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## ANALYSING PARTIES' BEHAVIORS ON MEDIATING BUILDING MANAGEMENT CASES

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**Abstract:** Although mediation is a topical research topic in construction management studies, building management dispute mediation is rarely reported in academic community. This study was conducted in the light of marked increase in the number of building management dispute settled by mediation. Within the context that the parties' behaviours during the course of the mediation would influence the outcome, the focus of the study is to examine the behaviours adopted by mediators and disputants. Data was collected with specially designed questionnaire and Relative Importance Index (RII) was used to rank the significance of the behaviours. The findings reveal that disputants often adopt aggressive approach to push their counterparts in defending their case as well as pressing for concessions. Mediators moreover, prefer establishing a trusting relationship with the disputants. In this regard, mediators seldom criticise and challenge disputants' point of view and argument. Instead, they would attempt to establish a harmonious environment by engendering heartfelt feeling and rational understanding. Mediators would refrain from responding inappropriately to the pressing behaviours of disputants. The research findings also suggest further research in building management disputes mediation would further provide insight to the public at large in understanding how building management disputes can be settled more effectively through mediation.

### 1 INTRODUCTION

Hong Kong is a small place and possibly the most densely populated city in the world. Most of the Hong Kong people live in multi-storey buildings having a large number of units. The common areas of their buildings (hereafter building management) are managed collectively by the property owners. These building management tasks include, inter alia, the daily maintenance and cleaning of facilities. In addition, larger scale maintenance activities like external wall renovation are regularly conducted. However, these tasks are not straightforward in view of complicated ownership involved. Having consensus view on tender and schedule etc. is always difficult if not impossible. Collecting the necessary funds is the most daunting task. As such, lack of maintenance and indifference to common areas become the key issues of building management. Having said that, it is clear that inadequate maintenance can present risk to the public at large.

An Owners' Corporation (OC) is usually formed to represent the interests of the owners. OC is a *body corporate set up under the Building Management Ordinance (BMO) by the owners and registered with the Land Register to exercise and perform the rights, privileges and duties of the owners....* (ICAC 2010). OC can also appoint a Management Committee to oversee the building manager or property management

company responsible for building management functions. Maintaining common areas of the buildings and the improvement of facilities are normally managed by the property management company. Other regular services such as security and cleaning may further be outsourced to other specialist companies. The web of contractual relationship so established adds to the complexity in effecting the building management functions.

Despite the fact that the operation of OC can facilitate the incorporation of property owners to carry out building management functions, disputes remain common in the operation. The practice of outsourcing exaggerates the incidences of building management dispute where quality of the service providers are at stake (Chan 2009, HAD 2011). These disputes can be very complicated in terms of the relationship among the parties. For example, difficult cases often involve substantial element of human issues where the building management company, property owners and tenants are having conflicts and differences. Typical examples include the liability of the maintenance of the common areas/facilities, the payment of management fee and the building maintenance fee shared by the property owners. For the period of 2008 to 2011, the Hong Kong Judiciary has reported 1,361 building management dispute cases. Among others, 18.7% are related to maintenance funds, 6.2% involved water leakage and 15.3% are having illegal structures. It can be observed that building management issues often create disturbance to the residents one way or the other. The parties concerned may not know each other and if tenants are involved, convoluted communication is inevitable. As a result, it is not easy to identify the real causes and who should be responsible. Disputes in this connection among the owners, management companies and occupants are therefore quite common.

### **1.1 Mediation – A Way to Resolve Building Management Disputes**

The increasing number of the building management dispute in recent years is raising concerns. The Hong Kong Judiciary is keen to streamline the settlement of these disputes through mediation so that courts' time can be saved. Mediation is considered as an effective way to resolve building management disputes. It is a sensible and economical way to handle these disputes where maintaining harmony with the community is desirable. For example, the Land Tribunal of Hong Kong introduced a pilot scheme to encourage disputing parties of building management disputes to resolve their differences by mediation. A Building Management Mediation Co-ordinator's Office (BMMCO) was set up in January 2008 to facilitate the disputing parties in seeking mediation. Mediation is more likely to derive mutually acceptable settlement agreements that should well fit disputants who are living closely to each other. Thus, it is the preferred way of settling building management disputes than adversarial litigation (Bateson 1997; Fenn et al. 1998). The success of mediation depends on the joint efforts of mediator and disputants. Experienced mediators should be able to provide active assistance in managing time and building a harmonious atmosphere to make communication easier. With these, the chance of reaching settlement is improved. Likewise, disputants should be sincere and refrain from holding a confrontational attitude. Otherwise, reaching mutually beneficial mediation outcome is quite distant. On these notes, it is important to understand the behaviours of both mediators and disputants that would enhance the success of mediating building management disputes. Upon a literature review in this topic, it is observed that reported research studies in mediating building management disputes are very few. This study aims to fill the knowledge gap in this area in studying the behaviours of mediators and disputants. The findings should raise the awareness of the importance in promoting a climate of harmony, effective communication and encouraging cooperative behaviors in building management dispute mediation. The study is reported in the following sections: i) a comprehensive review on the behaviors of parties involved in mediating building management disputes; ii) the research methodology and data collection procedure; and iii) results and discussions.

### **1.2 Mediating Building Management Disputes – A Behavioral Study**

As there is a lack of research on mediation for building management disputes, studies on mediation in construction, business and psychology provided valuable references to develop a framework for the study (Yiu 2006; Karim and Pegnetter 1983; Carnevale et al. 1989; Douglas 1962; Stevens 1963; Pruitt 1981; Eiseman 1977; Young 1972). Accordingly, behaviors of disputants and mediators can broadly be categorised into three groups: (1) emotion-related; (2) process-related; and (3) outcome-related. Emotion-

related behaviour is inherent in all human interaction. It is one of the key influencers in negotiation and would eventually affect the mediation process. Process-related and outcome-related behaviours are much more direct as far as the mediation process is concerned. The behaviours of disputants and mediators are listed in Tables 1 and 2 respectively.

Table 1: List of Behaviours of Disputants

<b>Behaviours of Disputants</b>	
<i>Emotion-related</i>	
D_EB1	Being hostile toward the other parties
D_EB2	Being emotional in the mediation process
D_EB3	Tend to argue with other parties
D_EB4	Being optimistic in the mediation process
<i>Process-related</i>	
D_PB1	Jointly solve the issue
D_PB2	Making concession
D_PB3	Actively communicating with other parties
D_PB4	Paying attention to others' words and show respect
D_PB5	Defending himself for every argument raised
D_PB6	Suspecting the mediator
D_PB7	Providing false information in the mediation process
<i>Outcome-related</i>	
D_OB1	Showing motivation towards the settlement
D_OB2	Showing concerns about future relationship with the other parties
D_OB3	Showing unrealistic expectation
D_OB4	Being motivated to solve the dispute
M_PB9	Avoiding social conflict between disputants
<i>Outcome-related</i>	
M_OB1	Suggesting solutions
M_OB2	Introducing consequences for not being settled
M_OB3	Developing plan for settlement

Table 2: List of Behaviours of Mediators

<b>Behaviours of Mediators</b>	
<i>Emotion-related</i>	
M_EB1	Showing empathy to disputants
M_EB2	Giving pressure to disputants
M_EB3	Building rapport in the mediation process
M_EB4	Gaining trust from disputants
M_EB5	Encouraging disputants to jointly solve the dispute
M_EB6	Giving face to disputants
<i>Process-related</i>	
M_PB1	Showing professional knowledge
M_PB2	Criticising disputants' argument
M_PB3	Challenging disputants' point
M_PB4	Maintaining the order of mediation
M_PB5	Bring up unaware issue(s)
M_PB6	Effectively listening to disputants
M_PB7	Facilitating understanding of disputants
M_PB8	Promoting exchange of ideas

### 1.2.1 Behaviours of Disputants

Five typical disputant behaviours on mediation are highlighted as follow:

1. Disputants with optimistic mindset would enhance the desire of the other to cooperate (Sebok 1993). This type of disputant tends to identify areas of agreement with the other parties, acknowledge the other parties' perceptions and express desire to see the others to get as much of what they want as possible from mediation (Sebok 1993). Furthermore, those disputants who show concerns about future relationship would influence the mediation outcomes (Mareschal 2003). It has also been suggested that disputants might consider future relationship with the counterpart when they choose among mediation, arbitration and litigation (Madden 2001).
2. Being motivated to solve the dispute and reach a settlement are behaviours concerning motivation derived throughout the mediation process. However, there is quite a significant difference between them. Being motivated to solve the dispute refers to behaviour that the disputants are willing to solve the dispute, preferably with a settlement that will satisfy both parties. But being motivated to reach a settlement refers to behaviour that disputants only put the settlement in the first priority, with other concerns left behind, such as the satisfaction of the other party on the settlement.
3. Demonstrating behaviour of joint problem solving and effective communication is highly related to mediation success. With these behaviours, disputants would attempt to put their best effort to exchange ideas and come up with a settlement. As suggested by Zubek (1992), these can be achieved by cooperating to seek a settlement that meets mutual needs. Alternatively, one party would make his/her own effort in seeking for possible solutions, and then work on a solution that would satisfy both parties' interest. The latter has proven to be able to enhance the likelihood of mediation success (Zubek 1992). Similar effect would be given if effective communication, which increases the exchange of idea and information, exists in the course of mediation (Zariski 2010).
4. According to Sebok (1993), demonstrating behaviours of paying attention to others would imply that disputant has been listening attentively, indicating that *the other party 'has a good point' when he*

*makes a point you believe has merit.* This type of behaviour demonstrates a real participation in mediation, and would enhance the overall mediation process.

5. Demonstrating behaviours of 'giving out false information', 'being emotional', 'showing unrealistic expectations', 'defend arguments raised', 'suspecting mediator' and 'concession making' would negatively influence the mediation process (Zubek 1992, Zariski 2010, Carnevale 1992).

### **1.2.2 Behaviours of Mediators**

Mediators play an important role to steer a successful outcome (Goldberg 2005, Goldberg 2007, Stulberg 1997). Similar to the classification of the disputant behaviours, three types of mediator behaviours, emotion-related, process-related and out-outcome related behaviours are applied. From the perspective of mediators, emotion-related behaviours refer to those that will influence the emotions of the disputants. This type of behaviour such as showing empathy, applying pressure, building rapport, gaining trust, encouraging jointly solving of the dispute, and giving "face" to disputants would lead to a change of emotions of the disputants. These are the demonstrations of concern and perspective taking (Zubek 1992). The mediator is concerned about the interest of either party, and through verbal or nonverbal actions, expressed this concern so that disputants' interests in all aspects will be taken good care of (Zubek 1992). These behaviours will lead to both parties' interests becoming aware in the mediation, so it is suggested that it will benefit the mediation process. Furthermore, demonstrating these behaviours would reduce tension between the disputants, and make the mediation progress easier from a psychological aspect. Similarly, the mediator can demonstrate process-related behaviours to affect the mediation process. These include showing professional knowledge, criticizing disputants' arguments, challenging disputants' points, maintaining the order of mediation, bringing up unaware issues, listening to disputants effectively, facilitating understanding of disputants, promoting exchange of ideas, and avoiding social conflict between disputants. The influence of mediator is always critical to the mediation process. Mediator is appointed because his background is relevant to the subject matter of the disputes, and he does possess a high reputation for his expert knowledge. Finally, a mediator quite often adopts outcome-related behaviours in the course of mediation in facilitating settlement formulation. These include suggesting solution, introducing the consequences of not being settled, and developing a plan for settlement.

## **2 METHODOLOGY**

This section presents the steps performed to study the behaviours of mediators and disputants in the process of mediating building management disputes. These include *questionnaire design* and *data collection procedures* and *data analysis procedures*.

### *Questionnaire Design and Data Collection Procedures.*

A questionnaire has been designed to identify the disputant and mediator behaviours in mediating building management disputes. As such, the target respondents of this questionnaire survey are the disputants or mediators of building management disputes. They were invited to participate in this questionnaire survey. If the respondent is the disputant (or mediator), he is required to evaluate his own behaviour, and evaluate the mediator's (or disputant's) behaviours as listed in Tables 1 and 2. A Likert scale of 1 (least occurred) to 7 (most occurred) was adopted.

### *Data Analysis Procedures*

The 7-point Likert scale described previously were combined and converted into Relative Importance Indices (RIIs) for each identified behaviours, the use of RII can determine the relative rankings of different behaviours by comparing the individual relative importance indices for different behaviours (Shash 1993, Kometa, *et al.* 1994 and Chan *et al.* 2002). The individual numerical ratings were therefore transformed to RIIs by the following formula:

$$[1] RII = \frac{\sum r}{H \times N}, (0 \leq RII \leq 1)$$

where,

RII = Relative Importance Index;

r = Rating given to each dispute source by the respondents

H = The highest rating (i.e. '7' in the rating scale), and

N = Total number of respondents of each behaviour

### 3 RESULTS AND DISCUSSIONS

A total of 53 respondents participated in this questionnaire survey. With the RII technique, the overall RIIs can be calculated for the adoptions of each behaviour (Figures 1 and 2 refers). Examining the indices, it is observed that the top-three disputants' behaviours are 'D\_EB3: Tend to argue with other parties', 'D\_PB5: Defending himself for every argument raised' and 'D\_PB3: Actively communicating with other parties'. 'Tend to argue' can be considered as a contending behaviour. It is a strategy to push counterpart in the direction of one's wishes (Carnevale 1992). This behaviour would usually bring an agreement at the end of negotiation. The party with forceful use of contentious behaviour will be favoured. However, this behaviour would discourage joint efforts from both parties. Being defensive is one of the key features when building management disputes are mediated, disputants often express their point of view to exclude liabilities (e.g. water leakage problems). Most of the disputants aim to take the high ground in order to take advantage in the settlement terms. In this study, it is found that the low-ranking disputants' behaviour is 'D\_PB6: Suspecting the mediator', implying that most disputants have confidence in their mediators. This may be due to the fact that the mediators are often jointly appointed by the disputant themselves. Trust can be hence maintained.

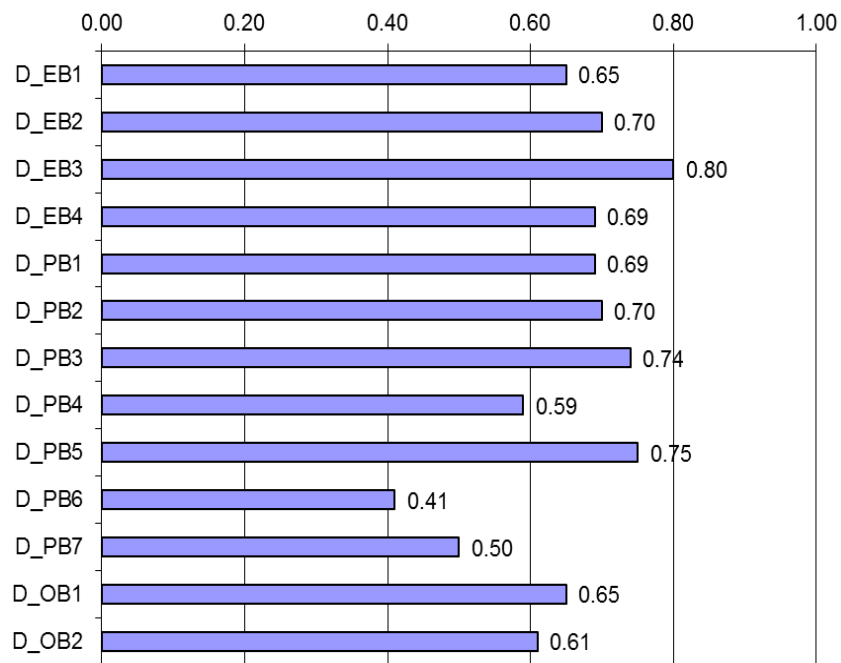


Figure 1: Results of RII - Disputants' behaviours

Regarding mediators' behaviours, the top-three mediators' behaviours are 'M\_PB7: Facilitating understanding of disputants', 'M\_PB6: Effectively listening to disputants' and 'M\_PB8: Promoting exchange of ideas'. These behaviours are inter-related in the sense that effective listening promotes

communication, exchange of ideas, and enhances understanding among disputants. Moreover, these behaviours would be deemed to be 'paying attention to the others' words (Sebok 1993). They are conveying that the disputant has been listening attentively, indicating that the other party "has a good point" when he makes a point you believe has merit. All these behaviours mean a real participation to the mediation, and both parties will have to make an effort to solve the dispute, preferably with a settlement satisfying both parties. These findings suggest that mediators are well connected with the disputants at the level of heartfelt feeling as well as rational understanding. Promoting the exchange of ideas is a positive mediator's behaviour. This enables the disputants to understand the way of thinking of the other side, and facilitates the generation of new ideas based on what others had been suggested or raised. Zubek (1992) suggested that challenging disputant would encourage him to think about the issues, and stimulates him to look over the unaware issues in their arguments.

Unsurprisingly, the mediators' behaviours, 'M\_PB2: Criticising disputants' argument' and 'M\_PB3- Challenging disputants' point', are low-ranked in this study. Criticizing other's idea is always not a smart tactic, as this will upset the disputants. Disputants will be dissatisfied when they were criticized (Zubek 1992). For example, asking embarrassing questions, a more subtle form of criticism, would be negatively related to goal achievement (Zubek 1992). Therefore, the behaviour of criticizing disputants' argument would inhibit mediation success.

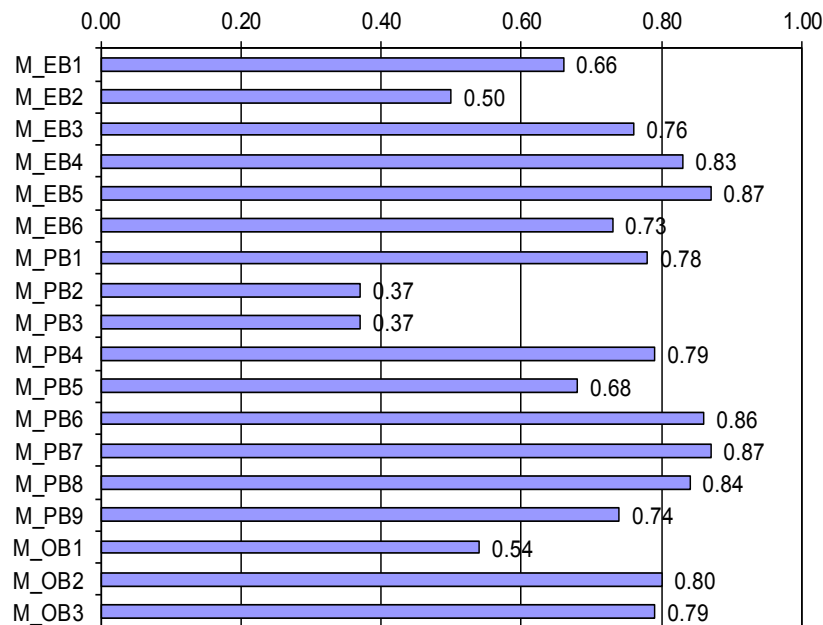


Figure 2: Results of RII - Mediators' behaviours

#### 4 CONCLUDING REMARKS

Building management disputes have become one of the major sources of disputes in Hong Kong Building Sector. In this study, a questionnaire survey was conducted to investigate the behaviours of disputants and mediators in building management dispute mediations. Relative Importance Indices were used to rank the importance of behaviours identified from a literature review. It was found that disputants often adopt an aggressive approach to press for concession, while mediators would try to establish a trusting relationship with the disputants by showing heartfelt feeling and rational understanding. This can cultivate a harmonious environment that is conducive for richer information exchange. It is also found that disputants seldom challenge the mediators. Furthermore, this study reveals that mediators would refrain from criticising the argument raised by the disputants. Instead, they prefer to engender a harmonious

environment whereby he would not be pushed to respond inappropriately. Using an inappropriate strategy would invite pressing behaviours of disputants. The research findings of this study are of significant value to the public to understand how mediation works in settling building management disputes.

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