1. Family Violence under Part 7 of the Women's Charter

Topic	Section
Overview Women's Charter 1961, ss 64–67	1.1
Persons protected: "family member" Women's Charter 1961, ss 64–65 *VFM v VFN* [2021] SGFC 91 Protection from Harassment Act 2014	1.2
Conditions for grant of PPO and other protection orders	1.3
"Family violence" Women's Charter 1961, ss 64–65 *UNQ v UNR* [2020] SGHCF 21 *UTH v UTI (on behalf of child)* [2019] SGFC 27 *UMI v UMK and UMJ and another matter* [2018] SGFC 53	1.4
Wilfully or knowingly placing, or attempting to place, a family member in fear of hurt Women's Charter 1961, s 64 limb (a) *VYR v VYS* [2021] SGFC 128 *UNQ v UNR* [2020] SGHCF 21	1.4.1
Causing hurt to a family member by such act which is known or ought to have been known would result in hurt Women's Charter 1961, s 64 limb (b) *UTH v UTI (on behalf of a child)* [2019] SGFC 27 *UMI v UMK and UMJ and another matter* [2018] SGFC 53	1.4.2
Wrongfully confining or restraining a family member against his or her will Women's Charter 1961, s 64 limb (c) Penal Code 1871, ss 339 and 340 *WDC v WDD and others* [2022] SGFC 41	1.4.3
Causing continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member Women's Charter 1961, s 64 limb (d) *Yue Tock Him @ Yee Chok Him v Yee Ee Lim* [2011] SGDC 99	1.4.4

WDR v WDQ [2022] SGFC 46 *VKW v VKX* [2020] SGFC 70 *UNQ v UNR* [2020] SGHCF 21 *Sim Tze Long v Chua Suat Kheng and Another Case* [2003] SGDC 125	
Exception: force lawfully used in self-defence Penal Code 1871, s 96 *TEK v TEJ* [2015] SGFC 89	1.4.5
Exception: force lawfully used by way of correction towards a child below 21 years of age *VYB v VYA* [2021] SGFC 121 Debbie Ong Siew Ling, "The Quest for Optimal State Intervention in Parenting Children: Navigating within the Thick Grey Line" (2011) SJLS 61 *TCV (On behalf of Child, A) v TCU* [2015] SGFC 3	1.4.6
"Necessary for the protection" of a family member Women's Charter 1961, s 65 *Yue Tock Him @ Yee Chok Him v Yee Ee Lim* [2011] SGDC 99 *UNQ v UNR* [2020] SGHCF 21 *TED v TEE* [2015] SGFC 88	1.5
Additional conditions to a PPO Women's Charter 1961, s 65(3)–(4) *UMI v UMK and UMJ and another matter* [2018] SGFC 53	1.6
Other orders Women's Charter 1961, s 65(5)	1.7
Expedited Order ("EO") Women's Charter 1961, s 66	1.7.1
Domestic Exclusion Order ("DEO") Women's Charter 1961, ss 65(5)(a) and 66 *Chua Li Choo v Teo Swee Theng* [2005] SGDC 241 *AGX v AGW* [2010] SGDC 271	1.7.2
Counselling Order ("CGO") Women's Charter 1961, s 65(5)(b)	1.7.3
Limits to orders made under s 65 of the Charter	1.7.4

Women's Charter 1961, s 65(5)(c) *WCG v WCH* [2022] SGFC 31	
Procedural issues	1.8
Standard of proof Women's Charter 1961, s 65 *UNQ v UNR* [2020] SGHCF 21 *Sim Tze Long v Chua Suat Kheng and Another Case* [2003] SGDC 125	1.8.1
Post-application conduct *BCY v BCZ* [2012] SGDC 360 *VFM v VFN* [2021] SGFC 91 *Lai Kwok Kin v Teo Zien Jackson* [2020] 5 SLR 389 Protection from Harassment Act 2014 *Teng Cheng Sin v Law Fay Yuen* [2003] 3 SLR(R) 356	1.8.2
Absence of party Family Justice Rules 2014, r 99A Criminal Procedure Code 2010, s 156	1.8.3
Revocation and variation of PPO Women's Charter 1961, s 67 *Jocelyn Toh Hui Yu v Toh Siew Luan Bette* [2013] SGDC 275 *UMI v UMK and UMJ and another matter* [2018] SGFC 53	1.9

1.1. Overview

1 Family violence of any form, whether physical or emotional, is unacceptable, and the courts will take a firm stance against it.[1] Where it is necessary for the protection of the victim, the court will not hesitate to grant a Personal Protection Order ("PPO") and other related orders to restrain the perpetrator from using family violence on the victim. Such other orders include granting a right of exclusive occupation of a shared residence to the victim and requiring the protected person or the victim to attend counselling. All these

[1] *UNQ v UNR* [2020] SGHCF 21 at [1]

orders may be made pre-emptively, where family violence is "likely to be committed" and even if family violence has not in fact been committed.[2]

2 The protection conferred by a PPO carries with it criminal sanctions. A person who wilfully contravenes a PPO is guilty of a criminal offence and will be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding six months or to both (see s 65(8) of the Women's Charter 1961 (the "Charter")). This will also be arrestable offence. A police officer who has reason to suspect that a person has wilfully contravened a PPO may arrest the person without a warrant (see s 65(11) of the Charter and ss 2, 17(1), and 429(19) of the Criminal Procedure Code 2010) (the "CPC"). Given these criminal consequences, a PPO will not be lightly ordered.[3]

3 The statutory provisions on family violence and PPOs are found in Part 7 (ss 64–67) of the Charter. These provisions can be categorised as follows:

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2 *UMI v UMK and UMJ and another matter* [2018] SGFC 53 at [39] and *UTH v UTI (on behalf of child)* [2019] SGFC 27 at [29]; approved in *Lai Kwok Kin v Teo Zien Jackson* [2020] 5 SLR 389

3 *UNQ v UNR* [2020] SGHCF 21 at [28]

Section	Subject
64	Definitions
65	Powers of court to grant PPOs and other related orders to ensure safety of applicant
66	Power of court to grant expedited order pending substantive hearing of application for PPO
67	Power of court to vary, suspend, or revoke orders made under ss 65 and 66 of the Charter.

4 Two conditions must be fulfilled before a PPO may be granted. First, the court must be satisfied that family violence has been committed or is likely to be committed. Second, the PPO must be necessary for the protection of the family member. These conditions are set out in s 65(1) of the Charter:

> **Protection order**
>
> **65**.—(1) The court may, upon satisfaction on a balance of probabilities that family violence has been committed or is likely to be committed against a family member and that it is necessary for the protection of the family member, make a protection order restraining the person against whom the order is made from using family violence against the family member.

1.2. Persons protected: "family member"

5 Designed to tackle the mischief of family violence, a PPO may be made only in respect of violence perpetrated within the familial context. Hence, only persons falling within the prescribed types of familial relations may seek the protection of a PPO, the application for which is generally to be brought by the victim of family violence himself or herself (see s 65(2)(a) of the Charter). These prescribed types of familial relations are set out in s 64 of the Charter, which defines the term, "family member".

> "family member", in relation to a person, means —
>
> (a) a spouse or former spouse of the person;

> (b) a child of the person, including an adopted child and a stepchild;
>
> (c) a father or mother of the person;
>
> (d) a father-in-law or mother-in-law of the person;
>
> (e) a brother or sister of the person; or
>
> (f) any other relative of the person or an incapacitated person who in the opinion of the court should, in the circumstances, in either case be regarded as a member of the family of the person

6 Thus, if a perpetrator commits an act of violence against a victim, that victim may apply for a PPO only if he or she falls within the six categories of persons prescribed in limbs (a)–(f) of s 64 of the Charter to be a "family member" of the perpetrator. If the victim does not fall within these six categories, his or her recourse against the perpetrator may lie elsewhere, possibly in crime, in tort, or under the Protection from Harassment Act 2014 (the "POHA").

7 The first five categories, limbs (a)–(e) of s 64 of the Charter, specify the types of persons who may seek a PPO against a perpetrator: a spouse (including an ex-spouse), a child (including an adopted child and a stepchild), a parent, a parent-in-law, and a sibling. The last category, limb (f) of s 64 of the Charter, is open-ended and extends to "any other relative of [the perpetrator] … who in the opinion of the court should, in the circumstances, … be regarded as a member of the family of [the perpetrator]". Still, as the Family Court held in *VFM v VFN* [2021] SGFC 91, limb (f) of s 64 of the Charter does not apply to all victims who claim to be a relative of the perpetrator but is limited to victims who are *connected by blood or marriage* with the perpetrator.

***VFM v VFN* [2021] SGFC 91**

The parties were former spouses. The ex-wife re-married and had a child, [L], with her new husband. She subsequently applied for a PPO on behalf of [L] against her ex-husband.

The Family Court did not grant the application, holding that [L] was not a "family member" of the ex-husband because [L] was not connected by blood or marriage with the ex-husband.

District Judge Kevin Ho:

(VIII) Does [L] have standing to apply for a PPO?

91 … I could not see how [L] was a "relative" of the Respondent. In its ordinary meaning, a person is said to be another person's relative if they are connected by blood or marriage. In fact, the phrase "relative" is expressly defined in Section 64, WC to include "a person who is related [through] marriage and adoption". If one looks at the types of family members specifically referred to in the statute, it is clear that non-blood relationships such as step-children or parents-in-law had to be spelt out separately as being included within the concept of "family members".

92 As [L] had no blood relations with the Respondent and as the Respondent and the Complainant were divorced long before [L] was even born, I fail to see how [L] can be considered the Respondent's "relative" under limb (f). This effectively meant that [L] had no standing to make the present PPO application.

8 For persons who are young or incapacitated and otherwise unable to apply for a PPO on their own, s 65(2) of the Charter provides that an application for the PPO may be brought on behalf of such a person by a "guardian or relative or person responsible for the care of the family member concerned". Even so, a child who is below 21 years of age but who is married or has been married may apply for a PPO for himself or herself as well as for a child or relative in his or her care.

Protection order

65.— …

(2) An application for a protection order under this section, or for an expedited order under section 66, may be made —

> (a) by the family member concerned, if that family member is not below 21 years of age and is not an incapacitated person;
>
> (b) by a guardian or relative or person responsible for the care of the family member concerned, or by any person appointed by the Minister for the purposes of this paragraph, if that family member is below 21 years of age or is an incapacitated person; or
>
> (c) despite paragraphs (a) and (b), by an individual below 21 years of age who is married or has been previously married, if the family member concerned is —
>
> (i) the individual;
>
> (ii) the individual's child (including an adopted child or a stepchild) below 21 years of age; or
>
> (iii) a relative below 21 years of age whom the individual is responsible for the care of.

1.3. Conditions for grant of PPO and other protection orders

9 To recapitulate, s 65(1) of the Charter requires two conditions to be fulfilled before a PPO may be granted: first, that family violence has been committed or is likely to be committed against a family member; and second, that a PPO is necessary for the protection of that family member.

1.4. "Family violence"

10 The definition of "family violence" is found in s 64 of the Charter::

> "family violence" means the commission of any of the following acts:
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> (a) wilfully or knowingly placing, or attempting to place, a family member in fear of hurt;
>
> (b) causing hurt to a family member by such act which is known or ought to have been known would result in hurt;

> (c) wrongfully confining or restraining a family member against his or her will;
>
> (d) causing continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member,
>
> but does not include any force lawfully used in self defence, or by way of correction towards a child below 21 years of age;

11 The term, "hurt", is also defined in s 64 of the Charter to mean "bodily pain, disease or infirmity".

12 In *UNQ v UNR* [2020] SGHCF 21, the Family Division of the High Court observed that based on these statutory definitions, family violence may be found in a variety of circumstances. Physically abusing a family member will constitute family violence under limb (b) of s 64 of the Charter where hurt was caused by an act that was known or ought to have been known would result in hurt. Acts that fall short of physical hurt but are committed to place a family member in fear of hurt, or where the respondent attempts to place the family member in fear of hurt, may also constitute family violence under limb (a) of s 64 of the Charter if such acts are committed wilfully or knowingly. Similarly, causing continual harassment to a family member may amount to family violence under limb (d) of s 64 of the Charter.

13 However, two types of force are exempted from the definition of "family violence" in s 64 of the Charter. These are: (a) force lawfully used in self-defence; and (b) force lawfully used by way of correction towards a child below 21 years of age.

14 In the usual case, the first limb of s 65(1) of the Charter is fulfilled by family violence that has been committed. But as the Family Court reiterated in *UTH v UTI (on behalf of child)* [2019] SGFC 27 and *UMI v UMK and UMJ and*

another matter [2018] SGFC 53, a PPO may also be made pre-emptively, where family violence is "likely to be committed" and even if family violence has not in fact been committed. Such family violence that is only "likely to be committed" will fulfil the first limb of s 65(1) of the Charter,

UTH v UTI (on behalf of child) [2019] SGFC 27

A mother applied for a PPO on behalf of her daughter against the father of the daughter based on incidents of physical violence between the father and the daughter. The animosity between the father and the daughter was evident not only in their conduct towards each other, but also in their conduct before the Family Court.

The Family Court held that the repeated skirmishes between the father and the daughter gave rise to a likelihood that family violence would be committed in the future.

District Judge Azmin Jailani:

29 The pre-emptive approach envisaged in section 65(1) must necessarily be the appropriate approach taken because it would be untenable, both as a matter of logic or principle, for the court to only issue protection orders only when actual family violence has been committed. This ensures the utility of protection orders as a tool to anticipate a problem before it reaches an irreversible state. Whilst this may be critiqued on a policy level as legislating a form of paternalism, that is not a matter for this court to decide, and best left to be resolved, if at all, in Parliament.

30 Without being exhaustive or prescriptive, I was of the view that the court should be more conscious on the satisfaction of this stage, on a pre-emptive basis, should it be in a situation where a positive finding of family violence cannot be made, by taking into consideration (1) the nature of the dispute or conflict between the family members, (2) the level and nature of the escalation of the conflict, (3) parties' relationship and their overall conduct, behaviour, and demeanour, and (4) factors which may points towards a further deterioration of their relationship if left unchecked.

…

87 To conclude, I was satisfied that both the daughter's and father's conduct left much to be desired. At different points of time, the daughter or father would either initiate or protract their conflict. I was satisfied that on the evidence before me, family violence had in fact been committed by both father and

> daughter. Further and/or in the alternative, I was also satisfied that these skirmishes indicated that family violence had likely been committed, or gave rise to a likelihood of family violence.
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> 88 For those reasons, I was satisfied that the first stage had been met.

1.4.1. Wilfully or knowingly placing, or attempting to place, a family member in fear of hurt

15 The first act that constitutes "family violence" is "wilfully or knowingly placing, or attempting to place, a family member in fear of hurt" (limb (a) of s 64 of the Charter). This limb covers acts by a perpetrator that fall short of physical hurt yet place or attempt to place the victim "in fear of hurt". In assessing whether the victim had been placed in fear of hurt, the court will take account of the fact that victims of family violence sometimes act in counter-intuitive ways. It is possible that some victims lash out when in fear, and under these circumstances the court will not be quick to conclude that such victims were never in fear. Hence, it is important to view the parties' relationship and dynamics holistically instead of merely focusing on specific allegations of family violence and specific acts of the parties.[4] In any event, even if the acts of the perpetrator did not *actually* place the victim in fear of hurt, family violence can still be established if the perpetrator had by the acts *attempted* to place the victim in fear of hurt.[5]

16 Still, the acts of the perpetrator will not constitute family violence unless he or she had acted with an *intention* to place the victim in fear of hurt, or with the *knowledge* that the family member would by the acts be placed in fear of hurt. These are "subjective" states of mind, in the sense that the perpetrator must

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4 *VYR v VYS* [2021] SGFC 128 at [18]

5 *VYR v VYS* [2021] SGFC 128 at [19]

have had the requisite intention or knowledge.[6] A mere expression of frustration by the perpetrator in the presence of the victim made without any such intention or knowledge will not in itself constitute family violence even if such expression may be inappropriate and ill-advised (see, *eg*, *UNQ v UNR* [2020] SGHCF 21).

> ***UNQ v UNR* [2020] SGHCF 21**
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> A mother applied for a PPO on behalf of her children against the father of the children. She alleged among other things that the father had thrown things around the house including a metal coffee mug. The father denied these allegations.
>
> The Family Division of the High Court held that the act of the father in throwing a metal coffee mug around the house, even if true, was at worst inappropriate but did not constitute family violence.
>
> **Justice Debbie Ong:**
>
> 35 The Father's alleged act of throwing the coffee mug on 8 March 2019 – which the Father denied – could amount to wilfully or knowingly placing the Children in fear of hurt if, for example, evidence showed that the children were standing in the direction where the mug was flung. But an expression of frustration by throwing a mug, though inappropriate and ill-advised, would not in itself constitute family violence. The DJ had set out the submissions of each party in respect of the March incident but did not make specific findings such as whether she found that the Father had flung the coffee mug in the direction of the Children. In my judgment, this illustrated the difficulty of reaching a finding on the balance of probabilities of whether family violence had occurred because of the limited evidence available.

17 Further, acts of provocation by a victim that elicit a reaction from an alleged perpetrator may be relevant to a determination of whether that reaction constituted family violence within limb (a) of s 64 of the Charter. Unless the alleged perpetrator had overreacted, it may be difficult to conclude that the reaction had placed or attempted to place the victim in fear of hurt (see, *eg*, *VYR v VYS* [2021] SGFC 128).

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6 *VYR v VYS* [2021] SGFC 128 at [21]

***VYR v VYS* [2021] SGFC 128**

A wife applied for a PPO against her husband, alleging that he had attempted to kick her but had missed only because she had dodged.

The Family Court found that the wife had engineered the incident to elicit a reaction from the husband and that she had not been in fear of hurt.

Magistrate Tan Zhi Xiang:

17 I first observe that during the incident on 19 May 2021, the complainant was not in fact in fear of hurt. It is apparent from the video recordings that the complainant continued arguing with the respondent even after he had raised his leg. She did not stop or hesitate when the respondent raised his leg. She even pursued him to the bedroom. I agreed with the respondent that if the complainant had truly been in fear of hurt, she would not have followed him and argued with him in the manner shown in the video recordings.

…

20 At trial, the complainant's evidence was that the respondent had attempted to kick her head but she had "dodged" and "covered [her] face", and that it was a "near miss". However, it is not entirely clear from the First [Video] Clip that the respondent had attempted to kick her, as opposed to the respondent's evidence, which was that he had only raised his leg in an attempt to kick the complainant's phone away, but lowered it after he realised he might hurt the complainant. The clip is ambiguous because the respondent's leg went out of frame in the crucial seconds. It was also not the complainant's case that the respondent had attempted to kick her a second time, which one would expect if the respondent had truly intended to kick the complainant but missed. In addition, the altercation (involving the alleged "kick") ended after the respondent retrieved the complainant's phone. Furthermore, the complainant accepted at trial that this was the only incident of alleged physical violence, which suggests that the respondent is not violent by nature.

21 As this was the complainant's application, she had to prove that the respondent had wilfully or knowingly placed (or attempted to place) her in fear of hurt. These are "subjective" states of mind, in the sense that the respondent must have had the actual intention or knowledge. For the above reasons, both the direct and circumstantial evidence do not support the complainant's case that the respondent had intended to kick her. Instead, for the same reasons, I accepted the respondent's evidence that he had merely raised his leg in an attempt to kick

the complainant's phone away, and did not intend to kick the respondent. The complainant had also not advanced any alternative case theory or additional evidence to suggest that the respondent had wilfully or knowingly put her (or attempted to put her) in fear of hurt while trying to kick her phone (but not her) away. Thus, even if the complainant had indeed been in fear of hurt, the respondent did not wilfully or knowingly place the complainant in fear of hurt. Similarly, the respondent did not wilfully or knowingly attempt to place the complainant in fear of hurt.

1.4.2. Causing hurt to a family member by such act which is known or ought to have been known would result in hurt

18 The second act that constitutes "family violence" is "causing hurt to a family member by such act which is known or ought to have been known would result in hurt" (limb (b) of s 64 of the Charter). This covers the physical abuse by a perpetrator of a family member that causes hurt or "bodily pain, disease, or infirmity" to the family member.

19 In *UTH v UTI (on behalf of a child)* [2019] SGFC 27, the Family Court observed that the definition of "hurt" is wide and does not require a medical diagnosis of an injury. Instead, it includes any bodily "pain", which is a broad concept that would be made out simply on the basis that there is a distressing sensation in a particular body part.

***UTH v UTI (on behalf of a child)* [2019] SGFC 27**

A mother applied for a PPO on behalf of her child against the father of the child. The mother alleged that the father had caused the daughter to suffer a bruise near to the shoulder after the daughter had entered the father's room to retrieve a mobile phone that he had confiscated from her. The father maintained that these injuries were the product of a scuffle between him and the daughter and added that the mother and the daughter had engineered the scuffle with the intention of applying for a PPO against him.

The District Court found that the father, having had ample opportunity to disengage from the scuffle, chose not to do so

and instead laid his hands on the daughter in the complained area of the bruise. This contact would have caused the daughter to experience pain and thus constituted family violence.

District Judge Azmin Jailani:

52 After assessing the evidence and parties' submissions, I was of the view that:

> …
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> (l) Fifth, by the time the altercation went [from inside the bedroom to] outside the bedroom, I was first of the view that there was nothing preventing the father from disengaging and separating himself from the conflict. As I mentioned earlier, this would have been the time when the father would have discovered the 'ploy' of catching him on video, which would have been a strong signal for him to disengage. Further, from a review of the video evidence, the daughter had, by then, adopted a more backward posture, despite continuing the verbal onslaught.
>
> (m) For the father to take the altercation outside and continue to engage the daughter, again, highlighted the father's desire to impose his will on the daughter. This is especially so when he discovered that the mother was recording the incident.
>
> (n) I was also satisfied, on a balance of probabilities, that the father did in fact lay his hands on his daughter in the complained area of the bruise. Even if the contact did not cause the bruise, I was, at the very least, satisfied that it would have caused the daughter to experience some pain. For completeness, I was not inclined in the circumstances to find that such force was justified as a means of self-defence or correction.
>
> (o) The father's actions (or reactions) indicated to me someone who did not want to disengage from the altercation when the daughter went out of the room, but to impose himself on the daughter. Also, I further accepted it as the father's standard modus operandi to get the police involved, more as a means of proactively asserting his right to protection, as opposed to a means of seeking refuge.
>
> (p) Turning lastly to the photos and videos of the bruises, the evidence presented by the mother were not sufficiently clear for me to make a determinative finding as to whether the injury was in fact suffered. There was also no contemporaneous evidence (i.e., doctor's memo,

> clinic visits, or subsequent photos where the bruise would become more visible) after the event to further corroborate this contention. Be that as it may, and explained earlier, it was not necessary for me to make a position finding on the existence of an injury to finding that hurt had been caused.
>
> (q) After assessing the matter as a whole, I was satisfied that hurt, or the likelihood of hurt, had been caused to the daughter by the father.

20 In *UMI v UMK and UMJ and another matter* [2018] SGFC 53, the Family Court added that the known vulnerabilities of the victim are a factor which must be considered in establishing whether an act did cause hurt or was known or ought to have been known to cause hurt. Hence, where the victim is an incapacitated person whom the perpetrator knows to be on dietary restrictions, the feeding of unsuitable foods to the victim may constitute family violence, especially if the perpetrator did so against the advice of medical professionals.[7] Moreover, whether family violence within limb (b) of s 64 of the Charter has been established is determined without reference to the intention of the perpetrator. It is sufficient that the perpetrator knew or ought to have known that his or her act would result in hurt to the victim, even if the perpetrator did not intend that the act cause hurt to the victim.

> ***UMI v UMK and UMJ and another matter* [2018] SGFC 53**
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> The complainant applied to revoke a PPO that had been granted in favour of the first respondent, who was an incapacitated person. The Adult Protective Service resisted the application on behalf of the first respondent on the basis that the complainant had continued to perpetrate family violence on the first respondent. It alleged that the complainant had caused hurt to the first respondent by feeding the first respondent with solid foods while knowing that the first respondent had been on a diet of non-solid puree foods.
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> The Family Court held that the complainant had fed the first respondent the solid food when she knew that first respondent

7 *UMI v UMK and UMJ and another matter* [2018] SGFC 53 at [80]–[90]

was on a puree diet and had done so against the advice of medical professionals. This placed the first respondent at risk of hurt.

District Judge Azmin Jailani:

43 … While the inquiry of whether an act of family violence has been committed is an objective exercise, it is not one conducted in vacuum. An act which would not cause an ordinary person hurt might be sufficient to cause bodily pain, disease or infirmity to a person who has certain known conditions. Needless to say, an act which in itself would cause hurt to an ordinary person would in all likelihood cause hurt to a more vulnerable or incapacitated person. In this latter sense, the inquiry goes more towards the extent of the hurt as opposed to the fact of the same. Whether the aggressor had knowledge of such conditions, and the extent of such knowledge is dependent on the specific facts of each case.

…

88 On the complainant's own admission, she fed the first respondent the bread when she knew that the latter was on a puree diet. In this regard, I did not accept the complainant's position as regards the 'melting' of the bread. I was satisfied that the complainant knew what she was doing when she fed the first respondent the piece of bread. Leaving aside whether the acts were borne out of love and kindness, the fact remains that she was aware that she was not allowed to do these things.

89 The complainant's attempts to justify her behaviour only supports the fact that the complainant knew what the default position was – that the first respondent could not have such types of food. In my view, the complainant was attempting to bend the rules, and in that light, place the first respondent's medically assessed well-being at stake. I also did not accept the complainant's evidence that L had allowed her to feed the first respondent the piece of bread. To my mind, there was no reason for L to accede to the complainant's request, which was against medical advice. This is especially so given the complainant's relationship with the nursing home. I found it improbable that the nursing home staff would put themselves in a position which might attract any complaint from the complainant.

90 On that basis, I was satisfied that the complainant had placed the first respondent at risk of hurt.

1.4.3. Wrongfully confining or restraining a family member against his or her will

21 The third act that constitutes "family violence" is "wrongfully confining or restraining a family member against his or her will" (limb (c) of s 64 of the Charter). Although the terms, "wrongful confinement" and "wrongful restraint", are not defined in the Charter, definitions for these terms can be found in ss 339 and 340 of the Penal Code 1871 (2020 Rev Ed).

> **Wrongful restraint**
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> **339**. Whoever voluntarily obstructs any person, so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.
>
> **Wrongful confinement**
>
> **340**. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

22 Still, following the breakdown of a marriage, it is not uncommon for disputes to arise over the care and control of and the access to children. In such circumstances, allegations of "wrongful confinement" or "wrongful restraint" of the child may arise every time access is withheld or denied (by the parent with care and control) or extended without consent (by the parent exercising access). As the Family Court cautioned in *WDC v WDD and others* [2022] SGFC 41, it is neither correct nor sensible to make such allegations because such conduct in relation to access, even if not ideal, will generally not constitute family violence from which the child requires protection.[8]

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8 *WDC v WDD and others* [2022] SGFC 41

***WDC v WDD and others* [2022] SGFC 41**

Following the breakdown of a marriage, the father was granted the care and control of the child of the marriage while the mother was granted access to the child. After a dispute over the access times and the return of the child following access, the father applied for a PPO on behalf of the child against the mother alleging that the mother had wrongfully confined the child.

The Family Court held that the hearing of a PPO was not the appropriate forum for resolving disputes over access to a child and dismissed the application.

District Judge Amy Tung:

40 It is not uncommon that parents will have some disputes over access of their child or children. It is neither a correct nor a sensible approach to be alleging family violence every time access is withheld or denied (by the parent with care and control) or extended without consent (by the parent exercising access). Such conduct in relation to access will generally not be regarded by the Courts to be "wrongfully confining or restraining a family member against his or her will"; it is not family violence from which the child or children require protection. I therefore do not accept this incident alleged by the Father to be disclosing any act of family violence against the Child. This is so even if, as alleged by the Father, the Child was subsequently reluctant to go with the Mother for fear that she would have to stay with the Mother for an extended period of access.

…

46 Counsel for the Father had also submitted that when the Child tried to escape from the Mother's arms, she was restrained against her will by the Mother for almost 30 seconds and it is clear that this was a traumatising event for the Child with significant anguish caused (and therefore there was family violence falling within limbs (c) and (d)). As I see it, the Mother was trying to effect access and held on to the Child for barely half a minute. The context, in and of itself, is sufficient to dismiss an allegation of wrongful confinement or restraint…

…

56 The parents before me are only in their twenties and they already have a history of bringing applications before the Courts. This should not be the way that they spend their youth and the prime of their lives. They each have a long journey of parenting ahead of them; a journey that is both challenging and rewarding. Each of them should be lending strength to the

> Child and shaping a positive narrative for her. I say this in particular of the Father.
>
> 57 The Father had acted unilaterally and imposed his own rules and conditions upon the access of the Mother; in short, he had made it difficult for the Mother when it came to her access with the Child… He also video-recorded the Mother and used flashlights on her when she came to pick up the Child for access, which led to the 2 Nov Order.
>
> 58 The access handovers need not have happened in the manner they did in August 2021, with distress for the Child and heated emotions on the part of the adults in her life. I strongly urge the parties to focus on the welfare of the Child; if parties made an effort, in particular the Father, the Child can happily go with the Mother for access and happily return to her Father after that. As I am of the view that the parties (including the Grandparents of the Child) will benefit from some therapeutic assistance, I direct the Counselling and Psychological Services of the Family Justice Courts to follow up with Family Conference(s) for them.

1.4.4. Causing continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member

23 The fourth act that constitutes "family violence" is "causing continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member" (limb (d) of s 64 of the Charter).

24 There is no legislative definition for the term, "harassment", for limb (d) of s 64 of the Charter. In *Yue Tock Him @ Yee Chok Him v Yee Ee Lim* [2011] SGDC 99, the District Court held that the term means: "a course of conduct by a person, whether by words or action, directly or through third parties, sufficiently repetitive in nature as would cause, and which he ought reasonably to know would cause, worry, emotional distress or annoyance of another person". Further, the harassment must be "continual" to constitute "family violence' – a single act of harassment would not, in itself, constitute "family

violence".[9] And "not all unpleasant or annoying behaviour between two family members will *ipso facto* be considered as 'family violence'; only sufficiently serious and grave conduct, which are continual and sufficiently repetitive will meet the requirement" (see *WDR v WDQ* [2022] SGFC 46 and *VKW v VKX* [2020] SGFC 70). As the District Court explained in *Yue Tock Him @ Yee Chok Him v Yee Ee Lim* [2011] SGDC 99, these requirements may at first glance appear stringent to a victim of family violence. But it is necessary that the law protects against frivolous complaints that make an issue of the most trivial of matters.

> ***Yue Tock Him @ Yee Chok Him v Yee Ee Lim* [2011] SGDC 99**
>
> A father applied for a PPO against his son on the ground of continual harassment. He alleged that the son had: (a) wet and dirtied the bathroom door and bathroom mirror and used more than the "minimum" amount of toilet paper; and (b) lodged a police report against him. He added that that "seven" persons were trying to kill him.
>
> The District Court held that the evidence was insufficient to prove these allegations on a balance of probabilities and dismissed the application.
>
> **District Judge Colin Tan:**
>
> The Complainant's 3rd allegation – the Complainant alleged that the Respondent had wet and dirtied the bathroom door and bathroom mirror and had used more than the "minimum" amount of toilet paper
>
> 75 In regard to the bathroom mirror, the Complainant's allegation in his application was that the Respondent had used a cosmetic item to spray on it…
>
> 76 The photograph produced by the Complainant showed numerous small white-coloured specks on the mirror (at page 14 of C2). If the Respondent had indeed used a cosmetic item to spray on the mirror, the mirror would more likely have been

[9] This definition, in turn, was based on the approach taken by the High Court in *Malcomson Nicholas Hugh Bertran v Mehta Naresh Kumar* [2001] 3 SLR(R) 379.

covered by large patches similar to graffiti produced by spray painting rather than numerous small specks…

77 This fact, taken together with the fact that the Complainant had not produced any evidence to show that the Respondent had dirtied the bathroom mirror… led me to take the view that the Respondent had not dirtied the bathroom mirror deliberately, and, if the Respondent had indeed dirtied the bathroom mirror in the cause of using it, such dirtying of the mirror was unintentional and did not constitute harassment and family violence within the meaning of the Act.

78 In regard to the toilet paper, the Complainant failed to give any particulars of what he considered to be "minimum" usage and he also failed to give any particulars of the amount of toilet paper used by the Respondent. In addition, the Complainant failed to produce any evidence to suggest that the Respondent's use of toilet paper was in any way excessive. I was therefore of the view that the Complainant had totally failed to prove that the Respondent had committed family violence on him by means of using too much toilet paper.

79 … [H]arassment is a serious matter and the acts complained of must necessarily be of a serious nature. It is regrettable that the Complainant felt that usage of toilet paper was a matter of such seriousness that it merits a personal protection order, and it is perhaps necessary to point out that a personal protection order is a means created by Parliament to protect persons in danger of harm and not a legal mechanism to preserve toilet paper.

The Complainant's 4th allegation – the Complainant alleged that the Respondent had lodged a police report against him

…

82 The Respondent is free to file a police report if he wishes to do so. If the Complainant does not agree with the contents of the Respondent's police report, he has other remedies available to him. However, a personal protection order is not one of these remedies. A personal protection order is an order to restrain a person from committing family violence. It is not meant to restrain a person from filing police reports.

83 As such, I was of the view that there was no merit whatsoever in the Complainant's position that the fact that the Respondent had filed a police report against him provided a ground to support his application for a personal protection order.

…

The Complainant's 7th allegation – the Complainant alleged that "seven" persons were trying to kill him as they were after his flat and his money

…

95 Attempted murder and conspiracy to commit murder are very serious matters and most normal people would seek police assistance when faced with a threat to their lives. It was therefore noteworthy that the Complainant did not produce any evidence to show that he had urgently sought police assistance to protect himself from being murdered.

…

97 The Complainant supported his allegation that black magic was being used against him by producing copies of photographs showing yellow talismans placed on several objects (at page 5 of C3).

98 I, however, noted that the Complainant was not certain that the Respondent was the person responsible for placing the yellow talismans ….

…

102 Other than the yellow talismans, the Complainant provided no other evidence to support his allegation that the Respondent (or any of the other 6 persons) was trying to kill him.

…

104 From the evidence, or more precisely the lack of evidence, it appeared clear to me that the Complainant had totally failed to prove that the Respondent was attempting to kill him.

…

106 On the issue of continual harassment, a balance must be struck between the right of an individual to place whatever he wishes, yellow talismans or otherwise, on his personal property, and the right of an occupant of a property not to be distressed by the sight of another person's items, whether it be yellow talismans or some other item.

107 I was of the view that if the Respondent's purpose was a legitimate one, i.e. the protection of his property from theft or disturbance by means of dissuading the Complainant from meddling with his things, the placing of the yellow talismans would not constitute harassment. This view was based on the right of an individual to protect his own property. I was reinforced in my view by the fact that the right of private defence

> is recognised in the Penal Code (Cap 224). If such a right is recognised to the extent that section 96 of the Penal Code provides that nothing done in exercise of the right of private defence is an offence, it must surely follow that the relatively innocuous act of placing yellow talismans on one's own property to dissuade another from disturbing such property must be lawful and cannot constitute continual harassment.
>
> 108 On the other hand, if the Respondent's purpose had no legitimate purpose but was instead merely a means to cause distress and anguish to the Complainant, then it might well be that the Respondent's act constituted harassment.

25 As the Family Division of the High Court reiterated in *UNQ v UNR* [2020] SGHCF 21, limb (d) of s 64 also contains a mental element, *viz*. there must also be an intention or knowledge on the part of the perpetrator to cause anguish to the victim by the acts in question. Whether the perpetrator possessed the necessary intention or knowledge at the time will be inferred from all the circumstances of the case. These circumstances include the state of the parties' relationship at the time and the parties' communications over the relevant period.

> ***UNQ v UNR* [2020] SGHCF 21**
>
> A mother applied for a PPO on behalf of her children against the father of the children. She alleged among other things that the father had yelled at the children and ignored them. The father denied these allegations.
>
> The Family Division of the High Court held that the acts of the father in yelling at the children and ignoring them, even if true, were intended not to cause anguish to the children but simply to obtain access to them and get them to comply with his instructions when they did not respond in the way that he had wanted. Although these acts were inappropriate, they did not constitute family violence.
>
> **Justice Debbie Ong:**
>
> 32 … Even if the Children have suffered anguish as a result of the Father's actions, the court must be satisfied that the Father had caused this anguish with the necessary intent or knowledge.

33 Indeed, it is important to set this matter in context. The Mother's complaints relate to the Father's treatment of the Children over the past two or three years, after divorce proceedings were commenced. The Children have been in the care of the Mother and there have been difficulties and conflicts in respect of access even after several court orders, with the Children sometimes rejecting the Father (see [7] above). This gives context to the complaints as well as the actions of the Father. Even if he had been yelling at the Children or behaving in a certain manner, it is doubtful whether he had the necessary intention or knowledge to cause anguish to the Children. He appeared instead to be trying to obtain access to the Children and getting the Children to comply with his instructions but the Children did not respond in the way he wanted them to. He responded by reacting harshly to the Children or showing anger in their presence. His reactions and actions were not exemplary, and it would be of benefit for him to gain greater insight into how his actions and reactions impact others, and learn to parent more positively. However, the acts did not meet the threshold of family violence as required in the law.

34 The Father highlighted that the daughter appeared fine in his care and only suffered from anxiety and breathing difficulties when she was in the Mother's care, while the Mother said this was due to the prospect of having access with the Father the next day. The daughter was admitted to the hospital on 7 March 2019, before she was with the Father on 8 and 9 March 2019, where the Mother claimed the Father yelled at the Children, threw a mug, and stayed in the room and ignored them. This sequence of events illustrated the difficulty of proving that the Father had the necessary intent to cause the Children anguish, because the daughter's anxiety did not appear to be caused directly by the Father's actions on 8 and 9 March 2019 and indeed preceded her interaction with the Father on those days. The relevance of the hospitalisation on 7 March 2019 to the particular allegations on 8 and 9 March 2019 was unclear. Rather than a response to only the Father's actions on those days, the daughter's anxiety appeared to be a reaction to the chronic conflict between her parents and the Father's response to that conflict over a long period of time.

…

37 For these reasons, I found that the DJ had erred in finding that family violence had been committed. This is not to say that such expressions of frustrations in high-conflict parental disputes can never amount to family violence. Parents must be aware of their conduct and be sensitive to the impact on their children. As stated earlier, a court can infer the necessary intention or wilfulness from all the circumstances of the case. For example, where a parent has been repeatedly

> reminded of the children's anguish or has been admonished by third parties, but still persists in aggressive outbursts around the children, a court can infer that the parent possessed the necessary know ledge that his or her conduct was likely to cause anguish to the children. In the present case, only a few incidents had been alleged with specificity, such as the Father's act of throwing a mug. I was not persuaded that the Father had the necessary intention or knowledge for his acts to amount to family violence; I emphasise that this was an assessment made on the facts of this particular case.

26 In *Sim Tze Long v Chua Suat Kheng and Another Case* [2003] SGDC 125, the District Court found that "continual harassment" was established when the perpetrator had repeatedly abused the victim having been "bent on causing him mental anguish" and had "placed him in a position of harm and would continue to do so each time a dispute arose – no matter how minor the issue."

> ***Sim Tze Long v Chua Suat Kheng and Another Case* [2003] SGDC 125**
>
> A husband applied for a PPO against his wife alleging that she had: (a) switched on all the lights in the home and increased the volume of the television and radio sets in the home when she knew that he was attending to business calls on the telephone; (b) repeatedly used vulgar language against him and his family; (c) threw his belonging around whenever he did not provide satisfactory replies to her questions and threatened to fine him $50 each time she felt he had been wrong in his actions; (d) split water on his matter while he was sleeping; and (e) prevented him from consuming medicine by repeatedly turning off the lights in his locations within the home.
>
> The District Court accepted the evidence of the husband and found that he had been a victim of continual harassment.
>
> **District Judge Shobha G. Nair:**
>
> 25 The husband proved on a balance of probabilities that he was the victim of abuse and that in his case, there was a need for protection. I was satisfied that he was the victim of continual harassment by his wife who was bent on causing him mental anguish. In my judgment, she had placed him in a position of harm and would continue to do so each time a dispute arose – no matter how minor the issue.
>
> …

> 34 Other allegations made by the husband were cursorily denied by the wife or not touched on at all. Much therefore hinged on who the court believed by reference to the totality of the evidence and the manner in which the evidence was presented by the parties. The court found the husband to be a credible witness. This is explained in the following part.
>
> 35 What surprised the court about the couple was that they often forgot they were in a courtroom – they demonstrated by their behaviour in court, the probable situation at home. At many points during the course of the hearing, the wife would quite literally chide her husband instead of asking him questions. He often kept quiet – his frustration seen through his silence.
>
> …
>
> 38 Although both parties spoke generally about many quarrels without referring to specific dates, often assuming the court knew which incident they were referring to (see for example NE: pages 9-10), it was the wife who gave very evasive and convoluted answers to questions in relation to a specific incident, sometimes drawing on other unrelated events. She also shifted positions so often on most points that it made her evidence of little, if any, weight.

1.4.5. Exception: force lawfully used in self-defence

27 Self-defence is exempted from conduct constituting family violence (the "Self-Defence Exception"). No definition for "self-defence" is found in the Charter, but the Family Court has in interpreting it referred to the right of private defence in s 96 of the Penal Code 1871 (2020 Rev Ed). These observations of the Family Court in *TEK v TEJ* [2015] SGFC 89[10] at [14] are instructive:

> "Force lawfully used in self-defence" is not defined in the Women's Charter, but as submitted by the Respondent Counsel, section 96 of the Penal Code regarding the right of private defence, is instructive. In the case of *Tan Chor Jin v PP* [2008] 4 SLR 306, the Court of Appeal used the explanation given in *Ratanlal & Dhirajlal's Law of Crimes: A Commentary on the Indian Penal Code 1860 vol 1* (CJ Thakker & M C Thakker

[10] This decision of the Family Court was reversed in HCF/DCA 25/2015 on the basis of new evidence that came to light following the conclusion of the proceedings in the Family Court

> eds) (Bharat Law House, 26th Ed, 2007), to explain private defence:
>
> > … The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self-creation. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonable apprehended and should not exceed its legitimate purpose. … The right of private defence is purely preventive and not punitive or retributive. The right of self-defence is not a right to take revenge nor is it a right of reprisal. It does not permit retaliation.

28 Whether an act constitutes force lawfully used in self-defence depends on whether the force that was used was proportionate to the threat made and/or harm caused, and whether that force was appropriately used to meet that threat and/or harm. An excessive reaction to an act of family violence may itself amount to family violence. Similarly, force was used in retaliation and not in defence/protection will not fall within the exemption in s 64 of the Charter (see *TEK v TEJ* [2015] SGFC 89 at [15]).

1.4.6. Exception: force lawfully used by way of correction towards a child below 21 years of age

29 Correction towards a child is also excluded from conduct constituting family violence (the "Correction Exception"). As the Family Court observed in *VYB v VYA* [2021] SGFC 121, despite growing suggestion internationally that physical punishment produces detrimental consequences in children, the Correction Exception remains a part of the law in Singapore. It operates as a "thick grey line" that accommodates different parenting approaches affected by culture, personality, or personal experience. Parenting behaviour that falls within this "grey" area "may not be the best parenting practices but neither does such behaviour necessarily justify state intervention". But beyond these limits,

the behaviour even if consistent with variations in culture, personality, or personal experience will be abuse or ill-treatment and attract state intervention (Debbie Ong Siew Ling, "The Quest for Optimal State Intervention in Parenting Children: Navigating within the Thick Grey Line" (2011) SJLS 61 at 80).

30 Still, for an act to qualify as "lawful correction", it must have been done for the purpose of teaching discipline with a measure of good sense, in a judicious and responsible manner, and for the benefit of the child. The observations of the Family Court in *TCV (On behalf of Child, A) v TCU* [2015] SGFC 3 at [13] are instructive:

> In order for an act to qualify as "lawful correction", it must have been for the purpose of teaching discipline with a measure of good sense and for the benefit of the Child: see Leong Wai Kum ("Ms Leong"), *Elements of Family Law* (2nd Edition, LexisNexis, 2013), where she opined at pages 136-137:
>
> > Correction towards a child is also excluded from conduct constituting family violence. Several points are worthy of note. The common law, which continues to underpin legal regulation of the relationship between parent and child in Singapore, had long supported the authority of a parent to inflict reasonable discipline on her chid, including some degree of physical punishment. The limit imposed on this authority to discipline came from statutory provisions, now contained in the Children and Young Persons Act which, inter alia, punishes any adult, including a parent, for committing an act of ill-treatment towards a child.
> >
> > Lawful correction of a child must be to teach discipline with a measure of good sense and must always be exercised for the benefit of the child. If the circumstances suggest that the act was prompted more by a need of the person to impose her power over the child rather than for the child's benefit, this "exception" may not hold…"

31 In *VYB v VYA* [2021] SGFC 121 at [14]–[15], the Family Court identified several related factors that shed light on the reasonableness of the

physical punishment by a parent of a child: the reasons for the punishment, the nature of the punishment, and the age and personal characteristics of the child.

> … Professor Chan Wing Cheong helpfully identified several related factors that shed light on the reasonableness of the physical punishment by a parent of a child (Chan Wing Cheong, "Corporal Punishment of Children by Parents: Is it Discipline or Violence and Abuse?" (2018) 30 SAcLJ 545 ("*Corporal Punishment of Children*").
>
> > (a) First, the reasons for the punishment. To fall within the Correction Exception, the force must have been used for the correction of misbehaviour for the benefit of the child. Force used for the "gratification of passion or rage", in the words of *Hopeley*, will not qualify. Such was the case in *TCV*, where the respondent-mother had, following her dispute with her own father, lashed out at the child. That force was used other than for the correction of misbehaviour. It was therefore family violence.
> >
> > (b) Second, the nature of the punishment. As Professor Chan suggests, types of force like punching may be unacceptable *per se*, presumably because they are beyond what any reasonable person would consider to be suitable correction. Other types of force like caning fall to be assessed against the other circumstances of the case. The decision in *BHR v Child Protector* [2013] SGJC 2, which involved the punching and caning of a child, is instructive. The Juvenile Court distinguished the punching from the caning, and found that the punching was, without more, "beyond the act of disciplining". But it assessed the caning based on the "number and extent" of the bruises caused. Similarly, in *BJJ v Child Protector* [2013] SGJC 3, the Juvenile Court held that the acts of kicking the head and body, hitting the head with a bunch of keys, and hitting the face and causing a nosebleed automatically went "beyond reasonable disciplining".
> >
> > (c) Third, the age and personal characteristics of the child. These factors take on especial significance in the case of young children, given their limited maturity and ability to endure physical punishment. As Professor Chan observes in *Corporal Punishment of Children*, for any correction to benefit a child, it must be "commensurate with the age and extent of understanding of the child" (citing *Public Prosecutor v AFR* [2011] 3 SLR 833 at [33]). A harsh regime [is]

> especially inappropriate for young children, "who should be treated with more love and tender care" (citing *Public Prosecutor v AQF* [2011] SGDC 75 at [29]) and whose correction, in the words of Hopeley, should not be "protracted beyond the child's power of endurance". These statements accord with the observations in *TCV* at [14] that any punishment must not cause "unnecessary pain and suffering" to the child.
>
> Nevertheless, the law does not intervene through the issuance of a PPO in every instance of parenting that exceeds the Correction Exception. Even if the parenting discloses family violence, pursuant to s 65 of the Charter, a PPO will not be granted unless it is necessary for the protection of the child.

32 The decisions of the Family Court in *TCV (On behalf of Child, A) v TCU* [2015] SGFC 3 and *VYB v VYA* [2021] SGFC 121, both of which involved the corporate punishment of children, illustrate the operation of the Correction Exception.

> ***TCV (On behalf of Child, A) v TCU* [2015] SGFC 3**
>
> A father applied for a PPO on behalf of his 12-year-old child against the mother of the daughter, alleging that the mother had slapped the child with a phone and caned the child violently in an escalating history of violence by the mother on the child. The mother replied that she had simply been disciplining the child for failing to do her homework.
>
> The Family Court held that the mother could not avail of the Correction Exception because her actions had been driven not by an intention to discipline the child but in an expression of frustration at events unrelated to the child. Further, the severity of the caning suggested that the case was on of violence and not of measured discipline.
>
> **District Judge Yarni Loi:**
>
> 51 When she caned the Child on 17 May 2014, it had nothing to do with the Child's homework. She had lashed out at the Child due to her frustration over the day's events, causing the Child unnecessary pain and suffering.
>
> 52 Second, the severity of the Caning Incident supports the conclusion that this was a case of violence and not of measured discipline …
>
> …

56 Third, I find that the Respondent lied when she said, on the stand, that she had deliberately and intentionally caned the Child 4 times, in a measured manner, to discipline the Child with no intention of hurting the Child. This new evidence is inconsistent with her affidavits where she stated that she caned the Child 5 times. In any case, the Respondent contradicted herself at a later stage of her testimony when she admitted that she "definitely" hurt the Child, although she said she did it unintentionally. That being the case, she could not have intentionally disciplined the Child.

57 In the circumstances, I find that the Respondent had committed family violence against the Child. She wilfully and knowingly placed the Child in fear of hurt, and also caused actual hurt to the Child through the Caning Incident. She had not acted responsibly or judiciously; and the Caning Incident was not for the purpose of teaching the Child discipline with a measure of good sense, nor was it for the Child's benefit. Instead, she lashed out at the Child out of frustration and anger over the day's events.

***VYB v VYA* [2021] SGFC 121**

A father applied for a PPO on behalf of his 6-year-old child against the mother of the child, alleging that the mother had on multiple occasions hit the child repeatedly with canes or clothes hangers. The mother replied that she had simply been disciplining the child to teach him to relieve himself in the toilet (the child suffered from a medical condition that affected his control of his bladder and bowels).

The Family Court held that the mother could not avail of the Correction Exception because the reasons for her actions were improper, and the extent of the correction was not commensurate with the maturity of the child. Nevertheless, the mere fact that the mother had hit the child with a clothes hanger was not improper because she had selected a hanger with rounded edges to minimise the risk of injury to the child.

Magistrate Patrick Tay Wei Sheng:

37 The mother claims that she had hit the child to teach him to relieve himself in the toilet rather than in his clothes. But her contemporaneous utterances reveal a meanness at odds with a desire to correct the child for his benefit … Ultimately, even if the mother did not mean what she said literally, her utterances tell of her reasons for hitting the child: less correction then contempt, and less discipline than denigration.

38 Separately, on 20 November 2020, the mother hit the child because the father had discarded her canes. This was a

> reason wholly unrelated to any behaviour by the child. As was the case in *TCV*, where the parent had lashed out at her child following her dispute with her own father, these hits by the mother were not for the correction of the child.
>
> …
>
> 40 It is undisputed that the mother hit the child with a clothes hanger or a cane. Although the use of a hanger is unorthodox, the mother gave unchallenged evidence that she had selected a hanger with rounded edges to minimise the risk of injury to the child. I do not therefore think that this aspect of the punishments was improper.
>
> …
>
> 43 In my view, the punishments, which involved up to 54 hits at a time with a cane or a hanger, were not commensurate with the age and powers of endurance of the then five or six-year-old child. It was undisputed that some of the hits had left bruises, which were photographed by the police, who had attended at the parties' residence following a complaint by the father. The mother herself described these bruises as "cane marks".
>
> …
>
> 45 Nor were the punishments commensurate with the maturity of the child. The punishments and the threats of further punishments left the child confused and blubbering: terrified of the punishments yet unsure of how to avoid them. "Can you just beat me one time", "Can you beat softly" "Just beat me three times only", "I love you", "I want mommy", the child cried in his futile attempts to avoid the hits. Moreover, the child appears to have lacked the faculties to modify the (mis)behaviour – the soiling of his clothes – that attracted the punishments. The medical evidence suggests that even as recently as in March 2021, the child could have controlled himself only with "treatment technique". As a matter of fact, too, it is difficult to conclude otherwise when barely hours after getting hit by the mother for soiling himself, the child not infrequently soiled himself again.

1.5. "Necessary for the protection" of a family member

33 Even if family violence has been committed or is likely to be committed against a family member, a PPO may be granted in favour of that family member only if it is "necessary for the protection of the family member" (see the second

limb of s 65(1) of the Charter). As the District Court explained in *Yue Tock Him @ Yee Chok Him v Yee Ee Lim* [2011] SGDC 99, a PPO is not a punitive measure to punish a perpetrator for past violence but is instead an order to protect the victim from future violence. Hence, if there will be no family violence in the future, it must follow that a PPO would not be necessary for the protection of the victim, and it will serve no purpose to grant a PPO.

34 In *UNQ v UNR* [2020] SGHCF 21, the Family Division of the High Court observed that the necessity of a PPO is a fact-intensive question, the answer to which will vary according to the evidence in each case. The fact that an incident of family violence might have occurred years before the application was filed does not necessarily diminish the importance of the incident because there may be circumstances that explain the delay. Still, a substantial period of time without any proven incidents of family violence between the incident that is the subject of the PPO application and the filing of the PPO application may suggest that there is limited necessity for a protection order. This requirement of necessity is statutorily prescribed and serves as a safeguard against unnecessary intervention by the court in family matters.

> ***UNQ v UNR* [2020] SGHCF 21**
>
> A mother applied for a PPO on behalf of her children against the father of the children. She alleged among other things that the father had hit the children on the head. The father denied these allegations.
>
> The Family Division of the High Court held that even if the father had committed family violence by hitting the children on the head, that incident was nearly two years before the PPO application was filed. The absence of any proven incidents of family violence since suggested that there was no necessity for a PPO.
>
> **Justice Debbie Ong:**
>
> 38 The second legal requirement before a court may order a PPO is that of necessity. Even if the court had accepted that the November 2017 incident occurred as the Mother alleged it

> had (which she claimed was based on what the daughter had relayed to her and the doctor), the incident would have occurred nearly two years before the present PPO application was filed. The jurisdiction of the court is statutorily prescribed and serves as a safeguard against unnecessary intervention by the court in family matters (see *UHA v UHB and another appeal* [2020] 3 SLR 666 at [72]). There were no proven incidents of physical violence since the incident in November 2017, even without a PPO in place. Indeed, the Father had taken the Children on a holiday after November 2017 without incident. The evidence and circumstances suggested that there was no necessity for a PPO. In making this finding, it must be emphasised that the necessity of a PPO is a fact-intensive assessment that will vary according to the evidence before the court in each case.

35 Where the alleged incident of family violence is an isolated one in an otherwise uneventful relationship, there may be little necessity for a PPO for the protection of the victim, especially where there will be limited future interaction and contact between the parties (see *TED v TEE* [2015] SGFC 88).

> ***TED v TEE* [2015] SGFC 88**
>
> The parties had a difficult marriage. The wife alleged that the husband had committed adultery. The husband alleged that the complainant was "suspicious, jealous and insecure". There had been no allegations of family violence during the course of the marriage until they had a scuffle that formed the sole basis for the application for a PPO by the wife against the husband. The scuffle occurred when the wife had pressed the husband for a refund of the deposit that she had paid for a fishing trip from which she had subsequently withdrawn.
>
> The Family Court held that the husband had committed family violence against the wife but there was no necessity for a PPO given the limited future interactions between the parties.
>
> **District Judge Kimberly Scully:**
>
> 35 Where the alleged incident of family violence is an isolated one in an otherwise uneventful relationship, there seems less reason to grant a PPO, especially where parties' future interaction and contact will be very limited. Since the 18 October 2014 incident, the parties have lived apart and in separate households. Parties are engaged in on-going divorce proceedings and will not be living together anymore. They do have a child, and they work in the same company. It was the Complainant Counsel's submission that both parties will have contact because they work in the same company. Whether this

> state of affairs will continue, and whether the business will even continue after the conclusion of divorce proceedings, were not matters submitted before me. It was neither alleged nor proven that the business environment was a potentially acrimonious setting or that any of the acrimony between the parties resulted from interaction in the course of business dealings. While I recognise there is the possibility of future interaction, and it might even be unavoidable, it is important to note that the 18 October 2014 incident was an aberration in the parties' relationship, and it arose from very specific circumstances involving money relating to a fishing trip the parties intended to take together. Such particular circumstances that culminated in this singular event of family violence, are most unlikely to ever arise again since parties' marital relationship has come to an end. In such circumstances, I was of the view that a PPO was … unnecessary and I accordingly dismissed the application.

1.6. Additional conditions to a PPO

36 In granting a PPO, a court may specify exceptions, conditions or the duration of a PPO (see s 65(3) of the Charter). The court may also include a provision that the perpetrator may not incite or assist any other person to commit family violence against the protected person (see s 65(4) of the Charter).

37 In *UMI v UMK and UMJ and another matter* [2018] SGFC 53, the Family Court opined that any condition attached to PPOs must be necessary, proportional, and in line with the underlying philosophy of a PPO being a protective tool (and not a punitive one). The connection between the acts of family violence complained of and the conditions sought should be clearly articulated in the application.

> ***UMI v UMK and UMJ and another matter* [2018] SGFC 53**
>
> The Adult Protective Service ("APS") applied to vary existing PPOs granted in favour of two family members who suffered advanced dementia and severe mental retardation. Among other things, APS sought to include the following conditions to the PPOs: supervised access, a restriction on the respondent from interfering with the administration of medication prescribed by the protected persons' doctors, a restriction on

the respondent from bringing food for the protected persons' consumption, and a restriction on the respondent from assisting the protected persons in their activities of daily living.

The Family Court imposed some conditions on the existing PPOs and disallowed others, on the basis of necessity and proportionality.

District Judge Azmin Jailani:

29 …

> (c) … APS essentially piggybacked on the various acts of family violence committed by the complainant as the underlying premise which necessitated the conditions it prayed for. I would pause here and note that it was not clearly articulated specifically the nexus between the alleged acts of family violence committed and the conditions sought, or the extent of the same.

…

148 … I accept [counsel's] submission that any condition towards the administration of PPOs must be necessary, proportional, and in line with the underlying philosophy of a PPO being a protective tool, and not a punitive one. For the reasons stated below, I accepted [counsel's] submission that some of the conditions which APS sought, in its proposed wording, appeared to be disproportionate.

…

149 Turning to the first proposed condition, APS's condition reads as follows:

> The [respondent's] visits to UMK shall be limited to 1 session every fortnight, 1 hour per session, and always be under the supervision of APS staff or the supervision of person(s) duly appointed by APS staff. Out of these arranged sessions, the [respondent] shall not be allowed to enter the premises where UMK resides.

…

153 After assessing the evidence, I was satisfied that the [respondent's] actions were borne out of her unfettered and unregulated access to the first respondent. In the premises, I was satisfied that supervised access for the [respondent] was now necessary.

…

155 In the premises, I was of the view that an initial programme of up to twice a week of supervised access of up to

2 hours would be suitable. I was mindful of how this might be a strain on APS' resources, but I was not convinced that APS's proposal was more for the protection of the [protected persons] than it was for APS's convenience and a form of punishment to the [respondent].

…

157 In the premises, I granted the first condition on the following terms:

> The [respondent's] visits to UMK shall be limited to up to 2 sessions every week for a maximum of 2 hours session. Such visits shall be supervised visits under the supervision of APS' staff or person(s) duly appointed by APS.
>
> … the [respondent] shall be at liberty to apply for a variation of the access terms after 1 year of the date of this order.

158 I will leave it to parties to determine the times for access, as is not for the Court to unduly micromanage parties. Lastly, I rejected APS's proposed condition to bar the [respondent] to be on the nursing home premises on non-visit days. I first found this a curious insertion, because it was not present in the proposed conditions relating to the second [protected person]. Further, I did not think it necessary for such a prohibition to be included, as it would be implicit in the above condition of supervised access.

…

163 … While I also registered my concerns on the [respondent's] involvement in the administration of the respondents' medical care, it is not the intent of these conditions to be overtly prescriptive, especially given the ramifications of its breach. Based on my earlier findings, I was inclined to allow the condition on the following terms:

> The [respondent] shall not interfere with the administration of UMK's medical requirements without express approval of the nursing home, including the booking and/or changing of medical appointments, the retention of all relevant documents generated by the relevant clinics or hospitals during UMK's medical appointments, and the collection and administration of UMK's medication. Such approval shall not be unreasonably withheld.

…

165 The fourth and fifth conditions reads as follows:

> The [respondent] shall not be permitted at all times to:
>
> (i) bring food for… UMK's consumption; and
>
> (ii) assist UMK in her activities of daily living, including but not limited to diaper changing and/or checking.
>
> 166 … After considering parties' submission, I declined to grant APS's proposed conditions, as I felt that this would be sufficiently addressed during the supervised visits. …

1.7. Other orders

38 Apart from an order to restrain the perpetrator from using violence against a family member, other orders may be made "as the court thinks fit having regard to all the circumstances of the case" (see s 65(5) of the Charter).

1.7.1. Expedited Order ("EO")

39 Pending the hearing of the application, the court may issue an expedited order ("EO") to restrain a respondent from using family violence against the applicant. An EO is granted where the court is satisfied that "there is an imminent danger of family violence being committed against the applicant" (see s 66(1) of the Charter).

40 An EO takes effect when notice of the order is served on the respondent, unless the court specifies a later date on which it is to take effect (see s 66(2) of the Charter). The EO ceases to have effect after 28 days, or the first court mention date, whichever is the earlier (see s 66(2) of the Charter). The duration of the EO may be extended by the court (see s 66(3) of the Charter).

41 The statutory provisions on EOs are set out in s 66 of the Charter:

> **Expedited order**
>
> **66**.—(1) Where, upon an application for a protection order under section 65, the court is satisfied that there is imminent

> danger of family violence being committed against the applicant, the court may make the protection order even though —
>
> > (a) the summons has not been served on the respondent or has not been served on the respondent within a reasonable time before the hearing of the application; or
> >
> > (b) the summons requires the respondent to appear at some time or place.
>
> (2) An expedited order does not take effect until the date on which notice of the making of the order is served on the respondent in such manner as may be prescribed or, if the court has specified a later date as the date on which the order is to take effect, that later date, and an expedited order ceases to have effect on whichever of the following dates occurs first:
>
> > (a) the date of the expiration of a period of 28 days beginning with the date of the making of the order;
> >
> > (b) the date of commencement of the hearing of the application for an order under this section.
>
> (3) Despite subsection (2), the court may extend the duration of the expedited order.

1.7.2. Domestic Exclusion Order ("DEO")

42 The court may also make a domestic exclusion order ("DEO"), which will exclude the perpetrator from the shared residence where the parties are or have been living together. The DEO may exclude the perpetrator from the entire property or a specified part of it, regardless of whether the shared residence is solely or jointly owned or rented by the perpetrator (see s 65(5)(a) of the Charter). A DEO, however, does not affect the perpetrator's existing title or interest (if any) in the shared residence (see s 65(6) of the Charter).

43 Similar to an order restraining a perpetrator from using family violence, the court will grant a DEO only if it is necessary for the applicant's protection. In *Chua Li Choo v Teo Swee Theng* [2005] SGDC 241, the District Court held

that the inability of the parties to get along and live under the same roof is not sufficient to demonstrate that a DEO was necessary.

> ***Chua Li Choo v Teo Swee Theng* [2005] SGDC 241**
>
> After obtaining a PPO against her husband, a wife changed the lock to the matrimonial flat and refused to let him in. An argument broke out between the parties and the wife called the police. The wife later applied for a DEO against her husband based on the allegations of his harassing behaviour.
>
> The District Court did not grant the application, holding that parties not getting along is not a basis to grant a DEO.
>
> **District Judge Tan Peck Cheng:**
>
> 26 Having regard to all the circumstances of the case, I find that the wife … failed to establish that she needs a DEO for her protection or personal safety. … It should also be noted that she had not lodged any complaint for breach of the PPO.
>
> 27 The parties are presently living apart and undergoing a divorce. It appeared to me that the wife applied for a DEO because she no longer wants to share the home with the husband and not because she feared him. She stated in her cross-examination that "it was not issue of being scared of him or not. It's an issue of respect for each other. He did not respect me at all". The fact that the parties could no longer get along and live under the same roof is no basis to grant a DEO to one party to oust the other from it.

44 Similarly, the District Court held in *AGX v AGW* [2010] SGDC 271 that a party's annoyance and irritation by the presence of the other party at the property is not sufficient to demonstrate that a DEO was necessary.

> ***AGX v AGW* [2010] SGDC 271**
>
> The parties were a divorcing couple who had been separated. After moving out of the matrimonial home, the husband would return to the matrimonial home frequently to have access to the son. During one such visit, a physical tussle occurred between the parties. The wife subsequently applied for a PPO and DEO against the husband, alleging that the husband's conduct on occasions when he returned to the matrimonial home amounted to harassment.

> The District Court did not grant the DEO, holding that the wife's annoyance and irritation by the husband's presence at the home was not a basis for granting a DEO.
>
> **District Judge Brenda Tan**:
>
> 45 … I did not think it was necessary for me to make a DEO against the husband. The fact that the wife is annoyed and irritated by the presence of the husband is not a good ground for the court to exclude the husband from his home. …

1.7.3. Counselling Order ("CGO")

45 The court may also make an order referring one or both parties, or their children, to attend counselling (a "CGO") (see s 65(5)(b) of the Charter).

1.7.4. Limits to orders made under s 65 of the Charter

46 There are limits to the types of orders that may be made under s 65 of the Charter. In *WCG v WCH* [2022] SGFC 31, the Family Court held that the court's powers to make orders for an applicant's protection are not unfettered. In particular, the Charter, as it currently stands, does not empower the court to make orders prohibiting a perpetrator from going near a protected person or a specified location. Although s 65(5)(c) of the Charter empowers the court to give *directions* necessary for and incidental to the implementation of a PPO, it does not empower the court to make *substantive orders* in that regard.

> ***WCG v WCH* [2022] SGFC 31**
>
> The parties were husband and wife. The wife had an existing PPO against the husband. Unhappy with the wife for denying him access to their daughter, the husband appeared unannounced at the wife's apartment to see their daughter and struck the wife in the face. The wife then sought to vary the PPO to add two supplementary orders that would restrict his movement as follows: (a) the husband must not come within a 10-metre radius of her person (the "Personal Buffer"); and (b) the husband must not come within a 200-metre radius of her apartment block (the "Residential Buffer").
>
> The Family Court dismissed the application, holding that the court's powers under s 65 of the Charter were not unfettered.

> The supplementary orders were not within the court's power to make.
>
> **Magistrate Patrick Tay Wei Sheng:**
>
> 25 I do not … think that the power to include orders supplementary to a PPO or a DEO under s 65(5) of the Charter empowers me to order the Personal Buffer or the Residential Buffer. These orders in essence entail an expansion of the geographical scope of a PPO and a DEO beyond the boundaries respectively of the applicant and her residence. Such an expansion is not consistent with the legislative object to facilitate a softer or therapeutic approach that heals and restores rather than severs relationships hurt by family violence.
>
> …
>
> 30 The applicant submits that the Family Court may also order the Personal Buffer and the Residential Buffer in an exercise of its power under s 65(5)(c) of the Charter. I am unable to accept this submission. That provision empowers the making of "direction[s] as is necessary for and incidental to the proper carrying into effect of any order made under this section". It does not empower the making of substantive orders. It contemplates only the facilitation of the implementation of substantive orders that have already been made … The Personal Buffer and the Residential Buffer are substantive protection orders rather than means of facilitating the implementation of protection orders that have already been made. I thus find that s 65(5)(c) of the Charter does not assist the applicant.

1.8. Procedural issues

47 Having set out the substantive considerations in an application for a protection order, the Chapter will now turn to key procedural issues.

1.8.1. Standard of proof

48 As set out in s 65(1) of the Charter, the court may grant a PPO "upon satisfaction on a balance of probabilities" that the conditions for a PPO have been satisfied. In other words, an applicant for a PPO need prove only that it is more likely than not that: (a) family violence has been committed or is likely to

be committed against him or her; and (b) a PPO is necessary for the protection of him or her. The applicant need to prove these conditions on the criminal standard of proof of "beyond a reasonable doubt" (see *UNQ v UNR* [2020] SGHCF 21 at [23]–[24] and [28]).

49 Whether the conditions for a PPO have been so proven often depends on the credibility of the parties, especially when the evidence comprises only the words of one party against the words of the other. It is also imperative for the court to be given information regarding the general nature of the relationship and level of communication between the disputing family members, the circumstances in which the allegations of violence arose, the regularity of the alleged acts of violence, and the frequency of contact between the disputing family members. The observations of the District Court in *Sim Tze Long v Chua Suat Kheng and Another Case* [2003] SGDC 125 at [13] and [39] are instructive:

> 13 In the arena of domestic/family violence, it is imperative that the court is informed not only of the allegations of violence but also aspects such as the general nature of the relationship and level of communication between the disputing family members, the circumstances in which the allegations of violence arose, the regularity of the alleged acts of violence and the frequency of contact between the disputing parties. Cross-applications by family members are very common in the arena of family violence as the allegations against each other stem for the most part, from the same set of facts – the need to understand the dynamics of the relationships and to appreciate the context in which the incidents arose makes it important to hear the applications together.
>
> …
>
> 39 Applications of this nature depend to a very large extent on the credibility of the parties. At the end of the day, it is one party's words against the other. Police reports were tendered and these were useful – yet the large number of reports lodged (only some of which were tendered to court) gave the impression that the parties felt that the more reports they lodged, the more believable their positions would be. The allegations were not of physical abuse in the sense that neither party was physically attacked during their disputes. There were therefore no medical

> reports other than the ones which showed that the wife and son had slipped on water.

1.8.2. Post-application conduct

50 Incidents of family violence may occur even after an application for a PPO has been filed but before the application is heard and determined at trial. Can such post-application conduct be relied upon by the applicant in support of the application for the PPO?

51 In *BCY v BCZ* [2012] SGDC 360, the Family Court held that allowing parties to litigate post-application conduct in a trial of a PPO application was permissible where the parties came prepared to litigate the conduct. The applicant had included the alleged facts of the post-application conduct in his affidavit filed for the trial, while the respondent had included her response to them in her affidavit filed for the trial. Hence, the respondent had ample notice of the facts in question and was not taken by surprise by them.

> ***BCY v BCZ* [2012] SGDC 360**
>
> A father applied for a PPO on behalf of his daughter against the mother of the daughter. He requested to adduce evidence of an incident of post-application conduct, which request was not objected to by the mother.
>
> The District Court found that the mother was not taken by surprise by the facts of the post-application conduct and allowed the request.
>
> **District Judge Muhammad Hidhir Majid:**
>
> 6 Other than the two incidents, at the trial, the complainant had also adduced evidence of a 3rd incident which took place on 24 February 2012 which was after the complaint was made and summons issued. The respondent did not raise any objection to this and as such, evidence was adduced to prove this 3rd incident...
>
> 7 I was of the view that this case can be distinguished from Teng's case in that unlike Teng's case where the respondent was taken by surprise, both parties in this case came prepared to litigate on the 24th February 2012 incident

> as the complainant had included the facts alleged in his affidavit filed for the purposes of the hearing. The respondent who had ample notice of it, had also filed her responses to the allegations in her affidavit.
>
> 8 Further, in PPO applications involving family members or married couples who still have continuing relationship and contact with one another, one can expect fresh incidents happening between them. To require or expect them to run back to the Family Court after each incident would inevitably result in multiplicity of complaints being made and summons being issued. There could even be duplicity of proceedings where evidence of earlier incidents are brought in to show past acts of violence in order to prove likelihood of family violence being committed or the necessity for PPO to be issued. If for every fresh incident, a party is required to file a fresh application, the parties concerned would end up attending many court mentions instead of the actual trial to determine whether or not a PPO is to be issued. In my view, a complainant should not be prevented from bringing in fresh incidents that had taken place after an application for PPO has been made as long as the other party is given notice that the fresh incident will be relied on for the application as in this case.
>
> 9 For the above reasons, I also proceeded to hear the evidence in respect of the 3rd incident.

52 More recently, the Family Court in *VFM v VFN* [2021] SGFC 91 at [44]–[45], allowed an applicant to adduce evidence on post-application conduct and observed that such conduct may, in the appropriate case, be relevant in assessing whether it is necessary for a PPO to be granted (see the second limb of s 65(1) of the Charter). Where a respondent wishes to persuade the court that an act of family violence was a one-off occurrence, or that the likelihood of recurrence of family violence is low, the applicant ought to be allowed to adduce evidence to rebut such allegations. This, in turn, may in some situations involve referring to the post-application conduct of the respondent.

> Further and in any event, I am of the view that post-application conduct may, in the appropriate case, be relevant in assessing whether it is necessary for a PPO to be granted.
>
> In this regard, the second limb of Section 65, WC (*ie*. the issue of the necessity of a PPO) has been said to operate "negatively" in that the burden (at least, in the evidential or "tactical" sense)

> is generally on the respondent to show that a PPO is unnecessary despite the court's finding that he/she had committed family violence or is likely to do so (see *TEK v TEJ* [2015] SGFC 89 at [11] and *TQY v TQX* [2016] SGFC 100 at [10]).That being the case, if a respondent wishes to persuade the court that the act of family violence in question was an one-off occurrence, or that the likelihood of recurrence of family violence is low, the complainant ought to be allowed to adduce evidence to rebut such allegations. This, in turn, may in some situations involve referring to the respondent's post-application behaviour or conduct.

53 This approach is consistent with that taken for applications for protection orders under the POHA, under which post-application conduct may be considered by the court hearing a trial of the application. In *Lai Kwok Kin v Teo Zien Jackson* [2020] 5 SLR 389 at [55]–[58], the High Court observed that precluding a victim from relying on post-application conduct may "lead to absurd outcomes where the [perpetrator's] conduct is escalating, rather than de-escalating in nature", because it could potentially require the victim to file a fresh application for each instance of post-application conduct, which was impracticable both for the victim and for the court process.[11]

> 57 In fact, as the respondent has correctly pointed out, the appellant's suggested approach may potentially lead to absurd outcomes where the respondent's conduct is escalating, rather than de-escalating in nature. A respondent's unabashed decision to blatantly persist with his/her harassing behaviour, despite being fully apprised of the legal consequences which may follow, must surely provide a very strong impetus for the issuance of a PO. I take the view that it would be wholly undesirable to circumscribe a court's powers to take such aggravating conduct into consideration when assessing the requirement under s 12(2)(b) of the POHA. Such an approach would certainly run contrary to Parliament's intention to swiftly

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11 Note however *Teng Cheng Sin v Law Fay Yuen* [2003] 3 SLR(R) 356, in which the High Court declared that a court hearing of a trial of an application for a PPO should not admit evidence of a disputed incident that occurred after the application before the court had been filed. The High Court observed that the admission of such evidence would take by surprise the other party to the proceedings. Still, even if such evidence has been admitted erroneously, a PPO granted on such evidence may still be upheld if other admissible evidence supports the grant of the PPO.

> curb harassing behaviour and protect victims of harassment through the introduction of the PO regime.
>
> 58 When this argument was put to the appellant, he responded that his suggested approach of disregarding acts which take place during the pendency of PO proceedings would not short-change potential applicants. He argued that any escalating or aggravating conduct that occurs subsequent to the date of the original PO application could potentially form the basis of a fresh PO application. I decline to endorse this approach. In my view, it is likely to clog up and unnecessarily complicate the existing legal process for PO applications under s 12(2) of the POHA. It would be far more practical and effective for courts to adopt a holistic view of the respondent's conduct, and to take into consideration all the circumstances up to (and including) the date of the hearing for the application, pending the determination of the application for the PO. This would preserve the flexibility inherent in the POHA, and facilitate the achievement of a just outcome based on the unique factual circumstances of each case.

1.8.3. Absence of party

54 For an application for a PPO specifically, where the respondent is absent, the court may proceed to hear and determine the application as long as the summons had been duly served on the respondent (see r 99A(2) of the FJR read with s 156 of the CPC).

> **Absence of respondent**
>
> **99A**.—(1) This rule and section 156 of the Criminal Procedure Code (Cap. 68) —
>
> (a) set out different circumstances in which the Court may proceed, in the absence of the respondent, to hear and determine an application for a protection order; and
>
> (b) are independent of each other.
>
> (2) The Court may proceed, in the absence of the respondent, to hear and determine an application for a protection order, if —
>
> (a) the respondent —
>
> (i) does not appear at the time and place mentioned in the summons; or

(ii) without reasonable excuse, does not appear at the time and place to which the application is adjourned;

(b) it appears to the Court on oath or affirmation that the summons was duly served on the respondent a reasonable time before the time appointed in the summons for appearing; and

(c) no sufficient ground is shown for an adjournment.

Absence of accused

156.—(1) The following apply where an accused does not appear at the time and place mentioned in the summons or notice to attend court:

(a) the court may proceed in the absence of the accused to hear and determine the complaint if —

(i) the court is satisfied on oath that —

(A) the summons or notice was duly served on the accused at least 7 days (or such shorter period as the court may consider reasonable in a particular case) before the time appointed in the summons or notice for appearing; and

(B) the accused was notified, when the summons or notice was served on the accused, that the court may hear and determine the complaint in the absence of the accused, if the accused fails to appear at the time and place mentioned in the summons or notice; and

(ii) no sufficient ground is shown for an adjournment

(b) unless the court proceeds in the absence of the accused under paragraph (a) to hear and determine the complaint, the court must postpone the hearing to a future day.

55 Alternatively, the court may issue a warrant of arrest against a respondent who is absent from any proceedings in an application for a PPO. If so, bail may or may not be offered to the respondent.

1.9. Revocation and variation of PPO

56 Following the grant of a PPO or an EO, the court may rescind, vary, suspend or revoke these orders. These powers also apply to counselling orders and domestic exclusion orders made under s 65 of the Charter.[12] These applications for rescission, variation, suspension, or revocation may be made by the protected person or the person against whom the protection order is made. This is set out under s 67(1) of the Charter:

> The court, on an application made by the applicant or the person against whom a protection order or an expedited order is made, has power by order to vary, suspend or revoke such order.

57 An application for rescission or revocation of a protection order is not a re-hearing of the original application for a protection order. The party seeking to revoke the protection order must prove that the circumstances have changed since the order was granted, such that there is no longer any necessity for the order to continue.[13] In *Jocelyn Toh Hui Yu v Toh Siew Luan Bette* [2013] SGDC 275, the District Court held that the factors which the court considers in determining whether a protection order should be revoked include:

(a) The surrounding circumstances (e.g. living arrangements) and the amount of contact between the parties;

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12 The definition of a "protection order" means an order made under s 65 of the Charter: see s 64 of the Charter.

13 *Jocelyn Toh Hui Yu v Toh Siew Luan Bette* [2013] SGDC 275.

(b) The amount of time that has passed since the last incident of family violence;

(c) The nature of the family violence which led to the granting of the PPO (e.g. whether the family violence was committed in private or in public); and

(d) Incidents of family violence after the protection order has been granted.

The District Court also held that allegations that a party has abused or misused a protection order are, in most cases, irrelevant considerations on whether or not to rescind or revoke the order.

Jocelyn Toh Hui Yu v Toh Siew Luan Bette **[2013] SGDC 275**

The complainant applied to have the PPO revoked, on the ground that the respondent had abused the PPO.

The District Court dismissed the application as the facts showed that the PPO remained necessary for the respondent's protection. In the judgment, the District Court set out the applicable legal principles and the relevant considerations in determining whether a protection order should be rescinded or revoked.

District Judge Colin Tan:

17 The principles governing rescission of a PPO are as follows:

a An application for rescission of a PPO is not a re-hearing of the original PPO application. Therefore, any arguments that the PPO had been wrongly granted (e.g. allegations that a party had lied or allegations that no family violence had been committed) would normally not be entertained.

b The original PPO would have been granted on the basis that the court had found that family violence had been committed (or would be likely to be committed in future) and that a PPO was necessary. Since the hearing of an application for rescission of a PPO would not be a re-examination of the findings of fact of the court that

granted the PPO in the first place, it follows that the court hearing the application for rescission of a PPO would accept the earlier finding that family violence had been committed (or would be likely to be committed in future) and the focus would therefore be on whether or not the PPO is still necessary.

…

d Allegations that a party "abuses" or "misuses" a PPO (e.g. by filing numerous and/or false police reports against the other party or by committing family violence against the other party in the belief that the other party will not dare to retaliate because of the PPO) are common, but they are not, in most cases, relevant considerations on whether or not to rescind a PPO. The purpose of a PPO is to protect the party holding the PPO. The fact that a party "abuses" or "misuses" a PPO does not change the fact that the holder of the PPO may be in need of protection and that the PPO is therefore necessary. The aggrieved party should select the appropriate remedy (e.g. if the holder of a PPO is making false police reports, the aggrieved party can bring the matter to the relevant authorities; or if the holder of a PPO has now become the aggressor and is committing family violence, the aggrieved party can seek police assistance and/or apply for a PPO for himself or herself).

…

g In determining whether or not the PPO is still necessary, the court will consider a number of different factors, but it is important to bear in mind that these factors should not be considered in isolation but, instead, the case must be looked at in totality. A non-exhaustive list of these factors is as follows:

> i Surrounding circumstances (e.g. living arrangements) and amount of contact between the parties – Clearly, if the parties are still living together or have to see each other often (e.g. when handing over children for access), then the risk of new incidents of family violence occurring is much higher as compared to cases where the parties are no longer in contact. If there is such a risk of further family violence, then the PPO would normally not be rescinded. …
>
> ii Amount of time that has passed since the last incident of family violence – Normally, enough time would have to pass between the last

> incident of family violence and the application for rescission for the court to be convinced that the PPO is no longer necessary. … However, the mere passage of time cannot, in itself, be determinative of whether or not the PPO should be rescinded as the court must consider all the surrounding circumstances of the case. A key consideration would be whether there have been no incidents only because the aggressor fears the existing PPO; in such a case, it would not make sense to rescind the PPO and the rescission application should be dismissed. …
>
> iii The nature of the family violence which led to the granting of the PPO … For example, if family violence had always taken place at home behind closed doors (and never ever in public), once the parties are staying separately and their contact is limited only to public places with lots of people (e.g. for handing over children for access) and enough time has passed since the last incident of family violence, the court might well be sympathetic to an application for rescission of the PPO. …
>
> iv Incidents of family violence after the PPO had been granted – Where incidents of family violence had occurred after the PPO had been granted (especially serious incidents and/or frequent incidents), the court would normally be slow to rescind the PPO as the aggressor would have shown by his/her conduct that even when a PPO is in force, he/she is willing to commit family violence and it would therefore stand to reason that if the PPO were to be rescinded, the aggressor would probably commit even more family violence against the other party. …

58 The considerations in determining whether a protection order should be varied are similar to those in determining whether a protection order should be revoked. In *UMI v UMK and UMJ and another matter* [2018] SGFC 53, the Family Court held that the applicant would need to establish the necessity and proportionality of the variations sought. The court's power to vary a PPO in any variation application would be circumscribed by what the originating court is able to do at first instance (*ie*, what is provided for in s 65 of the Charter).

***UMI v UMK and UMJ and another matter* [2018] SGFC 53**

The Adult Protective Service ("APS") applied to vary existing PPOs granted in favour of two family members who suffered advanced dementia and severe mental retardation.

The Family Court allowed the application in part, setting out the factors and principles that the court considers in determining whether a protection order should be varied.

District Judge Azmin Jailani:

50 In my view, the law in terms of variation applications, as with revocation orders, are largely similar. The court will need to look at whether there has been a material change in circumstances which necessitate a variation of the existing orders. While the issue is framed as to whether an order ought to be varied, as opposed to being revoked, I do not see any material difference in the factors the Court would need to consider. The Court would look at the nature of parties' relationship, whether there are any fresh instances of family violence, and whether, after considering the circumstances of the case, whether the particular variation sought for is necessary for the continued protection of the beneficiary of the protection order.

51 The only supplementary point I would add is that the applicant would have the burden in establishing the necessity and proportionality of the variations sought, bearing in mind that a protection order is not intended to be punitive in nature.

…

61 … [S]ection 67 allows the Court to make any modification to a protection order so long as that particular modification is provided for in section 65. In other words, if a particular modification was not expressly mentioned under section 65, a court could not make such a modification in a section 67 application.