

**Speech by the Hon Rimsky Yuen, SC, JP,
Secretary for Justice
at the Hong Kong Family Law Association
on Tuesday, 12 March 2013**

“Family Issues, Dispute Resolution and Related Matters”

Mr (Robin) Egerton (Chairman of the Hong Kong Family Law Association), Distinguished Guests, Ladies and Gentlemen:

First of all, thank you very much for inviting me to this function. I can assure you that I do not say this simply as a matter of courtesy. When Robin kindly invited me to this function, I readily accepted without any hesitation. As you all know, I have never been a family law practitioner and I know very little, if any, about family law. However, having assumed my present office, I have no doubt that family law and the related legal infrastructure constitute an important area that merits proper attention by the Administration. I am therefore most grateful that the Hong Kong Family Law Association gives me this opportunity so that I can listen to, if not learn from, this group of family law experts as to what may be done to improve our current system of family law and related matters.

2. Given my limited knowledge of family law, I would not dream of speaking to you on substantive matrimonial law. Instead, with a view to facilitating further discussion in the future, may I deal with the following four aspects, namely:

- (1) the Administration’s attitude towards family issues;
- (2) disputes resolution and possible future development;
- (3) international dimension of family issues.

I. Importance attached by the Government

3. Since family is the cornerstone of our society, the Government has all along attached great importance to family issues. In 2009, the Government promulgated a set of guidelines to encourage bureaux and departments to take into account family perspectives in their policy formulation process. As announced this January, this approach will

be further reformed by making assessment of family implications as a mandatory requirement in all policy submissions and Legislative Council briefs from next month onward.

4. The Government also encourages bureaux and departments to consult the Family Council on new policies with family implications. To implement the new initiatives and to strengthen its advisory role, the Family Council, which was established in 2007 to facilitate examination of family-related policies and to promote a culture of loving families, will be re-constituted with a new non-official Chairman, namely, Professor Daniel Shek of the Hong Kong Polytechnic University, with effect from April.

II. Use of ADR for resolving Family Issues

5. I am sure that most, if not all, of you here are very familiar with the use of mediation as a means of dispute resolution in the context of family disputes. Perhaps, let's do a quick stock taking and see what may be done to enhance the current regime.

6. In Hong Kong, family law practitioners are one of the pioneering groups that embraced mediation as a means of dispute resolution. Family mediation services were launched in Hong Kong as early as the 1980s by a few NGOs such as the Hong Kong Catholic Marriage Advisory Council and the Hong Kong Family Welfare Society. Apart from providing mediation services, these two bodies provide family mediation training courses approved by the Hong Kong International Arbitration Centre ("HKIAC"). At present, the HKIAC, the Law Society and the Hong Kong Family Welfare Society maintain their respective panels of accredited family mediators.

7. The Judiciary's contribution in this area likewise cannot be gainsaid. The Working Group set up in 1997, the subsequent three-year family mediation pilot scheme and the introduction of the Mediation Co-ordinator's Office are early examples of the commendable efforts made by the Judiciary.

8. The more recent examples include the issue of the latest version of Practice Direction 15.10 (which came into effect on 2 May 2012), the new Practice Direction 15.13 on Children's Dispute Resolution ("CDR") Pilot Scheme as well as the revised Practice Direction 15.11 on Financial Dispute Resolution ("FDR") Pilot Scheme (which became effective on 3 October 2012).

9. The Judiciary's objective of putting forward these pilot schemes sends a clear message to the community: it promotes settling family disputes in a non-adversarial way which may assist parties in reaching a faster resolution and thus may reduce the emotional distress throughout the process.

10. On the part of the Government, we have also been sparing no effort in promoting the development of mediation in Hong Kong.

11. In the specific area of family mediation, the Family Council launched in May 2012 a two-year pilot scheme to provide sponsorship to interested organizations on family mediation service. Eligible organizations can make use of the funding allocated to them under the scheme to expand their services to the sandwich class and the low income group. It is expected that some 200 separating families will be benefitted from the implementation of the pilot scheme each year.

12. On the more general level, the Working Group on Mediation (which was set up by the Department of Justice in 2008) published its report in February 2011. Since then, considerable progress has been made including the enactment of the Mediation Ordinance (which came into effect on 1 January 2013) as well as the establishment of a non-statutory industry-led accreditation body named the Hong Kong Mediation Accreditation Association Limited ("HKMAAL") in August last year.

13. The incorporation of HKMAAL is an important milestone in the development of mediation in Hong Kong. It is envisaged that HKMAAL will become the premier accreditation body for mediators in Hong Kong. It will set the accreditation standards for mediators and establish a robust complaint and disciplinary system. As is currently planned, HKMAAL will follow the practice of HKIAC and maintain a separate panel of accredited family mediators.

14. Further, with a view to furthering the promotion of mediation, a new Steering Committee on Mediation was set up in November last year, which will, amongst others, monitor the operation of the Mediation Ordinance, the setting of accreditation standards and further promote wider use of mediation in Hong Kong.

15. So much has been said on what has been done in the past. The question arises is: what next? Or, put it slightly differently: what should further be done to ensure that our family law and the supporting legal

infrastructure would continue to meet the needs of our society? The Administration would welcome views from all stakeholders including the Hong Kong Family Law Association. For the present purpose, perhaps let me throw a few balloons so as to attract future discussion.

14. First, now that we have the new Practice Direction 15.13 on Children's Dispute Resolution Pilot Scheme, what should be the future of mediation concerning children issues? The United Nations Convention on the Rights of the Child (1989) seeks to set a benchmark for children to participate in the making of decisions that would affect their lives. How can children be allowed more participation in the dispute resolution process? Are we well equipped to hear from children during the dispute resolution process? What, if any, should be done by the practitioners, the NGOs, the Judiciary and the Administration in this regard?

15. Second, apart from mediation, "collaborative practice" is another form of ADR that can be used in resolving family disputes. In this regard, may I first express my appreciation to the Hong Kong Family Law Association for its efforts in embracing the use of collaborative practice by setting up the first multi-disciplinary training session for collaborative practice in 2010.

16. In other jurisdictions such as the USA, Canada and Australia, the use of collaborative practice have been tested and practiced in the family law area with considerable success. In the circumstances, one question that merits consideration is: how best collaborative practice can be further promoted in Hong Kong so as to provide yet another option to parties involved in family disputes. The Department of Justice will be very interested in following the development of collaborative practice and how it may add value to the promotion of mediation in Hong Kong.

17. Third, whilst mediation is popular in the matrimonial context, the use of arbitration is far less popular. Instead, arbitration is more popular in other contexts such as commercial claims and construction disputes. However, interesting development is taking place in England. In early 2012, the Institute of Family Law Arbitrators was launched with the support of the Chartered Institute of Arbitrators. Whilst it may be pre-mature to pass any judgment on whether arbitration is a suitable means of ADR in the matrimonial context, it does provide fruit for thought, and it would certainly be worthwhile to keep an eye on it so as to see what can be done in Hong Kong.

18. Fourth, there is the question of research. Although there is much research and literature produced by eminent scholars and practitioners in other jurisdictions (notably the Western countries), their experience and research findings may not be directly or necessarily applicable in the Hong Kong context. In a way, Hong Kong is a unique place. There cannot be any doubt that proper research, including empirical research, is important to the healthy development of mediation in Hong Kong.

19. Until recently, conducting empirical research on mediation or related matters often faces difficulties since mediation is conducted in a confidential manner. Unless with the consent of the parties (which is normally not easy to obtain), one can hardly get data concerning mediation conducted in Hong Kong.

20. Confidentiality is of course a cornerstone of mediation. Indeed, one of the key features of the Mediation Ordinance is the protection of confidentiality of mediation communication. However, at the same time, the Mediation Ordinance provides for an exemption to such confidentiality so as to facilitate research (so long as the identity of the relevant parties will not be revealed).

21. With this statutory exemption, the question is how best we can make use of it. The Regulatory Framework Sub-Committee, set up under the Steering Committee on Mediation, will be putting forward research guidelines so as to enable academics, practitioners and others to conduct empirical research without breaching confidentiality. We would welcome views from the Hong Kong Family Law Association on how the guidelines should be formulated.

22. Furthermore, at the moment, the Judiciary, HKIAC and other stakeholders do not have any particular system to collect data concerning the conduct of mediation. For the reason mentioned earlier, we would invite views as to how empirical data concerning mediation can be collected in a systematic manner so as to facilitate proper research.

III. International Dimension: the Hague Conference

23. As you are aware, the Hague Conference on Private International Law established its Asia-Pacific Regional Office in Hong Kong late last year. Much of the work of the Hague Conference concerns family issues and children's rights.

24. Besides, the Hague Conference's work in recent decades reflects the increasing importance of mediation and other methods to bring about agreed solutions in international family law. Most of the modern Hague Family Conventions explicitly encourage mediation and similar processes for finding appropriate solutions to cross-border family disputes. A recent example is the publication, in last year, of the (5th version) Guide to Good Practice on the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the 1980 Convention). As explained in the publication,

"The Guide promotes good practices in mediation and other processes to bring about the agreed resolution of international family disputes concerning children which fall within the scope of [the 1980 Convention]. In line with other modern Hague Family Conventions, the 1980 Hague Child Abduction Convention encourages the amicable resolution of family disputes."

25. Now that Hong Kong has the privilege to house the Hague Conference's Asia-Pacific Regional Office, I would urge members of the Hong Kong Family Law Association to take full advantage of the situation, whether by assisting in the work of the Hague Conference or otherwise.

Conclusion

26. Ladies and Gentlemen, there is no doubt that a great deal of work still needs to be done to promote mediation and other forms of ADR in Hong Kong. With the concerted efforts by the Judiciary, the Government, and various stakeholders including the Hong Kong Family Law Association, I see a very good prospect for ADR to be used even more widely in handling family disputes in Hong Kong.

27. I am sure that you will continue to take a pro-active approach in adopting ADR in your practice and be part of the interesting development of ADR in Hong Kong in the years to come. We also look forward to your continuous support to the work of the Department of Justice in this area.

Thank you very much.