

HONG KONG BAR ASSOCIATION' S VIEWS ON

**The Proposed Common Entrance Examination**

1. Even though the proposed CEE is meant only for entrants to the solicitor profession, it will indirectly affect the Bar in at least 2 ways:
  - (a) It may affect the number of students who would otherwise want to join the solicitor profession to come to the Bar.
  - (b) It would affect the pre-qualification training of those who intend to join the Bar in that it may affect the decision of the universities in whether to continue with the PCLL courses or at least in their decision on the amount of resources to be put into the PCLL courses.
2. The difficulty of commenting on this proposed CEE is that there are too many uncertainties in this proposal. The major uncertainty lies on (i) whether it is proposed that this CEE should be taken during or after the stage of trainee contract or (ii) whether it is to be a common examination before the student would be qualified to commence his trainee contract. The effect on the Bar would be more if it is the latter. Without any further details of the proposal, it is not possible to put forward any definite view.
3. The consultation paper put forward by the Law Society has identified some concerns expressed by some stakeholders, but it is by no means clear as to whether these concerns were justified and to what extent the proposed CEE could really address these concerns.
4. The Special Committee on Legal Education of the Bar had previously met and discussed on the quality of the newly qualified barristers. The conclusion was that while there were obviously differences in the ability of the individuals, on the whole, there was no problem with the quality and standard of the newly qualified barrister in general.

5. At the moment the main stream for joining the Bar is through the PCLL. However we do not see any problem with the variation of standards amongst the new entrants arising from the fact that they are educated by different PCLL providers. The differences lie on the difference in ability amongst the new entrants and not from the differences in the courses they had taken during their PCLL.

6. It is possible to join the Bar by taking the Barristers Qualification Examination ("BQE"), but the number of entrants through this route is quite small and those who qualify through the BQE would not normally be treated as a beginner barristers.

7. Speaking of the proposed CEE for the solicitors, so long as the OLQE is retained as a separate route for qualified foreign lawyers to join the profession without having had to pass that CEE, we do not see how one can say that the CEE would be able to address the concern that there is no uniformity or consistency of assessments of the performance and standard of those joining the profession even at the beginner level.

8. We are concerned with the relationship between the proposed CEE and the PCLL. Is it proposed that the CEE is to replace the PCLL so that upon the implementation of the CEE students are no longer required to take the PCLL course and could get qualified simply by passing the CEE? If this is the case, would the PCLL course be relegated to a course for the preparation of the CEE? If the PCLL course is to remain a compulsory course that students must take in order to take the CEE, then what is the difference between the new CEE examination and the PCLL examination? If the PCLL course is merely optional and that students are not really required to take any particular course before they could attempt the CEE, then the incentive for the universities to continue to provide the PCLL course (or a preparatory course for the CEE) would be reduced and that would affect the training of the barrister students as well.

9. We consider that there is a point to be served by making students to take a compulsory course after the law degree and before attempting a qualifying examination such as the PCLL at the present moment. This is because there are some practical training in advocacy

and other lawyer skill which are difficult to acquire just by self study. It is of importance and certainly is beneficial that all lawyers, be he barrister or solicitor, should have some minimum training in these areas even though he may like to specialize in particular areas in the future.

10. At the moment, with the PCLL being a common qualification for both barristers and solicitors, there is a certain degree of flexibility to allow one to switch from one profession to the other. The commonality of the qualification is recognition of the fact that there are some basic knowledge and training which are common to both professions. Students taking the right option subjects in the PCLL course in fact could switch without being required to take any further examination. The flexibility may be reduced if in the future the solicitor students are to take the CEE and the Bar students are to take the PCLL or whatever would be the equivalent.

11. If the CEE is to be an additional examination on top of the PCLL for the intending solicitors, this would appear to be very harsh on the students and one is entitled to ask what the purpose of this CEE is. If it is conceived that the education and training of the PCLL is not sufficient, then the better course must be to ask the PCLL providers to improve their PCLL course. There is no evidence that the PCLL providers are not responsive to the suggestions and views of the professions.

12. It may be said that if there is just one CEE with one syllabus for all entrants to the profession, this would be better than the current situation where the syllabi of the 3 PCLL providers are somewhat different, because then one could expect a greater degree of uniformity in the knowledge and skill of the entrants when they join the profession. On the other hand, the divergence in the PCLL syllabi of the 3 universities would give rise to greater varieties and wider spectrum of training to the students and this would allow potential employers to have a wider choice.

13. The thought that the profession should have the control of the admission to the profession is an attractive one and it may be thought by many that this alone would justify an examination to be administered by the professional body guarding the entrance to the profession. Without

commenting on the validity of such thoughts, it has to be pointed out that this entrance self regulation would come with a price. It is a costly exercise to administer an examination and it is even more costly to set up a course to provide for the preparation of that examination. At the least the training and education aspects are better left to the education institutions.

14. It is recognised that there are from time to time complaints that the PCLL places are too few such that some good and deserving students could not get a place in the PCLL. It is also said that because of the great competition for places, in reality a student who accidentally does not do well in his law degree examination may, in reality, be barred from joining the legal profession. These are valid criticisms of the current system. The shortage of places may be somewhat relieved by asking the universities to increase their PCLL places. But even with the increase in the places, there will always be someone who just misses the threshold line. Furthermore, in so far as there are more people who want to join the legal professions than the professions could absorb, there will be a bottle neck somewhere. It would be a greater waste of resources if someone is to have taken and passed the qualifying examination and only to find that he is not able to secure pupillage or a trainee contract.

15. In reality for those who are really dedicated to join the legal professions in Hong Kong but are met with such misfortune of not being able to get into the PCLL, all is not lost. He can still get qualified elsewhere and later on gain admission to the legal profession here via the OLQE or the BQE as the case may be. No doubt this is a much longer and probably more expensive route, but this is a fact of life.

Date: 13th December 2013.

Hong Kong Bar Association