

Interview with Edward Chan SC

7 May 2024, at Sir Oswald Cheung's Chambers

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Q: Could you please share with us your experience studying law at HKU?

ECSC: As part of the first cohort of students, the law programme at HKU was different from what it is today. At that time, law was a new discipline, and my understanding of it was limited to what was presented in newspapers. HKU had just initiated the law programme which, when we enrolled, belonged to the Department of Law. It was a sub-discipline within the social sciences, instead of standing alone as an independent faculty. Therefore, in high school back then, law was neither a well-known nor widely acquainted major. In contrast, people were more familiar with the likes of the Faculty of Arts, Science, Engineering, Medicine and Architecture. At that time, the entry threshold for social sciences was quite high, and law was not particularly famous. Since I attended an English government school, my classmates tended to complete their preparatory courses in Hong Kong or abroad. HKU was typically the first choice for students, followed by the Chinese University of Hong Kong. However, in general, students from English schools would choose to apply to HKU.

I recalled that the career guidance talks organized by our teachers back then rarely touched upon law. Instead, they focused more on popular disciplines. As a result, it was relatively easy for us to gain admission to the law programme that particular year. To the best of my memory, the number of applicants was actually lower than the available places. Some of us had to attend interviews, while not all succeeded. Although I initially aspired to pursue social sciences, I eventually switched to law for these reasons. The interviewer at the time was Professor Dafydd Evans. When we first started our classes, there were only two professors, namely Professor Dafydd Evans and Professor John Rear. A week later, Professor Bernard Downey joined as a senior lecturer. After one semester, Professor Alan Smith came on board. By the time I completed my first year of studies, we had a total of four professors.

Q: Looking back, was there a turning point where you became interested in studying law?

ECSC: Back then, studying law was a novel endeavor. I was somewhat intrigued, which led me to choose the programme. We first participated in an orientation event where the university invited a renowned barrister, a prominent solicitor, and the then Attorney General. We were put in an interactive setting with them, who had given us some ideas regarding the legal career paths.

At that time, I was particularly impressed by Sir Oswald Cheung, who introduced the career of a barrister. He was one of the founding members of our Chambers. His presentation was captivating and sparked my interest in becoming a barrister. The representative of the Law Society was Ran Tisto, who was a partner at Johnson Stokes & Masters. He was yet to become a senior partner at his firm at that time. Notably, he later went on to become the President of the Law Society of Hong Kong. The Attorney General was Denys Roberts, who subsequently served as the Chief Justice and Chief Secretary.

Q: Did your law studies at HKU have any impact on your legal practice later?

ECSC: Initially, many people had misconceptions about studying law, often assuming that criminal law was of much importance. In conversations with the lay public, and even before I studied law myself, I assumed that criminal cases were generally more important and that police officers would necessarily have extensive legal knowledge. That said, once I began studying law, I quickly realized that this was not the case. The subjects we first studied were legal methods and legal systems, primarily teaching us how to conduct research. We then understood that the scope of law, that of civil law, is incredibly broad. As our studies progressed, we gradually came to the realization that the legal field requires gradual learning in both breadth and depth. In our first year, we studied contract law, legal methods, and legal systems, taught by Professor Evans, and public law by Professor John Rear, whose teaching was more vibrant. We also had Professor Downey. Although his teaching style was somewhat monotone as his voice was calm, in fact, his level of knowledge was exceptional.

Q: Did you have any career goals at the time when you were in the LLB programme?

ECSC: When we first entered university, we had no idea what the future held. The university could not make any promises about our graduation prospects. We were told that we would earn a law degree, but not what the transition to the actual practice would look like. We also had no idea of any further steps or studies required of us to becoming practicing lawyers after graduation. It was not until our third year, when we were about to graduate, that the university announced a fourth-year programme, namely the Postgraduate Certificate in Laws (PCLL), after which we could choose to complete an articleship or a pupillage. The initial idea was to pass the qualifying exam and then head to the UK to take another exam. Until then, that impression had stayed with us for a long time.

Q: How did you launch your legal career after graduating from HKU?

ECSC: Back then, you were not allowed to serve as a Crown Counsel even if you had a legal qualification from the Commonwealth. To become a solicitor, you had to pass the

final examination from the Law Society. This exam, organized by the UK Law Society, could be taken in the UK or Hong Kong. At that time, I was particularly drawn to the barrister profession because of Sir Oswald Cheung's mesmerizing and inspiring sharing. I was fortunate enough to receive a scholarship to study for an LLM at the London School of Economics and Political Science (LSE) after completing my third year. I then went on to study for the barrister course and completed my pupillage before returning to Hong Kong. The LLM programme at LSE was different back then, as now, schools like LSE, University College London (UCL), and King's College London (KCL) award degrees from their respective colleges. In our time, however, the master's degree was awarded by the University of London, and it was intercollegiate, meaning that you could take courses at different colleges. I took four courses at three different colleges during that time, which was an interesting experience.

During my master's program, I studied carriage of goods by sea, marine insurance, restitution, and credit and security. I took marine insurance and restitution at LSE since these two subjects had to be taken at the registered college. As LSE did not offer the carriage of goods by sea course, I took it at UCL. For credit and security, I studied at KCL. Two reasons explained why I chose these subjects. First, I had a discussion with Sir Oswald Cheung, who believed that these courses would be helpful for practice. Secondly, I was young and wanted to pursue commercial practice areas in the shipping industry which were 'fashionable' in the UK at that time. Therefore, I took two courses related to shipping, carriage of goods by sea, and marine insurance. However, this was very different from the actual situation in Hong Kong. Most commercial cases involving the shipping industry often resorted to London arbitration. Because of that, I was not able to get involved, especially in air law, such as carriage of goods by air. There were even fewer job opportunities because the amounts claimed were very limited. Therefore, there has long been a lack of work in Hong Kong involving shipping. Even when there are claims, most of them go to London arbitration.

These phenomena have not changed to date. Currently, there are not many job opportunities in maritime law in Hong Kong. To my understanding, there are people who work on maritime cases and I have also dealt with maritime cases in Hong Kong, especially when I first started my career. However, as time goes by, opportunities have become scarcer, which I think is normal. I would advise law graduates to study restitution law, as this area of law is becoming more indispensable for legal practice.

Upon completing my one-year Master's programme, I pursued a career as a barrister. It was a huge challenge since transitioning from HKU to the UK to undertake the barrister examination entailed a two-part assessment. The first part consisted of two sub-papers, Group A and Group B. Barring any exemptions, one could not complete both Group A and Group B examinations within the same year as they were respectively scheduled in June

and September. For a novice, it was virtually impossible to cram for these examinations, as well as the Bar Finals within a two-year timeframe. A law degree from HKU merely exempted us from contract law, tort law, and criminal law. This exemption was already a godsend, enabling us to complete both Group A and Group B within the same year. As these groups encompassed eight subjects, I had to undertake five exams, followed by the LLM in September. In the second year, I proceeded with the barrister profession's final examination (Bar Final) and completed a pupillage in the UK for approximately 15-16 months, fulfilling the one-year minimum requirement of pupillage.

Following my pupillage, I aspired to return to Hong Kong to advance my career. In truth, my acquaintance with Sir Oswald Cheung arose from a summer internship under his supervision. Our interaction left a profound impression on him, resulting in numerous engaging discussions. Upon returning, he offered me a position. Since then, I have practised at Sir Oswald Cheung's Chambers, currently holding the title of Head of Chambers.

Q: When you joined Sir Oswald Cheung's Chambers, did you set any directions for your career development?

ECSC: I never thought about it much, as I was the youngest tenant when I first joined. While working in the Chambers, interactions with other members were not very tight-knit. However, several talented colleagues joined the bench or other positions over time, allowing us to progress based on our years of experience.

I was a newcomer and willing to be instructed in all areas of work. In fact, our Chambers primarily focus on civil cases. I have handled a few criminal cases but not many. You can choose your future career path based on your interests while studying. Nevertheless, to some extent, your future work depends significantly on luck. If I had joined chambers specializing in criminal law, my expertise might have been in criminal law. But because I joined Sir Oswald Cheung's Chambers, I have always been on the civil side. Although I focused on maritime law, Hong Kong's maritime business remains limited. Therefore, I primarily work in land law, as the chambers handle numerous land-related cases. Additionally, I studied land law in the UK and learned about tenancy law, providing me with more job opportunities in Hong Kong.

Q: Did you encounter any complex or intractable problems at the beginning of your career?

ECSC: In reality, there are challenging issues every day, and it is crucial to handle them properly. When faced with genuinely difficult problems, we sometimes need to seek help

from others. Since I completed my pupillage in the UK, I did not have any pupil master in Hong Kong. The senior who mentored me was probably Sir Oswald Cheung.

Q: During your time in the Chambers, have you ever been led in cases by some of the prominent and respected professional figures such as Charles Ching or Robert Tang?

ECSC: Throughout the many years of my practice, I have indeed been led on a few occasions. I was led by Justice Charles Ching only a handful of times. It was relatively more frequent with Justice Robert Tang, who had led me about eight to ten times. However, I was not so fortunate in most of the cases I participated in, as I was the sole advocate. This is unfortunate because most junior barristers prefer to be led by seniors. Perhaps this is because of the lesser responsibility, especially in terms of making oral submissions in court, despite the burden of conducting research and other preparations.

Q: Were there any memorable lessons or inspirations coming from your collaboration with them in practice?

ECSC: Every individual has their own unique style. Sir Oswald Cheung, for instance, had a missile-like advocacy style. He usually did not cover an abundance of submissions; rather, he selectively focused on a handful of arguments with precision and struck the crux of the issues with unerring accuracy. This encapsulated his legendary style. The style I aspire to emulate is that of Patrick Yu. As an exceptionally renowned criminal barrister, he possessed an extraordinary memory and displayed astonishing craftsmanship in cross-examining witnesses. He seldom led juniors in his cases. I had the opportunity to be under his tutelage in two civil cases. Regrettably, both cases were settled out of court, depriving me of the chance to witness his performance in trial - a circumstance that left a particularly strong impression on me.

Q: Over the years, have there been any significant turning points which have shaped your career?

ECSC: Undoubtedly, a pivotal moment was in 1989 when I was appointed as a Senior Counsel. I was the first alumnus from HKU Law to be conferred the status of a Senior Counsel, colloquially known as 'taking silk'. However, it should be noted that Andrew Liao and Robert Kotewall were also appointed as Senior Counsels in the same year. As I had more years of experience, I am considered the first amongst us. Ronnie Tong was appointed the following year.

Q: Could you share with us some of the outstanding or unforgettable episodes during your career?

ECSC: I have been involved in two particularly lengthy cases. The first one concerned the Tsing Shan Monastery and lasted for dozens of days. My participation in this case was rather serendipitous. Initially, I was instructed to apply for a joinder only. I thought little of it and proceeded with the application. However, upon completion, I was asked to take on the entire case. My original junior barrister, Maria Yuen, was an accomplished chancery counsel, and I had hoped that she would manage the entire case. Unfortunately, she later became a judge, which compelled me to find another junior counsel. Eventually, the case was laboriously brought to completion. It reached the Court of Final Appeal (CFA) and involved Chinese customary law. I learned a lot while working on the case, as my university education had not adequately prepared me for it. Fortunately, we had an exceptional expert witness, Anthony Dicks.

The other case concerned Wang Din-shin and Teddy Wang Teh-huei. Ultimately, we lost at the CFA. There was nothing we could complain about. The trial lasted approximately 172 days, making it the longest trial I have ever been a part of.

Q: How did you enjoy being High Court Recorder for more than ten years?

ECSC: Serving as a Recorder, I believe, offers a distinctive viewpoint. It demystifies the judicial role, revealing that judges are not as mysterious or formidable as they may appear. Stepping into this role, one comes to realize that there are many areas where knowledge might be lacking. This holds true even for barristers or Senior Counsels - it's not a given that they are adept in every aspect. Often, in times of ambiguity, one must take the initiative to probe deeper and verify matters independently. Judges, too, do not have all the answers and are not as elusive or unreachable as they may initially seem.

However, serving as a full-time judge can be monotonous. You are likely to be isolated from social interactions. Social engagements become constrained, necessitating prudence in words and actions. Moreover, it is essential to introspect whether one's personality aligns with the expectations of the role. By contrast, the life of a barrister, though much more stressful, allows for greater personal freedom.

In fact, I carefully weighed the option of being a full-time judge when I was first serving as a Recorder. I spent over a decade as a Recorder, initially in the capacity of a Deputy Judge. I was among the first three Recorders, alongside Ronny Wong SC and Justice Robert Tang. Given that the usual term of appointment as a Recorder spans four weeks each year, I made every effort to prevent a case backlog. As such, I typically delivered judgments within a month of concluding the trials, rarely exceeding six weeks, while the details were still vivid in my memory. If not, the workload would mount, making judgment writing increasingly arduous as details could fade from memory, even to the extent of forgetting

the appearances of witnesses. How could one deliver a judgment then? Fortunately, the cases I heard as a Recorder were neither excessively complex nor protracted.

Q: Could you share with us your experience in the Election Committee?

ECSC: I believed 2007 was the right moment for a transition, which ultimately led me to resign as a Recorder. I had become a member of the Election Committee, representing the legal functional constituency. The Chief Justice of the Court of Final Appeal had issued a directive stating that all judicial officers should abstain from any political activities and clarified that being a member of the Election Committee inherently involved political undertones. As a result, the two roles were deemed incompatible, necessitating a decision between continuing as a Recorder or serving as an Election Committee member. However, since the position of a Recorder is a permanent appointment, distinct from a Deputy Judge, I opted to resign.

In truth, my resignation would have been imminent regardless of whether I agreed with the Chief Justice's directive. I understood his apprehensions about potential conflicts of interest, as it might appear unsuitable to some extent. If the matter at hand was the inability to serve as a party leader, I would concur. However, I perceived the role of a district councillor as less politically inclined, particularly as a member of the Election Committee. If even this was considered inappropriate, I felt the constraints were excessively strict.

Q: Besides the Election Committee, you have also been the President of the Bar Association. What were the biggest challenges?

ECSC: I started my journey by serving as a member of the Bar Council for four years, followed by taking on the role of Vice Chairman in 2001 and 2002. During that period, the esteemed Alan Leong SC was leading the Bar Association as the Chairman. Between 2003 and 2004, I assumed the position of the Chairman of the Hong Kong Bar Association. Toward the end of 2002, the government had put forth a proposal for legislation pertaining to Article 23 of the Basic Law. Alan Leong SC stepped down from his position as Chairman in January 2003, and I was honored to succeed him. During this crucial juncture, as we navigated the legislation of Article 23, we had a team filled with experienced Council Members and barristers. Together, we tackled numerous challenges, such as crafting relevant documents. Our tenure in 2003 and 2004 was replete with demanding tasks.

It is noteworthy that the legislative approach adopted by the government during that period was starkly different from recent practices. As the Chairman of the Bar Association, there was an array of matters that demanded my attention. The government,

back then, often sought the counsel of the Bar Association while formulating policies, and we, in turn, provided suggestions on the proposed government policies. Could I, as the Chairman, have been well-versed in every single aspect? Clearly not. Hence, when confronted with issues, we turned to other counsels for their able assistance. We sought the help of knowledgeable individuals, both within the Bar Association and outside. However, even though the Chairman of the UK Bar Association is a salaried position, with remuneration on par with a High Court judge, I was personally against the concept of a salaried Chairman for the Bar Association.

Imagine this scenario - if you were receiving a salary and sought my help, I might suggest that you should handle it yourself since you are already remunerated. This would pose a challenge in finding individuals willing to assist. If the Chairman, despite being salaried, asked other barristers for pro bono work, it could potentially lead to an imbalance. The response might be something along the lines of, "The Chairman should handle it, given your wisdom, respectability, and the fact that you're paid." Hence, it is vital to refrain from accepting a salary, as it would make it challenging to find help. If not salaried, the work becomes a collective endeavor. Certainly, the Chairman cannot always rely on others; there are tasks that require personal attention or group deliberations. However, it is unrealistic to expect the Chairman to be omniscient.

However, has the government maintained the same? For instance, do they currently conduct special consultations with the Bar Association? I am unsure. In the past, the government would initiate discussions with the Bar Association at the early stage. It is now a different story.

Q: what role do you think the Bar Association should have in society?

ECSC: For example, when the government grapples with contentious issues, especially those concerning constitutional law, human rights, family affairs, criminal justice, or property rights, it would be prudent to solicit the expertise of professional bodies. For example, in addressing family matters, the government should not only consult matrimonial lawyers but also engage stakeholders involved in related fields such as mediation. If the government were to adopt a comprehensive consultation process before implementing policies, it would typically yield more favorable outcomes. This is because diverse opinions may surface. Initially, the government might perceive the policy idea to be exceptionally sound, only to discover substantial opposition later on. At that juncture, should the government still insist on pushing it through? This is a matter that requires the government's discernment and judicious decision-making.

Q: How do you think the Bar Association should balance the tension between upholding the rule of law and taking a political stance?

ECSC: Upholding the rule of law encompasses two aspects: firstly, the legislative process, which involves the formulation of laws. For instance, when drafting criminal procedural law or criminal law, many details need to be elaborated in great depth. However, in certain situations, we need to determine whether these laws infringe upon human rights and whether they adhere to the principles of the rule of law. This often depends on the manner in which the law is enforced. Taking government prosecution as an example, should there be a fixed rule requiring prosecution to take place within a specified number of days, or for suspects to be released after a certain period of custody? In reality, such provisions are not feasible, as the investigation process might require more time. Nevertheless, if the government abuses this power, such as by denying bail after arrest under national security laws or delaying court hearings for a prolonged period after prosecution while continuously requesting adjournment, does this conform to the principles of the rule of law? Therefore, when the Bar Association is asked to comment on a law, we can only take into consideration whether a particular law is genuinely necessary. However, whether a law complies with human rights principles during its actual enforcement largely depends on the manner in which it is applied, and this is beyond the scope of the Bar Association.

Q: Besides the Bar Association, you were also engaged by the Law Reform Commission, working on adverse possession. Can you share with us your experience there?

ECSC: Indeed, as we previously discussed, our group had already considered several suggestions. I believe that the current UK proposal, which requires the provision of a notice before the expiration of a 12-year period, is appropriate. This is because, particularly in the New Territories, there are lots of tricky situations. Imagine that you have purchased a piece of land. Can you keep an eye on it every day? You might actually forget about it. So a notification system should be in place, which is reasonable. However, implementing this system would require addressing numerous related issues.

The second issue concerns land boundaries. In Hong Kong, especially in the New Territories, many land boundaries are unclear, and there are even missing lots. Even after paying the Crown Rent, it is impossible to determine the exact location of the plot. Therefore, if this policy is to be effectively implemented, I believe that having land titles registered is a good approach. However, Hong Kong does not currently practice a land title registration system, though the relevant law has already been passed but not yet implemented. I was once a representative of the Bar Association, and the biggest obstacle at the time was the government's unwillingness to assume responsibility.

Under the title registration system, the state needs to guarantee land rights. If the state is unwilling to endorse the title, the entire system cannot function. The government initially asked the Law Society to assume this responsibility, but of course, the Law Society was not willing. In reality, the Law Society was being asked to have its members assume the related responsibility. However, are lawyers willing to take on this liability? If they provide such guarantees without cause, legal services for property transfers would become extremely difficult. It is impossible to proceed. Therefore, the government must assume responsibility for this issue. In the case of uncertain titles, these lands can be resurveyed by establishing a compensation system. The government must bear responsibility since ultimately, registered land titles still rely on government guarantees. However, the government is concerned that compensation issues may plunge it into financial difficulties. Nevertheless, since the UK has implemented this system since 1925, and most of the land is now registered, there is no reason why Hong Kong, being relatively smaller in size, cannot follow suit.

Q: Given all the intriguing public services you have been engaged in, do you feel that they have impacted your private law practice in the sense that they brought our new perspectives?

ECSC: Some do, while others don't. For instance, I have worked with the Criminal Compensation Board, which focuses on cases involving criminal damage and criminal injury. However, these matters seldom speak to my interests.

I have also served on the Pharmacy and Poison Appeal Board, but I am not very much interested in it. On the other hand, I find the Town Planning Appeal Board quite fascinating. Urban planning is a highly contentious issue, with various stakeholders representing competing interests. When someone applies to change the land use, it may seem reasonable to allow the landowner to proceed. However, there are also concerns about the collective good, such as the impact on pollution. In many instances, we tend to disregard accusations against the Town Planning Department, such as why certain civil servants may oppose specific plans. The truth may be that many civil servants reside in the affected areas. But how can we take this into account without concrete evidence? We can only examine the available evidence, but it is difficult to eliminate these extraneous considerations when we are sitting together with non-legal professionals. Even with our best efforts to exclude such factors, we cannot prevent others from harboring those thoughts.

Although we should not consider those factors, we understand that they are actually being taken as part of the equation. As a judge sitting with a jury panel, you can only advise jurors not to consider matters outside the courtroom and to avoid being influenced by extraneous information. However, you cannot be certain whether the jurors

have heeded your advice or if they have been swayed. You also have no way of knowing whether they have been exposed to or influenced by that bit of information. Even if their decision is different from yours, you must accept it as an inevitable part of life. The same principle applies to being a judge. The opinions of the seven jurors may not align with your own. You cannot assume that just because their conclusion differs from yours, they must have been influenced by irrelevant factors. This is a completely unacceptable line of thinking.

Q: Do you feel that a barrister having a sense of belonging to society should take upon professional engagements in order to make further contributions?

ECSC: I do not believe it to be necessary. However, when you have ample time, it is crucial to find the right balance between your professional work and public engagement. Why bother to create trouble for yourself if you already cannot take care of your own professional work? This could ultimately backfire and you might find yourself in deep water on both fronts. Nevertheless, I maintain that if you encounter opportunities beyond your profession and are willing to participate, you should dedicate yourself wholeheartedly. It's not appropriate to merely hold a position without doing the actual work. When faced with certain tasks, either decline them or, if you choose to accept them, commit fully and treat them with sincerity and dedication.

Q: How do you balance between private legal practice and public services?

ECSC: At a given moment, when tasked with completing a particular assignment, it is essential to assess the time required for its completion. Furthermore, one must also consider the typical timeframe in which such work is carried out. Once the responsibility is accepted, it is incumbent upon the individual, be it a professional or a businessperson, to fully commit themselves to its execution.

As an illustration, in my capacity as the convener of the Barristers Disciplinary Tribunal Panel, my approach in selecting panel members is to afford opportunities to all members on my list as equitably as possible. My guiding principle is not to solely select individuals based on their experience but rather to ensure that each member is provided with an equal opportunity to participate. The composition of the disciplinary tribunal panel typically includes myself as the chairman, a senior barrister (silk), leading counsel, a junior barrister, and a layperson. Consequently, I endeavor to choose one representative from each category. Generally, there are two prevailing approaches for conveners, each embodying distinct philosophies. The first method involves selecting individuals with greater experience, thereby allowing them to engage in the process multiple times. This approach is more efficient, with outcomes that are easier to anticipate, as their decisions

in similar cases tend to exhibit consistency. Contrarily, my approach diverges from this, as I strive to incorporate every member rather than overburdening a select few.

Nonetheless, I have encountered numerous instances where non-professional members are unable to participate due to their preoccupations. The reason why they agreed to join the panel in the first place baffled me. It would be more prudent for such individuals to decline the appointment if they are incapable of active involvement, thereby allowing others to fulfil the role, particularly when the list of panel members is long and identifying alternatives poses no significant difficulty. Conversely, there was once a non-professional member who volunteered to join the panel and, upon finishing off a task, proactively inquired about future opportunities for engagement. While some individuals may find the appointment intriguing, others are solely motivated by the prospect of having another item on their resume. I find the latter problematic.

Q: As you have practiced in this profession for quite some years, have you noticed any major transformation in the profession?

ECSC: I do have several observations which I can share. Firstly, from a monetary standpoint, this profession can be viewed as a sunset industry. It has been increasingly challenging to navigate. The reasons for this are twofold: firstly, the intensity of competition due to the number of people entering the field, and secondly, the growing number of constraints and restrictions that hamper our practice.

The second viewpoint pertains to our potential contributions to society. The extent of these contributions is heavily contingent upon the prevailing political structures. The impact a lawyer can have on society in a certain region largely depends on the institutional structure of the place concerned. In some places, as a defence lawyer, your sole responsibility is to mitigate. Then what is exactly the contribution? Furthermore, one must also consider the nature of the system in place. If the system fundamentally discourages people from challenging the government, deeming it unacceptable and a waste of societal resources, then lawyers can make limited contributions. Therefore, even within this profession, it is crucial to understand what role you can play depending on the institution.

Q: What do you think the role of the profession should be in society?

ECSC: During my academic career, Hong Kong was still a British colony, and I was intrigued by the system in place at that time. The government was relatively tolerant, allowing citizens to express diverse opinions. There was a certain decorum within the government, which did not fixate on winning or losing or insist that the government could not afford to lose a lawsuit. The key factor was adherence to the institution in which one

upheld. Therefore, the contributions of this profession to a given region depend on the local institution and the government's expectations. Although there are alternations in power in some countries, say for example in the UK, both the Labour and Conservative parties share the same view on the roles of judges and legal professionals. As a result, the government influences the scope of contributions that local lawyers can make. For instance, in mainland China, a lawyer's primary responsibilities may be limited to drafting documents and contracts, with a separate system governing the enforcement of contracts. This does result in a starkly different role for lawyers in different contexts.

Q: On the other hand, as you have just mentioned the profession of barristers has gradually seen less demand, were you referring to the expansion of solicitors into the arena of advocacy, such as being solicitor advocates? Can you elaborate more on this?

ECSC: I am not suggesting that litigation lawyers pose a threat to barristers. If someone is interested in pursuing a career in litigation, they should initially consider becoming a barrister rather than a solicitor. However, I believe that with the increasing number of practitioners, there are fewer opportunities for individuals to realize their aspirations. Although it is true that there are more cases, the influx of people in the industry has likely resulted in relatively lower earnings on average.

I opine that the junior tenants in my chambers are quite impressive, far surpassing my abilities when I first started. However, I have noticed that they often have fewer cases, though not a total lack of work. The peculiar nature of a barrister's work is such that the faster and harder one works, the more briefs one receives. Conversely, if one is idle and procrastinates a lot, they will receive less work. Hence, the adage that "the harder your work, the more you earn" applies in this profession.

Q: There are voices in society expressing that there should no longer be a separation between barristers and solicitors, in that they should be amalgamated into a single profession. What is your view?

ECSC: My viewpoint is as follows. In certain places, the legal profession is categorized into distinct roles, such as in Australia. However, in the UK, there is currently no demarcation between solicitors and barristers, as both can perform each other's tasks. This is because, in the UK, some solicitors serve as King's Counsel (KC). This arrangement is a result of the implementation of multidisciplinary practice models, where a law firm can consist of barristers, solicitors, architects, accountants, and other professionals. Nevertheless, there are still some subtle differences within the UK legal profession. For instance, as a barrister, one cannot directly contact clients or accept cases of their

choosing, as doing so may lead to disciplinary action. Such a situation would likely not exist if such fusion into a single legal profession were to take place.

However, in reality, there are many tasks that I would be unable to perform if I were asked to carry out the work of a solicitor. Therefore, it makes perfect sense that becoming a barrister requires only one year of pupillage, while becoming a solicitor necessitates two years of traineeship. This is not because barristers are smarter or more superior than solicitors, but rather because of the difference in the nature of their work. As barristers, we are not responsible for much of the hands-on work or expected to be familiar with all the nitty-gritty. For example, if I am asked to sue someone, I can certainly draft a statement of claim. However, if asked to serve the claim, I would not know how to do so or where to begin. It would be truly shocking if a solicitor had no idea about all these procedures. To be frank, I am unsure about where to stamp or make a payment at the High Court. These practical skills are part and parcel of a trainee programme in a law firm. One must know how to guide others in performing these hands-on tasks, if not know them like the back of their hand.

There are many things I do not know where to start with because I have never done them before. Although it might not be difficult for me to learn, it would still take time. That is why a solicitor's traineeship takes longer, as there are many more things a solicitor must know. For instance, some people say that the first thing they learn when starting their traineeship is how to charge clients. This issue has never bothered me. In all these years, my usual practice has been to send the bill to the solicitors and tell them I am charging that amount of money. I would then expect them to issue an invoice and the fees would be settled. However, if a solicitor does not collect money from the client at the outset, he or she is essentially working for free. Thus, there are lots of practical concerns for solicitors.

In practice, people still maintain distinctions between the two roles. When I was the chairman of the Bar Association, some junior barristers told me that solicitors could do our work, at least in the lower courts. They would sometimes refuse to settle the bill after receiving money from the clients, so why not let us collect the money directly from the clients?

I advised them not to do that. Consider the history of barristers: they were gentlemen of the court, while solicitors were clerks of the court. The English took hundreds of years to establish a system where barristers do not have to collect money directly from clients and only have to collect from solicitors. We are not allowed to make direct contact with clients. With so many decades and centuries spent devising such a system, do you think you could figure it out on your own as an inexperienced barrister? You could try asking those who practice as solicitors: who has more 'bad debts', them or you?

When you are allowed to collect payment directly from clients, chances are things might not work in your favour. The solicitor will share with you the client's contact information and you can directly request payment from them. However, if you are working a criminal case and you earn your client an acquittal, your client might actually be nowhere to be found. On the contrary, they will be in jail if they are convicted, leaving you in a tricky position. You could end up being worse off. When you win the case, you may not know where to locate the client. Conversely, if you lose, you can assuredly find the client, but their willingness or means to pay becomes highly questionable. Therefore, I must stress that the idea of collecting payment from clients brings no benefits.

Q: What do you think are the needs of today's legal education in Hong Kong?

ECSC: Times have changed a lot, and there is now much more training available. I've been a member of the Standing Committee of Legal Education for many years until the government asked the Bar Association to let me go, as I had been there for too long. I spent more than ten years at the Association and noticed that the training for students is better now compared to the past, and their skills are way better than ours, especially in computer technology. Although I still use textbooks as my main research tool, I believe that any recent graduate is much more skilled in doing online legal research than I am.

I think universities are doing a great job. Of course, there is always room for improvement, and striving for excellence is certainly an honourable pursuit. However, offering a set of more rigorous training might not necessarily be helpful. I once had a brief discussion about this with the Chairman of the Bar Association in the UK. Their Bar Vocational Course was quite tough already. Yet, his impression was that around 5% of people would be deadwood regardless of how rigorous training is.

Some of the young barristers are truly excellent, while some are subpar. I have worked on a disciplinary case where a barrister, who was called to the Bar in the UK, did something atrocious. It was a shame that his charge was not one of gross incompetence. Had it been the case, it would have been straightforward to remove him from the bar. No matter how laborious the legal training is, there will always be some people who do not meet expectations. This could be due to a lack of aptitude or not having the right mindset to overcome challenges.

Q: Do you have any words for the law students who aspire to be barristers?

ECSC: If law does not speak to your interest, then it is not the field for you. While law can provide a decent income, just being a lawyer won't guarantee you a lucrative career.

Secondly, you are bound to face many frustrating moments in your legal career. However, it's crucial to always look at the wider picture and consider your role and what's expected of you. This perspective will be vital throughout your time as a lawyer.

It's important for everyone to be clear about their position. Lawyers, especially barristers, often have a major flaw - they believe they're infallible. You may wonder why your clients seem so clueless and why they're performing so poorly. But remember, if they weren't having difficulties, they wouldn't need your help. You may often believe you're incredibly smart and skilled, but the truth is, if you were in their shoes, you might perform even worse. Therefore, it's essential to always be empathetic and considerate. Keep your ego in check and remember, you are not as unassailable as you think you are. Always strive to understand and be considerate of others who are going through similar situations.