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Case Note

THE (NON-)EXPIRATION OF PARENTAL RESPONSIBILITY

Balancing the Child's Wishes, Second Families, and Parents' Ability in Maintenance for Adult Children

UYT v UYU
[2020] SGFC 81; [2020] SGHCF 8

In deciding whether to award child maintenance in Singapore, the courts' main considerations are the parents' ability and the child's needs. This is further complicated when it involves an adult child who has developed their own views and want to decide on their own future. This note explores the courts' difficulty in exercising their discretion in *UYT v UYU* [2020] SGFC 81; [2020] SGHCF 8 to grant maintenance to an adult child when the child's needs are in conflict with the parent's wishes and the needs of the second family. The author suggests that future child support guidelines should include maintenance for further education.

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I. Introduction

1 In *UYT v UYU*[2] ("*UYT (HC)*"), Choo Han Teck J recently remarked:[3]

1 The author is grateful to the Centre for Asian Legal Studies, Professor Leong Wai Kum from the National University of Singapore, Sim Bing Wen, KarLuis Quek, Charlotte Choo, and the anonymous reviewer for their support and comments on earlier drafts. Any errors, however, remain the author's own.
2 [2020] SGHCF 8.
3 *UYT v UYU* [2020] SGHCF 8 at [5].

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> Family Law is a misnomer for a happy family generally has no need for law nor does law need to intrude into a happy family. Decisions such as sending a child of the family for tertiary education, whether at home or abroad, are discussed and settled within the family, sometimes with a tinge of regret, sometimes with great sacrifice, but always with the comforting feel of give and take. By the time the [law] is invoked to resolve domestic problems, it usually means that the family can no longer mediate within itself. Section 69 [of the Women's Charter] [4] directs how such problems are to be resolved, but it is not a complete guide for the court to make these kinds of decisions in a way that a happy family would make them. It is one thing for a family to give and take within itself, and another for a third party to determine how they should do it.

2 Child maintenance remains a difficult issue in Singapore during divorce proceedings. Although ex-spouses are no longer married, parental responsibility continues for life.[5] However, more often than not, parents dispute the quantum and proportion of maintenance that they ought to provide for their children.[6] At times, orders made when the child is young become unworkable and/or insufficient as the child grows up, and new orders have to be sought by the parent with primary care of the child or the child themself (especially if they are above 21 years old). When child maintenance applications (especially those made by children on their own) are made against a parent, it usually stems from a breakdown of familial relationships. To paraphrase Choo J's observation quoted above, a happy family would not require such applications in the first place.[7]

3 This case comment is focused on maintenance applications by adult children in *UYT (HC)* and highlights the difficulties of balancing interests in such applications. In the context of this paper, adult children are defined as children aged 21 years and above.[8] The Court of Appeal has held that s 68 of the Women's Charter ("WC") provides that "each biological parent has an independent and non-derogable duty to maintain his/her children, whether directly, through the provision of such necessities as the child may need, or indirectly, by contributing to the cost of providing such necessities".[9] The author will first provide a general background to the law of maintenance for adult children before commenting on the decision of *UYT (HC)*.

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4 Cap 353, 2009 Rev Ed.

5 Leong Wai Kum, *Elements of Family Law* (Singapore: LexisNexis, 3rd Ed, 2018) at paras 7.051–7.052; Debbie Ong Siew Ling, "Parents and Custody Orders – A New Approach" [1999] Sing JLS 205 at 205–206.

6 See *AUD v AUE* [2015] SGHC 139 at [40]–[106].

7 *UYT v UYU* [2020] SGHCF 8 at [5].

8 See s 68 of the Women's Charter (Cap 353, 2009 Rev Ed).

9 *AUA v ATZ* [2016] 4 SLR 674 at [40].

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II. The law on maintenance for children above 21 years old in Singapore

4 Children above the age of majority must personally make an application for maintenance from their parents under s 69(3)(*b*) of the WC.[10] The adult child must satisfy the court that their maintenance application is necessary under s 69(5) of the WC. Reasons that show necessity include the adult child's mental or physical disability, current or future conscription liabilities, the pursuit of further education or training, or any "special circumstances".[11] From the drafting of s 69(5) of the WC and the phrase "special circumstances, other than those stated in [ss 69(5)(*a*)–69(5)(*c*) of the WC]", Parliament appears to have intended for this to be broadly construed by the provision of a catch-all provision in s 69(5)(*d*) of the WC.

5 Case law shows that the threshold for necessity under s 69(5)(*c*) of the WC is not high. In *BON v BOQ*,[12] the Court of Appeal was satisfied that there was a *prima facie* responsibility for both parents to finance their adult children's education because the adult children gave evidence that:[13]

> … they believe that a university degree would improve their prospects and give them a higher earning capacity. Besides, they are both pursuing courses to improve their employability in the work force and not merely some self-improvement courses. … this is a reasonable position and does not display a cavalier attitude towards the pursuit of their further studies.

The High Court in *Wong Ser Wan v Ng Cheong Ling*[14] ("*Wong Ser Wan*") has further stated that as long as the child is not intentionally prolonging his education and insisting on being maintained, and that if the pursuit of further education is "to prepare himself better for the working world", it would be reasonable for the parents to maintain him so long as they can afford to.[15] In this regard, the High Court in *ARV v ARW*[16] has held that the pursuit of university education (in that case, reading law) qualifies as "instruction" under s 69(5)(*c*) of the WC.[17]

6 Upon the satisfaction that maintenance is necessary for the adult child, the court will consider the parents' ability to provide for him.

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10 *Thery Patrice Roger v Tan Chye Tee* [2014] SGCA 20 at [50].
11 See s 69(5) of the Women's Charter (Cap 353, 2009 Rev Ed).
12 [2018] 2 SLR 1370.
13 *BON v BOQ* [2018] 2 SLR 1370 at [16]–[17].
14 [2006] 1 SLR(R) 416.
15 *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 at [100].
16 [2015] SGHC 72.
17 *ARV v ARW* [2015] SGHC 72 at [77].

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Against this backdrop, this article will consider the decisions of both the Family Court[18] and Family Division of the High Court ("High Court") in *UYT v UYU*[19] based on the broad principles identified above in relation to adult children's maintenance. The author will then propose a framework for future maintenance applications by adult children.

III. Facts of the case

7 This case involved an application by a then-22-year-old son (the "Son") against his father (the "Father") for maintenance under s 69(2) read with s 69(5)(*c*) of the WC for his university education in journalism in Canada. This education also included a preparatory programme in a Canadian college. This application was made shortly after the Son had graduated from polytechnic with a diploma. Unfortunately, his grades were not sufficient to qualify him for university education in local autonomous universities such as the National University of Singapore or the Nanyang Technological University. While there were other local private universities that the Son could have enrolled in, he had not applied to them as he had set his mind on going to Canada. Despite this, the Family Court found that the Son had a genuine desire to improve his employability in the workforce.[20] This was not disputed on appeal.

IV. The courts' decisions

A. The Family Court allowed the son's application

(1) The Father has the means to support the Son's university education

8 The Family Court found that the Father had the means to contribute to the Son's university fees. At trial, the Father was dishonest and not forthcoming about his income and assets. Nonetheless, the Family Court found that based on the Father's income tax statement for 2018, his annual income was $25,155 (that is, an average of $2,000 a month), double what the Father declared ($1,000).[21] It should also be noted that the Father's payslip showing his alleged salary of $1,000 was issued to him by himself as he was the sole director and shareholder of a company ("C Logistics").[22] In addition to his income from C Logistics, he was

18 *UYT v UYU* [2019] SGFC 81.
19 [2019] SGFC 81; [2020] SGHCF 8.
20 *UYT v UYU* [2019] SGFC 81 at [27]–[28].
21 *UYT v UYU* [2019] SGFC 81 at [51]–[53].
22 *UYT v UYU* [2019] SGFC 81 at [54]–[55].

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a director of various companies and received income from those other companies as well. This included a trade income of $9,153 from another company which the Father and his current wife owned in the ratio of 20:80 respectively. Although C Logistics was not doing well financially, the company was structured such that the Father's current wife continued to draw an annual income of $47,000 while he drew $12,000.[23] In this regard, the Family Court concluded that the Father's source of income was "effectively the same source" as his current wife's.[24]

9 Further, the Family Court found that the Father "had refused to contribute to the Son's maintenance, and that it was *not because of his financial inability* … because he was in principle not agreeable to the idea of the [s]on using his money, to go overseas to lead a lifestyle which he disapproves of" [emphasis added].[25] In addition, the Son had the expectation that his Father would pay for his overseas education for the following reasons: first, the Father had given financial support to his two stepsons from the second family for overseas education. Second, prior to doing his diploma at a polytechnic, the Son had communicated his interest for overseas education to his Father, who "did not indicate his inability or refusal to assist financially".[26] Even after the Son's graduation from polytechnic, when the Son's interest for overseas education was repeated to the Father, there was again no indication of his inability and/or refusal to assist the Son. Lastly, the Son's e-mail to the Father containing the university payment breakdown demonstrated that there was "some representation made to the Son that the Father would assist financially".[27]

(2) The Son should apply for maintenance from both parents

10 In his application, the Son had sought an order solely from his Father for his education. The learned District Judge held that the Son was unreasonable in doing so, despite being "entitled" to maintenance from the Father.[28] In this regard, she ordered the Son's maintenance should be borne by both parents in the proportion of 60% by the Father, and 40% by the mother ("the Mother") since the Mother was earning about $750 less than the Father, based on his alleged monthly income.[29]

23 *UYT v UYU* [2019] SGFC 81 at [60]–[62].
24 *UYT v UYU* [2019] SGFC 81 at [67].
25 *UYT v UYU* [2019] SGFC 81 at [46].
26 *UYT v UYU* [2019] SGFC 81 at [33]–[34].
27 *UYT v UYU* [2019] SGFC 81 at [46].
28 *UYT v UYU* [2019] SGFC 81 at [36].
29 *UYT v UYU* [2019] SGFC 81 at [72].

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B. The High Court overturned the Family Court's decision

11 On appeal, the High Court allowed the Father's appeal and held that he was "not obliged to pay any contribution to the [son's] further education in Canada"[30] for the following reasons:

(a) the Father's alleged salary of $2,000 would be insufficient for him to maintain his current wife and provide for the Son's further education;[31]

(b) there was no specific obligation under s 69(5)(*c*) of the WC for the Father to pay for the Son's university education;[32]

(c) there was a consent order made about 16 years ago ("Consent Order") relieving the Father from providing any maintenance for the Son, and both parents had lived up to their respective agreements;[33]

(d) flowing from the Consent Order, the Son should only apply for maintenance from his Mother;[34] and

(e) the Son "has to find his own means" since he is now an "independent adult".[35]

12 In *dicta*, the High Court also lamented the lack of a "strong bond", resulting in the Son appearing in opposition to the Father, and suggested that it played a part in his decision.[36]

V. Comment

13 Both the Family Court and High Court judgments were based largely on the same facts, yet their outcomes are diametrically opposed. The Family Court was not amused with the Father's failure to provide full and frank disclosure of his incomes and assets, and was focused on the Father's own admission that he was *choosing* to not support the Son. On the other hand, the High Court focused mainly on the Consent Order and allowing parties to move forward with their own lives. The High Court refused to order the Son to return the part-payment of $3,000 made previously so that parties may "go their own ways without further ado".[37]

30 *UYT v UYU* [2020] SGHCF 8 at [16].
31 *UYT v UYU* [2020] SGHCF 8 at [10].
32 *UYT v UYU* [2020] SGHCF 8 at [12].
33 *UYT v UYU* [2020] SGHCF 8 at [13]–[14].
34 *UYT v UYU* [2020] SGHCF 8 at [14].
35 *UYT v UYU* [2020] SGHCF 8 at [15].
36 *UYT v UYU* [2020] SGHCF 8 at [15].
37 *UYT v UYU* [2020] SGHCF 8 at [17].

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This stark contrast in outcomes demonstrates the inherent difficulty in determining child maintenance in Singapore, especially in balancing the educational needs of the adult child and their parents' ability in circumstances where a parent has not been forthcoming – and to some extent dishonest – in providing evidence of his income and assets.[38]

14 With respect, the author does not agree that the Father should not contribute at all to the adult Son's university education, be it locally or overseas. The author will consider (a) the extent to which the Father owed a duty to maintain his adult Son; (b) the extent to which the Father's choice to maintain his adult Son should be regarded; (c) the amount of weight to be given to the Consent Order made when the Son was eight years old; (d) the Father's ability to provide for the Son's university education; and lastly, (e) whether there was a reasonable expectation of an overseas education by the Son of the Father. Within this structure, the author will address some of the factors[39] relied on by the High Court.

A. Parents have a duty to maintain children above 21

15 The High Court's conclusion that the Father is "not obliged to pay any contribution to the [Son's] further education in Canada"[40] and that the Son "has to find his own means" since he is now an "independent adult",[41] with respect, leaves much to be desired.

16 In *BON v BOQ*, the Court of Appeal recently affirmed that s 68 read with s 69(5)(*c*) of the WC subjects "[p]arents [to] a duty to maintain their children and this includes children above 21 that are receiving instruction at an educational establishment".[42] In that case, the Court of Appeal allowed the appeal of two adult children (with polytechnic diplomas) against their mother for her to contribute to their university expenses in the US. The Court of Appeal accepted that the pursuit of university education is a "reasonable position" for maintenance to be "necessary" so long as the child is not pursuing multiple degrees or merely self-improvement courses.[43] It then held that "both the husband and wife are therefore *prima facie* responsible for financing their [adult children's] education".[44] The High Court in *Yong Shao Keat v Foo Jock Khim*[45] had

38 *UYT v UYU* [2019] SGFC 81 at [51]–[69]; *UYT v UYU* [2020] SGHCF 8 at [10].
39 Stated at para 11 above.
40 *UYT v UYU* [2020] SGHCF 8 at [16]; *UYT v UYU* [2019] SGFC 81 at [22].
41 *UYT v UYU* [2020] SGHCF 8 at [15].
42 *BON v BOQ* [2018] 2 SLR 1370 at [15].
43 *BON v BOQ* [2018] 2 SLR 1370 at [16].
44 *BON v BOQ* [2018] 2 SLR 1370 at [17]. Unfortunately, *BON v BOQ* was not addressed in *UYT v UYU* [2020] SGHCF 8.
45 [2012] SGHC 107.

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gone even further to state that since the child is above 21 years old and is undergoing university education, "[s]he is *entitled* to maintenance under s 69(5)(*c*) of the [Women's] Charter" [emphasis added].[46]

17 In this case, the Family Court's finding that the Son had a genuine desire to improve his employability in the workforce through further education was undisputed by the Father, even on appeal.[47] Therefore, the Father and Mother are *prima facie* responsible, financially, for the Son's university education. This parental responsibility imposed by *BON v BOQ* on both parents[48] arguably has a statutory basis flowing from s 46(1) of the WC which imposes duties on both parents to "co-operate with each other … in caring and providing for the children" during the marriage, and s 68 of the WC which provides that it would be the duty of *both parents* to maintain their child.[49] These principles are difficult to square with the High Court's holding that the Son should only seek maintenance from his Mother.[50] Accordingly, the Family Court was correct in following the Court of Appeal in *BON v BOQ* and holding that the Son should be applying for maintenance for his university education against *both parents*, and not just the Father.[51]

18 Further, this *prima facie* responsibility is not rebutted because the Son in this case is hardly "independent".[52] At the time of his application for maintenance, the Son had just graduated from polytechnic and had not gone for his national service.[53] In *BON v BOQ*, the Court of Appeal rejected the mother's argument that her two adult children, "having completed polytechnic, should be able to find a job and support themselves",[54] and allowed the adult children's appeal for maintenance for their university education. Following *BON v BOQ*, it would therefore not be reasonable to expect the Son to be independent and "find his own means" to support his university education so soon after graduating from polytechnic.

19 Even if the Son was gainfully employed or serving his national service, ss 69(5)(*b*) and 69(5)(*c*) of the WC provides that these factors will not bar the Son's maintenance application. Section 69(5)(*c*) of the WC

46 *Yong Shao Keat v Foo Jock Khim* [2012] SGHC 107 at [101].
47 *UYT v UYU* [2019] SGFC 81 at [27]–[28].
48 *BON v BOQ* [2018] 2 SLR 1370 at [17].
49 See the title and language of s 68 of the Women's Charter (Cap 353, 2009 Rev Ed).
50 *UYT v UYU* [2020] SGHCF 8 at [14]. The issue of the Consent Order will be addressed at para 23 below.
51 *UYT v UYU* [2019] SGFC 81 at [35]–[37].
52 *UYT v UYU* [2020] SGHCF 8 at [15].
53 *UYT v UYU* [2019] SGFC 81 at [9].
54 *BON v BOQ* [2018] 2 SLR 1370 at [16].

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explicitly states that the court may still order maintenance, if necessary, "whether or not [the adult child is] in gainful employment" while pursuing further education. On the other hand, it is implicit within s 69(5)(*b*) of the WC that during national service, the adult child will receive an allowance; nonetheless, it still allows the Son to apply for maintenance, if necessary. In *Wong Ser Wan*, the High Court allowed the adult child's maintenance application despite her working as a part-time tuition teacher and teaching assistant while studying in university; she was still held to be a dependant for the purposes of s 69(5)(*c*) of the WC.[55] This suggests that ss 69(5)(*b*)–69(5)(*c*) of the WC go beyond the adult child's needs as a basis for necessity; necessity is broader. Therefore, the Son's polytechnic diploma and/or national service allowance cannot reasonably make him "independent" such that his maintenance application should fail.

B. Duty to maintain a child is non-derogable

20 In the Family Court, the trial judge found that the Father had attempted to shirk parental responsibility. The Father's own evidence showed that he refused to contribute to the Son's overseas university education because he "felt that the Son had an ulterior motive for going overseas", and that "he was in principle not agreeable to the idea of the Son using his money, to go overseas to lead a lifestyle which he disapproves of".[56] The Father had also confessed in his evidence before the Family Court that he "*would have helped* but … [the Son] brought [the Father] to the Court which [made him and his current wife] upset" [emphasis added].[57] In his further evidence, he admitted that "*he would be able to obtain payment to fund the Son's education*, but for the fact that the Son made him angry" [emphasis added].[58] Unfortunately, the Father's admission to refusing maintenance despite having other means to provide for the Son was not addressed by the High Court.

21 Looking at s 68, 69(2), 69(4) or 69(5) of the WC, there is nothing which allows a parent to *choose* whether or when they would like to provide for their child. In fact, the Court of Appeal in *AUA v ATZ*[59] has made it clear that the parental duty to maintain a child under s 68 of the WC is "independent and non-derogable".[60] This is only logical and correct; as Gillian Douglas rightly noted, parental obligations cannot be based on commitments because they entail a voluntary undertaking

55 *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 at [104]–[105].
56 *UYT v UYU* [2019] SGFC 81 at [46].
57 *UYT v UYU* [2019] SGFC 81 at [40].
58 *UYT v UYU* [2019] SGFC 81 at [68].
59 [2016] 4 SLR 674.
60 *AUA v ATZ* [2016] 4 SLR 674 at [40].

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by the parent, which would make the enforcement of this obligation impossible against an unwilling parent from a divorce.[61] To this end, the provision of maintenance is necessary for the Son's university education because it would "improve [his] prospects and give [him] a higher earning capacity".[62] Therefore, the Father cannot simply choose when and/or on what terms or conditions he would maintain his Son.

22 The Son's lack of a "strong bond"[63] with the Father should not be a consideration in allowing the Father's appeal against the maintenance order. In *BON v BOQ*, the Court of Appeal held that "[e]ven if [the parent–child relationship] is strained, it is [the mother's] responsibility as a parent to facilitate the completion of the last leg of their education" since it was to "improve their employability in the work force".[64] The author further submits that this is also implicit in s 68 of the WC which imposes the duty on both parents, regardless of "whether [the children] are in his or her custody or the custody of any other person, and whether they are legitimate or illegitimate".[65] This shows that Parliament intended to impose the duty to maintain a child even where there is no "strong bond" between the parent and child, including situations where the child is illegitimate and not related by blood, or has not spent much time with the parent.

C. The Consent Order should be given little weight

23 As stated above,[66] the Son should not be limited to applying for maintenance from his Mother solely on the basis of the Consent Order made 16 years ago. When the Consent Order that the Father was not required to provide any maintenance for the Son was made 16 years ago, the court effectively made no order as to child maintenance.[67] This was likely to have been balanced as a compromise[68] against the other terms of the Consent Order. However, it should be noted that in principle, the provision of maintenance for the child should be separate from and not dependent on other ancillaries since child maintenance is solely for

61 Gillian Douglas, "Towards an Understanding of the Basis of Obligation and Commitment in Family Law" (2016) 36(1) Legal Stud 1 at 17.
62 *BON v BOQ* [2018] 2 SLR 1370 at [16].
63 *UYT v UYU* [2020] SGHCF 8 at [15].
64 *BON v BOQ* [2018] 2 SLR 1370 at [16]–[17].
65 Women's Charter (Cap 353, 2009 Rev Ed) s 68.
66 See para 17 above.
67 *APE v APF* [2015] 5 SLR 783 at [7]–[12]; *Tan Bee Giok v Loh Kum Yong* [1996] 3 SLR(R) 605 at [15].
68 *AUA v ATZ* [2016] 4 SLR 674 at [32].

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the child's benefit.[69] The author does not intend to speculate why no maintenance was ordered from the Father in the absence of additional information or the other terms of the Consent Order. However, from the discussion above,[70] despite the Consent Order, it remains that the Son has the right to apply for maintenance against the Father (and the Mother) through a fresh application under s 69(5) of the WC. To this end, it is suggested that little weight should be given to the Consent Order since this is a fresh application taken out by the Son for a new purpose – university education. Even if the Consent Order had provided for maintenance for the Son during his growing-up years, they would be for his past expenses; university education may not have been a consideration when the Son was only eight years old. In any case, the Consent Order would also have expired when the Son attained the age of 21, unless specifically provided for otherwise.[71] Therefore, in both scenarios, the Son would need to apply for a fresh maintenance order against the Father.

D. The Father's ability to provide for the Son

24 The issue of the Father's ability to provide for the Son was contested before both the Family Court and High Court. At both levels, the Father was not forthcoming and was dishonest with his income and assets. Consequently, the Family Court drew an adverse inference against the Father's ability to provide for the Son. As stated above,[72] from the limited information provided by the Father, it already appeared that he had the means to contribute to the Son's university education. The Father had admitted in his evidence before the Family Court that he "would have helped but … [the Son] brought [the Father] to the Court which [made him and his current wife] upset".[73] He had also admitted and offered the information that his current wife was earning "a good amount … so she would help me, definitely. … she's well-to-do".[74] The author submits that, in this case, it is necessary to also consider the way the Father's companies were organised and the Father's current wife's income.[75] This should be permissible under the "all embracing formula"[76] of s 69(4) of the WC – the court "shall *have regard to all the circumstances*"

69 This is unlike spousal maintenance, which is supplementary to the division of matrimonial assets. See *ATE v ATD* [2016] SGCA 2 at [33]; and Leong Wai Kum, *Elements of Family Law* (Singapore: LexisNexis, 3rd Ed, 2018) at paras 18.022–18.028.

70 See paras 4 and 16 above.

71 Women's Charter (Cap 353, 2009 Rev Ed) s 69(6).

72 See paras 8 and 9 above.

73 *UYT v UYU* [2019] SGFC 81 at [40].

74 *UYT v UYU* [2019] SGFC 81 at [40].

75 The author will not be considering the interaction between family law and company law in this article.

76 *Sengol v De Witt* [1985–1986] SLR(R) 809 at [15].

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[emphasis added]. Despite being the sole director and shareholder of C Logistics, the Father's salary was nearly a quarter of his wife's although she was only a secretary in the company. It would therefore be necessary to consider her income to prevent the Father from using the company as a vehicle to manipulate and lower his income artificially, which the Father had dishonestly done.[77] In this regard, it also bears highlighting that the Father had also admitted that his wife from the second family is earning "a good amount … so she would help me, definitely. … she's well-to-do".[78]

25 Even if there "appear[ed] to be very little now left" in the Father's accounts (that had been disclosed),[79] it should be noted that the Father had not provided full and frank disclosure of all his assets and income and is likely to have other undisclosed assets, including his Central Provident Fund moneys.[80] In *AUA v ATZ*, the Court of Appeal rejected the father's argument that he would have to "dip into his savings to meet this [child maintenance] obligation", holding that "there [was] no indication that this [had] caused him substantial hardship or that he [was] unable to continue making such a contribution".[81] Separately, in *THG v LGH*,[82] even though the father in that case had a second family with two dependent young children, the High Court still ordered that the father contribute to the maintenance for his child from the first marriage.[83] In this case, it would not be too onerous for the Father to contribute to the Son's university education even though he only has an alleged monthly income of $2,000 (and likely other income and assets) because the Father does not need to maintain his current wife or stepsons. Contrary to the High Court's decision, the Father's wife from the second family does not need to be maintained since she is drawing an annual income of $47,000 from C Logistics, of which the Father is the sole director and shareholder.[84] His current wife would logically not require maintenance under s 69(1) of the WC because her income is nearly four times of his, which is a factor under s 69(4)(*b*) of the WC for maintenance during the marriage.[85] In any case,

77 See para 8 above; *UYT v UYU* [2019] SGFC 81 at [51]–[69]; and *UYT v UYU* [2020] SGHCF 8 at [10].
78 *UYT v UYU* [2019] SGFC 81 at [40].
79 *UYT v UYU* [2020] SGHCF 8 at [10].
80 *UYT v UYU* [2019] SGFC 81 at [51]–[69]; *UYT v UYU* [2020] SGHCF 8 at [10].
81 *AUA v ATZ* [2016] 4 SLR 674 at [51].
82 [1996] 1 SLR(R) 767.
83 *THG v LGH* [1996] 1 SLR(R) 767 at [9].
84 *UYT v UYU* [2020] SGHCF 8 at [10].
85 The Father's stepsons do not need maintenance because they have completed their university education. See *UYT v UYU* [2020] SGHCF 8 at [10]; and *UYT v UYU* [2019] SGFC 81 at [33] and [66].

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it is trite law that maintenance is only ordered where necessary.[86] This can be seen in *UEB v UEC*[87] where the High Court rescinded the wife's maintenance order because her income is more than her expenses.

26 Finally, the abscondment of parental responsibility is only allowed in extreme circumstances when the parent is "*totally unable to pay such maintenance*"[88] [emphasis added]. In *Wong Ser Wan*, the High Court stated that adult child maintenance would not be ordered if they were satisfied that the father was "*totally unable* to pay such maintenance. … however, the [father] *does have assets* and [they] think *it is right to make him support [the child's] education to a reasonable extent*" [emphasis added].[89] It is clear from the absolute word "totally" that the threshold for not imposing parental duty under s 69(5) of the WC is very high and should be used sparingly. Therefore, the Father should at least contribute to a proportion of the Son's university education.

E. The Son's expectation for the Father to provide overseas education is reasonable

27 As stated above,[90] the Family Court had rightly found that the Son had a reasonable expectation for the Father to provide him with the same overseas education as the Father's stepsons. In *BON v BOQ*, the adult children had embarked on their overseas university education before applying for maintenance against their mother. Notwithstanding the lack of prior discussion between the estranged mother and the children, the Court of Appeal held that she should provide for her adult children, based on the costs of pursuing a degree at a local university.[91] It would therefore not be a stretch to deduce that the courts are more likely to allow overseas education for the adult child if the parents have been consulted. Considered together, the author agrees with the Family Court that the reasons above justify holding the Father liable for a portion of the Son's overseas university education, to prevent the Father from reneging on this expectation given to the Son based on the Father's behaviour.

28 In any case, assuming it was unfair for the Father to contribute to the Son's overseas education based on the Son's reasonable expectation, the Father should at least contribute to a portion of the costs of the Son's

86 Leong Wai Kum, *Elements of Family Law* (Singapore: LexisNexis, 3rd Ed, 2018) at paras 13.041–13.045.
87 [2018] SGHCF 5.
88 *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 at [101].
89 *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 at [101].
90 See para 9 above.
91 *BON v BOQ* [2018] 2 SLR 1370 at [18].

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local university education. This is reasonable since the Father agreed that the Son should be given university education, and even took the effort to consider similar courses in local universities for the Son. The Father's lack of indication of "his inability or refusal to assist financially" when the Son requested on multiple occasions for overseas university education[92] shows the Father's willingness to contribute to the Son's university education, at least to the extent that is not an overseas education. In this regard, the author agrees with the High Court to the extent that the Father is justified to not bear the costs of overseas education. However, following Court of Appeal's decision in *BON v BOQ*, even if there was no agreement for an *overseas* education by the Father, it is suggested that the Father should at least contribute 60% to the Son's *local* university education.[93] For completeness, the author suggests that this should be pegged to the most similar course at a local university that the Son could reasonably be enrolled in with his polytechnic grades.

VI. Proposed framework for maintenance applications for adult children

29 From the cases examined in this note, there is currently no clear structure for maintenance applications for adult children. This seems to have resulted in the difficulty in analysing the issues systematically. Therefore, the author proposes the following framework for adult children's maintenance in future, distilled from ss 68 and 69 of the WC and the principles applied by the cases examined in this note, especially from the recent Court of Appeal case of *BON v BOQ*:

(a) Section 68 provides the starting point that parents have a duty to maintain their children, including children above 21 years.[94] This duty on both parents is "independent and non-derogable"[95] and is not a choice for parents to make.[96]

(b) As a matter of standing, the adult child must apply for maintenance for themself.[97] In situations where the adult child is mentally or intellectually incapacitated or disabled, "any person

92 See para 9 above; and *UYT v UYU* [2019] SGFC 81 at [33]–[34] and [46].
93 This follows the Family Court's apportionment in *UYT v UYU* [2019] SGFC 81 at [72].
94 See also *BON v BOQ* [2018] 2 SLR 1370 at [15].
95 Women's Charter (Cap 353, 2009 Rev Ed) s 68; *AUA v ATZ* [2016] 4 SLR 674 at [40].
96 *BON v BOQ* [2018] 2 SLR 1370 at [16]–[18]. See also paras 20–22 above.
97 Women's Charter (Cap 353, 2009 Rev Ed) s 69(3)(*b*). See also *Thery Patrice Roger v Tan Chye Tee* [2014] SGCA 20 at [48]–[50]. This was demonstrated in *BON v BOQ* [2018] 2 SLR 1370 at [15]–[19], where the adult children made their own applications against their mother for maintenance.

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who is a guardian or has the actual custody" of the adult child may apply on their behalf.[98]

(c) The courts will have to first consider whether maintenance is "necessary" under s 69(5) of the WC before considering the parents' abilities to contribute to the maintenance.[99]

(d) The burden is on the adult child to show that their *application* is necessary as a result of mental or physical disability, national service, further education and/or training, or the "catch-all" provision in s 69(5) of the WC.[100]

(e) Specifically, for maintenance during or for the intended pursuit of further education and/or training (including university education), the courts will consider:

(i) whether the adult child is trying to "improve their employability in the work force and not merely some self-improvement courses".[101] The adult child cannot intentionally "prolong [their] education and take degree after degree and insist on being maintained".[102] The fact that the adult child is gainfully employed or working part-time does not bar them from applying for maintenance,[103] since s 69(5)(*c*) of the WC explicitly provides that maintenance may still be necessary "whether or not while in gainful employment".[104] This is not intended to be a high threshold;[105]

(ii) the reasons for the choice of university (including whether it is local or overseas, and if both parents have been consulted and/or are agreeable);[106] and

(iii) any other factor that is relevant for the application.

98 This appeared to be the basis for the mother's application on behalf of her adult son in *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 ("*Wong Ser Wan*"), which was unchallenged by the father. See *Wong Ser Wan* at [89] and s 69(3)(*a*) of the Women's Charter (Cap 353, 2009 Rev Ed).
99 Women's Charter (Cap 353, 2009 Rev Ed) s 69(4).
100 See para 4 above.
101 *BON v BOQ* [2018] 2 SLR 1370 at [16]–[17].
102 *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 at [100].
103 *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 at [104]–[105]; Women's Charter (Cap 353, 2009 Rev Ed) ss 69(5)(*b*)–69(5)(*c*).
104 See para 19 above.
105 See para 5 above.
106 *BON v BOQ* [2018] 2 SLR 1370 at [16]–[18].

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(f) If the court is satisfied that the application is reasonable and necessary, both parents will be *prima facie* responsible for financing their adult children's education.[107] The adult child then carries the additional burden of justifying the reasonableness and necessity of the *quantum* of maintenance sought and its duration.[108] It follows that parents are not required to provide for luxuries, even if they were enjoyed by the adult child during the marriage.[109] The adult child's part-time employment will be taken into account in the determination of a reasonable amount.[110]

(g) After determining the reasonable quantum of maintenance needed, the courts will also consider whether the parent(s) has "neglected or refused to provide reasonable maintenance" under s 69(2) of the WC. Further, the courts will consider whether the adult child's expenses and needs were "reasonably communicated" to both parents.[111]

(h) With respect to the adult child's inability to maintain themself under s 69(2) of the WC, a review of the reported cases does not appear to have considered this issue in depth. It is submitted that this needs to be considered in the context of s 69(5) of the WC; suffice to say, the child's part-time employment,[112] "gainful employment"[113] or national service allowance will not impede or bar the maintenance application.

(i) In determining the parents' abilities, the courts will look at both parents' income, assets, financial resources, earning capacity, and "all the circumstances".[114] As submitted above,[115] as in the current case, in appropriate circumstances, this can include consideration of the second family's income, assets and/or means to ensure that the financial situation of the parent whose maintenance is sought is not artificially depressed or manipulated.[116]

(j) Lastly, the courts will consider the extent and proportion in which the parents are to share the payment of maintenance.

107 *BON v BOQ* [2018] 2 SLR 1370 at [17].
108 *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 at [91]–[102].
109 *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 at [101]–[102].
110 *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 at [104]–[105].
111 The formulation is inspired and adapted from *UHA v UHB* [2020] 3 SLR 666 at [48].
112 *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 at [104]–[105].
113 Women's Charter (Cap 353, 2009 Rev Ed) s 69(5)(*c*).
114 Women's Charter (Cap 353, 2009 Rev Ed) s 69(4).
115 See para 24 above.
116 See paras 8, 9, 24 and 25 above; and *UYT v UYU* [2019] SGFC 81 at [60]–[62] and [67].

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Parents may not abscond from their parental responsibility unless they are "totally unable to pay such maintenance";[117] this is a high threshold. The need to "dip into [one's] savings" will not suffice.[118]

VII. Conclusion

30 This case demonstrates the difficulty in deciding adult children maintenance applications by the courts because the focus by counsel before the respective courts is different in each case. Children are always the victims of divorces because they generally do not have a voice in the divorce orders, especially when they are much younger, as in the Son's situation. Often, decisions are made for them without consideration for their thoughts. The court's job is made even more difficult when parties are not forthcoming with evidence, as seen in this case by the Father's refusal to provide full and frank disclosure of his income and assets.

31 To ensure consistency, the author's proposed framework above could serve as a guide for decision-making so that parties in future may be systematic in their maintenance applications. This will also allow them to be clear of the distinction between parental duty (which is imposed and not chosen by parents) and parents' ability. It is in this light that the author further proposes that perhaps the way forward would be to move towards child maintenance guidelines that take into account university education.[119] The author believes that this is likely to reduce the need to litigate this issue and acrimony within already difficult relationships.

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117 *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 at [101].

118 *AUA v ATZ* [2016] 4 SLR 674 at [51].

119 In 2017, Sundaresh Menon CJ announced that a committee has been set up to develop child support guidelines in Singapore. See the Honourable the Chief Justice Sundaresh Menon, "Response by Chief Justice Sundaresh Menon" Opening of the Legal Year 2017 (9 January 2017) at para 44.

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