

Report of the Special Committee on Mainland Affairs

2008 saw China stepping into a new landscape in international affairs. A more open regime was in many ways mirroring the Bar's continued efforts in fostering and maintaining a closer relationship with the Mainland. While on the trade in services front detailed rules on the implementation of the liberalisation measures under Supplement III to CEPA had yet to be announced, the Bar is now a better equipped profession ready to work with the Mainland lawyers and provide legal services to the Mainland, both in Hong Kong and Mainland. Examples are now seen that Barristers have now been :-

- (a) serving Mainland clients litigating in Hong Kong in an increasing rate ;
- (b) providing Hong Kong legal opinions before any legal proceedings are commenced in Hong Kong, directly to Mainland lawyers or their clients, for use in the Mainland ;
- (c) providing arbitration legal services both in Hong Kong as well as in the Mainland ;
- (d) providing international trade legal services (for example anti-dumping investigation assistance) for Mainland companies.

More needs to be done, however. For many years, the Bar has been trying to take an increasingly active role in establishing more contacts and exchange with Mainland. Individual distinguished members of the profession had no doubt made the task easier. Last year the Bar was able to begin organising talks for the Mainland universities for law students and potential lawyers, sharing views on practical aspects in litigation. In 2008 the Committee had met 135 Mainland delegates, from 41 institutions of 10 provinces or direct-controlled municipalities¹. Annexures I and II set out the Committee's work in developing better co-operation with the Mainland authorities, institutions, officials and lawyers.

It is perhaps encouraging to report that our counterparts in the Mainland, be they judges, lawyers, and even private businesses, are now quite familiar with the existence and merits of a referral system of the legal profession in Hong Kong, and more importantly the unique role of barristers as specialist advocates are no longer strange to them. I recall this situation was quite different from what 10 years back when many of the Mainland civil servants had to be briefed when the Bar met them, that the Bar was such a unique profession in the practice of law.

Beijing

Eventful would be the name given to the capital. 2008 has been an eventful year for the Mainland – the regrettable and disastrous snowstorms early this year and earthquake in Sichuan had not put a damper on the celebrated Beijing Olympic and Paralympic Games. The busy schedule made it difficult to arrange official exchange but a small Bar delegation was able to make it to Beijing in March to give talks to the Research Centre for Human Rights of the School of Law, Peking University on Hong Kong civil and criminal justice systems, as well as administrative law and judicial

¹ Municipalities directly controlled by central government

review. Three evenings were well spent and I would offer my thanks to those who contributed. That was followed by further talks to the Peking University and the China People's Public Security University at the end of October.

I am happy to report that this was the first institutional contact between the Bar Association and the China People's Public Security University to give a talk on the role of lawyers in criminal investigation, prosecution and trial. It helped to advocate the ideas of the rule of law as the Bar had been educated in a common law system, and in return we might begin to learn what happened often or what Mainland lawyers had hoped to know and practise in their daily work.

The Chairman led a delegation of about 20 members to Beijing from 10 to 15 December 2008. The Bar had been warmly received by its counterparts, amongst others, the National People's Congress Standing Committee Secretariat, the Hong Kong & Macau Affairs Office, the Ministry of Justice, the Supreme Peoples' Court, the All China Lawyers Association, Peking University, China Law Society and a small prison. Interesting topics including interpretation of the Basic Law, CEPA, Hong Kong citizens detained in the Mainland had been mentioned. The Bar hopes that such discussions will in future provide both the depth and understanding between the lawyers and officials of different jurisdictional background.

Regular Courtesy Calls and Visits

We had 10 courtesy visits in 2008.

Experience has shown us that although such regular exchanges can be a drain on the time of the Committee, the reward was encouraging. We have reports that this kind of exchange are more fruitful than the Bar taking part in larger-scale events attended by a large number of Mainland and Hong Kong participants as the former enables direct communication and paves way for future contacts. There could be less personal touch.

With the support of the Judiciary, it is now routine for the Committee to offer court visits to those who came to visit the Bar. We had some 75 visitors comprising of officials, lawyers and students in 2008. Such arrangements have proved to be rather welcome and aroused great interest.

Shenzhen

Popularisation of Law was the policy of the year in Mainland. The Bar was invited by the Shenzhen Municipal Office for Popularisation of Law to attend the Shenzhen Legal System Expo held on 7 December 2008 in Shenzhen. This half-day event provided another valuable opportunity for the Bar to demonstrate the Hong Kong legal system and the barrister profession to the general public in Shenzhen. Putting matters in context, in the Guangdong province, there are reports that less than 500 lawyers could handle foreign legal affairs, and no more than 15 law firms could handle foreign legal affairs, including commercial law areas. Only 4 lawyer firms have over 100 lawyers, while some 676 (or about 60%) law firms had less than 10 lawyers. Shenzhen and Guangzhou are the two places where 80% of the lawyers are working in the province. Although a developing one, they should be potential markets for Mainland practice owing to their economy and proximity to Hong Kong.

What next ?

There has been widespread coverage in the media and other international scenes that the global financial turmoil had provided the context for China's rising economic and international status. I do hope that this provides a good opportunity, in times of turbulence, for the Bar to demonstrate as a model of a profession that seeks to excel itself, and in advancing the rule of law. To hold the profession out as independent legal experts in advocacy and in law has been always its goal. I do hope that for the years to come the profession will continue seek to assist and collaborate with its counterparts and friends in the Mainland to uphold those values.

I would like to offer my many thanks to members of the Committee for their unfailing support and valuable advice. The good work of the Committee cannot be done without a helpful and dedicated team which I am always grateful for having. Priscilla To of the Bar Secretariat has been rendering her support throughout the year and I would like to thank her for all that she had done to facilitate the work of the Committee.

Membership:

Andrew Mak (Chairman)

Teresa Cheng, SC

Rimsky Yuen, SC

Kenneth Chow

Kenny Lin

Richard Khaw

Frederick Chan

Cheung Yiu Leung

Barbara Wong

Julia Lau

Hectar Pun

Gary Soo

William Wong

Colana Yeung

David Chan

Benjamin Ng

F.Y. Kan

Elaine Liu

Tim Wong

Yvonne Fong

Andrew Mak
Chairman
Mainland Affairs Committee

31 December 2008

**Chronology of HKBA's exchange activities with Mainland
held in the Mainland 2008**

2008 Beijing

17/3-19/3 **Beijing**

Visit and giving talks to the Research Centre for Human Rights of the School of Law, Peking University by members of the Special Committee on Mainland Affairs

28/10-30/10 **Beijing**

Visit and giving talks to the Research Centre for Human Rights of the School of Law, Peking University and the China People's Public Security University

7/12 **Shenzhen**

Participating in the Shenzhen Legal System Expo

10/12-15/12 **Beijing**

Visit to Beijing

Authorities/ institutions visited (in chronological order):

- the Ministry of Justice
- All China Lawyers Association
- the Yan Cheng Prison
- the Supreme People's Court
- the Court of the Chongwen District
- the China Law Society
- the HKSAR Basic Law Committee of the NPC Standing Committee
- the HK & Macau Affairs Office of the State Council
- the Peking University

**Chronology of HKBA's exchange activities with Mainland
held in Hong Kong 2008**

2008

- 18/1 Professor Wang Junmin and master course students of the Chinese University of Political Science and Law visited the Bar
- 18/03 Madam Tao Kaiyuan, Vice President of the High People's Court of the Guangdong Province and Mr. Chen Youqiang, Deputy Head, Civil Court No. 4, the High People's Court of the Guangdong Province visited the Bar
- 28/3 Professor Chen Ruihua of the Peking University visited the Bar and was invited to lunch
- 15/4 Mr. Chen Wuneng, Standing Vice-Director of the Taiwan, Hong Kong and Macao Committee of the All China Lawyers Association, visited the Bar
- 13/5 Mainland Officials under the Cooperation Agreement between the Mainland Justice Departments/ Bureaux and the Department of Justice visited the Bar and a set of chambers
- 5/6 Participants of the Training Scheme in Common Law for Mainland Official 2007-2008 visited the Bar and a set of chambers
- 11/6 Delegation of the Ministry of Justice visited the Bar
- 13/6 14 young Mainland lawyers (organised by the British Council) visited the Bar
- 1/8 The Associate Professor and students of the Law School of the Shantou University visited the Bar
- 29/10 Delegates from Tianjin visited the Bar, observe the High Court hearings and were invited to lunch