

“PRACTISING TJ”

JUSTICE DEBBIE ONG

Family Conference 2021: Big Questions in a Small World: International Issues in Singapore Family Practice, 29 September 2021

Co-Chairs of the Organising Committee of Family Conference 2021 and of the Family Law Practice Committee, Ms Wong Kai Yun and Ms Kee Lay Lian,

Distinguished Guests, and

All who are tuning into this virtual Address,

Introduction

1. I am delighted to be a part of the Law Society’s annual conference on Family Law. Thank you for inviting me to share more on the family justice system that delivers “Therapeutic Justice” or TJ for short- a theme that runs through most of today’s sessions.
2. Many of you have heard me speak numerous times on this subject of “TJ”. This is because it is really important that we approach our work through the TJ lens of care, for the sake of the children, who are not parties to the proceedings but are much affected by their parents’ separation. TJ is also important for the parties themselves so that they can begin the journey of healing after what may be said to be one of the most difficult times in their lives.
3. I have said elsewhere, as long ago as in 2005 in the first publication of the book “The Art of Family Lawyering”:¹ I said:

It is no longer possible today to effectively practise family law without some knowledge of the unique practice and procedures as well as some understanding of the emotional dimensions present in family disputes. The successful and effective family lawyer is not simply one who wins on the most issues, but one that best assists the whole family to reach arrangements which are workable and fair, and above all, which promote the welfare of the children.
4. More than 15 years have passed and I must say today, this has never been truer or more urgent.
5. The Chief Justice pointed out at the recent World Congress on Family Law and Children’s Rights Conference that it has been shown by evidence that the level of acrimony of divorce proceedings has a perceptible impact on children’s outcomes.² It makes a real difference to the positive outcome of family litigation whether it is approached as a war to be won, in contrast to a problem to be solved.³

¹ Debbie Ong, *The Art of Family Lawyering* (Law Society of Singapore, 2005) at p 3.

² Dialogue between Sundaresh Menon CJ and Diana Bryant AO, QC, at the 8th Family Law & Children’s Rights Conference: World Congress 2021: Through the Eyes of a Child (12–16 July 2021).

³ Dialogue between Sundaresh Menon CJ and Diana Bryant AO, QC, at the 8th Family Law & Children’s Rights Conference: World Congress 2021: Through the Eyes of a Child (12–16 July 2021).

6. These observations are consistent with academic literature on TJ. Research has noted that while traditional litigation is adversarial, an overriding theme of TJ is that adversarial processes are ill-suited for resolving disputes involving children. This is because children's adjustment to divorce and separation depends significantly on their parents' behaviour during and after the separation process. The higher the levels of parental conflict children are exposed to, the more negative the effects of family breakdown.
7. Also noteworthy is the point that while litigation may usually be one-off legal events, TJ views family disputes as ongoing social and emotional processes. This calls not for zealous legal approaches but for collaborative, holistic, and multi-disciplinary interventions to address the families' underlying dysfunction and emotional needs. While legal intervention by adversarial litigation is backward-looking and focused on the assignment of blame and allocation of rights, a TJ system assumes the forward-looking task of supervising family reorganisation after breakdown.⁴
8. It is not enough, though, to only have 'head-knowledge' of the need for TJ. As the Chief Justice has emphasised at the World Congress Conference, we need to bring this vision of TJ to life through a sustained, practical, and thoughtful review and reform of all aspects of the family justice system.⁵
9. As a start, I had shared at the FJC Workplan event earlier this year that there are at least three aspects of how we can begin to practise TJ. At the Workplan, I spoke about helping divorced families to have "A New Tomorrow" that is filled with hope even after divorce. These three aspects are:
 - First, adopting TJ and bringing in therapeutic assistance for parties in a multi-disciplinary environment;
 - Second, making the journey and processes simple, navigable and do-able; and
 - Third, ensuring the legal professionals – family judges and lawyers – are equipped to deliver TJ.
10. I am happy to share a little more today about how we can practically practise TJ through some initiatives we are building.

Panel of Therapeutic Specialists

Background

11. I had briefly mentioned at this year's Workplan that we were exploring setting up a panel of medical or mental health experts. This is going to be useful because families who are involved in litigation often come with complex needs and issues underlying the legal disputes. Whilst the Divorce Support Specialist Agencies, we refer to them as "DSSAs", have been set up to support the divorcing families, there is a need for *specialist* therapeutic assistance for families with special needs and issues. These include parties with serious mental health issues, highly conflictual family

⁴ Andrew Schepard, "The Evolving Judicial Role in Child Custody Disputes: From Fault Finder to Conflict Manager to Differential Case Management" (2000) 22 University of Arkansas at Little Rock Law Review 395 at 396.

⁵ Sundaresh Menon, *Keynote Address* at the 8th Family Law & Children's Rights Conference: World Congress 2021: Through the Eyes of a Child (12 July 2021) at para 7.

dynamics, and children with developmental or physical impairment. These parties may require more *specific and targeted* therapeutic interventions that fall outside the scope of the current support schemes available. Complex cases with diverse needs, such as marriages with cultural dynamics, power imbalances and cross border divorces may also require more specialised and inter-disciplinary team interventions to achieve holistic outcomes for the family involved.

12. In addition, not all cases qualify for the DSSA services and other public support schemes, and there may be no clear alternative pathways for such cases to access relevant private sector therapeutic services.
13. Parties in the divorce journey may feel a little lost about where to obtain the specific therapeutic assistance. We want to help parties not to feel lost, and empower them with knowledge and access to various services that they can benefit from.

“POTS”

14. FJC had reached out to the respective Presidents of the College of Psychiatry, Singapore Association for Counselling, and Singapore Psychological Society to explore setting up a *referral framework* and the establishment of a panel of therapeutic experts amongst their professional bodies. I am delighted that they have since consulted their respective Councils and have agreed to come on board in this initiative.
15. We are grateful to the Presidents of the three professional bodies for agreeing to form a Steering Committee to establish a panel of therapeutic specialists, which acronym is “POTS” - P.O.T.S. This panel will provide specialised clinical and therapeutic interventions for individuals and families undergoing family proceedings. It will comprise qualified private sector mental health and social science professionals, and their services will be accessed through the directions of a Judge or under a voluntary referral process, according to the needs of the parties.
16. The Steering Committee is headed by the Registrar of FJC and comprises the Presidents and a Past President of the three professional bodies as well as the FJC team. The Steering Committee will co-create the platform and process and manage a panel of qualified mental health professionals. It will also nominate and invite senior mental health professionals in the respective fields to volunteer as members of an honorary Therapeutic Advisory Council to develop the criteria and professional requirements for POTS and oversee the recruitment and selection of POTS. We like acronyms so we will call the Therapeutic Advisory Council “TAC”.
17. The panel members in POTS will provide paid specialised services to support families who may not qualify for public service support schemes or are unable to afford some private sector professional experts for their needs. Details on this scheme, including the terms and the fee structure will be further developed by the Steering Committee and the TAC.
18. We aim to launch a pilot initiative for POTS sometime next year. We hope that through POTS, litigants will have an additional avenue through which they can seek therapeutic assistance in their journey of healing.

Panel of Financial Experts

Background

19. Another initiative, also one that I had spoken about at this year's FJC Workplan, is the Panel of Financial Experts.
20. It is not uncommon for divorcing parties to quibble over the valuation of certain assets especially in high net worth cases. *Who* should carry out the valuation - *my preferred* valuer or *your preferred* valuer? What *methodology* of valuation should be used?

Panel of Financial Experts

21. In such situations, we can benefit from objective advice from 'neutral' financial experts. This is why, in December last year 2020, the FJC signed a Memorandum of Understanding with the Institute of Singapore Chartered Accountants, the "ISCA", to set up a Panel of Financial Experts, affectionately called P.O.F.E - "POFE".
22. Comprising ISCA members who are public accountants or ISCA Financial Forensic Professional credential holders with relevant experience, the POFE will provide the court with neutral financial valuation reports to assist the court and the divorcing parties at the ancillary matters stage. This project will enable the court to appoint a financial expert from the POFE to assist parties, especially those embroiled in complicated and contentious financial disputes.

Objective

23. It is hoped that obtaining neutral financial reports will provide an objective valuation of the matrimonial assets under contest, thereby reducing further conflict between parties and reaching outcomes more effectively and efficiently.
24. Appointing a valuer frees up the court's capacity to focus on the legal issues, and doing so would be in line with the overall TJ approach where such experts could assist with the financial planning aspects and help parties feel assured and comfortable.

Progress

25. We launched a POFE pilot as a start - the 1st tranche of cases for the pilot commenced in the first quarter of 2021 followed by the 2nd tranche in the second quarter. FJC and ISCA will review the pilot and consider whether to build this initiative for the long term and if so, FJC will work with the financial experts through ISCA to finalise the process, including the documents required and the fees payable to the financial experts under POFE.

Multi-Disciplinary Teams Pilot

Background

26. Another initiative which we have piloted is the use of Multi-Disciplinary Teams, "MDT" for short.

27. At the World Congress Conference, the Chief Justice highlighted the need to triage cases and use different tools to achieve therapeutic outcomes suitable in each case.⁶ This is particularly for high-conflict cases with complex child issues, which benefit from close management and customised solutions.

Multi-Disciplinary Teams

28. In September last year, FJC piloted docketed multi-disciplinary teams of judges and related professionals to manage a group of high-conflict and complex cases. These teams, which will be familiar with the facts of the dispute, intentionally adopt the solution-focused approach to facilitate positive and durable outcomes.

29. For this pilot, four MDTs were formed – three for Family Court cases and one for the High Court Family Division cases. Each MDT comprises hearing judges, a judge-mediator, court family specialists, and a case manager. The judges on the MDT pilot include several of my colleagues in the Family Dispute Resolution division of FJC, and I am myself also in one Team – the High Court Family Division MDT.

30. To date, 24 cases have been assigned to MDTs in this pilot. Features common to these cases include: high acrimony and conflict in the marital relationship; disagreement over access to or parenting plans for the children; family violence or child abuse; and multiple applications in ongoing court proceedings. The MDT intentionally focuses on facilitating durable and timely outcomes for the family. The MDT also makes clear to the lawyers that they are part of the team and are expected to play a constructive and problem-solving role in the process.

31. Although adopting a multi-disciplinary approach to family justice is not entirely new, what is new about the MDT pilot is the adoption of such a multi-disciplinary approach in the context of a non-adversarial environment. The judges, the lawyers, and the allied professionals seek to build a conducive environment for healing and restoration: one that discourages provocative letters and antagonistic affidavits, and disallows putting pressure on the children to take sides. In their place is the encouragement of responsible parenting and connecting parents and children to suitable supportive therapeutic services.

32. Speaking from our experience in the MDT pilot, the opportunity to triage early and the support from the relevant experts enabled greater insights into the underlying issues faced by each family in the pilot. This allowed us to address the pain points faced by the families, and, working in collaboration with the lawyers, we could manage the case to minimise acrimony and facilitate healing and restoration for the parties. Where appropriate, we referred the parties involved to the relevant social service agencies for targeted intervention.

33. I would like to record my appreciation to the lawyers who have participated in these MDT proceedings, for their diligence and adaptability in embracing the MDT process.

34. We are collating feedback and reviewing the outcomes in the MDT Pilot, to assess whether and how elements of the MDT approach can be applied more widely in family proceedings.

⁶ Sundaresh Menon, *Keynote Address* at the 8th Family Law & Children’s Rights Conference: World Congress 2021: Through the Eyes of a Child (12 July 2021) at para 13.

Voluntary TJ Certification

Background

35. In my Address at the recent World Congress Conference, I highlighted that a TJ system needs both the “hardware” structure and the “software” resources. The “hardware” includes the court system itself with its rules and processes. The “software” includes the skills that judges and lawyers bring to the cases.
36. The Chief Justice has also reminded us at that Conference that judges and lawyers need to be equipped with skills and knowledge beyond the law: interpersonal skills, basic familiarity with relevant social science concepts, and exposure to non-adjudicative conflict resolution methods.⁷ To this end, we continue to build training programmes to equip our judges and lawyers to practise in this TJ environment.
37. For family judges in FJC, we held a Learning Week in 2019 and another this year in February. Aside from legal developments, we learnt from social science experts and international thought-leaders of the FJC Advisory Research Council, which was established to help us build our TJ narrative and implement TJ in practical terms. These experts covered topics such as mental health issues of parents and the developmental needs of children. Through case studies and role play, we practised discerning the voice of the child and how to tap on the specialist services in the wider family justice system.

Certification

38. As for equipping family lawyers, the Law Society Family Law Practice Committee, also called the “FLPC”, has collaborated with the Singapore Academy of Law, the “SAL”, and FJC to develop a *voluntary* programme to assist lawyers in building new capabilities to practise effectively in a TJ-oriented family justice landscape. The programme will be called the “Family Therapeutic Justice Certification Programme” (“the Programme”).
39. The Programme goes beyond the existing continuing professional development trainings that lawyers have already been attending. The focus of those trainings has been on dispute resolution *as between the warring parties*. But family proceedings, unlike traditional litigation, has a profound impact on a set of non-parties - the *children*. As with the family judges’ training, this Programme will equip lawyers with extra-legal skills to effectively carry out the legislative direction that the paramount consideration in family proceedings is the welfare of the child.
40. Run by the SAL, the Programme comprises six modules of stackable, blended learning. About half of the Programme will comprise self-propelled learning, and the other half, face-to-face sessions. The first two runs of the Programme are targeted to take place in October to November 2021 and in February to March 2022, with about 30 to 40 participants in each run. Besides the law and relevant soft skills, topics covered will include social science perspectives on the family, pre-court interventions and mediation advocacy (which is different from conducting mediation for resolving family disputes). Our data shows that more than 90% of cases are resolved partially or fully

⁷ Sundaresh Menon, *Keynote Address* at the 8th Family Law & Children’s Rights Conference: World Congress 2021: Through the Eyes of a Child (12 July 2021) at para 12.

without court adjudication. Mediation advocacy skills are thus crucial to a successful family law practice. SAL will provide more details on the Programme in due course.

41. More broadly, the training of family judges and lawyers will be complemented by further efforts to “prepare the soil” for TJ to flourish. We will also be equipping allied experts from non-legal disciplines, including counsellors, mediators, and child psychologists with the relevant skills in this multi-disciplinary system. These specialists will become familiar with the features of the legal system within which they operate, as well as the legal tools that are available to achieve therapeutic outcomes. In the longer term, we will also review the education and training of our future family justice practitioners: from the early stages of legal education through to the Bar and professional exams, into continuing professional development.⁸

Feedback from the Bar

42. Through our engagements with the Family Bar, we received many valuable ideas on the content of this Programme. The three most prominent ones were: First, having the Programme cover substantive content and not just soft skills; Second, having judges participate in TJ training; and Third, introducing sanctions for the failure to practise in a TJ-oriented way.
43. I appreciate very much the Bar’s keen response to the call for ideas. Your suggestions are very valuable and will continue to assist the SAL and the FLPC to refine the Programme. I see a future where both family judges and lawyers undergo rigorous training so that all of us can discharge our respective roles effectively in this family justice system.
44. Building a TJ culture will have its challenges and developing TJ mindsets among lawyers and litigants will take time. There will be lawyers who do not practise in a TJ-focused way. There will be litigants whose conduct grates against our aspirations. Litigants-in-person particularly may be ignorant or unfamiliar with the family justice process. As the Court of Appeal and the High Court exhorted in the case called *VDZ v VEA*, a kind act begets a kind response while a nasty act inflames the other.⁹ You as a family lawyer, will be in that great place to encourage the divorcing parties to let their love for their children outshine their anger with each other, to lay down their arms, and allow healing and restoration to begin.
45. As a culture of TJ takes root and blossoms, it will become more natural for all to look at divorce proceedings as a process in transitioning into the next phase in life, instead of as adversarial litigation. Lawyers and litigants who continue to focus on taking aggressive adversarial stances, will find that the court will take notice of such conduct. The Family Justice Rules already empower the court to take a judge-led approach for the just, expeditious, and economical disposal of proceedings, and it may make any order, including orders for costs to address unreasonable conduct.¹⁰

⁸ Sundaresh Menon, *Keynote Address* at the 8th Family Law & Children’s Rights Conference: World Congress 2021: Through the Eyes of a Child (12 July 2021) at para 12.

⁹ *VDZ v VEA* [2020] 2 SLR 858 at [77]; *VDZ v VEA* [2020] 4 SLR 921.

¹⁰ r 22(2) and (6), FJR.

Divorce eService and Family Orders Guide

46. I would like to also share with you some initiatives that harness technology in our court system. FJC has been developing an online portal to facilitate the preparation and filing of court papers in divorce matters. There are two key parts to the portal: first, a Divorce eService; and second, a Family Orders Guide.
47. The Divorce eService was developed together with the Supreme Court's Office of Transformation and Innovation and the Computer Information Services Directorate. At the outset, it reduces the pain of form filling for lawyers and litigants by populating the litigant's personal particulars automatically from "MyInfo". The eService will also guide unrepresented litigants to fill in the necessary details of the applicable court forms and allow them to commence divorce proceedings on the Simplified Track. The eService will further contain a ready selection of commonly used court orders that an applicant can select to apply for.
48. To complement the eService, we have developed a "Family Orders Guide" containing a catalogue of court orders which the applicant can refer to. This Guide is designed to provide guidance on the drafting of court orders sought, and will be a common reference point for judges, lawyers and unrepresented litigants. The Guide will save time for lawyers who will then not have to draft court orders from scratch and minimise disputes over the language used. Unrepresented litigants will also benefit from a smoother experience when extracting court orders.
49. We are grateful to the Community Justice Centre, the Legal Aid Bureau, and members of the FLPC for testing out and providing their feedback on the eService. The FLPC also provided feedback on the Family Orders Guide. The feedback was valuable and has helped us to refine the initiatives.
50. I am delighted to launch the Family Orders Guide today. The guide will be available for download on our FJC website. The eService will be ready and available on 1 November 2021.

Conclusion

51. "Big questions in a small world" is the theme of this conference. That part of the title, "a small world", is a reminder of the interconnectedness of the society in which we live in, and the profound impact that our practice of family law can have on those around us. Family issues, conflicts and breakdown can happen to the best of us. Long after the conclusion of the dispute, family members continue to be connected in different ways – parents with children will always remain connected. It is in no one's interest to destroy family relationships further during divorce proceedings by allowing combative litigation.
52. Today, we are at a defining moment in family justice:¹¹ a transformative moment where our laws and institutions recognise the unique nature of family disputes and the need to eschew adversarial litigation. Transformation will require adjustment and hard work from us all, as judges and lawyers, but this is a time of great opportunity!

¹¹ Sundaresh Menon, *Keynote Address* at the 8th Family Law & Children's Rights Conference: World Congress 2021: Through the Eyes of a Child (12 July 2021) at para 4.

53. Practising Law, especially Family Law, is a calling. In today's family justice system, the endeavour is to find holistic solutions for the families such they can find healing and a way forward; it is not to score the most "wins". It is challenging, but very meaningful and fulfilling work.
54. Thank you for your dedication to family practice, which is one of the most challenging areas of practice. May we all apply the same dedication to excellence as we build up our family justice system.
55. Thank you for having me participate in this Conference, and I wish you an enriching time at all the sessions. Thank you very much.