

Chairman's Report 2019

You will probably be reading this report at the turn of the year. I do not need to tell you that it has been an extraordinary twelve months. The Chief Executive's decision early on in the year to force through a bill addressing a so-called "loophole" in the laws dealing with mutual legal assistance and the surrender of fugitives aroused widespread concern when the Government first published its proposals in February. The bill that implemented those unexpected proposals was published in April.

Her decision to persist with the bill against near-universal opposition led to street protests which have transformed the political landscape and made Hong Kong the subject of international attention once again.

These ructions in the body politic involved the Bar Association. The issues stemming from the protests bore directly on its responsibilities under the Objects Clause in the Rules & Regulations of the Association. Clause 2(b) states that its duty to 'take such action as it deems proper' on matters touching upon:

'...the defence, maintenance, upholding and improvement, in Hong Kong, of the independence of the Judiciary, the Rule of Law, the Basic Law, the Hong Kong Bill of Rights, the administration of justice, procedure, the arrangement of business, law reporting, and trial by jury'.

There was much to do for the Bar Council under this head of responsibility. In the second half of this year, the Bar issued 15 press releases, most of them having some connection with issues arising from the protests. In the entire preceding year, only nine press releases had issued.

I will not rehearse all the topics covered by these releases for I know that members read them carefully. Some members criticised the content of some of them. On the other hand, some members approached me to thank the Bar Council for them and saying that they needed to be published.

Whether you thought the statements useful or unnecessary, I assure you that members of the Bar Council drafted them conscientiously and with Clause 2(b) always in mind.

I believed that came across at a meeting that I called in October to let some members unburden themselves of misgivings about how the Bar Council discharged its duties under the Objects clause. That meeting was well attended. At the end of it, I was encouraged by the views of members there who supported the Bar Council's approach in commenting on the issues arising from the protests. I noted however the views of the members present who said that we had got it wrong.

Members may disagree profoundly with the Bar Council's approach. That is to be expected. Indeed, if Bar Council decision were met with universal approval, I would think that something must be wrong. It is the responsibility of the Bar Council to address important legal issues as it sees them and not to moderate its views for fear of upsetting third parties.

When a member disagrees with the Council's approach and he or she is also a member of the Bar Council, they must resign for the sake of conscience. Edwin Choy S.C was a Vice-Chairman this year. His resignation for this reason from the Council occurred in October.

I need to say again that I regret that Edwin felt that he had to leave. I have always valued dissenting voices in the Council. They contribute to the decision-making process of the Council. The contrary view may not prevail, but it can influence what is said and how it is said. I am sure that Edwin will serve on the Bar Council again in less troubled times which, I fear, may not be soon though.

The protests have affected one other responsibility of the Bar Association under Clause 2, which is to maintain good relations with foreign Bars. It has been necessary to work extra hard on this duty this year to make sure that national and international law associations understood what was behind the upheavals in Hong Kong. I travelled to many places in the last six months or so explaining what is going on in Hong Kong. Those places were Budapest, St Petersburg, Seoul, San Francisco, Washington, London, Kuala Lumpur, and Geneva.

Some of those places were venues for international conferences where my briefings on Hong Kong issues were incidental to the usual responsibilities when appearing as a Bar representative. Other visits to cities were tailor-made to deal with specific requests for information on what was going on here. That was, for instance, the case when I went to Geneva in November for discussions with other law associations with the UN Rapporteur on Rapporteur on Rights to Freedom of Peaceful Assembly and of Association in attendance.

I have also received many foreign legal visitors who have been anxious to learn about recent events. I have usually been able to bring along at least one other Council member to these meetings. I tried to make sure that a Young Barrister was the person accompanying me. Only by talking to people who will not be in their senescence in 2047 could the foreign lawyers understand the significance of the protests.

I can report that these visits went well. I was able to persuade some national and international legal bodies to make comments which would be helpful. More importantly, perhaps, I was able to discourage some of them from making what I thought might be unhelpful interventions.

One notable exception to maintaining good relations with external law bodies has been the Association's failure to engage with the Mainland. Relations turned frosty in 2018 when the Bar Council objected at the exclusion of two members who had volunteered to teach a common law course at Beijing University that they had offered before for years without objection.

It is fair to say that Mainland relations are now in the deep freeze. Offers to meet with Mainland lawyers have not been taken up. I was disappointed to discover that the All-China Lawyers' Association had left me off the invitation list to attend the annual meeting of the Presidents of the Law Associations in Asia (POLA) that it hosted in Kunming earlier this year.

POLA is a non-political organisation providing a forum for the leaders of bar associations from across the Asia-Pacific region to exchange ideas and information, collaborate on issues of mutual interest and promote friendships. The Bar Association has sent Chairmen or Vice-Chairmen to POLA meetings for nearly each of the twenty-nine years POLA has existed. No explanation was given for dropping the Bar from being given the opportunity to attend this year.

One good thing to come out of the protests has been some members showing the highest degree of professionalism in providing legal advice and representation to people whom the Police had arrested. It has been a challenge to these members to make legal visits at Police stations where detention officers have been overwhelmed with scores of detained persons. I have heard of members experiencing all kinds of difficulties there. After a late-night at a Police station, the next day some members have made evening appearances at an over-stretched magistrates' court.

I have spoken to the young barristers who have the stamina to deal with the demands of representation in these difficult circumstances. I admire them for their commitment to the best traditions of the profession.

Turning to home turf and less controversial matters, I see that there were 71 admissions as of 30 November where the new members took out practising certificates. That is a drop of about 25% from last year when 98 barristers were admitted who took out practising certificates.

The number of practising barristers is now 1558, including 107 silks. Young barristers-below seven years standing-continue to comprise about one-third of the Bar 523 members.

After less than a year, it is too early to say whether the new paid-pupillage scheme has been the main contribution to the drop in numbers. The intention behind the plan to make pupil masters pay their pupils was to see that they were justly rewarded for their work. If that has made some pupil masters re-evaluate the worth of pupils to them and the commitment they need to make to them, then that is not a bad thing. The Bar Council will monitor the pupils' remuneration scheme over the next couple of years to identify any shortcomings and make recommendations for change if a change is necessary.

A bright spot amongst the doom and gloom has been an improvement in the rates of pay for legal aid work. The Report of the Standing Committee on Legal Aid Reform has all the details, but I must record thanks to that committee's present and former members for working to make the increases happen.

As for next year, I am not rash enough to forecast what will happen. Members must hope that the HKSARG shakes off its constitutional lethargy and starts to govern again with greater awareness of the peoples' hopes and needs.

I will end with verses by the Anglo-American poet T.S. Eliot from his poem "Little Gidding". Some verses in the poem deal with the turn of the year and the need for a fresh look at problems.

'Last season's fruit is eaten

And the fullfed beast shall kick the empty pail.

For last year's words belong to last year's language

And next year's words await another voice.'

Here's hoping that 'another voice' will be heard next year and it will lead to a peaceful resolution of Hong Kong's problems.

Philip J. Dykes SC
Chairman
Hong Kong Bar Association

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