

# **The Differences in People's or Community's Mediation under the Eastern and Western Linguistic Culture**

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## **THE NATURE OF PEOPLE'S OR COMMUNITY'S MEDIATION OR CONCILIATION**

I shall discuss the above topic from my experience in the Labour Tribunal, sharing my practical experience with you.

Between 1995-1997, I had dealt with over 4,000 cases, over 80% of which were settled through conciliation.

I think the topic concerns discussion on one of the mediation methods that arises out of practical mediation.

The mediator has to try his/her best to convert confrontational differences between the parties into non-confrontation differences. The proper way to achieve this result depends on individual circumstances of each case, mainly to advise all parties to brush aside emotions temporarily perhaps, adopt a rational stance, seeking common interest or possibilities for resolving their disputes, achieving a win-win result. Alternatively, each side should understand the other party's situations and is willing to compromise in order to reach an agreement for settlement.

## **THE PURPOSE OF MEDIATION OR CONCILIATION**

Only one: resolve the differences peacefully, each side being convinced that he/she has obtained what he/she wants and they both win. This is the best win-win situation. The second best situation is that each side understands their respective positions and their interest, making compromises and they reach

settlement.

To achieve these purposes, the mediator has to make fully preparation before mediation, such as understanding the facts of the case and the relevant laws; the thinking of the relevant parties; their respective weaknesses and strong points; what they want and their common interest, if any; or if there are any other options open to them etc.

Let me illustrate it by a case that I had dealt with in the Labour Tribunal. An employer claimed against her employee for breach of the employment contract. She filed the claims for payment in lieu of notice and monetary claims for damages, totally around several tens of thousand dollars. The claims had gone through the Labour Department and the Tribunal Officers of the Labour Tribunal, each of which had attempted conciliation without success. One day before trial, I read the papers for over two hours myself. I understood that what the employer wanted was face-saving and the employee's target was to avoid payment of the amount claimed. At the hearing, I allowed the parties to express their grievances. Then I went straight to the question asking whether the employer wanted to claim money from her ex-employee, knowing that she would say no as she wanted face. I was right. She wanted the employee to admit her fault and apologized. I asked the employer if she would agree to settle if the employee apologized. She said that if the employee apologized, she would settle the claim for \$1. I was about to explain to the employee the offer before the employer retracted, the employee stood up and said "I am sorry" and she put \$1 on the table. The employer was satisfied. She took the \$1 and left. The case was closed and no trial was necessary. This is a win-win example.

## **THE DIFFERENCES UNDER THE EASTERN AND WESTERN LINGUISTIC CULTURE**

I consider the differences in Eastern and Western linguistic culture should cover

linguistic difference, the cultural difference and conceptual difference. Frankly speaking, I have made no research in this topic myself, I can only give my personal views as reflected from my experience.

The difference in linguistic culture is apparent that needs no further elaboration.

As to the cultural difference and the conceptual difference, I wish to explore these from the definition of the concept of justice under the western and the eastern culture.

First of all, let us look at the difference from the point of view on the law. The common law concept of the western culture places emphasis on the individuals' freedom of contract. Under the common law, one of the most important ingredients for contract is valuable consideration. A valid contract depends on the true intention of the contracting parties and the terms of the contract, and valuable consideration. The amount of consideration seems to be not important provided it is valuable consideration. Under the Chinese law of contract, one of the most important ingredients for contract is equivalent valuable consideration, a fundamentally different legal concept.

The western culture generally lays emphasis on the spirit of contract, everything depends on the terms of the contract. The eastern culture, such as the Chinese culture, lays more emphasis on relationship. In the High Court of Hong Kong, I have noticed that some of the disputes in the Mainland with the amount involved of one hundred million dollars or several hundred million dollars arose from oral agreement, which is unclear and its terms are uncertain. Such situations seldom happen if one side or both sides are western parties.

There is a difference in the concept of "justice" between the Eastern and Western cultures. I believe you know the late Professor Ji (季羨林教授), an expert in a rare language (火鳥文). He had studied in Germany for ten years

when he was young. So he understood the western culture. In one of his prose writings called “Diversion (隔膜)”, he mentioned the western concept of “justice”. He said that he saw two teenage boys, one bigger and the other smaller, fighting on the street. The adult onlookers did not intervene whereas if this happened in China, the adults would have intervened and told the bigger one not to bully the smaller boy. Professor Ji said “From this small incident, I have learned a lesson. In the eyes of the western countries, the one whose fists are bigger, where lies justice...” This demonstrates the difference between eastern culture and western cultural in respect of the concept of justice. This is, however, only one side of the picture.

If the mediator can realize such differences, he/she may stand a better stead in assisting the parties to resolve their differences.

All differences come back to the same target itself, the mediator’s objective is to assist the parties involved to compromise in order to settle their differences. But to be a successful mediator is, after all, not easy.

Thank you for giving me this opportunity of sharing my experience with you all here.