Recommendations for Reform of the Japanese Law

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In view of these concerns, many scholars believe that Japan’s Adult Guardianship Law is in need of a fundamental overhaul. In my view, two critical reforms would move the Adult Guardianship Law closer towards achieving its intended objectives.

The first is to thoroughly implement the ‘socialization of adult guardianship.’

More than a decade ago, Japan’s social welfare benefits system reached a major turning point, “from administrative measures to contracts,” with the introduction of the Long-term Care Insurance Act. Realigning the relationships of welfare service benefits through contracts meant, in conceptual terms, putting the providers and the users of services on a level playing field, in which both are parties to a contract. In many cases, however, the users of welfare services have some difficulties with regard to their contractual capabilities, and a paradoxical situation could not help but arise in which the greater the need for a service is, the more difficult it was to access. To prevent such a state of affairs, the development of a system to support the conclusion of contracts by users was essential. In this sense, the Adult Guardianship Law has become one of the most important components of the Japanese welfare system. And it has gone beyond the realms of civil and family law, providing the additional function of serving as a conduit between various social welfare laws.

If the Adult Guardianship Law enables incapacitated persons to access social welfare services, it could be thought that guaranteeing it to a wide sector of society is a responsibility for government and regional bodies as a part of developing the social welfare infrastructure.

This is the ‘socialization of adult guardianship,’ and there is an urgent need to establish a publicly funded support center for this purpose.
My second recommendation concerns responding to global trends.

It is essential that Japan’s Adult Guardianship system can adapt itself to the needs of those who are or may become incapacitated. A decade has passed since the current Adult Guardianship Law came into force, and there is now a need to carry out an appropriate review of them. Germany, where the Betreuungsrecht (Guardianship Law) came into force in 1992, has already witnessed three revisions to the law. Austria’s 1984 guardianship law, the Sachwalterrecht, was also revised in 2006. And in the United Kingdom, the 1986 Enduring Power of Attorney Act was enriched and strengthened as the Mental Capacity Act in 2005.

In Japan, on the other hand, there is very little movement in the direction of reviewing Adult Guardianship Law. This is unfortunate. If we fail to make the Adult Guardianship Law one that can pay adequate consideration to the physical custody of the principal, I fear that we will be unable to meet the needs of users and will fall behind global standards. For example, the (official) interpretation of not admitting the right of consent with regard to medical actions in adult guardianship in no way whatsoever reflects the needs of the people in question.

The 2006 United Nations Convention on the Rights of Persons with Disabilities is absolutely vital. Its 12th Article asserts that “…. persons with disabilities have the right to recognition everywhere as persons before the law.” I think that Japan must
seriously consider whether or not its Adult Guardianship Law is contravening this philosophy.

There can be little doubt that making a reality of the ideals and spirit of this UN convention cannot be achieved without revisions to the current Adult Guardianship Law.

Firstly, the three current categories of statutory guardianship – namely guardianship, curatorship and advisership – can longer be maintained. My own personal opinion is that these three types of statutory guardianship should be abolished and integrated into a single category, with adviserships only retained, and that the requirement for the agreement of the principal at the commencement of an advisership should also be rescinded. By integrating statutory guardianship into the single category of adviserships, a platform for thoroughly putting into practice the supported decision making concept in Japan could be created.

Secondly, while the current Adult Guardianship Law’s system is somewhat skewed towards property management, in order to pay due consideration to the livelihood of the principal it should be clearly stated that personal affairs are covered too.

Thirdly, a complete review of disqualification is required; in particular, the uniform forfeiture of voting rights is an urgent legislative issue.

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**Recommendations**

- 2) Respond to worldwide trends
- 3) “Yokohama Declaration”
- 4) “Act for Promoting Use of the Adult Guardianship Law”