

**Opening of the Legal Year  
(14 January 2008)  
Speech by the Chairman of the Hong Kong Bar Association**

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Chief Justice, Secretary for Justice, President of the Law Society, Judges, Distinguished Guests, Members of the Legal Profession, Ladies and Gentlemen:

1. We once again gather here to welcome the new Legal Year. What makes today's ceremony different from the previous ones is the presence of eminent leaders of the legal profession from other jurisdictions. On behalf of the Bar, may I extend our warmest welcome to our distinguished guests from overseas.

*Dispute Resolution*

2. A civil justice system that can resolve disputes in a fair and cost-effective manner is of vital importance to the maintenance of the rule of law. A system that can resolve commercial disputes efficiently is crucial to give the business community the confidence it needs to invest and thus is crucial in maintaining Hong Kong as an international commercial centre.
3. Litigation is conducted on an adversarial basis. The Civil Justice Reform proposed by the Judiciary, once implemented, will bring about a significant change to the ways adversarial litigation is to be conducted.
4. A change in the litigation culture is, however, not sufficient. The time has come for Hong Kong to embrace a more fundamental change to our dispute resolution culture. No matter how efficient our civil justice system is, litigation should not be, and should never be perceived to be, the first or only option to resolve disputes. On the contrary, there should be other avenues through which civil disputes can be resolved.
5. The term "alternative dispute resolution" ("ADR") is not new. In jurisdictions where ADR is better developed, people query whether the word "alternative" is still appropriate, and whether it should be changed to "amicable" so that the acronym "ADR" would stand for "amicable dispute resolution". If Hong Kong is to live up to her image as Asia's World City

and to stand out as the legal services hub of Asia, a cutting-edge ADR infrastructure is indispensable.

6. Apart from arbitration which deserves continuous support, mediation is another form of ADR that should be developed with full force.
7. Adversarial justice inevitably leaves a sense of animosity. Mediation, on the other hand, provides an option that has the virtues absent in litigation and arbitration. As a mediated settlement is the result of the voluntary agreement of the parties involved, it can only come about if each party is satisfied with the outcome. Parties coming out from a well-conducted and successful mediation are more likely to be in a position to maintain the relationship they enjoyed before their disputes arose.
8. Hong Kong has every reason to promote and develop herself as an international ADR centre. The business communities in overseas jurisdictions are used to resort to ADR to resolve their disputes. Unless we can meet the demands, Hong Kong as a commercial and services centre will suffer. Furthermore, both Hong Kong and overseas corporations doing business in the Mainland have a strong preference over ADR to litigation in the Mainland. Hong Kong, with her reputation in maintaining the rule of law, can offer herself as an ideal alternative venue for resolving Sino-foreign commercial disputes.
9. The Government, the legal profession and the academia each has an important role to play in the development of mediation and other forms of ADR.
10. The provision of premises for the setting up of an ADR centre where parties can conduct arbitration or mediation is definitely one of the ways in which the Government is in a unique position to assist. The premises currently occupied by the Hong Kong International Arbitration Centre is hardly sufficient to cater for the increasing demand for ADR facilities. Besides, with appropriate premises, other international ADR bodies may be invited to establish offices in Hong Kong so as to enhance Hong Kong's image as an international dispute resolution centre.

11. The role of the legal profession in promoting the use of ADR and in offering skilled services is pivotal in enabling Hong Kong to acclaim herself as an ADR centre. Admittedly there are members in our profession who remain skeptical towards mediation. Learning from other jurisdictions' experiences, the sooner we embrace this international trend the better. Last year, the Bar assisted its members in attending accreditation course held by the Centre for Effective Dispute Resolution in London and also provided similar training in Hong Kong. The Bar will continue to provide such training and has been in touch with other international bodies with a view to enlarging the pool of qualified mediators as well as to ensure that the services provided are at the forefront of dispute resolution practice.
12. Experiences in other jurisdictions also tell us that dispute resolution is a multi-discipline subject. Not only is continuous research essential, close collaboration amongst established disciplines such as economics, sociology, psychology and law is undoubtedly the way forward.
13. From the regulatory point of view, there is an increasing need for a set of accreditation standards that can cater for the differences inherent in different forms of mediation so that end-users of all types of mediation can have confidence in the process. In addition, the need for a code of conduct for mediators is no less important, and the question of whether there should be a Mediation Ordinance also deserves serious consideration.
14. The promotion of ADR is not the end but the beginning of the transformation of our dispute resolution culture. One key feature of traditional dispute resolution is that it is invoked only after a dispute has arisen. This should not be the only way to handle disputes. Rather, in many contexts, there are good reasons to implement the modern concept of dispute management which involves well-designed systems that can prevent, identify, address and defuse conflicts at the earliest possible stage.

#### *Independent Legal Aid*

15. Another aspect that is no less important in maintaining the rule of law is access to justice. Under Article 35 of the Basic Law, Hong Kong residents shall have the right to access to the courts and the right to judicial remedies. This right cannot be fully protected unless professional legal assistance is

made available when necessary, especially to the less privileged sector of our community.

16. Last year, the legal aid portfolio was transferred from the Administration Wing of the Chief Secretary for Administration's Office to the Home Affairs Bureau. This move was made notwithstanding justified concerns expressed by the stakeholders.
17. Legal aid services should not be regarded solely as a form of social welfare. Instead, they are an integral part of the administration of justice that translates the fundamental right of access to justice into a practical reality. The need to convert the Legal Aid Department into a truly independent institution with both institutional and operational independence is long overdue.

*Solicitors' Right of Audience*

18. In November last year, the Working Party on Solicitors' Right of Audience appointed by the Chief Justice published its Final Report. The Report recommends extending higher rights of audience to suitably qualified solicitors. Bearing in mind public interest should always be the paramount consideration, the Bar will and is prepared to meet this challenge head-on. Measures including reforms to our Advanced Legal Education Programme will help to ensure that the end-users of our professional services will see the distinct advantages in retaining barristers in the dispute resolution process.
19. Last but not least, may I wish all of you a happy and prosperous year of 2008.

Rimsky Yuen, S.C.  
Chairman of the Hong Kong Bar Association  
14 January 2008

**2008 年法律年度開幕典禮**  
**(2008 年 1 月 14 日)**  
**大律師公會之開幕禮致辭**

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終審法院首席法官、律政司司長、律師會會長、法官閣下、各位嘉賓、法律界同業、女士們、先生們：

1. 今天我們再次聚首一堂，一同迎接新的法律年度。是次的法律年度開幕典禮有別於以往的典禮，我們很高興來自外地法律界的翹楚能撥冗參與此次盛會。在此，本人謹代表香港大律師公會熱誠歡迎我們的外地嘉賓。

爭議之解決

2. 一個能公平及有效地解決民事糾紛的民事司法制度，對維持法治極為重要。要維持香港國際商貿中心的地位，及令商界有信心在港投資和發展，一個能有效率地解決商貿糾紛的機制亦同樣重要。
3. 對訟式訴訟 (adversarial litigation) 的處理方法及相關文化，在司法機構建議的民事司法制度改革推行後，將產生重要的變化。
4. 然而，單是訴訟文化的改變並不足夠。香港應迎接解決爭議文化的根本改變。無論我們的民事司法制度是如何有效率，訴訟不應及不該被視為解決爭議的優先或唯一選擇。反之，爭議各方應有其他的途徑去排解糾紛。

5. 「解決爭議替代方法」(Alternative Dispute Resolution) (以下簡稱“ADR”) 並非新的概念。在 ADR 發展完善的地區，有關人士已質疑“替代”(alternative) 這詞彙是否仍然恰當，及應否改為“友好”(amicable)，從而將“解決爭議替代方法”更改為“友好解決爭議方法”(Amicable Dispute Resolution)。若要維持“亞洲國際都會”的美譽，及凸顯香港作為亞洲法律服務樞紐的地位，一個完善的 ADR 機制絕對不可缺少。
6. 除了繼續支持仲裁的發展，調解 (mediation) 是另一必需全力推動的解決爭議模式。
7. 對訟式民事司法制度無可避免地令與訟雙方在爭議解決後仍存有芥蒂。調解則能提供訴訟及仲裁均欠奉的好處。經調解所達至的和解協議，是爭議雙方在自願及滿意結果的情況下達成。因此，爭議雙方能維持原有良好關係的機會往往相對上比較大。
8. 香港絕對有基礎發展成為一個國際 ADR 中心。外國的商界已十分喜歡採用 ADR 作為解決爭議的方法。倘若香港不能滿足外國商界在這方面的需求，香港商業及服務業中心的地位將受到沖擊。再者，在內地從商的香港及海外公司普遍喜歡採用 ADR 的方式解決與內地公司的爭議，而不願意在內地法院進行訴訟。香港在法治方面的成績在國際間有目共睹，我們可藉此優勢推動香港作為解決中外爭議的理想地點。

9. 政府、法律界及學術界均能就推動調解及其他解決爭議替代方法起一定的作用。
10. 提供合適場地以供爭議雙方進行仲裁或調解，絕對是政府可予以大力協助的其中一個方法。現時「香港國際仲裁中心」所享用的地方，遠遠不能滿足社會上對 ADR 設施需求的增加。此外，若有合適的地方，香港更可考慮邀請國際上知名的 ADR 機關在港開設辦事處，藉此提升香港作為國際解決爭議中心的地位。
11. 法律界在推動 ADR 及提供專業 ADR 服務方面亦責無旁貸。誠然，部份法律界人士對調解仍存有懷疑。但觀乎外國的經驗，香港法律界應盡快跟上這國際趨勢。大律師公會去年安排了部份會員到倫敦參加 Centre for Effective Dispute Resolution 舉辦的認可調解員課程，其後亦在香港提供同樣的訓練。大律師公會將繼續協辦相關課程，務必擴大業界合資格調解員的數目，並確保會員提供的調解服務能走在同業的最前。
12. 外國的經驗亦告知我們調解是一門跨越多個專業的科目。除持續的學術研究外，諸如經濟學、社會學、心理學及法律等界別應攜手合作，對調解這學科的發展進行有系統性的探討。
13. 從規範的角度看，香港需要一套完備的調解員認可資格準則，務使在顧及不同調解模式的個別特質下，令調解使用者對整個解決爭議過程有充份信心。一套健全的調解員專業手則更是不可或缺。再者，香港是否應就調解進行立法也是應考慮的問題之一。

14. 推動 ADR 並非改變解決爭議文化的終點，只是這銳變過程的開端。傳統解決爭議的方式，全都是在爭議發生後才能被啟動。這不應是解決爭議的唯一處理方法。相反地。在多個不同的範疇，也有落實爭議管理的現代概念，利用設計完善的爭議管理系統在最早的時機去防止、鑒別、處理並化解糾紛。

#### 獨立法律援助機關

15. 維持法治的另一重要關鍵，是確保香港市民能有效地行使「基本法」第 35 條所賦予向法院提出訴訟及獲得司法補救的權利。除非在需要時能得到專業法律協助，否則此權利不能得到應有的保障。這點對我們的弱勢社群尤為重要。
16. 去年，政府將法律援助的事務，由政務司司長辦公室轄下的行政署轉為由民政事務局負責，此舉引來不少質疑的聲音。
17. 法律援助不應單單被視為一種社會福利。它是司法管治的一部份，亦是落實及體現向法院提出訴訟這基本權利的重要機制。政府應盡快將法律援助署改革成為一個在機制及運作上真正獨立的機構。

#### 律師出庭發言權



18. 去年 11 月，終審法院首席法官成立的工作小組，就律師出庭發言權提交最後報告。報告建議擴大合適律師的出庭發言權。在公眾利益為首要考慮的大前提下，大律師公會將欣然面對這挑戰。高級法律進修計劃的改革及其他相關措施，將確保客戶能知悉在解決爭議過程中聘用大律師的好處。

19. 最後，我謹祝各位有一個豐盛的 2008 年。

袁國強  
大律師公會主席  
2008 年 1 月 14 日