

香港城市大學的信頭  
**Letterhead of City University of Hong Kong**

19 April 1999

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Clerk to Panel  
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Dear Mrs. Ma,

**LegCo Panel Inquiry on Legal Education**

This is further to Dean Smith's letter of 30 March concerning the LegCo Panel on Administration of Justice and Legal Services and its proposed inquiry into legal education. As Dean Smith mentioned in his letter, the School of Law of City University intends to hold a conference on issues in legal education on Saturday, June 12 and many of the issues raised in your letter of 24 March 1999 and others will be raised and discussed at that conference.

**The Forthcoming Legal Education Conference**

A committee here has been working on planning for the conference. Although the precise agenda is still being worked on, we intend to have speakers who will (1) provide an overview of issues in legal education in Hong Kong; (2) discuss developments in legal education in the UK and other common law (and non-common law) jurisdictions; and (3) discuss the goals, methods, and problems of legal education in university and post-graduate settings. We hope that representatives of the Bar Association and Law Society will discuss perceived problems with new entrants to the profession and the extent to which concerns are based on hard data or merely anecdotal evidence. We also plan to have speakers on (1) the history and current status of the legal profession in Hong Kong and how legal education should be shaped in light of the special nature of the profession and (2) the impact of globalization of law practice and its effect, for example, through competition from mainland-trained lawyers and others.

The goal of the conference is to provide a roadmap for a rational, careful and comprehensive review of legal education in Hong Kong. This conference reflects a commitment to ensuring that changes in legal education are thought about more systematically than has occurred to date, that they properly reflect recent changes in Hong Kong society and the profession, that they provide data on the strengths and weaknesses of entrants into the profession, and that they take account of the contemporary design of legal education in other jurisdictions.

### Need for More Liberal Arts Education for Lawyers

We have enclosed a copy of an article in the Hong Kong Lawyer (in English and Chinese) for which Dean Smith was interviewed in December. The article suggests:

1. the need for better liberal arts education for lawyers (in fields such as economics, science and technology, politics, and language); and
2. the possibility of expanding the LLB programme by at least a year to allow for training in other disciplines, language and skills

### The LLB/PCLL Split and the Separation of Substantive Law and Procedural Law Training

Suggestions have been made that expansion of the PCLL programme would go some way toward solving perceived problems with new entrants by allowing more skills to be taught. We support the notion of expanding the number of years devoted to legal education but do not think that simply adding onto the PCLL programme is the answer unless there were a greater integration of LLB and PCLL studies and the PCLL curriculum were reconsidered. Skills, language and writing training should be part of law student's education from his/her first day of LLB studies.

One problem with the current LLB/PCLL division is that it separates out "procedure" and "skills" on the one hand (PCLL) from the teaching of "substantive" law (LLB) on the other. Another problem is that the division of substantive law subjects between the LLB and PCLL discourages advanced scholarship in some areas of law until after the PCLL. In summary, these sometimes artificial distinctions do not readily allow law to be taught or learnt in context or for expertise or interests to be academically developed.

As to the skills/substantive law distinction, a student learning contracts in the LLB, for example, does not learn how contract disputes are settled until 3 years later. In addition, a contracts student will focus on the legislative and case law relating to the elements of a contract but will not learn the commercial context in which the contract is concluded and may not even be given a contract precedent to review. The particular procedure and process aspects of legal training are taught later, in the PCLL year, when students take civil procedure and a course in commercial law. This is too late. Document analysis, negotiation, drafting and letter writing need to be taught during the LLB years: students need to see and work with the integration of substance and practice.

To illustrate the point regarding the division of substantive law courses, revenue law (taxation), for special historical reasons, is taught in the PCLL course. As a result, even when offered as an elective, it is not taken in the LLB course. This means that a student who wishes to specialize in taxation is likely to first study it on the PCLL and does not have the opportunity to do more advanced work in this field unless he/she takes a higher diploma or masters course after the PCLL. The separation of substantive law subjects on the LLB and

PCLL is, thus, in many ways, counter-productive and restrictive and stifles the opportunity to acquire in-depth substantive knowledge until after the PCLL.

We believe that one solution to these issues would be, as mentioned, to extend the LLB to four years, allowing for a more liberal education and time to cover substantive law in context i.e. by including skills and procedure.

We would, in addition, suggest that the PCLL remain a one year course but focus exclusively on problem-solving, counselling and emphasizing skills such as interviewing, negotiation, drafting, writing, advocacy, and file and time management.

### LLB Studies

Having made some preliminary comments about the LLB, it is important to remember that LLB studies do not necessarily lead to a career as a solicitor or barrister. Many LLB graduates may go into the civil service or non-governmental organizations, for example. A choice not to practice law in a law firm or as a barrister does not mean that students do not need to be exposed to some substantive law areas and skills such as interviewing, counseling, advocacy, negotiation and letter writing usually taught on the PCLL. In government or business, students will need this knowledge and these skills. The fact that the LLB is not itself a training ground solely for law practice does not mean that students in the LLB program should be deprived of courses or skills now reserved for the PCLL. Our suggested change to the LLB/PCLL curriculum would ensure that these students would not be deprived of studying law in context.

This leads to a more basic point. We are training students not for next year, or the next five years, but for a lifetime. The LLB should provide a lifetime foundation. It is in the LLB that students should develop analytical, language and presentation skills, self-confidence, a sense of professionalism and professional responsibility and legal thinking. It is during the LLB course, as mentioned above, that students should learn law in context and how it interacts with other disciplines. The current 3 years devoted to LLB studies is not adequate to cover what needs to be dealt with for students just out of secondary school and the resultant burden on the PCLL means the PCLL year cannot be used to fully develop skills training. In short, the current split between the LLB/PCLL is artificial and counter-productive and does not allow the student to deal with more sophisticated concepts and problems as she or he progresses through 4 years of university.

### Legal Education as a Lifetime of Learning

We have focused our attention on the academic stage of legal education but emphasize that this is only one stage in the life of a legal professional. After the academic stage a graduate will not be a fully qualified legal professional. Rather, that responsibility at that stage of one's legal education is handed on, in the case of those entering practice, to the practising profession. To explain this stage further, PCLL graduates who enter into legal practice will

undergo practical “on the job” training as trainee solicitors (for two years) or pupil barristers (for 12 months). This stage of their education is supervised by the leader in their job i.e. a partner in a law firm for a trainee solicitor and a pupil master for a barrister. This stage of education is therefore fundamentally important for the practical and continued professional development of a practising lawyer. Because this stage of legal education is so important, we suggest that more should be done in Hong Kong to actively monitor and assess the content and quality of this training. This is not to suggest leaders do not take their jobs seriously but rather that just as checks and balances exist in the academic stage of legal education through the use of external examiners and course consultants, we believe similar checks and balances might be usefully and properly introduced into this later stage of legal training.

A number of different approaches have been taken to entrench these checks and balances in other jurisdictions, e.g. the requirement that trainee solicitors and pupil barristers enter into contracts with their firms/chambers and that professional bodies such as the Law Society and Bar Council review and monitor these contracts. We are advised that a “log book” system has been adopted by the Bar Council, so there is a record of what pupil barristers do. However, we believe closer monitoring and review is still in order. A variety of models should be explored for both branches of the profession. We endorse the suggestion that a more comprehensive and inclusive form of review/monitoring of this stage of legal education be considered for Hong Kong.

Finally, legal education, like education in medicine, should be an ongoing process. It should continue for the whole of a person’s professional life. Continuing legal education (CLE) for solicitors and Advanced Legal Education (ALE) for barristers requirements are imposed in Hong Kong by the professional bodies for solicitors and barristers but, at this stage of legal education, it is the lawyer herself or himself who takes responsibility for her or his continuing education. Only the Law Society has a mandatory scheme of CLE for certain practising solicitors. The ALE scheme for barristers is voluntary. Programmes offered to satisfy the educational requirements of the CLE scheme are reviewed and monitored by a specialist committee within the Law Society as are the programme providers. Practising lawyers must remain current as to law and practice and we urge an expansion of courses offered by the Law Society and Bar in CLE and ALE. We also urge the closer monitoring of the quality and nature of courses offered by the Bar. The Bar could, perhaps, base its review and monitoring of courses on the model currently being used by the Law Society in Hong Kong in its CLE scheme.

Thank you for giving us the opportunity to make these brief comments to your Panel. As we mentioned, there are several stages to legal education. Each stage is dependent on the other and therefore changes in one will have an impact on the other. We strongly discourage an ad hoc approach or isolated adjustment in one stage in the process. We urge an informed and comprehensive review of legal education through discussion, debate and research including all those involved in this important subject. We believe now, perhaps more than ever before, that the rule of law and the administration of justice in Hong Kong is at centre stage. Changes in the process of training of the professionals who will uphold and enforce this should not be undertaken without careful and thorough consideration. Our School very much looks forward to being an active part of this consideration. We are pleased, through the

forthcoming Legal Education Forum, to assist in providing a roadmap for review and we look forward to welcoming you and the Panel members to City University on 12 June 1999.

Should you require anything more from us or if our attendance before your Panel would be of assistance, please do not hesitate to contact us.

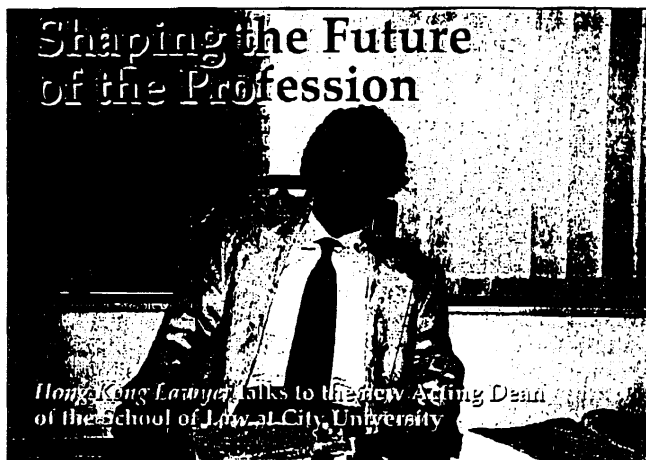
Yours sincerely

Mr David Smith  
Acting Dean  
School of Law

Associate Professor Terri Mottershead  
Associate Dean  
School of Law

Encl.

DNS/sl



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.' ■