

Speech of the Chairman of the Hong Kong Bar Association
on the ceremony of appointment of Senior Counsel, 17th May 2014

Chief Justice, Judges, Secretary for Justice, President of the Law Society, members of the legal profession, ladies and gentlemen,

In line with what I did last year, once the identities of the new silks had been revealed I began to compile my little dossier of dirt about the applicants. I know most of them personally and so dirt comes naturally without any need for searching. The one exception is Ian Pennicott.

Perhaps Ian can be branded the quintessential gentleman. None of my sources were prepared to spill dirt, apart from the fact that he is a construction law specialist (if you call that a kind of dirt). His own favourite story, which he keeps reminding other people, concerns the days when he was young, or younger. As a construction law expert he was in most if not all the big construction cases in Hong Kong, one of which was the Harbour City litigation in the 1980's. On one occasion he was led by Neville Thomas QC. As a conscientious junior then, he paid a special interest in what his leader had written in his notes in case he was called upon to follow. He found, to his shock and horror, that his leader's notes were all written in Welsh. Given the manner in which Neville Thomas QC used to chain-smoke, Ian did nothing but pray throughout the hearing for fear that Neville Thomas QC could not carry on till the end of his submissions and he had to take over the case.

The other item I dug up about him from his Chambers website is that he is a supporter of Southampton Football Club. Mention of Southampton today is a good omen because the last time Arsenal won the FA cup in open play was when they beat Southampton one nil in 2003. No prizes for guessing where my loyalty lies later this evening.

Anita Yip was a co-pupil with me in 1990. She has since developed an almost exclusive, and extremely prosperous, family law practice. I regularly receive phone calls from solicitors asking me to recommend a fierce barrister to act in a matrimonial case and I would invariably say "Go to Anita Yip". But occasionally they would say "yes .. but she is a woman and our client is from Chiu Chow" . I would invariably ask "What's wrong with it? I am from Chiu Chow". The solicitors would say "yes but they don't like women; in fact they beat women up." These clients would invariably regret later, when Anita was retained by the other side and demolished them with her ferocious cross examination in court. One blot on her professional life was when she was accused of rudeness in court. She was addressing a judge and the judge said, "Miss Yip can you please stand up when addressing me" and she retorted, "Sorry My Lord I cannot help it - I am already standing up!"

Raymond Leung had a previous career as a police officer before joining the Bar. Perhaps this had contributed to his persistent zeal in keeping himself fit. He would regularly be seen running – not jogging – in difficult paths in Hong Kong and even when travelling abroad. Contrary to popular belief, Raymond does not only specialize in personal injuries cases, but also in cases involving anti-discrimination

law and the Equal Opportunities Commission. Because of my politically incorrect comments about Chiu Chow I will not be surprised if someone were to lodge a complaint against me to the EOC later, in which case I would need Raymond's expertise. Raymond is also a very conscientious junior. He surpassed Ian Pennicott because he did not just look at his leader's notes. He took time to write notes on yellow post-it stickers and stuck them in front of his leader. On one occasion the note said "I think this point you just made is a completely bad point and we will shoot ourselves in our foot". Unfortunately that leading counsel, who shall remain nameless, actually read it out.

Lastly I come to Anson Wong. People called Anson are very hot in Hong Kong these days. This Anson is very hot for a different reason. Apart from having a record number of summer students and thereby turning himself into the teenage idol of the Bar, he is among the earlier batches of Bar Scholarship holders. With Anson being appointed to silk he had completed a historic mission – we now have a Bar Scholar who had joined the High Court bench, Bar scholars who had intermarried, and now the first Bar Scholar who has managed to take silk. When news of his appointment came out, one local newspaper mentioned his relative young age of 38 and mentioned him in the same vein as myself and Mr. Jat Sew Tong who took silk at 37 and 36 respectively. My mole tells me that this irritated Anson immensely because the reference to me set the standard too low for him (too easy to attain) and the reference to Jat Sew Tong set it too high (impossible to attain). By "too low" or "too high" I am referring to the level of fees we charge.

Every year at this juncture new silks were lectured about the virtues of silkhood and what they should do in court as leaders of the Bar. Today I wish to talk about what they can do outside court, on a serious note.

We often hear that “the Rule of Law and an independent judiciary is what marks Hong Kong out in this region uniquely”. Everyone says that in Hong Kong and I would like to think that most people believe in it. To many people it simply means that Hong Kong people generally obey the law and do not jump queues, and they do not beat people up lightly when they do not get what they want. But some people do not actually know that it means something more. In particular, some people from within and outside Hong Kong actually think that when it comes to important cases judges and courts are, or can be, subject to unspoken influences or pressure of business interests or the powers that be. Bernard Chan, a member of the Executive Council, wrote in the South China Morning Post last December about examples where American businessmen/lawyers did not want to use Hong Kong as a venue for dispute resolution for fear of outside influence. I have friends, locally born and bred and educated overseas, who think in the same way and who have asked me whether things are done this way.

The truth as we know is that this view is completely and utterly groundless. The Hong Kong Judiciary has a long standing history and tradition of independence. Not one iota of evidence or proof from actual cases had, or could, be produced (even anecdotally) in support of this view. Justice is administered openly and publicly and judgments are openly available for public scrutiny. Of course judges are not always polite or patient and they may sometimes even be wrong. But there could be no basis for doubting their independence and integrity, individually and

collectively. If anything, Hong Kong courts are so independent that I have sometimes heard it moaned that the Hong Kong Courts are ruling against the Government or state enterprises too readily.

It is hard to see how such misconceived notions could even begin to be spread. It could well be because of innate “value of Central district”: People just assumed that, as in Central district in Hong Kong, things are just done this way, by reference to who you are, whom you know, how much you have, what deals you can offer, “you scratch my back I scratch yours”; or as Bernard Chan wrote in the South China Morning Post last December, it could possibly be spread by overseas rivals for legal services or dispute resolution services market; or it may be because it would suit the political agenda of scaremongerers to portray the Hong Kong judiciary as gradually turning red or looking up north.

This is not the time to find out why. The Judiciary cannot come out to rebut this all the time. Nor can the Bar or the Law Society. The responsibility falls on your shoulders, as leaders of the Bar. Be prepared to put the record straight and to promote what we believe in. Among you, your practice spans a wide spectrum of disciplines and you will come across clients and people from all walks of life and all sorts of background. As silks you will be called upon to serve on public bodies and committees and meet people whom you would otherwise not have a chance of meeting in your private practice. Whenever you come across ill-informed comments or views about the profession or the judiciary, be prepared to look them in the eye and nib the comment in the bud. Because of the peculiar location and situation of Hong Kong, these views, albeit completely unfounded, could unfortunately gather ostensible respectability among the ill-informed. If left unchecked, they could spread like cancer cells. As Sir Sydney Kentridge QC said

in his book "Free Country", "*..we are still a profession and not a business. Some things permitted in the business world are not open to us.* "

The Rule of Law is perhaps one of the many things still left in Hong Kong that we can genuinely hold our heads up high among our sometimes noisy neighbours. And we must do our utmost to ensure that the public and the business interests do understand what it means and entails.

Lastly, on behalf of the Bar, I offer my warmest congratulations to the new silks and their family on this happy occasion. I wish them every success in their careers in the years to come.

17th May 2014

Paul Shieh SC

Chairman

Hong Kong Bar Association