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v

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[2016] SGHCF 1

High Court — Divorce Transfer No 4295 of 2011 (Summons No 3696 of 2015)

Debbie Ong JC

7, 22 September; 22 October 2015

Family law — Custody — Care and control — Access

Family law — Custody — Material change in circumstances

Family law — Custody — Judicial interviewing of children

6 January 2016

Debbie Ong JC:

Introduction

1 The parenting of children is one of the most central family obligations regulated by the Women's Charter (Cap 353, 2009 Rev Ed) ("the Women's Charter"). This responsibility can be found in s 46 of the Women's Charter, which succinctly encapsulates the most fundamental obligations of a couple entering into the marriage institution. Section 46 of the Women's Charter provides that "[u]pon 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."

2 Professor Leong Wai Kum has observed in her book *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at p 236 that “parenting can be considered the pinnacle of co-operation by any two persons.” This joint responsibility of co-operative parenting continues to be placed on both parents even when their own married relationship has ended in a divorce. As parental responsibility does not end even when a marriage does, fundamental to parental responsibility is the law’s expectation that parents must continue, post-divorce, to “place the needs of their children before their own” (see the Court of Appeal decision in *BNS v BNT* [2015] 3 SLR 973 at [29], citing *TAA v TAB* [2015] 2 SLR 879 at [18]). Numerous cases have demonstrated that in practice, parents undergoing the divorce process often cannot appreciate that their children’s needs include having a good relationship with *both* parents.

3 The discharge of parental responsibility requires the hard work and personal sacrifices of both parents in reducing conflict and minimising their acrimony, if any, between themselves. Research has usefully highlighted the adverse effects of parental conflict on children of separated families (see generally Christy M Buchanan and Kelly L Heiges, “When Conflict Continues After the Marriage Ends: Effects of Postdivorce Conflict on Children” in *Interparental Conflict and Child Development: Theory, Research and Applications* (John H Grych and Frank D Fincham eds) (Cambridge University Press, 2001) ch 13 at pp 337–362; Christina Sadowski and Jennifer E McIntosh, “On laughter and loss: Children's views of shared time, parenting and security post-separation” (2015) *Childhood* 1 (“*Children's views of shared time, parenting and security post-separation*”); and Robert D Hess and Kathleen A Camara, “Post-Divorce Family Relationships as Mediating Factors in the Consequences of Divorce for Children” (1979) 35(4) *Journal of Social Issues* 79).

4 The present case involves the parenting of children by parties who have recently been divorced. The Father had been granted the care and control of their three daughters, while the Mother had been granted access to them. In this application for the variation of existing orders, the Mother sought to spend more time with their three daughters, by way of obtaining care and control of them, or at least by obtaining increased access to them. My decision is focused on requiring the parties to discharge their parental responsibility and placing the welfare of the children as my paramount consideration.

Background facts

5 The Father and the Mother were married in January 2000. The interim judgment of divorce was granted in November 2012. The parties have three daughters whose names have all been redacted in this judgment in accordance with s 35(1)(a) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed). Their older two daughters, K and L, are twins who are 13 years old. The youngest daughter, M, is now 11 years old (ten years old at the time of the hearing). This application concerned the care and control and access over the three children.

6 The parties were engaged in litigation over the interim care and control arrangements of the children between 2011 and 2014. In December 2012, the District Judge granted interim care and control of the three children to the Father and reasonable supervised access to the Mother. The Father had shown evidence that the Mother had an addiction to internet activities and engaged in online activities with content of a sexual nature, which supported allegations that she was neglecting the children, making her the less suitable parent for the purposes of interim care and control. The following summarizes the District Judge's orders relating to the Mother's access:

- (a) weekday access every Monday and Wednesday from 5pm to 7.30pm;
- (b) alternate weeks on Friday from 5pm to 8pm and Sunday 5pm to 8pm on one week, and Friday 5pm to Saturday 8pm on the alternate week;
- (c) the Mother is allowed to take the children out of the home for access provided it is not a school day;
- (d) the children shall always return home after access with the Mother to sleep in their home; and
- (e) no overseas access for the Mother until further order unless this is agreed to by the Father, in which case overseas access will be supervised.

7 In a series of subsequent pre-trial conferences, the interim arrangements were continued pending the evidence of several psychiatric reports on the Mother's mental state. After this case was transferred to the High Court, the Mother applied in April 2014 to admit two further psychiatric reports and sought overnight and overseas access to the children. The High Court Judge affirmed the order for the Father's care and control of the children, and declined to grant the Mother overnight or overseas access. The learned Judge also gave the Mother liberty to apply for a review of the order after 31 December 2014 at the Family Court. Some adjustments were made to the orders which superseded the District Judge's earlier orders.

8 On 13 July 2015, the High Court Judge heard two summonses, one filed by the Father, and the other by the Mother. The Mother applied for shared care

and control of the children on the grounds that the children had grown older with two of them attaining puberty, necessitating her maternal care, and that they had indicated that they wished to spend more time with her. The Father, in his summons, asked for the Mother's weekday supervised access to cease, but agreed to alternate weekend access. Both alleged material change in circumstances which in their view justified the variations sought.

9 The High Court Judge held that none of the matters raised by the parties amounted to a material change in circumstances, observing that there was "nothing new that the parties could not see each other eye-to-eye". Where the Father's application was concerned, the learned Judge held that the minor change to the weekday access was not going to make much of a difference. As for the Mother's application, the Judge held that even if the two older children had attained puberty, it was possible for the Mother to provide them guidance under the existing access arrangements, and the children should be given stability and peace of mind without constant changes to their lives. The High Court Judge did not interview the children as he thought that "[t]he three girls should be allowed the stability and peace of mind to grow up without constant changes to their lives". Both applications were therefore dismissed.

10 This present application by the Mother first came before me on 7 September 2015. In these proceedings, the Mother sought to vary the care and control arrangements on the ground that there had been a material change in circumstances. She requested that the children be interviewed by the judge, or that a Child Representative be appointed in these proceedings. The Father objected to the Mother's application, contending that it was an abuse of process as the court had heard a similar application less than two months ago in July 2015. His lawyers also submitted that I should not be interviewing the children, as the High Court Judge had declined to interview them for the reasons I have

cited above. The Father’s lawyers further submitted that if I decided to interview the children, I would be granting the Mother a “key relief” which had been denied by the High Court Judge previously.

The judicial interview of children

Giving children a voice

11 Giving children the opportunity to be heard is part of Singapore’s international commitment under Art 12 of the United Nations Convention on the Rights of the Child (20 November 1989), 1577 UNTS 3/[1991] ATS 4/28 ILM 1456 (1989) (entered into force 2 September 1990) (“UNCRC”) which provides:

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

12 Research supports the view that when children are given a voice in divorce proceedings, it is more often than not beneficial for the parties and the children. Jan Ewing *et al*, “Children’s voices: centre-stage or sidelined in out-of-court dispute resolution in England and Wales?” (2015) 27(1) Child and Family Law Quarterly 43 explains at p 47 that:

When parents separate, children overwhelmingly report that they want information, both general and specific, and that they

wish to be consulted on arrangements made for them. They wish to have a ‘voice’, not necessarily a ‘choice’ (save for children in abusive or violent families who want both a voice and a choice). Uncertainty coupled with fear of decisions being made without their involvement causes distress for children. Conversely, children who report that they were consulted over or influenced the making of contact and residence arrangements express higher degrees of satisfaction with the arrangements. Some studies have found that giving children a voice can lead to more durable agreements, improved parental alliances, better father-child relationships and more cooperative co-parenting.

Concerns in the judicial interview of children

13 The Father argued that the High Court Judge had declined to interview the children at the hearing in July 2015 as “[t]he children need to be kept away from the fray and allowed to lead normal and happy lives as growing children, without being drawn into taking sides in the legal battles between the parties, or coming under intrusive scrutiny of a procession of counsellors, child representatives and the like.”

14 The issue of the desirability of judges speaking directly to children in parenting disputes has been debated in the common law jurisdictions (see Family Justice Council, “Enhancing the Participation of Children and Young People in Family Proceedings: Starting the Debate” (2008) 38 Fam Law 431; Nigel Lowe and Gillian Douglas, *Bromley’s Family Law* (Oxford University Press, 11th Ed, 2015) at pp 465–466). Academic research in England has also suggested caution in judicial interviews with children (see Rosemary Hunter, “Close encounters of a judicial kind: ‘hearing’ children’s ‘voices’ in family law proceedings” (2007) 19 Child and Family Law Quarterly 283).

15 There are a number of other concerns surrounding the issue. One is that judges are not trained to ascertain the views of children. It has been pointed out

that “[l]istening’ involves both understanding what the child is communicating from the child’s perspective, and conveying to the child that they will be heard and their views respected” (Pauline Tapp, “Judges Are Human Too: Conversation Between the Judge and a Child” (2006) *New Zealand Law Review* 35 at p 47). Communication is not confined to the words spoken by the child but by the child’s body language as well. The views expressed at the interview must also be understood in the context of what is currently going on in the child’s life. Further, a judge may not have had the time to establish a relationship of trust with the child which may be necessary for the child to feel safe in expressing her own views. There are also concerns that the child may be uncomfortable and feel intimidated by the court process and the judge in the formal environment of the court. Yet another concern is that children may be coached by the parents and pressurised by the parents to convey the coached views. Judges have also been reluctant to speak to children due to the view that the adversarial process, which does not promise confidentiality of the interview, hampers the effectiveness of the interview (see the views of the English Court of Appeal in *B v B (Minors) (Interviews And Listing Arrangements)* [1994] 2 FLR 489). In *Mabon v Mabon and others* [2005] 3 WLR 460 (“*Mabon*”) Wall LJ remarked that (at [38]):

An example of this difficulty, and one which perplexes our colleagues on the continent of Europe, is the reluctance of the English judge to talk to children in private. This reluctance has several origins, but one of them is undoubtedly rooted in the rules of evidence and the adversarial mode of trial. What is said in private by a child to the judge cannot be tested in evidence or in cross-examination. As a consequence, a judge in England and Wales cannot promise a child that any conversation with the child will be entirely confidential. That fact may inhibit children from expressing their true wishes and feelings to the judge in such circumstances ...

Recent developments

16 More recently in England, the court and the government have moved affirmatively to support the interviewing of children in proceedings. Suggestions were made to give children a voice in *Family Justice Review: Final Report* (Ministry of Justice) (November 2011) and *The Government Response to the Family Justice Review: A system with children and families at its heart* (Cm 8273) (February 2012). The Right Honourable Simon Hughes, in his speech to the Family Justice Young People’s Board at the 2014 “Voice of the Child” Conference (25 July 2014) <<https://www.gov.uk/government/speeches/simon-hughes-speech-at-the-voice-of-the-child-conference>> (accessed 28 December 2015), opined that:

... [I]t is the intention of the Ministry of Justice, and therefore the government, ... that it will be normal practice, the norm, that, from the age of 10, children and young people involved in public or private law family justice proceedings before the courts will have access to the judge, in an appropriate way which reflects their feelings and wishes to make clear their views as to what is the best resolution of the family dispute in their interest. ... Why 10? It seems to me wrong that a 10 year old in England and Wales is deemed old enough to be criminally responsible yet has no automatic voice in family proceedings in which decisions are being made about them.

17 Australia has led the way in common law jurisdictions in moving in favour of interviewing children. As early as in 1995, the Australian Law Reform Commission was tasked with a comprehensive inquiry into children and the legal process. Its report, *Seen and heard: priority for children in the legal process* (Comm Ref ALRC 84, 1997) at para 16.32, recommended a training programme for judges on inquisitorial approaches to determining the child’s best interests along with suitable guidelines to assist them in this regard. In the more recent decade, it has also been reported that the judges in New Zealand

appear to have become more positive about the practice of judicial interviewing of children and less anxious about the risks (John Caldwell, “Common law judges and judicial interviewing” (2011) 23 Child and Family Law Quarterly 41).

Judicial interview of children in Singapore family proceedings

18 There are good reasons for the court to ascertain directly the views of the children by speaking to them. Kathryn Kuehnle, Lyn R Greenberg, and Michael C Gottlieb have espoused the view in their article “Incorporating the Principles of Scientifically Based Child Interviews into Family Law Cases” (2004) 1(1) Journal of Child Custody 97 that (at p 98):

[I]n the majority of custody cases, “best interests” cannot be fully understood unless information and perceptions are directly obtained from the child. However, in all forensic contexts, speaking to a child and collecting valid information is fraught with problems. We propose that custody evaluators approach this task with a solid knowledge of forensic child interview techniques in order to avoid contamination of a valuable source of information and obtain the most reliable information possible.

19 In my view, abandoning judicial interviews with children altogether due to concerns over their limitations and risks, is to throw the baby out with the bathwater. In the Court of Appeal decision of *ZO v ZP and another appeal* [2011] 3 SLR 647 (“*ZO v ZP*”), Andrew Phang Boon Leong JA observed that (at [16]):

... [T]here is always the possible concern that a child (or children) might be primed or coached prior to the interview with the judge. We should think that parties would be sufficiently wise not to indulge in such a practice and that their counsel would advise them against such action as well. Further, we are confident that the judge concerned would, given the very nature

of his or her vocation, be sufficiently astute to discern whether or not the child concerned has in fact been so primed or coached. In any event, to allow such a possibility to *completely* negate the implementation of such a helpful as well as practical procedure would be to throw out the legal baby together with the bathwater. Having said that, such a procedure must not itself become ossified by being applied in a mechanical fashion. The possible fact situations are too numerous for general guidelines to be laid down. All that can be said is the judge concerned should – absent exceptional circumstances – be not only aware of this procedure but (more importantly) also be prepared to implement it as this would facilitate his or her decision. [emphasis in original]

20 I am of the view that judicial conversations with children are very useful, and the way forward must be to equip judges with the necessary skills, provide an environment most conducive to an effective process and eliminate or reduce as many of the risks as possible. Judges ought to be aware of the limitations and give the appropriate weight to the views expressed in judicial conversations with children.

21 The court’s discretion whether to interview the children should be exercised for the children’s welfare, in the light of all the circumstances. Pursuant to this discretion, a judge may even choose to interview the children on his or her own motion without an application being made by either parent. Section 125(2) of the Women’s Charter specifically directs the court to have regard to the wishes of the child of sufficient maturity to express her opinion:

(2) In deciding in whose custody a child should be placed, the paramount consideration shall be the welfare of the child and subject to this, the court shall have regard —

- (a) to the wishes of the parents of the child; and
- (b) to the wishes of the child, where he or she is of an age to express an independent opinion.

22 I do not think that having the children speak to a judge necessarily draws them into the fray of the parties' contentious proceedings. Many children in family proceedings have already witnessed and continue to witness parental conflict as they interact with their separated parents. Giving them the opportunity to express their views to a judge who will be making orders directly affecting their lives might in fact provide them a window out of the seemingly endless on-going parental conflict.

23 While legal systems which are traditionally adversarial in character may find it more difficult to cope with keeping part or all of judicial interviews confidential, our current family justice system has taken on a more robust approach to protecting the welfare of the children. Although it is at its core an adversarial legal system, our family justice system has taken on a more inquisitorial character. The Committee for Family Justice indicated in its report *Recommendations of the Committee for Family Justice on the framework of the family justice system* (4 July 2014) ("*The Committee Report*") at para 141 that:

... the Committee proposes the introduction of elements into the court hearing process which (a) empowers the judge to proactively guide and direct proceedings, (b) reduces the acrimony between parties, and (c) minimises the negative impact that court proceedings may have on the parties involved, especially children.

This judge-led approach in resolving family disputes has been adopted in Part 3 of the Family Justice Rules 2014 (Act 27 of 2014) ("the Family Justice Rules"). A judge is obliged to place the welfare of the child as its paramount consideration and is empowered to use a proactive approach to reach orders that serve the interests of the child. Even prior to the enactment of the more inquisitorial approach in the Family Justice Rules, the Court of Appeal in *ZO v ZP* had accepted the usefulness of judicial interviews of children (at [15]):

... [I]f there is an application to vary the orders relating to custody in the future, then the views of the children are to be taken into account – if appropriate, by way of *interviews with the judge concerned*. In our view, this is both logical and commonsensical (especially where the parents are at odds with each other to begin with, as is the case in the present appeal) provided that the children are mature enough to convey their views *independently*. There is no particular age when this may be appropriate as different children may mature sufficiently at different ages. In this case, there was no issue of consultation not being appropriate as the children were sixteen, thirteen and nine years of age, respectively. Such an approach is also consistent with – and, indeed, embodied in – the Women’s Charter ... in particular, s 125(2)(b) ... [emphasis in original]

24 The judicial interview of children should remain an important option within our family justice system which employs the judge-led approach to proactively manage cases and protect the welfare of children. It may be used if the judge considers it appropriate in furthering the interests of the children. The paramount consideration is, at the end of the day, the welfare of the child. However, judges are not compelled to interview children. There may be legitimate concerns if a judge is uncomfortable with speaking to a child, or is unaware of the limitations of such judicial interviews. Interviewing children may not always be the best way to proceed, for much depends on the specific circumstances. There are limitations to such an exercise, and it is prudent to bear in mind that useful information can also be obtained from the parents, lawyers, a Child Representative or a mental health professional. The availability of such options should also assuage any concerns that judges may have in “drawing children into the fray” of contentious legal proceedings through interviewing them directly. The court can order reports such as a Social Welfare Report, Custody Evaluation Report, Access Evaluation Report, Assisted Access Report to be produced with the assistance of professionals from the appropriate disciplines. Further, ss 27 and 28 of the Family Justice Act 2014 (No 27 of 2014)

give judges the powers to appoint assessors. It can appoint a registered medical practitioner, psychologist, counsellor, social worker or mental health professional to examine and assess the child for the purposes of preparing expert evidence for use in proceedings. Rule 30 of the Family Justice Rules allows the court, if it thinks it is in the children's best interests, to appoint a Child Representative, whose role is to “represent the child’s views and best interests in court proceedings, thus helping to ensure that the decisions eventually made by the court are in the child’s best interests” (*The Committee Report* at para 163). Through these various avenues, children can express their views to the judges directly or through professionals entrusted by the court to represent their interests and views. These are not mutually exclusive, and all are important options in giving the court reliable information about the children’s views and wishes.

25 When judges do decide to interview children, the interviews can be very helpful to a judge who is making orders for the welfare of these very children she meets. When judges are aware of the limitations and reservations set out earlier, they can place appropriate weight on the children’s views as they see fit. I have found the suggestions in Nicholas Bala *et al*, “Children’s Voices in Family Court: Guidelines for Judges Meeting Children” (2013) 47(3) Family Law Quarterly 379 to be helpful. There is a reminder to the judge to ask open-ended questions and to avoid leading questions or those which may cause the child to choose between her parents. A judge should consider the age and maturity of the children, whether the children have indicated their wish to speak to the judge, and whether they were pressurised by a parent to do so. A judge is exhorted to seek to listen to the children as much as possible, bearing in mind that children often feel loyalty conflicts or guilty about their parents’ separation. Children may also be expressing strongly negative views about one parent which has been alienated from him or her by the other parent.

26 In the present case, I chose to interview the children for several reasons. First, there were indications that they wished to speak with me. Second, they were mature enough to express their views on matters that impacted their lives. Third, I did not think that interviewing them would be dragging them into the fray. On the contrary, I thought that it would be beneficial to give the children the opportunity to express their views directly to me. I found that the children were genuinely keen to speak to me, and I found the session very helpful.

Was there an abuse of process or a material change in circumstances?

27 The Father contended that the Mother's application was an abuse of process as it was filed very soon after the High Court Judge had dismissed her application. He pointed out that she had already asked for the children to be interviewed in the last application and she was relying on the same facts which were already considered by the High Court Judge.

28 It is necessary to consider the provision upon which the Mother's application was founded in determining if her application was an abuse of process. Section 128 of the Women's Charter permits applications for a variation of custody orders:

128. The court may at any time vary or rescind any order for the custody of a child on the application of any interested person, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

Professor Leong explains the underlying basis for the court's power to vary or discharge a custody, care and control and access order (Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at p 584):

An order of 'care and control', 'custody' or 'access' is of continuing nature. Indeed, unless the order expressly limits its

duration, any of these orders lasts until the infant ceases to be an infant ... upon his or her 21st birthday. A continuing order is always subject to variation or even discharge. Whenever an application is made to court that circumstances have changed and in particular, *the welfare of the infant is no longer as well served by the order, there is opportunity for consideration of variation of any or all of its terms and, if necessary, its discharge.* [emphasis added]

29 In my view, if there has been a change in circumstances since the application which warrants a variation of the orders, there will be a genuine case for variation under s 128 of the Women's Charter, and the application will not be an abuse of process. The issues are inter-related, and on the facts, I did not think that the Mother's present application was an abuse of the court's process. The court should not readily find applications brought under s 128 of the Women's Charter to be an abuse of its process unless on the broad, merits-based test in *Kwa Ban Cheong v Kuah Boon Sek* [2003] 3 SLR(R) 644 ("*Kwa Ban Cheong*"), it is clear that the applicant was behaving vexatiously and making the application to oppress the other party. Belinda Ang Saw Ean J proffered in *Kwa Ban Cheong* that (at [25]–[29]):

25 ... What is required to ascertain whether an action is an abuse of process is a broad, merits-based judgment which takes account of private and public interests and all the facts of the case.

26 The doctrine of abuse of process is based on public policy. Lord Bingham in *Johnson v Gore* at 90 explained the public policy justification for the doctrine thus:

[T]he underlying public interest is that there should be finality in litigation and that a party should not be twice vexed in the same matter.

Lord Millett at 118 regarded the doctrine "as a procedural rule based on the need to protect the process of the court from abuse and the defendant from oppression".

27 Given the nature of the rule, it would be unwise to try and define fully the circumstances which can be regarded as an abuse of the process or to fix the categories of abuse. Each case must depend upon all the relevant circumstances. ...

29 The power is to be exercised with caution before striking out or dismissing any proceedings on the ground of abuse of process of the court. This is a drastic step as it will deprive a litigant of the opportunity to have either his claim or defence tried by the court ... The onus of proving an abuse of process lies firmly on the party alleging it ...

30 In *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453, Sundaresh Menon JC (as he then was) held that (at [53]):

... To put it shortly, a court should determine whether there is an abuse of process by looking at all the circumstances of the case, including whether the later proceedings in substance is nothing more than a collateral attack upon the previous decision; whether there is fresh evidence that might warrant re-litigation; whether there are *bona fide* reasons why an issue that ought to have been raised in the earlier action was not; and whether there are some other special circumstances that might justify allowing the case to proceed. The absence or existence of these enumerated factors (which are not intended to be exhaustive) is not decisive. In determining whether the ambient circumstances of the case give rise to an abuse of process, the court *should not adopt an inflexible or unyielding attitude but should remain guided by the balance to be found in the tension between the demands of ensuring that a litigant who has a genuine claim is allowed to press his case in court and recognising that there is a point beyond which repeated litigation would be unduly oppressive to the defendant.* ... [emphasis added]

31 Applications to vary or discharge existing custody and access arrangements brought within a short span of time from the last application may not necessarily be conclusive of an abuse of the court's process. It may well be that in some cases, repeated and frequent applications for a variation of care and control are symptomatic of a vexatious litigant wanting to frustrate the plans of

the other party. The determination of whether an application is an abuse of process depends on the facts and circumstances of the case. In applications to vary children's arrangements, it is conceivable that significant changes to the parties' lives can take place within a short period of time. Such changes include a parent obtaining a new residence in which the children can have a comfortable place to live in or enjoy access, or a parent finding a job in which there is greater flexibility of working hours. There can also be "negative" developments within a short period of time which may necessitate a change in arrangements, such as a parent succumbing to a debilitating illness.

32 Relationships are dynamic. A parent who is not emotionally close to a child at the time an access order is made may, through time, build a much closer relationship with the child subsequently. For example, a young three-year old child may have been clingy to his mother at the time the court orders care and control to the mother and limited access to the father. As the child grows older and builds a closer relationship with his father, it may be in his welfare to encourage increased access when he is, say, five years old. The child may have outgrown the phase of high dependence on and clinginess to his mother. There may not have been any one particular identifiable event that marks a material change in circumstances between the time he was three and five years old, but because relationships are dynamic, circumstances may have sufficiently changed such that a variation is warranted for his welfare. Hence, the court ought not to read s 128 of the Women's Charter too narrowly, but should take both a principled and pragmatic approach to the determination of a material change in circumstances.

33 My holding should not encourage parties to make variation applications based on material changes in circumstances when there is in fact none, just because they are not satisfied with the original order. I am ever mindful of the

need to ensure that children have stability in living arrangements and the settled presence of their parents in their lives. It is not in the welfare of the children to have their parents constantly applying to the court for new arrangements when there is no genuine need for review. A party who is dissatisfied with an order may pursue the path of an appeal to a higher court.

34 This brings me to another point which I think is worth noting. It may be prudent for the court to consider including an order for a review of the case, say, in six months or a year from the date of the order, so that it can ensure that the orders made continue to serve the children's welfare. This is because families which are in the midst of divorce proceedings and its aftermath may require some time to reach more stable and durable parent-child arrangements. A review offers the opportunity to review what has worked and conversely, where the difficulties lie, to improve on the arrangements. Further, as I have said earlier, relationships are dynamic, even unpredictable, and often, an adjustment to arrangements may better serve the children's welfare even in the absence of an identifiable event or group of events that constitute a material change in circumstances. The court is best placed to decide if a review is appropriate.

35 In my view, the Mother's present application disclosed certain developments which constitute a material change in circumstances for the purposes of variation of the orders. My conversations with the children have corroborated this finding. The Mother had obtained a comfortable place of residence in a condominium when she previously had none. She had also found stable employment, and made good progress with respect to the issue of her Internet addiction. The children have told me how much they enjoyed access at the new condominium. This was a material change in circumstances which I considered highly relevant in my decision to vary the access order to include overnight access.

Variation of existing orders

36 Although the Mother had shown that there was a material change in circumstances, I was not prepared to vary the order on care and control. However, I was satisfied that it was in the children's welfare to increase the access time with their mother.

37 The Mother appeared sincere when she said that she wanted to cooperate with the Father in raising the children. She expressed that she would encourage the children to spend time with the Father and that he should be equally involved in their lives. She told the court that both she and the Father had their strengths and weaknesses as parents, opining that the Father instilled structure and discipline in the children's lives while she was more nurturing. She also acknowledged that the Father had done an excellent job in giving the children a structured environment in which they were now thriving. The Father's counsel, however, disagreed with the Mother's description of their relationship and pointed to various statements in her affidavits where she had alleged that the Father was uncooperative and had sought to alienate the children from her.

38 Having weighed the accounts of both parties and considered the views of the children, I was of the view that the Mother's account of her attempts to cooperate with the Father was convincing. Her affidavit contained email correspondence between her and the Father, which showed that she had tried to communicate with him in a polite and civil manner on matters concerning the children's affairs and had tried to work out the children's arrangements amicably with the Father. The children had expressed that they enjoyed their access time with the Mother, and I found that the Mother had made good use of the access time to bond with the children and to build a loving relationship with

them. There was also evidence of the Mother's involvement in communicating with the children's school teachers.

39 In my view, the Father was also a dedicated parent who had put in place a stable and structured environment for the children. I found that the children love him, and are thriving in his care. While there was some level of parental conflict between the Father and Mother, I did not think that there were deliberate efforts from either parent to alienate the children from the other. I was of the view that it would be in the children's welfare for the Father to continue to have care and control, and for the Mother to be granted increased and overnight access to the children. This is so that the children can interact even more meaningfully with the Mother, who undoubtedly adds a dimension of parenting which is invariably different from what the Father can offer.

40 In the circumstances, I varied the orders as follows:

- (a) On alternate weekends, the Mother shall have overnight access from Saturday 10am to Sunday 6pm.
- (b) In addition, the Mother will have access on alternate Fridays (the Friday preceding the Saturday when the Mother does not have access) from 6 pm to 9 pm.
- (c) The Mother should be flexible in the exercise of access – if any of the children express that they have activities or homework to complete on any Friday night, she is to be flexible in accommodating their schedules.

I also ordered that a review be fixed before me in six months' time.

Conclusion

41 I urged the parties to improve on their cooperation with each other for the sake of their children. It is well documented in scholarly articles that parental conflict has a substantive negative impact on children, and it was clear to me from my meeting with the children that they loved both their parents and desired to spend time with both of them within a practical arrangement. Therefore, both parents must give their best efforts in managing their own conflicts with each other and communicate with each other with respect and courtesy. I cannot emphasize enough that both parents have parental responsibility and must cooperate to ensure the welfare of the children.

42 It is apt that I conclude with a particularly poignant passage from *Children's views of shared time, parenting and security post-separation* at pp 15–16 (*supra* at [3]), which summarizes what children of separated parents need and long for, like any other child does:

In that light, we conclude with reflections inspired by the children in this study on the advice other children might give to their parents about creating a way to feel ‘securely shared’. The following statement was written for parents by the authors, based on what our subjects told us, and in a style children might use:

When I feel securely shared, I know I don’t have to constantly keep watch over how you will act when you are together (at places like handovers, or my school or sporting events). Knowing that you won’t fight is really important. But that’s not enough. I want to see you act in ways that show me that you can sometimes still laugh and have fun with each other, and share your pride and joy in me. When I see this, I relax and feel good, instead of being worried and watchful whenever you are together. Sometimes when I am at your house, I might be feeling sad, or scared, or upset, and I might start to miss my ‘other’ parent. You and my other parent aren’t the same, and you do things differently. There are times when I just need to reach out

to the parent I'm not with, to help me feel okay again. When I feel like this, I want to know that it is alright for me to call, or even see them – even though it is 'your turn' with me. ***It makes it really hard for me when I have to worry about hurting your feelings because I miss the other person, and just need them. I'm still a kid with two parents, and I can't always get all my needs met by the parent I am with at the time.*** I will learn to cope with my grief, and I will adjust to you being separate, but there are some needs I can't just switch off, without creating big problems for myself. When I feel securely shared, I feel like I live in one world, not two. I feel like both my parents are in touch with, and responsive to most things I feel and need. You both make sure that my arrangements and the way you put them into place don't bury me under emotional burdens. You're not expecting me to live between two completely unconnected households. You make sure I'm not too weighed down with the practical problems of living in between two houses. You can come together and make sure that my arrangements are predictable, but flexible – both on a day-to-day basis, and as I grow and my needs change over time. ***Sometimes, my needs might be different from yours. When this happens, I'd be really grateful if you might put aside your own needs, and think honestly about mine, and what could help.*** There was this guy called Bowlby, who said ***the job of parents is to be bigger, stronger, wiser and kind.*** That about sums up what I'm asking for. These are things that you can do to help me to thrive in shared time. [emphasis added]

Parents, in discharging their parental responsibility, should endeavour to help the other parent to be the best parent possible under the circumstances, for this is in the children's welfare.

Debbie Ong
Judicial Commissioner

The plaintiff in person;
Khoo Boo Teck Randolph and Anusha Prabhakran (Drew & Napier
LLC) for the defendant.
