

香港家庭法律協會

THE HONG KONG FAMILY LAW ASSOCIATION

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ENCLOSURE

Dear Sirs

Child Custody and Access : Consultation Paper

I now enclose the response on behalf of the Hong Kong Family Law Association.

Yours sincerely



R N Egerton
Chairman

**The Hong Kong Family Law Associations response to the
Child Custody and Access Consultation Paper December 2011
("the Consultation Paper")**

Introduction

1. The Hong Kong Family Law Association ("the HKFLA") welcomes the opportunity to respond to the Consultation Paper.
2. The HKFLA was formed in 1986.
3. Its members are drawn from a cross section of professions who advise and assist parties during separation and or divorce.
4. Included within the membership are judges, lawyers, social workers, mental health professionals, mediators, academics and students.
5. Members of the HKFLA, in their individual capacities, advise and assist in a broad spectrum of issues including arrangements for children and financial division and represent parties either on a private basis or with a legal aid certificate.

Overview

6. The Consultation Paper is subsequent to the Law Reform Commission publishing its report on Child Custody and Access in March 2005 ("the LRC Report").
7. The Consultation Paper states that the LRC Report recommended that *"the joint parental responsibility model should be implemented by legislative means to replace the existing custody and access arrangements under the family law."* [§1]. In fact, there is no specific reference in the LRC Report to *"joint"* Parental Responsibility. The importance of the LRC Report are the 72 recommendations that it made after detailed consultation.

8. The Consultation Paper sets out at §12 concern from social workers and women's groups that *"from a practical perspective, law reforms were not necessary/imminent. Some stakeholders were worried that the model might not be able to cater to the needs of all parties"*.
9. The Consultation Paper states at §15 the experience of Singapore. Hong Kong can differentiate itself from the position in Singapore, where the Singaporean Court advocated the promotion of Parental Responsibility through the use of joint custody or no custody orders. In contrast, the Hong Kong courts have been vocal in commenting on the long overdue implementation of the LRC Report in a number of recent judgments: PD and KWW [2010] 4 HKLRD 101, SMM v TWM [2010] 4 HKLRD 37, TRR v RAR [2010] HKEC 1351 and, CTT and SLWE [2011] HKEC 351. These judgments all commented on the unfortunate situation in Hong Kong in that the Law Reform Commission's recommendations following its report on Child Custody and Access in 2005 have yet to be acted upon. It is therefore not just lawyers in Hong Kong, but the Judiciary as well, who have been calling for change.
10. Hong Kong can further be differentiated from Singapore as the latter has legislation enshrined in their Women's Charter, particularly under Part VI, Section 46 (1) in that: -

"Upon the solemnization of marriage, the husband and the wife will be mutually bound to co-operate with each other in safeguarding the interests of the union and in caring and providing for the children."
11. Because of this section, there is a positive duty on the parents to be responsible and co-operate with each other in caring and providing for the children. There is no equivalent provision in Hong Kong.

12. Further, the Hong Kong legislation does not allow the Court to make a no custody order at present, which is one of the options in the Singaporean model.

13. The Consultation Paper states at §1.19

“As for the LRC’s report on Child Custody and Access, the Administration considers that its recommendations, if adopted, would fundamentally change the existing concept of custody under the family law and have far reaching implications on children and family on various fronts. They should thus be examined carefully.”

14. The Consultation Paper at §3(a) states

“Sole custody order – When a sole custody order is made, the custodial parent would have both the right of daily care and control of the child as well as all the power to make important decisions about the child. The non-custodial parent would generally only retain the access right in respect of the child, and would be effectively excluded from the making of important decisions affecting the upbringing of the child.”

15. This is a misrepresentation of the correct meaning of a sole custody order and confuses custody, with care and control. It is possible to have a sole custody order but following by a joint care and control order, or for care and control of the child to be granted to the other parent. Therefore, it does not follow that having a sole custody order automatically means the custodial parent also has the sole care and control of the child, and that the non-custodial parent would generally only retain access right. The non-custodial parent is also not *“effectively excluded from the making of important decisions affecting the upbringing of the child”*. There is still a duty on the custodial parent to consult the non-custodial parent and where no agreement is reached, the parties will need to resolve their differences with the assistance from the Court. This is confirmed at §38 of PD and DWW.

16. The Consultation Paper at §4 states

“Joint custody orders are more commonly made than before, and even in cases where sole custody order is made, the court also thinks that the access parent should still be consulted on all important decisions affecting the child's welfare though the custodial parent retains the rights to the veto the opinion of the access parent and make the final decision”.

17. Most helpfully and concisely the approach to custody, care and control and access has been set out in the Court of Appeal's judgment of PD v KWW [2010] 4 HKLRD 191 (“PD v KWW”) where the litigants were in person.

18. The Court held as follows

“Per Hartmann JA

(1) The parent who was given custody was not given an absolute and independent authority to act without further reference to the non-custodial parent. Decisions should be made with due consultation with the non-custodial parent and in the event of disagreement [the custodial parent] may have the final say but if the non-custodial parent considered the decision to be inimical to the child's best interest, the court could be called upon to determine the matter. Dipper v Dipper [1980] 3 WLR 626, [1981] Fam 31, [1980] 2 All ER 722 (CA, Eng) followed (paras 36-39).

(2) An order for sole custody did no more than add qualification to the otherwise joint endeavor of both parents in raising their child, that qualification being that the final decision would rest with one parent (para 40).

(3) When a court awarded care and control to one parent but rights of access to another, the court was effectively awarding a form of shared care and control, especially staying access when the parent assumed care and control of the child for the time that the child was in that parent's physical custody (para 43).

(4) In determining the issue of custody, the judge was entitled to proceed on the presumption that competent, loving parents possessed of sufficient objectivity to be able to make rational decisions in the interests of the child would be able to co-operate with each other concerning the matters of importance in the

upbringing of the child. Here, there was no evidence that their ability to communicate matters of real importance in the child's life had been destroyed (para 56, 63).

(5) In light of the psychologists report, it would not be in the child's best interest at this time to be compelled to say overnight with the father and staying access was deleted from the order. However, as it was apparent that the child would like to spend time with her father, this should be of short duration and in the meantime half the school holidays were to be spent with the father during the day, every Saturday and two evenings during the week.

Per Lam J

(6) Although the line between sole and joint custody was a thin one, it was still one with potential practical significance. A parent with sole custody could determine the place of residence of the child and whilst the other party may have the right to be consulted, did not have the power of veto. This would have significance in removal applications (para 78).

Obiter

(7) When one parent was granted sole custody, the courts would normally order at the same time that the child should not be removed from the jurisdiction without the consent of the non-custodial parent. The Law Reform Commission report in 2002 recommended a provision following section 1 of the UK Child Abduction Act 1984 in which it was an offence to take a child out of the UK without the consent of the other parent or the court (para 79).

(8) The recommendations of the Law reform commission 2005 had not been taken forward which would clarify the respective rights and responsibilities of parents towards their children. Had the reforms been implemented, appeals such as the present case may have been avoided and the judge urged the administration to make some progress on this (paras 80-81)."

19. At §29 The Court in *PD v KWW* when identifying the meaning of "custody" and "care and control" stated "Regrettably empirical evidence suggests there is a large measure of misunderstanding as to the nature and extent of the two concepts, certainly among laypersons".

20. It is the view of the HKFLA that PD v KWW correctly and appropriately, in a case where the parties were without the benefit of legal advice, identified the fact that the meaning of custody, care and control and access is not well understood.
21. This misunderstanding frequently leads to unnecessary litigation which in turn causes unnecessary emotional and financial cost to the parties and to the children.
22. In addition to which it is the view of the HKFLA that the terms “custody” and “care and control” imply exclusive control or, put another way that one parent is excluded from parenting in the event there is a sole custody order or sole care and control order. It also denotes a sense of ownership over a child, rather than focusing on a child’s right to have both parents involved in his/her upbringing and care.

Response to “Concerns about implementing the model by legislative means” [§4.8 of the Consultation Paper]

23. At §4.8 (a) the Consultation Paper states

“Some stakeholders believed that it would take time to change the mindset of parents and an overnight law reform might not be the most effective way to implement and promote the concept of joint parenting. It might be more useful to promote joint parenting through family education and law reforms were not necessary/imminent”.

24. The concern relates not to any opposition to the adoption of joint parenting but how joint parenting should best be implemented. The HKFLA's view is that part of education is having a legal system that is clear and available to all, not just those who have access to Law Reports. It would be unfair to litigants in person and those without the benefit of specialist legal advice not to have access to the law in legislative form. Further the concept of joint parenting is not an alien concept. Parents exercise joint parenting during their marriage, from the

birth of a child. Upon breakdown of the marriage, the parental responsibility model simply promotes and effects the continuation of their parental responsibility. Just because the parties are no longer married does not mean their status as parents and commitment to their children should change.

25. At §4.8 (b) the Consultation Paper states

“On the contrary, under the proposed legislative framework to implement the model, joint parenting would be the default arrangement for all divorce families (except for cases involving domestic violence) this might not cater for the needs of families whose divorced parents can no longer cooperate with each other (not necessarily involving domestic violence)”.

26. The view of the HKFLA is that by reference to PD v KWW the Court’s approach in Hong Kong is that of continuing parental responsibility. In addition to which the specific arrangements within the legislative framework as to for example residence orders and contact orders, would be able to address the sensitivities and factual matrix of individual cases. The particular advantage of the legislative change is that it would remove the words *“custody”* and *“care and control”* which imply exclusivity and are divisive terms when parents are discussing potential arrangements for their children.

27. At §4.8 (c) the Consultation Paper states *“the new consent and notification requirements might be used by troublemaking or hostile parents to obstruct and harass the other spouse”.*

28. The view of the HKFLA is that as the court will continue to have jurisdiction and the power to make necessary orders in the event that either parent delays in decision making or raises improper objection, this is not a valid objection to the reform. There would be no difference from the present situation and the situation after the legislative change:

the Court would continue to have and exercise the same jurisdiction and powers.

29. At §4.8 (d) the Consultation Paper states *“the number of on-going litigated cases (and thus the litigation costs to be borne by parents) might increase, since the hostility between divorced parents might lead to prolonged legal disputes after the “up-front” battle for residences order”*.
30. It is an unfortunate fact that the increase in divorce in Hong Kong has been very significant over recent years, this relates to matters in relation to children as well as matters in relation to financial provision.
31. It is the view of the HKFLA that legislation cannot and should not stop litigation, it is after all a constitutional right of every person in Hong Kong to have his or her dispute determined by a court.
32. The advantage of the legislative change is that it will replace *“custody”* and *“care and control”* which are theoretical concepts, with practical terms such as *“residence”* and *“contact”*.
33. Such legislative change will not prevent litigation however it will focus the litigation, when it occurs, on the practicality rather than the theoretical.
34. The multi-professional membership of the HKFLA wishes to particularly emphasise that it is their joint and individual experience that it is of great help to litigants in reaching agreement and or narrowing the key issues in litigation to focus on the practical as opposed to the theoretical.
35. At §4.8 (e) the Consultation Paper makes reference to the obligation to pay maintenance and how that may impact on access.
36. The consistent and unwavering approach of the courts is that matters in relation to children and financial support are not linked. A parent cannot

buy or sell or restrict access by reference to financial demands or payment. The essence of “access” is the child’s right to have contact with both parents, not just the parent with primary day-to-day duties of care and supervision.

37. At §4.8 (f) the Consultation Paper states

“It might cast doubt on whether the attitude of parents towards parental rights and responsibilities would be changed by the changes in law”

38. It is apparent from the Consultation Paper that by reference to PD v KWW the practical application of family law in relation to “custody” and “care and control” has developed since the LRC Report in 2005. Parents, if party to litigation in Hong Kong, are obliged to follow Hong Kong law. It is therefore to their advantage if it is clear and set out in legislative form, rather than simply taken from case law.

39. At §4.8 (g) the Consultation Paper states

“some stakeholders were still worried that the reforms would encourage non-custodial parents to apply to the court for their cases to be reconsidered under the new legislative framework”

40. It is the view of the HKFLA that in the current situation, a party with a previous order could apply to the court on the basis of a change of circumstances which might, depending on the particular facts case, take into account the principles set out in PDD v KWW.

41. At §4.9 the Consultation Paper makes reference to a suggestion that *“the concept of “joint parental responsibility” could be further developed and promoted by the courts under the existing legislative framework without legislative changes”*.

42. It is the view of the HKFLA that, whereas under the common law system, the law invariably evolves, it is important to recognise that case law

depends on litigation which is a cost to the parties. It would be preferable to have the law evolve by legislative change rather than parties having to litigate to change.

43. At §4.9 the Consultation Paper makes reference to the concern of removing the restriction on the third party applying for orders concerning children.
44. It is the view of the HKFLA that it would be advantageous for third parties, for example grandparents to be able to apply for orders in relation to children. Such applications would be subject to the court's jurisdiction and discretion and would only be made when considered suitable by the court. This would give the court a jurisdiction, which although perhaps rarely used, would on occasions be of great benefit to children.

Q1. Do you agree that the concept of the joint parental responsibility model has the merits listed out in paragraph 3.3 of the consultation paper? If so, why? If not, why not?

45. Undoubtly the "parental responsibility model" has the merits listed in paragraph 3.3 for the following reasons:
 - (a) It brings about a change in terminology to the practical terms of parental responsibility, residence and contact rather than custody and care and control.
 - (b) As the terms are more practical, it enables the parties and indeed the court, to focus on the practical arrangements of where the children will live and how the children's time will be spent with each parent.
 - (c) It is particularly important and relevant that the term 'custody' will no longer exist.

- (d) The model is in the line with international trends.
- (e) It is consistent with the requirements of the United Nation Convention on the Rights of the Child. It would be most unfortunate and simply unexplainable if Hong Kong does not rectify its continuing contravention of this international obligation.

Q2. Should the concept of the joint parental responsibility model be promoted in Hong Kong? If so, why? If not, why not?

46. The HKFLA supports the concept of joint parental responsibility and believes that it should be promoted in Hong Kong for the following reasons;

- (a) Assuming that the concept replaces custody in Hong Kong the words themselves promote a sea change in attitude. "Custody" implies ownership and possession in so far as the original meaning of the word is concerned whereas joint parental responsibility implies a consideration of rights, obligations and responsibilities which, in the opinion of the HKFLA, is a far more constructive and non-adversarial approach to deal with these important matters concerning children. The temptation under the existing language is for parents to adopt a proprietary attitude towards the issue of custody whereas new language would encourage a different approach
- (b) the experience gleaned from England and Australia from members of the HKFLA is that the use of parental responsibility in those jurisdictions brought about a change in attitude in those jurisdictions and assisted both the individual parties and their lawyers to move forward on this issue in comparison to what had previously been the case adopting the old language of "Custody" disputes.

- (c) The HKFLA believe that the dicta of the Court of Appeal in Hong Kong in the case of PD and KWW is highly significant when considering this issue. In that judgment the Court made clear that it believed that the law should keep pace with social changes including the nature and manner in which the roles of the mother and father had changed as regards parenting and the Court was of the view that both parents should continue to play an equal role in making important decisions which concern the child's upbringing. In the opinion of the HKFLA the concept of joint parental responsibility will go some way towards achieving that end which can only be regarded as beneficial and in the best interests of all children in Hong Kong
- (d) In the view of the HKFLA new language would also be of benefit where parents are unmarried stressing the rights and obligations of the unmarried parent in just the same way as the married one and again encouraging the possibility of a change in attitude to reflect the current changes in society

Q3. If your answer to Q2 above is affirmative, do you agree that we should introduce legislative amendments to support and promote the concept of the joint parental responsibility model in Hong Kong? If so, why? If not, why not?

- 47. The HKFLA is firmly of the view that legislation should be introduced not just to reflect the parental responsibility model but to give effect to the specific recommendation of the LRC report
 - (a) It is important that the law is clear on the statute book
 - (b) It will remove terminology which is most unhelpful.

- Q4. If your answer to Q2 is affirmative and that to Q3 is negative (i.e. you think that the joint parental responsibility model should be promoted in Hong Kong but it should not be done through legislative reforms), how do you think the concept of the model should be promoted in Hong Kong?**
48. If there is not legislative change than any other development is through case law. This will be expensive for the parties and resource implication for the Courts, which are already stretched. These are important questions of public policy which should be considered in the Legislative Council
- Q5. If your answer to Q3 is affirmative, what are your views on the recommendations made in the LRC's Report to implement the joint parental responsibility model which are set out in paragraphs 3.4 to 3.8 of the consultation paper, including the introduction of two statutory lists of important decisions affecting the child (paragraph 3.6(b)), abolition of the custody order and access order currently provided for under the law (paragraph 3.7), introduction of the residence order, contact order, specific issues order and prohibited steps order (paragraph 3.7, and removal of the limitation in section 10 of the Guardianship of Minors Ordinance (Cap.13) on the right of third parties to apply to the court for orders concerning children (paragraph 3.8(a))?**
49. The HKFLA is firmly of the view that the concept of joint parental responsibility should be implemented in Hong Kong through legislative reforms. The concept of parental responsibility is more child centered and should be promoted over parental rights and authority to last until the child reaches adulthood or complete full time education if later.
50. The HKFLA has been of the view for a considerable period that the existing regime is in dire need of replacement in line with the

jurisdictions of England and Wales and Australia. A move away from the emphasis on parental rights towards parental responsibility will be a welcome development.

Paragraph 3.5

51. The HKFLA agrees that the concept of “*guardianship*” should be replaced with the concept of “*parental responsibility*” to denote the parent/child relationship in the law and to introduce a statutory list of parental responsibilities and a statutory [free?] list of parental rights based on the same or similar lists used in Scotland to serve as guide to parents, children and the court on the parameters of the relevant parental rights and responsibilities.

Paragraph 3.6

52. The HKFLA believe that parents should continue to exercise their duties, powers and rights and responsibilities in relation to a child irrespective of whether the child lives with that parent. Joint parental responsibility should be emphasised whoever the child lives with. The HKFLA also agree that parents exercising parental responsibilities should be able to act independently in relation to the day to day care and best interest of the child when that child is with that parent. This is in line with the decisions of the courts in various family law cases.
53. The HKFLA also agrees that joint parental responsibility extends to the decisions listed in 3.6 (b) (i, ii, iii).
54. The HKFLA also agrees that even if another person such as that parent or unmarried father acquires parental rights and responsibilities, an actual (or the other biological) parent should continue to retain parental responsibility and rights. There should be an acknowledgement by the legislature that a breakdown of the relationship between parents will not

lead to one parent losing or having to relinquish parental responsibilities and rights.

Paragraph 3.7

55. The HKFLA agrees that present custody orders and access orders should be replaced by “*residence order*” and “*contact order*.” It further agrees to the introduction of “*specific issues order*,” “*prohibited steps order*.” The court should continue to have the power to give directions on contact orders to include supervision where there has been a history of violence or abuse in the family or where the child’s circumstances requires such supervision or similar directions.

Paragraph 3.8

56. The HKFLA agrees that the limitation in Section 10 of the Guardianship Minors Ordinance (Cap. 13) on the rights of third parties to apply to the court for orders concerning children should be removed. It is noted that the recommendation is that leave of the court would not be required for a third party to apply for custody order in respect of the child if the child had lived with the applicant for a total of 1 year out of the previous 3 years (and that the 1 year period need not necessarily be a continuous period, but must not have ended more than 3 months before the application). The 3 months could be extended to 6 months as there may be reasons why an application cannot be made within the 3 months period.
57. The HKFLA firmly supports a statutory checklist of factors to be considered for custody in guardianship proceedings. The list should be used in all disputes relating to children as necessary, e.g. access/contact. Indeed the Family Court does currently make use of a checklist, as appropriate. The checklist enables the court to look

objectively at the overall picture of what is in the best interests of the child

Q6. Do you agree with the views of those in support of reforming Hong Kong's family law to implement the joint parental responsibility model? If so, why? If not, why not?

58. The existing model of 'custody' and 'care and control' implicitly emphasizes the 'rights' of the parents and objectifies the child. It supports the view of the parents' needs and rights as having superior status over the needs and rights of the child. At the time of a divorce, the adults are experiencing considerable practical and psychological disorganization in their lives, as well as disruption to their attachment bonds. It is an enormously stressful time and even normally competent individuals begin to experience emotional dysregulation and impaired capacity for rational thinking. During this time, the children may come to be viewed as the most significant asset of the marriage, leading to a contest over 'ownership'. In addition, one person may develop a view of the rejecting or rejected partner as unsuitable not only as a spouse but also as a parent. In these circumstances, the needs and wellbeing of the children may be viewed through the distorted lens of the threatened and dysregulated adults, with negative consequences for the children.

59. It is the view of the HKFA that the introduction of 'joint responsibility' is potentially beneficial to the wellbeing of both the children and the parents. The emphasis on the responsibility of the parents towards the child places the needs of the child at the centre of the stage, which is necessary for their healthy development. It implicitly recognizes the human rights of the child, and thereby their dignity and personhood. It also gives status to both parents, acknowledging the equal importance of father and mother to the child. In so doing, it affirms that both

parents have significance and value in the child's life, which in turn helps to ensure their ongoing commitment and involvement.

60. There will continue to be disputes, which the legal system will resolve in its customary manner. However, the change in terminology may prove educational in the long term in that it places the focus on the child and on the adults' responsibility toward him or her. It might also be beneficial to provide some structure for the adults who are undergoing considerable disorganization and disruption. In particular, a requirement for a 'parenting plan' could be advantageous to everyone concerned. It would provide an important focus on the best arrangements for the wellbeing of the child. It could also potentially provide the parents with a framework for operation in their evolving relationship as co-parents.

Q7. Do you agree with the view that the concept of the joint parental responsibility model should be promoted through the development of case law and public/parent education only? If so, why? If not, why not?

61. The HKFLA does not consider that the concept of joint parental responsibility should be promoted only through case law and public/parent education.
62. The HKFLA considers it is the Government's responsibility to bring about change through legislation to endorse modern and judicial thinking in this regard. That is crucial in helping people think about family relationships and to ensure that as many children as possible grow up in a safe environment and ideally with the love, participation and support of both parents. If the joint parental responsibility reforms can achieve that then all members of the community will benefit and children will have a loving and healthy home, whether their parents are together or not, to help them achieve their full potential.

63. The HKFLA considers that the Government through legislative change can bring about a cultural shift in how family separation is managed and that it can change the way people think about family breakdowns and to improve outcomes for children.
64. The HKFLA considers that case law is an important feature of the legal system however case law remains an interpretation and application of the legislation and therefore it is critical for the Government to be responsible for promoting the joint parental responsibility model by legislative reform

Q8. What lessons do you think we can learn from these overseas jurisdictions?

65. The HKFLA considers that important lessons can be gained from overseas jurisdictions such as from the Australian 2006 Shared Parental Responsibility legislation which made amendments that included:
- (a) Amending 'residence' to 'living with' and 'contact' to 'spending time with' and 'communicating with'. This further advance in the Australian law indicates that moving away from terms that indicate ownership of a child has been successful in Australia which is a useful lesson for Hong Kong.
 - (b) Legislating that there was a presumption that 'equal shared parental responsibility' is in the best interests of the child. The HKFLA considers that such a statutory presumption in another jurisdiction is a useful indication that modern parenting in other jurisdictions shares, on some level, the similar principles of what is being proposed in the Hong Kong model for joint parental responsibility.
 - (c) The HKFLA notes that the Australian law made a subsequent amendment after the implementation of the 2006 amendments for

the presumption of equal shared parenting and the requirement to consider 'equal time' or 'substantial and significant time' to address the circumstances in which shared care-time is not appropriate for children. The HKFLA considers this is a good lesson that supports the joint parental responsibility model as proposed to not make any proposal for 'equality'.

66. The HKFLA notes that Children Act in England made sweeping reforms to the English approach which has been successful. The change of law in England was regarded as dramatic and innovative at the time it took place and there was some understandable nervousness on the part of practitioners. However the subsequent experience following the changes was that the law can be innovative and proactive and in the context of England the experience was that previous mindsets could be changed and that when put in to practice the changes were entirely beneficial and the public at large were able to focus on the legal issues when the language being introduced was more comprehensible to the lay person.

Q9. Which jurisdiction(s) do you think can serve as the best reference for Hong Kong in considering our way forward, and why?

67. Having regard to the history of the development of the law in Hong Kong and the importance of the English jurisdiction as the foundation for the development of Family Law in Hong Kong it follows that the English jurisdiction provides a good reference for Hong Kong in determining the way forward.
68. The advent of the Children Act in England instigated sweeping changes to the English approach to children issues and is instructive as to the impact of the changes on an established legal system similar to the one in Hong Kong. It follows that the experience of England could be very helpful in signposting the way forward for Hong Kong and the obvious close connections between the two jurisdictions and the knowledge of

lawyers in Hong Kong as to the practice and procedure in both jurisdictions will be beneficial when considering changes in Hong Kong

Q10. Do you have any other views on the concept of the joint parental responsibility model and whether it should be implemented in Hong Kong by legislative means?

69. The pros and cons of the reform have been exhaustively canvassed by the Law Reform Commission and by stakeholders over the years since the LRC Report was published. The call for change has come not only from the legal profession, both barristers and solicitors and by NGO groups representing children. Perhaps most significantly, such pleas for change have emanated from the judiciary, indeed from members of the judiciary with unparalleled experience in both family law and judicial review, who are very well aware that law reform is primarily the role of the Administration and legislature. It is all the more compelling that these judges, sitting in the Court of Appeal in the case cited above, felt moved to express their clear and unequivocal collective view that reform was urgently required, for the benefit of the public, for families, for the efficient adjudication and disposal of cases, and for Hong Kong generally.

The Hong Kong Family Association

30 April 2012