

Kluwer Mediation Blog

Mediating with mask on

Ting-Kwok IU (Kwok, Ng & Chan, Solicitors & Notaries) · Saturday, April 2nd, 2022

As a mediator, have you ever come across a situation where the parties and their respective legal representatives insist to have a face-to-face mediation session with you against a backdrop of sudden rise of confirmed Covid cases in your city to the extent that social distancing measures are being tightened and the Judiciary has announced a [general adjournment of hearings of courts and tribunals](#)?

It is obvious that mediation could be conducted online with the aid of modern technology. But what if the parties and their legal representatives for their own reasons would very much like you, as the mediator, to conduct a mediation session in the conventional way.

I am inclined not to refuse the appointment for the sole reason of Covid. To me, mediation services are more than provision of professional services in exchange for monetary gain. Mediation is to make peace. Mediation is the promotion of alternative/appropriate dispute resolution process, which has the advantage of flexibility in terms of time and venue. Mediation is shifting the mindset of the parties in handling conflicts in a different way.

On 5 January 2021, I wrote on my Facebook “.....As pledged before, so long as the parties are willing to participate in mediation whether in person or by zoom, I shall make myself available. I shall keep myself healthy to serve them and promote mediation better.” At that time, my hometown was under the shadow of Covid but the city was not badly hit by the virus. Recently, there is a sharp rise of cases and death toll. The latest development in 2022 is scary but I am still holding the same view and this blog entry is to share with mediators in Hong Kong and those in other parts of the world how I have been managing my practice in the conventional way pursuant to the request of the parties who are reluctant to go for online mediation.

Since early 2020, I have been conducting about 100 cases where each of the persons in the room is having a face mask on. Interestingly, once people in the room are used to communicate with the face mask on, they tend to have the ability to find ways such as speaking louder and slower or focusing more on the eye contacts to compensate the limitations. As a mediator, I normally start with acknowledging the parties by saying that both parties are joining the mediation with the greatest sincerity because it is not easy to spend a day in the room with the mask on. During the mediation process, I (1) give encouragement to them by saying that they are doing well; and (2) let them have more breaks so that they may take off the mask for water or fresh air or cigarettes outside my office.

Reframing and summarising skills on the part of the mediator become more important as such

skills (in the disguise of overcoming the “limitations” resulting from the mask) could be deployed more often to make sure that the parties are able to read into the other side’s messages. Observing the eyes of each of the parties in the room is something that I, as a mediator, have done a lot more for the past two years. In the past, the conventional belief was that prolonged eye contacts might be considered impolite. Now, as a mediator, I have more legitimate reasons to tell the parties that I may have longer eye contacts with each of them as it is my job to read into each person’s messages correctly without the benefit of their facial expressions. In fact, the inability to read the facial expressions is not an unfixable handicap. The Fox’s observations in *The Little Prince* are remarkably inspiring: “And now here is my secret, a very simple secret: It is only with the heart that one can see rightly; what is essential is invisible to the eye.”

On the self-protection dimension, I do wear two face masks as per the recommendation of a microbiology professor of the University of Hong Kong. Apart from being a double-masked mediator, I make available bottles of antibacterial hand sanitiser and bottled water for the parties in the mediation rooms. Chocolates, cookies and egg tarts are no longer served. I do not normally drink water in the mediation room. I drink water in my own room with my hands washed when the parties need time to confer among themselves.

In terms of correspondence, I set out the parameters for the parties and their lawyers so as to manage their behaviour and expectations in the process of having a face-to-face mediation. The following paragraphs or some of them may appear in my correspondence with the parties’ legal representatives: –

As mentioned before, I am comfortable to do the mediation by zoom or in the conventional manner. Either way is fine with me.

Please confirm that on the morning of [date of mediation], the handling solicitor of each team will confirm with me and the other side by email or whatsapp that each member of the team as well as clients are done with Rapid Antigen Tests on the morning and each of the relevant results is “negative”. Of course, I shall do the Rapid Antigen Test too and inform all parties of my result at least one hour before the mediation session.

Like many other law firms, our firm has staff who are hit by Covid. It is unknown how they had contracted the virus. I welcome your and your clients’ visit but the management has reminded me to inform you that Covid is contagious and each party must take care of his/her own health and no one should assume that our offices are Covid free.

To protect the health and well-being of everybody at our offices, persons who enter the offices are reminded to observe antipandemic measures such as wearing face masks and maintaining appropriate social distancing at all times.

Mediators who are prepared to practise mediation in the conventional way under the shadow of Covid must have good understanding with their family members and colleagues of the practice firm. As peacemakers, mediators must have the support of those around them so that they may go ahead with the practice without worries. As such, genuine display of good practice of personal hygiene is important. Also, one’s personal view on the effectiveness or side effects of the vaccination jabs may not be as important as giving the parties’ the comfort that the mediator in question is sufficiently vaccinated.

While mediators always say that the mediation belongs to the parties and self-determination is one

of the cardinal principles in mediation, I hope this blog entry may help us walk the talk by providing the parties with a genuine and workable choice of having a safe and effective face-to-face mediation in addition to most trendy online mediation at a time when Covid is still with us.


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