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HK law firms fall short on pro bono work

HK law firms fall short in helping the disenfranchised seek *justice*

Lawyers not doing enough for free

In 2002, top-flight British law firm Freshfields Bruckhaus Deringer helped get Trinidad and Tobago-born businessman Krishna Maharaj, who had been convicted of double murder, off death row in Florida. The firm represented Maharaj for free until 2008 when it applied, unsuccessfully, to get him out of jail.

This firm is typical of the trend.

At the world's biggest commercial law firms, who can charge US\$800 an hour for their services, such noble efforts, known as pro bono publico in the Latin tongue that lawyers favour, are commonplace.

The American Bar Association calls the work of providing free legal advice a "moral duty".

But in Hong Kong, it seems, commercial lawyers are doing far from enough.

The South China Morning Post surveyed the world's 25 largest solicitors' firms, as ranked by The Lawyer magazine in 2006, about their pro bono efforts in Hong Kong.

Those who responded said uniformly they were helping charities with commercial law. Several firms are also assisting Filipino domestic helpers with employment disputes and helping refugees seek asylum through a voluntary organisation, the Hong Kong Refugee Advice Centre.

What was missing from the responses was something law firms do in the US and Europe - helping those who cannot afford lawyers gain access to *justice* and representing them in court.

Michael Smyth, the global head of pro bono at Clifford Chance, the world's third biggest law firm by revenue according to the American Lawyer magazine, said the Hong Kong office could do more. "The task now in territories like Hong Kong is to establish a sustainable global platform whereby all lawyers exhibit the same commitment to public interest activity," Smyth said. But he said Hong Kong did not have a well developed free-law infrastructure.

In London, for example, scores of legal firms contribute staff to the charity LawWorks, which runs free legal advice clinics for people who cannot afford a lawyer.

Meanwhile, commercial solicitors also flock to London's Royal Courts of *Justice* to help litigants who choose to represent themselves in court prepare their cases.

Hong Kong has no such schemes. The closest to them is the Hong Kong Legal Community Roundtable, a forum set up two years ago to share knowledge and experience of pro bono activities and promote the need for more.

Wong Kwai-huen, president of the Law Society, said when he received a plea from a person who could not afford legal representation, he sent out a request for a lawyer prepared to help.

So far, he said, every such request had been answered. "But the problem is, we don't have a pro bono centre and that's probably what we need to do," he said. "We do encourage firms to do pro bono work, but we don't force them to."

Wong said part of the problem in Hong Kong was that more than 80 per cent of the firms had a maximum of five partners, making it hard to institute a rule requiring them to dedicate time to pro bono.

Responses to the Post poll exhibited a timidity among the Hong Kong and mainland offices of global firms to fight contentious battles.

Barristers - the section of the legal profession that stands up in court wearing wigs and gowns - are more active in the city. Earlier this month, 10 Hong Kong barristers agreed to waive their fees representing pro-democracy activists who were arrested for storming the central government's liaison office in the city to protest against the 11-year imprisonment of dissident Liu Xiaobo, a former professor jailed on subversion charges on the mainland after he co-authored the "Charter 08" manifesto calling for political reform.

But not one of the world's 25 biggest law firms stepped in to help the protesters, two of whom were admitted to hospital after clashing with police in the December protest.

Martin Lee Chu-ming, founding chairman of the Democratic Party, who is co-ordinating the protesters' legal defence, said: "The big commercial lawyers are not helping [in this case]".

He said political protesters seeking legal advice in Hong Kong tended to go directly to Democrats chairman Albert Ho Chun-yan, who is a solicitor, for aid. "I am not complaining about the international firms. They do take pro bono cases from time to time. But it's up to the client, and often they know Albert is ready to help them and so they go straight to him," Lee said.

A litigation partner at an American law firm in Hong Kong said his employer would not allow him to act against the Hong Kong government. "If something is anti-government, we would think twice about getting involved," he said.

That sentiment is magnified in mainland human rights cases that law firms could be advising on for free. A partner at a top-five British law firm based in Hong Kong said his firm had "no priority" to try such cases. He said it would be commercial suicide for a global law firm to take on any case that may rattle government officials in Beijing. This is because the mainland is seen as a major source of revenue growth for these firms and their multinational clients.

Robert Precht, the Beijing-based China director of the Public Interest Law Institute, an organisation that supports lawyers working on ethical cases, adds: "In New York, for example, many law firms take pride in the fact they represent very controversial people, people who would be considered political prisoners, Guantanamo [Bay] detainees, death row inmates. I worked at a New York law firm that prided itself on having represented Martin Luther King."

But on the mainland, Precht says, it is different. This is because large international law firms are afraid of upsetting government officials, he says. "The political environment [in China] is unpredictable and the law firms are only able to stay at the pleasure of the Chinese government."

Wong did stress it was clear under mainland rules that even doing preparatory work for cases was not allowed unless you had proper qualifications.

Of course, pro bono work is not just about high-profile human rights cases. It is also a social responsibility to help people who cannot afford it to go to court.

Even Hong Kong's [\*Chief Justice\*](#) Andrew Li Kwok-nang complains not enough is being done to help the poor and disenfranchised gain access to [\*justice\*](#).

At the ceremonial opening of the legal year, Li called on lawyers to do more. "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."

He said [\*justice\*](#) for all was the challenge for society, with the rich and big corporations able to afford to litigate, but the bulk of the population finding the costs too expensive.

Access to pro bono services, he said, was one of the initiatives which could help alleviate some of the hardship caused by legal fees.

So what are the large global law firms doing to help society in Hong Kong?

The answer is rather a lot of charity work.

Take Freshfields. Its work on the Krishna Maharaj death row case won international plaudits. The further towards Beijing it goes, the less contentious its pro bono work gets. It helps refugees in Hong Kong apply for asylum status through the Hong Kong Refugee Advice Centre.

In Shanghai, its lawyers assist a charity called the Plant a Tree Today Foundation, its corporate social responsibility report of last year said.

Linklaters, whose partners pocketed an average of US\$2.25 million each in 2008 according to American Lawyer magazine, funds primary schools in Vietnam, donates to the green group WWF, works alongside Freshfields at the refugee advice centre, and helps mistreated domestic helpers in Hong Kong settle employment disputes.

This was a typical response to our survey.

But as St Augustine said "charity is no substitute for *justice*".

Intriguingly, when asked why they do not advise on human rights cases on the mainland for free, Hong Kong staff at global law firms uniformly say it is because they are not allowed to practise local law across the border.

"That is an utterly specious argument," fumes a London law firm partner who undertakes a great deal of international pro bono work.

On its website, American law firm Kirkland & Ellis says its lawyers assisted Zimbabwean solicitors representing a member of the troubled African nation's parliament who was thrown out of office after he got into a fight in the government chamber.

International law firms are not allowed to practise local law in Zimbabwe either. In this case, Kirkland assisted the International Bar Association by detailing the disciplinary procedures relating to the parliaments in a number of Western democracies.

That pro bono work is possible on the mainland, says Peter Barnes, the principal of Hong Kong law firm Barnes Daly, which does a laudable amount of pro bono on constitutional and human rights cases.

Barnes suspects that global law firms could be limiting their pro bono efforts far too much on the mainland, fearing what Beijing's response might be. "Self-censorship relies on your perceptions of what might happen. But without testing the edges of the issue, how do you know?"

"If all [the big firms] began practising [contentious pro bono law on the mainland], they couldn't all be dis-instructed by their [mainland] clients at once. Chinese corporations need them too."

Chief justice steps up bid for more free legal help

Chief justice steps up bid to co-ordinate free legal services

The outgoing chief justice wants an organisation set up to strengthen and co-ordinate pro bono efforts by lawyers. He is urging the government to consider providing more support.

Andrew Li Kwok-nang takes early retirement in September and is becoming increasingly vocal about his desire to see more pro bono - free legal services - efforts by lawyers, and improvements or additions made to the existing infrastructure to co-ordinate those services.

A judiciary spokesman said: "There are many litigants in person who cannot afford legal representation but are not eligible for legal aid. The chief justice recognises that the legal profession is already making a worthwhile contribution in providing pro bono services but suggests that they need to do more in this area.

"If individual lawyers are willing to do more, these efforts need to be co-ordinated through infrastructural support so that they can be put to the maximum and most effective use. This may be by expansion of the duty lawyer scheme and the free legal advice service, or by a new organisation. This is a matter for the administration to consider."

One member of the legal community, told about Li's views, believed his interest would probably lead him to dedicate his time to championing the cause when he retired.

If there was a need to form a working party to look into how to improve the existing infrastructure, or set up a new body, Li would be the ideal candidate.

In his speech at the opening of the legal year in January, Li said: "The practice of law cannot be treated merely as a business. 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."

In another speech during a conference attended by judges and lawyers on Thursday, he said: "The administration should give serious consideration to the provision of appropriate infrastructural support so contributions by members of the profession can be co-ordinated and put to maximum and effective use."

When asked to elaborate, Li said he meant that the existing duty lawyer scheme and the free legal advice service could either be expanded or an entirely new organisation could be set up.

The Duty Lawyer Service is fully subsidised by the government and includes the duty lawyer scheme, the free legal advice scheme, the tel-law scheme and the convention against torture scheme. The tel-law scheme provides people with free taped legal information by telephone.

However, the schemes are managed by the Bar Association and the Law Society, and lawyers have said they want the government to offer more support services so lawyers can concentrate on the legal advice.

Secretary for Home Affairs Tsang Tak-sing conceded in 2008 that the free legal advice scheme gave advice no further than "aiming to help clients understand the nature of their problems, their rights and obligations under the law and the channels available for resolution of problems".

Duty lawyers are also responsible for those appearing in magistrates' courts and are not intended to provide legal support for complex cases.

At present, people with financial resources of less than HK\$175,800 - a calculation based on monthly disposable income multiplied by 12 plus disposable capital - are eligible for full legal aid. Those

with a sum below HK\$488,400 can apply for supplementary legal aid. The government plans to raise the amounts to HK\$260,000 and HK\$1 million respectively.

But Li has said there are still many in the "sandwich class", or middle class, who are not eligible for legal aid and cannot afford access to *justice*, especially when faced by an opponent with large financial resources such as a land developer or a large corporation.

Legal sector lawmaker Margaret Ng Ngoi-yee said she would raise the matter with the Legislative Council's panel on administration of *justice* and legal services. She said another problem under the current system was that individual litigants "cannot afford to lose" because they may end up having to pay the legal costs of an opponent if they lose, even if the case has public interest.

One group of lawyers and professionals has already begun heeding Li's calls.

The Professional Commons, a group set up by professionals with common civil aspirations, will next month meet two city firms interested in supporting the pro bono service that the group intends to set up.

Commons member Dennis Kwok Wing-hang, a barrister, said the initial response to the suggestion had been positive and he believed it was because the *chief justice* was publicly championing the cause.

Kwok said his group hoped to provide a service which could first answer simple legal inquiries and give advice, but also identify cases with merit which, for whatever reason, do not come within the legal aid bracket. The Professional Commons would then call on law firms which have indicated their support to see if they were willing to take on a case on a pro bono basis.

Kwok said there were many public interest issues over air quality, the environment and consumer rights which could not be resolved because potential litigants may not fall within the legal aid bracket, and who also did not have enough cash to fight cases involving complex legal problems.

Other areas which would benefit from such an arrangement included medical negligence and personal injury cases, he said.

In the 2008-09 financial year, the government's subsidy for the duty lawyer scheme, free legal advice scheme and the tel-law scheme was HK\$94.4 million.

Improved pro bono services on agenda after chief justice's call

The government is critically examining possible options following remarks by the chief justice urging it to consider improving support for pro bono services by lawyers.

Chief Justice Andrew Li Kwok-nang has become increasingly outspoken on his desire to see more pro bono - free - services being offered, as well as improvements to the infrastructure to co-ordinate those efforts.

In his speech at the opening of the legal year in January, Li said: The practice of law cannot be treated merely as a business. 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.

In another speech during a conference this month, he said: The administration should give serious consideration to the provision of appropriate infrastructural support so contributions can be co-ordinated and put to maximum and effective use.

Last week a judiciary spokesman said: There are many litigants in person who cannot afford legal representation but are not eligible for legal aid. The chief justice recognises that the legal profession is already making a worthwhile contribution in providing pro bono services, but suggests that they need to do more in this area.

If individual lawyers are willing to do more, these efforts need to be co-ordinated through infrastructural support so that they can be put to the maximum and most effective use. This may be by expansion of the duty lawyer scheme and the free legal advice service, or by a new organisation. This is a matter for the administration to consider.

A Home Affairs Bureau spokesman said: The administration is aware of the demands from the community for the provision of more extensive free legal advice services.

He said the government already had plans to enhance the free legal advice scheme operated by the Duty Lawyer Service.

Apart from improvements to be made to the scheme, we are critically examining possible options for addressing the needs for more free legal information and advice in Hong Kong, including assistance for unrepresented litigants, with due regard to the sustainability of the mode of operation, financial implications, and impact on the private legal service sector, the spokesman said.

We look forward to further collaboration with the legal professional bodies and welcome their views on how services in this area can be improved. We will also continue to maintain close liaison with the judiciary in respect of the demands for free legal advice for unrepresented litigants, he said.  
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