

## CHAIRMAN'S REPORT FOR 2013

1. My term office started off with a flurry of interview requests from the local press, probably because I am the only Chairman in recent years who can speak Cantonese. This illusion is in part contributed by the skills of my predecessor in masking his knowledge of the Punti dialect.
2. The media requests had invariably started off with an invitation to comment on the weather, especially whether there is a storm of unprecedented ferocity over the Rule of Law in Hong Kong. I hope that any perception of a storm had been diffused by a careful and measured response from another retiring member of the Court of Final Appeal during his farewell sitting. At this time of the year many have forgotten about the storm or the forecast thereof. This story tells us how transient soundbites can be.
3. Against that backdrop, the Bar Council has had a relatively uneventful and yet productive year.
4. On 18<sup>th</sup> February 2013 the Bar issued a press statement on the repercussion of the Court of Final Appeal decision in Ubamaka v Secretary for Security (FACV 15/2011). The value of the Bar's views in its press statement on the subject of the screening mechanism for claimants in respect of (i) refugee persecution; (ii) torture and (iii) Cruel Inhuman and Degrading Treatment or Punishment was expressly acknowledged by the Court of Final Appeal in its decision in C v Director of Immigration (FACV 18-20/2011).
5. In March 2013, Hectar Pun represented the Bar in attending the United Nations Human Rights Committee Review of Hong Kong in Geneva. He spoke in two briefings and his reports were well received by the Committee. Thanks are due to

Hectar and also to PY Lo who, even though he could not find time to go, prepared the relevant submissions on behalf of the Bar.

6. The prosecution training programme offered by the Department of Justice for the Junior Bar continued this year. Two sessions were held: one on 23 February 2013 (with 35 barristers participating) and one on 10 August 2013 (with 38 barristers participating).
7. The other scheme whereby junior barristers can be offered the opportunity to work alongside more senior barristers in prosecuting more complex cases is also well under way. Junior and senior members are reminded and encouraged to make good use of this scheme, whereby senior members undertaking prosecution work can suggest to the Department of Justice that a more junior member be brought in to observe the preparation and presentation of a criminal prosecution. The service would be remunerated at, I am afraid to say, not quite the market rate but it is a good opportunity for junior juniors to have a feel as to how a complex case is prosecuted. I cannot guarantee that requests will always or invariably be granted, but what is the downside in asking?
8. During the course of the year a new Director of Public Prosecutions took office. He happened to be our former Vice-Chairman and Honorary Secretary Mr Keith Yeung SC. I am pleased to report that the Bar and the DPP had developed a very smooth and direct channel of communication over matters of interest to the practice and well-being of all sectors of our members.
9. Cases involving the Convention against Torture (“CAT”) and the Refugee Convention have the potential of becoming a sizeable source of junior members’ work, given the prevalence of such cases and given the impetus of recent case law in this area. On 27-28 July and 3-4 August 2013 the Bar organised its own training programme so that members could be trained on the relevant law, practice and techniques concerning preparation and presentation of CAT claims.

Instructors/lecturers included leading practitioners from the Bar, academics and judges from abroad experienced in the field, as well as experienced practitioners in related disciplines. The course was a huge success. Over two hundred junior members attended. Other attendants included pupils, solicitors, trainees, law students as well as representatives from the Duty Lawyer Service. It is contemplated that further courses would be run in future so that members are well trained and equipped to deal with this area of practice.

10. Following the good work of the Special Committee chaired by Lisa Wong SC a detailed and comprehensive draft revised Code of Conduct had been produced for the Bar Council's consideration. The Bar Council had completed its scrutiny and review of the draft and has adopted, subject to revisions and amendments, the draft revised Code produced by Miss Wong SC's special committee. By the time of the AGM, the consultation process will have commenced, and members will have received the draft revised Code. The draft revised Code will not only tidy up loose ends in the existing Code and re-present existing provisions in a more systematic manner, it would also contain new provisions which reflect and cater for the ever changing nature of our practice and of our community.
11. In June, I went to Beijing with a number of members to attend the graduation ceremony of the common law course that the Bar co-organised with Peking University for its LLM students. This is the third year that the course has been run. Over the course of several weekends, members of HKBA travelled to Beijing to deliver lectures to participants on principles of common law, with emphasis on public law. Participants had to take part in a mooted contest in the form of a commercial arbitration under Hong Kong common law principles, which was judged by members of the HKBA. Outstanding candidates were given a scholarship to come to Hong Kong in July to spend time in chambers to observe the common law in action. Because of the past success of the scheme this year the number of scholarships was increased from 8 to 10. In view of the success of the course, the Bar is actively

- considering and exploring the possibility of organising similar courses with other Universities on the Mainland.
12. In late October I led the official Bar delegation to Beijing where we were received by officials from various legal and governmental bodies such as the Ministry of Justice, the Ministry of Foreign Affairs, the Hong Kong and Macau Office, the Basic Law Committee, Supreme People's Court and the All China Lawyers Association. We had extremely useful and frank exchange of views with officials and judges, during which we put the Bar's point of view on a number of issues concerning Rule of Law, implementation of the Basic Law and mutual legal co-operation in a firm but courteous manner. One does not always expect the other side to agree with one's views or to be converted. But I am quite certain that those we met were left in no mistake as to what our position is, and how firm we are on principles which we regard to be immutable.
  13. As a result of the cordial relationship struck with our Mainland counterparts, a Memorandum of Understanding had been successfully negotiated with the All China Lawyers Association which, as of the date of the AGM, would already have been signed on 13 January 2014.
  14. I would like to take this opportunity to thank Andrew Mak and the members of his Special Committee on Mainland Affairs for their liaison work in respect of the two trips to Beijing. I would also thank those members who have given up their invaluable time to teach in Beijing (and eat great food incidentally), as well as YBs and other members who helped out in both events and who attended both events. I would have felt completely naked if they had not provided me with the necessary spiritual support, such was the state of my Putonghua.
  15. In 2013 the Legal Aid Services Council recommended to the Chief Executive that there was no immediate need to establish an Independent Legal Aid Authority. The Home Affairs Bureau also recommended a 9.3% increment to criminal legal aid fees

in its biennial review but without any comprehensive review as to the inherent defects of the criminal legal aid system such as the problematic nature of the base rate on which biennial increments are based.

16. The Bar found both these developments deeply unsatisfactory especially that relating to the establishment of the Independent Legal Aid Authority. The Bar made submissions to the Legco AJLS Panel on Independent Legal Aid Authority and to the Home Affairs Bureau on criminal legal aid fees. In the forthcoming year we will continue to tirelessly engage the relevant authorities (and all stakeholders). We will not lightly take no for an answer.
17. I would like to thank Ruy Barretto SC for his leadership in the Special Committee on Legal Aid. I entirely appreciate the frustration that was encountered from time to time but the Bar Council is fully behind him and those assisting him especially Raymond Leung and Nicholas Pirie.
18. In this day and age when the Hong Kong Bar faces competition from within and outside Hong Kong, it is crucially important that (within the constraints of resources) the Bar places its footprint on the world legal map. Over the past year apart from meeting various visiting Mainland contingents, the Bar had received and met delegations and representatives from a wide spectrum of overseas jurisdictions such as India, Italy, the United States, Republic of Uzbekistan and the Kingdom of Bhutan. Over the past year I have travelled considerably around the world. In terms of overseas visits and conferences I have attended the Opening of Legal Year in London and the International Bar Association Annual Conference in Boston, both in October. My predecessor Kumar Ramanathan SC had kindly attended the Presidents of Law Associations in Asia Annual Conference in Tokyo in June 2013. James MacGowan had kindly attended the Lawasia Conference in Singapore in late October on behalf of the Bar, and numerous members of the Bar Council had attended the Union

Internationale des Advocats Annual Congress in Macau in late October and early November.

19. Through these visits and meetings it had become obvious to me that for the long term success and survival of the Hong Kong Bar it is essential for us to actively inform the world that in Hong Kong there is a thriving Bar. After all, Hong Kong is one of only a few jurisdictions in the world which maintains a split profession and, in the absence of proper information and education to our overseas friends, work that could and would otherwise had come our way from abroad would have gone elsewhere.
20. Therefore in these events we had informed the world legal community that not only does Hong Kong have a common law legal system and judicial system based firmly in the Rule of Law and separate and distinct from the Mainland system, we have an independent referral Bar modelled on the English Bar which specialises in advocacy which can truly claim to be independent from governmental and business interests and which provides credible advocacy service. We hope that in the near future the Hong Kong Bar will more actively take part in international events so that the world will come to recognise that if they have any need for quality and specialist advocacy or advisory services in Hong Kong, the Bar is the place to go to.
21. The business of the Bar Council would not have been as smoothly and efficiently conducted without the assistance of the various Special Committees set up under the Council. The reports of the various Special Committees (insofar as there is any business to report) are enclosed with this report. My thanks are due to all the Chairman and members of the Special Committees who have selflessly undertaken the various tasks entrusted to them, with sterling effort.
22. Last but not least I would like to give my heartfelt thanks to my colleagues in the Bar Council and my “inner cabinet” of my two Vice-Chairman, the Honorary Secretary and Deputy Honorary Secretary. They had invariably given me advice and comfort when I felt indecisive. And thanks must also go to the unsung heroines and hero in

the Bar Secretariat. They had really pampered me to the extent of spoiling me. And in all seriousness and honesty, when people asked me whether it was a hard job chairing the Bar, my invariable answer is that contrary to popular belief, it is not as hard as many would think because we have a well lubricated machinery in the Secretariat and most of the time affairs of the Bar sort themselves out smoothly and without hiccup through the able hands of our Secretariat. The Secretariat may be a self-contained and small “cottage industry” but it is efficient and dedicated.

23. Last but not least I must thank all members for their patience and endurance while I fumble around as a novice in terms of Chairmanship. Hopefully having done it once, I will be able to do it better second time round.

January 2014

Paul Shieh SC

Chairman