

## **Chairman's Report 2020**

If you read my report for 2019, you may recall I ended it with a quotation from T.S. Eliot's poem 'Little Gidding'.<sup>\*1</sup> The verses were about end-of-year anxieties and the hope that things would improve in the year ahead.

I have been disappointed. Things did not get better in 2020: they got far, far worse.

The year began with the only overseas trip on behalf of the Bar in early January. It was a trip for two Opening of the Legal Year ceremonies in Singapore and Kuala Lumpur respectively.

With prescience, both the Chief Justice of Singapore and Malaysia showcased their courts' digital technology, including facilities for remote hearings, to efficiently and cheaply deliver justice. The technology and associated protocols were impressive. I made a mental note to raise the issue of new technology with the Bar Council because we seemed to be lagging in this area.

I returned to Hong Kong in time for our Opening of the Legal Year. In my speech at City Hall, I referred to the public order events, both the peaceful ones and the ones marred by violence.

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<sup>1</sup> '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.'

I remarked upon the vast number of persons arrested in 2019. I speculated that unless the Secretary for Justice was sparing in the exercise of the power to prosecute, the resulting criminal cases could well stretch the courts' capacity to cope.

The Secretary for Justice seems prepared to prosecute most cases arising from those public order events. There have been over 10,000 arrests. Only about 2,500 of these have been taken forward in court. About 7,500 cases remain. If they are all prosecuted, the last of the cases may be working their way through the criminal justice system in 2023.

I am pleased to see members taking on these cases. There has been an enormous demand for barristers who can handle public order event cases. It has resulted in some members being instructed in back to back cases for many months to come.

However, it is never a good thing if the unavailability of counsel delays criminal trials. Moreover, it is not a healthy state of affairs that only a few barristers can do this work.

Early on in practice, the problem facing barristers is that they find it challenging to acquire experience in the District Court. Without this experience, the Director of Legal Aid will not include them on his list of counsel that he may instruct.

To help barristers in this position obtain this extra experience, the newly established Patrick Yu Memorial Scholarship will help fund relatively inexperienced barristers to work with more senior barristers in criminal trials or appeals. I urge young barristers to find out more about the scheme.

The biggest shock to the profession in the first part of the year was, of course, the onset of Covid-19.

I do not need to tell you about the impact of the virus on physical access to the courts and your practices. Instead, I should say how the Bar Council dealt with the challenges to access that Covid-19 presented when judges began considering how to soldier on, aided by modern technology.

Members of the Standing Committee on Technology met with Judiciary representatives to work out how judges and practitioners could conduct remote hearings. The protocols for these had to be compatible with the somewhat dated technology used by the judges. Their work has benefited us all because it helped to keep the courts accessible.

The Standing Committee on Technology also worked with the Law Society and the Department of Justice to help administer the Government's first aid to the profession during the pandemic. This assistance was in the shape of grants for the purchase of technological equipment, but to be eligible, you had to be in a set of chambers with no more than five members.

This limitation on eligibility meant that members in larger sets of chambers who had a real need of such technology to further their practices missed out. Members of the Special Committee tried to secure a fairer deal. Still, the Secretary for Justice did not believe that something better scheme could be devised when there was a need to do something quickly that could be seen to benefit the profession.

The lessons learned from this exercise in the use of technology have been valuable. Because of the lessons learned, I expect changes to professional practices shortly to reflect that we are no longer a profession wedded to pen and ink. We all must develop skills that our legal cousins in Singapore and Malaysia now find second nature.

Looking ahead again, the Bar Council has established a standing committee to look at the Bar Secretariat's future. We will likely need a new home when the High Court relocates to a new site, as it will one day.

Although there is no fixed date for a move, it is a good idea to plan and try to anticipate the Bar's administrative needs (now serving about 1600 members) at a new location. Freed from constraints on what can and cannot be done in the High Court building, the Bar Association will offer a better service to its members.

The finances of the Association are healthy. Because of Covid-19, there have been savings on foreign travel to attend conferences and meetings has been saved. Participation in such events has been via the soulless Zoom facility at sometimes very unsociable hours.

The Standing Committee on Investment has reviewed the Bar's portfolio of investments. A painful experience from holding a large number of HSBC shares has prompted this. The Standing Committee will adopt a new policy to guard against overreliance on just a few shareholdings.

The HKBA has always been committed to maintaining the Rule of Law. In my last report, I talked about the recent changes to the Objects Clause in our Rules and Regulations that explicitly made its support a function of the Association.

The National Security Law has raised many Rule of Law issues that are too many and varied to go over here. One needs mentioning, though, because the Bar has special responsibility for it.

That responsibility is the defence of the Judiciary's when it is assailed, and there is no basis for the attack. The Judiciary cannot answer back when this happens. It falls to the Bar to defend the judges.

If the Bar does not act, misinformation and unjustified calumny spread and the public begin to doubt the justice system. When this happens, the Rule of Law suffers.

I believe that the Bar Council made about a dozen statements defending judges and their decisions over the past three years, many of them issuing in the past four or five months. When I was Chairman in 2005-2006, there were no statements on this topic. How times have changed!

I need to give you some facts and figures for membership. There were 90 admissions in 2020, compared to 97 admissions in 2019. The total number of members with a practising certificate at the end of 2020 was 1595, including 103 Silks. This figure represented an increase of 35 members since the end of 2019.

An important statistic is the number of new and relatively new entrants. The number of members of seven years' standing or less was 527 at the end of 2020, an increase of two members only on the previous year.

I expect membership growth to slow and numbers to decline. The promulgation of the National Security Law has affected members. It has made them take stock of the situation.

Some members plan to leave Hong Kong. I do not have a precise figure, but I know that it will not be a handful from talking to some young barristers. I also apprehend that a career at the Bar may not be so attractive to fresh law graduates because of the change in the legal atmosphere.

This information is depressing. However, for the sake of the new Bar Council, I make the same wish I made last year, which is that things will improve.

I fear that my wish may not come to pass. In which case, I ask that you continue with your support of the Bar Council in challenging times. I have appreciated that support over the last year and in the two years before that. I thank you all for it.

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Chairman  
Hong Kong Bar Association

31 December 2020