

**Letterhead of City University of Hong Kong**

LC Paper No. CB(2)1321/00-01(01)

18 April 2001

法律學院

To:LEGCO Committee on Administration of Justice and Legal Services      School of Law

Subject:      Review of Legal Education and Training

Dear Committee Members:

Representatives of the School of Law of City University will attend the 24 April meeting relating to the on-going review of legal education. We would, however, like to make the following observations.

The issue of possible restructuring of the LLB and PCLL programmes goes to the very heart of the review of legal education. The issue of the possible elimination of the PCLL programme -- if the consultants ultimately decide to make such a recommendation -- cannot be considered in isolation from many other issues and elements in the legal education process. The goal of all of us should be to see how we can bring legal education in Hong Kong to the highest international standard. What we need to ensure is that the Hong Kong government and the universities are prepared to create a system of legal education that will produce world class lawyers who can serve Hong Kong society with excellence and who can compete with lawyers now being trained on the mainland and in overseas jurisdictions. The report and recommendations of the consultants will, we expect, tell us what the international standards and benchmarks are and what hurdles we face in Hong Kong in achieving them.

Maybe there is a future role for the PCLL in a restructured programme of legal education and maybe there is not. We need to find out what the consultants have to say about this in the context of their overall findings. The review provides a once-in-a-lifetime opportunity for legal education and the profession in Hong Kong and we must all be open to the idea of significant and dramatic changes and be prepared to help surmount whatever hurdles are put in the way for ensuring world class standards of education for lawyers in Hong Kong. It is important that we not be locked in to traditional patterns of legal education.

In November the School of Law of City University prepared a major response to the preliminary consultation paper. We have, within the School, had on-going discussions about the future shape of legal education in Hong Kong. While we recognize the concerns expressed by the University of Hong Kong Faculty of Law, we are keeping an open mind on this and look forward to responding to the consultants' final report. As noted above, the role of the consultants is to educate all of us on standards and options and it is important that we learn from them and consider their recommendations in context.

I am enclosing another copy of our November response for your information. **(Appendix I)**

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I also enclose the following three items in English and Chinese:

An article on Legal Education Reform at CityU (April 2001) (**Appendix II**)

"Imagining the Future: Training Hong Kong Lawyers for the 21st Century", *Hong Kong Lawyer*, December (1999) (Making the case for basic law training at the post-graduate -- post B.A. or B.S. -- level) (**Appendix III**)

"Shaping the Future of the Profession," *Hong Kong Lawyer* December 1998  
(Making the case for expanding the LL.B. programme to 4 years) (**Appendix IV**)

**Yours sincerely**

**David Smith**  
**Acting Dean**  
**School of Law**

**Encl.**

DNS/sl

香港城市大學  
City University  
of Hong Kong  
School of Law

**Legal Education  
and Training  
in Hong Kong:  
Preliminary Review**

**Response to  
Consultation Paper**

**November 2000**

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## Abbreviations and acronyms

ACLE	Advisory Committee on Legal Education
ACLEC	Lord Chancellor's Advisory Committee on Legal Education and Conduct
ADR	Alternative Dispute Resolution
ALE	Advanced legal education
APLEC	Australasian Professional Legal Education Council
Bar Association	Hong Kong Bar Association
BVC	Bar Vocational Course [of England & Wales]
CLE	Continuing legal education
CPD	Continuing professional development
CPE	Common Professional Examination [of England & Wales]
CPEC	Common Professional Examination Certificate [of Hong Kong]
City University	City University of Hong Kong
DOJ	Department of Justice
EPP	Established Practitioners Programme [of the English Bar]
HKSAR	Hong Kong Special Administrative Region
HKU	Hong Kong University (the University of Hong Kong)
IPLS	Institute of Professional Legal Studies [of New Zealand]
JD	Juris Doctor
JEB	Joint Examinations Board
JUPAS	Joint University Programme Admission System
LACC	Law Admissions Consultative Committee [of Australia]
LAD	Legal Aid Department
Law Society	Law Society of Hong Kong
LLB	Bachelor of Laws
LLM	Master of Laws
MMU	Manchester Metropolitan University
LPC	Legal Practice Course [of England & Wales]
NPP	New Practitioners' Programme [of the English Bar]
OLQE	Overseas Lawyers Qualification Examination
PCLL	Postgraduate Certificate in Laws
PLT	Practical legal training
PRC	People's Republic of China
PSC	Professional Skills Course [of England & Wales]
QLTT	Qualified Lawyers Transfer Test [of England & Wales]
SPACE	School of Professional and Continuing Education
TC	Trainee solicitor contract
WTO	World Trade Organisation

## **The legal and social environment affecting legal education and training in Hong Kong**

Chapter 1 of the Consultation Paper document locates the present debate about legal education in some social context and raises some 'big' issues. This being the case, City University Law School's response to Chapter 1 is necessarily more broad-ranging than the more specific responses in succeeding chapters.

### **1.1 The Social Context**

The current review of legal education in Hong Kong takes place in a very specific social context and is, therefore, somewhat different from similar reviews conducted in the UK and Australia. Although each shares certain common 'drivers' for change (e.g. globalisation of the economy, growing specialisation of legal services) and may therefore share certain common responses, Hong Kong is different because its debate about legal education is also driven by the very particular circumstances of the post-1997 situation.

Though never specifically addressed by the Consultation Paper, this aspect of Hong Kong's current situation cannot be ignored. It particularly shapes the contours of the debate about English standards. Demands for an improved level of English language proficiency amongst law graduates may seem to be driven simply by the demands of a global market for legal services, but they touch on far wider social issues than this. As in other territories formerly part of the British Commonwealth, the debate about the place of English is connected to broader issues. Language is a way of seeing the world; it has often been seen an expression of national identity and a carrier of local culture. Where English, has remained the dominant language in these it has often been criticised by some as the carrier of an alien Anglo-centric culture.

Elsewhere, this debate has stimulated calls for the complete replacement of English by local or 'mother tongue' teaching. Echoes of this can be heard in Hong Kong. It is thus impossible to separate out from this wider debate the issues raised in this review about the place of English in the language of the law and in legal education.

### **1.2 Problems of Perception**

In Chapter 1 the Consultation Paper identifies what law teachers and legal professionals see as:

1. The 'problem' or 'problems' with legal education/new recruits to the profession;
2. the causes of these 'problems';
3. the possible 'cures' or need for change.

The first point to be made here is that the word 'problem' must be placed in inverted commas, for there is a real absence of any solid empirical evidence indicating that a 'problem' exists at all, and if it does exist, what exactly it is. Clearly, some people have very

definite views on this. However, simply because some people say there is a problem does not make it so, nor does it make their diagnosis of the problem the correct or only one.

The Consultation Paper authors note that they are not agreeing/disagreeing with any of the views expressed to them but are only reporting these views and trying to assemble these under certain headings. However, since these headings both define 'the problems' and set the agenda for future discussion of the reform of legal education, it is important to ask ourselves, as we read the Consultation Paper:

1. **who** is saying there is a 'problem'?
2. **what** in their view the 'problem' is;
3. **whether** there is any consensus about 'the problem';
4. **whether** the 'problem' lies more in the eye of the beholder;
5. **whether** we think the parameters of the debate should be different from those outlined in the Consultation Paper itself.

The views stated in the Consultation Paper indicate a sincere and deep concern amongst those in a position to influence the future of legal education in Hong Kong. Though there is a lack of solid empirical evidence to support them, as the authors point out the *perception* that there is a problem is central to this debate. All the 'stakeholders' need to listen to what is being said by others. It would, therefore, be foolish and discourteous to ignore them.

At the same time, however, it is an unwise policy maker who would proceed on the basis of perception alone. Where similar reviews have been undertaken in the UK, USA and Australia, these were assisted by empirical research, so that any subsequent restructuring of legal education proceeded on an informed basis. Without this kind of considered input, we cannot simply assume that the views expressed represent a 'correct' understanding of the situation. Clearly, however, they do tell us something. The question is, exactly *what* do they tell us?

### **1.3 A Gap Between Community Expectations and the Kind of Lawyers Being Produced by the Law Schools**

One of the claims made in the Consultation Paper is that a gap exists between the community's expectations of lawyers and the kind of lawyers being produced. Whether this is true or not, clearly some sectors of the community **believe** it to be true and **do** have certain expectations of what kind of graduate the law schools should be producing. Moreover, most respondents agree that the blame for failing to produce such lawyers lies with three chief culprits:

1. the law schools;
2. the local education system in Hong Kong more generally; and
3. the students' themselves.

Implicit in this discussion, however, is the assumption that such a 'gap' ought not to exist, and that it should be resolved by closer alignment between the community's expectations and

what the law schools do. It may be, however, that we should embrace some degree of 'gap' between the two, since part of what law schools do and do well is inculcate a scholarly understanding of the law. They do not exist simply in order to produce 'ready made' legal practitioners.

## 1.4 Which Community, Whose Expectations?

This brings us to a core issue for the review. At the end of Chapter 1 the question is posed as to whether we are training the right kind of lawyer. This is no straightforward question. What is the 'right' kind of lawyer? Who says so - the universities, the legal profession, or the community? Who constitutes 'the community'?

This is an important question since at the heart of the review lies the assumption that there is a 'gap' between the community's expectations of lawyer and the kind of lawyer the law schools are producing. It is thus pertinent to ask: who is 'the community'? Does 'the community' simply consist of the *present providers and users* of legal services? Or does it comprise the general population of Hong Kong?

There is no one, single community in Hong Kong - there are various social groups in society, some of which are better served by lawyers than others, and some of which seem to have a louder and more influential voice than others. In comparison with the voice of the legal profession, for example, the views of the wider Hong Kong society are rather weak and poorly represented in the Consultation Paper. The authors are clearly aware of this deficit and have made some attempt to access the 'community's voice' by interviewing various social service groups. Unfortunately, the parlous state of socio-legal research in Hong Kong means we know nothing about what the ordinary people of Hong Kong - the wider 'community' - wants and expects from its lawyers, nor do we have a very good understanding of the ways in which legal education needs to change to better meet these 'unmet' legal needs.

These are issues which have been seriously addressed by the profession and the academy in other jurisdictions, where there is a greater recognition of the integral relationship between the legitimacy of 'rule of law', access to justice and legal education. The absence of such similar attention in Hong Kong is itself indicative of a 'blind spot' shared by academics, government and the profession alike. This blind spot can itself be explained in terms of the over-arching conception that law in Hong Kong exists mainly in order to facilitate economic development. This in turn stems from the conception of Hong Kong primarily as an 'economy' rather than a 'society'. The work of lawyers is seen as meeting the needs of the market and securing investor confidence by upholding the Rule of Law. The day-to-day needs of ordinary people have typically figured somewhat lower down the list of both the profession's and the academy's priorities.

This conception of what law is **for** in Hong Kong permeates many of the comments made to the consultants. Moreover, it has coloured the conception of which community and whose expectations the law schools are failing to satisfy.

There are essentially four basic 'schools of thought' represented in Chapter 1. They are dealt with below under the following headings:

### 1.4.1. 'Legal Education Should Produce Lawyers Capable of Meeting the Needs of the Economy'



- 1.4.2. 'Legal Education Should Produce Lawyers Capable of Meeting the Needs of the Community'
- 1.4.3 'Legal Education Should Produce Lawyers Capable of Entrenching the Rule of Law in Hong Kong'
- 1.4.4 'Since Hong Kong Legal System is a Common Law System based on the English System, and Since English is the Language of International Commerce, Legal Education Should Produce Lawyers with Excellent Skills in English'

#### **1.4.1 'Legal Education Should Produce Lawyers Capable of Meeting the Needs of the Present & Future Economy'**

On this view, the 'problem' is that Hong Kong's system of legal education is not presently producing lawyers of the kind needed to maintain Hong Kong's competitive edge. Implicit in this is the view that legal practice and education should be driven principally by the economy. In recent years, Hong Kong has become more of a service economy. It is now an international financial centre in a changing global economy. The 'problem' is therefore seen as six-fold in nature

1. English is the language of international commerce, but we are failing to produce graduates whose proficiency in English is sufficient to meet the expectations of international clients and law firms;
2. We are failing to produce graduates with the legal skills demanded by international investors, including expertise in corporate & commercial law, and Alternative Dispute Resolution (ADR).
3. We need to keep the costs of litigation in check if Hong Kong is to remain competitive; this means lower legal costs for barristers in particular.
4. China's entry into the World Trade Organisation (WTO) means that Hong Kong will no longer be *the* 'link' between China and the 'West'. Foreign lawyers will be able to practice in China. Hong Kong lawyers will lose their competitive edge unless they have 'something else' to offer.
5. We need to produce more lawyers equipped "to deal with the Mainland market", which means producing more lawyers fluent in Putonghua, who also possess a sound understanding of both the common law and civil law (PRC) traditions and legal systems (including ADR);
6. If we place too much emphasis on producing lawyers proficient in Chinese language, law and legal system, then we will simply be producing Hong Kong lawyers who can do what Mainland lawyers and foreign lawyers in China already do (and do better). Hong Kong law graduates would thus have no competitive 'edge'. Hong Kong's legal profession therefore needs to retain and develop the one advantage it possesses i.e. English language proficiency and expertise in the common law.

All of the above flow from the view that 'legal education should be geared towards producing lawyers capable of meeting the needs of the economy. There are, however, two competing sets of expectations of what such a lawyer would look like. One is the lawyer who can function in the world of international commerce, with the skills and knowledge that requires.

The other is the kind of lawyer who can function well in the 'China market' for legal services. Of course, both 'types' of lawyers may share the need for certain kinds of skills and knowledge. However, there is no escaping the fact that they also require very **different** kinds of skills and knowledge. One question is, therefore, whether a single law graduate could ever hope to meet both sets of requirements.

Perhaps a failure to meet expectations here reflects the fact that the expectations are themselves extraordinarily high, and certainly far higher than those demanded of law students in other, less 'mixed', jurisdictions where the need for such legal 'arbitrage' is less pronounced. To meet such expectations a young lawyer would need to be trilingual (fluent in English, Cantonese, and Putonghua), well-versed in the common law and civil legal systems, possess the appropriate substantive knowledge of the law both in Hong Kong and China, be capable of critical and independent thinking, and be familiar with a range of legal skills. It may be asking too much to expect such a polymath to emerge from the current three-year LLB and one-year PCLL programme. Striving to be 'all things to all men' may also be a recipe for failure.

Assuming we *do* wish to produce such an all-round law graduate, there needs to be some radical re-thinking about the length and content of the LLB degree, as well as of the resources allocated to legal education. The question of resources is crucial to our ability to expand the number of electives offered at LLB and PCLL level, a broader range of electives being central to providing a broader legal education. Without additional resources (staff, funding, texts etc), the law schools will be forced to concentrate on producing one 'type' of lawyer to the detriment of the other. It would be far better if we could instead look to a future in which the law schools produce lawyers capable of meeting a variety of demands. This may require us to restructure the law degree to permit areas of specialisation and/or specialised 'streams' of legal education. It also requires adopting a more long-term approach to the development of legal education, rather than simply reacting to short-term needs. There is a danger that focussing too much on the economic role of lawyers may make us short-sighted. One lesson from the recent past is that Hong Kong lawyers have proved ill-equipped to move into new areas of work - with the decline of the property market, many have lacked the skills necessary to create new markets for legal services. Perhaps we need to learn from this experience.

The details of what kind of legal education might best produce lawyers capable of serving both kinds of markets clearly requires a great deal of fleshing out. One possibility would be a more flexible degree structure which allows students to accomplish *all* or *some* of the skills outlined above.

We might also consider the feasibility of running separate streams in which students engage in the study of certain law subjects in: (i) English only; (ii) Cantonese only; (iii) Putonghua only. It might, for example, be more appropriate for students wishing to specialise in Chinese law to study certain subjects in Putonghua, since texts and materials already exist in these areas. Those wishing to specialise in international and commercial law could study the appropriate subjects in English, developing their language skills with subsidiary English courses. Arguably, subjects such as Criminal law ought to be taught primarily in Cantonese, since (a) most of those appearing in the criminal courts are from the Cantonese-speaking population; and (b) it is a fundamental right of a defendant to be tried by a jury of his/her peers and to understand the case against him/her - something which the Hong Kong legal system presently fails to properly provide for. By the same token, it may be that subjects such as Family law, Housing law, Welfare law and Employment law ought also to be taught primarily in Cantonese, with Cantonese materials, since these are the areas of law closest to

the day-to-day needs of the local community. On the other hand, subjects such as Constitutional and Administrative law and Legal System are arguably so important that they must be delivered in both languages.

It is perhaps time to face the possibility that at some future date, legal services in Hong Kong will need to be delivered more in Cantonese than in English. Such has been the fate of almost all of Britain's former colonies. Arguably, therefore, we should start preparing ourselves by recognising now the need to develop teaching and materials in all the core courses in both English and Cantonese.

### **1.4.1A Utilitarian Attitudes to Learning**

For the Law Schools themselves, there is a more difficult question, which is whether legal education *should* be geared towards meeting the needs of the economy i.e. whether 'maintaining Hong Kong's competitive edge' provides a pedagogically sound rationale for legal education. This issue has to be discussed in the light of other criticisms voiced in the Consultation Paper, to the effect that Hong Kong students are utilitarian in their approach to legal education. The argument is that Hong Kong students see education as a means to an end not an end in itself, a means to social mobility and higher income rather than 'loving learning' for its own sake:

"The focus is not upon the love of learning for its own sake or education for its own sake but an acquisition of skills or qualifications with a narrower view to passing exams and obtaining employment".

Assuming this to be true, we have to ask ourselves two questions:

1. should legal education continue to look for its rationale to the 'needs of the market'? and
2. where have Hong Kong students got this idea from?

The idea that education is a means to an end rather than an end in itself has not simply fallen from the sky, nor does it make any sense in 21st century Hong Kong to talk of it as being a throwback to traditional Confucian values. (Who in the 'West' would claim that 'Western' societies still follow Socrates or Aristotle, or even the Enlightenment philosophers in their attitudes towards education?). Understanding where Hong Kong students get their utilitarian approach from requires some understanding of the history of the colonial government's attitude towards and policy for mass education in Hong Kong, especially since the 1970s. It also requires us to think about the dominant values extolled in Hong Kong (making money, social status, hierarchy). Since the 1970s in particular, education has been promoted as *the* means of social mobility. In other words, it has been promoted as a means to an end - improved personal life chances, better jobs, higher salaries, higher status, as well as an improved economy for all.

If in Hong Kong money and status are valued above all things, then we can hardly criticise the students for pursuing the 'Hong Kong Dream' through educational means. Moreover, the problem is rather more widespread. That the utilitarian approach is alive and well and thriving within the legal profession itself is revealed in many of the comments made to the consultants. Numerous respondents see law not as an end in itself but as a means to an end i.e. servicing the economy. This utilitarian attitude has been somewhat encouraged by the profession itself for, with some notable exceptions, few solicitors and barristers have seemed

willing to pursue non-legally aided cases 'for the love of the law', 'for the love of justice', or because they care about the development of the law in Hong Kong. The Government's own emphasis on the need for 'knowledge skills' and information technology also depicts knowledge not as a desirable 'end in itself' but as a means to an end i.e. facilitating Hong Kong's future prosperity.

Law teachers and the universities have also contributed to this utilitarian attitude. In the past, legal education in Hong Kong has placed too much emphasis on courses geared to what the profession and/or the market demands, rather than to what scholarship requires. Gaining a law degree has been seen primarily as a route to 'becoming a lawyer' than 'loving the study of law for its own sake'. Legal education has erred on the side of rote learning, memorization and the passing of exams, rather than on a wider understanding of the role of the law and lawyer in society. Moreover, the curriculum has conveyed the implicit message that law is more about people with property than those without.

The utilitarian ethos of Hong Kong education has been widely criticised by a number of leading academics. They compare secondary and tertiary education in Hong Kong unfavourably with overseas education, singling out the tendency towards memorisation and rote learning for particular criticism, and relating it to a preference amongst staff for quiescent rather than questioning students. The fact that many legal academics have not 'loved the learning of law for its own sake' is perhaps reflected in the dearth of basic texts and scholarly books produced by local academics on Hong Kong law.

Teachers of law in the universities have a particular responsibility to overcome student quiescence by adopting methods of teaching which will counter law's tendency to encourage students to simply follow the authorities 'in the books'. Law teachers need to change both *what* they teach and *how* they teach it. Concomitantly, if what is wanted is students who 'love knowledge' and see it as end in itself, then the university institutions need to encourage 'love of knowledge for its own sake' by providing institutional support for, and the celebration of, original research by staff and students.

#### **1.4.2 'Legal Education Should Meet the Needs of the Community'**

At the other end of the scale from the needs of high-flying international law firms dealing with commercial law is the view that what law schools should be doing is producing more lawyers who are willing and able to improve access to justice in Hong Kong.

Despite the dearth of empirical data on 'law for the poor' in Hong Kong, a cursory glance at some basic figures reveals that the mass of the HK population does not have ready access to a lawyer, could not afford a lawyer, and lacks the kind of free or cheap community law centres available in other countries. Moreover, legal aid in Hong Kong is not administered independently of the state, and certain provisions regarded as basic legal rights elsewhere (such as the right to free legal advice at the police station) simply do not exist.

The 'problems' identified by this school of thought are that:

1. the costs of litigation are high and well beyond the reach of the ordinary person
2. Despite the fall in income which is driving some firms to relocate to areas where office rents are cheaper, the mass of Hong Kong law firms are geographically concentrated in Central and fail to serve the outlying districts where most Hong Kong people live.

3. English is still the dominant language of the legal system but is not widely spoken by the community. Hence the system, the lawyers and the legal education which produces them are failing to meet the legal needs of the community;
4. This language issue directly affects the legitimacy of 'trial by jury' since in Hong Kong defendants tend to be tried not by their 'peers' but by those who meet the English language requirement (about 170,000 people out of 7 million).
5. The lawyers we produce are said to lack the linguistic and social skills necessary to communicate with clients - one issue is *which* clients: the English-speaking clients of high finance or the ordinary person in the street?

As previously pointed out, there has been no systematic research into unmet legal needs in Hong Kong. However, a cursory glance at the distribution of law firms and the ratio of lawyers per head of population suggests that such needs must exist.

In the USA the population/lawyer ratio changed from 1 per 695 persons in 1951 to 1 per 303 persons in 1995; by 1999, this was 1 per 270 persons. In the United Kingdom (England & Wales, N. Ireland excluding Scotland) the ratio in 1999 was 1 lawyer per 500 persons; in Canada, it was 1 per 729; in Australia, 1 per 533 and in Singapore 1 per 912.

The figures for the USA and UK are based on the 1999 Law Society of England & Wales Annual Statistical Report. That report interprets these figures as indicating room for considerable expansion of the profession. By contrast, the figure for Hong Kong is 1 per 1335 (in 1999 this was nearer to 1 per 1,813). Rather than interpreting this as grounds for expansion, however, the Hong Kong legal profession called for a *restriction* of numbers entering the profession, arguing that there were "too many" lawyers in Hong Kong.

Moreover, Hong Kong law firms are not distributed evenly throughout the territory. The geographical distribution of law firms reflects the kind of services lawyers provide. The focus is typically on commercial and property law, with the day-to-day problems of ordinary people (especially poor people) coming some way down the list. Law firms are thus highly concentrated in Central and Admiralty, providing services mostly at the commercial end of the spectrum. Of the law firms listed in 1999, 232 were located in this area, whilst only 30 had offices in the New Territories, and 31 in Kowloon.

Adjusting for this rather heavily skewed nature of legal provision, the 'true' ratio of lawyers to population is about 1 lawyer per 3,000 persons in Kowloon and 1 per 8,500 in the New Territories, yet Kowloon and the New Territories are the parts of Hong Kong in which two-thirds of the Hong Kong population lives.

Thus whilst the majority of *providers* of legal services are overwhelmingly concentrated in the Central business district, the vast majority of potential *consumers* of legal services live and work elsewhere.

As Economides and others in the UK have pointed out, access to justice is not simply a measure of the availability of legal aid - it is also a question of the spatial and occupational distribution of law firms. In the UK, this is partly a matter of the under-representation of lawyers in rural areas, UK solicitors being generally concentrated in the large urban conurbations (about 50% are in London and the South East). However, only about 15% are located in the City of London, i.e. in London's commercial centre.

By contrast, as the above figures show, the vast majority of Hong Kong law firms are located in the Central Business District. Access to legal services in Hong Kong is thus highly skewed towards the provision of commercial legal services located in a relatively small area around Central and Admiralty. Unlike the UK and the USA, this means that those without ready access to legal services include not only those living in the rural areas but also the vast majority of the population, most of whom live in the urban conurbations.

A cursory analysis of the kinds of work listed by barristers in Hong Kong also suggests that the majority are engaged in commercial work, and that relatively few undertake legal aid or pro bono work. Areas of law specifically under-represented include Civil Liberties (only 24 out of 700+ barristers cite this as an area of interest); only 20 mention Public Interest litigation, 12 cite Mental Health law, 14 Election Law, 47 Family Law, 41 Immigration Law, 13 Charities Law, 20 Tax law, 7 Telecommunications Law, and 52 Employment Law.

This preference for commercial work is further confirmed amongst the 440 local firms and 50 international firms of solicitors in Hong Kong. In 1999, 289 of these listed their areas of expertise as including Company Law, 276 as Civil Litigation, 264 as Conveyancing, 259 Probate & Wills, and 237 as Bankruptcy Law, compared to 26 who mentioned Constitutional Law and 135 Consumer Law. However, 265 did cite Landlord & Tenant as an area of expertise, whilst 222 cited Employment Law, 233 Personal Injury, and 189 Immigration work.

At the Bar and in the Law Firms, where legal aid work figures at all, it appears to be mainly criminal legal aid, legal aid being available to the defendant at the Magistrates' Court (but not at the police station).

The problem is not confined to the fact that the kind of services provided by the majority of lawyers do not match the needs of the local population. Since the early 1990s there have been repeated complaints about the high fees charged by barristers in Hong Kong. Fees are said to be higher than almost anywhere else in the world, and at least 50% higher than those charged in London. In his introduction to *Reform of the Civil Process in Hong Kong* (1), Mr. Justice Henry Litton (as he then was) commented on the specific problems faced by the so-called 'sandwich class' in obtaining legal services, observing that "An assumption engrained in the legal system is that lawyers' fees would be moderate, and that legal redress is available to everyone. The Rule of Law applies to all - it is not the exclusive privilege of those who can afford to pay" (2).

However, as noted by the social services respondents cited in the Consultation Paper itself, as well as by lawyers such as Pam Baker (who has single-handedly undertaken pro bono work for large numbers of litigants) local lawyers seem unwilling to develop services which would meet the 'unmet legal needs' of poor people. 'Law for the poor' and public interest lawyering are also woefully under-represented in the law degree, as is the cultivation of a 'service ethic' amongst law students.

By contrast, in the UK, as entrance to the profession has become younger and more diversified, there has been an increase in the number of solicitors carrying out pro bono work. 64% of UK solicitors in private practice conducted some pro bono work in 1997 compared with 40% in 1988; on average, this worked out at 37 hours of work per solicitor. By contrast, only a handful of lawyers and barristers in Hong Kong undertake any pro bono work.

One possible explanation for this difference between the UK and Hong Kong ethos is that the UK Government has taken steps to overcome utilitarian attitudes by explicitly cultivating a service ethic in legal education and the provision of legal services. In 1998, it identified the need to modernise institutions and services which are out-of-date, inefficient, or unaccountable to the people, and to make changes which would strengthen the social fabric and promote a freer, more decent and more inclusive society (3).

Part of the motive for this move in the UK was to demonstrate that the Government was a 'listening Government'; another was to underpin the Rule of Law by providing the foundation for peaceful social and economic activity. Reforms in legal education were seen as integral to improving access to justice and equality of opportunity for those wishing to take up any career associated with the provision of legal services. Those becoming barristers and solicitors were also perceived as needing to become more flexible and diverse in their range of knowledge and skills, including skills in non-court based solutions to disputes.

Enabling people to uphold their rights and defend their interests was thus seen by the UK Government as integral to its agenda for a reformed legal education. Justice, it is said, should serve everyone, regardless of their means, and everyone should be able to find effective solutions to their legal problems. Justice "must not be restricted to the very wealthy, who can afford high legal fees, or the very poor, who may qualify for legal aid" (4). To this end, the UK Government introduced a White Paper on the Justice System and Legal Services which aims to "remove old-fashioned restrictive practices that benefit only lawyers", and to provide a Community Legal Service to:

"revolutionise ordinary people's access to information about their rights, and new avenues to good quality legal services... The disadvantaged and the socially excluded will find help with the issues that affect their everyday lives... More money will reach the not-for-profit sector, which has particular expertise at dealing with the types of problems faced by poor people... people will be able to find out what their rights are and, if necessary, protect and enforce them at a predictable and reasonable cost in a system which serves everyone" (5).

### **1.4.3 Education Should Entrench the Rule of Law in Hong Kong'**

A third set of issues identified by the Consultation Paper relates to the entrenchment of the rule of law in Hong Kong. This is related to, but distinct from the economy being underpinned by legality, which sees the need for Rule of Law in instrumental terms i.e. as a requisite to secure investor confidence. Here, the problem identified by the Consultation Paper was the need to secure the confidence of local people, since the rule of law and the independence of the judiciary are seen as vital to the maintenance of their Hong Kong 'lifestyle' and wider, fundamental values. This set of issues thus raises wider political issues concerning the legitimacy of the legal system in the eyes of Hong Kong people.

Related 'problems' identified by the Consultation Paper are that:

1. if the principal areas of Hong Kong legal practice continue to be dominated by foreign lawyers, this would weaken the entrenchment of rule of law and its associated values locally.
2. currently, local legal education is failing to strengthen these values amongst local lawyers;

- 3        reducing Hong Kong's reliance on foreign-trained lawyers requires a system of legal education which produce 'world-class' local lawyers capable of obtaining work in those fields presently dominated by foreign lawyers;

This view of what legal education should be doing finds some support from Australia where Le Brun & Johnstone have noted the growth and significance of litigation involving administrative agencies (6). This, they argue, may force law schools to change their emphasis on case law. In Hong Kong, it also leads us to consider the degree to which legal education underpins the Rule of Law and its associated values. Advocates of this view hold that there is a need for lawyers to meet the community's growing demand for judicial review as well as other legal and quasi-legal mechanisms designed to make government more accountable to the people. This is especially important in a system which otherwise lacks the checks and balances of a representative government. Given that there is a growing expectation in Hong Kong society that government should be accountable and transparent, we need more lawyers with expertise in public law areas. In a society based on the Rule of Law, lawyers are needed act as intermediaries between state and citizen as well as between citizens of unequal power, wealth & status. Law schools therefore need to place more stress on the public interest dimension of law and practice.

In the UK, the Legal Advisory Group (LAG) report of 1999 argued that 10 'first principles' should guide lawyers and law schools when designing courses and delivering services:

1.        Access to justice is the constitutional right of each citizen; a denial of access can amount to a denial of justice.
2.        The interests of the citizen should predominate in policies on access to justice, not the interests of the providers.
3.        The goal is not only procedural but substantive justice.
4.        People have need for legal assistance in relation to both civil and criminal law.
5.        Access to justice requires policies which include reform of substantive law, procedure, education, information and legal services.
6.        Policies on legal services need to deploy a 'portfolio' approach of a wide range of provision, some publicly funded and some not, provided by both lawyers and non-lawyers.
7.        Programmes of reform must take account of the realistic levels of resources but these should be seen as limiting policies rather than defining them.
8.        Within civil law, more attention should be given than previously to the particular legal needs of poor people currently excluded from legal aid.
9.        The full potential of technological advances must be harnessed (e.g. to make services as cheap as possible).
10.       The constitutional right to be regarded as innocent until proved guilty should be respected as a cardinal principle of the criminal law.



City University School of Law supports the view that such principles should play a part in both its teaching and its scholarship. Law faculties exist within communities and should focus part of their attention on contributing to the development of public consciousness about the Rule of Law.

Part of the solution to this 'problem' may thus well be found in a revised vision of legal education in Hong Kong. This applies not only to what areas of substantive law are taught in the undergraduate degree, but also to the values which such a degree embodies. Indeed, the issue of what values legal education should embody is central to the review.

At first sight, it may seem that there is something of a conflict between the 'economistic' view of what kind of lawyer law schools should be producing and the view that the kind of lawyers we need are those with wider social values. However, as long as Hong Kong is so dependant on foreign lawyers in the commercial field, then the inculcation of Rule of Law values locally will be limited. Entrenching such values more firmly within the local profession thus seems to involve reducing Hong Kong's dependence on overseas lawyers, and replacing them with well-qualified local graduates who may then act as local 'carriers' of Rule of Law values. At one level, then, the goals of producing more graduates capable of high-grade commercial work and graduates imbued with Rule of Law values could be seen not as contradictory but as 'twin pillars' of a legal education designed to build up a local profession more able and more dedicated to preserving Rule of Law values in Hong Kong society.

#### **1.4.4 'The HK Legal System is a Common Law System, It is Based on the English System, English is also the Language of International Commerce, Therefore Legal Education Should Produce More Lawyers With a Higher Standard of English'**

Here we turn to the thorny 'problem' of English proficiency (or lack of it). Though we still lack any overall objective means whereby to assess it, there is clearly a firm belief in some quarters that the standard of English amongst Hong Kong's young lawyers is worse than it was 20 years ago, and secondly that their proficiency in English is insufficient to meet the demands of the large, international law firms engaged in commercial work. It is to be noted that several other surveys of local and international employers (not only law firms) also complain that poor English proficiency is deterring overseas investors and holding back bright students.

However, though there is much criticism and large amounts of anecdotal evidence to support such a view, the exact nature of the 'problem' is not clear. Nor is it clear what respondents see as the 'cause' and 'cure' for this 'problem' of language proficiency. Is what is being demanded that the law schools take the responsibility for improving students' English? This may be beyond their power, especially if (as many argue) the roots of the problem lie in Hong Kong's secondary educational system. Any remedy must therefore make reference to the Government's policy on mother-tongue teaching at secondary level. On the other hand, it may be that what is being argued is that, no matter what the cause of this deficiency, the way to deal with it as far as the law is concerned is *not* to admit students to the law degree whose English is deemed insufficient.

This has powerful ramifications. To raise the entrance requirements to a 'B' at HKCEE (as suggested by the Law Society) would, for example, deny the study of law to virtually the entire population of Hong Kong. It would also convey the message that law is an elitist subject - English as a medium of instruction is permitted in only a tiny minority of Hong

Kong schools (it is Government policy that only 100 schools in Hong Kong can teach in English).

The issue is not simply one of whether we think law *should* be an elitist profession; it is whether we think it equitable and fair for universities to deny to the majority of the population the **opportunity** to study law at the academic level. Moreover, the kind of policy suggested by the Law Society stands in complete opposition to approach adopted in the UK by the Lord Chancellor's Advisory Committee on Legal Education & Conduct (ACLEC) which specifically argued that there should be equality of educational opportunity in relation to the study of law. A knock-on consequence of such a strict and high admissions policy would be that law schools would fail to recruit from those populations which are already poorly served by lawyers in Hong Kong. Arguably, law schools should be making positive efforts to recruit more students from educationally, socially and 'linguistically' disadvantaged backgrounds, so that these students might, at some future point, make a contribution to the communities from which they came. UK law schools admit students with levels of English below those suggested by the Law Society as necessary for the study of law, and since many UK law students now hail from overseas, they are studying law in a second language. The consultants should consider examining the policies these law schools have in place vis-à-vis admission and support for non-native English speakers.

Behind the debate about the level of English language proficiency amongst Hong Kong students lies the problem of what people really mean when they talk about the falling 'standard of English'. This is related to some uncomfortable questions such as *who* is saying that the standard of English is not good enough and with *what* they are comparing it with. It seems, for example, that some people take as their measure whether or not today's students recognise a quote from Shakespeare when they hear one. Regrettable as this may be, it is also true of the majority of UK, American and Australian law students and can no longer be taken as a serious criterion. Others complain that the 'accent' of today's students is poor. Again, it has to be recognised that Received Pronunciation and 'BBC English' is no longer accepted as the touchstone of competency in English, even within the United Kingdom. Acceptance of this fact came about partly as a result of a shift in values away from elitism towards the recognition that other 'accents' were of equal value and that society (and the Bar) ought to become more inclusive than exclusive.

A further identifiable complaint is that the written English of today's students is inadequate. Again the question is 'inadequate for what - and whose - purposes?' Greater accuracy is needed here if we are to diagnose and remedy the problem. Research undertaken by the City University Department of English has, for example, attempted to identify the kinds of written English skills required by corporate law firms. Until we have a clearer idea of what the expectations are, it is difficult to see how any effective action can be taken. Another complaint is that today's students do not understand the 'nuances' of English as a language. There are appreciable difficulties here - law reports of court judgments frequently contain 'nuances' which students are required to interpret. Sometimes these are questions of emphasis, of ambiguity calling for interpretation, and these kinds of issues are normally addressed in City University's course on Legal Method, which specifically deals with issues of legal interpretation. At other times, however, the 'nuances' are more in the manner of clues and innuendos, the kind of veiled hints which judges give to lawyers (and lawyers give to other lawyers) indicating, for example, their displeasure, or perhaps their line of thinking. Interpreting some of these is less a matter of 'learning the law' than acquiring an appreciation of 'local legal culture'. Learning comes with 'the job' and is a matter of socialisation into the profession. Increasingly, law schools have come to recognise the importance of this socialisation process and legal scholars have taken to analysing the 'language of the law'.

But since so much of this kind of 'nuance' is tied to local legal culture, so it will change as that culture begins to change.

Perhaps, then, complaints of this kind are partly a sign that change is underway in the local legal culture of Hong Kong. However, whether or not what we are seeing is a change for the *worse* is something of a value judgment. Clearly, the Law Society and the Judiciary do take the view that new recruits' standard of English is poorer than it once was, and poorer than it should be.

## 1.5 The Common Lawyers of Hong Kong?

The Law Society allows that *some* lawyers should speak Cantonese 'where appropriate to their practice' but that *all* lawyers must possess fluency in English. From this flows the notion that legal educators should place more emphasis on students' English language skills. However, there is a danger here of implying that English is more important than Cantonese, that English should take priority over Cantonese and/or Putonghua, and that the skills needed to deal with international commercial clients are more important than those required to deal with the local population. There is also the implicit assumption that, whilst English *does* require special attention, there is no particular need to attend to students' Cantonese, presumably because it is thought that speaking Cantonese comes 'naturally' to our students. However, fluency in Cantonese can no longer be assumed. Our LLB and PCLL students are increasingly drawn from overseas, including the overseas Chinese, many of whom lack proficiency in Cantonese.

It is City University's view that, whilst acknowledging the importance of English in the law, we must move away from the idea that proficiency in Cantonese and the needs of the Cantonese-speaking population are of secondary importance, and that serving these needs is somehow 'second best' lawyering.

Whether we like it or not, the colonial dimension informs the discussion about the place of English language in the law school. One very telling comment quoted in the Consultation Paper is that understanding the common law necessarily entails a good command of English *and English culture*:

"The common law is a set of principles developed essentially around the language and the culture of England. So if a person does not have an understanding of both, they cannot operate effectively"

What is really being demanded here is not proficiency in English language *per se* but familiarity with 'English culture' - a culture familiar to many of the senior members of the legal profession in Hong Kong, many of whom studied at English secondary schools and at Oxbridge. As in other post-colonial societies, many of the values, practices and the etiquette of the local profession are necessarily imbued with what is, at bottom, an Anglo centric culture. Is it appropriate to insist that today's law schools perpetuate this culture and/or to do so by insisting that proficiency in the common law requires proficiency in English and in English culture?

These issues are not peculiar to Hong Kong. British society, for example, is no longer as homogenous as it once was. It needs lawyers who can meet the demands of various ethnic groups and has also had to deal with criticisms that entry into the profession is elitist and unrepresentative of the society it serves. The Bar, Judiciary and the Law Schools have taken structural steps to widen access to people from lower income groups and different ethnic

minorities, and to enhance access to the Bar and Judiciary through specific training schemes. Wales has a bilingual legal system and bilingual legal education in some universities. There are Welsh language courts, judges, lawyers, and civil servants. Elsewhere, other post-colonial societies have also had to grapple with such issues. Perhaps we can learn something from their example.

Moreover, experience elsewhere demonstrates that the common law can be successfully grafted on to non-English speaking societies. The common law of Hong Kong is not simply a 'mirror-image' of the law of England. If the common law in some part reflects the values of the society within which it grows and develops, then arguably young lawyers in Hong Kong have an equal, if not more important, need to understand Hong Kong history, language and culture, since it is this context within which the common law of Hong Kong 'makes sense'. Since Hong Kong is now part of China, perhaps students also need more exposure to Chinese culture, history, language and law. English law and values are a part of this history and culture, but by no means comprise its totality.

The issue of language also relates both to the degree of 'connection' or 'remoteness' between the legal system and Hong Kong people, to questions of culture and values as well as identity and the legitimacy of the legal system. If the common law *is* essentially 'English' at its core, this must limit its effectiveness as a legal system to which people in non-English societies feel 'attached' and able to use. Though the common law has been associated with economically successful societies in East Asia (and capitalism elsewhere) this is rather different from saying it is 'effective' for the mass of the non-English speaking population.

One question for legal educators in Hong Kong, then, is if the common law *is* essentially 'English', and *is* a carrier of English cultural values, are we engaged in a process of cultural imperialism, and if so, should we be? In a post-British colonial society, the dominance of English in the law may be felt to still relegate Cantonese to 'second' in the order of things, thus implicitly devaluing the experience and language of local people *vis-à-vis* the 'British'.

Much of what is being said about 'poor' language skills may actually be a 'lightning rod' for other anxieties felt by a largely colonial profession in a post-colonial era. These seem to be centred on issues such as entrance into the profession by people whose backgrounds and values are very different from those of the existing legal elite. If this is the case, then the question arises of whether 'poor English proficiency' is the 'real' problem, or whether it is actually code for 'these are not the sort of people we are used to seeing in the legal profession'? and 'if we take them, then they must become as much like us as possible - in their language, dress, values, attitudes'. The question thus ceases to be: what kind of lawyer does the market demand? and becomes: what kind of lawyer is the profession willing to accept?

## **1.6 A Different Kind of Lawyer for a Different Kind of World?**

One way of dealing with this question is to say that law schools should produce graduates capable of deciding for themselves what kind of lawyers they wish to be (or, indeed, if they wish to be lawyers at all). It is possible to do this by enlarging the number of electives as well as the skills element of legal education such that law students have the option to choose which kinds of courses they would like to follow. As an additional option, one might consider the introduction of a degree which is geared less immediately towards the needs of the profession (such as the BA in Legal Studies offered by some UK law schools) but which is capable of being combined with core courses in the event the student does wish to go into practice.

In the UK, like Hong Kong, much of the soul-searching about the aims of legal education have been prompted in large part by the discovery that many students no longer see law as a vocational course. There has also been a decline in residential conveyancing and commercial property work, prompting complaints about lawyers' inability to switch to new markets for legal services. Legal aid work has increased. Research into large international law firms has also revealed that they prefer more broadly educated, socially-conscious graduates to the 'straight' LLB graduate.

Studies of the UK also show that increasing numbers of law graduates are likely to enter professions *other* than those of barrister or solicitor. The UK figures reveal a decrease in the number of solicitors going into private practice, and an increase in the number of solicitors going into the public sector. Some universities have indicated that 66% of their law graduates do not enter the profession at all.

The Research and Policy Planning Unit of the Law Society of England and Wales 1999 Report argues that the profession must become more flexible in the work it tackles, more attentive to client care, more imaginative in attracting clients, undertake more legal aid work, and be more innovative in creating demand for legal services. UK law programmes have thus been adjusted to prepare students for a wider range of employment (7).

The 1996 and 1998 reports by ACLEC argued for a radical break away from "the traditional linear model of sharply divided academic and vocational stages" towards a model of legal education in which liberal values and professional legal skills were learnt "throughout the educational process by in-depth study of law" (8). This integrated approach stressed active rather than passive learning, intellectual rigour, and a liberal and humane legal education. The focus was on "understanding and depth rather than superficial coverage" (9).

ACLEC also commented favourably on the experience of Leiden and New York, where legal education was seen "as the foundation of many careers not limited to independent legal practice" (10). Part of ACLEC's ethos was the teaching of 'law in context'. This approach was adopted in the USA and Australia in the 1980s. In addition to understanding the law as lawyers see it, it stresses the need for law "to be studied with a broad awareness of social consequences and social origins of law" (11).

Essential to the development of this curriculum was the autonomy of the law schools, giving them the freedom to determine the content and arrangement of courses as well as autonomy over numbers. ACLEC rejected the idea that 'there are too many lawyers', an observation frequently made by the profession in Hong Kong. As Professor Dawn Oliver commented, we do not say there are 'too many' English or History graduates. She also rejected the view that law degrees should be training courses for intending practitioners and the view that law schools should be offering programmes of study that "encourage students to believe that practice is the only worthwhile future for them" (12).

These comments echo those of Le Brun & Johnstone in their book, *The Quiet Revolution*, in which they identify the possibility of two kinds of legal education emerging in the 21st century: the more conventional degree for individuals wishing solely to enter practice, and the other which provides a longer and more varied degree for students 'with broader interests' (13). The authors also make a point (which seems especially apposite in Hong Kong) that the law schools will feel battered by outside influences which threaten their autonomy and independence, including national and international economic policies and 'professional dictates'.

There thus appears to be a world-wide recognition that a law degree can be more than simply a route of entry into practice. Not all students may wish to study law as a vocational subject. This being the case, perhaps we should shift the emphasis away from the traditional stress on meeting market demands towards the study of law as a scholarly and academic pursuit. It is hard to capture what exactly is meant by this, but perhaps it includes an approach to legal education which encourages thoughtfulness as well as critical thinking, analysis and an ability to engage in legal reasoning, argument, advocacy on a range of issues.

On this view, a law degree (the LLB) is less about training students to meet market demands for legal services, than to expose them to legal scholarship and the ways in which lawyers have approached various kinds of social, economic and political - as well as 'legal' - issues. Such an education should produce more thoughtful, scholarly graduates capable of grasping concepts, thinking across disciplinary boundaries, and challenging prevailing ideas. It might also produce some graduates who choose never to go into the law as a career, as well as some of whom the profession will complain are ill-equipped for practice. However, it may be that this is how it should be (14).

This wider conception of the law degree has also led to the inclusion of General Transferable Skills in the curriculum of UK, US and Australian law schools. (These are called 'generic skills' elsewhere - for example, see Chapter 3.) In the UK, such skills were seen by Professor Bob Hepple as part of the revival of the 'Liberal Law Degree', offering "an intellectually rigorous curriculum capable of providing an all-round preparation for a wide range of occupational destinations" (15).

The issue of skills in legal education has also been the subject of systematic research and analysis in the UK and Australia. Research by Bell & Johnstone for the National Legal Education Centre identified Legal Skills and 'General Transferable Skills'. Legal Skills include Drafting, Research, Advocacy, Interviewing, Advising and Negotiation (colloquially known as 'DRAIN'). General Transferable Skills as those not specific to the subject studied by the law student but abilities which could be used in a wider range of activities and employment. They mention, for example, communication skills, problem solving, autonomy, teamwork, information technology, numeracy, and general intellectual skills such as analysis and reasoning. **Communication** refers to the ability to present and communicate in written and oral form and to use language appropriately in complex argument; **Problem Solving** refers to the ability to identify and analyse practical issues in a situation and to offer a practical solution making effective use of time and resources available; **Teamwork** refers to the ability to establish working relations with others, to interact effectively, and to promote productive cooperation; **Autonomy and Personal Skills** refers to the ability to act independently, to reflect on one's own actions and to accept and provide constructive feedback; **Information Technology** skills include the ability to use IT tools and develop that use by integrating it into students' own work; **Numeracy** refers to the ability to make use of numerical and statistical information as part of an argument or report; and **Intellectual Skills** refers to the ability to analyse, think critically, evaluate and synthesise information (16).

Such skills have now been factored into the Benchmarking and Threshold scheme adopted by UK law schools. The Threshold benchmark set out the minimally acceptable law graduate and identifies as a minimum certain achievements which a student must demonstrate to be awarded an undergraduate honours degree in law.

The need for legal education to pay greater attention to skills has been confirmed by ACLEC in the UK, by the McCrate Report, and by the American Bar Association's Task Force on

Law Schools and the Profession. In 1998, the Commonwealth Legal Education Association also called for the integration of general transferable and clinical legal skills in compulsory law schools courses, recommending the use of externships, actual-experience based clinical programmes in the community under staff supervision (17).

Research by the American Bar Foundation also found that Chicago law students admitted to the local Bar between 1986 and 1991 rated communication skills (oral and written) as extremely important, followed closely by ability to instil confidence, ability in legal reasoning, legal analysis and the drafting of legal documents. Most lawyers felt these skills could be taught effectively but received little attention in the law school curriculum. These skills were followed by knowledge of substantive and procedural law, problem-solving and negotiation skills. Those skills rated least important were research skills (such as library and computer skills) and litigation skills (18). Most lawyers felt there was a large gap between the essential core skill of knowing how to draft legal documents and the degree of attention this received in law school education. The core of what a law school can do and do well was identified as legal reasoning, legal research, professional ethics, and substantive law (19).

In its 1998 Report on *Legal Education & Training*, the Law Society of Hong Kong followed many of ACLEC's recommendations. It recognised the need for some general transferable skills to be integrated into the law degree. However, its conception of *why* such skills should be pursued seems to be inextricably tied to the needs of the market i.e. that the skills are required not because they are in themselves 'good' but because they are an effective means to an end - producing better practitioners more able to meet the demands of a global economy. The desirability of skills in English and Cantonese is, for example, expressed solely in terms of meeting Hong Kong's commitments as a centre of international commerce and finance.

One is forced, therefore, back to the question of values and of what kind of lawyer the profession wishes to cultivate. This may not be the kind of lawyer Hong Kong society more generally needs. The question is whether some compromise between the two can be found.

## 1.7 Conclusion

The Consultation Paper has revealed a clear polarization of views between those who have an essentially 'economist' view of law, which holds that we should be producing lawyers capable of serving the world of high finance, commerce and globalisation; and those who think we should be producing more lawyers to serve the community's 'unmet legal needs'. Certain implications flow from these two positions.

- From the first flows the view that we need to produce lawyers with good English skills (since English is the language of international commerce)) *and* sufficient Putonghua and knowledge of the PRC legal system to serve the Mainland market.
- From the second flows the implication that what the law schools should be doing is producing more lawyers who are fluent in Cantonese (this being the language of the overwhelming proportion of the Hong Kong people) as well as a knowledge of hitherto neglected areas of law e.g. Employment law, Housing, Immigration law, Welfare law, Discrimination law, Consumer Protection law, as well as wider knowledge of the various quasi-legal and legal means of calling government officials to account for possible abuse of power, and of areas such as the various ways of funding legal services (such as legal

expenses insurance, legal aid, *pro bono* work), and client interviewing skills and skills in ADR.

The dominant view is that law and legal education in Hong Kong should be geared to the needs of the economy. This is further reflected in the predominance in legal practice and the PCLL of conveyancing and property transactions. The prevailing view of the profession appears to be that the law schools should be producing a particular type of lawyer i.e. one able to meet the demands of Hong Kong's status as an international financial centre. It seems fairly clear that law in Hong Kong has been, and still is, focused on people with property rather than on the propertyless. Moreover, it seems equally clear that the dominant view of the profession is that it should stay this way.

Hong Kong's law schools may widen their scope to teach economically-attractive subjects such as IP Law, Cyber Law (and other subjects related more directly to the commercial and propertied sector and government's vision of Hong Kong as a 'knowledge based', information-technology driven economy) but in City University's view this does not go far enough. We need to place far greater emphasis on courses in Environmental Law, Employment Law, Immigration Law, Housing Law, Welfare Law, Law for the Poor, Public Interest Law, Constitutional & Administrative Law.

Ultimately, the question of what kind of lawyers we want to see the Law Schools producing cannot be divorced from the question of what kind of society we think Hong Kong should become. This review thus raises far-reaching questions. These are also being asked in an environment in which the Rule of Law has become highly politicised, an environment which includes not only social and economic forces but ambivalences about the colonial legacy.

As the consultants suggest, law is central to Hong Kong society. By tinkering with legal education we will be shaping the kind of society Hong Kong will be in future years:

**"The institutions for the education and training of its members powerfully shape the quality and values of the future legal profession. Accordingly, the review has considerable significance for the development of civil society in Hong Kong under the Basic Law".**

The shape of legal education we choose is thus closely connected to fundamental questions about the vision we have of Hong Kong society and the role we think law, lawyers and law schools should be playing in that future.



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## **Expectations and perceptions of the legal education system and of law graduates**

### **2.1 General Comments**

While many of the faults and shortcomings identified in the chapter exist to some extent in the profession, they are surely not limited to recent graduates. Furthermore, there are many recent graduates who are excelling as young barristers and solicitors. As a result, Chapter 2 can be said to present an unduly negative and inaccurate picture of recent graduates.

### **2.2 What kind of law graduate should we be producing?**

This is the most important question raised, directly and indirectly, in Chapter 2. The university and the people consulted agree to a very considerable extent about the kind of graduates we should be producing. Law graduates should:

- have a sound knowledge of a broad range of substantive and procedural law;
- know how to read cases;
- have good research skills;
- have good English language skills;
- think analytically, logically, creatively;
- have good communications skills (including interviewing skills);
- be independent learners; and
- appreciate the importance of lifelong learning.

The purpose of the LLB is to produce well-rounded graduates who are able to fulfill a variety of roles in society, not restricted to practising law.

The challenge for Hong Kong's law schools and both branches of the profession is how to develop and foster these attributes. The improvements and initiatives that could be implemented during the law school stage of legal education and training include:

- integrating more skills training across the four-year curriculum (see below);
- relying less on the traditional lecturing format and more on participatory learning;
- increasing the opportunities for students to do complex problem-solving and to apply their knowledge; and

- not setting assessments that can be passed simply by regurgitating lecture notes. (See also the discussion of skills teaching below and in Chapter 3.)

If law schools decide to enhance these aspects of legal education, some changes in their approaches to teaching and learning will be required. Among these changes will be rethinking the relatively traditional approach to teaching and learning that prevails in Hong Kong law schools.

It is evident that legal education and training in Hong Kong, and in the other places in which Hong Kong lawyers have been educated, have not produced lawyers who have been flexible enough to adapt to a collapsing conveyancing market and a significant downturn in the economy. There has been a considerable amount of discussion in particular about the fact that many solicitors need to retrain themselves but have no idea how to go about it. One of the contributions law schools can make is to develop strategies to train today's law students so that they will be more adaptable in the future should similar professional reorientation be required, as undoubtedly it will. Integrating and nurturing some core skills and attitudes (especially independent learning, creative problem-solving and an appreciation of lifelong learning) across the law school curriculum would be a start. This is already being done to some extent, but requires more attention.

## 2.3 Skills Teaching

The expectations and impressions expressed in the consultation paper indicate that it is essential to include more skills training across the four-year law school curriculum. City University agrees with and endorses this view, especially in relation to the PCLL course. Among the most important of these skills are

- research;
- learning how to read cases properly;
- thinking analytically, logically and creatively;
- interviewing;
- problem-solving;
- independent learning; and
- understanding law in its social, political, commercial and personal context

While integrating skills in the LLB curriculum is also important, it must be acknowledged that there will be students on the LLB who do not intend to become practitioners. If trends in other jurisdictions begin to develop in Hong Kong, we can expect this number to increase. The skills component of the LLB course should therefore focus on skills that are important and relevant regardless of whether the students intend to become practitioners. These include, for example, sound research skills, oral and written communication, and creative and independent problem-solving (and see Chapter 3 for further discussion of "core" skills).

As stated above, integrating skills teaching effectively across the four-year curriculum cannot succeed unless teachers commit themselves to the idea and do what is necessary to make it happen. This would require a high degree of inter-faculty collaboration and a willingness to

change course materials and teaching methods where necessary. This would not happen unless decision-makers within the universities were sufficiently committed to this objective. This commitment would include recognising and giving credit for the effort required, and the value added, by spending the considerable time and effort that would be required to develop new approaches to teaching and learning. It would also include a willingness to devote the necessary resources to this endeavour.

In order to implement such improvements, the professions would also have to be open to agreeing any necessary changes to the curriculum and methods of assessment. Past experience indicates that both branches of the profession have been reluctant to approve any PCLL curriculum changes.

The training responsibility of both branches of the profession must not be forgotten. There is anecdotal evidence to indicate that recent graduates are being expected by the people for whom they work to perform at a level that is unrealistic in the light of their lack of practical experience. The responsibility to train law students does not end on the day they leave university. The extent to which this responsibility is being discharged by the profession would require further consideration. The CPD scheme and the Bar equivalent do not appear to be fulfilling the growing need for post-university professional training. (This topic is also discussed in Chapters 3, 4 and 6 of this paper.)

## **2.4 The Hong Kong secondary school system**

The Hong Kong secondary school system is deficient in that it does not develop and nurture many of the attributes considered vital for a career in the law, including oral and written English language skills, general communication skills, analytical thinking, independent problem-solving, and an appreciation of learning as a lifelong pursuit. The secondary school system in Hong Kong focuses on learning as collecting information, and is geared to summative assessments which require students to memorise and then repeat the information they have learned.

There is not much that can be done in the short term, if at all, to improve this situation. The consultants can comment on it and make some suggestions, but for the purposes of developing a vision and strategy for university legal education in Hong Kong, the defects and limitations of the Hong Kong school system have to be accepted, and all concerned have to work within those boundaries. At the very least, the problems in secondary education can be identified and replication of these problems at the tertiary level can be avoided. Strategies to address some of these problems should continue to be identified and implemented.

## **2.5 English Language Standards**

Poor command of English has been the theme of many of the criticisms of new law graduates. One preliminary question is whether English language standards have in fact worsened, or are they proportionately the same but across what is now a much larger profession that it was 15 years ago. We do not have the answer to this question, but it is essential that the question be explored and discussed in the consultation process. This will help to ensure an accurate description of the nature and the extent of the problem and to promote responsive and constructive solutions.

Whatever the answer to this question, it is evident that legal practitioners need advanced English language skills. It would be a mistake, however, to expect native English skills. The extent to which this expectation is underpinning the criticisms about deficient English

language skills in Hong Kong needs to be explored. Lawyers need to be able to express themselves fluently, clearly and precisely, orally and in writing, but they do not need nor should Hong Kong lawyers be expected to possess native English language skills. Twenty-five years ago, most Hong Kong lawyers were educated in England, but legal education since that time has become more accessible to a broader segment of the Hong Kong population.

City University has worked consistently to develop strategies and programmes to improve students' English language skills. These initiatives have included raising the entry-level requirements for LLB students, adding separate legal writing courses on the LLB and PCLL programmes, increasing the opportunities for students to make oral and written presentations in English, and ensuring that students receive feedback on their oral and written work.

The universities need to consider whether there is more they could do to improve English language skills. One possibility is making the first year of the formal university training period a "foundation year", during which the focus would be on enhancing the written and spoken English language skills of students. This would probably not be possible unless the duration of the LLB programme were four years instead of three. Considerable effort and resources would also be required to develop such a first year programme.

Other possible initiatives are to incorporate more opportunities for exchange programmes and other activities whereby the students could improve their English language skills and expand their horizons.

The Issues Paper mentions the following possibilities:

- Raise university entry-level English requirement - This has already been done at City University. The level of LLB students entering the programme has improved dramatically in the past few years and is now "C" or better. The standard of English on the PCLL has also improved dramatically. Among the reasons for this improvement are general raising of entry-level standards and fewer places, which has increased competition.
- PCLL entry-level English exam - City University questions the value of further testing. There is already plenty of testing in the system, at both the secondary and the tertiary levels. The focus should not be on adding another test but in creating a culture in which students want to learn law and language for its own sake and not in preparation for a test. Having taken various steps to improve English language standards, the focus now should be on creating opportunities for university students to improve their English language standards.
- Exit test at the end of one or more of the LLB, PCLL, trainee/pupillage periods - If there is to be such a test, it would not be appropriate at the conclusion of the LLB training, because there will be some graduates of LLB programmes who have no intention to practice law. To the extent that this is a good idea, it seems more appropriate to do it at the end of the PCLL or the trainee solicitor/pupillage stage. However, for the reasons stated above City University doubts the value of another layer of testing.

Law graduates undoubtedly need a good mastery of oral and written English. The discussion of language issues and priorities, however, must include the need to make legal education and training in Hong Kong more accommodating to Cantonese speakers. The Hong Kong native language is Cantonese and is spoken by about 98% of the population. The government, judiciary, professions and the law schools must all make an effort to foster the use of Cantonese. This effort might include streaming legal education so that there are courses in

both Cantonese and English. At the very least, the question whether the time has now come to give Hong Kong students the opportunity to study law in Cantonese as well as in English must be asked.

## **2.6 Role of the Professions**

### **2.6.1 General Training**

The training in university is a small part of the training lawyers require to make them good practitioners. The professions have a very significant role to play in developing and expanding the knowledge and skills base of law graduates. Anecdotal evidence from graduates indicates that some receive excellent training and others receive little if any training.

One of the criticisms of graduates expressed in the Consultation Paper is that they have bad client interviewing skills. While there is a great deal that can be done to integrate interviewing skills across the four-year curriculum, is it realistic to expect that students should leave their formal legal training ready to conduct interviews independently and without any supervision and feedback? It is not, considering the other responsibilities of the law schools and the fact that they have only four years within which to fulfill those responsibilities. Anecdotal evidence from students indicates that they are often expected to arrive in their firms as trainee solicitors ready to perform the skills of a practicing lawyer and to bill 30 hours per week with little or any supervision. It is unrealistic to expect this of a new graduate.

### **2.6.2 Importance of Lifelong Learning**

Similar comments apply regarding the criticism that new graduates do not appreciate the need for lifelong learning. While instilling in students the importance of lifelong learning should be one of the aims of Hong Kong's law schools, the predominant role of the professions must be acknowledged. If the professions do not also develop and demonstrate a commitment to lifelong learning, much of what the law schools achieve will be wasted. Law graduates who become practising barristers or solicitors will be shaped by 40 years in their chosen profession much more than by their 4 years in law school. If their pupil masters, principals and other mentors, and the leaders in their profession, are committed to lifelong learning, then new graduates will gradually develop that same commitment.

### **2.6.3 Are the Professions Organised to Attract the Best Students?**

The Bar and the judiciary have been vocal in criticising new graduates. Are there specific problems relating to the Bar? Some graduates will be unable to commit to working for several years without regular income, particularly when a number of law firms and the Department of Justice offer good salaries and training programmes. Bar scholarships are steps in the right direction, but the Bar should try to do more to attract the best students.

## Structures of legal education

### 3.1 The stages of legal education

City University accepts the 3 stages of legal education established by the Ormrod Report:

1. an academic stage
2. a professional training stage, including
  - institutional training, and
  - in-training (traineeship and pupillage), and
3. continuing legal education stage.

Ormrod may be criticised in so far as it could be said to have caused the substance/skills divide. There should be a great deal of generic skills training in the LLB, especially in the early years. City University supports a four year LLB, amongst other reasons because it would allow more time for these skills. There has been a good deal of research on these skills, both generally in the context of student learning and specifically in relation to the training of lawyers. Bloom's taxonomy (Bloom, BS (ed) *Taxonomy of Educational Objectives: The Classification of Educational Goals - Handbook 1, The Cognitive Domain*, David McKay, New York, 1956) divided the cognitive domain into 6 stages - knowledge, comprehension, application, analysis, synthesis and evaluation. As examples of these skills, LLB students need particular skills, including skills in legal research, collection and analysis of facts, knowledge of core law areas and the ability to analyse and apply the legal principles to the facts, problem-solving skills, advising skills and oral and writing skills. A greater emphasis on such skills at the start of students' studies would help them and improve their performance in the later years of the LLB. If four years becomes the norm for undergraduate degrees in Hong Kong, then there would be an opportunity of enhancing these generic skills, but even without a standard four year undergraduate degree, the skills element in the LLB can be increased.

The LLB should not just be a first stage of training to become a lawyer, but a programme capable of standing in its own right as an intellectually stimulating programme, providing knowledge and skills valuable for a wide variety of careers besides Law.

Lawyer-specific skills should be taught in the PCLL and in training and continuing professional development. These skills have been identified in various research and reports, of which perhaps the best known is the American Bar Association report *Legal Education and Professional Development - An Educational Continuum* (the MacCrate Report) 1992. The skills identified for the post - LLB stage consist of higher level versions of the basic generic skills and specific lawyering skills such as interviewing, negotiating, counselling, advocacy, transactional and work management skills and ethics. The MacCrate Report highlights the point that professional legal education is a continuing process that does not end with the three years of the LLB equivalent.

### **3.2 Government subsidized education and an open legal profession**

In our comments on structures City University is mindful of the need to maintain subsidized education for undergraduate degrees and University based professional education. Hong Kong is not yet at a stage where prospective lawyers should be expected to pay their own way in their legal education, even if with Government loans. Accordingly, we favour maintaining the undergraduate LLB degree as the principal entry degree. If the only entry degree were a postgraduate degree, this would not be supported by Government funding and many worthy persons would be excluded from studying Law for financial reasons. However, some entrants into the LLB have come with overseas secondary education and degrees in non-Law programmes, and this is to be encouraged (but not to the exclusion of locally educated students). In a sense therefore for some students our three year LLB is already a graduate LLB programme. Where non-LLB students have had a reasonable input of Law in their programmes, they should have a route of progression to an LLB with credit for the Law they have already done. For example, students on the BBA (Accounting and Law) at City University, for which Law is the minor, will be given the opportunity to progress to an LLB in an alternative mode LLB programme and will be given credit for the Law they have already studied. City University anticipates an increase in such mixed discipline programmes.

### **3.3 PCLL to stay within Law Schools**

City University also favours the continued inclusion of the PCLL within the University Law Schools. Both branches of the profession seem to favour the continuance of the PCLL, and any plans or proposals they may have for some further exam or other filtering system pre-suppose the continuance of the PCLL. It is neither practically nor economically possible for the profession to establish the structure for a PCLL-type programme with the amount of instruction and administration required. Moreover it is generally believed that stand alone professional training institutions tend to lack a proper career structure for staff and the intellectual stimulation offered by their University based equivalents. The staff at City University Law School involved in PCLL teaching are unanimous in wanting the PCLL to remain within the Universities.

City University therefore assumes the continued existence of the PCLL as a programme within the Universities. Models 4 and 5 of the Consultation Paper show the PCLL merged with the LLB to become a four year LLB. Models 3 and 4 offer Institutional PLT as an alternative to in-training on the NSW/Victorian model (both being stand alone institutions) and Model 5 offers a summer model before commencing the TC or pupillage. Presumably in the Hong Kong context University, especially PCLL, staff would be expected to have some involvement in the PLT even if it was organised by the profession and not by the Law Schools, in the same way that academics are involved in the Hong Kong Law Society CPD and the Overseas Lawyers Qualification Exam preparation classes.

### **3.4 The merged LLB/PCLL model**

City University does not favour the merged LLB/PCLL model. While the PCLL remains the only or one of the requirements for practice, the profession is entitled to have a major input in the programme. This is acceptable while the PCLL remains separate. However City University anticipates that in the future a larger number of students will want to study Law without wanting to be lawyers. For those students who want to go onto the PCLL and then into practice, it is acceptable that the profession can mandate certain core subjects. But that is as far as the profession should be involved in the academic stage. The present division



between the LLB and PCLL helps to maintain the autonomy of the University over the academic stage, and so long as the PCLL remains a requirement for practice that division should be maintained. It is also important to maintain the three plus one division for those who currently come into the PCLL with qualifying overseas Law degrees (these include some of the more successful PCLL students at City University).

We would stress that when we say we favour the current structure, we do not mean that the LLB and PCLL will remain in their current mode. We anticipate considerable changes in both programmes over the coming years.

### **3.5 International perspectives**

These are not always helpful, especially where larger jurisdictions are investigated, because of a different secondary education system, a much larger critical mass of students (which makes it more cost effective for the profession to be involved) and other factors. For example, while Law graduates in the USA are more mature because Law is a postgraduate degree, the MacCrate Report criticised the insufficiency of skills and transactions training (and mentioned the Neil Gold City Polytechnic (now City University) PCLL model as an exemplar).

New South Wales and some other Australian States turned to institutional practical training because of the absence of training places. This is not yet a major problem in Hong Kong and with the reduced numbers in the internal (ie excluding SPACE) PCLL at HKU and at City University may not be an issue. We note that due to a further reduction in UGC funding, there will be yet another reduction in the PCLL entry at City University, down to 40 for the 2001-2004 triennium. Considering that the intake was 90 in 1997 and that the HKU PCLL entry has also been reduced, lack of training places would not appear to be an issue in Hong Kong in the foreseeable future.

Singapore is the closest of the jurisdictions mentioned in the Paper (para. 3.2.3) and we would suggest that the Consultants look further at Singapore and the views of the profession and others there on legal education. One important factor in their perceptions may be the greater use of English in Singapore. Besides the difference in size between Hong Kong and the main jurisdictions mentioned in the Paper, there is the difference (which may be the fundamental one) that students in Hong Kong are studying in a foreign language. The perceptions of many as to the quality of Law students may be affected by this. (See the discussion of this issue in Chapters 2, 4 and 6.)

### **3.6 The history of the PCLL**

As the Consultation Paper (para 3.2.2) mentions, the PCLL at HKU developed as a fourth year of the LLB and includes a good deal of substantive Law, eg Revenue Law. This is understandable given only a three year LLB and is accepted and preferred by the profession which appears to favour more substantive Law in the PCLL. However, several of the major courses in the PCLL are skills oriented. Conveyancing and its associated topics, Commercial Law & Practice (which is predominantly Company Practice and Corporate Finance) and Civil and Criminal Procedure all have carefully structured course documentation, which has a large skills element, and which has been commended by instructors in professional training courses around the world. While we should not be governed by history, overseas models are not necessarily best or helpful.

### **3.7 The variables (para 3.2.3)**

#### **3.7.1 Model 1**

This is the present structure. It has the disadvantage of a short, three year LLB and retains a separate one year PCLL. But on balance, taking into account government funding and other issues raised above, three plus one may be the most acceptable model.

#### **3.7.2 Model 2**

This represents an extended two-year PCLL. City University's view is that two years is too long. Like most institutional professional training courses, there is a motivation issue. The students have an LLB and think they know "the Law". They are impatient to get downtown into real practice and earn some money. A one year PCLL is already longer than many equivalent courses. We think that two years is too long. Also, with the UGC wanting to cut funding for taught postgraduate programmes, it is unlikely that a two year PCLL would be subsidized.

City University believes that the Consultants and the profession need to place more emphasis on the continuing legal education stage. Solicitors' Accounts, currently in the PCLL is better studied and, if necessary, examined while in training. LLB students need some understanding of professional ethics from the start of their studies (and this is not just a matter of interest to prospective practitioners). The profession's desire for more substantive law could be met by more CPD training and, where appropriate, specialism accreditation.

#### **3.7.3 Model 3 (Extended PCLL with institutional PLT as alternative to TC and pupillage)**

We have already commented on the extended PCLL. There is no need at the moment nor in the foreseeable future for Institutional PLT as an alternative to TC or pupillage. What would it cover which is not already covered in an extended PCLL and who would pay for it?

#### **3.7.4 Model 4**

The new factor here is the merged four year LLB/PCLL on which we have commented above in the context of University autonomy. The model indicates no further 'gate' to the professions, so presumably the merged LLB would be that gate, as the separate PCLL is now. If so, the professions would undoubtedly want an involvement in the whole of the merged LLB.

#### **3.7.5 Model 5**

It suggests a short institutional PLT after the merged four year LLB and before TC and pupillage.

Is the short institutional PLT to be the 'gate' to the professions? If so, and the professions have no involvement in the four year LLB (other than the core subjects), and the four years were UGC subsidized, this might be an attractive model. It would probably mean that the Institutional PLT would be self-funded, though if only a short course (summer vacation is suggested), this should not be too great a burden on would-be lawyers. Also, if it is only a

short course, the professions would probably want an involvement in the whole four year merged LLB.

### **3.7.6 Sandwich course models**

Para 6.3.3.3 suggests some examples of these, some involving split period PCLLs, others involving various modules which could be taken during the training period. While studying on the job has the advantage of the students being able to put their studies in context, the advantage of a continuous PCLL over a shorter or longer period allows the programme to be properly structured. City University supports the view of the value of a coherent bridging course to the real world.

Nevertheless we are in favour of greater emphasis on CPD training and the recognition by the profession that it is responsible for a much longer period of legal training than the Law Schools. The Law Schools have participated in CPD and no doubt will do so in any expanded CPD programme.

### **3.8 Conclusions**

Before Law teaching started at HKU in 1969 the legal profession had been elitist in that most lawyers had been those whose parents could afford to send them to England for training. City University does not wish to see any changes in the structure of legal education in Hong Kong which would make entry into the profession dependent upon having the necessary means. Thus, while a four year degree and a separate one year PCLL would be preferable, we have to be realistic and accept that it is unlikely that the Government will subsidize more than it does already, i.e. four years.

In a perfect world City University would be very content with a four year subsidized LLB, with no involvement of the profession, limited to core subjects for those who want to be practitioners. But with the PCLL as the current 'gate' to the profession, we see some value to the community generally in the Law Schools continuing to be involved in the practical training stage. The Law Schools can keep the gate more open than it is likely the profession would, if left to its own devices.

It is likely that the profession will need to continue to accept the PCLL as a gate, if not the only one. Therefore, because of the funding issue, City University supports a three year LLB and a one year PCLL. Some restructuring of the three year LLB, to include a greater skills element, can be achieved. More will be achieved if all undergraduate degrees become four years. If that happens, there is a reasonable chance that funding for the PCLL can be maintained (by analogy to medicine, architecture etc). Some restructuring of the PCLL can be achieved with the assistance of the profession. (See the Chapter 6 discussion). For example, as already mentioned, Accounts could be removed from the PCLL into the CPD stage. This would allow more emphasis on drafting of documents and pleadings, oral skills and understanding company accounts, and perhaps some electives, especially for would-be barristers, who quite fairly see the PCLL as solicitor oriented. (See Chapter 6 for further discussion of the PCLL).

## **The academic stage of legal education - LLB**

### **4.1 Purpose and Function of the LLB degree**

It is stated at the beginning of the Chapter that the goal of this Consultation Paper is to ensure that Hong Kong becomes a centre of academic and professional excellence in law. City University fully supports this goal. In this respect what needs to be considered is how the LLB programme can contribute to achieving this goal.

The Consultation Paper notes the tension on the modern LLB in most common law countries with regard to its professional dimension and its function as a liberal education programme. It states that in a number of common law countries the purpose of the LLB is no longer seen solely as an avenue to train lawyers for legal practice. City University endorses this view. Indeed City University promotes the LLB as a passport to a wide range of employment opportunities. Every person studying for a LLB need not necessarily end up as a practising lawyer. (See Chapter 4.) At the same time, however, we must ensure that the LLB curriculum achieves the goals of both a liberal arts education and a foundation for law practice. The currently structured three-year programme makes both goals difficult and there is a built-in tension in trying to achieve both goals.

### **4.2 Balance between Substantive Law and Skills**

The extent to which the LLB curriculum should embody skills training is an issue affecting all law schools. City University supports greater emphasis on generic skills training in the LLB through careful integration of substantive law teaching and skills training. One of the problems is how best to do this within the constraints of a three-year degree programme, but City University believes it is possible. There is also a perceived need to move away from traditional methods of delivering information to students and to focus on stimulating students to undertake self-directed independent learning that will prepare students for lifelong learning. A further challenge faced by the law schools is to 'shrug off our obsession with content ... in favour of wider intellectual and professional skills formation'.

While City University supports greater focus on skills training, it is recognised that skills training is complex and teacher-intensive. A shift in the emphasis on the LLB towards greater emphasis on generic skills training will also require a shift in the mindset of some students whose secondary education has not prepared them for anything more than the absorption of information.

In practical terms a shift in the emphasis in teaching on the LLB should be supported by teaching research into effective teaching and learning in Hong Kong.

### **4.3 Combined Studies Programme**

The Consultation Paper notes that both HKU and City University have made a modest start in launching combined degree programmes, while such programmes are the norm in Australia. To give one example, in the University of NSW alone there are currently 17 combined law programmes. The fundamental difference between the HK and Australian combined degree

programmes are noted in the Consultation Paper. The weaknesses of the Hong Kong programmes as noted in the Consultation Paper are that they are simply an amalgamation of two district degree programmes, and the heavy workload and cross-disciplinary perspective is lacking. City University supports the move towards combined degree programmes based on the Australian model which typically takes five years to complete with a three year law component. (See Chapter 8.)

#### **4.4 Part-time LLB degree**

The Consultation Paper notes that there is no LLB offered by part-time study by the local Universities. Currently there are part-time LLB degrees offered by English Universities either by distance learning or external study. The weaknesses of these LLB programmes are highlighted in Chapter 5 of the Consultation Paper. The demand for such part-time LLB programmes is strong in particular from graduates of other disciplines who want legal training. There is a perceived need to attract students of other disciplines to the law and a part-time Hong Kong degree programme would do so. With more mature students already having undergraduate degrees, law study could proceed at a more sophisticated level.

City University has for some time seen a need for a part time Hong Kong LLB and plans to offer such a programme from 2002. The challenge will be to ensure that a part-time Hong Kong LLB is not subject to the same criticisms that are made of distance learning degrees. (See Chapter 12). It is important that a part-time programme is of sufficient duration to permit in-depth self-directed learning that City University regards as important.

#### **4.5 Curriculum Issues**

An LLB degree will always include a core of compulsory subjects and an additional core to satisfy professional requirements. The Consultation Paper notes the need for new law subjects to be introduced to the LLB curriculum. City University supports this proposal. However, this must be addressed within the context of two major constraints faced by City University - the small cohort of students who are admitted to the LLB programme and the need not to overload the students within the three-year LLB degree.

The Consultation Paper refers to the tightness of the three-year LLB programme. At the same time it refers to the importance of inter-disciplinary education for lawyer and the need to introduce new fields of law to the curriculum. A question that can legitimately be asked here is whether all of this can be achieved within a three-year LLB programme. City University's view is that the LLB curriculum is already overloaded. City University LLB students are required to complete a significant number of English and Chinese language units as well as a compulsory course in Chinese Civilisation. The language demands placed on HKU students probably exceed those in other jurisdictions and it appears that these and other demands might be addressed only by lengthening the LLB programme.

#### **4.6 Teaching Methods**

The Consultation Paper refers to the traditional lecture and tutorial method and the interactive teaching methods. The present class size in the City University LLB programme is conducive to interactive teaching. It will be evident from the comments above (para 2) and in other chapters of this response (see, for example, Chapters 2, 3 and 6) that more attention has to be paid to incorporating appropriate skills in the LLB curriculum. Teaching methods and course materials will have to be changed where necessary, to facilitate this process. City University also agrees that a reassessment of the approach to teaching and learning is necessary to

ensure that it is effective in producing the kind of students we have agreed need to be produced and, as noted above, there is a need for more teaching and learning research to be conducted.

#### **4.7 Student Assessment**

The Consultation Paper notes the various forms of student assessments and the system of external examiners prevalent in Hong Kong. Changes in teaching methods must be reflected in assessments which should be consistent with teaching.

#### **4.8 Professional Values and Ethics**

The Consultation Paper speaks of turning out lawyers with a sense of social responsibility. It notes that lawyers seem unfamiliar with the concept of working on a pro bono basis.

The background to these remarks is unclear. Clearly there are many practising and academic lawyers who give free legal advice. At City University, academics have participated in advising women in domestic violence cases and more recently, overseas domestic workers. City University students have worked voluntarily taking statements from people claiming the right of abode in Hong Kong. Many practising and academic lawyers work for the community through charitable work and participation in government committees.

It is accepted, however, that more could be done to raise the awareness of law students to their obligations to society. There may be a tendency at City University to focus too much on areas of legal practice. This is inevitably the result of the demands of the majority of students who see their future in legal practice in commercial work. There are signs that this is changing and that more students now see law as a general degree leading to a wider variety of careers. City University, through its research and the courses offers, is trying to foster a greater awareness of broad legal issues. The constraints on doing so within a small school of law have been noted above in paragraph 4.5.

#### **4.9 Selection of Students for the LLB Programme**

Three years ago in response to negative criticism of graduates entering the legal profession, entry levels at City University for the LLB programme were raised to a "C" average in the combined HKCEE and HKAL results. Furthermore City University sought to attract mature students to its LLB programme. Currently about half the students enrolled in the LLB programme have degrees or diplomas in other disciplines.

The LLB programme has among the highest entry qualifications among all courses at City University. It is City University's aim to continue to attract very good students to its LLB programme. It is clear that law now competes for the best students with a wide range of programmes in science, engineering, computers and business. City University's challenge is to make its LLB programme more stimulating and relevant in order to compete successfully. Clearly more joint degrees should be offered. These are likely to attract good students. Moreover there is a need for lawyers to have specialist expertise in other disciplines - for example, environmental science, medicine, computing - and for those working primarily in other fields to have some knowledge of the law. It is also clear that there is thus a need and demand for a part-time LLB programme.

## **4.10 Student Numbers**

Three years ago the LLB student intake to the City University School of Law was reduced from 80 to 48. In the current academic year City University has accepted 52 students on to its LLB programme. It is noted in Chapter 6 in relation to the City University PCLL programme that the small student body makes it possible for City University to offer an excellent teaching and learning environment. The small student body has disadvantages, however. Among these is that City University is no longer able to offer a broad range of electives. Given the diversity of legal issues that arise in the modern world and in particular in Hong Kong, this lack of diversity within the law school prejudices the breadth of the education that is offered and the research that can be undertaken. The biggest is not necessarily the best, but the City University School of Law is of the view that the number of LLB places should be increased to approximately 100. This should not be done at the expense of entry-level standards but as has been said, the City University School of Law should continue to seek to attract very good students to its core LLB programme.

## **4.11 Language Requirements**

Language is intrinsically connected with the study of law. As stated in Chapter 2, City University has worked hard to identify and implement strategies and programmes to improve students' English language skills. This is a matter on which City University continues to focus. It is beyond dispute that students need advanced English language skills in legal practice. Considerable attention is paid to written and oral communication skills in the PCLL. City University sees the need to teach skills cumulatively from the LLB to the PCLL. In this respect there needs to be much closer liaison between the teachers on both programmes. The raising of entry level standards to both the LLB and PCLL programmes has produced an improvement in English language skills.

The City University LLB also includes Chinese language training. With this exception there is no other Chinese language training either on the LLB or the PCLL. Hence there is currently no preparation for a bi-lingual legal system. This is a matter that should be addressed by the law schools together with the practising profession.

## **SPACE and the other distance law education programmes**

The Consultants raise seven issues. The following response deals with each of these issues individually and in the order they appear in the report. They are all, however, interrelated.

### **5.1 Seven issues**

#### **5.1.1 Satisfying the demand for part-time legal education**

SPACE and the other distance law programmes do demonstrate a considerable need for part-time legal education. The fact that SPACE offers part-time legal education, however, is the main reason why the Law Faculty at HKU does not offer a part-time LLB. It has also proved to be an obstacle for the Law School at City University in its desire to offer a part-time or alternative mode LLB programme. This is because of the profession's misconceived perceptions regarding the numbers entering the profession. As such, a City University part-time programme is seen as an addition to such numbers rather than a local alternative for students who currently take the London LLB or English CPE. Almost by default, therefore, SPACE is seen as the provider of part-time legal education in Hong Kong.

#### **5.1.2 Providing access to legal education for academic and community education purposes**

There will always be a place in legal education for distance programmes but whether distance education is appropriate for LLB study is debatable. The issues raised here, however, concern the quality of such programmes and are dealt with later. Distance programmes should also be seen as useful extensions to an established local legal education system, not as a replacement for it.

#### **5.1.3 The focus of study is on English, not Hong Kong, law**

The reason for this is that SPACE has become the defacto provider of part-time legal education in Hong Kong. The lack of Hong Kong law in SPACE courses should, however, be a matter of some concern and SPACE itself has recognized this by adding the course of Hong Kong Constitutional Law to its CPE programme. Even so, most of the CPE and all the London LLB courses involve English Law. Much of Hong Kong law is similar to or the same as English law but there are also significant differences, not only in the areas of Constitutional and Land Law. It is somewhat perplexing that a person could study law in Hong Kong and thereafter join the legal profession without any knowledge of the Hong Kong legal system let alone the important differences between England and Hong Kong in, for example, criminal law, evidence, procedure and company law, to name a few. To an outsider such a situation would appear even more perplexing given the changeover of sovereignty in 1997.

#### **5.1.4 Quality issues**

As distance courses, the English CPE and London LLB are quality programmes and they produce good graduates. The more important question, however, is whether they provide the



sort of legal education that Hong Kong needs, particularly given the numbers enrolled in SPACE law programmes and the fact that neither HKU or City University offer part-time LLB's. The concerns regarding course content are dealt with above, but questions should also be raised regarding teaching methodologies, for example, intensive block teaching and infrequent tutorials or seminars, and the total lack of the development of intellectual skills such as research. Students receive little or no instruction on how to use a law library and it is generally believed that many CPE and London LLB students never use the library at HKU or any other law library in Hong Kong. In fact, both programmes do not require students to use the library although individual teachers might recommend it.

### **5.1.5 Personal qualities of distance education students**

This issue is interrelated with that of quality. Are the CPE and London LLB capable of providing the sort of legal education Hong Kong needs regardless of whether graduates from these two programmes enter the profession? Distance programmes should be seen as serving a positive role as additions to local legal education, not as replacements for it. Graduates of both programmes may accordingly have both positive and negative attributes but surely any jurisdiction should place emphasis on and give priority to local, not foreign, legally educated students.

### **5.1.6 Effect on standards**

Graduates from the CPE and London LLB do perform well on the PCLL and both programmes maintain high standards in their assessment regimes. This does not mean, however, that they are providing the sort of legally educated person Hong Kong needs. This is particularly true when one considers the teaching methodologies, the lack of development of learning and research skills and the foreign content of the law taught. As such, and again because these programmes provide all part-time legal education in Hong Kong, overall standards and quality must be brought into question.

### **5.1.7 Impact on numbers entering the profession**

This is not the issue. Even if SPACE was to stop offering such programmes students could still do the London LLB, for example, direct through London University. The issue is whether such programmes offer the quality of legal education needed by Hong Kong. In this sense the more important issue is whether Hong Kong and its legal professions should continue to recognize such programmes for the purposes of qualification for legal practice.

## **5.2 Proposals**

As noted, there is considerable demand for part-time legal education. The Law School at City University has developed a proposal for an alternative mode LLB. At present, the draft programme emphasizes commercial law as a specialty and is targeted at the many students currently enrolling in the London LLB and English CPE offered by SPACE. Apart from this target group, the proposed programme will also provide a part-time LLB option for students currently enrolled in City University's BA in Accounting and Law (full-time). In order to maintain the highest standards, general entry to the programme will be restricted to graduates who will have obtained at least a 2/2 honours award and, if places exist, for City University Higher Diploma in Legal Studies (HDLS or now Associate in Legal Studies) graduates who have achieved a credit or distinction. Preference will be given to those applicants in legal or law-related employment. Finally, the City University School of Law is also currently

exploring the possibilities of other joint degree programmes with the option of students completing the LLB component in conjunction with the proposed alternative mode LLB.

## **The practical stage of legal education - the Postgraduate Certificate in Laws**

Any discussion of the practical stage of legal education cannot be divorced from significant issues affecting legal education, the legal profession and City University as a provider of legal education in Hong Kong. These issues include whether the government will in future fund four year undergraduate degree programmes, whether there will continue to be a split profession in Hong Kong and whether any part of the formal training should be conducted in Chinese.

In addition there is the question of whether the government will continue to fund the PCLL. Funding to taught postgraduate programmes is being cut in the next triennium (starting 2001) with a consequential cut in UGC funded PCLL places. At City University in response to pressure from the legal profession about the quality of new entrants to the profession, the number of PCLL places was cut from 90 to 45 in 1998. Although the Consultation Paper refers to plans to increase the number of UGC funded places at City University, this has not been possible. Currently there are plans to further cut the number of UGC funded places at City University from 45 to 40 due to cuts in UGC funding.

It should also be noted that there is an imbalance between numbers of UGC funded places and therefore UGC funding at the two law schools. HKU currently has approximately 170 UGC funded PCLL places. While the smaller student body at City University means that City University is able to give students an excellent learning environment with a staff: student ratio of 1:8, City University does not enjoy economies of scale. For example, City University must offer the same range of courses as HKU but with a smaller body of staff. In practical terms this might make it difficult for City University to offer a range of elective courses. In addition there is a danger that changes to the PCLL tend to focus on what is viable at HKU with its larger student body. This was evident when common exams were implemented in 1999 and City University was required to adapt teaching in order to implement multiple choice testing that had been introduced at HKU.

City University offered 10 self-funded part time PCLL places in 2000 after gaining approval from the Bar Association and the Law Society to have one intake of part-time students and to review the position at the end of the two-year part-time programme. The admissions process for the part time PCLL demonstrated that there is a market for a part-time PCLL that is separate from the market for the full time PCLL.

The Consultation Paper raises a number of fundamental questions regarding the practical stage of formal legal education. These questions are discussed below.

### **6.1 Should there be a division in formal legal education between academic and practical training?**

There is currently a clear division between The LLB and the PCLL training both in fact and in substance. A combined four year programme might give the law schools opportunities to

integrate skills training throughout the four year programme and provide for a logical progression in the training.

The current division between LLB and PCLL, however, has important practical benefits in that it enables graduates from overseas universities to receive some formal training in Hong Kong before embarking on legal practice. The division also enables an early selection process to take place for legal practice and enables the law schools to retain autonomy over the LLB. That autonomy is important given that the LLB is designed, through the offer of electives, to offer students a broad legal education. Until recently it has appeared that most LLB graduates wanted to enter legal practice. However, that position might be changing. See Chapters 3 and 4.

While there are practical advantages therefore in retaining the division between LLB and PCLL, the division should not be an absolute division between academic and practical training. City University supports the inclusion of generic skills training on the LLB (see Chapter 3) and incremental teaching of generic skills throughout the formal training. In addition City University supports the progressive teaching of substantive law throughout the LLB and the PCLL.

## **6.2 Who should offer the PCLL?**

There is a perceived need to make the formal training cumulative and progressive in order to enhance its effectiveness. For this reason alone there is some advantage in both law schools continuing to provide both LLB and PCLL programmes.

The Consultation Paper, however, identifies other options for providing the PCLL: the options are one of the two law schools, the practising profession or the universities in conjunction with the practising profession. The view of City University is that there are further significant advantages in the two law schools continuing to provide the PCLL with monitoring by the practising profession.

These are first that the universities have resources available that support teaching including library and computing facilities, accommodation, teacher training and quality assurance mechanisms and accommodation and healthcare for students. While there have been cuts in UGC funding to both PCLL programmes, they receive support from the UGC. This ensures the quality of the PCLL programmes and makes them accessible to all LLB graduates regardless of their financial status.

Secondly the two law schools provide healthy competition that fosters the development of training methods and exercises. For example, while both law schools were required to adopt the same syllabuses for six courses, it is apparent that each law school has in some cases adopted a different focus and different exercises. Thirdly, there is no benefit in creating one large PCLL class, which in itself would tend to detract from small class groupings and the giving of individual feedback that are essential for effective skills training and individual independent research.

Some members of the profession and the judiciary have expressed a wish for complete uniformity of teaching and assessment on the PCLL. Complete uniformity between the two law schools would tend to make teaching and assessment information based because it is easier to achieve uniformity on textbook information rather than on independent research, practical exercises or skills based exercises. Complete uniformity could be achieved if there is one PCLL provider. This would eliminate all competition and lead to the creation of one

PCLL class of over 400 students. This size of PCLL class would also lead away from small class teaching and the giving of individual feedback that are beneficial to effective teaching and skills training.

Significantly the desire for uniformity also leads away from trends towards practitioner specialization seen in other jurisdictions. Greater specialization creates a need for a PCLL that is geared towards the demands of more than one kind of legal practice - for example the advocate, the solicitor advocate, the commercial lawyer and the private client lawyer. These trends suggest that complete uniformity will not be desirable in future but that it will become necessary for the law schools to offer electives reflecting the varying demands of legal practice.

If the two law schools continue to provide the PCLL, they will require autonomy over a number of matters including admission standards and the number of places offered. (See Chapter 12 concerning pre-PCLL qualifications) Clearly, however, there is a need for the law schools to produce PCLL graduates whose standards are acceptable to the profession. For this reason there are constraints on admissions and numbers.

City University reduced numbers on its PCLL programme in 1998. Its admissions policy is now to offer places to the best applicants wherever they come from without any preference to its own LLB graduates (refer to paragraph 6.3.1.9 on page 135 of the Consultation Paper which is incorrect). The beneficial effects of the cut on admissions standards are now seen in assessment and classroom performance. The answer to criticism about standards is not, however, to continue to cut places but rather to allow the law schools to compete for the best students through the quality of the programmes they offer and to ensure that teaching in the law schools is geared towards producing graduates with the ability and competency that is required in legal practice.

It is, however, accepted that PCLL providers should adopt equal standards of teaching and assessment. In short it is beneficial for the two law schools to compete and to preserve some differences in their PCLL programmes while maintaining equal standards through monitoring.

### **6.3 Monitoring the PCLL**

Both law schools have accepted monitoring of the PCLL but have retained their autonomy over the LLB. Given that the LLB does more than prepare graduates to enter legal practice it is important that the law schools retain their autonomy over the LLB. (See Chapters 3 and 4.)

The question then is what autonomy should the law schools have over the PCLL? Monitoring of assessments by external examiners profession has been accepted and has assisted the law schools to set and maintain standards and to maintain a dialogue between the practising profession and PCLL teachers. The role of the external examiners is to monitor assessments in specific subject areas.

Besides the external examiners, there are a number of bodies monitoring legal education. There are the ACLE, the JEB (now largely defunct) the two branches of the legal profession and the DOJ. These bodies have all at some time had an impact on the PCLL. In recent years the effects of that impact can be seen in a requirement for City University to obtain the consent of the Law Society and the Bar Association before implementing a part-time PCLL: in 1997 both law schools were required by the chief external examiner with support from the Law Society and the Bar Association to implement common examinations and multiple

choice testing: in the following year the ACLE decided to discontinue common examinations: in 1997 the Law Society agreed changes to the syllabus for the accounts course before the changes were vetoed by the ACLE. These sometimes inconsistent monitoring experiences indicate a need for one consistent channel of communication between the law schools, the profession, the DOJ and the judiciary through which can be discussed developments to the PCLL curriculum and a range of issues affecting the law schools the profession and the wider community. (See Chapter 12.)

Given a perceived need to meet wider demands of legal practice by developing the PCLL and by offering electives, it is important that there is a clear understanding between the PCLL providers and the profession as to the extent to which PCLL providers might offer different PCLL courses.

## **6.4 What should be taught on the PCLL?**

The PCLL is currently a hybrid of substantive law teaching and practical training. City University has managed to introduce a considerable amount of practical training and to develop assessments that test independent research work, substantive law and skills. The City University PCLL is not, however, a skills-based training programme. In reality, the focus remains the teaching of substantive law.

The view of City University is that substantive law teaching should remain on the PCLL. This is desirable because students should be encouraged to continue to develop their intellectual ability. However, at City University there is a perceived need to teach substantive law in a manner that encourages students to learn as they will be required to learn in legal practice: for example, students should be given the experience of conducting self-directed legal research without any prior instruction in the subject area and of carrying out tasks and conducting transactions that require them to use or present the results of their independent research in different forms. This process of training students to learn independently and deeply should ideally start on the LLB and continue progressively on the PCLL. This style of teaching, however, is both complex and staff-intensive, requiring individual feedback because students work in a manner that resembles the working style of research students. Furthermore, this teaching style is effective only if students are assessed in a manner that is consistent with teaching.

There is no short answer as to what should be taught on the PCLL. The courses now offered cover a range of law, generic and practical skills and transactions that might be regarded as basic building blocks on which graduates might build specialist knowledge. In reality, however, some graduates will practice in areas not covered at all on either the LLB or the PCLL. Moreover, the variations between the demands of different legal practices continue to grow. Inevitably, therefore those entering legal practice need to continue to learn throughout their careers. This is, after all, one of the hallmarks of a professional.

In this context the subject areas covered on the PCLL might be less important than the teaching methods used and the skills students develop. This is not to say that substantive law is unimportant. As has already been said, City University wants to retain substantive law on the PCLL and believes that skills training must be integrated with substantive law to be effective. There should, however, be some emphasis on independent, deep learning in addition to coverage of a certain number of topics. Making opportunities for independent self-directed research has been difficult given the perceived need for broad coverage of certain specified topics, but opportunities have been made at City University. In order to continue to develop the PCLL in this way there does seem to be a need first to remove some

topics from the curriculum and secondly to put in place a body with authority to permit changes to be made to the PCLL curriculum.

One suggestion that has arisen out of the Consultation Paper is that the Accounts course in its present form should be dropped from the PCLL. (See Chapter 3.) The suggestion is made in part because there is little expertise within the City University School of Law to teach this course. Knowledge of company accounts is useful, but might usefully be included in company law courses, while the Solicitors' Accounts Rules can be taught as part of a Professional Conduct course and in conjunction with other topics such as conveyancing and civil procedure.

It is important that the profession understands what can be expected of a PCLL graduate and in particular the extent of the practical and skills-based training. For example paragraph 2.3.3 of the Consultation Paper refers to lack of sensitivity when dealing with a client in a marital dispute. Family law is not a required subject for entry to the PCLL. Moreover the PCLL civil procedure course at City University does not currently include any family procedure, while students spend only one two-hour session on client interviewing skills. The channel of communication referred to in paragraph 6.3 above would facilitate greater understanding of what can be expected of PCLL graduates and the point at which the profession should take over responsibility for training. The overall aim of the City University PCLL is to prepare graduates to enter the profession as trainee solicitors or pupil barristers. It is implicit in this aim that students will receive further training.

## **6.5 Streaming and electives on the PCLL**

The PCLL currently prepares graduates for entry to both branches of the profession. This is of benefit to students in that they can leave decision-making until the end of the formal training. It has the disadvantage that the PCLL is heavily solicitor-oriented. The suggestion that the Accounts course in its present form be omitted would provide time for more training that is relevant to both solicitors and barristers.

Any requirement for streaming and electives has a resource implication for the law schools. Given its smaller size, this would likely create significant problems at City University. It appears, therefore, that the PCLL programme should offer basic courses but that there should be encouragement for the law schools to develop their programmes within their expertise and within their resources, after consultation with a monitoring body such as that referred to in paragraph 3.

## **6.6 General conclusions**

1. Practical legal education in Hong Kong continues to receive financial support from the UGC. Students also contribute towards the cost. UGC financial support is of great benefit to the practising profession and to society. It makes it possible for Hong Kong to continue formal training for legal practice for a further year after completion of the LLB and it makes careers in the law accessible to all sectors of society. Hong Kong should take advantage of UGC funding for as long as it is available.
2. Funding has recently become a key issue affecting the quality of practical legal education. It is vital that in the course of this review the question of funding for the PCLL is discussed with UGC. If government funding for the PCLL will not continue after the next triennium starting in 2001, this should be made clear at an early date.

3. Substantial reductions in the number of UGC funded places at City University have created problems associated with a very small student body. These include that the PCLL does not pay for itself and consequential staff cuts. There is also a need to address the imbalance in UGC funding between the two law schools, which has created one very large PCLL class at HKU, and one very small class at City University. City University believes that the optimum size of the PCLL class at City University is currently between 90 and 100 students.
4. The Hong Kong PCLL model has some advantages in that there is a balance between practical substantive law, training in practical work and opportunities for students to develop their skills including their research skills. There should be more emphasis on independent self-directed learning, which integrates substantive and practical knowledge and skills development. In order to achieve this there is a need to reduce the number of topics covered on the PCLL.
5. There is considerable support for a longer LLB programme if all undergraduate programmes in Hong Kong are lengthened. It is not clear how a longer Hong Kong LLB would fit with UK LLB degrees, which are of three years duration and which currently qualify graduates to enter PCLL programmes in Hong Kong. A longer undergraduate programme would be advantageous if it is used to offer opportunities to students to improve their language skills and to enable them to develop as creative thinkers and independent and mature people. A longer LLB would not automatically mean that more law topics would be covered, because there is a perceived need to emphasise independent deep learning. However, there is support for teaching basic civil procedure on the LLB and to teach advanced procedure on the PCLL.
6. There is a need to develop and to continue to develop the PCLL in line with the changing needs of both branches of the practising profession - for example, to offer more training for those students wishing to go to the Bar, to offer Chinese law courses and advocacy in Chinese and to offer more opportunities for students to work as though in practice and for example, to learn without prior instruction. This development can take place provided it is accepted that the two law schools can develop their programmes and there is a one channel of communication between the law schools, the two branches of the practising profession, the judiciary and the DOJ through which developments can be agreed.
7. City University has a specific proposal to omit the Accounts Course in its present form from the PCLL.



## **Trainee solicitors contracts and pupillage**

### **7.1 Introduction**

Legal education is a life-long process. It has been suggested by some senior members of the profession that lawyers only start to learn the law seriously when they are in practice. City University does not take this attitude but agrees with the underlying meaning of this statement, namely that on-the-job legal training is one of the most important pre-requisites to groom a competent solicitor or barrister. Under the current system, a law student will spend only four years (three year LLB and one year PCLL) formal training. Thereafter, graduates will enter the profession as trainee solicitors or pupils and will have thirty or forty years to practise law. Given the rapid pace of social and economic changes in our society, and the need for lawyers constantly to keep themselves abreast with developments in the law, it is unrealistic to expect that universities alone should undertake the training of our future legal profession.

### **7.2. Importance of On-the-job Training**

Ideally the one-year PCLL programme, followed by the two-year training for solicitors or the one-year pupillage for barristers, will help a law graduate build a solid foundation for legal practice. Some members of the practising profession have stated that the PCLL programme has failed to produce graduates with adequate skills and the sophistication required of practising lawyers. While the universities incorporate skills (such as document analysis and drafting, advocacy, interviewing and negotiating) in the PCLL programme, it is obvious that these skills can be developed to a high level of competency only through years of actual experience under proper supervision of senior lawyers. The universities are eager and prepared to teach more skills-based programmes, but this is possible only to a limited extent unless the formal training stage at the universities is extended. In the short term, this is unlikely to be funded by the government.

There are other aspects of legal practice that cannot be covered comprehensively by tertiary institutions. Examples are presentation skills, client-handling techniques and skills to handle complex commercial transactions. These are included in the formal university training, especially on the PCLL, but cannot be covered comprehensively considering the other demands during the four years of university training. City University's view is that, in addition to continuous professional development courses, proper post-PCLL training is essential for the education and professional development of new entrants to the legal profession.

### **7.3 Problems of Trainee Solicitors Contract**

The on-the-job training for trainee solicitors has been designed to enable trainee solicitors to grasp the basic skills associated with the practice and profession of a solicitor. According to the trainee solicitor contract, a trainee solicitor is placed under the supervision of a principal (a senior member of the law firm), who is responsible to ensure that the trainee solicitor receives proper training. The Law Society also requires that each trainee solicitor should have the opportunity to learn different aspects of legal practice, that is to say, a trainee solicitor

should at least be equipped with the basic skills to handle commercial, litigation and property matters. However, the success of the training programme depends very much on proper supervision by principals and the size and practice of a particular firm. As indicated in the Consultation Paper, many trainee solicitors are not satisfied with their training programme. They complain that their supervising principals do not provide proper training and that they have to learn on their own throughout the trainee period. The lack of proper supervision and training inevitably has a negative effect on the performance of trainee solicitors, which in turn attracts scathing criticism of the competence of new entrants to the profession.

Unlike international and a few large local firms, many of the local small and medium size law firms have traditionally generated a considerable proportion of their fee income from conveyancing. The effect of this has been that many trainee solicitors were trained only to be conveyancers, not well-rounded lawyers. When conveyancing work became less lucrative after the Asian financial crisis and the effective abolition of mandatory scale fees, anecdotal evidence suggests that many solicitors were forced to switch their practices to the commercial or litigation fields, without the required training and skills.

The legal profession appears to be particularly unhappy with the standard of those new entrants who completed their legal education locally. One cannot deny that candidates from overseas universities do have the advantage of possessing better English language skills. The other advantage enjoyed by overseas candidates is that international and large local firms are more willing to recruit them as trainee solicitors, hence, they have better training than most of the local graduates. City University agrees with the observations made in the Consultation Paper: the type of work that newly-admitted solicitors are able to do is a product of what they have learnt in their training period. Apparently, there is need for improvement of the present trainee system. It is questionable whether many small firms have the economies of scale to provide adequate training and supervision for trainees.

## **7.4 Problems of Pupillage**

A law graduate who wishes to join the Bar starts the one-year on-the-job training with a pupil master, a senior barrister with a minimum number of five years standing. Supposedly, the pupil master should provide the pupil with proper training on drafting and advocacy skills in accordance with the Code of Conduct of the Bar Association. However, the success of training during the pupillage depends largely on the commitment of the pupil master and the relationship between the pupil and the master. It is unclear whether there is any appraisal as to the effectiveness of the training which a pupil receives although the pupillage period will not be regarded as completed unless the pupil master certifies that the pupil has served his pupillage with diligence. After the one-year pupillage, a pupil will be called to the Bar and start his practice as a barrister. A recently retired judge commented that the standard of newly qualified barristers varies from one extreme to another: some demonstrate a very high level of competence, whereas others are not up to the required standard. Apart from the calibre of individual barristers, the type of training they had during their pupillage also determines how competent they will be.

## **7.5 City University's Response**

The Consultation Paper identified a number of issues relating to trainee solicitor contracts and pupillage. City University's views are as follows:

1. There is a need for greater clarification of the purpose and role of pupillage and trainee solicitor contracts so that pupil masters/principals and pupils/trainee solicitors can have a better understanding of their respective obligations and responsibilities.
2. The current length of one-year pupillage and two-year trainee solicitor contracts is appropriate, but there must be some mechanism in place to monitor the quality and effectiveness of pupillage and trainee solicitor contracts. The results from the survey conducted by the Trainee Solicitors Association suggested that many firms are not providing proper training. There is no similar survey conducted by pupils, but anecdotal evidence from recent graduates confirms that there is a need to improve the system of pupillage. A related issue is the problem potentially created by the fact that those responsible for monitoring the quality of training for pupils and trainee solicitors are also those who are responsible for the training.
3. The PCLL is the entrance requirement for the legal profession in Hong Kong. Students who pass the PCLL examinations can choose to become trainee solicitors or pupil barristers. City University questions the need to have a further examination before law graduates begin their training programmes. What matters is the quality of on-the-job training, not the skills to pass examinations. Without proper on-the-job training, candidates cannot be competent lawyers even if they pass such an examination.
4. Apart from conveyancing work, a trainee solicitor should be provided with opportunities to handle a range of other types of work, such as China practice or more sophisticated commercial transactions. If a particular firm cannot offer a range of work to its trainees, the trainee solicitor should be allowed to transfer to another firm, so that the trainee solicitor can widen the scope of training. This is particularly relevant given that China has recently opened its legal market to Hong Kong lawyers. China's accession to WTO provides further opportunities for Hong Kong lawyers but such opportunities can be grasped only if Hong Kong lawyers are capable of handling more advanced commercial transactions and have a basic understanding of the PRC system.

## **7.6 Conclusion**

Clearly, to survive the challenge of a rapidly changing society, there is much room for improvement in the training of our future lawyers. Some solicitors even suggest that an "academy of legal specialists" should be set up to enable lawyers with certain years of experience to acquire more specialised legal skills. However, it is not an overstatement to suggest that on-the-job training for lawyers is as important as the training they receive in the academic stage. While the law schools strive to improve the quality of legal education at the academic stage, attention must also be paid to the improvement of on-the-job training, which is indeed a vital part of the legal education process.

## **Postgraduate programmes and research**

### **8.1 Introduction**

The Consultation Paper points out correctly that both postgraduate programmes and academic research by staff of the two law schools are integral elements of modern law schools. It also acknowledges the strength of the City University School of Law in Chinese and comparative law and ADR. City University School of Law has other research strengths including commercial law, foreign investment and foreign trade law and socio-legal studies. The following addresses the issues raised in the Consultation Paper with regard to postgraduate programmes and academic research.

In many academic departments around the world, graduate programmes provide crucial intellectual stimulation for research and scholarship, generating intellectual economies of scale within law schools and providing a forum in which staff can teach and discuss the more sophisticated specialized concepts that their scholarship involves. By contrast, many graduate programmes in Hong Kong seem to be used to some extent as a form of continuing legal education. Such programmes are not suitable for the kind of elite intellectual scholarly engagement that stimulates scholarship. While research-oriented graduate law programmes do exist - the M.Phil and Ph.D - they are too small to have any impact on the intellectual environment, or to contribute to the overall intellectual community of a law school.

### **8.2 Research in Undergraduate Programmes**

Related to this problem is the structure and focus of the undergraduate law programme. Both the structure of the Consultation Paper and the title of Chapter Eight imply that research is primarily a postgraduate pursuit. Intentionally or not, the overall structure of the LLB is consistent with this implication. A lack of research training in the LLB stems from the overcrowded nature of the three-year undergraduate curriculum. In general at City University we have noted that there tends to be too much focus on doctrinal, practice-oriented courses. This, in turn, limits staff opportunities to develop synergies between their teaching and their scholarship. Moreover, these factors could stifle student appreciation for the more intellectual scholarship of law-as-discipline and limits students' exposure to legal research and scholarship. Many have commented to the consultants on the general lack of scholarly interest among Hong Kong law students and law graduates. This could be due in significant part to the strongly technical emphasis of the undergraduate curriculum and the lack of room for a liberal arts education.

The current undergraduate curriculum does not provide sufficient opportunities for students to explore the scholarly aspects of the discipline. How we remedy this is problematic given the severely limited scope allowed by a three-year curriculum. One possibility might be to diversify the undergraduate curriculum and to include within it more advanced and research-oriented courses. This would require an extension of the number of years devoted to LLB training, or a reduction in the number of required core courses and a corresponding expansion of the undergraduate population at City University so that more electives can be offered. Opportunities for inter-disciplinary linkage should also be explored - see paragraph 8.7 below.

### **8.3            Reconceptualise graduate and postgraduate programmes**

It is suggested in the Consultation Paper that students are motivated only by credentialism. City University's view is that this is not true of all students, many of whom study for interest and self-improvement. To the extent that attitudes need to be changed, perhaps the best and easiest way of changing attitudes to study is to reconceptualise the place of graduate and post-graduate programmes in Hong Kong. While continuing legal education programmes would of course still have a place in the graduate offerings, they should not dominate and define the graduate programmes. Rather than being seen primarily as a means of "continuing legal education," the graduate and post-graduate components of the curriculum should be seen as the pillars of the intellectual and scholarly culture of the law schools.

Part-time and evening programmes should continue to play important roles in the context of continuing legal education (including the provision of advanced training in speciality areas such as ADR). However, perhaps the core focus of the graduate programme overall should be on the transmission of specialized knowledge. Along these lines, the current distinction between research degrees and graduate degrees (and their different funding schemes), should be reconsidered. All graduate programmes (including the M.Phil) should include a classwork and research component in their core curricular designs. The weight given to these components may vary from programme to programme. Within the M.Phil, the coursework could include training in research skills; other coursework should be relevant to the research focus of each student.

Graduate programmes should be designed to attract local, mainland and overseas students. For example, internationalization of the New York University Law School's graduate programme in 1993 transformed it into an elite international legal education institution by the end of the decade.

Hong Kong is uniquely situated in the world's legal environment. It provides ready access to an unparalleled diversity of legal environments, cultures and problems. Graduate programmes that take advantage of this diversity of access would be in great demand internationally. For example, there is great demand among American law students for advanced programmes in Chinese law. Currently, no American law school has more than one specialist in Chinese law on its faculty, and geography and language severely limit even the best law school's access to the Chinese legal environment. Hong Kong's geography gives its law schools opportunities to offer advanced, elite graduate programmes in the areas of Chinese and comparative law that could easily become a Mecca for international scholars of Chinese law. City University has already made significant efforts along these lines. Similar opportunities exist in the areas of international business, law and development, public international law and human rights.

The benefits of this reconceptualization on the intellectual and scholarly aspects of the Hong Kong community would be considerable. It would increase the opportunities for staff to synergize their teaching and research. As will be discussed below, it could also provide a vehicle through which teaching load could be reduced and rationalized without significant increase in expenditure.

### **8.4            Academic Research by Staff at City University**

At City University, the problem of the small size of its School of Law is compounded by the wide scope of teaching responsibilities that have been placed on the School of Law. In addition to teaching law school courses, City University staff must also develop and teach a broad variety of continuing education and undergraduate courses for non-law students (see

Chapter 9). This not only increases the overall teaching load, it further inhibits the development of synergies between teaching and research, because the very limited legal knowledge possessed by the students in such courses frequently allows for only the most limited exposition of their subject matter.

City University School of Law has established collaborative links with Mainland, European and American universities. However, it is desirable to foster further links of an interdisciplinary nature with local institutions and departments. Along these lines, there are a number of ways in which Hong Kong law schools might promote a more internationally competitive intellectual and scholarly environment for staff and students.

The Consultation Paper suggests that one way in which quality scholarship could be promoted is through the development of more research centres. This is one method of promoting research. However, there are others. The principal focus should be on the development of more, and more inclusive research activities - for example, faculty seminars, colloquia, lecture and paper series. This is the software component of building a research culture.

## **8.5 Rationalize teaching loads and responsibilities**

Teaching loads and responsibilities of City University School of Law staff need to converge with their research responsibilities. In addition teaching loads could be reduced by using graduate students and research assistants for teaching, but only where appropriate.

One method of rationalising teaching and research is to offer staff the choice of teaching or research-only contracts. This is done in the UK. This enables staff to focus either on teaching or research according to their talents and interests. At the same time, we must take care to insure that such tracks do not inject harmful rigidities or hierarchies into law school environments. In particular, teaching-track staff should still be given opportunities to develop scholarly pursuits, and should have equal chances for promotion. Students should also have the benefit of learning from senior academic staff.

## **8.6 Developing Joint Degree Programmes**

One important form of interdisciplinary linkage that is yet to be meaningfully exploited by Hong Kong law programmes is the joint-degree programme (particularly in the core interdisciplinary areas mentioned in paragraph 8.7 below). Not only could such programmes help catalyze interdisciplinary analyses of legal issues, they could also provide justification for expanding the length of the degree programme (particularly the LLB), thus allowing for the introduction of more theoretical, scholarly courses.

## **8.7 Expanding approaches to legal scholarship**

While recognizing that doctrinal analyses are and should be a core component of legal scholarship, law schools need to introduce a wider variety of analytical methodologies into its legal scholarship. Internationally, there has been a significant trend towards more comparative and interdisciplinary approaches to legal scholarship particularly in the areas of economics, sociology, philosophy, public administration, business administration and literature. But for reasons discussed above, the present curriculum and environment in the City University School of Law tend to focus on doctrinal investigations and analyses of the law of either Hong Kong or the mainland.

Greater diversity in legal scholarship is desirable. This can be achieved by fostering interdisciplinary research projects, and removing institutional obstacles to interdisciplinary research and development - for example, by encouraging UGC to adopt an interdisciplinary approach to allocating funds.

One of the outcomes of considering the Consultation Paper is that it has become apparent that there are huge gaps in our knowledge and understanding of law and its relationship to society in Hong Kong, and complete absence of empirical data which is taken for granted in other jurisdictions. The law schools need to take initiatives to kick-start research in vital areas to build a research culture throughout the legal community and to celebrate research.

For example, Hong Kong has very little information on the processing of cases through the legal system, the operation of the courts, the history of the legal profession and un-met legal needs. Other areas could be more 'market driven' - for example, law and new technologies, law and engineering, law and science, para-legal training, trends in legal practice, declining areas of legal work and emerging markets for legal services.

Hong Kong could also consider other models of financing research - for example, a law foundation supported by the practising profession. We recognise the importance of this review in shaping the quality and values of the culture of the legal profession and its significance for the development of civil society in Hong Kong under the Basic Law. Legal research is a vital component in this process and in the development of law in our society.

## **Overseas Lawyers Qualifications**

### **9.1 Admission as a solicitor via the Overseas Lawyers Qualification Examination**

The Overseas Lawyers Qualification Examination (OLQE) enables persons entitled to practise the law of an overseas jurisdiction to qualify as solicitors in Hong Kong. To do so the overseas lawyers must meet certain educational and practice requirements, be of good standing in their own jurisdictions and pass, or have been exempted from, the OLQE. The practice requirement is two years for those entitled to practice in a common law jurisdiction and five years for those entitled to practice in a non-common law jurisdiction.

Paragraph 2 of Chapter 9.1.2 of the Consultation Paper contains information about those seeking admission in Hong Kong through the OLQE route. Over a relatively short time, a considerable number of persons with no previous connection with Hong Kong have entered the profession through this route. Attached to the Consultation Paper at Appendix 1 is a comparison of the numbers of solicitors entering practice via the City University PCLL and the numbers entering via the OLQE.

### **9.2 The Overseas Lawyers Qualification Examination**

As stated in the Consultation Paper, the process by which an overseas-qualified lawyer (OQL) can qualify as a solicitor in Hong Kong seeks to be "objective, nondiscriminatory and competency-based". On the whole it appears those objectives are being met. Persons intending to take the OLQE are provided with a detailed information package and preparatory courses are conducted by accredited course providers. There is a rigorous process both for setting and marking the examinations. The examinations are open book. Care is taken to avoid setting questions that are memory tests. A candidate who simply copies from a text book in an open book examination and does not "address, advise or discuss" is not demonstrating competence to practice.

One concern raised in the Consultation Paper is whether the areas tested in the OLQE (Conveyancing, Civil & Criminal Procedure, Commercial & Company Law and Accounts & Professional Conduct) are appropriate areas. For example, do overseas qualified lawyers intend to practise in Hong Kong's courts and particularly in the criminal courts? Do they intend to practise conveyancing? Is it appropriate that both Civil and Criminal Procedure should be tested in one examination?

There is little detail in Chapter 9 of the Consultation Paper about the work that entrants through the OLQE route actually undertake. Generalisations about those entrants coming to work in large commercial law firms might not reflect the true position. There is similarly little information in the Consultation Paper about the level of satisfaction or dissatisfaction with such entrants or their overall impact on both the profession and the supply of legal services in Hong Kong. Given the numbers of solicitors entering Hong Kong by this route, there is a need to gather this information in order to answer questions about the appropriateness of the examinations.



There is no reason in principle why Hong Kong should not expect those applying for admission in Hong Kong to demonstrate competency. The reality is that those seeking admission through the OLQE route have had little or no connection with Hong Kong's legal system. The OLQE is a convenient way for those seeking admission to demonstrate both general competency and sufficient understanding of Hong Kong's system so that they can safely be admitted as solicitors in Hong Kong.

If the OLQE is intended to allow candidates to demonstrate competence to practice in Hong Kong there is in principle no need to extend the scope of the examination. The rigorous way in which the examination papers are set and marked and the availability of instructional courses provides a level playing field for those seeking admission in Hong Kong. The spread of subjects presently examined provides ample opportunity for the OLQE to demonstrate both general competence and appreciation of Hong Kong's system.

On the information available from the Consultation Paper it is not suggested that major changes to the present procedure are necessary.

### **9.3 Experience of legal practice in Hong Kong**

Although many of the persons sitting the OLQE are already working in Hong Kong, there is no requirement for them to have had any practical experience in Hong Kong before sitting the examination.

### **9.4 Continuing Professional Development**

Persons admitted to practice in Hong Kong are subject to the continuing professional development (CPD) programme discussed in Chapter 11 of the Consultation Paper. The CPD programme is important especially as it enables overseas lawyers admitted to practise in Hong Kong to build upon their competency demonstrated in the OLQE. Any suggestion that those admitted through the OLQE need not participate in CPD should be resisted.

## **Teaching law to students in university courses other than law**

### **10.1 Background**

The teaching of law to non-law students has made law a much more significant discipline than ever before. More non-law students are being taught law in Hong Kong tertiary institutions than students pursuing law degrees in the two law schools in Hong Kong. Basic law subjects are taught in almost all tertiary institutions to meet the needs of the local community.

In City University, all law teaching, whether to law students or to non-law students, is carried out by the staff of the School of Law. The situation in City University is very different from that of the University of Hong Kong, where faculties such as business and humanities appoint lawyers to teach law courses - only the general legal education courses are taught by members of the Faculty of Law. The City University School of Law teaches 3,500 non-law students and 500 law students.

### **10.2 Law Subjects For Non-Law Students**

There are a great number and variety of courses taught to service students. Law courses taught to non-law students can be divided into three categories.

The first category consists of law courses taught to students of vocational disciplines, such as engineering and architecture. Such law courses are mandatory for these students.

The second category consists of programmes that have a large law component, which forms a substantial part of the degree. A good example is the Bachelor of Business Administration (BBA). Students opting to do a law minor as part of their degree are required to do two compulsory law units, and choose two electives from six.

The third category consists of law courses which are taught to students of other disciplines. These students are taught alongside regular law students. They attend the same classes, study the same materials and do the same tests and exams. The BBA (Hons) Accountancy & Law degree is an example.

### **10.3 Problems Facing Service Students**

#### **10.3.1 Language difficulties**

Under the University rules, all students must be taught in English. Law, like other subjects, has its own unique language. However, given that law is very language-dependent, students require an even stronger grasp of the English language. The problem for service students is that their linguistic skills are often insufficient for understanding the language of the law.

### **10.3.2 Difficulties with different accents**

As Hong Kong is an international city, law teachers come from different jurisdictions - including Hong Kong, mainland China, USA, Canada, England, India, Sri Lanka, New Zealand and Australia - and have different accents. Such a melange is rarely found elsewhere. This means that the students must cope with diverse accents. Though diversity of accents may not create problems for students with good English skills, students with weak English find it more difficult to grapple with the varying accents.

### **10.3.3 Difficulties arising from the intellectual abilities of students**

Although we have raised the standard of entry requirement for LLB student, the admission requirements for some of the service programmes which offer law as an out of discipline subject tend to be lower. Students admitted with lower grades have greater difficulty understanding law courses.

### **10.3.4 Difficulties because of the low prioritization of law**

Since law courses are adjunct to other courses, students may not devote as much time and effort to them. In fact, in some disciplines, students are interested only in obtaining a pass in law courses.

Moreover, students' perception of law is coloured by the core courses they study. For example, accountancy students would prefer law to be structured in accountancy terms. This would also be the case, to a large extent, with finance and economics students. They cannot comprehend the variations and exceptions that go hand in hand with every legal principle and rule of law. Nor do some of them fully understand that two cases with similar facts could have been decided differently and two judges could draw different inferences from similar facts. The expectations of many non-law students are that they have come to study certain rules and definite principles and that judgments and decisions given by a judge are final and binding. The idea that a lower court decision can be overturned by the higher court is difficult for them to appreciate. They often fail to understand that the principles of common law have developed on the basis of policy considerations and that legal principles change with changes in policy.

### **10.3.5 Difficulties with the expatriate nature of the law**

The common perception in Hong Kong is that law is largely expatriate and imported. Furthermore, until recently law was taught mainly by expatriates using foreign books and materials. This made law mysterious and its study difficult.

### **10.3.6 Difficulties with the lack of appropriate materials**

There are as yet very few textbooks in law which focus on teaching non-law students. This is very different from the position in England and, to some extent, in Australia. The Hong Kong Open University, which teaches some law courses to non-law students, has appointed professional staff to develop and write courses specifically designed for those students.

### **10.3.7 Difficulties of teaching too many subjects under one course**

The task of teaching several subjects under one course is often difficult for teachers. It is difficult to identify and explain the important legal rules and principles by taking into account

a common theme, while at the same time having to cover many topics in a short period of time. This problem is partly due to the fact that courses are offered to accommodate the requirements of professional bodies, economic or financial sectors, although pedagogically it may not be a sound thing to do.

### **10.3.8 Difficulties of teachers**

People who do service teaching face several problems. First, they have to spend much of their time devising strategies to address the need to present course content at a more basic level than is required on other programmes. This is time that could be spent on research. Second, the need to present course material at a basic level means that there is no opportunity for people teaching service courses to explore complex concepts or issues in their teaching that are related to their research interests.

These problems are related to the problem of small numbers of students. A larger student population would make it possible to hire teaching specialists who could do the particular type of teaching required on service courses, while at the same time freeing up other teaching staff to spend more time teaching and researching in their areas of specialization.

## **10.4 Concluding Remarks**

For service students, a very clear teaching strategy is required. The main question that faces law lecturers teaching courses to non-law students is at what level and how to impart legal education. What has to be done is to relate the application of the legal principles to day to day, relevant examples. We must not, however, seek to expose service students to an overly critical and analytical approach to the study of law.

What is needed is to produce material specific to each discipline. For example, if the law of negligence is taught to engineers and architects, building law and cases should form the basis of explaining principles of the tort of negligence. In the case of accounting students, the law of negligence should be explained by cases involving accountants, auditors and financial institutions.

Given the difficulties encountered by service students studying in English, it may be an idea to have some involvement of English language teachers in developing teaching materials for service students. These students should also be asked to study English for Legal purposes (a City University LLB course). They have greater problems than law students and we need to do more for them in this regard.

Lastly, we have to think of small group teaching for service students. Lectures of 200 or more students and tutorial groups of over 20 students are not helping them. However, maintaining such class sizes is a good strategy from the financial point of view, and a reduction would require a significant increase in resources.

## **Continuing professional development**

### **11.1 Continuing Legal Education for Solicitors in Hong Kong**

In 1991, the Law Society put in place a mandatory continuing legal education scheme for trainee solicitors and practising solicitors. At present, all trainee solicitors and practising solicitors in Hong Kong who were admitted after 31 December 1988 are required to obtain a minimum of fifteen Continuing Professional Development points every year. Solicitors may obtain CPD points by participating in a wide range of activities such as attending courses accredited with CPD points by the Law Society, taking distance learning courses, writing legal articles and books and preparing or presenting a course accredited with CPD points.

The Law Society's aim is to bring all solicitors in Hong Kong within their mandatory "Continuing Professional Development Scheme" by 1 January 2003. In other words, all trainee solicitors and solicitors practising in Hong Kong will have to accumulate fifteen CPD points every year from 1 January 2003 onwards.

### **11.2 Continuing Legal Education for Barristers in Hong Kong**

There is no mandatory continuing legal education scheme in place in Hong Kong for barristers.

In November 1998, the Bar Association introduced a pilot advanced legal education (ALE) scheme. Pupils and barristers in Hong Kong are encouraged to participate in courses on a wide range of topics organized by the Bar Association at a minimum charge.

The long term aim of the Bar Association is to make it mandatory for all pupils to join a Pupils Programme. The Programme will have 12 components dealing with areas including research, opinion writing, drafting, conference and negotiation skills, advocacy, fact management etc.

### **11.3 Comments on some of the issues raised by the Consultation Paper**

1. We agree that legal education should be seen as a life-long process commencing from the LLB programme and extending beyond and throughout a practitioner's professional life. Legal education and training should be designed based on this principle.
2. The LLB and PCLL curriculum could therefore be designed as follows:-
  - The LLB programme could focus more on providing substantive law and generic skills training (legal research, legal analysis, fact analysis skills etc - see Chapter 2 and 3 discussion) to students. This would serve the needs of students who intend to become legal practitioners and of those who do not intend to do so.

- The PCLL programme could focus on providing more practical skills training (e.g presentation skills, client interviewing skills, legal writing skills etc.) to equip students for future legal practice.
  - Trainee solicitors and pupil barristers should be required to take mandatory practical skills training courses during their training period. These training programmes should focus on skills which have not been given a lot of coverage in the PCLL programme, or they could be advanced courses building on the skills training courses offered during PCLL.
3. If such an approach is to be adopted, there will be a need for overall curriculum planning starting from LLB and extending beyond the training period for trainee solicitors and pupils. City University suggests that the Bar Association, the Law Society and the two law schools in Hong Kong should co-operate to consider this issue and to design suitable programmes for the students, in particular, those mandatory skills programmes to be provided after the PCLL.
  4. The LLB and PCLL programmes in Hong Kong cannot provide sufficient practical skills training to prepare students for legal practice. In particular, practical skills training for barristers is lacking. City University therefore agrees that a series of mandatory barrister vocational courses must be introduced for all pupils in Hong Kong. All pupils should be required to attend training courses on practical skills such as opinion writing skills, conferencing and client interviewing skills, and trial skills. The mandatory Pupils Programme focusing on such training should be offered by the Bar Association as soon as possible.
  5. Practical skills training courses such as courses on client-interviewing skills, legal writing skills, skills on drafting commercial documents and legal documents and client and practice management skills should also be made compulsory for all trainee solicitors under the CPD Scheme.
  6. At present, all legal firms in Hong Kong are required to pay for the CPD courses that their trainees attend. Since pupils have limited income during their pupillage, the Bar Association should continue with their current practice in requiring pupils to pay only a nominal fee for joining any training programmes they offer.
  7. All solicitors and barristers in Hong Kong should come under a scheme of mandatory continued professional development. If we wish to create a culture of lifelong learning in the Hong Kong legal profession, this will be an essential first step. Therefore, the mandatory CPD programme should continue. Hong Kong barristers should also introduce a mandatory ALE programme requiring all barristers in Hong Kong to receive continuing legal education throughout their professional lives.

## The system of regulation of legal education

Chapter 12 of the Consultation Paper (The System of Regulation of Legal Education") identifies two basic issues, as follows. First: would it be appropriate for the specification of the requirements for admission to practice to be encapsulated into one statement, possibly taking the form of rules? Second: would it be appropriate to replace the existing various bodies which play a role in monitoring and regulating the system leading to admission to practice with one body with overall responsibility for education and training? It seems clear from the way in which the consultants have framed these two issues that they are inclined to recommend (1) that there should be a set of rules specifying the requirements for admission to practice and (2) that there should be a single body charged with promulgating (and, perhaps, administering) such rules. It must be acknowledged that there are good reasons for recommendations to this effect. Indeed, Hong Kong's current practices in this regard are somewhat peculiar.

It is worth emphasising, however, before commenting on the detail of the proposals implicit in the Consultation Paper, that for the most part *the present system operates satisfactorily*. Indeed, it is entirely possible that adopting the suggestions made by the consultants could actually make things worse. In particular, Hong Kong currently takes an unusually cosmopolitan approach to the recognition of foreign law degrees. It seems to be generally thought, with good reason, that this is a good thing. It is possible however that the process of promulgating rules specifying the requirements for admission to practice would restrict current practices in such a way as to be detrimental (for example, by ceasing to recognise foreign law degrees currently regarded as acceptable).

Thus, if rules are to be promulgated specifying the requirements for practice, and if, therefore, some body is to be charged with the tasks of promulgating and administering such rules, great care will be required to ensure that this is done in such a way so as to produce a positive, rather than a negative, effect. In particular, such rules should not restrict current practices, except where this would raise standards in accordance with international norms.

### **12.1 The first issue: would it be appropriate for the specification of the requirements for admission to practice to be encapsulated into one statement, possibly taking the form of rules?**

Even to pose this question in this way is effectively to answer it: for the answer is, obviously, yes. Indeed, it is somewhat peculiar that there does not already exist a set of rules (or a statement in any form) specifying the requirements for admission to the practice of law in Hong Kong. Obviously in the great majority of cases those seeking to commence traineeship or pupillage have the following qualifications:

1. an LLB and a PCLL, or
2. a degree other than an LLB, a CPE and a PCLL.

Nonetheless, a number of important questions remain currently unresolved. These include the following:

1. Are there any circumstances in which a person can be admitted to the PCLL (and thus to the practice of the law) on the basis of a CPE, but without having a degree of any kind?
2. Is a BA majoring in law an adequate prerequisite for the PCLL?
3. LLB degrees from England, Wales, Australia, New Zealand and Canada all seem to be regarded as adequate prerequisites to the PCLL. But what about law degrees from Scotland, the United States, etc?
4. Some foreign universities have in recent years taken to offering LLB degrees on the basis of only two years' study (rather than the traditional three years'). Should Hong Kong recognise two-year LLB degrees?

Currently, questions of this nature are effectively answered by those responsible for student admissions to the PCLL programmes at the City University and at the University of Hong Kong (including SPACE). The reason for this, at the City University, is that the University's PCLL regulations require a Hong Kong LLB or equivalent - but leave it to the law school to determine whether the qualifications presented by applicants are "equivalent". We understand that much the same situation pertains at the University of Hong Kong law school and at SPACE. This seems to work well enough in practice, but in principle it is unsatisfactory in two respects. First, it is not necessarily the case that the two law schools and SPACE will answer these questions in the same way. In other words, it is possible that a qualification (for example, a two-year LLB) might be regarded as unacceptable by one PCLL programme but not by another. Moreover, even if the three bodies (City University law school, Hong Kong University law school and SPACE) invariably answered such questions in exactly the same way, it is far from clear that it is the universities that ought to be answering this question in the first place.

In this connection, it is important to distinguish between the qualification itself and the quality of the qualification. It may not be appropriate in principle (though it seems to work well enough in practice) for the universities to decide which qualifications should entitle their holders to *apply* for places on the PCLL. Rather, as the Consultation Paper suggests, it may be preferable for such decisions to be made by some body established for the purpose (and, as the paper appears to envisage, other like purposes in connection with the regulation of legal education). To take a more specific example, it is probably not appropriate for the universities to decide whether an LLB from (say) South Africa is "equivalent" to one from Hong Kong. But if South African degrees are to be acceptable, the universities are reasonably well-placed to assess their quality. In other words, it is appropriate for the universities to decide who, among those qualified to apply, should be admitted to their PCLL programmes (on the basis of academic merit, and other appropriate criteria); but there should be a set of rules specifying the qualifications which are prerequisite to the PCLL (and, of course, the same rules should apply at all PCLL programmes).

As to the substance of such rules, several observations seem apposite.

1. The international norm (that is, the norm in the developed common-law world) is that no one is permitted to practise law unless they hold a law degree (that is, an LLB or, in the US, a JD) obtained by attending a law school for at least three years full time



(or a pro rata lengthier period part-time). Currently, Hong Kong, like England and a number of less-developed jurisdictions (for example in Africa and the Caribbean) accept various lesser qualifications (notably, distance law degrees, the CPE and BA degrees covering core law subjects). There would appear to be no reason for Hong Kong to continue to recognise such qualifications, given that they are regarded internationally as inferior to a law degree obtained by attending a law school for at least three years. Therefore, Hong Kong should work towards complying with the international norm. In other words, Hong Kong should work towards permitting people to practise law only if they hold a law degree obtained by attending a law school for at least three years.

2. Whilst it would be desirable to restrict the practice of the law to people holding law degrees, it would not be desirable for this to be used as a justification for ceasing to recognise law degrees obtained by actual attendance at a foreign law school. In other words, it may be that Hong Kong should cease to recognise distance law degrees; but it should not cease to recognise law degrees obtained by actual attendance at a foreign university. It is true that most other jurisdictions put obstacles in the way of the holders of foreign law degrees. It seems reasonably plain however that this is simple protectionism, and has nothing to do with standards. Distance law degrees, the CPE and BA degrees in law, however, should perhaps be excluded not for any protectionist reason, but simply on the basis that they are inferior to a law degree obtained by attending a law school.
3. Obviously an LLB from City University or Hong Kong University should continue to be regarded as an acceptable qualification on the basis of which to apply for admission to the PCLL. (Equally obviously, it does not follow from this that all those who hold such degrees will be given places, because there might be insufficient places, or applicants with LLB degrees from other jurisdictions might be better qualified and admitted in preference to holders of Hong Kong LLBs, etc.)
4. LLB degrees from England, Wales, Australia, New Zealand and Canada should continue to be recognised as an acceptable qualification on the basis of which to apply for admission to the PCLL. (Again, it obviously does not follow from this that all those who hold such degrees will be given places, because there might be insufficient places, or other applicants might be better qualified, etc.)
5. There is currently some uncertainty as to whether law degrees from the US, Scotland and various other jurisdictions qualify their holders to apply for places on the PCLL. Such uncertainties should be eliminated. Even before 1997, there would appear to have been little reason in principle to discriminate against law degrees from these jurisdictions; now there is obviously less. Such degrees, therefore, should be acceptable. Indeed, in view of the globalisation of legal practice and business generally, it would seem to be to Hong Kong's benefit to recognise as broad a range of common law degrees as possible (including partially common law degrees, such as those from Scotland and South Africa). Again, of course, this would not mean that a person holding such a degree would necessarily be entitled to a place on a PCLL, but merely that he or she would be entitled to apply.
6. There is also currently some uncertainty as to whether a BA with a law major should be regarded as equivalent to an LLB. With the exception of England and Wales, Hong Kong appears to be the only developed jurisdiction in the world to permit a person to practise law without a law degree as such. Especially since 1997, there appears to be

no reason why Hong Kong should continue to follow England and Wales in such a practice, regarded as it is by the rest of the developed world as peculiar. In other words, this uncertainty should be eliminated by accepting as a prerequisite for the PCLL only law degrees as such (and not general arts, humanities, etc degrees with a law major). It would be necessary to provide for a suitable transition period (say five years or more) so as not to prejudice unfairly Hong Kong students currently studying for such degrees. It is necessary to mention also that there are no doubt many fine lawyers in Hong Kong who were admitted to practice on the basis of BA degrees with a major in law. But this is not a reason for continuing to recognise such degrees, for the issue is not the quality of the individual, but the appropriateness of the qualification.

7. There are also several qualifications which are currently recognised as acceptable for admission to the PCLL, but which perhaps should not be. One such is the distance or external LLB (such as that offered by the University of London). Currently, such degrees are accepted as qualifying their holders to apply for a place on the PCLL. It may be however, that Hong Kong should simply cease to recognise distance LLB degrees. The reasons are, first, that these degrees were originally intended as a means of providing access to legal education for persons in third world jurisdictions without their own law schools. Hong Kong obviously does not belong in this category. Secondly, distance LLB degrees are obviously inferior in a number of respects to degrees obtained by actually attending a law school. For example, holders of distance LLB degrees have commonly never been inside a law library, never taken part in a moot, and never seen a law report other than a photocopy. Thirdly, if the Hong Kong LLB programmes are extended to four years, persons wishing to become lawyers would save a year by doing a distance degree from London (or elsewhere), since this usually takes only three years. This would seem to be obviously undesirable. Again, if a qualification currently regarded as acceptable (that is, distance LLB degrees) is to cease to be so regarded, it would be necessary to provide for a suitable transition period (say five years or more) so as not to prejudice unfairly Hong Kong students currently studying for such degrees. Also, again, it is necessary to mention that there are no doubt many fine lawyers in Hong Kong who were admitted to practice on the basis of distance LLB degrees. But, again, this is not a reason for continuing to recognise such degrees, for the issue is not the quality of the individual, but the appropriateness of the qualification.
8. Another qualification which is currently recognised in Hong Kong but which perhaps should not be is the CPE. Again, this is an English eccentricity, and a deviation from the international norm, which is that no-one should be permitted to practice law unless they hold a law degree obtained by attending a law school for at least three years. Once again, if a qualification currently regarded as acceptable (that is, the CPE) is to cease to be so regarded, it would be necessary to provide for a suitable transition period (say five years or more) so as not to prejudice unfairly Hong Kong students currently studying for it. Also, again, it is necessary to mention that there are no doubt many fine lawyers in Hong Kong who were admitted to practice on the basis of the CPE. But, again, this is not a reason for continuing to recognise this qualification, for the issue is not the quality of the individual, but the appropriateness of the qualification.
9. For the same reason (that is, the desirability of not accepting qualifications inferior to the international norm), LLB degrees obtained in less than three years should not be recognised in Hong Kong. Typically such degrees are defended on the basis that

students are required to study over the summer months. But the line has to be drawn somewhere; and Hong Kong should not draw it any lower than the international norm.

10. If there are to be rules specifying the requirements for admission to practice, as would be desirable, it would be desirable also for the same rules to cover both barristers and solicitors.
11. Ceasing to recognise distance LLBs and the CPE would raise important questions of access to legal education. The solution to these problems is probably that Hong Kong's law schools should offer their own part-time LLB degrees (and, of course, that these should be recognised as qualifying their holders to apply for a place on a PCLL). Again, of course, this would be in accordance with the international norm. Indeed, one of the problems with the current system is that the recognition of distance law degrees (which are in practice obtainable in three years, part-time) is that it is very difficult for Hong Kong's law schools to offer an attractive part-time LLB. The reason is that, to be attractive, a part-time LLB would have to be obtainable in comparable time, and this would obviously entail lowered standards. (If a full-time LLB takes three years, a part-time one of equal standing must obviously take considerably longer - even if, as is sometimes claimed, students spend every evening, every weekend and every summer studying.)

## **12.2 The second issue: would it be appropriate to replace the existing various bodies which play a role in monitoring and regulating the system leading to admission to practice with one body with overall responsibility for education and training?**

Again, it seems reasonably clear from the way in which the consultants have phrased the question that they are inclined to view the establishment of such a body as desirable; and, again, they are right. In principle, such a body is, indeed, desirable. Again, however, it is necessary to emphasise that the current situation, whilst unusual, at least works.

They suggest also that the ACLE could have its authority effectively broadened so as to fulfil this function. This, too, is sensible. But, so as to ensure that the body focused on maintaining and improving standards, and that it did not yield to any protectionist impulse, it might be desirable to increase substantially the number of the body's members who had a clear interest in promoting the public interest in increasing the number of suitably-qualified lawyers. As the consultants recognise, this would require legislation; but this would appear to be reasonably straightforward.

If the ACLE's functions were to be extended, however, it would require additional resources. For the ACLE to develop its own secretariat would probably be difficult to justify. One solution might be for the DOJ (as an obviously competent body, but one without any particular institutional interest other than the proper administration of justice and the maintenance of standards) to provide whatever support the ACLE's expanded role required. Setting (and from time to time, no doubt, amending) rules prescribing the qualifications required for admission to practice would not be a particularly onerous task. *Administering* such rules, however, would be, for it would entail assessing (and verifying) the pre-PCLL qualifications of every person wishing to practice law. Currently, this function is, in effect, carried out by the universities. Whilst it is clearly up to the universities to decide whom to admit to their PCLL programmes, it is not necessarily desirable for it to be left to the

universities to decide whether applicants' pre-PCLL qualifications satisfy the requirements (whatever they may turn out to be) for admission to the PCLL. It would be possible for the universities to continue to fulfil this function (ie to decide whether PCLL applicants' pre-PCLL qualifications satisfy the criteria set out in the rules), but there are other possibilities also.

One possibility, and perhaps the most desirable approach to take, would be to have some independent body (again, perhaps, the DOJ) fulfilling this function. Thus, persons wishing to apply for a place on a PCLL programme would apply to the DOJ for a certificate to the effect that their pre-PCLL qualifications were in accordance with whatever rules were laid down by the ACLE. Then such persons would apply to either of the universities (or both of them) for a place on a PCLL. The universities would then admit applicants from among those thus certified, in accordance with the quality of the applicants' qualifications and the other criteria regarded by the universities as relevant for admissions purposes. In other words, the universities would not accept applications from persons not so certified.

### **12.3 Summary**

It may well be desirable for there to be a set of rules specifying the pre-PCLL qualifications required for admission to the practice of the law. Preferably, any such rules should be the same for barristers as for solicitors. Preferably, too, such rules should broaden rather than restrict the current practice as regards the jurisdictions whose LLB degrees are recognised in Hong Kong. But perhaps an LLB degree (from Hong Kong or elsewhere) obtained by attendance at a law school should be made a prerequisite to admission to practice. In other words, perhaps distance LLBs, BA degrees majoring in law and the CPE should no longer be recognised. Rules to this effect would (1) bring Hong Kong into line with current international standards whilst (2) enabling Hong Kong to retain the comparative advantage it obtains from its cosmopolitan approach to the recognition of foreign law degrees.

It might be desirable also to charge the ACLE (or some other body or bodies) with promulgating and administering rules specifying the qualifications (in particular, the pre-PCLL qualifications) required for practising law in Hong Kong.

**City University  
of Hong Kong**

School of Law  
Postgraduate Certificate in Laws (PCLL)

<b>Academic Year</b>	<b>No. of Students Admitted</b>	<b>No. of Students Sitting Final Examinations</b>	<b>No. of Graduates</b>	<b>Overall Pass Rate (%)</b>
1991/92	Information unavailable	63	43	68.3
1992/93	72	65	59	90.8
1993/94	72	71	57	80.3
1994/95	71	69	50	72.5
1995/96	82	74	65	87.8
1996/97	98	90	59	65.6
1997/98	95	86	66	76.7
1998/99	61	57	54	94.7
1999/2000	57	52	45	86.5

**Numbers of lawyers who have successfully completed the OLQE  
and who have been admitted to practise as solicitors**

<b>Year</b>	<b>No. passed</b>	<b>No. admitted</b>
1995	95	88
1996	85	77
1997	104	89
1998	56	49
1999	63	54

# LINKAGE

STAFF NEWSLETTER

www.cityu.edu.hk/cityutoday

April 2001

Issue No. 201

## Faculty in focus

# Breaking out of the box: School of Law reviews legal education

**B**ig changes are afoot in the way law is being taught, and will be taught, at CityU, with a major review of the substance and structure of legal education currently underway in the School of Law (SLW). Acting Dean, Mr David Smith, said SLW now recognizes that there has been undue emphasis on the teaching of legal doctrine and that more emphasis must now be placed on teaching legal reasoning: teaching students to think like lawyers.

More emphasis will also be placed on teaching about legal process—how laws are created and administered and how the judicial and administrative processes work. And there will be more discussion of values: who does the law help, who does it discriminate against, and are the legal system and professional services accessible to all? “We feel we need a more dynamic approach to teaching law than may have characterized the School in the past,” Mr Smith explained. SLW has to provide more skills training for its students, not just in analytical thinking but also in advocacy, negotiation, problem solving, research and writing, and in understanding law in its social,

economic and political contexts.

## Orientation Week has major impact

One response to the call for change was the launch last September of an Orientation Week for Bachelor of Laws with Honours (LLB) students, to give them a broad overview of law and the legal profession. Members of the profession visited CityU and talked to the students about their work, what it means to be a lawyer, and the special qualities a lawyer needs. “That programme had a major impact both on the students and on the teaching staff because it opened the window to what the possibilities are in legal training and law practice,” Mr Smith said.

The School has also taken steps to introduce new courses. “We’ve been working on educating students about the variety of fields they can go into within the law and some of today’s growth areas include international property law, communications law, cyber law, environmental law, trade and investment, the WTO, legal services for the poor, and Chinese law generally,” Mr Smith said. Two new courses on cyber law and law of the European Community were introduced this academic year.

## Legal education under review

Another reason for undertaking the internal review is that there is a general review of legal education underway in Hong Kong today. A steering committee, chaired by the Solicitor-General (Continued on page 3



## In this issue

5 Interview with  
Professor S Kitpornchai

6 Interview with  
Professor Kevin Hewison

8 Virtual Learning  
Support Centre

## Upcoming events

9/4

- 4:30–6pm  
Public Seminar Series  
2001: New Zealand's  
Health Reforms: an  
ever-changing story—  
Room B7316, 7/F  
Academic Bldg. Contact  
SA, ext 8932.

16–18/4

- An International  
Conference—Managing  
Housing and Social  
Change: Building Social  
Cohesion,  
Accommodating  
Diversity—Multi-media  
Conference Room &  
SCOPE. Contact  
RCPM, 2784 4533.

20/4

- 4–5:30pm  
University Development  
Forum: Improving our  
Campus Ambiance—  
Alteration, Addition  
and Improvement  
Works on Campus for  
2001–2—Lecture  
Theatre 16, 4/F  
Academic Bldg. Contact  
IA Office, ext 7466.

27/4

- 4:45–6:15pm  
Public Seminar by  
Professor Roger  
Wettenhall—SCOPE  
Lecture Theatre.  
Contact SA, ext 8932.



School of Law students attend a moot court.

(← *Continued from page 1*)  
and comprising representatives from the Law Society, the Bar Association, the two law schools and others, has been formed in response to the suggestion that Hong Kong is not producing the quality lawyers needed in today's world. Two legal educators from Australia have been retained as consultants to the committee.

SLW put together a major document expressing views about the future of legal education in Hong Kong for use by the consultants. The document was agreed upon by the School Board and represents a substantial analysis of various issues in legal education. "The consultants have told me that they found this to be a particularly valuable report," Mr Smith said. "This was possible because of a forward-looking attitude among our teachers and a recognition that we should play a leadership role in legal education in China and Asia."

Another factor affecting legal education in Hong Kong, Mr Smith said, is that the Chinese government has indicated that special consideration will be given to Hong Kong lawyers to allow them to take the mainland qualifying exam. "That opens up a vast field of practice for Hong Kong lawyers but two things need attention: our students have to have a legal education that will allow them to compete effectively with mainland lawyers (and lawyers trained elsewhere); and they need to learn a lot more about both Chinese law and China. So we

have to figure out how to integrate this into our curriculum. In this connection, the Chinese Civilisation Course is a very important building block for our students."

### Three-year programme a handicap

In training lawyers for Hong Kong and for work in the mainland, SLW is working under a severe handicap, Mr Smith said. The LLB programme is only three years in duration and, like other undergraduate programmes, many

students come directly out of secondary school. The ideal education for a lawyer, Mr Smith believes, should include the acquisition of broad social awareness as well as technical professional competence. "That awareness is very often lacking in students who come straight out of secondary school and we have limited opportunity to provide that in the three-year LLB curriculum." If

undergraduate education were to be expanded to four years, he said, this would give SLW more room to provide students with more of a liberal arts education to supplement their legal education, but even that is not likely to be enough.

What particularly concerns Mr Smith is that in the mainland and in Taiwan, Japan and Korea, universities have developed, or are considering programmes in which students can study

**"Teachers tell me that it has become increasingly stimulating and rewarding to teach law..."**



Mr David Smith

law after obtaining a degree in another discipline. "I worry that Hong Kong is going to be left behind, that our lawyers are going to find it increasingly difficult to compete with these more mature, sophisticated lawyers," he said. And while SLW can make improvements and do its best in educational reform, ultimately it requires real commitment by the Government to change and substantially upgrade the current system of education for lawyers.

### Foundation for graduate legal education

The School has built a foundation for moving in the direction of graduate legal education: it admits a number of students who already have degrees in other disciplines to its LLB programme. In addition, the recently introduced BBA (Honours) in Accountancy and Law enables graduates from that programme to convert into the LLB programme. "So that's another way to be able to teach law at the graduate level. I still would like all those students to have much more exposure to the liberal arts and

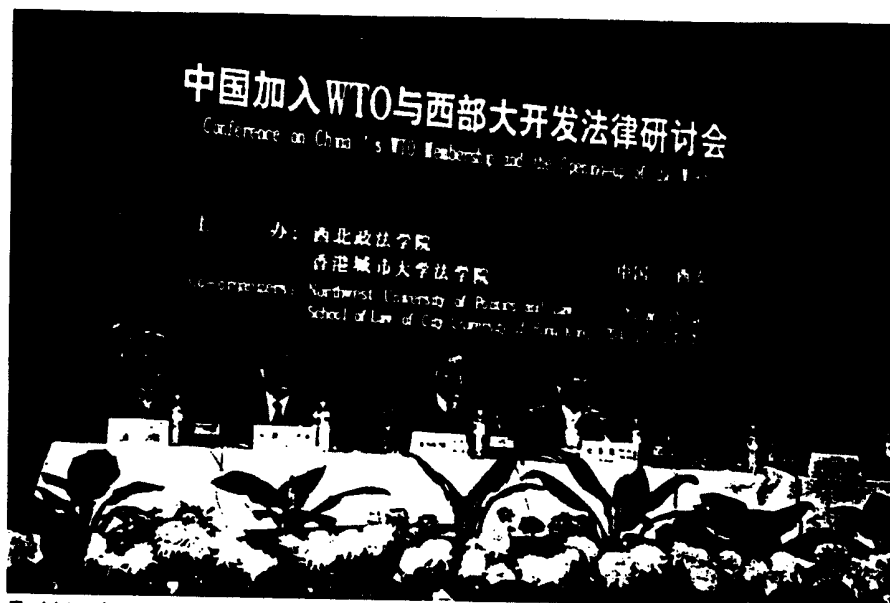
( Please turn over ➡ )

(← *Continued from previous page*)  
the need to resort to any sizeable layoffs as a means to cut cost. "I'll do my best to meet existing staffing commitments," he said, while staff members are urged, in return, "to do more with what's available." Improved efficiency and renewed commitment to our strategic goal will take us through difficult times, Professor Chang said.

Second, at least 65% of the recurrent grants is earmarked for direct academic purposes, while administrative and academic support expenses will be capped at a ceiling of 30%. The remaining 5%, set aside for unforeseen needs, will mostly be spent on academic activities. Last, the University will maintain an academic-led philosophy in budget allocation and monitoring. For

example, academic and non-academic budgets in the 2001-04 triennium are drafted by panels chaired respectively by Professor Edmond Ko, Vice-President for Education, and Professor P S Chung, Vice-President for Research. Professor Chang said: "Academics should and will maintain absolute leadership in resource allocation at CityU."

—Peter Ho



The joint conference in Xi'an

(← *Continued from previous page*)

sciences and some experience working in the real world, but it certainly is a step in the right direction," Mr Smith said.

Developing exchange programmes with mainland universities and universities overseas is another priority for SLW. Some students went to Xi'an University for a two-week workshop last year and 30 students from Xi'an and Wuhan came to CityU last August. "The more interaction you have between Hong Kong and mainland students the better for the future of Hong Kong."

The School has also established exchange relations with Erasmus University in Rotterdam, Jönköping International Business School in Sweden, and Northwest University of Politics and Law in Xi'an. One of SLW's first major undertakings with the latter was a joint conference in November last year on the WTO and the opening up of China's west. Papers presented at the conference by SLW and mainland scholars are currently being edited for publication in a book.

Each year, SLW hosts 10 or so exchange students who enrol in the Master of Laws in Chinese and Comparative Law (LLM) programme and this year had its first students from Sweden. SLW is working on a new stream of LLM studies in international business law, aimed at overseas students who would like to come to Hong Kong to study international business laws but not specialize in China.

## Rethinking legal education

Traditionally, Hong Kong has in some respects regarded legal education as largely technical training. With the help of a visiting specialist on pedagogy, SLW teachers are focusing on making their classes more interactive, on teaching more skills in the classroom, and using non-doctrinal materials that help to give students a greater sense of the social and economic setting in which law functions, Mr Smith said. "The teaching staff has been very responsive to, and energized by, the rethinking of legal education and I believe we'll see increasing motivation in the classroom here." The School is also experimenting with integrating the lectures and tutorials, using more of a seminar format. Combining lecturing with discussion and questions will encourage greater interaction among students and

produce better-trained students, Mr Smith believes.

Another area where SLW has made significant progress relates to raising overall admission standards for the LLB and the Postgraduate Certificate in Laws. This change, coupled with the increased recruitment of overseas students, has helped to raise the level of legal education at CityU. "Teachers tell me that it has become increasingly stimulating and rewarding to teach law because the quality of the students continues to grow—and this is very important for the University."

As far as research is concerned, Mr Smith said SLW has been productive, with seven books and 87 journal articles produced by a faculty of 35 in 1999–2000. In addition to holding periodic seminars to talk about research in progress, the School has also reduced teaching loads to around nine hours per week. "I think that's helped a lot," he said. "I think there's a stronger research culture in SLW now, with people showing drafts of their work to other faculty and constantly raising publication standards."

All in all, the stage is set for breaking out of the box and designing a system of legal education that will provide the quality lawyers Hong Kong needs to maintain a leadership position in China and the region. "I think that in the next year or so we can make very significant changes at CityU," Mr Smith stated. "The faculty is committed, we are a small school and we have the flexibility to adapt quickly. The beneficiaries will be the students, the staff, the profession, and society."

—Theresa Fox **U**

### At a glance

**Academic staff:** 35

**Students:** 442 (UGC funded); 48 (self-financing)

#### Student exchange agreements:

Washington College of Law, American University, US; University of Law, Economics and Science of Aix-Marseilles, France; School of Law, Erasmus University, The Netherlands; Jönköping International Business School, Sweden; Department of Law, Fudan University, China; Northwest Institute of Politics and Law, China.

#### SLW programmes:

Associate of Legal Studies; Bachelor of Laws with Honours; Postgraduate Certificate in Hong Kong Law; Postgraduate Certificate in Laws; Master of Arts in Arbitration and Dispute Resolution; Master of Laws in Chinese and Comparative Law.



# *Imagining the Future: Training Hong Kong Lawyers for the 21<sup>ST</sup> Century*

David N Smith, Acting Dean of the City University of Hong Kong Law School, argues that the time has come for Hong Kong to adopt law studies as a graduate program so as to ensure that our lawyers can compete in an increasingly global and complex environment

**H**ong Kong must commit itself now to becoming one of the leaders in legal education in Asia and the world. To do so, it must dramatically rethink the structure, process and content of legal education. This will not be easy, but it is essential if Hong Kong is to continue to serve as one of the great centres of finance, trade and technology in the world and if it is to maintain and secure a position of leadership in 21st century China and the Pacific region.

Within the next few years, a number of countries around the world will be reshaping their programmes of study for lawyers by requiring a stronger academic foundation in the humanities and sciences before students can embark on law studies. Several of Hong Kong's neighbours and likely competitors in the 21st century – including Singapore, Japan and Taiwan – are taking steps now to move away from law as an undergraduate discipline to law as a professional, post-graduate field of study. On the Mainland a number of law schools are considering adding similar programmes.

Law faculties and law schools (and other forums for training lawyers) are one of the windows through which a legal system is judged. If Hong Kong is to influence legal debate and developments in China (including issues in law reform and legal education) and elsewhere in Asia, it must develop a world class system of legal education across the board. One goal should be to attract Mainland Chinese students with degrees in other disciplines (who now go to Europe, Australia or North America, for example) for law study here.

## **The Case for Graduate Legal Education**

There are several reasons for what seems to be a significant movement world-wide toward post-graduate legal education.

The first is that it is simply no longer feasible to study law in isolation from other disciplines. Law spans the whole spectrum of human experience, from domestic relations to

corporate and governmental responsibility and liability, to international relations. Virtually every aspect of law is influenced by and influences economics, social theory, and science and technology. Lawyers in the coming century will be increasingly challenged in Hong Kong and elsewhere in dealing with technologically and socially complex issues. A lawyer, for example, who does not possess the basic scientific background to deal with (increasingly complex) intellectual property issues or (increasingly complex) scientific evidence (such as DNA) will not be able to serve her or his client as effectively as one who does.

And, of course, law faculties and law schools are not training just solicitors and barristers. Many law graduates eventually become judges, legislators, high-ranking government officials, law reform commissioners and teachers. Whatever the case may have been in the past, legislative, governmental, administrative and judicial (including constitutional) decision-making and law teaching today demand a sophisticated and broad understanding of economics, politics, social theory and technology. Great judges, legislators and law reformers are those who not only understand 'the law', but who also have broad humanistic interests and a rich understanding of history, literature, sociology and the sciences. Three-year undergraduate legal education simply does not provide time and room for this broad-based preparation. At the same time, a legal education that covers only the 'core' subjects (through a one-year 'conversion' course, for example) and that consequently does not provide exposure to a broad range of substantive law courses and skills, will be a disservice to the student and the profession no matter how good the student's basic liberal arts training has been. There is, in brief, no shortcut to training the lawyers who will have the knowledge and skills that will enable them to compete effectively in the legal world of the 21st century.

A second reason for the discernible movement toward graduate legal education is that the teaching of law at the

graduate level can proceed at a much more sophisticated level in the classroom if students have previous years of university education, a high level of competence in English and knowledge of science, humanities, logic, the corporate world and social structure. Students with a liberal arts education are more likely than students coming into law directly from secondary school to understand how business enterprises and securities markets work, how psychiatric analysis is to be evaluated and used in criminal and civil cases, how biotechnology should be regulated or how domestic relations law should be designed. Discussion of appropriate environmental law standards for manufacturing enterprises will proceed very differently in a classroom that contains students who have had, as undergraduates, some exposure to environmental policy or environmental science or economics.

Related to this is the fact that a student at, say, the age of 21 or 22 is likely to make a more reasoned and mature decision to pursue law studies than a student just completing secondary school. Indeed, a student who has explored many aspects of life through university study of history and science and the humanities is likely to pursue law study with greater determination, interest and passion, as well as greater understanding, than a secondary school leaver.

It is the case, of course, that the undergraduate LLB programme does not necessarily have to lead to a life in the law. But even accepting that there are students who enter the LLB programme with the understanding that they would not go on to further professional studies, it is time, I believe, to question whether LLB studies, on their own, provide an adequate foundation for life-long learning and flexible career development. The study of law, without doubt, is valuable to non-lawyers in training the mind and providing substantive knowledge and skills for work in government or business. But students might be better served by being able to pursue law studies in combination with very substantial exposure to other disciplines, such as economics, business management and science. This requires a broader university education than a three-year LLB programme can provide.

There is some movement toward more interdisciplinary studies in law in Hong Kong through joint programmes in government and law and business and law at the University of Hong Kong and accounting and law at City University of Hong Kong, but these developments do not address the issue of law as an undergraduate field of study. There are a number of other jurisdictions that have mandatory concurrent degree programmes, in which law and liberal arts studies are pursued jointly over a four, five or six year period and others that have four or five-year LLB programmes allowing

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for more exposure to liberal arts subjects. At City University a quarter of our entering first year class hold undergraduate degrees in philosophy, science, arts, business, English language and literature, sociology, economics and civil engineering. Still, in all of these cases, law study remains a largely undergraduate discipline, with its inherent limitations.

### The Language Factor

Because law is so dependent on the precise use of language, the opportunity to study and use English extensively in a university context before beginning law studies is a major argument for making law a subject of graduate, not undergraduate, study in Hong Kong. In addition, Hong Kong law students have the added challenge of developing a stronger foundation in Chinese history, economics and culture. Without such a foundation, work on legal issues related to the Mainland will be extremely difficult. A carefully designed undergraduate liberal arts programme of three to four years could provide the requisite background in language (English, Cantonese and Mandarin), critical thinking, Chinese and Asian studies and science and the humanities, laying the basis for training some of the most sophisticated and talented lawyers in China, if not Asia and the world.

### The Globalisation Factor

This leads to an additional reason for making law study a graduate programme. As the profession globalises, as more businesses become transnational, as international accounting and law firms pre-empt more and more law business relating to China and Asia, and as transnational and domestic corporations come to rely increasingly on in-house counsel (as seems to be the case), Hong Kong-trained lawyers will be greatly disadvantaged in competing for jobs with law graduates with five, six or seven years of university education. One needs only to look at the rosters of lawyers in the international firms and corporations in Hong Kong to see what the future might hold.

Soochow University in Taiwan, which has developed dual track programmes in law – LLB and Master of Laws (the latter open to students with undergraduate degrees in other disciplines) – has found that the graduates of the latter are in greater demand by law firms than the LLB graduates.

### The Technology Factor

Legal educators in Hong Kong are turning increasingly to the use of computer technology in teaching – for special websites for courses, e-mail discussions, Internet research

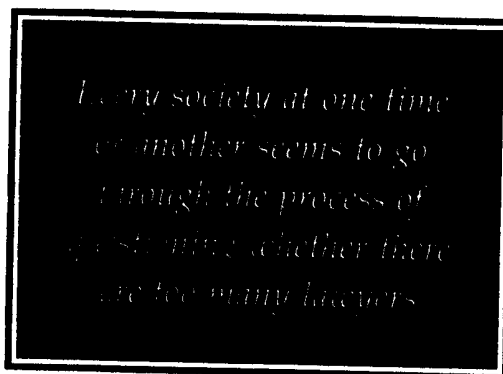
and Internet access to materials and discussions from other schools around the world. Powerpoint presentations are used increasingly to facilitate visual learning. There has been discussion in many quarters about the value of distance-learning through computers and the use of video presentations. All of this is a valuable supplement to traditional legal education but we must avoid falling into the trap of relegitimatising learning by correspondence. There is no substitute for being in a classroom, exchanging views among students, generating lively debates and having students on their feet making an argument. In graduate legal education students have much more self-confidence, speak out more and learn more from each other.

There will be future opportunities for sharing law classes and discussions across the globe through satellite transmission. For this to be successful, students must be at roughly the same level in terms of years of university education.

### Clinical Education

Another advantage to graduate legal education is that it facilitates giving students practical experience in working with real clients. There is a major move in law schools across the globe toward including in their curricula clinical legal education programmes, under the supervision of experienced law teachers and licensed lawyers. Clinical education provides an opportunity to give students real life experience in counselling, fact-finding, problem-solving and drafting and an opportunity to inculcate a 'public interest/ community service' ethic to the extent that the legal clinic serves the poor and underprivileged. Students who have had clinical experiences in law school are generally viewed as being much better prepared for practice. But such training for law students is likely to work best where students are mature and broadly educated, and know more about life than their own (often limited) personal experiences. In addition, it is very difficult, if not impossible, to fit a clinical experience into a three-year law programme which already has so many demands placed on it (including core courses, electives, out-of-discipline courses and English language training).

Whether experience in a clinical programme can take the place of a solicitor traineeship would depend on the exact shape of the clinical programme and the involvement of the Law Society. If the programme is well designed, the profession could be confident that certain law office skills were being taught systematically, rather than relying on the vagaries of supervision in solicitors' firms. The clinical law classes at the University of Hong Kong and City University could be small enough to ensure that all students could participate in clinics under close supervision.



Students who are enrolled in graduate law studies can also undertake sophisticated work with law firms, companies, government agencies and non-governmental and international organisations after their first and second years of law study, adding immensely to their education and their preparedness for careers in these firms and organisations.

### The 'Academic'/'Professional' Divide

The issue of clinical education leads to the question of whether Hong Kong should move away from the model of legal education in which 'academic', 'professional' and 'trainee' stages are separated. Many legal educators around the world believe that substance and procedure should be taught side-by-side and that subjects such as advocacy and professional conduct are taught best when integrated with other mainstream law subjects. Although City University of Hong Kong School of Law and the University of Hong Kong provide outstanding training in their respective PCLL programmes, there is little real logic in the division of courses between the LLB and the PCLL. One could just as well switch company law or evidence with commercial law and practice and revenue law in the PCLL, for example. This suggests that in reshaping legal education, the basic law programme and the PCLL might be merged, with more

emphasis on the types of skills training currently given insufficient attention in the LLB/PCLL programmes (brief and memorandum writing, fact-finding and negotiation, for example) and more attention to the inter-dependence of substantive law, procedure, skills and ethics.

### Too Many Lawyers?

Every society at one time or another seems to go through the process of questioning whether there are too many lawyers. The question often arises in a context of economic downturn or in the context of concern about increasing litigation. The answer to the question has significant implications for legal education because it will define 'the profession' for which we are training lawyers and the law jobs to be done by lawyers – and, perhaps, the number of lawyers to be trained.

One cannot, of course, look simply at how the profession has defined itself in the past and the tasks that society or the profession have set for lawyers over the last decades. We must consider what Hong Kong is likely to be in the 21st century, its relation to Mainland China and the law jobs we can foresee in a dynamic, forward-looking, knowledge-based society that intends to take a leadership role in scientific and technological development, trade and investment and the communications and entertainment



香港城市大學  
City University  
of Hong Kong



Anniversary  
十五周年紀念

City University of Hong Kong is a young and dynamic institution directly funded by the Government of the Hong Kong Special Administrative Region through the University Grants Committee (Hong Kong). Its strategic plan is an ambitious one, reflecting its aspirations to become one of the leading universities in the Asia-Pacific region by achieving excellence in teaching and research. The student population for 1999-2000 is approximately 16,200 (11,000 full-time and 5,200 part-time). The medium of instruction is English.

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#### Associate Professor/Assistant Professor/ Lecturer/Instructor I/Instructor II School of Law [Ref. C/359/09]

The appointee is required to teach law students at undergraduate and postgraduate levels.

Applicants should possess a good honours degree/Master's/PhD degree in Law, and experience in law teaching, law practice, government services or other significant law-related work. The candidates should have a strong interest in teaching and research, preferably with a record of publications in law or related areas. Appointments may be made at the level of Associate Professor, Assistant Professor, Lecturer, or Instructor I/II depending on the qualifications and experience.

#### Monthly Salary and Conditions of Service

Associate Professor	: HK\$71,765 to HK\$96,405 per month
Assistant Professor*	: HK\$46,190 to HK\$77,165 per month
Lecturer	: HK\$33,645 to HK\$43,060 per month
Instructor I	: HK\$29,400 to HK\$46,485 per month
Instructor II	: HK\$22,075 to HK\$28,075 per month

\*Appointees at the level of Assistant Professor with salary of HK\$64,820 per month or above may be considered for the title of Associate Professor.

(Exchange rate : US\$1 = HK\$7.8 approximately)

Appointment will be on fixed-term gratuity-bearing contract with contract-end gratuity payable upon satisfactory completion of contract. Excellent fringe benefits include medical and dental schemes, annual leave, and housing allowance where applicable.

#### Information and Application

Information concerning the posts and the University is available on the University's World Wide Web home page <http://www.cityu.edu.hk> or the University's listserver accessed by E-mail at "hrmail@citylnk.cityu.edu.hk", or from the Human Resources Office, City University of Hong Kong, Tat Chee Avenue, Kowloon, Hong Kong (Fax : (852) 2788 1154 or 2788 9334/ E-mail : hrrecrut@cityu.edu.hk). Please send your application in the form of an application letter enclosing a current curriculum vitae and the names and addresses of three academic referees to the Human Resources Office on or before **29 February 2000**. Please quote the reference of the post in the application and on the envelope.

industries. One must also take note of the Mainland's growing need for lawyers and legal services and try to imagine what roles Hong Kong-trained lawyers could play in providing these services.

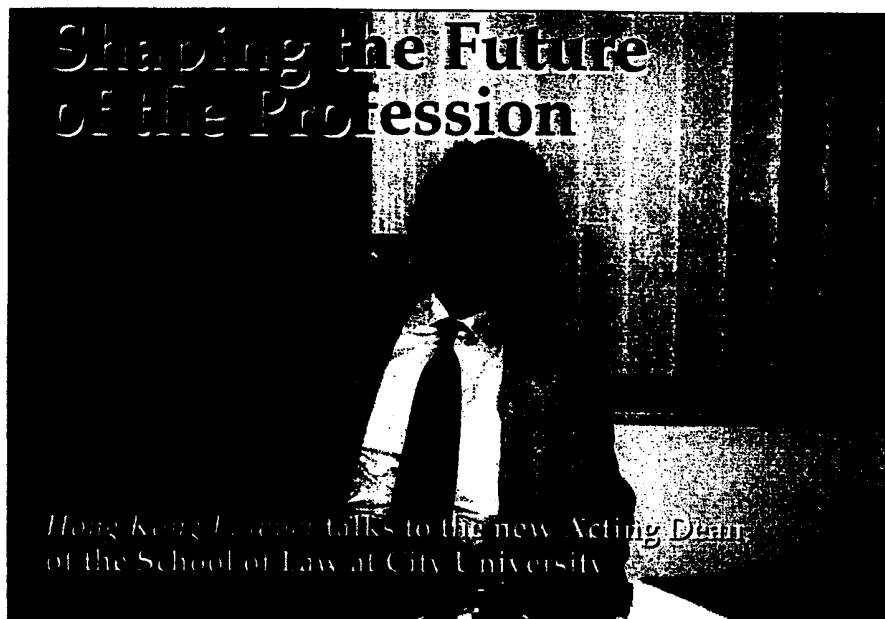
The fact is that in many jurisdictions around the world the need for lawyers has increased dramatically in the past 20 years. The reasons for this are important. One is the remarkable growth of law during this period. Health law, environmental law, communications law, electronic banking law, electronic commerce law, intellectual property law, law relating to entertainment and media industries and trade law are examples of new or rapidly developing areas of legal practice. Equally important, as governments provide for more legal services for the poor and under-privileged, as even relatively small companies go abroad and as individuals and companies seek alternative modes of dispute resolution, the need for lawyers increases.

The Law Society will soon undertake a survey of needs in the profession. It is hoped that this survey will take a very broad view of the roles that lawyers play in Hong Kong and the opportunities that could be open to the profession in the next century. It is also hoped that the survey will reveal 'needs' in terms of specialisation and skills.

### **The Future Is Almost Here**

Government policy makers, the profession and the universities will need boldness and foresight to position Hong Kong as a leader in legal education in China and the world, and to ensure that we are giving our lawyers the best possible preparation for serving a changing and dynamic society. The legal profession can, in the coming century, make tremendous contributions to the advancement of social and economic programmes in Hong Kong and China and can compete regionally and globally – but only if law training is appropriately designed. This means we must prepare law graduates for a multiplicity of roles, give them the full liberal arts and law training needed in modern society and develop a comprehensive vision of how Hong Kong lawyers can serve the law-related needs of the Mainland and contribute to the country's development. If we do not meet this challenge, others will and a great opportunity will be lost.

*David N Smith  
Acting Dean  
City University of Hong Kong  
School of Law*



David N Smith brings to his new job as the Acting Dean of the School of Law at City University a resume that is as long as it is varied. Currently on leave from his position as Vice-Dean at Harvard Law School, he has been involved in legal education and administration for the past 25 years. During that time he has also served as a legal advisor to a whole host of countries including China, Indonesia, Laos, Malaysia, Nepal, Sri Lanka, Thailand and Vietnam on matters involving legal education, law reform, conflict resolution, foreign investment policy and natural resource and environmental policy. He is proud to count among his former students at Harvard Professor Albert Chen, Dean of Law at University of Hong Kong (whom he refers to as a brilliant scholar), and Ma Ying Jeou who is running for election to the office of Mayor of Taipei in Taiwan.

#### Legal Education

Smith's appointment as Acting Dean coincides with what he believes is a period of great change confronting the legal community in Hong Kong. As the world itself has become more

complex, so too has the role of lawyers. As a consequence, Dean Smith believes that 'lawyers and legal scholars need to feel comfortable working in other subject areas such as economics, technology, public administration, or politics.' He points as an example to the issue of natural resource use in Asia. 'You cannot understand issues related to natural resources in Asia without understanding the economics of the industry, the politics of the country within which you are operating, the mentality of the administrators and the sociology of the local communities.'

*'Hong Kong law school graduates are going to be increasingly challenged by law graduates who have had very rich educational backgrounds'*

The importance for lawyers of interdisciplinary training and research

is one of the reasons that Dean Smith believes that Hong Kong needs to take another look at its system of legal education. 'In today's very complex world, lawyers probably need more background in the liberal arts and sciences than has been the case in the past.' Moreover, he argues that there are a number of major growth areas in the law where Hong Kong lawyers should be taking the lead. 'In areas such as environmental law, law and technology, law and media, intellectual property — these are some of the cutting edge issues of the future, areas in which the Hong Kong legal profession should be taking the lead and not yielding these subject areas to foreign lawyers. But in order to deal with these subject areas more effectively, lawyers do need more exposure to science and technology, economics and politics.'

One of the ways that Hong Kong might accomplish this objective, Smith suggests, is to add at least an additional year to the three year legal training program during which time students can focus on non-law disciplines and language studies. This, he believes, would provide a firmer foundation for legal studies. 'In the US and Canada, for example, lawyers have a total of seven years of university education where the first four years are liberal arts and sciences. In countries in Latin America and Europe, legal education often extends to five years, and during those years students often take so-called out of discipline courses in history and science and so forth.' Smith believes that such an educational background is important because, as he argues, 'law cannot be viewed just as a technical, black letter discipline.'

Smith cites another reason why a change in educational policy would be desirable. 'Hong Kong law school graduates are going to be increasingly challenged by law graduates who have had very rich educational

backgrounds. With the globalisation of the legal profession and with Hong Kong and other countries opening their doors to more and more foreign lawyers, they are going to face increasing competition.' While he is quick to point out that he has been extremely impressed with the skill, expertise and professionalism of both local lawyers and the judiciary, he nonetheless is of the opinion that 'the universities, and perhaps the Hong Kong Government as well, need to rethink what legal education should be.'

*'There is a big difference between law on the books and law in action'*

#### **Hong Kong and The Basic Law**

With the enactment of the Basic Law, Hong Kong has seen the dawn of a new constitutionally based legal system. It is in this area that Dean Smith sees the universities, and the law school at City University in particular, playing an important role. 'Both with regard to constitutionalism in Hong Kong, and constitutionalism in China, we should be undertaking some comparative studies to show how various "constitutional issues" are dealt with in other countries. We need to show the different models that have existed in relationships between courts and administrative agencies; the courts and the legislature; the legislature and the administrative agencies. In that way, lawyers, judges, and legislatures, when confronting new problems — and in a way shaping constitutionalism — can have in their minds models that have existed in other places. The Basic Law, as with most constitutions, does not necessarily solve practical, day-to-day problems. Lawyers and judges and legislatures have to solve these

problems. So there needs to be more education about how constitutions have worked elsewhere and to see how competing interests are balanced in other societies.'

#### **Law Reform**

Dean Smith is also a strong advocate of the need for more research that looks at the law reform process that is currently taking place in the Mainland. 'I would like to see research into how effective law reform has been and what needs to be done to make it more effective. There is a big difference between law on the books and law in action. One of the things that has not been as healthy as it should be in the world is that there is a lot of exporting of laws from industrialised countries into developing and newly industrialised countries, without as much attention as there should be to the social and political context in which those laws are going to operate. My feeling is that China may in fact be doing better in some ways in this regard than other countries. But even so, it's one thing to adopt a law. It's another thing to have it effectively administered by government officials, and another to have it effectively administered by courts.'

*'foreign law and economic advisors often have not recognised that law reform is a very difficult and a very long-term process'*

Smith believes that one of the sources of the current economic crisis in Asia and Russia is the failure of law reform. 'Banking laws have not been adequately shaped. Governments have not adopted systems that can control

corruption. And the courts often have been unreliable and ineffective.' But the problem does not lay entirely with the local governments and courts. As he points out, 'foreign law and economic advisors often have not recognised that law reform is a very difficult and a very long-term process. Foreign law advisors have often been inadequately attuned to the infrastructure that you need to make a law or a legal system work.' He hopes that through research into the law reform process, the law school will be able to make a significant contribution to the developing legal system in the Mainland.

#### **City University**

Despite his fairly recent arrival, Smith nonetheless possesses a very clear vision of what he hopes to achieve during his tenure as Dean of the School of Law at City University. 'My primary goal for City University is that we strive to be the best law school that we can possibly be.' The way in which this can be achieved he believes is through a strong commitment to both teaching and research. 'I want to encourage the faculty to think great thoughts ... I want us to think about the teaching process here and whether we are encouraging as much analytical and critical thinking as we should. Are we encouraging students to question law, and to think not only about what the law is but also what it should be?'

He believes that as an institution, the School of Law has much to contribute to the development of law both in Hong Kong and in the Mainland. As a consequence, research into the right areas must be encouraged so that both Hong Kong and the Mainland can benefit. For what is obvious above all else is that 'we have a strong obligation to society and to the profession to produce the best possible research, and to give the best possible legal education and the strongest sense of professional responsibility to our students.' **END**