

FROM SUBSTANTIVE LAW TOWARDS FAMILY JUSTICE FOR THE CHILD IN DIVORCE PROCEEDINGS IN SINGAPORE

The family justice system at judicial termination of marriage provides the ways by which procedural rules and professional legal practice support substantive law in allowing spouses to achieve justice without acrimony or sacrificing their child's continued well-being. Achieving justice without acrimony or further harming the child's well-being are complementary goals. This article traces the evolution of family justice in Singapore. It seeks to demonstrate that family justice may be traced to our substantive law regulating spousal and parental behaviour dating back to the very enactment of the Women's Charter in 1961. The substantive law provides firm foundation for the mechanics of family justice.

LEONG Wai Kum

*LLB (Hons) (University of Malaya), LLM (Harvard);
Professor, Faculty of Law, National University of Singapore.*

I. Towards the current family justice system in Singapore

1 The family justice system in Singapore was formally established by the Family Justice Act 2014¹ ("FJA 2014"). The court where all family proceedings originate (*viz*, the Family Court)² had, however, been

1 Act 27 of 2014. The term "family justice system" became popularly used only fairly recently although, it should be noted, the idea of using alternatives to litigation as dispute resolution, in particular the mechanism of mediation, originated in family practice in the US from as early as the 1970s. It is also interesting to note that England and Wales also formally committed to the family justice system in 2014 when their Family Court became established upon the UK government's acceptance of the recommendations of the review led by Lord Norgrove which published its findings as Ministry of Justice, the Department for Education and the Welsh Government, *Family Justice Review: Final Report* (November 2011).

2 See Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 10–12 and Debbie Ong, "The Singapore Family Court: Family Law in Practice" (1999) 13 IJLPF 328. By 2003, the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order 2003 had ensured that all originating family proceedings were resolved by the Family Court; see also Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at pp 720–722.

established within the State Courts³ almost two decades earlier, in 1995. The significant events leading, first, to the creation of the Family Court and, second, the formal establishment of the family justice system are easily traced.

A. *Formation of Family Court as District Court in 1995*

2 The present author has sight of a review of the Women's Charter,⁴ undertaken in 1975 but never made public, that had proposed the creation of a Family Court although this proposal was not acted upon.

3 The first published proposal of such a customised court was from the author who submitted a personal representation to the Select Committee of Parliament⁵ on the proposed amendments by the Women's Charter (Amendment) Bill.⁶ In her suggestion of the creation of a Family Court or a Family Division to the High Court, she offered the following reasons in support:⁷

[An] intra-family suit on a matter related to the family relationship itself [is] very different from any other suit ... There exists much greater scope for amicable settlements ... There is a continuing social interest even in a marriage which has failed because there may be children who will suffer even more if their parents have become bitter towards each other. Intra-family litigation should ... be conducted in as informal, cordial and conciliatory a manner as possible ... There is a greater resort to non-legal experts in intra-family litigation ... The ... Family Court will not only build up judicial expertise in family law matters in much quicker time; it will also allow for non-legal assistance in resolving all of the problems the ex-spouses and the children face upon the disintegration of the unit.

3 The current State Courts were known as the Subordinate Courts in 1995 when the Family Court was established within them. The change of name was achieved by the Subordinate Courts (Amendment) Act 2014 (Act 5 of 2014).

4 This is the major repository of the substantive family law in Singapore. The current version is Women's Charter (Cap 353, 2009 Rev Ed), amended by Acts 15 of 2010, 2 of 2011, 25 of 2012, 27 of 2014 and 7 of 2016. The Women's Charter was first enacted by the Legislative Assembly of the State of Singapore as Ordinance 18 of 1961.

5 See *Report of the Select Committee on the Women's Charter (Amendment) Bill (Bill No 23/79)* (Parl 1 of 1980, 25 February 1980).

6 Bill 23 of 1979.

7 *Report of the Select Committee on the Women's Charter (Amendment) Bill (Bill No 23/79)* (Parl 1 of 1980, 25 February 1980) Appendix II at p A3.

4 The Family Court became established in 1995⁸ and, from that time onwards, conscientiously discharged its duty of attenuating the debilitating effects of the adversarial system of litigation upon family members when husband and wife undergo proceedings for judicial termination of marriage by judgment of divorce. Divorce litigation should ideally not be acrimonious nor harm the well-being of the child beyond what may be inevitable.⁹

B. Committee for Family Justice

5 Chief Justice Sundaresh Menon announced the formation of the Committee for Family Justice (“Committee”) during his Welcome Reference at the Opening of the Legal Year in January 2013.

6 The Chief Justice then painted his vision of the family justice system at his address to the Family Justice Practice Forum of the same year:¹⁰

These changes will be far reaching and may be summed up in three essential points: first, a multi-disciplinary approach, beginning with the earliest touch-points, and continuing throughout the process; second, a reconstructed trial experience that has at its heart the child and the parties; and third, a fundamental change in the role of the Judge, supported by lawyers.

7 The Committee published its public consultation paper on 7 May 2014. Upon responding to comments and suggestions from members of the legal community and the general public, the Committee released its *Recommendations of the Committee for Family Justice on the Framework of the Family Justice System* on 4 July 2014. The Committee accepted as the overarching objective in creating the proposed family justice system as putting in place “a seamless synergy of substantive law, procedural law, institutions, agencies and the courts all assisting the expeditious and amicable resolution of family problems”.¹¹

8 Within comparable common law jurisdictions, Australia took the lead in creating a customised court for resolving family disputes. Australia had created its Family Court, as a Federal Court, in 1975 while New Zealand created its Family Court, as a District Court, in 1981. The UK’s creation of its Family Court only in 2014 was, from this perspective, fairly belated.

9 See the innovations of the court and its judicial officers discussed in Judge Khoo Oon Soo *et al*, *Practitioners’ Library: Family and Juvenile Court Practice* (LexisNexis, 2008) and updated in *Law and Practice of Family Law in Singapore* (Foo Siew Fong gen ed) (Sweet & Maxwell, 2016).

10 See Chief Justice Sundaresh Menon, “A Vision for Family Justice in Singapore”, address delivered at the Family Justice Practice Forum (18 October 2013) at p 13, para 32.

11 See the Executive Summary in *Recommendations of the Committee for Family Justice on the Framework of the Family Justice System* (4 July 2014) at p 5, adopting
(*cont’d on the next page*)

8 To support substantive law, the Committee recommended seven procedural developments in family justice:¹²

- (a) community support and solutions;
- (b) re-organising the courts towards the new Family Justice Courts;
- (c) enhancing court case management policies and processes;
- (d) strengthening the court's powers in resolution and adjudication of family disputes;
- (e) protecting the best interests of the child;
- (f) improving the Youth and Juvenile Courts; and
- (g) requiring family law practitioner accreditation.

9 The Government accepted the Recommendations in full and the FJA 2014 was enacted to bring these recommendations to fruition.

C. *Family Justice Act created Family Division of High Court*

10 The Family Justice Act ("FJA") created the Family Division of the High Court to hear and dispose of appeals from decisions of the Family Court.¹³ With this, a complete structure of courts is in place to hear the originating family proceedings¹⁴ as well as to hear appeals from the decisions emanating from these originating family proceedings.

11 By the FJA, the Family Justice Courts¹⁵ have taken on board more than the "traditional" family proceedings. By the definition of "family proceedings",¹⁶ the Family Justice Courts also resolve applications under the Inheritance (Family Provision) Act, Intestate Succession Act, Probate and Administration Act, Mental Capacity Act and Mental Health (Care and Treatment) Act. The present author suggests that it may still be useful to separate the "traditional" family proceedings from these other proceedings, *viz*, succession and mental

the words of the author who responded to the Committee for Family Justice's call for comments of its public consultation paper.

12 See *Recommendations of the Committee for Family Justice on the Framework of the Family Justice System* (4 July 2014) at pp 5–9.

13 See s 4 of the Family Justice Act 2014 (Act 27 of 2014).

14 Section 5 of the Family Justice Act 2014 (Act 27 of 2014) preserves the Family Court to which all family proceedings continue to originate.

15 This is an umbrella term for the Family Division of the High Court, the Family Court and the Youth Court (as the former Juvenile Court came to be called by the Family Justice Act 2014 (Act 27 of 2014)).

16 See s 2 of the Family Justice Act 2014 (Act 27 of 2014).

capacity and care proceedings. The philosophy of “family justice”, seeking to modify aspects of the “adversarial system of litigation” in order to promote more harmonious resolution so as not to cause greater grief to the child whose parents are pitched against each other, is better considered with regard to the traditional family proceedings, especially divorce litigation. It remains to be seen to what extent the philosophy of family justice also serves succession and mental capacity and care proceedings. This article focuses on the family justice philosophy within divorce proceedings. It is in divorce proceedings that one finds the more obvious modifications of the adversarial system of litigation.

12 The Family Division of the High Court is hoped, generally, to be the final court of appeal of all family proceedings as further appeal from the decisions of the Family Division of the High Court is only permitted with leave of court.¹⁷

13 To support these changes, hefty Family Justice Rules 2014¹⁸ (“FJR”) and Family Justice Court Practice Directions were issued in 2015.¹⁹

14 While the FJR and Practice Directions, being the big documents they are, appear to usher in a completely new system which might altogether be different from what existed previously, the present author suggests that they should be read to pursue two core objectives, at least, within divorce proceedings. The two core objectives are by no means new to the conduct of divorce proceedings in Singapore. Seen from this perspective, the massive FJR and Practice Directions only pursue these core objectives more explicitly than before.

17 See s 74 of the Family Justice Act 2014 (Act 27 of 2014) and s 34(5) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed).

18 S 813/2014. The Family Justice Rules 2014 (“FJR”) replaces the former Women’s Charter (Matrimonial Proceedings) Rules (Cap 353, R 4, 2006 Rev Ed). The latter can be traced all the way back to The Matrimonial Proceedings Rules (S 232/81), promulgated in 1981 that only catered to divorce procedure replacing the Divorce Procedure Rules 1950. Even by the 2006 edition, there were only 67 rules. In comparison, the FJR numbers 999 in total (although, in fairness, 164 of them relate to applications under statutes other than the Women’s Charter) and there are also the hefty Family Justice Court Practice Directions 2015 (“PDs”) which, although technically not subsidiary legislation, are binding on all parties in family proceedings. The present author will not be surprised if the massive PDs and FJR are subjected to review in the near future with the intention of simplifying and shortening them.

19 Family Justice Court Practice Directions 2015 total 170, together with almost 300 court forms.

II. Two complementary core objectives of family justice system of Singapore

15 The present author suggests that two core objectives drive the family justice system within divorce litigation in Singapore. The plethora of FJR and Practice Directions pursue these core objectives. The remarkable point the author suggests below is that these core objectives within divorce litigation can be traced to substantive family law. The discussion will try to demonstrate why we are, then, able to claim a seamless synergy of law and divorce procedure in Singapore such as may well be unique among comparable legal systems.

16 The first core objective relates to the manner by which divorce proceedings are resolved. After the more family-friendly techniques of mediation and negotiation still do not result in settlement, divorce proceedings in court should be disposed of in a “just, expeditious and economical” manner.

17 The second core objective is that the resolution of divorce proceedings should not undermine the continued well-being of the child of the marriage. Instead, the well-being of a child of the marriage should continue to be protected throughout the process of terminating the marital relationship and, indeed, even beyond this. The child is usually not a party to the proceedings between the parents but, of course, he is as deeply affected by the family dispute and its outcome.

18 The core objectives operate together. Although the second core objective is more directly concerned with the well-being of the child (which this Special Issue of the journal focuses upon), the child’s well-being is just as much served by the just, expeditious and economical disposal of his parents’ dispute. The protracted resolution of the dispute will likely turn acrimonious. The parties’ child cannot but suffer in that event as the parents will require a Herculean effort before they can co-operate in their continued parenting if they have become acrimonious towards each other. This article thus proceeds upon the premise that both core objectives of the family justice system in Singapore require to be pursued if the well-being of the child is to be assured through and beyond his parents’ divorce.

A. *Just expeditious and economical disposal of divorce proceedings*

19 The “just, expeditious and economical” disposal of divorce proceedings will hopefully follow from the procedural rules that anyone who practises in the Family Justice Courts are bound by. These rules

bring together what has been found to work and they target the fair but quick and cheap resolution of the dispute.

20 Parties are encouraged to use all forms of alternatives to litigation including mediation, negotiation and collaborative family practice. Social science expertise, including counselling, are readily available before and during the pursuit of divorce proceedings in court. The Family Justice Courts may direct parties to attend mediation and/or counselling or, more generally, encourage parties to resolve their dispute amicably.²⁰ Information from and between the parties should be made readily available. There are enhanced powers of discovery of relevant information and inspection of documents should any of this not be readily forthcoming by either party.²¹ Court forms are designed to be in simpler English and they are readily accessible.²² Affidavit of facts submitted by parties are directed to be limited in length so that only what is truly relevant is proffered.²³ There are separate tracks for resolving divorce proceedings including a simplified track that is appropriate where the application is uncontested and possibly where ancillary matters are agreed upon. Pre-trial status conferences facilitate agreement on issues to limit the scope of the parties' dispute. Even for matters in dispute, there is expected to be greater resort to hearings that are more simply conducted in the judge's chambers.²⁴

21 It is discussed below that these mechanisms were in place already, whether in the same or a simpler form, when the FJA 2014 was enacted.²⁵

B. Assuring continued well-being of child of marriage

22 Where the divorcing couple have a child or children, understood in Singapore as the child under the age of 21 years,²⁶ the

20 See Pt V of the Family Justice Court Practice Directions 2015.

21 See Pt 5, Div 2 and especially rr 62–77 of the Family Justice Rules 2014 (S 813/2014).

22 All court forms are appended to the Family Justice Court Practice Directions 2015.

23 See Pt XIII of the Family Justice Court Practice Directions 2015 – titled, “General Procedure” – in particular its s 149, titled, “Limits on the Size and Number of Documents Submitted Using the Electronic Filing Service”.

24 When the dispute becomes litigation in court, see Pt 3 of the Family Justice Rules 2014 (S 813/2014), titled, “Judge-Led Approach in Resolving Family Disputes” and r 83, titled, “Simplified Uncontested Divorce Proceedings”.

25 See paras 75–88 below.

26 See the Women's Charter (Cap 353, 2009 Rev Ed), as amended Acts 15 of 2010, 2 of 2011, 25 of 2012, 27 of 2014 and 7 of 2016, where s 122 defines “child” in relation to divorce litigation as “a child of the marriage as defined in section 92 but who is below the age of 21 years”. Section 92 defines “child of the marriage” by reference to relationship rather than age in this way: “[it] means any child of the

(cont'd on the next page)

resolution of the family proceedings must continue to protect the child's well-being. Family justice requires procedural rules that more directly assure preservation of the child's well-being during divorce proceedings.

23 While the FJR appear to have created a new position, called a "child representative",²⁷ to perform a fairly long list of responsibilities²⁸ "as far as possible and to the best of the child representative's ability" including "provide the child with the opportunity to express the child's views on the matters in the action or proceedings", "bring to the Court's attention matters which are relevant to advancing the interests of the child" and "ensure that the child has the opportunity to be advised about significant developments in the action or proceedings", it will be discussed below that this is, in truth, an extension of an innovation introduced by the Family Court some years earlier.²⁹

24 Similarly, while a judge of the Family Justice Courts expressly relies on the expertise of social science professionals in order to make better decisions that will protect the child of the marriage, it will be discussed below that such reliance has long been placed by the judge of the Family Court to great effect.³⁰

C. *Amalgamation of requirements of substantive law and innovations of Family Court since 1995*

25 The enactment of the FJA together with the accompanying FJR and Practice Directions undoubtedly highlight how family proceedings in Singapore, and divorce litigation in particular, are resolved with as much goodwill as may be possible so that divorced spouses can continue to co-operatively parent their children. Deeper analysis, however, reveals that this state of affairs is only further development and enhancement of the requirements of the Women's Charter enacted in 1961³¹ and innovations since the establishment of the Family Court in 1995. Substantive and procedural family law in Singapore from 1961 onwards have been building up to the current state of affairs.

husband and wife, and includes any adopted child and any other child (whether or not a child of the husband or of the wife) who was a member of the family of the husband and wife at the time when they ceased to live together or at the time immediately preceding the institution of the proceedings".

27 See r 30 of the Family Justice Rules 2014 (S 813/2014).

28 Rule 31(2) lists, as the child representative's responsibilities (in rr 31(2)(a)–31(2)(j)), r 31(3) on what the child representative "must inform the Court" and r 31(4) on what the child representative "may" choose to do.

29 See para 92 below.

30 See paras 75–82 below.

31 Women's Charter 1961 (Ordinance 18 of 1961).

26 Indeed, the substantive foundation of the core objectives of the family justice system may be seen to flow from provisions in the original Women's Charter 1961.³² The family justice system in Singapore is grounded in substantive legal demands. This is distinctive as few other common law jurisdictions can claim equivalent legal demands, as discussed below.³³ Being grounded as it is, the family justice system in Singapore is distinctively organic. It was not a set of procedural imperatives grafted upon substantive law as may be the case in other common law jurisdictions. This unique feature of the family law in Singapore bears notice.

III. Substantive foundation of core objectives since 1961

27 The author traces Singapore's commitment to family justice way back to the very enactment of the Women's Charter, the major repository of family law in Singapore, in 1961. The foundation of the two core objectives deduced above were planted in the Women's Charter, as Ordinance 18 of 1961, by the Legislative Assembly of the State of Singapore.

A. *Enactment of Women's Charter closely allied with political independence*

28 Singapore was not yet an independent Republic then³⁴ but the Colonial Office in London saw it fit to allow local elections to the Legislative Assembly from 1959.

29 In its manifesto seeking to be elected to the Legislative Assembly in 1959, the People's Action Party promised to improve the family law of the time applying to the non-Muslim portion of the population as well as to raise the status of women and, in particular, married women.³⁵

30 The non-Muslim family law in Singapore by the late 1950s was a fairly complicated mix of Chinese customary marriage law,³⁶ Hindu

32 Ordinance 18 of 1961.

33 See paras 33–37 and 53–60 below.

34 The Republic of Singapore was formed on 9 August 1965 upon Singapore's withdrawal from the Federation of Malaysia that it joined in 1963.

35 For an introduction, see Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 38–44.

36 For an introduction, see Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 87–112.

religious marriage law and its variants,³⁷ Jewish marriage law³⁸ and the common law marriage law³⁹ as well as the two marriage statutes enacted when Singapore was part of the Straits Settlements,⁴⁰ viz, the Christian Marriage Ordinance⁴¹ and the Civil Marriage Ordinance.⁴² The administrative history of Singapore of particular relevance to the development of its family law and the way the variety of marriage laws came into being have been traced before.⁴³

31 The present author has observed:⁴⁴

It was incongruous to have different marriage laws for the various ethnic and religious communities of non-Muslim persons within the small territory of Singapore. There was further dissatisfaction in these communities with the compromise principles that were passed off as local marriage laws, in particular, the Chinese community was unhappy with the local Chinese customary marriage law. The Peoples' Action Party that stood for local elections identified family law as ripe for legislative review. The party was victorious in the election and, soon after the convening of the first local legislature, the Women's Charter Bill was presented for its first reading.

The enactment of the Women's Charter as the State of Singapore Ordinance 18 of 1961 changed legal regulation of marriage and family life of non-Muslim Singaporeans. Muslim Singaporeans and the Muslim law were not included in the review leading to the law that now regulates all non-Muslim Singaporeans. The Women's Charter is the common marriage and family statute for non-Muslim Singaporeans. The statute integrated the laws regulating the husband-wife relationship, the parent-child relationship and economic aspects of family life with the law on formation of marriage.

37 Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 112–124.

38 Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 124–126.

39 Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 126–130.

40 Singapore was founded by the British East India Company for the British Crown in 1819. In 1825, the authorities in London permitted the company to annex Singapore and the neighbouring state of Malacca with Penang (or, the Prince of Wales Island as it was called then) to form the Straits Settlements. The Straits Settlements had a common administrative and judicial system.

41 Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 138–147.

42 Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 147–148.

43 Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997), detailing the administrative history at pp 2–4 and the process by which customs and religious rules followed by the local inhabitants became raised to law at pp 69–86.

44 See Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at p 717.

32 It was remarkable that the major statute regulating marriage and family law of the non-Muslim population of Singapore is so closely allied with the country's political nascence. There may be no other family law in any part of the world that possesses such connection with its people's increasing political awareness and demand for self-determination.

B. Section 46(1) of Women's Charter

33 Even more remarkable, however, was the inclusion of the current s 46(1), then as s 45, in the original Women's Charter. Section 46(1) has not changed in any material manner from the enactment in 1961 and today continues to provide:

Upon the solemnization of marriage, the husband and the wife shall be mutually bound to co-operate with each other in safeguarding the interests of the union and in caring and providing for the children.

34 Section 46(1) makes two demands but does not provide for any sanction if the demands are not fully complied with. In the positivistic style of legislative draughtsmanship that has been dominant in common law jurisdictions, such legal demand without sanction for breach would not find any place in legislation. The Minister⁴⁵ who moved the Women's Charter Bill in the Legislative Assembly informed the assembly members that the draughtsman of the Women's Charter was inspired by Art 159 of the Swiss Civil Code 1907 on "[rights] and duties of both parties [to marriage]"⁴⁶.

35 Article 159 of the then Swiss Civil Code, unofficially translated,⁴⁷ provided:

By the marriage both parties are bound in marital community.

They bind themselves, on either side, to preserve the weal of the common relationship, in harmonious working together, and to care for their children in common. They owe to each other fidelity and assistance.

45 Mr K M Byrne, the Minister of Labour and Law.

46 See *State of Singapore Legislative Assembly Debates, Official Report* (6 April 1960) vol 12(1) at col 485.

47 Swiss laws, at the time of the present author's research, appeared only in their three official languages, viz, German, French and Italian. Unofficial translations were gathered from *The Swiss Civil Code of December 10, 1907* (Robert P Shick trans) (Hyperion Press, Reprint 1980) – originally published by the Boston Book Company in 1915 – annotated by Charles Wetherill and corrected and revised by the drafter of the Code, Professor Eugen Huber of the University of Berne, as well as by Alfred Siegwart and Gordon E Sherman.

36 The present author's research revealed that the draughtsman of the Swiss Civil Code intended by the article to add a moral dimension to legal regulation of the marital relationship.⁴⁸ We owe a debt of gratitude to the brilliant draughtsmen, of the Swiss Civil Code and of the original Women's Charter.

37 The two demands of s 46(1) of the Women's Charter that has been a part of the substantive family law of Singapore since 1961 provide the substantive bases for two core objectives of the family justice system deduced above.

C. Demand of spouses to regard marriage as their equal co-operative efforts for mutual benefit

38 The first demand is made of the married couple of how to conceive of their marital relationship. Section 46(1) of the Women's Charter demands that each regard the relationship as "an equal co-operative partnership of their different efforts for their mutual benefit". There is no sanction provided if this legal demand is breached.⁴⁹ There is, unsurprisingly, no equivalent legal demand in other common law jurisdictions.⁵⁰

48 See Leong Wai Kum, "Fifty Years and More of the Women's Charter of Singapore" [2008] SingJLS 1 at 12–14. Eugen Huber had noted in his commentary, in German, "[the] matrimonial union has moral and legal content. It appears desirable to state the moral effects in the law, at least inasmuch as the violations affect the marriage and may possibly provide grounds for divorce": at 13.

49 See Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 355–357.

50 *Cretney's Principles of Family Law* (Judith Masson, Rebecca Bailey-Harris & Rebecca Probert eds) (Sweet & Maxwell, 8th Ed, 2008) on "[the] legal consequences of marriage and civil partnership" at pp 85–86 laments the absence of general principle of the rights and duties of spouses:

The reader ... might therefore reasonably expect now to be told what those rights and duties are. After all, if one looks at the codified systems of law in force in many of the other countries of the European Union, one finds statements (albeit often cast in rather general terms) about the rights and duties of couples who have formalised their relationship ... This chapter should surely contain the English counterpart. It has to be admitted at once that ... no such comprehensive statement is to be found ... [One] might well describe English family law as ... moving directly from the formation of marriage to divorce or death, pausing only to give the parties the right to apply to the court for protection from violence.

This book has discontinued and is largely replaced by *Cretney and Probert's Family Law* (Sweet & Maxwell, 9th Ed, 2015), where no chapter is devoted to the law regulating spouses. The writers, in ch 1, "Introduction: The Family and the Law", observed, at p 5, "[for] the most part, family law rarely directly prescribes how family members should behave towards one another. The law's views of the obligations that family members owe to one another generally manifests itself through the way in which breaches of these obligations are dealt with". Indeed

(cont'd on the next page)

39 The legal demand is, to an extent, aspirational. It demands the spouses aspire towards this ideal, but it will not directly punish any failure to meet the ideal. A spouse should always act in reasonable consideration of the other with full respect for their partnership but will not be punished in any specific way should he fail.

40 Instead of being meaningless because it lacks sanction, the present author believes that this legal demand is the only form of law that can possibly “regulate” the spouses in their behaviour towards one another at all points during their marital relationship. Legal regulation of the long-running, delicate and intimate relationship between spouses can only take the form of a provision such as s 46(1) of the Women’s Charter. Such legal demand is inspired law.⁵¹

41 That marriage, to the spouses, is an equal co-operative partnership of different efforts for mutual benefit is critical to appreciating the practical legal effects of marriage. This can be seen very clearly of the power bestowed upon the courts,⁵² upon pronouncing divorce, to divide the matrimonial assets between the soon-to-be former spouses in just and equitable proportions. The Court of Appeal in Singapore in *NK v NL*⁵³ clearly appreciated the connection between the purpose of its exercise of the power and the character of the spouses’ marriage when Andrew Phang Boon Leong JA observed thus:⁵⁴

It is important to emphasise once again that, ultimately, the division of matrimonial assets is not simply a numbers game. The social policy underscored by the division of matrimonial assets, the joint product of a marital partnership, is just as important as the final award. The language of a power to ‘divide’ says to the whole society that the law acknowledges the equally important contributions of the homemaker to the partnership of marriage and its acquisition of wealth. It would be unfortunate if the process of division perpetuated an impression of

another major textbook, Jonathan Herring, *Family Law* (Pearson, 8th Ed, 2017), does not contain a chapter on the law regulating spouses. Herring observed in ch 1, “What is family law?”, that there has been a “decline in ‘moral judgments’” of which there are supporters and detractors and that opinion is equally divided over whether we should be “sending messages through the law”.

51 See Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 356–357 and, most recently elaborated in Leong Wai Kum, “Moral Messaging in Law towards Harmonious Living” in *Reforming Hong Kong’s Child and Family Justice System* (Anne Scully-Hill, Sala Sihombing & Katherine Lynch eds) (The Chinese University Press, 2016) at pp 363–385.

52 See s 112 of the Women’s Charter (Cap 353, 2009 Rev Ed).

53 [2007] 3 SLR(R) 743.

54 See *NK v NL* [2007] 3 SLR(R) 743 at [40]. In *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 at [21], Andrew Phang Boon Leong JA referred to his Honour’s 2007 decision and even related his judicial characterisation of marriage as “an equal co-operative partnership of efforts for mutual benefit” to s 46(1) of the Women’s Charter (Cap 353, 2009 Rev Ed).

simply 'dividing the spoils' of the economically more advantaged party. The entire process must involve a mutual respect for spousal contributions, whether in the economic or homemaking spheres, as both roles are equally fundamental to the well-being of the marital partnership.

42 If there is any doubt of the value of a legal demand of both spouses of how each should behave towards the other, despite the lack of a direct sanction for breach, the decision of the Court of Appeal in *AOO v AON*⁵⁵ should put this to rest.

43 In January 2009, the husband confronted his wife with photographic evidence of her adultery. He expressed his unequivocal desire to terminate their marriage. Eight days after so confronting his wife, his solicitors passed to her a copy of a deed that purported to evince the spouses' intentions with regard to maintenance, division of matrimonial assets and custody of their teenaged children. By this deed, the husband would have sole custody of the children with reasonable access to the wife, their matrimonial home would be transferred to the husband without any refund of the amounts that had been paid out from the wife's Central Provident Fund account and the wife would provide for herself and waive her right to seek maintenance. The wife signed the deed on 12 February 2009 as did the husband on 16 February 2009. The husband commenced divorce proceedings the very next day. The proceedings were undefended and proceeded on an uncontested basis leading to an interim judgment of divorce on 5 May 2009 that was granted in the wife's absence as she had not attended any part of the divorce hearing.

44 The husband's application for ancillary orders were next processed. The first pre-trial conference was adjourned on 28 May 2009 due to the wife's absence. Thereafter, despite the wife being notified of their respective dates and timings, three further pre-trial conferences were adjourned due to the wife's absence. The hearing was eventually set for 7 October 2009. The wife did not appear. Phang JA, in the subsequent Court of Appeal hearing, observed:⁵⁶

What is clear from the facts is that, firstly, the wife made no appearances (whether in person or through a legal representative) in the ancillary proceedings despite having been accorded multiple opportunities to do so and, secondly, the ancillary order [made by the Family Court] tracked the provisions of the deed.

55 [2011] 4 SLR 1169.

56 *AOO v AON* [2011] 4 SLR 1169 at [4].

45 Finally, five months after the award of the ancillary order and four months after the award of the final judgment of divorce, on 8 March 2010, the wife filed her application. She sought to set aside the interim and final judgment of divorce as well as the ancillary order that closely followed the terms of the deed she had signed. At the hearing before the Family Court, she sought only to set aside the ancillary order. The Family Court granted her application. On the husband's appeal, the High Court below reinstated the ancillary order on the basis that it was a consent order since it closely followed the spouses' deed that was executed just before the divorce proceedings began.

46 On the wife's further appeal, the Court of Appeal demonstrated great sympathy for the wife by allowing her appeal and setting the ancillary order aside. In effect, the wife will now, so many months after failing to protect her own interests, still be able to defend her interests with respect to her entitlement of a just and equitable division of their matrimonial assets, her maintenance and the best living arrangements possible of their children. A vital step in the Court of Appeal's reasoning towards these conclusions was the judges' acceptance of the view of the District Judge of first instance regarding the husband's conduct leading to the spouses' execution of their deed. As Phang JA observed:⁵⁷

Although the wife had not appeared before the court as required on a number of occasions, we bear in mind the fact that she was not legally represented then. More importantly, as the District Judge pertinently pointed out, the husband 'sought to have the terms of the [deed] agreed upon immediately after confronting [the wife with photographic evidence of her adultery]' and that the husband 'clearly acted on her sense of guilt'. Indeed, in her brief reasons for her decision, the District Judge again reiterated that '[it] seems to me that the [husband] was capitalizing on the [wife's] sense of guilt'. This is clearly borne out by the relevant facts as well as context as [we] set out ...

47 This decision well illustrates the current⁵⁸ "kinder judicial treatment of a spouse who committed adultery". The kinder treatment was supported by the legal demand of both spouses in s 46(1) of the Women's Charter, although the provision was not cited:⁵⁹

[Even] an adulterous wife should be better treated by her husband. The current family law in Singapore demands no less of the husband, even, towards a wife who may herself have failed to safeguard the well-being of their marital partnership.

57 *AOO v AON* [2011] 4 SLR 1169 at [26].

58 See Leong Wai Kum, "Towards the Elimination of Prescriptive Sexual Regulation in Family Law in Singapore" (2016) 46(1) HKLJ 131 at 140.

59 Leong Wai Kum, "Towards the Elimination of Prescriptive Sexual Regulation in Family Law in Singapore" (2016) 46(1) HKLJ 131 at 140.

48 In not providing that the adulterous wife and her unkind husband should be sanctioned in any particular way for their respective failures to meet this legal demand, s 46(1) of the Women's Charter provided the Court of Appeal the opportunity to calibrate its response to these spouses. While not overlooking the wife's adultery, the court's decision also castigated the husband who responded to his wife in the less-than-reasonable way that he did. Her unreasonable behaviour in committing adultery did not excuse his unreasonable response.

49 It may more boldly be commented that s 46 of the Women's Charter in not providing a specific sanction for breach is, far from being a problem, actually the most appropriate form of law. The law makes the demand of the spouses and leaves it to the court, should the matter come before the court, to respond in the most appropriate way given the circumstances that present themselves then.

D. Effect of legal demand of spouses as adversaries in court

50 The effect of the demand by s 46(1) of the Women's Charter, upon the spouses, is that whether they are happily married or engaged in divorce proceedings, each spouse must continue to act with some respect for the other. It follows from this that spouses should be "less adversarial" as "opposing" parties in divorce proceedings.⁶⁰ Even if no specific sanction for breach is provided for, the legal demand is that a modicum of consideration must be extended by each spouse towards the other during the conduct of their dispute in court.

51 The demand in s 46(1) of the Women's Charter, therefore, provides the substantive basis for the procedural requirements within the FJR and Practice Directions that support the "just, expeditious and economical" disposal of divorce proceedings in the Family Justice Courts.

52 Without going into the details, the FJR and Practice Directions provide for:

- (a) a degree of judicial activism by the "judge-led approach" in the conduct of the proceedings;⁶¹

60 Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 389–390.

61 See Pt III of the Family Justice Court Practice Directions 2015, titled, "Judge-Led Approach in Resolving Family Disputes", elaborated in Pt 3 of the Family Justice Rules 2014 (S 813/2014) and *TIG v TIH* [2016] 1 SLR 1218.

(b) the use of differentiated tracks of case management for optimising speed and for the ease of the parties;⁶² and

(c) the optimal use of the social science resources and alternative means of dispute resolution including the court being empowered to order mandatory counselling and mediation.⁶³

E. Legal demand of spouses as parents towards their child

53 The second demand within s 46(1) of the Women's Charter is of parents in their parenting of their child.

54 Section 46(1) of the Women's Charter demands that the parents co-operate with one another as best as they are able to and always act in pursuit of the well-being of their child.⁶⁴

55 While, literally, this demand is only made of married parents, it can readily be extended beyond married parents. The present author has suggested that the same legal demand is made of all parents, including divorcing and, indeed, divorced parents.⁶⁵

(1) Supplementation by section 3 of Guardianship of Infants Act⁶⁶

56 It is also of note that, while the second demand in s 46(1) of the Women's Charter similarly lacks sanction for breach, this is made up by

62 See Pt IV of the Family Justice Court Practice Directions 2015 on proceedings for the dissolution of marriage under Pt X of the Women's Charter (Cap 353, 2009 Rev Ed), elaborated in rr 81 and 83 of the Family Justice Rules 2014 (S 813/2014) (on "[mode] of trial" and "[simplified] uncontested divorce proceedings" respectively).

63 See Pt V of the Family Justice Court Practice Directions 2015 on alternate dispute resolution. The Family Justice Rules 2014 (S 813/2014) and Practice Directions are not innovations in themselves. It will be discussed in paras 75–88 below that there had earlier been developments towards them from the time of the establishment of the Family Court.

64 See Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 444–445.

65 See Leong Wai Kum, "Restatement of the Law of Guardianship and Custody in Singapore" [1999] SingJLS 432 at 481–483, drawing upon Yong Pung How CJ's observation in *Lim Chin Huat Francis v Lim Kok Chye Ivan* [1999] 2 SLR(R) 392 at [91] and elaboration in Leong Wai Kum, "Parental Responsibility as the Core Principle in Legal Regulation of the Parent–Child Relationship" in *SAL Conference 2011: Developments in Singapore Law between 2006 and 2010 – Trends and Perspectives* (Yeo Tiong Min, Hans Tjio & Tang Hang Wu gen eds) (Academy Publishing, 2011) at pp 244–271, paras 2–5.

66 Cap 122, 1985 Rev Ed.

another statutory provision. The Guardianship of Infants Act (“GoIA”) has, since 1965,⁶⁷ in s 3 directed of all courts that:

Where in any proceedings before any court the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income thereof is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration ...

57 The effect of s 3 of the GoIA has been observed by the present author thus:⁶⁸

Every court deciding every issue [relating to the upbringing of a child] must apply the directive to give first and paramount consideration to what serves the welfare of the child. This directive, therefore, has the potential of subjecting every instance of parental conduct towards the child by this standard. An exertion of authority by the parent must necessarily be consonant with the parent’s pursuit of the welfare of the child. By this statutory directive, then, the exhortation to parents in the Women’s Charter section 46(1) is more powerful than its literal reading, as lacking legal sanction, suggests.

(2) *Expression of parental responsibility by section 46(1) of Women’s Charter optimal*

58 While a statutory provision on parental responsibility, since the extremely successful UN-sponsored Convention on the Rights of the Child in 1989,⁶⁹ may be found among all common law jurisdictions, it is still noteworthy that Singapore had enacted it as early as 1961. England enacted its equivalent only in the UK Children Act 1989⁷⁰ and Australia added it to their Family Law Act 1975⁷¹ only in 1995.⁷² From the perspective of time, Singapore had a head start of some three decades in

67 By an addition under Guardianship of Infants (Amendment) Act 1965 (Act 17 of 1965). It is of note that 1965 is four years after the enactment of the Women’s Charter 1961 with its s 46(1), then s 45(1).

68 Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at p 237; see also *AZB v AZC* [2016] SGHCF 1 at [1] and [2] and *AZZ v BAA* [2016] SGHC 44 at [28].

69 Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3. The Convention (also known as “UNCRC”) may be traced to the efforts of child’s rights activists who advocated, among other things, that a child is entitled to being respected as a whole “being” and not only as something that is “becoming” a person. It stands to reason that the fundamental right of a child is to have his parents discharge parental responsibility they owe him. A core commitment from governments, by the UNCRC, is to amend their laws where necessary to impose parental responsibility as law.

70 c 41; see s 2 on “[parental] responsibility for children”.

71 Cth.

72 See the (Australia) Family Law Reform Act 1995 and ss 60 and 61 of the Family Law Act 1975 (Cth).

developing upon the idea of parental responsibility and its implications on legal regulation of parenting.

59 More importantly, the substance of the demand in s 46(1) of the Women's Charter is clearer. The provision demands that all parents, whatever the circumstances of the child's birth, should discharge parental responsibility to their child. In contrast, the present author suggests that the provision in s 2 of the UK Children Act is worded more like a status bestowed upon a favoured parent.⁷³ By this provision, a mother is always favoured as is a married father. An unmarried father, however, possesses parental responsibility only by agreement with the mother or by order of court.

60 It is only when the statutory provision of parental responsibility takes the form of a demand made of parents, such as s 46(1) of the Women's Charter, that it provides substantive basis for the procedural demands of divorcing parents not to sacrifice the well-being of their child. The present author suggests that the form assumed by the UK Children Act is not as useful in lacking substantive content.

F. Effect of legal demand of parental responsibility within divorce proceedings

61 The legal demand of parents applies at all times during the minority of their child. During the course of divorce proceedings and after its conclusion, therefore, the parents as parties to the proceedings must continue to keep the well-being of their child in mind.⁷⁴

62 The effect of the demand of parents by s 46(1) of the Women's Charter is that, as each parent pursues his personal interests within the divorce proceedings, each continues to have to co-operate with the other for the continued well-being of their child. Their marriage may end but

73 See Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 356–357 and, most recently elaborated in Leong Wai Kum, "Moral Messaging in Law towards Harmonious Living" in *Reforming Hong Kong's Child and Family Justice System* (Anne Scully-Hill, Sala Sihombing & Katherine Lynch eds) (The Chinese University Press, 2016) at p 372; see also, *eg*, *Responsible Parents & Parental Responsibility* (Rebecca Probert, Stephen Gilmore & Jonathan Herring eds) (Hart Publishing, 2009) at p 1, lamenting, "while much has been written on the theoretical nature of parental responsibility, relatively little is known (or has been written) about the content of the specific rights and duties that it comprises".

74 See Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 356–357 and, most recently elaborated in Leong Wai Kum, "Moral Messaging in Law towards Harmonious Living" in *Reforming Hong Kong's Child and Family Justice System* (Anne Scully-Hill, Sala Sihombing & Katherine Lynch eds) (The Chinese University Press, 2016) at pp 364–365.

their parenthood is interminable. So too their responsibility towards their child does not terminate.

63 The present author suggests that parental responsibility as a substantive demand of the law in Singapore operates rather effectively to ensure that the well-being of the child is not ignored or overtly manipulated by either parent during family proceedings. The legal demand empowers the courts to respond effectively to curb any wrongdoing so that the well-being of the child is preserved. The courts have regularly used the provision to remind parents of their continued responsibility towards their child through the deterioration of their own marital relationship and beyond.⁷⁵

(1) *Mechanisms before and during divorce proceedings*

64 In Singapore, the legal demand of all parents to continue to act responsibly towards their child while pursuing their personal interests in divorce proceedings provides substantive basis for the procedural rules that empower the judge to “enforce” responsible parenting. Among the powers may be cited the following:

- (a) The court may appoint a child representative.⁷⁶
- (b) The court may give directions on the proper examination of children.⁷⁷
- (c) The judge may hold back the final judgment of divorce that irrevocably terminates the marital relationship until all arrangements have been made for the welfare of children of the marriage.⁷⁸

Among the latest reminder of parental responsibility may be cited the Women’s Charter that was amended in 2016⁷⁹ to add a new s 94A to provide that no parent may file a writ seeking a judgment of divorce or file a counterclaim in such proceedings unless he has completed

75 Illustrations are provided in Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 356–357 and, most recently elaborated in Leong Wai Kum, “Moral Messaging in Law towards Harmonious Living” in *Reforming Hong Kong’s Child and Family Justice System* (Anne Scully-Hill, Sala Sihombing & Katherine Lynch eds) (The Chinese University Press, 2016) at pp 373–378.

76 See Pt IV of the Family Justice Court Practice Directions 2015, titled, “Processes Relating to Children”, elaborated in rr 30–34 of the Family Justice Rules 2014 (S 813/2014) on child representatives.

77 See Pt IV, PD 9 of the Family Justice Court Practice Directions 2015 and elaboration in rr 35 and 36 of the Family Justice Rules 2014 (S 813/2014).

78 See Pt IV, PD 10 of the Family Justice Court Practice Directions 2015.

79 See the Women’s Charter (Amendment) Act 2016 (Act 7 of 2016).

a “parenting programme” within a specified time. Subsidiary legislation⁸⁰ defines the parents liable to this requirement as anyone who has a child below 21 years of age and who has not reached agreement with the other party to the proceedings on a number of matters such as maintenance, division of matrimonial assets, the living arrangements of their child and how the resident parent should continue to have regular contact with the child. The same subsidiary legislation requires the parents liable to the requirement to have completed such parenting programme within the past two years. Section 94A envisages that the Minister-in-charge will determine the form, contents and duration of the parenting programme and that the programme “provides information on matters relating to marriage, divorce and how divorce may affect a child of a marriage”. Parenting programmes are currently run by Divorce Support Specialist Agencies (“DSSAs”).⁸¹

65 The power in the Family Justice Courts to appoint a child representative merits some discussion.⁸²

66 While there has yet to be detailed judicial discussion of the role and responsibilities of the appointed child representative, it is of note the child representative is not the child’s advocate. The child representative should ascertain the views of the child and form a view of what serves the best interests of the child, which the child representative then conveys to the court.

67 The power to appoint such child representative, therefore, continues to fall short of assuring advocacy for the child. It is of note as well that, even in comparable common law jurisdictions that have enacted provisions to provide an advocate for the child’s views, academic commentary suggests that this will take time to become truly infused into court practice.⁸³ There may be a built-in inertia against

80 See the Women’s Charter (Parenting Programme) Rules 2016 (S 565/2016) as amended by Women’s Charter (Parenting Programme) (Amendment) Rules 2018 (S 10/2018).

81 See Ministry of Social and Family Development, “Divorce Support – Overview of DSSAs” <<https://www.msf.gov.sg/Divorce-Support/Divorce-Support/Divorce-Support-Specialist-Agencies/Pages/Overview-of-DSSAs.aspx>> (accessed 20 April 2018).

82 It will be discussed in para 92 below that even this can trace its roots to the “court-appointed counsel” scheme of the Family Court.

83 See, eg, Mark Henaghan, “Why Judges Need to Know and Understand Childhood Studies” in *Law and Childhood Studies* (Michael Freeman ed) (Oxford University Press, 2012) at pp 39–54, where Henaghan reviewed 120 Family Court of New Zealand cases from 2005 to 2010 to reveal a mixed record of hearing the child’s views despite the enactment of the New Zealand Care of Children Act 2004 (2004 No 90) requiring that “a child must be given reasonable opportunities to express *views* on matters affecting the child [and that] any views the child expresses

(*cont’d on the next page*)

appointing a legal representative to advocate for a child in the parents' family proceedings.

68 The instinct to protect a child by not directly involving him as participant in the parents' litigation requires to be gradually assured, with practice and growing confidence, that hearing the child's views of the home environment need not transcend into making the child choose between his parents. Where it is the child's general views of the home environment that are elicited and presented to the judge, these views are acknowledged to contribute to better decision-making.⁸⁴

(2) *Mechanisms post-divorce judgment*

69 The contribution of social science towards enhancing the protection of a child before and during divorce proceedings between his parents has also prompted the introduction of appropriate mechanisms post-divorce judgment. After the divorce proceedings have finally concluded, there are substantive laws as well as procedural mechanisms to assure continuing responsible parental behaviour.

70 Court orders relating to the living arrangements of children, *viz*, care and control, custody and access, have always been reviewable according to the needs of the situation. The increasing trend of marriage across borders has led to the courts forming principles whenever the child-carer seeks approval to permanently relocate where it will be harder for the other parent to exercise access to the child.⁸⁵ Newer laws to regulate parenting include the International Child Abduction Act,⁸⁶

either directly or through a representative must be taken into account". On the other hand, E Kay, M Tisdall and F Morrison have reported a more positive response in Scotland to similar statutory requirements in "Children's Participation in Court Proceedings when Parents Divorce or Separate: Legal Constructions and Lived Experiences" in the same edited readings at pp 156–173. The authors were able to conclude the following:

On the surface of reported case law, there has been a substantial change in the overt recognition of children's views: most children will meet the low threshold of 'practicability' for their views to be considered; their views and the weight of those views are used more explicitly to justify court decisions ...

All this can be seen as a considerable achievement, for those who normatively have argued for children's rights to participation in family law proceedings and elsewhere.

84 See, *eg*, Patrick Parkinson & Judy Cashmore, *The Voice of a Child in Family Law Disputes* (Oxford University Press, 2008) at pp 189–219, which suggested what measures will make "[towards] a more responsive legal system" concluding "[the] way forward is to abandon the idea that children's best interests can be served by protection from participation, and to find ways of protecting them in participation".

85 See, *eg*, *BNS v BNT* [2015] 3 SLR 973.

86 Cap 143C, 2011 Rev Ed.

which implements Singapore's accession to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.⁸⁷ There is a proposal to commit, as well, to the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.⁸⁸

71 Apart from substantive law, at end-2016, the Family Justice Courts adopted the mechanism popularised in the US where the judge may appoint a "Parenting Coordinator". As explained in the inaugural *Judiciary Times*:⁸⁹

Parents in a high-conflict divorce ... need ... a skilled professional ... to resolve parenting and access disagreements without resorting to the Courts. The Parenting Coordination scheme was therefore designed to ... incorporate perspectives, practices, and skill sets from the legal, mental health, mediation, and education fields ... The Parenting Coordinator (PC) is essentially an educator, a facilitator, a coach, and a mediator all rolled into one. They teach parents joint parenting and its benefits, help parents communicate better, encourage the father and the mother, find ways of helping them be self-sufficient and proactive, and try to resolve parental disputes or disagreements through consensus.

72 Legislation on parenting co-ordination is envisaged after lessons are learnt from the pilot project. There are, as of May 2017, 24 lawyers involved in parenting co-ordination. It may be expected that this number will increase and professionals from related disciplines may join the scheme.

73 Apart from the Mandatory Parenting Programme that a parent, with a child below 21 years old, must complete before the divorce proceedings, the DSSAs run several programmes and courses to assist both parents and children after the divorce is completed.⁹⁰ They include "Parenting PACT", "Children in Between", "Supervised Exchange and Visitation Programme" and "Counselling and Support Programmes". These services aim to help the divorced parents – whom the law demands must still be co-operative with each other – adjust to parenting

87 Concluded 25 October 1980.

88 Concluded 19 October 1996; see also Singapore Academy of Law, Law Reform Committee, *Report on the 1996 Hague Convention on the Protection of Children* (August 2017).

89 See "Effective Co-Parenting for Parents in Conflict" in *Judiciary Times* (May 2017) at p 10.

90 See Ministry of Social and Family Development, "Divorce Support – DSSA Programmes" <<https://www.msfc.gov.sg/Divorce-Support/Divorce-Support/Divorce-Support-Specialist-Agencies/Pages/DSSA-Programmes.aspx>> (accessed 20 April 2018).

after divorce. Helping the divorced parents make the appropriate adjustment can only benefit their child. The DSSAs will hopefully help remove any remaining acrimony between the divorced parents so that ancillary orders made at divorce may, over time, be reviewed to increase the degree of practical co-parenting by divorced parents. The ideal, of course, is for divorced parents to co-operate in parenting in the same way they did while they were happily married.

IV. Developments towards family justice from Family Court since 1995

74 There had already been statutory provisions enacted as well as innovations in procedure emanating from the Family Court since its establishment in 1995. What now appears explicitly in the FJR and the Practice Directions had their beginnings in these developments.

A. *Statutory provisions on use of social science expertise and mediation since 1996*

75 The Women's Charter was amended in 1996⁹¹ to empower the judge to refer spouses who are in the process of becoming divorced to accept the assistance of social science experts who can counsel them or help them to mediate their dispute so it is resolved as amicably as possible.

76 Section 49 empowers the judge to refer the parties to counsellors and envisages that, in the best outcome, the spouses may even be reconciled. Even where this is not possible, the assistance of counsellors will be very helpful for the amicable resolution of their dispute.

77 Section 50 empowers the judge to:

[Give] consideration to the possibility of a harmonious resolution of the matter and for this purpose may, with the consent of the parties, refer the parties for mediation by such person as the parties may agree or, failing such agreement, as the court may appoint.

78 From 2006, the Family Court housed a dedicated mediation unit. From 2009, counselling and psychological services were also provided in-house.

91 Women's Charter (Amendment) Act 1996 (Act 30 of 1996).

79 From 2011,⁹² these powers were extended so that, where appropriate, the court may order counselling for any child of the marriage.

80 From 2011 as well, the court may compulsorily order the parties to attend mediation and counselling sessions where parties have at least one young child.⁹³ Parenting courses and refresher courses have been offered at the Family Court for a long time now.

81 From 2011, the Child Focused Resolution Centre was set up to enhance the Family Court's ability to assure the continued well-being of children of the parties involved in family proceedings. With the establishment of the Family Justice Courts, all these developments became consolidated into the family dispute resolution division.

82 Parallel services were made possible by the provision of volunteer mediators from the mid-2000s. The Family Court has, from 2012 onwards, openly encouraged collaborative family practice where spouses are represented by legal practitioners who agree from the start not to take the dispute into litigation.

B. *Open court hearings had been dispensed with where application is uncontested from 2009*

83 From 2009,⁹⁴ counsel and parties do not have to attend an open court hearing where selected applications for judgment of divorce were not contested by the defendant. These applications included those based on the following facts:

92 See the Women's Charter (Amendment) Act 2011 (Act 2 of 2011).

93 See Kevin Ng & Sim Khadijah Mohammed, "Alternative Dispute Resolution in the Family Justice Courts" in *Law and Practice of Family Law in Singapore* (Foo Siew Fong gen ed) (Sweet & Maxwell, 2016) at paras 17.2.1 and 17.2.2, where the authors acknowledged that:

Over the years, the employment of counselling and mediation in resolving family and matrimonial disputes have become a cornerstone of the FJCs overall case-flow management, so much so that these methods have become an integral part of the family justice process, and not merely adjunct to it. The FJC has, thus, increasingly become a forum to facilitate cooperation and communication between parties, rather than just a place for families to litigate their respective disputes. This paradigm shift in mindset among family law practitioners and parties did not take place overnight. Instead, the shift from the traditional adversarial type of legal culture towards one that is more cooperative, conciliatory, child-focused and child-inclusive was a gradual one. Such a move was achieved through a series of law reforms and initiatives which included procedural and substantive changes to family law and practice.

94 See Practice Direction No 3 of 2009.

- (a) the parties' three years' separation with the other party's consent; or
- (b) the defendant's behaviour such as it is unreasonable to expect the plaintiff to continue to cohabit with him, or one party's two years' desertion or the parties' four years' separation and the defendant is not defending or there is a draft consent order on all or some of the ancillary matters.

The only exclusions are applications alleging adultery by the defendant or where the defendant does not give consent either to the application itself or the ancillary matters. When open court hearings are dispensed with, the application is likely to be resolved with greater speed.

84 This also meant that the idea of differentiated tracks for the processing of applications had begun from 2009 onwards and that the practice has become increasingly more pronounced.

C. Flexibility has long been shown with procedural rules

85 In *Tay Sock Hua v Yeo Lian Hock*,⁹⁵ the wife applied for divorce. The husband did not file an answer to this for several reasons including that negotiations were still continuing, he was hoping for a reconciliation and he might have been confused about his responsibility to file on time. When the time for filing his answer had lapsed, he applied for an extension of time. This application was refused by an earlier High Court so that the wife's application was set down for hearing.

86 At this hearing before the present High Court, the husband again indicated there were reasons to believe the marriage had not broken down and he was still desirous of filing an answer. In the result, K S Rajah JC decided to stand down the hearing and give the husband the opportunity to file his answer so that his arguments could be heard. The importance of hearing his side of the story outweighed the unfairness to the wife of having to wait further before resolution of her application. The judge decided:⁹⁶

The subject matter of the proceedings before Lai Siu Chiu JC was not a divorce [application]. The order refusing leave to file an Answer did not release me from inquiring into the facts of the case. The statutory duty under [s 95] of the Charter requires me 'to inquire into all the facts' ... I had to decide on the evidence whilst paying the greatest respect to the decision of Lai Siu Chiu JC.

95 [1994] 1 SLR(R) 31.

96 *Tay Sock Hua v Yeo Lian Hock* [1994] 1 SLR(R) 31 at [45]–[48].

87 Under classic “adversarial” litigation, the court will not likely be as kind to the husband here, who did not comply assiduously with procedural requirements. The court will feel it necessary to enforce the time limits for filing documents more stringently.

88 This is not to say that the same sequence of events is now common at the Family Justice Courts. There is, today, likely to be greater timely communication from the Family Justice Courts Registry with parties so that a party may not miss any deadline. The point simply is that the current friendlier practices of the Family Justice Courts can be traced to attitudes and approaches demonstrated by the senior judiciary from a couple of decades earlier.

D. Statutory provision from 1967 directs court not to award final judgment until satisfactory arrangements have been made for welfare of child

89 Since 1967,⁹⁷ even before the establishment of the Family Court in 1996, the Women’s Charter had a provision directing thus:⁹⁸

[The] court shall not make final any judgment of divorce or nullity of marriage or grant a judgment of judicial separation¹⁹⁹ unless the court is satisfied as respects every child —

(a) that arrangements have been made for the welfare of the child and that those arrangements are satisfactory or are the best that can be devised in the circumstances; or

(b) that it is impracticable for the party or parties appearing before the court to make any such arrangements.

90 It is, therefore, not new for the court hearing family proceedings to focus on the needs of the child.

E. Family Court demanded “parenting plan” since 1997

91 The Family Court has long required of the plaintiff and defendant in their documents to court to submit an “agreed parenting plan” or at least a “proposed parenting plan”.¹⁰⁰ In this document, the

97 See the Women’s Charter (Amendment) Act 1967 (Act 9 of 1967).

98 Women’s Charter (Cap 353, 2009 Rev Ed) s 123(1).

99 The Statutes (Miscellaneous Amendments) (No 2) Act 2005 (Act 42 of 2005) modernised the language in the provision. In 1967, the judgment of divorce, nullity of marriage or judicial separation was a “decree” and the final judgment was a decree “absolute”.

100 Since the Women’s Charter (Parenting Plan) Rules 1997 (S 214/1997). This was repealed when the requirement became incorporated as r 8 in the Women’s
(cont’d on the next page)

parties spell out what they plan regarding their continued parenting of their child.

F. Family Court’s “court-appointed counsel” and parenting workshops

92 The current child representative scheme is a development from the court-appointed counsel scheme that the Family Court had innovated for “high conflict cases”. The court-appointed counsel scheme pursued these objectives:¹⁰¹

- (a) to promote the views and best interests of the child;
- (b) to serve as a timely reminder to the parents to consider the best interests of their child;
- (c) to give the child the appropriate support through the early introduction of a counsellor, so that he or she may come to terms with his or her parents’ divorce; and
- (d) to enhance the chances for ameliorating the trauma of divorce for all concerned by increasing the possibility of settlement, thereby building lasting parental bonds for the future.

V. Conclusion – From substantive foundation to family justice for child

93 Singapore’s formal commitment to the twin core objectives of family justice within divorce proceedings from 2014 is rooted in its substantive law that existed since 1961. Procedure is synergised with substantive law to powerful effect.

94 This sets the family justice system in Singapore apart from that in comparable common law jurisdictions where the system is not as clearly grounded in substantive provisions of law.¹⁰² The family justice system in Singapore is uniquely organic.

Charter (Matrimonial Proceedings) Rules 2003 (S 167/2003); see also r 45 of the Family Justice Rules 2014 (S 813/2014).

101 See Judge Khoo Oon Soo *et al*, *Practitioners’ Library: Family and Juvenile Court Practice* (LexisNexis, 2008) at p 419.

102 See, *eg*, Jonathan Herring, *Family Law* (Pearson, 8th Ed, 2017) ch 2 on family justice, observing at p 37, “[a] major part of the response to the Family Justice Review was a series of procedural reforms designed to speed up the family justice system”. The learned professor did not relate any of the procedural reforms he discussed with substantive requirements of the family law in England.

95 As family practitioners mull over the latest Practice Directions or FJR in Singapore, they can look to the substantive foundation for the procedural requirements in s 46(1) of the Women’s Charter. The statutory provision will provide the context within which to better understand the procedural rules.

96 Relating the FJR and Practice Directions with the substantive foundation in the Women’s Charter brings several advantages to the family justice system in Singapore. There is substantive ballast. The reasons for the procedural rules become clearer when related with substantive legal demands of spouses (of their conduct with each other) and of parents (of their conduct with their child as well as of the spouses’ conduct with each other inasmuch as this affects their child). There need be no fear that substantive law and the procedural rules are, to any appreciable extent, inconsistent or even disparate of each other. Indeed, they pull in the same direction in seamless synergy.

97 The Women’s Charter of Singapore is a truly remarkable statute. At its enactment in 1961, it was already the repository of the foundation for the family justice system which, as procedural rules and mechanisms to support the goals of substantive family law, comparable common law jurisdictions began pursuing only fairly recently.¹⁰³

98 Singapore will likely move forward confidently along this path. We should remember to look back as we forge ahead.

99 This article has highlighted how the Family Justice Courts, since 2014, have built upon what the Family Court had innovated. There are now initiatives and programmes aimed to remind divorcing and divorced parents of their parental responsibilities. To this extent, the family law in Singapore manifests the reality that divorce only terminates the marital relationship, leaving the relationships between the parents and their child, largely, unaffected.

100 Family law, at the end of the day, remains a work in progress. As we continue to refine the “just, expeditious and economical” path to resolution of family disputes and to emphasise our concern that the “well-being of the child of the marriage” should be preserved at all times, there will also be time to consider improving substantive law affecting a child as well. Should Singapore retain the, largely, obsolete concept of “legitimacy” of selected relationships between parents and

103 See Ministry of Justice, the Department for Education and the Welsh Government, *Family Justice Review: Final Report* (November 2011).

their child?¹⁰⁴ Although the concept of legitimacy is not specific to divorce, its abolition will remove an anomaly. The law in Singapore imposes responsibility upon all parents towards their child, whether married, separated, divorced or never married. That we retain the idea of segregating children into those whose relationship with their parents is considered legitimate from those, unfortunately, whose relationship with their parents is considered illegitimate (although we have removed almost all the legal disadvantages of being illegitimate) is an anomaly. We await this reform.

104 The present author has predicted the abolition of this concept and suggested how this should be achieved, in Leong Wai Kum, “The Next Fifty Years of the Women’s Charter – Ripples of Change” [2011] SingJLS 152 at 156–165.