**Mediating Between and With Asian Parties in Disputes**

Kia ora good evening everyone. It is a real pleasure to be here tonight.

My thanks to Mai Chen and NZ Asian Lawyers for convening us for this important conversation. Can I also acknowledge the Hon Kit Toogood and Clayton Kimpton who are here tonight.

I am here because I believe our society needs to have enhanced capabilities for resolving disputes at every level of our community. This is important for preserving social cohesion – what helps our communities hang tight together in the face of adversity. This is especially so in super diverse societies like New Zealand.

Just a couple of weeks ago, I had the privilege of being at Government House here in Auckland, where we delivered the Harmony Accord.

It was a moment of significance for our nation, Jewish and Muslim national organisations coming together, face-to-face, after a long and painful journey of being at odds with each other. As many of us in this room will be aware, the war in Gaza has polarised many people. We have also seen an unprecedented rise in both Islamophobia and antisemitism. There are deeply held views about Gaza across the world including New Zealand. The challenge is they generate security risks for our country as well as creating divides between communities. This isn’t good for social cohesion that we often take for granted.

The Ministry embarked upon a task of bringing key Muslim and Jewish organisations to the table to agree to an accord that outlines how they will continue to bring their communities together despite perspectives that are difficult to reconcile. It took many months of careful negotiation, active listening and going to and fro between the parties to get to an accord that people felt they could sign up to. So it was momentous indeed when we reached agreement.

I have worked in the ethnic diversity space for many years. I am convinced that societies that are diverse need higher levels of dispute resolution capabilities to enable us to thrive and prosper together.

While diversity has an abundance of well-evidenced benefits, they can only be unlocked on the foundations of a stable society. When we bring people from diverse ethnicities, national origins and faiths together, there is bound to be conflict – clash of values and beliefs that are an inevitable but healthy part of any diverse community. We see this every day at the Ministry. And these clashes are becoming more evident in the current context that we are all experiencing today.

Constructive tensions are good as long as we are armed as society with the tools to handle conflict constructively - and outside adversarial processes that are not well suited for dealing with deeply felt cultural or religious perspectives. This is what we observed in the journey to striking an accord between the Jewish and Muslim organisations we worked with. The more diverse we become, the more critical it is to develop dispute resolution capabilities within the community. Our future depends on it.

That is why what we are talking about tonight matters. Your efforts to highlight mediation as a strong and viable alternative for resolving disputes outside the adversarial environment of a court room are highly commendable. We need more mediators in our society. It is a public good from my perspective.

We do not have sufficient evidence to draw a conclusion that Asian people in dispute are more likely to use the formal justice system as opposed to other more flexible avenues such as mediation. I wouldn’t be surprised though if this was the case – based on the evidence we have on barriers to access to information and services that many newcomers to our country face.

Firstly, we have evidence that Asian communities have high levels of trust and confidence in NZ’s judicial system. They regard our courts as respectable, fair and trustworthy to mete out justice to litigants irrespective of who they are. It is no surprise that choosing litigation would be a strong option given this factor.

Secondly, we know that many newcomers do not the same access to information and services that people who live here have. They may lack basic information on mediation services for example and therefore not choose this avenue for resolving their disputes.

Thirdly, even if they did know, they may choose not to use these services because they may not be culturally appropriate to Asian ways of resolving disputes. Asian values place a higher premium on face saving and preserving harmony as opposed to taking a more transactional approach to getting a settlement. People may simply not be able to find mediators who understand their culture, values, and ways of relating.

For these reasons, it would not be surprising if Asian people in dispute simply choose the courtroom as the most straightforward and trustworthy way for dealing with their disputes.

There is an irony in this. Many Asian cultures have for generations used mediation and other forms of dispute resolution mechanisms to resolve conflict because it is seen as more aligned with Asian collectivist cultures.

Collectivists cultures place more emphasis or preserving the interests of the collective and preserving harmony of the group in any given situation. Mediation would naturally be a viable option for many Asian people, rather than the adversarial environment of a courtroom where one’s dirty laundry gets aired publicly in a manner that can invoke shame and loss of face.

So if there are barriers to using mediation in NZ, these should be swiftly dealt with to enable access to these services. This would not only alleviate the immense pressures on the formal justice system, but it would also provide flexible and more culturally appropriate avenues for resolving disputes that sit more comfortably with many Asian communities. That is why we need more Asian lawyers to become mediators.

I have been a mediator in the past for almost 10 years. I found that part of my career to be immensely rewarding. I have continued to use the skills I learnt for many years including until recently when we arrived at the Harmony Accord.

The Harmony Accord reminded me that even in the hardest disputes, there is a path forward. It takes courage. It takes skill. It takes a willingness to stay at the table. But when we get it right, we’re not just solving a conflict, we’re shaping the kind of country we want to be. Everyone in this room can play a role in doing just that.

Nō reira, tēnā koutou, tēnā koutou, tēnā tātou katoa.  
Thank you.