

**Opening Address by the Hon Rimsky Yuen, SC, JP
Secretary for Justice at
MPS-HKMA Medical Experts Training Course in HK 2014
on 6 September 2014 (Saturday)**

Dr Shih (President of Hong Kong Medical Association), Dr Teoh (Head of Medical Services Asia, MPS), Ladies and Gentlemen:

It gives me great pleasure to join you at this opening session which kicks off the “Medical Experts Training Course”.

2. Experts, including medical experts, play an important role in dispute resolution. In the context of traditional court litigation, the engagement of experts’ assistance can be traced back to the sixteen century if not earlier. Over the course of today and tomorrow, I am sure you will be hearing a lot about medical experts’ role in litigation and how to be an effective expert.

3. The message that I want to convey today is that the role of medical experts is not, and should not be, confined to litigation. The landscape of dispute resolution has undergone significant changes in the past decade or so. Amongst the changes is the ever increasing popularity of mediation. I am glad to note from the programme of this training course that you will be having a session on “Mediation and Alternative Dispute Resolution” tomorrow afternoon. Let me make use of this opportunity to say a few words about mediation and medical disputes.

4. In Hong Kong, as in many other places, medical disputes including complaints and claims of medical negligence or misconduct are becoming more common, either as a result of changing public expectations or other reasons. Faced with this situation, we believe mediation can be one of the effective means for resolving medical disputes.

5. As you would know, mediation is a process in which an impartial mediator assists the parties to resolve their disputes by way of settlement instead of adjudicating who is right and who is wrong. As a means of dispute resolution, it has various attractions. Apart from its cost-effectiveness, three key features of mediation are of particular relevance to medical disputes. First, mediation is far more flexible in producing settlements that satisfy the needs of the parties and can go beyond what the court can do. In litigation, the key remedy is monetary compensation. In mediation, the choice of settlement options depend very much on what the parties want and is not confined to financial remedy. Second, the whole process is confidential. In Hong Kong, our Mediation Ordinance contains specific provisions aimed to preserve confidentiality of the entire mediation process. Apart from guarding against unwanted publicity or media attention, confidentiality can provide an environment more conducive to open and frank exchange of views between parties. Third, mediation often can preserve the relationship between the parties, instead of driving them to a point of no return as often happens after a hostile litigation.

6. The Government, and especially the Department of Justice, has been sparing no efforts in promoting the development of mediation and its use in various sectors including the medical sector. Dr Ko Wing-man, the Secretary for Food and Health, demonstrated his support by addressing the Mediation Conference organized by the Department of Justice this March. We jointly organized with the Hong Kong Medical Association a workshop on mediation for disputes in Hong Kong in the same month, and I was delighted to know that it was well attended.

7. In addition, the Steering Committee on Mediation has been considering, among others, how to facilitate a more extensive use of mediation for medical disputes. Amongst others, a sub-group has been set up to study the need for an apology legislation. Experiences and studies in overseas jurisdictions suggest that an appropriate apology at the right time can help a lot in resolving disputes, especially disputes (such as medical disputes) where monetary compensation may not be the priority of the parties. We will publish a report for consultation as soon as the study is completed, and we hope the medical community can offer views and suggestions so that we can decide whether to introduce an apology legislation in Hong Kong.

8. I am glad to note that the medical community is also expressing growing interest in the use of mediation. We have seen, for example, an increase in training courses and programmes on mediation for our medical and healthcare professionals. These include talks and seminars conducted by the Hospital Authority for its staff, as well as the certificate course provided by the Jockey Club School of Public Health and Primary Care of the Chinese University of Hong Kong.

9. Training programmes aside, the support of medical professional bodies and stakeholders is vital to the development of mediation culture. I would urge all of you to develop an interest in mediation and join us in developing a mediation regime which can be used to better serve the parties to medical disputes. Apart from acting as medical experts in litigation, your medical expertise and experience can also be of great value in the context of mediation, whether acting as mediators or advisers to parties engaged in mediation.

10. Ladies and Gentlemen, medical disputes and medical negligence claims are tormenting to both doctors and patients alike. Effective resolution of such disputes is in the interest of all, and mediation provides a promising tool. I hope we can count on your support in promoting its wider use in the medical sector and in Hong Kong at large.

11. In closing, may I wish the “Medical Experts Training Course” every success and every participants a fruitful learning journey.

12. Thank you.