

LC Paper No. CB(2)1669/03-04(01)

THE HONG KONG FAMILY LAW ASSOCIATION

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10 March 2004

By Fax (2509 9055) and By Hand

Mrs Sharon Tong

Clerk to Bills Committee

Legislative Council

Hong Kong

Dear Mrs Tong

Bills Committee on Adoption (Amendment) Bill 2003

Thank you for your letter of the 28th February 2004.

The Hong Kong Family Law Association supports the Administration's proposal to prohibit privately arranged adoption, with the exception of an adoption of a child by his/her birth parent or relative, or save in pursuance of any Order of the Court, as we believe it is important that an organization such as the Social Welfare Department is fully and independently involved in the adoption process. The Social Welfare Department might well authorise certain recognised organizations or bodies to act on its behalf, but we think it is very important that there is independent scrutiny of the adoption process, by an organization with no vested interest in the outcome of the adoption.

We are aware of the increasing concern that a "baby market" is, or might be, created for proposed adoptive parents who want to circumvent the Social Welfare Department. One has come across situations where it appeared that babies, sometimes from foreign

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domestic workers, or over-stayers in Hong Kong, or such like, were "brokered" through a Solicitor – or whoever else was the contact – for prospective parents who would not necessarily have fallen within the usual criteria for adoption. Such women have been paid for expenses arising from the costs of being pregnant and having a child here in Hong Kong, expenses which would appear to exceed such usual costs. Those expenses were paid by the proposed adoptive parents.

A Guardian ad litem, often instructed by the proposed adopters Solicitors, would prepare the report for the Court. The proposed adoptive parents would pay for the report and the Guardian ad litem fees and expenses. The proposed adoptive parents would also pay the Solicitors fees.

It has been an issue of increasing concern that there appeared to be no independent appraisal of the situation in such circumstances. There was no matching of families to babies, only the provision of a baby to prospective parents who were desperate to have a child in their family. There seemed to be little safeguard for the birth mother in circumstances such as these, and no provision for the long term disclosure of information to the child who was being adopted into, often, a foreign family.

We appreciate that this is an extremely difficult subject as it is always better by far to provide a home for a child rather than to keep a child in an institution or in a family or in circumstances where that child is not wanted, however, in order to prevent there being any suggestion of a "baby market" being operated in Hong Kong, we do feel it is essential that the adoptive process undergoes entirely independent and professional scrutiny, which can best be done by the formal involvement of the Social Welfare Department, or any organization authorised and nominated by the Hong Kong Government/Director of Social Welfare.

The Family Law Association does not object to the continuation of the process that a child can be adopted by a relative under private arrangements, but this would again be subject to an independent Guardian ad litem report being provided, preferably by the Social Welfare Department, or such organization as is nominated by the Director of Social Welfare. This could also be extended, for example, by an Guardian ad litem who was on an approved independent Guardian ad litem Panel. If such a Panel were to operate, then the selection of the Guardian ad litem to prepare the report for the adoption case should be strictly by rotation, so there could be no suggestion that any one particular Guardian ad litem was working for any one particular Solicitor, or such like, who had been instructed by the proposed adoptive parents.

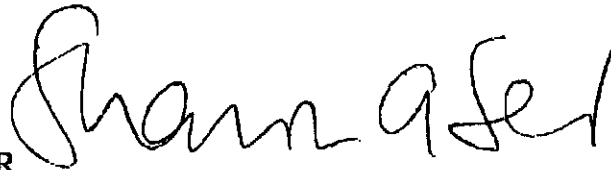
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I trust the above is of assistance to you.

Finally, may I point out that Tom Mulvey, who is one of the members of the Executive Committee of the Hong Kong Family Law Association, dissented from some of the views of the FLA Executive Committee as expressed in this letter. I understand Mr Mulvey sat on the original Committee on Adoption and his own views concerning private adoptions might previously have been expressed to the Committee members.

If I can be of any further assistance, do please let me know.

Yours sincerely



SHARON A SER
Vice Chairman
Hong Kong Family Law Association
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