

Nuts and Bolts in Aspirational Family Mediation

by
Ms Vivian Chih,
Barrister-at-Law,
Justice Chambers



Ms Chih is a practicing barrister-at law in HK since 1986. She holds a Bachelor degree in Law, a Master degree in International Law, a Diploma in International Arbitration and a Master Degree in Counseling.

Ms Vivian Chih is qualified as a HKMAAL general and family mediator in HK and is a very experienced and seasoned mediator having participated in nearly 300 mediation cases since 2009, covering area of personal injury, insurance, commercial, family, land, probate, employment and contractual matters, etc.



With respect to mediation/negotiation training, Ms Chih has received mediation training from the Accord Group as early as 2004 as part 1 of the Professional Mediation training of HKIAC, the accredited mediator training by CEDR of London (the Centre for Effective Dispute Resolution) in 2009, the part II Professional Mediation training of HKIAC in 2011, the Master of Negotiation programme by CEDR in Nov, 2013, the training programme for HKIAC panel of mediation assessor in 2014, the mediation training by the Hong Kong Family Welfare Society in 2013/14, and recently, the Programme on Negotiation at the University of Oxford in Oct, 2014, and the Programme on Negotiation at Harvard Law School in Nov, 2014 and April, 2015 respectively.

Ms Chih is a passionate and dynamic mediator. She has the firsthand experience in working out the difference between the technique used in mediation/negotiation as opposed to that used in litigation. She is eager to share her personal insight in the mediation/negotiation techniques applicable to the Hong Kong context.

Basic understating of the rights and responsibility of parties in family disputes

Financial provision

■ Principle for division of assets

1. What kind of assets are capable for division upon dissolution of marriage?
 - Matrimonial home/assets? - pre-marital assets?
 - External assets - e.g. gifts, inheritance?
 - Unilateral assets - e.g. sole investment/business?
 - Property held on constructive trust?
2. When can the equal sharing principle be departed?
 - by: Pre-nuptial agreement? Conduct of parties? Short marriages? Need of parties?
3. Can there be compensation for relationship - generated disadvantage or compensation for extra duty such as caring for children or elderly?

■ Principle for provision of Ancillary Relief

1. Should there be life long provision for spouse in short marriages?
2. When can there be variation in financial provision?
3. Should psychological effect upon children caused by welfare of spouse be considered?

■ Principle for maintenance for children

1. Should there be maintenance for children born by unmarried couples?
2. Should maintenance for children be for their life long interest?
3. Can lump sum be settled for purchase of house for children?
4. Should wish of paying party and need of children be considered?

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Custody, access, care and control

▪ **Meaning of custody, access, care and control**

1. Is there any practical significance between custodial rights and non-custodial rights? (right to final decision vs right to be consulted only)?
2. What kind of combination of custody, access, care and control are permissible by orders of Court? - Joint custody? Shared care and control? Parallel-parenting? Liberal/reasonable access or defined access?
3. When is sole custody preferable by Court?

▪ **Principles of guardianship under Guardianship of Minors Ordinance (Cap.13)**

1. Significance of social welfare report and wishes of children (child objection defence) in matters of custody, access, care and control

▪ **Jurisdiction of Hong Kong court in custody matters**

1. Can parents of children born in Hong Kong (permanent residents) but raised in foreign country (e.g. China) apply for custody, care and control in Hong Kong court?
2. *Forum non conveniens* - Should only Court of the habitual residence of child have right to intervene in custodial, care and control matters?
3. *A Lisalibi pendens* - significance of 'dispute elsewhere pending'

▪ **Safeguard against child abduction under Child Abduction and Custody Ordinance (Cap.512) implementing the Hague Convention on the Civil Aspects of International Child Abduction**

1. Who has the right to decide the child's place of residence?
2. Is there a breach of custodial right of another spouse by removing the child to another place?
3. Right of Hong Kong Court to intervene depends on
 - (i) Breach of custodial right of a spouse, unless there was:
 - (a) acquiescence (i.e. strong subjective intention or misleading conduct by the other spouse), or
 - (b) grave risk of the children in intolerable situation (e.g. suffering from physical or psychological abuse or neglect)

Skill in Family Mediation - 'Soften the Heart; Enlighten the Mind'

▪ **Control, respect and deployment of 'Emotion'**

1. Management of negative emotion - e.g. hatred, revenge, bitterness, distrust, disrespect, withdrawn, avoidance...
2. Management of tension/conflict in relationship
3. Management of emotional outburst or breakdown in negotiation
4. Nourishment of positive emotion, by
 - Unconditional regard, empathy, affirmation, appreciation, encouragement, positive optimistic interpretation...

▪ **Discerning the actual underlying core concern**

1. Active listening, observing body language, heeding signs of distress and pressure, discerning feeling and psychological condition...

▪ **Skill in guiding party to realize the best interest and solution for all especially for children**

1. Employing open, thought-provoking questions, education, personal sharing, analogy... etc. to arrive at:
 - (i) empathetic understanding of the relationship and conduct of parties,
 - (ii) fair, objective and realistic view of the interest of all parties in the long run

▪ **Generation of creative and practical options for parties**

1. Skill in improving communication and opening up deadlock
2. Skill in encouraging hope, faith, trust and confidence in negotiation and future communication
3. Skill in reducing conflict in access and ensuring punctuality in periodical payment...
4. Skill in bringing realistic, practical and feasible co-parenting plan (covering custody, access, care and control)

Scan to Calendar



Code:	EVT000000104	Level:	Intermediate
Date:	5 December 2015 (Saturday)	Language:	English
Time:	09:30 - 12:45 (Reception starts at 09:00)	Accreditation(s):	LSHK 3.0 CPD Points (LSHK Allocated Number: 20153867) HKMAAL 3.0 CPD Points HKIAC 3.0 CPD Points for Accredited Mediators HKMC 3.0 CPD Points
Venue:	Kornerstone Institute 15/F, Hip Shing Hong Centre 55 Des Voeux Road Central Central, Hong Kong	Request for Rerun:	Please Contact Us for Details



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