The Evolution of Family Justice
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More Civil and Less Common

About a month ago, Chief Justice Sundaresh Menon delivered a speech at the International Family Law Conference 2016 in Singapore. He spoke about the importance of family law, and the developments over the years in Singapore’s family justice system.

In the last decade, Singapore has made a remarkable shift from a traditionally adversarial family justice system to a more Judge-led, semi-inquisitional one. Jurisdictions such as Australia and the United States have long worked towards resolving family disputes in a conciliatory rather than an adversarial manner, and we have rightly followed suit.

The Chief Justice said in his speech that “Family law interventions should be supportive to the family, with the process being a navigated one designed to promote conciliation and reduce contention at every step. Family disputes thus call not only for the delivery of substantive and procedural justice, but also restorative and therapeutic justice.”

It calls for a mindset shift. The primarily adversarial nature of litigation in common law jurisdictions is not an appropriate template. Unlike commercial litigation, family disputes “may not be disentangled by a simple declaration as to who is at fault and how much that person ought to pay”, as observed by the Chief Justice at the First Inaugural Family Justice Practice Forum in October 2013.

The nature of family disputes is, undeniably, vastly different from commercial disputes. Family cases are not always, if at all, about the money. They can be complex and often involve parties other than the contending spouses, in particular the affected children.

With this in mind, our Family Justice Courts have strived to develop the family dispute resolution process to help parties resolve their conflicts amicably as possible, recognising that parties may still have to deal with each other long after the decision has been made. Solutions must be sustainable.

It is unsurprising that family disputes may have escalated to a bitter, acrimonious stage by the time they are brought before our Courts. Allowing parties to lead and shape their dispute often exacerbates the acrimony and resentment between them. Where proceedings are vexatious and unnecessarily lengthening proceedings, approaching family disputes in an adversarial manner increases the trauma that children of warring spouses face. This is an unwelcome but inevitable consequence, and we must recognise that ameliorating that trauma is crucial.

Article 3 of the United Nations Convention on the Rights of the Child enshrines the principle that the best interests of the child shall be a primary consideration in all actions concerning children, whether at a Court of law or otherwise.
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Article 12 seeks to enshrine the principle that a child capable of forming his or her views should be able to express them and be heard. The best interests of the affected child should be front and centre in a conducive, collaborative forum of Judges, mediators, counsel and parties.

Earlier in April this year, the Family Justice Courts unveiled new initiatives to better equip families in resolving disputes. Notably, the Courts announced the implementation of the Child Inclusive Resolution Process to involve affected children in the resolution of family disputes following a successful pilot programme.

We have seen that family disputes should move away from the adversarial approach under common law. Permit me a minor segue. Is this an approach that we can apply to part of our common law adversarial system in civil litigation? Of course, the objective would be the effective delivery of justice, not the family law ideals of restorative and therapeutic justice.

At the recent Singapore-Malaysia Summit 2016 in September, I made some modest proposals to reduce the cost of litigation and make justice affordable for all. There are two suggestions I feel ought to be ventilated – reforming the discovery procedures in civil litigation and abolishing the hearsay evidence rule.

Litigation lawyers will agree that discovery can be long-drawn, tiresome and costly to parties. A mountain of documents can be produced at this stage, and while there is the possibility of that one “smoking-gun” document buried in the haystack, most of the disclosed documents are in actual fact anodyne, unhelpful or irrelevant to the parties’ dispute. At trial, it is common for reference to be made to only a handful of documents out of the many bundles of documents adduced by the parties. This is something I think most, if not all, litigation lawyers lament.

The civil law dispute process eschews extensive discovery. It represents a significant gulf between the two systems. But the major civil law countries are not known for miscarriages of justice, and a hybrid approach is not unfeasible. The discovery procedure in New South Wales has been reformed to do just that. In 2012, the discovery procedure was changed such that parties must produce their witness statements before any order for discovery can be made. This ensures that only the most relevant and necessary documents are produced in specific discovery. In the Equity Division, no orders for disclosure are made unless necessary for the resolution of real issues in dispute in the proceedings.

The simplification of the discovery process in this manner saves time and costs for both parties and their counsel. Parties are able to limit the scope of documents requested, and avoid the production and inspection of copious volumes of documents of which only a tiny fraction prove relevant. We could perhaps adapt our discovery procedures either in the manner of our Australian counterparts, or in the manner in which it is conducted in international arbitration, to make litigation a more expeditious and cost efficient process.

My second suggestion is the abolition of the hearsay evidence rule. This well-worn rule is that statements made by or on behalf of persons out of Court, whether orally or otherwise, are inadmissible unless they fall within the exceptions of sections 32 to 40 of the Evidence Act (Cap 97).

How relevant is this rule in our civil litigation practice today? Arguably, the hearsay rule and its exceptions are much more relevant to the criminal justice system than the civil justice system. It has almost no role in international arbitration.

In the UK, the hearsay rule was largely abolished in civil proceedings by the Civil Evidence Act 1995. Section 1(1) of the Act states that evidence will not be excluded on the ground that it is hearsay. The Act then provides for a mechanism for the Court to weigh such hearsay evidence.

It is no longer radical to suggest that the hearsay rule be likewise abolished. In a global world, with cross border disputes, its utility is marginal. The provenance of the evidence ought to go towards determining weight, as opposed to admissibility.

What these reforms suggest, is that the separation of the common law and civil law traditions may find further and further blurring at its boundaries. The world has changed, it has become inter-connected. Global actors seek to increase uniformity and reduce friction in the law, rules and regulations. The common law has no monopoly on wisdom and in the years to come, it may become more common to be civil.

Thio Shen Yi, Senior Counsel
President
The Law Society of Singapore

Notes
1 CJ Menon's address at Family Justice Practice Forum in 2013.
2 Section 50(3A) of the Women's Charter.
4 Practice Note, Section 5.
Keeping Families-in-Crisis Together

This was the keynote address by Mr Tan Chuan-Jin, Minister for Social and Family Development, at the International Family Law Conference on 30 September 2016.

Introduction

1. I am honoured to join you this morning, at the inaugural International Family Law Conference. I am glad to see this opportunity where so many of us can share our thoughts and experiences on issues we are passionate about. We must endeavour to learn from each other.

2. Importantly, in this same room, we have family practitioners as well as policy-makers. Many of us have different roles. Some work in the court room, some are in the community with clients, some are working the processes in an office. But there is an important constant – we are all partners who care for families in crisis.

3. We share the same heartache of seeing families enter our family justice and welfare system. When there is acrimony in divorce and battles in Court, our children become embroiled in the embittered tussle. And there are consequences for our children in the long haul. When there is abuse in the family, our children bear the physical and emotional scars.

4. As agents in the family law and social welfare fields, we share these experiences. We all know the life-stories that tell of anger, vengeful disputes between spouses, violence against family members, and the subsequent long-term damage left on a child.

Keeping Families-in-Crisis Together

5. Against this backdrop, let me state categorically that we as a society have a duty to support these families. Every community has families who experience moments of crisis. Whether the crisis is the threat of family break-up, or the destructive spiral of perpetual violence, the social and justice systems must have a ready response.

6. In Singapore, we want a supportive system that is thoughtful, compassionate and hopeful in preserving families.

7. The family is the building block of a strong, safe and stable society. Each family unit must function as a safe environment of care and protection for our children, as well as, vulnerable family members.
8. I will elaborate, in three parts, how we intend to keep families together.

**Upstream and Preventive Efforts to Break Cycles**

9. **First**, I want to keep families intact by going upstream and this will involve **ramping up preventive efforts**. I want to break the cycles.

10. Let me share Jane’s story of her encounter with violence. You may read about this in MSF’s recent publication “Protecting Children in Singapore”.

11. Jane’s nightmare of being sexually abused by her stepfather began when she was eight. At 14, her teacher found her crying in school. Tearfully, Jane disclosed how she had been violated over six years whilst growing up. What followed was an intensive, conscientious response in investigative and protection work. We supported her and helped her recover. We made every effort to work with Jane and her care-givers to repair this young lady’s sense of safety, and security.

12. Even with the comprehensive support of the social system, victims of abuse often continue to experience long-lasting and complex trauma. This sometimes manifests in challenging behaviours that may cause distress to those around a young person dealing with trauma.

13. You might meet young people like Jane, and their families in a variety of contexts. As a Judge, you may be required to decide on the child’s placement, while weighing the crisis that the family is undergoing. What would a thoughtful and compassionate decision be? **Would the child be able to recover in a family who, at present, is working through how it can provide a safe environment?** Or would a children’s home be more appropriate for the time being, to ensure the child’s immediate safety? But when then is it okay for the child to be reunited and be raised by his or her natural parents?

14. Now as a social worker, you may encounter such a child. You will have sessions where you’re partnering the family to work through the safety considerations and practical arrangements necessary, given the child’s fragile state. **Would the agreed-upon plan work when the family’s relational issues are still work-in-progress?** These are practical questions grappled by many of you daily. It is frightfully difficult. It is very easy for people to comment on social media. But it is very difficult, and emotionally very challenging for many of you.

15. For the benefit of our friends from abroad, Singapore’s child protection system comprises a network of agencies. This includes my Ministry’s child protection officers, the Police, the judiciary, hospitals, schools, and voluntary welfare organisations. These are my Ministry’s close partners. They are key partners because they all encounter children in their day-to-day work. And the key word is partnership. We need to do this together.

16. In 2015, we introduced a national framework for child protection. The screening and reporting guide for our partners to better detect and manage child abuses was part of it. Tailoring the guide for healthcare, social service and education sectors was an effort highlighting our commitment to outcomes, and willingness to work better as a system.

17. Frontline professionals who have regular contact with children use these customised guides. It allows them to relate, and respond to the specific situations in which they find themselves.

18. These include deciding whether to be rightly concerned about a particular child they encounter. Whether to take further action – such as surfacing the suspected abuse within their organisation. In some cases, they may need to make referrals to the right agency to follow-up to protect the child. The development of these customised guides was significant for Singapore; lauded, in fact, as a first-of-its-kind effort among any child welfare system in the world. I am glad that MSF has allies in these partnering agencies. I value their dedication in working with us to adapt international best-practices for our specific, local use.

19. Together, our efforts have uncovered more suspected child abuse cases. Now these cases could have gone undetected in the past. Currently, MSF’s Child Protective Service is investigating more cases of serious harm done to children. The average number of such investigations used to range from 40 to 50 a month. Today, the numbers have doubled. And we really cannot do this work alone. We need families, professionals, volunteers and you to make collective efforts to keep children safe.

20. It is equally important for us to remember that behind each statistic, is a precious life and a family. We need to have as few children as possible, if not none, who live in fear every day. As we work with families at risk of
breaking down, we must adopt family-based strategies that are child-centric in approach.

21. Let me now share an example of what my Ministry will do to keep families intact as far as possible. MSF will be starting the Safe and Strong Families (“SSF”) pilot programme by December 2016. The SSF consists of two types of services: family preservation and family reunification services. The Family Preservation Service involves intensive in-home services to support and keep families together and prevents unnecessary removal of the child from the family. The Family Reunification Service seeks to reunify children who are in alternative care, such as foster or residential care – so that they can be reunited effectively with their families in a safe and timely manner.

22. After hearing Jane’s story, some of us may be sceptical about whether all families can be safe and nurturing for their children. And I will confess that when I first came to this Ministry – and as a Member of Parliament who has personally seen some of these issues on the ground – I had also wondered if we should be prepared and more ready to take children away sometimes, from the contexts in which some of the children find themselves in.

23. But there is growing research that shows that children need to be protected by their caregivers, and know that they can depend on them. Such children will grow to have higher self-esteem as well as better self-reliance. They also tend to be more independent; have lower reported instances of anxiety and depression, and are able to form better social relationships.

24. Having the natural family empowered and supported to capably meet the children’s needs would be ideal for families in Singapore. Having said that, when the natural family is not able to do this, and when we feel that it is in the best interest of the child, we must also be prepared to take the child away; and when it is suitable, to reunite them to their family.

25. In MSF, we try very hard to ensure that children who have been temporarily separated from their natural families are placed in a familial environment when they are in our care. We also endeavour to ensure that the children are safely reunited with their natural families. Hence, for the SSF pilot, a crucial element is an evidence-based intervention programme known as Functional Family Therapy. Trained professionals visit the place of residence and conduct intensive weekly sessions in the child’s family environment for four to six months. They aim to help the family address a range of issues such as violence, substance abuse and conduct disorders.

26. Such an intensive therapy is particularly suited for families where there are more complex relationship problems, and specialised psychological support for families is needed. So it is never just about the child, it is about the context, the broader family unit as well.

27. The advantage of this intervention is that it is delivered in the child’s natural home environment, which ensures the child’s natural caregivers are also actively involved. This increases the chance of treatment success. We are hopeful that these families would, ultimately, be able to support their child, and the child will grow up to be a healthy young person and adult.

Timely and Child-Centric Family Services

28. Moving on to the second strategy for preserving families in Singapore. Now this involves reaching families-in-crisis with timely services, delivered in a child-centric manner.

29. Many of us know that family forms in Singapore are changing. This has many implications on how we serve families in need of support.

30. A significant proportion of marriages involving Singaporeans are transnational in nature – close to 40 per cent. Most of these couples will form stable and strong families, but some non-resident spouses face difficulties managing cross-cultural differences as they settle down in Singapore.

31. So in 2014, we rolled out programmes – including the Marriage Preparation Programme and Marriage Support Programme – for Singaporean-foreigner couples. We need to better understand this group, as we review our policies and programmes to better support them.

32. Unfortunately, divorces are also on the rise in Singapore. When a marriage breaks down, children are invariably caught in the middle. Forty-six per cent of divorces in 2015 involved at least one child below 18. We know that it is not always easy to keep the family together. But we can mitigate some of these challenges. Acting early to support families to strengthen their bonds can help them stay together, especially when children are involved.
33. Things also will get complex when a transnational family experiences divorce, as there are cross-border issues. Let me share with you the story of a 10-year old girl whom we shall call Mei Mei. Mei Mei’s father was a foreigner, and her parents had a family business in China. Her parents often bickered over where was the best place to raise Mei Mei. Unfortunately, the business failed soon after Mei Mei became ill with epilepsy.

34. When her parents divorced, Mei Mei felt that she had been the cause of the divorce. After the divorce, Mei Mei was left in Singapore with her mother, who had to cope with the outstanding debts. Her father went on frequent travels to China with the hope of re-starting his business. He was not paying his maintenance on time and Mei Mei saw him irregularly. She felt that her father no longer loved her and blamed her illness as the start of all the bad luck.

35. It was only after the Supervised Visitation programme held at one of MSF’s appointed Divorce Support Specialist Agencies, that the family was better able to understand their hurts with the help of a counsellor. This safe platform allowed for the child to rebuild her trust in her father again. Her parents also learnt how to co-parent by putting Mei Mei’s interest first, so as to help the family move forward despite the divorce. Remember. You may not be husband and wife anymore. But you still remain a father and mother.

36. As we work with families who face divorce, we are aware of these increasingly complex circumstances facing the family. However, as in the case of Mei Mei, the welfare of the child is at the heart of our efforts and it must be so. We are hopeful that a collaborative system of support will lead to better outcomes for the children.

37. We must be compassionate in our approach when working with families who face conflict and crisis. The Divorce Support Specialist Agencies (“DSSAs”) support divorcing and divorced couples with children below 21. As new players in the delivery of family-centric services, they give the child a voice, and work with parents to fulfil their duties to their child even amidst conflict.

a. The staff from the DSSAs are counsellors and social workers equipped with specialist knowledge and skills to handle divorce issues. To ensure that the child’s interests are looked after, DSSAs offer programmes that adopt a child-centric approach, which help parents understand the impact of divorce on their children.

b. Counselling and support groups are also emplaced to ensure that parents can learn to co-parent better. In this way, we hope that the child can still thrive and become resilient even when the family has experienced the pain of divorce.

c. So MSF has set up a one-stop resource hub to facilitate seamless coordination of referrals between the Courts and MSF. This allows families affected by divorce to be supported immediately and effectively.

38. One of the new services that DSSAs will deliver is the mandatory parenting programme. From December 2016, divorcing parents with minor children who are not able to agree on all matters of the divorce have to attend this programme before they can file for divorce. The programme aims to guide parents to consider living arrangements, finances and housing arrangements post-divorce, and to increase parents’ awareness of the impact of divorce on their children’s well-being. A secured online portal will also be launched in November 2016 as part of the implementation of this programme.

Future-Ready Policies That are Attuned to the Family

39. Finally, the third prong of our work in preserving families requires our social and justice systems to be future-ready.

40. Both policy and practice call for anticipating, and being prepared for emerging trends. Singapore’s families are no longer as large as they used to be. These days, most couples tend to have only one or two children, or none at all. With shrinking family sizes, families have fewer members to rely on for support.

41. We are also aging. By 2030, there will be over 900,000 residents aged 65 and above, a fair number of whom would be single or have no children. Elderly who develop dementia may be unable to care for themselves. This is especially worrying for those who are living alone – this number is projected to increase from 35,000 in 2012 to 83,000 in 2030.

42. So it is even more important for family members, both immediate and extended, to maintain close ties with one another. As we grow older, our families will increasingly become our source of physical, emotional and financial support.
43. For our seniors, we are mindful that strengthening family ties among their siblings, nephews and nieces, is no easy feat. Our ground-observations point towards weaker extended family ties, and more seniors living alone. So, we need to do more to encourage a broader sense of family. We cannot force it, but it is something that is there, and we must encourage. We know social isolation can become a serious issue. It is not a problem, or an issue for those living alone. It is a problem for all. When we grow old, we can be socially isolated. It has an emotional, psychological impact, and, it impacts the physiological well-being as well.

44. But this is where our social system must think about how we deal with it. For one, I think we have a big strength in Singapore. I personally believe that the grassroots system is particularly important, where we can begin to develop the community networks well – and I believe we do it today – we develop the habit of reaching out to those amongst us who are older. And, we develop the habit of keeping people engaged, keeping people occupied, visiting and knowing how people are doing. I think this can go a very long way in addressing the concerns we may have. When we are mobile, we can travel, we can visit our families, our friends. But at some point we will become less mobile. And, our immediate neighbours become particularly important.

45. The other part of the social system that is equally important, in terms of how to support the vulnerable elderly, whose very safety is at risk, is actually the legal system. In this light, we will strengthen legislation where required. While family members will serve and must serve as the first line of protection for vulnerable adults, and, they must also be supported by a network of community and social service agencies, more legislative support must be rendered.

46. MSF will be tabling a proposed Vulnerable Adults Bill to allow the State to step in for high-risk cases, to protect and ensure the safety of the vulnerable adult.

47. I am referring here to a person over 18 years of age who is unable to protect himself from abuse, neglect or self-neglect, due to a physical or mental infirmity. He or she may be abused physically, sexually or psychologically. He or she may be neglected due to a lack of essential care, to the extent that injury or pain is caused or reasonably likely to be caused. Self-neglect is also conceptualised in this Bill, because the vulnerable adult may fail to care for himself. In such a case, we might find him living in unsanitary or hazardous conditions, malnourished or dehydrated.

48. So we should empower the social system to organise protective care around such persons. In high-risk cases where MSF would intervene, we need to work closely with community partners, and the families. We want to keep families intact as far as possible. We also want to ensure a safe environment for all its members.

49. It is early days yet, and our social system will be tested in terms of how ready our response would be in dealing with crisis-situations involving vulnerable adults in our community, and with the family that cares for them. The numbers will increase, the complexities will increase as well, but we must be prepared.

**Conclusion**

50. The three strategies and examples that I have shared demonstrate how tricky it is dealing with families-in-crisis.

51. Singapore has made important strides forward – whether in legislation, family intervention strategy, or services for families. For that, I want to applaud the strong partnership within the network of systems that comprise the social welfare and family justice system in Singapore.

52. As we move forward, we need the courage to do right by our children, and preserve families in the process. I want to also underscore the importance of our social agencies and our social workers in being aware of what has been shown to work for families, and to continually adapt our practices to meet needs of the families we work with. We need sound, evidence-based methods that work best in our local context.

53. I also want us to ask ourselves a crucial and very practical question – How do we, through what we do, break the vicious cycles that we see occurring in some families? We must break those cycles.

54. We must enhance our social system to help families through their situations, to thrive again in a sustainable way. If we do this well, tomorrow’s families avoid the dysfunction triggered by conflict and crisis, because of the support we render today.

55. Let us commit to building a stronger social and justice system. With each passing day, we empower families to be strong, stable and to thrive. Thank you.
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Making Numbers Make Sense
The Future of Family Justice: International and Multi-Disciplinary Pathways

This was the opening address delivered by The Honourable The Chief Justice Sundaresh Menon at the International Family Law Conference on 29 September 2016.

1. I am honoured to open our inaugural International Family Law Conference this morning. We are privileged to have, amongst us, eminent members of the judiciary, family law scholars, practitioners and distinguished professionals from the social science community, some of whom have travelled across the globe to be with us today.

The Importance of Family Justice

2. As there are many in the audience who are new to Singapore and in particular to the developments that have been taking place in the context of family justice, I thought I would take some time this morning to recount some aspects of the journey we have embarked on in recent years.

3. All of us, at this conference, are linked by a deep and shared interest in and commitment to family justice. We tend to take it for granted that this is a uniquely important area of law. But why is it so? A few weeks ago, I came across an extract from the speeches of Henry Brougham who was Lord Chancellor from 1830 to 1834. In one of these, he said:

There is no one branch of the law more important, in any point of view, to the great interests of society, and to the personal comforts of its members, than that which regulates the formation and the dissolution of the nuptial contract. No institution indeed more nearly concerns the very foundations of society, or more distinctly marks by its existence the transition from a rude to a civilized state, than that of marriage.¹
4. That was spoken a little less than two centuries ago and although the ties that bind families are under strain, the family remains the bedrock of our society, and a fundamental force for promoting social stability and societal progress. Closer to home, a more modern statesman, our founding Prime Minister, the late Mr Lee Kuan Yew, observed some 34 years ago:

Our strong family structure has been a great strength for continuity in bringing up of the next generation. The family has transmitted social values, more by osmosis than by formal instruction. We must preserve this precious family structure if our society is to regenerate itself without loss of cultural vigour, compassion and wisdom.²

5. When families function as they should, they bring great benefits to society as a whole. The young are nurtured; values are shaped and transmitted; and traditions are strengthened. It all makes for stability and a sense of security. And there would be little if any need for family lawyers, Judges or related professionals. But the truth is that the family today is facing unprecedented stress. In developed nations across the world, there has been a general increase in the incidence of family breakdown.³ Singapore too has been confronted with a growing rate of divorce and family-related disputes.⁴ Even as initiatives are undertaken to promote stronger marriages and more resilient families,⁵ it is inevitable that many relationships will break down irrevocably for a myriad of reasons.

6. And when they do, they raise issues for the court that are truly unique. Each area of the law is of course different but my emphasis is on the unique character of family disputes and their need for a suitable and particular response from all those of us whose calling it is to help those caught up in them.

7. The greatest concern of a family breakdown is the profound negative impact this will potentially have, not just on the parents but especially on their children. Divorce and separation are among the most stressful events that can confront an individual.⁶ Studies have also demonstrated that the developmental outcomes for children will diminish with persistent inter-parental conflict.⁷ Such children may carry difficulties into adulthood that range from feelings of sadness and vulnerability, to problems with relationships with other adults, to more serious mental health issues.⁸ All of this will translate into deeper issues affecting the community as a whole. For example, statistics maintained by our Youth Court which handles delinquency issues relating to young people, reveal an over-representation of youths from dysfunctional families or from reconstituted families.⁹

8. If parental conflicts have these negative effects, can we do something to ameliorate this? After all, at some stage in the life cycle of a family dispute, the matter will come before the Courts. The question for us is, how do we see our role in that context? Are we there just to pronounce a formality? Or do we have a larger role in trying to attenuate the dire consequences of the breakdown?

9. Perhaps, the most notable shift in this area over the course of the last 50 years has been the emerging perspective of the family justice system as an essential element in our efforts to protect our social fabric. An outmoded view would be to see the family justice system as an institution whose primary purpose is to define, protect and enforce legal rights that family members might have and to resolve conflicts between family members over those rights.¹⁰ A broader view would take in the importance of multi-disciplinary services such as counselling, psychotherapeutic services and social services to support or improve the well-being of individuals or the functioning of their relationships. In this view, litigants in the family justice system should not be seen only to be adjudicating over their legal rights; rather they should be the recipients of a particular kind of justice which seeks to understand their plight and to promote their welfare and that of their children.

10. Family justice systems around the world have moved increasingly towards this expanded view. At the turn of the 20th century, the earliest iteration of a Family Court was established in the United States, with jurisdiction over divorce, juvenile delinquency, and family based criminal matters. It combined adjudication with therapy, deploying qualified personnel to help diagnose the psychological reasons leading to a family problem.¹¹ And in 1975, the Family Court of Australia was conceived as a “helping court” with its own counselling and welfare services.¹²

11. These developments reflect the recognition that familial responsibilities and dependencies are rarely extinguished, but endure even after the breakdown of the marriage.¹³ Family law interventions should therefore be supportive to the family with the process being a navigated one that is designed to promote conciliation and reduce contention at every step. Family disputes thus call not only for the delivery of substantive and procedural justice, but also restorative and therapeutic
The Evolution of Family Justice

12. Courts adjudicate legal disputes and safeguard the rights of individuals. But legal systems around the world differ in their understanding of how these functions are best carried out. At the risk of simplifying matters overly, in the civil law inquisitorial system, the Judge takes a pro-active role in fact-finding and case management. There is no rigid separation between trial and the pre-trial stages. Legal proceedings are viewed as a continuous series of meetings, hearings and written communications. On the other hand, in the common law adversarial system, the Judge determines a matter but does not actively participate in the proceedings. Proceedings are by and large controlled by the parties to the dispute usually through counsel.

13. Much has been said about the comparative advantages and disadvantages of both systems. But they have each withstood the test of time and continue to serve their respective communities well. There is, however, growing consensus that the adversarial process in its purest form may not be suited to meet the therapeutic and restorative components of family justice. The premise of an adversarial system is that advocacy by opposing parties before a neutral decision-maker, would best lead to the determination of the truth and the vindication of rights. This is undoubtedly compelling in some settings, such as in criminal cases where the presumption of innocence remains a principle of cardinal importance and the rights of accused persons are paramount.

14. In the adversarial approach, the Court relies predominantly on the parties to determine how and what evidence will be led. Family matters, however, involve complex emotional and inter-personal disputes, and disputing spouses, desirous of presenting their best face to the Court even as they are laden with emotional baggage, are often prone to be selective in the information they provide. Moreover, much of the information may be irrelevant or unhelpful to the legal questions before the Court but yet may have been introduced often out of a deeply felt desire to lay blame. This is especially problematic in disputes relating to children, where the best interest of the child may be obscured by the fog of the war of the spouses. Furthermore, an adversarial system which requires impassioned advocacy for and against each side regularly leads to exacerbating conflict rather than ameliorating it. The escalating tensions are prone to add to the fragmentation of these relationships to the detriment of families and their children.

15. All this demands a fundamental shift in the perspective of the Court from that of a competitive battleground to a conducive forum where sustainable solutions can be reached. This in turn requires proactive Judges, collaborative counsel and multi-disciplinary professionals. This in essence is the philosophy underlying the ongoing transformation of the Singapore family justice system, to which I now turn.

A Unified Court and the Judge-Led Approach

16. The first foundations for a dedicated family court in Singapore were laid more than two decades ago when we established the Family and Juvenile Justice Division under the then Subordinate Courts in 1995. Judges and a Court support group comprising mediators, social workers and counsellors worked together to create a less-confrontational forum for dispute resolution. Improvements to Court infrastructure and processes were introduced over the years. However, the needs of dysfunctional and distressed families continue to evolve and the family justice system must adapt and respond in tandem.

17. The reform of the family justice system was a foremost priority when I took office as Chief Justice. In 2013, the Minister for Law and I commissioned the Committee for Family Justice (the “Committee”), an inter-agency team consisting of Judges, policy makers, academics and professionals involved in family work. Amidst growing divorce rates, it was an opportune moment for the Committee to undertake a meticulous and updated evaluation of every aspect of the family justice system. Following a year of extensive review and consultation and drawing from the experiences of other jurisdictions, the Committee submitted its recommendations. One of the key recommendations was the establishment of a separate specialised family Court structure. The principal recommendations were accepted by the Government and the enabling legislation was passed. On 1st October 2014, the Family Justice Courts, comprising the High Court (Family Division), the Family Court and the Youth Court were established. That was a defining moment and it ushered in the beginning of a re-imagined paradigm for the resolution of family disputes in Singapore. Let me highlight a few of the key features of this new framework.
18. First, we consolidated the Courts that would deal with family disputes and expanded their jurisdiction so that virtually all disputes relating to the family could now be heard under a single judicial roof. The problems associated with families in dysfunction tend to be interlinked. Parties often find themselves caught in a web of disputes relating to children, finances and domestic violence. By bringing all these matters under the Family Justice Courts, we are able to tap on the specialised expertise and temperament of Family Court Judges and Court professionals to deliver consistent and targeted solutions to the family concerned.

19. The unification of the Court structure has also allowed us to implement robust case management initiatives across the system. Family relationships are dynamic. It is unsurprising that the same parties return to Court on numerous occasions to seek fresh orders or to vary existing orders. Recognising the challenges that this can present, we have in selected cases implemented a case docketing system with the assignment of a Judge to a specific matter who will then be responsible for it until the case reaches its conclusion. Lengthy proceedings are physically and emotionally draining to parties. The prolonged period of uncertainty can also generate intolerable pressures for the children caught in the midst. Having a single Judge will help ensure familiarity with the facts of the case and a greater sensitivity to the unique needs of that family.

20. Next, we adopted the Judge-led approach to the resolution of family disputes through the adoption of the Family Justice Rules, which came into operation on 1 January 2015. The provisions empower the Judge to make a wide range of orders to facilitate the just, expeditious and economical disposal of family proceedings. These orders include directing parties to attend mediation, counselling or family support programmes. Other issues relating to the conduct of proceedings such as calling of witnesses, including experts, the admission of evidence and the length of submissions are all matters that are now within the ultimate control of the judge.

21. This stemmed from the recognition that letting the parties take the lead in shaping the dispute is not always appropriate and may, in some cases, exacerbate conflict and prolong the time taken to adjudicate disputes. Family relationships could have lasted years before the breakdown. Perhaps as a result of this, it is not uncommon for parties in litigation to file copious affidavits with voluminous supporting documents which may be of little relevance to the issues at hand. These affidavits often contain a litany of accusations engendering yet more bitterness and acrimony. This is not helpful at a time when it is crucial for parties to look beyond their differences to find a way to continue to function in the best interests of their children.
22. The arsenal of procedural tools has undoubtedly given our Judges significant powers, but we are also concerned to avoid perceptions of undue judicial intervention, lack of accountability or impartiality. While the appellate process can address some of these issues, it may be difficult, for instance, for litigants-in-persons to understand such issues. This calls for a delicate touch. It is therefore important to ensure that Judges are competent not only in the law but in managing the parties and their expectations and to this end, they receive continuing judicial education and training, not only on developments in the law, but also on a wide range of relevant social science topics.

23. The Judge, however, is not a psychologist, counsellor or an expert in child development. These are specialised fields which involve particular skills developed through years of professional training and experience. The dedicated support of a multi-disciplinary team of professionals is thus crucial to the new paradigm.

The Multi-Disciplinary Approach to Family Justice in Singapore

24. This important function is played by the Counselling and Psychological Services department ("CAPS"), the social science arm of the Family Justice Courts. Officers from CAPS identify and investigate underlying interests behind legal disputes that are often critical to the resolution, restoration and protection of individuals and families. Through the platforms of psychological assessments and evaluations, and by emphasising conciliation and mediation, CAPS officers seek to understand what lies beneath the dispute and to transform how individuals, families and children see their disputes and what lies beyond. Our team of about 20 comprises Court counsellors, social workers and psychologists who work with families and provide Judges with the advice, information and recommendations to enable them to make a considered decision about each child’s future in their best interests. Their approach extends to working with the children in order to discover their wishes and feelings, and then reporting their findings back to the Court.

25. This collaboration between our Judges and the multi-disciplinary team has been instrumental to the success of the many initiatives which have been put in place to enhance the resolution of family disputes in Singapore. It is plain that one of the key objectives of any family justice system is to promote and protect the interests of the affected children. The law here and abroad places the interest of children at the forefront, with an emphasis on parental responsibility instead of on parental rights. Some have gone further to categorise the parent-child relationship as a fiduciary one. On any view, the family justice system should ultimately be one which is child-centric, with preventive upstream interventions and follow up downstream support. Allow me to touch on some of these initiatives which reflect the approach we have taken towards resolving family disputes where children are involved.

26. Family issues are best resolved at an early stage before legal proceedings are commenced. With recent amendments to our laws, parties with children 14 years and below will soon be required to attend a parenting programme which seeks to better inform separating spouses of the impact of divorce on their children and finances. They are also advised on the importance of developing a workable parenting plan. The programme is mandatory and must be attended by the parties before a writ for divorce can be filed in the Court.

27. If divorce proceedings are commenced, the Court is empowered by law to direct parties to counselling or mediation. Mediation is a powerful tool in family proceedings where there are many areas of overlapping interests, in particular the welfare of the children, which can encourage parties to compromise. Parties are also more likely to adhere to settlements reached by consensus. We have therefore adopted a model where it is mandatory for parties with minor children to attempt mediation. A Judge-mediator and a Court counsellor work hand-in-hand with the parties to uncover the dynamics of the family relationship, address the needs of the children and equip parents with the necessary knowledge on co-parenting. This unique multi-disciplinary cooperation between counsellor and Judge has helped facilitate the resolution of the disputes more amicably.

28. We have also developed, for suitable cases, a child-inclusive mediation programme incorporating a therapeutic interview with the affected children to elicit their feelings and perceptions about their parent’s dispute. This is then followed by a feedback session between parents and the counsellor about the unique development needs and psycho-emotional adjustment of each child within the family. This has helped parents appreciate the consequences of their actions on their children, with encouraging results so far.

29. In addition, FJC and the Singapore Mediation Centre have developed the Singapore Family Mediation Training and Certification framework to grow the pool
30. There will be cases, often between high-conflict spouses, where mediation fails and litigation ensues. In such cases, the child’s voice is frequently suppressed by the parties as they each focus on maximising their own position. To overcome this and to enhance the prospects of the Court reaching an objective assessment, we implemented a Child Representatives scheme, empanelling trained and experienced family practitioners whose task is to interview the affected children, advocate on their behalf and prepare independent reports to ensure that their interests are sufficiently addressed. Some have cautioned against involving children in the proceedings. But we think it is important to recognise that many of these children are already aware of their parents’ dispute; and if they are of sufficient maturity and age, their views should be taken into account. This is also consonant with Article 12 of the United Nations Convention on the Rights of the Child which provides that state parties shall assure the right to express those views freely.

31. In disputes presenting difficult issues such as psychological concerns which the Judge may not be well-equipped to address, there will be a need for experts to assist the Court. In the common law tradition, the parties will usually appoint their own experts. It is not uncommon in this setting for the expert’s evidence to lean in favour of the client who had appointed him or her. This leads to divergent and often less than objective opinions which ultimately offer little assistance to the Judge. Furthermore, where young children or vulnerable witnesses are involved, repeated expert inspections and interviews can exacerbate the harm and suffering. To address this, our rules allow the Court to appoint an independent expert to assist, and once this is done, the parties cannot without leave of Court appoint their own experts to give evidence on the matters reported by the Court expert. The appointment of the independent Court expert might not only assist the Judge in decision-making, but it can also reduce the prospect of protracted and costly litigation occasioned by partisan expert opinions. This in fact resembles the approach taken by civil law jurisdictions where experts are typically appointed by the Court recognising that credible expertise should be neutral expertise. Certainly, there should be adequate safeguards, and our rules provide a wide discretion to the Judge to deal with any specific concerns that the parties might have.

32. But the Judge’s work does not end with the making of an order that seeks to prescribe a platform on which the parties can move on with their lives. Implementing this can be an even greater challenge. In some cases, parties may soon find themselves back in Court for yet another contest. To curtail this cycle of conflict, we intend to introduce, towards the end of the year, a pilot scheme of having trained parenting coordinators assist high-conflict parents with the implementation of their parenting plan. The parenting coordinators will also guide parents on how to resolve their own conflict without the need to return to the Courts.

33. It is of course the case that many of these initiatives were inspired by pioneering efforts abroad and we are indebted to our counterparts who have readily shared some of the best practices in their respective jurisdictions. This is comparative law in action and it is something we should all take advantage of because many of these issues are almost universally faced.

Confronting the Complexities of Family Justice in the Modern Globalised World

34. Another modern reality of our times is the increasingly common incidence of couples of different nationalities meeting, falling in love and getting married. In Singapore, we have witnessed a significant rise in transnational marriages which often take on a multi-cultural, multi-ethnic and multi-racial dimension. This is also reflected in other countries around the world. Inevitably, it has been accompanied by a corresponding rise in family disputes involving such marriages. These can raise complex questions in a number of areas.

35. Applications for relocation are always difficult. Decisions in such cases could result in the permanent separation of the child from one parent across national boundaries. On the other hand, declining the application could result in the primary caregiver being compelled to remain in a jurisdiction where he or she might not have any roots or access to support networks. Whichever way the Court decides, the decision is bound to cause considerable pain and anguish to one of the parties. Although these competing tensions are presented from the perspective of parents, the guiding principle in resolving these matters should be the welfare of the child. A recent decision of the Singapore Court of Appeal underscores...
this and I would highlight two key points made in that case.

36. First, the Court observed unequivocally that the welfare of the child is paramount and this will override any other consideration. The welfare principle in the words of the Court is “the golden thread that runs through all proceedings directly affecting the interest of the children”. Previous cases had considered the reasonable wishes of the primary caregiver to relocate as a weighty, if not determinative factor. We considered, however, that the primary caregiver’s wish to relocate is only one of the factors amongst other composite factors.

37. Second, we also endorsed the importance of joint-parenting, stressing the need to also consider the child’s loss of the relationship with the left-behind parent. This was a nuanced observation in that we also observed that like the wishes of the primary caregiver, the left-behind parent’s contact with the child is but one of the factors to be considered and its weight would depend on the strength of the existing bond between that parent and the child.

38. In the worst cases where parties cannot agree, one parent might take the child out of the jurisdiction without the consent of the other parent. The left-behind parent is then confronted with a real possibility of permanent separation from his or her child. It is against this backdrop that the International Convention on the Civil Aspects of International Child Abduction (“The Child Abduction Convention”) came to being. The Child Abduction Convention seeks to protect children from the harmful effects of their wrongful removal or retention. Signatory states are obliged through the administrative and judicial machinery to ensure their prompt return to the country of habitual residence.

39. Child Abduction Convention applications usually involve high-conflict parents whose relationship has broken down to such an extent that one parent has removed the child from the jurisdiction of habitual residence. The “abducting parent” might well have understandable reasons for his or her unwillingness to return the child. The Court is thus often confronted with the difficult issue of ensuring how the child’s best interest is served within the proper framework of the convention. Singapore’s first Child Abduction Convention case came before our Court of Appeal in 2014. The Court affirmed that the operating principle underlying the convention is that of jurisdiction selection, and the Court should only be concerned with the return of the child to his or her country of habitual residence, the Courts of which will adjudicate on substantive custody issues. In order not to frustrate this general principle, the exceptions to return contained in Article 13 cannot be invoked lightly. The court was nonetheless cognisant of the interest of the child in that case and we imposed a comprehensive series of undertakings to protect both the abducting parent and the child accompanying the order for return.

40. The Child Abduction Convention resolves one aspect of cross-border disputes. But there are other complex issues in this context which countries will have to resolve, either through consideration of other Conventions, or by encouraging the formation of communities of practice of various kinds. This is why sustained international conversation on family justice is crucial.

41. The Association of South-East Asian Nations (“ASEAN”) is important to Singapore, and the Working Group of the Council of ASEAN Chief Justices on Family Disputes Involving Children met earlier this week. The work of the Working Group will, in the course of time, facilitate greater interaction and dialogue on family matters amongst judiciaries in the region. As economic integration increases within ASEAN, it is important that our families in the region receive the assistance that they require to resolve their differences even as they cross borders.

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

43. Beyond communities of Judges, it is also important to develop conversations within the wider family justice eco-system. To this end, we have established an International Advisory Council (“IAC”) which brings together seven leading thinkers in the world in the field of family justice, to discuss and share perspectives on the latest developments in family law and practice. The members of the IAC come from Australia, Canada, Germany, Hong Kong, UK and the USA. They are each experts in different fields, namely, the Courts, academia and the social sciences. I had the pleasure of chairing the first meeting of the IAC yesterday, where there
was a lively and invigorating exchange of ideas on the latest developments and trends in various areas of family justice. Our Courts will continue to draw on the expertise of the IAC to build on, and implement, some of these ideas.

Concluding Remarks

44. Family issues are deeply interwoven with societal issues and necessitate strong support systems to help and engage families in transition. This International Family Law Conference was conceived with these realities in mind. This gathering not only of jurists but also of policy-makers, academics and professionals from the social science domain presents an ideal opportunity for all of us to deepen our insights and exchange ideas on holistic solutions to meet our challenges.

45. I believe that all of us here today recognise that family justice is not simply a matter of academic interest or intellectual debate. It is a critical component of any legal system which serves the needs of families, protects the rights of individuals, and safeguards the welfare of our children.

46. Yet, the success of any family justice system is not hinged upon the boldness of its reforms or the ingenuity of its initiatives. It ultimately rests in the hands of every individual behind it — the family practitioner who passionately advocates for his client whilst being sensitive to the needs of the children and the post-divorce family relationship; the counsellor and mental health professional who provides therapy for those in distress; the mediator who revives the conversation between estranged spouses; the academic who pushes the boundaries of family law and helps us reimagine the ways in which we think of these issues; the social scientist whose research may shed new light on the needs of troubled families and children; the policy maker who translates innovative policies into law; Court staff who consider the multiple facets of each case and litigant in search of solutions; and the Judge who respects and treats every single family dispute with the greatest care and compassion. In this collective enterprise, we each help steer families through adversity to become strong and resilient to face the future. This is why we are each engaged in this worthwhile collective endeavour and we are privileged indeed to have a role to play in replacing bitterness and acrimony with healing and hope.

47. I wish all of you an enriching and fruitful conference as you think through and discuss the many issues that will be raised over the course of the next couple of days. Thank you.

Notes

1 Speeches of Henry Brougham (Philadelphia, 1841) 2:289.
5 For example, in Singapore, there are marriage preparation workshops.
7 Kourlis et al, Courts and Communities helping families in transition arising from separation or divorce, at p 353.
8 Ibd., at p 358.
9 2013 and 2014 statistics show that 53% of all such cases have parents divorced or separated and 59% come from reconstituted families.
15 Supra note 13, at 26–27.
17 G Firestone and J Weinstein “In the Best Interest of Children: A proposal to Transform the Adversarial system” in J Singer and J Murphy “Resolving Family Conflicts”; see also S Murray, The Remaking of the Courts: Law-adversarial practice and the Constitutional Role of the Judiciary in Australia (Federation Press, 2014).
18 Supra note 13, at 43.
19 WK Leong, Elements of Family Law in Singapore (LexisNexis, 2007), at p 892. Prior to that, there were calls for a unified family court to be established — see for example S Lim, K.S Ong and C Mohan “Setting up a Unified Family Court in Singapore” [1985] 6 SingLRev 22 and S Quah “The Family Court: A Sociologist’s perspective on Enlightened Collaboration Between Law and Social Sciences” [1993] SLS 16.
21 Second Reading of the Family Justice Bill by Minister for Law, K Shanmugam (4 August 2014).


25 Supra note 23, at [138].

26 Supra note 13, at p 78.

27 Supra note 23, at [30]. See also J Langbein, “The German Advantage in Civil Procedure” 52 The University of Chicago Law Review (1985), at 848–849 where the learned author noted that judges in the German system undergo through in-depth training and a certification process before they qualify as judges as the inquisitorial system recognizes the important role of the judge.

28 J Goldstein, A Freud and A Solnit, “In the best interest of the child” (1986).


30 CX v CY [2005] 3 SLR(R) 690.


32 Women’s Charter Amendment Bill (2016) introducing the new section 94A.

33 Section 49 and section 50 of the Women’s Charter; section 26(9) Family Justice Act.


35 Section 125(2)(b) of the Women’s Charter.


40 See for example GW Jones, “International Marriage in Asia What do We Know and What do We need to Know” (Asia Research Institute Working Paper Series No.174, 2012). See also Giampaolo Lanzieri “A Comparison of Recent Trends of International Marriages and Divorces in European Countries” (2011), at p 32.

41 BNS v BNT [2015] 3 SLR 973.

42 It has been observed that the maintenance of contact between children and parents should not be merely seen as something to be encouraged but one of legal duty – see A Bainsham, “Children Law at the Millennium”, in Stephen Cretney: Essays for the New Millennium (Jordan Publishing, 2000). See also Children (Scotland) Act 1995 section 1 and Articles 9 of the United Nations Convention for the Rights of the child.


44 BDU v BDT [2014] 2 SLR 725.


46 Ibid, at 31 and 38.
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Family Justice in a World Without Borders: Three Ideas to Take on the Future?

Below is a reproduction of the closing remarks made by Judicial Commissioner Valerie Thean, Presiding Judge of the Family Justice Courts at the International Family Law Conference on 30 September 2016.

1. It is my privilege to close what has been a very fruitful conference. Over the last two days, we have had an exciting and varied discussion. We thank you all for spending this time with us, and for adding to the rich conversation we have had. I especially thank the speakers who spent time on presentations which have enriched our thinking.

Our Present Context

2. My topic this afternoon, “Family Justice in a World Without Borders”, has formed the backdrop for our two-day conference. We have talked about the global context of family law practice, and the challenges of cross-border divorces. But it is not merely national borders which we speak of. Advances in medicine have enabled us to cross traditional boundaries of life expectancy. The life expectancy at birth of a person born in Singapore today is about 83 years, fifth highest in the world. Only half a century ago, the life expectancy of someone born in Singapore was approximately 60 years. Traditional notions of family have also expanded, taking on new meaning and complexities. Most of us would agree that these advances bring huge benefits to humanity as a whole. But they are not without consequences, and they bring legal challenges in their wake.
What This Means for Access to Justice

3. In the light of these challenges, age-old issues of access to justice take on a new urgency, because family law issues often affect the most vulnerable segments of society or those who are already facing a confluence of other social and legal issues. This includes the disabled, those with mental health issues, the poor, and those with relatively low educational qualifications. In tandem with increasing family breakdown, we face a changing paradigm presented by aging populations and an increase in the number of elderly citizens. With societies all over the world aging, the elderly are coming, increasingly, into the family justice system. Unsurprisingly, with people living such long, yet stressful, urban lives, the mentally unwell are also increasing. I was told at lunchtime that in Singapore, the mentally unwell are 10 per cent of the population, and more and more of the mentally unwell are appearing in our Courts.

Three Ideas with Which to Take on the Future

4. Are we ready for these pressures? I would like to deal, this afternoon, with just three thoughts about the future.

“Courts Within the Community”

5. The first idea, which I call “Courts within the Community”, concerns the idea of where Courts ought to be. Traditionally we think of Courts in a building, preferably an old one. But litigation is a stressful experience. This is even more so for family cases, where users are unlikely to have prior court experience, and are thrust into the litigation process simply by virtue of their life circumstances. They come to court already facing challenging situations which deeply affect their personal lives. If they represent themselves, as a majority of litigants in many jurisdictions now do, they have to grapple with unfamiliar court forms and language. As a litigant noted in a Canadian study, “the language of justice tends to be ... foreign to most people”. For this reason, I posit that it is better for litigants to have a first experience of the Courts within their own community, in the context of the familiar.

6. Thus, for example, Singapore has various family service centres throughout the island. The FSCs have traditionally provided such victims with a first port of call, giving support in the form of information and referrals to appropriate agencies. We also have various Divorce Support Specialist Agencies, who help with pre-writ counselling for couples with young children. If litigants are able to apply for relief within such familiar surroundings, the experience would be far less challenging and intimidating for them.

7. An example is the application process in place with some agencies to apply for personal protection orders (“PPOs”). Traditionally such litigants would come to Court to apply and affirm the complaint before a Judge. For some years now, litigants have received first level care at the three Family Violence Specialist Centres. These centres provide counselling, groupwork and education to individuals and families. Litigants can also apply for a PPO at these centres, and affirm their complaint via video link with a Judge. The summons is then served, and the trial is later heard in Court. A pilot programme has been extended to seven Family Service Centres. Clients of these centres who require a PPO would undergo a safety assessment and application with the social worker at their centre. These FSCs are also able to deal holistically with the applicants by also providing them with safety planning options in the interim pending the hearing of their applications. Overall, these initiatives reduce the risk of trauma and anxiety. In time, if we can find sufficient sources of help within the community, we hope for this to be a new paradigm for a whole range of family matters.

8. In our efforts to bring justice closer to the community, technology is also possibly a great enabler. For those who are IT-savvy – and that part of the population is increasing – the internet could just as easily ease litigants into the Court process. Thus for example, some jurisdictions have gone further, to put in online dispute resolution systems, where litigants may seek legal information and put offers across to the other party. In such systems, resolution options could be provided for couples seeking a divorce, such as mediation, adjudication, review of agreements by a neutral party, and aftercare through a guided online interface. Couples who resolve their issues successfully could potentially avoid entering the physical courthouse altogether, through obtaining a consent order through the system.

9. If we press on with these initiatives, litigants need not commence their action at a Courthouse, but rather at a place where help is at hand. When the case truly needs a Courtroom, one is available and ready for him. On hand at Court of course will also be Court friends, lawyers and other professionals. But a good preface to the Court action is an area of potential that we have not yet fully actualised. And in many cases, in light of all the other issues that they face, it would be better for many
distressed families if they are able to resolve all their needs in that prefacing space.

“The Community Within the Courts”

10. The second area important to the future is the “Community within the Courts”. Because it is late in the afternoon, I will only deal with one player in this community this afternoon. This is the lawyer. We know that in many jurisdictions, litigants in person are now the majority. This is a trend that requires arrest. Of course, wherever litigants act in person, Courts will do whatever we are able, with simplified Court forms, trained Court friends. But lawyers have an important role within the family justice system, and are crucial to litigants in maintaining emotional stability during a time of great stress. Nurturing good family lawyers is a crucial component of addressing the future, but perhaps this topic deserves its own discussion.

11. What we did talk about this afternoon were the ethical challenges within family law. Interestingly, whilst there have been specific binding guidelines set out for criminal practitioners in our Professional Conduct Rules, none presently exist for family law practitioners in Singapore. This is despite the fact that family law practitioners are often faced with some of the most troubling dilemmas in legal practice. Thus, for example, they ought to be concerned with not just their client’s interests, but also the interests of vulnerable third parties, such as children and persons with diminished mental capacity. We heard from Professor Mushin earlier that, in the lawyer’s hierarchy of duties, he is of the view that the lawyer’s duty to a child ought to be even higher than that owed to his client. The continuing parent-child relationship also makes it especially important for parents to agree and take ownership of their plans for their child. Thus Professor Emery has discussed how parent conflict is incredibly toxic to the development of children, and is of the view that we should make parental agreement the first and overriding consideration in determining a child’s interest. This raises a need for amicable resolution or in any event, lower conflict processes. These unique factors create needs which are specialised to family practice.

12. These issues, and others relating to family practice, have been addressed in other jurisdictions through various forms. For example, the Model Code of Professional Conduct in Canada specifically prescribes that, in adversarial proceedings which might affect the health, welfare, or security of a child, lawyers are duty bound to take into account the best interest of the child. Similarly, in Ireland, the Guide to Good Professional Conduct for Solicitors states that in family law cases, practitioners should “assist the parties [to] reach a constructive settlement of their differences” with lawyers “encouraging a conciliatory approach”, and that “the welfare of children should be a first priority”. In line with these developments, it would be ideal if family lawyers could find a special place in the Legal Profession (Professional Conduct) Rules.

“Global and Local Community”

13. My third idea, about “global and local community”, has been a thread running throughout our conference. Everyone yesterday and today has talked about the increasingly international nature of family practice. Family breakdown is now very much a cross-jurisdictional affair, with litigation in various countries. For parties, differences in expectations lead to divergent views as to what might constitute a just result. The emotional content of family disputes is such that generally law-abiding citizens morph into fugitives happy to risk jail, commencing proceedings in whatever jurisdiction they think suits their desired outcome, blatantly ignoring judgments and orders made by Courts in other jurisdictions. A second difficulty, posed by Courts, is that differences in social, legal, and cultural norms mean that the same case may be viewed through very different lenses by different Courts, leading to very different results.
The Evolution of Family Justice

14. We have dealt in this conference with two solutions applicable: (i) the proliferation and growing acceptance of international agreements relating to family justice; and (ii) the increased use of cross-border alternative dispute resolution as a means of resolving family disputes.

15. Thus, we have spent time during this conference hearing about the various international agreements in play. Of course, these only work where the various countries possibly seized of the case are of the same mind. Where they have signed conventions, these can be usefully brought into focus. Where there is no confluence of these factors, mediation or other forms of dispute resolution may be able to plug the gap. But even where parties agree, things can fall apart later due to cross-border enforcement complications. As the Hague Conference on Private International Law recognised, “there are complex legal and practical challenges that they face in rendering their agreement binding and enforceable in more than one State”.16

16. We are thus heartened to hear that the Hague Conference’s Council on General Affairs and Policy has appointed an Expert’s Group, led by Professor Beaumont, to address the enforcement of voluntary agreements. It is noteworthy that the instrument which will ultimately be developed is intended to cover all forms of agreements reached by any alternative disputes resolution process, and not just mediation. The outcome of the Expert’s Group work will no doubt be the subject of much discussion, which we look forward to. A workable framework, if widely implemented, would enable parties to have a great deal more certainty in how they structure their lives moving forward from divorce.

Conclusion

17. In closing, and to summarise, I started with Courts in the community and ended with the global context of that community. In business, the Japanese adaptation of farming techniques to local conditions inspired the concept of "glocalization", which is really about adapting international products to local needs. In family justice we require the converse. It is the local order, best suited to the specifics of the family, that requires global reach. In obtaining that reach, we need the aid of various forms of dispute resolution, international conventions, Central Authorities, and judicial communication. We don’t yet have a word for this reverse glocalization, but our continued conversation ensures that we will find it.

18. This is because, even as challenges beckon in the future of family justice, our conversation results in joint solutions emerging on the same horizon. It has been said that it is easier to build a strong child, than to repair a broken man. As I close, I am hopeful for a future where a great many more strong children are built up by our work together. Thank you for coming to our conference. Our conversation here together has been rich and meaningful, and puts us on a good path for the future. Thank you.

Notes

1. See Life Expectancy in Singapore (Ministry of Health Singapore), 13 April 2016.
7. In Singapore, a 2012 survey showed that 96% of applicants and 99% of respondents were unrepresented in maintenance and personal protection order proceedings: see “Justice centre to aid the self-represented” (TODAY newspaper, 21 June 2012). See also Access to Civil & Family Justice: A Roadmap for Change (Ottawa, Canada, October 2013), at p 4.
10. In Singapore, a 2012 survey showed that 96% of applicants and 99% of respondents were unrepresented in maintenance and personal protection order proceedings: see “Justice centre to aid the self-represented” (TODAY newspaper, 21 June 2012). See also Access to Civil & Family Justice: A Roadmap for Change (Ottawa, Canada, October 2013) at p 4.
11. See the Legal Profession (Professional Conduct) Rules, Rules 14 and 15.
12. See the Canadian Model Code of Professional Conduct, at Rule 5-1-1.
15. Ibid, at p 1555.
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Engaging the International Community on Family Justice

For the first time, top jurists and policy makers from the ASEAN region and Hague Convention countries as well as an International Advisory Council on family justice met in Singapore from 26 to 30 September 2016, to discuss ways to better manage cross border disputes involving children and to address emerging trends.

Recognising the challenges of globalisation and the increasing context of cross border disputes involving children around the world, the Family Justice Courts (“FJC”) in its sophomore year, have been actively engaging in the international arena to increase awareness and opportunities for collaboration in this regard, with different jurisdictions.

Families form the bedrock of society. However, the family today is increasingly fragile. In developed nations across the world, there has been a general increase in the occurrence of family breakdown and Singapore has likewise been confronted with a growing rate of divorce and family-related disputes.1 We have, in Singapore, witnessed a significant rise in international marriages which often take on a multi-cultural, multi-ethnic and multi-racial dimension. There has also been a corresponding rise in family disputes involving international marriages. Of all the divorce cases filed, the percentage of divorces involving at least one party of a different nationality increased by about five per cent in a short span of three years.2

Family disputes with cross-border elements raise complex and difficult questions. Whether for relocation or the return of child in abduction cases,3 decisions could result in the separation of the child from one parent across national boundaries. Conversely, it could result in the primary caregiver being compelled to remain in a jurisdiction where he or she may not have any roots or access to support networks. Whichever way the Court decides, the decision is bound to cause considerable pain and anguish to one of the parties. The child being caught in the centre of the dispute is certainly not spared. The challenge is to see past the competing tensions between the parents and focus on the welfare of the child as the guiding principle. The issues are also not legal per se but require a multi-disciplinary approach e.g. the assistance of mental health professionals in addressing the on-going familial relationships despite the separation and any follow on work to bring about sustainable outcomes for all concerned.

Both local and foreign delegates attending this inaugural event were impressed by the efficiency of this event and the level of hospitality shown to them. They agreed that this event raised international and local awareness of the concerns of cross border disputes and their impact on the children and families involved.

Notes
2 31% in 2011 to 33% in 2012 to 36% in 2013.
3 Applications for return of child in abduction cases may be made to the Court under the International Child Abduction Act (Cap 143C) and the 1980 Hague Convention to which Singapore is a signatory or where the other country involved in the dispute is not a Hague Convention country, by applying for relief under the Guardianship of Infants Act (Cap 122).
Day 2 concurrent plenary session, chaired by DJ Shobha Nair (third from the right) with speakers (from left) Associate Professor Chan Wing Cheong, Ms Anne Hollands, Ms Sudha Shetty, Esq, Dr Jeffrey Edleson and Ms Michelle Woodworth

The Honourable Justice Jacques Chamberland
Court of Appeal Quebec

Dr Jeffrey Edleson
Dean and Professor, School of Social Welfare,
University of California Berkeley
The Evolution of Family Justice

Participants of the Symposium on Cross-Border Disputes Involving Children, 26 to 27 September 2016

Justice Jill Black, Lord Justice of Appeal, Court of Appeal of England and Wales

The Honourable Madam Justice Bebe Pui Ying Chu, Judge-in-Charge of the Family List in the Court of First Instance, High Court, Hong Kong
Sir Matthew Thorpe,
former Judge of Appeal of the Court of Appeal, United Kingdom

Professor Marilyn Freeman,
Principal Research Fellow, Westminster Law School, and Co-Director,
International Centre for Family Law, Policy and Practice

Dr Robert Emery,
Professor of Psychology, University of Virginia, USA

Professor Paul Beaumont,
Chair in EU and Private International Law, University of Aberdeen
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The Honourable Justice Judith Prakash (second from right) with (from left) Sir Richard George Bramwell McCombe, Lady Justice Jill Black and Professor Nahum Mushin at the Conference Cocktail

Judicial Commissioner Valerie Thean, Presiding Judge of FJC, (far left) at the Conference Cocktail with guests

Chief Justice Diana Bryant, Family Court of Australia

The Honourable Justice Judith Prakash (second from right) with (from left) Sir Richard George Bramwell McCombe, Lady Justice Jill Black and Professor Nahum Mushin at the Conference Cocktail

From left, Justice Bebe Chu, Principal District Judge Muhammad Hidhir and Judicial Commissioner Foo Tuat Yien

Singapore Law Gazette   November 2016
Parental Child Abduction: The Long-Term Effects

Qualitative research has been published which investigates the long-term effects of abduction through a series of interviews with previously abducted children. Findings indicate a high incidence of very significant effects including negative impact on the mental health of those participating in the research. The report makes recommendations on the ways in which children may be protected from the harmful effects of abduction as required by the 1980 Hague Child Abduction Convention both in terms of preventing abductions from occurring, and the provision of post-abduction support when it does occur.

This research project, which commenced in 2011, built on earlier work which I had undertaken including research for reunite, the International Child Abduction Centre, in particular the 2006 project which specifically considered the effects of abduction (hereafter Effects). In that project, which concerned abductions where the time the child had been away ranged from six weeks to 14 months (with one child never being returned), and where there had been more than five years between the abduction and the interview, I considered several categories of those who may encounter effects from the abduction. These included the left-behind parent, the abducting parent, the wider family, and the child. In relation to effects on the child, this was considered from the perspective of both the interviewed parent and, unusually,
the child concerned. Both left-behind and abducting parents participated in the research. Parents identified a series of effects which they perceived as being suffered by their children. These included: both physical and non-physical symptoms of stress; the learning of coping strategies like “blanking out”; a loss of trust; tensions on return in family relationships with non-abducted siblings and new family members; and a lack of post-return support which impacted on the children. The children, who were interviewed for the project by very experienced Children and Family Court Advisory and Support Service officers, confirmed that the return from the abduction can be as upsetting and stressful as the original abduction. The research found that all the interviewed children were adversely affected in different ways notwithstanding their age and stage of development, and that their trust in one of their parents, and sometimes both, was compromised by the abduction.

As part of the Effects project, a very small number of adults who had been abducted as children contacted me because they had heard about the research and wanted to participate. They described the effects of their abductions on them as “lasting”, and spoke of problems of loneliness and insecurity which, in their view, were “entirely attributable to the abduction” which, they said, “destroys your life”. They also emphasised the importance to them of the research being undertaken because it meant that “someone wants to know what happened”. This highlighted the lacuna which exists in the way in which abduction is dealt with under the legal mechanisms which have been put in place by the international community. Most often, nothing is known about the child once he or she has been returned following the abduction. That is where the legal mechanisms stop. The job has been done. However, for the previously abducted children, and their families, “the job” is usually just starting once return has occurred, and where the effects of the abduction may begin to materialise. Similarly, where a return does not occur, and the legal mechanisms have come to a halt, nothing is known about how the abducted child fares in terms of any effects which the abduction may have on their lives. There are also cases where there are no proceedings concerning return of the abducted child who may never be found and who grows up having not even had the degree of external involvement which return proceedings brings with them. What happens to them regarding any effects which their abductions may have on their lives? Who knows? And who cares? Many of them appear to believe that the answer to those questions is ‘nobody’.

This, then, is the background to the small scale, qualitative study about the long-term effects of abduction which I undertook to find out about the lived experiences of those who had been through an abduction many years earlier, and to learn whether, and how, the participants felt that the abduction had affected their lives, and if those effects had continued long-term. In this sample of 34 interviews (where 33 of these were with previously abducted children, and one was with the non-abducted sibling of a previously abducted child participating in the research) the abductions had occurred between 10 and 50 years prior to the interview. It was important, as the aim was to consider the long-term effects of abduction, to base the research on abductions which had occurred many years before but this also meant that many of the abductions occurred before the implementation of the 1980 Hague Child Abduction Convention. It is possible that this may have affected the outcomes for these children, and also that the outcomes may have been different at earlier points in time. The periods of time away before reunification in this sample, if it occurred, were substantial. For the majority (68.76 per cent) of those reunified, this did not occur until more than five years after the abduction, and more than one third of the reunifications (34.37 per cent) occurred after ten years. The sample of 34 interviews related to 30 separate incidents of abduction. Each participant was interviewed by me as Principal Investigator during the period 2011–2012 with an opportunity provided to each participant to update me by email in July 2014. The sample was recruited primarily in the USA and UK although initial discussions with potential participants who did not eventually participate took place in other countries including South Africa and Spain. The sample was acquired through personal and professional contacts working in the field, word of mouth, media publicity, and via the assistance of Take Root, an organisation for previously abducted children, funded by the US Department of Justice and located in Washington State, USA.

There are clear reflections in the accounts in the current project of the adults who were abducted as children of the comments of the parents and children who took part in the earlier Effects project. There were repeated references in the current interviews to: blocking things out; to not being good at intimate relationships; being in a constant state of insecurity; never feeling safe; never feeling connected to anyone; and having issues with trust. Some expressed a fear that they could be capable of doing the same thing to any child that they might have as their own parent had done to them and, consequently, they chose not to become parents. Many of the interviewees spoke of their depression, mental health problems, and attempts at suicide.

The interviews took between two to four hours to complete, and they were sometimes the first and only time that the previously abducted child (now an adult) had spoken about the events which occurred during the abduction and their feelings about it. These were, of necessity, very individual
The Evolution of Family Justice

interviews although they were based on a semi-structured interview format. However, one question which I asked in each interview was whether the interviewee thought that the abduction had had any effect on their lives and, if so, what that effect was. The responses to this question were illuminating. Almost all the interviewees felt that the abduction had had serious, long-lasting, negative effects. Several of them emphasised that parental abduction is not understood for what it is. It is, in fact, misunderstood. It is viewed as something which happens in families where the parental relationship breaks down and the children’s futures cannot be agreed upon. It is “one of those things”. The perception seems to be that it is not the same as stranger abduction because the abducted child is with one of her parents and, therefore, it cannot be as harmful or dangerous as a stranger abduction. Unfortunately, this is not the case. In some parental abductions, children are abused, neglected, scared, and hurt in both physical and non-physical ways. There is, in such cases, very little to distinguish them from what occurs in stranger abductions. Of course, this is not always the situation. There are also “protective” abductions where the child is abducted to protect her, or the abducting parent, from violence or abuse at the hands of the other parent. However, even in such abductions it is possible that the abducted child may still suffer many of the effects of abduction already identified. Children sometimes have their identities changed during an abduction, and this may include living in a different gender to that of the child’s birth. The strain of living under a different identity, and then having to reconcile that with the original identity at some point, has proven extremely challenging for some of those interviewed. It is therefore no surprise to find that some of those interviewed described the “ball of rage” which they feel in the pit of their stomachs about their abductions and the “non-issue” which it appears to be to many people they encounter. They stress that “abduction is a crime, and has long-term implications”. One interviewee explained to me that he is defined by the abduction, not simply affected by it. Several interviewees reiterated that parents thinking of abducting their children need to know all of this. They stated that this information should not be hidden. Abduction, they explained, is NOT a victimless crime, it is not just a domestic dispute, and that it needs to be taken more seriously. There needs to be more awareness of abduction, why it matters, and why “it is not ok”.

They talked about reunification – again echoing what was said in the earlier Effects project. This is where the legal mechanisms stop. This is where the families often face the greatest challenges. Where the child has been away for more than a short period of time, it is quite likely that the family structure from which she was taken has changed by the time of her return. There may be new partners or spouses for the left-behind parent, step-siblings, new half-siblings, as well as non-abducted full siblings who now form the family unit in which the child is being placed – but can it be said that the child is actually being “returned” in the sense of going back to something familiar and known? The interviewees stressed that people do not understand the situation which often faces the previously abducted child on return. They asked: Who are you being reunified with? Sometimes the left-behind parent is emotionally expecting the return of the child who left but that child has now had experiences which have changed her from the child she was and, where considerable time has passed, has grown into an older, and different, child. The return can be a shock for everyone concerned and, in the sample of this research, the return often did not work out well so that the child sometimes returned ultimately to live with the abducting parent. Returned children have said that they know that they are expected to be happy, and to fit in with the apparently happy family, but that they do not feel happy “on the inside” and do not understand what is wrong with them and why they are unable to do what is required of them. One interviewee described the return to the left-behind parent after more than four years with the abducting parent as “the kidnapping”. The return, to “a room full of strangers”, can be extremely difficult for the abducted child to handle. One interviewee said, “nobody can understand the pain”.

There was a high incidence in this sample of those who had suffered very significant effects which, under the classification used for analysis, was where the interviewee reported:

1. Attempting to see, seeing, or having seen a counsellor, therapist, psychologist, psychiatrist or similar; or
2. being diagnosed with a condition like post-traumatic stress; or
3. having suffered a psychotic episode or breakdown; or
4. having been admitted to a hospital or other institution with mental health issues; or
5. having suffered depression or attempted suicide.

Effects reported by the interviewees which did not fall into the very significant effects category were those, for the purposes of analysis, which were nonetheless discernible such as having problems with:

1. trust in relationships; or
2. lack of self-worth; or
3. fear of abandonment; or
4. panic attacks

The final category of the classification system used for analysis, “no real effects”, relate to where the interviewee reported having had:

1. minimal; or
2. no effects from the abduction.

It is emphasised that caution must be exercised in the use of the report’s qualitative findings as they result from the interviewees’ personal perspectives both as to the cause of the effects described, and the degree of impact of those effects on their lives, as well as the author’s system of data classification. Additionally, the sample numbers are relatively small, and there was no opportunity for a control group in the project. It is not suggested that these qualitative findings are generalisable. The focus of the research is to understand the effects of abduction on this sample of people as reported by themselves.

It is not possible to report the findings in detail in this note and interested readers are urged to consult the research report for detailed information. In summary, a high proportion (73.53 per cent) of the previously abducted children in this sample reported suffering very significant effects from their abduction in terms of their mental health. This percentage increases further (to 91.17 per cent) when taking into account those reporting less significant, but still discernible, effects. Such effects were evident even where the abduction occurred at a very young age where it might be thought that, as the child had not yet had a chance to form a strong and enduring relationship with the left-behind parent, the effects might be expected to be correspondingly less severe. A very low percentage (8.82 per cent) in this sample reported no real effects, and these were either related to very short abductions or to abductions where the interviewee supported the abduction or intention to abduct by the primary carer. Those who reported very significant effects talked about the ongoing nature of those effects in their current adult lives, often very many years after the abduction. These findings tend, therefore, to support those from earlier studies about the long-lasting negative effects of abduction which are emphasised in this project by the direct reporting of the abducted children, as adults, many years after the event.

The report makes recommendations which focus on the need to protect children from the harmful effects of abduction as identified in the Preamble of the 1980 Hague Child Abduction Convention, and makes suggestions about how this may be achieved in terms of both prevention of abduction, and support for those who have been abducted. It is important to continue to raise awareness of these issues, and I am grateful for the opportunity to bring these to the attention of the readers of this journal following my presentation at The International Family Law Conference, The Future of Justice: International and Multi-Disciplinary Pathways, at the Supreme Court, Singapore, from 29–30 September 2016.

I would end by underlining the words of the interviewees about abduction not being a benign, victimless event which “sometimes happens within families”. It is not about other people, it is about us, as a society. Abduction needs to be understood properly, for what it is, and it needs to be taken more seriously. I sincerely hope that this research has highlighted some of the issues which need our attention in this field.

Professor Marilyn Freeman is a leading child law expert and international child abduction specialist. She is also the co-director of the International Centre for Family Law, Policy and Practice which is affiliated to Westminster Law School where she holds the appointment as Principal Research Fellow. Her research includes the effects of international child abduction and relocation and higher and further education responses to forced marriage. She holds a door tenancy at specialist family law chambers and publishes widely. Professor Freeman is also a qualified Family Mediator.

Notes
2 Gratitude is expressed to Take Root, a US organisation devoted to previously abducted children, for its much valued assistance with obtaining the US component of this research sample, and to the Faculty of Law, Governance and International Relations at London Metropolitan University for its initial financial support for this project.
A Hierarchy of Children’s Needs in Divorce

This article is adapted from Chapter 2 of Dr Emery’s new book Two Homes, One Childhood: A Parenting Plan to Last a Lifetime.

Experts agree about what promotes children’s healthy adjustment to their parents’ divorce:

1. Low levels of conflict between parents. Or at least conflict that is contained, so children are protected from parental disputes, while parents cooperate as best they can in childrearing.

2. A good relationship with at least one authoritative parent, that is, a parent who is both loving and firm with discipline.

3. A good relationship with the other parent too, especially if that parent also is authoritative.

Experts agree about what matters to children. Where experts sometimes disagree is about what matters most. If parents are at war, is it better for children to spend most of their time with only one parent so they will not be living in a war zone? Or is it better for children to spend a lot of time with both parents, even though they will have to deal with a lot of fighting?

Before moving forward to answer these questions, let us step back in time. More than half a century ago, Abraham Maslow created his “Hierarchy of Human Needs.” Maslow brilliantly ranked human needs according to the simple figure portrayed below.

Like Maslow’s hierarchy, I have placed more basic needs closer to the bottom of the pyramid. Less basic needs go higher up. Physiological and safety needs remain at the base, more critical than any psychological needs. Protecting children’s safety must come first, ahead of any and all of their psychological needs.

Of course, all of children’s psychological needs in divorce are important. But the hierarchy shows in clear, broad strokes which needs are more basic. The hierarchy is a guide in circumstances when particular needs may be threatened or cannot be fulfilled. As with Maslow’s scheme, children will be better off emotionally if their parents sacrifice less basic psychological needs for more basic ones. For example, protection from conflict is a more basic need than having involved relationships with both parents.
Please do not misunderstand me. I absolutely want children to have good relationships with both of their divorced parents. However, based on research, living in the middle of a war zone between two parents is more harmful to children than having a really involved relationship with only one of them. In order for children to thrive living in two homes, parents have to find a way to contain their conflict and anger.

Let me turn back and discuss some key aspects of parenting before returning to discuss research on how parental conflict harms children.

Love is number one on most anyone's list of what children need for their healthy social and emotional development, as it is in Maslow's hierarchy and mine too. And there is no doubt, based on all kinds of research, that having at least one healthy, loving parenting is the best predictor of children's successful coping with divorce.

Love is the foundation, but children need parental discipline in order to build upon that structure. Children test the limits. This means that parents need to set limits. Authoritative parenting, not indulgent parenting (love without discipline), is essential in my Hierarchy of Children's Needs in a Divorce. An authoritative parent is loving and firm but fair in discipline.

Ignoring discipline is a mistake that divorced parents sometimes make. But saying "no" actually is an act of love. Typically, it is harder to say "no" than to say "yes." And while saying "no" is more work in the short run, it is less work in the long run. Discipline teaches children the right way to get along. Lack of discipline teaches them the wrong way.

Children need parental love and guidance from one and hopefully both parents. Children do not need to be caught in the middle of their parents' war. Parental conflict can be toxic to children. I say, "can be," because conflict happens in marriage and certainly in divorce. And conflict often is necessary to move forward, to resolve disagreements. But parents can manage their inevitable conflicts well, or badly.

Research has long shown that parental conflict harms children. Research shows that children who live in high-conflict, two-parent families have many more emotional problems than children who live in low-conflict, two-parent families. Dozens of studies also show that children who grow up in low-conflict divorced families have far fewer emotional problems than children in high-conflict divorces.

Many people are pessimists about managing conflict in divorce. They give up on the possibility that divorced parents can get along, even just about parenting. But that is an old model of divorce. More and more parents today realize they have to find a way to co-parent effectively, to put their children's needs ahead of their own emotions.

What are better ways to handle inevitable conflicts in divorce? Evidence indicates that children are less distressed by parental disputes if:

1. The fights are not about the children
2. The arguments do not occur in front of the children
3. The expression of anger is less emotionally intense
4. There is no physical fighting
5. Children are not asked or expected to get in the middle or to take sides
6. The conflict is resolved, even if parents only agree to disagree
In my books for parents, *Two Homes, One Childhood* and *The Truth about Children and Divorce* I guide parents in understanding both their own emotions and their children’s needs, so they can learn to better manage their conflicts. More basically, I also detail many “do’s” and “don’ts” about how divorced parents need to treat their children’s other parent.

But let me be clear about one thing here. Divorced parents do not need to be friends to have a cooperative, co-parenting relationship. Divorced parents only need to treat each other and work together like business partners in order to do their job successfully. Of course, their job is to raise happy and well-adjusted children.

Frequent contact with both of their parents is essential to children feeling close to both Mum and Dad. In a study of children and divorce that I conducted with Lisa Laumann-Billings, we collected data from 100 successful college students from divorced families. We included only young people who had bounced back from any struggles owing to their parents’ divorce. Yet, here is a startling thing we discovered about these resilient young people, who like most kids from divorced families, lived mostly with their Mums. Nearly one-third of them endorsed the item, “I sometimes wonder if my father really loves me.”

I think that’s an important, and sad, outcome. My number one goal as a father is to make sure my children feel loved.

Another important finding was that young adults from divorced families reported the greatest feelings of loss due to divorce if they saw their Dads only once or twice a month while growing up. This is equivalent to the very common “every other weekend” schedule. If the college students saw their Dads at least once a week, their pain was less. Interestingly, the young people who saw their father very infrequently or not at all also reported fewer current feelings of loss.

What do these findings mean? We interpreted our results this way: If you did not see your father much after your parents divorced, you grieved the loss. But eventually your mourning ended. If you saw your father a lot, you discovered you really did not have much to grieve after all. Both your parents remained front and centre in your life. But seeing your Dad every few weeks was just enough to keep your hopes alive – and to have them constantly dashed.

Honestly, I cannot be certain whether our interpretation is right. But the study does suggest that there are some important, hard-to-measure benefits of having a good, involved relationship with both of your divorced parents. Avoiding grief is a pretty big benefit in my view. So is feeling loved by both of your parents.

How can we increase the number of kids who see their Dads (and Mums) a lot, and decrease the number who see them rarely? Remember. “Protection form Conflict” is a more basic need than “Two Good Parents” in my Hierarchy of Children’s Needs in Divorce.

In the 1980s, I began what surely is the most important study I have ever done. I studied 71 families. The parents had just filed a petition for a contested child custody hearing. The custody contest places these parents among the top 10 per cent of most angry divorces.

I assigned these parents, at random, either to participate in an evaluation of the Court (the litigation group) or to try mediation (a very new idea at the time). Random assignment was a key to my study, or any study. This scientific procedure allows researchers to determine causation, not just correlation. In random assignment studies, there is no guesswork. Scientists know what caused what.

I found that mediation caused almost 90 per cent of families to settle their custody dispute without ever arguing their case before a Judge. In contrast, a Judge had to decide the custody plan for 70 per cent of the Court evaluation group. About 30 per cent in this group settled their case through attorney negotiations prior to trial.

More importantly, I followed these families for 12 years. The more cooperative approach of mediation caused both parents to be much more involved in their children’s lives 12 years later. For example, if they went to mediation instead of litigating, **three times** as many parents whose children did not live with them primarily still saw their kids every week. **Five times** as many parents who mediated spoke with their adolescent children on the telephone every week.

An average of six hours of mediation 12 years early **caused** these huge differences. Mediation also caused parents to get along with each other better and to rate each other as being better parents 12 years into the future.

For the parents in my study, trying to work with their ex in mediation came first. But the effort at cooperation led to more parenting time, better parenting quality, and improved co-parenting 12 years into the future – and probably beyond that too.

A second study also shows how parents working together is essential to sharing time with children across two homes. An outstanding group of researchers at Arizona State
University wanted to know how father involvement versus co-parenting conflict predicted the adjustment of children years into the future.

When the children in the study were adolescents, the investigators used statistics to identify different patterns of Dads’ involvement with their kids. The computer procedure uncovered three groups: (1) fathers who were very involved with their children but had a lot of conflict with their co-parent; (2) fathers who were moderately involved with kids and had low conflict with their ex; and (3) fathers with low involvement with children and moderate conflict with co-parents.

The psychologists followed the adolescents for nine years. They then asked the question: What pattern predicts better psychological adjustment during young adult life? What was the answer? Moderate involvement combined with low conflict. High involvement combined with high conflict offered no more benefits to children than low involvement combined with moderate conflict.

Conflict is more damaging to children in divorce than having only a limited relationship with one parent. Protection from conflict is a more basic need than a good relationship with both of your parents in my Hierarchy of Children’s Needs in Divorce. But if parents can find a way to manage their conflict and co-parent effectively, they can meet all of their children’s needs in divorce. If divorced parents truly put children first, their children can have a childhood. Their children can be just children, not forever “children of divorce.”

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Ethical Issues for Family Lawyers

The best interests of the child add an important element to ethical conduct in family law. Privilege, confidentiality and conflicts of interest require consideration over and above that which must be applied in other areas of the law. In particular, it is suggested that there is a duty to the child which must take priority over the duty to one’s own client in some circumstances.

Introduction

Our values are at the heart of ethical conduct. That is nowhere more important than in family law practice. Each of us must form our own views of the way in which we should conduct ourselves in practice. We must understand and apply standards relating to issues inherent in the practice of family law. Family violence, abuse of children including physical punishment and inappropriate parenting practices are amongst the most significant. Importantly, our own conduct must be commensurate with the highest of those standards. We must understand and accept that while each of us may have a different approach to any given issue, we need to apply some fundamentals on which to base our views.

All legal practitioners are bound by ethical rules in professional practice. Those rules are to be found in statute, subordinate legislation and the common law. They include issues of duties to the Court, the fiduciary duty to the client, and duties to others including opponents and the community. Those duties come into conflict at times. The requirements of lawyers’ ethics and professional responsibilities assist us in resolving those conflicts.

This article discusses some of those fundamentals and suggests ways in which they might be applied. They are matters of which we must be constantly aware in every day conduct.

Family Law is Different

The litigation decision making process involves first, the determination of the relevant facts, secondly the identification of the relevant law and finally, the application of the facts to the law, thereby deriving a decision. Family law has an added consideration. As part of the final step, the Court must exercise its discretion by deciding, in child cases, what is in the best interests of the child? That is the point at which value judgments are made. Those value judgments often raise exquisitely difficult issues. How do you evaluate family violence? Is any violence acceptable? What is the consequence of abuse of the child? Is a perpetrator of violence an acceptable role model for the child, no matter what the degree of violence? How does physical or mental disability impact on parenting and the child’s best interests? How does the bonding of the child with each of the parties impact on the child’s best interests?

There is very rarely only one correct answer to these questions and the ultimate determination. They challenge us in ways which are unique in the law.

Confidentiality and Legal Professional Privilege

Legal professional privilege has been a common law concept in Australia but has now been incorporated into legislation. It defines disclosure of confidential information given to the lawyer for the dominant purpose of seeking advice and conducting litigation. The essence of privilege is that it relates to the compellability of the evidence while confidentiality does not have that restriction. Privilege is a part of the wider concept of confidentiality. While all privileged information is confidential, not all confidential information is privileged. Unlike privilege, confidential information is compilable.

The duty of confidentiality arises from the fiduciary relationship between lawyer and client established by the retainer or contract to act. It is the only element of that relationship which survives the termination of the retainer.

The best approach to the duty is to regard everything which has passed between lawyer and client as being confidential. In discussing any aspect of a case with someone who is not connected with it should be on a totally anonymous basis, if at all.
The duty of confidentiality is the foundation of conflicts of interests discussed below. However, it is also extremely important in a most practical sense. For example, disclosing that you are acting for someone will usually be a breach of confidentiality. That is particularly so if you are known to practise in family law. In that instance, what you are really saying is that your client is experiencing relationship breakdown which constitutes an egregious breach of ethical conduct and could lead to disciplinary proceedings.

Conflicts of Interests

There are two categories of conflicts of interests relevant to legal practice. The first of those is conflict between the lawyer and the client. There are a myriad of ways in which such conflict might arise. They stem from the lawyer permitting the relationship to move away from the narrow imperative of acting in the best interests of the client. Often a breach will stem from a power imbalance between solicitor and client. For example, allowing the relationship to become personal and even romantic is unacceptable conduct on the part of the lawyer. It is extremely dangerous to enter into a business relationship including investing in the other’s business or lending dealings.

Costs is another important area in which a lawyer may be in conflict with the client. Recent amendments to the law of the Australian States of Victoria and New South Wales have introduced wide reaching disclosure and enforcement provisions. The legislation has removed most of the scope for disputes. If a lawyer does not make full disclosure, provide for retainer agreements to contain specific terms and ensure that the client understands every provision, costs agreement can be declared void by a Court or tribunal and the lawyer is at a high risk of facing disciplinary proceedings.

The second area of conflicts of interests is as between two or more clients of the lawyer. Conflict between current clients is known as concurrent conflict and between a previous client and a current client successive conflict. However, there are circumstances in which the client wants the lawyer to act despite a potential conflict. Accordingly, it is necessary to examine the test which is applied in determining whether the lawyer may act.

The essence of the determination of a conflict is the risk, if any, of the disclosure of confidential information. The test in civil law is to require there to be:

… a real, as opposed to a theoretical possibility that confidential information given to the solicitor by the former client might be used by the solicitor to advance the interests of a new client to the detriment of the old client.

That test is to be contrasted with the test which has applied in family law proceedings in Australia until quite recently. Courts exercising jurisdiction in family law have relied on a less stringent standard of “theoretical risk”. Regrettably, the Full Court of the Family Court of Australia has changed that test from theoretical risk to real risk. It is respectfully suggested that this change to the test is a retrograde step. The real risk test requires that an applicant for an injunction to restrain the lawyer from acting must to establish both the existence of relevant confidential information and a real risk of its disclosure. By contrast the lower threshold of theoretical risk only requires the applicant to establish the existence of relevant confidential information. Once the theoretical risk is established the Court is more inclined to infer an unacceptable risk of disclosure. That inference is consistent with applying a strict regime of protection of a client’s confidentiality. In the context of family law with the frequent emotional overlays of the breakdown of the relationship and the consequences on children and finances, the Courts should apply a high degree of caution in allowing practitioners to continue to act in a conflicted situation. That constitutes a more principled, and therefore more ethical, approach.

There is another element of conflicts of interests relevant to this discussion which is often overlooked. Part of the confidential information is what a lawyer learns about the personality and idiosyncrasies of the client. They have been referred to as the getting to know you factors. They must not be ignored in considering conflicts of interest.

A conflict of interests can be overcome by the affected clients giving informed consent. For some inexplicable reason, the Australian rules require that consent to be in writing in successive conflict but not in concurrent conflict. The vital element is that the consent must be informed. Informed consent may only be given if it is based on a full and frank disclosure of all relevant matters.

Several practical difficulties arise in everyday practice which suggest lawyers should exercise extreme caution where there is potential for conflict. Making the required full and frank disclosure would normally involve the lawyer disclosing the identity of the former or current client. As discussed above, that will usually be an ethical breach. Further, the conflicted lawyer will usually be unable to give the degree of independent advice necessary to enable the client to consider giving informed consent. Sending the client to another solicitor for that advice is quite unrealistic.

Ultimately, acting in a conflicted situation raises major ethical issues for lawyers. It is suggested that there is an unwritten rule in such situations: If in doubt, get out.
Dealing with Self-Represented Litigants

In the year to 30 June 2015, one or more litigants represented themselves in 37 per cent of cases in the Family Court of Australia. The picture is the same in common law Family Courts throughout the world. There are consequential ethical demands on lawyers to act appropriately towards self-represented litigants. Lawyers must treat such litigants with respect and dignity while ensuring that they always act in the best interests of their own client.

The issue is the subject of Rules in some jurisdictions. For example, Singapore’s Professional Conduct Rules provide:

8(2) A legal practitioner (A), when dealing on behalf of his or her client with any person who is not represented by another legal practitioner —

(a) must decline to give to the person any legal advice (other than advice to obtain independent legal advice), if A knows or ought reasonably to know that the interests of the person are adverse, or potentially adverse, to the interests of A’s client; and

(b) must take reasonable steps to ensure that the person is not under the impression that the person’s interests are protected by A.

In Australia, barristers in Victoria and New South Wales are bound by the following:

A barrister must not confer with or deal directly with any party who is unrepresented unless the party has signified willingness to that course.

Lawyers who have acted against self-represented litigants know the difficulties which often arise. As well as ensuring that no legal advice is given, there is the ever present risk of being misquoted, particularly in Court. The problem is exacerbated by negotiating with a self-represented litigant outside the Court and then having to cross-examine him or her in Court. The self-represented litigant cannot be expected to understand the concept of the privilege which attaches to bona fide negotiations and will often breach the law in that respect.

However, in a practical sense lawyers are often in a situation in which they have no choice but to deal with a self-represented litigant. It is unrealistic to ban all contact, particularly with regard to negotiating settlement of the proceedings. Much depends on whether the litigant takes a reasonable approach to such dealings. If belligerent, only written communications must be considered. If willing to participate in negotiations, consider having a third person present to take notes. A lawyer who must cross-examine the self-represented litigant if negotiations fail to settle should avoid being involved in discussions if at all possible. In any event, there should be an exchange of a written record of any discussion as soon as possible after the event.

Duty to the Child in Family Law Proceedings

Lawyers pledge to obey the law on admission to practice. Every lawyer becomes an officer of the Court which, in turn, imposes certain duties which are fundamental to the rule of law. The first of those duties is to the Court. Clients are often unable to understand that that duty applies ahead of the lawyer’s duty to the client. In a case of the lawyer’s duty to the Court being in conflict with his or her duty to the client, the duty to the Court takes priority.

In addition to the issue of discretion discussed above, there is an element of family law proceedings which makes them unique. Family law litigation, primarily in its child jurisdiction but also in property proceedings, concerns a child who is not strictly a party to those proceedings. Of course, the role of a lawyer for the child is different to that of the lawyers for the parties. The Court’s jurisdiction requires it to be satisfied as to what is in the best interests of that non-party, the child. That raises the question of what, if any, further duty is owed to the child? Is there a duty, owed by the lawyers for the parties to the Court, which also takes priority over the duty to the client?

The question has been the subject of judicial consideration on several occasions. In Clarkson v Clarkson, in reference to family law proceedings, Selby J held:

[T]he interests of the parties take second place. Regard for the interests of the child is the determining factor. … Recognised tactics of advocacy which may be in every way right and proper are not necessarily of assistance in cases of this nature. … The task of counsel is a difficult one for, while owing a duty to his client … he must always remain aware that the child’s interests come before those of his client.

The High Court of Australia considered the issue in the context of the legal professional privilege attaching to a lawyer’s knowledge of the whereabouts of a child who was the subject of litigation. Gibbs J held:

These cases support the view that where one party to matrimonial proceedings has failed to comply with an order giving custody of a child to another party, and
has taken the child into hiding, the public interest in securing the welfare of the child, and in ensuring that an order made for securing that welfare is not deliberately flouted, prevails over the competing public interest that confidential communications between solicitor and client should be protected from disclosure in order that members of the public may be free to seek that legal advice without which justice cannot properly be administered. That, in my opinion, is the correct view. The privilege, which arises only because the public interest requires it, does not exist when it is seen that it would be contrary to a higher public interest to give effect to it.\(^1\) (emphasis added)

In another case, both parties were represented by counsel in family law proceedings. During negotiations to settle the matter the husband offered to permit the wife to retain the care of the child on condition that he had the benefit of a custody order which he could show to the Child Support Agency to avoid paying child support. The trial Judge admitted the evidence of the negotiation on that point and was upheld on appeal, despite the privilege which otherwise attached to the negotiations. The Full Court upheld the Judge’s decision on the basis that it was in the child’s interests that the evidence be admitted:

However, in a case such as the present where the statement which his Honour found had been made by the father, indicated that he was not genuinely seeking custody of the child but only a formal custodial position which he, wrongly, thought to be to his financial advantage, a refusal to admit that evidence would have a direct adverse effect on the welfare of the child. In our view his Honour did not err in admitting that evidence in the circumstances of this case.\(^1\)

It is clear that in family law proceedings lawyers for the parties owe a duty to the child which, in some instances, takes priority over their duty to their own client. In all circumstances that duty includes conducting family law proceedings in a manner which does not unnecessarily inflame emotions which may be contrary to the child’s best interests.

**Conclusion**

The ever increasing complexities of the law and its practice make it impossible for any one lawyer to be expert across all fields of practice. That has brought about specialisation in particular jurisdictions and areas of practice. However, no matter what specialty a lawyer embarks upon, there is always one absolute. That is the need to specialise in ethical conduct in every aspect of being a lawyer. It underpins the community’s respect for the law and the Courts which in turn is the basis of the rule of law and access to justice. The rule of law is fundamental to the proper conduct of a democratic society.

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**Notes**

1. This article considers its subject matter primarily from the perspective of practice in Australia.
2. *Evidence Act 1995* (Cth) Part 3.10. The same legislation has been enacted in the States and Territories.
4. Prince Jefri Bolkiah v KPMG (a firm) [1999] AC 222, at 235; but see also Spincode Pty Ltd v Look Software Pty Ltd (2001) 4 VR 501, at 521–522, per Brooking JA, as to whether a duty of loyalty might also survive the termination of the retainer.
5. O, Schedule 1, Part 4.3.
12. *Family Court of Australia Annual Report 2014–2015*, Figure 3.21.
Consequences of Bankruptcy in Matrimonial Proceedings

In a situation where one party to a divorce is a bankrupt, the Family Justice Courts have no jurisdiction to make orders which may affect the Official Assignee’s interest in those assets of the bankrupt spouse which have vested in the Official Assignee upon bankruptcy. This article deals with the legal implications and consequences of this situation for the non-bankrupt spouse, and also suggests possible law reforms for this area.

Vesting of Bankrupt’s Property in the OA

When a party to divorce proceedings becomes a bankrupt, his creditors cannot pursue any action against him to recover their debts, and his property vests in the Official Assignee (“OA”) with effect from the date of the bankruptcy order (“vested assets”), subject to certain exceptions, such as a Housing and Development Board (“HDB”) flat and Central Provident Fund (“CPF”) account monies.

Court Hearing Ancillary Matters Cannot Make Orders in Respect of Assets Vested in the OA

The case of AVM v AWH [2015] SGHC 194 held that the effect of the bankrupt spouse’s property vesting in the OA is that the Court cannot exercise jurisdiction under s 112 of the Women’s Charter (Cap 353) (“WC”) to make any order affecting the vested assets, as the OA is not a party to the marriage. Under s 112 WC, the Court only has the power to divide assets between the parties to the marriage. Thus, the Court has no power to affect the OA’s title to the vested assets, nor to order the OA to transfer or sell any of those assets. This does not, however, preclude the non-bankrupt spouse from commencing or maintaining divorce proceedings against the bankrupt spouse. This is because the application for division of the matrimonial assets under s 112 WC is not in respect of a debt provable in bankruptcy, and falls outside the prohibition in s 76(1)(c) of the Bankruptcy Act (Cap 20) against creditors taking action against the bankrupt. Thus, the Court can hear the matter and make awards for the non-bankrupt spouse and children – but, as stated earlier, it cannot make any order which affects the OA’s title to the vested assets.

In this regard, it should be noted that the Court has no power under the WC to make orders for the division of the share of co-owned property that vests in the OA. If the divorcing couple hold the property as joint tenants, then the bankruptcy of one operates to sever the joint tenancy such that each co-owner holds the property as tenants-in-common in equal shares. If the form of the co-ownership was originally as a tenancy-in-common, then the bankrupt’s share would vest in the OA at the point of the bankruptcy order.

An interesting question arises as to whether equitable accounting principles might apply in the bankruptcy context, ie that the parties’ shares in the beneficial interest of the property may be adjusted in accordance with the contributions they have made to the property. However, the Singapore Courts have yet to apply the principle of equitable accounting in a bankruptcy context, though they have applied them in a non-bankruptcy context.

Possible Solutions – Non-vested Assets; Annulling Bankruptcy

If there are sufficient non-vested assets in the pool of matrimonial assets, then the Court can just take the value of the vested assets into account by notionally adding them back into the matrimonial asset pool and then dividing the enlarged pool in accordance with s 112 WC, without encroaching on the assets vested in the OA, by only making orders in respect of the non-vested assets. Thus, for example, if the matrimonial assets consist of an HDB flat in the parties’ joint names worth $300,000, the bankrupt husband’s CPF monies worth $100,000, and $100,000 cash in the husband’s bank account, the Court could divide the total matrimonial asset pool of $500,000 between the parties, even though the cash in the bank account would vest in the OA. Assuming a division between the parties in a 60:40 ratio in favour of the wife, then she would get $300,000 of the total asset pool. The Court could order that the HDB flat be transferred to the wife, which would satisfy her 60 per cent share, and that the husband retain his CPF account monies.
Another possibility is to annul the bankruptcy first and defer the resolution of the ancillary matters until then, or make orders for the division of the matrimonial assets on the basis that the bankruptcy will be annulled. This was the solution taken in the case of *AVM v AWH*. In this case, divorce proceedings were commenced on 27 January 2011. Interim judgment was granted on 25 October 2011, and the husband became bankrupt on 3 December 2012, which was before the hearing of the ancillary matters. The husband’s debts amounted to about $125,000. The main matrimonial assets included the sale proceeds of the matrimonial home (about $300,000), which were held by a law firm (M/s Mallal & Namazie) as stakeholders (the “Sale Proceeds”), and a private property (“Property A”) which was co-owned by the couple as joint tenants.

At the ancillary matters hearing, the Court ordered, *inter alia*, that:

1. M/s Mallal & Namazie release to the OA an amount of the Sale Proceeds sufficient to annul the husband’s bankruptcy;
2. subject to the bankruptcy being annulled, for the husband to transfer his share of Property A to the wife; and
3. the balance amount of the Sale Proceeds held by M/s Mallal & Namazie, after the amount in (a) was released to the OA, be released to the wife.

The Court had divided the total amount of the matrimonial assets between the parties in the ratio of 60 per cent to the wife and 40 per cent to the husband. After paying off the husband’s debts, there were sufficient funds to satisfy the wife’s 60 per cent share of the matrimonial asset pool. Thus, the wife in this case got her fair share of the matrimonial assets, despite the husband being a bankrupt.

**Implications of Current Bankruptcy Regime Vis-à-Vis Matrimonial Proceedings**

However, what if there are:

1. insufficient non-vested assets in the matrimonial asset pool in respect of which orders can be made to satisfy the non-bankrupt spouse’s share of the assets, or
2. there are insufficient assets in the matrimonial pool to annul the bankruptcy, or
3. there are sufficient assets in the matrimonial pool to annul the bankruptcy, but after the annulment of the bankruptcy, there are insufficient assets to satisfy the non-bankrupt spouse’s share of the assets?

In situation (2), the non-bankrupt spouse is “stuck”, as until the bankruptcy is annulled, no orders can be made in respect of the assets vested in the OA. In situations (1) and (3), the non-bankrupt spouse may get far less than what she would have gotten if there had been no bankruptcy issue, as the legal ownership of property does not always reflect the non-financial contributions of the parties to the marriage. Even if the non-bankrupt spouse could annul the bankruptcy order, obtaining the annulment would be troublesome for her, as it would involve an application to the OA, and she would also incur expenses which she may not be able to recover.

There may be different outcomes depending on the order of events, ie whether the spouse becomes bankrupt first, or the ancillary matters hearing comes first. If the ancillary matters hearing comes first, the non-bankrupt spouse can be awarded her rightful share of the matrimonial assets in accordance with the principles under s 112 WC. The only assets which would vest in the OA would be those which the ancillary matters Court has decided is the bankrupt spouse’s share. However if the bankruptcy of the spouse comes before the ancillary matters hearing, then all the assets in the bankrupt spouse’s name vest in the OA (save for those excepted by law), and this may mean that the non-bankrupt spouse might get considerably less than what she would have gotten under the s 112 WC regime, if there are insufficient non-vested assets or insufficient assets after paying off the bankrupt spouse’s debts, to give the non-bankrupt spouse her rightful share of the matrimonial assets.

**The OA’s Position and OA’s Practice Circular**

In practice, the OA takes the position that the common law on severance of joint tenancy will apply, if the bankrupt has an interest in jointly-owned properties. The bankrupt’s share will thus vest in the OA. If there are any disputes over the quantum of the assets vested in the OA, the party disputing the OA’s position, whether it is a party to the divorce or one of the bankrupt’s creditors, would have to apply to the High Court for a determination of this issue, which is a separate forum from the forum which would decide the ancillary matters (ie, the Family Justice Courts (“FJC’)). This means that the ancillary matters hearing would have to be held back pending the High Court’s determination of the dispute over the vested assets.

In the Official Assignee Practice Circular No 5 of 2016 (Matrimonial Proceedings Involving Bankrupts) (the “Circular”), parties are required to notify the OA of
matrimonial proceedings involving bankrupts and furnish copies of the relevant cause papers. Where draft consent orders or positions taken by parties concern assets that vest in the OA, for uncontested and contested ancillary matters proceedings respectively, the OA’s views must be sought on this. If the party who is a bankrupt is not represented, then the lawyer for the other party shall inform the OA of the matrimonial proceedings made by or against the bankrupt. The OA would, if necessary, send legal officers to represent the OA at the ancillary matters hearing, if any of the matrimonial assets are vested in the OA (typically a bankrupt’s spouse’s co-ownership interest in a non-HDB, private property, shares, cash in hand etc). The OA acts as an amicus curiae to inform the Court of the decision and effect of AVM v AWH, ie that the Court has no jurisdiction to transfer any of the vested assets to the non-bankrupt spouse.

**Possible Law Reform**

In order to address the issues set out above, it is proposed that the WC and Bankruptcy Act be amended to:

1. Provide the ancillary matters Court (ie, the FJC) with the jurisdiction to deal with bankruptcy matters, where those matters run concurrently with matters under the WC;

2. Allow the OA to be joined when divorce proceedings are commenced, or prior to the making of an ancillary matters order in relation to vested assets or maintenance (though the OA’s intervention should be confined just to these issues); and

4. Allow the FJC to consider the interests of the bankrupt spouse's creditor(s) when determining the division of the matrimonial property.

In this regard, Singapore could perhaps take some inspiration from the Australian Bankruptcy Act 1966 and the Australian Family Law Act 1975 (“Family Law Act”), which were amended in 2005 to, inter alia:

1. Give the Family Court additional jurisdiction to deal with bankruptcy matters where they run concurrently with matters under the Family Law Act;

2. Enable the trustee-in-bankruptcy to be joined when the divorce proceedings are commenced or before the making of a final order (in relation to the matrimonial assets or spousal maintenance). (The trustee in bankruptcy must be joined where the court is satisfied that the interests of the bankrupt’s creditors may be affected by an order made by the Family Court); and

3. Provide that the Family Court can have regard to the effect of any proposed order on the ability of a creditor to recover its debt, when making a spousal maintenance or matrimonial asset division order, and can also order vested assets to be transferred to the non-bankrupt spouse. However, it should be noted that the above amendments do not provide for the trustee-in-bankruptcy's remuneration to be taken into account by the Family Court when dividing the matrimonial asset pool. In the case of West v West [2007] FamCA 681, for example, the trustee-in-bankruptcy’s (quite considerable) costs were not taken into account by the Court when it ordered that the entire interest in the matrimonial home, subject to the existing mortgage, was to be given to the non-bankrupt spouse (the wife). There is also no guidance in the Australian legislation on how the Court may take the bankrupt spouse’s creditors’ interests into account. In the case of Pippos v Pippos [2008] FamCA 542, for example, the Court awarded 70 per cent of the matrimonial asset pool to the wife, given her significant contributions to the marriage. This meant that the creditors recovered only about a third of the money that they were owed from the husband’s share of the matrimonial asset pool. It is unclear whether this is a result which was intended by the Australian Parliament, and an analysis of the Australian case-law suggests that the Courts’ application of the Australian legislation seems rather biased in favour of the non-bankrupt spouse.

Academic writing from Australian practitioners has suggested some principles and factors that could be used to guide the Court on how to conduct the balancing exercise between the interests of the parties to the marriage, and those of the creditors of the bankrupt spouse, such as: (i) the state of the non-bankrupt spouse’s knowledge of (and complicity in) the events leading to the other party’s bankruptcy; (ii) whether the debts were incurred post-separation or pre-separation and whether it was for the benefit of both parties or just one party; (iii) whether the debt was incurred by the bankrupt spouse in deliberate disregard of the non-bankrupt spouse’s entitlement to a share of the matrimonial assets; and (iv) whether the creditor had pursued his debt in a timely fashion etc.

**Conclusion**

In the usual case where the bankrupt’s liabilities exceed his personal assets and an annulment of his bankruptcy is not possible, it would be difficult for the Court to exercise
its jurisdiction under s 112 WC to determine the bankrupt’s interest that vests in the OA at the point of the bankruptcy order, or to make orders that purport to transfer the bankrupt’s interest to the solvent spouse.

To address these difficulties, as stated earlier, possible key reforms to the WC include: (i) allowing the joining of the trustee-in-bankruptcy in the matrimonial proceedings, thus allowing the FJC to make orders binding on the said trustee; and (ii) explicitly allowing the FJC to consider the interests of third parties such as a trustee-in-bankruptcy or creditor when determining the division of matrimonial property (with specific provisions providing for the trustee-in-bankruptcy’s remuneration, and guidelines on how and to what extent the creditors’ interests should be taken into account).

However, these reforms have significant policy implications, as commercial creditors may find themselves subject to the jurisdiction of the FJC, rather than the High Court, in respect of their debts, and may consider themselves unnecessarily drawn into the bankrupt spouse’s personal matters. There is also the possibility that the creditors’ interests may be subordinated to that of the non-bankrupt spouse. Thus, consultation with, and input from, the various stakeholders (representing the interests of would-be creditors as well as the interests of the bankrupt and non-bankrupt spouses) would be important to inform any law reform efforts.

* All views presented in this article are entirely those of the authors, and do not represent the views of either the Legal Aid Bureau, the Insolvency Office, or the Ministry of Law.

Notes
1. See section 76(1)(c) of the Bankruptcy Act (Cap 20) (“BA”).
2. See sections 76(1)(a) and 78(2) of the BA. See also section 51(5) of the Housing Development Act (Cap 129) and section 24(2)(c) of the Central Provident Fund Act (Cap 36).
4. See part 2 of the Circular.
6. See sections 79(1), 79(9)(4)(c) and 75(2) of the Family Law Act. Before the amendments, the position was that once the bankruptcy petition was granted, the property of the bankrupt vested in the trustee-in-bankruptcy for distribution amongst the creditors, and the non-bankrupt spouse could only hope to recover a share after the creditors had been paid, even though the property had been acquired with the assistance of the non-financial contributions of the non-bankrupt spouse. See “When Bankruptcy and Family Law Collide” by the Hon Justice TE Lindenmayer and Paul A Doolen (1994) Australian Journal of Family Law, at page 116.
7. The size of the bankrupt husband’s debts were only AUS$8,000. However, the trustee-in-bankruptcy’s costs were AUS$69,000. The total value of the matrimonial asset pool was only AUS$116,000, consisting mainly of the matrimonial home and the husband’s superannuation assets. The court stated that it would not be just and equitable to remove the wife and children from the matrimonial home in order to meet what was in large part the trustee’s costs.
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Partnering Social Workers to Help Family Violence Victims

A client who comes to a lawyer seeking help for a divorce or other family matter may also be experiencing family violence, and require referrals to the relevant social service agencies who can help her. The Legal Aid Bureau ("LAB") has entered into a collaboration with one such social service agency, PAVE, in order to better help its applicants who are victims of family violence. This article sets out the details of this collaboration, which includes joint training, a referral protocol, and a mutual information helpline. The article also draws on LAB’s experience with this collaboration to explain what help beyond the legal sphere family lawyers could give to their clients who are experiencing family violence.

Earlier this year, a 46 year old lady approached the Legal Aid Bureau ("LAB") for help to divorce her husband. She was terrified of him. He was in prison for a drug offence. It was a moment of reprieve from years of violence. She recounted how he would hit her two to three times a week over the course of their 13-year marriage. Yet, she wrestled with her decision to apply for a divorce. He had threatened to kill her if she ever tried to divorce him, and she believed him.

It was not just a divorce she needed, or even a personal protection order ("PPO") (to keep her safe when the husband was released from prison). What she needed was the courage and the will to go through with the divorce, and to make the PPO application. For this, she needed a listening ear, comforting words, and a support group.

Such a case is not uncommon at LAB. We often come across stories of family violence when taking instructions for divorce and other cases. The victims not only need help for the family violence issue, they often also need help with finances, housing, and employment. As lawyers, our primary role is to represent the victim in Court and give her...
legal advice. However, in the course of handling the legal case, we have a good opportunity to link the victim to social services which might help her get out of the violent situation. This would benefit not just her, but her children as well.

Previously, the individual LAB officer handling the case would have had to do some research on his own, to find out what contact numbers the applicant could call to get social services. He would then scribble it down on a piece of paper for her. The applicant would have to make the effort to call the social service agency herself. Many would not, for a variety of reasons – such as inertia from years of oppression, fear of the perpetrator, and so on. There was no system to follow up on whether the applicant did end up making the call, attending the follow-up appointment with the social service agency, and taking out the PPO application.

LAB’s Partnership with PAVE

To make it easier for LAB officers to refer victims of family violence to social services, increase the chances of the victims making contact with the social service agencies, and also to keep track of the outcomes of the referrals, LAB has entered into a partnership with PAVE. PAVE is a social service agency which specialises in helping families living with violence. For its part, PAVE was also interested in finding out how to refer its clients who needed legal services and could not afford private lawyers to LAB for help.

To kick off the partnership, LAB and PAVE held a joint training-sharing session in June this year, where officers from each agency shared information on the services offered by their agency with the other agency. LAB officers were taught how to recognise the symptoms of family violence, how to assess when a victim of family violence appeared to be in imminent danger, and what services are available to such victims. PAVE social workers learned about the legal aid, assistance and advice services that LAB provides.

I speak for all PAVE social workers when I say that the introduction to the work of LAB and the role-play sessions were very useful in helping PAVE social workers understand the processes of LAB and see how LAB officers interview their clients. With this knowledge, PAVE social workers can better explain LAB’s procedures to their clients and educate them on what to expect before applying for legal aid. The interaction with LAB’s legal officers also enabled PAVE social workers to better understand the workings of a legal officer’s mind. With that, the PAVE social workers gained insights on why certain information may be crucial to a legal case.

– Dr Sudha Nair

LAB and PAVE also came up with a referral protocol to govern each agency’s referrals of clients to the other. Under the protocol, LAB officers classify the family violence situations they come across into “exceptional” and “ordinary”.

“Exceptional” situations are cases where the applicant’s life may be in imminent danger. Examples of such cases are where (i) objects or weapons were used against the victim; or (ii) the violence involved punching, kicking or slamming the victim’s head against the wall; or (iii) the violence occurred when the victim was pregnant. For such cases, LAB officers will seek the victim’s consent to be referred to PAVE. They will then fill in a standard referral form to be forwarded to designated PAVE social workers within 24 hours. The form supplies basic details on the family violence issues faced by the applicant, as well as the applicant’s consent to the release of information held by LAB to PAVE.

Upon receipt of the form, a PAVE social worker will contact the victim and offer her help. This ensures that the victim will be more likely to access the help she needs, than if she had to pluck up the courage and will to contact PAVE by herself. In cases where an applicant seems hesitant or unwilling to be referred to PAVE, perhaps because she is uncomfortable disclosing personal information to an unfamiliar agency, LAB officers will check if she is willing to speak to a PAVE social worker. If the applicant is willing, a PAVE social worker will either speak to her over the phone or come to LAB immediately to make a second attempt at persuading her to receive assistance.

For “ordinary” situations, where the applicant does not seem to be in imminent danger, LAB officers will similarly seek the applicant’s consent and forward the standard referral form to designated PAVE social workers. This is to be done within three days of meeting the applicant. Where an applicant refuses to be referred to PAVE, LAB officers will still fill up the referral form and pass the completed form to the applicant so that she can approach PAVE directly whenever she is ready.

Additionally, PAVE has provided stacks of its contact cards to LAB, which LAB officers generally hand out to applicants to enable them to contact PAVE at their convenience.

LAB and PAVE also have a mutual support and information system, where officers from each agency can call or e-mail selected officers from the other agency with queries about the services they provide, to ask whether their client can qualify for the services, and to share information on mutual clients, and the progress of their cases. This enables both sides to make appropriate referrals and also to track the progress of their referrals.
To the mind of a family violence victim, the decision to prioritise one’s safety is not a straightforward one. She may have financial concerns, like the perpetrator being the sole breadwinner in the household, or parenting concerns, like their children losing their father, or even the fear of having to face the perpetrator in Court. It is not uncommon for family violence victims to take out PPO applications, only to withdraw the application soon after.

In the case detailed above, the LAB officers handling the applicant’s divorce referred the applicant to PAVE, and followed the progress of her case with PAVE.

Legal Executive, Tan Rou’en, was the one who referred the 46 year old lady to PAVE. She commented, “The applicant tried to apply for a PPO against her husband many years ago, but she broke down in tears when she had to face him in court. She could not overcome her fear of him and had no choice but to withdraw her PPO application. After making the referral, I felt more assured that the applicant would receive the emotional support and encouragement she so needs from the PAVE social workers. She is now in PAVE’s good hands.”

The applicant was advised to take out a PPO application a second time. Armed with support from both PAVE and LAB, the applicant was more confident about making the PPO application, as well as going through with the divorce, and is currently taking steps to do both of these things. Thus, the emotional support received from a counsellor could be the “game changer” that sustains the victim, and encourages her to help herself and see through any legal proceedings to a successful conclusion.

Role That Family Lawyers Can Play

PAVE social workers weigh in on the role that family lawyers can play:

Firstly, be patient as it takes a lot of courage for victims of domestic violence to apply for a divorce or PPO. When they are shown patience, it encourages them and this helps them tremendously.

Secondly, it is important for victims to be open to help from trained professionals so that their trauma can be addressed. Being aware that they are not alone in the situation empowers them. The support helps the victim to put her thoughts into perspective and to take control of her life- a life that she has lost control of for many years.

Thirdly, when the victim has received help to make sense of her trauma, she will be in a better frame of mind to deal with her legal issues.

PAVE will also help her receive other vital forms of support- be it reconnected with her family that she has been closed off to or financial assistance. The lawyer will therefore be freed from having to deal with the bulk of the victim’s emotional baggage.

Family lawyers can help victims of family violence get the help they need by linking them to social services. They are in a good position to do so as their clients tend to value their opinion, and they are also in close contact with the client for the course of the legal case.

Members of the legal profession must not be blind to our clients’ helplessness and inertia in the face of family violence. The joint training session was timely. The partnership between PAVE and LAB enables victims and perpetrators to receive help, with the aim of eradicating the violence, for the sake of the children.”

– Mr Victor Lim, Deputy Director of Legal Aid

Now, whenever I encounter applicants whom I suspect may be suffering from family violence, I am more cognizant of her and the children’s safety - especially if parties are still living together. With a better understanding of PAVE’s counselling services, I am also better able to persuade applicants to seek help.

– Ms Joan Pang, Assistant Director of Legal Aid

All family lawyers can be partners of social workers in the fight against family violence, in the same spirit in which LAB has partnered PAVE, by referring their clients who are victims of family violence to social services.

To do this, family lawyers should equip themselves with the knowledge of the social service agencies that are available to help family violence victims, namely:

(1) Family Violence Specialist Centres (“FVSCs”)

If your client’s situation appears particularly urgent or serious, you may wish to refer her to an FVSC. You are also encouraged to refer your client to an FVSC if she is either very emotionally unstable or ambivalent about receiving support. These centres specialize in family violence work and can provide the client with targeted services including emotional support and practical help (e.g. support in applying for a PPO). There are three specialist centres which you can refer your client to:
(a) PAVE
www.PAVE.org.sg
Block 211, Ang Mo Kio Ave 3, #01-1446
Singapore 560211
Tel: 6555 0390
E-mail: admin@PAVE.org.sg

(b) TRANS SAFE Centre
www.transfamilyservices.org.sg
Block 410, Bedok North Ave 2, #01-58
Singapore 460410
Tel: 6449 9088
E-mail: transsafe@trans.org.sg

(c) Care Corner Project Start
www.carecorner.org.sg
Block 7A Commonwealth Avenue #01-672,
Singapore 141007
Tel: 6476 1482
E-mail: projectstart@carecorner.org.sg

(2) Family Service Centres (“FSCs”)

If your client appears to require less urgent intervention and/or faces a spectrum of issues apart from family violence, you may wish to refer her to an FSC. There are 47 FSCs located in HDB towns around Singapore. For your client’s convenience, you may wish to refer her to an FSC located near her place of residence. Apart from dealing with family violence, the FSCs also offer help in other areas such as financial, marital and parenting issues.

The different kinds of help that your client will receive if you refer her to a social service agency include:

1. Making safety plans: In extreme circumstances where it is necessary to remove the victim from the perpetrator, the victim will be brought to a crisis shelter to ensure that she is removed from the danger and has a safe place to stay. Generally, the victims will also receive help on making safety plans such as packing their personal items in a suitcase to allow them to escape quickly if they are in danger.

2. Counselling: The victim will be given help to process what she has gone through and undergo therapy to overcome her traumatic experiences. There are also programmes for perpetrators that challenge their beliefs and help them explore alternative methods of expression apart from violence. Affected children will also be given support to cope with the trauma of witnessing such violence and to deal with any possible recurrence of violence at home.

3. General support: If the victim is also facing financial difficulties, she can receive financial assistance (e.g. cash and meal vouchers) and even food rations to help tide her through this difficult period. If she is in need of long-term financial assistance, she will also be referred to the relevant agency.

“How blessed to be the hand that saves another from utter despair.” [footnote; Debbie Ong, “Thinking Out Loud-Family Lawyering”, Singapore Law Gazette (July 2008), p 25].

A small effort on the family practitioner’s part to refer a client who is a victim of family violence to social services may make a very positive and significant difference to her life and that of her children. LAB is grateful to PAVE for giving us the opportunity and the ability to set our applicants on the journey to transform themselves from the victims of family violence to the survivors.

Please feel free to e-mail us at HUI_Jia_Lun@lab.gov.sg or Beulah_LI@lab.gov.sg if you would like more information about LAB’s partnership with PAVE.

The Legal Aid Bureau aims to provide quality legal aid, advice and assistance to persons of limited means. We offer legal representation in a wide range of civil matters including divorce, monetary claim, custody of children, estate matters and claim for compensation in injury or medical negligence cases. Additionally, the Bureau is supported by a panel of some 600 volunteer lawyers, known as Assigned Solicitors. These lawyers handle cases that require special areas of expertise such as cases involving Syariah Law.

For further information, please refer to our website at <https://www.mlaw.gov.sg/content/lab/en.html>. 
Wanting To Be and Staying On

Having been a full time family lawyer for 13 years, and having worked with many family lawyers, different kinds of clients, and having spent a lot of time in the Family Justice Courts, acquiring many soft skills such as mediation, collaborative family law and child representation, I find that the work we do as family lawyers is really hard. And sometimes, our work is under-rated.

Increasing the number of family lawyers through the SIM law school is an option to solve the family lawyer crunch. It does not solve the entire problem though. To get to the root of the problem we have to ask – why are family lawyers quitting? What can we do to keep family lawyers in the profession?

The study of family law interests undergraduates and inspires them. They have a certain vision and ideals of family law practice – contributing to the welfare of couples and children, creating a brighter future for children, making a difference to the world we live in – these are some of the reasons why many graduates are joining the family bar.

On the other side of the coin, there is the emotional stress transferred by clients onto their lawyers, the clients’ demands after office hours, Court deadlines and pressures imposed by the firms they work in – these are just some of the push factors for these lawyers. After 19 years in law practice, I too feel emotionally tired in my law practice and I still think of embarking on something different outside of law.

Passion will still largely motivate many lawyers to continue to practise family law. It will drive them to manage the demands of family and life, find personal fulfillment and continue to be inspired by their vision and work hard to achieve it.

Recently, I met Nicole Stevens, an Australian lawyer practising family law in Sydney. She started her career as a personal assistant in Watts McCray in 1999 whilst studying for an Associate Degree in Law. She went on to pursue a Bachelor in Law by correspondence study whilst working as a paralegal. After completing her law degree in 2008, she got married the next year. In 2011, she did her Masters in Family Law whilst working as a legal associate. She also had two children during that time, a son now aged four and a daughter, two-and-a-half, all while pursuing her Masters. She still continues to work in the law firm of Watts and McCray where she started 17 years ago.

In a field where women lawyers find it hard to balance family, kids and work, she never gave up. What was different for Nicole? “I just stuck to being a family lawyer and did not let go,” was her earnest and direct response. Her parents who continued to extol the virtues of hard work, and the guidance and support of her boss and mentor were her constant support network.

She starts her day early and works till late when she needs to. Weekends are solely dedicated to her children and during this time she does not answer clients’ telephone calls.

“We need to realise that clients will never appreciate us as there is no win or lose in family cases.” She acknowledges that it takes time for a family lawyer to define her working style.

Besides passion, perseverance is also essential. If family lawyers give up in the first two years of practice, there is insufficient time to pursue their passion and develop their own practice.

The illusion of work-life balance, the lack of tenacity and the attractiveness of other options will always be push factors that take family lawyers away from the family bar. The advantage that UniSIM law school may have over the other two law schools is that they have offered 60 seats to serious mature students who wish to become family lawyers. It is hoped that these students may be more grounded, surer of what they want and become committed family lawyers.

As part of the study of family law, the students in all our law schools need to be exposed early to the
various challenges they will face as family lawyers. Family law is more than the study of the law. They should also be taught how to manage the stress they face in family practice. Family law has its own unique challenges – it is emotional and stressful. We meet and work with family clients at the lowest point in their lives. Some of them can be very difficult to manage due to the circumstances they are in. They need emotional support and someone to understand their expressed and non-verbal needs. They require legal advice, reassurance in a safe and trusting environment. Hard work, dedication, life experience and maturity are required of family lawyers.

Whether family lawyers are going to be stayers or quitters depends largely on them. At the same time, it will be helpful if we receive the same support from the Family Justice Courts that our clients require from us – understanding, concern, empathy, support and working together as one team. Deadlines and expeditious progress of cases are important. However, at the same time, family cases involve individuals with different personalities and importantly, the children. It takes couples time to move on, to be ready to take steps to give instructions and to fall in line with the speed expected by the Family Justice Courts.

Finally, the Family Bar needs to be united. We have a primary duty to assist our clients in the most efficient and effective manner. Family litigation is still different from other forms of litigation. Let us support each other with professionalism, consideration and with kindness. We are not fighting against each other. Our mission as family lawyers is to work together to assist these men, women and children to start a new phase of life and to build a bright future.

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Dialogue with the Family Bar

There have been significant developments in the family justice system since the formation of the Family Justice Courts (“FJC”) on 1 October 2014. Alternative dispute resolution methods such as family mediation and collaborative family practice for the Family Bar have also taken firm root over the last three years. With the slew of various programmes and initiatives introduced by the Ministry of Social and Family Development (“MSF”) and FJC, it was an opportune time for the dissemination of the information about these programmes to the Family Bar.

FJC together with MSF and the Family Law Practice Committee (“FLPC”) of the Law Society organised a dialogue for the Family Bar on 20 September 2016. This event was well attended. Judicial officers from FJC shared the ongoing mediation services provided by the Family Dispute Resolution Chambers and the mandatory mediation and counselling under the auspices of the Child Focussed Resolution Centre. FJC also announced the introduction of the Private Mediation Scheme which took effect from 1 October 2016. Under this scheme, if parties have assets valued at $3 million and above, they will be referred to private mediation in the Singapore Mediation Centre or by private mediation service providers. Only cases in which child custody issues have been resolved will be referred to private mediation.

Salient details under the Child Representative Scheme were also shared. Under the Scheme, the Court will appoint trained Child Representatives, who are family lawyers, to assist the Court in high-conflict child custody cases. The Court also introduced the Parenting Co-ordinator scheme where 24 family lawyers received training in January 2016 to become parenting co-ordinators. Parenting Co-ordinators are meant to assist parents resolve any child access difficulties they may face when carrying out access orders.

FJC counsellors also gave a rare and in-depth insight into the various counselling programmes run by the Counselling and Psychological Services for divorcing couples with children. This information was very useful to the Family Bar as it assisted lawyers to better understand how counselling supports their clients and children during divorce proceedings.

A representative from MSF gave an interesting presentation on their various programmes – the work of the Divorce Support Specialist Agency, their various Divorce Support Programmes and Mandatory Parenting Programme. It was a unique opportunity for family practitioners to hear first-hand about the much talked about programmes rolled out by MSF. It was interesting to learn about the various resources and initiatives that the MSF has to assist divorcing couples and children start on their new journey as parents. The child-centricity of the programmes highlighted the importance placed on the child and his welfare when his family unit breaks down.

The new Supervised Exchange and Supervised Visitation to replace the previous Assisted Transfer and Supervised Access by social workers were also introduced during the presentation.

FLPC is grateful to FJC and MSF for taking the time to conduct this session and sharing the presentation slides which were published in Jus News on 27 September 2016, 5 October 2016 and 18 October 2016. It is hoped that the sharing of information by FJC and MSF with the Family Bar will continue in the future so that the Family Bar, as another stakeholder in the family justice system can work together to build a new and bright future for the parents and children.

Family Law Practice Committee
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A global consulting company seeks a regional counsel to advise and negotiate on all corporate commercial contracts across the region, and advise on any legal or regulatory matters. At least 4-8 years’ PQE in corporate M&A, corporate finance or general corporate matters gained from a top tier law firm. Candidates from private practice or in-house with the ability to work independently and handle different business stakeholders across the region a must. (SLG 14217)

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Be Part of the MAS Team

Help shape Singapore’s financial landscape

Capital Markets Department
Assistant Director/Associate (Legal), Enforcement
(Ref: 30019402_62011)

At the forefront of a specialised area of practice, you will be a member of a team responsible for the enforcement of the civil penalty regime under the Securities and Futures Act (SFA). You will investigate potential market misconduct, including insider trading and market manipulation and conduct litigation on behalf of the MAS for the award of civil penalties for market misconduct.

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Requirements:

• Recognised Law Degree and admitted to legal practice in Singapore
• At least 1 to 3 years of Civil/Commercial Litigation experience
• Willing to be a pioneer in an emerging area of practice
• Ability to be innovative and creative in solving problems

Application:

To apply, please log on to our career page at http://www.mas.gov.sg/careers

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Closing Date: 7 August 2011

For enquiries, please contact Perry Tan: perry.tan@lexisnexis.com
Wendy Tan: wendy.tan@lexisnexis.com
ISDA Negotiator/ Derivatives Lawyers 5-10 PQE
Financial Institution Singapore
[S40815]
- Multiple roles with FI clients
- Short term assignments, up to 12-months (with possibility of extension)
- Derivatives/ISDA experience required
- Any seniority

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- Keen on business development
- Good Mandarin skills to deal with clients in the China market

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[S40506]
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- Familiarity with laws and commercial practices in the financial services industry is essential
- In-house experience at a technology or financial services company is advantageous
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[S40945]
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[S40839]
- Candidates must have a legal background and should ideally have derivatives/ISDA experience
- To advise the global markets business on structured OTC derivative transactions, handle term sheets and confirmations, document trades, and monitor regulatory changes

Legal Counsel 5+ PQE
European Pharmaceutical MNC Singapore
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- Called to Singapore bar
- In-house experience preferred
- Experience within life sciences industry a big plus
- To support Singapore business on legal and compliance matters

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[S40936]
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- Role covers Singapore

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Finance Industry Singapore
[S40947]
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- To advise on policies and documentation to ensure compliance with regulatory requirements
- Ability to keep pace with new regulations
- Familiarity with regulations in the derivatives market would be a plus

Legal Counsel - Real Estate Developer 8+ PQE
Singapore
[S40829]
- Experience advising on real estate, hospitality, and M&A matters required
- In-house experience with a real estate company is strongly preferred
- Candidates from private practice who have represented real estate companies will be considered

Corporate Counsel - Real Estate Developer 8+ PQE
Singapore
[S40829]
- Experience advising on real estate, hospitality, and M&A matters required
- In-house experience with a real estate company is strongly preferred
- Candidates from private practice who have represented real estate companies will be considered

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Every month, JLegal examines the PQE of a senior in-house counsel. This month we speak with Greg Chew who, despite his Korean boy band good looks, has happily maintained his down-to-earth and humorous approach to life.

- **What is on your mind at the moment?**
  Food (can you tell from my photo), why my son (10) keeps calling me "Dude" and why my daughter (6) insists that having a "pet" (after watching Life of Pets) is critical to her life growth.

- **Which talent would you most like to have?**
  Humour.

- **What is your idea of misery?**
  A life without love, laughter and alcohol, in random order depending on the day and need.

- **What do you most value in your friends?**
  The fact that I have some.

- **If you weren’t a lawyer you would be a...**
  Male Entertainer.

- **What is your most precious possession?**
  No possessions, only "memories" and "moments in time".

- **Where were you born?**
  Lewisham (London), rough, rough, rough.

- **Where is the best place you have ever been to?**
  "I've never been to me".

- **What is your greatest regret?**
  Not giving loved ones the kindness they deserved.

- **What do you consider your greatest achievement?**
  Getting my wife from "no", to "let's give it time", to "ask me next Valentines", to "yes", despite my obvious Korean boy band looks.

- **What is the strangest thing you have seen?**
  People who think they’re smart.

- **What is your motto?**
  "Laugh at yourself most because others surely will".

- **Top 3 favourite movies of all time?**
  Die Hard, Good Fellas, and The Godfather...
  ok if I’m honest, Bridges of Madison County, Notting Hill and Definitely, Maybe...

- **What do you consider the most overrated virtue?**
  "Ethical", so abused according to personal motives and desires.

- **What is your greatest extravagance?**
  The time given to people I care about.

- **If you could change one thing about yourself, what would it be?**
  Not a thing.

- **What irritates you?**
  People telling me "it's urgent"... just to check again, we don’t work in the ER?

- **What would you like to be remembered for?**
  Just for being "me".

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**Greg Chew**

Vice President, Senior Legal Counsel at Firmenich Asia
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