

The Steering Committee on the Review of Legal
Education and Training in Hong Kong

Legal Education and Training in Hong Kong: Preliminary Review

Executive Summary of the
Report of the Consultants

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Prepared for the Steering Committee on the
Review of Legal Education and Training in Hong Kong by
Professor Paul Redmond
Dean, Faculty of Law
The University of New South Wales, Australia
and
Christopher Roper
Director, The College of Law Alliance, England & Australia

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Disclaimer: Any opinions, findings, conclusions and recommendations expressed in this report (or by the members of the project team) do not reflect the views of the Government of the Hong Kong Special Administrative Region or the Innovation and Technology Commission.

Disclosure by Christopher Roper

At the time of his appointment as a consultant, Christopher Roper was Director of the Centre for Legal Education. However, in the course of the review he resigned from that position and became Director of The College of Law Alliance. The College of Law Alliance is an alliance between The College of Law of England & Wales, and The College of Law, Sydney Australia.

Recognising that there might be, or might appear to be, a conflict of interest, Christopher Roper disclosed this change of status to the Steering Committee and has assured the Committee that his work as a consultant has been carried out with scrupulous regard to the need for objectivity and impartiality.

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Abbreviations and acronyms

ACLE	Advisory Committee on Legal Education
ACLEC	Lord Chancellor’s Advisory Committee on Legal Education and Conduct
ALE	Advanced legal education
Bar Association	Hong Kong Bar Association
CLE	Continuing legal education
CPD	Continuing professional development
CPE	Common Professional Examination [of England & Wales]
CityU	City University of Hong Kong
HKSAR	Hong Kong Special Administrative Region
HKU	Hong Kong University (the University of Hong Kong)
JEB	Joint Examinations Board
JUPAS	Joint University Programme Admission System
Law Society	Law Society of Hong Kong
LLB	Bachelor of Laws
LLM	Master of Laws
LPC	Legal Practice Course
LQC	Legal Qualifying Council
Manpower Report	The Study on the Manpower Needs of the Legal Services Sector of Hong Kong, Final Report, April 2001
MMU	Manchester Metropolitan University
OLQE	Overseas Lawyers Qualification Examination
PCLL	Postgraduate Certificate in Laws
PLT	practical legal training
PRC	People's Republic of China
SPACE	School of Professional and Continuing Education

the Society	Law Society of Hong Kong
UEE	Use of English Examination
UELТ	Use of English in Law Test
UGC	University Grants Committee
WTO	World Trade Organisation

1

The terms of reference for the preliminary review and how this executive summary is structured

The terms of reference for this preliminary review are as follows –

- 1 The aim of the preliminary review is, in the light of best international practice and having regard to the unique characteristics of Hong Kong:
 - (a) to assess the current system of legal education and training in Hong Kong, including an assessment of its strengths and weaknesses;
 - (b) to advise on the requirements of a legal education and training system best capable of meeting the challenges of legal practice and the needs of Hong Kong society into the 21st century and how these challenges and needs can be met by the legal education and training system;
 - (c) to provide a set of benchmarks for measuring the quality and standard of legal education and training in Hong Kong so as to ensure that those entering the legal profession receive the best legal training for the maintenance or improvement of professional standards;
 - (d) to provide suggestions and alternative models for a reformed system of legal education and training in Hong Kong; and
 - (e) to make recommendations for improvements in the system of legal education and training in Hong Kong, including reforms of the existing system or the introduction of an alternative model.
- 2 The preliminary review will encompass:
 - (a) all stages of the legal education and training of legal professionals in Hong Kong, including the detailed components and content of undergraduate legal education, vocational training (including articles and pupillage as well as the professional stage of university legal education) and post qualification continuing legal education; and
 - (b) legal education for those persons who intend to pursue a career in areas other than legal practice.

The consultants' report does not deal with each of these terms of reference seriatim, but rather is structured in three parts –

Part A *Frameworks for discussion* – consideration of some underlying intellectual frameworks and of constitutional, economic and social frameworks specific to Hong Kong. In this executive summary the two chapters outlining these frameworks are not summarised.

- Part B *Underlying themes* – consideration of a range of issues which permeate various aspects of the discussion in regard to legal education and training in Hong Kong.
- Part C *The proposed model for a reformed system* – a description of the model which emerged from the discussion in Part B, together with a proposed model for governance of the legal education and training system leading to admission to practice.

The immediately following sections deal with the underlying themes in Part B, and the model and the governance system are then set out and discussed.

2

Numbers

2.1. A widespread concern about numbers

There is, in a number of quarters, a concern about numbers. This concern is by no means universal but it is, nevertheless, expressed with some regularity. It takes two forms. There is a concern about the number of law students, either in the undergraduate degree or in the PCLL. Sometimes this concern is linked with a criticism of the opening of a second law school at CityU. And there is a concern that there are too many lawyers in Hong Kong; more specifically that too many people are being admitted as lawyers. It is said that, at the government level, attitudes towards the funding of Law are affected by a perception that Hong Kong has too many lawyers.

The consultants were not asked to consider the substance of this issue – that is, whether or not there are too many lawyers. That issue is dealt with in the manpower study undertaken in parallel with this review. Rather this review looks at the legal education and training aspects of this issue.

There are two reasons why some argue that there are too many students in Hong Kong's law schools –

- the large increase in law student numbers is seen to have resulted in a decline in quality; and
- too many law students will graduate and, hence, too many people will enter the legal profession, a number which the profession will be unable to absorb.

Hence, there are two concerns – one in regard to standards or quality and one in regard to the impact of numbers on legal practice.

2.2. The standards or quality concern

There is a belief that the significant increase in numbers enrolled to study law, both at the law schools and at SPACE, beginning in the period before the resumption of sovereignty, has resulted in an increased proportion of students who do not have intellectual and language abilities at the desirable level for the study of law. The increase in student numbers, in itself, is not a concern, as most would accept that there were good arguments for the widening of the catchment for tertiary studies. But there remains a concern that the law schools are not 'weeding out' those who should not graduate. There is a perception that there is a "through train", that entry to law school effectively equates to

an exit into the legal profession. There is a belief that, once in the system, a student will not be effectively halted if his/her standards are not good enough.

2.3. The numbers-entering-the-profession concern

This concern about standards may be paralleled by a perception in the profession that there is some unspecified obligation on its members to find a place for all those coming out of the law schools. The first point of employment for law is pupillage or the trainee solicitor contract, both of which are seen as ‘apprenticeships’ and, in the case of some trainee solicitor contracts, with concomitant low salaries. It is not that hard, therefore, for this sense of obligation to take hold in that situation.

2.4. Examining these concerns

The relationship between quality and numbers in the law schools

It would appear that these concerns are not confined to the discipline of law. In other professions a decline in standards is also often attributed to the significant increase in students undertaking tertiary studies which occurred at the beginning of the nineties in response to concerns of a possible outflow from Hong Kong of qualified people as a result of the resumption of sovereignty in 1997.

There is a genuine concern that standards must be set and maintained. The question is whether restricting access to legal education is the best and appropriate means to ensure that.

Reducing law student numbers could improve average standards but not actual standards. The only way this might occur is through an improvement in the teaching/learning process and through the rigorous application of assessment processes.

Whilst Hong Kong has two law schools, in fact it accepts law graduates from a number of other sources. Hence, attempts to control numbers by limiting those in the LLB courses at HKU and CityU are doomed to failure because there are several other gates, in Hong Kong itself, through which legally qualified people may enter. Indeed, a reduction in numbers at the two law schools would probably only result in a transfer of students to these programmes.

The relationship between numbers in the profession and numbers in the law schools

The belief that Hong Kong now has too many lawyers is often largely attributed to the decline in conveyancing work. There are those who believe that numbers should be reduced so as not to exacerbate the difficulties now faced by many lawyers who have relied largely on conveyancing and whose incomes have declined. The suggestion usually is that there be a reduction in those at the two Hong Kong law schools. But, as already discussed, this would potentially make no difference at all. It would be necessary

also to limit, or indeed exclude, those entering the profession through the London LLB, the CPE, and other similar routes.

The consultants believe that the recognition or de-recognition of any qualification should not be driven by a concern to create an artificial barrier to entry to the profession, and should only be driven by issues in regard to the essential quality of the qualification itself.

From another point of view, it has been suggested that an abundant supply of lawyers will drive some into forms of practice which will serve unmet needs in Hong Kong. Indeed, this was suggested in the Consultation Paper, but one response to this proposal suggested it was naïve.

The consultants accept that this might be right, and that it may well be too simplistic to expect that a high level of supply (of lawyers) will force services down to less remunerative areas. On the other hand, they believe that the opposite will occur. That is, if there is a limited supply of lawyers the services will contract from less-remunerative areas and overall become more expensive – and quite possibly at the cost of quality.

The consultants believe that the real issue is quality, not numbers.

Some distinctive characteristics of Hong Kong which affect the question of numbers

As was said in the manpower report, “Hong Kong is principally about business”. This would suggest that Hong Kong, more so than most other economies, would be one that particularly requires lawyers. And yet the figures indicate that Hong Kong has a lower lawyer:population ratio than other comparable countries. The latest figures are – United States: 1:270; United Kingdom: 1:500; Canada: 1:729; Australia: 1:533; Singapore: 1:912; Hong Kong: 1:1335. Even Singapore has a higher lawyer:population ratio than Hong Kong.

What then should be made of the current concern about numbers? It may be that Hong Kong is passing through an, albeit painful, transition from an economy based significantly on the property market to one based on a services market. Indeed, in its short recent history Hong Kong has moved from being a major port, to a major manufacturing city, to a city which has experienced dramatic property developments, and most recently to an international city of business based on the delivery of services.

It is unlikely that it will be possible to return to a situation where the property market will be such a significant contributor to the creation of wealth. Indeed, it could well be argued that this would be undesirable. If Hong Kong is to be and remain a ‘world city of business’ it must generate its wealth from the delivery of those services which the world now needs.

Another distinctive feature of Hong Kong is the effect on it of developments on the Mainland. In particular, enormous opportunities are opening up for Hong Kong’s lawyers. In the words of the manpower report, the demand for legal services will be extensive and there will be a “great demand for legal services that combine China law and international law in a practical manner”. The top-end firms are likely to be best able to take advantage of this emerging market, although there is a practice of small law firms

growing hand in hand with expanding business enterprises established by entrepreneurs. This market and these enterprises are likely to require many more well trained lawyers able to operate in that market because of their language and legal skills.

2.5. The manpower survey

As part of this preliminary review a manpower survey has been undertaken. Its purpose has been to identify the manpower needs of a range of sectors in Hong Kong's economy and society for legal services. The brief to the manpower consultant said that the information to be obtained was what type of legally qualified people will Hong Kong need in this period. In what areas of society and the economy will they need to be able to provide services, and what knowledge and what sorts of skills will they need in order to meet the needs of the surveyed bodies and individuals in this period?

The brief recognised that there was little value in calculating an overall global figure for the intermediate future, even if that were possible.

The manpower report concludes that in the next decade, whilst some aspects may contract or change, the overall employment of law graduates and qualified solicitors may increase. For barristers, there will be continuing opportunity provided they are competent and affordable. The volume of legal services is expected to increase, and these will be provided by both those within the existing structure and those with a law education or legal qualification working in organisations outside the legal profession in Hong Kong.

The manpower report points out that what will increasingly be demanded by clients will be "comprehensive, competent service that can provide speedily effective solutions". The consultant concludes that there does not appear to be a situation of oversupply of legal professionals. Indeed, there is a possibility that should Hong Kong's economy grow reasonably rapidly over the decade (despite inevitable cyclical effects), there could be a shortage of solicitors.

2.6. Conclusions in regard to numbers

It may well be that the situation is, as expressed by one of those who made submissions, that "there is a shortage of good lawyers but in general an oversupply of lawyers".

In any event, as mentioned above, it would be pointless to reduce numbers in the two Hong Kong law schools as a means of controlling numbers entering the profession. All sources would need to be controlled, such as the London LLB and the CPE. This, clearly, will not or cannot be done. To control part of the inflow would be non-productive and indeed counter-productive.

Even so, the consultants are reluctant to recommend that there should be any mechanisms along the way in the legal education and training system which artificially control numbers. Rather, what is seen as a preferable system is one based on merit whereby, through the setting and enforcement of high standards which are appropriate to the ongoing circumstances, some will "fall by the wayside". By this means the numbers in

the system will be a reflection of the standards which the profession imposes on itself; in turn a response to the expectations of the Hong Kong legal profession by both Hong Kong society and the international community.

3

Language

At every turn and in every forum, the issue of language arises when legal education and training in Hong Kong is discussed. It is clearly one of the major underlying themes pervading discussion of almost every aspect of legal education and training in Hong Kong.

3.1. The English language and the law

There is an inextricable link between legal education and language. Law is expressed in language, the academic discipline almost totally involves the use of language, and much of the practice of law involves the use of language – both to interpret the law and its precise use to express concepts, arrangements, rights and duties.

Moreover the law of Hong Kong is the common law. The common law is traced back in time, and is built up over time, by means of the written word. Accordingly, a lawyer in a common law jurisdiction especially needs a good set of language skills. English and its nuances are needed to master the common law. Moreover, much of the common law is case law, expressed in English and in precise language. Without proficiency in the English language, one cannot explore and engage with that body of law.

3.2. Language and Hong Kong

Language is an important issue in Hong Kong, and this has an impact on legal education and training. It is sometimes suggested that Hong Kong has a choice between being –

- an international financial centre, or
- a Chinese financial centre with international characteristics.

It was argued that if it wants to be the former, English language proficiency will be required of *all* lawyers, even those with exclusively Cantonese practices.

The underlying fundamental question is Hong Kong's relationship with the Mainland. It was strongly argued to the consultants that if Hong Kong goes the second route – a Chinese financial centre with international characteristics – it will weaken its distinctiveness as the window to and from the Mainland. That distinctiveness is the rationale for Hong Kong's peculiar position that preserves its special status. Hong Kong will lose that if it loses English language proficiency.

Although this appears to be close to a unanimous view, it may not always be reflected in day to day life. The consultants were told, for example, of the common use of Cantonese for intra-office discussions and with some clients. Chinese is increasingly becoming a part of practice in lower courts advocacy and in, say, ten years time it may well be that the use of Chinese will be far more prevalent in various forms of general practice. However, the consultants were advised that about 90% of all correspondence between law firms is in English, and all legal documents are in English. In addition, law teaching is in English and, even more importantly, almost all the sources are in English.

There is a high price to pay for this imperative. Almost all those entering the two Hong Kong law schools speak neither English or Putonghua as part of their normal life, and so they must study in a language which is not their first language. When they go on to practise law, they must be bilingual at least and quite possibly trilingual.

The Education Commission clearly endorses the view that this price has to be paid, as it has said –

A good foundation in language is essential to lifelong learning. It is also essential in coping with a knowledge-based society. Whilst the development of language skills should start at the pre-school and basic education stages, it will remain the duty of higher education in the foreseeable future to further consolidate and enhance students' language proficiency and ensure that graduates have attained the language standards required.

3.3. Chinese language proficiency

And yet, as Hong Kong also wishes to remain as the gateway to and from the Mainland, lawyers engaged in work involving the Mainland will also require both spoken and written Chinese.

It was pointed out on a number of occasions during the consultations that Hong Kong lawyers, being bilingual, have an inbuilt advantage over their Chinese and European counterparts in 'exploiting' the rapid opening up of the Mainland.

But it was reported that the standard of written Chinese has dropped. Many Hong Kong students cannot write with the formality that Mandarin requires.

3.4. Trilingualism and biliteralism

All of this suggests that the language issue is not just about English or Chinese but is really one of trilingualism and biliteralism.

3.5. What was said about language during the consultations and submissions

Language was undoubtedly one of the most frequently raised issues during the consultations. Proficiency in both English and Chinese was a matter of concern for many,

but the primary concern was in regard to English. The major theme was that, overall, there has been a significant decline in English language skills amongst law students and amongst those entering the profession.

From all that was said the reasons for this perceived decline were seen to be –

- English is not spoken regularly, or at all, in the homes of most of those entering Hong Kong’s law schools
- although English is a compulsory subject for all secondary students, it is not taught well enough and the standards are not high enough, even in the relatively few English language high schools
- English is not used by university students amongst themselves, unlike the situation in Singapore and Malaysia, nor do they generally watch movies in the English language or even follow pop music sung in English
- the big increase in those studying law, with students now drawn from a much wider social spectrum, means that a greater number have significant English language difficulties in their law studies because English usage is still more common amongst the educated and privileged.

The implications of this were seen to be that –

- law students cannot read as much, or as deeply, as students in other countries with which Hong Kong wishes to compare itself and compete
- law students’ difficulties in assembling a cogent argument are exacerbated by their English language ability
- law graduates trained overseas, where they were immersed in English, display higher language proficiency.

The reasons why this perceived decline in English language proficiency is regarded so seriously is, as already discussed, that –

- the legal profession needs to be equipped, at a high level of proficiency, to play its part in ensuring that Hong Kong remains a major commercial and financial centre, both in its own right and as a doorway to and from the Mainland
- lawyers must command a firm grasp of spoken and written English; otherwise they are ill-equipped to participate in the complex commercial and financial transactions which are a daily occurrence in Hong Kong
- without English language skills, the language of international commerce, Hong Kong’s lawyers will “write themselves out of the game”.

There were also many comments about Chinese language proficiency – both Cantonese and Putonghua. Those comments can be distilled as follows –

- it would appear quite inappropriate that Hong Kong could be a special administrative region of China and yet its legal education system should not have a major focus on the legal system of China and in turn its language
- with China's accession to the WTO and the liberalisation and reform of the Chinese legal system, tremendous opportunities exist for Hong Kong lawyers in the Mainland, and the legal educational system should, accordingly, prepare them to take advantage of that new situation – this is where the future lies.

It is worth noting the clear distinction between proficiency in language and competence in communication. A failure to note this distinction can obscure a great deal of the discussion on issues facing lawyers in legal communication. Language, both spoken and written, is the means whereby students express their ability and in particular their intellectual skills. Commonsense suggests that a person with excellent skills, for example of analysis, may nevertheless have difficulty displaying that without good language skills. Although this may explain it does not really excuse – because both at university and in practice analytical, and other intellectual skills, are essentially worthless without the language skills to express and apply them.

3.6. What the experts suggest could be done about language

In the wider consultations it was suggested, from time to time, that the way to deal with language was by means of tests – either entry or exit. Other means were, however, also suggested – remedial or enhancement teaching, immersion and a pervasive approach whereby English becomes an inextricable part of the teaching and assessment in all law courses.

Testing

Some of those consulted suggested that, without questioning the importance of language, there is some doubt as the validity of the correlation between language ability, as measured by the UEE score, and success in law. It was put to the consultants that the skills which students need to display in the first year of law are different to those which are tested by the UEE. They said that the problem is not English language proficiency as such but rather its use in a legal context.

If this is correct then it would mean that raising the UEE score even higher would limit entry to those with higher language skills, as measured by that test, but they may be no better than those in lower cohorts at using English for legal purposes. It was also suggested that students who had a C or D would be required to put in an inordinate amount of effort to increase their score to a B. The validity of a generic test, or a test of general proficiency, these experts suggested, is questionable. They suggest that the teaching of English, and a test, if there is to be one, needs to be contextualised to what law students are learning or had learnt.

Taking the argument a step further, this suggests that any entry test would need to be specially designed to test an ability to use English for legal purposes.

If all of this is correct, it may be found that the mere adoption of existing tests of English language proficiency will not improve the situation. Despite the increased rigour, the perceived language skills of law students and graduates may be found not to have improved and the whole exercise found to be unproductive.

Remedial or enhancement teaching in English

One of the submissions proposed that in an extended LLB the first six to 12 months might be devoted to enhancing English language skills (and the teaching of non-law subjects). But from what the consultants heard from the experts, it would appear that the better tactic would be to emphasise the use of written and spoken English, and assessment of that, *throughout the whole degree* rather than in an intensive period at the beginning.

There are, of course, the existing English for Legal Purposes courses for all students at both law schools and these should continue. At CityU there is also the course for those with a lower UEE score. This, too, should continue. But the consultants have not concluded that the extension of courses such as these is the solution most likely to succeed.

Immersion

Usually, immersion is the best way to deal successfully with a language deficiency. This would be extremely expensive and is not feasible, so far as all law students are concerned. Because of the culture in Hong Kong, it is not feasible to expect that the immersion could occur in Hong Kong. It was suggested during the consultations that the law schools might consider establishing schemes whereby students could undertake, say, a semester or the summer vacation, at a law school outside Hong Kong in an English language environment.

Pervasive teaching and assessment

It was suggested during the consultations that one very positive way in which the English language proficiency of students could be improved, without the need of additional remedial teaching, would be to adopt the use of English as one of the criteria for assessment of students' work. In other words, law academics themselves would consciously write into the assessment criteria, for all work, a requirement that a defined standard of English was attained.

A recommendation from linguistics teachers and experts was that the very nature of much of the learning and assessment in law school is passive, requiring insufficient occasions when students are required to express themselves, either orally or in writing, in English. It was said that if students are required mainly just to attend lectures and write examinations, they get little opportunity to practise their English. But if the course constantly, frequently and rigorously requires them to speak and write English, they will inevitably improve their English.

But it needs to be recognised, if the law course itself is to be the dominant means of improving language ability, that teachers will need considerable assistance and staff

development to enable them to perform these new tasks more adequately. They would need to be enabled to be a facilitator of active learning.

3.7. Recommendations in regard to language

The consultants have concluded that, despite some expressed uncertainties about the validity of the correlation between advanced language skills and the ability to study the law, there must be certain prerequisites in regard to language along the legal education continuum. It would be quite inappropriate to ignore the need for English language ability in the study of law. Furthermore, the consultants feel compelled not to ignore the almost universal concern about language standards and the imperative that this issue be dealt with.

The consultants accordingly recommend –

Prerequisite for entry to an undergraduate law course

- 1 That the existing English language prerequisite for entry to law studies of a D7 Grade in the UEE be raised by two levels to a C5.

Research studies

- 2 That the law schools undertake a joint ongoing study to determine if there is a correlation between students' UEE scores and their success in their first and subsequent year courses.
- 3 That a joint study be carried out by both law schools of students' English language skills at the point of graduation from the LLB; the results to be compared to their language skills at the point of entry to the law school to see if a change occurs.

Special language test for law students

- 4 On the basis that it would be very difficult to have all secondary students wishing to study law also undertake a special test in addition to the UEE, the development of a test which tested the use of English in law, for the purpose of entry to law school, is not recommended.
- 5 That the two law schools cooperate to engage experts to design and develop a new test, to be known as the Use of English in Law Test (UELТ), which would seek to test not English language ability generically but its use for legal purposes.

When developed, there could be three levels of the UELТ, as follows –

- a test, of sufficient stringency, to be undertaken by all law students at the end of first year – those passing it would not be required to sit it again, and those failing it would be permitted to continue their law studies but would be required to undertake remedial tuition (in addition to their law studies).

- a test, of similar stringency, to be undertaken by those students who were required to undertake remedial tuition – to be conducted annually and affected students being given the opportunity to fail it twice.
- a test for all applicants for entry to the new legal practice course – which would be at a somewhat higher level, reflecting that candidates had completed their undergraduate law studies and were about to commence their practical preparation for practice.

English within the law course

- 6 That the process of active learning which, it is recommended be a more dominant aspect of law teaching, include a strong and rigorous emphasis on the use of English.
- 7 That one of the criteria for assessment of all oral and written assessable work in the LLB degree be English language ability appropriate to the work being assessed, and that this criterion be assessed rigorously, to the point where work could be failed on that basis alone.

Exchange programmes

- 8 That both law schools expand existing, and/or actively explore the possibility of developing, exchange programmes with law schools in English speaking countries, in order to give their undergraduate students the opportunity to study outside Hong Kong for one the long vacation or over summer and gain full credit, and thereby improve their English language ability.

Chinese language

- 9 It is highly desirable that there be a number of those admitted to practice in Hong Kong who are able to use the Chinese language, where appropriate to their practice, to comparable standards as those in regard to English. Continuing training in the Chinese language should be provided for students and lawyers who have capabilities in the use of Chinese.

4

Four judgements underpinning the proposed model

Before considering the underlying themes further, it is useful to indicate that there are four judgements which the consultants have made. These underpin much of the thinking which has led to the model to be proposed.

The first is that the academic stage of legal education needs to make more ambitious demands upon students. The consultants believe that higher level skills need to be developed in the academic stage, of a general intellectual character as well as those more specific to the discipline of law. This needs to be achieved through greater use of active teaching and learning methods as well as a curriculum with more attention to higher order skills.

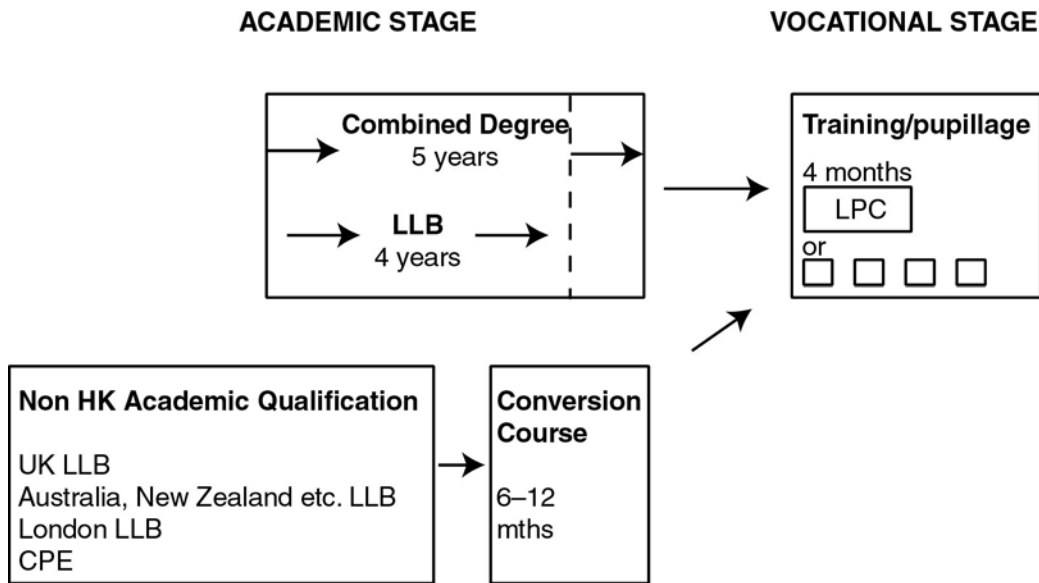
Secondly, the consultants believe that the PCLL does not provide, and as a university based programme is incapable of providing, the essential element of practical training which enables academic training to be used in practical ways. In consequence, the consultants have concluded that the Hong Kong legal education system lacks an effective and reliable process of practical training, and that that deficit significantly inhibits its ability to meet the challenges of legal practice and the needs of Hong Kong society of the 21st century. The consultants recommend the abolition of the PCLL with its substantive law component taken to the academic stage, primarily as elective courses, and the practical legal skills dimension taken to a legal practice course specifically designed for the purpose.

Thirdly, there needs to be a consistently high standard applicable to all academic entry points. The best means to achieve this is a conversion course for those entering the vocational training system from academic studies through overseas courses and an examination process for those seeking admission on the basis of overseas legal qualifications and experience.

Fourthly, training under training contracts is of uneven standard. The introduction of a legal practice course, institutionally provided and with a legal practice skills focus secures a platform of minimum training upon which further firm-based training may proceed.

In summary, the aim of the model, which will be described in detail below, is to develop a legal education and training system that is at once both academically stronger and more practically mounted in each appropriate stage.

The model proposed by the consultants may be represented diagrammatically in the following manner.



5

The academic stage

5.1. The mix of purposes for university legal education

The many vocational uses of a legal education

The undergraduate law degree has proved to be a valuable preparation not only for the practice of law but also for a variety of other careers. In many countries with similar legal, educational and economic systems to Hong Kong, only one-half of law graduates make their long term careers in the practice of law although a higher proportion proceed to full professional qualification. International experience is that more and more law graduates seek a wide variety of positions in practice as well as non-traditional paths upon completion of their law degree or equivalent and perhaps later vocational training. While this diversity of graduate destinations has yet to reach its maturity in Hong Kong, there are good reasons to believe that this is likely to be the broad path of development in Hong Kong.

The mix of academic and professional goals of legal education

A law degree is also potentially a valuable liberal education in itself, of benefit to those who undertake it for intellectual formation as well as for those who undertake it primarily for vocational preparation, in law or in another field. Indeed, the elements that make it attractive as a liberal education – the development of general transferable intellectual skills - are no less important to those who seek it as vocational preparation. The consequence is that the law degree should be so framed as to meet the needs of students who will go on to professional training as well as those who seek an education for its own sake or as preparation for another career.

5.2. The range of skills at the academic stage

Generally transferable intellectual skills

The generic or generally transferable skills and competencies, common to most university education in the humanities and social sciences, are essential to legal education. They include the skills of analysis and reasoning, to research and construct an argument and communicate it effectively in written and oral forms, the general ability to apply knowledge to the solution of problems, intellectual curiosity and breadth of thought and outlook, and intellectual integrity and independence of mind.

Intellectual skills specific to law

The intellectual skills and competencies that are specific to the discipline of law draw upon general transferable skills of analysis and problem solving but take on a cast of thought and intellectual method that is specific to the discipline of law. The core skills in this second category include —

- the ability to read with understanding legal material especially case law and statutes;
- application of legal knowledge and problem-solving: the analytical skills of identifying relevant legal issues and applying knowledge creatively to complex situations to provide arguable solutions for concrete problems;
- the technical skills of legal research including the ability to identify the issues which require researching and to formulate them with clarity, to identify and retrieve up-to-date legal information, and to use primary and secondary legal sources relevant to the topic;
- the craft skills of legal writing;
- ability to deal with (ie. collect, sort and investigate) facts; and
- an understanding of litigation and alternative dispute resolution procedures.

These skills amongst newly trained lawyers are essential for the practice of law. Taken with the general transferable skills, they require lawyers and other law graduates to be equipped to think logically, analyse a problem or legal issue, think critically and have the capacity to evaluate and think creatively and be able to solve problems.

Professional or lawyering skills

There are a group of lawyering skills that are frequently identified in the overseas reviews of legal education. They include the communication and interpersonal skills of effective oral communication skills, legal interviewing skills, client counselling, advocacy skills, negotiation and dispute resolution skills and legal drafting skills.

There is a considerable body of experience in overseas jurisdictions that supports the introduction to lawyering skills at law school. The consultants believe that these skills have a legitimate place in the academic stage of legal education in Hong Kong but not a necessary place. That is, the consultants do not believe that a law school *must* teach these skills but that it is appropriate for a law school to do so, whether as an elective subject or subjects or even as part of their compulsory core. A particular law school might, for example, choose clinical legal education as the means for the study and development of lawyering skills. This is but one aspect of the deliberate choice that individual law schools might make as their distinctive contribution to legal education in Hong Kong.

5.3. Legal education as liberal education

The consultants believe that it is a matter for each law school to strike a balance between the several goals in intellectual and professional skill development within the broad objectives determined by the statement of standards that applies prescriptively to all stages of legal education. A degree of pluralism and distinctiveness on the part of individual law schools in defining their particular goals and orientation is a good thing. The precise mix between academic and vocational goals is ultimately a matter for each university within broad limits set by the statement of the standards necessary for professional admission, and not for direction by the profession or others external to the universities. At the end of the day, the quality of the university's programmes and the responsiveness to the needs of its students depends in significant measure upon their own independence, autonomy and self-responsibility for the standards of their scholarship and education.

Law schools should be clear about their distinctive mix of goals and aims and should communicate them clearly to students. The precise balance that each strikes should be carefully stated and not hidden behind formulations that conceal distinctiveness, for example, by stressing the weight given to each of several approaches that are in the end competitors for emphasis and resources within the curriculum. They should not be hidden behind vague formulations that conceal the distinctive character of the law programme of the school.

5.4. Structure of law degree programmes

The consultants, as encouraged by the terms of reference, have suggested some alternative models for the academic stage.

Graduate law programme

Despite the undoubted benefits of studying law as a graduate, the consultants do not believe that the study of law in Hong Kong necessarily requires prior degree level study in another discipline. However, it is important to facilitate the study of law by those who are graduates in another field and to create a dedicated programme for graduates. Such students of law can be assumed to have had the general intellectual formation and breadth of outlook that non-law study is intended to secure and, accordingly, do not require additional study of non-legal material as part of the LLB. The consultants consider that such a LLB programme for graduates might occupy three or less with accelerated study. This programme should be available for part-time study so that its completion is not at the expense of the career or employment upon which the graduate has embarked.

The four-year LLB as the primary undergraduate law programme

The consultants recommend that the primary model for the academic stage of legal education in Hong Kong comprise a four-year degree in the first two or three years of which law and non-law subjects are taken concurrently. The function of the additional year is to broaden students' perspectives, promote intellectual curiosity and their ability

to handle complex problems. Non-law subjects should represent approximately one-quarter of the credit load for the degree and law subjects three-quarters. It has been recommended that the field in which the non-legal study may be taken should be a matter for decision by each university.

The curriculum in the third and fourth years of the LLB should include certain subjects, as elective subjects, that are presently dealt with in the PCLL programme either as elective or as core subjects. The status of such subjects would be a matter for decision by each university subject to any prescription in the statement of academic standards required for professional admission. In the light of the determination of the Legal Qualifying Council as to what portion (if any) of the PCLL should be required for purposes of admission, it may be necessary for the universities to review whether the component of non-law study should be reduced, but not below the equivalent of one-half of one year of study.

In all years attention should be given to English language proficiency, spoken and written, which would form part of the assessable curriculum. There is also a licence to develop in the LLB programme some skills in students that are valuable in the practice of law.

Mixed or combined law degree programmes

The consultants recommend that the four-year LLB be structured so that students may undertake a double (or combined) law programme by adding on a fifth year. Double or combined law programmes provide law students either with a broader liberal education than the straight LLB or powerful vocational preparation across a wider career field. Places in double degree programmes should receive full UGC funding since they secure valuable academic and/or vocational formation for those who undertake them. They also develop skills of wide social utility that are unlikely to be achieved except through serial degree level study.

The focus and content of non-legal study of double degree programmes should reflect the character of the individual double degree programme, varying between those programmes that have the objective of broader intellectual formation (eg, an Arts/Law programme) to those with a more explicitly vocational orientation (eg, Finance/Law).

Students undertaking such a double degree programme would study the same law subjects as those in the four-year LLB programme but their non-law studies would be sufficient in breadth and structure to lead to the award of a second degree. It is proposed that double degree programmes be structured and taught as an interdisciplinary degree, at least in the first three years when elements of both disciplinary fields are studied.

The LLB and mixed degree programmes should be structured with maximum articulation between them. This would enable students to move with as much flexibility as possible between the several programmes. The intention is that, for example, a student who enters the LLB programme but wishes to convert to an available mixed degree programme in the discipline in which non-law study has commenced shall have the maximum opportunity to do so.

Five-year LLB integrating legal and non-legal study

The consultants consider that two other five-year degree models are worthy of serious consideration and further development as an alternative to the four-year LLB. They are not the primary model recommended by the consultants and are put forward as examples of alternative models that might be developed. The terms of reference for the preliminary review require 'suggestions and alternative models for a reformed system of legal education and training in Hong Kong'.

The first is a programme in which legal and non-legal subjects are more closely integrated than under the four-year LLB or even under double degree programmes. Both of these programmes are likely to leave much to the student as to the choice of field of non-law study. Each has its peculiar limitations. The tightness of the four-year model, with its pressure to achieve liberal education goals, intellectual and legal skill formation, the folding in of the PCLL, and language development, militates against depth of treatment and favours compromise of important goals. The potential diversity of programme range in double degree programmes also acts as an obstacle to a structured, focussed and coherent integration of the perspectives and methodologies of the disciplines studied.

This alternative to the four-year LLB outlined above might focus upon the relationship between law and other disciplines in a way that replicates some of the goals of those combined law programmes that are not vocationally focused but are directed towards the development of liberal educational goals. It might secure the fuller realisation of those goals by a structured curriculum across a broader time frame. This curriculum would substitute the eclecticism of a liberal education programme that offers students a smorgasbord of choice among non-law subjects or double degree programmes with a programme that locates the study of law within a carefully designed intellectual framework. Such an integrated programme offers the prospect of true inter-disciplinary teaching and learning under a curriculum in which law is studied in close and structured association with fields of study with which it has an intimate connection. In this study the focus is upon the relationship between law and other fields, not upon each as independent subjects of study. Thus, the focus might be upon specific socio-legal problems and issues that shape legal principle and its development, rather than leave to happenstance the development of inter-disciplinary connection and focus.

This model might also treat professional skills development as part of the holistic development of legal skills. Thus, it might choose to provide for supervised and seminar related placements with firms, courts etc, securing a closer integration of academic work and legal experience with real clients. The lawyering skills content and clinical experience offered under the integrated programme might feasibly permit direct entry to in-training, perhaps supplemented with more modest institutional training than that proposed under the Legal Practice Course described below.

This programme might take its place alongside the range of double-degree programmes outlined above or, indeed, as an alternative to them. It might lead to the award of the Bachelor of Arts and Bachelor of Laws degrees.

Five-year LLB integrating academic and practical legal education

Another alternative model to the four-year LLB is a programme that effects an integration not merely of the substantive law content from the PCLL (as the four-year LLB would) but also the lawyering skills that are necessary for fledgling lawyers. In its essence, this model treats lawyering skills development as part of the *single* process of development of legal skills and competency. Law graduates under this model would proceed directly to in-training either in the form of a trainee solicitor contract or pupillage although they might be required to undertake some limited institutionally provided practical training.

The focus under this integrating model might be upon the teaching of generic professional skills – skills which are necessary in most of the principal forms of legal practice but which have a transferable quality so that they are deployable in a range of other occupations and professions. These include training in fact-finding, negotiation and facilitation skills, as well as the discrete skills, functions and ethics associated with decision-making.

As stated, the consultants also consider this model to be worthy of serious consideration and development as an alternative to the four-year LLB. This is not, however, the primary model recommended by the consultants and is not discussed further in the report.

5.5. Curriculum

Areas of essential knowledge in the LLB

The consultants do not feel in a position to identify with confidence the areas of knowledge necessary as a foundation for Hong Kong legal practice. The decision is one that requires close familiarity with and detailed experience of Hong Kong law and legal practice. The consultants accordingly recommend that the prescription of the areas of knowledge that are necessary to proceed to the vocational stage of training should be the responsibility of the proposed Legal Qualifying Council.

Specifically, the consultants do not believe that the areas of knowledge in the PCLL should automatically become a part of the compulsory core for purposes of professional qualification. Indeed, the consultants recommend strongly that any decision to convert these subject areas into a compulsory requirement for entry to the practical training course be taken with considerable caution since it has the effect of limiting student choice of electives. That choice is necessary if the expanded and ambitious LLB recommended here is to fulfil its purpose of serving a wider intellectual and vocational preparation.

The elective component of the LLB

It is intended that the substantive areas of law in the PCLL would become part of the LLB curriculum. The consultants anticipate that the major part of this curriculum will become elective subjects although this issue is one for the proposed Legal Qualifying Council in view of its superior capacity to make the judgment. The LLB needs to provide intellectual preparation for a number of vocations beyond law. The consultants

accordingly recommend that within the constraints of this decision and the need for a balanced and predictable elective offering, effort be made to include scope for specialisation by students in particular broad subject areas.

PRC law and legal system

Hong Kong is a springboard into the Mainland and, for the Mainland, as a window out to the world. This role and the accompanying opportunities will increase with China's prospective accession to the WTO. Lawyers in Hong Kong, if they are to continue to play the role of a bridge between the outside and the Mainland, need to be well equipped in Chinese law and with comparative law perspectives.

For this reason and for many others (not least of them so that Hong Kong lawyers are familiar with the legal structure and systems of their own country), it is essential that the LLB enables students to understand the principal features of the Mainland legal system and appreciate the differences between that and the Hong Kong system. The Consumer Council put it nicely in suggesting that Hong Kong law graduates should have a "basic understanding of rather than be well trained in Chinese law". The compulsory subject in PRC law and legal system is therefore an essential part of the LLB curriculum.

The consultants also recommend that priority be given in the development of the LLB curriculum to the offering of elective subjects on topics in PRC law of particular legal significance from both a practical and an intellectual perspective.

5.6. Teaching and learning methods

Emphasis upon active learning methods

A liberal education "implies that students are engaged in active rather than passive learning". The argument is strengthened, not weakened, by the addition of wider discipline-specific goals, whether of an intellectual or professional character. The consultants consider that teaching and learning methods should be framed by the intellectual and skills goals of the LLB programme. They include student centred, active learning and assessment methods that reinforce both the teaching and learning methods and the skill formation goals, including those of English language enhancement.

The consultants consider that the major impediment to the adoption of an interactive style of learning in the particular cultural context of Hong Kong is the lecture and tutorial method itself. The consultants recommend that it be discarded as the primary mode of instruction and that it be relegated to a mode used exceptionally where either staffing resources in a particular area or financial exigency require it. In its place the consultants recommend that interactive teaching in medium sized class groups based upon pre-assigned and pre-read material become the norm of instruction in Hong Kong law schools. The role of teachers in these class groups is not so much as providers of information but as stimulators, facilitators and modellers of analytical, critical, creative and deep thinking. This form of teaching and learning demands active participation by

students in each class. It encourages students to formulate the principles underlying the cases, and to articulate their thoughts.

The goals of English language enhancement through teaching method

The process of active learning proposed here includes a strong and rigorous emphasis on the use of English. One of the major advantages of the mode of teaching proposed is that the use of language would be constantly part of the process of learning. Interactive teaching in medium sized class groups based upon pre-assigned and pre-read material emphasises and develops proficiency with written and spoken English language.

Resources

The consultants are conscious of the financial demands and the radical character of the proposals they have made for the recasting of teaching methods. They are minded to persist in these proposals since there has been a widespread response in consultations and in other documentary sources as to the limitations (despite the assiduous efforts of dedicated academic staff) of the lecture method in Hong Kong. The consultants can see no other teaching initiative that is likely to produce a “legal education and training system best capable of meeting the challenges of legal practice and the needs of Hong Kong society into the 21st century” (as the terms of reference enjoin).

Clinical legal education

A gradual movement into real professional experience may assist the student to adjust to the realities of professional work. The combination of such experience with later year courses may assist students to perceive more fully the value of various areas of the law so that their study does not become book learning remote from daily work. Participation by students in legal clinics may also have the benefit of exposing students to the legal problems of the poor. The consultants accordingly recommend that the law school give consideration to the introduction of a law school operated legal clinic, perhaps one operated jointly by them.

5.7. Assessment

Assessment has a powerful impact on student learning behaviour. There is a considerable body of educational research to indicate the influence of the assessment process upon the focus and depth of student learning. The goals proposed for learning in the academic stage by the consultants will therefore be subverted if they are not supported by assessment methods that reinforce those learning objectives and reward their achievement.

The consultants recommend that the assessment system of each subject reflect the teaching and learning goals for that subject. If they are consistent with the goals identified above, the emphasis in assessment will be on methods of assessment that test students’ capacity to think logically, critically and creatively, to evaluate and to analyse legal problems. They will not be predominantly concerned with assessment that tests mere

recall of information, such as closed-book examinations and multiple-choice tests. The consultants recommend that a specific proportion of the marks for each subject be attributed to the students' capacity to exercise these skills. Where an examination is set as part of subject assessment, it should not usually be the sole assessment of the subject and should in the ordinary course be of the open-book type so that the examination tests skills and understanding rather than mere knowledge.

In view of the importance of legal research and writing skills for the development both of general intellectual and distinctively legal capacities, the consultants recommend that there be a compulsory requirement for the LLB to complete a substantial writing exercise as part of the assessment for at least one law subject.

5.8. Part-time law degree

Neither of the law schools in Hong Kong provides opportunities for study at undergraduate level for part-time students. It has been recommended above that there be a LLB programme for graduates available for part-time study. At least one of the law schools should be permitted, and given the necessary resources, to offer a true part time LLB degree that might be available also to non-graduates.

5.9. Achieving balance between the two law schools

There is a marked inequality in law student numbers, and consequently of law staff engaged in their education, in the two Hong Kong law schools. The consultants consider that the present inequality diminishes the advantages of having two law schools contesting for local and international recognition for their excellence in teaching and research, to attract the best students and to introduce innovative and responsive programmes. Two strong law schools are also important to provide a breadth of approach and perspective, a depth of research strength and the development of complementary strengths and initiatives. The present imbalance in student and staff numbers strongly favours the more established school. Accordingly, the consultants recommend that a conscious decision be taken to strengthen the law student intake and, consequently, staffing levels at CityU so that it achieves the critical mass that is a pre-condition to the healthy competition between two strong, balanced law schools.

5.10. Recommendations in regard to the academic stage

Goals and objectives of the academic stage

- 1 That the undergraduate law degree is a valuable preparation not only for the practice of law but also for a variety of other careers, and that this characteristic should be given weight in planning degree structures and content.

- 2 That the generic or generally transferable intellectual skills and competencies common to most university education in the humanities and social sciences are essential to legal education.
- 3 That the goals of the academic stage include the development of intellectual skills and competencies specific to the discipline of law. These draw upon general transferable skills of analysis and problem solving but take on a cast of thought and intellectual method that is specific to the discipline of law.
- 4 That, subject to the choice of structure of the academic stage, professional legal (or lawyering) skills have a legitimate place in the academic stage of legal education in Hong Kong, but not as an essential requirement for each school. Accordingly it is appropriate for a law school to include such skills in the LLB curriculum either as an elective subject or subjects or as part of the compulsory core.
- 5 That it is for each law school to strike a balance between the several goals in intellectual and professional skill development within the broad objectives determined by the statement of standards that applies prescriptively to all stages of legal education for purposes of legal qualification.
- 6 That law schools should be clear in the identification of their distinctive mix of goals and aims, and should communicate that distinctiveness clearly to students. The precise balance that each strikes should be carefully stated, for example, by stressing the weight given to each of several approaches in the curriculum that are, in the end, competitors for emphasis and resources within the curriculum. They should not be hidden behind vague formulations that conceal the distinctive character of the law programme of the school.
- 7 That law is a discipline whose study under the appropriate spirit and teaching practices (and with appropriate complements) provides a liberal education for those who undertake it primarily for vocational preparation, in law or in another field, as well as for those who undertake it solely for intellectual formation.
- 8 That the study of law needs to be pursued with a spirit of critical inquiry so that the reason for a rule is as significant as the rule itself.
- 9 That reliance cannot be placed upon the study of law, even pursued in a multi-dimensional character, to secure the desired intellectual skills and competencies characteristic of university education in the humanities and social sciences. Education in this style and intellectual method should not be imposed upon law teachers. Further, the skills required of those practising this method are of a broad range and are not evenly distributed among law teachers.
- 10 That, accordingly, legal education in Hong Kong should expose students to disciplines outside of law.

Structure of law degree programmes

Graduate law programme

- 11 That the LLB does not become a programme open only to graduates.
- 12 That there be a LLB programme for graduates that might be completed in three years, or less with accelerated study.
- 13 That the LLB programme for graduates should also be available for part-time study so that its completion is not at the expense of the career or employment upon which the graduate has embarked.

Four year LLB

- 14 That the primary model for the academic stage of legal education in Hong Kong comprise a four-year LLB degree in the first two or three years of which law and non-law subjects are taken concurrently.
- 15 That non-law subjects represent approximately one-quarter of the credit load for the LLB degree and law subjects three-quarters.
- 16 That the curriculum in the third and fourth years of the four-year LLB include certain subjects, either as core or as elective subjects, that are presently dealt with in the PCLL programme.
- 17 That the status of such subjects as compulsory or elective subjects should be a matter for decision by each university subject to any prescription in the statement of academic standards required for professional admission.
- 18 That in the light of the determination of the Legal Qualifying Council as to what portion (if any) of the PCLL should be required for purposes of admission, the universities should review whether the component of non-law study should be reduced, but not below the equivalent of one-half of one year of study.

Double (or combined) law programmes

- 19 That the four-year LLB be structured so that students may take a five-year double (or combined) law programme by adding on a fifth year.
- 20 That students undertaking such a double degree programme study the same law subjects as those in the four-year LLB programme but their non-law studies be sufficient in breadth and structure to lead to the award of a second degree.
- 21 That the double degree programme be structured and taught as an interdisciplinary degree, at least in the first three years when elements of both disciplinary fields are studied.
- 22 That the focus and content of non-legal study reflect the character of the individual double degree programme, varying between those programmes that

- have the objective of broader intellectual formation (eg, an Arts/Law programme) to those with a more explicitly vocational orientation (eg, Finance/Law).
- 23 That the LLB and double degree programmes be structured with maximum articulation between them, so as to enable students to move with as much flexibility as possible between single and double programmes.
 - 24 That places in double degree programmes receive full UGC funding since they secure valuable academic and/or vocational formation for those who undertake them.

Five year LLB integrating legal and non-law study

- 25 That a five-year degree programme which integrates legal and non-law study is worthy of serious consideration and further development as an alternative to the four-year LLB. The programme would lead to the award of the Bachelor of Arts and Bachelor of Laws.
- 26 That such a programme might take its place alongside the range of double-degree programmes recommended above or as an alternative to them.
- 27 That the rationale for such an integrated programme is that it offers the prospect of true inter-disciplinary teaching and learning under a curriculum in which law is studied in close and structured association with fields of study with which it has an intimate connection. In this study the focus is upon the relationship between law and other fields, not upon each as independent autonomous subjects of study.
- 28 That this model might also provide for professional or lawyering skill development as part of the holistic development of legal skill and competency, including through supervised and seminar related placements with firms, courts etc, securing a closer integration of academic work and legal experience with real clients.
- 29 That the scope of subsequent legal practice training required before entry to in-training after such an integrated model would depend upon the place assigned to legal skills development in the programme. The lawyering skills content and clinical experience offered under the integrated programme might feasibly permit direct entry to in-training, perhaps supplemented with more modest institutional training than that proposed under the proposed legal practice course.

Five year LLB integrating academic and professional legal education

- 30 That a five-year degree model integrating academic and professional legal education is worthy of serious consideration and further development as an alternative form of legal preparation to the four-year LLB. It might take its place side by side with double degree programmes recommended above.
- 31 That law graduates under this model proceed directly to in-training either in the form of a trainee solicitor contract or pupillage although they might be required to undertake some institutionally provided practical training before, during or at the

conclusion of the vocational training stage to complement LLB studies. The scope and duration of such practical training would be less than that proposed for the legal practice course to follow the four-year LLB proposed above.

Funding of law degree programmes

32 That each of the five law degree programme models be fully UGC funded.

The knowledge content of the LLB

- 33 That the prescription of the areas of knowledge which must be completed before proceeding to the vocational stage of training should be determined by the Legal Qualifying Council.
- 34 That the possible criteria for identifying the compulsory core of the LLB (including areas within the PCLL) might include considerations such as that the area is one that –
- deals with principles or subject matter, legal methods, or techniques which are fundamental for the law or legal system as a whole or are of social or political or economic significance;
 - is a “building block” for other subjects or for important areas of legal practice; or
 - assures a broader perspective about the operation of law and the legal system in society.
- 35 That there is a strong principle supporting greater freedom of choice of electives on the part of students so that they have the opportunity to study particular areas in depth, particularly those that build upon non-legal studies in the LLB or in mixed degree programmes. This principle needs to be borne in mind in considering the scope of areas of knowledge to be prescribed for admission purposes.
- 36 That the areas of knowledge in the PCLL should not automatically become part of the compulsory core for purposes of professional qualification.
- 37 That the elective portion of the LLB curriculum address pressing social and technological developments that are likely to have an impact upon legal practice or other careers of graduates where those courses do not satisfy the criteria for inclusion in the compulsory core.
- 38 That law electives be offered with such consistency and forward projection that student elective planning can be done on a predictable basis from a balanced range of subjects.
- 39 That, subject to the objective of providing a balanced and predictable elective offering, effort be made to include scope for specialisation by students in particular subject areas.

- 40 That the law schools explore ways of combining education in Hong Kong law with education in Mainland law, so as to be able to train lawyers who are dually qualified in both jurisdictions.
- 41 That priority be given in the development of the LLB curriculum to the offering of elective subjects on topics in PRC law of particular legal significance from a practical or intellectual perspective.
- 42 That Hong Kong law schools continue their commendable initiatives to develop postgraduate coursework programmes in PRC law for the benefit of Hong Kong and Mainland lawyers.

Teaching and learning methods

- 43 That the aim of teaching and learning in law should be to have students engage with the course material so that the learning experience is one of active and not passive learning.
- 44 That the existing system of teaching and learning, where it involves the primary use of lectures for the delivery of information supplemented by tutorials, is inadequate to meet the goals and objectives identified for the LLB programme.
- 45 That the lecture and tutorial method be discarded as the primary mode of instruction in the LLB and be used exceptionally where either staffing resources in a particular area or financial exigency require it.
- 46 That teaching methods employed in the LLB programme should enable students to think logically, critically and creatively, to have the capacity to evaluate, and to analyse legal problems and issues. What takes place in the classroom and what is required in the examination room must ensure that these capacities are developed and assessed.
- 47 That interactive teaching in medium sized class groups based upon pre-assigned and pre-read material become the norm of instruction in Hong Kong law schools.
- 48 That the role of teachers in these class groups be not so much as providers of information but as stimulators, facilitators and modellers of analytical, critical, creative and deep thinking.
- 49 That, in order to encourage and reward active participation in class, students' participation in class be part of the assessment scheme of each LLB subject.
- 50 That the effects and outcomes of the methods employed in Hong Kong law schools be monitored by educational research and evaluation.
- 51 That law schools be funded with such additional resources as are necessary to support the adoption of interactive mode of teaching recommended as the standard mode of teaching and learning since this method requires a lower staff: student ratio than passive modes of instruction based upon large lecture groups.

- 52 That a commitment by a law school to legal professional skills training be funded at a level sufficient for this teacher-intensive form of learning.
- 53 That teaching methods are adopted that promote English language proficiency, spoken and written, which should ordinarily form part of the assessable curriculum for all subjects.
- 54 That the law schools give consideration to the introduction of a law school operated legal clinic, and specifically to a clinic operated jointly by them.

Assessment

- 55 That teachers make clear to students the purpose of work undertaken for assessment and its relation to the objectives of each subject.
- 56 That subject objectives, learning activities and assessment, need to be mutually supportive.
- 57 That assessment tasks address the expected learning outcomes for a subject so students need to perform at a high level to meet the requirements of the subject.
- 58 That assessment tasks be treated as an integral part of the learning process rather than a summative measure at the end of the subject.
- 59 That teachers keep students continuously informed as to their progress so as to develop a sense of self-confidence and competence.
- 60 That a specific proportion of the marks for a subject be attributed to the students' capacity to exercise the particular skills identified as appropriate for each subject.
- 61 That where an examination is set as part of subject assessment, it should not usually be the sole assessment for the subject.
- 62 That where an examination is set as part of subject assessment, it should in the ordinary course be of the open-book type so that the examination tests skills and understanding rather than mere knowledge recall.
- 63 That a student' participation in class be part of the assessment scheme of each LLB subject.
- 64 That there be a compulsory requirement for the LLB to complete a substantial writing exercise as part of the assessment for at least one law subject.

Part time law degree

- 65 That at least one of the law schools be permitted, and given the resources to enable it, to offer a true part time LLB degree that might be undertaken by non-graduates as well as by graduates.

Achieving balance between the two law schools

- 66 That a conscious decision be taken to strengthen the law student intake and, consequently, staffing levels at CityU so that it achieves the critical mass that is a pre-condition to the healthy competition between two strong, balanced law schools in Hong Kong.

6

The vocational stage

6.1. Concerns about the PCLL and its reform

The consultants have concluded that, despite what might be said in the objectives for the PCLL and elsewhere, in reality the PCLL, particularly at HKU, is primarily an additional year of law studies – with a distinct academic emphasis in its goals, content, teaching methods and assessment.

The consultants have concluded that the Hong Kong legal education system lacks an effective and reliable process of practical training, and that that deficit significantly inhibits its ability to meet the challenges of legal practice and the needs of Hong Kong society of the 21st century. They conclude this because they do not believe –

- that the PCLL provides, or is capable of providing, the essential element of practical training which enables academic training to be used in practical ways, and
- that pupillage or trainee solicitor contracts alone provide, or are capable of adequately and consistently providing, training in lawyering skills to the standard required if the Hong Kong legal profession is to be of world standard.

The consultants suggest that the PCLL cannot do both, and that the academic and practical preparation of Hong Kong's future lawyers would be better served by folding back into a fundamentally reformed law degree those aspects of the PCLL course which are appropriately dealt with in a law degree, and moving into a new legal practice course the skills training component.

The consultants suggest that it is unlikely that the PCLL could remain within the universities and yet become a single integrated course focussed on lawyering. They are also sceptical that the existing teachers would willingly and happily move to this arrangement.

The consultants have very carefully considered the recent proposals of the Faculty of Law at HKU for the reform of the PCLL at that law school. They are not convinced that those reforms will address sufficiently the concerns which, they suggest, are inhibiting Hong Kong acquiring a system of practical training for legal practice sufficient to match the expectations and demands of the legal profession in the 21st century.

The consultants suggest that the only realistic and effective means of developing a process of practical training, within an institutional setting, of the standard needed to meet the expectation in the terms of reference, *ie.* capable of meeting the challenges of legal practice and the needs of Hong Kong society into the 21st century, is to remove institutional practical training from its university setting. Based on experience in other jurisdictions, an institution devoted solely to practical training, appropriately staffed and with a tightly focussed programme dedicated to specific practical legal training goals, is likely to require less resources.

This means that, although some or even all of the students may need to pay fees to undertake their practical training, the practical training institution could be free to set its own standards in the knowledge that it had the funding, to enable them to be met. The result of this would be that, with proper budgeting, teaching and assessment methods could be employed which were of world standard.

The consultants believe that present inconsistencies and inequities in access to vocational training through the PCLL could be overcome by having a separate legal practice course in its own institute. It would be able to provide places to all those who were otherwise qualified and were seeking a place, as it would have its own funds and would not be constrained by the limitations which the universities face, reliant as they are on the UGC for the number of places to be funded and the level of funding.

The consultants have concluded that the only way to resolve the impasse in present arrangements is to give to the universities that which is most appropriately dealt with by them in view of their distinctive expertise and mission, and to place the institutional practical training into a specific vocational stage for which the professions would be responsible. This means that the proposed legal practice institute would not be placed within the universities although it may be affiliated with the universities in order to attract UGC funding. As well, although there might be some members of its governing and/or teaching body drawn from the law schools, it would be the creature of the profession.

Although this proposal would separate the two stages – academic and vocational – the consultants believe this is the most likely to succeed. This does not mean, however, that there would not be a process and a venue for regular exchange of views and indeed for the formulation of the general expectations of those to be admitted to practice in Hong Kong, in which all would be involved. This would be done through the proposed Legal Qualifying Council.

6.2. Proposed new arrangements for practical training

The main elements of the proposal for a new system of practical training are, in summary, as follows:

That there be a period of training for both future barristers and solicitors to be known as the vocational stage. This period would comprise both institutional based practical training, to be known as the legal practice course (LPC) and pupillage or the trainee solicitor contract. The total length of this period would be one year and 16 weeks for

those seeking admission to the Bar and two years for those seeking admission as solicitors.

That the PCLL be abolished and a free-standing institution be established to conduct a course of practical preparation for law graduates seeking to be admitted as barristers or solicitors in Hong Kong. The institution be governed by a board on which the two branches of the profession would have substantial representation but which would also include people drawn from the judiciary, government, the universities and the community. The institution, although the profession's own training body, would be required to conduct its affairs in a transparent way.

That the LPC would preferably be conducted in its own premises.

That the legal practice course be supported with UGC funding to the fullest extent possible but, to the extent that it should not be possible, those students who are not so supported should pay a fee which reflects their proportionate share of the true cost of conducting the course.

6.3. Characteristics of the proposed Legal Practice Course

The LPC would form part of the proposed vocational stage and that the remainder of the period would be the trainee solicitor contract or pupillage, as appropriate.

The LPC would be an intensive course of four months (16 weeks).

The LPC would take the form of solely practical training, that is training in transactions and skills, within a strong ethical context.

Innovative teaching methods would be employed, including learning-by-doing and the inclusion of some distance learning approaches.

The LPC curriculum would be based on a conceptual framework of how legal work is done rather than necessarily being structured around subject areas of the law.

Teachers in the LPC would generally be practising lawyers with current or very recent experience of practice.

A small core of teachers in the LPC would be full time, but extensive use would be made of those appointed for short periods of full time teaching, or part time teachers or guest teachers for specific topics.

The LPC could have a common core of instruction for those seeking admission either to the bar or the solicitors' branch, and in that case there would also be options, which could be chosen depending on whether a student intended to practise at the bar or as a solicitor.

The LPC would be modularised, enabling students to undertake all of it immediately prior to pupillage or a training contract, or in two blocks, one at the beginning and the other during the remainder of the vocational stage, or spread out in three or more modules throughout the vocational stage.

The LPC would be available in a part time mode.

6.4. Pupillage and the trainee solicitor contract

The consultants believe that the concept of on-the-job training, which pupillage and a traineeship ideally provides, should continue to be part of the process of preparation for practice as a barrister or solicitor in Hong Kong. They also believe that the total period of the vocational stage for barristers should be increased to one year and four months, comprising four months for participation in the LPC course and a one year period of pupillage after call to the Bar. But they believe that the total period of the vocational stage for solicitors should remain at two years, comprising four months for participation in the LPC course and 20 months (the remainder of the two year period) in a trainee solicitor contract.

The consultants were concerned about the system of pupillage and believe that the Bar Association should appoint a working party to review the adequacy of training being received by pupils and of the system to monitor it, with a view to reforming the system.

The consultants support the reforms being initiated by the Law Society to the system of trainee solicitor contracts. They are aware of the frequent observation that in many cases the training received in trainee solicitor contracts is inadequate or even non-existent. The proposed reforms, together with the proposed legal practice course, will hopefully address some of the deficiencies.

The consultants do not believe that, as a solution to problems in regard to pupillage or the trainee solicitor contract, an examination at the end of either of them should be introduced.

6.5. The distinctive character of the proposed model

The model proposed is unique. It has no precise counterpart in any other country, to the knowledge of the consultants. Its structure owes much to the English traditions of Hong Kong legal education and, in particular, to the model of an undergraduate law degree with predominantly liberal education goals followed serially by institutionally-provided professional legal training and in-training through a training contract or pupillage. The English model remains the primary referent of the consultants' proposal for Hong Kong.

However, the proposal varies the United Kingdom model in the following respects —

- It formally combines some element of non-law study with the study of law at the undergraduate stage; in this idea, but not in its form, it reflects the experience of Australian law schools with combined law programmes.
- In its advocacy of interactive modes of teaching and learning and of reinforcing forms of assessment, it reflects the emphasis in United States and Canadian legal education.

- It supports but does not mandate the formal introduction at the academic stage of professional (or lawyering) skills in the manner of United States and Canadian law schools.
- It proposes a practical skills focus in the LPC which reflects recent developments with the Legal Practice Course and the Bar Vocational Course in the United Kingdom but which build also upon the experience of Canada, Australia and New Zealand with institutionally provided practical legal training.
- The conversion course proposed for those seeking to undertake the vocational stage of training in Hong Kong on the basis of overseas academic qualifications reflects the longstanding experience with like courses in Singapore and Malaysia.

6.6. Recommendations in regard to the vocational stage

The PCLL

- 1 That the PCLL be discontinued.

The vocational stage

- 2 That there be a period of training for both future barristers and solicitors to be known as the vocational stage.
- 3 That in the case of future barristers this period be one year and four months and in the case of future solicitors it be two years.

Organisational arrangements for a legal practice course

- 4 That a free-standing institution be established to conduct a course of practical vocational preparation for law graduates seeking to be admitted as barristers or solicitors in Hong Kong.
- 5 That the course conducted by the institution be known as the Legal Practice Course.
- 6 That, in the alternative, the course could be conducted by the proposed Academy of Law, a concept which has recently been endorsed by the Council of the Law Society.
- 7 That the course could be established under the *Legal Practitioners Ordinance* or by its own ordinance, or as a company or in some other way.
- 8 That the institution (assuming it is not the proposed Academy of Law) be governed by a board on which the two branches of the profession would have substantial representation but which would also include people drawn from the judiciary, government, the universities and the wider community.

- 9 That the institution, although the profession's own training body, would be required to conduct its affairs in a transparent way.

Numerical entry quotas

- 10 That the institution not impose any numerical quotas for entry to the legal practice course, although it would be empowered to specify entry standards in regard to matters such as academic merit or language.

Premises

- 11 That preferably the legal practice course be conducted in its own premises.

Establishment grant

- 12 That an establishment grant be sought to obtain and set up premises for the legal practice course to recruit the initial group of staff, and to design and plan the course.

UGC funding and fees

- 13 That the legal practice course be supported with UGC funding to the fullest extent possible but, to the extent that it should not be possible, those students who are not so supported should pay a fee which reflects their proportionate share of the true cost of conducting the course.

Characteristics of the Legal Practice Course

- 14 That the legal practice course would form part of the proposed vocational stage and that the remainder of the period would be the trainee solicitor contract or pupillage, as appropriate.
- 15 That the legal practice course be an intensive course of four months (16 weeks).
- 16 That the legal practice course would take the form of solely practical training, that is training in transactions and skills, within a strong ethical context.

Teaching methods

- 17 That innovative teaching methods be employed, including learning-by-doing and the inclusion of some distance learning approaches.

Curriculum

- 18 That the legal practice course curriculum be based on a conceptual framework of how legal work is done rather than necessarily being structured around subject areas of the law.

Relationship with pupillage and trainee solicitor contract

- 19 That the legal practice course, to the extent possible, seek to complement and reinforce the training received in pupillage or a trainee solicitor contract.

Teachers in the legal practice course

- 20 That teachers in the legal practice course would generally be practising lawyers with current or very recent experience of practice.
- 21 That a small core of teachers in the legal practice course would be full time, but extensive use would be made of those appointed for short periods of full time teaching, or part time teachers or guest teachers for specific topics.

Initial planning and design

- 22 That it would be appropriate to seek expertise and assistance from outside the Hong Kong legal profession and legal education community to work with those responsible for the initial planning, design and presentation of the legal practice course.

Common core and options

- 23 That the legal practice course could either be two separate courses – one for solicitors and one for barristers, or it could have a common core of instruction for those seeking admission either to the bar or the solicitors’ branch, and there would also be options, which could be chosen depending on whether a student intended to practise at the bar or as a solicitor.

Modularisation of the legal practice course

- 24 That the legal practice course be modularised, enabling students to undertake all of it immediately prior to pupillage or a training contract, or in two blocks, one at the beginning and the other during the remainder of the vocational stage, or spread out in three or more modules throughout the vocational stage.

Part time legal practice course

- 25 That the legal practice course be available in a part time mode.

Assessment

- 26 That students would generally be assessed at the end of the various modules and those who did not pass would be required to repeat the module, at some later time during the remainder of their vocational stage.
- 27 That students would be assessed as to whether they “could do”.

Pupillage and the trainee solicitor contract

Generally

- 28 That the concept of on-the-job training, which pupillage and a traineeship ideally provides, continue to be part of the process of preparation for practice as a barrister or solicitor in Hong Kong.
- 29 That the vocational stage leading to admission to practice in Hong Kong comprise two elements – pupillage or a trainee solicitor contract, on the one hand, and the legal practice course on the other.
- 30 That the total period of the vocational stage for barristers be one year and four months, comprising four months for participation in the legal practice course and a one year period of pupillage after call to the Bar.
- 31 That the total period of the vocational stage for solicitors be two years, comprising four months for participation in the legal practice course and 20 months (the remainder of the two year period) in a trainee solicitor contract.
- 32 That, in the alternative, the length of vocational preparation for barristers and solicitors be the same, in which case it might be, say, 100 weeks, comprising four months in the legal practice course and 84 weeks (1 year 32 weeks) in pupillage or a trainee solicitor contract.
- 33 That, as a solution to problems in regard to pupillage or the trainee solicitor contract, an examination at the end of either of them not be introduced.

Pupillage

- 34 That the Bar Association appoint a working party to review the adequacy of training being received by pupils and of the system to monitor it, with a view to reforming the system to ensure that there are procedures in place to ensure adequate training for those in pupillage.
- 35 That the Bar Association's proposal to make participation in the Pupils Programme as from September 2001 be implemented.

Trainee solicitor contracts

- 36 That the Law Society implement its reforms of the trainee solicitor contract, as now expressed in its *Position on Legal Education and Training*.
- 37 That the proposal, as now encapsulated in the Law Society's *Position on Legal Education and Training*, to establish a monitoring system, is endorsed.

7

A common admission standard

7.1. A common education standard for those seeking their first professional qualification

It is a distinctive feature of Hong Kong that it attracts lawyers from a wide variety of other countries. There is virtue, indeed a probable inevitability, in this reliance upon lawyers who have had some or all of their education and training overseas. The consultants do not seek to undermine this open-textured heterogeneity. However, they wish to ensure that it is not achieved at the cost of the integrity and consistency of the Hong Kong legal education system. It is less inevitable and perhaps less desirable that so many Hong Kong residents should resort to external study of law from overseas providers.

There are a number of modes of external study of law undertaken by Hong Kong residents and tuition is available locally to support them. The principal examples are the Continuing Professional Examination (CPE) and the University of London LLB. Tuition for both can be undertaken through SPACE. The consultants do not make recommendations with respect to continuing recognition for admission purposes of these individual programmes of study.

Rather, they recommend that the best way to ensure a common standard of academic preparation for all seeking professional admission in Hong Kong other than on the basis of overseas qualification and experience as a lawyer is for the proposed Legal Qualifying Council to issue a statement of academic standards in the preparation of legal practitioners. The educational preparation of those seeking a place in the Legal Practice Course (whether graduates from local or overseas law programmes or of other forms of completing the academic stage) may then be measured against this standard. Deficits in areas of knowledge or required skills might be made up by a conversion course offered in Hong Kong.

Accordingly, this process permits a system of flexible multiple entry points but ensures the integrity of the system through the single statement of admission requirements which are capable of being met by a variety of programmes of study, taken in Hong Kong or overseas, but tested against that standard.

7.2. Recognition of overseas qualification and experience as a lawyer

The consultants consider that the general design and operation of the Overseas Lawyers Qualification Examination for admission as solicitors works well. There are questions of detail and some of principle that justify close attention. Overall, the examination system works as well as might be expected, however, and superior arrangements are not indicated from examination of international practice.

7.3. Recommendations in regard to a common admission standard

Common standard

- 1 That a common standard of academic preparation for persons seeking professional admission in Hong Kong other than on the basis of overseas qualification and experience as a lawyer be established by the Legal Qualifying Council issuing a statement of academic standards in the preparation of legal practitioners.
- 2 That the common standard expressed in the statement is that against which the skills, knowledge and values formation content of law courses completed by those seeking entry to vocational training in Hong Kong (other than those of accredited Hong Kong law schools) are judged.

Conversion course

- 3 That, for persons seeking entry to vocational training in Hong Kong on the basis of academic qualifications other than those of the LLB from a Hong Kong university, a conversion course be established to make up deficits measured against the statement of academic standards required for entry to the vocational stage.
- 4 That, while the precise area of shortfall that needs to be made up will vary with the nature of the legal education received by each applicant for entry to the conversion course, possible areas of deficit that would need to be made up by those taking their legal education outside Hong Kong universities include:
 - Legal System of the People's Republic of China
 - Hong Kong Constitutional Law
 - Hong Kong Property Law and
 - legal research and writing skills.
- 5 That the subjects required in the conversion courses give credit for study undertaken in overseas courses so that the full local subject requirement is not automatically required but might in a particular area (eg, Hong Kong

Constitutional Law and Property Law) be simply a bridging course in areas where Hong Kong law is significantly different to that of the overseas legal system studied by the applicant.

- 6 That the standard duration of the conversion course for the holder of a three year full time law degree might well be six months although a decision as to duration would depend upon the content of the statement of academic standards issued by the Legal Qualifying Council.
- 7 That the Hong Kong law schools are the natural and obvious providers of the conversion course by dint of their expertise and central role in Hong Kong legal education.
- 8 That consideration be given to the formal recognition of the conversion course through the granting of an academic award to those who complete it.
- 9 That although the law schools are the natural providers of the conversion course, if the implementation of the conversion course proposal or its future operation through Hong Kong law schools should prove unsatisfactory, the Legal Qualifying Council might consider accrediting other course providers.

Overseas Lawyers Qualification Examination

- 10 That the design and operation of the Overseas Lawyers Qualification Examination for admission as solicitors is endorsed.
- 11 That the overall aims and standards of the Overseas Lawyers Qualification Examination for admission as solicitors be clearly expressed and communicated to all involved in teaching and assessment for the Examination as well as to the examinees. In particular, the statement should clarify the general standard of proficiency against which the examination is set.
- 12 That the Law Society keep under constant review the selection of heads for the Examination to ensure that they reflect the principal areas of emphasis and skill needed in contemporary legal practice in Hong Kong.
- 13 That the administration of the Overseas Lawyers Qualification Examination not be transferred to the Legal Qualifying Council

8

Academic staff development and training

8.1. A new way of envisaging the process and dynamics of academic legal education

As already discussed, the consultants' proposal is that what is required is not simply a new structure for legal education but, more importantly, a new approach to how law is taught and learnt. This will have a direct impact on the role of the law schools and of law teachers.

The consultants have proposed a typology of the skills that need to be developed in the process of legal education and training in Hong Kong. They are –

- general intellectual skills and frameworks of a transferable character
- intellectual skills and competencies that are specific to the discipline of law
- professional skills, broadly interpreted
- skills and competencies required for legal practitioners
- personal attributes, ethical capacities and values.

Although not all of these skills can, or should, be developed at the academic stage of legal education, there is nevertheless a question as to whether the curricula, as presently constructed, and the way in which law is taught, best facilitate the development of those listed skills which are appropriately developed at the academic stage.

The expectations of a law degree, expressed to the consultants during the consultations, suggest a law degree which focusses less on coverage (without questioning for a moment the need to 'know the law'), and more on the development of intellectual and 'professional' skills. If this is to be a dominant focus of how law is taught in Hong Kong's law schools, it will need not only a new curriculum but equally teachers with the abilities to teach in a way that develops the skills of the mind, and a readiness to do so.

There will need to be considerable professional development of Hong Kong's law teachers to enable a shift to the use of, what may be for some, new or more advanced skills in teaching (or enabling learning). There will also need to be a refreshed commitment to those elements of the aim of a law degree which refer to the development of intellectual and professional skills and frameworks.

The consultants propose that, if the legal education and training system is to meet the challenges of legal practice and the needs of Hong Kong society into the 21st century, and is to be one which equals best international practice, then –

- law students need to be required throughout all of their degree to display, in class and in assessments, the capacity to think analytically, critically, creatively and deeply
- accordingly, what takes place in the classroom and what is required in the examination room must ensure that this capacity is truly developed and assessed
- as this is a way of learning which will be foreign and challenging to many, if not most, law students, it will be a way of learning which they will need to learn to use
- and so the existing system, with its dominant approach of delivery of information in lectures will no longer be adequate
- but rather interactive teaching in medium sized class groups based upon pre-assigned and pre-read material must become the norm and teachers in those seminars will be not so much the providers of information but the stimulators, facilitators and modellers of analytical, critical, creative and deep thinking
- and, as well, the use of language will be constantly part of the process of learning.

In brief, what is needed is an active form of learning to encourage analytical, critical, creative and deep thought. This is not to say that this is not happening in legal education in Hong Kong. The consultants were told of, and impressed by, courses where this approach is very much encouraged. But the consultants suggest that what has been done in those courses is not, but must become, the norm.

In addition, the consultants propose that the assessment system also needs to change to reflect this changed emphasis. This will mean –

- that the emphasis will be less on methods of assessment which test the recall of information, such as examinations and multiple choice tests;
- rather, students will be more specifically assessed as to their analytical, critical, creative and deep thinking, and emphasis will not simply be given to coverage – with the result that a specific proportion of the marks will be attributed to the students' capacity to exercise these skills; and
- and, in addition, continuous and end-of-course assessment will specifically test language ability.

8.2. A ‘cultural change’ in regard to the law teacher’s role

All of this suggests that the role of the law teacher in Hong Kong, if this vision is to be implemented, must change dramatically. The law teachers in the reformed system will need to be, to the same degree as a present, subject matter experts; *ie.* have mastery of the areas of law in which they are teaching and researching. They will continue to need to be scholars, researching and writing in areas of interest to them. The consultants do not intend, in any way, to understate the importance of what law teachers do as researchers. It is essential that their capacity to research continues to be supported through staff development funding.

But they will need also to have the expertise to identify and develop in their students the skills of analytical, critical, creative and deep thinking. They will be those responsible for producing a group of lawyers with these high level intellectual abilities. This will require radically different teaching methods and skills on the part of teachers: a cultural shift of considerable dimension, rarely attempted. It will need external modelling and assistance and constant renewal through staff development to avoid slipping back to the cultural norm elsewhere in Hong Kong universities.

The successful implementation of the new LLB will critically depend on the readiness of law teachers to adopt an attitude to support the change and skills to implement it.

8.3. A structural impediment to achieving this cultural change

It may well be that Hong Kong’s law teachers, having seen the necessity to place greater emphasis on the development of intellectual skills and language ability, will be willing to assume this new approach to teaching law – or, more accurately, to adopt it even more than at present. But, the change could well be impeded by –

- the pressure which the university places on all teachers to research and publish, and
- insufficient funding being provided to ensure a sufficient number of teachers are available to support such an educational programme.

Both of these impediments effectively now mean that university teachers must ration the time which they can allocate to teaching, because they must allow sufficient time for their research and writing – both for the sake of their own careers and for the benefits which flow to the law school and the legal profession from a high research output. This change, therefore, will only be possible if the university is ready to recognise, in real ways not just in lip service, that this type of teaching requires considerable time, in preparation, in the classroom, in marking assessable work and in one-to-one contact with students as well, of course, as the time needed to be dedicated to the acquisition of new teaching skills and their refinement.

The university can do this in two ways. It can recognise that that form of teaching is of equal importance as research and writing, when it comes to considering tenure and

promotion. It can also provide sufficient funds to the law programme to ensure that such an educational programme can be implemented. Unfortunately, the discipline of law, not just in Hong Kong but in many countries, suffers from a perception that it can be taught in large lecture theatres and requires little more than didactic teaching. The students of such teaching are not what Hong Kong needs, or requires.

If sufficient funds for this more intensive form of teaching are not forthcoming, the whole thrust of the reforms proposed in this report will be undone.

This is where it must be recognised that the sort of lawyers envisaged by the terms of reference, and so clearly needed in Hong Kong, do not come cheaply. The existing academic, and indeed practical, education system is clearly inadequately funded for what is expected of it. Hong Kong recognises that its legal education system is not producing sufficient world class law graduates. It will never turn that around unless it is willing to fund its law schools so that they can staff to a level where interactive teaching can take place, which inevitably requires small groups, and its teachers can continue to research, write and carry out scholarly work which enables them to be of world standard.

8.4. A new role in regard to language

A particular thrust of the consultants' recommendations is that an effective, indeed the most effective, way to enhance law students' language proficiency and ensure that minimum standards are achieved is to treat language as part of the learning process. This means that students, when expressing themselves orally and in writing, will be coached on their use of language, and the assessments will treat language proficiency as a criterion upon which marks are awarded.

The advice given to the consultants by some language teachers in Hong Kong is that this requires special skills on the part of the teacher. The reforms envisage, therefore, that Hong Kong's law teachers will be given assistance in understanding what is involved, and coaching in how to recognise and deal with language difficulties and in appropriately assessing language within the context of assessment of law work.

8.5. Recommendations in regard to training and support for Hong Kong's law teachers in their new roles

The consultants propose that, in order that this essential element is in place to ensure that the new approach to law teaching is successfully achieved, it will be necessary for a major effort to be made to provide training and ongoing professional development support to all of Hong Kong's law teachers.

The consultants therefore recommend –

- 1 That a joint law schools working party be established with a view to developing an appropriate professional development programme for Hong Kong's law teachers –
 - in the use of interactive teaching to develop intellectual skills in the classroom
 - in the assessment of such skills
 - in becoming proficient tutors in language within the context of law teaching.
- 2 That the universities and the government will need to provide sufficient additional funding to ensure there is proper design of such training, that it is provided to all law teachers, and that there is adequate ongoing support for them as they implement these changes.
- 3 That it would be appropriate for the two universities to seek a special grant from the UGC to enable these recommendations to be implemented.
- 4 That the universities and the government accept, and respond accordingly to the reality that the proposed new type of law degree will require a higher level of funding than presently is the case in order that more staff can be engaged so as to enable small group teaching which the interactive form of teaching will require.

Equity and access in legal education

9.1. General principles in regard to access and equity

There is a general and widely accepted ideal that a civilised society's system of education, including of course legal education, should not exclude anyone from the opportunity to study on grounds other than academic potential or merit. It is for this reason that, generally, in developed societies a middle way is sought to be found between free tertiary education and education which only the rich or privileged can afford – thus excluding those who are already disadvantaged. Although a perfect solution can rarely be found, the ideal is to have an education system which provides as much access as possible to all who wish to study, and which operates in an equitable manner whereby applicants for places are not disadvantaged because of a characteristic which does not relate to their ability to study and learn.

As discussed elsewhere, there are concerns about the narrow range of experience of many Hong Kong law students. Those studying part time and by distance often bring with them a wider range of experience.

In this chapter, therefore, issues such as part time and distance education are considered, together with the opportunity to study law as a mature student and other issues such as cost, scholarships and the setting of quotas for places.

9.2. Access to the undergraduate law degree

Most of those entering the law school at HKU are school leavers. The degree is seen mainly as the preserve of young students who have recently completed their secondary schooling. A higher proportion of the intake at CityU are graduates from other disciplines. Access to the law school for these students is based purely on merit, that is, the results they obtained in their secondary schooling. To this extent, there is an equitable system in place. There is a question of whether this practice nevertheless results in a tendency for students from higher socio-economic classes to be studying law. There is a body of evidence and opinion that those students who enjoy the benefits of superior academic preparation at the primary and secondary level, through school and family support, enjoy a considerable advantage over those without such benefits at the tertiary level.

This is not an original observation but it is one of particular application to law for three reasons. First, in many countries law programmes are among the most selective

academically; that is, demand for them far outstrips supply. That is the case in Hong Kong although the access is not presently as competitive as in some earlier times. The second reason reflects the particular role that lawyers play in society, standing for the citizen and advocating on his or her behalf against the state or fellow citizens. There are problems in discharging this role if the social composition of the profession departs too markedly from that of society. Thirdly, law has long been a profession which offers a vehicle for social mobility through its recognition of, and openness to the rise of, individual talent. This is particularly so in societies in social transition. Hong Kong has been in marked transition for much of the past 50 years, a process that presently shows few signs of abating.

Since access to legal education determines entry to the profession, it is important therefore that selection criteria do not stifle the rise of talent or generate a profession socially distant from its society in composition, sentiment and underlying concerns.

The consultants suggest that the law schools consider, on an ongoing basis, how best to achieve a balance in the composition of their student body so that it generally reflects the socio-economic balance of Hong Kong society. They also suggest that the law schools consider whether, within the practices and requirements of their own universities, it is desirable to establish special admission schemes for students from identified equity categories which might otherwise be significantly under-represented in legal education and the profession.

9.3. Part time law studies in Hong Kong

It is an objective of the Government of the HKSAR that the educational system should facilitate lifelong learning. This implies that ways of studying, other than in a full time course, need to be made available to enable lifelong learning to occur.

At present, it is not possible to study towards a law degree on a part time basis at either of the two law schools in Hong Kong apart from the LLM and other postgraduate courses other than the PCLL.

The consultants were told that the typical ‘part-time’ law student, *ie.* in a programme at SPACE, is already in full-time employment, and comes from a wide range of backgrounds, some law-related and some not. The motivation to study ranges from general interest to enhancing job prospects to retraining. It was also said that the advent of affordable part-time legal education has meant a considerable demographic change in those studying law at undergraduate level, with such education no longer the preserve of the rich.

There have been proposals from time to time to introduce a part time undergraduate course at both law schools, but these have not so far eventuated. There is apparently no current proposal by the Faculty of Law at HKU to offer a true part time law degree.

CityU now proposes to introduce a part-time degree in 2002, with the first intake in 2003. This is yet to receive final approval from the University.

9.4. Part time PCLL

The possibility of a part time PCLL at HKU has been raised informally on a number of occasions. CityU now has some part time students in its PCLL, who attend three classes per week in the early evening and take the course over a two year period.

9.5. SPACE

Availability on a part time basis

SPACE offers several ways to study law which are seen as part time programmes. The two programmes conducted by SPACE which lead to qualifications for admission to practice are the University of London LLB and the Common Professional Examination (CPE). The CPE can be articulated into a LLB degree from the Manchester Metropolitan University (MMU).

These programmes are considered in this section solely from the point of view of their provision of an ability to study law part time. Issues in regard to their academic merit and other related matters are dealt with elsewhere.

The London LLB, for which SPACE provides tuition for those who wish to sit the University of London's examinations, is open to all who satisfy the University of London's prerequisites. Increasingly those undertaking it are graduates with a degree in another discipline.

In 2000/2001 there were 1,260 students enrolled in the SPACE preparation courses for the London LLB examinations. This is more than the total number of those studying for an LLB at HKU and CityU combined.

Students can undertake the tuition for the degree out of office hours – albeit very intensively. Lectures are delivered on a block basis by visiting academics from England. There are also intensive revision lectures, also delivered by visiting academics. These lectures are held on weekday evenings, Saturday afternoons, Sundays and public holidays. They are each of three hours duration and can be in a block as short as two weeks. The examinations are held in the day time.

The other part time course is the CPE course, also available through SPACE. It is a two year part time course for graduates in a non-law discipline. There are about 200 first year places each year and about 150 students go on to the second year, so that the total number of students in the CPE is about 350. Students undertake four subjects per year.

Evening lectures are from 6.30pm to 9.30pm, and Saturday lectures are from 2.30pm to 5.30pm. All lectures are held on the HKU campus. Examinations are held out of office hours.

There is also a one year part-time conversion course for those who wish to convert their CPE qualification to a LLB degree from MMU. This comprises the two courses of Business Associations and Evidence (required for PCLL purposes) and three LLB

courses, Intellectual Property, Commercial Law and International Export Trade. These subjects are taught in two blocks comprising several months. Each block consists of 15 hours tuition in three hour sessions in the evenings or at weekends.

Between 80 and 100 students take these further subjects.

Whilst these programmes are part time courses, it is somewhat more than ironic that the only way to study law part time in Hong Kong is by undertaking a course in what is essentially English law.

Cost of tuition

The total cost of undertaking the whole London LLB programme is about \$63,000 for non-graduates and \$46,000 for graduates, plus several one-off costs. The total cost of the whole two year CPE programme is only about \$53,750. The fee payable for the MMU conversion course is about \$25,500.

The cost of both the London LLB and the CPE compares favourably with the cost of undertaking an LLB at one of the Hong Kong law schools, where the annual amount payable by a student each year, even with UGC-funding support, is \$42,100, or \$126,300 for three years.

General comments

The demand for these courses points to the need for a part-time law course in Hong Kong. It also points to the ‘social mobility’ role they play. They provide access to entry to the legal profession for those who cannot undertake full-time study or meet the requirements for admission to it. But, it is paradoxical that the only way to secure this access is by undertaking self-funded studies.

However, it has been pointed out to the consultants that it is practically impossible for the two Hong Kong law schools to offer part-time law programmes. The reason advanced is that they would inevitably need to be longer than three years (as that is the length of the full-time courses) and yet the London University LLB is only three years in length. The predictable result, it is suggested, would be that students would opt for the faster route. This comparison however needs to be considered in the light of the consultants’ proposal for a conversion course and examination for those with non-Hong Kong law degrees.

There is also the issue of there being, in effect, no genuine part-time PCLL apart from the small number of places now available at CityU. There is a ‘half-time’ route in the SPACE PCLL course, but there is very limited entry. Recruitment was, until recently, every second year but is now every year. Attendance is required on two mornings or afternoons each week – there are no evening or weekend classes.

9.6. Access to the PCLL

There is a specific issue in regard to how access to the PCLL operates at present. This issue hinges on the practice of HKU and SPACE giving priority to their own students.

Although this is understandable from their point of view, it does set up a dynamic which may not be desirable for the system as a whole, as well as create some inequities for individual law graduates. This practice particularly impacts on those who have studied law at overseas law schools and are returning to Hong Kong to commence their legal careers. In many cases, they have jobs with the large international law firms. As they cannot obtain a place in the PCLL they cannot start the process of obtaining their qualifications; which naturally is very frustrating to them and their employers.

The consultants suggest that, in balance, it is better that there be an open system of entry to the PCLL on the basis that this will help improve standards. It would mean that future Hong Kong based law students would need to be made aware that entry to the PCLL was competitive and that they did not have an assured place.

The consultants have been advised by HKU that it is reviewing its practice with a view to providing open access to the PCLL at HKU. The consultants support this review

9.7. Distance education

The argument has been put that Hong Kong should cease to recognise distance LLB degrees. It has been noted that those lawyers trained by distance education often have difficulty with research. There is also the issue of whether, without face-to-face instruction, a person can study law as he/she lacks the essential qualities which come from discussion and the need to speak and argue.

The only form of legal education available in Hong Kong which describes itself as distance education is the University of Wolverhampton LLB. It is, essentially, a programme where students study on their own, using the printed materials as a guide and for support. However, twice each year, five members of staff from the University of Wolverhampton come to Hong Kong to provide study workshops. These workshops cover both study skills and substantive law. Local study groups may be established after the study workshops are complete.

Students do not have access to the libraries at HKU or CityU, although they can use the library at HKU by subscribing. It appears they may have access to the High Court library. The University of Wolverhampton attempts to provide alternatives to law library resources through the Internet, such as Lexis.

Wolverhampton University sees its programme as distinctive, being the only means to study law by distance education. They suggest that it enables mobile students, who may not remain in Hong Kong throughout their studies, to continue to study. As well, the part time programmes may have attendance requirements which are impossible or difficult to meet. A law degree by distance mode provides flexibility for those students.

There is also flexibility in the three entry points, the system of credit accumulation whereby a student can progress from a certificate to a diploma to a degree, and that it can be undertaken across national boundaries.

Its popularity can be seen in the fact that about 600 students are enrolled in it in Hong Kong. It appears that very few of its graduates go on to undertake the PCLL, *ie.* they are seeking the qualification to benefit themselves in some way other than for entry to the legal profession.

However, it should be recognised that there are concerns about the degree, particularly its granting of credit for first year subjects even if they were failed, and their granting of a final award based on results in the best five subjects – so that it would be possible to have a degree even with a failure in one of the eight core subjects. It is no longer a recognised degree in Singapore or Malaysia.

But more importantly, there is the question of whether law, by its nature, can be studied solely by distance bearing in mind the consultants' view that the development of intellectual skills needs to be at the core of undergraduate law studies and of the need for teaching methods which support that priority.

From an access and equity point of view, the question is really whether Hong Kong particularly needs a law degree which can be obtained by distance. The consultants share the concerns about distance education techniques, bearing in mind their proposal that the teaching of law in Hong Kong be quite radically changed to emphasise interactive learning. They are also concerned about the lack of emphasis on the development of research skills and the assessment techniques which do not fulfil the expectations the consultants have outlined elsewhere in this report. However, the absence of opportunities to study law part time or by distance at any of Hong Kong's law schools creates a certain pressure to maintain a programme such as that offered by Wolverhampton University.

The consultants recommend elsewhere that a common set of standards be set for all academic programmes to be recognised in Hong Kong. Once they come into force, it will then be a question as to whether the Wolverhampton LLB will meet the requirements and be recognised. The lack of real development of intellectual skills and opportunities for real research suggests that such recognition is not a foregone conclusion.

9.8. Opportunity for mature age students and graduates in other disciplines to study law

Most of those undertaking the LLB at HKU enter the programme direct from local secondary schools through JUPAS. Only a very small number of graduates or mature age students commenced their law degree in the 2000/2001 academic year. Thus, the position is that there is a limited number of places at Hong Kong's two law schools for mature age students and the only real option for most of them is to study law through SPACE. But to do this they must, effectively, study the laws of England not of Hong Kong. This is a paradox. They must also undertake forms of study which are far more content based and examination focussed, are often taught in intensive blocks which look very much like 'cram school', and provide very limited opportunities for the development of intellectual skills – which the consultants have argued elsewhere in this report are so vital for the future development of legal education. It is also quite likely that they would be better able

to develop and use such skills in view of their previous studies, work and life experience, and maturity.

Mature age students, who may wish to change their career or widen their knowledge and expand their qualifications, are not offered an alternative means of access to legal education on the same footing as that which is available for school leavers in UGC-funded places. Although, clearly, limited educational funding should be initially directed to school leavers, it should be possible to enable some flexibility for those already in work or with family commitments.

The current strong support for the CPE may well reflect not a loyalty to studying English law but rather to the opportunity it offers graduates to study law and perhaps become lawyers. Of course, it may also be popular because it is relatively brief, is cheaper than the LLB and there is no Hong Kong based part time course available.

9.9. Scholarships, bursaries and loans

There is a question of whether there might be some means of supporting, by scholarships, bursaries or loans, those who are disadvantaged in various ways.

Amongst the proposals for a new LPC is a recommendation that UGC funding be provided on the basis that it is an essential element to attain the basic requirement to practise law in Hong Kong. It may be, however, that some students in the LPC would not be entitled to UGC funding support. As well, it appears that a condition of UGC funding support would be that that the LPC would need, in some way, to be part of one of the eight UGC supported institutions in Hong Kong. That being so, the consultants have recommended that it may be appropriate that the LPC be an institute affiliated with the universities, in order that that funding support can be obtained. However, it is foreseeable that such an arrangement will not be possible and that students might be required to pay full fees.

This would be a new, additional expense for those who would have previously had a UGC funded place in both their LLB degree and the PCLL. But for the many who would have otherwise had to pay full fees for their degree and their PCLL place, this would, in fact, represent a reduction in the cost of their studies (on the basis that the LPC will be cheaper than the PCLL).

The consultants recommend that the institutions offering the conversion course and the LPC consider how they might so construct their budget that some modest funds are available to offer some scholarships, bursaries or interest free loans to selected students from low socio-economic backgrounds who would not be sufficiently supported from government-sourced loans and grants.

It would appear that grants which are at present available to full time university students would also be available to students in the LPC provided it were in a UGC-funded institution. However, loans are more widely available and students in non UGC-supported institutions are already able to access them. Hence it would appear that students in the LPC would be able to do so even if it were a completely independent

institution. These loans are not means tested, they are below market rates and are repayable over ten years.

9.10. No artificial numerical bottlenecks to control numbers

The consultants suggest that what will contribute to the long term durability of the legal education system, and indeed of the legal profession, is a system where there are no artificial numerical bottlenecks for entry to any of the stages of legal education. These bottlenecks might be in order to control numbers or limit places to certain categories of students. Or, it might be seen as a way to raise standards, by limiting entry to a specified number which, in effect, limits it to those with the higher scores.

The consultants do not recommend that the use of a numerical cut-off is the best way to achieve and enforce standards. Rather, they suggest that the standard should be an objective one – clearly articulated, fairly determined and rigorously enforced. All those who meet the standard should be entitled to move on to the next stage. This is fair and accords with basic principles of access and equity. Further, the health of the system will be more surely assured. Those who succeed will do so because of their inherent merit.

9.11. Recommendations

Part time law degree

- 1 That there should be a genuine part time law degree in Hong Kong offered by at least one of the law faculties.

Places in the conversion course

- 2 That, in any one year, there should be sufficient places in the conversion course and in the legal practice course for all applicants seeking a place – on the basis that the courses will be fee-paying and thus not dependent on government funding, and that there will be more than one entry point during the year.

Law degree by distance education

- 3 That there is no apparent need for a law degree offered by distance education, but that a number of the pedagogical techniques and technologies used in distance education could be usefully applied to full and part time degrees, the proposed conversion course and the legal practice course.

Mature age students and graduates in other disciplines

- 4 That there should be opportunity for mature age students, and graduates in other disciplines, to study law – both for equity and access reasons and for the richness and diversity this brings to the law schools and the legal profession.

Scholarships, bursaries and loans

- 5 That the institutions offering the proposed conversion course and the legal practice course so construct their budgets that some modest funds are available to offer some scholarships, bursaries or interest free loans to selected students from low socio-economic backgrounds.

Artificial numerical barriers or bottlenecks

- 6 That, as it is contrary to the principles of equity and access, and indeed to the long term health and vitality of the legal profession, no artificial numerical barriers or bottlenecks be imposed in order to control numbers or set standards.

10

Lifelong learning

10.1. The continuum of legal education

The concept of lifelong learning is now well established amongst the professions throughout the world. It emphasises that learning takes place throughout all of the working life of a professional person, and indeed this is as it should be. It rejects a model whereby a person ‘stocks up’ all the knowledge and skills they need before they enter the profession and then feeds off that knowledge and skills for the rest of their working life. Instead it is recognised that informal learning takes place throughout all of a professional’s life. In recognition of this, professional organisations around the world are increasingly providing more formal opportunities for their members to continue their learning.

There are a number of things which this education seeks to do. Perhaps most importantly, it recognises that change is occurring at a rapid pace, and a professional’s knowledge and skills need constantly to be updated. This is the most common reason why legal practitioners participate in continuing legal education (CLE) or continuing professional development (CPD). There are other reasons. One is the development of new skills and knowledge in order to move into new areas of practice. Another reason is to develop more advanced skills and know-how in an area of practice in order to move up into the ranks of a specialist in that area. And, of course, there is the need for new members of the Bar and the solicitors’ branch of the profession to be assisted to move through the transition from preparation to actual practice of the law.

Both branches of the legal profession have the challenge and the opportunity to respond to this situation, and the responsibility to ensure that their members are given opportunities for CLE which equal those offered to lawyers in other countries against which Hong Kong seeks to benchmark itself.

10.2. A commitment to lifelong learning

A hallmark of a legal profession capable of meeting the challenges of legal practice and the needs of society into the 21st century is its commitment to lifelong learning. This needs to be a commitment both by the professional body itself and by all its members. If the two branches of the legal profession in Hong Kong are to continue to be vibrant, and their work is to continue to be essential for the welfare of society and the economy, they need to have a demonstrable commitment to the concept of lifelong learning. A profession not in a continual process of updating, refreshment and improvement of

knowledge and skills will, in our fast moving world, soon become outpaced and increasingly irrelevant.

There is a formal commitment to lifelong learning by the two professional bodies, although they have moved at different paces and in somewhat different ways in formalising that commitment. The Law Society has an articulated commitment in its *Position on Legal Education and Training*. There is no equivalent statement from the Bar Association and the nature and depth of its commitment can only be identified from the activities it has initiated in the last few years.

10.3. The Bar's Advanced Legal Education Scheme

The Bar Association introduced its Advanced Legal Education (ALE) Scheme only as recently as 1998. It appears that the primary impetus for the scheme has been the need for well trained junior barristers, which the PCLL and pupillage together are not seen as being able to ensure.

It can rightly be said that work as a barrister is, in effect, a process of lifelong learning. On receiving a brief, it is an essential part of a barrister's preparation that he/she learns all that is necessary to achieve mastery of that brief. Because of this there is a question of whether there is a need for an extensive or intrusive continuing education programme for barristers. However, the experience of bars in other countries suggests that the bar as a whole, as with every other profession, benefits significantly if it has a structured programme of educational activities. For example, barristers at the English Bar in their first three years of practice are required to complete 42 hours of CPD across the whole three year period, and all barristers in later years of practice are required to undertake 12 hours of CPD each year. In the other jurisdictions where there is a separate bar there are usually structured CLE programmes.

There is no proposal to mandate attendance at the Bar's advanced legal education activities by members of the Bar generally and indeed this has been considered by the Bar Council and rejected. Although an encouraging initiative, the Bar's advanced legal education activities for members generally represent a quite modest programme. The programme for pupils and junior barristers is somewhat more ambitious. Although the Bar Association has adopted ALE, it has not progressed far in its implementation for members of the Bar generally. As evidence of the extent of a commitment by the Bar generally, the existing programme represents less than one activity per month.

If the Bar is to maintain and enhance its position, and to have its fair share of the best quality work in the Hong Kong courts in competition with London and other overseas barristers, it needs to enhance its commitment to the development of the knowledge and skills of all its members, not just pupils. Its existing ALE programme would appear to go only part way to being a programme of the extent and depth required for a sophisticated Bar in an international financial and commercial city.

There is also the question of whether the Bar should reconsider the mandating of participation in its ALE. Although this has occurred at the English Bar it is not a

development found elsewhere in comparable jurisdictions. For this reason, the consultants do not recommend that a mandatory scheme be introduced but they do recommend that the Bar Council consider again whether this is appropriate in Hong Kong.

10.4. Recommendations in regard to the Bar's Advanced Legal Education Scheme

- 1 That the Bar Association make a more substantial commitment to the professional development of its members through its ALE programme, by improving the extent, depth and overall quality of the programme.
- 2 That the Bar Council consider again whether a mandatory ALE scheme should be implemented.

10.5. The Law Society's Continuing Professional Development Scheme

The Law Society has demonstrated a commitment to lifelong learning which is seen, at least in part, in the range of its programmes and in other aspects of the Scheme's administration. The Law Society's range of CPD offerings can claim to rank amongst the most comprehensive in the world. The CPD Scheme is seen by the Law Society as a way of making a commitment to "the systematic maintenance, improvement and broadening of relevant knowledge and skills to enable a professional to successfully carry out his or her professional duties and responsibilities throughout his or her career".

A principal way in which the Law Society has sought to implement its commitment has been to mandate participation. The Law Society now has ten years of experience in conducting a mandatory scheme. The current scheme will extend to all solicitors by January 2003.

10.6. The mandatory issue

The consultants support the continuation of the Law Society's mandatory CPD scheme. Indeed they consider the Bar Association should, within a reasonably short period of time, give close consideration to introducing a mandatory scheme. None of the submissions urged the abolition of the Law Society scheme, nor was it proposed by any of the people with whom the consultants met in the consultations held in January 2000 and January 2001. The scheme is well established and will soon be extended to the whole profession.

The Law Society's Council has approved, in principle, the introduction of a mandatory practice management course for solicitors seeking an unconditional practising certificate for the first time. This accords with practice in a number of other jurisdictions where a particular need is targeted and mandating an educational programme is seen as a way to

address that need. The Law Society has had a working party considering the introduction of a risk management education programme for Hong Kong. The working party's report is still in the process of being considered. The Law Society's Council has approved, in principle, the introduction of a risk management course but there was no decision that it be mandatory – although this may be the ultimate decision.

10.7. The quality issue

There does appear to be a quality issue – not system-wide but in specific cases. Concerns were expressed to the consultants about the quality of some of the individual courses. Individual concerns were not pursued as part of this preliminary review, nor was it possible to examine how widespread this concern is. It may, in fact, be quite confined. All the consultants could do was look at the system as a whole.

A feature of the CPD system in Hong Kong is that it has a range of providers in addition to the Law Society and it is, to some extent, commercially driven. This contrasts with the Bar's programme where there is only one provider, and it is free.

The view was expressed to the consultants that, for the commercial providers, the programmes offered are often or primarily driven by a profit motive rather than the desire to provide high quality educational activities. Because of the profit motive, providers may, for example, be less willing to use more expensive teaching methods. There is an impression that many of those attending CPD are non-involved and passive. More sophisticated CPD activities could take place in small groups and require active involvement by participants, which, it was suggested, might overcome this passive non-involvement. But this costs money.

There are really only two choices for the Law Society to ensure quality. One would be to take responsibility for all CPD upon itself, and the other would be to have a free market but to monitor what is provided. The latter is present policy. And yet there are, in a sense, two contradictory pressures impinging on the Law Society – one is to lower or remove the unduly bureaucratic aspects of the existing monitoring system, and yet at the same time play a more proactive role in increasing the quality of what is offered. To do both would require a special insight which is perhaps impossible to achieve.

The Law Society has put in place a quality control system which operates in the context of an open market in CPD. The quality control mechanism takes the form of an accreditation procedure for courses and providers and course monitoring procedures. These appear to be suitable arrangements in order to balance quality with minimal bureaucratic requirements.

On their face the procedures appear entirely appropriate. It was not possible, as part of the preliminary review, to examine their implementation in any detail. But, although there is a quite thorough system, there appears to be an impression amongst some people that the Law Society does not always effectively ensure an appropriate standard of offering. This is exacerbated by a perception that courses are expensive and so the process is seen as profit, rather than quality, driven.

The consultants suggest that the Law Society reviews its individual accreditations in the light of the evaluations which are collected and forwarded to the Law Society. These should reveal those courses where there was significant discontent with quality, perceived or real. (As part of the study, what practitioners mean by 'quality' in this context could be explored.) The Law Society could then reconsider its accreditation procedures in respect of those courses to explore whether the insufficiency of quality could have been anticipated and hence dealt with. It may be that, through this exercise, the Law Society will be able to develop changes in its criteria and procedures, or new criteria or standards, or changes to its administration of the accreditation and monitoring of courses.

These mechanisms, in regard to the quality of courses offered, are complemented by another set of procedures ensuring compliance with the requirements by practitioners. These have a number of positive features. There is considerable flexibility in the way the CPD requirement might be met – permitting, in addition to attendance at courses, participation in distance education courses, law courses, the writing of articles and books, specified legal research, dissertations, preparation and presentation of approved training courses, participation in specified committees and working parties, and work as an external examiner. Another positive feature is that the onus is placed on solicitors themselves to maintain the record of their compliance, by requiring them to keep their own Mandatory CPD Training Record, which might be audited.

10.8. The curriculum issue

As from 2003, senior lawyers will be required to undertake CPD. Their needs and demands will need to be met, particularly as they are perhaps more likely than junior lawyers to express strong dissatisfaction if they feel the programmes offered are inadequate and do not meet their needs. This will bring to the fore the issue of the overall curriculum of CPD offerings in Hong Kong.

This issue is not one confined to Hong Kong. The issue is that, in contrast to the structured nature of education at school and university levels, CPD is highly unstructured. The range of courses available to Hong Kong solicitors is really a smorgasbord of courses, reflecting more what the providers think will be likely to be commercially successful than what the profession needs. Because there is such a wide range of courses available, practitioners can develop their own structure on which to base their participation. But the question remains whether there should be more structure in the CPD curriculum as a whole.

Would it be desirable, for example, that a stream of courses could be identified, with courses building on each other, to provide an overall programme made up of modules? Is there capacity for some articulation of CPD courses with postgraduate programmes at the law schools, enabling a complementation of the academic and practical aspects of the topic being studied? Could the Law Society develop some model curricula for solicitors in various forms of practice, and invite providers to tender to design and present courses which would make up the whole curriculum or modules within it?

A first step towards such an approach will be the proposed practice management and risk management courses. The Law Society intends to specify a model curriculum for the former which providers would need to implement in order to be accredited. This curriculum could be a model for applying this approach in other areas of practice.

By this means the overall range of activities would be more driven by the profession, not providers. It may be, to ensure the success of such an approach, that some credential be awarded to those who successfully complete such programmes.

10.9. The relationship between CPD and specialisation

The issue of specialisation is dealt with elsewhere. At the time of preparation of this report, the Law Society's proposals in regard to the establishment of a specialist accreditation scheme have not been finalised. In this chapter only one issue is canvassed, and that is whether a CPD requirement could be prerequisite for maintenance of accredited specialist status. Programmes prepared for specialists can be very focussed and of a high standard. As attendance would normally be limited to accredited specialists, numbers can be relatively small and indeed participants can often know each other, thus possibly enabling more interactive learning. For these reasons, it might be desirable that the Hong Kong scheme, if it is introduced, include a requirement of participation in CPD related to the specialty over and above the general CPD requirement.

It could also be a requirement of continued accreditation of a specialist that he/she must be a speaker or course leader in a CPD activity at regular intervals, say once every two years.

10.10. Recommendations in regard to the Law Society's CPD Scheme

Mandatory continuing professional development

- 1 That the Law Society maintains its mandatory CPD scheme.

Providers of continuing professional development

- 2 That there continue to be a multiplicity of providers of CPD, one of which can be the Law Society, and that the Law Society maintain and, where possible, improve its procedures which seek to ensure the quality of programmes offered.

Accreditation of providers and courses

- 3 That the Law Society set up a process to review its individual accreditations in the light of the evaluations which are collected and forwarded to the Law Society, and where significant discontent with quality has been reported, the Law Society reconsider its accreditation procedures and identify whether the difficulty could have been anticipated.

Model curricula

- 4 That the Law Society consider whether it might develop model curricula for some practitioners in various forms of practice, with a view to inviting providers to tender to conduct all or some of the modules making up those curricula.

Specialist accreditation scheme

- 5 That, should the Law Society introduce a specialist accreditation scheme, it consider requiring attendance at CPD related to the specialist's area of specialisation as a condition of re-accreditation, and also encourage specialists to participate in CPD and in other ways to disseminate their specialty.

10.11. An academy of law

The Law Society Council has endorsed a proposal that there be a body, to be known as the Academy of Law. The Academy is seen as “a one-stop shop for the provision and administration by the profession of qualifications and training for all lawyers post LLB”. The most important reason given for proposing it is that “it will ensure the maintenance of a consistent high quality and standard of professional legal education across the entire legal profession from the moment a student completes his LLB through to the end of his professional career”. Other reasons in support are that, given the size of the jurisdiction in Hong Kong, it will lead to economies of scale in the provision of the functions and services listed below, and that it will result in better regulation of the profession.

It was also put to the consultants that such a body could seek to achieve international standards for Hong Kong by, for example, bringing in people from overseas to conduct courses. Such a body might also provide integration in programmes offered and enabling lawyers to keep up with lifelong learning. It was noted that it would not be constrained, as the universities are, by matters such as funding constraints and the tenure system.

So far as its role in the area of continuing education is concerned, the overall aim would be an integration in CPD to enable lawyers to keep up with lifelong learning, and a means of raising standards.

It is proposed that it be responsible for –

- the administration, supervision and monitoring of the trainee solicitor contract system and pupillage
- the Practical Legal Training Course [in this report called the LPC] for all intending solicitors and barristers following the completion of the LLB
- CPD programmes for both solicitors and barristers at all levels
- additional skills training programmes for the profession post-PLT [in this report called the LPC], including advocacy skills training, mediation skills training, communication skills training.

- specialist training in specified areas of practice and specialist accreditation
- implementing a Mandatory Practice Management Course for solicitors
- implementing a Risk Management Education Programme (mandatory or otherwise) for solicitors
- administering the Overseas Lawyers Qualification Examinations and preparatory training courses.

The Law Society proposes that the establishment of the Academy be funded by the Government, as has occurred in the case of other disciplines. The basis for seeking such funding would be that the production of world class lawyers is no less important to the continued well-being of Hong Kong than the production of good doctors, dentists and architects. After the initial funding, the Law Society proposes that the Academy would be self-funding.

The proposal has only just been considered by the Law Society. It clearly will require considerable discussion with the Bar Association and the Government. The arguments in favour of the Academy, set out in the proposal considered by the Law Society Council, and also set out above, are really only assertions and are not argued out in depth. This, no doubt, will need to be done. In the absence of full argumentation in its favour, the consultants do not feel able to endorse the proposal but they do recommend that the concept of an Academy of Law is one worthy of serious consideration.

10.12. Recommendation in regard to the Academy of Law

- 1 That the proposal for an Academy of Law is worthy of serious consideration by the two branches of the profession and the Government of the HKSAR, and that it would be appropriate for government or other funding to be provided to enable the development of this proposal.

Values in legal education

Virtually every significant review of the goals and purposes of legal education over the past 30 years has emphasised the place of values and ethical development in legal education. This section seeks to apply principles derived from reflection upon these international reviews to the particular situation of Hong Kong. The starting point is the profession's own values, culture and aspirations.

11.1. Law as a public profession

The traditional professional ethic of disinterested public service

The American jurist Roscoe Pound wrote that the defining quality of all professions is that their primary purpose is “[p]ursuit of the learned art in the spirit of a public service”. Law’s connection with justice, its role in distributing power and rights and calling the exercise of each to account, means that its practice is more firmly impressed with the claims of the public interest and service than most other callings. Indeed, law has long been seen as a public profession whose practitioners assume responsibilities to interests beyond those of clients and themselves.

It is possible to distinguish several distinct levels of professional responsibility and values applicable to lawyers —

- Compliance with the law and rules of professional conduct, particularly those that extend beyond professional courtesies to fundamental ethical obligations of honesty, truth telling, duties of candour and fairness, and trust obligations in relation to the protection of clients’ interests where they are not able to deal with the professional on an equal footing.
- Personal values of honesty and integrity.
- Fundamental moral values of commitment to truth and justice.
- A professional ethic of public service that assumes responsibility for the availability and quality of legal services and a personal commitment to their improvement.

If these standards and values reflect those of the Hong Kong professional associations and the conduct of its members, then it becomes important to transmit them to those preparing to be lawyers, and to do so in ways that move beyond acquisition of knowledge

to an understanding of principles and an internalisation of values. If, on the other hand, these standards represent neither the current aspirations nor practice of Hong Kong lawyers then that will condemn to futility any attempt to internalise such values comprehensively through legal education and training. Law students will quickly appreciate the discrepancy between exhortations to virtue at the training stage and the reality of the norms governing professional conduct. The norms that are known to be practised will inevitably overshadow those that are urged in the education stages.

Does the service ethic survive in application or aspiration?

The influence of business values is said by some commentators to have undermined the ethical foundations of the practice of law. In the United States Anthony Kronman has written of a “spiritual crisis that strikes at the heart” of lawyers’ professional pride. Kronman attributes these changes to a number of developments including “the explosive growth” of the country’s leading law firms, which has created a “new, more openly commercial culture in which the lawyer/statesman ideal has only a marginal place”; the result is a “growing sense, among lawyers generally, that their yearning to be engaged in some lifelong endeavour that has value in its own right can no longer be satisfied in their professional work”. It has been argued that a narrow conception by lawyers of their responsibility leads to a crisis in their “moral authority”.

The force of competitive market pressure has been as keenly felt in Hong Kong as in most countries. Of course, it is easier to form and support a desired ethical culture when the professional community is small, homogenous and tightly knit. These are not characteristics associated with the Hong Kong legal profession as it has developed over the past 30 years.

Comment was also made in submissions and consultations with respect to the performance of public or community service. One submission stated that there was “little sign of acceptance of pro bono work as a natural part of being a lawyer” and that efforts to inspire Hong Kong lawyers to consider that “part of their professional life should be awareness of and legal action for the disadvantaged” had not been successful.”

11.2. Nurturing ethical behaviour and social responsibility through education and training: the goals

What values education should be attempted during legal education?: Hong Kong perspectives

The Law Society’s *Position on Legal Education and Training* identifies as one of the aims of the law degree that it should enable students to “acquire ... legal values, including a commitment to the rule of law, justice, fairness and high ethical standards”; similarly, in the vocational stage students should develop skills in “recognising and resolving ethical dilemmas and ethical formation”.

In some consultations, it was urged that ethical instruction should be given to law students to inculcate a sense of importance of the lawyer's position in society.

In its submission CityU stated that “the kind of lawyers we need are those with wider social values” and that the issue of what values legal education should embody is central to the review.

International perspectives

Each of the principal international reviews of the goals of legal education has stressed the importance of inculcating and nurturing values during education and training.

In England, ACLEC considered that professional values and standards should be internalised “from the earliest stages of their education and training” and that “students must be made aware of the values that legal solutions carry, and of the ethical and humanitarian dimensions of law as an instrument which affects the quality of life”. This requires more than familiarisation with professional codes of conduct but includes also the wider social and political obligations of the profession to society as a whole, its obligation to protect the rights of minorities within society and the welfare of the disadvantaged.

Similarly, in the United States, the MacCrate Report identified four “fundamental values of the profession”: the provision of competent representation, striving to promote justice, fairness and morality, striving to improve the profession, and professional self-development. It thought that law schools should play an important role in developing students’ skill of recognising and resolving ethical dilemmas and placing these issues in an organised conceptual framework. This requires law schools to stress that the examination of these fundamental values of the profession is as important in preparing for professional practice as the acquisition of substantive knowledge and legal skills.

11.3. The range of desirable goals in ethical and values formation

The English and North American statements are not in radically different terms. It is possible to construct from them a simple typology of the personal attributes, ethical capacities and values that call for development and nurture in the process of legal education and training —

1. *Ethical sensitivity*: the ability to recognise and resolve ethical dilemmas that arise in professional work.
2. *Legal values to which the profession has a particular responsibility*: eg, “a commitment to the rule of law, to justice [and] fairness” (ACLEC) and “striving to promote justice, fairness and morality” (MacCrate).
3. *Social responsibility for the provision of legal services*: “to ensuring that adequate legal services are provided to those who cannot afford to pay for them” (ACLEC); “the provision of competent representation” (MacCrate).

The abilities, values and attributes in these categories are generally stated (or assumed) to be acquired not only throughout the legal education process but also through socialisation within work settings. In their most basic sense, of course, the elements of integrity and ethical sensitivity have their wellsprings in personal formation.

11.4. Some means to develop ethical capacity and social responsibility through education and training

At the academic stage the means available include —

- the introduction of compulsory courses on legal ethics or professional responsibility at the academic stage;
- encouragement for clinical legal experience as a means of teaching professional responsibility;
- student internship programmes with community and government agencies; and
- a mandatory pro bono work requirement for law students.

11.5. The responsibility of law faculties for community understanding of law

A set of issues arises in relation to the responsibility of law faculties to contribute to community understanding of law as well as their traditional role as specialist advisors to legislators and business and professional groups. The traditional specialist role complements the academic legal training that the faculties provide. The faculties collectively and their staff individually also have a responsibility to contribute to social understanding of, and commitment to, the rule of law and the role of law in underpinning social harmony and development.

An important way of doing this, within the specialist competence and role of the law schools, is through leadership in public debate and community education. There are excellent examples in Hong Kong of legal academics doing so publicly, courageously and effectively. It has been argued above that even when law teachers think they are simply teaching law, they are inevitably also teaching legal ethics as well, by unconsciously modelling appropriate behaviour and values. Law teachers give students even stronger and more explicit messages about appropriate ways of acting and the values of law by their disinterested public role in community education through debate and formal programmes of instruction.

11.6. Recommendations in regard to the place of values in legal education

A professional culture of public service

- 1 That in aid of assisting law students appreciate the responsibilities of the profession that most will seek to enter, the Law Society and Bar Association review their formal public statements with respect to the responsibility of the profession, collectively and individually, for the amelioration of legal need through pro bono work and voluntary service.

Developing ethical capacity and social responsibility

- 2 That the opportunity offered during the law school stage of legal education for “sustained study, discussion and reflection” of ethical responsibilities of lawyers should be taken advantage of by appropriately structured and delivered courses to assist the creation of a professional sensibility and develop a thoughtful and lasting commitment to ethical conduct.
- 3 That such courses might bring together students and professionals from a number of fields – such as medicine, business, social welfare and education – to heighten students’ awareness of the ways others see the legal profession (and other professions) and so that prospective lawyers might learn that there are alternative value systems, approaches and professional resources to those of the legal profession and its dominant modes of thought.
- 4 That if it is not feasible to establish a university operated legal clinic, the law schools give careful attention to the creation of externship programmes that permit law students to work in a placement under supervision with external legal and other agencies (such as the Legal Aid Department and the Hong Kong Council of Social Services and its constituent organisations) engaged in direct service provision or policy development in areas that replicate the experience of legal clinics. If there were insufficient agencies available to accept placements it might be feasible to explore the placement of students outside Hong Kong, including in the Mainland.
- 5 That in relation to externship programmes for students, the law school offer seminars or other tuition to develop students' capacity to reflect upon their experience and support the development of lawyering skills through the externship experience. The externship might be for academic credit as an elective subject and students’ performance assessed including through a substantial written project which addresses an issue for the agency or reflects upon work performed in the light of research and other material, including statute and case law.
- 6 That HKU be commended for its initiative in establishing the social justice summer internship programme in collaboration with the Department of Social Work and Social Administration.

- 7 That the law schools be encouraged to support the wide adoption by law students of internship programmes that expose them as volunteers to socio-legal issues and inter-disciplinary perspectives or to legal, social and other agencies (such as the Legal Aid Department and the Hong Kong Council of Social Services and its constituent organisations) engaged in direct service provision or policy development.
- 8 That the law schools give careful consideration to the merits and optimal form of mandatory schemes for pro bono work, particularly at the academic stage of legal education in view of its longer duration.
- 9 That there is a clear role for professional responsibility education in the vocational stage, in both its institutional element during the legal practice course and in in-training through training contracts and pupillage.

Responsibility of law faculties for community understanding of law

- 10 That the faculties collectively and their staff individually have a responsibility to contribute to social understanding of, and commitment to, the rule of law and the role of law in underpinning social harmony and development.
- 11 That university promotion criteria recognise the contributions made by academic lawyers, within their specialist competence and role, in providing leadership in public debate and through their participation in community education.

12

The governance of the process of qualification for admission to practice

12.1. Why this matter is being dealt with in this report

The consultants' terms of reference require them, amongst other things –

- to assess the current system of legal education and training in Hong Kong
- to advise on the requirements of a legal education and training system best capable of meeting the challenges of legal practice and the needs of Hong Kong society into the 21st century and how these challenges and needs can be met by the legal education and training system
- to provide suggestions and alternative models for a reformed system of legal education and training in Hong Kong
- to make recommendations for improvements in the system of legal education and training in Hong Kong. (emphasis added)

The terms of reference clearly anticipate that the system of legal education and training as a whole should be improved and reformed, and not just its constituent parts, if it is to meet the challenges of legal practice and the needs of Hong Kong society into the 21st century. Having said that, the consultants stress that what follows is confined to those aspects of the system which relate to the process of admission to practice.

The consultants have been impressed by various aspects of the system and by the dedication and intelligence with which many of those involved are carrying out their roles and duties. Although the consultants have made various suggestions for improvement, they believe that, in many respects, the various parts are in good hands. But when they turn their attention to the system as a whole, the consultants suggest that there are a number of issues which need to be addressed.

12.2. There is no comprehensive, and mutually accepted, understanding of what is required in regard to legal education and training

There is no common, let alone agreed, understanding of what is expected of the legal education and training system, of the goals and purpose of legal education and of the

requirements for admission to practice. As well, there is no process to develop, review and revise a statement which reflects that understanding. Thus, the system tends to encourage individual stakeholders to make statements to each other rather than engage in dialogue. An agreed common statement, and the process of developing it, would be likely to provide a basis for trust, mutual understanding and cooperation.

There is no Hong Kong equivalent of the English Joint Statement, issued by the Law Society and the General Council of the Bar, on what should be in a law degree for it to be recognised for the purposes of admission to practice. Nor is there an equivalent of the standards issued by The Law Society of England & Wales' Legal Practice Course Standards Board, which specify what should be in a legal practice course.

12.3. Attempts at reform are generally reactive and specific to particular issues

The comprehensiveness and forward-looking focus of this preliminary review highlights that, until now, reform to the legal education and training system, and its parts, has generally been reactive. This, in itself, is not necessarily a bad thing. It is important that any undertaking does react and change when it considers it appropriate. But there will always be, from time to time, an appropriate moment when reform should be proactive and comprehensive. There needs to be a reform process which can occur without the need always to obtain the agreement of all the stakeholders and/or which will occur only if there is an intervention from a higher authority. Hong Kong does not have a system in place which enables that to occur and the result is that the system is enmeshed and almost incapable of reform.

12.4. The system lacks a capacity to self-renew

The system does not have an internal capacity to review and renew itself. There is no clear and efficient process for review, reform and renewal of the whole system. De jure and de facto power lies in a number of bodies. In regard to the monitoring and regulation of legal education, those playing a role are the ACLE, the JEB, the external examiners, the professional bodies and, of course, the universities. In fact, when any stakeholder is confronted with a desire to change any aspect of the system, if that proposed change may affect or impact on any other stakeholder, it appears there is often an impasse because there is no obvious way to effect any reform which involves or affects other stakeholders. As a result, there is little to no reform from 'within'. The system is too complex and, in a sense, uncertain, to enable it to remain responsive and dynamic.

Indeed it goes beyond this. The Law Society and the Bar have certain powers which they have not exercised. They have power to pass regulations to require certain areas of knowledge or forms of training prior to admission subject, however, to the approval of the Chief Justice. It has been suggested to the consultants that intra and inter institutional discussion about a particular issue or a possible reform takes place in a context where it is known that these bodies could exercise that power. They are potentially able to achieve

certain ends by the subtle indication that they might use that power. As a result, the system, because it does not have its *own* process to review and renew, tends to encourage a somewhat byzantine approach to the resolution of issues outside the meeting room.

This lack of a capacity to self-renew can result in less than complete transparency.

12.5. The system lacks a structure whereby all stakeholders can play a role

It is in the public interest, and in the interests of systemic integrity, that the system be governed in such a way that all of the stakeholders, including proxies for the public interest, be represented. No one group should be able to dominate, and there should be a structure in the membership of any overarching body whereby a wider perspective can be brought to bear.

At present, the universities tend to claim that decisions about all aspects of the undergraduate degree are wholly within their province. And yet the degree *is* part of the system leading to admission to practice. The PCLL is a programme based within the universities and hence they tend to claim a similar power in regard to it, although allowing for some input from the profession, such as through the system of external examiners. It too is part of the system. Pupillage and the trainee solicitor contract are within the domain of the two branches of the profession and they, presumably, would be reluctant if anyone else were to tell them what should be done with them. And yet they too are part of the system. There needs to be a recognition that the system itself has stakeholders. And, in addition, the public interest has an important seat at the table but, without the appointment of representatives for the public interest, no way of being expressed, except informally and outside the system.

12.6. The relationship between the system and the powers of the various stakeholders in the system

There is essentially an internal self-contradiction if it is recognised that the system needs a capacity to self-renew on an ongoing basis, but there is not a readiness to give *to the system* the powers it needs to do that. Anything less would mean that the system itself would remain essentially powerless as, whenever any issue were to arise, there would be a need to seek the willingness of each of the major parties to cooperate. The history of legal education in Hong Kong suggests this will not be likely to happen easily.

Hence, what is proposed by the consultants is, effectively, some trading by each of the major parties of their present formal or reserve powers for –

- relief against the powers of others or the constraints that fetter or preclude the exercise of their own powers;

- participation in decision making across the full range of determination of issues affecting legal education and training for purposes of admission to practice; and
- greater systemic coherence and renewal capacity,

by transferring individual powers to a central body upon which each is represented, together with representatives of government, the judiciary and the community, but which would neither be controlled by one party alone or even perhaps in combination with one other stakeholder. It would also be a formal device to ensure that stakeholders talked to each other about matters of legal education. The proposal, set out below, in regard to a Legal Qualifying Council (LQC) is made in this context and is seen as the only way to achieve a modern, workable and efficient system for Hong Kong.

12.7. International comparisons

The system in Hong Kong is very similar to that in England. There the two branches of the profession have broad powers to set the requirements for admission to the profession. Essentially the professional bodies ‘control’ the requirements for admission to practice.

In former British colonies a common situation seems to be that the requirements for admission to practice are specified by bodies which are more widely representative than the professional body/ies alone. In those that have been examined by the consultants there generally does not appear to be a situation where, as in Hong Kong, the profession retains almost unfettered responsibility and power to set the requirements for admission to practice.

The one major exception is Canada: it is similar to Hong Kong. In Canada's nine common law provinces and three common law territories, the control of the admission process lies with the law society for that particular jurisdiction.

In New Zealand, the powers in regard to admission to practice do not lie with the New Zealand Law Society but rather with the Council of Legal Education, which is a statutory body established under the *Law Practitioners Act*. In Australia the situation varies from State to State but they all have bodies which are empowered to set the academic and practical requirements for admission to practice. In none of the States do the professional bodies have the powers in regard to admission which lie with the Law Society and Bar Association in Hong Kong.

In Malaysia the body empowered to specify the requirements for admission to practice is the Legal Profession Qualifying Board. It is given power, under the *Legal Profession Act*, to make provisions governing admission and qualifications for admission to the Malaysian Bar. All decisions regarding the recognition of qualifications for the purposes of admission come under the jurisdiction of the Qualifying Board.

In Singapore the situation is slightly different where there is a Board of Legal Education. Its objectives include the registration of qualified persons seeking admission as advocates and solicitors.

12.8. General comments

The two branches of the profession in Hong Kong have the power to set their own requirements for admission to the profession subject to the approval of the Chief Justice. In this respect, the situation reflects the long history of how this has been approached in England except for the significant change that the approval of the Chief Justice is required. The two professional bodies jealously guard such a power and regard it as an essential element of being a profession. They argue that it is self-evident that a profession should have power to decide what should be required of any person seeking entry to it. The consultants are aware that the Law Society is of the view that there is no need for the establishment of a system of governance as proposed. The consultants have very seriously reflected before making a recommendation which is directly opposed by one of the major stakeholders. However, after careful consideration, they remain of the view that the best way to proceed is to establish a body with powers and which is not just advisory.

What is proposed is some partial forgoing of the power held by the various stakeholders –

- in the interests of the system as a whole
- in recognition that others also have a stake in what should be the requirements, in particular, the judiciary and the law schools and, it could be argued, the community generally
- and in the knowledge that other stakeholders, in particular the law schools, would also be forgoing some power of comparable scope.

12.9. Recommendations in regard to the Legal Qualifying Council

Generally

- 1 That a Legal Qualifying Council be established.
- 2 That the Council not be a council to govern all aspects of legal education but rather, one to set, monitor and govern the process of qualification for admission to practice, as either a barrister or a solicitor.
- 3 That the Law Society and the Bar Association would continue to administer the process of dealing with applications for admission, collection of fees, issuance of practising certificates, and otherwise act as they do now – except that they would operate within the overall policy framework of requirements and standards as specified by the Legal Qualifying Council.

Powers

- 4 That the powers of the Legal Qualifying Council be –
- a) To develop, prescribe and keep under review a general statement of the requirements and standards of those seeking admission as barristers or solicitors in Hong Kong regardless of where their training was undertaken.
 - b) To prescribe and keep under review the academic requirements for admission to practice.
 - c) To prescribe and keep under review the vocational requirements for admission to practice.
 - d) To prescribe and keep under review requirements for admission for those with degrees or other qualifications from institutions other than the two Hong Kong universities.
 - e) To monitor the provision of academic and institutional vocational training.
 - f) To collect and disseminate statistical information in regard to the legal education and training system in Hong Kong.

Composition

- 5 That the Legal Qualifying Council might comprise –
- two people drawn from the judiciary and nominated by the Chief Justice
 - two people nominated by the Law Society
 - two people nominated by the Bar Association
 - two people [or one person] nominated by the University of Hong Kong
 - two people [or one person] nominated by City University of Hong Kong
 - one person nominated by the Secretary of Justice
 - one person nominated by the Secretary for Education and Manpower
 - two other persons from the community.

Public accountability

- 6 That the Legal Qualifying Council report annually, in some detail, on its work to all relevant stakeholders. Its annual reports should be in the public domain.