

# 法律援助

## 訴訟與調解 - 另類排解糾紛方法



解屬自願性質的參與，由一名中立人士，即調解員，協助涉及法律程序或糾紛的各方當事人達致各方可接受的和解方案。

司法機構於二〇〇〇年推行一項為期三年的家事調解試驗計劃，測試以調解方式解決婚姻糾紛的成效。有關試驗計劃的結論是，接受調解的各方對達成的協議感到非常滿意，遵守該等協議的機會較法庭命令為高，及調解是在香港解決家事糾紛的有用方案。

為鼓勵市民更多使用調解作為另類排解糾紛的方法，法律援助署(法援署)亦於二〇〇五年三月推行了「法援婚姻訴訟個案家事調解試驗計劃」，為期一年。進行婚姻訴訟的法援受助人可選擇接受調解。在該計劃下，有107宗個案的受助人選擇接受調解。在88宗進行調解的個案中，61宗達成全面或部分協議。當局對參與者進行調查，90%受訪者對試驗計劃給予正面評價。

民事司法制度改革於二〇〇九年四月推行後，調解服務已成為民事法律程序的一部分。因此，獲批法援進行民事訴訟(包括婚姻訴訟)的受助人，可獲資助進行調解，作為排解糾紛的另一途徑。

雖然在獲批法援前，受助人並不須要已曾作出調解，但在獲批法援之後，除非其個案並不適合調解，否則為保障其利益，受助人宜考慮使用這項服務。受助人可就其個案是否適合調解，徵詢其律師的意見，律師亦有責任為個案是否適合調解給予適當的意見。在訴訟展開之前或訴訟期間，雙方都可嘗試調解。

如受助人願意嘗試接受調解，代表受助人的律師在聘用調解員之前，須向法援署署長(署長)取得批准，並提供下述資料：例如調解員的資歷和經驗、每小時收費、估計調解所需的時數及其他的附帶費用(例如為調解而租用場地)、調解費用的付款條件，以及受助人是否已獲告知署長第一押記的影響等。受助人了解第一押記的影響十分重要，因為除非對訟一方同意承擔調解的全部費用，否則有關費用須從受助人訴訟所獲得的損害賠償金或保留的財產中支付。

根據法援署的統計數字，自民事司法制度改革推行以來，選擇接受調解的受助人數目不斷增加。在二〇〇九年四月至十二月期間，共有39宗法援個案的受助人獲准進行調解，二〇一〇年截至六月為止的數字則為194宗。

受助人如對與法援個案有關的調解服務，例如費用的資助、個案是否適合調解、對訟費的影響及嘗試調解的程序有任何疑問，歡迎向本署人員查詢。

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### Litigation vs. Mediation - An alternative way to settle disputes



Mediation is a voluntary process in which parties involved in court proceedings or disputes can work with an impartial person, called a mediator, to find a solution which is acceptable to all parties.

In 2000 the Judiciary launched a Pilot Scheme on Family Mediation for 3 years to test the effectiveness of mediation in resolving matrimonial disputes. The Pilot Scheme concluded that parties who underwent mediation were more satisfied with the agreements reached and were more likely to comply with such agreements compared to court orders and a useful option for resolving family disputes in Hong Kong.

To encourage greater use of mediation as a method of alternative dispute resolution (ADR), the Department (LAD) also launched a one year mediation pilot scheme in legally aided matrimonial cases in March 2005. Mediation was made available to legally aided persons in matrimonial cases. Aided persons in 107 cases chose to undergo mediation under the scheme and 88 cases proceeded to mediation, of which 61 cases reached full or partial agreement. A survey was conducted among the participants and 90% of those surveyed rated the pilot scheme positively.

Following the implementation of the Civil Justice Reform (CJR) in April 2009, mediation is now a part of civil proceedings. As a result, aided persons involved in civil proceedings including matrimonial proceedings can now obtain funding support for mediation as an alternative means of resolving their disputes.

Although it is not necessary to have tried mediation before being granted legal aid, it is in the interest of a person who has been granted legal aid to consider mediation as an option unless the case is not suitable for mediation. Aided persons can consult their lawyer on the suitability of their cases for mediation and the lawyers are under a duty to give them appropriate advice. Mediation can be attempted at any time before or during court proceedings.

If mediation is to be attempted, the lawyers acting for the aided persons are required to obtain the approval of the Director of Legal Aid (DLA) before engaging a mediator by providing information such as qualification and experience of the mediator; hourly rate, estimated number of hours required for mediation and any other incidental expenses such as hiring of venue for mediation, the terms of payment of the costs of mediation and whether the aided person has been advised of the implications of DLA's First Charge. The First Charge implications are important because unless it has been agreed that the opposite party is to bear the entire costs of the mediation, aided persons may find that they have to pay for the costs out of the damages or property they get or keep in the proceedings.

Statistics kept by LAD show that there is an increasing number of aided persons opting for mediation since the implementation of the CJR. Between April and December 2009, approval was given to aided persons in 39 cases to undergo mediation; the figure for 2010 up to June was 194.

Aided persons who have any queries concerning legal aid for mediation such as funding, suitability, costs implications and procedures for attempting mediation are welcome to discuss such queries with staff of the Department.