

The Hon Ms. Margaret Ng,  
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Hong Kong Special Administrative Region,  
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Name and address supplied

5 April 2004

Dear Margaret Ng,

**Re Health, Welfare and Food Bureau response to Amelia Roberts' submission dated Feb 11<sup>th</sup>**

**Clause under discussion:**

*"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."*

I have read the response from the HWFB to my proposed addition to the Ordinance. I would like to respond to the following points:

*P5, 'Adopters do not merely have the care of the child, but become the child's parents. That is why it is important that before an adoption is made, a child has been freed for adoption or consent of birth parents has been secured'.*

There are many types of adoption that fit within this legal framework. Birth parent consent is sometimes only given when birth parents feel that they have found the right adoptive parents for their child. Part of the criteria for choosing appropriate parents for one's child is that adoptive parents agree with certain fundamental principles about the type of adoption that is being planned. Wishing to maintain a degree of on-going contact is not just about the needs of the birthparents; the adopted child and his/her whole family stand to benefit. After much discussion between birthparents and prospective adoptive parents, supported by Social Welfare professionals, a plan is formulated, documented and signed. This plan sets out the foundation for this particular child's future experience of adoption, as agreed between her birth-parents and her prospective adoptive parents. Then, birthparent consent is given.

When birth parents' consent is secured, birth parents are still the legal parents of the child. While still the legal parent, prospective birth parents may decide that openness in adoption provides the best possible foundation for the emotional well being of their child. If adoptive parents are chosen by the birth parents on the grounds that they support openness in adoption, and an agreement is drawn up detailing the proposed structure for such contact to occur, this agreement must hold legal weight.

If this process is not legally valid, adoptive parents could potentially make any number of promises to birthparents, knowing that they will not be held accountable. Effectively, it would be like obtaining a child under false pretences. Under the current Ordinance, birthparents and their children's future emotional well-being are not adequately protected in the context of open adoptions.

P6 *'Section 8(2) of the Ordinance provides that in making an Adoption Order the Court may impose such terms and conditions as it thinks fit.'*

This is an indicator of the potential flexibility of the Ordinance. It also allows for a mechanism whereby Courts can recognise an agreement made between the adoptive and the birth parents.

It is not, however, clear enough in its statement of scope. The Adoption Unit had no apparent awareness that the Court had the authority to formalize the written agreement between myself and the adoptive parents. I was not advised to make such a submission. I would therefore recommend an additional statement to the effect that ***'Any agreement made between birthparents and prospective adoptive parents regarding ongoing contact must be recognized by the Courts at the time of the granting of the Adoption Order for it to achieve legal validity.'*** This protects all parties. It also clarifies the procedures required by the Adoption Unit to ensure that the status of an open adoption is legally recognized and that the Court is aware of the foundation on which birthparent consent has been given.

P6 *'The approach of the Court is that the adoption order should as near as possible put the child in the position of a lawful child of the adopters. It would rarely be appropriate to impose a condition which derogates from this.'*

This seems confused. Legal parenthood is not in conflict with plans for ongoing contact. There also seems to be an assumption here that contact threatens the relationship between adoptive child and adopting parents. Research shows this is rarely the case within structured contact arrangements. Successful adoptions are not contingent upon there being no contact between birth and adoptive families. In fact, the reverse is probably true.

P6 *'The SWD has not come across any special request from a birthparent to impose post-adoption contact, as a condition in the adoption order.'*

In April 1998, I asked the Adoption Unit for the agreement to be incorporated as a condition in the adoption order. I was told that it would not be possible.

P9 *'In the public consultation exercise in 1998-99 and subsequent consultation with the Legislative Council Panel on Welfare, Ms. Robert's proposal had not been raised, nor had such a matter ever been drawn to the public's attention.'*

The described events did not begin until late 1999, after said consultation period. Now that the matter has been highlighted, further investigation becomes necessary. If further public consultation is needed, then it should be sought, rather than the lack of it used as an excuse to dismiss this emerging issue.

P9 *'the interests of the birth parents may not be consistent with the best interests of adoptees.'*

I am not clear on what criteria this assertion is based. Is there any particular reason why birthparents should be any less capable than anyone else in putting the needs of their children first?

P9 *'Adopters may also consider the actions of the birthparents intrusive'*

The issue of establishing appropriate boundaries when maintaining contact can be achieved with professional support and advice, especially when agreements are made months before the Adoption Order is granted, as was mine. This is an issue of procedure rather than policy.

P9 *'The situation may also be complicated by the emotions that may evolve among the adoptee, the adopter and the birth parents concerned.'*

This is an extraordinarily narrow representation of the complex issues surrounding the decisions made when planning the type of adoption best suited to the needs of a child. It is naïve to assume that closed adoptions avoid emotional complication. While they may be initially less complex, in fact as the adoptee matures, there is often greater emotional pain later on as the adoptee typically has issues with establishment of identity and unanswered questions. Moreover, having an unknown medical history can be problematic for adopted children. Adopted children in open adoptions typically show healthy psychological adjustment where contact has been cordially maintained. The issue here is not to decide on a one-size-fits-all adoption, but to ensure fairness, choice and flexibility in adoption procedures.

P10 *'The requests for post adoption contact arrangements were very rare in Hong Kong, in the past.'*

The Adoption Ordinance was last discussed 17 years ago. It seems inefficient not to make the changes as up-to-date as possible since we have the opportunity to do so. In another 17 years time, open adoption may be much more usual and the law will, by then, be woefully inadequate.

P11 *'Given that this subject has not been discussed in public before and that there has not been any indication of a pressing need for such a provision, we do not see the justifications for incorporating such a provision in the Amendment Bill.'*

In addition to current public need is the need for legal equity and consistency. I would like to reiterate that my own case has been satisfactorily concluded, with contact resumed amicably between both parties. This resolution, however, only occurred as a result of the legal protection offered to me under wardship proceedings. The protection offered under

the Adoption Ordinance was inadequate. There was an inconsistency in the legal remedies available, which substantially increased the length of time it took to achieve resolution and caused considerable emotional distress. My sole purpose, therefore, in pursuing this amendment is to resolve a legal inconsistency and ensure fairness in adoption proceedings. I believe this is sufficient justification for incorporating such a provision into the Bill.

There is also a need to clarify the issue of birthparents' rights. It is understood that adoptive parents make all decisions for their adoptive child. They have all rights in this respect. However, in the negotiation whereby the birthparents transferred these rights to the adoptive parents, prior to giving consent, the discussion took place between legal equals. If the very basis on which that transfer of rights was effected is subsequently shattered, birthparents' right to legal recourse should be resolutely upheld. If birthparent consent was given under the understanding that contact will be maintained, adoptive parents do not have the right to ignore this. They maintain full parental rights over the adopted child, but they do not have the right to alter fundamentally the conditions under which birthparent consent was given.

This is not, however, what is portrayed by comments such as '*Naturally weight would be given to the views of the adoptive parents,*' P8. It is my contention that when negotiating the transfer of parental rights from one party to another, this bias is intolerable. In P6, it is stated that '*the Court will not, except in the most exceptional cases, impose terms or conditions as to access to the birth parents, if the adopters object.*' This implies an intrinsic bias towards adoptive parents, rather than an objective assessment of the best interests of the child. Thus, even though legal recourse is technically available to birthparents, it is biased against their success. This is why I sought legal recourse through an alternative route, one which did not have inbuilt assumptions about the parties involved.

We have an opportunity to ensure that the unnecessary hardship I suffered can be avoided for other individuals. This can be achieved in such a way as to protect fully the well-being of the adoptee and his/her family unit as a whole. Moreover, we can lay the foundation for more humane adoption practices, with benefits to all members of the adoptive triangle. I can see no reasonable impediment to this amendment.

Yours sincerely,

Amelia Roberts, MA MEd