

Research Assessment Exercise 2020
Impact Case Study

University: The University of Hong Kong (HKU)

Unit of Assessment (UoA): 19 Law

Title of case study: Introducing the Special Needs Trust to Hong Kong and Beyond

(1) Summary of the impact

For a long time, there have been no adequate financial planning tools in Hong Kong for people with cognitive impairment. Ho and Lee's research directly led to the setting up of the special needs trust (SNT) in Hong Kong to fill this gap. The scheme benefits the families of some 250,000 individuals with special needs.

In having a government act as trustee, Hong Kong's SNT is the first of its kind in the world. Ho and Lee achieved impact at phenomenal speed. The impact has now reached South Korea, which decided in 2018 to launch an SNT.

(2) Underpinning research

For many years, parents of children with special needs have expressed concerns that after their passing, their assets will not be allocated to the care of their children, and the well-being of their children will be disrupted. Affordable legal tools such as wills, statutory guardianship and enduring powers of attorney for managing the assets of individuals with cognitive impairment are inadequate. The trust is an ideal mechanism for professional asset management, but at a typical threshold capital requirement of about HK\$40 million and a minimum annual fee of about HK\$200,000, it is beyond the means of most families. NGOs in Hong Kong have long advocated law reform, but both they and the Government were unsure as to the best way forward.

In 2014 and 2015, Ho published an article and a book chapter examining the inadequacy of existing legal mechanisms for financial planning for people with cognitive impairment [3.1] and advocating the SNT [3.2]. The research enabled Ho and Lee to formulate a model of the SNT that saves costs by pooling the funds contributed by parents for investment. They also convinced the Government that a government-managed SNT was both desirable and feasible. This was reported in [3.3].

To provide a sound theoretical and operational basis for their innovative solution, Ho and Lee conducted further research on two fronts. First, since 2015, they have worked with NGOs to raise awareness of the SNT, identify the needs of civil society for such a trust service, and consolidate support for reform in this area. They collaborated with the Concern Group of Guardianship System and Financial Affairs, an NGO, to carry out the first territory-wide questionnaire study of parental opinions on existing financial planning mechanisms and desirable features of an SNT for Hong Kong. The survey was completed successfully with an overwhelming number of over 2,500 valid returns. The survey reports were published in January 2017 and disseminated to the public and interested NGOs [3.4]. Ho was invited to present the results to the Working Group established by the Hong Kong Government to consider the feasibility of the SNT. The key findings of the report, namely the parents' wish for a government-operated SNT (82% of the respondents) that charges annual fees of not more 1% of the entrusted assets (85% of the respondents), were adopted by the Government. The framework for such a trust is reported in [3.5].

Second, they discussed their model of the Hong Kong SNT with overseas experts, and were invited to present their research in Amsterdam, Australia, Japan, South Korea, and Taiwan. They also organised a conference in Hong Kong in October 2018 to identify best practices on special needs financial planning across selected jurisdictions in Asia and the West. The research was published as an edited volume by Cambridge University Press in July 2019 [3.6].

Ho joined the Department of Law in 1992. She is currently Harold Hsiao-Wo Lee Professor in Trust and Equity.

Lee joined the Department of Law in 2005 and is currently an Associate Professor.

(3) References to the research

[3.1] Ho, “Financial Planning for Mental Incapacity: Antiquated Law in a Modern Financial Centre” (2014) Vol. 44 Part 3 Hong Kong Law Journal 795-807.

[3.2] Ho, ‘Unleashing the Potential of Trust Law for the Elderly: the Hong Kong Challenge’, in D Coester-Waltjen et al (eds), Liber Amicorum Makoto Arai (Nomos Publishing, 2015), 363-374.

[3.3] Ho & Lee, “Introducing the Special Needs Trust to Hong Kong” (2017) Vol. 23 Issue 10 Trusts & Trustees (Oxford: Oxford University Press), 1111-1121.

[3.4] Lee & Ho, “Ascertaining the Need for Special Needs Trusts 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).

[3.5] Ho & Lee, “Reforming Enduring Powers and Launching a Special Needs Trust in Hong Kong: in Ho & Lee (eds), Special Needs Financial Planning: A Comparative Perspective (Cambridge: Cambridge University Press, 2019), ch 13, 348-364.

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

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Lee and Ho, ‘Special Needs Trusts for Mentally Incapacitated Persons in Hong Kong: A Proposed Framework’, General Research Fund of the Research Grants Council (project number: 17612916) (HK\$825,800), 2016-2019.

Ho, ‘Legal Reform of Enduring Powers of Attorney: A Comparative Analysis’, General Research Fund of the Research Grants Council (project number: 17614318) (HK\$434,298), 2019-2021.

(4) Details of the impact

(4.1) Significance of impact

Ho and Lee’s research convinced the Hong Kong Government to introduce an innovative SNT service that was not previously available. As stated in the Government’s press release for its launch, the SNT ensures that notwithstanding their passing, “the assets of the deceased parents are used in meeting the long term financial needs of their children” [5.1]. The phenomenal speed at which their research in 2014 and 2015 made concrete policy change through the launch of the SNT service in 2018 indicates

that their proposal was a viable solution to a pressing need. The Government's willingness to take up trusteeship is irrefutably the first of its kind in the world.

The SNT benefits the families of some 250,000 individuals whose disability (be it intellectual disability, mental illness, or autism) renders them unable to manage their own property affairs [5.2]. At an unbeatable flat rate of HK\$1,750 service fee per month, the SNT closes an important gap because trust services were previously beyond the reach of families with modest wealth. Within just ten working days of the launch, the SNT office had received over 60 face-to-face inquiries from the public. The SNT also has the potential to serve elderly people with dementia, an even wider segment of the population.

(4.2) Details of impact

In October 2015, Ho submitted an informal policy proposal to the Permanent Secretary for Social Welfare advocating the SNT, and received a swift and enthusiastic response: the Government announced in its Chief Executive's Policy Address in January 2016 the establishment of "a working group to explore the feasibility of setting up a public trust". Ho was appointed to the Working Group [5.4]. Specifically, the demonstrable impact of their research includes:

(a) Ho and Lee's innovation led to the Government's decision to adopt the SNT: not only did they present an original solution to the Government, they also provided timely and much-needed research throughout its planning process. For example, Ho was invited to present the results of their questionnaire survey to the Working Group. In October 2017, the Chief Executive announced the Government's decision to set up the SNT, adopting Ho and Lee's distinct proposal that the government act as trustee of the SNT, making Hong Kong the first place in the world to do so. The 2018 Budget earmarked HK\$50 million to set up an SNT office and the SNT was mentioned again in the Government agenda of 2018 [5.4]. Ho also provided information on the market fee level at the Government's request, and advised on the draft trust deed [5.5]. The Government formally launched the SNT on 28 December 2018. The Commissioner for Rehabilitation commended Ho and Lee's research as providing "a theoretically sound and an operationally feasible basis for the Government", and rendering "significant contributions to the Government's introduction of a new SNT service" [5.6].

(b) Ho and Lee played a pivotal role in raising awareness of the SNT in civil society: Ho represented the Working Group in speaking at almost all the Government's outreach forums in 2018 and 2019, each of which had a full house of over 300 attendees [5.7]. That apart, Ho and Lee delivered eight talks to NGOs that attracted a total of nearly 1,800 participants, and participated in a considerable number of media interviews. Between June and October 2018, 23 talks were delivered to special schools and NGOs by students trained by Ho and Lee, reaching over 1,500 attendees [5.8]. The Chairperson of the Concern Group remarked that Ho and Lee's "tireless efforts and professional knowledge in research and advocacy have helped address one of the most pressing problems faced by the needy in Hong Kong" [5.9].

In summary, Ho and Lee's research, through a process of working with NGOs to raise local awareness and overseas experts to distil best international practice, provided the crucial point of confluence to channel the demands of civil society and the world's most advanced approaches to the Government.

(4.3) Affecting policy beyond Hong Kong

Lee presented their research findings at the Korean National Assembly in February 2018. The Korean Government subsequently announced in September 2018 the establishment of a Public SNT scheme. Prof Je, Chief of Korean Research Center for Guardianship and Trust, confirmed that Ho and Lee's

research “showed that a government-run and -managed SNT is feasible and provided incentive to NGOs in Korea to lobby for a similar model” [5.10].

Ho and Lee were awarded both the Faculty Knowledge Exchange Award and the University Knowledge Exchange Award in 2018.

(5) Sources to corroborate the impact

[5.1] “SWD launches Special Needs Trust Service”, Press Release of the Social Welfare Department, 28 December 2018 <<https://www.info.gov.hk/gia/general/201812/28/P2018122800267.htm>>.

[5.2] “Persons with Disabilities by Selected Type of Disability and Sex”, Census and Statistics Department <https://www.censtatd.gov.hk/hkstat/sub/gender/medical_and_health/index.jsp>.

[5.3] (i) Hong Kong Policy Address 2016, para 158 <<http://policyaddress.gov.hk/2016/>>;
(ii) Membership of Ho in the Working Group on Feasibility Study of Special Needs Trust, Labour and Welfare Bureau.

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

[5.5] (i) Agenda of the Third Meeting of the Feasibility Working Group, 17 January 2017; (ii) “Service Fees in Private Trust Market”, email by Ho to Social Welfare Department, 9 November 2018; (iii) “Legal Sub-Group”, email exchange between Ho and the Department of Justice, 19 September 2018; (iv) “SNT Trust Deed”, email exchange between Ho and the Department of Justice, 7 January 2019.

[5.6] Endorsement letter by Mr David Leung, JP, Commissioner for Rehabilitation, Social Welfare Department, 9 November 2018.

[5.7] Represented the Working Group in public forums on the SNT organised by the Labour and Welfare Department and the Social Welfare Bureau: (i) March-February 2018 and (ii) January-February 2019.

[5.8] (i) Public forums and workshops on SNT delivered by Ho and Lee; (ii) interviews with newspapers/social media: Lianhe Zaobao (Singapore), TV Most, RTHK Radio 1, AM 730, The Standard, and Oriental Daily and newspaper reports about the SNT; (iii) Talks at special schools and NGOs delivered by student and parent helpers trained by Ho and Lee.

[5.9] Endorsement letter by Ms Chiu Cheung Lai Man, Convenor, Concern Group of Guardianship System and Financial Affairs, 14 November 2018.

[5.10] Endorsement letter by Prof Cheolung Je, Chief of Korean Research Center for Guardianship and Trusts, 30 November 2018.