

FROM FAMILY LAW TO FAMILY JUSTICE

The Honourable the Chief Justice Sundaresh Menon*
Supreme Court of Singapore

The Law Society Family Conference 2020

Singapore, 14 September 2020

I. Introduction

1. I am delighted to deliver the keynote address for the Law Society's Family Conference 2020. This is the third iteration of the Conference. In previous years, family law practitioners had the privilege of gathering in person to reflect on our work and to consider the way forward. This year's Conference takes place in very different circumstances. While it is gratifying that we are able to proceed with the Conference despite the difficulties, we should not overlook the reality that the pandemic has presented serious challenges for many of us, and this is especially true in the area of family law where social distancing is almost antithetical to the law's core purposes and values. Nonetheless, our virtual gathering today gives us a valuable opportunity – and indeed an imperative – to mark the start of a new decade by reflecting on the role of the family justice system, how that has evolved over time, and to chart our way

* I am deeply grateful to my law clerk, Deborah Tang, and my colleagues, Assistant Registrars Elton Tan and Kenneth Wang, for all their assistance in the research for and preparation of this address.

forward as we look beyond the current crisis.

2. Any reflection on the role of family law should really start with the fundamental question – what is “good” family law? This deceptively simple question reveals its multiple facets and dimensions only on closer scrutiny. Is it law that is methodically logical or is it likely to entail a greater intuitive sense of what is right and just? Is it law that promotes or guards against societal change? Is it law that is specifically protective of the vulnerable or is it fundamentally directed at the vindication of rights? Or is it ultimately about having as little law as possible so that families are encouraged to resolve their own differences on their own terms? Our family law journey in Singapore, much like that around the world, has been an endeavour to answer this fundamental question in its many different facets and to examine how family law might effectively contribute to the realization of our vision of family justice.

II. The development of family law abroad

3. Let me begin with a brief reflection on the history of family law. What we know of today as family law did not always exist as it does. The law has long grappled with the question of whether, and if so to what extent, it should intervene in private relationships. The family is the quintessential sphere of private life, and the idea of the State intervening in this space inevitably presents some tension.

4. Internationally, a survey of the history of family law reflects a discernible reluctance in having the legal system interfere in familial relationships. This is unlike the position with other areas of human interaction such as crime or commerce where law is more readily seen as an essential condition for sustainable and orderly human interaction. This philosophy of non-interference in family law appears to be premised on two societal conceptions.

5. The first was that of the family as a unit under the exclusive dominion and control of the father or husband. In Roman law, for instance, the oldest living male of the family, as *pater familias*, had authority over the property and life of family members. Similarly, within the common law system, under the historical doctrine of coverture, married women had no legal personality separate from their husbands, and the notion of a court of law determining spousal or parental issues did not sit comfortably with the philosophy of the time. As a result, applications for custody, for example, had to be brought somewhat counter-intuitively by a writ of *habeas corpus*.¹ And the father's right to the custody of a child was more or less absolute in the absence of evidence that the father would harm the child.²

6. The second conception was a belief that family relations should be an

¹ See *R v De Manneville*, 5 East 222, 223 (1804) (though an application for guardianship could be brought in the courts of Chancery (see *De Manneville v De Manneville*, 32 Eng. Rep. 762 (1804))).

² See *Gillick v West Norfolk and Wisbech Area Health Authority and another* [1985] 2 WLR 413 at 438.

area not as much guided by laws and legal structures, as by local socio-cultural norms and customs. This was particularly evident in the colonial era. While the colonial powers were eager to export laws governing commerce, property, and crime to their colonies, they were more hesitant about doing so in respect of “domestic” matters such as family law. Perhaps unlike the other areas of law, they thought that laws relating to the family would have little impact on the colonial economies which, after all, would have been their primary interest. In colonial India, for example, the British were willing to cede authority in private and family relationships to Muslim and Hindu leaders.³ Personal matters were generally viewed as being within the province of the indigenous religions and customs, and outside the authority of the colonial courts.

7. Since the turn of the 19th century, there has been a significant shift in the philosophy pertaining to these issues. Societal resistance to the involvement of the law in matters of the family began to recede over time, and indeed, it has gradually come to be viewed as the obligation of the State to ensure a degree of fairness and equity in domestic relationships, and in particular, to protect the vulnerable in family disputes.

8. I suggest that three trends portended this important philosophical change. The first was the economic transformation of society that originated

³ Varsha Chitnis and Danaya Wright, *Legacy of Colonialism: Law and Women's Rights in India* (2007) 64 Wash & Lee L Rev 1315 (“Chitnis and Wright”) at pp 1322–1323.

with the Industrial Revolution, as the dynamics of the family unit changed in the shift from agrarian to industrial life. This not only affected the structure of national economies but also had a significant impact on the accepted social norms around family, gender, and work.⁴ As economic development led to the greater accrual of familial wealth, society became more concerned with the question of how such wealth should be distributed between family members, including in death and divorce.⁵ As for children, while they had for centuries been viewed as the economic assets of a family, the risk of exploitation of children in factories and mines in an industrialised society led to growing concerns over their welfare and, in turn, the enactment of child-related labour and education laws.⁶

9. The second trend was the women's rights movement. The changing role of women in society led to growing resistance to archaic rules such as coverture.⁷ With this came heightened demands for equality in the rights of mothers over their children. The English Custody of Infants Act in 1839, for example, allowed, for the first time, the mother to petition for the custody of her

⁴ Lawrence Moloney, *The Elusive Pursuit of Solomon: Faltering Steps Towards the Rights of the Child* (2008) 46 Fam Ct Rev 39 at p 40 (n 4), citing Anderson, M., *Approaches to the history of the western family, 1500–1914* (Macmillan, 1980).

⁵ Hannah Barker, *Family and Business during the Industrial Revolution* (Oxford University Press, 2017) at pp 51–54.

⁶ Elizabeth S. Scott and Robert E. Scott, *Parents as Fiduciaries* (1995) 81 Va. L. Rev. 2401 at p 2407 (n 17).

⁷ Sir John Baker QC, *Introduction to English Legal History* (Oxford University Press, 5th Ed, 2019) at pp 525–528.

child below the age of seven.⁸ This movement in England also influenced norms in her colonies.⁹ From the age-old idea that the husband wielded exclusive dominion over the family, progressive recognition of the status of women and their rights as mothers led to the development of many of the laws and principles that form the foundation of the modern family justice system.

10. The third trend was the waning influence of the ecclesiastical courts and the diminished role of religion in relation to the regulation of a family. In the UK, from the 12th to the 16th century, marriage was administered by the church as part of canon law.¹⁰ Regulation by religion became unsustainable by the turn of the 19th century in light of the changing nature of English society and the increasing numbers who worshipped outside the Church of England.¹¹ In time, this led to the enactment of the Matrimonial Causes Acts of 1836 and 1857, which took matrimonial disputes out of the ecclesiastical courts and into the secular realm, first with the provision of a purely secular form of marriage and then with the establishment of the Court of Divorce and Matrimonial Causes.¹²

11. As notions about the family unit gradually became unmoored from

⁸ Martha J Bailey, *England's First Custody of Infants Act (1994-1995)* 20 Queen's L. J. 391 at pp 391–392.

⁹ Chitnis and Wright (n 3) at p 1319.

¹⁰ Judith Masson, Rebecca Bailey Harris and Rebecca Probert, *Cretney's Principles of Family Law* (Sweet & Maxwell, 8th Ed, 2008) at para 1-002 ("Masson et. al").

¹¹ Masson et. al (n 10) at para 1-005.

¹² Masson et. al (n 10) at para 1-005; Leong Wai Kum, *The High Court's Inherent Power to Grant Declarations of Marital Status* (2019) SJLS 13 at p 20.

centuries of tradition, the emerging consensus was that the State *could* and, in some cases, *should* intervene to regulate domestic relations and to protect vulnerable parties, in particular women and children. This then led to the emergence of a corpus of family laws and principles, which continue to underpin our family justice system today. One of the most notable examples is the focus on the welfare of the child in child-related matters. The emergence of the welfare principle marked the shift from an era of instrumentalism, where children were perceived as instruments for the promotion of the interests of others, to an era of welfarism. Prior to this, custody had simply been a matter of weighing each parent's rights against the other. In 1888, the "welfare of the infant" was enshrined in legislation as a factor for the court's consideration for the first time, and by 1897, it received judicial endorsement as the paramount consideration in the determination of child custody, above all other factors such as the wishes of the parents.¹³ This remains a defining principle of family law in jurisdictions around the world today.

III. Our journey in Singapore

12. Despite our relatively short national history, we can observe parallels with the international experience in our own family law journey.

13. Initially, family law in colonial Singapore reflected a mix of basic English

¹³ See the Guardianship of Infants Act (1886) and *In re A and B (Infants)* [1897] 1 Ch 786.

law principles superimposed against a backdrop of local norms. This attempt to integrate English law with local custom was said to have left the system “mangled beyond all recognition”.¹⁴ It also meant that there was little opportunity for the development of a comprehensive family law framework that applied uniformly across race and religion.¹⁵

14. In the 1960s, newly vested with self-government and recognising the importance of protecting the welfare of women and children, we heralded a new chapter in our family justice history, beginning with the enactment of the Women’s Charter in 1961. This was a formal and comprehensive piece of legislation that consolidated all existing laws and norms on marriage, divorce, maintenance, and offences against women. It articulated fundamental principles that we have come to identify with the very fabric of our society today, including imposing monogamy on non-Muslims and affirming the capacity of married women to hold property.¹⁶ Much has been said about the significance

¹⁴ For example, English judges accepted that local Chinese men could be married to more than one woman, but then determined that each marriage was of equal status in law and each wife shared equally in a man’s estate. However, this was contrary to Chinese customary traditions where the first or “principal” wife had superior rights of inheritance. See Leong Wai Kum, *Cases and Materials of Family Law in Singapore* (Butterworths Asia, 1999) at p 50; M Freedman, *Colonial Law and Chinese Society* (1950) 80(1) *Journal of the Royal Anthropological Institute of Great Britain and Ireland* 97 at p 98; Kenneth K S Wee, *English Family Law and Chinese Family Custom in Singapore: The problem of fairness in adjudication* (1974) 16(1) *Malayan Law Review* 52 at pp 63–65.

¹⁵ *Elements* (n 16) at para 20.078.

¹⁶ See, eg, Leong Wai Kum, *Fifty Years and More of the Women’s Charter of Singapore* [2008] SJLS 1; Andrew Phang Boon Leong, *The Development of Singapore Law: Historical and Socio-Legal Perspectives* (Butterworths Asia, 1990) at pp 273 –276.

of the Charter that I need not repeat here, except to observe that the then-Minister of Labour and Law, Mr K M Byrne, had noted with great prescience that this would become a Charter for women in Singapore “outside the ordinary stream of legislation”.¹⁷

15. Over the following years, the legislative framework was also refined to accommodate Singapore’s unique socio-cultural context. The Administration of Muslim Law Act, for example, was passed in 1966 to provide for the administration of Muslim law in Muslim marriages, reflecting a system of legal pluralism.¹⁸ Another example is the Maintenance of Parents Act passed in 1995, which imposes an obligation on children to care for their parents under certain circumstances.

16. Overlaying the main pieces of our family legislation are principles crafted and refined over time by our courts as our family jurisprudence developed. These principles affect various aspects of marriage, parenthood, and the family, and today form an essential part of our family law. Examples include the principle that marriage is an equal co-operative partnership of efforts, that parents bear responsibilities as opposed to rights in respect of their children, and perhaps the best-known of all – the welfare principle, commonly

¹⁷ *Singapore Legislative Assembly Debates* (6 April 1960) vol 12 at col 480.

¹⁸ Noor Aisha Abdul Rahman, *Singapore’s Muslim Law versus Syariah Revivalism*, (2016) 36 ISEAS-Yusof Ishak Institute *Perspective* at p 2; Ahmad Mohamed Ibrahim, *The Legal Status of the Muslims in Singapore* (Malaya Law Journal Ltd, 1965) at p 10.

known as the “best interest of the child” test. Just as this has taken centre-stage in child proceedings around the world, it has evolved over the years in Singapore to become, in the words of Justice Chao Hick Tin, “without doubt, the golden thread that runs through all proceedings directly affecting the interests of children.”¹⁹

17. Together, the legislation and principles that I have outlined shape and anchor family law in Singapore.²⁰ But the *substantive* law, perfect as it may strive to be, is only one piece of the puzzle. It needs to be appropriately *administered* to the individuals that rely on it through a set of processes, which brings us to the important subject of legal procedure. Indeed, it is in the area of family procedure that we have undertaken the most significant experimentation and reform, especially over the past two decades.

18. Broadly speaking, there have been two waves of procedural reforms thus far,²¹ and they arose out of advances in allied social sciences and the accompanying deep reflection on our vision of family justice for Singapore. The “first wave”, which occurred between 1995 and 2011, began with the establishment of the Family and Juvenile Justice Division of what was then referred to as the Subordinate Courts. This also saw the introduction of

¹⁹ *BNS v BNT* [2015] 3 SLR 973 at [19].

²⁰ Leong Wai Kum, From Substantive Law towards Family Justice for the Child in Divorce Proceedings in Singapore (2018) 30 SAclJ 587 at paras 25–26.

²¹ Kevin Ng, Yarni Loi, Sophia Ang and Sylvia Tan, *Family Justice Courts – Innovations, Initiatives and Programme* (2018) 30 SAclJ 617 at paras 5–67.

specialised programmes and new approaches such as voluntary mediation and counselling. The “second wave” is identified with the establishment of the unified Family Justice Courts in 2013,²² and this was driven primarily by our shift towards a child-centric approach, in response to the growing scientific consensus on the dire effects of familial conflict on a child’s well-being.

19. These reforms reflected the emerging appreciation of family law as a unique area of practice, where the regular tools of civil litigation were neither adequate nor even appropriate. While the historical development of family law was primarily concerned with the articulation of the rights and responsibilities of family members through substantive law and principles – a natural first step in the creation of any formal legal system that needed to define the boundaries of one person’s sphere of liberty as against another – the next step was to consider the well-being of family litigants as they navigated the family justice system, and to ensure that the means appropriately served the ends. This change in perspective, and the reforms they gave rise to, heralded a sea change in our approach to family justice with very significant results. Today, more than 90% of all divorces are resolved without resorting to formal adjudicated processes, a testament to the success of the procedural reforms and the hard work of our

²² The formation of the Committee for Family Justice was announced at the Opening of the Legal Year 2013 to consider reforms to the family justice system, and the Family Justice Courts were established pursuant to its recommendations in 2014.

counsellors, lawyers, and judges.²³

IV. The next chapter for family justice

20. With the legislative framework firmly in place and supplemented by the principles and procedures crafted and refined over time, the family justice system has continued to evolve and to take shape in Singapore. In large part, the system has served us well. As we look ahead, however, it is important to maintain a clear-eyed view of the challenges that lie before us. I suggest that these may be summarised in three main aspects.

21. Let me begin with the first two points which relate to the substantive legal framework. The first and perhaps most complex challenge is the need for family law to adapt to the changing face of the family in modern society. As the sciences advance and our social norms transform, our society's understanding of a family and the relative roles of its members has also evolved. While the law strives to accommodate these changes, there is seldom, if ever, a perfect answer to these difficult questions and the solution is often be a matter of compromise.

22. One example that illustrates this is the assumption that the husband is the sole financial provider of the family. On this premise, the maintenance

²³ Debbie Ong, Presiding Judge, Family Justice Courts, "Today is a New Day", Address at Family Justice Courts Workplan 2020 (21 May 2020) ("Workplan Address") at para 9, <https://www.familyjusticecourts.gov.sg/docs/default-source/news-and-events/2020_pj_address_workplan.pdf (20 August 2020)>.

regime in the Women’s Charter as it was originally enacted imposed different responsibilities on a husband than it did a wife. For example, on proving that a husband had neglected or refused to provide reasonable maintenance, he could be ordered to pay maintenance to a wife (s 69); but there was no corresponding provision that entitled him to seek maintenance from her. This originated as a “quid pro quo” for the doctrine of coverture, but that doctrine itself has long been abolished.²⁴ As the relative roles of spouses and their financial means continued to evolve over the years, the Government in 2016 introduced s 69(1A) of the Charter to permit an *incapacitated* husband to claim maintenance from his wife. Similar changes were made in relation to former spouses in s 113 of the Charter. Introducing these changes in Parliament, the then-Minister for Social and Family Development Tan Chuan-Jin noted that the public had provided extensive feedback on this issue and that it was clear that no decision would satisfy all the diverse views. After careful consideration, it was thought that a balance should be struck through the enactment of these provisions in the Charter. This was an incremental step that recognised that, in the Minister’s words, “our society is not quite ready for gender neutrality on the spousal maintenance front”,²⁵ and it also hints of the challenges that lie ahead as we come to realise that the assumptions that underpinned our substantive family laws might no longer be compatible with the evolving realities of modern society.

²⁴ Section 51 of the Women’s Charter (Cap 353, 2009 Rev Ed).

²⁵ *Singapore Parliamentary Debates, Official Report* (29 February 2016) vol 94 (Tan Chuan-Jin, Minister for Social and Family Development).

23. Another example relates to advances in the field of fertility sciences. These developments have challenged traditional notions of what it means to be a parent and, correspondingly, what parental responsibility truly entails. In countries where surrogacy is legally permitted, questions have arisen on the rights and duties of the surrogate parents and the precise definition of a “legal parent”.²⁶ In Singapore, the courts had to contend with a different aspect of the issue in *ACB v Thomson Medical*,²⁷ involving the application of traditional tort law principles to the novel context of in-vitro fertilisation. Given the speed at which the underlying technology and societal attitudes are shifting, there is no doubt that more of these difficult issues will soon confront our courts and society.

24. The second area of challenge is the growing need for the courts to deal

²⁶ The Law Commission of England and Wales and the Scottish Law Commission recently engaged in a joint public consultation on the law and regulation of surrogacy from 6 June 2019 to 11 October 2019. The full consultation paper ran to 419 pages (excluding appendices) and considered reforms of legal parenthood, parental responsibility, and regulation of surrogacy arrangements. A full report containing recommendations for reform and a draft Bill is expected in early 2022. For more information, see Law Commission, “Surrogacy” <lawcom.gov.uk/project/surrogacy/> (accessed on 25 August 2020); Law Commission and Scottish Law Commission, *Building new families through surrogacy: a new law* (Law Commission Consultation Paper No 244 and Scottish Law Commission Discussion Paper No 167) (6 June 2019).

²⁷ In *ACB v Thomson Medical* [2017] 2 SLR 918, the appellant sued the respondents in tort and contract for mistakenly using sperm from an unknown third party instead of sperm from the appellant’s husband in in-vitro fertilisation. The appellant sought damages for, among other things, expenses she would incur in raising the baby. The Court of Appeal held that the appellant was not entitled to bring a claim for upkeep costs as recognition of such a claim would be against public policy in part because it would be inconsistent with, and deleterious to, the health of the institution of parenthood. However, the Court of Appeal held that the appellant had suffered a loss of “genetic affinity” which should be considered a distinct and recognisable head of damage in its own right.

with the phenomenon of the “international family”. In an era of a globalised economy with the consequent increase in the cross-border flow of people and services, family disputes have increasingly taken on an international dimension with cross-jurisdictional consequences.²⁸ The rise of the international family can also be traced in part to an increase in marriages between Singaporeans and non-Singaporeans.²⁹ While adding vibrancy and diversity to our population, the non-Singaporean spouses are sometimes in a vulnerable position given their lack of familial connections here and their potentially uncertain immigrant status.³⁰

25. As a result of this phenomenon, we have seen a series of difficult cases in recent years involving the children of such “international families”. One area where the stakes are particularly high is where the parents disagree over the issue of relocation. As Justice Andrew Phang recently observed, child relocation “involve[s] a binary decision – either the child stays or he goes”.³¹ Although

²⁸ Barbara Stark, “When Globalisation Hits Home: International Family Law Comes of Age” (2006) 39(5) *Vanderbilt Journal of Transnational Law* 1551 at pp 1559–1561.

²⁹ More than 1 in 3 marriages in Singapore in 2018 involved transnational couples (see “Number of citizen marriages in Singapore lowest since 2013”, *ChannelNewsAsia*, (Singapore) (25 September 2019) <<https://www.channelnewsasia.com/news/singapore/number-marriages-singapore-population-birth-rate-11940734>> (20 August 2020).

³⁰ “More protection needed for foreign spouses facing family violence”, *AWARE* (Singapore) (28 February 2020) <<https://www.aware.org.sg/2020/02/more-protection-needed-for-foreign-spouses-facing-family-violence/>> (20 August 2020).

³¹ Andrew Phang JA in the Court of Appeal decision of *BNS v BNT* [2015] 3 SLR 973 at [2], citing the decision of Mostyn J in *Re AR (A Child: Relocation)* [2010] EWHC 1346 (Fam) at [4].

technology may go some way to mitigate the impact of separation, the loss of regular in-person interaction between the non-relocating parent and the child cannot be understated, and the decision of the court in these cases may have far-reaching significance for the lives of each family member.

26. An added layer of difficulty arises where there are issues of conflict of laws. Unlike commercial cases where it is usually only money that is involved, the stakes are much higher in international family law disputes. Not only do they directly affect real human lives, there can be significant differences between national family laws reflecting each society's different values and mores. This in turn places greater significance – and also pressure – on the often technical rules governing conflicts of laws and this can present the courts with real difficulties given their desire to do substantive justice in each case. As a result of these differences, forum shopping and the abuse of cross-border legislative arbitrage will sometimes be resorted to despite their egregious consequences.³²

27. The two areas of challenge I have mentioned are complex and multi-faceted, but their difficulty cannot stop us from trying to manage the tensions

³² For example, while prenuptial agreements relating to the division of matrimonial assets cannot be enforced in and of themselves in Singapore, in *TQ v TR and another appeal* [2009] 2 SLR(R) 961, the Court of Appeal observed that where there was a prenuptial agreement that was wholly foreign in nature (such as one entered into by foreign nationals abroad and governed by foreign law), then there was no reason in principle why the court should not accord significant weight to the terms of the agreement. This was particularly because to hold otherwise might encourage forum shopping by those who wish to avoid the enforceability of their respective prenuptial agreements in their home countries (at [77], [87] and [109]).

involved. In this context, let me make two observations from the Judiciary's perspective.

28. First, in relation to the evolving family landscape, I suggest that in applying traditional family law principles to novel situations and issues, the courts should be slow to jettison the principles that have long formed the bedrock of family law. Ideas such as the primacy of the child's best interests, marriages as co-equal partnerships, and parenthood as an assumed responsibility rather than an asserted right, reflect the coalesced experience and consensus of our society, and they have withstood the test of time. And when faced with novel situations, courts should remain conscious of their judicial limits and constraints. Especially in areas of complex social policy with which family law is often intertwined, the judicial tool is a blunt and often ineffective one. The 2016 amendments to the spousal maintenance regime in the Women's Charter that I mentioned earlier, for example, came after extensive public consultations and careful policy calibration by the other branches of Government, and the courts are simply not equipped to undertake such an exercise. And as the history of family law I have outlined earlier will show, major changes in the family justice system are often led by powerful social movements, such as the emancipation of women. These may involve but are not ultimately be driven by the courts.

29. As for the other challenge involving the rising phenomenon of the

“international family”, I suggest that such international problems will require international responses, and an appropriate solution, in the longer term, will involve at least three main steps. The first is to clearly and rationally articulate the common aspirations and values of the global family justice system. The second is to enhance communication and cooperation between family courts and institutions. And the third is to consider the convergence of certain principles, norms, and practices of international family law, in a manner that is respectful of our socio-cultural differences.

30. We have already made significant progress towards achieving the first step of articulating a core of common aspirations. The best example of this is the UN Convention on the Rights of the Child which has obtained near-universal acceptance and has been ratified by almost all countries in the world.³³ It places “the best interests of the child” at the forefront of all actions concerning children, including in legislative frameworks and in courts of law.³⁴ This has had a direct impact on the manner in which courts and lawmakers around the world think about and discuss child-related issues.³⁵ We have also achieved some success

³³ As of 25 August 2020, there are 196 state parties to the UN Convention on the Rights of the Child. See United Nations Office of the High Commissioner, “Status of Ratification” <indicators.ohchr.org> (accessed on 25 August 2020).

³⁴ Article 3(1) of the UN Convention on the Rights of the Child states, “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

³⁵ For example, the UN Convention on the Rights of the Child and the best interests test is specifically referenced in policies on asylum in the United Kingdom (see *Regina (TN (Afghanistan)) v Secretary of State for the Home Department* [2015] 1

in relation to the second step of furthering international communication and cooperation. The International Hague Network of Family Judges is an outstanding example of a platform that fosters dialogue among family judges from around the world. Another example is the Hague Convention on the Civil Aspects of International Child Abduction, which came into force in 1983. This represented a momentous step forward by providing an internationally agreed procedure to bring about the prompt return of children who had been wrongfully abducted or retained across international boundaries.³⁶ Unfortunately, this progress has suffered a little from the uneven application of the Convention by courts around the world. Furthermore, child abduction is but one slice of the pie, and there are other areas of international family practice that would benefit from greater international cooperation, such as an agreement on the cross-border enforcement of family court judgments, a protocol on court-to-court communications in family law cases, or an agreement on the conduct of joint judicial hearings between like-minded jurisdictions. Controversial as some aspects of these ideas might be, I think they are worth consideration and debate.

31. Thus far, I have focused on the challenges affecting the substantive

WLR 3083 at [6]) and has been applied to regulate Inuit customary adoption in Canada (see *In the matter of X* [2007] 1 CNLR 168 at [26]).

³⁶ As of 19 July 2020, there were 101 contracting parties to the Hague Convention on the Civil Aspects of International Child Abduction. See HCCH, “Status Table” <hcch.net/en/instruments/conventions/status-table/?cid=24> (accessed on 25 August 2020).

laws governing family relationships. But the family justice system comprises more than just a collection of legislation and judicial principles. It encompasses also the procedures and processes through which the law is administered, and this is where the conduct of every actor within the eco-system has a direct impact on whether we will succeed in elevating the legal framework into a system that delivers *justice* to its users. The law, after all, must serve the ends of justice, and I suggest that justice in this context demands that we recognise and respect the foundational role of human relationships at the heart of every family dispute. Unlike a civil suit where parties may simply walk away from one another, familial ties cannot truly be broken; they can only be dishonoured at immense cost to the parties and to their children, who are the innocent victims of the acrimony. A “good” family justice system must therefore build on and go beyond the legal framework, to create a process that is committed to identifying and harnessing the parties’ common interests in order to secure a future for the family. This future, though perhaps imperfect and on terms different from what was originally envisioned, nonetheless remains a shared one, and it remains all the more important for the well-being of the parties and the children involved.

32. This brings me to the third major point I want to make, which is that we should seize the opportunity and the momentum, built by the two earlier waves of reform, to consider how the next set of procedural changes should take shape in order to support this vision of the family justice system. As the then-Second Minister for Law, Ms Indranee Rajah, observed in her keynote address at the

2018 Family Law Conference, family law is different from ordinary civil litigation, and so the practice and procedures of family law must reflect and accommodate that difference.³⁷ The central issue in family disputes, while often couched in the language of rights and liabilities, is much more concerned with addressing the fracturing of human relationships. And so, judgments of law, as far as they might go in determining the parties' formal legal obligations, will only provide superficial comfort if the process through which they are arrived at aggravates rather than ameliorates the deeper conflict and tensions between the parties. While this perspective has received some attention in the first two waves of reform, there remains more that we must do, particularly in light of the lessons we have learnt over the past twenty years.

33. The first and the most important step in this regard is the adoption of an overarching philosophy of therapeutic justice within our family justice system. Various definitions have been advanced, but distilled to its essence, therapeutic justice refers simply to a conception of the law as a method of resolving disputes between family members that is (a) **holistic**, in that the law must endeavour to address both the visible legal issues as well as their underlying non-legal causes; (b) **restorative**, in that the law must endeavour to aid the parties to repair their relationships at least so they get to be at a functional state; and (c)

³⁷ Indranee Rajah SC, Second Minister for Law, Keynote Address at the Family Conference 2018 (8 May 2018) at para 30, <<https://www.mlaw.gov.sg/news/speeches/keynote-address-by-indranee-rajah-sc-second-minister-for-law-family-conference-2018>>.

forward-looking, in that the law must endeavour to focus the parties on their shared future, rather than leave them preoccupied by their painful past.

34. The adoption of therapeutic justice will entail the restructuring of existing court processes, particularly in the provision of more “upstream” services such as pre-petition counselling and mediation to provide early support for families and to allow them to address the consequences of familial breakdown as amicably as possible. This must be accompanied by a fundamental change in the perspective of the key stakeholders on the role of family law. A simple example is the possible change in the terminology used in family court judgments. Instead of referring to the parties as “Plaintiff” or “Defendant”, which are terms associated with the adversarial system of civil litigation, they might better be referred to as “Husband” or “Wife”, or “Father” or “Mother”, to reflect the relationships they share and the responsibilities that they will continue to owe to each other and to their children.³⁸ Indeed, legal language should mirror reality, and the reality in family disputes is that however hostile the situation may seem, parents are not adversaries and children are not litigation outcomes to be won.

35. If one takes a step back to consider the trajectory of how family procedure has developed in Singapore, it will be clear that therapeutic justice represents a natural evolution following the earlier waves of family reform. A

³⁸ Workplan Address (n 22) at para 77.

narrative of rights and liabilities tends to reflect a zero-sum game inasmuch as one person's right is another's liability, and it ignores the vital fact that *interests*, on the other hand, can be shared even by divided families. As the Court of Appeal recently said in *VDZ v VEA*, "relationships constitute the very pith and marrow of a family... Damage [to these relationships] cannot be repaired ... by way of material recompense; healing needs to take place."³⁹ Indeed, I suggest that therapeutic justice reflects family law coming to terms with its very purpose – shifting from a singular focus on the adjudication of rights and liabilities, to the facilitated resolution of conflict through the alleviation of broken human relationships and a focus on the shared interests that persist even in familial disharmony.

36. Several other features will complement the adoption of therapeutic justice as the overarching philosophy driving our family justice system.

37. The first is a renewed focus on the development and training of our family judges and practitioners so that they are equipped with the appropriate skills to navigate the new justice landscape. To this end, a targeted curriculum will be developed to familiarise our family court judges with the wide set of tools available under this new approach to family procedure.⁴⁰ Similarly, our

³⁹ Andrew Phang JA in *VDZ v VEA* [2020] SGCA 75 at [77].

⁴⁰ Committee to Review and Enhance Reforms in the Family Justice System, *Report of the Committee to Review and Enhance Reforms in the Family Justice System* (13 September 2019) ("RERF Report") at paras 183–188.

practitioners must be offered training so that they may advise their clients on the most suitable course for the resolution of familial conflict, and to empower them to exercise the appropriate skills required in each situation. This could involve mediation or working with allied counsellors to help the parties come to grips with what is truly best for the whole family. As I mentioned at the Opening of this Legal Year, there are also plans to develop a specialist certification and accreditation framework for family practitioners in recognition of the specialised skillset and the expertise that they need and that they wield.⁴¹

38. A second feature of the proposed procedural reforms is the need to deploy a multi-disciplinary approach to resolve familial disputes, and to engage a diverse range of allied professionals and organisations in the family justice system. To be clear, these efforts are not new. Over the years, we have worked with a range of stakeholders outside the legal profession to assist court users to resolve their familial disputes holistically. One example is the collaboration since 2013 between the Family Justice Courts and the divorce support specialist agencies set up by the Ministry of Social and Family Development (“MSF”) to provide support services for families in distress. Under the therapeutic justice framework, we intend to leverage further on the capabilities of other stakeholders in the family justice system, including the social services,

⁴¹ Sundaresh Menon, Chief Justice, Response by Chief Justice Sundaresh Menon at the Opening of the Legal Year 2020 (6 January 2020) at para 14 <supremecourt.gov.sg/news/speeches/chief-justice-sundaresh-menon—address-at-the-opening-of-the-legal-year-2020 (25 August 2020)>; see also RERF Report (n 41) at paras 175–182.

mental health, and law enforcement sectors. A new scheme is being considered, for example, between the Family Justice Courts, the MSF, and the Singapore Police Force, involving an information sharing and triage protocol for child abuse allegations. The goal is to help us act more quickly and accurately to sift out allegations of child abuse that have merit, from those that are being weaponised to harm the relationship between the other parent and their child. Orders and interim directions that are most appropriate for the situation can then be issued expeditiously. This and other measures in the pipeline seek to harness the synergies of the different spheres of expertise across a spectrum of social sectors, and leverage on the collective strength of the entire family justice eco-system.

39. The third feature of the proposed reforms that I wish to emphasise is one that underlies all our efforts in the field of family justice – and that is our commitment to ensuring that the justice system remains accessible to all. The importance of this cannot be overstated. Even the best-designed legal framework will come to nothing if those in need cannot access it, and the issue takes particular significance in family practice where a high incidence of litigants-in-person is simply the reality.

40. Several measures to enhance accessibility to family justice have been proposed by the Committee to Review and Enhance Reforms in the Family

Justice System.⁴² The Committee’s report released in September last year has been accepted by the Government after extensive public consultation. These measures include, for instance, the consolidation of the various types of originating processes into a single standardised claim form, and the bifurcation of the Family Justice Rules into two smaller volumes dealing with family proceedings and probate matters separately. While the Committee’s recommendations are comprehensive, they are not exhaustive, and we need to remain vigilant at each step of the way to ensure that our policies and our processes sufficiently take account of all user perspectives, regardless of age, wealth, and literacy. A recent example arising from the pandemic, for example, is the creation of “Zoom rooms” on the Family Justice Courts’ premises so that even as court hearings have been conducted remotely, litigants-in-person or those unfamiliar with technology were able to participate in hearings with the benefit of on-site equipment and technical assistance.⁴³

41. As this example illustrates, we must continue to tap heavily into the potential of purpose-built technological tools to advance access to the family justice system. One such initiative that will soon be launched is Litigation Assist, which is an online portal that will allow litigants-in-person to proceed with a

⁴² RERF Report (n 41) at pp 2–3.

⁴³ Family Justice Courts, “Frequently Asked Questions on Family Justice Courts’ Matters in the Immediate Post “Circuit Breaker” Period (From 2 June 2020)” <familyjusticecourts.gov.sg/covid-19/faqs> (25 August 2020).

simplified uncontested divorce online without formal court filings and hearings.⁴⁴ The portal will assist parties with the generation and submission of documents and draft court orders through the use of a standard document repository. Where appropriate, it will also connect them with lawyer-mediators who can advise and assist them with online negotiations.

42. As I come to the end of this address, let me add that in thinking about the longer-term challenges, a sense of urgency has been brought about by the pandemic, which has exposed inherent fault-lines in families and subjected the family justice system to a significant stress test. As safe distancing measures are put in place, maintenance and access orders have become more difficult to comply with and to enforce.⁴⁵ Difficulties involving international families have also been significantly exacerbated as global travel has been severely disrupted and curtailed. More worrying is the fact that the home is not a safe haven for all. For some, having to stay at home for months on end, isolated from one's support system, may be difficult if not even sometimes dangerous. A rising trend

⁴⁴ Workplan Address (n 22) at para 93.

⁴⁵ See, for example, *VBS v VBR* [2020] SGHCF 10 at [5]. See also Goh Yan Han and Theresa Tan, "Coronavirus: Divorced couples face child access and maintenance issues during circuit breaker period", *The Straits Times* (Singapore) (19 April 2020) <<https://www.straitstimes.com/singapore/divorced-couples-face-child-access-and-maintenance-issues-during-circuit-breaker-period>> (20 August 2020); Frankie McCamley, "Coronavirus: Custody fight parents told not to exploit lockdown", *BBC News* (United Kingdom) (21 April 2020) <<https://www.bbc.com/news/education-52310034>> (20 August 2020); Eimear Flanagan, "Coronavirus: Some parents 'using Covid-19 to cut child access'", *BBC News* (Northern Ireland) (17 June 2020) <<https://www.bbc.com/news/uk-northern-ireland-53054775>> (20 August 2020).

of family violence in recent months, termed by some as the “shadow pandemic”,⁴⁶ has been observed around the world and even here in Singapore,⁴⁷ and the need to respond swiftly and effectively is among the most urgent tasks at hand for the family justice system. As the end of the pandemic remains out of sight, we will have to keep our sights on both the important task of reconceptualising family justice, and the urgent need to ensure the smooth delivery of family justice in spite of the present challenges.

V. Conclusion

43. I end by returning to the fundamental question I raised at the start of this address – what is “good” family law? Each society will have to find its own answers, and indeed, ours have changed through time as our values have evolved. But what remains unquestionable is that the law should lay the foundations for a justice system that reflects and respects the deeply human element in the familial relationships that it seeks to guide and govern. Healthy family relationships – even in situations involving divorce and disharmony – is a critical enabler of the health of our entire society. It is therefore of tremendous importance that we give deep thought to these issues and debate them robustly

⁴⁶ “Violence against women and girls: the shadow pandemic”, *UN Women*, (6 April 2020) <<https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>> (20 August 2020).

⁴⁷ Jean Iau, “Coronavirus: More cases of family violence during circuit breaker; police to proactively help victims”, *The Straits Times* (Singapore) (15 May 2020) <<https://www.straitstimes.com/singapore/courts-crime/coronavirus-more-cases-of-family-violence-during-circuit-breaker-police-to>> (20 August 2020).

so that collectively we might build a fairer, more empowering, more restorative, and more accessible family justice system.

44. Let me end by extending my heartfelt thanks to the organisers for putting together this Conference by remote means to accommodate the extraordinary prevailing circumstances. While the pandemic has exposed some family fault lines, it has also reinforced the importance of the relationships we have with our families and our loved ones in the modern world. And this makes the work of everyone here – our family law practitioners, judges, policymakers, and allied professionals – all the more meaningful and important.

45. I very much look forward to your contributions and discussions, and I wish you all a very successful and fruitful Conference. Thank you very much.
