

For discussion
on 25 June 2018

**Legislative Council Panel on
Administration of Justice and Legal Services**

Legal Education and Training in Hong Kong

This paper informs Members of the latest development of the comprehensive review on legal education and training in Hong Kong (“**Comprehensive Review**”) commissioned by the Standing Committee on Legal Education and Training (“**SCLET**”),¹ namely, on 15 May 2018, the SCLET released the final report of its appointed consultants (“**Consultants**”) on the Comprehensive Review (“**Final Report**”).²

Background

Background to the Comprehensive Review

2. A comprehensive review of the whole legal education and training system in Hong Kong was last conducted and the relevant consultancy report published in August 2001 (i.e. the Redmond Roper Report).³

3. Since then, there has been substantial developments and new demands faced by the legal profession.⁴ Thus, in December 2013 SCLET resolved to conduct a comprehensive review on the legal education and training in Hong Kong by independent consultants (i.e. the Comprehensive Review) with a view to enhancing professional qualifications and standards of the legal

¹ SCLET is an advisory body established under section 74A of the *Legal Practitioners Ordinance* (Cap. 159) (“**LPO**”). A brief history on the establishment of SCLET is set out in footnote 3 below.

² A copy of the Final Report is available at SCLET’s website: <http://www.sclet.gov.hk/eng/pdf/final2018.pdf>

³ One of the recommendations was the establishment of a statutory body with sufficient status and powers to oversee the implementation of reforms to monitor the future direction of legal education and training. Pursuant to this recommendation, section 74A of the LPO was promulgated in 2004 and SCLET was established in 2005. Source of information: Chairman’s message in the SCLET website, available at: <http://www.sclet.gov.hk/eng/index.htm>

⁴ More information about the developments since the Redmond Roper Report can be found in Annex 3 attached to SCLET’s written submissions for the Panel’s discussion on 27 April 2015, available at: <http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150427cb4-825-3-e.pdf>

practitioners to meet the emerging needs and challenges in the legal sector of Hong Kong.

Terms of reference and Consultants

4. The terms of reference for the Comprehensive Review are as follows:⁵

- (1) to review critically the present system of legal education and training in Hong Kong including its strengths and weaknesses;
- (2) to advise on the requirements of a legal education and training system⁶ which is best capable of meeting the challenges of legal practice and needs of Hong Kong society;
- (3) in the light of the findings in (1) and (2) above, to make recommendations, including making proposals to improve the existing system or introducing an alternative model of legal education and training system, to ensure that such improved or alternative system is best capable of meeting those challenges and needs;
- (4) to examine the present curricula of the various law programmes offered by the three universities and to make recommendations on such curricula to ensure that those entering the legal profession are best capable of meeting those challenges and needs;
- (5) to advise on the feasibility of setting up a mechanism for measuring the quality and standard of legal education and training in Hong Kong so as to ensure those entering the legal profession receive the best legal training for the maintenance or improvement of professional standards;

⁵ The terms of reference are set out in the Final Report (under section 1.2 on page 2) and in the consultation paper published by SCLET in October 2015 which is available at: <http://www.sclet.gov.hk/eng/pdf/cone.pdf>

⁶ For the purposes of the Comprehensive Review, the term “legal education and training system” has been construed narrowly by the Consultants to refer to training for the profession of solicitor or barrister. Other forms of professional or paraprofessional legal education are deemed to fall outside the remit of the Comprehensive Review (see section 1.2 of the Final Report on page 2).

- (6) to consider the current arrangements for the pre-qualification⁷ vocational training of trainee solicitors and pupils and to advise on the need (if any) and the ways to improve such vocational training.

5. The Consultants initially appointed in 2015 were:⁸

- (1) Mr Woo Kwok-hing, QC, formerly Vice-President of the Court of Appeal of the High Court and a former chairman of the Electoral Affairs Commission;
- (2) Professor Tony Smith, Professor of Law at the Victoria University of Wellington, New Zealand, and Honorary Bencher of the Middle Temple; a former Chairman of the Faculty of Law at the University of Cambridge, and a former Chair of the Committee of Heads of University Law Schools (UK); and
- (3) Professor Julian Webb, Professor of Law and Director of the Legal Professions Research Network at the University of Melbourne, Australia, and Academic Bencher of the Inner Temple; formerly Professor and Director of the UK Centre for Legal Education at the University of Warwick.

6. Following Mr Woo's resignation in October 2016, Mr Anthony Rogers, QC, Chairman of the Clearing and Settlement Systems Appeals Tribunal and former Vice-President of the Court of Appeal, took over the chairmanship of the group.⁹

Progress

7. In October 2015, the Consultants issued a consultation paper for public consultation.¹⁰ Interviews between the Consultants and relevant stakeholders were conducted in December 2015.

⁷ The focus on 'pre-qualification' education and training is taken by the Consultants to include workplace learning undertaken as part of the formal training contract or pupillage stages. Arrangements for continuing legal education/continuing professional development are outside the scope of the Comprehensive Review (see section 1.2 of the Final Report on page 2).

⁸ See the press release dated 15 May 2018 issued on behalf SCLET, accessible at: https://www.doj.gov.hk/eng/public/pr/20180515_pr1.html

⁹ Ibid.

¹⁰ A copy of the consultation paper is available at SCLET's website: <http://www.sclet.gov.hk/eng/pdf/cone.pdf>

8. An interim report was published on SCLET’s website in October 2017.¹¹ Written responses to the draft recommendations were invited and a further round of meetings between the Consultants and relevant stakeholders took place in January 2018. All written responses,¹² including the last response to the interim report which was made by The Law Society of Hong Kong (“**Law Society**”) on 8 May 2018,¹³ have been uploaded to SCLET’s website upon the release of the Final Report on 15 May 2018. Subsequently, the Consultants made observations on the Law Society’s response of 8 May 2018 to their interim report, which are also uploaded to SCLET’s website.¹⁴

The Final Report

9. The Final Report is structured as follows:

- Overview
- Section 1 – Introduction
- Section 2 – The existing structure of legal education and training in Hong Kong
- Section 3 – The reform of legal education and training: international trends and practices
- Section 4 – The academic stage of legal education
- Section 5 – The Postgraduate Certificate in Laws (PCLL)
- Section 6 – The proposal for a ‘Common Entrance Examination’
- Section 7 – The training contract, pupillage and the overseas qualifying examinations
- Section 8 – Conclusions and summary of recommendations

10. There are 38 recommendations in total which can be categorised as follows (at **Appendix** which sets out all the recommendations in full):

- (1) two recommendations about SCLET:

¹¹ A copy is available at SCLET’s website: <http://www.sclet.gov.hk/eng/pdf/interim2017.pdf>

¹² They are accessible at: <http://www.sclet.gov.hk/eng/pdf/response.pdf>

¹³ A copy is available at SCLET’s website: http://www.sclet.gov.hk/eng/pdf/lawsociety_20180508.pdf

¹⁴ The Consultants’ observations are accessible at: http://www.sclet.gov.hk/eng/pdf/consultant_20180529.pdf

- (i) to enhance SCLET's role by setting up a standing sub-committee of the SCLET to oversee the development of an appropriate mechanism for oversight of the operation of the PCLL in each of the universities;¹⁵ and
 - (ii) to consider the desirability of establishing a separate Secretariat for SCLET rather than by the Department of Justice as is the case since March 2018;¹⁶
- (2) four recommendations concerning the academic stage of legal education;¹⁷
 - (3) one recommendation on the feasibility of developing a more advanced legal executive qualification which may lead to direct entry to the PCLL;¹⁸
 - (4) six recommendations about the PCLL;¹⁹
 - (5) four recommendations concerning the development of the common entrance examination or some form of common assessment;²⁰
 - (6) 19 recommendations concerning the vocational stage of both solicitors and barristers which cover aspects of the training contract, pupillage and overseas qualifying examinations;²¹ and
 - (7) two long-term recommendations²² on how to maintain the system of legal education and training in Hong Kong, one of which touches on the proposed enhanced role of SCLET, namely extension of SCLET's oversight function to enable it to undertake a more substantive quality assurance role.²³

Way Forward

11. The Department of Justice is pleased to note that the Final Report

¹⁵ Recommendation 2.1

¹⁶ Recommendation 2.2

¹⁷ Recommendations 4.1 to 4.4

¹⁸ Recommendation 4.5

¹⁹ Recommendations 5.1 to 5.6

²⁰ Recommendations 6.1 to 6.4

²¹ Recommendations 7.1 to 7.19

²² Recommendations 8.1 and 8.2

²³ Recommendation 8.1

is comprehensive in scope and depth. It is understood that all the stakeholders, including the Judiciary, the legal professional bodies, the law schools and the general public as well as the SCLET will need to take some time to consider the Final Report and its recommendations.

12. The Department of Justice maintains the view that the ultimate yardstick for considering any changes to legal education and training in Hong Kong is the public interest. The key objective is to consider how Hong Kong's legal education and training can be further enhanced, so as to ensure that our graduates are well equipped to meet the challenges of legal practice and needs of society in the years to come, thereby contributing to the development of the legal system and the rule of law in Hong Kong, as well as Hong Kong's status as a leading centre for international legal and dispute resolution services in the Asia-Pacific region. The Department of Justice will continue to engage other stakeholders on the SCLET platform constructively with regard to the Final Report and its recommendations.

Department of Justice
June 2018

~~in her words "make a start on what is blindingly obvious as a basic requirement of our continued existence as a respected profession."¹⁸~~

~~Whilst we can make no definitive recommendation as such, we warmly commend much of the work that has been undertaken, particularly in Alberta and England, to the Law Society and Bar Association. The Singapore Academy of Law's LIFTED Initiative is also commended, particularly in its use of technological tools to support both a 'continuing competence' and innovation mindset within continuing professional education.¹⁹ We would strongly encourage Law Society and Bar to consider the ways in which such a benefits model might support them in maintaining their position and reputation among the world's legal professions.~~

8.4. Compilation of Recommendations

In this final section we present a complete list of the final recommendations made by this report, including two recommendations arising from the discussions in sections 8.2 and 8.3. Recommendation numbers reflect the sections of the report in which each recommendation is initially discussed. Explanatory notes included in the original locations are not replicated in this summary.

Recommendation 2.1

That consideration be given to the establishment of a Standing sub-committee of the SCLET to oversee the development of an appropriate mechanism for oversight of the operation of the PCLL in each of the universities. The Committee should oversee in particular: matters relating to admission to the course; the contents of the courses; the extent to which there is any substantial overlap between the substantive law content in that degree and in the undergraduate law courses, and the practices and standards of assessment.

Recommendation 2.2

That consideration be given to the desirability of establishing a separate Secretariat for the Standing Committee on Legal Education and Training rather than, as is the case at the time of writing, in March 2018, by the Department of Justice.

Recommendation 4.1

That in the context of the discussion and trends identified in this Report, additional work is undertaken by the law schools, in association with SCLET and associated stakeholders, to determine whether subject-based prescription should be replaced by an outcome-based statement or set of benchmarks for the LLB and JD respectively. We do not preclude either that (i) such a statement be devised in a form that binds all law schools to deliver a common set of core outcomes, or (ii) such statement provides standards and guidance to the law schools as to the appropriate nature and range of outcomes that each school should devise for itself.

¹⁸ W. Tam SC, 'Charman's Report for 2016', Hong Kong Bar Association, available online at <http://www.hkba.org/sites/default/files/Chairman%27s%20Report%20%202016%20%28E%29.pdf>, para. 17.

¹⁹ See Singapore Academy of Law, 'Elevate your practice with LIFTED' at <https://www.sal.org.sg/Resources-Tools/Legal-Education/LIFTED/Essentials>

Recommendation 4.2

In the context of the recommendations above or any other relevant process, significant steps are taken to reduce the scope of the compulsory academic curriculum in order to create greater room for choice and innovative offerings. Consideration also needs to be given to how, within the compulsory curriculum (however defined), law degrees can better prepare students to understand and engage with law and legal practice in a rapidly changing, globalised, and technologically-enabled world (noting, eg, the examples in section 4.5.4).

Recommendation 4.3

That principles of legal ethics and professionalism are introduced at the academic stage. We do not consider that this requires a full subject of professional legal ethics, but encourage the universities to consider how they might integrate ethics into programmes, as part of a subject or subjects, or pervasively across the core curriculum.

Recommendation 4.4

That as part of the process described in the 2.1 recommendations above, the Universities should each review their academic offerings annually, with a view to ensuring that students undertaking the PCLL courses are not required to learn (and be examined upon) significant amounts of substantive law in the vocational stage already studied at the academic stage. Better procedures should be put in place by the universities to control curriculum drift and unnecessary duplication between the academic stage and PCLL. This might be achieved (eg) by periodic meetings between programme directors and/or cognate subject convenors of the relevant academic and PCLL subjects, with a view to reporting to the sub-committee recommended in 2.1.

Recommendation 4.5

We invite legal executive training providers to investigate with the law schools and the profession, the feasibility of developing a more advanced legal executive qualification, leading to direct entry to the PCLL, and would encourage the Law Schools to be receptive to any initiatives in that respect.

Recommendation 5.1

We retain concerns about the risks and costs of moving to a wholly marketised system of admission to the PCLL, and do not recommend liberalisation on that scale. We do welcome providers' agreement to facilitate another moderate increase in PCLL capacity in the short term, and encourage providers to consider what additional steps should be taken to increase access to the PCLL (see Section 5.2) ,

Recommendation 5.2

That PCLL providers work together to increase the transparency of the admission process, and to develop consistent admission criteria across all three institutions. Revised admission criteria should reflect the factors identified in section 5.3.2, and would be the subject of reporting to the SCLET sub-committee as recommended.

Recommendation 5.3

That the Conversion Examination Board be invited to consider the adoption of a system of public grading of the Conversion Examination, in order better to facilitate the comparison of home and overseas students in the admission process.

Recommendation 5.4

That the professional bodies work with the law schools to construct a proper, uniform, statement of outcomes and written standards for the PCLL. These steps should include reference to the matters discussed in section 5.4.2, and proper consideration of the (uniform) competence standard or level for the course.

Recommendation 5.5

That the system of PCLL quality assurance be strengthened to include a quinquennial review of the course (Section 5.4.3), including a requirement that providers report formally to SCLET as to the steps taken to meet any conditions or recommendations of the review. New regulation should be introduced to enable de-accreditation of a provider, including an independent appeal process against a recommendation of de-accreditation.

Recommendation 5.6

That (i) key stakeholders when devising the outcomes and written standards, and (ii) the PCLL providers more generally when developing electives, or considering the scope of the informal (non-mandatory) curriculum, or delivery of student support, identify and address a range of future needs/priorities for training. These include: education in professionalism; commercial awareness; understanding of new modes and technologies of legal practice; developing greater proficiency in Putonghua; developing lifelong learning/reflective practice capabilities; the need for enhanced careers advice and support. As noted in section 4, this may be best achieved in the context of a larger re-evaluation of the outcomes of, and fit between, the PCLL and the academic stage.

Recommendation 6.1:

That a moratorium be called on current CEE development while (i) a further Benchmarking exercise for PCLL is completed (see Recommendations 5.4 and 5.5), and (ii) agreement is established between the Law Society, Bar and PCLL providers to progress any PCLL-associated CEE model (either as an interim or continuing solution).

Recommendation 6.2

If the key stakeholders (Law Society, Bar and PCLL providers) agree that an element of common assessment is desirable, that a cross-stakeholder working group under the auspices of SCLET should be convened to oversee the development. Membership of the group should include equal representation from the Law Society, Bar and PCLL providers, and at least one educationalist from outside the PCLL, with experience of high stakes professional assessment design. The chair of the group should also be independent of the above key stakeholders.

Recommendation 6.3

That any working group created under Recommendation 6.2 shall be charged with developing a model or models for the purposes of stakeholder consultation, revision and implementation. Without unduly constraining the terms of reference of the group, any model devised should include a basic risk analysis. It should also include worked arrangements for setting and review of common papers, examining arrangements and recommendations as to the structure and powers of any examining board. It will be for the working group to agree any revised implementation date for the scheme of common assessment.

Recommendation 6.4

That, if any system of common assessment is adopted, PCLL providers must be involved in paper setting and examination arrangements. A joint examination board of all PCLL providers, together with Law Society and Bar Association external examiners, should be devised to oversee results and report on assessment processes.

7.8.1 General recommendations in respect of the regulatory framework

Recommendation 7.1

That the Law Society and Bar each take steps to devise a proper set of outcomes for the final stage of training. These should build developmentally on the outcomes devised for the PCLL, and focus on the generic knowledge and skills required to demonstrate competence to practise (see Section 7.5).

The standard to be achieved through the training contract or pupillage should be set at the level expected of a 'day one' practitioner, ie, the standard expected of a newly admitted solicitor, or a barrister who has successfully completed the required period of limited practice.

Recommendation 7.2

We commend the work both professions have done in introducing trainee-specific continuing professional development/advanced legal education. Nonetheless, we recommend that, in the light of the revised outcomes established under recommendation 7.1, each professional body should review the scope and hours of trainee-specific training required to ensure a good fit with the desired outcomes.

Recommendation 7.3

That the Law Society undertakes a review of its regulation to determine whether there is scope to reduce the regulatory burden on training organisations, including:

- The need to maintain and register training contracts in standard form as currently prescribed by Trainee Solicitor Rules, Rule 8 and Practice Direction E2
- Whether the five year continuous practice rule for training principals should be retained, reduced, or eliminated [Legal Practice Ordinance, s.20(1)]
- The extent of reduction to the duration of the training contract permitted under Trainee Solicitors Rules, Rule 9A
- Secondment requirements for those undertaking a training contract in-house
- Regulation of secondments to law firms outside Hong Kong [Rule 9(4)]

Recommendation 7.4

That the Bar Council undertakes a review of regulation to determine whether there is scope to reduce the regulatory burden on barristers and chambers, including:

- Extent of restrictions on periods of approved pupillage [Section 10, B(QAP) Rules]
- The necessary minimum qualifying requirement for taking pupils
- Simplification of the duties of pupil masters [Rules 11.9-11.10, *Code of Conduct*]
- Pursuant to the move to outcomes, removal or substantial redrafting of the suggested minimum pupillage requirements (*Code of Conduct*, Annex 11, Pt 2)

Recommendation 7.5

That the professional bodies publish clearer information on their websites regarding their role in the authorisation and monitoring of training, including overview reports of monitoring activity undertaken, and identification of procedures for trainees to raise concerns with the relevant body regarding the conduct or adequacy of their training.

Recommendation 7.6

We recommend that the Law Society and Bar Association, in the light of any changes made in the wake of recommendations 7.8, 7.9 and 7.12, respectively, identify any additional steps that should be taken by them in order to ensure that monitoring of both the process and outcomes of the training contract or pupillage stage is adequate.

Recommendation 7.7

That the OLQE and the BQE should be brought within the reporting requirements and oversight of SCLET (or any successor body).

7.8.2 Specific recommendations in respect of the training contract

Recommendation 7.8

That the Law Society take steps to introduce a more structured training portfolio for the training contract stage, along the lines identified in section 7.6. Some increased process regulation is likely to be required, particularly enhanced monitoring of the ability of training organisations to meet the training outcomes.

Recommendation 7.9

That the conduct of formal periodic (eg quarterly) training reviews is made a condition of any training contract. An agreed progress report from each periodic review should form part of the training record.

Recommendation 7.10

That the Law Society investigate the feasibility of introducing and maintaining an online portfolio template and training record for use by all trainees

7.8.3 Recommendations in respect of pupillage

Recommendation 7.11

The Hong Kong Bar remains too small to warrant the introduction of any centralised clearing house system for pupillage applications (as operates, for example, in England and Wales). Nonetheless, we have some concerns as to the equity implications of the current, often informal arrangements.

We therefore recommend that, as a principle of good practice, chambers should be encouraged to advertise pupillage vacancies for an appropriate period on the Hong Kong Bar Association website. This may have the incidental benefit to chambers of reducing the number of speculative enquiries to which they must respond.

Recommendation 7.12

That the Bar take steps to enhance the consistency of pupillage outcomes by introducing a proper training portfolio requirement as per Section 7.6. This system would be supported by other regulatory enhancements, itemised in the following recommendations.

Recommendation 7.13

That chambers should identify within chambers an appropriate person (who may be the Head of Chambers) to address internal concerns or complaints regarding the adequacy of training provided. We see this primarily as a consolidation and regulatory recognition of existing best practice rather than a major innovation.

Recommendation 7.14

That the Bar investigates the feasibility of introducing and maintaining an online portfolio template and training record for use by all pupils to record their training.

Recommendation 7.15

That the conduct of formal periodic (eg quarterly) training reviews is made a condition of pupillage. An agreed progress report from each periodic review should form part of the training record.

Recommendation 7.16

That the Bar *Code of Conduct* (Rule 11.20) is revised so that the existing requirement that training logs are completed at the end of periods of pupillage should become a continuing requirement to maintain a training log and portfolio/diary throughout the duration of pupillage.

7.8.4 Recommendations in respect of the OLQE/BQE

Recommendation 7.17

That the format of the OLQE be substantially revised as discussed in section 7.7.1. Our preferred solution would be that, as a minimum, a substantial majority of the knowledge-based component should be conducted by standardised objective testing (multiple choice tests).

We take the view that, ideally, some element of skills-based assessment, akin to the English QLTS, would also be desirable as that would equate the OLQE more clearly to the range of competencies tested in the case of domestic trainees. We do not make an express recommendation to that effect but encourage the Law Society to investigate whether this would be economically feasible, given the numbers involved.

Recommendation 7.18

That consideration be given to an equivalent approach for the BQE, though we seriously doubt that this would be economically or administratively viable on the numbers involved. We invite the Bar to consider the possibility of some element of joint assessment with the OLQE, given that there is substantial knowledge overlap between the two examinations.

Recommendation 7.19

Whether or not recommendation 7.18 is implemented, we recommend that steps are taken to improve the quality of information surrounding the BQE, including:

- Some narrowing or refinement of the focus of syllabi
- Additional guidance on core topics and reading materials
- Publication of annual examiners' reports, including short outline answers to questions.

Recommendation 8.1

That (over and above enhanced arrangements for operational oversight of the PCLL – Recommendation 2.1), the Standing Committee's oversight function be extended to enable it to undertake a more substantive quality assurance role as identified in section 8.2 of this Report.

Recommendation 8.2

In the wake of developments in mature continuing professional development schemes in the UK, Canada and New Zealand, (per Section 8.3), that the Law Society be invited to initiate a review specifically into its methods of regulating and monitoring continuing professional development.