

For discussion
on 26 June 2017

Panel on Administration of Justice and Legal Services

Legal education and training in Hong Kong

In October 2015, consultants have been appointed by the Standing Committee on Legal Education and Training (“**SCLET**”)¹ to conduct a comprehensive review on legal education and training in Hong Kong (“**the Comprehensive Review**”). This paper seeks to brief Members on the progress of the Comprehensive Review and incidental matters.

General background

2. According to The Law Society of Hong Kong (“**the Law Society**”)'s submissions² concerning its common entrance examination (“**CEE**”) proposal for the Panel meeting on 16 December 2013,³ views have been expressed in recent years by members of the legal profession that there is a lack of consistency in the PCLL examinations, as well as questioning why the entry to the legal profession is not administered by the profession itself. As a result, the Council of the Law Society has considered this issue and resolved to undertake a consultation with the stakeholders on the question of CEE. The Law Society has appointed its own consultants and the consultation took place from December 2013 till February 2014.

3. At the Panel meeting on 16 December 2013, the Law Society's representative presented their CEE proposal. SCLET did not send any representative to attend the said meeting, but informed the Panel that it had resolved to conduct the Comprehensive Review.⁴

¹ SCLET is an advisory and statutory body established under section 74A of the *Legal Practitioners Ordinance* (Cap. 159) (“**LPO**”). A brief history on the establishment of SCLET is set out in fn 5 below.

² The Law Society's submissions can be found at:

<http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1216cb4-225-3-e.pdf>

³ It was upon the suggestion of the then Panel Chairman that the Law Society was invited to attend the Panel meeting on 16 December 2013 to brief Members on its proposal of introducing a CEE.

⁴ A copy of the SCLET letter to the Clerk to the Panel dated 5 December 2013 can be seen at:

Reasons for conducting the Comprehensive Review

4. Prior to the establishment of SCLET in 2005, a comprehensive review of the whole legal education and training system in Hong Kong was conducted and the relevant consultancy report was published in August 2001.⁵ Since then, there has been substantial developments and new demands faced by the legal profession.⁶ Thus, SCLET in December 2013 resolved to conduct a comprehensive review on the legal education and training in Hong Kong by independent consultants (i.e. the Comprehensive Review) with a view to enhancing professional qualifications and standards of the legal practitioners to meet the emerging needs and challenges in the legal sector of Hong Kong. The terms of reference of the Comprehensive Review are as follows:⁷

- (1) To review critically the present system of legal education and training in Hong Kong including its strengths and weaknesses;
- (2) To advise on the requirements of a legal education and training system which is best capable of meeting the challenges of legal practice and needs of Hong Kong society;
- (3) In the light of the findings in (1) and (2) above, to make recommendations, including making proposals to improve the existing system or introducing an alternative model of legal education and training system, to ensure that such improved or alternative system is best capable of meeting those challenges and needs;
- (4) To examine the present curricula of the various law programmes offered by the three universities and to make recommendations on such curricula to ensure that those entering the legal profession are

<http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/ajcb4-219-1-e.pdf>

⁵ One of the recommendations was the establishment of a statutory body with sufficient status and powers to oversee the implementation of reforms to monitor the future direction of legal education and training. Pursuant to this recommendation, section 74A of the LPO was promulgated in 2004 under which SCLET was established. Source of information: Chairman's message in the SCLET website, available at: <http://www.sclet.gov.hk/eng/index.htm>

⁶ More information about the developments since the Redmond Roper Report can be found in Annex 3 attached to SCLET's written submissions for the Panel's discussion on 27 April 2015, available at: <http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150427cb4-825-3-e.pdf>

⁷ The terms of reference are also set out in the consultation paper published by SCLET in October 2015 which is available at: <http://www.sclet.gov.hk/eng/pdf/cone.pdf>

best capable of meeting those challenges and needs;

- (5) To advise on the feasibility of setting up a mechanism for measuring the quality and standard of legal education and training in Hong Kong so as to ensure those entering the legal profession receive the best legal training for the maintenance or improvement of professional standards;
- (6) To consider the current arrangements for the pre-qualification vocational training of trainee solicitors and pupils and to advise on the need (if any) and the ways to improve such vocational training.

Previous discussion about the Comprehensive Review at the Panel

5. During the discussion of “Legal education and training in Hong Kong” at the Panel meeting on 27 April 2015, deputations and stakeholders had expressed views on the following topics regarding the Comprehensive Review:⁸

- (i) implementation of a common entrance examination as an alternative route to qualify as lawyers in Hong Kong;
- (ii) review of current regime concerning the Postgraduate Certificate in Laws (“**PCLL**”) system;
- (iii) implementation of an alternative route for admission into the PCLL programme;
- (iv) curricula of law programmes; and
- (v) arrangements of the Comprehensive Review.

The Panel Chairman concluded the discussion by inviting SCLET to engage more stakeholders, such as law students and employers, in the Comprehensive Review.

⁸ For more information, please refer to the Minutes of the said Panel’s meeting which is available at: <http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150427.pdf>

6. In October 2015, the consultants⁹ appointed by SCLET (referred to as “**the SCLET Consultants**” collectively) to conduct the Comprehensive Review published a consultation paper.¹⁰ In particular, views were invited on, among other issues, whether the CEE proposed by the Law Society might be considered as taking over the PCLL as an entrance threshold into the legal profession, or whether the CEE might be treated as an alternative or additional route to enter the legal profession.

Developments about the CEE

7. On 6 January 2016, the Law Society announced in a press release that its Council has decided that, starting from 2021, a person may only enter into a trainee solicitor contract if that person has passed a CEE. The CEE will be set and marked by the Law Society. The Law Society will require certified completion of the PCLL course but will not require any examination to be set by the providers of the PCLL. The Law Society was invited to brief the Panel on the implementation of CEE at the meeting on 25 April 2016.

Previous discussion about the CEE at the Panel

8. During discussion of the Law Society’s proposed CEE at the Panel meeting on 25 April 2016, the Law Society reported on the progress of its discussion with the three law schools.¹¹ At the same meeting, the Secretary for Justice said that as the Law Society was still in discussion with the relevant universities, and SCLET’s Comprehensive Review would cover the feasibility of introducing a CEE as a route for admission into the legal profession in Hong Kong, the Department of Justice suggested that, when considering the issue of CEE, all stakeholders would allow time and make room for consideration of the release of the report of the Comprehensive Review. The Secretary for Justice reiterated the Department of Justice’s position that the ultimate yardstick for considering any changes to legal education and training should be the public interest.

⁹ At the time when the consultation paper was published, the consultants were Mr. K.H. Woo, Q.C., Professor Julian Webb and Professor Tony Smith. Subsequently, Mr. Woo resigned as leader of the SCLET Consultants with effect from 18 October 2016, and Mr. Anthony Rogers Q.C. was appointed with effect from 8 November 2016 to fill the vacancy left by Mr. Woo.

¹⁰ See fn 7 above

¹¹ More information can be found in the Law Society’s paper submitted to the Panel, available at: <http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20160425cb4-899-1-e.pdf>

Progress of the Comprehensive Review

9. The Comprehensive Review, being conducted by SCLET, unfortunately, is behind schedule for more than a year. There are a number of reasons for this delay but this is mainly because of the teaching and other commitments of the two overseas experts (who were entrusted with the writing up of the draft) and the resignation in October 2016 of Mr K H Woo Q.C. as leader of the SCLET Consultants (resulting in the appointment of Mr Anthony Rogers Q.C. to take his place). Notwithstanding the new leader's expeditious work in catching up with the task, up to date, no interim report has yet been produced despite reminders. The SCLET Chairman had impressed upon the SCLET Consultants through its new leader that SCLET was gravely concerned with the delay in the review exercise and that he (the Chairman) expected an interim report to be issued by the latter part of 2017 to be followed by a second round consultation and the final report by the end of this year.¹²

The Interface between PCLL and the proposed CEE

10. To facilitate discussion before the Panel, it is considered useful to set out below certain observations which are relevant in understanding the interface between the PCLL and the proposed CEE. In general,¹³ the present system of legal education and training in Hong Kong involves three stages, namely (i) an academic stage (i.e. Bachelor of Laws “**LLB**” or Juris Doctor “**JD**”); (ii) a vocational course (i.e. PCLL) and (iii) a workplace apprenticeship (i.e. training contract or pupillage).

11. In Hong Kong, LLB and JD courses are currently offered by the University of Hong Kong (“**HKU**”), the City University of Hong Kong (“**CityU**”) and The Chinese University of Hong Kong (“**CUHK**”). The PCLL is administered by these three law schools only. The definition of PCLL in the *Legal Practitioners Ordinance* (Cap. 159) (“**LPO**”) refers to the PCLL programmes of HKU, CityU and CUHK, and the *Trainee Solicitors Rules* (Cap. 159J) provides that a person may only enter into a trainee solicitor contract if he

¹² SCLET previously submitted a tentative timetable when reporting on progress to the Panel in April 2015, see page 3 of SCLET's written submissions for the Panel's discussion on 27 April 2015, available at: <http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150427cb4-825-3-e.pdf>

¹³ For the purpose of this paper, admission by overseas lawyers is not included in the discussion of this paper although this is one of the subjects covered in the consultation paper for the Comprehensive Review.

or she passed the PCLL. Thus, under the current legislative framework, it will not be possible for any other institution to provide a PCLL programme which will enable its graduates to gain recognition and admission as solicitors under the LPO.¹⁴

12. The three law schools enjoy self-accreditation status and that they are empowered by statutes through which they were established to run the PCLL programmes, set their own admission criteria and conduct their own different PCLL examinations, subject to the PCLL benchmarks issued by the Law Society.¹⁵ The three local law schools are not only the exclusive course providers, they also, in effect, play an important role as the gatekeepers to the legal profession at two points in the process: first, at the entry point into PCLL (i.e. between stages (i) and (ii) as described in paragraph 10 above) and second, at the exit point from PCLL which is the entry point to the legal profession (i.e. between stages (ii) and (iii) as described in paragraph 10 above).

13. Against the background as highlighted in paragraphs 11 and 12 above, there are perceived issues relating to the PCLL admission process, including the criteria for admission and graduates' standards. These issues would form part of the broader studies by the SCLET Consultants in the Comprehensive Review as highlighted in paragraph 4 above.

14. To put matters in context and without seeking to pre-empt the deliberations of the SCLET Consultants, a number of issues were identified by the Chairman and some members of SCLET during various discussions at its (SCLET's) meetings which require examination by the SCLET Consultants in the Comprehensive Review:

- (a) Professional autonomy – To what extent must the Law Society take primary or even ultimate responsibility to set: (a) its own professional standards for solicitors to meet with the requirements of the community; and (b) if necessary and as part of manpower planning, the number of persons entering and practising in the solicitors' profession? Further, to what extent should the Law Society be answerable to the public for the said matters? The law

¹⁴ See para 3 of the Law Society's submissions for the AJLS Panel meeting on 16 December 2013, the link is available in fn 2.

¹⁵ See para 4 of the Law Society's submissions for the AJLS Panel meeting on 16 December 2013, the link is available in fn 2.

schools take the important role of making valuable contributions by acting as service providers and advisers on the programmes of professional education and training. It is pertinent to note that the present legislative structure for admission to the legal profession as solicitors (as provided for in the LPO, namely the requirement of PCLL) was set more than 40 years ago when there was only one law school with much fewer law graduates and other ways of getting qualified. The social conditions have since changed significantly and the respective roles of the Law Society and the laws schools may have to be reconsidered.

- (b) Concern over standards – To what extent does the fact that different law schools administer their own PCLL programmes by setting their own criteria for admission, providing their own teaching and conducting their own assessments reasonably give rise to legitimate and perceived concern of differences (or inconsistency) in the standards of PCLL graduates entering the legal profession? While differences in standards are natural and inevitable, the Law Society as the professional body for solicitors should rightly be concerned about graduates falling below the generally acceptable standard. Although the Law Society is empowered to set PCLL benchmarks, the practicability of the Law Society to keep a close, constant and regular monitor on the PCLL programmes run by the three law schools warrants examination. It is observed that a consultation for the introduction of an independent assessment through a Solicitors Qualifying Examination is underway in England and Wales.
- (c) A fair system – Should there be a uniform, objective and, equally importantly, transparent criteria for admission into the PCLL programmes run by the three law schools? Each law school currently adopts its own set of admission criteria which is meant to be on the basis of GPAs and degree honors from local and overseas universities and relying on past experience of the standards of their graduates. There are apparent difficulties in applying such criteria as it is not easy to objectively compare different GPAs and degree honours, complicated by conversion examinations for overseas graduates. With the limited number of PCLL places (even after

counting self-funded places), the system of admission may not only create a real or perceived grievance of unfair treatment on the part of persons who cannot get admitted, but also have the effect of barring potentially eligible students from entering the legal profession. This system also contributes to the expressed concern over differences in standards among the three law schools. One suggested solution for consideration is to have a common examination for admission to the PCLL programme if not a common examination (which is in line with the proposed CEE) after satisfactory completion of the PCLL programme.

- (d) PCLL places – How the growing demand for PCLL places during recent years should be addressed? There is a general call for more PCLL places. There is strictly no restriction on the number of PCLL places since the three law schools are permitted to accept self-funded students. The relevant consideration is the availability of facilities, accommodation and experienced teaching staff. While the increase in the number of PCLL places will provide more opportunities for students aspired to become lawyers, this may aggravate the concern over inconsistency in standards.

Any views or proposals made by the SCLET Consultants would assist in better understanding any impact, either directly or indirectly, which the proposed CEE may have on the overall scheme of things.

15. Instead of simply focusing on the proposed CEE, the Comprehensive Review is expected to adopt a holistic approach and aims to study more in-depth the systemic and institutional issues central to Hong Kong's legal education and training. In other words, the entire process of legal education and training in Hong Kong as highlighted in paragraph 10 above will be covered as opposed to merely scrutinising the final point of entry to the legal profession.

16. With a view to better facilitating communication between SCLET and the Law Society, a formal channel has been established. A subcommittee under SCLET comprising representatives of the Judiciary and the Department of Justice, and a member of the public appointed under section 74A(3)(a)(viii) of the LPO was formed to:

- (a) oversee the discussion between the Law Society and the three law schools on the implementation of a CEE;
- (b) facilitate the discussions between the SCLET Consultants and the Law Society to resolve any differences; and
- (c) take the recommendations of the SCLET Consultants forward.

This subcommittee is intended to act as a bridge through which concerns of the three law schools (whose representatives are also present in SCLET) about the format and operation of the CEE can be conveyed to the Law Society.

Way Forward

17. It is fully appreciated that all the stakeholders, including the judiciary, the legal professional bodies, the law schools, as well as the general public are awaiting with keen interest the recommendations of the SCLET Consultants. The Department of Justice fully appreciates the importance of legal education, and will continue to work closely with SCLET, and look forward to the early conclusion of the Comprehensive Review. Ultimately, the key objective is to consider how Hong Kong's legal education and training can be further enhanced, so as to ensure that our graduates are well equipped to meet the challenges of legal practice and needs of Hong Kong society in the years to come as well as contribute to Hong Kong's status as a leading centre for international legal and dispute resolution services in the Asia Pacific region.

Department of Justice

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