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

[2023] SGHC 154

Suit No 441 of 2021

Between

Li See Kit Lawrence

… *Plaintiff*

And

Debate Association (Singapore)

… *Defendant*

JUDGMENT

[Administrative Law — Natural justice — Breach of fair hearing rule]
[Administrative Law — Natural justice — Breach of rule against bias]
[Tort — Negligence — Breach of duty]
[Tort — Rule in *Wilkinson v Downton*]
[Unincorporated Associations and Trade Unions — Societies — Membership — Breach of contract of membership]
[Unincorporated Associations and Trade Unions — Societies — Powers — *Ultra vires*]

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v
Debate Association (Singapore)

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23 May 2023 Judgment reserved.

See Kee Oon J:

Introduction

1 The plaintiff is the father and personal representative of the estate of Li Guangsheng, Lucas (the "Deceased").[1] The defendant is the Debate Association (Singapore), a registered society under the Societies Act (Cap 311, 1985 Rev Ed) since 13 November 2000.[2]

2 The crux of the plaintiff's claim lies in his allegation that the defendant's grossly negligent and reckless actions had caused the Deceased to suffer an acute stress reaction ("ASR") that led to his unfortunate suicide on 8 August 2018. The claim is premised on the following broad causes of action:

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1 Statement of Claim (Amendment No 1) dated 16 November 2022 ("SOC") at para 1; Defence (Amendment No 1) dated 28 November 2022 ("Defence") at para 4.

2 SOC at para 2.

(a) the defendant's breach of its contract of membership with the Deceased;

(b) the defendant's negligence and breach of its duty of care to the Deceased; and

(c) further and/or in the alternative, the defendant's tortious breach pursuant to the rule in *Wilkinson v Downton* [1897] 2 QB 57 ("*Wilkinson v Downton*").

Background facts

3 The background facts are largely not in dispute. The defendant is a registered society governed by its rules as set out in a document entitled "Constitution of Debate Association (Singapore)" (the "Constitution"). By Art 3.1 of the Constitution, the defendant's objects are to: (a) promote English language development and argumentation in Singapore schools; (b) provide an infrastructure for debates, for schools desiring training and development of debate techniques and styles; and (c) serve as a bridge organisation between Singapore schools and international debate organisations/schools.[3] At all material times in 2018, the President of the Executive Committee of the defendant (the "ExCo") was Wee Loke Xian Cherylyn ("Cherylyn"), who testified at the trial on behalf of the defendant.[4]

4 At the material time, the Deceased was an ordinary member of the defendant. He was prominent in the Singapore debate community and had represented Singapore in international student debating competitions since

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3 SOC at para 2; 6AB3077.

4 Wee Loke Xian Cherylyn's affidavit of evidence-in-chief ("Cherylyn's AEIC") at paras 14–15.

2005.[5] Between 2012 and 2014, the Deceased was the founder and director of the Debate Development Initiative ("DDI"), a training and development programme for young debaters run by the defendant. Through the DDI, secondary school debaters were given the opportunity to be trained and mentored by senior members of the defendant and provided with opportunities to participate in debate tournaments at highly-subsidised rates.[6]

5 At the time of his passing, the Deceased was a government scholar employed by Enterprise Singapore ("Enterprise"), a statutory board of the Ministry of Trade and Industry.[7] He obtained his undergraduate degree from Brown University in 2011, and masters' degrees from the University of Cambridge and the National University of Singapore in 2012 and 2018 respectively.[8] It was common ground that he was homosexual and had mental health issues, which he had openly discussed in his Facebook posts and in private communications with friends. He had been diagnosed with cyclothymic disorder while he was an undergraduate at Brown University.[9] He was similarly diagnosed more recently by psychiatrists from Ko & Ko Specialists Pte Ltd where he was a patient from 2015 to 2017.[10]

6 On 24 October 2017, the Deceased was referred to the Institute of Mental Health's ("IMH") Emergency Services as he was having suicidal

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5 SOC at para 3; Cherylyn's AEIC at para 7; Defence at para 16.

6 SOC at para 3; Cherylyn's AEIC at para 7.

7 SOC at para 4; Defence at para 6.

8 Lawrence Li See Kit's affidavit of evidence-in-chief ("Lawrence's AEIC") at para 5.

9 Lawrence's AEIC at para 9.

10 Dr Pamela Ng Mei Yuan's report dated 23 February 2022 ("Dr Ng's Report") at para 7, as attached to her affidavit of evidence-in-chief ("Dr Ng's AEIC").

thoughts. He was diagnosed with major depressive disorder.[11] Dr Pamela Ng Mei Yuan ("Dr Ng") reviewed him thereafter on four occasions between 28 November 2017 and 21 May 2018.[12] At the 21 May 2018 review, Dr Ng observed that his "mood was stable without suicidal ideation", but he "continued to report some memory difficulties" arising from a reported incident of robbery and assault on 11 January 2018, during a business trip to Brazil.[13] The Deceased also attended a session with a psychologist at IMH on 18 June 2018 and was assessed to be not suicidal. Dr Ng testified as an expert witness for the plaintiff in this trial.

7 On 7 August 2018, the ExCo issued a public statement concerning the Deceased entitled "ALLEGATIONS OF MISCONDUCT AGAINST A FORMER DIRECTOR OF THE DEBATE DEVELOPMENT INITIATIVE" (the "ExCo Statement"). This Statement was published by Cherylyn on the defendant's website, its Facebook page and on the "Singapore Debaters" Facebook group managed by the defendant.[14] The ExCo Statement referred to allegations of "inappropriate behaviour" by the Deceased (who was not named in the ExCo Statement but referred to as a "DDI Director") and certain steps taken by the defendant in response. The salient points in the ExCo Statement are as follows:[15]

(a) The Deceased was the creator and moderator of a WhatsApp group named "DDI Darkness" (the "Darkness Chat Group"). The

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11 Dr Ng's Report at paras 9 and 16(a)(ii).

12 Dr Ng's Report at para 10.

13 Dr Ng's Report at paras 12–13.

14 SOC at para 5; Defence at para 7; Lawrence's AEIC at para 11.

15 SOC at paras 6–7; Defence at para 8; 5AB2832–5AB2835 (ExCo Statement).

participants were students in the DDI who were invited or added to the Darkness Chat Group by the Deceased.

(b) A number of comments which were sexual in nature were initiated by the Deceased and exchanged among participants of the Darkness Chat Group. These included discussions of sexual acts, sexual preferences and the sexual history of the participants. The Deceased, who was the only adult in the Darkness Chat Group, also led discussions which objectified DDI members who were minors, sharing photographs of such members for participants to comment on their physical characteristics (including genitalia).

(c) In July 2014, the Deceased had pressured a certain member of the Darkness Chat Group to exchange explicit photos through a private chat, which culminated in a "physical sexual encounter" initiated by the Deceased.

(d) In light of the findings of an "audit report" made by "two senior members of the debate community" who were appointed to conduct an audit of the DDI programme (the "Audit Report"), the ExCo decided to permanently ban the Deceased from all events of the defendant (the "Ban"), notify the defendant's partner organisations to prevent the Deceased from entering any competitions or camps co-organised by the defendant and file a police report against the Deceased (collectively, the "Decision").

(e) The Deceased had been notified of the Ban earlier the same day on 7 August 2018 (the "Ban Notification").

8 The defendant also notified Enterprise of the allegations outlined in the ExCo Statement against the Deceased on 7 August 2018.[16]

9 The then-ExCo members did not convene a general meeting of the members of the defendant to decide whether any action should be taken against the Deceased in light of the findings of the Audit Report.[17] It is disputed whether the then-ExCo members voted at an ExCo meeting in or around July 2018 or through other channels and/or means as to whether any action should be taken against the Deceased.[18]

10 According to the defendant, it was entitled to rely on the Audit Report which disclosed, among other things, that the Deceased had acted inappropriately towards members of the Darkness Chat Group. These members were students selected by the Deceased after he had identified them as being part of (or potentially part of) the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community. In addition, there was a specific incident which involved sexual acts being performed by the Deceased in the presence of a member who was a minor.[19] This individual was Hanniel Asher Lim Wen Te ("Hanniel"). Hanniel testified as a witness for the defendant and confirmed that the incident in question took place sometime in November 2014 after his mother had passed away (the "2014 Incident"). He was then 17 years old. According to Hanniel, the Deceased had arranged to meet him and they subsequently masturbated in each other's presence inside a toilet cubicle at Pasir Ris East Community Club.

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16 SOC at para 8; Defence at para 10.

17 SOC at para 10; Defence at para 12.

18 Defence at para 12.

19 Defence at para 13; 5AB2447–5AB2448 (Audit Report); Notes of Evidence ("NE"), 10 November 2022 at p 5, ln 12–18.

Hanniel stated that he only did so upon the Deceased's request.[20] Hanniel's evidence in relation to the 2014 Incident, as well as other events recounted in his AEIC including the Deceased asking for photographs of Hanniel's penis and sending Hanniel photographs of his own penis,[21] was not challenged.

11 It is common ground that the court is not being asked to determine the veracity or the merits of the allegations of inappropriate behaviour against the Deceased. The allegations nonetheless form part of the factual backdrop leading to the Deceased's decision to commit suicide by jumping to his death from the 14th floor of the apartment block where he resided on the afternoon of 8 August 2018.[22] He was 31 years old at the time. I should state at the outset that it is not necessary for me to delve into the detailed evidence adduced during the trial in relation to the allegations of inappropriate behaviour concerning the Deceased, in view of the approach adopted by counsel in the closing submissions for the plaintiff. For the same reason, I do not find it necessary to consider in detail the evidence of each and every witness who testified during the trial. It is evident that the plaintiff's case is largely premised on arguments on the law and its application to the facts, rather than on any material disputes of fact involving contested evidence from the witnesses.

12 I proceed next to outline the key aspects of the parties' cases below. I will examine them in greater detail under the analysis of the discrete issues.

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20 Hanniel Asher Lim Wen Te's affidavit of evidence-in-chief ("Hanniel's AEIC") at paras 34–42.

21 Hanniel's AEIC at paras 17–30, 43.

22 Lawrence's AEIC at para 15.

The plaintiff's case

13 The plaintiff's claims against the defendant lie generally in contract and tort, but span a range of different subsidiary aspects and legal considerations.

The claim for breach of contract

14 The plaintiff's claim against the defendant for breach of contract is grounded in the defendant's alleged breach of the contract of membership (*ie*, the Constitution) between the Deceased and the defendant. The plaintiff's submissions on this are multi-pronged.

15 First, the plaintiff submits that the defendant had no power under the Constitution to take any form of disciplinary action against the Deceased (specifically, to impose the Ban) as:[23]

(a) the Constitution does not expressly provide for any disciplinary or penal powers exercisable by the ExCo; and

(b) in any event, no such powers can be implied into the Constitution.[24]

16 Secondly, even if the defendant was empowered under the Constitution to take disciplinary action, such power was vested in a general meeting of the members of the defendant and not the ExCo. As no extraordinary general meeting was called by the ExCo to vote on the disciplinary action (if any) to take against the Deceased, the Ban and all associated actions were *ultra vires* the Constitution.[25]

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23 Plaintiff's Closing Submissions dated 1 February 2023 ("PCS") at paras 87–88 and 92.

24 PCS at paras 90–91.

25 PCS at paras 93–96.

17 Thirdly, in any case, there was no evidence that the ExCo voted on whether to impose the Ban and/or make the Decision at any ExCo meeting. Accordingly, the Ban and all associated actions were invalid.[26]

18 Fourthly, the Ban was invalid as it was made in breach of the rules of natural justice, in particular: (a) the fair hearing rule; and (b) the rule against bias, specifically, apparent bias.[27] Consequently, all of the defendant's actions made in connection with the Ban were tainted with the same unfairness and should likewise be set aside.[28]

19 Fifthly, the Decision was invalid as it was made irrationally, capriciously and in bad faith.[29]

20 Thus, in view of the defendant's breaches of the Constitution in making the Decision, the plaintiff submits that:

(a) The Deceased's estate is entitled to damages for the mental distress suffered by the Deceased as a consequence of the Decision.[30]

(b) The Deceased's dependants are entitled to damages for any loss attributable to the death of the Deceased on the basis that his death was caused by the defendant's breaches.[31]

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26 PCS at paras 97–100.

27 PCS at paras 101–124.

28 PCS at para 124.

29 PCS at paras 125–137.

30 PCS at paras 138–149.

31 PCS at paras 150–170.

The claims in tort

21 The plaintiff also claims against the defendant in: (a) the tort of negligence; and (b) the tort under the rule in *Wilkinson v Downton.*

The claim in the tort of negligence

22 In brief, the plaintiff claims that the defendant breached its duty of care to the Deceased, causing him to suffer psychiatric harm in the form of an ASR which led him to commit suicide.

23 First, the plaintiff submits that the defendant owed a duty of care to the Deceased. He contends that the threshold requirements of the presence of a recognisable psychiatric illness and factual foreseeability are satisfied. Given that the consequences of disciplinary action can be drastic and severe, it was foreseeable that any failure by the defendant to take reasonable care could cause a person of normal fortitude to suffer psychiatric harm, let alone a person with existing mental health issues such as the Deceased.[32]

24 Secondly, on the first stage of the test laid down in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*"), there was sufficient legal proximity for establishing the existence of the duty of care. In this connection, the existence of a contractual relationship between the parties must mean that there was sufficient legal proximity.[33] On the second stage of the *Spandeck* test, there are no public policy considerations which negate the proposed duty of care.[34]

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32 PCS at paras 176–178.

33 PCS at paras 179–181.

34 PCS at paras 182–186.

25 Thirdly, the plaintiff argues that the defendant should be held to a higher standard of care in the present case on the basis that the ExCo knew or ought to have known that the Deceased was psychiatrically vulnerable at the material time.[35] He alleges that the defendant breached its duty of care in the following ways:

(a) It failed to develop and implement any rules or procedures for ensuring that disciplinary proceedings are conducted fairly and in accordance with the principles of natural justice.[36]

(b) It failed to give any notice to the Deceased that he was under investigation for misconduct. He was not informed of the nature of the allegations and given an opportunity to respond to them before the Ban was imposed.[37]

(c) It decided to impose the Ban notwithstanding that: (i) the Darkness Chat Group was shut down in September 2013; (ii) at the material time, there was no evidence that the Deceased had set up a new chat group of the same nature; (iii) while the discussions in the Darkness Chat Group were sexually provocative, the overall tenor of the discussions would not have suggested to a reasonable person that the Deceased had set up the group for any purpose other than to provide a private forum for such discussions; (iv) apart from Hanniel and his allegations concerning the 2014 Incident, no other person had made such allegations against the Deceased; and (v) by Hanniel's own admission,

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35 PCS at paras 189–193.

36 PCS at para 195(a).

37 PCS at para 195(b).

he did not wish to pursue his allegations against the Deceased as he did not have any evidence to back them up.[38]

(d) It acted negligently and recklessly in issuing a public statement on the matter (*ie*, the ExCo Statement), which served no purpose other than to embarrass, humiliate and cause distress to the Deceased.[39]

(e) Even if it was appropriate to make a public statement on the matter, it was negligent and reckless of the defendant to make a public statement in the nature of the ExCo Statement which was carelessly prepared.[40]

(f) It acted negligently and recklessly in releasing the ExCo Statement without any prior notice to the Deceased.[41]

(g) It acted negligently and recklessly in notifying third parties, including Enterprise, of the allegations concerning the Deceased as it was premature, unnecessary and/or inappropriate to do so, given that the Deceased had yet to respond to the allegations of misconduct.[42]

(h) It neglected to even consider whether any disciplinary action could have a detrimental impact on the Deceased's mental health.[43]

26 In view of the breaches outlined above, the plaintiff submits that:

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38 PCS at para 195(c).

39 PCS at para 195(d).

40 PCS at para 195(e).

41 PCS at para 195(f).

42 PCS at para 195(g).

43 PCS at para 195(h).

(a) The Estate is entitled to damages for the psychiatric injury caused to the Deceased by the defendant's negligence.[44]

(b) The Deceased's dependants are entitled to damages for any loss attributable to the death of the Deceased on the basis that his death was caused by the defendant's negligence.[45]

The claim in tort under the rule in Wilkinson v Downton

27 Lastly, the plaintiff submits that the three elements of the tort under the rule in *Wilkinson v Downton* as expressed by the UK Supreme Court in *O (A Child) v Rhodes and another (English PEN and others intervening)* [2016] AC 219 ("*Rhodes*") are satisfied in the present case.[46] These three elements are as follows:

(a) A conduct element which requires words or conduct directed towards the claimant for which there is no justification or reasonable excuse.

(b) The mental element which refers to the intention to cause physical harm or severe mental or emotional distress.

(c) The consequence element which requires that the claimant suffered physical harm or recognised psychiatric illness.

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44 PCS at paras 196–203.

45 PCS at para 204.

46 PCS at paras 205–211.

The remedies sought by the plaintiff

28 Based on the foregoing, the plaintiff seeks:[47]

(a) a declaration that the Decision was unlawful as it was *ultra vires* the Constitution;

(b) further and/or in the alternative, a declaration that the Decision was unlawful as it was made in bad faith and arbitrarily, capriciously and/or unreasonably;

(c) further and/or in the alternative, a declaration that the Decision was unlawful as it was made in breach of the rules of natural justice;

(d) further and/or in the alternative, a declaration that the defendant acted negligently and in breach of the duty of care it owed to the Deceased:

(i) by initiating the investigations against him;

(ii) by the manner in which it conducted the investigations; and

(iii) by communicating and publicising the outcome of the investigations through the ExCo Statement;

(e) an order setting aside the Decision;

(f) an order requiring the defendant to remove the ExCo Statement from its website, its Facebook page, the Facebook page of "Singapore Debaters" and any and all other locations where the ExCo Statement was published;

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47 SOC at pp 17–19.

(g) an order requiring the defendant to publish a statement on its website, its Facebook page, the Facebook page of "Singapore Debaters" and the print and digital edition of the newspaper "The Straits Times" which:

(i) admits that the Decision was unlawful as it was made: (A) *ultra vires* the Constitution; (B) in bad faith and arbitrarily, capriciously and unreasonably; and (C) in breach of the rules of natural justice;

(ii) admits that the defendant acted negligently by making the Decision and publishing the ExCo Statement; and

(iii) contains an apology to the Deceased and his family for the harm and distress caused by the Decision and the ExCo Statement;

(h) damages to be assessed, including:

(i) damages under s 20 of the Civil Law Act 1909 (2020 Rev Ed) ("CLA") for the benefit of the plaintiff and the mother of the Deceased;

(ii) damages for bereavement under s 21 of the CLA;

(iii) special damages; and

(i) costs and interest pursuant to s 12 of the CLA.

The defence

The defence to the claim in contract

29 At the outset, the defendant submits that the psychological harm, mental distress and psychiatric illness suffered by the Deceased, which form the bases

of the plaintiff's claim for general damages, are not generally recognised heads of claim for breach of contract.[48]

30 In any event, the defendant takes the position that the Decision was *intra vires* the Constitution. In this connection, the defendant denies that it "expelled" the Deceased as a member or otherwise suspended his membership rights by the Decision, specifically, the Ban.[49] Further, the Decision was not disciplinary and/or corrective in nature *qua* the Deceased's membership.[50] Instead, the Decision was but an appropriate "self-help remedial response" by the defendant to the relevant complaints brought against the Deceased.[51] The defendant had conducted investigations and made the Decision pursuant to Arts 8 and 15 of the Constitution which empowered the ExCo to use their discretion as regards any and all questions or matters pertaining to the day-to-day administration of the defendant.[52]

31 However, even if the Constitution did not expressly provide for the defendant to make the Decision, it is implied in the Constitution that the ExCo "has the power to take all necessary preventive and/or remedial actions to protect the safety of its members, particularly when such members are minors" (the "Implied Term").[53]

32 The defendant also submits that there was no: (a) *Wednesbury* unreasonableness in the making of the Decision and the prior investigations;

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48 Defendant's Closing Submissions dated 1 February 2023 ("DCS") at paras 60–70.

49 DCS at para 74.

50 DCS at para 75.

51 DCS at para 75.

52 DCS at paras 76–86.

53 DCS at paras 89–102.

and (b) breach of natural justice. In relation to the former point, the defendant contends that the four facts pleaded by the plaintiff in support of this claim were false and thus could not support a finding of *Wednesbury* unreasonableness.[54] In addition, it was entirely proportionate and reasonable for the defendant to make the Decision, including instituting the Ban, filing the police report, publishing the ExCo Statement and informing Enterprise of the allegations against the Deceased.[55] In relation to the latter point, the defendant emphasises that the rules of natural justice vary with the factual matrix of each case. In the present case, they should not be applied with full rigour given the nature of the defendant association, *ie*, an informally run non-profit voluntary organisation involving mostly minors and young adults with no membership fees.[56] In any case, the defendant did not breach the rules of natural justice, namely the fair hearing rule[57] and the rule against bias.[58]

The defence to the claim in the tort of negligence

33 In relation to the plaintiff's claim in the tort of negligence, the defendant contends that it did not owe the Deceased a duty of care for three main reasons.

34 First, the threshold of factual foreseeability was not crossed. In this regard, the Deceased had not discharged the onus on him to inform the defendant about his pre-existing mental condition. Further, the defendant could

54 DCS at paras 108–133.

55 DCS at paras 134–144.

56 DCS at paras 145–164.

57 DCS at paras 166–196.

58 DCS at paras 197–214.

not have foreseen that the communication of bad news in the form of the Decision and the Ban to the Deceased could result in psychiatric harm to him.[59]

35 Secondly, the element of proximity was not satisfied. There was no circumstantial proximity between the defendant and the Deceased because a member-association relationship could hardly be considered as one of close ties. There was no physical proximity between the Deceased and the alleged tortious event, *ie*, the investigations and the communication of the Ban by e-mail. Neither was there causal proximity, as there was no malign intention on the defendant's part when making the Decision (including the communication of the Ban).[60]

36 Thirdly, the policy consideration of not curtailing the public good and benefit arising from the defendant's work militates against the imposition of a duty of care on the defendant. Moreover, if such a duty is imposed, associations in general would have to look beyond their constitutions when conducting themselves *apropos* their members to ensure that their members do not suffer psychiatric harm in the course of the associations' discharge of their duties, even if done in good faith.[61]

37 Moreover, the defendant's actions did not fall below the requisite standard of care. The defendant's conduct in relation to the investigations did not fall below the standard of care as any reasonable person in the position of the defendant using ordinary care and skill would have initiated investigations against the Deceased in light of the allegations and the Darkness Chat Group

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59 DCS at paras 225–243.

60 DCS at paras 244–268.

61 DCS at paras 269–274.

logs (which had been provided to the ExCo by one of the group's participants).[62] Further, the defendant's conduct in relation to the publication of the ExCo Statement also did not fall below the standard of care as it had no actual or constructive knowledge of the Deceased's pre-existing vulnerability to psychological harm at the material time.[63]

38 In any case, the defendant's actions did not *cause* the Deceased to suffer from psychiatric harm resulting in his eventual suicide. The plaintiff did not establish through Dr Ng that the Deceased was suffering from an ASR.[64] The Deceased's actions after coming to know of the Decision were inconsistent with the symptoms of moderate or severe ASR.[65] Even if the defendant's actions caused the Deceased to suffer from an ASR, the ASR did not result in his eventual suicide, as it was a deliberate choice on his part which was a *novus actus interveniens* breaking the chain of causation.[66]

39 Lastly, any psychiatric harm suffered by the Deceased and his eventual suicide was too remote a consequence of the defendant's actions.[67]

The defence to the claim in tort under the rule in Wilkinson v Downton

40 Finally, the defendant takes the position that the present case is clearly distinguishable from the factual matrix in the case of *Wilkinson v Downton*. In

62 DCS at paras 278–281; Cherylyn's AEIC at para 38.

63 DCS at paras 282–292.

64 DCS at paras 296–303.

65 DCS at paras 308–315.

66 DCS at paras 304–306.

67 DCS at paras 322–329.

any event, the three elements for tortious liability to arise as identified in *Rhodes* are not satisfied:[68]

(a) In relation to the conduct element, the defendant submits that it had justification or at the very least, reasonable grounds to make the Decision. In fact, on the face of the objective evidence, there would have been no justification or reasonable excuse for the defendant *not* to take action.

(b) In relation to the mental element, there is no evidence to suggest malign intention on the defendant's part to cause any harm to the Deceased by the Decision.

(c) In relation to the consequence element, the plaintiff has failed to establish causation in the present case, or even that the Deceased did in fact suffer from an ASR.

Issues for determination

41 There is no dispute that the defendant is a legal entity which may be sued in contract and in tort. Accordingly, based on the foregoing, the issues for determination are as follows:

(a) In relation to the plaintiff's claim in contract:

(i) Whether the defendant acted *ultra vires* the Constitution in making the Decision thus breaching the contract of membership *vis-à-vis* the Deceased. In particular:

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68 Defendant's Reply Submissions dated 21 February 2023 ("DRS") at paras 159–166.

(A) whether the Decision constituted disciplinary action;

(B) whether the Constitution provided for such actions to be taken; and

(C) whether a term can be implied into the Constitution to empower the defendant to make the Decision.

(ii) Whether the Decision was invalid as it was made in breach of the rules of natural justice, namely, the fair hearing rule and the rule against bias.

(iii) Whether the Decision was invalid as it was made irrationally, capriciously and in bad faith.

(iv) If any of the above are proved, what remedies are available to the plaintiff.

(b) In relation to the plaintiff's claim in the tort of negligence:

(i) whether the defendant owed a duty of care to the Deceased; and

(ii) whether the defendant breached its duty of care to the Deceased.

(c) In relation to the plaintiff's claim in the tort under the rule in *Wilkinson v Downton*:

(i) whether the conduct element is satisfied;

(ii) whether the mental element is satisfied; and

(iii) whether the consequence element is satisfied.

My decision

42 I consider each of the plaintiff's claims in turn, beginning with the plaintiff's claim in contract, the tort of negligence and finally, the tort under the rule in *Wilkinson v Downton*.

The claim in contract

Whether the defendant acted ultra vires the Constitution in making the Decision

43 As a preliminary point, I begin with the observation that the doctrine of *ultra vires* is not strictly engaged in determining a contractual claim which deals with the rights and obligations of parties to a contract. A finding that the defendant acted *ultra vires* the Constitution does not concern a breach of any term of the contract of membership *per se*. It is merely a finding as to whether the defendant's exercise of its powers falls within the scope and ambit of the Constitution. The situation might have been different if the plaintiff claimed that in imposing the Ban and preventing the Deceased from participating in the defendant's events, the defendant had breached the Constitution and impinged on the Deceased's right therein as a member to so participate. But this was not the plaintiff's pleaded case according to the SOC.

44 Notwithstanding this observation, the defendant does not appear to dispute that this *is* a contractual claim. On this basis, it could also be argued that there is an implied term at law that an association will not act beyond the powers delineated in its constitution. This was also obliquely hinted at in the case of *Singapore Shooting Association and others v Singapore Rifle Association* [2020] 1 SLR 395, where the Singapore Rifle Association had sought declarations that certain acts of the Singapore Shooting Association were *ultra vires* its constitution. There, the Court of Appeal noted (at [129]) that that case

was "in substance really a dispute about the governance of *one* particular charity, [Singapore Shooting Association], and how *its* constitution ha[d] allegedly been breached" [emphasis in original]. Nonetheless, such an argument based on a breach of an implied term not to act beyond the defendant's powers was not pleaded or canvassed in the plaintiff's arguments. Indeed, the legal basis for this argument remains unclear as it has not been explicitly articulated or endorsed in the case law. I would therefore decline to make any definitive ruling in this regard.

45 Nevertheless, the practical implication of this distinction between a finding of *ultra vires* and a finding of breach of contract presents itself more clearly in the context of the discussion of the remedies available, a point which I will return to later (see [98] below).

46 It should also be noted that in the SOC, the plaintiff defines the Decision as comprising the following three actions by the defendant:[69]

(a) The permanent ban on the Deceased from being present at, or involved with, all events and programmes affiliated with and organised by the defendant, *ie*, the Ban.

(b) The notification of the defendant's partner organisations to prevent the Deceased's entry to any competitions or camps co-organised by the defendant ("Notice to Partners").

(c) The filing of a police report against the Deceased.

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69 SOC at para 6.

47 It is these actions taken together which the plaintiff pleads are *ultra vires* the Constitution.[70] Notably, the plaintiff does not plead that the publication of the ExCo Statement constitutes part of the Decision. This is despite the fact that in the plaintiff's submissions, he submits that all actions associated with the Ban, including the publication of the ExCo Statement, were *ultra vires* the Constitution.[71] In any case, the plaintiff does not explain why the publication of the ExCo Statement is in and of itself *ultra vires* the Constitution. The plaintiff seems to suggest that because the Ban is *ultra vires* the Constitution, all corresponding actions that follow from the Ban are also *ultra vires*. Yet no authority is cited for such a proposition. Accordingly, I proceed with my analysis below by only evaluating the content of the Decision as pleaded in the SOC.

48 I am of the view that the only relevant parts of the Decision which fall to be governed by the contract of membership between the Deceased and the defendant are: (a) the Ban; and (b) the Notice to Partners. The filing of a police report against the Deceased stemmed from a perceived public duty on the part of the defendant, quite independent from the private law character of the contractual relationship existing between the parties. Therefore, I only proceed to consider whether the issuance of the Ban and the Notice to Partners (as opposed to the entire Decision as framed by the plaintiff) were *ultra vires* the Constitution.

49 I begin by setting out the law concerning the power of unincorporated associations, such as the defendant, to take disciplinary action against their members. It is trite that "[a]ny rule relating to discipline, including expulsion,

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70 SOC at p 17, prayer 1.

71 PCS at para 92.

suspension or any other penalty, should be framed in plain and unambiguous language": Nicholas Stewart, Natalie Campbell & Simon Baughen, *The Law of Unincorporated Associations* (Oxford University Press, 2011) at para 6.06. In *Singapore Rifle Association v Singapore Shooting Association and others* [2019] SGHC 13 ("*Singapore Rifle Association*") at [37], Pang Khang Chau JC (as he then was), explained that this was "only to be expected" because:

> … the consequences of disciplinary action, especially in the form of expulsion or suspension, can be severe and drastic, and it is only fair that members of the association have assurance that the power to impose such consequences are clearly defined and limited.

50 The threshold question is thus whether the Ban and the Notice to Partners amounted to disciplinary action being taken by the defendant against the Deceased. I turn to consider this next.

(1) Whether the issuance of the Ban and the Notice to Partners constituted disciplinary action

51 The defendant denies that it expelled the Deceased as a member or otherwise suspended his membership rights in the defendant by the Decision, specifically in imposing the Ban.[72] Further, it takes the position that the Decision was not of a disciplinary and/or corrective nature *qua* the Deceased's membership, but instead constituted "appropriate self-help remedial responses" by the defendant to the relevant complaints.[73]

52 Against this, the plaintiff argues that the defendant's position, *viz*, that the actions taken against the Deceased were not disciplinary or punitive in

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72 DCS at para 74.

73 DCS at para 75.

nature and did not adversely affect his rights of membership, is untenable.[74] The Deceased's fundamental rights as a member of the defendant included the right to attend and participate in all meetings, workshops, tournaments and other events organised by the defendant. The Ban deprived the Deceased of these essential privileges of membership. It thus could not reasonably be suggested that the Ban and the actions taken in connection with the Ban did not affect his rights as a member simply because he remained registered as a member. Therefore, in substance, the Ban was tantamount to an expulsion or a suspension of his rights of membership.[75]

53 In my view, the Ban and the Notice to Partners cannot be neatly characterised either as an expulsion or suspension. Specifically, those actions operated to deprive the Deceased of a key aspect of his membership, pertaining to his right to participate in events organised or co-organised by the defendant. The element of permanence of the Ban distinguishes this from a suspension which contemplates a specified terminable duration. On the other hand, the concept of expulsion involves the *termination* of membership altogether. However, this does not seem to be the actual case on the facts. There is no evidence to suggest that the Deceased's membership with the defendant was terminated at any point. The Ban and the Notice to Partners may be more properly described as an *exclusion* of the Deceased from the activities of the defendant, rather than a suspension or expulsion.

54 On any characterisation then, the question that remains is whether the Ban and the Notice to Partners were disciplinary or punitive measures.

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74 Plaintiff's Reply Submissions dated 21 February 2023 ("PRS") at para 10.

75 PRS at para 11.

55 In *The Stansfield Group Pte Ltd (trading as Stansfield College) and another v Consumers' Association of Singapore and another* [2011] 4 SLR 130 ("*The Stansfield Group*"), Judith Prakash J (as she then was) considered two cases, *John v Rees* [1970] Ch 345 ("*Rees*") and *Paul Wallis Furnell v Whangarei High Schools Board* [1973] AC 660 ("*Furnell*"). In *Rees*, a suspension was held to be penally equivalent to an expulsion which was punitive in nature, whilst in *Furnell*, a suspension was not considered to be punitive.

56 The case in *Rees* involved the authority of the National Executive Committee of the Labour Party to pass a resolution to suspend the activities of the Pembrokeshire Divisional Labour Party. Megarry J, sitting in the High Court, ultimately held that the resolution was a nullity. He considered suspension to be as penal as expulsion which deprived the person concerned of the enjoyment of his rights of membership.

57 However, as observed by Prakash J, the majority of the Privy Council in *Furnell* arrived at a different classification of the nature of a suspension order. In that case, a teacher was suspended from his duties by the school board pending the determination of certain disciplinary charges. The teacher then instituted legal proceedings against the school board, alleging that there had been a breach of natural justice in that he had not been told that his conduct was being investigated and had not been given an opportunity to be heard prior to the suspension order being made. It is pertinent to note that a suspension was not classified as a penalty under the relevant legislation or regulations. The Privy Council upheld the New Zealand Court of Appeal's decision that the rules of natural justice had not been breached, and that it was not unfair in the circumstances for the board to have exercised its discretion to suspend the teacher without giving him an opportunity to be heard. It is helpful to set out the

following passage from the judgment of Lord Morris, who delivered the majority decision of the Privy Council (at 682F–683B):

> It is next necessary to consider whether there was any unfairness on the part of the board, as was strongly suggested in the submissions made on behalf of the appellant. Though the board followed faithfully the directions of the regulations *it is said that nevertheless they should give a teacher an opportunity of being heard before they decide to suspend. Neither in the regulations nor in the Act is suspension classified as a penalty. Section 157(3) shows that it is not.* It must however be recognised that suspension may involve hardship. During suspension salary is not paid and apart from this something of a temporary slur may be involved if a teacher is suspended. But the regulations (by regulation 5) clearly contemplate or lay it down that the written statement of a teacher (under regulation 5(2) and the oral personal statement of a regulation 5(3)) will be made after suspension if any has taken place. Suspension is discretionary. *Decisions as to whether to suspend will often be difficult. Members of a board who are appointed or elected to act as the governing body of a school must in the exercise of their responsibilities have regard not only to the interests of teachers but to the interests of pupils and of parents and of the public. There may be occasions when having regard to the nature of a charge it will be wise, in the interests of all concerned, that pending decision whether the charge is substantiated a teacher should be suspended from duty.* In many cases it can be assumed that charges would be denied and that only after a full hearing could the true position be ascertained. It is not to be assumed that a board, constituted as it is, will wantonly exercise its discretion. [emphasis added]

58 After considering *Rees* and *Furnell*, Prakash J concluded that there was case authority to support the proposition that whether the act of suspending a person from a position in the association or membership is penal or not, ultimately depends on the circumstances of the case. In particular, she observed that these circumstances included (*The Stansfield Group* at [90]):

> *… whether the regulations involved expressly classify suspension as a penalty or not and what the purpose of the suspension is. It may also be a matter of significance as to whether the suspending authority is charged with protecting the interests of third parties.* This seems to be a significant difference between the cases of *Burn* and *Rees* on the one hand

> and *Furnell* on the other. In the first two cases, the union was considering its own interests and the conduct of the member concerned when it decided to suspend him from membership. In *Furnell*, the school board was investigating a complaint and thus considering the conduct of Mr Furnell but it also had to consider the interests of pupils and their parents and of the public and how these should be protected whilst the investigations were taking their course. The existence of such third party interests was a vital factor in persuading the Privy Council that suspension was invoked as a protective measure rather than a penal one. As important would be the purpose of the suspension, *ie*, whether it is considered an end in itself or is intended to provide a period in which something else can be accomplished, in the *Furnell* case that something else being the full investigation into the charges which could have resulted either in the complete exoneration and reinstatement of Mr Furnell or in his being subjected to a punishment. There is no indication from either *Burn* or *Rees* that in those cases it was intended that certain action be taken during the period of suspension which might result in either the lifting of the suspension or in the application of another sanction. In fact in *Rees* itself, the court emphasised that the practical result of the suspension there was indistinguishable from expulsion. [emphasis added]

59 To my mind, Prakash J's observations in the context of suspensions apply equally to the present case concerning what I would consider to be an exclusion. It is thus necessary to examine the circumstances of the present case in order to determine whether the Ban and the Notice to Partners were penal and therefore *ultra vires* the Constitution.

60 I consider first the purpose of the Ban and the Notice to Partners. I accept the defendant's explanation that these steps were justifiably taken as swift and decisive measures to ensure the safety of the students under its charge, especially those who were minors:

> (a) In Cherylyn's affidavit of evidence-in-chief ("Cherylyn's AEIC") at para 45, she stated that "at that juncture, what was at the top of the EXCO's concerns was that the safety of members of the [defendant], especially those who were minors, had potentially been

compromised, and the EXCO had a responsibility to act decisively and swiftly".

(b) Cherylyn further explained during cross-examination that the defendant had a responsibility to account to various stakeholders, including "MOE, schools, parents, students, minors, judges, coaches, et cetera".[76] She highlighted that "what was important to [the defendant] was transparency and immediacy, given, again, that the chat log contained 14-year-olds, 15-year-olds, minors, … and it was important that we get out the information as soon as possible, and to everyone".[77]

(c) In Vihasini Gopakumar's affidavit of evidence-in-chief ("Vihasini's AEIC") at para 17, she noted that the severity of the matters raised in the Audit Report "demanded an urgent response", and that the Ban against the Deceased was to act "as a safeguard against any further potential harm to other members of the [defendant]". She went on to add at para 26 that "the paramount objective of the [defendant] was in preserving the safety of the [defendant's] members, especially the young ones, and a decision had to be made, and made quickly". It is disputed whether Vihasini was a member of the ExCo at the material time as Director of Equity. However, nothing turns on this, as it is undisputed that Vihasini was heavily involved in the events leading up to the imposition of the Ban and the publication of the ExCo Statement.

(d) The above position is also underscored in the contemporaneous chat conversations between members of the defendant and in the content of the Ban Notification itself:

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76 NE, 16 November 2022, p 18, ln 1–10.

77 NE, 16 November 2022, p 20, ln 1–6.

(i) In a WhatsApp chat group named "DA(S) Equity" (hereinafter, the "DAS Equity Chat Group"), Reuben Lopez ("Reuben") stressed the "safety concerns" of not releasing the ExCo Statement and informing the public about the allegations against the Deceased.[78] At the material time, Reuben was, similar to Vihasini, "a senior member of the [defendant] with significant experience in the debate circuit".[79] Other participants in the DAS Equity Chat Group included Cherylyn (who created the chat group), Vihasini and Ali Ahmad Yaakub (the then-Treasurer of the defendant).

(ii) In the Ban Notification, it was stated that "[a]s an organization, the protection of [the defendant's] student participants is [the defendant's] highest priority".[80]

61 However, against this, it is apparent that the exclusion was not of a *temporary* nature, but one that was declared to be "indefinite" and permanent. This was quite unlike the situation in *Furnell* where the suspension was an interim measure pending a full investigation into the charges which could have resulted either in the complete exoneration and reinstatement of Mr Furnell or in his being subjected to a punishment. Similarly, in *The Stansfield Group*, Prakash J noted (at [99]) that "[t]he fact that the suspensions were temporary, were not for any fixed period and ended immediately after the *status quo ante* had been restored, [was] a very strong indication that the suspensions were not sanctions or penalties but were imposed for a totally different purpose". While there is evidence to suggest that the defendant contemplated an appeal or review

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78 Vihasini's AEIC at p 49 (see timestamp 11:10:11am to 11:12:04am).

79 Cherylyn's AEIC at para 44.

80 5AB2836.

process and anticipated that the Deceased would mount an appeal against the Ban and the Notice to Partners,[81] this was never expressly communicated to the Deceased. In any event, the fact that an appeal or review process was being contemplated at all, points towards the finality of the Ban and the Notice to Partners.

62 On balance, I am thus of the view that this exclusion was of a penal nature, which could only be imposed where the Constitution framed such a power in clear and unambiguous language.

(2) Whether the Constitution empowered the defendant to impose the Ban and communicate the Notice to Partners

63 The defendant submits that it was empowered under Arts 8.1 and 15 of the Constitution to conduct the investigations and make the Decision (including the Ban and the Notice to Partners).[82] I reproduce the relevant provisions of the Constitution as follows:[83]

> MANAGEMENT AND COMMITTEE
>
> 8.1 The administration of the [defendant] shall be entrusted to a Committee consisting of the following to be elected at alternate Annual General Meetings:
>
> A President
>
> A Vice-President
>
> A Secretary
>
> An Assistant Secretary
>
> A Treasurer

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81 NE, 9 November 2022, p 21, ln 12–20 and p 43, ln 19–24.

82 DCS at para 76.

83 6AB3079–6AB3080 and 6AB3083.

> An Assistant Treasurer
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> 5 Ordinary Committee Members
>
> …
>
> INTERPRETATION
>
> 15 In the event of any question or matter pertaining to day-to-day administration which is not expressly provided for in this Constitution, the Committee shall have power to use their own discretion. The decision of the Committee shall be final unless it is reversed at a General Meeting of members.

64 The defendant contends that on a literal reading of the above articles, the ExCo is empowered to use its discretion as regards any and all questions or matters pertaining to the day-to-day administration of the defendant. As the defendant's day-to-day activities included the organisation of debate events and programmes for students, the conception, execution and review of the same would logically be a matter of day-to-day administration. In this connection, the ExCo is thus empowered under the Constitution to act on any complaints regarding the welfare and safety of the students under its charge, in the process of its execution and/or review of the programmes.[84]

65 In my view, both Arts 8.1 and 15 of the Constitution do not set out in express terms any power of the ExCo or a general meeting of members to take disciplinary action with penal consequences against a member of the defendant. Article 8.1 simply establishes the makeup of the ExCo, which is charged with the general administration of the defendant. It says nothing more on any specific powers to take disciplinary action against members.

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[84] DCS at paras 77–78.

66 Article 15 of the Constitution similarly does not make reference to any disciplinary powers of the ExCo or a general meeting of members. In fact, as the plaintiff points out, a similar provision was considered in the cases of *Chee Hock Keng v Chu Sheng Temple* [2015] SGHC 192 ("*Chee Hock Keng*") and *Singapore Rifle Association*.

67 In *Chee Hock Keng*, Aedit Abdullah JC (as he then was) considered whether Art XIII of the defendant temple's constitution allowed for the expulsion of members. Article XIII read as follows:

> In the event of any question or matter arising out of any point which is not expressly provided for in the Constitution, the Committee shall have power to convene a meeting to solve the problem or to use its own discretion.

Abdullah JC held (at [52]) that Art XIII was not broad enough on a plain reading to encompass the power to expel. He observed that the provision appeared to be "primarily geared to allow the management committee to have facilitative powers for the continued running and operation of the [defendant temple]". He went on to state that the "expulsion of a member is a drastic and serious action" which could not "be easily founded on a broad provision of this nature". Further, it was noteworthy that the title of the provision was "Interpretation", which while not determinative, further reinforced the conclusion that the article was merely facilitative and did not give any power to expel.

68 In *Singapore Rifle Association*, Pang JC considered whether the defendant (Singapore Shooting Association) was empowered under Arts 6.4, 8.1 and 16.1 of its constitution to suspend the privileges of the plaintiff (Singapore Rifle Association). The relevant articles read as follows:

> 6. MEMBERSHIP FEES
>
> …

> 6.4 If a member falls into arrears with its subscriptions or other dues, it shall be informed immediately by the Treasurer. If it fails to settle its arrears within 4 weeks of their becoming due, the President may order that its name be posted on the Association's notice board and that if be denied the privileges of membership until the account is settled. If arrears are overdue for more than 3 months, the organisation will automatically cease to be a member and the Council may take legal action against the organisation.
>
> …
>
> 8. MANAGEMENT AND COUNCIL
>
> 8.1 The administration and management of the Association shall be entrusted to a Council consisting of the following to be elected at alternate Annual General Meeting:
>
> …
>
> 16. INTERPRETATION
>
> 16.1 In the event of any question or matter arising out of any point which is not expressly provided for in this Constitution, the Council shall have the power to use its own discretion. The decision of the Council shall be final unless it is reversed at a General Meeting of members.

Pang JC noted (at [40]) that nothing on the face of these provisions empowered the defendant to suspend the plaintiff's privileges. Article 6.4 referred to suspension of a member's privileges only on the ground that the member had fallen into arrears with its subscription or other dues, which was not engaged in that case. Article 8.1 merely entrusted the council with the administration and management of the defendant, which had to be performed in accordance with the constitution, and could not be read as allowing the council to create powers for itself which the constitution did not confer. Article 16.1 also made no express reference to any power of suspension.

69 I agree with the above observations of Abdullah JC in *Chee Hock Keng* and Pang JC in *Singapore Rifle Association* which are equally applicable to the present case. Further, to my mind, the defendant's suggestion to construe actions of a disciplinary nature as pertaining to matters of day-to-day administration stretches the definition of the latter beyond reasonable interpretation. I consider that disciplinary actions with penal consequences would not routinely arise as part of the defendant's day-to-day administration in running its activities for its members. The present case appears to have been the sole instance. At any rate, no evidence was led of any similar actions that were taken by the defendant on a routine or day-to-day basis.

(3) Whether a term can be implied into the Constitution to empower the defendant to impose the Ban and communicate the Notice to Partners

70 In the alternative, the defendant submits that even if the Constitution did not expressly provide for the defendant to make the Decision (including the Ban and the Notice to Partners), it is implied in the Constitution that the ExCo "has the power to take all necessary preventive and/or remedial actions to protect the safety of its members, particularly when such members are minors", *ie*, the Implied Term.[85]

71 The test for implication of terms in fact is set out in the seminal case of *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp*"). In that case, the Court of Appeal laid down a three-step process (at [101]) as follows:

(a) At the first step, the court is to ascertain how the gap in the contract arises. Implication will be considered only if the court discerns

[85] DCS at paras 89–102.

that the gap arose because the parties did not contemplate the gap at the time of contracting.

(b) At the second step, the court considers whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy.

(c) At the third step, the court considers the specific term to be implied. This must be one which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had the proposed term been put to them at the time of the contract. Where such a clear response is not forthcoming, the gap persists and the consequences of that gap ensue.

72 The plaintiff argues that a line of Singapore case authorities support the proposition that no disciplinary or penal powers can be implied into the Constitution (see *Foo Jong Peng and others v Phua Kiah Mai and another* [2012] 4 SLR 1267 at [46]–[47]; *Chee Hock Keng* at [55]; and *Singapore Rifle Association* at [41]). But the process of implying terms in a contract is in fact a highly fact-dependent one. This was stressed by the court in *Forefront Medical Technology (Pte) Ltd v Modern-Pak Pte Ltd* [2006] 1 SLR(R) 927 at [41]:

> … it is important to note that the tests considered above relate to the possible implication of a *particular* term or terms into *particular* contracts. In other words, the court concerned would examine the *particular factual matrix* concerned in order to ascertain whether or not a term ought to be implied. … There are practical consequences to such an approach, the most important of which is that the implication of a term or terms in a particular contract *creates no precedent for future cases*. In other words, the court is only concerned about arriving at a just and fair result via implication of the term or terms in question in that case – *and that case alone*. The court is only concerned about the presumed intention of the particular contracting parties – *and those particular parties alone*. …

[emphasis in original]

73 I am of the view that in the present case, the test for implication in *Sembcorp* is not satisfied. In particular, the Implied Term fails to satisfy the "officious bystander" test as reflected in the third step of the *Sembcorp* process for implication. In *Sembcorp* (at [98]), it was observed by the Court of Appeal that "a term that is not reasonable, not equitable, unclear, or that contradicts an express term of the contract, will not be implied" as it would "necessarily fail the officious bystander test". The Implied Term suggested by the defendant that the *ExCo* has the "power to take *all necessary preventive and/or remedial actions* to protect the safety of its members, particularly when such members are minors" [emphasis added], envisages an exceedingly broad discretionary power vested in a small group of members of the defendant. The ambit of this power is unclear and unspecific. Moreover, given the breadth of such a power, it is difficult to see how the members of the defendant would have considered it so obvious that the *ExCo* (and not a general meeting of the members) would be able to wield such power. This is especially so given that such a power may extend to the taking of disciplinary action against a particular member, even including drastic measures like suspension and expulsion.

74 Therefore, I am of the view that the defendant acted *ultra vires* the Constitution in imposing the Ban and communicating the Notice to Partners. Consequently, it is not necessary to consider the plaintiff's further arguments that: (a) even if the Constitution empowered the defendant to take disciplinary action, the power was vested in a general meeting of the members, and not the ExCo; and (b) in any event, none of the actions taken against the Deceased were properly authorised by a resolution of the ExCo.

Whether the Ban and the Notice to Partners were issued in breach of the rules of natural justice and therefore invalid

75 Unlike the plaintiff's arguments above concerning whether the defendant acted *ultra vires* the Constitution, the plaintiff's argument based on natural justice is properly founded in a claim for breach of contract. The basis for this was explained in *Kay Swee Pin v Singapore Island Country Club* [2008] SGHC 143 ("*Kay Swee Pin (AD)*") at [33] as follows:

> … Mdm Kay's claim properly understood is one in breach of contract, *ie* that the SICC had wrongfully suspended her membership in breach of the terms of contract found in the constitution and rules of the club. There is a 'judicial review' of the decision of the GC of the club to the extent of questioning whether it is in line with the rules of natural justice for the purpose of determining if there had been a breach of the contract, such natural justice rules being either expressly or in this case impliedly provided for under the contract in the form of the SICC's constitution. The principles of administrative law that were applied by the Court of Appeal, such as the *audi alteram partem* principle and those relating to the irrationality of the decision-making process, can therefore be seen as being applied by analogy to a private law context for the purpose of deciphering whether there had indeed been a breach of contract. Properly conceived, the claim for damages hence arises from a contractual breach, and it is therefore to the contractual principles of damages that recourse should be had in assessing the quantum of damages that is payable in this case.

76 As explained further in *Khong Kin Hoong Lawrence v Singapore Polo Club* [2014] 3 SLR 241, Tan Siong Thye JC (as he then was) observed at [23] that:

> The rules of natural justice are universal rules that govern the conduct of human behaviour. These rules are widely accepted to be of paramount importance. Contracting parties accept the rules of natural justice as obvious terms which are often not mentioned in their contract. Hence, courts assume that parties must have intended these rules to govern their contractual terms even if the contract is silent as to such rules. Therefore the rules of natural justice are implied terms of the contract between the Plaintiff and the Defendant. The rules of natural

> justice require the Defendant to act fairly against its members, such as the Plaintiff, especially when the disciplinary proceedings may result in sanctions. …

77 In *Sim Yong Teng and another v Singapore Swimming Club* [2015] 3 SLR 541 at [41], the court observed that the rules of natural justice can be recast as a duty to act fairly in all the circumstances of the case. There are two main pillars to the rules of natural justice: (a) the rule against bias; and (b) the fair hearing rule. In *Kay Swee Pin v Singapore Island Country Club* [2008] 2 SLR(R) 802 ("*Kay Swee Pin*") at [7], the Court of Appeal explained these pillars of natural justice as follows:

> A duty to act fairly involves a duty to act impartially. Procedural fairness requires that the decision-maker should not be biased or prejudiced in a way that precludes a genuine and fair consideration being given to the arguments or evidence presented by the parties: *Halsbury's* at para 10.050. It is also a cardinal principle of natural justice that no man shall be condemned unheard. Compliance with the *audi alteram partem* rule requires that the party liable to be directly affected by the outcome of the disciplinary proceedings should be given notice of the allegation against him and should be given a fair opportunity to be heard. Notice includes notice of any evidence put before the tribunal. It is a breach of natural justice for evidence to be received behind the back of the party concerned: *Halsbury's* at para 10.060. It will generally be a denial of justice to fail to disclose to that party specific material relevant to the decision if he is thereby deprived of an opportunity to comment on such material. Similarly, if a tribunal, after the close of the hearing, comes into possession of further evidence, the party affected should be invited to comment upon it: see *Halsbury's* at para 10.061.

78 However, the Court of Appeal in *Kay Swee Pin* also noted that the content of this duty to act fairly varies with the circumstances of the case (at [6]):

> … Certain factors will increase the likelihood of the principles being applied rigorously, *eg*, where there is an express duty to decide only after conducting a hearing or an inquiry, or where the exercise of disciplinary powers may deprive a person of his

> property rights or impose a penalty on him. All disciplinary bodies have a duty to act fairly as expulsion, suspension or other punishment or the casting of a stigma may be involved: *Halsbury's* at para 10.049. What fairness requires and what is involved in order to achieve fairness is for the decision of the courts as a matter of law. The issue is not one for the discretion of the decision-maker: see *De Smith's* at para 7-009, p 361.

79 I now turn to consider whether there was a breach of the fair hearing rule and the rule against bias on the facts.

(1) Whether there was a breach of the fair hearing rule

80 It is undisputed that the Deceased was not given the opportunity to address the allegations made against him or to defend himself against the Ban, the Notice to Partners and/or the ExCo Statement, neither was he informed of the investigations taken prior to these actions.

81 In Cherylyn's AEIC at para 45, she acknowledged that "[the Deceased] had not been given the opportunity to explain himself prior to the issuance of the public statement." This was echoed in Vihasini's AEIC at para 26, where she similarly agreed that "[the Deceased] was not given the chance to explain himself prior to the publication of the EXCO Statement". This was repeated during her cross-examination where she stated that "[the Deceased] wasn't heard before the [ExCo Statement] went out".[86]

82 During Vihasini's cross-examination, the plaintiff's counsel suggested that the defendant could have informed the Deceased of the investigations and provided him with an opportunity to respond to the allegations against him.

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86 NE, 16 November 2022, p 99, ln 23.

Vihasini did not deny that no such actions had been taken by the defendant. This exchange is captured as follows:[87]

> Q: … All you needed to do was to inform [the Deceased] that an investigation was being done in connection with the DDI programme. You could have told him that certain findings have been made in the audit report concerning him, and you could have given him some time to consider the allegations and to fashion a response. Once his response comes in, you could have had someone independent to determine whether the allegations were credible or not. That, if you agree, Ms Gopakumar, would have achieved very much a due process that he was entitled to. …
>
> A: On hindsight, there are a lot of things we could have done differently, but in that moment, we felt like we couldn't afford to do that.

83 The defendant argues that the rules of natural justice should not apply with the fullest rigour in the present case. This is because the defendant is a voluntary non-profit organisation involving mostly minors and young adults and no membership fees are charged.[88] Conversely, the plaintiff submits that such a contention is devoid of merit, as the defendant did not plead any such material facts to show that it did not charge any membership fees and that it was being run on a not-for-profit and informal basis.[89]

84 There is, however, authority which indicates that the dispensation or exclusion of a right to be heard is permissible where such procedures would hinder prompt action or where there is an urgent need to protect the interests of third parties. Harry Woolf *et al*, *De Smith's Judicial Review* (Sweet & Maxwell,

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87 NE, 16 November 2022, p 101, ln 2–12 and 14–16.

88 DCS at paras 147 and 153.

89 PRS at para 18.

8th Ed, 2018) ("*De Smith's*") notes that at common law, procedural propriety may be excluded in such circumstances (see para 8-039):

> *Urgency may warrant relaxing the requirements of fairness even where there is no legislation under which this is expressly permitted.* Thus a local authority could, without any consultation, withdraw children from a special school after allegations of persistent cruelty and abuse without this involving any procedural impropriety. In such circumstances there exists an emergency in which the primary concern is as to the safety and welfare of the children. The suspension without first affording an opportunity to be heard, of a Romanian Airline's flight permit, following the failure by five of its pilots of Civil Aviation Authority examinations in aviation law, flight rules, and procedures, was not unfair where an immediate threat to air safety was apprehended. Similarly where a self-regulatory organisation acted urgently to protect investors, it was not required to consider whether there was sufficient time to receive representations. Likewise, a local authority was entitled to prohibit allegedly dangerous toys as an 'emergency holding operation'. … *In general, whether the need for urgent action outweighs the importance of following fair procedures depends on an assessment of the circumstances of each case on which opinions can differ.* [emphasis added]

85 In *The Stansfield Group*, Prakash J cited the above extract from *De Smith's* with approval. Accordingly, she observed (at [118]) that:

> … although generally the rules of natural justice apply when an authority or quasi-authority such as CASE is making a decision that can have an impact on the livelihood of an organisation whose behaviour it monitors, those rules may not need to be followed if the circumstances require urgent action for the protection of third parties *and there is the possibility of representations being received subsequently* [emphasis added].

86 As set out above at [60], I accept that the defendant acted swiftly and decisively in making the Decision (in particular, in imposing the Ban and communicating the Notice to Partners) to preserve the safety of the students under its charge, especially the minors. During cross-examination, Vihasini reiterated, "I think the priority for us wasn't [the Deceased] but about what was best for the students, what was best for the minors, what was best for the Debate

Association. So maybe it wasn't that fair to [the Deceased], but this was trying to protect other, more important factors."[90]

87 On the facts, I accept that it was reasonable to prioritise urgent action to be taken. The evidence in the form of the Darkness Chat Group logs did objectively contain discussions of "sexual acts, sexual preferences and sexual history of participants",[91] which revealed sexual impropriety on the part of the Deceased *vis-à-vis* the other participants who were minors. Indeed, the plaintiff accepts that the discussions in the Darkness Chat Group were "sexually provocative and that [the Deceased] had engaged in such discussions".[92] At the material time, it was also undisputed that the Deceased was an active member of the defendant (albeit no longer a director of the DDI programme). As such, a degree of urgency in imposing the Ban and communicating the Notice to Partners, amongst other things, was required to ensure the safety of the participants of the defendant's programmes. Here, it is important to note that the reason for the Ban was really centred on the contents of the Darkness Chat Group and *not* the allegations raised by Hanniel – this was made clear in the Ban Notification sent to the Deceased.[93]

88 Against this, the plaintiff argues that there is no justification for the defendant's failure to observe the fair hearing rule as: (a) there was no evidence that the Deceased posed a threat to the safety of the members of the defendant such that it was necessary to act "decisively and swiftly"; (b) evidence showed that the Deceased was never a danger to any members of the defendant as apart

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90 NE, 16 November 2022, p 113, ln 10–15.

91 5AB2833 (ExCo Statement).

92 PCS at para 30.

93 5AB2836 (ExCo Statement).

from Hanniel's allegations concerning the 2014 Incident, there were no other similar allegations; (c) the defendant demonstrated a lack of urgency in dealing with the allegations; and (d) there was no evidence to suggest that the Deceased would have interfered with the investigations.[94] In my view, it did not matter that the allegations against the Deceased were allegations from some time in the past. They were objectively serious allegations and more importantly, the Deceased was still involved with and in close contact with minors participating in the defendant's activities (and the activities of other partner organisations). The very nature of the allegations demonstrated at least on a *prima facie* basis that the Deceased potentially posed a threat to the safety of members of the defendant, especially the minors.

89 That being said, the exception to the fair hearing rule in situations where the circumstances require urgent action is also subject to the possibility of representations being received subsequently (see [85] above). In this regard, while there was contemplation of some form of appeal or review process, the availability of such a process was not expressly communicated to the Deceased (see [61] above). In this connection, Cherylyn testified as to the practice in debate tournaments and how situations of misconduct are dealt with:[95]

> A: So, like, for example, if we're in the middle of a debate match and someone is being disruptive or someone, for example, has said vulgarities to their opponent, then we would remove them immediately, first, for, like, the safety of everyone involved. You can protest later on, like, you know, 'Why did you do that?' et cetera, like, 'It was unfair of you to move me' blah, blah, blah. But at

94 PCS at para 116.

95 NE, 16 November 2022, p 82, ln 5–16.

> the point of the -- of it happening, we will remove him first.
>
> Court: So I suppose the analogy is closer to a sporting event, where you have a referee saying, 'You have breached the rules'.
>
> A: I'm not familiar with sport, sorry, but I sup—I think so.

However, even if it is accepted that this practice is commonplace in debate tournaments and that the Deceased, as an active participant of the debating scene in Singapore, ought to have been aware of this, the objective facts show that the Deceased did not contemplate making such an appeal. Instead, the only expressly considered option was that of seeking legal advice, as seen in the Deceased's messages to some of his friends after receiving the Ban Notification and reading the ExCo Statement.[96] Given that there was no express indication to the Deceased that he was allowed to make representations and/or appeal the Decision and that there was also no indication that the Deceased had contemplated such a possibility at the time, I am of the view that the rules of natural justice still applied in the present case. The fair hearing rule, in particular, was breached. This is so even if I accept the defendant's argument that the rules of natural justice applied with less rigour; given that the breaches in the present case concerned the *fundamental* features of the fair hearing rule, none of which were complied with.

(2) Whether there was a breach of the rule against bias

90 To recapitulate, the plaintiff alleges that the defendant breached the rule against bias by demonstrating apparent bias in the proceedings leading up to the Ban. The applicable principles in relation to the doctrine of apparent bias were

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[96] See, for example: 5AB2819, 5AB2867, 5AB2869.

restated by the Court of Appeal in *BOI v BOJ* [2018] 2 SLR 1156 ("*BOI*") at [103] as follows:

> (a) The applicable test is whether there are circumstances that would give rise to a reasonable suspicion or apprehension of bias in the fair-minded and informed observer. This is not any different from asking whether the observer would conclude that there was a "real possibility" of bias, bearing in mind that the word "real" here refers to the degree of likelihood of bias (which must be substantial and not imagined), and not whether the bias is actual.
>
> (b) As the test for apparent bias involves a hypothetical inquiry into the perspective of the observer and what the observer would think of a particular set of circumstances, the test is necessarily objective.
>
> (c) A reasonable suspicion or apprehension arises when the observer would think, from the relevant circumstances, that bias is possible. It cannot be a fanciful belief, and the reasons for the suspicion must be capable of articulation by reference to the evidence presented.
>
> (d) In establishing whether the observer would harbour a reasonable suspicion of bias, the court must be mindful not to supplant the observer's perspective by assuming knowledge outside the ken of reasonably well-informed members of the public (*ie*, detailed knowledge of the law and court procedure, or insider knowledge of the inclinations, character or ability of the members of the court or adjudication body). The observer would be informed – that is, he or she would be apprised of all relevant facts that are capable of being known by members of the public generally. The observer would also be fair-minded; he or she would be neither complacent nor unduly sensitive and

suspicious. He or she would know the traditions of integrity and impartiality that administrators of justice have to uphold, and would not jump to hasty conclusions of bias based on isolated episodes of temper or remarks taken out of context.

(e) In line with (d), the relevant circumstances which the court may take into account in finding a reasonable suspicion of bias would be limited to what is available to an observer witnessing the proceedings. Such circumstances might include, for example, the demeanour of the judge and counsel, the interactions between the court and counsel, and such facts of the case as could be gleaned from those interactions and/or known to the general public.

91 In addition, the rule against prejudgment prohibits the decision-maker from reaching a final, conclusive decision before being made aware of all relevant evidence and arguments which the parties wish to put before him or her. The primary objection against prejudgment is the surrender by a decision-making body of its judgment such that it approaches the matter with a closed mind (*BOI* at [107]). While it has been said that prejudgment is distinct from (though related to) apparent bias, the Court of Appeal observed that the preponderance of authority has referred to prejudgment as something that amounts to apparent bias (*BOI* at [108]). Accordingly, in order to establish prejudgment amounting to apparent bias, it must be established that the fair-minded, informed and reasonable observer would, after considering the facts and circumstances available before him, suspect or apprehend that the decision-maker had reached a final and conclusive decision before being made aware of all relevant evidence and arguments which the parties wish to put before him or her, such that he or she approaches the matter at hand with a closed mind (*BOI* at [109]).

92 Flowing from my views expressed above, the plain and obvious inference is that the defendant had prejudged the Deceased. This inference can be reasonably drawn from the fact that the defendant did not ask to receive or consider any evidence from the Deceased before deciding on the Decision (including the Ban and the Notice to Partners). This is further underscored by Vihasini's AEIC at para 23, where she stated emphatically but perhaps presumptuously that, "there was *simply no fathomable explanation* that [the Deceased] could have mustered to justify his actions, *even if given the opportunity to do so*" [emphasis added]. Having also concluded that the exception to the application of the rules of natural justice (*ie*, the common law exception of urgency) does not apply in the present case, I am of the view that this prejudgment by the defendant amounted to apparent bias.

Whether the Ban and the Notice to Partners were issued irrationally, capriciously and in bad faith and therefore invalid

93 It is not strictly necessary to consider this argument by the plaintiff, which is founded on the defendant having acted unreasonably within the rubric of the administrative law concept of *Wednesbury* unreasonableness.[97] The argument was framed as a further or alternative basis for the plaintiff's claim for a declaration.

94 The plaintiff submits that the Decision may be reviewed by the court on the ground of *Wednesbury* unreasonableness, and that this concept can be imported into the present context involving a *private law* claim against an unincorporated association. In so arguing, the plaintiff relies primarily on the UK Supreme Court decision of *Braganza v BP Shipping Ltd and another* [2015] 1 WLR 1661 ("*Braganza*") and a series of Singapore cases which appear

97 PCS at para 125.

to have adopted the same position (see, *eg*, *MGA International Pte Ltd v Wajilam Export (Singapore) Pte Ltd* [2010] SGHC 319 ("*MGA International*"); *Leiman, Ricardo and another v Noble Resources Ltd and another* [2018] SGHC 166 ("*Leiman*")).

95 As summarised in the recent case of *Dong Wei v Shell Eastern Trading (Pte) Ltd and another* [2022] 1 SLR 1318 at [91], *Braganza*, *MGA International* and *Leiman* all involved the exercise of one party's *contractual discretion* relating to rights subsisting within the contours of their respective contracts. The restrictions in those cases served to ensure that a party's contractual discretion was not exercised in a manner which deprived its counterparty of its contractual rights, or which warped their contractual bargain.

96 In the present case, following from my analysis above, the defendant was not empowered under the Constitution to impose the Ban and issue the Notice to Partners. As such, there is no exercisable contractual discretion to speak of. Having dealt with this anterior issue thus, the question of the appropriateness of importing *Wednesbury* principles of unreasonableness into the private law context involving clubs and associations is not engaged, and need not therefore be the subject of my determination.

What remedies are available to the plaintiff

97 As I have found that the defendant had acted *ultra vires* the Constitution and in breach of the rules of natural justice in imposing the Ban and communicating the Notice to Partners, I turn next to consider the remedies available to the plaintiff.

(1) Damages for mental distress caused to the Deceased

98 The plaintiff submits that flowing from a finding of breach of contract, the estate of the Deceased is entitled to damages for the mental distress and/or psychiatric harm (in the form of an ASR) suffered by the Deceased, pursuant to s 10 of the CLA. At this juncture, I note that damages may only be sought in relation to a finding of a *breach of contract*. In the present case, arguably, the plaintiff might be entitled to claim for damages in relation to the finding that there was a breach of natural justice. The basis for this would be that the rules of natural justice are implied terms of the Constitution, which constitutes the contract of membership between the Deceased and the defendant (see [75] above). However, a finding that the Ban and the Notice to Partners were *ultra vires* the Constitution stands on a separate footing, as this finding is *not* grounded in a private law claim (in particular, a breach of contract) which entitles the plaintiff to damages. As such, only a declaration may be available as a remedy (see [111]–[117] below).

99 Therefore, I only consider the plaintiff's claim for damages in relation to the finding above that the defendant breached the rules of natural justice in imposing the Ban and communicating the Notice to Partners.

100 Nevertheless, even if I accept that the Deceased did suffer from some form of mental distress, and without first delving into the concepts of causation and remoteness, it is evidently clear that this is a claim for non-pecuniary loss. In *ACB v Thomson Medical Pte Ltd and others* [2017] 1 SLR 918 at [53], the Court of Appeal held that substantial awards of damages for non-pecuniary loss arising from reputational damage and mental distress are generally contrary to policy:

> … In general, the law of contract concerns itself with the remediation of pecuniary damage, and the scope for recovering damages for non-pecuniary loss in contract is greatly limited. This is the reason for the well-established rule that the law of contract does not *generally* award recovery for reputational damage and mental distress arising from a breach of contract … [emphasis in original]

101 That being said, as the learned authors of *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) highlight at para 21.121, "[i]t has long been accepted that the reluctance of the courts to award damages in compensation of non-pecuniary losses in the form of mental distress may be overcome given appropriate facts". In particular, recovery for mental distress is possible where the specific object of the contract was to provide pleasure and enjoyment, but the exact opposite resulted instead because of a breach of contract. Bingham LJ in *Watts v Morrow* [1991] 1 WLR 1421 ("*Watts*") at 1445 described the exception to the recovery of non-pecuniary losses as such:

> But the rule is not absolute. Where the very object of a contract is to provide pleasure, relaxation, peace of mind or freedom from molestation, damages will be awarded if the fruit of the contract is not provided or if the contrary result is procured instead. If the law did not cater for this exceptional category of case it would be defective. …

Subsequently, in the House of Lords decision of *Farley v Skinner* [2001] 3 WLR 899 ("*Farley*"), the court held that it is sufficient that the provision of "mental benefits" is a major or important object of the contract. In other words, it need not be the sole or entire purpose of the contract.

102 In the present case, the plaintiff argues that "[a]n important object of the contract was to provide the mental development and/or satisfaction which a member of the defendant may enjoy through attending and/or participating in such events". Thus, the contract of membership fell within the class of contracts

providing for "mental benefits" as contemplated in *Farley*.[98] The plaintiff also seeks to rely on the assistant registrar's decision in *Kay Swee Pin (AD)* where a substantial award of damages was awarded for non-pecuniary loss.[99] In particular, the assistant registrar held (at [79]) that "[r]ecovery in the present case is only permissible because the [Singapore Island Country Club] membership constitutes a contract which has as its central focus the provision of pleasure, enjoyment and other 'mental benefits'". On the facts of *Kay Swee Pin (AD)*, the assistant registrar noted (at [74]) that counsel for the club "did not appear to contend that the membership contract [was] not one to provide pleasure and enjoyment".

103 To my mind, the provision of "mental benefits", including pleasure and enjoyment as contemplated in *Watts* and *Farley*, was neither a major nor an important object of the contract of membership in the present case. To be clear, the objects of the Constitution are set out at Art 3.1 as follows:[100]

> OBJECTS
>
> 3.1 Its objects are:
>
> a) To promote English language development and argumentation in Singapore schools
>
> b) To provide an infrastructure for debates, for schools desiring training and development of debate techniques and styles.

98 PCS at para 149.

99 PCS at paras 142 and 149.

100 6AB3077.

> c) To serve as a bridge organisation between Singapore schools and international debate organisations/schools.

104 In my view, the objects stated above are plainly concerned with advancing the broader general objects of education, learning and social good. They say nothing about the specific provision of mental benefits, pleasure and enjoyment to individual members. It cannot thus be contemplated that the very object of the membership contract was to provide such benefits. It is quite irrelevant whether the Deceased himself sought to obtain such mental benefits, including mental development, pleasure or personal enjoyment from debating, from his membership with the defendant. It is possible that he may have subjectively derived such collateral benefits, but it goes too far to treat this as one of the objects of his contract of membership with the defendant. The present case is wholly unlike the case of *Kay Swee Pin (AD)*, where the membership in question was a Singapore Island Country Club membership which entitled the plaintiff as a fee-paying member to enjoy the club's various facilities which provided "pleasure, relaxation and comfort".

105 Further, it should be noted that in *Kay Swee Pin (AD)*, the assistant registrar had also considered (at [73]) the case of *Haron bin Mundir v Singapore Amateur Athletic Association* [1991] 2 SLR(R) 494. In that case, the defendant was an association of several sports clubs, which was vested with the power and responsibility to "promote, arrange and assist amateur athletic competitions and championships for the benefit of affiliates and foreign teams desirous of visiting the Republic of Singapore and to employ the funds of the association to this purpose and to promote athletics in general". The defendant's object was thus to promote competitive sports/athletics and the concomitant social good. This was recognised by the assistant registrar who determined that since the case involved the suspension of a member of an athletics association, where the

relationship between the association and its members could not be said to be one which had as its object the provision of "mental benefits", the exception was therefore not triggered and the general rule thus prevailed.

106 Accordingly, I am of the view that the exception to the general rule is similarly not triggered in the present case, and the plaintiff is not entitled to his claim for general damages for mental distress purportedly caused to the Deceased by the defendant's breach of contract.

(2) Damages for any loss attributable to the death of the Deceased on the basis that his death was caused by the defendant's breach of contract

107 In addition, the plaintiff submits that pursuant to ss 20 and 21 of the CLA, the Deceased's dependants are entitled to claim damages for any loss attributable to the death of the Deceased on the basis that his death was caused by the defendant's breach of contract and for bereavement. For the purpose of these provisions, the dependants of the Deceased are: (a) the plaintiff (as the father of the Deceased); and (b) Mdm Silvia Bridget Loh Gek Hui ("Mdm Loh") (as the mother of the Deceased).[101]

108 Section 20(1) of the CLA provides as follows:

> **Right of action for wrongful act causing death**
>
> **20.**—(1) If death is caused by any wrongful act, neglect or default which is such as would (if death has not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

109 Section 21(1) of the CLA provides as follows:

> **Bereavement**

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101 SOC at para 24.

> **21.**—(1) An action under section 20 may consist of or include a claim for damages for bereavement.

110 For the same reasons stated above, these claims under ss 20(1) and 21(1) of the CLA can only succeed if the person injured could have "maintain[ed] an action and recover[ed] damages in respect thereof". However, since the Deceased's claim would have been for non-pecuniary loss premised on his mental distress and/or psychiatric injury (in the form of an ASR), damages would not have been recoverable. As such, this claim would fail as well.

(3) Declaratory relief

111 In the plaintiff's SOC, the following declarations are sought in relation to the defendant's breach of contract:

(a) A declaration that the Decision was unlawful as it was *ultra vires* the Constitution.

(b) A declaration that the Decision was unlawful as it was made in bad faith and arbitrarily, capriciously and/or unreasonably.

(c) A declaration that the Decision was unlawful as it was made in breach of the rules of natural justice.

112 In the plaintiff's written submissions, one further declaration is sought, namely, a declaration that the Decision was *ultra vires* the Constitution as it was made without authorisation of the members of the defendant.[102] As this declaration was not sought in the SOC and thus not pleaded, I decline to consider it.

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102 PCS at para 216(b).

113 The requirements that must be satisfied before the court grants declaratory relief are set out in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 at [14] in the following terms:

(a) the court must have the jurisdiction and power to award the remedy;

(b) the matter must be justiciable in the court;

(c) as a declaration is a discretionary remedy, it must be justified by the circumstances of the case;

(d) the plaintiff must have *locus standi* to bring the suit and there must be a real controversy for the court to resolve;

(e) any person whose interests might be affected by the declaration should be before the court; and

(f) there must be some ambiguity or uncertainty about the issue in respect of which the declaration is asked for so that the court's determination would have the effect of laying such doubts to rest.

114 The elements going towards the requirement for *locus standi* were further distilled in the Court of Appeal's subsequent decision in *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 (at [72]) as follows:

(a) the applicant must have a "real interest" in bringing the action;

(b) there must be a "real controversy" between the parties to the action for the court to resolve; and

(c) the declaration sought must relate to a right which is personal to the applicant and which is enforceable against an adverse party to the litigation.

115 While the plaintiff had grouped together three separate actions comprising the Decision, I have stated (at [48]) that it is only relevant to focus on the Ban and the Notice to Partners. I have found (at [74]) that in imposing the Ban and issuing the Notice to Partners, the defendant acted *ultra vires* the Constitution. Further, in doing so, the defendant also breached the rules of natural justice (at [89] and [92]). As explained in my analysis above (at [96]), the issue of the appropriateness of importing *Wednesbury* principles of unreasonableness into the private law context involving clubs and associations is not engaged. There is therefore no need for this to be the subject of my determination.

116 Accordingly, I am of the view that in relation to the Ban and the Notice to Partners, the following declarations should be ordered:

(a) that they were unlawful as they were issued *ultra vires* the Constitution; and

(b) that they were unlawful as they were issued in breach of the rules of natural justice.

117 Indeed, the defendant does not appear to contest the propriety of such orders if the court finds the substance of the declarations to be true.

(4) Order setting aside the Ban and the Notice to Partners

118 Following from my findings above and the grant of declarations on the basis that the Ban and the Notice to Partners were unlawful, a further order should be granted setting aside the Ban and the Notice to Partners.

(5) Mandatory injunctions

119 The general power of the General Division of the High Court as to the reliefs which it may grant is set out in para 14 of the First Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed) which provides that the court has the "[p]ower to grant all reliefs and remedies at law and in equity, including damages in addition to, or in substitution for, an injunction or specific performance".

120 As noted by I.C.F. Spry, the learned author of *The Principles of Equitable Remedies: Specific Performance, Injunctions, Rectification and Equitable Damages* (Lawbook Co, 9th Ed, 2014) at p 344, the width of the court's power to grant injunctions was given clear expression by Lord Nicholls in the case of *Mercedes Benz A.G. v Leiduck* [1996] AC 284 at 308:

> … the jurisdiction to grant an injunction, unfettered by statute, should not be rigidly confined to exclusive categories by judicial decision. The court may grant an injunction against a party properly before it where this is required to avoid injustice, just as the statute provides and just as the Court of Chancery did before 1875.

121 In Steven Gee, *Commercial Injunctions* (Sweet & Maxwell, 6th Ed, 2016), an injunction as a discretionary remedy is explained as follows (at para 2–001):

> An injunction is a discretionary remedy, granted or refused in accordance with principles elucidated by the courts, and which can be enforced through proceedings for contempt. …

> …
>
> An injunction may be sought as a remedy in an infinite variety of situations and it must be recognised that any attempt to state principles must accommodate this. …
>
> …
>
> … The principles to be applied cannot be divorced from the nature of the rights claimed, the stage of the proceedings in which the application is made, the purpose for which an injunction is being sought, and the foreseeable effects of granting or refusing it.

122 I consider in turn each of the mandatory injunctions sought by the plaintiff.

(A) ORDER REQUIRING THE REMOVAL OF THE EXCO STATEMENT FROM ALL LOCATIONS WHERE IT WAS PUBLISHED

123 There is no basis for the making of this order given that the publication of the ExCo Statement itself is not *ultra vires* the Constitution and does not form part of the Decision as pleaded by the plaintiff (see [47] above).

(B) ORDERS FOR PUBLIC STATEMENTS TO CORRECT THE DECISION

124 In *Chin Bay Ching v Merchant Ventures Pte Ltd* [2005] 3 SLR(R) 142 ("*Chin Bay Ching*") at [25], the court observed that "the cases where the court should think that justice requires the grant of a mandatory injunction, to issue either a letter of withdrawal or correction, must be quite exceptional". No precedent was cited by the plaintiff to show that our courts have granted a mandatory injunction requiring the correction of a published statement. That being said, there also does not appear to be anything to preclude the court from granting such orders in its discretion. However, the plaintiff has not offered

cogent reasons for such an exceptional order to be made.[103] I therefore decline to make such an order.

(C) ORDER FOR APOLOGY

125 In *Chin Bay Ching*, an appeal against an interlocutory mandatory injunction and an interlocutory prohibitory injunction granted by the High Court in an action for defamation and malicious falsehood, the Court of Appeal recognised (at [25]) "the force of the argument that a defendant should not be compelled to apologise against his will as the very spirit of an apology is that it must come from the heart, something which the defendant wishes to do on account of the wrong he has done to the plaintiff". This stands on a different footing and is of a different character from an order "compelling a defendant to merely withdraw, or correct, an offending statement after a trial".

126 In the present case, the defendant has contested the entirety of the plaintiff's claim. In so doing, it demonstrated a lack of acknowledgment of any wrongdoing on its part. I am thus of the view that it would not be appropriate for the court to impose such an order on the defendant. That being said, given my finding that the defendant had breached the rules of natural justice, I venture to suggest that it would not be out of order for the defendant to consider extending an apology to the plaintiff and his family in the spirit of reconciliation. I do not propose to say more on this or to propose what form a possible apology might take.

127 For completeness, I also briefly address the case of *Excel Golf Pte Ltd v Allied Domecq Spirits & Wine (Singapore) Ltd* [2003] 4 SLR(R) 771 ("*Excel Golf*") which was cited by the defendant. In essence, the defendant relies on

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103 See PCS at para 223(b).

Excel Golf for the proposition that "the law does not enable the court to require the party in breach of contract [to] make a public apology for the breach".[104] In my view, *Excel Golf* is of limited assistance to the defendant. Ultimately, the judge's conclusion was based on the fact that the plaintiff's counsel in that case did not cite to the court any direct authority in support of the proposition that a court had the power in such cases to order that an apology be published and that para 14 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) gave the court that power (at [8]–[9]). However, to my mind, while the court in *Excel Golf* had declined to order the publication of an apology due to the lack of case authorities, it does not follow that the court had taken the definitive position that it *did not* have the power to do so – whether such an order was appropriate in law was thus a question that was left open in that case.

The claim in the tort of negligence

128 I next turn to the plaintiff's claim in the tort of negligence. I begin by setting out the elements which must be established in order for a plaintiff to succeed in a claim founded on the tort of negligence, as outlined by the Court of Appeal in *Ngiam Kong Seng and another v Lim Chiew Hock* [2008] 3 SLR(R) 674 ("*Ngiam Kong Seng*") at [146]:

(a) the defendant owed the plaintiff a duty of care;

(b) the defendant breached that duty of care by acting (or omitting to act) below the standard of care required of it;

(c) the defendant's breach caused the plaintiff damage;

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104 DCS at para 341.

(d) the plaintiff's losses arising from the defendant's breach are not too remote; and

(e) such losses can be adequately proved and quantified.

129 The plaintiff pleads that the defendant owed the Deceased, in his capacity as a member of the defendant, a duty of care in tort to initiate and/or conduct any investigations or disciplinary proceedings against him with reasonable care, including a duty to take reasonable care to avoid causing the Deceased to suffer psychiatric harm and/or distress as a result of: (a) conducting such investigations or proceedings against him; and/or (b) communicating the outcome of such investigations or proceedings to him.[105]

130 In this regard, the plaintiff contends that the defendant acted negligently and in breach of the duty of care it owed to the Deceased by: (a) initiating investigations against him with respect to the allegations referred to in the ExCo Statement; (b) the manner in which it conducted the investigations against him; and/or (c) the manner in which it communicated and publicised the allegations against the Deceased and the outcome of the investigations through the ExCo Statement.[106]

131 It is trite that the defendant's breach must have caused the plaintiff damage in order to for liability in negligence to be established. In the present case, the plaintiff has the burden of proving on the balance of probabilities that the defendant's breach of duty as alleged above caused the Deceased to suffer from the alleged harm of an ASR, a recognised psychiatric illness. However, a significant preliminary issue with the plaintiff's case in the tort of negligence is

105 SOC at para 21.

106 SOC at para 22.

that the plaintiff has not demonstrated how the alleged breach of duty as pleaded *caused* the Deceased to suffer from an ASR. Indeed, it is clear from the questions posed to the plaintiff's expert witness, Dr Ng, that the plaintiff's case is that the breach of duty lay in the defendant's actions of "permanently banning the Deceased from all events of the [d]efendant and making the allegations in the [ExCo] Statement". I reproduce the key question posed by the plaintiff's counsel to Dr Ng for the purposes of preparing her expert report, which states as follows:[107]

> b) Whether, on the balance of probabilities, the [d]efendant's actions in permanently banning the Deceased from all events of the [d]efendant and making the allegations in the EXCO Statement caused the Deceased to develop a mental illness, disorder or condition and/or suffer from a pre-existing mental illness, disorder or condition triggered by the [d]efendant's actions at the time of his suicide which impaired his capacity to make a voluntary, rational and informed judgment on whether he should live.

132 As pleaded, the plaintiff alleges that the defendant breached its duty by: (a) initiating investigations against him with respect to the allegations referred to in the ExCo Statement; (b) the manner in which it conducted the investigations against him; and/or (c) the manner in which it communicated and publicised the allegations against the Deceased and the outcome of the investigations through the ExCo Statement.[108] However, the plaintiff does not rely on (a) and (b) as a causative basis for the Deceased's ASR. Only (c) is referenced in the plaintiff's question posed to Dr Ng. Another manner in which the plaintiff claims the defendant breached its duty, as framed in the question posed to Dr Ng, is grounded in the defendant's act of permanently banning the Deceased from all events of the defendant. This was not pleaded in the SOC.

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107 Dr Ng's Report at para 15(b).

108 SOC at para 22.

133 The upshot is that the plaintiff has adduced no evidence in support of whether the purported breaches of duty in (a) and (b) above were in any way causative of the Deceased's ASR. Accordingly, even if it is accepted that the defendant owed a duty of care and breached that duty in the manner particularised in (a) and (b), there is insufficient basis to demonstrate causation.

134 Therefore, I refocus the analysis below to consider:

(a) Whether the defendant owed the Deceased a duty to take reasonable care to avoid causing him to suffer psychiatric harm and/or distress as a result of communicating the outcome of the investigation and disciplinary proceedings to him.

(b) Whether the defendant breached the alleged duty by the manner in which it communicated and publicised the allegations against the Deceased and the outcome of the investigations through the ExCo Statement.

Whether the defendant owed the Deceased a duty of care

135 The test under Singapore law for determining the existence of a duty of care in the context of claims in negligence for psychiatric harm was discussed in *Ngiam Kong Seng*, and is as follows (at [109]):

(a) First, two threshold requirements have to be established:

(i) the presence of a recognisable psychiatric illness; and

(ii) factual foreseeability.

(b) Secondly, the first stage of the *Spandeck* test assessing the legal proximity between the parties applies. This encompasses the three

factors set out by Lord Wilberforce in the third part of his judgment in *McLoughlin v O'Brian* [1983] 1 AC 410 namely (at [101]–[103]):

(i) the class of persons whose claims should be recognised (*ie*, circumstantial proximity);

(ii) the proximity of the claimant(s) to the accident (*ie*, physical proximity);

(iii) the means by which the shock is caused (*ie*, causal proximity).

(c) Thirdly, the second stage of the *Spandeck* test applies which comprises the consideration of public policy considerations that militate against the imposition of a duty of care.

136 As explained in *Ngiam Kong Seng* at [97], the plaintiff must prove as a threshold requirement that he or she (in the present case, the Deceased) has suffered a "recognisable psychiatric illness". Crucially, the Court of Appeal emphasised that psychiatric illness "must be distinguished from sorrow and grief (no matter how severe), for the latter are considered as constituting part of the vicissitudes of life". Further, the court noted that proof of a recognisable psychiatric illness depends in the main upon the relevant expert psychiatric evidence tendered before the court, which retains the ultimate supervisory responsibility of ensuring that such expert evidence is defensible as well as grounded in logic and common sense (see, for example, *JSI Shipping (S) Pte Ltd v Teofoongwonglcloong (a firm)* [2007] 4 SLR(R) 460 at [49]–[53] (citing the House of Lords decision of *Bolitho v City and Hackney Health Authority* [1998] AC 232)).

137 In *Kanagaratnam Nicholas Jens v Public Prosecutor* [2019] 5 SLR 887 ("*Kanagaratnam*"), Sundaresh Menon CJ reiterated the importance of requiring experts to explain the underlying analytical process leading to their conclusions. In this regard, Menon CJ emphasised (at [2]) that:

> … experts must appreciate that they cannot merely present their conclusions without also presenting the underlying evidence and the analytical process by which the conclusions are reached. Otherwise, the court will not be in a position to evaluate the soundness of the proffered views. Where this is the case, the court will commonly reject that evidence.

These views were reinforced in *Miya Manik v Public Prosecutor and another matter* [2021] 2 SLR 1169, where the Court of Appeal rejected two medical reports prepared by a psychiatrist which were tendered by the applicant, stating that the applicant was diagnosed as having an adjustment disorder. The court noted (at [42]) that these two reports "merely indicate[d] an unsubstantiated diagnosis, and [said] nothing about the provenance of the alleged adjustment disorder or even how [the psychiatrist] came to this diagnosis".

138 The plaintiff's case is that the Deceased suffered from an ASR, which is listed as a mental and behavioural disorder in the World Health Organisation's International Statistical Classification of Diseases and Related Health Problems 10th Revision.[109] In this connection, the plaintiff primarily relies on the expert opinion found in Dr Ng's Report, where she opined that "the Deceased likely had an acute stress reaction just before he took his own life".[110]

139 Having considered Dr Ng's Report, I find that it is unhelpful and somewhat lacking. In particular, Dr Ng's Report merely indicates an

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109 PCS at para 177(a).

110 Dr Ng's Report at para 16(b)(iii).

unsubstantiated diagnosis and does not discuss in any detail how she came to this diagnosis and how she applied any relevant diagnostic criteria. I set out the material portion of Dr Ng's Report here:

> iii) I opine that the Deceased likely had an acute stress reaction just before he took his own life. *An acute stress reaction refers to the development of transient emotional, somatic, cognitive, or behavioural symptoms as a result of exposure to exceptional stress*. The symptoms typically appear over minutes or hours following the stressor, and usually begin to subside within a few hours, but can sometimes last for several days. … [emphasis added]

140 Obviously, Dr Ng had no opportunity to examine the Deceased physically or observe his behaviour following the Ban Notification and the publication of the ExCo Statement. Nevertheless, as identified in Dr Ng's Report, ASR refers to the development of certain symptoms, which Dr Ng herself described as "transient emotional, somatic, cognitive, or behavioural symptoms". Put another way, these symptoms would be indicative of an ASR, in the aftermath of "exposure to exceptional stress". However, apart from *recounting* the Deceased's mother's account[111] of his behaviour post the events noted above, she could not make any direct observations of such symptoms, let alone conduct any form of analysis of any such observations. Neither did she offer any explanation as to how her reliance on pure hearsay accounts from the Deceased's parents in preparing her report some four years after the event could allow her to reliably diagnose that the Deceased had suffered an ASR. Without any further reasoned analysis, Dr Ng went on to opine that the Deceased "had an acute stress reaction just before he committed suicide".

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111 Dr Ng's Report at para 16(b)(ii).

141 According to the literature appended to Dr Ng's Report, a list of symptoms must be present for a diagnosis of ASR.[112] While these symptoms are either behavioural or physical symptoms which Dr Ng would have been unable to observe, she did not explain how she could have arrived at a diagnosis of ASR without even having observed *any* of these symptoms. Neither did she attempt to establish the link between the Deceased's parents' observations of the Deceased to draw certain inferences or reach certain conclusions, even assuming that such inferences could be properly drawn based entirely on indirect reports from his parents. In any case, one would expect that any such inferences would have to be based on strongly cogent accounts which are consistent with the available medical literature. Dr Ng herself conceded that without any direct assessment of the person, it was "very hard to know" if a person suffered from an ASR.[113] Having regard to Menon CJ's observations in *Kanagaratnam* (see [137] above), with respect, I find it difficult to accept Dr Ng's evidence that the Deceased suffered from an ASR given that her conclusions were presented devoid of the analytical process or reasoning to show how she reached her conclusions.

142 During cross-examination, it was pointed out to Dr Ng that the Deceased "had the presence of mind to seek legal advice, [and] to meet people" after being made aware of the Decision on 7 August 2018.[114] Counsel for the defendant queried Dr Ng whether it was possible in light of these facts to properly diagnose such a person as having an ASR. Her reply was that, "[i]t is still possible. It is still possible. What I can understand from this case is that the deceased was obviously very stressed by the [ExCo Statement]. That's why he took his own

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112 Dr Ng's AEIC at pp 19–20.

113 NE, 10 November 2022, p 49, ln 12–13.

114 NE, 10 November 2022, p 50, ln 11–13.

life the next day."[115] In the literature cited by Dr Ng, however, it is stated that in moderate or severe cases of ASR, "one may also exhibit … withdrawal from social activities".[116] It is evident from the Deceased's multiple text messages and phone calls to friends after the Ban and the publication of the ExCo Statement that in fact the converse was true. Dr Ng did not explain the obvious discrepancy between her answer of "it is still possible" and the literature cited, except to say that she could not confirm whether such a person could have more than a 50% or less than a 50% possibility of suffering from an ASR if she did not know anything much about "his mental state".[117] This statement was telling as it reflected the complete lack of any actual observable symptoms that Dr Ng could have relied on to make a sound reasoned assessment. With a dearth of information to allow her to know more about the Deceased's mental state, it is highly doubtful whether she could make a reliable diagnosis of ASR.

143 It is not sufficient in my view for Dr Ng to have simply asserted, in effect, that the Deceased *must* have suffered an ASR since he was "obviously very distressed by the [ExCo Statement]" and "that's why he took his own life the next day"[118] on 8 August 2018. With respect, Dr Ng assumed the very conclusion that she sought to establish (*ie*. that the Deceased suffered an ASR) primarily if not wholly by pointing to the fact that the Deceased had taken his own life. Dr Ng had not adequately explained how she came to her diagnosis of ASR other than to maintain that the Deceased was "obviously very distressed" such that this led him to commit suicide. In the circumstances, while I can accept that the Deceased must have suffered considerable distress following the Ban

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115 NE, 10 November 2022, p 49, ln 22–25.

116 Dr Ng's AEIC at p 20.

117 NE, 10 November 2022, p 51 at ln 10–13.

118 NE, 10 November 2022, p 49 at ln 23–25.

Notification and the publication of the ExCo Statement, I find it difficult to conclude that the plaintiff has proved on the balance of probabilities that the Deceased suffered from a recognisable psychiatric illness at the material time prior to his demise. In the Court of Appeal's words in *Ngiam Kong Seng* at [97], psychiatric illness must be distinguished from sorrow and grief (no matter how severe), the latter being considered as constituting part of the vicissitudes of life. It is not clear on the evidence that the Deceased had suffered from a psychiatric illness at the material time, as distinct from experiencing a period of severe sorrow, grief or distress.

144 I note also that the Deceased was previously diagnosed to have cyclothymic disorder when he was studying at Brown University in the United States of America. When he returned to Singapore he was diagnosed in October 2017 with major depressive disorder.[119] Dr Ng herself notes that cyclothymic disorder is a "mood disorder characterized by numerous periods with emotional ups and downs that do not meet the criteria for hypomania or major depressive disorder. The symptoms cause significant distress or impairment in functioning".[120] Whereas, major depressive disorder is a "mood disorder characterized by persistent feeling of sadness or loss of interest. Other symptoms may include appetite or weight changes, sleep disturbances, irritability, slowed thinking or body movements, fatigue, feelings of worthlessness or guilt, difficulty concentrating and suicidal ideations. These symptoms cause significant distress or impairment in functioning".[121] However, Dr Ng opined that "it [was] unlikely that [the Deceased] had a relapse of his mental illness at the time as his parents reported that they did not observe any

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119 Dr Ng's Report at paras 6, 9 and 16(a).

120 Dr Ng's Report at para 16(a)(i).

121 Dr Ng's Report at para 16(a)(ii).

significant mood changes before he was informed of the [d]efendant's actions and therefore, his suicide [was] unlikely premeditated".[122]

145 Without meaning to be dismissive of the emotional toll on the Deceased's parents and the enormity of their loss, I do have some doubt as to the accuracy of his parents' accounts of their observations of his behaviour prior to the events that transpired on 8 August 2018. Based on their testimony at trial and the Deceased's own self-reported accounts during his visits at IMH, it appears that he did not share a close relationship with his family. The Deceased had reportedly informed Dr Ng in October 2017 that he could not connect to his family and had "blocked out [his] family".[123] The Deceased's mother, Mdm Loh, who testified at the trial, was asked if this was true. She explained that he had "nothing in common" to talk about with his brothers due to their different interests, and he would not go into details when he did talk to her as he knew she would worry and he did not want her to get stressed. Moreover, the plaintiff was working overseas most of the time.[124] The plaintiff himself did not profess to be close to the Deceased – at any rate, he made no such claim in his AEIC. The Deceased's parents' stated observations of his behaviour thus might well have been cursory or inaccurate. As such, I view their accounts of his behaviour with some caution.

146 I note that the plaintiff argues in the alternative that the Deceased lapsed into and/or suffered from the symptoms of cyclothymia prior to his suicide as a result of the ExCo Statement.[125] This argument appears to be an afterthought. It

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122 Dr Ng's Report at para 16(b)(iv).

123 Dr Ng's AEIC at p 41 (IMH interview notes dated 24 October 2017).

124 NE, 8 November 2022, p 87 at ln 7–14.

125 PCS at para 177(b).

was not pleaded and not supported by any witness in his or her AEIC. In particular, it is not borne out by Dr Ng's evidence, since she had stated in her report that it was unlikely that the Deceased had suffered a relapse.[126]

147 As the threshold requirement of showing that the Deceased had suffered a recognisable psychiatric illness has not been satisfied, it is unnecessary to proceed with further analysis on whether a duty of care arises in the present case. Nonetheless, taking the plaintiff's case at its highest and assuming that a duty of care was owed by the defendant to the Deceased, I am of the view that the defendant did not breach its alleged duty of care for the reasons below.

Whether the defendant breached the alleged duty of care to the Deceased

148 To recapitulate, the plaintiff's case is that the defendant owed the Deceased a duty to take reasonable care to avoid causing the Deceased to suffer psychiatric harm and/or distress as a result of communicating the outcome of the investigation and disciplinary proceedings to him. The defendant breached this alleged duty by the manner in which it communicated and publicised the allegations against the Deceased and the outcome of the investigations through the ExCo Statement (see [130] above).

149 Generally, the standard of care is the objective standard of a reasonable person using ordinary care and skill: Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) ("*The Law of Torts*") at para 06.006. But it is trite that the standard of care varies depending on the circumstances of the case, in that it is responsive to accommodate relevant circumstances to render the standard more specific to the class of persons which the defendant belongs: *The Law of Torts* at para 06.008.

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126 Dr Ng's Report at para 16(b)(iv).

150 In particular, the benefit or utility of the defendant's conduct or activity must also be considered. In *Watt v Hertfordshire County Council* [1954] 1 WLR 835, Denning LJ said (at 838):

> It is well settled that in measuring due care you must balance the risk against the measures necessary to eliminate the risk. To that proposition there ought to be added this: *you must balance the risk against the end to be achieved*. … [emphasis added]

151 The plaintiff submits that the defendant should be held to a higher standard of care in the present case on the basis that the ExCo "knew or ought to have known, … that [the Deceased] was psychiatrically vulnerable and therefore any failure to exercise reasonable care in taking any disciplinary action would likely cause [the Deceased] to suffer serious psychiatric harm".[127] I accept that the defendant (through the personal knowledge of the members of the ExCo) had knowledge of the Deceased's struggles with mental health, even if the precise details of his condition may not have been known to each of the ExCo members.[128]

152 Nonetheless, the purpose of the ExCo Statement must be borne in mind. The publication of the ExCo Statement was but an extension of the purpose of the Ban itself – *ie*, to ensure the safety of the students under the defendant's charge (see [60] above). In addition, it served as an accountability mechanism to the rest of the defendant's members and partner organisations and a means to get other affected persons (if any) to contact the ExCo for further assistance (as reflected in the last two paragraphs of the ExCo Statement).[129] Here, the risk of the Deceased suffering from psychiatric harm had to be balanced against the

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127 PCS at para 189.

128 PCS at para 23.

129 5AB2832–5AB2835.

intended end to be achieved as perceived by the defendant (*ie*, safety of its members and accountability).

153 The contents of the ExCo Statement should also be read in the light of the defendant's objectives in having it published. The plaintiff argues that the ExCo Statement was carelessly prepared as it contained: (a) unnecessary details as to the background of the DDI Director in question; (b) excessive and unnecessary details as to the nature of the alleged misconduct; and (c) false and misleading statements with respect to the nature of the investigations leading to the Audit Report.[130] In relation to (a) and (b), I am of the view that the details provided were in fact the minimum necessary to ensure that the affected persons could reach out to seek assistance if required, in line with the purpose of the ExCo Statement. In fact, it is incontrovertible and undisputed by the plaintiff that the ExCo Statement itself did not contain the Deceased's name. The identifiers included in the ExCo Statement would have allowed his identity to be known only to those persons who needed to know such information (*ie*, the students affected and members of the debate community who may have been affected). If there had been any intent, whether express or tacit, to inform the general public at large, conceivably far more identifiers would have been included. It is important to also consider the platforms on which the ExCo Statement was published. They were confined to only those sites associated with the defendant or related to debating in Singapore (see [7] above). It thus can be seen that steps were taken to ensure that the ExCo Statement was made accessible to those whom the defendant was seeking to protect and that the Deceased's identity and his privacy interests were also sought to be protected. This was a delicate balance to achieve and I do not think that the defendant was careless in its attempt to strike a reasonable balance. In relation to (c), I am of

130 PCS at para 195(e).

the view that the description of the investigations prior to the Ban and the ExCo Statement were not inaccurate.

154 The plaintiff also takes issue with the defendant's decision to release the ExCo Statement without any prior notice to the Deceased.[131] While this could arguably be said to reflect poor judgment on the part of the defendant, not all errors of judgment result in liability in negligence. In the present case, given the safety interests sought to be protected by the defendant, I do not think that the defendant breached its duty of care.

155 It is easy to look back on this incident with the benefit and perspicacity of hindsight and suggest that the defendant could have done a better job to ensure a balance between the Deceased's interests and securing the safety of its members. The defendant does not dispute that various aspects could have been better handled. In my view, however, the defendant did not fall below the standard of care required of it in communicating and publicising the outcome of the investigations and disciplinary proceedings by way of the ExCo Statement.

156 Having concluded thus on the plaintiff's claim in the tort of negligence, it is unnecessary to address the defendant's submission that the Deceased's act of suicide amounted to a *novus actus interveniens* that broke the chain of causation.

157 To sum up, I find that the defendant did not owe the Deceased a duty of care given the context of the present claim in negligence for psychiatric harm. The plaintiff has not demonstrated that the Deceased had suffered from a recognisable psychiatric illness, thus not satisfying the threshold requirement

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131 PCS at para 195(f).

laid down in *Ngiam Kong Seng*. Even if I have erred in this finding, I also find that the defendant did not breach the alleged duty of care to the Deceased in communicating and publishing the ExCo Statement. As such, for the reasons stated above, I am of the view that the defendant is *not* liable to the plaintiff in the tort of negligence.

The claim in tort under the rule in Wilkinson v Downton

158 Finally, I turn to consider the plaintiff's claim in tort under the rule in *Wilkinson v Downton*. The rule was discussed recently in the case of *Tiong Sze Yin Serene v Chan Herng Nieng* [2022] SGHC 170. The court stated that the necessary elements to make out a claim under this rule were decisively summarised by the UK Supreme Court in *Rhodes* as follows (at [152]):

> (a) First, a conduct element which requires "words or conduct directed towards the claimant for which there is no justification or reasonable excuse" (*Rhodes* at [74]).
>
> (b) Secondly, a mental element which refers to the "intention to cause physical harm or severe mental or emotional distress" (*Rhodes* at [87]). Such intention "excludes not merely negligently harmful statements, but also recklessly harmful statements" (*Rhodes* at [113]).
>
> (c) Thirdly, a consequence element which requires that the claimant suffered "physical harm or recognised psychiatric illness" (*Rhodes* at [73]).

159 In my view, as explained above, the plaintiff has failed to prove on the balance of probabilities that the Deceased suffered from an ASR. It must follow that the plaintiff's claim in tort under the rule in *Wilkinson v Downton* is bound

to fail based on that finding alone as the consequence element would not be satisfied.

160 In any event, the plaintiff did not plead the mental element in the SOC. Nowhere does the plaintiff plead the material fact that the defendant possessed the *intention* to cause physical harm or severe mental or emotional distress to the Deceased. The only portion of the SOC that comes close to this is at para 20(c) in relation to the allegation of apparent bias, where it is pleaded that: "Cherylyn Wee caused the EXCO Statement to be published with the malign intention and/or ulterior motive of tarnishing the deceased's reputation." This does not plead with sufficient particularity that the defendant (as distinct from Cherylyn, the defendant's president at the time) possessed the intention to cause *severe mental or emotional distress* to the Deceased (as opposed to the intention to tarnish his reputation). Moreover, over the course of the trial and in closing submissions, the plaintiff did not pursue the pleaded point in para 20(c) of the SOC that Cherylyn allegedly had a strained relationship with the Deceased and had thus acted with improper motives. The plaintiff in fact conceded under cross-examination that no such evidence of a strained relationship was produced.[132]

161 Notwithstanding this point on the plaintiff's pleadings, I am of the view that the conduct element is also not satisfied and that there is insufficient evidence to support the existence of the mental element.

162 First, in relation to the conduct element, there was plainly justification or reasonable excuse for the defendant to issue the Ban Notification and publish the ExCo Statement. This was grounded in ensuring the safety of the members

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132 NE, 8 November 2022, p 25 at ln 10–13.

of the defendant and other participants of the defendant's programmes, as well as discharging its responsibility and accountability to stakeholders (see [60], [87] and [152] above), in the face of objective evidence in the form of the Darkness Chat Group logs.

163 The Darkness Chat Group logs reveal a host of sexually-charged exchanges. Perhaps some might be prepared to dismiss them as inconsequential frivolous banter among "hormonal teenagers", adopting the words of Celia Leo ("Celia"), a witness for the plaintiff, who was at one point a participant in the Darkness Chat Group.[133] But even if these exchanges were never meant to be taken seriously, they were nevertheless highly inappropriate. The Deceased, being the only adult who "led" the Darkness Chat Group which he created, was initiating discussions in a private chat as a "safe space" and purportedly "moderating" the sexualised content among a group of minors.[134] The discussions were, by the plaintiff's own admission, sexually provocative and tended to centre on the objectification of persons who might (or might not) be considered sexually attractive. The discussions included comments about the private parts of a DDI member, discussions about the sexual acts of other participants and pressure on a minor to disclose details of a personal romantic/sexual encounter.[135] Celia also accepted that a reasonable person who was not participating in the Darkness Chat Group would consider the Deceased's comments inappropriate.[136]

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133 NE, 10 November 2022, p 11, ln 13–16.

134 NE, 10 November 2022, p 10, ln 25 to p 11, ln 1; Celia Leo's affidavit of evidence-in-chief at para 6.

135 Cherylyn's AEIC at Tab 10 (see, in particular, pp 107, 109, 120 and 127).

136 NE, 10 November 2022, p 19, ln 1–20; p 27 ln 10–22.

164 Secondly, it must be borne in mind that in order to satisfy the mental element, recklessness or negligence is insufficient. In this regard, the plaintiff contends that the intent to cause severe mental and emotional distress to the Deceased can be inferred from a number of facts including the following:[137]

(a) The defendant chose not to give the Deceased any prior notice of the ExCo Statement.

(b) The ExCo Statement provided more than sufficient information which, according to Reuben's post in the DAS Equity Chat Group on 8 August 2018, would allow "anyone with half a brain"[138] to identify the Deceased as the former DDI Director accused of misconduct.

(c) The ExCo Statement contained false and misleading information which severely prejudiced the Deceased. In particular, it created the false and misleading impression that the decision to impose the Ban and file a police report was made following an independent and comprehensive investigation which included giving the Deceased an opportunity to defend the charges brought against him.

(d) The messages exchanged in the DAS Equity Chat Group on 6 August 2018 suggested that Cherylyn, Reuben and Vihasini intended to maximise the negative exposure and disruption for the Deceased which would follow from the publication of the ExCo Statement.

(e) The messages exchanged in the DAS Equity Chat Group from the morning of 9 August 2018 suggested that Cherylyn, Reuben and

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137 PCS at para 209.

138 5AB 2602: 8/8/18, 7:50:48 am.

Vihasini felt no remorse over the death of the Deceased as they were focused only on being politically correct and on damage control.

(f) The defendant took steps to notify Enterprise, the defendant's partner associations, and teachers of the schools who had student participants in the DDI, of the ExCo Statement and the allegations contained therein, notwithstanding that it was unreasonable to do so.

165 I am not satisfied that the points enumerated above necessarily give rise to the inexorable inference that the defendant intended at the material time in issuing the Ban Notification and publishing the ExCo Statement to cause severe mental or emotional distress to the Deceased. The ExCo Statement was deliberated upon before publication. The contents were not exaggerated or sensationalised. Arguably, the mention in the ExCo Statement of an "independent audit" and "comprehensive report of the findings" may suggest that the Deceased's response was obtained and duly considered. But at most, this was a possible inference that could be drawn; it was never specifically represented in the ExCo Statement that such was the case. As such, while some points in the ExCo Statement could have been set out more clearly and precisely, I do not accept that there was any intent for the ExCo Statement to convey false or misleading information.

166 To my mind, the *bona fide* intention of the defendant was simply and primarily to ensure the safety of its members and the student participants of its activities. As highlighted above at [153], steps were taken to limit the potential for the Deceased to be readily identified other than by those persons or entities who might have needed to know such information. The reference in Reuben's message in the DAS Equity Chat Group to "anyone with half a brain" being able to identify the Deceased should be understood in this narrower context.

Reuben's reference to "anyone with half a brain" was mere hyperbole. It would not have referred literally to any person outside the debating circle ("with half a brain") who chanced upon the ExCo Statement.

167 As for the content and tone of the messages in the DAS Equity Chat Group on 6 August 2018, they appeared to reflect perhaps an overblown sense of indignation amidst the atmosphere of heightened tension prior to the defendant's issuance of the ExCo Statement. I would not read much more into these messages to infer any malicious or spiteful intent. In relation to the messages exchanged on 9 August 2018 after the Deceased's passing, it would not be appropriate to infer a lack of remorse from the exchanges. The two messages reading "LOL" (*ie*, Laugh Out Loud) from Cherylyn and Reuben[139] may appear irreverent and inappropriate but were clearly spontaneous responses over the fact that they had quickly cobbled together three different draft media responses, all of which did convey a palpable sense of grief and sadness over the Deceased's passing. I do not think it is fair therefore to infer that the drafts were circulated to Cherylyn's "laughter and/or amusement"[140] or to suggest that they were actually making light of the situation. The exchanges in the DAS Equity Chat Group should be viewed in perspective for what they were, as free-flowing, brief and informal online conversations.

168 If anything, the sum total of the facts above which the plaintiff relies upon only demonstrates that the defendant was at most reckless or negligent as to whether its actions would cause the Deceased severe mental or emotional distress. I am not persuaded that the plaintiff has shown that these facts suffice to show that there was intent to cause such distress to the Deceased.

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139 5AB2617: 9/8/18, 9:43:56 am; 9:44:10 am.

140 PCS at para 209(e).

169 In summary, I am of the view that the plaintiff's claim in tort under the rule in *Wilkinson v Downton* is unsustainable as all three of the requisite elements (*viz*, the conduct, mental and consequence elements) are not satisfied.

Conclusion

170 Having reviewed the findings in the Audit Report, the defendant decided to prioritise the safety and protection of its members, especially those who were minors. Its primary motivation was to act responsibly, decisively and swiftly in taking preventive and remedial measures. The defendant's decision cannot be faulted in this regard. But in taking the steps the defendant did, the need for the Deceased to be afforded his right to be heard and to avoid apparent bias through prejudgment was unfortunately obscured. The process was thus unfair and prejudicial to him.

171 For the above reasons, I allow the plaintiff's claim in part. I grant declarations that the Ban and the Notice to Partners were unlawful as they were issued *ultra vires* the Constitution and in breach of the rules of natural justice. It follows that a further order will be granted to set aside the Ban and the Notice to Partners.

172 The plaintiff has not succeeded in proving all the other claims. I dismiss all the remaining claims, encompassing the other claims founded on contract, on the tort of negligence and under the rule in *Wilkinson v Downton*. In particular, the plaintiff's claim for damages in contract is dismissed on the ground that damages for mental distress are not usually granted for contractual claims. In addition, I find that the plaintiff has not succeeded in establishing any basis for the claim for damages in tort as it has not been shown on the balance of probabilities that the Deceased suffered from an ASR and consequently that this had caused him to end his own life. The plaintiff has thus not succeeded in

the majority of the pleaded claims. This outcome would have been avoided had the plaintiff elected to focus with greater circumspection on a narrower scope of claims instead of casting the net as far and wide as possible, as it were.

173 I shall hear the parties' submissions on costs.

See Kee Oon
Judge of the High Court

Paul Ong Min-Tse (Paul Ong Chambers LLC)
for the plaintiff;
Darren Tan Tho Eng, Silas Siew Wei Ying and Joshua Tan Ming En (Invictus Law Corporation)
for the defendant.