

THE NEXT FIFTY YEARS OF THE *WOMEN'S CHARTER*—RIPPLES OF CHANGE

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What changes will the next fifty years of this remarkable statute, which enactment was so uniquely bonded with the process of national reconstruction of Singapore from the late 1950s, bring? This article attempts to project the changes that appear likely in the short and medium terms and will also, rather foolishly, speculate on changes that are conceivable over the longer term.

I. THE *WOMEN'S CHARTER*

A. *Impact of its Enactment*

The *Women's Charter*¹ was enacted in 1961² as Ordinance 18 of the then State of Singapore.³ It was and remains the core of the family law that regulates all

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¹ Cap. 353, 2009 Rev. Ed. Sing. [*Women's Charter*], as amended by *Women's Charter (Amendment) Act*, No. 2 of 2011 [*Women's Charter (Amendment) Act 2011*], largely, w.e.f. 1 June 2011.

² For a brief discussion of the Bill's passage to enactment, see Leong Wai Kum, *Principles of Family Law in Singapore* (Singapore: Butterworths Asia, 1997) at 38-44 [*Principles*]. Also, see Editorial to this Special Issue.

³ Singapore was founded by Sir Stamford Raffles of the British East India Company for the British Crown in 1819. By a statutory power the Company was empowered to annex the state of Singapore with the Prince of Wales Island (the current state of Penang of the federation of Malaysia) and Malacca to form the Straits Settlements in 1825. As the Company's power waned, by 1866 control over the Straits Settlements, as a colony, was transferred to the Colonial Office in London. In 1946, after the Second World War, the Straits Settlements were officially disbanded whereupon Singapore, together with Cocos Island and Christmas Island, became a Crown Colony. When the other states in peninsula Malaya achieved independence as the Federation of Malaya in 1957, Singapore became a separate State. Small steps were taken whereby Singaporeans gradually achieved self-governance. An election to fill the whole of the Legislative Assembly was permitted in 1959. In 1963 Singapore was shorn off its British colonial yolk when it joined with the Federation of Malaya, Sabah and Sarawak as the new federation of Malaysia. Singapore's membership of this federation was never comfortable and on 9 August 1965 it separated to become the Republic of Singapore that it still remains. For brief discussion of our administrative history, see *Principles*, *ibid.* at 1-4.

Singaporeans except those who have married under the Muslim marriage law.⁴ Its enactment substituted the motley marriage laws that applied to Singaporeans of different ethnic and religious affiliations⁵ for a unitary monogamous marriage law. Enough has been written of the impact of the substitution of those previous marriage laws, including those judicially characterized as polygamous, with the monogamous marriage law in the *Women's Charter* to require elaboration here.⁶ Suffice it to remark that, apart from re-aligning marital commitment towards monogamy, the marriage statute raised the legal status of married women to be the equal of their husbands and in so doing was invaluable to economic progress.⁷

B. Amendments

Since the formation of the Republic of Singapore in 1965 where legislative power resides in the Parliament of Singapore, there were significant amendments to the *Women's Charter* in 1967,⁸ 1980⁹ and 1996¹⁰ where proposals were deliberated upon by a Select Committee of Parliament.¹¹ There was a relatively smaller amendment in 1975¹² and the latest in 2011, discussed immediately below. There were further consequential changes following amendments to other statutes in 1969,¹³ 1973,¹⁴ 1993,¹⁵ 1994,¹⁶ 2001,¹⁷ 2005¹⁸ and 2007.¹⁹

⁴ The *Women's Charter*, s. 3(1) provides 'this Act shall apply to all persons in Singapore and shall also apply to all persons domiciled in Singapore' and s. 3(2) provides '[The] Parts [on marriage, regulation of the husband-wife relationship, termination of marriage and applications for financial and child-related orders following termination of marriage] shall not apply to any person who is married under... Muslim law...' For brief discussion of the relationship between the non-Muslim and Muslim marriage and family laws in Singapore, see Leong Wai Kum, *Elements of Family Law in Singapore* (Singapore: LexisNexis, 2007) at 877-918 [*Elements*].

⁵ For an introduction to the Chinese customary marriage law, the Hindu religious marriage law, the Sikh religious marriage law, the Jewish marriage law as well as the civil marriage statute and the Christian marriage statute enacted for the territory, see *Principles*, *supra* note 2 at 63-148.

⁶ See, e.g., Leong Wai Kum, "Fifty years and more of the *Women's Charter* of Singapore" [2008] Sing. J.L.S. 1 at 7-9, and Andrew Phang Boon Leong, *The Development of Singapore Law: Historical and Socio-Legal Perspectives* (Singapore: Butterworths, 1990) at 276-282.

⁷ See Leong Wai Kum, *ibid.* at 9-10.

⁸ See *Women's Charter (Amendment) Act*, No. 9 of 1967 with effect from 2 June 1967. For a short description of all amendments up to 1997, see *Principles*, *supra* note 2 at 45-61.

⁹ See *Women's Charter (Amendment) Act*, No. 26 of 1980 with effect from 1 June 1981.

¹⁰ See *Women's Charter (Amendment) Act*, No. 30 of 1996 with effect from 1 May 1997.

¹¹ See *Report of the Select Committee on the Women's Charter (Amendment) Bill*, Paper No. 7 of 1967, *Report of the Select Committee on the Women's Charter (Amendment) Bill [Bill No. 23/79]* and *Report of the Select Committee on the Women's Charter (Amendment) Bill [Bill No. 5/96]*, online: Lawnet <www.lawnet.com.sg>, respectively.

¹² See *Women's Charter (Amendment) Act*, No. 8 of 1975.

¹³ See the *Statute Law Revision Act*, No. 14 of 1969.

¹⁴ See *Statutes of the Republic of Singapore (Miscellaneous Amendments) Act*, No. 21 of 1973 and *Statutes of the Republic of Singapore (Miscellaneous Amendments) (No. 3) Act*, No. 34 of 1973.

¹⁵ See the *Supreme Court of Judicature (Amendment) Act*, No. 16 of 1993.

¹⁶ See the *Judicial Committee (Repeal) Act*, No. 2 of 1994.

¹⁷ See the *Children and Young Persons (Amendment) Act*, No. 20 of 2001.

¹⁸ See the *Statutes (Miscellaneous Amendments) (No. 2) Act*, No. 42 of 2005.

¹⁹ See the *Statutes (Miscellaneous Amendments) Act*, No. 2 of 2007 as well as the *Penal Code (Amendment) Act*, No. 51 of 2007.

C. *Women's Charter (Amendment) Act 2011*

The latest amendment Bill was presented to the Parliament of Singapore for its first reading on 22 November 2010²⁰ and enacted on 10 January 2011.²¹

The amendment makes at least two changes of note. The first change accepts the proposal of the Singapore Academy of Law's Law Reform Committee that:²²

the *Women's Charter* be amended so that the Singapore court will have the power to order financial relief after a foreign divorce or annulment of marriage or legal separation. The powers will be co-extensive with and exercised on the same discretionary grounds as if the court had original matrimonial jurisdiction. All circumstances will be taken into consideration, including the foreign dimensions of the case and the existence and effectiveness of orders (if any) made by the relevant foreign court. There is a risk of abuse of the expanded powers, so certain safeguards are also recommended. Thus, the applicant must first seek permission to apply for this relief, and permission may be denied if the parties do not have sufficient grounds for relief, or Singapore is not the appropriate venue to provide such relief.²³

When this extension came into effect on 1 June 2011, the 'ancillary' character of the power to order the division of the former spouses' matrimonial assets under the *Women's Charter*, s. 112²⁴ and the power to order the former husband to continue to provide reasonable maintenance to his former wife under s. 113²⁵ was changed in that they are no longer limited to matrimonial proceedings brought before the Family Court in Singapore.

These powers may be accessed whether the proceedings leading to termination of the marriage was brought in or outside of Singapore. Such a change is welcome and may be overdue as increasing numbers of Singaporeans divorce outside Singapore. Where the proceedings are from outside Singapore, three formal limits need to be met. The court in Singapore should possess jurisdiction that is akin to matrimonial jurisdiction should the matrimonial proceedings be brought here instead of abroad, the leave of the court is required for any such application for financial relief and, before making the order sought, the court should consider whether Singapore is the appropriate forum.²⁶

²⁰ See *Women's Charter (Amendment) Bill*, No. 34 of 2010.

²¹ See Sing., *Parliamentary Debates*, vol. 87, col. (10 January 2011). Most of the changes come into force on 1 June 2011 while a few come into force on 1 September 2011.

²² See Sing., Singapore Academy of Law, *Ancillary Orders after Foreign Divorce or Annulment*, (Singapore: Singapore Academy of Law, 2009) at Executive Summary point 7, online: Lawnet <www.lawnet.com.sg>.

²³ See *Women's Charter (Amendment) Act 2011*, section 12, which inserted a new Chapter 4A "Financial relief consequential on Foreign Matrimonial Proceedings" to Part X of the *Women's Charter* that is on "Divorce, Judicial Separation, Nullity of Marriage, Financial Provisions consequent on Matrimonial Proceedings, Welfare of Children and General Provisions".

²⁴ S. 112(1) opens with "The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage ..."

²⁵ S. 113 provides "The court may order a man to pay maintenance to his wife or former wife—(a) during the course of any matrimonial proceedings; or (b) when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage."

²⁶ See the new ss. 121C, D and F of the *Women's Charter*.

With this extension, the ancillary powers operate more broadly. Former spouses may access them to obtain orders of financial relief whether their marriage was terminated by judgment from the Family Court in Singapore, under Muslim law including by judgment of the Syariah Court in Singapore²⁷ or by judicial or other proceedings in a foreign country.

The other amendment enhances enforcement of maintenance orders. One change appears more functional than principled. The writer and her colleagues²⁸ had argued against it but we did not persuade.²⁹ A new formal requirement is added to marriage solemnization whereby someone hoping to obtain a marriage licence must declare if he or she has been defaulting in maintenance payments to a former wife or a child. This confuses better enforcement of maintenance orders with the formality of solemnization of marriage. The new requirement gives the impression that the failure to meet maintenance obligations is among the most significant information an aspiring spouse should seek to discover of the other. One would have thought that it is more important to discover the intended spouse's views of how to co-operate for mutual benefit or how to discharge parental responsibilities.

D. Current State of the Women's Charter

The current state of the *Women's Charter* is sound. For a statute that regulates the most important relationships we may ever form during our lives, the *Women's Charter* is laudable in exhorting moral values. This is as it should be. Good family law should teach us what moral living is. Even if these exhortations cannot be turned into enforceable legal obligations they remain justifiable components of good family law.

In the rest of this paper, I shall speculate on possible changes over the next fifty years. I shall be doing what every academic knows to be foolhardy as there is every chance that I may be completely off the mark. The exercise is undertaken because there is no occasion more fitting than the fiftieth anniversary of an especially influential statute to strain for a glimpse of what else might come to be.

I suggest three groups of changes; one each for the short term, the medium term and the fairly distant future. Ripples from these changes may be visualized as starting

²⁷ The Syariah Court is the customised court formed in 1957 to resolve disputes where all parties are Muslim and the subject matter in dispute is one of a select group; for current law, see the *Administration of Muslim Law Act* (Cap 3. 1999 Rev. Ed. Sing.), ss. 35(1) and (2) [AMLA] discussed briefly in *Elements*, *supra* note 4 at 901-916. The 'ancillary' powers in the *Women's Charter*, ss. 112 and 113 were from 1999 made available to persons married under Muslim law whose marriage was terminated under Muslim law: see the *Administration of Muslim Law (Amendment) Act*, No. 20 of 1999 which inserted s. 35A to the AMLA as well as inserted s. 17A into the *Supreme Court of Judicature Act* (Cap 322, 2007 Rev. Ed. Sing.), and the *Supreme Court of Judicature (Transfer of Proceedings Pursuant to Section 17A(2) Order) 2007*, S673/2007, which direct that the civil courts handle an application by Muslim parties in the same way as an application by non-Muslim parties.

²⁸ She, with Assoc. Profs. Debbie Ong Siew Ling and Chan Wing Cheong, submitted a joint letter in response to a call for feedback on the public online feedback channel (REACH) on 28 September 2010.

²⁹ The Ministry of Community Development, Youth and Sports ("MCYS") released on REACH on 22 November 2010 a document '*Public Consultation on Women's Charter Amendments*' acknowledging some criticism to some proposals but preferring the feedback that were supportive, online: MCYS < <http://app1.mcys.gov.sg/MCYSNews/ResponsestoFeedbackonWCandCYP.aspx> > (last accessed 16 April 2011).

from the centre and expanding outwards—a fitting imagery as the *Women's Charter* is at the core of the non-Muslim marriage and family law in Singapore.

II. FIRST RIPPLES: FURTHER PROTECTION OF CHILDREN

A. Parental Responsibility

The first set of ripples of change may well be the further protection of children. The law in Singapore may have been at the vanguard of legal protection of children. The writer has long applauded its entrenchment of 'parental responsibility' as the fulcrum on which legal regulation of the parent-child relationship rests.³⁰ Parental responsibility is exhorted by the *Women's Charter*, s. 46(1) providing "the husband and the wife shall be mutually bound to co-operate with each other ... in caring and providing for the children" right from the enactment of the Act in 1961 when this was s. 45(1). The writer has observed that the exhortation conveys several meaningful messages³¹:

The moral view of parenthood encapsulated in [s. 46(1)] underlines several points:

1. that parents should view their relationship with the child from the perspective of responsibility;
2. that a parent should exercise authority over the child co-operatively with the other parent;
3. that the parents are equal in their responsibilities towards their child; and
4. that when a parent exercises his or her authority over a child, this should be in order to discharge his or her responsibility to care and provide for the child.

That we had this moral message in our statute since 1961 is all the more remarkable as only in 1989, through the *United Nations Convention on the Rights of the Child's* article 3(2),³² did 'parental responsibility' gain international acceptance. The

³⁰ See *Principles*, *supra* note 2 at 442-447. See also, *Elements*, *supra* note 4 at 246-259.

³¹ See *Elements*, *supra* note 4 at 249. While the *Women's Charter*, s. 46(1) is an exhortation lacking the power of direct enforcement, it is supported by the *Guardianship of Infants Act* (Cap 122, 1985 Rev. Ed. Sing.), s. 3 which provides the practical impact: see *Elements*, *supra* note 4.

³² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at United Nations High Commissioner for Refugees <<http://www.unhcr.org/refworld/docid/3ae6b38f0.html>> (last accessed 24 April 2011) [*UNCRC*]. The Convention provides that "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents ...", at article 3(2). See also, N. V. Lowe, "The meaning and allocation of parental responsibility—A common lawyer's perspective" (1997) 11 Int'l J.L. Pol'y & Fam. 192 at 192-3 which traces the gradual acceptance of the concept in Europe and suggests it may have started when West Germany substituted 'parental power' with 'parental care' in 1970, followed by Norway when it introduced 'parental responsibility' into its *Children Act 1981* and was boosted by the Council of Europe's Recommendation R 84(4) (Council of Europe, Committee of Ministers, *Recommendation R(84)4* (1984)) that "parental responsibilities" better conveys the modern view of the parent-child relationship as "a collection of duties and powers which aim at ensuring the moral and material welfare of the child". Professor Lowe adds that the concept was creeping into English case-law from the 1980s although it was not formally introduced until the *Children Act 1989* (U.K.), 1989, c. 41 [*Children Act 1989* (U.K.)].

Women's Charter may have been ahead of the curve in placing legal regulation of this relationship between parents and their child upon this moral basis.³³

While parental responsibility is the ideal basis of legal regulation of the relationship, there remain areas that are less outstanding. One weakness is the continued acceptance of the idea of legitimacy. I suggest that the idea is ripe for abolition. We need first to appreciate that legitimacy is an additional gloss upon the fact of the parent-child relationship.

B. *Legitimacy as Gloss upon the Biological Parent-child Relationship*

Legitimacy is the common law concept whereby parent-child relationships which meet its criteria are bestowed the label 'legitimate' leaving those which fail as 'illegitimate'. By the substantive common law rule of legitimacy,³⁴ the criteria rested purely on facts at the very formation of the parent-child relationship: the child must have been conceived, or latest, born of parents who are parties to a valid marriage. A child born of validly married parents (including one whose validly married parents' marriage had become terminated by death or divorce between his conception and birth) is legitimate while every other child is illegitimate. Once the child's birth does not conform the child is 'illegitimate' for life. Nothing the parents do can change the child's status although, technically, it is possible for the parents to adopt their own child upon which grant of the court order of adoption their relationship becomes transformed into a legitimate court-ordered adoptive parent-child relationship.

'Legitimacy' conveys exalted status. At the common law, there was a huge difference in the legal treatment of a legitimate child compared with an illegitimate child. Only the legitimate child received full legal protection. An illegitimate child was practically *persona non grata*.

C. *How Legitimacy Came to Singapore Law*

The common law substantive rule of legitimacy was received into Singapore through the general reception of English law by the Second Charter of Justice 1826.³⁵

1. *Was the idea alien to Singaporeans?*

It may well be that the idea of legitimacy was not part of Chinese, Indian or perhaps even Malay-Muslim culture. The courts of Malaya and Singapore have made pertinent observations.

³³ The *Women's Charter*, s. 46(1) was modeled upon article 159 of the *Swiss Civil Code* (1925); see *Sing. Legislative Assembly Debates*, vol. 12(1), col. 438 at 485 (6 April 1960). See also, Leong Wai Kum, "Fifty years and more of the *Women's Charter* of Singapore", *supra* note 6 at 12-15.

³⁴ Acknowledged in William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1766-1769) vol. I, Chapter 16, i at 454-7.

³⁵ Discussion of the process is beyond this article. See the instructive monograph in Andrew Phang Boon Leong, *From Foundation to Legacy: The Second Charter of Justice* (Singapore: Singapore Academy of Law, 2006). Of the inevitable compromises following from the process permitting selected customs to be raised to the status of law to modify pristine common law rules in order to avoid causing oppression to local inhabitants, see Leong Wai Kum "Common Law and Chinese marriage custom in Singapore", in Andrew Harding, ed., *The Common Law in Singapore and Malaysia* (Singapore: Butterworths, 1985) 177-194.

In 1949, Chief Justice Murray-Aynsley expressed dismay at the state of the law in Singapore, in particular, the way it treated Chinese customs. In *the Estate of Yeow Kian Kee (deceased); Er Gek Cheng v. Ho Ying Seng*³⁶ the question was whether the plaintiff Er Gek Cheng had proven she was a lawful widow (as secondary wife) of the deceased Yeow Kian Kee. It is this observation of the Chief Justice that bears note³⁷:

Cases of this kind have been fairly numerous in this Colony and by this time the law is, I think, settled, although it is not satisfactory.

To begin with, the Courts in an attempt to apply English law to Chinese custom made the *t'sip*,³⁸ for purposes of inheritance, equivalent to the *t'sai*,³⁹ which gave her a position which she had not enjoyed in China. At the same time the Courts have, as regards legitimacy, made marriage an essential condition, which is far removed from Chinese ideas, and, therefore, in order to prevent persons, who would according to Chinese ideas be entitled to a fair share in their father's property, from being deprived of it, unions have been held to be true marriages which would not have been so regarded by the Chinese. The Chinese have not I think any idea of legitimacy as distinct from paternity.

The Chief Justice did not have to elaborate further but found for the plaintiff. His observation of the absence of the idea of legitimacy among the Chinese bears noting.

There was also the case of *Khoo Hooi Leong v. Khoo Chong Yeok*⁴⁰ from Penang decided by the Privy Council where Lord Russell of Killowen noted, "[T]he respondent concedes (and in their Lordships' opinion rightly concedes) that the evidence of recognition would be sufficient to establish legitimation by recognition according to Chinese custom."⁴¹

A better way of stating the point might have been that an acknowledgement of paternity by a Chinese father would seal his relationship with a child in the view of the community. No one would question they were father and son. The court decided, however, not to raise this Chinese custom to law.

Similarly, although the Chinese had long practised adoption to ensure continuation of the family line, with the community regarding the child so customarily adopted as a full member of the 'adoptive' father's family, the Straits Settlements courts never recognised the relationships formed from such customary adoptions.⁴² These decisions hinted at Chinese pragmatism that would not have embraced any additional

³⁶ [1949] 15 M.L.J. 171.

³⁷ *Ibid.* at 172.

³⁸ Also known as the inferior or secondary wife. By Chinese custom she is someone the man selects himself, marries in a simple ceremony with both parties knowing that her position, while accepted by the community, is of vastly lower status than that borne by the primary wife.

³⁹ Also known as the primary wife. By Chinese custom, the girl is chosen by the elders of the man, married in an elaborate ceremony with all parties knowing that her status is official and inviolable as long as she behaves as social etiquette demands of a primary wife. The secondary wife is expected to serve and obey the primary wife who is her elder and is regarded as the official mother of all the man's children including those born of his secondary wives.

⁴⁰ [1930] S.S.L.R. 127.

⁴¹ *Ibid.* at 136.

⁴² See, e.g., *In the Goods of Goh Siew Swee, deceased, Goh Tat Eng v. Goh Eng Loon* [1910] S.S.L.R. 4 at 18-29.

requirement upon an acknowledged relationship between a man, in particular, and his child, whether this relationship arose biologically or from customary child adoption.

It appears that the Indians, at least those who were Hindus, also did not embrace the idea of legitimacy. In the Federated Malay States court sitting in Kuala Lumpur in 1958 in *Re Vasandah an Infant*⁴³ Smith J., hearing a father's application for custody of his young daughter, observed⁴⁴:

It should always be remembered that in Hindu law the position of illegitimate children differs from that in English law. As *Mayne on Hindu Law and Usage*⁴⁵ says:

'It is also to be remembered that, as the English rule which prevents bastards tracing to their father has no existence in Hindu law, so the fact of illegitimacy does not prevent bastard brothers claiming to each other.'

The judge found that it was unclear whether the relationship between the father and his daughter was legitimate. This, being unimportant under Hindu law and under the prevailing (West Malaysia) Civil Law Ordinance's⁴⁶ direction that a custody application should be decided as in England (by what is in the welfare of the child), the judge was content to make the order sought.

There was, thus, some judicial commentary that legitimacy may not be innate to our local cultures. Although no similar commentary was recorded of Muslim law, it is of note that Ahmad Ibrahim⁴⁷ pointedly began his chapter on the Singapore Muslim family law on parent and child with the Muslim rule on how to determine paternity thus⁴⁸:

According to the Shafii School of Law when a child is born to a woman who is married to a man (a) after six months from the date of the marriage; (b) within four years of the termination of the marriage, the mother not having remarried, the paternity of the child is established with the husband. [Otherwise] the paternity would not be so established unless the man asserts that the child is his and does not say that the child is the result of fornication (*zina*).

2. Common law of legitimacy received into Singapore

The Court of Appeal of the Straits Settlements sitting in Singapore in *In the Matter of the Estate of Choo Eng Choon, deceased, Choo Ang Chee v. Neo Chan Neo, Tan Seok Yang, Cheang Cheng Lim, Lim Cheok Neo, Mah Imm Neo and Neo Soo Neo*,⁴⁹

⁴³ [1958] 3 Malayan Cases 231-235.

⁴⁴ *Ibid.* at 233.

⁴⁵ John Dawson Mayne, *Mayne on Hindu Law and Usage*, 8th ed. (Madras: Higginbothams), at 775.

⁴⁶ See *West Malaysia Ordinance*, No. 5 of 1956 with effect from 7 April 1956 that substituted the *Federated Malay State's Civil Law Enactment*, No. 3 of 1937.

⁴⁷ The first Attorney-General of Singapore from 1963-1969 who had rendered distinguished public service for 22 years was an acknowledged expert on Muslim law.

⁴⁸ See Ahmad Ibrahim, *Family Law in Malaysia and Singapore* (Singapore: Malayan Law Journal, 1978) at 278, citing A. A. Fayzee, *Outlines of Muhammadan Law* (Oxford: Oxford University Press, 1955) at 164 and Nawawi, *Minhaj-et-Talibin: A Manual of Mohammadan Law According to the School of Shafii*, trans. by E. C. Howard (London: W. Thacker & Co., 1914) at 367.

⁴⁹ [1911] 12 S.S.L.R. 120.

abbreviated to and better known as, *The Six Widows Case*, affirmed how the common law idea would apply here.⁵⁰

A rich Chinese man died intestate leaving a vast fortune. A woman married as primary wife (Tan Kit Neo) predeceased him leaving one son. Six other women claimed to be his widows, some having children with him including one born before marriage. The administrator of his estate applied for declarations including whether the children were 'legitimate' as required by the (English) Statute of Distributions that applied here.⁵¹ By a majority decision the Court of Appeal upheld most of the decisions of the court below.

Chinese customary marriages were polygamous. Four of the women were lawfully married (Tan Seok Yang as primary wife and Neo Chan Neo, Cheang Cheng Kim and Mah Imm Neo as 'inferior wives' or concubines). The law treated these marriages as of equal status. The 'widow's share' of the estate should be shared equally by these lawful widows. Two of the women failed in their claims (Lim Cheok Neo did not undergo solemnization while Neo Soo Neo was married as primary wife while Tan Kit Neo was still alive so this was solemnization was void as 'bigamous'.) All children born of the lawfully married women including the child who was born before his mother was married were legitimate. The 'child's share' of the estate should be shared equally by all these legitimate children.

By this case of enormous proportions, the Court of Appeal, *inter alia*, affirmed the common law of legitimacy as received law in the Straits Settlements, although the way it was applied to the Chinese who were held to be allowed to marry polygamously would not be familiar to a common lawyer in England. Even a male child could only succeed to a father's intestate estate, not just on proof of biological connection (as Chinese custom would likely have allowed), but additionally on proof that the conception or birth had legitimately taken place during the subsistence of a valid marriage between his parents.

D. *Developments of the Concept in Singapore*

Since the reception of the common law concept of legitimacy Singapore has followed a singular trend of 'damage control' in (1) restricting the scope of the rule and (2) reducing the harsh effects the common law imposed on an illegitimate child.⁵²

Of the first, there have been rules enacted to restrict the scope of the rule of legitimacy and its concomitant illegitimacy. Among these are the statutory scheme of legitimation of a child born before marriage upon his or her parents' subsequent

⁵⁰ See Kenneth K. S. Wee, "The Law of Legitimacy in Singapore" [1976] *Mal. Law Rev.* 1 at 4 as well as "English Law and Chinese Family Custom in Singapore: The Problem of Fairness in Adjudication" (1974) 16 *Mal. Law Rev.* 52 at 63-65 and 70-71 for the extent to which the common law rules were modified by what the courts accepted as Chinese custom.

⁵¹ Until we enacted our own *Intestate Succession Act* (Cap. 146, 1985 Rev. Ed. Sing.) as Act 7 of 1967.

⁵² See Kenneth K. S. Wee, "The Law of Legitimacy in Singapore", *supra* note 50. These developments effectively mirrored those in England: see, e.g., Jonathan Herring, *Family Law*, 3d. ed. (Harlow: Pearson, 2007) at 370-371.

marriage with each other,⁵³ the *Women's Charter*, s. 111(1) that allows the child whose parents' marriage is annulled for a voidable cause to retain his or her legitimacy⁵⁴ and s. 111(2) that allows a child whose parents' marriage is void to be deemed legitimate if either or both of his or her parents reasonably believed their marriage was valid at the time they solemnized it.⁵⁵

The High Court recently observed that legitimation of a child, after birth, upon the valid solemnization of marriage between his or her biological parents builds upon the common law substantive rule of legitimacy. Tan Lee Meng J. in *Lim Weipin and another v. Lim Boh Chuan and others*⁵⁶ rightly decided that the provisions in the *Legitimacy Act*⁵⁷ only allow for legitimation of a child after birth upon the solemnization of marriage between his or her biological parents.⁵⁸ Legitimation is an exception to the common law substantive rule of legitimacy⁵⁹ and reasons from the substantive rule in that, despite the child's biological parents not being parties to a valid marriage at the time of the child's birth, the law confers legitimated status on the child when the parents subsequently validly marry one another. In other words, as unfortunate as it may be for the child to be determined not to have been legitimated upon the marriage of one of his or her biological parents, there is a need to maintain some internal coherence within the law of legitimacy.

Of reducing the effects upon the child of being 'illegitimate', several changes made to the law by the legislature or the courts achieved this. The *Women's Charter* s. 68⁶⁰ has since 1996 expressly provided that a parent is liable to provide maintenance "whether [the children] are legitimate or illegitimate". The High Court in *Tan Siew Kee v. Chua Ah Boey*⁶¹ affirmed the Malayan decision in *Re Miskin Rowter*⁶² to decide that the law of guardianship and custody in Singapore as well applies equally to legitimate as illegitimate children. More recently, Parliament has equalised the entitlement of gaining Singapore citizenship by illegitimate children with that of

⁵³ See the *Legitimacy Act* (somewhat inaccurately entitled) (Cap. 162, 1985 Rev. Ed. Sing.) [*Legitimacy Act*] originally enacted as the *Straits Settlements Ordinance*, No. 20 of 1934 and see *Lim Weipin and another v. Lim Boh Chuan and others* discussed immediately below.

⁵⁴ First enacted through the *Women's Charter (Amendment) Act*, No. 9 of 1967 replacing a far more limited provision in the previous s. 92; for discussion of current provision see *Elements*, *supra* note 4 at 396-399.

⁵⁵ The provision was first enacted through the *Women's Charter (Amendment) Act*, No. 14 of 1969 but the restriction requiring the parents to reasonably believe their marriage was valid at its solemnization was added through the *Women's Charter (Amendment) Act*, No. 8 of 1975. The intended benefit of the provision is, unfortunately, affected by the narrow reading the Court of Appeal in *Re Estate of Liu Sinn Min, deceased* [1974-1976] S.L.R.(R.) 298 chose to give to the phrase 'void marriage' as a result of which the second attempted marriage by the man (that was void for breach of the *Women's Charter* prescription of monogamy) was held not to be included in the phrase so that the provision did not apply to bestow legitimate status on children born to him and the woman he attempted to marry. The case was decided before the current restriction to s. 111(2) was added and it is unclear if it remains good law. See *Elements*, *supra* note 4 at 399-402.

⁵⁶ [2010] 3 S.L.R. 423 (H.C.).

⁵⁷ *Supra* note 53.

⁵⁸ *Supra* note 56 at paras. 66-68, Tan Lee Meng J. was citing *Principles*, *supra* note 2 at 608-609.

⁵⁹ *Supra* note 34.

⁶⁰ An expanded version of the former s. 121 and inserted through the *Women's Charter (Amendment) Act*, No. 30 of 1996.

⁶¹ [1987] S.L.R.(R.) 725; [1988] 3 M.L.J. 20.

⁶² [1963] 1 M.L.J. 341.

legitimate children through their connection with their parents who are themselves Singapore citizens.⁶³

The effect on the child flowing from being determined 'illegitimate' does not sit well with the concern for his or her wellbeing encapsulated in 'parental responsibility'. Thankfully, the disadvantageous effects of being an illegitimate child in Singapore are today of residual nature. There are many more areas where the law treats all children alike than those that discriminate or, at least, differentiate between the illegitimate and the legitimate siblings.⁶⁴

One residual area is succession. The *Intestate Succession Act*,⁶⁵ section 2, continues to define "child" as "means a legitimate child" thereby disentitling the illegitimate child from sharing the "child's share" under its s. 7 Rule 3. There used to be a common law rule that valid wills ought to be interpreted so that any family relationship is limited to a legitimate family relationship.⁶⁶ This rule has been repealed by statute in England⁶⁷ and it is still not clear what a court in Singapore might decide here. The Court of Appeal in the case discussed immediately below recently confirmed that an illegitimate child cannot apply for maintenance from his or her parent's estate and then, recognizing that this may be an unfortunate residual effect of illegitimacy, observed on the need to review this.

E. Judicial Call to Remove One More Disadvantage of being an Illegitimate Child

In *AAG v. Estate of AAH, deceased*⁶⁸ the intestate deceased left a lawful widow with four daughters. There were also two other girls who were irrefutably his illegitimate daughters. His name was registered as their father in their birth certificates and he was financially supporting them and their mother prior to his death.

Chao Hick Tin J.A. noted that the *Inheritance (Family Provision) Act*⁶⁹ did not expressly state if reference to "son" and "daughter" within it excluded illegitimate children. The Act was modeled upon the similar UK statute⁷⁰ that clearly excluded illegitimate children. The UK statute was, however, amended by another in 1969⁷¹ to allow illegitimate children to apply but no similar amendment has been made to the Singapore statute. There was academic opinion that the Singapore statute may

⁶³ See *Constitution of the Republic of Singapore (Amendment) Act*, No. 12 of 2004 which amended Article 122 of the *Constitution of the Republic of Singapore* (1999 Rev. Ed. Sing.). See also, Eugene K.B. Tan "A Union of Gender Equality and Pragmatic Patriarchy: International Marriages and Citizenship Laws in Singapore" (2008) Vol. 12, No. 1 *Citizenship Studies* 73-89.

⁶⁴ See paragraph immediately above and discussion in *Elements*, *supra* note 4 at 369-376.

⁶⁵ Cap. 146, 1985 Rev. Ed. Sing., first enacted as Act 7 of 1967.

⁶⁶ Usually attributed to *Hill v. Crook* (1873) L.R. 6 H.L. 265 and *Dorin v. Dorin* (1875) L.R. 7 H.L. 568.

⁶⁷ See the *Family Law Reform Act 1969* (U.K.), 1969, c. 46, s. 15 [*Family Law Reform Act 1969* (U.K.)] and the current legal view by the *Family Law Reform Act 1987*, (U.K.), 1987, c. 42, ss. 1 and 19 [*Family Law Reform Act 1987* (U.K.)].

⁶⁸ [2010] 1 S.L.R. 769 (C.A.).

⁶⁹ Cap. 138, 1985 Rev. Ed. Sing., first enacted as Act 28 of 1966.

⁷⁰ See *Inheritance (Family Provision) Act, 1938* (U.K.), 1 & 2 Geo. VI, c. 45.

⁷¹ See *Family Law Reform Act 1969* (U.K.) and see the current *Inheritance (Provision for Family and Dependents) Act 1975* (U.K.), 1975, c. 63.

not be open to illegitimate children⁷² although there was also academic opinion to the contrary.⁷³

The Court of Appeal affirmed the decision below and 'regretfully' disallowed the illegitimate daughters from applying for maintenance even though they were dependents. Despite the *Women's Charter* allowing a court to make an order of the father, while he lived, to provide reasonable maintenance to them, the court felt compelled in considering the intention of Parliament in enacting the statute based on the UK equivalent statute at the time, to hold that the word "daughter" should be interpreted as it would have been under that UK statute.

Chao Hick Tin J.A. concluded with a call to review this disadvantage. The Judge of Appeal began by noting our commitment to the *UNCRC* thus⁷⁴:

Although counsel for the parties have not raised this, we note that Singapore has ratified the United Nations Convention on the Rights of the Child on 4 November 1995. Article 18(1) of the Convention requires States Parties to use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. But nothing in this Convention compels Singapore to equate an illegitimate child with a legitimate child.

He then quoted with approval the change made in the UK as well as the writer's criticism of the whole idea of legitimacy thus⁷⁵:

We would urge the Legislature to seriously consider making the necessary reforms in this regard so as to enable an illegitimate child to claim for maintenance under the [*Inheritance (Family Provision) Act*].

... England has amended its law since 1969...

Professor Leong Wai Kum opined that the conclusion of the Law Commission [in *Family Law: Report on Illegitimacy* (Law Com No 118, 1982)] on the compelling need to change the law to remove any residual disadvantage to an illegitimate child, as of 1982, applies with as much force to us as well...⁷⁶ As Prof Leong argued, no self-respecting society can lay the burden on the shoulders of innocent children to encourage the better behavior of their parents of having children only during marriage. This argument is compelling. It would be unfair to punish innocent children by denying them maintenance which a legitimate child would receive upon his father's death, particularly where the father, as in the present case, had been supporting the child until his death.

⁷² *Elements*, *supra* note 4 at 374 and *Halsbury's Laws of Singapore*, vol. 15 (Singapore: LexisNexis, 2006 Reissue) at para. 190.298.

⁷³ Debbie Ong Siew Ling, "Family Provision after Death" [1995] 7 SAcLJ 379 at 390.

⁷⁴ *Supra* note 68 at para. 36.

⁷⁵ *Ibid.* at paras. 41-43. The Law Reform Committee of the Singapore Academy of Law has set up a sub-committee to review this particular effect of being an illegitimate child and is expected to propose relieving it.

⁷⁶ His Honour cited thus: "See Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2007) at p 634".

F. *Legitimacy Ripe for Abolition*

Should legal regulation of the parent-child relationship still operate with the gloss of legitimacy when (a) it did not emanate from our own traditions and (b) we have consistently been restricting it ever since we received it into our law? Does this gloss not detract from our commitment to protect all children expressed in the concept of parental responsibility and our acceding to the *UNCRC*? Does it not distort the legal regulation unnecessarily?

The *Application of English Law Act*, since 1993,⁷⁷ requires in its section 3(2):

The common law shall continue to be in force in Singapore... so far as it is applicable to the circumstances of Singapore and its inhabitants and subject to such modifications as those circumstances may require.

It is submitted that the circumstances in Singapore were never conducive to the idea of selecting only the parent-child relationships that conform to the common law rule of legitimacy for better legal treatment. More so now after we have signaled our commitment to the *UNCRC* that the law should accord children as many rights as possible. How can we possibly continue to justify treating some children less favourably simply because their parents conceived or birthed them outside of valid marriage?

1. *Options*

Should we reform the law of legitimacy, there are, as might be expected, several routes we can take. Bolder legislatures, *e.g.* in New Zealand, had since 1969 simply abolished the concept of legitimacy.⁷⁸ The United Kingdom took a more cautious route. Following the Law Commission of England and Wales report, it further attenuated the disadvantages of being an illegitimate child without abolishing the idea.⁷⁹ The Law Commissioners' reasons as provided in their 1982 report are worthy of note⁸⁰:

We are in no doubt that the law should be reformed so as to remove all the legal disadvantages of illegitimacy so far as they discriminate against the illegitimate child but we do not think that parental rights should vest in the fathers of non-marital children without the prior scrutiny of the child's interests by the courts.

Much has changed, even in the UK, since 1982. "Parental rights" over the child have become superseded by parental responsibility towards the child.⁸¹

⁷⁷ Now Cap. 7A, 1994 Rev. Ed. Sing. See also, Andrew Phang Boon Leong, *From Foundation to Legacy: The Second Charter of Justice*, *supra* note 35 at 37-49, who calls this Act the "Final Offspring" of the Second Charter of Justice.

⁷⁸ Through the enactment of the *Status of Children Act 1969* (N.Z.), 1969/18, s. 3.

⁷⁹ The *Family Law Reform Act 1987* (U.K.), s. 1 provides that for all future statutes "references (however expressed) to any relationship between two persons shall, unless the contrary intention appears, be construed without regard to whether or not the father and mother of either of them... have or had been married to each other at any time".

⁸⁰ Law Commission of England and Wales, *Family Law: Report on Illegitimacy* (No. 118) (London, 1982) at 43.

⁸¹ Since the enactment of the *Children Act 1989* (U.K.), *supra* note 32.

Almost all countries have committed to the *UNCRC*. Equal treatment of children, whatever the exact circumstances of birth, is increasingly accepted as the norm. I submit we should not follow the Law Commission of England and Wales' rather timid suggestion. Retaining the obsolete idea of legitimacy while removing all the effects of illegitimacy appears to reduce law to a superficial empty shell. How do we look at our children in the eye if we refuse to do what is right by them? The right by them is to abolish the gloss of legitimacy and its unfortunate twin of illegitimacy.

2. Suggested way to reform

The right way in Singapore to achieve the abolition of legitimacy is to rethink the suitability of the common law rule that was received. I submit, upon a consideration of the above points, that Parliament should pass a statute to revoke the reception of this concept in particular by the Straits Settlements Court of Appeal in *The Six Widows Case* in deciding that only a child whose relationship with his or her parents was legitimate succeeded to the parent's intestate estate. Revoking the reception of the concept should effectively abolish the concept of legitimacy from the law in Singapore.⁸² All legal benefits will accrue without any reference to legitimacy or otherwise of the relationship between the parents and their child.⁸³ Legitimacy as a legal idea was probably not suitable for Singapore even in 1911. One century on, with our ever more enlightened view of appropriate legal protection of children, it is incontrovertibly unsuitable.

G. Peripheral Protection of Children

There are peripheral issues of legal protection of children that Singapore should consider adopting.

1. Improve the presumption of paternity in the Evidence Act, s. 114

There has been a judicial statement urging urgent reform of the largely irrebuttable presumption in the *Evidence Act*,⁸⁴ s. 114 that the husband of a married woman who gives birth to a child is her child's father unless husband and wife had "no access" to each other at the possible times of conception of her child.⁸⁵ Choo Han Teck J. in *AD v. AE (minors: custody, care, control and access)* observed that the character of

⁸² There are many rules that should consequentially be abolished or amended including the *Women's Charter*, s. 111 and the *Legitimacy Act* as well as any reference to 'legitimate' or 'illegitimate' within statutory provisions.

⁸³ As indicated above, this is already true of some legal benefits following from the trend of restricting the idea of legitimacy and reducing the effects of a child being determined as illegitimate. For *e.g.*, the right to reasonable maintenance by parents, under the *Women's Charter*, s. 68, is available to a child whether legitimate or not. What revoking the reception of the idea of legitimacy accomplishes is that this is extended to all legal benefits available to children under the law in Singapore.

⁸⁴ *Evidence Act* (Cap. 97, 1997 Rev. Ed. Sing.), s. 114. The Ministry of Law is believed to be engaged in updating this provision.

⁸⁵ The evidential presumption is fairly complicated and it, as well as the urgent need for reform, is discussed in greater detail in the writer's article noted immediately below.

the presumption is better suited to the olden times when direct proof of parentage by DNA test was unavailable thus⁸⁶:

Section 114 of the Evidence Act was promulgated at a time when it was not contemplated that the paternity of a child could be proved scientifically at a level of confidence beyond 99.9%. It was intended to avoid bastardising children and the social stigma that attached to it, more so in the past than today, perhaps. Although some changes to this section might be necessary to avoid more serious problems than the one before me, it is still useful to have a provision that presumes paternity, provided that it is not, as presently so, an irrebuttable or conclusive presumption.

There is still need for a presumption that operates in default. The vast majority of children should not need to introduce DNA test results in court to prove who their father is. Where there is no challenge mounted, the presumption that a child born to a married woman is her husband's serves us well. It is only when a challenge to this presumption is mounted that the evidentiary rule is weak in not allowing any other evidence in rebuttal than "no access".⁸⁷

To bring this presumption up to date the writer has suggested that two changes need to be made⁸⁸:

1. The adjective 'conclusive' describing the character of the presumption should either be deleted or substituted with '*prima facie*' which will admit evidence that challenges the presumption more readily; and
2. The part of the presumption that only allows evidence of "no access" to be heard by the court should be omitted so that the court can hear any relevant evidence that reflects on whether the presumption should continue to stand.

These changes are likely to be made soon.

2. Updating our understanding of parentage given current complex families

The law in Singapore, in understanding 'parent' as including only the biological parents and adoptive parents,⁸⁹ is conservative in several regards. I anticipate responses, *inter alia*, from two challenges.

(a) *Challenges from assisted conception*: The law in Singapore has not responded to the multifarious ways of assisted conception. Where a donated sperm is *in-vitro*

⁸⁶ [2005] 2 S.L.R. (R.) 180 at para. 8. The point had been hinted by Kenneth K. S. Wee in 'The Law of Legitimacy in Singapore', *supra* note 50 at, 24-25 and elaborated by Leong Wai Kum, "Legal Implications of Paternity Testing" (Paper published in the Seminar 'Life Sciences and the Law' organized by the Singapore Academy of Law and the Bioethics Advisory Committee, October 2003), later published in Terry Kaan & Edison T. Lui, eds., *Life Sciences: Law and Ethics—Recent Developments in Singapore* (Singapore: Singapore Academy of Law and Bioethics Advisory Committee, 2006) at 169-171.

⁸⁷ See *Elements*, *supra* note 4 at 387-390.

⁸⁸ See Leong Wai Kum, "Legal Implications of Paternity Testing", *supra* note 86 at 144-171. The point is discussed more fully in Leong Wai Kum, "Parental responsibility as the core principle in legal regulation of the parent-child relationship", (Paper to be published in the forthcoming monograph on proceedings of the Singapore Academy of Law Conference 2011 'Developments in Singapore Law 2006-2010: Trends and Perspectives', 2011).

⁸⁹ See *EB v. EC (divorce: maintenance of stepchildren)* [2006] 2 S.L.R.(R.) 475 at paras. 13-16, and *Elements*, *supra* note 4 at 240-246.

fertilised by a donated egg and gestated in a surrogate's womb for the 'social parents', there can be eight adult persons involved. Each of them has a claim to parenthood as their participation or consent to their spouse's participation was crucial to the conception, gestation or upbringing of the child.⁹⁰ There was a paper in 1997⁹¹ suggesting rules on the status of these children but it has not been implemented. Medical science has continued to develop. The current rules in Singapore, applied to such relationships, are painfully inadequate. We need an urgent response.⁹²

(b) *Challenges when child is being brought up by single parent, cohabiting couple or homosexual couple:* How should the law respond when a child is being brought up in an environment that differs from the norm, *i.e.*, where the child's married parents conceived the child naturally? Families can be and are being created in many more ways today. In future our courts may face more of such new family forms. A woman can choose to raise a child by herself or, alternatively, a man may similarly choose to raise a child by himself whether the adult is biologically parent to the child. A cohabiting couple who may or may not be biologically related to the child may choose to raise the child. Homosexual couples also may raise a child. Many countries have made adoption available to single individuals, cohabiting couples or homosexual couples. While we do not yet allow homosexual marriage or adoption by homosexual couples, our courts need to decide how to treat the child who is being brought up in such family forms.

It is interesting to speculate what might happen. It is suggested that the court is bound by Singapore's commitment to article 3(2) of the *UNCRC* to "undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures". If protecting the child means that some legal recognition is accorded to the relationship between the adults raising the child, there may be no avoiding this. At the same time, however, we can think innovatively of how not to allow this to undermine our support of the traditional nuclear family. The ideal may be to balance our protection of the child while continuing to support the traditional nuclear family where the child is raised within the conjugal relationship of his or her biological parents. We would want to do this if we believe that the traditional nuclear family remains the best environment to raise a child. Whether and how to continue to support the traditional nuclear family in the face of challenges from the new family forms is discussed in greater detail below as the third idea that may change the *Women's Charter* in time to come.

⁹⁰ K. C. Vijayan, "IVF baby mix-up: Parents shocked to find DNA doesn't match dad's" *The Straits Times* (3 November 2010) at 1. It was reported that there appeared to have been an unfortunate mix-up at a local fertility centre so that the mother's egg was *in-vitro* fertilised with sperm other than her husband's and that this was discovered only a few months after the baby's birth. The story was followed with more details and discussion over the next few days. Here, both the sperm donor and the husband of the impregnated woman have valid claims to be 'father' of the child.

⁹¹ Singapore Academy of Law, "Report of the Law Reform Sub-Committee on the Status of Children Born Through Artificial Conception" (1997), online at Singapore Academy of Law <http://www.sal.org.sg/digitallibrary/Lists/Law%20Reform%20Reports/Attachments/16/artificial_conception.pdf> (last accessed 6 May 2011).

⁹² The Ministry of Law is believed to be engaged in proposing rules to determine the status of children of assisted conception.

I anticipate that legal protection will be extended to children who are raised within these new family environments. It will, however, probably take much longer before we can see how the *Women's Charter* responds to new family forms.

3. *Child's right to information surrounding birth*

To what extent should every child have access to information, including genetic information, relating to his or her birth or parentage? It has been recognised that article 7 of the *UNCRC* in giving "the right to know and be cared for by his or her parents" includes having easy access, at least when the child reaches a certain age of maturity, to the details of birth.⁹³ There is a report prepared for the Council of Europe that recommends a fairly broad entitlement to read "Subject to their best interests, children shall have the right to obtain information about their biological/genetic origins".⁹⁴

We need to review our rules and practices in the light of our commitment to the *UNCRC*. Currently, our law allows adoption to remain comparatively secretive where the adopted child may never be aware of it⁹⁵ and we have not legislated in any respect regarded assisted conception.⁹⁶ The recent liberalisation of birth registration of a child born of parents of mixed race⁹⁷ may be just a drop in the rather big pond.

4. *Prohibition of corporal punishment*

There is a global initiative to end to all corporal punishment of children including by their parents⁹⁸ that is dedicated to 'forge a strong alliance of human rights agencies, key individuals and international and national non-governmental organisations against corporal punishment' and 'promote awareness-raising of children's rights to protection and public education on positive, non-violent forms of discipline for children'. The initiative has the support, *inter alia*, of the Committee on the Rights of

⁹³ See, e.g., Samantha Besson, "Enforcing the Child's Right to Know her Origins: Contrasting Approaches Under the Convention on the Rights of the Child and the European Convention on Human Rights" (2007) 21 Int'l J.L. Pol'y & Fam. 137, Jane Williams, "Incorporating Children's Rights: The Divergence in Law and Policy" (2007) 27:2 L.S. 261 and Eric Blyth & Lucy Frith, "Donor-Conceived People's Access to Genetic and Biographical History: An Analysis of Provisions in Different Jurisdictions Permitting Disclosure of Donor Identity" (2009) 23 Int'l J.L. Pol'y & Fam. 174. Cf the cautionary view that, in our rush to impose openness on families we should remain aware of the potential negative consequences including to the child of exposing all 'family secrets': Carol Smart, "Law and the Regulation of Family Secrets" (2010) 24 Int'l J. L. Pol'y & Fam 379.

⁹⁴ See Nigel Lowe, "A Study into the Rights and Legal Status of Children being brought up in various forms of Marital and Non-marital Partnerships and Cohabitation", (Report for the attention of the Committee of Experts on Family Law of the Council of Europe, 21 September 2009) (CJ-FA (2008) 5) at 38-9 and 47 [*Family Status Report*].

⁹⁵ See the discussion of the re-registration of the adopted child's birth as if the adoptive parents were the birth parents in *Principles*, *supra* note 2 at 677-686.

⁹⁶ See *Principles*, *supra* note 2 at 90-92. When the IVF child reported about, *supra* note 90, becomes an adult, should he or she be told all the facts in the circumstances of conception and birth? It may seem particularly pernicious if this baby were not told the details that have been reported in some detail for public consumption.

⁹⁷ See press release by the Immigration & Checkpoints Authority, online: Immigration & Checkpoints Authority <www.ica.gov.sg/news_details.aspx?nid=12210&secid=> (last accessed 21 April 2010).

⁹⁸ See *Global Initiative to End All Corporal Punishment of Children*, online: <www.endcorporalpunishment.org> (last accessed 21 December 2010).

the Child that regards several articles of the *UNCRC* to prohibit corporal punishment of a child. It is also recommended to the Council of Europe to direct holders of parental responsibility that a child should not be subjected to corporal punishment or any other humiliating treatment.⁹⁹ We have to consider the global initiative seriously. I anticipate Singapore may legislate to discourage the infliction of corporal punishment of children although we may not go as far as to punish such infliction.

III. SECOND RIPPLE: EQUALISE MAINTENANCE OBLIGATION BETWEEN SPOUSES

The second ripple of change is possibly the removal of the last remaining unequal legal treatment of husband and wife, *viz* that the law in Singapore only allows the courts to order an able husband to provide reasonable maintenance to his dependent wife.¹⁰⁰ The reverse has never been possible. However able a wife and however dependent her husband, the court cannot order the wife to provide even bare subsistence to her husband.

The historical reason for this state of the law has been traced before and need not be repeated.¹⁰¹ Today, the law stands somewhat incredulously next to the exhortation in the *Women's Charter*, s. 46(1) that "Upon the solemnization of marriage, the husband and the wife shall be mutually bound to co-operate in safeguarding the interests of the union ..." How does a financially able wife co-operate in safeguarding the interests of the union if she will not provide even bare subsistence to her dependent husband? How will such a union possibly continue and thrive?

The need to equalize the maintenance obligation between spouses has been urged several times over the years, unfortunately, without success.¹⁰² What was said by the writer in 1987 continues to ring true¹⁰³:

Whether or not women in Singapore earn as much as men is not the issue. Neither is it relevant to ask how often it might be, if the law permitted it, that a wife may be ordered to maintain her husband. The issue is whether it is permissible now, when in nearly every important way a wife is treated on an equal footing with her husband, she should have the privilege never to be required by law to support a husband who is proven to be in need and who can prove that she is able to maintain him. As long as this one-sidedness continues, the law falls a little short of its expectation [in the *Women's Charter*, s. 46(1)].

⁹⁹ See *Family Status Report*, *supra* note 94 at 58.

¹⁰⁰ See the *Women's Charter*, s. 69(1), of the period during the subsistence of their marriage, and s. 113, upon the unnatural termination of their marriage by court judgment.

¹⁰¹ See Leong Wai Kum, "The Duty to Maintain Spouse and Children During Marriage" (1987) 29 *Mal. L. Rev.* 56, at 57-63.

¹⁰² *Ibid.* at 78. See also, Leong Wai Kum's private representation to the Select Committee of Parliament on the *Women's Charter (Amendment) Bill* No. 5 of 1996 reported in *Sing., Parliament*, Select Committee on the *Women's Charter (Amendment) Bill* [Bill No. 5/96] (1996), Paper No. 3 at B37 as well as similar point made by the Association of Women for Action and Research at B20, the Singapore Association of Women Lawyers at B44-45 and the Council of the Law Society of Singapore at B71. Our suggestion was, unfortunately, not taken up.

¹⁰³ *Supra* note 101 at 78.

The writer, with two family law colleagues, repeated her point in the latest public consultation over the proposed *Women's Charter (Amendment) Bill*, No. 34 of 2010.¹⁰⁴ The Ministry of Community Development, Youth and Sports, clearly oblivious of the writer's 1987 plea, rejected the suggestion thus¹⁰⁵:

On the suggestions to make the Women's Charter less gender biased and maintenance more needs-based, MCYS would like to clarify that with regard to the maintenance of children, the provision in the Charter is already gender-neutral and applicable to the father and the mother. The bias is confined to maintenance of spouse or ex-spouse, where a man is required to maintain his wife or ex-wife, and not vice versa. MCYS notes that notwithstanding the progress made by women, a gap still exists between men and women on the socio-economic front. The female labour force participation rate is lower than the male's. Women are usually the main caregivers for families and for the children post-divorce. Such situations are likely to affect the future employability of the women, putting them at a disadvantage when they need to re-enter the workforce after a divorce. Though society will continue to evolve, for now, women in general are still more vulnerable and in need of protection under the Women's Charter.

With respect, this is as unconvincing as ever. That it is the exception rather than the rule for a household to consist of a financially able wife and a dependent husband does not require the law of maintenance to be one-sided. However infrequent it may be when a court is asked to consider making a maintenance order against a wife for the benefit of her husband, the principle of spousal equality with the exhortation to both of them to co-operate to safeguard their union must lead to a gender-neutral maintenance obligation between spouses. Further, that there is no gender bias in the maintenance obligation of parents towards their children in that both mother and father are equally liable¹⁰⁶ does not in any way excuse the bias in the maintenance obligation between the spouses themselves. Until the gender bias in the *Women's Charter*, ss. 69(1) and 113 is removed, this will continue as blight within the legal view of the marital relationship as an equal co-operative partnership of different efforts for mutual benefit.

In any case, at some time, women in Singapore will truly do as well economically as men. The chances of a dependent husband with an able wife may become as common as the dependent wife with an able husband. From the response of the Ministry of Community Development, Youth and Sports, it appears that when that time arrives this aspect of the law will change to that urged repeatedly. We await that time. I anticipate that this will take place in the medium term perhaps within the next twenty years or so.

IV. THIRD RIPPLE: RESPOND TO DIVERSE FAMILY FORMS

The third set of ripples of change to the *Women's Charter* is the most speculative at this time: how will the *Women's Charter* respond to changes in the forms that

¹⁰⁴ *Supra* note 28. The writer understands that some other respondents who had been provided with a copy of this paper, may have adopted the same proposal in their feedback.

¹⁰⁵ *Supra* note 29.

¹⁰⁶ See the *Women's Charter*, ss. 68 and 69(2) and the discussion in *Elements*, *supra* note 4 at 438-441.

the modern family may take? The traditionally conservative view is that the family springs from the heterosexual coupling of husband and wife leading to conception of their biological offspring. From this conservative viewpoint, it would be correct for the marriage law to protect both the marital relationship and the relationship between parents and biological child in equal measure. It may then be argued that the privileges of marriage should only be available to the heterosexual couple since only they can possibly have a child who will then be brought up within this biologically bonded family unit.

A. Traditional Family

A law that favours the traditional family and may thus be regarded as a more conservative marriage law is that of the original *Swiss Civil Code* that was drafted by Professor Eugen Huber of the University of Berne in 1892, adopted by the Swiss legislature in 1907, went into effect in 1912 and remains in force today albeit with some modifications.¹⁰⁷ A unique provision is its article 159 within the Fifth Title on “The consequence of marriage in general” that provides¹⁰⁸:

By the marriage both parties are bound in marital community (*Eheliche Lebensgemeinschaft*).

They bind themselves, on either side, to preserve the weal of the common relationship, in harmonious working together, and to care for their children in common. They owe to each other fidelity and assistance.

The relevance of the *Swiss Civil Code* to Singapore is that the *Women's Charter*, s. 46(1) was expressly modeled upon the above article 159 of the *Swiss Civil Code* as was acknowledged during the legislative debates leading to the original *Women's Charter*.¹⁰⁹

The current *Women's Charter*, s. 46(1) equally protects the marital relationship and the parent-child relationship thus: “Upon the solemnization of marriage, the husband and the wife shall be mutually bound to co-operate with each other in safeguarding the interests of the union and in caring and providing for the children.”

¹⁰⁷ The professor had been commissioned to compile the cantonal private laws towards a unified code for his country in 1884 and completed his preparation in four volumes entitled *System and History of the Swiss Private Law* (1886-1893). As his codification was undertaken after the *Napoleonic Code* of 1804 and the *German Civil Code* of 1896, it may be surmised that he had the opportunity to reflect upon what more could effectively be added to these articles on family law to convey what he believed to be important ideas. The observation is made of the original Swiss law. Current Swiss law may have followed that of most European countries to accommodate new family forms.

¹⁰⁸ See the English translation of the Code by Robert P. Shick and annotated by Charles Wetherill (corrected by Eugen Huber, Alfred Siegwart & Gordon E. Sherman) entitled *The Swiss Civil Code of December 10, 1907* (*The Swiss Civil Code of December 10, 1907*, trans. by Robert P. Shick (Connecticut, USA: Hyperion Press, 1980, reprint of 1914 original)).

¹⁰⁹ See Sing., *Legislative Assembly Debates*, vol. 12(1), col. 438 at 485 (6 April 1960) where Minister Byrne revealed that “clause 45 [what is currently s. 46] is taken from the *Swiss Civil Code* and it has been considered by eminent jurists before”. See also, Leong Wai Kum, “Fifty years and more of the *Women's Charter*”, *supra* note 6 at 11-14.

It is not necessarily a common feature of marriage laws, apart from that in Singapore and Switzerland, to express protection of the parent-child relationship within a provision on the effect of the solemnization of marriage. There is no equivalent of the *Women's Charter*, s. 46(1) in England or any of the core common law countries of Australia, New Zealand, the states of Canada or the states of the US. Indeed, there is not likely to be an equivalent of this unique provision in many civil law countries apart from Switzerland. Professor Eugen had, in a commentary, expressed his desire to add a moral tone to what he regarded as the more technical provisions on marriage he observed within the German private laws thus:¹¹⁰ "The matrimonial union has moral and legal content. It appears to us desirable to state the moral effects in the law, at least inasmuch as the violations affect the marriage and may possibly provide grounds for divorce."

The absence of reference to the parent-child relationship within the marriage laws of most Western countries may go some way to explaining a recent phenomenon. Their marriage laws have, over a relatively short period of time, transformed from focusing on the traditional nuclear family towards protecting the diverse new forms that are increasingly gaining recognition there.

B. Couples More Self-Centred Today

The trend of young people becoming more self-centred is well acknowledged. The current generation is known by the not inaccurate appellation 'The me generation'. It may have begun about two decades ago. Anthony Giddens, a famous UK sociologist, describes the rise of the 'pure relationship'¹¹¹:

A pure relationship has nothing to do with sexual purity... It refers to a situation where a social relation is entered into for its own sake, for what can be derived by each person from a sustained association with another; and which is continued only in so far as it is thought by both parties to deliver enough satisfactions for each individual to stay within it.

In other words, young people are viewing their relationships to serve only the singular objective of their own personal needs. There are no worthy goals beyond the satisfaction of the self. Add the 'sexual revolution' of the past two decades where cohabitation or having children outside of marriage is almost as acceptable as marriage to be followed by conceiving children only with one's spouse and the effect on the marriage law is predictable. In many Western countries, there has been steady extension of the legal privileges of marriage to cohabiting couples and even to homosexual couples. Marriage may no longer be restricted to persons in heterosexual relationships. It may be proposed that there should be no official favouring of heterosexual conjugal couples and that all close adult relationships should receive equal legal favour.

¹¹⁰ See Eugen Huber, *Schweizerisches Zivilgesetzbuch, Erläuterungen zum Vorentwurf des Eidgenössischen Justiz- und Polizeidepartements* (Bern, 1902) at 143 (translation kindly provided by Professor Alexandra Rumo-Jungo of the University of Fribourg).

¹¹¹ See Anthony Giddens, *The Transformation of Intimacy: Sexuality, Love and Eroticism in Modern Societies* (Cambridge, UK: Polity Press, 1992) at 58.

C. Influential Reports Supporting the 'Close Adult Relationship'
View of Marriage

There have been reports that accept these developments to propose radical changes to the law of marriage. They are worthy of attention. The now-defunct Law Commission of Canada released their *Beyond Conjuality: Recognising and Supporting Close Personal Adult Relationships* in 2001.¹¹² One of its conclusions was¹¹³:

The state has a role in providing a legal framework to help people fulfill the responsibilities and rights that arise in close personal relationships. However, any involvement by the state should honour the choices that people make. Instead of focusing mainly on married couples and couples deemed to be 'marriage-like' governments should establish registration schemes to facilitate the private ordering of both conjugal and non-conjugal relationships... To the extent that the state continues to have a role in legally recognizing marriage, fundamental Canadian values and the secular nature of the state's interest in marriage require that the state not discriminate against same-sex couples.

A year later, the American Law Institute released its *Principles of the Law of Family Dissolution*, the culmination of more than 10 years of discussion.¹¹⁴ Quite differently from its usual summaries of current state of the law, this report proposed the shape of future law. The report proposes to sideline the traditional nuclear family in favour of supporting more diverse forms thus¹¹⁵:

During the final quarter of the 20th century, all western countries experienced extraordinary growth in the rate of nonmarital cohabitation. All responded with legal regulation... Normatively, Chapter 6 takes the view that family law should be concerned about relationships that may be indistinguishable from marriage except for the legal formality of marriage... The operative provisions of Chapter 6 are designed to distinguish relationships that are marriage-like from those that are not. They are designed... also to allow for individualized treatment.

A somewhat similar proposal has been made to the Council of Europe although this relates to the status of children. *A Study into the Rights and Legal Status of Children being brought up in various forms of Marital and Non-marital Partnerships and Cohabitation* recommended a new European Convention on Family Status¹¹⁶:

What is surely required is a modern instrument which embraces the wider forms of family households not least, in the context of parentage, the position with respect to children conceived as a result of assisted reproduction treatment including,

¹¹² See Canada, Law Commission, *Beyond Conjuality: Recognising and Supporting Close Personal Adult Relationships* (Ottawa, 2001) (accessible online: <http://www.samesexmarriage.ca/docs/beyond_conjuality.pdf> [*Beyond Conjuality*]).

¹¹³ *Ibid.* at 131.

¹¹⁴ American Law Institute, *Principles of the Law of Family Dissolution* (Philadelphia, USA, 2002) [*Family Dissolution*]. For a collection of essays analysing the *Principles*, see Robin F Wilson, ed., *Reconceiving the family: Critique on the American Law Institute's Principles of Family Dissolution* (Cambridge, New York: Cambridge University Press, 2006).

¹¹⁵ *Ibid.* at Chapter 1 "Overview of Chapter 6 (Domestic Partners)" at 30.

¹¹⁶ See *Family Status Report*, *supra* note 94 at 42-43.

in that context, the position of same-sex couples and, in the context of parental responsibilities, the position of carers other than parents... Such an instrument would satisfy the [An Evaluation of the Council of Europe's Legal Instruments in the Field of Family Law]'s¹¹⁷ criteria of modernity and utility... being essentially standard-setting

It is further of note that the *Family Status Report* drew inspiration from the International Lesbian and Gay Association¹¹⁸ Europe Report on "The Rights of Children Raised by Lesbian, Gay, Bi-sexual or Transgender Families: A European Perspective". Quoting from the ILGA Europe Report, the *Family Status Report* found¹¹⁹:

The ILGA Report was specifically concerned with lesbian, gay, bisexual and transgender (LGBT) people, but its basic premise seems relevant to all types of family units... Indeed, many children do not live in... a traditional household. As the ILGA report puts it "Divorce is now commonplace, leading to a rise in single-parent households and step-families. Growing numbers of couples are choosing not to marry, leading to greater numbers of children born out of wedlock." More recently, there has been growing acceptance and consequential expansion of LGBT families.

There is, however, no true unanimity as to whether extending the legal privileges of marriage, such as they are or in some form akin to these privileges, with the result that there is no longer any legal favouring of the conjugal heterosexual relationship is necessarily the best way forward. A more conservative view from that discussed above is possible as the following report shows.

D. An Influential Report Supporting Continuation of Legal Favour of the Traditional Nuclear Family

The more conservative report draws upon studies emanating from the US that continue to support the traditional family form as the best environment to bring up a child. The view is that a child is best brought up by her biological parents in a low-conflict marriage. Extending the privileges of marriage beyond parties in heterosexual relationships may leave the child less protected in failing to favour heterosexual couples who marry. The conservative report, therefore, offers a counterfoil to the above reports. It may not necessarily be true that the modern family forms are as good for a child as the traditional heterosexual conjugal relationship.

One study of whether family structure affects the child's well being concludes that it clearly does¹²⁰:

Research findings linking family structure and parents' marital status with children's well-being are very consistent... [R]esearch clearly demonstrates that

¹¹⁷ Nigel Lowe, *An Evaluation of the Council of Europe's Legal Instruments in the Field of Family Law*, CJ-FA (2006) 1.

¹¹⁸ Hereafter, "ILGA".

¹¹⁹ See *Family Status Report*, *supra* note 94 at 4.

¹²⁰ See Kristin Anderson Moore, Susan M. Jekielek & Carol Emig, *Marriage from a Child's Perspective: How Does Family Structure Affect Children, and What Can We Do about It?* (A Research Brief for Child Trends, an organization that describes itself as an independent non-partisan research

family structure matters for children, and the family structure that helps children the most is a family headed by two biological parents in a low-conflict marriage. Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes than do children in intact families headed by two biological parents. Parental divorce is also linked to a range of poorer academic and behavioral outcomes among children. There is thus value for children for promoting strong, stable marriages between biological parents.

Drawing upon such sociological studies and suggestions, the conservative Institute for American Values in its *The Future of Family Law: Law and the Marriage Crisis in North America*¹²¹ has recommended that the US should place a minimum five year moratorium on any change to the definition of marriage to allow for informed democratic consultation and deliberation. During this time there could be greater and more in-depth cross discipline studies to confirm or qualify the American Legal Institute recommendation to open up marriage to all close adult relationships apart from the heterosexual couple. Although the five years had expired by 2010, the fact remains that not many states in the US have changed their law of marriage to follow European models. This may be thought to be some success of this recommendation to go slow before dramatically opening up the marriage laws across the US to homosexual couples or equating marriage with cohabitation.

E. Implications for Singapore

Singapore remains a conservative society and our marriage law, currently restricted to heterosexual couples,¹²² places equal focus on the parent-child relationship as on the marital relationship.

We must gather our own sociological data.¹²³ We must find out how Singaporean couples are forming their close adult relationships. What is the rate of formation of these other relationships apart from the traditional heterosexual conjugal union? How many children are being raised in single parent families, or by cohabiting couples or by homosexual couples?¹²⁴ What is the rate of formation of homosexual relationships and how stable are they? When we have our own sociological data

centre dedicated to improving the lives of children and families by conducting research and providing science-based information) (Washington DC, US: Child Trends, 2002), online: Child Trends <<http://www.childtrends.org/files/MarriageRB602.pdf>> (last accessed 25 November 2010).

¹²¹ Institute for American Values, *The Future of Family Law: Law and the Marriage Crisis in North America* (New York, US: Institute for American Values, 2005) at 42, online: American Values <www.americanvalues.org> (last accessed 22 November 2010). This report comes from an interdisciplinary group of scholars from the US and Canada chaired by the highly respected Professor Mary Ann Glendon of the Harvard Law School.

¹²² See the *Women's Charter*, s. 12 and *Elements*, *supra* note 4 at 33-36.

¹²³ No statistics are published, officially or otherwise, of the circumstances of birth of children (by married or unmarried women or surrogates), of circumstances of child rearing (in marital households, cohabiting households or by homosexual couples) nor of rates of cohabitation or homosexual relationships.

¹²⁴ It is of note that statistics compiled by the Council of Europe confirm that societies in many European nations may differ significantly from our own. It is reported for 2006 that "in Belgium and Estonia less than half of all families were 'traditional families' while in most States births out of wedlock are increasing with, for example, more than half being so in Norway, 48.5% in France and 34% in Hungary. In Estonia and Netherlands, 45% and 30% respectively of families were 'cohabitant families' while

there should be multidisciplinary studies undertaken to relate the data with raising children to find out if there is an optimal family environment for this.

If we were minded to test out any beliefs, there are studies, largely in the US, which we can model our research upon.¹²⁵ We may well reach results similar to those uncovered by *Child Trends*, a research group in Washington DC, in 2002¹²⁶ that “the family structure that helps the most is a family headed by two biological parents in a low-conflict family”. Only when we have our own data are we in a better position to decide whether to follow Western countries that have liberalised their laws either by statute¹²⁷ or case-law¹²⁸ to extend marriage to homosexual couples or create an institution that is like marriage in everything but name for homosexual couples who are desirous of committing to each other¹²⁹ and proposals to more or less equalise marriage with cohabitation.¹³⁰ A new view of our law of marriage will probably not be formed for several decades.

F. *How New Family Forms may be Recognized in Women's Charter*

I anticipate that the law in Singapore will rightly extend full protection to all children including those who are being raised in any of these new family forms.¹³¹ The extension of such protection will, inevitably, lead to a degree of recognition of the new family form. Where this inherently flows from the need to extend protection to the children, the recognition of the new family form is justifiable. It is imperative that we discharge our commitment to the child and accept all consequential effects that flow from this.

We can aim for the optimal legal treatment of these new family forms, *viz*, single parenthood, cohabiting couples and homosexual couples. We may possibly agree

single parent households (commonly headed by women) ranged at the high end from 25% in the United Kingdom, around 20% in Finland and Germany, 19% in Poland and Slovenia, 13% in the Czech Republic and Estonia and 12% in Switzerland”. Also see *Family Status Report*, *supra* note 94 and Leong Wai Kum, ‘Fifty years and more of the *Women's Charter* of Singapore’, *supra* note 6 at 4.

¹²⁵ See, *e.g.*, Maggie Gallagher & Joshua K. Baker, “Do Moms and Dads Matter? Evidence from the Social Sciences on Family Structure and the Best Interests of the Child” (2004) 4 *Margins* 161-180, Sandra L. Hofferth & Kermyt G. Anderson, “Are All Dads Equal? Biology Versus Marriage as a Basis for Paternal Investment” (2003) 65:1 *Journal of Marriage and Family* 213-232 and Wendy D. Manning & Kathleen A. Lamb, “Adolescent Well-Being in Cohabiting, Married and Single-Parent Families” (2003) 65:4 *Journal of Marriage and Family* 876-893.

¹²⁶ *Supra* note 120.

¹²⁷ See, *e.g.*, The Netherlands’ *Act Opening Marriage to Same Sex Couples 2000*, Belgium’s *Act Opening Marriage to Same Sex Couples 2003*, Canada’s *Civil Marriage Act 2005* c. 33 and similar legislation in Spain, Argentina (some cities), Norway and Sweden.

¹²⁸ See, *e.g.*, *Halpern et al v. Attorney General of Canada et al* (2003) 106 C.R.R. (2d) 329 (Ont. C.A.), *Hillary Goodridge and ors v. Department of Public Health & Anor* 798 N.E. 2d 941 (Mass. Sup. Ct. 2003) and *Minister of Home Affairs v. Fourie and ors* (2006) (3) B. Const. L. R. 355 (S. Afr. Const. Ct.).

¹²⁹ See, *e.g.*, Denmark’s *Registered Partnership Act 1989*, England and Wales’ *Civil Partnership Act 2004*, (U.K.), 2004, c. 33, New Zealand’s *Civil Union Act 2004* (N.Z.), and similar statutes in Norway, Israel, Sweden, Switzerland, Greenland, Iceland, Hungary, France, Germany, Portugal, Finland, Croatia, Liechtenstein, Luxembourg, Andorra, Czech Republic, Slovenia and Uruguay.

¹³⁰ See *Beyond Conjugalities*, *supra* note 112, *Family Dissolution*, *supra* note 114 and the *Family Status Report*, *supra* note 94.

¹³¹ See text above under section II.G.2.(b).

with the more conservative research group in the US¹³² to go slow before we extend the privileges currently bestowed only upon the heterosexual couple who choose to marry and raise their child within their marital relationship. As much as we must reduce or remove any unfair legal treatment of single parents, cohabiting couples or homosexual couples, we could do so advisedly. We may wish to continue encouraging the heterosexual couple to marry by reserving the legal privileges of marriage only for them. There would seem every reason for us here to tread slowly before dramatically changing our marriage law.¹³³ The privileges currently bestowed on spouses should only be extended where sociological data reveals that the incidence of a new family form has assumed some significance and is largely accepted by general society in Singapore.

We should carefully balance what must be changed to remove any unjustifiable different treatment with what should be preserved. The best marriage law reforms judiciously balance change and preservation. This emerges only from considered democratic discussion and consultation. We ought not to blindly follow the Western models of change as differing proposals have been made as to what is the best way forward.

V. CONCLUSION

The last fifty years have brought gradual changes to the *Women's Charter*. With some luck the next fifty will also bring changes gradually after the most careful deliberation. This essay has speculated on three concentric ripples of law reform. The first and perhaps most certain is the further protection of children. The second removes the last differentiation in legal treatment of husband and wife. The third is some acceptance of the new family forms although the extent to which such acceptance is allowed to undermine the current legal favouring of the traditional family anchored in a heterosexual relationship remains to be decided.

¹³² *Supra* note 121.

¹³³ Current family forms in Europe may differ significantly from our own: *supra* note 124.