

---

# 30th LAWASIA Conference

## Japan - Tokyo

18-21 September 2017

---

(Participants: Joyce Lee, Priscilla Chow, Jun Lee, Victoria Yue)

---



### Introduction

Between the 18th and 21st September, we attended the 30th Lawasia Conference in Tokyo, Japan. This annual conference comprises of numerous themed and topical seminars throughout the day, during which a panel of speakers in the relevant fields would share their insights and experiences in their respective jurisdictions.

---

## **Judiciary Issues – Independence of Judiciary and Rule of Law**

We first attended a plenary session titled “Judiciary Issues – Independence of Judiciary and Rule of Law”. In this session, five renowned speakers from Japan (Mr Kohei Nasu, Former Judge of Supreme Court), China (Mr. Wenxian Zhang, Vice President of China Law Society/ Chairman of Academic Committee, China Law Society), Hong Kong (the Hon Geoffrey Tao-li Ma QC SC, Chief Justice of Hong Kong Court of Final Appeal), Malaysia (Dato’ Mah Weng



Kwai, Former Judge of Court of Appeal of Malaysia) and Australia (Dr Oliver Stople, Senior Program Officer, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime), discussed the difficulties faced and steps taken by their countries to maintain the independence of the judiciary and the rule of law in their countries. Recent events which happened in Hong Kong, including demonstration by activists and young people, suggest that certain people have concerns over the independence of the judiciary in Hong Kong. This talk provided us with insights as to measures that can be taken to alleviate people’s concern and maintain the independence of the judiciary.

## **Family Law – Legal Issues in Aged Society**

After the plenary session, one of the first seminars that we attended concerned legal issues that may arise in an ageing society, in particular the problem of wrongdoings committed

---

by elderly people who lack sufficient mental capacity. The key question addressed in this seminar was whether their legal guardians should be held responsible for such acts.

Professor Amy Shee from the National Chung Chen University of Taiwan sparked off the discussion with consideration of a hypothetical case: an 85-year-old man with dementia lost his sense of location while driving, and as a result drove onto the wrong lane of a highway and killed the driver of another car. If the elderly man was found totally mentally incapacitated at the time of the accident, who should be held liable? This case study set the scene for subsequent discussions about guardians and their potential liability by other speakers from Japan, Korea, and Australia.

We found this topic interesting and relevant as the liability of guardians are indeed legal problems that are arising in many developed societies with an ageing population. We were also surprised to see that different jurisdictions dealt with this issue in very different ways - for example, while the approach in Australia emphasised state responsibility for elderly patients, under Taiwan law, it appeared that the individual guardians of such patients may incur legal liability if persons under their care committed civil wrongs. While Australia has a state-focused system, the speaker also encouraged giving a presumption of capacity and setting clear parameters for determining capacity in order to preserve the autonomy, self-respect and dignity of the elderly.

This seminar was certainly a good introduction to the Lawasia conference, as the diverse approaches taken by different jurisdictions to dealing with legal problems was something that we would observe numerous times during the course of the conference.

### **Family Law – Child Support: How to Calculate and Effectively Collect**

We also attended a seminar where Professor Anselmo Reyes from Hong Kong was one of the speakers, along with other speakers from Japan, Australia and Singapore. The calculation of child support and effective collection of the same have been longstanding problems in many

---

jurisdictions, and it was interesting to see how different states used completely different models to deal with the same issue. For example, while the Singaporean system is similar to Hong Kong in that the Courts consider a range of different factors in determining the amount of child support, Australia has taken almost the opposite approach by simply requiring parties to enter their earnings in an online form, and the system would then generate a sum for them to pay. The matter would only be dealt with manually if the ordered sum became subject to review or appeal.

It is clear that each system has its pros and cons. While the Singaporean system appears to aim for decisions that are tailored to the needs of all parties, it is also considerably slower than the Australian system and may pose a substantial financial burden to the parties concerned. It is interesting to consider whether we may move towards a middle ground whereby both models are implemented and the best of both worlds are achieved.

**Public Interest/Corporate Law –**  
**What You Consult with Your Attorney about is Secret, or Not?**

This session focused on legal professional privilege, or rather, the lack of it in Japan. We were surprised to find out that LPP, as we know it in the common law world, does not exist under Japanese law. Mr. Laurence Bates, an in-house counsel who has been based in Tokyo for a significant period of time, spoke of how Japan's laws concerning confidentiality have resulted in lay clients wishing to maintaining the confidentiality of their legal advices by storing and accessing such advices only at their lawyers' offices. Japanese law requires lawyers to keep confidential information obtained from clients but does not confer LPP on lay clients.

Mr. Justice Robert McDougall, of the Supreme Court of New South Wales, and Mr. Scott Hammond, formerly of the United States Department of Justice, spoke of the operation of LPP in their respective jurisdictions, which largely mirror its operation in Hong Kong. Being able to hear the contrasting positions of common law jurisdictions and a civil law jurisdiction brought into perspective the uniqueness and importance of LPP in the common law world.

---

## **Judiciary/ Young Lawyers - Courts and IT - Present Conditions and Future Prospects**

Technology is rapidly changing all facets of life around us, and the courts are no different. At this session, representatives from Singapore, Germany and Korea spoke about the latest developments in their courts. Singapore now has an advanced system in which most documents and hearing dates can be booked or adjourned online. Germany also has an electronic mailbox system, and it has been used in the last 10 years for handling non-contested cases. The advantage of such systems is that documents can be retrieved quickly, files have less risk of being lost, and it saves resources in terms of messengers, registry clerks and physical space for storing files, and may prove helpful and easily adaptable to the Hong Kong Court system.

However, the more controversial was the proposition of an AI judge. Singapore is considering the viability of such a program for more basic cases in order to make the court system more efficient, but the Korean speaker did not think it would be a good idea to have a computer deciding on the fates of humans. This is certainly an interesting dilemma to ponder as the increasing demands of a fast-paced world and ballooning populations is juxtaposed with questions on safety, morality and power balance of using artificial intelligence.

### **LGBT Luncheon Session**

Lawasia managed to fit topical seminars in during lunch as well. One such session was concerned with LGBT rights and issues, at which, amongst others, the Honourable Mr. Michael Kirby, AC CMG, a former justice of the High Court of Australia, spoke about his experiences as an openly gay member of the judiciary. We found Justice Kirby's sharing particularly inspiring, as he reminded us that social acceptance could be built up through kindness and respect, and said that "The foundation of human rights is love for one another."



---

## **Criminal Law – Cooperation in White Collar Crime Cases: Legal and Practical Challenges for Prosecutors and Defence Attorneys**

White collar crime cases have frequently received a lot of attention in the press, as people involved are usually well known to members of the public and the money involved in those cases are often substantial in amount. This criminal law seminar titled “Cooperation in White Collar Crime Cases”, however, provided a completely different perspective of white collar crime. It focused on how to effectively question suspects and the techniques and skills that can be used in plea bargaining. The host kicked off the seminar by playing an interesting mini-drama of an interview of a suspect of white-collar crime. Various speakers then proceeded to provide their comments and views as to the questioning technique that was adopted in the video, and the improvements that can be made. Mr. Charles B Sklarsky, Attorney-at-law provided us with an overview of how to determine sentences of different categories of offence in the US. He also showed us plea bargain letters that he had drafted in real cases so as to allow us gain a better understanding as to how to effectively conduct plea bargaining on paper. This seminar provided tips to criminal law practitioners as to how to handle matters which may occur at pre-trial stages of white collar crime cases, which is not normally revealed to the public or taught in talks or seminars.

### **The Gala Dinner and Izakaya**



There was also time to mingle and network with other young lawyers between and after seminars. The Gala Dinner was a golden opportunity for us to share ideas and build professional networking with different professionals in the region. We met advocates from jurisdictions including Indonesia, Japan, India and Taiwan, to name but a few. At first, we only discussed serious matters like the field of law that we practised in, or differences between various streams of the profession and career aspirations.

---

Subsequently, as we became more familiar with each other, we moved onto more interesting topics such as anecdotes about our encounters at work and our personal interests, which enabled us to form personal bonds and develop closer friendships.

The networking did not end at the gala dinner, as our Japanese hosts generously offered to take us to visit a well-known izakaya in Japan, which is a popular place that the locals would visit after a long day of work. We had a good time and were impressed by the warmth and hospitality shown by our hosts.

Overall, attending the Lawasia Conference was a good experience in that we were able to meet other young lawyers from the Asia Pacific region and discuss issues facing lawyers and the legal profession across the region. It is a truly memorable and rewarding experience that we would highly recommend other members of the bar to take part in.

