



THE  
**LAW SOCIETY**  
OF HONG KONG  
香港律師會

Practitioners Affairs

3/F WING ON HOUSE · 71 DES VOEUX ROAD  
CENTRAL · HONG KONG DX-009100 Central 1  
香港中環德輔道中71號  
永安集團大廈3字樓

TELEPHONE (電話): (852) 2846 0500  
FACSIMILE (傳真): (852) 2845 0387  
E-MAIL (電子郵件): sg@hklawsoc.org.hk  
WEBSITE (網頁): www.hklawsoc.org.hk

Our Ref : CL/12/693263  
Your Ref :  
Direct Line : HAB/CR 19/1/32

17 January 2012

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Miss Christine Chow  
For Secretary for Home Affairs  
Government Secretariat, Home Affairs Bureau  
12/F, West Wing, Central Government Offices  
2 Tim Mei Avenue, Admiralty, Hong Kong

Dear Ms. Chow

**Re: Pilot Scheme to Provide Legal Advice for Litigants in Person**

I refer to your letter dated 9 December 2011 addressed to the President, Mr. Junius Ho and I have been instructed to send a reply on his behalf.

The Council of the Law Society has reviewed the Administration's paper on the proposed Pilot Scheme and has the following observations:

**A. The Scheme**

The aim of the Scheme is to provide "legal advice" to Litigants in Person (LIPs) on court rules and procedures only. LIPs would not be provided with legal advice on the merits of their cases. The Law Society considers this proposal to be unrealistic as it is not possible to separate legal advice from procedural advice. Litigation before the courts does not only concern procedure but also involves tactical decisions. We question whether it is possible to provide "purely procedural advice" when the LIP's cases is already before the court.

We cite as examples:

- an application for an appeal from a judgment: The LIP must prepare the Grounds of Appeal - in order to do this there must be a thorough review of the judgment and the grounds of appeal must be set out. The LIPs would expect the lawyer to provide advice on the grounds of appeal but this is not possible as the lawyer would then be providing legal advice on the merits of the case.

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- List of documents - if procedural advice is to be given then the LIP will be advised to list all relevant documents - this leads to the obvious question - what are the relevant documents? The lawyer could not answer this without a full review of the case which is not the purpose of the scheme.

Proposed 45-minute session: If the LIP is to be provided with purely "procedural advice" then sessions of 45 minutes will not be necessary. However, if the session involves more detailed advice then 45 minute sessions will be insufficient.

We also note the launch of such a Scheme could encourage even more litigants to become LIPs which would only aggravate and not alleviate the number of LIPs as they will be encouraged to attend these sessions to obtain advice.

### **Promoting the culture of pro bono advice by the legal profession**

The Law Society notes HAB's comments that one of the objective of the Scheme is to: "*promote the culture of providing pro bono legal advice by the legal profession*".

The Law Society is well aware of its responsibilities in relation to pro bono activities for the community. Solicitors current participates in the following pro bono schemes:

- Property Management Advisory Centre of Hong Kong Housing Society
- Hong Kong Trade Development Council Business Advisory Services (China Business Advisory Service) and (SME Advisory Service)
- P I Helpline
- Domestic Violence Helpline
- [www.choosehklawyer.org.hk](http://www.choosehklawyer.org.hk)

#### **Duty Lawyer Schemes – Capped Fees**

- The Duty Lawyer Service
- Convention Against Torture Scheme

#### **Public Education**

- *Law Week*
- *Teen Talk*

## **B. Staffing of the LIPs Office**

### **(a) *The Centre-in charge***

The Law Society notes this is an administrative role and does not require the appointment of a qualified lawyer.

### **(b) *The resident lawyer(s)***

No comment

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### **(c) Other support staff**

Conflict of interest: We note HAB has not provided any information on funding to create a database.

We query how a para-legal can "ensure *as far as possible* a case will not be assigned to a community lawyer if it is apparent from the court papers supplied that the community lawyer to be assigned comes from the firm which is representing the opposite parties in the proceedings" (emphasis added).

The Scheme does not have adequate procedures in place to ensure there is no conflict which is a standard practice for all law firms.

### **C. The Community Lawyers**

The Law Society queries whether lawyers with 2 years PQE will have enough experience to advise on the range of cases before the courts?

The Law Society has established its P.I. Helpline to assist victims with legal advice. The advice provided to the members of the public is targeted as panel members must have 3 years PQE and be a member of the Legal Aid's P.I. Panel.

### **Handbook**

We note the proposal to create a handbook on Frequently Asked Questions - Any handbook would not be of great assistance as it cannot provide practical experience to the community lawyers, especially those who have little or no experience in civil litigation.

### **D. Insurance**

The Administration indicates a separate policy of professional indemnity insurance will be taken out to cover the Scheme.

The Law Society notes that notwithstanding the Administration's attempt to avoid negligence claims by aggrieved LIPs, there is still a potential impact on the Law Society's Professional Indemnity Scheme.

### **E. Expenses**

HAB proposes to provide an honorarium of HK\$300 to lawyers participating for each 3-hour session which will be offered during the morning and afternoon from 8:30 a.m. to 5:30 p.m.

In relation to the proposed honorarium we note:

- ❖ The proposed honorarium/payment to lawyers is too low.
- ❖ The daily rate for community lawyer should not be less than the rate provided to lawyers on the Duty Lawyer Service Panel who receive a daily pay rate of HK\$3,000 per half day plus HK\$750 per hour of preparation plus HK\$750 per hour for conferences.

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### F. Operation of the Scheme

#### *(a) Making an appointment*

HAB proposes to operate the centre from 8:30 a.m. to 5:30 p.m. HAB's paper is unclear on the number of sessions to be provided each day. We note there are no sessions planned for public holidays - can HAB also confirm there will be no sessions during the week-ends?

The Law Society notes HAB's expectation that lawyers can provide pro bono services during the working day for \$300 each session is unrealistic. The Administration must be prepared to pay reasonable fees for legal services and cannot continue to expect the legal profession to continue to provide pro bono services to meet the unmet legal needs of the general public.

#### *(b) Taking of case background*

No comments

#### *(c) Arranging Appointment with lawyer*

HAB proposes the Centre-in charge will have discretion on the number of sessions each LIP can receive. This proposal needs to be reviewed as the discretionary decision by the Centre -in -charge can be challenged by disgruntled LIPs. Why should some LIPs have more sessions than others?

#### *(d) Withdrawing service*

This requires clarification. The Centre-in-charge has too much discretionary power. In circumstances where the LIP has means he should not be eligible to receive pro bono services at all.

#### *(e) Preparing for appointment*

No comments

#### *(f) Appointment with lawyer*

Who will provide the translation services - where is provision for this in the budget?

#### *(g) Case recording*

Will the lawyer be provided with a copy of the prescribed form for his/her records?

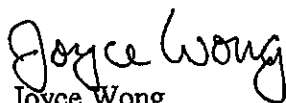
#### *(h) Follow-up appointment*

No comments

#### **Steering Committee**

Please provide details of the proposed membership.

Yours sincerely,



Joyce Wong

Director of Practitioners Affairs

e-mail: [dpa@hklawsoc.org.hk](mailto:dpa@hklawsoc.org.hk)