DIVORCE MEDIATION IN SINGAPORE

Bringing the Voice of the Child to the Table*

Currently, the voice of the child is limitedly present in divorce mediation. He or she is only engaged when the court discerns the necessity through child-inclusive dispute resolution. This article proposes that the starting point for all divorce mediations should be to first engage the child in mediation through a child advocate, bringing the voice of the child to the table.

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I. Introduction

1 Divorce usually comes after a period of intimacy and interdependency where spouses who used to trust one another no longer do. Parties are in their worst emotional state at the point of a divorce. Furthermore, extreme personal conflict makes mediation in family law more difficult for the parties and the mediator as compared to other forms of mediation. This conflict between the parents tends to focus on them and their feelings, often relegating the child to the sidelines. As a result, the voice of the child becomes distant in divorce mediation. Against this backdrop, this article proposes how the responsibilities of a judge-mediator should be redefined in the Singapore context.

2 Parental responsibility begins at the birth of the child and continues to the age of majority. Even when parents separate, this responsibility does not cease.[1] This parental responsibility arises from the statutory provision of s 46(1) of the Women's Charter[2] which provides:

> (1) 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.

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1 See Leong Wai Kum, *Elements of Family Law in Singapore* (Singapore: LexisNexis, 2nd Ed, 2013) at pp 235–236.

2 Cap 353, 2009 Rev Ed.

3 This creates a moral exhortation for parents to co-operate in providing care for the child(ren) of the marriage. Read together with s 3 of the Guardianship of Infants Act,[3] it requires parents to act in the best interest of their children to live up to this moral exhortation.[4] As Leong Wai Kum has stated, this directive "has the potential of subjecting every instance of parental conduct towards the child by this standard".[5] While these statutory provisions may not have much enforcement value, they espouse the intention of the Legislature to ensure that all children, including children of divorcing parents, are cared for. The Singapore Court of Appeal has continuously and consistently held that a child's best interest is advanced where both parents play an active role in the child's upbringing even after divorce.[6] This same principle must also apply to divorce mediation involving children, as parental responsibility does not change with the process of establishing post-divorce order. Therefore, it is crucial to build a "long lasting and robust agreement" between the parties for the well-being of the child.[7]

4 In diffusing tensions arising from divorce, it is pertinent to consider children's interests in the process. Sundaresh Menon CJ rightly stated that continued exposure to such "intense inter-parental conflict" causes "long-lasting adverse psychological, emotional and behavioural effects on children",[8] which undermines the moral exhortation of parental

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3 Cap 122, 1985 Rev Ed.

4 See s 3 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed), which provides 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* and save in so far as such welfare otherwise requires the father of an infant shall not be deemed to have any right superior to that of the mother in respect of such custody, administration or application nor shall the mother be deemed to have any claim superior to that of the father. [emphasis added]

5 See discussion of equal co-operative responsibility of parents during the marriage in Leong Wai Kum, *Elements of Family Law in Singapore* (Singapore: LexisNexis, 2nd Ed, 2013) at p 237.

6 The Singapore Court of Appeal in *CX v CY* [2005] 3 SLR(R) 690 at [26] and *AUA v ATZ* [2016] 4 SLR 674 at [44]–[46] has consistently stated that the:

> … idea of joint parental responsibility is deeply rooted in our family law jurisprudence … the welfare of the child was best advanced if both parents played an active role in the upbringing of the child, even if they might not continue to live together.

It has become trite law after *Lim Chin Huat Francis v Lim Kok Chye Ivan* [1999] 2 SLR(R) 392 and *L v L* [1996] 2 SLR(R) 529 at [17] and [22]–[23] that the best interests of the child should remain of paramount importance over what the parents want. Although the cases involve different factual patterns, they continue to emphasise the importance of the child's interests.

7 *Mediation in Singapore: A Practical Guide* (George Lim SC & Danny McFadden eds) (Singapore: Sweet & Maxwell Asia, 2nd Ed, 2017) at para 13.094.

8 See Chief Justice Sundaresh Menon, "The Problem-solving Practitioner and the Complexity of Family Justice", opening address at the Family Justice Practice Forum: Family Justice 2020 (14 July 2017) at para 5; Joan Kelly & Robert Emery, "Children's

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responsibility *per* s 46(1). Therefore, reducing conflict is an important objective during the divorce process to prevent or reduce such adverse effects on children.[9]

5 This article will provide an outline of the family justice system in Singapore[10] and propose a new "child advocate" scheme where the children representative and/or counsellor will be more suitable for the advancement of a child's interests in mediation instead of a judge-mediator.[11] The last part[12] will provide a conclusion.

II. Background

A. Enactment of Family Justice Rules in 2014[13]

6 The introduction of the Family Justice Rules 2014 paved the way for a more "child-centric approach" to separation and divorce in Singapore.[14] Since 2011, there has been a shift towards compulsory counselling and mediation for families with children at the Child Focused Resolution Centre ("CFRC"), a branch of the Family Dispute Resolution Division, by a judge-mediator.[15] Now, families with children under the age of 21 are required to undergo mandatory counselling and mediation that focuses on child arrangement and co-parenting issues.[16] This change has integrated mediation within the Family Justice Courts ("FJC") in Singapore to "facilitate cooperation and communication between parties, rather than merely provide a place for families to litigate".[17] Even though the mediation is done by a judge-mediator at the CFRC who may have undergone training, there are no guidelines to assist the mediator when

Adjustment Following Divorce: Risk and Resilience Perspectives" (2003) 52(4) *Family Relations* 352.

9 See Chief Justice Sundaresh Menon, "The Problem-solving Practitioner and the Complexity of Family Justice", opening address at the Family Justice Practice Forum: Family Justice 2020 (14 July 2017) at para 5.

10 See paras 6–9 below.

11 See paras 10–22 below.

12 See paras 23–24 below.

13 S 813/2014.

14 See Family Justice Courts, "Making Justice Real for Families", media release (20 February 2017) Annex C at para 2 <https://www.familyjusticecourts.gov.sg/NewsAndEvent/PublishingImages/Pages/FJC-Workplan-2017/FJC%20Workplan%202017%20Press%20Release.pdf> (accessed June 2018).

15 See paras 11(2) and 12(4) of the Family Justice Courts Practice Directions 2015 read with s 50(1) of the Women's Charter (Cap 353, 2009 Rev Ed) and r 26(9) of the Family Justice Rules 2014 (S 813/2014).

16 See Kevin Ng & Sim Khadijah Mohammed, "Alternative Dispute Resolution in the Family Justice Courts" in *Law and Practice of Family Law in Singapore* (Valerie Thean & Foo Siew Fong eds) (Singapore: Sweet & Maxwell Asia, 2016) at para 17.3.20.

17 Kevin Ng & Sim Khadijah Mohammed, "Alternative Dispute Resolution in the Family Justice Courts" in *Law and Practice of Family Law in Singapore* (Valerie Thean & Foo Siew Fong eds) (Singapore: Sweet & Maxwell Asia, 2016) at paras 17.2.1–17.2.2.

issues arise. At no point are children involved in the mediation.[18] At this stage, parties are not always rational and some grievances are not easily put to rest. What mediation seeks to do is attempt to address the grievances that have caused hurt to all parties.[19]

7 Where cases of family violence are involved, families should not be brought to mediation unless they are deemed appropriate by the mediator.[20] This is because mediation, as a forum, is problematic in not reflecting a disparity of power between the parties involved. It may, instead, be used by the perpetrator for further abuse of the victim.[21] This suggestion is in line with the goal of the FJC and Legislature to keep divorce fault-free. In the exceptional case of *AOO v AON*[22] where Andrew Phang Boon Leong JA chastised the husband for capitalising on the wife's guilt from adultery to get her to sign an agreement that was wholly disadvantageous to her, the court set aside the marital agreement on the basis of fraud and not fault.[23] In this case, although it was not a case of family violence, the husband had more power because of the moral high ground on which he stood for not committing adultery. This judgment exemplifies the Singapore court's denunciation of manipulation on the basis of power imbalance by one party of another. However, this article will not explore this area because it is not within its scope.

8 At times, cases with domestic violence may be mistakenly brought to mediation.[24] In cases where domestic violence is detected between the

18 This does not include mandatory counselling for the entire family prior to the commencement of any writ of divorce. See s 50(3A) of the Women's Charter (Cap 353, 2009 Rev Ed).

19 See Chief Justice Sundaresh Menon, opening keynote speech at the Opening of the Family Justice Courts (1 October 2014) at para 24 <https://www.familyjusticecourts.gov.sg/NewsAndEvent/Documents/2014Oct01_Keynote_OpeningFJCourts.pdf> (accessed June 2018).

20 The then Minister for Community Development, Youth and Sports stated that judges are given discretion under s 50(3B) of the Women's Charter (Cap 353, 2009 Rev Ed) to not counsel or mediate where family violence and abuse is involved. See *Singapore Parliamentary Debates, Official Report* vol 87 at cols 2087–2088 (10 January 2011) (Vivian Balakrishnan, Minister for Community Development, Youth and Sports). Ultimately, it depends on the discretion of the mediator who would assess the suitability of mediation for cases involving violence. See Jennifer McIntosh, Yvonne Wells & Caroline Long, "Child-focused and Child-inclusive Family Law Dispute Resolution: One Year Findings from a Prospective Study of Outcomes" (2007) 13(1) *Journal of Family Law Studies* 8 at 11.

21 See Tony Bogdanoski, "The Neutral Mediator's Perennial Dilemma: To Intervene or Not to Intervene" (2009) 9(1) QUTLJJ 26 at 37.

22 [2011] 4 SLR 1169.

23 The notion of fault-free divorce is the foundation on which the family justice system is built upon. See *AOO v AON* [2011] 4 SLR 1169 and *BMI v BMJ* [2018] 1 SLR 43.

24 See Lisa Webley, "When Is Mediation Mediatory and When Is It Really Adjudicatory? Religion, Norms, and Decision Making" in *Gender and Justice in Family Law Disputes* (Samia Bano ed) (Waltham: Brandeis University Press, 2017) at p 33 and Ann Milne, "Mediation and Domestic Abuse" in *Divorce and Family Mediation: Models, Techniques, and Applications* (Jay Folberg, Ann Milne & Peter Salem eds) (New York: Guilford Press, 2004) at p 304.

parties during the mediation, the mediator should be vigilant in assessing the suitability of mediation where there is large power disparity between the parties. Mediation might need to be discontinued when it is found to be insufficient or inappropriate.

B. Interest-based mediations

9 Another initiative by the FJC is the Collaborative Family Practice ("CFP") that began in 2012. The CFP introduced the concept of interest-based approaches to negotiations into mediation conducted by lawyers. These principles from principled negotiation should also guide principled mediation because they reduce tensions between parties and encourage collaboration. Roger Fisher and William Ury's work on principled negotiation can be distilled into four main characteristics: (a) separating the people from the problem; (b) focusing on interests and not positions; (c) generating options that will be advantageous to both parties; and (d) insisting that results are based on an objective standard.[25] With the proactive role that the judge-mediator has assumed, principled mediation from the CFP should also be used by judge-mediators in the CFRC if it has not already been implemented.[26]

III. Where is the child in all of this?

10 It is apparent that the child's voice is missing from the mediation table. Apart from when Child Inclusive Dispute Resolution ("CIDR") is employed by the judge-mediator or where there is co-mediation under the CFRC, the child's voice is non-existent. While there have been several initiatives in the FJC since 2011 to provide a voice for the child in schemes such as CIDR and the child representative, the judge-mediator and the judge remain the primary advocates for the child outside of those schemes. Focusing solely on mediation, the judge-mediator should not take on this dualistic role, in which he is both a neutral and an advocate for the child. Instead, a child advocate should be present during mediation to be the voice of the child.

11 While Lorri Yasenik, a psychologist, and Jon Graham advocate for direct involvement of the child in the mediation when parent readiness scores are moderately high to very high, the author believes that it would be prudent to first begin with a child advocate before determining the

25 These four characteristics were distilled by Wolfson. See Lorne Wolfson, *Settling Family Law Cases: Practical Techniques for Advocates and Neutrals* (Toronto: Thomson Reuters Canada, 2017) at p 59 and Roger Fisher & William Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (New York: Penguin Books, 2nd Ed, 1991).

26 This is logically deduced because the judge-mediator's role is to help parties focus on child arrangement and co-parenting issues. This refocusing is a trait of principled mediation.

viability of self-advocacy in future.[27] This is because the child may not be able to advocate for himself effectively in mediation. Instead, self-advocacy would put an unnecessary burden on him to choose sides and be more detrimental for him. Further, the child advocate's expertise in counselling or social work would put him in a better position to articulate the issues facing the child. Therefore, this article will focus on exploring the role of the child advocate in mediation and will not be considering the prospect of self-advocacy.

A. The unsuitability of judge-mediators to take on a dual role

12 In the current scheme, the judge-mediator is both an advocate for the child and a neutral facilitator. This joinder of roles is problematic because the judge-mediator does not have the child's input. What often results is that the judge-mediator advocates for what he thinks is the child's thoughts and interests without communicating with the child. Take, for example, a family where the mother can provide for the material livelihood of the child, while the father provides for emotional support for the child. Both parents would attempt to persuade the judge-mediator that he or she has the closer bond. What is useful in this situation is for the child advocate to provide the perspective of the child. This input would allow the judge-mediator to gain a fuller picture of what would be in the best interest of the child. Traditionally, the mother tends to have custody of the child. Thus, there is a significant possibility that the child might end up living with the mother, who seems to be able to care for the child best because of her ability to provide the material life. But that solution, in practice, might not be in the best interest of the child.

13 In George Lim SC's book on mediation in Singapore, Kevin Ng cited a tragic case involving a child who refused to see her father because of deep issues.[28] Unknown to the court, the judge had, with good intent, ordered supervised access for the father at an external family centre with a social worker present in a bid to improve the relationship between them.[29] During the meeting, the child clutched her teddy bear and requested to go to the washroom. After a significant amount of time, the social worker decided to check in on the child. When the child had not responded to the social worker's queries, the social worker broke down the door to find the child with a small box cutter knife, about to cut her wrist. The child had hidden the knife in the teddy bear prior to the meeting and intended to harm herself should she be forced to see her father. No one is to be blamed for this close call because it was well intentioned. However, this close call illustrates the importance of detecting emotional issues that plague

27 Yasenik and Graham provide a spectrum of child involvement depending on the level of conflict between the divorcing parents. See Lorri Yasenik & Jon Graham, "The Continuum of Including Children in ADR Processes: A Child-centered Continuum Model" (2016) 54(2) *Family Court Review* 186.

28 See *Mediation in Singapore: A Practical Guide* (George Lim SC & Danny McFadden eds) (Singapore: Sweet & Maxwell Asia, 2nd Ed, 2017) at para 13.047.

29 This was not picked up even during mandatory counselling.

families from children. The author proposes that a direct way to observe such signs would be through the proposed child advocate who would listen to the voice of the child. Through the interview sessions, the child advocate would have a better chance of detecting these deep-seated emotional issues in the child.

14 While it would be possible for the FJC to have more judges to interview children for their input, counsellors and child representatives are in a better position to do so because they have the expertise and are specially trained to communicate with children. Psychologist Joan Kelly has provided the clinical perspective that judge interviews might be overbearing and intimidating for children even if not intended to be.[30] Currently, there is no public information on whether judge-mediators undergo the same training programmes as counsellors and child representatives. However, even if they do, a better use of resources would be to delegate this role to counsellors and child advocates who possess this expertise.[31] Counsellors and child advocates are trained to build rapport with children over time to gain their trust and understanding of their situation and wishes. Further, taking into account the voluminous number of divorce cases that the FJC handles each year, it could be highly practical from this perspective for counsellors and child advocates to be responsible for interviewing children instead of judge-mediators. Accordingly, they would be more suited to advocate for children.

B. Having a child advocate is aligned with court's intention

15 Since the inception of the child representative scheme in 2014, child representatives were only appointed 24 times in litigation proceedings despite there being 26 lawyers who are capable of doing so.[32] Formally, the role of the child representative is to allow the voice of the child to be "heard *both* by the parents and by the court" [emphasis in original] during litigation.[33] In mediation, there is another newly created

30 In Canada, judges are reluctant to interview children because they lack the expertise to do so. Bringing a child to the judge's chambers can also be intimidating for the child. See Joan Kelly, "Psychological and Legal Interventions for Parents and Children in Custody and Access Disputes: Current Research and Practice" (2002) 10(1) Va J Soc Pol'y & L 129 at 153–154. Conversely, in Australia, there is a shift towards encouraging child involvement – be it direct or indirect involvement – where possible. See Lorri Yasenik & Jon Graham, "The Continuum of Including Children in ADR Processes: A Child-centered Continuum Model" (2016) 54(2) *Family Court Review* 186.

31 Family lawyer Rajan Chettiar believes that counsellors will ease acrimony between parties when given a bigger role in mediation. See Theresa Tan, "Ways Being Explored to Ease Trauma of Divorce on Children" *The Straits Times* (4 January 2018).

32 See Chief Justice Sundaresh Menon, "The Problem-solving Practitioner and the Complexity of Family Justice", opening address at the Family Justice Practice Forum: Family Justice 2020 (14 July 2017) at paras 17–18.

33 See Chief Justice Sundaresh Menon, "The Problem-solving Practitioner and the Complexity of Family Justice", opening address at the Family Justice Practice Forum: Family Justice 2020 (14 July 2017) at para 20; Judicial Commissioner Valerie Thean, "Access to Family Justice: Anchoring Deeper, Extending Wider", keynote address

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CIDR scheme (which began in 2015) where the FJC embarked on a pilot programme with 20 families to "incorporate a therapeutic interview with the affected children" as a pre-trial process. The counsellor would speak and interact with the child to understand the feelings and effects of the divorce on him or her. This information would be subsequently relayed to the parents by the counsellor to keep the parties aware of the situation and focus on moving forward in the relationship. This refocusing of the issue on moving forward for the child's sake allowed 80% of the 62 families to settle at least one of the issues affecting children by the end of mediation.[34]

16 The child representative and CIDR schemes both share features in that both provide an advocate for the child in their respective stages of the divorce process. Valerie Thean JC (as she then was), then-Presiding Judge of the FJC, and Menon CJ lauded both initiatives' successes. They recognised the potential and helpfulness of the two programmes to reduce animosity, empower parties and promote co-operation between ex-spouses for the sake of the child.[35] Despite the approval of both schemes for their therapeutic properties, the FJC has not incorporated a similar child representative scheme into mediation. The author proposes that a child advocate should represent the child's voice in all mediations under the CFRC; it should not be isolated within the CIDR scheme. The therapeutic benefits for the family undergoing separation will help the child understand the situation and help the family move forward.

17 The author believes that the child should always be represented in mediation by a counsellor, social worker or child representative as a child advocate. Studies to which the FJC pays attention have shown that family justice requires therapeutic outcomes.[36] American studies have also shown that involving the children in the process:[37]

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at the Family Justice Practice Courts Workplan 2017 (20 February 2017) <https://www.familyjusticecourts.gov.sg/NewsAndEvent/PublishingImages/Pages/FJC-Workplan-2017/JC%20Thean%20Keynote%20Address.pdf> (accessed June 2018).

34 See Family Justice Courts, "Making Justice Real for Families", media release (20 February 2017) Annex A <https://www.familyjusticecourts.gov.sg/NewsAndEvent/PublishingImages/Pages/FJC-Workplan-2017/FJC%20Workplan%202017%20Press%20Release.pdf> (accessed June 2018).

35 See Chief Justice Sundaresh Menon, "The Problem-solving Practitioner and the Complexity of Family Justice", opening address at the Family Justice Practice Forum: Family Justice 2020 (14 July 2017).

36 See Barbara Babb, "An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective" in *Resolving Family Conflicts* (Jana Singer & Jane Murphy eds) (Aldershot: Ashgate, 2008) at p 20, which was cited affirmatively in Judicial Commissioner Valerie Thean, "Access to Family Justice: Anchoring Deeper, Extending Wider", keynote address at the Family Justice Practice Courts Workplan 2017 (20 February 2017) at para 4 <https://www.familyjusticecourts.gov.sg/NewsAndEvent/PublishingImages/Pages/FJC-Workplan-2017/JC%20Thean%20Keynote%20Address.pdf> (accessed June 2018).

37 See Joan Kelly, "Psychological and Legal Interventions for Parents and Children in Custody and Access Disputes: Current Research and Practice" (2002) 10(1) Va J Soc Pol'y & L 129 at 145 and 147.

> … demonstrated increases in cooperation, a decrease in physical violence for women and men, decreases in disagreements, and improved abilities to communicate and focus on their children's needs.

This is because it fulfils the children's want to be kept informed and "have a say".[38] Both the CIDR and child representative schemes provide these therapeutic outcomes that family justice requires and therefore should be used to give every child involved in divorces the same starting point. This is especially so since the FJC has made mediation an integral part of the family justice system. The current discretion given to judges to employ the scheme when deemed suitable does not provide all children with an opportunity to obtain the benefits of the CIDR scheme, and this state of affairs does not truly live up to District Judge Jen Koh's goal of making the voice of the child heard in divorce processes.[39]

18 The Singapore courts have generally included the child's wishes as a factor in considering parental arrangements in litigation within the larger concept of "best interests" of the child.[40] Having a child advocate will help give effect to this important factor. Taking lessons from the CIDR and child representative schemes, the child advocate can come in the form of a child representative or in the form of a counsellor who has interviewed the child. By ensuring the child advocate is always present during the mediation between the parents and the judge-mediator, the interests of the child will always be considered from the perspective of the child. He thus acts as a direct medium for parents to hear the voice of the child.[41] Having a child advocate will be a useful neutral to remind the judge-mediator of the child's interests when providing practicable suggestions to parties. This way, the judge-mediator can become truly neutral in this new multiparty mediation dimension.[42] However, where the child is very young, the counsellor should be prudent during his initial assessment of the child during the CIDR to determine if this approach is appropriate.

19 Further, given that the law mandates that families with a child under 21 undergo mandatory mediation and counselling, there are many children who are intelligent and want to provide their opinion in the

38 See Lorri Yasenik & Jon Graham, "The Continuum of Including Children in ADR Processes: A Child-centered Continuum Model" (2016) 54(2) *Family Court Review* 186 at 187.

39 See Family Justice Courts, *The New Family Justice Paradigm: Family Justice Courts Annual Report 2015* at p 29.

40 Others include: the involvement of both parents in the child's life, the parent which shows greater concern for the child, maternal bond and desirability of keeping siblings (if any) together. See *ABW v ABV* [2014] 2 SLR 769 at [23] and s 3 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed).

41 See Lorri Yasenik & Jon Graham, "The Continuum of Including Children in ADR Processes: A Child-centered Continuum Model" (2016) 54(2) *Family Court Review* 186 at 192.

42 See Felicity Bell *et al*, "Choosing Child-inclusive Mediation" (2012) 23 *Australasian Dispute Resolution Journal* 253.

mediation. The author takes the position that children from the age of ten are able to understand the separation of their parents.[43] Admittedly, more studies would need to be conducted to determine the suitable age to have the voice of the child heard.[44] However, taking a common-sense approach, so long as the child shows the counsellor maturity, his or her voice should be heard in the mediation. Ultimately, divorce-related decisions concern the life of the child. It is, therefore, for his or her benefit that he or she has a say in the process; it would also give the child a sense of empowerment by partaking of it.[45]

20 In another tragic case of Joan, whom psychologist Judith Wallerstein encountered during her study on the impact of divorce on children, Joan was unhappy with the arrangements made by the courts for her to visit her father at the expense of her school and social life. Joan remarked that she only went because "some silly judge said that [she had] … to go [to her father's] two weekends every month and all July".[46] To her, the access time with her father was dreadful to the point that she would cry herself to sleep during her summer break in July. On the other hand, her father refused to allow her to stay with her friends over the weekends to complete her school projects because it was "his only time" to see Joan.[47] He undoubtedly loved her and felt that he was trying his best to be there for her.

21 This real-life story illustrates how important it is to have the voice of the child heard more clearly during the mediation that decides how his life is going to be post-divorce. Merely sharing how he feels during the CIDR is insufficient because the child is sharing how he feels in that moment; the child is unable to consider the future that would be affected.[48] While counselling in the CIDR is able to secure an "emotional base" for the

43 This age was derived from the study done by psychologist Joan Kelly that interviews with children aged around ten years old have shown to be beneficial. Children do not appear to be intimidated, especially where they requested for the interview. See Joan Kelly, "Psychological and Legal Interventions for Parents and Children in Custody and Access Disputes: Current Research and Practice" (2002) 10(1) Va J Soc Pol'y & L 129 at 160.

44 See Joan Blades, *Family Mediation: Cooperative Divorce Settlement* (Prentice Hall, 1985) at p 48; Donald Sposnek, "The Value of Children in Mediation: A Cross-cultural Perspective" (1991) 8(4) *Conflict Resolution Quarterly* 325 at 333.

45 See B Landau, "Involvement of Children in the Mediation Process: An International Perspective", paper presented at the International Mediation Forum of the Academy of Family Mediators, Danvers, Massachusetts (July 1990).

46 See Judith Wallerstein, Julia Lewis & Sandra Blakeslee, *The Unexpected Legacy of Divorce – The 25 Year Landmark Study* (US: Hachette Books, 2000) at p 178.

47 See Judith Wallerstein, Julia Lewis & Sandra Blakeslee, *The Unexpected Legacy of Divorce – The 25 Year Landmark Study* (US: Hachette Books, 2000) at p 177.

48 In the case study of Charlie and His Puddle, Charlie drew a picture of a puddle to illustrate his feelings regarding his parents' divorce during a mandatory counselling session at the Child Focused Resolution Centre. The case study does not provide more information on how the refocusing of matters to Charlie during the mediation sessions led to better outcomes in parenting planning: see *Mediation in Singapore: A Practical Guide* (George Lim SC & Danny McFadden eds) (Singapore: Sweet & Maxwell Asia, 2nd Ed, 2017) at paras 13.073–13.079.

child and allow the focus to be on the child's emotional well-being, it is important to build on this and consider the child's thoughts on the future since the parenting plan is intended to achieve this very goal of prescribing for the future. Therefore, it is important for a child advocate to elucidate the child's concerns and fears of the future and bring them to the table to allow the judge-mediator and parents to craft a practicable and child-centric parenting plan for the family while taking care of his emotions.

22 This reform would mean an increase in the need of social workers and/or counsellors to assist in being the voice of children in mediations. However, if the FJC truly believes that the child's interests are of utmost importance in a divorce, it should not hesitate to implement an effective, albeit potentially costly, programme that would help children. The therapy can help with building the trust of the child in his or her parents after the marriage has ended and with enabling parents to live up to the parental responsibility expected of them under s 46(1) of the Women's Charter. The ability to empower and reduce the possibility of a child growing up and away from his parents is worth more than the costs to provide structures for this reform. Despite the marriage ending in a divorce, the relationships that form a family still very much remain the core building blocks of society and could change how the child should be viewed: as a participant instead of an object of concern.[49]

IV. Conclusion

23 The author welcomes the continuing assessment and improvement of the FJC. It has resulted in a more personal approach towards family justice in Singapore. However, the current data provided by the FJC is limited in respect of detailed analysis because of the small sample size. Crucial data, such as the percentage of child-related issues being resolved in mediation within the various types of mediation – CFRC, CIDR, or just mediation – is lacking. Other crucial missing data includes whether the 75% and 80% success rates of mediation cases in 2015 and 2016 respectively are with regard to permanent or temporary resolutions of child issues.[50]

24 Despite this, the author is not suggesting that the CFRC and CIDR are inferior. The proposition of a new child advocate may be novel, but it has considerable potential to be the bridge between the courts and the child during mediation and build on the good work of the CIDR scheme.[51]

49 See Lorri Yasenik & Jon Graham, "The Continuum of Including Children in ADR Processes: A Child-centered Continuum Model" (2016) 54(2) *Family Court Review* 186 at 194.

50 See Kevin Ng & Sim Khadijah Mohammed, "Alternative Dispute Resolution in the Family Justice Courts" in *Law and Practice of Family Law in Singapore* (Valerie Thean & Foo Siew Fong eds) (Singapore: Sweet & Maxwell Asia, 2016) at para 17.5.17.

51 In Australia, a study was done to see the impacts of child-inclusive mediation on both parents and children. Reports were largely positive, indicating the usefulness of the child-inclusive mediation. A similarly thorough study should be done in Singapore to

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Children are ultimately the court's greatest concern during divorce mediation because of their vulnerable and impressionable state.[52] As Wallerstein notes, "divorce can benefit adults while being detrimental to the needs of children".[53] The impact of divorce on children goes far beyond their childhood and into their adulthood; what happens to them during this phase of divorce is unfortunate. Therefore, more needs to be done to protect and help children who are going through this process to understand and appreciate what is happening. This in turn will reduce the impact on them as they grow up. Safeguards should also be put in place so as not to burden the child with the notion that he is the decider of his own custody while empowering him to have a voice.[54] Gone are the days when children were kept in the dark until they were older. The children of this generation are more intelligent and cognisant of the changes around them. Instead of destroying the trust by keeping them in the dark, it would be better to bring light to them. Children should be given a form of co-ownership in establishing what would be in their best interests because of their stake in it. Including them in the process provides an opportunity for parents to build trust with their children as they start a new chapter in their lives.

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determine its suitability in the local context. See Jennifer McIntosh, Yvonne Wells & Caroline Long, "Child-focused and Child-inclusive Family Law Dispute Resolution: One Year Findings from a Prospective Study of Outcomes" (2007) 13(1) *Journal of Family Law Studies* 8.

52 In Australia, there are propositions for the inclusion of the child as a participant either on his own, with an advocate or with an advocate based on the conflict level of the parents. See Lorri Yasenik & Jon Graham, "The Continuum of Including Children in ADR Processes: A Child-centered Continuum Model" (2016) 54(2) *Family Court Review* 186.

53 See Judith Wallerstein, Julia Lewis & Sandra Blakeslee, *The Unexpected Legacy of Divorce – The 25 Year Landmark Study* (US: Hachette Books, 2000) at p xxxix.

54 Michael Emerson and Denise Britton provide the benefits of child-inclusive mediation studies done in Australia. See Michael Emerson & Denise Britton, "Involving Children in Family Dispute Resolution", paper delivered at the Legalwise Seminars (November 2008) <http://emfl.com.au/wp-content/uploads/2016/11/Involving-Children-in-Family-Dispute-Resolution.f..pdf> (accessed June 2018).