

Acknowledgements

This book originates from the 2nd *Children's Issues Forum* held on August 27-28, 2012 at the University of Hong Kong. This two day multi-disciplinary Forum was a unique collaborative effort jointly organized by the two Law Faculties from the University of Hong Kong and Chinese University of Hong Kong, along with the Hong Kong Family Law Association, Law Society of Hong Kong and Hong Kong International Arbitration Centre. The 2nd *Children's Issues Forum* followed on from the successful inaugural *Children's Issues Forum* held in September 2009 from which a collection of papers presented at the Forum were published in a book entitled *Children's Issues Forum: The Resolution of Disputes Relating to Children in Hong Kong*.¹

In collaborating on the organization of the 2nd *Children's Issues Forum*, we wish to acknowledge and thank the Hon. Mr. Justice Michael Hartman GBS, Her Honour Judge Bebe Chu, Principal Family Court Judge, Hong Kong SAR, and Her Hon. Judge Sharon Melloy for their invaluable help and assistance. All three members of the Hong Kong Judiciary have been staunch advocates for reform of judicial proceedings involving children in Hong Kong and provided us with much needed encouragement, inspiration and support in organizing both the 1st and 2nd Forums.

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¹ *Children's Issues Forum: The Resolution of Disputes Relating to Children in Hong Kong* (Katherine Lynch & Michael Wong, Editors, 2011).

Kong and Hampton, Winter & Glynn, one of Hong Kong's leading family law firms. Various other Hong Kong law firms also generously supported the activities of the 2nd Forum, including: Boase Cohen & Collins; Chaine, Chow & Barbara Hung; Hobson & Ma; Howse Williams Bowers; Ip & Heathfield; Stevenson, Wong & Co; and Withers (Hong Kong). We thank them all for their generous financial support of the 2nd Forum.

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The *2nd Children's Issues Forum* would not have been as successful without the diversity and range of distinguished Forum speakers and moderators – eminent judges, academics, legal practitioners, dispute resolution professionals, government officials and representatives from NGOs - who came from both Hong Kong and from afar in the UK, Canada, New Zealand, USA and Israel. The breadth and range of the Forum speakers and the diversity in the participants attending the Forum helped contribute to the inherent multi-disciplinary nature of the *2nd Children's Issues Forum*. Finally, we wish to thank the children of Hong Kong – those children who participated in and attended both the *1st* and *2nd Children's Issues Forums* – and also the 1.1 Million children in Hong Kong whose protection and welfare are the ultimate inspiration for organizing the Children's Issues Forums in Hong Kong.

Chapter 1

Introduction

Professor Katherine Lynch

The collection of essays in this volume originate from the *2nd Children's Issues Forum* held on August 27-28, 2012 at the University of Hong Kong. This two day multi-disciplinary Forum was collaboratively organized by the two Law Faculties from the University of Hong Kong and Chinese University of Hong Kong, Hong Kong Family Law Association, Law Society of Hong Kong and the Hong Kong International Arbitration Centre.

This 2nd Forum followed on from the successful inaugural "Hong Kong Children's Issues Forum: The Resolution of Disputes Relating to Children" held in 2009 whose primary focus was on the resolution of disputes relating to children. The papers presented at the 1st Forum by a distinguished panel of speakers from a range of professional disciplines dealt with diverse topics, including how to improve the family dispute resolution process, establishing family courts, enhancing the participation of children in family proceedings and the use of mediation and other innovative processes such as collaborative practice to resolve disputes involving children. The 2nd Forum was also multi-disciplinary involving distinguished jurists, academics and professional experts from Australia, Canada, England and Wales, Hong Kong, Israel, Japan, New Zealand, Norway,

People's Republic of China, Singapore and the United States – all of whom shared their unique perspectives and views on the need for specialized procedures for resolving family disputes involving children, allowing children a “voice” in such processes and forums and ensuring protection for children from all forms of abuse. The focus of the 2nd Forum was broadened from the 1st Forum to consider the paradigm shift occurring in family law away from traditional concepts of custody, care and control towards the notion of “parental responsibility” and the development of specialized dispute resolution procedures involving children in Hong Kong and other jurisdictions. The Forum also dealt with the need to protect and safeguard the mental and physical well-being of children, the exploitation of child labor and the incidence and prevention of child sex trafficking. Finally, the 2nd Forum discussed the pressing need to provide effective child protection advocacy by the establishment of a Children's Commissioner in Hong Kong.

The overriding intention of both the 1st and 2nd Forums was to provide a comparative context for on-going multi-disciplinary discussion, debate and dialogue about various pressing issues relating to the safety, well-being and welfare of children in Hong Kong. As in 2009, the 2nd Children's Issues Forum brought together members of the local and overseas judiciary and legal profession, government officials, social workers, child psychologists, health care and child protection professionals, mediators, and community and non-profit organizations. In so doing, the Forum created an opportunity for stakeholders in children's issues from different jurisdictions to come and share their comparative experiences and views for the improvement of children's dispute resolution in Hong Kong and internationally. The Forum provided a platform for interactive dialogue and discussion encouraging more informed decision making and public policy formulation in Hong Kong – in particular, a more holistic collaborative and complementary approach to the detection, prevention and treatment of child abuse and maltreatment in Hong Kong.

One of the specific intentions of the 2nd Children's Dispute Resolution Forum in 2012 was to examine the paradigm shift away

from a focus on custody, care and control of children towards parental responsibility. Forum speakers shared the developments in England, Australia, New Zealand and Canada in this regard and also discussed the increased use of out of court processes – “alternative dispute resolution” approaches – to resolving disputes involving children in their respective jurisdictions. The essays presented at the 2nd Forum by the distinguished judges, academics, lawyers, government officials and dispute resolution professionals provide comparative analysis of the following issues against the backdrop of the 1990 UN Convention on the Rights of the Child:

- a paradigm shift from custody, care and control to shared parental responsibility;
- reforming children’s dispute resolution processes;
- ensuring a child’s voice in dispute resolution proceedings;
- protecting against and addressing mental and physical child abuses;
- eliminating child/sex trafficking in Hong Kong, Asia and globally;
- improving child protection processes and procedures; and
- establishing a Children’s Commissioner/Ombudsman.

Volume 1 of “International Perspectives on Disputes About Children and Child Protection” are a collection of essays on parental responsibility and children’s dispute resolution. They offer comparative analysis on the paradigm shift from custody, care & control to shared parental responsibility in diverse jurisdictions such as England, Hong Kong, New Zealand, China and Europe. Contributors include The Honourable Mr Justice Andrew Moylan, England and Wales High Court, Family Division; Her Honour Judge Sharon D. Melloy, Family Court, Hong Kong; The Honourable Mr Justice Peter Boshier, Principal Family Court Judge, New Zealand; Judge He Xiaoyi, Civil Division, Zhuhai Intermediate people’s court, Guangdong Province, China; and Professor Nigel Lowe, Cardiff Law School, Cardiff University, UK. The essays in the first volume also consider the development of various specialized children’s dispute resolution procedures with contributions from the Rt. Hon. Lord Justice Thorpe, Head of International Family Justice for England and Wales; Judge Philip Marcus (retired) of the Jerusalem Family

Court; Professor Patrick Parkinson, University of Sydney; Professor Jerry McHale, QC, Lam Chair in Law and Public Policy, University of Victoria, Canada; Professor Mark Henaghan, University of Otago, New Zealand; and Professor Linda J. Silberman, Martin Lipton Professor of Law, New York University School of Law.

The 2nd volume focuses on preventing child abuse, parental responsibility and empowering children. The essays provide insights on the serious problem of child abuse and the need for effective child advocacy and protection from an outstanding group of common law judges and jurists from the UK, Canada, New Zealand, Australia and Hong Kong. The essays are both reflective and forward looking offering local, regional and global perspectives on child maltreatment and child protection and providing an important resource for Hong Kong and the broader community. A number of the essays highlight the urgent need for more empirical research and quantitative data to gauge the real extent of child abuse and to help calculate the huge financial costs of child maltreatment to society. Diana Swales, the UNICEF Regional Advisor on Child Protection for East Asia and the Pacific addresses the incidence and cost of child maltreatment in the East Asia region and the long term consequences of allowing this to happen. Dr. Edward K.L. Chan, HKU Department of Social Work & Social Administration presented a paper highlighting the prevalence of child psychological and physical abuse in Hong Kong and urgent need to implement effective prevention measures.¹

Professor Nicholas Bala from Canada addresses the consequences of emotional abuse of children in high conflict separation and parental alienation cases and offers best practices which can be achieved through the intersection of legislative and institutional change and by the individual and collective work of professionals and individual agencies. Ms Chang Lam Sook-ye, Senior Social Work Officer from the Hong Kong Family & Child Protective Services

¹ Dr. Chan's essay entitled "The Prevalence of Child Physical and Psychological Abuse in Hong Kong: Implications to Prevention" was not able to be published in this Volume.

(Child Protection) advocates for a much needed coordinated multi-disciplinary approach in the prevention and treatment of child abuse in Hong Kong. Dr Jessica Ho, the Director of Against Child Abuse, highlights the extent of child trafficking in Hong Kong and the need for community based prevention measures and support services for child victims of trafficking. Professor Carole Petersen, Director of the Matsunaga Institute for Peace and Professor at the William S. Richardson School of Law, University of Hawaii offers an international perspective on eradicating sex trafficking in the context of Hong Kong, with particular emphasis on preventing children from involvement in sex trafficking.

Judge Philip Marcus (retired) of the Jerusalem Family Court discusses the inappropriateness of a “rights based” discourse for matters of parents and children and argues for formulating a new paradigm for parent child relationships reframed as “parental responsibilities”. Judge Marcus explores the need to adapt the Hague Conventions, of 1980 on the Civil Aspects of International Child Abduction and of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibilities and Measures for the Protection of Children.

Amarantha Yip of the Hong Kong Family Welfare Society discusses giving children a voice through the development of peer mediation in Hong Kong. This volume concludes by focusing on the need for effective child advocacy and policy formulation through the appointment of an independent Children’s Commissioner or Ombudsman. Alasdair Roy, the Children & Young People Commissioner from the Australia Capital Territory discusses his child advocacy role in Australia and the importance of consultation with and listening to children. Mr Roy raises some important issues to consider when establishing a Children’s Commissioner. Professor Anne Scully-Hill of the Chinese University of Hong Kong puts this discussion in the Hong Kong context by analyzing the need for the appointment of an independent sufficiently empowered and resourced Children’s Commissioner to protect and promote the rights, interests and well-being of children in Hong Kong.

Taken collectively the essays presented in Volume 2 highlight the

need for collecting more empirical data and evidence to understand the full nature and extent of child abuse within the family, the community and within the context of the sex trafficking industry in Hong Kong, regionally and globally. In order to raise public awareness about the nature and scale of the problem of child abuse and child sex trafficking and the societal costs of not protecting children from such abuse, it is important to undertake in-depth field research in Hong Kong and globally

It is also clear that urgent and effective measures to prevent abuse to children and to protect and safeguard the well-being and best interests of children in Hong Kong and more broadly within Asia must be implemented. This requires a coordinated collaborative multi-disciplinary approach to decision making and policy formulating on children's issues in Hong Kong which involves the legislative, judicial and administrative branches of government, as well as other professionals, institutions, community and NGO stakeholders within the community, and pre-supposes adequate government funding and resourcing. These essays also highlight the need to implement best practices among the various professions and the development of an appropriate framework for ensuring the involvement of children and youth in dispute resolution proceedings (e.g. mediation) which involve them.

The overall goal of publishing this volume of essays is to highlight the profound issues affecting the safety and well-being of children in Hong Kong - from the need for specialized dispute resolution procedures to the need for adequate detection, protection and treatment of the problem of child abuse. It serves to address the pressing need for effective legislative reform to expressly recognize and implement the shift away from the concept of parental "rights" over children to the new paradigm of parental "responsibilities" focused on protecting the best interests of children. It also aims to highlight the need for effective child advocacy within Hong Kong by considering best practices from other overseas jurisdictions. These essays are inherently multidisciplinary and will be of interest to judges, lawyers, government officials, policy makers, social workers, child psychologists, dispute resolution professionals, educators,

students, and others interested in both children welfare and dispute resolution. The essays also have a strong educational component and as such, will be useful to both undergraduate and postgraduate students of law, social work, medicine and nursing within the University of Hong Kong, Chinese University of Hong Kong and other tertiary educational institutions in Hong Kong.

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