

# **INTERNATIONAL FAMILY LAW CONFERENCE 2016**

## **The Future of Family of Family Justice: International and Multi-Disciplinary Pathways**

**Chief Justice Sundaresh Menon**

**29 September 2016**

Judges

Distinguished Guests

Ladies and Gentleman

1. I am honoured to open our inaugural International Family Law Conference this morning. We are privileged to have, amongst us, eminent members of the judiciary, family law scholars, practitioners and distinguished professionals from the social science community, some of whom have travelled across the globe to be with us today.

### **I. THE IMPORTANCE OF FAMILY JUSTICE**

2. As there are many in the audience who are new to Singapore and in particular to the developments that have been taking place in the context of family justice, I thought I would take some time this morning to recount some aspects of the journey we have embarked on in recent years.

3. All of us, at this conference, are linked by a deep and shared interest in and commitment to family justice. We tend to take it for granted that this is a

uniquely important area of law. But why is it so? A few weeks ago, I came across an extract from the speeches of Henry Brougham who was Lord Chancellor from 1830 to 1834. In one of these, he said:

There is no one branch of the law more important, in any point of view, to the great interests of society, and to the personal comforts of its members, than that which regulates the formation and the dissolution of the nuptial contract. No institution indeed more nearly concerns the very foundations of society, or more distinctly marks by its existence the transition from a rude to a civilized state, than that of marriage.<sup>1</sup>

4. That was spoken a little less than 2 centuries ago and although the ties that bind families are under strain, the family remains the bedrock of our society, and a fundamental force for promoting social stability and societal progress. Closer to home, a more modern statesman, our founding Prime Minister, the late Mr Lee Kuan Yew, observed some 34 years ago:

“Our strong family structure has been a great strength for continuity in bringing up of the next generation. The family has transmitted social values, more by osmosis than by formal instruction. We must preserve this precious family structure if our society is to regenerate itself without loss of cultural vigour, compassion and wisdom.”<sup>2</sup>

5. When families function as they should, they bring great benefits to society as a whole. The young are nurtured; values are shaped and transmitted; and traditions are strengthened. It all makes for stability and a sense of security. And there would be little if any need for family lawyers, judges or related

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<sup>1</sup> Speeches of Henry Brougham (Philadelphia, 1841) 2:289

<sup>2</sup> National Archives of Singapore (<http://www.nas.gov.sg/archivesonline/data/pdfdoc/lky19820207.pdf>) at p4

professionals. But the truth is that the family today is facing unprecedented stress. In developed nations across the world, there has been a general increase in the incidence of family breakdown.<sup>3</sup> Singapore too has been confronted with a growing rate of divorce and family-related disputes.<sup>4</sup> Even as initiatives are undertaken to promote stronger marriages and more resilient families<sup>5</sup>, it is inevitable that many relationships will break down irretrievably for a myriad of reasons.

6. And when they do, they raise issues for the court that *are* truly unique. Each area of the law is of course different but my emphasis is on the unique character of family *disputes* and their need for a suitable and particular response from all those of us whose calling it is to help those caught up in them.

7. The greatest concern of a family breakdown is the profound negative impact this will potentially have, not just on the parents but especially on their children. Divorce and separation are among the most stressful events that can confront an individual.<sup>6</sup> Studies have also demonstrated that the developmental outcomes for children will diminish with persistent inter-parental conflict.<sup>7</sup> Such children may carry difficulties into adulthood that range from feelings of sadness and vulnerability, to problems with relationships with other adults, to more serious

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<sup>3</sup> In Hong Kong, crude divorce rates (per 1000 residents) grew from 1.11 in 1991 to 3.10 in 2013: See Hong Kong Census and Statistics Department <http://www.censtatd.gov.hk/hkstat/sub/sp160.jsp?productCode=FA100055>)

<sup>4</sup> Crude divorce rates (per 1000 residents) grew from 0.8 in 1980 to 1.9 in 2014. See Department of Statistics Singapore (<http://www.singstat.gov.sg/publications/publications-and-papers/marriages-and-divorces/marriages-and-divorces>)

<sup>5</sup> For example, in Singapore, there are marriage preparation workshops

<sup>6</sup> Holmes & Rahe, The Social Readjustment Rating Scale, 11 J. Psychosomatic Res. 213 (1967)

<sup>7</sup> Kourlis et al, "Courts and Communities helping families in transition arising from separation or divorce" at p 353

mental health issues.<sup>8</sup> All of this will translate into deeper issues affecting the community as a whole. For example, statistics maintained by our Youth Court which handles delinquency issues relating to young people, reveal an over-representation of youths from dysfunctional families or from reconstituted families.<sup>9</sup>

8. If parental conflicts have these negative effects, can we do something to ameliorate this? After all, at some stage in the life cycle of a family dispute, the matter will come before the courts. The question for us is, how do we see our role in that context? Are we there just to pronounce a formality? Or do we have a larger role in trying to attenuate the dire consequences of the breakdown?

9. Perhaps, the most notable shift in this area over the course of the last 50 years has been the emerging perspective of the family justice system as an essential element in our efforts to protect our social fabric. An outmoded view would be to see the family justice system as an institution whose primary purpose is to define, protect and enforce legal rights that family members might have and to resolve conflicts between family members over those rights.<sup>10</sup> A broader view would take in the importance of multi-disciplinary services such as counselling, psychotherapeutic services and social services to support or improve the well-being of individuals or the functioning of their relationships. In this view, litigants in the family justice system should not be seen only to be adjudicating over their

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<sup>8</sup> *Ibid* at p 358

<sup>9</sup> 2013 and 2014 statistics show that 53% of all such cases have parents divorced or separated and 59% come from reconstituted families

<sup>10</sup> J. Eekelaar & M. Mclean, "*Family Justice: The Work of Family Judges in Uncertain Times*" (Oxford: Hart Publishing, 2013 ) at p 8

legal rights; rather they should be the recipients of a particular kind of justice which seeks to understand their plight and to promote their welfare and that of their children.

10. Family justice systems around the world have moved increasingly towards this expanded view. At the turn of the 20<sup>th</sup> century, the earliest iteration of a Family Court was established in the United States, with jurisdiction over divorce, juvenile delinquency, and family based criminal matters. It combined adjudication with therapy, deploying qualified personnel to help diagnose the psychological reasons leading to a family problem.<sup>11</sup> And in 1975, the Family Court of Australia was conceived as a “helping court” with its own counselling and welfare services.<sup>12</sup>

11. These developments reflect the recognition that familial responsibilities and dependencies are rarely extinguished, but endure even after the breakdown of the marriage.<sup>13</sup> Family law interventions should therefore be supportive to the family with the process being a navigated one that is designed to promote conciliation and reduce contention at every step. Family disputes thus call not only for the delivery of substantive and procedural justice, but also restorative

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<sup>11</sup> Chute, “*Divorce and the Family Court*, (1953) 18 *Law and Contemporary Problems* 49 (Cited in S. Lim, K.S Ong & C. Mohan “*The Family Court – Why Should Singapore Adopt It* [1985] 6 *SingLRev* 12

<sup>12</sup> Australian Law Reform Commission “*Review of the Adversarial System of litigation: Rethinking Family Law Proceedings*” (Issue paper 22, November 1997) at p 20; See also *supra* note 9 at 59-60

<sup>13</sup> N. Fricker QC, “Family Law in the new millennium: a vision for reform – a view from the front line” in S. Cretney, “*Family Law: Essays for the new millennium*” (Jordan Publishing, 2000) at p 91

and therapeutic justice.<sup>14</sup> And in this venture, the Courts, the anchor of the justice system, have a fundamental role to play.

## **II. RECONCEPTUALISING THE FAMILY COURTS FROM A BATTLEGROUND TO A FORUM FOR SUSTAINABLE SOLUTIONS**

12. Courts adjudicate legal disputes and safeguard the rights of individuals. But legal systems around the world differ in their understanding of how these functions are best carried out. At the risk of simplifying matters overly, in the civil law inquisitorial system, the judge takes a pro-active role in fact-finding and case management. There is no rigid separation between trial and the pre-trial stages. Legal proceedings are viewed as a continuous series of meetings, hearings and written communications.<sup>15</sup> On the other hand, in the common law adversarial system, the judge determines a matter but does not actively participate in the proceedings. Proceedings are by and large controlled by the parties to the dispute usually through counsel.

13. Much has been said about the comparative advantages and disadvantages of both systems. But they have each withstood the test of time and continue to serve their respective communities well.<sup>16</sup> There is, however, growing consensus that the adversarial process in its purest form may not be

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<sup>14</sup> 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 p 20

<sup>15</sup> *Supra* note 13 at 26-27

<sup>16</sup> *Ibid* at 28. For an interesting insight see also J. Langbein, "The German Advantage in Civil Procedure, 52 The University of Chicago Law Review (1985)

suites to meet the therapeutic and restorative components of family justice.<sup>17</sup> The premise of an adversarial system is that advocacy by opposing parties before a neutral decision-maker, would best lead to the determination of the truth and the vindication of rights. This is undoubtedly compelling in some settings, such as in criminal cases where the presumption of innocence remains a principle of cardinal importance and the rights of accused persons are paramount.

14. In the adversarial approach, the Court relies predominantly on the parties to determine how and what evidence will be led. Family matters however involve complex emotional and inter-personal disputes, and disputing spouses, desirous of presenting their best face to the court even as they are laden with emotional baggage, are often prone to be selective in the information they provide. Moreover, much of the information may be irrelevant or unhelpful to the legal questions before the court but yet may have been introduced often out of a deeply felt desire to lay blame. This is especially problematic in disputes relating to children, where the best interest of the child may be obscured by the fog of the war of the spouses.<sup>18</sup> Furthermore, an adversarial system which requires impassioned advocacy for and against each side regularly leads to exacerbating conflict rather than ameliorating it. The escalating tensions are prone to add to the fragmentation of these relationships to the detriment of families and their children.

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<sup>17</sup> G. Firestone & J Weinstein “*In the Best Interest of Children: A proposal to Transform the Adversarial system*” in Resolving Family Conflicts J. Singer & J. Murphy; See also S. Murray, “The “*Remaking of the Courts: Less-adversarial practice and the Constitutional Role of the Judiciary in Australia*” (Federation Press, 2014)

<sup>18</sup> Supra note 13 at 43

15. All this demands a fundamental shift in the perspective of the court from that of a competitive battleground to a conducive forum where sustainable solutions can be reached. This in turn requires proactive judges, collaborative counsel and multi-disciplinary professionals. This in essence is the philosophy underlying the ongoing transformation of the Singapore family justice system, to which I now turn.

### **III. A UNIFIED COURT AND THE JUDGE-LED APPROACH**

16. The first foundations for a dedicated family court in Singapore were laid more than 2 decades ago when we established the Family and Juvenile Justice Division under the then Subordinate Courts in 1995.<sup>19</sup> Judges and a court support group comprising mediators, social workers and counsellors worked together to create a less-confrontational forum for dispute resolution.<sup>20</sup> Improvements to court infrastructure and processes were introduced over the years. However, the needs of dysfunctional and distressed families continue to evolve and the family justice system must adapt and respond in tandem.

17. The reform of the family justice system was a foremost priority when I took office as Chief Justice. In 2013, the Minister for Law and I commissioned the Committee for Family Justice (“the Committee”), an inter-agency team consisting

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<sup>19</sup>W. K. Leong, “*Elements of Family Law in Singapore*” (LexisNexis, 2007) at p 892. Prior to that, there were calls for a unified family court to be established - See for example S Lim, K.S. Ong & C. Mohan “*Setting up a Unified Family Court in Singapore*” [1985] 6 SingLRev 22 and S. Quah “*The Family Court: A Sociologist’s perspective on Enlightened Collaboration Between Law and Social Sciences*” [1993] SJLS 16.

<sup>20</sup>D. Lai, “*The Family Court of Singapore*” 1995 SJLS 655 at p658



of judges, policy makers, academics and professionals involved in family work. Amidst growing divorce rates<sup>21</sup>, it was an opportune moment for the Committee to undertake a meticulous and updated evaluation of every aspect of the family justice system. Following a year of extensive review and consultation and drawing from the experiences of other jurisdictions, the Committee submitted its recommendations.<sup>22</sup> One of the key recommendations was the establishment of a separate specialised family court structure. The principal recommendations were accepted by the Government and the enabling legislation was passed. On 1<sup>st</sup> October 2014, the Family Justice Courts, comprising the High Court (Family Division), the Family Court and the Youth Court were established. That was a defining moment and it ushered in the beginning of a re-imagined paradigm for the resolution of family disputes in Singapore. Let me highlight a few of the key features of this new framework.

18. First, we consolidated the courts that would deal with family disputes and expanded their jurisdiction so that virtually *all* disputes relating to the family could now be heard under a single judicial roof. The problems associated with families in dysfunction tend to be interlinked. Parties often find themselves caught in a web of disputes relating to children, finances and domestic violence.<sup>23</sup> By bringing all these matters under the Family Justice Courts, we are able to tap on

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<sup>21</sup> Second Reading of the Family Justice Bill by Minister for Law, K Shanmugam (4 August 2014)

<sup>22</sup> Recommendations of the Committee for Family Justice on the Framework of the Family Justice System (4 July 2014)

<sup>23</sup> 2003 John Barry Memorial Lecture speech by then Chief Justice Alastair Nicholson of the Family court of Australia titled, "*Justice for Families and Young Offenders - A unified court system as a 21st century reform*" at p10

the specialised expertise and temperament of family court judges and court professionals to deliver consistent and targeted solutions to the family concerned.

19. The unification of the court structure has also allowed us to implement robust case management initiatives across the system. Family relationships are dynamic. It is unsurprising that the same parties return to court on numerous occasions to seek fresh orders or to vary existing orders. Recognising the challenges that this can present, we have in selected cases implemented a case docketing system with the assignment of a judge to a specific matter who will then be responsible for it until the case reaches its conclusion. Lengthy proceedings are physically and emotionally draining to parties. The prolonged period of uncertainty can also generate intolerable pressures for the children caught in the midst. Having a single judge will help ensure familiarity with the facts of the case and a greater sensitivity to the unique needs of that family.

20. Next, we adopted the judge-led approach to the resolution of family disputes through the adoption of the Family Justice Rules, which came into operation on 1 January 2015. The provisions empower the judge to make a wide range of orders to facilitate the just, expeditious and economical disposal of family proceedings.<sup>24</sup> These orders include directing parties to attend mediation, counselling or family support programmes. Other issues relating to the conduct of proceedings such as calling of witnesses, including experts, the admission of

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<sup>24</sup> Rule 22(1) of the Family Justice Rules (2014)

evidence and the length of submissions are all matters that are now within the ultimate control of the judge.

21. This stemmed from the recognition that letting the parties take the lead in shaping the dispute is not always appropriate and may, in some cases, exacerbate conflict and prolong the time taken to adjudicate disputes.<sup>25</sup> Family relationships could have lasted years before the breakdown. Perhaps as a result of this, it is not uncommon for parties in litigation to file copious affidavits with voluminous supporting documents which may be of little relevance to the issues at hand. These affidavits often contain a litany of accusations engendering yet more bitterness and acrimony. This is not helpful at a time when it is crucial for parties to look beyond their differences to find a way to continue to function in the best interests of their children.

22. The arsenal of procedural tools has undoubtedly given our judges significant powers, but we are also concerned to avoid perceptions of undue judicial intervention, lack of accountability or impartiality.<sup>26</sup> While the appellate process can address some of these issues, it may be difficult, for instance, for litigants-in-persons to understand such issues. This calls for a delicate touch. It is therefore important to ensure that judges are competent not only in the law but in managing the parties and their expectations and to this end, they receive

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<sup>25</sup> *Supra* note 23 at [138]

<sup>26</sup> *Supra* n 13 at p78

continuing judicial education and training,<sup>27</sup> not only on developments in the law, but also on a wide range of relevant social science topics.

23. The judge, however, is not a psychologist, counsellor or an expert in child development.<sup>28</sup> These are specialised fields which involve particular skills developed through years of professional training and experience. The dedicated support of a multi-disciplinary team of professionals is thus crucial to the new paradigm.

#### **IV. THE MULTI-DISCIPLINARY APPROACH TO FAMILY JUSTICE IN SINGAPORE**

24. This important function is played by the Counselling and Psychological Services department (CAPS), the social science arm of the Family Justice Courts. Officers from CAPS identify and investigate underlying interests behind legal disputes that are often critical to the resolution, restoration and protection of individuals and families. Through the platforms of psychological assessments and evaluations, and by emphasising conciliation and mediation, CAPS officers seek to understand what lies beneath the dispute and to transform how individuals, families and children see their disputes and what lies beyond. Our team of about 20 comprises court counsellors, social workers and psychologists who work with families and provide judges with the advice, information and recommendations to

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<sup>27</sup> *Supra* note 23 at [30] See also J.Langbein, “*The German Advantage in Civil Procedure*” 52 *The University of Chicago Law Review* (1985) at 848-849 where the learned author noted that judges in the German system undergo through in-depth training and a certification process before they qualify as judges as the inquisitorial system recognizes the important role of the judge.

<sup>28</sup> J.Goldstein, A. Freud and A. Solnit, “*In the best interest of the child*” (1986)

enable them to make a considered decision about each child's future in their best interests. Their approach extends to working with the children in order to discover their wishes and feelings, and then reporting their findings back to the court.

25. This collaboration between our judges and the multi-disciplinary team has been instrumental to the success of the many initiatives which have been put in place to enhance the resolution of family disputes in Singapore. It is plain that one of the key objectives of any family justice system is to promote and protect the interests of the affected children.<sup>29</sup> The law here and abroad places the interest of children at the forefront, with an emphasis on parental *responsibility* instead of on parental *rights*.<sup>30</sup> Some have gone further to categorise the parent-child relationship as a fiduciary one.<sup>31</sup> On any view, the family justice system should ultimately be one which is child-centric, with preventive upstream interventions and follow up downstream support. Allow me to touch of some of these initiatives which reflect the approach we have taken towards resolving family disputes where children are involved.

26. Family issues are best resolved at an early stage before legal proceedings are commenced. With recent amendments to our laws<sup>32</sup>, parties with children 14 years and below will soon be required to attend a parenting programme which seeks to better inform separating spouses of the impact of divorce on their children and finances. They are also advised on the importance of developing a

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<sup>29</sup> Article 3 of the United Nations Convention on the Rights of the Child

<sup>30</sup> *CX v CY* [2005] 3 SLR(R) 690

<sup>31</sup> E.S. Scott, "*Parents as Fiduciaries*" 81 Va. L. Rev. 2401

<sup>32</sup> Women's Charter Amendment Bill (2016) introducing the new Section 94A

workable parenting plan. The programme is mandatory and must be attended by the parties before a writ for divorce can be filed in the Court.

27. If divorce proceedings are commenced, the court is empowered by law to direct parties to counselling or mediation.<sup>33</sup> Mediation is a powerful tool in family proceedings where there are many areas of overlapping interests, in particular the welfare of the children, which can encourage parties to compromise. Parties are also more likely to adhere to settlements reached by consensus. We have therefore adopted a model where it is mandatory for parties with minor children to attempt mediation. A judge-mediator and a court counsellor work hand-in-hand with the parties to uncover the dynamics of the family relationship, address the needs of the children and equip parents with the necessary knowledge on co-parenting. This unique multi-disciplinary cooperation between counsellor and judge has helped facilitate the resolution of the disputes more amicably.

28. We have also developed, for suitable cases, a child-inclusive mediation programme incorporating a therapeutic interview with the affected children to elicit their feelings and perceptions about their parent's dispute. This is then followed by a feedback session between parents and the counsellor about the unique development needs and psycho-emotional adjustment of each child within the family. This has helped parents appreciate the consequences of their actions on their children, with encouraging results so far.

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<sup>33</sup> Section 49 and Section 50 of the Women's Charter; Section 26(9) Family Justice Act

29. In addition, FJC and the Singapore Mediation Centre have developed the Singapore Family Mediation Training and Certification framework to grow the pool of specialist family mediators through training and accreditation. This is in keeping with our desire to extend the benefits of mediation to a wider range of disputes. And from next week, our practice directions will require parties with contested property disputes with a value in excess of \$3m to attend private, rather than court, mediation.

30. There will be cases, often between high-conflict spouses, where mediation fails and litigation ensues. In such cases, the child's voice is frequently suppressed by the parties as they each focus on maximising their own position. To overcome this and to enhance the prospects of the court reaching an objective assessment, we implemented a Child Representatives scheme, empanelling trained and experienced family practitioners whose task is to interview the affected children, advocate on their behalf and prepare independent reports to ensure that their interests are sufficiently addressed. Some have cautioned against involving children in the proceedings.<sup>34</sup> But we think it is important to recognise that many of these children are already aware of their parents' dispute; and if they are of sufficient maturity and age, their views should be taken into account.<sup>35</sup> This is also consonant with Article 12 of the United Nations Convention on the Rights of the Child which provides that state parties

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<sup>34</sup> P, Harris, "*Representation of Children*" in S. Cretney, "*Family Law: Essays for the new millennium*" (Jordan Publishing, 2000) at p 157-158. See also the some views of Singapore lawyers <http://www.todayonline.com/singapore/divorce-cases-child-representatives-double-edged-sword-say-experts>

<sup>35</sup> Section 125(2)(b) of the Women's Charter

shall assure to the child who is capable of forming his or her own views the right to express those views freely.

31. In disputes presenting difficult issues such as psychological concerns which the judge may not be well-equipped to address, there will be a need for experts to assist the court. In the common law tradition, the parties will usually appoint their own experts. It is not uncommon in this setting for the expert's evidence to lean in favour of the client who had appointed him or her. This leads to divergent and often less than objective opinions which ultimately offer little assistance to the judge. Furthermore, where young children or vulnerable witnesses are involved, repeated expert inspections and interviews can exacerbate the harm and suffering. To address this, our rules allow the court to appoint an independent expert to assist, and once this is done, the parties cannot without leave of court, appoint their own experts to give evidence on the matters reported by the court expert.<sup>36</sup> The appointment of the independent court expert might not only assist the judge in decision-making, but it can also reduce the prospect of protracted and costly litigation occasioned by partisan expert opinions. This in fact resembles the approach taken by civil law jurisdictions where experts are typically appointed by the court recognising that credible expertise should be neutral expertise.<sup>37</sup> Certainly, there should be adequate safeguards, and our rules provide a wide discretion to the judge to deal with any specific concerns that the parties might have.<sup>38</sup>

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<sup>36</sup> Family Justice (Amendment) Rules 2016

<sup>37</sup> J. Langbein, "*The German Advantage in Civil Procedure*" 52 *The University of Chicago Law Review* (1985) at p 836-837

<sup>38</sup> Rule 633 of the Family Justice Rules (2014)



32. But the judge's work does not end with the making of an order that seeks to prescribe a platform on which the parties can move on with their lives. Implementing this can be an even greater challenge. In some cases, parties may soon find themselves back in court for yet another contest. To curtail this cycle of conflict, we intend to introduce, towards the end of the year, a pilot scheme of having trained parenting coordinators assist high-conflict parents with the implementation of their parenting plan. The parenting coordinators will also guide parents on how to resolve their own conflict without the need to return to the courts.

33. It is of course the case that many of these initiatives were inspired by pioneering efforts abroad and we are indebted to our counterparts who have readily shared some of the best practices in their respective jurisdictions. This is comparative law in action and it is something we should all take advantage of because many of these issues are almost universally faced.

## **V. CONFRONTING THE COMPLEXITIES OF FAMILY JUSTICE IN THE MODERN GLOBALISED WORLD**

34. Another modern reality of our times is the increasingly common incidence of couples of different nationalities meeting, falling in love and getting married. In Singapore, we have witnessed a significant rise in transnational marriages which

often take on a multi-cultural, multi-ethnic and multi-racial dimension.<sup>39</sup> This is also reflected in other countries around the world.<sup>40</sup> Inevitably, it has been accompanied by a corresponding rise in family disputes involving such marriages. These can raise complex questions in a number of areas.

35. Applications for relocation are always difficult. Decisions in such cases could result in the permanent separation of the child from one parent across national boundaries. On the other hand, declining the application could result in the primary caregiver being compelled to remain in a jurisdiction where he or she might not have any roots or access to support networks. Whichever way the court decides, the decision is bound to cause considerable pain and anguish to one of the parties. Although these competing tensions are presented from the perspective of parents, the guiding principle in resolving these matters should be the welfare of the child. A recent decision of the Singapore Court of Appeal<sup>41</sup> underscores this and I would highlight two key points made in that case.

36. First, the court observed unequivocally that the welfare of the child is paramount and this will override any other consideration. The welfare principle in the words of the court is “the golden thread that runs through all proceedings directly affecting the interest of the children”. Previous cases had considered the *reasonable* wishes of the primary caregiver to relocate as a weighty, if not

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<sup>39</sup> A Sustainable population for a dynamic Singapore, a Population White Paper (2013) at p 26

<sup>40</sup> See for example G. W. Jones, “*International Marriage in Asia What do We Know and What do We need to Know*” (Asia Research Institute Working Paper Series No.174, 2012). See also Giampaolo Lanzieri “*A Comparison of Recent Trends of International Marriages and Divorces in European Countries*” (2011) at p32

<sup>41</sup> *BNS v BNT* [2015] 3 SLR 973

determinative factor. We considered, however, that the primary caregiver's wish to relocate is only one of the factors amongst other composite factors.

37. Second, we also endorsed the importance of joint-parenting, stressing the need to also consider the child's loss of the relationship with the left-behind parent.<sup>42</sup> This was a nuanced observation in that we also observed that like the wishes of the primary caregiver, the left-behind parent's contact with the child is but one of the factors to be considered and its weight would depend on the strength of the existing bond between that parent and the child.

38. In the worst cases where parties cannot agree, one parent might take the child out of the jurisdiction without the consent of the other parent. The left-behind parent is then confronted with a real possibility of permanent separation from his or her child. It is against this backdrop that the International Convention on the Civil Aspects of International Child Abduction ("The Child Abduction Convention") came to being. The Child Abduction Convention seeks to protect children from the harmful effects of their wrongful removal or retention.<sup>43</sup> Signatory states are obliged through the administrative and judicial machinery to ensure their prompt return to the country of habitual residence.

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<sup>42</sup> It has been observed that the maintenance of contact between children and parents should not be merely seen as something to be encouraged but one of legal duty - See A Bainham, "*Children Law at the Millennium*", in *Stephen Cretney: Essays for the New Millennium*" (Jordan Publishing, 2000). See also Children (Scotland) Act 1995 Section 1 and Articles 9 of the United Nations Convention for the Rights of the child.

<sup>43</sup> See M. Freeman, "*Parental Child Abduction – The Long Term Effects*", International Centre for Family Law, Policy and Practice (December 2014) on the discussion of long term effects of parental abduction on children.

39. Child Abduction Convention applications usually involve high-conflict parents whose relationship has broken down to such an extent that one parent has removed the child from the jurisdiction of habitual residence. The “abducting parent” might well have understandable reasons for his or her unwillingness to return the child. The court is thus often confronted with the difficult issue of ensuring how the child’s best interest is served within the proper framework of the convention. Singapore’s first Child Abduction Convention case came before our Court of Appeal in 2014.<sup>44</sup> The court affirmed that the operating principle underlying the convention is that of jurisdiction selection, and the court should only be concerned with the return of the child to his or her country of habitual residence, the courts of which will adjudicate on substantive custody issues.<sup>45</sup> In order not to frustrate this general principle, the exceptions to return contained in Article 13 cannot be invoked lightly.<sup>46</sup> The court was nonetheless cognisant of the interest of the child in that case and we imposed a comprehensive series of undertakings to protect both the abducting parent and the child accompanying the order for return.

40. The Child Abduction Convention resolves one aspect of cross-border disputes. But there are other complex issues in this context which countries will have to resolve, either through consideration of other Conventions, or by encouraging the formation of communities of practice of various kinds. This is why sustained international conversation on family justice is crucial.

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<sup>44</sup> *BDU v BDT* [2014] 2 SLR 725

<sup>45</sup> *Ibid* at 26

<sup>46</sup> *Ibid* at 31 and 38

41. The Association of South-East Asian Nations (ASEAN) is important to Singapore, and the Working Group of the Council of ASEAN Chief Justices on Family Disputes Involving Children met earlier this week. The work of the Working Group will, in the course of time, facilitate greater interaction and dialogue on family matters amongst judiciaries in the region. As economic integration increases within ASEAN, it is important that our families in the region receive the assistance that they require to resolve their differences even as they cross borders.

42. We were also privileged to host a meeting of the International Hague Network of Judges (“IHNJ”), which was established under the Hague Conference on Private International Law to facilitate cooperation and communication between judges on a global level. Our courts will continue to support further developments in the work of the IHNJ. The success of the 1980 Hague Convention, and other child-related Hague Conventions, highlights how international cooperation can ensure that parents are able to obtain real relief with the full assistance of authorities and the courts from contracting states.

43. Beyond communities of judges, it is also important to develop conversations within the wider family justice eco-system. To this end, we have established an International Advisory Council (“IAC”) which brings together seven leading thinkers in the world in the field of family justice, to discuss and share perspectives on the latest developments in family law and practice. The members of the IAC come from Australia, Canada, Germany, Hong Kong, UK and the USA. They are each experts in different fields, namely, the courts, academia and the

social sciences. I had the pleasure of chairing the first meeting of the IAC yesterday, where there was a lively and invigorating exchange of ideas on the latest developments and trends in various areas of family justice. Our courts will continue to draw on the expertise of the IAC to build on, and implement, some of these ideas.

## **VI. CONCLUDING REMARKS**

44. Family issues are deeply interwoven with societal issues and necessitate strong support systems to help and engage families in transition. This International Family Law Conference was conceived with these realities in mind. This gathering not only of jurists but also of policy-makers, academics and professionals from the social science domain presents an ideal opportunity for all of us to deepen our insights and exchange ideas on holistic solutions to meet our challenges.

45. I believe that all of us here today recognise that family justice is not simply a matter of academic interest or intellectual debate. It is a critical component of any legal system which serves the needs of families, protects the rights of individuals, and safeguards the welfare of our children.

46. Yet, the success of any family justice system is not hinged upon the boldness of its reforms or the ingenuity of its initiatives. It ultimately rests in the hands of every individual behind it – The *family practitioner* who passionately

advocates for his client whilst being sensitive to the needs of the children and the post-divorce family relationship; the *counsellor and mental health professional* who provides therapy for those in distress; the *mediator* who revives the conversation between estranged spouses; *the academic* who pushes the boundaries of family law and helps us reimagine the ways in which we think of these issues; *the social scientist* whose research may shed new light on the needs of troubled families and children; *the policy maker* who translates innovative policies into law; *court staff* who consider the multiple facets of each case and litigant in search of solutions; and *the judge* who respects and treats every single family dispute with the greatest care and compassion. In this collective enterprise, we each help steer families through adversity to become strong and resilient to face the future. This is why we are each engaged in this worthwhile collective endeavour and we are privileged indeed to have a role to play in replacing bitterness and acrimony with healing and hope.

47. I wish all of you an enriching and fruitful conference as you think through and discuss the many issues that will be raised over the course of the next couple of days. Thank you.