It is indeed my pleasure to take over the baton to chair the YBC from the capable hands of the previous Chairman, Jenkin Suen. At the time of the publication of Buzz, I have already served my term for just over half a year and I am grateful that I have inherited a team of dedicated and helpful committee members who have kindly agreed to continue their service. In addition, we are very fortunate to have recruited a few enthusiastic YBs and pupils, including May Chung, Isaac Chan, Queenie Lau and Esther Chan, to join our committee. I hope the YBC would remain as one of the most vibrant and active special committees under the umbrella of the Bar Association.

In the past two years, Jenkin together with our committee members and many other YBs not only worked diligently to organise events of interest for YBs and pupils but also arranged for various activities involving university and secondary students with the aim of attracting potential talent to join our profession. Highlights included the HKBA Debating Competition 2008-2009, our annual participation in the Dragonboat Competition at Stanley, the YBC Christmas Drinks and the Law Fair.
I would also like to take this opportunity to thank the Judiciary and other members of the Bar for their support, without which our activities would not have been possible.

The livelihood of YBs has always been a topic of much discussion. Senior members of the Bar are all very concerned about the situation that YBs are facing, but without real figures, it is difficult for us to truly see how well we are doing. Up till now, when asked about this, each of us has only been able to rely on our personal experience.

In order to compile more comprehensive data on the practice of YBs, the YBC conducted a survey on the professional practice of YBs through a Bar Circular in July 2008. But regrettably, we did not receive much response from YBs. As a result, the survey unfortunately does not show a full picture of YBs’ practice.

Throughout these years, while many YBs have asked the question “what has the YBC done to assist our practice”, not many of them have expressed more concrete opinion or have taken the initiative to bring up matters for discussion. It is undeniable that the Bar is bottom heavy, and YBs represents a large proportion of our profession. It is therefore important for us to know your needs. We strongly encourage YBs to write to us in order to let us better represent you on all issues affecting YBs.

With the relaxation of our Bar Code on advertising and the implementation of the Civil Justice Reform on 2nd April 2009, 2009 is a year full of changes and challenges for all practitioners. As members of the Bar, YBs will have to do their best to adapt. The YBC would continue to endeavour to provide assistance to YBs in practice-related issues.

Over the past few months, the YBC has been organising various practice-related talks by inviting judges to be our speakers. Our talks include “Appearance before District Court Judges and High Court Masters: Practical Tips and Sharing from the Bench” by His Honour Judge Lok and Master A. Ho held on 20th June 2008, “Appearance before the Companies Judge: Practical Tips and Sharing from the Bench” by The Hon. Mr Justice Barma held on 27th February 2009, and “The Role of Mediation in CJR and How YBs Can Become Involved” by The Hon. Mr Justice Reyes held on 24th April 2009. The YBC will continue to organise talks for YBs with a view to helping YBs in their practice.

The Bar itself is a very unique profession; it is a cohesive community which has a valuable tradition of fraternity and also a strong sense of justice and commitment towards our society. The YBC does not only focus on the practice and business of YBs but has always been working hard to reach out to other sectors of the community and to offer assistance whenever necessary. We hope that each and every YB would make an effort to uphold these traditions and values which we cherish.

Jolie Chao
CJR and Mediation

After the Civil Justice Reform ("CJR"), which was implemented on the 2nd April 2009, parties are actively encouraged to adopt dispute resolution methods other than litigation. As pointed out by The Hon. Mr. Justice Reyes in a talk to young barristers held on 24th April 2009, one of the main purposes of the CJR is to reduce the costs of litigation. However, some practitioners remain skeptical as to whether the present CJR regime can effectively achieve this purpose. Their worries are further fortified by the statistics that in England, where the Woolf Reforms were introduced some 10 years ago, the costs of litigation have become front-loaded but not reduced.

Under the present CJR regime, parties are obliged to present their cases and narrow down the real issues at an earlier stage. This necessarily involves spending money on some items which, under the previous regime, were only necessary at a later stage. For example, it may be necessary for the parties to obtain counsel’s advice before settling pleadings. If the parties end up going through trial, it is hard to see how costs can be reduced as a whole.

The missing piece is mediation, suggests Reyes J.

Reyes J pointed out that mediation is an integral part of the CJR rather than an external part the CJR can do without. In fact, the design of the CJR is to hope that by realizing the strengths and weaknesses of the parties' respective cases at an early stage, they will be more realistic in their settlement discussion so as to facilitate mediation. If the whole scheme works out as planned, a lot of cases will be settled and fewer cases will proceed to trial, thereby reducing costs as a whole.

In order to ensure that parties are informed of their choices to go to mediation, the Bar Code has been recently updated to impose a positive duty on barristers to “consider with his or her clients the possibility of attempting to resolve a dispute or any particular issue thereof by way of mediation.” (paragraph 116A)

Thus, the message is clear. The plan is to reduce the number of trials which, at least on the surface, unintentionally deals a blow to the Bar especially those at the junior end. With this in mind, the question is what a YB can do to prepare himself/herself for this challenge. To this, Reyes J urged us to obtain the accreditation as mediators. In the first few years, clients are less likely to instruct YBs to act as their mediators because of the lack of experience. But this is a long term investment and as suggested by Reyes J, YBs should first start by giving their services on a pro-bono basis so as to gain practical experience. The reward will then come in the long run.

Vincent Chen

The Role of Mediation in CJR and How Young Barristers Can Become Involved

A buffet table with a variety of mediation – that is what the CJR offers, suggests The Hon. Mr. Justice Reyes.

Since the CJR took effect on 2nd April 2009, there are now three variations on a theme of mediation: i) Order 13A; ii) Orders 22 and 22A; and iii) mediation in its most flexible form. Order 13A, which provides specifically for admissions in claims for payment of money, is the least creative option. Orders 22 and 22A, which relate to offers to settle and payments into court, allow a bit more flexibility and are more similar to mediation. Finally, there is mediation itself, which has few constraints and can be tailor-made to suit parties' needs. The key is that parties are encouraged to discuss what they truly want. This variety of options on how to do that reflects the emphasis of the CJR on mediation or quasi-mediation in resolving disputes.

It is probably not news that mediation is becoming bigger and bigger. Indeed, many YBs have enrolled for mediation courses and acquired accreditation. However, some have also expressed concern over the challenges in attracting clients who are willing to appoint junior members of the Bar as mediators. The question is: what can we do to maximise our chances?
YBs who have qualified as mediators could consider acting as mediators on a pro bono basis. For example, the Building Management Tribunal holds a list of mediators, and YBs could consider joining that list and hopefully gain some experience in mediation even if on a pro bono basis to begin with. YBs may also consider writing articles for magazines about mediation. There are many aspects of mediation which could usefully be explored. These efforts would no doubt help YBs attract appointments as mediator.

Reyes J also threw out a question: if there are complaints against the Bar’s mediators, what disciplinary action can be taken? He suggested that having a system dealing with such complaints would increase the public’s faith in the Bar’s mediators, which would in turn help barristers to establish themselves as mediators. This possibility is something that YBs should give some thought to and should perhaps put forward to the Bar Council. The YBC welcomes views on this.

The issue of mediation advocacy came up as well. Can barristers appear as mediation advocates without the presence of solicitors? Should barristers be able to do so? Would this help YBs in their practice? Again, the YBC would like to hear your views.

Queenie Lau

Advice from The Hon. Mr. Justice Barma on “Monday mornings”

In the evening of 27th February 2009, The Hon. Mr. Justice Barma kindly shared some of his views on how we as YBs can better prepare ourselves for the hustle and bustle of Monday morning hearings in the Companies’ Court, and also offered YBs the valuable opportunity to ask him questions about specific issues that they have come across.

In particular, Barma J offered two pieces of advice.

First, given most of the applications in a Monday morning are procedural in nature, i.e. mostly about time and manner of filing affirmations and other documents, try to agree with the other side as much as possible before we set foot in the courtroom. When facing a long queue of applicants, the Court would be pleased to hear that both parties have been sensible and efficient.

Second, when it comes to more substantive applications, what the Bench finds undesirable is to spend time unnecessarily to work out the procedural context of the application. The Court would welcome skeleton submissions which succinctly point out where the application stands in the procedural map of the case.

After Barma J’s talk and the question and answer session, he joined the participants for a drink, which many YBs enjoyed.

Special thanks also goes to Jin Pao who served as the mediator for the evening.

Isaac Chan
Survey on Livelihood of YBs 2008

One of the most frequently asked questions of YBs and pupils entering the profession is: “Will I be able to earn enough to cover my expenses at the beginning when I am still trying to establish my practice?”

In 2008, we attempted to answer this question by conducting a survey of YBs in their 1st to 5th years of practice.

A. The Data

Seniority of Respondents

The YBC received a total of 61 responses to the survey. The breakdown of seniority of the respondents was as follows:

- < 1 year: 11
- 1-2 years: 20
- 2-3 years: 18
- 3-4 years: 9
- 4-5 years: 3

Years of Call of Respondents

Revenue and Expenses

Respondents were asked about their average monthly revenue and expenses. 50 respondents chose to disclose this information. These were their responses:

Pupillage Assessment and Paid Pupillage

We also asked our participants (1) whether they would like an assessment on completion of pupillage to be introduced, and (2) whether they were in favour of compulsory paid pupillage. Here is a breakdown of their views:
Survey on Livelihood of YBs 2008 ... con’t

B. Findings

Surprisingly, no correlation was found between seniority and revenue or expenses.

The revenue chart shows in essence a bell curve distribution, with the peak at $20,001 - $30,000. However 11 respondents, i.e., roughly 20%, reported a monthly revenue of over $80,000, contributing to a second peak towards the higher end.

As to expenses, the data forms a classic bell curve, with the peak at $20,001 - $25,000.

It was further found that all respondents were able to cover their expenses with revenue from their practice. However, 1 out of 15 respondents had an expense-to-revenue ratio of 100%, i.e., their revenue was only just able to cover their expenses. On average, respondents’ expenses-to-revenue ratio was 47%. In other words, the average respondent was able to cover his expenses using less than half of his earnings. Among all the respondents, the lowest expense-to-revenue ratio was 15%.

As to pupillage assessment, most YBs (71%) were in favour of introducing some form of assessment on completion of pupillage. However, more respondents were against compulsory paid pupillage (40%) than for it (36%).

C. Observations

Although the YBC had been urged by many members of the junior Bar to conduct a survey of this nature, the number of responses received was quite disappointing. Despite our best efforts to reassure potential participants that the survey would be conducted completely anonymously, due to the sensitive nature of the questions, great reluctance was encountered. The data skew in the revenue chart is likely attributable to YBs with higher-than-average earnings being more eager to participate in the survey. By the same token, the percentage of YBs in the lower end of the revenue range may be higher in reality than is shown from the data.

Regardless of how reflective these findings are overall on the reality faced by members of the junior Bar today, one thing is certain: some YBs are struggling to break even while at the other end of the spectrum, other YBs are getting more work than they can handle.

With the advent of Civil Justice Reform, members of the junior Bar will have to face new challenges. We may also encounter new opportunities. What will the new landscape look like? In our next survey, we will examine the effects of CJR on YBs.

May Chung
(With contributions from Alfred Cheng and Tony Ko)

Dragonboating 2008

We take this opportunity to include photos of the YBC Dragonboat Team 2008. The highlight for our team last year was to have two special training sessions, the first with a member of a top-tier dragonboat team training us, and the second with the infamous “Stanley Dragon” dragonboat race team training us. It was invaluable to pick up some tips from the professionals. Special thanks to Rimsky Yuen S.C. and Lisa Wong S.C. for kindly sponsoring our refreshments at the races.

Liam Lai
The Department of Justice team and our team dispelled all jokes that the Bar is an unathletic profession by attaining 1st and 3rd place in the race respectively. Mission accomplished, we quickly ferried ourselves onto our marvellous pleasure boat for music, food and drinks.

After party

Many drinks later, the party shifted to another restaurant in Stanley and it was during then when Felix, brandishing a trophy, announced that we actually came third (albeit at the bottom of our category). Feeling vindicated, we all celebrated out of new cup of glory while eagerly looking forward to the race in 2010!

Acknowledgments

A special thanks goes to Russell Coleman S.C. and the Bar Council for their support, Keith Yeung S.C. and Selwyn Yu for generously funding our feast, Carl and Felix for being our wonderful coaches, Hectar for paying for most of our “team bonding sessions” and last but not least, Edward, for entertaining the whole team (and undoubtedly the other teams as well) by being the only member to fall off the boat (gracefully) during training.

Lester Lee and Emma Tsang
(Thursday, 2nd July 2009 8:10 p.m.)

很久沒有寫blog, update一下吧！

今早和師父上法庭，出席一宗民事案件的當庭核實，旁聽乃胸中常議，姑且試作一首打油詩諷之：「老翁自殺後埋葬，法院居中問彼在，謊話溢膽何無休？」師父代表銀行一方。對方當事人年紀實長，不識本地方，又沒有律師代表，所以為公平起見，我跟律師花了大量時間將文件和陳詞翻譯為中文，以便對方詳細。

早上開庭，母親和兒子陪同出庭，師父請她親訊，但母親打斷。她舉手示意，要講幾句話說自己因患聾病癱，接受放射性治療後有副作用，故有聲不治，所以聽不到師父的陳詞。法官要求她在書記室供聲變耳聾，師父檔案聾聵，母親仍說聽不到，書記便讓他調整耳聾器音量至最大。師父再講，母親仍說聽不清楚，法官發怒不耐煩地說她已盡其所能，又問問母親是否能夠繼續。母親回答，但她在書記室情況和幸運，法官於是替她兒子，是否願意代表其母親稟報。她聽了半小時後，法官認為母親醫療重病，失去繼續進行聆訊能力，故命令委任其兒子作母親的代表。兒子則說尚未收到所有文件，需時聯繫，申請延後聆訊。

事出突然，師父匆忙考慮後表示不反對法官的命令和兒子的申請，法官於是將案件押後。延後後，師父聽到我說法官的命令似乎略為明確，順利交由，似乎找到今天給我的功課了。其實今年無律師代表的訴訟人士越來越多，多數難纏的訴訟程序對我們來說是十分有益的。

看看時鐘，已經八點了，下午翻譯文書完成了「功課」後，便一直輪一份《上訴理由意見》傳聞至現在，且先祭五穀神，禮足勢動後繼續搏命。

晚餐是母親最愛的漢堡包，咬著咬著去年換我炒飯的trainee在blog上記下了甚麼。原來去年的今天，我花了十小時翻譯各位書面陳詞書“bulk print”，從後花了差不多十小時準備後來書面陳詞、公告和年報，只剩下大概四五個小時休息。

可喜時光易逝，從trainee轉為現在我已差不多一年，再看看去年今日的blog，寫著以trainee身份參與一宗“murder trial”的經歷：

「由中天搬到九龍，陪審團終於判client有罪，為這宗謀殺案寫上句號（不過明天還是處理訴訟），我這個「律師大總管」（好比法院工人類種類總監理）終於正式參與了這宗歷時數月的案情。姑且記憶，事情也甚是回味。如無常在，也不會想起（以喝咖啡）的情況：為符合喜愛咖啡的擇定八九個最好的銀行，經過場的一對X Initialized包裝泡茶；對咖啡的濃度和時間記錄；時刻留意各個咖啡的咖啡度等等。這個晚上，哭泣聲伴隨著議論聲，夢中亦黑影著光燈，幾是難忘的經驗，只是明天又要繼續鋪天蓋地的歸途了。」

轉行的決定應該沒有錯吧，就是「千萬dealk」，對我來說也不比現在的一宗conspiracy to defraud來得有挑戰性及滿足感。一次又一次著重於的標題無名份不知多少人，實習的經緯過程實在是一種折磨，但不亦可的律師的經歷卻是一種享受。比起在法庭內的爭執各方言詞，我還是喜歡在小街邊的「咖啡吧」，既可兼顧法律原則和檔案道理，又可張揚言談和體會，更可兼顧證明證人和案鬼的感慨，這就是我追求的。

我可以老老實實的說一句，I really like my work！

陳嘉軒
The 14th Malaysian Law Conference: 29-31 October 2007, Kuala Lumpur

The Malaysian Law Conference is a major event hosted by the Malaysian Bar every two years. The theme of the MLC 2007 was “50 Years of Merdeka”. “Merdeka” is a classical Indian word referring to the emancipation of the former Indian slaves from Portuguese and Dutch, and later adopted to mean “freedom” in Malay. In Malaysia, Hari Merdeka is the national day and commemorates Malaysia’s independence from the colonial rule by the United Kingdom in August 1957 and the proclamation of the written constitution of Malaysia. The conference included discussions on constitutional law, commercial law, human rights issues and socio-legal issues.

My schedule during the MLC was packed with conference sessions, and I was also fortunate enough to attend a dinner hosted by the Prime Minister of Malaysia and the Malaysian Bar’s 60th Anniversary Dinner.

I was particularly pleased to have the opportunity to meet a number of young lawyers, mostly from Malaysia and Singapore. The young lawyers whom I met were all very friendly and cheerful. I learnt from them that there is no distinction between barristers and solicitors in Malaysia. The term “Malaysian bar” refers generally to employees or partners of law firms, and almost no practitioner specialize solely in advocacy and legal research like barristers in Hong Kong.

In the conference session for “South East Asia Young Lawyers Convention – the Past, the Present and the Future of Young Lawyers in South East Asia”, I was invited to participate as one of the speakers amongst other delegates from Singapore, Brunei, Indonesia, Sarawak, Sabah and Malaysia. During this session, we shared our observations on the challenges faced by the young lawyers in our respective regions and our views on forming an alliance for South East Asia young lawyers. At the conclusion of the conference, all of the delegates proclaimed the Kuala Lumpur Declaration which signified the formation of the South East Asia Young Lawyers Alliance.

James Yu

Law Fair 2009

The annual Hong Kong Law Fair 2009 was held on 7th February 2009 at the Hong Kong Exhibition Centre. This event brings together around the two branches of the legal profession, the local universities and the Department of Justice to provide students information about opportunities open to them after they graduate from their legal studies.

This is the fifth year the YBC set up an information counter to reach out to students and to share with them about the life as a barrister. Visitors flocked to the YBC counter to see what we had to offer! YBC members were present to answer questions from them, and also to distribute leaflets about the profession, admission route, and latest news from the Bar. Gratitude must be expressed to all YBs who worked so hard on that day.

One of the main aims of the YBC is to foster closer relationships with students, so that they will be better equipped with knowledge about the profession before they decide on their future career. YBC members actively promoted the student membership of the Bar, and the results have been promising! This will serve as a starting point for the Bar to better promote itself among law students in Hong Kong and abroad.

Alfred Cheng
YBC Christmas Drinks 2008

The annual YBC Christmas Drinks was held on 5th December 2008 at the Verandah at the Foreign Correspondents’ Club in Central. There was a strong turnout by YBs, and we were privileged to be graced by the presence of several prominent Senior Counsel and members of the judiciary for this joyful occasion.

We certainly hope that everyone present enjoyed the food and drink provided and the opportunity to mingle with other barristers. Special thanks must go to Andrew Bruce S.C. for facilitating the booking of the venue.

Joseph Lee

Hong Kong Bar Association Debating Competition 2008-2009

The Hong Kong Bar Association Debating Competition 2008-2009, coordinated by the YBC, took place between October 2008 and February 2009. After a series of competitive debates, St. Paul’s Co-educational College was the winner of the Chinese division and South Island School successfully defended their title in the English division.

Both finals took place on 21st February 2009 at Rayson Huang Lecture Theatre of The University of Hong Kong and we were honoured to have the presence of The Hon. Mr. Justice Yeung, JA, The Hon. Madam Justice Chu, Paul Shieh S.C. (Vice-Chairman of HKBA), Martin Lee S.C. and Joseph Tse S.C. as our adjudicators for the finals. We certainly hope everyone had a great time!

The Hon. Mr. Justice Yeung, JA and the winning team from St. Paul’s Co-educational College in the Chinese Division.

Paul Shieh S.C., Martin Lee S.C. and Joseph Tse S.C and the two competing teams, South Island School and Chinese International School, in the Grand Final of the English Division.

Perhaps one of the first lessons one learns as a young barrister is that practitioners’ texts are indispensable in the course of practice.

This recently published text from Sweet and Maxwell Asia boasts a host of contributing editors drawn from the Bar, reputable firms, and academics. The final product is a well-written, uniquely organised, and very practical one.

The topics covered are varied and comprehensive, extending beyond the traditional “professional negligence” ambit of most texts written about this sphere of law. Some of the more unique areas ventured into are those such as practice promotion, remuneration and recovery of fees, money laundering, risk management, and in-house counsel.

On a practical level, of particular assistance to the junior barrister are the chapters on relationship with solicitors, remuneration (the lifeblood of any practice!), conflicts and confidentiality, and duties to clients and the courts. These chapters take the sometimes dense Bar Code of Conduct and explain the ambit and scope of a barrister’s duties. Undoubtedly, colleagues in chambers are often the first reference point when it comes to professional ethics questions. However, this handy reference text combines explanation of the Bar Code with much of the important case law. Hence, for example, in the chapter explaining remuneration, it is pointed out that it is open to counsel not to accept a brief unless the fee is prepaid. For those who have faced the agony of chasing down payment after a case has concluded, this little nugget of wisdom may save much headache and hassle (subject of course, to the solicitor and client agreeing to such an arrangement!).

The text would serve well as a one-stop reference point for firms and chambers alike for addressing those daily professional conduct issues which arise in the course of practice. The focus on Hong Kong-specific legislation, codes and case law (which are all amply covered) will no doubt provide a good guide to the “lay of the land” when engaged in professional conduct litigation.

In this regard, a particularly helpful chapter is found in the text on “The Conveyancing Solicitor”. Junior barristers often find themselves dealing with conveyancing transactions have “gone sour”. Where property deals fail, the clients will usually seek to blame the other side, and then, if that fails (or indeed, even before that is resolved), may seek to sue the solicitors for being negligent as well. The chapter in the text gives a helpful structure commenting on the solicitors’ duties, retainer, handling of stakeholders funds, confidentiality, and other undertakings. Whilst it is not detailed enough to serve as a “one stop shop” for legal research in this area (and really, no single text should ever be the end point of any research trail), it provides a succinct and useful framework from where to proceed. The same observation would apply to the many other areas covered in the text pertaining to the solicitors’ practice.

Aside from the heavy focus on the legal profession, two chapters offer concise overviews of professional conduct rules and processes for accountants, architects, engineers and surveyors. While these are relatively brief, they nonetheless survey the important aspects associated with these professions and serve as good reference points.

The HK$3,200 RRP is perhaps somewhat steep for any young barrister who does not have a burgeoning practice in professional negligence litigation. Chambers and firms would, however, find this a healthy addition to their libraries if their members have the occasional case or query associated with professional conduct.

Rachel Lam
Letter to Senior

Dear Madam Senior,

Alas, I am afraid I have another dilemma to trouble you with. I appeared in Court last week before Hon. Scarry J. My opponent and I argued intensely over a point in contention regarding the jurisdiction of the Court. His position was that the Court had no jurisdiction in those particular circumstances, whilst I was asserting that it did. The Court reserved judgment. Given the nature of the evidence, I am quite certain that judgment will not be so quick in coming.

I have since discovered a Court of Appeal authority which is directly against the point I raised, and the cases I cited. If my opponent had cited this authority, I would most certainly lose. But he did not do so... and I really do not fancy losing this case. It bothers me, nonetheless. What shall I do about this authority?

Yours in moral quandary,
Mister Junior

Letter from Senior

Dear Mister Junior,

Our duty first and foremost is to the Court and not our clients.

You were not in the wrong at the hearing, since you were not aware of the authority. According to section 130 of the Code of Conduct, we are not to knowingly deceive or mislead the Court. Hence, you acted with perfect propriety in arguing your case according to your understanding of the law.

However, now that your understanding has changed, the most prudent course of action is to write to the Court drawing their attention to this new authority. You will then have done your best to set right the position.

I would thus advise you to write to the Court, enclosing the authority, and succinctly state your understanding of how it affects your arguments. Also remember to cc your opponent in correspondence with the Court. I understand it may be disappointing to have to concede this point, but your reputation is worth more than one case.

Yours,
Madam Senior

Rachel Lam