

CHAIRMAN'S REPORT FOR 2014

1. In my Chairman's report last year I observed that the Bar Council has had a relatively uneventful year. I ought to have known better not to tempt fate in saying that, because 2014 turned out to be one of the most eventful years in Hong Kong's recent history. I had assumed that with a newly elected (or selected) Chief Executive in 2012, any suggestions of Article 23 legislation would have been rather remote. Little had I expected that the gap (in public controversy) left by any potential Article 23 legislation was swiftly filled (and indeed exploded) by the debate and controversy surrounding constitutional reform and the method for electing (or selecting) the Chief Executive in 2017.
2. The year started by heated debate in the community about the Government's consultation paper for constitutional reform. The focus of the debate was what has been called "citizens nomination". On 28th April 2014 the Bar published its detailed submissions in response to the Government's consultation exercise. The basic stance of the Bar was that what was colloquially called "citizens nomination" was not a nomination method that fell within the provision of Article 45 of the Basic Law, that nomination for the Chief Executive election has to be by a nomination committee which is broadly representative, but that the formation of the nomination committee has to allow maximum participation by the electorate.
3. Put in another way, though citizen's nomination is not constitutionally permitted by the provisions of the Basic Law, the underlying rationale is capable of being achieved by allowing maximum degree of citizens participation in the formation of the nomination committee.
4. In a highly politically charged atmosphere, it is understandable that political personalities and the Government had chosen to put their own "spin" on the Bar's

position. Each had capitalised upon parts of the Bar's position. Some had commented on the Bar's position without reading it in full. At one time, the Bar was *simultaneously* termed (by some) as a champion for democracy (because of its support for a nomination committee formed with maximum citizens' participation) and (by others) as having betrayed democracy and the Rule of Law (because it had not wholeheartedly supported citizens' nomination). All this demonstrates the importance of stressing (to the public) that the Bar is an apolitical organization and cannot come out in support of a particular electoral package simply because it may appear (to some) to be a politically desirable one, in disregard of the constitutional requirements.

5. In fact when all the dust had settled, and once all the arguments pro and contra had been rehearsed by all, I remain convinced that the Bar's analysis on citizens nomination is the correct one. I have not seen any convincing, apolitical and objective analysis that citizens nomination falls within the constitutional mandate. The manner of pursuing a political ideal must depend on the proper legal analysis under the *existing* constitutional framework. To push for citizens nomination if it is *permitted* under the Basic Law is obviously a very different exercise from pursuing it if it is not (the latter would involve pushing for an amendment, with all the timing problems as well as political and precedential repercussions that an amendment would entail).
6. The next thing to engage the Bar was to respond to the State Council's White Paper in June. The Paper sparked off controversies as to whether the Central Government was tightening its reins over Hong Kong and changing its *political* stance over Hong Kong. On the Rule of Law front, however, the talking point had been the classification of judges as "administrators" and the requirement that they had to be patriotic. The matter was eventually "fudged" (in my view) partly by reference to a translation problem and by reference to the wishy-washy concept that everyone had to be "patriotic" (which is not a legal concept). But in my respectful view, the

fundamental vice of attempting to tally judges to fulfil a *political* requirement had never been properly tackled and addressed.

7. Then came the 31st August 2014 decision of the NPCSC and the ensuing “Umbrella Movement”. The Bar had issued three public statements in response to the events, one on police brutality in its use of tear gas and two on the conduct of the “occupiers” and they speak for themselves. There are three points that I wish to highlight.
8. Some had queried why the Bar had not issued another statement to comment on the NPCSC decision. The answer is very simple, which is that all three controversial (and restrictive) aspects of the NPCSC’s decision (four sectors, majority decision and limited number of candidates) had been the subject of express comment in the Bar’s submission of 28th April 2014. Politicians may believe in the value of constant exposure (and of repeating the same point through differently formulated soundbites), but lawyers (and professional organisations) should realise that good points need no repetition, and those who want to read can have access to them.
9. The second point arises out of the Bar’s position over the Umbrella Movement. This is something I touched on in a light hearted way in the Bar Scholarship ceremony. Opposing sectors of the public had sent in emails to the Bar either supporting it, or criticising the Bar for supporting the other side. Forum and online media was full of discussions as to whose side the Bar was on. As a professional organisation the Bar can only express its views from the legal and Rule of Law perspective. The Bar owes no allegiance to any political or Governmental entity. If the Police is guilty of excessive force it deserves to be condemned. Likewise if people fighting for a political cause acts in an inappropriate manner, they cannot expect to escape criticism by reference to the nobility of their cause or because they had a halo over their heads.
10. Lastly, following the Bar’s statement on mass defiance of court orders, some commentaries had queried why we had not commented or criticised those who surrounded Apple Daily in defiance of injunctions. The insinuation seemed to have

been that the Bar had been selective in its criticisms. Such comments are mischievous, misinformed and misguided. The acts of sieging Apple Daily in breach of court order were openly, plainly and blatantly, WRONG. No one ever sought to justify them as noble acts, or acts which should be encouraged. In fact no organization had owned up to those acts. This is to be contrasted with the acts of mass defiance of injunctions, which were portrayed by influential legal and political figures as rightful and consistent with the Rule of Law. It ought to have been obvious that it is *this* feature that the Bar was commenting on. Indeed it *is* (not just ought to have been) obvious.

11. Amidst the various politically charged Rule of Law issues, the Bar still has time to deal with other matters concerning legal practice and the legal profession.
12. During the year, officials of the Bar have met with, and entertained, representatives from law and justice-related departments and bureaux in the Mainland as well as representatives from numerous overseas jurisdictions, such as Sir Stephen Tomlinson (Lord Justice of Appeal and Treasurer of the Inner Temple), officials of the Korean Bar Association, law students from South Korea, representatives of the Busan American Law Study Association, students from the Singapore Management University, Director of the Centre European de Cooperation Juridique, LLM students from Paris Bar Association School & Sorbonne-Assas International Law School, INSEAD *Campus*, to name but a few. Through these visits and meetings, members of the Bar Council have introduced the legal profession and the legal system in Hong Kong to our overseas visitors, and how the common law system had thrived in the unique “One Country Two Systems” setting.
13. I have travelled widely throughout the year, as have many of my colleagues on the Bar Council. I spoke on the topic of the advocate’s role in the protection of human rights and Rule of Law at the World Bar Conference in Queenstown, New Zealand (and Mr. Nicholas Lavender QC, Chairman of the Bar Council of England and Wales, visited Hong Kong after attending the World Bar Conference in New Zealand and spoke to members about latest developments in Legal Aid Reforms and Quality Assurance Scheme for Advocates). I attended the Opening of the Legal Year in

London as well as the International Bar Association Annual Conference in Tokyo, both in October. One of the Vice Chairmen, Paul Lam SC, attended the Summit of the Presidents of Law Associations in Asia (POLA) in Wellington, New Zealand and spoke on the topic of “Bilateral Free Trade Agreement between Hong Kong and New Zealand”. Council member Winnie Tam SC attended the 58th Congress of the Union International des Avocat in Florence, Italy in October/November and spoke on the topic of Lawyers’ Monopoly in Legal Services. Another Council member Kim Rooney attended the Annual Conference of Lawasia in Bangkok in October. In participating in these international events we ensured that the Hong Kong Bar remained on the international radar and we had secured strong bonds with, and support from, various overseas professional bodies.

14. In terms of Mainland relations, in 2014 we signed a Memorandum of Understanding with the All China Lawyers Association as well as an extension to the Memorandum of Understanding that we signed with the Shanghai Bar Association in 2013. As part of our collaboration with the Shanghai Lawyers Association, members of the Hong Kong Bar contributed articles on different aspects of Hong Kong civil and commercial law to be published in the period publication of the Shanghai Lawyers Association. A collection of the articles were published in Hong Kong by Chung Hwa Book Company (中華書局) under the title “香港大律師談民商法” in July 2014. In June we hosted the scholarship presentation ceremony for the Hong Kong Bar Association/Peking University Common Law Course scholarship in Beijing. This is the 4th year that this scholarship had been in operation and this year, 15 law students from Peking University (both from the undergraduate class and the postgraduate class) were awarded scholarships to enable them to come to Hong Kong and be attached to barristers’ chambers for a two weeks duration in the summer. In September, a delegation from the Bar visited Qingdao (followed by a short trip to Shanghai) on a mission co-organised by the Department of Justice of HKSAR together with Trade Development Council, the Hong Kong Bar Association, the Law

Society of Hong Kong, the Hong Kong International Arbitration Centre, the International Court of Arbitration of the International Chamber of Commerce (Asia Office) and the China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center for the purpose of promoting legal services in Hong Kong. Members of the Bar staged a number of mock arbitrations which were well received by our Mainland counterparts.

15. All the usual and regular training programs for pupils and newly qualified barristers went on throughout the year, with assistance offered by members of varying seniority. The Code of Conduct consultation exercise was completed in April. The Committee chaired by Miss Lisa Wong SC had since then been considering the responses and consolidating the views offered. Some topics had turned out to be more controversial than had been contemplated (which is the whole point of having a consultation). It is anticipated that Miss Wong SC's committee would be ready to report to the Bar Council on their findings soon.
16. On 24th November 2014, in an Extraordinary General Meeting, members resolved to confer the title of Honorary Life Member to Mr Michael Thomas SC, Attorney General for Hong Kong during the critical period in the mid 1980's. It is perhaps fitting that the resolution was passed in the midst of an equally critical period during the Occupation Movement. By the time of the AGM, the title would have already been conferred at the Bar Mess on 9th January.
17. As you will have gathered by now, after the AGM I shall be "retiring" as Chairman and a new Chairman will take over. Before I depart after 8 years of service on the Bar Council, I wish to register my heartfelt thanks to my two Vice Chairmen, my Honorary Secretary and Deputy Honorary Secretary, as well as all my Council members (elected and co-opted) and members of the Bar for their unfailing support and their wise words of wisdom, encouragement and criticisms offered throughout my two terms (whether in formal Bar Council meetings, in face to face exchanges or

by way of casual email or whatsapp messages), which is one of the most exciting and interesting periods in Hong Kong history. Special thanks are also due to the various Special Committees. We live in an age of specialisation and delegation, and the business of the Bar Council would not have been possible without their help. In particular (but, as lawyers say, without prejudice to the general gratitude expressed to all) I would like to thank the following committees who had been most frequently called on during the year namely two Special Committees for Overseas Admission (both civil and criminal), Disciplinary, Pupillage, Constitutional Affairs & Human Rights, International Relations, Greater China Affairs and Civic Education.

18. I wish my successor every success in her stewardship of the Bar, and I have little doubt that the Bar will grow from strength to strength and continue to stand for the values that it had so valiantly stood for and defended for so many years.

Paul Shieh SC

Chairman

January 2015