

OVERVIEW OF THE APOLOGY ORDINANCE IN HONG KONG

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ABSTRACT

The Apology Ordinance (Cap. 631) was enacted in Hong Kong in 2017 with the aim of promoting apology as a means of preventing conflict escalation and fostering amicable settlements. The Ordinance defines an apology as an expression of regret, sympathy, or benevolence, which also includes statements of fact. Apologies do not constitute admissions of fault or liability unless explicitly intended to be used as evidence. This legislation sets a precedent for other Asian jurisdictions and enhances Hong Kong's position in international dispute resolution.

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INTRODUCTION

The Apology Ordinance (Cap. 631)¹ (“the Ordinance”) came into operation on 1 December 2017 in Hong Kong. The Ordinance aims to promote and encourage the expression of an apology with a view to preventing the escalation of conflicts and fostering amicable settlements.²

BACKGROUND

It is common knowledge that an apology made during mediation is confidential, as well as, of a “without prejudice” nature. Mediation normally takes place after a dispute (with or without the commencement of legal proceedings) has arisen. However, for various reasons, often, one is more reluctant to apologise in an open or non-mediation context. An apology legislation may afford some protection to the apology-makers since an early apology may de-escalate a dispute from a conflict (whether physical or otherwise) or a protracted legal battle. As such, the Ordinance aims to address a significant gap in Hong Kong's legal framework regarding apologies.

Prior to its introduction, it was thought by some legal practitioners that “... an apology or a simple utterance of the word ‘sorry’ may be used by a plaintiff in civil or other non-criminal proceedings (such as disciplinary proceedings) as evidence of an admission of fault or liability by the defendant for the purpose of establishing legal liability.”³ As such, individuals were hesitant to apologise due to fears that their expressions of goodwill and

¹ The Government of the Hong Kong Special Administrative Region (Government), “Cap. 631 Apology Ordinance,” The Government of the Hong Kong Special Administrative Region (Government), accessed November 20, 2025, <https://www.elegislation.gov.hk/hk/cap631>.

² Section 2 of the Apology Ordinance (Cap. 631)

³ Department of Justice: The Government of the Hong Kong Special Administrative Region (Government), “Consultation Paper: Enactment of Apology Legislation in Hong Kong,” Department of Justice: The Government of the Hong Kong Special Administrative Region (Government), accessed November 20, 2025, https://www.doj.gov.hk/en/archive/pdf/apology_2015_e.pdf.

benevolence would lead to legal consequences. As apologies play a crucial role in facilitating communication and reconciliation between parties, this reluctance or concern had hindered the resolution of disputes. However, without the relevant piece of legislation, it was difficult to foster a culture of making apologies and resolving conflicts in a non-antagonistic manner.

In a report published by the Working Group on Mediation of the Department of Justice in 2010, it was recommended that an apology ordinance or legislative provisions dealing with the making of apologies for the purpose of enhancing settlement be further considered.⁴ In 2012, the Steering Committee on Mediation (“Steering Committee”), chaired by the Secretary for Justice, was established to further promote the development of mediation in Hong Kong. Alongside that, the Regulatory Framework Sub-Committee was set up under the Steering Committee to consider whether there was a need to introduce apology legislation in Hong Kong.

After two rounds of public consultation in 2015 and 2016, support for having an apology legislation was received from many professional bodies and the public generally. Thereafter, the apology legislation received the green light at the Hong Kong Legislative Council on 13 July 2017 leading to the enactment of the Ordinance on 1 December 2017. By clarifying the legal implications of apologies, the Ordinance offers protection for those who wish to express remorse and/or regret without the fear of incurring legal liabilities.

FEATURES OF THE ORDINANCE

Defined very widely under section 4 of the Ordinance as “an expression of the person’s regret, sympathy or benevolence in connection with the matter”, which may be expressed orally, in writing or by conduct, an apology also includes any part of the expression that is an express or implied admission of fault or a statement of fact in connection with the

⁴ Department of Justice: The Government of the Hong Kong Special Administrative Region (Government), “Report of the Working Group on Mediation,” Department of Justice: The Government of the Hong Kong Special Administrative Region (Government), accessed November 20, 2025, https://www.doj.gov.hk/en/legal_dispute/pdf/med20100208e.pdf, 123.

matter. The effects of the inclusion of statement of fact are discussed in the section below.

Under section 4(1) of the Ordinance, the relevant apology must be made by “a person”. Pursuant to section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), the word person “includes any public body and any body of persons, corporate or unincorporate ...”. So far, Hong Kong does not have any case law to clarify whether an apology made on behalf of a person by AI or a robot will be within the definition of apology under section 4 of the Ordinance.

The Ordinance applies to a wide range of civil proceedings, including judicial, arbitral, administrative, disciplinary, regulatory and other proceedings (“applicable proceedings”). One of the reasons as to why the Ordinance applies not only to civil court proceedings is that a professional against whom misconduct has been alleged, would be reluctant to apologise if the apology would only be protected in civil court proceedings but not in other proceedings where the very same apology could be used as evidence against him in subsequent or parallel disciplinary proceedings. Given the fact that some proceedings are of a fact-finding, rather than an adversarial, nature, and also for policy reasons, the legislature in Hong Kong decided to exclude criminal proceedings, those of the Legislative Council, under the Commissions of Inquiry Ordinance (Cap. 86), the Control of Obscene and Indecent Articles Ordinance (Cap. 390) and the Coroners Ordinance (Cap. 504), from the applicability of the Ordinance⁵.

For the purpose of the abovementioned applicable proceedings, an apology does not constitute an admission of fault or liability. In essence, the apology made must not be taken into account by the decision-maker when determining fault or liability. Neither must the apology made be allowed to prejudice their judgment. However, a party may choose to make an apology in court documents, testimonies or oral submissions at a hearing, with the intention that the apology be taken into account in the proceedings. In this circumstance, the apology may be adduced as evidence in the applicable proceedings.

Further, if A makes an apology on behalf of B, the apology made by A cannot be used as evidence against B in the applicable

⁵ Section 6(2), the Apology Ordinance (Cap. 631).

proceedings⁶. This enables the head of an organization to make an apology on behalf of the organization and its staff without raising concerns on the part of the junior staff that they will be adversely affected by the apology made by their superior or senior.

STATEMENT OF FACT

Section 4(3)(b) of the Ordinance provides that an apology includes a “statement of fact in connection with the matter”. A common issue which arose during the drafting of the apology legislation was whether a statement of fact should become part of the apology and be protected by the legislation. In considering this issue, the Steering Committee examined the approach from other jurisdictions,⁷ two of which are discussed below.

In Alberta, Canada, the apology legislation is silent on whether it covers statements of fact. The question of whether a statement of fact forms part of an apology is determined by the court on a case by case basis. In *Robinson v Cragg*⁸, the Court of Queen’s Bench ruled that the part containing an expression of sympathy or regret was inadmissible but an admission of fault was admissible. The court took into account the legislative intent and determined that it would be “unfairly prejudicial” to combine an expression of sympathy or regret with an admission of fault. This approach of separating the “apology words” from the accompanying factual statements received mixed reactions from the community. Some criticised the approach as being “problematic” and potentially discouraging parties from apologising.⁹ By way of illustration, litigation lawyers frequently exchange “without prejudice” correspondence in the course of litigation. However, it would be very unusual and problematic if the trial judge could peruse

⁶ Section 4(4), the Apology Ordinance (Cap. 631).

⁷ Department of Justice: The Government of the Hong Kong Special Administrative Region (Government), Consultation Paper: Enactment of Apology Legislation in Hong Kong, 108-124.

⁸ *Robinson v Cragg* [2010] AJ No 1395

⁹ Nina Khouri, “Sorry Seems to Be the Hardest Word: The Case for Apology Legislation in New Zealand,” *New Zealand Law Review* 2014, no. 4 (2015): 603–46.

the contents of the “without prejudice” correspondence albeit with the paragraph(s) containing the offer or counteroffer redacted.

With Scotland being the most recent jurisdiction at that time to enact an apology legislation in 2016, Scotland's experience was also relevant. Initially, the Apologies (Scotland) Bill considered including statements of fact within its definition of an apology. However, after extensive consultation and debate, lawmakers opted not to include any statement of fact as part of the apology as there would be potential injustice if the apology with statement of fact is the only means of demonstrating liability, but yet cannot be used in evidence. One of the concerns was that the benefit of hearing such apology may not be sufficient to outweigh the potential injustice arising.¹⁰ The decision adopted by the Scottish legislature thus reflects the delicate balancing exercise between encouraging genuine apologies while ensuring that victims retain their rights in civil proceedings.

After reviewing the above approaches, Hong Kong decided to adopt a third approach, that is to treat statements of fact as part of the apology but at the same time, allow the court to retain a discretion to admit a statement of fact as evidence against the apology-maker in appropriate circumstances. The Hong Kong Government's stance was that, if the Canadian approach was adopted, the court would have to decide on a case by case basis and determine how to differentiate statements of fact from apologies. This would bring about much uncertainty and even be counter-productive vis-à-vis the very purpose sought to achieve by such legislation, which is to resolve disputes.¹¹

¹⁰ Department of Justice: The Government of the Hong Kong Special Administrative Region (Government), “Enactment of Apology Legislation in Hong Kong: Report & 2nd Round Consultation,” Department of Justice: The Government of the Hong Kong Special Administrative Region (Government), para 10.7, accessed November 20, 2025, https://www.doj.gov.hk/en/archive/pdf/apologyreport_2016_e.pdf.

¹¹ Legislation Council, ‘Bills Committee on Apology Bill Government’s response to the list of follow-up actions arising from the discussion at the meeting on 24 February 2017’ (15 March 2017) (LC Paper No. CB(4)669/16-17(03)), para 13, available at <https://www.legco.gov.hk/yr16-17/english/bc/bc103/papers/bc10320170315cb4-669-3-e.pdf>

SECTION 8 OF THE ORDINANCE

This third approach is reflected in section 8 of the Ordinance, which deals with the admissibility of evidence of the apology. Section 8(1) reiterates the general principle that a statement of fact under the Ordinance will be part of an apology. However, section 8(2) deals with more specific situations in that a statement of fact can be used as evidence, provided that there is an exceptional case. Although what constitutes an exceptional case has not been conclusively defined, an example has been given, being the absence of other evidence. There are also the hurdles of “public interest” and “the interests of the administration of justice”. Although “public interest” and “the interests of the administration of justice” have not been defined in the Ordinance, the court and legal practitioners are unlikely to have any difficulty in understanding these terms by reference to other existing legislation or case law. Further, it is pertinent to note that section 8(2) only gives the decision maker of the applicable proceedings a discretion to admit the statement of fact as evidence and the decision maker is certainly not obliged to do so in every case. More information on the considerations of the legislative journey is set out below.

All the relevant circumstances

Initially, when the Apology Bill was first drafted, section 8(3) of the draft Apology Bill stipulated that “the decision maker may exercise the discretion only if satisfied that it is just and equitable to do so, having regard to *all the relevant circumstances*.”¹² That is to say, the threshold test was just and equitable considering all the relevant circumstances. However, concerns were raised that such discretionary power may engender uncertainty and deter people from disclosing statements of fact when making apologies. As such, after careful consideration, the Hong Kong Government removed the phrase “all relevant circumstances” and replaced it with “public interest or the interests of

¹² Department of Justice: The Government of the Hong Kong Special Administrative Region (Government), “Enactment of Apology Legislation in Hong Kong: Final Report and Recommendations,” Department of Justice: The Government of the Hong Kong Special Administrative Region (Government), accessed November 20, 2025, https://www.doj.gov.hk/en/archive/pdf/apologyFinal_2016_e.pdf, 92-97.

the administration of justice" with a view to reducing uncertainty while avoiding any undue restrictions.

Just and equitable

In including the words "just and equitable" as one of the criteria for the exercise of the decision-maker's discretion, the Hong Kong Government explained that the concept of "just and equitable" was not something new. There are ample existing legislation and case law, both in Hong Kong and other common law jurisdictions, to assist judges and legal practitioners in this regard¹³. In any event, "just and equitable" is one of the usual yardsticks that the courts or other tribunals have to take into account when considering the claims of a party.

Exceptional case

The phrase "exceptional case" was not used in the draft Apology Bill annexed to the Final Report and Recommendations of the Enactment of Apology Legislation in Hong Kong¹⁴. This phrase first appeared in the Bills Committee meetings when the Apology Bill was being deliberated at the Legislative Council. Concerns were raised at the Bills Committee meetings regarding whether the conferment of the discretionary power on the decision maker would give rise to uncertainty in the admission of statements of fact contained in an apology. In response, the Hong Kong Government took the view that such discretion would only be exercised by the court in limited and rare circumstances¹⁵. While the Ordinance does not define the meaning of exceptional case or give an exhaustive list of exceptional cases, an example is given in section 8(2). The example contemplates that if a

¹³ Legislative Council, 'Bills Committee on Apology Bill Government's response to the list of follow-up actions arising from the meeting on 9 May 2017' (May 2017) LC Paper No. CB(4)1085/16-17(02) ("LC Paper"), para 17, available at <https://www.legco.gov.hk/yr16-17/english/bc/bc103/papers/bc10320170509cb4-1085-2-e.pdf>

¹⁴ Department of Justice: The Government of the Hong Kong Special Administrative Region (Government), "Enactment of Apology Legislation in Hong Kong: Final Report and Recommendations."

¹⁵ Legislative Council, 'Bills Committee on Apology Bill Government's response to the list of follow-up actions arising from the meeting on 15 March 2017' (May 2017) LC Paper No. CB(4)1038/16-17(01), para 5, available at <https://www.legco.gov.hk/yr16-17/english/bc/bc103/papers/bc10320170315cb4-1038-1-e.pdf>

claimant is unable to adduce independent evidence to prove the facts mentioned in the statement of fact contained in the apology, the exclusion of the relevant statement of fact may make it more difficult to prove the claimant's case.

In light of the above concerns, the Hong Kong Government carefully reviewed whether an absolute protection of statements of fact was necessary, i.e. omitting section 8(2) of the Ordinance¹⁶, and allowed all apologies with statement of fact be excluded as evidence. *Prima facie*, a blanket protection of statements of facts might have the advantage of clarity and certainty. However, such approach may be too rigid and risk causing hardship¹⁷ to parties as the lack of any judicial discretion in the matter would mean that there will not be any leeway for courts to rule otherwise, including where dire circumstances arise. In a circumstance where the court must rule otherwise, the only option left is for such legislative provision to be struck down for being unconstitutional and the risk of unconstitutionality must be avoided¹⁸. As such, a protection of apologies with exception was deemed to be more appropriate.

As a whole, the above amendments struck a fair balance between the objective of promoting and encouraging the making of apologies and the need to safeguard a claimant's right to a fair hearing and judicial remedies.

UNIQUE POSITION OF HONG KONG'S APOLOGY ORDINANCE IN ASIA

So far, Hong Kong is the only jurisdiction in Asia with a standalone apology legislation. Despite the lack of empirical research in Hong Kong on the efficacy of the Ordinance, the Hong Kong Government had noted the existence of empirical research conducted overseas which examined the effect of apologies on the recipients' willingness

¹⁶ Legislative Council, 'Bills Committee on Apology Bill Government's response to the list of follow-up actions arising from the meeting on 9 May 2017' (May 2017), para 3.

¹⁷ *Ibid*, para 4.

¹⁸ *Ibid*, para 9.

to accept a settlement offer in a hypothetical situation.¹⁹ Results of that research indicated that a full apology would increase the likelihood of a settlement offer being accepted, compared to a partial apology or no apology²⁰. While the purpose of the Ordinance is to encourage parties to make apologies to prevent escalation of disputes, the Ordinance is not intended to mandate individuals or organizations including the Hong Kong Government to make apologies.

CONCLUSION AND LOOKING FORWARD

The Ordinance represents a significant advancement in Hong Kong's legal landscape by encouraging open communication and promoting harmony. With the enactment of the Ordinance, Hong Kong has set a precedent for other Asian jurisdictions to consider similar legislation. The Ordinance, together with the Mediation Ordinance (Cap. 620), has also provided a solid legal framework on avoiding and resolving disputes in Hong Kong.

Going forward, the Hong Kong Government will continue to make great efforts to deepen mediation culture in Hong Kong and position Hong Kong not only as a centre for international legal and dispute resolution services in the Asia-Pacific region under the national policies but also as the “Capital of Mediation”. It is hoped that Hong Kong, being an ADR forerunner, may share its experiences in avoiding and resolving disputes with other jurisdictions in the region and worldwide.

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¹⁹ Jennifer K Robbenolt, “Apologies and Legal Settlement: An Empirical Examination,” *Michigan Law Review* 102, no. 3 (2003): 460–516.

²⁰ *Ibid.*, 488–489.