

Tuesday, December 31, 1991

Removal of Unfair Treatment of Illegitimate Children Proposed

* * * * *

The Law Reform Commission has recommended the elimination of the distinctions drawn by the law between legitimate and illegitimate children.

The Attorney General, Mr Jeremy Mathews, who is the chairman of the Law Reform Commission, pointed out that the law at present treated illegitimate children differently in a number of different areas.

The Commission takes the view that this is unfair because the target of the discriminations is not himself responsible for any misconduct.

“In broad terms, the Commission’s proposals seek to remove as far as is practicable the legal disadvantages which at present attach to illegitimate children,” Mr Mathews said.

The Commission’s report on illegitimacy, which is published today (Tuesday), is the result of some two years’ work. A public consultation exercise conducted by the Commission in August 1990 revealed overwhelming support for a change in the law along the lines proposed.

The Commission has recommended that an illegitimate child should have the same rights to succeed to his parents’ property on death as legitimate children.

The Commission has also proposed that the same range of court orders relating to maintenance payments for the child by the parents should be available to all children, regardless of whether they are legitimate or illegitimate.

It has proposed that an illegitimate child should be able to apply to court for a declaration of his paternity, a course not open to him as the law stands now.

Other recommendations in the report argue for the adoption in Hong Kong of legislative provisions clarifying the court’s powers to order the taking of blood samples in cases where paternity is in dispute.

The Commission also discusses children born by artificial insemination.

Under the present law, a child born by artificial insemination by a donor other than the husband is illegitimate.

The Commission has recommended that such a child should be treated as the child of the woman and her husband, unless it is shown that the husband has not consented to the insemination.

While the Commission proposes in general that the law should treat children alike, it has been recommended that in the interests of the child there should continue to be some differences between the parents in respect of the rights and responsibilities they possess.

The Commission has recommended that the child's mother should enjoy parental rights and responsibilities automatically, but that the father should have those rights by virtue of marriage to the child's mother or by a court order.

The Commission has envisaged that a court order would be readily granted where, for instance, the unmarried father was cohabiting with the mother.

The Commission felt that such an approach could best ensure the child's welfare while keeping to a minimum the differences in treatment of the parents.

It is hoped that a bill embodying the Commission's recommendations will be introduced into the legislative council during the current session.