

## Speech by the Chief Justice at Mediation Conference

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Following is the speech delivered by the Hon Chief Justice Andrew Kwok-nang Li at the conference on "Mediation in Hong Kong: The Way Forward" today (November 30):

Vice-Chancellor, Secretary for Justice, Ladies and Gentlemen,

It gives me great pleasure to be here this morning to open this important Conference on Mediation in Hong Kong.

This Conference represents a unique collective effort by eight major stakeholders from both the private and public sectors to promote mediation and to discuss the way forward. The Conference will learn about the experiences in various overseas jurisdictions and will discuss the use of mediation in many areas in Hong Kong. The speakers, both local and overseas, make up a galaxy of talent which has not previously been assembled in one forum in Hong Kong. I would like to thank all speakers for their participation. To our overseas speakers, I would like to welcome them to Hong Kong and to wish them an enjoyable stay in our metropolis.

On such an occasion, it is unnecessary to rehearse in any detail the various advantages of mediation as an alternative method of dispute resolution: For the parties, the reduction in stress, the saving of time and costs and the achievement of a satisfactory solution, including, the maintenance of a continuing relationship. And for society, the economic and social benefits of alleviating conflict and achieving harmony.

These advantages are now well appreciated in Hong Kong. Many parties are now committed to facilitating and encouraging mediation and to making it a success. The dedicated and pioneering efforts of the mediation community over many years require no elaboration. These labours have borne fruit. They must be congratulated for what they have achieved so far and encouraged to continue and enhance their efforts.

The governing bodies of both branches of the legal profession as well as the universities fully understand the importance of mediation and are committed to developing it in Hong Kong. Indeed, this Conference follows a number of useful conferences and courses on mediation, which the legal profession and the universities have organised successfully during this year.

At the highest level of Government, the Chief Executive expressed the commitment of the Administration to promote the development of mediation services in his Policy

Address in October 2007. He referred to the benefits of mediation and its development around the world. He stated that the cross-sector group headed by the Secretary for Justice "will map out plans to employ mediation more extensively and effectively in handling higher-end commercial disputes and relatively small scale local disputes."

I know that the Secretary for Justice strongly believes in the need to promote mediation and there is no doubt that he will provide effective leadership to the cross-sector group.

As far as the Judiciary is concerned, a Working Party was established in 2006 under the chairmanship of Mr Justice Lam to consider how consensual mediation of civil disputes in the Court of First Instance, the District Court and the Lands Tribunal may be facilitated. We have achieved considerable success in promoting mediation in family disputes and also in construction disputes. As from January 2008, we will be starting a pilot scheme to promote mediation in building management cases in the Lands Tribunal. The Working Party will be giving consideration to the development of mediation in other areas in due course.

The efforts by the Judiciary to promote mediation are underpinned by a costs sanction. Where the court considers that a party has unreasonably failed to attempt mediation, the court may make an appropriate adverse costs order against the party concerned. This sanction has to be sensitively and effectively exercised. The appropriate approach to the use of this sanction will be developed over time through case law.

I believe that the promotion of mediation is plainly in the public interest. And I would like to take this opportunity of reiterating the unequivocal commitment of the Judiciary to its development.

Hong Kong has been making steady progress in this area in recent years. Although we still have a long way to go, it is heartening to note that momentum is gathering pace. What we must now focus on is how we can develop mediation at a faster pace and at the same time ensure high quality.

The quality of mediators is of crucial importance to the successful development of mediation. The better the quality of the mediators, the greater the prospect of achieving success. With increasing success in mediating satisfactory settlements, the greater will be the use of this method of dispute resolution. It is hoped that a snowball effect will develop.

To ensure the quality of mediators, all concerned should make a concerted effort to develop a common benchmark in this jurisdiction for accreditation as mediator. For this purpose, the benefit of overseas experience and the assistance of overseas expertise

would be useful. The benchmark should be of high quality and should be comparable to the standard set in major jurisdictions where mediation is at a mature stage. When developed, the benchmark should be able to gain recognition in other jurisdictions. All mediation bodies should co-operate to develop this benchmark as soon as practicable.

Another area which requires attention as soon as possible is to ensure that legal aid funds are available to cover the costs of mediation where the legally aided party wishes to attempt it. The case for this is compelling. Mediation provides an alternative method for dispute resolution which is often more satisfactory for the parties than litigation. This is well established by the experience in Hong Kong and in overseas jurisdictions which show that mediation enjoys a high rate of success. That being so, it is only fair and reasonable that this method should be available to legally-aided parties who wish to undertake it. There is no justification for depriving them of this effective method of dispute resolution.

Further, substantial public funds are spent on legal aid. The budget of the Legal Aid Department for 2007/08 stands at about HK\$720 million. The use of mediation in disputes where the legally-aided party desires to use this process is likely to result in substantial savings in legal costs for the public purse, in addition to the advantages for the parties concerned and the benefits for society.

The question of making available legal aid to fund the costs of mediation has been raised previously. I believe that this issue should now be addressed with expedition by those responsible for legal aid.

Ultimately, the success of mediation will depend on wide acceptance by the legal profession, by other professions, the business community and the public at large. To achieve this, all concerned and the public must gain and enhance their understanding of mediation and its advantages. To this end, training programmes need to be increased and public education is necessary. This should include the young at the school level so that they gain a good understanding of mediation at an early age.

In particular, the legal profession has a very important role to play in developing mediation. Whilst the governing bodies of both branches of the profession support the promotion of mediation, the extent of understanding of the mediation process among lawyers is rather limited and is very far from satisfactory. Much work needs to be done to enhance their knowledge of mediation through training courses and the like. This should start with the law school where mediation should be a compulsory part of the PCLL course; the professional qualification course for lawyers. And there should be continuing education courses for practising lawyers. Indeed, with the costs sanction vested in the courts where a party has unreasonably refused to attempt mediation, lawyers

have a professional duty to advise clients about this alternative method of dispute resolution and the possible repercussions of not trying it.

We have a long road to travel before mediation reaches a satisfactory level of maturity comparable to that in some other common law jurisdictions. All concerned are working towards this common goal for the benefit of our community. I am sure that with the concerted efforts of all concerned, we will succeed. Thank you.

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