

FAMILY CONFERENCE 2022

“ESSENTIALS FOR THE JOURNEY INTO NEW FRONTIERS”

13 SEPTEMBER 2022 (Day 1)

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

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

1. I am delighted to be here at the Family Conference 2022 to give the Closing Address.

Family Conference 2022 Theme

2. The theme for this year’s Family Conference is “Essentials for the Journey into New Frontiers”.
3. This is an extremely interesting theme that brings together different sub-themes – first, the “essentials” in the family justice system; second, the “journey” and third, “new frontiers” - signifying an evolving landscape, which brings with it new and greater challenges, and our response to these challenges in the form of transformative and innovative initiatives.
4. My closing address will focus on the first two sub-themes. As for the third sub-theme, the Registrar of the Syariah Court will be presenting on the Syariah Court’s digitalisation and transformation efforts in her session tomorrow.

Second Sub-Theme: The Journey

5. I will start with the second sub-theme, which is the “journey”.
6. As the Court, when we refer to a “journey”, we tend to see it from the perspective of the end-to-end court process, from the filing of the application until the disposal of the application, either by way of resolution or adjudication. Central to this perspective is process and procedure.
7. However, when the Court is placed within the family justice ecosystem, the Court becomes one of the many actors that fulfil a collective purpose, which is to support families through their divorce journey. The Court then becomes a pit-stop, sometimes a necessary one. Against this backdrop, the end-to-end court process becomes part of a broader network of processes involving pre-court and post-court efforts driven by the other actors within the family justice ecosystem.
8. The families too have their own journey as they experience different types or stages of conflict, and transit into the different phases of the family justice process. There can also be different emotions that they experience, ranging from feelings of distress, anger, hurt and contempt, to feelings of love, forgiveness and the desire for healing and closure. Sometimes, these emotions cannot be rationalised or reconciled but they exist and cannot be undermined. The family justice system therefore has to cater to the needs

of the different phases, the different emotions, and also the needs of different families who have gone through different experiences.

The Syariah Court's divorce journey

Pre-Court process

9. The need to cater to the different phases of the divorce journey is also reflected in the court context. I will share some insights into the Syariah Court divorce journey.
10. In the Syariah Court, when parties file a Registration for Divorce, they are required to attend the mandatory Marriage Counselling Programme (MCP) before they can file an application for divorce.
11. At the MCP, the parties will appear before a counsellor and discuss issues relating to the marriage and explore solutions with a view to salvaging the marriage. If the parties mutually agree that the marriage can be saved, no divorce application will be filed in Court. MCP ensures that marriages that can be salvaged are saved, and divorce is a solution of last resort.
12. If reconciliation is not an option, the parties will be given insights on the practical consequences of a divorce so that they can prepare themselves in all aspects should they eventually be divorced. Where there is a child under the age of 21 years, the counsellor will also work together with the parties to work out a parenting plan.
13. The court process will only commence after counselling has concluded and either spouse takes the additional proactive step of filing an application in Court. It is only then that the Court process commences. The MCP process allows the parties to reflect and make a considered decision in respect of their marriage before initiating the Court process.

Court process

14. After an application for divorce is filed, the parties' first attendance in Court will be mediation. At mediation, a global resolution of the divorce and the ancillary issues will be explored. If all issues are resolved, a consent order will be entered into by the President, who is the Syariah Court judge.
15. The objective of having mediation as the first attendance is to ensure that the parties who remain amicable, cooperative, and functional, notwithstanding the breakdown in their marital relationship, continue to take charge and be empowered to make decisions in respect of their family, including their children. This will also prevent needless acrimony from infiltrating into the family's relationships through the filing of affidavits and prolonged court proceedings. As such, only cases that require the Court's intervention through adjudication will go through the further stages of the Court process.
16. If there is no full resolution of the divorce and the ancillary matters, the case will be referred to Pre-Trial Conference and directions will be fixed towards a disposal of the matter.

17. Where the issue of divorce is contested, the Court may appoint hakam who are religious scholars appointed by the Court to resolve marital disputes. The role of the hakam is to facilitate reconciliation between the parties. If the hakam succeed in effecting reconciliation, as it has happened in a number of our cases, the divorce application will be withdrawn. If reconciliation cannot be effected, and divorce remains the only option to resolve the parties' differences, the hakam will facilitate an amicable divorce. This is consistent with the Islamic philosophy that if the circumstances are such that the spouses have to separate, it is to be done with kindness and compassion.
18. The hakam feature is unique to Syariah Court divorce proceedings. Its genesis is founded in the Quran and Muslim traditions.
19. The Syariah Court recognises that the hakam perform an important role in the Syariah Court divorce process. To assist the hakam in performing their role effectively, the Syariah Court has been supporting the hakam by providing regular training comprising legal and social science as well as practical-oriented trainings.

Third Sub-Theme: The Essentials

20. This brings me to the third sub-theme – the “essentials”.
21. When we discuss the “essentials” in family justice resolution, there are common themes that cut across both the civil courts and the Syariah Court, such as the need for therapeutic justice to resolve family disputes and the importance of a child-centric perspective that places the welfare of children as the paramount consideration.
22. In my Closing Address last year, I have discussed the application of therapeutic justice in the Syariah Court and how therapeutic justice is a collective endeavour by different actors – the courts, family support agencies, social science professionals and lawyers, among others.
23. In December 2021, the Syariah Court released its first written grounds of decision, which discussed the importance of therapeutic justice in the resolution of family disputes, including in the Syariah Court proceedings.¹ In that case, the Syariah Court expressed disapproval of the parties' actions in relying on extensive audio and video recordings and the taking of photographs involving the child as part of evidence-gathering strategy. The Court highlighted that photographs, audio and video recordings of a child should not be used as tools for litigation purposes as such methods to gather evidence are adverse to the child and may affect the child psychologically. The Syariah Court observed that family lawyers perform an integral role in the administration of therapeutic justice. In that case, voluminous affidavits, which contents were reflective of the highly acrimonious state of relationship of the parties, were filed in Court. This, in the Court's view, was not in line with the spirit and intent of therapeutic justice.
24. As we can see, the administration of therapeutic justice is directly connected to the preservation of the welfare and best interests of the child.

¹ Summons Nos. 53155/VO/01 and 53155/VO/02 (unreported judgment).

The welfare of the child

25. The principle of the welfare of the child applies to Syariah Court cases and is the paramount consideration in the determination of children matters. This position has been affirmed in many of our cases, including recent cases that have been published in the Singapore Syariah Appeal Reports Volume 8.² The welfare of the child is a principle that is deeply rooted in Muslim family law.
26. As a Court dealing with family disputes, child-centricity is in the forefront of the Syariah Court's initiatives.

The establishment of the court counselling framework in SYC

27. I am pleased to announce that the Syariah Court is establishing a court counselling framework in its court process.
28. With effect from 1 July 2022, a Principal Court Counsellor has been seconded from the Family Justice Courts to the Syariah Court.
29. The Principal Court Counsellor is a new role that the Syariah Court has created to strengthen coherence within the family justice system and to further enhance child-centricity in the Syariah Court divorce process.
30. The Principal Court Counsellor will be instrumental in the development and implementation of the court counselling framework in the Syariah Court.
31. The court counselling framework will be made up of different components, taking into account the specific needs of the families that appear before us.
32. The court counselling framework will be implemented in phases. We will provide updates as we progress through these phases.
33. The first phase has been implemented this month. With effect from September 2022, child interviews are conducted jointly by the President (who is the Syariah Court judge) and the Principal Court Counsellor.
34. Prior to this, judicial child interviews were conducted by the President alone. Needless to say, the involvement of a trained and experienced court counsellor in the child interview process ensures that the psychological wellbeing of a child remains protected, even if the child has to be involved in the court process through judicial interview.
35. It is to be noted that apart from judicial child interviews, the Syariah Court may avail itself of other judicial tools and referrals, like in the civil courts, such as directing for independent evaluation by way of a Custody Evaluation Report, making a referral for supervised visitation or exchange at the Divorce Support Specialist Agency (DSSA), or making a counselling order.

² See *DH v DI* (2021) 8 SSAR 132, *EH v EI* (2021) 8 SSAR 310, *EF v EG* (2021) 8 SSAR 301, and *DA and another (interveners) v DC* (2020) 8 SSAR 72.

36. The variety of possible approaches allows the Court to select the most suitable option or a combination of options to ascertain where the best interest of a child lies and to support the families through their divorce journey in a manner that protects the welfare of the child.

Conclusion

37. In conclusion, the “journey into new frontiers” is both exciting and daunting, but we must stay true to our purpose, as it represents the soil from which the “essentials” grow. As part of the ecosystem that constantly deals with disputes and conflicts, our outlook is sometimes influenced by the challenging cases that we encounter. But we should take a moment to pause and take comfort in the success stories that have been made possible through the unrelenting efforts of the various actors within the ecosystem. During times when there is surge of emotions, the ecosystem represents the voice of reason that reminds affected families that healing is within reach and there is light at the end of the tunnel. And because of this, we must press on.
38. Thank you to the Organising Committee for organising this conference and to the panelists for their insightful discussions. Have a good day.

[End]