

University: The University of Hong Kong (HKU)
Faculty: Law
Title of case study: Introducing the Special Needs Trust to Hong Kong
<p>(1) Summary of the impact (indicative maximum 100 words)</p> <p>Our research has generated: (i) a proposal to establish a Special Needs Trust (SNT) to provide otherwise unaffordable professional asset management service for individuals with cognitive impairment; (ii) the first territory-wide survey to generate supporting data; and (iii) public education of the SNT.</p> <p>The Government adopted our proposal. It appointed one of us to the feasibility working group on the SNT, and announced its launch by early 2019 in three consecutive Policy Addresses, pledging funding of HK\$50 million in the 2018 Budget. Already generating significant interest overseas, the HK SNT is the first of its kind in the world.</p>
<p>(2) Underpinning research (indicative maximum 500 words)</p> <p>Our research involved four aspects.</p> <p>(1) 2014 – present: University legal research</p> <p>Since 2014, we published articles that provide a critical and systematic assessment of existing legal mechanisms for financial planning for people with cognitive impairment in Hong Kong [1], such as wills, private trusts, statutory guardianship and enduring powers of attorney. We observed that a private trust remained the most flexible and reliable legal tool for financial management, but the cost of setting up a private trust in Hong Kong was prohibitive to most families with modest wealth. We recommended a model of the SNT that would achieve cost-saving through, among other design features, pooling the funds contributed by parents/caregivers of these vulnerable individuals for management and investment. This allows the SNT to provide otherwise unaffordable professional trust services for those with modest means. The research was reported in [2].</p> <p>(2) 2015 – present: Empirical research and engagement with NGOs and the special needs community</p> <p>Since 2015, we have worked closely with NGOs. In March 2016, we collaborated with the Concern Group of Guardianship System and Financial Affairs, an NGO to carry out the first territory-wide empirical study of parental opinions on the usefulness of existing mechanisms and the possibility of introducing an SNT to Hong Kong. The study was completed successfully with over 2,500 valid responses to our questionnaire survey. The survey results confirmed our assessment that existing legal mechanisms for financial planning were inadequate and that there was a strong demand for an SNT to be established in Hong Kong. The survey reports [3] were published and disseminated to the public, interested NGOs and the Government. We have continued to work closely with various local NGOs to campaign for the introduction of an SNT in Hong Kong. These include delivering talks and workshops, training students and parent volunteers, and attending media interviews (see below).</p> <p>(3) 2016 – present: Collaboration with international experts</p> <p>We developed our work further in consultation with international experts in Asia and the West.</p>

We identified best practices and innovative developments in statutory guardianship, enduring powers of attorney, and SNTs. The research will be reported in the form of a comparative study of the relevant laws and practice across selected jurisdictions in Asia and the West to be published by the Cambridge University Press in 2019 ([4]).

(4) 2016 – present: Professional advice to the Government

Ho was appointed to the Feasibility Working Group set up by the HKSAR Government in 2016 to provide expert advice. Our research and advocacy have influenced the HKSAR Government’s decision to introduce a ground-breaking government-led and government-managed SNT for people with cognitive impairment in Hong Kong. The proposed operational framework of such a trust is reported in [5].

Lee was appointed Assistant Professor in the Department of Law in 2005 and promoted to Associate Professor in 2010.

Ho was appointed Lecturer in the Department of Law in 1992 and promoted to Associate Professor and Professor in 1999 and 2006 respectively. She is currently Harold Hsiao-Wo Lee Professor in Trust and Equity.

(3) References to the research (indicative maximum of six references)

[1] **Ho**, “Financial Planning for the Elderly: Antiquated Law in a Modern Financial Centre” [2014] Hong Kong Law Journal 795-808; **Lee & Ho**, “Respecting Autonomy in Decision Making: Guardianship and Trust for Persons with Intellectual Disabilities in Hong Kong”, paper presented at the 2016 National Conference on Reflecting Will and Preference in Decision Making (Australian Guardianship and Administration Council, Sydney, October 2016); **Lee**, “Advancing protection for individuals with intellectual disability: Challenges and opportunities of advocacy by third sector organisations in Hong Kong”, paper presented at the 13th Conference of the International Society for Third Sector Research (Vrije Universiteit Amsterdam, July 2018).

[2] **Ho & Lee**, “Introducing the Special Needs Trust to Hong Kong” (2017) 23 Trusts & Trustees (Oxford: Oxford University Press) 1111-1121.

[3] **Lee & Ho**, “Ascertaining the Need for a Special Needs Trust in Hong Kong: Report on Key Findings and Observations” (Faculty of Law, The University of Hong Kong, January 2017), 31 pages (in English) and 29 pages (in Chinese).

[4] **Ho & Lee** (eds), Special Needs Financial Planning: A Comparative Perspective (Cambridge: Cambridge University Press, forthcoming 2019).

[5] **Ho & Lee**, “Reforming Enduring Powers and Launching a Special Needs Trust in Hong Kong”, in [4] above.

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Ho, General Research Fund of the Research Grants Council (project number: 17614318) (HK\$434,298), 2019-2021.

(4) Details of the impact (indicative maximum 750 words)

The innovative proposal brought about by our research was adopted by the Hong Kong Government to address a long-standing demand in civil society to enhance the public infrastructure for protecting individuals with cognitive impairment. Details of our impact are:

(1) Government adopts Special Needs Trust on the back of our research

For years, the parents of individuals with cognitive impairment live with an agonising worry: after the parents' passing, how to find a reliable manager of the assets devoted for their children's care? Based on the legal and empirical research described in section 2, we proposed an SNT that has been adopted by the Government to tackle this thorny issue. In October 2015, **Ho** submitted an informal policy proposal to the Permanent Secretary for Social Welfare advocating the SNT, and received a quick response. In the Policy Address of 2016, the Government announced the establishment of a Working Group on Feasibility Study of the SNT, and appointed **Ho**. In the next Policy Addresses of 2017 and 2018 and the Budget of 2018, the Government made an express commitment to set up an SNT based on the model proposed by us, namely that the Government would act as trustee. In February 2018, the Government pledged HK\$50 million to set up a dedicated office to launch the SNT by early 2019 ([1]).

Throughout the Government's preparation of the SNT, **Ho** has provided legal advice, supporting data obtained from a survey conducted by us in collaboration with an NGO, and policy suggestions on the features of the SNT. The research fostered a strategic partnership between the Government and the University, and also provided a successful example of tripartite partnership between the special needs community, the University and the Government. **Ho** represented the Working Group to attend all four public consultation forums conducted by the Government between February and March 2018 ([2]). The proposed SNT framework was also discussed in the LegCo meetings in May and July 2018 ([3]).

(2) Empowering and partnering with NGOs in advocating law reforms

Since 2015, we have served as honorary advisors of the Concern Group of Guardianship System and Financial Affairs, a local advocacy group to provide professional advice on matters relating to the legal protection of people with cognitive impairment.

Subsequently, in March 2016, we collaborated with the said Concern Group to conduct the first territory-wide Questionnaire Survey of opinions amongst some 2,500 parents. In January 2017, we organised a large-scale press conference, which was attended by about 200 members of the public and the media, to present the survey findings. Among the findings was that over 50 per cent wished that the Government act as trustee of the proposed SNT. Their wish was accepted by the Government, which takes the unprecedented step hitherto not seen in other places to act as trustee.

Since 2017, we have delivered numerous talks to NGOs. In May and June 2018, we organised two bilingual public forums on SNT. The forums were well-attended by over 600 parents, caregivers and social workers. After the forums, we provided training and support to a team of student and parent helpers to equip them to deliver similar talks to special schools and NGOs in the summer of 2018. Between June and October 2018, 23 talks were delivered to special schools and NGOs in Hong Kong, with over 1,500 participants attending so far ([4]).

(3) *Influencing and informing policy debates on protection of people with cognitive impairment*

We attended extensive newspaper and radio interviews with the media ([5]).

In addition, we developed a bilingual website to educate the public about the SNT. We also maintained a Facebook page to post updates of the progress of our research and advocacy ([6]). The website features a publicly accessible database which is regularly updated by us and contains useful information on SNT, adult guardianship and enduring power of attorney. The websites equip parents/carers of people with cognitive impairment, policy-makers, researchers, disability-rights campaigners, and others with a convenient means of locating information essential for mutual learning.

(4) *Sharing of Hong Kong experience with jurisdictions interested in establishing a Special Needs Trust*

The current SNT model proposed for Hong Kong, in which the government leads and manages the SNT, will be amongst the first of its kind in the world and provides an example of an affordable state-run SNT system. We were invited to present our research and advocacy to researchers and policymakers in Australia, Mainland China, Japan, South Korea, Amsterdam, and Taiwan ([7]).

Our research project was awarded the Faculty Knowledge Exchange Award 2018.

(5) Sources to corroborate the impact (indicative maximum of 10 references)

[1] (i) Hong Kong Policy Address 2016, para 158 <<http://policyaddress.gov.hk/2016>>; (ii) Hong Kong Policy Address 2017, para 190 <<http://policyaddress.gov.hk/2017/eng/>>; (iii) Hong Kong Budget 2018-19, para 176 <https://www.budget.gov.hk/2018/eng/pdf/e_budget_speech_2018-19.pdf>; (iv) Policy Agenda, Hong Kong Policy Address 2018, p. 164 <<https://www.policyaddress.gov.hk/2018/eng/pdf/Agenda.pdf>>.

[2] (i) Membership of Ho with the Working Group on Feasibility Study of Special Needs Trust, Labour and Welfare Bureau. (ii) Represented the Working Group in public consultations on the SNT organised by the Labour and Welfare Bureau, March-February 2018.

[3] Discussions of the SNT at various Legislative Council meetings: (i) LegCo Panel on Constitutional Affairs, 30 April 2018; (ii) LegCo Panel on Welfare Services, 14 May 2018; and (iii) LegCo, 11 July 2018.

[4] (i) Organised / delivered public forums and workshops on SNT; and (ii) Provided training and support to student and parent helpers to deliver talks on SNT to special schools and NGOs.

[5] (i) Attended interviews with the following newspapers/social media: Lianhe Zaobao (Singapore), TV Most, RTHK Radio 1, AM 730, The Standard, and Oriental Daily. (ii) SNT was also reported in various news reports.

[6] Website: <https://snt.support/>. Facebook page: <https://www.facebook.com/hkusnt/>.

[7] Presented to academics, NGOs, and policy-makers in Australia, mainland China, Japan, South Korea, Amsterdam and Taiwan.