Family Justice Practice Forum 2019

2 October 2019

Opening Address

Justice Debbie Ong

1. In 2014, when the FJC was established, the Chief Justice exhorted us to assist families towards a path of healing, away from being mired in painful memories and bitterness, and towards a new future:

> "When the Family Justice Courts was established, the Chief Justice exhorted us to assist families towards the path that will bring healing, like doctors diagnosing the problem and choosing the right treatment for healing. …Our aspiration as a society is to support every family towards a way forward. This means recasting the family's future, for the past may contain pain and perceived failures."
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> *[Per Justice Debbie Ong, Keynote Speech at Family Conference 2019, 3 July 2019]*

2. This may sound familiar to you; you might have heard me share this a number of times. This is because I am unwavering in my belief in this clear aspiration.

3. Many of our reforms were inspired by ideas from abroad, from other jurisdictions that shared their experiences and successes with us. Today, a distinguished panel of international experts, most of whom are members of our International Advisory Council (IAC), are here with us. Our IAC members have been supporting us in the last few years with their generous and wise counsel. Today, they will share insights on family justice from their respective jurisdictions in the plenary sessions.

4. We will also hold the inaugural Great Family Debate this afternoon on a topic that continues to generate debate today – the role of social science in the development and practice of family law. We look forward to the compelling arguments of our distinguished orators in our mini "International Court of Justice" this afternoon.

Report of the Committee for Family Justice in 2014

5. The FJC is 5 years old today. Yesterday was our 5th birthday. The FJC was established following the recommendations of the Committee for Family Justice in 2014, which focused on these key essentials:

- First, it was crucial to protect the best interests of the child. Unlike civil suits where every party has a voice, children are not parties and their voices will not be heard unless the system is sensitive to their voices.

- The focus was the creation of a comprehensive specialist family court structure with enhanced court case management policies and processes, as well as enhanced court powers. The judge was to control proceedings to lessen the trauma and acrimony, and dispose of matters expeditiously. Processes were to be streamlined to reduce unnecessary delays, costs and prolonged stress.

- The Committee hoped for better support for families to resolve disputes through an integrated network of assistance leveraging existing community resources.

6. In the past five years, family procedure has undergone significant changes with the introduction of the "judge-led" approach and the creation of an independent set of rules, the Family Justice Rules. Information Technology has also been used to improve the interaction between court-users and the court. We have also built up our multi-disciplinary and harmonious dispute resolution capabilities. Issues relating to the aging population and vulnerable adults were also attended to.

7. Today, a large percentage of cases are resolved amicably with only a fraction of cases proceeding on to a contested proceeding. In 2018, almost 9 in 10 divorce cases that went through mediation obtained either full or partial settlement. In the first half of this year, less than 4% of concluded divorce cases were contested on either the grounds of divorce or on ancillary matters. These reforms have had a positive impact.

FJC-MinLaw Court Users Survey 2018/19

8. I would like to share with you some results of a survey on aspects of the reforms. I hope to give you the essence of the reforms that have been implemented – the survey questions will give an idea of what the key reforms were.

9. This survey, jointly administered by FJC and the Ministry of Law, tested lawyers' and court users' perception of the 2014 reforms. 106 lawyers and 879 court users participated in this survey. More than 80% of lawyers (**83%**) and court users (**82%**) surveyed had an overall positive perception of the reforms based on their experience with the Courts.

10. On the Judge-led approach, 86% of lawyers agreed that judges have more control in their cases post 2014 reforms; 85% of lawyers found the judge-led approach made the proceedings more efficient; and 73% of lawyers found the judge-led approach has led to greater certainty in proceedings.

11. On the "docketing" system, 85% of lawyers agreed that the individual docketing system is effective in allocating judicial resources to tackle issues in cases; 82% of lawyers found that there is greater effectiveness in the courtroom with the same judge throughout the entire proceedings; 82% of lawyers found the individual docketing system is effective in speeding up the resolution of cases.

12. On simplified and streamlined court processes, 98% of lawyers agreed that the simplified track in case management is effective in allocating judicial resources to tackle issues in cases; and 97% of lawyers found that the simplified track in case management is effective in speeding up the resolution of cases.

13. On the emphasis on mediation, 92% of lawyers found court-directed mediation in the Court helpful; 91% of lawyers found mandatory mediation in the Court helpful; 84% of lawyers found private mediation scheme for financial matters helpful.

14. Court users also had a positive perception of the reforms. When asked about the "docketing" system, 96% of Court users agreed that there is greater effectiveness in the courtroom with the same judge presiding throughout the whole proceedings. When asked about

mediation, 94% of Court users found private mediation scheme for financial matters helpful; 72% of Court users found mediation in the Court helpful.

15. It is now timely for us to review the reforms and consolidate the work.

Report of the Committee to Review and Enhance Reforms in the Family Justice System ("RERF") in September 2019

16. Last year, I had the opportunity to co-chair a committee that reviewed these reforms to further strengthen the system. The inter-agency committee, the Committee to Review and Enhance Reforms in the Family Justice System ("RERF"), was formed to review and enhance the 2014 reforms. The RERF Report was released for public consultation on 19 September 2019.

17. There were many recommendations, and I broadly highlight some of them:

- The report highlighted strengthening upstream interventions in the divorce process – such as encouraging counselling and mediation before any legal action is taken.

- It was important too that we build on the role and capacity of family lawyers, family judges, mental health professionals, therapists and social workers.

- Therapeutic justice resides in a multi-disciplinary environment – so the coherent integration of support services with legal services is important.

- We will further strengthen the judge-led approach, enhancing the judge's powers for the expeditious disposal of proceedings, and enhance access to justice.

18. In considering the reforms, children are the centre of our concerns.

It takes a Village

19. Today's Forum reminds us that it takes all of us to strengthen the family justice system – it takes a global village.

20. This Forum's theme visual depicts a global village of adults, hand-in-hand with a child seated playfully on the arms of two adults. The child is depicted in red and has a larger shadow than the adults. This underscores the centrality of the wellbeing of the child to the family justice system.

21. The white figures – the adults – represent the indispensable actors within every family justice system around the world. They include our distinguished speakers and members of the audience today – social workers, counsellors, family lawyers, judges, academics, social scientists, medical professionals, and policy makers. They are steadfast in their common aspiration to ensure that, despite family breakdowns, children can have a normal happy childhood.

22. Now let me talk about "Village Life".

Villagers talk to each other

23. Villagers – that would be us all – must talk to one another. Legal remedies alone from the FJC do not provide the full therapeutic justice we aim to provide. We will be quite surprised by how much there is learn from other disciplines – what comes as second nature to one trained

in a certain discipline may be something that does not even occur to one from another profession. Our RERF meeting discussions were very good times when we had multi-disciplinary conversations.

24. In July, just a few months ago, our family judges had our "Learning" week,– where we received training from experts on child development and attachment research, on how to interview children and so forth. What was interesting to me was how the psychiatrists and psychologists who interacted with us expressed that they had many questions about family law and what court orders mean. There is much to talk about.

Villagers understand the mission and share their joys with each other

25. Villagers know what their common aspirations are and they share their joys with each other. I share one aspect that has been encouraging.

26. Our broad mission for years has been to help families towards a positive future - counselling is not a remedy that was considered only in the 2014 reforms.

27. However, years ago, the question of whether the court should order and mandate counselling was not an easy one to answer. It was a subject that attracted much debate. Many years back, there was no provision for the court to make counselling orders. It was thought that counselling required consent, a willing heart and positive will as "you can't force someone" to be helped in therapy.

28. Our law took a bold step despite the debates, and provided that the court could order counselling when it made Family Violence protection orders. Some counselling may have been effective, some not.

29. Let me share the experience of one man who was *unhappily forced* by the Court to undergo counselling.

30. David – yes, his real name – was sent to PAVE, a Family Violence Specialist Centre under a Counselling Order made by the Family Court. David allowed me to use his real name because he has experienced healing and wanted to share his story. This is an extract from his blog:

> When I was talked into a group counselling session, I like many did not know or understand why talking among strangers will provide answers to MY domestic issues. Yet I was there I was sitting in a circle barely making eye contact because no one is prepared to face the truth about abusing our partners. Some are mandated by the court of law; others are looking for a 'quick fix' solution. …
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> I am not going to sugar coat it to say that we hit it off from day 1 or it was comfortable sharing highly sensitive and intimate details. It was nerve wrecking initially, but we knew we couldn't go on hiding behind the walls of our home and keep on bullying our spouse, partner or girlfriend….
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> It happened each week in our session to the group of men, because we didn't just hear each other but listened. With that we laid down our pride, dropped the blame game so that we can actually protect the people who love us back….
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> …to the brave men who completed the program with me, they have my highest respect. To the facilitators who stood on the firing lines for us, I give them my eternal gratitude.

31. The Director of PAVE and David's case worker are here attending this Forum today. I share their joy in this lovely story. Your work inspires us. You inspire me.

32. Today, counselling orders in family violence proceedings are routinely made. Those responsible for family violence must attend counselling sessions that may include group work such as those attended by David.

33. In all divorce proceedings, counselling and mediation are mandatory for divorcing parties with minor children. This provision was made in the 2011 amendments to the Women's Charter.

34. We in Singapore have chosen this step, but it was not an easy one. Other jurisdictions may not choose the same path. There are many pieces to fit together in order for anything so huge to work – I would not support mandatory counselling and mediation if we did not have good counsellors and well trained mediators; this step might not have worked at all if lawyers did not support it. You see, we are a Village.

35. Now, back to Village life – what else does the global village do?

Villagers look ahead with courage; they shape behaviour

36. The Global Village must look ahead with hope and positivity. Laws and processes can shape good and responsible behavior.

37. I highlight an aspect of our law on custody that I think made a significant development in requiring parents to discharge their parental responsibility. First, I explain the legal concept of custody. "Custody" is the authority to make major decisions in the child's life. It is different from "care and control" which is the authority in respect of day-to-day matters of the child.

38. Prior to 2005, the law on custody of children was that if the parents' relationship was so acrimonious that they could not cooperate, sole custody (which places major decision-making authority on one parent) was appropriate. In *Albert Yeap v Wong Elizabeth (unreported, D3667/1995)*, the High Court remarked:

> "Sometimes it is better for a decision (of sole custody) to be made, even if it turns out that the perfect option is not chosen, rather than for the matter to be the subject of conflict between the parents."

39. It was thought that if parents were in a high conflict relationship, they would not be able to make joint decisions; they would fight more, so it was the lesser harm to have just one parent make major decisions for the children.

40. The Court of Appeal in *CX v CY* [2005] 3 SLR 690 took a position that was significant in 2005. The Court said at [36]:

> "the preferable position in the law of custody is …to preserve the concept of joint parental responsibility, even if the parties may harbour some acrimony towards each other. Often, advocates …rely on the acrimonious relationship of the parties to argue that joint custody will be detrimental to the welfare of the child. However, they fail to appreciate the fact that some degree of acrimony is to be expected when parties are undergoing the stresses of a marital breakdown. As allegations of wrongdoings and breaches of fidelity can be hurtful, the time when the marriage breaks down may not be the best time to assess whether both parents can co-operate for the rest of the child's

life. We believe that the fear that parties cannot co-operate may be overstated. It is a quantum leap in logic to assume that the parties' inability to co-operate during the period of divorce or custody proceedings equates to an inability to agree on the future long-term interests of the child."

41. In this landmark decision of *CX v CY*, the Court observed that some acrimony may not be unusual when parties are still litigating and the dust has not yet settled. Indeed parties are not their best selves when they are undergoing such grave conflict and litigation. It was thus premature to strike off one parent from the child's life just because the parties have difficulties in co-parenting at that time. Granting sole custody meant that the other parent had no part in major decisions in the child's life. Because that was what custody was – the authority and responsibility to make decisions in the major aspects of the child's life. The child would have lost the guidance of one parent in his life. *CX v CY* held that sole custody should be confined to exceptional situations.

42. This development in the law was a bold step towards demanding much more from parents. It was a case on a legal duty called "parental responsibility". It was also a message of hope – a message that things can get better. When litigation is over, when parties will have some certainty, the future can be positive. They must make the new arrangements work. Whatever may have happened in the past, I always say, "Today is a new day."

43. I share these examples on the making of mandatory counselling orders and the robust step in *CX v CY* demanding joint parenting as reminders that we must reach further. Sometimes a more robust step needs to be taken. If that is the right step, we must take it.

44. For example, can the law demand more on the discharge of parental responsibility? We should have hope and optimism that the human spirit can achieve wonderful things, such as healing from the pain of divorce and finding strength to repair relationships, and making sacrifices for the sake of the children. Relationships are dynamic and the children keep growing and maturing – they can have good relationships with both parents over time, when the most difficult divorce period is over. We can support them to reach well-balanced healthy views.

45. Today we have even more therapeutic and other resources that can be used to support court orders. We can take even more robust steps!

46. In the FJC, we have "Court Specialists" from CAPS (Counselling And Psychological Services) in FJC's Family Dispute Resolution Centre. All divorce proceedings in the FJC that involve minor children go through our child-focused conferences in our Family Dispute Resolution Centre, where families are provided with counselling and mediation. In recent years, we have "DSSAs" (Divorce Support Specialists Agencies) placed in our family justice system where the court may order supervised access or exchange to be carried out in these agencies, and order counselling for parenting issues as well. We have Child Representatives who speak to the children and give them a voice in the proceedings.

47. Of course, there are challenges:

- We are seeing more complex cases in our courts involving greater acrimony between the parties, multiple applications, voluminous affidavits, and cross-border issues.
- We are also seeing greater complexity of issues in parent-child relationships.
- As our population ages, there is a growing number of vulnerable persons who require care and we must consider how to protect their interests as they age.
- Reducing the costs of litigation remains a main consideration in our courts.
- With better education and efforts to increase access to justice, there are also large numbers of litigants-in-person who are unfamiliar with the processes.
- There are demands on our resources.

48. But we are a village, and we can address these challenges together. Technology is certainly a resource we use to addresses some of our challenges. Let me take this opportunity to share the launch of three modules in our electronic application system.

Launch of three iFAMS modules

49. As part of our endeavour to increase access to justice for court users, we are launching three additional modules in our integrated Family Application Management System (iFAMS):

- The Mental Capacity Act ("MCA") Module will allow the more common types of MCA cases to be filed using a simplified track. Approximately 60 to 80 per cent of the deputies' powers sought in the current applications will be covered by this simplified track.

- The iFAMS Remote Show Payment Module will allow Respondents in Maintenance Enforcement cases to show proof of payment online via iFAMS instead of physically coming to Court to do so. FJC will be rolling out the pilot in October 2019.
- The iFAMS "Offer to Resolve" Module aims to facilitate resolution of maintenance disputes. The voluntary "Offer to Resolve" pilot will be launched today. Through this Module, parties may make and accept offers via iFAMS for fresh applications for child and/or spousal maintenance and variation of such maintenance orders, in the earliest stages.

Conclusion

50. I often remind those around me that for every challenging high conflict dispute we encounter, there are many more cases of families who do resolve issues amicably. We the court may see the most difficult cases in litigation, but we do not see in court the many more who are able to make amicable arrangements. How can we assist as many families as we can towards such a path?

51. How can our family justice system enable families to resolve disputes harmoniously, without the incentive to be combative? Is a non-adversarial regime possible? Should we no longer refer to parties as "Plaintiff" and "Defendant"? In a civil suit, the Plaintiff is someone who sues the Defendant for a breach of a "right". However, in divorce proceedings, the issues are less about rights and wrongs than having to address the consequences of family breakdown. Perhaps we might refer to them simply as the "Husband" and "Wife", the "Father" and "Mother".

52. Might a non-adversarial system be built, where for example, parties file an "RTR" – a Request to Resolve – instead of a "Writ"? What about a system where mediation, traditionally known to be a form of "Alternative Dispute Resolution" is not just an alternative, but the instinctively preferred means to reach a way forward for the family?

53. I leave these questions with you, and wish us all a very good day at today's Forum. Thank you very much.