The Cultural Dilemmas in Dispute Resolution: The Chinese Experience

Professor Cecilia Lai-Wan Chan,
Director, Centre on Behavioral Health,
Professor, Department of Social Work and Social Administration
The University of Hong Kong

Presentation at the Conference of Enforcing Equal Opportunities in Hong Kong: An Evaluation of Conciliation and Other Enforcement Powers of the EOC. CENTRE FOR COMPARATIVE AND PUBLIC LAW (CCPL), FACULTY OF LAW, UNIVERSITY OF HONG KONG, Saturday, 14 June 2003, University of Hong Kong.

Western Dispute Resolution
• Western culture has always pursued democratic rights, individual justice.
• Use the communicative tools of open debate and confrontation to achieve its goals.
• Litigation as the prime and primary method in the settling of disputes.

Chinese Culture
• A sociocentric culture, the primary emphasis in society is on social relations; conventions and rules exist to shape social roles and to sustain long-term relationships (Lin & Lin, 1980).
• The function of law was to reinforce the cardinal order in daily encounters.
• The spirit of Chinese laws was to impute the concept of propriety into the content of law, and the ultimate goal of propriety was to maintain the cardinal order in interpersonal relationships (Zhang & Yang, 1998).
• Chinese culture cherished political stability and social harmony. People tend to adopt subtle persuasion and conflict avoidance techniques in communication.
• Highly compliant to authority and would not challenge the superiors. Chinese tend to present themselves favorably and submissively to the dominating power (Horowitz et al. 1991; Yang, 1992).
• Avoid "loss of face" (Uba, 1994): aggregate families' tendency to deny problems and to carefully guard against its disclosure to people outside of the family, causing greater burden and isolation.

Chinese Dispute Resolution
• Suppression of disputes and differences are common tactics in handling conflicting situations (Goh, 2002).
• Chinese subjects show stronger preference for mediation, bargaining and conciliation than for adversary and inquisitorial adjudication and litigation (Leung 1987).
• Chinese society is being described as litigation-averse (Goh, 2002).
• Traditional Chinese would present themselves before the court only when all other solutions (compromise or arbitration) had failed (Grenet, 1970).
Chinese Characteristics of Justice

- Adopt equality rules for friends but equity rules for strangers (Chi & Ho, 2003).
- Family members and favouring the intimate is acceptable under the Chinese culture that is relationship based (Hwang, 2001).
- More interested in group goals, and the personal welfare of the individual is secondary to collective interest (Harry, 1989). The outcome of mediation serves to restore group harmony.
- Allow implicit space, provide leeway in negotiation to protect face (Chiu-Li, 1999).

Attribution of Injustice in Chinese Tradition

- 命水 (destiny)
- 天意 (the will of Heaven)
- 風水 (determination of universe)
- 造孽 (bad karma)

Dilemma in Facing Dispute in Modern Hong Kong

- Accept vs. Escape
- Fatalistic vs. Self-righteousness
- Submit to authority vs. fight till the end
- Not right to express dispute vs. the commitment to justice

『家醜不可外揚』, 『以和為貴』, 『和氣生財』, 『家和萬事興』

Forms of Dispute Resolution

<table>
<thead>
<tr>
<th>Traditional Forms of Dispute Resolution</th>
<th>Modern Forms of Dispute Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Use the clan elder to pass a judgment, make a decision</td>
<td>- Use the rule of law</td>
</tr>
<tr>
<td>- Verbal resolution via a mediator who say good things about both of the parties</td>
<td>- Use professional arbitrator or lawyers, no communication between parties</td>
</tr>
<tr>
<td>- No record, verbal agreement</td>
<td>- Written contract and clear documentation</td>
</tr>
<tr>
<td>- Provide face to all parties concerned</td>
<td>- Matter of fact, impersonal</td>
</tr>
<tr>
<td>- Buy your way through (corruption) and power from the authority</td>
<td>- Use of mass media to put pressure on authority</td>
</tr>
<tr>
<td>- Harmony is most important</td>
<td>- Justice is most important</td>
</tr>
<tr>
<td>- Should be forgiving, not right to seek monetary compensation</td>
<td>- Monetary compensation for any harm done</td>
</tr>
<tr>
<td>- Comply to patriarchal authority</td>
<td>- Rely on facts and evidence</td>
</tr>
</tbody>
</table>
Barriers to Redress of Grievances in Chinese Society

– Fear of officialdom 生不入官門，死不入地獄
– Mistrust of the authority and government officials at all levels
– Accustomed to corruption
– Keep family problems as shameful and secretive
– Don't know what is right to ask for as compensation
– Self-denial culture-hate the rich, despise the poor
– Outright discrimination of disadvantaged population, such as women and persons with disability

Cultural Inhibition on Chinese people from launching a Complaint:

• Articulation of grievance is regarded as wrong
• No idea that collection of evidence is essential
• Don't know what to ask for as a remedy
• Look for a “wise man” to act on their behalf to ensure justice being done
• Great sense of shame in telling others of their failure experience of being discriminated, a continuous victimization, blaming of victim
• Complain process is humiliating, loss of face, fees are prohibitive
• Practical issues before ideological issues, e.g. complaint would give up if find a new job
Culture Differences in Mediation:
Values & Norms

<table>
<thead>
<tr>
<th>Chinese Culture</th>
<th>Western Culture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collectivist</td>
<td>Individualistic</td>
</tr>
<tr>
<td>Value conformity</td>
<td>Value Initiative</td>
</tr>
<tr>
<td>Address particular</td>
<td>Addresses universal</td>
</tr>
<tr>
<td>Adjustment</td>
<td>Principles</td>
</tr>
</tbody>
</table>

Organization of Behavior

<table>
<thead>
<tr>
<th>Chinese</th>
<th>West</th>
</tr>
</thead>
<tbody>
<tr>
<td>High-context</td>
<td>Low-context</td>
</tr>
<tr>
<td>Homocentrism</td>
<td>Egocentrism</td>
</tr>
<tr>
<td>“Community” as the primary social unit</td>
<td>“Self” as the primary Social unit</td>
</tr>
<tr>
<td>Emphasizes inter-dependence</td>
<td>Emphasizes self-reliance &amp; independence</td>
</tr>
</tbody>
</table>

Communication Mode

<table>
<thead>
<tr>
<th>Chinese Culture</th>
<th>Western Culture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indirect, ambiguous, symbolic and metaphorical</td>
<td>Direct, explicit, factual &amp; analytical</td>
</tr>
</tbody>
</table>

Expression of strong emotions

<table>
<thead>
<tr>
<th>Chinese Culture</th>
<th>Western Culture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strong feeling is intricately linked with legitimacy of a concern</td>
<td>Puts aside feelings in order to attain objective and reasonable solution</td>
</tr>
</tbody>
</table>

Family and Self

<table>
<thead>
<tr>
<th>Chinese Culture</th>
<th>Western Culture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extended family and social network play a crucial role in family decision, individual acts on behalf of family members' wills &amp; interest</td>
<td>Nuclear family as the main decision-making unit, every family member in general can clearly represent one's own interests</td>
</tr>
</tbody>
</table>

Chan & Wong (1997)

Mediator 和事佬 调庭人 中間人 中保

- In western practice, being impartial as the priority principle
- In Chinese culture, mediators with strong relational qualities, such as being warm, understanding, kind and listening are desirable. And sometimes, “expert” and “authority” roles are taken.
Adapting Therapeutic Mediation on Chinese Families (Irving, 2000)
- Mediator as Expert
- Mediator as Insider
- Respect for Hierarchy
- Respect for Harmony in the Family
- Recognizing Clients’ Limited affective vocabulary
- Mediation as a learning process
- The role of grandparents and other elders
- Concrete, quick results, clear steps and procedures
- Substantive issues

Expectations on EOC:

- Impartial by EOC Officers may mean they don’t care, to both complainant and respondent.
- Take active role in helping both complainant and respondent by providing more details of previous conciliation cases
- Set up a mechanism by which EOC can investigate incidences of discrimination even without a complainants, especially disability cases
- Revise Building Ordinance to make both public and private places responsible for equal access to all.
- Review existing cases that are regarded as "no unlawful act" and dismissed cases (including discrimination taken place outside Hong Kong, event happened 12 months ago, etc).
- Review legislation and procedures to ensure justice having been done (Owner’s Corporations power to refuse disability access)
- Take initiative in facilitating collective legal action, law reform and investigation