

香港司法機構
司法機構政務處



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JUDICIARY ADMINISTRATION
JUDICIARY
HONG KONG

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13 October 2009

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Miss Flora TAI
Clerk to the Panel on Administration
of Justice and Legal Services
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Miss Tai,

Panel on Administration of Justice and Legal Services (“AJLS Panel”)
of the Legislative Council

Follow-up Action regarding the Operation of the Resource Centre for
Unrepresented Litigants (“Resource Centre”) at the meeting
on 13 January 2009

At the captioned meeting, the Judiciary Administration informed Members that the Judiciary had been approached by the Faculty of Law of the University of Hong Kong (“HKU”) regarding a proposal to provide assistance to litigants by law students on cases which were not related to the Resource Centre for Unrepresented Litigants. We undertook to provide Members with relevant information on this matter at an appropriate time.

2. Earlier this year, the Judiciary was approached by the Faculty of the HKU to give consent to the launching of a scheme under the Pilot Clinical Legal Education Programme (“the Pilot Programme”) to provide assistance to certain litigants in the Small Claims Tribunal (“the Tribunal”) where legal representation is not allowed. Under this Pilot Programme, it was proposed that HKU law students, under the close supervision of their legally qualified staff, would assist a party to understand the procedures involved and to do the preparation required under the Tribunal’s directions given at the call-over or mention hearings (e.g. to assist in the preparation of the witness statements, liaison with the expert for the preparation of the expert report, collation of

relevant supporting documents, etc.). The Judiciary was informed that for the purpose of this Pilot Programme, the law students would only take up cases (i) where the other party is represented by the Department of Justice or by an employee who is a legally qualified person; and (ii) with the other party's consent. Since then we understand that the Department of Justice has given general consent to the Pilot Programme assisting one party when the Department of Justice is appearing on the other side. The Law Faculty of the HKU has made it clear that the service would be confined to assisting the party to understand and comply with the procedural requirements in the Tribunal and that legal advice would not be rendered by the law students. The application for the service under this programme is purely voluntary and the service is primarily free.

3. The Judiciary indicated support to the implementation of the Pilot Programme under the proposed terms and conditions. The Law Faculty of the HKU had prepared a pamphlet for the Pilot Programme. A copy is attached.

Annex

4. The Law Faculty of the HKU launched the Pilot Programme for two months from February to April 2009. The Judiciary is given to understand that two cases have been identified as being suitable for the Pilot Programme. Of these two cases, we understand that only the litigant in one case approached the Law Faculty, and service was provided to him under the Pilot Scheme. We understand that the Law Faculty of HKU has since then been reviewing the progress of the Pilot Programme to see whether and, if so, how it should continue in the coming academic term.

5. The Judiciary Administration has also conveyed to the Steering Committee on the Resource Centre for Unrepresented Litigants ("Steering Committee") Members' views on exploring possible collaboration with law students in providing assistance to unrepresented litigants in the Resource Centre.

6. The Steering Committee notes that the existing staff of the Resource Centre are well equipped to provide assistance to litigants on procedural matters, and that the existing manpower can cope with the workload. Indeed, the Steering Committee does not think that law students would be better placed than our trained staff in providing such assistance.

7. Regarding the possibility of providing legal advice to litigants in the Resource Centre by law students, the Steering Committee notes that the general subject of providing free legal advice to litigants had been thoroughly considered by a Sub-Committee on Making Available Free Legal Advice ("Sub-Committee") under a Consultative Committee on the Resource Centre ("Consultative Committee") in 2006. The Consultative Committee included

members of local universities. The Steering Committee notes after considering the matter thoroughly with inputs from members of the legal profession and the universities, the Consultative Committee and the Sub-committee had concluded that the Resource Centre should not be a provider of free legal service.

8. In coming to this conclusion, it was concluded that the provision of free legal advice at the Resource Centre would give rise to three major areas of concern:

- (a) the difficulty in upholding the independence and impartiality of the Judiciary if legal advice were given at the Resource Centre;
- (b) the difficulty of having legally qualified personnel to manage the Resource Centre, especially after office hours; and
- (c) the difficulty of securing appropriate and adequate insurance against potential claims resulting from the provision of legal advice.

9. The Consultative Committee also took the view that the Resource Centre should not duplicate the service offered elsewhere. However, the Centre could facilitate referrals to various free legal advice organizations or it could explore providing space for the dissemination of the services.

10. The Consultative Committee acknowledged that although there are pro bono services available in the community, there are still gaps in the provision of the free legal advice service to the public that had to be filled. It was noted that the extent of unmet legal needs was being reviewed by the Administration under a consultancy study commissioned by the Department of Justice.

11. The Steering Committee accepts the views of the Consultative Committee and its Sub-committee.

Yours sincerely,



(Ng Sek-hon)

for Judiciary Administrator



Pilot Clinical Legal Education Programme

臨床法律教育先導計劃

Faculty of Law, The University of Hong Kong 香港大學法律學院



The Faculty of Law, University of Hong Kong, has introduced on a pilot basis a clinical legal education programme whereby our law students will, under the supervision of our legally qualified staff, provide free assistance to a party in an action in the Small Claims Tribunal. If you wish to obtain our service, please read the information below. The deadline for application is 6 March 2009, while the quota still lasts.

Scope of Our Service

Our law students, under close supervision of our legally qualified staff, will assist the party to understand the procedures involved and to do the preparation required under the Tribunal's directions given at the call-over hearing or mention hearing for the future conduct of the claim (e.g. to assist in the preparation of the witness statements, liaison with the expert for the preparation of the expert report, collation of relevant supporting documents). Our service will formally end at the conclusion of the next scheduled mention hearing.

Please note that legal representation is not allowed at any hearing of the Small Claims Tribunal, and so we will NOT be your legal representative in the proceedings. Our service is confined to assisting the party to understand and comply with the procedural requirements and in the preparation of evidence.

As the primary purpose of the programme is to enable our law students to learn and develop lawyering skill through handling real cases, the service will be provided primarily by the students. As they are not professionally qualified, they will NOT give any legal advice to you. If we consider that certain legal advice needs to be given, it will be given by our legally qualified staff.

Cases that we may take up

For the purpose of the pilot programme, we will only take up cases (1) where the other party is represented by the Department of Justice or by an employee who is a legally

香港大學法律學院正展開一項臨床法律教育先導計劃，讓學生在具執業資格和經驗的導師督導下，為小額錢債審裁處審理之案件的當事人提供免費協助。如欲享用本計劃提供的服務，請參閱以下詳情。截止申請日期為2009年3月6日，額滿即止。

服務範圍

在具執業資格的導師指導下，本法律學院學生將協助當事人明白有關法律程序、及完成審裁官在初次聆訊或提訊時就審訊前準備所作的指示(例如預備證人口供詞及專家報告、整理有關文件等)，服務會在下次提訊時終止。

由於小額錢債審裁處不容許當事人由律師代表，我們將不會擔當代表律師的角色。我們所提供的服務亦只限於協助當事人明白及遵守程序上的要求和預備証供。

本計劃旨在透過處理真實案件，加強學生處理訴訟的經驗和技巧，故服務主要會由學生提供。法律學生未具執業資格，故不會提供任何法律意見。如有需要，我們會經由具執業資格的導師作適當安排。

受理案件

本計劃尚在試驗階段，故現時只能接受(1)對方由律政司或由具法律執業資格的公司員工代表的案件，並(2)得到

qualified person; and (2) with the other party's consent. If the other party subsequently withdraws his consent, we will cease giving any further assistance in the case and terminate our service.

What will it cost

Our service is free. However, you will be responsible for paying any disbursements incurred (e.g. copying charges and the costs of the experts). If you lose in the case, you may also be ordered by the Tribunal to pay the costs of the other party.

How to Apply

If you wish to obtain our service, please contact us for an appointment at

Ms Rachel Li
Faculty of Law, 4/F, KK Leung Building
The University of Hong Kong
(Tel: 2859 2919 ; Fax: 2559 3543
Email: lirachel@hku.hk)

As we wish to maintain high quality control and supervision of our students, we can only take up a limited number of cases. We therefore reserve our right not to provide assistance if we do not have any spare capacity, or the case is not of sufficient educational value in our view, or for any other reason. You will be informed within 2 working days after the first appointment whether we can provide assistance.

Please note that your application for our Service under this pilot programme is purely voluntary and will not affect the processing of your case in the Small Claims Tribunal. You also have the right to withdraw your application or your participation in the programme at any time.

Complaint Procedure

We hope you will be satisfied with the service provided by us. If you are unhappy with the service provided by our students, please ask to see our Director for Clinical Legal Education, Mr Eric TM Cheng and see if you can solve the problem. However, if you do wish to complain in writing, you may address your complaint to him. If you are dissatisfied with the response, you can further contact Professor Johannes Chan, the Dean of our Faculty.

對方同意本計劃向你提供服務。如過程中對方撤回其同意書，我們會終止所有服務。

收費

本計劃無需收費，但你要負責訴訟本身的其他開支(例如影印費和專家的顧問費)。一旦敗訴，你亦有可能被法庭命令支付對方的費用。

申請辦法

如欲參加本計劃，請與我們聯絡，並安排會面：

香港大學梁球鋸樓 4 樓
臨床法律教育先導計劃
李秀雯小姐
(電話: 2859 2919 傳真: 2559 3543
電郵: lirachel@hku.hk)

為確保服務質素，我們只能集中處理少量具教育價值的案件，並保留不接受任何案件之權利。我們會在首次會面後兩個工作天內回覆你是否接受申請。

參與本先導計劃純屬自願，並不會影響小額錢債審裁處處理你的案件的進度，你亦有權於任何時候終止參與本計劃。

投訴程序

我們相信你會滿意本院學生所提供的服務，但若你有任何投訴，請致電 2859 2974 與本計劃主任張達明律師聯絡，你亦可以書面方式投訴。如對回覆仍未滿意，可聯絡本院院長陳文敏教授。