

**Response to Standing Committee on Legal Education and Training (“SCLET”) Consultants
regarding unified law school and the Common Entrance Examination (“CEE”) and
other recommendations**

Background:

1. The PCLL course is undertaken at a stage after an intending solicitor had completed his or her legal academic training.
2. The Law Society of Hong Kong (“Law Society”) has considered the following 3 principles in the implementation of CEE:
 - a. Discharging the statutory duty imposed on the Law Society¹ to be the autonomous regulator of the solicitor’s profession, and by extension, the gate-keeper of quality.²
 - b. Ensuring that intending trainee solicitors achieve a unified standard.
 - c. In part preparing for additional qualified institutions wishing to offer PCLL (or equivalent) courses to enable more intending solicitors including those with overseas qualifying law degrees to have the avenue to undertake a vocational course leading to eventually becoming a solicitor.³
3. The Law Society believes that a significant number of intending solicitors are currently unable to enter the profession as they are unable to secure a place in the PCLL courses offered by the 3 universities. The Law Society is concerned about losing talents from applicants with local and overseas qualifying degrees.⁴
4. The bottleneck is at the PCLL entrance stage.
5. The Law Society does not believe that the entry into the profession should be determined artificially by PCLL admissions. The number of solicitors is a matter for the market to determine. To encourage an open and free market, the Law Society

¹ Legal Practitioners Ordinance Cap. 159(“LPO”), section 4.

² As opposed to quantity. The Law Society believes in a free commercial market where the number of available solicitors will find its natural balance. The statistics of the number of successful applicants seeking trainee solicitor contracts suggest that there is no current oversupply of solicitors.

³ At present, the average successful applicants gaining entry to PCLL courses offered by the 3 universities is 41% to 53%.

⁴ The Law Society does not have statistics on how many of the remaining 50% do not in fact achieve the minimum standard required by the Law Society Benchmarks to undertake the PCLL, but believes that a significant proportion of those who failed to secure a PCLL place do in fact satisfy the minimum standard.

had sought in discussions with the 3 universities to offer additional places on their PCLL courses. However, no significant increase had been noted.⁵

6. In the absence of sufficient PCLL places offered by the 3 universities, the Law Society welcomes other qualified institutions willing to offer suitable vocational training leading to an intending solicitor having such an avenue to enter the profession.
7. It was submitted to the Consultants that as the number of institutions involved increases, the Law Society's resources in monitoring such institutions will be stretched thinner (as it is already thin compared to the original concept of the PCLL being offered by the University of Hong Kong ("HKU") only). The Law Society therefore prefers to discharge its statutory duties by way of ensuring all intending solicitors reach a set standard after having completed a qualifying vocational training.⁶
8. The Law Society notes that for the same reasons, the Solicitors Regulation Authority ("SRA") in England is implementing a Solicitors Qualifying Examination.
9. It should also be noted that the conduct of vocational training was first placed in the hands of one university only, and that came mainly as a result of historical development. A Working Party commissioned by the Chief Justice of Hong Kong in 1966 established in response to pressures to develop local legal education, recommended the establishment of the Department of Law in HKU. Shortly after that, it became apparent it would also be necessary to put in place vocational training for the practice of solicitors and barristers. Hence, a second Working Party was established in haste by the HKU Vice-Chancellor with the new Chief Justice and that second Working Party recommended the creation of the PCLL, which was initially also administered by the Department of Law at HKU due to the lack of resources for the creation of a separate institution.

The Consultants' suggestions:

10. The Consultants suggested that:⁷
 - a. A unified law school (referred to in the Interim Report as the School of Professional Legal Studies) be established which will offer the vocational course leading to one qualifying as a trainee solicitor; and
 - b. That there be a moratorium on the implementation of the CEE.

⁵ According to the interim report of the SCLET Consultants, all 3 incumbent PCLL providers have indicated they may be able to increase the number of PCLL places by 40 to 50 each but no timeframe or details have been provided.

⁶ Interview of the Consultants with the Law Society on 15 December 2015.

⁷ Section 2.18 and section 6.9 of the interim report of the SCLET Consultants.

The Law Society's considerations:

The unified law school

11. As far as a unified law school is concerned, this concept was initially put forward in 2001⁸. It is now again advanced by the Consultants.
12. The Law Society considers it important to take heed of these recommendations. The concept (so far as it applies to the vocational training for an intending solicitor) is not inconsistent with one of the Law Society's main reasons for implementing the CEE. which is to ensure that intending solicitors all meet a unified standard.
13. Accordingly, the Law Society welcomes and is supportive of the concept behind establishing a unified law school, and the Law Society urges all stakeholders concerned, including SCLET to set out an implementation timetable with the assurance that such an institution can in fact be established without delay. The Law Society suggests that there is no reason why this cannot be attained within 3 years (i.e. by 31 March 2021).⁹ Time is of the essence and it is not in the interest of the profession to see this becoming a prolonged exercise.
14. The Law Society wishes to point out that the PCLL course is and should always be a vocational training programme. Academic learning is done at the undergraduate level or under the Juris Doctor programme.
15. The Law Society is required by statute to undertake and discharge its regulatory function as a gate-keeper of standard and skills of entrants to the solicitors' profession. The Law Society takes this duty very seriously. It is not correct for the entry standard to be placed under the de facto control of the universities with PCLL admission becoming an artificial barrier. If the argument is that the 3 Universities had been enjoying this "privilege" of controlling entry standard, then it is founded on false premise, as it is the Law Society's statutory duty.
16. It follows that the entry test must be the domain of the Law Society (so far as in respect of those seeking to enter the solicitor's profession is concerned).
17. Having said so, it should be made clear that the Law Society does not necessarily need to conduct such test itself. Subject to agreement and finalisation of details, the Law Society could contract the unified law school to administer the test under the Law Society's supervision and control.

⁸ Section 8.1.5 of the Report of Professor Paul Redmond and Mr. Christopher Roper on Legal Education and Training in Hong Kong: Preliminary Review, August 2001("Redmond Roper Report")

⁹ It is important to maintain momentum in this initiative else it could fall into the wayside as in the Roper Redmond Report.

18. In any event, when considering the composition of the board of the unified law school, the 3 universities will be represented, but this should not be an exclusive arrangement so that other suitable institutions wishing to provide such training in Hong Kong will also be able to participate.

The CEE

19. The Law Society also took note of the Consultants' recommendation that there should be a moratorium on the CEE at this stage.
20. The Law Society originally intends to bring in the CEE in the academic term starting in September 2021.
21. On the basis that the unified law school can in fact be established and operational within 3 years, the Law Society is willing to put an immediate moratorium on the implementation of the CEE.
22. The Law Society, however, reserves the right to revisit and implement the CEE should the proposal of establishing the unified law school not be implemented nor be likely to be implemented within the timeframe and in the manner suggested above.

The problem of not enough PCLL places

23. The Law Society is looking forward to the unified law school being able to offer a materially sizeable intake which will alleviate the demand for PCLL places, in order to deal with the other reason why the Law Society had wished to implement the CEE.
24. The Law Society also took note of the Consultants' discussion of the CEE as an alternative entrance route to the PCLL, which they referred to as the 'altCEE'.¹⁰
25. The Law Society notes that the public was not referring to this altCEE as an alternative entrance route to the PCLL. The public was in fact referring to this altCEE as an alternative entrance route to the solicitor's profession, bypassing the need to take the PCLL.
26. The Law Society notes the Consultants' expressed concerns that the altCEE (if implemented) may not be contingent on any formal course requirement. The Law Society shares this concern and notes that even with the original design of the CEE, intending trainee solicitors would still have to go through with the PCLL or pass relevant examinations and complete relevant courses as may be prescribed by the Law Society.

¹⁰ Paragraph 6.8 of the Interim Report.

27. The Law Society has given considerations to this proposal and has reached the conclusion that there should be no apparent need for the altCEE if the 3 universities are able to substantially increase PCLL intake immediately to completely remove the bottleneck or when the unified law school is able to maintain standards despite it being a form of monopoly.¹¹
28. Pending implementation of the unified law school and that sufficient PCLL places be made available in order to fairly and appropriately accommodate at least the current level of PCLL applications, the Law Society proposes to implement an interim alternative entry path to those who either are not able to gain entry to PCLL or prefers to undertake some other qualified vocational training.
29. The Law Society will, pending the above, establish the “Law Society Examination” (“LSE”) which is currently estimated to take effect as early as the academic year 2019/2020.¹²
30. The concept of the LSE is that an intending trainee solicitor may take the LSE if he or she has completed a qualifying vocational training programme approved by the Law Society.
31. The LSE will be implemented pursuant to the authority vested in the Law Society under section 73(1)(d) of the LPO.
32. The current thinking¹³ is that the LSE will have the following characteristics:
- a. The entry requirements to, and syllabus of, the LSE will likely be comparable to the PCLL;
 - b. The qualifying vocational course need not be partly or entirely undertaken in Hong Kong although the course content will have to be tailored specifically to the requirements of the Law Society;
 - c. The good number of the trainers or teachers for the vocational course will be Hong Kong solicitors or equivalent, with suitable skills and experience as explained above;
 - d. The LSE will be determined and supervised by the Law Society, although as observed above, not necessarily administered by the Law Society; and

¹¹ The current situation is already a monopoly by the 3 universities, not an oligopoly.

¹² The CEE was originally set to take effect no sooner than 2021 in order to not affect current undergraduate law students. Under the LSE, current undergraduate law students or Juris Doctor students will not be affected by it.

¹³ The Law Society appreciates that the current plan is still in its infancy but it is understood that the Consultants wish to have feedback quickly as they are proposing to finalise the Report imminently.

- e. For the information of the Consultants, the Law Society is currently in discussion with at least two institutions who have expressed interests in providing for such a vocational training course. Their qualifications have not yet been assessed.

Additional thoughts:

- 33. It should be emphasized the Law Society fully respects and our proposals concerning the CEE and now the LSE do not hinder the academic freedom of the 3 universities.

Proposals of the Consultants on continuing professional development (“CPD”):

- 34. On the suggestion of the Consultants for the Law Society to consider the models of New Zealand, Canada and the SRA on “continuing competence”, the Society would respond as follow:
 - a. The CPD obligations of legal practitioners in Canada and New Zealand are also expressed in terms of number of hours. The only major difference between these jurisdictions and Hong Kong is that practitioners are required in these jurisdictions to review and identify their learning and development needs and to develop a plan on how to address their needs.
 - b. The system in Hong Kong is not that different. Although there is no prescribed requirement for solicitors in Hong Kong to consider their development, learning and practice needs before taking CPD courses, in reality, solicitors choose courses which are relevant and beneficial to their practice.
 - c. Adopting the systems in Canada and New Zealand would increase the administrative work, both for the solicitors, trainee solicitors and the Law Society.
 - d. Expressing the CPD obligations in terms of number of hours is an objective and convenient means to assess whether a practitioner has met the minimum CPD requirements. The Law Society does not see any reason to depart from such a system.
 - e. The Law Society will however consider the feasibility of adopting an online system to enable practitioners to record the CPD and risk management education (“RME”) activities they have undertaken.
 - f. The Law Society’s CPD Committee will also consider the feasibility of adopting the system of the Law Society of British Columbia of specifying what particular lawyering skills may gain CPD accreditation, and what skills do not, so as to provide clearer guidance to the Society members.

Proposal of the Consultants on the Overseas Lawyers Qualification Examination (“OLQE”):

35. S4(1)(b) of the LPO provides that the Court may admit as a solicitor of the High Court a person who the Court considers is a fit and proper person to be a solicitor and who, in the case of a person who seeks admission on the basis of qualifications acquired outside Hong Kong, qualifies for admission under requirements prescribed by the Council of the Society.
36. S73(1)(da) of the LPO empowers the Council of the Law Society to prescribe requirements for admission of overseas lawyers as Hong Kong solicitors, including the qualifications for admission, examinations and the fees to be paid for applications and examinations.
37. Pursuant to S73(1)(da), the Council of the Law Society has prescribed the Overseas Lawyers (Qualification for Admission) Rules Cap. 159Q and the Overseas Lawyers (Qualification for Admission) (Fees) Rules Cap. 159V.
38. SCLET is not currently empowered by S74A of the LPO to oversee the OLQE.
39. The recommendation of the Consultants to transfer the power from the Law Society to SCLET or the proposed School of Professional Legal Studies interferes and impedes with the self-regulatory power of the Law Society and its professional independence in acting as a gatekeeper to the entrants to the solicitors’ profession. The Law Society will strenuously defend its autonomy.
40. The self-regulatory power of the Law Society to administer the OLQE is consistent with most jurisdictions where the gatekeeping power of admitting overseas lawyers is vested in the relevant professional regulatory bodies.
41. It also appears from the models of other jurisdictions that the examinations usually take the format of written assessments although a number of them involve multiple-choice questions. Very few involve the assessment of skills.
42. On the passing rates of the OLQE, the Law Society does not agree that the wide variation in the pass rates should be a matter of concern.
43. Each batch of candidates is different; they come from different jurisdictions and have different practice experience. The variation also proves that the Law Society does not have a hidden agenda of controlling the number of entrants to the solicitors’ profession. There are no prescribed passing rates.
44. The low pass rates for some OLQE in the past years also substantiate the examinations were rigorous.
45. The Law Society does not consider it necessary to assess the skills of the candidates in the OLQE as only practitioners with at least 2 years of practice experience would

be eligible to take the OLQE. The OLQE is not designed to train candidates, but to assess whether they have reached the requisite level of competence.

46. The Law Society disagrees with the Consultants the OLQE only tests candidates on substantive law. The scenario type of questions in the OLQE test candidates on the application of substantive law to practical situations, their analytical and problem-solving skills. The questions on drafting test candidates on writing, drafting and communication skills. The Law Society considers that it is essential to test candidates with scenario questions, and not simply multiple-choice questions, given that there are usually multiple solutions to a given set of problems in practice. Written answers instead of multiple-choice questions will provide better scope for the candidates to demonstrate their knowledge and capabilities, including their analytical and drafting skills.

Proposals of the Consultants on trainee solicitors' training:

47. On the Consultants' suggestion to develop a set of learning objectives i.e. outcomes for trainee solicitors similar to the Law Society of Scotland's Professional Education and Training Stage 2 ("PEAT 2"), the Law Society has already published a Training Checklist as early as 2009. Unlike PEAT2, the Training Checklist is not mandatory and only serves as a guide. The majority of law firms in Hong Kong are small to medium size firms. There is substantial diversity in the training provided by them. Any mandatory requirements implemented through the Training Checklist or PEAT 2 may place unnecessary and undue pressure on law firms.
48. The interim report raises various interesting aspects concerning outcome based training, such as consistency, monitoring, competency, assessment. The Law Society will keep under review the development of the legal industry in Hong Kong and revisit the issues and proposals when appropriate having regard to particular circumstances in Hong Kong.

Further comments:

49. The Law Society reserves the right to comment further on the final report of the Consultants.

The Law Society of Hong Kong

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