

**Family Justice Practice Forum: *Family Justice 2020***

The Honourable the Chief Justice's Opening Address

14 July 2017

***The Problem-Solving Practitioner and the Complexity of Family Justice***

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*Fellow Judges*

*Mr Gregory Vijayendran, President, The Law Society of Singapore*

*Distinguished Guests*

1. Let me begin by thanking each of you for taking the time to be with us at the Family Justice Practice Forum this morning.

**Introduction**

2. Almost 4 years have passed since we held the inaugural Forum in October 2013. On that occasion, I spoke about the need for us, the stakeholders in the family justice system to engage with one another in our shared quest to find the best ways to address disputes involving distressed familial relationships. Since then, there have been many significant developments in the family justice eco-

system, and it gives me great pleasure to continue our conversation at today's Forum, the fourth in this series.

3. Just a year after our inaugural forum, we witnessed the establishment of the Family Justice Courts ("FJC"), on 1 October 2014, as a set of specialist family courts comprising the High Court (Family Division), the Family Courts and the Youth Courts. This signalled the development of a new paradigm for the resolution of family disputes in Singapore, where all disputes relating to the family are handled under a unified court structure with a distinct culture, ethos and approach consonant with the specialised needs of family justice.

### **The centrality of the lawyer in the new paradigm**

4. I would like to spend some time this morning, focusing on the question of how this emerging ethos and culture affects the important, indeed critical, role of the family lawyer and to outline how the family lawyer can play an influential 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.

### *The need for conflict management*

5. The first and perhaps most important point I wish to highlight in this context is the paramount importance of conflict management and reduction. In other areas of litigation, conflict is necessary - often even helpful - to the process of getting to the issues. However, in family justice, we prioritise the welfare of the child as a core tenet, and because of this, the reduction of conflict becomes critical.

Continued exposure to *intense* inter-parental conflict and violence during marriage has been shown to have long-lasting adverse psychological, emotional and behavioural effects on children.<sup>1</sup> Even children who are exposed to persistent *low levels* of conflict have been reported to have higher incidence of depression, and lower levels of commitment and trust in forming future relationships.<sup>2</sup> Over the last 20 years, neuroscientists studying the human brain have learnt that fear and trauma in childhood can have a profound impact on the developing brain. Witnessing parental conflict can be terrifying and stressful for children, especially younger children, who do not have the capacity to make sense of what is happening around them and who do not know how to protect themselves.<sup>3</sup> Reducing conflict is therefore an important objective that underpins many of our efforts.

6. Indeed, even the disputing spouses often need to reduce and manage their conflicts, though they don't always realise this. About 50 years ago, the psychiatrists, Thomas Holmes and Richard Rahe developed the Holmes and Rahe Stress Scale which sought to identify links between stress and illness. In their study, they identified divorce as the second most stressful life event, ranking only

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<sup>1</sup> Emery and Emery "Children's Adjustment Following Divorce: Risk and Resilience Perspectives" (2003) 52(4) Family Relations 352–362; and Burke, McIntosh, & Gridley Parenting after Separation. A Literature Review prepared for the Australia Psychological Society, 2009.

<sup>2</sup> Amato and Both, A Generation at Risk: Growing up in an Era of Family Upheaval (Cambridge: Harvard University Press, 1997).

<sup>3</sup> If a developing child's world is safe, predictable, and characterised by relationally and cognitively-rich opportunities, the child can grow up to be self-regulating, thoughtful, and a productive member of family, community and society. In contrast, if the child's world is chaotic, threatening, and devoid of kind words and supportive relationship, the child may become impulsive, aggressive, inattentive and have difficulties in relationships. That child may require special educational services, mental health of even criminal justice intervention. See Perry, "Maltreatment and the Developing Child: How Early Childhood Experiences Shapes Child and Culture" The Margaret McCain Lecture Series, Inaugural Lecture, September 2004.

after the death of a spouse.<sup>4</sup> Other research reveals that those who face an important issue for the first time in an unfamiliar environment are likely to be much distressed by the experience.<sup>5</sup> For most of us, the court is part of our daily work routine; but for most litigants, it is an unfamiliar, daunting and highly stressful setting. Thus combining a familial breakdown with the ensuing court proceedings means the stress faced by these litigants is greatly exacerbated.

### *The vulnerable litigant and non-party*

7. Hence, most family litigants are, almost by definition, vulnerable. And, in family proceedings, we often see other types of vulnerabilities. The child, while not formally a party in divorce proceedings, is often at the heart of the family court's work. And in our context of an aging population, there are growing numbers of elderly who present a distinct type of vulnerability. Then, there are the mentally unwell. A recent study conducted by the Institute of Mental Health, suggests that about 5.8% of the adult population have suffered from Major Depressive Disorder in their lifetime and 1.2% from Bipolar Disorder. Further, about 3.9% have suffered from anxiety disorders including Obsessive Compulsive Disorder; while about 3.6% have abused or been dependent on alcohol at some point in their life. The majority of these persons, despite their illnesses, were not seeking help.<sup>6</sup> But we do see them in the family court.

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<sup>4</sup> Holmes, T. H. and Rahe, R. H. "The social readjustment rating scale", 1967, *Journal of Psychosomatic Research*, 11(2), 213-21.

<sup>5</sup> Berry, Davis and Wilmet, "When the Customer is Stressed", October 2015, *Harvard Business Review*.

<sup>6</sup> See Media Release by Institute of Mental Health dated 18 November 2011 "Latest study sheds light on the state of mental health in Singapore" (with Information updated as at 23 September 2016). The results are similar to the results of a study conducted by the Singapore Association for Mental Health in 1989 which estimated that 18% of the population experienced "minor psychiatric morbidity" with 12% of the adult resident population suffering from affective, anxiety or alcohol use disorders. This study was cited in Siow Ann Chong (2012), "A Population-based Survey of Mental Disorders in Singapore" *Annals Academy of Medicine*, Vol. 41, No. 2.

### *Lawyers as first responders*

8. Lawyers are the best 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 space to confide in them, and then appropriately counsel and help them in their quest for a more hopeful future than the past from which they have come.

### **Content of the lawyer's role**

9. Given the lawyer's crucial role, it becomes a matter of critical importance that we have a good understanding of the content of that role; and in particular, of the responsibilities and the opportunities it presents.

10. Around the world, there has been growing awareness for some time that lawyering in family work should emphasise the important role of lawyers as problem solvers, working collaboratively in a multidisciplinary environment, with the objective of achieving outcomes that are beneficial to *all* those involved in or affected by the dispute.<sup>7</sup>

11. In line with this, Professor John Lande<sup>8</sup> has observed that in America, despite the public image of family lawyers as fomenters of conflict, the empirical research indicates that most family lawyers in fact endeavour to be reasonable.

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<sup>7</sup> Judy Gutman, "The Reality of Non-Adversarial Justice: Principles and Practice", *Deakin Law Review*, Vol 14 No. 1, 30-51 at 50.

<sup>8</sup> Isidor Loeb Professor Emeritus and former director of the LLM Program in Dispute Resolution, University of Missouri.

They dampen legal conflict far more than they exacerbate it and generally try to avoid adversarial action.<sup>9</sup> Increasingly, they have looked beyond the confines of the traditional paradigm to embrace interest-based negotiation and creative problem-solving approaches that focus on the **true** interests of the affected clients and families.<sup>10</sup> Other family lawyers envision the role of the family lawyer as a “peace-maker”, believing that what they do, day after day, is to be “present” for their clients and to work for peace for them and their families.<sup>11</sup>

### *Client Advisor*

12. How then should our understanding of the role of the family lawyer in Singapore be affected by the changes we have introduced to our family justice paradigm? The family justice process starts when the family lawyer 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 approach that the client will take to the dispute and in particular, his willingness to cooperate in efforts to reduce conflict. Charlie Asher<sup>12</sup>, an Indiana Attorney who has established a website providing free resources to those involved in family disputes, observes that the family lawyer can, at the very early stages of an engagement, set a tone (through attitude, language and conduct) of either beneficial cooperation or destructive conflict. In his proposed model for a cooperative system of family

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<sup>9</sup> John Lande, “The Revolution in Family Law Dispute Resolution”, *Family Law Dispute Resolution*, Vol. 24, 2012, 411-449.

<sup>10</sup> Forrest S Mosten, “Lawyer as Peacemaker: Building a Successful Law Practice Without Ever Going to Court”, *Family Law Quarterly*, Vol. 43, No. 3 (Fall 2009), 489-518 at 495.

<sup>11</sup> Forrest S Mosten, “Lawyer as Peacemaker: Building a Successful Law Practice Without Ever Going to Court”, *Family Law Quarterly*, Vol. 43, No. 3 (Fall 2009), 489-518 at 490-491; and “Bringing Peace in the Room” by Daniel Bowling and David Hoffman (2003).

<sup>12</sup> Indiana Attorney, and Co-founder of UptoParents.org, America’s premier supplier of free resources for the resolution of divorce and other family crisis.

law litigation<sup>13</sup>, Asher proposes the following: Unless safety requires otherwise, counsel should - speak with clients about the advantages of safe cooperation in family cases; work with other counsel to reduce conflict, build cooperation and protect children; avoid unnecessary applications and hearings; use the least divisive processes to pursue safety, fairness, cooperation and the best interests of children;<sup>14</sup> and employ the same approach when dealing with self-represented persons.<sup>15</sup> It seems to me there is much wisdom in this.

13. Family lawyers can also practise what is known as preventive lawyering,<sup>16</sup> by using the training, skills and experience that they have, to anticipate how the court, client and other family members might behave in the future in a particular scenario, and so help their clients take steps to avert trouble.<sup>17</sup> For example, they could consciously time the filing of a writ for divorce so as to avoid surprise that might lead to unnecessary spousal conflict and emotional harm to the children; or facilitate communication between parties and lawyers, so as to maximise mutual understanding and cooperation, and the parties' sense of participation in the process.

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<sup>13</sup> Asher's proposal received the ABA Lawyer as Problem Solver Award. See Asher's entire proposed Up to Parents Model Rule for a Cooperative System of Family Law at [http:// www.uptoparents.org/files/UTPMODELRule.doc](http://www.uptoparents.org/files/UTPMODELRule.doc).

<sup>14</sup> Charlie Asher, "An Introduction to a Cooperative System of Family Law and Its Expression" in AssessFamilyLaw.org, reprinted from the "Professional Corner" link of UpToParents.org (January 21, 2012)

<sup>15</sup> Charlie Asher, "The UpToParents Model Rule for Family Cases", reprinted from the Professionals Corner – UpToParents.org (June 13,2010)

<sup>16</sup> Preventive lawyering was suggested 50 years ago but remains novel. See Forrest S Mosten and Lara Traum, "The Family Lawyer's Role in Preventive Legal and Conflict Wellness", Family Court Review, Vol. 55 No. 1 January 2017, 26-37 at 32.

<sup>17</sup> Forrest S Mosten, "Lawyer as Peacemaker: Building a Successful Law Practice without ever going to court", Family Law Quarterly, Vol. 43 No. 3 (Fall 2009), 489-518.

14. The family lawyer should also be a good client educator. Clients need easily digestible information on the basis of which they can then make good decisions and lawyers can help in this through the use of websites, brochures and hand-outs; or even having a small client library with reading material in waiting rooms.<sup>18</sup> We have already taken the initiative by making some such materials available in various waiting areas at the Family Justice Courts.

15. Importantly, if there are underlying unresolved needs and issues that must be addressed, the family lawyer should be able to refer the client to the appropriate therapists or mental health care professionals, co-parenting or, anger management classes, family service centres, local police, crisis shelters, banks, accountants, financial planners, real estate appraisers, the CPF Board or the HDB. Many of these references will be essential to help the client navigate her way out of her situation of distress and lawyers need to be informed, equipped and disposed to provide this type of assistance. By reducing such distress, lawyers would be enhancing the prospects of a constructive approach being taken. This in turn calls for skills of active and observant listening. The lawyer as diagnostician is just as responsible for spotting red flags and recommending preventive measures as a doctor who notices a patient's health warnings.<sup>19</sup> The family lawyer may also advise the client to pursue collaborative law options, or refer the client to mediation.<sup>20</sup> For any of these to come in fruition, lawyers will need to be committed,

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<sup>18</sup> John Lande and Forrest S Mosten, "Family Lawyering, Past, Present and Future", *Family Court Review*, Vol 51, No. 1 Jan 2013, 20-27.

<sup>19</sup> Forrest S Mosten and Lara Traum, "The Family Lawyer's Role in Preventive Legal and Conflict Wellness", *Family Court Review*, Vol. 55, No. 1 January 2016, 26-37.

<sup>20</sup> Forrest S Monsten, "Lawyer as Peacemaker: Building a Successful Law Practice Without Every Going to Court", *Family Law Quarterly*, Vol. 43, No. 3 (Fall 2009).

informed, intentional and strategic, and think about how to bring the sides together in their long-term interests.

*Other roles within the family justice continuum*

16. The renewed emphasis on the child within the new paradigm has also refined the role of the family practitioner in other ways.

17. Family lawyers represent the parents rather than the child. While many do routinely advise their clients in custody disputes that they must learn to co-parent, put aside their differences with the other parent and consider the best interests of their child, the truth is that the perceived interests of the parent and those of the child may not be aligned. As a result, the best interests of the child can sometimes be side-lined. In October 2014, FJC established the Child Representative scheme harnessing the skills of specially trained family lawyers. Under the scheme, a Representative may be appointed to represent the best interests of the child in the proceedings. Apart from interviewing the parents and the child, the Representative may speak to teachers, school counsellors and other persons involved in the child's life before preparing an independent submission setting out his or her recommendations on issues relating to custody, care and control and access, to assist the judge in coming to a determination.

18. The scheme 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, Representatives have been appointed in 24 cases. We

surveyed our judges recently and all those who had appointed a Representative felt that it had made a positive difference. For their part, the Representatives found their role meaningful, in that they were able to give the child a voice, and to help the court come to a solution in the child's best interests.

19. And for high-conflict cases, FJC has collaborated with the Family Bar to pilot the parenting co-ordination program in November 2016. A parenting coordinator appointed by the court works directly with the parents to facilitate communication, and to educate and help them resolve disagreements over practical issues of care, control and access. We are extending the scheme to include parenting coordinators from the social science fields because their special expertise may help some families.

20. In either of these capacities, the family practitioner can directly impact the best interests of the child by educating the parents, reducing conflict and helping to ensure that the voice of the child is heard **both** by the parents and by the court. Some lawyers have told us that through their role as Child Representatives, they have come to better appreciate the job of judging. The impact of these roles therefore extends beyond the case at hand, by influencing the attitudes and mind-sets of family lawyers, to help them see things from the point of view of the court and of the child. This will move us collectively towards a better model of adjudication.

## *Ethics*

21. Inevitably, our changing mind-set and the evolving roles played by family lawyers has a bearing on our approach to ethics. The best interests of the child and the continuing relationships within the family will often present ethical conundrums for a lawyer. Let me imagine some scenarios:

- (a) Your client claims to have a good relationship with his child, while the other parent contends that he does not. He would like to film his interaction with his child in order to present the court with evidence of his good relationship.
- (b) Your client contends that she was punched by the other parent in the presence of their child, who still has post-trauma nightmares of the incident. She would like to call the child as a witness.
- (c) Your client is a well-heeled investment banker. He knows that his wife has psychiatric issues and will be intimidated by aggressive litigation. He instructs you not to be accommodating and wishes to craft your correspondence to the wife, who is acting in person.

22. How are you to deal with each of these scenarios? There are no textbook answers. But the point of these examples is to illustrate the potential clashes between what your client may want, what you might believe to be best for your

client and for others in the long term, and in particular, what might best serve the interests of the affected children.

23. This is why the Ethics Workgroup comprising family law practitioners, academics and members of the judiciary was formed late last year to consider the ethical issues faced by family law practitioners. It has proposed a specialised family component to the Professional Conduct Rules Working Group. The guiding principle behind the proposed Rules 15A and 15B, is to exhort practitioners to be constructive and conciliatory from the time family proceedings are contemplated until their resolution. In brief, the proposed amendments seek to:

- (a) Encourage practitioners to take a constructive, conciliatory and non-confrontational approach towards the resolution of family proceedings;
- (b) Ensure that practitioners inform their clients about alternative dispute resolution options such as mediation and counselling, and advise their clients to consider the amicable resolution of family proceedings whenever possible and reasonable;
- (c) Ensure that practitioners advise their clients to adopt a constructive and reasonable approach to the resolution of any necessary proceedings;

- (d) Clarify that practitioners have a duty to advise their clients to consider the welfare of any children who may be involved in the family proceedings and the potentially adverse impact of the proceedings on them; and
- (e) Set out the duties of practitioners in relation to conflicts of interest having regard to the other roles they may play within the family justice process.

24. The Law Society will supplement the Rules with a Best Practices Guide, which will fill out the guidance provided by the Rules, on the gamut of issues that can arise in this context. The Guide will cover, amongst other things, the general duties of family lawyers and their relationship with the court, the client, other practitioners, self-represented litigants, and children; possible dispute resolution options; the conduct of litigation; and the preparation and drafting of communications, correspondence and affidavits. It is designed to be a useful and practical resource to provide thoughts, ideas and suggestions to assist lawyers throughout the course of the engagement. The Guide should also help lawyers maximize the benefits of the new family justice system for their clients.

## Features of the new paradigm

25. In the light of that re-imagined vision of a successful and effective family lawyer, let me briefly outline and review some of the options that today avail a client involved in a family dispute.

### *Mediation and counselling*

26. Mediation and counselling have long been an important feature of family justice. After 1 October 2014, the use of mandatory counselling and mediation for cases involving a minor child was extended to all cases involving children under the age of 21, and beyond just divorce cases, to all other summonses and applications related to children's issues. These services are also available for probate and mental capacity cases.<sup>21</sup> Since October 2015, these services have been sited at Maxwell Road, where concerted efforts were made to ensure the correct ambience and setting for this type of work.

27. The large number of cases that settle are a testament to the hard work of lawyers and mediators involved in these efforts. For mandatory counselling and mediation cases handled in 2014, 75% achieved a full resolution of all contested issues while 80% achieved a full or partial resolution of contested issues. In 2015, 77% reached full settlement of all contested issues, 82% reached either full or partial settlement and 91% reached full agreement on children's issues.

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<sup>21</sup> Y. Loi, S. Tan and I. Amir, "Serving Children and Families Responsibly – the Singapore Family Justice Courts Journey". Paper presented at the World Congress on Children's Rights, 4 June 2017, paragraphs 41 to 43.

28. To strengthen our efforts in this area, FJC has worked with the Singapore Mediation Centre and the Singapore International Mediation Institute to develop the Family Mediation Training and Accreditation Framework. The first Family Mediation Training and Accreditation Programme was jointly organised by FJC and SMC in 2014 and the SMC Family Panel of mediators (comprising judges, family lawyers and other legal and counselling professionals) was formed soon after. This was an initiative that was borne out of our recognition that the skills involved in family mediation are somewhat distinct. Today, there are more than 70 specially trained and accredited family mediators on the SMC Family Panel.

### *Litigation*

29. Despite these efforts, there will remain cases when personal and marital relationships have broken down to such an extent that it is virtually impossible for the parties even to communicate, let alone agree on a fair result. In such cases, litigation may be essential.

30. During the recent public consultation that the FJC and the Law Society held on the changes to the Professional Conduct Rules, lawyers asked whether a family lawyer's role in litigation is different from that in mediation. I think the answer to this is that the problem-solving family lawyer is equally needed in litigation as he is in mediation. The family lawyer, in some senses, does have a unique role in securing outcomes that are sustainable and in the long-term, best interests of all those affected by the dispute, including in particular, the children; and this remains so regardless of the mode by which the dispute is being resolved.

31. The model of the constructive problem-solving lawyer is integral to the judge-led approach introduced through Rule 22 of the Family Justice Rules. The judge-led frame was adopted to create a dynamic space for litigants, lawyers, witnesses and the court to collaborate and undertake a joint effort to resolve issues and find solutions.

32. Such a problem-solving and constructive approach is not incompatible with litigation. In Charlie Asher's model of a cooperative system for family law litigation<sup>22</sup>, he proposes that the lawyer can set the tone during litigation, for example, by showing courtesy through respectful language and behaviour; readily agreeing to requests by the other party for necessary information and facts; or for personal accommodations because of illness; refusing to take advantage of mistakes made by the other side; taking personal responsibility in solving problems and improving matters rather than just reporting on the alleged fault of others; refraining from negative, personal and sarcastic comments; creating a positive peace-making climate with the other party; respectfully listening to the other side; sensibly pursuing the best interests of all family members; and paying particular attention to the children's needs including being well aware that parent conflict is dangerous to children.<sup>23</sup> This model sets a standard that is different from the usual case where the lawyer's focus tends to be on maximising his client's position because litigation is often seen as a zero-sum proposition.

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<sup>22</sup> See Asher's proposed Up to Parents Model Rule for a Cooperative System of Family Law at [http://www.uptoparents.org/files/UTPMODEL Rule.doc](http://www.uptoparents.org/files/UTPMODEL%20Rule.doc).

<sup>23</sup> Charles Asher, The UpToParents Model Rule for Family Cases, reprinted from the Professionals Corner – UpToParents.org (June 13,2010).

33. The unique features of family justice also require us to re-consider the process of managing family cases. Thus the FJC has employed a stringent case management approach, with an emphasis on streamlining evidence to what is necessary, and deploying a single **judge** where appropriate to see a case through its entire life cycle.

34. Use of a single court **expert** complements this new judge-led philosophy. The Family Courts have long invoked Rule 41 of the Matrimonial Proceedings Rules, which mandated a single expert for child issues. But the child is not the only subject that benefits from this approach. Rule 635 regarding the use of a single court expert was introduced into the Family Justice Rules in 2016 as a result of observations made in a judgment of the Court of Appeal. *Re BKR* [2015] SGCA 26 involved 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 us to be particularly helpful; and the determination of her mental capacity rested largely on her cross-examination. In the judgment, we observed that for cases where mental capacity of an individual is in issue, the court should adopt a more inquisitorial and court-directed approach to the evidence. We also suggested that the individual should be independently examined in consultation with her own doctor, with the court appointing an independent expert if the parties are unable to agree on one. After all, the court's role in MCA proceedings is a protective one and it should not shy away from taking control of MCA proceedings and directing parties on the evidence that *it* requires in order to reach *its* decision. The same observation

applies to other types of family disputes, including disputes over financial assets. In the appropriate case, where parties disagree over an issue requiring expert evidence, lawyers should try and agree on a single expert, or consider applying to court for the appointment of a single independent expert under Rule 635.

35. There have been other initiatives shaped by a similar concern to reduce conflict. For instance, we introduced the uncontested simplified track procedure in January 2015, under which if parties are able to agree on divorce and ancillaries prior to filing of court papers, they may file simpler papers and obtain final orders without having to attend court. In 2015, 24% of the total number of Writs filed (1421 of 5,931) utilised the simplified track procedure; and in 2016, this increased to 37% of total number of Writs filed (2,330 of 6,302).

36. With these various changes, the number of cases that were disposed of within a year of filing increased from 46% in 2012 to 74% in 2016. The average time taken for final judgment to be granted reduced 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 object is to develop an altogether more appropriate process given the particular interests and complexities of family litigation. Over time, I would like to see the judge-led approach permeate all aspects of family litigation, from discovery, to affidavits, to cross-examination and costs, as we in the courts fully work out the opportunities, and test, refine and supplement the limits, of the “judge-led” approach.

## **The future: “Practice of Law 2020”**

37. Looking to the future, we will continue to make efforts to harness technology to streamline and situate more processes in the community.

38. Today, FJC is launching an integrated Family Application Management System (“iFAMS”) which is a comprehensive IT system that seeks to streamline and simplify processes for all family violence and maintenance applications. Lawyers and other court users will be able to access simplified user-friendly template application forms from remote locations. They will also be able to check their case status, and submit their documents, online.

39. Within the courts, we also mark the launch of FJC’s Family Protection Centre, a one-stop purpose built area designed to offer victims of family violence a safe, private and conducive environment to file PPO applications. It features redesigned spaces for risk assessment with a counsellor and facilities for affirmation of the supporting declarations before a judge. There will also be self-help kiosks for parties to file their applications, and volunteers stationed onsite to provide support.

40. Within the community, iFAMS and associated specialist assistance are now available from six community touchpoints that deal with family violence and maintenance. More community touchpoints will be added in the coming year, so that applicants may apply in a familiar setting where they are also able to receive

other assistance relevant to their specific needs. We believe that enabling them to do so within their community would alleviate much anxiety associated with engaging in litigation.

41. Early next year, we will extend the new IT platform to simplify mental capacity and deputyship processes as well, for applications which are uncontested and considered to be low-risk.<sup>24</sup>

*Necessary legal complexity of family litigation*

42. Over the years, we have perhaps tended to underestimate the complexity of family law. In truth, family law is varied and encompasses a host of legal issues, extending beyond matrimonial matters and custody issues into probate, succession, legitimacy, family violence and maintenance, child protection and even criminal law. It has also become increasingly international.

43. The widely reported case of the tour guide, Yang Yin<sup>25</sup>, who is now serving a lengthy prison term for misappropriating monies from an elderly widow (whom I will refer to as “P”) and related crimes illustrates the growing complexity of our work. After P’s niece discovered that a Lasting Power of Attorney had been registered on 6 July 2012 in favour of Yan Yin, an investigation was made into the state of P’s affairs. Amongst other things, it came to light that P had executed a will in 2010 naming Yang Yin as sole beneficiary of her entire estate.

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<sup>24</sup> Low risk cases are those cases where there is little risk to the mentally incapacitated person due to the nature of the powers sought as well as the identity of the applicants and where there are no disputes between the parties. Currently, about 94% of all MCA applications are uncontested.

<sup>25</sup> [2015] SGFC 63.

44. Various applications were then initiated by P, P's niece and the Office of Public Guardian, which eventually resulted in the revocation of the LPA and the execution of a statutory will on P's behalf under section 23(1)(i) of the Mental Capacity Act. The case highlights the complexity of mental capacity law and reminds us that the care of the aged can give rise to a host of complex issues. Given our aging population, we can expect to see more such issues arising.

45. Another area of complexity stems from the growing international dimension of family work. Singapore citizens form about 60% of the total population<sup>26</sup>, with non-residents making up about 30% of the population and permanent residents about 10%. With an increasing number of foreigners choosing to live and work in Singapore, the number of divorces involving at least one party who is a foreigner has similarly grown. In the past 3 years, about 40% of divorce cases each year involved at least one party who was a foreigner.<sup>27</sup> Further, about 1 in 3 of those cases involved at least one child below 21 years.<sup>28</sup> These cases raise a number of cross border concerns including enforcement, relocation and custody issues.

46. At the courts, we have seen other complex family law cases. In the first half of this year, the Court of Appeal had the occasion to examine the question of ancillary relief for couples divorced under foreign Syariah law. And more recently,

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<sup>26</sup> Of which 0.37% (20,815) were new citizens. Source: <http://www.channelnewsasia.com/news/singapore/singapore-population-rises-1-3-to-5-61-million/3159702.html>

<sup>27</sup> In 2014, 40% of 6,040 Writs filed involved at least one party who was a foreigner. In 2015, it was 41% of 5,933 Writs. In 2016, it was 40% of 6,302 Writs. Source: A Sustainable Population for a Dynamic Singapore: Population White Paper (January 2013) (National Population and Talent Division) at p26.

<sup>28</sup> In 2014, 30% of the Writs filed involved at least one party who was a foreigner with a minor child below 21 years old; in 2015 and 2016, the percentage was 33%.

a 3-Judge bench of the High Court dealt with questions of habitual residence and the concept of consent in the context of the 1980 Hague Convention on Child Abduction.

### *The practice of family law into the future*

47. Given the complex, diverse and unique nature of family disputes, the family law profession will have to work hard at continuing to develop its professionalism as well as the unique culture and ethos I earlier alluded to. Discussions, such as today's, will be crucial in developing the specialist skills that are needed. Our newest law school at the Singapore University of Social Sciences, being focused on family and criminal law, will also play a key role. It is specially targeted at mid-career professionals who have worked in related fields, for example, social work and teaching.<sup>29</sup> The curriculum includes modules in social work and counselling with a practicum component comprising a legal clerkship in the last 6 months of their studies. With their life experiences, the graduates will bring a multi-disciplinary perspective to the issues we face.<sup>30</sup> The first cohort of 59 students commenced studies in January 2017 and we look forward to welcoming them to our ranks sometime in the middle of 2020.

## **Conclusion**

48. The future of family law is bright. It promises many professional opportunities to those committed to this fascinating area of practice; but it also calls for a fresh

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<sup>29</sup> The first cohort commenced their classes in January 2017.

<sup>30</sup> Senior Minister of State (Law) Ms Indranee Rajah, Address to the Inaugural Cohort of Students at UniSim School of Law, 18 January 2017, retrieved on 31 March 2017, [https://www.gov.sg/~sqpcmedia/media\\_releases/minlaw/speech/S-20170118-2/attachment/SMS%20Address%20to%20the%20Inaugural%20Cohort%20UniSim%20SLAW.pdf](https://www.gov.sg/~sqpcmedia/media_releases/minlaw/speech/S-20170118-2/attachment/SMS%20Address%20to%20the%20Inaugural%20Cohort%20UniSim%20SLAW.pdf).

mind-set and perspective. We on the Bench will continue to pay close attention to the growth and development of a Family Justice eco-system that is responsive to the needs of our people and that seeks to minimise the harm to our future by paying special attention to the affected children. I also wish to acknowledge the many lawyers who have served selflessly in this goal.

49. Lawyers are the trustees of a robust family justice system, because of their dual roles: as counsellors for their clients, and as officers of the court. To those with family dysfunction, the rule of law means access to the law in order to change their status, obtain the protection they require, or vindicate their rights. But this has to be done with due regard to the need to avoid unnecessary and harmful collateral damage. How you shape your professional identity and how you build your practice, can make a real difference to the lives of those who seek your counsel. It is a deeply meaningful calling and I urge you to embrace it with an appreciation of and a commitment to all we are doing to help ease the journey of those who must go through the family justice system to restore balance in their lives.

50. Let me close by wishing you a very fruitful Family Justice Practice Forum today. Thank you.