

Report of the Special Committee on Constitutional Affairs and Human Rights

The year of 2015 has turned out to be as exciting as the year before. This is because the legal issues that gave rise to the Umbrella Movement occupation came to be determined and the Hong Kong Bar Association, as usual, was obliged to provide its views.

The preparation of the Bar's position on the issues raised in the HKSAR Government's Second Consultation Paper on the Selection of the Chief Executive by Universal Suffrage in 2017 led to a lively (if not fierce) debate within the Special Committee. While a draft position paper was submitted to the Bar Council for consideration, that was modified substantially after taking into account the strong views expressed by members of the Special Committee and subsequent developments. The resultant position paper of 6 March 2015 is for all to read and further comment.

Another effort that has gone on for most part of 2015 was to comment on and then to oppose the Security Bureau's proposed "enhancements" of the Unified Screening Mechanism. Members of the Special Committee, particularly those with hands-on experience in representing non-refoulement claimants, contributed to several letters the Bar Association sent to all stakeholders, including the Security Bureau, the Legislative Council Panel on Security, the Law Society of Hong Kong, and the Duty Lawyer Service. These letters have led to a firm opposition on the part of the legal profession against the proposed "screening bundle" (where the Immigration Department selects specified categories of documents to provide to the claimant and his legal representatives in replacement of the current practice of supplying all documents held by the Department containing the claimant's personal data as if a data access request had been made) and the proposed capping of fees payable to the duty lawyer on the basis of the number of hours taken to do an "average" case. The Security Bureau has halted implementation of the most of the proposed "enhancements" (including the proposed "screening bundle" measure), which were presumably conceived for the purposes of shortening the time taken to screen a case and saving legal costs and other public expenses. The Special Committee will keep this matter under close monitoring.

The Special Committee has kept on reporting on Hong Kong's human rights situation as in the past years. In 2015, the Special Committee compiled and with the endorsement of the Bar Council, a report on the situation in Hong Kong in the light of the provisions of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for the consideration of the United Nations Committee Against Torture's examination of the periodic report from the HKSAR in November 2015. The Special Committee has also provided preliminary views in respect of the implementation of the International Covenant on the Elimination of Racial Discrimination to the HKSAR Government. Individual members of the Special Committee have also participated in forums and exchange sessions organized by various organizations including the Constitutional and Mainland Affairs Bureau of the HKSAR Government, the International Legal Assistance Consortium, the Asian Human Rights Commission and the European Union Office to Hong Kong and Macao.

The Special Committee has been designated by the Bar Council as a practice area committee under a new initiative to enhance the knowledge and know-how of the general membership of the Bar through talks and other programmes. Indeed, ahead of the designation, two members of the Special Committee, Kirsteen Lau and P Y Lo, talked on 25 November 2015 on the practical operation of the Unified Screening Mechanism for non-refoulement claims and the duty lawyer's part in its operation. Further talks will be held in 2016, with one topic presently under consideration being "Is Judicial Review being abused?"

At long last, the time has come for this Chairman to retire from the chairmanship of the Special Committee. A reorganization of membership earlier in 2015 has enabled succession to take place without reduction in the quality of the advice the Bar Council will receive from the Special Committee and in the service the Special Committee provides to the general membership of the Bar. I take this opportunity to thank all members of the Special Committee for their support in the years and to give ALL BEST WISHES to the incoming management since I have not yet figured out how best to address the upcoming topic of "One Place Two Checkpoints" in the very near future.

Membership:

P. Y. Lo (Chairman)
Anson Wong SC (Vice Chairman)
Raymond Leung SC
Hectar Pun SC
Professor Lin Feng
Kirsteen Lau
Jocelyn Leung
Earl Deng
Timothy Parker
Jeffrey Tam
Ken Lee
Carter Chim
Earnest C.Y. Ng
Patricia Lam

PY Lo
Chairman
Special Committee on Constitutional Affairs
and Human Rights

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