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4 June 2014

Committee for Family Justice  
c/o Legal Policy Division  
Ministry of Law  
100 High Street, #08-02  
The Treasury  
Singapore 179434

**BY EMAIL & POST**  
**(MLAW\_Consultation@mlaw.gov.sg)**

Dear Sirs

### **Public Consultation Paper on the Interim Recommendations of the Committee for Family Justice**

We refer to the Public Consultation Paper on the Interim Recommendation of the Committee for Family Justice dated 7 May 2014 ("Consultation Paper").

2 Council of the Law Society, together with input from members, has considered the recommendations of the committee. The Society's views are set out below and we would be grateful if these views are taken into consideration.

#### **I) Establishment of Specialist Agencies**

##### Paragraphs 28 to 31 of the Consultation Paper

*The Paper recommends that families facing divorce or family violence related issues face multiple issues and would be best supported by Specialist Agencies which are staffed with social service practitioners equipped with specialist knowledge and skills in handling divorce and family violence issues.*

3 Council acknowledges that Specialist Agencies may be able to provide the specialised knowledge and have adequate skills to handle divorce and family violence issues. It would serve the community's needs holistically if services of these support agencies are also extended to families undergoing the Syariah Court ("SYC") matrimonial proceedings.

#### **II) Introduction of pre-writ consultation session**

##### Paragraph 32 to 41 of the Consultation Paper

*The Paper recommends that before filing for divorce in the Family Court, it would be beneficial for divorcing couples to undergo a pre-filing consultation session.*

#### **Council Members 2014**

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*The objective of the consultation session is to help parties understand the issues arising in a divorce and its impact on children. These consultation sessions may be conducted by trained social service practitioners from the Divorce Support Specialist Agencies and accredited family lawyers. Attendance at this consultation session could be made mandatory for parents with minor children.*

4 Council notes that currently the SYC conducts pre-divorce briefings through Projek Iltizam for divorce applicants, which are not mandatory. [However, the Marriage Counselling Programme (“MCP”), which divorcing couples attend after they have made their submissions for registration forms for divorce or counselling is mandatory.]

5 Council recommends that pre-divorce briefings under Projek Iltizam be made mandatory for couples as a first step. Subsequently, the following system may also be implemented:

- Couples should attend MCP and identify the specific issues relating to the intended divorce proceedings;
- Depending on the issues identified, the Ministry of Social and Family Development may refer divorcing couples to attend at the appointed agency; and
- Divorcing couples may then utilise the resources offered by these appointed agencies.

6 Council also recommends that programmes such as pre-divorce briefings and counselling measures should not be impacted due to administrative pitfalls and have to be implemented in a sustainable fashion. Accordingly, it should be ensured that social agencies and counsellors are well-equipped to deal with any increase in caseload.

7 Council welcomes the proposal to conduct workshops for counsellors as there has been feedback in the past about the counselling process, on both procedural and substantive aspects. Counsellors should be trained to conduct sessions on and be equipped with necessary skills to deal efficiently with the proposed parenting plan, given that the Consultation Paper seeks to mandatorily implement the said plan. Council also assumes that the proposed workshops for counsellors will be conducted at regular intervals.

8 Council would like to seek confirmation on whether the Centre for Family Harmony (“CFH”) is prepared to take up cases referred by the SYC. In the past, CFH had expressed reservations to undertake such referrals on ground that parties were unwilling or unable to bear the costs for interview process as well as use of their premises.

9 Council notes that while the parenting plan is made mandatory for Muslim couples contemplating divorce, at the pre-divorce summons stage, attendance at the Child Focused Resolution Centre (“CFRC”) is mandatory only for divorce proceedings before the Family Court with applicable minors. Practitioners of the SYC, who have had experience with CFRC have found it immensely useful as there are dedicated trained social workers handling issues of children with the divorcing couples. Further, the fact that mediation sessions at CFRC is conducted by judges have also been found to be extremely useful and worthwhile. Council is of the view that an approach for the services and facilities of CFRC to be made available to SYC cases would be beneficial.

10 Any step to allow SYC cases to tap into the CFRC would serve as an extension of CFRC to SYC cases, without diluting the jurisdiction of SYC. Presidents/judicial officers of the SYC could also be attached to the CRFC, which could lead to a mutual enhancement of

expertise and knowledge between the two courts. On another level, marriage counsellors who are in the SYC network can tap on and work with the counsellors at the CRFC. Ultimately, the objective is for the protection of children of divorcing couples appearing before both courts

11 Council also suggests the following 2 alternatives if allowing SYC cases to make use of CFRC facilities is not seen as a viable option. At present, Muslim couples already have the option of beginning an action on children issues under Guardianship of Infants Act (“GIA”) before the Family Courts. However, once a SYC divorce summons has been issued (before the conclusion of the Family Court proceedings), the Family Court will stay such proceedings under the GIA and the SYC shall take over the matter.

- Alternative 1

The Family Court could continue hearing the matter under the GIA as the transfer to the SYC has the effect of restarting proceedings, leading to a protracted process which may not be in the best interest of the children. In cases where there is an Islamic law related issues, parties may be allowed to refer the matter to the SYC.

- Alternative 2

The Family Court may be the default forum for cases involving children. If one party feels strongly that the matter should be heard in the SYC, an application for leave should be made, and only upon leave being granted, the SYC may hear the matter. Expert opinion on Islamic law issues on children can also be canvassed at the Family Court during the application for leave.

12 Council, and the Muslim Law Practice Committee, would be happy to have further discussions on this if feasible.

### **III) Establishment of the new Family Justice Courts**

#### Paragraphs 42 to 53 of the Consultation Paper

*The Paper recommends that the new Family Justice Courts comprising the Family Court, the High Court (Family Division) and the Juvenile Court should be established.*

13 It will be meaningful of the Law Society is represented on the proposed Family Justice Rules Committee, via the Family Law Practice Committee and Secretariat. This will allow for the representation of the Bar, to input views vis-à-vis procedure and subsidiary legislation under the proposed Family Justice Act.

### **IV) “Court Friend” scheme to assist unrepresented litigants in navigating the court system**

#### Paragraph 68 to 71 of the Consultation Paper

*The Paper recommends that unrepresented litigants may be assisted in court by a Court Friend, who will render practical support throughout the court process, including assistance in filling court forms, administrative and procedural matters.*

14 Council is of the view that it will be helpful to unrepresented litigants if the same scheme is made available to the SYC to render practical assistance.

## **V) A Judge-led approach to adjudicating family disputes**

### Paragraph 72 to 75 of the Consultation Paper

*The Paper recommends that Judges should be empowered to adopt a Judge-led approach and take a more proactive role in court proceedings.*

15 Council is of the view that the SYC should be allowed to adopt the same approach and that various resources such as CFRC (and other suitable agencies) be made available to the SYC judges to aid them in making decisions that are in the children's best interests.

16 On terminology, perhaps a term connoting less judicial intervention could be adopted, such as "Court-managed cases".

## **VI) Empowering the court to direct parties to appropriate family support services**

### Paragraph 76 to 77 of the Consultation Paper

*The Paper recommends that the court should be given the power to order parties to mediate their disputes or seek other forms of family support services (e.g. counselling) at any stage of the proceedings. The court may also conduct mediation in appropriate cases. The court may also involve support professionals such as social workers, psychologists and counsellors during the court process.*

17 Council is of the view that the same approach could be adopted in the SYC so that a less adversarial approach can be applied to the problems faced by families.

## **VII) A dedicated department to provide a voice to the child**

### Paragraph 80 to 83 of the Consultation Paper

*It is proposed that the Counselling and Psychological Services (CAPS) of the State Courts, in collaboration with the Ministry of Social and Family Development (MSF), have an expanded mandate to better represent the voice of the child, with proper resourcing.*

18 Council recommends that a similar system to CAPS may be put in place in the SYC. Alternatively, it is suggested that the SYC may be allowed to utilise the resources of CAPS.

## **VIII) Appointment of Child Representatives in court proceedings involving children**

### Paragraph 84 to 88 of the Consultation Paper

*In court proceedings where a child is involved, the interests of the child should be safeguarded by the appointment of Child Representatives in appropriate cases, who may, among other matters, act as the child's advocate, interview children and their parents, and prepare independent reports on the arrangements and decisions which will serve the child's best interests for the court's consideration.*

19 Council recommends that the same measures be adopted in SYC, so that interests of the children may be similarly represented. As regards the appointment of Child Representatives,

Council also recommends that the Law Society may collaborate with stakeholders in developing this pool.

**IX) Involving social and psychological service professionals in court proceedings**

Paragraph 89 to 90 of the Consultation Paper

*The court should be empowered to order, where appropriate, for expert assistance to be provided, in order to assist the court in its decision-making and ensure that the best interests of the parties and, in particular, the children are promoted.*

20 Council recommends that the SYC judges may adopt the same approach and utilise the expert assistance from social and psychological services to aid them in making decisions.

**X) The Family Law Practitioner (FLP) accreditation**

Paragraph 91 to 94 of the Consultation Paper

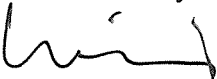
*FLPs are lawyers who have undergone specialist training so that they are equipped to practise family law effectively in a manner that is consistent with and promotes the ethos of the new family justice system. Such specialist training may comprise modular courses in non-court dispute resolution methods, the judge-managed approach and less adversarial techniques in family litigation, as well as non-legal aspects of family cases such as the availability of social support services. It should not be compulsory for all lawyers to be accredited as an FLP, although it is desirable that all who practise family law should do so.*

21 As regards the FLP accreditation, Council suggests that the Law Society may collaborate in the proposed specialist training programme with other stakeholders. Further, Council also recommends that training be extended to SYC practitioners.

**XI) Closing Remarks**

22 The Law Society sincerely hopes that the views expressed members will be taken into consideration and reflected in the Final Report of the Committee for Family Justice. Council also wishes to reiterate its intention to be committed to be continuously engaged in these initiatives.

Yours faithfully



Lok Vi Ming, SC  
President, The Law Society of Singapore