

Hong Kong Bar Association

Circular No. 134/18

To : All members and pupils of the Bar Association
From : Corinne Remedios, Chairman, Committee on Family Law
Date : 27 July 2018

FAMILY PRACTITIONERS NOTE - APPEALS IN CHILDREN CASES

Members' attention is drawn to the Court of Appeal decision in CAMP 67/2018 [2018] HKCA 436, wherein Lam VP deprecated the time taken in seeking leave to appeal in a matter involving a child (here, a relocation case). Going forward, guidance was given as to strict case management, in the following terms (subject to modification or addition by each family judge in light of the special circumstances of the case before the court):

- (a) Short of exceptional circumstances, the judge processing the leave application should be the same judge who have made the subject decision in respect of which leave to appeal is sought;
- (b) As the judge would be familiar with the case and the arguments advanced, and given that an unsuccessful party can renew the application in the Court of Appeal, leave application can be processed on the papers without any oral hearings. Hence unless the judge directs otherwise, no appointment should be given for such hearing when the summons is lodged;
- (c) Directions should be given for skeleton submissions to be lodged (with deadlines and page limits) and the judge shall read the same before deciding if oral hearing is necessary;
- (d) Non-compliance with the direction to lodge skeleton submissions by an applicant should be sanctioned by the striking-out and dismissal of the application on the ground of failure to prosecute the application with due diligence;
- (e) Unless the judge considers that there are matters which calls for clarification or there are other good reasons requiring an oral hearing to be held, the application shall be processed on the papers;

- (f) The application shall not be an elaborate process and filing of evidence should only be permitted when there is good justification for the same. If the process can be completed within a short period, usually there will not be any justification for putting in fresh evidence on the pretext of updating developments;
- (g) Costs of the application should be assessed summarily. The parties should also lodge costs statement at the same time to facilitate summary assessment;
- (h) If the judge directs for an oral hearing, such hearing should not be long. Parties should not be allowed to repeat what has been set out in the written submissions. The purpose of the hearing should be confined to clarification of matters and to assist the court on specific issues that the court invites the party to address. Usually, a 30-minute appointment should be sufficient;
- (i) This practice should equally be applicable to litigants in person. There is no reason why such litigants should have more claims on the use of court's time and other judicial resources.