

A Joint Submission from the Faculty of Law, The University of Hong Kong, the Faculty of Law, Chinese University of Hong Kong, and the School of Law, City University of Hong Kong to the Panel on Administration of Justice and Legal Services, the Legislative Council (“LegCo”), for the meeting scheduled for Monday, December 16, 2013 at 4:30 pm in Conference Room 2 of the LegCo.

1. This submission is made in response to item III of the Agenda for the above meeting, which reads “The Law Society of Hong Kong’s proposal to introduce a common qualifying examination for solicitors to replace the postgraduate qualification programme provided by the three law schools in Hong Kong.”
2. Perhaps we may begin by expressing our surprise at the agenda item. As far as we understand, the Law Society’s proposal is to introduce a common qualifying examination for solicitors in addition to, and not in replacement of, the postgraduate qualification programme provided by the three law schools in Hong Kong. Indeed, we have been repeatedly assured by the Law Society in the last 12 months that there was no intention to replace the postgraduate qualification programme currently provided by the three law schools of Hong Kong. In fact, even in the Consultation paper which is being widely circulated recently via the Law Society website it has been made clear that it is not the intention of the Law Society to abolish the PCLL programs.
3. In any event, we do not support the Law Society’s proposal, the justification of which is unclear and unconvincing. It would not produce any better lawyers; nor is it in the best interest of Hong Kong.

The PCLL

4. The “postgraduate qualification programme” refers to the Postgraduate Certificate in Laws (“PCLL”) programme. It is a statutory qualification for legal practice in Hong Kong under the Legal Practitioners Ordinance (Cap 159), and is a common qualification for both the barrister branch and the solicitor branch of the legal profession. Thus, any change in the statutory qualification will affect not only the solicitor branch but also the barrister branch.

5. The PCLL programme is offered by all three law schools in Hong Kong. The University of Hong Kong offers both a full-time and a part-time PCLL programme, whereas Chinese University of Hong Kong and City University of Hong Kong offer only a full-time programme. The three law schools combined provide a total of about 650 PCLL places in 2013-14 (150 by CUHK; 160 by CityU; 260 FT and 80 PT by HKU). A breakdown of the number of PCLL places in the last three years is provided in Annex I.

6. A major review of legal education was conducted by Professor Paul Redmond and Mr Christopher Roper under the auspices of the Steering Committee on Legal Education and Training between 1999 and 2002. As a result of the review, the PCLL programme has undergone massive reforms. The academic components of the PCLL programmes were taken out and rolled back to the LLB programme so as to make room for more practice training in the PCLL course, which has since 2005 become a skills-based programme to prepare law graduates to embark on either traineeship (to become solicitors) or pupillage (to become barristers). The Law Society and the Bar Association each set out their own benchmarks, which have to be met by the PCLL providers. Each of the PCLL courses is externally assessed by an examiner appointed respectively by the Law Society and the Bar Association, with a member of the Judiciary serving as the Chief Examiner. A PCLL Academic Board was set up at each law school, which has the remit over all matters relating to the PCLL, including curriculum, teaching, assessment, recruitment and staff appointment. The legal profession represents 40% of the members of the Academic Board. The university members represent only 40% of the members of the Academic Board, with the remaining 20% of the members comprising representatives from the Judiciary, the Department of Justice, and lay members. The Academic Board is chaired by an external member. Three sub-committees are set up under the Board to monitor curriculum, admissions, and human resources.

7. At the same time, the Steering Committee of Legal Education and Training was replaced by the Standing Committee of Legal Education and Training, which is a statutory body established in 2005 under the Legal Practitioners Ordinance to oversee legal education in Hong Kong. The Standing Committee comprises all stakeholders in legal education in Hong Kong, including representatives of the Law Society, the Bar Association, the three law schools, the Department of Justice, the representative of the Education Bureau and a few lay members. Apart from overseeing legal education, and particularly the PCLL programme, in Hong Kong, the Standing Committee of Legal Education is also responsible for setting the benchmark for English standards

for PCLL admissions and for administering the conversion examination for non-HK law graduates for the purpose of PCLL admissions.

8. The curriculum of the PCLL has been completely revamped in recent years to meet the benchmarks set by the Law Society of Hong Kong and the Hong Kong Bar Association. In all three law schools, both branches of the profession have intensely scrutinised the teaching materials of each of the courses taught in the PCLL, and have sent representatives to sit in on many of the PCLL courses, all of which are to ensure that the PCLL courses have met the demands, expectations and benchmarks set out by the Law Society and the Bar Association. Some providers also make extensive use of practising solicitors and barristers in the delivery of the PCLL, and where this is done they work very closely with full-time PCLL teachers.
9. The system has worked well since then. When the law school at CUHK was established in 2005, it was brought under the same monitoring system.

Review proposed by the Standing Committee on Legal Education

10. In 2012/2013, about 10 years after the publication of the Roper-Redmond consultancy report, the Standing Committee on Legal Education has decided to launch another major review of legal education. The review is prompted partly by the appearance of a new law school (CUHK) since the Roper-Redmond Report, and partly by the prevalence of the new JD programmes in Hong Kong. The review will also cover, for the first time, the training stage at both branches of the legal profession. We understand that the Standing Committee is in the process of appointing the consultants for the impending review.

A Common Qualifying Examination

11. In late 2012/early 2013, the then President of the Law Society of Hong Kong first raised the issue of introducing a new common qualification examination for solicitors. All three law schools have made enquiries into the details, and have been repeatedly assured that this was just a proposal for consultation. We were also repeatedly assured that there was no intention to abolish or replace PCLL.

12. In the summer of 2013, the current President of the Law Society announced, without consulting the three law schools, that the Law Society intended to introduce a common qualification examination for solicitors. Various exchanges on the desirability of a common qualification examination for solicitors have been made over the media. In August 2013, the Dean of the Faculty of Law of HKU orally indicated to one of the Vice-Presidents of the Law Society that it would be desirable for the three law schools to meet with the Law Society to discuss this matter than to have exchanges over the media. No separate meeting was arranged in response to this offer, although some of these issues were discussed between the law schools and a representative of the Law Society prior to a recent meeting of the Standing Committee.
13. In late October 2013, the three law schools were advised by the Law Society that its consultant would be visiting Hong Kong and would like to meet the three law schools. Despite the short notice (about one week) and the absence of a published consultation document, all three law schools met with Professor Avrom Sherr, one of the consultants appointed by the Law Society to advise on the desirability of introducing a new common qualifying examination for solicitors.
14. We are given to understand that the Law Society has been preparing a consultation paper on this subject for some months, that the consultants are to submit a report to the Law Society before December 2013, and that a consultation paper will be released by the end of December 2013. We were not informed what kind of consultation would be in place. Nor are we informed how this consultation study is related to the wider legal education review to be launched by the Standing Committee on Legal Education. By a letter dated 2 December 2013, we were invited by the Law Society to participate in a follow-up interview with the consultants. The letter also provided a link to a consultation document. While it is our collective view that it is only now that there can be some meaningful discussions on the issues raised by the Law Society, we also note the relatively short period of consultation as, it appears that the consultation period will expire by 31 December 2013.

The Purported Justifications

15. Different justifications for the new qualification examination have been put forward by the Law Society at different stages. Initially it was said that this was necessary because PCLL has become a bottleneck for admission to the legal profession. Later it was said that the new qualification examination would ensure a consistency in

standards, as it is difficult for the Law Society to ensure consistent standard among the three PCLL providers. At some stage it has been suggested that it is desirable in terms of resources to combine the various professional examinations such as the Overseas Lawyers Qualification Examination and the PCLL. There was also some very vague reference to quality of the PCLL programmes, but this concern has never been seriously pursued. Nor has any concern for standards ever been brought to the attention of the law schools or their Academic Boards.

16. We should emphasize that none of the justifications has been formally put forward. On the contrary, the Law Society has repeatedly reassured the three law schools that there is no intention to replace the PCLL.

Bottleneck Argument

17. As far as the bottleneck argument is concerned, it was said that because of limited PCLL places in the universities, many otherwise qualified students are unable to gain access to the PCLL programme and are hence denied access to the legal profession.
18. It is difficult to understand how a common qualification examination would solve the problem of a bottleneck in the form of the PCLL, while there is no intention to abolish the PCLL. An additional examination would not resolve any access or bottleneck problem, but would only present another hurdle for admission to the legal profession. A common qualifying examination can only be superfluous if it is to examine again what the students have learned in the PCLL when the students have already passed the PCLL examination, bearing in mind that the PCLL programme is closely monitored by the professional bodies. The Faculty is open to suggestions of reviewing the standards of admission (which are indeed set by the Law Society and the Bar Association) or the numbers of entrants. However, when we raised the possibility of enlarging the number of entrants to the PCLL, the Law Society replied that it does not have the manpower or resources to monitor the additional number of PCLL students.
19. We understand that there has been anecdotal evidence that it has been extremely difficult to get entry into the PCLL. The three law schools have earlier collated the admission data of the PCLL in the past three years, which was submitted to the Law Society in response to a letter from a JD student from Chinese University law school published in *The Lawyer*, the professional publication of the Law Society. The collated tables are now enclosed at **Annex I** for the reference of the Panel. The table

shows that there were about 1,300 applicants to the PCLL in each of the last two years. In accordance with the admission standards laid down by the Law Society and the Bar Association, HKU alone has admitted about 320 each year, and the three law schools together have admitted a total of about 650 students to the PCLL each year, which represents about 50% admission rate. By any standard, an admission rate of 1 in 2 in any professional discipline could not be said to be unduly restrictive. In any event, the three law schools are receptive to expanding their admissions if necessary or justifiable. In this regard, we should emphasize that the minimum admission standard is indeed set by the profession, and not by the law schools, which only apply the standard set by the profession.

20. In response to the concern that applicants who failed once to get admitted to the PCLL programme are unlikely to be competitive enough to successfully get admitted to the PCLL thereafter so that admissions to the PCLL programme become a once-in-a-lifetime chance, it is possible to envisage ways in which this can be addressed within the existing system. So, for example, HKU has decided, with effect in 2014-15, to designate a number of places for those who have failed to get admitted into the PCLL the first time around by taking into account other relevant experience such as working experience at a law firm. We trust this will alleviate this concern of one attempt only. CityU looks at applications fresh each year and past failure to get admission does not affect current year's applications. They also look at work experience and other achievements of an applicant apart from merely grades. The Chinese University also considers renewed applications afresh, so that candidates are not prejudiced by a past failure to secure admission to the PCLL.

21. There were also isolated complaints that an otherwise good candidate is denied admission to the PCLL programme for no reason other than that there are insufficient places on the PCLL programme. Admissions to the PCLL are decided by merits. For applicants from overseas, it is necessary for the law school to make a judgment on the quality of the applicants. We are aware of serious grade inflation in some overseas jurisdictions, and the criteria for the award of an honour degree varies from university to university. For instance, some British universities do not count the first year results for the purpose of degree classification, yet the first year of law study usually includes some of the most important foundation subjects in law such as contract, tort and criminal law. All these have to be taken into account in assessing comparative merits. Suffice to point out that, as far as HKU is concerned, our own LLB students have to compete for admissions for PCLL places, and out of the 340 PCLL places that we offer, only about 50% of the places are taken up by our own LLB students. As far as

CityU is concerned, their own LLB/JD students comprise of 60% to 65% of the student body in the PCLL programme. In 2013/2014 graduates of the Chinese University (LLB and JD) make up 85% of the PCLL cohort.

22. Law is a very demanding profession, of which the community has rightly very high expectations. On the other hand, entry to the profession should not be unnecessarily restrictive as to deny competent people from becoming legal professionals. This we readily accept, but a 50% admission rate seems, we submit, to be a decent proportion. HKU, and we are sure the other two law schools as well, is open to suggestions from others in legal education. On the other hand, it will be regrettably sad if access to the legal profession is further restricted by the unnecessary hurdle of a further examination.

Consistency Argument

23. As far as consistency among the three PCLL providers is concerned, all three PCLL programmes are closely monitored by the legal profession. All the law schools are very receptive to any comments or suggestions from the legal profession. If there is any difficulty in monitoring the PCLL programme, a solution may lie in changing the monitoring methodology. In this regard, the American Bar Association has to monitor over 300 law schools in the United States. The Law Society of England and Wales has to monitor the standard and to ensure consistency of over 20 providers of the equivalent of PCLL. Instead of adopting an annual monitoring, they adopt a periodic but intensive monitoring every few years. Some monitoring bodies have engaged full-time personnel rather than relying on busy practitioners to do the monitoring. There is a lot of experience that we can draw upon, and the argument of consistency does not lead to a solution of having a new common qualification examination.
24. We should also point out that some degree of diversity is a strength rather than a weakness. Different law schools have different strengths and focuses, and students will be benefitted by diversity in different programmes so long as they all cover the essential materials. Indeed, experience elsewhere has shown that a central unified qualifying examination will stifle creativity and diversity of legal education. In many jurisdictions, a unified qualifying examination has resulted in students who are interested in nothing but passing the examination. Anything else offered by the law school would not attract sufficient student interest, and a unified examination sets the

maximum, rather than the minimum, knowledge that a student would know. This has been the experience in Taiwan, Korea, and Japan. In contrast, at present, a year-long structured programme offered by the law schools provides systematic and progressive training for students. It also allows each law school to offer a variety of electives. Some students may wish to do more in advocacy or matrimonial work; others may wish to spend more time on listing or corporate finance. It is obvious that a structured programme provides much better assurance of better trained lawyers than a one-off examination.

25. In any case, the three PCLL providers currently work to common benchmarks established by the professions.

Quality Argument

26. We have already pointed out above that we are not aware of any concern about quality in recent years. Even if there were such concerns, they could be addressed within the existing system and all the law schools are receptive to any suggestions to improve the PCLL. On the other hand, a new common qualification examination would not address such concern. When the common qualification examination was raised at the Standing Committee on Legal Education in March 2013, the then President of the Law Society “clarified that the Society was not saying there was a problem with legal education provided by the 3 law schools per se.” (Minutes of the Meeting of the Standing Committee on Legal Education and Training held on 27 March 2013, para 3.1.30) We may also point out that there is only a small number of law teachers in Hong Kong. Not only are they teachers in the PCLL programmes, but they are also examiners of professional examinations such as Overseas Lawyers Qualification Examination or teachers in some of the privately-run preparatory courses for such examination. A new common qualification examination for solicitors is likely to be taught and assessed by the same people.
27. The PCLL is a one-year full time programme. After completing the PCLL, the students will have to undergo a traineeship with a law firm for two years. As far as the law schools are concerned, we see our task to be to prepare students competently for the traineeship. The law school is not and cannot be expected to produce graduates who are, upon graduation, fully-functioning assistant solicitors. If this is the basis for any concern for quality, we believe such expectation is unrealistic and unwarranted. On the other hand, the law school accepts that our responsibility is to

produce graduates who are competent to be trainee solicitors, and in this regard, we are prepared to ensure that we meet the appropriate benchmarks set by the professional bodies.

28. Training for a solicitor does not stop at the PCLL. The traineeship is arguably even more important, as it is at this stage that a trainee is to meet real clients and go through real cases in real context. The quality of traineeship may vary from law firms to law firms. As at 31 December 2012, there were 736 local law firms, among them 45% are sole practitioners. It is important to ensure that all trainees receive consistent and adequate supervision and training. If there is any concern about the consistency of standard among three law schools, there must be greater concern about the consistency of standard of traineeship among over 700 law firms. As far as we are aware, no review on the quality or consistency of traineeship has been conducted, and we are not aware of any trainee who has been certified as unsatisfactory and therefore failed to complete the traineeship. The more likely scenario is that an unsatisfactory trainee will not be recruited by the firm concerned, but the trainee will still be certified and allowed to practise at large. It appears that there is a strong case for a major review of the quality and operation of the current traineeship system.

Expediency Argument

29. Finally, insofar as the argument that it is more expedient to combine a few professional examinations, our response is that different examinations serve different purposes. Overseas Lawyers Qualification Examination (“OLQE”) intends to provide a route for overseas qualified lawyers to be admitted to Hong Kong. Only those who have at least two years of post-qualification experience are eligible to sit this examination. Those who pass the OLQE are entitled to practise as a solicitor in Hong Kong without having to go through the traineeship. Indeed, many who sit for OLQE have long practice experience elsewhere. In contrast, the purpose of the PCLL is to prepare a fresh law graduate for traineeship or pupillage. A student who passes PCLL is competent to serve as a trainee, and will have to undergo traineeship for two years before he is qualified as a solicitor. If the common qualification examination is to replace PCLL and be set at the end of the PCLL, and if the proposal is then to combine the common qualification examination with OLQE, these different examinations serve completely different purposes for different types of candidates. It makes no sense to combine them.

Abolition of PCLL

30. The issue of replacement of the PCLL by a practice course has been fully debated after the Roper-Redmond Report. It was then considered that this proposal would not be in the public interest. The proposal to replace the PCLL by a common qualification examination is not accompanied by any proposal to introduce training courses comparable to the PCLL, which is a year-long full-time training programme with a heavy component of skills-training. While it is possible for a student to prepare for the examination by self-study, it is difficult to see how a single common qualification examination will produce better lawyers if there is no preparatory course of study.
31. It is foreseeable that some institutions may offer preparatory courses on a commercial basis. The quality of such privately run courses will inevitably vary, and it is difficult to see how these courses could provide education and training for potential lawyers comparable to the current structured PCLL programme. On the other hand, if the preparatory courses are to match that of the existing PCLL programme, which has a heavy component of practical training, such courses will be very expensive and the cost will fall on the students. At present, the PCLL programme is partially publicly funded. Once it is replaced by a new common qualification examination, there is no longer any justification for public funding to support any preparation course for the examination. It will be a sad day if only those who could afford the high cost of study would be able to get access to the legal profession.

Conclusion

32. In conclusion, we are not convinced that there is a case for a new common qualification examination for solicitors either to replace or to be in addition to the PCLL. The rationale for introducing the current proposal is unclear, and while some of the issues that have been identified, they are better addressed by means other than a common qualification examination. On the other hand, a common qualification examination will have the effect of further restricting access to the legal profession, which is not in the public interest. As a statutory qualification for both branches of the profession, it is also necessary to consider the impact of any attempt to abolish PCLL on the barrister branch of the legal profession. It is in any event premature and should be better considered in the light of the impending legal education review to be conducted by the Standing Committee on Legal Education.

Dated this the 9th of December 2013.

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PCLL Admission Figures for 2011-12, 2012-13 & 2013-14

<u>2013-14</u>		<u>CityU</u>	<u>CUHK</u>	<u>HKU*</u>	<u>Total</u>
No. of applications		620	416	738	
No. of 1st choice applications	FT	438	276	359	1305
	PT	-	-	232	
No. of students admitted	FT	160	150	260	650
	PT	-	-	80	
<u>2012-13</u>					
No. of applications		700	426	673	
No. of 1st choice applications	FT	500	285	378	1322
	PT	-	-	159	
No. of students admitted	FT	161	150	242	633
	PT	-	-	80	
<u>2011-12</u>					
No. of applications		520	453	671	
No. of 1st choice applications	FT	322	307	450	1210
	PT	-	-	131	
No. of students admitted	FT	138	150	240	608
	PT	-	-	80	

** Some applicants may apply for both FT & PT places. An applicant who has applied for both FT & PT is counted as one applicant*

September 2013