

Closing Remarks for the Mediation Week 2018

“Mediate First – Exploring New Horizons”

By The Hon Mr Justice Lam, VP

18 May 2018

I am honoured to be invited to give the closing remarks of the Mediation Week 2018. The development of mediation in Hong Kong in the past decade speaks volume for the utility of this process as an alternative means to resolve dispute as well as the readiness of our community to adopt such a process. It also bears witness to the versatility and resourcefulness of the relevant stakeholders in this city to bring about and embrace the changes which are necessary to sustain Hong Kong as a world class dispute resolution hub.

At the Mediation Conference of December 2007, the theme was “The Way Forward”. In the Opening Address by the then Chief Justice Andrew Li, noting that Hong Kong still had a long road ahead before mediation reaches a satisfactory level of maturity, he also gave this sage advice,

“Ultimately, the success of mediation will depend on wide acceptance by the legal profession, by other professions, the business community and the public at large. To achieve this, all concerned and the public must gain and enhance their understanding of mediation and its advantages. To this end, training programmes need to be increased and public education is necessary. This should include the young at the school level so that they gain a good understanding of mediation at an early age.”

The Chief Justice also expressed the wish at the end of his remarks that all the stakeholders would work towards the common goal for bringing the benefit of mediation to our community.

We are now more than 10 years down the road. Mediation has indeed gained considerable and well-deserved popularity in Hong Kong. The Judiciary, the Department of Justice, together with the other stakeholders, have been making concerted efforts in facilitating and encouraging settlement of disputes by mediation. By now, those in the legal profession are familiar with the process of mediation and its advantages. Many of them have received training on mediation skills as well as skills for acting as lawyers in mediation. Through the efforts of all the stakeholders, members of the public are aware of the option of mediation and confidence on mediation as a process has been established. In this connection, based on feedbacks received by the Judiciary, most litigants who have gone through mediation found the process helpful and satisfying irrespective of the outcome. In matrimonial cases (where very often the parties were burdened with hurt and anger), family mediators were able to bring peace and amicable settlements which offer much better solution for the overall good of everyone in the family, including children. I would like to take this opportunity to pay tribute to those mediators (many of them worked on pro bono basis in schemes administered by our NGOs).

The number of accredited mediators in Hong Kong has grown from a few hundred in 2007 to almost 2,500 in 2018. Professionalism for mediators is reinforced by proper accreditation system, the Hong Kong Mediation Code and the concerted efforts of stakeholders from all quarters in the establishment of the Hong Kong Mediation Accreditation Association Limited. The enactment of the Mediation Ordinance and the Apology Ordinance, together with Practice Direction 31 give

statutory recognition to the role of mediation in Hong Kong as well as strengthening the legal framework to facilitate the process.

The number of court cases which has gone through mediations has increased over the years. In 2017, based on reports filed with the court, there were 1,381 cases in the courts of various levels in which parties have attended mediations. Some were able to achieve settlement through mediation and some were not. However, we have strong statistical evidence (published on our Judiciary website) to support our belief that mediation is a more costs and time effective way to resolve dispute as compared with litigation.

The mediation culture has indeed taken root in Hong Kong. At the same time, I also believe that there is room for greater use of mediation at different walks in life. There are still far too many cases where the parties would have been much better served by making attempts in good faith to mediate their differences than spending disproportionate and (sometimes unaffordable) legal costs on litigation. It is befitting that the theme of the Mediation Conference this year is “Mediate First --- Exploring New Horizons”. One of the beauty of mediation is its inherent flexibility and adaptability in providing suitable and acceptable options to resolve dispute which meet the needs and interests of the parties. Likewise, there is no limit to the new ideas and measures that we can adopt to promote the effective and proper use of mediation. Hong Kong is a vibrant city famous for the innovative spirit of its people. We should have foresight and broad horizon in the development of mediation in the future. This is an opportune occasion for me to share with you some thoughts which may provide some directions for potential future development.

The Hong Kong Judiciary has always taken the line that judges are not mediators and mediation services should be undertaken by independent mediators. Hence even though many of our judges have received mediation training, serving judicial officers would not act as mediators. However, it does not mean that litigation cannot be complimentary to mediation.

To further facilitate settlement of disputes, the District Court implements a pilot scheme engaging some experienced mediators cum lawyers to sit as Deputy Masters. These masters exercised case management power. In addition to the usual function of a master hearing case management summonses, they are also tasked to take appropriate steps to encourage parties to use alternative dispute resolution procedure and to assist the parties to narrow the issues in the dispute and to identify efficient means to obtain a court's ruling on issues that cannot be resolved by negotiation or mediation. It is hoped that through the experience gathered by these masters, a greater synergy can be achieved between the two processes.

Recently, the Mediation Information Office at the High Court Building was moved to the District Court. That office and the Family Mediation Co-ordinator's office were merged to become the new Integrated Mediation Office. That move also marked the 18th anniversary of the Judiciary's work on promotion of family mediation, starting with the Pilot Scheme on Family Mediation in May 2000. 18 is the age of majority in Hong Kong. Family mediation has come a long way since 2000. Yet our family justice system is facing many challenges with ever increasing case volume and proliferation of issues in family disputes. Judges in the Family Court are already playing substantial roles in the settlement process through Finance Dispute Resolution and Children Dispute Resolution hearings. I can also see potentials for greater synergy between mediation and litigation in the Family Court which should be explored.

All in all, we should continue with our efforts in the promotion of making good and proper use of mediation.

Last but not least, on behalf of the Secretary for Justice's Steering Committee on Mediation, I would like to express our gratitude to all co-organizers of the Mediation Week 2018. I must also thank the very distinguished speakers at today's conference as well as other events in the Mediation Week, both overseas and local, who have given us much food for thoughts and insights regarding the future development of mediation in Hong Kong.