

## **Re: Children's (Parental Responsibility) Bill**

### **Summary of the Position of The Hong Kong Bar Association**

1. The Hong Kong Bar Association repeats that it fully supports the Children's (Parental Responsibility) Bill (the “**Bill**”) and strongly urges the Panel to re-introduce the Bill for legislation. We have given our views to the Panel in our letter and paper dated 29<sup>th</sup> June 2023. We set out herein in short form the most obvious advantages of this legislation and reasons why it should be enacted.
2. Modernizing children's law to keep up with international counterparts and to boost Hong Kong's standing as a modern progressive jurisdiction with a strong rule of law:
  - a. Hong Kong has fallen behind its international counterparts such as Singapore, England, Scotland, Australia, New Zealand and Canada.
  - b. They have long moved away from the archaic parental “rights” model to parental “responsibility” model.
  - c. For example, the word “illegitimate” is still used to describe children born out of wedlock in our statutes, even though it is considered to be demeaning to the child being referred to and that it offends and violates that child's dignity: see the comments of B. Chu J in C v. S (HCMP 929/2017, 12 October 2017) at §6 (appeal dismissed [2020] HKCA 35).
  - d. Because of the lack of this legislation, the Family Court has had to implement provisions from the Bill where it can, such as the ‘Welfare Checklist’ in order to keep up with the needs of our society and to protect the best interests of our children. This is *not* the job of the court, it is the job of the legislature, passing this Bill will correct this and our courts will no longer be forced to operate in a legislative vacuum.
3. Hong Kong is a member of the United Nations Convention on the Rights of the Child (“**UNCRC**”). The Bill brings Hong Kong's law in line with its international obligations as a signatory to the UNCRC, for example by providing a mechanism for children's views to be heard.

4. Reducing conflict and the burden of the Court system:
  - a. The shift in language reminds parents that in such times of conflict, rather than fighting over their individual right to have control over their child they have a shared goal of putting the child's welfare and interests first.
  - b. For example, rather than the current hierarchical terms of "custody", "care and control" and "access", orders governing the person with whom the child is to live, spend time or otherwise have contact with; where the child is to live, spend time or otherwise have contact with any person, will singularly be referred to as a "Child Arrangement Order".
  - c. It will, without doubt, minimize conflict and reduce the workload of an already overburdened Family Court where a great deal of time is taken up by cases where parents continue to argue over these labels.
5. Expanding the Court's powers to make Orders for the protection of children:
  - a. At present, children's proceedings are governed in a piecemeal manner across various different ordinances, including the Guardianship of Minors Ordinance (Cap.13) ("**GMO**"), Matrimonial Causes Ordinance (Cap. 179), the Matrimonial Proceedings and Property Ordinance (Cap.192). The Bill will consolidate and update the existing laws into one piece of legislation benefiting everyone.
  - b. The current legislation, under s.10(1) of the GMO, only entitles either parent of a child or the Director of Social Welfare to apply to court for orders of custody or access to the child. This continues to fail children.
  - c. For example, a grandmother, who was the primary carer of the child, was unable to make any application to become the guardian, with the consequence that she could not register the child for a school place or travel documents: *CLP v CSN* [2016] 5 HKLRD 530. The Court was powerless to help her and the child under the existing law even though it wanted to do so. With this legislation the problem would have been solved. This is *just one* case.

- d. The Bill would expand the range of persons that can apply for such orders, keeping up with contemporary trends on “families” and the persons involved in a child's life.
6. Objections to the Bill that have been raised have been answered and dealt with and/or are misplaced
- a. It is understood that a primary objection continues to come from single parent groups, particularly single mothers who have concerns about the other parent intervening and interfering on issues relating to the child.
  - b. Even under the Bill, an unmarried father does not automatically have parental responsibility under all circumstances. A mother’s involvement is almost always required (eg. by marriage, by the mother registering the father in the birth certificate, or by agreement): see section 6 of the Bill.
  - c. Otherwise, the father will have to make an application to the Court for parental responsibility, and the Court will take into account any relevant circumstances in making an order.
  - d. Moreover, under the existing legislation, s.10 GMO already allows an unmarried father to apply to the Court for custody. The Court will likely treat applications under the Bill by unmarried fathers the same way.
  - e. Putting this in statutory footing would increase the transparency for both mother and father making it easier for all parties to understand the circumstances in which parental responsibility can be obtained, and their obligations to communicate with each other as parents. For example the Bill distinguishes the matters where one parent has to obtain the *consent* of the other to do something, and the matters that only require a parent to *notify* the other of something that they are doing, at present there is no legislative clarity on this. This is yet another aspect where the Bill will have the benefit of reducing scope for conflict and the Court’s burden.
  - f. Opposition that is based on fears that the Bill may cause more problems for families with a domestic violence background, and fears that a new requirement for obtaining the other party’s consent, or giving notification on major decisions may be taken advantage of by troublesome parents with malicious intent to obstruct and harass

a former spouse are, with respect, misplaced. The Bill specifically provides for the court to be able to take all such matters into consideration in making orders, including a mechanism for dispensing with the requirements for consent or notification where it is appropriate to do so.

- g. The Government has already dealt with concerns raised by some groups in the past. Specialised Co-Parenting Support Centres have been set up and have been running for some time. Enhanced support measures have also now been in place for some time, including provision of co-parenting counselling, parenting co-ordination services, and training for social workers on parental responsibility in order to implement the reforms under the Bill.
- h. Along with family practitioners many of these specialists are at a loss to know why the Bill has not been passed, like the Family Court they continue to operate in a legislative vacuum and this needs to be corrected.

Once again, the Bar Association urges the legislature to enact this Bill in order to safeguard and protect the best interests of our children

**Committee on Family Law**  
**The Hong Kong Bar Association**  
**14 June 2024**