

INTRODUCTION

Malathi DAS

*LLB (Hons) (National University of Singapore);
Advocate and Solicitor (Singapore);
Director, Joyce A Tan & Partners LLC.*

LIM Hui Min

*BA (Oxon), BCL;
Director of Legal Aid, Legal Aid Bureau.*

1 This is an issue devoted to how family law should deal with children issues, because children are society's top priority. They are the future of the country. They have the potential to do great things, or to go badly wrong. As stakeholders in the family justice system, we have both the opportunity and the responsibility to steer them towards the former path. So, we need to make sure that when their parents break up, the children can still thrive, and that when their parents neglect or abuse them, they are saved and restored. The legal framework needs to support this – not just with laws, but girded by procedures, programmes, and a whole family justice ecosystem, which works in harmony with other disciplines.

2 Over the years, there has also been an evolution in how children are seen by society. From being viewed merely as the assets of the head of the household, under Roman law and other ancient legal systems,¹ to a being with his own rights, which must be respected and safeguarded.² There is also a recognition of the role that the family, specifically the child's parents, play in his happiness and welfare. This role needs to be encouraged and supported.

3 Family law in Singapore is based on the principle of putting the welfare of the child at the centre of any dispute, and to emphasise the role of the parents in advancing the child's welfare. Lately, it has also placed more emphasis on hearing the voice of the child. Leong Wai Kum's article, "From Substantive Law towards Family Justice for the Child in Divorce Proceedings in Singapore" argues that the key piece of

1 *Eg*, Roman fathers could put their children to work without any restrictions, including outside of one's household, and for a long time, there were no legal prohibitions against abandoning or killing children at birth, and selling newborns. See Ville Vuolanto, "Children in Roman Law" *Oxford Research Encyclopedias* (February 2018), available at <<http://classics.oxfordre.com/view/10.1093/acrefore/9780199381135.001.0001/acrefore-9780199381135-e-8200>> (accessed 18 June 2018).

2 See the United Nations Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3, which more than 200 countries have ratified, including Singapore.

family legislation, the Women's Charter, was built around the concept of parental responsibility – and the procedural rules and court programmes were designed to realise this concept, for the good of the children. Since the time the Charter was enacted, there has been a steady progress in, and refinement of, these rules and programmes.³

4 This progress and refinement are set out in detail in the article, "Family Justice Courts – Innovations, Initiatives and Programmes: An Evolution over Time?" by District Judge Kevin Ng *et al*, which traces their historical development.⁴

5 We can also see, in the arena of child protection, how the system places the child at the centre – not just an object to be protected, but someone whose personality needs to be taken into account, and whose views should be consulted. There is also a strong emphasis on family preservation, and working with the parents in order to co-create solutions. The article by Carmelia Nathen *et al*, "Child Protection Cases – Engagement, Involvement and Empowerment – 'It's How You Make Them Feel'" gives a detailed account of the child protection system in Singapore, covering the judicial, legal and social work aspects.⁵

6 The article, "Corporal Punishment of Children by Parents: Is It Discipline or Violence and Abuse?" by Chan Wing Cheong illustrates how attitudes towards punishment of children have evolved, since what was once considered a parental right and discipline is now viewed quite differently.⁶

7 In "Custody Issues – Differences and Similarities between Civil and Syariah Laws in Singapore" by Ahmad Nizam Abbas, the author shows how the child's welfare is paramount in the way the law is applied in practice under both systems, even though the procedures may be different.⁷

8 How do we know what is in the child's best interests, however? This is where social science has a role to play. "Parental Alienation

3 Leong Wai Kum, "From Substantive Law towards Family Justice for the Child in Divorce Proceedings in Singapore" (2018) 30 SAclJ 587.

4 Kevin Ng *et al*, "Family Justice Courts – Innovations, Initiatives and Programmes: An Evolution over Time?" (2018) 30 SAclJ 617.

5 Carmelia Nathen *et al*, "Child Protection Cases – Engagement, Involvement and Empowerment – 'It's How You Make Them Feel'" (2018) 30 SAclJ 647.

6 Chan Wing Cheong, "Corporal Punishment of Children by Parents: Is It Discipline or Violence and Abuse?" (2018) 30 SAclJ 545.

7 Ahmad Nizam Abbas, "Custody Issues – Differences and Similarities between Civil and Syariah Laws" (2018) 30 SAclJ 695.

Syndrome: Is It Valid?” by Jennifer Teoh, Grace S Chng and Chi Meng Chu shows how social science research can inform legal decision-making, and also the importance of rigorous social science research, so that we base our decisions and arguments on conclusions drawn from evidence, rather than speculation, perception and impressions.⁸ The article “Law Reform for Shared-Time Parenting after Separation: Reflections from Australia” by Elizabeth Keogh, Bruce Smyth and Alex Masardo illustrates how social science can inform decision-making, in the area of contact time with the children.⁹

9 A key player in the legal system is the family practitioner. There is no point in having an excellent legal framework, procedures and programmes, supported by social science and experts, if family law is not practised in the right spirit. It needs head, heart and also judgment by family practitioners to maximise the legal system’s potential for good. The path, however, is not always straightforward. The practice of family law throws up ethical dilemmas which are unique to family law. “Ethics in Family Law – Beyond Legal Principles and into Value Judgments”, by Professor the Honourable Nahum Mushin AM explores these dilemmas and suggests what the family practitioner can do to resolve them with a clear conscience – that is, by always referring and going back to the core values of family practice.¹⁰

10 This awareness of the core values of family practice is especially important in unchartered territory, owing to new technology, or international elements. “Sleepwalking through the Minefield – Legal and Ethical Issues in Surrogacy” by the Honourable Chief Justice John Pascoe of the Family Court of Australia sets out the ethical and legal dilemmas created by a confluence of new technology and international elements, where would-be parents facilitate the creation of new lives in other countries – and sometimes do not follow through with their parental responsibilities.¹¹ Ease of international travel having also made international adoption much easier, the challenge is how to protect children who are removed from their birth parents and home countries. “Adoption Law and Practice in Australia – Safeguarding Children from Exploitation” by Judge Geoffrey Monahan and Jennifer Hyatt gives the Australian perspective on this. International child abduction is another activity facilitated by ease of international travel and communication,

8 Jennifer Teoh, Grace S Chng & Chi Meng Chu, “Parental Alienation Syndrome: Is It Valid?” (2018) 30 SAclJ 727.

9 Elizabeth Keogh, Bruce Smyth & Alex Masardo, “Law Reform for Shared-Time Parenting after Separation: Reflections from Australia” (2018) 30 SAclJ 518.

10 Professor the Honourable Nahum Mushin AM, “Ethics in Family Law – Beyond Legal Principles and into Value Judgments” (2018) 30 SAclJ 427.

11 John Pascoe, “Sleepwalking through the Minefield – Legal and Ethical Issues in Surrogacy” (2018) 30 SAclJ 455.

and the challenge for the law is to keep up with global developments, and provide uniform application and protection for the children in such cases.¹² In “Mediation to Resolve Child Abduction Issues for Hague and Non-Hague Convention Countries – Personal Account Covering Author’s Experience in Legal Practice” by the Right Honourable Sir Mathew Thorpe, a solution is proposed for this difficult area, which will hopefully serve the child’s welfare better than an adversarial litigation process.¹³

11 The articles in this issue are on varied topics, but the common thread running through every article is how and what can be best done to ensure that the suffering of children is minimised and their welfare advanced. This is based on the premise that children are of paramount importance, and their voices and experiences matter. We salute the authors of all the articles in this Special Issue, for taking their personal time to share their views, thoughts, convictions and passions on the various issues and topics in this area of the law.

12 It was the late Nelson Mandela who said, “There can be no keener revelation of a society’s soul than the way in which it treats its children.”¹⁴ It is hoped that this Special Issue will help contribute to our collective understanding of how we can treat our children better, and do right by them, so that we can all progress, as a society.

12 Geoffrey Monahan & Jennifer Hyatt, “Adoption Law and Practice in Australia – Safeguarding Children from Exploitation” (2018) 30 SAclJ 484.

13 Sir Mathew Thorpe, “Mediation to Resolve Child Abduction Issues for Hague and Non-Hague Convention Countries – Personal Account Covering Author’s Experience in Legal Practice” (2018) 30 SAclJ 575.

14 President of South Africa Nelson Mandela, address delivered at the launch of the Nelson Mandela Children’s Fund (8 May 1995).