

Chairman's Report 2008

1. The year 2008 is a year full of events and activities, both internal and external. Apart from the works undertaken by the various Special Committees which can be seen from their respective reports attached, I would like to highlight the following matters.

Internal Matters

The Junior Bar

2. As can be expected, the size of the Bar continues to grow. Up to 30 November 2008, there are a total of 68 newly admitted barristers. Of these 68 newly admitted barristers, 66 of them were based on PCLL qualifications whilst the remaining 2 are admissions of overseas lawyers. (Details can be seen from the table set out in the report by the Special Committee on Local Admissions.) This figure is similar to the figure of 2007, and represented a mild decline when compared with the figures for the years 2005 and 2006. It is difficult to predict the trend for the year 2009. Due to the current economic climate, there are signs that some solicitors firms are reducing the intake of trainee solicitors. According to past experience, this may have an impact on the number of law graduates joining the Bar although the exact extent is difficult to tell.
3. The provision of training and assistance to the junior end of the Bar remains one of the key focuses of the Bar Council. In my last report, I referred to the setting up of the Special Committee on Advocacy headed

by Mr. Russell Coleman SC. The work undertaken by this Special Committee can be seen from the relevant report attached. The Special Committee on Advocacy has contributed to the training of pupils and junior members and I am grateful to the contribution made by Mr. Russell Coleman SC, the other members of the Special Committee and also those who had assisted in the advocacy training programme. The Special Committee on Advocacy, together with our Director of Advanced Legal Education, has provided much training to pupils and juniors in respect of basic advocacy and practice skills.

4. Following last year's positive feedback, representatives of the Advocacy Training Institute were again invited to Hong Kong to assist in the training of trainers in last October. Lord Walker of the House of Lords also took part in this programme. Further, those involved in advocacy training took this opportunity to exchange views on the future of our training programme and also the possibility of further co-operation amongst different jurisdictions. In this regard, I should also mention that at a seminar held amongst the legal profession of Hong Kong, Singapore and Malaysia on the eve of Singapore's Opening of Legal Year on 3 January 2009, representatives of the three jurisdictions also agreed to explore possibility of co-operation amongst the three jurisdictions on advocacy training.
5. With a view to assisting junior members to have more chances of exposure and guidance from senior members, changes have been implemented with respect to the Bar's *pro bono* scheme. Senior members assisting in the scheme were assigned a junior member to help them in the preparation and research. While the senior members would

continue to do the work on a *pro bono* basis, the junior members were paid a small fee.

6. Towards the end of last year, discussion has begun with the Bar Council of England and Wales with respect to the possibility of putting in place an exchange programme whereby junior members of the Hong Kong Bar may do a short period of extended pupillage in London and *vice versa*. The initial response is positive and the Bar will follow up on this matter. Discussions along the same line have also been held with representatives of other jurisdictions as to the possibility of a wider exchange programme whereby junior members of different jurisdictions can have a chance to see how legal practice is conducted in jurisdictions other than theirs. The Chairman of the All China Lawyers Association has expressed interest and the matter will also be followed up.

7. Before I took over as the Chairman in January 2007, I had stated in my election platform that I would explore the possibility of setting up a mechanism whereby pupils would be required to undergo some sort of an examination or assessment before being allowed to start practice. Informal consultation had been held with certain stakeholders. This idea turned out to be more controversial than originally expected and there are many different views. Some favour an exit examination, whilst others favour subject-by-subject practical assessment. More important, the question of resources (both financial and human resources) poses the biggest practical problem and the problem will not be easy to solve. I hope the next Bar Council would consider it appropriate to continue to explore the viability of this intended reform.

Admission of Overseas Counsel

8. The number of applications for admission of overseas counsel has continued to increase. In 2006, the figure is 32. In 2007, the figure is 46. In 2008, the total figure has increased to 59. The total number admitted by the Court (with or without consent from the Bar) is 41 (as compared to 35 in 2007 and 26 in 2006). One of the applications that I would like to highlight is the recent one involving the application for admitting American attorneys to conduct an application arising from an arbitration award. The Bar opposed the application and Ma CJHC dismissed the application. This is an unprecedented application in that it is the first time American attorneys applied to be admitted in Hong Kong via the *ad hoc* admission route.

9. As stated in my last report, the Bar's opposition to the admission of overseas counsel has led to a suggestion that the Bar operates as a close shop. Unfortunately, this impression continues at least amongst some sectors of the community although such impression, in my view, is unwarranted. Contrary to such an impression, the admission regime in Hong Kong is a liberal and open one when compares with other jurisdictions.

Civil Justice Reform

10. Civil practitioners would have been watching the progress of the Civil Justice Reform closely. As we understand, the new legislative provisions and the amended Rules of the High Court, together with numerous new Practice Directions, will be implemented with effect from 2 April 2009.

Throughout the consultation process, the Special Committee on Civil Justice Reform has made great contribution in assisting the Bar in scrutinizing the proposals and in discussing the matter with the Judiciary.

11. With a view to assisting members to familiar themselves with the new regime, the Bar and the Law Society had jointly organized two large scale seminars. The response was very positive. Small class session have and will continue to be organized and I am grateful for those members who assist as trainers for the Bar. In addition, arrangement has been made with the Department of Justice whereby a few places in their training programme would be reserved for members of the Bar and *vice versa*.

Mediation

12. The development of mediation in Hong Kong continues. The Bar has two representatives in the Judiciary's Working Party on Mediation chaired by The Hon. Mr. Justice Lam. I am a member of the Government's Working Party on Mediation (chaired by the Secretary for Justice) and also chair its Sub-Group on Regulatory Framework.
13. Training remains the key focus in this area. Last year, the Centre for Effective Dispute Resolution was again invited to come to Hong Kong to hold a further (i.e. second) mediator skill training course for our members. The third training course has been arranged to take place in March this year.

14. The Bar and the Law Society has also entered into an arrangement with the dispute resolution section of the International Chambers of Commerce (“ICC”). The term of this arrangement is three years and it is intended that one training course on mediation will be provided every year. The first one was held in November last year. The number of participants from the Bar is less than that of the Law Society. I would urge members of the Bar to watch out for this year’s training course as some of the trainers are internationally well-known, if not top, mediators.
15. Other one-off seminars were organized with regard to mediation advocacy and general knowledge on mediation. For instance, there was one on introduction to mediation by Ms. Teresa Cheng SC. Recently, arrangements have been made with the Mediation Council of the Hong Kong International Arbitration Centre whereby they would provide speakers for seminars designed for members of the Bar on mediation. The first one is scheduled to be held in February this year.
16. The Bar’s List of Mediators have been reviewed and the number of accredited mediators has significantly increased. In the long run, the Bar should aim at establishing some sort of alternative dispute resolution centre administered by the Bar Secretariat. Experience in other jurisdictions have shown that this is a viable option for improving the Bar’s practice environment.

Discipline

17. As stated in my last report, disciplinary matters is an area that has taken up considerable time of the Bar Council. This continues to be the case

and I am particularly indebted to Mr. Peter Duncan SC and the other members of the Special Committee on Discipline for their time and hard work. I am also indebted to those members who assist the Bar in advising or prosecuting cases before the Barristers Disciplinary Tribunal.

18. As can be seen from the report by the Special Committee on Discipline attached, a total of 18 disciplinary matters were considered (up to 8 November 2008). Bearing in mind the total number of members we now have and the number of cases where the complaints were found to be unsubstantiated, the overall situation is satisfactory and there is no sign of any deterioration in the disciplinary context.

Solicitors' Right of Audience

19. The draft amendments to the Legal Practitioners Ordinance have been reviewed by the Bar on a preliminary basis. Further comments will be made in due course. In particular, the Bar finds it more appropriate to consider the proposed amendments to the Legal Practitioners Ordinance together with the proposed subsidiary legislation (which would be provided by the Law Society). After considering the proposed legislative amendments, the Bar will deal with the proposed Code of Conduct.
20. Whilst acknowledging that the introduction of solicitors' right of higher audience may have an impact on the livelihood of our junior members, the paramount consideration is public interest. The Bar's primary concern is how to ensure those solicitors applying for right of higher audience would meet the appropriate standard. Needless to say, the Bar

will remain concerned with the question of how to assist the junior members.

Lay Court Prosecutors

21. It is the Bar's stance that the system of lay court prosecutors should be grandfathered and discussion had been held with the Department of Justice. The Secretary for Justice has in a letter sent to the Bar in July last year confirmed that the guiding principles should be, amongst others: (1) the bulk of prosecutions ought ideally be conducted by the legally qualified, if not in the short term, then in the medium to long term; and (2) the Department of Justice has a role to play in assisting junior barristers to develop, although this is ancillary to its primary duty of upholding the standards of prosecution.

22. One particular issues faced by the Bar in this regard is the quality of fiat counsel. While the Bar provides valuable service in acting as fiat counsel, there have been from time to time expressions of dissatisfaction by magistrates and other stakeholders. The problem may well be one of chicken and egg. Unless junior members have more opportunity to act as fiat counsel, they are bound to be less experienced than lay court prosecutors as the latter conduct prosecution on a daily basis. With a view to ensuring quality and to persuade the Department of Justice that the costs they incur in briefing out cases are money well spent, a working group has been set up under the leadership of Mr. Peter Duncan SC. This working group has already devised a training programme to assist junior members in conducting prosecution and it is anticipated that the programme can be commenced in the first quarter of 2009.

Criminal Legal Aid

23. The Bar has in principle reached agreement with the Administration regarding the reform to fees arrangement for criminal legally aided cases. However, legislative changes are yet to be made because the Law Society has yet to reach an agreement with the Administration and the Administration wants to deal with both branches of the profession together. In my communications with the Financial Secretary and the Secretary for Home Affairs, I have expressed the Bar's stance in no uncertain term that the reform concerning the Bar can be implemented without awaiting the reform concerning solicitors. The latest development is that the Administration has put forward a fresh proposal to the Law Society and they would continue with their discussion. In my view, the Bar should continue to press the Administration to proceed with the reform concerning the Bar even if it cannot reach any agreement with the Law Society. The Law Society has also made it clear that they have no objection if the Administration is to implement the reform concerning the Bar before dealing with the reform concerning solicitors.

External Matters

24. As in the past, the Bar continues to express views on draft legislations and other matters concerning the rule of law or administration of justice. The areas addressed by the Bar include:
- (1) the Interim Proposal on a Sex Offender Register;
 - (2) the Land Titles Amendment Bill;
 - (3) the Rewrite of the Companies Ordinance;

- (4) the New Police Guidelines on Handling Searches of Detainees;
- (5) the reform to the Arbitration Ordinance;
- (6) the race discrimination legislation¹;
- (7) constitutional development and functional constituencies;
- (8) competition law;
- (9) youth drug abuse.

(A list of the submissions, representations and press statements issued by the Bar as well as their contents can be downloaded from the Bar's website.)

25. The Bar has actively participated in local and overseas conferences. Such conferences include: (1) the American Bar Association's annual meeting in New York held in August 2008; (2) the POLA conference held in Ho Chih Ming city in August 2008; (3) the World Bar Leaders Conference and Opening of Legal Year held in London in October 2008; (4) the Opening of Legal Year of Singapore on 3 January 2009 and the seminar on the day before.
26. In December 2008, the Bar has formed a delegation to visit various law-related bodies in Beijing including the All China Lawyers Association, the China Law Society, the Ministry of Justice, the Supreme People's Court and the Hong Kong Macau Office. The visit provided a good opportunity for members of the Bar to exchange views on matters of mutual interest.

¹ In addition to lodging submission with the Administration, Mr. PY Lo and I attended the United Nation's Committee on the Elimination of Racial Discrimination in March 2008 to present the Bar's position.

Postscript

27. I will be stepping down as the Chairman at the forthcoming Annual General Meeting. I wish to take this opportunity to express my utmost gratitude to all the members of the Bar Council, all the members of the Special Committee, the staff members of the Bar Secretariat (including those who administer the Bar's *pro bono* scheme) as well as all those who have assisted in the Bar's affairs or who have taken time to share with me their views on matters concerning the Bar.

Rimsky Yuen, S.C.
Chairman
January 2009