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Evaluation Study on The Pilot Scheme on Family Mediation

Final Report

A Consultancy Study Commissioned by the Judiciary
Of the Hong Kong Special Administration Region
To the Hong Kong Polytechnic University



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Executive Summary

Evaluation Study on the Pilot Scheme on Family Mediation

1. This report presents the main findings of the consultancy study on the Pilot Scheme on Family Mediation undertaken between 2.5.2000 and 30.4.2003. The objectives of the study are to (i) identify the profiles of service users; (ii) to examine issues of concern in mediation services; (iii) to examine the impact of the Scheme on court work; (iv) to study the outcomes of the mediation; (v) to study the satisfaction of users with the mediation services; and (vi) to gauge public acceptance of the family mediation service in Hong Kong.

2. For the purposes of this study, the data were collected from a variety of sources, including official data from the Mediation Coordinator's Office and the Family Court Registry, and interviews with service users, mediators and referrers. In addition, quantitative data were collected through a users' satisfaction survey and two telephone polls on public attitudes on the family mediation service in Hong Kong (para. 4.5).

3. The results of the two public attitude surveys show that between 21.1% and 25.0% of the public had heard of the Pilot Scheme (para. 5.2). The media was an important source from which they had learned of the Scheme (para. 5.3). Compared with litigation, the public had a favourable opinion of the family mediation service and considered that it should be widely promoted as a means of resolving family disputes (para. 5.13 & 5.14). Family mediation was preferable to litigation for a number of reasons:

- a. It saved time (para. 5.5).
- b. It reduced financial costs (para. 5.6).
- c. It did less harm to family relationships (para. 5.7).
- d. It gave the parties concerned more opportunities to express their views and concerns in the dispute resolution process (para. 5.8).
- e. It led to more sustainable agreements (para. 5.9).
- f. It enabled parties to communicate better (para. 5.10).
- g. It helped the parties to cooperate better in their parental roles in the post-divorce stage (para. 5.11).

4. The data collected from the Mediation Coordinator's Office offers the following profile of the service users:

- a. The majority of them had been married for 5 to 14 years, had children and were in their thirties and forties (para. 6.1a).
- b. Over half of them had been educated up to the secondary level (para. 6.1b).
- c. About half of them were 'white collar' workers (para. 6.1c).

- d. Around 80% of male users and about 60% of female users were income-earners (para. 6.1d, 6.1e). The median incomes for male and female users were \$10,650 and \$5,400, respectively (para. 6.1f).
- e. Female users were nearly twice as likely to be legally represented than male users. They were also more likely to receive legal aid (para. 6.3).

6. As far as service delivery and outcomes are concerned, official statistics in the Mediation Coordinator's Office show that:

- a. A total of 3,179 persons attended 594 information sessions up to 14.5.2003 (para. 7.3).
- b. 87.5% of the attendees went through an initial assessment in the MCO, which resulted in 999 cases being referred out to SWD (25.7%), NGOs (35.6%) and private practitioners (38.7%) for mediation (para. 7.4 & 7.12).
- c. In over 70% of the cases, an initial assessment on suitability for mediation had been completed and the case referred to mediators by the Mediation Coordinator within a week (para. 7.14). In about three quarters of the cases, the mediators took less than three months to complete their work (Appendix B, tableB33).
- d. Of the 933 cases completed between 2.5.2000 and 14.5.2003, 69.5% reached full agreement and another 9.7% partial agreement (para. 7.17 & 7.18).
- e. A by-sector analysis shows that SWD mediators had the highest (74.4%) full agreement rate and took the fewest number of hours to conclude a mediated case (para. 7.22 & 7.24).
- f. On average, it took 10.33 hours to reach a full agreement, 13.77 hours to reach a partial agreement, and 6.78 hours to reach no agreement (para. 7.23).

7. As far as users' satisfaction is concerned, the results of the Users' Satisfaction Survey show that:

- a. Almost 80.5% of the respondents stated that they were 'satisfied' or 'very much satisfied' with the mediation service they received (para. 8.1).
- b. More than 60% of the respondents agreed that they were able to discuss disputed issues with their spouses through the mediation service in a peaceful and reasonable manner (para. 8.4 & 8.5).
- c. More than 80% of the respondents reported that their mediators had been neutral and impartial in the course of rendering the mediation service (para. 8.6a).
- d. An overwhelming majority (95.1%) replied in the negative when asked if their mediators had ever made decisions for them (para. 8.6a).

8. Interviews with service users revealed that they had rather positive experiences in using the service:

- a. The mediation service saved the users time and money (para. 8.7a).
- b. The mediation service provided them with a good educational experience on how to proceed constructively with their divorce (para. 8.7b).
- c. The mediation service reduced tensions for both parties, with an agreement being reached (para. 8.7d).
- d. The mediation service facilitated a dialogue on matters related to the divorce (para. 8.7e).

The following views were also expressed on a number of issues:

- e. Users were ready to pay a certain amount in fees, although a free service was welcome (para. 8.18).
- f. The name of the service was misleading to some users (para. 8.19).
- g. The work of mediators and lawyers sometimes conflicted (para. 8.26).

9. Face-to-face and focus group interviews with mediators and referrers were conducted to gauge their views on the service. Below is a summary of their views on key issues:

- a. There was considerable sympathy for a compulsory service (para. 9.10).
- b. There was general support for charging fees (para. 9.11).
- c. Mediation speeded up legal proceedings (para. 9.13).
- d. Mediation was a much less costly service (para. 9.14).
- e. A 'serial approach', i.e. mediation before legal services, rather than a 'parallel approach', or one in which mediation was referred by the court during ancillary proceedings, could work out better in terms of reducing the extent to which one form of service interfered with the other (para. 9.16).

10. It is estimated that the court-hearing time for family dispute cases has been reduced by about 204.3 court days as a result of the implementation of the Pilot Scheme. The amount of court time reduced can be an indicator of the 'efficiency' of the service (para. 10.6 & 10.7).

11. Based on the analysis of the data collected so far, the research team offers the following observations on the Pilot Scheme:

- a. There is considerable evidence that family mediation is a viable option for dispute resolution in Hong Kong.
- b. Though there was sympathy for a compulsory service among mediators, this would be at odds with the voluntary nature of the service.
- c. Both court-based and community-based mediation services have their advantages and should co-exist to give the greatest benefit to users.
- d. Court-directed mediation as it operates in Australia and Singapore can be a reference in providing a court-based mediation service in Hong Kong.
- e. There is a need to focus on the role of the mediation coordinator in providing information and coordinating the service.
- f. Different service providers appeal to different categories of users. A pluralistic model of service is better able to cater to diverse needs.
- g. There is 'cross-talk' between family mediation and legal services. A serial mode of service is preferable to a parallel mode.
- h. Some fee-charging is acceptable to users and may increase their motivation to cooperate in making the service work and, therefore, the effectiveness of the service.
- i. The name of the service is an issue, as it was sometimes mistaken for a marital reconciliation service.

12. On the basis of the findings of the study, the research team recommends the following for the Judiciary's consideration:

- a. There should be a place for mediation in resolving family disputes in Hong Kong. Relevant legislative changes to current laws should be made so that mediation, and all mediated agreements arising from it, has a legal status in dispute resolution in matrimonial proceedings.
- b. Mediation services should be made available as an option for couples throughout the entire divorce and ancillary proceedings. A service delivery system comprised of community-based mediation services and court-based mediation services is recommended for adoption in Hong Kong.
- c. A pluralistic model of service comprised of different service providers should be adopted in Hong Kong. The court-based service should be provided by the Government, while the community-based service should be offered by NGOs and private practitioners.
- d. The cost of the mediation service should be borne by those who choose to use it. Fee-charging should be applied to users able to pay for the

service, while those who cannot afford the service should have access to it through an exemption of all or part of the fees.

- e. The Mediator Coordinator should be absolved from having to screen the clients to assess their suitability for the mediation service. She should focus on providing information on and coordinating the mediation services.
- f. All legal aid applicants should be required to attend information sessions at the MCO. In this connection, the Director of Legal Aid should be given the power to require applicants of legal aid services to attend an information session on mediation and other related services.
- g. For legal aid clients, for the sake of better a service outcome and to save public money, a serial mode of service whereby mediation precedes legal services is preferred to a mode in which both services are running at the same time.
- h. Mediation fees should be covered in the cost of legal aid should applicants for legal aid choose mediation to resolve their disputes.
- i. The name of the service should be changed to 'divorce mediation' (離婚爭議事項調解服務) so that the public will not mistake it for a reconciliation service.

Chapter One Introduction

1.1 Divorce is a significant life event that not only affects the male and female parties involved, but also has an impact on the development and well-being of their children. Family disputes arising from divorce, if not satisfactorily settled, are distressing to every party. In the past, family disputes were usually settled through litigation. Over the past two decades, however, mediation has emerged as an alternative approach to dispute resolution.

1.2 As a non-adversarial family dispute resolution process, family mediation is guided by the assumption that separating and divorcing couples, with the help of a professional mediator, can reach an agreement that is fair to both parties by negotiating between themselves on a voluntary basis. The concept has increasingly gained acceptance over the past twenty years and is now practiced in a growing number of countries, including England and Wales, Australia, Canada and the United States.

1.3 In line with the development of family mediation as a means of resolving disputes, since the late 1980s, a small number of social workers and lawyers in Hong Kong have been responding to the needs and problems of separating and divorcing couples by undergoing specialist training in family mediation or dispute resolution, and by offering mediation services through their employing agencies or through private practice.

1.4 Before the Pilot Scheme on Family Mediation was implemented, three NGOs had been providing divorce mediation services on a voluntary basis to couples considering divorce. The Hong Kong Catholic Marriage Advisory Council pioneered the Marriage Mediation Counselling Project in 1988. The Hong Kong Family Welfare Society launched its divorce mediation service in 1997. In the same year, Resource: the Counselling Centre also started its mediation service.

1.5 Divorce is a growing problem in Hong Kong. The number of divorce cases has increased sharply over the past two decades. In 1981, 2,811 divorce petitions were filed. The figure rose to 6,767 in 1990 and to 13,737 in 2001. According to the Hong Kong SAR Judiciary, 13,425 divorce *Decrees Absolute* were granted in 2001, six times the number (2,060) granted in 1981.

1.6 Of all divorce petitions filed with the Family Court each year, approximately 10% are cases with disputes that need to be settled in ancillary proceedings. In 1999, for example, there were a total of 11,874 divorce petitions for which the *Decree Absolute* had been granted. Of these petitions, 9.8% (1,166) were disputed and 91.2% (10,708) not disputed. A very large amount of public money is spent annually on legal aid for divorce-seeking couples. In 2000-01, for instance, approximately one-third (\$144 million, or 36%) of the civil legal aid budget cost

was spent on about 5,000 matrimonial cases, which included both disputed and non-disputed cases.

1.7 In 1995, the subject of mediation was brought up for discussion by the Working Group to Review Practices and Procedures Relating to Matrimonial Proceedings. Members of the Working Group supported the concept of mediation services as an option in contested matrimonial proceedings.¹ However, because of the lack of qualified mediators, it was recommended that the option be examined again when a reasonable pool of professionally qualified mediators became available.

1.8 In October 1997, the Chief Justice appointed a Working Group to consider a pilot scheme for the introduction of mediation into family law litigation in Hong Kong. In its report completed in 1999, the Working Group recommended that a three-year Pilot Scheme be run to test the effectiveness of mediation in resolving matrimonial disputes in Hong Kong. In June 1999, the Mediation Coordinator's Office (MCO) was set up to implement a pilot scheme funded and monitored by the Judiciary.

1.9 On May 2, 2000, the Judiciary of the Hong Kong Special Administrative Region officially launched a three-year Pilot Scheme on Family Mediation. The Pilot Scheme requires that an evaluation study be conducted on its efficiency and effectiveness and its impact on the existing social and legal systems. Before the Pilot Scheme was launched, in May 2000 the Judiciary commissioned a research team from the Department of Applied Social Sciences at the Hong Kong Polytechnic University to carry out the study. The members of the research team included:

Team Leader:	Professor Lee Ming Kwan (up to 1.12.2002) Dr Chan Yuk Chung (from 2.12.2002)
Members:	Mr Chun Ping Kit, Roxco Dr Lam Chan Lan-tak, Gladys Dr Lam Yeung Kit-sum, Syrine Ms Lam Moon Hing, Vera
Project officer:	Mr Lee Ka Man

1.10 This *Report* presents the findings of the Pilot Scheme carried out between May 2000 and April 2003. It outlines the research methods used in the study, public perceptions of the Pilot Scheme, the profiles of the users of the mediation service, the mechanism of the delivery of the service, and the opinions of both the users and providers of the service. Finally, on the basis of the findings of this study, the research team offers its recommendations on the approach to be taken in providing mediation services in Hong Kong.

¹ See the *Report of the Working Group to Consider a Pilot Scheme for the Introduction of Mediation into Family Law Litigation in Hong Kong*. (1999).

Chapter Two

Mediation As Dispute Resolution

2.1 The concept and practice of mediation is not new in Chinese culture. It has long been the principal means of resolving disputes in interpersonal relationships². Traditional Chinese culture sees harmony as the highest cosmic and social order³. Differences and conflicts should first, and best, be settled by moral persuasion and agreement rather than by sovereign coercion. As a matter of fact, in mainland China many interpersonal conflicts are currently first mediated in the neighbourhood people's mediation committees and then in the courts, before they are formally adjudicated⁴.

2.2 In most countries nowadays, mediation is becoming the preferred means of settling disputes rather than adversarial methods. In the realm of family disputes, for instance, England and Wales, Australia, New Zealand, Canada, the United States, Japan and Singapore have instituted the practice of mediation in the dispute resolution process over the past two years or so⁵. With the emergence of the concept and practice of restorative justice in the past decade, mediation is also increasingly coming to be accepted as a method of dispute resolution in criminal law.

What Is Mediation?

2.3 While there is at present no unitary conception of what mediation is, what constitutes the practice of mediation is less arbitrary. Among the most quoted definitions is that of Folberg and Taylor:

*It can be defined as the process by which the participants together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs. Mediation is a process that emphasizes participants' own responsibility for making decisions that affect their lives. It is therefore a self empowering process.*⁶

² Brown, D., (1982) Divorce and Family Mediation: History, Future Direction. *Conciliation Courts Review*, 20(2), 1-37.

³ Lao, Y.W. (1988). On Harmony: The Confucian View. In Liu S.H. and Allinson, R.E. (Eds). *Harmony and Strife: Contemporary Perspectives, East & West*. Hong Kong: The Chinese University Press.

⁴ Article 25 of the Marriage Law and Article 16 of the Law of Civil Procedure 1991 provides for voluntary mediation before going to court.

⁵ See Chapters 7-11 in The Law Reform Commission of Hong Kong (December 1998) *Subcommittee on Guardianship and Custody Consultation Paper*.

⁶ Folberg, J., Taylor, A. (1984). *Mediation. A Comprehensive Guide to Resolving Conflicts Without Litigation*. San Francisco: Jossey-Bass.

Common Components of Mediation Practice

2.4 As it stands, however, certain core components can commonly be identified in most mediation practices. According to the more common of these elements, mediation:

- is a non-adversarial option for resolving disputes
- is conducted by unbiased and impartial mediators
- requires the active involvement of the people concerned in the process
- facilitates and empowers people to make their own decisions
- focuses on reaching agreements by consensus

Mediation: A Primary or Alternative Option for Resolving Disputes?

2.5 As a non-adversarial option, mediation is basically a 'primary' or an 'alternative' dispute resolution process. The term 'Primary Dispute Resolution' (PDR), as used in an Australian context, signifies that it should be attempted first to avoid the trauma of litigation⁷, whereas 'Alternative Dispute Resolution' (ADR) simply refers to resolving disputes in ways other than going to court. In other circumstances, mediation is also referred to as an assisted, additional, appropriate and affirmative dispute resolution process.

Mediation and Other Non-judicial Dispute Resolution Processes

2.6 Mediation, however, differs from other non-judicial dispute resolution processes, such as negotiation and arbitration, in that negotiation is a process in which people involved in the dispute get together to discuss the problem and reach a mutual agreement by themselves. They can also ask a mediator to assist them in their negotiations, in which case it is more appropriate to call the process mediation. If they cannot resolve the disputes themselves, either through face-to-face negotiation or with the assistance of a mediator, they can hire a neutral person or panel to hear the facts and make a decision for them, in which case the process is known as arbitration⁸.

⁷ The Australian Family Law Reform Act 1995 introduced the term 'primary dispute resolution' to refer to arbitration, counselling and mediation. This was intended to emphasize the notion that these were the primary, rather than the 'alternative', dispute resolution processes for family law disputes.

⁸ *Resolving Disputes: Think About Your Options* Canada: Department of Justice. See <http://canada2.justice.gc/dept/pub/rd/index.html>

Varieties of Mediation Practice

2.7 Not being a unitary concept, the practice of mediation is different in different places. Basically, the range of differences can be summarized along the following dimensions:

- Mediation can be single or co-mediation. In co-mediation, two mediators whose skills complement each other work in cooperation as a team rather than as adversaries⁹;
- Mediation can be voluntary, mandatory or stand-down. Stand-down mediation means that a judge adjourns the litigation proceedings and orders a couple directly into mediation to try to reach agreement¹⁰;
- Mediation can be adjudicatory as well as non-adjudicatory. Adjudicatory mediation produces binding decisions, whereas non-adjudicatory mediation produces non-binding ones¹¹;
- Children may or may not be involved in the mediation process¹²;
- Mediation can be open or closed. In closed mediation, the parties cannot disclose communication made during mediation process in a subsequent court dispute, whereas in open mediation, they may inform the court about what transpired during the mediation;
- Mediation can be used within courts, i.e. be court-based or court-annexed; or outside the courts, i.e. community-based.

Advantages of Mediation

2.8 In spite of the variety of practices, mediation has been gaining increasing popularity around the world as a process for resolving disputes. Some of its potential advantages as compared with adversarial procedures include:

- it helps families learn to work together and develop skills to resolve future disputes¹³;

⁹ Alberta Law Reform Institute (May 1994) *Court-connected Family Mediation Programs in Canada*. Research paper No.20. Edmonton, Alberta: Alberta Law Reform Institute. pp.10-11

¹⁰ Alberta Law Reform Institute (May 1994) *Court-connected Family Mediation Programs in Canada*, Research Paper No.29. Edmonton, Alberta: Alberta Law Reform Institute.

¹¹ The Australian Law Reform Commission. (December 1996). *Alternative or Assisted Dispute Resolution*. Adversarial Background Paper 2

¹² For views in favour of including children in the mediation process, see Drapkin, R., Bienenfeld, F. (1985). The power of including children in custody mediation. In C.A. Everett (Ed.) *Divorce Mediation : Perspectives on the Field*. New York: Haworth, pp.63-95; and Garwood, F. (1990). Children in conciliation. The experience of involving children in conciliation. *Family and Conciliation Courts Review*, 28(1), pp.43-51. For views against inclusion of children in the mediation process, see Marlow, L., Sauber, S.R. (1990). *The Handbook of Divorce Mediation*. New York: Plenum Press; Meggs, G. (1993). Issues in divorce mediation methodology and ethics. *Australian Dispute Resolution Journal*, pp.198-20; and Emery, R.E. (1994) *Renegotiating Family Relationships*. New York: The Guildford Press.

- it promotes cooperation and helps to preserve trust among family members in the post-divorce stage;
- it avoids litigation and reduces further stress among family members¹⁴;
- it saves time and money;
- it enhances personal autonomy and reduces the incidence of state intervention.

Arguments Against Mediation

2.9 While mediation has a vital place to play in dispute resolution worldwide, it is not an appropriate option in all circumstances. There are certain arguments against its use that may prevent it from becoming a universal panacea. The views against mediation include:

- As a private settlement, mediation neglects the broader social values that are involved in achieving justice¹⁵;
- Compared with litigation, mediation does not guarantee the full protection of an individual's rights¹⁶;
- Mediation is not suitable for couples between whom there are obvious imbalances in conjugal power¹⁷;
- Informal settlements through mediation divert cases from judicial consideration and, therefore, takes away opportunities to refine the law through the ongoing development of legal precedents¹⁸;
- Mediation provides no record for judicial review¹⁹.

2.10 In sum, the brief review on mediation practices in this chapter has focused on its nature, development, varieties, strengths and limitations. Beyond doubt, in a significant number of jurisdictions in the world mediation has successfully gained a place in the formal dispute resolution process outside litigation. How far it is an option on par with litigation has yet to be determined. However, its increasing popularity as a method for resolving disputes is clear.

¹³ Fred A. Curtis and Beeke Bailey (1990). A mediation-counselling approach to marriage crises resolution. *Mediation Quarterly*, 8, 138.

¹⁴ Same as 13

¹⁵ Fiss, O.(1984). Against settlement. *Yale Law Journal*, 93, 1073.

¹⁶ Same as 15, at 1089.

¹⁷ Same as 15, at 1076.

¹⁸ Same as 15, at 1085.

¹⁹ Mediation assumes that the judgement is the end of the process while in some matters of family law, the judgement is only one phase of the judicial process. If a party to a mediated agreement subsequently seeks mediation, it is hard for the judge to reconstruct the situation retrospectively because there is no a formal record of findings of fact or law.

Chapter Three

Family Mediation Practices in Other Countries

3.1 Research findings in overseas countries show that, usually, over 70% of users are satisfied with the mediation services they receive. Agreement/settlement rates are usually between 60% and 70%. Almost without exception, mediation resulted in significant savings in both time and money. It is evident, therefore, that the outcomes of mediation are rather positive. A review of the mediation services provided in other countries, however, shows that the services are by no means uniform. They are operated and organized in different ways in different countries.

Australia

3.2 In Australia, family mediation is provided under the Family Law Act 1995, which states that parents may attend conciliation counselling and mediation services on a voluntary basis or, if proceedings have commenced, may be ordered to see mediators to attempt to reach an agreement. In financial matters, the Family Law Rules provide that property and maintenance are dealt with by Registrars who are legally trained. Both groups of professionals are employed by the Family Court and form an integral part of the court's case management system.

Singapore

3.3 The Singaporean system of mediation is contained in the Women's Charter. In accordance with this Charter, during the divorce proceedings a judge may refer the parties for mediation or reconciliation counselling to attempt a harmonious resolution of the matters arising from disputes related to the divorce. The Family Court of Singapore employs trained personnel to undertake conciliation and mediation work. Its Registrars conduct conciliation conferences on property matters, supplemented by volunteers in the Court Support Group with backgrounds in law, social work, or psychology, who conduct mediation and counselling sessions on an ex gratia basis.

Canada

3.4 In Canada, family mediation is mentioned in the Divorce Act of 1985. The Act makes it mandatory for a lawyer to make known to his/her client the availability of mediation services. Most Canadian provinces provide for a mandatory education seminar for all those proceeding with divorce, but mediation is voluntary in Canada. In provinces like Ontario and Newfoundland, the legislation expressly authorizes the court to appoint a mediator to deal with any matter that the court specifies. However, the order appointing the mediator must be made at the request of the

parties, who also select the mediator. What usually happens is that the judge will strongly recommend that the parties attend mediation, and they usually comply.

England and Wales

3.5 In England and Wales, the Family Law Act of 1996 makes it compulsory for a party seeking a divorce who wishes to apply for state legal aid funding for legal representation to attend a mediation session. The purpose is to assess whether or not they are suitable for mediation before the application for state funding can be considered. The Act did not make family mediation compulsory. However, it allows the court to give a direction requiring each party to attend a meeting arranged to explain the mediation facilities available to them for settling their disputes and to provide an opportunity for each party to agree to take advantage of the mediation facilities.

France

3.6 In France, civil mediation, of which family mediation is a part, did not achieve statutory recognition until 1995. Under the French system, mediation remains independent vis-à-vis the court throughout the mediation service. Although the court may, on its own initiative or at the request of the parties, appoint a mediator to assist the parties to reach a solution to their disputes, a mediator is not required to submit a report to the court authorities. The French have not set up a public mediation service, since the voluntary sector has been proven to be best suited for the tasks delegated by the courts. The costs of mediation are normally borne by the users of the service. However, those with limited resources may apply for publicly funded legal aid.

European Community

3.7 The development of family mediation in the European Community in recent years is worth mentioning. In 1998, the Council of Europe adopted Recommendation No. R(98)1 on family mediation. Recommendation No. R(98)1 sets out the principles on the organization of mediation services, the status of mediated agreements, the relationships between mediation and proceedings before the judicial officials and other competent authorities, the promotion of, and access to mediation and, the use of mediation in international matters. In addition, Recommendation No. R(98)1 calls for the government of its member states to introduce or promote family mediation and to take or reinforce measures necessary for this purpose, and to promote family mediation as an appropriate means of resolving family disputes.

3.8 In sum, there is no one unified model, and the service assumes different forms in different countries. It can be provided by court personnel as in the Australian and Singaporean systems. Alternatively, it can be run by agencies/organizations outside the court, as in the Canadian and French systems. Family mediation services can be publicly funded, as in Australia and Canada. However, it can also exist as a form of non-public service, as in the French case. In addition, family mediation can be mandatory or voluntary, but increasingly, laws in different countries are providing the court with the authority to refer, order or direct the parties to attempt mediation if the court thinks it is in the interest of the parties to do so.

Chapter Four Methods of Collecting Data

Objectives of the Study

4.1 The Pilot Scheme on Family Mediation is a new endeavour in Hong Kong, although the practice of mediation existed on a small scale for almost a decade prior to its launch. In accordance with the recommendations of the Working Party on the Pilot Scheme, a research study was to be conducted to evaluate the project with respect to its workability and effectiveness in the cultural context of the Hong Kong SAR. In view of this, this evaluative study was carried out with the following objectives:

- to identify the profiles of the users of the service in terms of their backgrounds, issues of dispute and expectation of outcomes;
- to delineate the characteristics of and issues of concern throughout the entire mediation process;
- to examine the impact on court work by estimating the amount of court time saved as a result of the project;
- to study the outcomes of the mediation in terms of the agreement and partial agreement rates achieved;
- to collect information on how satisfied the users of the service were with the mediation process and with the outcomes of mediation;
- to conduct public attitude surveys on the public's understanding and acceptance of the family mediation service.

Research Questions and Issues

4.2 To address the objectives mentioned in para. 4.1 means that this study is essentially aimed at providing answers to the following basic questions in connection with the Pilot Scheme on family mediation in Hong Kong:

- Do the public in general, and divorcing couples, in particular know and accept the approach of mediation to resolve family disputes?
- Does mediation to resolve family disputes keep down financial, psychological and social costs?
- Does it result in the more effective and efficient settlement of family disputes between divorcing couples?
- Does it lead to more satisfactory outcomes than conventional approaches?

4.3 In addition to providing answers to the basic research questions listed in para. 4.2, an analysis of the data has also highlighted the following issues:

- a. With regard to the outcomes of the service, what is the most viable form for the family mediation service to take after the Pilot Scheme?
- b. How should mediation services be financed after the Pilot Scheme? Who should pay for the service?
- c. What should be the role of the Government in providing mediation services after the Pilot Scheme?
- d. What roles should NGOs and private practitioners play in providing mediation services after the Pilot Scheme?
- e. How should mediation be interfaced with other services, particularly legal aid?

4.4 To provide answers to the above research questions, it is necessary to delineate the key concepts by which relevant indicators can be developed. For the purposes of this study, the research team worked out a number of relevant concepts and their indicators on which data are collected and analysed. These concepts and indicators are presented in Table 4.1.

Methods of Collecting Data

4.5 Due to the complexities of the systems embedding family mediation services, no single data collection method was believed to be adequate to generate a sufficient amount of data for the purposes of this evaluative study. Hence, the data was collected via multiple methods and sources. These included:

- a. official data and records from the MCO;²⁰
- b. official data from the Family Court Registry;²¹
- c. interviews with service users;²²
- d. interviews with mediators;²³
- e. interviews with referrers;²⁴
- f. a *Users' Satisfaction Survey*,²⁵

²⁰ A data file was constructed for all cases using the Pilot Scheme. As at 30.6.2003, the data of 912 cases were captured and analysed. Basic statistical tables are given in Appendix B.

²¹ The Family Court Registry provided the research team with access to collect information on the amount of court time needed to resolve family disputes through litigation for all cases in 2001. This data was needed to estimate the amount of court time saved as a result of the pilot scheme.

²² As at 30.6.2003, 179 in-depth interviews (including 73 male parties, 91 female parties and 15 children) from 121 Pilot Scheme cases were completed.

²³ 17 mediators were interviewed as at 30.6.2003.

²⁴ 18 referrers were interviewed as at 30.6.2003.

²⁵ 804 Scheme users were interviewed on the phone. Apart from these, 671 users could not be reached after three attempts to call them at different dates and times. Fourteen users refused to be interviewed. Two hundred and thirty-five users were not contacted either because they had not consented to be interviewed or had not attended any mediation sessions. Basic statistical tables are given in Appendix C.

- g. two surveys on public opinion and attitudes.²⁶

Table 4.1: Keys Concepts and Indicators in the Study

Key Concepts	<i>Key Indicators/Measurement (subjective & objective)</i>
Public attitudes towards the Scheme	<i>Knowledge:</i> Have the public heard of the Pilot Scheme? If so, from where? <i>Acceptance:</i> Do the public prefer mediation to litigation in resolving family disputes? Do they think the Scheme should be expanded?
Users' profiles	<i>Socioeconomic status:</i> age, sex, education background, employment, length of marriage, etc. <i>Issues of disputes:</i> child custody, access, financial support for spouse, financial support for child(ren), accommodation/property, other financial matters
Costs	<i>Financial cost:</i> Money needed to settle family disputes <i>Psychological cost:</i> stress involved in settling the disputes <i>Social Cost:</i> Harm done to family relationships in settling the dispute
Effectiveness	<i>Agreement rates:</i> percentage of cases reaching different levels of agreement (including no agreement, partial agreement and full agreement) through mediation service
Efficiency	<i>Reduction in court-hearing time:</i> estimates on the number of court hours reduced as a result of the implementation of the Pilot Scheme.
Users' Satisfaction	<i>Degree of satisfaction with the service:</i> ranging from very satisfied to very dissatisfied on a five-point scale <i>Whether the user would recommend the service to others:</i> a choice among certainly, not sure and certainly not.

²⁶ The first Public Attitude Survey was conducted between 7th and 9th September 2000 (N=828). The second survey was conducted between 14th and 17th January 2002 (N=915). Basic statistical tables are given in Appendix A.

Chapter Five

Public Perceptions of the Service

5.1 To gauge public perceptions in terms of their understanding and acceptance of the Pilot Scheme, two opinion polls were conducted, the first in September 2000 and the second in January 2002, with the help of the Computer-Assisted Survey Team (CAST) of the Centre for Social Policy Studies at the Hong Kong Polytechnic University. The first survey sampled 828 individuals and the second survey sampled 915 individuals. In both surveys, the population consisted of all households with registered telephone lines in Hong Kong. The respondents were randomly selected adults aged 18 or above. The main findings from the two telephone surveys are presented in Appendix A of this report.

How Many Know about the Pilot Scheme on Family Mediation and How?

5.2 Table A8 in Appendix A shows that about a quarter (25.0%) of the respondents in the first survey had heard of the Pilot Scheme on Family Mediation. The percentage of respondents who had heard of the Pilot Scheme dropped to 21.1% in the second survey, reflecting, perhaps, the fact that publicity on the Pilot Scheme had tapered off during the period.

5.3 As can be seen from Table A9, the media played an important role in making the Pilot Scheme known to the public. In the first survey, 73.0% of the respondents indicated that they had learned of the Scheme from the television or radio, and 38.0% of them from newspapers or magazines. In the second survey, 69.0% of the respondents reported that they had heard of the Pilot Scheme from the television/radio and 33.0% of them from newspapers/magazines. In both surveys, only a small percentage of the respondents had learned of the Scheme from social service or legal professionals.

Comparison of Family Mediation with Litigation by the Public

5.4 Respondents in both surveys were asked to compare family mediation with litigation on seven substantive aspects, including whether or not they thought family mediation would (1) save time, (2) reduce financial costs, (3) minimize trauma and acrimony, (4) enable the divorcing parties to participate more in the process, (5) enable the parties to better comply with agreements reached through mediation, (6) cause the parties to communicate better in the dispute resolution process, and (7) help parties cooperate better in their parental roles in the post-divorce stage.

Does Family Mediation Save Time?

5.5 As Table A10 (Appendix A) shows, 68.0% of the respondents in the first survey considered that family mediation saved time in reaching agreements on family disputes as compared with litigation. In the second survey, the percentage of respondents holding this view increased to 75.2%, suggesting that as many as three out of four people in Hong Kong believed that more time could be saved through family mediation.

Does Family Mediation Reduce Financial Costs?

5.6 Table A11 (Appendix A) shows that the majority of the respondents in both surveys believed that resolving disputes through litigation was financially more costly. Nearly 74% of the respondents in the first survey and 81.1% of the respondents in the second survey took the view that family mediation was a less costly approach.

Does Family Mediation Do Less Harm to Family Relationships?

5.7 The view was widely shared that, compared with litigation, family mediation did less harm to family relationships. Table A12 (Appendix A) shows that 53.6% of the respondents in the first and 61.6% of the respondents in the second survey held the view that family mediation caused less trauma and acrimony to divorcing parties.

Does Family Mediation Give Divorcing Parties More Opportunities to Express Their Views and Concerns in the Dispute Resolution Process?

5.8 Table A13 in Appendix A shows that 71.3% of the respondents in the first survey and 80.3% in the second survey agreed with the view that family mediation provided divorcing parties with more opportunities to express their views and concerns in the dispute resolution process.

Are Agreements Reached Through Family Mediation More Sustainable?

5.9 There was less public confidence in the sustainability of agreements reached through family mediation. As can be seen from Table A14 in Appendix A, not too many respondents were positive about whether or not divorcing parties were more likely to comply with agreements reached by family mediation. Less than half (47.8%) of the respondents in the first survey and just over half (53.6%) of the respondents in the second survey took the view that agreements reached through family mediation were sustainable.

Can Family Mediation Enable the Parties to Communicate Better?

5.10 It was generally believed that disputing couples communicated better with each other in the presence of a mediator. As can be seen from Table A15 (Appendix A), almost 70% of the respondents in the second survey believed that divorcing parties were better able to communicate with each other through the family mediation service. Only less than 10% of the respondents did not think so.

Can Family Mediation Help Parties Cooperate Better in Their Parental Roles?

5.11 As an adversarial process, litigation often aggravates the already poor relationship between the divorcing parties. This, in turn, hinders their cooperation in their parental roles in the post-divorce stage. Table A16 shows that 62.9% of the respondents in the first and about 70% of the respondents in the second survey took the view that, compared with litigation, family mediation helped the divorcing parties cooperate better in their parental roles.

Which is Better, Litigation or Mediation?

5.12 In both surveys, the majority of the respondents preferred family mediation to litigation for settling family disputes arising from divorce. Table A17 in Appendix A shows that almost 80% of the respondents in the first and 86% of the respondents in the second survey regarded family mediation as better than litigation. Only 6.6% and 2.8% of the respondents in the first and second surveys, respectively, felt otherwise.

Should Family Mediation be Further Promoted as a Means of Resolving Family Disputes?

5.13 Consistent with the positive views expressed above, an overwhelming majority of the respondents in both surveys agreed that family mediation should be further promoted as a means of resolving family disputes. Table A18 shows that 85.6% of the respondents in the first and 97.8% in the second survey endorsed the service.

5.14 These are very positive results, suggesting that the public was generally receptive to the idea of family mediation as an alternative approach to resolving divorce disputes. The results also suggest that support for the Pilot Scheme has been growing over time.

Summary

5.15 In sum, the majority of respondents in both surveys had a very positive attitude towards family mediation, in terms of the strengths of the approach as compared with using litigation to resolve family disputes. In addition, both surveys indicated that most of them preferred family mediation to litigation for settling family disputes arising from divorce. In short, the public attitude towards family mediation is very favourable, and support for the Pilot Scheme has been growing over time.

Chapter Six Profiles of the Service Users

Who Used the Service?

6.1 An analysis of the data captured from MCO-held records of 912 mediation cases (1,824 users) completed by the end of April 2003 (Appendix B) revealed the following profiles of the users of the service:

- a. Nearly three-quarters (71.9%) of the male users and close to four-fifths (78.1%) of the female users were in their thirties and forties. About half (45.7%) of them had been married for between 5 and 14 years. One-tenth (11.3%) of the couples were childless and around three-quarters (72.6%) of them had one to two children (Tables B1-B3 and B12, Appendix B).
- b. About one-fifth of the male (18.8%) and female (18.8%) users had received an education up to the primary level. Over half of the male (54.5%) and female (60.7%) users had been educated up to secondary level. About one-fifth of the males (20.5%) and one-seventh of the females (14.7%) had a tertiary education (Table B6 and B7, Appendix B).
- c. Of the male users, 46.6% were 'white collar' and 35.6% were 'blue collar'. Of the female users, about half (48.2%) were in 'white collar' jobs and one-third (32.7%) were 'home-makers'. As many as one-sixth (17.7%) of the male users and one-tenth (9.0%) of the female users were either retired or unemployed (Tables B8 and B9, Appendix B).
- d. In terms of monthly income, of the males, about one-fifth (21.1%) were earning less than \$10,000, about one-third (37.3%) were earning between \$10,000 and \$24,999 and about one-fifth (19.6%) were earning more than \$25,000. Slightly over one-fifth (22.0%) of the male parties had either an irregular or no income (Tables B10, Appendix B).
- e. As for the female parties, two-fifths (39.8%) of them had either an irregular or no income. Close to one-fourth (31.2%) were earning less than \$10,000 a month. One-fifth (20.0%) were earning between \$10,000 and \$24,000 a month and about one-tenth (9.0%) were earning more than \$25,000 a month (Table B11, Appendix B).
- f. Female users were earning significantly less than their male counterparts. The median income of female and male users was \$5,400 and \$10,650 respectively.

Where the Users Learned about the Service

6.2 As shown in Table 6.1 below, significantly more male users (48.7%) learned of the service from their partners than did their female counterparts (24.2%), suggesting that the female parties were more often the ones who had initiated the suggestion that the service be used. Compared to their male counterparts, the female parties were more likely to have learned about the service from lawyers, social workers and from the Family Court Registry. On the whole, female users appeared to have had more exposure and better access to information on mediation provided through concerned professionals than male users.

Table 6.1 Sources of Knowledge of the Mediation Service, in %

	Male Users	Female Users
Partners	48.7	24.2
Lawyers	19.7	34.1
Social Workers	11.4	16.1
Media	12.9	11.7
Family Court Registry	4.3	8.2
Friends/relatives	3.0	5.7
Total	100.0% (N= 900)	100.0% (N= 898)

Source: MCO Records (cases completed by end of April 2003)

Use of Legal Services

6.3 Over two-fourths of the 1,824 users of the service had commenced legal proceedings when applying for mediation services. More female parties (55.1%) were legally represented than male parties (31.0%) and more legally represented female parties (71.8%) had received legal aid than their male counterparts (35.8%) (Table B17, Appendix B).

Issues of Dispute

6.4 In descending order, the issues most in dispute among divorcing couples seeking mediation services, as reported (separately by male and female parties) to the MCO and picked up by mediators, were ‘financial support for children’, ‘financial support for spouse’, ‘child custody’, ‘child access’, ‘accommodation/property’, and ‘financial matters’. ‘Financial support for children’ was the most and ‘financial matters’ the least disputed matter (Table B18, Appendix B).

Summary

6.5 In sum, the information gathered from the MCO showed that the majority of the users were in their thirties and forties, and had been married for 5 to 14 years. The male parties generally had a higher level of education and income. The female parties were more active in initiating the mediation service and more of them were represented by lawyers than the male parties. About half of the users of the service had commenced legal proceedings. In descending order, financial support for children, spouse and child custody were the most commonly disputed issues.

Chapter Seven

Service Delivery and Outcomes

Commencement of the Pilot Scheme on Family Mediation

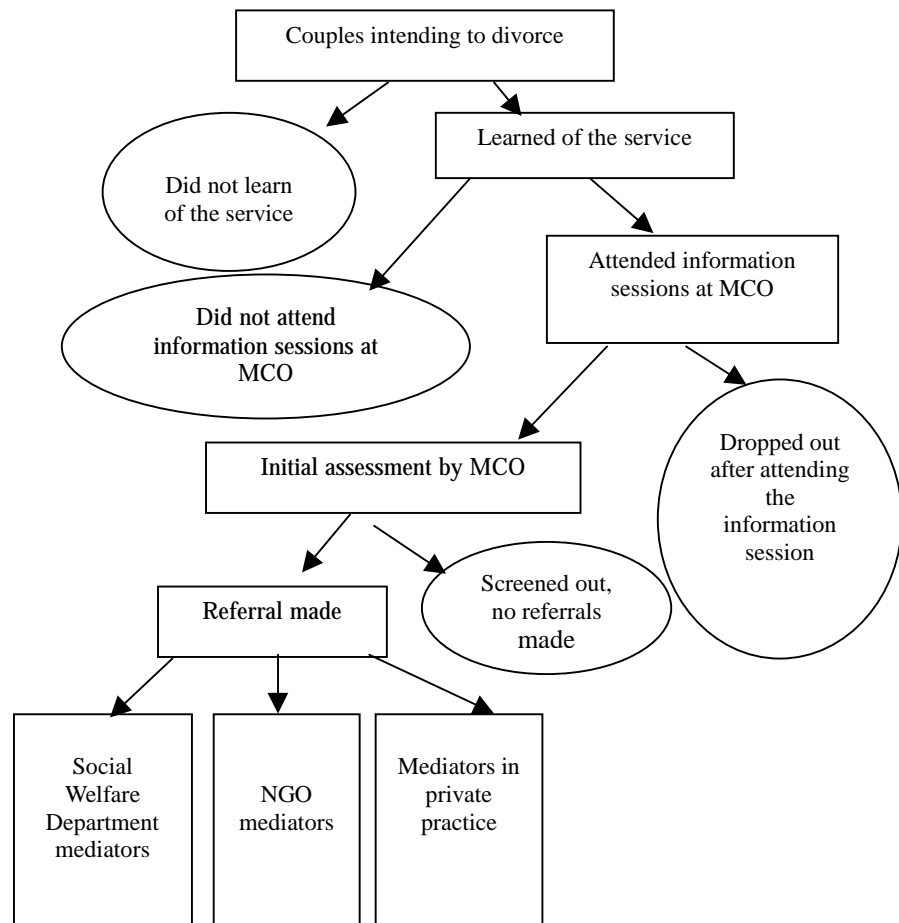
7.1 The three-year Pilot Scheme on Family Mediation was launched in May 2000 with the funding and resource support of the Judiciary of the Hong Kong SAR Government. A Mediation Coordinator's Office was set up in Wanchai Tower. The Office is manned by a Mediation Coordinator, a clerical officer and a clerical assistant.

The Service Delivery Process

7.2 The service delivery process is as described in the following and presented in Figure 1.

- a. Couples interested in the service may approach the Office to make appointments for an information session conducted by the Mediation Coordinator.
- b. After the information session, the Mediation Coordinator conducts an initial assessment of the suitability of cases for mediation, having regard to the nature of the disputes.
- c. For suitable cases, the Mediation Coordinator refers the parties seeking mediation to a list of accredited mediators from which the parties may choose their mediator.
- d. Upon receiving a referral from the Mediation Coordinator, the mediator contacts the parties and convenes interviews with them.
- e. Mediators normally conduct interviews in their own offices. Some mediators, like those from the Social Welfare Department, render their services at branch offices of their agencies in the vicinity of the service-users.
- f. Upon completing the service, with or without having reached an agreement, the mediators report the outcomes to the Mediation Coordinator's Office. The cases are then closed.

Figure 7.1 Access to the Family Mediation Service

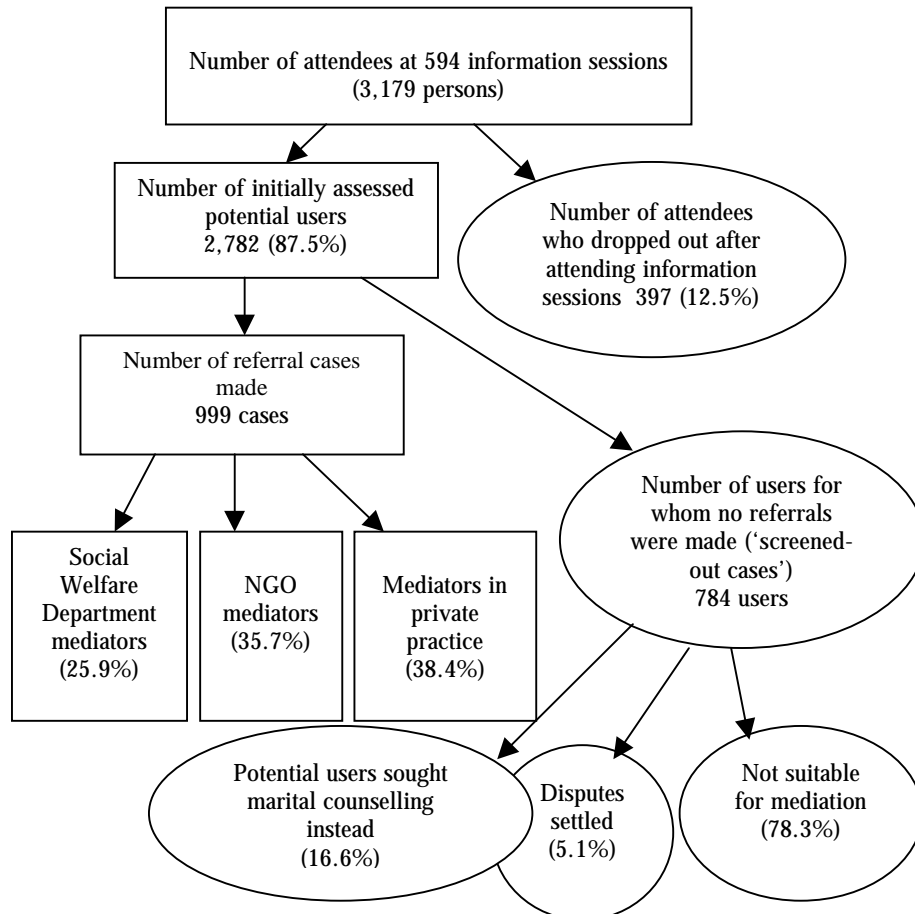


Number of potential users attending the information sessions

7.3 As many as 3,179 individuals attended 594 information sessions held at the MCO’s office between 2.5.2000 and 14.5.2003. The attendance figure is a reasonably good one, considering the fact that disputing couples could also turn to mediation services outside of the Pilot Scheme and that there were many cases that simply did not require mediation.

7.4 As can be seen from Figure 7.2, the majority (87.5%) of these attendees stayed on for an initial assessment of their suitability for family mediation. One out of seven of them (12.5%) dropped out after attending the information sessions.

Figure 7.2 Total Number of Potential Users and Users of the Family Mediation Service, 2.5.2000 – 14.5.2003



Number of Potential Users Who Undertook the Initial Assessment

7.5 As can be seen from Figure 7.2, referrals were made for roughly three-quarters (87.5%) of those who undertook the initial assessment. For cases for which no referrals were made, the majority (78.3%) concerned men and women who were found to be not suitable for mediation because their spouses either refused or did not turn up for mediation in response to the invitation of the MCO. There were also those (5.1%) who no longer needed the service ('dispute settled') and those who turned instead to marital counselling (16.6%). There were few actual screened-out cases.

The attendees who dropped out after attending information sessions

7.6 Attendees of the information sessions were not necessarily potential users of the mediation service. Apart from marital couples, they also include family members and friends of couples intending or seeking a divorce. Any members of the public who wanted to learn about the service could also attend the information sessions. Of the 397 attendees who 'dropped out' after the information sessions as shown in Figure 7.2, 116 were visitors, 130 were friends and 107 were family members of the couples contemplating a divorce. Therefore, the actual number of couples, and therefore potential users of the mediation service, who had dropped out after the information session was only 44.

7.7 The MCO had collected feedback from 38 attendees who had not stayed for the mediation service after the information sessions. The attendees ranged in age from 23 to 60. Mirroring the age range of the users of the service, the majority of the attendees were in their thirties and forties. About 68% of them heard about the service either from their lawyers or from the Family Court Registry. Fifteen per cent came to know of the service through social workers. The remainder learned about the service from very diverse sources such as the Legal Aid Department, friends, spouses or the Internet.

7.8 The reasons for not using the services were also very diverse. The major reason was that after the session they realized that the service did not serve their needs. A sizable number said they did not want to divorce or preferred to reconcile. The second major reason for not using the service was the inability of the attendees to motivate or contact their spouse to participate in mediation, which required the presence of both parties. Only two persons said that they chose litigation rather than mediation.

Choice of Mediators by Institution and Professional Background

7.9 The MCO's statistics show that, on 14.5.2003, there were a total of 75 family mediators on the MCO's register (The actual number of family mediators should be 73 because 2 family mediators served as employees of an NGO and as mediators in private practice at the same time, and therefore had been doubly counted). Of these 75 mediators, 2 were from the Social Welfare Department (SWD), 42 from non-governmental organizations (NGOs), and 31 were in private practice.

7.10 Of the 73 mediators, more than half (48) had a background in social work. One-third (24) had a background in law. One mediator had a background in counselling. Service-users who picked social workers, particularly social workers from the SWD, were characteristically 'working class' people with a modest education and low income.

7.11 Data from the MCO show that the 'free service' was (84.4% for males; 85.4% for the female party) the most frequently cited reason for choosing the service. Data collected through interviews with users of the service suggest that the location of the mediators' office was also an important consideration (Tables 20 & 21, Appendix B).

Number of Cases Referred to Mediators from Different Institutions

7.12 During the pilot period, 999 cases were referred out by the MCO to mediators. The mediators at the SWD received 257 (25.7%) cases, NGO mediators, 355 (35.6%) cases, and mediators in private practice, 387 (38.7%) cases. The per-mediator share by sector was 128.5 cases, 8.5 cases, and 12.5 cases, respectively. It is apparent that, while the *overall* distribution of cases by sector was roughly even, i.e. each sector had a one-third share of the total number of cases, distribution by sector in terms of per-mediator share was rather lopsided. The two SWD mediators received a disproportionate share of the cases referred from the MCO.

Time Taken from Application to Referral of the Case to a Mediator

7.13 Data from the MCO show that, in the majority of the cases (male service users, 74.9%; female service users, 76.4%), it took the users of the service less than 31 days from the time they put in an application to the time they were assessed for their suitability for the service (Tables B29-30, Appendix B).

7.14 After the initial assessment, the users of the service were usually immediately referred out to the mediators by the MCO. In the majority of the cases (male service users, 81.5%; female service users, 74.7%), they were referred to the mediators within seven days after the initial assessment (Table B31-B32, Appendix B).

7.15 In over half of the cases (54.3%), the entire process, from putting in an application to completing mediation, took fewer than 90 days. In only a minority (12.9%) of the cases did the entire process take more than 180 days (Table B34, Appendix B), often due to factors outside the control of the mediation coordinator and the mediators.

7.16 The MCO's data show that only around 13.4% of all mediation cases had never had a joint session (Table B26, Appendix B). There were two possible reasons for this. First, these cases might have been terminated at the intake stage; i.e., at least one party might have considered that mediation was not helpful or not necessary for resolving their disputes and therefore did not proceed further with mediation. Second, only a very small number of couples preferred mediators to settle their disputes through individual sessions. In the majority of the cases, the

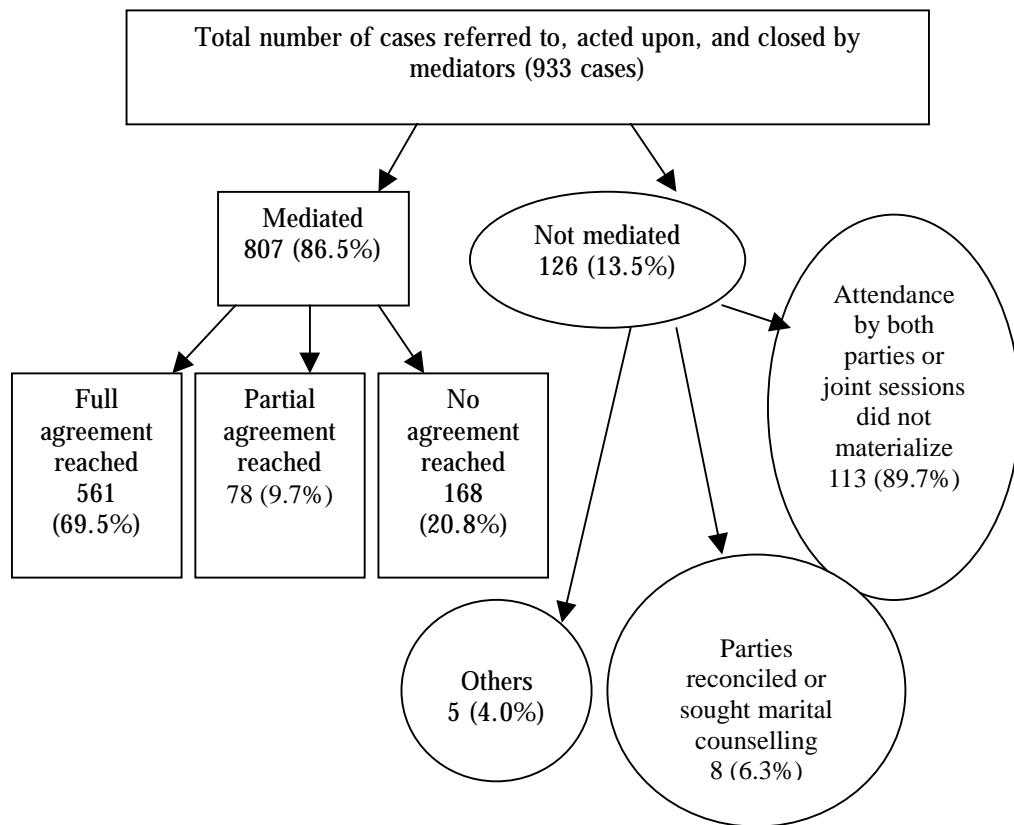
users of the service met their mediators in a combination of one-to-one sessions and joint sessions with their spouses.

Total number of cases referred to, acted upon, and closed by mediators

7.17 During the period of the pilot scheme, the mediators acted on and closed 933 cases referred from the Mediation Coordinator’s Office (Figure 7.3).

7.18 The large majority of these cases were *mediated*. Of these *mediated* cases eighty per cent (79.2%) had resulted in agreements. In seven out of ten (69.5%) duly mediated cases a full agreement was reached between the disputing parties, and in one in ten (9.7%) a partial agreement. About one-fifth (20.8%) of the mediated cases did not lead to any agreement.

Figure 7.3 Total Number of Referred and Mediated Cases between 2.5.2000-14.5.2003



7.19 One in seven (13.5%) cases referred to and acted upon by mediators were *non-mediated*. The main reasons for non-mediation were (a) one or both parties did not turn up at the mediator’s office, and (b) joint sessions fell through, for one reason or another. A small number of non-mediated cases (6.3%) involved parties who reconciled or sought marital counselling.

Agreements Completed by Mediators from Different Institutional Backgrounds

7.20 During the period, mediators ‘completed’, i.e. closed the files of, over 90% of the cases referred to them. SWD mediators, NGO mediators and private-practice mediators respectively ‘completed’ 98.1%, 92.1% and 91.5% of the cases referred (See Table 7.1).

7.21 As can be seen in Table 7.1, not all of the ‘completed’ cases had been ‘mediated’. Private-practice mediators rendered services to, i.e. ‘mediated’, 85.3% of the cases referred to them. NGO mediators ‘mediated’ 78.3% of the cases, and SWD mediators ‘mediated’ 77.4% of the cases referred to them.

Table 7.1 Completed Cases, in Percentage

	Non-mediated cases	Mediated cases	Total No. of completed cases	Total No. of cases referred by MCO since 2 May 2000
SWD mediators	20.6% (53)	77.4% (199)	98.1% (252)	100.0% (257)
NGO mediators	13.8% (49)	78.3% (278)	92.1% (327)	100.0% (355)
Mediators in private practice	6.2% (24)	85.3% (330)	91.5% (354)	100.0% (387)
Total	12.6% (126)	80.8% (807)	93.4% (933)	100.0% (999)

Source: MCO (the figures covered the period between 2.5.2000 and 14.5. 2003)

Table 7.2 Agreement Rates, in Percentage

	Full agreement (a)	Partial agreement (b)	Agreement (a + b) = (c)	No agreement (d)	Total (c + d)
SWD mediators	74.4% (148)	9.0% (18)	83.4% (166)	16.6% (33)	100.0% (199)
NGO mediators	70.1% (195)	7.9% (22)	78.1% (217)	21.9% (61)	100.0% (278)
Mediators in private practice	66.1% (218)	11.5% (38)	77.6% (256)	22.4% (74)	100.0% (330)
Total	69.5% (561)	9.7% (78)	79.2% (639)	20.8% (168)	100.0% (807)

Source: MCO (the figures covered the period between 2.5. 2000 and 14.5.2003)

7.22 By-sector *agreement rates*, i.e. the percentage of mediated cases that reached full or partial agreement, show that SWD mediators had the highest agreement rate (83.4%), followed by NGO mediators (78.1%), and then by mediators in private practice (77.6%). As shown in Table 7.2, SWD mediators had

the highest (74.4%) and mediators in private practice the lowest (66.1%) *full-agreement rate*.

Time Needed to Reach or Attempt to Reach an Agreement

7.23 It took, on the average, 10.33 hours to reach a full, 13.77 hours to reach a partial, and 6.78 hours to reach no agreement (See Table 7.3). Partial-agreement cases were more ‘time-consuming’, reflecting, perhaps, that these involved difficult and hard-to-reconcile issues. No-agreement cases had mainly to do with ‘parties unable to solve any issues’, ‘no joint mediation session conducted’, and ‘only one party attended the appointment with mediators’. ‘Parties unable to solve any issues’ was the most oft-cited reason for no agreement.

7.24 On average, as can be seen from Table 7.3, it took SWD mediators 7.93 hours, NGO mediators 9.90 hours, and mediators in private practice 11.15 hours to conclude a mediated case.

Table 7.3 Average Time Spent on Cases Resulting in Different Types of Agreement, in hours

	Full agreement	Partial agreement	No agreement	Average
SWD mediators	8.0 hrs	12.4 hrs	5.2 hrs	7.93 hrs
NGO mediators	10.8 hrs	13.3 hrs	5.8 hrs	9.90 hrs
Mediators in private practice	11.5 hrs	14.7 hrs	8.3 hrs	11.15 hrs
Average	10.33 hrs	13.77 hrs	6.78 hrs	

Source: MCO (the figures covered the period between 2.5.2000 and 14.5.2003)

Agreement Rates for Different Issues of Dispute Reached Through Mediation

7.25 Table 7.4 shows the percentage of cases with agreements reached for different disputed issues. Child custody and access were relatively easy to settle. Agreement rates on these two issues of disputes were over 92% for both female and male parties. Couples also did not have too much difficulty in reaching agreement over financial support for their children; the agreement rate for these was over 88%. Financial support for spouse, accommodation/ property issues and financial matters were relatively more difficult to resolve through mediation.

Table 7.4 Agreement Reached on Disputed Issues, by %

Disputed Issues	According to female parties	According to male parties
Child custody	92.9%	92.5%
Child access	94.9%	94.3%
Financial support for spouse	82.0%	82.6%
Financial support for children	88.2%	88.5%
Accommodation/ property	84.1%	84.5%
Financial matters	79.1%	65.3%

Source: MCO Records (cases completed by end of April 2003)

Summary

7.26 During the three-year Pilot Scheme period, nearly 600 information sessions were held, 87.5% of those who attended these sessions were initially assessed as potential users, and one-third of them were successfully referred to mediators. Service-users chose mediation mainly because of the free service and the convenient location of the mediator's office. Almost four-fifths of those screened out were considered not suitable for mediation because only one party had undergone the assessment.

7.27 Among the cases referred to mediators, 86.5% were mediated and most of them (70%) were able to reach full agreement, 10% partial agreement and 20% no agreement. These outcome statistics are similar to those obtained in overseas countries.

7.28 On average, it took 10.33 hours to reach a full agreement, 13.77 hours to reach a partial agreement, and 6.78 hours to conclude a no-agreement case. It took less time to reach agreement on child custody and access and financial support for children. Issues such as spousal maintenance, accommodation/property and financial matters were more difficult, hence, took longer to settle.

7.29 There were three groups of mediators, namely, the mediators from the SWD, the non-governmental organizations, and private practice. It is noted that the overall distribution of cases by sector was rather even. The mediators in private practice received the most cases (387), followed by the NGO mediators (355) and the SWD mediators (257).

Chapter Eight Satisfaction of Users

Quantitative Data from the Service Users' Satisfaction Survey

8.1 Users were, on the whole, positive about the service. Of the 804 respondents in the survey, 80.5% were 'very much satisfied' or 'satisfied' with the mediation service they had received, 8.5% of the respondents felt 'neither satisfied nor dissatisfied', and 11.1% of the respondents were 'dissatisfied' or 'very much dissatisfied' with the service (Table C20 in Appendix C).

8.2 Seven hundred and eighty-six people responded to the question of whether they were satisfied with the settlements on issues of dispute arrived at through the mediation service. Of these respondents, 63.6% felt 'very satisfied' or 'satisfied', 7.1% were 'neither satisfied nor dissatisfied' and 29.2% felt 'dissatisfied' or 'very dissatisfied' (Table C16 in Appendix C).

8.3 When the respondents were asked if they would recommend the service to their friends and relatives, 81.1% of the respondents replied 'yes, certainly', 8.9% were 'not sure' and only 10.0% said 'no, certainly not' (Table C21 in Appendix C).

8.4 On the question of whether they agreed they were able to discuss disputed issues with their spouse through the mediation service in a peaceful manner during the mediation session, 69.2% of the respondents said they 'very much agreed' or 'agreed', 7.7% indicated 'no comment' and 23.1% 'disagreed' or 'very much disagreed' (Table C18 in Appendix C).

8.5 On the question of whether they agreed that they were able to discuss disputed issues with their spouse through the mediation service in a sensible and reasonable manner during the mediation session, 62.3% of the respondents said they 'very much agreed' or 'agreed', 9.7% passed 'no comment' and 28.0% 'disagreed' or 'very much disagreed' (Table C19 in Appendix C).

8.6 The users' satisfaction survey also asked the users of the mediation service about their experience with the mediators helping them. Their feedback was, on the whole, very positive.

- a. Of the respondents, 86.9% replied 'no' when asked if the mediators had taken sides in the course of mediation, and 95.1% answered 'no' when asked if their mediators had ever made decisions for them (Tables C14 and C15 in Appendix C).
- b. Of the respondents, 28.2% reported that their mediators had given them legal advice on the issues under mediation, and 29.2% reported that

their mediators had given them psychological counselling in the course of mediation (Tables C12 and C13 in Appendix C).

- c. However, it was apparent that they did not reject such services. In fact, many of them said they actually needed such help in the mediation process. The majority of them also did not think mediators who offered legal advice in the form of general legal principles and legal information or psychological support were not neutral.
- d. The feedback from users suggests that family mediators were, on the whole, impartial and were able to respect the right of the users to make decisions themselves on issues of dispute.

Qualitative Data Collected from Interviews with Service Users

Sources of satisfaction

8.7 The results from in-depth interviews were reassuring, as reflected in the following excerpts from the interview files:

- a. Saved time and money: The service was efficiently arranged and, most importantly, it was free. Moreover, when agreements were reached, both sides could save time and money, as there was no litigation. Many service users appreciated the fact that the service was very accessible. Some mediators literally travelled to where the users were; they met users at branch offices of their agencies.

I'm not sure if the service provided by lawyers is different from theirs [mediators], but I know that it is very expensive to hire a lawyer. It [mediation service] was free.

We came to terms with each other in less than a week's time.

It saves time and money and should be made available to whoever is prepared to divorce.

I wanted a mediator who could interview me at the new town where I live. My request was entertained by a social worker of the SWD who could meet me there.

- b. Provided educational experience for some divorcees: Family mediation informed and educated those who had little idea of how to proceed when they were to divorce. It was, in this sense, 'educational'.

I had no idea what to do to divorce. The mediator helped us sort

out the things that we had to do and matters that we needed to consider.

At first, I didn't even know that when my son reached 18, I could stop supporting him financially. I learned this from the mediator.

- c. Commended for a high professional standard of service: The mediators were often described by the users as very professional, skilful in handling their differences and promoting an environment conducive to settlement and agreement.

The mediator was very professional. She was knowledgeable about matters related to divorce and knew what to do when we got emotional.

I think the mediator was effective. She could convince him [male party]. I don't know what she [the mediator] told him. But she did have the skills.

I am very satisfied with the performance of the mediator. She was responsible and skilful. She also maintained good neutrality in the process.

- d. Reduced tension with agreement reached: Once agreement was reached and as uncertainties were dispelled, the tension between the couple eased. Consequently, both parties were more ready to relate to each other. This is helpful in cases of co-parenting.

Mediation could help dissipate negative feelings.

At least, now we are still friends. I meet him regularly and talk to him [ex-husband] as a friend.

We are now able to relate to each other in a much more positive way. And we sometimes go out with our daughter during the visitations. This would not have come about had there not been the mediation service.

There was virtually no communication between us before. After we come to terms with each other through mediation, we have been better able to face each other. We have talked with each other for a number of times on parenting our younger son. There was no communication except quarrels between us before.

- e. Facilitated dialogues on matters related to divorce: Some users pointed out that mediators could help them express their views and positions

more freely and peacefully in the presence of their spouses, something they had not been able to do without the mediators.

We had worked on our disputes a lot of times before. However, we just couldn't control ourselves. We were so emotional that we weren't able to talk peacefully. Things were much better in the presence of a mediator. We worked out a solution with her help.

The most helpful part of the service was the drafting of the written agreement. As the judge said 'You had divorced in a civilized way.' We didn't need to argue in the court. After all, we were husband and wife.

We were not able to settle our disputes peacefully on our own, but in the presence of the mediator, things were a lot better. We came to terms with each other in less than a week's time.

The most valuable thing about family mediation was the spirit it held - we could sit down, listen and talk. In the court [the case was referred by the court], we just would not listen.

- f. Benefited the children of the divorcing couples: Mediation service does promote co-parenting for divorcing and divorced couples. The successful experience of resolving their issues constructively in the process of mediation tells them that they can actually work together. Moreover, when the relationship is less emotionally charged, both parties are better able to see to the interest of their children.

We can have some blind spots. For example, I was not so aware of the parental role of my ex-husband before... No matter what, he is still his father.

After we have reached an agreement, I can relate more easily with my ex-wife. This is very good for the children.

Mediation has brought more benefits to the welfare of the children than to the relationship with my ex-wife.

Summary on the Satisfaction of the Users

8.8 The picture formed by findings from the survey was that an impressive majority of the service users were satisfied with the service. Some respondents expressed satisfaction with the service notwithstanding the fact that they were not satisfied with its outcome. Of those who had reservations about the service, many still said that they would recommend the service to other would-be users. They

appreciated its value, even though not everything had gone their way. Many attributed the failure to reach an agreement to themselves rather than to the mediators.

8.9 The feedback from in-depth interviews was overwhelmingly positive. This might simply be that those who were satisfied with the service were more willing to accept our invitation for an interview. The advantages of family mediation in terms of saving time and money, reducing bitterness, promoting co-parenting and communication came across very strongly. In the survey, about 70% of the respondents endorsed the view that family mediation promoted peaceful and reasonable discussion on issues of dispute.

Other Views on the Satisfaction of the Users

The views of some of the service users' children

8.10 The response of users towards requests to interview their children varied. Many expressed the view that it was not proper to involve their children, as the latter should not be bothered by the business of their parents. Culturally, this makes sense, as Chinese parents tend to be protective towards their children. They may want to insulate their children from the repercussions of divorce. Nevertheless, some parents were willing to allow these interviews to take place. Some even went so far as to say that it would be good to involve their children in the mediation process for its outcome would have implications for their welfare. Some parents expressed the view that they would feel supported and understood, if their children were also present in the session.

8.11 The children's attitudes towards the service were mostly positive, although they were seldom directly involved in the process. Most of them did observe that their parents were relating more peacefully with one another after agreements had been reached. This helped allay their worries of being torn between them. This view was also echoed by some users of the service, who expressed the opinion that the constructive experience of relating to each other in mediation and the eventual settlement did contribute to better co-parenting.

8.12 Despite their reservations over directly involving children in the mediation process, many parents did support the idea that children should be informed of the changes and agreements their parents had made. Is simply keeping children informed good enough? How and under what circumstances should children's voices be heard on arrangements affecting their welfare? There is much food for thought here for the mediators. Below are some examples of the feelings and views of some of the children who were interviewed.

I was not invited to the mediation but I was ready to participate if invited. I understood that my parents might not want us to be bothered by the matter of the divorce. Sometimes, I do not want to

know too much as it can bother me... I have not shared the divorce of my parents with anyone.

I think I have a right to know, right?... They once quarrelled heatedly outside the court over my custody in the presence of their lawyers while they were using litigation to settle her custody. They, however, could peacefully come to terms with each other with the help of a mediator.

I would have liked to participate in the mediation process when it was related to me. I also have an interest in knowing what it [mediation] is.

No, I will not ask to be involved in the mediation for I do not want to be bothered with the troubles... I want to stay with my mother.

The choice of mediator

8.13 From the records of the MCO, roughly one third of the service users chose mediators from the Social Welfare Department, the NGOs and private practitioners, respectively. Mediators from the SWD and NGOs have a background in social work, while the private practitioners are mostly lawyers. From the in-depth interviews, the service users revealed that the factors that affected their choice were multiple and diverse.

8.14 Most of the users considered the accessibility of the service as crucial. Thus, those mediators who were mobile and had more support in terms of meeting places by the employing agency had a better chance of being chosen. From our observation, users from the grassroots level preferred social workers, with whom they might be more familiar, to lawyers. As for middle-class users, they tended to choose mediators with a legal background, as they thought legal knowledge was important for resolution of disputes. Disregarding the social class of the users, some chose social workers because of their expertise managing relationships and emotions while others looked for legal expertise from lawyers despite the fact that all of the mediators were accredited.

In my case, I think a mediator with a legal background is better. I really need some legal advice in resolving my disputes...

I was in a very bad mood at that time. That's why I chose a mediator with a social work background...

I did not mind the background of the mediator, as we did not know the mediator. He/She should be neutral. The most important thing was whether it was convenient for us.

The issue of neutrality

8.15 Of the respondents in the survey, 11.4% reckoned that their mediators had taken sides during the mediation (Table C14 in Appendix C). As neutrality is crucial for success in mediation, the perception that it was not upheld could have caused the users to hold an overall attitude of bias towards the service. In the in-depth interviews, the inability to maintain neutrality was also a main complaint of the users when they perceived that it had been violated.

It is reasonable to expect that a woman would help another woman. She [the mediator] might want to fight for her [his ex-wife].

She [the mediator] phoned me and asked me if I would agree to sell the flat. I was very angry, as we had agreed not to sell the flat in the agreement. I thought I might have scolded her. She should not just persuade me. She should understand that I would not agree unless my husband could assure me that he could provide a good shelter for my son who would be staying with him after the flat was sold, which he could not.

The mediator was not neutral. No matter what amount of maintenance was demanded by my ex-wife, the mediator would persuade me to accept... When she cried when I would not, the mediator would give more support to the female party.

The roles of the mediators

8.16 In the survey, 28.2% of the respondents were of the view that the mediators had provided legal advice on disputed items (Table C12 in Appendix C), and 29.2% reported that they had been given psychological or emotional counselling (Table C13 in Appendix C). In mainstream mediation approaches, these activities are deemed to be improper. We should, however, interpret these figures with care. The giving or clarifying of information might have been perceived as the offering of legal advice, while providing a sympathetic ear and emotional support when the users of the service were becoming emotional could be perceived as psychological and emotional counselling.

8.17 In the in-depth interviews, there were few complaints concerning the giving of legal advice and counselling by mediators. On the contrary, some of the users would have liked the mediators to be better equipped with legal knowledge to better inform them of relevant legal issues and principles. Furthermore, some expected the mediators to be more sensitive to their emotions, rather than conducting the mediation process in a mechanical way. Where there were specific complaints, these usually had to do with the failure of the mediators, as perceived by the complainants, to maintain neutrality, attend to their needs, inform them of the time

constraints, and to promote compromise.

The mediator was too cautious and reserved. She said she would not answer questions on legal opinions. She did not give any opinion, not even neutral ones.

She [the mediator] showed understanding of my painful experience and gave me the opportunity to ventilate. It was good.

The mediator should not be just a recorder. As the cost of litigation and the benefits of mediation were not forcefully brought forth, either party could stubbornly stick to their own unrealistic positions, refusing to compromise.

The charging of fees

8.18 As at the end of April 2003, of the 804 users reviewed, only 12 had paid a top-up fee. All of the other cases opted for the totally free service. It is clear that a free service was welcomed by most of the users. Of the 118 users surveyed on this question in the latter part of project, only 25 (21%) of them said that they would not use the service if fees were charged. The majority said that they would still use the service if fees were charged or depending on the sum charged. When they were asked what amount they were willing to pay for the service, 63 out of 93 users gave an answer. The range was from \$100 to \$20,000, and the average sum was \$2,980. The others found it difficult to state an amount. A few just said the charge had to be lower than that charged by lawyers. Views were also expressed that those who could not afford it should not be deprived of the service. It should stay free.

I could afford at most \$50 per hour and \$1,000 in total for the whole service.

It's meant for us poor people, people who can't afford a lawyer. Rich people just don't bother as they can hire lawyers to represent them. Therefore, the service should stay free - for the sake of the poor people.

It is fair to charge for the service. However, it is difficult to tell what level of charge is suitable as different people have different levels of ability to pay.

No, I will definitely not use the service... I have a legal aid lawyer. I can count on him...

The name of the service

8.19 The MCO's statistics as at May 14, 2003 show that, out of a total of 648 cases for which no referral made after the initial assessment, 74 (11.4%) had to do with 'couples who chose marital counselling instead of family mediation'. This would appear to suggest that a good number of users might have come to the information session mistaking 'Family Mediation' (家事調解) to be a counselling service helping couples to resolve their problems and restore their marriage. In-depth interview data corroborate such a finding: quite a few interviewees confirmed that they had been misled by the term 'Family Mediation', which did not accurately describe the nature of the service to laymen such as themselves.

The name of the service is family mediation. It gives me the impression that it is provided to couples to rescue their marriage.

It was disappointing that the emphasis of family mediation was not to help the couple get together to review their relationship, to settle disputes, to improve communication, and to provide information or even referrals for child-care resources.

Other Opinions, Dissatisfaction and Worries Expressed by Users of the Service

8.20 Fear of rejecting the mediation advised by the judge: When mediation was advised by the judge during the ancillary relief proceedings, both parties, even if they were pessimistic of what mediation could do for them, were inclined to follow the advice, as they feared that to do otherwise might jeopardize their interest in litigation. However, there were also users who were willing to accept the advice of the judge and come to an agreement during mediation.

8.21 Pressure to compromise because of time constraints: Some users felt that there were pressures on them to settle with each other because they were running out of time, something about which they had little idea at the beginning of the mediation process.

8.22 Insensitivity to the emotions and concerns of users: Some users expressed dissatisfaction with the service because of the insensitivity of the mediator to their concerns. A user insisted that her ex-husband had to move out of the flat first before she moved in. Her complaint was that the mediator failed to recognize her fear of possible sexual violence.

8.23 Worries about the acceptability and sustainability of the agreement: As an agreement reached in mediation is not legally binding, many users of the service, although satisfied with the service and its outcome, still worried about the uncertainty of the agreement. First, they worried about whether the court would endorse their agreement. Second, they worried about whether or not the other party would adhere to the agreement. A few became frustrated because the court had

queried or even changed their agreement. Some others were very frustrated because the other party had already changed his/her mind before going to court.

8.24 Power imbalance between the parties: In some cases, there was evidence of a great imbalance in power between the parties. The male was usually the dominant party. In some cases, there was even a history of family violence. In these cases, the weaker party might not have the freedom to express his or her wishes. Even if an agreement were to be reached, the weaker party would still feel that it had reached under a certain amount of coercion and that he/she had still been victimized in the 'settlement'. Even the presence of the mediator would not be able to remove this imbalance. Weaker parties may need an advocate rather than a mediator.

8.25 Suitability of the users for the service: As the MCO in actual practice performs more of a coordinating than a screening role, it was not surprising to find cases that were unfit for the service but that had nevertheless filtered through the system. According to the MCO's statistics, 13.5% of the cases referred to mediators did not receive mediation. Of these non-mediated cases, about 6.3% instead resorted to reconciliation or marital counselling (see figure 7.3 in Chapter 7). This raises the issue of whether the screening and assessment should rest with the MCO or the mediators, or both. At the same time, some who had been on very bad terms or who had a history of litigation were also referred to mediators, and many of them could not reach an agreement. A better screening system may further increase the agreement rate and satisfaction level of the users.

8.26 Interference between legal and mediation services: The interface between mediation services and legal services has to be improved because, while the former encourages compromise, the latter promotes advocacy and confrontation. When users of the service were making parallel use of the services of both mediators and their legal representatives, they might have been receiving conflicting messages from these two sources. This could interfere with the process of mediation and make it more difficult to settle disputes.

8.27 The go-between function of the MCO: In many cases, only one party approached the service of family mediation. The MCO served well as a go-between by expressing the intention of the approaching party and inviting the other party to participate in family mediation. This greatly increased the chances of using mediation as a way of resolving issues.

8.28 A one-stop shop service is desired: In many occasions, the users complained that after obtaining an agreement from mediation, they still had little idea of how to complete the divorce procedures. It would be very helpful if some guidance provided for them. Some of the users suggested that the mediators or their employing agencies provide instruction and information on procedures to follow in divorce and follow-up counselling for the divorcees. This is more possible for mediators coming from NGOs.

Overall Summary

8.29 Both the quantitative and qualitative data confirm that an overwhelming majority of the users were satisfied with the family mediation service. Some were greatly impressed by the service and highly commended it. It was generally agreed that family mediation can save time and money. The most important benefit delivered by family mediation is evidently the resolution of disputes between the divorcees in a more reasonable and peaceful manner. This, in turn, will promote a more harmonious relationship between the divorcees and, most importantly, better co-parenting if they have children.

8.30 Many of the users of the service expected the mediator to take a more active role in promoting compromise and agreement rather than presenting themselves as a messenger for both parties. The provision of information on general legal principles was welcomed by many of the users and it was not taken as violating the principle of neutrality. Emotional support and not counselling as such was regarded by service users as positive rather than negative.

8.31 The dissatisfaction of the users of the service came mostly from the insensitivity and lack of neutrality of the mediators. As agreements reached in family mediation are not legally binding, some users became worried and frustrated when the judge altered the agreement or the other party backed out. As observed in some cases, the interference of concurrent legal action on the mediation service is a concern.

Chapter Nine

Views of Professionals Involved in the Pilot Scheme

9.1 By 'professionals' participating in the Pilot Scheme, we mean *referrers* who referred cases to the Mediation Coordinator's Office for mediation service and *family mediators* who had been providing mediation service to cases referred by the MCO. Of all the referrers and family mediators, a total of 14 referrers and 13 family mediators were invited for an individual in-depth interview to gauge their views of the service. Another eight professionals, including mediators and family mediation service supervisors, participated in two focus groups. These professionals were selected based on the following considerations:

- a. that they were relatively more active as referrers/mediators;
- b. that they held special positions in connection with family mediation organizations and/or services;
- c. so that there would be a good mix of people with professional backgrounds in areas such as law, social work and counselling;
- d. so that there would be a balanced mix of male and female professionals;
- e. so that there would be a good mix of mediators belonging to different organizational backgrounds, namely the Social Welfare Department, non-governmental organizations, and the private sector.

On the Pilot Scheme

9.2 The impression came through that not many lawyers and potential service users were well informed about the service and the scheme, which would suggest the need for continued promotion and publicity to improve awareness and knowledge of the scheme.

9.3 Professionals indicated that the Government should take up a more active role in promoting the family mediation service as an approach to dispute resolution, so that the public can have the choice of using litigation and/or family mediation to settle divorce-related matters.

On the Mediation Coordinator

9.4 Professionals supported, for the future development of family mediation, the idea of retaining the role of Mediation Coordinator to perform the gatekeeping function of the service.

9.5 The view was expressed that, since the Mediation Coordinator carries the major role of arranging and conducting information sessions, screening cases and making referrals, the Mediation Coordinator should be an experienced and neutral person and an openly recruited mediator so that there will not be conflicts of interests arising from his/her organizational background.

9.6 It was also proposed that all accredited mediators can help promote the service and participate in the information sessions to introduce family mediation. To avoid conflicts of interest, however, it was suggested that the mediator will not take up the cases of people who have participated in the information sessions conducted by him/her.

9.7 It was considered desirable to have the Mediation Coordinator's Office in the Family Court, to reflect the status of the service as part of the Judiciary system.

On Mediation Services

9.8 Professionals all considered mediation an effective way of resolving disputes because it was less formal and less threatening. Users of the service felt emotionally more secure than going through litigation. On the kinds of disputes that could best be settled by mediation, professionals considered mediation a much better way of settling cases involving disputes of children, particularly those involving families with a single child. They regarded cases involving financial and property disputes difficult to resolve.

9.9 It was pointed out that family mediation is not only provided for divorcing couples, but also for parents with children, regardless of the marital status of the parents.

9.10 There was considerable sympathy for a compulsory service, the reasons being that mediation helped speed up the legal proceedings relating to issues of divorce and child custody, reconnect the divorcing parties to work on the welfare of their children, and recreate the spousal communication that is essential in ensuring that co-parenting continues after divorce. They left open issues such as what should be made compulsory, who would be required to attend mediation sessions and at what point they should attend mediation.

9.11 There was general support for charge fees, perhaps with users making a contribution to part of the fee, either in the form of a standard amount for all users

or a means-tested amount. Professionals were more inclined to favour the former form of fee charging because of its much simpler procedures. In order to prevent fee charging from depriving a certain group of potential service users who are unable to pay, it was generally thought that the Social Welfare Department and the non-governmental organizations could provide a family mediation service to individuals receiving Comprehensive Social Security Assistance or with low incomes.

9.12 There was the view that the current fee (\$600 per hour) was too low as compared with the market rate of professional services of a similar nature, for example, marital counselling. Some professionals pointed out that the expectation that family mediation services for one case normally be completed within 15 hours pressured family mediators into hurrying the process of mediation and of trying to achieve an agreement.

9.13 Mediation, it was said, saved time and shortened the process by three to four months on the average. In addition, it speeded up legal proceedings and helped solve some if not all of the problems between the parties.

9.14 It was also opined that mediation was a much less costly service: One professional estimated that, *'Where there was no argument, it could save the divorcing parties from around \$10,000 to \$15,000. Where there were disputes, it could save legal expenses ranging from a few thousand to several hundred thousand to even a few million dollars.'*

9.15 There were views that the family mediation service should be construed as part of the legal system to deal with the settlement of disputes arising from divorce or separation. This is so that, apart from litigation, divorcing or separating couples can make use of the family mediation service as an alternative to or in parallel with the legal service to settle disputes arising from divorce or separation to save time and money.

Interface Between the Mediation Service and the Legal Service

9.16 There were also views on how the mediation service and the legal service could best interface. Three possibilities for interfacing were identified:

- a. *Mediation prior to legal service, that is, couples wanting to divorce would first undergo mediation before starting legal proceedings.* The principal advantage of this practice is that it reduces possible conflicts that may arise during the legal process. An experienced mediator mentioned that lawyers would usually advise their clients to use 'unreasonable behaviour' as a ground for divorce because if they won the case, the legal fees would be charged against the respondent. These could create a lot of conflict between the divorcing couples during the

litigation proceedings. If the couples could come to terms peacefully before litigation, the subsequent divorce procedures would proceed more smoothly.

- b. *Mediation service running in parallel with the legal service.* When mediation and legal services are running at the same time, there is the risk of one service interfering with the other, hence jeopardizing the dispute resolution process. One mediator quoted one of her cases, in which she had successfully helped a couple to reach an agreement on the amount of maintenance. When the female party informed her lawyer of the agreement, the lawyer told her that he could definitely help her fight for a much higher amount. The female party subsequently refused to sign the agreement.
- c. *Mediation referred by the court during the ancillary proceedings.* A few professionals had clients referred to them by family court judges who wanted to see whether the petitioner and the respondent could work out an agreement for further hearings. This kind of *directed mediation* as determined by judges brings the mediation service and the legal service under one roof to smoothen the process of dispute settlement. At the present moment, disputes over financial matters in divorce cases will first go through mediation by the family court judges themselves.

9.17 No matter which of the above approaches is adopted, professionals cautioned that all legal cases should have the right to connect with mediation, legal advice and legal services at any time in their proceeding.

9.18 Better cooperation between lawyers and mediators was deemed necessary in all forms of interface.

9.19 Professionals preferring the parallel approach considered it more flexible. According to their experience, it was not uncommon for parties to resort to mediation during the litigation process. Some clients will change their minds and opt for mediation as litigation drags on.

9.20 Some other professionals took the view that mediation should start as soon as possible, and that the serial approach could work out better in terms of reducing the interference of one service with the other.

Provision of Family Mediation Service Upon Expiry of the Pilot Scheme

9.21 Towards the end of the Pilot Scheme, there was considerable concern over the mode of providing family mediation service after the Pilot Scheme expired. So far, the MCO continued to hold information sessions on family mediations for divorcing/separating couples, helped them understand the mediation service, and assisted them in obtaining mediation service after the expiry of the extended period of the Pilot Scheme on Family Mediation on 31.7.2003.

9.22 Since 1.8.2003, users of family mediation service who are financially competent began to bear fees payable to the mediators selected by them. Meanwhile, some NGOs and mediators in private practice offered free mediation service to couples who have financial difficulties, including those who are recipients of Comprehensive Social Security Assistance (CSSA). As at 30.10.2003, there were 10 mediators offering free mediation service on a non-means tested basis and a further 22 mediators providing free mediation service to recipients of CSSA or those with a monthly income of less than \$4,000.

9.23 There is so far no case that people in need of mediation service are debarred from the service due to financial reason. It seems, therefore, that the MCO and its new practice are running smoothly. In spite of these, the research team considers that there is a need to see to it that no people will be deprived of family mediation service as a result of their lack of means to afford the service.

Summary

9.24 The Pilot Scheme was widely welcomed by the professionals who obtained very positive feedback from their clients that the mediation service was helpful in many ways. The professionals, including referrers and mediators, thought the Pilot Scheme had introduced a useful, workable service that saved divorcing/separating couples time and money in settling disputes concerning child custody, maintenance and property. They were satisfied with the operation of the Scheme, although they felt that room for improvement in such areas as publicizing the service, promoting the Scheme, and educating the public to consider family mediation instead of litigation as an approach to resolving disputes. They showed support for introducing a fee-charging mechanism but suggested it be calculated on a means test or sliding scale. It was suggested that a family mediation service should be construed as part of the legal system, and that a better interface between family mediation services and legal services should be carefully worked out. The professionals indicated different forms of interface, namely, the serial approach whereby divorcing/separating couples would have to go through family mediation prior to legal proceedings, the parallel approach whereby the divorcing/separating parties would proceed with family mediation and legal services at the same time, and directed mediation whereby the parties concerned would have to attempt family mediation as deemed necessary by family court judges.

Chapter Ten

Cost-Effectiveness of the Pilot Scheme

10.1 The cost-effectiveness of the Pilot Scheme can be estimated on the basis of changes in the court-hearing time for settling disputes related to divorce petitions, which can range from less than an hour to several weeks. Cases with no issues in dispute are settled at the first or the second call-over at the Family Court, each session of which normally lasts for less than 15 minutes. If the divorce proceeding involves issues of dispute requiring court hearings, the process will commence after the second call-over. According to an experienced Family Court judge, disputes over custody and access take an average of three court sittings or several days to hear and grant orders, whereas disputes over maintenance and property vary, ranging from a few hours to several weeks, depending on the complexity of the cases.

10.2 Because cases differ in terms of their nature and complexity, it is not easy to estimate the cost-effectiveness of the Pilot Scheme. One approach to identifying the implications of the Pilot Scheme on the court-hearing time is to study how much court-hearing time could possibly have been saved as a result of its implementation. It is assumed that mediated cases in which a full agreement is reached will turn a contested case into an uncontested one, thereby saving on the time required for the dispute to be settled in court. For mediated cases in which a partial or no agreement is reached, it is assumed that the effects on the court-hearing time would not be significant, because the parties would ultimately settle their dispute in the Family Court.

10.3 On the basis of these assumptions, the research team attempted to study the cost-effectiveness of the Scheme through the following procedures: (1) calculating with the help of the Family Court Registry the average court-hearing time taken by the Family Court to resolve the three main categories of disputes; i.e. child issues only, financial issues only, and both child and financial issues, (2) matching as far as possible Family Court Registry and MCO classifications of issues in dispute, and (3) extrapolating from (1) above, finding out the implications of the Pilot Scheme in term of changes in court-hearing time as a result of the implementation of the Scheme.

10.4 For the purpose of estimating the amount of court time needed to settle the different kinds of dispute cases through trials, the research team collected the court-hearing time of all cases tried at six Family Courts in the Wan Chai Law Courts between May 2000 and April 2003 with the help of the Family Court Registry. These cases were classified into three categories; namely, cases that involved child issues (i.e., access and custody) only, cases that involved financial issues (i.e., maintenance and auxiliary relief) only, and cases that involved both child and financial issues.

10.5 Results show that during the three-year period, there were 245 cases involving child issues only, with an average court-hearing time of 2 hours and 24 minutes; 1,118 cases involving financial issues only, averaging 3 hours 14 minutes in court-hearing time; and 586 cases involving both child and financial issues, with an average court-sitting time of 1 hour 39 minutes. The average amount of court time required to settle cases with involving different issues in dispute was first calculated by adding up the court-hearing time of all of the cases according to the respective types of dispute and then dividing the total number by the number of cases involving a particular dispute.

10.6 Based on the information by the MCO, there were altogether 551 mediation cases in the Pilot Scheme in which a full agreement had been reached by the end of April 2003. Of these 551 cases, 5 reached agreement in child issues only, 133 in financial issues only, and 413 in both child and financial issues. Assuming that the court-hearing time saved is equal to the court hours taken to settle the disputes had they not been settled through mediation, the total court-hearing time saved in the 551 cases completed before the end of April 2003 as a result of the Pilot Scheme is therefore roughly equal to 1,123 hours. The results are presented in Table 10.1.

Table 10.1 Cost-Effectiveness of the Pilot Scheme on Family Mediation

Issues of dispute	Average court-sitting time (a)	No. of cases with agreement reached through mediation (b)	Court time saved (a) X (b)
Child issues only	2 hrs 24 mins	5	12 hrs
Financial issues only	3 hrs 14 mins	133	430 hrs 2 mins
Both child and financial issues	1 hrs 39 mins	413	681 hrs 27 mins
	Total:	551	1,123 hrs 29 mins

Source: The average court-hearing time was calculated from data in the Family Court System was provided by the Family Court Registry. The number of cases in which a full agreement was reached was based on information provided by the MCO.

10.7 Assuming that each court works 5 days a week and is in hearings for 5.5 hours a day, the 1,123 hours saved can be translated into 204.3 court days.

10.8 The implications of these results should be read with caution for reasons mentioned later in this chapter. While it is true that the amount of court-time saved will give some indications of the 'efficiency' of the service, one should not forget that 'family mediation' is not just about cutting costs and saving money. The overarching objective of the service, which one should never lose sight of, is that mediation provides a qualitatively different option to litigation. As illustrated by the

users' satisfaction survey and in-depth interviews, the satisfaction of the users of the service is great, and the social benefits of the scheme are significant.

10.9 The research team would like to point out that this approach to estimating the implication of the Pilot Scheme on court-hearing time is not an ideal one. The most important limitation arises from the fact that the existing Family Court Case Management System was not purposefully built for this research study. Hence, there is no way that the study can accurately identify which cases had received the mediation service and which had not. As a result, in calculating the average amount of court time required to settle cases involving different types of disputes it was not possible to avoid including cases that had received the mediation service. Hence, from this point of view, the resulting average court time for settling cases with different types of disputes could have been slightly under-estimated. At the same time, it is also possible that some cases having successfully reached agreements on items of family disputes through mediation had not yet started the legal proceedings for divorce. Therefore, the number of mediated cases which had started legal proceedings for divorce might be less than that of the cases shown on column (b) of Table 10.1. Since the calculation of court time saved has been based on all cases having successfully completed mediation, the results on average court time saved have necessarily been overestimated.

10.10 Besides, the current approach to estimating the implications of the Pilot Scheme on the court-hearing time is susceptible to two important criticisms. The first criticism is that it assumes that the court-hearing time saved for all issues of dispute per case can be linearly added up. This assumption may not hold since, as common sense tells, total court-hearing time saved per case may be less than what it takes to settle specific issues in dispute. In other words, there could be 'economy' from handling an entire case. The second criticism is that the average court-hearing time used to settle disputes may not be the best measure for estimating total court-hearing time because the average court-hearing time has been jerked up by more difficult cases. Again, as common sense tells us, cases that reach agreement through mediation are as likely to be cases that reach speedy agreement through litigation. Therefore, it is possible that the estimated reduction in court-hearing time saved has been inflated by a calculation based on the average court-hearing time.

10.11 In spite of all these limitations, the research considers that the result on average court time saved does in some way provide a rough indicator on the overall effectiveness of the Pilot Scheme.

Chapter Eleven

Discussion and Conclusion

11.1 This chapter attempts to pull together the information collected for the purpose of this research and to identify the issues of concern in connection with the provision of family mediation services in Hong Kong. It is hoped that, through careful consideration of these issues, a model of service delivery that suits Hong Kong can be proposed in the next chapter.

Family Mediation: A Viable Option for Resolving Disputes

11.2 Family mediation is a relatively new service to the people of Hong Kong. The popularity of using an external mediator to solve familial disputes among the Chinese was uncertain prior to this project. The two public surveys carried out for the purpose of this study consistently showed that it was well regarded by the Hong Kong public as an approach to resolving disputes. In view of its endorsement by the overwhelming majority of the public, 85.6% in the first survey and 97.8% in the second, it is beyond doubt that family mediation will be easily accepted by local people as an option to resolving familial disputes.

11.3 Nearly three-quarters of the couples who had sought the service to settle their disputes under the Pilot Scheme were satisfied or very satisfied with the service they had received. Service users generally reported that they were able to discuss issues of dispute with their spouse in a peaceful and reasonable manner in the presence of a mediator. No less than eight out of ten respondents said they would recommend the service to their friends and relatives. Judging from these tentative findings, it is quite safe to say that the family mediation service provided under the Pilot Scheme has been well received by the users of the service.

11.4 Of the couples receiving family mediation services, 69.5% reached a full agreement, and another 9.7% a partial agreement. On average, it took 10.33 hours for a couple to reach a full agreement and 13.77 hours (Table 7.1) to reach a partial agreement, which is considered to be rather economical in terms of time, while successful mediation further saves on court time. In view of these merits, family mediation can be regarded as an efficient means of settling disputes between divorcing couples.

11.5 The high level of satisfaction among the users of the service as well as the effectiveness and efficiency of the service strongly suggests that family mediation is a viable option for divorcing couples. Considering also the advantages of the service as reported in foreign and local studies, the research team holds the view that there should be a place for mediation in resolving family disputes in Hong Kong. However, as pointed out previously in this report, the delivery of mediation services is far from uniform, as is evident from the experience elsewhere in the world. In

the light of the findings of this study, the research team feels that the following issues warrant further thought and deliberation.

Form of Service: Mandatory or Voluntary

11.6 As used in the context of this study, family mediation is a process whereby a neutral family mediator helps couples reach agreements in resolving disputes arising from their divorce or plan to divorce. In Hong Kong, the service has a history of over 10 years. Prior to the introduction of the Pilot Scheme, as has been pointed out, it existed mainly as a private and voluntary form of service chosen by the clients. Mediation services under the Pilot Scheme continued to be rendered on a voluntary basis, but the present study found that there is considerable support in Hong Kong for a compulsory service.

11.7 Overseas, in addition to voluntary mediation services, there is an alternate form of mediation service that is established by law on a mandatory or court-ordered basis to resolve family disputes in specific areas. In disputes over children, for instance, by the mid-1990s 39 states in the US had passed laws allowing a court to order parents to participate in mediation before bringing the dispute to court.²⁷ There is also the practice, in Australia and in Singapore for example, of judges directing couples to first seek mediation in the course of trial.

11.8 The high level of satisfaction among those who had used the service in the Pilot Scheme suggests that a voluntary form of service was welcomed and accepted by the users of the service in Hong Kong. However, if the service remains entirely voluntary, those who are eligible for legal aid services may not have an incentive to choose mediation. If mediation cuts down on overall expenditures on legal aid, in addition to minimizing possible harm to family relationships, it would seem that there is a need to reconsider whether it should remain a wholly voluntary service. In this regard, two options are worth examining for their relevance to the local context.

11.9 The approach adopted in England and Wales can be a reference for Hong Kong. The Family Law Act 1996²⁸ provides that a person shall not be granted representation for the purposes of proceedings relating to family matters unless he has attended a meeting with a mediator to determine whether mediation appears a suitable option. If mediation appears suitable, the mediator should help the person applying for legal representation decide whether or not to apply for mediation instead.

11.10 The research team considers that the Director of Legal Aid could be given the power to require that couples who are considered suitable to attempt mediation do so before they are granted representation. The approach in England and Wales

²⁷ Saposnek, D.T. (1998). *Mediating Child Custody Disputes*. Revised Edition. San Francisco: Jossey-Bass Publishers. p.14.

²⁸ See Section 29 of the *Family Law Act 1996*.

looks applicable to Hong Kong because, on the one hand, it ensures that divorcing couples can make an informed choice as to how their divorce-related disputes can be resolved and, on the other, ensures that a mediation service is made available to them before they resort to legal services.

11.11 There is also a need to give couples whose disputes may be resolved through mediation but who do not choose this option relevant information on mediation services throughout the entire court proceedings. For couples who have not attempted mediation at the time their case is heard in court, the judge should have the power to adjourn the litigation proceedings and directly order the couple to engage in mediation to see if they can reach an agreement. In this evaluation study, the research team did in fact find couples who had directly benefited from being referred by the judge to mediators to settle their disputes.

Location of the Service: Court-based or Community-based Services

11.12 The location of the service is an important consideration. As revealed in this study, the accessibility of the service is an important factor in determining the choice of mediators by users of the service. Generally speaking, people will choose mediators who are located close to where they live and work. Those who have to work will also tend to pick mediators who can meet them outside working hours, usually in the evenings or on weekends. Hence, if the service is easily accessible, in terms of physical distance and hours of availability, more people will make use of it.

11.13 However, what also determines the location of a service, apart from the preferences of users, is its institutional arrangements. As shown in the experiences of other countries, the provision of family mediation services can be court-based; i.e., services provided by specifically assigned personnel in the court. Especially for couples who opt for litigation to resolve their disputes, the practice is for users to be directly mediated by the judge during court proceedings, as in England and Wales, or ordered by the judge to attempt mediation provided by court personnel, as in Australia and Singapore. In both cases, mediation is construed as part and parcel of the court-based mediation service.

11.14 The research team was aware that both court-based and community-based mediation services have their own advantages. A court-based service offers another chance, if not the last one, for divorcing couples to use the mediation service during the ancillary court proceedings, whether or not they have previously attempted it. On the other hand, services based in the community can be easily accessible by people through a good service network. To ensure that mediation services are always and everywhere available when couples seek to divorce, the research team favours the co-existence of court-based and community-based services.

Service Model: Unity vs Plurality

11.15 Under the Pilot Scheme, family mediation services are provided by different operators based in the community. These include the Government, NGOs and private practitioners. From the data gathered from this study, it appears that different service providers are attracting different service users. Service users coming from a working-class background tended to choose the mediation service provided by a government department, probably because many of them had prior experience with the welfare bureaucracy. On the other hand, service users who were professionals, and whose disputes were of financial nature, tended to turn to mediators with a legal background.

11.16 The research team is inclined to the view that the current service model, one that is basically pluralistic, has many advantages. Obviously, a service model in which mediation is provided entirely by private mediators is unlikely to meet the needs of service users in the lower socioeconomic stratum, while one in which the mediation service is entirely provided by the Government is unlikely to appeal to users with professional backgrounds. A pluralistic model, diverse in terms of the auspices of the services and professional backgrounds of the mediators, is more likely to meet the needs of a diverse clientele and preferable to a unitary model that provides users with few or no choices.

Roles of the Government, the Judiciary, NGOs and the Market

11.17 In discussing the future blueprint of the service, the relative roles of the four major operators in the provision of mediation services need to be addressed; namely, the Government, the Judiciary, the NGOs and private practitioners. In the Pilot Scheme, both the Government and the Judiciary assumed a number of important roles. As far as the Government is concerned, it has provided legal status for mediation services in matrimonial proceedings; it funded the Pilot Scheme; it promoted and publicized the service in the media; and it operates the service through the Social Welfare Department. As far as the Judiciary is concerned, its role in the Pilot Scheme has mostly been to coordinate the service through the MCO.

11.18 The research team noted the view that, under the scheme, there is a possible conflict of interest between the Government's service coordination role and its service operator role; i.e., the practice in which the MCO acts as a service coordinator and also refers cases to the Social Welfare Department casts doubt on its neutrality. Judging from the accounts of the service users that their choice of mediator was based on their own preferences and was their own decision, there is good evidence to support the MCO's impartiality. However, the research team believes that this was a result of a misunderstanding by the people that the Government and the Judiciary were one instead of two independent players in the provision of mediation services under the Pilot Scheme. Having said this, the research team thinks that it is necessary for the Government to reconsider its role in the overall provision of mediation services following the Pilot Scheme.

11.19 Specifically, there is a need to examine whether or not the Government, through its Social Welfare Department, should continue to be an operator in community-based mediation service in the future, having regard to the fact that an increasing number of mediators is now available in the NGOs and in the market. Since quite a large portion of users of the mediation service provided by the Social Welfare Department were those who were least able to pay for the service, i.e. those from the working class, there is a role for NGOs to play in looking after this group of service users, since they are unlikely to be able to afford the service in the private market.

Screening of Cases by MCO: Inclusive or Exclusive

11.20 The current delivery of services begins when couples approach, or are referred, to the Mediation Coordinator. The MCO soon contacts the applicants by telephone, inviting them to come for an information session. This information session consists of a talk delivered by the Mediation Coordinator on the nature, objectives and contents of the mediation service, and is followed by a video show. After the information session, the MCO will interview the applicants, either singly or jointly, to assess their suitability for mediation. Suitable applicants will then be given a list of mediators and asked to choose one from whom they would like to receive mediation services. After the applicants have made their choice, they are then referred to the mediators, usually in less than a week.

11.21 Under the Pilot Scheme, therefore, it can be seen that the role of the MCO is more than to coordinate services; it is also responsible for screening the suitability of cases. The MCO's statistics show that 512 out of 648 cases screened out by MCO between the period 2.5.2000 and 14.5.2003 were cases in which one party either showed no response to contacts initiated by the MCO, or failed to turn up for the information session or the assessment interview. Of the cases, 11.4% (74 out of 648) were screened out because the applicants chose marital counselling instead of family mediation. Only 10 cases were found to be unsuitable for the service because one party was of a low IQ and another too fearful of the other party²⁹. It appears that the MCO has been rather inclusive in the initial assessments.

11.22 In the interim report of April 2002, the research team considers it necessary to re-examine the role of the MCO in the service delivery system. The main reason is that the service provided under the scheme is financed out of public funds. The Government therefore has the responsibility of making sure that the service is provided only to those deemed suitable for it through a careful assessment of the applicants by the MCO. The research team still holds this view if the mediation service continues to be publicly funded. If, however, it is going to be paid for by

²⁹ From Table 7 Reasons for Cases with No Referral Made After Initial Assessment (accumulative figures from 2.5.2000 to 14.5.2003), *Statistics on the Implementation of the Pilot Scheme on Family Mediation*.

the users themselves, there seems no ground for the MCO to continue with its screening role. It will be more appropriate for the people to decide whether or not to use the service and for the mediator so chosen to determine if a case is suitable for mediation.

11.23 In the future operation of the mediation service, the MCO may restrict its role to one of providing information to potential users and to acting as a coordinating body. In providing information on mediation and other related services to potential users, the MCO may be assisted by experienced mediators from the NGOs and from private practitioners in the market. As for its coordinating role, the MCO may focus on coordinating the court-based mediation service to make sure that cases have completed the mediation service before the next court-sitting to hear the case.

Interface with Legal Aid Services: a Serial vs a Parallel Service

11.24 An important issue to be addressed is how mediation services should interface with legal aid services. As revealed in the course of this study, a couple could contemplate mediation at three points in time after they decide to end their marriage. First, they could attempt mediation before they actually start divorce proceedings. Second, they could try mediation after they have filed an application/petition for divorce, alongside the legal aid services they are receiving. Third, they could do so during the ancillary proceedings at the request of the court. In the light of the benefits that mediation can bring to a family, the research team considers it beneficial to leave mediation as an option to the couple throughout the entire divorce and ancillary proceedings, whether or not a couple chooses to receive mediation to resolve their dispute at an earlier stage.

11.25 However, a number of problems arise in the second scenario, where mediation and legal aid services run parallel to each other. It has been brought to the attention of the research team that there was much 'crosstalk' between the two services. There were complaints by mediators that agreements worked out between couples were sabotaged by the lawyers who, in the 'best' interests of their clients, advised them to drop the agreements and seek legal redress instead. Besides, legal aid lawyers considered that a parallel mode of service would not significantly reduce their work because, bound by a fixed schedule of court hearings, they could not simply wait until a couple reached a mediated agreement. It seems, therefore, that if mediation were run concurrently with legal aid services, legal aid costs would not be significantly reduced.

11.26 This is, in fact, very much consistent with the findings of research studies elsewhere. *The Evaluation of the Family Court Mediation* in 1994 in Australia, for instance, noted that mediated disputes where a court application had already been filed were less likely to be successful. It is noted further that the overlapping of the legal and mediated processes could interfere with the couples' capacity to be

reasonable and conciliatory about the issues being contested. The report concluded that, to many of the couples, the presence of a 'litigation shadow' was not conducive to a positive outcome³⁰.

11.27 For the benefit of the couple, the research team considers that a serial mode of service is perhaps preferable to a parallel mode. By serial mode, we mean that couples should, as far as possible, attempt mediation first. If they reach a mediated agreement, they can proceed to solicit legal service to prepare for them a consent summons, if they so choose. Should mediation be unsuitable or fail, they could then seek legal redress through legal aid. Based on the data gathered so far, there are reasons to believe that a serial mode of service will likely minimize the 'crosstalk' between the work of a mediator and that of the lawyers. It is also expected that it will lead to a reduction in psychological and legal aid costs, if more couples settle their disputes through mediation.

11.28 The research team agreed with the view that 'all legal cases should have the right to connect with mediation, legal advice and legal services at any time in their proceeding', and that a parallel approach may 'limit the flexibility of the service'. Therefore, they believe that given that the couples understand the possible pros and cons of two services running concurrently, those who can afford both services may opt for a parallel approach, if they so choose. However, to avoid the least possible harm to their relationship and to reduce financial costs, self-supporting couples in general and those relying on public funds for the services in particular should first consider using the mediation service to resolve their disputes.

Payment of Service: Free vs Fee-charging

11.29 The cost of the service has been found to be an important factor affecting the choice of mediators by users. The overwhelming majority of users of the service, especially those of a working-class background tended to choose mediators whose services were completely free. Although the range of choice would be much wider if they were ready to pay extra 'top up' money, it is quite clear from this study that they would not usually do so as long as free mediators are available.

11.30 An important advantage of a free service, as reflected by this Pilot Scheme, is that it can attract more users. This is particularly important in the beginning stages of a service's operation. Its biggest drawback, however, is that a free service cultivates no commitment on the part of the users of the service. Since the users do not have to bear any financial cost for the service, they can easily abort it without incurring any financial losses. As previously pointed out, this is particularly a problem for those who are making concurrent use of mediation and legal aid services.

³⁰ Bordown, S., Gibson, J. (1994). *Evaluation of the Family Court Mediation Service*. Research Report No. 12 Family Court of Australia Research and Evaluation Unit. p.84.

11.31 In fact, the majority of users interviewed by the research team indicated that they were ready to pay at least part of the cost of service, ranging from ‘a few hundred dollars’ to ‘as long as it was lower than that charged by lawyers’. Users chose free mediators obviously out of the ‘if the government is ready to pay the whole cost, why bother to pay for it out of my own pocket’ mentality. In light of these findings, it seems worthwhile to consider introducing a fee-charging mechanism, if not a full-blown users-pay system, into the service, bearing in mind that a free service should always be made available to those unable to pay.

Name of the Service: Family Mediation or Divorce Mediation

11.32 There was considerable concern over the name of the service. In interviews with key informants, opposing views were expressed. Some were happy with the current name while others preferred the name 'divorce mediation' (離婚爭議事項調解服務) instead.

11.33 The choice of a name for the service is more than a linguistic issue because the perceptions evoked by the name will lead to expectation that certain services are being offered. In the course of collecting data, it was found that quite a number of users of the service found its current Chinese name to be confusing. Some mistook it for family counselling and others thought it had to do with marriage reconciliation. Those who thought so found themselves in the wrong place, and therefore wasting time, after learning that it was for divorce mediation. Others, although relatively few in number, approached the service with the intention of reconciling, but ended up in divorce proceedings when the option was made available to their spouses.

11.34 This, then, appears to call for further and wider consultation for a better name. The research team is inclined to believe that were the term 'divorce mediation' to be used, possible misinterpretations by the public of the nature of the service could be avoided, minimizing the chances of attracting the wrong applicants. It could also give the service a better focus and, as will be discussed later, make the role of the Mediation Coordinator clearer and more specific.

Chapter Twelve Recommendations

12.1 This study has gathered data on the Pilot Scheme on Family Mediation between 5.2.2000 and 30.4.2003 from different sources to examine the public's perceptions of the mediation service, identify who its users were, and study its outcomes in terms of user satisfaction, agreement rates and the amount of court time saved as a result of it. The study also attempts to identify issues of concern in the delivery of mediation services in Hong Kong. On the basis of the findings of this study, the research team makes the following recommendations for the consideration of the Judiciary:

12.2 There should be a place for mediation in resolving family disputes in Hong Kong. People should be encouraged, as far as possible, to use the mediation service outside litigation to settle their family disputes. In this connection, relevant changes to current laws should be made so that mediation, and all agreements arising from it, has legal status in dispute resolution in matrimonial proceedings, respectively.

12.3 Mediation services should be available as an option for couples throughout the entire divorce and ancillary proceedings. In this connection, a service delivery system comprising two domains, namely, the community-based service and the court-based service, is recommended for adoption in Hong Kong. A community-based family mediation service is meant for those who voluntarily choose mediation in seeking a divorce, while a court-based service is for those who are required by the court to attempt mediation in the ancillary proceedings.

12.4 A pluralistic model of service with regard to service providers is recommended for adoption in Hong Kong. However, there seems to be a need to realign the current roles of the Government, the NGOs, and the private practitioners as service operators. The court-based services should be provided either by the Government or by the Judiciary, while the community-based services should be operated by NGOs and private practitioners. The Government may withdraw from the community-based services because its clientele can be aptly served by NGOs.

12.5 As a dispute resolution option on par with litigation, the cost of mediation should be borne by those who choose to use it. In this light, all community-based family mediation services should adopt the users-pay principle. It is therefore recommended that a fee-charging mechanism be introduced for users able to afford the service. Meanwhile, a valve should be built into the service delivery system to guarantee that those who cannot afford the service have access to it through the exemption of all or part of the fees.

12.6 The role of the Mediation Coordinator should focus on providing information and coordinating services. If people themselves are to decide whether or not to use the mediation service and are to pay for the service if they choose it,

the Mediation Coordinator can be exempted from its screening role. Whether or not a couple is suitable for the mediation service should be decided by the couple themselves on the basis of information provided by the Mediation Coordinator. Alternatively, their suitability can be decided by the mediator chosen by them

12.7 Because mediation is basically a voluntary service, the research team considers that it would hard to force legal aid clients to attempt mediation. However, this does not preclude the possibility that some suitable legal aid clients will choose mediation as an option in resolving their disputes. In this light, it is necessary to ensure that relevant information is provided to all those seeking legal aid. The research team recommends that (1) all applicants for legal aid be required to attend information sessions at the MCO, (2) the Director of Legal Aid be given the power to require that applicants for legal aid attend an information session on mediation and other related services, and that (3) mediation fees be covered in the cost of legal aid should applicants for legal aid choose mediation to resolve their disputes.

12.8 As this study has revealed the ‘crosstalk’ between mediation and legal services poses a real problem to successful mediation. As shown by the experiences of other countries, the presence of a ‘litigation shadow’ is not conducive to a positive outcome in mediation. Thus, the research team holds to the recommendation made in the interim report that, for legal aid clients, a serial mode of service whereby mediation precedes legal services is preferable to one in which both services are running at the same time. However, couples who can pay for the services themselves may choose to have both services at the same time. In both cases, there should be better communication and coordination between the two services.

12.9 Since the name of the service can cause confusion to some people, the Government may need to promote better understanding of the service among the public through more and wider publicity. Alternatively, it may consider changing the name of the service. In the latter case, the research team agrees that ‘divorce mediation’ (離婚爭議事項調解服務) is a better alternative.

12.10 Lastly, due to the limitations of this study, the durability of the agreements reached through mediation has yet to be looked into. This is the subject for further research. The research team suggests another study on the issue of the durability of mediated agreements as compared with those settled through litigation.

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Appendix A

Main Findings on Public Perceptions of the
Pilot Scheme on Family Mediation in Hong Kong

Table A1: Basic Facts on the Two Surveys

	First Survey	Second Survey
Date of survey	7.9.2000 – 9.9.2000	14.1.2002-17.1.2002
Number of respondents	828	915
Response rate	45.5%	51.23%
Range of sample errors	plus or minus 3.4%	plus or minus 3.3%

Table A2: Sex of the Respondents

	First Survey		Second Survey	
	N*	%	N	%
Male	364	44.0	409	44.7
Female	464	56.0	506	55.3
Total	828	100.0	915	100.0

Note*: 'N' stands for the number of persons, in this table and in all of the other tables.

Table A3: Age of the Respondents

Age	First Survey		Second Survey	
	N	%	N	%
18-29	266	32.1	234	25.6
30-39	227	27.4	253	27.7
40-49	165	19.9	216	23.6
50-59	75	9.1	121	13.2
60-69	43	5.2	49	5.4
70 or above	36	4.3	30	3.3
No answer	16	1.9	12	1.3
Total	828	100.0	915	100.0

Table A4: Marital Status of the Respondents

Marital Status	First Survey		Second Survey	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
Never married	284	34.3	290	31.7
Married	504	60.9	577	63.1
Divorced	24	2.9	33	3.6
Others	4	0.5	7	0.8
No answer	12	1.4	8	0.9
Total	828	100.0	915	100.0

Table A5: Do the Respondents Have Children?

	First Survey		Second Survey	
	<u>N</u>	<u>Valid %</u>	<u>N</u>	<u>Valid %</u>
No	91	17.1	85	13.8
Yes	442	82.9	532	86.2
N.A. */Refused to answer	295	-	298	-
Total	828	100.0	915	100.0

Note *: N.A. includes respondents who have never been married

Table A6: Monthly Salary of the Respondents

Monthly Salary	First Survey		Second Survey	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
Below \$4000	62	7.5	8	0.9
\$4000 – below \$7000	46	5.6	39	4.3
\$7000 – below \$10000	79	9.5	103	11.3
\$10000 – below \$14000	92	11.1	114	12.5
\$14000 – below \$17000	48	5.8	42	4.6
\$17000 – below \$20000	30	3.6	29	3.2
\$20000 – below \$25000	52	6.3	49	5.4
\$25000 – below \$40000	43	5.2	66	7.2
\$40000 or above	27	3.3	24	2.6
Other*	349	42.1	441	48.2
Total	828	100.0	915	100.0

Note *: Other includes no income, irregular income, and the refusal to answer

Table A7: Educational Background of the Respondents

	First Survey		Second Survey	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
Below primary	93	11.2	37	4.0
Primary	129	15.6	103	11.3
Secondary	416	50.2	555	60.7
Tertiary or above	177	21.4	212	23.2
No answer	13	1.6	8	0.9
Total	828	100.0	915	100.0

Table A8: Do Respondents Know about the Pilot Scheme?

	First Survey		Second Survey	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
Yes	207	25.0	193	21.1
No	620	75.0	722	78.9
Total	827*	100.0	915	100.0

Note *: One respondent in the first survey refused to answer this question.

Table A9: Where Did Respondents Learn about the Pilot Scheme?*

	First Survey		Second Survey	
	<u>N*</u>	<u>%**</u>	<u>N*</u>	<u>%**</u>
TV/radio	152	73.0	135	69.0
Newspapers/magazines	79	38.0	64	33.0
Social service agencies	19	9.0	9	4.0
Legal professionals	2	0.5	2	1.0
Friends/relatives	13	6.0	19	9.0
Colleagues	2	0.5	2	1.0
Other	2	0.5	5	2.0

Note *: Respondents could check more than one item if they learned of the Pilot Scheme from different sources.

** : The percentage was computed by dividing the number of respondents who had heard of the Pilot Scheme from a particular source by the total number of respondents who reported knowing about the Pilot Scheme.

Table A10: Does Family Mediation Save Time Compared with Litigation ?

	First Survey		Second Survey	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
Yes, it does	563	68.0	688	75.2
Not sure	59	7.1	94	10.3
No, it doesn't	103	12.4	29	3.2
Don't know/no answer	103	12.4	104	11.3
Total	828	100.0	915	100.0

Table A11: Does Family Mediation Save Money Compared with Litigation ?

	First Survey		Second Survey	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
Yes, it does	612	73.9	742	81.1
Not sure	79	9.5	62	6.8
No, it doesn't	74	8.9	36	3.9
Don't know/no answer	63	7.6	75	8.2
Total	828	100.0	915	100.0

Table A12: Does Family Mediation Cause Less Harm to Family Relationships than Litigation ?

	First Survey		Second Survey	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
Yes, it does	444	53.6	564	61.6
Not sure	160	19.3	162	17.7
No, it doesn't	148	17.9	98	10.7
Don't know/no answer	76	9.2	91	10.0
Total	828	100.0	915	100.0

Table A13: Can Divorcing Parties Participate More in Family Mediation ?

	First Survey		Second Survey	
	N	%	N	%
Yes, they can	590	71.3	735	80.3
Not sure	96	11.6	75	8.2
No, they can't	77	9.3	482	5.2
Don't know/no answer	65	7.9	59	6.2
Total	828	100.0	915	100.0

Table A14: Are Divorcing Couples More Likely to Comply with an Agreement Reached by Family Mediation ?

	First Survey		Second Survey	
	N	%	N	%
Yes, they are	396	47.8	490	53.6
Not sure	207	25.0	231	25.2
No, they aren't	139	16.8	88	9.6
Don't know/no answer	86	10.4	106	11.6
Total	828	100.0	915	100.0

Table A15: Can Family Mediation Enable the Parties to Communicate Better?

	First Survey		Second Survey	
	N	%	N	%
Yes, they can	518	62.6	629	68.7
Not sure	123	14.9	144	15.7
No, they can't	134	16.2	84	9.2
Don't know/no answer	53	6.4	58	6.3
Total	828	100.0	915	100.0

Table A16: Can Family Mediation Help Parties Cooperate Better in Parental Roles?

	First Survey		Second Survey	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
Yes, they can	521	62.9	635	69.4
Not sure	128	15.5	142	15.5
No, they can't	108	13.0	69	7.5
Don't know/no answer	71	8.6	69	7.5
Total	828	100.0	915	100.0

Table A17: Is Family Mediation or Litigation Better In Resolving Family Disputes ?

	First Survey		Second Survey	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
Litigation is better	55	6.6	26	2.8
Mediation is better	657	79.3	788	86.1
Don't know/no answer	116	14.0	101	11.0
Total	828	100.0	915	100.0

Table A18: Should Family Mediation Be Promoted as the Means to Resolve Family Disputes?

	First Survey		Second Survey	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
Yes, it should be promoted	709	85.6	850	97.8
No, it shouldn't be promoted	45	5.4	19	2.2
Don't know/no answer	74	8.9	46	5.0
Total	828	100.0	915	100.0

Appendix B

Main Findings on
the Profiles of Those Receiving Family Mediation Services
Under the Pilot Scheme on Family Mediation in Hong Kong

Table B1: Age of the Male Party

	N	Valid %
Below age 30	45	4.9
30-39	226	24.8
40-49	430	47.1
50-59	164	18.0
60-69	43	4.7
Age 70 or above	4	0.4
Total	912	100.0

Table B2: Age of the Female Party

	N	Valid %
Below age 30	103	11.3
30-39	366	40.1
40-49	347	38.0
50-59	89	9.8
60-69	6	0.7
Age 70 or above	1	0.1
Total	912	100.0

Table B3: Cases by Length of Marriage in Years

	N	Valid %
Less than 5 years	101	11.1
5-9 years	190	20.9
10-14 years	225	24.8
15-19 years	183	20.1
20-24 years	131	14.4
25-29 years	46	5.1
30 years or above	33	3.6
No answer*	3	-
Total (cases)	912	100.0

*Users who forgot when they had married (1 case) and couples with no marriage registration (2 cases).

Table B4: Year Since Residence in Hong Kong (According to the Male Party)

	N	Valid %
Before 1950	53	5.8
1950-59	276	30.3
1960-69	280	30.7
1970-79	171	18.8
1980-89	93	10.2
1990 and after	39	4.3
Total	912	100.0

Table B5: Year Since Residence in Hong Kong (According to the Female Party)

	N	Valid %
Before 1950	17	1.9
1950-59	186	20.5
1960-69	270	29.7
1970-79	134	14.7
1980-89	87	9.6
1990 and after	215	23.7
No answer/not HK resident	3	-
Total	912	100.0

Table B6: Educational Level of the Male Party

	N	Valid %
Primary or below	171	18.8
Form 1 to form 3	218	23.9
Form 4 to form 5	279	30.6
Matriculation	46	5.0
Tertiary (diploma)	55	6.0
University (degree)	100	11.0
Post-graduate	32	3.5
No formal education	10	1.1
No answer	1	-
Total	912	100.0

Table B7: Educational Level of the Female Party

	N	Valid %
Primary or below	171	18.8
Form 1 to form 3	177	19.4
Form 4 to form 5	376	41.3
Matriculation	48	5.3
Tertiary (diploma)	53	5.8
University (degree)	63	6.9
Post-graduate	18	2.0
No formal education	5	0.5
No answer	1	-
Total	912	100.0

Table B8: Occupation of the Male Party

	N	Valid %
Managers and administrators	99	10.9
Professionals	87	9.5
Associate professional	82	9.0
Clerks	25	2.7
Service workers and shop sales workers	132	14.5
Agricultural and fishery skilled workers	2	0.2
Craft and related workers	142	15.6
Plant and machine operators and assemblers	118	12.9
Elementary occupations	63	6.9
Homemakers	1	0.1
Unemployed	132	14.5
Retired	29	3.2
Total	912	100.0

Table B9: Occupation of the Female Party

	N	Valid %
Managers and administrators	45	4.9
Professionals	39	4.3
Associate professionals	65	7.1
Clerks	136	14.9
Service workers and shop sales workers	155	17.0
Craft and related workers	23	2.5
Plant and machine operators and assemblers	8	0.9
Elementary occupations	60	6.6
Homemakers	298	32.7
Unemployed	79	8.7
Retired	3	0.3
No answer	1	-
Total	912	100.0

Table B10: Monthly Income of the Male Party

	N	Valid %
Less than \$4,000	10	1.1
\$4,000-\$9,999	182	20.0
\$10,000-\$16,999	222	24.4
\$17,000-\$24,999	117	12.9
\$25,000-\$39,999	81	8.9
More than \$40,000	97	10.7
Irregular or no paid employment	200	22.0
No answer	3	-
Total	912	100.0

Table B11: Monthly Income of the Female Party

	N	Valid %
Less than \$4,000	43	4.8
\$4,000-\$9,999	239	26.4
\$10,000-\$16,999	121	13.4
\$17,000-\$24,999	60	6.6
\$25,000-\$39,999	53	5.9
More than \$40,000	28	3.1
Irregular or no paid employment	360	39.8
No answer	8	-
Total	912	100.0

Table B12: Cases by the Number of Children the Couples Have in their Current Marriage

	N	Valid %
0	103	11.3
1	328	36.0
2	334	36.6
3	107	11.7
4	34	3.7
5 or more	6	0.6
Total (Cases)	912	100.0

Table B13: Who Initiated Participation in the Pilot Scheme?

	N	Valid %
Male Party	334	36.6
Female Party	549	60.2
Joint	29	3.2
Total (Cases)	912	100.0

Table B14: Status of Applicants

	N	Valid %
Applicant for mediation service	411	45.1
As petitioner	320	35.1
As respondent	181	19.8
Total (Cases)	912	100.0

Table B15: Sources of Knowledge of the Mediation Service (Male Party)

	N	Valid %
Partner	438	48.7
Lawyer	177	19.7
Media	116	12.9
Social worker	103	11.4
Family Court Registry	39	4.3
Friends/relatives	27	3.0
No answer	12	-
Total	912	100.0

Table B16: Sources of Knowledge of Mediation Service (Female Party)

	N	Valid %
Partner	217	24.2
Lawyer	306	34.1
Social worker	145	16.1
Media	105	11.7
Family Court Registry	74	8.2
Friends/relatives	51	5.7
No answer	14	-
Total	912	100.0

Table B17: Statistics on the Legal Activities of the Parties

	No	Yes	N.A.	No answer/ Not sure	Total
Legal proceedings commenced?					
<i>Male party</i>	429 <i>47.3</i>	478 <i>52.7</i>	-	5 -	912 <i>100.0</i>
<i>Female party</i>	410 <i>45.1</i>	499 <i>54.9</i>	-	3 -	912 <i>100.0</i>
Legally represented?					
<i>Male party</i>	626 <i>69.0</i>	281 <i>31.0</i>	-	5 -	912 <i>100.0</i>
<i>Female party</i>	408 <i>44.9</i>	500 <i>55.1</i>	-	4 -	912 <i>100.0</i>
Received legal aid?					
<i>Male party</i>	181 <i>64.2</i>	101 <i>35.8</i>	626*	4 -	912 <i>100.0</i>
<i>Female party</i>	205 <i>50.2</i>	293 <i>71.8</i>	408*	6 -	912 <i>100.0</i>

Valid percentages are in *italics*.

* Parties with no lawyers.

Table B18: Items Intended to be Settled in the Service at the Time of Parties' Initial Assessment

	No	Yes	N.A.	Total
Child custody				
<i>Male party</i>	194	615	103*	912
	<i>24.0</i>	<i>76.0</i>	-	<i>100.0</i>
<i>Female party</i>	181	628	103*	912
	<i>22.4</i>	<i>77.6</i>	-	<i>100.0</i>
Child access				
<i>Male party</i>	207	602	103*	912
	<i>25.6</i>	<i>74.4</i>	-	<i>100.0</i>
<i>Female party</i>	199	611	103*	912
	<i>24.6</i>	<i>75.5</i>	-	<i>100.0</i>
Financial support for spouse				
<i>Male party</i>	233	679	-	912
	<i>25.5</i>	<i>74.5</i>	-	<i>100.0</i>
<i>Female party</i>	166	746	-	912
	<i>18.2</i>	<i>81.8</i>	-	<i>100.0</i>
Financial support for child(ren)				
<i>Male party</i>	155	656	103*	912
	<i>19.2</i>	<i>81.1</i>	-	<i>100.0</i>
<i>Female party</i>	123	686	103*	912
	<i>15.2</i>	<i>84.8</i>	-	<i>100.0</i>
Accommodation/property transfer				
<i>Male party</i>	414	498	-	912
	<i>45.4</i>	<i>54.6</i>	-	<i>100.0</i>
<i>Female party</i>	364	548	-	912
	<i>39.9</i>	<i>60.1</i>	-	<i>100.0</i>
Financial matters				
<i>Male party</i>	849	63	-	912
	<i>93.1</i>	<i>6.9</i>	-	<i>100.0</i>
<i>Female party</i>	838	74	-	912
	<i>91.9</i>	<i>8.1</i>	-	<i>100.0</i>

Valid percentages are in *italics*.

* Parties with no children.

Table B19: Statistics on Parties' Initial Assessment of their Suitability for the Service

	No	Yes	N.A.	Missing/ Not Sure	Total
History of domestic violence?					
<i>Male party</i>	557	249	-	6	912
	<i>61.5</i>	<i>38.5</i>	-	-	<i>100.0</i>
<i>Female party</i>	458	449	-	5	912
	<i>50.5</i>	<i>49.5</i>	-	-	<i>100.0</i>
Are you at risk?					
<i>Male party</i>	864	42	-	6	912
	<i>95.4</i>	<i>4.6</i>	-	-	<i>100.0</i>
<i>Female party</i>	809	98	-	5	912
	<i>89.2</i>	<i>10.8</i>	-	-	<i>100.0</i>
Are the children at risk?					
<i>Male party</i>	741	61	103*	9	912
	<i>92.4</i>	<i>7.6</i>	-	-	<i>100.0</i>
<i>Female party</i>	768	39	103*	6	912
	<i>95.2</i>	<i>4.8</i>	-	-	<i>100.0</i>
Has an injunction order been issued?					
<i>Male party</i>	883	22	-	7	912
	<i>97.6</i>	<i>2.4</i>	-	-	<i>100.0</i>
<i>Female party</i>	888	17	-	7	912
	<i>98.1</i>	<i>1.9</i>	-	-	<i>100.0</i>
Do you have health problems?					
<i>Male party</i>	731	176	-	5	912
	<i>80.6</i>	<i>19.4</i>	-	-	<i>100.0</i>
<i>Female party</i>	702	204	-	6	912
	<i>77.5</i>	<i>22.5</i>	-	-	<i>100.0</i>

Valid percentages are in *italics*.

* Parties with no children.

Table B20: Criteria for Selecting a Mediator (Male Party)

	N*	% in 912 cases
Free	770	84.4
Place	382	41.9
Other party's choice	207	22.7
Social worker	101	11.1
Lawyer	89	9.8
Time	36	3.9
Others [#]	32	3.5
No preference indicated	87	9.5

*Each user can have more than one criterion, except for those have not indicated a preference.

[#]Other criteria include institutional background, gender, languages spoken, ethnicity, and the religious background of the mediators.

Table B21: Criteria for Selecting a Mediator (Female Party)

	N*	% in 912 cases
Free	779	85.4
Place	412	45.2
Other party's choice	136	14.9
Social worker	111	12.2
Lawyer	104	11.4
Time	37	4.1
Others [#]	43	4.7
No preference indicated	93	10.2

*Each user can have more than one criterion, except for those have not indicated a preference.

[#]Other criteria include institutional background, gender, languages spoken, ethnicity, and the religious background of the mediators.

Table B22: Institutional Backgrounds of Mediators

	N	Valid %
The Social Welfare Department	239	26.2
Non-governmental organizations	352	38.6
Mediators in private practice	321	35.2
Total (Cases)	912	100.0

Table B23: Mediation Outcomes

	N	Valid %
Full agreement reached	551	60.4
Partial agreement reached	74	8.1
No agreement reached	287	31.5
Total (Cases)	912	100.0

Table B24: Number of Disputed Cases with Agreements Reached

	N
Child custody	444
Child access	459
Financial support for spouse	496
Financial support for child	454
Accommodation/property	415
Financial matters	263

Table B25: Number of individual sessions with the mediator

Number of Sessions	N	Valid %
No individual session	42	4.6
1-2	620	68.0
3-4	156	17.1
5-6	55	6.0
Over 7	39	4.3
Total	912	100.0

Table B26: Number of joint sessions with the mediator

Number of Sessions	N	Valid %
No joint session	122	13.4
1-2	399	43.8
3-4	257	28.2
5-6	96	10.5
Over 7	38	4.2
Total	912	100.0

Table B27: Total number of sessions with the mediator

Number of Sessions	N	Valid %
No session	11	1.2
1-3	215	23.6
4-6	464	50.9
7-9	162	17.8
10-12	29	3.2
13-15	16	1.8
Over 15	15	1.6
Total	912	100.0

Table B28: Duration of Service (in hours)

	N	Valid %
0 hour	8	0.9
Less than 2 hours	33	3.6
2 - 4.99 hours	180	19.7
5 - 7.99 hours	246	27
8 - 10.99 hours	182	20
11 - 14.99 hours	184	20.2
More than 15 hours	79	8.7
Total (Cases)	912	100.0

Table B29: Days Taken from Application to Initial Assessment (Male Party)

	N	Valid %
Within 7 days	188	20.6
8-30 days	495	54.3
31-60 days	153	16.8
61-90 days	33	3.6
More than 90days	43	4.7
Total	912	100.0

Table B30: Days Taken from Application to Initial Assessment (Female Party)

	N	Valid %
Within 7 days	207	22.7
8-30 days	490	53.7
31-60 days	139	15.2
61-90 days	39	4.3
More than 90days	37	4.1
Total	912	100.0

Table B31: Days Taken from Initial Assessment to Referral to Mediator (Male Party)

	N	Valid %
Within 7 days	743	81.5
8-30 days	138	15.1
31-60 days	25	2.7
61-90 days	6	0.7
Total	912	100.0

Table B32: Days Taken from Initial Assessment to Referral to Mediator (Female Party)

	N	Valid %
Within 7 days	681	74.7
8-30 days	196	21.5
31-60 days	26	2.9
61-90 days	6	0.7
More than 90 days	3	0.3
Total	912	100.0

Table B33: Days Taken for Mediator to Complete a Case

	N	Valid %
Within 7 days	24	2.6
8-30 days	224	24.6
31-60 days	263	28.8
61-90 days	163	17.9
91-120 days	88	9.6
121-150 days	48	5.3
151-180 days	35	3.8
More than 180 days	67	7.3
Total (Cases)	912	100.0

Table B34: Days Taken from Application to Completion of Mediation

	N	Valid %
Within 7 days	7	0.8
8-30 days	60	6.6
31-60 days	226	24.8
61-90 days	202	22.1
91-120 days	145	15.9
121-150 days	87	9.5
151-180 days	67	7.3
More than 180 days	118	12.9
Total (Cases)	912	100.0

Appendix C

Main Findings from the
Users Satisfaction Survey
Pilot Scheme on Family Mediation in Hong Kong

Table C1: Number of Respondents in the *User Satisfaction Survey* by Sex

	N	Valid %
Male	378	47.0
Female	426	53.0
Total	804	100.0

Table C2: No. of Respondents in the *User Satisfaction Survey* by Age Group

	N	Valid %
Under 30	56	7.0
30-39	283	35.2
40-49	363	45.1
50-59	88	10.9
60-69	12	1.5
70 or over	2	0.2
Total	804	100.0

Table C3: Whether the Mediation Service was Provided by Single or Co-mediators

	N	Valid %
Single mediator	756	94.0
Co-mediators	48	6.0
Total	804	100.0

Table C4: Sex of the First Mediator

	N	Valid %
Male	65	8.1
Female	739	91.9
Total	804	100.0

Table C5: Sex of the Second Mediator

	N	Valid %
Male	20	41.7
Female	28	58.3
Not applicable*	756	-
Total	804	100.0

* Respondents only had the services of a single mediator.

Table C6: Professional Background of the First Mediator

	N	Valid %
Lawyer	283	35.2
Social worker	456	56.7
Psychologist	3	0.4
Others	34	4.2
Don't know/no answer	28	3.5
Total	804	100.0

Table C7: Professional Background of the Second Mediator

	N	Valid %
Lawyer	15	31.3
Social worker	18	37.5
Psychologist	2	4.2
Others	7	14.6
Don't know/no answer	6	12.5
Not applicable*	756	-
Total	804	100.0

* Respondents only had the services of a single mediator.

Table C8: Agency Background of the First Mediator

	N	Valid %
The Social Welfare Department	202	25.1
Non-governmental organizations	236	29.4
Private practice	298	37.1
Don't know/no answer	68	8.5
Total	804	100.0

Table C9: Agency Background of the Second Mediator

	N	Valid %
The Social Welfare Department	4	8.3
Non-governmental organizations	9	18.8
Private practice	17	35.4
Don't know/no answer	18	37.5
Not applicable*	756	-
Total	804	100.0

* Respondents only had the services of a single-mediator.

Table C10: Number of Joint Sessions with the Mediator

Number of Sessions	N	Valid %
No joint session	29	3.6
1-2	182	22.6
3-4	421	52.4
5-6	117	14.6
7-8	30	3.7
9-10	16	2.0
Over 10	3	0.4
No answer/forgotten	6	0.7
Total	804	100.0

Table C11: Number of Individual Sessions with the Mediator

Number of Sessions	N	Valid %
No individual session	57	7.1
1-2	426	53.0
3-4	258	32.1
5-6	43	5.3
7-8	4	0.5
9-10	3	0.4
Over 10	1	0.1
No answer/forgotten	12	1.5
Total	804	100.0

Table C12: Had the Mediator Ever Provided Legal Advice to the Users of the Service on Issues under Mediation?

	N	Valid %
Yes	227	28.2
No	555	69.0
No answer	22	2.7
Total	804	100.0

Table C13: Had the Mediator Ever Offered Psychological/Emotional Counselling Services to the User?

	N	Valid %
Yes	235	29.2
No	554	68.9
No answer	15	1.9
Total	804	100.0

Table C14: Had the Mediator Ever Taken Sides During the Mediation?

	N	Valid %
Yes	92	11.4
No	699	86.9
No answer	13	1.6
Total	804	100.0

Table C15: Had the Mediator Ever Made Decisions for the Service User?

	N	Valid %
Yes	28	3.5
No	765	95.1
No answer	11	1.4
Total	804	100.0

Table C16: To What Extent were the Service Users Satisfied with the Settlements on the Issues of Dispute Arrived at with Their Spouses Through the Mediation Service?

	N	Valid %
Very much satisfied	97	12.3
Satisfied	403	51.3
Neither satisfied nor dissatisfied	56	7.1
Dissatisfied	167	21.2
Very much dissatisfied	63	8.0
Not applicable (no dispute items)	15	-
No answer	3	-
Total	804	100.0

Table C17: Did Service Users Agree that the Fees They Paid for the Mediation Service were Fair?

	N	Valid %
Very fair	2	16.7
Fair	7	58.3
Unfair	3	25.0
Not applicable (don't need to pay)	783	-
No answer	9	-
Total	804	100.0

Table C18: Did Users Agree that They were Able to Discuss Issues of Dispute With Their Spouses Through Mediation in a Peaceful Manner?

	N	Valid %
Very much agreed	92	11.7
Agreed	453	57.5
No comment	61	7.7
Disagreed	152	19.3
Very much disagreed	30	3.8
No answer	16	-
Total	804	100.0

Table C19: Did Users Agree that They were Able to Discuss Issues of Dispute with Their Spouses Through Mediation in a Reasonable Manner?

	N	Valid %
Very much agreed	66	8.4
Agreed	423	53.9
No comment	76	9.7
Disagreed	182	23.2
Very much disagreed	38	4.8
No answer	19	-
Total	804	100.0

Table C20: Overall Speaking, were the Users Satisfied with the Mediation Service that They had Received?

	N	Valid %
Very much satisfied	152	19.0
Satisfied	493	61.5
Neither satisfied nor dissatisfied	68	8.5
Dissatisfied	72	9.0
Very much dissatisfied	17	2.1
No answer	2	-
Total	804	100.0

Table C21: Would Users Recommend Mediation to Their Friends/Relatives in the Future?

	N	Valid %
Yes, certainly	651	81.1
Not sure	71	8.9
No, certainly not	80	10.0
No answer	2	-
Total	804	100.0

Appendix D

Centre for Social Policy Studies, The Hong Kong Polytechnic University Pilot Scheme on Family Mediation Public Attitude Survey

Schedule A: Self-Introduction

“Hello! We are calling from the Centre for Social Policy Studies at the Hong Kong Polytechnic University. The Centre is conducting an opinion poll on a ‘Pilot Scheme on Family Mediation’. We have a couple of questions to ask you and it would be very kind of you if you could spare a few minutes to talk to us. What you tell us will be kept strictly confidential.”

- Response from household:
- 1 Agreed to cooperate →
Begin Schedule B
 - 2 Refused to answer → *End the interview*
 - 3 Problem with connection: long humming sound; non-residential address →
End the interview
 - 4 No suitable interviewee (foreigner) →
End the interview
 - 5 No one ready to take the call/too busy for the moment/no adults around →
Try again later

Schedule B: Select the appropriate respondent

“This survey covers persons aged 18 or over, be they housewives or students or unemployed. Are you aged 18 or over?”

- 1 Yes → **Go to Schedule C**
- 2 No

“Are there persons aged 18 or over at home? Could you ask the one who most recently celebrated his/her birthday to talk to us?”


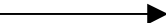
- 1 No such persons → **End the interview**
- 2 They/he/she are/is not at home →
Try again later

Schedule C: Questionnaire Begins

[The following information is to be filled in by the interviewer.]

SEX Male
 Female

Q.1 “Are you aware that the Judiciary is running a ‘Pilot Scheme on Family Mediation’ that provides mediation services to separating or divorcing couples to help them resolve disputes arising from marital breakdown?”

1 No  Introduce the Pilot Scheme
2 Yes on Family Mediation
9 No answer 

Q.2 “Could you tell us from which source you learned about this Pilot Scheme?”

1 TV, radio
2 Newspapers, magazines
3 Social service organizations
4 Legal professionals
5 Relatives, friends
6 Workmates
7 Other sources
9 No answer

“Introduced in May 2000 by the Judiciary, the Pilot Scheme on Family Mediation provides a free professional mediation service to separating or divorcing couples to help them reach mutually acceptable agreements on their disputes. A trained, impartial third person, the mediator, assists both parties to communicate and negotiate issues in disputes in a confidential setting.”

Q.3 “In your view, compared with litigation, is family mediation more likely to:

	No	No Strong Opinion either Way	Yes	Don't Know	No Answer
	1	2	3	4	9
(a) take less time to reach an agreement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) cost less financially to the parties involved?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) reduce trauma and acrimony?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) be a process in which both parties can more actively participate and express their views?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e) lead to an agreement with which the parties are more likely to comply?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(f) enable the parties to better communicate between themselves?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(g) improve the chances for the parties to cooperate in their roles as parents of their children?”	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.4 “In your view, which would be a better service in helping separating or divorcing couples resolve disputes arising from marital breakdown, litigation or mediation?”

- 1 litigation
- 2 mediation
- 3 don't know
- 9 no answer

Q.5 “In your view, should mediation be made available to more couples who need it?”

- 1 no
- 2 yes
- 3 don't know
- 9 no answer

Q.6 “How old are you?”

(The interviewer writes this down in the space above.)

Q.7 “Could you describe your employment status?” (Read from 1 to 7)

- 1 employee
- 2 employer
- 3 self-employed
- 4 unemployed/to be employed
- 5 retired
- 6 student
- 7 home-making
- 9 refuse to answer

Q.8 “Could you describe to us your job or occupation?”

- 1 managerial and administration
- 2 professional
- 3 para- or semi-professional
- 4 clerical
- 5 service and sales
- 6 farmers and fisherman
- 7 arts and crafts and related
- 8 mechanics and mechanical operators
- 9 unskilled
- 10 civil servants (probe and code 1 to 9 above)
- 77 others
- 99 refuse to answer

Q.9 “May we know the level of your educational attainment?”

- 1 graduate and post-graduate level
- 2 secondary level
- 3 primary level
- 4 less than primary
- 9 No answer

Q.10 “Are you married?”

- | | | | | |
|---|--------------------------|--------------------|---|-------------|
| 1 | <input type="checkbox"/> | unmarried | → | Go to Q. 12 |
| 2 | <input type="checkbox"/> | married | | |
| 3 | <input type="checkbox"/> | separated/divorced | | |
| 4 | <input type="checkbox"/> | others | → | |
| 9 | <input type="checkbox"/> | no answer | → | |

Q.11 “Do you have children?”

- | | | |
|---|--------------------------|-----------|
| 1 | <input type="checkbox"/> | no |
| 2 | <input type="checkbox"/> | yes |
| 3 | <input type="checkbox"/> | no answer |

Q.12 “Could you tell us how much you earn a month?”

- | | | |
|----|--------------------------|------------------------------------|
| 1 | <input type="checkbox"/> | below \$4,000 |
| 2 | <input type="checkbox"/> | \$4,000 to below \$7,000 |
| 3 | <input type="checkbox"/> | \$7,000 to below \$10,000 |
| 4 | <input type="checkbox"/> | \$10,000 to below \$14,000 |
| 5 | <input type="checkbox"/> | \$14,000 to below \$17,000 |
| 6 | <input type="checkbox"/> | \$17,000 to below \$20,000 |
| 7 | <input type="checkbox"/> | \$20,000 to below \$24,000 |
| 8 | <input type="checkbox"/> | \$24,000 to below \$40,000 |
| 9 | <input type="checkbox"/> | \$40,000 or above |
| 99 | <input type="checkbox"/> | refuse to answer / no fixed income |

“We have reached the end of the interview.
Thank you for giving your time to talk to us. Good bye!”

Appendix E

Service Users' Satisfaction Survey

“Hello! We are calling from the Hong Kong Polytechnic University and we are conducting an evaluation study on the ‘Pilot Scheme of Family Mediation’ for the Judiciary. We know that you have used the service and we would like to know your opinions of it. All of the information you provide us will be strictly confidential.”

FCCM/JA No: _____ [To be filled in by researchers]

MCO Ref. No. _____ [To be filled in by researchers]

1. Your sex: male female

2. Your age: _____

3. The mediation service was provided to you by a

- single mediator
- co-mediator
- mix of both

4. Your 1st mediator's sex: male female

【Ask those who have more than one mediator】

Your 2nd mediator's sex: male female

5. Your 1st mediator's professional background

- lawyer
- social worker
- psychologist
- others (Please specify: _____)
- don't know

【Ask those who have more than one mediator】

Your 2nd mediator's professional background

- lawyer
- social worker
- psychologist
- others (Please specify: _____)
- don't know

6. Your (1st) mediator came from
- the Social Welfare Department
 - non-governmental organizations
 - private practice
 - don't know

【Ask those who have more than one mediator】

- Your 2nd mediator came from
- the Social Welfare Department
 - non-governmental organizations
 - private practice
 - don't know

7. How many times have you seen your mediator with your divorcing spouse?
_____ sessions

8. How many times have you seen your mediator alone?
_____ sessions

9. Check only one for each of the following groups

A

- My mediator provided me with legal advice on issues under mediation.
- My mediator did not provide me with legal advice on issues under mediation.

B.

- My mediator offered psychological or emotional counselling to me.
- My mediator did not offer psychological or emotional counselling to me.

C.

- My mediator took sides during mediation.
- My mediator did not take sides with either party during mediation.

D.

- My mediator sometimes made decisions for me.
- My mediator did not make decisions for me.

10. How much are you satisfied with the settlement on the issues of dispute with your spouse through the mediation service?
- very much satisfied
 - satisfied
 - neither satisfied nor dissatisfied
 - dissatisfied
 - very much dissatisfied
11. Do you agree that the fee you paid for the mediation service was fair?
- not applicable – I did not have to pay for the service
 - very fair
 - fair
 - no comment
 - unfair
 - very unfair
12. Do you agree that you were able to discuss issues of dispute with your spouse through the mediation service in a peaceful manner?
- very much agreed
 - agreed
 - no comment
 - disagreed
 - very much disagreed
13. Do you agree that you were able to discuss issues of dispute with your spouse through the mediation service in a reasonable manner?
- very much agreed
 - agreed
 - no comment
 - disagreed
 - very much disagreed
14. Overall, are you satisfied with the mediation service you received?
- very much satisfied
 - satisfied
 - neither satisfied nor dissatisfied
 - dissatisfied
 - very much dissatisfied

15. Would you introduce the mediation service to your friends/relatives in the future?
- yes, certainly
- not sure
- no, certainly not
16. Would you use this service if you had to pay?
- yes
- no
- it depends on the amount charged
- other situations, please specify: _____
17. If there were charges for this service, how much at most would you be willing to pay? _____

- Thank You -

Note: Questions 16 and 17 were introduced in 2003

Appendix F

Evaluation Study on the Pilot Scheme on Family Mediation

**Interview Guide
(for petitioners/respondents/applicants)**

This guide serves the purpose of providing a framework to collect from the interviewee information relevant to understanding the client's evaluation of family mediation services and the Pilot Scheme. The client's evaluation helps to identify characteristics of the mediation process, assess the outcomes and effectiveness of mediation, the factors associated with the agreement or non-agreement of the petitioner/respondent, and the client's satisfaction. It is noted that the interview will be conducted with a high sensitivity to the client's pace and readiness for self-disclosure.

Interview no. _____
Date of interview _____
Place of interview _____
Time of interview _____
Name of interviewer _____

1. Information about the interviewee
 - 1.1 FCMC no.
 - 1.2 Name
 - 1.3 Telephone no
 - 1.4 Sex
 - 1.5 Age
 - 1.6 Occupation
 - 1.7 Length of marriage
 - 1.8 Type of mediator (SWD/NGO/private practitioner) (delete where appropriate)

2. Reasons for choosing mediation
 - 2.1 How did you come to know about family mediation?
 - 2.2 In what ways did you think family mediation could help you resolve divorce-related problems? For what reasons did you and your partner want mediation? Whose initiative was it to try mediation? How did you and your partner come to a joint decision to try mediation?
 - 2.3 Had you tried other services (e.g., legal, counselling, social work) before you chose mediation? If yes, what were your reasons for choosing mediation to help you sort out matters related to divorce as compared to other means?

3. Pre-mediation (the period from filing the application for mediation to beginning mediation)
 - 3.1 How did you choose your mediator?
 - 3.2 What did you understand by the purpose of mediation and your role in mediation?
 - 3.3 What steps were made to prepare yourself and your partner for mediation?
 - 3.4 How long had you waited until mediation was begun? Do you think that the duration of this period was reasonable? What was your experience about this 'waiting' period?
 - 3.5 Do you have any suggestions for improvements regarding this pre-mediation stage?

4. The mediation process (the period from the beginning of mediation up to the receipt of the report by the MCO of the outcome of the mediation)
 - 4.1 How many mediation sessions, individual and joint, did you have?
 - 4.2 Did you have one mediator or co-mediators? Do you prefer a single mediator or co-mediators? Why?
 - 4.3 Did the mediation take longer or less time than you expected? What is your view of the duration?
 - 4.4 Did you have to pay for the mediation? If yes, how much and did you think the fee was reasonable?
 - 4.5 What concerns were settled through mediation and what were not?
 - 4.6 Was your child(ren) physically present in the mediation interview? Why and why not? What were your considerations?
 - 4.7 Were you satisfied with the outcomes (tangible and intangible) of mediation in terms of the following aspects:
 - 4.7.1 tangible: time cost, monetary cost, terms of agreement
 - 4.7.2 intangible: own decisions, communication with former partner, reduction of conflicts with former partner, continuing relationship in co-parenting of child(ren)
 - 4.8 How would you comment your mediation experience?
 - 4.9 Were you receiving other services (legal, counselling, social work, etc.) at the same time that you were undergoing mediation? If yes, what outcomes do you think were brought about by mediation?
 - 4.10 Did you think that your mediator was an appropriate mediator, in terms of gender, advice given, the way he/she conducted the mediation process and interviews, methods used (directive, non-directive, facilitative, etc.)?
 - 4.11 Would you like to see any improvements made to the following?
 - 4.11.1 the Scheme (such as the referral time and procedures, coordination, funding)

- 4.11.2 the process of mediation (such as the top-up fee if any, the duration, number of sessions, involvement of each of the spouses and of the child(ren))
- 4.11.3 the mediator (such as gender, knowledge, skills, advice given)
- 5. Post-mediation (three months from the receipt of the mediation outcomes report by MCO)
 - 5.1 Were there any reviews and revisions of the agreement?
 - 5.2 Is the agreement sustainable?
 - 5.3 Were any variations to the agreement made at mediation?
 - 5.4 Are there any legal proceedings as a result of the failure to enforce the agreement?
 - 5.5 What is your overall comment on the Scheme?

Thank you for your cooperation

Appendix G

Evaluation Study on the Pilot Scheme on Family Mediation

Interview Guide (for Children)

Introduction: Parental separation/divorce will have an affect on children. The objective of interviewing the children of the clients is to explore whether parents have involved their children in terms of disclosures, discussions, expressions of opinion and feelings in response to their separation/divorce and parenting plan. The hypothesis of the study of this area is: If parents have involved their children in the form of informing, consulting, or inviting them to attend mediation sessions, etc., the results of such an involvement would allow their children to voice their opinions so that an informed parenting plan can be made. Furthermore, the anxiety and feeling of uncertainty of the children would be lessened if they are asked to take part in the process of discussion and decision-making.

Note: (1) This is the translated version of the original Chinese interview guide, the latter of which should be used when interviewing Chinese children. (2) The interviewees should be the son/daughter of parents who have taken part in the family mediation service; (3) the interviewee should be the eldest son/daughter aged below 18 and, if no consent is given or if the eldest child is not available, the researcher shall ask any available child of the couple, aged below 18, to be interviewed; (4) a parental consent form should be signed by each parent before the interview, and (5) the child should be interviewed alone, except when requested by his/her parents or under special circumstances.

The interviewer will be sensitive to the informants' age and ability to express themselves, and their emotional responses. The emotional well-being of the informants should always be the foremost consideration, not the attainment of the goals of this study. The interviewer will be very careful not to arouse feelings of discomfort in the informants, nor ignore the possible negative consequences of the interview. At the beginning of the interview, the interviewer will warm up with small talk and the interview will only proceed when the informant is judged to be ready to begin answering questions. The questions in the interview guide are for reference. The interviewer will carefully attend to the emotions of the informant and to add or delete questions from the interview guide where appropriate.

The interviewer may follow the natural flow of the conversation with the informant if the latter initiates disclosure of his/her case-based information, but the interviewer will exercise professional judgement to end the interview if the process and/or facts of the disclosure are assessed to be of concern and /or harmful to the informant. The interviewer may then take appropriate action or make a referral to another professional according to the needs of the informant or the situation.

Code of the Interview : _____
Date of the Interview : _____
Place of the Interview : _____
Time of the Interview : _____
Name of the Interviewer : _____

1. Background Information

- 1.1 Case file number of the parent (Father/Mother) _____
- 1.2 Sex/Age _____
- 1.3 Student: form/primary _____ or occupation _____
- 1.4 Do parents live with the child-interviewee? _____
- 1.5 Number of siblings _____, birth order _____
- 1.6 Receipt of other professional services while using family mediation services

2. Interview Guide

- 2.1 When did you know about your parents' idea to separate/divorce?
- 2.2 When did you know that your parents had started family mediation?
- 2.3 Do you know what family mediation is? What are the goals of family mediation?
- 2.4 Have you ever taken part in a family mediation session?
(If yes, answer questions from 2.5 to 2.13; if not, answer questions from 2.14 to 2.18)

- 2.5 Who asked you to attend those sessions? Did that person tell you about the goals of the sessions and prepare you to attend them?
- 2.6 Did you want to go?
- 2.7 Did you know the purpose of attending those sessions?
- 2.8 Who was there in the last session you attended?
- 2.9 Had you been asked to give your views at the family mediation session?
- 2.10 Did you feel that your views were taken into consideration?
- 2.11 Do you think that your taking part in the family mediation session was helpful to resolving problems caused by the separation/divorce of your parents?
- 2.12 Do you think that your taking part in the family mediation session was helpful to resolving your own problems?
- 2.13 How did you feel after attending the family mediation session?
- 2.14 In your opinion, has family mediation helped your family? If the answer is yes, in what ways do you think your family has been helped?
- 2.15 Do you think the relationships between you and your parents, and between you and other members of your family have changed or not? If change is noted, please describe the change.
- 2.16 Have your parents ever asked you for your opinion about their decision to separate/divorce?
- 2.17 Do you know the parenting plan made by your parents in the family mediation session? Have they explained the child-care arrangements with you? Do you understand? Are you satisfied?
- 2.18 In your opinion, what kinds of services or professionals can help you more than the family mediation service?

Appendix H

Evaluation Study on the Pilot Scheme on Family Mediation

Opinion Study

1 August 2001

Dear Sir/Madam,

The Hong Kong Polytechnic University is evaluating the Pilot Scheme on Family Mediation on behalf of the Judiciary. We understand that you have decided NOT TO USE the service after attending the information session. We want to find out why you made this decision, and will greatly appreciate it if you could spare a few minutes to answer a short questionnaire at the back of this letter. What you tell us will enable us to know more about the operation of the scheme and to suggest ways to improve the service.

We will not need any personal data from you. All of the questionnaires are anonymous and will be destroyed within three months after the study.

The help that you give to the study is very much appreciated.

Prof. LEE Ming-kwan
Department of Applied Social Sciences
The Hong Kong Polytechnic University

Evaluation Study on the Pilot Scheme on Family Mediation

Opinion Study

Please give a $\sqrt{\quad}$ in the appropriate .

1. From which source of information did you come to know about the family mediation service?

- Television
- Radio
- Newspapers
- Social Workers
- Lawyers
- Family Court
- Friends
- Others (please specify), _____

2. Reasons for NOT USING the family mediation service (you can $\sqrt{\quad}$ more than one box):

- I do not intend to divorce.
- I will seek marital counselling to reconcile with my spouse.
- My spouse does not like/opted out of this service.
- I will try mediation services offered outside the Pilot Scheme.
- I will hire a lawyer for divorce litigation.
- I am not sure whether the mediation service can help me.
- Other reasons (please specify).

3. Your age: _____

4. Your sex: Male Female

Thank you very much.

Appendix I

Evaluation Study on the Pilot Scheme on Family Mediation

Interview Guide

(for Mediators)

This guide serves the purpose of providing a framework to collect from the interviewee information relevant to understanding the evaluation of the mediator as a service provider on family mediation services and the Pilot Scheme. The mediator's evaluation helps to identify characteristics of the mediation process, assess the outcomes and effectiveness of mediation, and factors associated with the agreement or non-agreement of the petitioner/respondent, and the satisfaction of the client.

Interview no. _____
Date of interview _____
Place of interview _____
Time of interview _____
Name of interviewer _____

1. Information about the interviewee
 - 1.1 Name
 - 1.2 Type of organization
 - 1.3 No. of (mediation) practice years
 - 1.4 Type of discipline
 - 1.5 No. of mediation cases handled (under the pilot scheme)

2. Profiles of clients (the interviewee will be contacted prior to the interview so that he/she can prepare the following information)
 - 2.1 Age group
 - 2.2 Occupational profile
 - 2.3 Reasons for divorce
 - 2.4 Reasons for choosing mediation
 - 2.5 Concerns of clients
 - 2.6 Familial characteristics (such as child abuse, spousal abuse, substance abuse, alcohol abuse, etc.)
 - 2.7 Average duration of the mediation process? Any correlation with the above?
 - 2.8 Average no. of sessions, joint and individual?
 - 2.9 No. of cases with agreement
 - 2.10 No. of drop-out cases

3. About the mediation service (A general impression, use two representative cases, one difficult and one smooth, to illustrate the impression)
 - 3.1 Were any fees charged? If yes, how much and on what basis?
 - 3.2 Who are mediatable, and who not?
 - 3.3 Reasons for dropping out?
 - 3.4 What were offered to the non-mediatables and drop-outs?
 - 3.5 Was there any review of the effectiveness/sustainability of mediation?
 - 3.6 What did the clients like about mediation, and what not?
 - 3.7 What was the clients' knowledge and impression of mediation before and after mediation?
 - 3.8 Can you identify the different stages of mediation? What are the common issues at different stages of mediation?
 - 3.9 In what ways did the clients benefit from mediation?
 - 3.10 Are there any limitations on mediation?
 - 3.11 What sorts of knowledge (e.g., legal, financial), skills (e.g., counselling, negotiating) and qualities (e.g., patience) are required to conduct mediation?
 - 3.12 Experience of co-mediation? When should co-mediation be used?
 - 3.13 Are you satisfied with the existing arrangements under the pilot scheme with regard to offering mediation services, and reaching agreement? Are any improvements needed?
 - 3.14 Did you make any contact with the referrer (lawyer, etc.)? On what grounds?

Thank you for your cooperation

Appendix J

Evaluation Study of the Pilot Scheme on Family Mediation

Interview Guide

(for Referrers)

Note: (1) This is the translated version of the original Chinese interview guide, the latter of which should be used when interviewing Chinese respondents. (2) After the case has referred to the Family Mediation Coordinator, an interview should be arranged at the earliest available time. (3) The interview is voluntary. A consent form should be signed by the referrer before the interview.

Code of the Interview: _____

Date of the Interview: _____

Place of the Interview: _____

Time of the Interview: _____

Name of the Interviewer: _____

1. Background Information

1.1 Name: _____

1.2 Sex/Age: _____

1.3 Occupation: _____

1.4 Number of years working in your occupation: _____

1.5 Name of your organization/address: _____

1.6 Telephone number at work: _____

1.7 Fax number at work: _____

2. Interview Guide

- 2.1 Since the start of the Family Mediation Pilot Scheme, how many cases have you referred to the Family Mediation Coordinator?
- 2.2 Do you think the referral procedures are easy? If not, would you give suggestions for improvement?
- 2.3 Do you think you need to follow up the case after it has been referred? Why?
- 2.4 During the process of referral, what has satisfied you the most? What has made you feel the least satisfied?
- 2.5 In your opinion, what suggestions can be made to improve the referral method and process?
- 2.6 What are your expectations towards family mediation?
- 2.7 What is your opinion if asked to compare family mediation with the way lawyers handle a separation/divorce?
 - 2.7.1 when time is considered (reaching agreement)
 - 2.7.2 when fee charging is considered (cost)
 - 2.7.3 when dealing with conflicts is considered (skills)
- 2.8 In your opinion, what kinds of problems arising from separation/divorce are most suitable to be handled in family mediation? Why?
- 2.9 In your opinion, when is the most appropriate time to refer a case for family mediation? Why?
2. 10 In your opinion, which kinds of professional should take up the role of family mediator? What kinds of qualification and attributes should they possess?
2. 11 Do you have any opinions and suggestions as to the operation of the Pilot Scheme on Family Mediation?

Appendix K

The Evaluation Study on the Pilot Scheme on Family Mediation

Interview Guide (for Service Providers)

This guide serves the purpose of providing a framework to collect from the interviewee information relevant to the evaluation of family mediation services and the Pilot Scheme as a service provider. All of the information provided will be kept confidential and used in the evaluation study only.

Date of interview _____
Place of interview _____
Time of interview _____
Name of interviewer _____

4. Information about the interviewee
 - 4.1 Name
 - 4.2 Organization
 - 4.3 When did the service start in your organization?
 - 4.4 No. of accredited family mediators in your organization
 - 4.5 No. of accredited family mediation supervisors in your organization
 - 4.6 No. of mediation cases handled by your organization since the Pilot Scheme began
5. Major questions
 - 5.1 Your view on family mediation services based on your experience as a service provider in the Pilot Scheme.
 - 5.2 Your view on the role of the Government in mediation service.
 - 5.3 What roles can NGOs play in family mediation services?
 - 5.4 Your expectation/view on the role of private practitioners in family mediation services.
 - 5.5 What roles can the SWD play in providing family mediation services?
 - 5.6 Do you have any suggestions on fee-charging policies in HK? Which policy would your organization likely adopt?
6. Any other views/matters?

Thank you for your cooperation

家事調解試驗計劃評估研究

最後評核報告摘要

1. 本報告匯報家事調解試驗計劃的顧問研究所得出的主要評估結果。報告覆蓋之時間由 2000 年 5 月 2 日至 2003 年 4 月 30 日。研究之目的是(i)瞭解是項服務使用者背景的概況；(ii)探討在調解服務方面備受關注的課題；(iii)探討這項計劃對法院工作的影響；(iv)研究調解的成效；(v)調查使用者對調解服務的滿意程度；以及(vi)理解公眾人士對在本港提供家事調解服務的接受程度。

2. 就這項研究而言，研究小組所蒐集的資料源自幾個方面，包括來自調解統籌主任辦事處及家事法庭登記處的官方資料，以及與調解服務使用者、調解員及轉介人員訪談所得資料。除此之外，研究小組亦透過使用者的滿意程度調查，以及兩次就公眾人士對於在本港提供家事調解服務的態度所進行的電話調查，蒐集數量化的資料（報告正文第 4.5 段）。

3. 關於公眾人士所抱態度的兩項調查結果顯示，21.1%至 25.0%的人士曾聽聞這個試驗計劃（第 5.2 段），而他們主要是透過各類媒體得悉有關計劃的（第 5.3 段）。與法律訴訟相比，公眾人士對家事調解服務評價較高，而且認為這項服務應更廣泛地推行以作為解決離婚爭議的途徑（第 5.13 及 5.14 段）。家事調解較家事訴訟更勝一籌的原因如下：—

- a. 可節省時間（第 5.5 段）。
- b. 可減少費用（第 5.6 段）。
- c. 可減低對家庭關係所造成的傷害（第 5.7 段）。
- d. 可給予雙方更多機會在解決紛爭的過程中表達意見和提出其關注的事項（第 5.8 段）。
- e. 可達成雙方俱較有可能持續履行的協議（第 5.9 段）。
- f. 可使雙方能有最佳的溝通（第 5.10 段）。
- g. 可幫助雙方在離婚後更能和衷合作，繼續履行為人父母的責任（第 5.11 段）。

4. 從調解統籌主任辦事處蒐集得來的資料顯示，是項服務的使用者的概況如下：—

- a. 大部份使用者已結婚 5 年至 14 年，育有子女，而年齡為 30 多歲至 40 多歲（第 6.1a 段）。
- b. 多於半數的使用者曾受中學程度教育（第 6.1b 段）。
- c. 約半數的使用者為「白領」人士（第 6.1c 段）。
- d. 約 80% 的男性使用者及約 60% 的女性使用者是有收入人士（第 6.1d 及 6.1e 段）。兩者的入息中位數分別是 10,650 元及 5,400 元（第 6.1f 段）。
- e. 女性使用者有律師代表的可能性幾近男性使用者的兩倍。女性使用者使用法律援助服務的機會也較男性使用者為大（第 6.3 段）。

6. 就服務的提供和成效而言，調解統籌主任辦事處的官方統計數字顯示：—

- a. 截至 2003 年 5 月 14 日，總共有 3,179 人出席共 594 次調解講座（第 7.3 段）。
- b. 87.5% 的出席者完成調解統籌主任辦事處的初步評定；其中 999 宗個案分別獲轉介社會福利署（25.7%）、非政府組織（35.6%）及私人執業者（38.7%）以便接受調解服務（第 7.4 及 7.12 段）。
- c. 超過 70% 的個案完成是否適合調解的初步評定，並於一星期內由調解統籌主任轉介調解員（第 7.14 段），而調解員需時少於 3 個月完成的個案則約佔四分三（附錄 B，附表 B33）。
- d. 在 2000 年 5 月 2 日至 2003 年 5 月 14 日期間已完成調解服務的 933 宗個案中，69.5% 達成全面協議；另外 9.7% 則達成局部協議（第 7.17 及 7.18 段）。
- e. 以界別而論，社會福利署調解員在達成全面協議方面有最高的成功比率（74.4%），而他們完成處理調解個案所需時數也是最少的（第 7.22 及 7.24 段）。
- f. 平均來說，達成全面協議的個案需要 10.33 小時；達成局部協議的需要 13.77 小時；而沒有達成協議的則平均用去 6.78 小時（第 7.23 段）。

7. 就使用者的滿意程度而言，服務使用者的滿意程度調查顯示：—
- a. 差不多 80.5% 的被訪者表示對提供的調解服務感到「非常滿意」或「滿意」（第 8.1 段）。
 - b. 超過 60% 的被訪者同意，他們在所接受的調解服務中能以平和合理的方式與配偶討論爭議事項（第 8.4 及 8.5 段）。
 - c. 超過 80% 的被訪者表示，調解員在提供調解服務的過程中均能保持中立無偏（第 8.6a 段）。
 - d. 絕大部份（95.1%）的被訪者表示調解員並沒有自行為他們作決定（第 8.6a 段）。

8. 調解服務的使用者在面談中對該服務有甚為正面的評價：—

- a. 調解服務替使用者省回時間和金錢（第 8.7a 段）。
- b. 調解服務具教育作用，使他們學習到如何用有建設性的方式來處理離婚問題（第 8.7b 段）。
- c. 調解服務能紓緩緊張的形勢，促使雙方達成協議（第 8.7d 段）。
- d. 調解服務使雙方更易於在離婚的事情上展開對話（第 8.7e 段）。

此外，使用者也就若干問題表達了以下意見：—

- e. 雖然使用者歡迎免費提供的服務，但也願意支付某一數額的費用（第 8.18 段）。
- f. 這項服務的名稱令某些使用者產生誤解（第 8.19 段）。
- g. 調解員與律師所做的工作間或互有衝突（第 8.26 段）。

9. 顧問研究小組曾與調解員及轉介人員進行面談及小組討論，以蒐集及了解他們對是項調解服務的意見。現將各方就各主要事項所發表的意見概述如下：—

- a. 有不少人贊同強制正在分居或離婚的夫婦接受服務（第 9.10 段）。
- b. 一般意見認為應該收取費用（第 9.11 段）。

- c. 調解有助加快法律程序（第 9.13 段）。
 - d. 調解的費用遠較法律費用低廉（第 9.14 段）。
 - e. ‘串列方式’，即先調解後再尋求法律服務比‘並列方式’或在法庭於聆訊離婚的附帶法律程序時才轉介當事人接受調解的方式，更能減少這些服務的互相干擾，因此效果更為理想（第 9.16 段）。
10. 估計在推行這項試驗計劃後，法庭用以聆訊家事糾紛案件的時間減少了約 204.3 天。法庭時間的減省可以作為調解服務的「效率」指標（第 10.6 及 10.7 段）。
11. 研究小組在分析至今蒐集所得的資料後，對是項試驗計劃有以下見解：—
- a. 有力證據顯示：在香港社會裡，家事調解是解決爭端的另一可行方案。
 - b. 雖然調解員普遍贊成強制有關人士使用調解服務，但是這樣畢竟有違是項服務的自願參與性質。
 - c. 由法院提供的調解服務與由社會各界提供的調解服務各有好處，兩者應該並存，讓使用者得到最大的益處。
 - d. 澳大利亞和新加坡的法庭可指示婚姻訴訟雙方嘗試進行調解。對於在香港推行由法院提供的調解服務，這兩地的經驗皆具參考價值。
 - e. 調解統籌主任的職責應集中於提供資料及統籌和協調各種服務。
 - f. 不同的提供服務者都各自受到不同類別的使用者歡迎，一套多元化的服務模式才能夠兼顧到更多類別人士的不同需要。
 - g. 家事調解與法律服務之間出現“並行相悖”的情況。串列的服務模式比並列的服務模式更為可取。
 - h. 使用者認為酌量收費是可以接受的，而這樣也可能令到他們更能善用是項服務，從而提高服務成效。
 - i. 計劃的名稱有待商榷，因為曾有一些市民誤會這是一項調停婚姻問題的服務。

12. 研究小組根據調查結果作出以下建議，供司法機構考慮：—
- a. 家事糾紛的調解服務在香港有存在的空間。現行的相關法例應該作出修訂，使到調解安排及經調解而達成的協議得以在婚姻法律程序的解決爭議範疇內具有法律地位。
 - b. 在整個離婚及其附帶的法律程序進行期間，離婚夫婦應該在任何階段都可選擇使用調解服務。在提供服務的層面而言，由法院提供的服務與由社會各界提供的服務應該兼而有之，故此，應在香港採用兩者並行的運作模式。
 - c. 此外，香港亦應推行包括不同服務提供者的多元化服務。由法院提供的服務應由政府經辦，而由社會各界提供的服務則應由各非政府機構及私人執業者經辦。
 - d. 調解服務的運作成本應該由選擇使用是項服務的人士承擔。有能力負擔者應該繳費，無能力負擔者則應獲豁免全部或部份費用。
 - e. 調解統籌主任篩選適合使用者的職責應予免除。調解統籌主任的職責應以提供調解服務資料及統籌各種調解服務為主。
 - f. 應規定所有申請法律援助人士都必須出席調解統籌主任辦事處舉辦的調解講座。在這方面，法律援助署署長應獲授權使其得以規定申請法律援助的人士出席有關調解及其他相關服務的講座。
 - g. 就獲得法律援助的使用者而言，先調解後再尋求法律服務的串列模式較諸同時接受兩種服務的安排更具效益和更能節省公帑。
 - h. 申請法律援助的人士如選擇以調解方式解決糾紛，則調解費用應包括在法律援助的費用之內。
 - i. 此項服務的名稱應改為「離婚爭議事項調解服務」(divorce mediation)，以免公眾人士誤以為這是一項調停婚姻問題的服務。