Published on e-First 24 June 2022

17. FAMILY LAW

HO Wei Jing, Tricia[1]
LLB (Singapore Management University);
Lecturer, School of Law, Singapore University of Social Sciences.

17.1 A major change in the family justice system in 2021 is the establishment of the Appellate Division of the High Court ("High Court (Appellate Division)"). Previously, first instance family matters that were on appeal from the Family Division of the High Court would be adjudicated by the Court of Appeal. With the introduction of the High Court (Appellate Division), it is envisioned that the bulk of family matters would be fully and finally dealt with at this level. This review examines the implications that flow from the establishment of the new High Court (Appellate Division) on procedural and substantive law, in particular on the law of division of matrimonial assets. This review will also cover cases involving divorce and child welfare.

I. Court structure

17.2 Given the novelty of the High Court (Appellate Division), some time will be required before any meaningful commentary on its impact on both the judicial system and jurisprudence can be made. The focus, in the meantime, should be on figuring out the manner in which the High Court (Appellate Division) operates and how, if necessary, appeals can still be made from decisions made by the High Court (Appellate Division) and any ancillary applications.

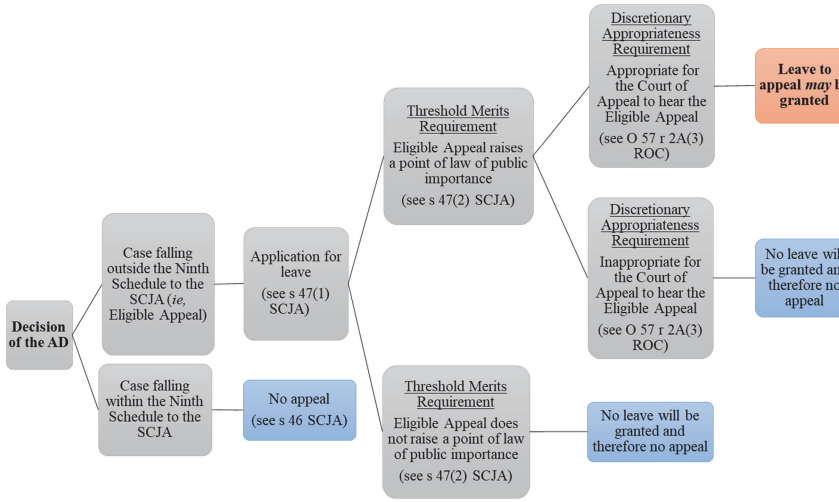
17.3 *UJM v UJL*[2] ("*UJM*"), as the first decision on leave to appeal from a decision of the High Court (Appellate Division) ("AD/CA Leave Application"), is instructive in this regard. *UJM* was the result of protracted legal proceedings in which the wife sought financial relief from the Singapore court following the parties' divorce in Karachi, Pakistan. The application was first made to the Family Court, where a District Judge granted the requisite leave and also ordered that the husband pay interim maintenance of $1,500 per month for the children and the wife. The parties then appeared before the General Division of the High Court ("High Court (General Division)") where the judge varied the maintenance orders and also ordered the husband to pay the wife

1 This chapter was written with substantive contribution from Aaron Yoong. All errors remain the author's. The author would also like to thank Elliot Fernandez and Melissa Kor for their valuable input and support.

2 [2021] SGCA 117.

in excess of $2.5m in three instalments. This decision of the High Court (General Division) was affirmed by the High Court (Appellate Division) in an *ex tempore* decision.

17.4 It should be preliminarily noted that the husband's application in *UJM* was dismissed on the basis that it had been filed out of time with no explanation. The Court of Appeal's observations in relation to the AD/CA Leave Application were thus *obiter dicta*. The Court of Appeal began by emphasising that the High Court (Appellate Division) was not meant to be seen as a further tier of appeal and that it was the final appellate court in a vast majority of cases.[3] The statutory scheme was summarised thus:[4]



17.5 The "Threshold Merits Requirement" must be assessed with reference to the facts and circumstances of the case, with the adjudicated point having weighty ramifications going beyond the disputing parties – for instance, appeals engaging new questions of law of general application or those involving conflicting decisions of the Court of Appeal or High Court (Appellate Division).[5] In turn, the "Discretionary Appropriateness Requirement" requires the Court of Appeal to consider[6] (a) the "rare and exceptional" situation where it is required to resolve a point of law; or (b) where it is required to adjudicate to further the interests of the administration of justice. Thereafter, the Court of Appeal has the flexibility to consider any and all relevant matters. With the above statutory scheme

3 *UJM v UJL* [2021] SGCA 117 at [60(c)].
4 *UJM v UJL* [2021] SGCA 117 at [83]–[84].
5 *UJM v UJL* [2021] SGCA 117 at [109].
6 *UJM v UJL* [2021] SGCA 117 at [113]–[126].

in place, AD/CA Leave Applications need not be assessed in accordance with the traditional common law rules for leave to appeal against the decision of the High Court (General Division), as set out in *Lee Kuan Yew v Tang Liang Hong*.[7] In particular, Parliament had made clear that AD/CA Leave Applications were to be assessed differently "in terms of both *the criteria* and *the stringency of review*" [emphasis in original].[8]

17.6 Overall, *UJM* made clear (and repeatedly emphasised) that the AD/CA Leave Application regime provided a "*tightly confined and highly limited avenue*" for appeal,[9] and that it would only be granted in "*rare and exceptional*" cases [emphasis in original].[10] Indeed, the Court of Appeal cautioned that parties had to be circumspect and realistic in bringing any AD/CA Leave Applications, and unmeritorious applications would be met with costs consequences.[11] This was reflected on the very facts of *UJM* itself, where the husband was found to have failed to even satisfy the Threshold Merits Requirement. While there were "interesting" legal questions before the High Court (General Division), these had not been raised before the High Court (Appellate Division), and the latter had only dealt with questions of fact. As a result, the application before the Court of Appeal was also bereft of questions of law.[12]

17.7 On the point of the court's structure, *UJN v UJO*[13] ("*UJN*") is also a useful judgment relating to leave to adduce further evidence for an appeal to the High Court (Appellate Division). Woo Bih Li JAD affirmed that the critical test remained that of whether there were special grounds, as set out in *Ladd v Marshall*,[14] to allow such evidence. Further, Woo JAD emphasised that a court should generally be disinclined to allow fresh evidence on appeal that is inconsistent with the applicant's position below.[15] Even where the evidence was credible, this had to be balanced against the interest of finality in proceedings, the interest to hold parties to their positions as a matter of fairness to the opponent and the court and the wastage of court resources.[16] Applying these principles in *UJN*, Woo JAD held that it was in the interests of justice to allow the husband to adduce evidence in respect of a bonus received, which could have shown

7 [1997] 2 SLR(R) 862; These principles, however, continue to be applicable to appeals to the High Court (Appellate Division). See *UJM v UJL* [2021] SGCA 117 at [87]–[91].
8 *UJM v UJL* [2021] SGCA 117 at [89].
9 *UJM v UJL* [2021] SGCA 117 at [61].
10 *UJM v UJL* [2021] SGCA 117 at [129].
11 *UJM v UJL* [2021] SGCA 117 at [130].
12 *UJM v UJL* [2021] SGCA 117 at [132]–[133].
13 [2021] SGCA 18.
14 [1954] 1 WLR 1489.
15 *UJN v UJO* [2021] SGCA 18 at [7].
16 *UJN v UJO* [2021] SGCA 18 at [7].

that the judge below had made an error. The other categories of evidence were, however, rejected as they represented a change in the husband's position taken before the lower court.[17]

II. Divorce

17.8 In 2021, another area of family law that developed was the law on divorce. On 2 May 2021, the Ministry of Social and Family Development ("MSF") released a consultation paper on how to reduce acrimony in divorces.[18] As part of the public consultation, MSF proposed an amicable divorce option where parties may be allowed to jointly file for divorces without relying on any fault-based facts. This is a welcome step, given that Singapore had already committed to a no-fault divorce regime in 1980 that led to the irretrievable breakdown of marriage becoming the sole ground for divorce in Singapore.[19]

17.9 Following the consultation, the Women's Charter (Amendment) Bill 2021[20] was read for the first time in parliament on 1 November 2021. It introduced a sixth fact to the Women's Charter 1961[21] for divorcing parties to rely on to show the irretrievable breakdown of marriage: that the spouses agree that the marriage has irretrievably broken down.[22] As the Women's Charter (Amendment) Bill has yet to come into force at the time of writing this edition, the sixth fact will be examined more closely in the subsequent editions. That being said, the state of divorce law in 2021 highlighted certain circumstances that demonstrate why change in this area of family law is essential.

17.10 In *VTP v VTO*[23] ("*VTP*"), the General Division of the High Court (Family Division) ("HCF") considered the sole question whether the Family Justice Courts could grant an interim judgment of divorce based on the fact that the husband's irresponsible financial behaviour made it unreasonable to expect the wife to continue living with him under s 95(3)(*b*) of the Women's Charter.[24] The Family Court answered that question in the affirmative and the husband appealed against the decision.

17 *UJN v UJO* [2021] SGCA 18 at [22]–[24] and [32].
18 Ministry of Social and Family Development, *Consultation Paper: How to Better Support Children and Divorcees, and Reduce Acrimony in Divorce* (2 May 2021).
19 *JBB v JBA* [2015] 5 SLR 159 at [15].
20 Bill 43 of 2021.
21 2020 Rev Ed.
22 Women's Charter (Amendment) Bill 2021 (Bill 43 of 2021) cl 29.
23 [2021] SGHCF 36.
24 Cap 353, 2009 Rev Ed. See *VTP v VTO* [2021] SGHCF 36 at [4] and [6].

17.11 The wife in *VTP* claimed that the husband engaged in numerous instances of financial irresponsibility such as investing the sum of $50,000 in a business that eventually became insolvent against her objections, making Foreign Exchange investments without her knowledge that left him in debt, registering her name in a multi-level marketing business without her knowledge or consent, becoming a bankrupt, and the non-payment of debts and fines incurred by the husband that the wife eventually repaid.[25] These findings of fact were not disturbed on appeal and such conduct was found to amount to unreasonable behaviour. In holding that the wife had met the legal threshold of behaviour to justify the grant of an interim judgment, the HCF also placed weight on the District Judge's findings that the husband's behaviour had taken an emotional toll on the wife to the extent that it affected her health and that the wife had "implored the husband to behave more responsibly and honestly in the managing of finances that affect her and the children".[26]

17.12 *VTP* suggests that the legal threshold to meet, when the fact of behaviour under s 95(3)(*b*) of the Women's Charter is relied upon to obtain a divorce in the Family Justice Courts, is a high one. While this may be so in contested divorce proceedings, the threshold for meeting the same requirement in uncontested proceedings tends to be much lower in practice.

17.13 In uncontested proceedings, the procedure is such that facts claimed in the court documents are rarely verified and/or supported by objective evidence. Given that cumulative behaviour consisting of a series of minor acts over a continued period of time may be sufficient to amount to behaviour that satisfies s 95(3)(*b*) of the Women's Charter,[27] interim judgments of divorce may be granted on much lower thresholds, especially when both the parties attest to agreed facts in an uncontested divorce.

17.14 Following from that, it is conceivable that the parties may conspire to obtain a faster divorce even if the facts of their case do not actually meet the high legal threshold for behaviour that is applied in contested proceedings. The presence of two different thresholds when proving behaviour under s 95(3)(*b*) of the Women's Charter results in a discrepancy that may lead one to then question whether there is truly any significance in relying on fault-based facts to obtain a divorce.

25 *VTP v VTO* [2021] SGHCF 36 at [5].
26 *VTP v VTO* [2021] SGHCF 36 at [7].
27 *Wong Siew Boey v Lee Boon Fatt* [1994] 1 SLR(R) 323 at [14] and [23]–[25].

17.15 A case that demonstrated the ease with which likeminded parties can fit their narrative into one of the five facts under s 95(3) of the Women's Charter to obtain a divorce is *VQB v VQC*[28] ("*VQB*"). The wife in that case applied to set aside the writ of divorce filed by the husband and all proceedings thereafter or, in the alternative, to set aside the interim and final judgments.[29] The District Judge dismissed the wife's application and she appealed, albeit unsuccessfully, to the HCF.

17.16 The husband in *VQB* filed for divorce having relied on the fact of having lived separate and apart from the wife for a continuous period of at least three years immediately preceding the filing of the writ, with the wife's consent. As grounds for her application to set aside the divorce, the wife claimed that her consent to the draft consent order for the simplified track divorce proceedings was obtained by duress, and that the parties did not live separate and apart for three years preceding the filing of the writ of divorce.[30]

17.17 The context of *VQB* revealed the wife's true intentions in consenting to the husband's filing of divorce at that earlier time and her subsequent act of applying to set aside the divorce. The wife had been having an affair with her married lover prior to the filing of the divorce. E-mail and audio evidence revealed that her ideal state of affairs was for both her and her married lover to obtain divorces so that they could be together. However, the reality was that the wife's married lover did not leave his wife and she was left without a marriage with her husband or her lover.[31]

17.18 Pursuant to s 136 of the Women's Charter, the court has the power to rescind the interim judgment at any time before it is made final if the plaintiff misled the defendant (whether intentionally or unintentionally) about any matter which the defendant took into account when deciding to consent to the grant of the judgment. It is clear that such power can only be exercised before the final judgment has been made and the marriage becomes fully and finally dissolved. The HCF held that there is no provision in the Women's Charter for the setting aside of a final judgment, and the only exception is when the final judgment was obtained by fraud which taints the final judgment itself. In light of this, the courts did not have the power to set aside the final judgment on the facts of *VQB* and the wife's appeal was dismissed.

28 [2021] SGHCF 5.
29 *VQB v VQC* [2021] SGHCF 5 at [2].
30 *VQB v VQC* [2021] SGHCF 5 at [2].
31 *VQB v VQC* [2021] SGHCF 5 at [8]–[10].

17.19 Separately, the husband's evidence was that the marriage had broken down four years before the divorce was filed and that the parties had been "living together" for the sake of their two young children. While the HCF was inclined to accept the husband's position,[32] there did not appear to be an examination of the evidence surrounding the circumstances of the parties' marital lives and whether they were truly living apart in the legal sense for the requisite amount of time that would fulfil s 95(3)(*d*) of the Women's Charter.

17.20 The above cases show that there are elements of the divorce system in Singapore that could be improved on. As the concept of therapeutic justice takes root in the family justice system along with the recognition that fault is irrelevant to the grant of divorce itself,[33] it is anticipated that the law on divorce may eventually shift to a completely non-fault based regime like that of the UK.[34] For now, it remains to be seen how the Family Justice Courts will apply the sixth fact to prove an irretrievable breakdown of marriage when the latest amendments come into force.

III. Division of matrimonial assets

17.21 In 2021, the HCF, the High Court (Appellate Division) and the Court of Appeal adjudicated cases involving the identification of matrimonial assets and their just and equitable division. Section 112(10) of the Women's Charter is challenging to interpret, and it would appear from the cases that different trends are emerging with regard to the commingling of gifts and inheritance with matrimonial funds. There is also a variation in terms of how the approach to division in *TNL v TNK*[35] ("the *TNL* Approach") is interpreted and applied by the courts.

17.22 *CLB v CLC*[36] ("*CLB*") involved a husband's appeal against the HCF's decision to include in the matrimonial pool certain Australian bank accounts and investment portfolios that the husband claimed were derived from gifts or inheritance from his father ("the Disputed

32 *VQB v VQC* [2021] SGHCF 5 at [12].
33 *JBB v JBA* [2015] 5 SLR 159 at [15].
34 The UK Divorce, Dissolution and Separation Act 2020 (c 11) that recently came into force on 6 April 2022 adopts a completely non-fault-based divorce regime. Divorcing couples will no longer have to establish facts to show an irretrievable breakdown of marriage and there is no longer any opportunity to contest the divorce (other than on narrow grounds such as jurisdiction).
35 [2017] 1 SLR 609.
36 [2022] 1 SLR 658.

Assets").[37] including a premarital ANZ Bank account bearing an account number ending in 55 ("ANZ-55").[38] While the husband did not have documentary evidence to prove that the Disputed Assets and ANZ-55 were derived from sources of gifts or inheritance,[39] it was undisputed that he received gifts and inheritance from several sources amounting to a sum of $5,024,886.35.[40] The husband in *CLB* also appealed against the drawing of an adverse inference against him for a discrepancy of $496,419 and the HCF awarding an indirect contribution ratio of 55% in favour of the wife instead of him.[41]

17.23 When determining whether gifts and inheritance are transformed into matrimonial assets pursuant to s 112(10) of the Women's Charter, the High Court (Appellate Division) held that it is important to distinguish between gifts and inheritance that remain in the same form and those that are used to subsequently obtain a different asset by way of being deposited into a bank account, exchanged for a different asset, or sold to fund the purchase of a new asset.[42]

17.24 Pursuant to s 112(10) of the Women's Charter, a gift or inheritance that *remains in the same form* may be transformed into a matrimonial asset if it can be shown that there is substantial improvement by the other spouse or both spouses during the marriage, or if it was used as a matrimonial home.[43] On the other hand, a gift or inheritance that is in *a different form* has to first be examined as to whether it retains its quality as a gift or inheritance. If it can be shown that the donee spouse had a "real and unambiguous intention" for the latest form of the gift or inheritance to constitute part of the pool of matrimonial assets,[44] that asset loses its quality as a gift or inheritance. It can then constitute a matrimonial asset if it satisfies either s 112(10)(*a*) or 112(10)(*b*) of the Women's Charter.[45]

17.25 At first instance, the HCF conducted a fairly elaborate tracing exercise to determine if the source of funds in the Disputed Assets, ANZ-55 and the husband's other bank accounts and investments in Singapore, Malaysia, Australia and Tanzania ("Other Assets")[46] were derived from

37 The Disputed Assets are specifically listed at Nos 12–17 of the table set out in *CLB v CLC* [2021] SGHCF 17 at [14].
38 *CLB v CLC* [2021] SGHCF 17 at [65].
39 *CLB v CLC* [2022] 1 SLR 658 at [11].
40 *CLB v CLC* [2022] 1 SLR 658 at [2]–[5].
41 *CLB v CLC* [2022] 1 SLR 658 at [2].
42 *CLB v CLC* [2022] 1 SLR 658 at [8].
43 *CLB v CLC* [2022] 1 SLR 658 at [7].
44 *CLB v CLC* [2022] 1 SLR 658 at [20].
45 *CLB v CLC* [2022] 1 SLR 658 at [8].
46 The Other Assets are specifically listed at Nos 6, 7, 8, 9, 10, 18, 19 and 20 of the table set out in *CLB v CLC* [2021] SGHCF 17 at [14].

sources of gifts or inheritance. The tracing exercise was essential on the facts of the case, as affirmed by the High Court's observations in the seminal case of *Chen Siew Hwee v Low Kee Guan*[47] ("*Chen Siew Hwee*").

17.26 In *Chen Siew Hwee*, the High Court mentioned that if it can be shown that the latest assets are traceable to the assets which constituted the original gifts or inheritance, there may be a case that the latest assets continue to retain their nature as gifts or inheritance and therefore ought to be excluded from the pool of matrimonial assets. However, if it is unclear what the source of funds used to acquire the latest assets were, it would be extremely difficult (or in the words of the learned Andrew Phang Boon Leong J "*logically impossible*" [emphasis in original]) to additionally consider whether the latest assets continue to be in the nature of a gift or inheritance.[48]

17.27 Bearing the above in mind, the tracing exercise by the HCF led to the finding that the moneys in the Other Assets were indeed solely derived from sources of gifts or inheritance and were not commingled with any other matrimonial funds.[49] The HCF then applied the legal test of whether the husband's act of depositing these funds into a joint account (in itself) and references in his communications to "cash" (on its own) evinced a "real and unambiguous intention" that all of the Other Assets were to become part of the pool of matrimonial assets.[50]

17.28 In applying the legal test, the HCF found that the requisite intention was not met as the husband could have intended to use only a part of his gift or inheritance for the family and retain the nature of the rest. Further, the husband's general references to "cash" may not have been to the specific sums that he was gifted or inherited. In light of this, it was eventually held that the Other Assets retained their nature as gifts or inheritances and were therefore excluded from the pool of matrimonial assets.[51]

17.29 Moneys in the Disputed Assets and ANZ-55, however, were more difficult to trace. First of all, the Disputed Assets comprised other Australian accounts that the HCF found were opened during the marriage.[52] The husband's position was that inheritance moneys in the Disputed Assets and ANZ-55 were intermingled with other funds.[53] No

47 [2006] 4 SLR(R) 605.
48 *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 at [58].
49 *CLB v CLC* [2021] SGHCF 17 at [52], [55], [62] and [80].
50 *CLB v CLC* [2021] SGHCF 17 at [56].
51 *CLB v CLC* [2021] SGHCF 17 at [56] and [62].
52 *CLB v CLC* [2021] SGHCF 17 at [71]–[72].
53 *CLB v CLC* [2021] SGHCF 17 at [65] and [70].

concrete explanation was provided as to the source of the other existing funds in the Disputed Assets and ANZ-55.[54] On the contrary, the wife's position was that the moneys in ANZ-55 and other Australian accounts included funds from the parties' joint Malaysian bank accounts, and the HCF found that this was supported on the evidence[55] although there was no specific mention of how much the funds from the joint Malaysian account amounted to. Given that the moneys in ANZ-55 were used to fund the family's expenses and that the commingling of the inheritance funds in the Dispu1ted Assets and ANZ-55 with existing funds made the inheritance no longer separately identifiable, it was held that the Disputed Assets and ANZ-55 were to be included in the pool of matrimonial assets.

17.30 For completeness, ANZ-55, the husband's premarital assets and the husband's premarital gifts were set out in a schedule to a prenuptial agreement that the parties had entered into five days before the marriage.[56] However, the HCF held that the circumstances of the parties had changed since they entered the prenuptial agreement and that the husband's conduct during the marriage showed that he relied on some of these assets to provide for the family. In particular, the correspondence showed that the husband had considered some of his personal assets to be part of the family's wealth[57] and that he had relied on his premarital gifts and inheritance to produce new income or as security that would provide for the family.[58] As a result, the HCF accorded the prenuptial agreement some weight but proceeded to analyse the factual circumstances surrounding each asset to determine if it should be included in the pool of matrimonial assets.[59]

17.31 After determining the assets to be included in the matrimonial pool and adding the sum of $496,419 to give effect to an adverse inference drawn against the husband,[60] the HCF applied the structured approach in *ANJ v ANK*[61] ("the *ANJ* Structured Approach"). It arrived at a direct contribution ratio of 57:43 in favour of the husband and an indirect contribution ratio of 55:45 in favour of the wife, leading to an average ratio of 50:50. Thus, the HCF divided the total pool of matrimonial assets valued at $13,233,139 equally between the spouses.[62]

54 *CLB v CLC* [2021] SGHCF 17 at [65].
55 *CLB v CLC* [2021] SGHCF 17 at [66] and [74].
56 *CLB v CLC* [2021] SGHCF 17 at [23] and [26].
57 *CLB v CLC* [2021] SGHCF 17 at [30].
58 *CLB v CLC* [2021] SGHCF 17 at [35].
59 *CLB v CLC* [2021] SGHCF 17 at [35].
60 *CLB v CLC* [2021] SGHCF 17 at [86]–[87].
61 [2015] 4 SLR 1043.
62 *CLB v CLC* [2021] SGHCF 17 at [117]–[119].

17.32 The High Court (Appellate Division) dealt with the question whether the Disputed Assets and ANZ-55 were to be included in the pool of matrimonial assets quite differently. It disagreed with the HCF that the sources from which the Disputed Assets and the ANZ Account were derived were unclear and that the commingled moneys were no longer separately identifiable as the husband's inheritance or gifts.[63]

17.33 Rather than examine the detailed movement of the moneys, the High Court (Appellate Division) held that on a broad level, the wife's evidence was consistent with the husband's position that the Disputed Assets were derived from his inheritance and gifts.[64] It also held that the numbers strongly supported the husband's case that he attempted to ring-fence his inheritance and gifts by funnelling them into the Disputed Assets.[65] The High Court (Appellate Division) calculated that the Other Assets had a total value of $1,335,025 whereas the husband's inheritance and gifts undisputedly amounted to a total sum of $5,024,886.35. It reasoned that the shortfall of $3,689,861.35 must have gone into the Disputed Assets as the value of the Disputed Assets and ANZ-55 at the ancillary matters hearing was a total of $3,812,465.[66] This left a relatively small discrepancy of around $120,000 that the High Court (Appellate Division) was prepared to attribute to interest rates in the bank accounts that the moneys were kept in and the husband's investment returns.[67]

17.34 Based on the High Court (Appellate Division)'s inference that the Disputed Assets could be traced to the inheritance and gifts, it then adopted the HCF's findings that none of the husband's inheritance or gifts that were now in the latest form of Disputed Assets lost their character. Since the inheritance or gifts were now the Disputed Assets and continued to retain their nature, the Disputed Assets should therefore be excluded from the pool of matrimonial assets.[68]

17.35 The High Court (Appellate Division) also commented on the HCF's reliance on commingling, which was the HCF's basis for finding that ANZ-55 and the Disputed Assets were matrimonial assets.[69] The High Court (Appellate Division) held that commingling was not mentioned in the Women's Charter as a legal principle that could transform an ordinarily excluded asset into a matrimonial asset.[70] Further, it mentioned that if the

63 *CLB v CLC* [2022] 1 SLR 658 at [9]–[10].
64 *CLB v CLC* [2022] 1 SLR 658at [11].
65 *CLB v CLC* [2022] 1 SLR 658 at [12].
66 *CLB v CLC* [2022] 1 SLR 658 at [12]–[14].
67 *CLB v CLC* [2022] 1 SLR 658 at [30].
68 *CLB v CLC* [2022] 1 SLR 658 at [15]–[20].
69 *CLB v CLC* [2021] SGHCF 17 at [69], [70] and [75].
70 *CLB v CLC* [2022] 1 SLR 658 at [22] and [27].

HCF was of the view that commingling gave rise to an evidentiary issue in that it was unclear where the inheritance or gifts went, that issue was addressed by the High Court (Appellate Division)'s factual finding that the inheritance or gifts were now in the form of the Disputed Assets that ought to be excluded from the matrimonial pool.[71]

17.36 The High Court (Appellate Division) then addressed the adverse inference issue and concluded that there was no concealment or dissipation by the husband and therefore no basis to draw an adverse inference against him. It found that the husband "had been open with his assets and had explained their movement through his accounts, albeit not very accurately".[72] The High Court (Appellate Division)'s decision to dismiss the adverse inference issue stemmed substantially from its finding that the husband's inheritance or gifts were now in the form of the Disputed Assets.

17.37 Finally, the High Court (Appellate Division) affirmed the HCF's finding on the parties' indirect contribution ratio[73] and recalculated a new average ratio based on an adjusted direct contribution ratio that excluded the Disputed Assets, ANZ-55 and the adverse inference sum.[74] The eventual outcome was the division of 58:42 in favour of the wife, with her receiving the sum of $5,176,067.90 out of a matrimonial pool valued at $8,924,255.[75] Compared with the HCF's decision to award the wife a sum of $6,616,569.50, which amounted to 50% of the matrimonial pool valued at $13,233,139,[76] she received $1,440,501.60 less on appeal.

17.38 It appears from the decisions of the HCF and the High Court (Appellate Division) that the variance in approaches towards the identification of matrimonial assets led to vastly different results. In *CLB*, other than the husband deposing in his affidavits that the funds in the Disputed Assets and Other Assets were from his gifts or inheritance, there was no documentary evidence showing the movement of the funds.[77] It became less clear whether portions of the gifts or inheritance were spent during the marriage and whether the moneys that existed in

71 *CLB v CLC* [2022] 1 SLR 658 at [23].
72 *CLB v CLC* [2022] 1 SLR 658 at [29].
73 *CLB v CLC* [2022] 1 SLR 658 at [31]–[34].
74 In *VJP v VJQ* [2021] 2 SLR 1041 at [22]–[24], the Court of Appeal held that recalculation of the parties' direct contribution ratio is justified where on appeal certain assets are excluded from the matrimonial pool, thereby reducing the size of the matrimonial pool. Generally, such recalculations only apply in cases where the structured approach in *ANJ v ANK* [2015] 4 SLR 1043 is adopted (*ie*, in dual-income marriages).
75 *CLB v CLC* [2022] 1 SLR 658 at [35]–[36].
76 *CLB v CLC* [2021] SGHCF 17 at [119].
77 *CLB v CLC* [2022] 1 SLR 658 at [8].

the Disputed Assets and ANZ-55 at the time of division were indeed the gifts or inheritance and did not constitute other matrimonial funds.

17.39 The wife too did not provide sufficient evidence that would allow for quantification of the matrimonial funds that she claimed were intermingled with the Disputed Assets and ANZ-55[78] or evidence that showed how much was spent on family expenditure over the years.[79] As a result, the High Court (Appellate Division) logically inferred that the husband's gifts and inheritances remained intact, given that the value of the Other Assets, Disputed Assets and ANZ-55 added up to the total undisputed value of his gifts and inheritance.

17.40 It is suggested that this decision may not fully reflect the reality of the marriage whereby the husband had intended to rely on his gifts or inheritance to provide for the family and give them security during the marriage, in turn affecting the way the wife chose to expend her financial resources. This specific family dynamic was perhaps captured in the HCF's decision, which strove to give the wife a part of the husband's gifts or inheritances based on his intention during the marriage. That resulted in equal division in a 16-year-long dual-income marriage where the parties were found to have "cooperated and built their family and wealth together using various resources and by various efforts".[80]

17.41 The difficulty with the intermingling of inheritance and matrimonial funds was similarly noted in *VJR v VJS*[81] ("*VJR*"). As a result of the husband adducing additional bank statements into evidence on appeal, the HCF in *VJR* managed to partially trace the source of funds for the husband's shares that he claimed were bought with inheritance from his late wife. It then struck a balance and deducted a portion of the husband's claimed inheritance from the pool of matrimonial assets to be divided.[82] The court's sense of fairness is seen in how it exercised its discretion in dealing with assets that were clearly traceable as being derived from gifts or inheritance, but that had been commingled with other matrimonial funds. It is clear that this area of the law is in need of clarification to enable family practitioners to better advise their clients on the identification of matrimonial assets that may have once been gifts or inheritance.

78 *CLB v CLC* [2021] SGHCF 17 at [66].
79 *CLB v CLC* [2021] SGHCF 17 at [54].
80 *CLB v CLC* [2021] SGHCF 17 at [118].
81 [2021] SGHCF 10 at [24].
82 *VJR v VJS* [2021] SGHCF 10 at [25].

17.42 Another case in 2021 that dealt with whether gifts ought to be included in the matrimonial pool is *CLT v CLS*[83] ("*CLT*"). In that case, the HCF had to determine whether the husband's shares in two companies that were allegedly gifted to him pre-marriage were matrimonial assets and whether interspousal gifts from the husband to the wife ought to be included in the matrimonial pool and subject to division. Notably, *CLT* also expounded on the type of cases in which the *ANJ* Structured Approach applied and when the *TNL* Approach applied.

17.43 First, the HCF approached the issue of the husband's shares by considering their nature and whether they retained their nature notwithstanding various transactions that occurred during the marriage. Preliminarily, it observed that whether the premarital shares were premarital gifts or premarital assets acquired by the husband's effort prior to the marriage had a bearing on the applicable formula to transform the premarital shares into matrimonial assets under s 112(10) of the Women's Charter. However, this finding did not have any practical impact on the facts of the case as it was undisputed that the premarital shares were not substantially improved by the wife during the marriage or ordinarily used by the family. In light of this, the premarital shares were *prima facie* excluded from the pool of matrimonial assets.[84]

17.44 That said, the shares that the husband possessed at the time of division were acquired during the marriage pursuant to certain share transfers between the husband and his extended family members. The husband contended that the shares he possessed at the time of division were acquired by way of gift from his family members, as the family undertook a tax planning exercise during the marriage which resulted in "paper transfers" of shares between himself and the extended family members.[85] In *USB v USA*,[86] the Court of Appeal held that the party who asserts that an asset in his name is not a matrimonial asset bears the burden of proving that on a balance of probabilities. Applying that rule, the HCF held that it fell to the husband to prove that the shares he possessed at the time of division were traceable to the premarital shares such that they retained their nature as premarital assets to be excluded from the matrimonial pool.[87]

17.45 The husband adduced evidence of signed share transfer forms, the Register of Members and Share Ledger and the Register of Transfers

83 [2021] SGHCF 29. This HCF decision is on appeal and is currently pending decision by the High Court (Appellate Division).
84 *CLT v CLS* [2021] SGHCF 29 at [19].
85 *CLT v CLS* [2021] SGHCF 29 at [23]–[26] and [32]–[36].
86 [2020] 2 SLR 588.
87 *CLT v CLS* [2021] SGHCF 29 at [20]–[22].

in respect of the shares in the two companies. The objective documents showed that consideration of $1.00 per share was given for the share transfers, which was inconsistent with the husband's claims that the shares were acquired by way of gift from his extended family members. In light of the evidence showing that consideration was given for the shares and the husband's inability to show that the shares he possessed at the time of division were traceable to the premarital shares, the HCF held that the shares the husband possessed at the time of division were acquired during the marriage and were therefore matrimonial assets to be included in the matrimonial pool.[88]

17.46 Secondly, due to the wife's claims that various transfers were made by the husband to his mistress, his brother-in-law and his former partner, the HCF had to determine if the sums ought to be returned to the matrimonial pool. In *UZN v UZM*,[89] the Court of Appeal held that the *TNL dicta* extends even to non-culpable acts of substantial expenditure that occur when a divorce is imminent or after the interim judgment has been granted but before the conclusion of the ancillary matters. Given that the other spouse may have a putative interest in the substantial sum, the sums must be returned to the matrimonial pool if the other spouse did not agree to the expenditure.[90] The HCF dismissed the wife's claims of wrongful dissipation in respect of the transfers that could not be sufficiently proven to have occurred. As for the transfers that the husband admitted to, the HCF found that those transfers were made before the divorce was imminent and therefore fell outside of the *TNL dicta*. In any event, it observed that the husband may have made various transfers on account of his generosity and that he had no intention to deplete the pool of matrimonial assets as the wife claimed. As a result, there was no wrongful dissipation found on the facts.[91]

17.47 Thirdly, the HCF had to determine if the interspousal gifts from the husband to the wife were matrimonial assets to be included in the matrimonial pool. The interspousal gifts comprised a property in Singapore, jewellery and a 25% share of a property in China.[92] They were pure interspousal gifts that did not originate from a gift from a third party or inheritance.[93] The interspousal gifts were given in the context of a settlement to withdraw a divorce suit filed by the wife in 2012, and a deed of arrangement ("the Deed") was drawn up to that effect.[94]

88 *CLT v CLS* [2021] SGHCF 29 at [27]–[31] and [32]–[37].
89 [2021] 1 SLR 426.
90 *UZN v UZM* [2021] 1 SLR 426 at [62].
91 *CLT v CLS* [2021] SGHCF 29 at [41]–[43].
92 *CLT v CLS* [2021] SGHCF 29 at [47].
93 *CLT v CLS* [2021] SGHCF 29 at [44].
94 *CLT v CLS* [2021] SGHCF 29 at [44] and [48].

17.48 As a starting point, the Court of Appeal held in *Tan Hwee Lee v Tan Cheng Guan*[95] ("*Tan Hwee Lee*") that pure interspousal gifts do not constitute "gifts" that are excluded from the matrimonial pool under the exception set out in s 112(10) of the Women's Charter. Instead, the nature and context of the gift can be considered when the court decides on a just and equitable division. Where it would be clearly inequitable for the donor spouse to be awarded a substantial share in the interspousal gift, the court can exercise its discretion in s 112(1) of the Women's Charter and award the donee spouse a greater share of the overall matrimonial assets.[96] Additionally, the Court of Appeal in *Wan Lai Cheng v Quek Seow Kee*[97] stated that where the donor spouse clearly intends to permanently renounce his beneficial interest in the interspousal gift, the donor spouse may be estopped from claiming any share in that asset when the court equitably divides the pool of matrimonial assets.[98] There was also the issue of whether the interspousal gifts were *de minimis* in their value *per se* and in relation to the matrimonial pool as a whole.[99]

17.49 In considering the nature and context in which the interspousal gifts were gifted, the HCF examined the clauses of the Deed that were made in contemplation of the wife discontinuing the divorce proceedings in 2012. The HCF found that the Deed was entered into on the husband's part to avoid further divorce proceedings and to assure the wife by giving her financial security. In light of this, the HCF held that the Deed was not an agreement that fell within s 112(2)(*e*) of the Women's Charter as that provision considered agreements made in contemplation of divorce.[100]

17.50 Importantly, cl 4 of the Deed provided that "[s]o long as the Husband and Wife are married, the Wife agrees that she shall not sell, mortgage or otherwise encumber the property, without the permission of the Husband".[101] That suggested that the husband could have perceived the property as remaining within the parties' joint marital partnership, in contrast with the situation where spouses enter into an agreement and are prepared to part with property in contemplation of divorce.[102]

17.51 Further, the HCF distinguished *CLT* from *Wong Ser Wan v Ng Cheong Ling*[103] ("*Wong Ser Wan*"). There, the High Court excluded the

95 [2012] 4 SLR 785.
96 *CLT v CLS* [2021] SGHCF 29 at [44].
97 [2012] 4 SLR 405.
98 *CLT v CLS* [2021] SGHCF 29 at [45].
99 *CLT v CLS* [2021] SGHCF 29 at [46].
100 *CLT v CLS* [2021] SGHCF 29 at [50].
101 *CLT v CLS* [2021] SGHCF 29 at [49].
102 *CLT v CLS* [2021] SGHCF 29 at [50].
103 [2006] 1 SLR(R) 416.

interspousal gifts from the matrimonial pool on the basis that it would be inequitable for the husband to seek division of the gifts that he had irrevocably transferred to the wife under a financial agreement, in exchange for her withdrawal of divorce proceedings that were filed upon discovery of his adultery. In *CLT*, the effect of cl 4 of the Deed was that the husband did not intend to permanently renounce his interest in the interspousal gifted property.[104]

17.52 In any event, the HCF noted that the notion in *Wong Ser Wan* of excluding interspousal gifts from the matrimonial pool had since been rejected in *Tan Hwee Lee*[105] and that the appropriate approach would be to consider the effect of the interspousal gift when apportioning the matrimonial assets in a just and equitable manner.[106] The HCF then found that the husband in *CLT* had not intended to permanently renounce his interest in the property even though the wife, as owner of the property, could deal with the property as she wished during the marriage under the "separation of property" regime. In light of this, the HCF concluded that the interspousal gifted property was to be included in the matrimonial pool for division.[107]

17.53 Relying on the *de minimis* exception, the wife claimed that the gifted jewellery and the 25% share of the property in China ought to be excluded from the matrimonial pool as they were insubstantial in value. It was undisputed that the wife's jewellery, bags and 25% share of the property in China had a total value of $737,357, out of a total matrimonial asset pool amounting to over $53m.[108] As a reference point, the HCF was guided by *Yeo Chong Lin v Tay Ang Choo Nancy*[109] ("*Yeo Chong Lin*"), where jewellery worth "in the range of a quarter million to half a million dollars" was found to be *de minimis* when compared to a pool of assets worth $68.9m. The HCF in *CLT* nonetheless found that there was no reason to exercise its discretion to exclude the gifted jewellery and the 25% share of the property in China from the matrimonial pool. It held that although the value of the gifts appeared small in relation to the total pool of matrimonial assets, the value of more than $700,000 was not so small and insignificant.[110]

17.54 Fourthly, the HCF determined the just and equitable proportions of division by applying the *TNL* Approach to the facts of *CLT*. The Court

104 *CLT v CLS* [2021] SGHCF 29 at [52].
105 See para 17.48 above.
106 *CLT v CLS* [2021] SGHCF 29 at [51].
107 *CLT v CLS* [2021] SGHCF 29 at [52]–[55].
108 *CLT v CLS* [2021] SGHCF 29 at [56].
109 [2011] 2 SLR 1157.
110 *CLT v CLS* [2021] SGHCF 29 at [57].

of Appeal in *TNL*[111] held that the *ANJ* Structured Approach should not apply to division in single-income marriages as it would doubly disadvantage the spouse who took on the non-financial role during the marriage.[112] Instead, the court should examine trends and case precedents for guidance on division proportions based on the length of the marriage and other key factors of the case.[113]

17.55 *CLT* clarified that *TNL* did not stand for the proposition that there should be an inclination towards equal division in all single-income marriages.[114] While the trends in long single-income marriages of about 26 years or longer generally lean towards equal division, that is not the case in shorter marriages. When it came to determining the proportions of division in single-income marriages, the Court of Appeal in *BOR v BOS*[115] ("*BOR*") laid down useful guidelines on the relevant division trends in marriages of different lengths.[116] The HCF in *UBM v UBN*[117] also provided useful observations on whether a marriage is to be classified as a single- or dual-income one. The focus is on whether one party is primarily the breadwinner and the other primarily the homemaker.[118]

17.56 When applying the *TNL* Approach and determining what is just and equitable division in single-income marriages, the HCF in *CLT* provided insight as to the key factors that ought to be considered. It held that factors such as the length of the marriage, the size of the pool of matrimonial assets subject to division, the roles each party carried out in the marriage and whether children were raised in the marriage are to be considered.[119]

17.57 The marriage in *CLT* was 17 years long, with the husband taking on the sole breadwinning role and the wife taking on the homemaking role.[120] Although the wife had received some yields from investing moneys, she had not worked during the marriage. In light of this, the HCF held that the marriage in *CLT* was a single-income one.

111 See para 17.21 above.
112 *TNL v TNK* [2017] 1 SLR 609 at [44].
113 *BOR v BOS* [2018] SGCA 78 at [110].
114 *CLT v CLS* [2021] SGHCF 29 at [75].
115 [2018] SGCA 78.
116 *BOR v BOS* [2018] SGCA 78 at [111]–[114].
117 [2017] 4 SLR 921.
118 *UBM v UBN* [2017] 4 SLR 921 at [48]–[53].
119 *CLT v CLS* [2021] SGHCF 29 at [70].
120 *CLT v CLS* [2021] SGHCF 29 at [67].

17.58 The wife in *CLT* claimed that the marriage was a long single-income one that justified equal division,[121] whereas the husband claimed that *VIG v VIH*[122] ("*VIG*") was instructive. The husband in *VIG* had accrued most of the matrimonial assets by his own efforts and yet was heavily involved in the children's upbringing and indirect contributions.[123] In a single-income marriage that lasted 12 years, he was awarded 70% of the exceptionally massive pool of matrimonial assets valued at about $36.8m.[124] Based on the holding in *VIG*, the husband in *CLT* contended that he should be awarded 80% of the matrimonial assets.[125]

17.59 Preliminarily, the HCF in *CLT* addressed the husband's misconception that the holding in *VIG* gave rise to an alternative approach to division that was distinct from the *ANJ* and *TNL* approaches. The Court of Appeal in *TNL* had considered the surrounding facts of the case and the trends of division in past cases in holding that a just and equitable outcome in long single-income marriages would tend towards equal division. Similarly, the HCF in *VIG* considered relevant trends, case precedents and the facts of that case in awarding a division proportion of 70% in favour of the husband.[126]

17.60 Taking into account case precedents and the facts of *CLT*, the HCF held that just and equitable division of the matrimonial assets would be 30:70 in favour of the husband. It highlighted that the most important factors in *CLT* were the length of the marriage, which was 17 years, the exceptionally large matrimonial pool of $53,485,931 and the different roles of the parties which gave rise to their various contributions during the marriage. The HCF adopted a broad-brush approach in assessing the overall contributions of the parties having regard to the respective roles they carried out in the marriage.[127] It found that the parties mutually supported each other's roles and co-operated well in safeguarding the interests of the marriage and providing for the child.[128]

17.61 The Court of Appeal in *BOR*[129] held that the trend for "moderately lengthy marriages" of about 15 to 19 years was "towards awarding the homemaker wife about 35% to 40% of the matrimonial assets".[130] In

121 *CLT v CLS* [2021] SGHCF 29 at [61].
122 [2021] 3 SLR 1145.
123 *CLT v CLS* [2021] SGHCF 29 at [74].
124 *CLT v CLS* [2021] SGHCF 29 at [72].
125 *CLT v CLS* [2021] SGHCF 29 at [74].
126 *CLT v CLS* [2021] SGHCF 29 at [75].
127 *CLT v CLS* [2021] SGHCF 29 at [66].
128 *CLT v CLS* [2021] SGHCF 29 at [68].
129 See para 17.55 above.
130 *CLT v CLS* [2021] SGHCF 29 at [71].

Yeo Chong Lin,[131] which the HCF held was of particular relevance, the husband was awarded 65% of the very substantial pool of matrimonial assets of $68m. *Yeo Chong Lin* involved a 49-year-long marriage, with the husband carrying out the role of the breadwinner and the wife a full-time housewife.[132] Taking into account the exceptionally massive pool of matrimonial assets in *CLT*, a division proportion of 70:30 in favour of the husband was consistent with the trends for moderately long marriages that involved exceptionally large pools of matrimonial assets.[133] Essentially, the husband would receive assets worth $37,440,151 and the wife would receive assets worth $16,045,779.[134]

17.62 The HCF also bore in mind that the husband had made interspousal gifts to the wife and that one of the matrimonial properties in the husband's sole name was largely paid up by him before the marriage.[135] It was not persuaded that the wife ought to have a larger share of such a massive matrimonial pool purely based on the circumstances surrounding the interspousal gifted property as the husband did not intend to divest all interest in it during the marriage.[136] It also observed that the wife would be able to retain the interspousal gifts as part of her share of the matrimonial assets.[137]

17.63 Lastly, the HCF held that there would be no maintenance ordered for the wife as her share of the matrimonial assets would be more than sufficient for her to meet her needs. She could also prudently invest the assets and use the financial yield as income.[138] As for maintenance for the parties' daughter, the HCF recognised that the husband clearly did not neglect to provide for her. It ordered that the husband should continue to maintain the child solely in respect of her reasonable expenses and that the wife could supplement that with her large financial resources once the division orders were carried out.[139]

17.64 *CLT* provides useful clarification on the law relating to the identification of matrimonial assets. The case affirms that assets that can be traced back to premarital assets continue to remain outside of the matrimonial pool, provided that there is sufficient evidence of

131 See para 17.53 above.
132 *TNL v TNK* [2017] 1 SLR 609 at [52].
133 *CLT v CLS* [2021] SGHCF 29 at [79].
134 *CLT v CLS* [2021] SGHCF 29 at [82].
135 *CLT v CLS* [2021] SGHCF 29 at [80].
136 *CLT v CLS* [2021] SGHCF 29 at [81].
137 *CLT v CLS* [2021] SGHCF 29 at [82].
138 *CLT v CLS* [2021] SGHCF 29 at [87].
139 *CLT v CLS* [2021] SGHCF 29 at [90].

the connection between the latest form of the assets and the original premarital assets.

17.65 Additionally, *CLT* adopted a modified *TNL* Approach that involved examining relevant trends and case precedents to arrive at a just and equitable division for single-income marriages of various lengths, similar to *BOR*[140] and *VIG*.[141] This is an interesting approach, especially when contrasted with the Court of Appeal's version of the *TNL* Approach that was applied in the 19-year-long single-income marriage in *TOF v TOE*[142] ("*TOF*").

17.66 *TOF* seemed to suggest that the *TNL* Approach ought to apply only in long single-income marriages, as opposed to single-income marriages of shorter length.[143] Once the *TNL* Approach is applied, the court should then favour equal division of the pool of matrimonial assets.[144] Naturally, this raises the question whether there is a bright line in terms of duration for which a single-income marriage falls under the Court of Appeal's *TNL* Approach. The examples of long single-income marriages set out in *TNL* were 26 years or longer[145] whereas the single-income marriage in *TOF* was approximately 19 years long.[146] It is encouraging that the Court of Appeal readily recognised the character of marriage as an equal co-operative partnership of efforts that translated into equal division in *TOF*. It is expected that future cases will provide more clarity on how wide-ranging the Court of Appeal's *TNL* Approach is, for instance, whether it applies to single-income marriages spanning 15 to 18 years, which have traditionally been viewed as moderately lengthy.

IV. Child welfare

17.67 In 2021, the HCF expounded on how therapeutic justice may be implemented in the context of cross appeals on care and control over Chinese New Year and New Year's Eve. In another pair of cross appeals, the HCF considered the concept of shared care and control and discussed the use of multidisciplinary and alternative dispute resolution tools in promoting the family's healing. In line with this, the HCF launched a Multi-Disciplinary Team Pilot Scheme to explore how judges, mediators, counsellors, psychologists and psychiatrists could work together to

140 See para 17.55 above.
141 See para 17.58 above.
142 [2021] 2 SLR 976.
143 *TOF v TOE* [2021] 2 SLR 976 at [63].
144 *TOF v TOE* [2021] 2 SLR 976 at [138].
145 *TNL v TNK* [2017] 1 SLR 609 at [49]–[51].
146 *TOF v TOE* [2021] 2 SLR 976 at [138].

resolve the family's issues holistically through a co-ordinated multi-disciplinary team effort.[147] What is clear is that litigation in court should be a last resort as there are various other avenues of help that support unhappily married parties in resolving their family conflict.

17.68 *VDX v VDY*[148] ("*VDX*") involved a pair of cross appeals against the variation of care and control orders primarily concerning Chinese New Year and New Year's Eve. The HCF noted that the appeals, which spawned one and a half years of litigation,[149] revolved around which days and for how many hours the child should be with each parent on these special occasions.[150]

17.69 The parties in *VDX* had entered into a consent order that was incorporated into an interim judgment of divorce granted on 25 June 2012. While the consent order did not specifically provide how the children's time during Chinese New Year and New Year's Eve should be shared between the parties, they had been able to agree on practical arrangements between themselves for seven years after the divorce.[151] The current material change was the parties' originally co-operative relationship breaking down such that they became unable to amicably agree on the youngest child's care arrangements.[152]

17.70 The wife contended that it would be in the best interests for the child to have time with each parent from 6.00pm on the eve of Chinese New Year on an alternate year basis[153] whereas the husband took the position that the child should be in his care from 5.00pm onwards on the eve of Chinese New Year each year.[154] The parties did not dispute that the child was to spend the first day of Chinese New Year with the husband and the second day of Chinese New Year with the wife.

17.71 The consent order stipulated that the husband had care of the children during the children's year-end school holidays,[155] which arguably included the special occasion of New Year's Eve. However, the wife contended that the child would need time to prepare for the upcoming school year[156] and should therefore be returned to her home by 9.00pm

147 *CLB v CLC* [2021] SGHCF 17 at [1].
148 [2021] SGHCF 2.
149 *VDX v VDY* [2021] SGHCF 2 at [39].
150 *VDX v VDY* [2021] SGHCF 2 at [24].
151 *VDX v VDY* [2021] SGHCF 2 at [2].
152 *VDX v VDY* [2021] SGHCF 2 at [25].
153 *VDX v VDY* [2021] SGHCF 2 at [8].
154 *VDX v VDY* [2021] SGHCF 2 at [9].
155 *VDX v VDY* [2021] SGHCF 2 at [5].
156 *VDX v VDY* [2021] SGHCF 2 at [11].

on 31 December.[157] The husband argued that the status quo was that he made extravagant preparations for New Year's Eve celebrations for the children[158] and that the child should be returned to the wife by 9.00pm on 1 January instead.[159]

17.72 At first instance, the Family Court held that a practical solution would be for the parties to split the time on the eve of Chinese New Year such that the child would have dinner first with the wife until 8.30pm and a second dinner at the father's home from 8.30pm onwards.[160] When it came to handover during the New Year's Eve period, the Family Court ordered that the husband was to hand the child over to the mother at 10.00am on 1 January to balance the objectives of work and play as he transited from the holidays to the start of a new school year.[161]

17.73 At the appeal stage, the husband adduced new evidence to show that the child's school term commenced later than the dates indicated in the Ministry of Education school calendar as he was being enrolled in an international school. In light of this, the husband took the position that he was prepared to return the child at 5.00pm on the eve of the first day of the school term.[162]

17.74 As the window of disagreement was quite narrow and concerned a matter of hours and specific days,[163] it appeared that the HCF tried to encourage the parties to reach an agreement on their own by giving them time and space to reflect. Despite the HCF's encouragement, the parties were unable to arrive at any agreement and the HCF proceeded to adjudicate the matter.[164] The HCF upheld the Family Court's orders in respect of the eve of Chinese New Year and exhorted the parents to be reasonable in their conduct and do their best to make the multiple dinner arrangement work.[165]

17.75 As for New Year's Eve, the HCF observed that the original consent order granted the husband care of the children for the entire December holidays, which under the international school calendar would include New Year's Eve and New Year's Day.[166] It held that the main question was

157 *VDX v VDY* [2021] SGHCF 2 at [8].
158 *VDX v VDY* [2021] SGHCF 2 at [12].
159 *VDX v VDY* [2021] SGHCF 2 at [9].
160 *VDX v VDY* [2021] SGHCF 2 at [16].
161 *VDX v VDY* [2021] SGHCF 2 at [15].
162 *VDX v VDY* [2021] SGHCF 2 at [22].
163 *VDX v VDY* [2021] SGHCF 2 at [26].
164 *VDX v VDY* [2021] SGHCF 2 at [32].
165 *VDX v VDY* [2021] SGHCF 2 at [32].
166 *VDX v VDY* [2021] SGHCF 2 at [33].

how much time the child should have in the wife's care before he started school in the new school year; at least a full day before the first day of the new school year with the parent that would have care of him during the school term would be reasonable.[167]

17.76 In reflecting the spirit of the original consent order, the HCF ordered that where the child started his new school year on a Monday, he should return to the wife by 9.00pm on the Saturday of the weekend just before the first day of the new school term. Where the child started his new school year on a different weekday, he should return to the wife by 9.00pm on the day before the eve of his first day of school.[168]

17.77 Essentially, the HCF held that the appeals were not about any fundamental difficulties or unworkability in the practical arrangements for the eve of Chinese New Year and New Year's Eve.[169] Resolving the arrangements in the manner whichever party proposed would not significantly affect the welfare of the child. What would significantly affect the child is the parents' spirit to co-parent and exercise parental responsibility in their child's best interests. If the parents are able to carry out the orders in a supportive and co-operative spirit, the child's welfare would be promoted.[170] How each parent supports his or her children and their time with the other parent is part of discharging parental responsibility,[171] which is a personal responsibility. Even though the marital relationship has been dissolved, parents should intentionally endeavour to work together to make parenting decisions for their children, with the courts being the last resort for the resolution of parenting matters.[172]

17.78 The HCF also provided helpful pointers on how therapeutic justice can be promoted by the parties and their counsel in a family setting. It suggested that counsel can take on an active role in advising clients to accept court outcomes by highlighting the limited scope of appellate intervention in matters involving how a child's time should be split between parents.[173] Counsel should also recognise the overt and subtle ways in which they can influence the parenting dispute, which include refraining from using inflammatory language in written

167 *VDX v VDY* [2021] SGHCF 2 at [34].
168 *VDX v VDY* [2021] SGHCF 2 at [35].
169 *VDX v VDY* [2021] SGHCF 2 at [28].
170 *VDX v VDY* [2021] SGHCF 2 at [29].
171 *VDX v VDY* [2021] SGHCF 2 at [31].
172 *VDX v VDY* [2021] SGHCF 2 at [42].
173 *VDX v VDY* [2021] SGHCF 2 at [39].

communications[174] and even for opposing counsel to work together as a team to problem-solve for their clients.[175]

17.79 *VDX* illustrates how the parties and counsel can act in a way that promotes therapeutic justice in the Family Justice Courts. The strong stance taken by the HCF makes it clear that overly litigious behaviour will be discouraged within the family justice system, and that unhappy parties have to start relying on other less acrimonious ways to resolve disputes relating to a child's wellbeing. The role of the family lawyer is also evolving. Rather than fight for the parties in an adversarial setting, the focus should be on how they can help the parties move forward with co-parenting and exercise parental responsibility in the child's best interests.

17.80 *VJM v VJL*[176] ("*VJM*") touched on another aspect of promoting therapeutic justice within the family justice system – using counselling to help the parties reduce conflict. *VJM* involved cross appeals on custody, care and control, access and relocation in respect of the parties' young son, who was four years of age at the time *VJM* was decided. The husband was a litigant-in-person and made certain innovative arguments in respect of shared care and control.

17.81 The Family Court ordered that the parties were to have joint custody of the child on the basis that joint custody supports joint parenting and is the default position consistent with upholding the welfare of the child.[177] The wife sought sole custody of the child on appeal.[178] The HCF did not see any reason to depart from the Family Court's decision that promoted joint parenting. The welfare of the child was best secured by letting him enjoy the love, care and support of both parents who were meaningfully involved in his life. That was so even when conflict between the parties on major parenting issues such as immigration and education could arise in the future. Given that the parties were still in high conflict and in litigation, it would be premature to exclude the husband from the child's life.[179] The HCF noted that the parties may use therapeutic or mediation support to assist them if necessary. The court's intervention should remain the last resort, after the parties have tried their best to reduce conflict and fulfil the legal obligation of parental responsibility towards the child.[180]

174 *VDX v VDY* [2021] SGHCF 2 at [37].
175 *VDX v VDY* [2021] SGHCF 2 at [40].
176 [2021] 5 SLR 1233.
177 *VJM v VJL* [2021] 5 SLR 1233 at [4].
178 *VJM v VJL* [2021] 5 SLR 1233 at [3].
179 *VJM v VJL* [2021] 5 SLR 1233 at [5].
180 *VJM v VJL* [2021] 5 SLR 1233 at [6].

17.82 The HCF also affirmed the Family Court's decision to grant the wife leave for the child to relocate to Florida, USA.[181] It held that one of the strongest factors in favour of relocation in *VJM* was the family's lack of connection to Singapore.[182] The wife, an American citizen, moved to Singapore in 2013 to join the husband, a British citizen. Thereafter, the child was born in Singapore in March 2017 and held both American and British citizenship. Neither party held any permanent resident status in Singapore and the whole family had no roots in Singapore.[183] While the HCF acknowledged that some loss of relationship would unfortunately result when a parent and a child are in different countries,[184] the husband had expressed his willingness to explore relocating to the US if the Family Court's relocation orders were to be affirmed. If the husband were to relocate to the US, the child would be able to enjoy more time with the husband and maintain their father–son relationship.[185]

17.83 On the issue of care and control, the husband appealed against the Family Court's order granting sole care and control to the wife. He claimed that the sole care and control order led to the psychological effect of the wife treating him as "less of a parent".[186] He also claimed that shared care and control should be "inclusive" and allow both parents to share substantially in caring for the child, rather than "exclusive". The husband raised examples of the "exclusive" view as situations where shared care was deemed "unworkable where the parties have a bitter relationship", "overly disruptive to a child's life" due to "uprooting the child every 3–4 days", "not suitable when parents have markedly different parenting styles" and inappropriate unless parents can agree on "every day-to-day-decision relating to the child".[187]

17.84 The HCF corrected the husband's misconceptions on shared care and control. His descriptions of there being "inclusive" and "exclusive" views of shared care and control were not found in the law and therefore rejected. The law provides that the paramount consideration in any issue concerning a child's welfare is the welfare of the child. The views and examples raised by the husband were instead factors to be considered when determining what living arrangements would be in the child's best interests in a given set of circumstances.[188]

181 *VJM v VJL* [2021] 5 SLR 1233 at [12].
182 *VJM v VJL* [2021] 5 SLR 1233 at [9].
183 *VJM v VJL* [2021] 5 SLR 1233 at [10].
184 *VJM v VJL* [2021] 5 SLR 1233 at [11].
185 *VJM v VJL* [2021] 5 SLR 1233 at [12].
186 *VJM v VJL* [2021] 5 SLR 1233 at [14].
187 *VJM v VJL* [2021] 5 SLR 1233 at [14].
188 *VJM v VJL* [2021] 5 SLR 1233 at [15].

17.85 The law adopts the legal constructs of "custody", "care and control" and "access" to support families in which the child's parents require legal intervention.[189] If the husband were to have an issue with any alleged psychological effect stemming from the use of terms such as "sole care and control" and "access", that would have to be addressed by legislative reform.[190]

17.86 The legal concept of "joint custody" upholds equal parental responsibility as it requires both parents to respect each other's joint and equal role in supporting, guiding and making major decisions for the child. Regardless of the care and control order made that governs the physical caregiving and living arrangements of the child, both parents are equal parents with equal parental responsibility in the eyes of the law. It is not the case that the parent who has been awarded sole care and control is the better or more important parent. In fact, a truly strong parent would actively support the child having a close relationship with the other parent.[191]

17.87 The clear guidance in the seminal case of *CX v CY*[192] that joint parenting is in the children's welfare means that the courts will endeavour to reach orders which promote joint parenting. However, the more specific question is what practical living arrangements would best support the meaningful involvement of both parents in the child's life. This would necessarily involve the balancing of various factors, some of which may be mentioned by the husband as being "exclusive".[193]

17.88 In considering whether shared care and control would be in the child's best interests or otherwise, the court would have to weigh factors such as that particular child's needs at that stage of life,[194] the extent to which the parents are able to co-operate within such an arrangement and whether it is easy for that child, bearing in mind his age or personality, to live in two homes within one week.[195] There is no presumption for or

189 *VJM v VJL* [2021] 5 SLR 1233 at [18].
190 *VJM v VJL* [2021] 5 SLR 1233 at [19].
191 *VJM v VJL* [2021] 5 SLR 1233 at [20].
192 [2005] 3 SLR(R) 690.
193 *VJM v VJL* [2021] 5 SLR 1233 at [15].
194 An example of a case where shared care and control was dismissed as it may not be appropriate for a child's needs would be *VMG v VMH* [2021] SGHCF 31. There, the child was diagnosed with global developmental delay. The mother took active steps to support early intervention for the child, whereas the father was slow to accept the son's needs and remain focused on the conflict between the parties. Given the child's young age and special needs at that stage of his life, the General Division of the High Court (Family Division) held that shared care and control would be too disruptive and not in the child's best interests.
195 *VJM v VJL* [2021] 5 SLR 1233 at [16].

against the granting of shared care and control, and much would depend on the precise facts and circumstances of each case.[196]

17.89 On the facts of *VJM*, the child had been in the mother's sole care since May 2018. While the husband was fit to provide care for the child as supported by a psychologist's report,[197] the wife had been the child's primary caregiver.[198] Further, shared care and control could not be realistically ordered where the parties were residing in two separate countries upon relocation. In light of this, the HCF affirmed the orders in respect of the wife having sole care and control of the child and the husband having access. [199]

17.90 As there was no concrete evidence on whether the husband would relocate to the US, the Family Court's access orders that were made on the basis that the husband would remain in Singapore[200] were largely upheld by the HCF, subject to certain adjustments.[201] If the husband were to relocate subsequently and the parties were to be unable to work out the access arrangements between themselves, an appropriate variation application could be made at that juncture.[202]

17.91 As mentioned above,[203] therapeutic and mediation support are critical tools that a party can turn to when he or she requires support in resolving family issues. The root of family issues is family dysfunction. Social service support in the form of counselling and therapy can equip the parties with the necessary skills they need to manage family conflict and resolve family matters amicably. The wife in *VMJ* had appealed against the Family Court's order for her to attend counselling for a period of nine months. The HCF held that the counselling order was a reasonable order and that the aim of the counselling order was to help the parties reduce conflict. There was a deep need for the parties to be stronger parents for the sake of the child's wellbeing,[204] and counselling would hopefully allow them to see past their differences and co-parent the young child effectively for years to come. In light of this, counselling is a key tool to promote therapeutic justice and litigants can expect that it

196 *VJM v VJL* [2021] 5 SLR 1233 at [21] and [23].
197 *VJM v VJL* [2021] 5 SLR 1233 at [26]–[28].
198 *VJM v VJL* [2021] 5 SLR 1233 at [28].
199 *VJM v VJL* [2021] 5 SLR 1233 at [29].
200 *VJM v VJL* [2021] 5 SLR 1233 at [30] and [32].
201 *VJM v VJL* [2021] 5 SLR 1233 at [33]–[39].
202 *VJM v VJL* [2021] 5 SLR 1233 at [31].
203 See para 17.80 above.
204 *VJM v VJL* [2021] 5 SLR 1233 at [42].

will be readily utilised by the courts to help distressed families overcome their emotional issues.