

Report of the Special Committee on Family Law 2010

The Special Committee has continued to perform its role of advising the Bar Council on matters concerning family law and promoting the interests of the Bar and its members on family law matters.

The Special Committee considered and advised the Bar Council on the proposed Matrimonial Proceedings and Property (Amendment) Bill 2010, a bill to amend Cap.192 by inter alia granting jurisdiction to the courts in Hong Kong to deal with issues of ancillary relief following decrees pronounced by the courts of foreign jurisdictions. The amendment will come into effect on 1st February 2011 and follow calls for reforming legislation from the Courts, the legal professional bodies and members of the Legislative Council. The measures will bring Hong Kong into line with other common law jurisdictions and will provide relief for litigants involved in multi-jurisdictional family litigation, a factor of significance for Hong Kong's particular circumstances as demonstrated by a recent decision of the Court of Final Appeal (see *ML v. YJ* FACV 20/2009).

The long-awaited legislation to reform the law on custody and access to bring Hong Kong in line with its counterparts in the common law world continues to languish in bureaucratic prevarication and indecision. The saga began more than a decade ago with a Law Reform Commission sub-committee report and widespread public consultation on wide-ranging issues designed to introduce into Hong Kong measures already well established in other common law jurisdictions such as the Children Act 1989 in England. The report was subsequently divided into four parts for ease of management, of which the one on Child Custody and Access has lain in limbo since 2005. Wide-ranging public consultation has been undertaken over the last five years but the government insists that it must continue to do so for an undisclosed period, thus delaying the drafting of relevant legislation indefinitely. The lack of political will to address and implement the recommendations in the report continues notwithstanding the efforts of the legal professional bodies, specialist family lawyers and the Courts - see the comments of Hartmann JA and Lam J in *PD v. KWW* (CACV 188/2009) and Cheung JA in *SMM v. TWM* (CACV 209/2009). Unless and until the long overdue reforming legislation is created, Court time will be taken, costs will be wasted and parties will litigate unnecessarily in pursuit of imaginary benefits from the technical continuation of custody on the statute books.

Some members of the Special Committee sit, either in their personal capacities or as nominees of the Bar, on a number of committees covering various aspects of family law including Family Mediation, Financial Dispute Resolution and the Family Court Users Committee. It is important that members of the Bar channel to those serving on these various bodies their views on all aspects of family law and procedure concerned. In addition, the Special Committee needs and values members' views and recommendations for improvement of the whole system and practice of family law in Hong Kong and welcomes all contributions and feedback.

Membership:

Jacqueline Leong, SC (Chairperson)

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