



## Pro Bono Practices and Opportunities in Hong Kong

### INTRODUCTION

The provision of pro bono services is often seen as secondary to the government-funded legal aid system in Hong Kong. However, the term pro bono has become very “topical” in recent years and there is increasing recognition within Hong Kong’s legal community that legitimate legal needs are not being addressed through traditional legal aid. Over the past few years, many international law firms have expanded their pro bono practices in the region. This chapter discusses the legal profession, the legal aid system and pro bono opportunities and considerations in Hong Kong.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The constitutional framework of Hong Kong’s legal system is provided by the Basic Law, which is the constitutional document for Hong Kong, sanctioned by the National People’s Congress of the People’s Republic of China (the “PRC”).<sup>1</sup> The sources of law in Hong Kong include national law, Basic Law, common law and the rules of equity, statute law enacted in Hong Kong, Chinese customary law, and international law.<sup>2</sup>

##### The Courts

The courts of justice in Hong Kong are made up of the following: the Court of Final Appeal, the High Court (which includes the Court of Appeal and the Court of First Instance), the District Court (which includes the Family Court), the Lands Tribunal, the Magistrates’ Courts (which include the Juvenile Court), the Coroner’s Court, the Labor Tribunal, the Small Claims Tribunal and the Obscene Articles Tribunal.<sup>3</sup>

The Magistrates’ Courts hear a wide range of criminal offenses, both summary and indictable.<sup>4</sup> The District Court has both a criminal and civil jurisdiction.<sup>5</sup> The High Court comprises the Court of Appeal and the Court of First Instance, and both courts have appellate and original jurisdiction.<sup>6</sup> The Court of Final Appeal is the highest appellate court in Hong Kong.<sup>7</sup> In addition to the courts, there are a large number of tribunals that adjudicate disputes relating to specific subject matters, such as the Lands Tribunal, the Labor Tribunal and the Small Claims Tribunal.

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<sup>1</sup> MYGovHK, Hong Kong: The Facts, Legal System, available at [http://www.gov.hk/en/about/abouthk/factsheets/docs/legal\\_system.pdf](http://www.gov.hk/en/about/abouthk/factsheets/docs/legal_system.pdf) (last visited on September 4, 2015).

<sup>2</sup> THE DEPARTMENT OF JUSTICE OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, The Legal System in Hong Kong-5<sup>th</sup> Edition, available at [http://www.doj.gov.hk/eng/legal/index\\_5th.html](http://www.doj.gov.hk/eng/legal/index_5th.html) (last visited on September 4, 2015); see also THE DUTY LAWYER SERVICE, HONG KONG SPECIAL ADMINISTRATIVE REGION, Our Aim, <http://www.dutylawyer.org.hk/en/about/aim.asp> (last visited on September 4, 2015).

<sup>3</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, Introduction, [http://www.judiciary.gov.hk/en/crt\\_services/pphl/html/guide.htm](http://www.judiciary.gov.hk/en/crt_services/pphl/html/guide.htm) (last visited on September 4, 2015).

<sup>4</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, Magistrates’ Courts, [http://www.judiciary.gov.hk/en/crt\\_services/pphl/html/mag.htm](http://www.judiciary.gov.hk/en/crt_services/pphl/html/mag.htm) (last visited on September 4, 2015).

<sup>5</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, The District Court, [http://www.judiciary.gov.hk/en/crt\\_services/pphl/html/dc.htm](http://www.judiciary.gov.hk/en/crt_services/pphl/html/dc.htm) (last visited on September 4, 2015).

<sup>6</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, High Court, [http://www.judiciary.gov.hk/en/crt\\_services/pphl/html/hc.htm](http://www.judiciary.gov.hk/en/crt_services/pphl/html/hc.htm) (last visited on September 4, 2015).

<sup>7</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, Court of Final Appeal, [http://www.judiciary.gov.hk/en/crt\\_services/pphl/html/cfa.htm](http://www.judiciary.gov.hk/en/crt_services/pphl/html/cfa.htm) (last visited on September 4, 2015).



The Hong Kong courts fall under the umbrella of the Hong Kong Judiciary, independent from the Executive and the Legislature of the Hong Kong Special Administrative Region (“**HKSAR**”) Government. The Judiciary is headed by the Chief Justice of the Court of Final Appeal who oversees both judicial and administrative matters. As of July 2015, there were over 190 judges and magistrates serving at different levels of the court and tribunal system in Hong Kong.<sup>8</sup> As stipulated by the Basic Law, the Chief Executive of the HKSAR, with recommendation of the Judicial Officers Recommendation Commission, appoints all judges. The Judicial Officers Recommendation Commission is an independent statutory body created pursuant to the Judicial Officers Recommendation Commission Ordinance (Cap. 92) and its membership is drawn from local judges, persons from the legal profession, as well as reputable persons from other sections.

## The Practice of Law

The legal profession in Hong Kong is a self-governing system, where lawyers either practice as barristers or solicitors, but not both.<sup>9</sup>

### Licensure

#### The Role of Barristers

Barristers are legal practitioners, experts in advocacy and litigation.<sup>10</sup> Generally, only barristers have the right of audience<sup>11</sup> in the Court of Appeal and the Court of Final Appeal.<sup>12</sup> Access to barristers is normally granted through solicitors, the Department of Justice, or members of professional bodies recognized by the Hong Kong Bar Association.<sup>13</sup> A candidate becomes a barrister in Hong Kong either via the “solicitor” route or the “overseas lawyer” route.<sup>14</sup> A qualified solicitor in Hong Kong must have been admitted for at least three years before his application for admission as a barrister.<sup>15</sup> In addition to these qualifications, all candidates must also undertake pupillage for six months before they are admitted as barristers, and another additional six months before they are able to practice as barristers.<sup>16</sup>

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<sup>8</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, List of Judge and Judicial Officers, available at <http://www.judiciary.gov.hk/en/organization/judges.htm> (last visited on September 4, 2015).

<sup>9</sup> THE DEPARTMENT OF JUSTICE OF HONG KONG SPECIAL ADMINISTRATIVE REGION, The Legal System in Hong Kong, <http://www.doj.gov.hk/eng/legal/> (last visited on September 4, 2015).

<sup>10</sup> HONG KONG BAR ASSOCIATION, About Us, <http://www.hkba.org/the-bar/aboutus/index.html> (last visited on September 4, 2015).

<sup>11</sup> A right of audience is a right of lawyers to appear and conduct proceedings in court on behalf of their client.

<sup>12</sup> HONG KONG BAR ASSOCIATION, About Us, *supra* n.17.

<sup>13</sup> HONG KONG BAR ASSOCIATION’S CODE OF CONDUCT, paragraph 50(a), available at <http://www.hkba.org/the-bar/code-of-conduct/code-of-conduct.html> (last visited on September 4, 2015).

<sup>14</sup> The Legal Aid Ordinance § 31, available at <http://www.hklii.hk/eng/hk/legis/ord/159/s31.html> (last visited on September 4, 2015). A barrister shall not be qualified to practise as such- (a) subject to subsection (2), unless he has completed the prescribed qualifying period of active practice; (b) unless he holds a valid practising certificate; (c) having qualified for admission as a barrister by virtue of section 27(1)(a)(i) or (ii) (as that section existed before its repeal by the Legal Practitioners (Amendment) Ordinance 2000 (42 of 2000)), unless he continues to be a barrister in England or Northern Ireland or an advocate in Scotland and is not there suspended from practice as such; (Amended 42 of 2000 s. 12); (d) if he is suspended from practice under section 37; (Amended 61 of 1992 s. 16); (e) if he is on the role of solicitors; (Replaced 70 of 1991 s. 7. Amended 61 of 1992 s. 16; 42 of 2000 s. 12); (f) if he is an employed barrister within the meaning of section 31C(1). (Added 42 of 2000 s. 12).

<sup>15</sup> HONG KONG BAR ASSOCIATION, Admission and Registration Rules, available at <http://www.hkba.org/admission-pupillage/general/> (last visited on September 4, 2015).

<sup>16</sup> *Id.*



### The Role of Solicitors

In contrast to barristers, solicitors may offer a variety of legal services ranging from land and property, personal and family, to commercial and criminal matters. A solicitor's right of audience is traditionally limited to the lower courts. A candidate becomes a solicitor in Hong Kong either via the "trainee solicitor" route or the "overseas lawyer" route. In the "trainee solicitor" route, the candidate first completes a Bachelor of Laws from an eligible institution. Then the candidate needs to complete and pass the Postgraduate Certificate in Laws.<sup>17</sup> The next step in the "trainee solicitor" route requires the candidate to undergo two years of training in a Hong Kong law firm as a trainee solicitor under a trainee solicitor contract, during which time the trainee solicitor is required to gain experience in at least three practice areas.<sup>18</sup> After the trainee solicitor completes his two-year term, he is then able to apply for admission as a solicitor.<sup>19</sup>

### The Role of Foreign Lawyers

A foreign lawyer wishing to practice in Hong Kong without being admitted as a solicitor, may only do so within a Hong Kong firm or a foreign firm.<sup>20</sup> Lawyers qualified in jurisdictions outside Hong Kong may apply to be registered as foreign lawyers. Registered foreign lawyers may only practice the law of their jurisdictions and are prohibited from practicing Hong Kong law.<sup>21</sup>

### Demographics

As of July 2015, there were more than 1,200 barristers in Hong Kong and more than 8,000 solicitors<sup>22</sup> working in more than 800 solicitor law firms<sup>23</sup> in Hong Kong out of a total civilian population of approximately seven million.<sup>24</sup> In addition to barristers and solicitors, there were approximately 1,340 registered foreign lawyers in Hong Kong as of September 2014.<sup>25</sup>

### Legal Regulation of Lawyers

The legal profession in Hong Kong is largely self-regulated. The Hong Kong Bar Association governs affairs relating to the regulation of barristers while the Law Society of Hong Kong is responsible for managing affairs concerning solicitors.

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<sup>17</sup> Postgraduate Certificate in Laws or PCLL is defined in Section 2(1) of the Legal Practitioners Ordinance as "a Postgraduate Certificate in Laws awarded by the University of Hong Kong, the City University of Hong Kong, the City Polytechnic of Hong Kong or the Chinese University of Hong Kong." The Legal Aid Ordinance § 2, available at [http://www.hkii.hk/eng/hk/legis/ord/159/s2.html#postgraduate\\_certificate\\_in\\_laws](http://www.hkii.hk/eng/hk/legis/ord/159/s2.html#postgraduate_certificate_in_laws) (last visited on September 4, 2015).

<sup>18</sup> LAW SOCIETY OF HONG KONG, *Becoming a Solicitor*, available at [http://www.hklawsoc.org.hk/pub\\_e/admission/AdmissionasaSolicitor/pdf/Booklet\\_on\\_becoming\\_a\\_solicitor.pdf](http://www.hklawsoc.org.hk/pub_e/admission/AdmissionasaSolicitor/pdf/Booklet_on_becoming_a_solicitor.pdf) (last visited on September 4, 2015).

<sup>19</sup> Id.

<sup>20</sup> LAW SOCIETY OF HONG KONG, *Becoming a Solicitor*, available at [http://www.hklawsoc.org.hk/pub\\_e/admission/AdmissionasaSolicitor/pdf/Booklet\\_on\\_becoming\\_a\\_solicitor.pdf](http://www.hklawsoc.org.hk/pub_e/admission/AdmissionasaSolicitor/pdf/Booklet_on_becoming_a_solicitor.pdf) (last visited on September 4, 2015).

<sup>21</sup> Foreign Lawyers Registration Rules, paragraph 12, available at [http://www.hklawsoc.org.hk/pub\\_e/professionalguide/volume2/default.asp?cap=8](http://www.hklawsoc.org.hk/pub_e/professionalguide/volume2/default.asp?cap=8) (last visited on September 4, 2015).

<sup>22</sup> THE LAW SOCIETY OF HONG KONG, *Members with Practising Certificate*, [http://www.hklawsoc.org.hk/pub\\_e/memberlawlist/mem\\_withcert.asp](http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_withcert.asp) (last visited on September 4, 2015).

<sup>23</sup> THE LAW SOCIETY OF HONG KONG, *Hong Kong Solicitors' Firms*, [http://www.hklawsoc.org.hk/pub\\_e/memberlawlist/mem\\_firm.asp](http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_firm.asp) (last visited on September 4, 2015).

<sup>24</sup> HONG KONG BAR ASSOCIATION, *Bar List*, <http://www.hkba.org/the-bar/bar-list/index-new-eng.html> (last visited on September 4, 2015).

<sup>25</sup> THE LAW SOCIETY OF HONG KONG, *Registered Foreign Lawyers*, [http://www.hklawsoc.org.hk/pub\\_e/memberlawlist/mem\\_foreignlawyers.asp](http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_foreignlawyers.asp) (last visited on September 4, 2015).



## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### State-Subsidized Legal Aid

Because of high legal fees in Hong Kong, the Hong Kong Government has established programs, such as legal aid services by the Hong Kong Legal Aid Department (the “**Legal Aid Department**”)<sup>26</sup> and the Duty Lawyer Service,<sup>27</sup> in order to provide legal assistance to those individuals who lack financial means. Established by the Legal Aid Ordinance,<sup>28</sup> the Legal Aid Department is a separate administrative department of the Hong Kong Government that provides legal representation to eligible applicants in civil and criminal proceedings.<sup>29</sup> Any person, regardless of his or her residency in Hong Kong, who is involved in legal proceedings in the District Court, the Court of First Instance, the Court of Appeal, the Court of Final Appeal, and committal proceedings in the Magistrates' Courts may apply for legal assistance.<sup>30</sup> However, even when an application for legal aid is accepted, the applicant may be required to contribute towards the costs and expenses incurred by the Legal Aid Department, depending on the financial resources of each applicant.<sup>31</sup> Moreover, in certain cases (e.g. successful recovery or preservation of property or damages), the aided persons in the proceedings are required to reimburse the Legal Aid Department for the costs incurred.<sup>32</sup>

Legal aid may be provided through three different schemes: (1) Ordinary Legal Aid, (2) Supplementary Legal Aid, and (3) Criminal Legal Aid.<sup>33</sup> All three schemes are open to applicants who pass the “means test” and the “merits test,” regardless of whether they are Hong Kong residents.<sup>34</sup> The purpose of the means test is to ensure that the applicant does not otherwise have access to affordable legal services. The standard for the means test differs for each legal aid scheme, as explained further below.<sup>35</sup> The purpose of the merits test is to determine whether an applicant has a reasonable chance of success in the matter in question and whether the grant of legal aid to an applicant is justified.<sup>36</sup> The three legal aid schemes operate differently in significant ways.

### Civil Proceedings

Ordinary Legal Aid provides assisted legal services in civil matters, including family and matrimonial disputes, personal injury claims, employment disputes, contractual disputes, immigration matters and professional negligence claims. Ordinary Legal Aid is not available for certain types of matters. To qualify

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<sup>27</sup> See mem\_foreignlawyers.asp” [http://www.hklawsoc.org.hk/pub\\_e/memberlawlist/mem\\_foreignlawyers.asp](http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_foreignlawyers.asp) (last visited on September 4, 2015).

<sup>28</sup> The Legal Aid Ordinance § 3, available at <http://www.hklii.hk/eng/hk/legis/ord/91/s3.html> (last visited on September 4, 2015).

<sup>29</sup> GUIDE TO LEGAL AID SERVICES IN HONG KONG at 5, available at [http://www.lad.gov.hk/eng/documents/ppr/publication/guide\\_to\\_legal\\_aid\\_services\\_in\\_hongkong\(e\)\\_lowr.pdf](http://www.lad.gov.hk/eng/documents/ppr/publication/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf) (last visited on September 4, 2015).

<sup>30</sup> LEGAL AID DEPARTMENT OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, Overview, available at <http://www.lad.gov.hk/eng/las/overview.html> (last visited on September 4, 2015).

<sup>31</sup> The Legal Aid Ordinance § 3, supra n.34.

<sup>32</sup> LEGAL AID DEPARTMENT OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, FAQ, available at <http://www.lad.gov.hk/eng/las/faq.html> (last visited on September 4, 2015).

<sup>33</sup> The Legal Aid Ordinance § 3, supra n.34.

<sup>34</sup> Id. at 4.

<sup>35</sup> LEGAL AID DEPARTMENT OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, FAQ, <http://www.lad.gov.hk/eng/las/faq.html> (last visited on September 4, 2015).

<sup>36</sup> GUIDE, supra n.35, at 13.



for Ordinary Legal Aid, an applicant must pass the merits test and the means test. Applicants may be required to pay a contribution towards their legal fees, which is calculated in accordance with their financial resources.

Supplementary Legal Aid covers cases involving personal injury or death, as well as medical, dental or legal professional negligence, where the claim for damages is likely to exceed HK\$60,000.<sup>37</sup> It also covers claims under the Employee's Compensation Ordinance. Supplementary Legal Aid requires the applicant to pass the merits test and the means test. Since Supplementary Legal Aid is a self-financing scheme funded by contributions paid and compensation recovered, applicants must pay an initial application fee plus an interim contribution once their application has been accepted.<sup>38</sup>

### Criminal Proceedings

Criminal Legal Aid provides legal services to an accused person in committal proceedings<sup>39</sup> in the Magistrates' Court, cases tried in the District Court and the Court of First Instance and in all criminal appeals. Under the merits test for Criminal Legal Aid, legal representation will be provided to an accused for committal proceedings and for trials in the District Court and the Court of First Instance if it is in the interests of justice to do so.<sup>40</sup> In criminal appeals, legal representation will be provided if there are meritorious grounds for appeal, except for cases involving a charge of murder, treason or piracy with violence, where legal aid must be granted even if there are no meritorious grounds for appeal.<sup>41</sup> The means test for Criminal Legal Aid has a financial eligibility limit.<sup>42</sup> If an applicant's financial resources exceed the limit, the Director of Legal Aid may waive the limit if he determines that it is in the interests of justice to do so.<sup>43</sup>

### Other Forms of Legal Aid

To complement Legal Aid, the Duty Lawyer Service was established in 1978 as an independent organization fully subsidized by the Hong Kong Government.<sup>44</sup> Managed by the Hong Kong Bar Association and the Law Society of Hong Kong, the Duty Lawyer Service provides legal assistance through four schemes: (1) the Duty Lawyer Scheme; (2) the Free Legal Advice Scheme; (3) the Tel-Law Scheme; and (4) the Convention Against Torture Scheme.

The Duty Lawyer Scheme provides legal representation to persons brought before the Magistrates' Courts, Juvenile Courts and Coroner's Courts. The Scheme also assigns volunteer lawyers to defendants facing extradition and hawkers (street sellers) with respect to their appeals to the Municipal Services Appeals Board. Like the Legal Aid schemes, in order to qualify for the Scheme, an applicant must pass a

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<sup>37</sup> See LEGAL AID DEPARTMENT OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, Ordinary Legal Aid Scheme.

<sup>38</sup> LEGAL AID DEPARTMENT OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, Supplementary Legal Aid Scheme, available at <http://www.lad.gov.hk/eng/las/lac/slas.html> (last visited on September 4, 2015).

<sup>39</sup> Committal proceedings are proceedings before a Magistrate for determining whether or not there is enough evidence against a defendant for a criminal case to be transferred to the High Court for trial or sentence. LAW AND TECHNOLOGY CENTRE OF THE UNIVERSITY OF HONG KONG, Introduction to Some of the Legal Assistance Available in Hong Kong, available at <http://youth.clic.org.hk/en/usefulInfo/Free-or-subsidized-legal-assistance/Introduction-to-some-of-the-legal-assistance-available-in-Hong-Kong/> (last visited on September 4, 2015).

<sup>40</sup> GUIDE, *supra* n.35, at 18.

<sup>41</sup> *Id.* at 19.

<sup>42</sup> *Id.* at 18-19.

<sup>43</sup> *Id.* at 19.

<sup>44</sup> Our Aim, *supra* n.5.



merits test and a means test and pay a fixed handling charge, which may be waived in cases of genuine hardship.<sup>45</sup> In 2014, 27,201 defendants were represented via the Duty Lawyer Scheme.<sup>46</sup>

Under the Free Legal Advice Scheme, volunteer lawyers provide members of the public with preliminary advice on their legal problems. The Scheme has nine district offices located throughout Hong Kong. Much of the advice sought falls into areas including matrimonial, landlord and tenant, employment, estate administration, commercial and property disputes, criminal, personal injuries, bankruptcy and debts. The Scheme does not offer any follow-up services or ongoing representation of clients. There is no means test and the service is provided free of charge.<sup>47</sup> In 2014, 1,107 volunteer lawyers advised 6,727 persons seeking free legal advice.<sup>48</sup>

The Tel-Law Scheme is a 24-hour fully computerized system that provides the general public with free pre-taped legal information over the telephone. There are 80 topics available which fall into eight main categories: (1) family law; (2) land law; (3) criminal law; (4) employment law; (5) commercial, banking and sales of goods law; (6) administration and constitutional law; (7) environmental and tort law; and (8) general legal information. The tapes are available in Cantonese, Mandarin and English.<sup>49</sup> In 2014, the Tel-Law Scheme recorded a total of 23,692 calls.<sup>50</sup>

The Convention Against Torture (“CAT”) Scheme is a pilot program that provides legal services to claimants who have made a petition to the Immigration Department under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Specifically, the CAT scheme provides advice to the claimant regarding procedures, legal rights and merits of the claimant’s petition. Volunteer lawyers assist claimants in completing relevant questionnaires, accompany claimants during interviews and represent claimants at oral hearings.<sup>51</sup> As of December 31, 2014, the CAT Scheme processed a total of 7,574 claims from the Immigration Department.<sup>52</sup>

## Mandatory Assignments to Legal Aid Matters

### Unmet Needs and Other Options

Despite increasing competition within the legal profession, legal expenses are still considered high and unaffordable for a large segment of the Hong Kong community.<sup>53</sup> Hourly rates for high quality legal professionals in Hong Kong can be as high as, if not higher than, those for equivalent professionals in London.<sup>54</sup> Despite Hong Kong’s relatively generous legal aid system and the operations of various free

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<sup>45</sup> DUTY LAWYER SCHEME, Annual Report 2014, [http://www.dutylawyer.org.hk/en/annual\\_14/overview.asp](http://www.dutylawyer.org.hk/en/annual_14/overview.asp) (last visited on September 4, 2015).

<sup>46</sup> THE DUTY LAWYER SERVICE, Means & Merits Tests, [http://www.dutylawyer.org.hk/en/annual\\_14/scheme.asp](http://www.dutylawyer.org.hk/en/annual_14/scheme.asp) (last visited on September 4, 2015).

<sup>47</sup> THE DUTY LAWYER SERVICE, Free Legal Advice Scheme, <http://www.dutylawyer.org.hk/en/free/free.asp> (last visited on September 4, 2015).

<sup>48</sup> Free Legal Advice Scheme, Annual Report 2014, [http://www.dutylawyer.org.hk/en/annual\\_14/advice.asp](http://www.dutylawyer.org.hk/en/annual_14/advice.asp) (last visited on September 4, 2015).

<sup>49</sup> THE DUTY LAWYER SERVICE, Tel-Law Scheme, [http://www.dutylawyer.org.hk/en/tellaw/tel\\_law.asp](http://www.dutylawyer.org.hk/en/tellaw/tel_law.asp) (last visited on September 4, 2015).

<sup>50</sup> Tel-Law Scheme, Annual Report 2014, [http://www.dutylawyer.org.hk/en/annual\\_14/tel-law.asp](http://www.dutylawyer.org.hk/en/annual_14/tel-law.asp) (last visited on September 4, 2015).

<sup>51</sup> THE DUTY LAWYER SERVICE, Convention Against Torture Scheme, available at <http://www.dutylawyer.org.hk/en/torture/torture.asp> (last visited on September 4, 2015).

<sup>52</sup> THE DUTY LAWYER SERVICE, Convention Against Torture Scheme, Annual Report 2014, [http://www.dutylawyer.org.hk/en/annual\\_14/torture.asp](http://www.dutylawyer.org.hk/en/annual_14/torture.asp) (last visited on September 4, 2015).

<sup>53</sup> Supply Study Report, *supra* n.2, at 3.

<sup>54</sup> *Id.*



legal advice schemes, the number of civil court hearings involving unrepresented litigants continues to increase. For example, more than one-half of the litigants in the District Court are unrepresented.<sup>55</sup> Moreover, even when an application for legal aid is accepted, the applicant may be required to contribute towards the costs and expenses incurred by the Department, depending on the financial capability of each applicant.

## Alternative Dispute Resolution

### Arbitration and Mediation

The Hong Kong judicial system has provided alternative dispute resolution (“ADR”) as a means of conflict resolution that seeks to minimize the costs of dispute resolution by avoiding expensive court costs<sup>56</sup> and to encourage the disagreeing parties to come to an agreement short of litigation. Arbitration and mediation are two of the most common forms of ADR.<sup>57</sup> In arbitration, it is the arbitrator(s), not a court judge, who issue(s) the final and binding arbitral award to the arbitration parties. An arbitration award has a status similar to a court judgment and is enforceable in a similar manner; parties can only challenge these awards in very exceptional circumstances.<sup>58</sup>

Mediation involves the appointment of a mediator, a trained and impartial third person, who helps and encourages the disputing parties to reach an agreement. Unlike arbitral awards which are immediately enforceable, parties in a mediation are not legally required to accept the terms of a settlement proposed in a mediation.<sup>59</sup> The Judiciary has encouraged parties to use mediation in particular aspects,<sup>60</sup> and some organizations, such as the Hong Kong Mediation Council and the Hong Kong Mediation Centre, may provide free mediation services for some cases.<sup>61</sup>

### Ombudsman

The Ombudsman is appointed by the Chief Executive of the HKSAR Government and serves as Hong Kong's watchdog. The Ombudsman handles complaints of maladministration against all Hong Kong government departments and agencies and statutory organizations he or she receives by conducting the needed inquiry, mediation, and/or full investigation. The Ombudsman may charge any person such reasonable fees as he determines in respect of any service approved by the Director of the Administration and provided by the Ombudsman to that person under the Ordinance<sup>62</sup>. In addition, the Ombudsman may also recover any fee payable to him as a civil debt.<sup>63</sup>

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<sup>55</sup> Edwin Rekosh & Tze-wei Ng, Pro Bono Legal Work Can Help Advance Social Justice in Hong Kong, SOUTH CHINA MORNING POST (May 23, 2014), available at <http://www.scmp.com/comment/insight-opinion/article/1517880/pro-bono-legal-work-can-help-advance-social-justice-hong> (last visited on September 4, 2015).

<sup>56</sup> COMMUNITY LEGAL INFORMATION CENTRE, Alternative Dispute Resolution, <http://www.clc.org.hk/en/topics/ADR/all.shtml> (last visited on September 4, 2015).

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, What is Mediation, available at [http://mediation.judiciary.gov.hk/en/doc/What\\_is\\_Mediation-Eng.pdf](http://mediation.judiciary.gov.hk/en/doc/What_is_Mediation-Eng.pdf) (last visited on September 4, 2015).

<sup>61</sup> Id.

<sup>62</sup> The Legal Aid Ordinance § 9A, available at <http://www.hkllii.hk/eng/hk/legis/ord/397/s9a.html> (last visited on September 4, 2015).

<sup>63</sup> Id.



## PRO BONO ASSISTANCE

### Pro bono Opportunities

In addition to government-funded legal schemes and aids, there are a variety of pro bono opportunities in Hong Kong organized by private organizations to fill the gap in legal needs. One important benefit with pro bono services is that they address a broader spectrum of needs than those covered by Hong Kong legal aid schemes. Therefore, pro bono services may serve a broader social purpose by supporting the work of non-governmental organizations (“**NGOs**”), thus allowing legal professionals to help NGOs to better serve the disadvantaged populations in society. However, for a variety of reasons, many lawyers in Hong Kong do not provide any pro bono services to the public. This section surveys a number of pro bono resources that facilitate the provision of pro bono services in Hong Kong.

#### Private Attorneys

According to a study conducted by the Hong Kong Department of Justice in 2008, about one-half of barristers and one-third of solicitors provided pro bono services to the public in the six months prior to the date of the study.<sup>64</sup> Of those lawyers who provided pro bono services during that period, more than 10% of barristers and close to 40% of solicitors spent more than ten hours per month on pro bono work.<sup>65</sup> Of the pro bono opportunities available in Hong Kong, the most popular program among barristers and solicitors is the Free Legal Advice Scheme provided by the Duty Lawyer Service.<sup>66</sup>

#### Law Firm Pro bono Programs

In recent years, law firms in Hong Kong have become increasingly aware of the need to do more pro bono work. The Justice Centre Hong Kong (formerly Hong Kong Refugee Advice Centre) (the “**Justice Centre**”), a non-profit organization committed to providing human rights legal assistance to refugees, has developed an innovative pro bono working model whereby it encourages law firms to provide financial support and time to assist those with needs.<sup>67</sup> Through its pro bono partnership program, the Justice Centre provides volunteer lawyers from law firms with intensive training in human rights law. Volunteer lawyers, in turn, assist the Justice Centre by providing legal support, either through conducting legal research or assisting refugee protection claimants with their claims.

#### Non-Governmental Organizations (NGOs)

Many Hong Kong lawyers participate in programs organized by NGOs.

The Justice Centre Hong Kong (formerly Hong Kong Refugee Advice Centre) (the “**Centre**”) is an example of an NGO that provides pro bono legal services.<sup>68</sup> As a non-profit organization, the Centre aims to provide high-quality, pro bono legal advice to forced migrants (including refugees and torture survivors) in Hong Kong and to ensure that they have access to fair refugee status determination procedures.<sup>69</sup> Through its Corporate Pro bono Program, the Centre is currently partnered with 11 of Hong Kong’s international law firms, three academic and research institutions, as well as other entities for assistance

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<sup>64</sup> Supply Study Report, *supra* n.2, at 22, 47.

<sup>65</sup> *Id.* at 23, 48.

<sup>66</sup> *Id.* at 22, 47.

<sup>67</sup> JUSTICE CENTRE OF HONG KONG, Partners, available at <http://www.justicecentre.org.hk/partners/> (last visited on September 4, 2015).

<sup>67</sup> *Id.*

<sup>68</sup> See generally JUSTICE CENTRE HONG KONG, available at <http://www.justicecentre.org.hk/> (last visited on September 4, 2015).

<sup>69</sup> *Id.*





with their casework.<sup>70</sup> Aleta Miller, Executive Director of the Centre, says: “Pro bono partnerships are essential to the Justice Centre’s ability to meet the needs of refugees and torture survivors. High quality legal support can mean the difference between life and death for some of the people we work with. By engaging in pro bono work with us, partners get the opportunity to change the human rights and pro bono landscape in Hong Kong, to use the rule of law to protect one of the most vulnerable groups and to make a tangible difference in the lives of the individuals we support.”<sup>71</sup>

Another NGO that has leveraged the pro bono support and resources of the legal community is Helpers for Domestic Helpers, a non-profit organization offering assistance to foreign domestic helpers.<sup>72</sup> Helpers for Domestic Helpers has partnered up with 50 lawyers from 13 law firms and companies to provide guidance on legal issues to domestic helpers.<sup>73</sup> The NGO has helped over 25,000 domestic workers since its establishment.<sup>74</sup> Holly Alan, who manages the clinic explained: “Many NGOs in Hong Kong, especially those that offer paralegal services like Helpers for Domestic Helpers, largely rely on pro bono legal assistance. We are lucky to have the support of a number of law firms in Hong Kong, increasing our capacity to serve people in need. Together, we endeavour to fulfil our mission of helping domestic workers who cannot possibly afford professional legal assistance to gain access to justice.”<sup>75</sup>

In addition, International NGO PILnet, a global network for public interest law that operates a pro bono clearinghouse paring up NGOs needing legal services with providers of pro bono services, launched its Hong Kong office at the end of 2013.<sup>76</sup> The next year, PILnet held its inaugural Asia Pro bono Forum on May 23, 2014 in Hong Kong to introduce those with legal resources and knowledge to NGOs on the front lines of rights’ protections.<sup>77</sup> More than 180 entities including NGOs, law firms, and law schools participated in the Forum.<sup>78</sup>

#### Bar Association Pro bono Programs

Lawyers in Hong Kong can also participate in schemes organized by the Hong Kong Bar Association and the Hong Kong Law Society to provide free legal services to the public. For example, the Bar Free Legal Service Scheme, a program sponsored by the Hong Kong Bar Association, is the second most popular program among barristers. Through the program, barristers provide legal advice and representation where Legal Aid assistance is unavailable.<sup>79</sup> The Bar Free Legal Service Scheme mainly provides services that require the principal expertise of a barrister, which is the representation of clients at

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<sup>70</sup> JUSTICE CENTRE HONG KONG, Partners, supra n.84.

<sup>71</sup> HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, available at <http://www.hk-lawyer.org/en/article.asp?articleid=2290&c=111> (last visited on September 4, 2015).

<sup>72</sup> See generally HELPERS FOR DOMESTIC HELPERS, available at <http://www.hdh-sjc.org/> (last visited on September 4, 2015).

<sup>73</sup> HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, supra n.90.

<sup>74</sup> HELPERS FOR DOMESTIC HELPERS, Partnership, available at <http://www.hdh-sjc.org/partnership/> (last visited on September 4, 2015).

<sup>75</sup> HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, supra n.90.

<sup>76</sup> PILNET: THE GLOBAL NETWORK FOR PUBLIC INTEREST LAW, About PILnet’s Asia Pro Bono Forum, available at <http://probono.hk/about> (last visited on September 4, 2015).

<sup>77</sup> Id.

<sup>78</sup> THE AMERICAN BAR ASSOCIATION JOURNAL, Growing Number of US Lawyers Are Doing Pro Bono Work in Other Countries, available at [http://www.abajournal.com/magazine/article/growing\\_numbers\\_of\\_u.s.\\_lawyers\\_are\\_doing\\_pro\\_bono\\_work\\_in\\_other\\_countries/](http://www.abajournal.com/magazine/article/growing_numbers_of_u.s._lawyers_are_doing_pro_bono_work_in_other_countries/) (last visited on September 4, 2015).

<sup>79</sup> Supply Study Report, supra n.2, at 22, 47.



hearings in courts and tribunals or giving specialist legal advice. Barristers do not have the resources to carry out factual enquiries or to deal with correspondence or court procedures on a client's behalf.<sup>80</sup>

The Hong Kong Law Society is also an example of a successful referral organization. In January 2010, the Law Society established the Pro bono Committee to coordinate pro bono services.<sup>81</sup> Within that year, the committee set up the Manila Helpline immediately after the tragic shooting in August 2010. It has also formed panels of volunteers to the SME Advisory Centre of the Hong Kong Trade and Development Council in addition to participating in the SCOLAR Volunteering Program to teach English to primary students.<sup>82</sup>

### University Legal Clinics and Law Students

Universities in Hong Kong have also set up legal clinics that enable law students to undertake pro bono work under the supervision of qualified legal personnel.<sup>83</sup> For example, the University of Hong Kong offers clinical courses in human rights (launched in 2014) and refugee law (in partnership with Justice Centre Hong Kong).<sup>84</sup> By taking these clinical classes, law students get the opportunity to engage in legal issues while serving the community.<sup>85</sup>

The pro bono program "Law for All" launched in February 2014 with support from the Gallant Ho Experiential Learning Centre and the private sector. HKU's Human Rights Program collaborated with the "Street Law" program in the United States to train 30 law students and pro bono lawyers on interactive teaching methods to, in turn, teach practical law and legal concepts to community members. The students who participated in the inaugural training are engaged in a variety of activities to develop "Law for All" in Hong Kong and throughout Asia.<sup>86</sup>

## Historic Development and Current State of Pro bono

### Historic Development of Pro bono

Historically, there have been a number of obstacles to the growth of Hong Kong's pro bono culture. These include lawyers' concerns about professional insurance coverage for pro bono work, difficulties faced by international law firms in identifying the needs for legal services among the local community and the NGO population and the relative lack of an ingrained culture of pro bono service among law firms in Hong Kong (as opposed to the making of purely financial contributions).<sup>87</sup> The legal community has demonstrated a growing interest to engage in pro bono work, as it provides a rewarding way for lawyers and law students to use their legal skills to benefit the community. There is growing encouragement for lawyers to volunteer their time and services for pro bono projects. External influences from international law firms, NGOs, internationally trained lawyers, the International Bar Association and United Nations agencies etc. have

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<sup>80</sup> The Hong Kong Bar Association, Bar Free Legal Service Scheme, available at <http://www.hkba.org/the-bar/free-legal-service/free-legal-service2.html> (last visited on September 4, 2015).

<sup>81</sup> THE LAW SOCIETY OF HONG KONG, Pro Bono, Introduction, [http://www.hklawsoc.org.hk/pub\\_e/probono/public/pbs\\_ls.asp](http://www.hklawsoc.org.hk/pub_e/probono/public/pbs_ls.asp) (last visited on September 4, 2015).

<sup>82</sup> Id.

<sup>83</sup> THE UNIVERSITY OF NEW SOUTH WALES, Hong Kong Refugee Law Clinic, <http://www.law.unsw.edu.au/current-students/law-action/clinics/hong-kong-refugee-law> (last visited on September 4, 2015); see also HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, supra n.90.

<sup>84</sup> CENTRE FOR COMPARATIVE AND PUBLIC LAW OF UNIVERSITY OF HONG KONG, Consulting, available at <http://www.law.hku.hk/ccpl/cons/clep/> (last visited on September 4, 2015).

<sup>85</sup> Id.

<sup>86</sup> Id.

<sup>87</sup> Deborah Papworth, Pro Bono: Lawyers Making a Difference, Hong Kong Lawyer, available at <http://www.hk-lawyer.org/en/article.asp?articleid=2290&c=111> (last visited on September 4, 2015).



all had a positive effect on the development of pro bono in Hong Kong. In fact, according to Edwin Rekosh, president of PILnet, local lawyers in Hong Kong actually are very willing to offer their services.<sup>88</sup>

In 2009, the Hong Kong Law Society established a Pro bono Committee to encourage the development of pro bono within the legal profession. Each year since 2011, the Law Society's Pro bono and Community Work Recognition Committee has also presented the Law Society Pro bono and Community Service Award in an effort to encourage active participation in pro bono and community work.<sup>89</sup> There is a growing list of recipients of the Law Society Pro bono and Community Service Awards every year, reflecting the increased attention on pro bono legal work.<sup>90</sup>

### Current State of Pro bono including Barriers and Other Considerations

The Hong Kong Bar Association and the Hong Kong Law Society impose few barriers on pro bono work for Hong Kong lawyers. Generally, there is "no objection to a barrister giving advice free on legal matters . . . on a charitable basis."<sup>91</sup> However, the Hong Kong pro bono culture has not yet fully matured.<sup>92</sup> Whereas Hong Kong is regarded to have one of the most mature legal systems in the world, its pro bono segment has only started to develop and lags behind its peer cities such as New York, London, and Singapore.<sup>93</sup> Furthermore, there remain a number of obstacles to the growth of Hong Kong's pro bono culture, including lawyers' concerns about professional insurance coverage for pro bono work.<sup>94</sup>

### Laws and Regulations Impacting Pro bono

#### "Loser Pays" Principle

Hong Kong adopts the "loser pays" principle in litigation. The party and party taxation is the process through which the court assists in determining how much the losing party should pay for the costs of the winning party. In doing so, the court refers to a set of scale rates which include some recommended allowable hourly rates for solicitors as guidelines.

#### Rules Directly Governing the Pro bono Practice

One restriction found in the Hong Kong Bar Association's Code of Conduct is that barristers may only give free legal advice in a scheme or program established to the satisfaction of the Hong Kong Bar Council to further the purpose of promoting the objectives of the Hong Kong Bar Association.<sup>95</sup> No similar limit exists in the Hong Kong Law Society's professional guide.

#### Practice Restrictions on Foreign-Qualified Lawyers

Foreign lawyers and foreign law firms, including the Hong Kong offices of many U.S. firms, face an additional obstacle to the provision of pro bono services that do not exist for local firms. Because foreign lawyers and foreign law firms are not allowed to advise on Hong Kong law, they are unable to

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<sup>88</sup> Stuart Lau, Pro Bono Legal Help Levels Playing Field for Hong Kong NGOs, SOUTH CHINA MORNING POST (May 26, 2014), available at <http://www.scmp.com/news/hong-kong/article/1519480/pro-bono-legal-help-levels-playing-field-hong-kong-ngos> (last visited on September 4, 2015).

<sup>89</sup> HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, supra n.90.

<sup>90</sup> Edwin Rekosh & Tze-wei Ng, Pro Bono Legal Work Can Help Advance Social Justice in Hong Kong, supra n.65.

<sup>91</sup> HONG KONG BAR ASSOCIATION'S CODE OF CONDUCT, supra n.21.

<sup>92</sup> Edwin Rekosh & Tze-wei Ng, Pro Bono Legal Work Can Help Advance Social Justice in Hong Kong, supra n.65.

<sup>93</sup> Id.

<sup>94</sup> Hong Kong has strict professional rules on liability insurance coverage, which deter lawyers from taking up pro bono cases unless they have their firm's support. See Edwin Rekosh & Tze-wei Ng, Pro Bono Legal Work Can Help Advance Social Justice in Hong Kong, supra n.65.

<sup>95</sup> THE BAR ASSOCIATION CODE OF CONDUCT, ¶ 22(7), available at [http://www.hkba.org/the-bar/code-of-conduct/code\\_of\\_conduct5.htm](http://www.hkba.org/the-bar/code-of-conduct/code_of_conduct5.htm) (last visited on September 4, 2015).



provide legal representation in Hong Kong courts on a pro bono basis, which is where the need for pro bono assistance is greatest.<sup>96</sup>

### **Availability of Professional Indemnity Legal Insurance Covering Pro bono Activities by Attorneys**

Hong Kong has a restriction that only allows law firms, and not individual lawyers, to obtain indemnity insurance. As a result, lawyers who want indemnification protection must seek their firms' approval before offering free services. Without their firm's approval, pro bono lawyers may find themselves unprotected in the event a client seeks compensation for poor legal advice.<sup>97</sup>

### **Socio-Cultural Barriers to Pro bono**

Despite the relatively few barriers to participation, a large proportion of lawyers in Hong Kong do not participate in pro bono activities. According to the Supply Study Report published in 2008, 48% of barristers and 63% of solicitors did not participate in any pro bono work. The main reasons provided for not participating were that lawyers had no time or no interest in participating.<sup>98</sup> As of 2008, only about 11% of solicitor law firms in Hong Kong had a company-wide policy on pro bono work.<sup>99</sup> For the vast majority of firms that did not have a pro bono policy, the main reason given was that there were insufficient resources to dedicate to pro bono work. Other firms cite that they do not participate because it is difficult for international firms to identify the needs for legal services among the local community and NGO population.<sup>100</sup> One solution to that problem could be partnering with local NGOs.

### **Pro bono Resources**

Listed below is contact information for certain other organizations offering pro bono programs in Hong Kong. The pro bono web page on the Hong Kong Law Society's website contains a list of other pro bono opportunities and resources.<sup>101</sup>

- The Hong Kong Law Society
- Website: [http://www.hklawsoc.org.hk/pub\\_e/probono/public/](http://www.hklawsoc.org.hk/pub_e/probono/public/) (last visited on September 4, 2015)
- The Hong Kong Bar Association
- Website: <http://www.hkba.org/the-bar/free-legal-service/index.html> (last visited on September 4, 2015)
- Hong Kong Refugee Advice Centre
- Website: <http://www.hkrac.org/> (last visited on September 4, 2015)
- Free Legal Advice Clinic at the Hong Kong Federation of Women's Centres

Website: <http://womenscentre.org.hk/en/services/70-counselling-and-legal-support/20-lac> (last visited on September 4, 2015)

## **CONCLUSION**

Along with the legal aid system, pro bono legal services help to ensure and promote more equal access to justice in Hong Kong, and act as a means by which the legal profession can contribute to advancing issues of public interest.<sup>102</sup>

<sup>96</sup> See Naomi Rovnick and Barclay Crawford, HK Law Firms Fall Short on Pro Bono, SOUTH CHINA MORNING POST (Apr. 5, 2010), available at <http://www.legco.gov.hk/yr09-10/chinese/panels/ajls/papers/aj0426cb2-1417-1-ec.pdf> (last visited on September 4, 2015).

<sup>97</sup> Stuart Lau, Pro Bono Legal Help Levels Playing Field for Hong Kong NGOs, *supra* n.101.

<sup>98</sup> Supply Study Report, *supra* n.2, at 25, 50.

<sup>99</sup> *Id.*, 12.

<sup>100</sup> HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, *supra* n.90.

<sup>101</sup> *Id.*

<sup>102</sup> HONG KONG LAWYER, Pro Bono: Lawyers Making a Difference, *supra* n.90.



Developing a more robust pro bono culture in Hong Kong will require increased efforts by the key stakeholders: individual lawyers, law firms, the professional bodies, law students, and the beneficiaries within the public and NGO sector.<sup>103</sup> At the root of pro bono is the stakeholders' sense of social responsibility. Among the stakeholders, lawyers are the gatekeepers of the law and the individuals who possess a much better understanding of legal reasoning, procedures and court systems than the average citizen. Armed with their professional knowledge and expertise, lawyers are in a unique position, through participating in pro bono projects, to help address inequalities in society, particularly unequal access to legal services, and hence unequal access to justice.<sup>104</sup>

September 2015

Pro Bono Practices and Opportunities in Hong Kong

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<sup>103</sup> Id.

<sup>104</sup> Edwin Rekosh & Tze-wei Ng, Pro Bono Legal Work Can Help Advance Social Justice in Hong Kong, *supra* n.65.