

**The Hong Kong Bar Association's Response to the  
Report of the Working Group on Mediation ("the Report")**

The Bar supports the commitment of the Government to the development and further establishment of Mediation in Hong Kong.

The Bar has the following particular comments in respect of the Report's recommendations.

**Recommendation 1**

A clear definition is necessary to ensure the public's confidence and understanding of the process.

**Recommendation 2**

The term "Mediation" should be used; conciliation will ideally become redundant to avoid confusion.

**Recommendation 3**

Agreed.

**Recommendation 4**

Agreed.

**Recommendation 5**

Agreed.

**Recommendation 6**

Agreed.

**Recommendation 7**

Agreed.

**Recommendation 8**

It is important that sufficient and appropriate resources are made available to the DOJ and Judiciary to ensure that the spirit and framework of Practice Direction 31 are maintained and developed within CJR.

**Recommendation 9**

Agreed.

**Recommendation 10**

Agreed.

**Recommendation 11**

Agreed.

**Recommendation 12**

Agreed. Collaborative Practice is not mediation although, it reflects the approach of Mediation to identify “interests” rather than positions.

**Recommendation 13**

Agreed.

**Recommendation 14**

Agreed.

**Recommendation 15**

Agreed.

**Recommendation 16**

Agreed.

**Recommendation 17**

Agreed.

**Recommendation 18**

Agreed. A significant proportion of members of the Bar have already attended mediation accreditation courses, and some have attended mediation advocacy courses. The Bar is also already taking steps to develop its own mediation training, and continued mediation advocacy training.

**Recommendation 19**

Agreed.

**Recommendation 20**

Agreed.

**Recommendation 21**

Agreed.

**Recommendation 22**

Agreed.

**Recommendation 23**

Too many 'systems' may give rise to confusion; one system which is flexible may be more appropriate.

**Recommendation 24**

Agreed, but it is important not to 'dumb down' mediation, it is now part of the established process of dispute resolution by virtue of Practice Direction 31.

**Recommendation 25**

A Single Accreditation Body should be introduced as soon as possible to:

1. Ensure the quality of mediators
2. Ensure consistency of standards
3. Build public confidence in mediation services
4. Maintain the credibility of mediation

**Recommendation 26**

As referred to above in recommendation 25 the Bar considers that a standardized system of accrediting mediation should not be delayed. Rather such a system should be brought in as soon as possible. The experience of other jurisdictions is that at some stage it is necessary to move towards some standardized form of accreditation. It will be easier to do so now rather than in the future.

**Recommendation 27**

Agreed.

**Recommendation 28**

Agreed.

**Recommendation 29**

Agreed.

**Recommendation 30**

Agreed.

**Recommendation 31**

Agreed, the Bar is already promoting such a process.

**Recommendation 32**

The Bar Council does not envisage a Mediation Ordinance would restrict the manner in which mediation is conducted in Hong Kong, but where appropriate could provide the necessary formality and clarity; this would particularly apply to court annexed Mediation and or Mediation conducted sequentially and or concurrently with litigation. The Bar therefore supports a Mediation Ordinance.

**Recommendation 33**

Agreed.

**Recommendation 34**

Agreed.

**Recommendation 35**

Agreed.

**Recommendation 36**

Agreed.

**Recommendation 37**

Agreed.

**Recommendation 38**

Agreed.

**Recommendation 39**

There should not be blanket immunity; the relationship of the Mediator and the parties can be determined by the Mediation Ordinance and the Agreement to Mediate.

**Recommendation 40**

Agreed.

**Recommendation 41**

Agreed.

**Recommendation 42**

Agreed.

**Recommendation 43**

There should not be an Apology Ordinance; for an apology to be of any value, it should be voluntary.

**Recommendation 44**

Agreed, the Government is but 'another' party save in exceptional circumstances already specifically provided for in existing legislation.

**Recommendation 45**

Agreed. Of note is the fact that Practice Direction gives the Court the jurisdiction to 'direct' the mediation once the Parties have agreed to Mediate.

**Recommendation 46**

Agreed.

**Recommendation 47**

Agreed.

**Recommendation 48**

Agreed.

**Hong Kong Bar Association**

31st May 2010