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SURROGACY, CHILD'S WELFARE, AND PUBLIC POLICY IN ADOPTION APPLICATIONS

UKM v Attorney-General

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This case note discusses the Singapore High Court case of *UKM*, in which an order was granted to a gay man to adopt his biological son conceived through a gestational surrogacy arrangement in the United States. In particular, the High Court's assessment of the welfare of the child and of public policy, in light of two factors—the prohibition of male homosexual acts in section 377A of the Penal Code and the *de facto* curtailment of domestic surrogacy by Singapore's restrictive rules relating to the use of assisted reproduction technology services—will be examined.

I. INTRODUCTION

This case note examines the role of policy considerations in adjudication in *UKM v Attorney-General*,[1] a case in which a bench of three judges (Sundaresh Menon CJ, Judith Prakash JA and Debbie Ong J) in the Family Division of the Singapore High Court reversed a Family Courts decision[2] and granted an adoption order to a gay man to adopt his biological son conceived through a gestational surrogacy arrangement in the United States ("US"). As the High Court extensively elucidated the role of public policy in judicial decisions, this case note will analyze the interaction between statutory law and policy, in view of the separation of powers doctrine insofar as it relates to the legislature and the judiciary. In particular, the High Court's assessment of the child's welfare and of public policy in light of two factors—the criminalization of male homosexual acts in section 377A of the Penal Code[3] and the *de facto* curtailment of domestic surrogacy by Singapore's restrictive rules relating to the use of assisted reproduction technology[4] services—will be examined.

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1 [2018] SGHCF 18 [*UKM*].

2 *Re UKM* [2018] SGFC 20 [*Re UKM*].

3 Cap 224, 2008 Rev Ed Sing, s 377A [section 377A].

4 ("ART").

II. Matrix of Surrogacy

Surrogacy may be chosen because pregnancy is impossible or risky for a woman; because gay men wish to have children with genetic connection to one of them; or because lesbians wish to experience co-maternity by having one partner carry the fertilized ovum of the other.[5] Conceivably, some may choose surrogacy to avoid the inconvenience of pregnancy, though the intended mother would have to endure the extraction of ova if she wishes to maintain a genetic connection. Others may be desirous of heirs or children without a relationship with the child's mother.[6] Less commonly, others may choose surrogacy over adoption even if the intended child has no genetic connection, if they wish to select what they view as the combination of ideal genetic material from sperm and ova donors with certain qualities, or if they wish to avoid adoption-related complications.

Altruistic surrogacy involves no monetary profit while commercial surrogacy involves the surrogate getting a fee and typically involves third party brokers. Traditional surrogacy involves artificial insemination with the intended father's or a donor's sperm, with the surrogate contributing the ovum and being the biological mother of the baby, while gestational surrogacy involves the surrogate carrying a baby that is conceived with the ovum of the intended mother or donor, and the sperm of the intended father or donor.

Unless surrogacy is done through home insemination of sperm into a traditional surrogate, sexual intercourse with a surrogate, or overseas ART services pursuant to surrogacy arrangements between persons who subsequently return to Singapore to carry the pregnancy to term,[7] surrogacy cannot be done within Singapore due to restrictions on the use of ART.[8] Overseas surrogacy remains a live concern for the Singapore government if Singaporeans apply for adoption orders to legitimize their relationship with biological children conceived through surrogacy, or if they apply for citizenship for such children. The government needs to take a stand on surrogacy even if it never intends to legalize domestic surrogacy. Granting adoption or citizenship to children conceived through surrogacy indirectly encourages the surrogacy industry as Singaporeans desirous of children may engage such services knowing that they could get approval *after* the fact. If the industry is exploitative or unethical, the government may be seen as indirectly encouraging morally suspect acts.

III. Facts and Holding of *UKM*

The appellant, a gay doctor who had agreed with his long-term partner to raise a child together, applied as a single male to adopt his biological child conceived

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5 Douglas Nejaime, "The Nature of Parenthood" (2016) 126 Yale LJ 2260 at 2306.

6 For *eg*, Lee Shau-kee, one of the richest men in Asia, became the grandfather of triplets when his bachelor son engaged a surrogate in California. See SCMP Reporter, "Peter Lee surrogacy case referred to police" (2 December 2010) South China Morning Post, online: South China Morning Post <https://www.scmp.com/article/732171/peter-lee-surrogacy-case-referred-police>.

7 In this case, the gestational mother is treated as the mother even though she goes through ART overseas: *Status of Children (Assisted Reproduction Technology) Act*, Cap 317A, 2015 Rev Ed Sing, s 6 [*SCARTA*].

8 Licensing Terms and Conditions on Assisted Reproduction Services (26 April 2011), pursuant to the *Private Hospitals and Medical Clinics Act*, Cap 248, 1999 Rev Ed Sing, s 6(5).

through overseas surrogacy in *UKM*. The appellant's and his partner's sperm were provided to fertilize a donor's egg(s). His sperm resulted in the successful creation of an embryo but his partner's did not.[9] A gestational surrogate in the US was paid to carry the pregnancy to term.[10] The child's birth certificate from the State of Pennsylvania listed the surrogate and the appellant as the parents. The surrogate swore an affidavit to relinquish her parental rights to the appellant, as agreed. The child, a US citizen, was brought to Singapore, where the appellant applied for, and was denied, citizenship for him. The child was granted a Long-Term Visit Pass. The appellant applied for adoption to increase the chance for citizenship for the child and to legitimize their relationship. The Ministry of Social and Family Development rejected the application.

A. *Lower Court Decision*

In the Family Courts, the Guardian-in-Adoption argued against adoption on the ground of public policy as the application was in effect seeking the court's endorsement of his intent to form a same-sex family unit.[11] The Guardian-in-Adoption argued that the *Adoption of Children Act*[12] reflected Singapore's public policy that encouraged parenthood within a heterosexual family unit.

The District Judge noted that the appellant knew ART was not available to him and sought to achieve his desired result by applying for adoption,[13] in essence getting the court "to sanction a *fait accompli*".[14] The adoption order was sought not so much for the child's welfare, given that the child was "well-maintained" and "not stateless", but for the appellant's interest,[15] to increase his chance of getting citizenship for the child. There was no need to give an adoption order to remove any stigma of illegitimacy as the appellant was recognized as the biological father in the US birth certificate. The District Judge found it troubling that the child was denied the right to know his mother, especially in view of the "deep, almost abstruse desire of adopted children" to know their biological parents.[16]

B. *High Court Decision*

The High Court reversed the decision,[17] stating that an adoption order would enhance the child's prospects of remaining in Singapore by entitling him to apply for citizenship on a different ground. With citizenship granted, care arrangements would be

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9 *Re UKM*, *supra* note 2 at para 6.

10 *Ibid* at para 7. The surrogate's husband was also paid for lost wages as he accompanied his wife for medical procedures.

11 *Ibid* at para 14.

12 Cap 4, 2012 Rev Ed Sing [*ACA*].

13 *Re UKM*, *supra* note 2 at para 33.

14 *Ibid* at para 43.

15 *Ibid* at para 42.

16 *Ibid* at para 36.

17 The court considered a further issue of whether the appellant made a prohibited payment in relation to adoption under *ACA*, *supra* note 12, s 11, but as the article is focusing on a jurisprudential analysis of the role of public policy considerations in adjudication, that issue would not be examined.

stabilized, giving caregivers peace of mind, and in turn contributing to the child's "sense of security and overall emotional well-being".[18] The countervailing public policy consideration against allowing adoption was not sufficiently weighty against the "statutory imperative" to promote the child's welfare.[19] The High Court embarked on a two-stage inquiry. First, it determined what the child's welfare required; second, it examined whether there were countervailing public policy considerations that defeated the claim based on the child's welfare, if established. This will be detailed in the analysis that follows. This case note will critically examine two main themes of the High Court's reasoning in the two-stage inquiry—the relevance of the formation of a same-sex family unit and of the deliberate conception of the child through surrogacy.

IV. Welfare of Child, Public Policy, and Section 377A

Section 5(b) of the *ACA* required that an adoption order be made for the child's welfare. The High Court held that section 3 of the *Guardianship of Infants Act*,[20] which required the court to regard the welfare of the infant as the "first and paramount consideration", applied to adoption applications.[21] An adoption order in the child's welfare should be made unless there were compelling reasons, such as a countervailing public policy, not to.[22]

A. *Stage 1 of Court's Enquiry: Child's Welfare*

The child's welfare referred to his well-being "in the most exhaustive sense of the word"—embracing his "physical, intellectual, psychological, emotional, moral and religious well-being", in both the short and long term.[23] It referred "not only to his psychological and emotional development, but also to the environment within which his sense of identity, purpose and morality will be cultivated".[24] The High Court noted that it had to assess if the proposed parenting arrangement would cause injury or detriment to the morals of the child, with due regard to the nature of the parents' relationship. For example, if it were proposed for a child to be brought up in "a polyamorous five-parent household in which each parent (was) in a sexual relationship with the other four", the court would "be fully entitled, in the light of the prevailing morality of our society" to reject the application as "the child's being raised in such a family would be injurious to his sense of identity, purpose and morality".[25]

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18 *UKM*, *supra* note 1 at paras 65, 67.

19 *Ibid* at para 248.

20 Cap 122, 1985 Rev Ed Sing.

21 *UKM*, *supra* note 1 at para 50.

22 *Ibid* at para 57.

23 *Ibid* at para 45.

24 *Ibid* at para 47.

25 *Ibid* at para 47. Supposed social stigmatization from being brought up in an unconventional family unit *per se* was irrelevant as the child would remain with the same family even if an order were not granted (at paras 81, 82). The High Court noted that the Guardian did not argue that the child's welfare would be affected in that his sense of identity and morality would be adversely affected by being brought up by a gay person (at para 83).

B. *Stage 2 of Court's Enquiry: Countervailing Public Policy*

If an order was in a child's welfare, section 3(1) of the *ACA*, gave the court a general discretion which, given the scheme and legislative history, allowed the court to consider, amongst other things, "any public policy... relevant to any aspect of the institution of adoption", which was in turn "premised on other foundational social institutions, such as parenthood and family",[26] and the consideration of which was distinct from the assessment of the child's welfare.[27]

Public policy, at this second stage of the inquiry, "involved arguments about the public or common good" and were of two types:

1. Legal policy involved "arguments for the common good that relate[d] to the conduct and consequences of legal practice".
2. Socio-economic policy referred to "arguments for the common good that relate more broadly to what would be good for society in general, especially from a social, economic, cultural and political perspective",[28] matters on which the court may lack expertise or information.[29]

Employing public policy in adjudication tended to be "unruly"[30] because it would take the court beyond the parties to the community's interests,[31] and because there was no easy consensus on its content, which might also change with the times.[32] For adjudication in relation to statutes, in particular,[33] the court had to be "very cautious" as a regime "which [embedded] the public policies" assessed to be relevant by a democratically elected legislature had been created.[34] The court cautioned that:

> They must therefore be very slow to decide a case based on any adaptation of the legislative regime founded on what they themselves happen to think about the asserted public policy, whether legal or socio-economic, even if the relevant legislation is revealed to be lacking in some respect.[35]

Particularly for socio-economic policy for statutes, any relevant policy should be that of parliament and the parliamentary executive,[36] or one which was found to "reflect some fundamental purpose of the law".[37]

Essentially, policy would be employed as an argument for curtailing a statutory right. The rationale for the court's involvement of policy even while it was

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26 *Ibid* at para 97.
27 *Ibid* at para 98.
28 *Ibid* at para 111.
29 *Ibid* at paras 113, 126.
30 *Ibid* at para 107.
31 *Ibid* at para 108.
32 *Ibid* at para 109.
33 When dealing with judge-made law, the court was delegated the role of law-maker: *ibid* at para 113.
34 *Ibid* at paras 115, 125.
35 *Ibid* at para 115.
36 *Ibid* at para 115. An example of a source was ministerial statements made in their official capacity: para 141.
37 *Ibid* at paras 130, 133. There could be a value or purpose underlying the legislative provisions that may be regarded as a public policy, and this could be confirmed by other statutes: para 139.

interpreting the law was that insofar as its duty was "to visit the consequences of the law on members of society",[38] it had to consider the effect of the law, when applied, on the common good. When the application violated "an established public policy or a fundamental purpose of the law itself",[39] the court had to balance the need to give effect to the regime (which itself had a value underlying the claimed right[40]) against the need to protect the common good.[41]

To balance countervailing policies against the welfare, "objective criteria" were assessed:

1. How connected was the policy to the legal issue?
2. Did the policy emanate from the applicable statutory regime?
3. To what degree would the countervailing public policy be violated if the claimed right were given effect to?[42] For example, polyamory of five parents departed significantly from the normative standard of the policy, the traditional family unit.[43] Further, whether the party seeking to enforce the right deliberately set out to violate the policy was pertinent.[44]

The High Court found a public policy in favor of parenthood within marriage but not policies against other forms of parenthood[45] or planned and deliberate parenthood by singles through ART or surrogacy.[46] The only countervailing policy, discerned particularly through the 2007 parliamentary debates over section 377A, as well as section 12(1) of the *Women's Charter*[47] which treated as void non-heterosexual marriages, was that against the formation of same-sex family units, whether with one or two homosexual parents.[48] In terms of the objective criteria, the High Court held:

1. An adoption order positively affirmed the attempt to form a same-sex family unit, having "an appreciable effect on traditional parenting norms in Singapore, which the Prime Minister was eager to preserve".[49]
2. The policy did not arise from the relevant statute.
3. The policy would be violated significantly by an adoption order but it was unclear whether the appellant set out to violate any public policy, though the High Court noted it would be harder to make the same argument in a future case given its judgment.[50]

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38 *Ibid* at para 121.
39 *Ibid* at para 121.
40 *Ibid* at para 149.
41 *Ibid* at paras 118, 148.
42 *Ibid* at paras 154-157.
43 *Ibid* at para 158.
44 *Ibid* at para 159.
45 *Ibid* at para 192.
46 *Ibid* at paras 193-201.
47 Cap 353, 2009 Rev Ed Sing [*Women's Charter*].
48 *UKM*, *supra* note 1 at paras 202, 204, 206.
49 *Ibid* at para 207.
50 *Ibid* at para 246.

On balance, the High Court held that the child's welfare prevailed over the sole countervailing public policy identified by the High Court.

C. *Analysis of the Court's Two-Stage Enquiry*

The High Court's appreciation of the judiciary's limited role as interpreter of the law was in line with its stance in recent cases such as *Yong Vui Kong v PP*,[51] where the Court of Appeal refrained from being a "super-legislature" by reading unenumerated rights into the Constitution,[52] and *Lim Meng Suang v AG*,[53] where it refrained from being a "mini-legislature" in pronouncing an object of the law to be illegitimate.[54] In *Lim Meng Suang*, the Court of Appeal sought to decide based on "objective legal rules and principles".[55] Referring to Ronald Dworkin's theory of adjudication, it distinguished between "extra-legal considerations…uniquely within the purview of the Legislature" and "extra-legal considerations *in so far as they impact the application of constitutional provisions"* and when "absolutely necessary" to enable the court to apply the relevant legal principles relating to those provisions.[56] This cautious trajectory, based on respect for the elected legislature's mandate as well as the acknowledgement of the court's lack of expertise, was seemingly continued in *UKM,* albeit by reference to "public policy" in the context of legislative provisions instead of "extra-legal considerations" in the context of constitutional provisions, with the willingness to consider socio-economic policy insofar as implicated by the legislature and parliamentary executive.

With due respect, based on the cautious trajectory, however, the fact that a same-sex family unit was being formed should not only have been considered as a countervailing socio-economic consideration impacting the common good that defeated a claimed right based on the child's welfare if it was weighty enough. Instead, it should also have had a bearing on the assessment of the child's welfare. The issues with parenting within a same-sex family unit, albeit extra-legal, could have been regarded as absolutely necessary to determine whether adoption was in the welfare of the child. The High Court volunteered the example of polyamorous parenting as injurious to the child's sense of identity, purpose, and morality in light of prevailing societal morality—matters pertinent to assessing the child's welfare. It then held that the adoption order granted to a single male homosexual person of his own biological son was in the child's welfare, despite the intent for co-parenting with his sexual partner. The necessary implication was that homosexual parenting was not problematic in the same way that polyamorous parenting was.

This conclusion that the court would have been entitled to conclude that polyamorous parenting was injurious to the child, while not finding the same with regard to parenting in a same-sex unit, is problematic on two grounds. First, it is inconsistent with the basis of section 377A. Section 377A was retained after extensive

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51 [2015] 2 SLR 1129 (CA).

52 *Ibid* at para 75.

53 [2014] 1 SLR 26 (CA) [*Lim Meng Suang*].

54 *Ibid* at para 77.

55 *Ibid* at para 7.

56 *Ibid* at para 6. It should be noted that Ronald Dworkin used different terminology but this will not be discussed here.

parliamentary debate, which, given what was discussed, should have been conclusive of the legislature's determination about prevailing societal morality or injury to the common good. The High Court accepted the legislative determination of prevailing morality, in view of its deference to legislative mandate and its acknowledgment of the lack of expertise on certain matters. It is commonsensical that because of the nature of the parent-child relationship, parents have a principal role in the transmission of moral norms to children and that such norms that would be transmitted inevitably included those relating to the nature of their relationship. Insofar as the High Court accepted that prevailing societal morality had been determined by the legislature to be opposed to same-sex relationships,[57] it should have concluded that the proposed parenting arrangement would cause injury or detriment to the morals of the child (thereby affecting the welfare of the child), *from the point of view of prevailing societal morality.* This is despite the fact, as the High Court noted, that the Guardian did not contend that being brought up by a gay person would adversely affect the child's sense of identity or morality and therefore undermine his welfare,[58] given that the conclusion about the detrimental effect did not hinge on any special finding of fact relating to the particular set of parents (in which case, the court would have been limited to evidence presented before it). Second, if the court impliedly decided that parenting in a same-sex unit was not injurious but parenting within polyamory was, how would other alternative family units be assessed?

A conservative interpretation and application of the *ACA* arguably required the High Court to decide that adoption was not for the child's welfare in view of the moral basis of section 377A, rendering the next stage of the inquiry—policy considerations—unnecessary. Considering the formation of same-sex family units under the second stage lent to the High Court's reluctance to give effect to it, as now a claimed right had been established based on the child's welfare.

Moreover, the second stage of the inquiry—policy considerations—was problematic in two ways. First, the assignment of weight to the criteria afforded much subjective leeway to the court even if the High Court said that "objective criteria" delineated the inquiry. The High Court found in favor of the child's welfare despite the satisfaction of the first and, to some extent, the third criteria. Second, the High Court viewed adoption as premised on other foundational social institutions such as parenthood and family, and noted that public policies could have been embedded within legislation by the elected legislature. If so, the second criterion pertaining to the source of the countervailing policy should not have been construed so narrowly. The institution of adoption was inextricably linked to other foundational social institutions protected by laws. The High Court itself acknowledged the legislative stance underlying section 377A and also section 12(1) of the *Women's Charter*.[59] Countenancing the underlying policies of such laws pertaining to related foundational social institutions, given that those policies carry legislative mandate,[60] was essential to interpreting the *ACA* and giving coherence to all related laws.

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57 *UKM*, *supra* note 1 at paras 204-206.
58 *Lim Meng Suang*, *supra* note 53 at para 83.
59 *UKM*, *supra* note 1 at para 206.
60 *Ibid* at para 162.

V. Surrogacy and Public Policy

The High Court found that deliberate conception through surrogacy did not "conceptually" affect the analysis of the welfare of the child.[61]

Moreover, there was no clear public policy against surrogacy for the second stage of the inquiry.[62] While gestational surrogacy could not be procured via ART here, neither domestic nor international surrogacy was criminalized. [63] Adoption orders had been granted to married intended parents.[64] The High Court opined that despite multifarious ethical considerations relating to surrogacy, it should not articulate a policy against surrogacy when none was found.[65] Indeed, it noted that, rather than relying on a policy against surrogacy, the Guardian-in-Adoption relied on a policy against singles intentionally using ART or surrogacy for parenthood.[66] It acknowledged that granting adoption orders resulted in dissonance with the *SCARTA*[67] insofar as intended parents could achieve through adoption orders what *SCARTA* did not allow—for them to displace a gestational mother and her husband.[68]

While the High Court did not express whether its decision would have been different if there was a clear governmental stance against surrogacy, it noted the lack of a clear position on surrogacy was unsatisfactory as it would have been a relevant countervailing policy given that surrogacy was a critical step to adoption.[69]

Given that adoption orders had been granted in overseas surrogacy cases to married couples, the High Court was left to deny an adoption order if an overseas surrogacy case involving homosexuals was not a "like" case, either because it was not in the welfare of the child, or because there was a sufficiently weighty countervailing public policy, as was discussed in the previous part. The government must clarify its stand on surrogacy and adoption.

It is proposed that the government treats domestic and overseas surrogacy consistently. What the government decides for domestic surrogacy should impact how it deals with overseas surrogacy, at least insofar as similar ethical issues plague the transactions. The government is confronted with overseas surrogacy generally in applications for adoption or citizenship. Should adoption orders be granted? One would first ask whether the *ACA* is meant to deal with situations of the adoption of one's biological child. Denying an adoption order amounts to refusing to legitimize the parent-child relationship, but the intended parent who provided the gamete might already be listed as a parent on the birth certificate and in any case is the biological parent. Denying legitimacy of the parent-child relationship in a case where the applicant is the biological parent is not unusual and does not change the parentage: after all, children born out of wedlock—a different category of cases—are not legitimate

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61 *Ibid* at para 67.
62 *Ibid* at para 163.
63 *Ibid* at paras 173, 174.
64 *Ibid* at para 176.
65 *Ibid* at para 185.
66 *Ibid* at paras 167, 185.
67 *SCARTA*, *supra* note 7. This did not apply to the child as he was born before it came into force: *ibid* at para 72.
68 *Ibid* at para 186.
69 *Ibid* at para 249.

despite being biological children.[70] One mode of legitimation of children born out of wedlock is through the *Legitimacy Act*. If an adoption order was granted in a case such as *UKM*, in what other cases might an adoption application be made for the purpose of obtaining citizenship, and could they be consistently denied in those cases? An example relates to children born overseas out of wedlock to foreign mothers and Singaporean fathers, as such children do not have citizenship by descent.[71] Generally, adoption orders cannot be made on application by one spouse without the consent of the other.[72] If the wife consents, the Singaporean father could make an application for adoption of his own biological child, and the situation is analogous insofar as it would be "an adoption application in form but not in substance".[73] Surrogacy cases are arguably more reprehensible than out-of-wedlock cases as surrogacy is a deliberate transaction involving multiple elaborate steps, whereas conceiving a child out of wedlock may be the result of an act that occurs at the spur of the moment, though it may also involve deliberate systematic violation of a marital vow. Taking responsibility for a child conceived out of wedlock may in some cases have a different moral hue from deliberately bringing a child about through surrogacy and then seeking legitimacy in effect by using the *ACA*. Should the *ACA* be used for the adoption of one's own biological children, something quite different from what was arguably originally envisaged by the *ACA*, which was "to place children in good, safe homes if one or both parents were not able to provide for their biological child"?[74]

Finally, it is recommended that if the government can find a public policy consideration against recognizing children conceived through surrogacy, based on ethical concerns with surrogacy and not wanting to encourage it, it has grounds to amend the *ACA* to exclude the adoption of children conceived through surrogacy.

VI. Conclusion

While the High Court defined its role conservatively as that of interpreter of the law, ironically, its holding turned out to approve of departures from the norms envisaged or intended to be protected by different legal frameworks—relating to ART, section 377A, adoption, and citizenship.

1. ART: It granted an adoption order to a doctor who circumvented the *de facto* prohibition of domestic surrogacy.

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70 *Women's Charter*, *supra* note 47, ss 92 and 122; *Legitimacy Act*, Cap 162, 1985 Rev Ed Sing [*Legitimacy Act*], provides for the legitimation of children born out of wedlock.

71 *Constitution of the Republic of Singapore*, 1999 Rev Ed Sing, art 122 read with para 15(1), Third Schedule [*Singapore Constitution*].

72 *ACA*, *supra* note 12, s 4(5).

73 *Re UKM*, *supra* note 2 at para 19.

74 *Ibid* at para 22. An adoption in effect conferred legitimacy to the parent-child relation in circumstances outside of the *Legitimacy Act* which dealt with biological children. It would seem that using the institution of adoption to achieve the effect of legitimacy is a circumvention of the *Legitimacy Act* at least in the cases of adoption of children born out of wedlock. But I will not argue that this case involves a straightforward circumvention of the *Legitimacy Act* insofar as this case is not a classic "out of wedlock" case contemplated at the time the *Legitimacy Act* was enacted.

2. Section 377A: The adopter was in a sexual relationship, the constitutive acts of which are the subject of a criminal prohibition oft-thought to be based on morals, with a partner who planned to co-parent (indeed, both had provided their sperm for the ART procedures).
3. Adoption: The adopter was already the biological parent, and adoption in such circumstances—"an adoption application in form but not in substance"[75]—was quite different from what was originally envisaged by the *ACA*, "to place children in good, safe homes if one or both parents were not able to provide for their biological child".[76] Moreover, the adopter applied as a single while intending to co-parent.
4. Citizenship: By using the institution of adoption in a way different from what was originally envisaged by the *ACA*, the appellant obtains the benefit of para 15(2)[77] of the Third Schedule of the *Singapore Constitution*. The net result was that there was a circumvention of the constitutional rules of citizenship which denied citizenship by descent to illegitimate children, of Singaporean fathers, born overseas.[78]

It is suggested that if the government does not wish to encourage its citizens to seek overseas surrogacy, it should change current adoption laws to reflect this policy. If it does not do so, not only might it end up indirectly approving of attempts to seek overseas surrogacy, amongst other things, the edifice of the traditional notion of the family that section 377A was meant to protect might also be chipped away.[79]

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75 *Re UKM*, *supra* note 2 at para 19.

76 *Ibid* at para 22.

77 According to para 15(2), the references to a person's father or to his parent or to one of his parents shall be construed as references to the adopter.

78 *Singapore Constitution*, *supra* note 71, para 15(1), Third Schedule.

79 That said, the High Court did caveat that in "an appropriate future case", an applicant's pursuit of an adoption application might be tainted with sufficient culpability that weighed against an adoption order: *UKM*, *supra* note 1 at para 246.