

## **The aftermath of divorce: maintenance and child support**\*

### **I. Introduction**

- 1 For better or for worse, divorce is increasingly common today. Yet, a divorce does not represent the clean break that one might hope for. Your financial life may still be connected to your spouse's even after divorce. You may either be entitled to receive, or required to pay, spousal maintenance and child support. Since this usually involves significant sums of money, it is important to know which applies in your case.
- 2 This article discusses four common questions that you may have. First, when does the court order spousal maintenance? Second, how does the court determine the sum of spousal maintenance to be paid? Third, when do you have to pay child support, and how does the court determine the sum? Finally, when does the court vary or enforce a maintenance order?

### **II. Discussion**

#### **A. *When does the court order spousal maintenance?***

- 3 Upon divorce, matrimonial assets are divided up according to each party's respective contributions.<sup>1</sup> Examples of matrimonial assets are savings, cars, and houses.<sup>2</sup> This is the primary method to ensure a fair division between the parties.<sup>3</sup>
- 4 Thus, the fundamental purpose of spousal maintenance is to correct any *remaining* inequality after matrimonial assets have already been divided.<sup>4</sup> An example of such a situation is where the wife has sacrificed her education or career to become a homemaker, such that she cannot produce an acceptable level of income after divorce.<sup>5</sup>

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<sup>1</sup> *NI v NJ* [2007] 1 SLR(R) 75 ("*NI v NJ*") at [18].

<sup>2</sup> Women's Charter (Cap 353, 2009 Rev Ed) ("*Women's Charter*") s 112(10).

<sup>3</sup> *ATE v ATD and another appeal* [2016] SGCA 2 ("*ATE*") at [32]; Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3<sup>rd</sup> Ed, 2018) ("*Elements of Family Law*") at p. 666.

<sup>4</sup> *ATE*, *supra* n 3, at [32]–[34]; Leong, *Elements of Family Law*, *supra* n 3, at p. 665–666.

<sup>5</sup> Leong, *Elements of Family Law*, *supra* n 3, at p. 666.

- 5 Generally, maintenance is awarded to the wife;<sup>6</sup> the husband is unlikely to receive maintenance unless under certain specific situations, such as incapacity.<sup>7</sup> Maintenance is awarded to maintain the wife at a standard which reasonably corresponds with her standard of living during the marriage.<sup>8</sup> The court may decide to order: a substantial sum; a mere nominal (meaning symbolic) sum; or no maintenance at all. This is to be considered on a case-by-case basis.<sup>9</sup>
- 6 Whether the wife is capable of supporting herself is a relevant factor in deciding whether to award maintenance.<sup>10</sup> As maintenance is not intended to enable the wife to depend on the husband forever,<sup>11</sup> the wife is expected to secure employment and contribute to her self-sufficiency.<sup>12</sup> In *ATE v ATD*, the wife was professionally successful and her earning capacity had not been adversely affected through the marriage.<sup>13</sup> Similarly, in *Tham Khai Meng v Nam Wen Jet Bernadette*,<sup>14</sup> the wife came from a well-connected family, had tertiary education, and had a high earning capacity.<sup>15</sup> In both cases, the court did not order any maintenance.
- 7 The court may also order nominal maintenance, which preserves the wife's right to apply for a larger sum of maintenance in the future. However, the mere fear of future misfortune is insufficient reason. The wife must give good reasons why she needs nominal maintenance. A possible example of a good reason is where the wife's earning capacity may be affected as a result of a relapse of illness.
- 8 The rationale for this requirement is to prevent the husband from being an indefinite insurer for the wife.<sup>16</sup> For example, in *ATE v ATD*, the wife was not granted nominal

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<sup>6</sup> Women's Charter, *supra* n 2, s 113.

<sup>7</sup> Women's Charter, *supra* n 2, s 2.

<sup>8</sup> *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 ("*Foo Ah Yan*") at [13]; *Quek Lee Tiam v Ho Kim Swee* [1995] SGHC 23 ("*Quek Lee Tiam*") at [16].

<sup>9</sup> *ATE*, *supra* n 3, at [34] and [40]; Leong, *Elements of Family Law*, *supra* n 3, at p. 666.

<sup>10</sup> *ATE*, *supra* n 3, at [38]; *ACY v ACZ* [2014] 2 SLR 1320 at [54]; *ASP v ASQ* [2015] SGHC 123 at [45].

<sup>11</sup> Leong, *Elements of Family Law*, *supra* n 3, at p. 693–694; *Quek Lee Tiam*, *supra* n 6, at [13], [21], and [22].

<sup>12</sup> *Foo Ah Yan*, *supra* n 6, at [16]; *NI v NJ*, *supra* n 1, at [14]–[16]; *Quek Lee Tiam*, *supra* n 6, at [22].

<sup>13</sup> *ATE*, *supra* n 3, at [44].

<sup>14</sup> *Tham Khai Meng v Nam Wen Jet Bernadette* [1997] 1 SLR(R) 336.

<sup>15</sup> *Id.*, at [43]–[45].

<sup>16</sup> *ATE*, *supra* n 3, at [43]; *TDT v TDS* [2016] 4 SLR 145 at [71].

maintenance as she could not give any reason other than in case some misfortune happened to her in the future.<sup>17</sup>

**B. *How does the court determine the sum of spousal maintenance to be paid?***

- 9 Assuming that the court does make an order for maintenance, the court adopts a flexible and commonsensical approach in determining the sum.<sup>18</sup> There is no fixed formula as the facts of each case are unique. However, the following factors may be relevant.
- 10 The husband's age and financial ability to meet the maintenance order are relevant factors.<sup>19</sup> In *NI v NJ*, the husband was 61 years old and employed only on a goodwill basis. The court took into account his age, and the uncertainty of his future employment, and income prospects in deciding to grant the wife less than she asked for.<sup>20</sup>
- 11 The court may also consider the wife's earning capacity.<sup>21</sup> She should attempt to secure employment and contribute as much as possible to preserve her pre-divorce lifestyle.<sup>22</sup> In *NI v NJ*, the court considered the wife's employment history, skills, and credentials in deciding that maintenance would be based on the assumption that she was employed.<sup>23</sup>
- 12 Lastly, the court may also consider the wife's standard of living before the breakdown of the marriage.<sup>24</sup> However, this standard must be reasonable and realistic, by taking into account the new realities that follows a failed marriage.<sup>25</sup> For example, in *ARX v ARY* one-sixth of the wife's maintenance claim was for holiday expenses. The court considered that this was unrealistic.<sup>26</sup>

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<sup>17</sup> *ATE*, *supra* n 3, at [43].

<sup>18</sup> *Foo Ah Yan*, *supra* n 6, at [19]; *Quek Lee Tiam*, *supra* n 6, at [21].

<sup>19</sup> Women's Charter, *supra* n 2, section 114(1)(a); *Foo Ah Yan*, *supra* n 6, at [17]; *Rosaline Singh v Jayabalan Samidurai* [2004] 1 SLR(R) 457 at [13].

<sup>20</sup> *NI v NJ*, *supra* n 1, at [14].

<sup>21</sup> Women's Charter, *supra* n 2, s 114(1)(a).

<sup>22</sup> *Quek Lee Tiam*, *supra* n 6, at [22].

<sup>23</sup> *NI v NJ*, *supra* n 1, at [14].

<sup>24</sup> *Foo Ah Yan*, *supra* n 6, at [13]; Women's Charter, *supra* n 2, s 114(2).

<sup>25</sup> *Foo Ah Yan*, *supra* n 6, at [19]; *NI v NJ*, *supra* n 1, at [16]; *ARX v ARY* [2015] 2 SLR 1103 ("*ARX v ARY*") at [70]; *Halsbury's Laws of Singapore* vol 11 (LexisNexis, 2006 Reissue) at [130.853].

<sup>26</sup> *ARX v ARY*, *supra* n 22, at [75].

**C. When do you have to pay child support, and how does the court determine the sum?**

- 13 Both parents are required to provide reasonable maintenance for their children.<sup>27</sup> This obligation generally lasts until the child becomes 21 years old. However, a parent may be required to continue paying child support if the child is disabled,<sup>28</sup> or where the child is still pursuing an education.<sup>29</sup>
- 14 In assessing the sum to be paid, the court will consider all relevant circumstances. The most important factors are likely to be the child's financial needs and the parent's ability to pay.<sup>30</sup> For example, in *AKC v AKD*, the parties' son had a learning disorder, which justified a higher sum.<sup>31</sup> However, the wife's request of \$4,500 every month was unreasonable because it would amount to nearly half of the husband's income.<sup>32</sup> The court found that \$3,500 every month was an appropriate middle ground.
- 15 Finally, both parents generally bear an equal portion of the sum to be paid, even if they earn different incomes.<sup>33</sup> However, this is not an inflexible rule. If one parent is unable to contribute equally, then that parent should contribute what he or she can, with the other parent making up the shortfall.<sup>34</sup>

**D. When does the court vary or enforce a maintenance order?**

- 16 Regardless whether you are the husband or wife, it is important that you keep detailed records of your financial circumstances. Relevant information includes: your expenses;<sup>35</sup> reasonable future increases in expenses; your income and proof of employment;<sup>36</sup> and evidence that maintenance or child support has or has not been paid.

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<sup>27</sup> Women's Charter, *supra* n 2, ss 68, 69(2).

<sup>28</sup> Women's Charter, *supra* n 2, s 69(5)(a).

<sup>29</sup> Women's Charter, *supra* n 2, s 69(5)(c); *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 at [101]; Leong, *Elements of Family Law*, *supra* n 3, at p. 435–436.

<sup>30</sup> Leong, *Elements of Family Law*, *supra* n 3, at p. 437.

<sup>31</sup> *AKC v AKD* [2014] 3 SLR 1374 (“*AKC v AKD*”) at [4].

<sup>32</sup> *AKC v AKD*, *supra* n 28, at [9].

<sup>33</sup> *AUA v ATZ* [2016] SGCA 41 at [43].

<sup>34</sup> *TBC v TBD* [2015] 4 SLR 59 at [27].

<sup>35</sup> Family Justice Courts Practice Directions, Part VII < <https://epd.familyjusticecourts.gov.sg/Part%2007-Proceedings%20under%20Part%20VII%20and%20VIII%20of%20Women%E2%80%99s%20Charter.html#25-documents-and-affidavits-in-respect-of-maintenance-proceedings-under-part-viii-of-womens-charter-cap-353>> (accessed 26 October 2019).

<sup>36</sup> *Id.*

You should continue to keep such records even after the court has ordered maintenance, as they will be useful if you wish to vary or enforce the maintenance order in the future.

- 17 Both the wife and husband can apply to increase or decrease the maintenance sum if there are any significant changes in circumstances.<sup>37</sup> One example of this is *Chua Chwee Thiam v Lim Annie*, where the husband was able to prove that his financial status had deteriorated drastically. He had documentary evidence to show that his company was in debt, his credit cards were cancelled, and he was unable to pay his income tax.<sup>38</sup>
- 18 If the husband has not been paying maintenance or child support, the wife can apply to enforce the maintenance order.<sup>39</sup> If the husband is able to pay the debt immediately, the court will normally order him to do so.<sup>40</sup> However, the court may also allow him to pay by instalments if the husband's conduct was not blameworthy. An example of this is if the husband has attempted to pay as soon as he was able to.<sup>41</sup> In addition, the court may also impose other sanctions, such as sentencing him to imprisonment,<sup>42</sup> or a garnishee order, which deducts the sums directly from his income.<sup>43</sup>

### III. Conclusion

- 19 The court adopts a case-by-case and commonsensical approach in deciding whether to order maintenance and child support. The same approach applies in determining the sum to be paid. Regarding child support, both parents generally bear an equal portion of the sum. The most important factors are likely the child's financial needs and each parent's ability to pay. Finally, you should ensure that you keep detailed records of your financial circumstances, as well as any anticipated changes. This will assist you in applying for, varying, or enforcing maintenance orders.

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<sup>37</sup> Women's Charter, *supra* n 2, s 118; *AYM v AYL* [2014] 4 SLR 559 at [23].

<sup>38</sup> *Chua Chwee Thiam v Lim Annie* [1989] 1 SLR(R) 426 at [6].

<sup>39</sup> Women's Charter, *supra* n 2, s 71; *GAX v GAY* [2014] SGDC 36 ("*GAX v GAY*") at [6]–[7].

<sup>40</sup> *GAX v GAY*, *supra* n 36, at [4].

<sup>41</sup> *Tay Ah Guan v Ong Kien* [2003] SGDC 13 at [16].

<sup>42</sup> Women's Charter, *supra* n 2, s 71(b).

<sup>43</sup> Women's Charter, *supra* n 2, s 71(c).

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