

Submission to the Steering Committee on the Review of Legal Education: The PCLL and its Reforms

The HKU Faculty of Law's preliminary response to the consultants' report has been set out in a document published on 10 August 2001 (copy attached). In that document, we indicated that we were preparing a paper in which we shall explain why we believe that

- The consultants have not made out a sufficient case for the abolition of the PCLL;
- There are fundamental problems and inconsistencies relating to the consultants' proposal regarding a 4-year LLB followed by a legal practice course and also a conversion course for non-Hong Kong law graduates;
- Our proposal regarding a reformed PCLL provides the best way forward.

This paper will now deal with these issues.

Has a sufficient case been made out for the abolition of the PCLL?

The consultants have put forward a number of arguments for the abolition of the PCLL. We shall respond to them separately.

First, it is said that that universities are not the appropriate setting to run a course to prepare students for legal practice (p. 189 of the report). However, as the consultants themselves acknowledged (p. 190), there exist vocational training courses for intending lawyers based within universities in various common law jurisdictions. According to our own research, such courses are provided by a large number of universities in

the UK and some in Australia.¹

Secondly, it is said that insofar as the PCLL attempts to teach both substantive law and lawyering skills, it is a “house divided against itself” and cannot be successful. We believe that there is overwhelming evidence to suggest that it is possible, within the context of a course to prepare intending lawyers for practice, to integrate the teaching of substantive law

¹ The following is a list (derived from the English Law Society’s website on legal practice courses, www.lpc.lawsociety.org.uk) of English universities which run legal practice courses (usually one academic year in length) (apart from universities, some independent colleges of law also offer such courses):

Anglia Polytechnic University
Bournemouth University
Cardiff University
University Of Central England In Birmingham
University Of Central Lancashire In Preston
De Montfort University At Birmingham
De Montfort University At Bristol
De Montfort University At Leicester
Exeter University
University Of Glamorgan
University Of Hertfordshire
University Of Huddersfield
Leeds Metropolitan University
Liverpool John Moores University
London Guildhall University
Manchester Metropolitan University
University Of North London And South Bank University
University Of Northumbria At Newcastle
Nottingham Trent University
University Of Sheffield
South Bank University And University Of North London
Staffordshire University
Thames Valley University
University Of The West Of England
University Of Westminster
University Of Wolverhampton

with the training of lawyering skills.² Indeed, such integration is the norm in one-year legal practice courses in the UK.³ The consultants themselves acknowledged (pp. 144-147) the possibility of a successful integration of substantive law teaching with skills training when they discussed the model of the 5-year LLB the graduates of which may immediately start traineeship or pupillage.

Thirdly, the consultants referred to “inconsistency and possibly inequity” (p. 192) in the existing PCLL arising from the parallel existence of the UGC-funded PCLL and the SPACE PCLL at HKU. However, the recent reforms of the PCLL at HKU (which the consultants are aware of) will remove these inconsistencies and inequities as from the academic year 2001-02, since the SPACE PCLL will be abolished, admission will be centralized, and all students will pay the same tuition fee.

² For example, the designers of the legal practice course (for intending solicitors) at Nottingham Law School in the UK designed the course in such a way as “to arrange core subjects and skills in order to integrate knowledge and skills elements”. They wrote: “The core subjects provide the contexts into which the skills are integrated. ... Successful integration of knowledge and skills is thus mutually enhancing: skills enhance and deepen knowledge by enabling students to manipulate that knowledge for specific purposes; and knowledge enhances skills by enabling students to practise those skills in a variety of realistic contexts. Some researchers argue that the successful integration of knowledge and skills learned through realistic problems --- using a problem based, rather than a subject-based curriculum --- is more likely to encourage students to use ‘deep’ approaches to learning rather than ‘surface’ approaches.” (Scott Slorach and Stephen Nathanson, “Design and Build the Legal Practice Course at Nottingham Law School” (1996) 30 *The Law Teacher* 187 at pp. 192, 196-7.) A similar integration of knowledge with skills is achieved in the Bar Vocational Courses in England. For example, the designers of the Bar Vocational Course at the College of Law wrote: “Students ... had to learn a wide variety of knowledge and skills ... While traditional subjects played their part, the practical exercises were the unifying ingredient of the curriculum, integrating the various skills and knowledge required for competent practice. ... Students should learn knowledge in the context of performing skills because it is motivating to apply knowledge to realistic, practical tasks and is likely to encourage deeper understanding. ... Knowledge and skills can be mutually enhancing when they are effectively integrated in the curriculum.” (Stephen Nathanson and Suzanne Fine, “The Bar Vocational Course at the College of Law: A Study in Curriculum Coherence” (1999) 33 *The Law Teacher* 172 at pp. 172-3, 175.)

³ For example, in England, the legal practice courses recognized by the Law Society must include in their curriculum, in addition to skills training (e.g. writing and drafting, interviewing and advising, advocacy and practical legal research), the teaching of the “principles of taxation, trusts and tax planning”, “an introduction to the principles of European Union law”, and “the basic principles of testate and intestate succession”. Other substantive law elements in the English legal practice courses for intending solicitors include partnership and company law, conveyancing law, civil and criminal procedure, the Financial Services Act and the Human Rights Act. For the English legal practice courses, see the English Law Society’s website www.lawsociety.co.uk, the Law Society’s Annual Report, www.annualreport.lawsociety.org, the website on legal practice course providers, www.lpc.lawsociety.org.uk, and Appendix O of the consultants’ present Report. See also the English Law Society’s consultation paper on *Training Framework Review* (2001), especially Appendix 4 (on the legal knowledge requirements at various stages to admission). The English Bar Council has specified that the Bar Vocational Course should consist of 60% skills and 40% knowledge. The substantive law knowledge areas include civil and criminal procedure, evidence, business associations, social security, European Community law, accounts and revenue. See Nathanson and Fine, *op. cit.* (note 2 above), p. 174.

Fourthly, it is said (p. 195) that the existing PCLL is inadequate in terms of teaching and assessment methods and coherence of course design. These are issues which can be addressed in the PCLL curriculum reform. If the PCLL were abolished and a new legal practice course is set up, the same issues of teaching and assessment methods and coherence of course design will need to be resolved. As the consultants acknowledged, the existing limitations in the teaching and assessment methods are largely due to limitations in financial resources. Such financial constraints will not automatically disappear when the PCLL is abolished. On the contrary, as explained below, they might even become more apparent if the PCLL is abolished.

Fifthly, it is said that it is not right that the legal profession have no say in the operation of a professional training course like the PCLL. However, as we have emphasized in our previous submissions to the consultants, members of the profession already participate in the PCLL as part-time tutors and external examiners, and we welcome any proposal for greater participation of the profession in the running of the PCLL in future. Elements of the recent reform proposal include the membership of representatives from the Law Society and the Bar in the PCLL curriculum reform committee and PCLL admissions committee, and an enhanced role for them in the selection of tutors and in the examination process.

Finally, the consultants suggest that the PCLL is “frozen in time” (p. 195), and they rejected the reform proposals put forward by HKU. However, a careful examination of the report would show that there has not been any serious consideration of the reform proposal (which has been presented to the consultants in a ten-page document), and no substantive reason has been given for rejecting the proposal.⁴

⁴ The only section in the Report which deals specifically with the reform proposal is section 8.1.2 (p.184) of the full report (although at p. 189 the abovementioned issue of the PCLL’s placement in universities is also discussed with reference to the reform proposal). After outlining the reform proposal, the consultants wrote: “The consultants have very carefully considered these recently proposed reforms but have concluded that they do not sufficiently address at least some of the fundamental issues underlying their perception that the Hong Kong legal education system lacks an effective and reliable process of practical training, and that this deficit significantly inhibits its ability to meet the challenges of legal practice and the needs of Hong Kong society of the 21st century. They conclude this because they believe –

- that the PCLL does not provide, nor is capable of providing, the essential element of practical training which enables academic training to be used in practical ways, and
- that pupillage or trainee solicitor contracts alone do not provide, nor are capable of adequately and

Problems and inconsistencies relating to the consultants' proposal

The consultants propose that the substantive law elements in the existing PCLL should be transferred to the LLB (which will according to their proposal become a 4-year degree) and become optional subjects therein (p. 322). This is grossly inconsistent with their affirmation of the existing system of the Overseas Lawyers Qualification Examination (OLQE). The subjects examined in the OLQE mirror the existing PCLL subjects (both the OLQE and the PCLL include the subjects of Conveyancing and Landlord and Tenant; Commercial Law and Company Law; Civil and Criminal Procedure; Professional Conduct; Accounts). The inclusion of these subjects in the OLQE demonstrates that knowledge of these areas is essential for legal practice in Hong Kong. If such knowledge is indeed essential, then logically the substantive law elements in the PCLL, when transferred to the LLB, should become compulsory subjects for intending lawyers in Hong Kong. If this is the case, then the liberal educational objectives of the proposed 4-year LLB (which according to the consultants should include non-law subjects as one-quarter of its curriculum) (p. 319) cannot be achieved.

A similar logical inconsistency relates to the consultants' proposal for a conversion course for non-Hong Kong law graduates (overseas law graduates, CPE holders, external degree graduates of overseas universities, etc). The proposed 6-month conversion course (p. 241) includes only Chinese legal system, the Hong Kong Basic Law and Hong Kong Property Law (p. 239). However, if, as demonstrated above, the substantive law elements of the existing PCLL curriculum (which are equivalent to the OLQE subjects) constitute essential knowledge for legal practitioners in Hong Kong, then the conversion course should include all these subjects, in which case it will be fairly similar to the existing PCLL.

consistently providing, training in lawyering skills to the standard required if the Hong Kong legal profession is to be of world standard.”

With respect, the “two reasons” for rejecting the reform proposal beg the question of whether the proposal is sound. The very purpose of the proposal is to reform the PCLL curriculum in such a way as to strengthen the “practical training” or “lawyering skills” elements (as distinguished from the “substantive law” elements) of the PCLL. And apart from giving these “two reasons” which, we submit, are not valid reasons for dismissing the reform, the consultants have not anywhere in the Report addressed the *substantive* content of the curriculum reform proposal or discussed the *merits* or *demerits* of the proposal.

The consultants have suggested that there is no justification for the separation of the PCLL from the LLB. By now the answer to this issue should be apparent. The PCLL combines the teaching of those substantive law elements of Hong Kong law that are essential for legal practice in Hong Kong (and which are not taught in the LLB) with the cultivation of lawyering skills. These substantive law elements (with the exception of Revenue Law) are almost identical to the subjects which overseas lawyers (including lawyers from common law jurisdictions) need to learn for the purpose of passing the OLQE. At the moment, these substantive law elements are taught in the PCLL to Hong Kong law graduates, non-Hong Kong law graduates and CPE holders alike. They constitute the common core of instruction for students with different academic backgrounds who enter the PCLL with the intention of becoming practising lawyers in Hong Kong. There is therefore a logic in the present system (which underlies both the PCLL and the OLQE) which the consultants have failed to perceive.

Turning to the consultants' proposal regarding the legal practice course, our first comment is that the proposed budget is, we believe, grossly under-estimated. The total number of teachers (including full-time and part-time teachers) in the proposal is smaller than the existing number in the two PCLL courses in the two universities (we acknowledge that the course will be shorter, but the student number will be larger), and the terms of service (given the budget proposed) will on the average be less attractive than the existing terms offered by the two universities. Furthermore, the budget has probably under-estimated the costs for accommodation, for clerical, administrative and technical support staff, and for equipment and facilities (e.g. library, computers and information technology services).⁵

If the budget is adjusted so as to become more realistic, it will have to increase significantly. This means a corresponding increase in the tuition fee. High tuition fees for the legal practice course will have far-reaching implications in terms of opportunities to enter the legal profession. Those

⁵ A good legal practice course is very demanding in terms of infrastructural support. For example, the legal practice course at the Nottingham Law School, which has been one of the most highly evaluated legal practice courses in England, is run in a building with "a state-of-the-art lecture theatre, seminar rooms equipped to support practical, interactive large and small-group session work, a library, designed more as a practical than an academic facility, and a computer resource room, with word-processing and CD-ROM." (Slorach and Nathanson, *op. cit.*, note 2 above, at p. 190.)

from wealthy family backgrounds of course do not need to worry. It is also true that the best students interested in commercial legal practice are usually able to secure employment by leading firms, and the firms will pay their tuition fees. However, the opportunities to enter the profession on the part of intending barristers or persons interested in public law, criminal law and public service will be adversely affected. Furthermore, if the total cost and time to prepare oneself for entry into the legal profession are to be increased, persons who are less well off may be deterred from studying law in the first place. This will be a loss for the legal community as a whole.

More fundamentally, we have grave doubts as to whether the proposed legal practice course will be able to attract teachers who are at least as well-qualified and as well-motivated as most of the teachers in the existing PCLL courses in the universities. University employment offers the latter prestige, prospects of career advancement, a vibrant intellectual environment, the opportunity to be at the frontiers of research, to engage in legal practice (on a part-time basis) and in high-level community service, and to participate in international academic activities. There are also the advantages of university library, sports and medical services. In recent years, we have been able to recruit as teachers experienced and reputable local practitioners from leading law firms in Hong Kong. Our experience suggests that the universities have a clear comparative advantage (relative to a legal practice course run by the profession) in attracting the best possible teachers for a course for professional legal training.

The consultants seem to believe that if the responsibility for operating the legal practice course is vested in the legal profession, this will automatically enhance the quality of the course. With respect, we do not believe that this can be assumed. The profession in Hong Kong has no track record so far of running courses similar to the existing PCLL or legal practice courses overseas. They do offer some CPD courses, but such courses do not require students to be assessed or examined on what they have learnt. Even the courses preparing candidates for the Overseas Lawyers Qualification Examination are not offered by the Law Society itself, but are offered by commercial providers and the School of Professional and Continuing Education at HKU.

Even if the legal practice course is run by the profession, they will have to

recruit full-time teachers to teach in it. Given the discussion above regarding relative terms and conditions of employment and career prospects, it is doubtful whether the full-time teachers recruited to teach in the course will be better teachers than those in the existing PCLL programmes. As for part-time teachers, the existing PCLL programme at HKU already involves more than 50 practitioners as part-time teachers. We have recently proposed to the Law Society and the Bar that they can be more actively involved in the selection and appointment of part-time teachers in the PCLL programme at our University.

Finally, as the consultants themselves acknowledge (pp. 196-197), legal practice courses in other jurisdictions have experienced a number of problems. There is no discussion in their report on whether these problems are likely to arise in Hong Kong if Hong Kong introduces the proposed course, or on how these problems can be overcome in the Hong Kong context. The consultants are recommending the abolition of the PCLL course (which has been well-tested in Hong Kong, which we acknowledge is imperfect but which we believe can be improved) in exchange for something whose benefits are uncertain and whose costs (including the financial, human and social cost of dismantling the existing system) are tremendous.

Our proposal for a reformed PCLL

We have already, in a previous submission to the Steering Committee, outlined our proposals regarding how the PCLL will be reformed. The reforms are far-reaching, and cover the reform of the tuition fee and funding arrangement (the replacement of the previous dual mode of the UGC-funded PCLL and the SPACE PCLL by a single “mixed mode” funded PCLL charging a uniform tuition fee), the reform of the PCLL admission system and policy (replacing the previous dual mode of admission by the Faculty and SPACE by the centralization of admission to the PCLL in the PCLL Admissions Committee which will include representatives of the legal profession, and the introduction of a fair admission policy), and the reform of the PCLL curriculum itself (which, like the one-year legal practice courses in the UK, will integrate the teaching of substantive law with the training of lawyering skills).⁶

⁶ At the moment, approximately 30% of the PCLL curriculum is devoted to skills training and practical

The single PCLL (replacing the dual mode) is being introduced in the academic year 2001-02. A curriculum reform working party has been set up in the Faculty, and its members include Mr Stephen Nathanson (who has co-designed the Nottingham legal practice course and the Bar Vocational Course at the College of Law in England, as well as two other legal practice courses in British Columbia and Queensland) and several teachers in our Department of Professional Legal Education who have recent local practice experience in leading law firms or at the Bar.⁷ The curriculum re-design work will take place within the academic year 2001-02, during which two experts on the design and operation of legal practice courses in England and Australia respectively have agreed to visit our Faculty to advise on the curriculum re-design.⁸ We will also work closely with the City University of Hong Kong and representatives of the legal profession in this curriculum reform initiative.

We welcome the input of members of the Steering Committee, members of the legal community and members of the public in Hong Kong in our work of PCLL reform. We are confident that the re-designed PCLL will be comparable to the best legal practice courses run by universities in England.⁹ We have the capacity and the will to contribute to the improvement of legal education and training in Hong Kong, but we also believe that any improvement can only be brought about by the collective and cooperative efforts of all parties concerned. We look forward,

exercises, and approximately 70% devoted to knowledge of substantive law. In the reformed curriculum, the skills and practical components will probably be increased to 60%, which is the norm for the Bar vocational courses and legal practice courses for intending solicitors in England. It should also be noted that those courses are usually one academic year in length.

⁷ They include Mr Felix Chan, Mr Eric Cheung (formerly litigation partner at Johnson, Stokes and Master), Mr Wilson Chow, Ms Vandana Rajwani (an active member of the Bar), Mr Richard Wu (formerly conveyancing partner at Johnson, Stokes and Master), and Ms Jessica Young (formerly banking and commercial partner at Kao, Lee and Yip). Other members of the group include Ms Janet Burton, Ms Anne Carver, Professor Christopher Sherrin, Ms Amanda Whitfort, and Professor Michael Wilkinson.

⁸ One of the experts is Professor Philip Knott, Professor of Professional Legal Education and Head of the Department of Professional Legal Studies, Nottingham Law School, Nottingham Trent University. Professor Knott has been responsible for the overall course design of the Nottingham legal practice course. He was also instrumental in the establishment of the Bar Vocational Course at Nottingham Law School. The other expert is Ms Judy Smith, Director of Professional Legal Education and Training, University of Queensland. Ms Smith is in charge of the legal practice course at the University of Queensland. She previously taught in and participated in the design of the legal practice course at Queensland University of Technology. She has also been invited to teach for one year on the Bar Vocational Course at the College of Law in London.

⁹ The most highly evaluated legal practice courses in England include those at Nottingham Trent University and the University of the West of England.

therefore, to further dialogue and cooperation with you.

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