

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

[2023] SGHC 200

Originating Application No 572 of 2023

Between

Xu Yuan Chen @ Terry Xu

... Appellant

And

Attorney-General

... Respondent

GROUND OF DECISION

[Statutory Interpretation — Construction of statute — Protection from Online
Falsehoods and Manipulation Act 2019 (2020 Rev Ed)]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND FACTS	1
THE MAY 2021 INCIDENT.....	1
THE ONLINE CITIZEN’S POSTS	4
THE APPELLANT’S POSTS.....	5
RESPONDENT’S APPLICATION FOR SECURITY FOR COSTS.....	7
THE LAW RELATING TO APPEALS UNDER S 17 OF THE POFMA	8
THE PARTIES’ CASES AND THE ISSUES.....	10
WHETHER AN ADVERSE INFERENCE SHOULD BE DRAWN AGAINST THE RESPONDENT.....	12
SUBJECT STATEMENT 1.....	13
SUBJECT STATEMENT 2.....	17
SUBJECT STATEMENT 3.....	18
SUBJECT STATEMENT 4.....	21
BURDEN OF PROOF	22
CONCLUSION.....	22

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Xu Yuan Chen (alias Terry Xu)

v

Attorney-General

[2023] SGHC 200

General Division of the High Court — Originating Application No 572 of 2023

Chua Lee Ming J

13 July 2023

26 July 2023

Chua Lee Ming J:

Introduction

1 The appellant, Mr Xu Yuan Chen @ Terry Xu, filed this appeal against a Correction Direction that was issued against him under the Protection from Online Falsehoods and Manipulation Act 2019 (2020 Rev Ed) (the “POFMA”). The Correction Direction was issued in connection with a Facebook post posted by the appellant in April 2023 about an incident that happened in 2021.

Background facts

The May 2021 incident

2 On 17 May 2021, the police received the following first information report:

Old Chinese lady looked lost and homeless here. She also not wearing mask.

The location of the incident was given as Block 743, Yishun Avenue 5, Singapore (the “Incident Location”). The report was broadcast over the police radio.

3 Sergeant Isaac Pang (“Sgt Isaac”) and Sergeant Irfan Moktar (“Sgt Irfan”), from the Yishun South Neighbourhood Police Centre, were the first police officers to arrive at the Incident Location. They found the elderly woman sitting on the floor beside a lift lobby. Sgt Isaac asked her if she was okay, and why she was there. She replied that her legs were painful. Sgt Irfan asked her where she stayed. The elderly woman was unable to tell the police officers where she stayed and instead repeated that her legs were in pain.

4 Subsequently, Sgt Isaac told the elderly woman that she was required to wear a mask, which was mandatory under the then-prevailing COVID-19 regulations. A passer-by intervened and said that it may be dangerous for elderly persons to wear a mask as they may have difficulty breathing, after which Sgt Irfan and Sgt Isaac stopped asking her to wear a mask.

5 Sgt Irfan and Sgt Isaac observed from a distance that the elderly woman was moving around aimlessly within the vicinity of the Incident Location for about 30 minutes, after which Sgt Irfan and Sgt Isaac approached her. Sgt Isaac again asked her where she stayed. Again, the elderly woman was unable to say where she stayed.

6 Station Inspector Jeff Lim (“SI Jeff”) arrived shortly after, together with Assistant Superintendent of Police Magdalene Lee (“ASP Magdalene”). Sgt Isaac informed them that Sgt Irfan and he had asked a few members of the public

but although some of them recognised the elderly woman, they did not know where she stayed.

7 SI Jeff then asked the elderly woman where she stayed but she was unable to tell him where she stayed. A member of the public recognised the elderly woman and approached the police officers. ASP Magdalene explained that they were responding to a report that the elderly woman was lost or looked like she was lost and that they wanted to know where she stayed. The member of the public was able to provide ASP Magdalene and SI Jeff with the block number and the floor level (but not the unit number) of the elderly woman's residence (the "Partial Address Location").

8 SI Jeff also told the elderly woman that she should wear a mask or else she may be fined \$300. Another member of the public stepped forward and offered the elderly woman a mask. The elderly woman agreed to put on the mask, and SI Jeff helped her to put on the mask.

9 After that, SI Jeff offered to bring the elderly woman to the Partial Address Location but the elderly woman refused, claiming that she knew how to go home.

10 ASP Magdalene and SI Jeff decided to contact the elderly woman's next of kin. ASP Magdalene asked Sgt Isaac and Sgt Irfan to go the Partial Address Location to search for the elderly woman's residence and see if there was anyone at home who could render assistance. Sgt Isaac and Sgt Irfan went to the Partial Address Location with a photo of the elderly woman and managed to find her residence with the help of the elderly woman's neighbours who recognised the elderly woman from the photo. The elderly woman's domestic helper was at home, and they brought her to the Incident Location.

11 The police officers entrusted the elderly woman to the care of her helper. Nonetheless, ASP Magdalene suggested trying to contact the elderly woman’s next-of-kin. At SI Jeff’s request, the helper called the elderly woman’s daughter-in-law (the “daughter-in-law”) and SI Jeff spoke to her. SI Jeff informed the daughter-in-law that the elderly woman had been “wandering around” without wearing a mask and that although they wanted to bring her home, she did not want to go home. The daughter-in-law told SI Jeff that the elderly woman was suffering from dementia and that whenever police officers found her loitering around, they would bring her home. SI Jeff informed the daughter-in-law where the elderly woman was and that her helper was with her.

The Online Citizen’s posts

12 On 18 May 2021, The Online Citizen (“TOC”) posted Instagram stories of the incident, criticising the police. The material portions of the stories stated as follows:

Do we really need 4 policemen to cluster an elderly auntie that took off her mask because she was feeling breathless?!?

Poor auntie already put back on her mask, but they continued to tell her off to the extent someone had to come and salvage the situation.

Please @singaporepoliceforce there are people not wearing a mask and asking why people no badge, go and spend your time and make yourself more useful! Not taunt an old cardboard collection auntie!

Instead of helping each other get through this, you taunt others with your authority?!?!?

13 TOC also posted videos of the Instagram stories on its Facebook, YouTube and Instagram pages. On 19 May 2021, the Singapore Police Force issued a press statement taking issue with TOC’s Instagram stories. TOC then amended its posts to refer to the press statement. On 21 May 2021, a Correction

Direction was issued against TOC. The Correction Direction stated that TOC's posts contained the following subject statement which was false:

The Police reprimanded and taunted the elderly woman, shown in the Instagram story by Instagram user [the original poster] on 18 May 2021, for not wearing a mask.

The Correction Direction stipulated the posting of a correction notice on TOC's Facebook page, stating (among other things) that the allegation that the police reprimanded and taunted an elderly woman for not wearing a mask was false.

14 TOC complied with the Correction Direction but applied to the Minster to cancel the Correction Direction. The application was rejected, and TOC filed an appeal to the High Court in Originating Summons No 563 of 2021 ("OS 563").

15 In OS 563, the court found that the subject statement was false and dismissed TOC's appeal: *The Online Citizen Pte Ltd v Attorney-General* [2022] SGHC 177.

The appellant's posts

16 TOC has since been renamed as The Online Citizen Asia. The appellant is its Chief Editor.

17 On 30 April 2023, the appellant published another post relating to the same incident on his Facebook. The relevant parts of the post stated as follows:

The facts of the case are:

1. The Police did not assist an old lady who was lost. They knew she knew where her house was but wanted to send her back home nevertheless.
2. The reason for the police to approach her was because she was not wearing a facemask, as evidenced by the constant

reminder from the police officers that she would be fined \$300 if she didn't wear a mask.

[...]

4. [...] the officer told the old lady's daughter or in-law that the old lady was lost. This resulted in the woman filing a police report on the issue. It can be argued that the police officer lied about the old lady being lost as the old lady told the officers on many occasions, not just in footage, that she knew where she stayed and wanted to go home herself later.

18 On 7 May 2023, a Correction Direction was issued to the appellant pursuant to s 11 of the POFMA (the "7 May 2023 Correction Direction"). The 7 May 2023 Correction Direction stated that the appellant's Facebook post contained the following false statements of fact (the "Subject Statements"):

1. The Police knew that the elderly woman was not lost but wanted to send her home nevertheless.
2. The main reason that the police officers approached the elderly woman was that she was not wearing a facemask.
3. The police officer lied and misrepresented to the elderly woman's daughter or daughter-in-law that the elderly woman was lost, despite knowing that this was untrue.
4. The elderly woman's daughter or daughter-in-law filed a police report on the issue as the police officer had misrepresented to her that the elderly woman was lost.

19 The text from which the Subject Statements were derived from were the statements in the appellant's Facebook post set out in [17] above (the "Subject Material"). The 7 May 2023 Correction Direction required the appellant to insert a correction notice at the top of his Facebook post, stating (among other things) that the Facebook post contained false statements of fact and that the police did not misrepresent the facts of the incident.

20 The appellant's application to the Minister to cancel the 7 May 2023 Correction Direction was rejected. On 5 June 2023, the appellant filed the present appeal pursuant to s 17(1) of the POFMA.

Respondent’s application for security for costs

21 On 26 June 2023, the respondent filed an application pursuant to O 9 r 12(1) of the Rules of Court 2021 for the appellant to provide security for costs of these proceedings on the ground that the appellant was ordinarily resident out of the jurisdiction. It was not disputed that the appellant was ordinarily resident in Taiwan.

22 However, I also had to consider whether it would be just in the circumstances to exercise my discretion to order security (*Cova Group Holdings v Advanced Submarine Networks Pte Ltd and another* [2023] SGHC 178 at [13]–[16]). A key factor in this case was whether there was a reasonable prospect of success in obtaining a costs order against the appellant.

23 Rule 15 of the Supreme Court of Judicature (Protection from Online Falsehoods and Manipulation) Rules 2019 (the “POFMA Rules”) states as follows:

Costs

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.

24 The respondent, relying on r 15(2)(b), submitted that the appeal did not have any reasonable prospect of success and that by bringing this appeal, the appellant’s conduct of the appeal was done in an extravagant and unnecessary manner. The respondent argued that therefore there was a reasonable prospect

of obtaining a costs order against the appellant under r 15(2)(b) of the POFMA Rules.

25 I disagreed with the respondent and dismissed the application for security for costs. In my view, the mere fact that the appellant’s appeal did not have any reasonable prospect of success (assuming this to be the case) could not form the basis for a costs order under r 15(2)(b) of the POFMA Rules. That rule referred to the manner in which the appeal was conducted. The bringing of an appeal that did not have any reasonable prospect of success (assuming this to be the case) did not fall within the meaning of the phrase “the conduct of the appeal”.

The law relating to appeals under s 17 of the POFMA

26 Under s 10 of the POFMA, the Minister may instruct the Competent Authority to issue a “Part 3 Direction” if (a) a false statement of fact (the “subject statement”) has been or is being communicated in Singapore, and (b) the Minister is of the opinion that it is in the public interest to do so. A Part 3 Direction refers to a Correction Direction issued under s 11 or a Stop Communication Direction issued under s 12: s 2 of the POFMA.

27 A recipient of a Part 3 Direction may appeal to the General Division of the High Court against the Direction if he has applied to the Minister under s 19 of the POFMA to vary or cancel the Direction and the application has been refused whether in whole or in part: s 17(1) and (2) of the POFMA.

28 Section 17(5) of the POFMA provides as follows:

(5) The General Division of 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.

29 The legal principles applicable to an appeal under s 17 of the POFMA were settled by the Court of Appeal in another case involving TOC, *The Online Citizen Pte Ltd v Attorney-General and another appeal and other matters* [2021] 2 SLR 1358 (“*TOC (CA)*”). The Court of Appeal set out a five-step analytical framework to be applied in determining whether a Part 3 Direction can be set aside under s 17(5)(a) or (b) of the POFMA (at [163]):

- (a) Firstly, the court should determine the Minister’s intended meaning in respect of the subject statement identified in the Part 3 Direction.
- (b) Secondly, the court should determine whether the subject material in fact makes or contains the subject statement or statements identified by in the Part 3 Direction. If the subject material does not make or contain the subject statement identified in the Part 3 Direction, the Direction could be set aside under s 17(5)(a) of the POFMA.
- (c) Thirdly, the court should determine on an objective approach whether the identified subject statement is a “statement of fact” as defined in s 2(2)(a) of the POFMA. If it is not, the Part 3 Direction may be set aside under s 17(5)(b) of the POFMA.
- (d) Fourthly, the court should determine on an objective approach whether the identified subject statement is “false” in the sense explained

in s 2(2)(b) of the POFMA. If it is not, the Part 3 Direction may be set aside under s 17(5)(b) of the POFMA.

(e) Fifthly, the court should consider whether the identified subject statement “has been or is being communicated in Singapore”, in the sense explained in s 3 of the POFMA. If the element of communication of the subject statement is not satisfied, the Part 3 Direction may be set aside under s 17(5)(a) of the POFMA.

30 The Court of Appeal also held (at [183]–[184]) that the burden of proof in applications to set aside Part 3 Directions under s 17(5)(a) and/or (b) of the POFMA lies from the outset on the recipient of the Direction being challenged. The recipient has to show a *prima facie* case of reasonable suspicion that one or more of the grounds for setting aside the Direction under s 17(5) is satisfied by putting forward some material which might, on further consideration, turn out to be an arguable case in favour of setting aside. If the recipient cannot establish this, its application would fail at the threshold. Conversely, if this threshold is crossed, the evidential burden would then shift to the Minister to show that none of the grounds relied on for setting aside are made out. The final determination would be made by the court based on the totality of the evidence, applying the standard of proof on the balance of probabilities (see *TOC (CA)* at [180]–[184]).

The parties’ cases and the issues

31 There was no dispute as to the Minister’s intended meaning in respect of each of the Subject Statements. The intended meaning in respect of each of the Subject Statements was plain and unambiguous.

32 It was also clear (and not disputed by the appellant) that the Subject Material did make or contain Subject Statements 1, 2 and 4. The 7 May 2023 Correction Direction set out part of the Subject Material as follows:

4. [...] the officer told the old lady’s daughter or in-law that the old lady was lost. This misrepresentation resulted in the woman filing a police report on the issue. It can be argued that the police officer lied about the old lady being lost as the old lady told the officers on many occasions, not just in footage, that she knew where she stayed and wanted to go home herself later.

This was inaccurate because the word “misrepresentation” in the second sentence was not found in the appellant’s Facebook post (see [17] above). However, this was immaterial and no issue was taken over it. It was unarguable that the Subject Material as set out in the appellant’s Facebook post did make or contain Subject Statements 1, 2 and 4.

33 The appellant did not expressly take issue with whether the Subject Material made or contained Subject Statement 3. However, as will be seen later, the substance of one of the appellant’s submissions raised this issue.

34 Finally, it was common ground that the element of communication was satisfied (see [29(e)] above), and that Subject Statements 1, 2 and 4 were statements of fact.

35 The appellant’s grounds in this appeal were that:

- (a) Subject Statements 1, 2 and 4 were true; and
- (b) Subject Statement 3 was not a statement of fact and that, in any event, it was true.

As alluded to earlier, the substance of the appellant’s submission that Statement 3 was not a statement of fact was that the Subject Material did not make or contain Subject Statement 3.

36 The appellant also submitted that the court should draw an adverse inference against the respondent because relevant footage of the body-worn camera (“BWC”) recordings had not been produced.

37 The respondent’s case was that Subject Statement 3 was a statement of fact, the Subject Material did make or contain Subject Statement 3 and that each of the Subject Statements was false. The respondent also submitted that no adverse inference should be drawn because all BWC recordings of the police officers’ conversations with the elderly woman had been produced.

38 The issues before me were therefore as follows:

- (a) Whether an adverse inference should be drawn against the respondent?
- (b) Whether Subject Statements 1, 2 and 4 were true or false?
- (c) Whether the Subject Material made or contained Subject Statement 3?
- (d) Whether Subject Statement 3 was a statement of fact, and if so, whether it was true or false?

Whether an adverse inference should be drawn against the respondent

39 All of the BWC recordings of the police officers’ conversations with the elderly woman had been produced. The appellant argued that the respondent

should have also produced the recordings of the police officers' interactions with passers-by. In his submissions, the appellant "suggest[ed] that the missing footages might show that the passerby (*sic*) were trying to tell the officers that the elderly woman was not lost or that she was not a person that the officers had to be concerned with".

40 I agreed with the respondent that there was no reason for me to draw any adverse inference against the respondent. An adverse inference cannot be drawn simply because one party takes the view that there is a particular piece of evidence that could have been adduced but was not. There must be a substratum of evidence that justifies the drawing of an adverse inference: *Wong Shu Kiat and another v Chen Jinping Michelle and another* [2023] SGHC 105 at [48]–[49]; *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 at [62]. The appellant was unable to show this. His suggestion as to what the BWC recordings of the police officers' conversations with the passers-by might show was sheer speculation.

Subject Statement 1

41 Subject Statement 1 was as follows:

The Police knew that the elderly woman was not lost but wanted to send her home nevertheless.

42 In my judgment, the evidence overwhelmingly proved that the four police officers believed that the elderly woman was lost.

43 First, the four police officers were responding to the first information report (broadcast over the police radio) that an old Chinese lady looked lost and homeless. Although the report also stated that the elderly lady was not wearing a mask, that did not detract from the report that she looked lost and homeless.

When approached by a member of the public, ASP Magdalene also explained that they were responding to a report that the elderly woman was lost or looked like she was lost and that they wanted to know where she stayed.

44 Second, the actions taken by the police officers showed that they believed that the elderly woman was lost.

(a) Sgt Isaac and Sgt Irfan were the first police officers to arrive at the Incident Location. Sgt Irfan asked the elderly woman where she stayed. The elderly woman was unable to tell the officers where she stayed. Instead, she merely said that her legs felt painful. After observing the elderly woman moving around aimlessly for about 30 minutes, Sgt Isaac and Sgt Irfan approached her again and Sgt Isaac asked her where she stayed; she replied, “I don’t know how”. Sgt Isaac also observed that the elderly woman was not speaking in a coherent manner and that she was not replying directly to his questions. Sgt Isaac formed the impression that the elderly woman may be suffering from dementia. Based on his experience from having interacted with multiple dementia patients, Sgt Isaac knew that persons with dementia may forget where they stay.

(b) After SI Jeff and ASP Magdalene arrived at the Incident Location, Sgt Isaac informed them that Sgt Irfan and he had asked a few members of the public but although some of them recognised the elderly woman, they did not know where she stayed.

(c) SI Jeff then asked the elderly woman where she stayed but she was unable to tell him. A member of the public recognised the elderly woman and gave ASP Magdalene and SI Jeff the Partial Address

Location (which included the block number and floor level of the elderly woman's residence but not the unit number).

(d) SI Jeff offered to bring the elderly woman home to the Partial Address Location but she refused. ASP Magdalene and SI Jeff then decided that they should contact the elderly woman's next-of-kin. On ASP Magdalene's instructions, Sgt Isaac and Sgt Irfan went to the Partial Address Location with a photo of the elderly woman to search for her residence. They found the elderly woman's residence with the help of her neighbours who recognised her from the photo. The elderly woman's domestic helper was at home, and Sgt Isaac and Sgt Irfan brought her to the Incident Location.

(e) Despite having entrusted the elderly woman to the care of her helper, ASP Magdalene suggested trying to contact the elderly woman's next-of-kin. The helper called the daughter-in-law and SI Jeff spoke to her and told her that the elderly woman had been "wandering around" without wearing a mask and that although they wanted to bring her home, she did not want to go home. SI Jeff also told the daughter-in-law where the elderly woman was and that her helper was with her.

45 Third, the event log of the incident (maintained by the police) recorded that the police officers "tried to converse with [the elderly woman] but could not get a proper answer" and that she "also did not seem to be carrying any form of identification on her". This was consistent with the police officer's attempts to find out where the elderly woman lived.

46 The appellant submitted that the police officers knew that the elderly lady was not lost. He alleged that the BWC recordings showed that the elderly

woman had constantly pointed to the direction where she stayed. However, the appellant made the allegation without bothering to check whether the elderly woman was pointing in the correct direction of her residence. Sgt Isaac gave evidence that the directions to which the elderly woman had pointed were in fact *not* in the direction of her residence.

47 Next, the appellant submitted that many passers-by had informed the police officers that the elderly woman was often seen around the area and that she stayed in the area. However, this did not mean that the police officers did not believe that she was lost. The police officers had asked the elderly woman several times, but she was unable to tell them where she stayed.

48 The appellant also relied on the audio recording of a statement made by Sgt Isaac in which he said “Not lost lar ... She just doing her own thing, that’s all”. Sgt Isaac explained that this statement was made after Sgt Irfan and he had brought the elderly woman’s helper to the Incident Location and the team was intending to hand the elderly woman over to her domestic helper. The helper had also informed Sgt Isaac that the elderly woman often went for walks. Sgt Isaac explained that it was in this context that he had made the offhand comment that the elderly woman was not lost. Sgt Isaac confirmed that even at that juncture, he did not know that the elderly woman was not lost. In my view, given the context of Sgt Isaac’s statement, the evidence that the police officers believed that the elderly woman was lost (see [43]–[45] above) far outweighed the significance of his statement. Even Sgt Isaac’s own actions were consistent with his belief that the elderly woman was lost.

49 Accordingly, I found that Subject Statement 1 was false. As the police officers believed that the elderly woman was lost, the statement that they knew that she was not lost had to be false.

Subject Statement 2

50 Subject Statement 2 was as follows:

The main reason that the police officers approached the elderly woman was that she was not wearing a facemask.

51 In my view, Subject Statement 2 was also false. First, the police officers were responding to the first information report. It was clear that the main reason for the first information report was that the elderly woman “looked lost and homeless” (see [2] above). The report that she was “also not wearing a mask” was a secondary matter.

52 Second, the police officers’ actions showed that the main reason that they approached the elderly woman was their belief that she was lost; their concern that she was not wearing a mask was secondary.

(a) See the police officers’ actions, discussed in [44] above.

(b) Sgt Isaac informed the elderly woman that she was required to wear a mask. However, after a passer-by intervened and said that it may be dangerous for elderly persons to wear masks as they may have difficulty breathing, Sgt Irfan and Sgt Isaac stopped asking her to wear a mask. Instead, they observed the elderly woman moving around aimlessly for about 30 minutes after which Sgt Irfan and Sgt Isaac approached her again and Sgt Isaac asked her where she stayed. If the main reason for approaching the elderly woman was the fact that she was not wearing a mask, surely, Sgt Isaac and Sgt Irfan would have continued to focus on asking the elderly woman to wear a mask, instead of focusing on asking her where she stayed.

(c) The police officers continued to interact with the elderly woman home even *after* she had put on a mask. In fact, Sgt Jeff continued to offer to send her home even after she had put on a mask. This was clear evidence that the issue relating to the mask was secondary.

53 The appellant submitted that the constant reminders from the police officers to the elderly woman to wear a mask showed that this was the main reason why they approached the elderly woman. In my view, these reminders had to be seen in context. The police officers were duty bound to remind her to wear a mask. These reminders did not detract from the evidence that clearly showed that the main reason why the police officers approached the elderly woman was their belief that she was lost.

Subject Statement 3

54 Subject Statement 3 was as follows:

The police officer lied and misrepresented to the elderly woman's daughter or daughter-in-law that the elderly woman was lost, despite knowing that this was untrue.

55 The appellant submitted that Subject Statement 3 was not a statement of fact but one of opinion. The appellant's submission was based on the fact that in the corresponding Subject Material (see [17] above), the appellant had said that "[i]t *can be argued* that the police officer lied about the old lady being lost ..." [emphasis added]. I disagreed with the appellant.

56 A "statement of fact" is defined in s 2(2) of the POFMA as "a statement which a *reasonable* person seeing, hearing or otherwise perceiving it would consider to be a representation of fact". An objective approach is to be taken in ascertaining whether the subject statement is a "statement of fact": *TOC (CA)* at [158].

57 I agreed with the respondent that Subject Statement 3 was clearly expressed as a statement of fact. A reasonable person reading it would consider it to be a representation of fact. There was nothing in Subject Statement 3 that suggested otherwise.

58 As stated earlier, the appellant relied on the words “[i]t can be argued” that were used in the Subject Material. In substance, the appellant’s submission was that the Subject Material (rather than Subject Statement 3) expressed an opinion that the police officers had lied about the elderly woman being lost. I agreed with the respondent that this was an issue that the appellant should have addressed under step two of the *TOC (CA)* analytical framework (see [29(b)] above). In other words, the substance of the appellant’s submission was not whether Subject Statement 3 was a statement of fact, but whether the Subject Material made or contained Subject Statement 3.

59 In *TOC (CA)*, the Court of Appeal explained the approach to take in determining whether the subject material makes or contains the subject statement as follows (at [156]–[157]):

156 Bearing in mind the principles set out above, we consider that in determining whether the subject material makes or contains the subject statement identified by the Minister in the Part 3 Direction in question, the court should interpret the subject material objectively in its proper context and ask *whether, on that approach to the subject material regardless of the subjective intention of the statement-maker (including the statement-maker’s subjective intended meaning), 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* (see [136] above). This, we think, strikes a reasonable balance between the need to give effect to the legislative intention underlying the POFMA (namely, the prevention of the communication of online falsehoods among the general public in Singapore and the

counteracting of the deleterious effects of such communication) on the one hand, and the need to ensure that statements which will only be construed in the false sense by an insignificant segment of the public or class of persons are not culled from the public discourse on the other.

157 We stress that *the interpretation of the subject material should be approached as a matter of impression*; that is to say, in ascertaining the interpretation that would be put upon the subject material by at least an appreciable segment or a particular class of its potential readership or audience in Singapore (which may, as indicated at [149]–[150] above, consist of persons who might be inherently more inclined to believe certain falsehoods, depending on their content), the court should not engage in fine-grained legal interpretation or unduly technical analysis (see [136] above). The court should also be alive to the likelihood of an appreciable segment or a particular class of the potential readership or audience of the subject material in Singapore taking the particular part of the subject material that is said to be or to give rise to the subject statement 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 (see [108] above). At the same time, the court should not be content to accept what, in truth, are nothing more than theoretically possible interpretations of the subject material.

[emphasis added]

60 I agreed with the respondent that read in context, the Subject Material did make or contain Subject Statement 3. Applying the approach laid down in *TOC (CA)*, it was clear that at least an appreciable segment of the potential readership of the appellant’s post would construe it as making or containing Subject Statement 3, or regard Subject Statement 3 as a reasonable interpretation of the subject material. The Subject Material stated that the police officer told the daughter-in-law “that the old lady was lost.” However, the Subject Material also asserted unequivocally that the police officers knew that the elderly woman knew where she lived. It followed that it was a reasonable interpretation of the Subject Material that the police officer had lied or

misrepresented to the daughter-in-law when he told her that the elderly woman was lost.

61 The next question was whether Subject Statement 3 was true or false. Given my finding that the four police officers believed that the elderly woman was lost, Subject Statement 3 was clearly false.

Subject Statement 4

62 Subject Statement 4 was as follows:

The elderly woman's daughter or daughter-in-law filed a police report on the issue as the police officer had misrepresented to her that the elderly woman was lost.

63 The respondent submitted that the "police officer" referred to SI Jeff since he was the officer who spoke to the daughter-in-law on the day in question. The appellant did not dispute this.

64 It was undeniably clear that Subject Statement 4 was false. In her police report, the daughter-in-law had said:

On the 19 May 2021, about 3:21PM, I saw the first article released by The Online Citizen ... I was unhappy with the article as Officer Jeff had explained the situation to me politely and the facts released in the article were not true. ...

... yesterday ..., my husband's eldest sister, forwarded me a video ... released by The Online Citizen (TOC) that she had received from Officer Koh Boon Yong. In the video, they had interviewed my mother-in-law about the events that happened on 17 May 2021 evening.

... my husband and I feel mentally disturbed and angry about the video as this video was filmed without our permission. My mother-in-law is old in age, has dementia, is unable to communicate and answer questions properly... I am afraid that the next time TOC might follow my mother-in-law home to interview her again. I was also afraid that the public might know

about my mother-in-law's address and our family condition as well. ...

After seeing this video, my husband and I then decided to lodge a police report as we wish to pursue this matter by lodging a Magistrate complaint against The Online Citizen ...

[emphasis added]

65 The falsity in Subject Statement 4 was most blatant. It was patently clear that the daughter-in-law had filed the police report because she was unhappy with TOC's actions and not because SI Jeff had told her that her mother-in-law was lost. The appellant had a copy of the daughter-in-law's police report but deliberately misrepresented the reason for the police report.

Burden of proof

66 In my view, the appellant had failed to show a *prima facie* case of reasonable suspicion that one or more of the grounds for setting aside the 7 May 2023 Correction Direction under s 17(5) of the POFMA was satisfied and accordingly, his appeal failed at the threshold (see [30] above). In any event, even if he did cross the threshold, the totality of the evidence led to the conclusion that none of the grounds relied on for setting aside were made out on a balance of probabilities.

Conclusion

67 For the reasons stated above, I dismissed the appellant's appeal.

Chua Lee Ming
Judge of the High Court

Lim Tean (Carson Law Chambers) for the appellant;
Shi Pei-Yi Sarah and Dan Pan Xue Wen (Attorney-General's
Chambers) for the respondent.
