

Evaluation Report on Mediation for Building Management Cases in the Lands Tribunal of the Judiciary

INTRODUCTION

In Hong Kong, the majority of residents built their homes and families inside multi-storey residential buildings. In any private housing estate, numbers of flats can easily exceed hundreds or even thousands. Living in such a peculiar environment, disputes between neighbours, owners and tenants or even within the building management committee are easily happening on a daily basis. As a matter of fact, parties in many of those building management dispute cases are unable to reach any agreement and end up litigating in court. So often the case has become an adversarial court battle and considerable amount of time and money are spent.

2. In many developed countries, mediation has been developing as an adjunct to litigation. It has become the preferred way of settling disputes to the adversarial methods. The provision of mediation service is proved to be effective in reducing stress, costs and most importantly, leading to a more sustainable agreement between the parties. Mediation is an alternative which the parties of building management (BM) dispute cases can consider to resolve their problems with the benefits of saving time, money and even relationship.

BACKGROUND OF THE JUDICIARY PILOT SCHEME FOR BUILDING MANAGEMENT CASES

3. In September 2007, the President of the Lands Tribunal issued Direction LTPD: BM No.1 of 2007 pursuant to Section 10(5)(a) of the Lands Tribunal Ordinance, Cap. 17. The Direction introduced a Pilot Scheme for Building Management Cases. The aims of the Pilot Scheme were to streamline the processing of building management cases and to encourage parties to make attempts to resolve their differences by mediation, so that such cases can be disposed of in an efficient and expeditious manner.

4. The Pilot Scheme was scheduled to run from 1 January 2008 to 31 December 2008 and there was a review of the scheme after one year. The primary targets were those cases where all the parties were legally represented, but if appropriate, the Lands Tribunal would also apply some of the procedures under the Pilot Scheme including mediation to cases where one or all of the parties were acting in persons.

5. In support of mediation under the Pilot Scheme, the Judiciary set up a Building Management Mediation Co-ordinator's Office (BMMCO) in the Lands Tribunal. The BMMCO conducts information sessions for the parties who are willing to attempt voluntary mediation before or after they issued proceedings in the Lands Tribunal. The actual mediation service is provided by accredited mediators outside the Judiciary. The BMMCO maintains a list of accredited mediators who are willing to participate in the Pilot Scheme, whether on a pro bono or fee-charging basis. It would also liaise with the mediators on the outcome of mediation.

6. With a view to completing the evaluation of the Pilot Scheme, the Pilot Scheme had been extended for another six months from 1 January 2009 to 30 June 2009.

7. For the purpose of the evaluation, data were collected from a variety of sources, including data and records from the Lands Tribunal and the BMMCO, a users' satisfaction survey on mediation service and the feedback from mediators. The results were listed in the following paragraph.

BRIEF SUMMARY OF THE RESULT OF THE PILOT SCHEME ON THE SCOPE OF MEDIATION FROM 1.1.2008 – 31.12.2008

8. There were a total of 63 completed mediation cases during the evaluation period from January 2008 to end of December 2008; the overall success rate was about 41%. The successful settlement rate of building management dispute issues was encouraging. The breakdown was as follows:-

Full agreement reached:	30.2%	(19 cases)
Partial agreement reached:	11.1%	(7 cases)
No agreement reached:	58.7%	(37 cases)

Success Rate: 41.3% (Full agreement and partial agreement)

On average, it took 5 hours to reach a full agreement and 3 hours to reach a partial agreement.

9. The same survey also discovered that the service users were on the whole very positive about the mediation service. Time was saved for the parties as a result of mediation. The time saved amounted to 25 court

days¹. In fact, 82% of the users considered that mediation was an effective means in resolving disputes. Amongst the 32 mediators (84% of the mediators involved) who had responded in the survey, 84% of them considered that mediation was an effective way to assist the parties to resolve their disputes on building management and 91% of them agreed that the process of referral from BMMCO was smooth.

10. When the evaluation of the Pilot Scheme was completed, a paper was issued by the Judiciary to the LegCo Panel On Administration of Justice and Legal Services (AJLS Panel) in April 2009 by which the Judiciary briefed the members of AJLS Panel on the findings of the evaluation of the Pilot Scheme for BM Cases in the Lands Tribunal and the proposed way forward. From the findings, it could be concluded that the Pilot Scheme was effective. The scheme had achieved its aim by more active case management and alternative dispute resolution through the encouragement of the use of mediation. Mediation resulted in the reduction of time and costs for the parties concerned. Court time was also saved. Judging from the relatively small amount of time involved in reaching full/partial settlement agreement, it had proven that mediation was an efficient and economical way to resolve BM disputes. Because of its proven record of helping the litigants to resolve their problems in the Pilot Scheme, it was recommended that with effect from 1 July 2009, the Lands Tribunal should adopt the measures taken in the Pilot Scheme as the standard practice.

CASE MANAGEMENT AND MEDIATION FOR BUILDING MANAGEMENT CASES IN THE LANDS TRIBUNAL

11. On 21 May 2009, the President's Direction (LTPD: BM No. 1/2009 on Case Management and Mediation for BM Cases) was issued to formalize the measures taken in the Pilot Scheme as the standard practice in the Lands Tribunal. The aims are to streamline the processing of BM cases and to facilitate the more efficient, expeditious and fair disposal of BM cases. Parties to BM cases are encouraged to make attempts to resolve their differences by mediation, either before or after they issued proceedings in the Lands Tribunal.

12. The BMMCO continues to hold information sessions on building management mediation and assist the parties who seek mediation to help resolving their building management disputes in a non-adversarial way.

¹ 19 cases fully settled x 6 hours (average court sitting time per trial) + 7 cases partially settled x 3 hours (average court sitting time per trial / 2) = 135 hours (~ 25 court days)

13. In order to collect more users' feedback on mediation, the users' satisfaction survey had been extended for another two years after the previous evaluation period from January 2008 to end of December 2008.

CASELOAD IN BMMCO

14. From January 2008 to end of December 2010, 556 cases were handled by BMMCO during the above mentioned period. These included cases filed in the Lands Tribunal, cases filed in/referred by other courts, and cases in which the parties made their approach on their own initiative. A total of 429 information sessions were held for 1520 persons. Subsequently, 359 cases were referred to the mediators. Out of the referred cases, there were a total of 338 cases completed within the period.

DIFFERENT ISSUES OF BUILDING MANAGEMENT DISPUTE

15. The 359 cases referred to the mediators encompassed different dispute issues and the breakdown were as follows:

- | | |
|--|-------|
| • Management Fees & Contribution for Maintenance funds | 18.7% |
| • Dissolution of Management Committee & Appointment of Administrator | 0.7% |
| • Discovery & Inspection of IO's documents by Owners | 6.1% |
| • Handing over of IO's documents to new Management Committee | 0.7% |
| • Breach of duties by chairman, secretary and treasurer of IO | 9.9% |
| • Illegal structures | 15.3% |
| • Water leakage | 16.2% |
| • Unauthorized use of common parts of building | 9.9% |
| • Others (e.g. pets raising, litigation costs, sewage backflow and purpose of unit, etc) | 22.5% |

**SUMMARY OF MAIN FINDINGS FROM THE USERS’
SATISFACTION SURVEY ON MEDIATION OF
BUILDING MANAGEMENT CASES FOR THE PERIOD OF
1.1.2008 – 30.12.2010**

16. The Judiciary had conducted an in-house users’ satisfaction survey for a total of three years. The service users were invited to complete the survey on voluntary and anonymous basis. A total of 636 surveys were issued and 329 returned. The respond rate was 52%. Among the respondents, 47% reached agreement through mediation and 53% reached no agreement.

(a) Profiles of the service users

17. Of the 359 cases referred to the mediators, over half (56%) of the service users were in their forties and fifties. 93% of them had secondary education or above. The median income was \$22,500 a month. Almost all (97%) had legal proceedings commenced when using the mediation service and 51% were legally represented. Out of the 359 cases, there were 62 cases where both parties were legally represented and 163 with only one party represented. In the other cases, the parties were not represented. Among all users, 31% of them were members of the incorporated owners and management committees, 19% came from estate management companies and 50% were owners/tenants.

(b) Case distribution among mediators

18. 261 private mediators had registered with the BMMCO as at end of 2010. The majority of them (201, 77%) indicated that they would offer pro bono service.

19. Amongst the 359 cases referred to the mediators, the majority of them (96%) selected pro bono service.

(c) Duration of the cases

20. No correlation could be drawn between the use of mediation and the duration of the cases. Many factors affected the overall duration of BM cases, e.g. the nature of disputes, the degree of complexity and the parties’ attitude.

(d) Success rate of mediation

21. Out of the 338 completed cases, 18 cases eventually had not used the mediation service because one of the parties had not turned up or they opted for other means to resolve their disputes.

22. There were a total of 320 completed mediation cases. The overall success rate was 44.1%, and the breakdown was as follows:-

Full agreement reached:	32.2%	(103 cases)
Partial agreement reached:	11.9%	(38 cases)
No agreement reached:	55.9%	(179 cases)

Success Rate: 44.1% (Full agreement and partial agreement)

On average, it took 5.5 hours to reach a full agreement, 5.8 hours to reach a partial agreement.

(e) Saving of time

23. Apart from the parties' time, court hearing time was also saved as a result of mediation. The time saved amounted to 133 court days². The amount of court hearing time saved could be an indicator of the efficiency of the service.

(f) Users' satisfaction

24. In general, the service users have indicated very positive response towards the mediation service:-

- (i) Of the 329 respondents surveyed, 81% of users either "very much agreed" or "agreed" that mediation service had helped to save time; (Table 1 of Annex A)
- (ii) 79% of users either "very much agreed" or "agreed" that mediation service had helped to save or reduce litigation costs; (Table 2 of Annex A)
- (iii) 81% of users either "very much agreed" or "agreed" that mediation service had helped to avoid tension and conflict in litigation; (Table 3 of Annex A)

² 103 cases fully settled x 6 hours (average court sitting time per trial) + 38 cases partially settled x 3 hours (average court sitting time per trial / 2) = 732 hours (~ 133 court days)

- (iv) 72% of users either “very much agreed” or “agreed” that mediation service had helped to maintain harmonious relationship with the other party; (Table 4 of Annex A)
- (v) 78% of users either “very much agreed” or “agreed” that mediation service had helped both parties to understand the matters in dispute; (Table 5 of Annex A)
- (vi) 80% of users either “very much agreed” or “agreed” that mediation is an effective alternative in resolving dispute in Building Management issue; (Table 6 of Annex A)
- (vii) 77% of users either “very much satisfied” or “satisfied” with the mediation service that they had received; (Table 7 of Annex A)
- (viii) 80% of users either “very much agreed” or “agreed” the mediation sessions were promptly scheduled and arranged by the mediators; (Table 8 of Annex A)
- (ix) 90% of users either “very much agreed” or “agreed” that the mediator had explained the mediation process clearly; (Table 9 of Annex A)
- (x) 85% of users either “very much agreed” or “agreed” that the mediator had given full opportunities and sufficient time to express parties’ view and to discuss matters in dispute; (Table 10 of Annex A)
- (xi) 84% of users either “very much agreed” or “agreed” that the mediator had helped to control parties’ feelings to facilitate mediation to proceed in a peaceful manner; (Table 11 of Annex A)
- (xii) 88% of users either “very much agreed” or “agreed” that the mediator had listened to users well and understood their needs; (Table 12 of Annex A)
- (xiii) 81% of users either “very much agreed” or “agreed” that the mediator was impartial and fair; (Table 13 of Annex A)
- (xiv) 80% of users either “very much satisfied” or “satisfied” with the mediator’s overall performance. (Table 14 of Annex A)

25. From the above findings, it can be concluded that mediation is an effective means to save time and costs on resolving disputes and reducing the tension between the parties. What mediation can provide is in fact beyond just saving time and costs. The service is for the disputing parties to come to an agreement with the help of the mediator, who should be neutral with regard to the outcome. It enables the disputing parties to reach a settlement that is responsive to their needs and acceptable to both sides. The end result is a win-win situation. It also helps to maintain a harmonious relationship among the parties, who are usually owners/tenants within the same building/estate.

Users Comments on Building Management Mediation Service

26. The followings are the English translation of certain comments obtained from the service users of Building Management Mediation Service:-

On Mediation Service

- (i) Mediation service allows the litigants to talk face to face, and to advance communication, thus it can gradually narrow down the differences step by step between the parties, and maintain a harmonious relationship with the each other. Mediation service can avoid tension and confrontation, it can save litigation costs and time, [it] is a worthy and promotable service.
- (ii) This service is based on the spirit of harmony, the use of mediation service can help to save time and reduce litigation costs; it can also help to avoid tension and conflict caused by litigation. This is helpful in maintaining a peaceful relationship with the other side. I think mediation service is another effective way to resolve the building management dispute! It fosters harmony and makes the society united. It is worthy to promote this good experience and this good channel.
- (iii) A third party, acting as a mediator for both parties, makes communication easier, [the third party] can also help to overcome the impasse of discussion.

On the Mediator / Role of Mediator

- (iv) Although no agreement could be reached, the mediator's impartial, fair and objective attitude, and offering his/her office

as the venue for mediation, was truly valuable, I was highly satisfied with the overall service.

- (v) Mediation was beneficial and constructive to both parties, [it] could effectively reduce the differences between both parties, although I could not achieve the result as I expected in this mediation, I would wholeheartedly thank the mediator. He had tried his greatest efforts.
- (vi) Mediator's attitude, active assistance is an essential element in reaching an agreement.
- (vii) Experience of a mediator is very important, such as time management and atmosphere moderation have to be done. Otherwise, the mediation would be lead by both parties, but not by the mediator, after being overshadowed, the result is unsuccessful.
- (viii) A mutually satisfied result may not be achieved in one or two mediation sessions. Especially if there is a deep difference between two parties, that cannot be resolved easily. Thus, if the mediator can patiently provide mediation service to both parties, the chance of success will be highly increased.

Representation / Role of the parties

- (ix) Representative of each party shall have adequate representation during the mediation process, if not, no decision could be made.
- (x) The original intention of this service is good, but if the other party has no sincerity, it would only waste each other's time. If one party is holding a confrontational attitude, the persisting party may lead to the failure of mediation.

Way Forward

- (xi) I think mediation is a tremendous scheme, which should be implemented on long term basis. This scheme not only saves the public resources, but also lets the litigants resolve the problem amicably, plus save the litigation costs.
- (xii) Mediation let both parties better understand each other in a peaceful atmosphere, it often minimizes the disputes. I appreciate a lot of different points of view throughout the

mediation process, and can bury the tomahawk. I hope mediation can be applied in other civil disputes.

The original comments in Chinese are at Annex B.

CONCLUSION

27. The study of overseas and local experience indicates that mediation has the benefits of reducing the stress on the parties concerned, arriving at amicable settlement, minimizing the costs of litigation and reducing the court time required for dealing with such cases. Mediation aims to take settlement resolution out of the adversarial court process and place it in a more co-operative framework. The results of the users' satisfaction survey implied that the mediation service introduced in building management cases in Lands Tribunal was helpful and successful. Most importantly, the service to a large extent helps the concerned parties to maintain the harmony between them. The result of whole evaluation shows that mediation is an alternative channel to bring the parties to a reasonable settlement in a less adversarial manner and is considered to be an effective resolution of disputes. This is in line with the world trend and our efforts of promoting mediation as an alternative dispute resolution to litigation.

The Building Management Mediation Co-ordinator's Office
Mediation Section
The Judiciary
September 2011

**Main Findings from the Users Satisfaction Survey
Building Management Cases in the Lands Tribunal (2008 - 2010)**

Table 1: Users agreed that mediation service had helped to save time

Level of agreement	No.	Valid %
Very much agreed	78	24%
Agreed	187	57%
No comment	37	11%
Disagreed	15	4%
Very much disagreed	10	3%
No Answer	2	1%
Total	329	100%

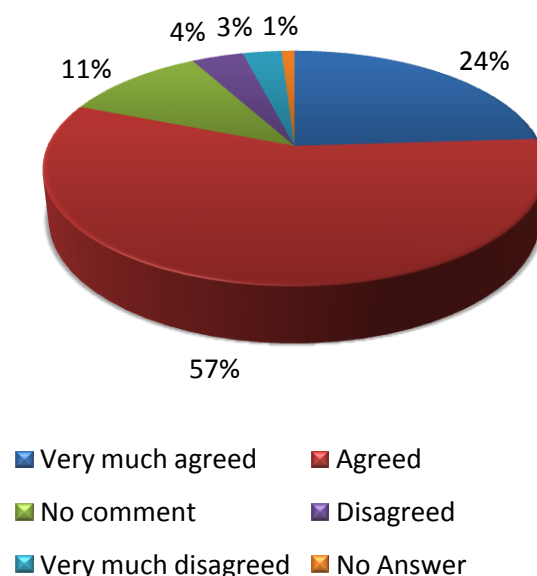
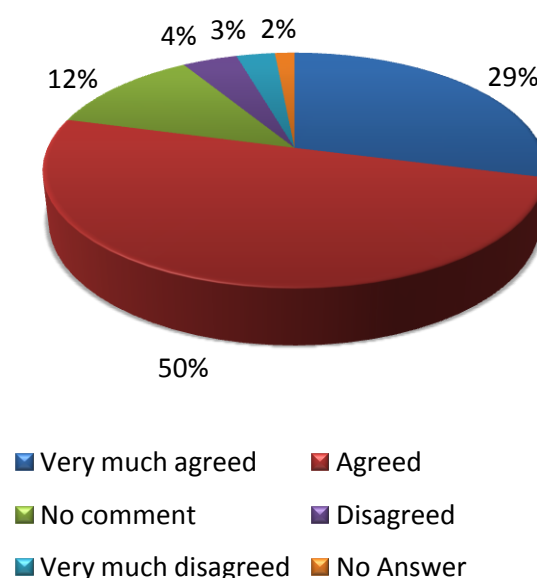


Table 2: Users agreed that mediation service had helped to save / reduce litigation cost

Level of agreement	No.	Valid %
Very much agreed	96	29%
Agreed	166	50%
No comment	40	12%
Disagreed	14	4%
Very much disagreed	8	3%
No Answer	5	2%
Total	329	100%



**Main Findings from the Users Satisfaction Survey
Building Management Cases in the Lands Tribunal (2008 - 2010)**

Table 3: Users agreed that mediation service had helped to avoid tension and conflict in litigation

Level of agreement	No.	Valid %
Very much agreed	80	24%
Agreed	186	57%
No comment	42	13%
Disagreed	13	4%
Very much disagreed	4	1%
No Answer	4	1%
Total	329	100%

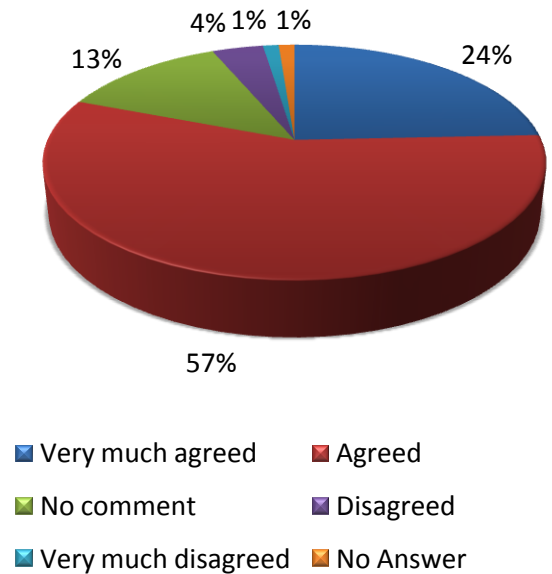
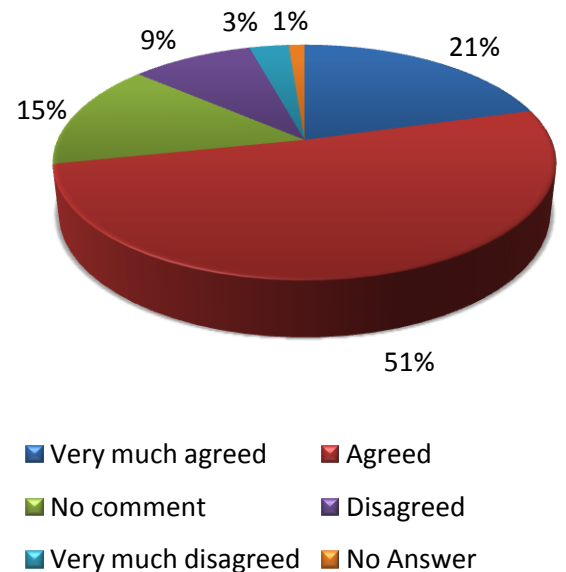


Table 4: Users agreed that mediation service had helped to maintain harmonious relationship with the other party

Level of agreement	No.	Valid %
Very much agreed	68	21%
Agreed	168	51%
No comment	48	15%
Disagreed	31	9%
Very much disagreed	10	3%
No Answer	4	1%
Total	329	100%



**Main Findings from the Users Satisfaction Survey
Building Management Cases in the Lands Tribunal (2008 - 2010)**

Table 5: Users agreed that mediation service had helped both parties to understand the matters in dispute

Level of agreement	No.	Valid %
Very much agreed	65	20%
Agreed	190	58%
No comment	46	14%
Disagreed	19	6%
Very much disagreed	5	1%
No Answer	4	1%
Total	329	100%

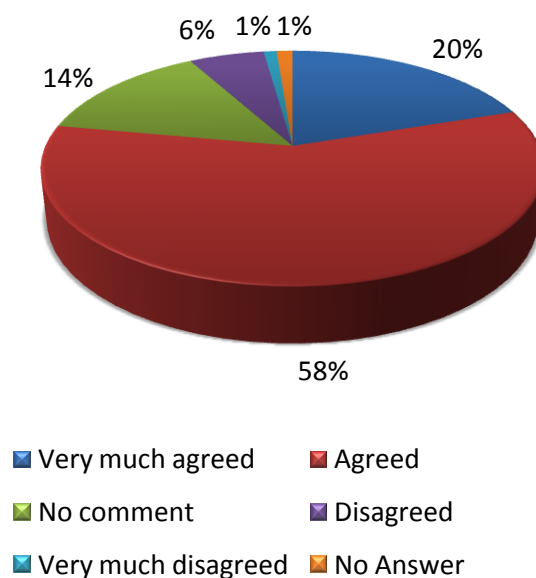
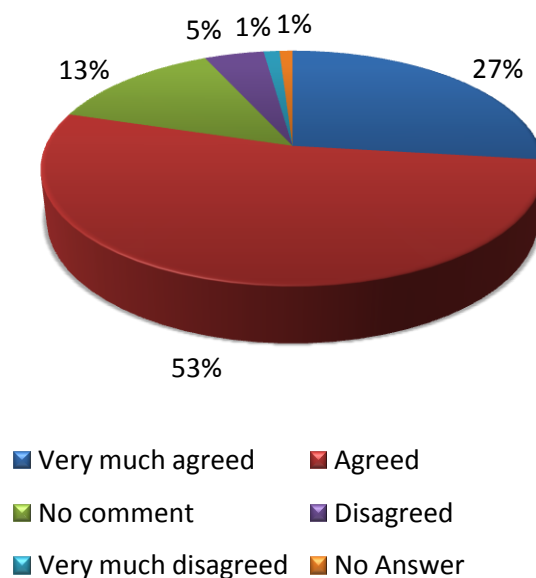


Table 6: Users agreed that mediation is an effective alternative in resolving dispute in Building Management

Level of agreement	No.	Valid %
Very much agreed	88	27%
Agreed	173	53%
No comment	44	13%
Disagreed	15	5%
Very much disagreed	4	1%
No Answer	5	1%
Total	329	100%



**Main Findings from the Users Satisfaction Survey
Building Management Cases in the Lands Tribunal (2008 - 2010)**

Table 7: Overall speaking, users were satisfied with the mediation service that they had received

Level of agreement	No.	Valid %
Very much agreed	82	25%
Agreed	171	52%
No comment	46	14%
Disagreed	22	7%
Very much disagreed	7	2%
No Answer	1	0%
Total	329	100%

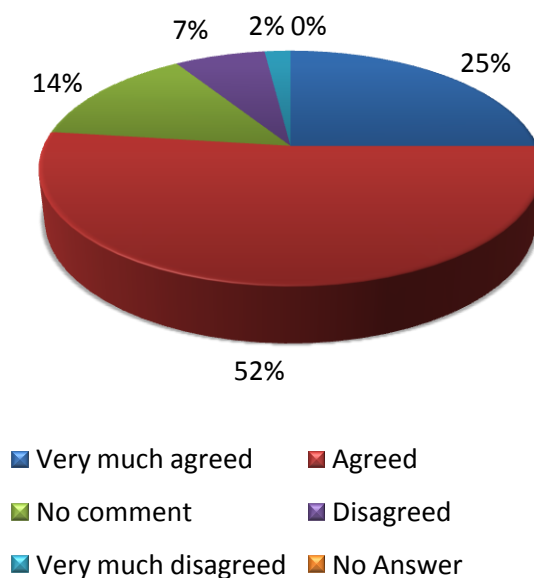
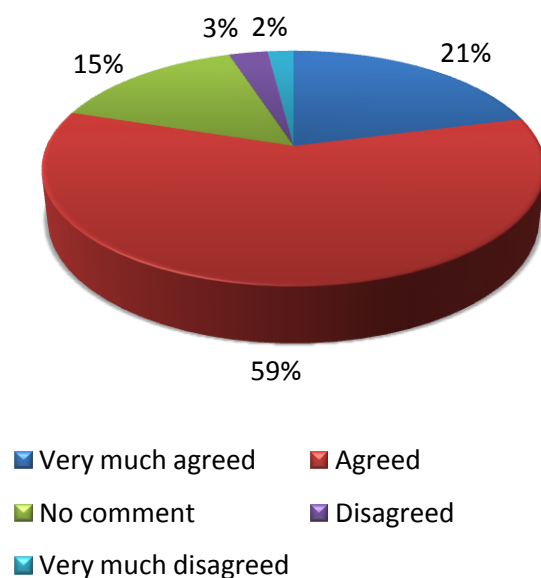


Table 8: Users agreed that the mediation sessions were promptly scheduled and arranged

Level of agreement	No.	Valid %
Very much agreed	70	21%
Agreed	194	59%
No comment	49	15%
Disagreed	9	3%
Very much disagreed	7	2%
Total	329	100%



**Main Findings from the Users Satisfaction Survey
Building Management Cases in the Lands Tribunal (2008 - 2010)**

Table 9: Users agreed that the mediator had explained the mediation process clearly

Table 9: Level of agreement	No.	Valid %
Very much agreed	94	28%
Agreed	204	62%
No comment	21	6%
Disagreed	5	2%
Very much disagreed	5	2%
Total	329	100%

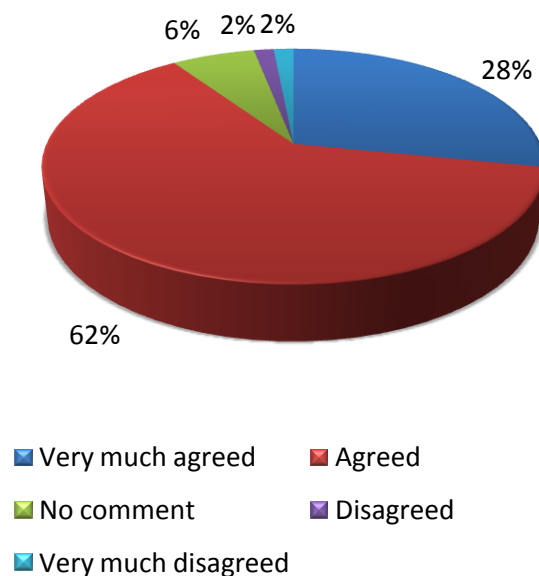
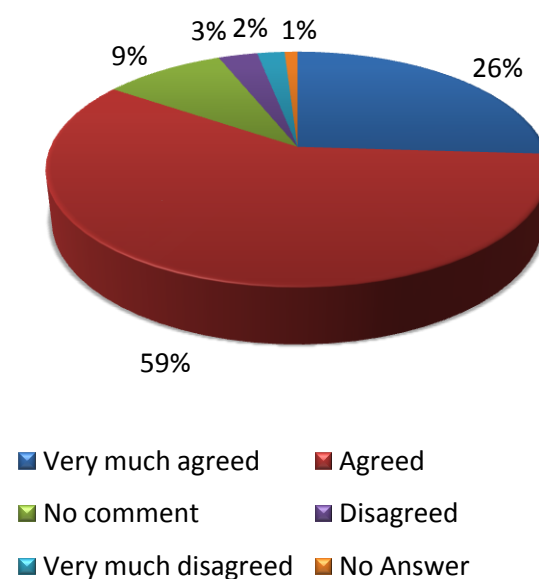


Table 10: Users agreed that the mediator had given full opportunities and ample time to express parties' view and to discuss matters in dispute

Level of agreement	No.	Valid %
Very much agreed	86	26%
Agreed	194	59%
No comment	31	9%
Disagreed	10	3%
Very much disagreed	7	2%
No Answer	1	1%
Total	329	100%



**Main Findings from the Users Satisfaction Survey
Building Management Cases in the Lands Tribunal (2008 - 2010)**

Table 11: Users agreed that the mediator had helped to control parties' feelings to facilitate mediation to proceed in a peaceful manner

Level of agreement	No.	Valid %
Very much agreed	78	23%
Agreed	203	61%
No comment	32	10%
Disagreed	9	3%
Very much disagreed	6	2%
No Answer	1	1%
Total	329	100%

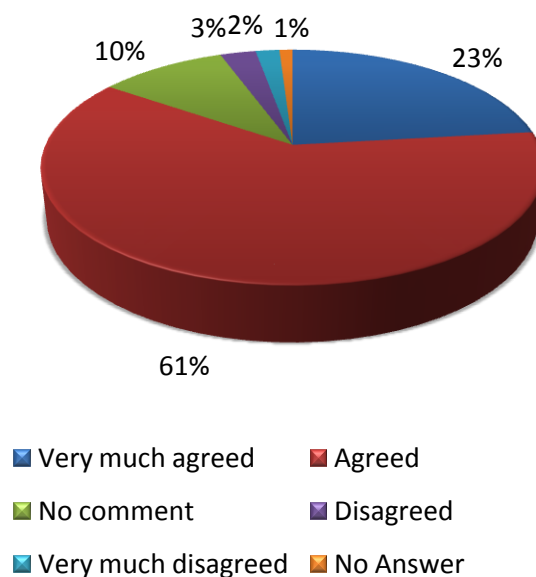
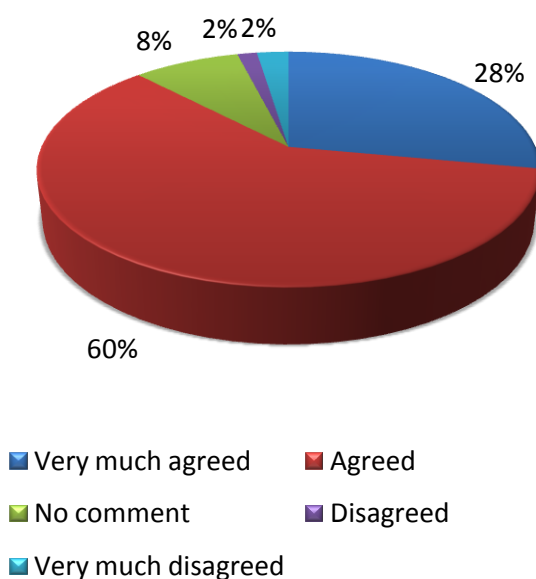


Table 12: Users agreed that the mediator had listened to users well and understood their needs

Level of agreement	No.	Valid %
Very much agreed	92	28%
Agreed	197	60%
No comment	27	8%
Disagreed	5	2%
Very much disagreed	8	2%
Total	329	100%



**Main Findings from the Users Satisfaction Survey
Building Management Cases in the Lands Tribunal (2008 - 2010)**

Table 13: Users agreed that the mediator was impartial and fair

Level of agreement	No.	Valid %
Very much agreed	97	29%
Agreed	173	52%
No comment	37	11%
Disagreed	12	4%
Very much disagreed	9	3%
No Answer	1	1%
Total	329	100%

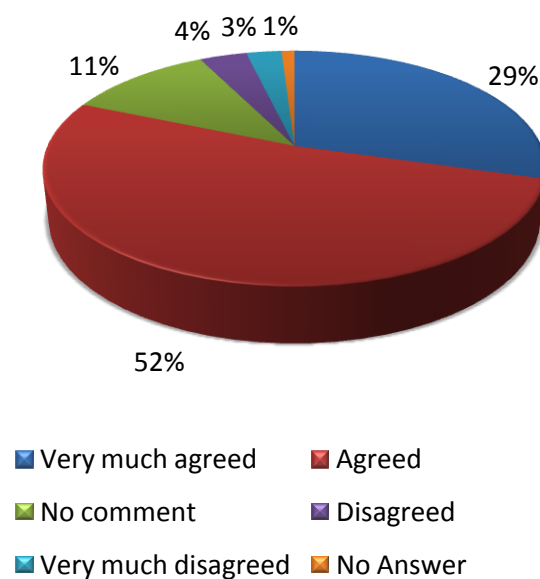
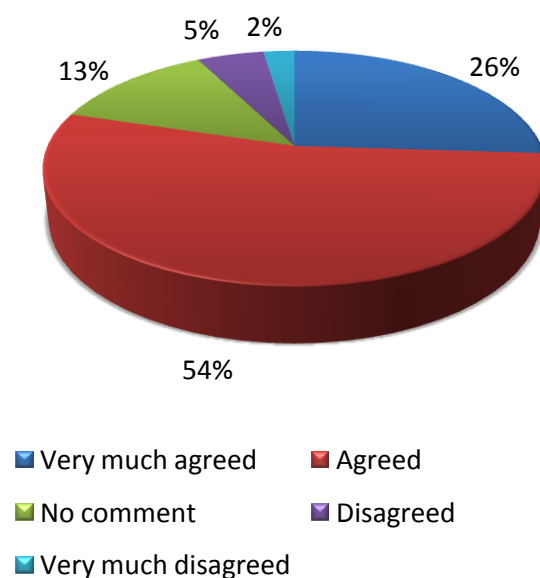


Table 14: Users satisfied with mediator's overall performance

Level of agreement	No.	Valid %
Very much agreed	86	26%
Agreed	176	54%
No comment	42	13%
Disagreed	17	5%
Very much disagreed	8	2%
Total	329	100%



The followings are the Chinese comments obtained from the service users of Building Management Mediation Service:-

On Mediation Service

- (i) 調解服務讓訴訟雙方面對面交談，促進溝通，從而可一步步的拉近雙方的距離，維持與對方和諧關係。調解服務可避免訴訟帶來的緊張和對立，可節省金錢和時間，是一項很值得提倡的服務。
- (ii) 此項服務是本着以和為貴的精神，運用調解服務有助於節省時間，減少訟費；有助於避免訴訟帶來的緊張氣氛和衝突，有助於維持與對方和諧的關係。本人認為調解服務是解決建築物管理紛爭另一有效的途徑！令社會祥和團結。乃值得推廣的好體驗、好途徑。
- (iii) 有第三者作為雙方的調停比較容易溝通，以及可以幫忙控制僵持的氣氛。

On the Mediator / Role of Mediator

- (iv) 雖然未能達成協議，但調解員持公正、公平客觀的態度，更加借出其辦公室作服務地點，實難能可貴，我感到整體的服務非常滿意。
- (v) 調解對雙方有益有建設性，有效地將雙方的分歧拉近，雖然我在這次調解未能達成我所期望的結果。但我是衷心感謝為我作調解的調解員，他已盡了最大之努力。
- (vi) 調解員的態度，積極的協助是達成和解不可缺少的因素。

- (vii) 調解員的經驗是非常重要的，如控制時間和緩和氣氛是必須要實行。否則調解就被雙方帶領而不是由調解員帶領，調解員被他人蓋過，結果是不成功。
- (viii) 調解很可能不是一次或二次可以達成雙方滿意的結果。尤其是雙方有很深的歧見，不容易化解的。所以如果調解員能耐心地給予雙方的調解服務，那麼成功的機會便大大提高。

Representation / Role of the parties

- (ix) 各方代表應能在調解過程有足夠代表性人員參加，否則不能達成任何決定。
- (x) 此服務原意好好，但如對方無誠意，只是會浪費各方的時間。若有一方是存有對抗性，堅持的一方亦可能導致調解失敗。

Way Forward

- (xi) 本人認為調解是一項最好計劃，有必要長期推行。這項計劃既可節省公共資源，也可使訴訟雙方在調解之下平和地解決問題，並節省了訴訟費用。
- (xii) 調解令雙方能在和平氣氛下，互易位而處，往往將大事變小事，小事化無事。我在是次調解事件過程中，確實領略到不同的觀點與角度，能化干戈為玉帛，希望能將其他民事糾紛案件納入調解方法去解決。