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The Hon Ms. Margaret Ng,
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11 February 2004

Dear Ms. Ng,

I have read the Legal Service Division Report on Adoption (Amendment) Bill 2003 (LS135/02-03) and would like to propose an additional amendment. This amendment would make the Adoption Ordinance (Cap 290) ("the Ordinance") more flexible to the needs of an open adoption arrangement. Under the existing provisions of the Ordinance, Birth Parents who sign an agreement with the Adoptive Parents concerning ongoing contact with the adopted child have no protection if the agreement is then reneged upon.

I am a birth mother whose child was placed for adoption in Hong Kong in 1997 under an 'open' arrangement, assisted by the Social Welfare Department. When the agreement was not acted out, there was no protection for me under the Ordinance. Legal protection was possible, however, in Wardship proceedings and under the Guardianship of Minors Ordinance (Wardship) (Cap. 13) ("GMO"). This route is more obscure which considerably prolonged my route to eventual restitution.

The inadequacy of the Ordinance in recognizing the rights of birth parents in open adoptions caused almost five years of loss of contact between myself and the adoptive family, and led to an initial refusal of Legal Aid, which was later overturned on Appeal. With more adequate legal protection, this lengthy period of distress could have been avoided. Contact has now been resumed, as a direct result of the legal protection offered to me as a result of the Wardship proceedings.

In order to avoid similar difficulties for others in the future, I would like to propose an addition to the Ordinance, to the effect of:

"Prior to the granting of the Adoption Order, if an agreement concerning ongoing contact between birth parents and the adopted child has been made between birth parents and adoptive parents, the agreement shall retain validity after the Adoption Order has been granted, provided that the welfare of the child is not compromised."

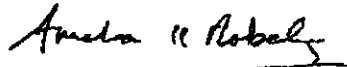
This increases the flexibility of the Ordinance and increases the protection offered to birth-parents, without impinging on the protection offered to the adopted child and his adoptive parents. It also removes an inconsistency between the remedies available in Wardship, and the Ordinance.

There is an increase in support for Open Adoptions internationally. Research shows that much of the problems associated with closed adoptions are avoided. Open adoptions may be more complex initially, but appear to provide a better foundation for many adopted children in the longer term. Speaking personally, openness allows birth-parents to experience some joy within the adoption process. Clearly structured and mutually agreed outlines for ongoing contact protect all members of the adoptive triangle.

~~I believe that the Social Welfare Department's Adoption Unit needs to be more flexible~~ to cater for different types of adoptions. If the proposed amendment for prohibiting private adoptions is passed, such flexibility is even more essential, as all adoptions will then pass through the Adoption Unit. It is likely that Hong Kong will follow the international trend of Open Adoptions becoming more common. The Ordinance needs to provide for flexibility in adoption, in anticipation of the demands that are likely to be placed on the Adoption Unit.

I would be grateful if you could examine this issue and propose the necessary amendments to improve further the legal status of open adoptions. I would be happy to discuss this matter further with you, should this be of assistance. I can be contacted on
Thank you for your help in this matter.

Yours sincerely,



Amelia Roberts

Cc Sharon Ser (Hampton, Winter and Glynn)
Bart Rwezaura (Department of Law, HKU)
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