

Keynote speech by DSJ at International Ombudsman Summit 2024 (English only) (with photo)

Following is the keynote speech by the Deputy Secretary for Justice, Dr Cheung Kwok-kwan, at the International Ombudsman Summit 2024 today (December 3):

President Qureshi (President of the Asian Ombudsman Association, Mr Ejaz Ahmad Qureshi), Ombudsman Chan (The Ombudsman, Mr Jack Chan), distinguished guests, ladies and gentlemen,

It is a great honour for me to join you here today at the inaugural International Ombudsman Summit 2024. Let me start with my heartfelt congratulations to the Office of the Ombudsman, Hong Kong, China, on celebrating its 35 years of distinguished services.

The theme of today's Summit is "Ombudsman in a Changing World: Learning from the Past; Preparing for the Future". I also note that my colleague from the Department of Justice will be moderating a panel discussion on Promoting Mediation and Multi-agencies Collaboration in Handling Public Complaints in the following session. I would therefore like to take this opportunity to talk about the use of mediation in Hong Kong, as we learn from the past and prepare for the future.

Learning from the past

The use of mediation has long been recognised as a cost-effective means of a dispute resolution process that encourages amicable settlement and promotes social harmony. In Hong Kong, the Government has started promoting the use of mediation since the 1980s with the Trial Mediation Scheme to settle construction disputes from 16 selected civil engineering contracts. All major public works contracts such as the Airport Core Programme have since 1989 included mediation clauses. With the Civil Justice Reform in 2009, the Judiciary has introduced mediation as a voluntary resolution process to assist parties to resolve disputes amicably, which also benefits the court by reducing the number of cases to trial with consequential savings on judicial recourses.

With the support from the Judiciary and other stakeholders, the Department of Justice has been at the forefront of mediation reform and its rapid development in Hong Kong. The Mediation Ordinance (Cap. 620), enacted in 2012, provides a regulatory framework for the conduct of mediation in Hong Kong without hampering the flexibility of the mediation process. It promotes, encourages and facilitates the use of mediation to resolve disputes and protects the confidential nature of mediation communications. To enhance settlement, Hong Kong enacted in 2017 the first standalone apology jurisdiction in Asia, that is the Apology Ordinance (Cap. 631), which is also the first amongst 56 common law jurisdictions that we have studied to protect statements of fact in an apology legislation.

To increase the awareness and the wider use of mediation, the Department of Justice

launched the "Mediate First" Pledge campaign in 2009. The "Mediate First" Pledge is a non-legally binding commitment where the pledgee pledges to explore the use of mediation first before resorting to other means of dispute resolution. To date, more than 850 companies, organisations, associations and individuals have made the Pledge to "Mediate First".

The quality and standard of mediators are essential for maintaining and enhancing public confidence in the use of mediation. In 2012, the Department of Justice facilitated the establishment of the Hong Kong Mediation Accreditation Association Limited, a non-statutory industry-led premier accreditation body for mediators. Today, we have over 2 200 general mediators accredited by this accreditation body from various backgrounds and expertises capable of handling a wide spectrum of cases, from big ticket arguments to community disputes.

Preparing for the future

We have laid a solid foundation for mediation to flourish in Hong Kong. Looking forward, are we prepared for the future, and what steps we have taken so far?

In furtherance of the Government's continual efforts in deepening mediation culture in Hong Kong, the Department of Justice issued a Policy Statement on the Incorporation of Mediation Clauses in Government Contracts last month (November 6). Being one of the initiatives in the Chief Executive's Policy Address last year, the Policy Statement underlines the Government's commitment to promoting the use of mediation to resolve conflicts in an amicable way. By taking the lead to incorporate mediation clauses in all government contracts, we hope to encourage private companies to include similar mediation clauses in their contracts, thereby further promoting a "mediate first" culture.

Capacity building and nurturing of talents are essential for the provision of quality dispute resolution services. As foreshadowed in the Chief Executive's Policy Address this year, the Hong Kong International Legal Talents Training Academy was officially launched in November this year. The Academy will capitalise on Hong Kong's bilingual common law system and international status to organise practical training courses, seminars, international exchange programmes to promote exchanges among talents in regions along the Belt and Road, with a view to nurturing legal talents conversant with international law, common law, civil law and national legal systems.

In addition, the International Organization for Mediation (IoMed) will have its headquarters established in Hong Kong upon adoption and entry into force of the relevant international convention. The IOMed will be the world's first intergovernmental international legal organisation dedicated to resolving international disputes through mediation. We are now working with relevant government bureaux, departments and contractors to convert the historic Old Wan Chai Police Station into the headquarters of the IOMed. All the above efforts will consolidate Hong Kong's position as a regional centre for international legal and dispute resolution services.

Mediation and the Ombudsman

Amidst this evolution of mediation culture in Hong Kong, we also witness the parallel transformation of the Ombudsman. When the predecessor of the Ombudsman, the Commissioner for Administrative Complaints, was first instituted in 1989, its role was confined to investigating complaints concerning administrative actions of government departments referred by members of the legislature. With successive legislative amendment exercises in the ensuing decade, several landmark changes have been made. First, the public can lodge complaints directly to the Ombudsman. Second, the jurisdiction of the Ombudsman has been expanded beyond government departments to cover designated statutory bodies. Third, and most importantly - the Office of the Ombudsman has been established as a body corporate separate from the Government since 2001.

With its independent identity, direct interface with complainants as well as the public's trust in its impartiality, the Ombudsman is well placed to handle complaints and resolve disputes through mediation. In this regard, I am pleased to note that the Ombudsman has been an advocate of using mediation for public complaints with minor or no maladministration. In 2023/24, the Ombudsman resolved 187 complaints by mediation, and the average time taken was only 13.5 days. Feedback from complainants and participating organisations indicated that over 90 per cent of them were satisfied with the mediation service. The above figures show that mediation is indeed a cost-effective and well-received means to resolve community conflicts.

It is therefore no coincidence that the important role of Ombudsman and mediator institutions in promoting good governance and respect for the rule of law was unanimously recognised by the General Assembly of the United Nations in its resolution passed in December 2022. I am also delighted to learn that the International Ombudsman Institute introduced the Best Practice Paper series in January 2023 on "Mediation as effective tool in complaint investigation", which provides useful guidance to facilitate wider adoption of mediation in Ombudsman institutions worldwide.

Conclusion

As a leading world city, we pride ourselves on having a clean and efficient government in Hong Kong. This has understandably created a "happy problem" for our public sector - as we continue to enhance our services, the public expects even more from us. Complaints on public services could more often be the result of unmet expectations than genuine maladministration. Being a trusted independent authority, the Ombudsman can play an even more prominent role in bridging this expectation gap between the general public and government authorities through mediation. This will certainly be conducive to our efforts in building a harmonious society.

Thank you very much.

Ends/Tuesday, December 3, 2024

