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**8th Family Law & Children's Rights Conference**
**World Congress 2021: Through the Eyes of a Child**

***Family Justice in Singapore: A Defining Moment***
**12 July 2021**
**Keynote Address by Justice Debbie Ong**
**Presiding Judge, Family Justice courts**

Madam Halimah Yacob, President of the Republic of Singapore, Patron of the 8th World Congress on Family Law and Children's Rights,
The Honourable the Chief Justice Sundaresh Menon, Chief Justice of Singapore,
The Honourable Diana Bryant AO, QC, Chair of the Board of the World Congress,
Mr Yap Teong Liang, Chair of the LAWASIA Family Law and Family Rights Section,
Members of the Board of the World Congress,
Distinguished guests,
Ladies and gentlemen,

1. I am delighted to be a part of this World Congress Conference. We in Singapore had looked forward to hosting every participant on-site in Singapore last year. Unfortunately, we could not, but I am happy we can meet this way, across the miles and time zones.

2. The Conference theme, "Through the Eyes of a Child", resonates deeply with us at the Family Justice Courts. The driving reason for a specialist family court *is* the presence of children in the proceedings. Children may be the subject matter of court orders, yet they are not parties to the proceedings.

3. When the Family Justice Courts was established in 2014, our Chief Justice exhorted[1] us to assist families towards the path that will bring healing, like doctors diagnosing a problem and choosing the right treatment for restoration. Our aspiration is to help the parties to move away from a painful past and recast their family's future.

4. This Address is entitled "Family Justice in Singapore: A Defining Moment". In order to see why this is a 'defining moment', I will first share what sort of moments we used to have. Let me start with our early beginnings.

5. This year, 2021, is the 60th Anniversary of the enactment of our key Family Law statute, the Women's Charter. This statute has the title of 'Women's Charter' because of its place in an important part of Singapore's history.

6. In 1958, Singapore's Constitution was revised. It gave Singapore self-government and its people could elect their own leaders. In 1959, the political party, the People's Action Party,

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1 "… in this area in particular, judges need to be attentive to the way forward for the affected parties. In some respects, the judicial task can be likened to that of a doctor with a focus on diagnosing the problem, having the appropriate bedside manner to engender trust and convey empathy, and the wisdom to choose the right course of treatment so as to bring a measure of healing.": Keynote Speech by Chief Justice Sundaresh Menon, at the Opening of the Family Justice Courts (1 October 2014) at [24].

or 'the PAP', presented a manifesto that addressed the issues on the economy, housing, education, and employment.

7. The PAP promised to *raise the status of women*, uplift the economy, and increase the opportunities for education and employment *of women*. The Party was eventually successful in being the majority elected to lead Singapore in self-government.

8. To raise the status of women, local customary marriages which allowed polygamy had to be abandoned. The Women's Charter was enacted in 1961. It introduced monogamy, and largely provided for the equality of the legal status and rights of husbands and wives. The Women's Charter provided *one marriage law* for all, except for Muslims.

9. These events in history explain why our family law legislation is called the Women's Charter. This statute itself is a piece of our history, enacted during the birth of an independent Singapore, intimately connected with the development of a new nation.

10. I highlight one particular provision in the Women's Charter. Section 46(1) of the Women's Charter sets out our society's aspiration of how marriage partners should behave. It provides:

> "Upon the solemnization of marriage, the husband and the wife shall be mutually bound to co-operate with each other in safeguarding the interests of the union and in caring and providing for the children."

11. The other subsections in s 46[2] go towards fulfilling the promise to raise the status of women, providing for the wife's equal status in a marriage.

12. The role of s 46(1) is, in some way, like that of a 'mother provision', a sort of 'higher order provision' within a statute that regulates many aspects of family life. There is no specific punishment or remedy for a breach of this provision. Yet s 46 remains a legal provision of immense importance.

13. It sets out the very core obligations of the husband and wife. As it imposes a duty on spouses to safeguard their union, it would be reasonable to expect from both spouses, real efforts at resolving their disagreements amicably and to treat each other with respect. Where spouses are also parents, they must not let their conflict hurt their children. These are legal obligations; they are not just relationship advice.

14. *If*, unfortunately, the spouses reach a point where safeguarding the union becomes unachievable, the law allows a different course of action, but one which still mirrors the same goal, that is, it allows a divorce, but one which should cause the least bitterness and

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[2] 46.—(1) Upon the solemnization of marriage, the husband and the wife shall be mutually bound to co-operate with each other in safeguarding the interests of the union and in caring and providing for the children. (2) The husband and the wife shall have the right separately to engage in any trade or profession or in social activities. (3) The wife shall have the right to use her own surname and name separately. (4) The husband and the wife shall have equal rights in the running of the matrimonial household.

trauma for the family. Because children still need their parents to care and provide for them, a divorce does *not* entirely end the relationship between divorced spouses in their capacity as parents to their children.

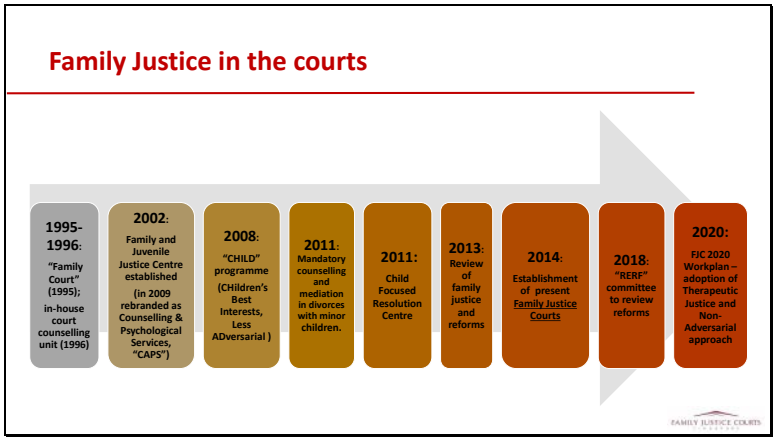
15. Thus, the second part of s 46(1), the obligation "in caring and providing for the children" endures *beyond* divorce – and the family justice regime can demand that this legal duty be discharged by separated parents.

16. Requiring bitter ex-spouses to be cooperative might seem to be an oxymoron, a contradiction in reality, but if we look through the eyes of a child, this is exactly what the child needs. And if we believe that the child's needs are paramount, then we cannot simply accept that the parties need not cooperate, that they need not behave better because it is hard for them.

17. Professor Leong Wai Kum, a leading family law academic in Singapore, exhorts in a discussion on s 46(1): "The law cajoles spouses to try to reach the ideal but refrains from trying to punish each failure. The courts may astutely use every appropriate opportunity to affirm the legal exhortation.".

18. Indeed, punishing every failure within the context of family relationships does *not* sit well with our endeavours to support healing and recasting of a positive future. On the one hand, the law should not be too quick to intrude into family relationships which are rather intimate in character. On the other, family law must be 'interventionist' to *some* extent, because there is a cost to the children's welfare when marriages break down.

19. Our family justice system has evolved over the years to achieve a *less adversarial and more supportive* journey for divorcing families. I share some milestone developments in this chart:




20. The court system has developed over the years to bring our family law principles into the practical journey of divorce.

21. The very first form of the 'Family Court' was established in March 1995 as one of the divisions in the Subordinate Courts of Singapore. It handled cases relating to maintenance, family violence and adoption. The next year, in 1996, jurisdiction to hear matters relating

to guardianship, custody, nullity, divorce and ancillary matters was transferred from the High Court to the Family Court. In the same year, an in-house court counselling unit was set up. Court counsellors provided short-term counselling in divorce cases to help parties to manage their emotions, explore reconciliation, and assist parties in reaching informed decisions. They provided support to family members involved in domestic violence, carrying out risk assessments and facilitating safety plans. They also prepared evaluation reports on child custody and access to assist the court.

22. In March 2002, the Family and Juvenile Justice Centre, or FJJC, was established. The FJJC's multi-disciplinary team included social workers, counsellors, psychologists and mediators. In 2009, FJJC's psychological and counselling unit was rebranded as the Counselling and Psychological Services or 'CAPS' for short.

23. In 2008, the CHILD Programme was launched. CHILD was the acronym for the 'CHildren's Best Interests, Less Adversarial' programme. The programme aimed to achieve a less adversarial and more expeditious hearing of disputes involving children. It had an intentional focus on the best interests of the child. The CHILD Court facilitated greater participation by the parents, and was supported by the court's Family Counsellor. The Family Court Judge would take an active role in the conduct of the hearing. The parties and their lawyers sat around a specially designed table, which encouraged face-to-face communications between the parties. The parties would take their oath at the same table and could give evidence there, seated or standing up. The CHILD Court was effective, but resources could not sustain its long-term use.

24. In January 2011, Parliament amended the Women's Charter to provide for *mandatory counselling and mediation* for divorcing couples with minor children. In September 2011, the Child Focused Resolution Centre ("CFRC") was set up. Family Court judge-mediators, family counsellors and court administrators work within the CFRC to assist divorcing parties with minor children.

25. These efforts over the years were endeavours in building a multi-disciplinary approach which included inputs and support from psychologists and counsellors.

26. In 2013, the Chief Justice appointed a committee to review the family justice system in Singapore. Acrimonious litigation of family disputes was a problem that needed to be addressed.

27. Pursuant to the recommendations in this Committee's Report, the Family Justice Courts was established in October 2014. The Family Justice Courts comprised the High Court Family Division, the Family Court and the Youth Court. The new Family Justice Act was enacted, and the Family Justice Rules followed suit. The Family Justice Courts adopted a "judge-led approach" to ensure expeditious proceedings and this meant a more pro-active management and conduct of family proceedings by specialist family judges.

28. The reforms arising from the 2013 Report were reviewed for further enhancement in 2018 by the Committee to Review and Enhance Reforms in the Family Justice System, called the "RERF Committee" for short. As Presiding Judge, I co-chaired this committee with the

Permanent Secretaries of the Ministry of Law and Ministry of Social and Family Development. This enabled wider enhancements to be made in an area which needed a multi-disciplinary approach beyond legal remedies.

29. In 2020, I shared the Workplan of the Family Justice Courts to adopt a *non-adversarial* system which delivers *Therapeutic Justice*.

30. In my Workplan Address last year, I quoted from an article that "Divorce should be no worse than a re-organisation of family members' living arrangements and the divorced spouses should still be able to continue to discharge their parental responsibilities with some degree of co-operation.".[3]

31. Spouses whose marriage has broken down can obtain a divorce but they must do so in a way that will enable them to still co-operate to the highest degree possible in discharging their parental responsibilities to their children.

32. The family justice system should be a *non-adversarial* one – a system that is "*problem solving*". It will seek to deliver "Therapeutic Justice" or in short form, "TJ".

33. TJ is a lens of 'care' through which we look at the extent to which laws, rules, legal procedures, practices, and roles of the legal participants produce helpful or harmful consequences. A TJ system builds the 'hardware' structure and the 'software' resources that will ensure therapeutic, helpful effects. This is so that the parties can find healing and a way forward.

34. We are building training programmes to equip our judges and lawyers to practise in this TJ environment – they are examples of TJ 'software'. It is important that we also ensure that the TJ 'hardware' – the court system itself with its rules and processes – support the software. Both are vital to produce the therapeutic effects we aim for.

35. The essence of TJ and the reason we adopt it is for parties to be enabled to find healing and a way forward. The non-adversarial system is the 'hardware', the structure, in which we believe is required to achieve the delivery of TJ.

36. This aspiration to move towards a more harmonious resolution of family disputes began years ago.

37. About 2 decades ago, major amendments to the Women's Charter strengthened the law and the aspirations towards a less adversarial resolution of disputes. Section 50 provided that a court may give consideration to the possibility of a *harmonious* resolution of the matter and may, where the parties consent, refer the parties for *mediation.*

38. It may take many years to fully achieve what s 46 in 1961 had first intended. For all of us working in Singapore's family justice system, it has been a long journey of never resting on

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[3] Leong and Ong, "Family Justice in Divorce Proceedings in Singapore for Spouses and Their Children", *Journal of the Malaysian Judiciary* (2020).

what has been achieved, and never pausing just because something appears impossible. One example comes to mind.

39. It used to be thought that if parents were in high conflict, they would not be able to make joint decisions, so it was the lesser harm to have just one parent make important decisions for the child. In a 1995 decision, the High Court remarked: "Sometimes it is better for a decision of sole custody to be made, even if it turns out that the perfect option is not chosen, rather than for the matter to be the subject of conflict between the parents.".[4]

40. Then, there was resistance to joint custody, which was the authority for both parents to make joint decisions in important matters relating to the child. Sole custody was frequently ordered where parties appeared acrimonious or unable to cooperate. Sole custody meant that one parent could exclude the other parent from making major parenting decisions.

41. But, in 2005, our highest court in Singapore, the Court of Appeal, took a different step, a brilliant one if I may say so.

42. In the judgment of *CX v CY* in 2005, the Court of Appeal stated in no uncertain terms that:

> "… the preferable position in the law of custody is … to preserve the concept of joint parental responsibility, *even if* the parties may harbour some acrimony towards each other. Often, advocates … rely on the acrimonious relationship of the parties to argue that joint custody will be detrimental to the welfare of the child. However, they fail to appreciate the fact that *some* degree of acrimony is to be expected when parties are undergoing the stresses of a marital breakdown. … the time when the marriage breaks down may not be the best time to assess whether both parents can co-operate for the rest of the child's life. …. It is a … leap in logic to assume that the parties' inability to co-operate during the period of divorce … equates to an inability to agree on the future long-term interests of the child.".[5]

43. Since this landmark decision, it has been widely accepted that joint custody is in the child's welfare and *is* the recognised *norm*. Sole custody is the exception. This remains our law today.

44. Yet I am aware there may be naysayers who continue to doubt: if divorcing parties are so full of acrimony and deep hurts, is it realistic to expect them to take a cooperative approach to parenting? Is it realistic to require that they do not behave as adversaries in court? Should parents be deprived of a good fight in court?

45. An enlightening development in our family law jurisprudence shows us the way.

46. In the very recent decision of *VDZ v VEA*[6], the Court of Appeal held that:

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4 *Albert Yeap alias Yeap Beng Yong v Wong Elizabeth* [1998] SGHC 97 at [16].
5 [2005] 3 SLR(R) 690; [2005] SGCA 37 at [36].
6 [2020] 2 SLR 858; [2020] SGCA 75 at [77].

> "TJ is not merely an ideal; it is a necessity and is intensely practical. … [*R*]*elationships* constitute the very pith and marrow of a family. When familial relationships break down, those relationships … are damaged. Such damage cannot be repaired (completely …) by … material recompense; *healing* needs to take place. … [H]ealing cannot even begin to take place if the parties … are in an antagonistic relationship – still less when parties wage war against each other. … [A] kind act begets a kind response while a nasty act inflames the other.".

47. For more than 2 decades, counselling and psychological support services have always been provided as a key part of the family's divorce journey in the Family Court. I have shared briefly the milestone developments over the years – adopting a multi-disciplinary approach is not new; providing counselling and mediation isn't new. But as long as these come within an adversarial system, the full positive effects of such beneficial services will always be undermined.

48. A counsellor might encourage the parties to "let go" of past hurts and vengeful thoughts, to look instead towards healing and co-parenting. Yet, at the very same time, if the parties are receiving antagonistic letters in the course of their adversarial litigation, it would be hard to think about forgiveness and letting go; instead, it would be very easy to think about writing even more hostile letters to your spouse (who is about to be your ex-spouse).

49. The adversarial system undermines healing and the therapeutic aims of support services. The two 'tracks' must align. We cannot give with one hand and take away with the other. If TJ is our aim, there is no place for inflammatory letters, no place for adversarial court battles.

50. This defining moment in our journey of family justice abandons the adversarial system, in a country where its long-standing legal system is the traditional common law adversarial legal system.

51. Our family judges and lawyers have been trained in the adversarial system. How do we embrace this somewhat unfamiliar way, maybe even uncomfortable way of practising? A client may be upset with her lawyer who refuses to write an aggressive letter to the other spouse. What can the lawyer do? We need new skills to be effective in this environment. Lawyers and judges must move ahead with the same mind and will.

52. I envisage that our family law jurisprudence itself will develop in line with these aspirations.

53. The judgment of the Court of Appeal that I have just quoted is a truly significant jurisprudential development. Not only is TJ adopted as a necessity, the Court of Appeal instructs that parental responsibility is crucial to the child's welfare. Let me highlight the following passage in the judgment:

54. The Court of Appeal continued in the same judgment[7]:

> "… what occurred in the present case was an extreme example of such warfare. The consequences of such an approach are negative in at least two ways.
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> First … healing cannot even begin to take place. And without such healing, parties (and their children) will find it extremely difficult, to say the least, to move forward with their respective lives.
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> Second, the damage that results will impact not only the former spouses but also the children. … [T]he parties and the court always act in the best interests of the child – phrased as a legal principle, the welfare of the child (or children) is paramount. … It is unfortunate that the children were forced to pick sides and turned against their father, with whom they previously had a healthy relationship. … However, the wonderful thing about life is that it is never too late. We would urge the mother to reflect seriously on her life as well as future actions. ... We hope that she can put aside her negative attitude and emotions and *encourage the children to restore their relationship with their father*. …It undoubtedly requires courage to take this positive step on behalf of the children…."

55. This passage highlights what it might take to uphold the child's welfare: *the child's best interest is intimately entwined with the proper discharge of parental responsibility*. To have the children pick sides and suffer a conflict of loyalty is failing to discharge parental responsibility. The parent who shows disappointment or even anger when the child tells him or her that she had a wonderful time with the other parent undermines the child's welfare.

56. The Court of Appeal was fully aware of the depth of acrimony but still exhorted the parties that it was never too late, and both parents should take courage to do what is needed for the sake of the children.

57. One ubiquitous legal principle in most family law systems is that the welfare of the child is the paramount consideration. Article 3 of the UN Convention on the Rights of the Child states that "In all actions concerning children, …the best interests of the child shall be the primary consideration".

58. Parties and lawyers seeking orders over children *know* the welfare principle very well. They cite it to the court to support their arguments, for example, that it is in the welfare of the child to spend more time with *them* and not the other parent.

59. The welfare principle may have been used *too* casually, without thought, such *that its true meaning* has been lost to many. I explain what I mean by this in the following case:

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7 *Ibid,* at [77]-[79].

60. The case of *VDX v VDY*[8] was a High Court decision involving cross-appeals that revolved around only two narrow issues: first, which parent would have care and control of their youngest child during dinner time on Chinese New Year's Eve, and second, when the Father should return the youngest child to the care of the Mother after the year-end school holidays. These arrangements were not specified in the original order made *7 years* ago. For 7 years since the divorce, the parents had been able to work out such practical and specific arrangements themselves.

61. I discuss only the first issue: which parent will spend dinner time with the child on Chinese New Year's Eve. In Singapore, families come together on Chinese New Year's Eve for a 'family reunion dinner'. This dinner is an important tradition and of great significance to those who celebrate Chinese New Year. In the lower court, the judge took a pragmatic approach and ordered that the child could have an earlier dinner with the Mother, before joining the dinner at the Father's home later at 8.30 pm.

62. Both parties argued that the judge's order was not workable. Both submitted that the child and his siblings should not commute between two dinners, and that the district judge ("DJ") had failed to give due weight to the acrimony between the parents which made this arrangement untenable. The Mother submitted that alternating arrangements for dinner on Chinese New Year's Eve every year was the best way to achieve parity, while the Father submitted that the children should have dinner with him and his extended family, while the Mother could have lunch that day with the children.

63. The High Court held that:

> "The present issues, whether resolved in the way the Mother proposed, or in the manner the Father sought, would not significantly affect the welfare of the child ("C"). What *would* significantly *affect C's welfare* is the *parents' conflicts* and the *spirit* in which they carry out the orders. If the arrangements are carried out by each parent with the intent to ruin the time that the other parent has with the child, then the child's welfare is being undermined. On the other hand, either of the arrangements proposed by the parents, if carried out with a *supportive and cooperative spirit*, could and would go well, and *promote C's welfare*..
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> … Is one arrangement in the child's welfare while the other is not (or is less so)? Whether one arrangement might be more comfortable than the other for the child on Chinese New Year's Eve may in fact depend on the child's particular circumstances on that day, such as his parents' support, his mood, his school schedule, or as he gets older, his plans with his friends. What was important was that the arrangements proposed by the parents and the final arrangements in the [District Judge]'s order would not, between them, *significantly affect C's welfare in a fundamental way*.

[8] [2021] SGHCF 2.

> The Father also alleged that the Mother did not limit how much the Children ate when they had an early reunion dinner with her and the Children were too full to eat a second dinner. Such issues go into *how* the broad care arrangements are carried out and the point made above that it is the *spirit* in which the parents carry out the arrangements that matters. How each parent *supports their children and their time with the other parent* is part of discharging *parental responsibility*.". [9]

64. The child's welfare isn't only about where she eats her dinner and how her week is physically split up between the two parents, it is so much more than that – it is much about *the spirit* in which both parents discharge their parental responsibility. The discharge of parental responsibility is *critical* to the welfare of the child. *To speak of upholding the child's welfare without applying the legal requirement of parental responsibility misses something far too fundamental.*

65. If parental responsibility is integral to the child's welfare, the only way forward is to put in place a family justice system that compels the discharge of parental responsibility in s 46(1) which mandates that parents "are mutually bound to co-operate with each other … in caring and providing for the children", even after a divorce.

66. The journey towards that place where separated parents can cooperate is not easy. Waging war in adversarial litigation is the opposite of conduct that is responsible parenting. Practices such as sending provocative letters, filing affidavits that highlight the worst of each other, encouraging young children to file affidavits against a parent, all grate against healing and moving forward. We must ensure that the TJ 'hardware', the court structure with its rules and processes, supports the TJ 'software' of effective lawyering and supportive therapeutic services.

67. *This is a defining moment* because we are taking steps that will make a colossal difference to families and the children of divorce. Because we are "Looking Through the Eyes of a Child".

68. As defining moments go, they tend to require a lot of hard work, an enormous mindset change, … and courage.

69. My colleagues in the Family Justice Courts will share more on what our family justice system is and endeavours to be.

70. Thank you for having me participate in this conference. Thank you for being here with me, and may you enjoy every session in this conference packed with really important discussions.

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[9] *Ibid*, at [29] and [31].
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