



THE SPLENDOR OF ADR IN FAMILY COURT

**HIS HONOUR JUDGE C K CHAN,
PRINCIPAL FAMILY COURT JUDGE**

9 May 2024

Topics to be Discussed

- Implementation of Family Court Master System
(家事法庭聆案官制度)
- Mediator-assisted Financial Dispute Resolution
(MFDR) (調解員協助的解決財務糾紛) &
Mediator-assisted Children Dispute Resolution
(MCDR) (調解員協助的排解子女糾紛)

Family Court Master System (家事法庭聆案官制度)

- Family Procedure Ordinance (家事訴訟程序條例),
Cap. 646:
- Partial Commencement on 30 June 2023

Family Court Master System (家事法庭聆案官制度)

- Section 15:
 - (1) The Registrar (司法常務官) may under the general or special directions of a judge hear and determine an application or matter in a family proceeding that may be heard and determined in chambers.
 - (2) All the jurisdiction, powers and duties conferred on the Registrar in relation to family proceedings may be exercised and performed by a Master (聆案官)

General Directions (一般指示)

- General Directions issued under Section 15 of FPO (GD 1.1 & 1.2)
 - GD 1.1: Proceedings before Masters in the Family Court (set out Masters' powers)
 - GD 1.2: Case Management (案件管理) and Time Tabling (訴訟時間表) in Children and Ancillary Relief Proceedings (replacing PDSL10.4)

Family Court Master System (家事法庭聆案官制度)

- Family Court Master System:
 - Commencement on 3 October 2023
- Implementation to be under the steer of Madam Justice Au-yeung (assisted by Family Judge Thelma Kwan & Elaine Liu)
- Currently 7 Family Court Masters
- As compared to 8 Family Judges (including 1 Principal Family Court Judge)

Family Court Master System (家事法庭聆案官制度)

- Objectives (目標):
 - Division of work between Masters and Judges
 - Achieve better case management
 - Increase efficiency
 - Prevent delay

Division of Work (分工)

- Work done by Family Judges:
 - Pronouncement of DN (宣告暫准離婚令) including DN under Special Procedure List (特別程序表)
 - Declaratory Relief (宣告性濟助)
 - Injunction (禁制令)
 - Committal Proceedings (交付羈押)

Division of Work (分工)

- Adoption (領養)
- CDR/FDR (except Masters may hear simple matters or LIPs)
- MCDR/MFDR
- Trial (審訊)
- Appeal from Master's Decision (聆案官上訴)

Powers and work of Family Court Masters (家事法庭聆案官的權力和工作)

- GD 1.1 Annex (附表):
 - Non-exhaustive list of applications to be dealt with by a Master in chambers (內庭)
 - Without prejudice to the power of Family Judge to deal with the matters listed in the Annex
 - Any matter or application before a Master may at any time be adjourned to be heard before a Judge

Powers and work of Family Court Masters (家事法庭聆案官的權力和工作)

- Work done by Family Court Masters:
 - Case Management (案件管理):
 - Children Appointment (CA) (子女糾紛初次會見)
 - First Appointment (FA) (財務糾紛初次會見)
 - Summons (傳票)

Powers and work of Family Court Masters (家事法庭聆案官的權力和工作)

- Interlocutory arguments (中段申請的辯論):
MPS, Discovery, Jurisdictions, etc.
- Enforcement (執行程序):
Judgment Summons (判決傳票), Charging Orders (押記令), Garnishee Orders (第三債務人命令), etc.

Powers and work of Family Court Masters (家事法庭聆案官的權力和工作)

- CA/FA:
 - May be processed on papers with directions issued (書面指示) or by oral hearing (口頭聆訊) if directed by Master
 - Master may issue unless order (除非命令) if parties fail to comply
 - In case of continuing default, Master may hold hearing, and/or adjourn to Family Judge for CMH (案件管理聆訊)

Powers and work of Family Court Masters (家事法庭聆案官的權力和工作)

- Taxation (訟費評定) of Family Cases:
 - This will continue to be handled by existing DC Masters (區域法院聆案官) but may in future be assigned to Family Court Masters (家事法庭聆案官)

Listing (排期)

- Listing Arrangement for Family Court Masters:
 - Different types of hearings every day, including CA/FA (兒童/財務糾紛初次會見), summons (傳票), enforcement (執行程序), time summons (時間延展傳票), amendment summons (修改傳票), etc.

Listing (排期)

- Summons in an existing case:
 - May go to the docket Judge (特定跟進法官) or Master (聆案官) depending on nature of relief and/or stage of progress of the case
 - Substantive argument (正審辯論) will be heard by Master or the docketed judge depending on the nature and complexity of the application

Listing (排期)

- Master aims to docket a case at the earliest appropriate stage
- Master transfer a case or an application to a Judge when it is ready, and a CMH (案件管理聆訊)/PTR (審前覆核) before a Judge will be fixed

Listing (排期)

- Time for docketing:
 - At the discretion (酌情權) of Masters and Judges
 - Having regard to:
 - Nature of hearing (聆訊性質)
 - Complexity of the case (案件複雜性)
 - Overall case management needs (整體案件管理需要)

Listing (排期)

- Hearing in Tandem (同步進行):
 - While an application or a matter is fixed before a Judge (e.g. access), Masters can continue to manage the other matters (e.g. ancillary relief)
 - A judge has the discretion to direct a matter to be heard by a Master

Case Management Hearing (CMH) (案件管理聆訊)

- Transfer to CMH before Family Judge when case is ready:
 - Issues (爭議事項) are identified
 - Key evidence (主要證據) has been filed
 - Interlocutory applications (中段申請) suitable to be heard by Master have been disposed of

Directions (指示) likely to be given by Master before CMH:

- Agreed chronology of events (序事表) (disputed items should be marked on same document with reasons)
- Agreed list of disputed items (爭議事項列表)
- Agreed schedule of assets and liabilities (AR)
(資產及負債表)
- Agreed parties' and children's income and expenses
(收入及支出列表) (AR)

Directions (指示) likely to be given by Master before CMH:

- Certificate for time estimate for trial (審訊時間預計), including number and names of witnesses (證人數目及名稱)
- Joint proposed directions (共同建議指示)
- Open proposals (公開建議)
- Written submissions (書面陳詞)
- CMH Bundle (案件管理聆訊文件冊)

CMH Bundle (案件管理聆訊文件冊)

- May include (normally should not be more than 250 pages):
 - Petition (呈請書), Answer (抗辯書), Reply (答覆書) (if defended main suit)
 - Outstanding summons (待處理傳票)
 - Relevant previous orders (有關命令)
 - Pleadings (狀書) (if preliminary issue on 3rd party interest)

CMH Bundle (案件管理聆訊文件冊)

- Relevant affidavits/affirmations (相關誓章)
- Witness statements (證人供詞)
- Form J and/or Form E
- Answers to Questionnaires (問卷回覆書)
- Reports (報告)

Hearings before Family Judge

- At CMH:
 - Appraisal on the complexity of children or AR proceedings, length of trial and set target time table (GD 1.2)
 - It is expected that parties are ready to fix dates for CDR/MCDR/FDR/MFDR, PTR and trial which are all milestone dates

Hearings before Family Judge

- MCDR/FDR/MFDR (Without Prejudice Hearings):
 - Default position to be heard by Non-CMH Judge (非案件管理聆訊法官), and trial to be done by CMH Judge (案件管理聆訊法官)
 - But CMH Judge has discretion to hear them, and trial to be done by Non-CMH Judge

Hearings before Family Judge

- Trials (正式審訊):
 - All trials are to be heard by Family Judge (CMH Judge or Non-CMH Judge)

ADR in Family Court (家事法庭的替代爭議解決模式)

- Family Court: Fore-runner in adopting ADR in the litigation process:
 - Reconciliation (和解)
 - Mediation (調解)
 - FDR (解決財務糾紛)
 - CDR (排解子女糾紛)
 - MFDR (調解員協助的解決財務糾紛)
 - MCDR (調解員協助的排解子女糾紛)

Mediator-assisted FDR (MFDR)
(調解員協助的解決財務糾紛)

Mediator-assisted CDR (MCDR)
(調解員協助的排解子女糾紛)

- *LLC v LMWC* [2019] HKFLR 74
Lam Acting CJHC (now Lam PJ):
to draw on the synergy (協同效應) of mediator and
Family Judge
- First ever MFDR: taking 4 sessions before
full settlement

Statistics (from 2019 to 4/2024)

- Total no.: 54
 - MFDR: 49
 - MCDR: 5
- 54 MFDR/MCDR: (HCMC: 2)
(FCMC: 52)

Statistics (from 2019 to 4/2024)

- Completed Cases: 47
- On-going Cases: 7
- Full & partial settlement: 33

- Success Rate: $33/47 = 70\%$

Statistics (from 2019 to 4/2024)

- 2 Special Features:
 - (1) Good settlement rate (70%)
 - (2) Relative small number of cases (54 cases)

Reasons for low figures

- Public health situation disrupting court proceedings
- Accommodation constraints
- Need more-ready acceptance by practitioners

Points to Note

- Choice of cases (案件選擇):
may not be suitable for LIP or small value of claims
- Prior mediation sessions (聆訊前調解):
cases could be settled or issues narrowed down

Points to Note

- Mediation Agreement (調解協議):
waiver on confidentiality
- Case report to the court before hearing
- Prior communication (事前溝通) between mediator and Judge

Court Process

- Seating arrangement (坐位安排) for Mediator
- Order of speeches (發言次序)
- Court giving views (法庭意見)
- Negotiations outside court (庭外談判)
- Mediator and parties reporting back (向法庭匯報)
- After MFDR (完成後的跟進)

Way Forward for CDR and FDR

- Further reform before FPR (家事訴訟程序規則)
- Consolidated PD (整合實務指示) on ADR
- CDR to be without prejudice (不損權益) ?
- CDR to be heard together with FDR?

Thank You
謝謝