

FAMILY JUSTICE COURTS WORKPLAN 2019

18 February 2019

“Every Outcome, a Way Forward”

Justice Debbie Ong

Chief Justice, distinguished guests, colleagues,

1. Today’s Workplan Seminar is entitled “Every outcome, a Way Forward”. This is one of the Values we have pledged to uphold. The Family Justice Courts’ (“FJC”) values are:

Every case, with fairness

Every outcome, a way forward

Every individual, with respect

2. Let me begin with our logo for this year’s Workplan – you see a curly ribbon to the left – that represents our lives with unresolved issues; sometimes we go round in circles. We hope that after going through FJC, the ribbon becomes straighter with an arrow pointing forward, in an uplifting way. It represents a way forward.

3. Why do we as a Court of Law bother with whether parties have a way forward? After all, the court applies the law and does not reach a different decision just because a litigant may suffer stress or poverty from losing a case.

Role of the Court

4. It has been said that “traditionally, courts define their role in civil cases as an umpire rather than a proactive force to improve the lives of the parties to the dispute.... Substantive outcomes are generally for the legislature to determine. Ordinary civil courts... do not care whether the mental health of litigants is better or worse as a result of judicial intervention.” (article by Schepard & Bozzomo).

5. It is thus not for the civil court to worry about whether the mental health of litigants is better or worse as a result of judicial intervention.

6. It has also been said that “the adversarial model was premised on the assumption that civil litigation was essentially a private matter... the judge assumed a passive role... the responsibility was upon the parties alone to identify the issues... and it was for the party making an assertion to prove it... The judge could not transgress beyond the issues and evidence presented by the parties...” (*per* former Chief Justice of Family Court of Australia, Alastair Nicholson).

7. There are of course advantages to the adversarial system as well. There is, for example, clarity in setting out one’s case in the pleadings, providing the opposing party the fair opportunity to answer the case that is stated clearly in the required pleadings. Ours is an adversarial system.

8. Perhaps, in some broad way, we could say that “justice” requires us to do “right” and “welfare” expects us to do “good”, on the broad basis that “right” encompasses adjudication by

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applying the law and enforcing legal rights, while “good” encompasses promoting welfare, wellbeing, and granting non-judicial remedies such as treatment, and ensuring lower costs to ease the financial burdens on litigants.

FJC – a unique court

9. In the early days, the former Chief Justice Yong Pung How had already said:

“(the family court)... must also promote and encourage resolution of such conflicts through conciliation and mediation. In this way, the court can reduce the financial, social and psychological impact of (family disputes) upon the parties and their children.”.

10. This perspective incorporates elements of therapeutic justice in the family court system. It would have to employ a less adversarial system, but this does not mean it is entirely an inquisitorial system – perhaps if we picked the strengths of both systems, we could enjoy the very best of both worlds for our families.

11. So, the Family Court is expected to do something more than just carrying out the traditional role of doing only ‘right’. It is important to appreciate, though, that the FJC is a Court and not a welfare service centre. But it is a unique court.

12. Chief Justice Sundaresh Menon has said at the Opening of the Family Justice Courts in 2014: “Family justice is a unique field in the administration of justice”.

13. The Committee to Review and Enhance the Reforms to the Family Justice System (which we call “RERF” for short) was tasked to review the recent reforms and further strengthen them. The RERF Committee had discussions over 7 meetings last year and is now working on its report.

14. RERF’s aspiration is the enhanced incorporation of therapeutic justice in the family justice system - therapeutic justice empowers families, applies mental health criteria, is interested in the mental health of litigants, and promotes positive change.

Child’s welfare

15. At last year’s FJC Workplan in 2018, I had said that the “presence of children demands a less adversarial approach”. Children are not parties in the divorce litigation process, yet they are deeply, immensely, affected by almost every step taken and every order made.

16. I sometimes wonder if we have heard this so many times that it has come to mean less.

17. In my many years as a family law academic prior to my appointment as a Judge, I had written many journal articles on children’s issues, advocating laws and processes that protect the children’s welfare. I wrote passionately about protecting children; I wrote about the seriousness of parental responsibility.

18. It was not a difficult thing to advocate for, because somehow, the world agrees with the idea that we should protect children; they are innocent and vulnerable.

19. But never have I been so stirred about this as when I became a judge. Speaking to a child, hearing her very own words on how she tries to be neutral so as not to hurt either parent, and reading reports on how children are severely damaged by parental conflict, have given me a far

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greater conviction of the grave need to help these children. And I had never encountered the depths of the challenges in this endeavor as I do now.

20. What does it mean when we hear that “children are the bedrock of our society”? Why are children the ‘bedrock’? Well, children grow into adults, and we need resilient people in our society with a strong moral compass and values that will get us through even tough times. Academically brilliant adults, apparently “successful” in careers, do not necessarily always equate with upright and resilient citizens. Records available from a trauma recovery centre in Singapore reveal that group therapy work for abusers and victims of intimate partner violence include alleged perpetrators of violence who are doctors, lawyers, teachers, police officers, accountants, and university professors (including those in high level positions in these professions) - professionals who appear ‘successful’ to the world, but struggle with troubling personal issues. Some have experienced trauma in childhood.

21. I pick out two cases that show up instances of children who have been drawn deep into their parents’ disputes:

22. In Case A, a *12-year old daughter* of the parties was asked how she spent her time with her mother. Her response was:

“My mother leaves the affidavits at home. I read them because they are ‘interesting’, because my Father lies a lot in them... During my time with my Mother, my Mother is busy writing affidavits.”

23. This is a snapshot of what life is like for a child whose family is in the litigation box. That is what happens everyday during their time together - talking about what to say to the court, being chronically worried for months about their future, getting upset about what the father says which are, to them, “lies”, wondering: what if the court believes his lies?

24. In Case B, an affidavit of an *8-year-old child* included describing his father as a “pervert”, that “mummy talked to us on this before” and that he never wants to live with the father whom he “hated”. This was not a case involving investigations for any abuse by the father but involved a father who had good relationships with the children a year earlier, where the children enjoyed fun outdoor activities with him.

A way forward

25. What is the way forward for these families? I focus on 5 points today. For a start, what we can do to reach that endeavour is to:

- a. control proceedings;
- b. enable refreshed mindsets;
- c. ensure the journey should not be harder than necessary: here we focus on simplified processes and use of IT;
- d. encourage harmonious routes, mediation and counselling (traditional or online), at all appropriate junctures (upstream and downstream); and
- e. build up strong solid coordinated and coherent non-legal therapeutic interventions and support.

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26. Expedient disposal of cases in the family court system is vital to our mission of protecting the welfare of the children and ensuring ‘a way forward’ for the family. We may feel as if being efficient and ‘clearing’ matters is just part of working in fast-paced Singapore, or that it is about nice, efficient-looking statistics – let us put that aside and let us go back to the root of why judge-led controlled proceedings are crucial in our family justice system.

27. In yet another case, Case C, in 2009, parties consented to the care and control of the children to be with the Mother. A counselling report dated May 2010 indicated that the children, particular one of them, had a good relationship with their Mother. But counselling reports from September 2010 onwards indicated that they were fearful of the Mother, could not recall any positive interactions with the Mother at all, and expressed that she was trying to kill them.

28. What had happened in the few months between early 2010 and September 2010?

29. We must never underestimate the harm that continues to be inflicted on the children when high conflict persists for years or even months. While we also want to put in place therapeutic interventions for children already damaged by the trauma of divorce conflict, we must try our best to prevent such damage in the first place.

30. We are urged to fight diabetes, reduce sugar, keep a healthy lifestyle to avoid illnesses, rather than to look to medical treatments later to cure the illnesses when they do occur.

31. We can help parents and children *not* to walk that road where treatment or therapy on badly damaged children will be limited in ‘curing’ the harm.

Controlling proceedings

32. Controlling proceedings and putting appropriate interventions and dispute resolution opportunities are crucial if we are to do our best for the children of divorcees.

33. While the less adversarial, more inquisitorial approach had been adopted years before the establishment of FJC, it was the Family Justice Rules (“FJR”) 2014 that expressly provided for the use of the judge-led approach in its Rule 22. This is a clear signal that family proceedings required a less adversarial approach, where judges are empowered to steer proceedings in a way that supported an outcome with a way forward.

34. Not everyone used to an adversarial legal system finds this an easy place to be at. Both lawyers and judges used to the adversarial system will need to adapt. Judges must learn the skills for such a practice as well. Litigants may find it an oxymoron to be in an “adversarial” system and yet are expected to “cooperate” for their children’s welfare – they too need to understand the practice and the objectives. We must refresh all our mindset.

Equipping family judges

35. We must do all we can to equip ourselves to adopt the judge-led approach appropriately. There may be an art to this – a judge is sometimes called to make swift orders which are needed for parties to have clarity and move on, and at other times, a judge may have to pause a little to bring parties to a place where they are ready to take on the next step.

36. We will develop a targeted and specialised curriculum for family judges with an emphasis on the specific competencies and skills required to be effective and efficient, including holistic judge-led case management and to be well-informed in social science principles so that they can

work within a multi-disciplinary framework. Time is always precious but this is our great priority and we will set aside a week for a training retreat without distractions. We are putting in place a Mentor Scheme for judges as well.

37. Controlling proceedings with strong case management will be a priority in the coming year.

Equipping family lawyers

38. I have talked about equipping judges with the necessary skills. I must add that the role of the family lawyer is also critical to a strong family justice system.

39. Second Minister for Law Ms Indranee Rajah SC, had said in her Keynote Address at the Family Law Conference in May last year:

“We are an adversarial system. So, the lawyers’ natural instinct which carries over into family justice is to be adversarial.

The time has come for family lawyers to realise and to understand that your role is different ... You should know that it is not wrong to depart from the highly adversarial approach because this is a specialised area of law in which a different approach is needed.

.. Using your knowledge of the law, you should help the parties achieve the resolution that is required in family law cases. This can take many different forms. A very simple example is what you say on affidavits. Affidavits can be very provocative. Affidavits can say things which just make the other side see red and have the desire to file a 100-page affidavit in reply to your 50-page affidavit. That is frequently unnecessary because if you just stick to the issue, help your client to understand that this is the issue the judge wants to focus on, you cut down cost and time, and most importantly, you cut down on the aggression. That is something well-worth doing.”

40. This calling is not easy. So we must do our best to support the calling. Hence, a Family Lawyer Certification Scheme will be conceptualised and implemented to enable all who practise family law to be equipped with the basic Specialist Skillsets. The training will include the use of the newest processes, updating lawyers in the latest practices. This scheme will be propelled by incentivising lawyers to be equipped.

41. A Family Specialist Accreditation Scheme will also be conceptualised and launched to recognise top-tier Family Law Practitioners who are experts in handling more complicated family proceedings involving divorce and children, including cases with complex cross-border issues.

42. The Singapore Academy of Law through its Specialist Accreditation Board has agreed in principle to building a Family Specialist Accreditation Scheme, supported by a sub-committee. This Scheme is targeted to be rolled out by 2020, with the first batch of Accredited Family Specialists to be announced by 2021.

43. We believe that these skills will significantly benefit family litigants and children.

Refreshing mindset

44. Rather high on my “wish list” is for parties to enjoy a refreshed mindset – that this can be a journey of hope and restoration, a journey towards a way forward – where adjudication is the

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last resort (litigation tends to be rather distressing). Getting back at the spouse who hurt us is not the journey to take.

45. If parties are better able to understand the value of legal services, they could make better use of them. Mediation and reaching amicable resolution is part of good legal services; it is a misperception that the family lawyer's services are only for adversarial litigation in court.

46. A navigable journey is what we hope parties will have. We want to enable access to information upstream, so that parties will appreciate the impact of conflict and litigation on their children – the Mandatory Parenting Programme, run by the Ministry of Social and Family Development, provides parties with information on some of the consequences of divorce, particularly on children. Litigants will be supported in understanding the options available – be they resources for mediation, legal services or counselling.

Simplify processes and use of Information Technology

47. A navigable journey requires simple processes – this leads me to my next point. To simplify and streamline court processes, we intend to work on the following (amongst others):

- amend the structure of the FJR, and include a roadmap setting out the general lifecycle of family proceedings,
- review interlocutory processes for efficiency,
- enable proceedings to be commenced through a single claim form,
- reduce the complexity of forms, making them more readable and user-friendly,
- take advantage of what Information Technology can offer us.

48. Our adversarial legal system requires parties to identify the issues, and it is for the party making an assertion to prove it. We endeavor to simplify processes, culling what is not necessary. But the Court is not a service agency, it is a neutral adjudicating body and cannot help either party to fill up substantive content nor give legal advice. Simplification of processes alone does not take away the value of legal services. A family lawyer provides very valuable services to family litigants, whose journey can already be difficult and emotionally charged.

49. We have a Courts of the Future (“COTF”) taskforce that has been working on initiatives to devise technology solutions for the efficient administration of justice, adopt the intelligent use of data, and develop self-help solutions for litigants. The Office of Transformation and Innovation has been recently established to move us along in this important endeavour.

50. FJC will conduct a holistic overhaul of key processes with the use of technology. It will consider whether court attendances can be reduced to save time and costs. For example, in the area of maintenance, Respondent to Show Payment (“RTSP”) cases are required to appear in person at the Court premises on pre-determined days each month to show proof that they have paid their maintenance dues. FJC will explore whether this can be done electronically through the Integrated Family Application Management System (“iFAMS”) in selected deserving cases as a start. In the area of divorce, FJC will explore the possibility of serving notices automatically and providing more services online such as requests for certified true copies of court documents. Provision of online sample templates/outlines, sample common court orders are also being considered.

51. The re-engineered processes will achieve cost savings (e.g. printing, paper, postage and storage costs), reduce FJC's paper footprint, and simplify the processes for all.

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52. Next, we must continue to lead the way in harmonious and amicable resolutions.

Statistics on harmonious resolutions

53. A snapshot of some statistics are heartening. Last year, we shared that in 2017, 47% of divorce applications were filed on the simplified track. Divorce filed on the simplified track involves no adjudication, and are filed by parties who have agreed on all relevant issues.

54. In 2018, 55% of divorce applications were filed on the simplified track. Thus, 45% of Divorces went on the *non-simplified* track in 2018.

55. As for Divorce cases that came through our FJC mediation in 2018, 70% of these cases were fully resolved without adjudication and 86% were at least partially resolved.

56. Through the years 2015 to 2017, the percentage of concluded divorce applications that went through Contested Divorce and/or Ancillary Matters adjudication is between 6 to 9%.

57. These statistics are heartening. A very large majority of divorce disputes are resolved by agreement. Parties may have reached settlements on their own, or with assistance from the FJC judge-mediators, FJC specialist-counsellors, private mediators, lawyers, community mediators/counsellors (and wise family and friends?).

58. Are these agreements reached “durable and strong” ones?

59. We made a preliminary study on the number of variations filed in the months or years after the agreements were made, to obtain a sense of whether the agreements were “durable” - this may give some indication of how ‘strongly made’ they were. The total percentage of variation applications in 2015 to 2017 were 2-plus percent in each category of simplified and non-simplified track cases. These figures capture variation applications in the period up to 6 months after Final Judgment of Divorce is obtained – for simplified track cases, this period would be about 10 months from the time of agreement; for non-simplified track cases, these could be about 1 to 1 and a half years from the time of the consent orders and court adjudicated orders. These figures do not necessarily tell us that these over 2% were not durable in that they were weak settlements, because variation applications are based on allegations of subsequent material change in circumstances. Still, I find these figures helpful in giving us a snapshot of where we are.

Facilitating harmonious resolutions

60. We will continue to work on facilitating harmonious resolutions. FJC will be working closely with the Community Justice Centre (“CJC”) to have volunteers provide holistic informational support for court users. The project will utilise existing volunteer programmes (i.e., Friends of LiPs (“FLIP”) and University Court Friends (“UCF”)) and new diverse avenues such as community centres to recruit and train volunteers.

61. The Family Mediation Symposium 2019 next month seeks to bring together foreign and local judges, lawyers, Central Authorities, and academics for the exchange of ideas and information on mediation of family disputes in the context of the Hague Conventions on child abduction and other disputes.

62. Our online dispute resolution (“ODR”) system is being worked on – this system aims to encourage resolution by parties through a virtual environment for the settlement and management maintenance related matters. This ODR system is expected to be launched in two years’ time. In

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the meantime, FJC is working towards enabling applicants in maintenance proceedings to make offers online *via* our iFAMS.

Multidisciplinary approach with coordinated and coherent therapeutic interventions

63. In my own experience as a Judge in family matters, I find that some of the hardest issues are not legal issues. I have found it extremely helpful for the families to obtain high quality interventions and support of the kind they specifically require. There are good resources within the courts (Counselling and Psychological Services (“CAPS”)) and outside the courts – voluntary welfare organisations (“VWOs”), MSF resources and agencies, private therapists – if they can be well coordinated within the broad family justice system, we can make a real difference to families.

64. Presently, FJC’s Court Specialists in CAPS support this crucial aspect of our work. CAPS Specialists conduct assessment, counselling, and mediation in respect of child issues – there is thus “docketed” support throughout the life of a case. CAPS is also our “link-bridge” with external agencies such as the Divorce Support Specialist Agencies (“DSSAs”) and Family Service Centres (“FSCs”).

65. I envisage that much work and resources will be required to enhance coordination of various services in the community; I think this is a very important and worthwhile endeavor.

66. We hope to be able to work towards a future where there is a family intervention scheme specifically in place for complex high-conflict cases involving children. This may involve many family conferences to manage strong emotions between parents; specialized therapeutic family interventions and high levels of coordination between the judge managing the proceedings and the professionals in CAPS and the community providing the therapeutic interventions. This may be a place we can aim for in the near future and I look forward to that day.

Family law development and jurisprudence

67. While I have been speaking on the 5 points towards a way forward, I also want to note a few other things. A strong family justice system rests on strong Family Law. Here is a sneak-preview of the draft chapter on Cases in Family in 2018 in the forthcoming Singapore Academy of Law Annual Review of Cases. The authors sum up:

“1 In 2018, the Singapore courts chartered new waters when it considered issues such as whether an adoption order should be granted to a gay man who fathered a child through gestational surrogacy, and whether a child should be returned to his mother in the UK when he had been wrongfully abducted from her. There were also cases that provided principles on key areas of family law (such as guardianship applications by non-parents) while others continued the application of well-established family law principles.

2 Collectively, these decisions represent a continued maturation and an increasing sophistication of Singapore family law jurisprudence...”

68. A heavy haul of 5 Court of Appeal judgments and 10 High Court (Family Division) judgments were reviewed in this chapter. Such was the strength of the development of our family law jurisprudence in the past year.

69. We will continue to develop our family law whenever there is opportunity in the cases that are presented to us, and build strong family jurisprudence that reflect our values for families in Singapore.

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70. We will look at whether the practical application of family law requires changes for a journey that minimises room for acrimony and battles. In particular, we will pay attention to the areas of the division of matrimonial assets and how the enforcement of access orders may be strengthened.

Supporting the elderly

71. Finally, while I have focused on the young, I also would like to share our work in supporting the elderly.

72. To enhance access to justice for the seniors and the vulnerable, FJC is exploring a Seniors' Court pilot where designated courtrooms and chambers can be retrofitted with elder-friendly infrastructure and systems. Lessons learnt from this pilot will eventually be included in the design for the new FJC building.

73. The iFAMS is a new filing system and a substantial number of Deputyships and related applications can gradually be made through this new system. We will work on public education materials that can assist users in such iFAMS applications.

Heartware

74. We can have great processes, great ideas and projects, but they come to naught if we do not power them with the most important resource – our “heartware”. At the last Workplan I had thanked all who worked in FJC – they are the “heartware” that powers us on, the “heartbeat” of FJC.

75. Our heartware should be looked after. We are paying attention to enhancing communications and collegiate support. We hope to find good opportunities for “together-events”, all of which are especially important as we operate from two separate physical locations in Havelock and MND. We look forward with longing to the time when we shall be together in one building.

76. I end with expressing my sincere appreciation to all who carry out the work of FJC, work which is very challenging, but extremely meaningful.

Thank you.

Justice Debbie Ong
Presiding Judge
Family Justice Courts