

THE HONG KONG FAMILY LAW ASSOCIATION

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Hong Kong

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17 February 2004

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Mrs. Sharon Tong

Clerk to Bills Committee

Legislative Council Building

Jackson Road

Central, Hong Kong

Dear Mrs. Tong,

Re: Bills Committee on Adoption (Amendment) Bill 2003

Mr. Barnes, the Chairman of the Hong Kong Family Law Association has passed to me your letter of the 21st January 2004 addressed to him, and following deliberations by the Executive Committee of the Hong Kong Family Law Association, he has asked me to write to you in response to your letter of the 21st January 2004.

May I first of all say that the Hong Kong Family Law Association was delighted to be invited to convey their views to the Bills Committee, and we are indebted to you for being given the opportunity to do so.

The Family Law Association was essentially in favour of the proposed amendments to the Adoption (Amendment) Bill 2003.

We completely agreed with paragraph 10 of the Legislative Council Brief, which proposes to amend the Adoption Ordinance to prohibit a person or an organisation other than SWD or adoption agencies authorised by SWD to make arrangements for the adoption of a child, with the exception of adoption of a child by his/her birth parent or relative, or save pursuant to an Order of the Court.

We further agreed with the proposal set out in paragraph 14 of the Legislative Council Brief insofar as proposed overseas adoptions were concerned.

Similarly, we had no objections to the proposed changes as set out in paragraphs 15, 17 and 19 of the Brief.

As far as paragraph 20 of the Brief was concerned, which set out details of the proposed penalty for breach of the ordinance, we accept that the penalties do have to be increased in order to take into account current values, but since these are matters that concern the welfare of a child, the financial penalty levels still seem to be rather low at their maximum, and we were surprised that no custodial sentences have been considered for any proposed breach, especially, say, in relation to the unauthorised private adoptions.

The Family Law Association agreed to the proposed amendments as are set out in paragraphs 24, 26, 27, 28, 30 and 32 of the Brief.

We did have concerns about the Root-tracing System as set out in paragraphs 33 to 35. In our view, the rights of the adopted child have to be of paramount interest. It is the adopted child who has to deal with identity issues once that child has learned that he or she is adopted. Given that the adopted child will actually be an adult at 18 when the mechanism will start to work for Root-tracing, we did not agree that a power of veto that might be exercised by a birth parent should apply until such time as the birth parent had either withdrawn the veto or had passed away. We did not

accept that the birth parents' right of privacy overrode the right of the adopted person to ascertain information concerning his/her birth parents, and background.

The Family Law Association had no concerns insofar as the Textual and Formatting changes were concerned, and we accept and endorse the proposals concerning inter country adoption and we were delighted that Hong Kong was fully embracing the provisions of the Hague Convention in this regard.

Essentially the Family Law Association thought the proposed amendments were progressive and helpful and, with respect, we thought the rationale behind the changes, and indeed as expressed in the Legislative Council Brief, were well thought out and well drafted.

The Family Law Association welcomes and supports the idea of "open adoption", in order to facilitate that any perceived stigma or embarrassment associated with adoption is eradicated at an early stage by children and adoptive parents speaking openly about the adoption process, and even in some circumstances having limited contact with the birth parents. Such a concept has been fully embraced in the U.K. and we believe that such a concept has scope here in Hong Kong also. We believe that the very progressive approach adopted by the Bills Committee on the Adoption (Amendment) Bills of 2003 is an important step in the direction of greater transparency in matters concerning adoption, and that we would fully endorse.

If we can be of any further assistance to you then do please contact us at the Hong Kong Family Law Association.

Yours sincerely,

Sharon A. Ser
Executive member of
The Hong Kong Family Law Association

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