

Submission to the Meeting of the Legislative Council Panel on Administration of Justice and Legal Services on 23 April 2013.

Provision of Mediation Services in Hong Kong

Introduction

1. It is now 4 years since the introduction of Civil Justice Reform in Hong Kong, and it is the right time to reflect on what have been achieved thus far as well as to plan ahead for the next 4 to 5 years.
2. The Mediation Ordinance (Cap. 620) (MO) was passed at the Legislative Council on 15 June 2012 and came into operation on 1 January 2013. The Hong Kong Mediation Accreditation Association Limited (HKMAAL) was incorporated on 28 August 2012, and was officially launched on 2 April 2013. Looking forward, what can we do to provide more and better mediation services in Hong Kong? I shall look at several areas, share my views and suggest some solutions, where appropriate.

Training and Accreditation

3. Both the number of training bodies and the number of individuals who have gone through the 40-hours training courses in mediation has increased rapidly and steadily in the last couple of years, just before the establishment of the HKMAAL and the enactment of the MO. The standard of training varies. In order to ensure the standard, it was deemed necessary to have a single accreditation body for mediators. This idea was supported by the 4 largest bodies in Hong Kong which had their own panel of mediators.
4. We are waiting to see how the other four Council Members are to be elected by members of the HKMAAL, and how the two members who are not members of the HKMAAL are to be co-opted. After that, the Association will form its committees, recruit a number of assessors, compose a list of accredited mediators and start working to fulfill its goals.
5. Apart from ensuring the standard of accredited mediators, it is also hoped that this Association will work out the number of mediators required in Hong Kong in the immediate future. Without this study and projections, Hong Kong may be following

the steps in the UK, which has produced too many mediators, many of whom end up not doing any mediation at all.

6. The third area for study is to work out the optimal duration of Stage 1 training. In my opinion, 40 hours training is not enough, and it should be increased to at least 50 hours with more role plays incorporated.
7. A fourth area for study is how much knowledge in composing a Settlement Agreement should be expected of a trained mediator.
8. A fifth area for study is whether there should be any higher training for mediation alone (without arbitration) and the creation of a 'Fellowship', in order to enhance the status of mediators as a professional.

Mediation Ordinance

9. In S8 (2) (d), it is not clear why only "serious harm to the well-being of a child" is considered and not any person or the elderly.

Professional Indemnity Insurance

10. Although it has been agreed that mediators are encouraged to take out Professional indemnity insurance for good reasons, the choice in the market is only one at the moment. Moreover the plan is on a claim basis and not on an occurrence basis, which offer better protection to the mediators than the former arrangement. It is hoped that the insurance industry will provide more services in this respect

Gathering Information for Research and Evaluation Purposes

11. We can get statistics on mediation from CEDR, China and Singapore, but no such figures are available in Hong Kong, except in some pilot schemes. In order to facilitate the development of mediation, which is still in its infancy in Hong Kong, it is proposed to set up a Central Registry. This Registry will collect all the data, do the analyses and publish reports from time to time. Identities of the Parties (including the mediator) need not be revealed.

Community Venues for Mediation

12. At present, there are only two community venues which provide free of Charge venues for *pro bono* mediations, namely the Leighton Hill Community Hall and the Henry G. Leung Yaumatei Community Centre. The Wanchai District Council has been reluctant to renew its permission for this purpose citing the low utilization rate as the reason. From my personal experience, the fact is the venue is not designed for mediation purpose. The time slot is only for half a day, there is no fax or photocopying facilities available, the set up of the large room is catered for committee meetings such as those for the incorporated owners, the mediator is asked to carry the furniture himself from the store room if he wants to use a small room for separate meetings, the adjacent rooms are being used for other purposes such as opera singing with very little sound proofing, and no food or drinks (other than plain water) are allowed in the premise etc. It is hoped that more and better venues will be made available for mediations, especially for *pro bono* cases.

Commitment from Law Schools

13. It is hoped that mediation will become one of the core subjects in the LLB, JD and PCLL courses in the three law schools in Hong Kong.

Co-mediators

14. This can be arranged and encouraged by the training centers or some pilot schemes. It may be arranged between experienced and newly-accredited mediators, or between two mediators of different specialties and background. However, it should not be enforced by law.

Conclusions

15. There are still much work to be done by the different stake holders: the judiciary, the different organisations, the different professionals and the individual mediators in order to provide more and better mediation services in Hong Kong in the future.

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