

ENGAGING THE FUTURE

Introduction

1. It gives me great pleasure to be here this morning as we discuss our plans for the Family Justice Courts in the coming year.

2. At the Opening of this Legal Year, I singled out the launch of the new Family Justice Courts as one of the most significant events of our legal calendar last year. The establishment of these Courts in October 2014 has structurally transformed the delivery of family justice in Singapore, with the High Court, the Family Courts and the Youth Courts integrated through a single Registry for the administration of family justice. A suite of programmes and services has been put in place to enhance the resolution of family disputes and to sharpen our focus on the interests of affected children. It has been a busy time for the FJC, and I appreciate all the work that the entire team has put in to get us to this point.

3. While we have sought to be bold and innovative, our reforms can be seen as part of a wider narrative that extends beyond our borders. As family life comes under greater strain, family courts all over the world have seen a rise in cases with a variety of challenging multi-dimensional needs and many have similarly embarked on reform initiatives. The FJC's priority for family justice in Singapore is to ensure that the courts remain relevant as a focal point for families to seek redress and to resolve disputes within the framework of the rule of law.

4. Our vision is ‘Justice that protects, empowers, restores.’ This morning, I would like to take some time to outline how the FJC will work in the coming year to achieve this vision; and also to touch on why the journey that lies ahead of us is crucial to the well-being of our citizenry.

Setting standards for family justice

Jurisprudence

5. Our decisions are ultimately at the core of our judicial work. By striving to do justice in each case that comes before us, we ensure that all litigants have recourse to the rule of law. This underlies the centrality of the “just and equitable” principle within our law. Thus, in *Surindar Singh s/o Jaswant Singh v Sita Jaswant Kaur*¹ and *TQ v TR*², the Court of Appeal held that while parties have a large measure of autonomy to order their private lives as they see fit, the Court may intervene where it is just and equitable to do so. The Court is the ultimate arbiter in family disputes and it may override the will of the parties because it has the responsibility to ensure justice and to protect the most vulnerable in these distressing situations.

6. On a wider level, the Courts also serve to shape values within our society. Decisions of the Court of Appeal in such cases as *NK v NL*³, *Lock Yeng Fun v Chua Hock Chye*⁴, and *BCB v BCC*⁵ emphasise the equal importance of the different aspects of contributing to home-making and the establishment of family wealth and prosperity. While these pronouncements come at the end of marriage, they speak in

¹ [2014] SGCA 37 at [56]

² [2009] 2 SLR(R) 961 at [78]

³ [2007] 3 SLR(R) 743

⁴ [2006] SGHC 230

⁵ [2013] SGCA 14

relation to how the parties must be seen to have approached the marital enterprise during its life and currency and so of how modern society views, upholds and affirms the marital partnership.

7. In the area of family justice, the law also sets the standard of responsible conduct expected of family members in managing conflicts. Thus, in *ABW v ABV*⁶, the High Court reiterated that parents are expected to place their children's interests above their own, holding that it would be in the children's interests for them to be with the parent who was more reasonable about access and hence more likely to ensure that the children's time would be generously shared with the other parent. The court noted that leaving the children with a parent who alienated them from the other would risk them "losing one of the most important human relationships they could have". This was a strong and important message to parents to place the needs of their children above their own and to focus first and foremost on their children's welfare.

8. Given the importance of judicial pronouncements in shaping our shared understanding of how these matters are best resolved, it is appropriate that we make use of an additional tool that is available to us to develop our jurisprudence, namely, the Three-Judge High Court. As we have done with the convening of three-judge panels to hear magistrates' appeals in the criminal justice, we expect to do the same in family justice to set the direction for difficult legal issues. This will help ensure that our decisions continue to set the framework for family conduct in a coherent and consistent way.

⁶ [2014] SGHC 29

Law reform

9. In family justice, legislation ultimately sets the context for all that we do and case law must always be seen in this light. It is therefore imperative that we work closely with policy makers to ensure that legislation is periodically reviewed so that we can be sure it is well suited to enable us to serve families and administer justice in practical and just ways. To this end, I intend to appoint a *Family Law Review Working Group*, comprising members from the key Ministries as well as from the Attorney-General's Chambers, from academia and from the practising profession to work with us on an on-going basis to identify areas that may require reform, revision or just refinement.

Process

10. To become fully effective, our new philosophy towards family justice must permeate our approach towards managing parties and cases. The processes that we put in place will therefore be crucial.

11. One example of this can be seen in the context of children's issues. Our family dispute resolution processes now encompass child-focused mediation and child-inclusive counselling, to emphasise the perspectives of the child in respect of whom issues of custody, care and access may be in dispute. Within the litigation process, judges work with professional counsellors who provide social welfare reports, custody evaluations or reports on other specific issues. A child representative may also be appointed to give voice to the interests of the affected

children. We have 18 suitably qualified persons on our panel, and in the course of 2015, we will put in place a process for further training, selection and appointment.

12. Another key example is in mediation and counselling which we have intentionally placed at the front and centre of the dispute resolution process. We have done this because we think these processes will often best meet the multi-dimensional complexity of family cases. In Singapore, this complexity can be made even more intricate by extended families and racial and cultural diversity. A real example will illustrate some of the challenges as well as the ways in which we have sought to meet these. An FJC mediator and a counsellor worked together with a couple who came from different racial and religious backgrounds. Their children had been exposed to two different cultures and religious practices from birth. When the couple decided to divorce, each party levelled accusations that the other party had been and remained insensitive to the accuser's religious and dietary practices. There were deep divisions on where the children should live, worship or go to school. To complicate matters, the primary caregivers of the children were the paternal and maternal grandmothers, who seemed more affected by the divorce than the couple. The grandmothers, each speaking a different language, were brought into the mediation process. All the parties together with the grandmothers were able to talk through their concerns. They eventually were able to come round to acknowledging that the children were privileged to be part of a rich heritage of two cultures, and the various issues were consensually resolved.

13. This provides a vivid example of how mediation and counselling can be powerful tools in family disputes: discussions in such a context can cover issues not

squarely within the ambit of resolving a technical legal question and it can lead the way to the parties gaining a new understanding of how it might be possible, after all, to face a different future than the one they had once, in a happier time, dreamt of.

14. Where cases do proceed for adjudication, the judge-led approach that we have put into place signals clearly that we do not take a kind view of parties dragging out litigation. Efforts have been and will continue to be made to lower the volume, sharpen the focus and concentrate only on what is relevant.

15. Since the New Year, we have been aided by the new Family Justice Rules and the Family Justice Courts Practice Directions to move us in this direction. These are the first sets of comprehensive Rules and Practice Directions for matters within the FJC. They consolidate various sets of rules. Over time, our intention is to simplify these further. For courts dealing with family issues, simple rules and practices that are easily understood are especially important whether or not the parties are represented by lawyers.

16. Through these process changes, we aim to build a new culture in the context of family court litigation. We have also found that the single Registry functioning in two levels of courts has helped to pull cases together more coherently. This is an advantage that we will seek to fully leverage in the coming work year.

Making family justice widely accessible

17. I have dealt with aspects of how we see the work of the Courts in terms of our case law, law reform and our processes. An essential complement to the quality of justice is its accessibility to those who need it.

Improving access to justice for vulnerable individuals

18. For those in need of protection, many of whom come from the less advantaged sectors of society, it helps greatly if justice can be made more accessible. In order to address one aspect of this, the Ministry of Social and Family Development has plans to augment the jurisdiction of the court for mental capacity and vulnerable persons cases. This will involve the introduction of new legislation as well as amendment of existing legislation.

19. Another aspect of enhancing access pertains to making better use of IT so that users can more easily and effectively access Court processes when they need to file the required applications. When devising the IT systems with these objects in mind, we will also seek to ensure that entities within the community that can best assist prospective litigants with these applications, such as hospitals, family service centres or specialist agencies, are able to do so. This will make it easier for litigants to obtain assistance and so improve their access to justice.

Access to services within the community

20. There is yet another aspect of access to justice. The FJC deals with the full spectrum of family issues. But if the reforms work as they should, it should in the end

be only the most difficult cases that actually reach the FJC. Parties who are at the initial stages of family disputes should receive help to enable them to resolve their differences justly using any of a number of different pathways. With this in mind, MSF has set up Specialist Agencies to assist parties with young children in the initial stages of contemplating a divorce. Such couples may contact these Specialist Agencies for information on financial and housing implications of a divorce, seek counselling support as well as attend support programmes with a child-centric approach. The Specialist Agencies will also provide information to parents about the impact of a divorce on their children and the children's developmental needs.

21. The pre-writ space will be further strengthened by FJC's close work with the Singapore Mediation Centre, the Singapore International Mediation Institute and the Law Society on developing our national family mediation framework and expanding the use of Collaborative Family Practice. Collaborative Family Practice is a way in which parties contemplating divorce can negotiate a possible agreement even before the divorce papers have been filed, and have lawyers and other professionals work with them to resolve the related issues. Over time, as family mediation and Collaborative Family Practice mature, it is our hope that these services will be widely available within the community, enabling parties to receive help in a more familiar environment. Recognising the importance of building up this part of our eco-system, we are also working with the Ministry of Law on a draft Mediation Bill, one of the objects of which will be to make agreements mediated outside the context of court proceedings more easily enforced.

Legal fraternity as integral to access to justice

22. Family lawyers are a crucial component of ensuring access to justice whether this be sought inside or outside the court. They form an important bridge for their clients, to the law, to services outside the court, and to interaction with and within the court.

23. In my address at the opening of these Courts, I had noted that family lawyers operating in the new family justice landscape must be properly equipped and that their work requires an understanding of other disciplines.

24. We are not the only jurisdiction that takes this view. In Canada, the *Family Justice Working Group of the Action Committee on Access to Justice in Civil and Family Matters* observed in 2013 that contemporary family law practice requires the philosophical map of family lawyers to be redrawn in order for them to become conflict managers and problem solvers. It was suggested that family lawyers should embody the values of “conflict resolution advocacy”, which required them to learn to wear the two hats of fighter and settler, and understand when to take one off and put the other on.⁷ Likewise, in Australia, a study of Australian family lawyers and clients indicated that clients preferred a constructive family lawyer who applied a balance of conciliatory and adversarial approaches to one who was purely adversarial.⁸

25. I am heartened by reports from the Family Court judges that they have observed an enthusiastic response from the Family Bar to the changes that have taken effect in the past few months. Our family lawyers have lent their services as

⁷ *The New Lawyer (2008)* Professor Julie MacFarlane

⁸ Jill Howieson (2011)

Child Representatives, been trained as family mediators and worked hand-in-hand with the judges to reduce acrimony in difficult cases.

26. To continue supporting and equipping the family Bar to fulfil their new roles in the changed family law paradigm, I have asked Justice Andrew Phang to chair the *Family Law Practitioner Accreditation Committee*. The Committee will take this year to work out its recommendations concerning the design of specialist family law and multi-disciplinary training for lawyers in close cooperation with the Law Society. I do not wish to pre-empt their work in any way and so wish to make it clear that despite the name of the Committee, its eventual recommendations may or may not involve accreditation.

Family justice within the international community

27. Let me touch on a final point. Increasingly, our cases reflect the international nature of our society. About 15% of our cases involve non-Singaporean parties. The most challenging are those where the parents wish to reside in differing jurisdictions after the divorce, but cannot agree which jurisdiction the children are to reside in. This raises complex issues including the question of which court should decide this. Different countries have different rules. For countries that are signatory to the Hague Convention on Child Abduction, it will be understood that in general, the court of the child's habitual residence should deal with the substantive dispute. However, many countries are not signatories.

28. This year, we will continue to work with other courts and mediation institutes in other jurisdictions on possible co-mediation schemes to bridge the jurisdictional divide. If parties are able to reach agreements, with the benefit of mediators from both jurisdictions, one option to resolve the jurisdictional impasse might be agreed 'mirror orders' that are made in both jurisdictions.

Conclusion

29. I have entitled this speech '*Engaging the Future*'. We started on this journey just two years ago. Although we have travelled far already, we are still at a very early stage and the future promises to be fascinating but also enormously rewarding. We must recognise that ours must be an evolving vision. We will need to constantly review our progress and make adjustments where necessary.

30. This brings me to my last, but most important, point: the premise of our success is our people. The nature of the work that lies ahead will require individuals who think creatively for the benefit of those they serve and who work well with other specialist professionals in this endeavour; persons who have the patience to deal with challenging litigants, and emotionally wrenching issues but who are yet able, willing and indeed committed to press parties forward with a measure of heart. These courts must become a vibrant home for ideas and for a strong team who are bound together by an unwavering commitment to serve. The work that lies ahead will undoubtedly be demanding but it will be well worth the effort, the passion and the commitment that I know all those involved in this endeavour will bring to bear.