

LAW FOR CHANGE STUDENT COMPETITION 2018

TEAM 10	PROJECT TITLE Make-A-Will Hong Kong
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SCHOOL The University of Hong Kong	

INTRODUCTION

We are all bound to go through the stages of being born, growing old, falling sick, and eventually dying (in Chinese - 生老病死). Most of the times, we go through these stages not alone, but with our most beloved family members. And speaking of death, making a will is particularly important in a sense that it ensures that when someone passes away, their property and other assets can be distributed according to how they had wanted it to be distributed. Sometimes, this is done such that the deceased can rest assured that his/ her family members will still be able to maintain a decent level of quality of life upon his/her death. If one died intestate (without a will), his or her assets will be distributed according to the law of intestacy. This may not reflect the true intention or may even run contrary to the intention of the deceased.

However, it is not common for Hong Kong people to make a will before they die for the following reasons. To begin with, death is often considered a taboo in the Chinese society with a majority of the older generation seeing the process of making a will as a curse of death. The superstition, together with a lack of understanding on the purpose of making a will and the potentially high

legal costs may have barred many from making a will. Alternatively, if a will has been made but certain parts of it are unclear, or that the document lacked signatures or proper witnesses, the will may be still be challenged upon the person's death. A lot of these cases eventually end up in court, decided by a judge. The problem with this is that the judge's decision may not always reflect what the deceased had intended. What's more is that bringing the matter to court may create hostility between family members and may ultimately have an adverse impact on their relationship.

This project focuses on assisting elderly in need to make a well-drafted will so as to ensure that one's assets can be distributed according to one's will and to reduce the chances of disputes to the minimum.

It is hoped that this project would contribute to social justice by (1) ensuring that the possessions are distributed according to the intention of the deceased, (2) showing respect and upholding the freedom for one to decide how he/ she wants to do with his/her possessions upon death, and (3) conserving resources by preventing cases going to court.

NEEDS ASSESSMENT AND SITUATIONAL ANALYSIS

Currently, there is a lack of statistics as to the proportion of the adult (or elderly) population who has already made a will. Assistance provided for will-making is inadequate and undesirable. What is not disputed is that there has been a lot of incidents and cases that went to court as a result of disputes arising from the will (or the fact that there is no will). One of the more recent and widely reported cases involves a female bodyguard allegedly shot her aunt and wounded three other relatives because of a fight over inheritance. This points to the fact that making a will is still not a common practice in Hong Kong.

The Hong Kong government has done little to encourage estate-planning. In China, organisations such as the China Will Registration Center are established to provide will-making services. As of September 2017, more than 72,240 wills have been made and archived. However, there is currently no governmental website which provides reliable and detailed information on making a will, unlike other developed countries like the UK.

The quickest and easiest way is probably to go to a solicitor. But such services are expensive and the pricing lacks transparency. The approximate fee for

making a "simple will" as stated on the website of a local solicitors' firm is around HK\$1,000 to HK\$1,500. This amount, however insignificant as it may seem compared to the importance of making a will, can still deter those who are less well-off from making a will.

Some District Councillors provide free legal advice or will-drafting services to the residents in their districts. However, these programmes are mostly one-off and lack sustainability. The Hong Kong Professional Teachers' Union offers free will-making service, but the service is exclusive to members and lacks personalisation (e.g. a standard template is used). There are also some online resources which provide basic information on making a will, for example the Community Legal Information Centre. The accuracy of the information is questionable. Furthermore, it is unknown whether they are utilized or not.

There are a service gap and a grave need for a sustainable programme which not only provides actual free will drafting services, but also emphasises on educating the public on the importance of making a will and the formalities of doing so.

OUR PROJECT

PHASE I: Initiation and Planning

1. Correspondence with NGO partners

We will identify and contact potential NGO partners to enquire about their service areas and to introduce them to our project initiatives. A website and leaflets containing information on frequently asked questions and answers on the topic of writing wills will be introduced to them, so as to equip them with the essential legal knowledge for tackling enquiries relating to writing wills. Mediation as an alternative for dispute resolution will also be mentioned. We hope that NGOs can pass on the information to others creating a multiplier effect. Once we have established contacts with our NGO partners, we will start receiving cases from them. The maximum capacity of cases is 10 per batch.

Although the detailed screening criteria will be negotiated with each NGO to best address individual needs, we have four basic rules to ensure the top priority is given to those who need us the most:

- (1) The client *should live in an empty nest family*, meaning that their children (if any) are living elsewhere. We expect this type of family is more isolated and less informed in terms of estate planning.
- (2) *The old couple or the elderly person should have an estate of more than \$50,000.* This is because under section 60K of Probate and Administration Ordinance (Cap.10), those with less than \$50,000 are exempted from the provision prohibition against intermeddling of estate under section 60J. We also believe this type of family is less likely to face family disputes when the elderly member passes away.
- (3) *There should be at least two blood relatives in the family, not including our elderly client.* We hope to address the social justice issue at a narrower perspective in the initial stage, before we expand to serve the family in the broader sense. This is to allow us to get familiar with similar cases and thus to improve the effectiveness and efficiency of our service.
- (4) *The elderly is mentally competent and literate.*

For those who are ineligible, we will give them a lower priority.

Once a referral case is accepted, we will only terminate our service if the client is being too “indecisive” and/or “uncooperative”. Indecisiveness may be demonstrated by constantly changing instructions. This will free up more opportunities for cases in the waiting list. A certain degree of subjective judgement will come into play so we will always have discussions all stakeholders.

2. Correspondence with legal advisors

In the meantime, we will approach legal practitioners, such as solicitors or barristers, and invite them to be our legal advisors. We may also contact retired lawyers and academic staff. Advisors are crucial in providing professional solutions to some of the more difficult legal problems. In most situations, we will ask them to double-check or verify some legal points we draw up from our research.

3. Correspondence with HKU students

Student engagement is an essential element of our project, so we will start recruiting student volunteers as soon as we secure our funding and NGO partners. A quota of 20 student volunteers each year can reduce repetitive training. Each student volunteer is expected to commit at least half a year. In the training, we will cover the details of the project, their expected commitments and important legal liability issues such as the signing of the disclaimers. We will recruit students from law and social sciences faculties.

PHASE II: Implementation

1. Preliminary meeting

The preliminary meeting (first meeting) will be held in the presence of the client, a staff from the NGO, one of the executive members and one student volunteer. It will take the form of a casual chat so we can get to know the client and build the trust. The key focus is to explain the particulars of our free will-drafting service. We will also introduce the alternatives of wills, with the aid of some standardised materials. For instance, the possibility of planned giving and the Three Instruments of Peace (Will, Enduring Power of Attorney, and Advance Directives in relation to Medical Treatment). Participation of our NGO partners as well as our student

volunteers in every meeting is crucial in ensuring identical knowledge between the parties. Each student volunteer will follow one case at a time. Those who would like to proceed should contact us within two weeks and schedule for a second meeting.

2. Second meeting

In the second meeting, we will emphasise that no legal advice is given by us or our student volunteers and no fee is charged. For each case, a handbook is used for recording all necessary information collected from the client or any questions they have. We will start drafting the will with the information collected in the second meeting. We will conduct legal research and ask for assistance from our legal advisors when necessary.

3. Third & fourth meetings

In the third meeting, we will present the client with our first draft of the will and collect any missing particulars.

The client will have to confirm if the personal information and details on the drafted will are accurate and correct. We aim to complete the will by the end of the fourth meeting.

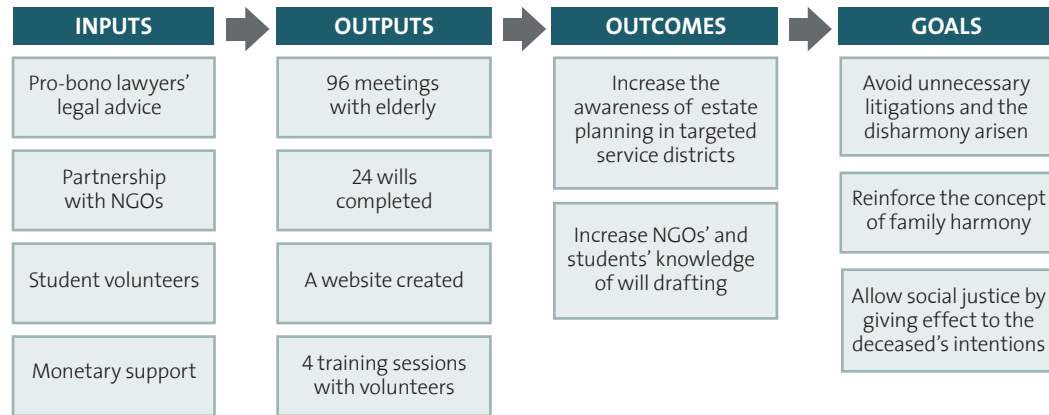
PHASE III: Will-Making and Execution

As the will is drafted, the client will need to sign a disclaimer. The disclaimer will confirm the scope of our service, the destruction of confidential records/ personal information and the presence of his consent to the adoption of our service etc. If the client decides to sign the will at this stage, one student representative and one representative from the NGO will be the witnesses. After the will is signed or drafted, we will immediately, and in front of the client, destroy the handbook. We will only leave our contact to the NGOs. If the client has follow-up questions, he/she should contact us through the NGOs.

Project Timeline

Stage	Action Points	Start Date	End Date
1. Pilot Scheme	<ul style="list-style-type: none"> • Find NGO and confirm partnership • Draft legal disclaimers • Contact legal advisors • Take in 4 referral cases from NGO 	Feb 2019	Apr 2019
2. Recruitment Training	<ul style="list-style-type: none"> • Recruit students through mass emails • Information sessions • First mass training 	Mar 2019 Late May 2019	Apr 2019 Early Jun 2019
3. Implementation	1st Batch <ul style="list-style-type: none"> • Receive 10 new cases from NGOs • Advance training (small group) • 1st batch of cases 	Early Jun 2019 Late Jun 2019 Jul 2019	Mid Jun 2019 Late Jun 2019 Aug 2019
	2nd Batch <ul style="list-style-type: none"> • Receive 10 new cases from NGOs • 2nd batch of cases 	Mid Aug 2019 Sept 2019	Late Aug 2019 Oct 2019
4. Evaluation	<ul style="list-style-type: none"> • Send out evaluation forms to NGOs and student volunteers • Repeat Stage 2-4 	Nov 2019	Nov 2019

Goals and Objectives



Involvement of NGO Partners

We have established primary contact with Tsuen Wan District Elderly Community Centre (“The Centre”), one of the branches under the Hong Kong Society for the Aged (“SAGE”). Established in 1977, SAGE is one of the largest and most established non-profit-organisations for the elderly in Hong Kong. We believe that our project echoes with the mission of SAGE, which aims at giving due respect and care to the senior citizens; providing opportunities for their further development; and ensuring that the elderly can grow old gracefully and peacefully.

Engagement of NGOs

The Centre has kindly confirmed their interest in being one of our NGO partners and will refer elderly cases to us based on the criteria in the abovementioned. They are willing to spare some of their conference rooms for the meetings. To ensure the smooth running and communications in the meetings, one representative from the Centre will also be attending the meetings with us and all the meeting logs are to be filled in and kept in a handbook by our members and the representative.

Expected Outcomes

The collaboration creates a win-win situation. From the discussions with the Centre, we understand their eagerness to expand their scope of services for their elderly members living in Tsuen Wan. We hold the same belief that a will is one of the best gifts we can leave for

our loved ones and agree that there are inadequate and non-transparent will-making services in Hong Kong. We are told that many elderly people in their Centre have raised questions on wills and probates and have asked for assistance in writing a will. However, with limited resources and a lack of knowledge, they cannot offer substantial help. Whilst the Centre can fill in their knowledge gap and provide more comprehensive services to the elderly in the collaboration, they can also act as the screening agent for our project so that resources are directed to those really in need and relieve the burden on them. Our collaboration with the Centre would also be carried on a practice of shared responsibilities and liability.

In the long run, we look forward to collaborating with other branches of SAGE and extend the impacts to districts beyond Tsuen Wan.

Involvement of HKU

The University of Hong Kong (“HKU”) will also be one of our key partners for the project. We have obtained the personal endorsement from Ms. Kitty Wong, Director (Development) of Development & Alumni Affairs Office at HKU. She is willing to connect us with other academic advisors at HKU. We have also got in touch with the Faculty of Law and Faculty of Social Sciences, seeking their endorsement. Professor Alice Lee, Associate Dean of the Faculty of Law has also expressed her interest in endorsing the project.

With the endorsements from HKU, it can further solidify the foundations and guarantee more support from our legal advisors and NGO partner. It can also encourage HKU students to join the project, given the wide recognition received from the faculties and university.

In addition, through the endorsements from teachers and faculties, we can secure a source of funding by applying for different project schemes from the university, so as to maintain the sustainability and continuation of the project in future years. We will distribute certificates signed by academic staff to recognise the contribution of our student volunteers.

Involvement of Legal Advisors

Legal advisors play an important role in our project. Mr. Malcolm Kemp, a senior partner at Stephenson Harwood has kindly agreed to be our legal advisor and offered to draft our disclaimers. We have also contacted Ms. Leung Sui Ming Olivia, a partner at Stephen Lo & P.Y. Tse Solicitors and she has gratefully agreed to be our legal advisor and provide legal training. They will oversee the project and answer our enquiries to ensure we do not incur any legal liabilities in the course of our project.

Budget

Category	Quantity	Projected Cost/Unit (HK\$)	Projected Total (HK\$)
IN KIND			
Booking fees for venue	/	–	–
Legal advice	/	–	–
Disclaimer drafting	/	–	–
PRINTING			
Posters	30	2	60
Leaflets	20	1	20
Meeting logbooks	60	18	1,080
Evaluation forms	200	0.15	30
Folders	60	7	420
Forms	120	0.15	18
Newsletters	20	1	20
Transportation of students subsidies	192	50	9,600
Website monthly subscription	12	97.84	1,174.08
CONFERENCES			
Conferences with NGOs	6	800	4,800
Conferences with legal advisers	4	800	3,200
Public Liability Insurance	4	3,000	12,000
CONTINGENCY EXPENDITURE			
Venue for meetings with NGOs and elderly	50	100	5,000
Venue for meetings for workshops	6	130	780
Contingency administrative/ miscellaneous expenditure	/	1,000	1,000
TOTAL (HK\$):			39,182

INNOVATIVENESS AND SUSTAINABILITY

Innovativeness

The project is innovative because it would be one of the few non-political organisations that provide free will-drafting service to the elderly. Compare to TungWah Groups of Hospital which also provides free will-drafting services, we allow flexibility in planned giving.

Moreover, our project will be promoting the Three Instruments of Peace (Will, Enduring Power of Attorney, and Advance Directives in relation to Medical Treatment) which the latter two are not popular in Hong Kong but still useful in promoting family harmony. Mediation will also be recommended as an alternative dispute resolution.

Lastly, we hope to generate a multiplier effect in our project. When the elderly has taken an initiative in drafting the will, we hope that his or her family members will be more aware of estate-planning. Moreover, equipping NGOs with the knowledge of will-drafting can increase our impact given their large platform and frequent contact with the elderly.

Sustainability

In order to make our project sustainable, we have long-term plans to recruit executive members to our team and to look for reliable and long-term sources of income.

Apart from the four members in our team, anyone who wishes to be an executive member must participate as student volunteers in at least two half-year service periods in order to be familiar with the project.

After the first year of launch, we aim to have 3-6 executive members at all time. Further expansion in the future may require a larger team of executive members. Each executive member is required to be fully committed to the project for at least one year.

Meanwhile, we will organise various internal events. Executive meetings are scheduled at least monthly to discuss executive and management issues.

Advanced training sessions are held to develop the bonding between student volunteers and to improve their knowledge through sharing sessions. Our website is updated regularly to equip students and the general public with the latest information about estate planning. Further, newsletters are issued semiannually and distributed as promotional materials. A larger coverage of our service is intended in the long run so the executive team will look for an expansion of NGO partnership.

Securing a reliable and long-term source of funding is an important aspect of our work. We will look for funding opportunities from different organizations, including but not limited to the University of Hong Kong Knowledge Exchange and Hong Kong Jockey Club. Also, we will explore the possibility of running the project as a social enterprise by adding other paid services in the long run.

MONITORING AND EVALUATION

Monitoring

To ascertain the quality of our meetings, we will ensure one of the executive members will be present in every meeting. Each of us will be assigned cases and be responsible for it until the case is closed. Our legal advisors will also assist us in maintaining the quality of the meetings. As mentioned, when we come across more difficult legal problems, they will help double-check the legal points we draw up from our research.

Evaluation

An evaluation will be held after the pilot scheme is completed. We will collect opinions and

recommendations from the NGOs and legal advisors. Through this, we aim to ensure the smoothness of the full-scale launch of our project and give first-hand experience to student volunteers. Throughout the year, we will have regular meetings to update work processes and further fine-tune our project. Contact will be made to NGOs and student volunteers but in a less formal way such as messaging through phone. A large-scale evaluation will be held after the 2nd batch of cases is completed. In this evaluation, surveys will be given out to the legal advisors, NGOs and student volunteers. Interviews are conducted for some follow-up questions.

CONCLUSION

Currently Hong Kong's free-will drafting services are mainly provided by political organizations. However, this is not ideal as some may manipulate it as a political tool. We aim to provide our service to the elderly because we believe they needed it the most. Social justice can also

be achieved as the accessibility and affordability of such service is enhanced through our project. It is hoped that the impacts of our project will extend beyond the elderly to the younger family members and ultimately, the society at large. ■