

Response to the Public Consultation on
The Proposed Legislation to implement the Recommendations of Law Reform
Commission Report on Child Custody and Access (2015)

Submitted by
The Division of Clinical Psychology, Hong Kong Psychological Society
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In response to the invitation of the Labour and Welfare Bureau of the Hong Kong SAR Government for public views on the proposed legislation to implement the Recommendations of the Law Reform Commission (LRC) Report on Child Custody and Access (2015), the Division of Clinical Psychology, Hong Kong Psychological Society would like to submit the following views.

Background of the submission

1. Division of Clinical Psychology, The Hong Kong Psychological Society (DCP) (<http://www.dcp.hkps.org.hk>) was founded in 1982. It is a professional body representing the specialty of Clinical Psychology in Hong Kong. All DCP members have completed either a master or doctorate training programme in clinical psychology.
2. Being Clinical Psychologists, mental well-being, be it of adults or children, is one of the most valued domain in our clinical and research practice. On the issue of Child Custody and Access in the context of parental divorce, the emotional well-being of both the parents and the children involved is greatly challenged. We submit our views on account of our deep concern for them.

Basis of Responses to the proposed legislation to implement the recommendations of the LRC Report on Child Custody and Access

3. Psychological impact of divorce on children has been well documented (APA, 2004). Research demonstrates that key factors contributing to healthy adjustment post-divorce include appropriate parenting, access to the non-residential parent, custody arrangements, and low parental conflict. Appropriate parenting includes providing emotional support, monitoring children's activities, disciplining authoritatively, and maintaining age-appropriate expectations.
4. We therefore welcome and acknowledge the core principle of "Parental Responsibility" in place of "Parental Rights and Authority" in the proposed legislative reform in Child Custody and Access, and its underlying intention of encouraging greater involvement of both parents in the lives of their children even after divorce.

5. Notwithstanding the admirable intentions of the legislative reform, the anticipated positive outcome would not materialize without the understanding and acknowledgement of the community at large, and the families concerned in particular. Despite publicity with the catchphrase of “Marriage may end, but parenthood goes on” for some time, resistance in divorced parents to cooperate with their ex-partner can still be witnessed in both clinical contacts and public forum. There is a genuine need to hear and understand the obstacles and a readiness to render as well as sustain supportive services to ameliorate the obstacles. To carry the good intentions beyond the slogan, the engagement of various parties, including the service planners, the judiciary, the mental health professionals, the media, and the involved families would need to be well-coordinated.
6. As clinical psychologists, we are keenly aware and often witnesses of the high emotional charge, as well as the complexity of difficulties, in the divorce scenarios. The high emotional charge becomes the context in which the various parties interpret their roles, bear the impact and make decisions for actions. Amid the complexity, the mental health of various parties (children and adults alike) in a divorce is often our mainstay in the conduct of the professional practice. It is also the mainstay that we advocate in our response to the consultation exercise.
7. We echo the importance of putting the best interests of the children at the forefront of consideration, given their dependency on adults in their development. It is our informed belief that the familial environment plays a significant role in the mental well-being of the children. Given the varying developmental needs of the children along the maturation pathway, the attention to these needs in the context of the changes and challenges arising from parental divorce would inform the decisions regarding the practicality in parental responsibilities. In particular, the needs of infants and young children are very often overlooked. Recent researches on early child development have informed us on how ‘toxic stress’ such as high parental conflict impacts on infant’s brain development.

Recommendations for Support and Services for the Implementation of the Proposed Legislative Changes

8. To put the good intentions of the proposed legislative changes into practice, the availability of support and services at different levels are considered utterly important, if not indispensable:
 - A. Provision of necessary information

- a. Information for the parents: The necessary information and guidance on parenting arrangements after divorce needs to be readily available for the divorcing parents. It can be made available on the websites of the Judiciary and Service agencies, as well as in booklet formats accessible for the parties concerned. The information should highlight the principle of “Parental Responsibilities” and the practicalities. The presentation of the information needs to be easily comprehensible for the general public.
 - b. Information for the children: The information on divorce and related legal procedures, parenting arrangements, their roles and possibilities of making responses, should also be available for the children, prepared in languages and formats appropriate for different developmental stages.
- B. Mandatory psychoeducational programmes on Divorce with Parenting Arrangement
- a. For parents: The direct participation of the parents in the programmes is to enable their understanding of the practical as well as emotional issues on divorce. On the practical side, the parents can be educated on the principle of “Parental responsibility”, the process of divorce and the options. They would also benefit from the understanding of their own emotions and that of their children in going through the process. These mandatory psychoeducational programmes should also be made available to third parties who play a significant role in the daily care of the children. This would allow the adults to have a more solid basis to work out the necessary arrangement and make choices with the interests of the children in mind through the process. There is evidence that participation in prevention programs leads to reductions in children’s post-divorce adjustment problems and increases in competencies (e.g. Braver, Griffin & Cookston, 2005; Wolchik et al., 2000).
 - b. For Children from pre-school age onward: Mandatory Psychoeducation programme needs to be instituted for children of divorcing parents before the divorce decree is granted, with the objective to minimize the negative impact of the parental divorce. This is to help the children to reach an adequate understanding of the reality of divorce, to understand and appropriately express their emotions, to acquire coping and problem-solving skills relevant to the parental divorce as well as to re-affirm their unique qualities and

strengths despite the parental divorce.

C. Formal Assessment

In-depth Assessment is needed for child dispute cases to help parties gain a professional view of the family dynamic and impact on the children, to identify children's authentic voices and needs, and make considered recommendations in the best interest of the child. In this respect, clinical psychologists can make their unique contribution given their training in normal and abnormal functioning of both children and adults as well as a wide range of assessment skills.

D. Divorce cases of high conflict parents would require additional and individualized service. These high conflict cases would need to be identified and considered for specific service model (e.g. Case Manager Model, mandatory counselling service for a fixed adjustment period) (Barnwell & Stone, 2016).

E. Families with prior mental health issues and/or developmental difficulties also require extra attention and care in the high stress situations of divorce and parenting arrangement. The adjustment of the vulnerable individuals involved and the specific disposal necessitated require more detailed planning, with input and concerted effort from the various professionals and service agencies already involved prior to the divorce proceeding.

F. Therapeutic programmes

a. For Divorcing/Divorced parents

- i. Psychosocial intervention on the coping with the emotional aftermath of the divorce
- ii. Court-directed conflict-resolution programme/ counselling sessions for parents in high conflict, those suffering from unresolved emotions or "negative intimacy" with the other parent, and those whose actions do not reflect their priority on the children's interests.

b. For Children of Divorcing / Divorced parents

- i. Psychological intervention needs to be instituted for children caught in divorce situations with high conflicts, between the parents or between parents and children. Strong encouragement and support need to be rendered to the children to be engaged in these programmes, with the objective of helping them develop coping skills and build resilience in the high stress situations.
- ii. Court-ordered family reunification treatment program for children

experiencing difficulties with one or both parents

9. Review of workability of parenting arrangement has to be built in in the overall planning, possibly in a year's time. Only with review could gaps be identified and the welfare of the children be adequately protected. This is especially important for families with high conflicts.
10. Services in various formats are currently delivered in different service settings, some more dedicated to divorced families than others. It would be worthwhile to stock take the current services, to identify gaps and to map out the necessary components in a co-ordinated manner.

The collaboration between various professionals involved

11. All professionals involved in the child dispute proceedings should be adequately equipped with relevant knowledge and skills on handling and managing the arrangements on children.
12. Besides the strengthening of knowledge and skills in the respective professional domains, regular and timely cross-professional interchange would render the support to these families better integrated.
13. As one of the involved professionals, Psychologist has been regarded as having a role in providing competent and impartial opinions with direct relevance to the "psychological best interests" of the child (APA, 2010). Concerned parties such as the court, solicitors and parents might consider obtaining assistance from qualified psychologists along the divorce process. Clinical psychologists, with their training in clinical assessment, are able to facilitate both adults and children to express their views, to obtain relevant information in reaching an informed clinical opinion. Clinical psychologists are cautious of the risk of undue influence from parents, and protective of the children from unnecessary stress of being forced to choose between parents, feeling overpowered or guilty in making adult decisions.

Conclusions

14. The Division of Clinical Psychology, Hong Kong Psychological Society, and its members are committed to support effort for the well-being of children and their families undergoing divorce, and looking forward to collaborating with other professionals to realize the implementation of the reform on Child Custody and Access.

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