

Management and Staff

Last year's report referred to the prominent role in the work of the Secretariat that the PIS had played in the preceding 12 months. This year began no differently but at an increased pace because of the proposed legislative timetable if the Qualifying Insurers Scheme ("QIS") as mandated by the earlier extraordinary meeting was to be in place in time for the October 2006 renewal. For the first three months of the year lengthy meetings were being held on at least a weekly basis between the Working Party and the Law Drafting Division of the Government. A very considerable degree of assistance was provided by the Division in drafting the necessary rules to establish a QIS. After a tendering process solicitors were commissioned to prepare the Qualifying Insurers Agreements and the Assigned Risk Pool Agreement which were required under the rules. Expressions of interest were sought from potential insurers and a "dummy run" was held when a number of firms volunteered to make applications for cover under a QIS in order to ascertain the level of premium which might be payable. Whilst these were not regarded as excessive it became clear as the discussions on the drafting progressed that the introduction of a QIS was unlikely to be in the interests of the majority of smaller firms and would place a heavy financial burden particularly on those partners who wished to retire from practice. The consequences for any firms which had the misfortune to spend any time in the Assigned Risk Pool would have been dire. The Working Party concluded that whilst there were benefits for the larger firms in terms of a reduction in premium these benefits did not extend to the medium or smaller firms. At the extraordinary general meeting in April the advantages and disadvantages of the proposed QIS were placed before the meeting and members voted convincingly against the introduction of a QIS thus ending the proposal that some 18 months earlier appeared on first view to be an answer to the dissatisfaction with the existing PIS. The work carried out on the QIS did however highlight flaws in the PIS and a Working Party has been established to review all aspects of the PIS and, if thought fit to make recommendations for alternative schemes.

On another issue related to the PIS the Council reviewed the provisions for indemnity cover required of foreign lawyers registered in Hong Kong. *The Foreign Lawyers Registration Rules* require foreign lawyers to have a policy

of insurance which provides indemnity in respect of acts as a foreign lawyer in Hong Kong "in a manner and to the extent similar to the indemnity provided to a solicitor" under the *Hong Kong Solicitors Professional Indemnity Rules*. In the past it has been considered sufficient for foreign lawyers to provide evidence that they have indemnity cover usually provided by their main office for an amount not less than the equivalent of ten million Hong Kong dollars. Almost without exception the cover existing in respect of these firms is substantially in excess of that figure but is limited in the aggregate. However with the general rise in the value of work undertaken the view was taken that the foreign lawyers should have in existence indemnity cover more closely aligned to that of Hong Kong solicitors. One of the main features of the current PIS is that it provides cover which is unlimited in aggregate. A considerable amount of time was expended in explaining the change to foreign lawyers in advance of the renewal of their registrations, negotiating with brokers in New York as to what would be acceptable to the Law Society and ensuring that foreign law firms were given ample opportunity to make the necessary changes so as to hold indemnity cover which was unlimited in aggregate and also provided cover against employee fraud-another feature of the PIS.

The establishment of the role of Civil Celebrants meant that The Law Society was required to provide certificates of eligibility for what amounted to over 1,000 solicitors seeking appointment. Long hours were worked to issue the certificates and whilst The Society did benefit from the "windfall" nevertheless such a large operation did cause temporary disruption to other services usually offered by those concerned. It is gratifying to see that the adoption of the role of Civil Celebrants by solicitors has opened the door for many to relate more closely in a professional manner with the younger generation and hopefully this will result in more work for the profession in the future.

The issue of certificates of eligibility bore some similarity to the issue the preceding year of digital certificates to all members who requested them at a time when the Judiciary were actively engaged in introducing the electronic filing of court orders. However that proposal was short lived and the Society has declined to go through the same process

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in the ensuing year since the Judiciary does not intend to proceed with its plans. The Law Society is currently looking at ways in which an enhanced membership card might be used to perform similar functions by the profession. This is associated with a planned review and updating of the Society's database system which is an integral part of its record keeping and regulatory functions. Inevitably this will take time but is believed to be essential given the growth of the profession since the database was first created.

Criticisms continued to be leveled at The Law Society when on occasions the findings and orders against solicitors by Disciplinary Tribunals are dismissed upon appeal not because of any failure in the adequacy of the prosecution process but because of what the Court of Appeal regarded as a lack of independence by the Disciplinary Tribunal in the way in which the hearing and preparation of the findings and orders were conducted. The Solicitors Disciplinary Tribunal Panel is an independent body whose members are appointed by the Chief Justice. The Clerks to the Tribunal are appointed by the Tribunal members. The Law Society appears only as prosecutor before the Tribunal and has no other influence. It is very frustrating for those involved in the preparation and prosecution of cases before the Tribunal whether they are members of the Standing Committee on Compliance or employees of The Law Society to see their efforts and care rejected through no fault of their own. If these concerns are to be allayed there is a need to define closely the role which all play in the disciplinary process and ensure that the rules of natural justice are applied evenly in disciplinary proceedings involving all professionals in Hong Kong. This will involve the Tribunal Convenor, panel members and clerks and not just The Law Society in reaching a consensus as to how future criticisms may be avoided without bringing the disciplinary process to a halt.

The judicial review involving a solicitor whose practising certificate the Council had resolved to suspend pending disciplinary proceedings raised a number of novel issues involving the interpretation of the *Legal Practitioners Ordinance*. As a result procedures have been changed so as to avoid any future criticism of the way in which a member might be disciplined in any similar but somewhat unusual set of circumstances.

The Recreation and Sports Committee had another busy year with a particularly successful Sports Meet in Macau and a party which was considered by many to have been one of the most enjoyable events hosted by The Law Society. The weekly bookings at sporting venues for training and practising by members is a very labour-intensive task particularly as each event requires considerable back up work and a high degree of patience in answering queries and effecting bookings, cancellations and generally performing as team manager of what has become something akin to a sporting body. This places a strain upon the Society's resources and there is a need for tolerance on the part of members if they do not immediately receive an exclusive and personal service on demand. There can be no doubt that the popularity of the sports events, practice sessions and camaraderie engendered by the Committee has done much to foster a more collegiate spirit amongst members and there is an increased and growing awareness that The Law Society is not just a tiresome regulatory body but does indeed want to encourage a sense of belonging proudly to a professional body.

During the year the Government announced its intention to introduce a five day week for civil servants. The Judiciary soon followed suit and although The Law Society did express concerns at the implementation of a list of closures including those of the court registries without enabling legislation which resulted in postponement of that phase of the closures. Nevertheless there is clearly a growing trend for offices to close to the public on Saturday mornings with an increasing number of law firms as well as clearing banks following the Government's lead. The Law Society Secretariat remains open and staff attend each Saturday morning on a rotational basis but the time may well come when the decision to close to the public and members may occur. Many staff see their contemporaries permitted to work a 5 day week by their employers and this is an attraction which the Law Society cannot offer when recruiting staff. As it happens a substantial number of staff remain working long after their hours of employment have officially passed and the loss of Saturday mornings would in all probability be made good during the rest of the working week.

During the year the Society appointed Mr. Raymond Ho as Deputy Secretary General in order to spread the existing work load of the Secretary General and with a view to succession to the head of the Secretariat.

The introduction by the Standing Committee on Policy and Resources of Long Standing Service Awards to staff has been warmly welcomed as a means of showing that The Law Society does appreciate the loyalty of staff. As at the date of this report out of a staff of 72 nearly one third have worked for The Law Society for more than 10 years, several of these for more than 15 years and one for more than 20 years.

Much of the latter part of the year has been spent in preparations for both the Centenary to be celebrated from 8 April 2007 onwards and the LawAsia 20th Biennial Conference to be hosted by The Law Society between 5th and 8th June 2007. Plans have been made and bookings reserved for a *Law Society Centenary Cup* at the Happy Valley race meeting on 6 June and the major event will be the Centenary Dinner & Dance on 7 June in the Grand Hall at the Hong Kong Convention & Exhibition Centre. A large number of distinguished guests and VIPs both from Hong Kong, the Mainland and overseas will be attending the event which it is hoped will be an evening of celebration with formalities reduced to a minimum but a live band and singer for dancing. Sadly most of the Society's archives have been lost through a variety of mishaps but most significantly as a result of the Occupation between 1941 and 1945. However the Society is determined to mark its Centenary with a tangible record of the history of the law, lawyers and Hong Kong since 1907 and a publisher is to be commissioned to produce a readable rather than definitive history before the end of the Centenary Year. Attempting to trace records has been an enthralling but time consuming task better left to the professional researcher than to The Law Society.

This will be the last occasion on which I write this report as it has always been my intention to retire from the post of Secretary General at the end of 2007 when The Law Society attained its centenary and I passed retirement age! It has been an honour to serve The Law Society, its Council and members over the last 15 years. At times it has been frustrating, at times stressful but it always has been a challenge and a privilege to be an integral part of my professional body. I remain impressed by the time that busy practitioners give for the benefit of the profession and their fellow members in service on committees and working parties where without their expertise and sharing of experience The Law Society and the profession would be the poorer. I have received much support from members at all levels which has made my job that much easier and I take this opportunity to thank the profession for the assistance and tolerance it has shown to me.

Patrick Moss
Secretary General