IN THE GENERAL DIVISION OF THE HIGH COURT
OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 100

Originating Summons No 856 of 2020

Between

Singapore Democratic Party

… *Appellant*

And

Attorney-General

… *Respondent*

JUDGMENT

[*Statutory Interpretation – Construction of statute – Protection from Online Falsehoods and Manipulation Act (No. 18 of 2019)*]

TABLE OF CONTENTS

Singapore Democratic Party
v
Attorney-General

[2022] SGHC 100

High Court — Originating Summons No 856 of 2020
Woo Bih Li JAD
11 September 2020, 28 March 2022

10 May 2022 Judgment reserved.

Woo Bih Li JAD:

Introduction

1 Originating Summons No 856 of 2020 ("OS 856") is filed by the appellant, Singapore Democratic Party ("SDP"), to set aside a Correction Direction issued by the Alternate Authority on the instruction of the Minister for National Development ("the Minister") on 4 July 2020 ("the 4 July CD"). A Correction Direction ("CD") may be issued pursuant to s 11 of the Protection from Online Falsehoods and Manipulation Act 2019 (2020 Rev Ed) ("POFMA"). Section 17(4) of the POFMA empowers the General Division of the High Court to set aside a CD on any of the grounds provided under s 17(5) of the POFMA.

Background

2 The present appeal arises from SDP's claim during the 2020 national elections that the government of Singapore had plans, or was "toying with the idea", of having a population of 10 million people in Singapore.[1] The alleged population target of 10 million was refuted by representatives of the government on multiple platforms.[2] Among others, it was stated unequivocally that "[t]he Government has never proposed or targeted for Singapore to increase its population to 10 million. And if we look at today's situation, our population is likely to be significantly below 6.9 million by 2030."[3]

3 On 3 July 2020, SDP published, as part of its election campaign, a press release on its Facebook page entitled "10 million population" ("the SDP Article"). According to the post, "[t]he idea of Singapore increasing its population to 10 million did not originate from the SDP." In support of this position, the post went on to make the following statement (hereinafter "the Subject Statement"):[4]

> Also, the HDB chief executive Cheong Koon Hean [("Dr Cheong")] said that Singapore's *population* density would increase from 11,000 people per sq km to 13,700 people per sq km between now and 2030. Given our land area, this means that our population would go up to nearly 10 million by 2030. [emphasis added]

The reference to "the HDB" was to the Housing and Development Board, a statutory authority.

---

1 Exhibit marked "JTLJ-1" at p 2, para 11 and John Tan's affidavit at Annex B, p 17.

2 John Tan's affidavit at Annex B, pp 18 to 20.

3 John Tan's affidavit at Annex B, p 18.

4 John Tan's affidavit at Annex C, p 22.

Immediately after the Subject Statement was a hyperlink referring readers to a letter from one Mr Cheang Peng Wah to the Straits Times published on 20 April 2018 ("Mr Cheang's Forum Letter").[5] In turn, the letter related that:

> Housing Board chief executive [Dr Cheong], in her IPS-Nathan Lecture on April 10 entitled "Anticipating Our Urban Future – Trends, Threats and Transformation", said that Singapore's population density would increase from 11,000 people per sq km to 13,700 people per sq km between now and 2030.
>
> This is alarming. As Singapore's land area is a mere 720 sq km, *does this mean that our population could go up to 9,864,000, or nearly 10 million by 2030*?
>
> This figure is not the same as that projected in the Population White Paper of 2013 – 6.9 million by 2030.
>
> I hope the authorities can explain this new figure on population density, and assure Singaporeans that everything is being planned to prepare for such an eventuality."
>
> [emphasis added]

The lecture referred to therein was delivered by Dr Cheong on 10 April 2018 in the IPS-Nathan Lecture Series ("the IPS Lecture").[6]

4 Parties had referred to a written script of the IPS Lecture. The relevant portion states:[7]

> **3) Deliver Well Managed and Liveable Density**
>
> With a growing population, living density in Singapore will increase from 11,000 persons per square kilometre to 13,700 persons per square kilometre between now and 2030. However, we need not fear densification if it is done well.

---

5 John Tan's affidavit at Annex C, p 23.

6 John Tan's affidavit at Annex F, p 36.

7 John Tan's affidavit at Annex F, p 53.

5 After the SDP Article was posted, the Alternate Authority for the Minister appointed during the election issued the 4 July CD. The CD required the SDP to publish a notice informing the reader that the SDP Article "contained a false statement of fact". Readers of the post were also referred to "the correct facts" on a government website.[8] According to the government website, the IPS Lecture (which was referenced in the Subject Statement) pertained to:[9]

> … [H]ow Singapore can continue to be a highly liveable city should living density in Singapore increase to 13,700 persons per square kilometre by 2030. Dr Cheong referred to **living density**, which takes into account only the land available for urban areas, and excludes land used for ports, airports, and defence, among others. It is therefore inaccurate and misleading to extrapolate a population size of 10 million by applying the living density figure to the total area of Singapore. [emphasis in original]

6 The 4 July CD also explained the basis on which the Subject Statement was determined to be a false statement of fact ("the Basis Statement"), which reads as follows:[10]

> HDB CEO Dr Cheong had referred to living density and not population density in her lecture on 10 April 2018. Living density takes into account only the land available for urban areas, and excludes land used for ports, airports and defence, among others. It is therefore inaccurate and misleading to extrapolate a population size of 10 million by 2030 by applying the living density figure to the total area of Singapore.
>
> The Government has not proposed, planned nor targeted for Singapore to increase its population to 10 million.

---

8 John Tan's affidavit at Annex C, p 22 and Annex D, pp 26 to 27.

9 John Tan's affidavit at Annex D, p 26.

10 John Tan's affidavit at Annex A, p 14.

7 SDP applied to the Minister on 17 August 2020 to cancel the 4 July CD. This application was rejected by the Minister on 19 August 2020.[11] The present appeal was then made to the court to set aside the 4 July CD on various grounds. Two of the grounds were that the Subject Statement was a statement of opinion that was not covered by POFMA, and that, in the alternative, it was not a false statement of fact. In addition, SDP had initially contended that the 4 July CD was unconstitutional as it did not fall within the exceptions to the right to freedom of speech and expression under Art 14(2)(*a*) of the Constitution of the Republic of Singapore (1985 Rev Ed) ("the Constitution").[12] In particular, it argued that the definition of "public interest" in s 4 POFMA was unduly broad and thus beyond the ambit of "public order" under Art 14(2)(*a*) of the Constitution. Further, SDP contended that the burden of proof in a s 17 POFMA application lay with the Minister,[13] and that the criminal standard of proof applied given the quasi-criminal nature of a CD.[14] As such, their case was that the Minister had failed to discharge this burden. At the hearing of OS 856 on 11 September 2020, I ordered the matter to be adjourned pending CA 47/2020 and CA 52/2020, where substantially similar arguments were made regarding the constitutionality of POFMA before the Court of Appeal ("the CA") as well as other arguments. Consequently, the CA released *The Online Citizen Pte Ltd v Attorney-General and another appeal and other matters* [2021] 2 SLR 1358 ("*TOC v AG*"), which upheld the constitutionality of POFMA having applied the test in *Wham Kwok Han Jolovan v PP* [2021] 1 SLR 476: at [55]–[112]. The CA also ruled on the burden of proof and the standard of proof. Following this,

---

11 John Tan's affidavit at paras 3 and 4.

12 Appellant's Written Submissions ("AWS") at paras 72 to 80.

13 AWS at paras 33 to 57.

14 AWS at paras 16 to 32 and paras 58 to 62.

counsel for SDP indicated that it would not be pursuing its arguments on the constitutionality of POFMA, nor any arguments regarding the applicable burden and standard of proof in setting aside applications under s 17 POFMA.[15]

8 Before considering SDP's remaining arguments proper, I address a preliminary issue that arose for my determination.

Preliminary issue: Whether the hearing ought to proceed in open court

9 SDP applied for the hearing of the present appeal, which was initiated by originating summons, to proceed in open court. According to counsel for SDP, Mr Suresh Nair ("Mr Nair"), the starting point for POFMA appeals was rr 11(*a*) and 11(*b*) of the Supreme Court of Judicature (Protection from Online Falsehoods and Manipulation) Rules 2019 ("POFMA Rules"), which provides that:

> 11. The Court hearing an appeal may —
>
> (*a*) give such directions for the hearing of the appeal as the Court thinks fit;
>
> (*b*) conduct the hearing of the appeal in such manner as the Court thinks fit; and
>
> …

According to Mr Nair, this showed that the "POFMA Rules do not provide for any 'default' position as to whether the hearing takes place in chambers or in open court", and "the issue is entirely a matter for decision by the Court, and the legislation does not provide for any predisposition either way". While O 28 r 2 of the Rules of Court (2014 Rev Ed) ("ROC") stipulated that "[a]ll

---

15 SDP Letter to Court dated 11 February 2022.

originating summonses shall be heard in Chambers", this was subject to, among other things, "any written law (or) any directions of the Court".[16]

10 Following his argument that there is no predisposition in favour of a chambers hearing or an open court hearing, Mr Nair submitted that the present appeal was a matter of public interest which leant in favour of an open court hearing because:[17]

(a) CDs restrict the constitutional right to freedom of speech;

(b) the timelines for appeals against the decision are truncated;

(c) an appellant can only appeal against the High Court's decision with leave of court, such that it is not assured that the arguments will ever be ventilated in open court before the Court of Appeal;

(d) the impugned statement was a matter of public interest as it had to do with Singapore's population;

(e) the 4 July CD was issued in the middle of an election campaign; and

(f) novel questions of law were being raised in the present appeal, which related to (i) the distinction between statements of fact and opinion for the purposes of POFMA; and (ii) whether POFMA is constitutional.

---

16 Letter from AC dated 9 September 2020 at paras 7 and 8.

17 Letter from AC dated 9 September 2020 at paras 9 to 13.

He also submitted that the Deputy Attorney-General, Mr Hri Kumar Nair *SC* ("the DAG"), had argued in an earlier POFMA appeal that "the public interest threshold will clearly be met in every POFMA direction".[18]

11 Before dealing with the rest of the arguments, I address the DAG's comments about the "public interest threshold". In the earlier POFMA appeal before Ang Cheng Hock J (reported in *Singapore Democratic Party v Attorney-General* [2020] SGHC 25 ("*SDP v AG* (*Ang CH J*)"), Dr Chee Soon Juan ("Dr Chee"), who represented SDP, argued that POFMA appeals ought to be heard in open court as, among others, a threshold of public interest had to be satisfied before a CD could be issued under POFMA. In meeting this argument, the DAG submitted as follows:[19]

> [Dr Chee's argument is] that before a minister can issue a direction under POFMA, … there has to be a threshold of public interest to be satisfied. We don't dispute that, that's correct. Two points I make. Number one, just because public interest, that's not special reason. But, effectively, what Dr Chee is arguing, that because every POFMA decision involves a public interest, therefore every POFMA decision should be heard in open court. That's effectively what he's arguing. **Because the public interest threshold will clearly be met in every POFMA direction.** If that is the case, then one would have expected that the Registrar or [POFMA] would provide for all POFMA matters to be heard in open court. But clearly, the contrary is true. That as far as the Act is concerned and the Rules of Court are concerned, they do not treat POFMA applications any different from any other [originating summonses] …
>
> [emphasis added in bold]

---

18 Letter from AC dated 9 September 2020 at p 13, lines 26 to 27.

19 AGC's letter to Court dated 10 September 2020 at p 52 lines 18 to 32.

12 As was apparent from the above passage, the DAG was not saying, as Mr Nair posited, that "[b]ecause the public interest threshold will clearly be met in every POFMA direction", POFMA appeals ought to be heard in open court. Instead, the DAG was merely summarising Dr Chee's argument, and in addressing the argument, he then said that "[i]f that is the case, then one would have expected that the Registrar or [POFMA] would provide for all POFMA matters to be heard in open court. *But clearly, the contrary is true*" [emphasis added]. Seen in the appropriate context, the DAG's comments could not be seen as supporting the proposition that POFMA appeals ought to be heard in open court because the Minister must be "of the opinion that it is in the public interest to issue the Direction" (s 10(1)(*b*) of POFMA) before a CD is issued. To the contrary, the DAG was making the point that simply because "public interest" is engaged did not mean that all POFMA appeals must be heard in open court.

13 Counsel for the Attorney-General ("AG"), Ms Kristy Tan *SC* ("Ms Tan"), emphasised that the starting point remained O 28 r 2 of the ROC, which sets out the default position for *all* originating summonses:

> *All* originating summonses shall be heard in *Chambers*, subject to any express provision of these Rules, any written law, any directions of the Court or any practice directions for the time being issued by the Registrar. [emphasis added]

14 According to Ms Tan, if Mr Nair's arguments were accepted, it would establish a general principle that POFMA appeals ought to be heard in open court, as opposed to in chambers. But such a general principle was not supported by the statutory provisions. Under r 5(1) of the POFMA Rules, all POFMA appeals to the High Court "*must* be brought by *originating summons*" [emphasis added]. While r 4(2) of the POFMA Rules explicitly sets out specific provisions in the ROC (*eg,* O 28 r 2A of the ROC) which do *not* apply to POFMA appeals,

it was pertinent to note that O 28 r 2 of the ROC is *not* excluded. Hence, Ms Tan submitted that there was no predisposition for POFMA appeals to be heard in chambers or in open court. Rather, reading O 28 r 2 of the ROC with the POFMA Rules (which do not provide for a derogation from the default rule in O 28 r 2), the default position was that a POFMA appeal, which was to be initiated by originating summons, was to be heard in chambers unless the court directed otherwise. In so far as r 11 of the POFMA Rules (set out at [9] above) provides for the Court to conduct the hearing of a POFMA appeal in such manner as the Court thinks fit, this is not inconsistent with O 28 r 2 of the ROC, which reserves to the court the discretion to depart from the default position in an appropriate case.[20]

15 To justify a departure from the default position for originating summonses as set out in O 28 r 2 of the ROC, an applicant seeking an open court hearing must show "special reasons" (*Chee Siok Chin v Attorney-General* [2006] 3 SLR(R) 735 ("*Chee Siok Chin (Phang JA)*") at [7]).

16 In *Chee Siok Chin (Phang JA),* the plaintiff had applied for, *inter alia*, the results of the 2006 General Elections to be declared null and void. In response, the AG applied, by summons in chambers, to dismiss the plaintiff's application, and for the plaintiff to pay the AG's costs. Before Andrew Phang Boon Leong JA, counsel for the plaintiff submitted that the AG's application should be heard in open court, rather than in chambers, as it was in the public interest that proceedings of such nature be heard in open court. Phang JA had "no hesitation" in rejecting the argument for a *general* rule to this effect. Nevertheless, in view of the close link between the AG's application and the

---

20 AGC's letter to Court dated 10 September 2020 at para 4.

plaintiff's substantive application to have the results of the General Election declared null and void (which was already scheduled to be heard in open court), the judge ruled that there was sufficient public interest to justify holding the hearing of the AG's application in open court with the plaintiff's substantive application. However, the court cautioned that the decision "sets no precedent for the future" (*Chee Siok Chin (Phang JA)* at [8]). It was not disputed that the observations of Phang JA also apply to an originating summons.

17 Ms Tan also relied on the following decisions, which I set out briefly.

18 In *Chee Siok Chin and another v Attorney-General* [2006] 4 SLR(R) 541 ("*Chee Siok Chin (Belinda Ang J)*"), the plaintiffs sought, via an originating summons, for a declaratory order that the repeal of certain rules was unconstitutional and in breach of the principles of natural justice. The plaintiffs submitted that the usual practice of hearing an originating summons in chambers ought to be departed from as the originating summons raised constitutional issues that were of public interest, and as it was connected to two defamation suits involving politicians. Belinda Ang Saw Ean J declined the application, finding that the reasons were not compelling enough to warrant a departure from the norm. In the judge's view, the questions raised in the originating summons were "plainly questions of law and, as such, any written judgment on the matter would serve as a sufficient record of the proceedings in chambers" (at [15]). It was also noted that in *Jeyaretnam Joshua Benjamin v Attorney-General* [1990] 1 SLR(R) 590, the hearing of an originating summons concerning the seat of the plaintiff as a Member of Parliament was also conducted in chambers.

19 In *Ravi s/o Madasamy v Attorney-General and other matters* [2017] 5 SLR 489 ("*Ravi*"), the plaintiff applied by way of originating summons to

challenge the Elected Presidency Scheme, arguing that it was contrary to certain aspects of the Constitution. Before the substantive hearing proper, the plaintiff applied, among others, for the proceedings to be heard in open court. In the main, it was argued that matters of public importance going to the heart of the Constitution were being surfaced by him in the public interest. The application was nonetheless dismissed by See Kee Oon J, who held that there was "no reason to depart from the general rule in O 28 r 2" of the ROC (at [8]).

20 More recently, in *SDP v AG (Ang CH J)* (the first POFMA appeal raised to the High Court) and *Ong Ming Johnson v Attorney-General and other matters* [2020] SGHC 63 ("*Ong Ming Johnson*") (joint applications to have s 377A of the Penal Code (Cap 224, 2008 Rev Ed) declared unconstitutional), applications to have the matters heard in open court were similarly dismissed. In the latter of the cases, See J observed that "there was no exceptional reason to depart from the general position of having [originating summons] proceedings heard in chambers" (*Ong Ming Johnson* at [5]).

21 Mr Nair sought to distinguish some of the cases which Ms Tan relied on.

22 He submitted that *Chee Siok Chin (Phang JA)* was not a case involving POFMA which is *sui generis* because it involved the use of executive power to restrict the right to free speech. The public interest element in all POFMA proceedings was also a factor "that would weigh strongly in favour of an open court hearing."[21]

---

[21] Letter from AC dated 9 September 2020 at paras 15(a) and (b).

23 For *Chee Siok Chin (Belinda Ang J)*, Mr Nair submitted that the court appeared to have based its decision not to have the hearing in open court because the issues "were plainly questions of law and, as such, any written judgment on the matter would serve as a sufficient record of the proceedings in chambers" (*Chee Siok Chin (Ang J)* at [15]).[22] While I am of the view that that was a factor that the court had taken into account, it was not the only factor. Before that observation, the court had noted that the "usual practice" was to hear originating summonses in chambers and that the argued reasons for an open court hearing were "not compelling enough to warrant a departure from the norm" (*Chee Siok Chin (Belinda Ang J)* at [15]).

24 For *Ravi*, Mr Nair submitted that the court declined to hear the originating summons in open court because the court was influenced by the argument that the nature of the substantive application before the court involved scandalous allegations and remarks which were political attacks, and the plaintiff was motivated by a personal agenda to seek an open court hearing. Mr Nair submitted that the present case was not a case of scandalous allegations or political attacks.[23] However, it was undisputed that the court in *Ravi* also noted that the general rule in O 28 r 2 was for originating summonses to be heard in chambers (*Ravi* at [8]). I am of the view that the court's decision not to have an open court hearing was not solely influenced, if at all, by the argument about scandalous allegations and political attacks.

---

22 Letter from AC dated 9 September 2020 at para 15(c).

23 Letter from AC dated 9 September 2020 at para 15(d).

25 For *SDP v AG (Ang CH J)*, Mr Nair submitted that the applicant seeking an open court hearing was not represented by counsel.[24] However, in my view, that point was neither here nor there.

26 It seemed to me that Mr Nair's attempts to distinguish the cases which Ms Tan relied on did not address Ms Tan's central point which was that the starting position for an originating summons was as stated in O 28 r 2 of the ROC. I agree with her submission that POFMA could have excluded the application of this provision or specified that the starting position for a s 17 application under POFMA was to have the hearing in open court. That was not done (see [14] above). Accordingly, the argument of Mr Nair that POFMA is *sui generis*, for the purpose of having an open court hearing, was not persuasive. Leaving that argument aside, Mr Nair accepted that even if an issue was of public interest and/or even if a constitutional point was raised, that alone would not constitute a special reason to have an open court hearing.

27 The question thus turned to whether special reasons existed in the present appeal to warrant an open court hearing. Having considered the reasons proffered, I found that no such reasons existed, and accordingly dismissed the application to have the proceedings heard in open court. While the Subject Statement related to Singapore's population, and the 4 July CD was issued during the election period, these did not go towards showing why it was in the public interest for the hearing to be heard in open court, as opposed to in chambers. At the highest, this meant that there would be interest from the public as to the arguments raised in the present appeal, but, as seen in the cases discussed at [18]–[20] above, a matter which is of interest to the public does not

---

[24] Letter from AC dated 9 September 2020 at para 15.

necessarily warrant an open court hearing. The novelty of the *legal* questions raised was also clearly inadequate – novel legal issues are often raised in originating summons proceedings, and yet the starting position for such proceedings to be heard in chambers is seldom departed from.

The substantive submissions

28 I turn next to the parties' substantive submissions.

SDP's Case

29 SDP advanced various points in its written submissions covering three proposed steps that the court should undertake. There were actually four proposed steps from SDP.

30 SDP argued that because the Subject Statement was essentially a *report* of Dr Cheong's Statement, the first step was to determine whether Dr Cheong's Statement, rather than the Subject Statement, would in the view of at least an appreciable segment or particular class of the potential readership or audience in Singapore, be taken to have the same meaning as that identified by the Alternate Authority in the Basis Statement of the 4 July CD ("the First Proposed Step").[25] This was to be done objectively and in proper context. In this regard, it submitted that no reasonable person would have interpreted Dr Cheong's Statement to have the meaning identified in the Basis Statement.

31 SDP then argued that the second step was to determine if the Basis Statement complied strictly with the Minister's duties under reg 6(*b*) of the

[25] Appellant's Further Written Submissions dated 4 March 2022 ("AFWS") at paras 8 and 9.

Protection from Online Falsehoods and Manipulation Regulations 2019 ("POFMA Regulations") ("the Second Proposed Step"). If not, the 4 July CD should be set aside.[26]

32 Third, SDP argued that the court should determine if the Subject Statement was a "statement of fact" as defined in s 2(2)(*a*) of the POFMA ("the Third Proposed Step"). It argued that it was a statement of opinion instead. It asserted that the first sentence of the Subject Statement essentially "states what was said by Dr Cheong", and then *derives* the alleged population target of 10 million by multiplying the figure of 13,700 per sq km allegedly related by Dr Cheong by Singapore's raw land mass. This deductive process, it argued, rendered the Subject Statement an opinion rather than a statement of fact. Accordingly, the 4 July CD should be set aside under s 17(5)(*b*) POFMA.[27]

33 Fourth, SDP argued that the court should consider if the Subject Statement was a *false* statement of fact ("the Fourth Proposed Step"). It argued that it was not false. SDP's argument here was yet again that its report of Dr Cheong's Statement was accurate, and that no falsehood was perpetuated. Accordingly, the CD would be liable to be set aside under s 17(5)(*b*) POFMA.[28]

The AG's Case

34 In turn, the AG contended that the Subject Statement was a direct reproduction of the words used in the SDP Article.[29]

---

26 AFWS at paras 20 to 23.

27 AFWS at paras 24 to 25 and AWS at paras 81 to 99.

28 AFWS at paras 26 to 28 and AWS at paras 100 to 103.

29 Respondent's Further Submissions dated 4 March 2022 ("RFS") at paras 11 to 16.

35 Next, the AG submitted that the Subject Statement plainly meant that Dr Cheong had said that the population of Singapore would be 10 million by 2030 based on the total area of Singapore.[30]

36 Third, the AG contended that the Subject Statement was a statement of fact. Its position was that when the Subject Statement was read in its proper context, the Subject Statement attributed the notion of a 10 million population by 2030 as having been conveyed by Dr Cheong. It was not a statement of SDP's opinion.[31]

37 Finally, the AG submitted that the Subject Statement was false, as Dr Cheong's Statement did not use the term population density, nor was she referring to the density of people inhabiting Singapore based on the total area of Singapore. The AG therefore argued that the Subject Statement's assertion that Dr Cheong conveyed that Singapore's population would go up to nearly 10 million by 2030 was false.[32]

The applicable approach

38 In light of the foregoing, I will first mention the applicable approach to setting-aside applications under s 17 of the POFMA.

39 Under s 10(1) of the POFMA, a Part 3 Direction may be issued where a false statement of fact has been communicated in Singapore and where the Minister is of the opinion that it is in the public interest to issue the Part 3

---

30 RFS at paras 10 to 15.

31 RFS at paras 17 to 19 and Respondent's Written Submissions dated 10 September 2020 ("RWS") at paras 19 to 22.

32 RFS at paras 20 to 22 and RWS at paras 23 to 32.

Direction. Accordingly, under s 11(1) of the POFMA, a CD is issued to a person who communicated the false statement of fact in Singapore, requiring the person to communicate in Singapore in the form and manner specified in the CD a correction notice that contains a statement that the statement made is false or that the specified material contains a false statement of fact.

40 In turn, s 17(1) of the POFMA permits recipients of the Part 3 Direction to appeal to the court against said Direction; but the court may only set aside the Direction on the following grounds under s 17(5) of the POFMA:

> (5) The High Court may only set aside a Part 3 Direction on any of the following grounds on an appeal:
>
> (*a*) the person did not communicate in Singapore the subject statement;
>
> (*b*) the subject statement is not a statement of fact, or is a true statement of fact;
>
> (*c*) it is not technically possible to comply with the Direction.

41 The CA's decision in *TOC v AG* has laid down the applicable approach to determining applications to set aside under s 17 of the POFMA. *TOC v AG* concerned appeals by The Online Citizen Pte Ltd ("TOC") and SDP in respect of CDs issued under s 11 POFMA for separate alleged infringements of the Act and was the first opportunity for the CA to consider the interpretation and application of POFMA.

42 Therein, the CA explicated a five-step analytical approach ("the *TOC* Framework") applicable to determining whether a Part 3 Direction could be set aside under s 17(5)(*a*) and s 17(5)(*b*) POFMA. I reproduce the framework below (*TOC v AG* at [163]):

163 …

(a) First, the court should determine the Minister's intended meaning in respect of the subject statement that he has identified in the Part 3 Direction. This is to be done by construing the subject statement objectively in the light of the Direction as a whole. It is the subject statement *as understood according to the Minister's intended meaning* which is the subject statement that the court is concerned with under the second to fifth steps of the analytical framework set out at sub-paras (b) to (e) below.

(b) Second, the court should determine whether the subject material in fact makes or contains the subject statement (or statements) identified by the Minister in the Part 3 Direction. This should be done by: (i) interpreting the subject material objectively in its proper context, and as a matter of impression rather than of finegrained or unduly technical analysis; and (ii) asking whether, on that approach to the subject material, there would be at least an appreciable segment or a particular class of the potential readership or audience of the subject material in Singapore who would construe it as making or containing the subject statement, or regard the subject statement as a reasonable interpretation of the subject material. In undertaking this interpretive exercise, the court is not concerned with the single meaning rule, nor with the subjective intention of the statement-maker (including the meaning that it subjectively intended to place on the subject material). Furthermore, while considering the subject material as a whole, the court should be alive to the likelihood that the particular part of the subject material that is said to be or to give rise to the subject statement may be taken out of context from the subject material as a whole owing to factors such as "clickbait", deceptive headlines, or forms of emphasis placed on that part of the subject material (such as through the use of outsized graphics). If the court determines that the subject material does not in fact make or contain the subject statement identified in the Part 3 Direction, the Direction may be set aside under s 17(5)(*a*) of the POFMA.

(c) Third, the court should determine whether the identified subject statement is a "statement of fact" as defined in s 2(2)(*a*) of the POFMA, in the sense that a reasonable person would consider it to be a representation of fact. An objective approach applies in

> this regard. If the court finds that the identified subject statement is not a statement of fact, the Part 3 Direction may be set aside under s 17(5)(*b*) of the POFMA.
>
> (d) Fourth, the court should determine, likewise on an objective approach, whether the identified subject statement is "false" in the sense explained in s 2(2)(*b*) of the POFMA. If the court finds that the identified subject statement is not false, the Part 3 Direction may similarly be set aside under s 17(5)(*b*) of the POFMA.
>
> (e) Fifth, the court should consider whether the identified subject statement "has been or is being communicated in Singapore", in the sense that it has been or is being published on or through the Internet, *and* has been or is being accessed by at least one end-user in Singapore, as stated in s 3(1) of the POFMA. If the element of communication is not present, the Part 3 Direction may be set aside under s 17(5)(*a*) of the POFMA.
>
> [emphasis in original]

(In my analysis, I refer to the above steps as the first to fifth steps of the *TOC* Framework respectively).

43 It further held that the burden of proof in applications under s 17(5)(*a*) and s 17(5)(*b*) lies on the recipient of the CD in question. To this, the recipient of the CD has to show a *prima facie* case of reasonable suspicion that one or more of the grounds above was satisfied by putting forth material that might show an arguable case in favor of setting aside. If this threshold requirement was met, then the evidential burden shifts to the Minister to show that none of the grounds was made out. This was to be established on the civil standard of a balance of probabilities: *TOC v AG* at [180] to [184].

Applying the TOC Framework

44 Before applying the *TOC* Framework, I should first mention that SDP's submissions were premised on SDP's characterization of the Subject Statement

as a mere report of Dr Cheong's Statement. To this, it cited as evidence of Dr Cheong's Statement a *written script* of the IPS Lecture which is set out at [4] above.

45 While reliance was placed by both parties on this written script of the IPS Lecture as the basis for what Dr Cheong was alleged to have said, this may well *not have been what Dr Cheong had actually said at the lecture itself*. Every page of the written script had come with the disclaimer to "check against delivery". It became clear during the hearing of the present application on 28 March 2022 that neither party had checked the written script against what Dr Cheong had orally said at the IPS Lecture. Therefore, when reference is made to "Dr Cheong's Statement", this is based on the written script of the IPS Lecture and not what she may have orally said.

(1) The first step in the *TOC* Framework

46 As it turned out, it did not matter who had the burden of proof. The Subject Statement was a repetition of the relevant part of the SDP Article. There was no dispute as to what the Subject Statement meant. The first step in the *TOC* Framework is easily undertaken. The Subject Statement meant that Dr Cheong had said that the population density over the entire land area of Singapore would increase from 11,000 people per sq km to 13,700 people per sq km between the time of Dr Cheong's Statement to 2030. Given Singapore's land area, Singapore's population would increase to nearly 10 million by 2030.

47 In my view, SDP's First Proposed Step was incorrect. In arguing that the court should determine what Dr Cheong's Statement means rather than what the Subject Statement means, SDP was proceeding on the premise that the Subject Statement was an accurate report of Dr Cheong's Statement. However,

that was precisely the point in contention. In the present case, the Minister did not agree that this was so. On the contrary, the Minister's position was that the Subject Statement did not accurately reflect what Dr Cheong's Statement said. Hence, the first step is to consider what the Subject Statement meant and not what Dr Cheong's Statement meant.

(2) The second step in the *TOC* Framework

48 The second step in the *TOC* Framework is also easily undertaken on the facts before me. The subject material, *ie*, the SDP Article does contain the Subject Statement.

49 On SDP's Second Proposed Step, SDP submitted that the Basis Statement must "reasonably relate to the Subject Statement in question".[33] If the Basis Statement failed to do so, the CD must be set aside for breaching reg 6(*b*) POFMA Regulations which states:

> 6(*b*) the basis on which the subject statement or the statement contained in the subject material (as the case may be) is determined to be a false statement of fact;

50 Here, SDP submitted that because the Subject Statement complained of was in respect of Dr Cheong's Statement, the Basis Statement must reasonably relate to both statements. It then submitted that the Basis Statement did not reasonably relate to Dr Cheong's statement.

51 However, this submission made the same error as mentioned above in respect of SDP's First Proposed Step. It conflated the Subject Statement with Dr Cheong's Statement.

---

[33] AFWS at para 20.

52 The Basis Statement explained why the Subject Statement was a false statement of fact. It did not purport to say or explain that Dr Cheong's Statement was false. Whether the Subject Statement was an accurate report of Dr Cheong's Statement was another matter.

(3) The third and fourth steps in the *TOC* Framework

53 SDP's Third Proposed Step concerned the determination as to whether the Subject Statement was a statement of fact. Its Fourth Proposed Step is the determination whether the statement, if it were one of fact, was false. These two steps coincided with the third and fourth steps in the *TOC* Framework. I will take the two steps together as they overlap.

54 The starting point for determining whether a statement is one of fact or opinion is s 2(2)(*a*) of the POFMA, which provides that a statement of fact is a statement which "a reasonable person seeing, hearing or otherwise perceiving it would consider to be a representation of fact". This points towards an objective approach at this stage of the inquiry: *TOC v AG* at [158]. As such, where such statement of fact is not found, a Part 3 Direction may be set aside under s 17(5)(*b*) POFMA.

55 I set out the Subject Statement again for ease of reference:

> Also, the HDB chief executive [Dr Cheong] said that Singapore's population density would increase from 11,000 people per sq km to 13,700 people per sq km between now and 2030. Given our land area, this means that our population would go up to nearly 10 million by 2030.

56 Mr Nair first reasoned that the Subject Statement "clearly states what Dr Cheong said" in the first sentence, asserting that this was an accurate report of what she had said as the terms "living density" and "population density" were

virtually synonymous (hereinafter referred to as "the Synonymity Argument").[34] Next, Mr Nair contended that the second sentence "goes on to state SDP's interpretation of what … her statement meant", making clear that Dr Cheong "did not herself say that the population would go up to 10 million".[35] As such, Mr Nair contended that the deductive process by which the 10 million was arrived at in the second sentence made the Subject Statement an *opinion* as opposed to fact, citing *Chen Cheng and another v Central Christian Church and other appeals* [1998] 3 SLR(R) 236 ("*Chen Cheng*") at [34], which in turn cites *Gatley on Libel and Slander* (Sweet & Maxwell Ltd, 9th Ed, 1998) that a comment, as opposed to a statement fact, is "something which is or can be reasonably inferred to be a deduction, inference, conclusion… etc" (at para 12.6).

57 Mr Nair characterized the opening phrase of the second sentence of the Subject Statement ("Given our land area, …") as a statement of "the methodology used to derive the conclusion" that the population would go up to 10 million by 2030.[36] SDP relied on paragraph 6B(xiii) of the Ministry of Law's paper titled "How the Protection from Online Falsehoods and Manipulation Act applies" ("the MOL paper"), an article which sets out guiding illustrations and examples to how POFMA should apply. The pertinent paragraph reads as follows:

> The following are statements of opinion:
>
> …
>
> (xiii) N states that nine out of 10 jobs in Singapore went to foreigners, and sets out *his methodology* based on certain data

---

34 AWS at para 81.

35 AWS at para 81.

36 AWS at para 83.

> that he refers to. The fact that the data is incomplete does not change the fact that this is a statement of opinion.
>
> [emphasis added]

58 The AG disagreed. Ms Tan argued that in the second sentence of the Subject Statement, SDP was not purporting to convey its own opinion but allegedly what Dr Cheong had said. This was because the objective behind SDP's post was to show that the idea of a 10 million population originated from the government, not SDP.[37]

59 As mentioned, the SDP Article was posted on SDP's Facebook feed on 3 July 2018. It bore the heading "Press Release" and the sub-heading "10 million population". It then opened with the following line:

> The idea of Singapore increasing its population to 10 million *did not originate from the SDP.*
>
> [emphasis added]

60 I am of the view that the second sentence of the Subject Statement was not an attempt by SDP to give its own opinion about what Dr Cheong's Statement would mean. Rather, the entire Subject Statement purported to be a report of what Dr Cheong had said in Dr Cheong's Statement. Hence, both sentences were statements of fact.

61 For completeness, I turn to SDP's reliance on paragraph 6B(xiii) of the MOL Paper. It appears that SDP did not take into consideration the corresponding paragraph 6B(13), which reads:

> However, for each of the respective examples above, if:
>
> …

---

[37] RWS at para 20.

> (13) In the case of [paragraph 6B(xiii)] above: N cites *data that is fabricated*, N's statement is a false statement of fact.
>
> [emphasis added]

62 Reading paragraphs 6B(xiii) and 6B(13) of the MOL Paper together, it appears that even if a subject statement were an opinion, it would still constitute a false statement of fact if it were based on false information.

63 In the present case, since both sentences of the Subject Statement purported to be a report of Dr Cheong's Statement, the question was whether the Subject Statement read as a whole was true or false.

64 SDP submitted that if the terms "living density" and "population density" are used interchangeably, then the Subject Statement was factual and correct. It argued that the term "living density" has no ascertainable technical meaning and there is no discernible difference between the two phrases.

65 According to the AG, various parts of the Subject Statement were incorrect, making the Subject Statement false. First, Dr Cheong's Statement referred to "living density" while the Subject Statement referred to "population density".

66 Secondly, and more importantly, aside from nomenclature, the density which Dr Cheong was referring to was density based on urban areas and not total land area. This was supported by a letter from Jaffrey Aw, HDB's Director (Strategic Planning) dated 24 April 2018 ("Mr Aw's Letter") and what Ms Tan termed a "back of the envelope" calculation which I elaborate on below at [83]. However, the Subject Statement meant that the density that Dr Cheong was referring to was based on total land area. Hence, the second sentence of the

Subject Statement took her figures and applied them to Singapore's total land area to derive a population of nearly 10 million by 2030.

67 I am of the view that the Subject Statement was false. Before I elaborate, I mention the following chronology.

68 After the IPS Lecture, Mr Cheang's Forum Letter was published in the Straits Times on 20 April 2018. The contents of the letter have been set out at [3] above.

69 Three days later, one Mr Ravi Philemon ("Mr Philemon") posed the following question to Dr Cheong at a subsequent lecture delivered on 23 April 2018 entitled "Shaping the Future of Heartland Living": [38]

> In the [IPS Lecture] you mentioned that Singapore's population density will increase in the future. I can understand and appreciate that your views on urban planning are based on your role as a planner – not policy maker. But planners too don't plan in a vacuum. My question is, "what underlying principles/philosophies guide your planning process?"

Apparently, Dr Cheong did not answer Mr Philemon's question.

70 The next day, on 24 April 2018, HDB proffered a response to Mr Cheang's Forum Letter through Mr Aw's Letter which said:[39]

> We refer to [Mr Cheang's Forum Letter].
>
> [Dr Cheong's] lecture was about how Singapore can anticipate its urban future and develop "liveable density".

---

38 John Tan's affidavit at Annex G, p 66.

39 John Tan's affidavit at Annex H, p 71.

> The figures cited were, hence, on living density, and not population density.
>
> Living density takes into account only the land available for urban areas, and excludes land used for ports, airports, defence and utilities, among others.
>
> It would be *inaccurate to extrapolate the population size from the living density figure*."
>
> [emphasis added]

71 Within the same day, TOC posted an article entitled "HDB Chief refuses to answer opposition member's question on planning principle behind high population density" ("the TOC Article").[40] This article referred to the interaction between Mr Philemon and Dr Cheong (at [69]), and also quoted Mr Aw's Letter in full.

72 SDP referred to the TOC Article and argued that Dr Cheong had the opportunity to clarify Dr Cheong's Statement when Mr Philemon posed his question but she refused to do so. I should mention that it was not a situation in which only one question was posed to Dr Cheong and she flatly refused to answer it. That was the impression that the heading of the TOC Article may have given. The heading reads: "HDB Chief refuses to answer opposition member's question on planning principle behind high population density". However, its contents showed that several questions were posed to Dr Cheong and she then chose some of those to respond to, which did not include Mr Philemon's question. In any event, it was clear that Mr Philemon's question was different from the question raised in Mr Cheang's Forum Letter. Mr Philemon's question was about the urban planning principle behind the higher population density. He was not asking what Singapore's population

---

40 John Tan's affidavit, Annex G, pp 65 to 68.

would be by 2030 or at any time in the future. Hence, SDP's reliance on the TOC Article was a red herring.

73 Indeed, it was telling that SDP chose to steer away from a more important document in its arguments. This was Mr Aw's Letter. As can be seen, that letter made two clarifications. First, that the figures in Dr Cheong's Statement pertained to living density and not population density. Secondly, that living density takes into account only the land available for urban areas and excludes other land such as land used for ports, airports, defence and utilities.

74 It was clear from that letter that the density which Dr Cheong's Statement was referring to was not based on Singapore's total land area but only on urban areas. This would be obvious to anyone reading that letter.

75 When Mr Nair was asked by the court to address that letter, he argued that there was no positive evidence to show that SDP was aware of this letter at all. It was not a valid argument.

76 First, this letter was one of the documents which SDP itself had referred to in its application to cancel the 4 July CD. At that time, SDP had sought to argue why that letter was not helpful. If SDP had been unaware of the letter soon after it was published or before the SDP Article was published, SDP would have said so.

77 Second, the contents of the letter were cited in the TOC Article which SDP itself was relying on.

78 Third, in the Minister's response to SDP's application to the court, the response specifically mentioned that it was not SDP's evidence that it was

unaware of Mr Aw's Letter. Importantly, SDP did not correct or take issue with that point.

79 In the circumstances, it was not open to Mr Nair to suggest that SDP might not have been aware of Mr Aw's Letter when SDP itself chose not to say so explicitly.

80 The court is entitled to infer and I do infer that SDP was aware of Mr Aw's Letter at all material times including around the date when it was published in the Straits Times and before SDP published the SDP Article.

81 That letter is the first reason why the Subject Statement, considered as a whole, was a false statement of fact. It showed that the SDP Article had deliberately substituted "living density" in Dr Cheong's Statement for "population density" in the SDP Article. More importantly, that letter showed that the density in Dr Cheong's Statement was based on urban areas in Singapore and not Singapore's total land area. Yet the SDP Article deliberately applied her figures to the latter.

82 Thus, although Mr Nair argued that there was no evidence that "living density" was different from "population density", that was not the point. Whether the terms were interchangeable or not, the explanation in Mr Aw's Letter showed that the density in Dr Cheong's Statement was referring to urban areas only.

83 The second reason why the Subject Statement was false was that if one were to apply the initial density in Dr Cheong's Statement, *ie*, 11,000 people per sq km to Singapore's total land area of about 720 sq km, this would yield a figure of 7,920,000 persons at the time of the IPS Lecture. Ms Tan referred to

this as a back of the envelope calculation and argued that Singapore's population then was not even 6.9 million. Hence, SDP must have known that the density in Dr Cheong's Statement could not be simply applied over Singapore's total land area. Significantly, Mr Nair did not have any response to the argument about the back of the envelope calculation.

84 To the extent that Mr Nair submitted that SDP was not obliged to take into account Mr Aw's Letter, the second reason does not depend on that letter.

85 In any event, I do not accept Mr Nair's submission. Since the Subject Statement purported to be an accurate report of Dr Cheong's Statement, it should have taken Mr Aw's Letter into account. This is because the SDP Article was premised on Mr Cheang's Forum Letter about Dr Cheong's Statement. Mr Cheang's Forum Letter did not assert that Singapore's population would increase to nearly 10 million. He mentioned that as a question. Mr Aw's Letter was in response to that question. It was incongruous for SDP to refer to Mr Cheang's Forum Letter and ignore the response thereto. Furthermore, this was not a situation in which SDP had valid reason to doubt that Mr Aw's Letter was issued on behalf of HDB. Neither did it have any reason to doubt the truth of what that letter was saying. Besides arguing that there was no distinction between "living density" and "population density", SDP did not contend that Mr Aw's Letter was in any way false or illogical. In the circumstances, this submission was also telling.

86 In oral arguments, Mr Nair referred to a different part of the written text of the IPS lecture which states:[41]

---

41 John Tan's affidavit at Annex F, p 47.

> **1.2) Build Adaptability Into Our Planning**
>
> Being adaptable means that we should provide for 'modularity and flexibility' in our plans, in view of future uncertainties. For example, even though we have safeguarded a large tract of land in Tuas for our port, it could be phased to retain strategic flexibility, in case demand for port activities does not pan out as envisaged.
>
> Building flexibility into our plans also requires us to develop plans which can accommodate a larger population. Dr Liu Thai Ker has advocated planning for a projected population of 10 million. His view has generated debate. No doubt, there will continue to be much discussion on what might be an appropriate population size for Singapore. This largely depends on whether we can find innovative urban solutions to sustain our good living environment, and on the level of acceptance by our citizenry.
>
> Regardless of public sentiments, it is wise to plan for scenarios with varying population sizes, as it would help planners to anticipate the types of infrastructure that will be needed, the appropriate densities to build on available land, and to work through the many difficult trade-offs in allocating land amongst competing uses. If the population growth does not materialise, we would have a happy situation of having more land buffer set aside and more choices in the use of land.

87 Mr Nair argued that this part supported SDP's position that Dr Cheong's Statement was referring to a population of 10 million by 2030.

88 It is clear to me that this part did not assist SDP in the least. Dr Liu Thai Ker ("Dr Liu") was advocating planning for a projected population of 10 million. This is different from saying that the government was aiming for such a population. In any event, Dr Cheong's Statement had nothing to do with a population of 10 million, regardless of what Dr Liu was advocating.

89 Finally, SDP relied on a Straits Times article dated 12 January 2022 titled "10 million population 'not really ridiculous number' for Singapore to plan for: Liu Thai Ker", presumably to show that the government did in fact

plan for a population target of 10 million. The article reported that at a panel discussion organized by the IPS on 11 January 2022, former chief city planner Dr Liu maintained that a population size of 10 million was not a ridiculous number for the government to plan for. Further, it was reported that fellow panellist, Mr George Yeo ("Mr Yeo") (who is a former cabinet minister), said the following:[42]

> If you plan for more and we don't reach that number, then Singapore will be very spacious. Whereas if you plan for fewer, and because of the nature of things – not everything within our control – the population grows more than we anticipated then it will be very crowded.

90 I note that it was also reported that Dr Liu had clarified that he was speaking in his personal capacity and that the 10 million number was always a planning parameter and not a target.

91 In any event, SDP's reliance on this article proceeded on the same incorrect premise as before. It assumed that Dr Cheong's Statement was alluding to a population of 10 million. It used that statement to support its argument that this was the target of the Singapore government. Dr Liu's and Mr Yeo's comments were supposed to corroborate the argument that that was the target of the government. However, the point is that Dr Cheong's Statement did not allude to a population of 10 million in the first place. That was the fundamental flaw in the SDP's position in this entire application. For the purpose of this application, the court is not concerned whether there is other evidence that the Singapore government had a population target of 10 million but whether the Subject Statement was a false statement of fact in relation to Dr Cheong's Statement.

---

[42] Appellant's Bundle of Authorities dated 4 March 2022 at Tab 2.

(4) The fifth step in the *TOC* Framework

92 The fifth step in the *TOC* Framework was not in issue. It was not disputed that the Subject Statement had been communicated in Singapore and had been accessed in Singapore.

Conclusion

93 For the above reasons, SDP's application under s 17 of the POFMA fails. Accordingly, OS 856 is dismissed.

94 On the issue of costs, Mr Nair submitted that where a s 17 POFMA application is dismissed, the default position is that no order on costs should be given unless the application was an abuse of the court's process, or if the conduct of the appeal was done in an extravagant and unnecessary manner. He referred to r 15(2) of the POFMA Rules in this regard.

95 Rules 15(1) and (2) of the POFMA Rules state:

> 15.— (1) Subject to paragraph (2), an appellant that is an individual may not be ordered to pay any costs.
>
> (2) The Court may order the appellant to pay the costs of, or incidental to, the appeal if the Court is satisfied that —
>
> > (*a*) the commencement, continuation or conduct of the appeal by the appellant was an abuse of the process of the Court; or
> >
> > (*b*) the conduct of the appeal by the appellant was done in an extravagant and unnecessary manner.

96 I agree with Ms Tan's argument that Mr Nair's reading of r 15 of the POFMA Rules is not correct. In my view, r 15(2) must be read in light of r 15(1), which provides that subject to r 15(2), an appellant that is an individual may not be ordered to pay costs. Therefore, the default position for an appellant that is

an *individual* is indeed that no order on costs should be given; but nowhere in the Rules does it say that the same applies for an entity such as the appellant in this case. Costs continue to remain at the usual discretion of the court.

97 In the light of the reasons I have given, it is clear that SDP deliberately included the Subject Statement in the SDP Article, knowing that it was false. In the circumstances, SDP should pay the costs of OS 856. Having considered submissions on quantum, I order SDP to pay the AG costs of $7,000 and reasonable disbursements to be fixed by the court if not agreed between the parties.

Woo Bih Li
Judge of the Appellate Division

Suresh Nair (P K Wong & Nair LLC) (instructed), Eugene Singarajah Thuraisingam and Joel Wong En Jie (Eugene Thuraisingam LLP) for the appellant;
Tan Ruyan Kristy *SC*, Pang Ru Xue, Jamie and Beulah Li Sile (Attorney-General's Chambers) for the respondent.