

CHAPTER 5 LAW AND LEGAL SERVICES ORGANIZATIONS

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I. Definition, methodology and background

Definition

International Classification of Non-profit Organizations (ICNPO)¹

- 1 According to the ICNPO, law and legal services organizations are defined as “organizations and groups that...offer legal services and promote public safety.”² This includes legal services, crime prevention and public safety, rehabilitation of offenders, victim support and consumer protection associations.

Application in the Hong Kong SAR

- 2 For the purposes of this study, the law and legal services sector has been defined narrowly to include only those organizations that provide legal services or focus on consumer protection.³ However, as legal services and consumer protection organizations in Hong Kong differ in terms of operations and development, the term “legal services organizations” will be used only to refer to those organizations whose primary activity is the provision of legal services, advice and assistance in dispute resolution and court-related matters.⁴ The term “consumer protection organizations” will be used to refer to those organizations working for the protection of consumer rights and the improvement of product control and quality.

Methodology

- 3 A discussion of the methodology used in this study is provided in Appendix I.

Background

- 4 The first legal services programme in Hong Kong was introduced by the colonial Government in the 1960s in response to increasing welfare needs and social unrest.⁵ A history of Hong Kong’s Legal Aid Department notes, “A series of...disturbances highlighted the fact that a substantial section of the population, denied political or legal redress in matters of labour, housing or personal grievance, had little recourse other than taking matters into their own hands.”⁶ Although judges could appoint free legal representation for some defendants under the existing “paupers petition” system, the system operated on an ad hoc basis and was applicable only in a small number of cases.⁷
- 5 Improving access to legal services was seen as critical to addressing community frustration and mediating social tension. In response to public demands for a more comprehensive legal services programme, the colonial Government established a Legal Aid Committee made up of members of the Hong Kong Bar Association and the Law Society of Hong Kong. A Legal Aid Ordinance based

on the recommendations of the committee was passed on November 23, 1966.⁸ The ordinance outlined a scheme of free and subsidized legal assistance to be funded primarily by the colonial Government that would cover most civil proceedings in the Full Court, Supreme Court and District Court. Defendants would be subject to a merits and a means test in order to determine the legal relevance of the case and the financial eligibility of applicants.⁹ Starting from January 1967, the scheme began operations as a sub-department within the judiciary. It was later granted independent status as the Legal Aid Department.¹⁰

- 6 The establishment of the Legal Aid Department represented a significant achievement in improving community access to legal services, but the scope of the services provided was limited. For example, the department did not provide legal representation in Magistrates' Courts or during other legal proceedings, such as extradition cases and identification parades. The creation of the Law Society Legal Advice and Duty Lawyer Schemes in 1978 (later incorporated as the Duty Lawyer Service in 1993) represented an attempted to expand the scope of legal services in Hong Kong.¹¹ The Duty Lawyer Service (DLS) is administered jointly by the Law Society and the Bar Association and was therefore the first independent legal services organization in Hong Kong.¹²
- 7 An important feature of the DLS was the creation of a Legal Advice Scheme, through which members of the public could obtain free legal advice about a problem before making the decision to initiate legal proceedings. Traditionally, legal services programmes have tended to focus on litigation, meaning that assistance is provided only when a case reaches the courts. Recent research has suggested that providing legal advice at a preliminary stage may actually be a more effective way of meeting community needs.¹³ In 1984, the DLS expanded its services further through the introduction of a Tel-Law Scheme that provided information to the public on various legal subjects.¹⁴
- 8 Over the past two decades, an increasing number of welfare and advocacy organizations have also begun to offer various legal services as part of their activities. The legal services offered by these kinds of organizations may include mediation, dispute resolution, legal advice, information hotlines and referral to the DLS, in addition to follow-up services, such as reading of legal documents, escorting clients to court, counselling following trial, etc.¹⁵ Comprehensive information regarding the nature and quality of these types of projects is limited. However, available data appear to indicate that these projects are growing at a faster rate in terms of service creation and clients served than organizations focusing primarily or entirely on provision of legal services.¹⁶ A comprehensive review of the legal services offered by different Third Sector organizations in Hong Kong is needed.
- 9 It is often alleged that the present consumer protection movement in Hong Kong is underdeveloped. This may be due to a variety of factors, including concerns regarding potential government interference in the market, lack of government or private sector support and lack of public awareness of consumer rights. The major consumer protection organization in Hong Kong is the Hong Kong Consumer Council, which was established in 1974 at a time of inflationary prices and widespread public concern about profiteering. The responsibilities and

activities of the Council were formalized in the 1977 Consumer Council Ordinance.¹⁷

- 10 The Hong Kong Consumer Council works to protect and promote consumer interests. Its activities include product research and testing and investigation of consumer complaints and enquiries. The number of complaints registered with the council continues to increase, a fact it attributes to greater consumer awareness and increased dissatisfaction with poor-quality goods and services in Hong Kong.¹⁸ However, a number of observers have commented on the urgent need to strengthen the consumer protection movement in Hong Kong. This is seen as critical in maintaining the competitiveness of Hong Kong's markets.¹⁹

II. Overview of the sector

Catalogue

- 11 The number of legal services and consumer protection organizations in Hong Kong is limited. If classification is based on the ICNPO system, there are unlikely to be more than 10 organizations in this sector and the number may be as small as five. Given the small size of the population, it is difficult to reach any definitive conclusions about the characteristics of organizations in this sector. However, some quantitative data on four of the organizations in the sector is shown below in Table 1. All figures are for 2001-02.

TABLE 1

	Sources of Income (as % of total)			Staff †	Centres	Geographic Scope	Service Users **
	Government	Private Sector	Other*				
Organization A	99%		1%	92	8	Hong Kong	112,736
Organization B	96%		4%	138	12	Hong Kong	129,720
Organization C	92%	4%	4%	10	3	Eastern District West Kowloon	133
Organization D	30%	70% ‡		0	1	Kowloon	approx 20

* Includes fees and charges, sale of publications, bank interest, etc.

† Full and part-time staff.

** Includes only those service users who actively seek out services.

‡ Funding provided entirely by Hong Kong and foreign-based foundations.

- 12 These data indicate that there is a high level of diversity within the sector despite the small number of organizations. The data also appear to suggest that the source of income for an organization and, specifically, whether or not the organization receives government subvention, is a significant determinant of organizational size and structure. Organizations A and B are funded almost entirely through government subvention and are also the two largest organizations in this sector in terms of staff, scope of activities and service users.

Role in economy

- 13 As indicated in Table 1, legal services and consumer protection organizations are a source of local employment and expenditure, although the direct multiplier

effect in terms of the economy is minimal due to their small number. The indirect impact of legal services and consumer protection organizations on the Hong Kong economy is likely to be far more significant, although this is also more difficult to measure.

- 14 The availability of free or discounted legal services for community members clearly has important economic benefits. This reduces the overall costs of dispute resolution for individuals. Recent UK studies suggest that provision of timely and appropriate legal services also helps to avoid costly litigation procedures and may in fact be a more effective means of addressing community needs.²⁰
- 15 Legislative Councillor Margaret Ng, who represents the legal functional constituency, notes that legal services organizations also provide valuable opportunities for development and renewal of the legal sector, both on an individual and on a professional level.²¹ Most legal professionals in Hong Kong serve a small and affluent percentage of the population and concentrate on a relatively narrow range of legal issues. Participation in volunteer schemes exposes legal professionals to the wider community where needs and expectations may be very different. This benefits the legal profession as a whole by increasing capacity and awareness.²² A 2001 Legislative Council motion debate on “Upholding the rule of law” put forward by Audrey Eu Yuet-mee emphasized the importance of legal aid programmes and community legal service centres “in order to maintain the competitive edge of Hong Kong in the rule of law.”²³
- 16 Despite the perception that consumer protection movement in Hong Kong is underdeveloped, consumer protection organizations do contribute to the Hong Kong economy by helping to ensure that standards of best practice are maintained in the market. This in turn bolsters consumer confidence and investment and enhances Hong Kong’s reputation as a tourist destination and business centre. Better protection of consumers will improve trust between consumers and traders and lead to sustainable internal consumption. As a result, Hong Kong’s balance of payment will be improved.²⁴

*Role in society*²⁵

- 17 Legal services organizations and consumer protection organizations fill a distinctive and important set of roles. Legal services organizations engage in activities aimed at providing legal services, advice and assistance for those in need and improving public awareness and understanding of the law. Consumer protection organizations engage in activities to protect and promote the interests of consumers of goods and services as well as consumers of immovable or intangible property such as stocks, mortgages and leases.

Service provision²⁶

- 18 *Legal representation.* Legal services organizations may provide free or subsidized legal representation to clients in criminal and civil cases. This is the primary activity of the Duty Lawyers Service (DLS), which is the largest legal

services organization in Hong Kong.²⁷ In 2001, the DLS provided legal representation to a total of 42,307 defendants in Magistrates' and Juvenile Courts. Of the non-guilty plea cases proceeding to trial that had DLS representation throughout, the overall acquittal rate was 63.87%.²⁸ Wesley-Smith notes that due to the complexity of the Hong Kong legal system, litigants without adequate legal representation are at a serious disadvantage.²⁹ However, many litigants are unable to hire legal counsel themselves. As the Legal Aid Department provides legal representation in the District Court and above and in committal proceedings in Magistrates' Courts only, many of the clients represented by DLS would otherwise have no legal representation during trials or other legal proceedings.

- 19 *Legal advice.* The provision of free legal advice to members of the community is the major activity of most legal services programmes in Hong Kong. Typically, an administrative officer, peer counsellor or volunteer will meet with prospective clients in order to take down a record of the questions/issues to be resolved.³⁰ Provided that the case meets the criteria set out by the organization, clients will then meet with a volunteer lawyer who has been briefed on their case.³¹ The DLS Free Legal Advice Scheme currently runs nine evening sessions at various locations around Hong Kong. In 2001, the DLS and affiliated programmes provided advice to 6,252 clients.³² A growing number of welfare and advocacy organizations in Hong Kong are also offering legal advice programmes as part of their activities.³³
- 20 *Legal information.* Most legal services organizations and many welfare or advocacy organizations provide information about legal issues to clients and to the community at large. Information may be made available to the public in a variety of ways, including meetings with lawyers, social workers and volunteers; legal hotlines; the internet; and various publications. For example, the DLS provides information on specific legal issues to the public through the Tel-Law Scheme, a 24-hour multilingual service. The scheme provides clients with an easy and anonymous way to gather basic facts about a legal problem. Information is available by telephone in the form of pre-recorded audio tapes or via the internet. For 2001, the Tel-Law Scheme reported a total of 62,300 calls.³⁴
- 21 *Dispute resolution.* Organizations may provide dispute resolution or mediation services in resolving problems out of court. For example, the Hong Kong Consumer Council does not have statutory investigative or enforcement authority and therefore seeks to engage consumers and traders in mediation in order to resolve complaints. Of the 18,765 complaints lodged with the Council in 2000-01, 12,214 had pursuable grounds. Eighty-nine percent of these cases were resolved through mediation, whether by obtaining redress from the trader (68%) or by provision of an acceptable explanation (21%).³⁵
- 22 There is little information on the types of clients who receive services through legal services and consumer protection programmes. However, the limited and fragmentary data that are available suggest that at least some of the clients who receive services might not otherwise seek out or receive assistance, whether due to financial considerations, lack of familiarity with the legal system or the personal nature of the problem.³⁶ On the one hand, the complexities of the legal system make lawyers "indispensable." At the same time, obtaining professional

legal services in Hong Kong is expensive. Therefore, seeking legal recourse or protection may be beyond the means of many Hong Kong people.³⁷

- 23 The availability of legal services and consumer protection programmes undoubtedly increases individual access to justice. This helps to address imbalances in the current legal system and contributes to the creation of a more just society. On a broader level, providing individuals with the practical information and tools needed to resolve disputes in an affordable and effective way helps to mediate feelings of frustration and helplessness. This is a key step in combating widespread social problems and averting domestic tragedies. Therefore, improving community access to justice contributes to the overall well-being and stability of the community as a whole.

Critics and watchdogs

- 24 The major role of consumer protection organizations is to safeguard the interests of individual consumers by monitoring the activities of the private sector. This includes research on industry performance, company practices and the quality of the goods, services and immovable/intangible properties available on the market. The “watchdog” role may involve product tests to determine safety, performance, ease of use, endurance, environmental sustainability, etc.;³⁸ assessment of individual companies; analysis of market behaviour; and investigation of the specific complaints and concerns put forward by individual consumers.³⁹ Information about private sector activities is then distributed to the public in various ways, including public announcements, newsletters and publications.⁴⁰
- 25 The information gathered and distributed by consumer protection organizations has significant benefit for the Hong Kong community, including prevention of corporate malpractice and other illicit activity, ensuring against health and safety problems due to faulty or harmful products and improving the overall quality of consumer goods. Information about consumer issues also has value on a regional and international level. For example, the Consumer Council works closely with parallel agencies on the mainland in sharing information about regional products and services. A 2002 report by the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) noted that “comparative product testing and regular publication of test results in consumer information magazines is the distinguished strength of the Hong Kong Consumer Council (HKCC).”⁴¹

Intellectual and visionary

- 26 Hong Kong’s legal services and consumer protection organizations serve as an important source of independent information and analysis. The fact that Third Sector organizations are not focused on making a profit may sometimes allow them to adopt a more innovative and multi-disciplinary approach in examining problems and developing solutions.⁴² Organizations may also play a central role in raising awareness of problems and needs that have not been acknowledged or addressed by the Government or the private sector.

Advocacy

- 27 Many legal service and consumer protection organizations regard advocacy as an essential aspect of their operations. Advocacy may take a number of forms, including lobbying of government departments and representatives, contributing to government policy, pushing for private sector reforms, addressing professional and industry groups and raising community awareness of citizen and consumer rights. The Hong Kong Consumer Council notes the imbalance of resources and expertise between individual consumers and businesses and describes its mandate as “a conscious effort to redress the imbalance so that consumer interests will be represented.”⁴³
- 28 Organizations may also offer input on needed reforms. For example, legal services organizations may feel that their work gives them a unique insight on the actual needs of community members and lobby the Government to ensure that the legal system is focused on meeting these needs rather than simply generating commercial profit. However, one of the organizations interviewed noted that fears of losing government subvention have deterred some organizations from taking an active stance on key issues. See Sections 3.1 and 4.1.

Problem solving

- 29 Legal services and consumer protection organizations may be approached by government departments and private sector groups to assist in developing strategies and solutions on issues of common concern. For example, in 2000-01, the Consumer Council was asked to offer its views to the Legislative Council and various government departments, advisory bodies and industry associations on 26 occasions. For the same year, council members participated in 50 committees, working groups, statutory bodies and industry associations.⁴⁴ This differs from advocacy in the sense that interaction is welcomed by all parties – although partnership with the Government and the private sector may be one outcome of successful Third Sector advocacy.

Volunteerism promotion

- 30 Many organizations regard the voluntary services donated by community members as their most valuable resource. At the same time, volunteer work creates valuable opportunities for personal and professional development among members of the Hong Kong community. The DLS currently has a roster of 1,403 volunteer lawyers. It says that volunteer lawyers describe their work with the organization as challenging and personally rewarding. The fact that a number of its current volunteers have participated continuously in the volunteer scheme since its inception in 1979 is an indication of the level of commitment and interest among individual volunteers.⁴⁵
- 31 A two-year review of legal education and training in Hong Kong noted the importance of pro bono work and voluntary service in maintaining “the traditional professional ethic of disinterested public service” among legal professionals.⁴⁶ Exposure to a broader range of clients and legal issues also

increases the capacity and expertise of lawyers. The sociologist Nan Lin observes that this transfer of skills and information is a source of social capital in communities. The “acquisition of experiences” through organizations also contributes to the heterogeneity and richness of societies.⁴⁷

Funding

- 32 In general, provision of financial resources is not a major activity of legal protection organizations or consumer protection organizations. However, under some circumstances, organizations may waive user fees or provide funding to cover related user costs. For example, the Hong Kong Consumer Council has established a Legal Action Fund in order to provide financial assistance to consumers in cases that offer significant grounds for legal redress or an opportunity to promote consumer interests. Since the establishment of the Legal Action Fund in 1994, 43 types of cases have been considered with each case representing many individual consumer complaints. Legal assistance has been granted in 16 cases, of which six have resulted in compensation for consumers.⁴⁸

III. Links between the Government, the market and the Third Sector

Interaction with Government

- 33 Legal services and consumer protection organizations interact with the HKSAR Government on a variety of levels:
- *Funding.* Government provides subvention for a number of legal services programmes and at least one consumer protection organization. Where government provides all or a significant portion of funding, it generally plays a role in governance of the organization. Individual government agencies may also contribute to organizations by providing facilities or resources, such as office space.
 - *Case referral.* Most of the legal services organizations in Hong Kong work closely with the various departments of the HKSAR Government in referring or taking on cases. This includes interaction with the Legal Aid Department, various law enforcement agencies and District Offices.
 - *Partnership.* Consumer protection organizations may work closely with various law enforcement agencies in order to uncover industry malpractice. Organizations may also work with relevant policy bureaux and the Hong Kong Tourism Board to improve the legal infrastructure for protection of consumer rights.
 - *Advocacy.* Some legal services and consumer protection organizations regard advocacy at the governmental level as an essential aspect of their operations. This may include input on policy issues or lobbying to make government departments and representatives more aware of particular needs.

- *Presentations and meetings.* Consumer protection organizations may meet with various government bodies on occasion in order to offer their views on policy issues.
 - *Advisory/consultative bodies.* Representatives from consumer protection organizations may be asked to sit on government advisory and consultative bodies.
- 34 Interviews indicated mixed views as to the quality of interactions with the Government. One organization said that it had found the Government to be very supportive and open-minded. However, another organization criticized the Government for its narrow and short-term approach to long-term community problems and its tendency to prioritize bureaucracy over community needs. The organization also expressed concern regarding the low level of government interest in partnering with Third Sector organizations.
- 35 A third organization was critical of the HKSAR Government's conservative attitude towards involvement in community issues. The organization believed that this attitude reflects fears regarding potential criticisms of government interference in the market. The organization added that the lack of government involvement in community issues has high costs, including the failure to implement much-needed reforms in public policy and the legal structure. A more specific concern raised during interviews relates to the effectiveness of partnership with government agencies.⁴⁹
- 36 All of the organizations interviewed felt that the Government could take more initiative in providing long-term support for Third Sector organizations and protecting the rights and interests of individual Hong Kong residents. Detailed discussion of specific government policies relevant to the activities of legal services and consumer protection organizations is provided in Section 4.6.

Interaction with the private sector

- 37 Legal services and consumer protection organizations interact with the private sector on a number of levels:
- *Advocacy.* The primary mission of consumer protection organizations is to protect the interests of individual consumers and effect changes in the behaviour of private sector companies. Therefore, advocacy at the private sector level is a major priority. Consumer protection organizations may also lobby business and professional associations to establish codes of best practice in order to regulate the activities of members.
 - *Presentations and consultations.* Consumer protection organizations may be invited to offer their views to industry and sit on various committees and professional bodies.
 - *The media.* At least one of the organizations interviewed regards the media as a key tool for distributing information to the general public.

- 38 Interviews suggested that although certain individuals and groups have been supportive of the activities of legal services and consumer protection organizations, the private sector in Hong Kong could do much more to support and work with these organizations. For example, law firms could play a role in volunteerism promotion. One organization interviewed expressed the view that Third Sector organizations need to partner with private sector groups in order to achieve any significant changes in the current situation in Hong Kong.

Third Sector dynamics

- 39 Legal services and consumer protection organizations work closely with other Third Sector groups in sharing resources and information:
- *Case referral/management.* Legal services organizations collaborate with other local organizations, including welfare and advocacy groups, in taking on and referring cases. One organization interviewed described the close working partnership between legal services and other Third Sector organizations as essential in ensuring that the needs of clients are met. Community organizations are likely to have the best understanding of specific community needs.⁵⁰
 - *Education.* Organizations may work with schools and universities in co-sponsoring events, conferences and courses.
 - *International network.* Consumer protection organizations often work with a variety of international partners, including other consumer protection groups and community organizations, in order to share information and resources.
- 40 One organization interviewed described Hong Kong's Third Sector as being very conservative. It said that Third Sector organizations lack the initiative to implement any real changes in the current situation in Hong Kong. The organization believed that any significant change was dependent on developing partnerships with the private sector and the Government. Another organization commented on the mutual lack of trust between the Government and Third Sector organizations in Hong Kong. The organization sees this as a significant obstacle to developing broad coalitions between governmental and non-governmental agencies.

IV. Major issues facing the sector

Financial resources

- 41 During interviews, funding was identified as the major issue facing legal services and consumer protection organizations.

Sources of funding

Government subvention

- 42 All of the organizations interviewed are heavily or entirely dependent on government subvention. The organizations said that alternative sources of funding, such as private sector donations and fees, may not be appropriate or feasible due to the nature of their activities.

Private donations

- 43 The organizations interviewed do not currently receive or solicit private sector funding. Organizations said that private sector fund-raising may not be compatible with their role in providing independent information or legal services. Organizations feared that accepting private donations from individuals or private sector groups might result in a conflict of interest or compromise their neutrality. In order to avoid any such bias, they have made a conscious decision not to engage in private sector funding.

Fees

- 44 At least two of the organizations interviewed implement fees for certain products and services. However, fees are not regarded as a major source of income. One of the organizations generates a small percentage of its income through consultation services and the sale of publications. The second organization implements a minimal user fee for one of the services that it offers. This fee is intended primarily to increase user accountability.

Funding issues

Government bureaucracy

- 45 Several of the organizations interviewed regarded government bureaucracy as the primary cause of funding problems. Specifically, they mentioned the lack of flexibility in government funding schemes, lack of willingness on the part of the Government to invest in partnership with Third Sector organizations and an overall tendency to prioritize bureaucracy over community needs. Organizations added that the current focus on short-term economies seems short-sighted given the tremendous value added of legal services for the community as a whole.
- 46 Given their reliance on government subvention, organizations were concerned about recent cuts in government funding, especially the Enhanced Productivity Programme (EPP) for Subvented Welfare Agencies.⁵¹ Organizations were critical of the reasoning behind EPP funding cuts, noting that reductions in funding will not reduce the demand for services, although it may reduce the quality of services available to clients. Organizations say funding cuts compromise their ability to address the real concerns and needs of clients and may actually increase the overall welfare burden of the community. The failure to address individual problems at an early stage through effective intervention may result in the need for greater and more costly intervention at a later stage. This is especially true during a period of economic recession as the needs of individuals are likely to be even more urgent.

Administrative strain

- 47 The organizations interviewed said that financial limitations create a significant administrative strain as they are unable to hire necessary staff members. All of the organizations interviewed are now facing continued reductions in their funding due to changes in government support for subvented organizations. Despite this, the number of service users continues to increase. Organizations said that they are now meeting greater needs with fewer resources. Users may be forced to wait longer for services. For example, one of the legal services organizations interviewed says that the processing time for legal advice cases has increased from one week to as long as six weeks due to administrative overload.

Limited potential for expansion of services

- 48 One of the organizations interviewed is currently engaged in talks with a government department regarding the possibility of providing legal representation for care and protection proceedings in Juvenile Courts. The organization sees this as an important opportunity to increase its capacity and expertise, but is unable to commit to any further expansion of services without additional funding. [Editorial note : the organisation concerned has secured the necessary funding from the Health Welfare and Food Bureau and the service commenced in late 2003.]

Independence

- 49 One of the organizations raised the concern that government subvention may compromise the independence of the Third Sector. For example, organizations may have less flexibility to expand or modify their activities or may feel less able to fill an advocacy role.

Human resources

Staffing

- 50 The organizations interviewed stressed the importance of an efficient and capable administrative staff in maintaining a high quality of services for users. For example, in legal services organizations, staff members act as intermediaries between clients and lawyers. Staff members must therefore have some legal background and a good understanding of the client's needs and expectations in order to ensure that client-lawyer meetings are productive.

Financial limitations

- 51 The organizations interviewed regarded the current financial limitations as the major staff recruitment issue. At present, financial resources are insufficient to hire the necessary staff members. This increases the administrative burden of the organization significantly. Organizations expressed the concern that human resources constraints would jeopardize the quality of services available to users.
- 52 For example, due to budgetary cuts, one of the organizations interviewed has been forced to reduce staffing for its hotline service. This, coupled with a simultaneous increase in public demand for hotline services, has resulted in an increase in waiting time. It has been proposed that hotline staff cut the time allotted to each caller in order to shorten waiting time. The organization believes

that this proposal is not an acceptable solution. If callers are allotted a shorter time period, they may not receive all the information that is needed or may be confused by the information provided.

Volunteers

- 53 Legal services organizations tend to rely heavily on volunteer services. In most cases, the ability of organizations to provide legal services would not be possible without the voluntary contribution of legal professionals. Consumer protection organizations rely less on the contribution of volunteers due to the specialized nature of their activities.

*Volunteer recruitment*⁵²

- 54 Organizations interviewed identified the following issues as obstacles in recruiting and retaining volunteers:

- Lack of necessary skills or expertise among available volunteers – Those professionals with the necessary skills and expertise are unaware of, uninterested in or unable to meet the needs of the organization;
- Time commitment;
- Scheduling, i.e. difficulties of coordinating volunteer obligations with professional obligations;
- Diminished confidence among young professionals; and
- Financial considerations – Some legal services organizations do provide financial remuneration for volunteer lawyers. However, such remuneration is generally lower than market rate legal fees and is unlikely to be a sufficient incentive to increase levels of volunteer recruitment dramatically.

- 55 One of the legal services organizations interviewed noted that although the number of lawyers participating in its volunteer scheme continues to increase, the rate of increase has slowed and is now slower than the rate of increase in cases. During the period from 1998-99, the rate of increase in volunteers was 10%. The current rate of increase is only 4%. The organization believes this may be due to the current economic downturn.

Volunteerism promotion

- 56 One of the legal services organizations interviewed suggested that law firms could help to address issues of volunteer recruitment and accountability through the creation of formal volunteer programmes.⁵³ Professional groups like the Law Society and the Bar Association could also play a role in volunteerism promotion. Little information is available about total volunteer activity across legal services organizations, some of which occurs on an informal level. However, available information suggests that only a small percentage of the total professional population participates in legal services programmes.⁵⁴

Accountability

- 57 Interviews suggested that volunteer accountability is also an issue for some organizations, particularly those that rely heavily on volunteers in their daily operations. One legal services organization reported a 40% absentee rate for volunteer lawyers on days that legal services are to be provided. This creates a

significant administrative strain for the organization and may jeopardize the quality of services provided. For example, more active volunteer lawyers may be forced to absorb a larger caseload in order to compensate for less active or reliable volunteers.

Training

- 58 One of the legal services organizations interviewed raised the concern that the lack of training for administrative volunteers may impact the effectiveness of the organization. A basic understanding of legal issues and procedure is required for case processing and referral. For example, where volunteers are responsible for initial contact with clients, they must be able to assess the true nature of the problem and pass on necessary information. If the interaction between the volunteer and the client is unproductive, subsequent meetings between the client and the lawyer may be frustrating and unhelpful. The organization noted that lawyers currently spend most of the meeting trying to clarify issues that should have been addressed at an earlier stage. Clients may leave feeling as though their real concerns have not been addressed.⁵⁵

Office infrastructure

- 59 Office infrastructure was not identified as a significant issue during interviews. Two of the organizations interviewed have a permanent office space while the third organization operates out of the offices of partner organizations.
- 60 Two of the organizations interviewed have internet websites that provide contact details for the organizations, recent publications and information about activities and services. Organizations say that given the high level of internet usage in Hong Kong, the internet is a very effective tool for raising public awareness. However, one organization said that the lack of funding to upgrade its existing IT infrastructure is a significant issue, both in terms of efficiency and outreach to the public. Providing information on the website may remove the need for service users to contact the organization in person. This is a significant benefit, especially in cases where the user has concerns about confidentiality or personal safety.

Public awareness

- 61 Increased public awareness is a priority for both legal services and consumer protection organizations. The aim of outreach is to make community members more aware of the activities of the organization and the services it provides. Outreach may take a number of forms. For example, one of the organizations interviewed outreaches to the public through education programmes, press interviews and distribution of informational materials such as publications and pamphlets.
- 62 The continued increase in demand for legal services provides some indication that the public is aware of legal services organizations.⁵⁶ Similarly, the increase in demand for services reported by consumer protection organizations may reflect greater consumer awareness and increased dissatisfaction with poor quality goods and services in Hong Kong.

Ethics

- 63 The only ethical issues mentioned during interviews were in relation to funding. Given the nature of their work in protecting individual and consumer interests, organizations feared that accepting private donations from individuals or private sector groups might result in a conflict of interest or compromise their neutrality. In order to avoid any such bias, they have made a conscious decision not to engage in private sector funding.

Government policies

- 64 The following comments reflect the specific policy issues and recommendations highlighted by organizations during interviews:

Government investment in the Third Sector

- 65 All of the organizations interviewed believe that government investment in Hong Kong's Third Sector is crucial to long-term growth and development. This encompasses both financial support for individual organizations and investment in the intellectual and social capital of the Third Sector as a whole.

Funding

- 66 In terms of funding, organizations were critical of the current economising measures adopted by the Government, in particular, the Enhanced Productivity Programme (EPP) for Subvented Welfare Agencies. Organizations described such measures as short-sighted and misguided as the focus is on the financial bottom line rather than on the real needs of the community. Moreover, although the current economic downturn has created an incentive to cut government funding, community needs tend to be greatest during periods of economic recession. Organizations said that at a minimum, the Government should be more flexible in implementing EPP cuts as the structure and spending patterns of subvented organizations may differ widely. For example, requiring all subvented agencies to adopt a budget cut of 5% may penalize those organizations that have already adopted a lean structure. One organization suggested that the Government should allow all subvented organizations to apply for additional tide-over grants in order to compensate for future budget cuts. Such grants are available for only some subvented agencies.

Intellectual and social capital

- 67 Organizations also emphasized the need for increased government investment in the intellectual and social capital of the Third Sector as a whole. One organization noted that partnership between different sectors in a community can be a very effective way for improving intellectual and social capital. The organization therefore expressed concern regarding the low level of government interest in partnering with Third Sector organizations. The organization said that the absence of well-developed government-Third Sector partnerships reflects the patronizing or sceptical attitude of government agencies towards the Third Sector. Organizations are often regarded by government agencies as being ineffective or amateurish. The organization noted that at the same time, there is no attempt to

upgrade the capacity of organizations, whether through partnership or through other investments in intellectual capital, such as seminars or training courses.

Obsolete legal structure

- 68 Organizations commented that Hong Kong's existing legal structure is obsolete in relation to existing community needs and expectations. For example, one organization was critical of the Government's conservative attitude towards increasing the scope of legal protection for consumer rights. The organization commented that the Government's desire to avoid criticism for interference in the market had prevented implementation of much-needed legal reforms. It added that government bureaux should take more initiative in improving the legal infrastructure for protection of consumer rights in Hong Kong. One suggestion was that the scope of the Trade Description Ordinance could be expanded to cover both commodity goods and services.

Data on community legal needs

- 69 Legal services organizations stressed the need for an empirical survey of legal needs in the Hong Kong community and an assessment of whether or not these needs are being met. Organizations felt that the Government should also assess the effectiveness of current legal services programmes. One organization mentioned the amount of resources directed to legal aid and litigation as an issue of particular concern as provision of free or affordable legal advice may be a more effective and economic way of meeting needs. However, the lack of data on this point is an obstacle to any comprehensive review.⁵⁷
- 70 The organization also identified the lack of data on the legal profession in Hong Kong as a matter of concern. The organization stated that generalizations about the legal sector as a whole may obscure diversity and variation within the sector. For example, although there are frequent complaints regarding inflated legal costs in Hong Kong, there has been little attention to the question of whether or not affordable legal services are in fact available. The organizations suggested that the Government should undertake a study of the legal profession in Hong Kong in order to compile a more representative profile of the sector and assess the degree to which the legal sector is meeting actual community needs.

Public education

- 71 One of the organizations interviewed said that the Government should devote more resources to raising public awareness of consumer rights. This will help to protect the interests of individuals and also demonstrate government support for consumer protection. The organization noted that there is also a need to outreach to tourists in raising awareness of consumer rights. This is ultimately in the best interests of Hong Kong in maintaining its status as a tourist destination and shopping centre.

V. Conclusion

- 72 Given the small number of legal services and consumer protection organizations in Hong Kong, their relative significance within the Third Sector as a whole is minimal. Nevertheless, the work of these organizations in improving access to justice and protecting consumer rights is extremely significant both for the Third Sector and for the wider Hong Kong community specifically because there are few organizations that fill this role. In many cases, the services, resources or information provided by legal services and consumer protection organizations would not otherwise be available in Hong Kong.
- 73 There is an urgent need for more data about these kinds of organizations and related Third Sector initiatives. In particular, there is a need for further study of the scope and content of the legal programmes offered by welfare, advocacy and other Third Sector organizations. Such programmes clearly play an important role in providing a variety of legal services to the community and may sometimes be more effective in addressing specific community needs than legal services organizations. Further study is also needed in order to compile a comprehensive picture of community legal needs and assess the effectiveness of Hong Kong's legal services in addressing these needs. As part of this project, examination of the legal services available in other jurisdictions, particularly the UK, given the similarities between Hong Kong and UK law, would be a useful reference. Similarly, a study of consumer protection organizations and movements in other countries would be an important step in enhancing Hong Kong's consumer protection movement.
- 74 One of the major difficulties in completing this research was the limited amount of data on legal services and consumer protection organizations in Hong Kong, although individual organizations were generally very helpful in providing information. It was also difficult to integrate information about Hong Kong's legal services and consumer protection organizations into a single chapter without distorting or overlooking the distinctive aims, activities and issues of each group. This pairing reflects the ICNPO classification as adapted for this study, which admittedly may not be the most logical treatment for all types of third-sector organisation given the need to strike an overall balance. Therefore, this report may not adequately reflect any overlap between legal services and consumer protection organizations and advocacy or political organizations.
- 75 Moreover, the decision to treat these three subsectors as individual sectors may have unintentionally distorted the picture of Hong Kong's Third Sector. The reality is that the local Third Sector continues to be heavily dominated by more traditional charitable organizations and has only a small number of interest-based or advocacy groups as compared with the US, the UK or even other Asian countries such as Thailand, India and Japan.⁵⁸ This appears to reflect both the level and direction of Third Sector development in Hong Kong.

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APPENDIX 1: Methodology

Information about legal services and consumer protection organizations in Hong Kong was gathered from a variety of sources, including interviews, the Third Sector Survey, the Internet and a literature review.

Identification of organizations

Organizations were identified using a variety of means, including the HKSAR Government's *List of Approved Charitable Institutions and Trusts of a Public Character* (2002), the Hong Kong Tourism Board's *Associations & Societies in Hong Kong* (2001), the internet and a review of relevant government, private sector and Third Sector literature. The period for identification of organizations lasted approximately six weeks.

Third Sector Survey

The purpose of the Third Sector Survey was to classify organizations on the basis of their primary activities, update contact details and obtain sufficient statistical information to compile a snapshot of the Third Sector as a whole.

Due to the small size of the population and high level of diversity, it was necessary to survey as many organizations as possible in order to avoid distortion of data. The survey was sent out by mail in late October 2002 to all legal services and consumer protection organizations identified with the goal of obtaining at least a 50% response rate. Follow up by telephone occurred in early November 2002.

A decision was made by the Researcher not to use the survey results for the law and legal services sector in writing this chapter. However, these results are included in the aggregate results for the Third Sector presented at the start of this Report.

Interviews

Interviews were intended to provide insight into the operations and issues of a particular organization. Information gathered during interviews was then used as a reference in making more general observations about the sector as a whole.

The goal of the interview process was to solicit information on specific subjects from organizations and allow them an opportunity to offer their views and ideas. The focus was on collecting qualitative information about how organizations operate. Quantitative information was obtained from a number of other sources, including the Third Sector Survey and the annual reports, publications and websites of individual organizations.

In order to obtain a balanced and diverse perspective on issues, at least one organization was interviewed in each of the two sub-groups. Selection of organizations for interviews was based on the following considerations, with the aim of interviewing organizations that differed in one or both of these respects:

1. Size – number of employees/volunteers, scope of activities etc.;
2. Age – year of foundation
3. Nature of activities
4. Profile – visibility in the community, availability of contact information, etc.

Interviews were conducted with three organizations, representing approximately 25% of the sector as a whole. In each case, the person interviewed was the chief executive, director or administrator of the organization. Two of the interviews were conducted in English and one interview was conducted in Cantonese. Most interviews lasted about 45 minutes. The Interview Outline sent to organizations prior to interviews is provided in Appendix 2. Following the interview, a record of the discussion was sent to the organization for verification.

Specific comments made during interviews have not been attributed to the organization by name within this report. Where organizations are mentioned by name, information has been obtained from the public materials of that organization or from other publications.

APPENDIX 2: Interview Outline

The Third Sector Study

The Third Sector Study is being undertaken by the Central Policy Unit of the HKSAR Government in order to gain a better understanding of the issues and problems facing non-profit organizations in Hong Kong. The final report will be made available to the public in early 2003, less any information that should remain confidential for legal/privacy reasons. A similar study on corporate philanthropy in Hong Kong was published by the CPU several months ago and is available online at www.info.gov.hk/cpu/english/new.htm.

Should you have any additional questions about the study, please contact Ms Mandy Wong at the CPU at 2810 2378.

Interview

The purpose of the interview is to provide insight into the issues and problems facing a particular organization. This information will be used as a reference in making more general observations about the issues and problems facing the sector as a whole.

Information gathered during the interview process may be used in a case study. Organizations will have the right to make comments off the record or to stipulate that their name will not be published in the final report (either in a case study or within the text of the report).

Below is an outline of questions to be addressed to the interviewee. Where appropriate, some information may be obtained from supplementary sources, including annual reports, publications, etc.

1. Mission and activities

Brief mission statement

What is your primary activity (or activities)?

2. Funding

What are your major sources of funding?

Relative importance of each source?

Trends in funding?

How could the situation in terms of funding be improved?

3. Staffing/management

Administrative structure and general office infrastructure?

Any staffing or management issues or problems?

Significance of volunteers?

How could the situation in terms of staffing/management be improved?

4. Government policies

Legal status and benefits/drawbacks?

Need for additional support from government (financial, access to information etc.)?

How could the situation in terms of government policy be improved?

5. Public awareness

Public awareness of organization and activities?

Difficulty/ease of promoting organization?

Impact of religious affiliation, if any?

How could the situation in terms of public awareness be improved?

6. Dynamics of the Third Sector

Do other organizations face similar issues and problems?

Interaction with other organizations?

How could the situation in terms of the dynamics of the Third Sector be improved?

7. Role in economy and society

How would you describe your role in the economy and in society?

What do you see as the ultimate value of your work?

8. Three major issues or problems for your organization?

-
- ¹ The ICNPO system was developed during the 1990s by a team of international scholars as part of the Johns Hopkins Comparative Non-profit Sector Project. To date, the ICNPO has been used to classify non-profit organizations in 40 countries, including six Asian countries. The ICNPO uses the following five criteria in defining Third Sector groups: (1) organized, (2) private, (3) non-profit distributing, (4) self-governing and (5) voluntary. More information about the Non-profit Sector Project is available online at <www.jhu.edu/~ccss>.
- ² Salamon, Lester M. and Helmut K. Anheier (1996), "The International Classification of Non-profit Organizations: ICNPO-Revision 1, 1996," *Working Papers of the Johns Hopkins Comparative Non-profit Sector Project*, No. 19, Baltimore, MD: The Johns Hopkins Institute for Policy Studies, p. 17, <www.jhu.edu/~ccss/pubs/cnpwork>, 2 Nov 2002.
- ³ The decision to narrow the scope of the law and legal services sector is based both on the heterogeneous nature of the ICNPO classification and the current situation in the Hong Kong SAR. In Hong Kong, crime prevention and public safety, rehabilitation of offenders and victim support organizations do not focus on provision of legal services as their primary activity. Offender rehabilitation and victim support organizations provide a variety of social services – including peer support, counselling, work training and accommodation – in order to meet the specific needs of a target population. Therefore, it seemed more useful to classify these kinds of groups as welfare organizations. Similarly, as the primary focus of the one crime prevention and public safety organization in Hong Kong is research, a decision was made to classify it as an education and research organization. The heterogeneous ICNPO classification may reflect the situation in countries where the provision of legal services is a normative feature of offender rehabilitation, victim support and crime prevention organizations or where these organizations have some formal legal authority. The fact that this is not the situation in Hong Kong at present may be both a reflection of its particular cultural, legal and political context and an indicator of the level of Third Sector development in Hong Kong.
- ⁴ Although information on the development of non-profit, non-governmental legal services in Hong Kong is limited, a growing number of welfare and advocacy organizations are beginning to offer legal aid, advice and information as part of their services. Within the past five years, several organizations have established formal legal services programmes, such as free legal advice clinics and legal hotlines. Many other organizations provide legal advice and information on an informal basis. As the provision of legal services is not the primary activity of these organizations, they have not been included here. However, a more comprehensive study of these and other legal services programmes in Hong Kong is urgently needed.
- ⁵ Changes in Hong Kong society during the 1940s and 1950s, primarily the massive influx of "squatters" from mainland China, resulted in housing shortages, labour problems and, in some instances, outbreaks of violence, such as the Tsuen Wan riots of 1956. Welsh, Frank (1997), *A History of Hong Kong*, revised ed., London: Harper Collins Publishers, 1994, pp. 438-439, 454-460.
- ⁶ Legal Aid Department (2000), *Access to Justice*, Hong Kong: HKSAR Government, p. 11.
- ⁷ As the term implies, "paupers petitions" could be filed only in extreme cases. For example, in criminal cases, petitions could be filed by defendants charged with capital offences and in civil cases, by defendants with property worth less than HK\$500. This meant that petitions could be filed only in a small percentage of all legal cases. Moreover, in the absence of a formal volunteer scheme, appointment of legal representation was dependent on the willingness of individual lawyers to take on cases without a fee. The lack of interest in pro bono work was compounded by the shortage of legal professionals in Hong Kong. In the late 1960s, the entire Hong Kong Bar List was a page in length and there were few solicitor firms. Legal Aid Department (2000), *Access to Justice*, pp. 11, 16.
- ⁸ The Ordinance was based on the UK Legal Aid and Advice Act but also reflected some aspects of Singaporean legislation on legal assistance.
- ⁹ In 1966, the financial eligibility limit was set at a disposable capital of HK\$3,000 and a disposable monthly income of HK\$500. At the time, it was estimated that this would include about half of the Hong Kong population. Legal Aid Department (2000), *Access to Justice*, p. 12.
- ¹⁰ A key step in gaining independence was the implementation of the Legal Aid in Criminal Cases Rules in 1970. Under the terms of the Rules, legal aid was made available for Criminal Cases in the Supreme Court and for appeals in the Supreme Court and Full Court. In its first year of operation, the Legal Aid office provided assistance in 688 civil cases. In 1971, when the office

was granted independent status as the Legal Aid Department, it provided assistance in 1,112 civil cases, 133 criminal cases and 73 appeals. Legal Aid Department (2000), *Access to Justice*, p. 13.

11 The DLS operates under the conditions set out by the 1966 Widgery Committee in the UK, which state that the proper scope of an adequate scheme of legal assistance is “to secure that injustice does not arise through an accused person being prevented by lack of means from bringing effectively before the court matters which may constitute a defence to the charge or mitigate the gravity of the offence.”

12 The DLS initially provided free legal representation to defendants charged with six scheduled offences in three Magistrates’ Courts. The scope of the programme was extended to nine offences in 1981 and to all adult and juvenile courts in 1983. Under the terms of the 1991 Bill of Rights Ordinance, the Scheme was again expanded to provide representation to any defendant in the Magistrates’ Courts in cases “where the interests of justice require, and without payment by him in any such case if he does not have sufficient means to pay for it.” Article 11(2)(d) s.8 Bill of Rights Ordinance.

13 This theme was addressed during the 2001 British Council colloquium in Hong Kong, entitled “Access: The Future of Law.” Keynote speaker Professor Hazel Genn noted that empirical studies of community needs suggested that legal advice schemes were a more effective method of addressing these needs than legal aid schemes. See also Genn, Hazel (1999), *Paths to Justice*, Oxford and Portland, OR: Hart Publishing.

14 As of 2001, automated information on 73 legal subjects is available via telephone or the Internet.

15 The Divorce Mediation Service provided by the Family Welfare Society provides one example of a legal services project created in order to meet the specific needs of a particular user group. The Service was established in 1998. Its aim is to enable couples who have decided to divorce or separate to reach a settlement on custody and care of children and facilitate more effective co-parenting. The Family Welfare Society currently provides mediation services at three centres around Hong Kong and also conducts bi-monthly legal consultation sessions on the divorce process. In 2000/2001, the fourth year of operations, the Service handled 133 cases, an increase of 133% over the previous year. Of the cases that completed mediation services, 66.3 % reached a settlement and 10.5 % decided to reconcile. Hong Kong Family Welfare Society (2001), *Annual Report 2000-2001*, Hong Kong, pp. 45-46.

16 Ng, Margaret (2001), “Introduction,” *Paths to Justice: A preliminary study on the channels of free legal advice available in Hong Kong*, Hong Kong: Legislative Council Office of the Hon. Margaret Ng, p.12.

17 “About Us,” Consumer Council, <www.consumer.org.hk/aboutus/about_e.htm>, 13 Nov. 2002.

18 In 2002, the Council received an estimated 110,955 consumer enquires, including requests for information on unsafe products, specific products or services and consumer rights. For the same period, 18,765 consumer complaints were lodged with the Council. This is the second highest number of consumer complaints since the establishment of the Council in 1974. The majority of the complaints for 2000-01 dealt with complex property contract issues, a fact that may reflect the current economic downturn. Figures as reported in the Consumer Council (2002), *Consumer Council Annual Report 2000-2001* (2002), Hong Kong, p. 25, <www.consumer.org.hk>, Nov. 13, 2002.

19 In a November 2001 talk entitled “Has Hong Kong Lost its Competitiveness?” prominent Hong Kong journalist Jake van der Kamp noted the failure of the HKSAR Government to protect consumer interests over private sector interests and floated the idea of a Consumer Protection Authority. *Hong Kong Democratic Foundation Newsletter*, Issue 19, <www.hkdf.org/newsletters0201/0201_7.htm>, Dec 13, 2002.

20 See, for example, Genn, Hazel (1999), *Paths to Justice*, as referenced in Ng, Margaret (2001), “Introduction,” *Paths to Justice: A preliminary study on the channels of free legal advice available in Hong Kong*, pp. 1-2.

21 Personal communication, Hong Kong, Oct 29, 2002.

22 In 1999, the HKSAR Government commissioned a two-year review of legal education in Hong Kong. The *Executive Summary of the Report of the Consultants*, published in August 2001, noted that the weakness of local law graduates is a cause for serious concern. Among the recommendations of the report was the suggestion that legal education programmes seek to develop a professional culture of public service through pro bono work and voluntary service in order to strengthen legal values and awareness of social responsibility. The Steering Committee on the Review of Legal Education and Training in Hong Kong (August 2001), “Executive

Summary of the Report of the Consultants,” *Legal Education and Training in Hong Kong: Preliminary Review*, Hong Kong: HKSAR Government, pp. 71-76.

23 Motion debate put forward by the Hon. Audrey Eu Yuet-mee, “Upholding the rule of law,” Nov 7, 2001 <www.legco.gov.hk/yr01-01/english/counmtg/motion/mot_0102.htm>, Nov 15, 2002.

24 Lee, Jane (2000), “Refining the SAR Advantage: More Efficient Markets,” <www.hkcsi.org.hk/event/qf2000/d.html>, Nov 13, 2002.

25 This analysis is based on the concept of the six “functional roles” performed by Third Sector organizations, as described in Zarsky, Lyaba and Simon Tay (2000), “Civil Society and the Future of Environmental Governance in Asia,” The Nautilus Institute (Published in D. Angel and M. Rock, eds. (2001), *Asia’s Clean Revolution: Industry, Growth and the Environment*, Sheffield, UK: Greenleaf Publishers), <www.nautilus.org/papers/enviro/zarsky_tay.html>, Nov 14, 2002.

26 The Johns Hopkins Comparative Non-profit Sector Project suggests that the services provided by Third Sector organizations differ from those provided by companies and government agencies in four key respects:

1. Quality – not primarily profit-oriented so may devote more resources to service provision, resulting in higher overall quality of services.
2. Equity – more likely to focus on meeting the needs of the disadvantaged or marginalized members of a community, i.e. those who cannot afford commercial services.
3. Cost to users – services made available to users at a lower cost or at no cost.
4. Specialisation – may target a particular population or focus on a specific service or set of services.

Existing data on the legal sector in Hong Kong is not sufficient to determine whether or not the services provided by legal services organizations are of higher quality than those provided by for-profit firms. However, the legal services organizations interviewed do identify provision of discounted or free legal services to all members of the community as their primary objective. There is some specialization of services in cases where legal services are provided for a target population. Consumer protection organizations also make discounted or free services available to members of the community. However, there is less evidence of specialization. Salamon, Lester M., Leslie C. Hems and Katheryn Chinnock (2000), “The Non-profit Sector: For What and for Whom?” *Working Papers of the Johns Hopkins Comparative Non-profit Sector Project*, no. 37, Baltimore, MD: The Johns Hopkins Center for Civil Society Studies, pp. 5-6.

27 The DLS employs lawyers in private practice and its own legal team to provide representation for clients in Magistrates’ Courts, Juvenile Courts and Coroner’s Courts. Nearly all serious and common legal offences are covered. Prospective clients must pass a merits test to determine the legal relevance of the case and a means test to ensure that the gross annual income of clients is below the financial eligibility limit. The merits test used by the DLS reflects the criteria set out by the Widgery Committee in 1966 for use in determining whether or not legal representation is required in the interests of legal justice. The initial financial eligibility limit in 1978 was set at a gross annual income of HK\$50,000. This was intended to reflect the income of a breadwinner for a family made up of a husband, wife and two children. The limit was increased to HK\$127,330 with effect from June 1997. Clients who pass both the merits and the means test are then subject to a handling charge of HK\$300. This is the only cost to the client, regardless of the length of the trial. Duty Lawyers Service (2001), *Report of the Council of the Duty Lawyer Service* (2001), pp. 1-3.

28 This represents an increase of 5.6 % over the previous year. For the same period, the DLS also undertook representation for five defendants facing extradition and three hawkers making appeals before the Municipal Services Appeals Board. In addition, the organization provided representation for 1,003 suspects in one-way viewer identification parades. Figures as reported in Duty Lawyers Service (2001), *Report of the Council of the Duty Lawyer Service* (2001), pp. 1-3.

29 “Without legal representation, a litigant is severely disadvantaged: even the routine of a lawyer’s practice, such as issuing writs, preparing statements of claim, and seeking discovery, can be carried out by few who are not lawyers.” Wesley-Smith, Peter (1993), *An Introduction to the Hong Kong Legal System*, 2nd ed., Hong Kong, Oxford, New York: Oxford University Press, 1987, p. 95.

30 In some cases, prospective clients may approach the organization themselves. In other instances, they may be referred by a hotline, partner organization or government agency.

31 The Community Legal Service Centre is a partnership between the DLS and local Third Sector organizations. The Centre proposes to expand the scope of existing legal advice programmes in

Hong Kong through the establishment of specialist clinics. Clinics would focus on different legal issues on different nights of the week. The Centre has also emphasized the importance of active outreach to potential clients through events with partner organizations; for example, a workshop on a specific legal issue that is relevant to the needs of that organization's clients. "Community Legal Services Centre: A Proposal" (2002), <www.margaretn.com/mng_legco/CLSC/prop_en.htm>, Sep.24, 2002.

32 Since January 1992, the Hong Kong Federation of Women's Centres Free Legal Advice Clinic and Hotline have also operated under the DLS Free Legal Advice Scheme. The Clinic runs an evening session once a week and specializes in providing advice to female clients on matrimonial and domestic matters. Figures as reported in Duty Lawyer Service (2001), *Report of the Council of the Duty Lawyer Service* (2001), pp. 3-4.

33 These programmes tend to be targeted at a specific client population. In some cases, follow up services such as referral to government agencies or partner organizations, escorting to court and reading of legal documents may also be provided. Other sources of free legal advice in Hong Kong include the Law Society Law Week and various classes/sessions offered by Legislative Council members. Again, although these activities are outside of the scope of this chapter, the development of these kinds of programmes and their effectiveness in meeting community needs is a subject for further study. Ng, Margaret (2001), *Paths to Justice: A preliminary study on the channels of free legal advice available in Hong Kong*.

34 The cumulative statistics on calls offer useful insight into the specific issues on which members of the public are seeking information. The most frequently selected subject was family law, which accounted for 24.52% of selections (21,505 callers). The second most frequently selected subject was criminal law (4,220 callers). Information on bankruptcy or public legal assistance in civil cases was also a frequent selection (2,629 and 1,699 callers, respectively). Over 93.33 % of callers requested Cantonese materials, while 4.92 % of callers requested English materials and 1.75 % requested Putonghua materials. Figures as reported in Duty Lawyer Service (2001), *Report of the Council of the Duty Lawyer Service* (2001), pp. 48-49.

35 Traders refused to cooperate with mediation in the remaining 11 % of cases. Figures as reported in Consumer Council (2002), *Consumer Council Annual Report 2000-2001*, pp. 25-26.

36 Since 1992, the Hong Kong Federation of Women's Centres Free Legal Advice Clinic has attempted to compile basic information on the background of its clients. These data provide a useful profile of some of the types of women that seek out services from the Clinic. For example, in 1999-00:

61 % of clients had an education level below Form 5

47 % of clients were employed full-time

43 % of clients were home-makers

67 % of clients had a monthly income of less than \$36,000

The two issues of primary concern to clients were collecting alimony and housing. These data suggest that at least some of the Clinic's clients may not have had access to other legal services, whether due to lack of familiarity with the legal system or legal advice programmes, financial constraints or the personal nature of the problem. Ng, Margaret (2001), *Paths to Justice: A preliminary study on the channels of free legal advice available in Hong Kong*, Tables 4-9.

37 Wesley-Smith, Peter (1993), *An Introduction to the Hong Kong Legal System*, 2nd ed., p. 95.

38 Product testing is the primary activity of the Consumer Council. In 2000-01, the Council published 38 consumer reports in its independent journal, CHOICE, including assessments of cooking pots, scooters, Ginko leaf products and dietary supplements. It undertook investigation of alleged anti-competitive actions, including the Electronic Payment System (EPS) charges levied by banks. Consumer Council (2002), *Consumer Council Annual Report 2000-2001*, pp. 16, 27.

39 In 2002, the Hong Kong Consumer Council received an estimated 110,955 consumer enquires, including requests for information on unsafe products, specific products or services and consumer rights. For the same period, 18,765 consumer complaints were lodged with the Council. This is the second highest number of consumer complaints since the establishment of the Council in 1974. The number included 952 complaints lodged by tourists, a decrease over the 1,116 complaints registered the preceding year. Figures as reported in the Consumer Council (2002), *Consumer Council Annual Report 2000-2001*, p. 25.

40 In 2002, the Consumer Council circulated about 355,000 publications and distributed roughly 50,000 pamphlets. For the same period, the Council sponsored about 170 consumer education programmes. The Council also held press conferences to censure the malpractice of two Hong

- Kong traders. Figures as reported in Financial Services and the Treasury Bureau (The Treasury Branch) (2002), "Head 177 Subventions: Non-Departmental Public Bodies," *Estimates For The Year Ending 31 March 2003: Fund Accounts Vol. II*, Hong Kong: HKSAR Government, p. 2, <www.budget.gov.hk/2002>, 28 Nov 2002 and Consumer Council (2002), *Consumer Council Annual Report 2000-2001*, p. 29.
- 41 UNESCAP (2002), "Part Three," *Guidebook on Promotion of Sustainable Energy Consumption: Consumer Organizations and Efficient Energy Use in the Residential Sector*, <www.unescap.org/enrd/energy/psec/guidebook-part-three.htm>, 13 Dec 2002.
- 42 The Johns Hopkins Comparative Non-profit Sector Project describes this as the "innovation role" of the Third Sector, noting "...we might expect this sector to be an incubator for new ideas and approaches for identifying and solving public problems. It can thus perform in the public sphere the same kind of innovative role that small private businesses play in the sphere of private profit-oriented action. This suggests that non-profit organizations can be expected to be pioneers in particular fields, identifying unaddressed issues and focusing attention on them, formulating new approaches to problems, and generally serving as a source of innovation in the solution of societal problems." Salamon, Lester M., Leslie C. Hems and Katheryn Chinnock (2000), "The Non-profit Sector: For What and for Whom?" p. 6.
- 43 "First, consumers are not necessarily a homogeneous mass, the more diffused the consumer interests, the more difficult it is for one forceful consumer view to emerge, unless there is a conscious effort to collate such views. Second, on an individual level, most people are more conscious of their role as a wage-earner than a consumer. They will be more prepared to speak up on matters that may affect their income with a view to influencing government policies and decisions rather than on general consumer issues, not to mention their lack of resources and expertise vis-a-vis the sophisticated business lobby. Conversely, businesses affected by a particular policy have more resources and are in a better position to articulate their views and demands. Establishment of the Consumer Council signifies a conscious effort to redress the imbalance so that consumer interests will be represented." Consumer Council (2002), *Consumer Council Annual Report 2000-2001*, p. 7.
- 44 Consumer Council (2002), *Consumer Council Annual Report 2000-2001*, p. 7.
- 45 1,266 lawyers participate in its Duty Lawyer Scheme and 797 lawyers participate in the Legal Advice Scheme. 660 lawyers participate in both schemes. Figures as reported in Duty Lawyer Service (2001), *Report of the Council of the Duty Lawyer Service* (2001), p. 25.
- 46 The Steering Committee on the Review of Legal Education and Training in Hong Kong (August 2001), "Executive Summary of the Report of the Consultants," *Legal Education and Training in Hong Kong: Preliminary Review*, p. 71.
- 47 Lin, Nan (2001), *Social Capital: A Theory of Social Structure and Action*, Cambridge: Cambridge University Press, pp. 193-207.
- 48 Cases considered in 2000-01 dealt with inflated school fees, the sale of real property, contractor services and building management. Consumer Council (2002), "Report of the Consumer Legal Action Fund," *Consumer Council Annual Report 2000-2001*, pp. 96-100.
- 49 Both of the legal services organizations interviewed work with District Office staff in processing and referring legal cases. However, one of the organizations described this system as inefficient and ineffective, noting that District Office staff do not have any formal legal background and tend to see their role as purely administrative. If District Office staff are unable to assess the true nature of the client's problem or pass on necessary information to the client, subsequent meetings between the client and the lawyer may be frustrating and unhelpful. Clients may leave feeling as though their real concerns have not been addressed.
- 50 The Community Legal Services Centre provides a useful example of the potential for Third Sector collaboration on legal services projects in Hong Kong. The working partnership of the Centre includes 21 welfare and advocacy organizations. Through the involvement of these organizations, a total of 130 individual service centres around Hong Kong refer cases to the DLS for legal advice and/or legal representation. It is envisioned that future partnership activities will include hosting of outreach events by partner organizations in order to actively solicit clients in the community.
- 51 The Enhanced Productivity Programme (EPP) for Subvented Welfare Agencies was implemented in 1998. According to the EPP, organizations must achieve productivity gains equal to 5 % of total operating income by 2003.
- 52 Existing information on volunteer activity appears to suggest that levels of volunteer activity in Hong Kong are relatively low compared with Third Sector trends worldwide. The findings of the

- Johns Hopkins Comparative Non-profit Sector Project indicate that private philanthropic activity is dominated by volunteer work rather than private donations to the Third Sector. In a survey of 24 countries worldwide, volunteer work outweighed private cash donations by an average ratio of 2:1. By contrast, a 1998 survey of Hong Kong residents found that 25 % of respondents were members in Third Sector organizations. Of this 25 %, only 28 % – equal to 7% of total respondents – said that they participated in events sponsored by the organization on a regular basis. Holliday and Tam conclude that although levels of charitable donations in Hong Kong are comparable to those in the UK or the US, “In comparative terms, Hong Kongers do not take much interest in voluntary associations or voluntary work.” Holliday, Ian and Waikung Tam (2001), “Social Capital in Hong Kong,” *East Asia*, Spring-Summer 2001, p. 164. For the findings of the Comparative Non-profit Sector Project regarding levels of volunteer activity worldwide, see Salamon, Lester M. and Wojciech Sokolowski (2001), “Volunteering in Cross-National Perspective: Evidence From 24 Countries.” *Working Papers of the Johns Hopkins Comparative Non-profit Sector Project*, no. 40. Baltimore: The Johns Hopkins Center for Civil Society Studies, 2001, <www.jhu.edu/~ccss/pubs/pdf/cnpwp401.pdf>, Nov 25, 2002.
- 53 The need for company volunteer programmes is highlighted in a 2001 study of corporate philanthropy in Hong Kong. Some of the initiatives suggested in the study include the creation of formal volunteer schemes for broad-based volunteer activity, provision of matching funds and time off for individual volunteer work, internal company awards for volunteer service and increased dialogue between corporate groups and charities. Golin/Harris Forrest (2001), *The Role of Companies in the Development of a Vibrant Third Sector in Hong Kong*, Hong Kong: HKSAR Government Central Policy Unit, <www.info.gov.org/cpu/new/eng.htm>, Nov 8, 2002.
- 54 A two-year review of legal education and training in Hong Kong commissioned by the HKSAR Government noted that the culture of volunteerism is underdeveloped among local legal professionals. One submission to the report commented that there is “little sign of acceptance of pro bono work as a natural part of being a lawyer” and that attempts to foster “awareness of and legal action for the disadvantaged” as part of professional life had been unsuccessful. The report suggested that legal education programmes and professional bodies such as the Law Society of Hong Kong and the Hong Kong Bar Association should strengthen support for pro bono work and voluntary service. The Steering Committee on the Review of Legal Education and Training in Hong Kong (August 2001), “Executive Summary of the Report of the Consultants,” *Legal Education and Training in Hong Kong: Preliminary Review*, pp. 72, 73.
- 55 The Hong Kong Federation of Women’s Centres Free Legal Advice Clinic has dealt with this issue by requiring all frontline volunteers and service providers to receive 21 hours of training on issues such as divorce procedure, alimony and legal aid. The Clinic also offers follow up services to clients such as transfer of cases to the Legal Aid Department or other agencies, case counselling, escorting and reading of legal documents. The positive feedback provided in client evaluations indicates the importance of training and follow up services in addressing a client’s needs. In client evaluations for 2000/2001, 48% of clients said they had received all information they needed from the meeting with a Clinic lawyer; 83% reported that questions were answered completely and 93% felt that the advice given was easy to understand; 88% said the amount of time for meeting was sufficient and 87% felt comfortable coming to see the lawyer. Ng, Margaret (2001), *Paths to Justice: A preliminary study on the channels of free legal advice available in Hong Kong*, pp. 9-11.
- 56 However, one of the organizations interviewed noted that the number of cases should not be taken as an indicator of the level of need in Hong Kong. The organization noted that due to resource limitations, legal services organizations do not actively outreach to potential clients. It characterized current interaction of legal services organizations with the public as reactive rather than proactive, largely because these organizations find it difficult to manage their existing caseload without soliciting additional clients.
- 57 Peter Wesley-Smith suggests that the needs of the community are not adequately addressed either by professional legal services or legal aid programmes, noting “Many people [in Hong Kong] are too poor to hire lawyers for themselves and yet too wealthy to qualify for legal aid.” Wesley-Smith, Peter (1993), *An Introduction to the Hong Kong Legal System*, 2nd ed., p. 96.
- 58 Salamon, Lester M. et al (1999), *Global Civil Society: Dimensions of the Non-profit Sector*, Baltimore, MD: The Johns Hopkins Center for Civil Society Studies; Salamon, Lester M., Leslie C. Hems and Kathryn Chinnock (2000), “The Non-profit Sector: For What and for Whom?”