



**SEMINAR ON FAMILY MEDIATION PRACTICE 2023**  
**RESOLVE FAMILY DISPUTE IN COURT –**  
**A NEW PERSPECTIVE**

21 September  
2023

**HER HONOUR JUDGE ELAINE LIU**

Two main areas:

- Implementation of Family Court Master System
- Court-based and Court-annexed mediations in family disputes

# Common goal

- resolve family disputes more efficiently and more cost effectively

# Family Procedure Ordinance

- Section 15
  - Under the general or special directions of a Family Judge, the Registrar of DC may hear and determine an application or matter in family proceedings that may be heard and determined in chambers
  - All the jurisdiction, powers and duties conferred on the Registrar in relation to family proceedings may be exercised and performed by a Master

# Family Procedure Ordinance

- Family Procedure Rules Committee
  - make rules for regulating the practice and procedures for family proceedings in the CFI and Family Court

# Family Procedure Ordinance

- Two General Directions issued pursuant to section 15 of FPO
  - GD 1.1 - Proceedings before Masters in the Family Court
  - GD 1.2 – Case Management and Time Tabling in Children and Ancillary Relief Proceedings
- These directions apply to all cases in the Family court, whether commenced before or after PDSL 10.4

# Family Procedure Ordinance

- GD1.1 Annex
  - Non-exhaustive list of applications to be made to and to be dealt with by a Master in chambers
  - Without prejudice to the power of Family Judge to deal with the applications or matters listed in the Annex
  - Any matter or application before a Master may at any time be adjourned to be heard before a Judge

# Family Court Master System

- Madam Justice Au-Yeung oversees:
  - The introduction and implementation of the master system in the Family Court
  - The mentoring and training of the Family Court Masters



# Family Court Master System

- Commences on 3 October 2023
- Initially 6 Family Court Masters

# Family Court Master System

- Objectives
  - Achieve better case management
  - Increase efficiency
  - Prevent delay
  - Division of work between Judges and Masters
  - System enhancement to enable immediate fixing of next hearing at the first available date of a Master

# Work done by Family Court Judge only

- Special procedure / pronouncement of Decree Nisi
- Injunction
- Committal
- Adoption
- CDR/FDR (except Masters may hear these for simple matters or LIPs)
- MCDR/MFDR
- Trial
- Appeal against Master's decision (Order 58 applies)

# Listing Arrangements for Master

- Different types of hearings every day
  - FA/CA, Summons, Enforcement, Time Summons, Amendment Summons
- Cases are not docketed to a Master at the initial stage
- Hearings are fixed on the first available date before the same or a different Master

# Listing Arrangements for Master

- Master aims to docket a case at the earliest appropriate stage
- At the discretion of Masters and Judges having regard to
  - Nature of the hearing
  - Complexity of the case
  - Overall case management needs

# Listing Arrangements for Master

- Example:
  - Once a Master has heard a substantial contested interlocutory application (e.g. MPS), then the case will be docketed to the Master until ready to transfer to a Judge

# Listing Arrangements for Master

- Master transfers a case or an application in a case to a Judge when it is ready
- a CMH before a Judge will be fixed

# Hearing in Tandem

- The court has the flexibility to list a particular interim application before a Judge or a Master, depending on
  - the respective diary position
  - complexity of the matter
  - likelihood of appeal if the matter is heard by a Master



# Hearing in Tandem

- While an application or a matter is fixed to be heard before a Judge (e.g. access), Master can continue to manage the other matters of the case (e.g. ancillary relief)
- A Judge has the discretion to direct a matter to be heard by a Master

# CMH before Family Judge

- Appraisal by Family Judge on the complexity of the Children Proceedings or AR Proceedings, length of the trial and set the target timetable

# CMH before Family Judge

- It is expected that the parties are ready to fix the dates for CDR/MCDR/FDR/MFDR, PTR and the trial, which are milestones days
  - All disputed issues identified
  - No more interlocutory application save in very exceptional circumstances with leave of the court, and may be sanctioned by costs
  - No more evidence without leave of the court

# CMH before Family Judge

- Default position is that it will be heard by non-docket Judge
- Docket Judge has discretion to hear the FDR himself

# Trial

- By Family Judge

# **ADR in Family Disputes**

Encouragement of ADR at all stages of the proceedings

# ADR in Family Disputes

“A characteristic of matrimonial or family proceedings which all those involved in it (parties and those relatives who supported them, lawyers as well as judges) should always be mindful is that the resources (including both time, monies as well as energy) of the parties should not be disproportionately squandered away in litigation. This is particularly so in cases where there are children in the family.”

LLC v LMWA [2019] HKCA 347 [30]

*per* Lam Acting CJHC (as Lam PJ then was)

# ADR in Family Disputes

- Mediation
- Court-based mediation
  - Mediator-assisted FDR
  - Mediator-assisted CDR
- Court-annexed Mediation



# MFDR / MCDR

- Not to replace mediation
- Complementary with mediation
- Synergy between Judge and Mediator

# MFDR / MCDR

- “There can be matters on which a FDR judge can give useful views and steer the parties to explore at greater length with a mediator. With such steering, a mediator can work more effectively with the parties separately in a way which a FDR judge cannot . The mediator can also refer some issues which divided the parties to the FDR judge for an authoritative opinion. With synergy between the FDR judge and the mediator, it is also more likely in cases where parties reach agreement on some but not all the issues, a more costs effective way to resolve the outstanding issue could be worked out.”

LLC v LMWA [2019] HKCA 347 [68]  
*per* Lam Acting CJHC (as Lam PJ then was)

# MFDR / MCDR

- Synergy between Judge and Mediator
- Judge provides authoritative views on disputed issues, and steer the direction for discussion and further exploration by the parties with the assistance of the mediator.
- Mediator can also refer some issues which divided the parties to the FDR judge for an authoritative opinion.

# Statistics of MFDR/MCDR

(from 2019 to Aug 2023)

Type	Cases
MFDR	38
MCDR	3
MFDR+MCDR	1
<b>Total no. of MFDR + MCDR:</b>	<b>42</b>



Type	Cases
HCMC	2
FCMC	40
<b>Total</b>	<b>42</b>
Full & Partial settlements	27
Ongoing cases	7

Success Rate =  
 $27/35 = 77\%$

# MFDR / MCDR

- MFDR/MCDR will be conducted at the direction of the judge with the consent of the parties
- Usually a mediator has been engaged by the parties

# MFDR / MCDR

- People
  - The Parties
  - Their legal representative, if any
  - The Judge
  - The Mediator

# MFDR / MCDR

- Chambers hearing not open to public
- Without prejudice

# MFDR / MCDR

- Preparation by Mediator:
  - Meet the parties before MFDR/MCDR
  - Identify the parties' common grounds and interest
  - Identify the disputed issues and the parties' respective views
  - Identify the parties' concerns and latest proposal in respect of each disputed issue
  - Prepare the mediator's note



# MFDR / MCDR

- Get familiar with:
  - Venue – courtroom
  - Seating
  - Mediation facilities outside courtroom

# MFDR / MCDR

## Communication with the Judge before and during the MFDR/MCDR

- Why
- When
- What
- Confidentiality – prior written consent of the parties required

# MFDR / MCDR

## Confidentiality

- Communication with the Judge and court staff
- Communication with the parties in joint session
- Communication with the party in separate session
- Communication with legal representatives

# Court Annexed Mediation

- Pilot scheme targeted to be implemented in Q1 of 2024
- On site mediation by duty mediator
- Dispute resolution rooms of Family Court are available
- Staff of Integrated Mediation Office may accompany the parties

# Court Annexed Mediation

- Judge / Master may refer suitable case to duty mediator for mediation to be conducted outside court room
- Duty mediator would not discuss the case with the presiding judicial officer

# Court Annexed Mediation

- If settlement can be reached, the duty mediator would assist in preparing the settlement agreement for court's endorsement
- If settlement cannot be reached, the parties would report to the court and the presiding judicial officer may give direction and/or adjourn the case for next hearing

# Settlement

- Settlement Agreement
- Consent Summons
  - Jurisdiction
  - Enforcability

# Questions & Answers



Thank you