

# ***Pro Bono Practices and Opportunities in Hong Kong***

***Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions***

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The provision of *pro bono* legal services by private law firms in Hong Kong is less common than in the United States and Europe because Hong Kong has a tradition of providing legal aid through the government. However, there is an increasing recognition that there are legitimate legal needs which are not being met through the traditional legal aid system and over the past few years many international law firms have expanded their *pro bono* practices in the region. This chapter discusses the law governing *pro bono* activities in Hong Kong, the legal aid services provided by various governmental bodies, as well as existing *pro bono* opportunities in Hong Kong.

## **I. Legal Services and the Legal Profession in Hong Kong**

### **A. The Legal Aid Department**

The Legal Aid Department is a separate administrative department of the Hong Kong government which provides legal representation to eligible applicants in civil or criminal proceedings before various courts and tribunals.<sup>1</sup> The “Legal Aid Services Council Ordinance” passed by the Legislative Council on May 1, 1996, established a supervisory body (the “Legal Aid Services Council”) to supervise the provision of legal aid services in Hong Kong, oversee the work of the Legal Aid Department and advise the Hong Kong government on legal aid policy. The Legal Aid Services Council may also (i) formulate policies governing the services provided by the Legal Aid Department, (ii) review the work functions of the Legal Aid Department and (iii) advise generally on the expenditures of the Legal Aid Department.<sup>2</sup>

Any person in Hong Kong, whether a resident or not, may apply for legal aid. However, applicants may be required to contribute towards the costs and expenses incurred by the Legal Aid Department unless that person’s financial resources fall below a certain amount or no money or property is recovered or preserved in a civil proceeding. If a claim is unsuccessful, aided persons may be responsible for paying the difference between the costs and expenses incurred by the Legal Aid Department and any contribution paid by the person. Where no contribution has been paid or the contribution does not cover the Legal Aid Department’s costs, the director of the Legal Aid Department has a right to require reimbursement of its costs and expenses from property recovered or preserved in civil proceedings. If the contribution is more than the costs and expenses, the Legal Aid Department will refund the difference to the aid beneficiary.<sup>3</sup>

Legal aid is provided under three different schemes: Ordinary Legal Aid, Supplementary Legal Aid and Criminal Legal Aid. Civil proceedings for which legal aid is granted are handled by either in-house lawyers from the Legal Aid Department or by assigned solicitors or counsel in private practice who have expressed a willingness to undertake these cases.<sup>4</sup>

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<sup>1</sup> The Legal Aid Department provides representation for proceedings in the District Court, the Court of First Instance, the Court of Appeals and the Court of Final Appeals, committal proceedings before the Magistrates’ Courts, proceedings before the Mental Health Review Tribunal and proceedings before the Coroner’s Courts under certain conditions. See <http://www.lad.gov.hk/english/las/overview.htm>.

<sup>2</sup> See Establishment of LASC, available at: <http://www.info.gov.hk/lasc/frame.htm>. See also Legal Aid Services Council Ordinance (Cap. 489).

<sup>3</sup> See What is Legal Aid?, Guide to Legal Aid Services in Hong Kong, Chapter 1 at 4, available at: <http://www.lad.gov.hk/english/las/overview.htm> and [http://www.lad.gov.hk/pdf/guide\\_to\\_legal\\_aid\\_services\\_in\\_hongkong\(e\)\\_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf).

<sup>4</sup> See What is Legal Aid?, Guide to Legal Aid Services in Hong Kong, Chapter 1 at 5, available at: [http://www.lad.gov.hk/pdf/guide\\_to\\_legal\\_aid\\_services\\_in\\_hongkong\(e\)\\_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf).

To qualify for Ordinary Legal Aid,<sup>5</sup> applicants must generally satisfy a means test<sup>6</sup> and a merits test.<sup>7</sup> The major types of cases covered are family and matrimonial disputes, personal injury claims, employment disputes, contractual disputes, immigration matters and professional negligence claims. Legal aid is not generally available for matters involving defamation, matters before the Small Claims Tribunal or Labour Tribunal, election petitions or money claims in matters involving derivatives or futures.

The Supplementary Legal Aid<sup>8</sup> scheme provides legal representation to people who are not eligible for Ordinary Legal Aid but whose financial resources are still below a specified amount.<sup>9</sup> Applicants must pay an initial application fee plus an interim contribution upon acceptance of legal aid. Supplemental Legal Aid is available for cases involving personal injury, death or professional negligence, where the claim is likely to exceed HK\$60,000, and for claims under the Employee's Compensation Ordinance.

The Supplementary Legal Aid Scheme is financed by recovered damages, an initial application fee and any interim contributions. All costs and expenses incurred will be deducted from the damages recovered. If the proceedings are successful, aided persons must pay a percentage of the recovered damages into a Supplementary Legal Aid Fund. If the proceedings are unsuccessful, the application fee and interim contribution are only refunded to the extent that they exceed the actual costs and expenses incurred.

To qualify for Criminal Legal Aid,<sup>10</sup> an applicant must satisfy the same means test required for civil cases. Applicants charged with murder, treason or piracy with violence can apply to a judge for exemption from the means test and the legal aid contribution. Legal aid must be provided for any appeal involving charges of murder, treason or piracy with violence. For other criminal appeals, legal representation will only be provided if it is shown that there are meritorious grounds for an appeal. A successful applicant must pay a contribution calculated in accordance with his or her financial resources unless, as in civil cases, the applicant's resources do not exceed HK\$175,800.<sup>11</sup>

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<sup>5</sup> See Civil Legal Aid, Guide to Legal Aid Services in Hong Kong, Chapter 2 at 6–8, *available at*: [http://www.lad.gov.hk/pdf/guide\\_to\\_legal\\_aid\\_services\\_in\\_hongkong\(e\)\\_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf).

<sup>6</sup> To be eligible for Ordinary Legal Aid, an applicant's monthly disposable income multiplied by 12 plus his or her disposable capital must be less than HK\$155,800. See Paragraph (1), Section 5, Cap. 91 Legal Aid Ordinance. See also The Means Test, Guide to Legal Aid Services in Hong Kong, Chapter 3 at 11-12, *available at*: [http://www.lad.gov.hk/pdf/guide\\_to\\_legal\\_aid\\_services\\_in\\_hongkong\(e\)\\_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf).

<sup>7</sup> The Legal Aid Department must be satisfied that the case has a reasonable chance of success and may seek the opinion of counsel or solicitors in private practice before making its determination. See The Merits Test, Guide to Legal Aid Services in Hong Kong, Chapter 4 at 13-15, *available at*: [http://www.lad.gov.hk/pdf/guide\\_to\\_legal\\_aid\\_services\\_in\\_hongkong\(e\)\\_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf). Legal aid may also be refused for other reasons specified in the Legal Aid Ordinance such as when the applicant leaves Hong Kong and stays outside of Hong Kong for a continuous period of six months or fails to provide information requested by the Legal Aid Department. See Paragraph (2), Section 10, Cap 91 Legal Aid Ordinance.

<sup>8</sup> See Civil Legal Aid, Guide to Legal Aid Services in Hong Kong, Chapter 2 at 9-10, *available at*: [http://www.lad.gov.hk/pdf/guide\\_to\\_legal\\_aid\\_services\\_in\\_hongkong\(e\)\\_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf).

<sup>9</sup> The "specified amount" is currently designated as below HK\$488,400. See Paragraph(b), Section 5A, Cap. 91 Legal Aid Ordinance.

<sup>10</sup> See Criminal Legal Aid, Guide to Legal Aid Services in Hong Kong, Chapter 6 at 18-20, *available at*: [http://www.lad.gov.hk/pdf/guide\\_to\\_legal\\_aid\\_services\\_in\\_hongkong\(e\)\\_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf).

<sup>11</sup> Paragraph (1), Rule 15, Cap. 221D Legal Aid in Criminal Cases Rules.

## B. The Duty Lawyer Service

The Duty Lawyer Service was established in 1978 and is an independent organization fully subsidized by the Hong Kong government.<sup>12</sup> The organization is managed by the Hong Kong Bar Association and the Law Society of Hong Kong through a governing council.<sup>13</sup> The Duty Lawyer Service offers three legal assistance schemes which complement the legal aid services provided by the Legal Aid Department: the Duty Lawyer Scheme, the Free Legal Advice Scheme and the Tel-Law Scheme.

The Duty Lawyer Scheme provides legal representation, by qualified lawyers in private practice, to persons brought before all Magistrate Courts, Juvenile Courts and Coroner's Courts.<sup>14</sup> To be eligible for representation, in most instances a person must pass a merits test,<sup>15</sup> a means test<sup>16</sup> and pay a fixed handling charge of HK\$436 which may be waived for students or other dependents. The Scheme also provides lawyers to advise defendants facing extradition and to undertake representation of hawkers (street sellers) with appeals to the Municipal Services Appeals Board. In 2009, 36,991 defendants were represented via the scheme, with an overall acquittal rate of 75.45%.<sup>17</sup>

The Free Legal Advice Scheme provides preliminary legal advice to members of the public at nine Legal Advice Centers located throughout Hong Kong. The objective of the scheme is to help clients understand the nature of their problems, their legal rights and obligations and the channels available for resolution. The scheme does not offer any follow-up services or ongoing representation of the clients. The main areas of inquiry include matrimonial, landlord and tenant,

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<sup>12</sup> See The Duty Lawyer Service, About Us, Our Aim *available at*: <http://www.dutylawyer.org.hk/en/text/about/aim.asp>.

<sup>13</sup> The Duty Lawyer Service is composed of 12 members, four appointed by the Law Society of Hong Kong, four appointed by the Hong Kong Bar Association, three lay members who are not legal professionals and an administrator. See The Duty Lawyer Service, About Us, Our Council *available at*: <http://www.dutylawyer.org.hk/en/text/about/council.asp>.

<sup>14</sup> Cases in the Coroner's Courts arise as a result of person being accused of giving incriminating evidence in coroner's inquests. See The Duty Lawyer Service, The Duty Lawyer Scheme *available at*: <http://www.dutylawyer.org.hk/en/text/duty/duty.asp>.

<sup>15</sup> The Criteria (apart from means) for deciding whether a grant of legal representation for summary trials is "in the interests of justice" are as follows: (a) that the charge is a grave one in the sense that the accused is in real jeopardy of losing his liberty or suffering serious damage to his reputation; (b) that the case raises a substantial question of law; (c) that the accused is unable to follow the proceedings and state his own case because of language barrier, mental illness or other physical disability; (d) that the nature of defense involves the tracing and interviewing of witnesses, or expert cross-examination of witnesses for the prosecution; (e) that legal representation is desirable in the interest of someone other than the accused as, for example, in the case of sexual offenses against young children where it is undesirable that the accused should cross-examine the witness in person. See The Duty Lawyer Service, Annual Report 2009 *available at*: [http://www.dutylawyer.org.hk/en/text/annual\\_09/scheme.asp](http://www.dutylawyer.org.hk/en/text/annual_09/scheme.asp).

<sup>16</sup> Duty Lawyer representation is offered to defendants charged with certain types of offenses at their first court appearance. For a list of qualifying offenses, see <http://www.dutylawyer.org.hk/en/doc/list.xls>. If the defendant wishes to have legal representation for subsequent appearances, he or she must go to the Court Liaison Office for a means test. The financial eligibility limit is set at a gross annual income of HK\$131,860. A defendant who fails the means test can apply to the Administrator to waive his or her means test. The decision of the Administrator is final. The means test does not apply to matters before the juvenile court.

<sup>17</sup> See The Duty Lawyer Service, Annual Report 2009, *available at*: [http://www.dutylawyer.org.hk/en/text/annual\\_09/scheme.asp](http://www.dutylawyer.org.hk/en/text/annual_09/scheme.asp).

employment, estate administration, commercial and property disputes, criminal, personal injuries, bankruptcy and debt.<sup>18</sup>

There is no means test and the service is free, but a person seeking free legal advice must first visit a referral agency to make an appointment to meet a volunteer lawyer. All volunteers providing services at the Legal Advice Centers are Hong Kong-qualified lawyers.<sup>19</sup>

The Free Legal Advice Scheme also provides volunteer lawyers to render legal advice in connection with programs run by the Federation of Women's Centre, the Hong Kong Federation of Women and Action for Reach Out. The Women's Centre Free Legal Advice Clinic was established under the Free Legal Advice Scheme in 1992 and specializes in matrimonial and domestic matters. The Free Legal Advice Hotline was established by the Hong Kong Federation of Women in 1998 and provides legal advice on family, property, probate and bankruptcy matters. The Free Legal Advice Clinic was established by Action for Reach Out in 2003 and provides advice to female sex workers.<sup>20</sup>

The Tel-Law Scheme provides the general public with free recorded legal information on legal topics over the telephone. The audio tapes have also been converted to digital format. Both the tapes and the transcripts are available on the Duty Lawyer Service website in English, Cantonese and Putonghua (Mandarin).<sup>21</sup> There are 78 topics divided into the following eight groups: family law; land law, landlord and tenant; criminal law; employment law; commercial, banking and sales of goods; administration and constitutional law; environmental law and tort; and general legal information. Any person who intends to initiate legal action is encouraged to consult his or her own lawyer or a volunteer lawyer provided through the Free Legal Advice Scheme.<sup>22</sup>

### C. The Bar Free Legal Service Scheme

The Bar Free Legal Service Scheme was established in 2000 and is sponsored by the Hong Kong Bar Association, the professional organization for barristers in Hong Kong. A management committee arranges for legal advice and representation to be provided by volunteer panel members in cases where assistance is unavailable through the Legal Aid Department or where the committee believes there are grounds to appeal a decision by the Legal Aid Department to refuse legal aid to an applicant. These services are provided free of charge, in both civil and criminal matters.<sup>23</sup>

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<sup>18</sup> See The Duty Lawyer Service, Free Legal Advice Scheme, *available at*: <http://www.dutylawyer.org.hk/en/text/free/free.asp>.

<sup>19</sup> As of December 31, 2009, there were over 700 lawyers participating in the Free Legal Advice Scheme. See The Duty Lawyer Service, Annual Report 2009, *available at*: <http://www.dutylawyer.org.hk/en/text/free/free.asp>.

<sup>20</sup> See The Duty Lawyer Service, Annual Report 2009, *available at*: [http://www.dutylawyer.org.hk/en/text/annual\\_09/advice.asp](http://www.dutylawyer.org.hk/en/text/annual_09/advice.asp).

<sup>21</sup> See The Duty Lawyer Service, Annual Report 2009, *available at*: [http://www.dutylawyer.org.hk/en/text/annual\\_09/tel-law.asp](http://www.dutylawyer.org.hk/en/text/annual_09/tel-law.asp).

<sup>22</sup> See The Duty Lawyer Service, Annual Report 2009, *available at*: [http://www.dutylawyer.org.hk/en/text/annual\\_09/tel-law.asp](http://www.dutylawyer.org.hk/en/text/annual_09/tel-law.asp).

<sup>23</sup> See Bar Free Legal Service Scheme, *available at*: <http://www.hkba.org/the-bar/free-legal-service/free-legal-service1.html>. Applications for assistance are reviewed by the management committee which considers the following factors in deciding whether to refer a case to a panel member: (a) Does the case appear to deserve assistance? (b) Can the applicant or his or her family afford legal assistance? (c) Are the services of a barrister

Barristers may volunteer to provide free services for three days or 20 hours each year. Once the case has been accepted by a volunteer, the Bar Association ceases to be actively involved unless there is some unexpected difficulty. For lengthier cases, volunteers may request the assistance of solicitor firms who have expressed a willingness to assist in *pro bono* cases.<sup>24</sup>

#### D. Resource Centre for Unrepresented Litigants

The Resource Centre for Unrepresented Litigants was established by the Judiciary in 2003 to provide free assistance on procedural matters to unrepresented litigants involved in civil proceedings in the High Court or District Court.<sup>25</sup>

The Resource Center for Unrepresented Litigants provides oath and declaration services to unrepresented litigants who are required to file affirmations or affidavits in preparation for their cases. Computer terminals with access to the Judiciary website, interlinked with the websites of the Legal Aid Department and of other agencies offering free legal advice, are available to users. Users may also access a database of frequently asked questions raised by unrepresented litigants. The Resource Center for Unrepresented Litigants also provides brochures outlining civil proceedings in the High Court and District Court, sample court forms and videos of court procedures. Guidance with completing court forms and submission of court documents is also provided. The staff will not advise on the merits of a case and assistance is not available for matrimonial, lands, employees' compensation and probate matters.<sup>26</sup>

## II. *Pro Bono Opportunities in Hong Kong*

In a speech at the ceremonial opening of the legal year in January 2010, outgoing Chief Justice Andrew Kwok-nang Li urged the legal profession to become more involved in the provision of *pro bono* legal advice to unrepresented litigants. He stated that "All lawyers should contribute their fair share to service of the profession and public service. They should also do their part to develop *pro bono* services, which are much needed."<sup>27</sup> Kwok went on to state that "The practice of law cannot be treated merely as a business."<sup>28</sup> There is a growing need for *pro bono* legal services in Hong Kong that could be met through the efforts of volunteer lawyers from private practice. This need is greatest with respect to representation of unrepresented litigants in the court system.<sup>29</sup>

In response to this perceived need, the Law Society of Hong Kong established a working party to study the possibility of introducing free legal services in Hong Kong like those offered by

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needed? (d) What is the nature of the work involved? See <http://www.hkba.org/the-bar/free-legal-service/free-legal-service2.html>

<sup>24</sup> See Bar Free Legal Service Scheme, available at: <http://www.hkba.org/the-bar/free-legal-service/free-legal-service1.html>.

<sup>25</sup> See Resource Centre for Unrepresented Litigants website, available at: <http://rcul.judiciary.gov.hk/rc/cover.htm>. The Judiciary is responsible for the administration of justice in Hong Kong. It hears all prosecutions and civil disputes. It is completely independent of the executive and legislative branches of the government. See Judiciary, About Us, available at: [http://www.judiciary.gov.hk/en/crt\\_services/pphlt/html/guide.htm](http://www.judiciary.gov.hk/en/crt_services/pphlt/html/guide.htm).

<sup>26</sup> See Resource Centre for Unrepresented Litigants website, available at: <http://rcul.judiciary.gov.hk/rc/cover.htm>.

<sup>27</sup> See "HK Law Firms Fall Short on Pro Bono Work" by Naomi Rovnick and Barclay Crawford, *South China Morning Post*, April 5, 2010.

<sup>28</sup> *Id.*

<sup>29</sup> See *id.*

some of the solicitors' firms in London and many American firms. Similarly, the Legal Aid Services Council has also questioned whether it would be desirable to invite solicitors' firms to handle cases in the District Court on a *pro bono* basis. Other opportunities exist to provide legal advice to nonprofit organizations that serve the arts community, domestic helpers, low-income households, the elderly and refugees.<sup>30</sup> In addition, in 2008, a group of leading international law firms came together to form the Hong Kong Legal Community Roundtable, which meets on a quarterly basis to discuss and address *pro bono* opportunities in the region.<sup>31</sup> However, law firms that are licensed by the Law Society of Hong Kong as foreign firms—which include the Hong Kong offices of many U.S. firms—are unable to assist needy persons in the Hong Kong courts or advise nonprofit organizations on Hong Kong law.<sup>32</sup>

### III. Conclusion

There are already several institutions in Hong Kong that have been established to serve the needs of low-income persons with legal problems. Given the lack of funding in recent years, these institutions are under pressure to handle more cases with fewer resources. This presents a potential opportunity for law firms that are locally qualified to expand their *pro bono* efforts to fill this need, in addition to the ongoing efforts of international law firms currently providing *pro bono* services. This would be best accomplished through collaboration via an organization, such as the Hong Kong Legal Community Roundtable, which can both encourage *pro bono* participation by private law firms and serve as a link between those in need and those willing and able to help.

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<sup>30</sup> Two of the most successful of these organizations, the Hong Kong Refugee Advice Center (*see* <http://www.hkrac.org>) and Helpers for Domestic Helpers, an organization run in collaboration with a local church (*see* <http://www.helpersfordomestichelpers.org>), have been successful in partnering with international law firms to assist in provision of *pro bono* legal services to refugees and foreign domestic helpers, respectively.

<sup>31</sup> *See* “HK Law Firms Fall Short on Pro Bono Work” by Naomi Rovnick and Barclay Crawford, *South China Morning Post*, April 5, 2010.

<sup>32</sup> *See* Clause 12 (Prohibition on the practice of Hong Kong Law), Foreign Lawyers Registration Rules, The Law Society of Hong Kong.