

Report of the Special Committee on Family Law

The Special Committee on Family Law consists of the following members:-

Jacqueline Leong, SC (Chairman)
Paul Shieh, SC
Corinne Remedios
Lisa Remedios
Robin Egerton
Jeremy Chan

The committee has met several times during 2011 to consider a wide range of issues relating to Family Law including advising the Bar Council on various proposals concerning legislation and supporting subsidiary measures. Some members also sit, in their personal capacities, on several committees and working parties dealing with family law matters and the cross-fertilisation between them provides useful links for the Bar on many of the important initiatives being pursued in this discipline.

Important issues that the committee has considered during the year include:-

- Practice Direction 15.12 on Matrimonial Proceedings and Family Proceedings

This measure, which followed views expressed by Lam J. in *Tam Wai Hung v. Chow Sin Kim and Another*, is intended to have applications under the Inheritance (Provision for Family and Dependents) Ordinance, Cap.481 commence in the Family Court rather than the Court of First Instance (although there will be a power to transfer suitable cases to the CFI) by reason of the similarity to the ancillary relief jurisdiction in the Matrimonial Proceedings and Property Ordinance, Cap.192. The measure, which could impact adversely on the already heavily loaded lists in the Family Court, will also divide such matters from the probate jurisdiction which will remain in the CFI. The committee expressed its misgivings about the measure being introduced without a corresponding increase in judicial manpower and resources in the Family Court which is already operating with caseloads substantially exceeding those in other common law jurisdictions with similar systems of practice such as England, Australia and New Zealand.

- Matrimonial Proceedings and Property Ordinance (Amendment) Ordinance.

This amending legislation extended the jurisdiction of the Hong Kong courts to enable them to order financial relief in Hong Kong following a divorce, judicial separation or annulment by a court outside Hong Kong. Applications under this extended jurisdiction may only be made with leave, on substantial grounds and where the court is satisfied that Hong Kong is an appropriate venue. The financial relief will cover both interim and final relief. The measures address an increasingly important need given Hong Kong's unique circumstances and also bring it in line with similar powers exercised in various other jurisdictions. The committee welcomed the legislative implementation of these proposals which were first raised in 2010 following widespread calls for such jurisdiction by the courts, the legal profession and members of the legislature.

- Practice Direction 15.10 on Family Mediation

This new version of PD 15.10 harmonises measures to encourage mediation in family proceedings.

- Child Dispute Resolution Pilot Scheme

The committee welcomed and strongly endorsed the recommendations of the Working Group on Children in Family Proceedings. The scheme, which will operate initially on a pilot basis, is to operate in conjunction with Practice Direction 15.11 which covers the Financial Dispute Resolution Pilot Scheme that is already running successfully. It is hoped that the scheme can commence operation in 2012. It is to operate mandatorily although the court may direct to the contrary either on its own motion or on an application by either party. The scheme will be a welcome addition to the more structured rules that increasingly govern various aspects of the practice of family law and are in line with the broad spectrum of the civil justice reform measures. Matters concerning children are difficult for all concerned and any means that improve the practise of this area of the law are to be supported.

- Family Practice Directions and Procedure Rules and Child Dispute Resolution

Consideration is now being given to whether, and if so how, Hong Kong should adopt a consolidated set of Family Practice Directions and Family Procedure Rules. This mammoth task has recently been addressed in some other common law jurisdictions e.g. the United Kingdom and New Zealand, although a uniform approach and methodology has not been employed. It is hoped that there will be sufficient will and resources made available to enable this exercise to proceed as it will ultimately be of lasting benefit to the Judiciary, the profession and litigants.

Finally, our thanks are due to Rani Romani for her unfailing helpfulness, efficiency and patience in dealing with the work of this Special Committee.

19 December 2011