



Safeguarding Integrity: A Young Lawyer's Perspective

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Roadmap

- ▶ Integrity as a Barrister
- ▶ Anti-corruption Court Cases
- ▶ Outreach Initiatives of the Young Barristers' Committee (“**YBC**”)

Integrity as a Barrister

- ▶ Fit and proper person – requirement since pupillage
- ▶ Barristers (Qualification for Admission and Pupillage) Rules (Cap 159AC) – Rule 14

(1) A person shall not be eligible to become a pupil for the purposes of these Rules if he—

(a) is an undischarged bankrupt within the meaning of the Bankruptcy Ordinance (Cap. 6);

(b) has been convicted of an offence of such a nature that, in the opinion of the Bar Council, he is unsuitable to be a pupil;

(c) is engaged in any occupation which, in the opinion of the Bar Council, is incompatible with pupillage; or

(d) is for any other reason considered by the Bar Council to be unsuitable as a pupil.

(2) If the Bar Council has made a decision that a person is ineligible for pupillage under subsection (1), it should notify that person of its decision and the reasons for the decision within 28 days of the application made under section 11(1).

Code of Conduct

6.2 A practising barrister must not accept any instructions if to do so would cause him to be professionally embarrassed. For this purpose, a barrister will be professionally embarrassed:-

...

- ▶ (e) if the matter is one in which by reason of any connection with the client it will be difficult for him to maintain professional independence. Examples of the operation of this rule are given in Annex 7;
- ▶ (f) if the matter is one in which, by reason of any connection with the Court or a member thereof, the impartial administration of justice might be or might appear to be prejudiced. Examples of the application of this rule in regard to judicial position and family relationship are given in Annex 8;
- ▶ (g) if there is or appears to be a conflict or risk of conflict either between the interests of the barrister and some other person or between the interests of any one or more clients (unless all relevant persons consent to the barrister accepting the instructions and the barrister is able to act without embarrassment);

...

Code of Conduct

Relation with Persons or Bodies Authorised to Instruct Counsel

- ▶ **10.7** A practising barrister must not have a seat in the office of any person authorised to instruct him or in the office of the company, firm or other body of which such person is a director, partner, member or employee.
- ▶ **10.8** A practising barrister must not give any person authorised to instruct him or the company, firm or other body of which such person is a director, partner, member or employee any sum of money, whether by way of gift, loan or otherwise, for the purpose of financing the practice of such person or for any other professional purpose.
- ▶ **10.9** Other than the payment of his professional fees, a practising barrister must not accept from any person authorised to instruct him or the company, firm or other body of which such person is a director, partner, member or employee any sum of money, whether by way of gift, loan or otherwise, for the purpose of financing his practice or for any other professional purpose.
- ▶ **10.10** A practising barrister must not give a commission or present or make any payment (other than a payment for practice promotion permitted by this Code) to any person for the purposes of procuring professional instructions or rewarding the giving or introduction of professional instructions.
- ▶ **10.11** A practising barrister should not attend a conference at or visit the office of the person authorised to instruct him in the matter or the office of the company, firm or other body of which such person is a director, partner, member or employee to collect a brief unless there is a good reason for departing from the general rule.
- ▶ **10.12 (a)** There is no objection to practising barristers accepting social invitations from persons authorised to instruct him or companies, firms or other bodies of which they are directors, partners, members or employees.
- ▶ **(b)** While there is no objection to practising barristers extending social invitations to such persons, companies, firms or other bodies, the invitation must not be intended or be likely to cause the recipient to choose or recommend Counsel having regard to anything other than the client's best interest. Practising barristers should therefore be circumspect in this connection in that lavish or excessive entertainment may lead to the perception that Counsel has been chosen on grounds that are not objective or professional.

Code of Conduct

- ▶ **10.65** Prosecuting Counsel should not regard himself as appearing for a party.
- ▶ **10.66** It is not the duty of Prosecuting Counsel to obtain a conviction by all means at his command but rather to lay before the Court or the jury fairly and impartially the whole of the facts which comprise the case for the prosecution and to assist the Court on or, to see that the jury are properly instructed in, all matters of law applicable to the case.

Code of Conduct

10.55 A practising barrister to whom a confession of guilt has been made by his client must observe the following rules:

- ▶ (a) If the confession is made before the proceedings have started he may continue to act only if the plea is to be one of guilty, or if the plea is to be one of not guilty he acts in accordance with the rules set out in Annex 12 which impose very strict limitations on the conduct of the defence. In the latter case he must explain his position to the client and his instructing solicitor. If the barrister is instructed to act otherwise than in conformity with this rule he should return his brief.
- ▶ (b) If the confession is made during the proceedings or in such circumstances that he cannot withdraw without compromising the position of his client, he should continue to act and to do all he honourably can for him; but this situation similarly imposes very strict limitations on the conduct of the defence; and the barrister may not set up an affirmative case inconsistent with the confession by, for example, asserting or suggesting that some other person committed the offence charged or calling evidence in support of an alibi.

(See also Annex 12)

Anti-corruption Court Cases

- ▶ *Secretary for Justice v Chan Chi Wan Stephen* [2017] 20 HKCFAR 98
- ▶ *HKSAR v Lew Mon Hung* [2019] 2 HKCFAR 159

And the practical experience in courts ...

Secretary for Justice v Chan Chi Wan Stephen [2017] 20 HKCFAR 98 - Extract

"53. [...] In my view, on a proper construction of s.9 in the light of its mischief, the induced or rewarded conduct "aimed at the principal's business" has to be conduct which subverts the integrity of the agency relationship to the detriment of the principal's interests. It is not the legislative intent to stigmatise as criminal, conduct of an agent which is beneficial to and congruent with the interests of the principal (as in the present case).

54. I hasten to add that the prejudice to the principal's interests to which I refer does not need to involve immediate or tangible economic loss to the principal or benefit to the agent at the principal's expense. Of course, it will frequently (or indeed, usually) do so, but that is not essential on the true construction of the section. The agent may, for instance, be induced to act prejudicially to the reputation of the principal's business or to divulge confidential information without any immediately palpable loss to the principal. Where the offering, solicitation or acceptance of an advantage is of such a nature as to undermine the integrity of the agency relationship, that is, of such a nature as to injure the relationship of trust and loyalty that a principal is entitled to expect from his agent, this in itself is capable of constituting the necessary detriment. This reflects increasing recognition in the field of employment law, of the importance of the reciprocal duties of trust and confidence in the relationship of employer and employee - perhaps the most common agency relationship - with the evolution of remedies for damage to that relationship." (per Ribeiro PJ)

HKSAR v Lew Mon Hung [2019] 2 HKCFAR 159 - Extract

“31. This brings me to the type of situation faced in this appeal, that is, approaching the Chief Executive and the Commissioner with a view to stopping or otherwise interfering with an ongoing ICAC investigation. The Chief Executive and the Commissioner are, respectively, the head of the HKSAR and the head of the ICAC. Moreover, the Chief Executive is the very person to whom the Commissioner is accountable in respect of his work. **In my view, writing to them asking them to stop an ongoing ICAC investigation, with the threat that otherwise a huge political bomb would be detonated, plainly involves a tendency to pervert the course of justice.** This case is far removed from the examples I gave earlier of situations where a court may find that there was no tendency to pervert the course of justice.

32. First, the emails and letter were written at a time when the investigation was ongoing. There is no question of the matter having gone past the stage where it could be interfered with.

33. Secondly, by virtue of his position, the Commissioner was directly and most relevantly connected with the ICAC investigation. So far as the Chief Executive is concerned, he is the person to whom the Commissioner is accountable. Moreover, he is the head of the HKSAR. He is plainly a relevant person connected with the ICAC investigation.” (per Cheung PJ, as Cheung CJ then was)

Outreach Initiatives of the YBC

- ▶ Exchange between the Young Barristers Committee and the ICAC
 - ▶ 2022.07.16 Guided Tour on ICAC Open Day 2022
 - ▶ 2021.09.11 Guided Tour ended with a sharing session



Outreach Initiatives of the YBC

- ▶ Hong Kong Bar Association Debating Competition – annually held
 - ▶ Debates on socio-legal topics (for secondary school students)
- ▶ Street law initiatives – Collaboration with Street Law HK
 - ▶ Moot Court Summer Schools and “MARS Mission” (for secondary school students)
 - ▶ Flip Courtroom Workshops (for lawyers)

... thereby promoting legal education and the concept of the rule of law.

