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

[2024] SGHC 136

Originating Claim No 496 of 2023 (Assessment of Damages No 4 of 2024)

Between

Shanmugam Kasiviswanathan

… *Claimant*

And

Lee Hsien Yang

… *Defendant*

Originating Claim No 497 of 2023 (Assessment of Damages No 3 of 2024)

Between

Vivian Balakrishnan

… *Claimant*

And

Lee Hsien Yang

… *Defendant*

JUDGMENT

[Damages — Assessment — Defamation]

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v
Lee Hsien Yang and another matter

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Goh Yihan J
2 May 2024

24 May 2024 Judgment reserved.

Goh Yihan J:

1 This is the assessment of damages to be awarded to the claimants in HC/OC 496/2023 ("OC 496") and HC/OC 497/2023 ("OC 497"), respectively. This assessment follows from the judgment in default of a Notice of Intention to Contest or Not Contest ("Notice of Intention") that I granted in favour of the claimants on 2 November 2023. I heard the claimants' evidence in relation to the assessment in open court on 2 May 2024.

2 Despite being informed of the assessment hearing, the defendant did not appear on 2 May 2024. Indeed, the defendant has not responded to the Originating Claims ("OCs") in any manner since they were first filed on 2 August 2023. As I will explain further below, the defendant's decision to not respond means that I must decide the OCs on the basis of the claimants' case in the absence of any countervailing material that the defendant could have

adduced. However, in all fairness to the defendant, I also consider (but ultimately reject) some arguments that he could have made had he responded to the OCs.

3 After taking some time to consider the matter, I award general damages and aggravated damages totalling $200,000 to the claimant in OC 496, and general damages and aggravated damages totalling $200,000 to the claimant in OC 497. I provide the reasons for my decision in this judgment.

The background facts

The parties

4 I begin with the background facts. In OC 496, the claimant, Mr Shanmugam Kasiviswanathan ("Mr Shanmugam"), claims against the defendant, Mr Lee Hsien Yang, for defamation. Mr Shanmugam is currently the Minister for Law and Minster for Home Affairs of Singapore. He has been a Cabinet Minister since 1 May 2008 and a Member of Parliament since 3 September 1988.[1] He is the lessee of 26 Ridout Road, at which he resides.

5 In turn, in OC 497, the claimant, Dr Vivian Balakrishnan ("Dr Balakrishnan"), claims against the same defendant for defamation. Dr Balakrishnan is currently the Minister for Foreign Affairs of Singapore. He has been a Cabinet Minister since 12 August 2004 and a Member of Parliament since 4 November 2001.[2] He is the lessee of 31 Ridout Road, at which he

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1 Affidavit of Evidence-in-Chief of Shanmugam Kasiviswanathan dated 11 April 2024 ("Mr Shanmugam's AEIC") at paras 6–7.

2 Affidavit of Evidence-in-Chief of Vivian Balakrishnan dated 15 April 2024 ("Dr Balakrishnan's AEIC") at paras 6–7.

resides. For convenience, I will refer to both of the claimants as the "claimants" collectively where necessary.

6 The defendant in OC 496 and OC 497 is well-known in Singapore. He is active on social media. He maintains the Facebook profile page "Lee Hsien Yang" (at https://www.facebook.com/LeeHsienYangSGP) (the "Page") and regularly posts on matters concerning Singapore and Singaporeans on the Page. The Page states that it has "89K followers". The defendant describes himself on the Page as a "Public figure".[3]

The Facebook post

7 Both claims are founded on a Facebook post that the defendant published on the "timeline" on the Page at or around 7.10pm on 23 July 2023 (the "Post"). The Post contained, among other things, the "Offending Words", which are in bold:[4]

> **Trust in the PAP has been shattered.**
>
> **PM Lee has recently said that "high standards of propriety and personal conduct, together with staying clean and incorrupt, are the fundamental reasons Singaporeans trust and respect the PAP."**
>
> **Trust has to be earned. It cannot simply be inherited. PM Lee Hsien Loong's failure of leadership has squandered that trust.**
>
> **Two ministers have leased state-owned mansions from the agency that one of them controls, felling trees and getting state-sponsored renovations**. Two Temasek companies have committed serious corruption offences - Keppel and the former Sembcorp Marine. SPH Media, an entity being given almost a billion dollars of taxpayers monies, has fraudulently inflated its

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3 Mr Shanmugam's AEIC at para 8 and p 40.

4 Statement of Claim in OC 496 dated 2 August 2023 at para 3; Statement of Claim in OC 497 dated 2 August 2023 at para 3.

> circulation numbers. A cabinet minister has been arrested for corruption. Yet again, the speaker of Parliament has resigned, over a scandal which the PM knew about for years but did not disclose.
>
> Wei Ling and I stated in June 2017 that "We do not trust Lee Hsien Loong as a brother or as a leader." These latest facts speak volumes. Hsien Loong's regime does not deserve Singaporeans' trust.

8 When the Post was published, there was widespread public discussion and media coverage in Singapore about the claimants' leases of 26 and 31 Ridout Road, respectively. For example, an article published on Channel NewsAsia's website on 28 June 2023 had stated, among other things, the following:[5]

> SINGAPORE: Investigations, including by the Corrupt Practices Investigation Bureau (CPIB), found no evidence of criminal wrongdoing or preferential treatment given to two ministers who rented state properties for their personal use.
>
> It emerged in early May that Home Affairs and Law Minister K Shanmugam and Foreign Affairs Minister Vivian Balakrishnan had rented two black-and-white colonial bungalows at 26 and 31 Ridout Road.

9 On 25 July 2023, the Minister for Culture, Community and Youth and Second Minister for Law, Mr Edwin Tong, instructed that a Correction Direction under the Protection from Online Falsehoods and Manipulation Act 2019 (2020 Rev Ed) be issued to the defendant in relation to the Post. The Correction Direction related to several untrue statements in the Post. These statements included: (a) the State paid for the renovations to 26 Ridout Road and 31 Ridout Road because the properties were leased by the claimants,

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5 Mr Shanmugam's AEIC at para 10(b) and p 52.

respectively; and (b) trees at 26 Ridout Road and 31 Ridout Road were allowed to be felled because the properties were leased by the claimants, respectively.[6]

10 The defendant then edited the Post sometime on 25 July 2023 to include the following words at its top:[7]

> CORRECTION NOTICE:
>
> This Facebook post contains false statements of fact relating to the 26 Ridout Road and 31 Ridout Road matter, and to SPH Media Trust. For the correct facts, click here: https://www.gov.sg/article/factually250723

However, the defendant did not remove the Offending Words on 25 July 2023. They remained visible on the Post until 10 November 2023.[8]

The commencement of the OCs

11 On 2 August 2023, the claimants commenced OC 496 and OC 497. On 14 August 2023, the claimants filed HC/SUM 2460/2023 and HC/SUM 2459/2023, respectively, seeking permission to serve sealed copies of the OCs and Statements of Claim ("SOCs") in OC 496 and OC 497 out of jurisdiction on the defendant. On 16 August 2023, an Assistant Registrar granted those applications. On 28 August 2023, the claimants filed HC/SUM 2607/2023 and HC/SUM 2608/2023, respectively, seeking permission to effect substituted service of the abovementioned OCs and SOCs on the defendant out of Singapore by Facebook messenger. On 13 September 2023, an Assistant Registrar granted those applications.

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6 Mr Shanmugam's AEIC at para 11 and pp 147–149.

7 Mr Shanmugam's AEIC at para 12 and p 157.

8 Mr Shanmugam's AEIC at paras 13 and 17.

12 Following this, Mr Shanmugam in OC 496 effected substituted service of process on the defendant at 4.01pm on 15 September 2023 by Facebook messenger. Dr Balakrishnan in OC 497 did the same at 4.15pm on the same day. The evidence shows that the defendant saw the documents that were served on him. Among other things, at 12.43am on 16 September 2023, the defendant published a post on the Page confirming that he had been served with process in both OC 496 and OC 497.[9]

13 The defendant failed to file and serve his Notice of Intention within the prescribed 21 days after 15 September 2023 (that is, by 6 October 2023). The claimants then applied to obtain judgments in default of a Notice of Intention. On 2 November 2023, I granted judgments in favour of the claimants with damages to be assessed. I also ordered that the defendant be restrained from publishing or disseminating the Offending Words (see *Shanmugam Kasiviswanathan v Lee Hsien Yang and another matter* [2023] SGHC 331 ("*Shanmugam*")).

14 After the claimants' solicitors served the judgments on the defendant by Facebook messenger on 9 November 2023, the defendant published the following post on the Page on 10 November 2023 at 6.48pm:[10]

> I am made to understand that a court order has been granted to the two ministers living in Ridout Road that I should cease to publish the statement which the two ministers take offence at. This is in spite of the fact that my post has already been the subject of a POFMA notice and carries a link to state why they consider it to be a false statement of fact. In my view, my statement did not say what the ministers claim. I had left it published so that it was open to anyone to form their own view as to whether I had indeed defamed the two individuals. I have

9 Mr Shanmugam's AEIC at para 27(b) and p 3446.

10 Mr Shanmugam's AEIC at paras 15–16 and p 171.

> now been compelled to remove the statements from my facebook page

15 Thereafter, sometime on 10 November 2023, the defendant edited the Post to remove the Offending Words. The edited version of the Post read as follows:[11]

> CORRECTION NOTICE:
>
> This Facebook post contains false statements of fact relating to the 26 Ridout Road and 31 Ridout Road matter, and to SPH Media Trust. For the correct facts, click here: https://www.gov.sg/article/factually250723
>
> Trust in the PAP has been shattered.
>
> PM Lee has recently said that "high standards of propriety and personal conduct, together with staying clean and incorrupt, are the fundamental reasons Singaporeans trust and respect the PAP."
>
> Trust has to be earned. It cannot simply be inherited. PM Lee Hsien Loong's failure of leadership has squandered that trust.
>
> [XXXXXXXXXXXXXXXXXXXXXXXXX] Two Temasek companies have committed serious corruption offences - Keppel and the former Sembcorp Marine. SPH Media, an entity being given almost a billion dollars of taxpayers monies, has fraudulently inflated its circulation numbers. A cabinet minister has been arrested for corruption. Yet again, the speaker of Parliament has resigned, over a scandal which the PM knew about for years but did not disclose.
>
> Wei Ling and I stated in June 2017 that "We do not trust Lee Hsien Loong as a brother or as a leader." These latest facts speak volumes. Hsien Loong's regime does not deserve Singaporeans' trust.

16 Finally, on 6 February 2024, I ordered OC 496 and OC 497 to be tried together. I did this because I was convinced that there are common questions of law and/or fact in the assessment of damages in the two actions. Further, I was also satisfied that the reliefs claimed in both actions that are the subject of the

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11 Mr Shanmugam's AEIC at para 17 and p 173.

assessment of damages arise out of the same factual situation. The practical implication of this order is that the assessment of damages for the OCs would take place at one sitting.

17 It is against the above background that the present assessment of damages takes place.

The legal implications of the defendant's choice not to respond to the OCs

18 Before I turn to the assessment of damages, the evidence is clear that the defendant has not responded to the OCs in any manner since they were filed on 2 August 2023. Indeed, despite having notice of the commencement of the OCs, the defendant chose not to file a Notice of Intention by the deadline of 6 October 2023. Also, despite having notice of the judgments in default by 10 November 2023 at the latest, the defendant has not applied to set aside the judgments. Finally, despite being served with the dates and time of the present assessment of damages on 8 March 2024, 22 April 2024, and 25 April 2024, the defendant did not appear for the hearing on 2 May 2024, nor was he represented by counsel. In the circumstances, while it remains for me to scrutinise the evidence led by the claimants, make the appropriate findings of fact as established by the evidence, and consider the legal submissions advanced by the claimants, the defendant's decision to wholly disengage from these proceedings has certainly not made the claimants' task any more difficult. This follows from certain legal implications of the defendant's choice, which I now explain.

19 To begin with, every defendant has the right to defend a civil claim that has been brought against him. Correspondingly, every defendant also has the right to choose *not* to defend a claim that has been brought against him. However, a defendant who consciously chooses not to defend a claim cannot

expect that a court will automatically dismiss the claimant's case against him. This is because a claimant also has the right to pursue his claim against a defendant of his choosing. In our system of adversarial justice, it is incumbent on a defendant to respond to such a claim. If a defendant does not do so, then a claimant will have an easier, though not certain, route to a favourable judgment. This follows from certain legal implications of a defendant's choice not to respond to a claim that has been brought against him, even if the court still needs to be independently satisfied that the claimant has established its case on a balance of probabilities.

20 First, a defendant's failure to file a Defence means that the facts in the Statement of Claim are taken to be admitted by him. Thus, in the High Court decision of *Brightex Paints (S) Pte Ltd v Tan Ongg Seng (in his personal capacity and trading as Starlit(S) Trading) and others* [2019] SGHC 116, the court explained (at [32]) that, according to O 18 r 13(1) of the Rules of Court (2014 Rev Ed) ("ROC 2014"), any allegation of fact made by a party in his pleading is taken as admitted unless it is specifically traversed by the opposing party. While there does not appear to be an equivalent provision in the Rules of Court 2021 ("ROC 2021"), there is no reason why the position in O 18 r 13(1) does not continue to apply (see, for example, Cavinder Bull, gen ed, *Singapore Civil Procedure 2024* (Vol 1) (Sweet & Maxwell, 2024) at paras 6/7/4 and 6/7/9, as well as Jeffrey Pinsler, gen ed, *Singapore Court Practice 2021* (LexisNexis, 2021) at para 44.7.2). Indeed, there are provisions in the ROC 2021 that continue to endorse the general position in O 18 r 13(1), albeit in a slightly different context (see, for example, O 10 r 5(1)(*a*) of the ROC 2021). Ultimately, since a defendant who has not served a Defence "cannot be in a better position than if he had served a [D]efence and not specifically traversed all allegations of fact" (see the High Court decision of

Zulkifli Baharudin v Koh Lam Son [1999] 2 SLR(R) 369 at [17]), it follows that the failure to file a Defence means that a defendant effectively admits to the facts pleaded in the Statement of Claim.

21 Second, if a judgment is granted in default of a Notice of Intention, then the defendant against whom the judgment is granted will not be able to dispute liability at an assessment of damages hearing. Instead, it is only the amount of damages and costs that remains to be determined. Thus, the Court of Appeal held in *U Myo Nyunt (alias Michael Nyunt) v First Property Holdings Pte Ltd* [2021] 2 SLR 816 ("*U Myo Nyunt*") (at [47]) that, where a default judgment is entered in default of appearance with damages to be assessed, a defendant cannot dispute liability at the assessment hearing. While *U Myo Nyunt* was decided in the context of the ROC 2014, I do not think that the position is changed by the ROC 2021, which contains provisions providing for similar consequences upon a defendant's failure to file a Notice of Intention.

22 Third, at least in respect of some actions, a defendant's failure to respond can be taken as a factor that counts against him in either establishing liability or assessing the damages to be awarded to the claimant. For example, in so far as defamation claims are concerned, a defendant's conduct can be taken into account in assessing damages. Where a defendant fails to respond to a claim against him but persists in publishing the defamatory material, that can, in an appropriate case, be taken against him and justify the award of a higher quantum of damages.

23 These legal implications, which flow from a defendant's choice not to defend a claim, do not generally automatically result in a claimant prevailing against a defendant. However, they do make it easier for a claimant to prevail

because the court is left with the unchallenged pleadings and submissions from only one side. While a court needs to be independently satisfied that a claimant has established his case, the claimant's task of persuading the court that he has done so, especially in our adversarial system premised on a civil standard of a balance of probabilities, is made much easier.

24 Notwithstanding the above, a defendant who originally chose not to respond to a claim can change his mind and respond subsequently. For example, if a judgment is granted in default of a Notice of Intention, it remains possible for a defendant to respond and apply to set aside the judgment so granted. While it will be harder for a defendant to do so the later he chooses to respond to the claim, it remains possible for him to do so. However, if a defendant persistently chooses not to respond to a claim, he cannot complain that he could not defend himself against such a claim. This is for the simple reason that that defendant has consciously chosen to forgo the right and opportunity accorded to every defendant to defend a claim brought against him, such as by giving his version of the facts or making legal submissions.

25 In saying all of this, it remains that if a defendant genuinely cannot respond to a claim because he is unable to access the justice system for reasons unrelated to a conscious choice not to do so, there are avenues to help him access the justice system. For example, a defendant who is unable to afford legal representation and therefore cannot access the justice system may choose to appear in person or seek legal aid. However, this is clearly different from a defendant who has consciously chosen not to defend a claim.

26 Returning to the present case, I am satisfied that the defendant has consciously chosen not to respond to the OCs. The evidence is clear that the

defendant is aware of the OCs and has been kept informed of each step of the proceedings, including the present assessment of damages. As such, the defendant cannot contest his liability for defamation at this point even if, had he turned up or been represented by counsel at the assessment of damages, he could have led his own evidence to challenge the damages claimed by the claimants. I must therefore decide the OCs on the basis of the claimants' case in the absence of any countervailing material that the defendant could have adduced. This is despite me considering, though it is not necessary to do so, some arguments that the defendant could have raised had he responded to the OCs. It is on this basis that I turn to the assessment of damages.

The assessment of damages

The relevant factors

27 It is clear that general damages for defamation are compensatory in nature and "serve to console the [claimant] for the distress he has suffered from the publication of the statement, to repair the harm to his reputation and to vindicate his reputation" (see the High Court decision of *Lee Hsien Loong v Xu Yuan Chen and another suit* [2022] 3 SLR 924 ("*LHL v XYC*") at [67], citing the Court of Appeal decisions of *Arul Chandran v Chew Chin Aik Victor* [2001] 1 SLR(R) 86 ("*Arul Chandran*") at [53] and *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 ("*Lim Eng Hock Peter*") at [4]).

28 From this starting point, it has been said that a court will consider the following factors when assessing damages (see *LHL v XYC* at [67]):

(a) the nature and gravity of the defamation;

(b) the conduct, position, and standing of the claimant and the defendant;

(c) the mode and extent of the publication;

(d) the natural indignation of the court at the injury caused to the claimant;

(e) the conduct of the defendant from the time the defamatory statement is published to the very moment of the verdict;

(f) the failure to apologise and retract the defamatory statement;

(g) the presence of malice; and

(h) the intended deterrent effect of the damages.

29 In addition to general damages, a court may also award aggravated damages against a defendant. Such damages are also compensatory in nature. They are awarded when the defendant's conduct before and during trial has aggravated the hurt to the claimant's feelings (see *LHL v XYC* at [68]). As the High Court observed in *LHL v XYC* (at [68]), examples of such conduct include, among other things, a failure to make any or any sufficient apology and withdrawal, conduct of the preliminaries or of the trial calculated to attract wide publicity, and malice.

30 I turn now to apply these factors to the present case.

The application of the relevant factors to the present case

The nature and gravity of the defamation

31 I consider first the nature and gravity of the defamation. As the High Court held in *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2009] 1 SLR(R) 642 ("*LHL v SDP*") (at [86]), the most serious types of defamation "are those that touch on the core attributes of the [claimant's] personality, namely, matters such as his integrity, honour, courage, loyalty and achievements". Similarly, the High Court also observed in *LHL v XYC* (at [69]) that "[t]he more closely the defamatory statement touches the [claimant's] personal integrity, professional reputation, honour and core attributes of his personality, the more serious it is likely to be". It follows that the quantum of damages would rise in proportion to the severity of the defamation. Indeed, the High Court ruled in *Lee Kuan Yew and another v Tang Liang Hong and others and other actions* [1997] 2 SLR(R) 81 (at [111]) that "[t]he more enormous, outrageous, scandalous or scurrilous the defamation and/or aggravation, the greater the damages".

32 In the present case, since I have already granted interlocutory judgment on liability, the defendant can no longer (and, in any event, he has not) challenge the claimants' pleaded meaning of the Offending Words. In this regard, the claimants' pleaded meanings are as follows (see *Shanmugam* at [34]):

> (a) Mr Shanmugam in OC 496 pleaded that the Offending Words, in their natural and ordinary meaning, by themselves and/or in context, meant and were understood to mean that he acted corruptly and for personal gain by having the Singapore Land Authority ("SLA"), which is under his control, give him preferential treatment by felling trees

without approval and illegally, and give him preferential treatment by paying for renovations to 26 Ridout Road.[12]

(b) Dr Balakrishnan in OC 497 pleaded that the Offending Words, in their natural and ordinary meaning, by themselves and/or in context, meant and were understood to mean that he acted corruptly and for personal gain by having the SLA give him preferential treatment by felling trees without approval and illegally, and give him preferential treatment by paying for renovations to 31 Ridout Road.[13]

33 Apart from the claimants' pleaded meanings which have not been challenged by the defendant, I am also independently satisfied that the pleaded meaning of the Offending Words, in the absence of any countervailing meaning advanced by the defendant, is correct. Indeed, I had made the following observations in *Shanmugam* (at [35]–[36]), which I set out in full:

> 35 Bearing in mind the principle that a court will decide the meaning of the words as they "would convey to an ordinary reasonable person, not unduly suspicious or avid for scandal, using his general knowledge and common sense" (see the Court of Appeal decision of *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 at [27]), I considered the meaning of the Offending Words in the context of the pleaded rest of the Post, as well as the pleaded matters that were widely reported about the claimants in connection with their leasing of 26 and 31 Ridout Road. In light of all of these matters, had it been necessary, I would have concluded that the claimants' pleaded meaning is the plain and ordinary meaning of the Offending Words. This is because, bearing in mind that the ordinary reasonable reader would, as pleaded in the SOC, have known about the claimants' leasing of 26 and 31 Ridout Road, respectively, that reasonable reader reading the Post would have discerned that the Offending Words opened by quoting a statement by the Prime Minister Lee Hsien Loong

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12 Statement of Claim in OC 496 dated 2 August 2023 at para 5.

13 Statement of Claim in OC 497 dated 2 August 2023 at para 5.

> about Singaporeans trusting and respecting the People's Action Party because of high standards of propriety and personal conduct, together with staying clean and incorrupt. The Offending Words then say that that trust has been "squandered" before referring to "two ministers" (which I have found sufficiently refers to the claimants) having leased state-owned mansions from the agency that one of them controls, felling trees, and getting state sponsored renovations.
>
> 36 In my judgment, a reasonable reader who takes into account the juxtaposition of these words and reference to the claimants would have understood the Offending Words to mean that such trust had been squandered because of the claimants' allegedly corrupt conduct, from which they gained personally. The reasonable reader would further have understood that the said corrupt conduct and personal gain were on account of the claimants' lease of the Ridout Road properties from "the agency that one of them controls", by "felling trees" and "getting state-sponsored renovations". This would have been sufficient to establish a defamatory meaning, especially since a "libel or slander of [a public leader's] character with respect to [his] public service damages not only [his] personal reputation, but also the reputation of Singapore as a State whose leaders have acquired a worldwide reputation for honesty and integrity in office and dedication to service of the people" (see the Court of Appeal decision of *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 at [12]).

34 Accordingly, based on the claimants' pleaded meaning of the Offending Words, I find that the defendant's defamatory allegations against the claimants, which go towards their personal integrity, professional reputation, honour, and core attributes of their personalities, are of the gravest kind. This is therefore a factor that points towards the award of higher damages.

35 To be fair to the defendant, I consider whether there are any countervailing factors that may reduce the nature and gravity of the defamation. In this regard, the defendant may argue that since he had edited the Post to include reference to the Correction Direction issued on 25 July 2023, readers of the Post would have seen the article linked in the edited Post and thereby know that the Offending Words were false. However, as the High Court held in *Lee*

Hsien Loong v Leong Sze Hian [2021] 4 SLR 1128 ("*LHL v LSH*") (at [63]), the fact that there may be countervailing information provided does not reduce or negate a defamation, especially if such information does not originate from the party which is responsible for the defamation. Moreover, the defendant did not remove the Offending Words until 10 November 2023, nor did he state that he accepted the Offending Words to be false. Instead, the evidence is that he doubled down in a "comment" posted on his Facebook post of 25 July 2023 and said that the Correction Direction he had received was "misleading" and that "I stand by what I said".[14] As such, had the defendant argued this point, I would not have considered it to reduce the nature and gravity of the defamation.

The position and standing of the claimants

36 I turn then to the position and the standing of the claimants. In this regard, it is well-established that the higher the claimant's standing, the higher the damages that will be awarded. Thus, the High Court in *Lee Kuan Yew and another v Vinocur John and others and another suit* [1995] 3 SLR(R) 38 ("*Vinocur John*") cited (at [26]) with apparent approval of an academic text which explained that "the greater the reputation of the person defamed, the greater the damage award that will be made – on the basis that these persons are more vulnerable in so far as they are well known, often hold public positions of great responsibility and trust, and have a wider circle of social and business contacts" (see Keith Evans, *The Law of Defamation in Singapore and Malaysia* (Butterworths Asia, 2nd Ed, 1993) ("*The Law of Defamation in Singapore and Malaysia*") at pp 104–105).

[14] Mr Shanmugam's AEIC at paras 26(b) and 36 and p 3422.

37 Similarly, the Court of Appeal in *Lim Eng Hock Peter* explained (at [12]) that "Singapore courts have consistently awarded higher damages to public leaders … for similar types of defamation because of the greater damage done not only to them personally, but also to the reputation of the institution of which they are members". Thus, as the court went on to explain (at [12]), "[a]ny libel or slander of [a public leader's] character with respect to [his] public service damages not only [his] personal reputation, but also the reputation of Singapore as a State whose leaders have acquired a worldwide reputation for honesty and integrity in office and dedication to service of the people".

38 In the present case, the claimants in the OCs are long-serving Cabinet Ministers and Members of Parliament. They are public leaders and persons of the highest integrity who undoubtedly have a high standing. Accordingly, this is a factor that points towards the award of higher damages.

The position of the defendant

39 As for the position and standing of the defendant, it is equally well-established that the greater the standing of the defendant, the greater the impact of the defamation and the degree of injury. Thus, as the High Court cited in *Vinocur John* (at [26]), an academic text explains that "[i]f the person who speaks the defamatory words is also a person of prominence, with considerable standing in the public eye, damages may be greater due to the fact that the words would carry more weight than if they were spoken by a lesser individual" (see *The Law of Defamation in Singapore and Malaysia* at pp 104–105).

40 In the present case, the claimants relied on the following facts to show that the defendant is well-known in Singapore: (a) the defendant is well-known in Singapore and is active on social media; (b) the defendant regularly publishes

posts on the Page on matters relating to and concerning Singapore and Singaporeans; and (c) the Page states that it has "89K followers" and the defendant also describes himself on the Page as a "Public figure".[15] I accept the claimants' reliance on these facts and find that the defendant is well-known in Singapore. Accordingly, this is a factor that points towards the award of higher damages.

The mode and extent of publication and republication

41 Turning then to the mode and extent of publication and republication, the Court of Appeal in *Lim Eng Hock Peter* has described (at [33]) it as "trite law that the wider the extent of publication, the greater the award of damages for defamation".

42 However, I am less certain about the relevance of a defendant's knowledge or intention that wide publication would occur. In this regard, Mr Davinder Singh SC ("Mr Singh"), who appeared for the claimants, cites the High Court decision of *Lee Kuan Yew v Chee Soon Juan* [2005] 1 SLR(R) 552 (at [72]) as standing for the proposition that "[t]he defendant's knowledge or intention that his defamatory statements would be repeated and republished and that the defamatory statements were so repeated and republished is also relevant to the question of damages".[16] However, I do not think that this principle is made out by the cited paragraph. Indeed, the said paragraph simply read as follows:

> ***The publication of the defamatory statements***
>
> The statements were made at an election rally attended by members of the public and the news media. The defendant

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15 Claimants' Opening Statement dated 24 April 2024 at para 17; Mr Shanmugam's AEIC at para 8; Dr Balakrishnan's AEIC at para 8.

16 Claimants' Opening Statement dated 24 April 2024 at para 18.

> must have expected that his words would be published, and had expressly asked the news media to publish what he said. The words were broadcast over television by Channel News Asia on 28 October 2001. *The Business Times* also carried an account of the statements on 29 October 2001.

Reading the paragraph together with the header, it seems the court was merely making the point that the defamatory statements had been published, and that this was because the defendant had arranged for one of the publications. I do not think that the court went so far as to make a point regarding the defendant's knowledge or intention.

43 Similarly, Mr Singh cites the Kuala Lumpur Court decision of *Datuk Harris bin Mohamed Salleh v Abdul Jalil bin Ahmad & anor* [1984] 1 MLJ 97 (at 99E–G) for the proposition that "if the publication is timed so as to influence a greater number of people, damages should be increased".[17] However, all that the cited passage said was as follows:

> ***Mode and extent of publication***
>
> In *Morgan v Odhams Press Ltd & Anor* the House of Lord [*sic*] held that the wider the extent of the publication, the heavier the damages will be. In this case, 10,000 copies of the book containing the libellous articles were printed and distributed throughout Sabah. They were printed in 1981, just before the 1982 General Election and the timing of the publication can only mean that the publication was intended to influence the people of Sabah in their choice of the plaintiff as their leader of the state. However, the publication did not appear to have affected the plaintiff's position as he was returned to power with a majority of over 5,000 votes. …

Indeed, I do not think that this passage supports the proposition that Mr Singh seeks to draw from it. If at all, the learned judge had started her analysis on the trite proposition that the wider the extent of the publication, the greater the

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17 Claimants' Opening Statement dated 24 April 2024 at para 18.

award of damages will be. It is not clear that she intended to make the defendant's state of mind as to the extent of publication a relevant factor. At best, she seemed to be making the point that while the defendant intended to influence the electorate, this was unsuccessful as "the publication did not appear to have affected the plaintiff's position". Importantly, the learned judge ended her analysis (at 99I–100A) by concluding that "the plaintiff has not been able to recall the 10,000 copies that have been circulated and there is no knowing also whether the books have left the State in which case the extent of the repercussions is subsequently wider". It appears to me that the focus was on the mode and extent of publication, with no clear indication that the defendant's state of mind was relevant to the analysis.

44 Finally, Mr Singh cites the High Court decisions of *Lee Kuan Yew v Seow Khee Leng* [1988] 2 SLR(R) 252 (at [26]) and *Lee Kuan Yew v Jeyaretnam Joshua Benjamin* [1990] 1 SLR(R) 709 ("*LKY v JBJ*") (at [57]) as supporting his contention that "one of the factors relevant to damages is whether the defamatory statements are likely to be spread quickly by others".[18] I agree with him that whether the defamatory statements are likely to be republished extensively is a fact relevant under the factor of the mode and extent of publication and republication. However, this is quite a different fact from whether the defendant *intended or knew* that the defamatory statement would be spread quickly by others.

45 Conceptually, the mode and extent of publication and republication are primarily concerned with the *fact* of the distribution of the defamatory material. The simple premise is that the wider the distribution, the greater the harm of the

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[18] Claimants' Further Written Submissions dated 9 May 2024 at para 19.

defamatory material, and the greater the damages to be awarded. While I can see how a defendant's state of mind, including the presence of malice, can lead to higher damages,[19] it is not helpful to analyse that under the rubric of the mode and extent of publication and republication. Put differently, if a defendant did not expect the defamatory material to reach as many people as it actually did, should that reduce the damages to be awarded? I do not think so, since the aim of general damages is to compensate the claimant, and the damage to the claimant's reputation remains the same regardless of whether the defendant knew or intended for the extent of publication and republication.

46 Indeed, Mr Singh ultimately submits that "the timing of publication is relevant to the conduct of the defendant and malice, which are *separate* factors that the [c]ourt will have regard to" [emphasis added].[20] It would therefore seem that Mr Singh really agrees that the defendant's intention or knowledge that wide publication of the defamatory material would occur is better analysed under the separate factor of the defendant's conduct. In any case, Mr Singh does not actually refer to the defendant's knowledge or intention that extensive publication would occur in arguing that the mode and extent of publication and republication in the present case should lead to higher damages.

47 Instead, the claimants primarily rely on a "platform of facts" to establish that there has been and continues to be substantial publication of the Offending Words within Singapore. I accept that the claimants can rely on such a platform of facts to prove the substantial publication of the Offending Words (see the Court of Appeal decision of *Koh Sin Chong Freddie v Chan Cheng Wah*

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19 Claimants' Further Written Submissions dated 9 May 2024 at para 25.

20 Claimants' Further Written Submissions dated 9 May 2024 at para 26.

Bernard and others and another appeal [2013] 4 SLR 629 ("*Koh Sin Chong Freddie*") at [43]–[44]). In this regard, the High Court in *LHL v LSH* pointed (at [45]) to the following matters from which the court could infer substantial publication of a Facebook post:

> (a) First, the number of "likes", "shares", "reactions" and comments which a post draws might provide insight into the number of individuals who accessed it, especially since not every individual who reads the post will necessarily respond in such a fashion: *Bolton v Stoltenberg* [2018] NSWSC 1518 at [154] and [155], as upheld in *Stoltenberg v Bolton; Loder v Bolton* [2020] NSWCA 45 at [102].
>
> (b) Second, the number of "friends" and "followers" the poster has on the relevant social media platform is also relevant in determining whether or not substantial publication has taken place: *Pritchard v Van Nes* [2016] BCJ No 781 at [83].
>
> (c) Third, setting the privacy settings of the relevant post to "public" is also more likely to give rise to an inference that the defamatory statement had been accessed by third parties and that substantial publication arose: Doris Chia, *Defamation: Principles and Procedure in Singapore and Malaysia* (LexisNexis, 2016) ("*Doris Chia*") at paras 15.10 and 15.11.

48 Considering these matters and the platform of facts so established in the present case, I find that the Offending Words have been substantially published within Singapore:

> (a) First, the Post attracted numerous "reactions", comments, and was "shared". As at 2.53pm on 2 August 2023, the Post had received 2,705 "reactions", 478 comments, and 435 "shares".[21] As at 7.11am on 5 April 2024, the Post had received 2,765 "reactions", 489 comments, and 402 "shares".[22] While these are already substantial numbers, they do

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21 Statement of Claim in OC 496 dated 2 August 2023 at para 7(e); Statement of Claim in OC 497 dated 2 August 2023 at para 7(e).

22 Mr Shanmugam's AEIC at para 23(b)(iii); Dr Balakrishnan's AEIC at para 23(b)(iii).

not suggest that these were the only persons who had accessed and downloaded and/or read the Post.

(b) Second, the Page states that it has "89K followers", which is a substantial number.[23]

(c) Third, the privacy setting of the Post is set to "public",[24] which means that the Post is and continues to be available and accessible to all Facebook users, including the public in Singapore at large.

49 In addition, the evidence shows that the defendant has in later Facebook posts on the Page continued to refer to, draw attention to, and/or invite readers in Singapore to read the Post. He has also repeatedly published Facebook posts on the Page that refer to and/or provide updates on the OCs. In doing so, the defendant has drawn attention to the OCs and therefore to the Post. Each of these posts received a significant number of "reactions", comments, and "shares", including from Facebook users whose Facebook profiles say that they are from and/or live in Singapore.[25] While I do not think that the defendant's knowledge or intention as to the extent of publication is directly relevant, the fact is that his conduct has attracted more attention to the Post. Based on all of these considerations, I find that the Offending Words, being part of the Post, have been substantially published within Singapore.

50 Apart from the defendant's publication of the Offending Words in the Post, I also find that the Offending Words have been republished substantially

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23 Mr Shanmugam's AEIC at para 8.

24 Mr Shanmugam's AEIC at para 22.

25 Mr Shanmugam's AEIC at paras 26–27.

as a natural and probable consequence of the initial publication. In this regard, it is trite law that a defendant who publishes defamatory material will be liable for all subsequent republications of that defamatory material which are the natural and probable result of his act (see the Court of Appeal decision of *Tang Liang Hong v Lee Kuan Yew and another and other appeals* [1997] 3 SLR(R) 576 at [180]).

51 I find that the Offending Words have been republished substantially because, as the evidence suggests, a post that is published on a Facebook user's "timeline" appears, and is thereby republished, on the "news feeds" of the user's "followers". Further, if the user's "followers" "react" to and/or comment on that post, the post is also republished on the "news feeds" of the "friends" and/or "followers" of those "followers". This process continues on to further degrees if other Facebook users "react" to, comment on, or "share" the Post if it appears on their "news feed" or otherwise. This will allow the Post to reach further Facebook users multiple times if there are many degrees of "reactions", comments, or "shares". Moreover, since the privacy setting of the Post was set to "public", this allowed the Post to be read, "reacted" to, commented on, and/or "shared" by all Facebook users, and the public in, among other places, Singapore, without any restriction. Indeed, as at 2.53pm on 2 August 2023, the Post had been shared by 435 Facebook users (the "Share Posts").[26] In turn, as at 2.53pm on 2 August 2023, the Share Posts had attracted at least 373 "reactions" and 60 comments.[27] Further, the evidence also shows that the Offending Words

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[26] Statement of Claim in OC 496 dated 2 August 2023 at para 9(b); Statement of Claim in OC 497 dated 2 August 2023 at para 9(b); Mr Shanmugam's AEIC at para 28(f).

[27] Statement of Claim in OC 496 dated 2 August 2023 at para 9(c); Statement of Claim in OC 497 dated 2 August 2023 at para 9(c); Mr Shanmugam's AEIC at para 28(g).

have been republished on the Internet on various blogs, websites, and the media, all of which are accessible to readers in Singapore.[28]

52 For completeness, the defendant may argue that since he had edited the Post on 10 November 2023 to remove the Offending Words, he should not be responsible for any publication or republication of the Offending Words after 10 November 2023. However, this does not affect the position before 10 November 2023. In any case, the evidence shows that there continues to be substantial republication of the Offending Words even after the defendant removed them on the Post on 10 November 2023.[29] As such, as with the previous point, had the defendant argued this point, I would not have considered it to reduce the mode and extent of publication and republication.

53 For the reasons above, I find that the Offending Words have been published and republished to a substantial extent within Singapore. Accordingly, this is a factor that points towards the award of higher damages.

The natural indignation of the court at the injury caused to the claimants

54 Mr Singh points to the "the natural indignation of the court at the injury caused to the claimants" as a relevant factor in the assessment of damages. He refers to, among others, the Court of Appeal decisions of *Lim Eng Hock Peter* (at [7]) and *Koh Sin Chong Freddie* (at [23]) as authorities supporting the relevance of this factor.[30] To these authorities, I will add the High Court decision of *LHL v XYC* (at [67]), which I have cited above at [27]. However, when

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28 Mr Shanmugam's AEIC at para 28(k).

29 Mr Shanmugam's AEIC at paras 28(k) and 28(m).

30 Claimants' Opening Statement dated 24 April 2024 at para 35.

examined closely, these authorities merely state "the natural indignation of the court at the injury caused to the claimants" as a factor among other relevant factors in the assessment of damages, but neither do they explain nor apply this particular factor. On his part, Mr Singh cites the High Court decision of *LKY v JBJ* at [57] for the proposition that a court, in applying this factor, will "assess if a fair-minded person would be horrified by the defamation and would react with a great deal of indignation against the grievous injury inflicted on the [c]laimant".[31] For ease of explication, I set out the relevant parts of the cited paragraph:

> … In my view, a fair-minded person would be horrified on hearing the slander and would react with a great deal of indignation against the grievous injury inflicted on the plaintiff. I am satisfied that the defendant's motive in bearing "false witness" against the plaintiff was to hit him below the belt at the general elections. Any award must provide the plaintiff with an adequate *solatium*. *In view of the gravity of the slander, I have additionally to bear in mind that the award of damages, albeit compensatory, must be commensurate with the gravity of the allegations if it is to serve as a full and sufficient vindication.* In other words, the plaintiff must be able to point to the award of damages in this case and say "I was awarded $x by the judge to show that I was untruthfully accused of encouraging or countenancing Mr Teh Cheang Wan's suicide for the purpose of a cover-up". The element of vindication in this case, in my view, is important but that is not to say that the element of vindication should constitute a separate head of damages.
>
> [emphasis added]

55 In my view, the court in *LKY v JBJ* was not dealing with the distinct factor of "the natural indignation of the court at the injury caused to the claimants". To begin with, the court did not identify this as a factor that it was considering. Further, the court was concerned with the "gravity of the slander" and whether the award of damages would meet that gravity. It therefore seems

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[31] Claimants' Opening Statement dated 24 April 2024 at para 36.

to me that a separate factor of "the natural indignation of the court at the injury caused to the claimants" adds nothing to the list of other factors, especially since the factor of "nature and gravity of the defamation" is going to be closely considered in most cases.

56 Indeed, in as much as the court in *LKY v JBJ* based its analysis on the need to vindicate the damage to the claimant, another case cited by Mr Singh, *ie*, the House of Lords decision of *Cassell & Co Ltd v Broome and another* [1972] 1 AC 1027 ("*Cassell v Broome*"),[32] actually suggests (at 1073C) that it is desirable to stop referring to "vindicative" damages altogether. This is because while the natural indignation of the court at the damage inflicted on the claimant is "a perfectly legitimate motive in making a generous rather than a more moderate award to provide an adequate solatium", the better reason is "because the injury to the [claimant] is actually greater and, as the result of conduct exciting the indignation, demands a more generous solatium" (see *Cassell v Broome* at 1073D). Thus put, Lord Hailsham's analysis in *Cassell v Broome* clearly explains that the factor of "the natural indignation of the court at the injury caused to the claimants" is perfectly explainable by referring to the nature and gravity of the defamation. Indeed, it is telling that the relevant pages of a leading practitioner text, as cited to me by Mr Singh, no longer refers to the factor of "the natural indignation of the court at the injury caused to the claimants" (see Richard Parkes, et al, *Gatley on Libel and Slander* (Sweet & Maxwell, 13th Ed, 2022) at paras 10-001–10-022).

57 As such, I do not think that it is necessary to consider "the natural indignation of the court at the injury caused to the claimants" as a *separate*

[32] Claimants' Opening Statement dated 24 April 2024 at para 35.

factor in the assessment of damages. This is because such consideration is really founded on the nature and gravity of the defamation, which I have already considered above. Indeed, I am supported in this view by the High Court's observations in *LHL v LSH* to the following effect (at [122]):

> The plaintiff also argued that the court should take into account the "natural indignation of the court" in determining the appropriate quantum of damages. Cases such as *Lim Eng Hock Peter* ([85] *supra*) at [7] and *Lee Kuan Yew and another v Tang Liang Hong and others and other actions* [1997] 2 SLR(R) 81 at [86] were cited in support of this proposition. Looking at the cases cited to me, I remain unsure what this factor adds, if anything, to the factors already discussed above. Given potential concerns of double-counting, I declined to place significant weight on this consideration.

58 Thus, while I agree with Mr Singh that "allegations of corruption and/or acting for personal gain against a Cabinet Minister of Singapore would cause any fair-minded person to be outraged",[33] it adds nothing to the list of relevant factors to consider this a second time under a separate (and nebulous) factor when it would already be considered under the nature and gravity of the defamation.

The conduct of the defendant

59 I turn to the conduct of the defendant. Broadly speaking, the court can consider a defendant's conduct of the case when awarding damages, including aggravated damages (see *LHL v SDP* at [72]). A defendant's conduct would aggravate a claimant's damage when it amounts to, among others, "a failure to make any or any sufficient apology and withdrawal, a repetition of the libel; conduct calculated to deter the [claimant] from proceeding, … the general conduct either of the preliminaries or of the trial itself calculated to attract wide

[33] Claimants' Opening Statement dated 24 April 2024 at para 36.

publicity; and persecution of the [claimant] by other means" (see the Court of Appeal decision of *Arul Chandran* at [55], citing *Gatley on Libel and Slander* (9th Ed, 1998) at pp 212–213).

60 In the present case, it is significant that the defendant did not apologise and/or remove the Post despite being given an opportunity to do so. The evidence is that the claimants had written to the defendant via Facebook messenger through their solicitors on 27 July 2023 to give him an opportunity to apologise, to remove the Post and all comments in response and in relation to the Post, and to pay the sum of $25,000 to each claimant by the deadline of 31 July 2023. The claimants' solicitors further stated that if the defendant did so, the claimants would treat the matter as resolved and waive their costs.[34]

61 However, the defendant did not comply by the deadline of 31 July 2023.[35] Instead, as the evidence shows, the defendant accused the claimants of making false claims and of demanding a false apology. In particular, in a Facebook post on 31 July 2023 at 5.25pm, the defendant said the following:[36]

> Ministers Shan and Vivian are demanding that I lie in a public apology. They insist that I make this statement: "I recognise that the Post meant and was understood to mean that Mr K Shamugam [*sic*]/Dr Vivian Balakrishnan acted corruptly and for personal gain by having the Singapore Land Authority give him preferential treatment by felling trees without approval and illegally and having it pay for renovations to 31 Ridout Road."
>
> This is what I said: "Two ministers have leased state-owned mansions from the agency that one of them controls, felling trees and getting state-sponsored renovations."

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34 Mr Shanmugam's AEIC at paras 38–40.

35 Mr Shanmugam's AEIC at para 41.

36 Mr Shanmugam's AEIC at para 26(d) and p 3434.

> Anyone who can read can see that Ministers Shan and Vivian are demanding a false apology, for statements that are just not there. No Singaporean should have to lie to avoid lawsuits.

The privacy setting of this post was set to "public". The evidence also shows that as of 13 August 2023, this post received about 2,500 "reactions", 572 comments, and 208 "shares". Further, a number of Facebook users who "reacted" to, commented on, or "shared" this post said on their Facebook profile pages that they "live in Singapore" and/or are "from Singapore".[37]

62 For completeness, the defendant may argue that a failure to apologise does not always result in higher damages or aggravated damages. In this regard, he may rely on the High Court decision of *M Badiuzzaman and others v Salma Islam and others* [2023] SGHC 311 ("*M Badiuzzaman*") (at [24]), where the court held that aggravated damages were not warranted despite the defendants not apologising. However, this may be explained by the fact that the defendants there did not persecute their allegations against the claimants through other means nor conduct themselves egregiously, but simply ignored the claimants (see *M Badiuzzaman* at [22]).

63 The facts of the present case are quite different. Not only did he not apologise, but the defendant also actually took to Facebook to repeatedly draw attention to and invite people in Singapore to read the Offending Words. For example:

(a) In a Facebook post on 4 September 2023 at 5.28pm, the defendant said the following:[38]

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37 Mr Shanmugam's AEIC at para 26(d) and pp 3436–3438.

38 Mr Shanmugam's AEIC at para 27(a) and p 3440.

> I invited ministers Shanmugam and Balakrishnan to sue me in the UK, where I made the statement that upset them. Instead, they have chosen to commence legal action in Singapore. It is for the public to judge their reasons.

(b) In a Facebook post on 16 September 2023 at 12.43am, the defendant said the following:[39]

> Ministers Shanmugam and V Balakrishnan have just served papers for the alleged defamation on me. The Singapore courts gave permission for them to do so via facebook message.

(c) In a Facebook post on 5 October 2023 at 4.15pm, the defendant said the following:[40]

> ARBITRATION?
>
> I suggested to Ministers K Shanmugam and V Balakrishnan that they should sue me in London courts, since the statement which they took offence to was made in the UK. London has long been a jurisdiction of choice for defamation suits. They have declined to do so, and have instead proceeded to take action in the Singapore Courts and have been given permission to serve papers via Facebook instead of in person.
>
> I have since responded to suggest the following means of resolution: that we mutually agree to an independent arbitration where we each choose an arbitrator of high international standing. The Ministers' nominee could be, if they wish, a retired Singapore Supreme Court judge. The two arbitrators in turn could choose a third individual. The proceedings would be conducted in confidence but the decision would be made public, and be final and binding on all parties.

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39 Mr Shanmugam's AEIC at para 27(b) and p 3446.

40 Mr Shanmugam's AEIC at para 27(c) and p 3452.

The privacy settings of these posts were set to "public", and the evidence suggests that each of them was read by a substantial number of Facebook users who lived in Singapore and/or are from Singapore.[41]

64 While the defendant may argue that he was only stating his position that the meaning of the Offending Words was not as the claimants have contended, it remains that if the Offending Words are (as I have found) defamatory, then he has to bear the legal consequences of posting them and drawing subsequent attention to them. Indeed, the defendant has not responded to the OCs in any manner to put his alternative case forward. As such, the defendant's conduct in drawing attention to the Offending Words would be a factor that points towards the award of higher damages.

Malice

65 Finally, I turn to the factor of malice, which in defamation means "any ill-will, spite or some wrong or improper motive" (see the High Court decision of *Lee Kuan Yew v Davies Derek Gwyn and others* [1989] 2 SLR(R) 544 at [112]). As the High Court held in *LHL v XYC* at [88], malice can be proved in two ways, namely: (a) the defendant's knowledge of falsity, recklessness, or lack of belief in the defamatory statement; and (b) where the defendant has a genuine or an honest belief in the truth of the statement, but his dominant motive is to injure the plaintiff or some other improper motive.

66 Based on the evidence before me, I find that the defendant knew that the Offending Words were false, that he published them recklessly, and/or without considering or caring whether they are true or not. To begin with, the evidence

41 Mr Shanmugam's AEIC at paras 27(a)–27(c).

shows that, at the time of the Post, the Corrupt Practices Investigation Bureau's ("CPIB") investigation found that there was no preferential treatment given to the claimants in relation to the Ridout Road properties. The CPIB's investigation also established that there was no evidence that the claimants had abused their position for personal gain. This is because trees were felled with the National Parks Board's approval, and the works that the SLA had done to 26 and 31 Ridout Road as landlord were to make them safe and habitable in accordance with conservation guidelines. Thus, the works done by the SLA prior to handover were consistent with its general practices and comparable to that done for similar properties.[42]

67 Yet, despite knowing these matters, the defendant did not make any inquiries or try to ascertain the truth of the Offending Words before posting them. He also did not ask the claimants. At the minimum, this shows that the defendant did not take any steps to ascertain or verify the truth of the Offending Words before publishing them. This is sufficient, as the High Court held in *LHL v XYC* at [88], for a finding of malice. Moreover, even if the defendant may claim he genuinely did not know that the Offending Words were not true, he would have been aware by 25 July 2023 of the contents of the Correction Direction. Despite this, he still did not make any inquiries but maintained the Post on the Page until he edited it to remove the Offending Words on 10 November 2023. In any event, the defendant has not given any evidence as to his state of mind in relation to the Post.

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42 Mr Shanmugam's AEIC at para 32.

68 For all these reasons, I find that the defendant acted with malice in posting the Offending Words. This therefore justifies the award of not only higher damages but also aggravated damages.

My decision: the appropriate quantum of damages

69 I come now to the appropriate quantum of damages. To recapitulate, I concluded above that the relevant factors in the present case point to the award of higher damages and aggravated damages.

The precedent cases

70 While Mr Singh does not specify the amount of damages that he thinks is appropriate, I find that reference to precedent involving the defamation of political leaders to be helpful. In this regard, I repeat the High Court's helpful summary of the relevant cases in *Lee Hsien Loong v Ngerng Yi Ling Roy* [2016] 1 SLR 1321 ("*LHL v RN*") (at [114]):

> (a) *Seow Khee Leng* ([27] *supra*) – in 1988, the then-Prime Minister was awarded $250,000 in general and aggravated damages for the defamatory statement set out at [27] above, which was uttered by the then Secretary-General of an opposition party at an election rally. He was found to have been actuated by malice. He had also, by defending himself on wholly unmeritorious grounds, denied the plaintiff vindication for three and a half years. Nevertheless, he had apologised and admitted liability at the trial.
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> (b) *LKY v Davies* ([53] *supra*) – the then-Prime Minister was awarded $230,000 in 1989 for an article published in a reputable international publication that implied he was anti-Catholic Church and had caused or connived at the arrest and detention of other persons as an attack against four priests. The statement was found to have been made maliciously, and the defendant had cross-examined the plaintiff repeatedly on unrelated issues.
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> (c) *Lee Kuan Yew v Jeyaretnam Joshua Benjamin* [1990] 1 SLR(R) 709 – the then-Prime Minister was awarded

> $260,000 in damages for an allegation that he had been implicated in the unlawful taking of a life for a sinister purpose. The defamatory statement, which had been uttered by a leading member of an opposition party at an election rally, was heard by 7,000 people. The defendant was found to have been "up to no good" and had timed the slander. Although the judgment did not expressly state that this sum included aggravated damages, the judge noted that the defendant had failed to correct or apologise for his imputations and had inflicted increased hurt in a subsequent defiant speech which had given the impression that he was reaffirming the original slander. The court also noted that the plaintiff had to pursue the litigation for two years and face the defence of fair comment.
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> (d) *Vinocur John* ([28] *supra*) – in 1995, the then-Prime Minister was awarded $350,000 in general and aggravated damages for the defamatory statement set out at [28] above, which appeared in an international publication with a local circulation of 4,000 copies daily. The allegations were found to have been unprovoked and actuated by malice. The defendants had published another article comprising allegations of a similar nature despite having undertaken not to do so barely a month earlier.
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> (e) *GCT v CSJ* ([31] *supra*) – in 2005, the then-Prime Minister was awarded $300,000 in general and aggravated damages for allegations that he had concealed from Parliament and the public, and/or misled Parliament in relation to, a $17b loan made to Indonesia. The defamatory statements were made by the leader of an opposition party in the presence of members of the public and the news media.
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> (f) *LHL v SDP* ([57] *supra*) – in 2009 the Prime Minister was awarded $330,000, taking into account sums received in settlement from the other defendants, in general and aggravated damages for defamatory articles published in the newspaper of the Singapore Democratic Party which drew comparisons between the PAP-led Government and the National Kidney Foundation. The articles carried the ordinary and natural meanings that the Prime Minister, *inter alia*, was guilty of corruption, nepotism, criminal conduct, and had condoned or permitted corruption in government institutions. 5,000 copies of that edition of the newspaper were sold, while the English version of the defamatory article was published online. The defendants were found to have acted in malice.

In general, as the court noted in *LHL v RN*, the general and aggravated damages that have been awarded to a Prime Minister in these cases have ranged from

$230,000 to $260,000 in the 1980s to sums in excess of $300,000 in the last 20 years. In *LHL v RN* itself, the court awarded general and aggravated damages of $150,000 because of the comparatively low standing of the defendant. More generally, as Mr Singh submits, previous awards in defamation cases involving Cabinet Ministers in Singapore (including the Prime Minister) have ranged from $100,000 to $400,000. Where the defamatory allegations have related to corruption, criminal conduct, and/or abuse of position, the awards have ranged from $133,000 to $400,000.[43]

71 In particular, as Mr Singh submits, I find it useful to refer to the two most recent cases which involved, among other things, defamatory statements posted on Facebook. These two cases are:

(a) *LHL v LSH*, where the High Court awarded the Prime Minister $100,000 and $33,000 in general and aggravated damages, respectively, for defamatory statements that were held to mean that: (i) the claimant had been complicit in criminal activity related to Malaysia's 1Malaysia Development Bhd ("1MDB"); and (ii) the claimant had used his position as Prime Minister to help former Malaysian Prime Minister Mr Najib Razak launder money from 1MDB. The defamatory statements were published in a Facebook post that was available for three days before it was removed; and

(b) *LHL v XYC*, where the High Court awarded the Prime Minister $160,000 and $50,000 in general and aggravated damages, respectively, for defamatory statements that were held to mean that: (i) the claimant had misled his father, Mr Lee Kuan Yew ("LKY"), into thinking that his

[43] Claimants' Submissions on damages and costs dated 2 May 2024 at paras 5–6.

> property had been gazetted by the Singapore Government and that it was futile for LKY to keep his direction to demolish it; (ii) the claimant thereby caused LKY, who had originally wanted to demolish the property, to consider alternatives to demolition, and to change his will to bequeath the property to the claimant; and (iii) after it was revealed to LKY in late 2013 that the property had in fact not been gazetted, he removed the claimant as an executor of his will. The defamatory statements were published both on The Online Citizen's website and in a Facebook post on The Online Citizen's Facebook page.

72 In the present case, I have found several factors that point towards the award of higher general damages and aggravated damages. It is useful to discuss those factors with reference to the facts in *LHL v LSH* and *LHL v XYC* in determining the appropriate quantum of damages in this case.

The nature and gravity of the defamation

73 First, as to the nature and gravity of the defamation, I have found that the defendant's defamatory allegations against the claimants, which go towards their personal integrity, professional reputation, honour, and core attributes of their personalities, are of the gravest kind.

74 Further, the present case is similar to *LHL v LSH* in that both involved defamatory allegations for corruption, criminal conduct, and/or abuse of position. Indeed, the defamatory allegations in the present case are even more serious than those in *LHL v XYC*. This is because, as the High Court held in *LHL v XYC* (at [121]), "[w]hile dishonesty towards one's father is undoubtedly grave and severe, it is not of the scale of the more serious allegations made in the above cases, such as pertaining to corruption and abuse of power, criminal

conduct, being complicit in taking a person's life, nepotism, or misleading the public on public funds".

75 All things being equal, this therefore points to an award that approximates the total of $210,000 awarded in *LHL v XYC*.

The position and standing of the claimants and the defendant

76 Second, as to the position and standing of the claimants and the defendant, I have found that the position and standing of the claimants, being Cabinet Ministers and Members of Parliament, and of the defendant, being a well-known person in Singapore, point towards the award of higher damages.

77 The claimants' standing in the present case is similar to both *LHL v LSH* and *LHL v XYC*, where the claimant was the Prime Minister. However, as Mr Singh alludes to in his submissions, this connotes slightly lower damages since the standing of a Cabinet Minister, while high, is not equivalent to that of the Prime Minister.[44]

78 I find that the defendant here is as, or slightly more well-known, than the defendant in either *LHL v LSH* or *LHL v XYC*. Indeed, in *LHL v LSH*, the High Court held (at [125]) that the defendant's standing there was "roughly comparable" to the defendant's standing in *LHL v RN*. This was because "both were socio-political commentators who did not hold any formal positions of public office, and both had some modicum of following on their websites and online pages". The defendant's relatively modest standing in *LHL v RN* proved significant in that it persuaded the High Court to award a comparatively lower

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[44] Claimants' Submissions on damages and costs dated 2 May 2024 at para 11, as well as the Claimants' Further Written Submissions dated 9 May 2024 at para 34.

amount of damages. In that case, the court observed (at [42] and [116]) that "none of the awards given to a Prime Minister involves a defendant of modest standing such as the defendant in the present case", whom the court regarded as "merely an ordinary citizen writing on his personal blog". Similarly, in *LHL v XYC*, the court observed (at [122]) that unlike defendants with a political platform such as "the Secretary-General of the WP and SDP" or "related to reputable or influential international publications", there was no evidence that the defendant's platform of The Online Citizen was as reputable or influential. In the present case, the claimants do not rely on any evidence that the defendant has any political platform. Nor do the claimants allege that the defendant has any other connection that would make him more well-known. Instead, the claimants primarily rely on the defendant's presence on social media in arguing that he is well-known.[45] As such, based on the evidence before me, I conclude that the defendant is as, or slightly more well-known, than the defendant in either *LHL v LSH* or *LHL v XYC*.

79 All things being equal, and taking into account the claimants' standing as compared to the Prime Minister's standing in *LHL v LSH* and *LHL v XYC*, this would point towards an award that approximates or is lower than the total of $210,000 awarded in *LHL v XYC*.

The mode and extent of publication and republication

80 Third, as to the mode and extent of publication and republication, I have found that the Offending Words have been published and republished to a

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45 Claimants' Opening Statement dated 24 April 2024 at para 17; Mr Shanmugam's AEIC at para 8; Dr Balakrishnan's AEIC at para 8.

substantial extent within Singapore. This would, in and of itself, point towards the award of higher damages.

81 Further, the publication and republication in this case are more extensive than that in *LHL v LSH*, which also involved a Facebook post. In that case, the defamatory Facebook post was available for less than three days. It attracted only 22 "reactions", five comments, and 18 "shares". The defendant's Facebook page in that case had 5,000 friends and 149 followers. The High Court found that the extent of publication of the post would have been at most about 400 persons in Singapore (see *LHL v LSH* at [6]–[8], [46], and [105]). Moreover, the defamatory material there was in the form of a hyperlink to an article on a third-party webpage that the defendant had "shared" in the Facebook post concerned. This meant that only the first few words were visible on the post itself and a reader would have to click on the hyperlink to access the rest of the article (see *LHL v LSH* at [27]–[29] and [33]).

82 Indeed, the evidence shows that the publication and republication in this case is more extensive than that in *LHL v LSH*. To begin with, the Offending Words were available on the Post for 3.5 months. Even after the defendant removed the Offending Words on 10 November 2023, they continue to be available on third-party websites that republished them. Next, the Post which contained the Offending Words also attracted substantially more "reactions", comments, and "shares". This was in the context of the Page having many more friends and followers than the Facebook page in *LHL v LSH*. Finally, the Offending Words were wholly contained in the Post itself and a reader would not need to click on a hyperlink to access a separate article.

83 However, the publication and republication in this case is less extensive than that in *LHL v XYC*. In that case, the defamatory article was published on The Online Citizen website and a Facebook page. The evidence there was that the Facebook page had over 121,000 followers and 117,000 "likes" in total, that the post on the Facebook page had "a few hundred comments", and that the article on The Online Citizen website had 114,263 views (although this may not have accounted for repeated views) (see *LHL v XYC* at [71] and [82]).

84 All things being equal, the comparison above would point towards an award that exceeds the total of $133,000 awarded in *LHL v LSH*. This is because the extent of the publication and republication of the Offending Words, taking into account the reach of the Page and the time the Offending Words were published, was comparatively more extensive than in *LHL v LSH*. While the extent of the publication and republication of the Offending Words is less extensive here than it was in *LHL v XYC*, the defendant here did, as I outlined above (at [63]), take to Facebook to repeatedly draw attention to the Post that contained the Offending Words. This would objectively have increased the extent of the publication and republication of the Offending Words. As such, while this factor *alone* would mean that damages here should not exceed the $210,000 awarded in *LHL v XYC*, the quantum should approximate that amount.

The defendant's conduct and malice

85 Fourth, as to the defendant's conduct and malice, I have found that the defendant's conduct, such as his failure to apologise and in drawing attention to the Offending Words, as well as his acting with malice, would lead to the award of higher damages.

86 I find that the defendant's conduct and malice here is worse than that of the defendant in *LHL v LSH*. In that case, the High Court awarded $33,000 in aggravated damages because: (a) the court placed "some limited weight" to the defendant's failure to apologise; and (b) the defendant had drawn attention to the libels by his conduct after removing the defamatory materials (see *LHL v LSH* at [110(a)] and [114]). However, the court also held that the defendant's conduct there should not attract a "markedly increased" award of damages because the defamatory material had been removed after being available only for a few days. Also, the defendant's conduct in drawing attention to the defamatory material had been done "in the midst of explaining his position" (see *LHL v LSH* at [115]–[116]). In contrast to the facts of *LHL v LSH*, the Offending Words were available on Facebook for 3.5 months. Further, unlike in *LHL v LSH* where the defendant was explaining his position in his further posts, the defendant here drew further attention to the Offending Words despite being reasonably aware that they were false. At the very least, as I found above (see [67]), the defendant did not make any inquiries as to the truth of the Offending Words despite being served with a Correction Direction.

87 Instead, the defendant's conduct and malice here is more similar to that of the defendant in *LHL v XYC*, where the High Court awarded $50,000 in aggravated damages. The court found that the defendant there had used social media and news platforms to put forth his assertions against the claimant. He also continued to make allegations against the claimant in his Opening Statement and on the stand. The court also found that the defendant there had acted recklessly, with indifference to the truth, and with ill will towards the injury (see *LHL v XYC* at [91]–[99] and [106]–[115]). Similarly, in the present case, the defendant took to social media with the Offending Words and repeatedly drew attention to them with subsequent posts. However, unlike

LHL v XYC, because the defendant chose not to respond to the OCs, he did not make any further allegations in either his Opening Statement or on the stand.

88 All things being equal, the comparison above would point towards an award that approximates the total of $210,000 awarded in *LHL v XYC*, and specifically the aggravated damages of $50,000 awarded there.

The appropriate quantum of damages

89 As such, accounting for the various factors, and with especial consideration of the awards in *LHL v LSH* and *LHL v XYC*, which Mr Singh primarily relies on, I conclude that the total quantum of damages for each claimant should exceed $133,000 and approximate $210,000. In my judgment, this accounts for the particular facts here, including: (a) the serious and grave nature of the defamation; (b) the respective standings of the claimants and the defendant; (c) the extent of publication and republication; and (d) the defendant's conduct and malice. However, in contrast to *LHL v XYC*, I also consider that the extent of publication and republication in the present case is not as great as in that case. I therefore award $200,000 in general and aggravated damages to each claimant (comprising $150,000 in general damages and $50,000 in aggravated damages). On balance, it is appropriate that the quantum of damages awarded in the each of the OCs exceeds the $133,000 awarded in *LHL v LSH* but is slightly lower than the $210,000 awarded in *LHL v XYC*.

Conclusion

90 For all the reasons above, I award $200,000 in general and aggravated damages ($150,000 being general damages and $50,000 being aggravated damages) to each of the claimants in OC 496 and OC 497, respectively.

91 Finally, having considered the claimants' submissions on costs, I award costs of $51,000 plus disbursements (as set out in the claimants' respective cost schedules) to each of the claimants in OC 496 and OC 497, respectively.

92 In this regard, I accept the claimants' submission that the court should assess costs on the High Court scale. The starting point is that, pursuant to s 39(1)(*a*) of the State Courts Act 1970 (2020 Rev Ed) (the "SCA"), if a party commences an action in the High Court that could have been commenced in the State Courts, and the party recovers a sum not exceeding the District Court limit, the party is not entitled to any more costs of the action than those to which they would have been entitled if the action had been brought in the District Court. However, s 39(4)(*a*) of the SCA allows the court to depart from this and make a costs order on the High Court scale if there was "sufficient reason for bringing the action in … the High Court". I am satisfied that there was sufficient reason for the claimants to have brought the OCs in the High Court. Among other reasons, there was a reasonable basis to take the view that these OCs would raise an important question of law concerning the court's power to grant injunctive relief in an application for judgment in default of a Notice of Intention under the Rules of Court 2021. This is because the defendant had indicated that he may not participate in these proceedings by filing a Notice of Intention. Indeed, I had addressed this very issue in *Shanmugam* (see generally at [3]).

Goh Yihan
Judge of the High Court

Davinder Singh s/o Amar Singh SC, Fong Cheng Yee David,
Wong Zi Qiang Bryan and Sambhavi Rajangam
(Davinder Singh Chambers LLC) for the claimants;
The defendant absent and unrepresented.
