

Law Reform Commission releases report on child custody and access

The Law Reform Commission today (March 7) released its report, Child Custody and Access.

The main focus of the report is the introduction of a new "joint parental responsibility model" into Hong Kong's family law. This new approach aims to make it easier for both parents to continue to have an active involvement in the lives of their children after they divorce.

Ms Miriam Lau, Chairperson of the Commission's Sub-committee on Guardianship and Custody, explained that under the existing law, the parent-child relationship was defined in terms of the "rights" and "authority" of each parent towards their child.

"When parents divorce, the court's role is seen as being to divide up this bundle of rights and authority between them. In the past, the courts would often award one parent sole custody of the child, with all the decision-making power that that implied, while the other parent's involvement was limited to a right of access. This often resulted in the contact between the child and the parent who did not have custody dwindling as time went by," Ms Lau said.

Ms Lau said that the courts in Hong Kong were now making more orders for "joint custody", recognising the importance of maintaining the direct involvement of both parents in their children's lives as far as possible.

She said that in a number of overseas jurisdictions, including England, Scotland and Australia, former child custody laws similar to Hong Kong's had now been replaced with laws reflecting the joint parental responsibility model.

"This more modern approach emphasises the continuing parental responsibilities of both parents, rather than their individual parental rights. It also focuses on the child's right to enjoy a continuing relationship with both parents if this is in the child's best interests," Ms Lau said.

As part of this change in concept, a new range of court orders was introduced in England, Scotland and Australia to sweep away the old "custody" and "access" terminology in family proceedings. The commission considers that this change in terminology and new range of orders should also be introduced in Hong Kong.

The report also recommends the removal of the current limitation on the right of interested third parties, such as close relatives, to apply for court orders affecting children.

Other important recommendations in the report include:

- providing increased powers and new guidelines to the courts to deal with custody and access cases which involve domestic violence;
- providing better mechanisms for the views of children to be taken into account in family proceedings which affect them;
- amending the legislation governing care and protection proceedings so that children's rights can be better protected.

Another recommendation is that the minimum age for marriage without parental consent should be reduced from 21 to 18 years.

The report is the final in a series of four reports under the commission's reference on guardianship and custody of children. These reports follow extensive research in this area by the Sub-committee on Guardianship and Custody, which issued a consultation paper on the topic in

December 1998. The commission published two reports, Guardianship of Children and International Parental Child Abduction, in 2002; and its third report in the series, The Family Dispute Resolution Process, was published in 2003.

Copies of the latest report are available on request from the Secretary, Law Reform Commission, 20/F Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong. The report can also be found on the Law Reform Commission's webpage at www.hkreform.gov.hk.

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