

**FAMILY LAW CONFERENCE 2021 - BIG QUESTIONS IN A SMALL WORLD:
INTERNATIONAL ISSUES IN SINGAPORE FAMILY PRACTICE**

28 SEPTEMBER 2021 (Day 1)

Closing Address by Mdm Guy Bte Ghazali, Senior President, Syariah Court

Good afternoon distinguished guests, ladies and gentlemen, colleagues from the family justice fraternity.

1. It is my pleasure to give the closing address today.
2. The theme for this year's Family Conference is "Big Questions in a Small World: International Issues in Singapore Family Practice".
3. Some of these "big questions" have been discussed today by the various speakers. I would like to thank the speakers for their very insightful discussions and perspectives. I am sure we all have learnt a lot from the speakers today.
4. Today's speakers have covered a wide variety of issues.
5. We have heard the legal, social, and psychological challenges in relocation situations involving children. This is irrespective of whether the relocation is a subject matter of a formal application before the Court or committed unilaterally without leave of Court or the consent of the other parent. Both scenarios pose their own sets of challenges for the Court to navigate and arrive at an outcome which the Court believes will serve the best interests of the child.
6. Mental capacity issues are also becoming more common. Needless to say, if a litigant is found to be mentally incapacitated, the administration of a case becomes less straightforward. I will elaborate more on this later in the context of a Syariah Court divorce.
7. We have also heard the complexities involving foreign Muslim marriages and the recognition of foreign divorces for Muslim parties. For foreign marriages, the Syariah Court requires the foreign marriage certificate to be properly attested before the Court will accept the document. That deals with the issue of the document itself. Thereafter, the Court must still satisfy itself that the foreign marriage has satisfied all the requirements of a valid Muslim marriage. It is only then that the Court will proceed to deal with the divorce. Until the Court is satisfied that there is a valid marriage on evidence, the Court is unable to deal with the divorce. Because if there is no valid marriage, there is nothing to dissolve.
8. Let me touch now on foreign divorces. What if there is already a foreign divorce and a party nevertheless applies to the Syariah Court for a divorce? This is another interesting area. In what circumstances do we recognise the foreign divorce and accept that there is a valid Muslim divorce? Do we recognise the foreign divorce if it is granted by a foreign civil court instead of a foreign Syariah Court? Would different considerations apply if that particular country does not have an equivalent of a Syariah Court? We acknowledge

that not every country in the world has a Syariah Court. These are the considerations at play when the Court is faced with a foreign divorce and to decide whether the Muslim parties have been divorced or not.

9. Assuming that we accept that there is a valid foreign divorce, does the Singapore Syariah Court deal with the ancillary issues? Have the ancillary issues been dealt with in some manner by the foreign court? The answer would be obvious if the foreign court makes positive orders, for example, for payment of *nafkah iddah* and *mutaah*. However, questions arise where the foreign court makes no order on the ancillary issues notwithstanding that it is in a position to make these orders. That then begs the question as to whether the ancillary issues have been considered and are therefore settled issues; or whether they have not been dealt with at all and it is open for the Singapore Syariah Court to deal with them. Even so, we have seen from the facts of the case of *TMO v TMP* that whilst the Syariah Court may make orders on *nafkah iddah* and *mutaah* where there is a foreign divorce, it does not have the power to make orders on division of matrimonial assets. The issue of division of matrimonial assets for foreign Muslim divorces is heard by the civil courts and not the Syariah Court.
10. Distinguished guests, the speakers for the various sessions today have covered a lot of ground. At first blush, these topics appear to be three distinct subjects that do not overlap. However, this is far from the reality. Most of us – whether as judges or lawyers or other family specialists - would have come across cases where there is more than one of these elements coming together, posing challenging questions for the courts to resolve and presenting the courts with an intricate factual matrix. These areas of law have contributed towards an evolving and increasingly complex family justice system.
11. Let me take this opportunity to share some perspectives from the Syariah Court context. Before that, I would like to take some time to provide an insight on the types of matters that we hear in the Syariah Court.
12. The Syariah Court is the court that deals with Muslim divorces in Singapore. The grounds for divorce as recognised under Muslim law are set out in statute, which is the Administration of Muslim Law Act (AMLA).
13. There are four grounds of divorce under AMLA. One of the grounds for divorce is *talak*, which is pronouncement of divorce by the husband. Even though this is a pronouncement by the husband, this can be a ground for divorce relied on by the husband or the wife to achieve the outcome of a divorce. Other grounds include *taklik* or breach of marital conditions by the husband; *khuluk* or redemption of divorce by payment of a sum of money by the wife to the husband; and *fasakh* which is the dissolution of marriage due to the grounds enumerated in AMLA.
14. When the Court deals with the divorce, the Court also deals with the ancillary issues. What are the ancillary issues that the Syariah Court deals with? These issues include issues that are not foreign to our civil court counterparts such as the division of matrimonial assets and the issues of custody, care and control and access of children. In addition to these matters, the Syariah Court also determines financial claims such as *nafkah iddah*. *Nafkah iddah* is maintenance to the wife for the period of *iddah*. *Iddah* means the waiting period upon divorce. For the purpose of a Syariah Court order, the *iddah* period is taken to be the general period of three months. Apart from *nafkah iddah*,

there is also the financial claim of *mutaah*, which is a consolatory gift, ordinarily in the form of payment by the husband to the wife, upon divorce.

15. From time to time, there are cross-border elements at play in the determination of these matters. For example, where a matrimonial asset is situated overseas, information can be scarce – whether in terms of the valuation of the asset, whether there is evidence proving the financial contributions of the party, compounded by issues arising from holdings via nominees and the application of foreign law. These are considerations that cut across all family courts, whether it is the Syariah Court or the civil courts.
16. The issue of cross-border is even more challenging in children matters. In determining children matters, the paramount consideration is the welfare of the child. The welfare of the child is a universal concept. It is also an ingrained concept under Muslim law. It is not always easy to determine where the welfare of the child lies, especially if the parties take conflicting positions on affidavits in the absence of objective evidence.
17. To assist the Court in arriving at its determination, the Court sometimes relies on independent assessment such as a custody evaluation report. The preparation of a custody evaluation report necessarily requires the child to be within the jurisdiction of the court. If the child is situated outside of jurisdiction, the custody evaluation report is not an option that the Court will or can consider. Hence, if the child is situated outside of Singapore, and the child issue is contested as part of the ancillary matters, the Court may not be sufficiently equipped to decide on the issue of welfare of the child. How then can the Court decide what would be in the best interest of the child – whether it serves the best interest of the child to be uprooted from the foreign environment or to be returned to Singapore? Again, these are considerations that the Court has to make – whether to make no orders on the child and for the parties to have the child matters determined in the jurisdiction where the child is situated or to nevertheless proceed to make the orders on the ground of special case or exceptional circumstances.
18. In the context of divorce proceedings, the Syariah Court also deals with relocation applications, as they arise. The considerations and principles applied to relocation applications are similar to the civil courts, including whether the wishes of the parent who is seeking relocation are reasonable and whether there will be a loss of relationship with the left behind parent. Again, these are common factors when we consider where the best interest of the child lies. However, it is not always a straightforward situation. For example, would the Court allow a care and control parent to relocate with a child on the basis that the parent has been posted overseas for work for a few years or do you deny that parent the opportunity to progress career-wise because the Court is of the view that relocation will be adverse to the relationship between the child and the left behind parent? These are serious issues that the Court has to deal with from time to time.
19. I would add at this juncture that for abduction cases that have been discussed in the earlier session, the Syariah Court does not hear applications filed under the International Child Abduction Act. These applications are heard by the civil courts.
20. I have earlier alluded to how mental capacity may affect the administration of divorce proceedings. The issue of mental capacity poses challenges in the administration of divorces in the Syariah Court. Let me give an example. I have mentioned earlier that one of the grounds of divorce under AMLA is *talak*. *Talak* is the pronouncement of divorce

by the husband. Even though *talak* is a pronouncement made by the husband, the ground of *talak* is not just relied on by the husband to seek a divorce. *Talak* is also a ground utilised by the wife to dissolve the marriage, where the wife is the plaintiff. This is because *talak* is a form of no-fault divorce. It does not require the wife to prove her case for divorce. It is therefore a preferred option to dissolve the marriage. However, for a pronouncement of divorce to be valid, the husband must have mental capacity in order to pronounce the divorce voluntarily. Where a husband is mentally incapacitated, and even where a litigation representative has been appointed to act on behalf of the husband, the litigation representative is unable to make a pronouncement of divorce on behalf of the husband.

21. The husband is also unable to delegate the right of *talak* to any other party due to his mental incapacity. As such, the Court has to look at other grounds of divorce that are prescribed under AMLA, which will require the wife to prove her case, and determine whether these other grounds are satisfied before a marriage can be dissolved.
22. At this juncture, I would like to briefly address the interaction between the Syariah Court and the civil courts. Where Muslim parties are concerned, there is also the interaction with the civil courts, apart from the Syariah Court. I have mentioned earlier that applications filed under the International Child Abduction Act are heard by the civil courts. The civil courts also hear applications made under the Guardianship of Infants Act where there are no divorce proceedings instituted in the Syariah Court. These would relate to applications in respect of children. The civil courts also hear applications for maintenance of children, applications for maintenance of wives who are not yet divorced and enforcement of Syariah Court orders.
23. Hence, we can see that even where there is no international element in a case, there is already the cross-court interaction between the Syariah Court and the civil courts pertaining to the same parties. This has contributed to extensive jurisprudence straddling both courts, especially on questions of jurisdiction and powers of the Court.
24. While the substantive law in certain areas may differ, the challenges that we face in the Syariah Court or the Family Justice Courts or other family courts around the world are similar. The courts are always endeavouring to find the most practicable solutions, within the confines of the law, to bring about the best outcome for a case.
25. This brings me to the next topic, which is the theme for tomorrow – Therapeutic Justice.
26. As family practitioners, we recognise that the family justice system is unique, in that, it has the capability to perform a function and serve a purpose that extends beyond the law. In fact, the court is only one of the many actors in the family justice ecosystem. The court is supported by family law practitioners, social science professionals and family support agencies, to name a few. Every actor in that ecosystem performs a specific role that contributes towards the collective effort. The intention is clear, in that, we must facilitate healing and enable parties to transit effectively from a state of hostility or unworkability to a state of functionality and normalcy.
27. For the Syariah Court, it has always been the philosophy of the Court, consistent with Muslim law, to facilitate a divorce that is premised on peace and compassion.

28. When parties file the registration for divorce, the parties will first have to attend counselling before they can file the Originating Summons. During the counselling session, the counsellor will try to understand the problems of the parties and whether there is prospect of reconciliation. If reconciliation is not possible, then the divorce process will commence upon the filing of the Originating Summons by a party to the marriage.
29. The first court attendance after the Originating Summons is filed is usually mediation. The issue of reconciliation may again be explored in mediation. Otherwise, the mediator will facilitate a global settlement of the matter. If there is a settlement on both the divorce and the ancillary matters, a consent order will be entered, and the case is concluded. If there is no settlement on all matters (because there must be a full settlement and a partial settlement will not be sufficient for Syariah Court purposes), the case will then be fixed for Pre-Trial Conference and eventually a hearing will be fixed to dispose of the case.
30. Where the issue of divorce is contested, the Court may appoint hakam. The hakam process is a salient feature of the Syariah Court divorce process that aims to promote closure and healing. Hakam are *asatizah* or religious scholars appointed by the Court to resolve marital disputes in divorce proceedings where the issue of divorce is contested. The role of the hakam is to facilitate reconciliation between the parties, if that is possible. If reconciliation cannot be effected, the hakam's role then is to facilitate an amicable divorce. With the assistance of the hakam, a divorce by trial is averted and the issue of divorce becomes uncontested.
31. In fact, where the hakam session is so effective that it helps to repair the relationship between the parties, it also translates into bringing about an amicable resolution of the ancillary matters and the start of an effective co-parenting relationship.
32. What does this illustrate, ladies and gentlemen? This shows that Therapeutic Justice is a collaborative endeavour. The courts cannot achieve Therapeutic Justice on its own. It requires the support of other specialists and other actors within the family justice ecosystem.
33. I have earlier mentioned the role of mediators and the role of hakam in the Syariah Court divorce process. Where there are children issues, relationship-building and co-parenting are key. In this regard, family support agencies and social science professionals play a critical part. They contribute to pre-court upstream efforts, post-court downstream efforts and provide support and services pursuant to court referrals and directions. Family law practitioners also play an important role in guiding clients and navigating through the court process in a manner that is consistent with the spirit and objective of Therapeutic Justice - for example, in managing the parties' emotions, calibrating the language used in affidavits and determining how evidence is generally presented. Indeed, Therapeutic Justice is a multi-disciplinary approach to the resolution of family disputes.
34. Finally, I would conclude by acknowledging that the road ahead will not be easy. It requires enormous effort, persistence and resilience. We will continue to be faced and thrown with "big questions" in our "small world" but larger than that is our collective commitment and strive to do the utmost that we can for affected families as they walk through the path in this family justice ecosystem.

35. I would like to thank the organisers for the enriching conference and the speakers for their sharing. Thank you for having me here. Have a good evening.

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