

Kluwer Mediation Blog

Anchoring the future of mediation in Hong Kong

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As a mediation trainer and practitioner for more than a decade, it is hearten to see that mediation has gained a prominent role in Hong Kong's dispute resolution sector with growing popularity amongst practitioners and the public. Being part of this blooming mediation community and a member of the [Steering Committee on Mediation](#) chaired by the Secretary for Justice ("SJ"), I am proud to say that with the concerted efforts from the Department of Justice ("DoJ"), the Judiciary, mediation organizations and key stakeholders, the mediation culture in Hong Kong has prospered in the past decade and more. It is well known that the Government's staunch policy has long been striving to boost Hong Kong's status, as SJ puts it, as a leading centre for international legal and dispute resolution services and deal-making hub in the Asia Pacific region. I also see that Hong Kong is taking the role as a core pillar of the [Greater Bay Area](#) as well as the [Belt and Road region](#). Since the [Chief Executive's Policy Address in 2007](#), the DoJ has worked tirelessly in nurturing an environment conducive to mediation through various legislative, capacity building and promotional initiatives.

One of the key initiatives of the DoJ is the ["Mediate First" Pledge campaign \("MFP"\)](#) since 2009.

The MFP, or the Pledge, is a non-legally binding manifestation made by pledgees on their commitment to *first* explore the use of mediation when dispute arises, before resorting to any other means of dispute resolution. Over 700 businesses and organisations have already signed the Pledge. This year, the DoJ held their biennial flagship promotional event, i.e. the MFP Event 2021, on zoom for the first time. The Event featured the theme of ["Mediate First – Anchoring the Future"](#) and attracted over 1,300 participants from 14 jurisdictions joining the full day webinar, event ceremony and virtual networking. The 3 webinar panels gathered experts and mediators with different background to share their insights on how to apply mediation or mediation skills in resolving disputes arising from private wealth and family office, healthcare and the employees' compensation claims contexts. I am very privileged to have joined the Event this year and met with SJ and a few speakers at the Event. Let me share with you some of highlights of their thought-provoking discussions.

The Family Office & Private Wealth Panel

The growth of the private wealth and asset management sector is remarkable in Hong Kong and beyond in the past decade. The astonishing growth rate in family offices and wealth management

business and related disputes (and hence the need for dispute resolution services) in the recent years has got the attention of the mediation community as well as the Government. Distinguished speakers at the private wealth panel shared their views and experiences on how mediation can help resolving a wide range of monetary disputes in families, including complex probate and trust matters and sometimes across generations. Speaking as a long-serving family mediator, I fully agree with the observations from the panel speakers that many of these disputes are embedded with personal and emotional issues, and that the public attention or media coverage resulting from litigating these disputes is highly undesirable. Unlike court proceedings, which may be placed under the media spotlight and extremely time-consuming accompanied with hefty legal fees, the confidential nature of mediation (and comparatively less costly and more speedily than arbitration but with the same benefit of confidentiality) makes it a highly desirable option. With the adoption and integration of mediation skills by mediators, such as procuring common grounds and applying reality testing in the process, the parties can explore a wide range of sensible and creative settlement options catering for complex financial arrangements amongst wealthy families and family businesses affecting interests of multiple family members. Healthy family relationships are essential for the parties' wellbeing as well as maintaining the family businesses in the long term. With the aid of mediation, which is interest-based and party-driven, conflicts arising from family wealth and businesses management may be resolved without sacrificing family harmony.

The Healthcare Panel

Since the outbreak of the COVID-19 pandemic, which further heightens the workloads of the entire healthcare sector, dispute resolution in healthcare industry is a seasoned topic and one of the public's greatest concerns. It is more often to see clinical disputes arising under these stressful and challenging times. In the cases of medical mishaps prior to enactment of the Apology Ordinance in 2017, out of insurance/professional liability concerns many medical professionals are often more reluctant to make apology or acknowledgement to the patients resulting in escalation of disputes. With the case studies and lively experience-sharing of speakers from public and private hospitals, the audience could get a better picture of how mediation skills come into play to resolve medical disputes. As the Secretary for Food and Health put it in her Opening remarks for the panel, by identifying the needs of the aggrieved for explanations and emotional acknowledgments, hospitals and healthcare practitioners may promptly and suitably address potential disputes with disclosure, apologies or other interpersonal supports. This helps to build trust and confidence in our medical process. With the panelists vividly illustrating with real life examples, we heard how the powerful effect of first recognizing and acknowledging the feelings and emotions of the aggrieved patients and their families could effectively minimize the risk of miscommunications and conflicts. With the aid of mediation, applied mediation skills and the protection offered by the Apology Ordinance, clinical staff are more likely to take initiatives to express their sympathy to patients and their families without the fear or pressure of legal repercussions of admitting liabilities. As a result, it aids conflict avoidance and prevents disputes from escalating to court or disciplinary proceedings, which are well known to be lengthy, costly and stressful burden for the aggrieved and also many hardworking members of our heavy-loaded healthcare system. Echoing the closing remarks of webinar by Dr. James Ding, Commissioner of the Inclusive Dispute Avoidance and Resolution Office of the DoJ, the crux of this panel discussion can be succinctly summarized by the quote of the famous psychotherapist Ms Megan Devine, "*Acknowledgement can be the best medicine we have*".

The Employee Compensation Claims Panel

Under the pandemic, ensuing social distance restrictions, the new trend of work-from-home arrangements and economic downturn might increase likelihood of tensions and conflicts between employers and employees. I am sure many participants would be pleased to hear at the panel how the Labour Department and the Legal Aid Department have been working on encouraging and expanding the use of mediation in employees' compensation claims. As the speakers for the 3rd panel discussion illustrated, mediators can help explore solutions to the interpersonal issues in disputes arising from work accidents, which can help preserve the ongoing employer-employee relationship in a more cost-effective manner. The panel discussion also cleared the misconceptions on the imbalance of power between the employees and insurance companies acting for the employers in conducting mediation (or litigation) and give great assurance to the public in attempting mediation when facing employees' compensation claim disputes.

Concluding remarks

As a member of the audience and the Steering Committee on Mediation, I am very pleased to say that the MFP Event 2021 has been a great success and the efforts of the DoJ in hosting this webinar at this challenging time are remarkable. The inspiring sharings and discussions from the three panel sessions undoubtedly bring new perspectives in further development of mediation and mediation services in Hong Kong. With surging vaccination rates in Hong Kong and around the globe, I am confident that we are ready to anchor a brighter future in Hong Kong and its mediation services across different sectors.

Thanks to Miss Priscilla SY Chan, DoJ Senior Government Counsel (Acting), who is also my former mediation student for assisting me to prepare this blog entry.

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