



Analysing Parties' Behaviors on Mediating Building Management Cases

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Outline

- Development of Mediation in Hong Kong
- Building Management Dispute (BMD)
- Mediation- A Way to Resolve BMD
- Behavior of Disputants and Mediators in BMD Mediation
- Concluding Remarks



Development of Mediation in Hong Kong

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1984	Trial Mediation Scheme
1989	Mediation for all major public works
1990	'Condition Precedent' before Formal DR
1999	Integral Part of DR provisions
2006	Pro Bono Mediation Scheme
2007	Policy Address



Development of Mediation in Hong Kong

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2007	Promotion Strategies
2008	Department of Justice
2009	Civil Justice Reform Practice Direction – 6.1
2010	Practice Direction 31



Building Management Disputes

- Small and densely populated
- Multi-storey buildings
- Common areas collectively owned
- Building management tasks : daily maintenance and cleaning of facilities, external wall renovation etc.
- Complicated ownership issues



Building Management Disputes

- Owners' Corporation(OC)
- Building Management Ordinance (BMO)
- Building Management functions by Professional Organisations.
- Outsourcing affects quality
- Bid Rigging
- Diverging views between owners; owners & OC



Building Management Disputes

- 2008 to 2011, the Hong Kong Judiciary 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



Mediation – A Way to Resolve Building Management Disputes

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- Concern- rising number
- Concern- Courts' time
- Search for alternative by the Hong Kong Judiciary
- Mediation: a sensible option
- Building Management Mediation Co-ordinator's Office (BMMCO)



Mediation – A Way to Resolve Building Management Disputes

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- A study of the behaviours of mediators and disputants and involves:
 - 1) literature review on the behaviors of parties in building management dispute mediations;
 - 2) collecting data
 - 3) discussion of findings



Behavior of Disputants and Mediators in BMD Mediation ¹⁰

- Lack of research on mediation for building management dispute
- Studies on mediation in other types of dispute e.g. construction and business.
- Behaviors of disputants and mediators can broadly be categorised into three groups
 - (1) emotion-related;
 - (2) process-related; and
 - (3) outcome-related



Behaviours of Disputants

Behaviours of Disputants	
<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 showing 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 settle the dispute



Behaviours of Mediators

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Behaviours of Mediators	
<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
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



Data For the Study

- Questionnaire as tool for data collection
 - ✓ Identify the disputant and mediator behaviours in building management dispute mediations
 - ✓ Target respondents: the disputants or mediators of building management disputes
 - ✓ Occurrence evaluation his/her own and the mediator's behaviours



Relative Importance Index (RII)

- Data analysis
 - ✓ The 7-point Likert scale and converted into Relative Importance Indices (RIIs) for each of the identified behaviours
 - ✓ The ranking by RII is used for discussion



Results and Discussions

- A total of 53 respondents participated
- Top-three ranked disputants' behaviours
 - ✓ “D_EB3: Tend to argue with other parties”,
 - ✓ “D_PB5: Defending himself for every argument raised”; and
 - ✓ “D_PB3: Actively communicating with other parties”
- Lowly-ranked disputants' behaviour
 - ✓ “D_PB6: Suspecting the mediator”
Most disputants have confidence in the mediator



Results and Discussions

- Top-three ranked mediators' behaviours
 - ✓ “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 enhance understanding among disputants
- Genuine participation of the disputants will help to solve the differences thereby driving a settlement that meets the needs of them.



Results and Discussions

- Lowly ranked mediators' behaviours
 - ✓ “M_PB2: Criticising disputants' argument” and “M_PB3: Challenging disputants' point”, are lowly-ranked in this study
 - ✓ Criticizing other's idea is always not a tactic conducive for reaching a settlement



Concluding Remarks

- Disputants often adopt an aggressive approach
- Mediators aim to establish a trusting relationship
- Mediators aim to engender a harmonious environment that is conducive for information exchange
- Mediators refrain from criticising the argument raised by the disputants
- No major departure from findings of mediation of other types of dispute
- Further research on interrelationship dispute type, strategy and outcome



Thank You

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