

PRACTICE DIRECTION – 15.12

MATRIMONIAL PROCEEDINGS AND FAMILY PROCEEDINGS

A Introduction

1. This Practice Direction sets out the applicability of the Rules of the High Court (Amendment) Rules 2008 (“RHC”) and Rules of the District Court (Amendment) Rules 2008 (“RDC”) under the Civil Justice Reform to the Matrimonial Proceedings and the Family Proceedings with necessary modifications.

“Court” in this Practice Direction refers to the High Court or the Family Court.

“Family Court” means that division of the District Court which is for the time being assigned by the Chief Justice to deal with Matrimonial Proceedings and / or Family Proceedings, as defined in this Practice Direction.

B Definitions of “Matrimonial Cause” and “Matrimonial Proceedings”

2. For the purpose of this Practice Direction,

“Matrimonial Cause” means any proceedings for divorce, nullity, judicial separation, presumption of death and dissolution of marriage (see section 2 of the Matrimonial Causes Ordinance (Cap. 179) (“MCO”).

“Matrimonial Proceedings” means any proceedings with respect to which rules may be made under section 54(1) of the MCO, and include those proceedings under the Matrimonial Proceedings and Property Ordinance (Cap. 192) (“MPPO”) (see rule 2 of the Matrimonial Causes Rules (Cap. 179A) (“MCR”).

C Application of the Matrimonial Causes Rules

3. For the avoidance of doubt, the MCR, being those rules made under section 54(1) of the MCO shall continue to apply to all

Matrimonial Proceedings, and the jurisdiction vested in the Court by the MCO shall so far as regards procedure, practice and powers of the Court be exercised in the manner provided by the MCO.

D Definition of Family Proceedings

4. For the purpose of this Practice Direction,

“Family Proceedings” include proceedings issued under the following Ordinances, and any of their respective subsidiary legislation:

- (1) Adoption Ordinance (Cap. 290);
- (2) Domestic Violence Ordinance (Cap. 189);
- (3) Guardianship of Minors Ordinance (Cap. 13);
- (4) Legitimacy Ordinance (Cap. 184);
- (5) Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188);
- (6) Marriage Ordinance (Cap. 181);
- (7) Married Persons Status Ordinance (Cap. 182);
- (8) Marriage Reform Ordinance (Cap. 178);
- (9) Parent and Child Ordinance (Cap. 429); and
- (10) Separation and Maintenance Orders Ordinance (Cap. 16).

5. For the avoidance of doubt, “Family Proceedings” in this Practice Direction do not include applications under the Child Abduction and Custody Ordinance (Cap. 512) or Wardship Proceedings which shall continue to be dealt with exclusively by the High Court in accordance with the current practice and rules, or applications under Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481) which shall continue to be dealt with in accordance with the current practice and rules.

E Applicability of the RHC

6. Without limiting the generality of paragraph 3 hereinabove, the RHC shall apply with necessary modifications to those proceedings below:

- (1) Matrimonial Proceedings, subject to rule 3 of the MCR;
- (2) Proceedings issued under the Domestic Violence Ordinance, subject to rule 3 of the Domestic Violence Rules;
- (3) Proceedings issued under the Married Persons Status Ordinance, subject to Order 89 of the RHC, if such proceedings are in the High Court; and
- (4) All other Family Proceedings issued in / transferred to the High Court, subject to any rules made under the respective Ordinances.

F Applicability of the RDC

7. The RDC shall apply with necessary modifications to those proceedings below:

- (1) Proceedings under the Guardianship of Minors Ordinance, subject to section 23 thereof, and Order 90 of the RDC;
- (2) Proceedings under the Parent and Child Ordinance, subject to section 18 thereof and Order 90 of the RDC;
- (3) Proceedings under the Separation and Maintenance Orders Ordinance, subject to section 11 thereof and Order 89 of the RDC;
- (4) Proceedings under the Married Persons Status Ordinance, subject to Order 89 of the RDC, if such proceedings are in the District Court; and
- (5) All other Family Proceedings issued in / transferred to the District Court, subject to any rules made under the respective Ordinances.

G New Measures under the Civil Justice Reform

8. Without limiting the generality of the above, the Court may exercise the case management powers under Order 1B having regard to the underlying objectives of the Civil Justice Reform under Order 1A.

9. Some of the measures under the Civil Justice Reform are by their nature of general applicability. The following are some of the examples:

- (1) Order 2 – Effect of non-compliance;
- (2) Order 22A – Miscellaneous provisions about payments into Court;
- (3) Order 24, rule 15A – Order for limiting discovery;
- (4) Order 35, rule 3A – Time, etc. limits at trial;
- (5) Order 38, rule 4A – Evidence by single joint expert;
- (6) Order 38, Part IV – Expert evidence;
- (7) Order 41A – Statements of Truth;
- (8) Order 62 – Costs; and
- (9) Order 62A – Costs offer and payments into Court.

10. Some of the above rules may not be applicable across the board, but the Court may still apply these rules in appropriate applications in Matrimonial Proceedings / Family Proceedings and subject to the provisions set out in this Practice Direction.

H Mode of Beginning Certain Family Proceedings

11. Where there are pending any other Matrimonial Proceedings or Family Proceedings, any application under section 3 of the Domestic Violence Ordinance, or section 18A of the Marriage Ordinance, may be made by summons in such other Matrimonial Proceedings or Family Proceedings.

12. Except in the case aforesaid, and unless otherwise specified in any of the Ordinances and / or Regulations relating to Family Proceedings, and notwithstanding

- (1) Order 5 of the RHC / RDC, and
- (2) Order 89 and Order 90 of the RHC / RDC

the appropriate mode of beginning any Family Proceedings should be by way of Originating Summons, in the expedited form, i.e. Form No. 10 in Appendix A, or if applicable, in the *ex parte* form, i.e. Form No. 11 in Appendix A, unless otherwise directed by the Court.

13. Where the mode of beginning of Family Proceedings is by way of Originating Summons, notwithstanding Order 7, rule 2(2) of the RHC / RDC, the applicant is to be called “Applicant” and the respondent “Respondent”, instead of “Plaintiff” and “Defendant”.

I Financial Proceedings in Matrimonial / Family Proceedings

14. In addition to those applications to which Practice Direction 15.11 currently apply, the Court may direct, on application by one or more of the parties or of its own accord, in other applications for financial provision for the applicant and / or any child in Matrimonial Proceedings / Family Proceedings and where applicable,

- (1) that the parties do file and exchange / serve a Financial Statement by way of Form E; and
- (2) that any other part of Practice Direction 15.11 be extended to such applications.

J Case Management (Order 25)

15. In order to provide better case management to Matrimonial Proceedings and Family Proceedings, the Court may, where applicable, apply some of the concepts and provisions contained in Order 25 of the RHC / RDC and any Practice Direction issued in relation to Case Management in Matrimonial Proceedings / Family Proceedings, with necessary modifications.

16. The parties shall try to settle any disputes in the case by mediation / alternative dispute resolutions.

17. The parties shall try to agree on the list of disputed legal / factual issues as early as practicable.

18. The parties shall try to agree on the directions in relation to discovery / interrogatories / financial questionnaires.

K Expert Evidence (Order 38)

19. For the avoidance of doubt, those provisions in Order 38 of the RHC / RDC, in relation to “Expert Evidence” and any Practice Directions issued in connection therewith, shall, unless the Court orders otherwise, apply with necessary modifications, in defended / contested Matrimonial Proceedings / Family Proceedings when an expert needs to be instructed, subject to the directions hereinafter set out in this part.

20. In Matrimonial Proceedings / Family Proceedings relating to children, which are held in chambers and not open to public,

- (1) the Court’s permission is required to instruct an expert. Such proceedings are confidential and, in the absence of the Court’s permission, disclosure of information and documents relating to such proceedings risks contravening the law of contempt of Court or statutory provisions protecting this confidentiality.
- (2) Before permission is obtained from the Court to instruct an expert, it will be necessary for the party wishing to instruct an expert to make enquiries designed so as to provide the Court with information about that expert which will enable the Court to decide whether or not to give permission.
- (3) Such preliminary enquiries, and the disclosure of anonymised information about the case which is a necessary part of such enquiries, will not require the Court’s permission and will not amount to any contempt of Court.

21. In Matrimonial Proceedings (except as provided in rule 121 of the MCR) and in Family Proceedings, no document filed or lodged in the

registry, other than a decree or order made in open Court, shall be open to inspection by any person without leave of the Court, and no copy of any such document, or of an extract from any such document, shall be taken by, or issued to, any person without such leave. Thus, permission should first be sought from the Court before any copies of documents are provided to any expert to be instructed.

L Statements of Truth (Order 41A)

22. Order 41A of the RHC / RDC and any Practice Direction issued thereunder shall apply, with necessary modifications to Matrimonial Proceedings / Family Proceedings.

23. For the avoidance of doubt, documents to be verified by a Statement of Truth in Matrimonial Proceedings and Family Proceedings include:

- (1) petition, answer, or reply;
- (2) a joint application;
- (3) an originating application;
- (4) responses to questionnaires / requests for Further and Better Particulars;
- (5) a statement as to arrangement for children;
- (6) a witness statement;
- (7) an expert report; and
- (8) any other document verification of which is required by any other statutory provisions or practice directions.

24. The Court may order any document submitted in Matrimonial Proceedings / Family Proceedings to be verified by way of a Statement of Truth.

M Costs and Costs Offer (Order 62 and Order 62A)

25. Orders 62 and 62A of the RHC / RDC and any Practice Directions issued thereunder shall apply, with necessary modifications to Matrimonial Proceedings / Family Proceedings.

26. In particular, in order for the Court to make a summary assessment of costs of an interlocutory application under Order 62, rule 9A of the RHC / RDC, a party should prepare a Statement of Costs, which should contain, as far as possible, such information as set out in Appendix A of Practice Direction 14.3 issued under Order 62, rule 9A. Such statement should be signed by the party acting in person or his / her solicitor, and should be lodged and served on any party against whom summary assessment is sought together with the skeleton argument for the substantive application.

N Appeals Against Decree Nisi, Imprisonment Order

27. As set out in section 63 of the District Court Ordinance and Order 1, rule 2(2A) of the RDC, and for the avoidance of doubt, an appeal against a decree nisi or a decree absolute of divorce, or nullity of marriage, from the Family Court, which is part of the District Court, falls within the ambit of Order 58, rule 2 of the RDC, and an application for leave to appeal must be made within the time limit set out under Order 58, rule 2(4) of the RDC.

28. The provisions in Order 59 of the RHC in relation to appeals against a decree nisi of divorce or nullity or marriage are only applicable if such decree nisi is pronounced in the High Court.

29. An appeal to which section 63(3) of the District Court Ordinance applies does not require leave and for the avoidance of doubt, this includes any imprisonment order made in the Matrimonial Proceedings or the Family Proceedings by the Family Court.

O Commencement Date

30. This Practice Direction shall come into effect on 2 April 2009.

Dated this 12th of February 2009.

(Andrew Li)
Chief Justice