

立法會
Legislative Council

LC Paper No. CB(2)2611/10-11
(These minutes have been seen by
the Administration)

Ref : CB2/BC/7/10

Bills Committee on Guardianship of Minors (Amendment) Bill 2011

Minutes of meeting
held on Wednesday, 27 July 2011, at 10:45 am
in Conference Room A of the Legislative Council Building

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Sing-chi

Members absent : Hon Miriam LAU Kin-ye, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon CHEUNG Kwok-che

Public Officers attending : Item II

Ms Wendy LEUNG
Principal Assistant Secretary for Labour and
Welfare (Welfare) 1

Mr Parson LAM
Assistant Secretary for Labour and Welfare (Welfare) 1A

Ms Caran WONG
Assistant Director of Social Welfare (Family and
Child Welfare)

Ms Karmen KWOK
Government Counsel
Department of Justice

**Attendance
by invitation** : Item II

The Hong Kong Family Law Association

Mr Jonathan MOK
Executive Committee Member

Hong Kong Bar Association

Mr Enzo CHOW

The Law Society of Hong Kong

Mr Dennis HO Chi-kuen
Member of the Family Law Committee

Hong Kong Federation of Women Lawyers

Ms Elizabeth MO
Vice President

**Clerk in
attendance** : Mrs Sharon TONG
Principal Council Secretary (2)

**Staff in
attendance** : Ms Clara TAM
Assistant Legal Adviser 9

Mr Jove CHAN
Senior Council Secretary (2) 8

Ms Michelle LEE
Legislative Assistant (2) 7

I. Application for late membership

The Bills Committee accepted the application for late membership by Ms Miriam LAU.

II. Meeting with deputations and the Administration

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

3. The Bills Committee received the views from the following organizations -

- (a) The Hong Kong Family Law Association;
- (b) Hong Kong Bar Association;
- (c) The Law Society of Hong Kong; and
- (d) Hong Kong Federation of Women Lawyers.

(Post-meeting note: The submission of Hong Kong Federation of Women Lawyers was circulated to members vide LC Paper No. CB(2)2450/10-11 on 27 July 2011)

4. The Bills Committee requested the Administration to provide the following information -

- (a) written response to the views and issues raised by the deputations in their submissions and at the meeting including the following -
 - (i) the use of more modern terms and expressions, including replacing "welfare" with "best interest", "wishes" with "views", "parental rights" with "parental rights and authority", etc.;
 - (ii) the validity of appointment of guardian by using the standard form but not compiling formal requirements such as attestation by two witnesses and the possibility of including a provision resembling section 5(2) of the Wills Ordinance (Cap. 30);
 - (iii) the appropriateness of seeking the child's view on the appointment of guardian;
 - (iv) the suggestion of The Hong Kong Family Law Association of including in the Bill a statutory

checklist of factors to assist judges to consider in proceedings concerning children;

- (v) the suggestion that the threshold of application to the court for resolution of disputes between guardians (i.e. when a guardian thought that the other guardian was "unfit to have guardianship over the minor") be lowered; and
- (vi) the recommendation of the Report on Child Custody and Access published by the Law Reform Commission of Hong Kong that a third party should be allowed to apply for custody and maintenance orders in respect of a minor under section 10 of the Guardianship of Minors Ordinance (Cap. 13).

- (b) the measures to deal with the conflicts arising from dual appointments by both parents under different scenarios, e.g. parents' marital status, relationship, residency, existence and the child's custodianship, etc.

5. The Bills Committee requested the Clerk to forward the Administration's response to the deputations when it was received.

III. Any other business

6. The Bills Committee agreed to cancel the next meeting originally scheduled for 29 July 2011 to avoid clashing with The Legislative Council Commission's meeting and site visit to the New Legislative Council Complex in the morning of the same day. The Chairman suggested and members agreed that about six meetings be held between October and November 2011. The Clerk would draw up the schedule of subsequent meetings in consultation with the Chairman and members.

7. The meeting ended at 12:08 pm.

**Proceedings of meeting of
Bills Committee on Guardianship of Minors (Amendment) Bill 2011
held on Wednesday, 27 July 2011, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
001020 - 001107	Chairman Ms Audrey EU Mr WONG Sing-chi	The application for late membership of Ms Miriam LAU	
001108 - 001324	Chairman Ms Audrey EU Mr WONG Sing-chi	Cancellation of the meeting on 29 July 2011 and arrangement for the subsequent meetings	The Clerk to draw up the schedule of subsequent meetings in consultation with the Chairman and members
001325 - 001629	Chairman	Opening remarks	
001630 - 001937	Chairman The Hong Kong Family Law Association	Presentation of views (LC Paper No. CB(2)2431/10-11(03))	
001938 - 002626	Chairman Hong Kong Bar Association	Presentation of views (LC Paper No. CB(2)2446/10-11(01))	
002627 - 003226	Chairman The Law Society of Hong Kong	Presentation of views (LC Paper No. CB(2)2461/10-11(04))	
003227 - 004202	Chairman Hong Kong Federation of Women Lawyers	Presentation of views	
004203 - 005145	Chairman Admin	The Administration's responses to views and enquiries of the deputations	
005146 - 011039	Chairman Ms Audrey EU The Hong Kong Family Law Association The Law Society of Hong Kong Hong Kong Bar Association Hong Kong Federation of Women Lawyers	Suggestion of replacing the term "wishes" with "views" in section 3 of the Guardianship of Minors Ordinance (Cap. 13); Conflicts arising from dual appointments by both parents; Appointment of guardian by a will or by using the standard form; and Mandate of the suggested checklist of factors to assist judges in determining the best interests of the child	The Administration to provide - (a) written response to the deputations' views and issues raised in their submissions and at the meeting; and (b) information on the measures to deal with the conflicts arising from dual appointments under different scenarios, e.g. parents' marital status, relationship, residency,

Time marker	Speaker	Subject(s)	Action Required
			existence and the child's custodianship, etc.
011040 - 011416	Chairman Admin	The Administration's response to the deputations' views on the threshold of application for the appointment of guardian by a third party, and the appointment by a will	
011417 - 012345	Chairman Admin Hong Kong Bar Association	Reflecting the minor's view on the appointment of guardian in the standard form under different scenarios, i.e. the minors' age, maturity, etc; and Details of the public consultation in respect of the Report on Child Custody and Access published by The Law Reform Commission of Hong Kong in 2005 to be carried out near the end of 2011	
012346 - 012717	Chairman The Law Society of Hong Kong	The timing of introducing amendments to section 10 of Cap. 13 regarding the application for custody and maintenance in respect of a minor by a third party; Suggestion of relaxing the proposed requirement on application to the court for resolution of dispute under the proposed section 8A(2) of Cap. 13; and Suggestion of amending the proposed requirement for the appointment to be attested by two witnesses under the proposed section 6(3) of Cap. 13	
012718 - 012818	Chairman	Closing remark	