

**Speech given at the Opening of Legal year 24 January 2022
by the Chairman of the Hong Kong Bar Association**

Victor Dawes SC

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

1. The Hong Kong Bar Association has a long and honourable history and many eminent members have previously occupied the position of chairman. I have the honour of addressing you today as the new chairman having been elected together with a number of new council members at our AGM last week. My new colleagues and I look forward to the opportunity of working with those members whose tenure carried over this election.
2. The Hong Kong Bar Association came into being with clear aims, to maintain the honour and independence of the Bar, to improve administration of justice, and to establish rules of conduct and discipline among barristers. The aims are set out in the general Rules and Regulations of the Bar and have become the established high standards to which we are held.
3. Today I am grateful for this opportunity to share with you our vision for the Bar as Hong Kong moves forward.

The role of the Bar in upholding the rule of law

4. A strong and independent bar exists to serve the public and to further the administration of justice. As specialist advocates, we help litigants uphold their legal rights and play a part in the efficient and effective operation of our courts. But our duties do not stop in the courtroom. It has been

repeatedly emphasized by my predecessors that the Bar has a societal role in promoting the rule of law and explaining it to the community.

5. The rule of law is the bedrock of our democratic society. A lot has been said over the years on its two key facets: the independence of the judiciary, and the fundamental requirement of equality and fairness before the law. The maintenance of the rule of law, and the authority of the Court, are matters of special importance in our society and essential parts in the Hong Kong's success story.
6. What we stress today is that whilst the law plays the role of keeping politics within certain limits that are dictated by the ideas of justice and social order, there is no place for politics in the administration of justice.
7. Over the years there have been a significant number of cases before the Courts with important political, economic and social repercussions. However, it is important for the community to understand that judges do not function in the political arena. They decide cases strictly in accordance with the law based on facts and evidence presented, without being influenced by any extraneous considerations. While the Courts may, in appropriate cases, carefully consider the views of the legislative and executive branches, it is the court that has the ultimate responsibility of determining cases by reference to legal principles based on arguments presented.
8. Even in the United States where the appointment of Supreme Court justices has been described by its Congress as "an event of major significance in American politics", senior judges have repeatedly warned against the politicisation of the US Supreme Court. In a recent speech at the Scalia

Lecture in Harvard Law School, Supreme Court Justice Breyer has this to say:

“If the public sees judges as ‘politicians in robes’, its confidence in the courts, and in the rule of law itself, can only diminish, diminishing the Court’s power, including its power to act as a ‘check’ on the other branches.”

9. Politics also has no role to play in the affairs of the Bar. If barristers are seen as “politicians in wigs”, public confidence in the Bar and the role we play in the administration of justice will diminish. One is not suggesting that members of the Bar cannot get involved in politics, but the role of the association itself is a different story.
10. As part of the interface between the judiciary and members of the public, the Bar has an important role to play in speaking out on issues concerning the rule of law and the administration of justice. The line between law and politics can in some instances be a fine one, but as exemplified by our judges who are accustomed to dealing with multidimensional issues, the Bar will continue to speak out on rule of law issues without political considerations.

Unique role of the Bar

11. Next I would speak about the unique role of the Bar in upholding the rule of law and how the existence of an independent self-regulated Bar is in the best position to discharge that role.

12. Like the Hippocratic Oath which binds the doctor to a patient, barristers must take up any case which comes their way, irrespective of the public perception of the client or the cause advanced.
13. The growth of the internet and social media platforms in many places, including Hong Kong, has been said to result in an increased polarization of society.
14. In the legal context, it must be borne in mind that in a society governed by the rule of law, everyone is entitled to a fair trial and this entails unhindered access to the Courts and to legal advice and representation. Trial purely by public opinion – including through the internet and social media platforms – which is not only instantaneous but without any natural justice protection, has no place in a democratic society.
15. Regrettably in Hong Kong and elsewhere there has been a trend whereby lawyers are subjected to an increasing amount of pressure by segments of the public to prevail upon the lawyers not to act for certain clients or in certain cases. This trend must not be allowed to grow. It is for the Courts to determine the legal rights and wrongs of entities and individuals. It would be a sad day indeed where individuals were unable to obtain legal advice and representation because lawyers were pressured whether morally or economically not take up certain cases deemed to be sensitive.
16. I would venture to remind us all that having legal representation is a fundamental right irrespective of who the person seeking that representation is, no matter how “good” or “bad” that person appears to be. The purpose of having lawyers in a Court is to assist the Court in reaching a reasonable decision on the facts and based on the law. In the same vein, it is sad to see

lawyers being castigated or depicted as if they and their client were the same. I would urge members of the public to be mindful of the role actually played by lawyers. Failure to recognize that may result in an insidious and dangerous encroachment of the fundamental right I have referred to.

17. The Bar's Code of Conduct requires barristers to be uncompromisingly independent, and to act irrespective of our personal views. It is the high level of independence and the degree of freedom from conflict of interests that place the Bar in a unique role in the legal profession in Hong Kong.
18. Specifically, paragraph 6.1 of our Code of Conduct preserved the "Cab-Rank Rule", which, for those unfamiliar, provides that if the brief or instruction is within the barrister's capacity, skill and experience and that he is available and properly remunerated, the barrister is obliged to act irrespective of the nature of the case, the party on whose behalf he is instructed and the belief or opinion which he may have formed as to the character, reputation, cause, conduct, guilt or innocence of that person.
19. This ensures that everyone in Hong Kong can be assured that he or she will have access to fearless legal representation and advice.
20. In 2013 the Bar Standards Board in England commissioned an independent report to evaluate whether the "Cab-Rank Rule" was still relevant. The conclusions were clear: removing the rule would threaten access to justice; the rule protects the interests of litigants by ensuring the availability of a wide pool of counsel from which real and meaningful choices of suitable counsel can be made.
21. Barristers do not choose who they prosecute nor defend, whether they are acting for a consumer or a bank, whether they are acting for the Government

or individuals. They act to the best of their abilities and always remembering their higher duty owed to the Court so that it could discharge its constitutional duties in administering justice.

22. An independent Bar of course does not mean a Bar which is purely self-interested, nor one which is aloof. Internally, in the coming year we will look into a wide range of measures to further enhance training for our members. Externally, the Bar shall continue to play its role in providing its input on law reform, legal education and general awareness of the rule of law principles. The Bar is always to be guided by the public interest.
23. This year marks the 25th anniversary of the establishment of the HKSAR. We are half-way through the 50 years of unchanged way of life provided for in Article 5 of the Basic Law. It is, therefore, natural for aspiring law students to ask whether there is a future for them if they are to enter into the legal profession as they will be leaders of the profession going forward and beyond 2047.
24. The same question was asked of myself and the two new Vice-Chairmen of the Bar when the three of us commenced our legal studies shortly before the handover. In the eyes of our critics, there were considerable doubts over our future back then. The 3 of us together with other young lawyers who joined the legal profession then put in a vote of confidence for Hong Kong. If I had decided otherwise I would not have the privilege of addressing you today.
25. We are living in challenging times. The Rule of Law here and elsewhere faces constant challenges, and Hong Kong is not alone in this regard. Law students and our young lawyers will have a significant role to play in the years to come. I urge you to continue to believe in Hong Kong, just as we did 25 years ago and continue to do. Hong Kong has weathered many storms

over the years and has always emerged stronger, with the rule of law safeguarded we can be sure it will continue to thrive.

26. It remains for me to wish you a happy new year, good health and good fortune.

Victor Dawes SC
Chairman
Hong Kong Bar Association