

RAVENS CROFT & SCHMIERER

Solicitors Notary Rechtsanwälte

Custody and Access to Children After Divorce

1. Custody, Care and Control and Access to Children After Divorce

There are few more testing times in a person's life than the break-up of a marriage. This may be even more so when children are involved and there is no agreement as to their custody, care and control.

IN DECIDING QUESTIONS OF
CUSTODY OF AND ACCESS TO
CHILDREN THE INTERESTS OF THE
CHILD ARE PARAMOUNT

2. The Principles Upon Which the Hong Kong Courts Will Act

Nowadays the courts encourage parties to resolve child-related disputes, indeed almost all disputes, by mediation. When agreement has not been achieved the courts will deal with the matter on the basis of well-established principles.

The most important of these are set out in section 3 of the Guardianship of Minors Ordinance (cap 13) which provides that the welfare of the child is the paramount consideration. The court will also, depending upon the age of the child, have regard to the wishes of the child and in addition any social investigation report by the Social Welfare Department. Thus, what a party may consider to be his or her rights do not loom large in the court's consideration.

3. Custody

The concept of custody of the child, as opposed to daily care and control, covers long-term decisions such as education, religious upbringing, extra-curricular activities and medical treatment. The courts often, and even preferably, award custody to both parents jointly encouraging them to discuss, compromise and reach agreement.

Sole custody will usually only be awarded against the wishes of one of the parties when that parent has demonstrated an inability or refusal to co-operate in this way. Even if a parent is granted sole custody of the child there is still an obligation on the part of that parent to seek agreement on custodial matters.

4. Care And Control

Care and control involves the day to day upbringing of the child. Almost always the child will live with the parent granted care and control, although there may be occasions when circumstances dictate that the child should live with, for example, a grand-parent or other relation. There is no presumption that either the father or mother is in a better position to have care and control of the child.

5. Access

This is the right of the parent not having care and control of the child to see the child regularly. This is encouraged by the courts to facilitate bonding with both parents. This may also include overnight stayover

access when the child will stay in the home of the party having access. There may also be the parental right to have regular telephone access to the child and in due course to correspond by letter or email.

Depending upon the state of relations between the parties access will either be informal – that is to say agreed flexibly by the parties as they go along – or,

where this does not work, defined by reference to the time and days of access, such definition stated in a court order.

Whilst every effort has been made to ensure the accuracy of this article it is general in nature and does not constitute legal advice of any kind. You should seek your own personal legal advice before taking legal action. We accept no liability whatsoever for loss arising out of the use or misuse of this article.

RAVENSCROFT & SCHMIERER

Solicitors Notary Rechtsanwälte

Ravenscroft & Schmierer

Unit 1802, 18/F, Ka Wah Bank Centre

232 Des Voeux Road Central

Hong Kong

Tel: +852 2388 3899

Fax: +852 2385 2696

Email: teams@rs-lawyers.com.hk