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Introduction

The Honourable Judicial Commissioner, Valerie Thean PJ, Family Justice Courts, Honourable Judges and Judicial Commissioners of the Supreme Court, Family Court Judges, Distinguished Members of the Bar, Delegates of the Family Justice Practice Forum 2017, Ladies and Gentlemen

As the Honourable the Chief Justice Sundaresh Menon in his Opening Address shared with us this morning, the family law practitioner of today needs to have problem-solving skills both in and out of court room. Practising family law is a “deeply meaningful calling” as Chief Justice aptly described in his opening address. It is not a pure adversarial combat with one-upmanship and gamesmanship. The nuance is because a different sort of skill set and sensitivity is required when managing the most delicate and intimate relationships that a human can have. His or her marriage and family. If the family is a building block of society, when disassembling this building block, special care and caution is needed. If not, the disassembled family could become a potential stumbling block of society.

In this closing address, I want to touch on two skills and two sensitivities required of a 21st century family law specialist. Much more can be said and written on this and so I cannot do full justice to this topic as a comprehensive piece. I share this as one who has made the occasional foray into family law cases and has thought a little about the issues. But I will not pretend to have the indepth knowledge expertise of the stellar family law specialists in our audience.

(a) Collaborative Family Practice

The first skill I want to speak about is Collaborative Family Practice. I know that I am preaching to the converted in this respect but it bears reinforcement.

The Honourable CJ Sundaresh Menon made reference to lawyers as peacemakers. There is great wisdom in this role. More than 150 years ago, Abraham Lincoln said:

Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often a real loser – in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.

Collaborative Family Practice ("CFP") is a valuable role for lawyers to be peacemakers. It is an interest-based approach to untangling matrimonial discord before the start of any court proceedings. In the words of Michelle Woodworth, Chair of the Family Law Practice Committee, CFP is frontloaded and non-tactical.

With the support of the Family Justice Courts of Singapore and the Law Society of Singapore, the CFP service aims to help disputing couples reach an agreement that both sides can live with, preventing bitter lawsuits.

Specially trained CFP lawyers and other family specialists (such as financial advisers and child experts), work with the parties to negotiate a bespoke agreement that suits the family.

A unique feature of this process is that CFP lawyers cannot represent their clients in future litigation if settlement is not reached. This gives a greater incentive for feuding parties and lawyers to settle all their disputes in a holistic way. As a result, there is a real commitment to helping the parties reach a settlement.

Unlike matrimonial legal battles, CFP is a much less stressful and less hostile process. It allows parties to be civil towards each other, which is very important if they have children. The process is confidential.

Members of SMC’s Panel of CFP Lawyers are practising family lawyers. Many are also accredited SMC mediators with specialist training. The Law Society launched our...
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The Singapore Law Gazette

 October 2017

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### The Law Society’s Mission Statement

To serve our members and the community by sustaining a competent and independent Bar which upholds the rule of law and ensures access to justice.

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### Singapore Law Gazette

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President's Message

Continued from page 1

LSMS scheme. We now have a greater pool of mediators who are eager beavers in their mediation journey. Together with the leadership of the Family Law Practice Committee, we will develop a bespoke and nuanced mediation training to better equip our family law mediators.

The beauty of collaborative family law practice is that it is voluntary and consensual. It won’t be forced on or foisted on parties.

I would add the following. From experience in a few matters, there is a wisdom about pre-agreeing ancillary matters even before reading the breakdown allegations are made. In one case, where I represented the plaintiff wife, together with a collaborative family law practitioner on the other side representing the husband, we settled the ancillaries even before divorce papers were filed right down to the teddy bear collection. The emotional temperature would have been very different if we had had the same conversation after the divorce papers were filed.

(b) Collaborative with Other Multi-disciplinary Practitioners

The second skill I want to touch on is collaboration with other multi-disciplinary practitioners. I will never forget watching anecdotal examples of seeing both the counselling skills and legal skill work in tandem in a pro bono clinic setting. In one example where a lawyer and counsellor were present, five minutes into the legal consultation session, it was clear that the client was exhibiting signs of depression. So the lawyer stopped and the counsellor began. It is humbling to know that law is only one facet. Law is part of a holistic solution.

Multi-disciplinary partnerships with therapists, social workers and counsellors will be a safety net to an individual mired in divorce proceedings. This is team work that makes the dream work: the dream of restoration and healing for the broken marriages and family.

This last week, I was attending the World Justice Forum at the Hague organised by the World Justice Project. They are an independent, multidisciplinary organisation working to advance the rule of law worldwide. There is a global and growing recognition that rule of law is not just for lawyers but non-lawyers. Multi-disciplinary partnerships can lead to more effective justice outcomes.

Even though multi-disciplinary practices may be some way off, I envision a day when law firms “partner” with psychologists, counsellors. We could run a pilot project involving certain boutique family law specialist firms. For

Law Society members present, if you think this resonates with you and your practice, please drop a line to Law Society’s Director of Representation and Law Reform, K Gopalan. It is not just about skill but also sensitivity.

First, the sensitivity in counselling and communication. Lawyers are “counsel” in more ways than one. This is not inconsistent or contradictory with the point I just made about collaboration. There will be cases requiring multi-disciplinary expertise to attain an optimal resolution. As seasoned family law specialists present will attest, for many cases, basic counselling skills are a must. This is part of what Minister Tan Chuan Jin meant about specialists with deep expertise. It is both pragmatic (as we have more supply than demand for counsellors in the social service sector) and also practical. We need to look beyond words and discern the emotion. When we can decode the emotion involved – unforgiveness, anger, fear, depression, etc, it is easier to understand the client’s given instruction but also to slip in a word sideways on addressing the root of the issue. This is so even if the lawyer is not a qualified counsellor to journey with the client through the emotional phases of his or her justice journey. It’s important to have our emotional antenna up. If not, the danger is we will ventilate instructions that are in substance nothing more than our client’s emotional placation.

Lawyers need to master their primers on listening skills. In particular, listening to understand and empathize. For the junior lawyers in our midst, if this exercise of empathy is not easy, I ask you to think of a family member, relative or friend that underwent or is undergoing divorce. Think of the impact on them based on what you have observed and your conversation with them. Keep that image or discernment with you the next time you meet a family law client. You will find that there is a commonality about the emotional experience that will humanize your client for you.

Chief Justice Robert Benham who served as Chief Justice of the Georgia Supreme Court in a speech in October 2005 at the International Association of Collaborative Professionals pointed out that doctors heal the body and lawyers heal community. And I invite us to reflect on this model of family lawyer who is not only peacemaker (as Chief Justice Sundaresh Menon exhorted us) but also healer.

I would reiterate that we need to be sensitized not only to the justice journey of each individual but to the emotional aspects of that part of the justice journey. By this I am not venturing to say to lawyers present that you displace or replace the counsellors. For one, you would be a very expensive counsellor and for another, probably an ill-equipped one!
But there are practical cues and clues that we could pick up about clients to ensure not blindsided about how they are feeling. Are they meeting or e-mail persons? Are there temperament or personality differences between the clients? By sharing their narrative, this could be a type of narrative therapy for them. We could ask the right questions about their narrative that could be helpful for the client in processing how they feel.

Part of the sensitivity should cross over into the communication via our letters and e-mails. Once again, I appreciate that am preaching to not only the converted but the convicted in this regard. I strongly believe that in family law practice, we should not add to the acrimony in our conduct of the litigation and stoke the fire with every letter. This does not mean going soft or doing a disservice to the client. We can be fair, firm but sensitized to the emotional barometer of other party. These were after all parties who once loved one another. Although there may be a revisionist tendency or a view through a pessimistic lens, in the vast majority of cases, an objective perspective recognises that it cannot have been all bad or all black. There were likely sweet remembrances of the union (often time the children whom we heard much about this morning from Minister). These remembrances will form part of the treasure trove of memories until their dying day.

The sensitivity in communication would also apply to what we say about another lawyer and the courts. Our opponent is not the “Lawyer from Hell” nor is the Judge from another planet. There is an old and wise adage that if there is nothing good to say, don’t say anything at all. We need to adopt an ethos about our communications relating to the Court (even if there is a place for legitimate critique of the Court’s decision) as well as of the other party.

Finally, a word of caution for family law specialists who embark on this journey of counselling. There is also a need for self-care and drawing healthy boundaries. We have read local cases in which family lawyers transgressed ethical boundaries in representing matrimonial clients. I will not be sanctimonious about this. Any one of us at the wrong time and wrong place could be vulnerable. But it behoves us to wisely maintain healthy boundaries e.g. having a colleague present, not having a meeting alone with the client late in the evening, etc.

Finally, let me end off with a contribution from the Bar. The cross-examination of vulnerable Ws (with a special focus on children)

The Law Society is developing guidelines for vulnerable witnesses. The raison d’être for this is a recognition that we need to enable vulnerable witnesses give their best evidence in court and ameliorate some of the stress associated with the giving of such evidence. Let me give you a preview of prototype for children – one class of vulnerable witness – based on draft guidelines which the Law Society Secretariat has come up with to date: see Annex to this Speech.

This is a quick snapshot of some of the guidelines to come. But it is also an illustration of the sensitivity needed of the Singaporean family practitioner.

Conclusion

In conclusion, family law practice is one of the best practice areas to develop multifaceted skillsets. It is also one of the best practice areas to develop empathy.

Minister Tan Chuan Jin spoke of the generational impact of divorce. I believe in time to come, many more longitudinal studies will add to the growing evidence.

A famous pop song by Michael Jackson in the early 1990s begins with a child’s voice saying:

Think about the generations and say that we want to make it a better place for our children and children’s children so that they know it’s a better world for them.

We can each heal the world and make it a better place. Each of us (especially the lawyer healers) are uniquely placed to heal Singapore, one family a time. May that vision and the accompanying wisdom we have gleaned from today’s Forum be our guiding light.

Annex

1. Adjust your pace of questioning to the child’s needs. Some children may need more time to process information before answering your questions. Be prepared to pause during questions and to allow breaks of about 10 minutes as the child should not be expected to be able to withstand questioning for long periods. To keep the cross-examination useful consider the following:

   a. Questioning should be based on the child’s concentration span;

   b. Children’s concentration span is generally shorter than that of adults and some have specific difficulties with attention.
2. Make sure the child understands the question. Be alert to possible miscommunication. The child may try to answer questions even when he does not fully understand the question. Do not rely on the child to say he does not understand the question.

3. Plan questions in topics and be clear about changes of topic as this helps the child make sense of the process and focus on the subject. For example:
   a. Introduce the topic by saying “Now we are going to talk about …”;
   b. “We have finishing talking about what happened on ____. I want to talk about what you did the next day”.
   c. Follow a logical and, preferably, a chronological order.

4. Ask each question once unless there is a good reason to repeat it. Phrase your question such that the child is able to understand the question. Generally repeated questioning will reduce the child’s overall accuracy. Recognise that the child sees you as a person in authority. Anxiety, combined with a desire to please someone in authority can cause some children to change their first answer, regardless of its initial accuracy.

5. Ensure your tone of voice and body language are neutral and maintain attention because the child needs to know that you are speaking to him and listening to him. Some children can be particularly attuned to your facial expressions, tone of voice and body language. Helpful techniques include:
   a. Regularly using the child’s preferred first name instead of calling him “witness”;
   b. Maintain eye contact as far as possible;
   c. Non-verbal responses such as nodding or shaking your head or looking up at the ceiling as in disbelief can cause misunderstanding, compliance or acquiescence.

► Gregory Vijayendran
   President
   The Law Society of Singapore

Notice of Change of Particulars

Members are required to submit a “Notice of Change of Particulars” through eLitigation (https://www.elitigation.sg/home.aspx) whenever there is any change in the particulars relating to your practice, eg if you move from one law practice to another, if there is a change in your designation, or if you cease to practise.

The Notice of Change of Particulars can only be submitted through the eLitigation account of the individual lawyer. If you do not have an eLitigation account, you may approach the Service Bureau for assistance, subject to payment of applicable fees and charges.

## Diary

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<td>4 September 2017</td>
<td>Extraordinary General Meeting of the Law Society of Singapore</td>
<td>6.00pm NTUC Auditorium</td>
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<td>5 September 2017</td>
<td>Seminar on Risk, Uncertainty and Complexity: Overcoming These Barriers for Cross-Border Transactions</td>
<td>Jointly organised by the Law Society of Singapore and Thomson Reuters 12.30pm–1.45pm The Law Society of Singapore</td>
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<td>7 September 2017</td>
<td>Introductory Course to Arbitration (Session 1)</td>
<td>Organised by the Continuing Professional Development Department 6.00pm–9.00pm 137 Cecil Street</td>
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<td>11 September 2017</td>
<td>Managing Your Finances: Budgeting and Understanding Credit &amp; Debt Management</td>
<td>Jointly organised by the Law Society of Singapore and Institute for Financial Literacy 12.30pm–1.45pm The Law Society of Singapore</td>
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<tr>
<td>13–15 September 2017</td>
<td>Basic Parenting Coordination Training Programme</td>
<td>Jointly organised by the Law Society of Singapore and the Family Justice Courts 9.00am–5.00pm 55 Market Street</td>
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<tr>
<td>13 September 2017</td>
<td>Introductory Course to Arbitration (Session 2)</td>
<td>Organised by the Continuing Professional Development Department 6.00pm–9.00pm 137 Cecil Street</td>
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<tr>
<td>14 September 2017</td>
<td>The Fundamentals of International Legal Business Practice</td>
<td>Jointly organised by the Law Society of Singapore and the International Bar Association 9.00am–5.40pm Marina Bay Sands Expo and Convention Centre</td>
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<td>15 September 2017</td>
<td>Small Law Firms and State Courts &amp; Family Justice Courts Committees' Luncheon</td>
<td>Organised by the Small Law Firms and State Courts &amp; Family Justice Courts Committees 12.30pm–2.30pm The State Courts Bar Room</td>
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<tr>
<td>16 September 2017</td>
<td>Handling Financial Experts in Court (Part 1)</td>
<td>Jointly organised by the Law Society of Singapore and Deloitte 9.00am–1.00pm The Law Society of Singapore</td>
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<tr>
<td>18-20 September 2017</td>
<td>Intermediate/Advanced Parenting Coordination Training Programme</td>
<td>Jointly organised by the Law Society of Singapore and Family Justice Court of Singapore</td>
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<td>20 September 2017</td>
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<td>Organised by the Continuing Professional Development Department</td>
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<td>20 September 2017</td>
<td>Introductory Course to Arbitration (Session 3)</td>
<td>Organised by the Continuing Professional Development Department</td>
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<td>137 Cecil Street</td>
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<tr>
<td>21 September 2017</td>
<td>Certificate in Paralegal Skills (Module 1)</td>
<td>Jointly organised by the Law Society of Singapore and Temasek Polytechnic</td>
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<td>21–23 September 2017</td>
<td>Handling Financial Experts in Court (Part 2)</td>
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<td>137 Cecil Street and The State Courts of Singapore</td>
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<td>25 September 2017</td>
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<td>Jointly organised by the Law Society of Singapore and Law In Order</td>
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<td>26 September 2017</td>
<td>Making the Switch to Paperless: How to Make it Happen</td>
<td>Jointly organised by the Law Society of Singapore and Bizibody</td>
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<td>27 September 2017</td>
<td>Introductory Course to Arbitration (Session 4)</td>
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<td>137 Cecil Street</td>
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<tr>
<td>28 September 2017</td>
<td>Certificate in Paralegal Skills (Module 2)</td>
<td>Jointly organised by the Law Society of Singapore and Temasek Polytechnic</td>
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<td>1.00pm–6.00pm</td>
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29 September 2017
Seminar on Anti-Money Laundering
Jointly organised by the Law Society of Singapore and Ingenique
2.30pm–4.50pm
55 Market Street

Upcoming Events

2, 3, 4, 6 & 7 November 2017
Cross-border Family Mediation Training

10 November 2017
Law Society 50th Anniversary Dinner & Dance

15 November 2017
Seminar on the Art and Craft of Persuasive ADR Case Statements

23 & 24 November 2017
Developing Personal Effectiveness for Legal Practitioners

The Singapore Law Gazette (“SLG”), an official publication of the Law Society, aims to be an educational resource for both practising lawyers and in-house counsel, a forum for debate, and a useful reference of high quality commissioned articles covering all legal specialties.

Members of the Law Society, non-practising legal professionals and professionals in related fields are welcome to submit well-researched manuscripts that are of educational merit and likely to be of interest to a wide-ranging legal audience.

Submissions are welcome throughout the year. All submissions should be unpublished works between 1,500 to 2,500 words and are subject to the Law Society’s review.

The SLG is the premier legal journal for all lawyers and other related professionals practising in Singapore. Our articles are read by 5,000 readers including practitioners, the judiciary, the legal service, the academia, libraries, overseas bar associations and a significant number of in-house counsel in Singapore.

We look forward to hearing from you!
From the Desk of the CEO

Dear Members,

Over the decades, the Law Society has grown in size and functions in tandem with the increase in our membership. Today, we provide a wide range of services to more than 5,000 members such as helping them keep current with their legal knowledge, acquire practice management skills and bring their practice overseas. We are also committed to advance the cause of justice and the rule of law. With this expansion of size and function, Council and Secretariat felt that it was prudent to invest the Society’s surpluses in additional premises to cater for medium to long term growth. Such property purchase would also help to diversify the Society’s investments.

At the Annual General Meeting last year, we obtained a mandate to purchase additional premises for up to $9 million. We notified our members on 18 August 2017 that an extraordinary general meeting (“EGM”) will be held on 4 September to seek members’ approval for the sale of our current premises at South Bridge Road (Resolution A) and the purchase of larger premises (Resolution B).

Seventy-nine members attended the EGM on 4 September 2017. A vote was carried out at the meeting and the results were as follows:

1. Resolution A was not passed. 33 voted for and 38 voted against, with 1 abstaining.
2. Resolution B, as modified, was passed. 50 voted for and 16 voted against, with 2 abstaining.

The modified Resolution B which was passed at the meeting was as follows:

To authorise Council to purchase new premises for the general use and/or benefit of the Law Society and its members at an outlay of up to S$15.5 million (including stamp duty, legal fees, renovations and incidental expenses), and that such acquisition would be funded by utilizing reserves in the General/Compensation Funds and/or a bank loan provided always that no new building levy is to be imposed on the Law Society’s members.

Members who spoke up at the EGM against Resolution A expressed sentimental attachments to our South Bridge Road shophouse and extolled the advantages of having an external façade to represent the legal profession. Council and Secretariat respect these views and now have to come back to the drawing board to see how we can work within the constraints of the shophouse layout as well as the budget afforded by Resolution B in its modified form.

More than just an external façade to represent the legal profession, the Law Society is committed to taking concrete steps to help our members with their practices. The legal profession, perhaps more so than other professions, is facing increasing pressure from automation and globalisation and predictions from HR specialists are loud and clear – the profession at a global level is expected to shrink in the near future whereas robot proof jobs will be those where the human touch cannot be easily replaced. Our profession is now at the crossroads – the decision we have to make is whether to ride this tidal wave of change by innovating, moving up the value chain and exploring new markets, or to be left behind by the competition.

Senior Minister of State (“SMS”) Ms Indranee Rajah met with the small law firm practitioners at our South Bridge Road office on 8 September and with the mid-size firm practitioners on 15 September to brief them on the Committee of Future Economy (“CFE”) Report. She urged practitioners to seize the opportunities identified by the CFE Report and to keep upgrading their skills. For instance, it would be strategic for small law firms to partner with large law firms so that large law firms could refer work that they were conflicted out of to small law firms on the assurance that the referral would be one based on proven quality. The Chairman of the Singapore Accountancy Commission Mr
Chaly Mah shared with the small law firm practitioners that some small accountancy firms have managed to give the Big 4 a run for their money by focusing very successfully on niche areas. He cited Mr Nicky Tan of nTan Corporate Advisory Pte Ltd as one such example. President of the Law Society Mr Gregory Vijayendran also explained the work that the Society had been and would be doing to help members position themselves for new areas of work and new markets.

In line with the recommendations of the CFE report, we will be stepping up on more mission trips and country-focused CPD seminars. We organised a mission trip to Myanmar from 20 to 23 August for 17 lawyers from 15 law firms in collaboration with Singapore Business Federation (“SBF”). Our lawyers attended a workshop with SBF members from the construction sector and also had the opportunity to network with Myanmar companies in the construction sector. We also visited the Independent Lawyers Association of Myanmar (“ILAM”), the Yangon High Court and were hosted by Keppel to a tour of their new Junction City Tower office. Participants and Secretariat staff who were on the trip had some of their travel expenses subsidised by IE Singapore.

We are planning three more of such mission trips over the course of next year or so and lining up more CPD seminars to keep members updated regarding countries with opportunities for Singapore qualified lawyers. On 25 October, we held a seminar on Myanmar with a focus on their new Investment Law and Companies Law. We are also working with other course providers to bring more relevant content to our members. Apart from educating lawyers on the law, we also recognise that the 21st century lawyer needs practice management, business development, marketing and leadership skills.

We will be holding a joint networking event on 17 November with the Institute of Singapore Chartered Accountants (“ISCA”) to give our members the opportunity to reach out to accountants to explore potential areas of collaboration. Attending our CPD conferences often presents an excellent opportunity for networking as well. As our conferences and networking events are immensely popular and spaces are taken up very quickly, I urge members to keep a lookout for our mailers on such events and to sign up as quickly as possible. We will look to scaling up our events while keeping a close watch on costs.

SMS Indranee also reminded members to apply for the Tech Start for Law subsidy before the scheme ends on 28 February 2018. The Law Society has lined up a series of training programmes on the various technologies under Tech Start. If members find such technologies too basic for their practice, they can also consider the Capability Development Grant (“CDG”) scheme offered by SPRING. For instance, some law firms have applied successfully for the CDG to adopt specialised IT systems for IP management and the grant is also available for HR consultancy. For more information, please contact lpi@lawsoc.org.sg.

Change is often difficult, I’m not purporting that it isn’t. My transition from legal work to management has not always been smooth sailing and I can’t say that I never had my doubts. The fickle-mindedness of humans is often harder to grasp than the most complex of legal documents. We acknowledge that the expansion into new practice areas and new markets come with risks – ironically, something that clients pay lawyers to avoid. We can ease the pain for members to ride out this wave of change, but we can’t erase all pain. Before I sign off, I would like to share this poem that I found on the Internet:

I once heard someone say,  
If you don’t change you do not grow,  
But I waved the thought away,  
For who were they to think they know,  
I’d always stayed the same,  
A heart that thrived within the cold,  
And I had no desire to change,  
At least that’s what I had been told,  
But deep within my mind,  
A thought grew slowly, bit by bit,  
Until I felt trapped in my skin,  
For it no longer seemed to fit,  
There’s a whole world sitting out there,  
Changing every single day,  
That proves it’s nothing to be scared of,  
If you do it the right way,  
For a day afraid to turn to night,  
Will miss the silver moon,  
And a flower that refuses change,  
Will never get to bloom,  
I had thought I was a thorn bush,  
Only good for snagging clothes,  
But if you do not dare to change,  
You’ll never find out you’re a rose.

– e.h

Delphine Loo Tan
Chief Executive Officer
The Law Society of Singapore
Remarks by Tan Chuan-Jin, Minister for Social and Family Development, on “Family Justice Eco-system 2020”

At Family Justice Practice Forum, 14 July 2017

The Honourable Chief Justice Sundaresh Menon
JC Valerie Thean, Presiding Judge of the Family Justice Courts
Mr Gregory Vijayendran, President of The Law Society of Singapore
Distinguished Guests
Ladies and Gentlemen

Introduction

1. I was telling Chief Justice just now that actually I don’t really need to deliver my speech because I completely support and affirm the points he has raised.

2. With the rising numbers of divorce, the Courts have increasingly become a critical point of interaction and intervention for families and individuals. Parties are however expected to transition out of the legal system once proceedings have concluded and move on with their lives.

3. Yet, we all know that reality is not quite so simple. It doesn’t work that way. The emotional and financial impact of marital breakdown and divorce will remain, as former spouses begin the process of unravelling their shared lives. As we saw in the video earlier, where children are involved, parents will have to learn how to work together in a fluid and evolving parenting relationship, which may be further complicated if either or both parents go on to form new relationships.

4. I asked for the video to be screened because I think the points raised by Chief Justice earlier and the science and evidence is very clear. The impact on our children is hugely significant. For some, they can last a lifetime. The impact on society is not [inaudible] and while we can intellectually register that, I think it is important to hear from the children as well. We have
produced various videos, re-enacted, words expressed by children undergoing such traumatic experiences. As lawyers, I believe you can all play a part in helping to advise and ameliorate the situation. The question we need to ask ourselves is this – are we peacemakers or fermenters of conflict? All of us involved in the process can make a difference.

5. The “best interests” principle is at the heart of many of our initiatives and decisions concerning children. It is driven by the desire to ensure the best possible outcomes for innocent children. But what exactly is the ‘best interests of a child’ can mean profoundly different things to the divorcing parties, their lawyers, the social worker, and the child psychologist. It may even be contested between well-intentioned professionals in the same field.

6. Thus, the best possible outcome for a child may not always be achieved if one party insists on their own determination of what is in the child’s best interests. So in this regard, it is also important to recognise and avoid a combative “winner-take-all” mentality in familial disputes. This is not only unhelpful in family law cases, but it also adds to the acrimony and as mentioned, sometimes, irreparable damage.

Vision for the Family Justice Ecosystem

7. How then should the Family Justice Eco-system 2020 look like? Allow me to share three thoughts with you.

a. First, although they play a unique and critical role, the Courts are not and should not be the sole point of interaction and intervention for troubled families. There are many junctures before, during and after the Court process that help and support can be equally provided to all parties in a dispute, and to ensure the best outcome for the children.

b. Secondly, a collaborative approach is required in a complex system, where many actors and agents act independently and interact dynamically. Apart from judicial determination of property division and child custody issues, the on-going relational issues between the players cannot be resolved on a purely legal basis. Efforts to de-escalate the conflict before court intervention and support in following through with court orders are also necessary to ensure sustainable outcomes for these families. There may also be safety issues to contemplate where there have been allegations and concerns of family violence. As such, an interdisciplinary and multi-agency ecosystem is paramount.

c. Third, a different mindset and skillset are required by family practitioners to achieve the best outcomes for their clients and the children that are caught-in-between. This could be through efforts to de-escalate potential conflicts and reduce acrimony throughout proceedings. Or it could be by helping the parties’ shift the focus away from themselves and to see the situation through the eyes of the child, and understand the impact the proceedings has on the child.

(A) MSF Collaboration with FJC Within the Eco-system

8. MSF and the Courts have enjoyed a long and fruitful working relationship and I am tremendously appreciative of the effort. This has allowed us to better support families with different needs, at various stages of their interactions with the Courts. For families who are facing genuine financial difficulties or who are seeking employment or opportunities for training or reskilling, they can approach any of the social service offices (or SSOs) for assistance.

9. It is undisputed that divorces affect families negatively. In our work with the Courts, we are guided by considerations of the welfare of the child and the importance of parents keeping the child’s interest and welfare in mind, when making decisions with respect to their marriage and by extension, the family’s future.

10. Such considerations were what led to the development of the Mandatory Parenting Programme (or MPP), a programme which parties who are contemplating divorce will have to attend if they have a child aged fourteen (14) years and below and are unable to agree on all divorce related matters beforehand. MPP is conducted by three divorce support specialist agencies (or DSSAs), which are located at various places around the island. We understand that this can be a particularly difficult and emotional time for parties and so if they are uncertain as to whether to go ahead with divorce, the DSSA provides support services and referrals for marital recovery, if necessary. So if possible, we should prevent couples from even reaching that stage.

11. When the Women’s Charter was amended to include MPP, some expressed concerns that it would delay the divorce process. This is not substantiated. That is not the intent. On the contrary, couples who have attended
the MPP consultation shared that they found the session informative and beneficial.

Allow me to share a story about James, a father of two primary school children who attended a MPP session early this year. He had been feeling very bitter about his wife and in-laws for blocking access to his children after they left the matrimonial home to move to her parents’ house. Whenever he tried to visit the children, there would be shouting episodes, which terrified his 6 year old daughter and caused her to cry incessantly.

At the MPP session, James was visibly affected when the counsellor shared how open conflict can adversely strain the parent-child relationship. He decided thereafter to join a fathers’ support group at the DSSA which has given him insights on how to coparent effectively with his ex-wife, and how to be present in his child’s lives, such as through daily Skype calls. The marriage may be over for James but he remains a father and he is striving to be the best dad ever to make the transition less painful for the children.

12. During the course of the legal process, the welfare of the child is best served if acrimony between parties is kept at a minimum. With this in mind, our programmes and initiatives have to reduce the chances of and need for conflict between parties as well as to educate them on how to work together for the benefit of the child. Parties are also encouraged to resolve matters sooner rather than later, and preferably without the need for contested proceedings.

13. We understand that maintenance issues continue to be an area of concern for some parties, even after the divorce has been finalised. For the parent who requires financial contributions from the other towards the child’s upkeep, having to return to Court to enforce a maintenance order can be tedious and frustrating. This is especially so when the other parent has the means to pay, but refuses to do so. We see many of these examples.

14. As such, we worked with Courts to pilot the Maintenance Record Officer scheme (or MRO) scheme in the 2nd half of last year. The MRO scheme had been initiated to assist the court in its fact-finding process by obtaining information on parties’ financial circumstances, and where necessary, to firstly, provide assistance to parties facing genuine hardship and second, to identify recalcitrant defaulters who refuse to pay maintenance even though they can afford it.

15. Where appropriate, the Courts can then impose harsher penalties against recalcitrant defaulters and I hope the Courts do that. We have been evaluating the pilot together with the Courts and recognise that for the MRO to be more effective, he would need to be able to identify applicants and their children who need help early on and render the necessary assistance. As such, we will be introducing an earlier intervention point, at the filing stage, for the MRO to work together with parties.

16. Currently, parties are referred to the MRO after they have been unable to reach a resolution at mediation and are proceeding to a trial. So moving forward, we will be expanding the existing criteria to allow for cases to be referred to the MRO from the 1st enforcement application onwards. In addition, we are also looking to have the MRO included as part of the Court process, to allow judges to direct parties to produce relevant documents to the MRO. MSF and the Courts are working on bringing in the necessary provisions to the Family Justice Rules to formalise this.

17. These initiatives, are targeted to for implementation by end of this year, they signal our pro-active stance with respect to tackling maintenance-related issues. The Committee for the Establishment of a Child Maintenance Table has also been working hard to develop a child maintenance table, which in due course, will be a valuable and accessible tool which parties, practitioners and the Courts can take reference from with regard to the appropriate quantum of child maintenance.

18. Another area where acrimony between parents has a direct and immediate effect on the children would be in matters concerning the child’s care arrangements. In particularly contested matters, the Courts can direct parties to attend counselling and/or the Children-in-Between programme, which aim to help parents and children better communicate with each other.

19. There are however cases which remain extremely high-conflict and acrimonious throughout the proceedings, and this often carries over even after the final orders have been made. For such cases, we recognise that longer term intervention is required to work with the family to reduce the levels of conflict and hopefully re-establish channels of communication between them.

20. Our DSSAs provide a safe platform for supervised exchange or supervised visitation services to be carried
out and regular updates are provided back to the Courts for them to assess if parties need to continue with supervised visitation or are able to handle custody/access matters on their own. Some families may require such services even after divorce proceedings have concluded.

This was the case for Mark and Wendy, who divorced four years ago but still continued to struggle to coparent their two young sons. The boys lived with Mark as Wendy travels extensively for work. Supervised visitation sessions were ordered by the Court as Mark would raise allegations of child abuse, whenever Wendy tried to have access with the boys.

Recently, Mark found a new partner, who has been a good surrogate mother to the boys. At a supervised visitation session, the boys started kicking Wendy and hurling vulgarities at her, their mother. The counsellor decided to schedule play therapy sessions for the two boys to better understand the change in their behaviours. The counsellor discovered that the boys felt triangulated in their parents’ conflict, especially when coaxed to behave in certain ways in the hope that Wendy would stop asking for child access. Following multiple counselling sessions with the family, the two young boys are now able to resume a meaningful relationship with Wendy. I do wonder though, whether there are longer term impact on the children, as a result of what the father has done.

21. Moving forward, we will continue to work with the Courts and channel our efforts towards empowering parties to resolve their matters early and amicably. We will also work with stakeholders to increase awareness and avenues of legal assistance available for family matters.

22. We also hope to encourage deeper collaboration between members of the family bar and the social service sector. Often times, the issues a family faces require a multi-disciplinary, multi-prong approach to help them resolve it and move ahead in their lives. In fact it’s not often times, it’s always. As no two families are alike, the solutions derived have to be tailored to the needs and concerns of each family. I think it is important for us to remember as individuals, we have many many multi-dimensional issues which affect us. Our lives are not organised according to the way we organised ourselves, as a government and as agencies.

It behooves us to collaborate our services to attend to these individuals and families.

23. One key example of a robust interdisciplinary partnership is the National Family Violence Networking System ("NFVNS"), which was established in 1996. It embodies the multi-sectoral and integrated collaboration to provide multiple access points for victims seeking help. This system links the Courts, Police, prisons, hospitals, social service agencies and MSF to provide a tighter network of support for families affected by violence.

24. Research has shown clearly, as described earlier by Chief Justice, children affected by violence, whether as victims or witnesses, experience significant negative impact to their physical, psychological, and emotional well-being and functioning. There will be lifelong repercussions, sometimes even spanning across generations.

25. When making protection orders, Courts can order counselling to support victims and perpetrators. Our community-based specialist agencies collaborate with Courts and MSF for this recovery and rehabilitation process. Trained professionals work together with the perpetrators to develop alternative ways to expressing themselves, while ensuring the safety of their loved ones. Making an early referral to the appropriate professionals can help to avert harm. In some cases, early referrals have actually improved family relationships.

26. To foster such an eco-system, there needs to be a change in mindset amongst lawyers, amongst social service professionals on how best to address and understand family issues, and it is heartening to note that the third law school, the Singapore University of Social Sciences (or SUSS), will require its students to take a course on social services in Singapore, in addition to its law modules. I would encourage students with an interest in family law to seek out attachments with social service organisations, and to gain a more holistic understanding of families and the needs they might have. Similarly, social workers undergoing their courses, would also benefit from familiarising themselves with the law.

27. Many family law practitioners are also accredited mediators, collaborative family law practitioners, and parenting coordinators. Such training provides
additional and valuable skills in one’s repertoire to complement your legal knowledge.

28. However, when the issues faced by the client are beyond your skillsets, we should not shy away from advising their client to attend counselling, approach a mental health professional or receive some form of therapeutic treatment to deal with the root issue.

29. For example, in cases involving marital infidelity where one party is feeling very bitter towards the other for the betrayal, it would be difficult for them to work effectively to coparent their child when there is unresolved anger, bitterness and mistrust between them.

30. In these situations, I think a courtroom is not necessarily the place to address the parties’ underlying emotional issues. In such cases, a counsellor who provides a listening ear and is able to process the myriad of emotions a client is facing, and would in fact, be the more suitable person to work with the client to restore his or her own emotional well-being. Only when the client is in a healthier state of mind and well-being, would he or she then be able to also think rationally on what would be in the best interest of the child.

31. Platforms such as this Forum provide networking opportunities between family practitioners from different sectors. Learning from each other allows us to broaden our understanding of various aspects of family related work and services. It is important to establish relationships. Get to know each other. So that you are not just calling a generic number and seeking help from a [inaudible], but you can actually call someone who you know, whether it is a counsellor or someone in HDB or someone in the various agencies, to help tend to the different complex issues these individuals face.

32. I myself have a number of lawyers who volunteer regularly in my constituency, and the feedback from them, and many other lawyers involved in ground volunteer work, whether in the legal field or otherwise, is that they find it meaningful and a good way to stay grounded, and also to utilise their legal expertise to do good. In helping such as on the social front with some of these families, it also helps them better appreciate the stress source that many of these families face, so it provides them with the context when they then interview the client when they come forward to seek help.

33. I believe that volunteering regularly allows them to better understand and also befriend those whom they are assisting and over time, they get to see how their ongoing efforts positively impacts the lives of others and this is what spurs many of them to continue helping. I hope that in our effort to promote volunteerism as part of the SG cares effort, more law firms and individuals can consider participating in these volunteer efforts. It makes a difference to not only those whom we are helping, but I think we are at the same time, having an impact on ourselves and as we change, I think collectively we begin to build a very different society and I believe that the experiences you gain, will have a tremendous impact on your practice as lawyers.

Conclusion

34. In conclusion, dealing with family-related issues involves a three-layered approach. At the first level, the state intervenes because as a nation we do have to care for each other. The social safety net is important to restore our relationships, to repair our social fabric.

35. Under that layer, we rely on the community, working in partnership to establish and facilitate support structures. Specialists with deep expertise, working across silos, come in to assist each other and each family holistically. At the same time, relatives, neighbours and friends need to anchor rehabilitation and healing for the family.

36. At the core of the effort, however, is the ability of the individual, to respond, to heal and to grow as they experience the various interventions whether in court or in the community.

37. Most of us working in this area of assisting families do so because we recognise the intrinsic value of families, its importance to society and the impact it has on future generation of Singaporeans, who will one day also raise families of their own. Breaking cycles of familial conflict is absolutely necessary to protect our families and children. Even if parents are no longer be married to each other or living together, they still remain parents of precious children.

38. The family justice eco-system which I have outlined and as Chief Justice has shared, cannot be realised without the full spectrum of professionals working together to serve these families who are in distress or in conflict. Let us also acknowledge that they have the ability to heal, to grow and thrive if the family justice ecosystem they encounter becomes a channel of support and empowerment for them, and if we as individuals care enough to make that difference.

39. I wish each of you a fruitful and exciting time of learning at this Forum. Thank you very much.
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Family Justice Practice Forum:  
Family Justice 2020  
The Honourable the Chief Justice’s Opening Address  

The Problem-Solving Practitioner and the Complexity of Family Justice

Minister Tan Chuan-Jin  
Fellow Judges  
Mr Gregory Vijayendran, President, The Law Society of Singapore  
Distinguished Guests

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

Introduction

2. Almost four years have passed since we held the inaugural Forum in October 2013. On that occasion, I spoke about the need for us, the stakeholders in the family justice system to engage with one another in our shared quest to find the best ways to address disputes involving distressed familial relationships. Since then, there have been many significant developments in the family justice eco-system, and it gives me great pleasure to continue our conversation at today’s Forum, the fourth in this series.

3. Just a year after our inaugural forum, we witnessed the establishment of the Family Justice Courts (“FJC”), on 1 October 2014, as a set of specialist family courts.
The Centrality of the Lawyer in the New Paradigm

4. I would like to spend some time this morning, focusing on the question of how this emerging ethos and culture affects the important, indeed critical, role of the family lawyer and to outline how the family lawyer can play an influential role in enabling the parties to take advantage of some of the many initiatives we have introduced in our endeavour to enhance the family justice system.

The Need for Conflict Management

5. The first and perhaps most important point I wish to highlight in this context is the paramount importance of conflict management and reduction. In other areas of litigation, conflict is necessary – often even helpful – to the process of getting to the issues. However, in family justice, we prioritise the welfare of the child as a core tenet, and because of this, the reduction of conflict becomes critical. Continued exposure to intense inter-parental conflict and violence during marriage has been shown to have long-lasting adverse psychological, emotional and behavioural effects on children.¹ Even children who are exposed to persistent low levels of conflict have been reported to have higher incidence of depression, and lower levels of commitment and trust in forming future relationships.² Over the last 20 years, neuroscientists studying the human brain have learnt that fear and trauma in childhood can have a profound impact on the developing brain. Witnessing parental conflict can be terrifying and stressful for children, especially younger children, who do not have the capacity to make sense of what is happening around them and who do not know how to protect themselves.³ Reducing conflict is therefore an important objective that underpins many of our efforts.

6. Indeed, even the disputing spouses often need to reduce and manage their conflicts, though they don’t always realise this. About 50 years ago, the psychiatrists, Thomas Holmes and Richard Rahe developed the Holmes and Rahe Stress Scale which sought to identify links between stress and illness. In their study, they identified divorce as the second most stressful life event, ranking only after the death of a spouse.⁴ Other research reveals that those who face an important issue for the first time in an unfamiliar environment are likely to be much distressed by the experience.⁵ For most of us, the court is part of our daily work routine; but for most litigants, it is an unfamiliar, daunting and highly stressful setting. Thus combining a familial breakdown with the ensuing court proceedings means the stress faced by these litigants is greatly exacerbated.

The Vulnerable Litigant and Non-party

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

Lawyers as First Responders

8. Lawyers are the best first responders in this landscape of special needs and of different types of vulnerabilities. It is the lawyer who comes into contact with the parties well before the Court does. Being bound to their clients by privilege, lawyers can afford their clients a safe space to confide in them, and then appropriately counsel and help them in their quest for a more hopeful future than the past from which they have come.

Content of the Lawyer’s Role

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

10. Around the world, there has been growing awareness for some time that lawyering in family work should emphasise the important role of lawyers as problem solvers, working collaboratively in a multidisciplinary environment, with the objective of achieving outcomes that are beneficial to all those involved in or affected by the dispute.⁷
11. In line with this, Professor John Lande has observed that in America, despite the public image of family lawyers as fomenters of conflict, the empirical research indicates that most family lawyers in fact endeavour to be reasonable. They dampen legal conflict far more than they exacerbate it and generally try to avoid adversarial action. Increasingly, they have looked beyond the confines of the traditional paradigm to embrace interest-based negotiation and creative problem-solving approaches that focus on the true interests of the affected clients and families. Other family lawyers envision the role of the family lawyer as a “peace-maker”, believing that what they do, day after day, is to be “present” for their clients and to work for peace for them and their families.

**Client Advisor**

12. How then should our understanding of the role of the family lawyer in Singapore be affected by the changes we have introduced to our family justice paradigm? The family justice process starts when the family lawyer is approached by a potential client whose internal world and family life are falling apart. As the first port of call, the lawyer has a tremendous opportunity to influence the approach that the client will take to the dispute and in particular, his willingness to cooperate in efforts to reduce conflict. Charlie Asher, an Indiana Attorney who has established a website providing free resources to those involved in family disputes, observes that the family lawyer can, at the very early stages of an engagement, set a tone (through attitude, language and conduct) of either beneficial cooperation or destructive conflict. In his proposed model for a cooperative system of family law litigation, Asher proposes the following: Unless safety requires otherwise, counsel should – speak with clients about the advantages of safe cooperation in family cases; work with other counsel to reduce conflict, build cooperation and protect children; avoid unnecessary applications and hearings; use the least divisive processes to pursue safety, fairness, cooperation and the best interests of children; and employ the same approach when dealing with self-represented persons. It seems to me there is much wisdom in this.

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

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

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

**Other Roles Within the Family Justice Continuum**

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

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

18. The scheme started with 18 lawyers being appointed to the panel for an initial term of two years. Today, there are 26 lawyers on the panel. Since the scheme was introduced, Representatives have been appointed in 24 cases. We surveyed our Judges recently and all those who had appointed a Representative felt that it had made a positive difference. For their part, the Representatives found their role meaningful, in that they were able to give the child a voice, and to help the court come to a solution in the child’s best interests.

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

20. In either of these capacities, the family practitioner can directly impact the best interests of the child by educating the parents, reducing conflict and helping to ensure that the voice of the child is heard both by the parents and by the court. Some lawyers have told us that through their role as Child Representatives, they have come to better appreciate the job of judging. The impact of these roles therefore extends beyond the case at hand, by influencing the attitudes and mind-sets of family lawyers, to help some families.

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

a. Your client claims to have a good relationship with his child, while the other parent contends that he does not. He would like to film his interaction with his child in order to present the court with evidence of his good relationship.

b. Your client contends that she was punched by the other parent in the presence of their child, who still has post-trauma nightmares of the incident. She would like to call the child as a witness.

c. Your client is a well-heeled investment banker. He knows that his wife has psychiatric issues and will be intimidated by aggressive litigation. He instructs you not to be accommodating and wishes to craft your correspondence to the wife, who is acting in person.

22. How are you to deal with each of these scenarios? There are no textbook answers. But the point of these examples is to illustrate the potential clashes between what your client may want, what you might believe to be best for your client and for others in the long term, and in particular, what might best serve the interests of the affected children.

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

a. Encourage practitioners to take a constructive, conciliatory and non-confrontational approach towards the resolution of family proceedings;

b. Ensure that practitioners inform their clients about alternative dispute resolution options such as mediation and counselling, and advise their clients to consider the amicable resolution of family proceedings whenever possible and reasonable;

c. Ensure that practitioners advise their clients to adopt a constructive and reasonable approach to the resolution of any necessary proceedings;

d. Clarify that practitioners have a duty to advise their clients to consider the welfare of any children who may be involved in the family proceedings and the
potentially adverse impact of the proceedings on them; and

e. Set out the duties of practitioners in relation to conflicts of interest having regard to the other roles they may play within the family justice process.

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

Features of the New Paradigm

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

Mediation and Counselling

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

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

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

Litigation

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

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

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

32. Such a problem-solving and constructive approach is not incompatible with litigation. In Charlie Asher’s model of a cooperative system for family law litigation22, he proposes that the lawyer can set the tone during litigation, for example, by showing courtesy through respectful language and behaviour; readily agreeing to requests by the other party for necessary information and facts; or for personal accommodations because of illness; refusing to take advantage of mistakes made by the other side; taking personal responsibility in
solving problems and improving matters rather than just reporting on the alleged fault of others; refraining from negative, personal and sarcastic comments; creating a positive peace-making climate with the other party; respectfully listening to the other side; sensibly pursuing the best interests of all family members; and paying particular attention to the children’s needs including being well aware that parent conflict is dangerous to children.23 This model sets a standard that is different from the usual case where the lawyer’s focus tends to be on maximising his client’s position because litigation is often seen as a zero-sum proposition.

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

34. Use of a single court expert complements this new judge-led philosophy. The Family Courts have long invoked Rule 41 of the Matrimonial Proceedings Rules, which mandated a single expert for child issues. But the child is not the only subject that benefits from this approach. Rule 635 regarding the use of a single court expert was introduced into the Family Justice Rules in 2016 as a result of observations made in a judgment of the Court of Appeal. Re BKR [2015] SGCA 26 involved the issue of the mental capacity of an elderly lady. The parties had each engaged their own mental health experts whose reports did not seem to us to be particularly helpful; and the determination of her mental capacity rested largely on her cross-examination. In the judgment, we observed that for cases where mental capacity of an individual is in issue, the Court should adopt a more inquisitorial and Court-directed approach to the evidence. We also suggested that the individual should be independently examined in consultation with her own doctor, with the Court appointing an independent expert if the parties are unable to agree on one. After all, the Court’s role in MCA proceedings is a protective one and it should not shy away from taking control of MCA proceedings and directing parties on the evidence that it requires in order to reach its decision. The same observation applies to other types of family disputes, including disputes over financial assets. In the appropriate case, where parties disagree over an issue requiring expert evidence, lawyers should try and agree on a single expert, or consider applying to court for the appointment of a single independent expert under Rule 635.

35. There have been other initiatives shaped by a similar concern to reduce conflict. For instance, we introduced the uncontested simplified track procedure in January 2015, under which if parties are able to agree on divorce and ancillaries prior to filing of court papers, they may file simpler papers and obtain final orders without having to attend court. In 2015, 24% of the total number of Writs filed (1,421 of 5,931) utilised the simplified track procedure; and in 2016, this increased to 37% of total number of Writs filed (2,330 of 6,302).

36. With these various changes, the number of cases that were disposed of within a year of filing increased from 46% in 2012 to 74% in 2016. The average time taken for final judgment to be granted reduced from 5.2 months in 2012 to 3.8 months in 2016. The point of this is not to make divorce easier, but rather to reduce conflict and help ease the anxiety of litigants when divorce is inevitable. The ultimate object is to develop an altogether more appropriate process given the particular interests and complexities of family litigation. Over time, I would like to see the judge-led approach permeate all aspects of family litigation, from discovery, to affidavits, to cross-examination and costs, as we in the courts fully work out the opportunities, and test, refine and supplement the limits, of the “judge-led” approach.

The Future: “Practice of Law 2020”

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

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

39. Within the courts, we also mark the launch of FJC’s Family Protection Centre, a one-stop purpose built area designed to offer victims of family violence a safe, private and conducive environment to file PPO applications. It features redesigned spaces for risk assessment with a counsellor and facilities for affirmation of the supporting declarations before a Judge. There will also be self-help kiosks for parties to file their applications, and volunteers stationed onsite to provide support.
40. Within the community, iFAMs and associated specialist assistance are now available from six community touchpoints that deal with family violence and maintenance. More community touchpoints will be added in the coming year, so that applicants may apply in a familiar setting where they are also able to receive other assistance relevant to their specific needs. We believe that enabling them to do so within their community would alleviate much anxiety associated with engaging in litigation.

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

Necessary Legal Complexity of Family Litigation

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

43. The widely reported case of the tour guide, Yang Yin25, who is now serving a lengthy prison term for misappropriating monies from an elderly widow (whom I will refer to as "P") and related crimes illustrates the growing complexity of our work. After P's niece discovered that a Lasting Power of Attorney had been registered on 6 July 2012 in favour of Yan Yin, an investigation was made into the state of P's affairs. Amongst other things, it came to light that P had executed a will in 2010 naming Yang Yin as sole beneficiary of her entire estate.

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

45. Another area of complexity stems from the growing international dimension of family work. Singapore citizens form about 60% of the total population26, with non-residents making up about 30% of the population and permanent residents about 10%. With an increasing number of foreigners choosing to live and work in Singapore, the number of divorces involving at least one party who is a foreigner has similarly grown. In the past 3 years, about 40% of divorce cases each year involved at least one party who was a foreigner.27 Further, about 1 in 3 of those cases involved at least one child below 21 years.28 These cases raise a number of cross border concerns including enforcement, relocation and custody issues.

46. At the courts, we have seen other complex family law cases. In the first half of this year, the Court of Appeal had the occasion to examine the question of ancillary relief for couples divorced under foreign Syariah law. And more recently, a three-Judge bench of the High Court dealt with questions of habitual residence and the concept of consent in the context of the 1980 Hague Convention on Child Abduction.

The Practice of Family Law into the Future

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

Conclusion

48. The future of family law is bright. It promises many professional opportunities to those committed to this fascinating area of practice; but it also calls for a fresh mind-set and perspective. We on the Bench will continue to pay close attention to the growth and development of a Family Justice eco-system that is responsive to the needs of our people and that seeks to minimise the harm to our future by paying special attention to the affected children. I also wish to acknowledge the many lawyers who have served selflessly in this goal.
FAMILY JUSTICE PRACTICE FORUM 2017
FAMILY JUSTICE 2020: THROUGH THE RIGHT DOORS
14 JULY 2017 • SUPREME COURT AUDITORIUM
49. Lawyers are the trustees of a robust family justice system, because of their dual roles: as counsellors for their clients, and as officers of the court. To those with family dysfunction, the rule of law means access to the law in order to change their status, obtain the protection they require, or vindicate their rights. But this has to be done with due regard to the need to avoid unnecessary and harmful collateral damage. How you shape your professional identity and how you build your practice, can make a real difference to the lives of those who seek your counsel. It is a deeply meaningful calling and I urge you to embrace it with an appreciation of and a commitment to all we are doing to help ease the journey of those who must go through the family justice system to restore balance in their lives.

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

Notes


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


5 Berry, Davis and Wilmer, "When the Customer is Stressed", October 2015, Harvard Business Review.

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


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


10 Forrest S Mosten, “Lawyer as Peacemaker: Building a Successful Law Practice Without Ever Going to Court”, Family Law Quarterly, Vol. 43, No. 3 (Fall 2009), 489-518 at 495.
1. It is my privilege to welcome you to our Family Justice Practice Forum. I would like to extend my warm appreciation to our co-organisers, the Ministry of Social and Family Development and the Law Society of Singapore.

2. The Family Justice Courts was established on 1 October 2014 upon a recognition that family justice requires a specialised approach. For example, dysfunctional families often need wider assistance, in mental health and other areas, in the context of their dispute. And familial relationships, such as that between parent and child, remain important, even after litigation. The Committee for Family Justice, which recommended the setting up of the FJC, asked for the establishment of a problem-solving family justice system. This mandate
3. The theme for today’s Forum, “Through the Right Doors”, recognises these various concepts that are present in any family dispute. Family breakdown is not a single end state, but rather, a continuum of emergent events. Every family, too, is different. Each has a story to be told and problems to be solved. The courts are a point of intervention for families in distress. Within the unique context of family disputes, the application of the law is not, as in many other kinds of legal cases, merely a forensic determination of evidence, rights and remedies. Rather, it is one that deeply impacts, and may transform, the dynamic of the family, and the lives of the individuals, within it. Going through the right door is crucial to the family finding a way forward.

4. The role of lawyers within this process, the subject of the Chief Justice’s Opening Address, is important. Practitioners know their clients’ needs best and they are the advocates of their clients’ interests. At the same time, as officers of the court, they are also fundamental to FJC’s evolving approach. We have been honoured to have worked closely with various Presidents of the Law Society and the legal fraternity in many of our endeavours, and we thank them for their generous time and effort.

5. Employing social science expertise and deepening our partnership with the wider community are the other planks of our approach. In this respect we have been privileged to have a deep working relationship with community partners, and in particular, the Ministry of Social and Family Development. I thank our Minister for Social and Family Development for his strong support. The launch today of iFAMS shows the potential of this partnership. Since Monday, iFAMS has been available at six community touch-points, in tandem with other kinds of specialist care that the particular agencies provide. More community touch-points and wider categories of cases are in the pipeline. This is a first step in larger vision, where the linkage of IT systems and community assistance would ensure earlier and at the same time, more structured access to justice.

6. The introduction of iFAMS and our redesigned Family Protection Centre are the result of many months of work on the part of court staff, vendors and partners. I thank all court staff and stakeholders for their dedication, cooperation, and wonderful work.

7. Our efforts to improve family justice in Singapore have led us on a continuous search for forms and ideas that best suit the needs of our society. We look forward to discussion today with our speakers and panels on various aspects of family justice, family violence and ethics. In our local jurisprudence, our Judge of Appeal Justice Andrew Phang has famously written about the aspiration of an autochthonous legal system. Our family law is part of that aspiration. It may be likened to an evergreen tree, which grows in a manner unique to our social and legal clime, bearing fruit which best serves our needs. Its roots are of course in English law. But principles from other sources have also been grafted on. Thus, s 46(1) of the Women’s Charter, which exhorts marriage as a cooperative effort by spouses towards the union and care of the children, was adapted from the Swiss Civil Code. Laws are a social construct. Our search for that which meets our needs has been a collaborative effort, in which conversations such as those today are crucial to our inclusive and consultative approach. We thank the many who have nourished our family justice tree.

8. This search is of immense value to us as a community. This is because in dealing with issues of family breakdown, we set the standards and shape the values for social institutions and practices, including marriage, the care of children and the protection of the vulnerable. How we deal with family assets upon divorce, for example, reflect and serve to instil the concept that marriage is a joint partnership of co-operative efforts. The welfare principle, and how we give effect to the best interests of the child, guards our future generations. How we protect our elderly reflects the values of compassion and humanity to which we aspire. Our work strengthens the resilience of the family unit and our society as a whole. This is the bedrock of a sound community. And it is upon this bedrock that economic progress and the wider ambitions of a free society may be pursued.

9. On this note, may I thank the Chief Justice, who has guided and supported our journey, and may I welcome him to deliver the Opening Address.
Singapore International Commercial Court Suit
No 5 of 2016

CPIT Investments Limited v Qilin World Capital Limited and another
[2017] SGHC(I) 05
1. This suit concerns a non-recourse loan entered into by the plaintiff, CPIT Investments Ltd (“CPIT”), a company incorporated in the British Virgin Islands (“BVI”). Under the loan, CPIT borrowed HK$31.25m from Qilin World Capital Ltd. It was not clear whether the lending party was the first defendant, which was incorporated in Hong Kong, or the second defendant, a BVI company. Both had the same name, and the lending party will be referred to as “Qilin”. As collateral for the loan, CPIT provided Qilin with control over 25m shares in Millennium Pacific Group Holdings Limited (“Millennium”). These shares were publicly traded on the Growth Enterprise Market of the Hong Kong Stock Exchange. The loan was disbursed pursuant to two contracts: a Stock Secured Financing Agreement (“the Loan Agreement”) and a Control Agreement, which were both executed in November 2015.

2. In December 2015, Qilin transferred the Millennium shares into a new account, and executed a Sale Note by which it sold the shares to itself at HK$2.50 per share, for a total of HK$62.5m. It then transferred the shares to its account with another trading company and started selling the shares from 8 December 2015 onwards. The shares then sharply fell in value. Thus a dispute arose over whether Qilin had committed a breach of contract by selling the shares, or whether a price default clause in the Loan Agreement had been triggered, which required CPIT to provide additional collateral for the loan. Proceedings were commenced in the Singapore High Court in January 2016. On 18 January 2016, the High Court granted an injunction restraining Qilin from disposing of the Millennium shares in any way. This injunction was later varied, by consent, so that the proceeds from the sale of the shares held by Qilin, amounting to approximately HK$25.4m, together with a further sum of approximately HK$2.1m was to be paid by Qilin into a designated account with its solicitors.

3. The case was transferred to the Singapore International Commercial Court on 28 June 2016 before Vivian Ramsey IJ.

4. In its judgment, the Court first held that the terms of the Loan Agreement indicated that the relevant lending party was the second defendant (ie, the BVI Company) and not the first defendant. It also rejected CPIT’s argument that the two defendants were alter egos of one another.

5. The Court went on to find that Qilin was not entitled to sell the Millennium shares under the terms of the Loan Agreement, and rejected Qilin’s argument that it was permitted to sell the shares to “hedge” when their share price fell. Against Qilin, the Court also found that the price default clause in the Loan Agreement had not been triggered and that Qilin’s breach of contract in selling the Millennium shares was one which entitled CPIT to validly terminate the Loan Agreement. This was done on 4 January 2016 through a solicitor’s letter from CPIT to Qilin.

6. With regard to the proceeds from the sale of the Millennium shares which Qilin held, the Court held that these monies, after deducting the value of the loan, were held on trust for CPIT. In addition, the Court rejected Qilin’s defence that CPIT was not entitled to enforce its legal rights because of certain communications in December 2015 between Qilin, CPIT and the people who introduced the two parties to each other. The Court found that there was insufficient evidence that such communications had taken place. The Court also did not accept Qilin’s argument that CPIT should not be granted any relief because it was involved in artificially maintaining the price of the Millennium shares before the fall in their share price. There was insufficient evidence of this.

7. The Court, however, found that CPIT had suffered no loss arising from Qilin’s wrongful sale of the Millennium shares. It held that the cause of the substantial fall in the Millennium share price was their overinflated price at the beginning of December 2015, and not the sale of the Millennium shares by Qilin. It could not be said that, but for Qilin’s sale of the shares, the market price would not have fallen.

8. Therefore, the Court ordered that CPIT was not entitled to any contractual damages, although it was entitled to: (a) payment from Qilin of HK$31.25m, representing the proceeds from the wrongful sale of the Millennium shares, after deducting the value of the loan, and (b) an account from Qilin of any profit which it had made from using the sale proceeds.

This summary is provided to assist in the understanding of the Court’s judgment. It is not intended to be a substitute for the reasons of the Court.
Recklessly Misleading the Court in Singapore and England

This article examines recent lawyer disciplinary decisions in Singapore and England that have applied their respective criminal standards of recklessness to the prohibited conduct of misleading the Court. It also analyses the practical implications of the new test of recklessness for the Singapore legal profession.

I. Introduction

Two boys, not yet teenagers, decided to set fire to some bundles of newspapers which they found in the backyard of a shop. After throwing the ignited papers under a plastic dustbin, they left the shop behind with the papers going up in flames. The dustbin caught fire and the fire blazed through both the shop and its adjoining buildings, causing about £1m worth of damage.

An experienced private equities trader made two postings on a financial portal suggesting that a certain company had been raided by the authorities. The company’s share prices fell before it was clarified that no such raid had occurred. The trader had posted the false information based on unsubstantiated rumours.

What do these two cases have in common? More importantly, what do they have to do with lawyers’ ethics?

Both cases were concerned with criminally reckless behaviour – the boys were charged with arson, and the trader was charged with disseminating false information that was likely to induce the sale of securities by others. In each case (the House of Lords in the first (R v G),1 and the Singapore High Court in the second (PP v Wang Ziyi Able (“Wang Ziyi Able”)),2 the Court set down a legal test of recklessness which today forms the basis of determining whether a lawyer has “recklessly” misled the Court in England and Singapore respectively.

This article examines recent lawyer disciplinary decisions in Singapore and England which have applied their respective criminal standards of recklessness to the prohibited conduct of misleading the Court and considers the key similarities and differences between the two disciplinary regimes. It also reviews the practical implications of the new test of recklessness for the Singapore legal profession under the Legal Profession (Professional Conduct) Rules 2015 (“PCR 2015”).

II. Recklessly Misleading the Court in Singapore: Absence of Honest Belief

The issue of when a lawyer is considered to be “reckless” in misleading the Court arose in a recent Singapore disciplinary decision, Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter (“Udeh Kumar”),3 which was concerned with breaches under the prior version of the Legal Profession (Professional Conduct) Rules (“former PCR”).4

Amongst other charges, the respondent lawyer was charged with “knowingly” misleading the Court under rule...
56 of the former PCR in two separate instances. In the first case, the respondent lawyer applied to the Court via the e-Litigation system to seek a two-week adjournment of the hearing of his client’s application to quash an order of the Director of the Central Narcotics Bureau. This matter had been adjourned on a number of occasions and the Attorney-General’s Chambers (“AGC”) had indicated to the respondent lawyer that it would not accede to any further adjournments.

However, the respondent lawyer did not check with the AGC and certified a request to the Court through the e-Litigation system that all the other parties concerned in the hearing of the application were available on the proposed adjourned date. The AGC was also not copied on the request. As a result, the Court adjourned the hearing for two weeks.

In the second case, the respondent lawyer applied to the Court to request a two-week adjournment of a criminal appeal in a different hearing. In support of his request, the respondent lawyer stated that he:

1. had only been recently informed that his client wished to appoint his firm to represent him in an appeal against the client’s conviction; and
2. had been unable to take instructions from his client in prison because no visiting slots were available.

However, the Disciplinary Tribunal ascertained that these statements were false or inaccurate.

A key issue raised at the hearing before the Disciplinary Tribunal was whether the respondent lawyer had “knowingly” made the false statements in both cases.

In the first case, citing the old English case of *Derry v Peek*, the Disciplinary Tribunal took the view that a false statement could be made recklessly without any real belief in the truth it stated. Although the respondent lawyer had argued that he was not familiar with the e-Litigation system and trusted his staff to operate the system, the Disciplinary Tribunal noted that his conduct went beyond carelessness. His request for adjournment containing the false or inaccurate certification was made recklessly without regard as to whether it were true or false. Hence, he had the requisite knowledge of misleading the Court.

In the second case, the Disciplinary Tribunal determined that the respondent lawyer had knowingly made the false statements to mislead the Court into granting an adjournment of the appeal. Although the respondent lawyer had claimed in cross-examination that it was in fact his staff who had written the letters containing the false statements, the Disciplinary Tribunal held that in any event, the respondent lawyer had been reckless in not checking the letters before they were sent out. Thus, he also had the requisite knowledge of misleading the Court.

At the show cause hearing, affirming the Disciplinary Tribunal’s views, the Court of Three Judges dismissed the respondent lawyer’s argument that recklessness as to the truth or falsehood of a statement was insufficient to constitute a breach of rule 56 of the former PCR. The Court cited two main reasons for its stance:

1. the *mens rea* of recklessness under rule 56 was consistent with the approach in a prior Singapore case; and
2. as a matter of principle, the focus of the test in *Derry v Peek* was on “the absence of an honest belief in the truth what is being stated”. Hence, based on the High Court’s decision in *Wang Ziyi Able*, making a statement recklessly (but not carelessly) would be subjectively dishonest.

On the facts, however, the Court did not need to apply the “absence of honest belief” test, as it found that the respondent lawyer had *knowingly* misled the Court in both cases. In the first case, the Court found that it was more likely that the respondent lawyer, who was “experienced in litigation”, had submitted the request for adjournment “personally”. Even if was his staff who had submitted the request, the Court found that the staff must have acted on the respondent lawyer’s instructions to send the request with the false statement and not to copy the AGC on the request.

In the second case, the Court also found that the respondent lawyer had made the false statements knowing that they were untrue, as he had in fact been representing his client much earlier and had not even attempted to apply to the prison authorities to visit his client after his client’s conviction.

The Court concluded that the respondent lawyer had been “fraudulent in his dealings with the court” and due cause had been established for his improper conduct under section 83(2)(b) of the Legal Profession Act.

III. Recklessly Misleading the Court in England: Awareness of Risk

The House of Lords in *R v G* established the test of recklessness that is applicable to the English legal
The controversy in R v G was whether it was fair to apply the Caldwell test of recklessness to the two young boys who, due to their age, had not apprehended the risk of the fire spreading to the shop and its adjoining buildings. The House of Lords redefined the test of recklessness as one requiring “foresight of consequences”, i.e. a person charged with arson would only be considered to have acted recklessly:

1. did an act which created an obvious risk that property would be destroyed or damaged; and

2. had either not given thought to the possibility of such a risk or had recognised that there was some risk involved but had proceeded to do it.

The controversy in R v G was whether it was fair to apply the Caldwell test of recklessness to the two young boys who, due to their age, had not apprehended the risk of the fire spreading to the shop and its adjoining buildings. The House of Lords redefined the test of recklessness as one requiring “foresight of consequences”, i.e. a person charged with arson would only be considered to have acted recklessly:

in respect of a circumstance if he was aware of a risk which did or would exist, or in respect of a result if he was aware of a risk that it would occur, and it was, in the circumstances known to him, unreasonable to take the risk.

However, he would not be culpable if, “due to his age or personal characteristics, he genuinely did not appreciate or foresee the risks involved in his actions”. The boys’ convictions were accordingly quashed.

English academic commentary has referred to this test as an “awareness-based model of recklessness”, which “marks a reversion to the traditional, more subjective definition of recklessness based on the defendant’s awareness of the risk”.

The “awareness of risk” test of recklessness was first applied to the English legal profession in Alastair Brett v The Solicitors Regulation Authority (“Brett”). In Brett, the English ethical rule in question (unlike rule 56 of the former PCR) expressly incorporated the mens rea of recklessness:

You must never deceive or knowingly or recklessly mislead the court. [emphasis added]

The detailed facts of Brett have been discussed by this author elsewhere. In summary, the English High Court found that the respondent solicitor had acted recklessly by allowing the Court to be misled by a false claim in a witness statement that he had drafted, and by not correcting the misleading impression. In the statement, the witness asserted that he had lawfully used information in the public domain to deduce the identity of the author of an anonymous blog, when in fact he had illegally accessed the author’s e-mail account and had disclosed this fact to the respondent solicitor.

Despite requests by the author’s solicitors to clarify the witness’s deduction process, the respondent solicitor, who was “a hugely respected and highly experienced solicitor in the field”, did not respond with a further witness statement or a correction. He also dismissed as “baseless” their allegation that the witness might have gained authorised access to the author’s e-mail account because of his history of hacking e-mail accounts.

Applying the “awareness of risk” test established in R v G, the English High Court held that “the evidence, particularly that of the contemporaneous correspondence and the lack of any response by Mr Brett to the demands contained in it”, demonstrated that the respondent solicitor had “acted recklessly … in allowing the court to be misled”.

More recently, the “awareness of risk” test was also applied by the Solicitors Disciplinary Tribunal (“SDT”) in Solicitors Regulation Authority v Nigel George Walshe (“Walshe”), which considered an ethical rule similar to the one in Brett. In Walshe, the respondent solicitor, who had been admitted as a solicitor since 1978, acted for the complainant in a number of clinical negligence claims from about February 2012.

Several months later, he entered into a personal relationship with the complainant. As the lawsuit progressed, he received an expert report by Dr D (“the Expert”) which was unfavourable to the complainant’s case. The complainant expressed concerns that her claims could be struck out in view of the expert report. She also informed the respondent solicitor that one of the defendants in the proceedings (“Dr I”) had been in the same medical school as the Expert and both of them had graduated in the same year. She suggested that the Expert might thereby have failed to disclose a conflict of interest.

The complaint’s suggestion triggered a series of e-mail correspondence between the respondent solicitor and the Expert concerning, amongst others, the potential conflict of interest issue. Unfortunately, the Expert had overlooked these e-mails as he was away on vacation and only gave a holding reply to the respondent solicitor upon his return. Subsequently, although the respondent solicitor had attempted, to no avail, to verify the complainant’s information independently, he did not follow up with the Expert on the potential conflict of interest issue. Instead, he
concluded that the Expert was trying to avoid addressing the issue and, on this basis, took out an application to the Court to allow the complainant to apply for an alternative expert report.

At the hearing of the application, the respondent solicitor reaffirmed that the Expert had not responded to him at all on the potential conflict of interest issue. He also asserted that the Expert and Dr I had been at “the same medical school in London in 1983” and “would have been the same small group of people”.25

The SDT established that no actual conflict of interest existed and that the Expert “did not know or have any association with Dr I”.26 In the circumstances, the “cumulative effect” of the respondent solicitor’s statements to the Court, which were submissions rather than facts, “was to give an incorrect impression to the Court and hence potentially to mislead the Court”.27

The SDT opined that “a solicitor acting with appropriate caution would have taken into account the relative costs of making a further enquiry of [the Expert], as against the cost of making an application to the Court”.28 Also, a prudent solicitor would have “checked that [the Expert] was aware of the issue and the urgency of providing a response”.29

In addition, the SDT found that the respondent solicitor’s opinion that a conflict of interest existed was influenced by his personal relationship with his client. The SDT concluded that the respondent solicitor had recklessly misled the Court based on the “awareness of risk” test because:

1. he was “well aware that there was a real risk that the Court would be misled if he was not frank and did not give full and complete information”;30 and

2. “[n]evertheless, [he] took the risk that the Court would be misled by failing to set out the full circumstances in the witness statement, making misleading and partial submissions and statements and failing to correct the erroneous views the Judge formed during the hearing”.31

IV. Comparing the Singapore and English Lawyer Disciplinary Regimes on Recklessness

The Singapore and English disciplinary regimes are aligned insofar as they view recklessly misleading the Court as a disciplinary offence deserving of sanction. The SDT in Walshe had observed that “[r]ecklessly misleading a Court was a serious matter”,32 while the Court of Three Judges in Udeh Kumar emphasized the “critical nature of the advocate and solicitor’s duty of candour”.33

Where the two regimes diverge or are likely to diverge on their respective tests of recklessness are: (i) the origin of the test; (ii) the way in which the test is applied; and (iii) whether the test requires dishonesty.

(A) Origin

The origin of the English test was relatively straightforward as the English High Court in Brett merely transposed the “awareness of risk” test in R v G to a lawyer disciplinary context. This was easily achieved, given that the relevant provisions in both the UK Criminal Damage Act 1971 and the UK Solicitors’ Code of Conduct expressly referred to the mens rea of “recklessly”.

By contrast, the origin of the “absence of honest belief” test in Singapore requires a closer look as the Court in Udeh Kumar did not explain why Wang Ziyi Able, a case concerned with a securities offence under section 199 of the Securities and Futures Act (“SFA”), was relevant to the prohibited conduct of misleading the Court.

Under the version of section 199 of the SFA considered in Wang Ziyi Able, it was an offence for a person to make or disseminate information that is false or misleading in a material particular if, when making or disseminating the information:

(i) he does not care whether the statement or information is true or false; or

(ii) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular. [emphasis added]

The issue in Wang Ziyi Able concerned the interpretation of mens rea of the offence under section 199(i) of the SFA, i.e. “does not care whether the statement or information is true or false” (“does not care’ mens rea”). The Singapore High Court held that based on Derry v Peek, the “does not care’ mens rea required the accused person to have some subjective dishonesty. The objective test of recklessness, which was commonly associated with negligence, did not apply, as otherwise both limbs of section 199 of the SFA would have effectively identical mens rea.34 This would, on the face of it, be tautologous and there was no reason to rebut the “presumption against tautology” in interpreting section 199.35

From the above, it is clear that both Udeh Kumar and Wang Ziyi Able adopted the proposition in Derry v Peek that a
statement made not caring whether it was true or false was made dishonestly.

The Court in Udeh Kumar, however, went a step further by holding that the mens rea of “knowingly” in rule 56 of the former PCR encompassed the mens rea of recklessness, which it equated with the “does not care” mens rea. The theoretical basis behind extending the mens rea of “knowingly” to include recklessness was not explained in Udeh Kumar. It is submitted that Derry v Peek only supported the position that a false or misleading statement could be made knowingly or recklessly, but did not equate recklessness with knowledge.

This is not to say that recklessly misleading the Court should not be a valid ground for lawyer discipline; rather the concern is that by incorporating one type of mens rea (recklessness) into another type (knowledge) without a theoretical justification, an anomaly may result where, as will be discussed in Part V, both “knowingly” and “recklessly” appear as distinct mens rea in an ethical rule under PCR 2015 related to misleading the Court.

(B) Application

The application of the “awareness of risk” test in both Brett and Walshe was straightforward. Both cases involved experienced lawyers who were aware that there was a real risk that the Court would be misled by their false statements and failed to correct the misleading impression. Instead, they unreasonably took the risk of misleading the Court by drafting incomplete witness statements and, in Walshe, the respondent solicitor also made misleading submissions in Court.

On the other hand, as mentioned in Part II, the Court in Udeh Kumar did not have the opportunity to apply the “absence of honest belief” test. It is therefore necessary to return to Wang Ziyi Able to surmise how the test may be applied in a lawyer disciplinary case in Singapore.

In essence, the Singapore High Court applied a two-stage test in Wang Ziyi Able. At the first stage, the Court considered, from an evidential viewpoint, “whether there were reasonable grounds to believe in the truth of the statements” made by the trader on the portal.36 The assessment here was an objective one, taking into the account “the perspective of a reasonable person calibrated against the relevant qualities and characteristics of the accused person”, such as his “qualification, profession, intellect, experience and skills”.37 Although the objective analysis was not determinative, it would often constitute “relatively strong evidence” of whether there was a lack of honest belief.38

On the facts of Wang Ziyi Able, the Court found that no reasonable grounds existed for the accused person, who was “a full-time and seasoned private equities trader at the material time”,39 to believe in the truth of his statements. Among other things, the trader had failed to point out that his statements were based on reports that were subject to a qualification that the information about the raids was unverified. He had also failed to verify this information from other sources.

At the second stage, any objective evidence of a lack of honest belief may be outweighed or rebutted if, on a subjective analysis, the accused person believed in the truth of the information which he had disseminated.40 Here, the accused person’s motive in making or disseminating the statement was generally irrelevant, although if an improper motive was proved, it was less likely that the accused person would succeed in proving that he had an honest belief in the truth of the statement.

On the facts of Wang Ziyi Able, the Court discounted the trader’s purported good intentions to share information with others. It also took into account the evidence that the trader himself had doubts about the veracity of the information about the raid.

From the above, it is likely that in any future lawyer disciplinary case in Singapore involving recklessly misleading the Court, the experience of the solicitor in question and the efforts made by him to verify the truth of the statements will be important factors in undertaking the first-stage objective evidential assessment of determining whether reasonable grounds exist for the solicitor to believe in the truth of his statements. If no independent sources are available, it will probably be necessary, as the facts of Walshe indicate, for the solicitor to verify the truth of the statement from the source itself.

As for the second-stage subjective analysis, a lawyer’s motive in making the false statement would likely be entirely irrelevant, because it would almost invariably be borne out of an obligation to advance the client’s interest, which is overridden by his duty to the Court.41

(C) Dishonesty

The third and perhaps most important distinction between the Singapore and English lawyer disciplinary regimes concerns whether the test of recklessness requires dishonesty. Based on Brett and Walshe, the English position
is that recklessness is not synonymous with dishonesty as the respondent solicitor in each case was not alleged to have been dishonest. This stance is well illustrated by Brett, where the English High Court held that even though the SDT had accepted that the respondent solicitor had not been dishonest, it wrongly found that the respondent had “knowingly” allowed the Court to be misled because such a finding was “in effect, a finding of dishonesty”.42

On the other hand, Wang Zyi Able suggests that the “absence of honest belief” test in Singapore is inextricably linked to subjective dishonesty. A close reading of Udeh Kumar, however, suggests that the “does not care” mens rea may only be one form of recklessness caught under rule 56 of the former PCR, as the Court had, at the outset, rejected the respondent solicitor’s argument that the mens rea required for a breach of rule 56 of the former PCR was subjective dishonesty.43

V. Practical Implications for the Singapore Legal Profession under the PCR 2015

The critical issue is whether the “absence of honest belief” test applies to the various provisions in the PCR 2015 concerned with or related to “knowingly” misleading the Court. The Court in Udeh Kumar did not offer any observations on this issue, but it has practical implications for how the Singapore legal profession should interpret the relevant ethical rules under the PCR 2015.

The starting point of the analysis is rule 9(2)(a) of the PCR 2015, which states:

A legal practitioner must not knowingly or recklessly cite the law out of context, interpret the law in a manner calculated to mislead the court or tribunal, or otherwise advance any submission, opinion or proposition which he knows or ought reasonably to know is contrary to the law. [emphasis added]

Citing the law out of context is an instance of misleading the Court. Here, if the mens rea of “recklessly” is taken to refer to the “does not care” mens rea, a presumption against tautology may arise because “knowingly” and “recklessly” should not mean the same thing. It is therefore uncertain whether the mens rea of recklessness in rule 9(2)(f) should be interpreted to mean another form of recklessness which does not involve subjective dishonesty.

This interpretive conundrum is complicated by the fact that rule 9(5) of the PCR 2015 requires an advocate to remedy any breach of rule 9 committed “unknowingly” or inadvertently.44 However, in light of Udeh Kumar, would “reckless” breaches under rule 9(2)(f) have to be disclosed and remedied in accordance with rule 9(5)? If the implication of Udeh Kumar is that “knowingly” always encompasses recklessness, rule 9(5) is not applicable if an advocate recklessly committed a breach of rule 9(2)(f) as the mens rea of “unknowingly” is not satisfied. However, if “knowingly” is distinct from “recklessly” under rule 9(2)(f) (to avoid a tautologous interpretation), a reckless advocate would have to comply with rule 9(5) as the mens rea of “unknowingly” is satisfied. The proper interpretation of “unknowingly” therefore has significant consequences for reckless advocates as they may be held liable for an additional breach of rule 9(5).

More critically, if the paramount ethical concern under rule 9(5) is with an advocate’s duty to correct misleading impressions, it should not matter whether the original contravention was made inadvertently, knowingly or recklessly. The real mischief, as illustrated by the facts
of Brett and Walshe, is that the advocate knowingly or recklessly fails to correct misleading impressions even though he has become aware or has reasonable grounds to believe that the statements are false. Accordingly, rule 9(5) merits a review as to whether its mens rea targets the correct ethical mischief.

VI. Conclusion

The importation of the criminal standard of recklessness into lawyer ethical codes in Singapore and England has been a recent phenomenon, but it should not come as a surprise. As pointed out by an American academic, the legalisation of lawyer ethical codes and the increasing frequency of disciplinary enforcement means that “mens rea issues are likely to attain greater prominence”.45 Using the English lawyer disciplinary regime as a yardstick for comparison, this article has sought to raise critical questions surrounding the test of recklessly misleading the Court in Singapore, and its potential implications. Just as there should be “no criminal liability without fault”,46 lawyers should not be disciplined if the requisite mens rea is absent. The mens rea standard of recklessness under the PCR 2015 should not deserve any less attention than its exposition in the criminal law.

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* The views expressed in this article are the personal views of the author and do not represent the views of RHTLaw Taylor Wessing LLP.

Notes
1 [2004] 1 AC 1034.
2 [2008] 2 SLR(R) 61.
3 [2017] SGHC 141.
4 Cap 161, R1, 2010 Rev Ed.
5 (1889) 14 App Cas 537.
6 Supra (note 3), at [36].
7 Ibid, at [48].
8 Ibid, at [55].
10 Supra (note 1), at 1050H-1051A.
11 Ibid, at 1034G.
12 Ibid, at 1034H-1035A.
13 Ibid, at 1035A.
16 Supra (note 14).
19 Alvin Chen & Helena Whalen-Bridge, Understanding Lawyers' Ethics in Singapore (Singapore: Lexis-Nexis, 2016), paras 5.55-5.59.
20 Supra (note 17), at [91].
21 Ibid, at [28].
22 Ibid, at [100].
23 Solicitors Regulation Authority (Applicant) and Nigel George Walshe (Respondent), Case No 11620-2017 (Solicitors Disciplinary Tribunal), Judgment dated 22 August 2017.
24 UK Solicitors’ Code of Conduct 2011, Outcome 5.1: “You do not attempt to deceive or knowingly or recklessly mislead the court.”
25 Supra (note 23), at [44].
26 Ibid, at [88].
27 Ibid, at [98.61].
28 Ibid, at [98.49].
29 Ibid.
30 Ibid, at [98.63].
31 Ibid.
32 Ibid, at [98.67].
33 Supra (note 3), at [55].
34 Supra (note 2), at [74].
35 Ibid.
36 Ibid, at [97]-[107].
37 Ibid, at [87].
38 Ibid, at [88].
39 Ibid, at [119].
40 Ibid, at [86].
41 See eg the general interpretive principle in Rule 4(a) in PCR 2015: “A legal practitioner has a paramount duty to the court, which takes precedence over the legal practitioner’s duty to the legal practitioner’s client.”
42 Supra (note 17), at [98].
43 Supra (note 3), at [54]-[35].
46 Supra (note 15), p 173.
Changes in the Law of Medical Negligence

The law of medical negligence has recently changed, both substantively and procedurally. This article aims to provide a simple update on these changes.

I. Introduction

Recent months have seen some developments in the law of medical negligence. The Court of Appeal has qualified the long-standing Bolam test. The courts have also enacted protocols for medical negligence cases, which evince a shift towards a less adversarial approach to resolving such cases, with an increased emphasis on mediation and the appointment of court assessors. This article will look at both developments.

II. Changes in Substantive Law – the Montgomery Test

All law students will be familiar with the Bolam test: a doctor will not have acted negligently if the act complained of is supported by other respected doctors, so long as those doctors’ opinion is internally consistent and logical. Previously, the Bolam test applied to every aspect of the patient-doctor interaction – ie most of the time there would be little need to distinguish between (a) diagnosis; (b) giving of advice; and (c) treatment.

But in Hii Chii Kok v Ooi Peng Jin London Lucien, the Court of Appeal held that the Bolam test now applies only when it is alleged that a doctor has negligently diagnosed or treated the patient. Where it is alleged that the doctor was negligent in advising the patient, a new legal test applies (the “Montgomery test”).

Since the Bolam and Montgomery tests apply to different aspects of the patient-doctor interaction it is important to understand what that interaction comprises:

1. Diagnosis, ie the identification of the patient’s affliction. Diagnosis is the process by which the doctor obtains information from the patient by taking history and physical examination, considers what further investigations are required, analyses the information, and forms a provisional conclusion on what to do.

2. Advice, ie the presentation of the appropriate information to the patient. Advice includes giving recommendations on what should be done, providing information on diagnostic procedures and any associated risks, as well as advising treatment plans and associated risks.

3. Treatment, ie the implementation or execution of the cure, including medication, surgery, or other procedures.

A doctor may be negligent in his diagnosis of, advice to, and/or treatment of a patient. A doctor may misdiagnose a cancerous tumour as a benign one, wrongly explain what side-effects a particular drug may have, or make a mistake during surgery by amputating the wrong leg.
A. Rationale Behind the Montgomery Test

The Montgomery test is premised on the different natures of (a) diagnosis and treatment; and (b) giving of advice. A patient whose ailment is being diagnosed and who is being treated is merely a passive recipient of care: he is entirely in the doctor’s hands. But when a doctor gives a patient advice, the patient is not a passive recipient of care. This is because patient autonomy means that the doctor has to respect the patient’s right to choose his treatment, even if the choice is not what the doctor would have preferred. And in order for the patient to meaningfully exercise his right to choose, the patient must be supplied with sufficient knowledge. So the crux of the Montgomery test is whether the doctor has given the patient sufficient advice and information.

In order to determine whether sufficient advice and information has been provided, the court will apply a variant of the familiar “reasonable person” test: what would that particular patient in his circumstances reasonably regard as material? Critically, this test focuses on the patient’s perspective. It means that, unlike in the Bolam test, the views of other respectable doctors are not determinative. The Montgomery test will be applied on the facts and circumstances as they existed at the time the material event occurred. There are three stages:

1. The patient must satisfy the court that relevant and material information was withheld from him.
2. If so, the court will determine whether the doctor had that information in the first place.
3. If so, the court will determine whether it was justifiable for the doctor to withhold that information from the patient.

B. Stage 1 of the Montgomery Test

Stage 1 of the Montgomery test asks whether the patient failed to receive any relevant and material information. Doctors ought to disclose (a) information that would be relevant and material to a reasonable patient in that particular patient’s position; and (b) information that the doctor knows is important to that particular patient in question.

The relevance and materiality of information is assessed essentially from the perspective of the patient. Relevant and material types of information would include (but are not limited to):

1. the doctor’s diagnosis;
2. the prognosis with and without medical treatment;
3. the nature of the proposed treatment;
4. the risks associated with the proposed medical treatment; and
5. the alternatives to the proposed medical treatment and their advantages/risks.

The Court will apply a common-sense approach to determining whether specific information was relevant and material. Obviously, there is a fine line between:

1. taking reasonable care to ensure that the patient receives all relevant and material information – failing which the patient would be unable to make an informed decision; and
2. not indiscriminately bombarding the patient with every iota of information – failing which the patient may simply be left more confused and also unable to make an informed decision.

For example, say a patient is contemplating a particular surgical procedure, which carries with it a number of risks. A doctor does not have to disclose each and every possible risk to the patient. Whether a risk has to be disclosed depends on the severity of the potential injury and its likelihood. Hence the risk of a likely but slight injury should be disclosed; and so should the risk of an unlikely but serious injury. Importantly, however, the risk of a very severe injury would not have to be disclosed, so long as the possibility of its occurrence was “not worth thinking about”, eg because the likelihood of its occurrence is negligible, or because such a risk is common knowledge.

To take another illustration, a doctor will have to tell the patient about the benefits and side-effects of the proposed medical treatment. The doctor must also tell the patient about the advantages and disadvantages of alternative procedures and the consequences of no treatment at all. But the doctor only has to tell the patient about reasonable alternatives – ie the doctor does not have to tell the patient about fringe alternatives or treatments that are obviously inappropriate.

Further, a doctor must disclose information that he knows (or ought reasonably to know) would be important to that particular patient. For example, when a doctor is taking a patient’s history, he will commonly find out the patient’s occupation. That knowledge may be important in assessing what information that particular patient would find material
and relevant. Hence a very low risk of slight eye injury would be highly relevant to a professional fighter pilot, even if it might be insignificant to other people.

The doctor does not have to ensure that the patient in fact understands the information provided, but only to take reasonable care that he does. So while the doctor does not have to “test” the patient’s knowledge, the doctor will have to assess the ability of the patient to understand the information. The doctor will have to deliver the information using language and at a pace that allows the patient to absorb that information. Understanding means that the patient must appreciate the significance of the information – hence simply reciting to the patient the statistical probabilities is unlikely to be enough.

C. Stage 2 of the Montgomery Test

Stage 2 of the Montgomery test asks whether the doctor did in fact have the information (that was relevant and material, and not told to the patient).

If the doctor did not have the information, he cannot be negligent for failing to provide that information to the patient. But he could potentially be negligent for not having that information in the first place – ie negligence in diagnosis (because certain investigations were not done) or negligence in treatment (because the doctor did not realise an alternative treatment was available).

D. Stage 3 of the Montgomery Test

The last stage of the Montgomery test asks whether the doctor was justified in withholding the information from the patient: ie was it a sound judgment that a reasonable and competent doctor would have made? If so, the doctor is not negligent, and vice versa.

The burden is on the doctor to justify why the doctor withheld reasonable and relevant information that he knew about (as established at stages 1 and 2 of the Montgomery test) from the patient.

In general (with the exception of (b) below), the focus is not on whether other respectable doctors would have considered it appropriate to withhold that information (ie the Bolam test will in general not apply), but on whether it was objectively reasonable in the circumstances to have done so.

Here are some examples of when non-disclosure of information would be justified:

1. Consent: where the patient has expressly said (or it can very clearly be inferred) that he does not wish to hear further information.

2. Emergency: in emergency situations where there is a threat of death or serious harm to the patient, the patient temporarily lacks decision-making capacity, and there is no substitute decision-maker.

3. Therapeutic privilege: where the doctor reasonably believes that giving the patient that information would cause the patient serious physical or mental harm (eg patients whose state of mind, intellectual abilities, or education may make it extremely difficult to explain the true reality to them).

III. Changes in Procedural Law (in the High Court)

To understand the changes in procedural law, it helps to start with the Chief Justice’s observation in 2016 that “we must avoid a situation where the practice of medicine comes to be adversely affected by the medical practitioner’s consciousness of the risks of malpractice liability.”

The Chief Justice then listed three overlapping measures that were “under evaluation”: (a) promoting mediation as a primary step in resolving medical malpractice disputes; (b) shifting from the present adversarial model to a more Judge-led process in which the Judge will pro-actively direct the proceedings; and (c) the appointment of medical assessors to help the Court with specialised or technical issues.

In July 2017, the High Court adopted a protocol for medical negligence claims. There are a number of procedural innovations, some of which seem to have been adopted from earlier experiments:

1. There is standardised pre-action specific discovery of documents. The idea is to standardise and streamline the disclosure of medical records and other relevant information. This is to increase the prospect that medical negligence disputes can be resolved quickly.

2. The requested information should be provided to the claimant within seven weeks of the request.

3. The plaintiff is required to file and serve the main documents relied on in support of the claim (including expert reports) together with the Statement of Claim.

4. The 1st PTC will be convened before a Judge, three weeks after the close of pleadings.
5. At the 1st PTC, the parties will explore the possibility of resolving the case by, inter alia, mediation. The judge may also discuss with the parties the potential appointment of a medical assessor.

6. No directions for general discovery will be taken.

A. Some Thoughts

First, the Montgomery test finds clear expression in the sample letter of pre-action discovery provided in the protocol. The sample letter expressly requests that the medical services provider states inter alia:

1. the treatment prescribed, risks in such treatment (if any) and when and how these risks were communicated to the claimant or the deceased and/or his next-of-kin;

2. Whether alternatives to the prescribed treatment were discussed and disclosed to the claimant … and if so, why the prescribed treatment was preferred over these alternatives.

This is sensible, as it focuses the parties’ attention from a very early stage on what is likely to be the relevant issues in such case.

Further, the protocol states that pre-action discovery is “in order for a claimant to consider whether he has a viable claim or cause of action against his doctor and/or hospital for medical negligence”. This would suggest that pre-action discovery is not a necessary step for the claimant to take before starting an action – e.g. if the plaintiff has a clearly viable case. Yet it is likely that pre-action discovery under the protocol would be available even where the claimant has a clearly viable case (whereas the converse would be so under a typical O 24 r 6 application), since the protocol assumes that there will be no general discovery.

Second, it is unclear from the protocol what sanction (if any) will be imposed if the plaintiff fails to comply with the requirement to “file and serve the main documents relied on in support of the claim including expert report(s) together with the Statement of Claim.” Such a case is likely to arise most commonly where the decision to sue is taken close to the limitation period, and there is insufficient time to obtain the supporting documents. At the extreme, one possibility might be for the court to strike out the claim immediately. But a sensible solution would perhaps be for the defendant to apply to Court for an extension of time to file the defence, with time to start running from the date the plaintiff files the supporting documents (or, even better, for the parties to consent to the same).

Third, the protocol sets out in some detail the potential involvement of a medical assessor. In this regard, it is worth noting that the medical assessor is essentially that of an independent counsellor to the Court, who helps the judge to understand and navigate difficult and technical medical issues. But the Judge remains the decision-maker. The assessor may be involved before the trial, during the trial, and after the trial. Parties will have the opportunity to respond to the assessor’s views and also to set out the areas on which the assessor will provide his views.

Fourth, one would expect a medical assessor to be at least as senior (in experience and skill) as the parties’ expert witnesses. This in turn raises the question of the cost to properly compensate and attract the best medical professionals to act as a medical assessor. The starting position, as set out in the protocol, is that the costs of the medical assessor will be split between the parties. The Court will retain the final discretion to decide who shall bear the medical assessor’s fees and in what proportion. In practice, this means that each party will be advised of the possibility that he/it will have to pay for $1.5 - 2 experts, on top of quite heavy upfront costs (pre-action discovery, reviewing the documents, preparing expert report(s), drafting the Statement of Claim). For a large medical-services provider, this is unlikely to be a problem. But for the everyday man in the street, one has to wonder if having to contribute to the costs of the assessor will be the last straw compelling him to settle, or, worse, discouraging meritorious claims. One way to keep the assessor’s costs down may be for medical assessors to be appointed only in the more difficult or technical cases, and for the court to review with the parties at each stage of the proceedings the necessity of the medical assessor’s involvement.

Fifth, the emphasis on mediation (or other ADR) will renew the debate on the desirability of mediation in cases of bodily injury. It may be argued that mediation by its nature requires a compromise, and that intuitively a person who has suffered bodily injury ought to be wholly compensated. Another view is that mediation increases access to justice and thereby helps to uphold the rule of law. More pragmatically, mediation works best when the mediator has a solid grasp of the legal and practical issues raised by a particular dispute. This would suggest that the ideal mediator for medical negligence cases would have at least a working knowledge of the medical issues raised in a particular case. But a quick scan of the mediator lists of the Singapore Mediation Centre and the Law Society Mediation Scheme suggests a relative paucity of expertise in the medical field.
IV. Conclusion

As Singapore’s population enjoys increasingly greater access to medical services, and advances in medical technology continue to be made, it is perhaps inevitable that the number of medical negligence cases will increase. It is therefore timely that the courts have re-examined both the substance and procedure of medical negligence cases, and it is to hoped that both substantive and procedural developments go some way to simplifying and rationalising medico-litigation, thereby improving the quality and administration of justice.

Tham Lijing
M/s Tham Lijing

Colin Liew
M/s Colin Liew

Notes

1 The qualification that the body of opinion has to be internally inconsistent and logical was added in the case of Bolitho v City and Hackney Health Authority [1998] AC 232.


3 After the case of Montgomery v Lanarkshire Health Board (General Medical Council intervening) [2015] AC 1430. The test adopted in Hii Chii Kok was in fact a modified version of the Montgomery test, but this can be disregarded for present purposes.


5 Hii Chii Kok v Ooi Peng Jin London Lucien [2017] SGCA 38 at [132].

6 Hii Chii Kok v Ooi Peng Jin London Lucien [2017] SGCA 38 at [138].

7 Hii Chii Kok v Ooi Peng Jin London Lucien [2017] SGCA 38 at [141]. One example of such a risk is the risk of being knocked down by a car when crossing the road.

8 Hii Chii Kok v Ooi Peng Jin London Lucien [2017] SGCA 38 at [142].

9 Hii Chii Kok v Ooi Peng Jin London Lucien [2017] SGCA 38 at [144].

10 Hii Chii Kok v Ooi Peng Jin London Lucien [2017] SGCA 38 at [154].

11 N.B. that in deciding whether the situation is so critical that there is no opportunity to provide information to the patient, the court will apply the Bolam test.


13 Supreme Court Practice Directions, Appendix J. Note that the State Courts’ protocol on medical negligence cases has been in place since 2007.

14 One could query the generosity of the timelines, given the limitation period for personal injury claims of only 52 weeks.


17 BCL, BA (Oxon)

18 BA (Oxon)
The Accredited Investor Scheme – Penetrating the Fog of War

The Accredited Investor scheme in Singapore has come under scrutiny in recent months following highly publicised payment defaults by several prominent bond issuers. This article examines legislative changes to the Accredited Investor scheme, the consequences that arise from being an Accredited Investor, and the protections available to a retail investor.

A. Background: The Accredited Investor Scheme

Introduction

1. 2016 saw the default of two prominent bond issuers: Swiber Holdings Ltd and Pacific Andes Resources Development Ltd, to the dismay of Accredited Investors ("AIs") who had invested sizeable sums in buying bonds issued by the aforementioned two parties.¹ The Accredited Investor scheme attracted significant attention as some of the AIs attributed their misfortune to the scheme.² In the words of an affected investor, one may not “understand the full consequence of being an accredited investor” as it could be “a grey area”.³

The Accredited Investor Scheme in Singapore

2. Individual AIs, which this article concerns itself with, are typically individuals with a higher capacity for investment exposure as compared to the typical retail investor. The AI status opens doors for the investor to invest in a greater variety of financial products (possibly more complex with varying degrees of risk) which are not offered to the typical retail investor. The Swiber bonds, for example were offered to AIs on the “wholesale” market.⁴

3. Recent amendments to the Securities and Futures Act⁵ ("SFA") and proposed amendments to the Securities and Futures (Prescribed Specific Classes of Investors) Regulations 2005⁶ will refine the qualifying criteria for individual AIs such that it will include the following persons:

   a. Individuals whose net personal assets exceed SGD 2,000,000 or its equivalent in foreign currency or such other amount as the Monetary Authority of Singapore ("MAS") may prescribe, the value of their primary residence not accounting for more than SGD 1,000,000 of net personal assets, such value
calculated by deducting any outstanding amount on any credit facility secured from the residence from the estimated fair market value of the residence;\(^7\)

b. Individuals whose income in the preceding 12 months is not less than SGD 300,000 or such other amount as MAS may prescribe in place of the first amount;\(^8\)

c. Individuals whose financial assets as legislatively defined net of related liabilities exceed SGD 1,000,000 or its equivalent in foreign currency or such other amount as MAS may prescribe in place of the first amount;\(^9\)

4. Importantly, proposed amendments to the Securities and Futures (Prescribed Specific Classes of Investors) Regulations 2005 will ensure that individuals who prima facie qualify for AI status will have the option to “opt-in” or “opt-out” of the scheme depending on whether they are already existing AIs.\(^{10}\) This allows AIs to come under the regulatory safeguards offered to non-AI retail investors, to which we now turn.

B. Regulatory Safeguards for Non-AI Retail Investors

Mandatory Licensing Requirement

5. The Financial Advisers’ Act\(^{11}\) ("FAA") imposes a requirement for all financial advisers to be licensed unless they are exempted by specific provisions.\(^{12}\) This licensing function ensures (inter alia) that: (1) the financial adviser is financially sound and has the proper indemnity insurance policies to serve as asset cover;\(^{13}\) (2) the employees and officers of the financial adviser have the necessary ethical and educational qualifications to function as financial advisers, being fit and proper persons for their roles;\(^{14}\) and (3) the financial adviser adheres to all lawful orders and regulations governing its operations and puts in place strong internal compliance functions as well as effective controls to mitigate potential conflicts of interests that may arise from the performance of its day-to-day duties.\(^{15}\)

6. AIs derived limited protection from the mandatory licensing requirements due to the availability of exemptions related to the advisory of AIs. For example, a resident in Singapore who acts as a financial adviser to not more than 30 AIs on any occasion by giving advice directly or “through publications or writings or by issuing or promulgating research analyses or research reports, concerning any investment product (other than life policies)\(^{16}\) is exempt from the licensing requirements. An exemption also exists in respect of giving advice or analysis on bonds to an AI.\(^{17}\)

Corporate Accountability, Key Product Information, and Product Disclosure

7. In keeping with a disclosure-based capital market regime in Singapore, the SFA generally requires that an offer of securities should be accompanied by a prospectus in compliance with prescribed requirements to be lodged with MAS,\(^{18}\) unless the offer is specifically exempted under the SFA. The prospectus is expected to contain the highest standards of accuracy and should contain all information that investors will “reasonably require to make an informed assessment” of the security as an investment product including the financial position and performance of the issuer.\(^{19}\) The requirement that such prospectus should be signed by the director or equivalent person of the issuer or by the person making the offer (in a case where the offeror is not the issuer) reflects the standard of accountability that key officers of the issuer or offeror must maintain in committing to a fair and transparent capital market for investors.\(^{20}\)

8. The FAA and Financial Advisers Regulations ("FAR") also work in tandem with the SFA to impose several obligations on the licensed financial adviser, its representatives and supervisors for the benefit of non-AI investors. Section 25 of the FAA embodies a ‘product-disclosure’ obligation on the licensed financial adviser mandating disclosure to clients and prospective clients all material information relating to any designated investment product it recommends including: (1) the terms and conditions of the designated investment product;\(^{21}\) (2) benefits and risks, or likely benefits and risks arising from the product;\(^{22}\) and (3) premiums, costs, expenses, fees or other charges that may be imposed in respect of the product.\(^{23}\) This obligation is fleshed out in greater detail by MAS’s Notice on Information to Clients and Product Information Disclosure which further clarifies that clients are to be furnished with information such as the nature and objective of the product, the level and duration of financial commitment required of the client, and details of the product provider.\(^{24}\)

9. s 27 of the FAA also imposes an obligation on the licensed financial adviser to have a ‘reasonable basis’ for making investment product recommendations to persons who may reasonably be expected to rely on
such recommendation. This essentially requires that the licensed financial adviser should conduct ‘Know-Your-Client’ ("KYC") exercises designed to understand the investor’s investment objectives, financial situation and particular needs. The due diligence effort is buttressed by corresponding provisions in the FAR which require the financial adviser to carry out a due diligence exercise to ascertain whether new products are suitable for targeted clients in accordance with the evaluative criteria specified in paragraph 18B(2). Similar language contained within the MAS Guidelines on ‘Fair Dealing – Board and Senior Management Responsibilities for Delivering Fair Dealing Outcomes to Customers’ reinforce the point that pre-rollout product suitability and investor-specific concerns should be manifestly addressed.

10. Licensed financial advisers are exempt from the requirements of ss 25 and 27 of the FAA in respect of advising or recommending products to AIs. Even so, it is necessary for the licensed financial adviser to disclose to such AIs concerned that it is under such exemption. This basic disclosure requirement helps the AI appreciate the contrast between the duties owed to a non-Al retail investor and himself, and provides a basis for further investigation into product viability vis-à-vis the investor’s risk appetite, financial health and investment horizon. While the Fair Dealing Guidelines promulgate best practices for the financial services industry in general, the AI should note the lack of regulatory bite in the form of penalties for non-compliance. Optimists will argue that market competition inevitably levels the playing field for AIs as financial services providers compete to attract AIs by offering higher standards of service and transparency above and beyond the regulatory baseline, given that AIs logically gravitate towards service providers with a higher commitment to investor protection. Realists will nonetheless mark the possible presence of information lag, infrastructure or operational stress, and various other market factors which may impede the development of ideal market practice.

**Mandatory Internal Controls: Balanced Scorecard Framework and Internal Sales Audit Unit**

11. The FAA also offers non-Al Investors an additional layer of protection in the form of mandatory internal controls that the licensed financial adviser must institutionalise. For instance, licensed financial advisers are to establish and adhere to a remuneration system modelled after Balanced Scorecard Framework ("BSF"). The BSF integrates a mix of financial and non-financial measures for assessing performance and reward across business operations, combines them and establishes their legitimacy and effectiveness in setting compensation. The remuneration system aims to

... align the interests of FA representatives and supervisors with that of their customers and minimise conflicts with customers’ interests that are inherent in volume-based remuneration.

12. Section 38 of the FAA also requires non-exempted licensed financial advisers to establish an independent sales audit unit ("ISA Unit") to be staffed by individuals with the necessary qualifications prescribed by the FAA and MAS. The ISA Unit conducts reviews every calendar quarter comprising document checks, mystery shopping exercises and client feedback checkpoints for infractions committed by representatives of the licensed financial adviser. These infractions include: (1) recommending unsuitable investment products for clients with little regard to the fact find process; (2) recommending switching to investment products for the representative’s benefit; (3) failure to provide product-related information which would have had a material impact on the client’s decision to purchase the product; (4) failure to execute the client’s instructions without valid cause resulting in material losses; and (5) acts of gross negligence or serious misconduct.

13. The internal controls mentioned in the preceding paragraphs will be of obvious interest and attraction to retail investors. They promote investment service fidelity and assure that the financial adviser has a strong internal mandate to put customers’ interests at the fore. Such internal controls are important in the aspiration towards the fair dealing outcomes envisioned by the MAS. Even so, licensed financial advisers are exempted from these requirements in respect of AIs. From one perspective, the exemptions for specific categories reduce transaction costs, resulting in savings which can ultimately be passed on to the AIs – the BSF and ISA framework have been described as “resource-intensive” in terms of setting up and operational requirements. Reducing turnaround time for processing transactions in respect of the specified exempted categories also accelerates investor-based financing and supports the growth of larger capital markets. It is then for the AI to carefully appraise his risk appetite and financial objectives in determining whether the exemption from such protective provisions are balanced by the benefits to be derived under the AI scheme.
C. Considering Investor Re-Classification and Review

Investor Re-classification and Monitoring

14. An individual’s net worth and financial health typically varies over the course of his investment time-span. There may be certain retail investors who, having previously met the requirements for the AI scheme and opted into it, subsequently fall short of the quantitative requirements in terms of wealth and financial assets. Is there then a duty to carry out a re-assessment of such investors’ eligibility and on whom does this duty lie?

15. The current provisions of the SFA are silent as to a re-classification situation. Nonetheless, one may appreciate the implications that may follow if an investor continues to be exposed to financial products and risks that he should not be privy to under eligibility requirements. When investments take a turn for the worse, it is not difficult to imagine that some investors may second-guess their existing level of categorisation and challenge the validity of the financial adviser’s classification as well as the validity of investment decisions made whilst under that classification.

16. In 2015, MAS responded to queries on whether “a client’s opt-in to AI status must be reviewed every two years and if clients would be required to provide a new written “opt-in” confirmation during the periodic review”. The response was unequivocal – financial institutions are expected to monitor if an investor continues to meet AI thresholds. MAS further suggested that the review of such status could be worked into existing processes in place for periodic account reviews under the MAS Notice on Prevention of Money Laundering and Countering the Financing of Terrorism, and that financial institutions should “minimally remind clients of their AI status and their right to opt-out of such status at any time”.

17. It seems that whilst the onus remains on the investor to assess his own suitability for the scheme in light of his financial objectives and circumstances, there should be a complementary effort by financial institutions to monitor the status of AI investors and provide necessary reminders of their options at periodic intervals. As a matter of good practice, financial institutions should not be too quick to assume that all AIs possess by default the necessary experience and knowledge to understand the implications of the scheme.

D. Conclusion

18. The amendments to the AI scheme will be welcomed by AIs who desire a higher level of regulatory clarity and oversight. Grappling with the concept of the ‘sophisticated’ investor always raises difficult questions of categorisation and appropriate bounds of protection. While the present changes represent a right step towards fair and responsible financial markets, all investors should take the reins of their investment choices and remain accountable for their own choices. In this respect, knowledge represents the best armour against unwise investment decisions with long-lasting consequences.

Notes

1 Wong Wei Han “Choppy bond market raises questions” The Straits Times, 22 August 2016.
3 Ibid.
5 Securities and Futures Act (Cap 289, 2006 Rev Ed). The amendments had not yet come into force at the time of writing.
6 Securities and Futures (Prescribed Specific Classes of Investors) Regulations 2005.
10 Draft Legislative Amendments To The Securities and Futures (Prescribed Classes of Investors) Regulations 2005 – Amendments To Definitions of “Accredited Investor”, “Institutional Investor” and “Expert Investor” s 2A.
12 Financial Advisers Act (Cap 110, 2007 Rev Ed) s 6(1). The regulatory safeguards discussed in this paper are neither exhaustive nor representative of all the protections offered under the SFA.
Securities and Futures Act (Cap 289, 2006 Rev Ed) s 240(4A).
Supra n 28.
In contrast, penalty provisions for non-compliance with ss 25 and 27 of the FAA exist in the form of ss 25(5) and ss 27(5) respectively.
Supra n 37 at para 3.2.2.
Supra n 37 at para 4.5.
Financial Advisers Regulations (2004 Rev Ed) S462/2002 para 34A(1)(d)(i). Exemptions also exist for other categories of dealings as stipulated by para 34A such as for the provision of only factual service and where no recommendation or advice is provided by the financial adviser or its representatives.
MAS Response To Feedback Received – Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets para 6.41.
MAS Response To Feedback Received – Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets para 6.42.
Supra n 41.
Tech Start for Law Spotlight: CLIO: Making Lawyers Efficient, Paperless and Mobile

The Tech Start for Law ("TSL") program, launched on 1 March 2017, is a joint initiative by Law Society, Ministry of Law and SPRING Singapore. It provides funding support of 70% of the first-year cost of adopting technology products for practice management, online research and online marketing to Singapore law practices.

To-date, more than 70 law firms have successfully tapped on the TSL to subsidize their adoption of legal technology tools.

Here we spotlight one of the more popular practice management tools approved for funding support under the TSL program, CLIO practice management system (PMS).

CLIO is a cloud-based PMS with over 160,000 users over 76 countries, the most popular in the world today.

CLIO Users in Singapore

There are more than 45 law practices using CLIO in Singapore.

CLIO is especially popular with boutique law firms, headed by progressive and enterprising partners.

The archetypal Clio law firm is forward-looking, with 1-8 persons, and led by experienced practitioners between 35 – 50 years of age. Despite having cut their teeth working at well-resourced mid-size or large law firms, they recognise that things can be done differently, and, when they start their own practices, opt for modern, paper-less, technology-driven set-ups, where Small is the New Big.

Clio lawyers run very lean practices with minimal (1 staff for every 3 or 4 or even 5 lawyers) to no (if a solo practice) support staff. They engage outsourced services on an as-need basis, such as bookkeeping, bulk digitizing, printing, trial bundling support services.

The office is likely to be a virtual office, or a co-working space with shared receptionist and meeting rooms. Needless to say, you won’t see paper stacks in these firms; their default paper management protocol is scan and shred.

For these practitioners, good technology is a key pillar of their practice.

They love Clio’s clean modern eye-candy interface and rich features (which go well beyond the more accounting focused functionalities in other PMS). In place of paper files bound with pink string, they save and retrieve all case related information – including tasks, calendar dates, documents and emails related to a case – into and from Clio.

They use Clio’s automated time recording, disbursement and automated bill generation functions to reduce time spent on financial administration, and Clio’s client account management functions to ensure compliance with the Solicitors Accounts Rules.

These lawyers love being able to work from anywhere using the Clio mobile app. The ability to work on the go - retrieve documents, check client's details or invoice/payment/client account records, and to log time or record an attendance note - brings much freedom and productivity.

From a tech perspective, Clio is way ahead of its competitors in its third-party app integrations. Clio works well with email and calendars (Gmail, Office365), document management (Dropbox, OneDrive), accounting (Xero, Quickbooks), marketing and client intake (Lexicata), and many other applications. Clio makes its API (Application Programming Interface) publicly available, and Bizibody has used it to develop integrations with our other legal technology tools.

Challenges

Many Clio practitioners are established legal practitioners. This means they were trained in law firms where workflows were primarily paper-based.

Why did these lawyers decide to eschew traditional time-worn paper-based case management, and how did they overcome the initial challenges of working paperlessly, and learning Clio?
To better understand how Clio can benefit a law firm and the challenges moving from paper-based to paper-less practice, we invited several lawyers to share their experiences with running a technology driven, paper-less practice and how it has helped them to realise their vision for their practices.

Propelling a Personal Vision for Your Practice

Eden Law Corporation was established with the aim of ensuring access to justice. For them, doing good and running a successful legal practice are not mutually exclusive. They aspire to be the premier ‘low-bono’ firm in Singapore.

Earlier this month, they were awarded the AWARE Champions for Gender Equality and Justice award. June Lim, Founder and Director of Eden Law shares how Clio has helped Eden Law realise their low-bono vision:

“As Eden Law is focused on access to justice for underprivileged communities in Singapore, we recognised that we had to leverage heavily on technology to reduce costs so that the costs savings could be passed on to our clients. Hence, the firm was set up to be as paper-less as possible and in a manner that would allow our lawyers to work from anywhere. Clio is one of the key pillars of our paper-less practice, enabling us to access our client’s information, documents, invoices, outstanding monies owed etc. at any time. It also saves our lawyers time since we can enter our time costs after meetings or Court attendances on the go. The firm has grown in a short span of 2 years, and we have signed up for additional CLIO licenses, which allows us to build on our existing paper-less infrastructure in an inexpensive manner.”

Integro Law Chambers is a firm that believes that mediation should be the default first stop for couples contemplating divorce.

Its founder, Angelina Hing, spent 7 years as a District Judge in the Family Justice Courts and was involved in the Court’s initiatives to provide mediation and protect the well-being of children involved.

She explains her motivations for running a modern, paperless office, and how she overcame her aversion to technology.

“Making the move to set up my own family law practice was in itself a huge step for me. But I felt strongly that the conventional way of practising family law (in an adversarial fashion) had to fundamentally change. I wanted my practice to be more collaborative, and I wanted to offer my clients, including lawyers, the option of mediating at my offices even before commencing legal proceedings. To do that, I needed an office which was big enough to conduct private mediations. I also needed it to be clutter-free and be conducive for parties to talk through difficult issues. Clio is user friendly and competitively priced. The software is a good organiser for my client’s database needs. It is a cloud-based software, which means that I do not have to worry about updating it, and it conveniently allows me to access Clio from anywhere, with any device with a web browser to obtain information on my cases and even manage my appointment calendar offsite. My office gets updated right away with my updates offsite.

I decided to overcome my own aversion to technology and determine to learn the workings of the software from scratch. Of course, there were some difficulties in the beginning. But it is a matter of biting the bullet and working through them.”

Small is the New Big

Two commercial litigators from large Singapore law firms, who started solo practices with a vision to undertake high-value commercial litigation with minimal paper, space and support staff also shared how Clio has helped them realise their vision

Clio has become an indispensable practice management tool for my solo practice. It’s intuitive, well thought out and well designed, with just the right number of features. No unnecessary bells and whistles.

– Chua Sui Tong, Managing Director, Rev Law LLC

My main motivation to adopt a PMS was so I could save time by not having to deal with clerical and filing work, and lowering costs by not needing additional space for storage. It has made it possible to operate the firm without support staff.

– Derek Tan, Managing Director, Stoa Law,

Whilst technology is a great disruptor, it is also a great leveller and can bring significant opportunities to law firms willing to embrace technology and change the way they run their practice.

Studies have shown that going paperless could potentially reduce 66% of operating costs. However beyond cost
savings, Clio is helping these practitioners realise their vision for their law practice.

The TSL grant, which provides 70% funding of the first-year cost of adopting Clio PMS and other software, is available up to 28 February 2018. Contact Bizibody Technology Pte Ltd (<info@bizibody.biz>; Tel 6521 7022) to arrange a demo for your firm.

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Notes

1 In a diagnostic and analytical study conducted by Eden Strategy Institute, consultants commissioned by the Law Society on the technological needs of small to mid-sized law firms.
Content Marketing for Lawyers – The Secret Sauce to Grow Your Business

Content marketing has been important for law firms in winning new clients, keeping in touch with existing ones, and generating a presence in the market. With increased competition from international and local lawyers and a growing pressure for law firms to differentiate themselves in this crowded space, this is going to be critical going forward.

Producing more content (eg more articles, videos and editorial columns) is not the ideal solution. In the 2017 State of Digital & Content Marketing Survey¹, 96% of in-house counsel indicated that information overload was a problem in their efforts to consume information affecting their companies.

The answer to better content marketing is to produce quality content, package it appropriately and distribute it more effectively. Here are my thoughts on some easy ways to achieve that:

**Produce Quality Content**

**Focus on the Audience Not the Law**

You may have heard this many times from your firm’s marketing team – *Do not write in legalese, as this will alienate your audience*. This is a valuable reminder as it is always tempting to rely on industry speak, especially one which has had a long tradition. It is important to focus on your audience. A simple question to ask when you write your article is – Will my audience understand this and be engaged to read further? If the answer is no (or even maybe), rewrite the article and have this reviewed by a peer who is not from the legal industry. You should ideally be having a conversation with your audience and not talking at them.

Some have asked if this means “dumbing down” the content. The answer is no. It is about using relatable examples and language to convey your thoughts. The audience should not be made to struggle with the content due to the extensive reliance on legalese. It is far more challenging to write or present in a simple and precise manner, without industry speak.

**Do Not Make a Sales Pitch**

Content marketing and thought leadership are not sales pitches or advertisements, but a showcase of your firm’s insights which can solve your audience’s problems. Do some market research. Or if you are fortunate to have a knowledge and library team, have them conduct research to find out what topics are most important for your audience. Produce articles or posts that address these concerns with possible solutions, without giving away your winning move. Whilst you should not provide legal advice in a public piece, you should offer sensible next steps for someone who is looking for solutions. When the content offers meaningful, relevant and actionable insights, the selling will take care of itself through the expertise you share.

**Less is More**

Know that sometimes less is more – In a world where your target audience is suffering from information overload and reducing attention span, writing a 30-page analysis of a change in the law might not be the most effective use of your time. Depending on the topic, a short analysis will suffice and interested clients will contact you for more.

**Package the Content Appropriately**

**Have a Powerful Title**

Use clear, actionable words which connect with your audience to explain what the article or blog is about. For...
instance, “What impact will the Personal Data Protection Act have on your business?” is more powerful than “A legal discussion on the Personal Data Protection Act”. It should also answer the audience’s question of, “Why should I care?” or “What’s in it for me?”

**Make it Beautiful**

Make use of suitable images and branding to attract your audience to consume the content. In an article, a relevant image and white space between each subheading can help readers retain the information better and take a mental breather between the key points you are making.

At the same time, make it easy for clients to recall and share the content by using info-graphics. This graphical visualization image is a fast way of displaying information that can attract the attention and recall of your readers. Information compiled by MDG Advertising found that materials with compelling images can generate 94% more views than simple text. Furthermore, info-graphics can be easily shared across many platforms like e-mails, WhatsApp, LinkedIn, etc., making it easier to broaden your outreach.

**Less is More**

Avoid over-packaging the content. Use images only where relevant, minimise the use of fancy colours unless necessary (I have not found a compelling reason so far) and use only one font type throughout your content.

**Distribute the Content More Effectively**

**Time Your Content Well**

Link your content to the latest news. The most obvious ones include new laws or a proposed change in law that is under public consultation, but these are far from being the only chances to produce or refresh your content. Other opportunities include high profile business matters being reported by the media (e.g. fourfold increase in investments from China in ASEAN, increased counterfeiting in the region), use opportunities like these to highlight how an
existing law could be applied or interpreted. Even better, work with your marketing or PR team to gain new publicity outlets.

**Leverage External Media/Publications/Platforms**

Publishing with external media, publication and social media platforms can increase your content outreach. If you are looking to only target lawyers and in-house counsel, specialist platforms like the Law Gazette and LexisNexis will work well. For a broader outreach, platforms like AsiaLawNetwork.com, Singapore Business Review or the local press are good options. To amplify the outreach, you can also share these published content on your firm or your digital media platforms (eg LinkedIn, Twitter and increasingly, WeChat).

All of these will reach audiences beyond your existing contacts.

**Less is More**

Finally, less is more. If you are distributing your content via emails or digital media, spacing out the time between each campaign is important as it demonstrates your respect for your audience’s time and personal space. The worst outcome is one where your audience unsubscribes from your mailing list or “un-follows” your firm’s digital media platforms out of annoyance.

When it comes to content marketing, we need a more calibrated and sophisticated approach to engage your audience. Less is more in the age of information overload.

Once your content is ready and successfully marketed, you can consider other more advanced areas in content marketing, including Search Engine Optimisation (“SEO”), tracking click-through and managing feedback, which I will be happy to discuss over coffee.

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Roy Ang is passionate about marketing and business development in the legal and professional services sector, and was part of the pioneering batch of officers in the Ministry of Law and EDB’s Legal & IP Programme Office. He spent some time as the Deputy Head of Business Development in SIAC and conducted B2B sales in a major global recruitment firm. He currently heads up the Asia-Pacific marketing and business development function in Withers Worldwide and Wither KhattarWong - its Formal Law Alliance in Singapore.

**Notes**

1. <https://digitalandcontentsurvey.com/>
The New Family Practice

The Family Justice Practice Forum held in July 2017 highlighted the changing roles of family lawyers to peacemakers and constructive family lawyers.

This is not only a clear indication of shedding off the cloaks of litigation but offering novel, interesting and even challenging ways for family lawyers to innovate their practice. The timely focus on social sciences to understand issues relating to the effects of divorce on children and their development is refreshing and educational to family lawyers. The importance family lawyers place on acquiring soft skills in family mediation, collaborative family practice, child representation, parent co-ordination and cross-border family mediation can be seen in the well subscribed trainings over the last three years.

Creating awareness and receiving training is just the beginning of the new journey in family lawyering. The change of mindsets and the willingness to change the traditional practice of family law is the next big step for the Family Bar to take.

Traditional family litigation still remains and will remain, as not all divorces can be amicable divorces. However, the shift to assisting clients to achieve amicable divorces out of court is slowly growing traction. There still remains anecdotally an emphasis on litigation first and resolution later, if possible, by a section in the Bar.

How serious are we in achieving amicable divorces for our clients or are we just paying lip service to show appearances to keep up with the current judicial trends in amicable dispute resolution? Admittedly, the shift from litigation is difficult and the concern over a drop in revenue is worrying for lawyers.

A full time career as mediators or collaborative family lawyers seems like a very distant career goal now. Having spoken to American family collaborative and mediation lawyers over the last five years, I have learnt that it is a risk they took. They made a decision that they were not going to court. They slowly took less litigation cases and moved to doing more non-adversarial work.

These lawyers, including younger Australian and Canadian lawyers, took a few years to make the career switch. These men and women have shown that they can have successful careers, just as litigation lawyers seemingly do.

Locally, only Senior Counsel George Lim is known to have a full-time mediation practice. Besides the judicial shift, much can be done to create public awareness on how lawyers can achieve amicable divorces.

In his inspiring closing remarks at the Forum, President Gregory Vijayendran referred to family lawyers as healers. He also proposed setting up of multi-disciplinary family law practices. The family law eco-system does not only consist of lawyers and judges, but also mediators, child
representatives, parent co-ordinators, divorce coaches (as counsellors, psychologists, psychiatrists are known in the United States) and financial advisers who offer divorce financial planning as is done in the States.

We are at the beginning of a long road. It is no more about advocacy or training. It is time to create a road map on how to help divorcing couples, the children who are caught between their parents and the court system and to create a new family practice.

The Ministry of Social and Family Development, the Family Justice Courts and the Family Bar now must collaborate and become cohesive travel partners on this journey.

Create nationwide public awareness on how to salvage rocky marriages or to achieve amicable divorces. Establish a multi-disciplinary family practice where lawyers, mental health professionals and amicable dispute professionals can work together to assist couples. Instead of attempting mediation after proceedings are commenced in court, pre-court mediation can be included as part of the current Mandatory Parenting Programme before a spouse can file for divorce.

One of the major difficulties which clients and lawyers face during divorce proceedings is the high conflict the couple is in which affects their children and the conduct of court proceedings. Counselling must be extended beyond resolving child issues. Lawyers and the Court can work together to identify the specific issues faced by the clients and orders for counselling till the end of the divorce proceedings or when the emotional issues are resolved can be made.

It took us a long time to get to this current stage in the family legal system. I hope the next stage of our journey can start sooner or even now.
Remembering Our Consultant
Percy Cyril Sirisena Mendis

We are saddened by the demise of our Percy Cyril Sirisena Mendis. Percy departed earlier this year on 26 March 2017. Percy had been a Consultant with our Property Law Department from April 2006 until his death at the age of 77.

Percy’s passing was rather sudden as most of us, as well as his other friends, remember seeing him some days or weeks before his passing.

Percy was a quiet man, but an iconic figure, not only in the Property Law Department but throughout the whole firm. His knowledge and experience in Property Law was legendary and he never failed to share his vast knowledge with those who required assistance. Many young associates and fresh members of staff benefitted from his generous nature as he freely shared his experience and knowledge.

Lawyers from other firms would also seek him out, bringing their complex conveyancing problems to him and he would unreservedly share with them his views and solutions. He clearly understood what it meant to be in a fraternity. Percy had a strong sense of service and a grave respect for the law. We are grateful to Percy for his selfless assistance to clients and colleagues.

Percy also had a great sense of humour and a humility which defined him and his work. He was a fatherly figure in the Property Law Department and he never failed to inspire and boost the confidence of those around him. His sense of humour never failed to bring laughter and joy to the firm. And, he remained an active participant in firm life throughout his time with us despite the ailments attendant on account of his age. Percy would often join in our short firm trips, willingly participating and entertaining us with his jokes and good humour.

Percy began his working life as a teacher. As a lawyer, he continued the teaching profession’s finest traditions of sharing and caring. Being a man of great integrity, honesty and trustworthiness, Percy knew that we must always try to do for others what we wish they would do for us.

Dear Percy, your wisdom, guidance and the fond memories of you will be forever cherished. You will always be remembered by the Team at Tito Isaac & Co LLP. Farewell!

Colleagues from Tito Isaac & Co LLP
<table>
<thead>
<tr>
<th>Name of Deceased (Sex)</th>
<th>NRIC</th>
<th>Date of Death</th>
<th>Last Known Address</th>
<th>Solicitors/Contact Person</th>
<th>Reference</th>
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<tr>
<td>Yee Yau Meng (M)</td>
<td>S0024695F</td>
<td>13 April 2015</td>
<td>Blk 8 Jalan Batu #08-17 Singapore 431008</td>
<td>Ho Wong Law Practice LLC 6713 9333</td>
<td>WSC/ht/may 4079/15</td>
</tr>
<tr>
<td>Teo Pee Lian (F)</td>
<td>S0949602E</td>
<td>11 August 2017</td>
<td>Blk 533 Woodlands Drive 14 #07-577 Singapore 730533</td>
<td>Summit Law Corporation 6597 8362</td>
<td>2017081530/11</td>
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<td>Bhatt Krishna Chandra (M)</td>
<td>S2708817A</td>
<td>8 August 2017</td>
<td>Blk 73 Choa Chu Kang Loop #10-02 Singapore 689674</td>
<td>GSM Law 6969 7667</td>
<td>20170609-572</td>
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<tr>
<td>Seow Soh Chen (F)</td>
<td>S0022542H</td>
<td>18 July 2017</td>
<td>51 Everitt Road Singapore 428604</td>
<td>Summit Law Corporation 6597 8362</td>
<td>2017071474/11</td>
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<td>Tay Chwee Wai (M)</td>
<td>S0481969A</td>
<td>15 March 2017</td>
<td>19 Joo Chiat Avenue Singapore 428134</td>
<td>Straits Law Practice LLC 6538 1300</td>
<td>SP/LSF/yk/201700955</td>
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<tr>
<td>Fong Kim Pung Lillian nee Wong Loke Moy Lillian (F)</td>
<td>S0258233C</td>
<td>25 May 2017</td>
<td>52 Shrewbury Road Singapore 307829</td>
<td>Drew &amp; Napier LLC 6531 2447</td>
<td>JTLT/444599</td>
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<tr>
<td>Wee Sian Choo (F)</td>
<td>S0673727G</td>
<td>13 September 2017</td>
<td>Blk 702 West Coast Road #03-367 Singapore 120702</td>
<td>Cheong &amp; Koh 6226 4487</td>
<td>KBH/6002.17/may</td>
</tr>
<tr>
<td>Ong Kim Geok (F)</td>
<td>S0453166C</td>
<td>24 August 2017</td>
<td>Blk 315 Ubi Avenue 1 #02-397 Singapore 400315</td>
<td>Joo Toon LLC 6536 1009</td>
<td>LJT/0264/17</td>
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Law practices are encouraged to submit their Information on Wills requests via the online form available at our website www.lawsociety.org.sg > For Lawyers > Services for Members > Information on Wills. Using the online form ensures that requests are processed quicker and details published with accuracy.

Effective 1 January 2017, the rates for Information on Wills will be revised to S$107 per entry for law firms. All submissions must reach us by the 5th day of the preceding month.
Private Practice

Litigation Partner
Singapore 10-18 PQE
Global firm with a growing regional practice is looking for a Litigation Partner to join their Singapore practice. The partner will assist to spearhead their Disputes Resolution practice in Singapore and the region. The ideal candidate should be Singapore qualified, with at least 10-18 years of experience advising both local and international clients on a range of commercial litigation and/or arbitration matters, and a good understanding of the Singapore market. A portable book of business is required. (SLG 15805)

Corporate Partner
Singapore 10-18 PQE
International law firm with a strong international platform seeks a corporate partner to expand its corporate practice. Ideal candidate should be admitted to Singapore with strong corporate M&A experience and good commercial business acumen. (SLG 14870)

Trade Finance Partner
Singapore 8-15 PQE
A well-established regional firm with a global network is looking for a senior trade finance lawyer to join their team in Singapore. The lawyer will assist to spearhead their trade finance practice in Singapore and the region. The ideal candidate should be qualified in Singapore or a commonwealth law jurisdiction with at least 8-15 years of experience in banking finance work and a focus on trade finance work in Singapore or the region. (SLG 15859)

Senior Construction Associate
Singapore 6-9 PQE
Top international firm with a growing practice is looking for a senior associate to join their infrastructure team in Singapore. The lawyer will assist the partners in managing a broad range of non-contentious construction project transactional work. The ideal candidate should be either Singapore, UK or Australian qualified with at least 6-9 years of experience in project construction or real estate development work. (SLG 15707)

TMT Associate
Singapore 4-7 PQE
Top international firm is looking for a senior associate to join their TMT team in Singapore. The lawyer will assist the partners in managing a broad range of TMT related transactional and regulatory work. The ideal candidate should be Singapore qualified with at least 4-7 years of experience in advising on telecoms, IT or media related contracts or regulations. They are open to consider lawyers from private practice or in-house. (SLG 15881)

Junior Banking Finance Associate
Singapore 1-3 PQE
A global firm with a strong presence in the region is looking for a junior banking lawyer with at least 1-3 PQE to join their banking finance team in Singapore. The ideal candidate should be qualified in Singapore, Australian or UK, with some experience in banking finance transactional work gained from a top tier local or international firm. The successful candidate will be part of a team advising on cross border banking finance matters with focus on the South Asia market. (SLG 15818)

In-house

Head of Legal
Singapore 10-15 PQE
A leading regional healthcare service provider is looking for a senior legal counsel to manage and oversee its legal affairs based in Singapore. The lawyer will be solely responsible for advising the business on a broad range of matters across several jurisdictions, with a focus on advising on joint ventures and acquisitions, corporate strategy as well as general dispute matters. The ideal candidate should have at least 10 years PQE with strong experience in M&A transactional work. They are open to consider lawyers from in-house or private practice. Due to the nature of the role, Singapore qualification is required. (SLG 15871)

ASEAN Legal Counsel
Singapore 7-10 PQE
A leading regional F&B Company is looking for a legal counsel to oversee their fast expanding business in Singapore and the ASEAN region. The ideal candidate should have at least 7 – 10 years’ PQE, with good commercial and M&A experience, dealing with laws in different countries across St. Asia. Experience in the retail or F&B industry would be most ideal. Due to the nature of their business, Singapore or common law qualification with proficiency in Mandarin is preferred. (SLG 15718)

Commercial Counsel
Singapore 4-7 PQE
Major US listed company in the IT space is looking for a legal counsel to join their team based in Singapore. The Counsel will be part of a dynamic team of lawyers supporting the business across the APAC region where he/she will be involved in advising, negotiating and drafting a broad range of customer service related Contracts. The ideal candidate should have at least 4 – 7 years PQE with good corporate commercial experience, although they are open to look at good commercial litigators. They are open to consider lawyers from in-house or private practice. Due to the nature of the role, proficiency in Mandarin is required. (SLG 15575)

Regulatory Counsel
Singapore 3-6 PQE
Major Investment Company is looking for a corporate or regulatory lawyer to join their legal regulatory team based in Singapore. The lawyer will work closely with the business and transactional team to provide regulatory advice on a broad range of regulatory matters including anti-bribery, anti-trust, takeover code, and financial regulations relating to the company’s global Investments. The ideal candidate should have a Law degree with a minimum of 3 – 6 years’ PQE in either corporate finance or regulatory work gained from a top tier law firm. (SLG 15831)

Commercial Counsel
Singapore 3-5 PQE
Global leading commodities company is looking for a junior legal counsel to join their dynamic team in Singapore. Reporting to the Senior Counsel in Singapore, the lawyer will have primary responsibility for assisting the business units in Singapore and driving some of the key focus areas of the Legal Department. The ideal candidate should have a Law degree with a minimum of 3 – 5 years’ PQE, with a combination of law firm as well as in-house counsel experience with multiple jurisdictional exposure. (SLG 15690)

Junior Funds Counsell
Singapore 1-3 PQE
Global asset management house is looking for a junior lawyer to join their APAC legal team to be based in Singapore. Reporting to the Head of Legal, the lawyer will advise on all legal matters relating to funds distribution, regulatory and general corporate commercial matters in Singapore and also across the region with focus on Greater China. The ideal candidate should have at least 1 – 3 years’ PQE with understanding of and experience in funds work, although they are also open to consider lawyers with strong regulatory or corporate background. Due to the nature of their business, strong proficiency in Mandarin is required. (SLG 15535)

To apply, please send your updated resume to the following consultant in Singapore:

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Tel: +65 6557 4158
Email: j.lee@alsrecruit.com

Sunil Gopwani
Tel: +65 6557 4179
Email: s.gopwani@alsrecruit.com

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You should be a mid-career lawyer or legal counsel with 6 - 15 years' experience in legal advisory and documentation work. You must be a Singapore citizen and a legally qualified person. It will be advantageous if you have studied public international law or have some litigation experience. Appointment will be commensurate with your experience.

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Every month, JLegal examines the PQE of a senior in-house counsel. This month we talk to Dag Ove Solsvik, a secretly talented husband with an aversion to enforced team building.

- **What is your mind at the moment?**
  I really want to go home from the office...

- **What secret talent do you have?**
  My wife says that I am a talented husband (but she claims there is still some room for improvement). We keep it secret - she does not want word to get out.

- **If you weren’t a lawyer you would be a …**
  professional footballer and then a carpenter when I retire.

- **What is your idea of misery?**
  Some forced team building events can be quite miserable. Marching bands as well. A team building event that incorporates those two would be the worst - a team trying to be a marching band. Not so unlike the Norwegian national day.

- **What is the strangest thing you have seen?**
  A dish called “Milt/Shirako, Ginger Eupuma” made by my good friend Chef Markus - it was essentially made out of whale sperm as I understand...

- **Where is the best place you have ever been to?**
  I like so many places. As far as beach holidays go, I like Sri Lanka, Caribbean and Angra dos Reis in Brazil. My home town, Vestre Jakobselv, is also an amazing place - although don’t enter the water there.

- **What is your motto?**
  Victoria Concordia Crescit (It’s not really mine, I borrowed it from my football team).

- **If you could have one superpower it would be ...?**
  Turn water into wine - preferably a nice white Burgundy style wine.

- **What do you consider the most overrated virtue?**
  Obedience is overrated, especially in strict forms which leads to complete subordination.

- **What was your last Google search?**
  “Most overrated virtues”.

- **Which of the Seven Dwarfs is most like you?**
  I would say Happy. Some might say Sleepy.

---

**Dag Ove Solsvik**

Head of Group Legal, Middle East & Asia Pacific

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