



香港和解中心  
Hong Kong Mediation Centre

和

氣

會員通訊 NEWSLETTER

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Interview with Judge Chen of No. 2  
People's Court of Dongguan City



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**和氣** 第一期秋季號出版後，編輯室收到部份會員意見，反映需要改善的地方，例如：內頁的版面較封面單調；題材的選擇等。總體上，讚賞的多，在此我要衷心的感謝全體出版委員會成員的努力及付出。

香港政府正就規管調解服務進行諮詢，稍後將草擬《調解條例》，就此，創辦人梁海明教授(創會會長及監事委員會委員)分享他對和解員專業發展方面的看法。

早前，香港和解中心為東莞二級人民法院的法官和人民調解員舉辦了首次的「高級和解課程」，更專訪了人民法院陳葵院長，為我們上了一堂國內調解發展的入門課，對國內司法制度下的調解認識不少。

同時，緊記留意本會的持續專業進修計劃的疑難解答，對各位保持專業質素是很重要的。

石家俊  
出版委員會主席



First, thanks for the valuable comments on our first issue of the **和氣**. We shall work harder on the newsletter design, picks of the topics and issues. I thank again the Publications Committee for the dedicated efforts to make it happen.

For this issue, we are honor to have Professor Raymond Leung, Founding President and Honorary Governor, to discuss with us quality of a mediator and to highlight key elements in practicing.

In late 2010, we had opportunity to provide “Advanced Mediation Training” to a group of judges and mediators from the No. 2 People’s Court of Dongguan City. The interview with the President, Chen Kui, shared the current system and practice of mediation in China. It was indeed a valuable lesson to understand China’s judicial system and direction in mediation.

Further, I hope you will find the Q&A for the Continuous and Professional Development Program useful. It is important to keep ourselves up-to-date of the development and knowledge in mediation.

I do wish you enjoying this issue and am looking forward to more inputs and articles.

Mr. Vincent Shek  
Chairperson, Publications Committee



親愛的會員們：

本地調解服務在 2010 年已進入一個高速發展的時代。所有的眼光都落在政府的政策及本地調解發展上。我們有幸與各位見證這段重要的時刻及一起推動本地調解工作。

在 2010 年，我們在各方面都有著重要的發展及改進。在調解服務方面，我們與七間機構成立聯合調解專線辦事處有限公司(聯合辦事處)；另與聯合辦事處及發展局於 2011 年初，推行為土地強制售賣個案提供的「調解先導計劃」；同時，以本中心名義及由本中心的代表提交了設立投資者教育局及金融糾紛調解中心的建議方案。在社會服務中，與民建聯合作推出調解服務計劃；在教育方面，我們引入更多的合作伙伴，把調解知識帶到更廣泛的年齡及職業層面；在考核方面，我們強化考核員團隊，改進考核制度及規定註冊和解員必須要接受個案演繹員的訓練，方可於考核試中服務；在會員方面，我們鞏固內部培訓機制，把持續專業發展計劃完善化，又舉行不同的會員活動及出版會員通訊，提供一個予大家認識及交流的平台。在上年度完結前，我們錄得總註冊和解員，並加入我們會籍的共有 400 多人。

我們預期 2011 年是一個充滿挑戰的一年，本地調解發展將會有著急速的轉變，而這些轉變將會對未來發展有著重要及深遠的影響。抱著寬容的心情，我們預料將會看見更清楚和明確的本地調解發展方向。你準備好跟我們在這充滿挑戰的一年，踏出更大的一步？

我在此祝願各位與你們的家人在兔年有著更豐盛的發展、家庭幸福、身體健康及生活愉快！

曾炳超  
會長



Dear Members,

MEDIATION in Hong Kong was formally entered and introduced into legal landscape in 2010 after the issuance of the Report of the Working Group on Mediation in February and the Practice Direction 31 brought in effect in 1 January 2010. We also noticed increasing demand of mediation services. I like to welcome you on board witnessed these significant changes with us and joined in to support / promote mediation in the community.

In 2010, the Centre submitted our views on the two important consultation papers in February (ie the Report of the Working Group on Mediation and the consultation paper of the proposed Financial Dispute Resolution Centre), joined the Joint Mediation Helpline Office in July with the other seven professional organisations, and participated in the Pilot Mediation Scheme championed under the Development Bureau for Cap 545 Lands (Compulsory Sale for Redevelopment) Ordinance. To promote mediation in the community, we initiated a mediation pilot scheme with Democratic Alliance for the Betterment and Progress of Hong Kong. To cultivate broader understanding in mediation, we had cooperation scheme with different educational institutes to delivery mediation training courses to people from different occupations. To instil a minimum standard in the accreditation and membership quality, we stipulated that only trained members could serve in the role-play examination and encouraged panel members to actively participate in Continuing Professional Development Programme. By the end of 2010, recorded more than 400 accredited mediators on our panel list. I applauded to everyone to give your time and efforts in attaining professional standard and to advocate mediation as alternative dispute resolution. As with this newsletter, it is our Centre commitment to keep an open dialogue with you so that you will be updated on latest developments not only in our Centre but also the mediation news in general.

We anticipate 2011 will be a challenging year. A lot of challenges are rapidly developing, which will be far reaching impact on the mediation practice and development. I am looking forward having you to take part in the upcoming changes and together. We can contribute to building a harmonious society through training, practicing mediation, and/or applying mediation skills in our daily lives.

I sincerely wish you and your family have a very prosperous, healthy and joyful, *Year of the Rabbit!*

Mr. Paco Tsang  
President

## 訪問東莞市第二人民法院院長



### 撮要

香港和解中心早前獲東莞市第二級人民法院邀請到當地為法院的法官和人民調解員舉辦高級調解課程。在課程期間受到人民法院陳葵院長的熱烈歡迎及款待，而且她亦在百忙中抽空接受我們的專訪。在接近四十五分鐘的訪問中，陳院長為我們簡述了祖國建國後的調解發展，講解現時國內的調解制度，並分析東莞市第二級人民法院設立的「調解速裁中心」獲得成功的原因。最後，陳院長更表示日後與我們香港和解中心的合作機會良多；並會研究香港和解中心的和解員在東莞提供調解服務的可行性。在這方面，我們日後會繼續為會員報導更多的消息以及本中心在國內的發展方向。

### 到訪東莞市第二人民法院

香港和解中心於 2010 年 7 月曾到東莞市第二人民法院為法院的法官及人民調解員舉行為期三天的密集式高級和解課程。香港和解中心編輯組特意隨行，與秘書處一同到訪東莞市第二人民法院，並為陳葵院長進行了一個訪問。把握此珍貴機會，讓會員對國內調解的發展情況有所了解。

陳葵院長在繁忙的工作中，擠出寶貴的午膳時間，給予編輯組人員進行採訪。整個訪問安排在一個電視新聞採訪的正規會客廳中進行。時間雖然只有短短的四十五分鐘，但編輯組人員親身感受到陳葵院長對和解中心及是次訪問的重視。

## 國內調解發展已逾半世紀

香港司法機構在近數年大力推動調解，並擬進行關於調解的立法工作。相對國內，無疑是稍為落後，原來祖國自建國以後成立法院時便有調解的出現，陳葵院長向我們介紹新中國建國後，政府於 1954 年已在民間成立「人民調解委員會」，處理民間糾紛，套用她接受訪問時說的一句話「國內調解的發展是歷史悠久並且普遍」。

陳葵院長進一步解釋，人民調解委員會是一個由官方推動、由民間自願成立的基層組織。它源於並發展在每條村或社區(以前叫公社)中。除小區外，在單位(企業)亦設置人民調解委員會；一些工人數目在 200 人以下的工廠，亦會自組一些調解小組。上述組織可協助調解一些民事及勞動糾紛。

查國內的調解，主要分為訴訟調解及民間調解；民間調解主要由人民調解員提供調解服務。大部份案件在進入法院前已經過調解階段，當調解失敗而進入法院處理後亦可繼續由法院進行調解。

現時全國約有 80 多萬個人民調解組織，並擁有超過 400 萬名人民調解員。這些人民調解員，主要為兼職的及無償的為各種糾紛進行調解工作。隨著國家的發展，調解工作的路途亦起伏不定。陳葵院長講述自 2002 年後，中國人民最高法院聯合司法部推出了關於對調解工作的意見，中央政府及司法界對調解工作重新注視，令我國調解工作的發展，再出現新的契機。



## 二法院特色亮點 - 調解速裁中心

陳葵院長以東莞市為例，第二人民法院為更好地推行調解服務，在 2009 年成立了「調解速裁中心」。該中心匯聚來自本土各界的社區人士，利用他們對於東莞本地風俗習慣的瞭解，去解決相應的糾紛，發揮調解速裁中心整合不同調解力量的功能。同時，該中心亦與交警隊合作處理大量的交通道路糾紛；與保險公司、商會等聯動，提供調解的服務。除此以外，中心亦發揮著快速分流案件的作用，讓法官集中資源處理複雜的案件，對一些簡單而具備調解條件的案件，分流至調解速裁中心處理，此舉起到繁簡分流的作用，可大量節省法官處理案件的時間，使法院能更集中及善用資源處理一些情節複雜或重大的案件；這正與現時香港推行調解的目的亦是不謀而合。

## 兩地交流日增 共建和諧社會

由 2009 年至今，香港調解工作的發展，在律政司的大力推動下，已蔚然成風。香港和解中心亦把握如此良好的大氣候，全力推動調解工作的發展，並肩負起教育市民大眾認識和解好處的責任。在訪問中，陳葵院長表示與香港和解中心在未來的日子裏將有更多的合作機會，例如，香港和解中心的調解員，在第二人民法院參與及提供調解服務的可行性研究等。我們相信藉著兩地的交流，相互分享經驗，定能對推動建構一個和諧社會作出貢獻。

石家俊

出版委員會主席

## Interview with Judge Chen of No. 2 People's Court of Dongguan City

Hong Kong Mediation Centre was invited by the No. 2 People's Court of Dongguan City to provide mediation training to more than 120 local judges and court-mediators. In an hour long interview, the President of the Court, Ms Chen Kui, briefly explained the development of mediation and its current practices in China. Ms Chen also analyzed the success of the "Mediation Centre", which was set up within the People's Court of Dongguan. Ms Chen expressed there would be opportunities for future cooperation between Hong Kong Mediation Centre and the People's Court of Dongguan and considered the feasibility of our panel members providing mediation services in Dongguan. More updates will be provided in due course. (Extract Summary)

Mr. Vincent Shek  
Chairperson, Publications Committee



## 律政司司長黃仁龍談論本港落實調解服務的進展

律政司司長黃仁龍於1月10日在2011年法律年度開啓典禮上致辭提及，《實務指示31 --- 調解》生效一年來，得悉一些調解個案未有認真執行實務指示，只把調解當作例行公事，沒有認真看待。因此，如何監管調解服務和調解員的質素，已成為一個日益迫切的問題。黃司長指出，去年許多回應政府《調解工作小組報告》的人士均強烈要求，提早落實訂定一套單一的調解員資格評審制度的建議。他剛成立了新的調解專責小組，將致力解決資格評審這個至為重要的問題，並協助律政司制定有關調解的法例。當時收集到的意見，大部分都表示支持立法，為在香港進行調解提供統一的架構，而不減損調解服務的靈活性。

楊麗明  
出版委員會委員



### Mediation Development – Highlights from Various Speeches by the Secretary for Justice, the Hon Wong Yan Lung, SC

On various occasions, since the issuance of the Report of the Working Group on Mediation in February 2010, the Secretary for Justice (“SC”) repeatedly mentioned that mediation has been a core element of legal landscape in Hong Kong. Since the implementation of the Civil Justice Reform in 2009, the Court has taken proactive stance to facilitate parties to use mediation as first attempt to resolve their disputes without litigation. That being said, more need to be done.

As in his speech delivered at the International Chamber of Commerce (ICC) Dispute Resolution Services: Amicable Dispute Resolution (ADR) Workshop (12 November 2010), SC gave detailed updates and ways forward of mediation development. He urged more focused efforts to

promote the mediation widely to diverse segments in Hong Kong. Whilst the set up of the Joint Mediation Helpline Office has acted as a one-stop mediation referral agency for parties in need of mediation, he mentioned more support from the commercial sector is required to apply mediation at a broader range of disputes. In addition he expressed the need to promulgate relevant legislation (Mediation Ordinance) and to establish quality assurance around mediation.

The quality issue is highlighted in his speech during the ceremonial opening of the 2011 Legal Year in January 2011. He expressed concern about some practitioners and parties seeing mediation as a procedural requirement to get a ‘tick’ on the civil proceedings without making a real attempt to mediate. That would defeat the real purpose of using mediation as a dispute resolution alternative. Whilst mediation should remain flexible and affordable to parties in need of mediation, quality control is equally important.

With the new Arbitration Bill passed in November 2010 which provides the use of mediation in the arbitral proceedings, given parties’ consent in writing and the mandate of using mediation as first attempt to resolve financial and investment related disputes by the proposed Financial Dispute Resolution Centre (note 1), SC sees a great potential of mediation making access to justice easier and less costly.

(Note 1: the proposed Centre is championed by the Financial Services and the Treasury Bureau and will be formally established in 2012. It is a response to the successful pilot scheme in 2009 when the Hong Kong Monetary Authority advocated using mediation and arbitration to resolve financial disputes between Lehman Brothers investors with the banks.).

Ms. Yeung Lai Ming  
Member of Publications Committee



## 調解於處理物業管理問題上的困難

自 2010 年初的民事司法改革鼓勵調解作為處理紛爭的一種方法，專業調解服務的認知在社會上已有一定增加，各界人士選擇修讀調解課程作為增值亦成一種趨勢。然而，調解服務在坊間一般市民中仍未有足夠的認識，此種情況在最為貼身的物業管理紛爭中更見明顯，值得同業一同探討和研究。

本人作為民選區議員，經常接獲有關物業管理紛爭的個案。早前，筲箕灣一業主立案法團被房署入稟違反大廈公契，未有為屋苑行人天橋的升降機聘用專業維修承辦商，而業主立案法團則指行人天橋的升降機為公眾使用，拒絕由業主承擔維修費而停開。本人曾聯絡及建議雙方就此案進行調解，惟雙方沒有意願採取專業調解處理爭議。

而本人辦事處的「免費社區調解服務」在 2008 年至 2010 年間接收了 50 多宗有關物業管理的調解個案，當中包括水管滲漏等問題，成功促成管理公司與居民及居民與居民間達成和解協議，惟當中亦有不少居民間的私人糾紛，因對方拒絕合作，一意對簿公堂，令調解會議未能展開。

就本人觀察而言，比較容易展開調解的個案，多為比較簡單的個案，和當事人及早尋求調解服務。而一些複雜、涉及原則及糾紛維持已久的個案則較難。原因在於一般市民對調解信心不足，擔心協議未能執行或對方變卦而秋後算帳，又或部門及企業員工守舊的「按本子辦事」風氣，認為無需為對方解決問題，亦有人對原則對錯極為重視，要求法律作出一錘定音的作用，最後就是華人雖通常希望「多一事不如少一事」，但問題一旦糾纏太久，就會開始「對人不對事」，將紛爭視為零和遊戲，務求擊敗對方。

看來，調解服務在市民中推廣普及，仍面對不少困難。

趙家賢 太古城區議員  
出版委員會委員 及 考核員

## Challenges to Apply Mediation on Building Management Cases

Thanks to the championship of the Department of Justice to take bold steps in the Civil Procedure Reform, and with the Practice Direction 31 (Mediation) made effective as at 1 January 2010, we see

increasing mediation cases as well as number of people attended mediation training. Amongst all kinds of disputes, mediation has been actively adopted in building management cases. Parties are encouraged to make bona fide attempts to resolve their differences by mediation, which is seen as less costly, more efficient and effective mean, before or after they issue proceedings in the Tribunal (LTPD BM1, took effect on 1 July 2009). Despite that, there are still reservations and misunderstanding about the usefulness and appropriateness of mediation in resolving building management cases.

As an elected District Councillor, I have offered “pro-bono community mediation service” to residents as part of my responsibility, and actively encouraged disputing parties to try mediation in more than 50 cases that I received since 2008. Amongst all these disputes, there were common cases like leakage problems, arguments about management issues between residents and property management companies, interpersonal conflicts amongst residents. Though I had successfully helped mediating and settled some of those cases, there were also unsuccessful attempts due to lack of consensual interest in (or clear understanding of) mediation. For example, the Incorporated Owners (“IO”) of an Estate in Shau Kei Wan was sued by the Housing Authority (“HA”) for breach of deed of mutual covenant. HA claimed IO did not employ a designated contractor to maintain the lift which was installed to access the pedestrian bridge linking to the Estate. IO countered that the lift could have been used by the public and refused to bear the maintenance costs by closing the lift access. Both parties refused to adopt mediation to resolve the dispute and ended up going to court.

Based on my experience, mediation is best applied when conflicts are at the early stage of disagreement, or parties are willing to try mediation to avoid litigation. It is more difficult (if not impossible) to apply mediation when parties are being positional with respect to their claims, or the disputes have been dragged on for a while, or when one party insists on managing conflicts according to defined ‘standard of procedure’. The road to achieve a win-win conflict resolution is not easy. There are still a lot to do to educate the public about mediation, the legal implication of settlement agreement, and to induce a paradigm shift in mindset in dispute resolution.

Mr. Andrew Ka Yin Chiu  
Elected District Councillor (Taikoo Shing West)  
Member of Publications Committee & Assessor





## 論如何引入香港人才 參與中國現代化發展 梁海明教授創會會長

### 序言

今年，中央推出《國家中長期人才發展規劃綱要（2010—2020年）》，這個綱要是新中國成立以來第一個國家人才發展的規劃，標誌著我國人才發展事業已經步入了加快建設人才強國的新時代。《人才規劃綱要》的基本戰略定位是服務發展、人才優先，人才規劃將引進國外智力作為人才工作的一項重要內容。

國家領導人胡錦濤、溫家寶、習近平等也分別發表了重要講話。胡錦濤主席在講話中強調：在人才資源的開發上，引進國外智力，積極開拓國際人才資源管道，加強與國際高水準人才機構合作。胡主席更提出了引智工作在政策法規建設、實施更加開放的人才政策、加快我國人才隊伍建設等方面的任務目標，為引智事業發展指明了方向。

### 論點

在中國現代化進程中，香港人才可以發揮哪些作用？

香港作為一個重要的國際金融中心和貿易自由港。香港在金融、經貿、旅遊、城市管理、衛生、文化等領域有豐富的經驗和成熟的市場運作能力，人才儲備非常充足。金融服務業一直以來是內地需要香港專家最多的行業。同時，法律、會計、製造業、地產、廣告幾大類專業的人才仍然是內地最需要的香港人才。專業的人才才是投資者背後的支柱。

香港擁有成熟的專業經驗，精通外語，熟悉國際慣例和法律規則，國際化的視野和思維，在文化上有進行合作交流的優勢，香港專家在內地普遍受到歡迎。按照統計數字，長期專家中香港專家大多數年齡在中年以上，具有

比較豐富的工作經驗，職位多為企業（項目）負責人，或者高級技術人員、高級管理人員。這些專家在專業服務方面給聘用單位帶來了實在的效益。

香港專家在經濟管理的工作領域包括：製造業、批發零售業、租賃和商務服務業、信息傳輸和計算機服務業、金融業、餐飲業、交通運輸和物流業、仲裁及調解、建築業、及其他服務業等。從事科教文衛領域工作的香港專家主要在教育領域工作，也有從事科學研究、技術服務、衛生及社會保障、文化體育及娛樂業工作的。總之，香港專家在內地工作的行業領域是比較廣泛的。從總體趨勢上看，像生物制藥、IT、通信、法律等正在加速國際化的內地企業，對香港專才的需求量也在明顯增加。

### 論證

胡錦濤主席在深圳經濟特區建立三十周年慶祝大會上的講話中指出：「深圳從一個邊陲小鎮發展成爲一座現代化大城市，綜合經濟實力躍居全國大中城市前列，創造了世界工業化、現代化、城市化，這是發展史上的一個奇跡。」這個奇跡絕對不是偶然，香港在深圳的經濟發展及人才輸送的貢獻是得到國家肯定的。除深圳以外，香港爲內地各省市的人才培訓也提供了很多支援，做了不少有益的工作。

隨著國家經濟社會的不斷發展，引智工作規模不斷增大，由上世紀90年代每年引進境外專家幾萬人次發展爲近年的每年40多萬人次。據統計，2009年來華工作的外國專家約33萬人次，當中的港澳臺專家便超過15萬人次。

外國專家局局長季允石先生在報刊的訪問中指出：近幾年，每年聘請的香港專家超過6萬人次，多數是長期專家（工作3個月以上），其中在經濟技術領域工作的專家約佔90%，在教育、科研、文化、體育、衛生等領域工作的專家約佔10%。香港專家不僅爲中國帶來了先進的科學技術與管理方法，更重要的是帶來了先進理念。外專局從2005年開始更設立了“炎黃獎”以表彰在境外人才交流、合作及人才培訓方面做出突出貢獻的港澳臺同胞、海外華僑、華人和團體等，每年評選一次。本年度“炎黃獎”由香港中華教育基金榮獲。

眾所週知，香港出現過不少蜚聲國際的科研人才，香港高等院校亦有卓越的科研成果。例如諾貝爾物理學獎崔琦教授就是我的母校「培正中學」的學長。2009年諾貝爾物理學的得獎者便是有「光纖之父」之稱的前香港中文大學校長高錕。

### 結論/建議

為早日實現《國家中長期人才發展規劃綱要》的共同目標，本人謹提出四點建議：

#### 1. 教育產業雙贏形式合作：

- 香港擁有全球認可的專業考試，建議國家透過香港引入國際認可的專業考試；
- 香港擁有全球著名的高等學府，建議國家允許香港的高等學府可在內地合作辦學，獨立辦學，開設分校等多種形式發展高等教育的教育產業，亦可參照澳門大學的模式，劃出土地讓香港高等學府辦校，招收內地學生；
- 香港擁有成熟及完善的職訓體系，國家可引進香港各類型職業培訓體系。



#### 2. 以「合約制」吸納退休香港高級公務員：

香港擁有全球稱譽的優秀公務員隊伍，目前一般退休年齡是55歲，可考慮與香港高級退休公務員組織合作，以合約制挑選一些表現優秀及身體健康的公務員協助制定內地一些公營單位的工作程序及制度培訓等。

#### 3. 以「顧問制」吸納香港高級行政，管理及商業發展主管：

香港是一個人才薈萃的國際大城市，對世界大趨勢有敏銳的觸角。這些人才退下來的生活是過得比較富裕及優閒，但靜極思動，亦會希望有機會以所學所長繼續報效社會。因此，以全職聘用這些人才是比較困難，但以顧問型式聘用則應可能，而所要求報酬亦相應較低，同時

可利用到他們的人脈關係。

#### 4. 積極推動香港與內地服務業人才有效地進行整合及互補：

2003年，內地與香港簽署了「內地與香港關於建立更緊密經貿關係的安排（CEPA）」，其中的重點便是突出專業服務。近年來，中央及香港領導人更多次指出香港專業服務的優勢，對香港專業人士繼續為國家服務創造新的條件。優秀專業的人才是每一個成功的企業和社會不能缺少的重要部份。

在國家「十二五」規劃中香港所能參與的角色，是香港今後如何配合好國家的發展，繼續對國家作出貢獻。國家發展需要大量專業人士，香港應該向國家輸出更多專業人士，提高為國家服務的水準，這些服務並不局限於專業技術，應包括專業制度、專業操守和國際接軌等認識。

兩地政府應積極推動香港與內地服務業有效地進行整合、互補。讓香港專業服務人才進軍內地，例如市場認可及專業資格認證等方面，從而帶動內地現代服務業發展，香港也可同時發展成為高端服務基地和人才培養中心。共同為實現《國家中長期人才發展規劃綱要》的目標，共同為中國現代化的發展而努力。

梁海明教授創會會長

## 專訪本會創會會長梁海明教授



去年九月，本會創會會長梁海明教授出席了一個有關海外人才與國家發展的論壇，並發表講話，指出香港在各工作領域的專家，一直對內地人才發展方面貢獻良多。他希望《國家中長期人才發展規劃綱要》的目標，得以早日實現，並就此提出四項建議。今期我們刊登了梁教授的講話全文，並專誠訪問了梁教授，以他豐富的和解經驗，分享對本港未來調解服務發展的觀察及看法。

本會創會會長梁海明教授(梁)

出版委員會委員黎同濟(黎)

**黎：**你在文中提及『十二五規劃』、《人才發展規劃綱要》及 CEPA，加上深港合作開發的「前海發展區」規劃，日後中港兩地的貿易交往日益頻繁，因此涉及兩地商事或民事糾紛亦可能相應增加。你對此有何看法？

**梁：**未來中港融合緊密，商業合作加強，例如前海發展區、港深合作、香港上海金融中心角色等，同時也促成雙邊合作(包括商事調解)。金融風暴後，多了港人往內地工作，兩地業務糾紛自然增多。內地有仲裁法、人民調解法，而且法院也准許進行調解，因此調解服務大有發展空間。由於內地的調解尚未普及，中港融合機遇中，需要引入不同行業的人才，特別是有具有調解技能的專才。

**黎：**在一國兩制下，例如在前海發展區這種規劃，調解服務是否要使用國際標準？

**梁：**調解要在雙方同意的程序中進行。因此，每個提供調解服務的機構都可考慮在前海發展區設立分部或試點，各自進行調解工作，或透過多方合作去做。至於調解服務是否要使用國際標準，則要視乎未來

的發展情況。

**黎：**律政司剛成立了『調解專責小組』。你是該小組成員，可否談談小組的工作？

**梁：**該小組已召開了首次會議，擬設推廣小組及審核委員會，並制訂《調解條例》。該小組將會就各項開展的工作，諮詢本港八個提供調解服務的機構，並會著手推動公眾教育及宣傳調解服務。

**黎：**你對調解專業的認證及規管方面有何看法？

**梁：**和解員的認證及規管方面確實令人擔心，因為目前未有統一而嚴格的監管及執行機制。就以香港和解中心為例，有近 700 名學員已取得調解證書，而當中約 500 名學員成為註冊和解員。事實上，40 小時的和解員課程只是基礎，而且要求持續進修學分也只是加深和解員對調解的認識，大部分認可和解員仍是未曾擔任過正式和解員的工作，即從未處理真實個案。因此和解員的專業責任及相關索償問題特別值得關注。如要規管，至少要制訂最基本的水平指標。

**黎：**作為“Hong Kong Mediation Handbook”的編輯，你認為香港調解服務應朝哪個方向發展？

**梁：**和解員要有良好的調解技能，即善於操控調解的過程及時間。由於每個行業需要不同背景的和解員，因此調解服務並不可能全由某個專業的人員擔任。事實上，和解員具備良好的調解技能比起他們的專業背景更為重要。另外，如果和解員輕易放棄為雙方達成和解，這是未盡專業責任的表現，更會對相關方有不良影響。在推動調解方面，市民對調解的認知要加強，目前政府及本港提供調解服務的機構已按諮詢結果部署有關工作。至於推展調解服務方面，現時步伐恰當，例如香港和解中心就有充裕的人力及資源去配合。當然，我們期望和解員在裝備好才接收和解個案，否則力有不逮，未能達成和解目標。由此可見，未來香港調解服務一定要朝著專業化的方向發展，而提供調解服務的機構應培訓及提供具有良好的調解技能的和解員。

**黎：**對於和解員在調解專業化發展方面，你有何忠告？

**梁：**以下的提示可供和解員參考：

無論和解員的專業地位及身份如何高尚，都應在提供調解服務的過程中，放下身段，客觀持平，不要提出自己的意見。要有協助雙方的思維，以期達成協議，而非只為賺取收費。在進行調解時，要多觀察雙方的身體語言。致力達成和解目標。面對困難時，不要輕易放棄，否則未盡專業責任的表現。持續學習，經驗分享，了解各方需要，否則不進則退。

**黎：**內地剛實施《中華人民共和國人民調解法》，你認為制訂香港未來的相關法例有否值得借鏡的地方？

**梁：**內地的人民調解，大多類近香港的公益性質的調解。但涉及中港兩地商事及民事糾紛的調解，則須因應香港的法例而觸及和解員的專業責任及索償事宜，有需要在立法時詳加考慮，諮詢及討論。因此相信『調解專責小組』將會跟進相關的工作。

出版委員會委員黎同濟  
統籌王學軒



## Interview with Professor Raymond Leung Hai Ming, Founding President of the Hong Kong Mediation Centre

In September of 2010, Prof. Raymond Leung Hai Ming, the founding President of the Hong Kong Mediation Centre, attended a forum on "Overseas Talents and the National Development Strategy". At the forum, Prof. Leung delivered a speech highlighting tremendous contributions of Hong Kong experts in developing talents in China. He made four suggestions to support the delivery of the vision embedded in the "National Program for Long Term Talent Development". We have great opportunity to interview Prof. Leung for his views on the future development of mediation services, and his advice on mediation practice.

Professor Raymond Leung Hai Ming (Leung)  
Mr. Lai Tung Chai (Lai);

**Lai:** In your speech, you mentioned "The 12th Five-year Program", "Talent Development Plan" and the CEPA, and the project "Qianhoi Development Plan" between Shenzhen and Hong Kong would further expand trading opportunities between the two places. At the same time, these developments will unavoidably bring increased commercial or civil disputes. Why do you think so?

**Leung:** It is no doubt that both commercial and trading activities will be further integrated between China and Hong Kong through projects like the "Qianhoi Development Plan", broaden cooperation schemes between Shenzhen and Hong Kong, split roles between Shanghai and Hong Kong in financial and investment matters, etc. There are also arrangements with China authorities and professional institutions on various commercial schemes and legal services, including the provision of commercial mediation.

Since the financial crisis, more and more Hong Kong people working in and/or developing their business in China. There are also increasing numbers of cross-border commercial disputes. China authorities are in favour of adopting alternative disputes resolution approaches as outlined in the Arbitration Law and People's Mediation Law. The courts also conduct mediation wherever feasible to facilitate early settlement. That being said, mediation are not widely applied in commercial disputes and hence, there are ample opportunity to develop mediation services in China. There will be great demand of mediators with different industry experience and professional backgrounds.

**Lai:** Under The One Country Two System, do you think mediation services need to be regulated by any international standards, as in the example of the Qianhoi Project?

**Leung:** Mediation is a consensual negotiation process conducted in private between parties, and facilitated by a trained neutral (ie mediator). Individual mediation service providers can set up their representation office and practice mediation on their own or through cooperation schemes at the Qianhoi district area. There is no specific requirement on applying any international standards in the mediation services though future developments will give more clarity on this issue.

**Lai:** Secretary of Justice has recently set up a "Mediation Task Force". As a member of the Task Force, can you share with us key deliverables and the latest developments?

**Leung:** The Task Force had the first meeting recently proposing the establishment of sub-committees responsible for the promotion and education of mediation service, accreditation and registration of mediators, and drafting of the "Mediation Ordinance". Each of these key initiatives will be further discussed with each of the eight mediation institutions in Hong Kong.

**Lai:** What are your views on accreditation and regulation of mediation?

**Leung:** Indeed, these are pressing issues that cannot be overlooked. As noted in the Report on the Working Group of Mediation (February 2010), there are quite diverse views on the accreditation and training of mediators. As a matter of fact, there is no single set of stringent standards regulating these two areas. The Report recommends the establishment of a single accreditation body and it can be happened soon.

Taking our Centre as an example, we have issued nearly 600 certificates to students who have completed the 40-hour training, of which 400 students passed the accreditation examination. The 40-hour training is only a starting point for anyone interested in mediation practice. It is important for all mediator to upkeep with professional development and to continue learning related skills. That means, mediators should attend CPD programs to enhance mediation knowledge and skills.

Further, majority of our mediators have no mediation experience since accreditation. They may not have full picture of potential liability claims and hence a proper realization mediator's accountability. If regulations are imposed, we need to advocate minimum standards and benchmark for accredited mediators to comply with.



**Lai:** As the general editor of the "Hong Kong Mediation Handbook", what are your views of the development of mediation service in Hong Kong?

**Leung:** A mediator should be equipped with good mediation skills to master well both the process and timing. Different industries or clients may demand mediators with specific or related professional backgrounds. It is impractical for mediators from one particular professional background to handle all kind of mediation cases. Hence, good mediation skills are more relevant and more important than professional backgrounds.

In addition, a mediator needs to be determined to help parties resolving their dispute; else it may reflect an inability to discharge the professional responsibility, and makes an adverse impact on parties.

Regarding the promotion of mediation service, it is important to raise broad public awareness and understanding. Both the government and mediation institutions have already prepared to do more in the area of promotion and education. Current stage of the development of mediation services is on right track. For example, our Centre has grown steadily in past few years with adequate number of accredited mediators and supporting resources to meet the upcoming changes and demands. Certainly, our members need to upkeep themselves for the emerging challenges. We anticipate that future development in mediation is built around professionalism. It will be a common goal for all mediation institutions to ensure their members are properly trained in mediation skills.

**Lai:** What are your advices of professional development for mediators?

**Leung:** A few tips for our mediators to consider:

1. A professional mediator should always remain neutral and non-judgemental. Regardless one's professional background or status, a mediator should not offer personal opinion nor suggestions.

2. The goal of mediation is to facilitate disputing parties to reach a settlement even it is a paid case.
3. It is important to observe body language of the parties.
4. Be determined to achieve settlement for the dispute.
5. Do not give up easily even facing an impasse. Grasp any opportunity to help parties exploring and expanding options for the resolution. Else, it could leave an adverse impression on the mediation.
6. Continue to sharpen mediation skills and knowledge through professional development programs and experience sharing with others.

**Lai:** The People's Mediation Law of the People's Republic of China was promulgated in August 2010. Would it play any influence on the proposed Mediation Ordinance in Hong Kong?

**Leung:** Majority of mediation cases in China is similar to the community mediation in Hong Kong and are conducted on pro-bono basis. For commercial and civil disputes involving parties from cross-border, the proposed Mediation Ordinance would need to consider differences in the legal systems and respective rules and regulations on mediator's accountabilities and liabilities. I believe the Mediation Task Force will further deliberate and collect different inputs in that regard.

Mr. Lai Tung Chai  
Member of Publications Committee

Mr. Rick Wong  
Coordinator

## Q&A Session

**問1:** 我是新註冊和解員，想知道持續專業發展計劃的年度計算方法。

**答1:** 持續專業發展計劃的計算年度為每兩年清算一次。現在的持續專業發展計劃的計算年度由2010年1月1日至2011年12月31日，適用於所有在2012年前加入為註冊和解員的會員。會員須於在該年度完結前，在申請續會時，達到最低專業學分(10)要求。至於新入會的會員，他們的專業學分計算方法將會按比例計算。

### **Question 1: I have recently joined the Panel Membership. Can you tell me what is the CPD Points accumulation period?**

**Answer:** The CPD Points accumulation period for Panel Membership is calculated on two consecutive years basis. The current CPD Points accumulation period has started on 1 January 2010 and will end on 31 December 2011. This applies to all existing Panel Members registered before the end of 2011. New Panel Members registered after January 1, 2010 will have their CPD Points calculated on pro rata basis. Panel members are expected to achieve the minimum CPD Points (10) for the renewal of Panel Membership.

**問2:** 如果我未能達到持續專業發展計劃的最低學分要求，會否影響我在該年度的續會申請?

**答2:** 會員有責任完成持續專業發展計劃的最低學分要求。如在該計算年度完結前未能達到最低要求的人士，將會被要求作出合理解釋及提交有關支援文件。

### **Question 2: Will my Panel Membership renewal be affected if I fail to meet the minimum CPD Points requirement during the accumulation period?**

**Answer:** Yes. In order for your Panel Membership renewal to be considered, you are required to meet the minimum CPD Points requirement during the accumulation period. Renewal of your Panel Membership will be subjected to the final decision of the HKMC Council.

## 「運用調解技巧處理脅持危機」專題講座 07.10.2010



2010年於馬尼拉發生的挾持人質事件實在是一場悲劇。當遇上如此罕見的生命備受威脅事件，一般人都想知道應如何處理及有效地溝通。有見及此我們舉辦了一個有關的工作坊。在工作坊中，蕭詠儀監事委員會主席(前會長)及陸庭華副會長跟我們探討了人質及警員該如何運用和解技巧去處理這次事件。兩位講者亦與現場觀眾交換了意見。這個工作坊有超過一百人參加，當中有半數以上是我們和解課程的學員及對和解感興趣人士。

### **Using Mediation Techniques to Deal with Manila Bus Hostage Situation 7.10.2010**

The Manila Bus Hostage incident was a sad tragedy. Everyone in Hong Kong felt the pain and showed sympathy for the victims and their families. Questions were raised as to whether mediation skills could be applied in such kind of crisis management. We had organized a workshop inviting both members and their friends to discuss the topic on 7 October 2010. Ms. Sylvia Siu, JP, Past President and Chairman of the Board of HKMC, and Mr. Denys Look, Vice President, discussed how the mediation skills could be used by the hostage and policemen, and invited the audience to share their views on approaches in handling the incident. We had over a hundred attendees for this workshop, and more than 50% of them were either taking our mediation courses or were new to mediation. The workshop also achieved the purpose of promoting mediation to the public.

### **「使用談判技巧解決衝突及取得更好交易的20個談判秘訣」講座11.10.2010**

我們邀請了一間來自英國的國際知名談判訓練公司 Scotwork 為我們舉辦「談判訓練研討會」。代表該公司的陳華益先生及文健華博士與我們分享了談判過程的八個步驟及20個獲取更佳交易的秘訣。課程有超過80個會員參加，獲得很高的評價。





## Negotiation – Alternative to Resolve Conflicts and 20 Tips for Getting Better Deals 11.10.2010

Negotiation is one a set of core skills that any mediator needs to master well. Whilst mediator's role is not to negotiate settlement on behalf of either party, it is important to understand the elements and process of effective negotiation, such that the mediator can help parties to move away from positional negotiation and be willing to explore options for reaching settlement. We were glad to have invited Mr. William Chan and Dr. Andy Man, representatives of Scotwork, an international renowned negotiation training company from England, to share with us key features of negotiation. Both guest speakers introduced to the audience the 8 steps in negotiation process and 20 tips for getting better deals. More than 80 members attended this workshop with great feedback on the practicality and applicability.

## 和解員專業試角色扮演員訓練工作坊 (第一節、第二節) 28.09.2010及 22.11.2010

資格核實及考試委員會宣佈，所有有興趣在和解員專業試中成為角色扮演員的會員，均需參加角色扮演員訓練工作坊。這個工作坊在每季均會舉辦。而我們已在2010年9月28日及11月22日，與會籍及持續專業發展計畫委員會合辦了兩次工作坊。在工作坊中，評核員分享了如何引領考生表現出應有的技巧的方法。接受訓練的會員已超過150人。



## Assessment Role-player Training Workshop 1st & 2nd

28.09.2010 & 22.11.2010

The Accreditation and Assessment Committee announced that it is a requirement for panel members with intention to serve as role-players in the accreditation examination to attend the Assessment Role-player Training Workshop. This workshop is co-sponsored by the Membership & CPD Committee. During the workshop, live demonstration of good and poor role-player examples and role-player guidelines will be briefed, and participating members will also have time to practice in small groups. Over 150 panel members already participated in the two workshops organized on 28 September & 22 November 2010.

## 青年講場 28.11.2010

香港律師會於2010年11月28日舉辦了一個名為“青年講場”的一天工作坊，讓中四以上的中學生討論一下時下青少年的道德價值觀。香港和解中心派出了61名和解員以導師身份參與這個工作坊。

## Teen Talk 28.11.2010

The Law Society of Hong Kong organized a one-day workshop on 28 November 2010 for the local secondary school students (Form 4 or above) on ethical issues. Mediators, counselors, lawyers and university students were recruited as facilitators to lead group discussion. We had 61 members from HKMC volunteered to attend the workshop.

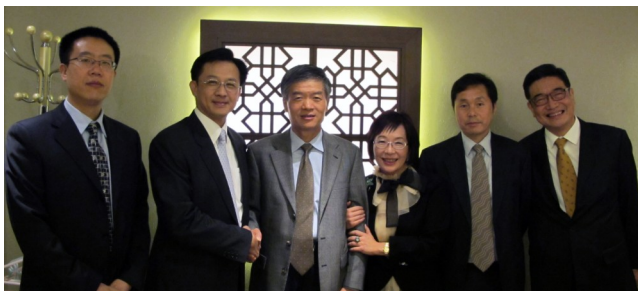
## 和解經驗分享系列(第二節) 26.01.2011

和解經驗分享的第二節將於2011年1月26日舉行。我們邀請了陳萬成先生及馮詠敏女士分別分享他們關於“當事人談判趨向”及“保險從業員於和解中的角色”的和解經驗。

## Mediation Experience Sharing Series (Session 2) 26.01.2011

The second sharing session was held on 26 January 2011. Mr. Jango Chan and Ms. Fanny Fung shared their mediation experience and insights in the areas of “Parties’ Negotiation” and “The Role of the Insurer in Mediation”.





### 中國國際貿易促進委員會/中國國際商會調解中心(總部)代表探訪本中心

本中心與中國國際貿易促進委員會有悠久的合作關係，雙方交往頻繁。在 2010 年年中，本中心代表被邀出訪該會設於北京的總部，同年 10 月，該會的董松根副會長聯同其他代表亦到訪本中心。

### Visit by the representatives from the China Council for the Promotion of International Trade (CCPIT) and the Mediation Center of China International Chamber of Commerce

Hong Kong Mediation Centre has a long-time collaboration and sharing with the China Council for the Promotion of International Trade (CCPIT). Our Centre was invited to visit their head office in Beijing in the middle of the year of 2010, whereas we were honor to have their Vice-Chairman, Mr. Dong Songgen paid a visit in our Centre last October.



### 《土地(為重新發展而強制售賣)條例》調解先導計劃

《土地(為重新發展而強制售賣)條例》於1999開始實施，任何人擁有某地段的不可分割面積不少於90%，可向審裁處申請強制售賣該地段作為重新發展用途。此條例於2004經修訂後，申請的門檻由90%降為80%。發展局於2011年1月透過傳媒公佈推行為期一年的調解先導計劃，為協助涉及強制售賣土地的各方進行自願性的調解。此計劃由聯合調解專線辦事處負責行政工作。長者及小業主在調解先導計劃可向政府申請行政及財務支援。會員倘若有興趣參與這項計劃(Cap 545 Scheme)，請出席由JMHO安排的半天訓練/工作坊。

### Pilot Mediation Scheme for CAP 545 Land (Compulsory Sale for Redevelopment) Ordinance

The Land (Compulsory Sale for Redevelopment) Ordinance was implemented in 1999 for the purpose of redevelopment of urban area. Under this Ordinance, a person or persons who owns or own not less than 90% of the undivided shares in a lot may make an application of redevelopment to the Lands Tribunal. The Ordinance was revised in 2004, and the threshold was lowered from 90% to 80%. In January 2011, the Development Bureau had announced the Pilot Mediation Scheme (administered by the JMHO) to provide a channel for the majority and minority owners to resolve disputes concerning compulsory purchase of the outstanding units on volunteer basis. Minority owners and elderly in this Scheme are eligible to apply for administrative and financial support provided by the Development Bureau. Panel members who are interested in participating in the Cap 545 Scheme under JMHO are encouraged to attend a half day workshop organized by the JMHO.



### 東莞市第二人民法院春節開放日

本中心應東莞市第二人民法院邀請於今年 1 月 29 日到法院參加春節嘉年華會。是次嘉年華會，一共設置了數十個攤位遊戲於法院四周和內部數層，供遊人玩耍和參觀法院設施。在兔年，本中心將會和內地更多的地方合作，加強培訓和推廣工作。

### Chinese New Year Carnival — No. 2 People's Court of Dongguan City

Our Centre was invited to attend the Chinese New Year Carnival organised by the No. 2 People's Court of Dongguan City on January 29, 2011. A number of stall games were set up around and inside the Court area to let visitors enjoyed playing the games and visiting the Court area at their leisure. Our Centre has plans to extend the cooperation network to do more training schemes and promotion in different cities in China.

## 秋季燒烤日 13.11.2010

約有90多人參與了本中心於2010年11月13日假白石俱樂部舉行的秋季燒烤日，當中有本中心的註冊和解員、普通會員及學員。當日下午我們分別有集體活動和高爾夫球練習提供給參與者。於黃昏時，我們有燒乳豬比賽及大抽獎，禮物由各理事捐出。



## BBQ Party 13.11.2010

Ninety members and students with their families and friends joint the Centre's BBQ Party at Whitehead Club on 13 November 2010. Various group games and golf practices were organized for the participants in the afternoon. Roast pig competition and a luck draw ended the evening with generous gifts donated by Council members.

## 和解箴言創作比賽

為提高市民對和解的認識，我們於2010年12月至2011年1月期間舉了和解箴言創作比賽。會員可提交最多一個中文及一個英文箴言。評審團由三個理事會成員組成，選出一個中文冠軍、一個英文冠軍，及十個優異獎。是次勝出作品將被選為推廣和解服務及本中心之用。比賽結果將於2011年3月透過電郵通知各會員及於網站公佈。得獎者可獲得獎品包括現金及環保袋。

## Motto Competition

To promote and raise public awareness of mediation as an alternative dispute resolution, a Motto Competition was held in December 2010 and January 2011. Members were invited to take part in the competition by each submitting no more than one Chinese and one English motto. Three of our Council Members will serve as judges to select one winning motto in Chinese and one in English as the Centre mottos. The mottos will be used in the future events. The results will be released in March and ten consolation prizes, including cash and environmental bags, will also be given to the winners.



## 「非同凡響」2011周年晚會 26.03.2011

本中心將於3月26日假尖沙咀香港基督教青年會舉行周年晚會，詳細資料將會日內公佈。



## “Be Different” — HKMC Annual Dinner 2011 26.03.2011

HKMC is going to organize an annual dinner party to celebrate the Year of the Rabbit on March 26 at YMCA of Hong Kong in Tsim Sha Tsui. Watch out for the upcoming announcement.

## 會員證

2011年度香港和解中心會員證已向各註冊會員們寄出。此證代表會員屬本中心的專業身份。



## Membership Card

A Membership Card has been sent to all current panel members in December 2010. This card is a proof of membership and professional status with HKMC.

## 環保袋

本中心製作了一款與會員證近似圖案的環保袋供服務推廣用。



## Environmental Bag

A newly designed environmental bag bearing the HKMC logo is now being used as promotional gift.

## 歡迎來稿

香港和解中心誠邀各會員，把您在日常生活中應用調解技巧的故事寫下來，並投稿至出版委員會，與我們分享您的經驗；藉此推廣，宣傳及展示調解對企業和社會帶來的好處。您可以把文章直接傳送至以下電子郵箱

[newsletter@mediationcentre.org.hk](mailto:newsletter@mediationcentre.org.hk)。

## CALL FOR ARTICLES

HKMC invites you to share your experiences and stories about mediation practices and of the observed benefits mediation can bring to the business sectors and the community as a whole. You can submit the articles in either English or Chinese via [newsletter@mediationcentre.org.hk](mailto:newsletter@mediationcentre.org.hk). The Publications Committee reserves the right to edit and to make appropriate modifications on the wordings of the article.

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