

Consultants' Response to Law Society's Submission

Law Society Comments	Consultants Response
<p>1. Supply Study Report</p> <p>1.1 Overview of the Legal Services Sector</p> <p>1.2 In relation to the figures provided in paragraph 2.5, the Panel should note the number of solicitors with practising certificates as at 31 December 2007 was 5913 (4746 in private practice and 1167 not in private practice).</p> <p>It should also be noted that from 2011 up to 150 law graduates from the Law School of the Chinese University will be joining the profession each year.</p> <p>1.3 Pro bono Service by Solicitors The Report fails to mention various pro bono programmes provided by the Law Society and the voluntary service of solicitors: (a) www.chooselawyer.org. This is a pro bono scheme where more than 100 law firms offer a free 45 minute consultation to members of the public; details of the service can be found on the Law Society's website. (b) Domestic Violence Panel Panel members have offered to provide free initial legal advice to victims of domestic violence. The list of Panel members has been circulated to the Hong Kong police and to the Social Welfare Department. (c) The Law Society has organized <i>Law Week</i> for the past 15 years. <i>Law Week's</i> mission has been to educate the community on a wide variety of legal rights and to provide free legal consultations. (d) Many solicitors sit on Statutory Tribunal Panels and Appeal Boards</p> <p>This failure is reflected throughout the report when pro bono services of solicitors is discussed and is a material omission. (See also paragraphs 4.22 and 5.3 pf the Report.)</p>	<p>The figures in the report relate to the situation at the time of the study</p> <p>There is a whole section on pro bono services (para 4.27-33) which includes all such work reported by the lawyers, and should cover the services mentioned by LawSoc, and more.</p> <p>This 45 minute service offering is mentioned in para. 5.33.</p> <p>Not mentioned but in any case covered. Para. 5.9 also mentioned services through the Building Management Resources Centre, HAD</p> <p>Mentioned in para. 5.32</p> <p>Don't see how this can be a problem given paras. 4.27-33 cover all the pro bono work the solicitors reported.</p>

2. Demand Study Report (Part I) – Survey of Small and Medium Enterprises

2.1 SMEs

The Law Society notes in the chart appended paragraph 3.3, some 19.8% of the SMEs with employees outside Hong Kong had more than 100 employees and we query the relevance of the views of these firms in the survey. “SME” is defined in footnote 1 to Chapter 2 in the Executive Summary as: “*SME covers manufacturing firms which employ fewer than 100 persons in Hong Kong and non-manufacturing firms which employ fewer than 50 persons in Hong Kong*”.

2.2 Difficult-to-solve problems or disputes

The survey indicates in paragraph 4.1 and 4.2 that over the last 5 years a combined total of 46% of respondents had experienced difficult to solve problems, thus **a majority namely 54% did not encounter problems.**

The “analysis” of the “Difficult to Solve Problems or Disputes” in paragraph 4.2 indicates the overwhelming majority were related to “business related matters” 43% or “other money matters” at 53.9%.

Many of these difficult to solve problems were regarded by 67% of the respondents as “unimportant”. We question whether the majority of these “problems” required legal advice or representation given the “unimportant” rating.

2.3 Services of Solicitors

The Law Society is pleased to note from paragraphs 5.40 and 5.42 that 73% of the incidents where solicitors’ services were used, the companies concerned had found such services satisfactory or even very satisfactory. The survey indicates respondent’s dissatisfaction with the level of “legal fees” which were viewed as unreasonable. However, this comment is made without any additional context e.g. the legal fees might be costly when compared with the amounts involved in the disputes.

The definition of SMEs was based on C&SD’s definition and agreed by the working group on which LawSoc was represented.

Taking out the SMEs with large employee numbers would not help LawSoc’s arguments. These are the firms which are more likely to have used lawyers, considered their fees not unreasonable, or services helpful

The focus of the study was on those who had difficult to solve problems.

As mentioned in the report, a lot of the difficult to solve problems are considered unimportant. There is no suggestion that these unimportant problems need advice or representation. The concern is more with those problems which are considered important and yet did not get adequate support from lawyers or others.

The survey respondents must be assumed to have taken all factors into consideration before commenting on the reasonableness of the legal fees, including the amounts involved in their disputes.

<p>2.4 Views on Access to Justice - Knowledge In paragraph 6.4 the Report states:</p> <ul style="list-style-type: none"> (a) 65% of the SMEs did not know what to do when faced with legal problems; (b) 74% did not know how much it would cost to use legal services and (c) 68% found it difficult to find out information on the specialization and experience of lawyers. <p>Information on Legal Services The Law Society’s website contains the <i>Law List</i> of all practising solicitors, and the <i>Directory of Solicitors’ Firms</i> lists the practice areas of the subscribing firms together with information on the solicitors and their individual websites and full contact details.</p> <p>The Law Society’s website www.choosehklawyer.org provides information on some 100 solicitors’ firms offering free initial legal consultations of 45 minutes in areas such as: bankruptcy, building management, court claims, conveyancing, criminal aw, employment law, family law, intellectual property, landlord and tenant, personal injuries and wills and probate.</p> <p>Legal Costs As regards legal costs, solicitors usually charge on a “time-spent” basis and it is difficult to provide in advance a detailed estimate of the costs to be incurred for any court action. In Hong Kong when parties engage in litigation the general rule is “costs follow the event, i.e. the losing party pays the winning party’s costs” therefore a litigant is exposed to the risk of paying the other party’s legal costs if he or she loses the case.</p>	<p>Surely the LawSoc has publications that list out the services of their members, printed or otherwise. The question is more about accessibility and adequacy, not availability. If the market is saying people still lack the information, they lack the information and it is for those responsible to see how this can be addressed, starting with taking a look at the circulation of the Law List, and the access rate of the websites.</p> <p>This may be a major deterrent to the use of legal services. The subject is outside the scope of the study.</p>
<p>3 Demand Study Report (Part II) – Survey of Households</p> <p>3.1 Nature of “difficult-to-solve problems or dispute” In the chart appended to paragraph 4.2, the three major types of “difficult-to-solve problems or disputes” are:</p> <ul style="list-style-type: none"> (a) consumer-related matters (43.5%) 	

<p>(b) problems related to damages and disturbances caused by others (37.8%) and</p> <p>(c) employment related (18.7%)</p> <p>The Law Society notes that 81% of the incidents involving money disputes involve sums of less than \$10,000 (see paragraph 4.10). As with the problems encountered by the SMEs, these may or may not be legally-related ones which involve the law or the need for legal advice or representation.</p>	<p>Not all incidents considered important involved money.</p> <p>The study covered legal and related services, not only services provided by lawyers. The difficult to solve problems may or may not require services from legal practitioners.</p>
<p>4. Combined Analysis Report</p> <p>4.1 Small Claims The analysis in the Report fails to indicate problems or claims involving \$50,000 or less are within the jurisdiction of the Small Claims Tribunal or the Labour Tribunal where legal representation is not allowed. The jurisdiction of the Small Claims Tribunal and the Labour Tribunal is only covered in footnotes 2 and 3 on page 22 of the Executive Summary.</p> <p>4.2 SMEs On what basis is it justifiable for SMEs to expect “free” or “pro bono” legal services as the majority of legal firms are SMEs themselves with high overheads? The Law Society considers it unrealistic to conduct a survey on the basis that legal firms and lawyers should be expected to provide professional services without charge. All businesses, including SMEs should allocate funds in their operating budgets to cover legal costs. In order to practise, solicitors must have professional indemnity cover which is calculated in part on the gross fee income of the firm. Solicitors also have unlimited liability and even pro bono work will attract claims. Professional Indemnity insurance is a significant part of the operating costs of a law firm.</p>	<p>References have been made to the Small Claims Tribunal limits in paras. 2.29, 3.51 and 4.30 of the report. References to Labour Tribunal in para 5.12 of Supply Study report, and in para. 5.31 that not all tribunals allow representation.</p> <p>These problems are not uncommon for professional practices. Other professions would see pro bono work as some form of investment to attract potential clients, or considered it a marketing cost. The accountancy profession for example usually attributes such involvement to practice development.</p>