

LRC Report on Guardianship of Children published

The Law Reform Commission today (January 18) announced the publication of its report on "Guardianship of Children." The report deals with the law relating to the appointment of guardians for children in the event of the death of one or both parents.

Amongst the report's recommendations, the Commission proposes that the procedures necessary for parents to appoint guardians for their children should be simplified and that the court's powers to appoint and remove guardians for children should be widened.

The Deputy Secretary to the Commission, Ms Michelle Ainsworth, explained that the Commission's focus in reviewing the law of guardianship of children had been on recommending ways to simplify the relevant law and procedures so that more parents would be encouraged to take the positive step of making guardianship arrangements for their children.

Ms Ainsworth said that a variety of shortcomings had been identified with the law in this area, including:

- * the high degree of the formality required for the appointment of testamentary guardians for children;
- * the limited provisions allowing third parties, such as grandparents, to apply to be appointed guardians;
- * the power of surviving parents to veto testamentary guardians from acting unless the guardian takes the matter to court;

- * the lack of any provision to allow a testamentary guardian to appoint a testamentary guardian to act for him in the event of his death, and
- * the lack of any provision to allow a testamentary guardian, once appointed, to formally disclaim his appointment.

The Commission recommends in the report:

- * the introduction of a more simple, standardised procedure for the appointment of guardians for children;
- * widening the court's power to appoint guardians for children, so that any person may apply to be made a guardian of a child, not only in cases where the child has no parent with parental responsibility for him, but also in cases where a custody order for the child has been made in favour of the parent who has now died;
- * removing the current right of the surviving parent to veto a testamentary guardian from acting, so that either the surviving parent or the guardian may apply to the court if there is a dispute between them on the best interests of the child;
- * that a testamentary guardian appointed by the parent who has custody of the child should be able to act automatically as guardian for the child on the death of that parent;
- * that, as far as practicable, the views of the child on the appointment of the guardian should be taken into account;
- * that a child's guardian should be able to appoint a guardian for the child in the event of the guardian's death;
- * that there should be a system for withdrawing from acting as guardian similar to the system for appointing a guardian;

* that the High Court's power to remove or replace a guardian in the best interests of the child should be extended to the District Court.

The Guardianship of Children report is the first in a series of four reports to be published by the Law Reform Commission under its reference on guardianship and custody of children. These reports follow detailed consideration by the Commission of responses to a consultation paper issued by the Commission's Sub-committee on Guardianship and Custody, chaired by the Hon Ms Miriam Lau, in December 1998. The three remaining reports under this reference, on parental child abduction, custody and access, and mediation will be released later in the year.

Copies of the report are available on request from the Law Reform Commission Secretariat, 20th Floor, Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong. The report can also be found on the Internet at <www.info.gov.hk/hkreform/>.

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