

Report of the Special Committee on Overseas Admissions (Criminal)

The Bar Council throughout the year and as at the day this report is being written has received a total of 10 notifications from solicitor firms who intimated their intention to engage overseas leading counsel to conduct some part or parts of the criminal proceedings on behalf of their clients in Hong Kong. These were in turn passed to the Special Committee for consideration and for a recommendation in each case to be made to the Bar Council as to whether to consent to their future application before the Chief Judge, or to oppose it, in respect of all or parts only of those proceedings. The guidelines to apply have already been clearly laid down by the Chief Judge in his previous judgments delivered in earlier applications. Factors that should be taken into account included the circumstances of each case, the degree of complexity of the facts or points of law involved, the pool of available local leading counsel that possessed the relevant expertise in any particular subject, whether the assistance of overseas leading counsel would contribute towards the development of the local jurisprudence, and whether genuine efforts had been made to seek out suitable local leading counsel. Those recommendations were in due course carefully considered by the Bar Council, which looked at the relevant materials once again, together with the views expressed by the members of the Special Committee.

Of those 10 instances mentioned in the preceding paragraph, the Bar Council ultimately decided that 8 of those merited the services of an overseas leading counsel in part or all of the proceedings, while the Bar should not give consent to the remaining 2. Despite that, only 6 of those 8 to which the Bar had given its consent went ahead and obtained the services of such leading counsel.

As for the 2 applications that the Bar saw fit to oppose, 1 is still pending, and 1 was dismissed. The Chief Judge in the latest application took the opportunity to highlight the case of one overseas silk who had been invited to come to Hong Kong by the solicitors firm to meet with his potential client. A meeting was indeed held and the expenses of his stay in Hong Kong were paid for by the potential client. Although the Chief Judge did not specifically comment on the propriety or otherwise of the conduct of the particular applicant's case at hand, since he was not fully addressed on it, he made it plain that such practice might fall foul of the provisions of the Legal Practitioners Ordinance that requires all persons to be admitted first before practicing or acting as a barrister, failing which it might amount to a criminal offence. Such practice by overseas leading counsel in Hong Kong, whether common or not, should therefore cease.

The total number of overseas leading counsel admitted into Hong Kong in this year in respect of criminal proceedings up to now is 6, compared with 8 for the previous year, and 6 for the year before that.

Finally, I wish to express my utmost gratitude to all the members of the Special Committee whose views are always most valued and highly reliable.

Membership

Joseph Tse, SC (Chairman)

Gary Plowman, SC

Wong Man-Kit, SC

Michael Blanchflower, SC

Peter Duncan, SC

Alexander King, SC

Richard Wong

Selwyn Yu

Osmond Lam

Joseph Tse, SC

Chairman

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9 December 2008