CHAIRMAN’S LETTER

By the time members read this, you would have elected a new Chairman and also welcomed the Lunar New Year of the Snake. It is in the nature of things that when one becomes engrossed in doing work for the Bar and discharging the duties as its Chairman, time assumes a persona of its own such that one easily forgets that two years have passed by so quickly and efficiently.

In the past year I have travelled quite extensively around the world to leave the footprint of the Hong Kong Bar in the international legal arena. In January it was to Singapore for the opening of their legal year. In February it was to New Delhi for the IPBA. Next came a trip to Tokyo to promote Hong Kong as the ideal seat of arbitration in Asia. I then led a Bar delegation to Beijing in early June where we met with officials of the Ministry of Justice, office bearers of the All China Lawyers Association, the Vice President and judges of the People’s Supreme Court amongst others. Our discussions centered on exploring ways in which members of the Bar can gain better access to undertake work in the Mainland and to promote the advantages of possibly using barristers as the single joint expert in cases involving questions of Hong Kong law.

We also visited the Peking University where the students who attended the series of common law lectures that members of the Bar had delivered participated in a civil and criminal moot. The best 8 LLM students were given scholarships to visit Hong Kong and become attached to a number of Chambers to see how the common law operates in actual practice. As I had indicated in my speech at the Opening of the Legal Year, this initiative, which is in its second year, is in my view, both an unique and worthwhile project and one that I am hopeful will be continued in the years to come and possibly replicated with other universities in the Mainland.

Towards end of June I attended the World Bar Conference in London. This is the one conference under the umbrella of the IBA which specifically focuses on the independent referral Bars around the world. It was a highly interesting and thought provoking conference highlighting and addressing the issues and challenges which were confronting the various Bars around the world.

In August I attended the POLA conference in Manila where I addressed the conference on the issue of Legal Aid in Hong Kong as well as the problems posed by the increasing number of litigants in person appearing.
in the District and High Courts. Towards end September/early October I attended the IBA in Dublin. The IBA keeps getting bigger each year and this time there were over 6,500 lawyers and judges from all over the world attending. Quite a conclave of the legal fraternity in one place!

In mid-October I lead a Bar delegation to Shanghai promoting closer and greater cooperation between the HKBA and our Shanghai counterparts. We met up with officials of the Ministry of Justice as well as office bearers of the Shanghai Lawyers Association. Our discussions centered on promoting greater cooperation and assistance between the two professional bodies. As the first step towards this goal, on the morning of the Opening of the Legal Year I signed a memorandum of cooperation and mutual assistance with the President of the Shanghai Lawyers Association. It is anticipated that legal forums will be held in both cities in the course of the coming year in furtherance of the memorandum signed. The highlight of my first visit to Shanghai culminated with my first partaking of the famous "hairy crabs". With apologies to the aficionados of this hairy crustacean, personally it seems to me to be a lot of effort for very little crab meat reward!

In November, I attended the 26th LawAsia Conference in Bali, where I again spoke on issues relating to legal aid, its expansion and the increase in cases involving litigants in person, which suggested a denial of access to justice to the sandwiched class. This completed my international commitments for the year. I will however be going to Mumbai and New Delhi in early February 2013 as part of a roadshow to promote Hong Kong as the ideal seat of arbitration to Indian corporates and the Indian legal fraternity, an obligation I agreed to undertake although I was stepping down as Chairman.

On the home front, the welfare and work opportunities for the junior Bar have been a focal point of concern for the Bar Council. With the cooperation of the Director of Public Prosecutions and the Department of Justice, the flat prosecution training and work programme was repeated in February and July last year. The programme has been well received by the junior bar and will be continued in 2013.

We had a Bar mess in November 2011 in honour of the Chief Justice Geoffrey Ma which was very well attended. In June drinks were organised at the Hong Kong Club to provide a platform for senior and junior members to meet informally, get to know each other better and discuss matters of mutual interest and concern. The YBs organized their customary Christmas drinks in December which, as always, was well attended. In November, an EGM was held which resolved to confer Honorary Life Membership of the Bar to Mr. Justice Bokhary NPJ (now) for his contribution to the administration of justice in Hong Kong. To commemorate this, a Bar mess was held on 11th January 2013 at which a silver plate was given to Mr. Justice Bokhary to witness the occasion.

It has been an amazing and incredibly interesting and rewarding two years as your Chairman. I am humbled by the honour bestowed on me to serve as your leader. I am also deeply grateful for all the help, advice and unstinting support given to me by members covering the complete spectrum of the Bar. I leave the Bar’s leadership in the safe hands of my successor Paul Shieh SC and wish him and his Council a rewarding and enjoyable stewardship of the Bar.

Finally I would like to wish all members Kung Hei Fat Choi and hope the Year of the Snake brings health, happiness and fruitful endeavours to everyone!

Kumar Ramanathan SC
Chairman

米其在位期間，我們已推選了一位新主任和迎選了農曆新年的蛇年。蛇的本質是，當一個人全神貫注地為大律師公會做事，並履行擔任主席的職責，時間會代入自己的角色，令人很容易忘記兩年其實已經飛快和有效率地過了。

在過去的一年，我走南闖北，為香港大律師公會在國際法律舞臺留下足跡。去年一月我去到新加坡，參加當地法律年度的開幕；二月份是新德里的泛太平洋律師協會 (IPBA)；接著是去東京推廣香港作為亞洲的理想仲裁地。然後，六月初我先後到大阪和首爾，會見當地司法部的官員，中國律師協會的幹事，最高人民法院院長和法官及其他人士。

我們的討論集中在探索一些方法，使得大律師公會的成員可以獲得更多在內地開展工作的機會；並且準在涉及香港法律問題的案件，使用大律師作為單一的聯合專家的意見。

我們還參觀了北京大學，大學的學生出席了一系列由大律師主持的普通法講座，參與了一場民事和刑事的模擬法庭辯論。表現最好的八名法學碩士 (LLM) 學生獲得獎學金訪問香港，並附屬於一些大律師的辦公室，了解普通法是如何在實際執業中被應用。正如我在法律年度開幕典禮的致詞中曾表示，這一已來到第二年的倡議，在我來看，是一個獨特及有價值的項目，而我希望在未來數年將會繼續並有可能在內地其他大學複製此項目。

六月底，我參加了在倫敦舉行的世界大律師公會會議 (World Bar Conference)。這是國際律師協會 (IBA) 旗下的一個會議，特別側重於世界各地獨立贊助的律師公會。

這是一個非常有趣的並發人深省的會議，會議強調商務世界各地各位大律師公會所面對的問題和挑戰。

八月份，我參加了在馬尼拉舉行的 POLA 會議。在會議上我談及香港的法律援助這個問題，以及越來越多香港律師代表的訴訟當事人親身在區域法院和高等法院應訊所帶來的問題。

九月底 / 十月初時，我出席了都柏林的國際律師協會 (IBA)。國際律師協會的規模越來越大，今年有超過六千五百名來自世界各地的律師和法官參加。這真是一個很多法律界同輩所
參加的會議！

十月中旬的時候，我帶領大律師代表團到上海，以促進大律師公會和我們的上海同行之間更緊密和更多的合作。我們與司法部的官員以及上海律師協會的幹事會面。我們的討論集中於促進兩個專業法律團體之間的合作和協助。作為實現這個目標的第一步，法律年度開幕典禮當日的上午，我和上海律師協會的會長簽署了一份合作和相互協助的備忘錄。我們預料簽署備忘錄後，法律論壇將在來年於兩個城市舉行。我首次到上海最難忘的部份是我第一次品嚐到著名的「大閘蟹」。我要向這些毛茸茸的甲殼動物的愛好者道歉，在我看來，要賣太多的功夫才獲得極之少蟹肉的獎勵！

在十一月，我參加了在巴厘島召開的第二十六屆亞太區法律協會會議（LawAsia Conference），在那裡我再次談到法律援助，其擴張和涉及無律師代表當事人的案件的增加，意味著拒絕多元訴訴法律。我今年的國際承諾就此展開了。不過，在二零一三年二月上旬我會到孟買和新德里參與路演，以推廣香港作為印度公司和印度的法律界的理想仲裁席位。雖然我已簽署主席，但這是我同意承擔的義務。

在本港而言，新晉大律師的福利和工作機會一直是大律師公會的關注焦點。隨著刑事檢察處處長和司法部的合作，外判刑事檢控的培訓和工作程序在去年二月和七月重複進行。新晉的大律師非常歡迎這個計劃，並計劃會在二零—三年繼續。二零一一年十一月，我們為終審法院首席官馬道立舉辦了一個大律師聚會（Bar Mess），反應很熱烈。六月份我們在香港會舉辦了晚會，藉此為新晉的成員提供一個非正式會面的平台，使他們可以相互了解和討論共同關心和關切的事項。新晉大律師們在十二月安排了慣常的聖誕晚會，一如往常，反應非常熱烈。本會的特別會員大会在十一月舉行，決定授予（現任）終審法院非常任法官包致金 NPJ 終身榮譽會員會籍，確定他對香港的司法所作出的貢獻。為了紀念此事，我們在二零一三年十二月一日舉辦了一次大律師聚會，我們頒發了銀碟子包致金法官，見證此場合。

當你們的主席過去兩年是精彩和令人難以置信地有趣和豐收的。作為你們的首領，對於這份你們給予我的榮譽，我感到謙卑。我也深深感謝所有層次的成員給我的幫助，建議和鼓力支持。隨著我離開主席的一職，大律師公會的領導落在我可靠的手中。我的繼任人石永泰資深大律師。我祝願他和他的議會將豐收和愉快地管理大律師公會。

最後，我衷心祝願所有成員「恭喜發財」，希望蛇年給大家帶來健康、快樂和成果！

林孟達 資深大律師
主席

EDITOR’S NOTE
編者按

It is with great pleasure that I have served as Chairman of the Publication Special Committee in the year that the Bar Newsletter finally makes a comeback since last being published in January 2010! I hope that the content which the Committee has selected for the Newsletter is a good and interesting reflection of the many events impacting the Bar and the legal community which have occurred over the past three years.

On behalf of the Committee, I would like to convey our sincerest gratitude to the esteemed Judges and senior members of the Bar for taking time out of their very busy schedules to contribute to this issue of the Newsletter.

I would also like to take this opportunity to thank all members of the Committee of this year as well as the last few years for their assistance, and in particular to John Hui and Deanna Law for going above and beyond the call of duty. Special thanks also to Rani of the Bar Secretariat for her endless patience.

Christopher Chain

我非常高興能夠在今期擔任刊物出版特別委員會的主席。自二零一零年一月出版以來，大律師公會刊物終於在今年復刊重出現！我感謝委員會為此刊物所挑選的內容能好好及有效地反映在過去三年影響著大律師和法律界的事件。

代表著委員會，我向向尊敬的法官和大律師公會的資深成員，傳達誠摯的感謝。感謝他們在繁忙的工作中抽出時間，為期刊付出作出貢獻。

我也想藉此機會感謝今年以及過去幾年委員會所有成員的協助，特別是許其昌大律師和羅素山大律師的無私的貢獻；還要特別感謝大律師公會秘書處的 Rani 無盡的耐心。

錢孝良大律師
When the Bar Newsletter was last published, I was still in my previous office, preoccupied with the day to day operations of the High Court. Three years later, as I start another year in the law - my 33rd (by the way, as I write, it is New Year’s Eve) - it is a good time to reflect on the responsibilities of my present position and the direction the Judiciary should be heading. In Hong Kong, the future of the Judiciary has always rested with the legal profession and within this, the Bar has always held a special significance.

When I was sworn in as the second Chief Justice after the establishment of the Hong Kong SAR, I was aware of my responsibilities. Maintenance of the confidence reposed by the community in the Judiciary and in our system of law is perhaps the single greatest responsibility as head of the Judiciary. It is not a light one. As recent events have demonstrated, and many people are now showing a much greater willingness than before to comment on the law, on judges and on cases decided (even sometimes yet to be decided) by the courts, the community is perennially concerned with all facets of the rule of law. It is fair to say that on the whole the public trusts Hong Kong’s system of law and the way our judges discharge their professional responsibilities. We do so bearing in mind that the constitutional role of judges is simply to apply the law independently - in the judicial oath, this independence is contained in the requirement to serve Hong Kong and discharge judicial duties “without fear or favour, self interest or deceit”. By the time you read this, I will already have discussed these themes in the speech prepared for the Opening of the Legal Year.

The application of the law involves looking not just at the letter of the law but discovering its spirit. It is this discipline that ensures a principled approach to the practice of law. Barristers, by their training to start with and then through experience, adopt precisely the same approach. It is no coincidence at all that hitherto, many members of the Judiciary have come from the ranks of the Bar. This has been the experience of not just Hong Kong but also almost every other common law jurisdiction.

The Hong Kong Bar is an important institution in Hong Kong, having a significance far beyond just comprising persons who act for those in need of legal services. The community looks very much to the Bar to take the lead on issues which affect the law, lawyers and most important of all, the rule of law and its true meaning. The Bar does so fearlessly and independently, the very same qualities required of judges. It has often been said that the legal profession is a service industry but the part that is not often talked about in this context involves the ideal of serving the public, not just the fee-paying public. This Newsletter contains articles about and interviews with members of the Bar (past and present). They will provide to the interested reader a real insight into the make-up of a barrister and the goals to which every barrister ought to aspire.

I was a member of the Hong Kong Bar. It was a privilege to be one. On November 25, 2011 when the Bar Association held a Bar Mess in my honour on becoming Chief Justice, I thought then - as I do now and probably said it as well on that occasion - that whatever other honours and accolades came my way, very few would be able to match this singular honour and certainly not overtake it. If you can understand this sentiment, you will have some idea of my own feelings of what it means to be a member of the Hong Kong Bar.

Geoffrey Ma
Chief Justice’s Chambers
31 December 2012
巧合。這不只是香港的經驗，幾乎是所有其他普通法司法管轄區的經驗。

在香港，香港大律師公會是一個重要的機構，意義遠遠超出純粹為需要法律服務的人而服務的一個機構。社會非常期待大律師起著頭的作用，影響法律、律師；最重要的是，影響法治和它的真正意義。大律師無畏地、獨立地去做，法官亦需要同樣的素質。人們常常說，法律界是一個服務行業，但不經常談到的部分是涉訴服務公眾的理想，而不僅僅是付費的公眾。這些刊物的文章有談及大律師公會成員（過去和現在），還包括他們的採訪。這些文章將讓有興趣的讀者真正體會到大律師的構造和每一個大律師應該追求的目標。

我曾是香港大律師公會的成員，這是一種特別的恩賜。二零一一年十一月二十五日當天，大律師公會為慶賀我成為首席大法官舉行了大律師聚會。我那時想，我現在也這麼想。在那場合當中，我不可能已經受過。我擁有的任何其他的榮譽和榮譽，很少會能夠匹配這一幕幕榮譽，更別說超越它。如果你能理解這份情感，你便能有所理解我本人對成為香港大律師公會成員的感覺的意義。

馬道立
終審法院首席法官辦公室
二零一二年十二月三十一日
THE BAR MESS IN HONOUR OF THE
HONOURABLE CHIEF JUSTICE MA AT
THE HONG KONG COUNTRY CLUB,
25 NOVEMBER 2011

2011 年 11 月 25 日大律師聚會

Mr. Kumar Ramanathan S.C. (林孟達資深大律師) and Mr. Stewart Wong, S.C. (黃耀明資深大律師)

Silver plate presented by the HKBA to the Hon. Mr. Justice Ma to mark his appointment as the Chief Justice of the HKCFA presented at the Bar Mess held on 25 November 2011 (由香港大律師公會向馬國達首席法官頒發之紀念銅碟，以紀念其獲委任為終審法院首席法官)

The Hon. Mrs. Doreen Le Pichon (鄺美雲女士)，the Hon. Mr. Justice Chan P.J. (陳兆輝終審法院首席法官)，Mr. Paul Shieh S.C. (祁永華資深大律師) and the Hon. Mr. Justice Tang P.J. (鄧國標終審法院首席法官)

Mr. Kumar Ramanathan S.C. (林孟達資深大律師) and the Hon. Chief Justice Ma (馬國達首席法官)

Mr. Norman Hui (許文恩大律師) and Mr. Frederick Chan (陳慶輝大律師)
Mr. Isaac Chan (陳志剛大律師), Ms. Queenie Lau (劉恩沛大律師) and Mr. Victor Dawes (杜淦強大律師)

Mr. Martin Lee S.C. (李柱銘資深大律師) and Mr. Alan Leong S.C. (梁家傑資深大律師)

Mr. Jat Siew Tong S.C. (嘉紹陳資深大律師) and Mr. Edward Chan S.C. (陳景生資深大律師)

The Hon. Chief Justice Ma (馬道立首席法官) and Mr. Kumar Ramanathan S.C. (林孟達資深大律師)

Members of Parkside Chambers (Parkside Chambers 之成員)
TRIBUTE TO THE HONOURABLE FORMER CHIEF JUSTICE LI BY SIR ANTHONY MASON NPJ AND THE HONOURABLE WONG YAN YUN LUNG, S.C., FORMER SECRETARY FOR JUSTICE

終審法院非常任法官梅師賢爵士與前律政司司長黃仁龍資深大律師向前首席法官李國能之致敬

It was a privilege and a pleasure to work with Chief Justice Li. He was dedicated to the rule of law, to the independence of the judiciary and to impartial judicial determination of legal issues. Judicial leadership and dedication of that kind was necessary to sustain a common law legal system in the HKSAR under the Basic Law.

While Chief Justices generally share the essential qualities you would expect to find in a Chief Justice, they bring individual characteristics to the office. Chief Justice Li identified very strongly with Hong Kong and the People’s Republic of China. He saw the Basic Law as providing a firm foundation for the rule of law in Hong Kong. He was also a very good administrator, some would say a “hands on” administrator.

He introduced a regime of judicial conferencing in relation to the writing of judgments which involved discussion both during adjournments and after the conclusion of oral argument. He recognized that, by reason of the presence of the overseas judge who would leave Hong Kong at the end of the sitting, it was necessary to finalize judgments, so far as possible, by the time the overseas judge departed. Electronic communication is not an adequate substitute for “eyeball” communication between judges when it comes to the writing of judgments.

In discussion of the draft of a judgment, he encouraged a full and free exchange of views and a resolution of different opinions with a view to achieving a consensus, where possible. Where consensus was not achieved, the judgments addressed the debatable issues.

My understanding is that the Chief Justice, when at the Bar, had a practice which was centred on commercial law. As Chief Justice, his main judicial contribution was in the sphere of constitutional and public law because he perceived it was in that area that the Court of Final Appeal’s (“CFA”) judgments would have the greatest impact on Hong Kong in the future. And those lawyers who are familiar with CFA judgments will know that he made an outstanding contribution to Hong Kong’s constitutional and public law.

The Chief Justice had an excellent knowledge of the law. He always read widely in the texts and journal articles touching on questions arising in cases coming before the CFA. He attended international conferences and particularly enjoyed the discussion each year on constitutional issues held at Yale University. He was well aware, from his past experience at the Bar and his membership of the Executive Council, of the problems of government. But, as his judgments on matters of human rights reveal, he was always mindful of the need to uphold them when that was possible. He was also concerned to see that judgments were written in a way that judges and magistrates would understand and would be able to apply in the courts below the CFA.

Working with Chief Justice Li and the CFA was one of the great experiences of my legal career.

Sir Anthony Mason NPJ

一般而言，首席大法官之間會找到一些人所預期的共通點，但除此以外，他們也會於其職位上注入不少的個人元素。而李國能首席大法官則對香港和中國有強烈的身份認同，而且，他將基本法視為對香港法治所提供的一個牢固的平台和基礎。在此以外，他亦是一位非常好的管理人，很多事他亦會親力親為。

另外，他引進了法官於審判期間的一個討論模式，不論是於休庭時，或是於口頭陳詞後法官之間會就案件作出討論。他明白到海外法官於任期結束後會離開香港，故此應盡可能於
As I write, it has been about five months since former Chief Justice Li retired from the highest judicial office in the Hong Kong Special Administrative Region which he held for 13 years since the latter’s establishment. Very rarely can one find anywhere in the world where a top judge leaving office with such unanimous accolade and warm gratitude within the entire community. Indeed, Chief Justice Li and the “Li Court” have become a momentous part of Hong Kong’s history, to be remembered for their monumental contribution to anchor the SAR safely in the rule of law amidst the uncharted and sometime misty waters of “One Country Two Systems”, and to equip the SAR soundly for the future journey amidst the unpredictable and sometime choppy seas of the modern globalized and competitive world.

I had tried to summarise the achievements of Chief Justice Li in my statement on 2 September 2009 on the day when he announced his early retirement. He was instrumental in the firm establishment of the Court of Final Appeal, which is now acknowledged to be one of the models exemplifying the highest standard of judicial independence and professionalism in the common law world. As a reformer, he spearheaded the Civil Justice Reform, putting in place significant changes in civil procedures aimed at improving access to justice at reasonable cost and speed, including the promotion of mediation. Under his leadership, the Judiciary has also rigorously extended the use of Chinese in the courts and assistance to litigants in person. As a judge, Chief Justice Li is well-known for his professional excellence, fairness and superb judicial temperament. Because of his personal inspiration and leadership, the Judiciary has attracted many top legal talents to join its ranks since 1997.

Before taking up the highest judicial post, Chief Justice Li was Andrew Li QC my pupil master and head of chambers. He is a dear friend, mentor and exemplar of excellence. His meticulous research, dependable advice, watertight submissions, original work (never reliant on juniors however able), persuasive advocacy and utmost integrity are well-known qualities which every barrister should aspire for. Yet, with all his abilities and achievements, Andrew is the very opposite of the pompous and indifferent barrister who cares more about his own bank accounts. Personable and unassuming, he had time and room for people, particularly those who were stretching their wings at the early stage of their legal career. The many fond stories about Andrew told by the pupils he taught and groomed, and by the Bar Scholars he chose and inspired, speak of the man who has the vision and the heart to light up the fraternity within the Bar and to build up talents to uphold the rule of law in Hong Kong. The life membership of the Bar Association conferred on him earlier in January is therefore most deserving and itself brings honour back to the Bar.

Wong Yan Lung SC
January 2011
於我執筆之際，李國能首席大法官已從他於在最高法庭工作了十三年的崗位榮休近五個月，而這也是自從特區政府成立十三年後之事。事實上，於世界各地也很難找到一位最高級法官離任時能享有如此一致的推崇和從整個社會而來的溫暖祝賀。的而且確，李國能首席大法官與其法庭已成為了香港歷史上重要的一個里程碑，特別是其一國兩制下對法治的重大的貢獻以及為特區政府就面對現今全球化的強烈競爭所作的準備。

於二零零九年九月二日正當李國能首席大法官宣佈提前退休時，我已試試總結他所作的貢獻。就成立終審庭一事他扮演了不可或缺的角色，而今天，終審庭已被公認為普通法世界裏享有最高的獨立性和專業性的一個模範。作為一位改革者，他率領了民事司法改革，他引進了不少重要的民事程序的改變，而目的在於市民可以享有一個更有效率和以更合理價錢所能享有的公義，這包括了對調解的運用。在他的領導下，香港的法院大大的拓展了對中文的使用，無論於法庭內或對自辯人的協助。作為一位法官，李國能首席大法官是一位專業、公平和有良好修養的法官，自1997年以來，

於李國能首席大法官的影響和領導底下，香港司法機關成功地吸納了不少優秀的法律人才。

於成為首席大法官以前，李國能御用大律師既是本人之師，亦是我所處大律師樓之領導。他是一位能幹，導師及卓越的典範。他葛穎無遺的研究，可信賴的法律意見書，滴水不漏的陳詞，原創的工作（從不依賴年資高的大律師，具說服力的口才以及崇高的人格均是他眾所周知的特色，亦是每一位大律師的榜樣。縱使他的各種才華和能力，李國能並非那種對事情漠不關心，只顧著他的銀行戶口的大律師。相反，他總會給予時間和空間予他身邊的人，特別是那些羽翼未豐於事業早期的大律師。從他的學徒以及他揀選的大律師學者口中可以得知他是一個有遠見的人，並有着那顆熾熱和專業的心，並積極培訓人才去維持香港的法治。因此大律師公會於本年一月時所頒予他的終生會員之名是他實至名歸的，而事實上這亦是大律師公會的榮耀。

黃仁源資深大律師
二零一一年一月

2011 年 1 月 21 日大律師聚會
The Hon. Chief Justice Li (as he then was) and Mr. Kumar Ramanathan S.C.

The Head Table (貴賓席)

The Hon. Mr. Justice Bokhary PJ (as he then was) addressing members of the Bar Mess

The Hon. Mr. Justice Bokhary PJ (as he then was) and Mr. Russell Coleman S.C.

Mr. Martin Lee S.C., Mr. Alexander King S.C. and Mr. Graham Harris S.C.
FROM BAR TABLE TO THE BENCH
從大律師到法官之路

The path from Bar Table to the Bench is one of the oldest and greatest traditions of the Bar. Since January 2010, seven Senior Counsel have been elevated to the High Court Bench: the Honourable Mr. Justice Joseph Fok JA, the Honourable Mr. Justice Jonathan Harris, the Honourable Mr. Justice Mohan Bharwaney, the Honourable Mr. Justice Andrew Macrae, the Honourable Mr. Justice Anthony Chan, the Honourable Mr. Justice Godfrey Lam, and the Honourable Mr. Justice Peter Ng.

The Committee was fortunate enough to have Mr. Justice Fok JA, Mr. Justice Harris, and Mr. Justice Bharwaney share their thoughts and experiences on practice at the Bar and their decision to enter the judiciary.

Q: What prompted his Lordship to leave behind private practice and join the Bench?

A: Prior to joining the Bench, I had been in private practice for 23 years, 10 of those years in silk, and I felt it was time for a change. Although I had not envisaged becoming a judge at the start of my career, from when I began sitting as a Recorder of the High Court in 2003, I found that I enjoyed adjudicating cases just as much as advocating cases. At the same time, it was an honour to be given the opportunity to join the Bench, which I feel is a natural progression from and the ultimate step in a career at the Bar. It was a combination of all these reasons which prompted me to leave private practice behind.

Q: What part of being a Judge does his Lordship find most enjoyable?

A: I find the process of adjudicating well-argued cases where Counsel have identified the relevant issues and presented materials in a logical and engaging way to be most enjoyable. I enjoy the intellectual challenge of working through issues to come to the right answer, and the preliminary view that I form from reading papers will often change after hearing Counsel’s argument.

Q: What does his Lordship find to be the biggest difference between practice at the Bar and life on the Bench?

A: I find that there is a big difference in how I approach issues from the perspective of a judge compared to the perspective of a barrister – issues are viewed in a different light when you are removed from the arena.

As a judge you are also relieved of the stress of winning or losing cases. For example, as a judge you will not
have to deal with the stress of your key witness giving testimony that undermines the foundations of your case. Another big difference is the emphasis of where the work is done in a case. As counsel, all of your work is geared towards finishing submissions, at which point the case is in the hands of the judge. As a judge, a large part of the work comes after the hearing when it comes to writing the judgment.

Q: In his Lordship’s opinion, what are the most important attributes of a good Judge, and of a good barrister?

A: When I was in private practice, I often appeared before judges where I came out of court with the feeling that I had a fair, reasonable, and courteous hearing, whether I won or lost. I think this in particular is one of the most important attributes of a good judge.

A good barrister should be able to present arguments with clarity and conciseness, whilst being reasonable and realistic. It is not helpful to a judge or to a client’s case to present dozens of points, including bad points which are not reasonably arguable, which only serve to dilute and lessen the impact of the good points.

Q: Any general tips for counsel, particularly junior juniors, appearing before his Lordship?

A: I would advise junior juniors to learn to step back and take an overview of the case, which will help them to gain those attributes of clarity, conciseness, and having reasonable and realistic judgment which make a good barrister.

問：您覺得當法官那一方面最為困難？
答：從時間的角度來看，審訊前要有足夠時間閱讀文件，然後在審訊後寫判詞是具挑戰性的，案件往往一個接著一個。作為法官，和私人執業時相比，一定不能如以往一樣控制自己的時間表，且不幸的是根本不能控制你可以花多少時間在閱讀文件上。

問：您覺得當法官那一方面最為合意？
答：當法官已經確認了有關問題，並呈上合邏輯和優勝的材料時，審理這種充滿論據的案件的過程是我最享受的。我享受挑戰智力的工作，通過問題找出正確的答案，而我從閱讀文件並初步形成的看法經常在聽了律師的論點後改變。

問：您覺得當大律師及當法官的最大分別是甚麼？
答：我覺得從法官的角度和從大律師的角度去處理問題有很大區別 - 當你不再在競技場中，你會從一個不同的角度去了解問題。

作为一个法官，你對輸贏的壓力也就釋然了。例如，作為法官，你並沒有壓力去應付關鍵證人作證時破壞了案件基礎的情況。

另一很大的不同是一件案件的工作在哪裡完成這重點。作為律師，是要完成提交所有的法律陳詞；此時，案件落在法官手中。作為法官，工作的很大部分是在審訊後才完成，涉及到判詞的寫作。

問：依您之見，甚麼是當一位好法官及一位好大律師的重要條件？
答：當我還在私人執業時，不論我贏了還是輸了，對於我面對的法官，離開法院時我經常感覺我經歷了一場公平、合理和友善的審訊。我覺得這尤其是當一個好法官的最重要條件之一。

一個好的大律師應該能提出清晰和簡潔同時又是合理、實際的論點。呈上數十個當中包括不合理、不值得商榷的較差論點，對法官或客戶的案件沒有幫助，這只會沖淡和減輕好的論點的效果。

問：您對大律師們，特別是年資尚淺的，有否任何提點，特別是面對法官閣下時？
答：我會建議初級大狀學習後進一步，綜觀整個案件，這會幫助他們獲得清晰、簡潔這些條件，並具有合理和切合實際的判斷，使他們成為一個好的大律師。
Q: What prompted his Lordship to leave behind private practice and join the Bench?

A: I have a young family, and being a judge gives me a more structured lifestyle. Also, I feel that it is time for me to make another change in my career, the first being leaving my solicitors practice to become a barrister in 1998. The novelty of arguing cases before the Court has faded over time, and I think that deciding cases is now more attractive to me than arguing them.

Q: What part of being a Judge does his Lordship find most difficult?

A: Writing judgments for long and complex cases. Sometimes it is not easy to allocate adequate time for writing long and comprehensive judgments, especially if the hearing or trial is closely followed by another long case.

Q: What part of being a Judge does his Lordship find most enjoyable?

A: I find deciding cases most enjoyable. I also like case management and finding the most efficient way to proceed with a case while doing justice to the parties.

Q: What does his Lordship find to be the biggest difference between practice at the Bar and life on the Bench?

A: I did not realize it before I was appointed to the Bench, but I find that my fellow judges are a lot more relaxed and humorous than barristers. We do not have the same kind of pressure that solicitors and barristers encounter in their practice, and which tends to make them competitive and tense.

Q: In his Lordship’s opinion, what are the most important attributes of a good Judge, and of a good barrister?

A: Obviously a judge should be able to write good judgments. It is important for judges to have patience in listening to arguments and submissions and make allowances for the difficulties that counsel, particularly young ones, face in presenting cases. On the other hand, a good judge should be “in charge” of the Court and sets its tone. There is a fine balance between these two attributes.

It goes without saying that a good barrister should be technically skilful and eloquent in his submissions. He should be able to package and present his case in a way which is easy to understand and can best help the judge to arrive at a decision. There is no point in unnecessarily complicating your case and citing unnecessary authorities.

The most important attribute of a good barrister, however, is to have the trust of the Court. This includes being reliable in terms of the evidence and the law, and being credible in his arguments and submissions. Once a barrister loses the trust of the court, it is very hard to re-establish it again.

Q: Any general tips for counsel, particularly junior juniors, appearing before his Lordship?

A: In addition to the above, for counsel who appear in the Monday mornings in the Companies Court, it is generally helpful if they can file a short note or skeleton no later than the previous Friday to guide and inform the judge what they intend to ask for in the hearing, and which I need to read.
Interview with the Honourable Mr. Justice Bharwaney

訪問包華禮法官

Sitting in his Chambers with a panoramic view of Hong Kong Park, the Hon. Bharwaney J, who was appointed to the Court of First Instance in February 2010, is clearly enjoying his transition from the Bar to the bench.

After practicing at the Bar for 32 years, and having taken silk in 2008, Bharwaney J felt that he had reached a stage in his career where one would naturally considering becoming a judge. Describing himself as a "traditionalist", Bharwaney J was attracted by the time-honoured practice of ending a career at the Bar by taking a judicial appointment. He also considered that, being in his mid-50s, he would be able to give "a good ten years of service" to the judiciary.

Of the differences between acting as counsel and sitting as a judge, Bharwaney J comments: "At the Bar, one talks a lot. As a judge, one must listen." Although he still occasionally feels it necessary to remind himself of these differences, he considers himself on the whole to be a good listener and to have the right temperament for the bench.

Bharwaney J recommends that every practitioner who is contemplating a judicial career should avail himself, if possible, of the opportunity to sit as a deputy judge. Such temporary appointments are extremely useful in assessing whether one derives satisfaction from the judicial role. "Different people have different temperaments; one never knows unless one tries," Bharwaney J explains.

One thing that Bharwaney J does miss about the Bar is the experience of appearing as an advocate before the courts, where one must figure out how best to persuade the tribunal, and where one is often arguing for a change in the boundaries of the law – what Bharwaney J calls "the practice of advocacy in its purest sense".

According to Bharwaney J, the pressure that he faces as a judge is qualitatively different from that which he experienced at the Bar. "As a barrister, you want to do the best for your client, but there are so many factors you cannot control, such as evidence from witnesses – these uncertainties will cause you stress." By contrast, the stress is somewhat different for a judge: there is pressure to "get it right", since one's decision may set a precedent that affects many people in the community. "It
is a huge responsibility,” Bharwaney J acknowledges.

However, an element common to both roles is the mental energy which is required. While a barrister may be rummaging his arguments throughout the day, a judge likewise has to think about which party is telling the truth even when he is not at his desk. “Now, even when I am brushing my teeth, I am often thinking about a legal point”, Bharwaney J says half-jokingly.

Having been appointed as the Personal Injuries Judge in May 2010, Bharwaney J has been much involved in the implementation of the Civil Justice Reform. For him, one clearly positive aspect of the CJR is the increased emphasis on mediation. Although settlement rates in personal injuries cases are generally high anyway, in the past, settlement often occurred only on the first day of trial. Mediation encourages parties to arrive at a settlement before reaching the doorstep of the court.

“Sometimes, parties need the catharsis of reliving the case. Mediation allows this to happen.”

安坐於他坐擁香港公園全景的辦公室，在二零一零年年二月獲任命為高等法院原訟法庭法官的包華禮, 顯然正在享受他由大狀成為法官的過渡期。

貴為執業大律師三十二年，並已在 2008 年被委任為資深大律師，包華禮法官認為他的職業生涯已到了他自然會考慮成為一名法官的一個階段。描述自己為「傳統主義者」，包法官承傳自古以來的做法，以接受司法任命來結束了他的大律師職業生涯。他認為，年屆五十的他，還可以為司法界服務另一「美好的十年」。

談到作為大律師和坐在法官椅上的差異，包法官有以下見解：

「作為大律師，會講很多。作為法官，一定要聆聽。」雖然偶爾也會感到有必要提醒自己這些差異，他認為自己總體上是一個很好的傾聽者和具備作為法官應有的脾性。

包法官建議每一個正在考慮以司法作為終身職業的大律師從業，如果可以的話應把握機會，出任暫定法官。這種暫時的任命在評估一個大律師是否能從司法的角色得到滿足是非常有用的。「包法官解釋，「不同的人有不同的脾性：人不嘗試永遠不會知道。」

對於過往作爲大律師的日子，包法官懷念在法庭上作抗辯律師的經歷。大律師必須弄清楚如何用最好的方法說服法庭，以及經常在爭取改變法律界限 -- 這亦即是包法官所稱之為 「抗辯的最純潔意義的實踐」。

據包法官所言，作為法官的他面臨的壓力和他當大律師時所經歷的大大不同。他說：「作為一名大律師，你想為你的客戶做到最好，但有那麼多你無法控制的因素，例如來自證人的證據 - 這些不確定因素會增加壓力。」與此相反，在法官而言，這種壓力是全然不同的：法官會有壓力「做正確的事」，因為法官的決定可能會開先例，在社會上影響到很多人。包法官承認，「這是一個極大的責任。」

然而，這兩個角色的共同元素是必需的精神能量。雖然大律師可有一天來回反覆他的論點，同樣地，法官即使不在辦公室前亦要思考哪一方說的是真話。包法官半開玩笑地說，「現在，即使我在刷牙時，也會經常思考法律的觀點。」

在二零一零年五月被任命為人身傷害法官的包華禮一直積極參與民事司法制度改革的執行。對他來說，民事司法制度改革其一明顯的好處是更加重視調解。雖然人身傷害案件的和解率一般都很高，但在過去，和解往往只發生在審判的第一天。調解鼓勵各方在到達法院門口之前達成和解。「有時，各方需要宣泄情緒去重溫案件。調解正正好容這種情況發生。」
THE BAR MESS IN HONOUR OF THE HONOURABLE MR. JUSTICE BOKHARY, G.B.M., NPJ

2013 年 1 月 11 日大律师聚會
Members of Sir Oswald Cheung’s Chambers (張偉爵士大律師事務所之成員)

Mr. Ramsky Yuen S.C., Secretary for Justice (袁國雄資深大律師，律政司司長) and Mr. Andrew Mak (麥俊成大律師)

Ms. Kate Poon (潘惠大律師), Ms. Elaine Liu (劉玉玲大律師) and Mr. Peter Duncan S.C. (鄧樂勤資深大律師)

Members enjoying the scrumptious dinner (成員享用美味的宴會)

Mr. Kumar Ramanathan S.C. addressing members of the Bar (林孟達資深大律師向晚宴成員致辭)
In Honour of Sir John Swaine

Sir John Joseph Swaine, CBE, QC, SC, JP passed away in Malta on 7 August 2012. At the time of his passing, he was 80 years old, and the most senior member of the Hong Kong Bar.

Sir John took silk in Hong Kong in 1975 and sat at the apex of the Hong Kong Bar for many years. In addition to a bustling and successful practice, Sir John also dedicated much of his time to serving the people. Prior to being called to the Bar, Sir John was one of the first “local” Cadet Officers (now called Administrative Officers) of the Hong Kong Government.

It is impossible to list all of Sir John’s accomplishments and selfless contributions to the Hong Kong community. A knighthood, the Presidency of the Legislative Council, Membership of the Executive Council, and Chairmanship of the Royal Hong Kong Jockey Club are only a small part of the many honours he received and esteemed positions he occupied.

Sir John was a doyen of the Hong Kong Bar and a model for many aspiring young barristers to follow. The Bar Publications Committee would like to take this opportunity to honour Sir John. His achievements and legacy will no doubt continue to move and influence our next generation in the many years to come.

二零一二年八月七日，施偉賢爵士（「大英帝國司令」勳章獲勵者（CBE），御用大律師（QC），資深大律師（SC），太平紳士（JP））在馬耳他逝世。施偉賢爵士享年八十歲，是香港大律師公會最資深的成員。

一九七五年，施偉賢爵士在香港被委任為御用大律師，多年來擔任香港大律師公會的頂尖位置。他繁忙和成功的私人執業以外，施偉賢爵士還奉獻他大部分的時間服務社會。在成為大律師之前，施偉賢爵士是港英政府首批華人政務官（即現在的政務主任）之一。

要列出施偉賢爵士所有的成就和對香港社會的無私奉獻是不可能的。他的職位，作為立法局主席、行政會議成員，並擔任香港賽馬會主席，只佔他獲得的許多榮譽和尊敬地位的一小部分。

施偉賢爵士是香港大律師公會的資深前輩和許多有抱負的年輕大律師尊敬的典範。大律師公會刊物出版委員會想藉此機會向施偉賢爵士致敬。他的成就和傳奇將毫無疑問在未來的許多，許多年繼續感動，影響我們的下一代。