

**THE LAW SOCIETY OF HONG KONG
ANNUAL CONVENTION 2002**

A Keynote Presentation by

Mr. Raymond Tang,

Privacy Commissioner for Personal Data

on

*The Legal Profession: Lessons from the Past,
Learning for the Future and a Case for Re-invention*

at

*The Law Society Annual Convention 2002
Hong Kong Convention and Exhibition Centre*

4 - 5 October 2002



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GOOD TIMES, BAD TIMES

- ◆ **Difficult days, *Yes*; Bleak future, *No***
- ◆ **Period of adjustment**
- ◆ **Essential institution in any modern economy**
- ◆ **Adaptation through re-examination, re-tooling and re-positioning**



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GOOD TIMES, BAD TIMES (cont'd)

Real issues:

- ◆ **What manner of legal market?**
- ◆ **Do we have the right professionals to service the market?**
- ◆ **Impact of competition**



“THE GOOD OLD DAYS”

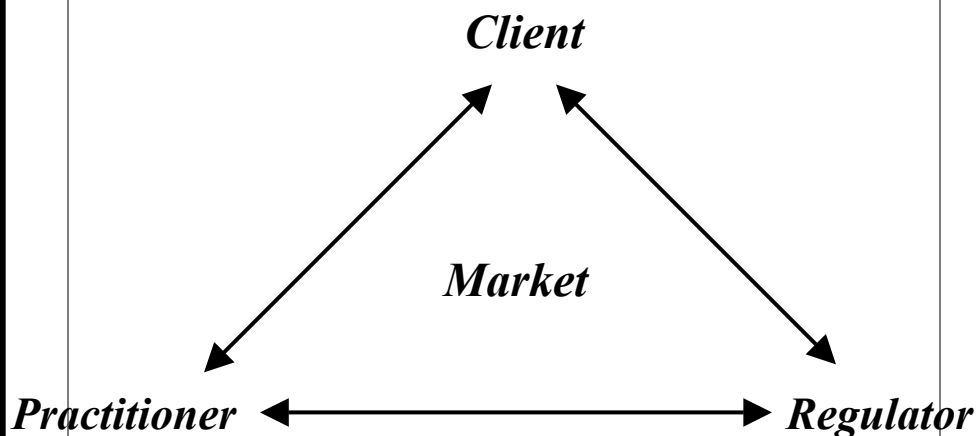
- ◆ **Is our mode of practice client-oriented?**
- ◆ **Have we placed ourselves in a position of competitive advantage?**
- ◆ **Is there sufficient diversification in our scope of practice?**
- ◆ **Has the profession been following the trend in its development?**
- ◆ **And, in following the trend, have we reviewed our management style and practices in tandem?**



“THE GOOD OLD DAYS” (cont’d)

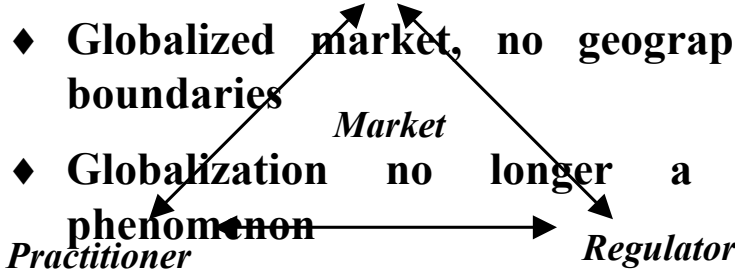
- ◆ **Counterparties have all the cards and chips!**
- ◆ **Separate representation**
- ◆ **No incentive to diversify**
- ◆ **Competitive disadvantage**

COMPONENTS OF A MODERN PROFESSION



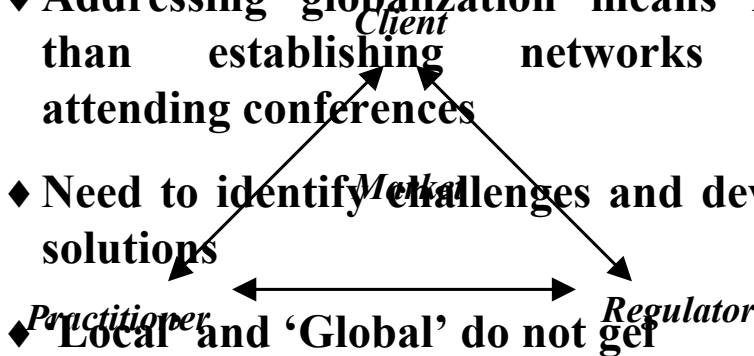
LOCAL PROFESSION IN A GLOBALIZED WORLD

- ◆ Market, determinant of all things, good and bad *Client*
- ◆ Globalized market, no geographical boundaries
- ◆ Globalization no longer a new phenomenon
- ◆ Local businesses must respond



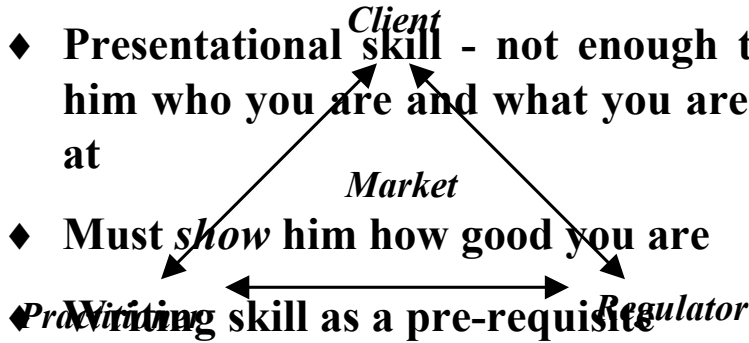
LOCAL PROFESSION IN A GLOBALIZED WORLD (cont'd)

- ◆ Addressing globalization means more than establishing networks and attending conferences
- ◆ Need to identify challenges and develop solutions
- ◆ 'Local' and 'Global' do not get



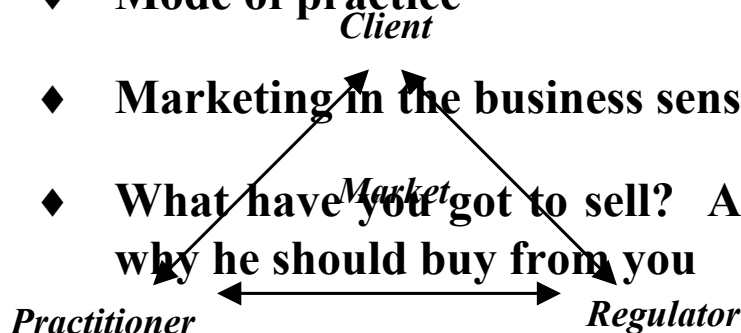
THE 'CLIENT'

- ◆ His expectations - he expects everything
- ◆ Presentational skill - not enough to tell him who you are and what you are good at
- ◆ Must *show* him how good you are
- ◆ Writing skill as a pre-requisite



THE PRACTITIONER (1)

- ◆ Mode of practice
- ◆ Marketing in the business sense
- ◆ What have you got to sell? And, why he should buy from you



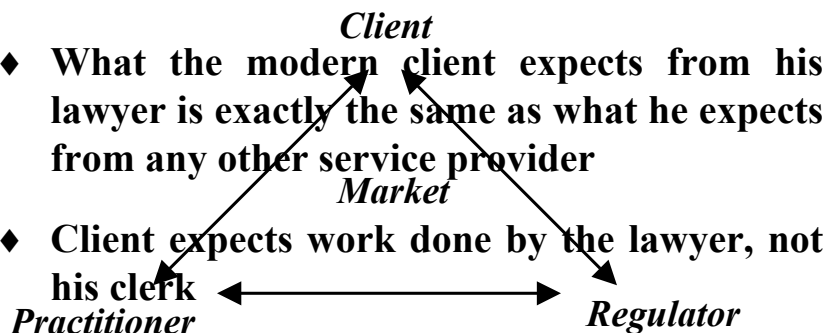
THE PRACTITIONER (2)

- ◆ Relationship between lawyer and client re-defined

- ◆ What the modern client expects from his lawyer is exactly the same as what he expects from any other service provider

- ◆ Client expects work done by the lawyer, not his clerk

- ◆ Law firm is a business



THE PRACTITIONER (3)

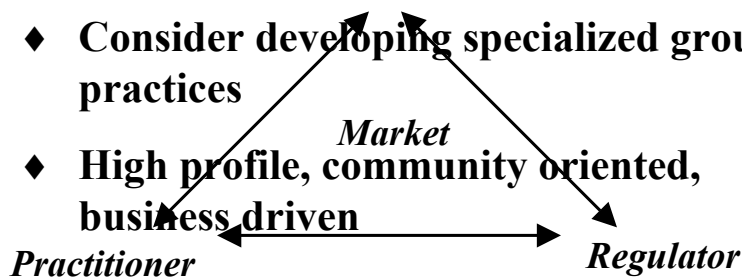
- ◆ Commit to re-tool, ready to re-position

- ◆ Accountants had a head start

- ◆ Consider developing specialized group practices

- ◆ High profile, community oriented, business driven

- ◆ Maximise collective strength



THE PRACTITIONER (4)

- ◆ Review management style
 - ◆ Be cost conscious
 - ◆ Replace manual intervention with technology
 - ◆ Output-based remuneration
-
- Client*
Practitioner *Market* *Regulator*
Overseas associations



THE PRACTITIONER (5)

- ◆ Clients of today are not the clients of yesterday
 - ◆ A Resource Exchange?
-
- Client*
Practitioner *Regulator*



THE TRAINEE AND THE NEWLY QUALIFIED

- ◆ Our joy and our hope
 - ◆ Personal attitude crucial factor
 - ◆ Price of accessibility to profession - competition
 - ◆ No such thing as an uninteresting CPD seminar
 - ◆ Role of the principal
-
- ```
graph TD; Client[Client] --> Practitioner[Practitioner]; Client --> Regulator[Regulator]; Practitioner --> Regulator; Market[Market];
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## *THE REGULATOR*

- ◆ As regulator
  - ◆ Expectations of the consumer
  - ◆ Acceptance by the regulated - a fundamental benchmark to success
  - ◆ Traditional notion of a profession - *not* an issue for tomorrow
- 
- ```
graph TD; Client[Client] --> Practitioner[Practitioner]; Client --> Regulator[Regulator]; Practitioner --> Regulator; Market[Market];
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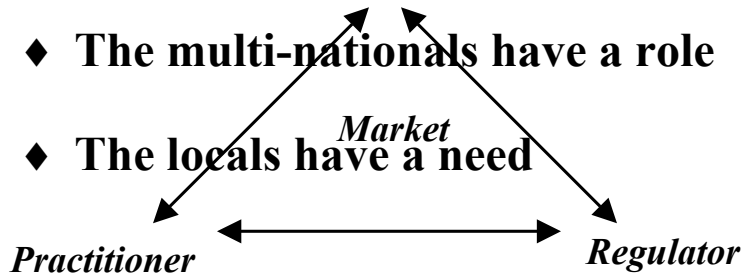
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THE REGULATOR (cont'd)

◆ As business **facilitator**

◆ The multi-nationals have a role

◆ The locals have a need



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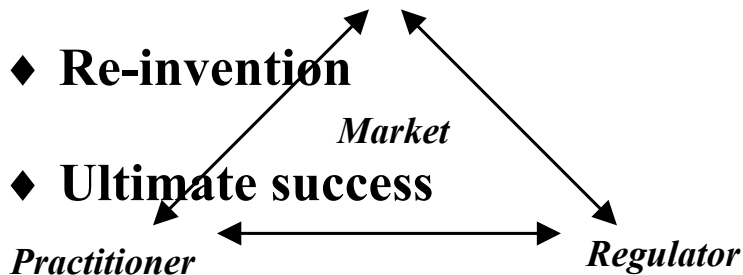
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'ONE COUNTRY, TWO SYSTEMS'

◆ Exit from transition

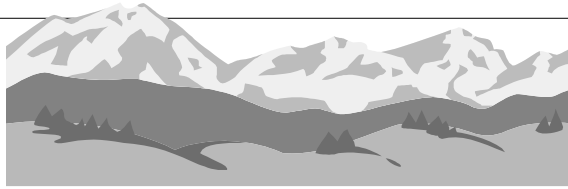
◆ Re-invention

◆ Ultimate success



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- A Brighter Future -



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Salutations

Mr. President, Convention Chairman, Ladies and Gentlemen.

Introduction

Unpleasant as it may be, we have all come to terms with the reality that lawyers are having a very difficult time, especially for solicitors who made up the local profession. Drastic decline in the volume of

conveyancing work, equally drastic decline in property value, the much cherished scale fee receding into fond memories, have all taken their toll. Bidding for conveyancing work at minimal or zero cost had left some of our well-heeled professional brethren with feeling of shame and disgust. Many lament that the future is bleak. That's a somber note and not a very pleasant way to start a presentation. So, I shall commence by telling you that I emphatically *disagree* with such a disheartening prediction of our future. We lawyers are having a tough time, but our future is not bleak - for the simple reason that no modern society can do without a legal profession, and no modern economy can function without one.

As many of you know, I have been a legal practitioner for some years, albeit in modesty and without much achievement. In that role, I have been a provider of legal services (and, together with my contemporaries, have been through good times and bad). I have been in private practice as well as in-house. I have also been a consumer of legal services when holding appointments in statutory bodies. The privilege of having experienced the joy and frustration of legal practice from diverse perspectives has led me to the realization that the ebbs and tides of fortune in a given profession are no different from the vicissitude of life. And the key to withstand such cyclical impacts lies in **adaptation**, through **re-examination**, **re-tooling** and **re-positioning**.

Our profession is in a period of adjustment, albeit an extended period. But we have been here before. We have had adjustments in the past, in 1967, in 1973 and in late 1980's. In those earlier adjustments, the difficulty encountered was reflected in a drop in the volume of business, principally the one type of business most important to the profession,

namely, property-related work, or conveyancing. This time around, the adjustment is more structural. Furthermore, the adjustment occurs at a time of major constitutional change for Hong Kong that is without parallel or experience in any jurisdiction of the world, and accompanied by economic upheavals of regional and global significance dampening consumer confidence to a level hitherto unseen.

Adjustment is predicated upon pre-existing conditions, in this case, the **market**. There will always be a legal market. For an international city of stature, a regional financial centre with 7.2 million people (geographically connected to another 60 million across a river), there will always be a market. So, the question of there being no legal market to serve simply does not arise. The real issues are what manner of legal market do we now have, do we have the legal professionals needed to service that market, and have we given enough thoughts to the impact of competition.

I have constructed my presentation around what I would describe as the components of a modern profession. To discuss that in a meaningful way, we shall need to examine a few historical facts. It is through that examination that we may be able to distill **lessons from the past**, and by learning those lessons that we may be able to find the **road to re-invention**.

‘The Good Old Days’

One obvious question we have to ask ourselves is whether our mode of practice in the past has in any way contributed to the situation we now find ourselves. By examining what we were will assist us in charting

our future course while we navigate through a sea of economic forces that put every profession to the test.

Many factors work together to shape our profession. Let me just mention a few which have come to mind. These same factors are just as relevant now as they were in those earlier days.

- ◆ Is our mode of practice client-oriented?
- ◆ Have we placed ourselves in a position of competitive advantage?
- ◆ Is there sufficient diversification in our scope of practice?
- ◆ Has the profession been following the trend in its development?
- ◆ And, in following the trend, have we reviewed our management style and practices in tandem?

From about 1960's to early 90's, conveyancing was the main source of work for the local profession. In the earlier years, all you need was to put a sign outside, get a couple of clerks with 'connections' and you were on your way to your first million. Not a guaranteed outcome, but by and large, having enough work was not too much of a problem (problem was more likely to be having too much work) and financial success of a reasonable level was in most cases assured. Conveyancing work and good connection with banks would assure the practitioner much more than 'reasonable' financial success. Those were the 'good old days'. Those were the days when a solicitor could literally wait for the client to come to him (in most cases, to the clerk first). The solicitor was held (using the vernacular of the day) in high esteem and the client did not get to meet and discuss with

'his' lawyer unless the size of his transaction warranted the solicitor's personal attention.

The way practice was conducted could not be said in the modern sense to be **client oriented**.

In those earlier days, marketing meant getting to know your banker and the property developer. They were the ones who gave you your passport to fame and fortune. Not the little guy who came to you to transact his modest purchase - simply because the little guy had no say in who to go to to represent him. In latter years, that special marketing relationship was extended to include estate agents who could ensure a steady flow of work to those solicitors with whom these estate agents maintain, for want of a better term, a working relationship.

That special working relationship between the practitioner, the banker, the developer and the estate agent brought wealth and social status to many. Unfortunately, that same relationship also sowed the seed of decline which plagued the profession in recent years. All the cards in the game were held by these counterparties, and all those who relied upon them for work were left with little or no ability to bargain. It might not even be an overstatement to say that the conveyancing practitioners were left at the mercy of these counterparties.

The subject of separate representation in project conveyancing has been a thorny issue within the profession for years. But the issue is significant in the context of whether the profession has, or has not, placed itself in a position of competitive disadvantage.

The last time when the issue of separate representation was seriously discussed was in 1990 through 1991. A special committee was formed to consider the issue and a report was presented to the Council of the Law Society. A dissenting report was annexed to the main report, because the vote (rejecting separate representation in project conveyancing) was narrowly passed - by one vote at the committee stage. Subsequently, an EGM was convened (17 July 1991) to consider the issue. It was a very lively debate and the meeting very well attended. The proposal to mandate separate representation in project conveyancing was carried on a show of hands, but (as expected) was not carried when a poll was demanded and the proxy votes given effect. With that resolution of the EGM, two things were assured. First, project conveyancing maintained its position as the prime focus of the local profession in terms of scope of work. Together with 'scale fee', project conveyancing was the 'goal', the 'fountain of wealth' and the reason to be in the solicitors profession. Secondly, the prosperity enjoyed by the profession would thenceforth be determined by those who had the ability to control the flow of project conveyancing work.

The comfort and wealth that engulfed the profession dampened all spirit to extend our scope of work or to acquire additional skills. With most, single skill was the order of the day. Life was too good to give any thoughts to **diversification**. Conveyancing practitioners commanded the highest pay and litigation lawyers were at times reduced to a supporting role. Success and reputation of a firm was measured by its exposure to only one type of work.

In the event, when the tide turned against the profession, a bitter lesson was learnt. At the risk of stating the obvious, we have put most of our eggs in one basket. With the change in fortune, it has been a painful experience for those affected.

We have placed ourselves in a position of **competitive disadvantage**. We have willingly allowed ourselves to be swamped under the economic forces that shaped the profession and its business environment. In the process, we have given up all incentives to diversify.

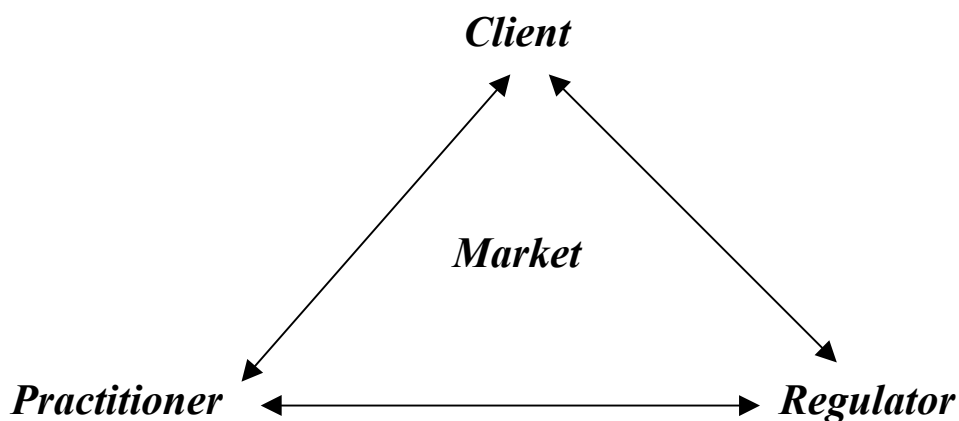
In that span of 30 years or so, the world has changed. Client base has changed. Clients have become much more sophisticated and demanding. Technology intervention has operated to change and replace manual processes. But, has the profession's mode of practice and management style changed to align itself with the developments in the market? I think not.

As 1997 approached, the China dimension was rapidly gaining significance and relevance. It would have been our competitive edge, with our geographical proximity and cultural compatibility. Did the profession devote sufficient attention to the economic value of that dimension? Or, were we more involved in the political debate and wrangling of the day?

In 1997, the market was still good. Property transactions were still very active. In the event, we did not start looking at ourselves until the economic downturn descended upon us and began to be felt.

Components of a Modern Profession

Let me now offer you a few observations on the components of a modern profession.



For good public interest reasons, a modern profession is usually regulated by law through the intervention of an elected industry body. Independent self-regulation is perceived to be the most effective and efficient mode of regulation. Public interest concerns and expectations, as interpreted by the executive government, are reflected in the statutory provisions, and, the task of answering to those concerns and expectations are then entrusted to those elected to serve the industry under a regulatory framework established by law.

[Figure] The components seem obvious enough. The ‘Client’ is at the top, as he always is. But note that the ‘Practitioner’ and the ‘Regulator’ are at the same level (in parity) and not one above the other.

Without the ‘client’, there is no business, no fuel for the profit generator, if you like. And, without the practitioner, there is no industry to serve the market. And, without an effective regulator, the profession lacks the credibility which it must possess if the profession were to enjoy the confidence of the community. And, the **foundation** of any successful profession is the attainment of that **confidence**.

The significance of this “*trinity*” lies in the inter-relationships between the components. What the modern legal practitioner needs to focus upon is the significance of the double arrows. The client expects a reasonable level of service from the lawyer, and he expects from the regulator protection of his legitimate interests through effective regulation of the practitioner. The lawyer owes a duty to the client in return for reasonable remuneration, and he expects support from the regulator (through education and CPD) and the provision of a fair competition environment. For the regulator, the issues are what level of quality assurance that should be provided to the client through dispute resolution mechanism and disciplinary processes, and the comprehensiveness of professional codes and guidelines to assist the practitioner in his work.

As you can see, there is mutuality in the relationships. It is that mutuality which guarantees the relevance of each of the components. And, it is that relevance which ensures a healthy market and a healthy professional environment.

Local Profession in a Globalized World

The 'triangle' that I have depicted has at its centre, the all-important '*Market*'. The concept of a 'market' is multi-faceted and its utility multifarious. The market is the source of work, the focus of development and at the same time the determinant of all things, good and bad, which seek to go into it. The market will admit things which add value to its utility, and will reject those which do not - those which will reduce or damage the attributes of an efficient market.

Traditionally, markets are bound by geographical borders. Local demand for a product or service dictate the shape and size of the market. The same goes for Hong Kong's legal market. It has been shaped by local conditions over the years. Consistent with the experience of other industries both here in Hong Kong as well as in other jurisdictions (particularly those in developing nations), local businessmen and service providers are beginning to feel the effect of globalization. Globalization is no longer a new phenomenon. It has taken roots and its real impacts have begun to be felt. Challenges to localized industries have to be met, and negative impacts are being suffered by those least able to afford it, long before benefits are realized, if at all. As a result, some doubts have been cast as to the benefits of globalization to lesser nations. I am not an economist, and am not qualified to comment in depth. One thing is clear though and that is that the advent of globalization has changed the way business is done. The business horizon has become much broader and deeper.

Globalization has allowed access to markets beyond a business' own national borders. This forces the local business to respond if it is to remain in business. It would be disingenuous to deny that big business does not have an advantage in such a process. Skill transfer and technology

transfer have been advanced to justify such incursion into foreign markets in the name of globalization. Whether merits and advantages outweigh demerits and disadvantages are not the subject to be canvassed this morning.

The reality of the situation is that a service industry, such as Hong Kong's legal profession, will need to consider its response to the challenges of globalization. Globalization brings about opportunities as well as challenges. Addressing globalization means more than just establishing networks or maintaining international relationships or attending international conferences. Those tasked with the burden of guiding the profession will need to spend time and devote resource to understand what globalization means in the context of the practice scope and practice methodology of the profession. Globalization brings about movement of capital, some long term investments and some short term ventures. Movement of capital generates opportunities as well as challenges. Those tasked with guiding the profession have a mandate to identify and address these challenges. The problem we have to address, in the context of globalization, is whether the local profession is trained to provide the breadth and depth of service demanded by cross-border businesses. Expertise in local laws and practices, however knowledgeable, may not be sufficient to reach that service level expected of the local profession. A knowledge base that has the attributes of multi-lingual, multi-jurisdictional, even multi-disciplinary may be *demand*ed of local practitioners - bearing in mind that the words 'local' and 'global' do not gel in a globalized environment. If we do not intend to go down that route and re-invent ourselves, we will have to ask ourselves the question - whether we are equipped to take on those with the attributes that I have just mentioned in open competition.

The Client

Let us, first of all, look at the client. This is the gentleman (or lady) most easily recognizable. He is the guy who pays your rent. Nowadays, the more sought after clients tend to be the corporate client. However, the presence or absence of body and soul seems to make no difference to what the client expects of his or her legal adviser.

What the consumer (client) expects in terms of (basic) skills

The **client** expects a great deal from his legal adviser - everything from personal attributes to technical abilities to resource capabilities of the firm. I shall not take time to enumerate them, the list is too long. I shall only mention one, one that has immediate impact on an average client - it is **presentational skill**, and, in particular, **writing skill** (which, by definition, embraces language skill).

Writing skill. Surprising as it may seem to some of you, I put this ahead of knowledge. I am not, of course, saying that knowledge is of lesser importance. What I am saying is that writing skill is a “**materializer**” that materializes the economic value of knowledge. You are not going to benefit from your knowledge (in a way that will pay your rent) unless you can demonstrate that you have that knowledge in a clear and effective manner. At its lowest, limited or mediocre knowledge could still benefit from the ability to write and present skillfully. Sadly, from my own experience as a consumer of legal services, writing skill is found wanting amongst many (and **not** just some) of our younger members. This applies to both English **and** Chinese presentational skills.

Writing skill is more than just letter writing. The ability to organize what you have heard discussed at a business meeting in a meaningful way and then reduce that into written form for subsequent deliberation back at the office is crucial. This is what the client would expect you to deliver, and he gets very upset if he is asked to pay for the attendance of a whole team of lawyers at an important negotiation meeting, and then the subsequent report fails to record in a succinct manner the negotiation progress, discuss the factual issues, relate those factual issues to relevant legal principles or statutory provisions, identify the pros and cons and finally, and most importantly, recommending a proposed course of action.

The average client does not feel disposed to pay someone to tell him - "On the one hand, it is this, but on the other hand, it is that. It's your call, please decide". Even if it *is* a 50-50 situation, the client would expect to know your preference. Bear in mind that it is that preference or recommendation he is paying real money for.

Further, if you bring a team of assistants to a meeting, your client is likely to expect everyone in the team to be familiar with the issues and able to participate, especially you, the leader. There is nothing more annoying for the client than to have to pay for the "services" of a **nominal** leader of a team.

The Practitioner

The modern practitioner is a very complex entity. We can talk about him all day. But for this morning I shall only touch on two aspects of

that complex entity: the “**Mode of Practice**” and “**the Trainee**” (and within that term, I shall include the newly qualified practitioner).

Mode of Practice

Nowadays, marketing takes on a different meaning, requiring a different approach. Market forces demand of the practitioner different and varied skills. You have to go to the client and find out what he wants. You have to show him that you have got something to sell, and explain to him why he should buy from you. Mundane as it may seem but it boils down to what have you got to sell.

The interface between a lawyer and his client is being re-drawn and their relationship re-defined. The commercial nature of our work has placed us in greater alignment with a business. What the client expects of his lawyer is exactly the same as what he would expect from any other service provider. He would expect to see and discuss his case with the lawyer, not his clerk. He would expect his solicitor to personally know about his case, and he would expect to be able to locate his solicitor in the office during normal office hours! In short, the client expects a law firm to be managed and provide service to him in exactly the same way as any other business. Whether solicitors practice is a business is a moot point but for the client a law firm *is* a business.

The issue of future development rests with the local practitioner. He must identify the elements of the new environment, the needs and expectations of his **prospective** clients, and answer to those needs and expectation through re-tooling and re-positioning. Perhaps we can learnt

from the way the accountants profession has developed over the years. They have ventured into areas of work unrelated to their traditional functions, for example, privacy audits, which has nothing to do with numbers or preparation of financial accounts. They are engaged in feasibility studies, risk transfer schemes, and so on. Some law firms are involved in similar kind of work but I suspect that our local practitioners are lagging far behind.

Looking ahead, we need to develop specialized groups of practitioners engaging in specific areas of practice. I believe we already have some groupings, e.g. land law, family law, etc. I believe that these existing groupings and other new alliances should take a much more active, visible and publicity-oriented approach in promoting their expertise in their specialized area of the law and the services that they provide, or can provide, to the community.

We can learn from other jurisdictions. The United States would be a good place to start. They have numerous professional groups that provide mutual support to practitioners engaged in specific types of work. Their collective efforts are rewarded by greater exposure publicly, which translates into more work and more business. They have groups ranging from the more traditional areas such as personal injury to thematic subjects such as environmental protection and consumer rights to globalized legal issues such as anti-dumping and cross-border trade disputes. Practice-specific groups such as The National Association of Consumer Advocates in the U.S. and the American Immigration Lawyers Association adopt a high profile in advancing their cause, publicly commenting on policy developments within their remits, sharing their knowledge and expertise,

making known to the public the value of their work and constantly expanding the legal market that they serve.

We need to find ways to organize the profession to maximize our collective strength and project it to the general public. We need to venture beyond our traditional areas of work, adopt a business-oriented approach and look at the legal market as a market, and re-visit with courage controversial issues such as class action legislation.

Law firms need to review their management style and become more cost conscious in terms of staffing, use of technology to replace manual operations and output-based remuneration. The time-honoured practice of the founder or retiring senior partner retaining his office (and secretary) and share of income (but not his share of work) is something of a curiosity that should be reviewed. In the past, an army of unqualified staff in large open offices might have impressed a client, but not anymore. Quality clients nowadays will want to know how many qualified lawyers there are in a firm, what are their respective expertise and skills and what is the client base. International clients would expect their lawyers to have cross-jurisdictional expertise, which generally translate into memberships in cross-border link-ups. Such association represents a law firm's research capability and ability to access information on foreign law and to provide service on multi-jurisdictional issues. Unfortunately, such association may not occur unless the local firm itself is of reasonable size, and therefore beyond the reach of many of our local practitioners. Mergers and consolidations would help but no sign of that happening.

Clients of today are not the clients of yesterday. They are knowledgeable, profit-oriented, cost conscious and demanding. Corporate and institutional clients often have as much legal skills within their own organization as the law firm they instruct, if not more. They could well be experts in their own field. In this information age, the notion that a client goes to see his lawyer because he does not know the law is somewhat outdated. The re-definition of the relationship between the client and his lawyer means changing the way solicitors conduct their practices, change of mind-set, and change of practice rules.

There may be situations where certain law firms have excess resource which they can share with other practitioners. Such excess resource may represent significant economic value in the form of knowledge of foreign laws or expertise in handling a specific kind of work such as international arbitration, anti-dumping or admiralty. Consideration can be given to set up a *Resource Exchange*. I draw some inspirations from the concept of *Emission Trading Program* which came about as a result of the *Kyoto Climatic Protocol* - by that program industrial sources which produce less emissions than permitted can trade the excess capacity with other polluters who are unable to meet emission targets set by the national authority.

From my own experience, I have witnessed U.S. attorneys instructing other U.S. attorneys to handle specific issues in a particular cross-border transaction. It is a common occurrence in the U.S. and it works fine. Perhaps some critics will say that it would not work in Hong Kong, citing risk of client pinching and client confidence and perhaps matter of 'face' for the instructing lawyer. I believe it is a matter of mind-set. If there is value to

be shared, it is at least worth exploring ways and means to tap that source of value.

A Resource Exchange can be a private arrangement between a group of practitioners. Or, it can be something more formal and structured, and regulated by, for example, the Law Society. Such sharing can only benefit the profession as a whole, and allow smaller firms to accept work which they would not normally do because of absence of in-house expertise.

The Trainee and the Newly Qualified

In considering the future of the profession, I look at the trainee first before all else. The ‘trainee’ provides the answers to what we are and why we are. In them, we need to find a new breed of practitioners, unbound by tradition, thirsty for knowledge and responding with vitality to the promises of the new century in a new global order.

The ‘trainee’ is also the reason why we must persevere in the face of mounting challenges, and make those difficult decisions, if the profession is to remain relevant to the community.

The personal attitude of the trainee is the one most crucial factor in the shaping process. I would go so far as to describe it as the deciding factor. Without a positive attitude on the part of the trainee, the best of educational programs and the most comprehensive of training facilities will not produce any worthwhile member for the profession. Their willingness to learn, the courage to face up to challenges, the ready (and willing) acceptance

of professional ethics and values, and the ambition to excel will determine the quality of the output.

To our young friends, may I remind them that society has invested heavily in them. University places are now far more accessible than in earlier years. There is a price to pay for such accessibility, and that price is the acceptance of competition. And competition translates into a continual process of improvement and development. Bear in mind that the flip side of your principal's demand could be an invaluable opportunity to gain more experience; his instructions to you to handle something unfamiliar and difficult over a weekend could be a rare chance to acquire knowledge and experience, which may not be repeated.

The same is true of the newer members of our profession. I only need to relate to you my experience of seeing a large group of younger members queuing to sign-out of a seminar in full view of the principal speaker and *before* he had completed his presentation. It was a quality seminar and the speaker was an acknowledged expert in his field. Obviously, those attendees were only there for the CPD points. Apart from being an affront to the guest speaker, it is a dismal reflection of the attitude of some of our younger members.

May be the young members' anxiety to leave had something to do with the subject matter being discussed. It was not a subject that they could easily relate to in terms of their everyday work, such as conveyancing or litigation. The subject that was being discussed was to do with world trade and the competitive advantages of regional economies, but, unfortunately, with only a limited dose of legal content - somewhat esoteric

as a subject. But for anyone who has any vision at all about the future, about the way forward for this jurisdiction, anyone who has any desire to broaden his understanding of the world or of developments in the region, such a subject is of importance. If, indeed, such a subject is of no interest to our young practitioners, how are we ever going to acquire the knowledge and skill to undertake work involving cross-jurisdictional or cross-border issues.

We often talk about the new economy, the digital world, the information age and we take pride to be part of it. But, unless we seize every opportunity to learn more about it, to understand what it is all about, unless we push back our personal horizon beyond our daily sights and sounds, we shall never be a part of that big new world.

At international law conferences, I have often been disappointed to find so few of our local practitioners participating in them, whether as speaker or as delegate. Jurisdictions with a robust profession would usually field credible contingents. Cost is an issue and incentive to participate is another. Lack of visible tangible return may be another reason. But if I were one of those businessmen present at that seminar I would have a pretty poor impression of our young practitioners.

We need to bear in mind that information and knowledge do not come cheap, in terms of investment in time and money. Unless we are willing to make that investment, information, knowledge and ensuing skill will remain beyond our reach.

I cannot leave our ‘trainee’ and ‘newly-qualified member’ without asking his principal to ask himself how much has he done to ensure

his successor will in the course of time become a valuable member of the profession, someone worthy to take the principal's place when he retires. Has the principal actively encourage his trainee (and newly qualified assistant) to attend refresher courses, **including** those that do **not** provide CPD points? Has he willingly provided financial assistance for such attendance? It is a question of investment. All of us who has a stake in the outcome must decide for ourselves how much investment we are willing to undertake.

There are, of course, many more issues affecting the training of newcomers, not least, legal education. A most important issue. We would not have time to go into this, and in any case the subject is under review and I am sure we will all be following the development with great interest.

The Regulator

The modern regulator has two service targets: the profession and the community. In serving the profession, it functions, first, as a regulator, and, secondly, as facilitator in business promotion. The second service target (namely, the community) is a flow-on from the first. The benefits of good regulation and the creation of an efficient legal market are the fruits that would be enjoyed by the community.

As regulator

From the perspective of the consumer, the demand he makes of the regulator is relatively straightforward. He expects protection of his rightful interest, and, in the event of dispute with his legal adviser, he expects

an efficient dispute resolution mechanism and, where applicable, fair compensation. Tied to these very reasonable demands, the regulator ensures the quality of new entrants and regulation of practitioners. The regulator is expected to issue best practice rules which operate as benchmarks against which the consumer can judge whether he has been fairly and properly served by his chosen legal adviser.

Successful regulation is predicated upon acceptance on the part of the regulated. The level of respect commanded by the regulator is of critical importance and the representational structure of the regulator is directly relevant. These are important issues and underpin the benchmarks which the regulator must set for himself.

There are other issues relevant to the role of the regulator, for example,

- (a) the development of ‘a code on fair practice’ to deal with conduct as between practitioners to strengthen the ‘no unfair competition’ practice rule,
- (b) the role of the regulator as business facilitator, and
- (c) the promotion of a management culture that could turn the profession into a corporate machine that is profit-oriented.

These are important matters requiring a re-examination of the traditional notion of a profession. Although we do not have time to examine them today, they are **not** issues of tomorrow.

Regulator as Business Facilitator

Let me just say a few words on business facilitation. Successful business facilitation is essential to the maintenance of vitality and viability of a modern profession, and business facilitation is particularly important for the local practitioner.

There is probably less demand on the local regulator (as a business facilitator) from the major international firms. The multi-nationals are likely to have their own views of the legal market and have formulated their own business strategy. They operate in different markets and they have honed their skills and complemented their diverse expertise in line with their business objectives. Their contribution to the legal market lies in the richness of those skills and expertise. The local legal market benefits from the reputation and recognition gained through the provision of their services to multi-national clients. These multi-national practitioners have an important role to play. They are the visible face which major clients, local and international, can and do recognize. Not only the market as a whole benefits but the local practitioner also benefits from the presence of these multi-nationals through skill transfers, albeit, in a limited fashion. So, by and large the multi-nationals have lesser calls on the regulator as a business facilitator.

What about the local practitioner? At the present time, the local practitioner in Hong Kong operates in a very restricted market (as I have earlier commented, a market that we have created for ourselves with a somewhat shortened vision). He has a genuine need of the assistance of the regulator as a business facilitator. The regulator needs to examine what it

can do to assist the local practitioner in the exploration of new markets and new opportunities. The Law Society is doing a lot and so is the Department of Justice. We need focus with identifiable objectives translatable into economic values, and we need greater participation and cooperation from the local profession in terms of investment in time and commitment.

Conclusion

Some historical features of our local profession might have come home to roost. There is no quick fix but I am confident that we will find our own exit from the current difficulties. Just as Hong Kong has yet to emerge from the incidence of constitutional transition, our local profession faces the same challenge.

We need to catch up where we have fallen behind. The current economic situation may make diversification difficult (because of scarcity of opportunities) but we will still have to make the efforts. We have to invest in re-tooling; we have to learn to gauge and analyse market developments and then adjust our operational systems in line with business realities. In the process, we may have to down-size to purge non-productive excesses. It will be painful for some, and others will fall by the wayside. The choice of reform rests with the profession. It may be that the biggest obstacle to reform could be ourselves.

On the brighter side, Hong Kong is unique in many ways. Our infrastructures, legal system, business culture, our people, the way we do business, the way we think, all contribute to equip us to benefit from '*One country, Two systems*'. We will find our own exit from transition, re-

establish our own culture that is consistent with the new constitutional order, and find our rightful place in the national economy, which symbolizes the new powerhouse of global economic development in the new century. That is the landscape before us, and in that landscape lies the mandate for those charged with the responsibilities of guiding the local profession to the process of re-invention and ultimate success.

This brings me to the end of my paper.

Thank you, once again, for the invitation. And, may I wish you all good day and success in your practices.

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