Family Justice Courts Workplan 2016

6 April 2016

Keynote Address by Chief Justice Sundaresh Menon

A New Family Justice Paradigm

(I) Introduction

1 Family breakdown is an increasingly common phenomenon in many parts of the world. In Singapore too, we are seeing signs of family and community ties coming under strain, perhaps as a consequence of the increasing pace and pressures of life.[1] We have seen an increase in applications for personal protection against family violence.[2] Divorce rates too have risen, with more people seeking court intervention in the context of family disputes.[3]

2 Globalisation and the rising incidence of transnational work practices will add their own complexities to these trends. Families are becoming increasingly international in composition and context. We see cross-cultural and cross-national marriages to a growing degree.[4] This is unsurprising since Singapore is a choice

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1 Between 2009 and 2013 alone, the percentage of respondents to a survey on social attitudes of Singaporeans who indicated that their jobs were keeping them away from spending more time with their families increased from 47% to 55% (Source: Ministry of Social and Family Development) (cited in Dr Mathew Mathews and Assoc Prof Paulin Tay Straughan, Overview of Singapore Families presented at the Social Service Partners Conference 2015). Also see generally: Bahira Sherif Trask, *Globalization and Families: Accelerated Systemic Social Change* (Springer, 2010).

2 Since 1996, the number of applications for Personal Protection Orders and Domestic Exclusion Orders has nearly doubled: See Violence: Applications for Personal Protection Order (PPO)/Expedited Order (EO) and Domestic Exclusion Order (DEO) (available on <http://app.msf.gov.sg/Research-Room/Research-Statistics/Violence-PPO-EO-DEO-Applications> (accessed on 28 August 2015)) and "Protecting Families from Violence: The Singapore Experience" (Ministry of Community Development Youth and Sports) (October 2009) at p 12.

3 The annual ratio of marriage to divorce today is 4:1, compared to 13:1 in 1980: The figures for total marriages against total divorces and annulments in a given year are 22,444:1,721 (1980), 23,953:3,634 (1990), 22,651: 5,137 (2000) and 28,407:7,307 (2014) (see Statistics of Marriages and Divorces 2014 Report (Department of Statistics) (released on July 2015) at pp 23 and 65).

4 A Sustainable Population for a Dynamic Singapore: Population White Paper (January 2013) (National Population and Talent Division) at p 26.

destination for expatriates working abroad. Out of all the divorce cases filed between 2011 and 2015, the percentage of international divorces involving at least one party who is a foreigner increased from 31% in 2011 to 36% in 2013 to 40% in 2015. In terms of absolute numbers, international divorce cases increased from 1,929 in 2011 to 2,272 in 2013 and to 2,381 in 2015.

3 These are some aspects of the context in which we unveil the Workplan of the Family Justice Courts ("FJC") this year. In this Workplan, we grapple with the complexities of dealing with these trends in Singapore. As we continue the work we began on 1 October 2014 with the establishment of these courts, this year we also focus on the challenges of a growing international caseload.

(II) The Child

4 The child remains at the centre of our work. The Courts have consistently taken the view that the welfare of the child is our paramount consideration and will override any other consideration. This was reiterated by the Court of Appeal last year in *BNS v BNT*[5] when the court described this as the "golden thread" that runs through all proceedings affecting the interests of children. In that case, the Court of Appeal declined the mother's application for leave to relocate to Canada with her two children. In coming to this decision, the court had regard to the importance of maintaining the children's close links with their father in order to ensure their continued welfare.

5 This legal principle is soundly rooted in societal needs. Our young are the future of our society and we best protect our community's future by protecting them.

[5] [2015] 3 SLR 973.

Social science research suggests that divorce is the cause of a range of serious and enduring behavioural and emotional problems in children and adolescents and this view is now gaining wide acceptance.[6] In our Youth Court, for instance, it is evident that youths coming from families in which parents are separated, or from reconstituted families, are over-represented.[7] We must do what we can to ensure that the conditions required for children to develop to their full potential are preserved as far as possible despite the difficult circumstances they might find themselves in.

6 And yet, while the Court's jurisprudence is central in setting the standards for parents, we cannot carry the burden of dealing with the complexity of family breakdown on our own. For example, it is widely accepted that a child benefits from contact with both his parents and court orders seek to reinforce this approach. But research has shown that it is the *quality* of the relationship, not its frequency or quantity, that is significant in a child's post separation adjustment and well-being.[8] The point to be emphasised is that if parents engage in a continuous cycle of litigation, the conflict engendered by this will be detrimental to the child.[9]

Implementation of the Child Inclusive Resolution Process

7 Recognising this, we have thought hard about how the behaviour of parents might be affected in a positive way. At the Opening of this Legal Year, I spoke about the completion in July 2015 of a pilot study on the use of a child inclusive counselling and mediation resolution process.

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6 J.B. Kelly, & R.E. Emery, "Children's Adjustment Following Divorce: Risk and Resilience Perspectives" (2003) 52(4) Family Relations 352–362.

7 2013 and 2014 statistics show that 53% of all such cases have parents divorced or separated and 59% come from reconstituted families.

8 Cashmore, J, Parkison, P, & Taylor, A. (2008) Journal of Family Issues, 29(6), 707-733.

9 J. Eekelaar & M. Maclean, *Family Justice: The Work of Family Judges in Uncertain Times* (Oxford: Hart Publishing, 2013) at 176 – 181.

8 Let me elaborate on why this programme is different. Since its establishment in 1996, the Family Court's multi-disciplinary mediation and counselling services have consistently focused on the child, helping parents to come to arrangements that are best suited for the child. But the child inclusive process goes a step further to involve the child, with first a developmental consultation with the child to understand his experience and perspectives of the conflict between the parents, and then a therapeutic feedback conversation with the parents. The intention is to re-align co-parenting efforts by drawing the focus of the parents to the experiences of and consequences upon their children. Our hope is that in this way, we might be more successful in effecting behavioural change, than if we were to rely just on a negotiated agreement or an imposed order.

9 Seventy-five percent of the cases in the child inclusive pilot resulted in consensual resolutions. This settlement rate, while strong, is not the main advantage – indeed the rates for child focused dispute resolution (for a larger batch of cases) stood at 82% in 2013. What was more significant was that the study also found that the children perceived a reduction of the intensity of the conflict between their parents. This behavioural modification is what gives us hope that these children might yet have a nurturing future. Given the promising results of the child inclusive pilot study, the FJC have decided to implement it for all suitable cases this year. More court counsellors are being trained to become Child Consultants, and they are working collaboratively with Mediating Judges to implement the child inclusive resolution process.

Parenting Coordination

10 A second programme targeted at lessening the ongoing conflict between parents, Parenting Coordination, will be piloted in the second half of this year.

11 At one time, it was thought that divorce was a transition that children could easily recover from. Current research suggests that children require more time than was initially thought to be the case to regain their emotional equilibrium after divorce; indeed it could take up to five years.[10] Where there is on-going conflict between parents around the court access and care arrangements, this makes it harder for children. With high-conflict parenting situations, disagreements frequently arise over how access is to be carried out by the parent who does not have care and control of the child. This can give rise to a host of issues, including the location for access, the timing for handover of the children, or whether the child is allowed a playdate on that parent's access day. While these disagreements might appear to be trivial to the uninitiated, they can become a significant source of acrimony between divorced parents. And the children, who inevitably are caught in the middle, suffer developmental harm from the mental stress that this causes.

12 To help protect children in these disputes, the FJC will introduce Parenting Coordination to assist parents in their transition after a divorce. Parenting Coordinators ("PC") will provide practical help to resolve access issues in relation to the children. The FJC will work with the relevant ministries on the design of a local PC scheme that will facilitate access arrangements. A group of 24 lawyers have already been trained, and will assist in the pilot in the second half of this year.

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[10] Lamb, ME (1997). *The role of the father in child development* (3rd ed), New York: Wiley.

(III) Recognising the Special Needs of Family Justice

13 The importance of the child, a non-party in divorce disputes, is an especially notable aspect of the unique nature of family justice. But there are others as well. These include the high number of litigants-in-person in such disputes and the continuing relationships that reside at the centre of these disputes. At the same time, a family judge's role to look to the justice and equity of each case affords her a greater width of discretion than in many other types of cases.

Tailored Processes and Jurisprudence

14 Judges respond to this by seeking solutions that are reasonably predictable and workable even as we strive to be creative. This is reflected as well in the case law we develop. In *ANJ v ANK*[11], the Court of Appeal introduced a structured approach to deal with the differing financial and non-financial contributions that each party puts into a relationship when dividing the assets owned by parties. This was an inspired piece of judicial thinking that sought on the one hand to reiterate that marriage is a joint partnership of effort, while on the other hand, capturing in a fair way the significance of all the different kinds of sacrifices and contributions made by the parties throughout the lifetime of their marriage. What is especially commendable is that the framework laid down in that case is workable and can be applied by the parties themselves to reasonably anticipate the range of possible outcomes.

15 This sort of approach extends also to procedural justice and effective case management. Rule 22, planted when the Family Justice Rules came into effect on

[11] [2015] 4 SLR 1043.

1 January 2015, sets out the "judge-led process" used in family cases and gives wide-ranging discretion of the family judge on procedural matters in each case.

16 Rule 22 was highlighted in *TIG v TIH*[12] where the High Court pointed out that the statutory context in cases concerning ancillary reliefs allows a family judge a wider discretion than is afforded in other civil cases when considering matters of evidence, discovery and cross-examination; and in exercising that discretion, judges ought to consider the specific features of family cases, where the costs being incurred as a result of protracted proceedings almost always come out of the very assets sought to be divided.

17 In *JBB v JBA*[13], the High Court pointed out the need to have regard to some of the special features presented by family cases when determining the question of costs. Courts should not focus only on who had "won" the case as would be the case in many other civil cases where costs follow the event. Rather, it will also be relevant to have regard to the conduct of the parties, and whether such an order would further increase the hostility between the parties which in turn could affect their ability to co-parent effectively.

18 The continuing parent-child relationship was also considered in *TCT v TCU*[14], where it was held that a summons for interim maintenance ought not to be filed in the course of a divorce where there has been no failure to maintain one's spouse or child reasonably.

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12 [2015] SGHCF 12, at [26].
13 [2015] SGHCF 6.
14 [2015] SGHCF 3.

19 Some of these cases have not yet been commented on by the Court of Appeal and it is not my place today to affirm these holdings. Rather, my point is a more fundamental one: it is that this is a unique area of law where judges need to take a broader view of matters in decision-making and these are examples of cases where judges have done just that.

Maintenance Enforcement Regime

20 I wish to move to another area – namely maintenance enforcement orders. Under the existing framework, the court may make a variety of different orders to require a respondent to meet his maintenance obligations. These include requiring a party to undergo financial counseling, permitting monthly instalment repayments of arrears, imposing terms of imprisonment and attaching earnings. In choosing among them, the courts differentiate between those maintenance debtors who are genuinely unable to pay, and the recalcitrant ones who deliberately choose not to meet their obligations. This task will often be made more challenging in the case of parties who are acting in person because they may not be able to marshal and present the relevant evidence.

21 I wish to thank the Ministry of Social and Family Development for its willingness to help on this front. The Ministry is working with the FJC to provide for the appointment of Maintenance Record Officers ("MROs"). In such cases, it is envisaged that where a respondent raises an inability to pay, the MROs will be asked to investigate the respondent's or for that matter, both parties' financial circumstances and submit the findings to the Judge dealing with the matter. Should the parties refuse to cooperate in the MRO's investigations, the MRO will be able to apply to the court for the production of relevant documents. The MRO's findings will

be made available to the parties and the MRO can be cross-examined on them. The MRO will also act as a liaison officer between the courts, the Community Justice Centre and the MSF where needy parties may receive financial assistance in deserving cases. With this development, we believe the courts will be better equipped to carry out its role in the maintenance enforcement regime. We will work with agencies to implement this scheme.

Law Reform

22 These courts have been working with our partners in other areas as well, to strengthen the family justice framework. The Women's Charter has been amended this year to make pre-writ parenting mandatory. As an enhancement of our probate jurisdiction, the Trustees Act will be amended so that the FJC may hear applications where the trust is an executorship or administratorship. And the Vulnerable Adults Act ("VAA"), which is intended to protect vulnerable adults from harm arising from abuse, neglect or self-neglect, is scheduled be introduced in Parliament later this year.

23 The Family Law Review Working Group, chaired by the Presiding Judge of the FJC, Judicial Commissioner Valerie Thean and comprising academics, agency officials and practitioners, has concluded its report on the Guardianship of Infants Act. The group has made recommendations that seek to enhance the law in relation to the welfare and care of children, and to rationalize the legal framework applicable to parenting on the one hand and guardianship on the other. I am grateful to the members of the Working Group for their valuable work.

(IV) Domestic Disputes but International Context

24 I began this address with some observations on the increasingly international nature of the issues we face. As I approach the close up of my address, let me return to this point.

25 In 2015, the FJC dealt with a high number of issues that raised cross-border issues. Such cases often require the court to achieve substantial justice between the parties whilst having due regard to international comity. In *TGT v TGU*[15], the High Court ordered a stay of a mother's child maintenance application in favour of a clearly more appropriate forum to hear the dispute notwithstanding that the laws there were detrimental to her claim. 2015 also saw the High Court's first published grounds of decision on the application of Chapter 4A of Part X of the Women's Charter, which were inserted in 2011 to allow litigants who have obtained their divorce in a foreign country to seek financial relief here.[16]

Co-operation with Like-minded Judiciaries

26 International cases involving children pose a special challenge. Different jurisdictions may have somewhat different views on child cases. Parents who do not agree with each other may engage in protracted and ultimately fruitless litigation. The international legal framework is not yet fully developed to deal with these cases. Nor is it broadly consistent in all areas. And where a child is not in the same jurisdiction as one of his parents, the child's relationship with that parent, and ultimately, its well-being, is at risk. At the FJC's Workplan on 3 February last year, I

15 [2015] SGHCF 10.

16 *Harjit Kaur d/o Kulwant Singh v Saroop Singh a/l Amar Singh* [2015] SGHCF 5.

announced that the FJC was working with other judiciaries and mediation institutes on co-mediation schemes with a view to bridge the jurisdictional challenges with agreed settlements. This work has started amongst ASEAN judiciaries, and will continue this year with other like-minded judiciaries and mediation institutes in the region.

Knowledge Sharing within the International Community

27 I also believe that some of the issues we face can be better addressed by learning from the experience of others. On 29-30 September this year, the FJC and the Singapore Academy of Law will collaborate in holding the Singapore International Family Law Conference. The Conference will draw together two strands of concern: the need for a multi-disciplinary approach to the demands of family justice, and the increasingly international context of such disputes. We have planned an exciting dialogue bringing together eminent speakers from the legal, psychology and social science sectors to examine how family justice systems around the world have met these challenges and to facilitate an international exchange of insights.

28 Lastly, at the Opening of the Legal Year this year, I announced that I had decided, in consultation JC Thean, to establish an International Advisory Council. The object is to bring together some of the leading thinkers in the world, in the field of family justice, to discuss and share perspectives on the latest developments and to generate ideas and innovations that could be taken in order to situate the FJC at the forefront of family court practice.

29 I will chair the IAC and JC Thean will be vice-chair. The members of our first IAC, in alphabetical order of their home jurisdictions, are:

(a) Chief Justice **Diana Bryant**, Chief Justice of the Family Court of Australia;

(b) Justice **Jacques Chamberland**, Judge of the Court of Appeal, Quebec, Canada;

(c) Professor Emerita Dr. **Dagmar Coester-Waltjen**, University of Göttingen, Germany;

(d) Justice **Michael Hartmann**, Non-Permanent Judge of the Court of Final Appeal, Hong Kong;

(e) Sir **Mathew Thorpe**, former Head of International Family Justice for England and Wales;

(f) Professor **Linda Silberman**, New York University, USA; and

(g) Dr. **Robert Emery**, University of Virginia, USA.

30 These individuals bring with them invaluable experiences and expertise from their respective family justice domains and I am confident that their contributions will enrich the development of family justice in Singapore.

(V) Conclusion

31 2016 will be another busy year for the FJC, its supportive community of family practitioners and social scientists, and its partners in the family justice eco-system. It is widely accepted that the nature of family justice work is emotionally charged. Exhaustion, stress and work-related burnout are known hazards.[17] Those who work this ground must be large in heart, passionate in will, and able to work with others.

[17] K. Miller & B. Bornstein, eds., *Stress Trauma, and Wellbeing in the Legal* System (New York: Oxford University Press, 2013) at 273.

32 I want to close by expressing thanks to the whole family justice community, with my special appreciation to the judges and staff at the FJC who serve tirelessly in this important field. A true story will demonstrate the unique challenges faced in this space. On a late afternoon last December, a distraught woman sought help at the FJC because her suicidal husband had taken their young son in a fit of anger. After a brief risk assessment, the FJC counsellor and court administrator worked with the police to intervene throughout the evening. The man was traced and the child was returned safely to his mother. This is one example; there are many unsung heroes among you who have quietly walked the extra mile in this way. Your resilience, initiative and commitment are fundamental to our on-going quest to make justice accessible to families in distress. Your continued dedication, inventiveness and indomitable spirit is inspiring to all of us and I thank you. Finally, I wish you success as you embark on the goals laid out in this workplan.