

## RETHINKING THE STANDARD OF PROOF FOR ADULTERY IN DIVORCE LAW

WQX v WQW

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In divorce proceedings, a party to a marriage may seek to satisfy the court that the marriage has irretrievably broken down by proving, *inter alia*, that the other party has committed adultery. But what is the standard of proof for adultery? In *WQX v WQW*, the General Division of the High Court (Family Division) found that the wife had proved beyond reasonable doubt that the husband had committed adultery, but it queried whether the criminal standard of proof beyond reasonable doubt for adultery, which applied in the past, is still warranted today. It is submitted that there are indeed strong arguments in favour of lowering the standard of proof for adultery from the criminal standard of proof beyond reasonable doubt to the civil standard of proof on a balance of probabilities.

### I. INTRODUCTION

In divorce proceedings, a party to a marriage may seek to satisfy the court that the marriage has irretrievably broken down<sup>1</sup> by proving, *inter alia*, that the other party has committed adultery.<sup>2</sup> But what is the standard of proof for adultery? Is it the criminal standard of proof beyond reasonable doubt? Or is it the civil standard of proof on a balance of probabilities? Or does it lie somewhere between proof beyond reasonable doubt and proof on a balance of probabilities? In *WQX v WQW*,<sup>3</sup> the General Division of the High Court (Family Division) found that the wife had proved beyond reasonable doubt that the husband had committed adultery,<sup>4</sup> but it queried whether the criminal standard of proof beyond reasonable doubt for

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<sup>1</sup> Women's Charter 1961 (2020 Rev Ed) [Women's Charter 1961], s 95(2)(a). The sole ground for divorce is the irretrievable breakdown of the marriage, which can be established by proving one or more of the facts under section 95A(1) of the Women's Charter 1961: see Leong Wai Kum, *Elements of Family Law in Singapore*, 3d ed (Singapore: LexisNexis, 2018) [Leong, *Elements of Family Law*] at para 6.047.

<sup>2</sup> Women's Charter 1961 (2020 Rev Ed), s 95A(1)(a). See also Debbie Ong, *International Issues in Family Law in Singapore* (Singapore: Academy Publishing, 2015) at para 5.34.

<sup>3</sup> *WQX v WQW and another appeal* [2024] SGHCF 18 [*WQX v WQW*].

<sup>4</sup> *Ibid* at [18].

adultery, which applied in the past, is still warranted today.<sup>5</sup> It is submitted that there are indeed strong arguments in favour of lowering the standard of proof for adultery from the criminal standard of proof beyond reasonable doubt to the civil standard of proof on a balance of probabilities.

## II. FACTS AND DECISION

*WQX v WQW* concerned cross-applications for divorce filed by both parties to a marriage.<sup>6</sup> At first instance, the Family Court found that the wife had proved that the husband had committed adultery with the co-respondent<sup>7</sup> and granted the wife's application for divorce.<sup>8</sup> Dissatisfied with the Family Court's decision, the husband and the co-respondent appealed to the General Division of the High Court (Family Division), arguing that the evidence adduced by the wife did not satisfy the criminal standard of proof beyond reasonable doubt that was required in cases of adultery.<sup>9</sup> In addition, the husband and the co-respondent also took issue with the fact that the Family Court did not say whether it found for the wife on the civil standard of proof on a balance of probabilities or the criminal standard of proof beyond reasonable doubt.<sup>10</sup>

After a thorough and meticulous analysis of the evidence,<sup>11</sup> the General Division of the High Court (Family Division) found that adultery had been proved beyond reasonable doubt<sup>12</sup> and dismissed the appeals of the husband and the co-respondent.<sup>13</sup> Significantly, while the General Division of the High Court (Family Division) noted that the earlier 1992 High Court<sup>14</sup> decision of *Tan Meng Heok v Tay Mui Keow*<sup>15</sup> had accepted the criminal standard of proof beyond reasonable doubt as the applicable

<sup>5</sup> *Ibid* at [5].

<sup>6</sup> *Ibid* at [1]. While the husband also filed an application for divorce against the wife, the issue of the applicable standard of proof for adultery arises in relation to the wife's application for divorce, which shall be the focus here.

<sup>7</sup> Part 2, rule 3(1) of the Family Justice (General) Rules 2024 provides that subject to certain exceptions, "if an applicant alleges in a matrimonial application that the respondent has committed adultery, the person with whom the adultery is alleged to have been committed (*P*) must be made a co-respondent".

<sup>8</sup> *WQX v WQW*, *supra* note 3 at [2].

<sup>9</sup> *Ibid* at [3].

<sup>10</sup> *Ibid*.

<sup>11</sup> *Ibid* at [8]–[17].

<sup>12</sup> *Ibid* at [18].

<sup>13</sup> *Ibid* at [20].

<sup>14</sup> The High Court is now known as the General Division of the High Court following the establishment of the Appellate Division of the High Court on 2 January 2021: see *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2021] 2 SLR 440 (CA) at [1]–[2].

<sup>15</sup> [1992] SGHC 100. *Tan Meng Heok v Tay Mui Keow (m w) and another* [1992] SGHC 100 dated 21 April 1992 contains the oral judgment of the High Court, while *Tan Meng Heok v Tay Mui Keow (m w) and another* [1992] SGHC 218 dated 7 August 1992 contains the grounds of decision of the High Court. In *WQX v WQW* [2024] SGHCF 18, the General Division of the High Court (Family Division) referred to *Tan Meng Heok v Tay Mui Keow (m w) and another* [1992] SGHC 100, but not to *Tan Meng Heok v Tay Mui Keow (m w) and another* [1992] SGHC 218: see *WQX v WQW*, *supra* note 3 at [5].

standard of proof in cases of adultery, it queried whether a higher standard of proof for adultery is still warranted “in modern times”.<sup>16</sup>

First, the General Division of the High Court (Family Division) pointed out that *Tan Meng Heok v Tay Mui Keow* was decided in 1992, “before the names of the parties and families were redacted”.<sup>17</sup> As the General Division of the High Court (Family Division) explained, “[t]he higher test is needed not so much to reflect the criminality of the act of adultery ... but to protect the identities of other parties unconcerned with the adultery, and in the event that adultery is not proved, of the named parties themselves”.<sup>18</sup> In this regard, the General Division of the High Court (Family Division) opined that “[i]t may even be arguable whether in modern times these are sufficient reasons to warrant a higher standard of proof for adultery”.<sup>19</sup> Second, the General Division of the High Court (Family Division) observed that all the other facts under the Women’s Charter 1961 that can be relied upon to satisfy the court that the marriage has irretrievably broken down (apart from adultery) “can be proved on a balance of probabilities”.<sup>20</sup> Be that as it may, the General Division of the High Court (Family Division) took the view that the Family Court “was not obliged” to “specifically say which [standard] of proof [it] applied” and that “[i]t [was] sufficient if [the Family Court] had found that the evidence on the whole justify[ed] a finding of adultery”.<sup>21</sup>

### III. ANALYSIS

Although *WQX v WQW* did not expressly “make a ruling on the law regarding the standard of proof in cases of adultery”,<sup>22</sup> the perceptive observations of the General Division of the High Court (Family Division) suggest that there are indeed strong arguments in favour of lowering the standard of proof for adultery from the criminal standard of proof beyond reasonable doubt to the civil standard of proof on a balance of probabilities.

#### *A. The Criminal Standard of Proof Beyond Reasonable Doubt for Adultery is No Longer Warranted Today*

In *WQX v WQW*, the General Division of the High Court (Family Division) pertinently identified the 1992 decision of *Tan Meng Heok v Tay Mui Keow* as “[t]he last reported case from the High Court that accepted proof beyond reasonable doubt”

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<sup>16</sup> *WQX v WQW*, *supra* note 3 at [5].

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid* at [7].

<sup>22</sup> *Ibid* at [3].

as the applicable standard of proof in cases of adultery.<sup>23</sup> Notably, while *Tan Meng Heok v Tay Mui Keow* was decided “before the names of the parties and families were redacted”,<sup>24</sup> the practice “[i]n recent times” is that “the names of all parties are redacted such that their identities are not known”.<sup>25</sup> In particular, section 10(1) of the Family Justice Act 2014 provides that subject to certain exceptions, “all matters and proceedings in a Family Justice Court must be heard in private”.<sup>26</sup> Accordingly, pursuant to Part 1, r. 9(2)(b) of the Family Justice (General) Rules 2024, the reports of any judgment in proceedings heard in private may only be published “after the removal from the judgment of all information which may disclose or lead to the disclosure of the identity of any party to the proceedings”.<sup>27</sup> In light of this, there is much force in the suggestion that *Tan Meng Heok v Tay Mui Keow*, which is more than three decades old, is a “fairly old High Court decision” and “may no longer be followed today”.<sup>28</sup>

Moreover, a closer examination of the reasoning of the High Court in *Tan Meng Heok v Tay Mui Keow*<sup>29</sup> behind its acceptance of the criminal standard of proof beyond reasonable doubt in cases of adultery suggests that those reasons are no longer applicable today. In *Tan Meng Heok v Tay Mui Keow*, the High Court rejected “the view that the standard of proof [for adultery] should be one of balance of probabilities as in other civil proceedings” and reasoned as follows:<sup>30</sup>

The existence of provisions in our laws that seek to uphold marriage and safeguard the interests of the union in s[ection] 45 of the Women’s Charter<sup>31</sup> and the sections in the Penal Code with regard to offences relating to marriage do not permit a lower standard of proof when adultery is alleged on the ground that adultery “no longer generally entails the serious social consequences that in former times resulted from its discovery” ... I therefore applied the standard of proof beyond reasonable doubt.<sup>32</sup>

Importantly, unlike the position in the past where adultery was regarded as a “matrimonial offence”<sup>33</sup> and “divorce was granted only if one spouse proved that the other spouse had committed a matrimonial offence”,<sup>34</sup> divorce law has since abandoned the “matrimonial offence theory” in favour of the “irretrievable breakdown of

<sup>23</sup> *Ibid* at [5]. In an earlier 1975 decision of *Koh Teng Lam v Koh Chen Chee Elsie and another* [1974–1976] SLR(R) 510 (HC) at [35]–[36], the High Court similarly held that adultery had to be proved beyond reasonable doubt.

<sup>24</sup> *WQX v WQW*, *supra* note 3 at [5].

<sup>25</sup> *Ibid* at [4].

<sup>26</sup> Family Justice Act 2014 (2020 Rev Ed), s 10(1).

<sup>27</sup> Family Justice (General) Rules 2024, P. 1, r. 9(2)(b). See also Chen Siyuan, Eunice Chua & Lionel Leo, *Family Procedure in Singapore* (Singapore: LexisNexis, 2018) at para 671.04.

<sup>28</sup> Leong, *Elements of Family Law*, *supra* note 1 at para 6.050, n 74.

<sup>29</sup> *Tan Meng Heok v Tay Mui Keow (m w) and another* [1992] SGHC 218. Reference is made here to the grounds of decision of the High Court.

<sup>30</sup> *Ibid*.

<sup>31</sup> Section 45 of the then Women’s Charter is now section 46 of the Women’s Charter 1961 (2020 Rev Ed), which provides that “[a] husband and wife are mutually bound to cooperate with each other in — (a) safeguarding the interests of the union; and (b) caring and providing for the children”.

<sup>32</sup> *Tan Meng Heok v Tay Mui Keow (m w) and another* [1992] SGHC 218.

<sup>33</sup> Debbie Ong & Valerie Thean, “Family Law” (2008) 9 SAL Ann Rev 309 at para 14.8.

<sup>34</sup> *Tan Kay Poh v Tan Surida and another* [1988] 2 SLR(R) 515 (HC) [*Tan Kay Poh v Tan Surida*] at [5].

marriage theory”.<sup>35</sup> Today, “divorce is no longer based on fault but on the concept of ‘irretrievable breakdown’”,<sup>36</sup> which “may be established only by proof of one or more of [the] facts set out in [section 95A(1)] of the Women’s Charter [1961]”.<sup>37</sup> Indeed, as a learned commentator aptly observed:<sup>38</sup>

... the traditional standard of proof beyond a reasonable doubt was developed at a time when the law of divorce was based upon the commission of matrimonial offences. This is no longer the law today. Adultery no longer has any significance as a matrimonial offence; it only shows the state of the marriage like any other relevant fact. We should probably not require it to be proven to a higher standard of proof than any other fact regarding the marriage because to continue to do so would be anachronistic in the present scheme of the law of divorce.

B. *The Civil Standard of Proof on a Balance of Probabilities  
Should Apply to All Facts That Can Be Relied Upon to  
Satisfy the Court That the Marriage Has Irretrievably  
Broken Down (of Which Adultery is One)*

Given that “[a]n application for a judgment of divorce is a civil action”, the civil standard of proof on a balance of probabilities should apply to “any issue in divorce”,<sup>39</sup> including allegations of adultery.<sup>40</sup> This would promote consistency, especially in view of the General Division of the High Court (Family Division)’s perceptive observation in *WQX v WQW* that all the other facts for divorce under the Women’s Charter 1961 (apart from adultery) “can be proved on a balance of probabilities”.<sup>41</sup> As will be recalled, a party to a marriage may seek to satisfy the court that the marriage has irretrievably broken down<sup>42</sup> by proving one or more of the following facts under section 95A(1) of the Women’s Charter 1961:<sup>43</sup>

- (a) X has committed adultery and Y finds it intolerable to live with X;
- (b) X has behaved in such a way that Y cannot reasonably be expected to live with X;

<sup>35</sup> Leong, *Elements of Family Law*, *supra* note 1 at para 6.049. See also Leong Wai Kum, “A Turning Point in Singapore Family Law: Women’s Charter (Amendment) Bill 1979” (1979) 21 Mal LR 327 at 327.

<sup>36</sup> *Tan Kay Poh v Tan Surida*, *supra* note 34 at [5]. Cf the view expressed in Wing-Cheong Chan, “Trends in Non-Muslim Divorces in Singapore” (2008) 22(1) Intl JL Pol’y & Fam 91 at 93 that “[f]ault ... continues to be implicitly required in that ‘irretrievable breakdown of marriage’ can only be proved by satisfying the court of one or more of the ... ‘facts’” under section 95A(1) of the Women’s Charter 1961. In the words of Leong, *Elements of Family Law*, *supra* note 1 at para 6.033, the current divorce law “remains a slightly awkward compromise of the ‘fault’ and ‘irretrievable breakdown of marriage’ theories of divorce”.

<sup>37</sup> *Tan Kay Poh v Tan Surida*, *supra* note 34 at [6].

<sup>38</sup> Leong Wai Kum, *Family Law in Singapore: Cases and Commentary on the Women’s Charter and Family Law* (Singapore: Malayan Law Journal Pte Ltd, 1990) [Leong, *Cases and Commentary on the Women’s Charter*] at 204.

<sup>39</sup> Leong, *Elements of Family Law*, *supra* note 1 at para 6.049.

<sup>40</sup> *Ibid* at para 6.050, n 74.

<sup>41</sup> *WQX v WQW*, *supra* note 3 at [5].

<sup>42</sup> Women’s Charter 1961 (2020 Rev Ed), s 95(2)(a).

<sup>43</sup> Women’s Charter 1961 (2020 Rev Ed), s 95A(1). See also Debbie SL Ong, “The Singapore Family Court: Family Law in Practice” (1999) 13(3) Intl JL Pol’y & Fam 328 at 338–339.

- (c) X has deserted Y for a continuous period of 2 or more years immediately before the application for divorce;
- (d) X and Y —
  - (i) have lived apart for a continuous period of 3 or more years immediately before the application for divorce; and
  - (ii) consent to a divorce being granted by the court;
- (e) X and Y have lived apart for a continuous period of 4 or more years immediately before the application for divorce; or
- (f) subject to subsection (6)(c), X and Y agree that the marriage has irretrievably broken down.

If the civil standard of proof on a balance of probabilities applies to sections 95A(1)(b) to (f) of the Women's Charter 1961, then it would be in the interests of consistency for this same standard of proof to apply to section 95A(1)(a) as well.<sup>44</sup> Moreover, it should be noted also that section 95A(1)(a) of the Women's Charter 1961 mandates that two facts be proved, namely, "(i) that [X] has committed adultery, and (ii) [Y] finds it intolerable to live with [X]".<sup>45</sup> Bearing in mind that "[i]t is the conjunction of these two facts that proves the irretrievable breakdown of marriage",<sup>46</sup> the same standard of proof (*viz*, the civil standard of proof on a balance of probabilities) should apply to *both* (i) and (ii) as "[i]t would be highly anomalous if the two halves of [section 95A(1)(a) of the Women's Charter 1961] were required to be proven to different standards".<sup>47</sup>

### C. There Should Be No Intermediate Standard of Proof for Adultery

What, then, about the concerns raised by the husband and the co-respondent in *WQX v WQW* that adultery is "a blemish on the reputation of the parties concerned" and "the finding of adultery must not be made lightly less the reputations of those concerned are sullied"?<sup>48</sup> Do these concerns justify the courts applying "a *third* standard of proof that lies somewhere *between* the criminal and civil standards of proof"<sup>49</sup> in cases of adultery? To answer this, it would be apposite to "go through the history of the oscillating jurisprudence"<sup>50</sup> emanating from the Court of Appeal on the applicable standard of proof where allegations of fraud are made in the civil context and draw some lessons from these decisions.

<sup>44</sup> Leong, *Elements of Family Law*, *supra* note 1 at para 6.050, n 74.

<sup>45</sup> *Ibid* at para 6.054. See also Leong, *Cases and Commentary on the Women's Charter*, *supra* note 38 at 204; Leong Wai Kum, *Principles of Family Law in Singapore* (Singapore: Butterworths Asia, 1997) at 708.

<sup>46</sup> Leong, *Elements of Family Law*, *supra* note 1 at para 6.071.

<sup>47</sup> Leong, *Cases and Commentary on the Women's Charter*, *supra* note 38 at 204.

<sup>48</sup> *WQX v WQW*, *supra* note 3 at [4].

<sup>49</sup> *Chua Kwee Chen and others (as Westlake Eating House) and another v Koh Choon Chin* [2006] 3 SLR(R) 469 (HC) [*Chua Kwee Chen v Koh Choon Chin*] at [14].

<sup>50</sup> Chen Siyuan & Lionel Leo, *The Law of Evidence in Singapore*, 3d ed (Singapore: Sweet & Maxwell, 2022) [Chen & Leo, *The Law of Evidence*] at para 3.029.

A useful starting point would be the 1996 decision of *Yogambikai Nagarajah v Indian Overseas Bank*,<sup>51</sup> where the Court of Appeal was in favour of “impos[ing] a [standard] of proof more onerous than the ordinary civil standard where what is alleged is as serious and grave as fraud”.<sup>52</sup> Almost a decade later, the Court of Appeal took a different position in its 2005 decision of *Tang Yoke Kheng v Lek Benedict*<sup>53</sup> and emphasised that “the standard of proof in a civil case, including cases where fraud is alleged, is that based on a balance of probabilities”.<sup>54</sup> In 2013, the Court of Appeal in *Alwie Handoyo v Tjong Very Sumito*<sup>55</sup> finally “put this issue to rest”<sup>56</sup> by expressing its preference for the approach in *Tang Yoke Kheng v Lek Benedict* as opposed to that in *Yogambikai Nagarajah v Indian Overseas Bank*.<sup>57</sup> As the Court of Appeal authoritatively held in *Alwie Handoyo v Tjong Very Sumito*,<sup>58</sup> “[t]he standard of proof that applies in *all* civil proceedings is the balance of probabilities. There is no third legal [standard] of proof that straddles the civil and criminal [standards]”.<sup>59</sup> That said, in light of “the serious implications of fraud”, the Court of Appeal made clear that “cogent evidence is required before a court will be satisfied that the allegation of fraud is established”.<sup>60</sup>

It is submitted that the Court of Appeal’s holding in *Alwie Handoyo v Tjong Very Sumito* in respect of allegations of fraud that are made in the civil context should apply with equal force to allegations of adultery that are made in divorce proceedings. To begin with, the courts should not apply “a third standard of proof that lies somewhere between the criminal and civil standards of proof”<sup>61</sup> in cases of adultery as it “would likely result in complexity and confusion, technical distinctions between standards and the consequential proliferation of litigation”.<sup>62</sup> Rather, “it might well make for more conceptual clarity if the courts adhere to just two standards of proof, *viz*, the civil and criminal standards, respectively”.<sup>63</sup> However, in

<sup>51</sup> [1996] 2 SLR(R) 774.

<sup>52</sup> *Ibid* at [44].

<sup>53</sup> [2005] 3 SLR(R) 263.

<sup>54</sup> *Ibid* at [14].

<sup>55</sup> [2013] 4 SLR 308.

<sup>56</sup> Chen & Leo, *The Law of Evidence*, *supra* note 50 at para 3.029.

<sup>57</sup> *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 (CA) [*Alwie Handoyo v Tjong Very Sumito*] at [159].

<sup>58</sup> *Ibid*. *Alwie Handoyo v Tjong Very Sumito* remains the leading decision on the issue of the applicable standard of proof where allegations of fraud are made in the civil context and has been repeatedly affirmed in subsequent Court of Appeal decisions: see *eg*, *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 (CA) at [183]–[184]; *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 (CA) at [41]; *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 (CA) at [99]; *PH Hydraulics & Engineering Pte Ltd v Airtrust (Hong Kong) Ltd and another appeal* [2017] 2 SLR 129 (CA) at [32]; *Charles Lim Teng Siang and another v Hong Choon Hau and another* [2021] 2 SLR 153 (CA) at [56].

<sup>59</sup> *Alwie Handoyo v Tjong Very Sumito*, *supra* note 57 at [159]. In particular, the Court of Appeal expressed its agreement with the “analysis and conclusion” of the High Court in *Chua Kwee Chen v Koh Choon Chin*, *supra* note 49: see *Alwie Handoyo v Tjong Very Sumito*, *supra* note 57 at [159]–[160].

<sup>60</sup> *Alwie Handoyo v Tjong Very Sumito*, *supra* note 57 at [161].

<sup>61</sup> *Chua Kwee Chen v Koh Choon Chin*, *supra* note 49 at [14].

<sup>62</sup> Jeffrey Pinsler, *Evidence and the Litigation Process*, 8th ed (Singapore: LexisNexis, 2024) [Pinsler, *Evidence and the Litigation Process*] at para 12.096A.

<sup>63</sup> *Chua Kwee Chen v Koh Choon Chin*, *supra* note 49 at [22].



light of “the serious implications”<sup>64</sup> of adultery (as was suggested by the husband and the co-respondent in *WQX v WQW*),<sup>65</sup> the courts should require “cogent evidence”<sup>66</sup> before finding that adultery has been proved on a balance of probabilities. As a learned commentator put it in numerical terms:<sup>67</sup>

... if 50.01% against 49.99% represents the state of evidence to justify proof on a balance of probabilities, the requirement of sufficient and cogent evidence in the case of fraud or forgery (or other serious allegations) means that the plaintiff must do more to reach 50.01%. The court is not imposing a standard of proof beyond 50.01%, which remains the same for all civil cases.

#### IV. CONCLUSION

*WQX v WQW* is a timely decision that brings to the forefront the issue of the applicable standard of proof for adultery in divorce law. As has been argued, there are indeed strong arguments in favour of lowering the standard of proof for adultery from the criminal standard of proof beyond reasonable doubt to the civil standard of proof on a balance of probabilities. In this regard, the perceptive observations of the General Division of the High Court (Family Division) in *WQX v WQW* will undoubtedly prove to be valuable in the continuing search for the applicable standard of proof for adultery, an issue that is of significance.<sup>68</sup>

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<sup>64</sup> *Alwie Handoyo v Tjong Very Sumito*, *supra* note 57 at [161].

<sup>65</sup> *WQX v WQW*, *supra* note 3 at [4].

<sup>66</sup> *Alwie Handoyo v Tjong Very Sumito*, *supra* note 57 at [161].

<sup>67</sup> Pinsler, *Evidence and the Litigation Process*, *supra* note 62 at para 12.096C.

<sup>68</sup> The standard of proof has been said to be “one of the most significant topics in evidence law”: Jesus Ezurmendia & Maria de los Angeles Gonzalez, “A Comparison Between the Standard of Proof Applicable in Arbitration and Formal Adjudication” (2021) 25(1) *International Journal of Evidence and Proof* 3 at 4. This is perhaps unsurprising given that “[w]hether a party manages to prove a fact depends on the standard which the law applies to determine whether a fact has been proved”: Pinsler, *Evidence and the Litigation Process*, *supra* note 62 at para 12.070.