REPORT OF THE COMMITTEE TO REVIEW AND ENHANCE REFORMS IN THE FAMILY JUSTICE SYSTEM

13 September 2019

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EXECUTIVE SUMMARY

1. Strong families offer a conducive environment where children can grow into resilient adults who lead happy and productive lives, and who will start families of their own. However, when families run into difficulties and threaten to break apart, the well-being of their children may also come under pressure.

2. A strong family justice system requires policy-makers, as well as professionals working with families to consider how the adverse effects and negative impact of familial conflict and break up can be reduced, to protect children whose parents have divorced. This requires understanding the experiences of families who have gone through the family justice system and examining whether there are gaps within the system which call for review and improvement.

3. Litigation is often associated with negative connotations – conflict, acrimony, stress, legal costs and heavy burdens on time. When litigating parties are former spouses with children, the conflict and contests can inflict deep wounds not just on the parties, but on their children as well.

4. As such, resolving family issues and conflicts through alternative dispute resolution mechanisms, such as mediation, negotiation, conciliation, complemented by counselling support and other divorce support programmes, is a key focus of the Committee's recommendations. It is critical for these therapeutic and restorative measures to be introduced as early as possible. Just as a wound left untreated festers, delays in working through family issues and conflicts can cause more harm to the family.

5. However, despite the best efforts, inevitably some marriages still break down. When this happens, there are many issues for the couple to consider and decisions to make. In addition to coming to terms with the breakdown emotionally, it is important to sort out the bread and butter matters (*e.g.* living arrangements and finances) early in order to avoid disputes and distress later. Hence, the Committee has recommended that upstream, pre-filing initiatives be made available to better support parties contemplating divorce in their decision making. To enable such support, couples will also need to be provided with relevant information, especially those related to housing and financial matters, to facilitate informed decision-making on the family's future (see Recommendation 1).

6. A key reform introduced through the recommendations made by the Committee for Family Justice in 2014 involved the simplification and streamlining of divorce processes. As a result of these changes, parties who agree on the divorce and the ancillary matters prior to the filing of the action have been able to obtain a

divorce without going through lengthy court proceedings. This reduces acrimony between parties. Where parties are unable to agree, the court processes will continue to provide conciliatory avenues for the harmonious and lasting resolution of disputes. The Committee recommends further simplifying existing procedural rules governing all family proceedings to make the process of family litigation simpler, more timely and more affordable (see Recommendation 2).

7. In some instances, a judge-decided outcome is the most appropriate intervention and the only way to enable parties to move forward. Since the judge-led approach was implemented in 2014, judges have adopted a more pro-active approach in case management, and are empowered to make directions for the just, expeditious and economical disposal of proceedings. Protracted litigation with the attendant uncertainties is detrimental to the well-being of parties and their children. The Committee has considered how the judge-led approach has been implemented over the past four years, and is of the view that greater clarity on how the judge-led approach can be applied in family proceedings would significantly strengthen the system (see Recommendation 3).

8. Enhancing the present enforcement regime for child access orders is a suggested area for law reform. As such cases often relate to a parent's decision-making role, parental responsibility, and time with their child post-divorce, they are emotionally-charged issues which must be handled with sensitivity and wisdom. The children must be protected as far as possible from the very harmful effects of their parents' conflict (see Recommendation 4).

9. It is important to ensure, as far as feasible, that couples contemplating divorce have access to quality legal advice and services. Every decision made by the parties will have long-term personal and financial implications. It is important for parties to be properly advised and made aware of the options available to them, including options such as mediation and counselling, which could lead to better outcomes. The Committee is heartened by the Law Society's initiative and partnership in developing the Family Justice Support Scheme which seeks to make affordable legal services available to more litigants (see Recommendation 5).

10. Besides handling disputes over family breakdowns arising out of a divorce, the court also handles matters relating to applications made under the Mental Capacity Act ("MCA"), where an individual applies to be a proxy decision maker on behalf of someone who has lost mental capacity. Such applications have become a regular mainstay in family proceedings, as our population ages. The family justice system must provide a clear framework on how the ageing person's family, where necessary, can make decisions for his or her benefit, whether they relate to day-to-day care or decisions on the person's property and finances.

11. Caring for someone who has lost or has fluctuating mental capacity is not an easy task. We read of caregiver stress and sacrifices which family members and loved ones make in order to care for someone suffering from debilitating mental conditions such as dementia. The Committee recommends supporting such family members and caregivers through simplifying the court application process for deputyships, as well as providing training and counselling for those appointed as deputies and donees (see Recommendation 6).

12. The Committee feels that a robust multi-disciplinary, cross-functional approach is required to help parties address and work through their issues holistically, to minimise the need to undergo litigation or prolonged legal proceedings. To improve legal processes and better support families, professionals working within the family justice system must be trained, accredited and (re)skilled, across multiple disciplines where necessary. This will better enable them to help and support families in moving on with their lives beyond their journey in the family justice system (see Recommendations 7 – 9).

13. Finally, the Committee recommends developing a set of Key Performance Indicators ("KPIs") to assess the health of the family justice system. Orders made by the court profoundly affect lives, especially those of children. Beyond tracking figures which measure traditional KPIs tied to performance and efficiency, a holistic perspective of the impact the family justice system has on healing and restoring broken family relationships should be considered. This will enable us to continuously strengthen the way family justice is practised and dispensed. Agencies should also develop a more systematic way of collecting data across different agencies and organisations involved in family work, to support the tracking of outcomes, evidence-based research, and data analytics (see Recommendation 10).

CHAPTER 1 – INTRODUCTION

1. Family justice is a unique field in the administration of justice. This was an observation of the Honourable the Chief Justice Sundaresh Menon in his speech marking the Opening of the Family Justice Courts ("FJC") on 1 October 2014. In the Singapore justice system, family justice occupies a unique and "special" place because of the presence of children. The interests of children demand a less adversarial approach, where parties and lawyers must cooperate to protect their welfare.

2. In 2014, the Committee for Family Justice issued a set of recommendations to reform the family justice system so that it can better serve the needs of families in distress. The key recommendations can be summarised in three broad points. First, provide better support for families going through family proceedings through a robust network of community assistance and support. Second, create a comprehensive specialist family court structure with enhanced judicial case management processes and court powers. Third, protect the best interests of the child.

3. Pursuant to the 2014 recommendations, the Divorce Support Specialist Agencies ("DSSAs") were established to provide better support for families facing divorce issues. A specialist family court structure – the FJC – was established with enhanced case management processes and powers to resolve family disputes in ways that lessen the trauma and acrimony. Court-appointed Child Representatives were also introduced to provide a voice for the child in divorce proceedings.

4. The effects of these reforms have been promising. Upstream measures ensure that more cases are settled before parties enter the court system. This is reflected in the percentage of divorce cases granted under the simplified track (*i.e.* cases with no contested issues) which has steadily increased from 24% in 2015, to 37% in 2016, to 49% in 2017, and 55% in 2018.

5. Where contested cases enter the FJC, court-annexed mediation and counselling have resulted in a decrease in the percentage of divorce cases that involve contested matters. Through the years 2015 to 2017, the percentage of concluded divorce cases that required a final adjudication hearing to resolve divorce and/or ancillary matters was between 6% and 9%.

6. The overall result is that the proportion of divorce cases which require full adjudication has decreased, and the amount of time required to resolve these cases has also decreased through enhanced case management processes and active judicial involvement.

7. To take these successful reforms forward, the Committee was formed in November 2017 to build on the work of the earlier Committee for Family Justice.

8. The Committee's terms of reference are set out below:

   (a) Review court procedures and legal processes relating to (i) divorce, maintenance and child custody, and (ii) mental capacity, undergirded by the aims of ensuring the ends of having a fair outcome without undue delay, complexity and costs to the parties in conflict;

   (b) Consider other appropriate and multi-disciplinary approaches and processes in resolving family disputes outside of the court, which can minimise the need for families to undergo litigation;

   (c) Work on a set of KPIs customised for assessing the state of health of the family justice system;

   (d) Examine how elements of therapeutic and restorative justice can be applied in the family justice system for better outcomes for the family and community; and

   (e) Strengthen the training and continuing legal education of family law practitioners.

9. One of the Committee's key objectives was to consider how elements of therapeutic and restorative justice can be further incorporated in the resolution of family disputes. As family proceedings involve a state of continuing affairs between parties, the Committee looked at appropriate dispute resolution mechanisms and multi-disciplinary approaches to promote more sustained family outcomes so that any resolution can withstand the test of time.

10. The family justice system also faces new complexities arising from an increase in transnational marriages and an ageing population.

11. Family law is no longer domestic in character and application. The globalisation of families has also introduced complex private international law issues that involve child relocation and parental abduction across jurisdictions. It has, therefore, become important and necessary for family lawyers to equip themselves with knowledge of the international aspects of family law.

12. The ageing population draws attention to other aspects of family justice beyond divorces, such as those covered by the MCA, and this will be increasingly important in time to come. In order to ensure that our family justice system is

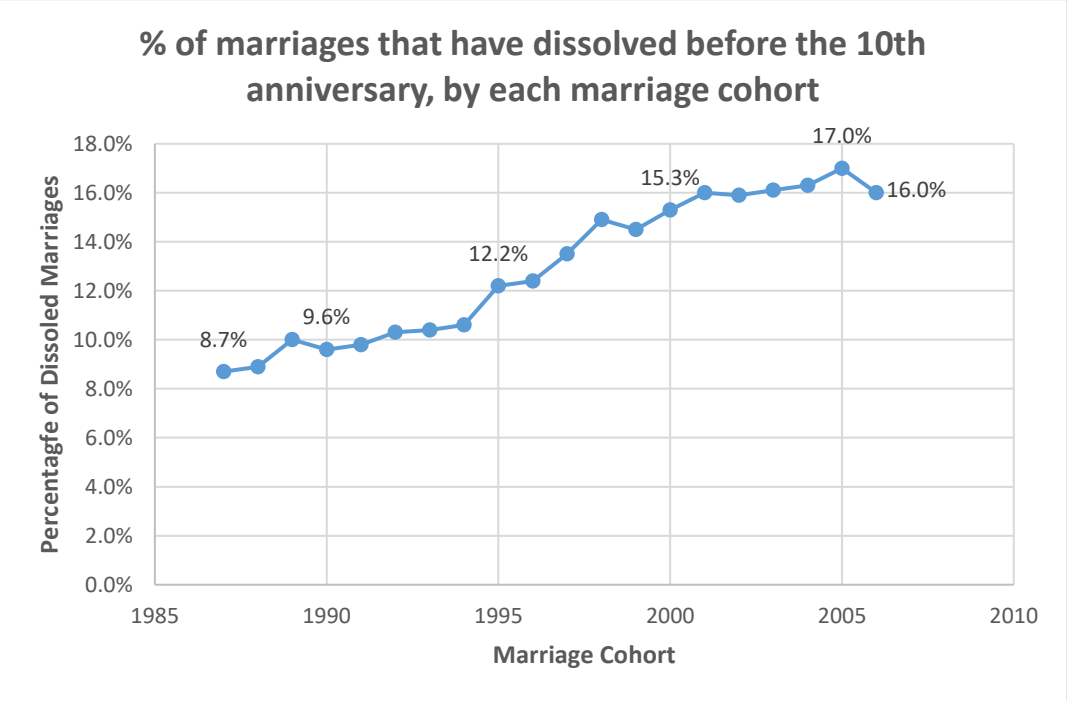
future-ready and able to address these new challenges, the Committee considered measures which will be necessary to tackle these issues.

13. All these efforts will not be successful if our family justice system is not supported by well-trained professionals who believe in the ethos of the new family justice system. In this regard, the Committee looked at measures to train and equip these professionals so that they have the appropriate capacity and capability to support families in distress.

CHAPTER 2 – REDUCING ACRIMONY AND CONFLICT IN DIVORCE FOR POSITIVE FAMILY OUTCOMES

OVERVIEW

14. Divorce rates are rising globally. In Singapore, there are about 7,000 divorces a year. About half involve at least one child below 21, with more than 6,000 children affected by divorce yearly. In addition, marriage dissolution rates are higher among more recent marriage cohorts.



Source: Department of Statistics

15. Divorces have a significant impact on society, family and individuals. Families are the basic building blocks of our society. Strong families offer support and care, shape our values and beliefs, and contribute to social stability and harmony. Critically, strong families offer a conducive environment where children can be nurtured and develop into adults who lead happy and productive lives, and start families of their own.

16. The breakdown of a family has long-term consequences for the parties and especially their children. While the bulk of the recommendations that follow seek to minimise the adverse effect and fallout upon the breakdown of the family, these measures are largely remedial. These measures enable parties and their children to continue with their lives. The family however, is no longer the same.

17. Many initiatives have thus been introduced to strengthen marriages and reduce the chances of them breaking down. These include marriage preparation programmes to help couples learn how to communicate with each other better and resolve the problems that they will inevitably face as a married couple. An example is the evidence-based Prevention and Relationship Enhancement Programme, made available through social service agencies ("SSAs") in the community, as well as at the Registry of Marriages. There are also marriage enrichment and parenting programmes conducted by SSAs and at schools, which aim to equip parents with the skills to cope with the different stages of family life. In addition, family service centres and counselling centres exist to offer marital counselling support.

18. The Committee is heartened by existing efforts to strengthen and support marriages and recommends channelling more resources and efforts upstream to provide sufficient avenues for parties to seek advice and support early, before they experience marital difficulties and contemplate divorce. This includes marriage preparation courses, marriage enrichment programmes, and marital counselling.

19. While we continue to put in place preventive measures to ensure that marriages stay strong, we should also examine what can be done for couples who are contemplating divorce. When a couple is at a very difficult point in their married lives, one or both may be considering whether to keep things at *status quo*, whether to attempt reconciliation and marital recovery, or whether to end the marriage. The impact of a divorce on a family is real and couples need to be fully aware of this before making the decision to divorce.

20. Even when a couple is considering a divorce, they should be supported and referred to appropriate help agencies for marital recovery support if there appears some residual desire to give their marriage another chance. The possibility for reconciliation should be factored in divorce support services provided.

21. Divorces are traumatic for all parties, especially for the children involved. Studies have shown that depending on the child's maturity and understanding of what has taken place, the impact of the parents' divorce continues to be felt by the child in each developmental stage. It may affect the child's personality, the ability to trust and cope with change and expectations about relationships.

22. The ability of divorcing couples to anticipate the changes that will arise from the divorce, to manage their own emotional and mental stress, and to communicate well with each other can have a significant bearing on the outcomes of children caught in divorces.

23. Families going through divorces experience a great deal of upheaval. The immediate change to their daily lives is the formation of new households and potentially tighter household budgets, as it may no longer be possible to pool together or share resources.

24. Parties also have to re-learn how to relate to each other in a positive manner, especially as their children grow up and go through different stages of life and require different care arrangements. For example, what may have been a suitable living and care arrangement for a child in primary school will change as the child goes on to secondary school. Similarly, the financial resources required to maintain a child will require adjustments over time. Divorced parents need to understand these new realities and challenges well, ahead of time, and prepare themselves mentally, emotionally, and financially.

25. How can we help divorcing parents understand that these important decisions have to be worked through together; that they need to put aside their differences and make decisions for the well-being of the child?

26. The key lies in reducing acrimony and conflict between divorcing couples, so that they are not overwhelmed by emotional baggage and legal conflict to the point that the interests of the children and their own self-care are overlooked. This can be achieved by ensuring that the key issues and disagreements which divorcing couples often get entangled in are resolved upfront and in an amicable manner. This reduces the need to go through lengthy and often antagonistic litigation in court. We should also empower and support divorcing couples to work through their differences in settling divorce matters, especially if they have young children.

RECOMMENDATION 1: STRENGTHENING PRE-FILING INTERVENTION FOR POSITIVE FAMILY OUTCOMES

SUMMARY OF RECOMMENDATIONS

1.1 To enhance the Mandatory Parenting Programme to strengthen the focus on co-parenting, and enhance access to personalised information that indicate impact on children post-divorce

1.2 To facilitate pre-action counselling for a couple's emotional needs to be better addressed from the outset, with a view also to marital recovery where possible

1.3 To encourage the take up of mediation services at the pre-action stage and facilitate earlier resolution of family disputes

1.4 To develop a consolidated online platform that offers pre-filing services, including online counselling with relevant information that enable couples to pause and reflect, contemplate the impact of divorce on their children, as well as to be referred to appropriate support services offline

INTRODUCTION

27. Since its inception in January 2015, the four DSSAs, staffed by social service professionals with specialist knowledge and skills to help families undergoing divorce, have delivered programmes[1] designed with a child-centric approach in resolving marital conflicts. DSSAs ensure that families are supported throughout all the stages of the divorce process: (a) the pre-filing stage; (b) during the period the divorcing couple is going through the court process; and (c) post-divorce.

28. One such programme is the Mandatory Parenting Programme ("MPP") for divorcing couples with minor children and who are unable to agree on divorce and ancillary matters (*e.g.* child custody, care and control, access, child and spousal maintenance and division of matrimonial assets).

29. Parties are required to complete a consultation session with a DSSA counsellor, before they can file for divorce. The aim is to encourage and equip divorcing parties early with the information they need to make decisions that prioritise the

[1] A full list of the programmes and services provided by the DSSAs are set out in the Appendix.

well-being of children. This consultation helps divorcing couples understand the financial challenges of divorce, how divorce impacts living arrangements, child custody and access matters, and the importance of co-parenting (*i.e.* how parents share child-raising duties in view of their respective living arrangements with the child). DSSAs also give parents support through services such as counselling, case management and family dispute resolution with a strong focus on child centricity.

30. Parents who have completed the MPP have provided feedback that the MPP has helped them keep in mind what would be in the best interest of their children, even as they go through emotional challenges in a divorce. The DSSAs have also served as a resource centre which parties can approach to better understand what the divorce process entails.

IMPETUS FOR REVIEW

31. The MPP has made a good start by helping and encouraging parents to put their child's interest ahead of their own. However, there is still potential for more to be done to empower parties early so that they are able to make decisions for their family's benefit. The three areas that can be improved or enhanced are discussed below.

32. First, the current MPP covers *generic* content pertaining to financial planning post-divorce, impact of divorce on children and co-parenting. Consultation sessions with stakeholders and parents have indicated that having access to more personalised information would be useful so that parents are more cognisant of their resources and constraints when making decisions that could impact on their children. For example, a divorce may entail selling off the matrimonial home and dividing the proceeds, in which case, both parents may need to consider what their housing options are, whether they have sufficient means to afford a new home for their respective selves and their children, provide child maintenance and manage separate budgetary provisions to sustain long-term living arrangements.

33. Second, we should recognise that having to make major, life-changing decisions for themselves and their child can be very stressful for divorcing parties. Often, parties may not be aware that they require professional help, for example, counselling, or they realise it too late. They may also feel embarrassed having to ask an outsider for help. While counselling services are currently available at DSSAs, the "take up" rate by parties prior to filing for divorce remains low. We should do more to encourage and enable divorcing couples to access counselling services, so that they can be in a better emotional and mental state to make the major decisions that a divorce entails.

34. Third, more emphasis should be placed on encouraging divorcing couples to have an open and honest discussion with each other on the best way forward for the family, early on.

35. Open and honest discussion reduces the emotional and financial toil on parties and their families. Should parties decide to go their separate ways, it allows parties to focus on rebuilding and moving ahead with life, instead of getting caught up in protracted legal wrangles.

36. While there is currently no requirement for parties to attempt mediation before they file for a divorce, they can initiate a discussion on post-divorce arrangements between themselves by:

    (a) Negotiating an agreement on the divorce and ancillary matters, with or without the assistance of lawyers;

    (b) Attempting family mediation at the Singapore Mediation Centre ("SMC") where the session is overseen and facilitated by a member of SMC's panel of family mediators; or

    (c) Opting to participate in collaborative family practice, where specially trained lawyers and family specialists such as financial advisers and child experts work with the parties to reach an agreement that suits the family.

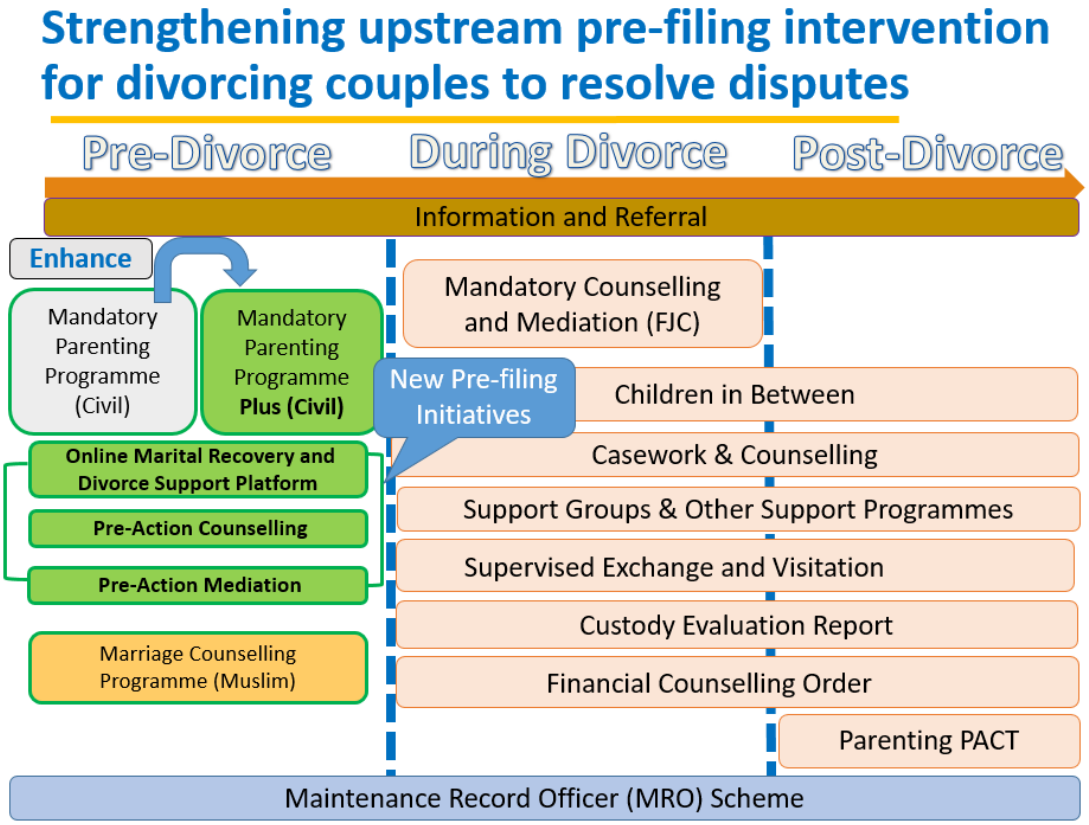
37. Any agreement reached *via* any one of the abovementioned options can be filed as a divorce on the simplified track with the court. 55%[2] of all divorces filed in 2018 were filed under the simplified track. This is a good start, and it means that more than half of all divorces filed stand a better chance of better outcomes for the children involved.

RECOMMENDATIONS

38. The Committee makes four recommendations to strengthen upstream pre-filing intervention measures in order to better support divorcing parents and their children.

39. An overview of existing pre-filing intervention measures and the recommendations discussed in this section is set out below:

[2] Source: FJC.



RECOMMENDATION 1.1: TO ENHANCE THE MPP TO STRENGTHEN THE FOCUS ON CO-PARENTING, AND ENHANCE ACCESS TO PERSONALISED INFORMATION THAT INDICATE IMPACT ON THE CHILDREN POST-DIVORCE

40. The Committee recommends that the MPP be expanded to include self-help functions which divorcing parents can tap on before filing for divorce. This would include self-assessments on marital satisfaction, child safety and personal safety (where there is risk of family violence), tools to map out their respective needs, and information on where to seek timely support.

41. An array of personalised housing and financial calculators can also be provided to help parents better understand their housing and financial situation post-divorce. Examples include calculation of loan mortgages, monthly expenditures and information on housing options. A parent should be able to generate this personalised information in the form of a report, which can be brought along to the consultations with the DSSA counsellors. This information will facilitate a more focused, personalised, and holistic discussion.

RECOMMENDATION 1.2: TO FACILITATE PRE-ACTION COUNSELLING FOR A COUPLE'S EMOTIONAL NEEDS TO BE BETTER ADDRESSED FROM THE OUTSET, WITH A VIEW ALSO TO MARITAL RECOVERY WHERE POSSIBLE

42. The Committee recommends that counselling services should also be made more accessible to divorcing parties. For some couples, counselling will help them to work through their issues, and determine if there is still a chance to save their marriage. Where appropriate, parents who are having second thoughts about divorce can be directed to marital recovery, to work through marital stressors and acquire better skills to resolve issues between themselves.

43. When counselling is attempted at a later stage of the divorce process, parties are more likely to be entrenched in their respective positions, and resolving issues amicably would be more challenging. By encouraging parties to attempt counselling early on, they will be able to better address dysfunctional familial relationships, have proper marital closure, manage emotions and prevent further escalation of conflict.

44. Apart from reducing the adverse outcomes of divorce on the family, upstream counselling can also pave the way to increase buy-in from couples to attempt alternative dispute resolution mechanisms ("ADR") such as mediation, conciliation, and negotiation, before filing for divorce.

RECOMMENDATION 1.3: TO ENCOURAGE THE TAKE UP OF MEDIATION SERVICES AT THE PRE-ACTION STAGE AND FACILITATE EARLIER RESOLUTION OF FAMILY DISPUTES

45. The Committee recommends that more efforts be taken to encourage the use of mediation in the pre-action sphere.

46. When a divorcing party initiates a divorce or any other legal proceedings, he or she would have to abide by the time frames that govern court processes. The parties would have less control over the pace of the proceedings. In comparison, in the pre-action space where parties have not filed for divorce or other legal proceedings yet, parties have more time to think, understand and make considered decisions. This space is ideal for mediation sessions facilitated by experienced, legally trained family mediators.

47. These mediators can help parties address and resolve the issues arising from the decision to end the relationship in a respectful manner, which minimises acrimony and impact on their children. Where parties decide to divorce, the mediator could help them work through the various issues involving children and other matrimonial matters that need to be resolved, so that litigation is not necessary.

48. Today, couples can go to the SMC or request for mediation services from private service providers. More can be done to encourage the take up of mediation at the pre-filing stage. This could include raising the awareness of available mediation services, encouraging more active referrals to SMC, as well as exploring schemes to provide affordable mediation services, particularly to the low-income and litigants-in-person ("LIPs") groups.

RECOMMENDATION 1.4: TO DEVELOP A CONSOLIDATED ONLINE PLATFORM THAT OFFERS PRE-FILING SERVICES, INCLUDING ONLINE COUNSELLING, WITH RELEVANT INFORMATION THAT ENABLE COUPLES TO PAUSE AND REFLECT, CONTEMPLATE THE IMPACT OF DIVORCE ON THEIR CHILDREN, AS WELL AS TO BE REFERRED TO APPROPRIATE SUPPORT SERVICES OFFLINE

49. The Committee recognises that technology can be a useful enabler to operationalise the recommendations proposed. Therefore, the Committee recommends developing a consolidated online platform to bring together the relevant information, resources, service and programmes across government agencies to help divorcing parties. The platform should allow users to:

    (a) Reflect on the decision to divorce and be channelled into marital recovery if parties wish to save the marriage;

    (b) Perform self-assessments on their marital satisfaction, highlight any child safety and family violence concerns, and obtain information on housing and financial matters;

    (c) Access a trustworthy and confidential online counselling platform to share their personal issues and decide if they wish to seek face-to-face counselling with a specialised counsellor; and

    (d) Seek supporting agencies such as a verified and credible mediation service provider to triage and assess parties' readiness to make use of ADR services such as mediation.

RECOMMENDATION 2: SIMPLIFYING THE FAMILY JUSTICE RULES

SUMMARY OF RECOMMENDATIONS

2.1 To enhance the accessibility of the Family Justice Rules for users

2.2 To streamline court processes to achieve greater efficiency

INTRODUCTION

50. The Family Justice Rules ("FJR"), in its current form, was adopted in 2014, and was purpose-built for the newly set-up FJC. Since then, judges, lawyers and other stakeholders have developed significant experience with the FJR and its nuances. Building on the experience of stakeholders since the FJR's implementation, proposals have been made for its simplification. In view of this experience, the Committee recommends that the FJR be redesigned to make the process of family litigation simpler, more timely, and more affordable.

RECOMMENDATION 2.1: TO ENHANCE THE ACCESSIBILITY OF THE FJR FOR USERS

A. To amend the structure of the FJR

51. Currently, the FJR cover *all* proceedings in the FJC. This includes, among other things, divorce proceedings and probate actions. The FJR, as presently drafted, could be clarified to better indicate which rules are applicable to the different types of proceedings.

52. The current experience is that the rules governing probate proceedings are quite distinct from the rules governing all other family proceedings, as probate proceedings follow more closely the rules for civil proceedings (as set out in the Rules of Court).

53. Therefore, the Committee recommends that it would be clearer for court users if the FJR is restructured into two separate volumes: (a) one volume encompassing probate matters; and (b) the other volume dealing with all other family proceedings. Each volume is intended to act as a stand-alone set of rules for the respective proceedings, so that parties need not refer to other subsidiary legislation.

B. For the FJR to include a roadmap setting out the general lifecycle of family proceedings

54. In addition, to assist in the holistic understanding of the FJR, the Committee recommends that the FJR include a roadmap setting out the general lifecycle of family proceedings. As far as possible, the FJR should be reorganised to match the flow of the lifecycle of each case.

RECOMMENDATION 2.2: TO STREAMLINE COURT PROCESSES TO ACHIEVE GREATER EFFICIENCY

A. For proceedings to be commenced through a single claim form

55. Family proceedings are commenced in the FJC by way of various different originating processes. Presently, the FJR provides for three different originating processes, *i.e.* the Writ of Summons, Magistrate's Complaint and Originating Summons. Each of these caters to a different type of proceeding and each type of proceeding is governed by different processes. These distinctions are, largely, historical in nature and, depending on the relief sought, a litigant may conceivably have to take out various different originating processes to resolve different aspects of his case.

56. The Committee recommends that in the redesigned FJR, non-quasi-criminal proceedings such as applications for divorces, child orders and interim applications could be commenced through a single claim form. Further, the Committee recommends aligning, standardising, and streamlining the processes as far as possible for all the different kinds of cases, such that litigants will be able to expect the same process for each type of proceeding.

57. For example, if the married mother of a child wishes to apply for child custody and divorce at the same time, she would have to commence two separate actions by way of two different originating processes:

    (a) First, by way of an Originating Summons to apply for custody of the child; and

    (b) Second, a Writ of Divorce.

58. These proceedings would follow separate tracks and have different requirements in terms of how the evidence is to be presented, and even the nature of the hearing. The Committee recommends that, in the redesigned FJR, the mother in question should be able to utilise the same claim form for each type of relief sought, with one standardised procedure for both applications.

B. To make interlocutory processes more efficient

59. Interlocutory applications are often taken out in the course of proceedings in order to facilitate the substantive hearing of the matters. The procedures for these should be simplified in the revised FJR. This will alleviate the difficulty faced by LIPs, who may be unfamiliar with these procedures.

60. There are two examples identified which are often used in family proceedings: (a) applications for substituted service or dispensation of service; and (b) applications for discovery or interrogatories.

i. Applications for substituted service or dispensation of service

61. When a litigant commences an action, the originating process and accompanying documents must generally be served personally on the defending party. Where personal service cannot be effected, litigants must file an application for substituted service or dispensation of service. The Committee recommends that the rules of service be relaxed by, for example, extending the use of acknowledgments of service to all forms of service, including electronic service.

ii. Applications for discovery or interrogatories

62. These applications are the primary way in which parties seek documents and information from another party.

63. Currently, this entails first serving a request and awaiting the response of the answering party. If the response is insufficient, the requesting party files a formal application supported by affidavit which is heard by a Registrar or Judge. With the revisions to the FJR, a party may be able to request documents and information, and state his/her position as to why the same should be provided, in a single document. The other party will then state his/her position on the same document, which can be subsequently submitted to the court as the basis for an application if any disputed categories of documents or information remain to be adjudicated.

64. The Committee further recommends that the court should have the discretion to conduct such hearings without the need for parties or their counsel to attend; these hearings will proceed based on the paper documents. This will simplify the process, and reduce delays and costs for litigants.

C. To reduce the complexity of forms by making them more readable

65. Currently, the FJC Practice Directions contain 268 different hardcopy forms for various purposes.

66. The Committee recommends that these forms be made more readable and user-friendly, first by simplifying the structure and language, and subsequently through digitisation. Further, in the long term, these forms could be migrated to a pre-populated platform so that a party seeking to file proceedings will be able to do so through a common electronic interface. Depending on the nature of the claim, the relevant fields for the type of claim will be available for the user's input, reducing the amount of guesswork involved for court users. In addition, the basic information for court users will be pre-populated in subsequent applications.

RECOMMENDATION 3: ENHANCING THE JUDGE-LED APPROACH

SUMMARY OF RECOMMENDATIONS

3.1 To disallow the filing of further applications unless leave is first obtained

3.2 To allow for hearings without physical attendance to facilitate expeditious and economical disposal of applications

3.3 To allow the courts to make substantive orders on its own motion

3.4 To make it clear that judicial interviewing of children is part of the judge-led approach

3.5 To empower the courts to restrict cross-examination where:

- **a. A party is facing criminal proceedings or has been convicted of any offence involving violence perpetrated against the other party; or**
- **b. Where a party has obtained a personal protection order against the other party**

INTRODUCTION

67. The judge-led approach was introduced in the FJR[3] to empower the judge to take the lead in identifying relevant issues and ensuring that evidence adduced is relevant to the case. The judge may, at any time, make such orders or give such directions as it thinks fit for the just, expeditious and economical disposal of the matter.

68. When the judge-led approach was conceptualised, the aim was to re-shape the adversarial litigation model into a less adversarial one by incorporating suitable features from the inquisitorial models. It envisaged judges being more pro-active in managing the cases and lawyers being problem-solvers who would assist the judge to arrive at a fair and just decision.

69. In practice, the judge-led approach has contributed to the just, expeditious, and economical disposal of proceedings. Some examples of this are set out below:

    (a) In *TGV v TGW* [2015] SGFC 131, the court ordered that it was not necessary for a particular expert (a doctor) to be cross-examined as this "would not be fruitful and only add to the length of the proceedings and costs which ought to be avoided."

    (b) In *TJF v TFG* [2016] SGFC 165, the court referred to the judge-led approach in declining to allow a child to be produced as a witness. The court had regard to the paramount interests of the child and was of the view that calling her as a witness was unnecessary.

IMPETUS FOR REVIEW

70. The Committee wishes to strengthen the existing FJR to provide greater guidance and clarity to judges when adopting the judge-led approach in managing cases.

71. In this regard, the Committee is of the view that the current FJR on the judge-led approach may be worded too broadly. It is unclear from the broad wording of the rules whether there are any limits on the power given to judges – for example, whether the court is limited to making procedural orders or can make orders of a more substantive nature on its own motion. The lack of clarity has given rise to

[3] See Part 3 of the FJR titled 'Judge-led approach in resolving family disputes'.

uncertainty as to the ambit of the judges' powers and the adoption of a more cautious approach in some instances.

RECOMMENDATIONS

72. The Committee makes five recommendations to enhance the judge-led approach. These recommendations are intended to promote clarity and to equip the courts with powers that are necessary for the just, expeditious, and economical disposal of proceedings.

RECOMMENDATION 3.1: TO DISALLOW THE FILING OF FURTHER APPLICATIONS UNLESS LEAVE IS FIRST OBTAINED

73. Currently, rule 22 of the FJR empowers judges to limit the number of affidavits filed by a party or witness. Rule 89 of the FJR limits the filing of affidavits in ancillary matters to two rounds and stipulates that no further affidavit shall be received in evidence without the leave of the court. However, similar restrictions do not exist in relation to the filing of interlocutory applications (*e.g.* discovery or interrogatories).

74. The filing of unnecessary applications prolongs proceedings, promotes acrimony, and strains judicial resources. Yet not every case involving the filing of multiple applications is necessarily an abuse of process. In any event, the power to strike out or dismiss any application on the ground of abuse of process of the court is exercised with caution. This is viewed as a drastic step as it deprives a litigant of the opportunity to have his claim heard by the court.[4]

75. Therefore, to address the filing of unnecessary and unmeritorious applications, which may not necessarily involve the abuse of process, the Committee recommends that in appropriate circumstances, leave must be sought and obtained before a further application can be filed. This will ensure that unmeritorious applications, which detract from important issues, are weeded out.

RECOMMENDATION 3.2: TO ALLOW FOR HEARINGS WITHOUT PHYSICAL ATTENDANCE TO FACILITATE EXPEDITIOUS AND ECONOMICAL DISPOSAL OF APPLICATIONS

76. Oral hearings in court for every application may not be necessary. Preparations for such hearings can be costly, time-consuming and emotionally trying.

[4] *Kwa Ban Cheong v Kuah Boon Sek* [2003] 3 SLR(R) 644.

77. The Committee recommends that the courts should be given the discretion to dispose of certain types of applications by hearings without physical attendance. Examples include leave applications and applications for recusal. This will lead to cases being dealt with expeditiously and economically. Importantly, reducing the need for oral hearings will also reduce acrimony.

RECOMMENDATION 3.3: TO ALLOW THE COURTS TO MAKE SUBSTANTIVE ORDERS ON ITS OWN MOTION

78. Currently, the court may only direct parties on its own motion to appear before it to make an order or direction for the "just, expeditious, and economical disposal of the cause or matter". However, it is unclear if the court can make orders of a substantive nature on its own motion. For example, an order prescribing reasonable access to a child may be unhelpful for parties who are no longer able to co-parent or cannot agree on the access period. It is unclear if the judge-led approach includes the power to vary the existing access without any party filing an application for variation.

79. The Committee recommends that the court be empowered to make substantive orders on its own motion. This is subject to the usual processes that ensure access to justice, for example, the party who is likely to be affected by such an order must first be given an opportunity to be heard.

RECOMMENDATION 3.4: TO MAKE IT CLEAR THAT JUDICIAL INTERVIEW OF CHILDREN IS PART OF THE JUDGE-LED APPROACH

80. Family proceedings involve decisions about where children will live and when they will spend time with each parent. Yet, the views of children affected by these decisions are seldom heard directly by the court.

81. Section 125(2) of the Women's Charter ("WC") specifically directs the court to have regard to the wishes of a child of sufficient maturity although it does not specify the mode in which this is to be done. Section 125(2) of the WC states:

> "In deciding in whose custody a child should be placed, the paramount consideration shall be the welfare of the child and subject to this, the court shall have regard –
> (a) to the wishes of the parents of the child; and
> (b) to the wishes of the child, where he or she is of an age to express an independent opinion."

82. Part 3 of the FJR obliges a judge to place the welfare of a child as its paramount consideration. The court is empowered to adopt a proactive approach to make orders that serve the interests of the child. It is implicit in this that the judge-led

approach allows for judicial interviewing of children. In fact, there have been cases where judges have interviewed children to reach outcomes that serve the interests of the child.[5]

83. The Committee appreciates that the desirability of judges speaking directly to children in parental disputes has been debated in some common law jurisdictions.

    (a) Most common law jurisdictions have adopted a protective stance and are reluctant to allow children to enter the arena in terms of having any direct contact with the court itself.[6] The common practice in many common law jurisdictions is that a trained counsellor or custody evaluator conveys the views and feelings of children as part of their report to court.[7]

    (b) The conventional wisdom in these jurisdictions is that the more indirect methods of informing the court of children's views are superior to the judge interviewing children directly. Not only are such professionals regarded as better able to interview children, but they are also seen as better qualified than judges to interpret the child's views in the light of all circumstances.[8]

    (c) In addition, there are due process concerns that judicial interviews with the child may violate the judge's role as an impartial trier of fact who does not enter the adversarial arena.[9]

84. These views are now being challenged; there is increasing discussion about the benefits of judicial interviews as part of the overall decision-making process in England, Australia, New Zealand, and Canada.[10] The main reason is that research has highlighted children's wishes to be more involved in the decisions that may affect their lives profoundly and their dissatisfaction with the indirect processes that are available to them.[11]

85. There are a variety of methods that can be used to inform children about, and give them a voice in, proceedings that affect them. In many cases, the child's voice will be heard through an assessment by a mental health professional, a

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[5] *AZB v AZC* [2016] SGHCF 1.
[6] Ursuala Kilkelly and Laura Lundy, *Children's Rights* (Routledge, 2017).
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*

Child Representative or other professionals. In certain circumstances, judicial interviews can be a valuable method of involving the children.

86. The Committee is of the view that it should be made clear that the judge-led approach allows for a judge to interview a child to make orders that serve the interests of the child. Provided that judges are well-trained, judicial interviewing can be an invaluable tool to a judge who is making orders on the welfare of the children involved.

RECOMMENDATION 3.5: TO EMPOWER THE COURTS TO RESTRICT CROSS-EXAMINATION WHERE (A) A PARTY IS FACING CRIMINAL PROCEEDINGS OR HAS BEEN CONVICTED OF ANY OFFENCE INVOLVING VIOLENCE PERPETRATED AGAINST THE OTHER PARTY; OR (B) WHERE A PARTY HAS OBTAINED A PERSONAL PROTECTION ORDER AGAINST THE OTHER PARTY

CURRENT LAW

87. Rule 101A of the FJR allows the court to limit the scope and duration of cross-examination or to disallow direct cross-examination in two situations: a family violence trial or an application under s 67(1) of the WC.

IMPETUS FOR REVIEW

88. It is unclear if the judge-led approach allows for a judge to prohibit or limit cross-examination in other cases. One of the recommendations made by the Committee for Family Justice in 2014 was to empower judges to take a more proactive role in court by receiving certain discretionary powers. Among these powers was the power to "directly question witness and parties" and to "determine the manner and extent of cross examination by the parties". This power was not explicitly included in rule 22 of the FJR.

89. While judges might not hesitate to use the powers incorporated in rule 22 of the FJR, the power to prohibit cross-examination – especially of parties to the proceedings – is of a different nature compared to procedural powers.

90. The issue of prohibiting cross-examination of parties in family proceedings was specifically considered by two jurisdictions recently – England and Australia.

CROSS-JURISDICTIONAL ANALYSIS

A. England

91. The Prisons and Courts Bill 2017 proposed to place a prohibition on cross-examination of parties who had been abused. However, following the

announcement of a General Election in June 2017, the Bill was withdrawn by a unanimous vote of MPs on the Bill Committee.

92. One case that preceded the proposed reforms was *Re A (A Minor/Fact Finding; Unrepresented Party)* [2017] EWHC 1195 (Fam). This case concerned a couple married in Pakistan. The mother arrived in the UK with their child (A) in 2014 where she applied for asylum. When she did not return to her husband as agreed, a dispute erupted with the father demanding that A be returned to Pakistan. The mother opposed this on the basis of allegations of violence. The mother was cross-examined by her husband *via* video link as he was residing in Pakistan. The mother became extremely distressed during the cross-examination. The judge allowed her to turn her back to the video camera so that she did not have to engage face-to-face with her abusive husband.

93. In its written judgment, the court gave two reasons for its disappointment with the current system:

    (a) First, allowing the perpetrator of domestic abuse who is controlling, bullying, and intimidating to question their victim is to offer perpetrators another opportunity to wield power and control;[3] and

    (b) Second, as a consequence of this state-sanctioned opportunity to again wield power and control over the victim, this relationship of power facilitates cross-examination that is "inherently and profoundly unfair".

94. This case is an example of how cross-examination by violent abusers can take place in proceedings other than a family violence trial or an application under s 67(1) of the Women's Charter.

B. Australia

95. A key reform of the Family Law Amendment (Family Violence and Cross-examination of Parties) Act 2018 (“Cross-examination Act”)[12] is to protect victims of family violence from being directly cross-examined by their alleged perpetrators. The amendments are intended to apply equally to parenting and

[12] The Cross-examination Act was passed by the Parliament of Australia on 5 December 2018. The provisions commenced on 10 March 2019 and apply to cross-examinations that occur six months after commencement.

property proceedings, thereby ensuring that appropriate safeguards for victims of family violence are in place in all types of family law proceedings.

96. During the Second Reading of the Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018, the Attorney-General explained that the direct cross-examination of a victim of family violence by their alleged perpetrator can expose them to significant re-traumatisation. This affects their ability to give clear and cogent evidence. The power dynamics underlying family violence can also make it difficult for victims to effectively cross-examine their alleged perpetrator.

97. The Attorney-General also explained that victims of family violence often cite the fear of being cross-examined directly by their alleged perpetrator as a significant factor in their decision to settle a matter. These matters are often settled on terms that they consider to be unfavourable. This can place victims and children at an increased risk of harm.

98. The Cross-examination Act prohibits direct cross examination in the following limited circumstances, where there is an allegation of family violence between the parties to proceedings:

    (a) First, where either party has been convicted of, or is charged with, an offence involving violence, or a threat of violence, to the other party;

    (b) Second, where a family violence order (other than an interim order) applies to both parties; or

    (c) Third, where an injunction for the personal protection of either party is directed against the other party.

99. Where these circumstances do not apply, the court retains a discretion to make an order to prohibit direct cross-examination where an allegation of family violence has been made.

100. Where allegations of family violence have been raised, but direct cross-examination is not prohibited, the Cross-examination Act requires that the court apply other appropriate protective measures. This includes allowing the victim to appear *via* video link. Support persons or screens can also be utilised.

101. If direct cross-examination is prohibited, cross-examination must be conducted by a legal representative. Parties are expected to obtain their own legal representation where possible. Where a party is unable to obtain private legal

representation, he will be able to access legal aid according to the usual rules and standards.

102. These measures apply to both parties. Therefore, where the prohibition applies, a party's legal representative must undertake the cross-examination on their behalf, regardless of whether the party is the perpetrator or the victim. This ensures that the victim is given appropriate protection and support both when cross-examining the alleged perpetrator and when being cross-examined by the alleged perpetrator.

RECOMMENDATIONS

103. The Committee appreciates that the importance of cross-examination must be balanced with the needs of those who may have experienced family violence.

104. On one hand, cross-examination tests and challenges the evidence of the other party and his or her witnesses. It is through testing the credibility and veracity of the witness *via* cross-examination that the truth or otherwise of an allegation is established. On the other hand, it is important that victims of domestic violence are not re-traumatised and are appropriately supported in putting cogent evidence before the court.

105. The Committee considered two options:

(a) To introduce a mandatory prohibition on cross-examination in the following circumstances:

i. Where the cross-examining party is facing criminal proceedings or has been convicted of any offence involving violence perpetrated against the other party; or

ii. Where the party being cross-examined has obtained a personal protection order against the other party.

(b) To empower the courts to restrict cross-examination of a party in the circumstances outlined above as part of their judge-led powers.

106. The Committee is of the view that a mandatory prohibition in all cases may be a drastic step and not necessary. Instead, the Committee recommends that the courts should be empowered to restrict cross-examination in the circumstances outlined above. This approach will ensure that there is flexibility in dealing with the circumstances surrounding each case.

107. In particular, they should be empowered to make the following orders:

(a) Restrict cross-examination in scope and duration; and

(b) To disallow direct cross-examination.

108. Further, when a court makes an order to disallow direct cross-examination:

(a) Each question to be asked during the cross-examination of the witness must be stated orally or in writing to the judge;

(b) The judge may require the question to be reframed before the question is asked; and

(c) The judge should be prepared where necessary and appropriate to conduct the questioning of the witnesses on behalf of the parties, focusing on the key issues in the case.

RECOMMENDATION 4: SIMPLIFYING ENFORCEMENT OF CHILD ACCESS ORDERS

SUMMARY OF RECOMMENDATIONS

4.1 To provide for a simpler mode of commencing enforcement proceedings where a child access order has been breached

4.2 To empower the courts with a slew of measures which will encourage compliance with child access orders

4.3 For the court to be empowered with the discretion to order either imprisonment or a fine for failure to comply with orders

INTRODUCTION

109. Child access orders made by the FJC are generally complied with and the number of enforcement applications are relatively small. Although the number of cases that fall into the latter category is small, there are serious effects on the family and the flagrant violation of court orders undermines the rule of law. Disproportionate judicial resources are spent adjudicating these applications. Breaches of court orders damage public confidence in the family justice system and can negatively affect the child's relationship with the access parent. While sanctions exist for breaches of access orders, they are fairly draconian and not easy to obtain.

EXISTING ENFORCEMENT REGIME FOR CHILD ACCESS ORDERS

A. Committal

110. Where there has been a breach of access orders, an access parent may commence committal proceedings against the care parent who refuses to comply with access orders. The procedure for committal proceedings is laid down in rules 758-766 of the FJR and comprises a three-stage process: (i) an *ex-parte* application for leave to commence committal proceedings; (ii) an application for an order for committal; and (iii) the hearing of the application. There are strict procedural steps which need to be fully complied with and the committal proceedings can be lengthy. In addition, the process does little to facilitate access for the aggrieved parent in the meantime.

111. Committal proceedings are fairly draconian, time consuming and procedurally challenging. While the number of cases that fall into this category is small, there are serious effects on the family and the rule of law. Further, while committal proceedings can result in a fine or imprisonment sentence, this does not provide the aggrieved parent with the veritable redress, namely, access that he or she needs. Moreover, the child or children would be deprived of the care of the parent being committed to prison for the period of imprisonment. It is also not hard to imagine the aggravation this may cause to the already acrimonious relationship between the parents.

B. Variation of care and control

112. In extreme cases where a parent consistently and without good reason refuses to comply with court-directed access orders and this results in the other parent being deprived of all contact with the child, the courts may reverse care and control and grant care to the access parent.

113. However, this may be impractical, counterproductive or harmful to the child in some situations. Such a drastic order can also result in severe negative effects on the child particularly in cases where there has been a long history of acrimony and the child has become hostile and rejects the access parent.

C. Non-legal programmes

114. In addition to the above legal sanctions, a slate of non-legal programmes has been put in place by the Ministry of Social and Family Development (“MSF”) to help educate and support parents so that parties understand the implications of divorce on the family and, in particular on the children, as well as the consequences of their actions. While these programmes may have played a role

in reducing the number of cases where court-ordered access is breached, they do not specifically target the issue of non-compliance with access orders and persistent denial of access.

RECOMMENDATIONS

115. To address these challenges, the Committee recommends broadening the enforcement regime for child access orders by introducing the additional measures set out below. Effecting them will require legislative amendments. The aim of the Committee's recommendations is to reduce acrimony, increase the effectiveness of the enforcement regime for child access orders and introduce less confrontational measures. Ultimately, they aim to protect the child's best interests.

RECOMMENDATION 4.1: TO PROVIDE FOR A SIMPLER MODE OF COMMENCING ENFORCEMENT PROCEEDINGS WHERE A CHILD ACCESS ORDER HAS BEEN BREACHED

116. In addition to the current contempt proceedings available to parties, the Committee recommends that a simpler intermediate inter-disciplinary framework similar to the legislative schematic of s 71 of the WC, be enacted. This framework could be triggered by way of a "Summons for Compliance", empowering the court with the slate of measures recommended below.

RECOMMENDATION 4.2: TO EMPOWER THE COURTS WITH A SLEW OF MEASURES WHICH WILL ENCOURAGE COMPLIANCE WITH CHILD ACCESS ORDERS

A. Parental Education

117. The Committee recommends that where appropriate, the court could order defaulting parents to attend a parental education programme which addresses and emphasises to parties the negative impact of access disputes on children. By increasing awareness of the dangers of breaching access orders, it is hoped that the programme will serve to encourage parties to resolve their current access disputes in order to safeguard the well-being of their children.

B. Counselling (specialised therapeutic interventions and treatment programmes)

118. The Committee recommends a suite of specialised therapies and interventions that could holistically address and treat the underlying needs of the parties and children, such as specialised therapy to restore parent-child contact, and assist in reunification of parents with their children where their relationships have been severed. In the light of the complexity of such cases and the specialist nature of

the requisite interventions, service providers will need to undergo specialised training and supervision.

C. Co-mediation

119. The Committee recommends introducing co-mediation as an enforcement measure for cases where the judge hearing the matter determines that some consensus could be reached by the parties if the dispute is mediated. These cases will be jointly mediated by a judge-mediator together with a Court Family Specialist with a view to understanding and addressing the underlying cause of the denial of access and assisting parties to reach a resolution. The presence of a Court Family Specialist will also assist in addressing any emotional issues.

D. Parenting Coordinator

120. A Parenting Coordinator ("PC") is a trained professional appointed by the court to a particular case, to facilitate the carrying out of parenting orders, and to de-escalate conflicts relating to those orders. A PC does this through educating, coaching and mediating the parents through their conflict. If despite these efforts, the parents are still uncooperative, the PC may inform the court and make recommendations (*e.g.* changes) regarding the parenting plan for the court's consideration.

121. In this way, a PC could be a suitable 'enforcement tool', as the parents will be aware that if they do not cooperate, their behaviour and the recommendations of the PC can be considered by the court in making further orders. As legislative amendments are being considered for the PC scheme, the Committee recommends that the appointment of a PC also be considered as an express enforcement measure where the court is satisfied that it would be beneficial to the parties.

E. Compensation of time and expense

122. The Committee recommends introducing a specific regime for which prescribed types of expenses can be compensated or make up access time can be ordered for lost access time, where the court is satisfied that it is just and equitable to do so.

123. The Committee notes that while such orders can concurrently be made by the courts pursuant to its broad general power to make orders which are in the best interests of the child, the introduction of compensation as an express enforcement measure would make it clear that this is an available enforcement measure that parties can pursue directly.

F. Performance bond, security, and pledge

124. The Committee recommends that provision of a performance bond by a defaulting parent be introduced as an express enforcement measure for breaches of access orders. A bond will be ordered to secure compliance with the access orders – *i.e.* where a parent defaults, the bond may be forfeited or a fine imposed. The bond could be secured through the provision of a surety or sureties. The amount forfeited could also vary depending on how long the breach of access orders continues.

RECOMMENDATION 4.3: FOR THE COURTS TO BE EMPOWERED WITH THE DISCRETION TO ORDER EITHER IMPRISONMENT OR A FINE FOR FAILURE TO COMPLY WITH ORDERS

125. In order for the framework to be effective, the Committee recommends that the court be empowered with the discretion to order either imprisonment or a fine should a party fail to comply with the final orders made in a "Summons for Compliance". This will be similar to the FJC's current practice for applications under s 71 of the WC and mirrors the consequences provided under the committal regime. The court would exercise its discretion to make this default order only in appropriate cases (*e.g.* where the non-compliance of the access orders follows a behaviour of persistent and wilful breaches without legitimate reasons).

126. To limit the potential acrimony in litigating a "Summons for Compliance", the Committee recommends adopting a "show cause" procedure for these applications – the access parent will only be required to show a prima facie breach of the access terms, following which the care parent will have the burden to explain why access could not take place. There will be situations where access with the child could not be carried out for legitimate reasons. This could be a statutory defence to such applications. Should there be legitimate reasons, the court will dismiss the application and costs may be ordered against the applicant. Potential adverse costs orders would discourage or preclude parents from litigating their access disputes where there are legitimate reasons for failure to grant access.

RECOMMENDATION 5: FACILITATING ACCESSIBILITY OF LEGAL PROCESS THROUGH AFFORDABLE LEGAL SERVICES

SUMMARY OF RECOMMENDATIONS

5.1 For the Law Society or Law Society Pro Bono Services to make more affordable legal services available to certain litigants

INTRODUCTION

127. Family disputes are amongst one of the most stressful and emotional events that an individual can experience in his or her lifetime. Family lawyers play a vital role; they bring empathy and objectivity necessary for parties to make right choices, playing an important role in conflict management, dispute resolution, protecting parties' interests and promoting the welfare and interest of the children involved. Family lawyers are also client educators and problem solvers, working collaboratively in a multi-disciplinary environment to achieve amicable resolution with elements of therapeutic justice.

128. In the present family justice eco-system, there are agencies or organisations that assist with legal services for individuals who are unable to afford commercial legal services. The Legal Aid Bureau assists low-income litigants and the Community Justice Centre through the Primary Justice Project provides litigants with affordable basic legal advice and services. However, not all litigants in family disputes are legally represented in proceedings in the FJC. In 2018, of the cases that were concluded as at end May 2019, 17.0% of divorces filed involved parties that were both represented, 76.9% where either party was represented, and 6.0% where both parties were unrepresented.

IMPETUS FOR REVIEW

129. Litigants who are not legally represented go through the legal proceedings without the benefit of such valuable assistance. They may not be familiar with the court processes, procedure and evidentiary rules. Without the benefit of counsel, they may accept settlement offers which may not be equitable. Prolonged acrimony between parties may increase without legal assistance, which can then negatively impact their children's welfare.

RECOMMENDATION

RECOMMENDATION 5.1: FOR THE LAW SOCIETY OR LAW SOCIETY PRO BONO SERVICES TO MAKE AFFORDABLE LEGAL SERVICES AVAILABLE TO CERTAIN LITIGANTS

130. The Committee recommends that the Law Society or Law Society Pro Bono Services considers a scheme to enable certain litigants who are unable to qualify for legal aid to receive more affordable legal services. One possibility is for litigants who do not qualify for legal aid, but fall within the 'sandwich class' to be referred to a panel of family lawyers who are prepared to offer legal services at a lower commercial rate. The target cohort is litigants who will remain under-lawyered without the assistance of the panel. Social service touchpoints in the community can also make referrals to this panel.

131. In appropriate cases, the panel of family lawyers can also be assisted by law students supervised by their professors within their university's clinical programmes.

132. The Committee notes that the Law Society and Law Society Pro Bono Services are working together to implement the pilot scheme in 2019.

CHAPTER 3 – SAFEGUARDING PERSONS WITHOUT MENTAL CAPACITY AND SUPPORTING FAMILIES CARING FOR THEM

OVERVIEW

133. The number of Singaporeans aged 65 and above is expected to reach around 900,000, or approximately one in four persons, by 2030.[13] With a rapidly ageing population, families will increasingly come under stress as caregiving responsibilities become heavier. The Government has been strengthening and expanding the long-term care sector, and has also started work to better support caregivers.

134. However, a key area where families and individuals must take more proactive action in is preparing themselves for potential loss of mental capacity. Dementia is the leading cause for loss of mental capacity, and the number of residents aged 60 and above with dementia is expected to rise.[14]

135. A person who has lost mental capacity is in a vulnerable position, as he is largely reliant on the honesty, goodwill, and care of another to make decisions for him. Office of the Public Guardian ("OPG") plays an important role in ensuring that a court-appointed deputy acts in the person's best interest, within the ambit of the deputy's powers, as granted by the court.

136. Additionally, the Public Guardian has the power to investigate allegations of ill-treatment against a person who has lost mental capacity. In this respect, the wider community, volunteers and service providers can also assist to look out for a person who has lost mental capacity, and intervene or raise the alarm, if the need arises.

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[13] Ministry of Health.

[14] This assumes a 10% dementia prevalence rate in the population, based on a local study by the Well-being of the Singapore Elderly (WiSE) conducted in 2013 and published by the Institute of Mental Health (IMH); see Mythily Subramaniam et al, "Prevalence of Dementia in People Aged 60 Years and Above: Results from the WiSE Study" (2015) 45 Journal of Alzheimer's Disease 1127 – 1138.

RECOMMENDATION 6: ENHANCING THE MENTAL CAPACITY ECOSYSTEM

SUMMARY OF RECOMMENDATIONS

6.1 For more appointed and prospective deputies to undergo training conducted by the Office of the Public Guardian

6.2 To facilitate the use of counselling and mediation for dispute resolution and caregiver support

6.3 To build a more robust process for supervision of deputies

6.4 To simplify the court application process

INTRODUCTION

137. When a person loses mental capacity without having appointed a proxy decision maker, it could complicate the caregiving burden borne by family members. Someone would need to apply to court to be appointed as a deputy, in order to make decisions for the individual. The decision over who is best placed to be deputy may also lead to intra-family arguments, if there are differences in opinions amongst family members.

138. To cope with this, the MCA, which came into force in 2010, sets out a two-prong framework for the appointment of a proxy decision-maker when a person loses mental capacity:

(a) Individuals who have mental capacity (referred to as donors) can voluntarily make a Lasting Power of Attorney ("LPA") and choose their preferred decision-maker, a donee. LPAs are checked and registered by the OPG; and

(b) If an individual loses mental capacity without making an LPA, a deputyship application must be made to the FJC before the court can appoint a deputy to act for him (this individual is referred to as "P" in the following paragraphs).

IMPETUS FOR REVIEW

139. The Committee understands that a person who is not legally trained may be unfamiliar with the deputyship application process as it is a court process. Persons who lack mental capacity are vulnerable to exploitation, even by family members. Hence, it is important that a right balance be struck between simplifying court processes on the one hand, and ensuring that there are sufficient safeguards to protect the vulnerable persons on the other hand.

140. Over the years, the FJC and the OPG have made efforts to address these concerns, for example, by providing template forms which guide applicants on what information they need to provide to the court, but applicants still find it challenging to navigate on their own without legal assistance. Some of the challenges cited include:

    (a) Lack of support for applicants: Lack of information on where to find affordable lawyers who have expertise in this area of law;

    (b) Costs: There is scope to reduce the costs involved in applying for deputyship. It can also be difficult and time-consuming to obtain medical reports certifying that P lacks mental capacity to manage his matters; and

    (c) Court Processes: There could be a lack of familiarity with the legal requirements and court process. Medical reports attached with applications may be rejected if they are poorly written and contain insufficient information. Further reports or affidavits may be required and increases costs and causes delays. In some instances, essential decision making powers were not sought at initial application and deputies subsequently have to file an application to vary the initial court order for more comprehensive decision–making powers. This also increases cost and inconvenience.

141. As the majority of deputyship applications are made by P's family members, next-of-kin and caregivers, they are largely uncontested. These family members and carers apply to be P's deputy in order to care for P and access the necessary resources to meet P's needs. It is commendable and they should be supported in their efforts.

142. There is a need to consider if deputyship applications can be further simplified for straightforward, uncontested applications, whilst ensuring that P's interests are safeguarded. At this juncture, it is helpful to underscore the importance of the court's role as it carefully considers each deputyship application, given that P is particularly vulnerable.

143. While it is important to ensure that P is adequately cared for, the wellbeing of P's family members and carers is just as important, as many of them can be caring for P for long periods of time on end, which may take a toll on their physical and emotional health. In addition to taking care of P's day-to-day needs, family members who take on the role of P's deputy are additionally tasked with making decisions on P's behalf. These are likely to be decisions on managing P's property and finances responsibly, to ensure that there will be sufficient funds for P's care.

144. When reviewing the annual reports filed by deputies, post-appointment, many deputies cited lack of knowledge as the reason for decisions made which inadvertently exceed the scope of their powers in the court order. Some deputies have also shared the stress of having to manage the differing views of family members when making major financial decisions, for example, selling P's home or withdrawing P's Central Provident Fund monies ("CPF") or insurance monies, in order that the proceeds can be put towards P's care. Even though the final decision rests with the deputy who is required to act in P's best interest, intra-family relationships will no doubt be a significant consideration.

RECOMMENDATIONS

RECOMMENDATION 6.1: FOR MORE APPOINTED AND PROSPECTIVE DEPUTIES TO UNDERGO TRAINING CONDUCTED BY THE OPG

145. The Committee recommends for the OPG to increase accessibility of its training by making the training materials available online to engage more deputies as well as prospective ones, such that:

(a) Deputies understand their role and obligations and the scope of powers granted to them by the court, thus equipping them to discharge their responsibilities more effectively; and

(b) Prospective deputies can have a better understanding of a deputy's role and obligations, thus equipping them to assess their own ability and suitability for the role.

RECOMMENDATION 6.2: TO FACILITATE THE USE OF COUNSELLING AND MEDIATION FOR DISPUTE RESOLUTION AND CAREGIVER SUPPORT

146. For deputies who require counselling to sort out familial disputes or need an avenue to relieve themselves from caregiver stress, there should be a formal framework in place to support them post-appointment. While the court may mandate counselling as part of deputyship orders, the Committee recommends that the OPG develops a framework with the court to better monitor compliance of the parties ordered to attend counselling.

147. Beyond the court process, deputies (as well as donees) caught in disagreements and conflict with family members should also be encouraged to use mediation and/or counselling to resolve disputes. Counselling may also be needed by deputies (as well as donees) for self-care, which in turn will enhance P's care and the well-being of the family. This would ultimately benefit P as all parties can focus their time and efforts in caring for P. The OPG will need to build up the capabilities of service providers in the community to increase accessibility and affordability of such mediation services.

RECOMMENDATION 6.3: TO BUILD A MORE ROBUST PROCESS FOR SUPERVISION OF DEPUTIES

148. The Committee is of the view that the process for supervising deputies can be enhanced. The Committee notes that the OPG will be building a new integrated system which leverages technology to enable more effective and robust supervision of deputies. With increased capacity to supervise, the OPG would be able to better engage deputies and their family, as well as support new deputies in adjusting to their role. This could help avoid unnecessary conflict and reduce acrimony in the family.

149. The recommendations address practical concerns over the readiness of deputies to take on their role and address challenges that might arise post-appointment. Cases where the deputy requires more support and/or supervision would also be brought to the OPG's attention earlier, so that the appropriate intervention can be provided to assist the deputy and P.

RECOMMENDATION 6.4: TO SIMPLIFY THE COURT APPLICATION PROCES

150. The Integrated Family Application Management System ("iFAMS") is a new case application and management system developed by the FJC, with LIPs in mind.

151. The court launched the iFAMS (Specific Orders) in June 2018 to allow families to apply for a specific order to decide on dental and medical related treatments. The court also intends to expand the types of specific orders which an applicant

can apply for through iFAMS, for example, specific orders relating to Housing Development Board flat ("HDB") repairs, and allowing families where the sole breadwinner loses mental capacity unexpectedly to access the sole breadwinner's monies to pay for the family's expenses in the interim, while waiting for the outcome of deputyship application.

152. The Committee recommends leveraging iFAMS to create a simplified order track for LIPs for straightforward and uncontested deputyship applications. This will make the deputyship process for straightforward cases simpler, more accessible and more affordable for citizens who need it. Examples of how the application process can be simplified include allowing doctors to submit the medical report online without a need for it to be attested before a Commissioner for Oaths and having the court order emailed to applicants once granted.

153. As some LIPs will require assistance to guide them in completing the application, the Committee recommends for the OPG to work with the court to explore how LIPs can be supported by agencies such as the Community Justice Centre.

CHAPTER 4 – ENHANCING THE MULTI-DISCIPLINARY APPROACH AND PROFESSIONAL TRAINING

OVERVIEW AND IMPETUS FOR REVIEW

154. Every family has a story and every story is different. Family breakdown is not a single end state; it is a continuum of emerging events. Distressed families must experience access to justice in a manner that addresses the multi-faceted issues they face.

155. In this Chapter, the Committee emphasises the need to expand and build up capabilities to better support divorcing families and those without mental capacity. The Committee also makes recommendations in relation to accreditation of family law practitioners and the training of judges. A specialist court and profession provides obvious benefits and allows for specialist knowledge and the development of specialist jurisprudence.

RECOMMENDATION 7: BUILDING SOCIAL SECTOR CAPABILITIES

SUMMARY OF RECOMMENDATIONS

7.1 To expand and build up capabilities in divorce support and mental capacity matters

INTRODUCTION

156. Divorce ranks as the second most stressful life event[15], only superseded by the death of a loved one. Even after court proceedings have been concluded, parties may often continue to carry and hold on to unresolved emotional trauma, anger, and bitterness. It is clear that a mediated outcome or court order does not address the underlying issues that led to the divorce or new wounds inflicted by parties on each other, in the affidavits filed, lawyers' letters exchanged and messages sent between parties, as they unravel their shared lives.

[15] Holmes, Thomas H., and Richard H. Rahe. 1967. "The Social Readjustment Rating Scale." *Journal of Psychosomatic Research* 11(2): 213-218.

157. As families' needs become increasingly complex, they often require the input of professionals from various disciplines to adequately address the issues. For example, when a client first attends before a lawyer for legal advice, the lawyer may assess that the client's immediate need is for counselling and healthcare from a mental health professional, as the client shows signs of depression. The client's mental and emotional state will no doubt impact how the client responds Fand copes with the divorce proceedings. However, the lawyer's professional skillset is unlikely to allow him to meaningfully assist the client at this juncture. In such situations, the lawyer should consider first advising the client to approach a counsellor for help.

158. If the impact of divorce on an adult is so significant, one can only imagine the impact of divorce on a child. Often the impact of divorce on the child is not immediately apparent, or can be overlooked, as the parents are occupied with their own emotions. It is critical that professionals working with the family are able to pick up on such signs of distress in children. This would include the child's teachers, who should work together with a school counsellor to support the child during this unsettling and difficult transition.

IMPETUS FOR REVIEW

159. Professionals within the family justice system often operate independently, and may not fully appreciate the perspectives of each other's disciplines. There is scope for different professionals to collaborate more in supporting the family, so that the advice and support rendered are more holistic. For example, if a lawyer does not fully appreciate the scope and intent of divorce support programmes like Parenting PACT and the MPP, this will impact how he presents options available to a client. The client is often told that such programmes are not really helpful or necessary, except to comply with the filing requirements. Similarly, counsellors could also benefit from understanding the legal process to help their clients manage their stressors especially when they have to file affidavits or attend court hearings.

160. In order to foster greater collaboration amongst professionals who deal with the family, the professionals themselves have to be trained and equipped to know how to tap on the expertise of others, when needed. It requires a change in mind-set for all professionals involved in the family justice ecosystem. Cross-disciplinary training and multi-disciplinary collaborations will strengthen how professionals help clients navigate through the family justice ecosystems.

RECOMMENDATION

RECOMMENDATION 7.1: TO EXPAND AND BUILD UP CAPABILITIES IN DIVORCE SUPPORT AND MENTAL CAPACITY MATTERS

161. The Committee recommends developing clear areas of competencies and capabilities to support (i) couples undergoing divorce and their children and (ii) families who encounter tensions and disputes arising from caregiving and financial management for the elderly or vulnerable persons without mental capacity. To address this, there is a need to deepen counselling capabilities, as well as broaden the range of capabilities to include financial counselling, psychological services and mediation.

A. Counselling

162. The Committee recommends expanding the pool of counsellors to support the new initiatives proposed in this report as well as ensure manageable workload ratios so that each counsellor is sufficiently resourced to provide care and support to families. The career development of counsellors should also be studied, to ensure healthy career progression and retain the expertise and experience of seasoned counsellors in the sector.

163. The Committee recommends setting minimum entry qualifications for counsellors and a mandatory on-boarding programme for counsellors to be equipped with specific knowledge on divorce support and family dispute resolution (for mental capacity cases), skills and awareness of legal processes and resources. Beyond the counsellor's formal qualifications, his or her life experiences, training and temperament should also be considered in assessing their suitability.

164. To equip counsellors to handle increasingly complex cases, the Committee recommends developing a structured continuing education framework that will help counsellors to systematically deepen their competencies in the domain of divorce support and family dispute resolution. This should include core components such as, trauma-informed therapies, high-acrimony conflict resolution and mediation, negotiation skills, writing reports for courts, managing family violence and child maltreatment situations. Counsellors should also be equipped with competencies to provide online counselling that require different skills such as real-time chat and tech-enabled psychoeducation.

165. The Committee recommends setting up a clinical supervision framework that counselling support agencies have to adhere to. Supervisors will need to meet a minimum requirement before they can take on a supervisory role and will receive ongoing support to hone their supervision skills.

B. Financial counselling

166. Financial counselling is a distinct branch of divorce support work, which requires competencies in financial management – from budgeting to debt management and restructuring. This is an essential component of divorce support work given significant changes in the financial situation of the family post-divorce, which affects key decisions such as housing, division of matrimonial assets, as well as child maintenance.

167. To do this well, financial counsellors would need to be well versed in policies pertaining to HDB and CPF, and to some extent, the larger property market and financing instruments for properties, so as to advise clients on sustainable housing options. They would need to be equipped with the knowledge and skills to help clients review income and expenditure statements and explore options to ascertain and manage their finances post-divorce. Where there are debt issues, financial counsellors should be equipped to propose debt restructuring options.

168. The Committee recommends that DSSA staff be equipped with financial counselling capabilities, leveraging on expertise and training by financial experts where necessary.

C. Psychological assessment and intervention

169. The stress of divorce often takes a toll on the mental health of divorcing couples and their children. Mental health issues such as estrangement, separation anxiety, and personality disorders frequently go undetected without professional assessment, potentially causing protracted conflicts or long-term trauma to the well-being of the individual. Similarly, when there are deep-seated psychological issues such as the controlling behaviour of a parent or alienating behaviour displayed by the child towards a rejected parent, specialised psychological intervention can help to reverse and recover healthy parent-child relationships.

170. In relation to caring for a loved one who has lost mental capacity, caregiver stress is commonly seen. Without sufficient support, the caregiver often becomes overwhelmed, and experiences increasing isolation, fatigue and helplessness which may spiral into incidences of elder abuse, depression and suicide ideation. This further escalates into disputes or makes the deputy or donee unsuitable for the task, which may then require a case to go to court for another proxy decision maker to be appointed.

171. To address such growing needs, more structured and accessible referral protocols to hospitals and SSAs for psychological services should be put in place to tap on and reap synergies with the wider mental health ecosystem.

D. Mediation

172. To support implementation of mediation services in the pre-action space, the Committee recommends that divorce mediation capabilities be developed in the community. It is important to start the scheme on the right footing, with capable family mediators as well as effective systems and workflows. This will encourage higher take-up of mediation service and ensure that mediated outcomes are durable and implementable post-divorce.

173. There is a need to encourage mediation as the preferred approach to resolve family disputes over care and financial management for persons who lack mental capacity. Mediation has been found to be an effective tool to resolve disputes and achieve more harmonious outcomes for the family.

174. The Committee recommends that the FJC and MSF identify and train a pool of mediators who are well versed in family law and mediation, with the aptitude and skillsets to apply therapeutic justice principles to guide the mediation process.

RECOMMENDATION 8: ACCREDITATION OF FAMILY LAW PRACTITIONERS

SUMMARY OF RECOMMENDATIONS

8.1 For a Family Lawyer Certification and Accreditation Scheme to be conceptualised and implemented

8.2 For a Working Committee to be established to develop the details of the Family Lawyer Certification Scheme

8.3 For the Singapore Academy of Law (Specialist Accreditation Board) to develop the details of and implement the Family Specialist Accreditation Scheme

INTRODUCTION

175. On 4 July 2014, the Committee for Family Justice issued a report setting out its recommendations to revamp the family justice landscape. A key recommendation was to introduce an accreditation process for family law practitioners (“FLPs”).

176. The mental paradigm and practice approach of FLPs are of great importance in the effective transformation of family law practice and the dispensation of family justice. The recommendation recognised that very often, parties undergoing divorce require not merely legal solutions but also practical assistance to navigate the underlying emotional and related financial issues, especially when there are children involved.

177. FLPs are often the first port of call for such parties. Therefore, there is a need for FLPS to be equipped not only in the law, but also in various specialist competencies that will enable them to provide more effective and targeted advice to their clients, in line with the ethos of the new family justice regime. Such specialist skillsets include:

    (a) Non-law aspects of family conflict and disputes, especially the impact of spousal conflict and protracted litigation on children;

    (b) Different types of non-court specialist referrals, such as psychological, financial, housing and other related social support services;

    (c) Non-adversarial modes of dispute resolution, such as mediation and collaborative law; and

    (d) Non-adversarial practical skills in the courtroom itself.

IMPETUS FOR REVIEW

178. The Committee has considered that there is a need to provide a structured and systematic training framework for FLPs.

RECOMMENDATIONS

RECOMMENDATION 8.1: FOR A FAMILY LAWYER CERTIFICATION AND ACCREDITATION SCHEME TO BE CONCEPTUALISED AND IMPLEMENTED

179. The Committee recommends that:

    (a) A Family Lawyer Certification Scheme be conceptualised and implemented to enable all who practise family law to be equipped with the basic Specialist Skillsets; and

    (b) The Family Specialist Accreditation Scheme be conceptualised and launched to recognise top-tier FLPs who are experts in handling more

complicated family proceedings involving divorce and children, including cases with complex cross-border issues.

RECOMMENDATION 8.2: FOR A WORKING COMMITTEE TO BE ESTABLISHED TO DEVELOP THE DETAILS OF THE FAMILY LAWYER CERTIFICATION SCHEME

180. The Committee recommends that a Working Committee be set up (*i.e.* FLP Training Committee) to work out details of the scheme, and make recommendations in the following areas:

(a) A basic certification framework, including criteria for registration, incentives for participation, and exceptions;

(b) A basic structured syllabus, to include:

i. Family law topics (including probate and mental capacity topics);

ii. Non-law social science topics covering inter alia the impact of spousal conflict and protracted litigation on children; common mental health issues; and vulnerable adult issues;

iii. Different types of non-court related social services such as psychological, financial, housing and other related social services;

iv. Non-adversarial modes of dispute resolution, such as mediation and collaborative law; and

v. Non-adversarial practical skills in the courtroom itself including mediation advocacy, and the role of the constructive problem-solving lawyer under the judge-led regime.

(c) To recommend a suitable certification body; and

(d) To consider if certification should be a pre-requisite to lawyers' acting for clients in proceedings in the FJC.

RECOMMENDATION 8.3: FOR THE SINGAPORE ACADEMY OF LAW (SPECIALIST ACCREDITATION BOARD) TO DEVELOP THE DETAILS OF AND IMPLEMENT THE FAMILY SPECIALIST ACCREDITATION SCHEME

181. The Singapore Academy of Law (Specialist Accreditation Board) has agreed in-principle to put together and run the Family Specialist Accreditation Scheme,

through a sub-committee ("SAL-SAB Sub Com"). It is proposed that the Family Specialist Accreditation Scheme be rolled out by 2021 (one year after the launch of the certification scheme), with the first batch of Accredited Family Specialists to be announced by 2022.

182. It is recommended that SAL-SAB Sub Com deliberates and decides on the criteria/requirements for Family Specialist Accreditation, with details to be worked out. There could be two tiers of specialists, Senior Family Specialists for FLPs with more than ten years' Post-Qualified Experience ("PQE") and Junior Family Specialists for FLPs with more than 5 years' PQE.

RECOMMENDATION 9: TRAINING OF JUDGES

SUMMARY OF RECOMMENDATIONS

9.1 For the Family Justice Courts to develop a targeted and specialised curriculum for its Family Judges and ensure that there are sufficient resources available for training

INTRODUCTION

183. The FJC was established in October 2014 as a specialised court dealing with all family related disputes in Singapore. Following its establishment, wide-ranging reforms have been introduced, with the objective of moving the family justice system away from an adversarial model and towards a judge-led, non-adversarial and collaborative model that is multi-disciplinary, problem-solving and characterised by therapeutic and restorative justice.

IMPETUS FOR REVIEW

184. One of the keys to unlocking and fulfilling the potential of the 2014 reforms would be to ensure that the mind-sets and skillsets of all working in the family justice system are aligned to the unique needs and challenges of family conflicts and breakdown. This includes judges in the FJC ("Family Judges") who regularly deal with highly emotive parties and emotionally difficult situations and issues.

185. The goal should be to train Family Judges who are impartial, competent, efficient and effective. In the field of family justice, an effective judge would not only be well-versed in black letter family law, but would also be empathetic and child-focused, and possess relevant multi-disciplinary knowledge and skills for the judge-led approach to managing cases.

186. Presently, Family Judges receive training focused on seven main learning categories, namely, bench skills, legal development, social science awareness, judicial ethics, judicial wellness and resilience, accounting, and judicial leadership. The training sessions consist of a mix of talks and half-day seminars typically conducted workshop style.

187. With increased complexities in family disputes and the demands of the transformed family justice system, there is a need for a more targeted and specialised curriculum to be implemented for Family Judges.

RECOMMENDATION

RECOMMENDATION 9.1: FOR THE FJC TO DEVELOP A TARGETED AND SPECIALISED CURRICULUM FOR ITS FAMILY JUDGES AND ENSURE THAT THERE ARE SUFFICIENT RESOURCES AVAILABLE FOR TRAINING

188. The Committee recommends that the FJC:

(a) Develop a targeted and specialised curriculum for its Family Judges, to enhance their adoption of multi-disciplinary approaches for more optimal resolution of cases and the advancement of restorative and therapeutic justice. The content of the curriculum will focus on pertinent legal topics, relevant inter-disciplinary social science topics, as well as skills-based learning. Trainers will be sourced from experts in their respective fields, depending on the topic in question;

(b) Set aside dedicated time for training and learning, which has to be balanced against court hearing time and judicial duties of judges;

(c) Set aside resources for local and overseas training of Family Judges, to enable them to study multi-disciplinary approaches and best court practices in other jurisdictions, for adoption in the FJC, where applicable;

(d) Recognise the importance of judicial wellness and set aside time for learning and activities that enhance the judicial wellness of Family Judges; and

(e) Recognise that the recruitment of Family Judges should be highly targeted. Only judicial officers with an affinity for family court work, as well as the necessary temperament, aptitude and ability, should be appointed as Family Judges.

CHAPTER 5 – ASSESSING THE HEALTH OF THE FAMILY JUSTICE SYSTEM

CURRENT LANDSCAPE

189. Besides implementing initiatives and programmes to better support the families and the family justice system, it is also essential to track their effectiveness. This ensures that the family justice system is able to promote restorative and therapeutic outcomes for families, while enhancing access to justice.

190. The Committee recognises that there are broad indicators which track the family justice system and family outcomes. For example, MSF tracks the cohort dissolution rates[16] before the 7th and 20th anniversary of marriage, while the FJC tracks the percentage of cases that were filed under the simplified track for divorce.

RECOMMENDATION 10: SYSTEMATIC COLLECTION OF DATA

SUMMARY OF RECOMMENDATIONS

10.1 For courts and government agencies to collect data to track the effectiveness of initiatives and programmes implemented

RECOMMENDATION

RECOMMENDATION 10.1: FOR THE COURTS AND GOVERNMENT AGENCIES TO COLLECT DATA TO TRACK THE EFFECTIVENESS OF INITIATIVES AND PROGRAMMES IMPLEMENTED

191. To complement the broad indicators, the Committee recommends that three desired outcomes be measured:

(a) First, that more cases are being resolved upstream with reduced acrimony throughout all stages of the divorce and deputyship appointment process;

[16] Refers to the cumulative proportion of marriages among resident marriage cohorts that have been dissolved before a particular wedding anniversary.

(b) Second, that orders made are sustainable, and supported with a multi-disciplinary approach informed by social science principles; and

(c) Third, that justice is accessible, timely, and affordable to litigants.

192. For example, to track the proportion of cases being resolved upstream, the FJC, Ministry of Law ("MinLaw") and MSF could build on existing indicators, such as tracking the proportion of cases which completed pre-action mediation and proceeded to file under the simplified track. To track the sustainability of orders, the proportion of divorce cases that are remitted back to mediation after final orders have been made could be measured. As for justice that is accessible, timely, and affordable, this could be tracked through the median time taken for a case to reach its conclusion, and the median cost of obtaining a divorce or deputyship order.

193. The Committee also recommends that the FJC, MinLaw, and MSF systematically collect the necessary data to jointly track such outcomes. The data should be collected in digital, machine-readable format, to enable efficient analysis. This would enable the government to draw on empirical data to inform its review of policies, programmes, legislation and processes to help families navigating the family justice system.

CHAPTER 6 – REVIEWING OTHER ISSUES IN THE FAMILY JUSTICE SYSTEM

OVERVIEW

194. The Committee considered key issues in the family justice system. These issues include: (a) child custody and co-parenting matters; (b) nomenclature used in children's care orders; (c) the substantive law on the division of matrimonial assets; and (d) litigants who present mental health concerns.

195. These issues are now discussed in greater detail in the four sub-chapters below.

CHAPTER 6.1: CHILD CUSTODY AND CO-PARENTING MATTERS

196. A divorce can have long term consequences on children. A large body of research indicates that divorce can negatively affect the behavioural, developmental and educational outcomes of children. Research also suggests that how parents co-parent can affect how children respond to the stressors associated with divorce.

197. Therefore, it is important for parents to both be aware of the impact of different co-parenting styles and parenting arrangements (*e.g.* shared or sole care and control) on the child, so as to make informed decisions that are in the best interests of the child. A deeper understanding of co-parenting is much needed.

198. Currently, the literature and research on child custody arrangements and parenting styles are largely focused on Western societies. While there are many learning points which can be gleaned from such research, we should develop a strong body of research that is situated within our Asian context, to better inform both policy makers, social sector professionals, the courts, and most importantly, parents, on the most appropriate care arrangements for their children.

199. Studies should be commissioned to examine the state of co-parenting in Singapore and better understand how different co-parenting styles and arrangements affect children. The findings from this study can be used to guide the courts when making custody and care and control orders, to ensure as best as possible, that the orders are in the child's best interest, so as to minimise the negative effects the divorce may have on the child's well-being. In addition, the findings can also serve as a strong evidence base to inform the design on child-centric policies and programmes, to guide parents towards making better co-parenting decisions based on their circumstances. The finding can also educate parents on the co-parenting styles and arrangements that they can consider adopting to ensure better outcomes for their children.

CHAPTER 6.2: NOMENCLATURE USED IN CHILDREN'S CARE ORDERS

200. In *CX v CY* [2005] SGCA 37, the Court of Appeal explained the concepts of "custody, care and control". Recently, in *TAU v TAT* [2018] SGHCF 11, the High Court elaborated on these concepts and with regard to access orders as set out below.

201. Custody orders pertain to decision-making over the major aspects of the child's life such as the child's education and major healthcare issues.

202. Care and control is given to the parent whom the child lives with primarily and that parent is the child's daily caregiver. Consequently, this parent is generally responsible for making the day-to-day decisions for the child's welfare such as how the child is to dress or what the child is to eat.

203. Access orders enables the child to be able to spend regular periods of time with the other parent through an arrangement known as "access". There is a broad range of access orders that may be made, depending on the circumstances of the case. Where a parent has extensive and liberal access, the care arrangements are practically similar to a shared care and control arrangement.

204. In making orders for custody, care and control and access, the court's focus is on the child's welfare, which is the paramount consideration in all proceedings directly affecting the best interests of a child.

205. Some jurisdictions such as the United Kingdom, New Zealand, and Australia have moved away from traditional terminology of "custody" because of overtones of the child being considered a possession and the corresponding orders regarding care and control of such a possession.

206. Some parents may perceive certain orders to be "better" than others, *e.g.* being awarded "access" is inferior to being awarded "care and control". This may lead to perceiving that they had "lost" even where they were granted liberal access. Parents also often complain that the care and control parent refuses to facilitate access, possibly due to the perception that the parent with care and control has greater parenting authority and, "control" over the child's life.

207. Would a change in terminology ironically weaken the established and stable substantive concepts? In addition, if it is considered that a change in terminology is needed, what would a change in the terminology of "care and control orders" and "access orders" achieve? Will it: Help to clear up misperceptions? Help parties to focus on the interests of the child instead of what they perceive as

losing or winning against the other party? Help to reduce acrimony and remove the winner/loser mind-set as well as the feeling of loss of parental rights?

208. The Committee is of the view that the legal constructs are good and that changes to the current terminology are not required. The Committee considers, however, that it is vital that misconceptions surrounding the current terminology are cleared up. Importantly, any misimpression that children are "prized property" to be fought over with "winners" and "losers" should be corrected.

CHAPTER 6.3: DIVISION OF MATRIMONIAL ASSETS

209. Section 112(1) of the WC provides the courts a discretionary power to make an order that divides the parties' matrimonial assets between them in "just and equitable" proportions. This provision allows the courts to give equal recognition to the different kinds of efforts made by the respective spouses during the subsistence of their marriage, whether they are in the form of earning income or of homemaking and/or child caring.

210. The court considers all relevant circumstances including the specific factors enumerated in s 112(2) to reach a fair division. The court adopts a "broad brush" approach; it does not undertake any precise mathematical calculations but exercises its discretion in "broad strokes".

211. On the one hand, s 112(1) of the WC allows the court to consider the facts and circumstances of each case so that it can decide what is just and equitable for that case.

212. On the other hand, the assessment of contributions is necessarily a value laden exercise. In order for the court can assess contributions, parties are required to rake over the details of their married life.

213. The need to consider contributions provides an incentive to inflate one's own contribution and denigrate that of the other spouse. The position also encourages combing through financial contributions in a petty and calculative manner. In order to build up their respective cases for both direct financial contributions and indirect financial and non-financial contributions, parties are incentivised to recall the most negative and unhappy experiences they have of the other party. This is so that parties can present their own alleged contributions in the best possible light whilst downplaying the other spouses' contributions. A spouse may even go to the extent of alleging misconduct on the part of the other spouse.

214. The Committee suggests that the law and the practice on the division of matrimonial assets should not encourage unnecessary litigation and acrimony

between parties which is antithetical to the goals of therapeutic justice. Litigation and conflict over assets aggravate the stress that parties and their children already suffer in divorce proceedings. Even an earnest attempt by the court to consider all the facts and circumstances of the marriage is not likely to reveal the complete picture of what the marital partnership had been over the number of years that it subsisted.

215. The Committee is cognisant that this is an important area of the law that will have a significant impact on the outcomes of all divorces. The Committee has, therefore, been circumspect to ensure that even as ways to reduce unnecessary litigation and acrimony are considered, outcomes remain fair and aligned with the philosophy of marriage as an equal partnership of different efforts.

216. The Committee suggests that any review of the law and practice on division of matrimonial assets should include studying how the current law and processes contribute to the parties' conflict and how the law and processes (including pre-action counselling and mediation) can be developed to reduce acrimony.

CHAPTER 6.4: MENTAL HEALTH ISSUES IN FAMILY PROCEEDINGS

217. Litigants in family proceedings can often be in a situation of intense marital and/or family conflicts. Coupled with the stressors from the legal processes, the situation may place litigants in an emotionally and psychologically vulnerable state. Litigants who require further psychiatric or psychological support should be provided with an avenue to seek help.

218. The FJC does not have the general power to order the medical examination of a party or to compel a party to seek medical treatment. A limited power, however, exists in s 28(1) of the Family Justice Act. This provision allows the court to appoint a registered medical practitioner, psychologist, counsellor, social worker or mental health profession to examine and assess a child or a person for the purpose of preparing expert evidence in proceedings involving the custody or welfare of a child.

219. Professionals from the social services sector and judges gave feedback that litigants who exhibit signs of psychiatric-related conditions appear reasonably frequently in the FJC. The Committee considered if there are avenues available to provide help to such vulnerable litigants.

220. The Committee was heartened to learn that on-site psychological services exist to offer such help. These services allow litigants who are undergoing divorce proceedings or applying for personal protection orders to consult a psychiatrist from the Institute of Mental Health. This consultation is at no cost to the litigant.

In 2017, the FJC made 41 referrals. These litigants were diagnosed with mental disorders such as depression and substance-related disorders (not including those who defaulted the consultation sessions).

221. Although such services are available, litigants must seek them voluntarily. If they choose not to make use of these services, there are no measures to compel or encourage them to do so. The Committee considered that the number of referrals to the on-site psychological services remains small. In addition, the Committee recognises that family proceedings tend to be emotionally charged. To compel a psychiatric evaluation of such litigants may very well make these proceedings more acrimonious. The Committee is, therefore, of the view that encouraging such litigants to seek help voluntarily instead of compelling them to obtain such help, may be more useful in resolving disputes amicably. That said, the issue as to whether the courts should be empowered to order or direct parties to avail themselves of psychiatric assessment and/or treatment should be monitored.

CHAPTER 7 – CONCLUSION

222. The Committee comprises members who represent the various stakeholders in the family justice system: judges, lawyers, practitioners, and professionals from the social sciences fields. In our shared quest to find the best ways to address disputes involving distressed familial relationships, we have made several recommendations which we have set out in this report. These recommendations are intended to promote more sustained and positive family outcomes.

223. The Committee would like to place on record its gratitude and appreciation to everyone who has contributed to the Committee's work and for the feedback and views shared by stakeholders. In particular, the Committee is grateful to Professor Leong Wai Kum, Mr Raymond Yeo, and Mr Charles Lim. Their views have played a significant part in the Committee's deliberation in formulating the set of recommendations.

Dated this 13th day of September 2019

JUSTICE DEBBIE ONG
Presiding Judge
Family Justice Courts

NG HOW YUE
Permanent Secretary
Ministry of Law

CHEW HOCK YONG
Permanent Secretary
Ministry of Social and Family Development

JC VINCENT HOONG
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ALFRED TAN
Chief Executive Officer
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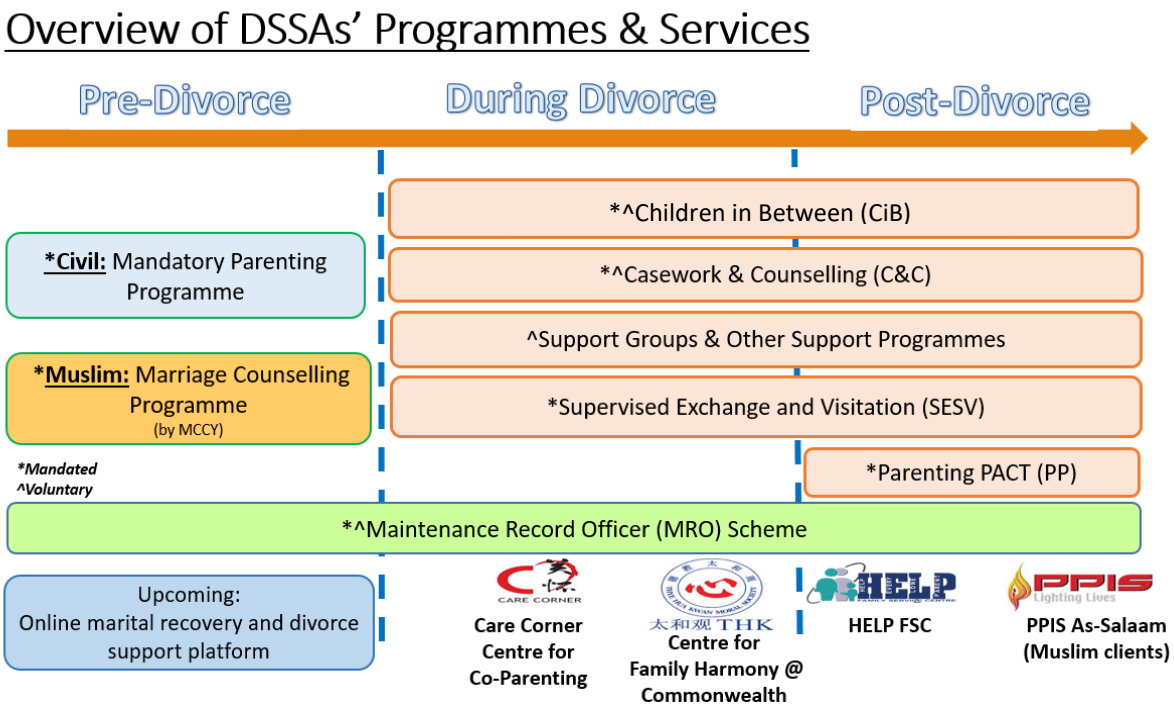
MICHELLE WOODWORTH
Co-chairperson of the Family Law Practice Committee
The Law Society of Singapore

Appendix



A. Parenting PACT

This programme helps divorced parents with minor children (below 21 years old) understand the impact of divorce on their children, learn effective co-parenting strategies and practise self-care. The two-hour one-time consultation session also offers information about the community support resources available to families, post-divorce. It is currently available to parents of children aged below 21.

The session aims to help parents:

- Understand the impact of divorce on their children;
- Learn cooperative co-parenting strategies;
- Practise self-care; and
- Get more information about the community support resources available.

B. Children in Between

This is an evidence-based programme developed by child experts. It has two components - one for parents and another for children. The parent component comprises two sessions (two hours/session) highlighting ways in which children can be caught in the middle of their parents' emotional conflict. It imparts practical co-parenting skills and explores ways to reduce and prevent future parental conflict.

The child component is a skills-based programme held over three sessions (two hours/session) to equip children (aged six to below 15 years) with the necessary skills to manage their feelings and develop resilience despite their parents' divorce. The programme

offers age-appropriate activities that cater to the needs of primary and secondary school-going children.

C. Supervised Exchange and Visitation

This service helps families work out feasible child access arrangements. The end goal is to help parents co-parent more effectively and build secure parent-child relationships over time without compromising the child's sense of personal and emotional safety.

D. Mandatory Parenting Programme

The Mandatory Parenting Programme is a two-hour consultation session conducted by DSSA counsellors for prescribed parents with minor children, before they file for divorce. This programme helps divorcing parents make informed decisions regarding financial, housing and parenting issues that prioritise the child's well-being.

E. Casework and Counselling

Counselling is offered to individual, joint or family sessions to address different needs. DSSA staff are committed to offer professional and holistic care and support during and after a divorce.

F. Maintenance Record Officer

The Maintenance Record Officer scheme was introduced to assist the FJC in obtaining information on parties' financial circumstances in maintenance applications and enforcement. Where applicable, the Maintenance Record Officer offers timely social support to parties facing genuine hardship by referring them to Social Service Offices.

G. Other Support Programmes

There are several other support programmes offered by the DSSAs where divorcing/divorced parents and children can come together in a safe and confidential environment to share their experience and offer mutual support.