

Secretary for Justice's speech at Mediation Conference 2016 (English only)

Following is the speech by the Secretary for Justice, Mr Rimsky Yuen, SC, at the Mediation Conference 2016 today (May 13):

Mr Justice Barnabas Fung, Mr Raymond Yip, Mr Thomas Kwong, distinguished guests, ladies and gentlemen,

"Mediate First - Advance with the times"

On behalf of the Department of Justice, may I start off by welcoming you all to this Mediation Conference 2016, co-organised by the Department of Justice and the Hong Kong Trade Development Council, and supported by various key players in the field of mediation in the Hong Kong SAR (Special Administrative Region).

This is the fourth Mediation Conference held since 2007. Further, since 2014, the Department of Justice introduced Mediation Week. As the name denotes, various programmes were organised within a week so as to promote interest in mediation. As today's Conference marks the closing of Mediation Week 2016, may I take this opportunity to share with you some thoughts on this year's theme, "Mediation First - Advance with the times". Two key areas will be covered, namely, a brief survey of what had been done in the past, and what will be the future directions and challenges.

Hong Kong's Mediation Landscape

The use of mediation in Hong Kong can be traced back to the 1980s, if not earlier. Significantly, in 2007, the highest level of our Government formally included the promotion of mediation as part of its policy objectives. Much progress has since been made. Today, mediation is an integral part of our dispute resolution landscape. This development is the result

of the joint efforts of the Government and the relevant stakeholders in four main areas, namely (1) institutional support; (2) regulatory framework; (3) accreditation and training; and (4) public education and publicity.

Institutional Support

Starting with institutional support, it is pertinent to note the role played by various committees and task forces. The first one is the Working Group on Mediation set up in 2008 to map out plans for the overall development of mediation in Hong Kong. The Working Group published a report in 2010 with 48 recommendations which set the scene for subsequent development. In the same year, a Mediation Task Force was established to take forward recommendations including the enactment of the Mediation Ordinance and the establishment of the Hong Kong Mediation Accreditation Association Limited (HKMAAL), which is an industry-led body to oversee matters concerning accreditation, training and discipline. In 2012, the Steering Committee on Mediation was formed to continue with the mission. To-date, the Steering Committee continues to assist in the further promotion and development of mediation in Hong Kong.

Other institutions in Hong Kong have also made significant contributions. Apart from introducing the Civil Justice Reform, which has proved to be a strong catalyst for mediation, the Judiciary set up the Mediation Information Office in 2010 to provide mediation information to the general public, especially litigants in person. Further, since 2009, the Legal Aid Department has extended the provision of legal aid to cover mediation costs incurred by legally aided persons.

Regulatory Framework

In terms of regulatory framework, the Mediation Ordinance, which has been in operation since January 1,

2013, provides a legal framework for the conduct of mediation without hampering the flexibility of the process. The Steering Committee has been closely monitoring the operation of the Mediation Ordinance, so as to ensure that it serves its objectives. Later today, Ms Lisa Wong, SC, the Chairperson of the Regulatory Framework Sub-committee, will launch the Guidelines for Mediation Communication. Confidentiality is one of the most important features of the mediation process. On the other hand, researches based on empirical data are essential to facilitate studies on how mediation can be further and better developed. The Guidelines seek to strike a balance between these two and other relevant considerations, and are yet another step to ensure the smooth and effective operation of the Mediation Ordinance.

Another on-going effort is the study on apology legislation. The key objective is to encourage the making of apologies so as to enhance the possibility of settlements by clarifying the legal consequences of making an apology. Two rounds of public consultation have been conducted since last year and the overall response is positive. The Steering Committee is formulating its final recommendations with a view to introducing appropriate apology legislation in the next legislative year.

Accreditation and Training

In the area of accreditation and training, the HKMAAL that I mentioned earlier assists to ensure the quality of mediators and consistency of standards, which is crucial in maintaining public confidence in using mediation as a means to resolve disputes. Since its commencement of operation in April 2012, there are now a significant pool of accredited mediators with diverse backgrounds and expertise. A question that is often asked is whether this body should be converted into a statutory body. The Government maintains an open mind and we will continue to study the pros and cons of doing so.

Public Education and Publicity

In terms of public education and publicity, you would note that the seminars organised during Mediation Week are mostly sector-specific, including education, medical, community, commercial and intellectual property (IP). The aim is to explore how these specific sectors can make the best use of mediation, as well as to enrich the sustainable development of mediation in Hong Kong.

In order to promote the mediation culture, the Department of Justice initiated the Mediate First campaign in 2009 to encourage businesses and other organisations to first consider the use of mediation before resorting to litigation or other dispute resolution processes. The campaign was repeated in 2013 and 2014. To date, about 360 entities from very different sectors, ranging from international corporations, small businesses and NGOs, have signed the pledge.

Government Commitment to Promoting Mediation

One may ask why the Government is so committed to promoting mediation. There are of course various reasons behind this policy. To highlight a few of them, may I stress the following.

First, as Lord Bingham pointed out, one of the key elements of the rule of law is the provision of effective means to resolve bona fide civil disputes which the parties themselves are unable to resolve (Note 1). Traditional litigation in courts has its strengths, but may not always be able to fully satisfy the needs of parties to disputes. Other dispute resolution processes, including arbitration and mediation, have become increasingly popular both in Hong Kong and beyond. Hong Kong, as a place where the rule of law is our core value, simply cannot afford to turn a blind eye to this important development.

Second, legal and dispute resolution services are closely related to economic growth. Various studies and researches have established this point beyond doubt. As an international financial and commercial centre and to maintain its competitiveness, a robust dispute resolution regime is of utmost importance, and no effective dispute resolution regime can be completed without an effective mediation service.

Third, globalisation and regional integration have significantly transformed the global economy and posed new challenges. Against this background, the world is not lacking in new economic initiatives. Examples include China's Belt and Road Initiative and the ASEAN's Regional Comprehensive Economic Partnership, which are opening up exciting business opportunities. While the volume of cross-border activities is expected to surge, the same trend can be expected of cross-border commercial and investment disputes. Traditional court litigation has its limitations, and those involved in cross-border trade often find mediation more attractive given its various advantages including flexibility and cost-effectiveness.

Advance with the times

Although considerable efforts have been made in the past, a lot remains to be done and the road ahead is full of challenges. A piece of good news is this: not only has the Hong Kong SAR Government remained firmly committed to promoting mediation, the Central People's Government has also expressed its support by formally stating, for the first time, in the recently announced 13th Five-Year Plan, that it supports Hong Kong's role as a centre for international legal and dispute resolution services in the Asia Pacific region.

Looking forward, we believe mediation should be promoted towards the directions of professionalism, specialisation, integration and internationalisation.

For the purposes of today, I believe the need for professionalism hardly requires further detailed elaboration. In short, the practice of mediation should not be seen solely as a gainful employment. Instead, it should be regarded as a profession and the ultimate consideration is public interest, including the provision of high-quality professional services with the utmost integrity. In this regard, we will work closely with HKMAAL and other stakeholders to ensure that the practice of mediation will be developed along this direction.

Another important aspect is the development of a specialised list of mediators for specific sectors. Similar to other professions such as medical doctors, lawyers and engineers, specialisation is the natural development in the history of every profession. Besides, we expect that the demand for mediation services in specialised areas is going to increase. This happens in, for instance, IP disputes where parties may consider that evaluative mediation may in appropriate circumstances serve their needs better. With over 2,000 accredited mediators with diverse backgrounds and expertise, Hong Kong has an edge to develop specialisation.

Mediation is only one of the various means of dispute resolution. To maximise the potential of mediation, it is necessary to further explore how mediation can be best fitted into the overall landscape of dispute resolution, and how mediation can interact constructively with other means of dispute resolution, such as expert determination and early neutral evaluation, so as to achieve synergy.

Moreover, collaboration and co-operation between different mediation organisations, regardless of their jurisdictions, may enhance cross-fertilisation and thereby generate synergy. In this regard, I am glad to report that in December last year, the China Council for the Promotion of International Trade and the Hong Kong Mediation Centre established a Joint Mediation Centre in Hong Kong. This is

the first joint mediation centre established by major mediation institutions in the Mainland and Hong Kong to provide an effective platform in Hong Kong for resolving cross-order commercial disputes.

Lastly, internationalisation is another important aspect. I have briefly mentioned the upsurge of cross-border disputes. In the context of mediation, the increasing demand for cross-border mediation raises significant issues that call for serious research and studies. One of them is the enforcement of cross-border mediated settlement.

This is not a new issue, but it remains an issue that should be properly addressed. Earlier this year, a Working Group of the United Nations Commission on International Trade Law delivered a report on its study on the matter. In short, it is considering whether an international convention modelled on the New York Convention (Note 2), or model legislative provisions or a guide to legislation enactment, would be the feasible option for addressing the issue of enforcement of cross-border mediated settlement. With a view to ensuring the effective enforcement of mediated settlement agreements, Hong Kong will be following this development closely.

Conclusion

Ladies and gentlemen, it takes time to cultivate a mediation culture, but I believe that we have built a solid foundation for future growth. Today's Conference will provide an excellent opportunity to exchange views on how we may advance with the times and how mediation services can be further improved in Hong Kong.

Before I conclude, I would also like to take this opportunity to express my utmost gratitude to all the supporting organisations, sponsors, and speakers, especially those who travelled from overseas jurisdictions to share with us their insights and experience. Without their

support, Mediation Week 2016 and this Mediation Conference would not have been possible. I, of course, also thank all of you for attending this Conference, since your presence is the best demonstration of the interest in mediation.

On this note, it only remains for me to wish this Conference great success.

Thank you.

Note 1: Tom Bingham, *The Rule of Law* (Allen Lane) (2010), Chapter 8 (at p. 85): “[m]eans must be provided for resolving, without prohibitive costs or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.”.

Note 2: This refers to the New York Convention, which is the international convention dealing with enforcement of international arbitration award. Based on this New York Convention, arbitral awards made in Hong Kong can be enforced in around 150 jurisdictions. Besides, the reciprocal enforcement regimes entered into with the Mainland and the Macao SAR are also modelled on the New York Convention.

Ends/Friday, May 13, 2016