

17TH CONFERENCE OF CHIEF JUSTICES OF ASIA AND THE PACIFIC

SESSION 4

ROLE OF COURTS REGARDING RECENT FAMILY ISSUES – HOW TO TACKLE FAMILY ISSUES

ON CHILD WELFARE AND DOMESTIC VIOLENCE

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Law deals with legal relationships and legal remedies. Consequently, the application of the law has real and lasting effects on the lives of the parties involved. Nowhere is this more keenly felt than in the context of family law disputes. These commonly involve issues of child welfare and domestic violence. But despite the breakdown of the legal relationships, the biological and familial relationships and their attendant dynamics endure. Courts involved in the administration of family justice must recognise this reality and be especially alive to the advantages of embracing a multi-disciplinary and conciliatory approach towards the resolution of such disputes.

Introduction

1 Chief among the concerns of family breakdown is the profound and negative impact this potentially has, not only on the affected spouses but also and perhaps especially on the children

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of the marriage. Over the years, studies have shown that continued exposure to intense inter-parental conflict and violence during marriage has correspondingly adverse and long-lasting psychological, emotional and behavioural effects on children.¹

2 Over the past two decades, neuroscientists studying the human brain have learnt that fear and trauma in childhood can have a profound impact on the developing brain, which can give rise to problems with coping socially in the later stages of life. A growing body of empirical research also suggests that divorce increases the risk of adjustment problems developing in children and adolescents. In short, growing up in a chaotic and threatening familial setting places a child at considerable risk of becoming impulsive, aggressive and inattentive, and of having difficulties in maintaining relationships.² Children caught in the fallout of such a situation will often require special educational services, mental health or even criminal justice interventions, where appropriate.

3 American psychologists have also found that the children of divorced families are more than twice as likely to have behavioural, social and academic problems as are children of intact families.³ In Singapore, the Ministry of Social and Family Development recently completed a

¹ JS Wallerstein and S Blakeslee, *Second Chances: Men, Women, and Children a Decade After Divorce* (New York, Tickner & Fields, 1989).

² PR Amato and A Booth, *A Generation at Risk: Growing up in an Era of Family Upheaval* (Harvard University Press, 1997).

³ EM Hetherington, "Should we stay together for the sake of the children?" in *Coping with divorce, single parenting, and remarriage* (Erlbaum, 1999) (EM Hetherington, ed) at pp 93–116.

study of youth offenders which found, in line with the reported findings of some of the foregoing studies, that domestic circumstances such as a family history of criminal behaviour, non-intact family structures and poor parenting were “significantly predictive” of general recidivism.⁴ On the other hand, strong and protective familial networks have been found to be associated with the satisfactory completion of probation sentences amongst youth offenders.⁵

4 These problems that attend a family breakdown are compounded by the reality that familial responsibilities and dependencies do not extinguish with the legal dissolution of a marriage. The sources of stress for a child caught in a divorce can be complex, manifold and persistent. The stress typically arises in the course of the parental conflict (sometimes coupled with domestic violence), which predates and leads to the separation, grows during the process of separation itself, and intensifies with the uncertainties that attend the future after the separation of the parents. In the latter context, the causes of such uncertainties may typically be characterised by the following factors: continued parental conflict following their separation; diminished parenting roles after divorce; the child’s loss of sustained relationships with the non-custodial parent and his/her extended family; reduced economic opportunities and standards of

⁴ CM Chu *et al*, “The Utility of the YLS/CMI-SV for Assessing Youth Offenders in Singapore” (2014) 41(12) *Criminal Justice and Behavior* 1437 at 1451; G Chng, *et al*, “A Latent Class Analysis of Family Characteristics Linked to Youth Offending Outcomes” (2016) 53(6) *Journal of Research in Crime and Delinquency* 765–787.

⁵ J Teoh, “Beyond Child Rescue: Strengthening Families through Evidence-based Interventions”, International Family Law Conference, Plenary 4: The Role of Social Science and Family Law.

living in the household; and parental re-marriage/re-partnering and the consequent reconstitution of the family unit.⁶

The inherent limitations of judicial intervention

5 In contrast to the enduring nature of familial relationships and dependencies, family law intervention, paradoxically, is for the most part a mere episodic occurrence within the larger continuum of family relations. For better or worse, a judge is usually spared the enormous baggage that the spouses bear even as they pit themselves against one another in and out of court. Nevertheless, to come to grips with the real issues, the judge must appreciate the intricacies afflicting the familial relationship if she is to arrive at a wise, and not merely a correct, decision.

6 But for several reasons, this can be a most challenging task. For one thing, typically, the facts presented by the spouses in court would have undergone considerable strategic refinements with the input of the parties' legal representatives. Furthermore, because of the tempestuous nature of a marital breakdown, strong emotions invariably permeate the conflict thus impairing the parties' ability to stay objective and sensible throughout the legal process.

⁶ JB Kelly and RE Emery "Children's Adjustment Following Divorce: Risk and Resilience Perspectives" (2003) 52(4) Family Relations 352-362.

7 On top of this, it is often the psychological and emotional aspects of a fractured familial relationship that are the root of the problem. And if these are left unaddressed, they will continue to perpetuate dysfunction even in the midst of attempts to resolve the disputes. How is a judge, who will usually not be schooled in disciplines such as psychology, trauma management and emotional healing, to undertake such a challenge?

8 And in cases involving issues of child welfare, the court's consideration of what would be in the "best interests of the child" is often made more difficult by the fact that the child is not formally a party to the divorce proceedings. The parties' efforts to put aside their differences and consider the best interests of the child will often run into obstacles when the perceived personal interests of the divorcing parties and those of the child are not aligned.⁷ This makes it all the more imperative for a judge to recognise the limitations in the legal process, and consciously seek the needs and welfare of the child by ensuring that the child's 'voice' is heard in a family dispute.

9 This is the complex milieu in which a judge, who at best is an expert in law, must intervene, seek the truth and develop solutions that are practical, wise and fair.

⁷ S Menon, "The Problem-Solving Practitioner and the Complexity of Family Justice", Family Justice Practice Forum: Family Justice 2020, 14 July 2017 at [17].

Key learning points from Singapore's experience in the administration of family justice

10 The experience in Singapore with regard to the resolution of family disputes involving issues of child welfare and domestic violence has taught us a number of valuable lessons, of which I highlight three.

11 First, the resolution of family disputes is best undertaken as a multi-disciplinary effort, in which the court is supported by an effective system of triaging at the incipient stages of the dispute. The focus of such a triage system would be to enhance the prospects of early detection of at-risk persons embroiled in the dispute, provide timely out-of-court support to mitigate such risks as well as to manage the dispute in order to afford the parties a reasonable chance at reconciliation, or at least to reduce the intensity of the conflict so that the ill-effects that unrestrained litigation might otherwise have on such vulnerable individuals can be ameliorated. The other relevant disciplines may include psychology, sociology, behavioural science, and even neuroscience. Alternative dispute resolution methods such as counselling and mediation should also feature as integral elements of the triage system at an early stage of the process.

12 Second, legal processes must be tailored to create the most suitable setting in which disputes are maturely ventilated and comprehensively addressed. In this regard, we should strive for court processes that are reasonably navigable and designed to minimise contention

and maximise the prospect of conciliation at every step,⁸ especially where the parties are not legally represented or legally aided. Particularly in common law jurisdictions, a re-think of the adversarial system of litigation may be required to enhance the prospects of success in realising such outcomes in the family justice system. The traditional adversarial system, which by design contemplates impassioned advocacy either for or against each side in court proceedings in which there is a winner and a loser, tends to aggravate rather than ameliorate conflict in a family dispute before the court. The resulting tensions add to the fragmentation of relationships to the detriment of families and their children.

13 Third, the judge, though she is the final arbiter in the legal process, must remain cognisant that she is but one actor in the overall remedial network that operates to resolve disputes and support a family in distress. To yield durable and holistic solutions in a family conflict, a judge should willingly enlist the help and cooperation of other stakeholders and relevant experts, including social service workers, family law practitioners, and even the affected parties themselves:

- (a) Social service workers are frequently the first point-of-contact when domestic relations go awry. By continuing to call on their expertise even when a dispute progresses further downstream and reaches the courts, the chances of restorative and therapeutic

⁸ N Fricker QC, "Family Law in the new millennium: a vision for reform – a view from the front line" in in *Family Law: Essays for the new millennium* (Jordan Publishing, 2000) (S Cretney, ed) at p 91.

justice materialising for the parties at the end of the legal process are significantly improved. The observations of Associate Professor Barbara A Babb as to the utility of social science in the resolution of child custody cases provide a good illustration of how such inter-disciplinary collaboration facilitates better decision-making by judges.⁹

A specific example of the relevance of interdisciplinary study to the field of family law arises in the determination of child custody cases. A better understanding of child development, including the various developmental needs and stages of children, may help decisionmakers reach more appropriate outcomes in child custody cases ... In addition, the use of social scientific guidelines or findings regarding child development can serve as the basis for factors judges should consider in custody cases, thereby limiting judges' discretion in these matters. In this manner, social science research can contribute to the field of family law by providing scientific alternatives to individualized judicial discretion.

(b) Family law practitioners represent the disputing spouses and provide them guidance and advice as they journey through the legal process and procedures. With adequate professional training, family law practitioners can bring into practice a new ethos geared towards helping clients work through their disputes using the available in-court and out-of-court dispute resolution methods with as little animosity as possible.¹⁰

⁹ BA Babb, "An interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and therapeutic Perspective" (1997) 72(3) Indiana LJ 775 at 793–794.

¹⁰ S Menon, "The Problem-Solving Practitioner and the Complexity of Family Justice", Family Justice Practice Forum: Family Justice 2020, 14 July 2017.

(c) The affected parties themselves include not only the contending spouses but also such collateral victims of family disputes as the children. With necessary safeguards in place, the legal process should avail the affected child a means of giving ‘voice’ to what constitutes his/her best interests in the proceedings. This will significantly assist the court in determining issues relating to child welfare.

Responses and reforms in Singapore’s family justice system

14 These lessons were what inspired the major family justice reforms in Singapore which, among other things, established the newly structured Family Justice Courts on 1 October 2014 comprising the High Court (Family Division), the Family Courts and the Youth Courts. The following sections of this paper illustrate the key reforms that have been put in place to address child welfare and domestic violence issues in family disputes in the light of these lessons.

Reforms specific to child welfare in family disputes

15 Five particular reforms (including a pilot programme) relating to child welfare in family disputes have been implemented in Singapore’s family justice system, all of which carry a common thread embracing a multi-disciplinary approach towards the resolution of such disputes. These reforms relate to the following and I will touch on each of these briefly:

(a) Compulsory mediation and counselling.

- (b) Parenting plans.
- (c) Court-appointed Child Representatives.
- (d) Expert evidence.
- (e) Parenting coordination.

Compulsory mediation and counselling

16 Compulsory mediation and counselling play a significant role in reducing acrimony in family disputes. In Singapore, section 50(2) of the Women's Charter¹¹ empowers a court hearing any matrimonial proceedings to direct or advise any of the parties or their children to attend mediation or counselling, or participate in any other appropriate family support programme or activity if it considers that doing so would be in the best interests of the parties and their children. Where the case involves children under 21 years of age, such mediation and counselling is compulsory.

17 Mediation is a powerful tool at the disposal of the judge in family proceedings because there are many areas of overlapping interests, in particular the welfare of the children, which should encourage parties to compromise. Parties are also more likely to adhere to settlements reached by consensus. Over several years of development, we have evolved our model into one where it is mandatory for parties with minor children to attempt mediation. Under this

¹¹ (Cap 353, 2009 Rev Ed). See also section 50(3A) of the Women's Charter.

framework, a judge-mediator and a court counsellor will work hand-in-hand with the parties to uncover and understand the dynamics of the family relationship, address the needs of the children and equip the parents with the necessary knowledge on effective co-parenting. This unusual cross-disciplinary collaboration between the judge and the counsellor helps facilitate the resolution of the disputes more amicably.

18 We have also developed, for use in suitable cases, a Child Inclusive Dispute Resolution programme incorporating a therapeutic interview to be conducted with the affected children to elicit their feelings and perceptions about their parent’s dispute. This is followed by a feedback session between the parents and the counsellor at which the unique development needs and psycho-emotional adjustment of each child within the family are discussed. This has helped parents appreciate the consequences of their actions on their children, with encouraging results so far. For instance, a pilot study conducted in 2015 indicated that of all the families who participated in the programme, 75% reached agreement on all issues relating to children; and in 2016, out of all the cases that went through the programme, 80% had at least one or all of the issues relating to children settled. To secure the capacity and competence needed to provide such mediation services, the Family Justice Courts and the Singapore Mediation Centre have further developed the Singapore Family Mediation Training and Certification framework to grow the pool of specialist family mediators through training and accreditation.¹²

¹² S Menon, “The Future of Family of Family Justice: International and Multi-Disciplinary Pathways”, International Family Law Conference 2016, 29 September 2016 at [27]–[28].

Parenting plans

19 Rule 45 of the Family Justice Rules 2014¹³ requires a plaintiff in divorce proceedings to file, for the court's consideration, an agreed or proposed parenting plan where there is any dependent child in the marriage. Both divorcing parties must try to agree on arrangements relating to the welfare of the child under the parenting plan, and in doing so they may seek external advice and assistance from persons trained or experienced in matters relating to child welfare. Where there is a child of the marriage aged 14 years or below, the requirement to have a parenting plan is statutorily reinforced by section 94A of the Women's Charter which requires separating spouses to attend a parenting programme before they may file a writ for divorce.¹⁴ This parenting programme seeks to educate the spouses about the impact of divorce on their children and on their finances, and helps facilitate the development of a workable parenting plan.

Court-appointed Child Representatives

20 Rule 30 of the Family Justice Rules 2014 empowers the court to appoint specially-trained family law practitioners to act as Child Representatives to make independent submissions to the court as to the best interests of a child unwittingly caught up in divorce proceedings. In discharging their responsibilities as Child Representatives, the appointees are permitted to

¹³ (No S 813 of 2014).

¹⁴ (Cap 353, 2009 Rev Ed).

interview the child’s parents, teachers, school counsellors, and other persons acquainted with the child. The use of Child Representatives is particularly suitable for cases involving high-conflict spouses, so as to safeguard the child’s interests and well-being even as issues relating to custody, care and control are being contentiously pursued by the parents.

21 Some commentators have cautioned against involving children’s participation in the proceedings.¹⁵ Some lawyers in Singapore too have described the use of Child Representatives as a “double-edged sword” that could encourage divorcing spouses to coach their children in their interactions with the Child Representative.¹⁶ However, it is important to recognise that many of these children are already aware of their parents’ dispute, and if they are of sufficient maturity and age, there is no reason to exclude their perspectives on the issues at hand. Indeed, the court’s consideration of the views of the child is statutorily mandated under section 125(2)(b) of the Women’s Charter, which states that in deciding in whose custody or in whose care and control a child should be placed, the court shall have regard to the wishes of the child “where he or she is of an age to express an independent opinion”. Such an approach is not only consonant with international practice as embodied in Article 12 of the United Nations Convention on the Rights of the Child – to which Singapore is a state party – but represents at

¹⁵ P Harris, “Representation of Children” in *Family Law: Essays for the new millennium* (Jordan Publishing, 2000) (S Cretney, ed) at pp 157-158.

¹⁶ LE Philomin, “In divorce cases, child representatives a double-edged sword, say experts”, Today Online, 2 June 2014.

a more fundamental level a philosophical stance that ultimately respects the opinion, and hence the dignity, of the independent-thinking child as a human being.

22 Since its inception in October 2014, the Child Representatives scheme has grown from strength to strength. It started with 18 lawyers being appointed to the panel for an initial term of two years. Today, there are 26 lawyers on the panel. Since the scheme was introduced, Child Representatives have been appointed in 40 cases to date. We surveyed our judges recently and all those who had appointed a Child Representative felt that it had made a positive difference. For their part, the Child Representatives found their role meaningful in that they were able to give the child a voice and help the court arrive at solutions in the child’s best interests. The impact of these roles extends beyond the case at hand, by influencing the attitudes and mindsets of family law practitioners, to helping them see things from the point of view of the court and of the child. This progresses the family justice system collectively towards a better model of adjudication.¹⁷

Expert evidence

23 Section 130 of the Women’s Charter and section 11A of the Guardianship of Infants Act¹⁸ require a court, when considering any question relating to the custody of a child, to “have regard

¹⁷ S Menon, “The Problem-Solving Practitioner and the Complexity of Family Justice”, Family Justice Practice Forum: Family Justice 2020, 14 July 2017 at [17]–[20].

¹⁸ (Cap 122, 1985 Rev Ed).

to the advice of a person, whether or not a public officer, who is trained or experienced in child welfare”. Rule 36 of the Family Justice Rules 2014 is essentially to the same effect.

24 Judges have required such reports to be prepared by trained professionals such as counsellors, social workers or psychologists on a variety of issues, including the general welfare of the children, the suitability of custody and access orders, and the mental health of any of the parties to the proceedings.

25 A judge may also interview the child to ascertain the child’s wishes or otherwise seek input from the child directly. As a matter of practice, neither the parties nor their solicitors would be present at the interview, although the judge may invite a counsellor with social science training to attend the interview. In *ZO v ZP and another appeal* [2011] 3 SLR 647, the Singapore Court of Appeal recognised such interviews as a useful means to take into account the wishes of the child involved in a welfare dispute.

26 In a related vein, rule 630 of the Family Justice Rules 2014 empowers the court to appoint an independent expert to assist the court in understanding complex issues which the judge may not be well-equipped to address without such assistance, such as those relating to the psychological impact on the child involved. Rule 635 of the Family Justice Rules 2014 in turn provides that where an independent expert is appointed by the court, a party cannot without the leave of court call any other expert witness to give evidence on the question reported on by the

court expert. This is a departure from the common law tradition, in which the parties generally appoint their own experts to give evidence on the issues separately. In such cases, it is not uncommon to find that each expert leans in favour of the appointing party. This can lead to divergent opinions, which do not ultimately assist the judge.

27 This problem was exemplified in *Re BKR* [2015] 4 SLR 81, which triggered the introduction of rule 635 of the Family Justice Rules 2014. That case concerned the issue of the mental capacity of an elderly lady. The parties had each engaged their own mental health experts whose reports did not seem to be particularly useful to the court. The determination of her mental capacity in the end rested largely on her performance under cross-examination, which was hardly the best way to resolve this issue. In its judgment, the Court of Appeal observed that for cases where the mental capacity of an individual is in issue, the court should adopt a more inquisitorial and court-directed approach towards the taking of evidence. The Court of Appeal also suggested that the individual should be independently examined in consultation with her own doctor, with the court appointing the independent expert if the parties were unable to agree on one. After all, the court's role in mental capacity proceedings is a protective one and it should not shy away from taking control of the proceedings and directing parties on the evidence that it requires in order to reach its decision. The same observation can be extended to other types of family disputes. Especially where young children and vulnerable witnesses are involved, repeated expert interviews and assessments can intensify the harm and suffering and should thus be avoided if at all this is possible.

28 Where the parties disagree over other types of issues that require expert evidence to aid in their resolution, it will often be best for them to try and agree on appointing a single joint expert, or consider applying to court for the appointment of a single court expert. And as mentioned earlier, once the court expert has tendered a report on an issue, the parties cannot, without leave of court, appoint their own experts to give further evidence on any matter that has been addressed by the court expert.¹⁹ At the same time, the court expert will be subject to cross-examination.²⁰ In this way, the appointment of the court expert would not only assist the judge but would also reduce the prospect of protracted and costly litigation occasioned by partisan expert opinions. This in fact resembles the approach commonly taken in civil law jurisdictions where experts are typically appointed by the court.²¹

Parenting coordination

29 The Family Justice Courts and the family law Bar have more recently also designed a pilot parenting coordination programme to test new avenues by which parties in high-conflict cases may be assisted. As presently envisaged, the programme which is still in its initial and exploratory phase will enable the court to appoint, from a pool of legal professionals and professionals in the social science fields, a parenting coordinator to work directly with the

¹⁹ Rule 635 of the Family Justice Rules 2014.

²⁰ Rule 633 of the Family Justice Rules 2014.

²¹ J Langbein, "The German Advantage in Civil Procedure" (1985) 52 Chicago LR 823 at 836-837.

divorcing couple to facilitate communication and promote constructive problem-solving, as well as to help them resolve disagreements over practical issues of care, control and access. The parenting coordinator may also assist the couple in their transition after divorce, and in the implementation of and compliance with parenting orders, including access orders.

30 A parenting coordinator will be appointed for a specified period of time, and the cost of the parenting coordinator will be borne by the parties. The court may also allow the parenting coordinator, with the approval of the parties, to make certain non-substantive decisions in relation to parenting arrangements. The Family Justice Courts is working in consultation with the relevant stakeholders to study the prospects of a wider scale implementation of the programme in the future.

Reforms specific to domestic violence in family disputes

31 The recent reforms in relation to domestic violence have focused mainly on improving the identification of vulnerable victims of domestic violence, and then simplifying the process by which such victims can obtain a Personal Protection Order (“PPO”) and/or a Domestic Exclusion Order (“DEO”) against their aggressors. The former restrains the aggressor from visiting family violence upon the victim,²² whereas the latter grants the victim the right of

²² Section 65(1) of the Women’s Charter.

exclusive occupation of a specified part of the shared residence to exclude the aggressor from that part of the shared residence.²³

32 The Family Justice Courts has also established a Crisis Intervention Team to improve its ability to identify incidents of family violence. Consisting of specially trained personnel from disciplines including law, psychology, administration and security, the Crisis Intervention Team trains frontline court staff members to identify vulnerable persons requiring additional attention and support, and to refer them to the appropriate agencies for out-of-court support.

33 A Family Protection Centre was also established within the courthouse in May 2017 as a one-stop purpose-built area designed to offer victims of family violence a safe, private and conducive environment in which to file PPO/DEO applications. It features redesigned spaces for risk assessment with a counsellor and facilities for affirmation of the supporting declarations before a judge. There are also self-help kiosks for parties to file their applications, and volunteers are stationed on-site to provide support.²⁴

34 Finally, the Family Justice Courts maintains a continuing review effort to ensure that the legal process and system is sensitive to the needs of vulnerable persons. One source of trauma for vulnerable witnesses, such as children, has been aggressive cross-examination at trial by

²³ Section 65(5) of the Women’s Charter.

²⁴ Family Justice Courts, “Protection Against Family Violence Initiatives – 2017 and Beyond” (unpublished) at p 4.

their alleged abusers. Such questioning can cause the vulnerable witness to re-live the trauma in the intimidating setting of a trial. This concern is exacerbated by the high incidence of such matters that are litigated without the involvement of lawyers. In 2016, for example, 98% of the complainants and 99% of the respondents in family violence trials were self-represented. This has two consequences. First, the litigants who are already emotionally wrought may not be sensitive to the harm being visited on a vulnerable witness. Second, judges may be more circumscribed in intervening and moderating the proceedings, so as to minimise allegations of bias by the parties. To address this, we are studying the prospect of amending the Family Justice Rules 2014 to enable the judge to better regulate the cross-examination by a litigant-in-person in a family violence trial, by expressly empowering the judge to restrict the scope and direction of cross-examination, and where appropriate order that the questions be put through the judge or an intermediary appointed by the judge.²⁵

Other reforms in Singapore's family justice system

35 Aside from the foregoing changes, we have also made philosophical adjustments to the Singapore's family justice system in three key aspects:

- (a) A shift away from the adversarial system of litigation.
- (b) Enhanced pedagogy in judicial training.

²⁵ Family Justice Courts, "Protection Against Family Violence Initiatives – 2017 and Beyond" (unpublished) at p 6.

- (c) Capability development for family law practitioners.

Shift away from the adversarial system of litigation

36 A judge-led and more inquisitorial approach towards adjudication has taken root in our family justice system, marking a shift away from the more traditional common law adversarial system. This is enshrined in rule 22 of the Family Justice Rules 2014 which empowers the court to make orders and give directions for the just, expeditious and economical disposal of proceedings. This approach is in line with the growing consensus that the adversarial process may not only be ill-suited to meet the therapeutic and restorative objectives of family justice, but may actually exacerbate the conflict and enhance the tension inherent in an already strained relationship.

37 We have also strived to reduce acrimony in divorce proceedings by introducing the uncontested simplified track procedure in January 2015, under which, if the parties are able to agree on divorce and ancillaries prior to the filing of court papers, they may file documents in simpler formats and obtain the final orders without the need for court attendance. In 2015, 24% of the total number of writs for divorce filed (*ie*, 1,421 of 5,931) used the simplified track procedure; and in 2016, this increased to 37% of the total number of writs filed (*ie*, 2,330 of 6,302).²⁶ With these changes, the number of cases that were disposed of within a year of filing

²⁶ S Menon, “The Problem-Solving Practitioner and the Complexity of Family Justice”, Family Justice Practice Forum: Family Justice 2020, 14 July 2017 at [35].

increased from 46% in 2012 to 74% in 2016. The average time taken for final judgment to be granted also reduced significantly from 5.2 months in 2012 to 3.8 months in 2016. The point of this is not to make divorce easier, but rather to reduce conflict and help ease the anxiety of litigants when divorce is inevitable. The ultimate objective is to develop an altogether more appropriate process given the particular interests and complexities involved in family litigation.

38 Over time, we also aim to have the judge-led approach permeate all aspects of family litigation, from discovery to affidavits, cross-examination as well as costs determination.

39 Complementing the judge-led approach in the Family Justice Courts is a pilot scheme launched in July 2016, known as the Individual Docket System (“IDS”), where each judge is responsible for the management of the case assigned to her from commencement to final disposition. This means that the same judge will deal with all pre-trial hearings and the final hearing itself. Apart from the benefit of greater individual responsibility for the resolution of the case, the IDS ensures firmer judicial control and consistency of approach throughout the progress of the case as the judge is familiar with the issues. This is especially useful where there are multiple applications and proceedings in court. The initial results thus far are very encouraging. In the first phase of the pilot, 97% of the cases were fully dealt with within 12 months of commencement of proceedings. We are closely monitoring the results of the second phase which began this February and are confident that the IDS will be fully implemented in the near future.

Enhanced pedagogy in judicial training

40 The judicial training pedagogy has been significantly re-thought with the aim to provide judges with a multi-disciplinary curriculum and a greater awareness of the underlying social issues that typically underlie a family dispute.

41 The Singapore Judicial College organises regular seminars and programmes for judges and judicial officers concerning such topics as child psychology and development, family violence and abuse, as well as counselling and communication techniques. These seminars are conducted by a variety of stakeholders in the family justice system, and have included judges (on case management issues), academics (on legal trends), the police (on family violence issues), and psychiatrists (on mental health issues). The Family Justice Courts has also appointed a Judicial Education Liaison to work with the Judicial College in the development of customised training programmes.

42 In addition, the Judicial College also undertakes empirical research projects together with academics from the universities in Singapore to provide a scientific basis upon which family justice policies can be implemented. These projects have included, to date, a study of litigants-in-person (“LIPs”) and access to justice, as well as a profiling of international divorces, the salient details of which are as follows:²⁷

²⁷ Singapore Judicial College, *Annual Report 2016: Making our Mark*.

(a) The study of LIPs and access to justice undertakes a comparative analysis of guidelines and best practices in foreign jurisdictions and seeks to explore optimal methods of communication and assistance that judges can adopt in their interaction with LIPs. The project will identify interfaces that are key to effective judicial and LIP interaction, examine the current practices, and evaluate their efficacy.

(b) The profiling of international divorces in Singapore is an exploratory study that seeks to examine divorce cases filed in as early as 2011 involving at least one foreign party in the proceedings. The collection and charting out of such demographic data will provide greater clarity of trends in international divorce cases which can in turn help mould new reform initiatives and strategies to be undertaken by the courts in the future.

Capability development for family law practitioners

43 The family law practitioner plays a significant role in enabling the parties to take advantage of some of the many initiatives we have introduced in our endeavour to enhance the family justice system. Most litigants are, almost by definition, vulnerable. And in family proceedings, we often see other types of vulnerabilities, ranging from youth to age to mental illness. Family law practitioners are the first responders in this landscape of special needs and of different types of vulnerabilities. It is the lawyer who comes into contact with the parties well before the court does. Being bound to their clients by privilege, lawyers can afford their clients a safe sanctuary to confide in, and then appropriately advise and help them in their search for a more hopeful future than the past from which they have come.

44 The process of family justice begins when the family law practitioner is approached by a potential client whose internal world and family life are falling apart. As the first port of call, the lawyer has a tremendous opportunity to influence the stance that the client will adopt in the dispute and, in particular, the client's willingness to cooperate in efforts to reduce conflict. Family law practitioners are therefore encouraged to speak with their clients about the advantages of cooperation in family dispute cases; work with other counsel to reduce conflict; avoid unnecessary applications and hearings; use the least divisive processes to pursue safety, fairness, cooperation and the best interests of children; and employ the same approach when dealing with self-represented persons.²⁸

45 The role of the family law practitioner as a constructive problem-solving lawyer is critical and complementary to the judge-led approach discussed above and this is best done by setting an appropriate tone during litigation that is different from the usual portrayal of litigation as a zero-sum contest.²⁹ To support the efforts in realising this vision, four initiatives are either under development or have already been introduced:

²⁸ S Menon, "The Problem-Solving Practitioner and the Complexity of Family Justice", Family Justice Practice Forum: Family Justice 2020, 14 July 2017 at [12].

²⁹ S Menon, "The Problem-Solving Practitioner and the Complexity of Family Justice", Family Justice Practice Forum: Family Justice 2020, 14 July 2017 at [31]–[32].

(a) First, the development of a Family Law Practitioner (“FLP”) accreditation scheme. Once this is implemented, accredited FLPs would be encouraged or even be expected to have undergone specialist training that will equip them to practise family law effectively and in a manner that promotes the ethos and philosophy that underpins our family justice system. Such specialist training could include courses relating to alternative dispute resolution methods, adopting less adversarial techniques in family litigation, basic psychology and an understanding of the dynamics of strained family relationships.

(b) Second, the promulgation of a Family Mediation Training and Accreditation Framework. A tripartite collaboration between the Family Justice Courts, the Singapore Mediation Centre and the Singapore International Mediation Institute, this framework was designed to train and accredit family law practitioners and other qualified persons to be empaneled as family mediators on the Singapore Mediation Centre Family Panel. This was developed in part because of some encouraging statistics evidencing the success of mediation in this setting in recent years. In particular:

(i) in 2014, 75% of mandatory counselling and mediation cases achieved full resolution of all contested issues while 80% achieved a full or partial resolution of contested issues; and

(ii) in 2015, 77% reached full settlement of all contested issues, 82% reached either full or partial settlement and 91% reached full agreement on issues relating to children.

(c) Third, the establishment of a new law school at the Singapore University of Social Sciences, specialising in the teaching of family law and criminal law. The new law school offers a variety of classes including those on social work and counselling, with a practicum component comprising a six-month legal clerkship. Graduates from the new law school will gain an inter-disciplinary insight which they can put into practice when they embark on their careers in family law.³⁰ We also expect the law school to play a significant role in the FLP accreditation scheme that has been described above.

(d) Fourth, the reform of our professional conduct rules to address certain ethical issues faced by family law practitioners. An Ethics Workgroup comprising family law practitioners, academics, and members of the judiciary has proposed specific rules that are designed to remind practitioners of their special duties in the context of family justice. These rules are designed with the following outcomes in mind:³¹

³⁰ S Menon, “The Problem-Solving Practitioner and the Complexity of Family Justice”, Family Justice Practice Forum: Family Justice 2020, 14 July 2017 at [47].

³¹ S Menon, “The Problem-Solving Practitioner and the Complexity of Family Justice”, Family Justice Practice Forum: Family Justice 2020, 14 July 2017 at [23].

- (i) encouraging practitioners to take a constructive, conciliatory and non-confrontational approach towards the resolution of family disputes;
- (ii) ensuring that practitioners inform their clients about alternative dispute resolution options such as mediation and counselling, and advise their clients to consider amicable resolution of family disputes whenever possible and reasonable;
- (iii) ensuring that practitioners advise their clients to adopt a constructive and reasonable approach to the resolution of any necessary proceedings;
- (iv) clarifying that practitioners have a duty to advise their clients to consider the welfare of any children who may be involved in the proceedings and the potentially adverse impact of the proceedings on them; and
- (v) setting out the duties of practitioners in relation to conflicts of interest, having regard to the other roles they may play in the entire legal process.

46 We believe these measures will help us realise the ideal of enhancing the commitment of the family law Bar to the evolving ideals of our family justice system.

Plans for the future

47 I turn finally to outline briefly the Family Justice Courts' plans for the future, which at this time rests on two main pillars – harnessing the role of technology and strengthening international judicial cooperation.

Harnessing the role of technology

48 The Family Justice Courts continues to explore innovative ideas to enhance access to justice with the help of technological advancements. In this regard, the Family Justice Courts has been included as part of the agenda of the Courts of the Future Taskforce (“COTF”) established in 2016. The aim of the COTF is to undertake a strategic study on harnessing technology to enhance the administration of justice across all courts in Singapore. The COTF has since finalised its report, and a unified One Judiciary IT Steering Committee has been established and a Technology Blueprint for the courts for the next five years was endorsed in 2017.

49 On 14 July 2017, the Family Justice Courts launched the integrated Family Application Management System (“iFAMS”) which is a case-management system for the obtaining of various orders. The iFAMS provides for electronic case-filing and is available from six decentralised locations within the community. This allows applicants to file their applications in a familiar setting where they can also receive other assistance relevant to their specific needs.

This seeks to alleviate much of the anxiety that non-legally represented parties normally associate with litigation.

50 Going forward, there are two key technology initiatives under review in relation to family justice – online dispute resolution and virtual courtrooms.

51 The idea of online dispute resolution is inspired by the electronic dispute resolution tools adopted in e-commerce sites. For example, buyers and sellers on eBay have been using the site’s automated dispute resolution tool to settle up to 60 million claims every year. In broad terms, the automated dispute resolution tool uses algorithms to guide users through a series of questions and explanations to help them reach a settlement themselves, with human adjudicators brought in as a last resort.³² A similar system has been piloted in the Netherlands, where the Legal Aid Board operates a platform called *Rechtwijzer* for use by separating or divorcing parties, and the platform handles about 700 divorces yearly.³³ Access to the platform is available at an affordable cost and is user-friendly with guided questionnaires, allowing users to arrive at consensual outcomes at their own pace.³⁴

³² Carol Matlack, “Robots Are Taking Divorce Lawyers’ Jobs, Too”, *Bloomberg*, 30 June 2016.

³³ The Law Society of England and Wales, “Capturing Technological Innovation in Legal Services” (January 2017) at p 63.

³⁴ See www.hiil.org/project/rechtwijzer.

52 Employing online tools to settle routine legal disputes can improve access to justice for those who cannot afford to hire a lawyer. At the same time, it also helps to ease the load on court dockets which can then be applied to accommodate the more complex cases. For family disputes in particular, the use of an online platform avoids some of the potential for confrontation that attends face-to-face dispute resolution. As the adoption and use of an online dispute resolution platform grows, so too will the amount of information that it generates. This information can then be tapped to improve the algorithms on which the system operates, thereby further improving the ability of the online dispute resolution platform to facilitate settlements between users.

53 It has been reported that although Dutch lawyers were initially wary of the *Rechtwijzer* system and fearful of a loss of their billable hours, many now view the online platform as a cost-efficient way to process simpler cases, leaving the more complicated matters to be addressed with the help of their legal expertise.³⁵ As observed by Jin Ho Verdonschot, a lawyer at Dutch non-profit organisation HiiL who led the development of the *Rechtwijzer* platform, “it doesn’t diminish the market for legal professionals, it just reshuffles it.”³⁶

³⁵ The Law Society of England and Wales, “Capturing Technological Innovation in Legal Services” (January 2017) at p 63.

³⁶ Carol Matlack, “Robots Are Taking Divorce Lawyers’ Jobs, Too”, *Bloomberg*, 30 June 2016.

54 As to virtual courtrooms, this will involve greater use of video-conferencing and other innovative connective technologies in court proceedings, which can be extremely helpful in cases involving vulnerable children or victims of domestic violence and abuse.

Strengthening international judicial cooperation

55 In the era of a globalised and “flattened”³⁷ world that we now find ourselves in, international judicial cooperation is fast becoming an essential strategy for municipal courts to keep their justice systems relevant in an interconnected and much more dynamic social landscape. This is equally true for family justice systems, as we continue to experience larger numbers of transnational marriages and cross-border child “abduction” issues today.³⁸ This is precisely why sustained international cooperation and cross-judicial conversation on family justice is more crucial than ever before.

56 In this regard, we have been eager to seek out ways to grow and strengthen our partnerships with counterpart judiciaries both regionally and internationally. For instance, we are actively involved in the Working Group of the Council of The Association of South-East Asian Nations (“ASEAN”) Chief Justices on Family Disputes Involving Children. The efforts

³⁷ Thomas L Friedman, *The World is Flat: The Globalized World in the Twenty-first Century* (Farrar, Straus and Giroux, 2005).

³⁸ See for example *BDU v BDT* [2014] 2 SLR 725, a case decided by the Singapore Court of Appeal under the Hague Convention on the Civil Aspects of International Child Abduction which seeks to protect children from the harmful effects of their wrongful removal or retention by their parents.

of the ASEAN Working Group holds the promise of facilitating greater interaction and dialogue on family matters amongst the ASEAN judiciaries. As economic integration increases within ASEAN, it is important that our families in the region receive the assistance that they require to resolve their differences even as they cross borders.

57 Another example is our recent hosting of a meeting of the International Hague Network of Judges (“IHNJ”), which was established under the Hague Conference on Private International Law to facilitate cooperation and communication between judges on a global level. Our courts will continue to support further developments in the work of the IHNJ. The success of the 1980 Hague Convention, and other child-related Hague Conventions, highlights how international cooperation can ensure that parents are able to obtain real relief with the full assistance of authorities and the courts from contracting states.

58 Beyond communities of judges, it is also important to develop conversations within the wider family justice eco-system. To this end, we have in 2016 established an International Advisory Council (“IAC”) which brought together seven leading thinkers in the world in the field of family justice, to discuss and share perspectives on the latest developments in family law and practice. We have since added one more member and they come from Australia, Canada, Germany, Hong Kong, UK and USA. They are each experts in different fields, namely the courts, academia and the social sciences. I personally had the pleasure of chairing the first meeting of the IAC in September 2016, where there was a lively and invigorating exchange of ideas on the latest developments and trends in various areas of family justice. The Family

Justice Courts will continue to draw on the expertise of the IAC to build on, and implement, these ideas moving forward.

Conclusion

59 The resolution of family disputes involving issues of child welfare and domestic violence is both an art and a science. A keen awareness of the various challenges that these disputes pose to the parties informs the need for a shift in our thinking about the way we go about resolving them in our courts.

60 As custodians of the law, courts are best placed to lead the legal profession and develop legal processes in the direction of promoting a new ethos of embracing a multi-disciplinary approach towards constructive problem-solving in family disputes.

61 Singapore's experience in its family justice reforms in recent years has been encouraging thus far. But we have much to do. By sharing these experiences, it is our hope that the courts of other jurisdictions may similarly contribute to a global conversation on how best to tackle family issues relating to child welfare and domestic violence.