

FAMILY CONFERENCE 2024 – “RETRACING THE KEY DEVELOPMENTS IN THE LAST DECADE: SHAPING FAMILY JUSTICE FOR THE FUTURE”

3 SEPTEMBER 2024 (DAY 1)

CLOSING ADDRESS BY MDM GUY GHAZALI, SENIOR PRESIDENT, SYARIAH COURT

Ladies and gentlemen, colleagues and friends.

Good afternoon.

Introduction

1. It is my pleasure to deliver the Closing Address.
2. This year’s Family Conference is special. We celebrate the 10th anniversary of the Family Justice Courts (FJC) and the great strides that have been made in the family justice space in the last decade. On behalf of everyone at the Syariah Court, I would like to convey our heartiest congratulations and best wishes to FJC on their 10th anniversary.

Therapeutic Justice – a significant development in family justice

3. One of the most significant developments in the family justice landscape in recent years has been the advancement of therapeutic justice (“TJ”).
4. In her speech at the Family Justice Courts Workplan 2020, the Honourable Justice Debbie Ong, who was then the Presiding Judge of the FJC, described TJ as “a lens of ‘care’, a lens through which we can look at the extent to which substantive rules, laws, legal procedures, practices, as well as the roles of the legal participants, produce helpful or harmful consequences”.¹
5. Family disputes need to be delicately managed. Lives, families, relationships, and children are at stake. The approach of the courts must lean towards preserving or repairing family relationships. Even if we are not successful in doing so, we must do our best to arrest the escalation of acrimony and not contribute to its exacerbation.

¹ Justice Debbie Ong, “Family Justice Courts Workplan 2020: Today is a New Day”, *Family Justice Courts* (21 May 2020), at para 43

Advancement of TJ in the Syariah Court

6. For those who may ask whether the Syariah Court administers TJ, I would like to share the case of *FB v FC* [2021] SGSYC 5. This judgment was delivered by the Syariah Court in December 2021.
7. This case involved cross-applications for variation of orders in respect of the parties' only child, who was five (5) years old at that time. Both parties were represented by counsel. They both filed voluminous affidavits. The contents of these affidavits were reflective of the parties' high conflict state. There were numerous applications filed in the FJC and the Syariah Court. Both parties made extensive allegations against the other and the other party's family members. The parties' affidavits exhibited photographs, transcripts of audio recordings and stills of video recordings of the child, which were gathered and used as evidence in Court.
8. This case is significant for three reasons:
 - i. First, it expressly referred to TJ and relevant parts of Justice Debbie Ong's Family Justice Courts Workplan 2020 speech on TJ.² This case affirmed the existence of TJ in the Syariah Court.
 - ii. Secondly, it demonstrates the Syariah Court's management and approach to high-conflict cases. See *FB v FC* at [16] to [18] below:

16 The parties also relied on extensive recordings and photographs involving the child as evidence in these applications. Needless to say, this Court frowns upon the gathering of evidence by the taking of audio and/or video recordings of the child as well as subjecting the child to the taking of photographs to be exhibited in affidavits.

17 Photographs, audio recordings, and video recordings of a child should be used to document fond memories of the child growing up, and not as tools for litigation purposes. Such methods to gather evidence are adverse to the child and may affect the child psychologically.

² *FB v FC* [2021] SGSYC 5 at [1]: "As highlighted by Justice Debbie Ong in her Family Justice Courts Workplan 2020 speech (Justice Debbie Ong, "Family Justice Courts Workplan 2020: Today is a New Day" *Family Justice Courts* (21 May 2020)), the system should ensure that the whole divorce journey allows for healing from hurt, and not allow the opposite, which is, the aggravation of hurt (at para 18). The court endeavours to achieve this by administering Therapeutic Justice ("TJ"). In a system where TJ is dispensed, "the parties are not adversaries in court" and there is opportunity for "healing, restoring and recasting of a positive future" (at paras 38 and 39). It has been said that the family justice system is a "problem-solving system", not an adversarial one (at para 48)."

18 This Court has taken the deliberate approach of not enumerating each and every allegation that the party has raised against the other. To do otherwise will not be helpful to the parties or the child and runs counter to the Court's objective of administering TJ

- iii. Thirdly, the Syariah Court emphasised the important role that family lawyers play in the advancement of TJ.

See *FB v FC* at [11]:

11 I cannot emphasise enough that family lawyers perform an integral role in the administration of TJ and to that end, they must evolve and adopt a problem-solving mindset instead of being entrenched in an adversarial one.

See also *FB v FC* at [2]:

2 in order for TJ to be effective in generating the desired outcomes, it requires the co-operation of the parties and the commitment of family lawyers to conduct themselves in a manner that is not contrary to the spirit and intent of TJ.

Multi-disciplinary approach to resolution of family disputes

- 9. The case of *FB v FC* also recognised that the resolution of family disputes requires a multi-disciplinary collaborative effort. The Court made the following observation at [1]:

1 The court is only one of the many actors in the larger family justice system. Other actors include social science professionals, family support agencies and family lawyers, to name a few. Although the different actors perform different roles, there is a common purpose ...

- 10. In the context of the Syariah Court, this multi-disciplinary collaboration involves three main groups, namely, legal professionals, social science professionals and religious professionals or *asatizah*.

- 11. In August this year, the Syariah Court organised our inaugural SYC Practice Forum ("the Forum"), which brought together more than 150 participants and partners from the legal, social science and religious sectors. The theme for the Forum was "The Ties that Bind", representing the different actors and roles in the family justice system, bound by the common goal to support divorcing families and children.

12. At the Forum, the participants engaged in a full-day multi-disciplinary learning and sharing. The participants provided feedback that they benefitted from the cross-disciplinary interactions.

The principle of *Ihsan* in the administration of Muslim family justice

Ladies and gentlemen,

13. Much has been said in recent years, particularly from 2020 onwards, about the importance of therapeutic justice in resolving family disputes. Where Muslim family justice is concerned, the principle of *Ihsan* has always been the philosophy underpinning the administration of Muslim family law.
14. What is the principle of *Ihsan*? It refers to the effort of striving towards excellence or perfection through the performance of good deeds and righteousness. This is reflected through an administration of justice that upholds the virtues of fairness, kindness and compassion. Spouses must treat each other with fairness. If the marriage has to come to an end, this must be done with compassion and kindness. If the couple have children, the children's welfare and interest must be considered.
15. The principle of *Ihsan* is a recurring theme in the Syariah Court divorce process. I will illustrate this in five (5) areas as follows:
- a. Pre-divorce counselling
 - b. Mediation as the first court event
 - c. *Talak* as a form of no-fault divorce
 - d. Marital conciliation to resolve marital dispute
 - e. Efforts to enhance child-centricity in the Syariah Court divorce process

These examples are non-exhaustive.

(a) Pre-divorce counselling – Marriage Counselling Programme

16. Before divorcing parties can file an Originating Summons for divorce, they must submit a registration for Marriage Counselling Programme ("MCP") and attend the MCP.
17. MCP is a pre-divorce marital counselling programme. Pre-divorce marital counselling has been in place since the Syariah Court's inception in 1958. It was not called MCP then. Pre-divorce marital counselling was formalised as the Marriage Counselling

Programme in 2004. In 2018, MCP was made mandatory through the 2017 amendments to the Administration of Muslim Law Act (AMLA).

18. At the MCP, the parties will appear before an MCP counsellor and discuss issues relating to the marriage. The MCP counsellor will facilitate the exploration of strategies and solutions with the parties, with a view to salvaging the marriage. If the parties wish to proceed with divorce, they will be given insights into the practical consequences of a divorce. Where there are children, the MCP counsellor will also work with the parties to work out a parenting plan. The MCP process ensures that divorce becomes an option of last resort, after efforts to save the marriage are not successful.
19. To give an indication of the utility of MCP, in the last three (3) years, from 2021 until 2023 (both years inclusive), an average of 35% of MCP registrants did not proceed to file the Originating Summons for divorce.

(b) *Mediation as the first court event in the divorce stage*

20. In the event that an Originating Summons for divorce is filed, the first court event is mediation.
21. Mediation has been a feature in the Syariah Court divorce process since 1999. Mediation provides a platform for parties to resolve their dispute amicably without having to file affidavits which only serve to increase acrimony.
22. If there is a settlement on all issues (i.e. the divorce and ancillary matters), the parties will enter into a consent order and the case is concluded. In 2023, one-third of Originating Summons for divorce filed in the Syariah Court were concluded at the mediation stage. As an indication, based on the divorces registered in 2023, the median and average time for these cases to conclude at the mediation stage is four (4) months or less from the acceptance of the Originating Summons.

(c) *Talak as form of no-fault divorce*

23. I would like to address briefly on the grounds of divorce under AMLA. There are four (4) grounds of divorce under AMLA. I will not be elaborating on each of these grounds today. Suffice for me to highlight that out of these four (4) grounds, two (2) are non-fault grounds. This means that a party seeking a divorce does not have to prove fault on the part of the other party or to produce witnesses in Court to prove his or her claim

for divorce. The two (2) non-fault grounds are divorce by husband's pronouncement, or otherwise known as *talak*, and divorce by redemption or *khuluk*.

24. For present purposes, I would like to focus on the ground of *talak* as divorce on the ground of *khuluk* is rare.
25. As I mentioned earlier, *talak* is pronouncement of divorce by the husband. If the parties are in Court, divorce on the ground of *talak* will be decreed with a simple utterance of the words "I divorce my wife". The parties do not have to file voluminous documents. They do not have to take the stand to give evidence and be cross-examined or produce witnesses to prove fault on the part of the other party.
26. In the last three (3) years, from 2021 until 2023 (both years inclusive), divorces registered on the ground of *talak* constitutes 95% of the total divorces registered by the Syariah Court during this period. Out of these, in 68% of cases, the plaintiff is the wife. Even though *talak* is pronounced by the husband, it is a ground that is relied on by the wife to achieve a non-contentious divorce. Only an average of 5% of divorces registered in the last three (3) years – this translates to less than 80 cases a year - were dissolved on fault-based grounds. Fault-based grounds are typically utilised where a defendant is absent and does not participate in court proceedings.
27. To ensure that *talak* is pronounced ethically by husbands, the Syariah Court has expended efforts in public education. Husbands are encouraged to pronounce *talak* in Court, and not out of Court, to avoid ambiguity, or dispute between the parties as to what was uttered or the legal effect of the pronouncement.

(d) Marital conciliation to resolve marital dispute

Ladies and gentlemen,

28. We have discussed how *talak*, as a ground of divorce, facilitates a non-contentious divorce. However, what if the husband refuses to pronounce *talak*? This is where the *hakam* or marital conciliation process features in the divorce stage.
29. Marital conciliation is a unique feature in the Syariah Court divorce process. It is provided under section 50 of the AMLA.

30. Where the issue of divorce is contested, such as where the wife is seeking a divorce, but the husband does not wish to divorce the wife, the Syariah Court may appoint two hakam, one for each party, to resolve the marital dispute.
31. In practice, marital conciliators or hakam will be appointed from the Syariah Court's panel of hakam, made up of religious scholars or asatizah.
32. The role of the hakam is to explore the possibility of reconciliation between the parties. If reconciliation cannot be achieved, the role of the hakam is to facilitate an amicable divorce, including to pronounce divorce if both hakam are of the joint opinion that the parties should be divorced. Through the hakam process, what started as a contested divorce becomes uncontested. Witnesses and proof of fault are not required. The hakam only need to be satisfied that marital discord exists between the parties, such that to continue in the marriage will cause hardship or harm to the parties and their relationship.
33. Given their important role in the divorce process, the Syariah Court has supported the building of hakam's capabilities. In 2023, the Syariah Court launched a structured training and assessment framework for hakam called HIKMAH. HIKMAH stands for Hakam's Ideals – Knowledge, Methodology, Application, Heart, representing the attributes that the Syariah Court requires of and aspires for its hakam. The HIKMAH framework covers four (4) training modules, namely, legal, social science, ethics and conduct, and role-play. It also incorporates an assessment framework through the demonstration of competencies by the hakam in the role-play module, feedback received from parties who have undergone the marital conciliation process, and performance tracking by the Syariah Court based on a list of indicators. This is to ensure consistency in practice and standards among the Syariah Court's panel of hakam.
34. Feedback received from parties has been positive, including that, the hakam explained the hakam process clearly, gave meaningful religious advice, demonstrated good control of the hakam session, asked appropriate questions, understood the parties' concerns, were able to facilitate amicable discussions and were sensitive to the parties' feelings.

(e) *Efforts to enhance child-centricity in the Syariah Court divorce process*

35. To further enhance child-centricity in the Syariah Court divorce process, a court counselling framework was established in 2022 with the appointment of our first Principal Court Counsellor. In September that year, the Syariah Court introduced the Joint Child Interview process, where children are interviewed by the President (Syariah Court judge) together with the Court Counsellor instead of the President alone. In November 2023, the Syariah Court launched its Child Representative scheme. This was addressed at length in my Closing Address last year. The Syariah Court's Child Representatives are made up of social science professionals whose role is to assist the child in expressing views to the Court. This year, the court counselling unit has also been expanded to support the Syariah Court in delivering more child-centric services.

Conclusion

Ladies and gentlemen,

36. Family is the basic unit and bedrock of society, and children are at the centre of that. Our role directly impacts broader efforts to build resilient families, which has a bearing on the building of a strong social compact.

37. As we reflect on the significant developments that have taken place in the family justice system, let this be an inspiration and motivation for us to continue to evolve and innovate to meet the changing needs and challenges of families. Drawing inspiration from Rumi, if we become a helper of hearts, springs of wisdom will, naturally, flow from our hearts.

With that, I thank the Organising Committee and wish all of you an enriching Conference.