

CHAIRMAN'S REPORT 2018

I last wrote a Chairman's Report in 2006 after completing a two-year stint as your Chairman. I re-read that report in December, and the preceding 2005 report as well, and I can see that some of the issues concerning the Bar over ten years ago have not gone away.

It is depressing to see that many of the complaints made about Legal Aid are still being made today in more or less the same terms, i.e. delay in payment, uneven allocation of work and unattractive fixed fees in criminal work. There was concern too then about rates of remuneration for Duty Lawyer work. I saw also from those earlier reports that there were complaints that there was insufficient advocacy and other kinds of training for new entrants to the profession.

My responsibilities as Chairman when I wrote the 2006 report then were to about 1300 practising barristers: 918 junior counsel and 78 senior counsel. 301 junior barristers were under seven years call.

The figures for this year are:

Senior Counsel (including one Honorary Senior Counsel) - 104
Junior Counsel-over seven years call - 1,001
Junior Counsel -under seven years call - 506 members

The huge rise in numbers is, in part, attributable to the Chinese University commencing legal education courses in 2006 and other bodies, including the three universities with law schools, offering part-time legal education courses leading to a Post Graduate Certificate in Laws (P.C.L.L.).

Although not every law graduate comes to the Bar, it is clear that there is keen competition at entry level and that will persist for years afterwards.

If you wish to have a good idea of the challenges facing entrants to the profession, I urge you to read the Standing Committee on Young Barristers Survey on the Young Bar 2018. It is important as it should be treated as representative of the views of the Young Bar, now comprising about 40% of the profession.

It shows that many new entrants are having a tough time, especially those doing criminal work. Although over 80% of the Young Bar are proud to be in the profession and appear to derive satisfaction from their work, only about 60% were confident that they would be in practice in five years' time. I was alarmed to see that about 15% of those surveyed were making a loss out of their practice.

I shall be sending copies of this survey to the Judiciary and to those branches of the Hong Kong Government that have responsibilities in seeing that the guarantees in Article 35 Basic Law about free choice of lawyers and access to the courts are met. I will urge that it be read carefully and, where there is room for it, acting on some of the findings when making legal policy.

With the great increase in numbers joining the profession there has not been a corresponding increase in opportunities for conventional barristers' work. Members will have to look to new practice areas if they are to get ahead.

I urge members who are intrigued by the Central Government's grand plans for developing the economic potential of the Pearl River Delta to make the most of the openings that may arise across the border. They may even look further afield looking for opportunities that may arise from the even grander Belt and Road Initiative. The Standing Committees on Greater China Affairs and China Practice Development have done good work here in the past.

I also anticipate that all members' professional prospects will improve as a consequence of the Council's decision earlier this year to introduce compulsory courses for professional development in 2021.

I expect that the next Bar Council will devote resources in 2019 to develop legal education projects that members want, and which may give them an edge in their practices. The Bar Council should have about two years of experimentation in selecting and arranging courses before the necessary regulatory changes are introduced to require members to undertake such courses.

The major change this year has, of course, been the introduction of paid pupillage. This had been a nettle that had to be grasped. After canvassing members' views about the subject in the run up to the election in January, I am pleased to report that Bar Council was quick to endorse a proposal that paid pupillage should be introduced in 2019 and that subsequent consultation with members showed that a substantial number backed that decision.

Too many would-be entrants with obvious commitment and excellent legal talents were having to give up the idea of practice at the Bar because of the lack of financial support during pupillage.

I hope that this change will mean that no person will give up on the Bar because they believe that the Bar has given up on them at the very outset of their careers. I do not want would-be barristers echoing the words of the American poet John Greenleaf Whittier: *"Of all sad words of tongue or pen, the saddest are these, 'It might have been.'"*

Another major change has been the abolition of rules governing supplementary occupations. In the light of a recent court case that focussed on the application of these rules, the Bar Council saw that it made sense to trust to members' good sense and professionalism when it came to follow other employment interests and opportunities.

Members no longer need the permission of the Bar Council to take up another occupation so long working at the other occupation does not bring the Bar into disrepute.

Members will have to notify the Bar Council however about the supplementary occupation so that if the occupation appears problematic, advice can be given to the barrister about potential difficulties.

Another surprising statistic to emerge from looking at my earlier reports was the increasing number of *ad hoc* admissions. In 2006 I said that there were about thirty such admissions a year when there were about eighty senior counsel at the HK Bar. I had hoped that the growth of an inner Bar would see a dropping off in overseas admissions.

I was surprised to see this year that, although the number of HK Senior Counsel had increased by about 30% in the past twelve years, the number of ad hoc admissions now averaged about thirty a year in that period

Although *ad hoc* overseas admissions are clearly needed in some cases, it seems that the High Court has been very accommodating to these legal transients. I would hope that the next Bar Council will review the criteria it uses to decide whether to consent or oppose such applications, always accepting that the court has the final say in these matters.

I must apologise to members that offer to serve on committees came late in the year. When I started my term last January, I reviewed the terms of reference of all committees, including committees for different practice areas.

I saw that some committees had no terms of reference or that such terms of reference that existed, needed revising to bring up to date. My spring clean in this area took longer than I planned and hence the lateness of invitations to members. In order to avoid this happening again, I hope that future Bar Councils might ask those members who chair them to take the initiative to suggest necessary or desirable revisions to terms of reference.

One other forecast I made in my 2005 report had come to true. I had said that the HK Bar could provide the same kind of assistance and training in common law topics and specializations that the English Bar had begun to offer Chinese universities and other institutes of legal learning. Not long afterwards, the HKBA entered into arrangements with Peking University to offer students courses at that university and give them an opportunity to visit Hong Kong for further education.

This course proved a success and ran smoothly until this year when the organisers at the Peking end suddenly announced that two course teachers who had taught the same course for many years could not teach the courses again this year. No explanation was given about why they were not welcome. I was discouraged from going to Beijing in an attempt to get to the bottom of this unexplained repudiation of two members.

I have explained to members in a letter a few months ago why the Bar Council felt that they felt it necessary to suspend the course. Although the Bar welcomes, and has always welcomed, close relations with Mainland academic institutions it is not acceptable that they should be conducted on an opaque basis with members left guessing what they might have done to offend.

I have made it clear that the Bar is more than willing to resume normal cross-border activities if it can be assured that nothing like this occurs again. I made two short trips into Guangzhou in the past few months on official Bar business and I was received civilly. I also received a delegation of lawyers from Ningbo a few weeks' ago and concluded a memorandum of understanding with them. I believe the next Bar Council will have more opportunities to engage with Mainland universities and other professional and legal bodies there.

I should tell you that relations with lawyers from Taiwan have gone from strength to strength. There have been several visits by Taiwanese lawyers to Hong Kong in the past year. I went to Taichung in March for a short visit to celebrate the 70th anniversary of the city's Bar Association and was well received there.

I reported at the end of my last stint as Chairman my disappointment that when attending international law conferences, I found that many delegates had only a hazy notion of how the legal system worked in Hong Kong.

Things have not improved much. I spent time at IBA conferences in Norway and Italy where I met lawyers who assumed Mainland Chinese law applied at all levels. The two Vice Chairmen also attended law conferences in Australia, U.S.A. and South Africa. They also reported a low level of understanding of how the 'one country, two systems' idea is meant to work.

Despite the constitutional buffeting of the last few years which has made it appear to some that Hong Kong has lost some of its legal autonomy, I believe that the common law has a future as an important constituent part of the Basic Law. It is more important than ever that the Bar's voice be heard abroad. I have taken steps to see that in 2019 that will happen by encouraging members to take part in overseas conferences and seminars.

On the home front, members of the Council appeared before the Legco Panel on Administration of Justice and Legal Services Panel. One important achievement there was to persuade members of the panel to explore how public money was spent by the Department of Justice on procuring barristers' services. I suggested that the Secretary for Justice should commit to an open policy of briefing out cases on a non-discriminatory basis, much like the Attorney General for England & Wales has done in publishing a Gender and Diversity statement.

It may be a step too far for the Secretary for Justice to publish a similar detailed statement saying that briefing out is done irrespective of the barrister's gender, age, ethnicity, disability, marital status, and sexual orientation. But it appears from reports by members that the Department of Justice is in fact casting its net wider when briefing out.

I can report some success with a concerted attempt to make the Legal Aid Department deal with a considerable number of fee notes that had not been paid for years. About twenty barristers joined in a scheme to push for payment of some fee notes that were so old they were growing whiskers. The Director of Legal Aid co-operated, and members' issues were dealt with speedily.

The results of that push are being collated and analysed now with a view to identifying systemic faults in the system that can be addressed by the Director of Legal Aid and by barristers.

One other structural change that is worth mentioning here is the establishment of a Standing Committee on Equality and Diversity. Being self-employed means possessing a fair degree of self-reliance.

However, there are some barristers that have these necessary qualities who face other obstacles at the Bar that have nothing to do with their legal skills or training but has everything to do with what makes them unique.

The Bar Council established this standing committee to remind members of their legal obligations under our anti-discrimination ordinances and to recommend best practices for sets of chambers to follow. Only if we have a diverse and inclusive Bar can it be said that the profession reflects the make-up of society in Hong Kong.

I conclude by thanking all Bar Council members for their hard work in 2018. I do not forget to thank the many members of standing committees and committees on practice areas. I am especially grateful to all the members of the Bar secretariat staff who work unstintingly for the Bar Council and the Association as a whole.

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Chairman
Hong Kong Bar Association

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