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**HEARING CHILDREN'S WISHES:  
PRACTICE OF THE SINGAPORE FAMILY COURT  
IN DIVORCE PROCEEDINGS**

*The Family and Juvenile Justice Division,  
Subordinate Courts, Singapore*

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**I. Overview of the Singapore Family Court**

1. Set up in 1995, the Singapore Family Court (‘the Court’) is a specialised forum that deals with a comprehensive range of family disputes. The Court has jurisdiction over the following matters:

- (i) divorce, judicial separation and nullity cases;<sup>1</sup>
- (ii) applications for guardianship, custody, care and control and access of children;<sup>2</sup>
- (iii) applications for division of matrimonial assets;<sup>3</sup>
- (iv) applications for protection orders;<sup>4</sup>
- (v) applications for spousal and child maintenance;<sup>5</sup>
- (vi) applications for enforcement of maintenance orders made by the Court, the Maintenance of Parents Tribunal and the Syariah Court;<sup>6</sup>
- (vii) reciprocal enforcement of maintenance orders made by foreign courts or tribunals;<sup>7</sup> and
- (viii) adoption cases.<sup>8</sup>

2. The constitutional duty of the Court is to administer justice, by hearing and deciding the legal disputes. However, the Court recognises that family disputes stand in a class of their own. Often, the cases involve dysfunctional families, and parties with complex inter-personal conflicts and deep-seated relationship issues. The Court has to go beyond the legal issues presented, to address the root conflicts, causes and emotions. Thus, the philosophy of the Court is to protect family obligations. The Court challenges itself to ensure that family and marital rights and responsibilities are fulfilled, and the

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<sup>1</sup>Part X, Women’s Charter (Cap 353) (‘Charter’).

<sup>2</sup>Guardianship of Infants Act (Cap 122) and Part X, Charter.

<sup>3</sup>Part X and section 59, Charter.

<sup>4</sup>Part VII, Charter.

<sup>5</sup>Parts VIII and X, Charter.

<sup>6</sup>Section 71 and Part IX, Charter, Maintenance of Parents’ Tribunal Act (Cap 167B) and Administration of Muslim Law Act (Cap 3).

<sup>7</sup>Maintenance Orders (Facilities for Enforcement) Act (Cap 168) and Maintenance Orders (Reciprocal Enforcement) Act (Cap 169).

<sup>8</sup>Adoption of Children Act (Cap 4).

psychological and physical well being of all family members, especially the children, are preserved and protected.

3. Consequently, the Court provides free mediation<sup>9</sup> and counselling<sup>10</sup> services, to facilitate the conclusive resolution of the disputes and the underlying tensions, and promote the welfare of the parties. Mediation may be conducted by the judges, although a judge who has mediated a case will not hear it. Counselling is provided by the trained counsellors in the Family and Juvenile Justice Centre ('FJJC'), an integral part of the Court. Further, in close collaboration with other justice constituents, such as government and community partners, the Court provides a wide range of programmes and services, to inform, assist and support the parties and their families through the difficult transitions in their lives.

## **II. The Divorce Process**

4. Like many other jurisdictions, Singapore has been experiencing an upward trend in divorces. In 2004, 5,319 applications for divorce were filed. In contrast, in 1994, there were 3,554 divorce applications. This represents a 49.7% increase in the number of cases before the Court over a period of only 10 years. In the same period, the population in Singapore grew by only about 25%.

5. Getting divorced is a two-stage process. First, the Court will deal with the divorce issue (that is, whether the marriage should be dissolved and on what facts), in an open court hearing. Either party to a marriage who wishes to obtain a divorce must file an application to the Court on the ground that the marriage has irretrievably broken down.<sup>11</sup> The applicant must satisfy the Court as to one of several facts before the Court will be satisfied that the marriage has irretrievably broken down.<sup>12</sup> The application may either be contested or uncontested by the other party to the marriage. If the Court is

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<sup>9</sup>With the consent of the parties, the Court may refer parties for mediation: Section 50(1), Charter.

<sup>10</sup>The Court has the power to order parties or their children to attend counselling: Section 50(2), Charter.

<sup>11</sup>Section 95, Charter.

<sup>12</sup>The facts are (1) the commission of adultery by the other party and the applicant finds it intolerable to live with the other party; (2) the behaviour of the other party is such that the applicant cannot reasonably be expected to live with the other party; (3) the desertion of the applicant by the other party for a continuous period of at least 2 years immediately preceding the presentation of the application; (4) the parties have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the application and the other party consents to a decree being granted; and (5) the parties have lived

satisfied that the marriage has irretrievably broken down, and it is just and reasonable to make a decree,<sup>13</sup> it will grant the application, and pronounce the *decree nisi*.

6. Thereafter, the Court deals with the ancillary matters (that is, the issues that are consequential upon a divorce), in a chambers hearing. Again, these may be contested or uncontested by the parties. Evidence is given through the filing and exchange of affidavits between the parties. The parties will then make their submissions based on the evidence in the affidavits. If required, and with leave of the Court, they may apply to cross-examine any of the deponents of the affidavits. Once the ancillary matters have been fully dealt with, the Court will then make the *decree nisi absolute* in the divorce application, which dissolves the marriage<sup>14</sup>. Parties may only apply for this no earlier than 3 months from the date of the *decree nisi*. Mediation and counselling services are weaved seamlessly into both stages, as alternative means to resolve the disputes.

### **III. Children in Divorce Proceedings**

7. Battles over the children would take place at the ancillary matters stage, and concern disputes over orders as to the custody, care and control of the children, and access to the children ('the children issues').<sup>15</sup> Briefly, a custody order grants the right to make major and long-term decisions for the child, such as decisions pertaining to religion, education and healthcare for the child.<sup>16</sup> Parents may fight to obtain sole custody of the children. They may allege that they are unable to cooperate with each other, or cast doubt on the other parent's ability to make decisions for the child for a multitude of reasons. However, save in exceptional circumstances, joint custody is to be ordered to promote and support joint parenting.<sup>17</sup>

8. The care and control order determines which parent shall be the daily caregiver of the child, and with whom the child shall live. The disputes would focus on who would be the most appropriate caregiver, in all the circumstances of the case. The parent

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apart for a continuous period of at least 4 years immediately preceding the presentation of the application: Section 95, Charter.

<sup>13</sup> Section 95, Charter.

<sup>14</sup> Section 99, Charter.

<sup>15</sup> Other issues to be dealt with include maintenance of the spouse and children, division of the matrimonial assets and costs.

<sup>16</sup> The landmark Court of Appeal decision in *CX v CY* [2005] 3 SLR 690.

<sup>17</sup> *CX v CY* (*supra*).

without care and control would have an access order, determining the level of contact the parent has with the child. Disputes over access are wide-ranging, and include whether access should be supervised or unsupervised, whether there should be overnight access, whether there should be overseas access, how long access should be or whether a third party should be present during access.

9. For the 5,319 divorce applications filed in 2004, it is estimated that there might be 7,978 children involved in the families.<sup>18</sup> It is well-acknowledged that family disintegration has a tremendous impact on the children caught in the web of conflicts. Research has found that 15 years after divorce, 80% of the divorced mothers and 50% of the divorced fathers felt the divorce was good for them. However, only 10% of the children felt positive about the divorce.<sup>19</sup> Further, it has been reported that compared to children from intact two-parent families, children from divorced homes performed more poorly in reading, spelling and mathematics.<sup>20</sup>

10. Research has also shown that children of divorce can carry on the devastation. The cycle can be inter-generational. Daughters of divorced parents tend to divorce more frequently<sup>21</sup> and the risk of divorce is increased by as much as 620% in the early years of marriage.<sup>22</sup> The next generation of divorced parents was more likely to cohabit or marry early, and experienced more breakups in relationships or marriages. The female children were also 25% more likely to become teenage mothers.<sup>23</sup>

10. Criminogenic roots can also be traced to family disintegration. In a study of juvenile delinquents from three institutional homes in Singapore, almost half had either only one parent or at least one parent who did not live in the same dwelling as the

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<sup>18</sup> This estimate is worked out on the basis that there are 1.5 children per marriage.

<sup>19</sup> Larson, D. B. and Swyers, J. P. and Larson, S. S. (1995), *The Costly Consequences of Divorce*. National Institute for Healthcare Research: Rockville, Md.

<sup>20</sup> Popenoe, D. (1995), *Life Without Father*. Martin Kessler Books: New York.

<sup>21</sup> Glenn, N. D. and Kramer, K. B. (1987), 'The Marriages and Divorces of the Children of Divorce,' *Journal of Marriage and the Family*, Vol. 49, pp. 811-825.

<sup>22</sup> Amato, P. (1996), 'Explaining the Intergenerational Transmission of Divorce,' *Journal of Marriage and the Family*, Vol. 58, p. 628.

<sup>23</sup> Kiernan, K. (1997), 'The legacy of Parental Divorce: Social. Economic and Demographic experiences in Adulthood', *CASE Paper 1*, STICERD (Suntory and Toyota International Centre for Economics and Related Disciplines, London School of Economics) Publications: London.

child.<sup>24</sup> In another local study of 155 female juvenile delinquents from cases in 1998 to 1999, it was found that 28% came from divorced families.<sup>25</sup>

#### **IV. Welfare of the Child**

11. Given that the children are directly affected by the Court orders in relation to the children issues, it is regrettable that they are not formally parties before the Court, and as minors, they do not have the right to participate fully in the process. Nonetheless, in dealing with the children issues, the law provides that the paramount consideration of the Court shall be the welfare of the child.<sup>26</sup> Welfare is to be taken in its widest sense. It means the general well-being of the child and all aspects of his upbringing, religious, moral as well as physical, and is not to be measured in monetary terms.<sup>27</sup> The welfare concept is akin to the best interest principle within the United Nations Convention of the Rights of the Child ('CRC'),<sup>28</sup> which states that in all actions relating to children, the best interests of the child shall be a primary consideration.<sup>29</sup> These general principles safeguard the children. More importantly, in deciding on the children issues, the Court is to have regard to the wishes of the child, where he or she is of an age to express an independent opinion.<sup>30</sup> Again, this is in accord with the best interest principle within the CRC, providing for consultation of children, and promotion of their decision-making abilities.<sup>31</sup>

#### **V. Hearing Wishes of the Child**

12. While it may seem obvious and uncontroversial that the Court should have regard to a child's wishes, soliciting the child's wishes is not an easy task, especially in the following two scenarios. First, where the children issues are bitterly contested, even well-meaning parents cannot be relied on to act rationally and reasonably for the sake of

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<sup>24</sup> Huan, V., & Tan, E. (1999), The relationship between different parenting techniques and the social adjustment of adolescents', National Institute of Education.

<sup>25</sup> Subordinate Courts (2000), 'Profile of female juvenile offenders', *Research Bulletin* issue No. 26.

<sup>26</sup> Section 125, Charter.

<sup>27</sup> *Tan Sien Kee v Chua Ah Boey* [1988] 3 MLJ 20.

<sup>28</sup> In fact, the welfare concept was first enunciated in case law: see *In the Matter of the Intended Marriage between Lee Keng Gin and Catherine Wong Kim Lan* [1935] MLJ201. The welfare concept was subsequently enshrined in various statutes dealing with children, including the Charter, the Adoption of Children Act (Cap 4) and the Guardianship of Infants Act (Cap 122). Thereafter, in 1995, Singapore acceded to the United Nations Convention of the Rights of the Child ('CRC')

<sup>29</sup> Article 3(1), CRC.

<sup>30</sup> Section 125, Charter.

<sup>31</sup> Article 12, CRC.

the children. Often, parents would forward conflicting pictures to the Court of what the child would wish for, painting the other parent in the worst possible light, and throwing allegations of varying degrees, ranging from mere incompetence as parents, to neglect, to physical, mental or sexual abuse of the child. In other situations where a court may be called upon to make a decision for a child, the Court may place considerable weight on the views of the parents as to a child's wishes, as a form of 'substituted judgment'. In disputes over the children issues, the Court cannot safely and reliably depend on what the parents say to be the child's wishes. Similarly, it would be doubtful whether close relatives such as grandparents would be able to give fair and unbiased opinions.

13. Secondly, in the majority of cases where parties contest the children issues, the children are young. The Court would be wary to accord much, if any, weight to any affidavits deposed to by the children because the affidavits would have been prepared by either one of the parties and their solicitors. For the same reasons, the Court would be reluctant to give any weight to letters, cards or other documents written by the children, filed by either or both of the parents as exhibits in their affidavits.

14. Therefore, in the straightforward cases where the parents remain on reasonably good terms, and hold the same or similar opinions on the children issues, the Court may find it sufficient to have regard to the views of the parents or other witnesses, such as close relatives, on the children's wishes. Further, where the children are on the brink of adulthood, such as children in their late teens, the Court would be quite willing to accord due weight to such affidavits filed for the ancillary matters stage, or documents written by the children attached to the parties' affidavits. However, where the disputes over the children issues are serious and acrimonious, and where the children are fairly young, other means of ascertaining a child's wishes become critical.

15. The Court's fundamental concerns over any means to be used to obtain a child's wishes are as follows. First, within the process, there should be an assessment whether the child is sufficiently mature and independent to express a view. If the child falls short, there should be some indication of the child's level of such attributes, to allow the weight to be accorded to such views to be adjusted accordingly. Next, care should be taken to ensure that the view expressed is the child's, and that the child is not under any

pressure, coercion or undue influence to state certain views. Third, the child should not be traumatised by the process. Lastly, the child should not fear repercussions from expressing a view, and his safety and well-being in the future should not be compromised.

16. With these factors in mind, where necessary, both for mediation and adjudication purposes, the Court's practice is to obtain the children's views through the following means, being (i) preparation of Reports by trained persons; (ii) conduct of interviews by the Court; (iii) counselling by trained persons; and (iv) separate legal representation for the children under the Court Appointed Counsel Scheme. Generally, for each case, the Court resorts to one of these processes, rather than a combination of them. This is to prevent imposing too much strain on the children, through multiple interviews, assessments and examinations. Depending on the facts and circumstances of the case, the Court will choose the most appropriate method. Each of the processes will now be described.

## **VI. Reports from Trained Persons**

17. The Court will order a report if it is of the view that the input of someone trained and experienced in child welfare would be useful in coming to a decision on what orders to make in relation to the children issues.<sup>32</sup> In the cases, the levels of conflicts vary, as well as the nature of the allegations. The facts and circumstances of the children and the parties also differ. Recognising this, the Court has implemented arrangements for various sources to prepare different types of Reports, to meet the needs of the different cases. These are the Social Welfare Report (SWR), Custody Evaluation Report (CER) and Access Evaluation Report (AER), Child Guidance Clinic Report (CGC Report), Assisted Access or Assisted Transfer Reports, and Reports from Professionals in the Private Sector.

18. Further, the Court has established a set of guidelines for the calling of such reports. The guidelines are not exhaustive. In fact, there may be some overlap in the

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<sup>32</sup> Section 130, Charter states 'When considering any question relating to the custody of any child, the court shall, whenever it is practicable, take the advice of some person, whether or not a public officer, who is trained or experienced in child welfare but shall not be bound to follow such advice.'

different categories of reports, in that different types of reports may be equally suitable for the same situation. Which type of report is appropriate, and which type of report is ordered is a matter for the Court's discretion, and will depend on the facts and circumstances of the individual case. Some facts that the Court would take into account would include (but are not limited to): the age of the child in question, his relationships with each of his parents, his siblings and any significant third parties, his academic performance and behaviour in school, his living and sleeping arrangements, and his mental and physical health.

19. For each case, the practice is to call for only one report, save in exceptional circumstances. For each type of report, the trained persons would interview the children, and observe their interactions with the parties. Usually, the reports are called for in the early stages of the proceedings, by the mediating judge or deputy registrars conducting pre-trial conferences to monitor the cases. If not called for at the earlier stages, the hearing judge dealing with the children issues at the ancillary matters stage may do so.

*Social Welfare Report ('SWR')*

20. The SWRs are prepared by officers of the Ministry of Community Development, Youth and Sports ('MCYS officers'), trained in child welfare issues and custody dispute investigations. However, MCYS officers are not trained psychologists or psychiatrists.

21. To prepare a SWR, the MCYS officer will interview both parents, as well as any significant third parties. The officer will also speak to the child (if he or she is old enough to converse with the officer), and observe the child's interactions with the respective parties. The officer will try to establish a rapport with the child at the interview, so that when the officer does the home visit, the child will recognise the officer, and be more open. To build rapport, the officer may play games with the child. Home visits will be made by the MCYS officer to the child's home and/or the homes of other relatives, such as the grandparents, if necessary<sup>33</sup>.

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<sup>33</sup>For more information on the investigation process, see the article by the Ministry of Community Development, Youth and Sports ('MCYS') in the Singapore Law Gazette (July 2003 issue) entitled 'Custody Dispute: Social Investigation'.

22. The Court calls for SWRs for disputes over custody, care and control, and generally not access disputes, save for those disputes which are whether or not to grant overnight access (since that involves spending time in a particular place, which may make a home visit necessary), and possibly, whether or not to grant supervised or unsupervised access. Where there is no dispute over care and control, but only a dispute over sole or joint custody, a SWR is unlikely to be ordered, as this is more of a legal issue, and submissions and affidavits by the parties themselves should suffice. Appropriate circumstances in which to order an SWR would include those situations where:

- (i) the child is not really able to express himself verbally (usually if he is under 10 years old); and/or
- (ii) the custody, care and control, and access disputes are serious ones — usually a situation where both parties have indicated consistently during the early stages of the proceedings that they will be contesting the issues; and/or
- (iii) there are allegations about the place the child would be spending a significant amount of time (either because of access or because he would be cared for in that place) which would make home visits useful. For example, if there are allegations that the home environment is noisy and messy, MCYS can examine the child's sleeping and studying arrangements there; and/or
- (iv) there are specific allegations such as physical or sexual abuse, alcoholism or drug use.

23. It takes about three months from the time it is ordered for the preparation of a SWR, and parties do not have to pay for it. The SWR is a confidential report, for the use of the judge mediating or the judge hearing the children issues. As a general rule, it will not be shown to parties, and the maker of the report will not be cross-examined.<sup>34</sup> Further, as a general rule, the Court does not grant parties' applications to inspect or make copies of the SWR, or to cross-examine the maker. The rationale for this is public policy—to ensure that those who prepare the reports can do so without being constrained

by the fear of retribution from the subjects of the report. Equally, the children would not have to fear the repercussions of stating their views to the officers.

*Custody Evaluation Report ('CER') and Access Evaluation Report ('AER')*

24. CERs and AERs are prepared by the counsellors from the FJJC. The counsellors are trained in social work, counselling or psychology, as well as in the preparation of such reports. The CER is called for to decide which parent should have custody, care and control of the child or the access the other parent may have to the children, while the AER assists the Court in resolving access disputes.

25. CERs and AERs are prepared based on interviews and observations which take place in the Court. The counsellors do not conduct home visits. A CER requires about 40 hours of interviews with the parents, the child and any significant third parties. The interviews take place over a six week period, at the end of which the CER will be written. An AER would take a shorter time to prepare. In this respect, the preparation of a CER or AER is much faster than an SWR.

26. The CER or AER focuses more on the interaction between the parties and the children, and the developmental needs of the child. The CER or AER is suitable for:

- (i) children who are able to express themselves—those over 10 years old, usually;
- (ii) very acrimonious custody, care and control, and access disputes; and/or
- (iii) situations where there are allegations that one child is alienated from one parent, and of brain-washing; and/or
- (iv) where home visits would be pointless, because there are no allegations of the home environment being unsuitable, the key issues being the nature of the relationships between each of the parties.

27. Parties do not have to pay for the preparation of the CER or AER. Like the SWR, CER or AER is treated as a confidential report, to protect the maker of the report,

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<sup>34</sup> *Soon Peck Wah v Woon Che Chye* [1998] 1 SLR 234 and *Lim Chin Huat Francis & Anor v. Lim Kok Chye Ivan & Anor* [1999] 3 SLR 38, both Court of Appeal cases.

as well as to protect the children. The CER or AER is furnished to the judge mediating or the judge hearing the children issues.

*Assisted Transfer or Assisted Access Report*

28. The Assisted Transfer or Assisted Access Reports are furnished pursuant to orders for Assisted Transfer or Assisted Access under Project Contact. In this programme, certain Family Service Centres ('FSCs'), being community groups, collaborate with the Court to provide services to facilitate access by parents to their children.

29. Under an Assisted Transfer order, the parents will hand over and / or return the child at a participating FSC. The hand-over will take place in the presence of a counsellor. The child may also be returned at the same place, in the presence of a counsellor. Alternatively, the child may be returned at a different place, without the presence of a counsellor. The latter order would be appropriate if the problems seem to occur at the initial handover rather than the return. The latter order should be used, if possible, as it gives parties greater flexibility in terms of place and time. The Assisted Transfer order will also allow the counsellor to observe the dynamics of the relationship between the parents and the child at the hand-over stage over an eight week period. The counsellor will then write a report on this for the Court.

30. Assisted Transfer is suitable in cases where the relationship between the mother and the father is very acrimonious, but the relationship between each of the parents and the child seems to be all right. The Assisted Transfer will reduce the opportunity for the parents to quarrel when the child is handed over, thus reducing trauma for the child.

31. Under an Assisted Access order, the parent has access to the child at a participating FSC under the supervision of a counsellor. It will also allow the counsellor to observe the dynamics of the relationship between the parent and the child over an eight week period. The counsellor will write a report on this for the Court. An Assisted Access order is not meant to encourage bonding between the parent and the child, and the sessions are not meant to be therapeutic. The report made after an Assisted Access programme has been completed will be more in-depth, but is much more time-

consuming and resource-intensive than an AER. It is ordered when in-depth observation is necessary, and is suitable in the following circumstances:

- (i) the child is not really able to express himself verbally (usually if he is under 10 years old); and/or
- (ii) there are very serious allegations of alcohol abuse, child abuse, family violence, etc. against the parent who wishes to exercise access, but there is some evidence that the relationship between the parent who wishes to exercise access and the child is actually quite sound; and/or
- (iii) there seems to be little or no bonding between the parent who wishes to exercise access and the child; and/or
- (iv) where home visits may not be necessary, because there are no allegations of the home environment being unsuitable, the key issue being the nature of the relationship between the parent who wishes to exercise access and the child.

32. Assisted Transfer or Assisted Access orders are both intended as *interim measures*, to give a counsellor the opportunity to observe the parties and the children during hand-over or access. The reports to the Court are confidential, and will make recommendations as to what steps should be taken next. Thereafter, the Court will review the matter. It is intended as a tool for the Court to make a decision as to what kind of access orders to make, to finally dispose of the matter, taking into account the views of the children.

33. The FSCs charge an average of \$50-\$100 an hour, for assisted access. Assisted transfer fees would be about \$25-\$50 for each transfer. (So, a two-way transfer—handing the child over, and then handing the child back—would be \$50-\$100.). Usually, these fees are ordered to be paid by the parent wishing access, or to be shared equally.

*Reports from Child Guidance Clinic, Institute of Mental Health ('CGC')*

34. A psychiatrist in the Child Guidance Clinic, Institute of Mental Health ('CGC') prepares the CGC Report. There are interviews with the relevant parties and the

children, and observations of parties. However, there are no home visits. A CGC Report is ordered in exceptional circumstances, which include;

- (i) a party is alleged to have exhibited behaviour consistent with a mental disorder (for example, paranoia, seeing evil spirits, extreme confusion); and/or
- (ii) a party is suspected of having a medical condition (e.g. alcoholism, mild mental retardation), that may diminish his capacity to fulfil his parenting duties; and/or
- (iii) there are allegations that the child's mental health is being seriously affected or would be seriously affected by the child's interaction (or lack thereof) with his parents—and that the child may suffer a mental problem as a result; and/or
- (iv) there are serious allegations of child sexual or physical abuse.

35. A CGC report is not confidential, and is prepared between four to six weeks. While CGC reports are sent directly to the court, parties can obtain copies from CGC, if they wish. The makers of the CGC Reports may be subject to cross-examination. The CGC charges for the preparation of a CGC Report, usually about \$600. For parties who are financially strapped, there is the possibility for parties to explore with the medical social worker in the hospital as to whether the fees can be waived.

#### *Reports from Professionals in the Private Sector*

36. Prior to April 2005, reports from professionals in the private sector, especially private psychiatrists, may be filed by parties, on their own initiative. The reports are given by the psychiatrists to the parties themselves. The opposing party may apply to cross-examine the psychiatrist. Conflicting reports may be filed. There was the obvious danger of the disturbing phenomenon of parents bringing the child to see many psychiatrists, in order to obtain a report favourable to themselves, and traumatising and damaging the child in the process.

37. In April 2005, the Court imposed restrictions over the preparation of expert evidence by professionals. After divorce proceedings are commenced, a party who

wishes to cause a child to be examined by any professional, be it a psychologist, psychiatrist, counsellor or other social work or mental health professional must obtain the leave of court.<sup>35</sup> The Court may make any order which it deems fit, including the appointment of an independent expert, structuring the examination process and defining the scope of the brief to the expert. A detailed framework is set out that ensures that all parties direct their minds to such questions which the expert is required to present in his report, and sets out who is to bear the costs of the report, the documents to be furnished by the expert and the persons whom the expert is entitled to interview in preparing the report<sup>36</sup>. Where leave has not been obtained, any evidence obtained may not be adduced without leave of court.<sup>37</sup> In this way, the Court can reduce the stress to the child who is in the middle of the dispute.

## **VII. Interviews by the Court**

38. The hearing or mediation judges may also choose to interview the children themselves, to ascertain their wishes on the issues, or to clarify certain matters they are in doubt of. Usually, the children should be over 10 years old so that there may be meaningful communication during the interview. Further, in deciding whether or not to interview the children, the hearing or mediation judges keep in mind the following factors:

- (i) the risk of ‘over-interviewing’ the child. The child may be traumatised and damaged by being interviewed too many times on these very sensitive issues. If there has already been a report, the child would already have been interviewed several times. In such a situation, the judge gives serious thought to the issue of whether the value added by the interview with the child is justifies the trauma that may be caused to the child by yet another interview. If there is already a report in the file which provides adequate assistance in making the decisions, then the children should preferably not be interviewed further;

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<sup>35</sup> Rule 26A(1), Women’s Charter (Matrimonial Proceedings) Rules (‘Rules’).

<sup>36</sup> The Subordinate Courts Practice Directions contain a standard form application which parties have to use when applying for leave for the child to be examined under r 26A(1) and a standard letter addressed to the expert appointed to brief him on the case. Applicants must annex a draft of the standard letter to the expert to the application for the Court’s consideration at the leave application hearing.

<sup>37</sup> Rule 26A(3), the Rules.

- (ii) judges have not been trained in child-interviewing techniques. For young children, MCYS has developed a special interview kit, which involves soft toys, a doll-house (actually the model of an HDB flat), a snakes-and-ladders game. FJJC has similar games. Such interviews aim to build rapport with the child first, and may extend to several sessions, of several hours. When the judge interviews the child, the judge will be dressed in black and white, which can be rather intimidating, and will not have the same luxury of time, or the benefit of these interview tools. Judges are therefore aware of such deficiencies when deciding to have the interview;
- (iii) judges are also aware of the pressure on the child of having to 'choose' between his parents, no matter how carefully the questions are couched. The interview may potentially be stressful for the child. The parents will also inevitably interrogate the child on what he has said to the judge during the interview, even if they are warned against doing so. A younger child may not be able to withstand this kind of interrogation. It may also be stressful even for an older child. The parents may interpret any hearing outcome as resulting from what the child has told the judge. This may have a damaging effect on the parent-child relationship in the long term.

39. Should the judges decide to interview the children, the judges would follow the guidelines below:

- (i) the interview is usually conducted in chambers or a counselling room instead of the court room (which is rather intimidating) to facilitate easier communication;
- (ii) parents and counsel are not present during the interview;
- (iii) parents are cautioned not to interrogate the children about the interview;
- (iv) the children are informed during the interviews that the contents would be kept confidential;
- (v) the minute sheets are kept sealed in an envelope, and are not available for inspection or copying by the parties.

40. In an appropriate case, where parents are willing to abide by and respect their children's wishes, an interview with the children provides the judge with an invaluable opportunity to clarify the issues, and ascertain their views. Also, some parents are more accepting of the outcomes on the children issues, given that their children have had their say in the decision making process to the Court.

### **VIII. Counselling – Use of KIDSLINE**

41. The Court may order counselling at any stage of proceedings, conducted by the FJJC counsellors. Counselling focuses on emotional issues and the dynamics of the family members and helps the person counselled come to a better understanding of himself, the members of his family, his situation. In particular, the FJJC carries out a great deal of counselling work for children that focuses on child-related issues. In some cases where emotional support and comfort is needed for children who are deeply grieves or troubled by divorce proceedings, support counselling will be given. These sessions are confidential, and the notes will not be made known to the hearing judge. However, the notes may be made available to the judge-mediator. Further, the judge-mediator who wishes to know what the wishes of the child are may specifically order counselling for mediation. The notes of these sessions will be made available to the judge-mediator. This will assist the judge-mediator in mediating the case, with the children's wishes in mind. To prepare the children for the counselling sessions, pamphlets have been prepared to explain to the children what is involved in the sessions.<sup>38</sup>

42. For the purpose of counselling children, KIDSLine, which stands for Kids in Difficult Situations, was developed by FJJC. KIDSLine is an interactive CD-Rom, with games, colourful images and simple dialogue, to help children aged between seven and ten years of age who are caught in the midst of divorce to understand what divorce is about and to address their feelings. It also explores family violence with the use of light-hearted digital animation. The programmes contain easy-to-use information on where the children could turn to if they are troubled by their parents' divorce or if they are or have witnessed violence at home.

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<sup>38</sup> The pamphlet is entitled 'Why do I have to see a Counsellor?'

43. In individual counselling provided for children caught in highly contentious disputes, KIDSLine is used together with the counselling work such that it is played by the child together with a trained counsellor who will guide him along the way. Emotions of trauma and grief experienced by children in such cases are also addressed in the programme. The views of children obtained through counselling, while not available to a hearing judge, is available to a judge-mediator. In fact, the judge-mediator, when ordering counselling for mediation, can direct that KIDSLine be used during the session. Alternatively, the counsellors will use KIDSLine when they deem it necessary to do so.

### **IX. Separate Legal Representation**

44. The Court implemented the Court Appointed Counsel scheme to help children embroiled in high conflict cases where there are intractable conflicts between parents, allegations of child abuse, evidence of alienation from one parent or cultural or religious differences between the parents affecting the child. In these highly acrimonious battles, if the child is above 8 years old and capable of forming an opinion and expressing his preferences, the Court will appoint an *amicus curiae* who is well versed in family law matters to interview him to find out his views and other concerns which are relevant to his well-being. The counsel will be assisted by FJJC counsellors when he interviews the child.

45. The counsel will see both parties thereafter and act as a neutral moderator to assist parties to settle the children issues. If the matter goes for hearing, the counsel will give a legal submission to the Court which highlights the child's wishes as well as all other relevant factors which may not be disclosed by the parties. In this way, this scheme gives full cognisance to a child's right to be heard in a matter that affects his future and also reminds parents to consider seriously the interests of their child when at conflict with each other. Since the inception of the scheme, the Court has had to resort to this scheme only in a handful of cases, while relying on the other means to hear the child's wishes in the majority of cases.

### **X. Conclusion**

46. In the difficult cases which trouble the Court, and where the children are young, the processes are invaluable to the Court to hear the wishes of the child, for the purposes

of mediation and adjudication of the children issues. The Court is acutely conscious of the strains imposed on the children in the processes, and endeavours to use the most appropriate method in each case. Thus equipped with the children's views, the Court then makes the best decisions possible on the children issues, based on the facts and circumstances of each case.