

Case Comment

**PROVING ADULTERY: THE APPROPRIATE
STANDARD OF PROOF**

WQX v WQW [2024] SGHCF 18

[2025] SAL Prac 13

In *WQX v WQW* [2024] SGHCF 18, the court had the opportunity to consider whether proof beyond a reasonable doubt was necessary for proving adultery as a fact of irretrievable breakdown of marriage. While the court did not need to conclude on the appropriate standard, it did observe that proof beyond a reasonable doubt may not be necessary. This case comment argues that the appropriate standard is that of balance of probabilities: first, that the historical justification for proof beyond a reasonable doubt no longer holds true, and secondly, requiring proof beyond a reasonable doubt, which is commonly associated with criminal proceedings, undermines the concept of therapeutic justice.

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I. Introduction

1 Standard of proof is commonly known as the “degree of persuasion which [a] tribunal must feel before it decides that the fact in issue did happen”.² In *WQX v WQW*,³ the General Division

1 The author is very grateful to Ms Dorothy Chai for her helpful comments and Ms Elaine Lum for editing this case comment. All errors remain the author’s own.

2 *In re B (Children)* [2008] UKHL 35 at [4].

3 [2024] SGHCF 18.

of the High Court (Family Division) (“General Division”) considered the appropriate standard of proof for adultery as a fact of irretrievable breakdown of marriage. This case comment analyses the General Division’s observation on the standard of proof and argues that the appropriate standard is that of the balance of probabilities.

II. Facts and decision

2 In *WQX v WQW*, the husband (“Husband”) and wife (“Wife”) filed cross-applications for divorce.⁴ At the lower court, the Husband succeeded on the fact of unreasonable behaviour on the part of the Wife.⁵ The Wife also succeeded on her application on the facts of unreasonable behaviour and adultery on the part of the Husband.⁶ The Husband appealed the finding of unreasonable behaviour against him, and together with the co-respondent (“Co-Respondent”) – with whom it was alleged the Husband had committed adultery – appealed the finding of adultery.⁷

3 As regards adultery, the Husband and the Co-Respondent argued that the appropriate standard of proof was proof beyond a reasonable doubt, and – in any event – the Wife did not meet the lower standard of proof on a balance of probabilities.⁸ Their argument was that a higher standard of proof was necessary to protect the reputation of the parties involved.⁹ The General Division observed that requiring proof beyond a reasonable doubt was not to reflect the criminality of the act of adultery, as the act of adultery was not a crime in Singapore.¹⁰ Rather, it was to “protect the identities of other parties unconcerned with the adultery, and in the event that adultery [was] not proved, of the named parties themselves”.¹¹ Even then, the General Division questions whether this was necessary, as presently, the names of

4 *WQX v WQW* [2024] SGHCF 18 at [1].

5 *WQX v WQW* [2024] SGHCF 18 at [1].

6 *WQX v WQW* [2024] SGHCF 18 at [2].

7 *WQX v WQW* [2024] SGHCF 18 at [2].

8 *WQX v WQW* [2024] SGHCF 18 at [3].

9 *WQX v WQW* [2024] SGHCF 18 at [4].

10 *WQX v WQW* [2024] SGHCF 18 at [5].

11 *WQX v WQW* [2024] SGHCF 18 at [5].

the parties involved in family proceedings were now redacted.¹² Additionally, it noted that proof beyond a reasonable doubt was “normally reserved for the proof of crime and, arguably, fraud in civil cases”.¹³

4 The General Division, however, did not conclude on the appropriate standard of proof for adultery, as it considered that the evidence justified a finding of adultery even on the standard of proof beyond a reasonable doubt.¹⁴ It held that the circumstantial evidence, which included private investigators’ reports and witness testimony, supported a finding of adultery.¹⁵ As regards the appeal against the finding of unreasonable behaviour on the part of the Husband, the General Division similarly dismissed the appeal.¹⁶

III. Analysis

A. The different standards of proof in Singapore

5 In Singapore, it is well accepted that there are two standards of proof, namely, *balance of probabilities* for civil proceedings; and *beyond a reasonable doubt* for criminal proceedings.¹⁷ In *WQX v WQW*, the General Division stated that the latter standard is reserved for criminal and *civil fraud* cases.¹⁸

6 From the above, it would appear that where civil proceedings have a *quasi-criminal* nature, proof beyond a reasonable doubt may apply.¹⁹ Hence, while acts of adultery are not criminalised, it may be possible for the standard of proof for proving adultery to be beyond a reasonable doubt if adultery carries a quasi-criminal hue.

12 *WQX v WQW* [2024] SGHCF 18 at [5].

13 *WQX v WQW* [2024] SGHCF 18 at [6].

14 *WQX v WQW* [2024] SGHCF 18 at [18].

15 *WQX v WQW* [2024] SGHCF 18 at [8]–[18].

16 *WQX v WQW* [2024] SGHCF 18 at [5].

17 See *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 at [158]–[160].

18 *WQX v WQW* [2024] SGHCF 18 at [6].

19 *Wee Teong Boo v Singapore Medical Council* [2023] 3 SLR 705 at [41].

B. Appropriate standard of proof for adultery in Singapore

7 The origin of the view that adultery must be proved beyond a reasonable doubt stemmed from a theory known as the *theory of matrimonial offence*, which was once used to explain the basis for divorce.²⁰ Such a view was in fact a legal transplant from English law that was originally influenced by the Church’s view that “marriage is a sacrament”²¹ and how a spouse could only “be freed from the bond upon proof of the commission by the other of the few extreme provocations – the matrimonial offences”.²² Hence, courts required a higher standard of proof to be met.²³

8 Indeed, prior to the amendments to the Women’s Charter in 1980, divorce was granted only when a matrimonial offence was proved.²⁴ Examples of such matrimonial offences were adultery, cruelty or desertion.²⁵ When such acts were relied upon in divorce, the standard of proof to be met was proof beyond a reasonable doubt.²⁶ Indeed, as noted by a leading commentator:²⁷

The matrimonial offences, while the basis for divorce was the matrimonial offence theory, were clearly required to be proven to the criminal standard of ‘beyond reasonable doubt’. A court would not find the respondent committed adultery, or cruelty or desertion without being satisfied that the evidence met this standard.

9 However, it is this author’s opinion that the modern standard of proof for adultery, ought to be on the balance of

20 Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2007) at p 150.

21 Leong Wai Kum, “A Turning Point in Singapore Family Law: Women’s Charter (Amendment) Bill 1979” (1979) 2 Mal LR 327 at 328.

22 Leong Wai Kum, “A Turning Point in Singapore Family Law: Women’s Charter (Amendment) Bill 1979” (1979) 2 Mal LR 327 at 328.

23 *Bastable v Bastable* [1968] 1 WLR 1684 at 1687.

24 *Tan Kay Poh v Tan Surida* [1988] 2 SLR(R) 515 at [5].

25 *Tan Kay Poh v Tan Surida* [1988] 2 SLR(R) 515 at [5].

26 For instance, see *Koh Teng Lam v Koh Chen Chee Elsie* [1974–1976] SLR(R) 510 at [18] and [35]–[36], where the High Court held that the standard of proof to be met when proving cruelty and adultery was proof beyond a reasonable doubt.

27 Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at p 705.

probabilities. Firstly, the prevailing theory for divorce is no longer that of matrimonial offence. Rather, “divorce is no longer based on fault but on the concept of ‘irretrievable breakdown’” [emphasis added].²⁸ Additionally – and as noted by the General Division in *WQX v WQW* – parties’ names are now redacted in family proceedings.²⁹ A higher standard of proof is no longer necessary to protect the identities of the relevant parties.³⁰ Therefore, there is no basis for a higher standard of proof. Lastly, retaining a higher standard of proof that is usually reserved for criminal proceedings or quasi-criminal proceedings does not further the aims of therapeutic justice, which “underlies the entire approach to the resolution of family disputes”.³¹ It is clear that family law is *not criminal or quasi-criminal in nature*. Any association with criminal law – as implicit in the standard of proof beyond a reasonable doubt – will go against the concept of therapeutic justice.³²

10 A lower standard of proof *does not* mean that marriage is no longer sacrosanct. There is without a doubt that the sanctity of marriage is still being upheld in Singapore.³³ An example of the law upholding the sanctity of marriage is by adopting the *general* position that no divorce is to be filed within three years of marriage as well as parties having to first prove that their marriage had broken down irretrievably before a decree of divorce is granted by the court.³⁴ Concerns relating to how a lower standard of proof could make proving adultery (and thereby establishing divorce) easier can be assuaged. Courts have held that while the standard of proof in civil proceedings is that of the

28 *Tan Kay Poh v Tan Surida* [1988] 2 SLR(R) 515 at [5].

29 *WQX v WQW* [2024] SGHCF 18 at [5].

30 *WQX v WQW* [2024] SGHCF 18 at [5].

31 *WKM v WKN* [2024] 1 SLR 158 at [40]. For discussion relating to the standard of proof for criminal and quasi-criminal proceedings, see paras 5–6 above.

32 For a view on therapeutic justice in the context of divorce, see generally Chen Siyuan & Joel Fun, “Achieving Therapeutic Justice in Divorce Proceedings” [2021] SAL Prac 31.

33 See generally Debbie Ong, “Time Restriction on Divorce in Singapore” [2003] Sing JLS 418 at 423–425.

34 Women’s Charter 1961 (2020 Rev Ed) s 94. See *Ng Kee Shee v Fu Gaofei* [2005] 4 SLR(R) 762 at [21]. This position is a general one, as an exception could be made when an applicant suffers exceptional hardship or there is exceptional depravity on the part of the respondent.

balance of probabilities, more evidence is needed when serious allegations are made.³⁵ For instance, as noted by the House of Lords in *In re H (Minors) (Sexual Abuse: Standard of Proof)*:³⁶

When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A step-father is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her.

11 The same approach can be taken by courts when adultery is being alleged – courts can require stronger evidence depending on the severity of the allegations.

IV. Conclusion

12 In the past, courts may have required proof beyond a reasonable doubt when adultery was alleged. This was predominantly influenced by the matrimonial offence theory of divorce. However, such a view is no longer the prevailing view in Singapore. Divorce is now based on an irretrievable breakdown of marriage, and the standard of proof now ought to be on the balance of probabilities. Having a standard of proof commonly associated with criminal proceedings does not further the aim of therapeutic justice in Singapore. As such, it is desirable for the modern standard of proof for adultery to be on the balance of probabilities instead of beyond a reasonable doubt.

35 See *Chua Kwee Chen v Koh Choon Chin* [2006] 3 SLR(R) 469 at [22] and [39] and *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 at [159]. In the context of divorce, see a similar discussion in Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2007) at p 705.

36 [1996] AC 563 at 586. This passage was cited with approval by the court in *Chua Kwee Chen Koh Choon Chin* [2006] 3 SLR(R) 469 at [28]. This position by the House of Lords was recently criticised in George Leggatt, “Black Marbles, Blue Buses and Yellow Submarines: An Essay on the Civil Standard and Burden Of Proof” 140(Oct) *Law Quarterly Review* 570.