2. Maintenance under Part 8 of the Women's Charter

Topic	Section
Overview Women's Charter 1961, ss 68–74	2.1
Definitions Women's Charter 1961, s 2, Parts 8 and 10 *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 Administration of Muslim Law Act 1966 *Chaytor Alan James v Zaleha Bte A Rahman* [2001] 1 SLR(R) 504 *USA v USB* [2020] 4 SLR 288 *VJF v VJG* [2020] SGFC 54	2.2
Legal threshold: Neglect and/or refusal to provide maintenance Women's Charter 1961, s 69 *UHA v UHB* [2020] 3 SLR 666 *WGV v WGU* [2022] SGFC 75 *TCT v TCU* [2015] SGHCF 3 *VXM v VXN* [2022] 3 SLR 1174 *VXT v VXS* [2021] SGFC 119	2.3
Factors in making maintenance orders Women's Charter 1961, s 69	2.4
Factors (1) : Financial Needs, Resources, Income and Earning Capacity Women's Charter 1961, s 69(4)(a)–(b) *TBC v TBD* [2015] 4 SLR 59 *AXM v AXO* [2014] SGCA 13 *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 *VVQ v VVR* [2021] SGFC 97 *WGD v WGC* [2022] SGFC 69	2.4.1
Factors (2) : Standard of Living Women's Charter 1961, s 69(f) *UNZ v UNY* [2018] SGFC 69 *UEC v UEB* [2017] SGFC 92	2.4.2

VUJ v VUK [2021] SGFC 87 Family Justice Rules 2014, Division 5 of Part 18 *TEZ v TFA* [2014] SGDC 267 *TGA v TGB* [2014] SGDC 368	
Time limit for enforcing maintenance arrears Women's Charter 1961, ss 74 and 121 *Meenatchi d/o Kuppusamy v Subbiah Pillai* [2013] SGDC 202 *Koay Guat Kooi (m w) v Eddie Yeo* [1997] SGHC 197 Lee Meng Leng v Tan Huat Soon [2014] SGDC 224 *VLW v VLX* [2020] SGFC 84 *Lee Siew Choo v Ling Chin Thor* [2014] SGHC 185	2.8

2.1. Overview

1 This chapter is focused on Part 8 of the Women's Charter 1961 (the "Charter"), which empowers the court to make, vary and enforce orders for maintenance orders. Maintenance here refers to the provision of support (of a financial nature) for a wife, an incapacitated husband, and/or children.

2 Broadly, common maintenance orders include:

(a) Fixed monthly payments or allowance.

(b) Lump sum payments.

(c) Reimbursement (repayment) of specific expenses, either in full or part.

(d) Direct payment of expenses to a service provider (such as a childcare centre or utilities provider).

Court may order maintenance of wife, incapacitated husband and children

69.–(1) The court may, on the application of a wife, and on due proof that her husband has neglected or refused to provide reasonable maintenance for her, order the husband to pay a monthly allowance or a lump sum for the maintenance of that wife.

(1A) The court may, on the application of an incapacitated husband, and on due proof that his wife has neglected or refused to provide reasonable maintenance for him, order the wife to pay a monthly allowance or a lump sum for the maintenance of that husband.

…

(2) The court may, on due proof that a parent has neglected or refused to provide reasonable maintenance for his or her child who is unable to maintain himself or herself, order that parent to pay a monthly allowance or a lump sum for the maintenance of that child.

3 Part 8 (in particular, ss 68 - 74) of the Charter contains provisions relating to the court's power to order maintenance for a wife, an incapacitated husband, and/or children. These provisions can be categorised as follows:

Section	Subject
68	Duty of parents to maintain children
69	Court may order maintenance of wife, incapacitated husband and children
70	Duty to maintain child accepted as member of family
71	Enforcement of maintenance order
71A	Banker's guarantee
71B	Financial counselling
71C	Community service orders
72	Rescission and variation of order
73	Power of court to vary agreement for maintenance of child
74	Application of section 121

2.2. Definitions

4 While the definition of a "wife" is not explicitly set out in the Charter, it generally refers to a "married woman" as defined under s 2 of the Charter:[1]

> **Definition**
>
> **2.**— (1) In this Act, unless the context otherwise requires –
>
> "married woman" means a woman validly married under any law, religion, custom or usage

[1] Prior to the enactment of the Women's Charter (Amendment) Act 2016, s 69 of the Charter expressly refers to an application being made by a "married woman". The language was amended in 2016 to align the drafting style of ss 69(1), (1A) and (2) : see Explanatory Statement, Women's Charter (Amendment) Bill (No. 6/2016)

4 However, the Charter draws a distinction between a "wife" and a "former wife". An order for maintenance for a woman, under Part 8 of the Charter, can only be sought during the subsistence of a marriage.[2] Maintenance for former wives is provided for in Part 10 of the Charter. Where the parties were married under Muslim law and governed by the Administration of Muslim Law Act 1966, they are treated as married until their divorce has been confirmed by the Syariah Court.[3]

5 On the other hand, the definition of an "incapacitated husband" is set out in s 2 of the Charter as follows:

> **Definition**
>
> **2.**— (1) In this Act, unless the context otherwise requires –
>
> "incapacitated husband" means a husband who –
>
> (a) During the marriage, is or becomes –
>
> (i) incapacitated, by any physical or mental disability or any illness, from earning a livelihood; and
>
> (ii) unable to maintain himself; and
>
> (b) continues to be unable to maintain himself.

6 In *USA v USB* [2020] 4 SLR 288, the Family Division of the High Court observed that the ordinary meaning of the term "livelihood" under s 2 of the Charter, is "a means of securing the necessities of life". A husband would fall within the definition of an "incapacitated husband" only if there is sufficient evidential basis to show that he is incapacitated from earning a livelihood either because he was "completely unable to work" or became unable to earn a means of securing the necessities of life". Pertinently, suffering from an illness is

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2 *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506, at [21] – [22]

3 *Chaytor Alan James v Zaleha Bte A Rahman* [2001] 1 SLR(R) 504, at [34]

a different matter from being "incapacitated from earning a livelihood" (see e.g., *USA v USB* [2019] SGHCF 5).

***USA v USB* [2020] 4 SLR 288; [2019] SGHCF 5**

The defendant (Husband) claimed that he was incapacitated due to Meniere's Disease, a condition which caused hearing loss, vertigo, and tinnitus, and applied for monthly maintenance from the plaintiff (Wife). He alleged that he had to give up his job as a lawyer because of his Meniere's Disease.

The Family Division of the High Court held that the Husband did not meet the definition of an incapacitated husband and declined to order maintenance for him. There was insufficient evidential basis to support the Husband's claim that he was incapacitated from earning a livelihood as he was not completely unable to work, nor had he become unable to earn a means of securing the necessities of life.

Judicial Commissioner Tan Puay Boon:

Is the Husband incapacitated from earning a livelihood?

124 … Having regard to the evidence, I find that there is insufficient basis to support the conclusion that the Husband has become incapacitated from earning a livelihood. I generally agree with the Wife that the medical reports relied upon by the Husband do not suggest that the Husband is completely unable to work. Rather, they suggest that he may be unable to work *upon the onset of an attack* of vertigo. As to the frequency of these attacks, the medical reports are largely based on the Husband's own account that he had "six episodes of vertigo from April 2016 to June 2016", and I find that they carry limited weight as an objective indicator of the frequency of his attacks. I also note that despite the Husband's claim that he has been suffering from frequent debilitating attacks of vertigo, there is nothing in evidence to suggest that he has more recently sought medical treatment, which would be expected if the attacks were as frequent and disruptive as he claims. I also take into consideration the private investigator reports which do suggest that the Husband is able to go about his daily activities

125 This is not to say that the Husband is not affected by Meniere's Disease at all. It may well be the case that he is affected by the disease to some extent. That is, however, a different matter from whether he is *incapacitated from earning a livelihood* within the meaning of s 113 of the Women's Charter. The ordinary meaning of the term "livelihood" is defined as "a means of securing the necessities of life". I was not persuaded that the Husband had become unable to earn a

> means of securing the necessities of life. While the Husband's monthly income for 2016 was a rather meagre sum of $598, I did not think that this was an accurate indicator of the Husband's earning capacity, given that just a year before this, his monthly income was in excess of $2,000. Moreover, while one can imagine how litigation and court work may be affected by the Husband's condition, which apparently causes hearing deterioration, I was not persuaded that Meniere's Disease would render him unable to perform other kinds of legal work.

7 The indicators of incapacitation include being placed on medical leave for being permanently unfit to work and receiving no income as a result. The court may take into consideration whether the husband has been precluded from most types of work available to him based on his qualifications and educational background due to his incapacitation (see e.g., *VJF v VJG* [2020] SGFC 54).

> ***VJF v VJG* [2020] SGFC 54**
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> The respondent-husband applied for maintenance as an incapacitated husband from the appellant (Wife) under s 69(1A) of the Charter. Accordingly, the Husband had purportedly suffered a work injury and had been on a medical certificate leave since then and has had no income since.
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> The Family Court held that the respondent-husband was an "incapacitated husband" within s 69(1A) of the Charter.
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> **District Judge Jason Gabriel Chang:**
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> 27 Unlike *USA v USB*, the Husband had at least two (2) medical reports which unequivocally stated that the Husband was permanently unfit for work due to his physical and/or mental disability…
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> …
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> 29 In this case, the Husband did not have any formal educational qualification. The work that he would have to perform, given his previous line of work, was likely to be labour-intensive. This is opposed to the husband in *USA v USB*. Hence, in this case, the Husband, given his medical condition, would most likely be precluded from most types of work available for someone of his educational background.
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> …
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> 32 The fact that the Husband had been on medical certificate leave since his workplace accident in 2017 and has

> had no income since, was another indicator that the Husband was incapacitated from earning a livelihood, i.e., a means of securing the necessities of life.

2.3. Legal threshold: Neglect and/or refusal to provide maintenance

8 To succeed in obtaining a maintenance order under s 69 of the Charter, the applicant must show due proof that the respondent – i.e., the other spouse or parent – has neglected or refused to provide reasonable maintenance. The burden of proof lies on the party claiming maintenance.[4]

9 To determine whether the threshold legal requirement has been met, the court will usually first determine what amount of money constitutes "reasonable maintenance" based on the facts of the case. Thereafter, the court will determine whether the respondent had indeed provided or had neglected or refused to pay such reasonable maintenance.

10 In *UHA v UHB* [2020] 3 SLR 666, the Family Division of the High Court observed that "reasonableness" can be considered in several ways.

11 First, the court could consider the reasonableness of the expenses in question. Some disagreement to less common and reasonable expenses is not always a refusal to provide maintenance.

12 Second, the court could consider whether the relevant needs or expenses have been reasonably communicated to the other party. To find neglect or refusal to provide maintenance, the alleged non-paying party must be aware or ought to have been aware of the needs and expenses. For example, in relation to child's maintenance, a parent ought to be aware that provision for basic needs

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4 *UHA v UHB* [2020] 3 SLR 666, at [29]

would be required, but for expenses that go beyond the usual necessities, it may not be reasonable to expect the parent to pay when he or she was given little or no information on the expenses in question.

***UHA v UHB* [2020] 3 SLR 666; [2019] SGHCF 12**

The mother applied for maintenance on behalf of the child against the father. However, she did not provide evidence of any requests from her seeking maintenance for the child from the father. Instead, she sought to rely on affidavits filed in the course of other legal proceedings between the father and herself to argue that the father was made aware of the child's expenses and had neglected to provide for such expenses.

The Family Division of the High Court held that requests for maintenance found only in an affidavit is not a reasonable communication of the child's needs or expenses.

Justice Debbie Ong:

Reasonableness in communication to the Father in the present case

58 When asked, the Mother did not tender evidence of any requests for payment. She pointed to a text message conversation on 15 June 2017 where the Father refused to pay the $10,000 administrative fee required to enrol the child in school. The Father explained that he had paid the $10,000 fee, but it had been forfeited because of alleged delay on the Mother's part. As discussed, the touchstone for the conduct of the parties is *reasonableness*. In these circumstances, I do not think that this incident constituted unreasonable conduct sufficient to demonstrate a neglect or refusal to provide reasonable maintenance.

59 The Mother also relied on affidavits filed in the course of the other proceedings between the parties to argue that the Father was aware of the child's expenses. I do not think these affidavits, whether in the present proceedings or related ones, demonstrate neglect. The Mother has to communicate the child's needs and expenses reasonably. The Father has to have an opportunity to provide reasonable maintenance before the matter is escalated to court. Regardless of how extensive court proceedings are, I do not think the request should be found only in an affidavit.

60 I find that despite the Father's requests, the Mother did not provide any information on the child's expenses before commencing the maintenance application. The Father had tried

> to discuss child support but the Mother was not co-operative in that respect. This occurred after he had transferred a substantial sum of money to her in 2015 and 2016, and his evidence is that he had overpaid in those months because he had not been informed of and had no way of knowing the child's reasonable expenses.

13 In relation to maintenance for a child, a parent ought to be aware of the need for the provision of basic needs for the child, without the need for the other parent to make a specific request being made. However, where the expenses in question goes beyond basic needs, the need for such expenses must be reasonably communicated to the parent and supported with sufficient evidence.

> ***WGV v WGU* [2022] SGFC 75**
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> The applicant-wife ("Wife") applied for maintenance on behalf of the child against the respondent-husband ("Husband") father. Her claim included a claim for tuition expenses that amounted close to S$1,000 per month but did not provide evidence of any requests from her seeking maintenance for the child from the Husband.
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> The Family Court held that the tuition expenses of close to S$1,000 per month goes well beyond just basic needs that had to be reasonably communicated to the father.
>
> **District Judge Jason Gabriel Chang:**
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> 42 The Wife argued that even without reasonable communication of expenses, a parent ought to be aware that there needs to be the provision of basic needs without a specific request being made.
>
> …
>
> 44 However, tuition at this quantum of close to S$1,000.00 a month, goes well beyond just basic needs. The tuition did commence before the alleged family violence and when parties thereafter separated, and the Husband should have known that the Child, was taking tuition, but that is wholly different from whether this high quantum of costs for tuition had been reasonably communicated to the Husband, let alone, whether he had been consulted on it.
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> 45 The Wife also had provided no concrete evidence of the increased tuition costs, or even of evidence of the initial tuition costs that she was seeking for the Child. I had allowed parties

> the opportunity to make disclosure on in a supplementary affidavit and submissions, but no official receipts were evidenced for most of the tuition. While there are some bank transaction records for payments, they did not seem to add up to what the Wife had been claiming. Additionally, these records did not clearly indicate who was providing services and at what rate. There was a cheque provided purportedly for math tuition, but it was unclear as to what the actual quantum of fees for tuition was and if the sum included a registration fee. This cheque was also dated 29 August 2021, and as it included registration, it could be inferred that this tuition was new, and commenced after parties separated. Additionally, the fact that chemistry tuition had not been previously claimed also suggested that this was new. Moreover, no evidence had been provided on such Chemistry and Physics tuition, which costs S$280.00 each.
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> …
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> 47 Overall, I found the Wife's documentary evidence on tuition expenses and the explanations of the documentary evidence to be sorely lacking in this regard. If the Court was unclear about it from the documents provided, it was evident that the Husband would have been equally unclear as to what such costs were for, in relation to whether it to be deemed reasonable communication for this quantum of costs and further how the quantum itself is reasonable.
>
> 48 So, whilst, in this day and age, it may be common and even necessary for a child to receive some form of tuition, the quantum which the Wife was attempting to claim was high and not properly documented in evidence. While it was undisputed that the Child underwent some form of tuition, given the lack of clarity on the actual tuition costs and the reasonableness of such costs, I limited this expense to an aggregate sum of S$400.00, which I found to be more reasonable given parties' circumstances. The Wife is entitled to engage the Child in tuition beyond this amount, but that would be on her own dollar.

14 Third, the court may consider whether the paying party had used a reasonable mode of payment. For example, providing the party (who is receiving the maintenance money) with direct access to funds in a bank account or credit account may be considered to be reasonable modes of payments (see e.g., *TCT v TCU* [2015] SGHCF 3 and *VXM v VXN* [2021] SGHCF 37).

TCT v TCU [2015] 4 SLR 227; [2015] SGHCF 3

The husband was ordered by the district judge to pay interim maintenance for the wife and their son. The husband appealed against this decision. His main ground of appeal was that he had not neglected to reasonably maintain his son and wife. The husband argued that he had provided supplementary credit card to which the son's expenses were charged to.

The Family Division of the High Court allowed the husband's appeal. There was no evidence that the husband had neglected to reasonably maintain either the wife or the son. The evidence showed that the husband had been paying for a substantial portion of the household expenses through his mother. The husband had also made two supplementary credit cards available to the wife for the son and the wife had been using these cards for various expenses without any limitations imposed by the husband. On a whole, the court found that the Husband was not paying so little that he had failed to reasonably maintain her.

Judicial Commissioner Valerie Thean:

Wife's maintenance

37 Nevertheless, it is not correct to say the Husband was not maintaining the Wife in any way. She lived in the matrimonial home, where a substantial proportion of the household expenses were paid by him through his mother. The component of expenses paid for in the first instance by his mother remained the Husband's contribution. His mother was content with the mode of payment, which had been in place since 2008. It was not the Wife's contention that she had paid her mother-in-law. Her contention was that the Husband was slow to reimburse his mother. His mother, on the other hand, had no complaint. It did not make sense to impose a court order for the Husband to pay the Wife in order for her to pay his mother when both had their own arrangement which neither were unhappy with.

38 The Wife's other contention was that she contributed to the expenses. Yet the law does not render it the sole obligation of the Husband to pay for all the family's needs. While the Wife also paid for various expenses, it is commonplace in a marriage not to account for each expense and split expenses down a precise middle line; indeed the law should not encourage that. Spouses often pay for different components, and the Husband would have failed to reasonably maintain her if he was shown to have paid such a minimal proportion as to be neglectful. On the facts, I was not persuaded that the Wife was paying so much and the Husband paying so little that he had failed to reasonably maintain her.

Son's maintenance

39 Again, it was clear that the Son benefits from the household expenses paid by the Husband. In addition, the Husband had made two supplementary credit cards available to the Wife. While her evidence was that she had stopped using these cards, this was not because of any request on the part of the Husband. The Husband imposed no limitation on her use of the cards, and adduced evidence that she had been using the cards for various expenses up until relatively recently. The duty to maintain a child is shared by both parents. The Wife was not able to make out a case that she had paid so much, and the Husband so little, that he had failed to maintain his Son. And there remained, throughout, the provision of the credit cards

***VXM v VXN* [2022] 3 SLR 1174; [2021] SGHCF 37**

The husband was ordered by the District Judge to pay backdated interim maintenance for the wife and their two children, pending the finalisation of the parties' divorce.

The husband appealed and submitted that the wife had withdrawn a sum of money from their joint account when she left the matrimonial home and said that she would not dissipate it pending further discussion between the parties on the divorce. When the Wife asked for maintenance, the Husband was agreeable to her using the money she had withdrawn for her and the children's reasonable expenses. However, the Wife refused to utilise the money she had withdrawn and filed an application for maintenance

The Family Division of the High Court allowed the husband's appeal, finding that the husband did not entirely refuse to provide maintenance as the money withdrawn by the wife was of a reasonable amount to cover her and the children's expenses for some months. A spouse is not entitled to refuse to use the funds they have access to and then claim that the other spouse entirely neglected to provide reasonable maintenance

Justice Debbie Ong:

Did the Husband neglect or refuse to maintain the Wife and children?

8 In the present case, the IJ was granted on 19 March 2021. The sum of $282,000 was withdrawn and kept by the wife in end July 2020, at a time when divorce proceedings were imminent but prior to the IJ date. During this time, parties may use what would be matrimonial assets for reasonable, daily, run-of-the-mill family expenses, but they may not spend substantial sums without the consent of the other spouse…

> 9 Thus, the Wife may use the $282,000 for ordinary, daily expenses for herself and the children. She was not entitled to refuse to use the funds she has access to and then claim that the Husband entirely neglected to provide reasonable maintenance, especially when the Husband had agreed to the use of those funds.
>
> 10 Given these circumstances, the Husband, having clearly asked the Wife to use the $282,000 for reasonable expenses, could not be said to have wholly refused to provide maintenance, as the size of the sum was a reasonable one for expenses for at least some months. I note that the Wife submitted that the Husband had not agreed that she may use the monies for rent and as such, he had refused to provide maintenance. I will address this point below.

15 On the other hand, where the paying party insists on providing maintenance by requiring the other party to present receipts for every expense incurred for approval, or where reimbursement is made long after the expenses had been incurred, such arrangements may be considered to be unreasonable modes of providing maintenance (see e.g., *VXT v VXS* [2021] SGFC 119).

> ***VXT v VXS* [2021] SGFC 119**
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> The applicant-mother ("Mother") applied for maintenance from the respondent-father ("Father") on behalf of her two children. The Father had an "Arrangement" where he would deposit $200 into his account with one child and that all of the children's expenses are claimed from or paid of the account. The Mother was required to submit claims to the Father for approval, with supporting documents. It was further claimed that when there are insufficient sums in the bank account, each side would be asked to top up in equal shares, but there was no detailed history of when such top-ups had occurred, if they did occur.
>
> The Family Court held that the arrangement between parties was not a reasonable mode of provision of maintenance as the Mother had no direct access to funds or a credit card, but instead has to document all expenses to submit for reimbursement from the Father. The process of seeking reimbursement for basic expenses, which are not exceptional or ad-hoc, is cumbersome and administratively fraught.
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> **District Judge Jason Gabriel Chang:**
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> 28 … the current Arrangement for both the Mother and Father to make monthly top-ups of S$200.00 each to the

Account with some ad-hoc top-ups when there is any shortfall, where the reimbursements are fully determined by the non-care paying parent, I would find not to be reasonable. The Mother has no direct access to funds or a credit card, but instead has to document all expenses, even the mundane and repeated expenses to submit for reimbursement from the Father out of the Account, which, in essence, contains 50% of her monies for the Children. Practically speaking, under the Arrangement, the Mother has to seek approval from the Father to even spend the S$200.00 a month that she had set aside for the Children.

29 It is clear that there may be a significant number of transactions for expenses, which may very well be undocumented, such as marketing expenses. Moreover, this Arrangement behoves the Mother to not only take on primary care for the Children but to also keep a detailed account of the expenditure she incurs for the Children to obtain reimbursement. The Arrangement effectively leaves the Mother to bear the brunt of all of the Children's expenses and to then seek reimbursement for the expenses she was able to keep receipts for.

30 The process of seeking reimbursement for basic expenses, which are not exceptional or ad-hoc, is cumbersome and administratively fraught. Moreover, this Arrangement further allows the Father to make any reimbursement from the Account, which is in the joint names of him and the Daughter, as he is not required to account for his expenditure on the Children to the Mother.

2.4. Factors in making maintenance orders

16 Section 69(4) of the Charter sets out a non-exhaustive list of factors which the court may consider when ordering maintenance for a wife, an incapacitated husband or a child:

> **Court may order maintenance of wife, incapacitated husband and children**
>
> **69.**– …
>
> (4) The court, when ordering maintenance for a wife, an incapacitated husband or a child under this section, is to have regard to all the circumstances of the case including the following matters:
>
> (a) the financial needs of the wife, incapacitated husband or child;
>
> (b) the income, earning capacity (if any), property and other financial resources of the wife, incapacitated husband or child;
>
> (c) any physical or mental disability of the wife, incapacitated husband or child;
>
> (d) the age of each party to the marriage and the duration of the marriage;
>
> (e) the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family;
>
> (f) the standard of living enjoyed –
>
> (i) by the wife before her husband neglected or refused to provide reasonable maintenance for her;
>
> (ii) by the incapacitated husband before his wife neglected or refused to provide reasonable maintenance for him; or
>
> (iii) by the child before a parent neglected or refused to provide reasonable maintenance for the child;
>
> (g) in the case of a child, the manner in which the child was being, and in which the parties to the

> marriage expected the child to be, educated or trained; and
>
> (h) the conduct of each of the parties to the marriage, if the conduct is such that it would in the opinion of the court be inequitable to disregard it.

2.4.1. Factors (1) : Financial Needs, Resources, Income and Earning Capacity

17 Sections 69(4)(a) and (b) of the Charter refer to the income, earning capacity, property and other financial resources of the recipient of the maintenance as relevant factors which the Court will take into account when ordering maintenance.

18 Although s 69(4) does not expressly refer to the paying party's financial capacity, resources and income, these matters are nonetheless relevant and can be taken into consideration under the "all circumstances of the case" limb in the provision.[5]

> ***TBC v TBD*** **[2015] SGHC 130; [2015] 4 SLR 59**
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> The applicant-mother ("Mother") sought maintenance from the respondent-father ("Father") for their child, who was born out of wedlock. The Father had objected to paying maintenance on the grounds that the child was illegitimate. The District Judge ordered the Father to pay maintenance and apportioned the maintenance amount according to the parties' salaries with the Father paying the larger proportion. The husband appealed against the District Judge's order arguing that he was not liable to maintain the child as well as the amount of maintenance he was ordered to pay.
>
> The High Court dismissed the Father's appeal on his liability to pay maintenance holding that s 68 of the Charter imposed a duty on parents to maintain their legitimate and illegitimate child. The High Court also noted that financial capacity of the paying party is clearly relevant in determining the appropriate amount of maintenance under the "all the circumstances of the case" limb of s 69(4) of the Charter.

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5 *TBC v TBD* [2015] 4 SLR 59, at [18]

Justice Kan Ting Chiu:

> 18 In determining the amount of maintenance to be paid, the ability to pay must be a major consideration. Section 69(4) makes reference to financial capacity. Subsection (4)(*b*) refers to the income, earning capacity, property and other financial resources of the recipient of the maintenance and not that of the paying party. Nevertheless, as the financial capacity of the paying party is clearly relevant, it can be taken into consideration under the "all the circumstances of the case" limb of the provision…

19 Overall, it is important to bear in mind the nature and objective of an application under s 69 of the Charter, which is to provide maintenance to help the wife, incapacitated husband or child overcome their immediate financial needs.[6] In other words, as observed by the Court of Appeal in *AXM v AXO* [2014] SGCA 13, the application for maintenance under s 69 of the Charter is for interim maintenance assessed on a "necessary as well as practical" basis with a full investigation of the financial positions of the parties left for their divorce proceedings, and that such orders are intended to provide modest maintenance (often calculated on a conservative basis) to tide the parties over pending the final determination of the parties' divorce.[7]

20 Additionally, the Family Court in *WGD v WGC* [2022] SGFC 69 also observed that in an application for wife's maintenance while there are pending divorce proceedings I thin an between the parties, the court adopts a broad-brushed approach in assessing what are the immediate needs of the party. This is because the issue of what maintenance the wife should eventually be entitled to will be revisited by the court determining the ancillary matters at the divorce.[8]

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6 *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 (Court of Appeal), at [22]

7 *VVQ v VVR* [2021] SGFC 97, at [21]

8 *WGD v WGC* [2022] SGFC 69, at [30]

2.4.2. Factors (2) : Standard of Living

21 Sections 69(4)(f) the Charter directs the court to have regard to the standard of living enjoyed by the family prior to any neglect or refusal by the paying party to provide reasonable maintenance.[9]

22 In applications for interim maintenance, this means that the court does not expect the applicants to reduce their living standards and to live with only the bare necessities being provided for. The court in determining what are reasonable expenses will have regard to the parties' relative incomes and their standard of living.[10]

2.4.3. Factors (3) : Parties' conduct

23 Sections 69(4)(h) of the Charter allows the court to take into account the conduct of each of the parties to the marriage, if the conduct is such that it would in the opinion of the court be inequitable to disregard it.

24 Examples of such conduct include: (i) where one parent had unnecessarily incurred additional rental expenses as a result of a decision to co-habit with his or her new partner which is unrelated to the child;[11] and (ii) where parties had previously entered into a divorce settlement agreement (under foreign law) where the paying party had agreed to pay a larger sum of monthly maintenance for the children to take into account the difference between the age of majority in Singapore and in the foreign jurisdiction.[12]

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9 *UNZ v UNY* [2018] SGFC 69, at [21]

10 *UEC v UEB* [2017] SGFC 92, at [12]

11 *UQZ v URA* [2019] SGFC 2, at 134

12 *VME v VMF* [2020] SGFC 89

***VME v VMF* [2020] SGFC 89**

The complainant-mother ("Mother") applied for a maintenance order against the respondent-father ("Father") in respect of their 2 children – who were 20 years old and 19 years old – under s 69 of the Charter. The mother alleged that the father had not paid maintenance since the children turned 18 years of age.

The father argued that when the parties divorced in 2015 in the People's Republic of China ("PRC"), they were discussions regarding the children's maintenance from the ages of 18 to 21. Parties eventually entered into a divorce agreement where the father agreed to pay twice the amount of maintenance as compared to what he had been paying because under PRC law only permitted the provision of maintenance for children until they turn 18 so as to cater for the maintenance for the children between the ages of 18 and 21.

The Family Court found, amongst other things, that based on the agreement between the parties, the father had already paid the children's maintenance up to the age of 21 and was under no obligation to pay further maintenance for each of the children.

District Judge Suzanne Chin:

20 In determining the amount of reasonable maintenance payable by the Father for the children, I also took into consideration the provisions of Section 69(4) of the Women's Charter and in particular Section 69(4)(h) which provides that when ordering maintenance for a child, the court shall have regard to all circumstances of the case including "the conduct of each of the parties to the marriage, if the conduct is such that it would in the opinion of the court be inequitable to disregard it".

21 It was not disputed that the parties had divorced in 2015 and had arrived at settlement of issues relating to the children's maintenance as well as the division of matrimonial property in the Divorce Agreement. The Divorce Agreement clearly stated that the parties had "willingly entered into" the Divorce Agreement. While the Wife claimed during the trial that the Divorce Agreement was incomplete, she provided no details to explain what she meant. In the absence of any other agreement showing otherwise (other than the bare denial of the Mother), I accepted that this Agreement had been entered into freely and willingly by the Parties.

22 According to the Father, when the parties entered into the Divorce Agreement in 2015, there had been a discussion as to who was going to provide for the children's maintenance from the ages of 18 to 21. This was because PRC laws only permitted

> the provision of maintenance for the children up to the time they turned 18 years of age. The Father maintains that at the time, he had been paying $1,200 for the monthly maintenance of both children (See R2 filed on 20 August 20, para 9 and at page 21) but in order to provide for maintenance for the children until they reached 21 years of age, the parties agreed that the Father pay twice the amount of maintenance ie $2,400 so as to cater for the maintenance for the children after they each turned 18 and until they turned 21. The Mother did not dispute this and clarified that $1,200 is was the amount that the Father had been paying towards the both children's maintenance in 2015.
>
> 23 The Father also referred to the Mediation Agreement which parties had entered into in September 2019. According to the Father, this Mediation Agreement was entered into by the parties to address issues faced with effecting the transfer of the matrimonial flat to the Mother. He explained that prior to and up to the signing of the Mediation Agreement, the Mother had not at anytime raised any issues of his failing to pay children's maintenance and it was only after the Mediation Agreement had been signed and steps taken to transfer to the matrimonial flat to her that the Mother filed her application for the children's maintenance. This was not denied by the Mother and I accepted the Father's contentions that the Mother had filed this application for children's maintenance in an attempt to seek additional amounts of children's maintenance from him.
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> 24 Taking all of the above into consideration, I accepted that the Father had already paid for the children's maintenance up to the age of 21 based on the agreement reached between the parties and accordingly was under no obligation to pay further maintenance for each of the children.

2.5. Child maintenance

25 Section 68 of the Charter provides that it is the duty of a parent to maintain his or her children (whether legitimate or illegitimate), regardless of whether they are in his or her custody or the custody of any other person.

> **Duty of parents to maintain children**
>
> **68.**– Except where an agreement or order of court otherwise provides, it shall be the duty of a parent to maintain or contribute to the maintenance of his or her children, whether they are in his or her custody or the custody of any other person, and whether they are legitimate or illegitimate, either by

> providing them with such accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof.

26 The following persons may make the application for maintenance on behalf of the child:

> **Court may order maintenance of wife, incapacitated husband and children**
>
> **69.**– …
>
> (3) An application for the maintenance of a child under subsection (2) may be made by –
>
> (a) any person who is a guardian or has the actual custody of the child;
>
> (b) where the child has attained 21 years of age, by the child himself or herself;
>
> (c) where the child is below 21 years of age, any of his or her siblings who has attained 21 years of age; or
>
> (d) any person appointed by the Minister.

2.5.1. *Duty to maintain non-biological children*

27 Section 70(1) of the Charter extends a parent's duty to provide child maintenance to non-biological children:

> **Duty to maintain child accepted as member of family**
>
> **70**.–(1) Where a person has accepted a child who is not his or her child as a member of the person's family, it shall be the person's duty to maintain that child while he or she remains a child, so far as the father or the mother of the child fails to do so, and the court may make such orders as may be necessary to ensure the welfare of the child.

28 Two conditions must be fulfilled before the duty of a non-parent to maintain a child arises. First, the child must have been accepted as a member of

the non-parent's family. Second, there must have been a failure of the father or mother of the child to maintain him or her.[13]

29 In relation to the first condition, the concept of "acceptance" as part of one's family entails not only the voluntary assumption of responsibility for the child's maintenance but also the voluntary assumption of parental responsibility. Some strong indicators of acceptance into the family would include: the changing of the child's surname to that of the non-parent, or if the child has been encouraged to address the non-parent in parental terms, such as "father" and mother".

30 A party who marries knowing that his or her spouse has had a child from a prior relationship is generally presumed to have accepted the child as a member of his or her family (see e.g., *TDT v TDS* [2016] 4 SLR 145). However, not all step-parents will be found to have accepted a step-child as a member of his or her family. In determining whether a non-parent has accepted a child as a member of his or her family, the court will look at the objective facts and circumstances of the case.

> ***TDT v TDS* [2016] 4 SLR 145; [2016] SGCA 35**
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> The husband sought a refund of the interim maintenance paid to the wife's daughter, who was born out of wedlock from a previous relationship, pending the final judgment of their divorce. He argued that he had not at any point during the marriage, accepted the child as a member of the family and alleged that the child had never acknowledged him as her father and that they shared a distant relationship. He also claimed to never have taken part in disciplining the child and the gifts given to the child were only given out of generosity.
>
> The Court of Appeal held that the fact that the husband married the wife knowing that she had a child from a previous relationship was *prima facie* evidence of his acceptance of the child as a member of the family. Further, the husband had lived

13 *TDT v TDS* [2016] 4 SLR 145; [2016] SGCA 35, at [88]

with the child for about three years, provided for the child by buying her gifts and procuring a club membership for her. Taken together, these were sufficient to demonstrate that the husband had accepted the child as a family.

Judge of the Court of Appeal Andrew Phang Boon Leong; Justice Judith Prakash; Justice Quentin Loh:

132 As we have explained above, the fact that the Husband married the Wife knowing that she had a child from a prior relationship is *prima facie* evidence of his acceptance of Q as a member of his family. At the time of the marriage, Q was only about ten years old. The evidence which the Husband points to does not contradict the *prima facie* position, and self-serving statements made on his part are to be accorded little weight. It is not disputed that he had had lived with Q in the Park Green apartment for about three years, and had provided for Q by buying her gifts and even procured a junior membership at the American Club for Q. In our judgment, this is sufficient to demonstrate that the Husband accepted Q as a member of his family. There was therefore a basis upon which the court could order the Husband to pay interim maintenance to Q under s 127(1) of the Act.

31 Where a non-parent has accepted a child as a member of his or her family, he or she cannot thereafter withdraw that acceptance by simply changing his or her mind.

***AJE v AJF* [2011] 3 SLR 1177; [2011] SGHC 115**

The husband appealed against an order for him to pay maintenance for the wife's son from her previous marriage. He argued that he should not have to pay for the child's maintenance as the child was already receiving maintenance from his biological father, the child no longer lived with him (the husband had moved out of the matrimonial home), and that he had no legal right of access to the child.

The High Court held that while the child did receive maintenance from his biological father, the amount received was not sufficient for the child. In such a situation, the non-parent who had accepted the child as a member of his or her family still had the duty to provide the child with additional maintenance within his means as reasonable for the child.

Justice Kan Ting Chiu:

13 As it was not contended or established that the $350 per month from [B]'s father was sufficient for [B]'s upkeep, [B]'s receipt of maintenance from his father did not release the husband from his duty to provide maintenance for [B].

32 Still, in the context of the breakdown of a marriage between the non-parent and the child's natural parent, the non-parent's obligations to maintain the child usually ends when interim judgment for divorce is granted.

***TDT v TDS* [2016] 4 SLR 145; [2016] SGCA 35**

The husband sought a refund of the interim maintenance paid to the wife's daughter, who was born out of wedlock from a previous relationship, pending the final judgment of their divorce. He argued that he had not at any point during the marriage, accepted the child as a member of the family and alleged that the child had never acknowledged him as her father and that they shared a distant relationship. He also claimed to never have taken part in disciplining the child and the gifts given to the child were only given out of generosity.

The Court of Appeal held that the fact that the husband married the wife knowing that she had a child from a previous relationship was *prima facie* evidence of his acceptance of the child as a member of the family. However, his obligation to maintain the child ceased when the husband's and the wife's relationship had ended when interim judgment for divorce had been granted. The husband was therefore entitled to a refund of the maintenance he had paid to the wife after that date.

Judge of the Court of Appeal Andrew Phang Boon Leong; Justice Judith Prakash; Justice Quentin Loh:

123 Thus, where a child is taken away from the non-parent in the context of the breakdown of a marriage between the non-parent and the child's parent, this would, in our view, cause the non-parent's duty imposed by s 70(1) to cease. In our view, the duty imposed by s 70(1) on a non-parent would thus ordinarily cease when the interim judgment for divorce is granted. In the context of the division of matrimonial assets, we held in the case of *ARY v ARX* ([50] *supra*) that the starting point or default position to determine the pool of matrimonial assets should be the date that the interim judgment is granted (at [31]). In this context, we observed (at [32]):

> There is a strong justification for this position as a matter of principle. The interim judgment 'puts an end

> to the marriage contract and indicates that the parties no longer intend to participate in the joint accumulation of matrimonial assets …' (*AJR v AJS* [2010] 4 SLR 617 ('*AJR*') at [4]). The grant of interim judgment is a recognition by the court that there is 'no longer any matrimonial home, no *consortium vitae* and no right on either side to conjugal rights' (*Sivakolunthu Kumarasamy v Shanmugam Nagaiah* [1987] SLR(R) 702 at [25]). The interim judgment 'put[s] an end to the whole content of the marriage contract, leaving only the shell, that is, the technical bond' (*Fender v St John-Mildmay* [1936] 1 KB 111 at 115–117). In a general sense, it would be artificial to speak of any asset acquired *after* the interim judgment has been granted as being a matrimonial asset.
>
> …
>
> 134 In the present case, since the marriage between the Husband and Wife has broken down, and the Wife has taken Q away from the Husband, it was not appropriate for the Husband to have had to pay maintenance for Q over the period which he did (3 years and 11 months), especially since the marriage effectively lasted only for 4.5 years. We have explained above that in the usual case, a step-parent's duty to maintain a child would cease once the interim judgment for divorce is granted. We see no reason to depart from this general position in the present case. We therefore order a refund of $40,000 to the Husband, which was the maintenance paid by the Husband to Q after the month in which the interim judgment for divorce was granted (*viz*, December 2013).

33 As regards the second condition, it is sufficient to show that the child's biological parents, irrespective of their means, have not adequately provided for the child.

> ***AJE v AJF* [2011] 3 SLR 1177; [2011] SGHC 115**
>
> The husband appealed against an order for him to pay maintenance for the wife's son from her previous marriage. He argued that he should not have to pay for the child's maintenance as the child was already receiving maintenance from his biological father, the child no longer lived with him, and that he had no legal right of access to the child.
>
> The High Court held that while the child did receive maintenance from his biological father, the amount received was not sufficient for the child. In such a situation, the non-

> parent who had accepted the child as a member of his or her family still had the duty to provide the child with additional maintenance within his means as reasonable for the child.
>
> **Justice Kan Ting Chiu:**
>
> 13 As it was not contended or established that the $350 per month from [B]'s father was sufficient for [B]'s upkeep, [B]'s receipt of maintenance from his father did not release the husband from his duty to provide maintenance for [B].

34 Section 70(3) of the Charter allows a non-parent to reclaim sums expanded on maintaining a non-biological child from the child's biological parent:

> **Duty to maintain child accepted as member of family**
>
> **70.**– …
>
> (3) Any sums expended by a person maintaining that child are recoverable as a debt from the father or mother of the child.

35 However, it is to be noted that a non-parent who is in a relationship with one of the child's parents will not be allowed to reclaim the expenditure from the child's biological parent with whom he or she was in a relationship.[14] It should also be noted that although s 70(3) of the Charter provides that such a claim "shall be recoverable as a debt", the application should be filed by way of a summons to the Family Court rather than as a civil suit[15].

2.5.2. *Equal responsibility but differing obligations*

36 In *UHA* v *UHB* [2020] 3 SLR 666, the Family Division of the High Court observed that while both parents are equally responsible to provide for

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14 *TDT v TDS* [2016] 4 SLR 145; [2016] SGCA 35, at [116]

15 *VLW v VLX* [2020] SGFC 84, at [8].

their children, their precise obligations may differ depending on their means and capabilities.[16]

> ***UHA v UHB*** **[2020] 3 SLR 666; [2019] SGHCF 12**
>
> The mother applied for maintenance on behalf of the child, arguing that the father should bear all of the child's expenses and alleging that the father had neglected or refused to provide reasonable maintenance for the child.
>
> In dismissing the mother's submission, the Family Division of the High Court held that both parents are equally responsible for providing for their children, although their precise obligations may differ depending on their means and capabilities.
>
> **Justice Debbie Ong:**
>
> 36 …the law is clear – both parents are equally responsible for providing for their children, but their precise obligations may differ depending on their means and capabilities. (see *AUA v ATZ* [2016] 4 SLR 674 at [41]). I do not find that the [District Judge] erred in calculating the proportions of both parties' income on the evidence that was before him and relying on that to calculate their share of expenses. In the present circumstances, there is no basis for ordering the Father to bear all of the child's expenses.

37 To recapitulate, s 69(4) of the Charter sets out a non-exhaustive list of factors that the court may consider when ordering maintenance for a wife, an incapacitated husband or a child. Hence, there is no starting point that parents must bear the financial burden of child maintenance equally and the court has the discretion to take into consideration factors such as the relative circumstances of both parties, including their earning capacity, financial resources as well as the property each currently possesses, including their financial needs, when deciding the apportionment of the share of maintenance payable by each parent.

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16 *UHA* v *UHB* 2019 SGHCF 12, at [36].

***WBU v WBT* [2023] SGHCF 3**

At the divorce ancillary matters hearing, the District Judge ("DJ") ordered the plaintiff-father ("Father") to pay $1,035 to the defendant-mother ("Mother") as child maintenance. The DJ found that the child's reasonable maintenance was $3,450 and apportioned it in the proportion of 70 (Father) : 30 (Mother).

The Mother appealed to the High Court arguing, amongst other things, that the DJ erred in respect of the proportion which the parties were to bear the child's reasonable expenses. The Mother alleged that both parents bear equal responsibility and that the DJ failed to take into account the Father's ability to contribute equally.

Justice Debbie Ong:

35 … I am of the view that there should not be a starting point that parents bear the financial burden of child maintenance equally. While both parents have the *equal parental responsibility* to care and provide for their children… it does not necessarily follow that every component of this duty must be borne equally in numerical terms, nor is it possible to divide the parenting duties in strictly mathematical ways. Instead, the financial obligations of parents may differ depending on their means and capabilities (see *UHA v UHB* [2020] 3 SLR 666 at [36])…

36 … It would thus be undesirable to assume, as a general rule or a starting point, that the financial obligation of maintenance should be borne equally in numerical terms between the parties. Marriage entails both financial and nonfinancial obligations – each spouse contributes in different aspects towards the marriage, and they fulfil different roles according to their individual capabilities in ensuring the welfare of the child.

…

38 While I do agree that the [Father] will need a car in his line of business, it may not be necessary for him to maintain a higher-end vehicle like a Mercedes which cost at least $2,216.32 per month to upkeep, especially when the [Father] has been "struggling" to keep up with maintenance payments for his young children and is "heavily in debt". While the [Father] has declared that his salary is a gross sum of $4,657.41, the [Father] has shown in his affidavit that he has been sustaining expenses of at least $8,481.70 each month even though according to the [Father], he has not been able to keep up with his expected expenses in the region of $13,331.70 and that he has to take loans to maintain his expenses. One of the expenses that the [Father] has explained during the hearing that he has

defaulted thus far is the monthly allowance of $1,000 for his parents (even though the figure was only $300 during the ancillary hearing before DJ Chin) as the [Father] was staying with his parents after the divorce. However, the [Father] has testified during the hearing that he no longer had to pay the parents $1,000 per month as allowance as he has since moved out and has now his own place to stay. The reduction of such an expense can be channelled to pay for the expenses of the children who are still growing up. It is certainly more needful for the [Father] to spend his income on his young children than in maintaining a high-end vehicle. I add that financial capacity need not be rigidly ascertained by sole reference to income alone. Consistent with s 69(4)(b) of the Charter, the court should consider the parties' "income, earning capacity (if any), property and other financial resources", as well as significant liabilities and financial commitments. For instance, a party who earns no income but has substantial savings or had received substantial inheritance would well be able to afford to bear a higher burden of the maintenance obligation, if reasonable in the circumstances of the case. The court should also have regard to the assets received by parties after the division of their matrimonial assets.

39 Both parents have the *equal duty to maintain* the child (see s 68 of the Charter), but this does not necessarily translate to bearing an *equal quantum* of maintenance. Each case must turn on its own facts. Suppose, hypothetically, the quantum of a child's reasonable expenses is $1,000. Let us say that in one scenario ("Scenario (1)"), one parent earns $10,000 while the other earns $20,000 a month. It is assumed that both parents do not have much in other financial resources. Equal apportionment will result in each parent paying $500 towards maintaining the child. This is affordable and does not place too heavy a burden on the parent who earns less (at $10,000 a month). In such a situation it would seem that both parents have the financial means to pay a maintenance sum of $500 each. While there is no starting point of equal apportionment, to order equal apportionment in such a circumstance would nevertheless be reasonable and fair, and consistent with a broad-brush approach. Let us then vary the hypothetical situation to another scenario ("Scenario (2)"). In Scenario (2), one parent earns $10,000 while the other earns $2,000. If a maintenance quantum of $1,000 is apportioned equally, the spouse who earns less (at $2,000 per month), will have to use one-quarter of his or her monthly income for such a maintenance sum. This would seem to be a significant financial burden to that spouse. In such a situation, it will seem more reasonable for the spouse earning $10,000 to bear a higher proportion of the maintenance sum.

2.5.3. *Duty to maintain ends when the child turns 21 years old, unless special circumstances exist*

38 Section 69(6) of the Charter provides that the duty to maintain the child ends on the day the child turns 21 years old, unless there is an order directing that the duty to maintain continues for a period ending after that day:

> **Court may order maintenance of wife, incapacitated husband and children**
>
> **69**.– …
>
> (6) An order under subsection (2) ceases to be in force on the day on which the child attains 21 years of age unless the order is expressed to continue in force for a period ending after that day.

39 Notwithstanding the aforesaid, child maintenance may be ordered for children above 21 years of age in the following situations provided for under s 69(5) of the Charter:

> **Court may order maintenance of wife, incapacitated husband and children**
>
> **69**.– …
>
> (5) The court shall not make an order under subsection (2) for the benefit of a child who has attained 21 years of age or for a period that extends beyond the day on which the child will attain that age unless the court is satisfied that the provision of the maintenance is necessary because —
>
> (a) of a mental or physical disability of the child;
>
> (b) the child is or will be serving full-time national service;
>
> (c) the child is or will be or (if an order were made under subsection (2)) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or
>
> (d) special circumstances, other than those stated in paragraphs (a), (b) and (c), exist which justify the making of the order.

40 In respect of s 69(5)(c), where maintenance for a child above 21 years old is sought on account of the child receiving instruction at an educational establishment, the court will consider the circumstances of the case. It is also notable that a duty to provide university education may not extend to an overseas course where a local one would suffice.

***BON and others v BOQ* [2018] 2 SLR 1370; [2018] SGCA 68**

The parties' two sons had filed maintenance applications in their own names for the wife/mother ("Mother") to contribute to their university education in the United States (US). The Judge held that mother was not required to do so as she was not involved in their decision to study in the US and that the husband/father ("Father") was in a financially stronger position to do so.

The sons appealed, arguing that the Mother had a duty to contribute to their university expenses as a parent. The Mother, in turn, argued that she did not have a duty to pay any maintenance despite s 69(5)(c) of the WC as her sons were receiving their second tertiary education. They had already attended polytechnic and should be able to find a job and support themselves.

The Court of Appeal allowed the children's appeal in part holding that the Mother should be partially responsible for the children's university expenses. However, this responsibility did not include an overseas university education. It would be more reasonable to assess the mother's contribution based on the cost of a local university education for a foreign student.

Judge of the Court of Appeal Steven Cong; Justice Belinda Ang Saw Ean; Justice Quentin Loh

16 … we are not concerned with a case involving the pursuit of multiple university degrees. Both sons have given evidence that they believe that a university degree would improve their prospects and give them a higher earning capacity. Besides, they are both pursuing courses to improve their employability in the work force and not merely some self-improvement courses. In our view, this is a reasonable position and does not display a cavalier attitude towards the pursuit of their further studies.

17 Given that the sons' positions are reasonable, both the [Father] and [Mother] are therefore *prima facie* responsible for financing their education. The Judge dismissed the children's application on the basis that the [Father] had previously agreed

> to pay for the children's university studies, and was in a financially stronger position, but in our judgment, these two reasons cannot excuse the [Mother's] responsibility for the maintenance of her children. Even if their relationship is strained, it is her responsibility as a parent to facilitate the completion of the last leg of their education. Further, we note that the [Mother], having worked as a schoolteacher for many years in the marriage and having largely relied on the [Father] to provide for the family, is likely to have the financial capability to contribute to her children's studies. In any event, her contributions could always be deducted against her share of the matrimonial assets.
>
> 18 However, we agree with the Judge that the [Mother] should not be responsible for the sons' university expenses to the extent that this includes an *overseas* university education. The sons do not dispute that the [Mother] was not informed or consulted on their decision to study in the US, as well as the course of study. She has been estranged from her sons since 2009 and only found out about their further studies during the ancillary hearings. Although it may have been their understanding in happier times that the sons would pursue their university studies in the US, given the change in their family circumstances, the [Father] and the children quite fairly now accept that it would be more reasonable to assess the [Mother's] contribution based on the cost of a local university education for a foreign student.

41 The question of whether an overseas university education is justified depends on whether it is reasonable. In *UYT v UYU* [2020] SGHCF 8, Justice Choo Han Teck, in declining to order the father to pay the cost of overseas university education for the child, commented at [12]: "Maintenance, as we know, does not mean maintaining fully or of an unreasonable amount. To say that a parent has a duty to maintain a child is not the same as saying he must pay for all the expenses of the child's education."

2.5.4. *Relevancy and weight to be accorded to marital agreements*

42 The Court of Appeal in *AUA v ATZ* [2016] 4 SLR 674 observed that in situations where parties have entered into an agreement providing for the quantum of maintenance to be paid for a child, the court will be guided by two

general principles when deciding on the weight to be placed on the terms of such a marital agreement. First, the welfare of the child must be the overriding objective. Second, the courts would not allow a parent to abdicate his or her responsibility of parental support.

***AUA v ATZ* [2016] 4 SLR 674; [2016] SGCA 41**

Parties entered into a deed of separation which provided details provisions for their separation, including that for child maintenance. Accordingly, under the deed, the matrimonial home was to remain the husband's sole property and the husband was to arrange for the wife and their child to stay in a separate apartment. The husband had paid the rental deposit for the separate apartment and provided in the deed that he would pay the wife an additional rental sum for the duration of the rental tenancy which was to expire in 3 years from the date of the deed. Thereafter, the husband would no longer be obliged to pay for the child's accommodation and will only pay a separate sum of $1,500 for the child's maintenance.

The High Court Judge varied the terms of the deed to provide that the husband was to pay an additional rental sum for the child's accommodation on top of the child maintenance sum as stipulated in the deed. The husband appealed against the Judge's decision

The Court of Appeal dismissed the husband's appeal and held that an order for the maintenance of the child as provided in the deed would leave the child with inadequate support as it did not take into account the husband's obligation to provide for the child's accommodation. The husband cannot contract out of his obligation to provide the child with adequate accommodation.

Judge of the Court of Appeal Chao Hick Tin; Judge of the Court of Appeal Andrew Phang Boon Leong; Justice Quentin Loh:

Does the Deed set out a just and fair maintenance order?

50 First, it is clear that the provision in the Deed for the child's upkeep would leave her with inadequate support. The apartment in which the wife and child reside costs $3,750 a month in rent. While there was some dispute as to the wife's income, the notice of assessment issued by the Inland Revenue Authority of Singapore ("IRAS") for 2013 lists the wife's gross annual income at almost $37,000 (or approximately $3,100 per month). It is clear that without significant financial contribution

from the husband, the wife and child will not be able to continue staying at the apartment…

52 Second, we are of the view that the present maintenance order does not respect the principle of common but differentiated responsibilities. The husband's concession that this sum *only* reflects his obligation to provide for the child *sans* rental, in our view, settles the issue. The fact that the Deed states that the husband would not be obliged to pay the cost of accommodating the wife and the child after 14 November 2011 is of little moment. Section 68 of the Charter requires the husband to provide for "such accommodation, clothing, food and education as may be reasonable". As a matter of principle, the husband can no more contract out of his obligation to provide the child with adequate accommodation than he can contract out of his obligation to maintain the child entirely…

53 The wife relocated to Singapore only to be with the husband and she did not work until after the parties had separated. Since then, she has taken on a variety of jobs, most recently as a real estate agent. Her monthly income, as determined by IRAS, does not exceed $3,100 a month. The assets in her sole name amount to approximately $31,500. In contrast, the husband is well-established in Singapore and has substantial savings. While he contends that his business is not doing well, it cannot be disputed that he was, and continues to be, a man of substantial means, with assets in excess of $6.5m (see the Judgment at Annex A). In our judgment, it would not be a just and fair apportionment of financial responsibilities for the wife to shoulder the full cost of the rent for the apartment, bearing in mind particularly that she is the child's primary caregiver and is less well off than the husband.

54 The question then is what proportion of the rental of $3,750 the husband ought additionally to bear, given the need of the child for a roof over her head. The Judge first noted that the wife would have to be liable for at least a part of the rent since she would also be staying in the apartment. On that basis, the Judge concluded that the fairest order in the circumstances would be to require the husband and the wife to share the total cost of the accommodation equally. When we looked at the matter in the round, we saw no reason to disturb this ruling. It seems to us that this is a just apportionment, having regard to, among other things, the financial capacities of the parties and the present and future contributions of each to the continuing welfare of the child…

2.6. Rescission and variation of maintenance order

43 Where the court has made an order for maintenance for a wife, incapacitated husband or child pursuant to s 69 of the Charter, the person receiving maintenance or paying maintenance may apply to the court to vary or rescind the maintenance on proof that has been a change in circumstances of paying party or the receiving party, or for other good cause being shown.

> **Rescission and variation of order**
>
> **72**.–(1) On the application of any person receiving or ordered to pay a monthly allowance under this Part and on proof of a change in the circumstances of that person, or that person's wife, incapacitated husband or child, or for other good cause being shown to the satisfaction of the court, the court by which the order was made may rescind the order or may vary it as it thinks fit.
>
> (2) Without affecting the extent of the discretion conferred upon the court by subsection (1), the court may, in considering any application made under this section, take into consideration any change in the general cost of living which may have occurred between the date of the making of the order sought to be varied and the date of the hearing of the application.
>
> **Power of court to vary agreement for maintenance of child**
>
> **73.** The court may, at any time and from time to time, vary the terms of any agreement relating to the maintenance of a child, whether made before or after 1 June 1981, despite any provision to the contrary in that agreement, where it is satisfied that it is reasonable and for the welfare of the child to do so.

44 In the case of an order for the payment of maintenance of a child made by consent, the Court of Appeal held, in *AYM v AYL* [2014] 4 SLR 559, that the language of s 73 is wide enough to encompass a material change in the parents' circumstances as a basis to vary one parent's agreement to pay for his or her child's maintenance.[17]

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17 *AYM v AYL* [2014] 4 SLR 559, at [16]

45 Where a variation of the maintenance order is sought on the basis of a change in circumstances, such change must amount to a material change from the time the order (or agreement) was made.

> ***VEV v VEW* [2022] SGFC 58**
>
> The applicant-husband ("Husband") and the respondent-wife ("Wife") had previously entered into a consent order of court which provided for, amongst other things, the payment of maintenance for the Wife and their two children in 2015.
>
> The Husband, who was 60 years old, subsequently applied to vary the maintenance order in 2021 on the basis that there has been a material change in circumstances, in that: (i) his older child had graduated from a local tertiary instruction and his younger child has started his tertiary education; (ii) he had been retrenched from his previous employment and his current employment was of a reduced salary; and (iii) the Wife's financial circumstances are stable given that she was gainfully employed.
>
> The Family Court ordered that the maintenance for the older child to cease, and for the maintenance for the younger child to continue until she starts tertiary studies, thereafter the younger child's expenses are to be paid out of an education fund created earlier. The Husband was further ordered to continue paying maintenance for the Wife until he reaches the age of 63.
>
> **District Judge Jen Koh:**
>
> 10 Both parties referred to the prevailing legal principles in their submissions as well as the relevant provisions of law with regard their respective positions. As the law is trite in this area, I propose to summarize the main principles.
>
> 11 With regard to variation of maintenance, as set out in Sections 72, 73, 118 and 119 of the Women's Charter, Cap 353 and further expounded in seminal decisions […] on this issue, the legal principles distilled are:
>
> > (a) There is a change of circumstances of the person receiving or ordered to pay maintenance;
> >
> > (b) The change in the circumstances in question must be those prevailing at the time the agreement was entered into;
> >
> > (c) The material changes, which the party seeking to vary an agreement for maintenance must show, therefore relate to those circumstances;

> (d) It is therefore not a *de novo* application;
>
> (e) The Court can allow a variation if good cause is shown to the satisfaction of the Court;
>
> (f) The Court can take into consideration any change in the general cost of living which may have occurred between the date of the making of the order sought to be varied and the date of the hearing of the application;
>
> (g) The Court must be satisfied that it is reasonable and for the welfare of the child to allow the change;
>
> (h) The provisions are wide enough to encompass a material change in the circumstances of the parents as a basis for varying the maintenance for the child; and
>
> (i) It is a factual inquiry; in other words, it is also fact-centric and dependent on the circumstances of each individual and respective case.

46 Apart from a change in circumstances, an application for variation of a maintenance order may be made for "other good cause". There is no exhaustive list of factors as to what amounts to "good cause" and the court would consider the circumstances of each and every case before it and each case would have its own particular factual matrix.[18]

2.7. Enforcement of maintenance orders

47 Where a maintenance order has been made under s 69 of the Charter, and the person ordered to pay maintenance (referred to as, the "respondent") has failed to make one or more payments required, an application may be made for the court to enforce the maintenance order pursuant to s 71 of the Charter.

> **Enforcement of maintenance order**
>
> **71.**—(1) If any person fails to make one or more payments required to be made under a maintenance order, the court which made the order may do all or any of the following:

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[18] *AGT v AGV* [2010] SGDC 162, at [18] – [20]; *TJP v TJQ* [2015] SGFC 148, at [12]

> (a) for every breach of the order by warrant direct the amount due to be levied in the manner by law provided for levying fines imposed by a Magistrate's Court;
>
> (b) sentence the person to imprisonment for a term not exceeding one month for each month's allowance remaining unpaid;
>
> (c) make a garnishee order in accordance with the Family Justice Rules made under section 79;
>
> (d) order the person to furnish security against any future default in maintenance payments by means of a banker's guarantee which —
>
> (i) must be valid for such period (not exceeding 3 years) as the court may determine, starting from the date the order for security is made; and
>
> (ii) must be for an amount not exceeding 3 months of maintenance payable under the maintenance order;
>
> (e) if the court considers it in the interests of the parties in the maintenance proceedings or their children to do so, order the person to undergo financial counselling or such other similar or related programme as the court may direct;
>
> (f) make a community service order requiring the person to perform any unpaid community service for up to 40 hours under the supervision of a community service officer.

48 The quintessential characteristic of enforcement proceedings is the opportunity for the respondent to "show cause" (or, in simple terms, "show reason") why the maintenance arrears due to the receiving party should not be enforced in full or in part.

***Lai Ching Kin v Ng Chin Chye* [2001] SGDC 228**

The complainant-wife had applied to enforce a maintenance order made by the High Court in 1991 which required the respondent-husband to pay a monthly maintenance of $2,000 for the complainant and their three children. The complainant alleged that the maintenance was in arrears since June 1998.

The respondent claimed that there was an agreement between the parties that he only needed to pay $1,000 from June 1998, and he had acted in accordance with this agreement until December 2000.

The District Court found that there was an agreement reached between the parties in August 1998 for the respondent to pay a lesser amount and that it was unfair to enforce the full amount against the Respondent.

District Judge Shobha G. Nair:

10 While it was the Complainant's duty to prove that the Respondent had failed to make one or more payments required to be made, I was and am of the firm view that the *quintessential characteristic of enforcement proceedings* is the opportunity that is made available to the Respondent to "*show cause*" (which is the term found in the summons that is served on Respondents generally and on the Respondent in this case) or in simple language, "*show reason*" why the maintenance in arrears should not be enforced in full or as in this case, in part. As much as it is necessary to ensure that wives, ex-wives and more importantly, children of the union between man and wife, are provided reasonable maintenance, this right cannot be blindly enforced in the face of legitimate reasons for the failure of husbands and fathers to make payment.

…

30 The Respondent had adhered to the High Court Order of 1991 for seven years without default. It was his evidence that financial difficulty compelled him to start paying only $1000 from June 1998. Whether he was in fact in financial difficulty was an issue that was undoubtedly considered by the High Court when it ordered a downward variation of its earlier order. It was of some relevance to the enforcement proceedings as well. The Complainant accepted the Respondent's position that he was unable to pay $2000 per month because of financial difficulties. I did not doubt that he was in such difficulty *even today* (Exhibit "R1"). In any event, the Complainant's withdrawal of her application for enforcement in August 1998 which by her own admission was not forced on her, gave rise to the Respondent *relying* on her promise as he provided $1000 per month for the next two years and four months without any steps taken by the Complainant to enforce what she claims was due to her in accordance with the High Court Order of 1991. When the Respondent decided on his own to pay the Complainant $500 in January 2001, having sunk further into the pit of financial instability, these proceedings were instituted. The result is that by going back on her promise to accept a lower

> figure, the Respondent is now left with a hefty $38850 "bill" - a sum which he cannot afford.
>
> …
>
> 32 The quantum of maintenance that called to be enforced was $8550. This decision was in accordance with applicable principles of law. The relatively broad discretion afforded to the courts in this area of law was exercised cautiously and in the interest of justice. To have enforced the sum claimed by the Complainant would have been unfair to the Respondent and consequently a disservice to the development of law in the arena of enforcement of maintenance orders.
>
> 33 As much as a man has a responsibility under our laws to provide reasonable maintenance for his family, he too must be given a voice in our courts. Where that voice is one of reason, it must be given expression through our court orders. This was such a case.

49 Whether a respondent has "shown cause" is a fact sensitive exercise and the court will consider all relevant factors to arrive at the outcome. The touchstone of the inquiry is whether the making of an enforcement order would lead to injustice and/or where it would be inequitable to do so, given the circumstances and facts of the case.[19]

> ***VUJ v VUK* [2021] SGFC 87**
>
> The complainant-wife had applied to enforce a maintenance order made by the High Court in 1991 which required the respondent-husband to pay a monthly maintenance of $2,000 for the complainant and their three children. The complainant alleged that the maintenance was in arrears since June 1998.
>
> The respondent claimed that there was an agreement between the parties that he only needed to pay $1,000 from June 1998, and he had acted in accordance with this agreement until December 2000.
>
> The District Court found that there was an agreement reached between the parties in August 1998 for the respondent to pay a lesser amount and that it was unfair to enforce the full amount against the Respondent.

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19 *VSP v VSQ* [2021] SGFC 71, at [21]; *VUJ v VUK* [2021] SGFC 87, at [20] – [22]

District Judge Kevin Ho:

20 In *Lai Ching Kin v Ng Chin Chye* [2001] SGDC 228, the District Court noted that the quintessential characteristic of enforcement proceedings is for a respondent to be given a chance to "show cause" (ie. provide reasons which are satisfactory to the Court) why an enforcement order should not be made against him or her.

21 Whether a respondent had "shown cause" is a fact-sensitive exercise given the myriad of possible reasons why a person did not make payment in accordance with the terms of a maintenance order. Without being prescriptive or exhaustive, circumstances in which the Family Courts had found a respondent to have sufficiently "shown cause" include:

(a) where the parties had mutually agreed to a reduction of the amount payable pursuant to maintenance order or where there was an understanding (whether implicit or explicit) between the parties not to require strict compliance with the terms of the said order (see for eg., *Lai Ching Kin v Ng Chin Chye* [2001] SGDC 228 at [15], *UAE v UAF* [2017] SGFC 46 at [24] – [28] and *VAM v VAN* [2019] SGFC 96);

(b) where the respondent had went over and beyond what was required under the maintenance order and/or had provided additional support to the complainant even though the payment modality may not have been exactly in accordance with the terms of the maintenance order (see *TDR v TDS* [2014] SGDC 183 at [22] – [27]);

(c) where a complainant had used monies belonging to the respondent to pay for expenses which were within the scope of the maintenance order such that the respondent should be treated as having paid for those expenses (see for eg. *TXY v TXZ* [2017] SGFC 21); and

(d) where a respondent had a good track record of payment but is facing genuine financial difficulties in keeping up with the payments (see for eg. *VSP v VSQ* [2021] SGFC 71, a case involving financial difficulties brought about by the COVID-19 pandemic).

22 Ultimately, the touchstone of the inquiry is whether the making of an enforcement order would lead to injustice and/or where it would be inequitable to do so, given the circumstances and facts of a given case.

50 Where a respondent has failed to "show cause", the court may avail itself to the wide array of options available under ss 71(1) and of the Charter. This

include making a garnishee order against the respondent,[20] requiring the respondent to provide a banker's guarantee as security against future default,[21] ordering the respondent to attend financially counselling,[22] and making an attachment of earnings order under Part 9 of the Charter.[23]

51 Further, to secure the respondent's compliance with a maintenance order, the court may, in the appropriate case, order the respondent to show proof of payment of maintenance and/or arrears in maintenance (referred to as a "order to show payment") at a designated time and place (located in the Family Justice Courts), failing which a term of imprisonment may be imposed on the respondent.[24]

2.8. Time limit for enforcing maintenance arrears

52 Section 74 of the Charter, read with s 121(3) of the Charter, imposes a restriction on the recovery of maintenance arrears beyond a period of 3 years prior to the making to the enforcement application, unless the court, under special circumstances, otherwise allows.

> **Application of section 121**
>
> **74**.— Section 121 applies, with the necessary modifications, to any order for the payment of maintenance under this Part.

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20 Section 71(1)(c) of the Charter, read with Division 5, Part 18 of the Family Justice Rules 2014

21 Sections 71(1)(d) and 71A of the Charter

22 Sections 71(1)(e) and 71B of the Charter

23 Sections 81 – 85 of the Charter

24 *TEZ v TFA* [2014] SGDC 267, at [32] – [34]; *TGA v TGB* [2014] SGDC 368, at [25] – [28]

> **Recovery of arrears of maintenance**
>
> **121**.—(1) Subject to subsection (3), arrears of unsecured maintenance, whether payable by arrangement or under an order of court, are recoverable as a debt from the defaulter and, where they accrued due before the making of a bankruptcy order against the defaulter, are provable in the defaulter's bankruptcy and, where they accrued due before the defaulter's death, are a debt due from the defaulter's estate.
>
> …
>
> (3) No amount owing as maintenance is recoverable in any suit if it accrued due more than 3 years before the institution of the suit unless the court, under special circumstances, otherwise allows.

53 The "special circumstances" exception was included to ameliorate the hardships faced by recipients of maintenance where there are genuine reasons for not applying for the recovery of arrears before the expiration of 3 years.[25] These are circumstances which are sufficiently persuasive in themselves that to ignore them would do great injustice to the party receiving maintenance.[26]

54 Examples of "special circumstances" include: (i) where a wife had taken out a massive mortgage in order to keep the flat for herself and her young children, and was unable to get in touch with her husband in spite of attempts to do so;[27] (ii) where the recipient of a maintenance order had his or her attempts at enforcement frustrated by the payor's successful attempt to evade service or where the payor had disappeared in order to avoid the payment of maintenance;[28] and (iii) circumstances where the payor had made unilateral deductions from court-ordered maintenance, thereby shifting the burden unto an

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25 *Meenatchi d/o Kuppusamy v Subbiah Pillai* [2013] SGDC 202, at [17]

26 *Koay Guat Kooi (m w) v Eddie Yeo* [1997] SGHC 197, at [12]

27 *Koay Guat Kooi (m w) v Eddie Yeo* [1997] SGHC 197, at [12]

28 *Meenatchi d/o Kuppusamy v Subbiah Pillai* [2013] SGDC 202, at [24]

overseas claimant to fly to Singapore to personally file a complaint under s 71 of the Charter.[29]

55 It should additionally be noted that while the time bar applies to orders of maintenance made under Part 8 of the Charter, it does not apply to orders for maintenance made under ancillary hearings pursuant to Part 10 of the Charter (see *VLW v VLX* [2020] SGFC 84, at [20] read with *Lee Siew Choo v Ling Chin Thor* [2014] SGHC 185).

[29] *Lee Meng Leng v Tan Huat Soon* [2014] SGDC 224 at [46] and [47]