



THE COURT OF APPEAL FOR BERMUDA

Ref. A/50

Tuesday, 9 January 2007

CIRCULAR NO: 1 of 2007

TO ALL ATTORNEYS

Practice Direction - Core Bundle for Appeal Cases

The November 2006 Court of Appeal session proved to be a 'documentary nightmare' for the Registry staff as well as the Appeal Justices. The Appeal Justices do not wish for the same to occur again. The following is an extract from one of the cases heard and it expresses their sentiments. Keep this in mind prior to settling the record for future 'big' cases.

" 24. This appeal has been a deplorable example of the way in which the Court can be overburdened with documents in civil appeals, a tendency which appears to be increasing and which this Court considers should be halted forthwith. This was a straightforward appeal on Forum conveniens and certain related issues and it was set down for a maximum two-day hearing. There is a long history of bitter and no doubt well-funded litigation between the parties, and an enormous number of documents has been generated, but that does not mean that the whole corpus has to be produced and reproduced for the Court at every stage. It does not begin to excuse the Appellants' failure to attempt any sort of editing or selection process, or to prepare a Core Bundle.

25. The bare statistics are sufficient to make good this charge. Four volumes of what were called Pleadings, which mostly were Affidavits and copies of Exhibits, totalled more than 1000 pages. Very few of these documents were referred to at the hearing, nor would many more have been if the forum issue had been fully argued. It was almost unbelievable that in addition to these four bundles, together with Written Submissions and copies of the legal authorities relied upon, no less than twelve bundles containing in total more than 5600 pages were provided for each member of the Court. These bundles were wholly unnecessary, and any process of selection would have resulted in very few of their contents finding their way into any Core Bundle, sensibly compiled. In total, therefore, each member of the Court received in excess of 7000 pages when only a small fraction of that number could possibly be required for the hearing of the appeal.

26. The time has come, in our view, for the Court to make it clear that extravagances of this sort, which we hope will never be repeated, can result in special Costs Orders which at least will ensure that the financial burden is not passed on to an opposing party. But we are also concerned to make it clear that preparing a Core Bundle and marshalling (only) the relevant documents are the first steps towards effective appeal advocacy. (The underlining is my emphasis.)

27. *It does not follow from this that in large cases, where a great mass of documents has been accumulated, a complete set should not be available in or near the Courtroom, for reference if required. Modern copying facilities are such that individual documents can be copied almost immediately, and we would far prefer the inconvenience of adding to a Core Bundle, as and when necessary, to being overburdened with irrelevant documents as we were in this case.*”

The Core Bundle should contain the bare minimum documents of whatever is required to prove your points of appeal. A Chronology of Events may be useful in some circumstances and this is only to support your position. However, at no time should the numbers of pages be excessive. Note that Paragraph 27 above does suggest a complete set of documents be available for the Court, should the need arise.



REGISTRAR FOR THE COURT

**cc: The Attorney-General's Chambers
Director of Public Prosecutions**

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