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## Columnist - Implementing mediation to solve parental maintenance conflicts

King Yung, Anna TANG

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### Columnist:

Dr. Anna King-yung TANG, LL.M (Peking University), MPhil (Lingnan University) and EdD (Tarlac State University), is Wan Chai District Councillor and accredited mediators in Hong Kong, serving the community for over 30 years. She is also a freelance writer and has recently published a book entitled *From Maintenance to well-being: Negotiating Responsibilities in Supporting the Aged as in the Modern Chinese Culture*.



## Implementing Mediation to Solve Parental Maintenance Conflicts

Anna King-yung TANG | Translation: Louis Au-yeung, Tony Lai

The world has changed. As industrialisation and urbanisation supersede agricultural society and technological innovation is valued more than experience accumulation, and as universal values including freedom, democracy, and human rights flourish, the concept of intergenerational equality has replaced traditional mentality. The function of family has been gradually undermined, rendering the traditional practice of “bringing up children to provide against old age” obsolete. Hong Kong has recently seen the number of elderly neglect, abandonment, violence and abuse incidents skyrocket. It is pitiful that affection amongst family members has become so fragile, and whether our elderly can live a honourable late life is now a major concern.

Many countries and regions have provided incentives in areas including taxation, housing, elderly services and products to encourage children to live with their parents. However, due to the change in family structure, roles and personal values, the discrepancy between the two generations has caused difficulties to co-residence. There are also countries that use legislation to require children to support their parents. Despite the fact that legislation can bring immediate results, traditionally Chinese are both aversive and frightened of lawsuits, with an old saying of “Never enter the court alive nor the hell dead”. “Never leaks any home scandals” is another, with many parents thinking that to go to court to claim maintenance from their children is shameful - which is why if we were to use the high pressure means of legislation to achieve the goal of requesting able children to support their needy parents, it is possible that the relationship gap between family members may widen. By introducing mediation as a solution to parental maintenance conflicts, we can prevent the damage to family relationship brought by antagonistic lawsuits as well as alleviate the tension of co-residence.

### The Meaning of Parental Maintenance Mediation

“Parental maintenance mediation”, in contrast to other kinds of mediations, has its unique definition: “Parental maintenance is a problem solving measure designed for family members. A professionally trained and just mediator will assist the involving parties under comfortable atmosphere to make arrangements about the maintenance of parents based on a voluntary basis. Through negotiation conflicts can be resolved while all parties can not only be satisfied of their needs but can also understand each other, that their relationships can be amended and can interact again in harmony.”<sup>1</sup>



The meaning of mediation for elderly maintenance differs from other kinds of mediations because the litigant may not be seeking material or financial gains, but rather to repair a broken relationship. Disputes usually stem from misunderstandings which increasingly distress the litigant, leading to the development of negative emotions such as the loss of confidence, fear, worry and anxiety. The earlier mediation takes place, the more effective it can be.

### Introducing the Concept of "Restorative Justice"

In many cases of parental maintenance conflict involving acts of violence or illegality, many victims (i.e. parents) are reluctant to report such incidents as they fear their accused children may suffer legal punishment. Such a mentality eventually leads to further and more serious tragedies, and so the introduction of "restorative justice" is important. It is necessary to let the offenders repent and redeem themselves by taking up responsibility and making amends, and to be forgiven and reintegrate with society. Ultimately the community will regain harmony when the relationships amongst its members are repaired as everyone is encouraged to take up their own responsibilities.<sup>2</sup>

In 2010, the Department of Justice published the *Report of the Working Group on Mediation* and suggested that "it should be encouraged to further support the current restorative justice and mediation scheme and extend to all social strata of Hong Kong." Hong Kong now applies mediation skills to promote conciliation between offenders and victims, such as concord mediation and peer mediation. It is an international trend to use restorative justice and mediation. Recently, Australia, New Zealand, Canada, America, and even countries and regions in South-east Asia such as Mainland China and Macau have actively promoted such services, which have been proven to be effective.

### The Practices of Mediation at All Times and in All Places

At all times and in all places, the application of mediation in solving family disputes is traceable. In China, such a mentality sprouts long before the Pre-Qin era. It is recorded in *Liji* – Li Yun (a.k.a. Ceremonial usages – their origins, development and intention) that "When the Grand course was pursued, a public and common spirit ruled all under the sky; they chose men of talents, virtue, and ability; their words were sincere, and what they cultivated was harmony. Thus men did not love their parents only, nor treat as children only their own sons. A competent provision was secured for the aged till their death, employment for the able-bodied, and the means of growing up to the young. They showed kindness and compassion to widows, orphans, childless men, and those who were disabled by disease, so that they were all sufficiently maintained."<sup>3</sup> In the Western Zhou period there were mediators dealing with family, marriage and land disputes. From the Han Dynasty to Qing Dynasty, numerous books recorded government officials handling parental maintenance disputes with regard to consanguinity, rationality and legality.

The Maintenance of Parent Act (1995) in Singapore and the Law of the People's Republic of China on the Protection of Rights and Interests of the Aged (1996) in China both adopt the mediation system of alternative dispute resolution, widely used by modern western societies, so as to minimise the deterioration of parental relationship.

Currently, while Hong Kong does not legislate parental maintenance, the mediation system is well established, as illustrated by the establishment of Family Mediation Co-ordinator's Office and Building Management Mediation Co-ordinator's Office in Courts. Hong Kong should further consider setting up a Parental Maintenance Mediation Co-ordinator's Office to deal with conflicts between elders and their family members arising from parental maintenance. It is also suggested that the Government and mediation service providers can join hands and promote parental maintenance mediation service at the community level.



1. See Tang A.K.Y. & Chan A.C.M. (2014). From Maintenance to Well-being: Negotiating Responsibilities in Supporting the Aged as in the Modern Chinese Culture. Hong Kong: Methodist Bookroom.
2. See Zehr, H. (2002). The little book of restorative justice. NZ: Good Books.
3. Translated by James Legge.