

**The government should protect children's right to
participation in their parents' divorce**

Child Councilors :

Chiu Chung Yin Cyrus

Choi Wing Yi

Chow Lok Yim Loretta

Ho Ka Miu Noel

Huang Ying

Lau Hi Tung

Lee Cheuk Him

Lee Wing Man Fiona

Li Lai Ying Amy

Ng Yu Yan Kate

Ning Xiao Fan Fiona

Wong Ming Choi

Wong Sun Yue Sunny

Wong Wai Chi Helen

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Introduction

Divorce has a significant effect on children; yet, Hong Kong's existing judicial system says little about children's right to freely express their opinions in their parents' divorce proceedings or agreement, and how that right can be exercised. In view of this, we, the Child Councillors, will take an in-depth look at the issue and will seek to come up with a solution that best represents the interests of children and secures their right to free expression. We urge the government to identify the faults and deficiencies in the current policies and make suitable improvements.

According to Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), every child who is capable of forming his or her own views is entitled to the right to freely express their views in all matters affecting them, especially in cases of judicial or administrative litigation, and those views will be duly taken into account.

For this reason, on behalf of the 14 Child Councillors in my group, I move that the motion "The government should protect children's right to participation in their parents' divorce" be passed.

Current Situation

According to the figures provided by the Census and Statistics Department, the number of cases of divorce has risen sharply from 9,473 before the handover (1996) to 18,167 in 2010, representing an increase of nearly 100 per cent.

In another study conducted by the Hong Kong Council of Social Service entitled the Social Development Index, the number of single-parent families soared 86 per cent to 76,900 in 2005 from 41,200 in 1996. Meanwhile, the number of children from single-parent families also surged from 59,000 in 1996 to 101,700 in 2005, with one in every 12 children coming from a single-parent family. As cases of divorce continue to rise, the impact on children can only become worse.

The divorce of parents can deal a traumatic blow to the children. Therefore, as one of the most affected stakeholders in their parents' divorce, children deserve to have their say. Furthermore, children's involvement will have a direct influence on the judge's decision, and thus the government should give maximum priority to safeguarding children's right to participation in the proceedings of their parents' divorce on grounds both of reason and humanity. This is in the best interest of the affected children's lifelong well-being.

As the number of divorce cases keep on rising, our group finds that there are only a very few channels through which children can express their views, with the most common medium being social workers. They sit down with the children and summarize their opinions in a report. Alternatively, children may write to the judges or express their wish to meet with the judges via social

workers. If necessary, the judge will appoint an independent legal representative to act and speak on behalf of the children. The service is currently provided by the Official Solicitor's Office. Regrettably, the independent legal representation service has yet to become widely known in Hong Kong. After interviewing with a solicitor of the Official Solicitor's Office and a Family Court Judge, our group found that today's children and their parents are largely unaware that such a legal service is provided, a fact which has caused the service to be underused. In addition, our findings suggest that Family Court Judges often rely too heavily on social workers' reports as a means to hear children's points of view. As the result of a survey conducted by our group indicates, despite home visits by social workers, the vast majority of children who have experienced their parents' divorce are unaware that they have the right to request the judge to appoint a legal representative to speak for them, or that they could talk to the judge directly to express their views.

In addition, no regulation is in place in Hong Kong requiring either Official Solicitors or Family Court Judges to take pre-employment training before they can start practicing. Interviewees revealed that they learned how to listen to children only through experience, and agreed that related training in this respect would help them communicate with children more effectively.

Although it is not an easy task to reach children who have experienced divorce, our group still managed to conduct a questionnaire survey of 30 children under 18 years of age whose parents had separated. The survey found that about 77 per cent of the children in the survey did not know that they had the right to request the judge for an independent legal representative to speak on their behalf. This shows that government publicity is lacking and that the service fails to offer solid assistance to the children affected by their parents' divorce. Meanwhile, 94 per cent of the interviewed children agreed with the view that they should have an independent legal representative to act on their behalf in matrimonial lawsuits. They thought that only by so doing could their will be expressly communicated to, and respected by, the judges and parents.

Moreover, only half of the children interviewed said that their views had been taken into account in their parents' divorce proceedings, and that they had only had their father/mother or social worker to listen to their views. From this, it can be seen that judges, as the arbiters of children's well-being, fail to take the initiative to understand their views and needs throughout the proceedings.

By comparison, the judicial systems of the United Kingdom and New Zealand are more advanced in this respect. Hong Kong would do well to learn from them. Both countries have formulated guidelines for their family court to safeguard the right to participation of children who find themselves in family disputes. Under the guidelines, Family Court Judges must follow a strict arrangement when they meet the children. The solicitors appointed to represent the children also have a pivotal role to play. The children will not only have a certain understanding about the proceedings, as well as the verdict and the functions of judges, but will also be given reasonable

opportunities to express their views, so that their views will be made clear to the judges. To put it simply, the guidelines adequately protect children's right to participation.

Suggestions

Taking the above information and studies into consideration, we find that children are given few opportunities to express themselves in their parents' divorce. In face of this, we feel urged to offer the following suggestions geared towards improving the situation:

1. The government should step up efforts to promote the readily available channels through which children can express their views in their parents' divorce proceedings. It can do so by, for example, producing TV programmes, special programmes and cartoons, holding seminars, making posters and distributing publicity leaflets. These can help raise social awareness of the issue and encourage the public to offer assistance to those children in need. If teachers or school social workers come to be aware that students are undergoing their parents' divorce, they may explain to them what channels are available for them to express their opinions and to choose the most comfortable way to do so.

2. The government should step up its efforts to promote children's right to have an independent legal representative to represent them. Such publicity campaigns as mentioned above will raise public awareness about the service and ensure that the service brings about the greatest social benefits for children and offers concrete assistance to them.

3. We think it is imperative for the authorities concerned offered training courses to professionals who work with children, including judges, lawyers, social workers and teachers, so that they became equipped with the necessary skills to communicate with children. Only then can they more effectively explain to, and offer affected children channels through which they can voice their views.

4. Our group suggests that the authorities concerned should formulate guidelines under which judges must consult the affected children as to whether they would want to voice their opinions in the proceedings. Children should be given appropriate channels to express their opinions, directly or indirectly. In addition, guidelines for social workers should also be put in place, so that they can explain the whole proceedings to the children, and the channels open to them to express themselves. Publicity should be stepped up to ensure that children are well aware of their right to participation in proceedings.

5. Last but not least, our group proposes that a survey of wishes be prepared for children whose parents have divorced on good terms. They may fill in the survey under no-stress conditions and, if necessary, in the company of social workers. The survey will be presented to the judge as a reflection of

the child's feelings. Judges, being able to know the wishes of children, can be better informed as to whether the grant of custody and access arrangements in relation to the child is appropriate. This entitles the children to the right to participation even if their parents divorce after mediation or without having to be present in court.

As a matter of fact, the importance of children's voice in the matrimonial proceedings had already been raised and recognized in the Law Reform Commission of Hong Kong's Child Custody and Access Report published in March 2005. Yet, they have not been given due attention by the authorities. We therefore urge the government to give serious thought to the above suggestions after our reading of this motion and take action to safeguard children's right to participation in the proceedings of their parents' divorce.

Conclusion

Many countries in the world are aware of what far-reaching effects divorce has on children and have also recognized how children's rights can be better safeguarded for them to have a say in their parents' matrimonial lawsuits or family disputes. Such countries as the United Kingdom, Australia, and New Zealand have guaranteed children's right to participation in their parents' matrimonial lawsuits or family disputes in the judicial proceedings. However, in Hong Kong where the divorce rate keeps climbing, the government still fails to pay heed to the NGOs' and professional groups' call to act to protect children's right to participation in their parents' divorce. Never has it tried to provide suitable channels for children to voice their feelings in court either.

A child's future hinges on a single decision of their parents and a verdict by the court. Despite this, Hong Kong, a signatory to the Convention on the Rights of the Child, overlooks children's right to participation in their parents' matrimonial proceedings or family disputes. Children's feelings suffered great harm when their voices are not heard. This is a gross violation of the Convention.

As key stakeholders in matrimonial lawsuits or family disputes, children are not adequately supported by the government in having their voices heard. In such circumstances, children do not know where to begin or what to believe. In the face of this, our group has put forward a number of proposals in light of the present situation, hoping that the government will take action to protect children's right to participation in their parents' matrimonial lawsuits or family disputes. In conclusion, on behalf of the 14 Child Councillors in my group, I move that the motion "The government should protect children's right to participation in their parents' divorce" be passed.

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Acknowledgments

Her Hon Judge Bebe CHU Pui Ying, Principal Family Court Judge, Family Court

Ms Sherman CHEUNG, Assistant Official Solicitor, Official Solicitor's Office

Mr YAM Mun Ho, Chief Social Work Officer (Domestic Violence), Family and Child Welfare Branch, Social Welfare Department

Ms LAU Siu Hing, Jackie, Senior Social Work Officer (Domestic Violence), Family and Child Welfare Branch, Social Welfare Department

Ms Winnie CHOW, Committee Member, The Hong Kong Family Law Association

All children who took part in the questionnaire survey