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HCAD 13/2024
[2024] HKCFI 3356

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ADOPTION PROCEEDINGS NO. 13 OF 2024

IN THE MATTER OF [REDACTED]
[REDACTED], an
infant [REDACTED], and [REDACTED]
[REDACTED] (“the Applicant”)

and

IN THE MATTER OF the Adoption
Ordinance, Cap. 290

BETWEEN

B Applicant

and

B 1st Respondent
DIRECTOR OF SOCIAL WELFARE 2nd Respondent

Before: Hon H. Au-Yeung J in Chambers (Not Open to Public)

Date of Hearing: 15 October 2024

Date of Judgment: 15 October 2024

Date of Reasons for Judgment: 22 November 2024

REASONS FOR JUDGMENT

INTRODUCTION

1. This application for an adoption order was ordered to be transferred to the Court of First Instance by a Judge of the Family Court (“**the Judge**”). The relevant order which was made on 24 April 2024 reads:

“[...]

3. Given this adoption by a sole applicant with: -

- same sex orientation; **and**
- a registered marriage with his life partner in [REDACTED], England, in 2013

may have wide implications and precedential effect on future adoption cases, guidance from higher courts are of valuable assistance.

4. I hereby direct that this adoption case be transferred to the Court of First Instance.

[...]” (“**the Transfer Order**”)

BACKGROUND

2. The following summary of the background of the present case is largely adopted from the written submissions of the counsel representing the applicant.

3. The 1st respondent (“**the Child**”) was born on [REDACTED] 2021 to his birthmother [REDACTED]. He was born to have [REDACTED] [REDACTED] and has been diagnosed with significant developmental delay [REDACTED]

4. On 23 February 2022, The Child’s birthmother gave her general consent to adoption in the usual form (Form 4A). Further, the Child was placed into the care of the Director of Social Welfare (“**the Director**”) on 4 March 2022, when he was only 3 months’ old, pursuant to a Care and Protection Order made by a Magistrate. Thus, by operation of law (section 5(5F) of the Adoption Ordinance (Cap.290, Laws of Hong Kong) (“**the Ordinance**”)) and by Order of the Juvenile Court, the Director became both the guardian *ad litem* (entitled to perform such duties of a guardian as may be necessary in the best interests of the child) and the legal guardian of the Child.

5. Soon thereafter, the Child’s case was referred to the Adoption Unit Matching Panel. After a year of searching, the Director found a

suitable placement for the Child, that is, the applicant. The Child has been living under the care of the applicant (and his husband (“**the Husband**”)) since 9 June 2023. The Social Welfare Department reports that the Child is a happy toddler who has attained progressive overall development under the proper care of the applicant – in other words, the match is successful and the Child has responded well to this placement.

6. The applicant is an established [REDACTED], who lived in Hong Kong from September 2002 until December 2003 and then permanently since January 2005. He had been in a registered civil partnership with the Husband in [REDACTED], Scotland, since [REDACTED] 2013, which subsequently was changed into a registered marriage in the same jurisdiction on [REDACTED] 2015 [REDACTED]. The Husband has permanently resided in Hong Kong since April 2008.

7. As the applicant and the Husband wished to adopt a child, the applicant applied as a sole applicant for adoption of a ward of the Director on 2 February 2016.

8. In compliance with section 27 of the Ordinance, the applicant applied for assessment of his suitability to be an adoptive parent. His social background, including but not limited to his personality, early life experiences, education, employment, interest and integration into the community, religion, physical, mental and emotional health, economic situation, accommodation, love relationship, views of his extended families, parenting attitude and capabilities, childcare arrangement, motives for adoption, adoptive parenthood, views on telling of adoption,

inter-cultural/racial issues, child preference and comments from referees had been assessed.

9. As a matter of policy, if a sole applicant is in a relationship with another person who would be involved in the childcare of the infant and affect the childcare plan for the infant, the partner of the applicant would also be included in the aforesaid suitability assessment. This is irrespective of the sexual orientation of the applicant and his/her partner and whether they are registered as civil partners or as married in a foreign jurisdiction. Hence, the Husband was also involved in the process of assessment.

10. As the applicant has been assessed and approved under section 29(1) of the Ordinance to be a suitable prospective adoptive parent (“PAP”), he was put in the prospective adoptive home pool as one of the suitable PAPs available for consideration by the matching panel of the Adoption Unit of the Social Welfare Department.

11. The aim of adoption service is to find permanent and suitable homes for children whose parents are unable or unwilling to take care of them.¹ In matching an infant with the most suitable PAP, a number of factors relating to the PAP, such as his/her parenting capability, child care arrangement, support network, etc. will be considered. For the infant, his/her ethnic background, cultural heritage, family background, individual needs such as health condition, character, history of growth and development, developmental needs, etc., would also be taken into account.

¹ Further Social Welfare Officer’s Report dated 30 January 2024, at §4 [B/9/55]

12. The matching panel would consider all PAPs in the matching pool in respect of a particular infant and arrive at a final decision by consensus with the best interests of the infant as the cardinal principle in the matching/decision-making process. Infants with no suitable local adoptive home available for them would be referred for inter-country adoption with local matching in parallel.

13. The matching panel eventually determined that the applicant was the most compatible parent for the Child within the pool of the then existing options. In other words, the applicant was determined to be the best candidate to adopt the Child in his best interests. In fact, the applicant was the only PAP in the home pool who was willing to accept the Child's profile.

14. As aforesaid, the Child has been placed under the care of the applicant since 9 June 2023 with a view to adoption. The applicant has ceased working since 4 June 2023 and become the Child's major caregiver. He escorted the Child to attend all trainings, medical appointments and a private playgroup regularly. He also brings the Child to the pool and playground in the morning (if weather allows) and does home training for motor development in the afternoon. Childcare arrangements by the applicant have been considered highly satisfactory. The Child has bonded well with the applicant and the Husband, and has good adjustment in the adoptive home. The Child has also made significant improvement on his muscle tone. He now manages to stand with minimal support, sit still without falling to the sides or leaning forward, and walk with assistance.

15. An application for an adoption order (FCAD 37/2023) was then taken out by the applicant on 4 October 2023. For such a purpose, the Director has provided a General Report on 8 December 2023 and recommended the granting of an adoption order to the applicant as it is opined that such an order would be in the best interests of the Child.

16. The substantive hearing for the adoption application was initially fixed to be heard before the Judge on 20 December 2023. However, on 18 December 2023, the Judge sent (through a court clerk) a Memorandum to the Director (“**the Memorandum**”) and raised certain questions concerning, *inter alia*, the impact of the applicant’s homosexual orientation and his relationship with the Husband on the life-long sexual orientation development of the Child and whether the Child’s best interests would be served if the adoption order is made. To give the Director adequate time to submit a report on those questions, the original hearing date was vacated.

17. On 20 December 2023, the applicant sent a response to the court clerk, in an attempt to address the questions raised by the Judge in the Memorandum. The response was accompanied with quite a number of case authorities (including Judgments of the Court of Final Appeal and the Court of Appeal) as well as academic work.

18. The Judge then ordered, *inter alia*, that the Department of Justice shall assist the Court in giving their views and submissions on the response and authorities provided by the applicant.

19. On 30 January 2024, the Director lodged a Further Report (“the Further Report”), and explained why she maintained her view that the proposed adoption arrangement is considered to be in the best interests of the Child. However, the Director has not addressed the Judge’s query on whether the applicant’s homosexual orientation and his relationship with the Husband would have any impact on the life-long sexual orientation development of the Child.

20. On 9 February 2024, the Department of Justice wrote to the Judge. For reasons which will be made apparent in the latter part of this Reasons for Judgment, I should quote the following parts of the Department of Justice’s reply:

“We refer to captioned proceedings, the directions made by [the Judge] that the Department of Justice be invited to assist the Court with the views and submissions on the material enlisted in the List of Authorities and the answers provided by the Applicant on 20 December 2023.

2. On the Court’s requisitions [...], we are instructed that the Social Welfare Department would like to supplement that there is no definitive evidence to reach a conclusion on requisition (b)². As for requisition (c)³, according to [the Further Report ...], the present adoption arrangement is considered to be in the best interest of the infant concerned. [...]

3. Insofar as the various studies, articles, journals and academia cited therein the Applicant’s submissions, **DoJ expresses no views on the materials and answers provided by the Applicant**. This however is not to be construed as our general endorsement of the contents thereof. The Secretary for Justice has no intention to participate in the proceedings.

[...]”

² Requisition (b) relates to the question of whether the applicant’s homosexual orientation and his relationship with the Husband would have any impact on the Child’s sexual orientation development life-long

³ Whether the Child’s best interests would be served if the adoption order is made

(emphasis added)

21. On 24 April 2024, the Judge directed that the applicant's adoption application be transferred to the Court of First Instance (see [1] above).

22. A call-over hearing has been held as a result on 5 June 2024, in which this Court ordered, among other things, that:

(1) The Official Solicitor be appointed as guardian *ad litem* of the Child in place of the Director;

(2) The Director be added as the 2nd respondent herein;

(3) The application be adjourned to a date to be fixed for argument.

23. The substantive hearing was subsequently fixed for 15 October 2024.

24. Having considered the written submissions lodged by counsel representing the applicant, the Child and the Director respectively as well as the oral submissions made at the substantive hearing (to which this Court is most grateful), this Court was satisfied that it is indeed in the best interests of the Child that an adoption order should be made. I further took the view that not only an adoption order should be made, but also that it should be made forthwith without further delay. A final adoption order⁴

⁴ With no order as to the costs of the action

was therefore pronounced at the end of the hearing, with the Reasons for Judgment to be handed down in due course, which I now do.

HOMOSEXUAL ORIENTATION AND SAME-SEX MARRIAGE

25. I now turn to consider the question raised by the Judge, namely, the approach that the Court should take in an adoption application made by a sole applicant with same sex orientation and a registered marriage with a partner.

Homosexual orientation

26. In my view, for the present purpose, the starting point is section 8(1)(b) and section 8(1)(ba) of the Ordinance which provide that:

“The Court before making an adoption order shall be satisfied –

[...]

(b) that the order if made **will be in the best interests** of the infant, due consideration being for this purpose given to the wishes and opinions of the infant, having regard to the age and understanding of the infant;

(ba) [...] taking into account the information obtained by the Director from the Commissioner of Police, the applicant is a fit and proper person to be granted the adoption order;

[...]”

(emphasis added)

27. When considering the best interests of the Child, it is now trite that the Adoption Checklist should be adopted by the Court: *Director of*

Social Welfare v YPC [2020] 5 HKLRD 233, [2020] HKCFI 2290, at [69], [71] and [75].

28. In this Reasons for Judgment, I do not think it is necessary to go through the items in the Adoption Checklist one by one. It suffices for this Court to note that, putting aside the applicant's homosexual orientation and his same-sex marriage for the time being, there is a consensus and I agree that it must be in the best interests of the Child for the adoption order to be made. The only question is whether the aforesaid sexual orientation and marriage would have any impact on the adoption application.

29. In this regard, parties have helpfully placed before the Court a number of authorities for consideration, and I will refer to some of them below.

30. In *S v S (Custody of Children)* (1980) 1 FLR 143, the mother developed a lesbian relationship in the course of her marriage. She then left her former husband. She applied for custody of their 2 children. In the welfare report, the welfare officer recommended that the mother should have the care of the children. Although the psychiatric specialists concerned agreed there was no danger of the children being led into deviant sexual ways, one of them took the view that the father should have the care, because if the children were with the mother, there was the social danger that they would be caused social embarrassment and hurt and it could be harmful to them if the mother's lesbian relationship became known in the locality. At the end of the day, the court decided not to follow the welfare officer's recommendation, and made an order that it was in the

interests of the children for them to be cared by the father by reason of the said social danger.

31. When considering this case, the Court should of course bear in mind that the social atmosphere back in 1980 was very much different from that of today. That is the reason why Sir James Munby P. reminded in *Re M (Children) (Ultra-Orthodox Judaism: Transgender) (Stonewall Equality Ltd & Anor intervening)* [2018] 3 All ER 316 that welfare is to be judged by reference to the changing views, as years go by, of reasonable men and women as of today, and therefore there is a need to have regard to the ever changing nature of the world including changes in social standards and changes in social attitudes. This is particularly significant because of the remarkable changes in recent years. It is essential that our law, including family law, shall keep pace with the social realities.⁵

32. In *Re P (A Minor) (Custody)* (1983) 4 FLR 401, the marriage of the parties broke down when the mother left the father to start a lesbian relationship with another woman. The mother took with her the child of the marriage and another child who was a child of her former marriage. A custody order was made in respect of the children in favour of the mother. The father then appealed, contending that in no circumstances should a child be brought up in a homosexual household, since it would expose the child to “corruption” by force of example or by erosion of instinctive rejection of devious conduct which inevitably resides in the normal mind, and adversely affect the child’s “reputation” due to expressions of ridicule or scorn over the mother’s lesbian relationship. It was held by the English Court of Appeal that:

⁵ At [44] – [45]

(1) There was no evidence to indicate that there was any likelihood of corruption of the child even though it was clear that the child would be likely to be disadvantaged from living in such a household;

(2) That disadvantage had to be weighed against the advantage of a warm mother's care and this was the balancing operation that the court had to undertake;

(3) There was no total nor inevitable embargo preventing the court in every case from granting custody to a parent in a homosexual household simply by its existence, but the court should look at the circumstances of each case.

33. In *B v B (Minors) (Custody, Care and Control)* [1991] 1 FLR 402, the question before the court was also whether the care and control of a child should be granted to the mother who had a lesbian relationship with another woman. The specific issue which the court had to resolve was the desirability of bringing up a child in a lesbian household. According to the expert evidence adduced, there was no increased incidence of homosexuality among the children of homosexual parents. The court therein in the end granted care and control of the child to the mother by taking into account various factors including the court's finding that the mother was a caring and loving mother with a good understanding of the psychological needs of children.

34. The *B v B* case was cited in our own Family Court in *W v W* [2005] 1 HKFLR 312. In this case, both the lesbian mother and the father wanted to obtain care and control of children of their marriage. The father's case was that the mother's "coming out" had had a detrimental effect on the family, and that the stigma of homosexuality still existed in Hong Kong and the children should not be subjected to this. The children had been interviewed by a psychologist and a social welfare officer and were found to be happy in both homes. In his Judgment, Geiser DJ referred to the summary of a policy statement from the American Academy of Pediatrics dated February 2002 which stated that:

"[...] the weight of evidence gathered during several decades using diverse examples and methodologies is persuasive in demonstrating that there is no systematic difference between gay and nongay parents in emotional health, parenting skills, and attitudes toward parenting. No data have pointed to any risk of children as a result of growing up in a family with 1 or more gay parents. Some among the vast variety of family forms, histories, and relationships may prove more conducive to health psychosexual and emotional development than others."

35. His Honour then concluded:

- (1) In reality, any adverse effect on the child of a lesbi – gay parent are in fact quite minimal;
- (2) Having considered numerous cases from other jurisdictions, there is no common leaning one way or the other by the courts. Each case had been decided on its own peculiar facts and the decisions are consistent in their approach that the question of homosexuality in either parent is but one of the factors that

the court takes into account when deciding what is in the best interests of the child;

- (3) As in *B v B (supra)*, the focus should not be on the mother's sexual orientation, but rather, despite her sexual orientation, whether she is a fit and proper person to have the care and control of the children.

36. With respect, I agree with His Honour's view. Whether an applicant's application for an adoption order should be accepted should depend on the ultimate question of whether it is in the best interests of the child concerned for the order to be made rather than solely on the basis of the applicant's sexual orientation which should only be one of the factors to be considered. Indeed, in the present case, no evidence has been adduced to show that the fact that the parents are homosexual would have any negative impact on the sexual orientation development of the Child. Further, in the last 20 years since *W v W*, our society norm regarding same sex orientation and marriage have evidently moved on. These serve to reinforce the appropriateness of the approach adopted.

37. Further, the *W v W* approach has also been adopted recently, for example, in *M v WP & Others* [2021] HKCFI 2699, in which B Chu J considered factors in the Adoption Checklist, including the 16-year-old child's relationship with the 1st defendant therein and the fact that the child did not resist the same-sex relationship between the 1st defendant and his cohabitee, when considering whether an adoption order should be made.

38. I therefore hold the view that this should continue to be the approach to be followed by the Court.

Same-sex marriage

39. Section 4 of the Ordinance provides that:

“Subject to the provisions of this Ordinance, the Court may, upon an application made in the prescribed manner, make an order authorizing—

(a) the sole applicant; or

(b) the applicants who apply jointly as 2 spouses, to adopt an infant.”

40. Pursuant to section 5(5)(b) of the Ordinance, if the adoption is made by one of the 2 spouses, an adoption order shall not be made by the court except with the consent of the other spouse.

41. In the present case, the applicant is married to the Husband in Scotland. The question which arises immediately is whether the Husband should be regarded as applicant’s “spouse” for the purpose of the Ordinance because, if he is so regarded, the applicant’s application must be supported by the consent of the Husband (in the form of Form 4).

42. The term “spouse” is not defined in the Ordinance. However, it is evident that the Director has always treated that term to mean somebody of the opposite sex.

43. Having said that, that does not mean that the term “spouse” in the Ordinance cannot be interpreted to include the same-sex partner of the applicant who has formally got married at a place which recognise same-sex marriage – see for example, *Leung Chun Kwong v Secretary for the Civil Service* (2019) 22 HKCFAR 127, [2019] HKCFA 19 and *Ng Hon Lam Edgar v Secretary for Justice* [2023] 5 HKLRD 608, [2023] HKCA 1224.

44. The question is: whether such an interpretation is necessary in the context of the Ordinance.

45. There is also a more fundamental question as to whether this is an appropriate occasion that the aforesaid question is considered.

46. Having taken parties’ submissions into account, I agree with them that this is not such an occasion because:

- (1) There is no allegation of discrimination against the Director herein at all;
- (2) The applicant is currently applying as a sole applicant;
- (3) In order to play safe, the Husband has also executed a Form 4 so as to signify his consent to the applicant’s application.

47. Moreover, I am given to understand that even though the applicant has applied as a sole applicant, given his relationship with the Husband, the Director had taken such a relationship into account when

deciding whether the applicant is a suitable adopter of the Child. The Director had also considered the relationship between the Child and the Husband, and in this regard, the Husband's attitude towards the application must be a relevant matter to be considered. Viewed in this light, whether the Husband should be regarded as the applicant's "spouse" under the Ordinance would only affect the application procedurally but not in substance, and I cannot see why (and no one has suggested otherwise) the current practice of the Director should change, as I hold the view that the best interests of the prospective adopted child can still be sufficiently protected.

POSTSCRIPT

48. There are two further matters which should be mentioned in this Reasons for Judgment.

Case management decision made by the Court of its own initiative

49. This adoption application was originally commenced in the Family Court – a division of the District Court which is for the time being assigned by the Chief Justice to deal with matrimonial proceedings and family proceedings as defined in Practice Direction 15.12.

50. The action was subsequently transferred to the Court of First Instance of the Judge's own motion. There is no doubt that the Judge had the power to do so pursuant to section 4A(2) of the Ordinance which provides that:

“An application commenced under subsection (1) may be transferred by the District Court to the Court of First Instance –

(a) at the request of any party to the proceedings; or

(b) on the motion of the District Judge.”

51. However, a feature in the present case is that the Judge had not given the parties any opportunity to address the court on the transfer.

52. In this regard, reference should be made to Order 1B rules 2 and 3 of the Rules of the District Court (Cap.336H, Laws of Hong Kong) (“RDC”)⁶ which stipulate that:

Rule 2 (Court’s power to make order of its own motion)

“(1) Except where a rule or some other enactment provides otherwise, the Court may exercise its powers on an application or of its own motion.

(2) Where the Court proposes to make an order of its own motion—

(a) it may give any person likely to be affected by the order an opportunity to make representations; and

(b) where it does so, it shall specify the time by and the manner in which the representations must be made.

(3) Where the Court proposes—

(a) to make an order of its own motion; and

(b) to hold a hearing to decide whether to make the order,

it shall give each party likely to be affected by the order at least 3 days’ notice of the hearing.

⁶ It has been made clear by Rule 32 of the Adoption Rules (Cap.290A, Laws of Hong Kong) as well as paragraphs 4(1) and 7(5) of Practice Direction 15.12 that the RDC shall apply to adoption applications pending in the District Court

(4) The Court may make an order of its own motion, without hearing the parties or giving them an opportunity to make representations.

(5) Where the Court has made an order under paragraph (4)—

(a) a party affected by the order may apply to have it set aside, varied or stayed; and

(b) the order must contain a statement of the right to make such an application.

(6) An application under paragraph (5)(a) must be made—

(a) within such period as may be specified by the Court; or

(b) if the Court does not specify a period, not more than 14 days after the date on which notice of the order was sent to the party making the application.”

Rule 3 (Court’s power to give procedural directions by way of order nisi)

(1) Where the Court considers that it is necessary or desirable to give a direction on the procedure of the Court and that the direction is unlikely to be objected to by the parties, it may of its own motion and without hearing the parties, give the direction by way of an order nisi.

(2) The order nisi becomes absolute 14 days after the order is made unless a party has applied to the Court for varying the order.

53. It can be seen that while the said rule 3 is stated to be applicable to the procedure of the Court only, there is no such limitation as far as the applicability of the said rule 2 is concerned. There is hence an overlap between the two rules, in the sense that rule 2 can also be applicable to case management directions⁷.

⁷ Neither “order” nor “direction” is defined in the RDC

54. A decision in making an order of transfer is a case management decision relating to the procedure of the Court.

55. Reading rules 2 and 3 together, whenever a court intends to make an order (or direction) on its own initiative, the court would have the following options:

(1) To propose to make an order and hold a **hearing** to decide whether to make such an order, and in which case the court has to give each party likely to be affected by the order at least 3 days' notice of the hearing: Order 1B rule 2(3) of the RDC;

(2) To propose to make an order and give any person likely to be affected by the order an opportunity to **make representations**, and in which case the court has to specify the time by and the manner in which the representations must be made: Order 1B rule 2(2) of the RDC;

(3) To make an order directly **without hearing** the parties **nor** giving them an opportunity to make **representations**, but in which case the order must contain a statement making clear that any party affected by the order has a right to set aside, vary or stay such an order. Unless the order states otherwise, the application must be made within 14 days: Order 1B rule 2(4) – (6) of the RDC;

(4) To make an order *nisi* **without hearing** the parties if the proposed order/direction on procedure is **unlikely to be**

objected to by the parties – in such a case, a party affected by the order/direction may apply within 14 days for varying the order; if no application is made, the order *nisi* would become absolute after the expiry of 14 days: Order 1B rule 3 of the RDC.

56. With greatest respect to the Judge, there are a number of problems with the making of the Transfer Order:

(1) Insofar as it was made under Order 1B rule 3 of the RDC, I am afraid it cannot be said that the direction was “unlikely to be objected to by the parties”, because transferring the application to the Court of First Instance would necessarily mean that much costs would have to be incurred, and more importantly, the matter would be delayed. This is particularly so when the Director has already lodged two reports with the Court in full support of the application. Hence, the Judge should not have relied on Order 1B rule 3 of the RDC (if that was really the provision relied on);

(2) Furthermore, as can be seen at [1] above, the Transfer Order was not described as an order *nisi*;

(3) Insofar as the Transfer Order was made under Order 1B rule 2(4) of the RDC, it did not contain any statement (as required by rule 2(5)) making clear that any party affected by the order has a right to set aside, vary or stay such an order. To the

contrary, it appeared that it was already an absolute order of transfer.

- (4) What is more fundamental is whether the Judge should have made an order of transfer without asking the parties to make representation or to have a hearing on the matter in the first place. In my view, given the grave effect of such an order, the Judge should at least have given an opportunity to the parties to make representations on the matter.

Assistance from the Department of Justice

57. It may be recalled that the Judge had invited the Department of Justice to render assistance in relation to the materials (including case authorities) submitted by the applicant.

58. I have set out the Department of Justice's reply at [20] above.

59. It is noted that the Department of Justice did not, by such a reply, take the stance that they had no capacity to assist the Court in the present case or that it was inappropriate for them to assist.

60. Be that as it may, they regrettably chose to express no views on the materials and answers provided by the applicant. With greatest respect, such a reply is most unhelpful. In a way, this is a blatant disregard of the Judge's request without explanation.

61. The further disclaimer that “This however is not to be construed as [DOJ’s] general endorsement of the contents thereof” is even more puzzling. I simply do not understand why the author of the reply letter would think fit to adopt such a stance, as if the Judge was an opponent of the Department of Justice.

62. If the Department of Justice had acceded to the Judge’s request to assist and address on the various case authorities, it was possible that the Judge would be satisfied that the Transfer Order was not necessary at all, and in such a case, the adoption order would have been made much earlier.

63. I sincerely hope that such an unhelpful attitude would not be adopted by the Department of Justice again.

(H. Au-Yeung)
Judge of the Court of First Instance
High Court

Mr Azan Marwah and Mr Nicklaus Pannu-Yuon, instructed by Hugill & Ip,
for the applicant

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Ms Josephine Tjia, instructed by the Official Solicitor’s Office, for the 1st respondent

Ms Bonnie Y. K. Cheng, instructed by the Department of Justice, and Ms Hikki Wong, Senior Government Counsel, for the 2nd respondent

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