

INFORMATION NOTE

Free Legal Advice Service

1. Introduction

1.1 This information note provides members of the Panel on Administration of Justice and Legal Services with information on free legal advice service in Hong Kong, England and Wales of the United Kingdom, the Province of Ontario of Canada and the State of New South Wales ("NSW") of Australia.

2. Free legal advice service in Hong Kong

Legal Aid Department

2.1 The Legal Aid Department ("LAD") of the Hong Kong Special Administrative Region ("the HKSAR") provides legal representation to eligible applicants by a solicitor or a barrister (if necessary) in civil or criminal proceedings. According to the *Legal Aid Ordinance*, any applicant, whether or not a Hong Kong resident, who passes both the means test and the merits test is eligible for legal aid. Depending upon the applicant's financial resources, he or she may be required to cover part of the legal costs involved.

2.2 LAD primarily provides legal representation services to eligible applicants only and does not provide free legal advice service.

Duty Lawyer Service

2.3 The Duty Lawyer Service ("DLS") is an independent organization fully funded by the HKSAR Government and managed by the Hong Kong Bar Association and the Law Society of Hong Kong through a governing council. The Government subvention to DLS for the financial year 2010-2011 is HK\$103.1 million.

2.4 DLS offers four legal assistance schemes to complement the legal aid services provided by LAD. The four schemes are: the Duty Lawyer Scheme, the Legal Advice Scheme, the Tel-Law Scheme, and the Convention Against Torture Scheme¹.

2.5 The Legal Advice Scheme, commenced operation in 1978, provides free preliminary legal advice to members of the public who face genuine legal problems and would not normally be able to afford fees for professional legal advice. The legal advice service aims to help clients understand the nature of their problems, their rights and obligations under the law, and the channels available for resolution. It covers most of the common legal problems faced by clients in various areas including matrimonial, landlord and tenant, employment, estate administration, commercial and property. Typical advice sought under the Scheme is civil in nature involving small monetary amounts.

2.6 Legal advice service is provided by volunteer lawyers on a pro bono basis. Applicants are not required to go through means test and the service is free of charge. The service is provided in the Legal Advice Centre² located in the nine District Offices run by the Home Affairs Department. Except for the Wan Chai Centre which operates twice a week in the evening, all the other Centres operate once a week in the evening.

¹ The Convention Against Torture Scheme was operating on a pilot basis for 12 months with effect from 24 December 2009. The Duty Lawyer Service has agreed with the Government to continue the service for another 24 months since 25 December 2010.

² The nine Legal Advice Centres are located in the following District Offices: Shatin District Office, Central and Western District Office, Wan Chai District Office, Tsuen Wan District Office, Kwun Tong District Office, Yau Tsim Mong District Office, Island District Office, Eastern District Office, and Wong Tai Sin District Office.

2.7 A member of the public who wishes to seek free legal advice from the Scheme has to attend a referral agency³, and to make an appointment to meet a volunteer lawyer at a Legal Advice Centre at his or her choice. Staff of the referral agency will take down the detail background of the applicant's case when making the appointment, suitable cases will be sent to volunteer lawyers for preparation to give advice on the day of appointment. An applicant should be able to meet a volunteer lawyer within two weeks after making an appointment. Each lawyer normally interviews five cases each evening and each interview will be allocated 20 to 30 minutes. The service is one-off in nature and no follow-up or representation services will be offered to the clients.

2.8 According to the guidelines of the Legal Advice Scheme, free legal advice will not be offered in the following situations:

- (a) cases involving foreign law;
- (b) cases involving building management, owners-incorporation, and deeds of mutual covenant;
- (c) cases not involving a legal problem;
- (d) clients who have been granted legal aid;
- (e) clients who have already engaged private lawyers to deal with their cases;
- (f) clients who wish to set up a business and request the volunteer lawyer to draft contract for their future use;
- (g) clients who are officers and/or representatives of a company incorporated or registered under the Companies Ordinance (Cap 32) and seek advice on behalf of the company;
- (h) clients who are officers and/or representatives of a corporation, corporation sole and/or statutory body and seek advice on behalf of the corporation; and
- (i) clients repeatedly seeking advice from the Service concerning the same cases and/or the same issue.

³ There are totally 29 referral agencies with 153 branches.

3. Free legal advice service in selected places

England and Wales

3.1 The Legal Services Commission ("LSC") is a non-departmental public body established in England and Wales under the *Access to Justice Act 1999*. It runs the legal aid scheme which provides advice, assistance and representation services to people in need. LSC is financed by the grant-in-aid received from the Ministry of Justice of the United Kingdom government. The annual budget for legal aid and advice services is around £2 billion (HK\$25.5 billion).

3.2 To be financially eligible for free legal advice, the applicants should pass the means test with the following requirements: gross annual income not exceeding £14,213 (HK\$171,987.3), disposable capital of £1,000 (HK\$12,100.7) or less, and disposable income of £95 (HK\$1,149.6) per week or less.

3.3 LSC runs two schemes: the Community Legal Service ("CLS") and the Criminal Defence Service ("CDS"). CLS provides and promotes civil and family legal advice and representation while CDS provides legal advice and representation to people being investigated or charged with a criminal offence.

Community Legal Service

3.4 CLS provides civil legal advice via the Community Legal Advice ("CLA"), which is a scheme under LSC funded by the government. CLA offers free, confidential and independent legal advice for low-income or benefits people of England and Wales. The legal advice services can be accessed via telephone helpline, website, digital TV, Community Legal Advice Centres and a series of free legal information leaflets. Clients can get advice about debt, education, family, welfare benefits and tax credits, employment and housing problems, as well as matters related to police and crime⁴.

⁴ Community Legal Advice provides online information and advice services on both civil and criminal matters.

3.5 Clients calling the telephone helpline will first be received by an operator. The operator will run through an eligibility check to see if the caller is eligible for free advice from one of the specialist legal advisers. An eligible caller will be transferred to a legal adviser who will take on the case. The services provided by the legal adviser include writing letters, speaking to third parties like landlords, employers and creditors, preparing documents for clients to take to court or a tribunal, and referring clients to face-to-face legal aid providers if they need representation in court or tribunals. Clients can speak to the adviser as many times as they need until their problems are solved.

3.6 Clients can also seek independent and confidential legal advice services in Community Legal Advice Centres. General legal advice is available at an initial appointment free of charge while specialist advice is available only if the client is eligible for legal aid.

Criminal Defence Service

3.7 CDS offers solicitors' advice and assistance on criminal matters, and online information and advice service via CLA for eligible clients. The advice and assistance provided by such a solicitor cover giving general advice, writing letters, negotiating, getting a barrister's opinion and preparing a written case.

3.8 Members of the public detained by the police on suspicion of less serious criminal offences⁵ can directly access to non-means tested telephone advice, i.e. CDS Direct. Under CDS, free legal advice from a duty solicitor is also available at the police station during questioning⁶ and at the magistrates' court, but it is not available during criminal proceedings, after charge or summons.

3.9 Both CLS and CDS provide follow-up services. For CLS, if a case needs to go to court, Community Legal Advice Centres will provide support and ensure representation through the wider legal aid provider network. For CDS, advocacy assistance and representation services are available when necessary.

⁵ Examples of less serious criminal offences are drink driving offences, non-imprisonable offences, breach of bail and warrants.

⁶ No means test is required in case legal advice is needed by the client in a police station during questioning.

Ontario of Canada

3.10 Legal Aid Ontario ("LAO") is a statutory corporation established under the *Legal Aid Services Act 1998* to administer the Province's legal aid programme. LAO has an annual funding of over CAN\$300 million (HK\$2,438.7 million). The majority of the funding comes from the Ontario government, while other sources of funding include the Law Foundation of Ontario and client's contribution. The funding from the Ontario government in 2009-2010 was CAN\$237 million (HK\$1,927.1 million).

3.11 LAO's free legal advice is delivered through toll-free telephone service and the Advice Lawyer Service, and is available for low-income people. To be financially and legally eligible, the basic principle is that the applicant has little or no money left after paying for basic things like food and housing; and the legal issue is within the domain covered by LAO. Applicants need to pass a means test which takes into account income, expenses and liability. For a one-person family, the maximum net monthly income is CAN\$601 (HK\$4,807.6) and the liquid assets exempt amount is CAN\$1,000 (HK\$7,999.2)⁷.

Toll-free telephone service

3.12 LAO's toll-free telephone service is divided into two tiers. The first-tier staff provides general information and referrals to duty counsels⁸, community legal clinics⁹ or other agencies as needed. The second-tier staff provides more specialized services like certificate application processing, client reassessment and referrals to receive summary legal advice.

⁷ The applicant's net household income and assets corresponding to his/her household size must be at or below a specified limit. The maximum net monthly income for two-person and three-person families is CAN\$1,075 (HK\$8,598.8) and CAN\$1,137 (HK\$9,095.2) respectively; and the liquid assets exempt amount is CAN\$1,500 (HK\$11,998.9) and CAN\$2,000 (HK\$15,998.6) respectively.

⁸ A duty counsel is an in-house or private lawyer (paid by Legal Aid Ontario) who represents people in need of immediate legal support in court for criminal, family and youth matters, and gives advice about legal rights, obligations and court processes.

⁹ Community legal clinics provide non-means tested free summary advice within a defined geographic area.

3.13 Summary legal advice is delivered by a legal aid staff lawyer knowledgeable in the relevant area of law through the toll-free telephone hotline. Eligible clients with criminal and family law issues may be able to speak with a lawyer for up to 20 minutes. Summary advice lawyers can also refer clients to duty counsels, community legal clinics and private bar, or recommend self-help. In addition, they may advise clients to apply for a legal aid certificate which can be used to retain a private lawyer to represent them in court.

Advice Lawyer Service

3.14 The Advice Lawyer Service is one of the services offered by the Duty Counsel Service¹⁰. It provides out of court assistance including free general advice and legal documents review. The service is available for three to four hours per week in over 130 locations in Ontario. In order to ensure that only those who cannot afford a lawyer receive help from an Advice Lawyer, applicants are required to pass a simplified income and assets test.

New South Wales of Australia

3.15 The Legal Aid Commission ("LAC") is an independent statutory body established under the *Legal Aid Commission Act 1979* of NSW. It provides legal aid and other legal services to the disadvantaged people and assists them socially and economically to understand and protect their rights. LAC receives its funding mainly from the Commonwealth and NSW governments, the Public Purpose Funds, interest earned from lawyers' trust accounts and clients' contributions. The combined funding in 2009-2010 was AUS\$215.1 million (HK\$1,758.9 million).

3.16 LAC's free legal advice is available through LawAccess NSW legal helpline and the Legal Aid Office. Such services are not means tested and applicants are not required to apply for a grant of legal aid to receive free legal advice.

¹⁰ The Duty Counsel Service represents the "emergency room" of the court system. It quickly assesses a person's legal problems and provides efficient and cost-effective services including front-line advice, information and representation to individuals who would otherwise be unrepresented and unassisted in the courtroom.

LawAccess NSW legal helpline

3.17 LawAccess NSW is a free government telephone service that provides legal information, advice and referrals for people who have a legal problem in NSW. Applicants calling the LawAccess NSW legal helpline will be received by Customer Service Officers who can provide legal information over the telephone, send out written information, arrange one of their lawyers to provide telephone legal advice, or refer clients to another legal or related service including face-to-face legal advice.

3.18 LawAccess NSW legal helpline does not provide legal advice to everyone. The legal enquiry must meet the legal advice guidelines and must be suitable to be discussed over the telephone. According to the Policy, Procedure and Service Standards Manual of the NSW Department of Justice and Attorney General, legal advice will not be provided under the following situations:

- (a) the subject matter of the client's inquiry falls outside the expertise of the Legal Advice Group;
- (b) the client requires complex legal advice or legal representation;
- (c) the client has documents which would need to be sighted for legal advice to be provided;
- (d) there is an existing specialist legal advice service and the client's inquiry would be more appropriately and completely addressed by that service;
- (e) the client has already obtained legal advice from a qualified solicitor and is seeking a second opinion;
- (f) the client is a business (or an employer in a business) that has the financial ability to obtain legal advice from a private solicitor; and
- (g) the client is an individual with the financial ability to obtain legal advice from a private solicitor.

Legal Aid Office

3.19 Other than telephone enquiries, clients who need face-to-face legal advice can call their closest Legal Aid Office and make an appointment to see a lawyer. Such free legal advice is provided at the central office in Sydney and 21 regional offices, numerous legal advice clinics located in various metropolitan and country centres. For family law advice, it is provided at the central office and appointment is not required. Each legal advice session is usually limited to about 20 minutes. If the client requires more than legal advice, LAC is able to provide legal representation to help with the case.

Prepared by Katrina WU
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Tel: 2869 9695

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Appendix

Free legal advice service in selected places and Hong Kong

	Hong Kong	England and Wales	Ontario of Canada	New South Wales of Australia
Authority responsible for legal aid (including free legal advice service)	The Legal Aid Department ("LAD").* The Duty Lawyer Service ("DLS").	The Legal Services Commission ("LSC").	Legal Aid Ontario ("LAO").	The Legal Aid Commission ("LAC").
Status	LAD is a government department. DLS is an independent organization fully funded by the Government and managed by the Hong Kong Bar Association and the Law Society of Hong Kong through a governing council.	LSC is a non-departmental public body established under the <i>Access to Justice Act 1999</i> .	LAO is a statutory corporation established under the <i>Legal Aid Services Act 1998</i> .	LAC is an independent statutory body established under the <i>Legal Aid Commission Act 1979</i> of New South Wales.

* LAD does not provide free legal advice service.

Appendix (cont'd)

Free legal advice service in selected places and Hong Kong

	Hong Kong	England and Wales	Ontario of Canada	New South Wales of Australia
Funding	The government funding for DLS is HK\$103.1 million in 2010-2011.	The annual funding for LSC from the Ministry of Justice is around £2 billion (HK\$25.5 billion).	The funding for LAO from the Ontario government was CAN\$237 million (HK\$1,927.1 million) in 2009-2010.	The funding for LAC from the Commonwealth and NSW governments, the Public Purpose Funds, interest earned from lawyers' trust accounts and clients' contributions was AUS\$215.1 million (HK\$1,758.9 million) in 2009-2010.
Financial eligibility of services	Means test is not required.	Means test is required.	Means test is required.	Means test is not required.
Means to access to free legal advice service	Legal Advice Centres.	Community Legal Service and Criminal Defence Service.	Toll-free telephone and Advice Lawyer Service.	LawAccess NSW legal helpline and the Legal Aid Office.

Appendix (cont'd)

Free legal advice service in selected places and Hong Kong

	Hong Kong	England and Wales	Ontario of Canada	New South Wales of Australia
Time limitation of service	20 to 30 minutes.	As much time and as often as needed until the problem is resolved.	About 20 minutes.	About 20 minutes.
Follow-up services	The services are one-off in nature, and no follow-up or representation services are available.	LSC provides support and ensures representation if the case needs to go to court.	LAO provides referrals and advises clients to apply for a legal aid certificate for representation service.	LAC provides referrals and representation service for clients who require more than legal advice.

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