

ETHICS IN FAMILY LAW: THE COLLECTIVE WAY FORWARD

[2025] SAL Prac 24

How do family lawyers in Singapore view ethics in the family law space? Are there unique ethical considerations that family law stakeholders should be mindful of? What can family lawyers do as a collective to promote responsible family practice? These questions were addressed at a seminar organised by the Singapore Academy of Law in May 2024. Justice Choo Han Teck began the seminar with his opening address, followed by a panel discussion with family law veterans. This article recaps the salient discussion points of the seminar, including the ethical difficulties faced in family law practice, practical considerations in managing clients and opposing counsel, and how the family Bar can move forward to promote ethical family lawyering.

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I. Introduction

1 With the formal advent of therapeutic justice (“TJ”) in the Family Justice Courts in May 2020,² there is a growing need to

1 The author would like to thank Ms Wong Kai Yun for her support and valuable input in respect of this article.

2 Justice Debbie Ong, Family Justice Courts of Singapore, “Today Is a New Day”, speech at the Family Justice Courts Workplan 2020 (21 May 2020) <https://www.judiciary.gov.sg/docs/default-source/news-docs/fjc-workplan-2020.pdf?sfvrsn=8b619dco_0> (accessed 16 July 2025).

refine the expectations of family lawyering inside and outside the courtroom. TJ has brought into sharp focus the need to protect the interests of distressed families facing legal issues, and for the legal system to respond with empathy and care for all members of the family.³ Doing so allows the law to produce therapeutic effects for the families,⁴ which give them hope for a new future despite the pain of yesterday.

2 In order to achieve TJ within the family justice system, relevant stakeholders have been exhorted to adopt a caring mindset that manifests in practical behaviours that promote TJ.⁵ A critical aspect of achieving this vision is the role that family lawyers play *vis-à-vis* the client, the court and each other as counsel.⁶ Such interactions are intrinsically connected to a family lawyer's ethical obligations under the Legal Profession (Professional Conduct) Rules 2015 ("Professional Conduct Rules").

3 In 2018, the Professional Conduct Rules were amended to include rr 15A and 15B, which set out ethical obligations for practitioners who represent clients in family proceedings. Although the introduction of rr 15A and 15B preceded the formal adoption of TJ by the family justice system, they are very much in line with the notion of caring for distressed families. These rules impose additional ethical obligations on those who choose to embark on this specialised field that has a lasting impact on the lives of families and children.

3 Barbara A Babb & Judith D Moran, *Caring for Families in Court – An Essential Approach to Family Justice* (Routledge, 2019) at pp 45 and 69.

4 *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (David B Wexler & Bruce J Winick eds) (Carolina Academic Press, 1996) at p xvii; David B Wexler, "Therapeutic Jurisprudence and the Culture of Critique" (1999) 10 *Journal of Contemporary Legal Issues* 263; David B Wexler, *Therapeutic Jurisprudence: The Law as a Therapeutic Agent* (Carolina Academic Press, 1990); David B Wexler, "How the Law Can Use What Works: A Therapeutic Jurisprudence Look at Recent Research on Rehabilitation" (1997) 15 *Behavioural Sciences and the Law* 365 at 367.

5 Yarni Loi & Suzanne Chin, "Therapeutic Justice – What It Means for the Family Justice System in Singapore" (2021) 59(3) *Family Court Review* 423 at 427, 430, 439 and 440.

6 Tricia Ho & Aaron Yoong, "Therapeutic Justice: For Practitioners, By Practitioners?" [2021] SAL Prac 29 at paras 12–13.

4 With the implementation of TJ processes and court initiatives in full swing,⁷ it has become imperative for us to have a clear understanding of the most optimal way in which rr 15A and 15B of the Professional Conduct Rules should be applied. In particular, how these rules apply to an individual family lawyer's practice and to the family Bar as a whole. Family lawyers need to put renewed thought into how they balance their client's legal interests with the possibly competing non-legal interests of the children and overall family. They also need to consider how they can soften the adversarial nature of family proceedings through problem-solving measures with the court and other counsel.

5 The following important ethical questions in family law come to the fore: How do family lawyers in Singapore view ethics in the family law space? Are there ethical considerations unique to this area of law that family law stakeholders should be mindful of? What can family lawyers do as a collective to set ethical standards and promote responsible family practice? These and other related issues were discussed at a seminar organised by the Singapore Academy of Law on 13 May 2024. Distinguished speakers and panelists, along with many other members of the family Bar, weighed in with their views and engaged in meaningful dialogue on these key ethical issues.

6 This article recaps the salient points of the discussion and explores the aspirations and challenges facing the family Bar in the road ahead. Part II⁸ of the article focuses on ethics in family law, while expounding on the wisdom in Justice Choo Han Teck's opening address. It touches on the principle of the best interests of the child, how this relates to a family lawyer's duty to the court, and how this may be balanced with a family lawyer's duty to the client. Part III⁹ of the article offers a commentary on rr 15A and 15B of the Professional Conduct Rules. Part IV¹⁰ addresses

7 See the information on the Therapeutic Justice ("TJ") Model that was launched on 21 October 2024, which sets out a practical framework for TJ processes in the Family Justice Courts: Singapore Courts, "Family Justice Courts Therapeutic Justice Model (TJ Model)" <<https://www.judiciary.gov.sg/who-we-are/therapeutic-justice>> (accessed 16 July 2025).

8 See paras 7–17 below.

9 See paras 18–26 below.

10 See paras 27–39 below.

the practice-focused ethical issues in Singapore's family law context that were discussed at the seminar. Lastly, Parts V¹¹ and VI¹² conclude with potential developments and recommendations for ethics in family law moving forward. It is envisioned that the dialogue will continue, as the family Bar collectively develops ethical standards.

II. Ethical considerations in family law

7 Choo J opened the session by highlighting the differences in two main ethical schools of thought. On the one hand, ontology presumes that there are moral answers to ethical questions in the form of established "higher" values. On the other hand, consequentialist theory determines what is ethical according to the eventual utility of the act. How we make ethical decisions has differing implications on both the parties and the children. When it comes to child-related cases, which this article will focus on, family lawyers are often faced with difficult choices that may result in the child growing up reasonably well-adjusted or struggling to manage the consequences of her parents' divorce and conflict. Child-related issues often result in complicated ethical issues, given the higher stakes involved when there are vulnerable children who usually do not have a direct say in significant matters involving their well-being and living arrangements. This is a struggle that family law stakeholders are intimately engaged in, especially when faced with contested issues of child custody, care and control, and access.

8 There may be cases or exceptions where one might prefer applying an ontological approach over a consequentialist approach and *vice versa*. For instance, where a child is removed from the matrimonial home by a parent shortly before the service of the divorce originating application on the other parent. Child removal without the other parent's consent may inherently offend ontological beliefs, yet there are certain scenarios where adopting a consequentialist approach may result in the child

11 See paras 40–47 below.

12 See paras 48–50 below.

continuing in the new arrangement with appropriate access arrangements in place for the other parent.

9 The application of ethics in the realm of family law is unique. As Choo J put it, “as far as the parents and judge are concerned, we are making choices that are not involving our lives but the lives of the children”. It is clear that family lawyers have an ethical role in not only providing counsel to distressed parties, but also protecting vulnerable children. Underscoring this ethical role is rr 15A and 15B of the Professional Conduct Rules. To give full effect to the spirit and purpose of these rules, family lawyers must bear in mind certain nuances pertaining to ethics in family law.

10 Statutes and case law enshrine the principle that the child’s welfare and interests take centre stage in any proceeding relating to the child.¹³ This welfare principle imposes an additional duty on the family lawyer – an ethical duty to have regard to the child that is the subject matter of proceedings.¹⁴ That said, tension arises when the child or the child’s time is perceived as the “prize” in family law cases that are adversarial, rather than problem-solving in nature. In attempting to achieve the “prize” for his client, the family lawyer is faced with the difficult question of reconciling his duty to the client and the additional duty of doing what is best for the child.

11 It may be that a shift of perspective is needed in terms of what the “prize” is. The family lawyer should actively persuade the client to arrive at decisions that safeguard the child’s interests when conducting proceedings.¹⁵ If both parties focus on the child’s interests as common ground, they are more likely to be able to rise above their individual interests and arrive at arrangements that benefit the child when carried out in a co-operative spirit.¹⁶

13 See s 125(2) of the Women’s Charter 1961 (2020 Rev Ed); s 3 of the Guardianship of Infants Act 1934 (2020 Rev Ed); and *BNS v BNT* [2015] 3 SLR 973.

14 See Nahum Mushin, “Ethics in Family Law – Beyond Legal Principles and Into Value Judgments” (2018) 30 SAclJ 427 at para 28.

15 See Nahum Mushin, “Ethics in Family Law – Beyond Legal Principles and Into Value Judgments” (2018) 30 SAclJ 427 at para 29.

16 *VDX v VDY* [2021] SGHCF 2 at [26] and [29].

Exercising short-term restraint over trivial legal disputes may well lead to a much bigger “prize” down the road – relationships being preserved within the family and a better long-term future for the child.

12 The application of ethics comes to the forefront when the family lawyer stives to fulfil his multiple duties, which are summarised as follows:

(a) Legal practitioners, as officers of the court, have the first and foremost duty to assist in the administration of justice.¹⁷ The family lawyer must be truthful and accurate in all communications related to court proceedings,¹⁸ and refrain from engaging in any conduct that could undermine the administration of justice. Inherent in this duty is a need for the family lawyer to reconcile the pursuit of legal rights with the caring mindset expounded by TJ, which calls one to emphasise collaboration over conflict and to assist the court in meeting the aims of TJ.

(b) Secondly, the family lawyer owes a duty to his client. This includes carrying out the client’s instructions diligently¹⁹ and safeguarding the client’s best interests and confidentiality.²⁰ The family lawyer should also avoid being in a position of conflict that could compromise his ability to act for the client to the best of his abilities.²¹

(c) Thirdly, the family lawyer owes a duty to his fellow legal practitioner, which is to accord proper respect and to deal with one another in good faith and courtesy.²²

(d) Lastly, as elaborated above, unique to the family lawyer is the duty to the child of the proceedings. This duty manifests in the need to minimise conflict in the conduct of family proceedings.²³ The family lawyer

17 Legal Profession (Professional Conduct Rules) 2015 r 9(1)(a).
18 Legal Profession (Professional Conduct Rules) 2015 r 9(1)(c).
19 Legal Profession (Professional Conduct Rules) 2015 r 5(1)(c).
20 Legal Profession (Professional Conduct Rules) 2015 r 6.
21 Legal Profession (Professional Conduct Rules) 2015 rr 20–22.
22 Legal Profession (Professional Conduct Rules) 2015 r 7.
23 Legal Profession (Professional Conduct Rules) 2015 r 15A.

should prioritise the interests of the child and consider the impact of the client's decisions on the well-being of the child.

13 Often, the ethical conundrum faced by the family lawyer arises when these respective duties tug in different directions. There are situations where the family lawyer will need to prioritise his duty to the court above contrary client instructions. This is especially so in cases involving the safety and well-being of the child. For instance, in a case where a family lawyer is informed of the child's whereabouts by his abductor client and is ordered to disclose the same by the court. Although the family lawyer is faced with the competing public interest of safeguarding client confidentiality, there may exist a higher public interest in securing the welfare of the child.²⁴ There is no simple answer to when this higher public interest is triggered, as each case must be decided on its own facts. The family lawyer must exercise his value judgment in considering what the child's welfare entails in each case.²⁵

14 Another common scenario faced by many family lawyers is when an emotional client insists on responding to a letter from opposing counsel containing negative personal remarks on the client's parenting, with offensive and accusatory language of his own. The family lawyer may feel pressured to carry out the client's instructions faithfully to fulfil his duty to the client, yet doing so would fall afoul of his duty to be respectful and courteous to fellow legal practitioners. Allowing the client to take an unconstructive position could also inflame matters further.

15 In situations where the client insists on an aggressive approach to litigation, the family lawyer should attempt to persuade the client to adopt a TJ mindset and to focus on the long-term holistic interests of the family and child. The Therapeutic Justice Model ("TJ Model") launched by the Family

24 See *R v Bell* (1980) 30 ALR 489; and discussion in Nahum Mushin, "Ethics in Family Law – Beyond Legal Principles and Into Value Judgments" (2018) 30 SAcLJ 427 at para 50.

25 See Nahum Mushin, "Ethics in Family Law – Beyond Legal Principles and Into Value Judgments" (2018) 30 SAcLJ 427 at para 18.

Justice Courts on 21 October 2024²⁶ serves as a tool that allows the family lawyer to bring the client through the expectations of the parties in litigation as well as the ethical obligations imposed on the family lawyer. It would be helpful to bring the TJ Model to the attention of the client at an early stage to set a tone of problem-solving and constructive behaviour.

16 If the client remains adamant on an adversarial approach, the family lawyer may need to problem-solve with opposing counsel to generate options and creative solutions that prevent the situation from escalating. In connection with this, Choo J suggested devoting a significant amount of time to understanding the client's true situation based on the objective evidence available. Thereafter, the lawyer and the other party's lawyer can enter into informal discussions and brainstorm over how to improve the situation for the family. Very often, each set of lawyers will only have their client's perspective. Coming together co-operatively may offer a broader perspective of the true situation and allow for more insightful solutions.²⁷

17 Unfortunately, there may be situations where the client remains unreasonable. In that event, the family lawyer should make a judgment call as to whether the client's behaviour has reached the extent that the family lawyer is unable to continue representing the client, without falling afoul of the other duties he owes to the court, the child and opposing counsel. There is no doubt that such decisions are difficult to make, in particular, when business considerations are engaged. Ultimately, the family lawyer has a choice as to how he wishes to run his client's case and must be able to make decisions that are ethically sound.

26 For information on the Therapeutic Justice Model, infographic and related posters, see Singapore Courts, "Family Justice Courts, Therapeutic Justice Model" <<https://www.judiciary.gov.sg/who-we-are/therapeutic-justice>> (accessed 16 July 2025). Video resources by the Judiciary are also available on YouTube: see, eg, Singapore Courts, "Therapeutic Justice in Singapore", YouTube (21 July 2022) <<https://www.youtube.com/watch?v=UEb5yFYpbdY>> (accessed 16 July 2025).

27 *The Art of Family Lawyering* (Alvin Chen gen ed) (The Law Society of Singapore, Special Ed, 2019) at paras 10.2.2–10.2.4 and 10.19.

III. Rules 15A and 15B of Legal Profession (Professional Conduct) Rules 2015

18 The challenge of ethics in the realm of family law has not gone unnoticed. As Chief Justice Sundaresh Menon noted in his address at the Opening of the Legal Year 2017, family law practitioners “are often placed in a precarious position because of the many competing demands they face”.²⁸ He noted that it would be beneficial to spell out professional standards that apply specifically to family law practitioners.

19 Menon CJ’s comments led to the formation of the Ethics Workgroup, which was tasked to consider the ethical issues faced by family law practitioners. This resulted in the introduction of the then new rr 15A and 15B by the Legal Profession (Professional Conduct) Amendment Rules 2018.

20 The Ethics Workgroup laid out the broad intention of the new rules as follows:²⁹

(a) to reduce the adversarial nature of family proceedings by ensuring that practitioners consider and advise their clients on different available dispute resolution options; and

(b) to ensure that the interests of any children involved in family proceedings are considered by practitioners.

21 Further, the Ethics Workgroup provided that the new rules seek to achieve the following objectives:³⁰

28 Chief Justice Sundaresh Menon, Supreme Court of Singapore, address at the Opening of the Legal Year 2017 (9 January 2017) <[https://www.judiciary.gov.sg/docs/default-source/news-docs/opening-of-the-legal-year-speech-final\).pdf](https://www.judiciary.gov.sg/docs/default-source/news-docs/opening-of-the-legal-year-speech-final).pdf)> (accessed 16 July 2025).

29 Family Justice Courts, “Making Justice Real for Families” (20 February 2017) at Annex E, para 9 <<https://www.judiciary.gov.sg/news-and-resources/news/news-details/media-release-fjc-workplan-2017>> (accessed 16 July 2025).

30 Family Justice Courts, “Making Justice Real for Families” (20 February 2017) at Annex E, para 9 <<https://www.judiciary.gov.sg/news-and-resources/news/news-details/media-release-fjc-workplan-2017>> (accessed 16 July 2025).

- (a) Ensure that practitioners take a constructive and conciliatory/non-confrontational approach towards the resolution of family proceedings.
- (b) Ensure that practitioners inform their clients about alternative dispute resolution options such as mediation and counselling, and advise their clients to consider an amicable resolution of family proceedings whenever it is possible to and on a reasonable basis.
- (c) Where a matter has to be adjudicated, ensure that practitioners advise their clients to adopt a constructive and reasonable approach to the resolution of the family proceedings.
- (d) Make it clear that practitioners have a duty to advise their clients to consider the welfare of, [and] potentially adverse impact of the family proceedings on, any children who may be involved in the family proceedings.
- (e) Set out the duties of practitioners in relation to conflicts of interest where they are appointed as Child Representatives and/or Parenting Coordinators.

22 The principles under r 15A find their roots in the Law Society of Ireland's, *Solicitor's Guide to Professional Conduct*.³¹ It recognised that the practice of family law benefits from a collaborative approach to assist parties to reach a constructive settlement of their differences.³² Choo J emphasised that the principles under r 15A remind family lawyers to be conscious of the child's interest, and where reasonably possible, to be constructive and conciliatory. The following paragraphs provide guidance on the content of the rules and how they may be generally interpreted.

23 The duty to consider alternative dispute resolution goes beyond the duty to charge the client fairly in respect of professional fees (that applies to all areas of practice),³³ and requires the family

31 Guidance & Ethics Committee of the Law Society, *Solicitor's Guide to Professional Conduct* (4th Ed, 2022) <<https://www.lawsociety.ie/globalassets/documents/committees/conduct-guide.pdf>> (accessed 16 July 2025). See Family Justice Courts, "Making Justice Real for Families" (20 February 2017) at Annex E <<https://www.judiciary.gov.sg/news-and-resources/news/news-details/media-release-fjc-workplan-2017>> (accessed 16 July 2025).

32 Guidance & Ethics Committee of the Law Society, *Solicitor's Guide to Professional Conduct* (4th Ed, 2022) at p 29 <<https://www.lawsociety.ie/globalassets/documents/committees/conduct-guide.pdf>> (accessed 16 July 2025).

33 Legal Profession (Professional Conduct) Rules 2015 r 17(2)(e).

lawyer to specifically address the child's interests.³⁴ This is further reinforced by r 15A(3) of the Professional Conduct Rules, which sheds light on child welfare-oriented advice ethically required of family lawyers where children are involved.³⁵ The family lawyer should advise the client to take into account the best interests of the children in a manner that does not inordinately prejudice the legitimate interests of the clients.³⁶ Taking into account the best interests of the children also includes the family lawyer's duty to ensure that his client is mindful of his communications with the children. The family lawyer should ensure that the client is advised to refrain from arguing in the presence of the children or to involve the children in any way in the court proceedings (for example, by discussing court events with them or having them act as messengers between their parents).³⁷ The family lawyer should also warn clients about the potentially damaging effects of involving their children in their disputes.³⁸ While the family lawyer ought to be mindful of the best interests of the family as a whole, matters involving children's issues warrant extra care and attention.³⁹

24 Rule 15A of the Professional Conduct Rules also reminds family lawyers of their paramount duty to the court to assist in the administration of justice. Put simply, it prohibits the family lawyer from being a mere mouthpiece for their client,⁴⁰ as he remains an officer of the court and a citizen having special

34 Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (Academy Publishing, 2nd Ed, 2022) at para 15A-15B.005.

35 *The Art of Family Lawyering* (Alvin Chen gen ed) (The Law Society of Singapore, Special Ed, 2019) at p iii.

36 *The Art of Family Lawyering* (Alvin Chen gen ed) (The Law Society of Singapore, Special Ed, 2019) at para 4.4.

37 Family Law Council & Family Law Section of the Law Council of Australia, *Best Practice Guidelines for Lawyers Doing Family Law Work* (4th Ed, 2017) at Part 1, para 4.2.

38 Family Law Council & Family Law Section of the Law Council of Australia, *Best Practice Guidelines for Lawyers Doing Family Law Work* (4th Ed, 2017) at Part 6, para 1.7.

39 *The Art of Family Lawyering* (Alvin Chen gen ed) (The Law Society of Singapore, Special Ed, 2019) at para 1.6.

40 Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (Academy Publishing, 2nd Ed, 2022) at para 15A-15B.007.

responsibilities for the quality of family justice.⁴¹ The duty requires the family lawyer to advise the client to consider an amicable resolution of the proceedings, and to be constructive and reasonable when participating in proceedings. The role of family lawyers is in providing the voice of calm and reason to help their clients problem-solve and support them towards making rational decisions.⁴²

25 In addition, r 15A of the Professional Conduct Rules makes clear to family lawyers not to get carried away by the acrimonious motivations of their clients. In *VII v VIJ*,⁴³ the acrimonious nature of the parties' relationship resulted in numerous applications being taken out by both parties against each other. The district judge highlighted the damaging effect of the parties' conflict on the children's well-being. It was further noted that the exchange between parties through their counsel was unnecessarily adversarial and needlessly copied to the court. The district judge fittingly referred to r 15A of the Professional Conduct Rules and reminded counsel of the expectations to uphold constructive and conciliatory conduct in family proceedings.⁴⁴

26 The above rules remind family lawyers of the multitude of considerations that apply in family proceedings, despite them being situated within a largely adversarial legal system. The adoption of TJ introduces a problem-solving focus for family disputes, and seeks to move away from the purely adversarial legal system that family law practitioners in Singapore had been operating in. There is no clear winner or loser in family proceedings,⁴⁵ and the focus should be on how to help the family as a whole move forward. It is the duty of the contemporary family lawyer to advocate for a shift from the previous mindset and to impel the client to avoid anti-therapeutic behaviour that would take a toll on the parties' and the children's welfare.

41 *The Art of Family Lawyering* (Alvin Chen gen ed) (The Law Society of Singapore, Special Ed, 2019) at para 1.6.

42 *VQZ v VRA* [2021] SGFC 69 at [70].

43 [2020] SGFC 48.

44 *VII v VIJ* [2020] SGFC 48 at [156].

45 *JBB v JBA* [2015] 5 SLR 153 at [14].

IV. Practice-focused ethical issues

27 Given that the focus of the seminar was on a collective way forward, it was essential to hear from the family lawyers themselves on how family law ethics should be conceptualised. Notably, the family lawyers present were a sizeable representation of the family Bar, with over 70 attendees from small, medium and large firms, as well as related organisations, with varying post-qualification experience. Most of the attendees indicated that more than half of their work was in family law practice.

28 There was a consensus amongst the family lawyers that TJ, as an overarching concept, could unify the different aspects of family practice. TJ was also seen as a useful guide that could shape the essence of family law ethics in Singapore. Several concerns were raised by the family lawyers over how counsel could work together on a case⁴⁶ and how clients could be better managed, in ways informed by TJ.

29 The panel, made up of veterans Engelin Teh SC (“Teh SC”), Yap Teong Liang (“Yap”) and Wong Kai Yun (“Wong”), touched on the distinct ways that counsel run their cases. In the drafting of affidavits, it is critical for the family lawyer to work with the client to set out the facts accurately. The client’s version of the facts ought to be consistent with the objective evidence, and counsel should make arguments that tally with the evidence.

30 As eloquently explained by Yap, “in today’s regime, learning elegance is the key”. There are ways to address an opposing counsel’s statements in court when they are not fully consistent with the evidence. These involve learning new language and being sensitive to the impact that one’s statements may have on the case. Such efforts contribute to creating a framework of “professional courtesy and common decency”,

46 As did those present at this seminar, it appears common for lawyers to identify relationships with opposing counsel as an area for overall improvement. For instance, lawyers in New Jersey cited undue competitiveness in opposing counsel as the most common problem in divorce practice. See *Practicing Therapeutic Jurisprudence: Law As a Helping Profession* (Dennis P Stolle, David B Wexler & Bruce J Winick eds) (Carolina Academic Press, 2000) at p 175.

where “one can disagree and yet not be disagreeable”.⁴⁷ Ultimately, the family Bar continues to work with each other on cases and building a culture of respect goes a long way.⁴⁸

31 While one may graciously point out inconsistencies in their opposing counsel’s statements in court, there are times that call for a firmer approach. In this connection, Teh SC elaborated on her approach of giving opposing counsel the benefit of the doubt up to a certain point, especially where the opposing counsel is young. Where possible, Teh SC seeks to clarify the situation with them outside of the courtroom.⁴⁹ However, when faced with a series of untruths and/or opposing counsel who are unwilling to concede, more robust measures have to be taken to bring the court’s attention to the untruths.⁵⁰

32 Such an approach is duly consistent with a practitioner’s general ethical obligations under the Professional Conduct Rules. Rule 9 of the Professional Conduct Rules governs the duty of the legal practitioner to “assist in the administration of justice”.⁵¹ The practitioner’s position as an officer of the court leads first and foremost to a duty to assist in the administration of justice.⁵² A practitioner’s duty to advance the client’s interest is subject to her duty to assist in the administration of justice.⁵³ It therefore follows that a practitioner must be truthful and accurate in her presentation of the facts, the evidence and the law to the court.⁵⁴

47 *China Insurance Co (Singapore) Pte Ltd v Liberty Insurance Pte Ltd* [2005] 2 SLR(R) 509 at [64].

48 *The Art of Family Lawyering* (The Law Society of Singapore, Special Ed, 2019) at para 10.12.

49 *The Art of Family Lawyering* (The Law Society of Singapore, Special Ed, 2019) at paras 10.24–10.25.

50 *The Art of Family Lawyering* (The Law Society of Singapore, Special Ed, 2019) at paras 10.6–10.11.

51 See r 9(1)(a) of the Legal Profession (Professional Conduct) Rules 2015.

52 Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (Academy Publishing, 2nd Ed, 2022) at para 09.004.

53 Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (Academy Publishing, 2nd Ed, 2022) at para 09.004.

54 Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (Academy Publishing, 2nd Ed, 2022) at para 09.004.

A practitioner is legally bound to place the interest of justice over and above her personal interest or any interest of the client.⁵⁵

33 In addition, the panel reiterated that it is the family lawyer's duty to decide how best to run their client's case, bearing in mind the paramount duty to the court in assisting in the administration of justice. Fulfilling one's duty to the court may indeed be separate from the case that the client wishes the practitioner to run, if to do so were to mislead the court.

34 In *Bachoo Mohan Singh v Public Prosecutor*,⁵⁶ the Court of Appeal observed of the practitioner's role that "the tension between the duty to the court and to the client can only be reconciled by the solicitor maintaining his poise by dint of steering a cautious middle course". It is therefore the practitioner who is expected to take ownership of how the case is run, in accordance with their ethical obligations. As affirmed by Yap, "it is not about your opponent, but how you decide to run your client's case". Practitioners ought to make choices by letting their individual moral compasses lead the way, thereby contributing to a culture of ethics within family law practice. Focusing on short-term gains or solely on the win-lose dichotomy will do little to build camaraderie within the profession.⁵⁷

35 The panel further shared their wisdom on client management. The family lawyer has a challenging role: persuading clients to be conciliatory, handling the client's emotions, and constructively managing opposing counsel. Gone are the days where clients may simply be told what to do. With today's culture and its emphasis on agency, one must find ways to obtain the psychological backing of the client. What is the upside to co-operating with the other party? How can the best interests of the child be protected even when the parties have differing views? Would letting go of a particular legal position help move matters forward?

55 Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (Academy Publishing, 2nd Ed, 2022) at paras 09.003–09.004.

56 [2010] 4 SLR 137 at [114].

57 *Law Society of Singapore v Tan Buck Chye Dave* [2007] 1 SLR(R) 581 at [21].

36 Perhaps the solution is for family lawyers to be more open towards collaborating with each other to find creative solutions that meet both the parties' needs to a reasonable extent. A straightforward starting point would be to pick up the phone and call our learned friends. A concrete example set out by Teh SC and Wong shows the value in counsel communicating with each other and collaborating to solve issues.

37 In that particular case, Wong represented the mother and Teh SC represented the father. In a scenario familiar to most family lawyers, the father alleged that the mother was alienating the child against him, resulting in the child being reluctant to attend access sessions with him. The mother however had text messages between the child and the father showing that it was in fact the father who had been negatively coaching the child. After obtaining the mother's permission, Wong informed Teh SC of the text messages instead of simply adducing them in the ongoing court litigation. The shared aim was for Teh SC to resolve the issue with the father without further implicating the already unstable child. Wong's initiative allowed Teh SC to speak candidly with her client about the conflict over the child. For completeness, when the father refused to acknowledge the text messages and remained insistent on his instructions, Teh SC ended up discharging her client.⁵⁸

38 The above is a practical example of how lawyers can protect the best interests of the child by collaborating with each other. The constructive sharing of information allowed counsel to discern the actual situation that the child was experiencing and discuss steps that could mitigate further harm. Had the father been more receptive, counsel could also have explored a compromise solution on access. Rule 7(1)(b) of the Professional Conduct Rules supports such collaboration by providing that:

A legal practitioner must deal with another legal practitioner in good faith and in a manner which is dignified and courteous, so that the matters on which they have been instructed can be

58 *The Art of Family Lawyering* (The Law Society of Singapore, Special Ed, 2019) at para 10.13.

properly and satisfactorily concluded or resolved in the best interests of their respective clients.

39 Returning to an earlier point, Teh SC noted that family law clients are more emotional, leading to counsel who feel for their clients and litigate emotionally as well. There is an ongoing quandary that pulls the family lawyer in different directions: knowing what is objectively best for the family and advocating the client's position. Though not an easy feat, it is possible to bridge the gap with effective family lawyering. The best family lawyer is one that maintains objectivity⁵⁹ and achieves solutions for the client that promote therapeutic outcomes such as healing and moving on.

V. Recommendations and future developments

40 What does effective family lawyering look like for family lawyers in Singapore? Against the backdrop of TJ, family practice involves lawyers working with clients to apply existing law and processes in a manner that is likely to promote their psychological well-being.⁶⁰ At first glance, this may sound vague. A useful way to proceed would be to break down the lawyer-client relationship into its various stages and fit effective family lawyering strategies into the structural framework.⁶¹

59 Lawyers having an awareness of their own emotional reactions is a preliminary step to confronting the emotional dimension in lawyering. Research has shown that lawyers are generally resistant to emotional awareness, and the effects that their emotions may have on the way the case is being conducted. Resources on transference and counter-transference may be helpful to deepen understanding in this regard; see Harrop A Freeman, *Legal Interviewing & Counseling* (West Publishing Co, 1964); see also *Practicing Therapeutic Jurisprudence: Law As a Helping Profession* (Dennis P Stolle, David B Wexler & Bruce J Winick eds) (Carolina Academic Press, 2000) at p 358.

60 *Practicing Therapeutic Jurisprudence: Law As a Helping Profession* (Dennis P Stolle, David B Wexler & Bruce J Winick eds) (Carolina Academic Press, 2000) at p 46.

61 Due to constraints on the word limit of this article, the authors may have to follow up with more extensive discussions of the other stages in the family dispute process. In any event, the dialectic topic of family law ethics is an evolving conversation that will benefit from renewed thinking and further dialogue by the family Bar.

41 At the outset, there is the initial consultation with the client.⁶² At this stage, the psychologically sensitive lawyer may choose to adopt a more client-driven perspective, as opposed to a purely legal one. There are numerous benefits in doing so. Family lawyers have an important psychological function,⁶³ and the way they choose to conduct themselves could lead to therapeutic impacts on the client.

42 It is trite that litigation comes with both emotional and financial costs. Given that litigation is one of the most stressful events in a person's life, a client is likely to have strong anti-therapeutic feelings at the prospect of having to engage in litigation. Some of these feelings include fear, anxiety, hurt, depression and other strongly negative emotional reactions that can diminish a client's psychological well-being.⁶⁴ There is social science research that shows that when an individual holds onto strong feelings and does not express them, her decision-making ability is distorted. It follows that being able to express emotions has the effect of freeing the individual to think more clearly and rationally.⁶⁵ This would be extremely helpful when exploring alternative dispute resolution options and other less acrimonious courses of action with the client, in line with the family lawyers' ethical obligations under r 15A(2) of the Professional Conduct Rules.

43 A widely researched strategy that the family lawyer may consider to help the client express her emotions is the use of empathy.⁶⁶ If lawyers are able to effectively express empathy, they can create a safe space for clients to open up and express

62 *Practicing Therapeutic Jurisprudence: Law As a Helping Profession* (Dennis P Stolle, David B Wexler & Bruce J Winick eds) (Carolina Academic Press, 2000) at p 219; see Figure 4.

63 *Practicing Therapeutic Jurisprudence: Law As a Helping Profession* (Dennis P Stolle, David B Wexler & Bruce J Winick eds) (Carolina Academic Press, 2000) at pp 309–312.

64 *Practicing Therapeutic Jurisprudence: Law As a Helping Profession* (Dennis P Stolle, David B Wexler & Bruce J Winick eds) (Carolina Academic Press, 2000) at pp 311–312.

65 *Practicing Therapeutic Jurisprudence: Law As a Helping Profession* (Dennis P Stolle, David B Wexler & Bruce J Winick eds) (Carolina Academic Press, 2000) at p 340.

66 Gary Low, "Emphatic Plea for the Empathic Judge" (2018) 30 SAclJ 97.

their emotions,⁶⁷ thereby helping to build rapport and a strong relationship of trust.⁶⁸ It would be useful for the lawyer to build up soft skills that assist in strengthening the relationship of trust and confidence with the client. For instance, becoming adept at passive and active listening⁶⁹ to validate the feelings expressed by the client and provide responses that convey interest, care and warmth. Having a strong lawyer–client relationship is instrumental in persuading the client to adopt more constructive strategies when dealing with family disputes and to be more open to problem–solving with the other party or opposing counsel.

44 There may also be situations where the client is going through serious emotional distress or experiencing psychological reactions that lawyers are not fully equipped to deal with. If necessary, the family lawyer should recommend that the client consult a mental health professional. A family lawyer may make such suggestions gently by explaining how such referrals helped previous clients and provide the client with names of trusted mental health professionals to consider.⁷⁰

45 At the initial consultation stage, it is also recommended that family lawyers provide the client with essential material on what the court expects of them and the legal ethics that family lawyers are bound by. There are two reasons for this: (a) to establish a norm of behaviour; and (b) to encourage compliance with authority.⁷¹ It is more likely that clients will accept the lawyer’s conciliatory advice if the client is informed that participants in the family justice system ought to promote TJ,

67 *Practicing Therapeutic Jurisprudence: Law As a Helping Profession* (Dennis P Stolle, David B Wexler & Bruce J Winick eds) (Carolina Academic Press, 2000) at p 341.

68 *Practicing Therapeutic Jurisprudence: Law As a Helping Profession* (Dennis P Stolle, David B Wexler & Bruce J Winick eds) (Carolina Academic Press, 2000) at pp 339–340.

69 DA Binder, P Bergman & SC Price, *Lawyers as Counsellors: A Client-Centred Approach* (West, 1991) at pp 52–53.

70 *Practicing Therapeutic Jurisprudence: Law As a Helping Profession* (Dennis P Stolle, David B Wexler & Bruce J Winick eds) (Carolina Academic Press, 2000) at p 343.

71 *Practicing Therapeutic Jurisprudence: Law As a Helping Profession* (Dennis P Stolle, David B Wexler & Bruce J Winick eds) (Carolina Academic Press, 2000) at p 343.

a philosophy that the Family Justice Courts is strongly committed to. In this connection, an essential resource that family lawyers may review with the client is the TJ Model. The TJ Model serves as a useful guide for the family lawyer to bring the client's attention to the court's expectations on her conduct in family disputes.

46 Part 2, Section B (“The TJ Objectives and stages of the court process”) of the TJ Model contains a table⁷² that can be shown to the client, for the client to gain awareness of what is expected at each distinct stage of the divorce proceedings. The table signals the court's expectations of the parties, and the lawyer can use it as a tool to persuade the client to act reasonably and conciliatorily during proceedings. Similarly, the TJ Model clarifies the role of the party in the proceedings, with para 13 containing a summary of “do's and don'ts” that divorcing parties should adhere to.⁷³ The TJ Model also sets out certain TJ standards and the positive and negative consequences that could ensue under the judge-led approach, thereby providing a soft enforcement mechanism of the TJ standards.⁷⁴ Overall, the TJ Model is a valuable tool in helping family lawyers advise their clients and conduct their client's cases in a manner consistent with their ethical obligations.

47 TJ-minded lawyers may also consider collaborating with social science professionals (in the fields of psychology, counselling and social work) to prepare educational resources on child psychology in divorce and the psychological impact of divorce on the family as a whole. This can be done in the form of an infographic, so that the information is easily accessible to the client.⁷⁵ Such information would contribute towards the family

72 Singapore Courts, “Family Justice Courts Therapeutic Justice Model” at para 5 <https://www.judiciary.gov.sg/docs/default-source/family-docs/fjc_tj_full.pdf?sfvrsn=6d5426b0_2> (accessed 16 July 2025).

73 Singapore Courts, “Family Justice Courts Therapeutic Justice Model” at paras 12-13 <https://www.judiciary.gov.sg/docs/default-source/family-docs/fjc_tj_full.pdf?sfvrsn=6d5426b0_2> (accessed 16 July 2025).

74 Singapore Courts, “Family Justice Courts Therapeutic Justice Model” at paras 15-19 <https://www.judiciary.gov.sg/docs/default-source/family-docs/fjc_tj_full.pdf?sfvrsn=6d5426b0_2> (accessed 16 July 2025).

75 David B Wexler, “The DNA of Therapeutic Jurisprudence” (Arizona Legal Studies Discussion Paper No 20-43) in *The Methodology and Practice of* (cont'd on the next page)

lawyer's ethical obligation of "[advising] the client to consider the welfare of the child, and the potentially adverse impact of those proceedings on the child" under r 15A(3) of the Professional Conduct Rules, as well as considering the "psychological health of the client" under r 15A(1).

VI. Conclusion – an ongoing conversation

48 It is evident from the discussions at the seminar that there is more work to be done in the development of family law ethics in Singapore. We have a strong foundation in the form of rr 15A and 15B of the Professional Conduct Rules that were incorporated into our local context in 2018. While these rules are inherently compatible with the goals of TJ in the family justice system, further discussion on how the rules may be applied in the day-to-day practice of family lawyering is required.

49 The marrying of TJ with our family justice system's function and goals has served to provide us with a useful consolidating lens in which to evaluate prior efforts and generate future ones.⁷⁶ We are fortunate in that we can now tap on therapeutic jurisprudence resources, including articles and books that address the issues that have been drawn into sharp focus.⁷⁷ For instance, a psychologically sensitive lawyer's management of a client and the psychological function of counsel are topics that have been explored extensively in therapeutic jurisprudence literature, and are intimately tied up with the ethical obligations in advising the client.

50 The evolution of our family law ethics is part of an ongoing conversation that will continue well into the future. The development of our ethics is an iterative process that will be honed through discussion and the building up of a body of

Therapeutic Jurisprudence (Nigel Stobbs, Lorana Bartels & Michel Vols eds) (Carolina Academic Press, 2019) at pp 8–9.

76 Yarni Loi & Suzanne Chin, "Therapeutic Justice – What It Means for the Family Justice System in Singapore" (2021) 59(3) *Family Court Review* 423 at 440.

77 David B Wexler, "Creating a Therapeutic Justice Culture" [2021] *SAL Prac* 20 at paras 1–2.

jurisprudence. The family Bar coming together to share views and concerns is part of a broader knowledge collection process that we can use to develop common understandings of what it means to be an ethical family lawyer in Singapore. May these conversations continue as we strive towards creating a collective family law ethics that we can be proud to call our own!