

**FAMILY CONFERENCE 2018**

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**KEYNOTE ADDRESS BY SECOND MINISTER FOR LAW INDRANEE**

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***Supporting, Healing, Reconstructing***

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Presiding Judge, Family Justice Courts,  
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Ladies and Gentlemen,*

**A. Introduction**

1. Thank you very much for inviting me to this Conference.
2. Let me explain how I came to be here. Last year, I was attending an Intellectual Property (IP) conference in National University of Singapore (NUS) when Michelle accosted me at the reception after that and explained that she wanted to organise a family law conference the first time for one done of this nature and scale by the Law Society. She was very passionate about it and thought it was an important subject. I wholeheartedly agree.
3. For the longest time, family law has not been in the spotlight or shared the same attention as some other fields which seem to be more glamorous – international arbitration, commercial litigation, mergers and acquisitions. But, in recent years, we have increasingly come to place greater importance on family law - – the role of family lawyer. If you think about it, it is absolutely crucial because the family is the basic unit of society, and the role that the family lawyer plays

is actually a role that affects the type and tone of the society that we will have.

4. For that reason, what you will be doing as practitioners is far more than just doing a case. Everything that you do has an impact. It will impact the type of society that we are. It will impact the tone that Singapore sets for itself moving forward and that it is not a light thing at all.
5. So it is for that reason, I am more than happy to come and support this conference.
6. In the audience today are judges, practitioners and some law students, as well as people who provide supporting services – counsellors and mediators.
7. All of you are here today because you are connected by a shared interest in, and commitment to, family justice.
8. Family law is not like other areas. If you take commercial law for instance, it is largely, though not only, about money; it is about the quantum of damages. It is about the price of the goods that failed to be delivered. If it is about construction, it is about the cost of the construction or the damages occasioned by the delay.
9. But family law is about people. It is about emotions. Family law is about children. It is about how people are able to progress forward in their lives when their lives have been broken and torn apart, when they are shattered by emotional trauma, when children are impacted by quarrelling parents.

10. So, family law is very different. It touches on the most intimate areas of people's lives. Obviously, the most common incidents of family law would be divorces and the ancillary issues like maintenance and custody. But, it extends beyond that, e.g. family violence, child protection, probate, succession, and, occasionally, criminal law because you have to deal with that as well.
11. The growing number of transnational marriages has also introduced complex cross-border issues that involve relocation and parental abduction.
12. Far too often in divorce cases, parents engage in a battle of wills at which the child is at the centre of the tug of war between parents. The child becomes the prize to be won. That is something which is not good at all and it is something that needs to be tackled.
13. So, let me just give you a few examples. There is one case where a father insisted that his daughter enroll in a particular school. The mother was of the view that the child should be enrolled in another school.
14. It took the High Court to break the deadlock. But, pending the hearing, the father wrote to the school the mother had chosen to warn the school about enrolling the child before the hearing. And you can just imagine the kind of position that it put the school in, not to mention what about the child?
15. If the school had listened to what the father said, then the daughter might not have been enrolled in any school at all pending the outcome of the hearing. How is that in the interest of the child?

16. Another example: two years ago, the High Court had to deal with the case of a father who killed his 5-year-old son in the midst of a bitter custody battle.
17. The day before the father was due to appear in the Family Courts, he received an unexpected affidavit from his wife's lawyers.
18. The affidavit was about their son's care and custody arrangements. It also contained reference to what the father felt were private discussions with the wife.
19. Feeling betrayed and exhausted by legal battle, the father decided to kill their son and himself. He survived. Their son did not.
20. I cite this not to cast blame on the wife's lawyers, or on the wife, who no doubt would have seen this as part and parcel of the normal course of litigation where you put in what your client instructs or what you think is relevant. The point I am making is that the things that are said and done in family litigation have an impact on people. And, it is an impact that can cut very deep. In certain cases, it can lead to consequences far beyond what the other side anticipated.
21. In my own practice as a lawyer, I had to deal with a case where the father had telephone access to the two sons. Every time he telephoned, the mother would send the two sons out to the kitchen or balcony where the washing machine was, to answer the phone call by the father. So, in their minds, taking a call from Dad was associated with basically banishment and punishment: "Go out of the house, go to the balcony and that is where you take the call from your father."

22. Again, those kinds of things have an impact on the children. So, that is why family law is different.

**a. Impact on divorcing couples**

23. Divorce and separation are amongst one of the most stressful events that an individual can experience.

24. The Holmes and Rahe Stress Scale – which contains a list of stressful life events – ranks divorce as the second most stressful life event after the death of a spouse.

**b. Impact of divorce and domestic violence on children**

25. The effects of divorce – especially acrimonious ones – are destabilising and debilitating to children.

26. Research has revealed three things:

a. First, the developmental outcomes for children diminish when there is inter-parental conflict, especially when it is long-drawn out. These children may carry difficulties into adulthood that range from feelings of sadness to problems with relationships with others as well as serious mental and psychological issues. So inter-parental conflict goes beyond the child's childhood, it carries on sometimes when the child becomes an adult.

b. Second, children who live through a contentious divorce suffer harm to their health for decades thereafter and even into adulthood. Stressful experiences in a child's life affect their

physiology and inflammatory processes, and increase the risk of poorer health and chronic illness. Think about it. It is simple: it is like being under constant stress all the time. And you know what stress can do to your system. This is just another manifestation of it.

c. Third, there is a connection between the breakdown of families and various social problems like crime. In our Youth Court, it is clear that a significant number of youths who offend come from families in which parents are separated.

27. Research also tells us of the lasting influence of seeing one parent hit or hurt by the other, the suffering that it causes to the child and how detrimental it is to the child's mental health.
28. The mere witnessing of violence is harmful to children.
29. These images are forever etched into their brains. There is accumulating scientific evidence that witnessing violence or being abused physically or verbally alters brain development, resulting in a hyperactive emotional system.
30. Because family law is different, and because the impact on the family and individuals is also very different from other types of law, the family justice system and the practice of family law must also be different.
31. Other cases are about winning and losing, where the emphasis is on rights and liabilities, very often just about the quantum damages and money.

32. Family justice however must be about helping parties navigate a path of healing, restoration, and positive transformation.
33. But in order to do this, the family justice system itself must transform. And, lawyers must also embark on that journey of transformation.
34. We started on the first stage of this transformation with the Family Justice Reform Committee co-chaired by Justice of Appeal VK Rajah (as he then was) and myself back in 2013.
35. The recommendations in our report included:
  - a. the setting up the Family Courts. So that is why, Debbie, I am very happy to see you here today as the second presiding judge of the Family Courts. That is really the implementation of the recommendations we made. On 1 October 2014, that was when for the first time, a specialised family court structure was formed. We set up the Family Justice Courts, comprising the High Court (Family Division), the Family Court, and the Youth Court.
  - b. the setting up of specialist divorce agencies to help and counsel couples undergoing divorce; and
  - c. the introduction of the judge-led approach for court cases. I will speak a little bit more on that in a while.
36. So these are the initial steps. But, we need to go further and each of the stakeholders has a part to play. The important contributors for an effective family justice system are the:

- a. judges;
- b. lawyers;
- c. Government; and
- d. of course, the parties involved.

37. Let us start with the judges.

38. The transformation that we have set out is really the judge-led approach. In our traditional common law set-up, the judge takes a back seat. The judge does not step into the arena. The judge lets the parties battle it out. The judge adjudicates. That is the traditional approach. That has been changing across the board, even for commercial litigation. But, in the area of family justice, it has become essential and crucial for the judge to lead the litigation and the conduct of the case.

39. I am not suggesting for a moment that the judge should substitute himself or herself in the role of counsel nor should the judge step in in any inappropriate way into the arena. But what the judge can and must do is to be able to direct and give very firm guidance on the way the case unfolds. This is for the very simple reason that because the parties are battling it out with other and emotions are involved, the positions taken are not always logical, rational or based on legal principles.

40. It is very often – and those of you who are practitioners know this – driven by a desire to hurt the other side. Usually, the best way, in a person's mind, to hurt the other side is to take away the child, or

deny access to the child, or get a greater share of the matrimonial assets. You will find many unreasonable positions taken.

41. The lawyers, in fairness, do their best or some just relay what their clients tell them. Even those who are doing their best will find that they are constrained because, at some point, the client will say "Are you my lawyer or not? These are my instructions. Why aren't you doing what I am telling you to do? "I can see some sort of murmur of agreement here.
42. That puts the lawyer in a difficult position which is why, ultimately, when it comes to the court, the judge is the final arbiter.
43. The judge has the ability, the power, and every right to guide the parties on how the case should be conducted. The judge should point out when allegations are unnecessary so as to discourage repeat conduct in the form of putting forward unnecessary allegations. The judge should generally just make the parties understand that this is not so much a process about winning and losing. In family law, it is a process about how you can disengage with the least acrimony possible, putting maximum focus on the welfare of the child and allowing you to move on with your life. In this, the judge has a hugely important role to play. We will be looking at how we can enhance the judge-led approach. So in all the areas of law, you have judges who are playing a greater role but nowhere is this more important than in family justice.
44. Then, we come to the lawyers. For the last 50 years of our development, our lawyers have been brought up in the best of the common law tradition. We are an adversarial system. So, the

lawyers' natural instinct which carries over into family justice is to be adversarial.

45. The time has come for family lawyers to realise and to understand that your role is different for the reasons I have outlined earlier. 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.
46. I would urge all practising lawyers here to know and understand that you are not – as many people have said – *just* a family lawyer. You are specialist lawyers. You will need to become a specialist lawyer in your own right.
47. We are at the point of time where we are transforming family law and you are in a very exciting time. You are at the vanguard and the forefront of this transformation. What do we need you to do? In the context of family law, you have to be peacemakers. You have to be the problem solvers and to some extent, the people who also have to counsel. I am not suggesting that lawyers should take the place of professional counsellors. There are some types of cases where you really need the professionals to step in. But I think as lawyers, you need to understand what the underlying issue is and very often the issue is not legal.
48. Very often, the issue is an emotional one. In some cases, as what Greg highlighted – the issue is a mental one. You should be able to spot that, to be able to intervene with some sort of preliminary basic counselling, and then to be able to direct the parties to the appropriate assistance.

49. 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.
50. You must also know and be familiar with the relevant agencies to refer your clients to for assistance. The manner in which you conduct the case in court is very important. How you assist the judge is also important. The judge needs Counsel's assistance to understand the real problem and what is going on, so that the judge can do the correct intervention to make the case move along.
51. So, as lawyers, you do play an important role and I would ask you all to see yourself as specialist lawyers. In time to come, not just the Law Society, but I think on the Government side, we will be looking to see how we can do more continuing education so you can continue to equip yourself going forward.
52. Before I touch on what Government can do, because there are law students in the audience today, let me say something to the law students who are thinking of doing family law as well.
53. If you are going to do family law, you must understand that you should not do it because you think it is glamorous. You should not do it because you think it is easy. It is not. You are going to have to

be very emotionally resilient. You will need to have lots of common sense. You will have to need to handle people from all walks of life. You will realise that no matter how rich or powerful or prestigious they are, at the end of the day, they are just human beings- husbands and wives, mothers and fathers, people who have very real human issues to deal with. You must see people for what they are.

54. If you are going to be a family lawyer, please do it for the passion of it. Don't do it for any other reason because it takes a lot out of you. Don't let me discourage you. It is well-worth doing and the rewards at the end of the day are very fulfilling when you know that you have helped couples on their way and helped to heal a family. Most importantly, when you have done something to protect the child. That is well-worth doing.
55. So for law students, if you are thinking of family law, please understand this. Some years ago, we were looking at the attrition rate for lawyers. Amongst those doing family law, one of the reasons cited was just the emotional burnout. Many younger people could not cope with this. You have to have a certain mindset, a certain resilience if you want to do family law. But as I said, you do it because it is well-worth doing, because the impact goes well beyond just your clients. The impact is on society.
56. What is the government's role? The government's role is to set the right legislative frameworks and to put in place the appropriate support structures. In time to come, obviously, we will also be looking at greater continuing education on family law.

57. Parties themselves will have to adopt a new mindset. But, obviously, that is not something that is going to happen spontaneously. So, they are going to have to be helped along the way by judges, lawyers and the Government.
58. To take this forward, we have set up an inter-agency committee to Review and Enhance Reforms in the Family Justice System ("RERF Committee"). We set that up in November 2017. That is basically Family Justice Reforms Version 2.0 to see how we can move forward.
59. The RERF Committee is going to look at how family justice can further benefit from the restorative and therapeutic components of justice. Some aspects the RERF Committee is looking at include the promotion of alternative and multi-disciplinary approaches to conflict resolution and measures to empower the parties to make decisions that are in their children's best interests.

## **B. Emphasising non-adversarial modes of conflict resolution**

60. Let me touch briefly on non-adversarial modes of conflict resolution. Because of the nature of family cases as I have described, really the better way is not so much litigating but more of mediation and counselling.
61. Mediation and counselling have long featured as an integral component of family justice. But, there is much potential for it to be used more, and we must build up our capacity in this area. Good mediators and counsellors are needed. We have some very good ones, but we need more. We also need good counsel. And this type of alternative dispute resolution requires a different set of skills.

62. This is one of the reasons why we set up the third law school at the Singapore University of Social Sciences (SUSS). That is going to be an important pipeline in our capacity building for family lawyers. It focuses on family and criminal law, but importantly, it brings a multi-disciplinary perspective to our family justice system.
63. Their curriculum includes modules in mediation and interest-based conflict resolution. Electives, reflecting the most current challenges facing the family justice system such as cross-border issues are also offered. Leslie Chew, who is the Dean of the SUSS Law School is right here, so he can answer your questions on the curriculum at the end of the session.
64. In addition, there is a practicum component comprising a legal clerkship in the final six months of the students' studies. Their experience as mid-career professionals who have worked in related fields like social work, will allow them to view the family justice system with lenses that go beyond the purely legal.
65. The mediation approach that we want to encourage, is rooted in three principles:
  - a. First, that conflict between parents is harmful to children and should be actively discouraged.
  - b. Second, parents know more about their children's needs than a judge would.
  - c. Third, parents are more likely to cooperate with a post-divorce plan if it is mutually negotiated and not imposed against the will of one parent. So, mediation seeks a "win-win" solution. Therefore, this will be the approach going forward.

66. After 1 October 2014, mandatory counselling and mediation was extended to all cases involving children under the age of 21, and to all summonses and applications related to children's issues. Mediation and counselling services are also available for probate matters and under the Mental Capacity Act.
67. The use of mediation and counselling has seen some encouraging statistics:
- a. The percentage of divorce cases decided under the simplified track where there are no contested issues has steadily increased from 24% in 2015, to 37% in 2016, and to 49% in 2017. That is almost half and we would like that number to increase.
  - b. The percentage of divorce cases that involved contested matters has also decreased over the years. In 2016, less than 7% of divorce hearings were contested either on grounds of divorce or on ancillary matters.
68. The low proportion of contested hearings is a result of several measures, including the greater use of mediation and counselling.

### **C. Leveraging technology to provide for harmonious resolutions**

69. Technology can also be a useful lever for harmonious resolutions.
70. Recognising the emotional trauma that applicants for personal protection orders face, an online portal, the Integrated Family Application Management System ("iFAMs"), allows individuals to file their applications electronically.

71. The forms are simple enough for a lay person to complete but they do not compromise on the requirements of the law which guard against frivolous applications.
72. There are also plans to apply online dispute resolution to child maintenance claims.
73. To encourage resolution, there will be an outcome simulator will assist parties to understand the possible outcomes of a maintenance claim. This will basically work out the financial permutations.
74. An online platform for both parties to negotiate will also be provided. If their negotiation fails, online mediation will be offered.
75. Apart from improving the administration of justice, this initiative will help parties resolve their claims earlier and with lowered costs which will ultimately benefit the children of the marriage.

#### **D. Putting children at the heart of the system**

76. On children, let me say something, which is that where we come from is that we want to put the children at the heart of the system for those cases where children are involved. The law ensures that the voice of the child is not just heard but given full consideration.
77. Section 125(2) of the Women's Charter specifically directs the court to have regard to the wishes of the child of sufficient maturity. The voice of the child can be heard through interviews by judges, Child Representatives, or other professionals.

78. Research supports the view that when children are given a voice in divorce proceedings, this normally benefits parties and their children.
79. Some studies have found that giving children a voice can lead to more durable agreements, improved parental alliances, better father-child relationships, and more cooperative co-parenting.
80. And there is a range of other measures which the court can use to insulate children from the effects of divorce.

#### **E. Complexities of family justice in the modern world**

81. Now, let me touch a little about the complexities of family justice in the modern world.
82. It has become increasingly common for couples of different nationalities to get married – close to 40% of marriages involving Singaporeans are transnational in nature. Such transnational marriages have transformed our family law landscape.
83. The increase in such marriages raises complex legal issues affecting family life.
84. Two such difficult issues include applications for relocation and abduction of children by parents.

##### **a. Applications for relocation**

85. Relocation is one of the most controversial and intractable problems currently facing family courts all over the world.

86. The desire of one parent to remove the child to another jurisdiction, leaving the other parent behind, frequently produces deep conflicts because of the irreconcilable interests of the parents and child.
87. They involve a binary decision – either the child stays or he goes. Whichever way the courts decide, the decision is bound to cause anguish and anger to one party. The child is often caught in the middle of the storm.
88. On the one hand, you have the relocating parent's autonomy to live where he or she wishes. And if you interfere with that, if you threaten, he or she may potentially be isolated from the support of their family network overseas or unable to support himself or herself.
89. On the other hand, the parent left behind risks losing a meaningful relationship with the child. Contact with the child may be reduced to a few Skype or telephone calls, and visits during the holidays.
90. In 2015, our Court of Appeal expressed the view that there was only one fundamental legal principle upon which everything else depends.
91. This is the welfare of the child which is paramount and it overrides any other consideration. So, please bear this in mind when advising your clients. Think of the child's best interest and not so much what is in the interests of the warring parties.

**b. Abduction of children by parents**

92. Next, on abduction. Abduction of children by parents is a growing issue. It was against this background that the Hague Convention on

the Civil Aspects of International Child Abduction came to being ("Hague Convention").

93. The Hague Convention, which is given effect to in Singapore by the International Child Abduction Act, obliges signatories to use their administrative and judicial machinery to ensure that the abducted child is returned to the country of habitual residence.
94. Issues like parental abduction highlight the need to develop global conversations with other family justice institutions because this is a complex issue.
95. The International Advisory Council ("Council"), chaired by the Chief Justice, is one such means of engaging in such conversations.
96. Established in 2016, the Council consists of members from Australia, Canada, Germany, Hong Kong, the United Kingdom, and the USA.
97. These members are all experts and leading thinkers in different fields like academia and the social sciences.
98. Their thoughts and ideas on how we can all be prepared for emerging trends and new challenges in the changing context and dynamics of modern families will better help us in addressing present and future challenges.
99. So, for all the family lawyers here, these two examples of relocation and abduction highlight something else I would like you to hoist in. Increasingly, you are also international lawyers. For the longest time, family law was seen as purely domestic. It is not. It is cross-border. There are international conventions involved. You will have

to equip yourself to deal with these international aspects of family law. You will stand up there, with the rest of the other international lawyers but in a different context, in your own sphere, a specialist in your own right. But, please acquire the knowledge that will enable you to do so, because we would like Singapore to be a centre of thought leadership in all aspects of law, including family law.

## **F. Shrinking family sizes and the ageing population**

100. Finally, let me do a wrap up on other broad areas of family law, particularly the ones that have been occasioned by our shrinking family sizes and the ageing population. Apart from cross-border issues, there are two social issues confronting the family justice system: shrinking family sizes and the ageing population.
101. By 2030, we will have over 900,000 residents aged 65 and above – that is one in four Singaporeans.
102. Life expectancy is also projected to increase. The average 60-year-old man will live 22 more years and spend three years of that time disabled in some way. (I am not sure if this includes smokers. The statistics may not apply to those of you who smoke!) The average woman of the same age will live 26 more years and spend eight years of that time disabled in some way.
103. The number of people who are living alone is projected to increase from 35,000 in 2012 to 83,000 in 2030.
104. On top of all these, estimates are that one in 10 here aged 60 and above has dementia.

105. These numbers are alarming and impact almost every aspect of the law and policy-making. The elderly may be unable to care for themselves especially if they develop dementia.
106. Our law and our policies must, therefore, be future-ready.
107. Our elderly should be allowed to live and grow old independently and with dignity.
108. Against this landscape, it is important for family members – immediate and extended – to maintain close ties.
109. It is also important for the community to be involved. The grassroots system, for example, plays an important part by reaching out to the elderly and keeping them engaged.
110. Elderly abuse – whether physical, emotional, psychological or financial – is an area that merits close attention.
111. The Vulnerable Adults Bill was introduced earlier this year to allow the authorities to step in to protect and ensure the safety of vulnerable adults like the elderly.
112. The high-profile case of an 89-year-old widow, whose niece sought to revoke the authority of the elderly woman that the elderly woman had granted her tour guide who was eventually convicted of several dishonesty-related offences, highlights the vulnerability faced by the elderly.
113. The Mental Capacity Act was amended in 2016 to plug gaps to prevent the vulnerable from being exploited financially.

114. For example, the courts can revoke a Lasting Power of Attorney ("LPA") or deputyship order if the donee of an LPA or deputy is convicted of an offence or is no longer registered as a professional deputy or donee. The courts can also suspend a donee's or deputy's powers even if no application has been made.
115. You can see that these are various other aspects of family law. They do not always take centre stage but because of our ageing population and demographics, in time to come, this will become increasingly important. So, I would also encourage all the family law practitioners here to go beyond divorces, and think of the broader aspects especially of an ageing population, family succession, family planning, lasting powers of attorney, stewardship. All of these are things that you will need to become familiar with.

## **G. Conclusion**

116. And, just remember, at the end of the day, we are embarking on a transformation of family law.
117. Last night, the President delivered the President's Address. She set out our agenda for a new chapter in the Singapore's story. There are many new aspects of the new chapter in the Singapore's story. The practice of family law is one of them because it goes to the most essential and basic unit of our society which is the family. You stand right in the forefront and the vanguard of that.
118. Let me just conclude by wishing you not just a good conference, but also the understanding that you are participating in transformation – something which is new, something very exciting – and you are right in the middle of this.

119. Please do your best to put Singapore right in the centre of thought leadership for that and become specialist practitioners in your own right.

120. Thank you all very much.