

Chairman's Report 2007

1. The year 2007 is a year of growth and development. The key areas of work undertaken in the past year can be seen from the reports by the Special Committees¹. The following are areas that I would like to add or highlight.

Internal Matters

Pupils & the Junior End

2. The size of the Bar continues to grow. At the end of 2006, there were a total of 994 practising members. At the time of preparing this report, the total number of practising members is slightly over 1,040 (out of which 80 are senior counsel). Judging from the trend in the past few years, it is not unlikely that there will be another 50 to 70 new members joining us in 2008.
3. As previously pointed out, training and provision of assistance remain the Bar Council's key tasks regarding pupils and the junior end of the Bar. In addition to the usual Advanced Legal Education ("ALE") Programme, a "Training the Trainers" programme was organized in May 2007 with the help of the Advocacy Training Council. Participants had the opportunity to learn from eminent trainers including Lord Walker and Mummery LJ. The feedback is positive and it is hoped that similar programme can be held again in 2008.
4. In line with our intention to strengthen advocacy training, a new Special Committee on Advocacy headed by Mr. Russell Coleman SC has been established. This Special Committee will be responsible for the future development of advocacy training for pupils. In addition, a taskforce headed by Mr. Peter Duncan SC has recently been set up to oversee the introduction of a training course for junior members with special emphasis on criminal prosecution.

¹ Not each and every Special Committee has submitted a report, as some of them have a relatively quiet year.

5. The reform of the ALE Programme for pupils is under consideration. Since around late 2006, there had been discussion that pupils should be required to pass an examination or obtain some form of accreditation before they can commence practice. The intended reform, as expected, is controversial. Very different views have been expressed by members, the Special Committee on Legal Education and representatives of the universities. It is anticipated that a draft proposal can be finalized and made available for formal consultation in the first quarter of 2008.
6. Our Code of Conduct as it previously stood² only allowed payment to a pupil during the first six months of his pupillage by his pupil masters but not other barristers who might have asked the pupil to do devilling work. With a view to encouraging members to remunerate pupils, the relevant provisions in our Code of Conduct were changed in May last year. Pupils can now receive payment from any barristers (whether his pupil master or otherwise) for work done at any time of his pupillage.
7. The search of pupil masters and tenancies are the other difficulties often faced by pupils and junior members. The setting up of a central registry regarding pupillage and tenancies with a view to assisting pupils and junior members in this regard is being considered by Mr. Michael Liu. May I urge all chambers to assist and co-operate when this scheme is put into place.

Admission of Overseas Counsel

8. The number of applications for admission of overseas counsel has increased from 32 in 2006 to 46 in 2007. The Bar Council has given consent to 32 applications. Of the applications that were opposed by the Bar, 6 of them had been dealt with by the Court and admission was allowed in 5 of them. Figures apart, the recent admission of 2 overseas counsel in respect of a District Court criminal trial has caused concern amongst members, although this can partly be explained by the fact that more complex commercial fraud cases are being tried in the District Court rather than before a jury³.

² See paragraph 82 and paragraph IV.L of Annex 5 of our Code of Conduct.

³ Viewed from a different angle, this phenomenon raises a different issue, namely, whether the Department of Justice's practice of placing these complex commercial fraud cases before the District Court is appropriate as such practice arguably deprives the defendant of the right to a jury trial.

9. From time to time, the Bar's opposition to the admission of overseas counsel has led to suggestion that the Bar operates as a close shop. Perhaps I should take this opportunity to reiterate that this is not the case. The principles governing *ad hoc* admission of overseas counsel are well established. The complexity of the issues involved and the availability of local counsel are the key considerations, while public interest remains the ultimate test. However, more often than not, the view of the Special Committee on Overseas Admission and the Bar Council on whether a case is sufficiently complex to warrant the admission of overseas counsel differs from that of the Court and this accounts for the low success rate in the Bar's opposition to applications for admission of overseas counsel.

Practice Environment

10. The Bar Council has paid special attention to the development of mediation. In July last year, arrangements were made with the Centre for Effective Dispute Resolution ("CEDR") so that members could attend CEDR's accreditation course in London at a discounted rate. In September, representatives of CEDR were invited to hold a seminar and a mediation theatre for introducing mediation to our members in Hong Kong. This was followed up by the holding of an accreditation course in Hong Kong by CEDR in late October. In addition, the Bar's representatives attended other mediation functions organized by other bodies including the conference "Mediation in Hong Kong: The Way Forward" jointly held by the University of Hong Kong, the Department of Justice and other institutions on 30 November and 1 December.
11. Judging from the way alternative dispute resolution including mediation is developing in Hong Kong and overseas, there is plainly a need for the Bar to stay at the forefront of this development. Apart from CEDR, the Bar is also discussing with other bodies (both local and international) including the dispute resolution section of the International Chambers of Commerce with a view to exploring possible co-operation in the provision of training regarding alternative dispute resolution. Besides, the Bar will be represented at the Working Party to be formed by the Secretary for Justice, which will be responsible for mapping out a structured plan for the development of mediation in Hong Kong.

12. In the 2006 Chairman's Report, my predecessor reported that the Director of Administration had acknowledged that there were serious structural problems with the scheme for remunerating counsel and solicitors for undertaking legal aid criminal work. Regrettably, the desired change has not yet been implemented. While the Administration has in principle accepted the proposals put forward by the Bar, discussion between the Administration and the Law Society continues. The Bar Council will closely monitor the progress with a view to having the Criminal Legal Aid Rules changed in 2008.

Code of Conduct

13. The Code of Conduct currently in force has been in use for many years. Problems in relation to the enforcement of the Code have from time to time emerged. It is plain that the Code of Conduct requires an overhaul. The task is a huge one and I am grateful to Ms. Audrey Campbell-Moffat and the other members of the Code of Conduct Special Committee for taking on this project. It is anticipated that the first draft of the new Code of Conduct will be available for consultation next year.
14. With the growth in the size of the Bar, the number of requests for permission to undertake supplementary occupation⁴ has increased significantly. The types of supplementary occupation involved vary a lot, including private tutor, free-lance translator and non-executive director of listed companies. As the number of applications increases, more and more new issues arise. For instance, whether the three-year rule that has been adopted by the Bar Council for years remains appropriate, and what should be the proper meaning of the term "occupation" in this context. In July, the Special Committee on Supplementary Occupation under the chairmanship of Mr. Anthony Chan SC was set up to review the situation.

Discipline

15. Disciplinary matters is an area that has taken up considerable time of the Bar Council. I am particularly indebted to Mr. Clive Grossman SC and the other members of the Special Committee on Discipline for their time and the

⁴ Under paragraph 23 of our Code of Conduct.

helpful reports they prepared. Needless to say, I am equally indebted to those members who assist the Bar in prosecuting cases before the Barristers Disciplinary Tribunal.

16. When the Complaint Form was introduced, some members had expressed concern that the measure might lead to an increase in the number of complaint. This concern has not materialized. I am happy to report that there is no indication of any increase in the number of complaints received by the Bar Council. On the contrary, there was a decline from 47 disciplinary complaints in 2006 to 40 in 2007.
17. The question of costs payable by a member following the conclusion of a hearing before the Barristers Disciplinary Tribunal, however, is an area that need to be addressed. Attempts are made to ensure that the costs payable by members found to be guilty of disciplinary offences are reasonable and proportionate.

Solicitor's Right of Audience

18. In late November 2007, the Working Party on Solicitor's Rights of Audience appointed by the Chief Justice delivered its Final Report. It recommends the extension of higher right of audience to solicitors who obtain accreditation by the Higher Rights Assessment Board. This Board will be chaired by a senior judge and will consist of representatives from the Judiciary, the Bar, the Law Society and the Department of Justice and lay persons. The solicitor-advocates who obtain such accreditation will be subject to a code of conduct to be devised.
19. The issue of solicitor's higher right of audience has been considered and debated for many years. Consultation had been done in the past and position papers had previously been submitted to the Working Party. Following the issue of the Final Report, a further Circular has been issued to seek members' view and the deadline for submission of views has not expired at the time when this report is prepared.
20. No doubt the implementation of this recommendation will have an impact on the Bar, especially the junior end, although the exact extent of such impact remains to be seen. In England, the impact was not significant when similar

measure was introduced years ago. Besides, the recommendations contained in the Final Report do not come as a surprise and it is difficult, if not impossible, to argue that the recommendations are contrary to public interests and thus should not be implemented.

21. The more important task ahead is two-fold. First, looking from the perspective of public interest, the implementation of the recommendation, including the setting up and operation of the Higher Rights Assessment Board as well as the code of conduct to be adopted for solicitor-advocates, should be closely watched. Second, from the Bar's perspective, the key to maintaining an edge over solicitor-advocates is to ensure and enhance quality of our service, so as to demonstrate that the engagement of counsel does make a material difference. Partly for this reason, the Bar Council believes that there is all the more reason to push forward the intended reform to our ALE Programme.

Bar Secretariat

22. The Bar Secretariat has undergone certain changes. We have a new Administrator Ms. Dora Chan. A few other secretariat staff members have left us. Given the current condition of the local employment market, there may be further staff movement. In this regard, I am indebted to Ms. Lisa Wong SC and Mr. Keith Yeung for overseeing the management of the Secretariat staff and for ensuring smooth transition notwithstanding the staff turnover.
23. The Bar Council has recently resolved to revamp the Secretariat's computer system in three stages and the first stage has completed. In the past, addition and improvement to our computer system has been done in a rather haphazard manner. This has created significant difficulties in various aspects including the building up of a proper data base and the revamp of the Bar's website. Throughout the past year, I have received from time to time negative comments from members and other people about our website. Attempts to effect improvements have been unsuccessful due partly to the condition of our computer system. With the installation of a new computer system, the daily administrative work can be improved and the Bar's website can be revamped so as to make it more user-friendly and bilingual.

External Matters

Constitutional Issues

24. The constitutional development for Hong Kong has generated heated debates in the community, and will remain controversial notwithstanding the NPCSC decision made at the end of December last year.
25. The dividing line between law and politics is not always easy to draw. This is particularly true in the context of constitutional matters, which very often involve legal, political as well as a multitude of other issues. The Bar no doubt has a duty to maintain the rule of law and to speak out when it is necessary to defend our legal system. That said, the Bar Council's unanimous view is that the Bar Association, as a professional body (as opposed to a political body), should not venture beyond legal issues and matters concerning the rule of law. Members, in their personal capacity, are of course fully entitled to engage in whatever political activities they see fit.
26. Pursuant to this policy, the Bar submitted a position paper in response to the Government's "Green Paper on Constitutional Development" in August last year addressing the legal issues arising therefrom. The Bar disagrees with the Government's view concerning the applicability of paragraph (b) of Article 25 of the International Covenant on Civil and Political Rights ("ICCPR"). The Bar urges the Government to devise and implement, within the constitutional framework laid down in the Basic Law, a method for the election of the Chief Executive and a method for forming the Legislative Council by election that are fully in line with Article 25 of the ICCPR.

Rule of Law

27. Access to justice is a crucial aspect of the rule of law and legal aid plays an important role in this regard. In May last year, the Government proposed to transfer the responsibilities for formulating legal aid policy and overseeing the implementation of various legal aid schemes by the Legal Aid Department from the Administration Wing of the Chief Secretary for Administration's Office to the Home Affairs Bureau. The Bar opposed the proposed transfer on the ground that it would affect the independence of the Legal Aid Department. Notwithstanding the opposition from the Bar and a few other stakeholders,

the transfer was implemented. The Bar has been following up on this matter and a further submission has recently been made to the Legal Aid Services Council. As I said during the Opening of the Legal Year, the body providing legal aid and responsible for formulating the relevant policy should enjoy true institutional and operational independence.

Bills & Law Reform

28. As in the past, the Bar continues to express views on draft legislations. Key examples of the bills on which the Bar has expressed opinion in the past year include the Race Discrimination Bill, the Mainland Judgments (Reciprocal Enforcement) Bill, the Independent Police Complaints Council Bill and the Shenzhen Bay Port Hong Kong Port Area Bill. In addition, the Bar has expressed its views on various areas of proposed law reform including the draft legislations for implementing the Civil Justice Reform, the reform relating to enduring power of attorney and arbitration, as well as the rewrite of the Companies Ordinance. The law on trust and trustee in Hong Kong is relatively dated. Jurisdictions such as England and Singapore have reviewed their trust law substantially. The stakeholders have been calling for substantial reform of our trust law and the Government is interested to proceed so as not to affect Hong Kong's status as an international commercial centre. A working party has recently been set up to follow up on this matter.

Conferences

29. The Bar has actively participated in local and overseas conferences. The Bar has acted as supporting organization in the "ADR in Asia Conference" in September, the "Southeast Asia Media Defence Litigation Conference" in late May and the "7th World SME Expo – Legal, Arbitration & Mediation Industries Meet Symposium" in December.
30. Representatives of the Bar had attended various international conferences held overseas. These include the American Bar Association's Annual Meeting in San Francisco, the POLA Conference at Jakarta, the Opening of the Legal Year in London, the International Bar Association's Conference in Singapore, the International Criminal Bar Conference in Tokyo, the 15th Commonwealth Law Conference at Nairobi, the Australia Advocacy Institute's 2nd International Advocacy Teachers' Conference at Prato, Tuscany and the 14th

Malaysian Law Conference. Participation in these overseas conference enables the Bar to keep abreast of the development in other jurisdictions and to learn from the experience of the other bar associations.

Mainland China

31. The Bar continues to promote exchanges and interflow with the lawyers associations and other law-related bodies in Mainland China. Co-operative Agreements with the Lawyers Association of the Liaoning Province and the Xinjiang Lawyers Association were signed in the first half of 2007. In July, the Bar delivered the first series of lectures on Hong Kong law to the National Judges' College in Beijing. The 7th China Lawyers Forum at Yinchuan, Ningxia on 31 August to 2 September 2007 was attended by a small delegation of the Bar. In October, the Bar co-organized the Mock Trial of Civil and Criminal Cases with the China Legal Education Trust Fund. The Mainland portfolio is a time-consuming one and I am indebted to Mr. Andrew Mak for all the hard work he did in the past year.

Postscript

32. Before I conclude, may I take this opportunity to express my utmost gratitude to the staff of the Bar Secretariat, the members of the Bar Council and the various Special Committees as well as a lot of other people who have given me their support and advice. Last but certainly not least, may I also thank all of you for giving me this privilege to serve you in the past year.

Rimsky Yuen, S.C.
Chairman
10 January 2008