Chairperson's Message

It is again time to say Happy Lunar New Year. I especially wish all YBs another fulfilling year ahead.

The livelihood and survival of YBs have been topics of much discussion recently. Competition amongst YBs is and has always been keen. The keen competition no doubt brings many uncertainties to the career path of YBs. It is commonly recognized that a high level of competence and integrity are the two essentials for maintaining our practice in good shape. Let’s work hard to equip ourselves and maintain the high standard of the Bar.

Two years ago, we launched the YBC Talk series, which were aimed at providing assistance and facilitating discussion among YBs on practice-related matters. Responses were positive and encouraging. We also invited YBs to share with us their views relating to practice, either through YBC drinks, writing in to Buzz or by approaching any of the YBC members. I trust mutual assistance amongst YBs will benefit us as a whole. I hope this will go on. As for other activities undertaken by the YBC in the last year, I do not intend to repeat them here as they were all set out in my report. These are certainly not my achievements, but the achievements of all members of the YBC last year and many other YBs who dedicated their time and efforts in these activities.

I am deeply grateful for having had the opportunity to serve as chairman of the YBC in the last two years. I am also lucky to have had a team of wonderful committee members. I cherished the experience of working with you all in the last two years. I am glad that the baton of the YBC has been passed on to able hands - a new team of YBC members led by Mr. Jenkin Suen. I wish the new YBC team every success in the coming year.

Elaine Liu

A Note from the Editor

How time flies! It did not seem like a year has passed since I first became editor and now this is already my last issue. I take this opportunity to thank Jolie Chao and Rachel Lam, my co-editors, for their kind assistance throughout, and our chairlady Elaine, without whom this issue particularly, would not have seen the light of day.

The theme of this issue (apart from the obvious Chinese New Year undertones) relates to proposals in the pipeline that are likely to affect prospective pupil barristers. The rest are things new yet familiar. Happy reading!

Abigail Wong
The Case of the Bar Exam: A Hypothesis

1. What is your case?

2. Why is that?

3. Who’s taking this exam, did you say?

4. Now isn’t it true that law graduates are already required to pass the PCLL Exam?

5. How “taught”?

6. Seems to me that some care needs to be taken not to overlap with what would’ve already been learnt by PCLL graduates for the exam to make sense.

7. Looks to me the aspirants to the Bar would have to think very carefully about joining.

8. Very well then, so when is this exam going to be?

9. No, I meant when this is going to be implemented.

10. Alright. Now, on the issue of costs for the administration and management of the exam. Who will bear those?

1. It is about the Bar Exam. It is possibly time for one.

2. To maintain the standards of the Bar, really. Many jurisdictions have this, like England & Wales, for example.

3. The aspirants to our profession. They shan’t commence practice until they’ve passed.

4. That is so, but we’re thinking this should be different. Specific skills of the trade will have to be taught and tested, say case analysis and advocacy skills.

5. Well, with the right modifications the ALE might come into that. The ALE is a linked issue, no doubt.

6. Naturally. And there should be dialogue with the law schools to sort this out.

7. That must have been true, in any case.

8. There’s talk about it being either an exit or entry exam.

9. Apologies. Well, it is all a bit too early to say. We’ll keep you informed.

10. Now isn’t that always a vexed question? It will be substantial, for sure. Let’s just say that this is reserved for further argument on another day...
Towards a more transparent system of pupillage application in Hong Kong

In recent years, the Bar has seen an increasing number of pupillage-seekers. This has prompted the question of whether the existing pupillage application system can be made more transparent for pupils and prospective pupil masters alike.

In England and Wales, for example, the Online Pupillage Application System (OLPAS) allows a graduate to apply to at most 12 sets of chambers at any one time by submitting a single online application. Participating chambers will then process the applications received according to a common timetable. Currently, around one-third of the chambers in England and Wales have joined OLPAS, although other chambers may also provide basic information about themselves, as well as any vacancies on offer, on the OLPAS website.

Clearly, the OLPAS system has made life much easier for pupils by providing a one-stop solution to the bulk mailing of applications, the chance of "double-bookings" and hence increasing the transparency of the entire exercise.

That said, the number of pupillage-seekers in Hong Kong is still not that large. Figures suggest that the number tops at around 80 per year, on average. Hence, the need for a computerized online system to standardize applications will have to be balanced against economic feasibilities. For example, figures from OLPAS suggest that it costs the 130 participating chambers in England around HK$450,000 each year. However, the cost is unlikely to go down proportionally to the size of the system - this presents a disincentive to chambers in Hong Kong as the system we need can be of a smaller scale, but it won't be appreciably cheaper.

Another important factor is that the Bar in Hong Kong is less institutionalized than the Bar in England. Some chambers in Hong Kong are still in the process of acquiring a distinct image and status; others might never wish to do so. Although it may be that individual barristers can elect whether or not to join such a system, the impression conveyed by chambers joining as a set is different - that such disparity is inherently accentuated may beg the question of whether the system is necessarily a fair one.

Moreover, it has to be remembered that not all intricacies of the pupillage application exercise can be addressed by simplifying its administration. For instance, even OLPAS does not prescribe the way chambers select their pupils in England (although participants must agree to follow a code against discrimination on race, physical disabilities etc). At the end of the day, each set retains a complete free hand to choose pupils they think will suit their chambers best, and each chambers will still need to assess and interview prospective pupils on their own. Whether or not this last stage of the pupillage application exercise ought to form part of a centralized system is a debatable subject, where one of the bones of contention is likely to be whether full transparency should be bought at the price of depriving chambers or pupil masters of this discretion and autonomy over the pupils selection process.

Therefore, it would seem that the benefits that a system like OLPAS will bring to Hong Kong will depend on local circumstances, and its implications must be examined closely from various perspectives.

Notwithstanding the above, there are ways that the current pupillage
application procedure in Hong Kong may be improved to facilitate an informed choice for those who aspire to join the Bar. For example, the possibility of putting up more information on the Bar’s website about the available number of pupil masters in chambers, the appropriate time and way to send applications to specific chambers, or even whether, because applicants are now required to inform the Bar Secretariat of their prospective pupil master before pupillage, such information can be gathered into a database to minimize “double bookings” etc... can be looked into. This way, prospective applicants can better assess the way they should apply for pupillages, and this in turn means that chambers are more likely to receive applications they find suitable.

Alfred Cheng

Letter to the Senior

Dear Madam Senior,

I have a problem.

I was approached today by a solicitor who wishes to instruct me as a junior in defending a big case. The trial would likely be quite long, and the brief is bound to be rather substantial.

I vaguely recall doing a small piece of advisory work on a related matter for one of the plaintiffs. I am sure it was not for this particular action. My records do show a high degree of overlap in the facts, however. Also, I happen to know one of the plaintiffs (although not very well). Can I take on the case?

Yours in need,

Mr. Junior

Dear Mr. Junior,

Under our code of conduct, you are not obliged to accept a brief if you have previously advised another person on or in connection with the same matter; and you ought not to accept a brief or advise or draft pleadings if you would be embarrassed in the discharge of your duties. If you have material information which was entrusted to you in confidence by or on behalf of your previous client, you would most certainly be embarrassed.

Further, the fact that you happen to be acquainted to the plaintiff may also put you in conflict of interest. Under the code of conduct, where it would be difficult for you to maintain your professional independence, you should not accept the brief. This latter issue is a matter of judgment for you.

On the whole, I think it would be wise to decline the instructions in this case.

Yours faithfully,

Madam Senior

(Editor’s note: See also §§ 57 & 58 of the Hong Kong Bar Code of Conduct)
二零零七年一月某日 寒

除夕，四顾过去一年工作，總體可說是平平，足夠支付租金和開支之餘，還有點微薄的收入。但收入和工作量始終未達致穩定無憂。近年新晉大律師普遍的執業情況都是辛苦經營，自己的表現可算是合格吧。繼續努力，希望來年工作更穩定成熟。

收拾好案頭的文件，晚上七時，準備離開辦公室，回家度假。電話突然響起，律師來電，說有一宗案

我是該接還是不該接這案件呢？

律師扼要地講述案件的性質和事實背景。這類案件我曾處理過，該是應付得來。元旦期間泡湯不打算，多接一件案件，多取一些經驗無疑是好事。結果把案件接下來。

元旦大清早回返辦公室，但願是一個好的開始。

不久，律師帶着三位客戶和兩大檔案夾的文件到達辦公室。來的是兩姊弟和他們年老的母親。剛坐下不久，焦急的姊妹便急不及待的輪流把他們的怒恨和委屈嘮嘮不休的道來，似乎有滿肚子鬱結，不吐不快。

我多次提問，又對兩姊弟的話作簡短總結，以作確認，希望能更集中了解事情重點所在，及嘗試理順檔案夾內的文件。他們兩位也太熱切了，我的問題只能起一時的作用。

我不時問他們又對兩姊妹的話作簡短總結，以作確認，希望能更集中了解事情重點所在，及嘗試理順檔案夾內的文件。他們兩位也太熱切了，我的問題只能起一時的作用。

步出法庭，腳步開始飄浮，腦海沒有知覺，彷彿不屬於我的。腦袋裏浮現着老婦在知道宣判結果後首度綻放的微笑。總算安安穩稳地完成今年第一項工作。

踏上計程車，噢，眼皮睜不開了，我要睡覺。
**YBC Talks**

On 21st July 2006, Mr. Giles Surman, Kevin Wong and Derek Chan gave a very well-attended talk entitled ‘Common Criminal Briefs for YBs - What to expect and what to look out for’. Topics covered the ins-and-outs of criminal practice by YBs, including common problems faced not only when defending clients, but also when prosecuting on flat. This was followed by discussion where members shared their experiences and discussed other matters, such as what to do when someone you know calls you from the Police Station in the early hours of the morning. All those who attended agreed that the talk had generally been very useful.

Yang-Wahn Hew

In the past year, the YBC had held a series of talks which were aimed at sharing practical tips with fellow YBs on practice-related issues. A talk on "Monday Mornings - Practical Tips on Call-Over Hearings" was given by Jin Pao to the YBs on 20th October 2006, whereby practical tips on companies call-over hearings were given.

'Monday Mornings" very often form the bread and butter for YBs. However, that is not to say that they are in any way "a breeze". The talk focused on certain areas which YBs may find difficult to handle.

Other than discussing the general nature of Monday Morning hearings, the different types of winding-up petitions and the type of orders commonly sought, the talk focused on giving practical tips to YBs, e.g.

What should you do if a solicitor approaches you outside Court to represent his client on a Monday morning? What is meant by being fully prepared for a Monday Morning? What are the common related applications and under what circumstances would those be entertained on a Monday Morning...etc.

After the Talk, YBs were invited to share their experiences in the Winding-up Court and to discuss the problems they had run into in the past. The feedback of the Talk was encouraging and those who attended all agreed that such talks are helpful, especially if they are about to go to the Winding-up Court for the first time.

Phoebe Man

**Christmas Drinks 2006**

Judging from the faithful attendance of members from both the Bar and Bench every year, it is certainly no exaggeration to say that the annual pre-Christmas Drinks Party organized by the YBC has become something of a tradition. On this occasion, the jolly event was held on 8th December 2006 at the Verandah at the Foreign Correspondents’ Club. Despite being unusually warm for the season, the guests were observed to be enjoying the opportunity to mix and mingle at cozy quarters (See opposite). Special thanks go to Mr. Raymond Leung and Ms. Jessie Yang for facilitating the booking of the venue.
The Hong Kong Law Fair 2007 was held on 20th January 2007 from 12 noon to 4 pm at the Hong Kong Exhibition Centre. This annual event attracted more than 600 job seekers from around the world. The participants this year included over 20 major law firms, educational institutions and the Department of Justice.

The Hong Kong Bar Association has maintained its presence in the Law Fair since 2005. Our aim is to make the Bar more transparent and accessible to the general public. The Law Fair is a great opportunity for people to interact with young barristers and pupils. Like many others, people who attended the event were keen to know about the requirements for pupillage, admission and the nature of the work that we undertake. Apart from sharing our experience, we also provided them with flow charts, Q&A summaries and publications about the Bar which would no doubt enable them to make more informed career decisions.

Wilson Hui