

立法會
Legislative Council

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Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 31 August 2021, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon CHEUNG Kwok-kwan, JP (Chairman)
Hon Starry LEE Wai-king, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBM, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Elizabeth QUAT, BBS, JP
Hon Jimmy NG Wing-ka, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan, JP
- Members absent** : Hon Martin LIAO Cheung-kong, GBS, JP (Deputy Chairman)
Hon CHUNG Kwok-pan
- Public Officers attending** : **Agenda item III**

Department of Justice

Ms Jenny FUNG Mei-fung
Deputy Solicitor General (Policy Affairs) (Acting)

Mr Aaron CHAN Chi-lung
Government Counsel

Agenda item IV

Department of Justice

Dr James DING
Commissioner
Inclusive Dispute Avoidance and Resolution Office

Ms Queenie WU
Senior Government Counsel (Acting)
Inclusive Dispute Avoidance and Resolution Office

Miss Connie YEUNG
Government Counsel
Constitutional and Policy Affairs Division

**Attendance by
invitation**

: Agenda item III

Hong Kong Bar Association

Mr Paul HARRIS, SC

Mr Michael YIN

The Chinese University of Hong Kong

Prof Lutz-Christian WOLFF
Dean, Faculty of Law

The University of Hong Kong

Mr Wilson CHOW
Head, Department of Professional Legal Education,
Faculty of Law

City University of Hong Kong

Prof TAN Cheng-han
Dean, School of Law

Prof LIN Feng
Associate Dean, School of Law

Law Association, The Hong Kong University
Students' Union

Miss Amanda HUANG Wan-ning
Chairman

HKU School of Professional and Continuing
Education

Prof Danny GITTINGS
Associate Head of College of Humanities & Law

Agenda item IV

Hong Kong Bar Association

Mr Paul HARRIS, SC

Mr Richard KHAW, SC

Ms Queenie LAU

The Law Society of Hong Kong

Mr C M CHAN
President

Mr Neville C H CHENG
Vice-Chairman of Greater China Legal Affairs
Committee

Clerk in attendance : Mr Lemuel WOO
Chief Council Secretary (4)6

Staff in attendance : Ms Clara TAM
Senior Assistant Legal Adviser 2

Miss Janice HO
Council Secretary (4)6

Ms Emily LIU
Legislative Assistant (4)6

Action

I. Information paper(s) issued since the last meeting

(LC Paper No. CB(4)1206/20-21(01) - Submission from the Hong Kong Bar Association relating to the Secretary for Justice's Proposal on Amendment to Eligibility of Application for the Status of Senior Counsel

LC Paper No. CB(4)1273/20-21(01) - Administration's response to the letter from Hon Holden CHOW Ho-ding dated 3 May 2021 on matters relating to the item on "Proposed creation of one supernumerary post of Deputy Principal Government Counsel and one supernumerary post of Assistant Principal Government Counsel in the Rule of Law Unit of the Inclusive Dispute Avoidance and Resolution Office of the Department of Justice

LC Paper No. CB(4)1358/20-21 - Information paper on the Proposed Amendments to the Rules of the High Court and the Rules of the District Court to Remove the "Fraud Exception Rule" provided by the Judiciary Administration

LC Paper Nos. CB(4)1460/20-21(01) - Letter dated 12 August 2021
and (02) from Hon Elizabeth QUAT
proposing items for
discussion by the Panel
(Chinese version only) and
the Judiciary
Administration's written
response)

Members noted the above papers issued since the last regular meeting of the Panel on Administration of Justice and Legal Services ("the Panel") held on 21 June 2021.

II. Date of next meeting and items for discussion

(LC Paper No. CB(4)1430/20-21(01) - List of outstanding items for discussion)

2. Members noted that the following items would be discussed at the next regular meeting of the Panel to be held on 27 September 2021 –

- (a) Progress on implementation of Vision 2030 for Rule of Law; and
- (b) Professional development for legal profession – international organization secondment programmes.

III. Legal education and training in Hong Kong

(LC Paper No. CB(4)1430/20-21(02) - Paper provided by the Administration

LC Paper No. CB(4)1430/20-21(03) - Updated background brief prepared by the Legislative Council Secretariat

LC Paper No. CB(4)1431/20-21(01) - Submission from The University of Hong Kong School of Professional and Continuing Education (English version only)

LC Paper No. CB(4)1431/20-21(02) - Submission from Law Association of the HKUSU, The University of Hong Kong (Chinese version only)

Briefing by the Administration

3. Deputy Solicitor General (Policy Affairs) (Acting) ("DSG(P)(Ag)") of the Department of Justice ("DoJ") recapitulated that the Administration had, at the Panel meeting on 25 June 2018, introduced the final report of the consultants appointed by the Standing Committee on Legal Education and Training ("SCLET") on the comprehensive review on the legal education and training in Hong Kong ("Final Report"). The Panel was updated at its meeting held on 24 June 2019 on the development since the Final Report was released in 2018.

4. DSG(P)(Ag) briefed members on the further updates and latest development since the Panel meeting in June 2019, in particular the discussions in SCLET regarding the recommendations in the Final Report on the academic stage of legal education and the feasibility of developing a more advanced legal executive qualification which might lead to direct entry to the Postgraduate Certificate in Laws programmes ("PCLL") offered by the University of Hong Kong ("HKU"), the City University of Hong Kong ("CityU") and the Chinese University of Hong Kong ("CUHK") ("the three universities").

Views of the Hong Kong Bar Association and other deputations

5. The Chairman welcomed representatives from the Hong Kong Bar Association ("the Bar Association") and deputations from the three universities, HKU School of Continuing and Professional Education ("HKU SPACE") and the Law Association of the HKU Student Union ("LA-HKUSU") attending the meeting by invitation. He reminded them that their addresses or written submissions to the Panel would not be covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

6. Mr Paul HARRIS, SC, of the Hong Kong Bar Association ("Bar Association") expressed that there was no update to the Bar Association's previous submissions to the Panel on this subject. As regards the Common Entrance Examination ("CEE") and the Law Society Examination ("LSE") proposed by The Law Society of Hong Kong ("the Law Society"), Mr Michael YIN of the Bar Association said that the initial reasons for such proposals might have been overtaken by events in view of at least four developments in recent

years. The first development was that the three universities had, following the Final Report's recommendations, agreed on ways to synchronize the standards of their programmes so that there was no more concrete complaints on the standards or inconsistencies of PCLL.

7. As regards the second development, Mr Michael YIN said that the number of PCLL places had increased owing to the double cohort arising from the implementation of new academic structure in the three universities, which were not reduced after the impact of the new academic structure had lapsed. The third development was that the three universities had either implemented or were in the course of finding ways to recognize the post-qualification experiences of those who had not got the requisite academic requirements for entry to PCLL programme. The fourth development was that HKU SPACE would introduce the programme of the Advanced Diploma for Legal Executives (Graduate Level) ("AdvDip for LE") and legal executives holding the AdvDip for LE would proposedly be eligible to apply directly for the PCLL programme as an alternative route.

8. The other deputations then presented their views, a summary of which is in the **Appendix**.

Discussion

Declaration of interests

9. Dr Priscilla LEUNG declared that she had been teaching law in CityU since 1989. Ms YUNG Hoi-yan declared being a graduate from CityU's Juris Doctor ("JD") programme. Dr Junius HO declared that he was a Council member of the Law Society before 2018, and had joined the relevant discussion when the Law Society was proposing the concept of LSE and indicated support.

Common professional examination as gateway to the legal profession

10. Dr Priscilla LEUNG said that over the years, the Panel had been very much concerned about the legal education and training in Hong Kong. She was pleased to note from deputations' presentation and her own observation that there had been a noticeable increase in the number of PCLL places. However, it was one thing to increase the number of PCLL places, it was quite another thing to meet the actual needs for legal services and, for the latter purpose, she had proposed as early as in 2000 the establishment of a common professional examination so that anyone who passed the examination could gain admission to legal practice. Dr LEUNG further explained that the benefits of the examination was that it would set uniform standards to ensure that the legal

professionals screened through the examination would be of high quality and possessed the knowledge and skills required for meeting the needs for legal services in the community.

11. Dr Priscilla LEUNG expressed her view that CEE/LSE were proposed by the Law Society as an expediency to meet the acute shortage of PCLL places, and were not the same as the common professional examination she had proposed. Notwithstanding the heated debates on CEE/LSE generated among the stakeholders, however, Dr LEUNG remained of the view that a common professional examination for the legal profession was a worthy cause to be explored for the potential advantages to law students in general and benefits to the legal profession in the long run that the common professional examination could bring. She also called upon the legal professional bodies and the three universities to be open-minded towards the idea and SCLET not to put it on moratorium.

12. Dr Junius HO considered that many of the initial reasons which had prompted the Law Society to propose CEE/LSE, including the inadequate supply of PCLL places, inconsistencies in the various PCLL programmes (in respect of their curricula and standards) and the programmes' relevance to the market demand, had not entirely subsided. Dr HO said that he maintained of the view that the Law Society was vested with the power under the Legal Practitioners' Ordinance (Cap. 159) to take forward CEE/LSE. Over time, however, he tended to agree with Dr Priscilla LEUNG that a common professional examination to be jointly launched by the Bar Association and the Law Society might be more advantageous to the legal profession.

13. Noting LA-HKUSU's reservations about CEE/LSE as expressed by Miss Amanda HUANG Wan-ling in her address to the Panel, Dr Priscilla LEUNG invited Miss HUANG to elaborate on the views. Miss HUANG said that if the common professional examination (including CEE/LSE) was to be implemented by a legal professional body who could also control its passing rate, there was a concern that the legal professional body might control the supply of the relevant legal professionals so as to protect the existing ones from facing keen competition. Miss HUANG also expressed that the autonomy of the three law schools in deciding on matters relating to respective PCLL programmes including the admission requirements, contents and examinations, etc. might also be affected and the issue should not be neglected.

14. In response, Dr Priscilla LEUNG said that common professional examinations had been adopted by a number of overseas jurisdictions such as Australia, Singapore and the United Kingdom ("UK") as gateways to respective legal professions. From the experience of these jurisdictions, no degradation in

the reputations, academic freedom or institutional autonomy of their law schools had been observed. However, Dr LEUNG shared the view of Miss Amanda HUANG that, if a common professional examination was implemented, a committee should be formed comprising major stakeholders including legal professional bodies, law schools as well as scholars experienced in legal education, responsible for the planning and implementation of the examination.

Curricula and tuition fees of programmes on legal studies in Hong Kong

15. Ms YUNG Hoi-yan shared other members' views that there would be enormous opportunities for the Hong Kong legal profession in the Mainland, in particular in the Greater Bay Area ("GBA"). According to her own experience as a practising barrister, Ms YUNG said that she had handled more and more cross-border cases. She invited the views of deputations from the three law schools on whether they had given or would give more weight to subjects regarding the Chinese law in their undergraduate and PCLL programmes.

16. Mr Wilson CHOW from Faculty of Law, HKU said that currently HKU had a number of courses on Chinese law being taught at the undergraduate level. Among them there was a compulsory course providing a general introduction to the Chinese law and he supplemented that HKU was exploring the possibility of arranging students of that course to be lectured in the Mainland. Exchange opportunities in the Mainland had been offered to law students and it was under consideration whether a mandatory exchange programme/ course in the Mainland for law students should be set up.

17. Prof LIN Feng from School of Law, CityU said that CityU had started teaching Chinese law many years ago, including an introductory course on Chinese law in CityU's Bachelor of Laws ("LLB") programme, which had been split into two compulsory courses (i.e. Chinese public law and Chinese private law) in light of the growth in cross-boundary activities. Prof Lutz-Christian WOLFF from Faculty of Law, CUHK said that CUHK had paid special attention to Chinese law and there was a Chinese law stream in its undergraduate law programme. He agreed that the significance of Chinese law to Hong Kong had been increasing and said that CUHK was providing mandatory courses as well as electives at both undergraduate and postgraduate levels to better equip students with the necessary knowledge.

18. Mr Holden CHOW considered that the high costs entailed in studying law had thwarted many from pursuing legal studies in Hong Kong. He quoted as example that the tuition fee for completing a JD programme in Hong Kong was over HK\$300,000 while those for studying conversion courses provided in other jurisdictions, such as the one leading to the Graduate Diploma in Law ("GDL")

offered in UK, which could also lead to legal professional qualifications, only costed one less than half. Mr CHOW urged the three universities to study whether there was any room for reducing the tuition fees.

Opportunities for law graduates and non-law graduates who aspired to be a lawyer

19. Ms YUNG Hoi-yan noted that many graduates from the LLB or JD programmes ("the law graduates") had had difficulties in securing PCLL places from any of the PCLL providers. Those who could not get into PCLL programmes but still aspired to be a lawyer were particularly worried about their career prospects. Ms YUNG pointed out that there were indeed other pathways leading to the legal profession, such as GDL which was a conversion course for law graduates aiming for a second chance into PCLL or to become solicitors or barristers in England and Wales. Ms YUNG urged the universities and legal professional bodies to provide more support and information to law graduates, many of them were unaware of or had little knowledge about such alternative pathways.

20. Mr Holden CHOW recalled that it had been discussed in previous Panel meetings the idea of setting up a mechanism to recognize the experience of those experienced legal executives who were non-law graduates but had long and relevant services in the legal field, and provide them with opportunities to become a lawyer. He considered that the practical experience of these legal executives accumulated on the job was valuable and their efforts should indeed be recognized. Therefore, Mr CHOW was pleased to note that HKU SPACE would soon introduce AdvDip for LE which would offer such an opportunity to the legal executives.

IV. Guangdong-Hong Kong-Macao Greater Bay Area ("GBA") Legal Professional Examination and other development opportunities in the GBA for the Hong Kong legal profession

(LC Paper No. CB(4)1430/20-21(04) - Paper provided by the Administration

LC Paper No. CB(4)1430/20-21(05) - Background brief prepared by the Legislative Council Secretariat)

Briefing by the Administration

21. Commissioner of Inclusive Dispute Avoidance and Resolution Office of DoJ ("C/IDAR") gave an account of the inaugural Guangdong-Hong Kong-Macao Greater Bay Area Legal Professional Examination ("the GBA Examination") which was held on 31 July 2021 and its latest developments, other initiatives and work that might bring development opportunity in GBA for the Hong Kong legal profession and enhancement of cooperation and exchange on legal matters between the Mainland and Hong Kong as set out in the Administration's paper.

Views of the Law Society of Hong Kong

22. Mr C M CHAN, President of the Law Society hailed the inaugural GBA Examination as a success with 655 Hong Kong legal practitioners enrolled in the examination. He said that the Law Society had also actively promoted the examination to its members. However, as Hong Kong legal practitioners who passed the GBA Examination would need to undergo a series of post-examination training, assessment, application for the lawyers' practice certificate (GBA), and arrangement for practice management after obtaining the practice certificate, Mr CHAN said that the Law Society was looking forward to early announcements of the relevant details by the Administration. The Law Society was also studying other related technical issues, such as the applicability of the Professional Indemnity Scheme to Hong Kong lawyers practising in the Mainland.

23. Mr Neville CHENG of the Law Society relayed the queries raised by some members of the Law Society about the discrepancy in treatments received by those who passed the Unified National Judicial Examination (known as the National Unified Legal Professional Qualification Examination ("National Examination") since 2018) and those who would obtain a lawyer's practice certificate (GBA). To illustrate, he pointed out that while those with a lawyer's practice certificate (GBA) would be allowed to take up litigation cases absence of any "Hong Kong-related elements" in GBA, those who passed the National Examination were not allowed although the latter examination was more demanding. Mr CHENG also said that some members of the Law Society had also expressed their wish for an expanded scope of business in the Mainland, such as providing notarial services.

Views of the Hong Kong Bar Association

24. Mr Paul HARRIS, SC considered the GBA Examination an extremely positive development for Hong Kong barristers, in particular those having the

necessary language skill, who had much to offer including forensic, analytical and advocacy skills. He was also pleased to note that 67 barristers had enrolled in the inaugural GBA Examination and looked forward to the relevant development in future.

25. Mr Richard KHAW, SC of the Bar Association hoped that with the introduction of the GBA Examination, it would create favourable conditions for Hong Kong barristers to engage in more in-depth and direct cooperation with Mainland law firms and lawyers on arbitration cases. He further said that the major concerns of members of the Bar Association were the Mainland tax policies applicable to Hong Kong barristers practising in GBA and the possible forms of cooperation (as partners, employees or merely a consultant) with law firms in GBA. Mr KHAW, SC said that it was expected that more communication within the Bar Association and with DoJ would take place. Ms Queenie LAU of the Bar Association supplemented that the Administration could consider how to effectively facilitate lawyers who passed the GBA Examination to take the necessary assessment with local lawyers association in Guangdong, and to participate in the pre-assessment trainings remotely, in view of the COVID-19 pandemic.

26. In response to the views and concerns raised by the two legal professional bodies, C/IDAR said that the Administration would maintain close communication with Mainland authorities to address their concerns. The Administration was also planning to co-host with relevant Mainland authorities a briefing in due course to assist Hong Kong legal practitioners to understand the application procedures for practising in GBA and other concerned issues such as professional indemnity. Also, the Administration was actively discussing with Mainland authorities on the feasibility of conducting online post-examination trainings for Hong Kong legal practitioners.

Discussion

27. Mr Holden CHOW was pleased to note that the inaugural GBA Examination had taken place smoothly with over 600 Hong Kong legal practitioners enrolled. He wished that the Administration could provide the relevant details on the post-examination training, assessment, application for practising certificates and practice management to the two legal professional bodies in due course. Ms YUNG Hoi-yan commended DoJ for its effort in seeking support from the Ministry of Justice to arrange the inaugural GBA Examination, which she herself had taken.

28. Ms YUNG Hoi-yan said that as a practising barrister for more than ten years, she had visited the Mainland on several occasions with former chairmen

and other members of the Bar Association several years ago and had exchanged views with the legal profession there. Ms YUNG hoped that the Bar Association would put aside those politically contentious issues causing schism among its members and focused on affairs beneficial to the overall development of Hong Kong barristers. For instance, she hoped that the Bar Association could help Hong Kong barristers seize the business opportunities in the Mainland and sort out problems of common concerns to Hong Kong barristers relating to practising in the Mainland.

29. In response to the enquiry and the call of Ms YUNG Hoi-yan, Mr Paul HARRIS, SC said that he had made many trips to the Mainland on behalf of the Bar Association before he became the Chairman. Indeed, he hoped to do many more to enhance the exchange between the Bar Association and the legal profession in the Mainland including GBA.

30. Mr Holden CHOW noted from the Administration's paper that persons who had acquired legal professional qualification and officers specialized in foreign-related legal matters working in Guangzhou were listed as urgently-needed talents and could apply to the Guangzhou Municipal Human Resources and Social Security Bureau for financial subsidies if their individual income tax paid in Guangzhou exceeded the tax amount computed at 15% of their taxable income. He enquired whether similar arrangement had been implemented in the other eight Mainland municipalities in GBA. Mr CHOW also enquired the percentage of the over 10 000 wholly owned Hong Kong enterprises ("WOKEs") in Qianhai which had adopted Hong Kong law.

31. In reply, C/IDAR explained that Dongguan, Zhongshan, Zhaoqing and Jiangmen, had introduced similar preferential individual income tax policies as Guangzhou but announcements made by individual municipalities should be referred to on the exact policies of respective municipalities. C/IDAR explained that as WOKEs were not obligated to report to the Administration that they had chosen to adopt Hong Kong law, the Administration did not have the requested statistics on hand.

32. Mr Holden CHOW said that as Qianhai Cooperation Zone was the pilot zone in GBA where WOKEs were allowed to agree on the choice of applicable law, including Hong Kong law, in their civil and commercial contracts and the relevant terms would not be considered invalid despite the absence of any "foreign-related elements", Hong Kong legal practitioners aspired to practise in GBA would certainly want to know more about the situation there and relevant details such as tax policies and the scope of the application of Hong Kong law by WOKEs. Mr CHOW called on the Administration to maintain a close dialogue with the Mainland authorities to monitor the situation and report to the

Panel when appropriate.

33. Dr Junius HO welcomed the expansion of scope of business as detailed in the Administration's paper for persons holding lawyers' practice certificates (GBA) who would be allowed to handle litigation matters including civil and commercial cases that were accepted by different levels of court in nine Mainland municipalities in GBA. He enquired whether the Administration would consider expanding the scope of business of holders of the lawyers' practice certificates (GBA) so that they could also administer oaths and declarations in GBA for Hong Kong residents working there. He further suggested amending the Oaths and Declarations Ordinance (Cap. 11) to achieve that effect in the future. In response, C/IDAR said that while the subject matter did not concern the GBA Examination at present, he took note of the suggestion of Dr HO.

34. Dr Junius HO also considered it worthwhile to consider flexibly including some of the subjects of the GBA Examination in the syllabus of Hong Kong's LLB and PCLL programmes. In reply, C/IDAR said that he would convey Dr HO's views to the responsible officers for consideration.

Any other business

35. There being no other business, the meeting ended at 6:05 pm.

Council Business Division 4
Legislative Council Secretariat
5 November 2021

Panel on Administration of Justice and Legal Services

**Meeting held on Tuesday, 31 August 2021, at 4:30 pm
Receiving invited deputations' views on "Legal education and training in Hong Kong"**

Summary of views and concerns expressed by deputations

No.	Name of deputation	Submission/Major views and concerns
1.	Faculty of Law, CUHK	<ul style="list-style-type: none"> ● CUHK shared the views of the Bar Association. ● In relation to paragraph 6 of the Administration's paper, CUHK clarified that while the subjects of civil procedure and criminal procedure would no longer be prerequisites for entry to the PCLL programme starting from the academic year of 2021/2022, these subjects were still covered in CUHK's undergraduate and JD programme and they remained to be very popular among students.
2.	Department of Professional Legal Education, Faculty of Law, HKU	<ul style="list-style-type: none"> ● Having regard to the recommendations and outcome of discussions in the Final Report, HKU would do its best to enhance various aspects of the PCLL programme (including the enrollment of students and assessment of their performance) to ensure that it would be in the public interest and prevent law students from facing double jeopardy. ● HKU would continue to discuss and cooperate with relevant stakeholders in the legal sector, including the legal professional bodies, the legal practitioners and the other two law schools, with a view to improving the legal education and training system in Hong Kong.

No.	Name of deputation	Submission/Major views and concerns
3.	School of Law, CityU	<ul style="list-style-type: none">● CityU had worked with the Law Society and come up with an agreement to enhance the Law Society's oversight of the PCLL programme and the rules of engagement between the law school and the profession, and was prepared to do the same with the Bar Association as well in order to ensure that its PCLL programme would remain relevant to the needs of the practising profession.
4.	Law Association of HKU Students' Union	<ul style="list-style-type: none">● Presentation of views as set out in submission LC Paper No. CB(4)1431/20-21(02) (Chinese version only).● Supported the Law Society's decision to defer implementation of the proposed CEE and LSE to after the academic year 2022/2023.● With no major criticism on the quality of the programmes, the three law schools should be autonomous in deciding the admission requirement, content of the programmes and examinations of respective PCLL programme. Instead of setting a set of unified standards or rules to be followed, concerns about the inconsistency in PCLL programmes might be addressed by enhancing the transparency in programme development.● Law schools should take into account the law students' needs when planning for their development.
5.	College of Humanities & Law, HKU SPACE	<ul style="list-style-type: none">● Presentation of views as set out in submission LC Paper No. CB(4)1431/20-21(01) (English version only).● Expression of gratitude to the support from the Panel in the past which helped the AdvDip for LE programme to be materialized.

Council Business Division 4
Legislative Council Secretariat
5 November 2021