Mediation Conference 2014
"Mediate First for a Win-Win Solution"

Welcome Address by
the Honourable Chief Justice Geoffrey Ma
on 20 March 2014

1. The theme of this Conference encapsulates in an attractive and catchy way the philosophy of mediation. It goes far beyond merely providing another avenue of dispute resolution and fills in a much needed gap in the administration of justice. Everyone present today will only be too aware of this point but from time to time it is important to remind ourselves of it.

2. The problem with other traditional forms of dispute resolution is that it does only that: resolves disputes – sometimes in a multi-layered way when appeals are involved – and that is all. What commentators, academics and lawyers have described as wounds that need healing, bitterness, relationships (commercial or otherwise) that perhaps need continuation, are all aspects untouched generally by these other traditional means

of dispute resolution. Settlements in the course of such proceedings may go some way towards addressing these aspects, but often only fortuitously so.

3. The beauty of a mediation process, if carried out conscientiously and properly, is that protagonists are able – sometimes for the first time and perhaps on the only occasion after a dispute has arisen – to meet and discuss on neutral ground, with an impartial person (the mediator), their real problems. Often, the real problems as I have used this term, are matters with which other forms of dispute resolution cannot adequately cope. Even post the Civil Justice Reform, in traditional litigation in the courts (and this applies also to arbitration), the pleadings and lists of issues will define the so-called matters in dispute which the court or the arbitral tribunal will have to resolve. Where, one can legitimately ask, is there any room to try to sort out long term relationships, to heal wounds opened up by the very human emotions that humans have and which have been stirred by what has led to the legal

dispute between the parties? And also what of the future for our litigants? As Eliza Doolittle says after the Embassy Ball: "What will become of me?"

4. In 2002, in a well-known but evocative passage (among many this most distinguished Judge has written), he described just what a mediator can achieve: "it may very well be that the mediator is able to achieve a result by which the parties shake hands at the end and feel they have gone away having settled the dispute on terms with which they are happy to live…. Occasions are known to the court in claims against the police, which can give rise to as much passion as a claim of this kind where a claimant's precious horses are killed on a railway line, by which an apology from a very senior police officer is all that the claimant is really seeking and the money side of the matter falls away."[1]

5. The experience in Hong Kong has been that mediation has largely been successful in the type of cases where

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[1] *Dunnett v Railtrack Plc* [2002] 1 WLR 2434, at para 134 (Lord Woolf MR).

the characteristics I have just enumerated as the human facets of a dispute, exist – family disputes, personal injury cases, disputes between neighbours and in a number of different types of commercial dispute, both large and small.

6. The variety of representation in this Conference also amply reinforces the point that mediation looks very much further than just the legal issues that other forms of dispute resolution solely concentrate on. Just a quick look at the list of participants reveals the presence of bankers, other commercial persons, medical practitioners, academics, persons in the construction industry, religious groups, social and family welfare representatives, and of course lawyers and judges.

7. Far from just being another form of dispute resolution, mediation has turned out to be an established and integral social and public service. Many mediators may perhaps not see their role quite in this way, but I venture to suggest that it is useful to bear this in mind, of course in the context of the resolution of a legal dispute.

8. I have had debates with fellow judges over whether mediation, like arbitration, can be said to be a part of the administration of justice. This is largely a sterile debate over whether the term "the administration of justice" is confined to what the courts do and the role of judges. For me, the administration of justice includes as an integral activity the resolution of disputes to arrive at a just, proper and legally justifiable result. Mediation fits into this rubric.

9. I was involved from the start in the Civil Justice Reform in Hong Kong. You will see from the various Reports compiled in the course of that Reform (which of course led to the formal implementation in 2009) that mediation was very much an important feature. It also featured prominently in the Woolf Reform in the United Kingdom. I am extremely pleased to see that Lord Woolf of Barnes is present today (I have earlier quoted from his judgment when he occupied the position of the Master of the Rolls). He is due to deliver an important Keynote Address.

10. As a further indication of the role of mediation in the administration of justice, it has been recognized that a regulatory framework is needed. The Mediation Ordinance[2] came into effect on 1 January 2013 dealing with some important aspects of the conduct of mediation, including the critical aspect of confidentiality of mediation communications (a topic to be discussed this afternoon).

11. A few days ago, I gave a talk to Lingnan University, the theme of which was "A Respect for Rights and A Respect for the Rights of Others". Mediation aims to do both and, simultaneously, to achieve both.

12. I welcome everyone to this two day Conference, with a special welcome to those who have travelled from afar. I wish it much success.

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[2] Cap 620.