

**LAW FOR CHANGE
STUDENT
COMPETITION 2017**

| | |
|--|---|
| TEAM 3 | TITLE Community Mediation Clinic |
| MEMBERS Tang Chuen Ngai, Matthew ¹ Tan Ning Sang , Jessica ² Chow Tuen Ting, Tiffany ³ Kwan Kei Yan, Rhoda ³ Kobayashi Lui Yukiko ² | |
| SCHOOLS ¹ The Chinese University of Hong Kong ² The University of Cambridge ³ The University of Hong Kong | |

1 OVERVIEW

Alternative dispute resolution is at the heart of Hong Kong's Civil Justice Reform. For example, Order 1A, rule 4 of the Rules of High Court (Cap. 4A) provides that the court shall encourage parties to facilitate the use of alternative dispute resolution if appropriate. However, while many free or low-cost legal advice schemes in Hong Kong provide legal advice relating to litigation proceedings, alternative dispute resolution is still not readily available to under-resourced populations. That such populations do not have equal access to certain legal-related services demonstrate how access to justice is linked to social inequality.

In this project, we propose to provide such an alternative dispute resolution service to under-resourced populations as a means to increase access to justice and therefore promote equality. Specifically, our proposal is to provide regular and community-based mediation clinics to lower-income and lower-educated

populations living in under-resourced areas of Hong Kong. Our project consists of three phases:

- Phase I: work with the District Councillors and NGOs servicing New Territories West to provide regular mediation services in local regions such as Tin Shui Wai, Yuen Long, and Tuen Mun.
- Phase II: provide the same services to other underserved districts, defined as New Territories North (Fanling/Sheung Shui), Tai Po, Outlying Islands, Tsuen Wan/Kwai Tsing. We will cooperate with the existing providers of low-cost legal advice regimes such as the Duty Lawyer Services ("DLS") or NGOs wherever possible.
- Phase III: Expand to all other districts in Hong Kong.

For the purpose of this proposal, we will limit our discussion of detailed timelines, monitoring and evaluation, and budgets to Phase I.

2 SOCIAL JUSTICE ISSUES

2.1 Background

General socio-legal context

While Hong Kong is renowned for its independent judiciary and rule of law, it is often overlooked that many citizens cannot access the justice system. This is because the current legal system excludes people by virtue of its cost, content, and qualification requirement.

With regards to cost, it is no secret that obtaining legal advice is extremely expensive such that most Hong Kongers cannot afford it. With regards to content, the justice system is further inaccessible because both the procedural and the substantive laws (i.e. statutes and common law) are hard to understand. Moreover, the law is perhaps most inaccessible because it is necessarily exclusive: lawyers need professional qualification. But because law school and PCLL admissions are so selective, only the most successful students – often the wealthiest – gain admission. As such, Hong Kong's legal industry is dominated by individuals from upper class backgrounds and is far removed from the average Hong Kongers' reality.

We include this background because Hong Kong's broader access to justice issues must be contextualized by the city's social inequality. We believe that the inaccessibility to justice is detrimental to equality. Moreover, we understand that achieving equality means both empowering the underprivileged and dispersing power at the top. Our project is ambitious because it addresses both. We help the average citizen increase access to justice through alternative dispute resolutions just as we challenge the legal system's exclusivity by having people without legal qualification handle casework and conduct alternative dispute resolution.

Specific legal-related issues

In 2006, the Department of Justice ("DOJ") conducted a comprehensive survey on the demand and supply for all legal and related services in Hong Kong; that data was analyzed and published in a consultancy study in 2008.¹ With regards to cases on the lower-end of the legal market, it was found:

1. **There is more demand than supply of legal and related services for low-cost cases:** for 63% of claims considered important, no action was taken by the respondents concerned.² In particular, lower-

income populations found legal costs too expensive, were less likely to seek help for their problems, and often unaware of available remedies.³

As such, it was suggested that there is large potential for mediation and other forms of dispute resolution given the community's general unwillingness to go for legal action and the profile of "difficult-to-solve" problems in Hong Kong.⁴

Of the incidents considered important, 30% were consumer-related matters, 27% related to damage and disturbances caused by others, and 12% employment-related.⁵ But the proportion with action taken were higher for family-related problems (54%), problems related to owners of residential properties (53%) and consumer-related problems (47%).⁶

2. **There is a geographical mismatch in delivery services:** 82% of respondents who had justiciable problems lived in Kowloon or New Territories⁷ whereas 97% of barristers' chambers are in Central or Admiralty and 86% of solicitor firms are on Hong Kong Island.⁸

2.2 Specific Target Group

Given the DOJ's study, we conclude that the population most underserved by the current legal and related services are lower-income and lower-educated populations living in Kowloon and New Territories whose "difficult-to-solve" problems are of lower cost. This is our project's specific target group.

The way that we determined this project's specific target group indicates our team's creative approach of relating law and social justice. Most legal NGOs will first look at a specific group of oppressed people and subsequently ask: how the law can help a specific group people? Instead, we looked first at the existing legal system and subsequently asked: what specific group of people is the current legal system failing? How can we address that failure?

In the next section, we will substantively explain how our project proposes to remedy the existing system's failure.

3.1 What is our service?

Components

Our project seeks to provide one, single service: low-cost, regular, community-based mediation clinics. Our service comprises three steps:

1. Our partners (District Councillors and local NGOs/ free legal advice services) refers clients to us
2. Our team reviews the case and does case management in preparation for mediation
3. Our team organizes and conducts the mediation service

3.2 How does it work?

Activities

The mediation clinics would be held regularly on a rotational basis in community centres. An example schedule of Phase I would look like the following:

| | |
|-----------|-------------------------|
| Monday | 4 hours in Tin Shui Wai |
| Tuesday | 4 hours in Yuen Long |
| Wednesday | 4 hours in Tuen Mun |
| Thursday | 4 hours in Tin Shui Wai |
| Friday | 4 hours in Yuen Long |
| Saturday | 4 hours in Tuen Mun |

In Phase II of the project, we would duplicate the above service schedule in other underserved areas. For example, in New Territories North, we would provide the same services in Fanling, Sheung Shui and Lok Ma Chau. In Phase III of the project, we would hope that such services exist all across Hong Kong. However, given the disproportionate amount of services provided in Hong Kong Island compared to Kowloon and New Territories, we would envision offering more regular services in Kowloon and New Territories compared to Hong Kong Island.

Job responsibilities

As suggested above, our team has three main external job responsibilities:

- Liaising with partners
- Completing case management
- Organizing and conducting mediation services

In order to sustain ourselves, we would have three main internal job responsibilities:

- Fundraising
- Marketing/publicizing our service
- Management and recruitment of student interns

3.3 Why our service?

Objective

Broadly, our goal is to promote equality by enhancing under-resourced populations' access to justice. Specifically, our goal is to set up low-cost, regular, community-focused mediation clinics to help resolve the legal-related issues of lower-income and lower-educated populations living in Kowloon and New Territories whose "difficult-to-solve" problems may not be so technical as to require litigation.

Strategy

1. Simplicity and sustainability

Our project will succeed because it is deceptively simple: we only provide one, single, relatively untechnical service – mediation. With regards to the service itself, it is a service that addresses a huge unmet legally related need, that integrates well with existing legal and related mechanisms, but that is very scalable and can be easily duplicated. With regards to resource requirements, the only significant physical and financial resource is renting a room; the only human resource requirements are a mediator and caseworker (student interns in our case). And through recruiting student interns, it is expected through observing mediation sessions, they would have a deeper understanding

towards this underdeveloped area of alternative dispute resolution and join our project in the future. Although the idea itself is simple, multiple parties are given adequate level of involvement to fuse future growth of our project. The service's simplicity is its key to sustainability.

2. Meeting unmet needs

Our project will succeed because we are directly addressing the most significant category of unmet needs within Hong Kong's existing legal and related services. According to the DOJ report, that category of unmet needs is the lower-cost "difficult-to-solve" problems of lower-income and lower-educated populations living in Kowloon and New Territories. Our project would increase the supply of alternative dispute resolution services to satisfy this demand at the lower end of the legal market. Indeed, the DOJ report explicitly stated that in light of such circumstances, "there seems to be a large potential for mediation and other alternative forms of dispute resolution"⁹.

3. Grassroots and accessibility

Our project will succeed because our highly community-centric and -specific approach of working with District Councillors and local organizations will ensure that we have no shortage of clients. By collaborating intimately with local community networks, we are deliberately entering their spheres of community networks rather than asking them to come into our spheres of networks. This would increase access to justice and therefore equality.

Innovativeness

1. Mediation as a new and unexplored alternative dispute resolution option

Although the Mediation Ordinance came into effect in 2013 to "promote, encourage and facilitate the resolution of disputes by mediation", there has yet to be a comprehensive, visible and ingrained program that renders mediation accessible to low-income parties. This is a gap in the current system we aim to address.

2. Grassroots and community-oriented and legal-related services

Our grassroots strategy of reaching out to local communities is a model that has yet to be substantively implemented in Hong Kong. The closest equivalent is the Duty Lawyer Service's (DLS) free legal advice scheme, but their services have not reached the areas with the most amount of unmet legal needs such as New Territories West or New Territories North. Moreover, DLS's service does not seek to be community-oriented or -specific as we do.

3. Innovative use of law and legal-related services

We are radically re-envisioning how legally related services rather than law itself can address unmet needs. By not utilizing legal professionals or law itself to help ordinary citizens' unresolved legal and related matters, we are transforming law from its professional and exclusive status to something personable and approachable. We believe this will work because an ordinary citizen's everyday problems will likely be more social than overly legally complex or technical. The likely issues will concern consumer matters, social disturbance, family, landlord and tenant, or labor/unemployment etc. We believe that these are mostly less technical issues that could be resolved without legal professionals.

4.1 Description of the three phases

Our main focus throughout the three phases set out below is an intention to create grassroots networks and community-specific and -centric solutions. We also aim to maintain transparency and accountability by publishing periodic reports on the progress of the scheme, which will also generate publicity for the scheme and ensure best practices are observed.

Phase I

In Phase I, we would reach out to the relevant District Councillors and NGOs in Tin Shui Wai, Yuen Long and Tuen Mun in the New Territories West area to set up our organization’s first low-cost, regular, and community-based mediation clinics. This will ensure that potential users of the service, who may not otherwise have an understanding of the availability of alternative dispute resolution, can access information about our services. It is our goal for the mediation service to become a cornerstone in local communities and a way to provide easily accessible legal advice and assistance to the disenfranchised.

We would begin with Tin Shui Wai, Yuen Long and Tuen Mun because no organization currently provide any free legal services in the New Territories West area. This is quite surprising given that it is one of the poorest regions of Hong Kong. Indeed, the DOJ’s survey found that 60% of respondents living in Yuen Long and Tuen Mun did not take action on their problems.¹⁰

We believe in partnering with District and Legislative Councillors because they are connected to and familiar with their local constituents’ needs. Practically speaking, the District Councillors would refer clients to our service. This is because District and Legislative Councillors already have sophisticated complaint mechanism schemes that their local constituents use. PILnet’s report “This Way: Finding Community Legal Assistance in Hong Kong” (2017) indicated that 75% of Legislative Councillors and 81% of District Councillors provide some form of legal or related service, including “general mediation services”;¹¹ but there is extremely limited information about these services. By establishing strategic partnership, we could help providing an alternative channel for the District Councillors to resolve their citizens’ concerns.

Practically speaking, the legal and mediation clinic would take place in community centers. If possible, we would request that our partners provide us with a free venue to minimize rental costs. This strategic location is also to ensure accessibility of the clinic and to formulate its “community-based” identity.

Phase II

In Phase II, we would reach out to the relevant District Councillors and NGOs in other underserved areas, currently defined for our purposes as New Territories North (Fanling/Sheung Shui), Tai Po, Outlying Islands, and Tsuen Wan/Kwai Tsing. We would duplicate the services that we are providing in New Territories West. With the growing public awareness of the scheme, accumulated expertise from Phase I and the additional resources and knowledge of District Councillors, we aim to expand the number of hours of mediation/advice we can provide.

Where possible, we would also partner with all the existing providers of free legal schemes such as DLS, Legal Aid, the Law Society, Bar Association, NGOs and government departments. This is because these organizations could be a good source of client referral and can also offer additional expertise and manpower.

Internally, we would need to begin considering a more sustainable structure by hiring full-time staff, formulating a Board of Directors and finding office space. We would obtain an internal source of revenue by changing our structure of the community-based mediation clinics. While they are free in Phase I, depending on the response in Phase I, we envision charging a low-cost fee in Phase II. Externally, we would also seek to obtain further funding from the government, law firms, and/or charity foundations.

Phase III

In Phase III, we would make our services available to all 18 regions of Hong Kong. We envision expansion both in terms of the comprehensiveness of the services offered to clients and in the nature of services provided. One area of particular interest is the online dimension, which can be used not only to generate publicity for the scheme but may also be used as a tool in mediation.

There are several other scalable ways to expand our services; the possibilities are endless. Just to give a few examples:

- We can expand our clientele to SMEs;
- We can provide online mediation services for cross-jurisdictional disputes;
- We could spread to cities in China, Taiwan and/or ASEAN countries;

4.2 Detailed timeline

We will only consider Phase I in this timeline as Phase II/III would change according to the successes and failures of Phase I. We envision completing Phase I in one year:

| STAGE | ACTIVITIES | DURATION |
|---------------------|---|------------------|
| Project Initiation | Contacting relevant District Councillors and NGOs in New Territories West; recruiting pro-bono mediators | Months 1-3 |
| | Recruiting and training the first batch of volunteers to assist in mediation services | |
| | Finalizing methodology of the alternative dispute resolution scheme | |
| | Finding a site in the community for mediation services | |
| | Creating and disseminating promotional materials to: (1) advertise the service in NT West and (2) for recruitment purpose | |
| Implementation | Trial period (around 2-3 initial sessions) for mediation with real clients, in which we will request detailed feedback from clients and mediators | Months 4-12 |
| | Analysis and implementation of the changes and feedback received; Finalisation of mediation scheme and procedures that are unique to the scheme | |
| | Continued recruitment and training of volunteers (depends on the scale) | |
| | Continued feedback collection process from clients, mediators and volunteers throughout the entire implementation phase | |
| Post-implementation | Further research into efficacy of mediation techniques and general effectiveness of the scheme in the specific context of NT West. | Month 12 onwards |
| | Production of full report of mediation services provided, case outcomes and feedback from clients and other parties. | |
| | Exploring other marketing channels and points of contact with a view to expansion to other geographical regions in both Hong Kong and abroad. Possible commencement of discussions with District Councillors in other constituencies to establish legal advisory and mediation clinics. | |
| | Recruiting full-time staff for sustainable operation of the program | |

4.3 Monitoring & evaluation

The purposes of the present proposal this part will mainly focus on Phase I as the actual implementation of Phase II and III depends on the feedback and comments collected from Phase I. There will be

ongoing feedback collection throughout the entire implementation.

Issues to Investigate

We will investigate the following issues classified according to our stakeholders:

| STAKEHOLDER | ISSUES TO INVESTIGATE |
|---------------------------|---|
| Core Team Members | Organizational Capacity/Group process - How well we are working together in terms of the following: <ul style="list-style-type: none"> - Management (roles & responsibilities, clarity about aims, team morale etc.) - Cost-effectiveness (comparing budgets with actual expenses to see if it is necessary to cut costs/ look for alternative sources of financial support) - Sustainability (volunteer/ mediators' turnover) Joint working - How well we are working with external parties: <ul style="list-style-type: none"> - Relationship with partners, mediators etc. |
| Pro Bono Mediators | Effectiveness of the programme <ul style="list-style-type: none"> - The actual implementation process (e.g. adequacy of subsidies, duration of mediation sessions, on-site support from volunteers, arrangement of duty roster, atmosphere) - Alignment of the actual programme with our objectives - Effectiveness of different marketing channels in recruiting mediators |
| Clients | Effectiveness of the programme <ul style="list-style-type: none"> - Relevance of the programme in addressing their needs - Effectiveness of different marketing channels in promoting the essence of mediation services - The actual implementation process (e.g. duration of mediation sessions, on-site support from volunteers, atmosphere, location etc.) |
| Volunteers | Effectiveness of the programme <ul style="list-style-type: none"> - The actual implementation process (e.g. duration of mediation sessions, on-site support from volunteers, atmosphere, location etc.) - Their level of involvement and takeaways from the programme - Effectiveness of different marketing channels for recruitment purpose |
| Partners | Joint working - How well we are working with them <ul style="list-style-type: none"> - Relationship with partners - Client referral process |

4.4 Methodology

Questionnaire

Questionnaires will be the most common method in collecting feedback. Different sets of questionnaires will be designed for different stakeholders according to the above issues, and will be distributed to them on the following occasions. Online surveys will also be prepared.

| STAKEHOLDER | WHEN TO DISTRIBUTE QUESTIONNAIRE |
|-------------------|--|
| Clients | At the end of their mediation sessions/ follow-up online surveys |
| Volunteers | Towards the completion of their service |
| Mediators | Towards the completion of their service |
| Partners | Towards the end of partnership |

Interview

At the initial sessions (the aforementioned “trial period”), we would like to conduct interviews with clients and mediators, so as to obtain a more thorough response for the finalization of procedures. Later on, interviews may be conducted on an ad-hoc basis for the purpose of persistent monitoring of the programme effectiveness.

Regular meetings

Core team members will hold regular meetings to address the aforementioned group process and joint working questions. Also, we would liaise with the partners regularly to discuss the client referral process, and see if any adjustments are needed.

5 RESOURCE REQUIREMENTS

5.1 Human Resources

Key stakeholders

There are three key stakeholders: our clients, our partners, and our team. Our clients, partners, and team members summarized in the below table according to that phase:

| STAKEHOLDER | PHASE I (NT West) | PHASE II (other underserved areas) | PHASE III (all 18 districts) |
|-----------------|--|--|---|
| Clients | People in NT West | People in NT North (Fanling/Sheung Shui, Tai Po, Outlying Islands, Tsuen Wan/Kwai Tsing) | All Hong Kong people (still targeting low-income and lower-education individuals) |
| Partners | NT West LegCo and District Councillors | LegCo and District Councillors from the relevant districts | All LegCo and District Councillors |
| | NGOs specifically serving NT West citizens ¹² | NGOs/free legal advice schemes where possible | NGOs/free legal advice schemes where possible |
| Team | Present team and other students/individuals who want to help | Board of Directors | Board of Directors |
| | | 2-5 full-time staff | More full-time staff |
| | Pro bono mediators | Pro bono mediators | Pro bono mediators |
| | | Student interns | Student interns |

Detailed job responsibilities

At every stage, there will be “external” and “internal” job responsibilities. The external responsibilities are those related to conducting mediation services. They would include: contacting District Councillors/NGOs for client referrals, finding pro bono mediators, and organizing the mediation sessions. The internal job responsibilities are those responsibilities related to running and sustaining our organization. They would include: fundraising/budgets, marketing/publicizing our organization, and human resources (e.g. recruiting student interns).

In this section, we will describe all the responsibilities needed for our organization to succeed and how we envision to fulfill them.

Phase I

In Phase I, the organization would consist of our present team members and other university students who we recruit (student interns). Specifically, we would envision

recruiting from Lingnan University (LingU) because the school is located in New Territories West and because the university has a strong ethos for caring about social issues. Notably, LingU opened their “Office of Service-Learning” in 2006 to encourage students to combine academic learning and community service;¹³ starting from the 2016-2017 academic year, Service-Learning has become a graduation requirement for LingU students.¹⁴

Because Phase I is mainly about establishing our mediation services, most tasks will concern publicizing our service and growing the organization’s network of resources. As such, there are more internal than external job responsibilities.

- In months 1-12, the main internal job responsibilities include:
 - Further fundraising
 - Marketing/publicizing
 - Student recruitment

- In months 1-3, the main external job responsibilities include:
 - Obtaining client referrals from NGOs/District Councillors
 - Finding pro bono mediators
- In months 4-12, the further external job responsibilities include:
 - Conducting casework for client referrals
 - Organizing mediation sessions

Core team

As Jessica and Yukiko currently reside in the UK, they will focus on fundraising, marketing and recruitment from international sources; the Hong Kong team members (Matthew, Tiffany, Rhoda) will focus on implementation at the domestic level. Jessica and Yukiko will seek international sources of funding, support from Oxbridge alumni in Hong Kong, and recruitment of other Hong Kong students studying abroad. They will also design the marketing/publication materials with their graphic design experience. Matthew, Tiffany and Rhoda will seek domestic sources of funding such as the government, law firms, mediation centers, charity events, or other social enterprise competitions. To market and publicize our services, they will contact all relevant NGOs and District Councillors from the New Territories West region to obtain client referrals. Furthermore, they will contact mediation centers to find pro bono mediators and conduct training for student interns. To sustain our organization, they will further contact universities to give presentations about this new opportunity. Jessica and Yukiko will also help with implementation when they return to Hong Kong for the summer.

Student intern

The major responsibilities of the student interns would include assisting in mediation sessions by taking notes, guiding clients into the venue etc. In later months, they would also help handling case management (e.g. filing of cases).

Phase II

Phase II means that we have successfully implemented free, regular, mediation clinics in New Territories West and that we are expanding to other under-resourced regions in Hong Kong. Such an expansion of services means that we envision the need to expand and solidify our team. We are looking to make the organization more stable and therefore anticipate three practical changes to our team:

1. Hiring full-time staff;
2. Developing a formal partnership/practicum scheme with all local universities to have regular student interns;
3. Creating a Board of Directors

First, with regards to hiring full-time staff, they would ideally be converted interns from their previous year’s involvement with the organization. Having established a successful mediation clinic in New Territories West, these staff would need to:

- With respect to external job responsibilities:
 - Obtaining client referrals from District Councillors and NGOs
 - Completing casework
 - Organizing and conducting mediation sessions
- With respect to internal job responsibilities:
 - Fundraising/finances
 - Marketing/publicizing
 - Student recruitment/HR

We would begin by hiring one person to handle external job responsibilities and one person to handle internal job responsibilities, continuing to hire as necessary and as budget allows. The external-facing staff will focus duplicating the existing New Territories West services to other parts of Hong Kong; the internal-facing staff will focus on administrative tasks. The full-time staff will, of course, continue to be supported by the existing team who will continue to develop this project on a part-time basis.

For sustainability purposes, we envision that there need to be two significant changes to our service model with regards to the hiring of full-time staff:

1. We would start charging a low cost for our mediation services to help cover the employment cost of the full-time staff
2. Full-time staff doing external work (i.e. organizing mediation sessions) would ideally themselves be accredited mediators because our expanded services will likely require more mediators than we are able to provide with pro bono mediators

Notably, the full-time staff are not qualified lawyers. From an access to justice perspective, we want to demonstrate that people who are not qualified lawyers can do casework and facilitate dispute resolution. Having said that, it is very possible that our full-time staff will have studied law but are not practicing lawyers. This is because there are many more people with law degrees than there are availabilities on the PCLL course,¹⁵ meaning that there is much more supply than demand for people with law degrees. However, we would also envision graduates from social work, social sciences or government to be interested in our positions to enhance workplace diversity.

Second, the full-time staff will also be supported by a continuous stream of student interns. The student interns would operate as clerks who handle case management or other job responsibilities. To ensure such a steady stream of student interns, our organization would have to establish a long-term partnership with universities (both law and non-law degree programs) to offer positions in their practicum courses such that students receive academic credit for their work. The law faculties of both the University of Hong Kong and the Chinese University of Hong Kong have recently begun to provide such practicum opportunities for their students.¹⁶ At Chung Chi College of CUHK, there is also a Service-Learning Office, similar to the one at LingU.¹⁷ To give an example of an NGO that frequently uses student interns, Justice Without Borders offers a position of “Legal Fellows” to law students during term time.¹⁸

The increasing recognition in both universities and NGOs to offer credit-bearing work experience during term time is an underused resource in Hong Kong. Given that several of our team members are among the inaugural students in these programs, our desire to utilize these university students’ efforts is also one of our key competitive advantages. We see mobilizing students as a triple win: (1) in the city’s broad social justice context, it gives the students early exposure to local social justice issues, (2) it specifically gives students early exposure to real responsibilities and on-the-job training, and (3) it is low-cost for us.

Third, existing team members will invite experienced professionals to sit on a Board of Directors to help advise and fundraise on behalf of our organization. This will increase legitimacy of the organization and provide us with more opportunities to expand our network.

Phase III

In Phase III, the team would increase in size depending on the relevant needs at that time. Ideally, there would be less administrative work necessary due to the streamlined and systematized structures set in place. This would allow most efforts to be placed on organizing and conducting mediations.

If possible, it would be ideal to have mediators specialize in different types of common claims (e.g. one in each family, labor, landlord/tenant, consumer). This would represent our commitment to addressing the specific lower-cost and less technically complicated needs of our targeted group of lower-income and lower-educated populations living in Kowloon and New Territories.

5.2 Financial Resources: Budget for Phase I

| STAGE | EXPENSES | ESTIMATED COSTS | COSTS REDUCTION |
|---------------------|---|---|--|
| Project Initiation | Printing fees for campaign materials | Leaflets (A5; 1000 copies): \$340 ¹⁹ Posters (A3; 200 copies): \$600 ²⁰ | Existing team members will be responsible for the outreach and design of materials (no extra cost) |
| | Printing fees for training materials | Booklets (A5; 8 pages; 100 copies): \$690 ²¹ | |
| Implementation | Renting mediation sessions location (community centres) | \$54 (hourly rate) ²² x 24 hours per week x 18 weeks ²³ = \$23,328 | We will negotiate with our partners to see if they are able to lend out their conference rooms at a lower cost/ for free |
| | Subsidies for participating mediators | \$40 (estimated traveling expense for 1 mediator; 1 mediator per session) x 6 (sessions per week) x 18 (no. of weeks) = \$4,320 | Mediators will only be remunerated for their traveling expenses |
| | Subsidies for participating students | \$80 (estimated traveling expense for 2 students) x 6 (sessions per week) x 18 (no. of weeks) = \$8,640 | Students will only be remunerated for their traveling expenses |
| | Administrative expenses for mediation sessions (e.g. stationary, printing fees for confidentiality agreements etc.) | \$40 (per session) x 6 (sessions per week) x 18 (no. of weeks) = \$4,320 | |
| Post Implementation | Questionnaires - printing fees | \$0.5 (cost per copy) x 200 copies = \$100 | Existing team members will be responsible for designing questionnaires. |
| TOTAL COST | | HK\$42,338 (PILnet budget: HK\$50,000) | |
| Future Cost | Phase II: 1. Recruit full-time staff 2. Rent office space | Further fundraising needed. To be considered by the future Board of Directors. Options include other competitions, government funding, law firms, various charity events etc. | We will mainly look at shared office space (such as co-working spaces) to reduce rental expense |

6 DIFFERENTIATION: REVIEW OF FREE MEDIATION AND LEGAL ADVICE SERVICES

Our project seeks to fill a gap that currently exists among low-cost legal advice regimes in Hong Kong: pro bono mediation targeting low-income populations. In the following section, we shall describe the currently available low-cost mediation and legal advice schemes and identify their respective limitations with regards to providing mediation services for underprivileged populations. We propose that the project can collaborate with and enhance the current legal advice services.

6.1 Free Mediation Services

6.1.1 The Pro Bono Mediators Committee

The Hong Kong Mediation and Arbitration Centre (“HKMAAC”) established the Pro Bono Mediators Committee in 2011²⁴. HKMAAC has been making co-operation arrangement with governmental and judicial institutions such as the Small Claims Tribunal and Hong Kong Housing Society.

Mediation has been incorporated in the Small Claims Tribunal proceedings. At the Call-over hearing, the Adjudicator and the Tribunal Officer have the duty to attempt to conduct mediation between parties to settle the dispute.

Limitations

The current low-cost mediation service focuses on incorporating mediation into the service of particular institutions. Mediation, however, can be applied in a broader set of situations. The application of pro bono mediation should not be restricted to parties in specific proceedings in specific institutions only.

6.1.2 Free Community Mediation Services

Hong Kong Mediation Centre (“HKMC”) offers one free mediation session to all members of the public²⁵. The maximum time covered by the free session is 4 hours. No follow up session is included in the service. The free session covers a wide range of disputes including landlord and tenant disputes, family disputes, school disputes etc. The maximum amount for the dispute must be less than HK\$1,00,000

Limitations

While the Free Community Mediation Services covers a wide range of disputes, it has set limits as to the length of the free mediation session. If the parties are unable to settle with 4 hours, they need to apply for mediation again. The proposed project will offer a continuous, personalized approach with regard to mediation session. Follow-up session can be arranged with the same mediator handling the case.

6.1.3 Specialized Mediation Schemes

Free Mediation Services are available for specialized disputes. The Home Affairs Department, HKMC and Hong Kong Mediation Council jointly offer the Free Mediation Service Scheme for Building Management which covers disputes involving building management and maintenance work²⁶.

The Mediation Centre of Hong Kong Family Welfare Society implements the Family Mediation Service²⁷. The Service offer mediation to couples planning divorce or separation. It covers custody of children, maintenance, visitation arrangement and the division of assets.

The Standard Rate is HK\$720 for one participant each hour. Participants with less than HK\$10,000 monthly income and recipients of the Comprehensive Social Security Assistance Scheme can use the service free of charge.

Limitations

As mentioned, mediation should be applied to a wide range of disputes. A general free or low-cost mediation services can better promote mediation to underprivileged populations.

6.2 Legal Advice Schemes

6.2.1 Legal Aid Department

The Legal Aid Department has three schemes:

1. Ordinary Legal Aid Scheme (“OLAS”)
2. Supplementary Legal Aid Scheme (“SALS”)
3. Criminal Legal Aid Scheme

For the purpose of this proposal, we will focus on OLAS and SALS.

6.2.1a Ordinary Legal Aid Scheme

The OLAS covers a range of civil proceedings, such as matrimonial proceedings, traffic accident claims, and breach of contract claims in the District Court, the superior courts, Coroner’s inquests and Mental Health Review Tribunal.

The applicants have to satisfy both the Means Test and the Merits Test. The current financial eligibility limit is HK\$290,380 in financial resources. The applicants will also have to demonstrate that their cases have “reasonable grounds for taking or defending the proceedings”.

6.2.1b Supplementary Legal Aid Scheme

The SALS aims at providing legal services to the applicants whose financial resources exceed the financial eligibility limit under OLAS. The financial resources limit under SALS is between HK\$290,380 and HK\$1,451,900.

The Merits Test is the same with OLAS.

Limitations

The Means Test has been criticized as “skewed towards the young and the working” and placed undue burden on those with erratic income or living on past saving to apply²⁸.”

Litigation is often not the best solution. The proposed project offers more flexibility by invoking mediation. The parties can save legal costs by avoiding litigation.

6.2.2 Duty Lawyer Scheme

The Duty Lawyer Scheme provides legal representation to defendants in Magistrates’ Court, Juvenile Courts and Coroner’s inquest.

6.2.2a Free Legal Advice Scheme

The Duty Lawyer Scheme cooperates with Law Society of Hong Kong to provide “preliminary legal advice” to the general public with a “genuine” claim. The service is not subject to any means test and is free of charge. One important feature is that the legal practitioners will not provide any follow up service, including legal representation in subsequent legal proceedings.

A member of the public who wishes to obtain legal advice under the scheme has to attend a meeting with a clerk at one of the referral agencies under the DLS. The case will be recorded by the clerk, vetted by the DLS, and referred to the lawyers. Legal advice will be provided at a later appointment with a qualified lawyer.

There are 9 Legal Advice Centres (note: no office in New Territories West):

- 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.

6.2.2b Tel Law Scheme

The Tel Law Scheme is a free hotline providing recorded legal information on various areas of law.

Limitations

Continuous legal advice cannot be provided under the Free Legal Advice Scheme due to the absence of any form of follow up action. The proposed project is complementary to the Scheme as it offers mediation as one form of follow up action. The participants of the Scheme may not need to seek legal representations in the future if they decide to take actions after they have consulted with the Scheme as mediation has now become a possible avenue for them to settle their dispute.

Our project proposes to set up low-cost, regular, community-based mediation clinics to serve lower-income and lower-educated populations living in Kowloon and New Territories who have lower cost, less technical, legal-related problems. This is a proposal that directly addresses the current gap between supply and demand in Hong Kong's legal and related services, namely that the aforementioned population is not provided with sufficient services.

Our proposal would successfully resolve that issue because of its simple service, effective grassroots approach, and innovative alternate conception of legal services. The project is simple because we only provide one, simple service that has low administrative cost, is easily implemented with existing services, and easily scalable and replicable. The project is effective because it uses a grassroots and community-specific approach by integrating itself into existing webs of community networks, namely by working with District Councillors and regional NGOs. The project is innovative because it considers how legally related services, not only law and explicitly legal services, can be used to address the legal-related needs of lower-income and lower-educated populations.

Taking a step back, we recognize that the imbalance between supply and demand in Hong Kong's legal and related services is simply one manifestation of the city's wider social context of social inequality. While we absolutely believe that this project has the capacity to fundamentally counteract the imbalance legal and related services in Hong Kong, we further believe that our project will begin to tackle the more fundamental problem of deep social inequality in our city. ■

1. Full research report: <http://www.doj.gov.hk/eng/public/consultancy.html>
2. Para 3.1 of DOJ survey's Executive Summary Combined Analysis Report <http://www.doj.gov.hk/eng/public/pdf/2008/reports/escombined.pdf>
3. Para 2.15, 2.23, 2.25, 2.29, 3.3-3.9, 3.20, 3.45-3.47 of DOJ survey's Executive Summary Combined Analysis Report
4. Para 2.28 of DOJ survey's Executive Summary Combined Analysis Report
5. Para 4.2 of DOJ survey's Executive Summary Demand Study Report (Part II) - Survey of Households
6. Para 5.1 of DOJ survey's Executive Summary Demand Study Report (Part II) - Survey of Households
7. Detailed breakdown (Para 3.39 of DOJ survey's Executive Summary Combined Analysis Report): 28% in Kowloon; 18% in Tsuen Wan and Kwai Tsing; 16% in Shatin and Sai Kung; 9% in Yuen Long and Tuen Mun; 9% in Tai Po, New Territories North and the Islands District.
8. Para 3.39 of DOJ survey's Executive Summary Combined Analysis Report
9. Para 2.28 of DOJ survey's Executive Summary Combined Analysis Report
10. Para 3.41 of DOJ survey's Executive Summary Combined Analysis Report
11. http://www.pilnet.org/images/FINAL_REPORT_31_May_2017.pdf ("PILnet report"), p41
12. e.g. CFCS, Crossroads, Christian Action, Maggie's Centre, New Opportunity Ltd., ELCHK (信義會), SKHWC (香港聖公會屯門綜合服務-賽馬會青年幹線)
13. List of organizations that LingU works with: https://www.ln.edu.hk/osl/community_list_1415.php
14. <https://www.ln.edu.hk/teaching-and-learning/lingnan-s-liberal-arts-education/community-service>
15. <http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20160425cb4-884-3-e.pdf>
16. HKU Social Justice Internship: <http://www.law.hku.hk/currentstudents/sjsi.php>
HKU Clinical Legal Education Program - Refugee Stream: <http://www.law.hku.hk/ccpl/cons/clep/index.html>
CUHK Clinic for Public Interest Advocacy: <https://www.cuhk.edu.hk/clear/tdg/1215/1215-26.html>
17. <http://www.news.ccc.cuhk.edu.hk/slp/>
18. Autumn 2017/Spring 2018 position advertisement: https://www.facebook.com/forjusticewithoutborders/videos/1137624706339114/?hc_ref=ARRFtEARuyKJfiC3wAsROsu7Hvr8IZo-nHGZG5KddmvaAwKuWwFpXWCIMcu1VHzey
19. https://www.e-print.com.hk/en_products_brochure_booklet_leaflet_printing
20. https://www.e-print.com.hk/en_products_poster_printing
21. https://www.e-print.com.hk/en_products_books_printing_stitched_binding_mono
22. http://www.had.gov.hk/file_manager/en/documents/public_services/community_halls_centres/Rates%20of%20Charges%20for%20Use%20of%20Facilities%20in%20CHCCs.pdf
23. Phase I mediation sessions will be held bi-weekly for months 4
24. https://www.hkmaac.org/mediation/pro_bono.php
25. <http://www.mediationcentre.org.hk/en/services/ProBono.php>
26. http://www.buildingmgmt.gov.hk/en/whats_new/2_19.htm
27. http://www.mediationcentrehk.org/Eng_FamilyMediation.html
28. PILnet report, p31