

Secretary
Bills Committee on Interest on
Arrears of Maintenance Bill 2001
Legislative Council
Hong Kong Special Administrative Region
of the People's Republic of China
(Attention : Ms. Mary So)

11th September, 2002

Dear Ms. So,

Re : Interest on Arrears of Maintenance Bill 2001

Thank you for your letter of the 1st August, 2002, inviting the views of the Hong Kong Family Welfare Society on the captioned Bill.

Being a charitable, non-governmental welfare agency, the Hong Kong Family Welfare Society has been providing a wide range of 23 social welfare services for families and individuals in Hong Kong for about 53 years. In our counseling service, we have handled more than 5,000 cases each year, a large number of families have been troubled by marital problems. More than 20% of the families receiving our counseling service are single parent families. Many of them are divorcees and some cases are receiving our divorce mediation service. We have conducted a study of divorcees on the issue of collecting maintenance, a sharing forum was also held in December, 2000. Furthermore, an Outcome Study on Divorce Mediation was completed in July, 2001. Based on our experience and all the relevant surveys, this submission will highlight the views observed by our professional staff and the users on the captioned Bill as well as the observations from the afore-mentioned studies.

- 1. Maintenance payees may apply for interest in legal proceedings instituted to recover maintenance arrears and the court shall have a discretionary power to award interest at judgement rates**

- 1.1 We basically agree to the proposal and perceive it as an additional measure to help enforce maintenance payments. In determining whether to require the maintenance payers to pay interest and, if so, the amount of interest, we support the court to take into account the circumstances of individual cases which are specified from (a) to (e) on P.4, P.7, P.10 & P.13 to be added to the four Ordinances relating to maintenance orders. This can help balance the interests of both the payees and the payers.
- 1.2 The effect of the proposal with the interest payments at judgement rates as a deterrent, however, may need further review. Besides, with this additional measure, it may not imply better assurance of the monitoring of the regular and punctual payment made by the maintenance payers. For any system to work, the cooperation of the payers is necessary and should be obtained at the outset. As a preventive measure, mechanism to help increase the awareness of the payers on their rights and responsibilities and the possible consequences of default payment is necessary. Besides, they should be encouraged to update their financial situations in case they could not afford to pay in view of the current economic downturn. This can help save cost in legal proceedings.
- 1.3 Public education measures to inform maintenance payees about the proposal is significant. However, their perception of the helpfulness of the proposal may need to be addressed. In the study conducted by the Society in December, 2000 on the views of divorcees on collecting maintenance, of the 336 single parents involved, nearly 20% were receiving maintenance as all / part of family income. Of them 58% could not collect the payments regularly or on time. Half of them had gone through legal proceedings to recover arrears. However, only 8% could collect the payments regularly as a result; 30% could initially receive payments from the payers but the payment was defaulted again after some time; about 47% viewed that legal proceedings could not help much to recover arrears due to “missing of payers”, “inability of payers to afford payments” and “failure to obtain cooperation of payers e.g. intentionally not to receive judgement summon”, etc.. For another half respondents not choosing legal actions to recover arrears, the reasons included “not knowing the whereabouts of the payers”, “lacking of knowledge about proper legal procedures”, “anticipating the appeal would be unsuccessful”, “not able to afford legal charges”, “the payers having no stable income”, “not prefer to worsen the relationship with the payers”, etc.. These can reflect some of their attitude to make use of the available measures for recovery of maintenance arrears, which are perceived as ineffective to certain extent.
- 1.4 While the effectiveness of the proposal and whether it can help reduce the number of single parent families who have to apply for CSSA due to failure in receiving maintenance payment need to be further observed, we would like to reiterate that a child’s best interests should not be put at risk because of parental financial disputes over maintenance. Safety net by CSSA payment to sustain living for the families with difficulties to collect / enforce maintenance payment should always be available.

2. The court may make, in respect of a lump sum maintenance order, an attachment of income order (A.I.O.) regardless of whether the lump sum is

to be paid in one amount or by instalments

2.1 We support the proposal.

2.2 **The effectiveness of the A.I.O. to help collect maintenance payment for the payees is suggested to be reviewed.** Again, the common issues e.g. payers are casually employed, frequent changing jobs and with variation in income, etc. are still the blocks leading to not able to apply the Order.

3. Recommendations

Based on our experience in handling divorce cases and the issue about maintenance payment, we suggest Divorce Mediation to prevent this problem.

According to overseas experience, Divorce Mediation was an effective measure to ensure high compliance to the agreed settlement. The mediation process also helps the parties to acquire a positive communication pattern and conflict resolution skills which entails cooperative efforts in future dispute.

The Interim Report of the 3-year Pilot Scheme on Family Mediation, which was published in April 2002, reflected very positive outcome of the service. Followings are some finding related to maintenance payment directly or indirectly:

- 77% of respondents showed satisfaction to the service
- Among the mediated cases, 79.9% have reached agreement on divorce settlement
- 82.3% of the female party and 81.0% of the male party stated that they reached agreement on financial support for the children
- 78.5% of the female party and 75.2% of the male party stated that they reached agreement on financial support for the spouse
- 63% of the 231 respondents showed very satisfied or satisfied with the settlement on issues of dispute through mediation
- 66.7% very much agreed or agreed that they were able to discuss disputed issues with their spouse through mediation in a peaceful manner.
- 61.1% - were very much agreed or agreed that they were able to discuss disputed issues with their spouse through mediation in a sensible and reasonable manner.
- 78.5% would recommend mediation to their friends and relatives.

Our Society has introduced Divorce Mediation to assist in divorce settlement since 1997. Our 3-year built-in research study has also proved the effectiveness of the service with 82% of cases with agreement reached and more than. Hence, mediation can be part and parcel of the divorce proceeding and legal aid should be granted. In fact, as shown by research studies, this ADR can save legal cost on the one hand, and protect the best interests of all parties, especially the children, on the other.

- 83% of respondents showed satisfaction to the service
- Among the mediated cases, 82% have reached agreement on divorce settlement

- 90% were satisfied with the financial support for the children
- 86% were satisfied with the financial support for the spouse
- 86% of respondents were satisfied that the decisions reached in mediation were fair.
- 90% would return to mediation if they have a similar problem in future
- 92% would highly recommend mediation to a friend who were getting divorce

Our Society will also follow up these cases to see the compliance rate of the settled agreement in due course.

The above findings have supported Divorce Mediation as the primary dispute resolution process to enable the couple to settle and even follow up the issue of maintenance payment. It is recommended that the service to be integrated into all the procedural processes of matrimonial cases. We also proposed for a mandatory information session on Divorce Mediation so that all petitioners could be informed about this service.

I hope that the above views may be helpful.

Thank you

Yours sincerely,

Cecilia Kwan (Mrs.)
Assistant Director