

CHAIRMAN'S REPORT 2021

2021 has been another difficult year for Hong Kong, and the Bar has not been exempt from the difficulties faced by society.

When I became chairman I said that I would like to explore the possibility of amendments to the National Security Law to ensure that it was fully consistent with the Basic Law. I was particularly concerned about Article 60, which provides that officials of the Office of National Security are not subject to the laws of the HKSAR while on duty. These comments caused an extremely hostile response from the Central authorities, including threats to the existence of the Bar Association if I did not resign. I considered that it was my duty to continue to represent the Bar's interests for the remainder of the term for which I was elected. I was heartened by the overwhelming support of members over this period.

At the same time as dealing with these attacks on me in Hong Kong I was heavily involved in attempting to stop moves in the United Kingdom to require the British Non-Permanent judges on the Court of Final Appeal to resign as a response to the National Security Law. These moves were led by the Labour Party and looked likely to succeed. On 24 April 2021 by invitation I addressed the English Bar Council on the subject by video-link. I stated that the rule of law still existed in Hong Kong, and that the Hong Kong legal system would be gravely damaged if the Court of Final Appeal was weakened by the withdrawal of the overseas judges. My speech was well-received and I believe that it had a significant impact.

Until July continuing Covid restrictions meant that the Bar Council could only meet remotely on Zoom. When in-person meetings were resumed the Bar Council resolved that members of the Council who are out of Hong Kong or in quarantine could attend the Council remotely using a Microsoft Teams secure video-link. With the extension of quarantine in many cases to 21 days this arrangement has proved its value during the second half of the year.

The major task with which the Bar has been involved during this year has been the introduction of arrangements for mandatory Continuing Professional Development (CPD). The Hong Kong Bar is the only one of the twelve referral bars in the world which has not until now had CPD, and the only major profession in Hong Kong which does not have such provision. A voluntary scheme introduced following a decision in 2018 generated little interest and has been adjudged a failure. I am very grateful to the Standing Committee on Continuing Education chaired by Jin Pao SC which has produced a scheme which the Bar Council, after consulting members, adopted on 7 October 2021. The Scheme has now been sent to the Chief Justice for his consideration. The intention is that it will commence operation in 2023. It involves a requirement to complete just 8 hours of CPD in a year, and a wide range of courses and activities will qualify for CPD.

Most of us recognize that however learned we may be, there is always something more to learn. Although many of us attend courses and seminars regularly to update ourselves on a voluntary basis, it is an important reassurance to the public to know that such attendance is a requirement to be a barrister.

Some opponents of CPD remind me of the rhyme about the nineteenth century Master of Balliol College, Oxford, Benjamin Jowett:

“First come I, my name is Jowett.
Everything there is to know, I know it.
I am the Master of this College
What I don’t know isn’t knowledge”

Any modern-day Jowetts among us can be reassured that under our scheme CPD points will not only be awarded for learning but will also be available for teaching.

The Bar has also asked for approval from the Chief Justice to a proposed amendment to the Legal Practitioners Ordinance to give it power to suspend a member from practice on medical grounds. This is a power which the Law Society has had for many years. Although sad cases where a barrister seeks to continue in practice while medically unfit are rare, they have occurred, and are potentially dangerous to clients and to the reputation of the profession.

Because of Covid and quarantine restrictions I am the first chairman for many years to have done no travelling on behalf of the Bar, although I have attended on-line meetings with colleagues through the IBA and Lawasia.

I am pleased to report that partly as a result of the absence of any travel expenditure for nearly two years the Bar's financial situation is healthy.

Taking advantage of this healthy situation, the Bar Council at its meeting on 30 December 2021 resolved to double the fees paid to members of the Bar for prosecuting complaints before Bar Disciplinary Tribunals. These fees had been fixed since 2004. I hope that new higher fees will mean that delays finding counsel willing to undertake this important work will be reduced.

I have had regular meetings with the Director of Legal Aid. Legal Aid rates were raised in July 2021. The Department consulted in November 2021 on changes to the arrangements for assigning cases. A Bar special task force chaired by Philip Dykes SC provided a response from the Bar which can be read on the Bar's website.

The Standing Committee on Information Technology has started preparation for a major improvement of the Bar's website, which has not been upgraded for some years. An invitation to tender has been issued for this work, which it is hoped will start early next year.

The Arbitration Committee has continued to be highly active in promoting the Bar's role in this important and growing area of practice.

Exceptional thanks are due to the Standing Committee on Discipline, which has cleared a large backlog of disciplinary complaints which were awaiting processing at the beginning of the year.

The Bar Council has set up a task force to prepare guidance for chairmen and members of Bar disciplinary tribunals on procedural matters. Such guidance has not previously existed. It is hoped that it will assist tribunal members and also help to minimize delays in dealing with disciplinary matters.

On 10 February 2021 the Bar Council resolved to support the Hong Kong Legal Walk. This is a charity walk, modelled on the London Legal Walk which has been in existence for many years, and which raised almost 1 million pounds for charity on the last occasion it was held before Covid. I attended the official launch of the Walk project on 18 October 2021. At present the Walk is scheduled to be held on 9 April 2022, subject to Covid restrictions, and donations can be made online via the Charitable Choice website. The charities to be supported are the Hong Kong Cancer Fund, the Changing Young Lives Foundation, the Association for the Rights of Victims of Industrial Accidents, and Help for Domestic Helpers. If the Walk is a success it is hoped that it will become an annual event as it is in London. It gives me particular pleasure to support the Hong Kong Cancer Fund as I am myself a cancer survivor thanks to pioneering treatment in a unit supported by a cancer charity.

My predecessor warned last year of the likelihood of severe court delays as a result of prosecutions arising from the events of 2019. This has come to pass, with cases awaiting trial for those events now fixed for 2023.

The Committee on Criminal Procedure has this month completed a study of possible initiatives to reduce these on-going delays. It will be for my successor to take these forward.

Delays are also a matter of serious concern in the civil and particularly in the family courts. When the Bar Senior Vice Chairman and I attended the Administration of Justice and Legal Services panel of the Legislative Council on 11 October 2021 we put before it startling statistics which show how far Hong Kong has fallen behind Singapore in handling family cases. Hong Kong has more than three times as many divorces as Singapore, but Singapore has four times as many family courts as Hong Kong. It is to be hoped that this situation will be remedied.

The Bar has sadly been depleted this year by a number of established practitioners relocating from Hong Kong to other jurisdictions. This has affected the work of some Bar Council committees, in particular the Constitutional and Human Rights Committee.

However the Bar has succeeded in re-establishing a Mainland Affairs Committee after a hiatus of three years. I am grateful to Richard Khaw SC for taking on the chairmanship.

I have attended various seminars and events related to the Greater Bay Area. I believe that for those members of the Bar with good Putonghua skills there will be meaningful professional opportunities in the Greater Bay Area over the coming years.

My greatest concern approaching the end of the year is an over-zealous attitude to prosecutions related to national security, whether under the National Security Law or at common law. The denial of bail to many defendants, invoking the restrictive bail provisions of NSL Article 42, combined with court delays, has resulted in defendants spending extremely long periods in prison on remand. This is causing widespread concern in the community and affecting perceptions of the rule of law in Hong Kong.

On a lighter note my most enjoyable event as chairman was attending as guest of honour at the Lawyers versus Prison Officers Hockey match at Happy Valley Racecourse this month. Lawyers won 3-2. Sporting events are a good way of bringing us all together and we need more of them.

Finally I would like to thank those who have assisted me on the Bar Council, and particularly the very hard working officers, Anita Yip SC, Erik Shum, Johnny Ma and Eugene Yim, and to thank the Secretariat for their unfailing support.

It remains for me to wish you all San Nin Fai Lok, San Tai Gin Hong, and every success in 2022!

Paul Harris, SC
Chairman
Hong Kong Bar Association

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