

**For discussion
on 24 June 2019**

Legislative Council
Panel on Administration of Justice and Legal Services

Legal Education and Training in Hong Kong

On 15 May 2018, the Standing Committee on Legal Education and Training (“**SCLET**”)¹ released the final report (“**Final Report**”)² of its appointed consultants (“**Consultants**”) on the comprehensive review on legal education and training in Hong Kong (“**Comprehensive Review**”). At the Legislative Council Panel on Administration of Justice and Legal Services meeting on 25 June 2018, the Government introduced the Final Report to Members to facilitate discussion. This paper updates Members on the development since June last year.

Background

Background about SCLET

2. In November 1999, an *ad hoc* Steering Committee on Legal Education and Training was established to conduct a comprehensive review of the legal education and training in Hong Kong. The relevant consultancy report on that review was published in August 2001 (i.e. the Redmond Roper Report). One of the recommendations was the establishment of a statutory body with sufficient status and powers to oversee the implementation of reforms and to monitor the future direction of legal education and training. Pursuant to that recommendation, section 74A of the *Legal Practitioners Ordinance* (Cap. 159) (“**LPO**”) was enacted in 2004 and SCLET was established in 2005.

3. Pursuant to section 74A(2) of the LPO, the functions of SCLET are as follows:

- to keep under review, evaluate and assess the system and

¹ SCLET is an advisory body established under section 74A of the LPO.

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

provision of legal education and training in Hong Kong, including the academic requirements and standards for admission to the Postgraduate Certificate in Laws (“PCLL”) programme;

- to monitor the provision of vocational training of prospective legal practitioners in Hong Kong other than by the Hong Kong Bar Association and the Law Society of Hong Kong;
- to make recommendations on the above matters;
- to collect and disseminate information about the system of legal education and training in Hong Kong.

4. SCLET Members are appointed by the Chief Executive upon the nomination of various stakeholders in the legal and education sectors as stipulated in section 74A(3)(a)(i) to (vii) and (ix) of the LPO.³ Lay members of the public are also included (section 74A(3)(a)(viii) of the LPO).

The Comprehensive Review

5. In 2013, SCLET resolved to appoint Consultants to undertake a further review on legal education and training in Hong Kong. A summary of the key events leading to the publication of the Final Report is set out at **Appendix 1**. In May 2018, the Final Report of the Consultants was published with 38 recommendations in total covering various aspects of Hong Kong’s system and provision of legal education and training. Those recommendations can be categorised as follows (the recommendations are set out at in full at **Appendix 2**):

- (a) two recommendations about SCLET:
 - (i) to enhance SCLET’s role by setting up a standing sub-committee of the SCLET to oversee the development of

³ The Members are nominated by the Chief Justice, the Secretary for Justice, the Secretary for Education, the Law Society of Hong Kong, the Hong Kong Bar Association, the University of Hong Kong, the City University of Hong Kong, the Chinese University of Hong Kong and the Federation for Self-financing Tertiary Education.

an appropriate mechanism for oversight of the operation of the PCLL in each of the universities;⁴ 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;⁵
- (b) four recommendations concerning the academic stage of legal education;⁶
- (c) one recommendation on the feasibility of developing a more advanced legal executive qualification which may lead to direct entry to the PCLL;⁷
- (d) six recommendations about the PCLL;⁸
- (e) four recommendations concerning the development of the common entrance examination or some form of common assessment;⁹
- (f) 19 recommendations concerning the vocational stage of both solicitors and barristers which cover aspects of the training contract, pupillage and overseas qualifying examinations;¹⁰ and
- (g) two long-term recommendations¹¹ 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.

Discussions in SCLET since June 2018

6. Since the Panel meeting in June 2018, SCLET has held 6 meetings to discuss the Consultants' recommendations and the way forward. The discussions covered, among others, the recommendations concerning the academic stage of legal education, the recommendation on the feasibility of

⁴ Recommendation 2.1

⁵ Recommendation 2.2

⁶ Recommendations 4.1 to 4.4

⁷ Recommendation 4.5

⁸ Recommendations 5.1 to 5.6

⁹ Recommendations 6.1 to 6.4

¹⁰ Recommendations 7.1 to 7.19

¹¹ Recommendations 8.1 and 8.2

developing a more advanced legal executive qualification which may lead to direct entry to the PCLL, and the recommendations concerning the PCLL.

7. With regard to the Consultants' recommendations concerning the academic stage of legal education, the three law schools would review the curriculum of their LL.B. course(s) in the light of the relevant recommendations as well as the changing legal landscape and consult the profession and SCLET.

8. As to the Consultants' recommendation of inviting legal executive training providers to investigate with the law schools and the profession on the feasibility of developing a more advanced legal executive qualification leading to direct entry to the PCLL, HKU SPACE proposed to work with the three law schools and legal profession to explore the feasibility of an advanced legal executive qualification leading to direct entry to the PCLL and revert back to SCLET in due course. SCLET members also discussed the Consultants' recommendations regarding the PCLL and common entrance examination but the discussions have not yet concluded pending further information about the Law Society's plans regarding the common entrance examination and the Law Society Examination.

9. The deliberations of SCLET are still ongoing. SCLET will tender its comments and recommendations on the way forward to the Government for consideration in due course.¹²

Way Forward

10. The Department of Justice will continue to engage with other stakeholders on legal education and through the SCLET platform constructively with regard to the Final Report and its recommendations.

Department of Justice

June 2019

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¹² Press Release on the Final Report published on 15 May 2018, accessible at: https://www.doj.gov.hk/eng/public/pr/20180515_pr1.html

A summary of the key events leading to the publication of the Final Report

2013	<p>SCLET resolved that it was time to undertake a further review in the context, chiefly, of:¹</p> <ul style="list-style-type: none"> • continuing expansion of legal education and training in Hong Kong, including the recognition of a third law school and the provision of graduate (JD) law degrees • perceived concerns over access to the profession, and consistency in standards of education and training • changes to the delivery of legal services and new demands on the profession, including the impacts of technology, globalization, and increasing integration of Hong Kong and Mainland legal markets
By July 2015	<p>The Consultants initially appointed were:²</p> <ul style="list-style-type: none"> - Mr Woo Kwok Hing, QC, GBS³ (Chairman) - Professor Tony Smith⁴ - Professor Julian Webb⁵

¹ See para 1.1 “Background to the review”, Chapter 1 “Introduction” of the Final Report, p. 1

² Ibid

³ Mr Woo is formerly the Vice-President of the Court of Appeal of the High Court, Hong Kong and a former chairman of the Electoral Affairs Commission

⁴ Professor Smith is 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 Chairman of the Committee of Heads of University of Law Schools (UK).

⁵ Professor Webb is 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.

October 2015	The Consultants issued a consultation paper for public consultation.
December 2015	The Consultants conducted interviews with the stakeholders.
November 2016	Following Mr Woo's resignation, Mr Anthony Rogers, QC, GBS took up the chairmanship of the group. ⁶
October 2017	An Interim Report ⁷ was published via the SCLET website. Written responses to the draft recommendations were invited.
January 2018	The Consultants conducted a further round of meetings with the stakeholders.
26 April 2018	The Final Report was presented to SCLET.
15 May 2018	The Final Report was released.
May 2018	The Consultants made observations ⁸ on the Law Society of Hong Kong's response of 8 May 2018 ⁹ to the Interim Report.

⁶ Mr Rogers is the Chairman of the Clearing and Settlement Systems Appeals Tribunal, Hong Kong, and former Vice-President of the Court of Appeal of the High Court, Hong Kong.

⁷ A copy of the Interim Report is available at SCLET's website:
<https://www.sclet.gov.hk/eng/pdf/interim2017.pdf>

⁸ A copy of the Consultants' observations is available at SCLET's website:
https://www.sclet.gov.hk/eng/pdf/consultant_20180529.pdf

⁹ By this document, the Law Society of Hong Kong ("**Law Society**") proposed 'the Law Society Examination' (**LSE**) and estimated it to take effect as early as the academic year 2019/2020. The LSE would provide an alternative mode of qualification for solicitors to PCLL. This proposal which had not been made previously by the Law Society had been considered by the Consultants in their Interim and Final Reports under the name of AltCEE (Alternative Common Entrance Examination). On 28 December 2018, the Law Society announced that "*The Law Society has been considering proposals on the examinations required, set or approved under rule 7(a) of the Trainee Solicitors' Rules. Advance notice will be given regarding relevant proposals which, in any event, will not be implemented in the academic year of 2019/2020*". http://www.hklawsoc.org.hk/pub_e/news/press/20181228.asp

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.

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 13, 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 investigate 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.