

CHAIRMAN'S REPORT FOR 2012

1. The Apocalypse year predicted by the Mayan calendar has come and gone! I am happy to report that we appear to have all survived into the New Year. It however must be said that 2012 has been a tumultuous year for Hong Kong politically, economically and legally in terms of issues affecting the administration of justice.
2. A new Chief Executive has been installed with a new administration in place. The new Secretary for Justice, Rimsy Yuen SC, is a former Bar Chairman. The elections for a new LegCo were held in September and the new legislator representing the legal functional constituency is Dennis Kwok, a member of the Bar.
3. 2012 has been plagued with a number of controversies involving a range of issues - from illegal structures in the residences of prominent community figures, controversial statements attributed to the former Secretary for Justice about the lack of understanding by Hong Kong judges and the legal profession as to the workings of the Basic Law and the relationship between the Central Government and the HKSAR and ominous warnings by a retiring judge of the Court of Final Appeal of storms of unprecedented ferocity looming in the horizon threatening the rule of law in Hong Kong.
4. Against that backdrop, the Bar Council has had a busy, productive and interesting year. The initiative with the Department of Justice which was implemented in 2011 to help the Junior Bar by providing them with an intensive one-day course followed by two weeks of prosecution work was continued in 2012. This enabled newly qualified members to receive training on how to conduct a prosecution on fiat in the Magistracies and at the same time gain valuable practical experience with the added bonus of being remunerated at the same time! This has proved very popular and has been well received by the junior and newly qualified members of the Bar. The

success of this programme has resulted in over 113 members having undergone this training and undertaken prosecution work in the last two years. The DPP has assured me that this programme will continue in 2013 as well, and I hope for the foreseeable future.

5. The welfare of and work opportunities for the junior Bar has been an issue of considerable importance and concern during my term as Chairman. We have a slightly 'bottom heavy' Bar and I feel it is important that a vibrant, reasonably busy and contented junior Bar is important going forward so as maintain a strong and independent Bar going forward as well to develop and nurture future leaders of the Bar.
6. I can report that the revision of the Bar's Code of Conduct has finally been completed. This mammoth task has been overseen by Lisa Wong SC and her committee. The Bar owes her and her committee a huge debt of gratitude for sacrificing the time, effort and industry in order to complete this very important overhaul of our Code so as to bring it into the 21st century and cater for the new challenges and demands modern technology poses.
7. The Bar Council is presently considering the proposed changes and it is anticipated that members will be consulted on any fundamental changes which need their consideration and input. The overhaul of the Disciplinary rules is also being undertaken by another Special Committee. It is expected that some of the changes that may be proposed would require legislative intervention. I envisage that members will be consulted on the material changes at the appropriate time.
8. As a self-regulating professional body it is important that the Bar is seen to be equipped with the relevant and up to date disciplinary regulatory system and mechanisms. Only by transparently and efficiently handling the disciplinary process can the Bar maintain public and professional confidence that is demanded of its

members and who in turn are expected to conduct themselves to the highest standards in terms of their work, conduct and etiquette.

9. The community expects, and rightly demands, to be served by a strong and independent Bar. It is therefore incumbent upon the Bar to maintain and preserve the public's confidence and respect. It is a symbiotic but powerful relationship that the Bar shares with the people of the HKSAR and it is a relationship that highlights the role the Bar has played is playing and will continue to play in upholding the Rule of Law.
10. When the Judiciary and the legal profession came under criticism by the former Secretary for Justice, the Bar felt compelled to speak out and defend the independence of the Judiciary. An independent and impartial Judiciary is an important pillar supporting the foundation for the successful implementation of the One Country Two Systems concept. Freedom of speech is an enshrined and treasured right Hong Kong people have enjoyed and cherished. However, people who proclaim their freedom to express an opinion should also bear in mind that their official positions and status carry with that elevated status and office a responsibility as to where, when and how they can so exercise their right of free speech.
11. As members would be aware, the Bar issued a statement when there was considerable comment and viewpoints expressed on the appropriateness and the implications of the Secretary of Justice filing certain submissions in the FDH pending case before the Court of Final Appeal. The Bar Council took the view that as the matter was the subject of pending legal proceedings, it was inappropriate for comment or discussion which could arguably be directed towards influencing the Court responsible with the task of dealing with the case. We also issued a statement taking to task the suggestion that judges of the CFA should only be permanent residents of the HKSAR, which was clearly contrary to the provisions in the Basic Law.

12. In June, I led a Bar delegation to Beijing where we met up with the officials from the Ministry of Justice, judges from the People's Supreme Court, Chairman of the Basic Law Committee as well office bearers of the All-China Lawyers Association. The discussions covered a wide range of topics and in particular examining ways in which the Bar could help in providing training on subjects such as lawyers' ethics, ADR as well as the possibility of using HK barristers to provide a single joint expert report on Hong Kong law to assist Mainland courts in dealing with cases that involve Hong Kong law.
13. Members will understand that these discussions are in their early stages and involve delicate issues with arguably profound implications. I however believe that with perseverance and genuine cooperation from all quarters, tangible progress and real long term benefits for the Bar may be achievable in the long term.
14. The Beijing visit coincided with the completion of the unique common law course that the Bar has been running Peking University since 2011 for their LLM students. This course has proved to be extremely popular with both the students, the University as well as with members of the Bar who have generously given their time and efforts to fly to Beijing and lecture the students over weekends between March and end May on various aspects of the common law. This programme has as its objective to promote a better understanding amongst the next generation of Mainland lawyers as to what the common law system is all about and how it in fact operates in reality.
15. This year the Bar doubled the scholarships offered to the top students of the course to 8. These 8 students came to Hong Kong in the autumn and worked in different sets of Chambers and had a unique opportunity of experiencing and seeing how the common law was being practiced. I would hope that future Bar Councils will continue to support this unique collaboration as it has real and practical value in promoting the One Country Two Systems concept. I believe that the better understanding and appreciation by the next generation of Mainland lawyers of the common law system

will help cement a stronger foundation from which the concept of Two Systems can be seen to work in reality.

16. I would like to take this opportunity to thank Andrew Mak and the hardworking members of the Special Committee on Mainland Affairs for the stellar work they have done over the years in helping promote closer contacts and exchanges between the bar and their Mainland counterparts. I would like to thank in particular all those hapless YBs who had the unenviable task of acting as my interpreter in discussions with Mainland officials. They did a brilliant job despite having a Chairman who often forgot he needed to pause so as to allow them to interpret!
17. Legal Aid remains a perennial problem both in terms of the eligibility criteria as well in respect of the scope of cases to be covered. Only by the expansion in both can the Administration fulfil its obligation to provide and maintain genuine access to justice for those who are otherwise unable to afford legal representation.
18. In 2012 the Bar made representations to Deloitte's, the consultants appointed by the Government to study the question as to the need and feasibility of setting up an Independent Legal Aid Authority {ILAA}. Given the increasing number of judicial reviews and public law issues that are being ventilated in the Courts, it is important that there is both a perceived as well in reality terms independence of the Legal Aid Department from the public {user's} perspective. I have invited the new Administration to seize the initiative and the high moral ground in establishing an ILAA as soon as possible, something that the previous Administrations chose to do nothing about despite clear and compelling arguments as to why an ILAA should be established.
19. I would like to pay special tribute to Ruy Barretto SC and his small but dedicated Committee for the time and efforts they have expended over the years into keeping the issue of Legal Aid in the limelight in LegCo as well as in the public domain

generally. On behalf of the Bar, I would like to thank Ruy and his team for valiantly fighting for the sandwiched class on behalf of the Bar and the community as a whole.

20. A new Special Committee on International Relations was established this year. This was to cater for the greater interaction and meetings that the Bar has been having with overseas legal bodies and organisations, some of whom make courtesy visits when they are in Hong Kong. The global legal village is getting larger in one sense but at the same time there is a greater propensity and understanding that there is a need for mutual cooperation and assistance between legal bodies across the world spectrum. It is important that the Hong Kong Bar remains engaged with their counterparts from other jurisdictions around the world in order to leave the important footprint in the international arena that there is a vibrant and independent Bar still practising the common law in Hong Kong, despite being part of China.
21. The reports from the various Special Committees are in members' hands and they provide an overview of the work that they have been undertaking on behalf of the Bar. I do not intend to repeat them here and leave it to members to read it at their leisure. I would like to take this opportunity to thank all the Chairmen and members of the various Special Committees for their unstinting help and support given to the Bar Council in the past year. Without your help and willingness to step up and help the Bar, the Council would have had a difficult task of dealing with the myriad issues that it was confronted with this year.
22. The Bar Secretariat has been the backbone of the Bar over the years. Despite working in testing and trying environment conditions in terms of space, they have continued to provide solid support to the Council at all times. I would like to thank the Administrator and her team of dedicated and hardworking staff for the tremendous work they have put in on behalf of the Bar. The gentle reminders in the memos to Chairman have kept me fully aware of what I needed to address in an expeditious fashion and ensured I dealt with all matters in a timely fashion.

23. Over the past year I have travelled considerably around the world. In February I led a Bar delegation to Tokyo at the invitation of the Tokyo Bar Association to speak at a symposium as to the advantages to Japanese companies and individuals to choose Hong Kong as the seat of arbitration, particularly involving disputes with Mainland companies and state entities. Over 100 Japanese and International lawyers attended and the symposium was acknowledged to be a great success. We have signed an agreement with the Tokyo Bar Association for future co-operation and mutual assistance. It is anticipated that there will be a return visit by our Tokyo counterparts in the first quarter of 2013. We also were privileged to visit the Japanese Supreme Court which was quite an imposing and impressive building where we had tea with one of the justices.
24. I then attended the Inter-Pacific Bar Association conference in New Delhi which was a useful venue to press for Hong Kong to be gazetted by the Indian Government and recognised as one of the countries whose arbitral awards could be enforced. This was something I had seen as one of my tasks to try and secure during my term. I am glad to report that this eventually came into force in April. I am hopeful that this may increase the use of Hong Kong as the seat of arbitration, and thereby help create work for the arbitral community in Hong Kong in general and the Bar in particular. I expect to lead a road show in February to India to promote the advantages of Hong Kong being chosen as the seat of arbitration.
25. I attended the World Bar Conference in London in June, followed by the POLA in Manila in August, the IBA in Dublin in September, a trip to Shanghai in October and finally the LawAsia Conference in Bali in November. These overseas trips have helped to establish new and cement old ties. I would encourage my successor to keep these contacts open and maintained as they are important for the future development of the Bar in the world legal community.

26. I have had the privilege and honour of serving the Bar over the last two years as its Chairman. I have been touched by the warmth and unselfish support I have received from the members of the Bar Council which has made my task that much easier. I have enjoyed my 'innings' and it is time for me to bid adieu and wish my successor, the new Bar Council and all of you a healthy, productive and successful year.

Kumar Ramanathan SC

Chairman