

Your Honours,

The Law Society, and several NGO's I am also associated with, greatly welcome the Administrations intention to extend legal aid to cover mediation in legally-aided matrimonial cases.

The LAD's scheme confirms the Judiciary's findings that Mediation is of considerable Value to divorcing families. Mediation promotes understanding, co-operation and allows positive change that affects the family now, *and* affects the future families of the current children. Mediation is an investment in our Future.

Without Mediation, families of Divorce often remain stressed and stuck - frozen in dispute and discontent – Without Mediation these families are more needful of expensive Government and other Court Services and they stay buried in the Past. Without Mediation the Court system is overloaded.

We all agree that Mediation is essential. The only question is how to go about it.

The small caseload for the LAD Scheme is of no real significance. The earlier Judiciary Scheme proved that Mediation works. You only need to take a few cases through the LAD system to see where issues arise.

What the LAD scheme needs to concentrate on is *how to implement* mediation - for example:

Firstly the funding implications of those cases where only one party is legally aided.

One mediator is engaged by two Parties.

Secondly, If a party with Private Funds wants to hire a Professional Mediator – who charges more than the \$600 fee paid for by LAD – Is that allowed?

Would the LAD then contribute \$600 towards the cost – or only \$300 for its client's share?

What happens if the Legally-aided client cannot not raise the balance of the funds?

Would that that be a refusal to mediate? And who is doing the refusing? The legally-aided party or the LAD?

and

Thirdly, the implications of limiting legally-aided mediation costs to \$600 per hour – the Charity funded rate.

The \$600 mediators fee adopted by the Judiciary Scheme, and then LAD Scheme, was based on the Social Work Pay Scale. The NGO's actual cost of providing the service was just over \$800 per hour – there was, and is, a 25% funding shortfall.

The shortfall was accepted because the priority was for the Scheme to go ahead so that Government could appreciate the effectiveness of Mediation.

My Agency was able to participate in the Judiciary Scheme because the Community Chest and Jockey Club helped subvent the costs of the Service. Our Mediators take-home pay was HK\$100 per hour.

There was no Charitable subvention available for the LAD Scheme and so my Agency could not provide mediators.

An essential difference between the Judiciary Scheme and the LAD Scheme, was that the Judiciary Scheme allowed Top-Up Fees. The Government would pay the first \$600 and parties could elect to choose more experienced mediators by paying the difference in cost themselves. This allowed more Professionals and Solicitors and Barristers to be on the Mediation Panel. The Top-Up Scheme allowed more Choice.

The Solicitor Mediators I have spoken to joined the LAD scheme for various reasons. Some because doing 10 cases will give them an extra qualification. Others because doing the occasional case will maintain their qualifications, and others volunteer their time as providing the service keeps Mediation in the public eye.

Solicitors Firms cannot afford to run a mediation practice on the basis of the HK\$600 per hour per couple. Only sub-vented Agencies can manage that rate.

Professional Mediators – charge in the region of \$3,000 per hour per couple. (\$1,500 per client) The LAD rate is \$600 per hour per couple (\$300 per client).

If Parties can choose a Professional Mediator – there is more likelihood of clients opting to choose Mediation as a forum – thus reducing pressure on the Court system and freeing up Judge time to allow a more efficient use of resources.

The current \$600 fee is increasing the likelihood that Mediation will be seen as a Charitable event – a Poor Cousin – and that Poor Cousin association of idea will bleed through into other legal areas.

For Mediation to become a route of Choice - it must be seen to be Valued as a viable legal channel – legal rates and Professionals are more likely to promote a legal association of idea than are the use of charitable agencies.

NGO's offer fully trained and qualified mediators but I am making a distinction between Agency mediators, Solicitors who donate time with *pro bono* work and Professional

Mediators, to highlight that there are individuals who wish to make some kind of living out of doing Mediation.

The Government does not seem to be Valuing Mediation as a serious legal avenue. The fee scale proposed by Government seems to have no bearing on the cost of education, training and responsibility of a Mediator. \$300 per hour per client is what a Masseuse charges.

It seems very odd that a Trainee Solicitor, who cannot yet qualify as an Accredited Mediator, can be charged at \$1,400 per hour per client; whereas a Solicitor Mediator, with at least 3 years PQE, and more skill and training, is only paid the equivalent of \$300 per client.

Until the Government is seen to Value Mediation; the public will remain convinced that Mediation is a poor option; and the public will continue to clog the Courts, to attend the FDR scheme, where a well-trained Judge; at his hourly rate; and at even more cost to the Government, will then proceed to mediate with the parties.

If the Civil Justice Report wants Mediation to be a Player – Mediation should be treated with the same respect and value as other legal channels. If Government continues to devalue Mediation – it will always be the Poor Cousin and the Courts will remain clogged.

The low rate suggested for Family Mediation services – significantly undermines its credibility as a serious legal avenue. In the early stages of introducing mediation to the Courts, perception is very important – Justice needs to be seen to be done – what is being seen to be done here is Charity.

Charity is a good thing. The LAD does a good job and has many understandable funding constraints and many people do need Charity – that is a fact of life. And for those cases where both parties are legally aided, Charity may be all that is available.

But where only one party needs legal aid; where only one party is temporarily embarrassed for funds; the LAD must be allowed to fund that party to participate in a Professionally charged mediation – which would allow a share of costs in the region of \$1,500 per person.

For these reasons - The Way Forward from here is to:

- 1) allow legal aid for the funding of Family Mediation Services, and
- 2) allow the LAD to fund proper Professional Rates.

The first point is good for Families; and the second point is good for Court Resources and Mediation as a whole.

Thank you