

Research Study on Hong Kong Mediation Services – Standard Practice and Procedure

Summary of the Research Report

OBJECTIVES

The Research aims at identifying the factors affecting parties' consent towards choosing mediation as their dispute resolution method, studying existing local and overseas mediation practices in order to look for areas for improvement of Hong Kong mediation practice, and also finding out what constitute good practice of mediation service.

METHODOLOGY

Empirical study and literature review were conducted to analyze issues in mediation services. Surveys were then delivered to users of mediation services to collect information and feedbacks on each mediation case, and quantitative and qualitative analysis were then performed to find out the best practices of mediation.

KEY FINDINGS

- 1. Services provided by Service Providers:** 71% of service providers provide standardized documents such as mediation agreement, settlement agreement, confidentiality agreement, etc. for their mediators. Most of the service providers have their own procedures and standards on nomination and appointment of mediator, and request their mediators to uphold confidentiality.
- 2. Nature of disputants:** 70.6% of the disputants are middle-aged and 45.4% of them of low education background (i.e. primary education level). Most of them were involved in court proceedings (77.6%), and did not have legal representation (88.1%).
- 3. Types of disputes and dispute amount:** The common types of disputes from the research are tort cases (16.8%), family issues i.e. inheritance/ ownership of property (16.1%), business (15.1%) and monetary claims (12.5%). Besides, 50.7% of disputes involve dispute amount of HK\$500,000 or below.
- 4. Reasons of using mediation:** Nearly half of the respondents (44.6%) attempted mediation because of “court direction”. Other reasons are “more efficient” (14.1%), “maintain relationship” (14.1%) and cost effective (12.7%).
- 5. Service evaluations:**
 - (a) 64.6% and 71.4% of the mediation users were either satisfied or very satisfied with the mediation services and the mediators they engaged respectively;
 - (b) The majority of respondents felt that they were being heard during the process

- (93.9%) and in control of the mediation process (86.6%);
- (c) The majority of the respondents (91.7%) agreed that mediation has been timely conducted for their case.

6. Factors affecting parties' decisions to utilize mediation:

- (a) Since many disputants were middle-aged (70.6%) and nearly half of low education background (45.4%), the availability of a one-stop mediation referral services could assist them to prepare and use mediation.
- (b) As majority of the disputes were involved in court proceedings (77.6%) and were directed by the court (55.9%) to attempt mediation, encouragement of courts and the judiciary were the main drives for utilization of mediation service.
- (c) Nearly 70% respondents had not heard of mediation, and over half of them had little or no understandings on mediation (53.2%) and role of mediator (58.2%). Almost all expressed that the publicity of mediation in Hong Kong was not enough (97.7%), which affected the popularity of mediation in Hong Kong.

RECOMMEDATIONS

1. Mediation Practice and Procedure:

Based on the literature review of the local mediation pilot schemes, overseas mediation services experiences, and survey findings received from the mediation enquirers, mediation users and the mediators, the following good practices of mediation are recommended to mediation service providers:

- (a) To hold information sessions/intake sessions to enhance disputants' knowledge in mediation and what they should prepare in mediation;
- (b) To assist disputants in seeking the consent of the counter party or parties regarding utilization of mediation services to resolve their disputes;
- (c) To nominate a mediator in accordance with the parties' requirements;
- (d) To provide administrative support, to brief the appointed mediator on the case nature; and to provide standard documents to mediators for reference; and
- (e) To provide assistance in the arrangement of mediation venue.

2. Promotion and Publicity: More promotion and publicity campaigns on the practical aspects of mediation are required.

3. Trainings for Mediators: Continuous trainings for mediators to uphold the quality of mediation services and increase the popularity of mediation in Hong Kong are advisable.

- 4. Standard Documents:** Sample standard documents and forms as annexed to the Research Report should be made available to members of the service providers and mediators.

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