

## **Trends in the Division of Matrimonial Property Based on Contribution: An Empirical Case Study Based on the Structured Approach in Singapore**

Abstract:

Different jurisdictions have adopted different approaches to the division of matrimonial properties. While some have greater certainty and predictability from a rules-based approach that adopts equal division as a starting point, others have adopted a discretionary approach with little to no guidance from the legislation. Using statistical methods, this empirical quantitative study seeks to show how trends (and in turn certainty and predictability) can be obtained from a discretionary system, using Singapore's contributions-based approach as a case study. Analysing 265 Singaporean judgments, the authors observed, amongst other trends, that division for both single-income and dual-income marriage tend to incline towards equality as the marriage length increases; there are divergences in collective outcomes from the Singapore Court of Appeal and Singapore High Court, and judgments from the Singapore Family Justice Courts; direct contributions have a significant impact on division for dual-income marriages; and the presence of child(ren) significantly influences division.

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### **I. INTRODUCTION**

The division of matrimonial property upon divorce (“**division**”) is a relatively new phenomenon that emerged in the past century. At least up until 1815, on marriage, the husband and wife became one person in law for many purposes; women were chattel of men, making division difficult, if not impossible. Paraphrasing William Blackstone, Albert Venn Dicey noted that in the nineteenth century:

*... a husband on marriage became for most purposes the almost absolute master of his wife's property. The whole of her income, from whatever source it came (even if it were the earnings of her own work or professional skill), belonged to her husband.<sup>1</sup>*

If marriage is seen as a business transaction, on divorce, there would be an expectation that the wife's properties would be returned to her. However, as Stephen Cretney noted, the Matrimonial Causes Act 1857 and Divorce Act 1857 “*did not deal coherently*” with the issue of property entitlement on divorce.<sup>2</sup> In fact, the English Courts were not empowered to transfer properties acquired during the marriage (usually by the husband) from the husband to the wife; the discretionary power to transfer properties from one spouse to another (i.e. through division)

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<sup>1</sup> Dicey AV, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (Macmillan and Co, 2nd ed, 1914), 373.

<sup>2</sup> Cretney S, *Family Law in the Twentieth Century: A History* (Oxford University Press, 2003) (“**Cretney (2003)**”), 94 – 95. See also Cretney (2003), 395.

was only legislated much later in 1970.<sup>3</sup> Equal sharing of matrimonial property<sup>4</sup> premised on gender equality was an even newer concept for family law. John Eekelaar noted that gender equality only began taking shape in the law after the ‘*strong reaction of most of the western world against the anti-egalitarian ideologies which were overcome in [the Second World War]*’.<sup>5</sup> Despite this, many jurisdictions have conceived equality differently<sup>6</sup> resulting in different division outcomes. Unlike New Zealand,<sup>7</sup> and Ontario, Canada<sup>8</sup> where equal division is prescribed within their rules-based systems, jurisdictions such as Australia,<sup>9</sup> England and Wales, United Kingdom,<sup>10</sup> Hong Kong,<sup>11</sup> and Singapore<sup>12</sup> continue to empower their respective judiciaries with broad discretionary powers with little to no guidance on the exercise of this discretion within their legislations. Predictability and consistency are largely (or at least theoretically) absent in these discretion-based systems as compared to Ontario and New Zealand where equal division is the default. Indeed, in England and Wales,<sup>13</sup> *White v White*<sup>14</sup> and *Miller v Miller; McFarlane v McFarlane*<sup>15</sup> have consistently been criticised for the lack of certainty as a result of the retention of this unfettered discretion guided merely by principles.<sup>16</sup>

<sup>3</sup> Cretney (2003), 132 – 136, and 420 – 426; Eekelaar J, *Family Law and Social Policy* (Weidenfeld and Nicolson, 2nd ed, 1984), 100 – 107; and Kahn-Freund O, ‘Recent Legislation on Matrimonial Property’ (1970) 33(6) *Modern Law Review* 601, 615 – 620. See also at Law Commission, *Report on Financial Provision in Matrimonial Proceedings* (LC No. 25, 1969), [50(a)], and [55] – [75]; Law Commission, *First Report on Family Property: A New Approach* (Law Com No. 52, 1973), [0.3] – [0.4], and [0.21]; and Lesser H, ‘The Acquisition of Inter Vivos Matrimonial Property Rights in English Law: A Doctrinal Melting Pot’ (1973) 23(2) *The University of Toronto Law Journal* 148, 150 – 151.

<sup>4</sup> In the context of this article, matrimonial property and matrimonial assets will be used interchangeably. For the avoidance of any doubt, it is defined as per section 112(10) of the Singapore Women’s Charter 1961.

<sup>5</sup> Eekelaar J, ‘Equality and the Purpose of Maintenance’ (1988) 15(2) *JLS* 188, 189. See also Kahn-Freund O, ‘Matrimonial Property Law in England’ in Friedmann W (ed), *Matrimonial Property Law* (Stevens & Sons, 1955), 275–291.

<sup>6</sup> Alison Diduck highlighted at least three different interpretations of equality that have been universally applied: substantively, it could be ‘*achieved by way of compensation for economic advantage or disadvantage*’ resulting from the breadwinning / caregiving roles during the marriage; on the other hand, it could mean a ‘*consistency or sameness of treatment, [or] it could mean non-discrimination*’. See Diduck A, ‘Ancillary Relief: Complicating the Search for Principle’ (2011) 38(2) *Journal of Law and Society* 272 (“**Diduck (2011)**”) at 279.

<sup>7</sup> New Zealand Property (Relationships) Act 1976, s 11.

<sup>8</sup> Ontario Family Law Act RSO 1990, s 5(1).

<sup>9</sup> Australian Family Law Act 1975 (Cth), s 79.

<sup>10</sup> English Matrimonial Causes Act 1973, s 25. The English Courts would only order asset transfers from 1970. See Barlow A, ‘Property and Couple Relationships: What does Community of Property have to Offer English Law?’ in Bottomley A et al, *Changing Contours of Domestic Life, Family and Law: Caring and Sharing* (Hart Publishing, 2009), 30–31.

<sup>11</sup> Hong Kong Matrimonial Proceedings and Property Ordinance, ss 4 & 7; and Glynn D et al, ‘Chapter 4: Ancillary Relief: The Law’ in Hewitt P (ed), *Family Law and Practice in Hong Kong* (Sweet & Maxwell, 2011), [4.05]–[4.023].

<sup>12</sup> See s 112(1) of the Singapore Women’s Charter.

<sup>13</sup> See Scherpe J, ‘Matrimonial Causes for Concern – A Comparative Analysis of *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24’ (2007) 18(2) *KLJ* 348; Cooke E, ‘*Miller/McFarlane*: law in search of discrimination’ (2007) 19(1) *CFLQ* 98; Hitchings E, ‘Chaos or Consistency? Ancillary Relief in the ‘Everyday’ Case’ in Miles J et al (eds), *Sharing Lives, Dividing Assets: An Inter-Disciplinary Study* (Hart Publishing, 2009) (“**Hitchings (2009)**”); Hitchings E, ‘The impact of recent ancillary relief jurisprudence in the ‘everyday’ ancillary relief case’ (2010) 22(1) *CFLQ* 93 (“**Hitchings (2010)**”); Douglas G, ‘Sharing financial losses as well as gains on divorce’ (2018) 32 *AJFL* 108 (“**Douglas (2018)**”), 110; and Miles J et al, ‘The Legal Consequences of Dissolution: Property and financial support between spouses’ in Eekelaar J et al (eds), *Routledge Handbook of Family Law and Policy* (2nd ed, 2020).

<sup>14</sup> *White v White* [2001] 1 AC 596.

<sup>15</sup> *Miller v Miller; McFarlane v McFarlane* [2006] 2 AC 618 (“**Miller**”).

<sup>16</sup> These criticisms apply equally to Hong Kong since it has adopted the English approach in nearly its entirety.

Even amongst systems which provide the courts with broad discretion, their approaches to division are significantly different especially with regard to their bases for division. At this juncture, it is worth to briefly consider some of these theoretical bases for division. Joanna Miles has identified some of these bases to include the needs of parties (and child(ren)), entitlement based on parties' contributions or efforts to the marriage (hereinafter known as "**contribution**"), entitlement based on the relationship, and compensation.<sup>17</sup> The adoption of one or a combination of these different theories by various jurisdictions has resulted in division outcomes deviating significantly. In all four discretion-based jurisdictions, no starting point has been prescribed by their respective statutes or judiciaries. England and Wales, like Hong Kong,<sup>18</sup> does not have a matrimonial property regime but is guided by three principles – needs, compensation, and equal sharing.<sup>19</sup> On the other hand, Australia has adopted an approach that is based on equal sharing, parties' contributions, and needs.<sup>20</sup> Singapore takes a different approach from the other three jurisdictions and has adopted a deferred community of property regime within its rules-based discretionary system.<sup>21</sup> Division within its hybrid system is based on parties' contributions to the marriage as the basis for division within a structured framework.<sup>22</sup> With these common law jurisdictions being largely discretion-based, a question arises as to the extent for which a party deviates from similar cases and / or equal division when obtaining their negotiated outcome.<sup>23</sup> This begs the further question of certainty in the realm of division on divorce, especially for discretion-based jurisdictions.

As family justice shifts globally towards reducing acrimony during divorce, accordingly, more cases will be resolved through mediation and negotiation. While lower legal costs and less protraction of divorce proceedings benefit parties, the question of fairness – what each party should walk away from the marriage with – remains. John Eekelaar argues that models or some *standard* deals are '*essential to responsible negotiation for both sides to know how far they are accepting a deviation from the default outcome*'.<sup>24</sup> Predictability and consistency thus become important pillars for amicable divorces. This article uses Singapore as a case study to investigate the trends in the outcomes from division. This is useful for three main reasons: first, it allows for a better understanding of the division outcomes from a jurisdiction that bases division on parties' contributions to the marriage. The trends identified will show that certainty for a hybrid rules-based discretionary system is possible.<sup>25</sup> Second, this article will show how predictability and consistency can be attained in a discretionary division regime like Singapore. Lastly, insight obtained from this empirical study of Singapore's division approach can be extrapolated, evaluated, and / or applied by other jurisdictions which currently utilise or are considering transplanting a similar approach that focuses parties' contributions as a basis for division. More importantly, this article will investigate whether the resulting division outcomes

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<sup>17</sup> Miles J, 'Financial Provision and Property Division on Relationship Breakdown: A Theoretical Analysis of the New Zealand Legislation' (2004) 21 NZULR 268 ("**Miles (2004)**"), 272–290.

<sup>18</sup> *LKW v DD* [2011] HKFLR 106; and *WLK v TMC* [2011] HKFLR 144.

<sup>19</sup> *Miller*, [10]–[17].

<sup>20</sup> See s 79(4) of Australian Family Law Act 1975; *Stanford v Stanford* [2012] HCA 52, [37]–[40]; *Engelbrecht v Moss* [2015] FCWA 19, [137(a)]–[137(g)]; *Clayton v Bant* [2020] HCA 44, [23]; and *Hsiao v Fazarri* [2020] HCA 35, [27]–[28].

<sup>21</sup> Scherpe JM, 'Marital Agreements and Private Autonomy in Comparative Perspective' in Scherpe JM (ed), *Marital Agreements and Private Autonomy in Comparative Perspective* (Hart Publishing 2012) ("**Scherpe (2012)**"), 467.

<sup>22</sup> *ANJ v ANK* [2015] 4 SLR 1043, [17].

<sup>23</sup> Eekelaar J, 'Financial and Property Settlement: A Standard Deal' [2010] FL 359.

<sup>24</sup> Eekelaar J, 'Financial and Property Settlement: A Standard Deal' [2010] FL 359.

<sup>25</sup> c.f. The Hong Kong Court of Final Appeal has held that the reliance on precedents is to be avoided since the Hong Kong Courts are focused on the principles and not how another court has *applied* the principles to the unique facts of the precedent. See *Mimi Kar Kee Wong Hung v Raymond Kin Sang Hung (Ancillary relief: clawbacks)* [2015] HKFLR 318, [27].

promote or impede gender equality and / or equal sharing that is becoming more prevalent in many jurisdictions.

Few studies (albeit a growing number) have engaged quantitative statistical methodologies in empirical-legal analysis of the law, and even fewer in family law. This importance cannot be overstated because consideration of reformation or transplant of the law should be informed by statistics to ensure that they are evidence-based.<sup>26</sup> Unfortunately, an empirical study based on division outcomes and their long-term impacts for parties is difficult, if not possible or meaningful for Australia, Hong Kong, and England and Wales because of their adoption of the 'holistic' approach to ancillary relief.<sup>27</sup> Amongst other reasons, the difficulty in England and Wales (arguably for Australia and Hong Kong as well) in conducting such quantitative studies on division outcomes is due to: first, inability for 'everyday' cases to reach the UK Supreme Court, resulting in a dearth of precedents;<sup>28</sup> second, the limited impact of arguably more predictable and / or quantifiable factors such as equal sharing<sup>29</sup> and the lack of principle in justifying needs has resulted in a multitude of justifications which have in turn created great unpredictability in the division outcomes of these cases;<sup>30</sup> and third, uncertainty resulting from inconsistent exercises of judicial discretion (including the use of other ancillary relief) by different judges.<sup>31</sup> Compounded together, they prevent the distillation and exploration of crucial factors affecting 'everyday' cases for division and their long-term impact.<sup>32</sup> Consequently, empirical quantitative scholarship by Hayley Fisher and Hamish Low tended to focus on the economic consequences of divorce which are premised on longitudinal studies that investigate the recovery of parties' income,<sup>33</sup> instead of just division outcomes. Even where studies conducted by Joanna Miles and Emma Hitchings were on the division outcomes in England and Wales, qualitative empirical methods were mainly employed.<sup>34</sup> In contrast, the adoption of the 'pillars' approach where the division of matrimonial property and maintenance are considered separately in Singapore is significant. Under the 'pillars' approach, the other ancillaries (such as spousal and child maintenance) are conceptually distinct and considered separately from division, whereas under the 'holistic' approach, the ancillaries (including

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<sup>26</sup> Miles J et al, 'Financial remedy outcomes on divorce in England and Wales: Not a 'meal ticket for life'' (2018) 32 AJFL 43 ("**Miles (2018)**"), 73 – 75; and Cooke E et al, *Community of Property: A Regime for England and Wales* (The Nuffield Foundation, 2006), 12.

<sup>27</sup> Jessep O, 'Marital Agreements and Private Autonomy in Australia' in Scherpe JM (ed), *Marital Agreements and Private Autonomy in Comparative Perspective* (Hart Publishing 2012), 20; Scherpe (2012), 460 – 461, and 476 – 477; and Scherpe JM, "Chapter 14. Contracting Out of the Default Relationship Property Regime" in Palmer J et al, *Law and Policy in Modern Family Finance: Property Division in the 21st Century* (Intersentia, 2017) ("**Scherpe (2017)**"), 360.

<sup>28</sup> Douglas (2018), 119 – 120; and English Law Commission, *Matrimonial Property, Needs and Agreements Consultation (2): A Supplementary Consultation Paper* (Law Com No 208, 2012) ("**Law Com (2012)**"), [3.33]–[3.35].

<sup>29</sup> Hitchings (2010), 105–107.

<sup>30</sup> Law Com (2012), [3.31]–[3.32].

<sup>31</sup> Miles (2018); and Douglas (2018). See also Hitchings (2009).

<sup>32</sup> Law Com (2012), [3.36]–[3.37].

<sup>33</sup> Fisher et al, 'Divorce early or divorce late? The long-term financial consequences' (2018) 32 AJFL 6; Fisher H et al, 'Recovery From Divorce: Comparing High and Low Income couples' (2016) 30(3) IJLPP 338; Fisher H et al, 'Financial implications of relationship breakdown: Does Marriage Matter?' (2015) 13 REH 735; Fisher H, 'Divorce Property Division Laws and the Decision to Marry or Cohabit' (2012) 28(4) JLEO 734; and Fisher H et al, 'Who Wins, Who Loses and Who Recovers from Divorce?' in Miles J et al (eds), *Sharing Lives, Dividing Assets: An Inter-Disciplinary Study* (Hart Publishing, 2009). See also Eekelaar J et al, *Maintenance after Divorce* (Clarendon Press, 1986), 59 – 103.

<sup>34</sup> Hitchings E et al, 'Meal tickets for life: The need for evidence-based evaluation of financial remedies law' (2018) 48 FL 993; Hitchings E et al, *Financial Remedies on Divorce: The Need for Evidence-Based Reform* (Nuffield Foundation, 2018); Miles (2018); Hitchings (2010); and Hitchings (2009).



division, maintenance, and pensions)<sup>35</sup> are considered together by the courts to tailor a unique package for each case depending on their facts. The Singapore Courts have to make a finding on the share that each party receives from the divorce.<sup>36</sup> This ability to isolate division from other ancillary relief makes it possible for data to be obtained with respect to the division outcomes such that an empirical study is possible for Singapore.

At the outset, this article does not intend to be conventional (whether doctrinal and / or theoretical) legal scholarship. Traditional discourse on the topic of division, including the debate between the rule-based approach and discretion-based approach,<sup>37</sup> are not engaged. Instead, the authors focus on analysing the empirical data through statistical methods. These analyses will allow a more comprehensive understanding of division based on contributions and dispel preconceived notions about this division approach. The law on division in Singapore will first be discussed briefly in Section II to set the backdrop, before the data and methodology are described in Section III. Section IV identifies key trends in the orders for division and how various factors such as the type of marriage, length of marriage, and presence of child(ren) affect the inclination towards equality. Section V discusses whether the trends and effects identified in Section IV are consistent with legal literature, and the mechanisms through which such trends and effects may arise. Section VI concludes.

## **II. BACKGROUND TO DIVISION IN SINGAPORE**

In this section, the authors will first discuss the general principles under the Singapore Women's Charter, before defining what short, moderate, and long marriages are for the purposes of this empirical study.

### **A. General Principles**

Section 112(1) of the Women's Charter empowers the Singapore Courts with wide discretion to divide matrimonial assets in a '*just and equitable*' manner.<sup>38</sup> This section provides that all matrimonial assets<sup>39</sup> are to be treated as community property on divorce, effectively cementing a deferred community of property regime in Singapore.<sup>40</sup> This is because division in Singapore is premised on the ideology espoused within section 46(1) of the Women's Charter,<sup>41</sup> that marriage is an equal co-operative partnership of different efforts for mutual benefit.<sup>42</sup> Despite this moral exhortation, since the enactment of section 112 of the Women's Charter in 1996, the Singapore Courts have grappled with the application of its power to divide

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<sup>35</sup> It is worth noting that Singapore does not have pension schemes. However, the Court of Appeal has held that monies within a party's Central Provident Fund (the compulsory savings scheme in Singapore and the closest equivalent to a pension scheme) is subject to the Court's division power. See *Central Provident Fund Board v Lau Eng Mui* [1995] 2 SLR(R) 826; and Part 3A of the Central Provident Fund Act 1953.

<sup>36</sup> In Singapore, the order for maintenance is supplementary to the order for division. See *TNL v TNK* [2017] 1 SLR 609, [63]; and *ATE v ATD and another appeal* [2016] SGCA 2 ("**ATE v ATD**"), [33].

<sup>37</sup> Hitchings E et al, 'Rules Versus Discretion in Financial Remedies on Divorce' (2019) 33 IJLPF 24.

<sup>38</sup> See section 112(1) read with section 112(2) of the Women's Charter which provides for an inclusive list of facts to be considered when exercising this power.

<sup>39</sup> As defined under section 112(10) of the Women's Charter.

<sup>40</sup> *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 529 ("**Lock Yeng Fun**"), [40]; and *BPC v BPB and another appeal* [2019] 1 SLR 608, [49]–[52].

<sup>41</sup> Section 46(1) of the Women's Charter provides that:

*'Upon the solemnization of marriage, the husband and the wife shall be mutually bound to co-operate with each other in safeguarding the interests of the union and in caring and providing for the children.'*

<sup>42</sup> See Chan LV, 'The Unfounded Fears Towards Equal Division of Matrimonial Assets in Singapore' (2018) 30 SAclJ 797 ("**Chan (2018)**"), [6]–[7]; Leong WK, *Elements of Family Law in Singapore* (LexisNexis Singapore, 3rd Ed, 2018) ("**Leong (2018)**"), [15.013]; Leong WK, 'The just and equitable division of gains between equal former partners in marriage' [2000] SJLS 208, 224 – 225; *NK v NL* [2007] 3 SLR(R) 743, [28] and [41]; and *TNL v TNK*, [45].

matrimonial assets.<sup>43</sup> This wide discretion bestowed upon the judiciary provides no statutory prescription on what constitutes a ‘*just and equitable*’ division or the basis for division.<sup>44</sup> As a result, the Singapore Courts have largely focused on rewarding parties for their contributions to the marriage within the structured broad-brush approach<sup>45</sup> from the Court of Appeal decision of *ANJ v ANK*<sup>46</sup> (the “**Structured Approach**”), which continues to apply to all cases involving division in Singapore.<sup>47</sup>

Under the Structured Approach, the Singapore Courts will first delineate the pool of matrimonial assets, making clear the date(s) used for such assessment. In most cases, the global assessment methodology – dividing matrimonial assets as a single pool – is adopted; the classification methodology<sup>48</sup> – matrimonial assets are separated into different classes and dividing differently between the classes<sup>49</sup> – is only adopted when adverse inferences are drawn against an identifiable class of assets or where there is a clear reason to divide them differently.<sup>50</sup> Second, a ratio representing each party’s direct financial contributions towards the acquisition of matrimonial assets relative to the other party will be ascribed. Third, a ratio representing each party’s indirect contributions to the well-being of the family (which includes non-financial and indirect financial contributions) will be attributed, although, the ratio representing each party’s indirect contributions should not be further split into two separate smaller ratios of non-financial contributions (such as homemaking efforts) and indirect financial contributions (such as the payment of groceries or the child(ren)’s extracurricular classes).<sup>51</sup> Fourth, the Singapore Courts will then use these two ratios obtained to derive each party’s average percentage contribution to the marriage which sets the preliminary proportion that each party is to receive. In some cases, where necessary, further adjustments may be made to this average percentage contribution or the weightage of the direct and indirect components to take into account other relevant factors. This includes adverse inferences and

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<sup>43</sup> For a brief history of the evolution of the tests for division adopted by the Singapore Courts, see Chan (2018), [9]–[16].

<sup>44</sup> For other bases of division, see Miles (2004), 272–290.

<sup>45</sup> The broad-brush approach accords mutual respect to parties’ ‘*equally fundamental*’ economic or homemaking efforts towards the well-being of the marital partnership. See *ANJ v ANK*, [17].

<sup>46</sup> *ANJ v ANK*, [23]–[25].

<sup>47</sup> It is worth noting that the current Structured Approach was only established by the Court of Appeal after many years of different Singapore Courts applying different frameworks / tests from their different understanding of “*just and equitable*” under section 112(1) of the Women’s Charter; the power under this provision proved to be highly discretionary and extremely broad. See *ANJ v ANK*, [17]–[30]; and Chan (2018), [9]–[16].

<sup>48</sup> The classification methodology is seldom applied by the Singapore Courts. From the authors’ initial dataset of 265 cases in this study, only 20 applied the classification methodology (7.6% of the total cases). This can be attributed to the difficulty in showing separate classes of matrimonial assets; these 20 cases were eventually excluded from the final dataset. Further, of these 20 cases, they appear to be uniformly applied over the 5-year period that this article examines; there does not appear to be an increase in the use of the classification methodology. See section III below.

<sup>49</sup> For example, in *TNC v TND*, the High Court held that the classification methodology was more appropriate because the pool of matrimonial assets could be suitably divided into two groups – one class represented assets acquired during the marriage by the efforts of one or both parties, and the other class representing the rest (including pre-marital assets that were “*substantially improved*” or “*ordinarily used*” by at least one party during the marriage under section 112(10)(a) of the Women’s Charter). Accordingly, the direct contributions by each party to both classes of assets were different. On appeal, this approach and its analysis of the approach was unchallenged before the Court of Appeal. Further, the Court of Appeal continued the application of the classification methodology. See *TNC v TND* [2016] 3 SLR 1172, [39]–[44]; and *TND v TNC and another appeal* [2017] SGCA 34 (“**TND v TNC**”), [12]. See also Leong (2018), [16.088].

<sup>50</sup> See *NK v NL*, [31]–[33]; *AYQ v AYR and another matter* [2013] 1 SLR 476, [16]–[24]; and *TQU v TQT* [2020] SGCA 8, [98]–[102].

<sup>51</sup> *TNL v TNK*, [47].

factors found in section 112(2) of the Women’s Charter<sup>52</sup> to arrive at a just and equitable division.<sup>53</sup>

From the inexhaustive list of factors found under section 112(2) of the Women’s Charter, three factors are put in the spotlight by the Singapore Courts – whether the marriage was a single-income or dual-income marriage<sup>54</sup> (i.e. the type of marriage),<sup>55</sup> whether there was a child from marriage,<sup>56</sup> and the length of the marriage prior to divorce<sup>57</sup> – in determining the parties’ respective direct and indirect contributions to the marriage under the Structured Approach.<sup>58</sup> In this article, single-income marriages refer to marriages with only one breadwinner, while dual-income marriages are marriages where both spouses worked.<sup>59</sup> Notwithstanding the implementation of the Structured Approach, the Court of Appeal has held that it would not be applied to single-income marriages because it unduly favours the breadwinner of the family.<sup>60</sup> In *TNL v TNK* which involved a long marriage of 35 years, the same Court held that in long single-income marriages, division would follow precedents which have equalised division, unless there were exceptional facts to not warrant equal division.<sup>61</sup> For short or moderate-length single-income marriages, no separate test has been explicitly laid down by the apex court; at best, *BOR v BOS* may be seen as implicitly endorsing *TNL v TNK*’s reliance on precedents for moderate-length marriages.<sup>62</sup>

## **B. Definition of Length of Marriage**

The Singapore Courts’ emphasis on the length of the marriage<sup>63</sup> is premised on the assumption that there is a correlation between the length of the marriage and the amount of

<sup>52</sup> *ANJ v ANK*, [22].

<sup>53</sup> As an illustration, in *ANJ v ANK*, the Court of Appeal held that the ratio of the husband’s direct contributions as against the wife’s was 60.00:40.00. With respect to indirect contributions, the ratio of the husband’s indirect contributions as against those of the wife’s was 40.00:60.00. Given the equal weightage attributed to both direct and indirect contributions, this resulted in the average percentage contributions for final division outcome between the husband and wife to be 50.00:50.00:

	Husband	Wife
Direct contributions	60.00	40.00
Indirect contributions (both financial and non-financial)	40.00	60.00
Average percentage contributions	50.00	50.00

See *ANJ v ANK*, [31] – [37].

<sup>54</sup> In *TNL v TNK*, the Court of Appeal held that the application of the Structured Approach would depend on whether the marriage was a single or dual-income marriage. See also sections 112(2)(a), (d), and (g) of the Women’s Charter; and *TNL v TNK*, [42]–[47]; and *UBM v UBN*, [48]–[67].

<sup>55</sup> Henceforth, the ‘type of marriage’ will refer to whether the marriage is single or dual-income in nature.

<sup>56</sup> The presence of a child of the marriage will affect the ratio of indirect contributions attributed to the parties, and / or could affect the weightage given to direct or indirect contributions. See sections 112(2)(c) and (d) of the Women’s Charter; *Zhou Lijie v Wang Chengxiang* [2015] SGHC 316 (“*Zhou Lijie*”), [43]–[60], and [67]; *ANJ v ANK*, [27(a)]; *ATE v ATD*, [19]; and *UBM v UBN*, [47].

<sup>57</sup> See *TNL v TNK*, [48]; *BOR v BOS*, [110]–[114]; and *UBM v UBN*, [41]–[47].

<sup>58</sup> For completeness, the Court of Appeal has held that where appropriate, other factors under section 112(2) read with section 114(1) of the Women’s Charter may be relevant to adjust the final ratio. See *ANJ v ANK*, [28].

<sup>59</sup> *TNL v TNK*.

<sup>60</sup> *TNL v TNK*, [41]–[46]; *TOF v TOE* [2021] SGCA 80, [63(a)] and [138]; and Chan (2018), [27]–[33].

<sup>61</sup> *Ibid.*

<sup>62</sup> See *BOR v BOS*, [110]–[114].

<sup>63</sup> Unlike England and Wales, only the duration of the marriage is considered in the determination of the length of marriage in Singapore; pre-marital cohabitation is excluded. See *USB v USA and another appeal* [2020] 2 SLR 588 at [18].

contributions each party can expend for the benefit of the relationship.<sup>64</sup> Despite this, the parameters remain unclear because of the hesitancy to define short, moderate, or long marriages. Instead, the Singapore Courts have adopted vague descriptions such as ‘*moderately lengthy*’<sup>65</sup> for marriages around 15 to 18 years, ‘*relatively long*’<sup>66</sup> for marriages nearly 21 years long, and ‘*short-to-moderate length*’<sup>67</sup> for marriages around 10 to 15 years. The authors submit that these descriptions not only prevent ‘*bright blue line[s]*’ from demarcating short marriages from moderate or long ones, but also intentionally blur whatever lines were present in the first place.<sup>68</sup> This has the effect of not binding the courts to precedents that do not fall within these categories neatly, while shifting parties’ fixation away from the category which their marriages fall under in order to argue for a different and more favourable division outcome. However, the lack of parameters result in uncertainty. To facilitate the study of how the Singapore Courts’ categorisation of marriage lengths affect division outcomes, the authors reviewed 85 reported judgments from the High Court and Court of Appeal and propose the following parameters for the different categories of marriage lengths:

- (1) Short marriages: marriages that have lasted less than 11 years;
- (2) Moderate-length marriages: marriages that have lasted between 11 and less than 21 years; and
- (3) Long marriages: marriages that have lasted 21 or more years.

The authors’ proposition largely follows the precedents and existing social norms. The current median length of non-Muslim marriages<sup>69</sup> under the Women’s Charter in Singapore before a divorce is 11.0 years in 2019.<sup>70</sup> Taking 11 years as a starting point for moderate-length marriages is supported by *Smith Brian Walker v Foo Moo Chye Julie*, where the High Court definitively held that the 11-year marriage in that case was ‘*not short*’.<sup>71</sup> Putting it in another way, the Court of Appeal in *BOR v BOS and another appeal* similarly found that the 11.5-year marriage in that case was ‘*mid-length*’.<sup>72</sup> Correspondingly, with 11 years as the lower limit for moderate-length marriages, the upper limit for short marriages will be less than 11 years, which is also less than the median duration of marriages before divorce. This position is supported by precedents such as *UBM v UBN* where the High Court held that a marriage about 9 years long is the starting point for short marriages, and *VIG v VIH* where another High Court held that a 12-year marriage was ‘*short-to-moderate length*’.<sup>73</sup>

The upper limit for moderate marriages was guided by *ATT v ATS*, where the Court of Appeal held that moderately lengthy marriages ranged from 17 to 20 years.<sup>74</sup> Accordingly, long marriages are defined as lasting 21 years or more. This position is not without basis: the Court of Appeal in *Twiss, Christopher James Hans v Twiss, Yvonne Prendergast* (“*Twiss v Twiss*”)

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<sup>64</sup> *TNL v TNK*, [48]–[49]; *BOR v BOS and another appeal* [2018] SGCA 78 (“*BOR v BOS*”), [112]; *Tan Hwee Lee v Tan Cheng Guan* [2012] 4 SLR 785, [85]; and *UBM v UBN* [2017] 4 SLR 921, [58]–[67].

<sup>65</sup> *BOR v BOS*, [113]; and *ATT v ATS* [2012] 2 SLR 859, [18].

<sup>66</sup> *UJH v UJI* [2018] SGHCF 4, [45].

<sup>67</sup> *VIG v VIH*, [2020] SGHCF 16, [75].

<sup>68</sup> *UBM v UBN*, [54].

<sup>69</sup> In Singapore, only non-Muslim marriages are governed by the Women’s Charter. Muslim marriages are governed separately by the Administration of Muslim Law Act 1966.

<sup>70</sup> Department of Statistics Singapore, ‘Marital Status, Marriages and Divorces’ (Department of Statistics Singapore, 28 July 2020) <<https://www.singstat.gov.sg/find-data/search-by-theme/population/marital-status-marriages-and-divorces/latest-data>> accessed on 20 May 2021.

<sup>71</sup> *Smith Brian Walker v Foo Moo Chye Julie* [2009] SGHC 247, [13].

<sup>72</sup> *BOR v BOS*, [112].

<sup>73</sup> *VIG v VIH*, [75].

<sup>74</sup> *ATT v ATS*, [17]–[20].



held that the 21-year marriage was ‘fairly lengthy’.<sup>75</sup> Separately, the High Court found that the 21-year marriage in *UFE v UFF* was long,<sup>76</sup> the 21-year marriage in *UJH v UJI* was ‘relatively long’,<sup>77</sup> the 21.5-year marriage in *AOB v AOC* was long,<sup>78</sup> and the nearly 22-year marriage in *TXW v TXX* was long.<sup>79</sup> For completeness, the authors also note that a 19-year marriage in the recent Court of Appeal decision of *TOF v TOE* was held to be long.<sup>80</sup> Be that as it may, this still falls within the moderately lengthy range prescribed by the same apex court in *ATT v ATS*. Therefore, there is sufficient judicial authority to justify these ranges. In any case, 21 years is a suitable start for long marriages because 21 years takes into account the fact that most couples in Singapore only have children approximately 2.2 years<sup>81</sup> after marriage and the child of the marriage is likely to have attained the age of majority – 18 years old. For uniformity and as seen from the cases, these ranges apply regardless whether there is a child from the marriage.

While this delineation largely follows decisions of the High Court and Court of Appeal, the authors recognise that there are some outliers such as *AVM v AWH*,<sup>82</sup> *TME v TMF*,<sup>83</sup> and *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)*<sup>84</sup> (“**Chen Siew Hwee**”) where the High Court found that the 15-year marriage, 20-year marriage, and 17-year marriage, respectively, were long marriages.<sup>85</sup> However, with the apex court’s decisions in *ATT v ATS* demarcating moderate-length marriages as 17 to 20 years and *Twiss v Twiss* finding the 21-year marriage in that case long, these Court of Appeal decisions remain authoritative since they were not distinguished in *AVM v AWH*, *TME v TMF*, and *Chen Siew Hwee*.

Notwithstanding some outliers, while the authors appreciate the reasons behind the broad-brush approach in not drawing bright blue lines for the length of marriages, they submit that these delineations are necessary to obtain meaningful insights from the trends of division from the Singapore Courts’ categorisation of marriage lengths. Further, the authors’ proposed ranges for the duration of the marriage are also useful guides for the Singapore Courts in considering the duration of marriages in future decisions to allow for consistency and certainty. Be that as it may, guides are not writ in stone. In line with therapeutic justice<sup>86</sup> and the broad-

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<sup>75</sup> *Twiss, Christopher James Hans v Twiss, Yvonne Prendergast* [2015] SGCA 52 (“**Twiss v Twiss**”), [21].

<sup>76</sup> *UFE v UFF* [2017] SGHCF 28, [1].

<sup>77</sup> *UJH v UJI* [2018] SGHCF 4, [45].

<sup>78</sup> *AOB v AOC* [2015] 2 SLR 307, [28].

<sup>79</sup> *TXX v TXW* [2017] 4 SLR 799.

<sup>80</sup> *TOF v TOE*, [138].

<sup>81</sup> This value is obtained by subtracting the median age of Singaporean women when they first marry in 2019 (28.4 years old) from the median age when Singaporean women have their first birth (30.6 years old). See National Population and Talent Division, Strategy Group, Singapore Prime Minister’s Office et al, *Population in Brief 2020* (National Population and Talent Division, Strategy Group, Prime Minister’s Office, 24 September 2020) <<https://www.strategygroup.gov.sg/files/media-centre/publications/population-in-brief-2020.pdf>> accessed on 3 June 2021, 23 and 25.

<sup>82</sup> *AVM v AWH* [2015] 4 SLR 1274, [94].

<sup>83</sup> *TME v TMF* [2016] SGHCF 6, [41].

<sup>84</sup> *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 (“**Chen Siew Hwee**”), [66].

<sup>85</sup> Specifically, in *Chen Siew Hwee*, the High Court found that the duration of the marriage was a ‘relatively long period of 17 years’. See *Chen Siew Hwee*, [66].

<sup>86</sup> In Singapore, the Family Justice Courts have adopted therapeutic justice which seeks to encourage healing and a fresh start for all parties involved, and hopefully allow parties to co-operate at a “functioning” level during both the divorce proceedings and beyond divorce. See Justice DSL Ong, “Today is a New Day”, speech at the Singapore Family Justice Courts Workplan 2020 (21 May 2020), [44]–[54]; Justice Ong DSL, “Through the TJ Lens: A Balanced Application of the Law”, speech at the Law Society Family Conference 2020 (15 September 2020), [16]; Justice Ong DSL, “Let’s Go”, speech

brush<sup>87</sup> approach adopted by the Singapore Courts, the authors echo the exhortation by Judicial Commissioner Debbie Ong (as she then was) in *UBM v UBN* that no ‘*bright blue line should separate a short marriage from one of moderate length and a long one*’.<sup>88</sup> Having defined the ranges for the length of the marriage, the authors will analyse the division trends by the Singapore Courts based on these defined ranges and the type of marriage.

### **III. METHODOLOGY AND DATA**

This study encompasses every reported case decided after *ANJ v ANK* (i.e. after 7 July 2015) up until 31 December 2020.<sup>89</sup> The cases were drawn from LawNet, Singapore’s online repository of reported judgments,<sup>90</sup> using a permuted combination of the following search phrases: ‘*ANJ v ANK*’, ‘division’, ‘matrimonial asset’, and ‘Women’s Charter’.<sup>91</sup> This yielded 265 cases in the initial dataset, which was subsequently filtered for several reasons. First, two cases were excluded as the final division was based on marital agreements (whether antenuptial or post-nuptial),<sup>92</sup> and did not apply the Structured Approach.<sup>93</sup> Second, another two were excluded because no data on final division, which is the subject of this study, was provided.<sup>94</sup> Third, 20 cases could not be coded because they did not apply the global assessment methodology; in applying the classification methodology, different considerations are applied to different classes of assets and the outcomes are therefore not comparable to the others within the dataset. Lastly, one case was excluded as the type of marriage was ambiguous even after closer analysis of the judgment.<sup>95</sup> As a result, the final dataset comprised 240 cases.

The variables were coded according to the information provided in the judgments. Objective facts such as the length of the marriage and the number of children were uncontroversial. The

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at the Singapore Family Justice Courts Workplan 2022 (18 Mar 2022), [12]–[31]; *VDZ v VEA* [2020] 2 SLR 858, [75]–[79]; *VBB v VBA* [2022] SGHCF 1, [27]; Chan LV et al, ‘No-Fault Divorce: The Step in the Right Direction towards Therapeutic Justice’ (2022) 52:1 Hong Kong Law Journal 1, 5; WK Leong et al, ‘Family justice in divorce proceedings in Singapore for spouses and their children’ [2020] Journal of the Malaysian Judiciary Special Issue 165; and Loi Y et al, ‘Therapeutic Justice - What It Means for the Family Justice System in Singapore’ (2021) 59:3 Family Court Review 423.

<sup>87</sup> *BCB v BCC* [2013] 2 SLR 234, [16].

<sup>88</sup> *UBM v UBN*, [54].

<sup>89</sup> This does not include consent orders or cases where matters were settled amicably without going to court. In Singapore, even if parties are divorcing amicably with agreements on division, children’s issues, and maintenance, they are must still commence divorce proceedings albeit under the simplified uncontested track.

<sup>90</sup> For the avoidance of any doubt, in this article, reported judgments refer to all written judgments by the Singapore Courts regardless of whether they are officially reported in the Singapore Law Reports.

<sup>91</sup> The following combinations of search terms were employed: (1) ‘*ANJ v ANK*’, ‘division’, ‘matrimonial asset’, and ‘Women’s Charter’; (2) ‘*ANJ v ANK*’, ‘division’, and ‘matrimonial asset’; (3) ‘*ANJ v ANK*’, ‘division’, and ‘Women’s Charter’; (4) ‘division’, ‘matrimonial asset’, and ‘Women’s Charter’; and (5) ‘division’ and ‘matrimonial asset’.

<sup>92</sup> Even where there is a marital agreement (whether antenuptial or post-nuptial), it is but one factor that the Singapore Courts will consider for division under section 112(1) of the Women’s Charter. The Court of Appeal has held in *AUA v ATZ* that the Structured Approach “*is “germane to the general run of matrimonial cases where the parties’ direct and indirect contributions are the only two factors engaged” and the court is asked to determine the matter of the division of matrimonial cases de novo*”; a marital agreement is likely to be upheld where there are “*no good and substantial grounds*” to conclude that the marital agreement was unjust for either party. Consequently, as a result of the considerations for situations involving marital agreements being different from the others, they are not included in the final dataset. This is in line with this article’s objective of analysing how the Singapore Courts exercise their power for division under the Structured Approach. See *AUA v ATZ* [2016] 4 SLR 674, [23]–[36].

<sup>93</sup> *AUA v ATZ*; and *Mark Haynes Daniell v Karin Sixl-Bornemann (MW)* [2015] SGFC 113.

<sup>94</sup> *TKW v TKX* [2016] SGFC 12; and *TYS v TYT* [2017] SGHCF 7.

<sup>95</sup> *TOA v TOB* [2016] SGFC 52.

determination of the type of marriage (i.e. whether single-income or dual-income) was, to some extent, subjective because of some parties' mixed roles during the marriage. The Court of Appeal<sup>96</sup> held that the marriage in *Yow Mee Lan v Chen Kai Buan*<sup>97</sup> was a single-income marriage despite the husband working throughout the marriage and the wife working periodically during the marriage. In this case, the wife merely played a supporting role in the family business and did not have the ability to produce the substantial income generated by the husband. In a similar vein, in *Lock Yeng Fun v Chua Hock Chye* ("**Lock Yeng Fun**"), the unemployed wife invested her allowance given by her husband and amassed substantial wealth. Despite the wife's substantial contribution towards the acquisition of matrimonial assets, the marriage was still held to be a single-income marriage.<sup>98</sup> On the other hand, the wife's intermittent periods of work in *TWM v TWN* were deemed sufficient for the marriage to be classified as dual-income.<sup>99</sup> Before giving birth, she worked full-time for two-and-a-half-years. Shortly after, she assisted in the husband's business for nearly three years on a salaried part-time basis.<sup>100</sup> Therefore, care was taken in determining the type of marriage for each decision, since the determination of the type of marriage required a '*qualitative assessment of the roles played by each spouse in the marriage relative to the other*'.<sup>101</sup> Where the type of marriage was not explicitly stated in the judgment, so long as one party was '*primarily the breadwinner and the other is primarily the homemaker*', they were classified as single-income marriage. Otherwise, by elimination, the others were classified as dual-income marriages.<sup>102</sup>

This study relied on all reported judgments (as opposed to only unique cases) because they show the number of times various courts have dealt with division, and at times, differently.<sup>103</sup> Only reported judgments were used in this study because,<sup>104</sup> as a general rule in Singapore, judgments are only issued for more complex cases or where there is a question of law that is of public interest,<sup>105</sup> and when there is an appeal of a lower court's decision.<sup>106</sup> These decisions will likely have more influence in developing this area of law. In this regard, reported judgments will provide a good flavour of how different courts deal with division.

Alan Dignam and Peter Oh have cautioned that '*counting multiple decisions from a common case can distort the aggregate results by giving a misleading picture [...] by multiplying data*'.<sup>107</sup> However, the authors take the contrary position that including multiple decisions from a common case is not distortive, as the decisions of the appellate court are independent of the lower court's decision. The assumption of independent observations – that an observation

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<sup>96</sup> *TNL v TNK*, [51].

<sup>97</sup> *Yow Mee Lan v Chen Kai Buan* [2000] 2 SLR(R) 659 ("**Yow Mee Lan**"), [42].

<sup>98</sup> *UBM v UBN*, [53]; and *Lock Yeng Fun*.

<sup>99</sup> *TWM v TWN* [2021] SGFC 19, [17]–[28].

<sup>100</sup> *TWM v TWN* [2021] SGHCF 25, [9].

<sup>101</sup> *UBM v UBN*, [48].

<sup>102</sup> See for e.g. *UAP v UAQ* [2017] SGHCF 11. This was classified as a single-income marriage since the wife was primarily the homemaker for most of the 22-year marriage and financially dependent on the husband.

<sup>103</sup> The inclusion of cases that had appealed from the High Court to Court of Appeal did not affect the results. In fact, the model results were not dissimilar. For completeness, the following cases appeared twice within the dataset 'SGCA + SGHCF' because of their appeals: *USA v USB* [2019] SGHCF 5 and *USA v USB* [2020] SGCA 11; *TNL v TNK* [2016] SGHCF 7 and *TNL v TNK* [2017] SGCA 15; *UZN v UZN* [2019] SGHCF 26 and *UZN v UZN* [2020] SGCA 109; *UYP v UYQ* [2019] SGHCF 16 and *UYP v UYQ* [2020] SGCA 3; *TQT v TQU* [2018] SGHCF 17 and *TQU v TQT* [2020] SGCA 8.

<sup>104</sup> Unfortunately, there is no available data that allows for a meaningful estimation of how representative the reported judgments are *vis-a-vis* the total number of all division cases in Singapore. Available data does not provide a breakdown of decisions involving division issues.

<sup>105</sup> Supreme Court of Singapore, 'Supreme Court Judgments' (Supreme Court Singapore) <<https://www.supremecourt.gov.sg/news/supreme-court-judgments>> accessed on 2 September 2021.

<sup>106</sup> See rule 826 of the Singapore Family Justice Rules 2014 (Act 27 of 2014).

<sup>107</sup> Dignam A et al, 'Disregarding the Salomon Principle: An Empirical Analysis, 1885–2014' (2019) 39(1) OJLS 16, 22.

is independent if the outcome in that observation is not influenced by the outcome of other observations – is therefore not violated. Theoretically, the appellate court's affirmation or dismissal of the appeal is independent of the lower court's decision because the appellate court has to examine the reasoning behind lower court's judgment and arrive at its own conclusion;<sup>108</sup> it is merely coincidental that the two courts agree on the same reasoning.

For clarity, the dataset was coded based on the court which decided the matter. Cases decided by the Court of Appeal and High Court were considered together, while cases decided by the Family Courts were modelled separately for three reasons: first, out of practicality, the dataset for Court of Appeal and High Court judgments are too small to be considered on their own;<sup>109</sup> second, there is likely greater consistency in decision-making since the High Court (both in their original<sup>110</sup> or appellate jurisdiction) and the Court of Appeal form the same superior court in Singapore – the Supreme Court. Consequently and unsurprisingly, a significant majority of cases before the Court of Appeal and High Court (whether in their original or appellate jurisdiction) were heard by the same judges;<sup>111</sup> and third, it would be useful to consider whether the Family Courts have followed the direction of the superior courts. This would illuminate the notion of *stare decisis* in division cases. Additionally, the authors used the following abbreviations within the various Tables and Figures below: '**SGCA + SGHCF**' for cases decided by the Court of Appeal and the High Court; and '**FJC**' for cases decided by the Family Courts. When referring to the parties' respective division share or contribution relative to the other, the authors took guidance from the judgments and expressed them as a ratio (wife's share : husband's share). However, percentages are used when referring to a party's individual contribution or share of the matrimonial pool. For example, where the wife was awarded with 60.0% of the matrimonial pool and the husband with 40.0% of the matrimonial pool, the final order of division would be expressed as 60:40.

#### **IV. OVERVIEW OF ORDERS FOR DIVISION MADE**

In this section, the authors will provide an overall observation before analysing two main trends: the deviation from equal division, and how the factors – length of marriage, type of marriage, and number of children – affect the division outcomes.

##### **A. Overall Observations**

Table 1: Descriptive statistics of division cases by the Singapore Courts, differentiated based on the court that decided the matter.<sup>112</sup>

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<sup>108</sup> Nevertheless, the authors are minded of the appellate courts' reservation to substitute the lower court's division decision with its own too readily if the adjustment is less than 10.0%. See *TNL v TNK*, [68].

<sup>109</sup> The cases in this dataset were too varied; no common characteristic(s) (whether the type, length, or presence of a child) could be identified to determine the effect of the inclusion of High Court cases where the court was exercising its original jurisdiction on the dataset.

<sup>110</sup> This refers to first instance cases before the High Court.

<sup>111</sup> 46 of the 62 cases (74.2%) in this dataset were before the same High Court judges. Therefore, the findings from this dataset is not significantly distorted solely on the basis of the jurisdiction that the High Court is adopting since the same judges will be applying the same principles from the Structured Approach regardless whether they are exercising their original or appellate jurisdiction.

<sup>112</sup> Mean value is given for length of marriage, with standard deviation in parenthesis. Absolute quantity is given for total cases, type of marriage and presence of children.



	SGCA + SGHCF	FJC
Total cases	77	163
Length of Marriage	18.9 (10.0)	16.5 (10.1)
Type of Marriage		
Dual-Income	45	120
Single-Income	32	43
Presence of child(ren)		
Has child(ren)	71	145
Childless	6	18

Table 1 provides an overview and breakdown of the different characteristics of cases decided by the Court of Appeal and the High Court, and the Family Courts. Of all the differences, the most striking is the significantly larger proportion of single-income marriage cases decided by the Court of Appeal and the High Court (41.6%, 32 of 77 cases) as opposed to the Family Courts (26.4%, 43 of 163 cases). In addition, cases decided by the Court of Appeal and the High Court generally involved longer marriages than those decided by the Family Courts. Despite these differences, the proportion of cases involving childless marriages decided by the Court of Appeal and the High Court involving childless marriages (7.8%, 6 of 77 cases) was not too different from the Family Courts (11.0%, 18 of 163 cases).

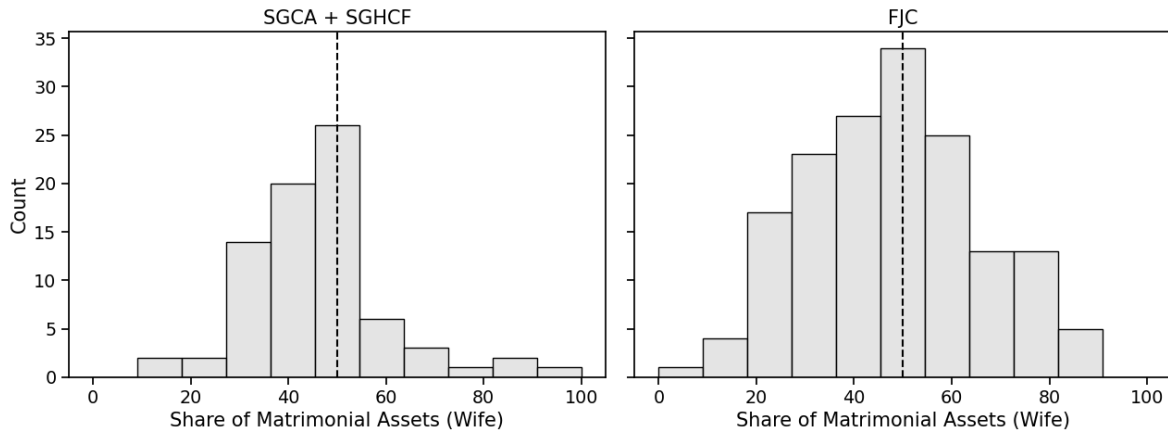


Figure 1: Distribution of the wife's share of the matrimonial assets, differentiated by the type of court.

Orders for division of matrimonial assets take on a wide range of values. Figure 1 illustrates the wide dispersion of orders for division of matrimonial assets. Divisions by the Court of Appeal and the High Court generally favoured husbands, with the median order for division being 45.75:54.25 and an interquartile range of 37.50:62.50 to 50.00:50.00. On the other hand, division by the Family Courts have a central tendency towards equal division, although there is a slight inclination towards husbands as indicated by the interquartile range of 35.00:65.00 to 59.75:40.25.

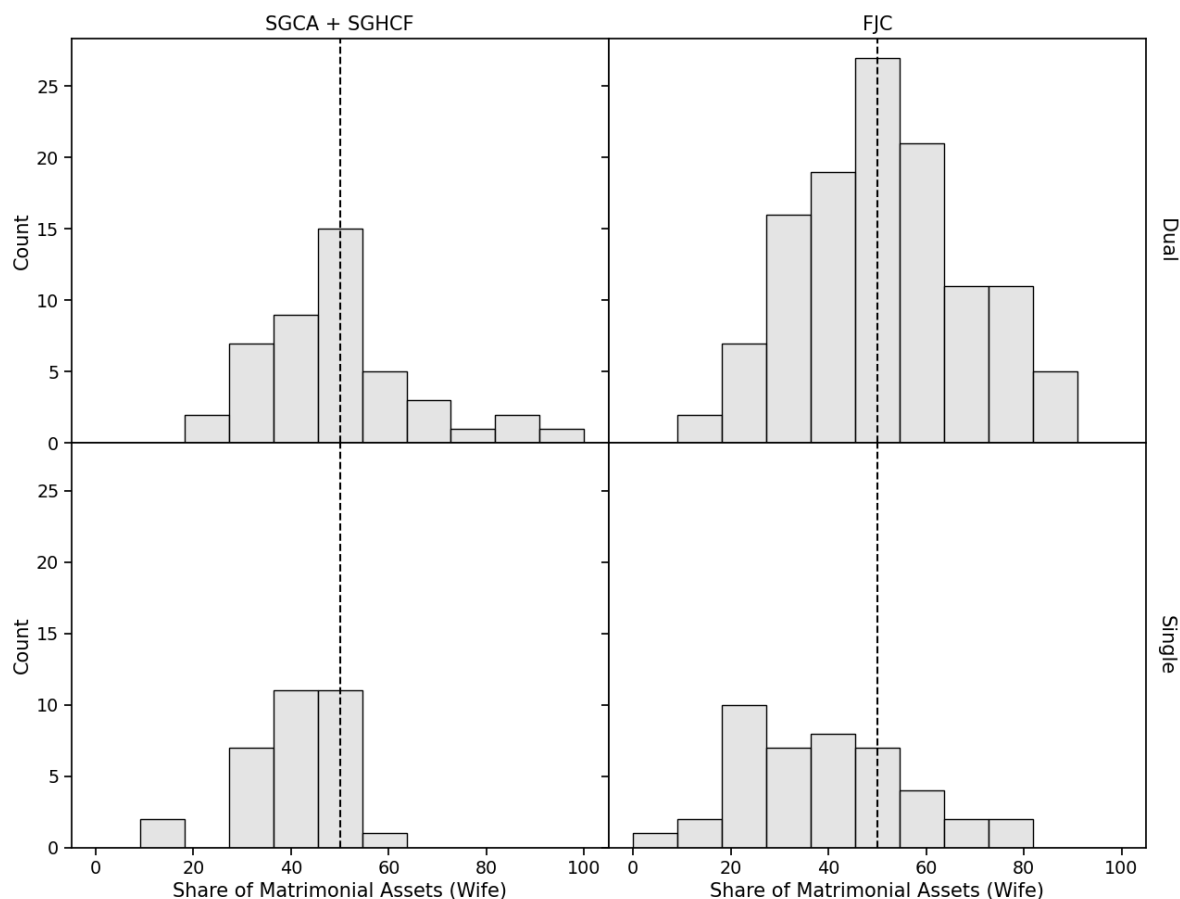


Figure 2: Distribution of the wife's share of the matrimonial assets, differentiated by the type of court and type of marriage.

The gendered outcomes observed for cases decided by the Court of Appeal and the High Court is a result of the significant proportion of matters involving single-income marriages being adjudicated by these courts. As illustrated in Figure 2, division by the Court of Appeal and the High Court for dual-income marriages generally showed no inclination towards either party, with a median order for division of 50.00:50.00 and an interquartile range of 40.00:60.00 to 60.00:40.00. In contrast, division for single-income marriages strongly favoured the husband, with a median order for division of 40.00:60.00 and an interquartile range of 30.00:70.00 to 50.00:50.00. These findings were expected since the husband was the sole breadwinner<sup>113</sup> in almost all of the single-income marriages captured in this dataset. With single-income marriages comprising 41.6% of cases adjudicated by the Court of Appeal and the High Court, the gender-inclination of division orders in single-income marriages has the effect of skewing the general trend in division outcomes of the Court of Appeal and the High Court.

Similarly for the Family Courts, the slight inclination in division orders towards husbands is caused by divisions for single-income marriages, tending to favour husbands. Nevertheless, after taking this into account, the impact of this bias towards husbands is minimal because of the lower proportion of single-income marriages adjudicated by the Family Courts (26.4%).

### **B. Deviation from Equal Division**

<sup>113</sup> The husbands are more than three times likely to be the sole breadwinner for single-income marriages. See Department of Statistics Singapore, 'Census of Population 2020 Statistical Release 2', (Department of Statistics Singapore, June 2020) <<https://www.singstat.gov.sg/-/media/files/publications/cop2020/sr2/cop2020sr2.pdf>> accessed on 9 September 2021, 15.

As noted in the introduction, the importance of equal division requires closer examination to understand how far the Structured Approach has strayed from other jurisdictions with equal division as a starting point. Equal division is a good baseline for other jurisdictions considering a transplant of Singapore's contributions-based approach, especially since there appears to be resistance and contention against equal division in Singapore. It would therefore be appropriate at this juncture to understand the current position on equal division in Singapore. In a review of the Women's Charter in 1996, the Singapore Parliament rejected the retention of an '*inclination towards equality*' found in the predecessor to section 112 of the Women's Charter because they did not want to bind the courts' hands when faced with short childless marriages.<sup>114</sup> Subsequently, the apex court in *Lock Yeng Fun* also confirmed that there is no norm or starting point of equal division.<sup>115</sup>

However, since *Lock Yeng Fun*, the Court of Appeal in *TNL v TNK* has held that the Structured Approach does not apply to all single-income marriages because the double penalisation of the pure homemaker in both direct financial contributions and indirect financial contributions translates into more credit being awarded to financial contributions by the sole breadwinner as compared to pure homemaking.<sup>116</sup> In this regard, it held that division for *long* single-income should follow the trend from precedents of marriages with similar lengths which tends towards equal division.<sup>117</sup> More recently, for long dual-income marriages, Justice Debbie Ong ("**Justice Ong**") observed in *UYP v UYQ* that her analysis of such marriages showed that division also inclined towards equality.<sup>118</sup> Although the outcome of her decision to adjust the ratio downwards from 67.50:32.50 to 60.00:40.00 was reversed, the Court of Appeal did not overrule or dismiss her observation that division for long dual-income marriages inclined towards equality; no definitive conclusion was made on this.<sup>119</sup> However, no further adjustments may be made to the parties' average final ratios '*for the sole purpose of reaching an equal or a more equal division between the parties*'.<sup>120</sup> Similarly, from a macro level and as a matter of principle, Leong Wai Kum observed that the deferred community of property regime favours equal division because '*this brings about some equalisation of the financial statuses of the spouses as they exit*' the marriage.<sup>121</sup> Further, her analyses of the Court of Appeal decisions up until 2018 showed that that '*the just and equitable division of the matrimonial assets revolves around equal division*'.<sup>122</sup>

To measure how far an order for division is from equal division, a metric termed 'deviance from equal division' will be used ("**D**"). The deviance from equal division in a given case is the absolute value of the difference between the actual percentage share of matrimonial assets awarded to one party and 50.0% (i.e. equal division).<sup>123</sup> For example, *D* would be 10.0% whether or not the wife was awarded a 40.0% or 60.0% share of the matrimonial assets. The range of values that the deviance from equal division can take is between 0.0% to 50.0%, inclusive of boundary values.

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<sup>114</sup> Report of the Select Committee on the Women's Charter (Amendment) Bill (Bill No 5/96) (Parl 3 of 1996, 15 August 1996), 5.5.4, B27-B28, and C2-C4; *Parliamentary Debates Singapore: Official Report*, vol 66 at col 534 (27 August 1996), 526–527; and Chan (2018), [36]–[50].

<sup>115</sup> *Lock Yeng Fun*, [50]–[57].

<sup>116</sup> *TNL v TNK*, [44].

<sup>117</sup> *TNL v TNK*, [48]–[52].

<sup>118</sup> *UYP v UYQ* [2020] 3 SLR 683, [53] and [106]; and *UBM v UBN*, [63].

<sup>119</sup> *UYQ v UYP*, [5].

<sup>120</sup> *TOT v TOU* [2021] SGHC(A) 9, [17].

<sup>121</sup> Leong (2018), [17.003]; and Leong WK, 'Fifty Years and More of the Women's Charter of Singapore' (2008) SJLS 1, 11 – 16.

<sup>122</sup> Leong (2018), [17.125].

<sup>123</sup> See also Leong (2018), [17.145]–[17.172].

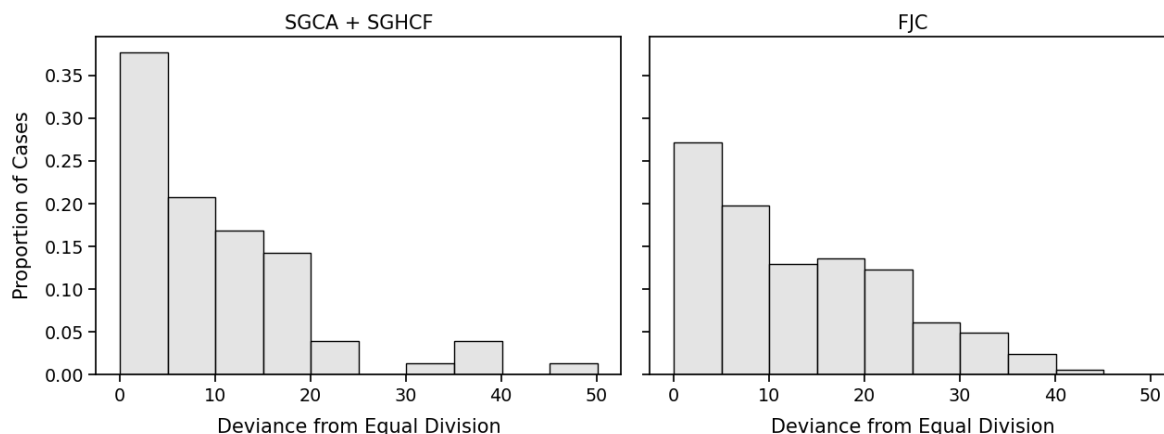


Figure 3: Distribution of deviances from equal division, differentiated by the type of court.

Adopting Leong Wai Kum’s definition of ‘*inclination towards equality*’ as deviations of 10.0% or less from equality,<sup>124</sup> Figure 3 reveals a notable trend: the division orders by the Court of Appeal and the High Court generally deviates less from equal division as compared to division orders made by the Family Courts. 58.4% of cases (45 of 77 cases) decided by the Court of Appeal and the High Court ‘inclined towards equality’. On the other hand, 46.6% of cases (76 of 163 cases) decided by the Family Courts ‘inclined towards equality’.

(i) Examining the effect of the various factors identified above on the deviance from equal division

The authors used the Ordinary Least Squares (“**OLS**”) regression model to examine the relationship between the Singapore Courts’ tendency to deviate from equal division and the three factors identified above – the length of marriage (“ $x_1$ ”), type of marriage (“ $x_2$ ”), and presence of children (“ $x_3$ ”). The OLS model was chosen because it produces model coefficients which are readily understood for readers to estimate the effect of the identified factors on the tendency towards equal division.<sup>125</sup> The results of this analysis are reported in Table 2 below.

Regression analysis allows the isolation of the quantitative effect of each factor by controlling for the other factors. In this regard, it is the authors’ view that, to some extent, such methods are effectively akin to precedential reasoning techniques used by legal professionals, except in a quantitative statistical form. These methods take into account all relevant cases and ascertain the general relationship between a particular factor and the outcome, showing us which factors play a bigger determining role. By controlling for differences in the factual characteristics of cases decided by each court, similarities and differences in the approach each court takes towards particular factors can be studied. What is achieved then, is an

<sup>124</sup> Leong (2018), [17.187]; and *UYP v UYQ*, [50]–[52] and [106].

<sup>125</sup> As a caveat, the authors note that while the OLS model ensures greater comprehensibility, the standard errors of the coefficients may be mis-specified as the response variable is bounded at the closed interval [0.0, 50.0]. To ensure the veracity of the statistical inferences obtained from the OLS model, these were cross-verified against statistical inferences obtained from a Variable Dispersion Beta Regression model, which indicated that the statistical inferences drawn by the OLS model were largely reliable. Nevertheless, the OLS model remains an effective tool for estimating the effects of the identified factors on the tendency towards equal division. Research has shown that even with bounded response variables, the OLS model is unbiased, has reasonable type-1 error rates, and performs comparably to the Variable Dispersion Beta Regression model, especially in small sample datasets. See Meaney C et al, ‘A Monte Carlo simulation study comparing linear regression, beta regression, variable-dispersion beta regression and fractional logit regression at recovering average difference measures in a two sample design’ (2014) 14 BMC Medical Research Methodology 14.



evidence-based study of contribution-based division in Singapore. The regression formula used is as follows:

$$D = \beta_0x_0 + \beta_1\ln(x_1) + \beta_2x_2 + \beta_3\ln(x_1)x_2 + \beta_4x_3 + \epsilon$$

In statistic parlance, the “ $\ln(x_1)x_2$ ” term in the above formula refers to an interaction term, and is presented in Table 2 as “Single-Income Marriage X In(Marriage Length)”. This factor is intended to model the correlation between the length of marriage and the deviance from equal division across cases involving different types of marriages. The effects are expected to vary across different types of marriages since division for long single-income marriages tend to equality,<sup>126</sup> whereas this tendency was rejected by the Court of Appeal for long dual-income marriages in *UYQ v UYP*.<sup>127</sup>

(ii) Results

Table 2: OLS regression model of the deviance from equal division on the factual matrix of the cases decided by the Singapore Courts.<sup>128,129</sup>

	SGCA + SGHCF	FJC
Intercept <sup>130</sup>	26.26*** (5.7283)	16.54*** (3.9063)
In(Marriage Length)	-5.50*** (2.0739)	-1.58 (1.4683)
Single-Income Marriage	23.10# (13.1125)	-3.58 (8.3820)
Single-Income Marriage X In(Marriage Length)	-8.08* (4.4712)	2.26 (2.9964)
Childless	0.73 (4.3300)	7.13*** (2.6645)
Observations	77	163
R-Squared	0.218	0.066

Standard errors in parentheses.

Table 2 should be understood as follows: the model coefficients represent the change in the deviance from equal division where the factor is present. For example, “*Single-Income Marriage*” in “*SGCA+SGHCF*” in the table has a coefficient of 23.10 – this means that between cases involving dual-income marriages and single-income marriages, *ceteris paribus*, the Court of Appeal and the High Court, on average, is more likely to award an outcome that is away from equal division by 23.1% in cases involving single-income marriages as opposed to cases involving dual-income marriages; regardless whether in favour of the husband or wife. To calculate the average deviance from equal division in cases with a particular factual matrix,

<sup>126</sup> *TNL v TNK*, [44], and [48]–[52].

<sup>127</sup> *UYQ v UYP* [2020] 1 SLR 551, [5]. However, it should also be noted that this issue was not substantively dealt with by the Court of Appeal in this case, and is open for arguments since the position is not “*writ in stone*”.

<sup>128</sup> The regression analysis of cases decided by Court of Appeal and High Court is cross-verified with a variable dispersion beta regression model. These cross-verifying results are available on request.

<sup>129</sup> \*, \*\*, \*\*\* indicate significance at the alpha level of 0.10, 0.05, and 0.01 respectively. For example, if an effect is significant under a particular alpha level is 0.05, this means that there is less than 5.0% chance of finding that this factor has a non-zero effect on the deviance from equal division when the effect is in fact zero. In other words, it is statistically unlikely that the non-zero effect was observed by random chance.

# indicates significance at the alpha level of 0.10 in the OLS model, but not statistically significant under a cross-verifying Variable Dispersion Beta Regression model.

<sup>130</sup> In this case, the baseline (or intercept) against which the outcomes are compared is arbitrarily defined as a short dual-income marriage with children.

the factual matrix and the model coefficients should be substituted into the regression formula above. For example, in a single-income marriage of 20 years with children, the average deviation from equal division would be as follows:

$$\begin{aligned}\hat{D} &= (26.26)(1) + (-5.50) \ln(20) + (23.10)(1) + (-8.08) \ln(20) (1) + (0.73)(0) \\ &= 8.67\%\end{aligned}$$

With this understanding of distilling the data from OLS regression model, several notable insights may be extracted from Table 2. The results indicate that the effect of each factor on the judicial tendency towards equal division differs significantly between decisions from the Family Courts, and the Court of Appeal and the High Court. On one hand, the Court of Appeal and the High Court placed significant emphasis on the length of marriage and the type of marriage. On the other, the significant factor affecting the Family Courts' tendency towards equal division is dependent on the presence of child(ren) in the marriage. Furthermore, the "Intercept" value – which indicates that in the baseline case that is arbitrarily set to very short dual-income marriages with children – the Court of Appeal and the High Court were more willing to deviate from equal division (26.3% from equal division) whereas the Family Courts were, comparatively, less willing to deviate from equal division (16.5% from equal division). Unfortunately, no observation could be made for the different courts' focus on different factors.

## V. NOTABLE TRENDS

In this section, the authors will discuss the results found in tables and figures found in Section IV with respect to the three identified factors – length of marriage, type of marriage and the presence of children.

### A. ***Division in Single-Income Marriages Incline towards Equality as Marriage Length Increases***

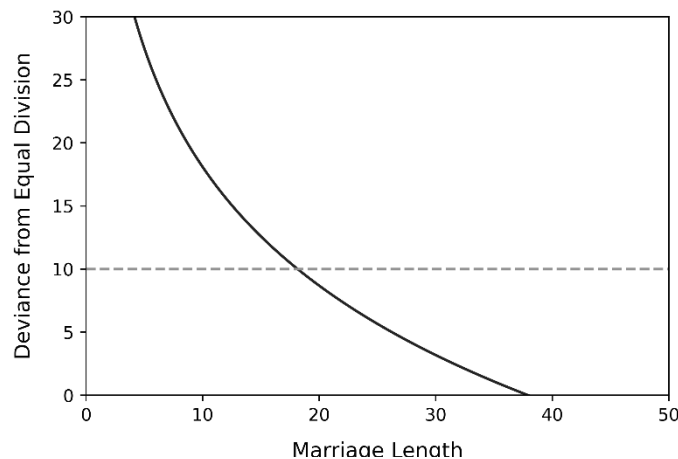


Figure 44: Relationship between deviance from equal division and length of marriage for single-income marriage cases decided by the Court of Appeal and High Court, after controlling for other factors.

The results in Table 2 indicate that marriage length is generally associated with a lower deviance from equal division in cases involving single-income marriages decided by the Court of Appeal and the High Court. Figure 4 illustrates this relationship between deviance from equal division and marriage length in such cases. In particular, the mean deviance from equal division is under 10.0% for marriages longer than 20 years. These findings are consistent with the authors' parameters for long marriages as well as the Court of Appeal's finding in *TNL v*

*TNK* that orders for division in long single-income marriages generally tend towards equal division.

It should be recalled that *TNL v TNK* abolished the Structured Approach for single-income marriages; instead, a precedents-based approach was propounded for long single-income marriages; *BOR v BOS* appears to have implicitly approved the same for moderate-length single-income marriages. In this regard, Figure 4 supports the Court of Appeal's observations in *BOR v BOS*<sup>131</sup> that marriages lasting between 15 and 18 years should expect a deviance of between 10.0% and 13.0% from equal division, translating to 37.0% to 40.0% share for the homemaker. For marriages lasting between 10 and 15 years, the mean deviance from equal division is between 13.0% and 18.0%, which translates to a 32.0% to 37.0% share for the homemaker. Overall, the mean deviance from equal division in moderate-length marriages is between 8.5% and 18.0%.

For short marriages, the mean deviance from equal division is above 20.0%. Caution should be exercised in interpreting the range of mean deviances for short single-income marriages, since there is only one judgment in the data set involving a short single-income marriage and therefore the range of values are an extrapolation of the observed trend.

Notwithstanding these findings, Table 2 also reveals that there is no association between deviance from equal division and marriage length in cases involving single-income marriages decided by the Family Courts. The mean deviance from equal division lay around 14.3% for marriages with children, and around 22.1% for marriages without children. A possible driver of this unexpected finding is the distortive effects arising from cases decided before *TNL v TNK*,<sup>132</sup> since the model takes into consideration cases decided by the Singapore Courts both before and after *TNL v TNK*.

Table 3: Number of single-income marriage cases decided before and after *TNL v TNK*, differentiated by the type of court.

	SGCA + SGHCF	FJC
Pre- <i>TNL</i> (8 July 2015 to 3 March 2017)	7	21
Post- <i>TNL</i> (4 March 2017 to 31 December 2020)	25	22

As seen from Table 3, while the proportion of cases involving single-income marriages decided before and after *TNL v TNK* in the Family Courts are roughly even, there was a marked increase in the number of cases involving single-income marriages decided by the Court of Appeal and the High Court after *TNL v TNK* was decided.<sup>133</sup> This meant that if the outcomes from the Family Courts pre-dating *TNL v TNK* did not incline towards equality in long single-income marriages, these cases decided before *TNL v TNK* would skew the mean deviance from equal division in long single-income marriages for Family Court cases away from equal division. This turned out to be true.

<sup>131</sup> *BOR v BOS*, [113].

<sup>132</sup> In this study, the date of decision was used to ascertain whether a decision was decided before or after *TNL v TNK*. The limitation in using this cut-off date is that it may not wholly reflect whether the decision was made with *TNL v TNK* in mind. Further, although the date of decision is after *TNL v TNK*, hearings for some may have pre-dated *TNL v TNK*; some of these decisions may have been made without the benefit of hearing submissions on *TNL v TNK*.

<sup>133</sup> Notably, nearly all cases involving long single-income marriage were decided after *TNL v TNK*; only two of 14 long single-income marriage cases were decided before that. See *TNK v TNL* [2016] SGHCF 7; and *TVJ v TVK* [2017] SGHCF 1.

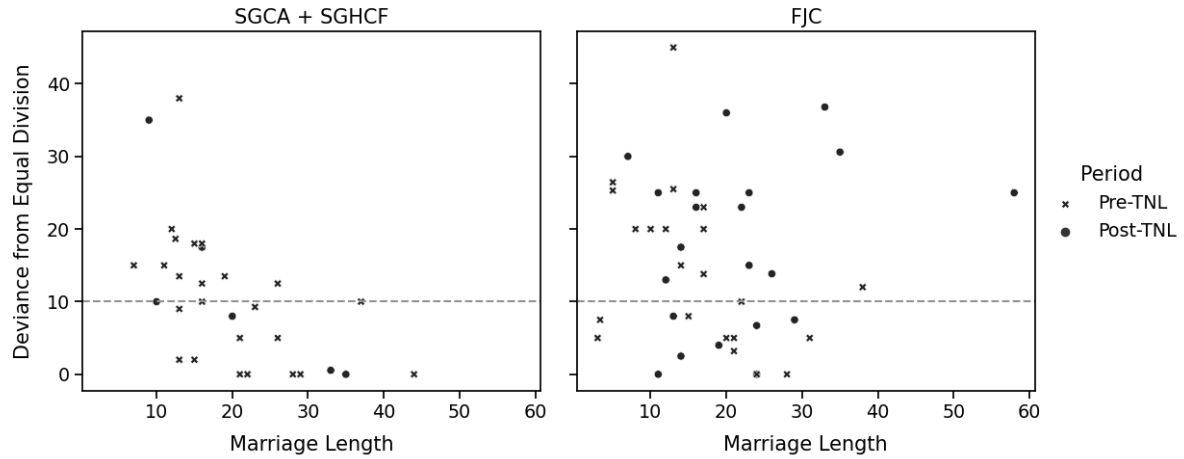


Figure 55: Deviance from equal division by marriage length, differentiated by the type of court and period for which it was decided.

Figure 5 shows the deviance from equal division and marriage length for single-income marriages. Before *TNL v TNK*, the Family Courts commonly deviated significantly from equal division for long single-income marriages. After *TNL v TNK*, the Family Courts reduced their incidences of significant deviation from equality for these marriages. In the only exception of *VCP v VCQ*, involving a 38-year marriage,<sup>134</sup> the Family Court applied the Structured Approach because parties did not submit on whether the Structured Approach or *TNL v TNK*'s precedents approach applied to their only matrimonial asset which involved a third-party (their adult son's) interest in it. Eventually, after ordering a lump-sum maintenance from the husband to the wife, each party was entitled to half of the couple's interest in the matrimonial asset.

**B. Division in Dual-Income Marriages Incline towards Equality as Marriage Length Increases**

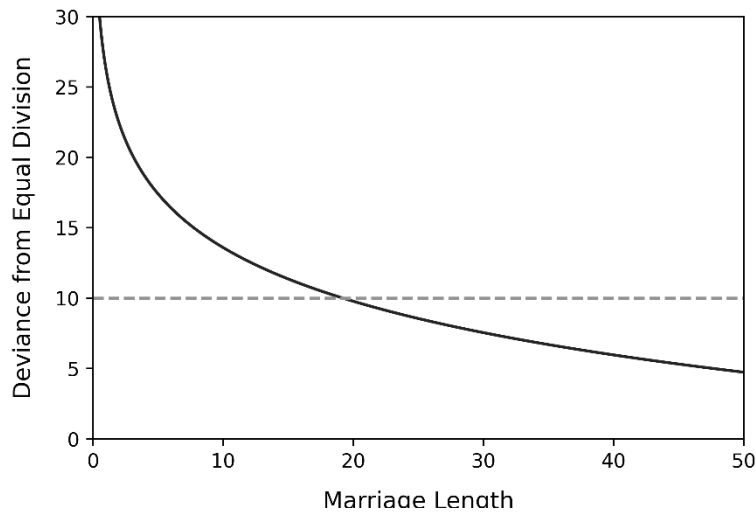


Figure 66: Relationship between deviance from equal division and length of marriage for dual-income marriage cases decided by the Court of Appeal and High Court, after controlling for other factors.

<sup>134</sup> *VCP v VCQ* [2019] SGFC 126.



In support of Justice Ong’s observation in *UYP v UYQ*<sup>135</sup> and *UBM v UBN*,<sup>136</sup> Table 2 above shows that decisions involving dual-income marriages by the Court of Appeal and High Court – tended to incline towards equality in longer marriages. Figure 6 above illustrates this relationship between deviance from equal division and marriage length in cases involving dual-income marriages. While the relationship is not as strong as compared to single-income marriages, the mean deviance from equal division remains under 10.0% for marriages lasting more than 21 years. This is also in line with the authors’ definition for a long marriage. It may therefore be worth considering whether the Structured Approach should continue to apply, especially for long dual-income marriages,<sup>137</sup> since they tend to incline towards equal division, albeit to a lesser extent compared to long single-income marriages.

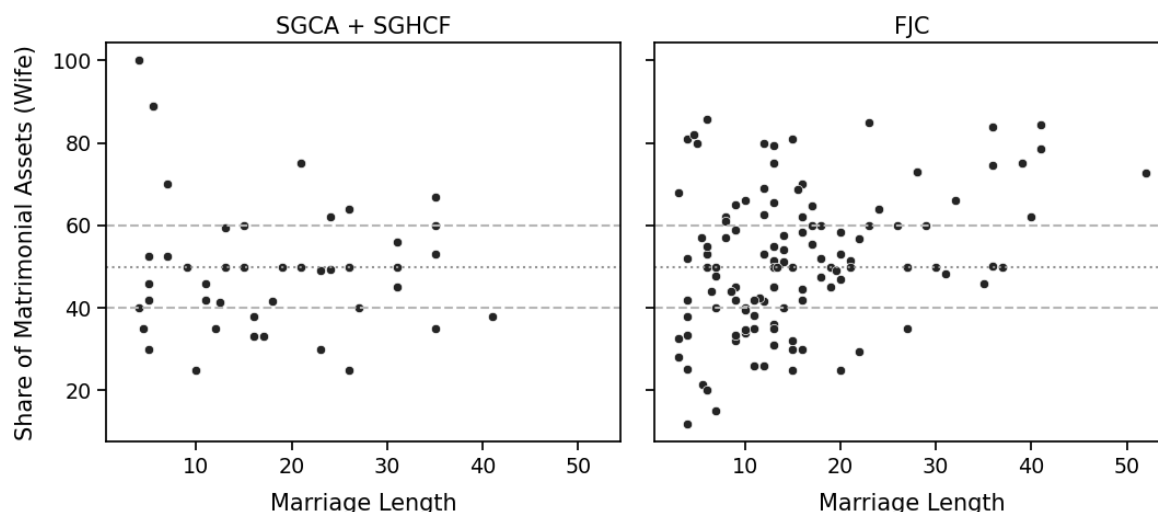


Figure 77: Wife’s share of matrimonial assets by marriage length in dual-income marriages, differentiated by the type of court.

For short and moderate-length marriages, the mean deviance from equal division is 15.0% to 30.0% and 10.0% to 14.0% respectively. As can be observed from Figure 7, the model is significantly skewed away from equal division for short marriages by three exceptional judgments: in *UQP v UQQ*, the High Court refused to apply the Structured Approach and awarded the wife 100.0% of the matrimonial home (the only matrimonial asset) because the husband made no financial contributions to the acquisition of it during the 5-year marriage.<sup>138</sup> In *USA v USB*,<sup>139</sup> the Court of Appeal affirmed the High Court’s decision to award the wife an 89% share because of her substantial direct and indirect contributions to the short 6.5-year marriage. On the other hand, no orders for division in moderate or long marriages deviated from equal division by more than 25.0%. This suggests the possibility that the courts are willing to grant orders for division which deviate by large margins from equality in short marriages whereas they would not be so willing in moderate or long marriages.

Table 4: Breakdown of division outcomes in long dual-income marriages by the type of court.

	FJC	SGHCF + SGCA
Wife is awarded >60.0% of matrimonial assets	13	4
Equal division	13	11

<sup>135</sup> *UYP v UYQ*, [48]–[66].

<sup>136</sup> *UBM v UBN*, [66].

<sup>137</sup> *TNL v TNK*, [42]; and *UYQ v UYP*, [5].

<sup>138</sup> *UQP v UQQ*, [11]–[14]. For criticism, see Chan LV, 'The beginning of the end of the broad-brush approach – a case comment of *UQP v UQQ* [2019] SGHCF 7' (SLW Commentary, Issue 1 of Apr 2019).

<sup>139</sup> *USA v USB* [2019] SGHCF 5; and *USA v USB* [2020] SGCA 57.

Husband is awarded >60.0% of 2  
matrimonial assets

4

In contrast, for cases involving dual-income marriages decided by the Family Courts, there is no statistically significant association (i.e.  $p > .05$ ) between deviance from equal division and marriage length. The mean deviance from equal division in such cases is in excess of 10.0%. Figure 7 above shows a scatterplot of the wife's share of matrimonial assets and marriage length in each case involving a dual-income marriage. Out of the 28 cases involving long dual-income marriages, 15 cases deviates from equal division by at least 10.0%, with six cases deviating from equal division by more than 25.0%. Notably, division outcomes in such cases skew considerably in favour of the wife as illustrated in Table 4. Individual analysis of the cases showed that the Family Courts tended to find that the wives in such cases had provided more direct contributions to begin with, as compared to those in the Court of Appeal and High Court. Quite apart from this observation, there does not appear to be any systemic reason (or in the judgments) for why division outcomes for long dual-income marriages in the Family Courts is significantly more skewed in favour of the wife than division outcomes in the Court of Appeal and High Court.

### C. Direct Contributions: The Key Determinant for Division instead of Gender?

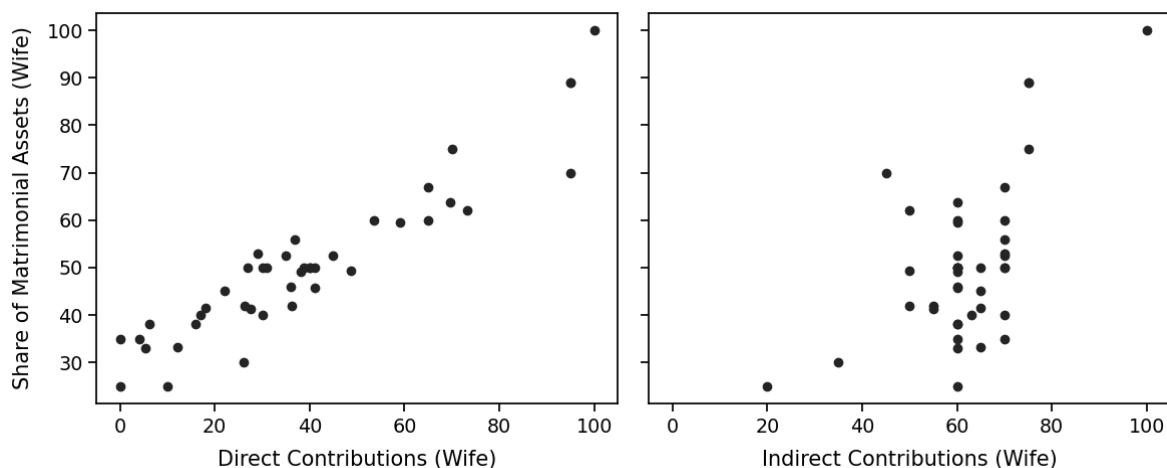


Figure 88: Wife's share of matrimonial assets by direct and indirect contributions in dual-income marriage cases decided by the Court of Appeal and High Court.

As illustrated in Figure 8, data suggests that for dual-income marriages decided by the Court of Appeal and the High Court, parties' direct contributions were a better barometer in predicting the variations in the final division outcome as compared to indirect contributions. Parties' direct contributions strongly correlated to the final division outcome ( $r(42) = .93, p = .00$ ).<sup>140</sup> Conversely, parties' indirect contributions are only moderately correlated to the order for division ( $r(42) = .58, p = .00$ ). This finding is concerning in light of the Court of Appeal's holding that economic and homemaking contributions are '*equally fundamental to the well-being of a marital partnership*' and that the Structured Approach was intended to '*put financial and non-financial contributions on an equal footing*'.<sup>141</sup> It would appear that despite the best intentions

<sup>140</sup> 42 of 45 dual-income marriage cases decided by the Court of Appeal and High Court were used as the remaining three did not disclose the respective particularised contributions of the parties.

<sup>141</sup> *ANJ v ANK* at [26].

to equalise the types of contributions, the spectre of the ‘uplift’ approach<sup>142</sup> – that continues to prioritise direct financial contributions – continues to remain.

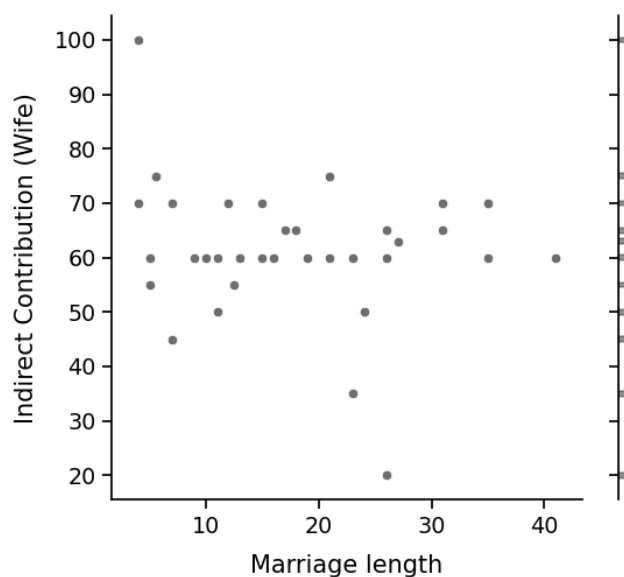


Figure 99: Distribution of indirect contributions attributed to the wife in dual-income marriage cases decided by the Court of Appeal and High Court.

Looking at Figure 9 which looks at the distribution of the wife’s indirect contributions in cases involving dual-income marriages decided by the Court of Appeal and High Court, two observations stand out: first, in a majority of cases, the wife is attributed more than 50.0% of the indirect contributions. Generally, the wife was only attributed with less than 50.0% for indirect contributions in childless marriages<sup>143</sup> or where the wife took minimal or no care of the child(ren) during the marriage.<sup>144</sup> This observation is consistent with Lim Hui Min’s observation of a ‘*gender bias in assessing indirect contributions*’ for division cases predating *ANJ v ANK*.<sup>145</sup> In this regard, this bias is likely grounded on factors that appear systemically across cases. Indeed, Lim Hui Min highlights that mothers ‘*generally tend to do more housework even if they work as well*’.<sup>146</sup> Studies from 2010<sup>147</sup> and a more recent statistical study in 2020 by Raudhah Hirschmann support Lim Hui Min’s observation and showed that mothers continue to ‘*still [be] the main caregiver for their children across all time categories*’.<sup>148</sup> In fact, the Court of Appeal in *ANJ v ANK* was cognisant of this fact, observing that ‘*in most homes, even in a home where*

<sup>142</sup> The ‘uplift’ approach was rejected and replaced with the Structured Approach. See *ANJ v ANK*, [18]–[21].

<sup>143</sup> *BWU and another v BWW and another matter* [2019] SGHC 128 (“*BWU v BWW*”); and *Zhou Lijie*. See also *TXO v TXP* [2017] SGFC 117.

<sup>144</sup> *TQU v TQT*.

<sup>145</sup> Lim HM, ‘Matrimonial Asset Division – the Art of Achieving a Just and Equitable Result – A review of High Court and Court of Appeal cases from 2005–2010’ in Yeo TM et al, *SAL Conference 2011: Developments in Singapore Law between 2006 and 2010 – Trends and Perspectives* (Academy Publishing, 2011), 15–16.

<sup>146</sup> *Ibid*, [37].

<sup>147</sup> Yap SY, ‘It Pays to Reason with Kids, say Parents’ (Singapore Children’s Society, 21 October 2010) Available at: <<https://www.childrensociety.org.sg/news-article/it-pays-to-reason-with-kids-say-parents/>> accessed on 20 August 2021.

<sup>148</sup> Hirschmann R, ‘Singapore: main caregiver for children by time of the week 2020’ (Statista, 15 Jul 2020) <<https://www.statista.com/statistics/1132158/singapore-main-caregiver-for-children-by-time-of-the-week/#statisticContainer>> accessed on 20 August 2021.

*both the spouses are working full time, ... it is more likely than not that ordinarily the wife will be the party who renders greater indirect contributions*'.<sup>149</sup>

Second, the Singapore Courts' attribution of indirect contributions concentrate around particular values, regardless of the length of the marriage. Figure 9 shows that the most frequent value for the wife's indirect contributions is 60.0%, which occurred in 16 of the 42 cases analysed; 70.0% for the wife's indirect contributions was the next most frequent, in nine of the 42 cases analysed. Overall, the wife was attributed with 60.0%, 65.0%, or 70.0% of indirect contributions in 30 of 42 cases. The authors suggest this significant clustering of more than half of these cases at 60.0% and 70.0% reflects the 'broad-brush' nature of the division exercise (especially for indirect contributions), and is used by the Singapore Courts to symbolically show that the wife had contributed more in this regard. This is because indirect non-financial contributions – which form a significant component of indirect contributions – are '*impossible to measure, and success on that front [are] intangible and difficult to define*';<sup>150</sup> no arithmetical formula or analytical tool is capable of effectively '*capturing or accommodating the diverse and myriad set of factual scenarios*'.<sup>151</sup> With respect to indirect financial contributions for the day-to-day expenses and running of the household, there is simply '*very little concrete evidence*' for the Singapore Courts to rely on,<sup>152</sup> especially for long marriages. These reasons may have led the Singapore Courts to fall back on comfortable values between 60.0% and 70.0% in spite of the length of the marriage.

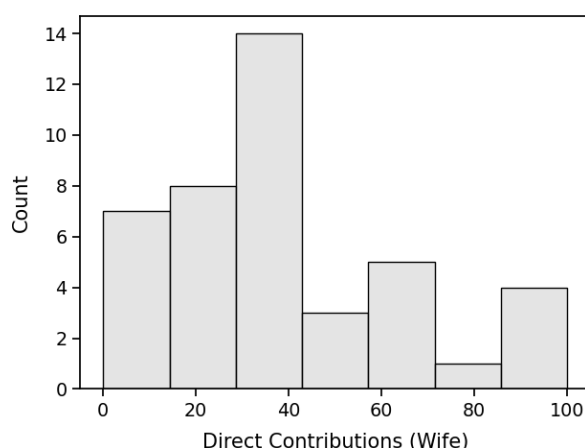


Figure 1010: Distribution of direct contributions attributed to the wife in dual-income marriage cases decided by the Court of Appeal and High Court.

The concentration of attributed indirect contributions on several discrete values in the 60.0% – 70.0% range explains why the attributed direct contributions are more predictive of the variances amongst division outcomes. Figure 10 illustrates the distribution of direct contributions attributed to the wife in each of the 42 cases. The dispersion of direct contributions attributed to the wife is very wide, with a standard deviation of 26.6%. Given that the order for division in dual-income marriages is generally equivalent to the average of the parties respective direct and indirect contributions (i.e. the weightages to both types of contributions are equal), the wide dispersion of attributed direct contributions together with the concentration of attributed indirect contributions on several discrete values in the 60.0% – 70.0% range would necessarily mean that the attributed direct contributions is more predictive of the variance in division outcomes. This therefore reinforces the authors' above observation that

<sup>149</sup> *ANJ v ANK*, [24]

<sup>150</sup> *Lock Yeng Fun*, [39]; and Ong DSL et al, 'Family Law' (2005) 6 SALAR 259, [13.31].

<sup>151</sup> *ANJ v ANK*, [24].

<sup>152</sup> *ANJ v ANK*, [24]; and *TNL v TNK*, [47].

the ‘uplift’ approach – that prioritises direct financial contributions – appears to have been inadvertently retained substantively.

The outsized influence of direct contributions is a notable weakness of the Structured Approach, which in theory, requires equal weightage to be applied to both direct contributions and indirect contributions. Given the influence direct contributions have on division outcomes, the Structured Approach could result in gendered outcomes if one gender systemically received a lower income than the other. As was noted above, this was recognised by the Court of Appeal in *TNL v TNK* when it abolished the application of the Structured Approach for single-income marriages because it penalised the homemaker spouse (usually the wife) by attributing no or significantly lower direct contributions to the homemaker spouse. However, in the context of dual-income marriages, the detriments of overemphasising the parties’ direct contributions appear to have been partially ameliorated. While the wife is generally attributed less direct contributions because of their (usually) lower income,<sup>153</sup> this is counter-balanced by the greater indirect contribution the wife is normally attributed with. This is because the wife (usually as the lower income earner) will take on a greater role in the homemaking sphere. Consequently, the mean division outcome in dual-income marriages is more or less equal. The tipping points appear to be where the wife was attributed with more than 40.0% of the direct contributions and less than 30.0% of the direct contributions. Where the wife was attributed with more than 40.0% of direct contributions, she was more likely to be awarded a majority share from division.<sup>154</sup> In contrast, where the wife was attributed with less than 30.0% of direct contributions, she was likely to be awarded a minority share of the pool of matrimonial assets.<sup>155</sup>

Although the current position – the wife requiring more than 40.0% of direct contributions to be awarded a majority share from division – appears to favour the wife, the odds remain stacked against the wife a result of the systemic income disparity between wives and husbands. As observed above, in addition to their work, the working wife was also more likely to be the main caregiver, consequently, they *‘[we]re more likely to take time off from work when children are present in the household.’*<sup>156</sup> A study by the Singapore Ministry of Manpower showed that *‘women with children [we]re likely to lag behind in terms of work experience, career progression, and earnings relative to men and women without children.’*<sup>157</sup> Therefore, with the continued adoption of traditionally gendered roles in the family where the wife is the main caregiver and the husband is the main breadwinner, it is not the norm for the wife to even achieve more than 40.0% of direct contributions to the marriage; it is exceptional. Further, given the greater influence of direct financial contributions on the division outcome for dual-income marriages, this is especially onerous in cases involving longer marriages because the income disparity between the wife and the husband widens the longer the marriage.<sup>158</sup>

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<sup>153</sup> In most cases, the wife is attributed with less than 50.0% of the direct contributions (31 of 42 cases), with the mean direct contribution attributed to the wife being 39.4%.

<sup>154</sup> The wife was awarded with more than 50.0% of the matrimonial assets in 12 of 17 cases where the wife is attributed with more than 40.0% of the direct contributions.

<sup>155</sup> The wife was awarded with less than 50.0% of the matrimonial assets in 15 of 18 such cases where the wife is attributed with less than 30.0% of the indirect contributions.

<sup>156</sup> Lin E et al, ‘Singapore’s Adjusted Gender Pay Gap’ (Ministry of Manpower, January 2020) <[https://stats.mom.gov.sg/iMAS\\_PdfLibrary/mrsd-Singapores-Adjusted-Gender-Pay-Gap.pdf](https://stats.mom.gov.sg/iMAS_PdfLibrary/mrsd-Singapores-Adjusted-Gender-Pay-Gap.pdf)> accessed 15 March 2022 (“**Lin (2020)**”), [6.2(a)].

<sup>157</sup> Lin (2020), [6.2(b)]. See also *UBM v UBN*, [52]–[54]; *ANJ v ANK*, [27(c)]; Ong DSL et al, ‘Family Law’ (2005) 6 SAL Annual Review 259, [13.31] (affirmed by the Court of Appeal in *Lock Yeng Fun*, [39]; and *BCB v BCC*, [11]); *AYQ v AYR and another matter* [2013] 1 SLR 476, [23]; *ARY v ARX and another appeal* [2016] 2 SLR 686, [61]; *Twiss v Twiss*, [21]; *Yow Mee Lan*, [43]; *UYP v UYQ*, [48]–[62]; Lim (2011), [72]–[75]; and Leong (2018), [17.116] and [18.017].

<sup>158</sup> Lin (2020), Chart 19.



Despite the attempt to counter-balance the lower direct contributions that wives tend to receive with higher indirect contributions, this has only worked to some extent in cases where there were children of the marriage. In *BWU and another v BWW and another matter* (“*BWU v BWW*”), the wife earned less than half of the husband’s salary in the 23-year long, childless marriage. The High Court held that the ratio for indirect contributions was 65.00:35.00 in favour of the husband, despite the wife largely looking after the household (including the household chores and the purchasing of groceries) and helping out at the husband’s parents’ Chinese food stall;<sup>159</sup> the husband only stepped in when she was unwell. As a result of the ratio for direct contributions being 74.00:26.00 in favour of the husband, the final division outcome was 70.00:30.00 in favour of the husband (after rounding off). It would not be a stretch to deduce that the wife’s significantly lower proportion of indirect contributions of 30.0% (as compared to the usual 60.0% – 70.0%) arose because of the lack of childcaring.<sup>160</sup> Even though this was a long marriage, the length of the marriage did little to increase her share from division. On the contrary, owing to the husband’s higher income, he was doubly rewarded both for direct contributions and indirect contributions because of his contribution to the wife’s medical bills.

Looking at the observations above together, it becomes clearer that the Structured Approach may not be suitable even for dual-income marriages. The case of *BWU v BWW* and the fact that wives had to be attributed with more than 40.0% of direct contributions before they are more likely to be awarded a majority share from division, demonstrate how the Structured Approach has the propensity to accentuate gender biases. Regardless whether there is a child during the marriage, the study by the Singapore Ministry of Manpower found that the mean hours worked by females are the same.<sup>161</sup> It would therefore not be a stretch to suggesting that wives do make substantial career sacrifices even in child marriages, likely to aid in home-making activities. Regrettably, despite attempting to provide equal weight to direct contributions and indirect contributions, the Structured Approach has the unintended consequence of perpetuating the inherent financial disparities between husbands and wives, especially where the wife already earned less than the husband and there was no child of the marriage.

#### **D. Significance of the Presence of Child(ren)**

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<sup>159</sup> *BWU v BWW*, [21]–[23].

<sup>160</sup> Within the authors’ dataset for Court of Appeal and High Court decisions, the wife was awarded at least 50.0% for indirect contributions for all other cases in long dual-income marriages with children, except *TQU v TQT* where the wife left the matrimonial home midway in the marriage and had a poor relationship with the children thereafter. See for e.g. cases with children and where the wife’s income was less than half of the husband’s: *UTQ v UTR* [2019] SGHCF 13; *UBD v UBE* [2017] SGHCF 14; *Tan Teck Koon v Tong Guat Hwa* [2016] SGHCF 2; and *TEG v TEH and another matter* [2015] SGHCF 8.

<sup>161</sup> Lin (2020), Chart 17.

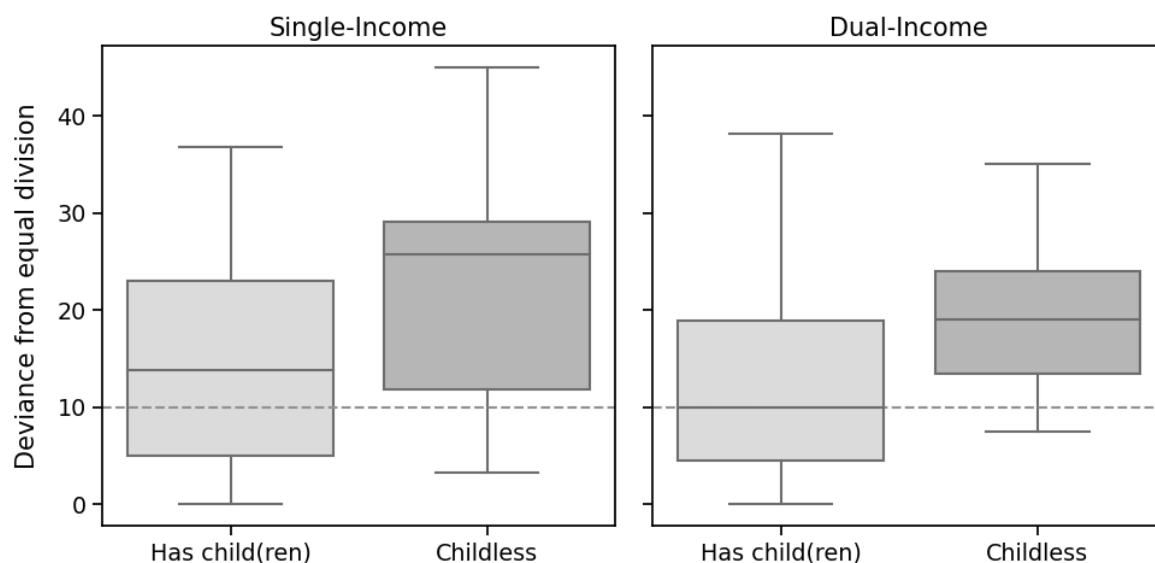


Figure 1111: Distribution of deviances from equal division by child status of marriage, differentiated by type of marriage.

Table 2 above indicates that the Family Courts tended to deviate more from equality in childless marriages than in marriages with child(ren). Figure 11 illustrates the comparison of median deviance from equality between marriages with children and marriages without children and shows that this trend holds true regardless of the type of marriage. This finding is unsurprising for single-income marriages, since the Singapore Courts were likely to find that the homemaker's contribution was less in marriages without children, and therefore deviate more from equality.

Similarly, the Family Courts tended to deviate more from equality in childless dual-income marriages than in marriages with children. For such marriages, parties' indirect contributions largely hinged on their indirect *financial* contributions, which is generally correlated to the direct contributions attributed to the parties. In childless dual-income marriages, direct contributions and indirect contributions are moderately correlated at the alpha level of 0.10,  $r(10) = .59$ ,  $p = .09$ . In dual-income marriages with child(ren), direct contributions and indirect contributions are not correlated,  $r(98) = .09$ ,  $p = .36$ . Therefore since, *ceteris paribus*, indirect non-financial contributions are likely to be equal for childless dual-income marriages, the authors submit that the income disparity between spouses would likely explain the more frequent deviation from equality. The higher-income party would likely be able to contribute more financially to both direct and indirect (financial) contributions. Seen from this perspective, like the homemaker spouse in single-income marriages, the lower-income spouse is also doubly penalised. This double penalisation does not apply to (or is not as egregious in) dual-income marriages with child(ren) because the lower-income spouse is often the primary caregiver; the lower-income spouse's significantly greater indirect *non-financial* contributions from caregiving will balance out the higher-income spouse's direct and indirect *financial* contributions.

Separately, no statistically significant correlation between deviance from equal division and the presence of child(ren) was found in cases from the Court of Appeal and High Court. In any case, for completeness, the authors note that the only decision from the Court of Appeal and High Court to deviate significantly from equal division in a long single-income marriage is *UVF v UVG*, involving a childless long single-income marriage decided by them.<sup>162</sup> This

<sup>162</sup> For one childless marriage, the High Court held that the wife's homemaking efforts were '*not phenomenal or substantive*'. Based on a 'broad-brush' approach, the High Court ordered for division that exceeded the bounds of the 40:60 to 60:40 range. See *UVF v UVG* [2019] SGHCF 21, [57].

observation can be contrasted with that from the Family Courts where there was significant deviation from equality for all their decisions involving long single-income marriages with children.

## **VI. CONCLUSION**

Although division remains a difficult issue, this article utilised quantitative statistical methods to provide comprehensive insights into division outcomes under Singapore's contributions-based approach. The raw data showed that the Court of Appeal and High Court have a greater tendency towards equal division than the Family Courts. After controlling for factors such as the length of marriage, type of marriage, and the presence of child(ren), the findings suggest significant divergence in outcomes from the Court of Appeal and High Court, and the Family Courts. In cases decided by the Court of Appeal and High Court, division generally converged to equality as the length of marriage increases, regardless of the type of marriages. However, for cases decided by the Family Courts, the mean deviation from equality remains above 10% for marriages of all lengths in all types of marriages, regardless whether they are short, moderate, or long.

The authors found that the presence of child(ren) from the marriage plays a significant role in ascertaining division outcomes. Regardless of the level of court, if equality is understood as equal division, the lower-income or homemaker spouse who contributes less (or nothing) financially is doubly penalised in childless dual-income and single-income marriages respectively, as illustrated by the positive correlation between direct and indirect contributions. Conversely, there is no correlation between direct and indirect contributions for marriages with child(ren), suggesting that for such marriages, the greater financial contributions (whether direct or indirect) by the higher-income or sole breadwinner spouse is counter-balanced by the non-financial contributions of the other party, in tandem with the increase in marriage length. Therefore, the contributions-based approach could be seen as promoting only formal equality and not substantive equality; arguably, the Structured Approach does not promote gender equality in childless marriages since wives are more likely to be the primary homemaker and the lower-income spouse in these marriages.

The results from this study are not intended to encourage positional negotiation during mediation to resolve the ancillaries after divorce. Instead, in line with therapeutic justice, this study is intended to be a guide to more informed and less acrimonious resolution for those contemplating non-litigious means of resolving their ancillaries, especially division. This study has demonstrated that some certainty and predictability can be obtained even from a discretionary-based division framework like Singapore's. Of course, this is in part due the Singapore judiciary's willingness to adopt a framework to systematically analyse parties' contributions. Regardless, insight obtained from this empirical study of Singapore's contributions-based approach can be extrapolated, evaluated, and / or applied by other jurisdictions which currently utilise or are considering transplanting a similar system (whether a contributions-based approach or a framework) as a basis for division.