

Case Comment

**SAME THRESHOLD, DIFFERENT REMEDY?
RECONSIDERING JUDICIAL SEPARATION**

XTR v XTQ [2026] SGHCF 11

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This case comment analyses the recent decision of the General Division of the High Court (Family Division) in *XTR v XTQ* [2026] SGHCF 11, where the court held that the threshold for assessing unreasonable behaviour was the same for judicial separation proceedings and divorce proceedings. In this case comment, the authors provide some critical commentary in relation to this case law development and highlight its implications for family law practitioners.

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I. Introduction

1 In *XTR v XTQ*² (“*XTR*”), the General Division of the High Court (Family Division) (“HCF”) dismissed an appeal by the husband, and in so doing, rejected the notion that a less stringent threshold applied for the purposes of determining “unreasonable behaviour” in respect of judicial separation proceedings.³ This case comment briefly summarises the key aspects of the case, while considering its implications for family law practitioners in Singapore.

II. Facts

2 The parties in *XTR* married on 25 January 2004 in India and were Indian citizens at the time of the marriage, though the wife was based in Singapore. The husband then relocated to Singapore in 2005. Both parties subsequently became Singapore citizens in 2008. However, from 2014 onwards, the couple mainly lived apart due to the husband’s overseas postings, with the husband working in Malaysia and later relocating to Japan in 2014 before moving to the US in 2022, and the wife largely remained in Singapore during this time. They had no children.

3 By 2018, marital tensions had escalated, and in June of that year, the parties mutually agreed to a three-month “trial separation”.⁴ The parties’ accounts of what happened thereafter diverged, with the husband alleging that the period of separation effectively ended the marriage by November 2018, while the wife argued that the couple had reconciled and resumed marital relations (albeit still living apart due to the husband’s job).

4 In April 2024, the wife filed a writ for judicial separation in Singapore under s 101(1) of the Women’s Charter 1961⁵ (“WC”) on the ground that the husband’s unreasonable behaviour had caused an irretrievable breakdown of the marriage. The husband

2 [2026] SGHCF 11.

3 *XTR v XTQ* [2026] SGHCF 11 at [23].

4 *XTR v XTQ* [2026] SGHCF 11 at [6].

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contested the application. Prior to the wife's action, the husband had, unbeknownst to the wife at the time, initiated divorce proceedings in India on 5 August 2023, alleging that her cruelty and abandonment had led to the marital breakdown. When the wife later learned of the Indian proceedings, the husband attempted to stay the Singapore judicial separation suit on *forum non conveniens* grounds. The husband's stay application was dismissed on 18 November 2024, and the matter proceeded to trial.

III. Decision at first instance

5 At first instance, and following consideration of the wife's specific allegations of the husband's unreasonable behaviour, the district judge ("DJ") found that the husband's actions would "cumulatively amount to behaviour on his part such that the [wife] cannot reasonably be expected to continue to live with him".⁶ In this regard, the DJ relied on the case of *USC v USD*⁷ ("USC") (as well as academic commentary) to hold that a "less rigorous and stringent approach"⁸ applied for the purposes of assessing whether a marriage had irretrievably broken down for the purposes of an application for judicial separation (as compared to divorce).⁹ The DJ proceeded to make an order for judicial separation.¹⁰ The husband subsequently sought to appeal the decision to the HCF, challenging the decision in its entirety.

IV. Decision of the General Division of the High Court (Family Division)

6 On appeal to the HCF, the court first briefly summarised the applicable principles in relation to the unreasonable behaviour grounds under s 95(3)(b) of the WC, namely that:¹¹

6 *XTQ v XTR* [2025] SGFC 116 at [48].

7 [2019] SGFC 6.

8 *XTQ v XTR* [2025] SGFC 116 at [51].

9 *XTQ v XTR* [2025] SGFC 116 at [17]–[18].

10 *XTQ v XTR* [2025] SGFC 116 at [51].

11 *XTR v XTQ* [2026] SGHCF 11 at [27].

(a) The test under this section was an objective one that required the court to take into account the subjective qualities of the plaintiff.

(b) The court's focus under this inquiry was to consider the objective question of whether a plaintiff could reasonably be expected to live with the defendant, having regard to "the personalities of the individuals in question, the impact of the defendant's conduct and the particular plaintiff in the light of the whole history of the marriage and their relationship".¹²

(c) The primary question was whether a reasonable man would expect *this* plaintiff to continue to live with *this* defendant based on the evidence before the court.

7 On review of the authorities, the court noted that the courts in several instances (including the DJ at first instance) had proceeded on the basis that there were two different elements to the test for unreasonable behaviour under s 95(3)(b) of the WC – (a) a subjective element that asked whether the plaintiff found it intolerable to live with the defendant; and (b) an objective element that asked whether the plaintiff could reasonably be expected to live with the defendant¹³ – and that the courts in these cases had purported to apply the formulation set out by the High Court in *Wong Siew Boey v Lee Boon Fatt*¹⁴ ("*Wong Siew Boey*"). On a proper analysis of *Wong Siew Boey*, the HCF rejected this particular formulation for unreasonable behaviour for the following reasons:

(a) First, as a matter of statutory interpretation, the court noted that the words "the plaintiff finds it intolerable to live with the defendant" did not appear in the relevant provision under the WC and instead appeared under a different subsection providing for a separate and distinct ground of divorce,¹⁵ and there was no indication within the legislation that these words should be imported

12 *XTR v XTQ* [2026] SGHCF 11 at [27].

13 *XTR v XTQ* [2026] SGHCF 11 at [77].

14 [1994] 1 SLR(R) 323.

15 *XTR v XTQ* [2026] SGHCF 11 at [79].

into the test for unreasonable behaviour under s 95(3)(b) of the WC.¹⁶

(b) Second, the court in *Wong Siew Boey* had endorsed the test laid down in several English judgments, none of which lent support to a two-element test. Instead, the cases framed the test *solely* as an objective one seeking to ascertain whether the respondent had behaved in such a way that the petitioner could not reasonably be expected to live with him, taking into account the parties' characters and personalities. Further, the English courts had been clear that the subjective element of the petitioner "finding it intolerable to live with the respondent"¹⁷ should *not* be imported into the test for unreasonable behaviour.¹⁸

8 The court thus found that the High Court in *Wong Siew Boey* did *not* rule that the test for unreasonable behaviour comprised two elements. Instead, the relevant test was an objective test, albeit one which accounted for the *subjective* traits of the parties' personalities "in the light of the whole history of [the parties'] marital relationship".¹⁹

9 Turning to the key issue of whether a "less stringent threshold" ought to apply where the court was assessing unreasonable behaviour for the purpose of judicial separation proceedings, Mavis Chionh Sze Chyi J first undertook a careful and meticulous tracing of the historical development of judicial separation in Singapore.²⁰ She found that the history of the provisions did not provide any basis for suggesting that the courts should be more inclined to grant a judgment of judicial separation as compared to a divorce judgment,²¹ and notably, that if Parliament *had* intended to introduce a lower legal threshold to judicial separation cases, this would have been a significant change in the law which would "surely have been done deliberately,

16 *XTR v XTQ* [2026] SGHCF 11 at [80].

17 *XTR v XTQ* [2026] SGHCF 11 at [85].

18 *XTR v XTQ* [2026] SGHCF 11 at [81]–[85].

19 *XTR v XTQ* [2026] SGHCF 11 at [90].

20 *XTR v XTQ* [2026] SGHCF 11 at [44]–[53].

21 *XTR v XTQ* [2026] SGHCF 11 at [44].

by clear, measured and considered provisions – rather than by leaving it to inference”.²²

10 Next, the court noted that s 101(1) of the WC, which provides for the grounds under which judicial separation may be obtained, merely provided that the same grounds for divorce set out in s 95(3) of the WC applied “with the ‘necessary modifications’”.²³ The question of what such “necessary modifications” ought to entail had previously been considered by the court in *USC*. There, the court had indicated that the phrase reflected the “differing legal character of a judgment of judicial separation and a judgment of divorce”,²⁴ and was included to “indicate the differing legal threshold to be applied”²⁵ between the two proceedings.

11 On the differences between a judicial separation and a divorce, the court had observed, among other things, that the proceedings indicated a differing severity of the breakdown of a marriage. As the eventual consequences of a divorce were more severe and far-reaching than a judicial separation,²⁶ a less stringent threshold would thus apply in relation to assessing the impact of the alleged unreasonable behaviour for judicial separation proceedings.²⁷ At first instance, the DJ had seemingly endorsed this proposition, but this was soundly rejected by the HCF, with Chionh J holding that both the decision in *USC* and the DJ’s reliance on the reasoning in that case were erroneous.²⁸ Chionh J further noted that both the court in *USC* and the DJ at first instance had misinterpreted academic commentary as supporting their position, when in fact the commentary had merely proposed this lower threshold as one of four possible modifications.²⁹

22 *XTR v XTQ* [2026] SGHCF 11 at [53].

23 *XTR v XTQ* [2026] SGHCF 11 at [24].

24 *USC v USD* [2019] SGFC 6 at [53(e)].

25 *USC v USD* [2019] SGFC 6 at [53(e)].

26 *USC v USD* [2019] SGFC 6 at [54]–[55].

27 *USC v USD* [2019] SGFC 6 at [54]–[55].

28 *XTR v XTQ* [2026] SGHCF 11 at [41].

29 *XTR v XTQ* [2026] SGHCF 11 at [69]–[72].

12 In this regard, Chionh J observed that the consequences of an order for judicial separation were significant given that: (a) parties' financial positions could be altered following such an order, in the same way as following a divorce judgment;³⁰ and (b) a judgment of judicial separation had the "inherently potent effect"³¹ of altering parties' positions from what would otherwise have been under intestacy law.³² Given these consequences, the court disagreed with the academic commentary which argued that a decree of judicial separation was a "fairly modest"³³ one.³⁴

13 Accordingly, as regards the issue of what "necessary modifications" under s 101(1) of the WC entailed, the HCF held that – apart from denoting modifications of the nomenclature used in the provisions³⁵ – this phrase should be understood to mean that while judicial separation could be granted where the same facts justifying a grant of divorce under s 95(3) of the WC were established, the court hearing an application for judicial separation *need not* make a finding that the marriage had broken down irretrievably, unlike in the case of divorce.³⁶ Such a position was justified with reference to the principle underlying these proceedings: while a judicial separation does not involve the final termination of the marital relationship, divorce proceedings result in legal termination of the relationship where the court is satisfied that there is an irretrievable breakdown of the marriage.³⁷

V. Analysis and commentary

14 There are a few key points flowing from the court's decision in *XTR*.

30 *XTR v XTQ* [2026] SGHCF 11 at [58].

31 *XTR v XTQ* [2026] SGHCF 11 at [59].

32 *XTR v XTQ* [2026] SGHCF 11 at [59].

33 *XTR v XTQ* [2026] SGHCF 11 at [72].

34 *XTR v XTQ* [2026] SGHCF 11 at [72], citing Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at p 747.

35 *XTR v XTQ* [2026] SGHCF 11 at [75]; see also *USC v USD* [2019] SGFC 6 at [53(e)]–[53(f)].

36 *XTR v XTQ* [2026] SGHCF 11 at [74].

37 *XTR v XTQ* [2026] SGHCF 11 at [74].

A. *Test for unreasonable behaviour is purely objective*

15 The first key point is that the test for unreasonable behaviour is purely objective. As discussed previously, the position under the law was that there were two elements to the test under s 95(3)(b) of the WC (*ie*, a subjective element requiring the court to be satisfied that the plaintiff finds it intolerable to live with the defendant, and an objective element requiring that the plaintiff cannot reasonably be expected to live with the defendant).³⁸ The decision of the HCF in *XTR* therefore clarifies that the correct test does *not* include the first element. In other words, the court is *not* required to find that the plaintiff *subjectively* finds it intolerable to live with the defendant as a prerequisite to finding unreasonable behaviour under s 95(3)(b) of the WC. The decision in *XTR* thus helpfully clarifies the nature of the test as a purely objective one, albeit one incorporating the subjective traits of the parties' personalities.

B. *Judicial separation is not a shortcut to divorce*

16 The second key takeaway from *XTR* is its guidance regarding the feasibility of pursuing judicial separation, as opposed to divorce proceedings. In practice, parties may choose judicial separation for various reasons, including religious considerations (and consequently, parties' reticence to divorce), or where the mandatory three-year time bar for a divorce has yet to be met. The general tenor of prior authorities may have resulted in a misconception that a judicial separation was "easier" to obtain. By virtue of the decision in *XTR*, however, this impression must now surely have been dispelled. Counsel should thus be aware, and advise their clients accordingly, that the substantive burden of proving unreasonable behaviour is *just* as onerous for judicial separation as for divorce proceedings. Thus, where a party lacks evidence strong enough to satisfy an unreasonable behaviour claim for divorce, they will equally fail on an application for judicial separation, and there is no practical

38 *XTR v XTQ* [2026] SGHCF 11 at [77].

benefit in opting for judicial separation in the hope of a more lenient court approach.

17 As a corollary of the above, counsel are advised to be careful in properly framing and bringing any such claim for judicial separation. Pursuant to s 102(2) of the WC, the court may treat the judgment of judicial separation as sufficient proof of the adultery, desertion or other ground on which it was granted, but the court must not grant a judgment of divorce without receiving evidence from the applicant. Indeed, in *XTR*, the husband had argued, on this basis, that it would be wrong to apply a lower threshold for judicial separation cases, given that this judgment could thereafter be used to seek a divorce and the bar for a divorce could therefore effectively be lowered. The HCF in *XTR* observed that such arguments had “some basis”, and observed that:³⁹

[A] judgment of judicial separation obtained on such basis might be treated as sufficient proof of the grounds for divorce; and this might have the effect of allowing parties to avoid the rigorous scrutiny which the courts would normally give to a writ for divorce.

18 Practically speaking, it would be advisable to treat judicial separation proceedings not as a shortcut, but as proceedings requiring the same level of rigour and depth of thought as for divorce proceedings. This is particularly so given that a judicial separation application may well influence the eventual divorce application, and a poorly prepared judicial separation application, or one granted on relatively flimsy grounds, may hamper subsequent attempts to rely on such an application for the purpose of divorce proceedings.

C. *Secretive and trust-destroying conduct can constitute unreasonable behaviour*

19 Third, the decision in *XTR* underscores the importance of demonstrating and proving a pattern or instances of conduct that significantly undermines the marital relationship from the

39 *XTR v XTQ* [2026] SGHCF 11 at [67].

perspective of the particular spouse. In *XTR*, having found that, among other things, the husband had: (a) refused to share his US address with the wife;⁴⁰ (b) made important financial decisions without disclosing them to the wife;⁴¹ and (c) provided the wife's contact details to moneylending agencies when seeking loans from them without informing the wife, the HCF held that the husband's conduct amounted to "secretive" behaviour,⁴² justifying the DJ's finding that the wife could not reasonably be expected to continue living with him. This highlights the value of emphasising behaviours which demonstrate deceit and trust-destroying behaviour for the purposes of building and mounting a claim based on the opposing party's unreasonable behaviour.

20 This case emphasises how evidence of dishonesty and evasion can potentially meet the statutory standard, and that the psychological impact of certain actions, *eg*, "false expectation and hope",⁴³ can nevertheless render such actions as pertinent as more traditional forms of "bad behaviour" such as abuse or neglect. In this case, a key finding of fact – which was affirmed on appeal – was that the husband had misled the wife in relation to an application for a US dependant pass. The husband had given the wife the "belief and expectation"⁴⁴ that "parties were planning for her relocation to the US as a married couple"⁴⁵ and that he would apply for a US dependant pass for her, when in fact, he did not intend to do so.⁴⁶ Accordingly, the HCF in *XTR* found that the husband had deceived the wife over an extended period of time and this represented a "betrayal of her trust in him".⁴⁷ This alone was sufficient to constitute unreasonable behaviour such that the wife could not reasonably be expected to continue living with him.

⁴⁰ *XTR v XTQ* [2026] SGHCF 11 at [128].

⁴¹ *XTR v XTQ* [2026] SGHCF 11 at [129].

⁴² *XTR v XTQ* [2026] SGHCF 11 at [126]–[131].

⁴³ *XTR v XTQ* [2026] SGHCF 11 at [125].

⁴⁴ *XTR v XTQ* [2026] SGHCF 11 at [112].

⁴⁵ *XTR v XTQ* [2026] SGHCF 11 at [112].

⁴⁶ *XTR v XTQ* [2026] SGHCF 11 at [112].

⁴⁷ *XTR v XTQ* [2026] SGHCF 11 at [126].

D. Importance of documentary evidence

21 The final key point is the importance of documentary evidence. The court in *XTR* affirmed the DJ’s finding that the parties had *not* been separated following their period of trial separation in 2018, given that:

(a) There was evidence relating to the regularity and personal nature of parties’ communications following that period.⁴⁸

(b) The husband had informed the wife of “big-ticket” purchases and other personal financial matters after 2018.⁴⁹

(c) The husband had not sought to correct the wife on the numerous occasions where she had referred to herself as the “wife” in parties’ exchanged messages.⁵⁰

22 It bears reiterating that such factual findings of the court were only possible because of the evidence before it. The wife in *XTR* was able to point to numerous communications such as e-mails and messages, as well as the frequency of such messages, to support her claim. This highlights the inherent value of obtaining and adducing adequate documentation, such that any claim put forth before the court can be robustly demonstrated through the available evidence. Crucially, such evidence may also have a corroborating or cross-pollinating effect, such that otherwise discrete and standalone circumstantial evidence may come together to cumulatively sway the finding(s) of the court.

VI. Conclusion

23 Ultimately, *XTR* provides welcome clarification on key principles under Singapore’s family law, specifically in relation to judicial separation and the ground of unreasonable behaviour, and the HCF’s refusal to countenance a lower threshold for judicial separation proceedings preserves a common, consistent

48 *XTR v XTQ* [2026] SGHCF 11 at [97].

49 *XTR v XTQ* [2026] SGHCF 11 at [100].

50 *XTR v XTQ* [2026] SGHCF 11 at [102].

standard across both judicial separation and divorce proceedings. This decision harmonises the law, thereby reducing the risk of litigants exploiting a potentially lower threshold for separation to obtain a divorce, while offering guidance to counsel in navigating the path forward for their clients.