FAMILY JUSTICE COURTS – INNOVATIONS, INITIATIVES AND PROGRAMMES

An Evolution over Time*

Through the years, the Singapore courts have increasingly recognised that the resolution of family disputes requires an interdisciplinary therapeutic jurisprudential approach. The seeds of such an approach were first planted in 1995 when the family and juvenile courts were brought together as a single division in the then Subordinate Courts. Court-based mediation was introduced and a counselling division was established as the social science arm of the courts. The establishment of the Family Justice Courts in 2014 ushered in a second wave of reforms. Fresh initiatives have been put in place to help spread therapeutic jurisprudential principles and techniques throughout the family justice ecosystem, providing an opportunity for all stakeholders to co-create a new paradigm.

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I. Introduction[1]

1 The family is the basic unit of society, predating both state and government. Healthy families are essential for raising well-adjusted children, and building a healthy and flourishing society. The institution of marriage as a legal construct is integral in enforcing the family structure, and stipulating the obligations and duties of husbands and wives, parents and children. When marriages crumble and parties are unable to resolve their issues amicably, they turn to another institution for help, that is, the courts. The courts represent a fundamental institution of government, set up to perform the judicial function of helping parties resolve disagreements by upholding the rule of law.

2 Yet, family disputes are unlike commercial disputes. Underlying each legal dispute are fractured family ties and broken relationships that endure long after the legal dispute has played out in the courts. More importantly, family disputes often involve innocent children caught in the conflict. According to social science research, continued exposure to interparental conflict and violence during marriage can have long-lasting and adverse psychological, emotional and behavioural effects on children.[2]

1 The authors are grateful to Presiding Judge of the Family Justice Courts, Justice Debbie Ong, and Deputy Presiding Judge of the Family Justice Courts, District Judge Chia Wee Kiat, for their comments on an earlier draft of this article.

2 Joan B Kelly & Robert E Emery, "Children's Adjustment Following Divorce: Risk and Resilience Perspectives" (2003) 52(4) *Family Relations* 352; Susie Burke,

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3 From the mid-1990s, the Singapore courts have recognised that courts cannot dispense "justice" *simpliciter* when handling family-related disputes. It is not just about resolving the legal dispute which is important, but about *how* the courts go about helping parties resolve their disputes that can have a powerful impact on families and children. Recognising the limits of relying purely on legal jurisprudence, the courts have been applying principles of therapeutic jurisprudence, actively drawing on the knowledge, resources and expertise of specialists in other social science disciplines, to enhance and improve the way disputes are resolved and "justice" dispensed, whilst upholding the law.[3]

4 This article will chart the evolution of the various innovations and initiatives driven by the Family Justice Courts ("FJC"), working closely with government and community partners, in continuing efforts to improve the way the courts meet and serve the needs of distressed families and children. The evolution tells a story of the (continuing) co-creation efforts of all the stakeholders, as co-authors of the family justice ecosystem and co-labourers in the enterprise of building and creating something even better.

II. 1995–2011 – First wave

5 The court is the place where parties turn to in order to receive help to resolve their disputes which they have not been able to resolve themselves. The original court model which Singapore had inherited from the British was an adversarial adjudication model, developed in the common law tradition. In addition, family-related disputes were heard in several different *fora*. For example, divorce petitions were heard in the High Court, while juvenile matters were heard in the then Subordinate Courts.

6 Starting around 1995 or 1996, there was growing recognition that adversarial processes were not always best suited to resolve family disputes. Alternative dispute resolution ("ADR") options which were initially introduced by the courts for reasons of expediency, eventually became the mainstay when the courts came to realise that their facilitative (instead of litigious) methodologies were in fact very appropriate for resolving already acrimonious family disputes.

Jennifer McIntosh & Heather Gridley, *Parenting after Separation: A Literature Review Prepared for the Australian Psychological Society* (Australian Psychological Society, 2009).

3 Barbara A Babb, "An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective" (1997) 72 Ind LJ 775 in *Resolving Family Conflicts* (Jane C Murphy ed) (Routledge, 2008) at p 20.

A. 1995 – Family and Juvenile Justice Division – Consolidating family and juvenile cases under one roof

7 On 1 March 1995, the Family and Juvenile Justice Division ("FJJD") was established under the then Subordinate Courts (now known as State Courts) to bring together the Family Court and the Juvenile Court. Initially, the Family Court only heard cases involving applications for maintenance and protection orders under the Women's Charter. In 1996, divorce, matrimonial, maintenance and guardianship jurisdiction which used to reside in the High Court was transferred to the Family Court.[4] The Juvenile Court dealt with proceedings under the Children and Young Persons Act ("CYPA").[5]

B. 1996 – Introduction of voluntary mediation

8 Meanwhile, in the mid-1990s, concerned that Singaporeans were becoming excessively litigious, ADR methods (primarily, mediation) were promoted throughout the legal landscape.[6] It was believed that mediation was particularly suited for Asian cultures which cherished social order and harmony.[7] As such, in around 1994, court-based mediation was introduced in the civil courts.[8]

9 As a result of the successful run in the civil courts, court-based mediation was extended to family proceedings as well; and in 1996, amendments were passed to the Women's Charter to give the court the power to refer parties to mediation, with their consent.[9] This was offered

4 In 1996, the Family Court heard adoption proceedings, matrimonial proceedings, guardianship proceedings, family violence cases, spousal and child maintenance cases, and civil applications under the Mental Capacity Act. In 1999, the enforcement of Syariah Court orders was also heard in the Family Court. Proceedings under the Children and Young Persons Act were handled by the Juvenile Court. Probate matters and division of assets for matrimonial cases where the net value was more than $1.5m were heard in the High Court.

5 The Act covers children under 14 years of age or young persons between 14 and 16 years of age.

6 The Government also encouraged the establishment of domestic mediation programmes in the community. In May 1996, the Committee on Alternative Dispute Resolution was formed and its recommendations led to the setting up of the Singapore Mediation Centre in August 1997 and the first Community Mediation Centre in 1998.

7 Teh Hwee Hwee, "Mediation Practices in ASEAN: The Singapore Experience", paper delivered at the 11th General Assembly of the ASEAN Law Association (14–19 February 2012).

8 On 7 June 1993, a pilot project was introduced for civil cases. The Court Mediation Centre was subsequently established in 1995 and evolved into the Primary Dispute Resolution Centre in May 1998 and the State Courts Centre for Dispute Resolution in March 2015.

9 Women's Charter (Cap 353, 2009 Rev Ed) s 50(1).

as an alternative, more expedient and less confrontational option for the resolution of family disputes. The guiding philosophy was to resolve family disputes expeditiously and equitably, and to protect the welfare of children.[10] Mediation was conducted on a "without prejudice" basis by district judges and deputy registrars, and also professional and volunteer mediators.

C. 1996 – Introduction of counselling

10 The 1996 amendments also gave the court the power to direct parties to attend counselling for selected cases in the interests of the parties and/or their children. There was increasing awareness that there were inherent limits to pure judicial legal intervention, as the root cause of family problems could often be traced to psychological and emotional wounds.

11 An in-house court counselling unit known as FAMCARE[11] was therefore formed in 1996. Meanwhile, the Psychological Services Unit ("PSU") was formed in 2000 to support the work of the Juvenile Court.[12]

12 Shortly after, when the Family Court and Juvenile Court physically came together under one roof in the same building in 2001, FAMCARE and PSU merged to form the Family and Juvenile Justice Centre ("FJJC"). In a speech delivered by then Chief Justice Yong Pung How at the Opening of the Family and Juvenile Court Building on 11 January 2002, his Honour voiced the need for an integrated approach to family and juvenile issues; and articulated principles that were consistent with therapeutic and transformative justice:

> [The] time has come for the Court to develop a new family and juvenile justice pathway … (taking) an integrated approach to tackling the problems of marital breakdown and poor parenting, which in turn lead to problems of juvenile delinquency, and, in a vicious circle, lead to problems of marital breakdown and poor parenting in the next generation …

13 Subsequently, in 2009, FJJC was renamed the Counselling and Psychological Services ("CAPS"). Today, CAPS professionals who are trained in disciplines such as psychology, social work and counselling,

10 Thiam Leng Liew, Daphne Hong, Chin Rhu Ong & Hui Min Lim, "Mediation in the Family Court" in *Families in Conflict: Theories and Approaches in Mediation and Counselling* (Butterworths Asia, 2000) at pp 47 and 49.

11 Family Conciliation and Resolution Centre.

12 This was the first time professional psychologists were introduced to work in-house in the courts. They were involved in family conferences, offender profiling, research in criminal and juvenile justice issues, and promoting public education in juvenile justice issues.

are known as court family specialists. CAPS continues to play a pivotal role as the social science arm for family disputes in the courts. Through therapeutic interventions across the wide spectrum of family court work, court family specialists help identify and address underlying interests and issues behind legal disputes that are often critical for a sustainable resolution of the dispute. They provide short-term confidential counselling in divorce cases to help parties manage their emotions, explore the possibility of reconciliation, facilitate discussions between parties and assist them in arriving at informed decisions by addressing psychological and emotional issues underlying the marital breakdown, and provide families with psychological resources to aid them in the process of restoration even after the case has ended in court.[13] Court family specialists also prepare court-ordered evaluation reports for custody disputes[14] and provide support to families involved in family violence cases.[15]

D. 2006 – Family Resolution Chambers – Dedicated unit to consolidate mediation programmes

14 The benefits of ADR became quickly apparent and in 2006, the Family Resolution Chambers ("FRC") was set up. It is a dedicated division consolidating all the mediation programmes in FJJD.[16] The resolution rate at FRC was promising,[17] and this continued to change the mindset of family lawyers, "encouraging more lawyers and their clients to turn to mediation to resolve their disputes without resorting to full-fledged litigation".[18] More than just a case management tool, mediation was now recognised as a valuable and appropriate platform for parties to reach an amicable resolution sooner rather than later.

13 Katijah Dawood, "Counselling in the Family Court" *Singapore Law Gazette* (January 2000).

14 Women's Charter (Cap 353, 2009 Rev Ed) s 130.

15 Court family specialists carry out risk assessment, educate parties on family violence, facilitate safety plans, make recommendations for urgent protection orders, and direct the applicant to relevant external help agencies. They also work closely with family violence centres in Singapore. Presently, there are three specialist centres, namely, the Centre for Promoting Alternatives to Violence (also known as "PAVE"), Trans Safe, and Project StART.

16 Joyce Low & Dorcas Quek Anderson, "An Overview of Court Mediation in the State Courts of Singapore" in *Mediation in Singapore: A Practical Guide* (Danny McFadden gen ed) (Sweet & Maxwell, 2015) at paras 9.003–9.011.

17 In 2012, the overall settlement rate at Family Resolution Chambers was 73% and in 2013, 78%. The source of this information is an unpublished report: *State Courts Family Alternate Dispute Resolution Report*.

18 Kevin Ng & Katijah Sim, "Alternative Dispute Resolution in the Family Justice Courts" in *Law and Practice of Family Law in Singapore* (Sweet & Maxwell, 2016) at para 17.3.6.

15 The effectiveness of mediation as a means of resolving disputes also led to the establishment of the Maintenance Mediation Chambers ("MMC") in 2007. MMC was set up as a specialised unit to deal with applications for spousal and child maintenance, as well as the enforcement of maintenance payments, which typically involve litigants-in-person ("LIPs"). Mediations are routinely conducted for such applications, save for exceptional cases. They are conducted by trained staff mediators and volunteer mediators. The MMC scheme has resulted in a sizeable number of applications being resolved at MMC.[19]

E. 2011 – Child Focused Resolution Centre – Introduction of mandatory mediation and counselling

16 Building on the work of FRC and CAPS, the Women's Charter was subsequently amended in 2011 to provide for mandatory mediation and counselling for couples who have filed for divorce and who have minor children.[20] On 26 September 2011, the Child Focused Resolution Centre ("CFRC") was set up to carry out mandatory mediation and counselling.[21] Cases which do not involve minor children may also be referred to court mediation at the request of parties, save that cases with matrimonial assets worth more than $3m will be directed to the Singapore Mediation Centre ("SMC") or a private mediation service provider. This freed up court resources for more needy cases. Unlike court mediation, which is free, parties will have to pay for the services of a private mediation service provider.

17 The aim at CFRC is to achieve better outcomes for children by encouraging parents to focus on their children's immediate and longer-term needs in a less adversarial and more therapeutic court setting. To achieve this aim, CFRC conceived of a model where the judge-mediator collaborates closely with the court family specialist, so that parties benefit not only from the mediation skills and legal expertise of the judge-mediator, but also the therapeutic and social science expertise of a social science expert.

18 Drawing from their specialised training and knowledge, *inter alia*, of psychological and affective factors related to marital

19 According to the Family Justice Courts internal statistics, Maintenance Mediation Chambers achieved settlement rates of 85% in 2016 and 87% in 2017.

20 Women's Charter (Cap 353, 2009 Rev Ed) s 50(3A).

21 The implementation of mandatory counselling and mediation for divorcing parties with minor children was rolled out in Child Focused Resolution Centre in three phases: (a) from 26 September 2011, it was extended to cases involving at least one child below the age of eight years; (b) from 1 July 2013, it was extended to cases with at least one child below the age of 14 years; and (c) from 1 October 2014, it was extended to cases with at least one child below the age of 21 years.

breakdown, court family specialists (a) offer parents expert knowledge of their situation from a psychosocial perspective in a safe space, (b) help parents understand and focus on the needs of their children, (c) provide psycho-education for parents to gain greater insight into their emotional difficulties and to prepare them psychologically for their new roles, and (d) provide information on community resources. It should be stressed that court counselling is short term with a focus on children's matters and parents' psychological adjustment to the new realities. It is therefore distinct in quality and quantity from long-term therapy and interventions related to marriage and relationship counselling.

19 A short description of the CFRC process will demonstrate the active operation of the principles of a therapeutic jurisprudential approach. First, parents and their lawyers have to attend a family dispute resolution conference before a judge-mediator and court family specialist where they are invited to resolve their divorce and ancillary issues amicably in the best interests of the child by taking a non-adversarial approach. Issues in dispute are jointly explored with the parents, and directions given for parents to exchange documents and proposals, and a mediation date is fixed.

20 Immediately after the mediation conference, the court family specialist brings the parents to a separate counselling room to conduct an intake and assessment session with the parents directly without the lawyers. The objectives of the intake and assessment session are to (a) identify key psychosocial and practical issues with regard to the children's care arrangements; (b) assess possible risk factors such as family violence, substance and behavioural addiction, child abuse and neglect, and mental health concerns; (c) assess parents' readiness to participate in the process; and (d) facilitate parents' amicable resolution of children's issues. After the intake and assessment session, further counselling sessions may be scheduled to address specific concerns arising from the intake session. The counselling sessions will generally be completed within one month, depending on the complexity of the case. At the end of the counselling sessions, the court family specialist will try and facilitate an amicable agreement on the children's issues. If an agreement is reached, a draft agreement will be drawn up and parties may consult their lawyers on the draft. If, in the process of counselling, it is ascertained that either one or both parents would benefit from longer-term counselling or psychological assessment/treatment, appropriate referrals will be made.

21 After the conclusion of the counselling sessions, parents will attend the mediation session(s) before the judge-mediator who will continue to facilitate negotiations between parties to try and resolve all outstanding divorce and ancillary issues. For more complex cases, the

judge-mediator may conduct co-mediation with a court family specialist. If a settlement is reached on some or all of the divorce and ancillary issues, a consent order is recorded accordingly. All other outstanding unresolved issues will be referred to the adjudication track, where a different judge will proceed to hear the case. Mediation and counselling sessions are confidential unless a party has voiced a specific plan to inflict self-harm or to harm others; and/or where there are reasons to suspect that a child has been, or is at risk of being abused and/or harmed, in which case, Child Protective Service of the Ministry of Social and Family Development ("MSF") will be alerted.

22 The unique multidisciplinary CFRC model has proven to be effective in resolving the majority of cases involving children by helping divorcing parents make a shift: from being self-focused to child-focused.[22] Nonetheless, some highly acrimonious cases still require adjudication.

III. 2014–2017 – Second wave

23 At the Opening of Legal Year 2013, Chief Justice Sundaresh Menon announced that an inter-agency committee, the Committee for Family Justice, would be established to study and recommend possible reforms to the family justice system.[23] In its consultations, the Committee highlighted, *inter alia*, three main concerns:[24] (a) going to court is not ideal, and it had to consider how family problems can be addressed at an earlier stage; (b) an adversarial approach is not the best means of resolving family disputes; and (c) the interests of the child were not sufficiently protected and represented.

22 Child Focused Resolution Centre managed 1530 families with children under 21 years in 2014 and 1380 families with children under 21 years in 2015. For mandatory cases, in 2014, 75% achieved a full resolution of all contested issues while 80% achieved full or partial resolution of contested issues. In 2015, the figures were 77% and 82% respectively. See Kevin Ng, "Mandatory Counselling and Mediation – The Child Focused Resolution Centre" *Singapore Law Gazette* (December 2011).

23 The Committee was helmed by Senior Minister of State for Law and Education, Indranee Rajah SC, V K Rajah (former Judge of Appeal) and Andrew Phang Boon Leong JA. Members included representatives from the Ministry of Law, Ministry of Social and Family Development, the Judiciary (*ie*, Supreme Court and State Courts), social service agencies and the legal fraternity. The full list of members can be found in Appendix A of the Committee for Family Justice, "Recommendations of the Committee for Family Justice on the Framework of the Family Justice System" (4 July 2014).

24 Justice of Appeal V K Rajah, "Transforming Family Justice", opening remarks at the Family Justice Seminar (19 May 2014).

24 On 4 July 2014, the Committee released its recommendations which led to the next wave of reforms, starting with the passing of the Family Justice Act and the birth and establishment of a new judicial institution, FJC, on 1 October 2014.[25] This was a historic milestone event and the pace at which FJC was established signalled a strong commitment to the endeavour from the very top.

A. Bigger roof

25 The Family Justice Act enabled important structural changes in the courts to be effected to deal with the whole spectrum of family cases. Instead of being just a division (that is, FJJD) of the State Courts, FJC was established as a distinct and specialised body of courts comprising three courts, namely, the Family Courts, the Youth Courts and the Family Division of the High Court, led by a Presiding Judge. FJC's first Presiding Judge was then Judicial Commissioner Valerie Thean.[26] After the expiry of her three-year term, Justice Debbie Ong was appointed as Presiding Judge on 1 October 2017.

26 As Menon CJ articulated in his keynote speech at the Opening of the Family Justice Courts on 1 October 2014, "[the] changes go beyond the nomenclature and mark something of a coming of age".[27] For the first time ever, all family-related proceedings will be heard under one roof. Collectively, these constituent courts now hear all youth-related matters under the Children and Young Person's Act, as well as the full suite of "family proceedings", which consist broadly of all matrimonial and divorce cases, child-related applications such as guardianship and adoption, family violence applications, mental capacity and deputyship matters, and probate and succession cases.[28] As Menon CJ has observed, this "breadth of work is unusual" and the setting up of FJC "[marks] a reform effort that has effected and will … continue to effect fundamental changes to the way we approach and resolve disputes concerning the family".[29]

25 Chief Justice Sundaresh Menon, keynote address delivered at the Opening of the Family Justice Courts (1 October 2014) at para 1.

26 Judicial Commissioner Valerie Thean was appointed High Court Judge on 1 October 2017.

27 Chief Justice Sundaresh Menon, keynote address delivered at the Opening of the Family Justice Courts (1 October 2014) at para 10.

28 "Family proceedings" are defined under s 2(1) of the Family Justice Act 2014 (Act 27 of 2014).

29 Chief Justice Sundaresh Menon, keynote address delivered at the Opening of the Family Justice Courts (1 October 2014) at paras 15 and 30.

27 To cope with the increased workload arising from its expanded jurisdiction[30] and to usher in specialised family judges, apart from the Presiding Judge, judicial commissioners of the High Court (Family Division) were appointed, and the number of district judges and court family specialists was increased.[31] Not surprisingly, with the introduction of specialist family judges, family law jurisprudence has been enlivened, as evidenced by the significant number of written opinions emanating from the newly created High Court (Family Division), as well as our apex court, the Court of Appeal.

B. A differentiated case management approach – Divorce through-flow

28 FJC has also adopted a differentiated case management approach for divorce cases. The uncontested simplified track procedure was introduced for uncontested divorce cases where parties have reached an agreement on all divorce and ancillary issues prior to filing court papers. On the other end of the spectrum, complex cases usually involving high-conflict parents are docketed to a single judge.

29 The differentiated case management approach is important because it is directly related to the child's "best interests". It is well-documented that children who have been exposed to intense marital conflict and violence suffer adverse psychological, emotional and behavioural effects.[32] Further, research has shown that it is not just divorce *per se* but exposure to continued parental conflict that is particularly damaging for the child. As such, the "best interests" lens should be enlarged to include not merely the legal standard for determining a custody dispute, but the entire divorce through-flow. How the family justice system helps families navigate the journey from marriage to divorce is important in advancing the "best interests" of the child.

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30 The Family Courts are the courts of first instance for family proceedings. Appeals against decisions of the Family Courts and Youth Courts are heard by the High Court (Family Division). In selected cases where the guidance of the Family Division of the High Court would be especially useful for judges in the Family Courts or the Youth Courts, the appeal may be heard by three judges: see ss 23, 24 and 25 of the Family Justice Act.

31 As at 2017, there were 38 district judges, 24 Counselling and Psychological Services officers, nine judicial case managers, 111 court/administrative support staff and 18 language interpreters and ten mediators.

32 Joan B Kelly & Robert E Emery, "Children's Adjustment Following Divorce: Risk and Resilience Perspectives" (2003) 52(4) *Family Relations* 352; Susie Burke, Jennifer McIntosh & Heather Gridley, *Parenting after Separation: A Literature Review Prepared for the Australian Psychological Society* (Australian Psychological Society, 2009).

30 Social science expert, Dr Robert Emery, has proposed that the dispute-resolution process be visualised in the shape of a funnel. Procedures nearer the wider top of the funnel which include more informal and less adversarial processes that involve greater autonomy in parental decision-making (such as informal negotiations and private settlements), should be more commonly used. On the other hand, procedures nearer the bottom of the funnel (such as court adjudication) which are generally more formal, more adversarial and more restrictive of parental autonomy, should be less frequently used.

31 His theory is that since parental conflict is detrimental to children, the "best interests" of children are better served by diverting divorcing parents away from the "adversarial" court system; and encouraging them to resolve matters amicably by themselves or with the help of lawyers, through ADR platforms[33] situated in the community. After all, parents are better acquainted with their own living arrangements and children's needs, and better placed to make decisions that would suit those needs.

(1) Pre-court resolution and the uncontested simplified track procedure

32 Consistent with this philosophy, the uncontested simplified track procedure was introduced to encourage more parties to resolve their issues amicably outside court. If parties are able to resolve all their divorce and ancillary issues before they file their court papers, they may utilise the uncontested simplified track procedure in court. This enables parties to obtain final court orders relatively quickly through a straightforward single filing of documents. Lawyers and parties do not have to attend court, resulting in great savings in time and costs.

33 Presently, there are many ADR options available in the community which may be utilised by lawyers and parties, before court papers are filed. They include collaborative law, the Primary Justice project and private mediation. Since its establishment, FJC has been working closely with SMC and the Singapore International Mediation Institute to develop the Family Mediation Training and Accreditation Framework. The inaugural family mediation training and accreditation programme was jointly organised by FJC and SMC in 2014[34] and the SMC Family Panel of mediators (comprising judges, family lawyers and other legal and social science professionals) was formed soon after. As at

33 Kimberly C Emery & Robert E Emery, "Who Knows What is Best for Children? Honoring Agreements and Contracts between Parents Who Live Apart" (2014) 77 Law & Contemp Probs 151.

34 As of end 2017, there have been two further rounds of training.

2017, there are 82 specially trained and accredited family mediators on the SMC Family Panel.[35] An increased pool of family lawyers who are trained in mediation techniques augurs well for a future where more families resolve their issues amicably out of court.

34 In addition, following the Committee's recommendations, four divorce support specialist agencies ("DSSAs") have been set up by MSF to provide divorce support services, as well as counselling and post-divorce support services such as supervised visitation and exchange. As of 21 January 2018, through amendments introduced to the Women's Charter, before the filing of a writ for divorce or counterclaim, parties who disagree on divorce and/or ancillary matters and have at least one child younger than the age of 21, must complete a mandatory parenting programme conducted by a DSSA. This focuses the parents on the impact that a divorce would have on the children, and compels parents to consider issues in relation to the children at an earlier stage, before divorce papers are filed.

35 The percentage of divorce cases filed under the simplified track procedure with no contested issues has increased from 24% in 2015 to 37% in 2016 and 49% in 2017[36]. As Menon CJ has explained, the point is not to make divorce easier, but to reduce conflict and help ease the anxiety of litigants when divorce is inevitable, to provide more appropriate avenues given the particular interests and complexities involved in family litigation.[37]

(2) Court-based mediation and counselling

36 For cases which are not resolved through the uncontested simplified track, they are generally referred to compulsory court-based counselling and mediation at CFRC. From 1 October 2014, the use of mandatory counselling and mediation has also been extended beyond just divorce cases, to include all other applications related to children's issues. The court also has the power to direct parties at any time to undergo mediation or counselling.[38]

35 See Singapore Mediation Centre website <http://www.mediation.com.sg/> (accessed 6 June 2018). See also Kevin Ng & Katijah Sim, "Alternative Dispute Resolution in Family Justice Courts" in *Law and Practice of Family Law in Singapore* (Sweet & Maxwell, 2016) ch 17 at para 17.3.29.

36 Chief Justice Sundaresh Menon, response at the Opening of the Legal Year 2016 (11 January 2016) at para 27.

37 Sundaresh Menon, "Role of Courts Regarding Recent Family Issues – How to Tackle Family Issues on Child Welfare and Domestic Violence", paper delivered at the 17th Conference of Chief Justices of Asia and the Pacific (20 September 2017) at para 37.

38 Family Justice Act (Act 27 of 2014) s 26(9).

37 Since the establishment of FJC, the separate ADR and multidisciplinary centres, namely, FRC, CFRC, MMC and CAPS, have been amalgamated under a single division, the Family Dispute Resolution and Specialist Services Division ("FDR"), to leverage on the specialist competencies and skill sets of judge-mediators, court family specialists and other trained volunteer mediators. The results at FDR continue to be encouraging.[39] In addition, the services of FDR are now available for probate, adoption and mental capacity cases.

(3) Court adjudication – Introduction of docketing and the judge-led approach

38 Cases which are not settled at FDR are referred to the hearing track for adjudication Notably, following the 2014 reforms, several measures have been introduced into the adjudication space. First, FJC has introduced the system of docketing of appropriate cases to a single judge. Second, the "judge-led approach" was articulated in the Family Justice Rules. Under the "judge-led approach", the judge is to take the lead in identifying relevant issues in any given cause or matter and ensure relevant evidence is adduced by the parties, and may, at any time after the commencement or at the hearing of any proceedings, make such order or give such direction as it thinks fit, for the just, expeditious and economical disposal of the cause or matter.[40]

39 The introduction of docketing coupled with the "judge-led" approach are tools that, when effectively utilised, have the potential to help the judge manage a case more effectively, neutralise the adversarial process, and avert protracted conflict. This is because the docket judge will be more familiar with the case and unique needs of the particular family and would be better placed to make orders or directions to manage the case more effectively. For example, the judge may direct that the parties give evidence orally instead of by affidavit, or limit the number of affidavits filed by a party.[41]

(4) Voice of the child

40 When child custody issues are in dispute, the views and wishes of a child, who is of sufficient age and maturity, may be heard through reports prepared by specialists, as well as judicial interviews with the

39 In 2017, close to seven in ten cases were fully resolved through court mediation. A further 15% of the cases not fully resolved were partially resolved: see Justice Debbie Ong, "Family Justice Courts: In the Next Phase", speech delivered at Family Justice Courts Workplan 2018 (28 February 2018) at para 62.

40 Family Justice Rules 2014 (S 813/2014) Pt 3, s 22.

41 Family Justice Rules 2014 (S 813/2014) r 22(3).

child. The aim of such interventions is to assist parents and/or the court arrive at a decision in the child's best interests.

41 While the court may on occasion order a private psychiatrist to prepare a custody report, the bulk of custody evaluation reports[42] called for are prepared in-house by court family specialists, and social welfare reports prepared by MSF psychologists. These reports are typically prepared after interviewing the parents, child and significant persons in the child's life. They are also currently confidential, although a move towards disclosure (to parents and lawyers) is being studied.

42 Determining a child's "best interests" is ultimately a complex process that is value-laden. Nonetheless, as Timothy M Tippins and Jeffrey P Wittman have suggested, mental health professionals, such as psychologists, can assist to "maximise self-disclosure about issues that may be disputed"[43] and give the judge greater insight into the case. In preparing the reports, report writers, who are experts in social and behavioural sciences,[44] utilise forensic interviews and observations of parents, children and significant others to elicit corroborative evidence relevant to the determination of the child's "best interests", and provide the court with evidence-based recommendations on future parenting arrangements.

43 Following the establishment of FJC in 2014, two fresh initiatives have been introduced to increase the channels through which the child's voice may be heard.

44 First, FJC has worked closely with the family bar to implement the Child Representative scheme in October 2014,[45] to give the child a voice in the litigation process.[46] Specially trained family lawyers sit on the panel of child representatives. Under the scheme, a child representative may be appointed to represent the best interests of the child in the proceedings. Apart from interviewing the parents and the child, the child representative may speak to teachers, school counsellors and other persons involved in the child's life before preparing an independent submission setting out his recommendations, to assist the judge in coming to a determination on custody issues. The scheme

42 Court family specialists also prepare specific issues reports and access evaluation reports.

43 Timothy M Tippins & Jeffrey P Wittman, "Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance" (2005) 43 *Family Court Review* 193.

44 David G Myers, *Social Psychology* (McGraw Hill, 9th Ed, 2008) at pp 153–164.

45 The child representative will be selected from a panel of lawyers who have been specially trained.

46 The scheme compliments the existing reports that a judge may call for.

started with 18 lawyers being appointed to the panel for an initial term of two years. As of November 2017, there are 26 lawyers on the panel and child representatives have been appointed in 42 cases.

45 Family law practitioners who have acted as child representatives have given feedback that they find their role meaningful. They were able to directly impact the best interests of the child by educating the parents, reducing conflict and helping to ensure that the voice of the child is heard both by the parents and by the court. Through their role as child representatives, they have also come to better appreciate the difficult job of judging. The impact of the scheme therefore extends beyond the case at hand, by influencing the attitudes and mindsets of family lawyers, which will help move us collectively towards a more appropriate model of adjudication.[47]

46 Second, the repertoire of counselling services provided at the FDR stage during mandatory mediation and counselling has been expanded to include child-inclusive counselling, which was formally introduced in 2016 after a successful pilot.[48] Child-inclusive counselling[49] is an evidence-based practice that is appropriate for school-going children.[50] It involves a developmental consultation with the child to understand his perspective, followed by a therapeutic feedback conversation with the parents. The aim is to realign co-parenting efforts by drawing the focus of divorcing parents away from their own acrimony and towards the child's inner experience of the parental conflict, so that parents can better respond to the child's

47 The Family Justice Courts obtained feedback from child representatives during an internal review of the scheme in 2017. See also Chief Justice Sundaresh Menon, "The Problem-Solving Practitioner and the Complexity of Family Justice", opening address delivered at the Family Justice Practice Forum: Family Justice 2020 (14 July 2017) at para 17.

48 In 2015, the Family Justice Courts conducted a small-scale pilot at the family dispute resolution court counselling stage involving 20 families. Preliminary findings found that the child-inclusive approach was beneficial to most families. Most children reported a reduction in the level of the parents' level of acrimony, and an overall satisfaction with their communication and relationship with their parents after three months of the intervention.

49 The Family Justice Court's model is an adaptation of the child-inclusive model developed by Jennifer McIntosh: see Jennifer McIntosh, "Child Inclusion as a Principle and as Evidence-Based Practice: Applications to Family Law Services and Related Sectors" (2007) 1 ARFC 1.

50 In the Family Justice Courts, the criteria for child-inclusive counselling is set at seven years of age, although it can be suitable for children as young as five in appropriate cases. Cases which are not suited for child-inclusive approach include those involving a high risk of family violence, untreated severe psychiatric disorders, parents with low intent to prioritise needs of the child over theirs, and low intent on resolving dispute through mediation.

developmental needs, and co-operate with each other to generate a customised, durable and developmentally sound parenting plan.[51]

47 Child-inclusive counselling takes place during the FDR mediation stage. If, during intake and assessment, the family court specialist determines that a case is suitable for child-inclusive counselling, an interview with the child will be arranged. The interview aims to elicit information on the child's inner world and developmental experience of the parents' marital breakdown. After the session with the child, the court family specialist will schedule and plan a feedback session with the parents, to converse with them about their child's current adjustment to divorce, highlight developmental and psychological concerns, and discuss the child's needs following the separation. The court family specialist therefore supports parents by functioning as the child's ally, in reflecting the child's needs sensitively to the parents.[52] This conversation encourages parents to consider how they can shift from their stressed and warring state to a more emotionally attuned and co-operative co-parenting relationship, to aid in the child's post-divorce adjustment. Parents are encouraged to help their child feel like they live in "one world" with freedom to move between two households as opposed to living in two separate "warring worlds". The court family specialist will also guide parents and help them work out a durable and stable care arrangement that suits the needs of the child and which also accommodates parents' work schedules.

48 This therapeutic approach goes beyond just hearing the wishes of the child. It opens pathways that bring to the foreground the child's developmental outcome. As the child-inclusive intervention is situated at the FDR mediation stage, parents are given an opportunity to better manage their conflict at an early stage in the court process. The process is also therapeutic for the child as it provides a safe platform for the child to speak about his inner experiences, worries or fears about the divorce. For some children, this could be the first time that they have a supportive therapeutic space to voice their feelings, which can be a source of relief and assurance. Longitudinal studies on the child-inclusive approach in Australia have found significant and enduring

51 Jennifer E McIntosh, "Ask the Experts: Six Core Components of Effective Child Inclusive Mediation Practice" (2016) 11(5) *Association of Family and Conciliation Courts eNews* 1.

52 See Jennifer McIntosh, "Child Inclusion as a Principle and as an Evidence-Based Practice: Applications to Family Law Services and Related Sectors" (2007) 1 ARFC 1.

reductions in levels of conflict between parents and positive outcomes for children.[53]

49 Initial results at FDR are promising. In 2016, the child-inclusive approach was utilised in 62 cases and in 80% of the cases, there was some or full settlement of the children's issues.[54]

(5) Post-court therapeutic support

50 FJC has also collaborated with community partners to strengthen post-court therapeutic support and increase the types of post-court intervention orders that may be made. Following the 2014 reforms, four DSSAs were established to provide divorce support services such as supervised visitation and exchange services, post-divorce counselling, and other parenting and child programmes such as "Parenting PACT" and "Children in Between".[55] These services supplement the already existing services offered by some service providers.

51 Working in collaboration with the family bar, FJC has also piloted the parenting co-ordination scheme for high conflict parents.[56] A parenting co-ordinator appointed by the court will work directly with the parents, to facilitate communication, and educate and help them resolve disagreements over practical co-parenting and access issues. For example, if the parents cannot agree on what time to hand over the child on the weekend, the parenting co-ordinator can make suggestions and help the parents come to an agreement on this. Presently, the panel of 61 parenting co-ordinators consists of specially trained family lawyers and social science professionals. It is hoped that with support by parenting co-ordinators, high conflict parents will eventually be able to manage co-parenting better, resolve conflicts over access by themselves, and eventually not have to resort to the courts.

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53 Jennifer E McIntosh & Caroline M Long, *Children beyond Dispute – A Prospective Study of Outcomes from Child Focused and Child Inclusive Post-Separation Family Dispute Resolution: Final Report*, Australian Government Attorney-General's Department (October 2006); Jennifer McIntosh, Caroline Long & Lawrie Moloney, "Child-Focused and Child Inclusive Mediation: A Comparative Study of Outcomes" (2004) 10(1) *Journal of Family Studies* 87.

54 Judicial Commissioner Valerie Thean, "Access to Family Justice: Anchoring Deeper, Extending Wider", keynote address delivered at the Family Justice Courts Workplan 2017" (20 February 2017) at para 9.

55 The Parenting PACT programme is a two-hour one-time consultation session that aims to help divorced parents with minor children understand the impact of divorce on their children, learn co-operative co-parenting strategies and practise self-care. The Children in Between programme for parents and children is an evidence-based programme developed by experts.

56 The pilot started in November 2016.

C. Re-naming Juvenile Courts as Youth Courts

52 When FJC was established, the Juvenile Court was renamed "Youth Courts", to reduce the stigma associated with the term "Juvenile". Guided by the principles of restorative justice, the Youth Courts hear proceedings under the CYPA, typically, youth arrest cases, care and protection order ("CPO") cases and beyond parental control ("BPC") cases. It has been observed that many cases involving youth are symptomatic of other fractures within the family. As such, by having the Youth Courts within the purview of FJC, there is greater opportunity for the court to better appreciate the nature and extent of the family's problems and provide better holistic outcomes.[57]

53 Under the CYPA, when presiding over a case concerning a youth, the judge is required to sit with two community experts from a panel of advisers to obtain their views. A chamber discussion[58] is also convened before orders are passed to determine what is in the best interests of each youth. Family conferences involving court family specialists can also be directed for selected cases to facilitate counselling and reconciliation for parents and guardians to help re-integrate the youth.[59]

54 For youth arrest cases, the court's focus is typically rehabilitation, in keeping with the principles of restorative justice.[60] Pre-Sentence reports by Probation Services will be prepared for all cases. Sentencing options such as probation[61] and reformative training are all geared towards rehabilitation.

55 For CPO cases, there are dedicated processes to preserve the best interests of children, such as allowing the conduct of hearings in chambers by way of affidavits instead of oral evidence, and ensuring that

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57 Chief Justice Sundaresh Menon, "Harnessing the Law to Benefit Our Youth", keynote address delivered at the Conference on At-Risk Youth 2015: Achieving, Connecting and Thriving (3 November 2015) at paras 62 and 63.

58 The judge consults the views and opinions of experts within the community usually made up of the panel of advisers and case managers.

59 Where family conferences do not result in agreed resolution, a beyond parental control order may be made, resulting in the youth being placed in a closed institution for a period of time. During this period, investigations are conducted into the youth's background and information is presented to the judge, before orders are made.

60 When youth are caught engaging in criminal behaviour, they are first channelled to diversionary programmes that seek to address the underlying issues to avoid the necessity of them having to appear in court.

61 The court is empowered to impose various conditions such as requiring the youth to perform community service, attend school or undergo specific programmes to help them in their rehabilitation.

there is opportunity for the views of the child to be heard. Family conferences are also convened in contested cases, and are aimed at helping parties resolve their differences amicably through a strength-based therapeutic approach, to provide caregivers with greater insight into their potential and ability to construct their own solutions.[62]

56 The Youth Courts also place emphasis on identifying and preventing crime, delinquency and abuse through early intervention, assistance and care. For youth who exhibit delinquent traits, parents may file for a BPC Order.[63] A social report by specialist agencies will be prepared to assist the judge in understanding the risks and needs of the youth and recommendations on suitable measures are made to address them.

D. Family violence

57 In July 2017, FJC launched a brand new Family Protection Centre. The centre is a one-stop purpose built area designed to offer victims of family violence a safe, private and conducive environment to file their applications for personal protection orders. It is designed to allow applicants to seamlessly progress from registration using simplified application forms, to risk assessment with a court family specialist/family violence specialist, to affirmation before a judge. In conjunction with the Family Protection Centre, FJC also launched an Integrated Family Application Management System ("iFAMS") which is a comprehensive end-to-end system that seeks to streamline and simplify processes for all family violence, as well as maintenance applications. iFAMS will make court applications more convenient and accessible for court users who will be able to file their applications online through user-friendly template application forms.

58 Importantly, court family specialists continue to provide critical intervention to support both victims and perpetrators of family violence. A victim of family violence who comes to court is often vulnerable (lacking in financial resources or a social support network), requiring immediate emotional support. Court family specialists are therefore on hand to carry out risk assessment and offer advice to victims on safety measures and provide referrals to appropriate support agencies. In cases involving children, special precautions are taken to ensure their physical and emotional safety. Where there is family

62 The strength-based approach not only allows parties to reach an agreement as to the caregiving plans of the children, but also gives parties a renewed sense of hope and empowerment as they construct their own solutions.

63 All cases are screened for suitability to be diverted to community-based programmes.

violence at home, children from infants to adolescents are deeply affected by the experience, regardless of whether they actually witnessed the violence or were the target of violence. Where imminent risk is assessed, court family specialists will, at the earliest possible opportunity, alert the Child Protective Service, MSF, and other related child protection specialist centres. Video-link mentions and trained support volunteers are provided to ensure safety of the children during the proceedings.

59 Some parties may have mental health issues and lack the capacity to comprehend the impact of their actions (that is, alleged violence) on their family members. In collaboration with the State Courts and Institute of Mental Health, a psychiatric consultation clinic has been set up within the premises of the State Courts. This facility provides an expedient touch-point for FJC users with suspected mental health issues, and helps to connect them with the appropriate psychiatric services.

E. International cases – Hague and non-Hague cases

60 An area of increasing complexity stems from the growing international dimension of family disputes in an increasingly borderless world. In 2016, Singapore citizens formed only about 60% of the total population of 5,607,300,[64] with non-residents making up about 30% of the population and permanent residents about 10%. By way of comparison, in year 2000, of a population size of 4,027,900, 74% were Singapore citizens, 19% were non-residents and 7% were permanent residents.[65] At the same time, there has been a rise in the number of cross-national marriages in Singapore. In 2013, 30% of all marriages involved at least one Singapore citizen and a non-resident spouse, whereas in 2003, the figure was 23%.[66] The number of divorces involving foreigners has also risen. In the past three years, about 40% of divorce cases each year involved at least one party who was a foreigner.[67]

64 Of this total population, 0.37% (*ie*, 20,815 people) were new citizens: see "Singapore Population Rises 1.3% to 5.61 Million" *Channel NewsAsia* (27 September 2016).

65 See Singapore Department of Statistics, "Population and Population Structure", available at https://www.tablebuilder.singstat.gov.sg/publicfacing/downloadMultiple.action?id=118librart/publications/publications_and_papers/population_and_population_structure/population2016.pdf (accessed 19 June 2018).

66 See Lauran Elizabeth Philomin, "New Moves to Smooth Way for Transnational Marriages Here" *Today* (25 October 2014), available at <http://lkyspp2.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/04/TD_New-moves-to-smooth-way-for-transnational -marriages-here-251014.pdf> (accessed 19 June 2018).

67 In 2014, 40% of writs filed involved at least one party who was a foreigner. The percentage increased to 41% in 2015 and 40% in 2016. See Singapore,

(*cont'd on the next page*)

This was up from 31% in 2011.[68] Further, about one in three cases involved at least one child below 21 years.[69]

61 When transnational cross-border marriages break down, a common tale often unfolds. Feeling emotionally and financially insecure, with little or no social support network, one parent often feels the need to leave Singapore and relocate/return to his home country, especially when physical and emotional abuse are added to the mix. This may give rise to relocation applications. At the same time, the risk of child abduction is very real. Worldwide statistics suggest that over 100,000 children each year are abducted by one parent without the other's consent.[70] The Convention on the Civil Aspects of International Child Abduction[71] ("Hague Convention") was enacted as an international response, to provide a coherent legal structure to deal with such situations.

62 Singapore's first Hague Convention case came before the Court of Appeal in *BDU v BDT*.[72] That case 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 country of habitual residence, the courts of which will adjudicate on the substantive custody issues.[73]

63 More recently, important issues regarding the approach to be taken in determining "habitual residence" under Art 3 of the Hague Convention and the approach to construing the "consent" exception under Art 13(a) were considered at first instance by the Family Courts[74] and then on appeal to the High Court, by a specially convened court of three judges comprising the Chief Justice and two other justices of appeal.[75] A subsequent application for leave to appeal against the

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A Sustainable Population for a Dynamic Singapore (Population White Paper, January 2013) at p 26.

68 Seow Bei Yi, "Countries Should Work Together on Family Justice: CJ" *The Straits Times* (30 September 2016).

69 In 2014, 30% of the writs filed involved at least one party who was a foreigner with a minor child below 21 years old; in 2015 and 2016, the percentage was 33%.

70 Christopher Paul & Sybille Kiesewetter, *Cross-Border Family Mediation* (Wolfgang Metzner Verlag, 2nd Ed, 2014).

71 Concluded 25 October 1980.

72 [2014] 2 SLR 725.

73 For non-Hague Convention cases, the High Court has clarified in *TDX v TDY* [2015] SGHCF 4 that the welfare principle involves the proper application of the doctrine of *forum non conveniens*, which requires the court to examine which jurisdiction was better placed to decide on issues concerning the welfare of the child.

74 *TUC v TUD* [2016] SGFC 146.

75 *TUC v TUD* [2017] SGHCF 12.

High Court decision was dismissed.[76] Several points arise. First, convening a special court of three judges was possible because of an innovation provided in the Family Justice Act which allowed for it. Second, because permanent judges of the Court of Appeal heard the appeal (sitting as High Court judges), the parties effectively obtained a fully considered decision from our apex court in a much shorter time frame than would have been possible under the usual appeals process. Third, the move signals to the international community the unwavering commitment by the Singapore judiciary to ensure that a prompt decision is delivered for international relocation/abduction cases, to serve the best interests of the child and the family.

64 Given the complexity of possible issues involving international cases, dedicated judges within FJC are assigned to handle all applications related to international relocation and abduction case, both brought pursuant to the Hague Convention under the domestic International Child Abduction Act ("ICAA"), as well as non-Hague cases that do not fall within the ambit of the ICAA.[77] Indeed, many countries, including many of Singapore's neighbouring countries,[78] are not signatories to the Hague Convention.[79]

65 Part of FJC's co-ordinated response includes developing a cross-border family mediation framework that will apply to ICAA cases as well as non-ICAA relocation cases.[80] Under the framework, the preferred option is for co-mediation by both a female and male

76 See *TUC v TUD* [2017] SGHCF 15 at [25], where Judith Prakash JA explained that the application was dismissed "primarily for the reason that this was a unanimous decision of a High Court bench comprising three Judges and … in such circumstances the default rule must be that leave to appeal will be refused. There must be exceptional circumstances to justify a further appeal. No such circumstances existed here".

77 A co-ordinated and focused response is important because such cases are often time sensitive.

78 There are 98 contracting states as at September 2017. Singapore is a contracting state with the Convention entering into force for Singapore on 1 March 2011.

79 Presently, 12 countries in the East Asia, South Asia and Pacific Regions are non-Hague Signatory countries: see Library of Congress, "Provisions on Child Abduction in Non-Hague Countries", available at <http://www.loc.gov/law/help/child-abduction/non-hague-countries.php> (accessed 6 June 2018). Further, even if a country is a signatory, there has to be a convention relationship with the other signatory country before the provisions of the Convention on the Civil Aspects of International Child Abduction (concluded 25 October 1980) can be effected between those two countries.

80 In 2016, Sundaresh Menon CJ observed that with the "increasing incidence of transnational marriages and family relocations", the Family Justice Courts would have to keep pace by "developing an international family mediation framework to address the reality that family law issues too are crossing borders to a growing degree": see Chief Justice Sundaresh Menon, response at the Opening of the Legal Year 2016 (11 January 2016).

mediator, one with training in law and the other in social science and mental health, who are able to represent different cultures, nationality and language ability. This model follows the Wroclaw Declaration on Mediation of Bi-national Disputes over Parents' and Children's Issues,[81] and is being generally adapted for use by FJC and SMC.

66 Recognising that it may be physically or financially difficult for some parties to travel to Singapore for mediation, FJC is also working with SMC to develop a binational mediation framework for cases where one party is in Singapore and the other party is in another country, through video conferencing platforms. Unlike domestic mediation, a binational framework will take into consideration not only parties' different cultures, languages, religions and practices, but also practical logistic matters such as geographical distance, time zones and types of communication technology.

67 Cross-border mediation has several advantages. First, if successful, it is cheaper and faster than litigation which can be protracted and costly.[82] Second, applications under the Hague Convention are limited to the return or non-return of the child to the state of habitual residence, and do not include important child matters such as custody, access and maintenance. Mediation would allow these issues to be aired and addressed. Third, the possible negative impact on the child can be reduced through mediation. A study on the long-term effects of child abduction found that 74% of the victims suffered some form of post-traumatic stress, depression, psychotic episode breakdown, attempted suicide or required hospitalisation. Another 17% had issues regarding their self-worth, abandonment or had panic attacks.[83]

IV. Future – Second wave continues

68 In the space of three years since FJC was established, FJC has, in close collaboration with key stakeholders, put in place infrastructure and introduced initiatives that can help spread and infuse therapeutic jurisprudential principles and techniques (initially pursued by the multidisciplinary teams) throughout the entire family justice ecosystem, even before cases are filed in court, up until the time the case is adjudicated and beyond. This therapeutic approach to family justice is no longer confined to confidential mediation and counselling at FDR,

81 Wroclaw Declaration on Mediation of Bi-national Disputes over Parents' and Children's Issues (8 October 2007).

82 Nuria Martín, "International Parental Child Abduction and Mediation: An Overview" (2014) 48(2) *Family Law Quarterly* 319.

83 Marilyn Freeman, "Parental Child Abduction: The Long Term Effects" *International Centre for Family Law, Policy, and Practice* (5 December 2014).

but has started to slowly but surely infuse the entire family justice ecosystem. It now (a) illuminates the way family judges think about family cases, manage court proceedings and make decisions; (b) influences the way family lawyers practise family law and advise their clients; (c) shapes the services that are put together by government partners to support parents and children; and (d) informs the way policymakers and educators are redesigning training and education for family law practitioners.

69 It is now up to all participants of the family justice ecosystem to fully utilise the hardware that has been put in place, to collectively move towards an altogether new paradigm which does not promote further conflict between the parties, but seriously seeks to reduce conflict instead. A paradigm where family law practitioners will actively try and help their clients resolve disputes amicably outside court. If court intervention is required, for family law practitioners to continue to work constructively (not combatively as adversaries) with the other party in the courtroom, to assist the judge arrive at a sensible and fair decision in a "judge-led" space that is defined by principles of therapeutic jurisprudence. This would require a mindset shift by all family justice practitioners including lawyers and judges, so that all stakeholders are of one mind in approaching family disputes. If this shift happens, it will be truly transformative. It will bring us very much closer to addressing a main concern raised in the Family Justice Committee's consultations that an adversarial approach to adjudication is not the best way to resolve family disputes.

70 Several keys that can help unlock the potential for the family justice system to realise this new paradigm will now be discussed.

71 The traditional adversarial system contemplates impassioned advocacy which tends to aggravate rather than ameliorate conflict in a family dispute.[84] The "judge-led" approach was therefore developed to empower the judge to give robust directions for the conduct of the proceedings, to avert protracted conflict. The limits of the "judge-led" approach are being explored; and, there is great potential to develop our own jurisprudence on the "judge-led" approach, to move towards a constructive and problem-solving model of adjudication throughout the life-cycle of the case, from the time a case is filed until a final resolution.

84 Sundaresh Menon, "Role of Courts Regarding Recent Family Issues – How to Tackle Family Issues on Child Welfare and Domestic Violence", paper delivered at the 17th Conference of Chief Justices of Asia and the Pacific (20 September 2017) at para 12.

72 In such a "judge-led" model, the judge would need to have a good grasp of the social science behind family disputes, as well as skills to manage difficult litigations, and to interview children.[85] The judge also has to be well-trained in case-management techniques, to be equipped to effectively and actively manage the case from the start. This would represent a departure from the traditional role of the judge as an umpire. As Judge Leonard Edwards has observed, the role of the matrimonial judge has to be a modification of the traditional role with judges having:[86]

> [Increased] administrative responsibilities … [who] would have to become more familiar with services such as mediation, parent orientation, and parent education, and [who] would have to start looking at the court system as a series of educational steps and procedural opportunities for parents to resolve their child custody disputes. The judge would become more of a case manager and less of a trier of fact. The judge would develop an attitude that while the court remains ready to provide a trial, if necessary, the preferred outcome is for parents to reach an agreement …

In similar vein, John Lande has observed that under the old system, family courts were not expected to plan cases, but only adjudicate them. Now, judges essentially direct a process to diagnose and treat family disputes in addition to managing litigation and adjudicating legal rights.[87]

73 To achieve the goals of the "judge-led" approach, the family law practitioner's participation is crucial. The practitioner should be a constructive problem-solving lawyer who is attuned to the unique nature of family disputes, the limits of legal jurisprudence, and alive to the need for a multidisciplinary approach in helping parties resolve their disputes. As Menon CJ observed in his opening address at the Family Justice Practice Forum in July 2017,[88] around the world, there has been growing awareness for some time that family lawyering should emphasise the important role of lawyers as problem-solvers, working collaboratively in a multidisciplinary environment, with the objective of achieving outcomes that are beneficial to all those involved in or

85 In *AZB v AZC* [2016] SGHCF 1, then Judicial Commissioner Debbie Ong held that custody and access orders are continuing and dynamic and judicial interviews are an important option for judges.

86 Judge Leonard Edwards, "Comments on the Miller Commission Report: A California Perspective" (2007) 27(4) *Pace Law Review* 672.

87 John Lande, "The Revolution in Family Law Dispute Resolution" (2012) 24 *Journal of the American Academy of Matrimonial Lawyers* 411 at 432.

88 Sundaresh Menon, "The Problem-Solving Practitioner and the Complexity of Family Justice", opening address delivered at the Family Justice Practice Forum: Family Justice 2020 (14 July 2017).

affected by the dispute.[89] This problem-solving posture should apply throughout the life cycle of the case, from the time the writ is filed, through the interlocutory process, up until the hearing or trial, to assist the judge to come to a fair and sensible solution.[90]

74 In this vein, FJC has worked closely with the family bar to introduce professional rules[91] for family lawyers which would require them to adopt a conciliatory and constructive approach towards family disputes, consider the child's welfare and consider ADR options. In addition, the Law Society's Family Law Practice Committee is working on a best practice guide for family law practitioners.[92] Further, there will soon be a pipeline of family lawyers who would actually embody the multidisciplinary approach. A third law school, the Singapore University of Social Sciences, was recently set up, with a special focus on criminal and matrimonial law for mid-career professionals. Their curriculum includes modules in social work and counselling, and a practicum component comprising a six-month legal clerkship. With their life experiences, they will bring a multidisciplinary approach to their learning and enter the legal profession as more socially conscious practitioners, bringing the practice of family law to a "whole new level".[93] A family law practitioner accreditation committee has also been set up to look into possible accreditation for family lawyers who have received specialised training in family-related disciplines such as counselling, child development and psychology.[94]

89 Judy Gutman, "The Reality of Non-Adversarial Justice: Principles and Practice" (2009) 14(1) *Deakin Law Review* 29 at 50.

90 See Charles A Asher, "The *UptoParents* Model Rule for Family Cases" *UptoParents* (13 June 2010). In Asher's model of a co-operative system for family law litigation, he proposes that the lawyer can set the tone during litigation, *eg*, by (a) showing courtesy through respectful language and behaviour, (b) taking personal responsibility in solving problems and improving matters rather than just reporting on the alleged fault of others, (c) refraining from negative, personal and sarcastic comments, (d) creating a positive peacemaking climate with the other party, and (e) sensibly pursuing the best interests of all family members, paying particular attention to the children's needs including being well aware that parental conflict is dangerous to children.

91 The Legal Profession (Professional Conduct) (Amendment) Rules 2018 (S 82/2018) was gazetted on 9 February 2018 and came into operation on 12 February 2018.

92 The guide is expected to be released in 2018.

93 Indranee Rajah SC, Senior Minister of State, Ministry of Law and Ministry of Finance, address to the Inaugural Cohort of Students at UniSim School of Law (18 January 2017).

94 Chief Justice Sundaresh Menon, "The Problem-Solving Practitioner and the Complexity of Family Justice", opening address delivered at the Family Justice Practice Forum: Family Justice 2020 (14 July 2017).

75 Apart from the legal actors such as judges and lawyers, the law itself has a part to play in reducing conflict too. In appropriate areas of substantive family law, having bright-line rules, as opposed to a discretionary case-by-case approach, may go a long way towards helping to reduce conflict between parents and advance the well-being of the child. Uncertainty in the law (with ensuing wide judicial discretion) feeds parties' appetite to carry on litigating to the detriment of the child who is caught in continued conflict. On the other hand, bright-line rules would reduce the scope of potential litigation between parents. As observed by former Presiding Judge of FJC, Thean JC, human decision-making can be skewed by cognitive bias. Further, in family disputes, the court may also not have all it needs in terms of evidence because of the lack of legal representation or simply because families do not conduct their lives in contemplation of eventual breakdown.[95] One possible area which could benefit from a rules-based system would be child maintenance tables.[96] If such tables are implemented, they would provide guidance to the judge and also ensure parity in the award of maintenance. They could also conceivably facilitate settlements and greatly reduce the likelihood of acrimonious litigation between parents. A further possible area for review is s 112 of the Women's Charter, which provides for the court's power to divide matrimonial assets.[97]

76 FJC is also collaborating with academics on empirical research projects aimed at providing a scientific basis upon which family justice policies can be fine-tuned and enhanced. At the moment, the Singapore Judicial College is undertaking two empirical research projects together with local universities. The first project is aimed at studying litigants in person and access to justice, and the second project is geared towards profiling of international divorces. FJC and the National Institute of Education are also collaborating on a longitudinal research project to explore the outcomes of 300 families who have undergone counselling and mediation at FDR.[98] This study will measure the impact of the FDR's child-centric approach over the course of one year. The results will provide greater insight into the needs of children affected by divorce, and assist FJC in designing more effective and appropriate interventions.

95 Judicial Commissioner Valerie Thean, "Access to Family Justice: Anchoring Deeper, Extending Wider", keynote address delivered at the Family Justice Courts Workplan 2017" (20 February 2017).

96 An interdisciplinary cross-agency committee of experts comprising actuaries, policymakers and family practitioners, was established to explore and make recommendations on establishing such tables using local data.

97 Justice Debbie Ong, "Family Justice Courts: In the Next Phase", speech delivered at the Family Justice Courts Workplan 2018 (28 February 2018) at para 58.

98 The study is expected to be completed in 2020.

77 FJC has to remain committed to continuous learning with the international community as well. It has been actively engaging in conversations with the regional and international community both to learn and to share its experiences, as well as to strengthen judicial relations. For example, FJC is actively involved in facilitating the work of the Council of ASEAN Chief Justices ("CACJ") on family disputes involving children. Hence, in 2015, the then Presiding Judge of FJC was appointed as co-chair of CACJ's Working Group on Cross Border Disputes Involving Children within ASEAN ("Working Group").[99] Since then, the Working Group has led several important initiatives including holding the first ASEAN Family Judges' Forum Training Workshop on the use of mediation in dealing with family disputes and children, which was held in Manila in 2017.[100] In April 2016, FJC also established the International Advisory Council ("IAC") to bring together a group of internationally renowned leading experts and thinkers in the field of family law, practice and justice, to discuss and share perspectives on latest developments and trends, and to situate FJC at the forefront of family justice.[101] In conjunction with the first IAC meeting held in September 2016, FJC hosted the International Family Justice Week, which featured Singapore's first international law conference, as well as a meeting of the International Hague Network of Judges established under the Hague Conference on Private International Law to facilitate co-operation and communication between judges globally. The Board of the World Congress on Family Law and Children's Rights has since named Singapore as the venue for its 2020 conference.

V. Conclusion

78 The evolution of FJC started with the first wave of reforms, with roots that can be traced back to important initiatives started in around 1995/1996. These initiatives essentially created a blueprint that captured the essence of therapeutic justice, namely, a multidisciplinary, problem-solving and child-focused approach. The 2014 reforms and the establishment of FJC have ushered in a second wave; and put in place infrastructure and innovative tools to facilitate the spread of this blueprint throughout all levels of the family justice ecosystem. FJC will

99 The Working Group was established at the third Meeting of the Council of ASEAN Chief Justices held in March 2015 in the Philippines.

100 The current Presiding Judge of FJC, Justice Debbie Ong, continues to be co-chair of the Working Group.

101 International Advisory Council ("IAC") members come from both civil and common law jurisdictions and are experts in different fields of family law. They include judges, retired justices, law academics and social scientists. Since its formation, IAC has met twice in Singapore. The Family Justice Courts will continue to draw on the expertise and experience of the IAC members, and build on and implement some of the initiatives flowing from the IAC meetings.

continue to co-labour with community and government partners to move the second wave towards an exciting new paradigm; and continue the important work of co-creating an even better family justice system, which will include courts that are firm, yet responsive, and at heart, caring.