

# **Reform in the Mechanism for the Resolution of Various Disputes**

**by the Judiciary**

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## **THE DEVELOPMENT OF MEDIATION IN HONG KONG**

### **The Labour Tribunal and the Small Claims Tribunal**

The Hong Kong Judiciary adopted conciliation or mediation (a loose term used in the tribunals) to resolve disputes started from the Labour Tribunal. Before the establishment of the Labour Tribunal, labour disputes were resolved through the legal proceedings in the District Court. Both parties could be represented by legal representatives. The legal procedures were in accordance with those for the civil proceedings. As a result, because of the financial predicament of the employees, usually they could not afford to have legal representation whereas the employers were legally represented. This had created an unsatisfactory situation of imbalance of force between the parties.

The Labour Tribunal was established in 1973. It aimed at resolving the labour disputes expeditiously, economically and by simple procedures. All parties before the Labour Tribunal were not allowed to be legally represented. The procedures in the Labour Tribunal did not have to comply with the rules of civil procedure for civil litigation.

There were Tribunal Officers at the Labour Tribunal responsible for investigation of the facts of the case. The Tribunal Officers would compile reports with the summary of facts for the Presiding Officers (in layman term “the Judges”) for trial. In the course of investigation into the facts, the Tribunal Officers would attempt conciliation for the parties. If conciliation was

successful, the settlement agreement would become an order of the court and be enforced. If conciliation was unsuccessful, the case would be disposed of by the court expeditiously.

In fact, before the case reached the Labour Tribunal, the parties had been at the Labour Department (an administrative organ of the government) where the civil servants there would attempt conciliation for the parties. It was only where conciliation was unsuccessful, the matter would be referred to the Labour Tribunal.

In 1976, the Small Claims Tribunal was established to deal with civil claims of \$50,000 or below where all parties were not allowed to have legal representation. There were also Tribunal Officers at the Small Claims Tribunal responsible for investigation into the facts and conciliation for the parties.

Let me make it clear that mediation at the Labour Tribunal and the Small Claims Tribunal is different from mediation for the general civil matters, the latter being conducted by independent mediators outside the Judiciary and the parties have to share the expenses for mediation.

The way of conciliation is being conducted at the Labour Tribunal or the Small Claims Tribunal is similar to the way at the courts of the Mainland where mediation is to be conducted before judgment. However, here, the judge who had conducted conciliation for a case which failed would not normally try the same case unless agreed by the parties. The case will be tried by another judge. This is to avoid any suspicion that the judge who had conducted conciliation would be prejudiced.

Where any party who is not satisfied with the decision of the court at the Labour Tribunal or the Small Claims Tribunal may appeal to the Court of First Instance of the High Court either on the ground that the tribunals have no jurisdiction to deal with the matter or the judge at the Labour Tribunal or the Small Claims

Tribunal has applied the law in error. The appellate court dealing with the appeal will adopt the law for civil procedures for the appeal.

Between 1995 and 1997, I was in the Labour Tribunal where I had handled more than 4000 cases of labour disputes. 80% of the cases were settled through conciliation.

As of now, these two tribunals are still adopting conciliation to resolve the parties' disputes. If conciliation fails, the case will be tried.

### **Other areas**

As from 2003, mediation is a regular procedure in the Family Court.

As from 1 July 2009, all building management cases, whether represented or not, will adopt the primary objectives of the Civil Justice Reform: mediation first, failing which, then adopt the most expeditious, simple and economical ways to resolve the parties' disputes.

In 2009, the Judiciary published Practice Direction 31, which came into effect on 1 January 2010 and sets out the procedures for mediation. If the parties come across problems such as the choice of the mediator or the time for commencing mediation etc., they may seek guidance from the Practice Direction, which regulates the parties' conduct and escalates the status of mediation in the civil procedures.

In 2010, Secretary for Justice published "Hong Kong Mediation Code". In the same year, the Joint Mediation Helpline Office was founded by 8 professional bodies. The office of this non-profit making organization is set up at the High Court Building. Any party who wants to obtain mediation service may seek assistance from this joint office to appoint mediator.

In 2013, the Mediation Ordinance, Cap. 620 was enacted. The Secretary for Justice is in the course of preparing the enactment of Apology Legislation

In 2014 and 2016, the Secretary for Justice, under the support of the Judiciary, had launched a series of activities during the Mediation Week , aiming at raising public interest and concern for mediation.

## **THE FUTURE DEVELOPMENT OF MEDIATION IN HONG KONG**

The conventional and solemn judicial process for civil litigation remains the main stream, which will be adopted to ultimately resolve parties' disputes where other means are unable to do so. However, this conventional method has its inevitable inherent problems: expensive litigation costs; long preparation time; complicated legal procedures; long waiting time for hearings or trials; pressure upon the witness and the parties giving evidence in court; loss of privacy or confidential information of incorporations; devastation of personal relationship through litigation and uncertainty of enforcement of judgments or orders. All of these problems remain in the foreseeable future.

Thus, mediation will play a more and more important role in disputes resolution as it can avoid most of the above problems caused by the conventional method mentioned above.

There has been much experience gained by the professionals in mediation in Hong Kong. Mediation is supported by the government and the Judiciary. I believe this service has much room for expansion in Hong Kong.

Now that Hong Kong is one of the world financial centres. I believe that, along with the commercial and trade development, especially the concept of Belt and Road Initiative and its development, there is high chance that Hong Kong will become a world centre of mediation providing service for the world. What Hong Kong requires to do are to perfect the existing mediation system, raise the

quality of the mediators and to regulate the mediators' conducts in order to provide quality service to meet the rapid rise of need of the service.

Thank you.