

# 家事調解

## Family Mediation



調解現晴天

家事調解 —  
訴訟以外的選擇

**A New Life for all**

Family Mediation —  
Option besides Litigation



## 引言

當婚姻破裂時，你可能面臨很多關於子女、財物和金錢方面的問題需作決定。你可能難於和你的配偶商量，或者你們在某個問題上陷入了僵局。有人會選擇放下怨恨，和平分手。也有人會選擇對簿公堂。結果，經過漫長的法律訴訟程序，並支付了昂貴的訴訟費後，很多人最後還是要在法庭上請法官為他們作出這些關係重大的決定。其中一個最不想看見的結局，就是小朋友成為事件中無助的受害者。

司法機構於二零零零年推行一項《家事調解試驗計劃》，並為此於家事法庭大樓內設立了調解統籌主任辦事處，協助推行這項試驗計劃。現在，試驗計劃已告完成。但由於這項計劃成效顯著，能夠幫助正在分居或離婚的夫婦，在無需花費大量金錢進行訴訟下把問題解決，有見及此，司法機構決定保留調解統籌主任辦事處。調解統籌主任會繼續主持家事調解講座，並在多方面協助尋求調解的夫婦以非對抗的形式解決問題。

本單張旨在幫助你認識調解的意思，以及調解給你帶來的好處。此外，亦會介紹由調解統籌主任辦事處舉辦的家事調解講座。

## 甚麼是家事調解？

家事調解是一個解決問題的方法，為正在分居或離婚的夫婦而設，協助他們就有關子女和財務事宜的持續安排達成雙方均接受的協議。

這是一個自願參與的計劃，由經過訓練的第三者（調解員），秉持不偏不倚的宗旨，協助雙方在保密的情況下就有關的事宜作溝通和協商。在此過程中各方均有機會陳述其論點並聆聽對方的說法。調解員的任務並非為各方作出決定，而是幫助各方探討其論據的強弱，並尋求可行的解決方案，從而協助各方達成和解的協議。調解員受過專門訓練，善於打破談判僵局，並能令各方專注於尋求解決方案。

在進行家事調解會談的時候，調解員會協助你們：

- 討論和確定雙方在哪些方面有爭議
- 探討雙方各自的需要和利益
- 盡量尋求各種可行的解決方案並選擇最適合的解決方法
- 擬訂詳細的協議，列明你們同意如何解決每項問題。

## 為誰而設？

家事調解服務為正在分居或離婚的夫婦提供輔助性和實際的辦法，協助他們達成既可切合他們本身的需要，又能顧及子女和配偶的需要的一項協議。

假如你們的婚姻破裂，或者已決定分手，你和配偶可考慮往晤調解員。家事調解服務可在訴訟展開前或進行期間的任何階段開始。

## 調解員？他們是甚麼人？

調解員具有不同的專業背景，一般具備法律、心理學、社會工作或社會科學方面的資格。他們都接受過專門的訓練，並須在協商和解決糾紛的知識和技巧方面達到認可的要求。此外，他們亦須遵守從事調解工作的執業守則。

調解員：

- 不會提供法律意見，但會鼓勵你在這方面諮詢你的律師
- 不會提供輔導或治療，但可提議你採用這些服務
- 不會偏幫任何一方
- 不會為你作決定，但會幫助你評估所作決定的可行性。

## 家事調解有甚麼好處？

- 可避免一些在法庭上對抗會引起的緊張和衝突
- 可省回為上庭抗辯而花費的時間和金錢
- 自己作主，達成雙方更願意遵守的協議
- 可以改進你與前伴侶溝通的能力
- 可以增進你們作為父母的持續關係，長遠來說，可令你們在履行為人父母的責任時合作得更好。

## 家事調解需要很長時間嗎？

這視乎你們需要解決的問題的複雜程度和數量。你們在調解會議中的合作和投入參與程度也有影響。假如問題較為簡單，而過程進展順利，那麼只需要參與兩三次為調解而舉行的會議，每次大

約兩小時，便可取得協議。

## 關於家事調解，還有其他需要注意的事項嗎？

- 由於不是所有個案都適合以調解方式處理，調解員會與你初步會談，在會談中評定你的情況是否適合以調解方式處理
- 調解這個方法並非對所有糾紛都適用（例如嚴重的虐兒和家庭暴力等情況，其中一方可能會因恐懼而未能暢所欲言地進行協商）
- 雙方在調解過程的任何階段均有權尋求法律意見
- 雙方均有權隨時終止接受調解
- 不能在任何法律程序中利用對方在調解會議上所說的話，這是雙方均須遵守的規則
- 在調解會議中草擬的協議，經雙方簽署後具有合約之約束力。經調解達成的和解協議，不可作為仲裁裁決、判決或法庭命令般強制執行。但你可以在諮詢你的律師後向法院申請按協議條款頒令。

## 保密

家事調解會議上所披露的事情，調解員須予以保密。若雙方同意接受調解，調解員會要求他們簽訂一份調解協議，註明所有調解通訊\*是保密及不得向外界披露。以下特定情況則屬例外，例如是得到調解的每一方和調解員的同意，或有合理理由相信必須作出披露以防止任何人受傷或未成年人的福祉受嚴重損害，或獲得法院的許可下作出披露等。

\* 調解通訊指為調解的目的或在調解的過程中而說出的任何說話或作出的任何作為，擬備的任何文件；或提供的任何資料。

## 如何尋求安排家事調解服務講座

你可選擇：

- 聯絡調解統籌主任辦事處  
地址：香港灣仔港灣道12號灣仔政府大樓1樓113-116室  
電話：2180 8066 或 2180 8063  
傳真：2180 8052  
網頁：<http://mediation.judiciary.gov.hk>
- 向家事法庭登記處提出要求：  
地址：香港灣仔港灣道12號灣仔政府大樓M2樓  
電話：2840 1218  
傳真：2523 9170
- 諮詢你的律師或社工等。

## 下一步怎樣做？

- 假如你有意尋求調解服務，便會獲安排出席由調解統籌主任主持的調解講座
- 調解講座結束後，調解統籌主任會給你一些關於家事調解服務的資料，你可自行申請或通過調解統籌主任辦事處申請有關服務
- 調解統籌主任會向法庭匯報，有意尋求調解的各方是否曾出席調解講座，以及是否願意參與調解
- 無論哪一方申請出席家事調解講座或參與調解，都不會導致法律程序自動擱置，而法律程序是否擱置，須視乎法官就此作出的指示而定。

## 家事調解講座是否需要收費？

調解統籌主任辦事處提供的調解講座和調解前諮詢是完全免費的。

## 家事調解服務是否需要收費？

不同專業背景的私人調解員或非政府機構提供之調解服務，會收取不同的調解費用。一些非政府機構會按使用服務人士收入的高低收取服務費，或者提供減免收費服務。

## 使用服務人士對家事調解服務的評語

以下是推行家事調解試驗計劃期間，使用家事調解服務的人士所作的評語：

1. (家事調解)讓我們冷靜而積極地商討問題。假如單靠我們私下討論，必定只會把時間浪費在沒結果的討論上。
2. (家事調解)幫助我們節省時間和金錢。應向所有決定離婚的夫婦提供這項服務。
3. 我們可以平靜地討論彼此間有衝突的意見.....若我們在女兒面前爭執，女兒必定因此而受到傷害.....現在，我的前夫偶而前來探望女兒的時候，我也可以跟他們一起外出。假如沒有經過調解，這是不可能辦得到的。

4. 調解員對待我們的態度極為友善，且能設身處地替我們著想，令我留下深刻的印象。儘管我目不識丁，她也耐心地向我解釋所有相關的事項，盡展其專業精神。
5. 調解員的專業水平相當高：她對本人的處境作了客觀的分析；在調解的過程當中一直能夠控制氣氛，而且表現中立。此外，她亦熟諳有關這宗離婚案的法律程序。
6. 透過調解服務，問題得以面對面解決。使用妥協的方式可避免過分傷害感情，亦可節省金錢。
7. 擬訂書面協議是這項服務最有用的部分。正如法官所言：「大家以文明的方式離婚」。有了協議，我們便無需在法庭爭辯。
8. 我們可以利用調解，處理一些我們不想面對面談論的題目。在對立的情況下，有第三者(調解員)在場可令討論的氣氛變得比較平和。
9. 調解員在調解會談時，像家人聊天一般跟我談話，令我覺得她對大家討論的事情是感同身受的。
10. 在調解過程當中，調解員不斷提醒我們離婚後保持良好親子關係的重要性。
11. 由於我對離婚事宜毫無經驗，亦完全不認識有關的法律程序或需要處理的事情，故此，(家事調解的)每一項服務都很有用。

12. 有很多事情我們根本察覺不到。例如，我沒有注意到我丈夫身為父親是要承擔責任的.....無論如何，他畢竟是女兒的父親。

## 參考資料

### 法律援助署

香港金鐘道66號  
金鐘道政府合署24樓  
電話：2537 7661

九龍旺角聯運道30號  
旺角政府合署地下  
電話：2380 0117

### 香港家庭法律協會

香港郵政總局郵箱11417號  
(代收函件地址)  
電郵地址：admin.hkfla@gmail.com  
網址：<http://www.hkfla.org.hk>

### 香港國際仲裁中心

香港中環交易廣場第二期38樓  
電話：2525 2381  
傳真：2524 2171  
電郵地址：adr@hkiac.org  
網址：<http://www.hkiac.org>

## 香港律師會

香港中環德輔道中71號

永安集團大廈3樓

電話：2846 0500

傳真：2845 0387

## 香港明愛

香港中環堅道2號

明愛大廈1樓

明愛家庭服務中心

電話：2669 2316 或 2843 4670

傳真：2676 2273

## 香港公教婚姻輔導會

婚姻調解輔導服務處

九龍觀塘翠屏北邨

翠樟樓M2樓101-105室

電話：2782 7560

傳真：2385 3858

網址：<http://www.cmac.org.hk>

## 香港家庭福利會調解中心

香港西營盤第一街80A西園

電話：2561 9229

傳真：2811 0806

網址：<http://www.mediationcentrehk.org>

(位於港九新界之分會均有提供服務)

## 基督教宣道會沙田堂社區服務中心

新界沙田

愉田苑E及F座地下

電話：2648 9281

傳真：2635 4795

## 循道衛理楊震社會服務處

旺角綜合家庭服務中心

九龍彌敦道736號中匯商業大廈地下

電話：2171 4001

傳真：2388 3062

## 免費法律指導

(可向各區民政事務處申請)

電話：2835 2500

## 電話法律諮詢

電話：2521 3333 或 2522 8018

司法機構

二零一二年五月

## Introduction

When your marriage breaks down, you may be faced with numerous decisions about your children, property and money. You may face difficulties in talking about them with your spouse or the two of you may be deadlocked on a particular issue. Some may decide to put aside their grudges and part in peace. Some may choose to resolve the matter in court. As a result, after lengthy and expensive legal proceedings, many people end up in court asking a judge to make these important decisions for them. One of the saddest outcomes is that children become helpless victims of a family crisis.

In 2000, a pilot scheme on family mediation was launched by the Judiciary. In terms of that scheme, a Mediation Co-ordinator's Office was set up within the Family Court building to assist in implementing the pilot scheme. The pilot scheme has now come to an end. However, because of its proven record of helping separating/divorcing couples to resolve their problems without the need for expensive litigation, a decision has been made to maintain the Mediation Co-ordinator's Office. The Mediation Co-ordinator will therefore continue to hold information sessions on family mediation and generally assist couples seeking mediation to help resolve their problems in a non-adversarial way.

This information leaflet aims to help you understand mediation, what it is and how it works to your advantage. It also tells you about the information sessions on family mediation which are run by the Mediation Co-ordinator's Office.



## What is Family Mediation?

Family Mediation is a problem-solving process designed to help separating/divorcing couples to reach their own mutually acceptable agreements regarding issues such as the on-going arrangements for their children and/or the resolution of financial matters.

It is a voluntary process in which a trained, impartial third person, the mediator, can assist both parties to communicate and negotiate issues in a confidential setting. During the process, each party to the dispute has a chance to put his/her case and to hear what the other has to say. The mediator's job is not to make a decision for the parties, but to assist the parties to explore the strengths and weaknesses of their own cases and to identify possible solutions, so as to facilitate them to reach a settlement agreement. The mediator is skilled in unlocking negotiations that have become deadlocked and in keeping everyone focused on finding a solution.

In a family mediation session, the mediator will help you to:

- discuss and decide which areas are in dispute,
- explore each party's needs and interests,
- expand options and select the most suitable solution, and
- draw up your agreement in detail setting out how you have agreed to solve each problem.

## For Whom?

Family Mediation provides supportive and practical steps to help separating/divorcing couples reach a settlement that is responsive to their needs, and to the needs of their children and their spouse.

If your marriage has broken down or you have decided to separate, you and your spouse may consider seeing a mediator. Family Mediation can start before any litigation begins or at any stage during the process of litigation.

## Mediators? Who are they?

Mediators come from various professional backgrounds. They usually have qualifications in law, psychology, social work or social science. They are specially trained and have to meet accreditation requirements covering knowledge and skills in negotiation and dispute resolution. They are also required to abide by a Code of Practice.

Mediators:

- Do not provide legal advice. You will be encouraged to consult your lawyer for such advice.
- Do not offer counselling or therapy but may suggest such services.
- Do not take sides with either party.
- Do not make decisions for you but help you assess the feasibility of the decisions.

## What are the Advantages of Family Mediation?

- You may avoid the tension and conflict in the adversarial litigation system.
- You may save some time and money in not having to contest matters in court.
- You make your own decisions and reach agreements which you and your former partner are more willing and ready to comply with.
- Family Mediation can improve your ability to communicate with your former partner.
- Family Mediation can enhance your continuing relationship as parents and help you work better together as parents in the long-run.

## Does Family Mediation take a long time?

It depends on the complexity and number of issues you need to settle. The degree of your cooperation and readiness to participate in the family mediation sessions also counts. If issues are less complicated and the process goes smoothly, it may only take 2 or 3 mediation sessions, each lasting for about 2 hours, for you to reach agreement.

## Any other concerns about Family Mediation?

- Family Mediation may not be suitable for everyone. You will attend an intake interview in which the mediator will assess whether family mediation is suitable for your particular circumstances.

- Family Mediation may not be appropriate for all disputes, e.g. in cases of serious child abuse and/or domestic violence, etc. as fear may prevent one party from negotiating freely.
- Legal advice can be sought by the parties at any stage of the family mediation.
- Both parties have the right to terminate the family mediation at any time.
- Both parties must appreciate that what the other party says in a family mediation session cannot be used in any legal proceedings.
- An agreement drafted in the family mediation session and signed by both parties is legally binding as a matter of contract. A mediation settlement agreement is not enforceable as an arbitral award, judgment or order of court. You may, however, seek your lawyer's advice on it and then apply to court to make the agreement an order of the court.

## Confidentiality

Family Mediators are required to observe confidentiality in respect of all matters disclosed in the family mediation session. When parties agree to enter family mediation, they will also be required by the mediator to sign an agreement to mediate that all mediation communication\* is confidential and must not be disclosed. They may be disclosed unless under specified circumstances, for example, with the consent of all parties and the mediator or where there are reasonable grounds to believe that the disclosure is necessary to prevent danger of injury to a

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\* mediation communication means anything said or done, any document prepared, and any information provided for the purpose of or in the course of mediation.

person or of serious harm to the well being of a child, or with the leave of the court.

## Ways you may seek Information Session on Family Mediation Service

- Contact the Mediation Co-ordinator's Office:

Room 113 - Room 116, 1/F, Wanchai Tower,  
12 Harbour Road, Wanchai, Hong Kong  
Tel. 2180 8066 or 2180 8063  
Fax. 2180 8052  
Website: <http://mediation.judiciary.gov.hk>

- Make your request at the Family Court Registry :

M2/F, Wanchai Tower,  
12 Harbour Road, Wanchai, Hong Kong  
Tel. 2840 1218  
Fax. 2523 9170

- Consult your lawyer or social worker, etc.

## What's next?

- If you are interested in seeking family mediation, arrangements will be made for you to attend an information session on family mediation conducted by the Mediation Co-ordinator.
- After the information session, the Mediation Co-ordinator will give you the information on family mediation service available for you to apply for it yourself or you may apply for it through the Mediation Co-ordinator's office.
- The Mediation Co-ordinator will report to the court as to whether the parties seeking mediation have attended an information session on family mediation and whether the parties are willing to take part in mediation.
- A party's application for information session on family mediation or participation in mediation will not lead to an automatic stay of the legal proceedings, but is subject to the court's direction in this regard.

## Do I need to pay for the Information Session on Family Mediation?

Information sessions and pre-mediation consultations provided by the Mediation Co-ordinator's Office are free of charge.

## Do I need to pay for the Family Mediation Service?

Private mediators of different professional backgrounds or non-governmental agencies charge different range of mediation fees when they provide mediation service. Some non-governmental agencies charge a fee according to a sliding scale based on the user's income or provide fee reduction or remission service.

## Users' Comments on Family Mediation Service

The following are comments from users of family mediation service under the Pilot Scheme on Family Mediation :

1. (Family Mediation) enables us to discuss matters in a calm and constructive manner. We would have wasted time on fruitless discussions if we had had the discussion just between ourselves.
2. (Family Mediation) helps us save time and money. Such service should be provided to all divorcing couples.
3. We can have a peaceful discussion about our conflicting views... Our daughter would be hurt if we quarrelled in front of her... Now on occasions, my ex-husband comes to see our daughter and I can go out with them. Without mediation, this would be impossible.
4. The mediator showed tremendous friendliness and empathy towards us which left me deeply impressed. Although I am an illiterate, she exhibits professionalism in explaining all matters to me patiently.

5. The mediator is highly professional: she gives an objective analysis of my situation; maintains control over the atmosphere throughout the mediation process and displays neutrality. She is also highly proficient with legal proceedings relating to the divorce.

6. Through mediation service, problems can be solved face to face. Feelings will not be deeply hurt by using the compromise method, and it saves money.

7. The most helpful part of the service is drafting of the written agreement, as the judge said "we divorce in a civilized way", we do not need to argue in the Court.

8. We could use mediation to deal with issues we don't want to talk face to face. At conflictual situations, with the presence of a third party [the mediator], discussion may be proceeded in a more peaceful atmosphere.

9. The mediator talked with me in mediation sessions like chatting in family and I felt that the conversation concerns her as a person who has feeling.

10. We were reminded the importance of maintaining good parent-child relationship after divorce throughout the mediation service.

11. Everything (in the family mediation) is useful as I have no experience in divorce matters at all and I have no knowledge about the procedures or the matters to be dealt with.

12. There are many blind spots in what we see. An example is that I did not notice that my husband has responsibilities to bear as a father... No matter what, he is our daughter's father after all.

## Other Information

### Legal Aid Department

24/F, Queensway Government Offices,  
66 Queensway, Hong Kong  
Tel: 2537 7661

G/F, Mongkok Government Offices,  
30 Luen Wan Street,  
Mongkok, Kowloon  
Tel: 2380 0117

### Hong Kong Family Law Association

c/o G.P.O. Box 11417, Hong Kong  
E-mail: [admin.hkfla@gmail.com](mailto:admin.hkfla@gmail.com)  
Website: <http://www.hkfla.org.hk>

### Hong Kong International Arbitration Centre

38/F, Two Exchange Square,  
Central, Hong Kong  
Tel: 2525 2381  
Fax: 2524 2171  
E-mail: [adr@hkiac.org](mailto:adr@hkiac.org)  
Website: <http://www.hkiac.org>

### The Law Society of Hong Kong

3/F, Wing On House,  
71 Des Voeux Road Central,  
Central, Hong Kong  
Tel: 2846 0500  
Fax: 2845 0387

### Caritas – Hong Kong

Caritas Family Service  
1/F, Caritas House,  
2 Caine Road, Central, Hong Kong  
Tel: 2669 2316 or 2843 4670  
Fax: 2676 2273

## **Hong Kong Catholic Marriage Advisory Council**

Marriage Mediation & Counselling Service

Room 101 - 105, M2 Level, Tsui Cheung House,

Tsui Ping (North) Estate, Kwun Tong, Kowloon

Tel: 2782 7560

Fax: 2385 3858

Website: <http://www.cmac.org.hk>

## **Hong Kong Family Welfare Society Mediation Centre**

Western Garden, 80A First Street,

Sai Ying Pun, Hong Kong

Tel: 2561 9229

Fax: 2811 0806

Website: <http://www.mediationcentrehk.org>

(Service also provided in centres in different regions of HK)

## **Shatin Alliance Community Services Centre**

G/F, Block E & F, Yue Tin Court,

Shatin, New Territories

Tel: 2648 9281

Fax: 2635 4795

## **Yang Memorial Methodist Social Service**

Mongkok Integrated Family Service Centre

G/F, Central Commercial Tower, 736 Nathan Road,

Mongkok, Kowloon

Tel: 2171 4001

Fax: 2388 3062

## **Free Legal Advice Scheme**

(Application can be made to any District Office, Home Affairs Department)

Tel: 2835 2500

## **Tel-Law Service**

Tel: 2521 3333 or 2522 8018

Judiciary  
May 2012

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