

## LRC seeks public views on guardianship & custody proposals

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The Law Reform Commission's sub-committee on Guardianship and Custody, chaired by Ms Miriam Lau, today (Tuesday) published for public consultation recommendations for reform of the law which it believes will be of assistance to families undergoing divorce or separation.

The Consultation Paper makes recommendations in three areas:

- \* the substantive law of guardianship and custody,
- \* non-adversarial dispute resolution processes, and
- \* reforms of the law on child abduction.

### Guardianship and Custody

In presenting the recommendations, Ms Lau noted that guardianship disputes can arise on the death of a parent who has appointed a testamentary guardian (by a will) to look after his child when he dies, or where no guardian has been appointed and there is a dispute between relatives as to who has the responsibility to look after the child. Custody disputes arise when parents disagree on the parenting of children after divorce.

"The sub-committee recommends that there should be a statutory checklist of factors to assist the judge in determining such disputes and in applying the principle of the child's best interests.

"The present typical order which awards custody to one parent and only access to the other parent will be abolished. To some parents this implies ownership and control of the child to the exclusion of the other parent," Ms Lau explained.

The present orders will be replaced by "residence", "contact", "specific issues" and "prohibited steps" orders, which focus more on practical arrangements for the child.

The "residence order" will specify where the child is to reside and who is to have the responsibility for his day-to-day care and welfare. The "contact order" will reflect the child's right to have a relationship with the parent with whom he does not reside.

If there are issues on which the parents disagree, then a "specific issues order" will delineate their duties and rights and how they are to be exercised.

A "prohibited steps order" will preclude a parent from exercising a specific aspect of his parental responsibility without the court's consent.

Ms Lau added that the sub-committee considers that parental guardianship should be replaced by the principle of continuing parental responsibility after divorce, as parents need to make parenting arrangements until a child reaches maturity. Guardianship will be confined to the responsibility of a third party to take care of a child in the absence of a parent, whether the parent has died or not.

"We also make recommendations to modernise the Guardianship of Minors Ordinance to encourage parents to appoint a guardian to take care of their child in the event of their death. The surviving parent will no longer be able to veto the testamentary guardian acting in the best interests of the child.

"We recommend more legal recognition of the role played in Hong Kong by grandparents by allowing them to be appointed guardians, or to seek contact with their grandchildren.

"The sub-committee also recommends that, to comply with the United Nations Convention on the Rights of the Child, the child's views should be obtained in all custody and guardianship disputes, whether by appointing a separate representative, such as the Official Solicitor, or through a report from a social welfare officer or child therapist, or from the child himself if he is of a sufficient degree of maturity.

"In addition, to improve co-ordination of policy-making, we recommend that a single policy bureau should take responsibility for all legislation concerning families and children," Ms Lau said.

#### Dispute Resolution Processes

On the subject of dispute resolution, the sub-committee proposes some improvements to the Family Court system by, for example, the adoption of target performance pledges for priority listing of custody cases, and a Case Management Practice Direction by the court which would encourage efforts to resolve the dispute at an earlier stage.

"Experience in other common law countries has shown that changes in the language of the substantive law, and the way custody disputes are handled through the use of alternative dispute resolution such as mediation, helps to diminish conflict between divorcing parents," Ms Lau noted.

"The sub-committee recommends that parents should be encouraged to resolve their disputes themselves, or through a mediator, and to minimise resort to the court for future parenting decisions.

"Parents can enter into a parenting plan outlining future parenting arrangements on the residence, contact, education, religion and medical treatment of the child which could be registered with the court.

"And to encourage the use of alternative dispute resolution processes, we recommend public information sessions at the Family Court giving information on alternative dispute resolution processes and support services. We also recommend that lawyers be obliged to tell parents about counselling and mediation services," she said.

"The sub-committee also recommends providing additional resources for the Family Court to employ a Support Services Co-ordinator to facilitate and co-ordinate referral of parents to support services and to operate the information sessions, and giving additional resources to government and non-government agencies to provide counselling and mediation services.

"Another recommendation is for a court mediation service, independent from the investigation and reporting service of social welfare officers.

"The goal of these initiatives is to promote a more effective and compassionate way of resolving disputes about children which will take more cognisance of their needs and in a way that minimises the bitterness and hostility between their parents," Ms Lau said.

#### Child Abduction

The sub-committee recommends some changes to the civil and criminal law on child abduction, such as, the introduction of location and recovery orders to assist in tracing and recovering the child before he is removed out of the Hong Kong jurisdiction.

"This will bolster the effectiveness of the Hague Convention on the Civil Aspects of International Child Abduction," Ms Lau said.

#### Public Consultation

Anyone who wishes to obtain a copy of the Consultation Paper should contact the Secretary to the Commission, 20th floor, Harcourt House, 39 Gloucester Road, Wan Chai, Hong Kong.

End/Tuesday, December 1, 1998

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