



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