

## Updates for Clients

- by - KAWAL PAL SINGH, ISABEL CHEW & SHAMINI SHARA

### Children: A Creation Of Love, Not A Commodity

#### Unchartered legal territory

On 7 April 2020, the COVID (Temporary Measures) Act (the "Act") was passed by Parliament.

Under sections 34(1) of the Act, the Covid-19 (Temporary Measures) (Control Order) Regulations 2020 (the "Regulations") were introduced to, inter alia, restrict movement in instances where an individual can leave their ordinary place of residence to prevent spread of Covid-19.

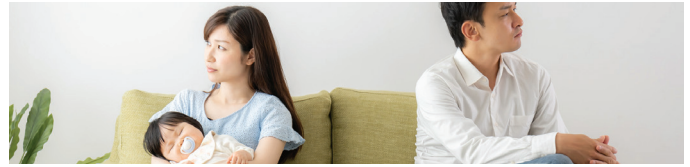
Unsurprisingly, during these unprecedented times, family lawyers received enquiries from anxious parents who had divorced or separated. Their concerns were about returning their children to co-parents who might attempt to keep the children away from the other parent. Such enquiries arose as the "permitted purposes" pursuant to the Regulations was not clearly defined vis-à-vis issues of shared custody and living arrangements of their children.

It was only through the second amendment of the Regulations, that the transfer of temporary custody or care of a child pursuant to any agreement regarding the access rights of a parent, or in discharge of a legal obligation (i.e. an Order of Court), was expressly provided as one of the "permitted purposes".

Further, the Ministry of Health released guidelines stating that children of divorced or separated parents were allowed to take turns to live with either parent, and that access arrangements could also continue as per an Order of Court or any agreement between parties, although co-parents should keep movement and travel to a minimum.

#### Co-parenting, or lack thereof, amidst the coronavirus pandemic

Despite the Regulations, it has been reported that ex-spouses were facing difficulties during the "Circuit Breaker" period (the "CB Period"), especially for parties with acrimonious relationships.



A parent with care and control may have a genuine concern for the safety of his/her child when the child has to shuttle between different households. However, many attempted to exploit the CB Period as a pretext for denying access to the other parent, in violation of the shared custody order or agreement.

Unfortunately, there were also many instances where parents with regular access refused to return a child to the other parent with care and control. They were willing to bet on the likelihood that if they were taken to task before a Court, a Judge may agree that their decision was reasonable given these unprecedented times.

However, this is a big gamble for the non-compliant parent who may possibly be faced with committal proceedings for breaching an Order of Court. Indubitably, the Court will not condone parents who place their own interests before their child's, and refuse to facilitate or cooperate with a willing parent.

Regardless of the outcome, it is likely to involve significant legal expense, time fighting in court and emotional turmoil for both the parents and the child.

#### Finding common ground

The concepts of custody, care and access, are instruments which the law provides to regulate parent and child relationships after a divorce. They are powerful legal constructs, that enable parents to continue caring for their children after the breakdown of the marriage. Parties should use this for that purpose and not as tools to hurt or retaliate against the other parent.

It is not uncommon for parties to distrust each other. Skeptical and doubtful, they have been hurt and let down far too many times to find the confidence to trust that the other parent will do the right thing.

However, affected parties need to accept the reality that a divorce does not terminate parental responsibility; and co-parenting needs to continue for many years ahead, long after the divorce has concluded.

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# Therapeutic Justice: *The way forward*

**“Divorce should be no worse than a re-organisation of the family members’ living arrangements and the divorced spouses should still be able to continue to discharge their parental responsibilities with some degree of co-operation.”**

*Justice DEBBIE ONG & Professor LEONG WAI KUM*

*“Family Justice in Divorce Proceedings in Singapore for Their Spouses and Their Children”*

*Journal of The Malaysian Judiciary, January 2020*

Justice Debbie Ong, presiding Judge of the Family Justice Courts, in her Family Justice Courts Workplan 2020 speech elucidated the way forward for our family justice system which should be one that aims to deliver “Therapeutic Justice”, a non-adversarial system that is “problem solving”.

Therapeutic Justice seeks to address the family’s inter-related legal and non-legal issues with a view to reach an outcome that improves the family’s functionality, going beyond the parents’ broken relationship, helping them transit into a new phase of their lives.

Justice Debbie Ong reminded parties not to use court proceedings to vent their frustrations; and they should instead use therapeutic services to support them in respect of the emotional consequences of a family breakdown.

The family justice system aims to pave a path forward which allows **healing, restoring** and **recasting** of a positive future for parties. It should also allow parties time to grieve over the broken marriage and to be supported throughout this painful journey.

On the issue of children, applications for custody, care and access should not become tools to dominate the other parent; or to be employed to gain a grip over the child and in turn be used as instruments to control the activities of the other parent.

To quote Justice Debbie Ong, “a misguided sense of entitlement, unresolved anger, or a genuine and intolerable difference of opinion are all it takes to turn an instrument of care into an instrument of control”.



A recent judicial pronouncement has amplified the definition of Therapeutic Justice. The Court of Appeal rightly accentuated that the family justice system is one that – despite the parties’ problems with each other (both emotional and otherwise) – is intended to aid the parties and their children to achieve as much **healing** in all its variegated aspects as is possible. This is essential in order for the family to move forward, albeit separately, as positively as possible with their lives (VDZ v VEA [2020] SGCA 75 at [75]).

It is axiomatic that relationships constitute the very foundation of a family. When family relationships break down, these relationships are deeply damaged. Such damage cannot be repaired (completely at least) by way of material recompense. Healing needs to take place but cannot even begin if the parties are in an antagonistic relationship, much less when one or both parties have an axe to grind.

The vindictiveness, will impact not only the parties but also the children, be it physically, emotionally, psychologically or otherwise. If not treated with care, the adverse impact will have a ‘knock on’ effect in the future and may, in extreme situations, result in negative family environments and vibes being generated.

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### In the best interests of the children

As family lawyers, we are reminded to problem solve, help a grieving party make good decisions right from the onset, in an attempt to reach agreements that are reasonable, fair, workable, durable and harmonious, especially when children's interests are at stake.

As parents, parties need to be mindful that their children are often left with a solution which he/she may often struggle to make sense of. A parent's role is to help the child understand the solution, not to immerse the child in their struggles. The simple question is whether an act or a word can contribute towards the healing or the pain of the child. It is important for continuing parents to understand that more often than not, every child requires love, care and attention from *both* parents in order to grow up, to blossom and to reach their fullest potential as balanced individuals.



Ultimately, we are all looking at the best interest of the child – phrased in legal jargon, the welfare of the child is paramount.

To conclude, parties should recalibrate and recognise that they are not adversaries in court, but family members who are grieving yet healing, re-organising their finances and living arrangements, after losing what was once a cherished insitution.

**“Healing does not mean the damage never existed, it means the damage no longer controls our lives.”**

**If you would like to have a chat with us about our family law services, please contact:**



**KAWAL PAL SINGH**  
Partner

kawal.singh@titoisaacclaw.com  
+65 6730 6025



**ISABEL CHEW**  
Associate

isabel.chew@titoisaacclaw.com  
DID: +65 6730 6029



**SHAMINI SHARA**  
Associate

shamini.shara@titoisaacclaw.com  
+65 6730 6085

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