FAMILY JUSTICE COURTS WORKPLAN 2017

20 February 2017

ACCESS TO FAMILY JUSTICE: ANCHORING DEEPER, EXTENDING WIDER JUDICIAL COMMISSIONER VALERIE THEAN

I: THE IMPORTANCE OF ACCESS TO FAMILY JUSTICE

- It is my great privilege to welcome you to the Family Justice Courts' Workplan
 I thank our Chief Justice for gracing the occasion as our Guest of Honour this morning.
- 2. The year opened to political and economic uncertainty in much of the world. Singapore, with our embrace of an open economy, in a dense, urban environment, confronts similar issues of uneven opportunity and income distribution. Our families need to weather the strain and stress of living and working in a global marketplace that is increasingly uncertain. In these challenging times, with growing risks of family dysfunction, it is crucial for the court to be effective in dispensing justice to all who seek its intervention. This brings us back to the fundamental question of what access to justice truly means to families.
- 3. Family justice is rooted upon varied, and sometimes competing, aspects of traditional notions of justice and its access. John Rawls conceived justice as fairness,

with equality in the assignment of rights and duties. What does equality in the assignment of rights and duties mean when the subject is a child that may not be halved? Law has also been seen as an enterprise of subjecting human conduct to the governance of rules. Legal certainty has thus been described as one of the fundamental elements of the rule of law. Within the family law domain, however, ascertaining what is just and equitable on the particular facts of each case necessitates judicial discretion to be exercised with some flexibility.

4. Following another strand, our former Chief Justice Chan Sek Keong has described the administration of justice as the enforcement and protection of legal rights and interests of litigants vested in them by law.⁴ This is also true of family justice, where courts adjudicate and give orders depending on rights assigned by the law. At the same time, within a complex family context, any enforcement has other psychological consequences on those it impacts.⁵ The court judgment does not extinguish the relationships, which continue. Indeed, family courts can become very divisive places. When a plaintiff comes to court to, in his mind, "seek justice", he is essentially saying he wants to be proved right, and the defendant, utterly and incontrovertibly, wrong. The irony is that within the complexity of a relationship, the answer, if not delivered well, could serve very little purpose and in fact do more harm than good. Thus family justice is also said to require therapeutic outcomes.⁶ The

¹ J.Rawls, "A Theory of Justice" (Clarendon Press; 1972) pg14.

² Lon Fuller, "The Morality of Law" (New Haven: Yale University Press, 1969).

³ The "Seaway" [2004] 2 SLR(R) 577 at [12].

⁴ Opening of Legal Year 2009 - Response of Chief Justice Chan Sek Keong, 3 January 2009 at [5].

⁵ D. Stolle at el, "Practicing Therapeutic Jurisprudence: Law as a Helping Profession" at pg 7.

⁶ B. A. Babb, "An interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective" in J. Singer & J, Murphy, "Resolving Family Conflicts" (2008) at pg 20.

paradox in this is that whilst the adjudication of rights relies on the past to found its basis, the resolution of a family's problems lies in its vision of its future.

5. Family justice needs to look, in a multi-dimensional way, to all the various facets of justice outlined above. In line with these notions, our court was conceived as a specialist court, armed with a full suite of multi-disciplinary services, to resolve family disputes expeditiously and effectively with less acrimony to parties, always placing the welfare of the child at the fore.⁷ This morning, I would like to return to these objectives in talking about this year's work initiatives.

II. THE CHILD AT THE HEART OF FAMILY JUSTICE

- 6. The child is at the heart of our work. As the Honourable the Chief Justice Sundaresh Menon has said previously, our young are the future of our society and we best protect our community's future by protecting our young. Social science research⁸ suggests that divorce is the cause of a range of serious and enduring behavioural and emotional problems in children and adolescents. The children in the families that we deal with are thus especially at risk.
- 7. Our Court of Appeal, in the landmark case of *CX v CY (minor: custody and access)*⁹, affirmed joint parental responsibility. In *AUA v ATZ*¹⁰ last year, our Court of Appeal took this further. Here, where parties had signed a deed of separation, the Court of Appeal noted that when it comes to child issues, the court assumes a

⁷ Second Reading of the Family Justice Bill by Minister for Law, K Shanmugam (4 August 2014).

⁸ J.B. Kelly, & R.E. Emery, "Children's Adjustment Following Divorce: Risk and Resilience Perspectives" (2003) 52(4) Family Relations 352–362.

⁹ CX v CY (minor: custody and access) [2005] 3 SLR(R) 690 at 700 – 701.

¹⁰ [2016] SGCA 41.

custodial role and the overriding objective is to safeguard the welfare of the child.
The Court also introduced the concept of "common but differentiated responsibilities" in the discharge of parental duties.
This deals, in a way, with the query I raised at the start of my speech this morning, about the complexity of equal rights and duties as a concept of fairness in family justice. Just as a child may not be halved, parents are not standard sized issue with the same skills, talents and abilities. One parent might thrive as a home-maker while the other might flourish in the marketplace. One parent could be more nurturing, the other, more achievement-oriented. If both parents work together, the child benefits. The law best supports joint parenting when it looks for ways to support their complementarity and pooled abilities, in order for the child to have the fullest measure of childhood possible.

Family Law Review Working Group

8. In this vein, the Family Law Review Working Group ("FLRWG") recommended a set of changes to the Guardianship of Infants Act last year to reinforce joint parental responsibility, in line with the approach of *CX v CY*. Suggesting a change of name to the Care of Children Act, the FLRWG also suggested two broad areas of reform. The first is to introduce a clear framework applicable to all individuals involved in the care of the children by delineating clearly the concepts of parental responsibility, guardianship responsibility and how both principles interact and complement each other. The second is to enhance the welfare of the child by placing the welfare principle at the forefront of the act, introducing a non-exhaustive list of factors a court should consider when applying the welfare principle, providing for the grant of specific powers

¹¹ Ibid, at [48].

¹² *Ibid*, at [41].

relating to the care and upbringing of the child and extending the locus standi provision to support the making of these specific care orders. I thank the members of the FLRWG for their contribution to this work.

Practicalities of Joint Parenting

- 9. The law is one aspect. The reality of joint parenting through a divorce can be complex and gritty. A case explains what I mean. Parents divorcing after a 13 year marriage both wanted care and control of their son. He was close to and felt best cared for by the father, who was his primary care-giver. But the father also had a hoarding illness, which the mother rightly felt threatened the son's living environment. Through our Child Inclusive Dispute Resolution, the child was able to understand that the divorce was not his fault and to articulate his needs. The parents were better able to understand how their conflict was causing their child great distress. Our counsellors were able to help the father address his hoarding problem with the help of MSF and the relevant Family Service Centre. Last year, Child Inclusive Dispute Resolution was used on all suitable cases, and in 80% of the 62 cases, some or all children's issues were settled. An excellent result for our dedicated Family Dispute Resolution team of judicial officers, counsellors and administrators.
- 10. For cases that go on to adjudication, the high conflict parent remains a challenge. Social science research has demonstrated that inter-parental conflict is one of the fundamental root causes of child developmental issues.¹³ There is research to

¹³ See J.B. Kelly, & R.E. Emery, "*Children's Adjustment Following Divorce: Risk and Resilience Perspectives*" (2003) 52(4) Family Relations 352–362. Amato, P. R. (2001). Children of divorce in the 1990s: an update of the Amato and Keith (1991) *meta-analysis. Journal of family psychology*, *15*(3), 355.

indicate that children whose homes are broken by the death of parents, do better than children with divorcing parents who have tremendous amount of conflict. ¹⁴ Thus Professor Robert Emery, in drawing up a hierarchy of child's needs, ranks a close relationship with one parent and freedom from conflict as more important than having a good relationship with both parents. ¹⁵

11. Parenting coordination addresses this need for parents to cooperate. A parenting coordinator appointed by the court can work directly with the parents, to facilitate communication, educate and help them resolve disagreements. This is faster and less adversarial than continually coming to court. Last November, we started a pilot with trained lawyer parent coordinators. This year we will be working to include parenting coordinators from the social science fields.

Child maintenance work

12. We can see from our work with children that many areas of substantive family law require assessment of multiple factors in each case with a sound exercise of discretion by the judge. A drawback of such an approach, in other cases, could be a lack of certainty. We know from the work of Nobel laureate Daniel Kahneman that human decision-making can be skewed by cognitive bias. There is also "noise", which can arise from variations in situation, mood and for neurological reasons. In the

¹⁴ Douglas, J.W., Ross, J. M, Hammond, W.A.,& Mulligan, D.G. (1966) *Deliquency and social class. The British Journal of Criminology*, 6(3), 294-302. See also Gregory, I. (19650 *Anterospective data following childhood loss of a parent*. Archives of General Psychiatry, 13, 110-120.

¹⁵ Emery, R. E. (1982). *Inter-parental conflict and the children of discord and divorce. Psychological bulletin*, 92(2), 310; Robert Emery's hierarchy of children's needs in divorce in R. Emery "*Two Homes, One Childhood: A Parenting Plan to Last a Lifetime*".

¹⁶ BNS v BNT [2015] 3 SLR 973 at [19-22].

¹⁷ D. Kahneman et el, "Noise How to Overcome the High, Hidden Cost of Inconsistent Decision Making". (Harvard Business Review, October 2016) https://hbr.org/2016/10/noise.

family field, the court may not have all it needs in terms of evidence because of the lack of legal representation or simply because families do not conduct their lives in contemplation of eventual breakdown and litigation. This causes us to query where a rule-based system, ¹⁸ being fairly predictable, may be useful for quality and consistent outcomes.

13. Maintenance of children, which is determined primarily on the children's needs against the parents' earning capacity, is one area which could benefit from a rulebased system of a child maintenance table. This is currently used in jurisdictions such as Germany and various Canadian states. 19 Mr Gerard Ee and I are leading an interdisciplinary cross-agency committee of experts comprising actuaries, policy makers and family practitioners to explore the possibility of establishing a child maintenance table using local data. I thank the Committee for their help. This would serve as an invaluable judicial tool which not only provides quantitative guidance to judges when determining the quantum of child maintenance but also ensures parity in the award of such maintenance by treating parents and children who are in similar situations alike. The experiences of other jurisdictions show that such a tool also serves to facilitate settlements between parents by making the calculation and determination of child maintenance more objective, thus helping to free valuable court resources and judicial time. More importantly, it reduces the likelihood of contentious and acrimonious litigation between parents.

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¹⁸ M. Maclean "Delivering Family Justice in the 21st Century" at pg 53-55.

¹⁹ The German Dusseldorf Table and The Canadian Child Support Guidelines.

14. We can see from the above that the two objectives of child welfare and reducing the acrimony of parties are inextricably linked. The quicker that parties are able to move beyond their past, the sooner they are able to piece together a new logic to their relationships - with their children and with each other as parents - for the future. While some areas of our work require a detailed and artisanal approach, such as in the decision of child issues where each child's long term wellbeing must be of critical and detailed assessment, other areas of family law, such as maintenance, benefit from certainty. Of course, exceptions still exist and the law must deal with these flexibly and well. Thus, some children have special needs and judicial discretion will be exercised in those cases with very particular attention to the specific facts.

Adjudication certainty, case management and the judge-led approach

15. In order to reduce the negative impact on the child, it becomes important to reduce conflict throughout the case process. In this respect, the Court of Appeal's decision in *ARY v ARX*²⁰ where it decided that the default position, *in general*, for the operative date for determining parties' pool of assets should be the date of the interim judgment, is an important one in the dynamics of family litigation. The court recognised that having a starting point will better enable parties to a divorce to arrange their financial affairs and give them the comfort of knowing when they will be taken as having moved into a different phase in their lives, also making it easier for their counsel to advise them.²¹ At the Courts, as a case management process, our capable case management team have, generally, in most cases, limited the number of affidavits.

²⁰ [2016] SGCA 13.

²¹ *Ibid* at [34].

The ARY decision will help to curtail parties from filing more and more affidavits to fuel their conflict, often with less and less utility.

- 16. Since our establishment, we have been trying out docketing cases to single judges in a variety of categories, especially in high conflict cases and child cases. This will be enhanced in the coming year, where the individual docketing system, a more comprehensive way of docketing cases, will be extended by the second half of 2017 to all divorce cases. Having a single judge from start to finish is deal for both the judge and the litigant. For the single judge at the helm, there is ownership and a good grasp of the factual matrix. For litigants, there is better certainty and more effective management.
- 17. With these, and earlier case management changes made, the number of divorce cases disposed of (including ancillaries) within the same year it was filed has increased from 46% in 2012 to 74% in 2016. For cases disposed of in the same year, the average time taken for divorce cases to be granted IJ²² has been reduced by a quarter, from 68.6 days (more than 2 months) in 2012 to 53.1 days (less than 2 months) in 2016. The average time taken for FJ²³ to be granted has also reduced by a quarter from 155 days (5.2 months) in 2012 to 115 days (3.8 months) in 2016. A comparison of the 2012 and 2014 cohorts of cases also indicates a drop in the cases that proceeded onto contested AM hearing. These statistics are the work of the whole court working as a team, from the mediators and counsellors to the adjudication JOs and administrators who ease and help the process.

²² This refers to cases that are filed and granted with IJ within the same year.

²³ This refers to cases that are filed and granted with FJ within the same year.

The distressed litigant and community access to the courts

- 18. These changes also benefit the parties involved directly. At the centre of these initiatives is the distressed person before us. Divorce is the second most stressful event, after the death of a spouse.²⁴ There is also psychological research to show that typically persons who face an important issue for the first time, in an environment unfamiliar to them, are highly distressed.²⁵ These are our litigants at the Family Justice Courts. If we can give the process greater certainty, greater education, at a pace they find sensible, they will experience justice in a real and practical way.
- 19. This likely fear of a first time user of the system also explains the work we are doing to bring the courts into the familiar context of community organisations. Within the local sphere, community touch points play an important role in directing those in need to the appropriate family support services. ²⁶ Our court does not exist in isolation or dispense justice in a vacuum. We are part of an entire family justice eco-system with different components serving various needs. This eco-system should allow litigants access to associated services they need, in an environment that is familiar as a first port of call to the courts. To illustrate, a spouse who has suffered family violence will require safety options and specialised counselling. She should be able to receive all she needs at a Family Violence Specialist Centre. In this regard, we will be working closely with the DSSAs and Family Violence Specialist Centres to assist parties in filing applications at these frontline locations.

²⁴ The social readjustment rating scale, Holmes, T. H. and Rahe, R. H. 1967, Journal of Psychosomatic Research, 11(2), 213-21.

²⁵ When the Customer is Stressed, Berry, Davis and Wilmet, October 2015, Harvard Business Review.

²⁶ Report of the Committee for Family Justice 2014 at [60-64].

Family violence

- 20. Our processes for family violence are also being enhanced, mindful of the emotional trauma and unique needs faced by applicants for personal protection orders ("PPO"). With a new IT system called iFAMS, applicants can file their applications electronically, either at the Family Court Registry or the Family Violence Specialist Centres. The electronic forms have been redesigned with simplicity and ease of use in mind without compromising on the essential requirements of the law. In addition, iFAMS will be integrated with the divorce and Youth Court's electronic systems. This will enable us to identify all the pending cases in related systems involving the parties or children, so that we can provide more holistic handling of cases.
- 21. At the same time, we have used design thinking to redesign the space for family violence applicants within Family Court. In July, we will have a new Family Protection Centre. Intake, counselling and affirmation will be seamless in a self-contained, private and calming area, bringing about more order and less anxiety.

III. READYING FAMILY JUSTICE FOR THE FUTURE

22. Our governing objectives are also informed by three strands of evolving context. The first two reflects the growing width of our work, somewhat paradoxically, wider on the international platform, and yet deeper on the local platform. The third, because of the exigencies of the first two, our deep reliance on the eco-system, and within that, the legal profession.

The eco-system and legal profession within

- 23. I start with the most important to our long term development. FJC has always worked in collaboration with our eco-system, in recognition of the many facets of delivering family justice. We have spoken many times of the multi-disciplinary facets of family practice and the importance of the wider eco-system. The social science profession is well established in our court philosophy. This morning I would like to talk about the legal profession, which bridges the litigant and the court. We are very privileged to have a supportive family bar that has been instrumental to the success of many of the reforms we have undertaken. In many other countries, the litigant in person is now increasingly the norm. While we do have litigants in person, we are fortunate that many lawyers in our profession see the nobility in helping families.
- 24. Practice in family law is unique in a plethora of ways. While looking to his client's best interest, the lawyer has many competing demands. First, in the context of continuing family relationships, lawyers must understand the importance of mediation, which allows parties to take ownership of their future. Second, many litigants in the system have issues of mental health or difficulties which are best dealt with in counselling or with third party assistance. Lawyers, being the ones at the forefront, would best know whether their clients are at risk and how to help their clients. Third, our judge-led system carves out an important role for the lawyer. It retains what I would call "the best of our traditional adversarial system". Lawyers know their case and how best to present it to the court. If they do this in a problem solving and constructive way, their clients benefit from the orderly and properly informed adjudication of all issues. At the same time, they have to advise their clients to look beyond the immediate legal issues to consider for instance the financial, emotional impact on the family which

are all too often shrouded in the fog of litigation. Most importantly, many family cases have a vulnerable patient or child at the centre of the dispute: clients must be advised that the court is guided by their best interests.

- 25. In cases where lawyers do not represent parties, they are uniquely placed to take on other roles to aid the Court, such as acting as Child Representatives and Parenting Coordinators. In so doing they have to be alert to conflict of interest issues.
- 26. For these reasons, Law Society and FJC launch today a consultation paper on possible amendments to the Professional Conduct Rules, which we will submit to the Professional Conduct Rules Working Group after the views of the profession have been taken. I would like to take this opportunity to thank all the lawyers who volunteer in all the various facets of our work.

Growing local needs

27. A second strand is the need for wider access to family justice within the community. With the help of a robust healthcare system and medical advances, Singapore will see an age shift. It has been estimated that the number of residents aged 65 years or older would double.²⁷ We may see a corresponding increase in the number of elderly persons with dementia or disabilities who are unable to care for themselves.

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²⁷ Report of the Committee on Ageing Issues 2006.

- 28. Mental capacity is one area where the court must safeguard the interests of the vulnerable. At the same time, many are from low income backgrounds in situations where there is low risk of abuse and the need there is for quicker and more practical assistance. One example was the simplified process we worked out in 2014 for parents to continue as their mentally disabled children's deputies after the children turn 21. This year, we will look into further ways to enable limited funds to be channelled quickly in cases where there is no risk of abuse, such as HDB-mandated repairs, urgent and essential nursing home care, and dental treatment prescribed by care agencies.
- 29. Another feature of the elderly is that they may be socially isolated, financially and emotionally dependent on their caregivers, ²⁸ and susceptible to abuse, neglect or deceit and require protection by the law. An important piece of legislation we are working on with the Ministry for Social and Family Development is the Vulnerable Adults Act. The Act seeks to safeguard vulnerable adults from abuse, neglect or self-neglect through the issuance of care and protection orders and restraining orders by our courts. We will continue to work closely with the Ministry in the formulation, implementation and eventual operation of the Act.

International outlook

30. In serving local needs, we find that our cases necessitate an international outlook. Last year, our Court of Appeal dealt with the balance between international comity, on the one hand, and domestic public policy, on the other, in *Yap Chai Ling v*

²⁸ A. Hayden, "A Restorative Approach to Family Violence – Changing Tack" (Ashgate Publishing: 2014) at pg 54.

Hou Wa Yi²⁹. In 2016, the proportion of divorces in the local courts involving at least one party who is a foreigner was 40%.³⁰

- 31. As this work grows, we need to develop the infrastructure to support the rule of law in cross-border disputes. The stakes for parents are extremely high in these cases. Whichever way the court decides, one of the parents would invariably be physically separated from their children across frontiers. With the ease of international travel, otherwise law abiding parents often feel compelled to take the law into their own hands.³¹
- 32. The consequences of one parent taking a child out of jurisdiction without the consent of the other parent or even the child can be serious, long-term and irreversible. Studies relating to children whose parents abducted them to another jurisdiction³² have found that a high proportion suffer significant disadvantage in terms of their mental health, including post-traumatic stress, psychotic episodes, depression, lack of

²⁹ [2016] 4 SLR 581.

³⁰ This amounts to a total of 2,502 divorces in which at least one part was a foreigner. This statistic does not take into account relocation cases filed under the Guardianship of Infants Act, and reflects a worldwide trend.

³¹ In *TAA v TAB* [2015] 2 SLR 879 at [32] the High Court noted that the father had left the jurisdiction with the children despite having been refused the order allowing him to take the children to Spain. The father and children had not returned to Singapore at the time of hearing of the case.

³² For example, Marilyn Freeman (5 December 2014), Parental Child Abduction: The Long-Term Effects (hereafter "Freeman, Parental Child Abduction: The Long-Term Effects") Marilyn http://www.childabduction.org.uk/images/longtermeffects.pdf, Freeman (May International Child Abduction: The Effects (hereafter Freeman, International Child Abduction: The Effects") http://www.reunite.org/edit/files/Library%20-%20reunite%20Publications/Effects%20Of%20Abduction%20Report.pdf, and Janet (2000), Parental Abduction: A Review of the Literature, US Department of Justice, Office of Juvenile Justice and Delinquency Prevention 2000 (hereafter "Chiancone, Parental Abduction: A Review of the Literature") https://www.ncjrs.gov/pdffiles1/ojjdp/190074.pdf.

self-worth, fear of abandonment or panic attacks.³³ These effects were often on-going in their adult lives many years after the abduction.³⁴

- 33. It was for these concerns that Singapore became a signatory to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("The 1980 Hague Convention"). 35 This year, to strengthen this area, we will be discussing with relevant Ministries and other agencies on the use of stop order legislation, which prevents parents from leaving the jurisdiction with children in breach of court orders. Such legislation is also found in Hong Kong, New Zealand and Australia. Having stop order legislation will help in two ways. First, even where the intended abduction is to a signatory country, the stop order cuts out the long process of seeking a child's return after abduction. A second, more fundamental, reason is that, although the Child Abduction Convention has 80 signatories, there remain many countries that are not a party, in particular those in our immediate Asian region. As Singapore grows as a transnational hub, more will require greater protection.
- 34. Our work, and our thought leadership in family justice, benefits all who live and work here in Singapore. International networks help us clarify our approach to our cases. Last year, the FJC hosted a very successful International Week, which saw our very first International Family Law Conference, a meeting of the Hague Network of Judges and ASEAN judges in a Symposium on Cross-Border Child Issues, which gave

³³ Freeman, *Parental Child Abduction: The Long-Term Effects*, pages 18, 29 to 32 and 35. Study has shown that a high proportion (73.53%) of the children reported suffering very significant effects from their abduction in terms of mental health, while the percentage increased further (to 91.17%) taking into account those reporting less significant, but still discernible, effects (page 35).

³⁴ Freeman, *Parental Child Abduction: The Long-Term Effects*, pg 35-36.

³⁵ The Hague Convention is a multilateral treaty, which seeks to protect children from the harmful effects of abduction and retention across international boundaries by providing a procedure to bring about their prompt return.

us a good understanding of the Hague Family Conventions. The Council of ASEAN Chief Justices' Working Group on Cross Border Disputes involving Children also met, and discussed a wider ASEAN forum for family judges. I thank all of you for your work on this, and am happy to announce that the Board of the World Congress on Family Law and Children's Rights, many of whom were here at our International Week, has named Singapore as the venue for their 2020 conference. This is an affirmation of all the team has done in this area.

IV CONCLUSION

- 35. Indeed, our people remain the driving force behind all that we do. We may come from different backgrounds, with different experiences and skills to offer. Yet, when we come together, we always do so as a vibrant community and a cohesive team. What we do for others also fuels us. The work at hand is rich and fulfilling, bonding us as a team, and giving us joy for the journey.
- 36. Let me conclude with a simple everyday story. A lady who was seriously abused by her husband was living at a crisis shelter at a confidential location. She came with her social worker to apply for a personal protection order at FJC. She was utterly fearful and flustered when she spotted her husband loitering in the premises. When the registry officers learnt of this, they asked her to remain in the enclosed space of the registry office. Counsellors were promptly activated and a safety plan was devised on the spot with assistance of security. The duty judicial officer conducted the affirmation at the registry office instead of the usual chambers which was easily accessible. In one coordinated effort by the entire team, the lady was able to complete her application and leave the court safely without the husband stalking her. I called

this an everyday story because this is typical of many of FJC's unsung stories where, each day, each of you make access to justice real to those we serve.

37. As your Presiding Judge, I am grateful for your work, humbled by your passion, and proud to serve alongside with you in our common pursuit of family justice. Let us press on with fervour for the year ahead.