Published on e-First 13 April 2026

GUIDANCE *VERSUS* INTERVENTION: PROCEDURE AND PRECEDENCE IN THE INTERSECTION OF FAMILY AND YOUTH COURT MATTERS

Acrimonious divorces often involve acrimonious custody and access proceedings. In some of these cases, a parent may accuse his or her spouse of abusing the child, and might even report the alleged child abuse to the Child Protective Service,[1] which may in turn bring the case to the Youth Court. This article discusses issues arising from this, such as: What is the process by which the justice system discerns whether a case with severe parental conflict is one with genuine child protection concerns, or one where one or both parents are trying to use the child protection process to influence the outcome of their custody battle? If a case involves both the Family Court and the Youth Court, what is the most expedient procedure to adopt, to avoid conflicting orders and to promote the best interests of the child and his family? The authors examine the jurisdiction and powers of the Family Court and the Youth Court and relevant case law, proposing the most expedient solutions in the child's best interests, as well as possible improvements to the system.

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1 The Rehabilitation and Protection Group of the Ministry of Social and Family Development ("MSF") has restructured with effect from 1 May 2025. As part of this restructuring, the Child Protective Service, Adult Protective Service and Children in Care units are now collectively known as "Protective Service" ("PSV"), and Child Protection Officers and Adult Protection Officers are now known as "Protection Officers". As this change is relatively recent, the cases discussed in the article would have used the old nomenclature, therefore this article will continue to use the terms "Child Protective Service" and "Child Protection Officer" to refer to that part of the PSV and PSV officers dealing with child protection matters respectively.

2 The views expressed in this article are the authors' own, and not representative of the views of the Ministry of Law or the Legal Aid Bureau. The authors are grateful to the Protective Service for addressing certain points in this article regarding their practices and policies (at paras 53, 55 and 58). However, all views expressed in this article are not representative of the views of the Ministry of Social and Family Development. The authors also wish to thank Charlotte Lim Lici for her careful proofreading of this article and valuable suggestions that improved the clarity and accuracy of the text, as well as Lee Yun Ze for his valuable assistance with the first draft of the article.

I. Introduction: severe parental conflict cases in the Family and Youth Courts

1 It is not uncommon for divorcing parents engaged in a custody battle to allege that the other parent is abusing their child.[3] One or both divorcing parents might even lodge a complaint with the Child Protective Service[4] ("CPS") about this, whilst the divorce proceedings are imminent or ongoing, or even after they have been concluded.

2 In *WBI v WBJ*,[5] the court noted that: "… such allegations [*ie*, that the other parent is abusing the child] are sometimes utilised by one parent as a weapon, in order to gain the upper hand in custody proceedings and to disrupt the other parent's relationship with the child".

3 In such high conflict cases, the child often has a closer relationship with one parent, and may appear to be alienated from the other.[6] For the purposes of this article, we will term such cases "severe parental conflict cases". These are cases where both parents are still interested in being involved in the child's life but, quite apart from any harm each of them may be individually inflicting on the child, are mired in such conflict over the child that it harms or risks harming the child. Such conflictual parents are usually unable to make or carry out any co-parenting arrangements without judicial or state intervention. These cases lie in the intersection between family law and youth law – that space where two different courts (*ie*, the Youth Court and the Family Court)[7] with related but distinct goals have jurisdiction.

4 The Family Court and the Youth Court were established by s 5 of the Family Justice Act 2014.[8] The Family Court has jurisdiction over

3 See for instance, *WKN v WKM* [2024] 1 SLR 158; *WAA v VZZ* [2022] SGHCF 19; *CSW v CSX* [2022] SLR(FC) 204; and *TEN v TEO* [2020] SGHCF 20.

4 The Child Protective Service ("CPS") is a department under MSF that is responsible for investigating and intervening in situations where the child is not safe with his caregivers. For more information on CPS, see Ministry of Social and Family Development, "Child Protection System in Singapore" <https://www.msf.gov.sg/what-we-do/break-the-silence/protection-system/child-protection-system> (accessed 25 March 2026).

5 [2022] SGFC 25, *per* District Judge Tan Shin Yi at [4]. The child-related issues were not raised in the appeal, *WBI v WBJ* [2023] 3 SLR 998.

6 See n 15 below for sources on parental alienation.

7 The Family Justice Courts ("FJCs") consist of the Family Division of the High Court, the Family Courts, and the Youth Courts (see s 3 of the Family Justice Act 2014 (2020 Rev Ed)). For the purposes of this article, we will be using the term "Family Court" to refer to the courts which deal with divorce matters and "Youth Court" to refer to the courts dealing with care and protection issues.

8 Act 27 of 2014 (now known as Family Justice Act 2014 (2020 Rev Ed)).

matters pertaining to divorce and its ancillary matters, including the custody, care and control of the child of the marriage, pursuant to Pt 10 of the Women's Charter 1961 ("WC").[9] The Youth Court has jurisdiction over matters in the Children and Young Persons Act 1993 ("CYPA"),[10] which include care and protection proceedings for children and young persons under the age of 18 years. The WC regulates the private care of children while the CYPA regulates the public care of children. In both spheres, the welfare of the child is the paramount consideration.[11] Hence, both the Youth Court and the Family Court have the best interests of the child as the primary consideration in their decision-making,[12] although each has a different task to perform. The Youth Court has the primary goal of making orders to provide care and protection for a child who is in need of it. The Family Court has the goal (amongst others – including that of dividing the matrimonial assets equitably between the parties and ordering maintenance for the spouses and the children, where appropriate) of helping the divorcing parents to make post-divorce co-parenting arrangements, through the making of orders on the custody, care and control of the children.

5 Each court is given somewhat different powers from the other to accomplish their respective missions. Certain powers of the Youth Court have been described as a "blunt instrument of last resort",[13] as compared to the powers of the Family Court, which equip it to ensure that the welfare of children is safeguarded, but do not involve state intervention.

6 This article discusses: (a) what types of cases would be more appropriate for either the Family Court or the Youth Court to deal with; and (b) the most expedient procedures to adopt when a case involves both courts, to avoid conflicting orders and promote the best interests of the child and his family.

II. Scope of the intersection between Family and Youth courts

7 The intersection of the Family Court and the Youth Court in a case (intersection) would only occur if the Youth Court intervenes when there is some sort of conflict between the parents over the child, which they had resolved or are trying to resolve through Family Court

9 2020 Rev Ed.
10 2020 Rev Ed.
11 *UNB v Child Protector* [2018] 5 SLR 1018 ("*UNB*") at [53].
12 See s 4(*b*) of the Children and Young Person's Act 1993 (2020 Rev Ed) and s 125(2) of the Women's Charter 1961 (2020 Rev Ed).
13 *UNB v Child Protector* [2018] 5 SLR 1018 at [37].

proceedings. This means that the more active the Youth Court is in intervening in such cases, the wider the intersection.

A. *A wider limit* – Ministry of Social and Family Development (MSF) v GCC and GCD *(overturned on appeal)*

8 The case of *Ministry of Social and Family Development (MSF) v GCC and GCD*[14] ("*GCC and GCD*") illustrates a wider limit for the intersection, as it took the position that Youth Court intervention would be appropriate for cases where the child seems to have been harmed by parental conflict, including in a parental alienation[15] situation, even where at least one parent was able to take care of the child. This case was subsequently overturned on appeal (see paras 12–19 below), but it is nonetheless instructive to study it, to see how interventionist the Youth Court could potentially be.

9 In this case, the parties were divorced and involved in long-drawn and acrimonious proceedings regarding custody, care and control of two children. The Family Court made various orders which were subsequently reviewed and varied. However, the ordered care and control and access arrangements never took place. The children refused to leave the father's car to have overnight access with the mother on 4 November 2016, and the father then admitted them into a residential facility. CPS applied to the Youth Court on 27 December 2016 for care and protection orders on the basis that the children were being ill-treated by their mother and that there was serious and persistent conflict between the children and mother causing them emotional injury.

10 At the contested hearing on 11 September 2017, the Youth Court ordered, *inter alia*, that the children be placed under supervision for 12 months, reside with the father, and that access with the mother be subject to the approval and review of the approved welfare officer. The court relied on reports by various professionals stating that the children were in chronic stress and anxiety, with negative and unresolved issues with the mother, and had significant distress and fear at the thought of meeting her. One consultant psychiatrist diagnosed them with

14 [2017] SGYC 2 ("*GCC and GCD*").

15 The reference to parental alienation here is to the behaviour or conduct of the warring parents, as opposed to "parental alienation syndrome" or "parental alienation disorder". For further reading on the latter, see Jennifer Teoh, Grace S Chng & Chi Meng Chu, "Parental Alienation Syndrome: Is it Valid?" (2018) 30 SAcLJ 727 and Department of Justice, Government of Ireland, *Parental Alienation: A Review of Understandings, Assessment and Interventions* (25 May 2023).

"post-traumatic stress syndrome".[16] The court found that the children were at risk of being ill-treated by the mother and suffering emotional injury if she insisted on seeing them before their fear and anxiety had subsided.[17] The court accepted that it was in the children's best interests to reside with the father given professional input that they needed a familiar and safe environment.[18]

11 This case demonstrates a more interventionist stance by the Youth Court, as it is clear from the orders made in this case that the father was fully capable of taking care of the children,[19] and the judgment did not state that the father would be unable to protect the children from being harmed by the mother. In addition, there was no physical injury caused to the children, and neither were they self-harming nor threatening to do so. Despite this, the court had sanctioned CPS's intervention.[20] The key consideration seems to have been the opinions and recommendations by the different professionals involved with the family regarding the children's relationship with the mother,[21] and the fact that the mother had refused CPS's request to attend an assessment at a relevant medical facility as to her mental condition,[22] which would have been similar to what the father and the children had undergone.

B. A narrower limit – UNB v Child Protector

12 The mother had appealed against the orders made in *GCC and GCD* – and her appeal was allowed, in *UNB v Child Protector*[23] ("*UNB*"). *UNB* makes the threshold for Youth Court intervention in a severe parental conflict case much higher than in *GCC and GCD*.[24] The facts of the case have been set out in paras 8–11 above.

16 *Ministry of Social and Family Development (MSF) v GCC and GCD* [2017] SGYC 2 at [69(c)].
17 *Ministry of Social and Family Development (MSF) v GCC and GCD* [2017] SGYC 2 at [75]–[88].
18 *Ministry of Social and Family Development (MSF) v GCC and GCD* [2017] SGYC 2 at [111].
19 *Ministry of Social and Family Development (MSF) v GCC and GCD* [2017] SGYC 2 at [111].
20 Ministry of Social and Family D*evelopment (MSF) v GCC and GCD* [2017] SGYC 2 at [65] and [75].
21 *Ministry of Social and Family Development (MSF) v GCC and GCD* [2017] SGYC 2 at [69] and [82].
22 *Ministry of Social and Family Development (MSF) v GCC and GCD* [2017] SGYC 2 at [115].
23 [2018] 5 SLR 1018 ("*UNB*").
24 See further at paras 17–18 below.

13 The High Court set aside the orders of the Youth Court. The key points made by the court in finding that the requirements in the then ss 4(*d*)(i) and 4(*g*) of the CYPA were not satisfied were:

(a) It was unlikely that Parliament intended to empower and task CPS with the mandate to intervene whenever a child is suffering from some emotional injury, no matter what the extent and what the family circumstances. The state should only intervene as a last resort.[25]

(b) In the light of (a) above, the term "emotional injury" should not have a broad reading, such that CPS could intervene when for instance, a child witnesses his parents frequently quarrelling or when a child has a parent who suffers from some symptoms of depression.[26]

(c) The threshold in the then section 4(*g*) CYPA would not be satisfied just by the presence of a conflict between the child and the parent leading to disruption of family relationships and emotional injury. Take for example, a case where a 15-year-old girl experiences emotional turmoil after a failed boy-girl relationship, and the parents' attempt to help her through this resulted in their relationship with her gravely deteriorating. Although on a literal reading the requirements of then s 4(*g*) CYPA appear to have been satisfied, it would be incongruous for CPS to intervene in such a scenario, because it would be at this difficult time that the teenager would need her parents to guide and support her.[27] Hence, the presence of serious and persistent conflict between a child and their parent in and of itself, does not, *without more*, warrant the use of a blunt instrument of state intervention. The court should consider if the nature of the risk and the extent of the emotional injury in question was such that a blunt instrument of last resort (*ie*, Youth Court proceedings and the powers of the Youth Court) was justified.[28]

(d) The court acknowledged that the reports submitted by the various professionals stated that the children were

25 This sentiment has been expressed in earlier cases as well. See for instance, the case of *ABV v Child Protector* [2009] SGJC 4, where Justice V K Rajah reversed the holding of the lower court and held that: "The removal of a child from the parents is a very drastic remedy that should be resorted to only when there is a real fear of imminent physical or psychological danger." The decision on appeal was unreported: Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at para 7.216. See also *VET v VEU* [2020] 4 SLR 1120 at [32].

26 *UNB v Child Protector* [2018] 5 SLR 1018 at [33].

27 *UNB v Child Protector* [2018] 5 SLR 1018 at [49].

28 *UNB v Child Protector* [2018] 5 SLR 1018 at [24] and [37].

emotionally distressed – they were anxious, fearful and frustrated. However, the court noted that the reports did not state that the children were suffering from any serious psychiatric or psychological disorders.

(e) The court expressed concerns with the reports of one professional, the consultant psychiatrist who diagnosed the children with having "Post-Traumatic Stress Syndrome/disorder". (He was the only professional to diagnose the children with such a syndrome.) The court observed that the professional only met the children in November 2016 (almost a year before the Youth Court hearing in *GCC and GCD* on 17 October 2017), and he did not meet them after that. His reports relied on secondary evidence such as medical records and the meeting minutes of a multi-agency case discussion.

(f) The court put more weight on the report of another doctor who interviewed the children more recently before preparing his reports (his reports were dated 17 April 2017, half a year before the *GCC and GCD* hearing) and whose only medical diagnosis was that the children were suffering from a "parent-child relationship problem". The court also considered the fact that this doctor had interviewed the mother, unlike the consultant psychiatrist. In a case where one parent is alleging that the other parent has been alienating the children from him or her, the court opined that it would be desirable for both parents and the children to be interviewed, so that the professional can take a holistic view of the issues facing the family.

14 In respect of the then s 4(*d*)(i) CYPA, the court was of the view that the children were not at risk of being ill-treated by the mother. The only purported acts of ill-treatment were the mother's attempt to enforce access orders to see the children. This did not warrant state intervention.

15 The High Court pointed out that the Family Court is well-equipped to safeguard the children's welfare.[29] In this case, *eg*, the Family Court could have varied the access order and also directed parties to receive professional help (counselling, therapy, *etc*), to restore the children's relationship with the mother.[30] After setting aside the Youth Court orders, the High Court did not restore the previous access orders. The parents had each applied for sole custody, care and control of the children after CPS's application to the Youth Court on 27 December

29 *UNB v Child Protector* [2018] 5 SLR 1018 at [56].
30 Carmelia Nathen *et al*, "Child Protection Cases – Engagement, Involvement, Empowerment" (2018) 30 SAcLJ 647 at [12].

2016. These applications would be determined by the Family Court. Meanwhile, the court ordered, amongst other things, that the mother's physical access to the children should be stayed. CPS was to continue arranging access between the mother and the children in a way that promoted reunification. CPS was to transfer the access arrangements to the Divorce Support Specialist Agency ("DSSA")[31] and update the Family Court within one month, and the Family Court was to review the access thereafter.

16 Of interest to note is that the particular limb under which CPS made the care and protection application, *ie*, the then s 4(*g*) CYPA, was subsequently removed from the CYPA by the Children and Young Persons (Amendment) Act 2019,[32] which took effect on 1 July 2020. In its place was promulgated a new s 4(*g*), which stated "the child or young person suffers or is likely to suffer from emotional harm because the child or young person has been or is subject to emotional or psychological abuse by his parent or guardian". This section was subsequently renumbered as s 5(*g*) of the current CYPA.[33] It is submitted that this legislative change is in line with the principles set out in *UNB*. It emphasises the child protection system's primary goal of identifying a child in need of care and protection from someone who is actively ill-treating or abusing him, and distinguishes it from a situation where a child may be suffering from emotional distress as a result of his parents' break up, conflict, and possibly inappropriate parenting, but not to the level of ill-treatment warranting state intervention.

17 It is submitted, in light of *UNB,* that to determine whether the Youth Court should intervene in a serious parental conflict case, the following questions should be asked:

> (a) Whether the child is being ill-treated by his parent, *ie*, the parent: (i) subjects the child to physical or sexual abuse; (ii) does an act which endangers the child's safety, or causes the child any unnecessary physical pain, suffering or injury, any emotional harm, or any injury to his health or development; or (iii) intentionally neglects, abandons or exposes the child in circumstances which would have the consequences set out in (ii).

31 Divorce support programmes provided by the Divorce Support Specialist Agency ("DSSA") until March 2025 are now provided by FAM@FSCs. In this article, references to DSSAs are in the context of orders made or actions undertaken in cases which were heard by the court before March 2025, when FAM@FSCs had not yet been set up.

32 Act 30 of 2019.

33 Via Act 30 of 2019, with effect from 31 December 2021.

(b) Emotional harm means any serious impairment to the child's growth, development, or behavioural, cognitive or affective functioning, including delayed mental and physical development, being severely withdrawn, anxious or depressed, or being diagnosed by a medical practitioner as having a mental health condition such as post-traumatic stress disorder, anxiety, depression or psychosomatic disorder.[34] If it is an "emotional injury" type of case, to ascertain whether the child is suffering or more likely to suffer from emotional harm because he has been subject or is subject to emotional or psychological abuse by his parent.

(c) Examples of such abuse in s 5(2) CYPA include persistent acts of rejection, threats to physically hurt, kill or abandon the child, placing the child or a related person (someone the child cares about) in a dangerous situation, isolating the child by consistently denying him opportunities to communicate with any person, confining the child in a small space for the purposes of discipline, or influencing the child to develop self-destructive, antisocial, criminal, deviant or other maladaptive behaviour.[35]

(d) The court is less likely to intervene if the child was not being ill-treated or harmed, or at risk of this.

18 It is submitted that the court would be guided by these principles, in the light of *UNB,* in deciding as to whether a child was in need of care and protection:

(a) Where one parent is capable of caring for the child, state intervention will rarely be warranted unless, *eg*, that fit parent is also determined to be unable to protect the children from being further harmed (in the manner set out in para 17(c) above) by the unfit parent.[36]

(b) Where the allegations relate only to psychological abuse, or where there is a suspicion that the children have been coached by a parent to make allegations against the other, the court would closely scrutinise the evidence regarding the abuse before determining whether state intervention is warranted.[37] This means that there must be detailed evidence regarding the child's ill-treatment and/or emotional or psychological abuse (of the sort set out in para 17(c) above). There should also be evidence

34 Children and Young Person's Act 1993 (2020 Rev Ed) s 2.
35 Children and Young Person's Act 1993 (2020 Rev Ed) ss 5(2)(*a*)–5(2)(*e*).
36 *UNB v Child Protector* [2018] 5 SLR 1018 at [59].
37 *UNB v Child Protector* [2018] 5 SLR 1018 at [57].

from the appropriate medical/therapeutic professionals that the child is suffering from some sort of psychiatric or psychological disorder because of the ill-treatment or abuse beyond mere emotional injury or distress. This is as opposed to mere conflict between the child and the parent arising from difficulties in carrying out access orders.[38] The assessment of the professionals should be based on recent interviews with all the relevant parties as well as the child.

(c) The risk of harm to the child must be such that there are no suitable or viable measures available within the Family Court's powers that could help to restore the child's relationship with the alienated parent, and there is a real fear of imminent physical or psychological danger to the child which the Family Court would be unable to address with the tools at its disposal.[39]

19 Conversely, an example of a case which might satisfy the rather stringent criteria for intervention under the narrower limit would be *BHR (the natural mother of B) v Child Protector*[40] ("*BHR*"). In this case, both parents were divorced, and care and protection orders were made committing the child to a place of safety rather than residing with either parent. The child had been diagnosed with post-traumatic stress disorder and had suffered harsh physical punishment from the mother (including being chained to a water pipe and beaten). The mother was a controlling parent who lacked awareness of the child's needs, spoke negatively about the father to the child, and refused to attend counselling or therapy. The child had physiological responses (*eg*, migraines) and emotional distress when in contact with the mother. The father had largely been absent from the child's life and the child did not have a good relationship with him. In this case, there was no parent capable of taking care of the child, the child had suffered from harsh physical punishment, and there was no hope of improvement because the mother had mental health issues, did not have insight and refused help to treat her condition. State intervention was clearly needed to keep the child safe from both parents, especially the mother.

C. Interim orders – a wider limit? – and why it matters

20 *BHR* was a rather extreme case, however. It is submitted that short of a *BHR*-type of situation, the court would probably adopt a much more

38 *UNB v Child Protector* [2018] 5 SLR 1018 at [51].
39 *UNB v Child Protector* [2018] 5 SLR 1018 at [35].
40 [2014] SGJC 1.

cautious approach to making a care and protection order in a serious parental conflict situation.

21 However, the situation might be different in the case of interim orders. The purpose of interim orders would be to ensure that the child is kept safe, pending a full investigation and social report on the case. The court would usually have scant information on the case at this stage. It would mainly be relying on CPS's preliminary investigation and assessment to decide whether the child had suffered or was at risk of suffering harm because of abuse. Factors the court would consider at this pre-social report stage when deciding what interim orders to make would be: (a) the seriousness of the allegations of abuse; (b) any evidence regarding the harm allegedly suffered by the child; (c) the extent to which the parents are able to co-operate with CPS so that CPS can complete their investigations; and (d) whether the child is in imminent danger of suffering harm while CPS's investigations are ongoing.

22 In *Ministry of Social and Family Development (MSF) v GCF*[41] ("*MSF v GCF*"), the father and mother had each made applications for the custody, care and control of the child in the Family Court. The Family Court had on 26 January 2018 passed interim orders pending the hearing of these applications, for the status quo to remain (*ie*, the child to remain at XXX,[42] and the parents to have equal access time). The child had been admitted to XXX for his safety after an incident between the parents during the mother's supervised access to the child in a shopping mall, after which the father had called for police assistance after the mother refused to return the child to the father's care. Since that time, both parents had been taking turns to reside with the child at XXX.

23 Before the applications could be heard in the Family Court, CPS applied on 9 February 2018 for a care and protection order for the child, based on the then s 4(*d*)(i) and s 4(*g*) CYPA.

24 CPS was concerned over reports of the child being exposed to and physically triangulated when the mother was physically violent towards the father. There were also various incidents involving the mother when she tried to get access to the child. This included: (a) not adhering to the visitation arrangements which CPS had worked out with both parties;[43] (b) her volatile emotional and mental state; (c) her history of mental health issues; and (d) difficulties in obtaining her consent to

41 [2018] SGYC 1 ("*MSF v GCF*").
42 The name of the residence had been redacted in the court judgment.
43 This led to her turning up at XXX when it was the father's access time, leading to conflict between them – which upset the child.

retrieve her medical reports which were critical in assessing her mental state to accord safe care for the child.

25 The Youth Court called for a social report, and made the following interim orders, amongst others, which were effective until 6 April 2018 (about two months later, when the social report would be presented to the court):

> (a) The child to be placed under the supervision of an approved welfare officer until a specified date, under the then s 49(1)(*d*) CYPA;[44]
>
> (b) Access between the child and the mother and/or significant others to be subject to the approval and review of the approved welfare officer under the then s 49(2) CYPA;[45] and
>
> (c) The child to reside with the father. A protective adult, subject to the approval and review of the approved welfare officer, to reside with the child under the then s 49(2) CYPA.[46]

26 The court stated that even at the stage of considering whether to make interim orders, the court must consider two issues: the first being whether, on a balance of probabilities, the child is in need of care and protection, and if so, then the second issue would be what care and protection orders which would be in the best interests and welfare of the child. In considering these issues, a balance must be struck between due process and the rights of the parents *versus* the safety and well-being of the child. This would be a difficult balance to achieve, especially during the pre-social report stage, where the parties would not have filed and exchanged affidavits, and the court would often only have the complaint brought by CPS before it, as well as the parties' oral submissions in court, when considering the appropriate interim orders to pass. In such a situation, the court would "rather err on the side of safety for the child and well-being of the child".[47] So long as the court is satisfied that there is a *prima facie* case that the child is in need of care and protection, the court will pass interim orders that the court thinks is in the child's best interests in order to ensure the safety and well-being of the child, pending

44 The current version is s 54(1)(*c*) of the Children and Young Person's Act 1993 (2020 Rev Ed) as at 13 September 2023.

45 The current version is s 54(8) of the Children and Young Person's Act 1993 (2020 Rev Ed) as at 13 September 2023.

46 The current version is s 54(8) of the Children and Young Person's Act 1993 (2020 Rev Ed) as at 13 September 2023.

47 *Ministry of Social and Family Development (MSF) v GCF* [2018] SGYC 1, *per* District Judge Eugene Tay at [27].

the social report being presented to the court (the "err on the side of safety" approach).

27 Given the limited material and evidence before the court at this early stage, the court would find it difficult to determine the veracity of differing accounts by the parents, based on their own respective accounts and assertions alone. In these circumstances, the evidence and views from CPS, a neutral third party, would be given "considerable, though not conclusive, weight".[48] Without evidence to the contrary, it appears that the court would not disbelieve CPS's accounts of the party's behaviour, or believe that CPS would side with or favour one or the other party (provided that it was assured that CPS had communicated with both parties during its preliminary investigations). This can be gleaned from the court's views on CPS's evidence in this case,[49] where the court stated that it did not have strong reason to disbelieve CPS's accounts of the mother's reported behaviour, namely non-adherence and disruptions to the agreed visitation arrangements, notwithstanding the mother's denial of the same. The court also noted that there was no evidence to suggest that CPS had favoured the father over the mother, or had fabricated their accounts of the situation. The court was satisfied from the contents of the complaint that CPS had communicated with and engaged both parents, and also accepted the word of the Child Protection Officer in court that she had spoken to both parents before taking out the application.

28 Based (mainly) on CPS's evidence, the court found on a balance of probabilities that the child needed care and protection, as there was a risk that the mother would act in an unreasonable and/or unstable manner likely to endanger the safety of the child. The mother had not been able to propose safety plans[50] for the child to date, compared to the father who could provide a safety plan for the child that CPS had assessed to be viable and suitable. CPS had assessed that it would be safe for the child to be discharged to the father's care while CPS continued to engage the mother on a safety plan for the child. XXX was considered not to be a suitable placement, as the child would be exposed to various illnesses,

48 *Ministry of Social and Family Development (MSF) v GCF* [2018] SGYC 1 at [30].
49 *Ministry of Social and Family Development (MSF) v GCF* [2018] SGYC 1 at [33].
50 The safety plan is a key plank of CPS's strategy to protect the child, and is heavily reliant on the co-operation of the parents. CPS has recently strengthened its protocols on information sharing and co-ordination with various agencies to look out for vulnerable children under the State's care to ensure their well-being. This includes more detailed plans to keep a child safe, including making more effort to engage the child himself and members of his family to come up with a safety plan. This is so that everyone knows what to do in various situations, and can play their part to keep the child safe. See Theresa Tan, "Faster Action if Agencies Suspect Something is Amiss", *The Sunday Times* (15 October 2023).

germs and viruses there, and also due to the mother's inability to adhere to the agreed access arrangements. This meant that there would always be a risk of conflict between the parents there, which XXX was ill-equipped to handle.

29 The appeal eventually did not proceed, as the interim orders (effective from 9 February 2018 to 6 April 2018, the latter being the date of the hearing at which the social report would be presented in court) were allowed to lapse on 6 April 2018 (with both parties' consent). This is because CPS reported no further care and protection concerns, and did not proceed with the care and protection application.

30 The "err on the side of safety" approach can also be seen in the *Father of GFD v Child Protector*[51] ("*GFD v Child Protector*"). In this case, the parties were divorced in March 2017. On 27 October 2022, the Family Court had ordered, in custody variation proceedings, that the mother was to have care and control of the child (who was at that time residing with the father). The mother was to inform the father in writing on the date, time and venue for the father to hand the child over to her. The father was to have no access to the child for the next 12 weeks and/or until the completion of the psychological assessment of the child's readiness to resume access, whichever was later.

31 On 1 December 2022, CPS applied to the Youth Court for a care and protection order under ss 5(1)(*d*)(i), 5(1)(*e*) and 5(1)(*g*) CYPA. They submitted that the child was being ill-treated or at risk of being ill-treated by the father, was suffering or likely to suffer from emotional harm because of having been or being subject to emotional or psychological abuse by the father, and needed to be examined, investigated and treated, but the father refused to allow this. At the time of the hearing, the mother had apparently not seen the child for two years, because the father had denied her access. The mother informed the court at the hearing that when she tried to pick the child up from the father's residence, the father had refused to open the door, but had passed the key to the door to the child. However, the child refused to leave with the mother. The father took no responsibility for this turn of events, but blamed the mother for abusing the child. He said that the child had refused to follow the mother when the mother tried to pick the child up from the child's school on 28 October 2022, and that the child would only want to return home with the father. On the day of the hearing, he had not brought the child to court, as he said that the child was "scared of CPS".

51 [2023] SGYC 1.

32 CPS reported that the child had not attended school from February 2022 until 9 May 2022. The father had also not complied with a Protector's Order issued on 19 November 2022 under s 10 CYPA for him to produce the child for assessment in view of concerns over her psychological well-being, by refusing to exercise his parental authority to override the child's resistance towards the assessment. There were school reports regarding the school's concerns on "poor boundaries" between the father and the child, including allegations of the father lying in the same bed with the child when she was in Primary One and being kissed "all over her face while tickling her". Professionals who had seen the child had highlighted concerns over the child being triangulated by the father in the ongoing custody proceedings, including allegations that the father had disclosed to the child court affidavits and private emails sent by the mother regarding the child.

33 The court adopted the "err on the side of safety" approach in *MSF v GCF*. Although the court acknowledged that there was limited evidence before it since the case was at the pre-social report stage, it was satisfied that the child was in need of care and protection under s 5(1)(*g*) CYPA, because she was suffering or likely to suffer from emotional harm as she had been or was being subject to emotional or psychological abuse by her parent or parents. Both parents had differing accounts, with each accusing the other of abusing the child, but the court was of the view that there was no need to make any finding as to which parent had caused the emotional harm to the child at this stage. It was satisfied, on a balance of probabilities, that the child was likely to suffer from emotional harm because of the conflict between her parents.

34 However, the court was not satisfied that the father had neglected or refused to have the child examined, investigated or treated under s 5(1)(*e*) CYPA, given that the father had repeatedly emphasised to the court at the hearing that he had always facilitated a particular professional named Yvonne Heng and the school counsellor to speak to the child. The court was also not satisfied that the child was ill-treated by the father under s 5(*d*)(i) CYPA based on CPS's evidence, given the seriousness of the allegations.

35 The court accordingly called for a social report to provide more information. The court ordered, amongst other things, that:

> (a) the child be committed to a place of safety, the Marymount Centre Ahuva Good Shepherd Interim Placement and Assessment Centre, with effect from 1 December 2022; and
>
> (b) the child's contacts with the father and any significant others to be subject to the approval and review of the Approved Welfare Officer.

These orders would stand until the presentation of the social report on 9 January 2023.

36 CPS had recommended for the child to be committed to a place of safety for the interim period, pending the presentation of the social report. The court accepted this recommendation as it was of the view that the place of safety was a neutral location where professionals could speak to the child and assess the child without any interference or influence from either parent, and CPS could facilitate any access between either parent and the child. At the father's request, Yvonne Heng was to be present to speak to the child when she would be first brought to the place of safety in order to minimise any trauma caused to the child.

37 Although the court adopted the "err on the side of safety" approach in both *GFD v Child Protector* and *MSF v GCF*, the court in *GFD v Child Protector* seemed to place less emphasis on CPS as a neutral party than in *MSF v GCF*. The court was careful to say that at the pre-social report stage, it could not and did not have to ascertain which parent was responsible for the emotional injury to the child. It only had to be satisfied, which it was, that the child was suffering from emotional injury as a result of emotional abuse stemming from the conflict between her parents. Notably, the judgment did not allude to any reports that the child was suffering from any serious psychological or psychiatric condition. It is submitted that a key factor in this case was the apparent difficulty experienced by CPS in sighting the child, due to the father's reluctance to co-operate.[52] His influence on the child also appeared to be quite strong, and might be a significant obstacle to CPS in carrying out a proper investigation of the case.

38 The father had appealed against the interim orders. However, the appeal was eventually not proceeded with.

39 In light of *MSF v GCF* and *GFD v Child Protector*, it is submitted that the following principles apply in an interim order situation:

(a) as long as there is a *prima facie* case that the child is in need of care and protection, the court will make such orders as it sees fit, in the best interests of the child;

(b) in deciding whether there is such a *prima facie* case, the court will consider:

52 The failure to sight a child is a major concern for CPS. They recently strengthened their protocols to require social workers who fail to see and interact with the child despite multiple attempts to do so to flag the cases to CPS. See Theresa Tan, "Faster Action if Agencies Suspect Something is Amiss", *The Sunday Times* (15 October 2023).

(i) the available evidence on the parties' behaviour (whether it has been abusive in any way) and the child's condition (whether she has suffered any emotional or other injury), especially reports from professionals; but if there is currently very little evidence, it would be inclined to give more weight to the evidence of CPS as a neutral third party in these matters;

(ii) the extent to which CPS has tried to engage both parties, and the extent to which each party has co-operated with CPS, which includes coming up with reasonable and feasible safety plans for the child, going for interviews and assessments as requested, and being able to arrive at and keep to visitation agreements for the child; in particular the court will consider what is required for CPS to be able to investigate the matter properly and come to a proper assessment of whether the child is in need of care and protection; and

(iii) the seriousness of the allegations of abuse by the parents.

40 It is submitted that although it would be best to err on the side of the child's safety in a pre-social report situation, the court should proceed with caution in making interim orders which might in themselves influence the relationship between parent and child, which may in turn have a strong influence on the eventual outcome of Youth Court proceedings, and subsequently, Family Court proceedings.

41 For example, interim orders had been made in *GCC and GCD* for the children to reside with the father pending the preparation and presentation of the social report. The interim orders were made on 27 December 2016 and the final hearing was only on 17 October 2017. During this 10-month period, the children resided with the father, and there was a strong possibility that the father had influenced the children against the mother. The father had been doing "excessive gatekeeping" from August 2014 onwards when he took the children and left the mother. For example, he gave the children a questionnaire in which he asked them to choose between living at the maternal family's home (described only by address) or "Daddy's Home" (using an affectionate description). The court observed that this question was framed in an unbalanced manner. The father did not appear to support the children's relationship with the mother, and continued to paint a picture of the mother as an obstructive parent to the children.

42 Another example involved a handover incident on 5 November 2015 at a public library. The father claimed that the children were so

resistant to seeing their mother that two complete strangers called the police to express their concerns about a woman approaching two young girls. The father managed to get hold of a police report by these "strangers" just two days after the event and even managed to get a statutory declaration by one of these "strangers" a few weeks later. The mother submitted that this was a "set up", and the court agreed that the circumstances were concerning.[53] The court found it surprising that the children rejected the mother in such an "alarming way" even though she had very little contact with them since August 2014.

43 The High Court in *UNB* pointed out that the effect of the final order as made by the Youth Court in *GCC and GCD* was effectively to grant sole care and control to the father while restricting access to the mother. In the past 14 months from the hearing in *UNB*, CPS facilitated only 14 calls with the older child and 12 calls with a younger child, each lasting about 5 to 15 minutes. The mother did not see the children during this period. Telephone contact alone only permitted one-dimensional interaction, *ie*, conversations. Therefore, the orders made effectively overrode the Family Court orders which gave the mother overnight access, school holiday access and public holiday access. The court said that state intervention risked entrenching the status quo at the time of parental conflict. The father may have perceived that his views were vindicated, rendering him even less likely to co-operate with the mother. The children's negative perception of the mother may have been reinforced by the impression that even the state has chosen to align with the father's views. As a result, the prospects of restoring the children's relationship with the mother could have been severely undermined. The court said that it found the father's use of the child protection proceedings "very disappointing".[54]

44 This concern was not so apparent in *MSF v GCF*, because the order was for the child to reside in a neutral location, and not with either parent. It is submitted that interim orders should be made with much more caution in a case where the order is for the child to reside with one parent. This is because it seems inevitable that there will be some influence by the parent whom the child resides with, to make the child think negatively of the other parent. This could tip the balance in the final Youth Court hearing, and also have an impact in the Family Court proceedings, since both courts would take into account the current relationship between the child and each parent in its decision. In this

53 See *TEN v TEO* [2020] SGHCF 20, *per* Justice Debbie Ong at [37]–[38]. The High Court in this case heard the cross-appeals of the parents against the district judge on custody, care and control, access and maintenance in relation to the *GCC and GCD* children in the Family Court, which took place after the decision in *UNB*.

54 *TEN v TEO* [2020] SGHCF 20 at [39].

regard, it is interesting to note that in *TEN v TEO*,[55] even though the court said that the father was uncooperative and did not facilitate the relationship between the mother and the children, the eventual decision was that the mother would not have *any* access to the children. The court stated:[56]

> … the best interests of the Children require the Mother to cease direct contact with them until they were ready and willing to meet her. This would be painful for the Mother, but I was of the opinion that pushing the Children to connect with the Mother now might cause a further deterioration of whatever remained of their relationship with her.

45 One implication, in the light of the foregoing, is that it may be quite "risky" for a parent (parent A) to lose regular and frequent contact with the child if the other parent (parent B), who is in regular and frequent contact with the child, is bent on destroying (or, at least, not supportive of) the relationship between parent A and the child. The questions that arise are what the Family Court, Youth Court, or the care and protection system itself can do to manage the situation, which court would be the more appropriate forum to deal with the matter if judicial intervention is required, and how to prevent a situation where pre-court and/or court processes are exploited by one parent to the detriment of the other.

D. State intervention – ideally, to intervene as little as possible

46 The "nightmare scenario" for a parent typically begins when one parent abruptly removes the child from the other parent's care, as was the case in both *MSF v GCF*[57] and *GCC and GCD*.[58] In these cases, the fathers took children away from the mothers during ongoing matrimonial proceedings, leading to deteriorating parent-child relationships through intentional or unintentional alienation. When the excluded parent attempts to regain access, conflicts escalate, children become distressed, and eventually CPS becomes involved following particularly fraught incidents. This pattern creates a dangerous cycle where the parent who initially removed the child may benefit from the resulting dysfunction.

47 The involvement of CPS and Youth Court proceedings can inadvertently entrench the status quo and validate the alienating parent's

55 [2020] SGHCF 20.
56 *TEN v TEO* [2020] SGHCF 20 at [56].
57 See *VHA v VHB* [2020] SGFC 31 at [9], which was the Family Court hearing for the custody, care and control applications filed by the parents in the *GCF* family.
58 *Ministry of Social and Family Development (MSF) v GCC and GCD* [2017] SGYC 2 at [46].

position. In both *GCC and GCD*[59] and *MSF v GCF*,[60] Youth Court orders placed children with the fathers who had originally taken them, while restricting the mothers' access. As the High Court noted in *UNB*,[61] this alignment between the state and one parent can reinforce the children's negative perception of the excluded parent and severely undermine prospects for relationship restoration. (The High Court did not have the opportunity to give any views on the situation in *MSF v GCF*, as the appeal was not proceeded with, and CPS eventually withdrew the matter. However, it is submitted that the High Court might well have agreed with CPS's intervention for this case, unlike for *UNB*, given that the mother appeared to have a deep-seated hatred of the father, was isolated from any support, and had exhibited bizarre behaviour in front of the child and towards the father's family members, which did not appear to be the case for the mother in *GCC and GCD*.)

48 The case of *UXV v UXW*[62] further demonstrates how allegations triggering CPS involvement can restrict a non-resident parent's access for extended periods (seven months in that case), even when investigations ultimately prove inconclusive.[63]

59 See paras 8–11 above.

60 See paras 22–29 above. Also see *VHA v VHB* [2020] SGFC 31 at [66], *per* District Judge Kathryn Thong.

61 *UNB v Child Protector* [2018] 5 SLR 1018 at [60].

62 [2019] SGFC 70.

63 In this case, an ancillary matters order had been made on 23 May 2016, giving the mother care and control of the child, and the father unsupervised and overnight access. Sometime in June 2016, the mother reported to CPS that the father had touched the child inappropriately and twisted the child's arm. MSF filed a police report on the mother's behalf. All these led to CPS applying for care and protection orders in the Youth Court. On 1 July 2016, the Youth Court ordered that the child be placed under the mother's care for a period of two months and restricted the father's access by making it subject to the approval of the relevant MSF officer. This was followed by a further statutory supervision court order for another 4-month period till January 2017. On 13 January 2017, however, after considering the social report, the Youth Court did not grant any further extension of the child protection orders, as the court felt that there were no longer any significant care and protection concerns for the child. Notwithstanding the discharge of the care and protection orders, the mother continued to refuse the father the access he was given under the ancillary matters order. The mother applied on 28 February 2017 to suspend and also vary the access orders, including removing reasonable access and/or unsupervised/overnight access to the child. Given the mother's allegations of child abuse (and notwithstanding that the Youth Court had not extended the child protection orders), the Family Court decided to "exercise more caution, gave the benefit of doubt to the [mother] pending the assessment" and temporarily suspended the access orders, pending the hearing of the summons (see *UXV v UXW* [2019] SGFC 70 at [9]). The court ordered the father to have supervised visitation at DSSA instead. It also asked CPS to provide an updated social report. This report was only issued on 15 June 2017. This case illustrates how allegations by a resident parent which end up triggering the CPS process can have the practical effect of restricting the non-resident parent's access

(cont'd on the next page)

49 These cases highlight the risk that the child protection system, designed to safeguard children, may be exploited by parents in custody disputes to gain tactical advantage. The prolonged separation and formal state intervention can damage parent-child relationships that might otherwise be irreparable through Family Court processes, creating long-term harm that extends well beyond the resolution of the immediate protection concerns.

III. With great powers, come great responsibility – what Child Protective Service could (and should?) do

50 There could also be cases before the Family Court where there is no Youth Court intervention yet, but only allegations made to CPS and ongoing CPS investigations regarding the abuse of the child of the marriage by either or both parents. In such cases, the issue would be how to prevent the parent-child relationship from being damaged while the CPS investigations are ongoing, especially for the parent who is not residing with the child, as the investigations may ultimately find no care and protection concerns.[64]

51 CPS could be a game changer in the family dynamics of a severe parental conflict case, for better or for worse, because it is endowed with significant powers. Most important of these powers is the power to remove the child if CPS is satisfied on reasonable grounds that the child is in need of care or protection. CPS may place the child in a place of safety or with a fit person, arrange for the child to be medically or

for a significant period while the process runs its course. It took about seven months from the complaint to the lifting of the care and protection orders, for the CPS/Youth Court intervention to resolve. Even after that, the allegations and prior Youth Court involvement seem to have influenced the Family Court to continue restricting the father's access (which it is respectfully submitted the court should not have, as there was no basis to do so). Ironically, CPS's investigations into the allegations were inconclusive (see *UXV v UXW* [2019] SGFC 70 at [18(3)]). Fortunately, the child in this case did not appear to be alienated from the father, although "clearly caught in between two feuding parents" (see *UXV v UXW* [2019] SGFC 70 at [22]). They were able to bond, and the DSSA sessions had gone smoothly. Eventually, generous unsupervised access orders were made for the father. This included one weekday dinner access, weekend access, daily telephone access, alternate public holiday access, and eventual overnight access, including school holiday access with overnight access. There was no reported appeal case for this matter.

64 See, for instance, *WKN v WKM* [2023] SGHCF 25, where the court was of the view that the mother's allegations of abuse and neglect by the father were unfounded (at [9]) – though the court nonetheless granted care and control of the child to the mother. On appeal, the court in *WKM v WKN* [2024] 1 SLR 158 restored care and control of the child to the father.

psychologically assessed and/or treated, and restrict contact between the child and any other person.[65] This is something only CPS can do.

52 Generally, rather than making an application immediately to the Youth Court for a care and protection order for the child, CPS will try to enter into a voluntary care agreement with both parents of the child regarding the child's care arrangements and access to the child.[66] An application to the Youth Court for a care and protection order for the child would only be made if it was not possible to broker an agreement between the parents, or if the brokered agreement could not be carried out, for whatever reason.

53 The authors understand from CPS that generally, in severe parental conflict cases where there is no serious allegation of sexual or physical abuse, CPS would take a cautious approach, redirecting the parents to seek help from a Family Service Centre, FAM@FSC, the Family Justice Courts, or the Legal Aid Bureau, to resolve their issues, instead of handling the case themselves. In this regard, it is submitted that to avoid a cynical use of CPS by a parent in a severe parental conflict case, it is important that at this early stage of involvement, CPS be alive to whether this is a *UNB* type of situation, *ie*, whether:

(a) there is a fierce conflict between the parties over the children (particularly if there are already multiple pending or previous Family Court custody and access proceedings);

(b) there is a potential parental alienation situation – where the child seems very rejecting of one parent and aligned to the other;

(c) there is only emotional injury and emotional abuse alleged, which is largely centred around access-related incidents; and

(d) at least one parent can care for the children adequately.

54 In such a case, it might be better to leave it to the parties to invoke the help of the Family Court to resolve their conflict, rather than to activate the care and protection process, in order to avoid the "risk of negative effects" from state intervention, which include "entrenching the status quo at that time of parental conflict".[67] A swift decision by CPS not to intervene in such situations would be helpful as if there are pending

65 See ss 11(1)–11(4) of the Children and Young Persons Act 1993 (2020 Rev Ed).

66 See s 15 of the Children and Young Persons Act 1993 (2020 Rev Ed). This is what it tried to do in *MSF v GCF*, *eg,* see paras 22–24 above.

67 *UNB v Child Protector* [2018] 5 SLR 1018 at [59]–[60].

Family Court proceedings, they would usually be adjourned pending the conclusion of CPS's investigations.[68] CPS had acted swiftly in the case of *WBI v WBJ*,[69] *eg*, managing to close its preliminary investigation in time for the ancillary matters hearing.[70] Similarly, in *VIJ v VII*,[71] it took merely two weeks for CPS to close an investigation. (However, CPS had found that the two children of the marriage had been subjected to the parents' "ongoing marital conflicts and disagreements over custody matters of the children" and had thus referred the family to a family service centre to learn parenting skills, and how to co-parent the children. CPS further advised the parents to refrain from triangulating the children in their marital conflicts.[72] In this way, CPS can add value to the situation, even without intervening directly).

55 Should CPS decide that it is an appropriate case for intervention, however, because of safety concerns, and it is a situation where the child is residing with one parent (and CPS applies for this status quo to remain), then it should be mindful to encourage regular contact between the non-resident parent and the child. The authors understand from CPS that it is indeed their policy and practice to do so, if such contact can be done safely and is appropriate. The regular contact would allow CPS to assess the quality and safety of the contact and to help it progress and develop, if it is in the child's best interests to do so. (This approach would avoid a situation like in *GCC and GCD* where only short telephone calls were facilitated between the children and the mother over an 8-month period).[73] It is submitted that such situations warranting intervention would include cases where the resident parent seems unable to protect the child from being harmed by the other parent, whether because the other parent has severe psychiatric issues or the resident parent is of a particularly weak or timid character or both, or the

68 In *WKN v WKM* [2024] 1 SLR 158, *eg*, the mother refused to return the child after access, and alleged that the father was abusing the child. She made a police report, and the police reported the matter to CPS. It took more than a year before the child was ordered to be returned to the father by the Family Court, after the police and CPS had closed the case. By this time, the child was more aligned with the mother, as was evident from the judge interview with the child during the hearing of the High Court appeal by the mother against the Family Court's decision. It is possible that the year-long separation of father and child had contributed to the child becoming closer to the mother than the father. The High Court's decision was reversed on appeal to the Court of Appeal. See further discussion at [100]–[104].

69 [2022] SGFC 25.

70 *WBI v WBJ* [2022] SGFC 25 at [13].

71 [2021] SGFC 29.

72 *VIJ v VII* [2021] SGFC 29 at [77]–[79]. Quotations extracted from a letter from CPS to the father dated 9 April 2019.

73 See paras 8–10 above for the background facts of the case.

child is exceptionally fragile. In all other cases, the Family Court should be able to decide.

56 If the case is brought to the Youth Court, the social report would usually not have been done yet, and the Youth Court would have to make interim orders pending the social report. As stated in paras 20 to 45 above, in an interim order situation, it appears that the Youth Court is more prepared to err on the side of the child's safety, and accept the assessment of CPS on what is best for the child pending the next hearing where the social report will be presented. The court might want to be more cautious in certain situations, and, where possible, avoid ordering the child to reside with one parent while limiting access to the other parent.

57 In such a situation, the faster the social report can be done, the faster the Youth Court can make a final decision on the care and protection of the child with full information.

58 The time between the initial Youth Court hearing and the hearing at which the social report would be presented was slightly less than two months in *MSF v GCF* (9 February 2018 to 6 April 2018), and about 10 months in *GCC and GCD* (27 December 2016 to 17 October 2017). The former timeline would be better for all the parties and the child, if CPS's resources permit, as it would give all of them more certainty at an earlier stage. It would also avoid a situation where the child becomes alienated from the non-resident parent. The authors understand from CPS that the time frame between a complaint to the Youth Court and the presentation of a social report is generally between 8 to 10 weeks, and it is quite unusual for the social report to be presented at the 10-month mark. In the *GCC and GCD* case, one reason for the extended timeline was perhaps because the case was highly contested, protracting the Youth Court proceedings, and the report in October 2017 was a follow-up (review) report, and not the first social report.

59 A non-resident parent, in such a situation, would be well advised to co-operate with CPS to the fullest extent (*eg*, by providing CPS with his medical records when asked, undergoing the relevant examinations where requested by CPS, attending scheduled appointments with CPS, making reasonable suggestions for the child's welfare, keeping to agreed access arrangements, *etc*), in order to obtain regular and frequent access to the child. If the non-resident parent is of the view that he is not getting sufficient access to the child, then he should engage CPS in a dialogue

on this, and/or seek legal advice. As a last resort, he could make an application to the Youth Court on this issue.[74]

IV. Procedure and precedence

60 The last part of this article deals with the nuts and bolts of cases coming to the Family Court and the Youth Court either at the same time or at different times.

A. Avoiding conflicting orders

61 In *UIV v UIW*,[75] the Family Court had to address the issue of care and control and access while the child was under a care and protection order at the time of hearing. The court observed as follows:[76]

> I was mindful and cautious of passing orders relating to the child that could potentially be or have the effect of being inconsistent and/or in conflict with the [care and protection] order, as this may lead to confusion and raise questions as to which orders should take precedence. This would in turn not be in the best interests and welfare of the child.

The situation where there is the most risk of conflicting orders being made is where both Youth Court proceedings for the care and protection of the child (Youth Court proceedings) and Family Court proceedings in relation to the custody, care and control of the child (Family Court proceedings) are ongoing. This would include a scenario where Family Court orders have been made concerning the custody, care and control of the child (Family Court orders), Youth Court proceedings are ongoing, and where a variation application has been filed in the Family Court concerning the custody, care and control of the child (Family Court variation application).

62 To avoid a conflicting order situation, the most practical solution seems to be to consolidate the Youth Court matter with the Family Court matter and have them heard by the same judge (though wearing different hats at the appropriate time). The judge in his capacity as a Youth Court judge will make orders for the care and protection of the child (Youth Court orders) first, and then after that, in his capacity as a Family Court judge, make the Family Court orders, taking care not to contradict the Youth Court orders he has just made. If the decision is that it need not be a Youth Court matter, then the matter can be sent

74 See s 54(5) of the Children and Young Person's Act 1993 (2020 Rev Ed).
75 [2018] SGFC 8.
76 *UIV v UIW* [2018] SGFC 8 at [11].

back to the Family Court to be dealt with, or the Youth Court judge could straight away put on his Family Court hat and proceed to deal with the matter like a Family Court judge. One issue is whether this might be an obstacle to making orders on the division of matrimonial assets and spousal maintenance, since these issues might be affected by the custody, care and control orders.[77] However, it is submitted that this should not be an obstacle, as the Family Court could just make the division of matrimonial assets and spousal maintenance orders on the basis that the custody, care and control orders would mirror the arrangements under the Youth Court orders. Child maintenance orders can also be made on this basis. Child maintenance can also be provided for under the Youth Court orders.[78]

B. Status of Family Court orders during pendency of Youth Court order

63 What would happen, however, if the Family Court orders were made on the premise that care and control was being given to one parent, but the situation changes subsequently, because of a later Youth Court order? For example, the mother had the flat transferred to her on the basis that she would have care and control of the children, and there is also a maintenance order for the children. What if the Youth Court decides that it is the father that should be the children's caregiver now, and for the foreseeable future?

64 This raises the question of the status of the Family Court orders when the Youth Court order is made, and after the Youth Court order has expired. Are the Family Court orders (at least those which overlap with the subject matter of the Youth Court order) suspended or even superseded/terminated by the Youth Court order? If so, do they automatically "revive" once the Youth Court order is lifted? It is suggested that legislation be enacted to clarify this point, *ie*, to specify the status of the Family Court order during the pendency of the Youth Court order, and after the Youth Court order is discharged. This is important because Youth Court orders are always intended to be temporary, or they will expire once the child turns 21 years old. In order not to leave parties in a vacuum, after the Youth Court orders have expired, it is submitted

77 The court is to have regard to, *inter alia*, the needs of the children when deciding on the division of matrimonial assets (s 112(2)(*c*) of the Women's Charter 1961 (2020 Rev Ed)), as well as the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future (s 114(1)(*b*) read with s 112(2)(*h*) of the Women's Charter 1961 (2020 Rev Ed)).

78 See Pt 8 of the Children and Young Person's Act 1993 (2020 Rev Ed) ("Expenses and Contributions").

that the most practical position to take is that the Youth Court order temporarily suspends the operation of the Family Court order, and once the Youth Court order expires, the Family Court order comes back into operation.[79]

65 If this position is correct, then although the father still theoretically has to pay the child maintenance to the mother under the Family Court order in the scenario set out above, if the mother tries to enforce the order, then the father should have a good defence, *ie*, the children were not residing with her, and therefore she did not need the child maintenance sum. At any rate, the father could apply to rescind or vary the child maintenance order on the basis of a material change of circumstances under s 118 WC.[80] Ideally, any issue of child maintenance should have been dealt with at the Youth Court hearing so that a separate variation application need not be taken out by the non-care and control parent at the Family Court. Since the Youth Court order is temporary, there should be no reason to disturb any orders on the matrimonial assets – once it expires, the care and control situation could revert to what it was before the Youth Court order was made. But, in any event, the father could always file an application to vary the matrimonial assets orders, provided he can satisfy the criteria in *AYM v AYL*[81] to show that there has been a material change in circumstances. Of course, what could help eliminate any confusion in such a situation is if the Youth Court

79 A complication arises, however, if families come to private arrangements between themselves and CPS after CPS becomes involved in the case, in the form of a voluntary care agreement. In such a case, there would be no Youth Court order, but the arrangements may be very different from what has been ordered under the Family Court order. It is suggested that legislation be enacted to clarify that a voluntary care agreement, like a Youth Court order, temporarily suspends the operation of the Family Court order, and once the voluntary care agreement expires, the Family Court order comes back into operation.

80 For example, in FC/D 3812/2016 (FC/SUM 3968/2021), the Plaintiff father had applied on 9 November 2021 to vary existing orders made on 25 July 2018 in relation to care and control of and access of the child as well as other orders relating to the division of the matrimonial flat, transfer of the father's Central Provident Fund monies to the Defendant mother and maintenance of the child. The child had been the subject of various care and protection orders passed by the Youth Court since 21 July 2021. The Family Court had called for a social report to be prepared by CPS after hearing parties' submissions and also passed an interim order that the father was not required to pay the mother maintenance for the child for the duration the child was placed out of home under a care and protection order and not residing with the mother. The court found that given the developments, *ie*, CPS's involvement, and the care and protection orders passed by the Youth Court, while under the care and control of the mother, it was clear that there had been a material change in circumstances since the ancillary order and access order were passed.

81 [2013] 1 SLR 924.

judge could also make orders clarifying the status of the Family Court order at the same time that he makes the Youth Court orders.[82]

C. Family Court orders made "subject to" Youth Court orders

66 In a situation where Youth Court orders have been made, and Family Court proceedings are ongoing (which would include a scenario where a Family Court variation application has been filed), the Family Court judge could make orders on care and control, which are "subject to" any existing Youth Court orders.

67 For example, in the case of FC/D 3812/2016, the Family Court ordered that parties should have joint custody of the child, with sole care and control to the mother, "subject to" the terms and conditions of the care and protection order dated 3 April 2023 under CPO-000125-2021. After the care and protection order had been discharged, the father should have reasonable access with the child – namely, eight hours unsupervised access from 11.00am to 7.00pm on Saturday, and/or any days, times and periods mutually agreed between parties.

68 In this case, the parties were divorced, and the parties were ordered to have joint custody of the child, with care and control to the mother, and supervised access to the father at a DSSA. Subsequently, the access arrangements were varied by consent in an Order of Court dated 22 July 2019. CPS applied for a care and protection order for the child in the Youth Court on 31 May 2021. Various Youth Court orders were made, and the child was admitted to the care of a fit person, namely the

82 It is not uncommon for the Family Court to order that no custody orders be made where Youth Court orders have been made, or that the custody orders be subject to the Youth Court orders, *eg*:

(a) *UIV v UIW* [2018] SGFC 8: The Family Court ordered there be no custody order as long as the care and protection order was in force.

(b) DIV/5650/2021: The Family Court order provided for sole custody and care and control to the mother, and for the father to comply with the directions of the care and protection order in respect of his access.

(c) DIV/148/2016: The consent order provided for the Plaintiff mother to have sole custody while MSF would have care and control of the children who would remain in foster care.

(d) FC/D2601/2022: The consent order provided that there would be no orders for child custody pending the recommendations of CPS. In FC/D590/2018, the consent order provided that there would be no custody orders for the two children and for the current arrangements by CPS to continue.

(e) FC/D 590/2018: The Family Court ordered that there be no custody order for the children and for the current arrangements by CPS to continue, as there was a prior Youth Court Order for the child to be committed to the care of a foster mother and for both parties and any other significant persons' contacts with the child to be subject to the approval of and periodic review by CPS.

maternal aunt, since 21 July 2021. The latest care and protection order was passed on 3 April 2023 with the consent of both parents, for the child to be committed to the care of the maternal aunt for a further nine months from the expiry of the previous care and protection order, amongst other things. The father applied to vary the existing orders in relation to care and control of and access to the child. He wanted to have care and control of the child.

69 The court ordered a social report to be prepared by CPS, and pending the preparation of CPS's social report, the court ordered in the interim that the father was not required to pay the mother maintenance for the child for the duration that the child was placed out of home under a care and protection order and not residing with the mother. The court noted that it would have to take into account the current care and protection orders dated 3 April 2023 passed by the Youth Court placing the child in the care of the maternal aunt. The court stated that as far as possible, the court would not pass an order that would be inconsistent with the care and protection order passed by the Youth Court. The court noted that there were sufficient care and protection concerns arising when the child was under the care and control of the mother, such that it was deemed unsuitable for the child to continue residing with the mother, but had to be committed into the care of the maternal aunt.

70 The court noted that there appeared to be no issues or concerns over the father's contacts with and care for the child, and he had clearer, more concrete plans which would provide greater support and stability for the child compared with the mother's. The child, who was 13 years old at the time of the hearing, had also expressed her wish to reside with the father. Therefore, the court ordered that the child be placed under the care and control of the father, but subject to the terms and conditions of the current care and protection order (including any variations or extensions of the same). The court explained, "… what this means is that even though care and control may be given to the father, the child still required to be under the care of [maternal aunt] for the duration of the care and protection order".[83] The mother would have access to the child subject to the approval and review of CPS, as provided for under the current care and protection orders. The current access arrangement for her since 7 March 2023 was eight hours unsupervised access. The court noted that there was no good reason why this could not continue after the expiry of the current care and protection orders. However, based on CPS's social report, the child was not ready to progress to overnight access, and hence this was not ordered. The father was ordered to solely maintain the child, since he was granted care and control.

83 FC/D 3812/2016 at [38], *per* District Judge Eugene Tay.

D. Youth Court orders taking precedence, where required

71 Where Family Court orders have been made, and Youth Court proceedings are ongoing, the Youth Court judge can of course make orders which do not conflict with the original Family Court orders. However, if the care and protection needs of the child require it, the Youth Court could also make orders which are at variance with the Family Court orders. For example, in *GCC and GCD*,[84] the court opined that if there is a prior, existing order on custody, care and control relating to a child made by the Family Court, the Youth Court will recognise the same in deciding on the appropriate care and protection orders for the child. However, this does *not* mean that the Youth Court is constrained or bound to follow and adopt the former if the Youth Court determines it is not in the child's best interests and welfare.

72 The court cited previous cases where the then Juvenile Court (now Youth Court) had ordered the child to reside at a place of safety (and therefore apart from the parents) for a particular duration, notwithstanding existing Family Court orders on custody, care and control and access. The court held that the effect of a care and protection order made by the Youth Court for a child *after* a Family Court order on custody, care and control and access involving the same child would be that the later care and protection order by the Youth Court would supersede and override the earlier order on custody, care and control and access made by the Family Court in so far as where and with whom the child is to reside and how one or both parents is/are to have access to the child, to the extent that the former differs from the latter and for the duration of the former. However, a care and protection order made by the Youth Court under the CYPA does not remove or vary a parent's custodial rights. In other words, a parent who has joint custody over a child under a Family Court order still retains joint custody, and a similar point applies for care and control.

73 The authors respectfully submit that this is correct, on the basis that state intervention (which is what Youth Court orders bring about)

84 Although the appeal against this decision was allowed in *UNB*, the ratio of the case centred around whether it was an appropriate case for state intervention. The court in *UNB* did not discuss the issues of:

(a) what approach to take if deciding on the appropriate care and protection orders for the child when there are existing Family Court orders on custody, care and control and access involving the child; and

(b) what effect would the later care and protection order have on the earlier order on custody, care and control and access.

Therefore, it is submitted that *GCC and GCD* is still authoritative on these issues.

should take precedence over "private" orders (Family Court orders which regulate the (parenting) behaviour between two private parties).

74 Incidentally, in this scenario, if the Family proceedings are consolidated with the Youth Court proceedings,[85] after dealing with the Youth Court proceedings, the judge can then put on his Family Court hat, and proceed to clarify which Family Court orders should continue (*eg*, if the parties are halfway through a series of FAM@FSC sessions, which can be continued with even if parties are under the Youth Court regime) or incorporate parts of the Family Court order into the Youth Court order, and so on.

E. Expiry of Youth Court order, revival of Family Court order

75 Another interesting question is what happens when the Youth Court order expires, but circumstances might have changed such that the original Family Court orders may not be relevant. For example, the Youth Court might have ordered the child to stay with the grandmother as a fit person, whereas the original Family Court order might have given care and control to the mother. When the Youth Court order is discharged, it may not be practical for the Family Court order to be implemented immediately, because the child may not want to leave the grandmother so abruptly. Parties are at liberty to file applications to vary the Family Court order if necessary.[86] The Family Court does not have the standing to do this, because it is *functus officio*. The Youth Court will not do this, because the case is not brought before it. If the parents do not take any action, the Family Court would retain the discretion to call for a case conference and make orders, or direct parties to make the appropriate applications, if necessary. For example, if FAM@FSC sessions had been ordered under the original Family Court order, and parties were halfway through the sessions before the Youth Court order was made, and the

85 There might be no pending Family Court application to consolidate with the Youth Court matter, but it is submitted that the Family Court could call parties back to ask what the situation is and make orders of its own motion. See the catch-all provision under r 5(2) of Family Justice (General) Rules 2024.

86 In FC/D 3042/2021, there were no custody, care and control and access orders in respect of the children of the marriage, and the Order of Court dated 2 December 2021 instead provided for parties to be at liberty to apply for further orders after the Youth Court's review. On 20 July 2022, MSF informed the mother's solicitors that there were no existing protection orders made under the Children and Young Person's Act and that the children were no longer known to the CPS. The mother then applied to the Family Court to vary the Order of Court to obtain joint custody and care and control of the children, and succeeded in obtaining these orders by consent.

Family Court now wants to order that the sessions be terminated because they are no longer necessary.

76 To avoid this outcome, CPS could put in place some transitional arrangements towards the end of the Youth Court order, to eventually mirror the situation under the Family Court order (if this is thought to be in the child's best interests) and it can do this as long as neither parent objects. If either parent objects, CPS would have to go back to Youth Court and apply for an extension of the care and protection order, and specifically for any transitional arrangements that it thinks fit. At the point of discharging the Youth Court orders, the Youth Court judge could make orders for transition arrangements or "weaning off" orders, so that things are not so abrupt for the parties between the discharge of the Youth Court order and the revival of the Family Court order. If the optimal arrangements after the discharge of the Youth Court order are different from the arrangements under the Family Court order, then either the parents can just come to an agreement to proceed with the arrangements without going back to the Family Court to vary the Family Court order, or one of them could apply for a variation of the Family Court order.

V. Conclusion

77 The authors have argued in this article that the Youth Court should only intervene in a severe parental conflict case where the child is being ill-treated by his parent, and that most severe parental conflict cases would not fall into this category. A more interventionist approach might be suitable when making interim orders (*ie*, pending the outcome of CPS investigations). However, the court should still proceed with caution in doing so (especially if the effect of the order is to give one parent sole care and control, as was the case in *GCC and GCD*), since these interim orders may in themselves influence the parent-child relationship and have a strong influence on the eventual outcome of the Youth Court and/or Family Court proceedings.

78 State intervention would generally not be warranted where one parent can care for the child. The authors have made some suggestions to ensure the current system works even more effectively and efficiently. For example, for CPS to make swifter decisions on whether to intervene in a case, to have shorter timelines for social reports to be presented to the Youth Court, and being more mindful to encourage access between the non-resident parent and the child. In terms of procedure, the authors have noted from actual cases which have gone through the Family Court and/or the Youth Court that there are already different ways taken by the court to avoid a conflicting order situation – though ideally,

legislation should be enacted to clarify certain points, such as to specify the status of the Family Court order during the pendency of the Youth Court order, and after the Youth Court order is discharged.

79 The final point the authors would like to make, however, is the important role which counsel for parties involved in severe parental conflict cases can play. If a case does not warrant CPS's intervention, parties should be advised accordingly, and strongly discouraged from going down this route. In a case where CPS is involved, parties should be strongly advised to co-operate with CPS. Counsel could also encourage parties to access therapeutic support services and programmes to strengthen their parenting and communication skills. Parties involved in severe parental conflict cases are often too mired in deep emotions to view matters objectively. Their lawyers can be the ones to show them the way to a more peaceable future for themselves and their children, in the spirit of the following quote by Mahatma Gandhi:

> I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men's hearts. I realised the true function of a lawyer was to unite parties riven asunder.