Lee Hsien Loong v Singapore Democratic Party and Others and Another Suit [2008] SGHC 173

Case Number : Suit 261/2006, 262/2006, SUM 1574/2008, 1575/2008, NAAD 23/2008, 24/2008

Decision Date : 13 October 2008

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Davinder Singh SC, Adrian Tan, Tan Siu-Lin and Tan IJin (Drew & Napier LLC) for the plaintiffs; M Ravi (M Ravi & Co) for the first defendant; Second and third defendants in person

Parties : Lee Hsien Loong — Singapore Democratic Party; Chee Siok Chin; Chee Soon Juan; Ling How Doong; Mohamed Isa Abdul Aziz; Christopher Neo Ting Wei; Sng Choon Guan; Wong Hong Toy; Yong Chu Leong Francis

Civil Procedure – Striking out – Affidavits of evidence in chief – Whether pleadings defective – Whether affidavits contained admissible evidence – Whether procedural requirements under O 78 r 7 Rules of Court (Cap 322, R 5, 2006 Rev Ed) satisfied

Contempt of Court – Contempt in face of court – Defendants persistently disobeying court orders during assessment of damages hearing and accusing judge of bias – Whether defendants guilty of contempt of court – Whether imprisonment appropriate

Contempt of Court – Court's powers – Court citing defendants for contempt after close of assessment hearing – Whether court entitled to defer summary process for contempt – Whether court should refer contempt proceedings to another judge

Contempt of Court – Court's powers – Principles governing exercise of summary process for committal

Damages – Aggravation – Tort – Defamation – Defendants conducting rancorous cross-examination and persistently asking questions of political nature – Amount of aggravation

Damages – Assessment – Tort – Defamation – Principles of assessment – Relevant factors for consideration

Damages – Quantum – Tort – Defamation – Principles of quantification

Tort – Defamation – Damages – Assessment of damages – Defendants publishing article alleging plaintiffs dishonest and unfit for office – Principles of assessment – Quantification of damages

13 October 2008 Judgment reserved.

Belinda Ang Saw Ean J:

Introduction

1 These libel proceedings arose from the publication of two articles, one in English and one in Chinese (collectively, "the Articles"), and a photograph ("the Photograph") in an issue of the newspaper of the Singapore Democratic Party ("SDP"), *The New Democrat*, in or around February 2006 ("*The New Democrat Issue 1*"). Two separate defamation actions were commenced on 26 April 2006 in respect of the publication of the Articles and the Photograph (collectively referred to as "the Libel"), namely, Suit No 261 of 2006 ("Suit 261") and Suit No 262 of 2006 ("Suit 262"). The plaintiff in Suit 261 is Mr Lee Hsien Loong ("LHL"), the Prime Minister of Singapore. The plaintiff in Suit 262 is Mr Lee Kuan Yew ("LKY"), the Minister Mentor of Singapore. For convenience, LHL and LKY are

hereinafter collectively referred to as "the Plaintiffs", and Suit 261 and Suit 262 are collectively referred to as "the Present Actions".

2 There are, for practical purposes, three defendants before me in the Present Actions. The first defendant, the SDP, is a political party. The second defendant, Ms Chee Siok Chin ("CSC"), is a member of the Central Executive Committee of the SDP. The third defendant, Dr Chee Soon Juan ("CSJ"), is the secretary-general of the SDP as well as a member of its Central Executive Committee. I shall refer to these three defendants collectively as "the Defendants". (The Plaintiffs did not eventually pursue their claims against the fourth to the ninth defendants named in the Present Actions as the latter apologised for the Libel and agreed to pay damages and costs.)

3 On 12 September 2006, I allowed the Plaintiffs' applications for summary judgment against CSC and CSJ ("the Summary Judgment Applications"), with damages to be assessed (see *Lee Hsien Loong v Singapore Democratic Party* [2007] 1 SLR 675 ("*Lee Hsien Loong (HC)*")). As for the SDP, on 7 June 2006, interlocutory judgment in default of defence was entered against it, with damages to be assessed. The present judgment concerns the assessment of the amount of damages to be awarded to the Plaintiffs for the Libel. The hearing of the assessment of damages ("the Assessment Hearing") commenced on 26 May 2008 and continued over three days. At the conclusion of the Assessment Hearing on 28 May 2008, I reserved judgment on the quantum of damages to be awarded.

4 Initially, the Assessment Hearing was listed for hearing on 12 May 2008 for three days. Also listed for hearing on the morning of 12 May 2008 were two other applications, one for each of the Present Actions, to strike out the affidavits of evidence-in-chief filed by and on behalf of the Defendants (collectively referred to as "the Striking-Out Applications").[note: 1] The hearing of the Striking-Out Applications was adjourned to 22 May 2008 following the Defendants' successful oral application for an adjournment. On 26 May 2008, I granted an order in terms of the Striking-Out Applications.

5 Several other oral applications were made on 12, 22–23 and 26–28 May 2008 (referred to collectively as "the May 2008 hearings") by the Defendants. As will become apparent later on, save for the adjournment application made on 12 May 2008 and the application on 22 May 2008 for the hearing of the Striking-Out Applications to be audio-recorded ("the audio-recording application"), the rest of the Defendants' oral applications were dismissed as they were patently ill-founded, and readily showed up the many things which a litigant could do to hinder, delay or prolong court proceedings. (The adjournment application and the audio-recording application were allowed for the reasons explained at [234] and [241] below.) Instead of three days, the hearing for the Striking-Out Applications and the Assessment Hearing eventually took six days. For ease of reading, I will discuss all the oral applications made at the May 2008 hearings in the final section of this judgment (see [224]–[249] below).

6 There are four parts to this judgment. They deal with, respectively:

(a) the Striking-Out Applications ("Part A");

(b) the assessment of the damages to be awarded to the Plaintiffs ("Part B");

(c) the proceedings against CSC and CSJ for contempt of court ("the Committal Proceedings") arising from their conduct in court from 26 to 28 May 2008 ("Part C"); and

(d) the oral applications made at the May 2008 hearings ("Part D").

They are prefaced with a brief summary of the Libel (see [8]–[9] below).

7 Mr M Ravi ("Mr Ravi") represented the SDP in respect of the Striking-Out Applications and the Assessment Hearing, while CSJ and CSC acted in person. As for the Committal Proceedings, Mr Ravi represented CSC, and Mr J B Jeyaretnam ("Mr Jeyaretnam") represented CSJ until he ceased to act as counsel for the latter, who then acted in person. Mr Davinder Singh SC ("Mr Singh") represented the Plaintiffs throughout.

The Libel

8 Briefly, the Libel made numerous comparisons between the National Kidney Foundation ("NKF") and the People's Action Party ("PAP"). The Libel was published in *The New Democrat Issue 1* against the backdrop of what the Plaintiffs termed "the NKF Saga".[note: 2] Particulars of the NKF Saga were set out in the pleadings as follows:[note: 3]

> PARTICULARS OF [THE] NKF SAGA
>
> (a) On 11 July, 2005, trial of a libel action ("NKF Suit") brought by the National Kidney Foundation ("NKF") and its ... Chief Executive Officer T. T. Durai ("Durai") against Singapore Press Holdings commenced. The proceedings of the NKF Suit were extensively reported in the local press. In the course of and after the trial, issues arose in relation to [the] NKF's funds and their use, the benefits enjoyed by [the NKF's] former management, the characterisation of Durai's salary and defamation suits brought by [the] NKF and/or Durai.
>
> (b) Over the next few days, public outrage erupted on an unprecedented scale across Singapore. It culminated on 14 July, 2005 when Durai and his entire 15-member board of the NKF resigned.
>
> (c) In August 2005, the interim board of the NKF invited the police and the Inland Revenue Authority of Singapore to investigate into the activities of the former board of the NKF.
>
> (d) On 19 December, 2005, an independent auditor appointed by the interim board of the NKF released a 332-page report criticizing the manner in which the former NKF board and Durai managed the financial affairs of the NKF.
>
> (e) On 17 April, 2006, Durai was arrested by the Corrupt Practices Investigation Bureau, released on public bail and ordered to appear in court the following day.
>
> (f) On 18 April, 2006, Durai, three former directors and an employee of the NKF were charged in court for, inter alia, corruption and breach of fiduciary duties.
>
> (g) On 24 April, 2006, it was reported that the NKF had commenced civil proceedings against Durai and some former members of the NKF board of directors for, inter alia, breach of fiduciary duties.
>
> [emphasis in bold in original omitted]

The defamatory passages in the Articles ("the Disputed Words") and the Photograph are described in *Lee Hsien Loong (HC)* ([3] *supra*) at [21]–[26]. The sting in the Disputed Words is explained as

follows (*id* at [61]–[63]):

> 61 In my view, the sting in the Disputed Words lies in the way they highlight the commonality between the PAP-led Government and the NKF, namely, lack of transparency and lack of accountability. By this, the Disputed Words imply that the PAP and the political elite are not transparent about the finances of the Government and government institutions such as the GIC [Government of Singapore Investment Corporation] because they want to conceal their financial improprieties, just as Durai [the former chief executive officer of the NKF] erected a shroud of secrecy around the NKF in order to hide its management's pecuniary abuses. This is evidenced by the standfirst on page 5 of the English Article [*ie*, the English article mentioned at [1] above] that highlighted the impossibility of not noticing "the striking resemblance between how the NKF operated and how the PAP runs Singapore. It would take someone foolishly blind not to be concerned with how our financial reserves and CPF [Central Provident Fund] savings are dealt with. Here are the similarities". The standfirst as well as the suggestive statement in the text box on the same page of the English Article, "If you think the running of NKF was bad, read this…" ... blatantly invite and encourage the ordinary, reasonable reader to indulge in some degree of conjecture about the financial improprieties practised by and in the PAP-led Government.
>
> 62 The English Article goes on to state that this system of non-accountable, non-transparent governance, which has been "engineered over the decades by the PAP", represents "what a "democratic society, based on justice and equality" should not be". A similar statement is made in the Chinese Article [*ie*, the Chinese article mentioned at [1] above], which asserts, *inter alia*, that "the system that the People's Action Party has moulded over the decades ... is the extreme opposite of the justice and impartiality advocated by a democratic society". As explained above at [42], LKY is the only individual to have led the Government for "decades". As such, the ordinary, reasonable reader would understand the English Words and the Chinese Words as implying that LKY had systemically set up a political system which is inconsistent with the ethos of justice and equality encapsulated in our national pledge – in other words, "a corrupt political system for the benefit of the political elite" as pleaded in the statement of claim. Similarly, since LHL is the leader of the present Government, the ordinary reader would also reasonably infer from the English Words and the Chinese Words that he has "perpetuated" the corrupt political system put in place by LKY. In addition, by drawing parallels between the PAP-led Government and the NKF under Durai's management, the English Article conveys to the ordinary reader the broad impression that the "benefit" enjoyed by the "political elite" under this "corrupt political system" consists of financial gains. This is because the NKF was, in [CSC's and CSJ's] own words, a byword for "corruption, financial impropriety and the knowing abuse of unmeritorious defamation suits" at the time the English Article was published. In essence, by highlighting the "striking resemblance" between how the NKF operated and how the PAP runs Singapore, [CSC and CSJ] have, by their publication of these words, all but directly accused the [P]laintiffs of being dishonest. In the circumstances, the ordinary, reasonable reader would take these words as meaning that both LHL and LKY are dishonest and unfit for public office.
>
> 63 The ordinary, reasonable reader would also conclude that the [P]laintiffs have been dishonest in another respect – namely, in suing their critics for defamation despite knowing such criticisms to be true, thereby effectively suppressing financial abuses and improprieties in the Government in the same way [that] Durai used defamation suits to stop the abuses and excesses in the NKF from being made known to the public. The sting here is that LHL and LKY brought the earlier defamation actions (referred to in para 12 of the statement of claim for both [Suit 261] and [Suit 262]) not to vindicate their reputations but to suppress allegations which were true and which they knew to be true. What is damaging is the insinuation that even though LHL and LKY knew that their successful claims in these defamation actions were not genuine victories (as was

the case with Durai in his [defamation] suits against Mr [Archie] Ong and Ms Tan [Kiat Noi] ...), they nonetheless dishonestly continued to wear their "victorious" lawsuits as a badge of their "competence and absence of wrong-doing". In other words, as the NKF Saga starkly illustrated, the [P]laintiffs' and the rest of the political elite's "use, or rather abuse of defamation laws in this country has led to a situation where wrong-doings cannot be exposed".

9 I held that "the Disputed Words bore the ordinary and natural meanings asserted by the [P]laintiffs as a result of 'defamation by implication'" (see *Lee Hsien Loong (HC)* ([3] *supra*) at [57]). In respect of LHL, the "ordinary and natural meanings" (*ibid*) of the Disputed Words were as follows:[note: 4]

> ... [LHL] is dishonest and unfit for office because:
>
> (a) [he], as Prime Minister, has perpetuated a corrupt political system for the benefit of the political elite;
>
> (b) [he] and his Government had access to the information which has since been unearthed about [the] NKF but corruptly concealed and covered up the facts to avoid criticism;
>
> (c) the defamatory allegations made against [him] which were the subject of [previous defamation actions commenced by him] were true and ... [those actions were] brought not to vindicate [his] reputation but to suppress allegations which were true and which [he] knew to be true;
>
> (d) as the allegations in the [previous defamation actions commenced by him] were true, [he] is guilty of corruption, nepotism, criminal conduct, a cover[-]up and of advancing the interests of the Lee family at the expense of the needs of Singapore; and
>
> (e) there is corruption in institutions such as the Housing Development Board, the Government of Singapore Investment Corporation and the Central Provident Fund, and [he] condones or permits it.

In respect of LKY, the "ordinary and natural meanings" (*ibid*) of the Disputed Words were that:[note: 5]

> ... [LKY] is dishonest and unfit for office because:
>
> (a) [he] devised a corrupt political system for the benefit of the political elite;
>
> (b) the defamatory allegations made against [him] which were the subject of [previous defamation actions commenced by him] against among others, Mr J. B. Jeyaretnam, Mr Tang Liang Hong and CSJ were true and those actions were brought not to vindicate [his] reputation but to suppress allegations which were true and which [he] knew to be true;
>
> (c) as the defamatory allegations were true, [he] is guilty of corruption, nepotism, criminal conduct, dishonesty, had advanced the interests of his family at the expense of the needs of Singapore, had misled Parliament and had covered his tracks to avoid criticism; and
>
> (d) [he] has managed the [Government of Singapore Investment Corporation] in a corrupt manner.

Part A: The Striking-Out Applications

Overview

10 The affidavits of evidence-in-chief which the Plaintiffs sought to strike out (collectively, "the Defendants' AEICs") were:

(a) CSJ's affidavit filed on 16 November 2007 on behalf of himself, CSC and the SDP for the Assessment Hearing ("the CSJ affidavit");

(b) CSC's affidavit filed on 3 March 2008, which formally adopted the contents of the CSJ affidavit; and

(c) Francis T Seow's affidavit filed on 5 February 2008 on behalf of the Defendants ("the Seow affidavit").

A striking-out application of the kind taken out by the Plaintiffs is not unusual if, for example, it is plain from the affidavits of evidence-in-chief in question that the defendant has no evidence available other than rumours – in other words, if it is plain that the matters pleaded in the defence are not going to be supported by evidence which is acceptable in a court of law. In such circumstances, it may be appropriate to strike out the affidavit evidence concerned as this is a sensible course which is likely to shorten the trial in the interest of saving time and costs.

11 As mentioned earlier (at [4] above), at the end of the hearing of the Striking-Out Applications, I struck out all of the Defendants' AEICs. My reasons for doing so are set out at [14]–[70] below. It is sufficient at this point to highlight two matters. First, the most significant aspect of the CSJ affidavit was the disavowal therein by CSJ and CSC of the summary judgments entered against them on 12 September 2006 ("the Summary Judgments") (see [3] above) despite the clear pronouncement of the Court of Appeal that any intended appeals against the Summary Judgments were hopeless as the High Court's reasons for entering summary judgment for the Plaintiffs were "hard to fault" (see *Lee Hsien Loong v Singapore Democratic Party* [2008] 1 SLR 757 ("*Lee Hsien Loong (CA)*") at [72]). The SDP adopted the same stance taken by CSJ and CSC for the purposes of the Assessment Hearing since the CSJ affidavit was also made on behalf of the SDP.

12 Second, the Defendants' submissions at the hearing of the Striking-Out Applications confirmed and exposed their stratagem of deploying material, tendered purportedly in mitigation of damages, to justify the Libel rather than to address the issue of the assessment of the damages to be awarded ("the quantification issue"). It is well settled that a defendant cannot, in mitigation of damages, plead particulars and go into evidence which, if proved, would constitute justification of the libel (see *Lady Violet Watt v Julia Watt* [1905] AC 115 ("*Watt v Watt*") at 118). In the Present Actions, the important question in relation to the Striking-Out Applications was whether or not the material in the Defendants' AEICs was admissible on the quantification issue, either as evidence of the Plaintiffs' alleged general bad reputation or as what may be termed "*Burstein* particulars" following the English Court of Appeal's ruling in *Burstein v Times Newspapers Ltd* [2001] 1 WLR 579 ("*Burstein*"). On both counts, my answer was decidedly "no".

13 I now set out in detail the reasons why I allowed the Striking-Out Applications. I begin with the grounds which counsel for the Plaintiffs, Mr Singh, advanced to strike out the Defendants' AEICs. By and large, the same grounds appear in the notices of objections filed by the Plaintiffs' solicitors, Drew & Napier LLC, on 30 November 2007, 19 February 2008 and 11 March 2008 to the contents of the Defendants' AEICs.

The grounds relied on by the Plaintiffs in the Striking-Out Applications

The first ground: Defect in the pleadings

14 Mr Singh's first ground for striking out the Defendants' AEICs was based on a defect in the amended defences filed on 11 May 2006 for Suit 261 and Suit 262 respectively ("the pleadings issue"). As these two amended defences, which were filed on behalf of CSC and CSJ (but not the SDP), are largely similar, I shall use the term "the Amended Defence" to refer to both defences collectively in this judgment. Essentially, Mr Singh's argument was that matters relating to the assessment of the quantum of damages to be awarded (*ie*, the quantification issue) must be pleaded; if not, the plaintiff would be taken by surprise and would not be ready with the necessary evidence to meet the defendant's case on damages. In my judgment, if a defendant intends to raise mitigation or reduction of damages as part of his defence as to damages, this point, together with the relevant supporting particulars, must be pleaded and proved like any other fact (see *Emjay Enterprises Pte Ltd v Skylift Consolidator (Pte) Ltd* [2006] 2 SLR 268 ("*Emjay*")). It was decided in *Emjay* (at [31]) that O 18 r 13(4) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("the 2004 ROC") did not override O 18 r 8(1)(*b*) of the 2004 ROC so as to permit a defendant to argue, without more, that issues as to assessment of damages need not be pleaded. Specifically, O 18 r 8(1)(*b*) of the 2004 ROC provides as follows:

> A party must in any pleading subsequent to a statement of claim plead specifically any matter …
>
> ...
>
> (*b*) which, if not specifically pleaded, might take the opposite party by surprise …

The position remains the same under the current edition of the Rules of Court (*ie*, the Rules of Court (Cap 322, R 5, 2006 Rev Ed)) as O 18 r 13(4) and O 18 r 8(1)(*b*) thereof are *in pari materia* with the corresponding provisions of the 2004 ROC.

15 The Amended Defence, which was filed by M/s M Ravi & Co on 11 May 2006 as the then solicitors for CSC and CSJ, was settled with the assistance of a Queen's Counsel, as confirmed by CSJ on 28 May 2008.[note: 6] One section of para 8 of the Amended Defence is titled "Particulars of mitigation". This section reads as follows:

> **Particulars of mitigation:**
>
> The 2nd and 3rd Defendants [*ie*, CSC and CSJ] intend to rely at trial on the following facts and matters: –
>
> (i) The circumstances in which the Plaintiff proves the publication took place;
>
> (ii) The reputation of the Plaintiff.

I shall refer to the above particulars as "Item (i) of para 8 of the Amended Defence" and "Item (ii) of para 8 of the Amended Defence" respectively.

16 In respect of Item (i) of para 8 of the Amended Defence, the averment there, in so far as it refers to proof by the Plaintiffs (as opposed to by CSC and CSJ) of the circumstances in which the

Libel was published, is meaningless, both factually and legally, in the context of assessment of damages. Of course, if the averment in Item (i) of para 8 of the Amended Defence were put forward in the context of CSC's and CSJ's liability for the Libel, the sentence would make sense in that it was incumbent on the Plaintiffs to prove publication of the Libel in order to establish their respective causes of action. However, Item (i) of para 8 of the Amended Defence cannot possibly be interpreted as an averment relating to liability since it falls under the section headed "Particulars of *mitigation*" [emphasis added]. As a pleading for the purposes of mitigating damages, Item (i) of para 8 of the Amended Defence cannot stand.

17 As for Item (ii) of para 8 of the Amended Defence, it likewise cannot stand as a pleading. CSC and CSJ say that they are relying on the Plaintiffs' general bad reputation in mitigation of damages, and that the Defendants' AEICs deal with this plea. If that was indeed CSC's and CSJ's intention, they should have specified in their pleadings what the Plaintiffs' alleged general bad reputation was or in what way the Plaintiffs' general reputation was allegedly bad (see *Plato Films Ltd v Speidel* [1961] AC 1090 ("*Plato Films*") at 1135; see also O 18 r 7(1) and O 18 r 8(1)(*b*) of the Rules of Court). The Plaintiffs, however, were not told the nature of the reputation which they were said to have. There was no plea of the Plaintiffs' alleged general bad reputation in the Amended Defence; neither were any specific facts pleaded to establish such reputation. For these reasons, the Amended Defence was defective. In my judgment, there was a departure from the procedural rules applicable to pleadings, seeing that the intention of CSC and CSJ was to raise the Plaintiffs' alleged general bad reputation in mitigation of damages. The state of the Amended Defence produced some uncertainty as to what exactly was the case for CSC and CSJ *vis-à-vis* the assessment of damages. The particulars pleaded in mitigation of damages in the Amended Defence ought to have been, for example, the Plaintiffs' alleged general bad reputation and/or facts constituting directly relevant background context of the circumstances in which the Libel came to be published (*ie*, *Burstein* particulars). No such facts were pleaded in the Amended Defence. In the case of the SDP, it did not even file a defence. Clearly, there was no plea by any of the Defendants which could form a proper basis for the CSJ affidavit and the Seow affidavit, and, as such, these affidavits related to matters which were not put in issue before the court. It follows that the CSJ affidavit and the Seow affidavit (and, likewise, CSC's affidavit of 3 March 2008 since that affidavit adopted the contents of the former) were irrelevant to the quantification issue at the Assessment Hearing and, hence, were inadmissible in evidence. The Defendants' AEICs were thus struck out under O 41 r 6 of the Rules of Court or, alternatively, under the inherent jurisdiction of the court. They were also stuck out for other reasons which I will come to later.

18 Before moving on to the admissibility of the evidence sought to be adduced by the Defendants (which was the Plaintiffs' second ground for seeking to have the Defendants' AEICs struck out), there is one other point on the pleadings issue to highlight. This has to do with the state of the pleadings, as set out in the Amended Defence, where the common law defences of justification and fair comment are concerned. The state of the pleadings in this regard compounded CSC's and CSJ's difficulty in the context of assessment of damages. A bald plea of these two common law defences was made in the Amended Defence, and these defences failed for that reason. The state of the pleadings was noted and commented upon in detail in my earlier grounds of decision for the Summary Judgment Applications (see *Lee Hsien Loong (HC)* ([3] *supra*) at, *inter alia*, [66]). For present purposes, it must be remembered that, under the law on defamation, the issue of the plaintiff's alleged bad reputation is distinct from justification, in that evidence of the former goes to *mitigation of damages*. In contrast, justification is a specific defence that goes to *liability*, and the evidence called in support of this plea must be specific to the matters complained of. It may be that the evidence called is insufficient to establish the defence of justification (or any of the other common law defences), but such evidence may nevertheless, in the context of assessment of damages, be relied upon to reduce the damages to be awarded to the plaintiff (see *Pamplin v Express Newspapers*

Ltd [1988] 1 WLR 116). This was not the situation in the Present Actions because there were no specifically-pleaded facts in relation to the common law defence of justification in the Amended Defence to begin with. The position is the same for the SDP, which did not file a defence. This aspect of the present case leads me to O 78 r 7 of the Rules of Court. This rule is discussed below at [22]–[29]. Suffice it to say at this juncture that the Defendants should have given particulars pursuant to O 78 r 7 of "the circumstances under which the libel or slander was published, or ... the character of the plaintiff" (referred to hereinafter as "O 78 r 7 particulars") which they intended to adduce in evidence, but they did not do so. The consequence of non-compliance with O 78 r 7 is discussed below (at [23]–[24]).

The second ground: Inadmissibility of the evidence contained in the Defendants' AEICs

19 The second ground advanced by Mr Singh in support of the Striking-Out Applications was that, even if, for the sake of argument, Item (ii) of para 8 of the Amended Defence (see [15] above) could stand as a pleading, the evidence in the CSJ affidavit and, likewise, that in the Seow affidavit was irrelevant and inadmissible because such evidence ran foul of the law on admissibility of evidence. In the circumstances, Mr Singh submitted, an order to strike out the Defendants' AEICs was fully justified. In essence, Mr Singh's point was that the evidence called by the Defendants had to comply with the existing principles governing the admissibility of evidence of a plaintiff's alleged bad reputation in defamation proceedings ("the admissibility principles"). The law as expressed in a cluster of cases cited by Mr Singh is well settled. Mr Ravi did not challenge the legal propositions enunciated therein, but questioned their application to politicians who sued their political opponents for defamation. I shall deal with Mr Ravi's arguments at an appropriate juncture (see [21] below). It is sufficient at this point to mention that I was satisfied that it was right to strike out the CSJ affidavit and the Seow affidavit, both of which could be described as incurably bad because there were distinctly no facts in those two affidavits that counted as admissible evidence on the quantification issue, whether as evidence of the Plaintiffs' alleged general bad reputation or as *Burstein* particulars. In addition, as explained earlier (see [18] above), there was also no evidence in the CSJ affidavit and the Seow affidavit that was admissible on the authority of *Pamplin v Express Newspapers Ltd* ([18] *supra*).

(1) The admissibility principles

20 Before I consider the CSJ affidavit and the Seow affidavit in detail, it is worthwhile summarising the admissibility principles, which are as follows:

(a) The evidence sought to be admitted must pertain to the plaintiff's general reputation and may not relate to specific acts of misconduct (see *Scott v Sampson* (1882) 8 QBD 491; *Gatley on Libel and Slander* (Patrick Milmo & W V H Rogers eds) (Sweet & Maxwell, 10th Ed, 2004) at paras 33.29–33.32; and *Aaron v Cheong Yip Seng* [1996] 1 SLR 623 at 644, [60]).

(b) The evidence of the plaintiff's alleged general bad reputation must relate to the area or sector of the plaintiff's character which is relevant to the libel (see *Plato Films* ([17] *supra*) at 1140; see also *Gatley on Libel and Slander* at para 33.32).

(c) The evidence must be of the plaintiff's reputation prior to or at the date of the publication of the words complained of; evidence of the plaintiff's bad character subsequent to the publication is inadmissible in mitigation of damages (see *Gatley on Libel and Slander* at para 33.33).

(d) Evidence of rumours that the plaintiff did what was charged in the libel is inadmissible (see

Scott v Sampson at 503–504; *Plato Films* at 1136; and *Gatley on Libel and Slander* at para 33.34).

(e) Evidence of other publications to the same effect or relating to the same incident as the words complained of is inadmissible (see *Associated Newspapers Ltd v Dingle* [1962] AC 371 at 396; and *Gatley on Libel and Slander* at para 33.35 and para 33.55). It will not do to plead what other publications have said about the plaintiff, and the defendant is not permitted to take such a course even for the purposes of proving the plaintiff's alleged general bad reputation.

(f) Under O 78 r 7 of the Rules of Court, where the defendant has not in his defence asserted the truth of the defamatory statement complained of, he may not give evidence of, *inter alia*, particular acts or conduct on the part of the plaintiff which tend to show the latter's character and disposition unless the procedural requirements in this rule have been complied with (see further [22]–[29] below).

21 It is now a convenient juncture to pick up Mr Singh's point that Mr Ravi did not dispute the correctness of the admissibility principles, which was indeed the case (see [19] above). Mr Ravi focused instead on the question of the applicability of the admissibility principles to cases of this nature where politicians sued as private citizens. He argued that the admissibility principles had been enunciated in cases involving private citizens, as opposed to cases involving people who held public office such as politicians. In my view, the distinction which Mr Ravi made was fanciful. The underlying premise of his contention echoed the arguments made in his written submissions filed on 2 August 2006 on behalf of CSC and CSJ for the Summary Judgment Applications. As stated in my grounds of decision for those applications (see *Lee Hsien Loong (HC)* ([3] *supra*) at [35]–[37]), the law on defamation in Singapore protects all individuals, whether persons holding public office, politicians or private individuals. This principle was made clear by L P Thean J in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 2 SLR 310 at 332–333, [62]. The learned judge pointed out that whilst politicians in the discharge of their official duties might come under robust, vehement, caustic and, sometimes, unpleasantly sharp attacks, such criticisms must respect the bounds set by the law of defamation. In other words, freedom of expression is not a right without bounds; if a person chooses to defame another, he must pay for the consequences, with the damages for the injured party being assessed according to the prevailing law. Contrary to Mr Ravi's submission, the rules governing the quantum of damages to be awarded for defamation draw no distinction between persons holding public office or politicians on the one hand and private individuals on the other. In the words of L P Thean JA in *Tang Liang Hong v Lee Kuan Yew* [1998] 1 SLR 97 ("*Tang Liang Hong (CA)*") at [118]:

> [I]f a person chooses to defame another or others, he must pay for the consequences with damages to be assessed according to the prevailing law. Any argument which calls for a reduction or moderation of damages purely on the basis that the successful plaintiff is a politician, say a minister, or that the case has a political flavour is untenable and wrong. To accept such a contention is to allow a person more latitude to make defamatory remarks of such personality and to escape with lesser consequences for the defamation he committed.

(2) The procedural requirements under Order 78 rule 7 of the Rules of Court

22 Order 78 r 7 of the Rules of Court reads as follows:

> In an action for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled [at] the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge,

unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

23 Order 78 r 7 applies where "the defendant does not by his defence assert the truth of the statement complained of", *ie*, where the defendant does not plead justification. In my view, a case involving a bald plea of justification, such as that made in the Amended Defence, is no different from a case involving a defendant who does not plead justification at all in his defence or who does not file any defence. In such a case, O 78 r 7 has to be complied with. The defendant is *not* entitled at the trial "to give evidence in chief, with a view to mitigation of damages, as to ... the character of the plaintiff, without the leave of the Judge, *unless* 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence" [emphasis added]. To reiterate, the effect of non-compliance with O 78 r 7 is that the defendant is precluded from giving evidence of O 78 r 7 particulars for the purposes of mitigation of damages unless leave of court is given; neither is the defendant allowed to elicit such evidence in cross-examination. It should be noted that this procedural rule does not alter the common law rule laid down in *Scott v Sampson* ([20] *supra*). Further, in giving O 78 r 7 particulars, the admissibility principles (as outlined at [20] above) must be observed. An exception to the admissibility principles has emerged as a result of the decision in *Burstein* ([12] *supra*) that particulars concerning directly relevant background context of the circumstances in which the publication came to be made (*ie*, *Burstein* particulars) are admissible. I will address this point in greater detail later on.

24 The Malaysian case of *Chong Siew Chiang v Chau Ching Geh* [1995] 1 MLJ 551 is a useful illustration of the effect of non-compliance with the Malaysian equivalent of O 78 r 7 of our Rules of Court. In that case, the cross-examination of the plaintiff by the defendants' counsel was substantially concerned with the circumstances surrounding the publication of the libel even though the Malaysian equivalent of O 78 r 7 had not been complied with. It was, as Richard Malanjum J said, an attempt to justify why the libel had been published or to explain the motive for its publication. The judge did not consider this aspect of the defendants' evidence in the assessment of damages because the Malaysian equivalent of O 78 r 7 had not been complied with.

25 In the Present Actions, Mr Ravi argued that the requirements of O 78 r 7 had been complied with as particulars of the Plaintiffs' alleged general bad reputation or matters directly relevant to the background context in which the Libel came to be published had been furnished in the CSJ affidavit as well as in the Seow affidavit. Disagreeing, Mr Singh submitted that the starting point was the pleadings issue. He contended that, even if, for the sake of argument, O 78 r 7 particulars could be furnished via an affidavit of evidence-in-chief and had indeed been given in the CSJ affidavit as well as the Seow affidavit, those particulars must still be pleaded and then proved like any other fact. The pleadings issue, in Mr Singh's view, was first and foremost a stumbling block to the Defendants' attempt to adduce O 78 r 7 particulars in evidence by way of the CSJ affidavit and the Seow affidavit. Citing Lord Denning in *Plato Films* ([17] *supra*) at 1140, Mr Singh explained that, whether or not justification was pleaded, *Scott v Sampson* ([20] *supra*) made it clear that a defendant who intended to give evidence of the plaintiff's general bad reputation in mitigation of damages must first include the material facts in his defence by pleading those facts. This, in his view, was consistent with the requirements of O 18 r 7 and O 18 r 8(1)(*b*).

26 The question in this regard is whether, by reason of the introduction of O 38 r 2 of the Rules of Court (which provides for the filing and exchange of affidavits of evidence-in-chief), O 78 r 7 is complied with when the O 78 r 7 particulars sought to be adduced in evidence for mitigating damages are contained in an affidavit of evidence-in-chief. In my view, the answer is "no". Order 38 r 2 and O 78 r 7 are separate and distinct provisions. The starting point for O 38 r 2 is O 18 r 8(1)(*b*) – *ie*, before a litigant can give evidence of a particular fact "which, if not specifically pleaded, might take

the opposite party by surprise" (see O 18 r 8(1)(*b*)), he must first plead that fact; if he fails to do so, he cannot give evidence of that fact in his affidavits of evidence-in-chief. (There may well be cases where, after the affidavits of evidence-in-chief have been exchanged, the plaintiff manages to demonstrate that the defendant's evidence in mitigation of damages and the defence do not match. In such cases, the defendant may wish to seek leave to amend his defence.) If no defence is filed, the defendant can still give evidence of O 78 r 7 particulars for the purposes of mitigating damages provided O 78 r 7 has been complied with. In other words, as I alluded to earlier (see [23] above), if no defence is filed, O 78 r 7 particulars will have to be furnished by the defendant to the plaintiff at least seven days before the trial so that affidavits of evidence-in-chief deposing to those particulars may be used at the trial.

27 Another difference between O 78 r 7 and O 38 is that O 38 r 3 empowers the court to give directions as to how evidence of a particular fact is to be given. Order 78 r 7, in contrast, does not prescribe the manner in which O 78 r 7 particulars are to be given. It seems to me that O 78 r 7 particulars may be given either in the pleadings or separately by serving a "Notice of Particulars of Evidence in Mitigation of Damages" (see Jack I H Jacob, *Chitty and Jacob's Queen's Bench Forms* (Sweet & Maxwell, 21st Ed, 1986) ("*Chitty & Jacob*") at p 1256). The notice at p 1256 of *Chitty & Jacob* is somewhat similar in format to the various notices contained in Appendix A of the Rules of Court. If the defendant pleads in the defence particulars in mitigation of damages, such matters will not provide a substantive defence to liability, but will satisfy O 18 r 8(1)(*b*) as well as serve as notice of O 78 r 7 particulars for the purposes of O 78 r 7. It seems to me that, in a case where no defence has been filed and interlocutory judgment with damages to be assessed has been obtained, the defendant who intends to defend the assessment of damages has to either: (a) seek directions under O 37 for filing his defence as to damages; or (b) furnish O 78 r 7 particulars under a separate notice pursuant to O 78 r 7. In this regard, the commentary in *Bullen & Leake & Jacob's Precedents of Pleadings* (Jack I H Jacob & Iain S Goldrein eds) (Sweet & Maxwell, 13th Ed, 1990) ("*Bullen & Leake*") at p 1275 is instructive. It reads (*ibid*):

> A defendant may not lead evidence in mitigation of damages as to the circumstances under which the libel or slander was published, or as to the plaintiff's character, without leave of the Judge, unless at least seven days before trial the defendant gives the plaintiff particulars of the matters of which he intends to give evidence (R.S.C. [Rules of the Supreme Court 1965 (UK)], Ord. 82, r. 7.). Accordingly *such matters may be pleaded in a defence or under a separate notice*. A defendant may however only plead that the plaintiff has such a reputation in a relevant sector of his life (*Plato Films Ltd.* v. *Speidel* [1961] A.C. 1090 at 1125). He may not plead, or give evidence of, specific acts of misconduct to establish general bad reputation (*Scott* v. *Sampson* (1882) 8 Q.B.D. 491) with the exception of convictions in the relevant sector of the plaintiff's life (*Goody* v. *Odhams Press Ltd.* [1967] 1 Q.B. 333). [emphasis added]

28 Pausing at the English equivalent of O 78 r 7 of the Rules of Court (namely, O 82 r 7 of the Rules of the Supreme Court 1965 (UK) ("the 1965 RSC")) and by way of explanation, the English rule preceding O 82 r 7 of the 1965 RSC was O 36 r 37 of the Rules of the Supreme Court 1883 (UK) ("the 1883 RSC"). Order 36 r 37 of the 1883 RSC was introduced after the decision in *Scott v Sampson* ([20] *supra*) in order to cover cases where justification was not pleaded so as to require the defendant in those cases to give the English equivalent of our O 78 r 7 particulars under a separate notice. Both O 36 r 37 of the 1883 RSC and O 82 r 7 of the 1965 RSC are substantially the same as O 78 r 7 of our Rules of Court. The procedural rule in Singapore thus remains the same as that which was in force in England prior to the revocation of O 82 r 7 of the 1965 RSC in 1989.

29 Reverting to Mr Ravi's contention that the Defendants had complied with O 78 r 7 of the Rules of Court (see [25] above), I was not persuaded that O 78 r 7 particulars could be furnished by way of

an affidavit of evidence-in-chief. That would not constitute proper notice pursuant to O 78 r 7 (see *Chitty & Jacob* ([27] *supra*) at p 1256; see also *Bullen & Leake* ([27] *supra*) at p 1275). In any case, the CSJ affidavit fell short of the requirements of O 78 r 7 for it did not state or go into matters relating to the Plaintiffs' alleged general bad reputation. On the contrary, it seemed to admit to the Plaintiffs' good reputation, but argued that such reputation was inflated. The Seow affidavit suffered from the same deficiencies.

The third ground: Inapplicability of the principle laid down in Burstein

30 Mr Singh referred me to the principle laid down by the English Court of Appeal in *Burstein* ([12] *supra*) ("the *Burstein* principle"). He argued that, given the pleadings issue (see [14] above) and the Defendants' non-compliance with O 78 r 7 of the Rules of Court, the *Burstein* principle did not apply – there were no legitimate *Burstein* particulars to speak of. In contrast, Mr Ravi argued that the particular acts referred to in the CSJ affidavit as well as the Seow affidavit represented the contextual background in which the defamatory statements were made and were thus admissible as *Burstein* particulars. I was not persuaded by Mr Ravi's argument. The context in which the defamatory statements were published was not pleaded at all, and, thus, there was nothing in the Amended Defence which could form the basis for the material sought to be adduced via the CSJ affidavit and the Seow affidavit. Besides, and as Mr Singh rightly submitted, these two affidavits did not state or explain the background and the circumstances in which the Articles came to be written and published in *The New Democrat Issue 1*. The Defendants' arguments on contextual background failed for these reasons (see also [43]–[46] below). Nevertheless, I shall proceed to consider whether the *Burstein* principle is good law in Singapore.

(1) The Burstein principle

31 The English Court of Appeal accepted in *Burstein* ([12] *supra*) that, for the purposes of mitigating damages, evidence of particular facts which were directly relevant to the contextual background in which a defamatory publication came to be made were admissible. The *Burstein* principle, as expounded by May LJ (*id* at [42]), is as follows:

> For practical purposes, every publication has a contextual background, even if the publication is substantially untrue. In addition, the evidence which *Scott v Sampson* excludes is particular evidence of general reputation, character or disposition which is not directly connected with the subject matter of the defamatory publication. It does not exclude evidence of directly relevant background context. To the extent that evidence of this kind can also be characterised as evidence of the claimant's reputation, it is admissible because it is directly relevant to the damage which he claims has been caused by the defamatory publication.

32 Some guidance as to what this means in practice can be derived from the judgments of May LJ and Sir Christopher Slade in *Burstein* ([12] *supra*) and from the English Court of Appeal's application of the *Burstein* principle to the facts of that case. There, the plaintiff ("Mr Burstein"), a composer, sought damages from the defendant newspaper after it alleged that he was "an aggressively self-righteous, rather slushy composer who used to organise bands of hecklers to go about wrecking performances of modern atonal music" (*id* at [2]). The defendant did not plead justification. Instead, it pleaded that the words complained of were fair comment on a matter of public interest, and gave extended particulars of the facts upon which it said its comment was based. The particulars, as summarised at [10] of *Burstein*, were as follows:

> (a) Mr Burstein was associated with, and indeed had claimed to be the co-founder of, a group of militant campaigners against atonal music called "The Hecklers".

(b) On the day of a performance of *Gawain* by Sir Harrison Birtwhistle at the Royal Opera House on 14 April 1994, The Hecklers publicly invited the audience to join them in booing at the end of the performance.

(c) Mr Burstein attended the performance and, at the end, joined other members of The Hecklers in booing and hissing.

33 The English Court of Appeal accepted that such evidence was admissible because it was directly relevant to the damage which Mr Burstein alleged had been caused to his reputation by the defamatory publication (*id* at [42], *per* May LJ). Sir Slade added (*id* at [59]) that the particulars given by the defendant showed that Mr Burstein had deliberately courted a reputation as a militant opponent of atonal music.

34 The basis on which the defendant's evidence in *Burstein* ([12] *supra*) was admitted appears at [40]–[42] of May LJ's judgment. To May LJ, the admissibility of the evidence in question was essentially a "procedural case management [question]" (*id* at [40]) which would be "heavily affected, if not determined, by questions of procedural fairness and of case management" (*ibid*). He held that "[t]here was a background context to the defamatory publication ... [and] [t]o keep that away from the jury was to put them in blinkers" (see *Burstein* at [41]). He added that the heckling which Mr Burstein had organised would appear sufficiently from an appropriately confined selection of the documents to which the defendant wanted to refer. That evidence was directly relevant to the damage which Mr Burstein claimed had been caused by the defamatory publication. Agreeing with May LJ, Sir Slade pointed out that he considered the case to be a special one on its facts. He listed (at [59] of *Burstein*) the facts which the defendant wished to adduce in evidence, and held that "[t]o preclude the jury from knowledge of [those] ... facts ... was indeed to compel them to look at [the] case in blinkers when they came to assess the damages properly payable" (*id* at [60]).

35 Thus far, the English courts have been cautious in their application of the *Burstein* principle. In *Turner v News Group Newspapers Ltd* [2006] 1 WLR 3469 ("*Turner*"), the defamatory allegation was, *inter alia*, that the claimant was involved in "a twilight world of swingers and wife-swapping and was depraved and immoral" (*id* at [5]). The *Burstein* particulars sought to be relied upon, which are listed at [12]–[14] of the judgment of Keene LJ, were as follows:

(a) the claimant's membership of a fetishist/swingers club;

(b) the role of the claimant as an agent who arranged for his former wife ("A") to be photographed in pornographic poses; and

(c) a newspaper article in which the claimant talked about his failed marriage and the fact that A had been "a 'page 3' model" (*id* at [14]).

36 Those facts fell within a small compass. Two of the three matters were conceded to be admissible. The English Court of Appeal held that the trial judge, Eady J, had been correct to admit the evidence of both the claimant's bad reputation and the claimant's acts of misconduct since those two factors formed part of the directly relevant background of the defamatory publication. There was a sufficient nexus between the three matters sought to be adduced in evidence as contextual material and the allegations which the claimant complained of as libellous. The evidence to be adduced was not unfair to the claimant, and it was also confined both in its subject matter and its duration.

37 Another case that is illustrative of the English courts' narrow application of the *Burstein*

principle to the facts of the case at hand is *Rashid Ghannouchi v Houni Ltd* [2003] EWHC 552 ("*Ghannouchi*"). In that case, Gray J examined each of the areas on which the defendants (*viz*, the printer, the chief editor and the publisher, respectively, of a newspaper called " *Al Arab*") sought to cross-examine the claimant, a Tunisian, so as to determine if those matters constituted contextual background as argued by the defendants. The claimant sued the defendants in respect of an article published in *Al Arab* in January 2002 alleging that the claimant had close links with Osama bin Laden and Al Qaeda, and was a violent and dangerous terrorist responsible for terrorist bombings and assassinations which had taken place in Tunisia. In reality, the claimant was the leader of An Nahda, a moderate, pro-democracy, Islamist political movement that was the main independent opposition to the autocratic regime in Tunisia. The claimant had never had anything to do with Osama bin Laden or Al Qaeda, and had no involvement in the atrocities that had occurred in Tunisia. The defences of justification and qualified privilege were abandoned, the defendants having indicated that they did not oppose the claimant's application to strike out those defences. However, the defendants gave notice that they wished to cross-examine the claimant for the purposes of mitigation of damages by relying on the claimant's own public statements as well as on such facts and matters that would controvert the claimant's portrayal of An Nahda (and its predecessors) as a moderate political movement and of himself as a political moderate, a man of peace and a supporter of democratic governance. Counsel for the defendants indicated that these matters included:

(a) some of the claimant's public pronouncements, including speeches which he made in 1990, 1991 and 1994;

(b) the defection of the co-founder of An Nahda and two other leaders of the movement on the publicly stated basis that the claimant and his movement had "chosen to resort to violence" (see *Ghannouchi* at [11]); and

(c) the claimant's "connections or possible connections with an unidentified Palestinian Islamic Jihad leader currently under indictment in Florida on terrorist charges" (*ibid*).

Counsel argued that the matters which he intended to put to the claimant in cross-examination were admissible under the *Burstein* principle because they could properly be described as what May LJ termed "directly relevant background context" (see *Burstein* ([12] *supra*) at [42]). Gray J disagreed, stating that the defendants were in effect seeking to reintroduce by the back door a modified plea of justification and that this, as a matter of law, was not allowed (citing *Prager v Times Newspapers Ltd* [1988] 1 WLR 77). Furthermore, in Gray J's view, none of the particulars put forward qualified as directly relevant background context. For instance, he held that it was fanciful to suggest that matters occurring as long ago as 1990 (namely, the speeches given by the claimant in the 1990s) could be regarded as context or even background context in respect of the defamatory article published in January 2002.

38 In summary, the law is that a defendant cannot, in mitigation of damages, invoke specific aspects of the plaintiff's behaviour as opposed to matters alleged by way of the plaintiff's general bad reputation (see *Scott v Sampson* ([20] *supra*)). That is still the law, subject to the *Burstein* principle, which represents a narrow exception to the long-standing rule in *Scott v Sampson.* If evidence is to be admitted under the *Burstein* principle, it has to be evidence which is directly relevant to the contextual background in which the defamatory publication came to be made.

(2) Is the Burstein principle applicable in Singapore?

39 The *Burstein* principle, in my view, is applicable in Singapore, seeing that it is a development in the common law as to the kind of evidence that is admissible in relation to the assessment of

damages or compensation for libel. The effect of the English Court of Appeal's decision in *Burstein* ([12] *supra*) was to ease the strictness of the rule in *Scott v Sampson* ([20] *supra*) and to render admissible, in some limited circumstances, evidence of specific facts which were hitherto permitted to be adduced only where there was a plea of justification. In other words, the *Burstein* principle creates a narrow exception to the rule in *Scott v Sampson*, which rule was accepted and applied as part of Singapore law in *Aaron v Cheong Yip Seng* ([20] *supra*) at 644, [60].

40 The criterion for admissibility, as enunciated in *Burstein* ([12] *supra*), is encapsulated within a single phrase, "directly relevant background context" (*id* at [42], *per* May LJ) of the publication complained of. As Moses LJ observed in *Turner* ([35] *supra*) at [87]–[89], this phrase does not provide sufficient guidance to judges who are called upon to apply the *Burstein* principle. The expression is deliberately nebulous for what is permitted to be adduced in evidence as being directly relevant to the contextual background of the publication complained of must necessarily be left to the judge to decide on a case-by-case basis. The judge has to examine whether the facts which the defendant aspires to plead and seeks to establish qualifies as background context that is directly relevant for the purposes of assessing damages, in particular, damages for the harm done to the plaintiff's reputation in the sector of his life to which the publication relates and for the injury to his feelings. Although the evidence of the background context of the publication in question need not be "causally connected" (see *Burstein* at 579) with the publication before it may be admitted as *Burstein* particulars, it is well worth noting Keene LJ's reminder in *Turner*, citing Eady J's warning in *Polanski v Condé Nast Publications Ltd* (21 October 2003) (unreported), that "one should guard against extending too creatively the concept of 'directly relevant background'" (see *Turner* at [56]). It must not be forgotten that the exclusionary principle laid down in *Scott v Sampson* ([20] *supra*) was intended primarily to prevent defamation trials from becoming roving inquires into that part of the plaintiff's reputation, character or disposition which is unconnected with the subject matter of the defamatory publication; such inquiries, if permitted, could result in a "trial within a trial" occurring in defamation suits.

41 There are two other considerations which must be noted in relation to the *Burstein* principle. First, the defendant who proposes to plead and establish facts directly relevant to the contextual background of the publication complained of has to notify the plaintiff of the proposed particulars. In *Turner* ([35] *supra*), there was an early apology from the first defendant (who was the publisher of the defamatory article) and no defence was filed. The three categories of material which the first defendant wanted to admit in evidence for the purposes of reducing the amount of compensation to be awarded were notified to the claimant by a document served on 22 February 2005 (*id* at [11]). Prior to that, the claimant had first been notified (on 18 June 2004) of the first defendant's intention to invoke those factors in aid of mitigation of damages before he accepted the first defendant's offer to make amends. In Singapore, the defendant who proposes to plead and establish facts directly relevant to the contextual background of the publication in question has to notify the plaintiff of the proposed particulars either in the defence or by way of a notice given pursuant to O 78 r 7 of the Rules of Court. Specifically, the plain words of O 78 r 7, namely, "the circumstances under which the libel or slander was published", are wide enough to apply to *Burstein* particulars.

42 Second, *Burstein* particulars – which are intended to mitigate the quantum of damages awarded to the plaintiff – must not go to justify the libel. The proposition enunciated in *Burstein* ([12] *supra*) by May LJ at [47] is as follows:

> Evidence in support of a plea of justification which fails is admissible in reduction of damages. But the very same evidence would not be admissible to a sensible defendant who acknowledges that it will not support a plea of justification. What is not permissible is to plead a defence of partial justification which in truth is no defence at all.

(3) Application of the Burstein principle in the Present Actions

43 Mr Ravi argued that the particular acts referred to in the CSJ affidavit and the Seow affidavit set out the contextual background in which the defamatory statements were made. In his written submissions filed on behalf of the SDP, Mr Ravi stated that the Plaintiffs "resent[ed] opposition, [were] dictatorial, and [were] publicly and bitterly ill-disposed towards the Defendants".[note: 7] These matters purportedly formed "the contextual background to the statements held to be defamatory, which were made in the course of an election campaign".[note: 8] Mr Ravi's submissions in this regard are misconceived. The allegations made of the Plaintiffs are nowhere to be found in the pleadings. On top of that, they are factually inaccurate in relation to the Libel, in that the Disputed Words were published in *The New Democrat Issue 1* in February 2006, and were not statements made in the course of an election campaign as claimed. The three matters mentioned in Mr Ravi's written submissions – namely, the Plaintiffs' resentment of opposition, their dictatorial nature and their ill-disposition towards the Defendants – also could not constitute directly relevant background context of the circumstances in which the Libel was published as there was no sufficient nexus between these three matters and the Libel, which accused LHL and LKY of dishonesty and, hence, of being unfit to hold office as Prime Minister and Minister Mentor respectively. Again, the three matters referred to by Mr Ravi were patently unconnected with and irrelevant to the subject matter of the defamatory publication, which centred on corruption, financial impropriety and the knowing abuse of unmeritorious defamation suits. In this regard, May LJ had explained at [40] of *Burstein* ([12] *supra*) that:

> It will, generally speaking, normally be both unfair and irrelevant if a claimant complaining of a specific defamatory publication is subjected to a roving inquiry into aspects of his or her life unconnected with the subject matter of the defamatory publication.

44 Mr Ravi submitted that the matters set out in the Seow affidavit were relevant as *Burstein* particulars as they described how the Plaintiffs had devised a political system to advance the interest of the political elite. These matters, it was submitted, were "relevant to the contextual background and [were] also evidence that the Plaintiffs [had] bad reputations in this respect".[note: 9] I did not accept this submission. In my judgment, the CSJ affidavit as well as the Seow affidavit did not in any way allude to the contextual background of the publication in question. Contrary to Mr Ravi's submissions, it is impermissible, at the stage of assessment of damages, to justify by the back door the sting of the defamatory statement complained of – *ie*, it was not legitimate for any of the Defendants, under the guise of "background context", to introduce in mitigation of damages evidence aimed at proving the truth of the Libel. In the Present Actions, the defences of justification and fair comment failed because they were bald pleas which had no proper basis in fact and lacked particularity. Given these circumstances, it was not permissible for the Defendants to conjure up particulars in support of (*inter alia*) their bald plea of justification and have these particulars introduced in evidence as *Burstein* particulars.

45 Mr Ravi further argued that the Defendants wanted to adduce evidence in relation to the various topics enumerated in para 8 of the Amended Defence under the section titled "Particulars of Public Interest" as they were directly relevant to the contextual background of the publication complained of. These topics are:

(i) The governance of the State of Singapore;

(ii) The performance of the PAP as the governing party in the [P]arliament of Singapore;

(iii) The performance of [LHL and LKY] as Prime Minister [and Minister Mentor, respectively] of Singapore;

(iv) The NKF scandal;

(v) The use by PAP politicians of defamation litigation against political opponents;

(vi) Free speech;

(vii) [The] [i]ssue of whether there is corruption or perception of it in boards and corporations of the Singapore government;

(viii) Administration of public institutions or organisations subject to the control and/or supervision of the Singapore government;

(ix) Administration of the GIC [Government of Singapore Investment Corporation];

(x) The public's right to information concerning the investments of the GIC;

(xi) The financial affairs of the CPF [Central Provident Fund];

(xii) The performance of the mass media in Singapore.

In my judgment, even if one accepts the above items as particulars (which they are not, for the reasons stated in *Lee Hsien Loong (HC)* ([3] *supra*) at [66]), they are not legitimate *Burstein* particulars. Furthermore, this so-called "contextual background" is unconnected with the real sting of the Libel, which I have earlier set out at [8] above.

46 In the circumstances, in my judgment, there is no scope for the application of the *Burstein* principle in the Present Actions. This view received further confirmation after a detailed consideration of the CSJ affidavit, the Seow affidavit and the arguments of both sides on these affidavits, as I shall explain below.

Reasons for striking out the Defendants' AEICs

47 To recapitulate, the grounds on which the Plaintiffs sought to strike out the Defendants' AEICs were as follows: First, these affidavits ought to be struck out because of the pleadings issue (see [14] above) and, quite apart from the pleadings issue, because of non-compliance with O 78 r 7 of the Rules of Court. Second, even if the pleadings issue and non-compliance with O 78 r 7 were not obstacles to the admission of the evidence in the Defendants' AEICs, the CSJ affidavit did not bear out the Defendants' assertion that the Plaintiffs were men of bad reputation. Third, the Defendants' AEICs did not contain any material that qualified as "directly relevant background context" (see *Burstein* ([12] *supra*) at [42]) of the publication of the Libel for the purposes of assessing damages. The Defendants, on the other hand, maintained that the CSJ affidavit contained the particulars relied on for general bad reputation. In his oral submissions, Mr Ravi, when asked what exactly were the particulars of bad reputation which he was referring to, duly listed items (ii)–(xii) of the topics referred to in para 8 of the Amended Defence under the section titled "Particulars of Public Interest" (see [45] above). CSJ and CSC did not dissent from this answer, and, in fact, the Defendants wanted to use documents from the list of documents which was filed on 14 June 2007 ("the Defendants' List of Documents") to cross-examine the Plaintiffs in respect of these topics. The Defendants also maintained that the particular acts referred to in the CSJ affidavit and the Seow affidavit were admissible as *Burstein* particulars.

The CSJ affidavit

48 Mr Singh challenged virtually every step of the arguments made by the Defendants and the evidence that they sought to rely on, which, he said, fell foul of the type of evidence that was admissible to prove general bad reputation. The key points made in the CSJ affidavit were (*inter alia*) that:

(a) because there was no freedom of expression in Singapore, the Plaintiffs' reputation had been self-inflated; and

(b) unless this court asked itself what foreigners and Internet-savvy Singaporeans thought of the Plaintiffs, the court could not properly assess the Plaintiffs' reputation and, therefore, the damages to be awarded for the Libel.

Mr Singh submitted that these matters were on no view evidence of the Plaintiffs' alleged general bad reputation; neither were they evidence of the contextual background of the circumstances in which the Libel was published. In other words, the CSJ affidavit did not contain any admissible evidence which could support a case of general bad reputation or which could be properly regarded as *Burstein* particulars. That affidavit also did not mention the NKF Saga or the various matters that Mr Ravi mentioned from the Bar (see [47] above).

49 Mr Singh then advanced a detailed attack on the defects in the CSJ affidavit, in so far as it purported to set out material to support a reduction or mitigation of damages, by taking the court through each paragraph of that affidavit. He argued that the CSJ affidavit was premised on, *inter alia*, rumours and hearsay, and impermissibly relied on other publications. Mr Singh submitted that the CSJ affidavit was filed to advance the Defendants' political agenda and to launch political attacks against the courts and the Plaintiffs. I agreed with Mr Singh's submissions. The legal principles contravened by the CSJ affidavit are self-evident from a reading of the affidavit itself, as I shall demonstrate below (at [50]–[60]).

50 Paragraphs 3–6 of the CSJ affidavit raise the following complaints as to the circumstances surrounding the Summary Judgments, namely:

(a) those judgments were obtained at a hearing when Mr Ravi ,who was then representing CSJ and CSC, was absent as he was ill; and

(b) the defence put forth by CSC and CSJ (*ie*, the Amended Defence) had disclosed triable issues, but CSC and CSJ had nonetheless been denied the opportunity to defend themselves in open court.

In this part of the CSJ affidavit, the Defendants contend that, given that the Summary Judgments were obtained in such circumstances, there has been a travesty of justice and they do not accept the Summary Judgments. In my view, paras 3–6 of the CSJ affidavit are entirely irrelevant as they have nothing to do with the assessment of damages. They are also scandalous and contemptuous of the Summary Judgments. The Defendants' complaint of "a travesty of justice"[note: 10] suggests that this court and, by implication, the Court of Appeal, which dismissed CSJ's application for an extension of time to appeal against the Summary Judgments (see *Lee Hsien Loong (CA)* ([11] *supra*)), are biased and not independent. CSJ's poser – *ie*, the problem of finding an independent and unbiased assessment of the Plaintiffs' reputation (see [48] above) – is a backhanded swipe and collateral attack against not only the judges who heard the Summary Judgment Applications and CSJ's application for an extension of time to appeal against the Summary Judgments respectively, but also the Judiciary in general. The passages, in context, are scandalous.

51 Paragraph 7 of the CSJ affidavit refers to an assessment of the Plaintiffs' reputation and the problem of finding "a[n] independent and unbiased assessment of these reputations".[note: 11] Paragraphs 8–10 explain why this problem has arisen. What CSJ deposed to is that the local media says that the Plaintiffs' reputation is sterling. That, he contends, is tantamount to the Plaintiffs praising themselves as the media is "controlled and subservient".[note: 12] In contrast, the foreign media holds "a much more critical view"[note: 13] of the Plaintiffs. Notably, CSJ does not say what the more critical views of the Plaintiffs are. Without this information, nobody knows, firstly, what the Plaintiffs' bad reputation as alleged by the Defendants is supposed to be and, secondly, whether the evidence which the Defendants seek to adduce of the Plaintiffs' alleged bad reputation falls within the sector of the respective plaintiff's character that is relevant to the Libel. In addition, reliance on other publications and evidence of rumours is impermissible in law.

52 Paragraphs 12–16 of the CSJ affidavit refer to a defamation suit in Canada in 1999 between LKY and the former President, Devan Nair. According to CSJ, the comments of the Canadian judge on freedom of expression in Canada support his assertion that "there is no freedom of expression in Singapore ... [and this] lends weight to the argument that the [P]laintiffs' reputations have been inflated by the [Plaintiffs] themselves".[note: 14] Paragraph 17 lists several international groups such as Amnesty International, Freedom House, Reporters Without Borders, Human Rights Watch, National Endowment for Democracy, Council for a Community of Democracies, Lawyers Rights Watch Canada, International Commission of Jurists, Human Rights First and the US Department of State, which, CSJ claims, have criticised the Singapore government for not respecting freedom of expression in Singapore. CSJ concludes in para 18 of the CSJ affidavit that international opinion supports his assertion that "the reputations of the [P]laintiffs are not what the [Plaintiffs] claim them to be".[note: 15] This, he says, has to be seen in "the context of the lack of freedom of expression in Singapore which curtails criticism, as well as the publication of such criticism, of the [Plaintiffs]".[note: 16] Next, paras 19–20 of the CSJ affidavit deal with the views of the layperson contained in online forums, which, according to CSJ, are "rife with robust criticism of the [P]laintiffs".[note: 17]

53 Mr Ravi submitted that the CSJ affidavit concerned the Plaintiffs' bad reputation in relation to freedom of speech and the electoral system in Singapore, and that such evidence was relevant in so far as it discredited the Plaintiffs' evidence of their good reputation, which was "the product of a corrupted media".[note: 18] In this regard, the CSJ affidavit again did not itself spell out: (a) what the Plaintiffs' alleged reputation was supposed to be; and (b) what exactly the views held by other organisations critical of the Plaintiffs were in relation to the Plaintiffs' alleged reputation. As I pointed out earlier (at [51] above), without such information, it is not possible to ascertain whether the Defendants' evidence of the Plaintiffs' alleged reputation lies within the sector of the respective plaintiff's character that is relevant to the Libel. For instance, freedom of expression is a sector that is not relevant to the Libel. The "[v]iews of the layperson"[note: 19] [emphasis in original omitted] are hearsay, and reliance on rumours is impermissible in law (see [20] above). The paragraphs in question (*ie*, paras 12–20 of the CSJ affidavit) are also irrelevant for the reason that they contain arguments and submissions including opinion evidence, all of which are inadmissible in evidence.

54 In paras 21–25 of the CSJ affidavit, CSJ deposes that the Plaintiffs' reputation has been assessed through general elections.[note: 20] However, the electoral system in Singapore, he contends, is "'engineered' to ensure a PAP victory"[note: 21] and so, "the [Plaintiffs] continue to be re-elected at every election".[note: 22] He points out that "[LHL] has said that if there are more opposition [M]embers of [P]arliament, he [*ie*, LHL], as [P]rime [M]inister, will have to 'fix' the opposition and 'buy' support".[note: 23] In para 25 of the CSJ affidavit, it is said that "[t]he Elections Department which conducts elections is being supervised by the Prime Minister's Office". From all this, CSJ implies that the electoral system in Singapore has created a skewed picture of the reputation of

the Plaintiffs. Again, these paragraphs on elections and the electoral system in Singapore are irrelevant. Elections and the electoral system comprise a sector that is not relevant to the Libel, and, hence, evidence on these matters is inadmissible. If anything, the matters deposed to are, at the highest, evidence of particular acts by the Plaintiffs tending to show their disposition and character. Such evidence is impermissible in law as general evidence of bad reputation (see, *inter alia*, *Scott v Sampson* ([20] *supra*)).

55 Finally, para 26 of the CSJ affidavit concludes that an accurate and unbiased assessment of the Plaintiffs' reputation is not to be gathered from the local press and the results of general elections held to date, but from the opinions of other sources. As stated, the opinions of these alternative sources – namely, foreign media, international groups and bloggers on the Internet – are rumours and hearsay evidence, and are hence irrelevant and inadmissible. Furthermore, para 26 is irrelevant as it represents CSJ's arguments and submissions on matters outside the sector of the respective plaintiff's character that is relevant to the Libel.

56 In fact, as I noted earlier (at [53] above), the CSJ affidavit is replete with CSJ's arguments and submissions. For example, CSJ opines that:

(a) "self-praise is no praise";[note: 24]

(b) the law suit in Canada between LKY and Devan Nair (see [52] above) is "another indication that there is no freedom of expression in Singapore which lends weight to the argument that the [P]laintiffs' reputations have been inflated by the [Plaintiffs] themselves";[note: 25]

(c) "[t]he reputations of the [P]laintiffs must be assessed by looking at the entire spectrum of views";[note: 26]

(d) "[t]here is little coverage and analysis of the political machinations of the [P]laintiffs by Singapore's media";[note: 27]

(e) "the [P]laintiffs' reputations have been built up on the backs of a controlled and subservient media";[note: 28] and

(f) "[o]nly when a comprehensive vantage [of the Plaintiffs] is considered can an accurate and unbiased assessment of their reputations be made".[note: 29]

As I have stated earlier (see, *inter alia*, [53] and [55] above), opinion evidence is irrelevant and inadmissible. The only proper way for CSJ to support his opinions (as outlined above) in court is by pleading facts and thereafter proving the matters which underpin his opinions; it is only then that these opinions can be explored and tested.

57 I must add that, to lead evidence on general bad reputation, the Defendants have to call evidence from persons who have dealt with the Plaintiffs and are prepared to testify that the Plaintiffs are corrupt (see *Associated Newspapers Ltd v Dingle* ([20] *supra*) at 412). In this regard, the CSJ affidavit is completely irrelevant as CSJ and CSC have not dealt with and do not know the Plaintiffs personally. Besides, there is nothing in the CSJ affidavit that can form the basis of *Burstein* particulars, and, even if there were any such materials, they would not constitute legitimate *Burstein* particulars.

58 In my judgment, the Defendants' submissions, the CSJ affidavit and the Seow affidavit must be understood and received in the full context of the Defendants' outward rejection of the Summary

Judgments, as expressed at para 4 of the CSJ affidavit. In this regard, I highlight two points. First, the Defendants are openly seeking to move away from the subject matter of the Libel. Mr Ravi claimed that the Defendants were not asserting that the Plaintiffs had criminal convictions and were therefore corrupt. Bad character, he argued, included the opinions held by others as regards the issues enumerated in para 8 of the Amended Defence under the section titled "Particulars of Public Interest". That the Plaintiffs resented opposition, were dictatorial, and were publicly and bitterly ill-disposed towards the Defendants, Mr Ravi argued, formed the contextual background of the statements held to be defamatory, which statements were made in the course of an election campaign. To CSC, there was no difference between being corrupt and being a dictator. Oppressive laws, she claimed, had been designed to suppress the right to freedom and that was tantamount to corruption. In her view, the Plaintiffs had used oppressive laws and the Internal Security Act (Cap 143, 1985 Rev Ed) to incarcerate those whom they deemed to be a threat to them, and those persons were not given a trial. She saw that as corruption stemming from a dictatorship. On this basis, it was alleged that everything that the Plaintiffs had done, including the way they governed the country, was corrupt. The meaning of "corrupt" which the Defendants now canvass is unsurprising as it is consistent with para 4 of the CSJ affidavit, where the Defendants reject the Summary Judgments as binding on CSJ and CSC. However, that alternative meaning cannot legally be pursued at this stage as it is too late in the day; the question of the Defendants' liability for the Libel has already been determined and the only outstanding issue is the quantum of damages which the Defendants should pay the Plaintiffs.

59 Second, I agreed with Mr Singh that the Defendants were clearly attempting to revive the question of whether the Disputed Words and the Photograph were defamatory of the Plaintiffs – they wanted to revive by the back door, in mitigation of damages, the issue of the truth of the Libel. In the circumstances, any material that the Defendants seek to introduce as "directly relevant background context" (*per* May LJ in *Burstein* ([12] *supra*) at [42]) is a guise and is purely a tactical ploy to impermissibly drag in material to justify the Libel. At the risk of repetition, the law does not permit facts to be adduced or evidence to be put in cross-examination which, if proved, would justify the libel (see *Watt v Watt* ([12] *supra*) at 118). It is important to note that it is only when the libel is accepted either because it has been established or admitted that the *Burstein* principle renders admissible, in some circumstances, evidence of specific facts which have hitherto been admitted only when there is a plea of justification. Besides, facts directly relevant to the contextual background of the publication in question must be pleaded as the setting of such publication is critical. In the Present Actions, there was no such plea.

60 For all the reasons stated, the above-mentioned paragraphs in the CSJ affidavit (*ie*, paras 3–27 thereof) cannot stand as they are. This leaves the first two paragraphs, which merely introduce CSJ and his address. They are of little value as stand-alone paragraphs without the remaining paragraphs. Consequently, I struck out, in its entirety, the CSJ affidavit under O 41 r 6 of the Rules of Court or, alternatively, under the inherent jurisdiction of the court. CSC's affidavit, which adopted the CSJ affidavit, was also struck out as a result.

The Seow affidavit

61 With regard to the admissibility of the Seow affidavit, Mr Singh advanced the same legal arguments which he made in relation to the CSJ affidavit. Mr Ravi likewise argued in his written submissions that, as with the CSJ affidavit, the evidence in the Seow affidavit was general evidence of the Plaintiffs' bad reputation in respect of freedom of speech and the electoral system in Singapore in so far as it discredited the Plaintiffs' evidence as to their good reputation, which was the product of a corrupt media. Mr Ravi further pointed out that the evidence in the Seow affidavit was admissible as the deponent, Mr Francis T Seow ("FTS"), had had close dealings with LKY. According to Mr Ravi,

the Seow affidavit also provided contextual background to the issue of how the Plaintiffs had devised a political system to advance the interest of the elite, as well as demonstrated the Plaintiffs' resentment of the opposition, their dictatorial style of leadership and their public and bitter ill-disposition towards the Defendants.

62 I will now consider each paragraph of the Seow affidavit in turn. The legal principles which, according to Mr Singh, this affidavit contravenes are the same as those considered earlier in respect of the CSJ affidavit. These principles, which are self-evident from a reading of the Seow affidavit, are the admissibility principles set out earlier (see [20] above). Before I start, I should mention that FTS has had no dealings with LHL and, as such, on the Defendants' own case, the Seow affidavit is not admissible against LHL. Further, contrary to CSC's submission that FTS was able to speak his mind about LKY's reputation because he had worked with LKY in the past, the Seow affidavit was not admissible in evidence against LKY because it fell foul of the admissibility principles.

63 In paras 3–10 and para 13 of the Seow affidavit, FTS states that "LKY is bent on the total control of the Singaporean society".[note: 30] FTS refers to the control of the press and the media, and the prohibition of public protests. He also talks about the use of the Internal Security Act to "quarantine and rehabilitate"[note: 31] the Government's political opponents, depicting himself as "one of [LKY's] victims",[note: 32] and about the use of defamation laws to silence opposing views. Additionally, he speaks of the persecution of dissenters and opponents, and says that, consequently, few people in Singapore dare to join opposition parties and stand for election as opposition candidates.[note: 33] That state of affairs, according to FTS, has enabled the PAP to return to power with ease. Given the lack of democracy and the undemocratic practices in Singapore, FTS alleges that LHL cannot claim that Singaporeans have given him the mandate to govern the country, seeing that he has inherited the undemocratic political system put in place by his father, LKY.[note: 34]

64 In paras 10–12 of the Seow affidavit, FTS mentions the media's lack of independence in that the media is "in the hands of LKY and those close to him".[note: 35] FTS deposes that journalists and editors who have been critical of LKY and the system which he devised have been detained without trial; newspapers that have shown independence have been closed; and it is not possible to get a balanced view of LHL because the media is controlled by LKY and people who are close to him.

65 In paras 14–16 of the Seow affidavit, FTS suggests that the undemocratic political system in Singapore inflates the Plaintiffs' reputation; "[in] a climate of fear and intimidation, there can only be praise of the [P]laintiff[s]"[note: 36] as their critics have been silenced. Given this scenario, the reputation of LKY and that of LHL, so FTS asserts, is based on "[each plaintiff's] own opinion and those of his minions".[note: 37]

66 In my view, the matters stated in paras 3–16 of the Seow affidavit bear no relation to the Libel. For instance, the Plaintiffs' reputation in relation to freedom of speech, the electoral system in Singapore, the media, their alleged dictatorial style of government and the Internal Security Act do not pertain to the sectors of the respective plaintiff's character that are relevant to the Libel, and are hence inadmissible. If anything, the matters deposed to, at the highest, can only be "evidence" of particular acts by LKY which tend to show his disposition and character. Evidence of the incarceration of FTS, the alleged threats against him whilst he was in custody and the alleged detention of journalists critical of LKY, to cite a few examples, is impermissible in law as general evidence of bad reputation; if anything, these matters represent evidence which does not pertain to the sector of the respective plaintiff's character that is relevant to the Libel. Notably, what the alleged bad reputation of the Plaintiffs in relation to the matters set out in the Libel is supposed to be was left unsaid in the Seow affidavit (as was the case *vis-à-vis* the CSJ affidavit).

67 The Seow affidavit is also irrelevant as it contains arguments and submissions. For example, FTS says that "there is no doubt that LKY is bent on the total control of the Singaporean society"[note: 38] and "the PAP Government thrives on fear".[note: 39] Similarly, the opinion evidence in the Seow affidavit is irrelevant and inadmissible. For instance, FTS opines that "Only those operating within the PAP system will agree that the system is not designed to inflate the [Plaintiffs'] reputation and to curtail opposing views",[note: 40] and that "a broader spectrum of views and opinions must be sought especially from persons/groups who are not within the control of the Singapore Government".[note: 41] As stated earlier (see [56] above), the only proper way to adduce opinion evidence is to plead facts and thereafter prove the facts which underpin the expressions of opinion; those opinions can then be explored and tested.

68 Furthermore, the Seow affidavit is scandalous as it contains offensive and insulting matters unconnected with the Libel. For example, FTS alleges that LKY has put in place undemocratic practices which LHL is perpetuating and that, although the Plaintiffs have not been "duly elected",[note: 42] LHL "pretends that he operates in a democracy and claims that his position in the Government is a mandate given by Singaporeans".[note: 43] Furthermore, the statement in para 15 of the Seow affidavit is scandalous. There, FTS deposes that "[there] is no way to assess [the Plaintiffs'] reputation especially in a court of law"[note: 44] given the "climate of fear and intimidation"[note: 45] that exists, so he claims, for the reasons stated at [63]–[67] above. FTS is thereby insinuating that, like everything else under the control of the Plaintiffs, the Singapore judiciary is not independent, and cannot be trusted to reliably and validly assess the reputation of LHL and that of LKY.

69 As for Mr Ravi's assertion that the matters deposed in the Seow affidavit are admissible in evidence as directly relevant contextual background of the defamatory publication, the starting point is that the *Burstein* principle and the Plaintiffs' alleged general bad reputation must first be pleaded. The *Burstein* principle was not pleaded in the Present Actions because there was no suggestion that the defamatory allegations were made in the context of FTS's incarceration in 1988. That incarceration as well as the alleged lack of democracy and freedom of expression in Singapore have no direct relevance to the Libel or the sector of the Plaintiffs' lives that pertains to the Libel. The English courts have assiduously guarded against an overly liberal application of the *Burstein* principle, as the case of *Ghannouchi* ([37] *supra*) illustrates. The Present Actions stand on an even worse footing than *Ghannouchi* in that, here, there are no pleadings in mitigation of damages and it is not clear what the nature of the Plaintiffs' reputation said to be created by the Libel is. There are also no *Burstein* particulars as the Seow affidavit (and likewise the CSJ affidavit) did not contain anything about the context in which the Defendants came to publish the Libel in *The New Democrat Issue 1*.

70 For these reasons, I decided that the paragraphs identified (*ie*, paras 3–16 of the Seow affidavit) could not stand as they are. This leaves the first two paragraphs, which merely introduce FTS. Consequently, I likewise struck out the Seow affidavit under O 41 r 6 of the Rules of Court or, alternatively, under the inherent jurisdiction of the court.

The Defendants' List of Documents

71 With regard to the Defendants' List of Documents (see [47] above), the Defendants applied for the documents listed therein to be used in cross-examination of the Plaintiffs. I dismissed the application because the Defendants failed to show how the documents in the Defendants' List of Documents related to the facts in issue in this assessment of damages, assuming that those facts had been pleaded and that the documents in the Defendants' List of Documents were admissible evidence to establish the factual issues. The Defendants did not satisfactorily explain the need to rely on the various publications set out in the Defendants' List of Documents and the purpose of those

publications in the context of assessment of damages. The Defendants claimed that the documents in question provided "contextual background".[note: 46] However, the CSJ affidavit referred to only a few of the documents in the Defendants' List of Documents, and those documents were excluded once the entire affidavit was struck out. Plainly, the mere filing of the Defendants' List of Documents did not *ipso facto* make the documents listed therein evidence of what they stated. In any case, in the light of the admissibility principles (see [20] above), it is not permissible for the Defendants to mitigate damages by relying on the documents in the Defendants' List of Documents as any attempt to do so would contravene the rule that the defendant in a defamation suit cannot cross-examine the plaintiff on specific acts of misconduct unconnected with the libel, cannot refer to rumours or hearsay and cannot rely on other publications. On any view – whether from the perspective of the admissibility principles or the *Burstein* principle – any cross-examination based on the materials in the Defendants' List of Documents would relate to collateral matters such as the transfer of Singapore's reserves, the loan made by the Singapore government to the Indonesian government in 1997, the controlled press in Singapore, freedom of expression and the former President, Ong Teng Cheong, to select a few documents from the list. Such cross-examination would be wholly irregular and must be disallowed. As stated, the admissible evidence which the law allows for the purposes of establishing a plaintiff's alleged bad reputation is evidence from those who know the plaintiff; such evidence was not called in the Present Actions.

Part B: The assessment of the damages to be awarded to the Plaintiffs

General principles on the assessment of damages in defamation actions

72 It is well settled that general damages in libel actions are meant to vindicate the plaintiff's reputation as well as to afford compensatory redress for unjustified injury to the plaintiff's reputation and feelings. In assessing damages, the court takes into account a number of factors. Relevant factors would include the gravity of the libel (*eg*, allegations relating to the integrity or the truthfulness of a plaintiff are amongst the most serious), the extent of the circulation of the libel and any repetition of it. The court has to take into account any mitigating features and any relevant aggravating conduct on the part of the defendant. Retraction or apology, if any, is a matter tending to mitigate damages. Malice of the defendant, in contrast, is an aggravating factor. Also of relevance is the conduct of the plaintiff and his standing in society. Equally, the defendant's conduct of the proceedings and at the trial itself might be a basis for aggravating or increasing the damages awarded to redress the injury to the plaintiff's feelings. In that connection, the court will generally consider the chronology of the entire proceedings so as to see to what extent (if any) the defendant's conduct should impact upon the compensation to be awarded to the plaintiff.

73 Lastly, the size of the award has to be an amount that represents a fair and reasonable sum commensurate with or proportionate to the damage which the plaintiff has suffered to his reputation, standing and good name. It will also have to be a sum that sufficiently vindicates his reputation (see *Cassell & Co Ltd v Broome* [1972] AC 1027 at 1071, *per* Lord Hailsham of St Marylebone LC). To this end, the court will look at the corpus of past awards for comparison or guidance. Broadly appropriate comparable cases can, if used with discretion, provide some guidance on the appropriate amount of damages to award in a particular case. This approach is especially useful in promoting a rationally sustainable and coherent regime for damages for libel, and, as a corollary, in avoiding "the grossly exorbitant awards so often made by juries in other jurisdictions" (*per* Thean JA in *Tang Liang Hong (CA)* ([21] *supra*) at [158]). Notably, in making that remark, Thean JA was not in any way suggesting that, in adopting this approach, damages should be capped. That would be quite unrealistic, given the factual diversity of defamation cases. But, the fact that the damages awarded in previous cases inevitably depend on the facts and circumstances of each individual case is not a reason for rejecting the use of case precedents as comparables. In other words, the award of damages made in a case

comparable to the case at hand is not sacrosanct, but it can hardly be thought to be irrelevant. The impression gathered from a review of the past awards in local cases is that the increase in damages seen in the cases is largely linked to the nature and the number of aggravating factors present in a particular case and, to an extent, the change in the purchasing power of money over the decades. To illustrate the latter point, in *Lee Kuan Yew v Seow Khee Leng* [1988] SLR 832, F A Chua J cited the "diminished" (*id* at 840, [40]) value of money as a reason for departing from an award made nine years ago in a comparable case. A similar approach was adopted in *Lee Kuan Yew v Jeyaretnam JB (No 1)* [1990] SLR 688. In that case, Lai Kew Chai J spoke of the judge, in the context of assessing damages, looking at available precedents and having regard, to, *inter alia*, "the value of money and the financial implications of an award of damages in the hands of a successful plaintiff" (at 709, [56]).

Aggravating factors in the Present Actions for the purposes of assessing damages

Overview of the relevant aggravating factors

74 From the outset, it must be noted that this case has all the features seen in previous comparable cases taken in combination in which the damages awarded have been adjusted to reflect the aggravating factors present. That said, there are some extraordinary elements here that stand out as points of distinction between this case and the appropriate comparable case precedents (see in this regard [123] and [129] below). These elements are also the aggravating factors to which I have attached significance in assessing the damages to be awarded to the Plaintiffs. All in all, the aggravating features present, taken as a whole, put this case in a class of its own.

75 One of the points to which I attached particular importance in the assessment of damages was the Defendants' public rejection and denouncement of the interlocutory judgments entered against CSC and CSJ (*ie*, the Summary Judgments). It is trite law that the ordinary means of vindication for a plaintiff who has been defamed is by a favourable verdict on liability and an award of damages. As mentioned earlier (at [3] above), the Summary Judgments were entered against CSJ and CSC on 12 September 2006. They did not appeal against the decisions. CSJ's application to extend the time for filing an appeal against the Summary Judgments was dismissed by the Court of Appeal on 31 July 2007 (see *Lee Hsien Loong (CA)* ([11] *supra*)). As for the SDP, it did not file its defence within the time allowed by the Rules of Court and, in default, interlocutory judgment with damages to be assessed was entered against it on 7 June 2006 (see [3] above). The SDP likewise did not appeal against that decision. That left only the assessment of damages as the remaining issue to be dealt with in both of the Present Actions. Unfortunately, the impact of the Libel did not diminish with the interlocutory judgments because of the Defendants' conduct subsequent to the entry of those judgments.

76 It is important to remember that the dissemination to the public of the distorted information that the court had refused to grant CSC and CSJ an adjournment of the hearing of the Summary Applications on 12 September 2006 even though Mr Ravi, who was then acting as their counsel, was ill and had entered the Summary Judgments in the absence of CSJ and CSC was intended to give the misleading impression that the Plaintiffs actually had no case and, by taking out the Summary Judgment Applications, were fleeing from confronting CSC and CSJ in open court. In reality, CSC and CSJ had no viable defence to the Summary Judgment Applications. As I pointed out earlier (see [11] above), in dismissing CSJ's application for an extension of time to file his appeal, the Court of Appeal held, amongst other things, that his intended appeals on the substantive merits of the Summary Judgments would be hopeless. The disingenuous stance adopted by CSC and CSJ at the summary judgment proceedings in September 2006 was repeated at the Assessment Hearing in May 2008 both in chambers and in open court. At no point did CSJ and CSC disclose that they had walked out on the summary judgment proceedings on 12 September 2006 before the court had ruled on their application

for an adjournment. It was left to Mr Singh to set the record straight in open court. Apart from denouncing the Summary Judgments, the Defendants never criticised the interlocutory judgment entered against the SDP. They also persisted, without any foundation whatsoever, in their assertions that the Libel was true when it was no longer open to them to prove the truth of the allegations contained in the Libel or to defend those allegations as, for example, fair comment. Furthermore, CSC and CSJ went about cross-examining the Plaintiffs on issues relating to liability in an insulting and annoying way. Of significance too is the undisputed fact that the Defendants cross-examined the Plaintiffs about matters which had been struck out pursuant to my orders on the Striking-Out Applications. The Defendants were clearly and deliberately circumventing my ruling on 26 May 2008 striking out the Defendants' AEICs and were reintroducing by the back door matters which had been struck out. All of that is outrageous, and is another aggravating feature of the Present Actions. In effect, the Defendants deliberately attacked the Plaintiffs' character and reputation in a way that was impermissible in law. Clearly, the Defendants' motive and conduct, which I have outlined here and which I shall spell out in detail in later paragraphs, have aggravated the injury to the feelings of the Plaintiffs. In the words of Lord Devlin in *Rookes v Barnard* [1964] AC 1129 at 1221:

> [I]t is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation.

77 Mr Singh expressed concern and unease about the way in which the cross-examination on 26 May 2008 was conducted. On 27 May 2008, he applied to the court for a time limit (also referred to as "guillotine time" in this judgment) to be imposed on the cross-examination of the Plaintiffs. It had clearly emerged from the cross-examination carried out on 26 May 2008 that Mr Ravi and CSJ had either introduced and explored irrelevant and inadmissible matters which had already been struck out, or had pursued a line of questioning which had the effect of resurrecting defences to the Libel when none existed in law at all. I granted the Plaintiffs' application and imposed a time limit on the cross-examination of the Plaintiffs. Even with guillotine time, however, the cross-examination continued along the same lines as that on 26 May 2008. The Defendants continued without any foundation whatsoever to resort to impermissible tactics, and CSC and CSJ also behaved badly to the Plaintiffs. All of this points to yet another aggravating feature of the Present Actions, and I also attached particular importance to this factor in the assessment of damages.

78 In the final analysis, the motive and the conduct of the Defendants throughout the Assessment Hearing bore out two broad objectives, namely:

(a) to bring into view at a highly-publicised hearing their political grievances; and

(b) to use the Assessment Hearing as a platform to:

(i) indict a political regime;

(ii) discredit, insult, humiliate and embarrass the Plaintiffs; and

(iii) denigrate the Judiciary.

Mr Singh decried such tactics as an abuse of the court's process in the way explained in *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR 582. In that case, the High Court set out (at [34]) four

categories of proceedings that would amount to an "abuse of process". In the present case, Mr Singh stated, the Defendants' acts of abuse fell squarely within the category of "proceedings where the *process of the court [was] not being fairly or honestly used but [was] employed for some ulterior or improper purpose or in an improper way*" [emphasis in original] (*ibid*).

79 One important consequence following from the Defendants' cross-examination of the Plaintiffs on matters which had very little or nothing to do with the quantification issue is that the Plaintiffs' case on assessment was not challenged, and there were also no facts in evidence from the Defendants to mitigate or reduce damages. The three matters that were brought up by the Defendants in cross-examination at the Assessment Hearing – *viz*, the Defendants' malice, the circulation of *The New Democrat Issue 1* and the damage suffered by the Plaintiffs as a result of the defamation – had, in my judgment, no adverse effect on the Plaintiffs' case.

80 I now turn to the particular features common to both of the Present Actions. These features are also the relevant factors which I outlined earlier *vis-à-vis* the assessment of damages for defamation in general (see [72] above).

Objective features of the Libel

81 I shall first consider the objective features of the Libel itself such as its gravity, the extent of its circulation as well as the position and standing of the parties.

(1) The gravity of the Libel and the standing of the parties

82 One feature present here is the gravity of the allegations made against the Plaintiffs, who are prominent public figures. LHL is the Prime Minister of Singapore and a Member of Parliament for Ang Mo Kio Group Representation Constituency ("GRC"). He is a member of the PAP and has been a member of its Central Executive Committee since 1986. He is also the secretary-general of the PAP.

83 LKY is the Minister Mentor in the Prime Minister's Office. He was the first Prime Minister of Singapore. He remained Prime Minister until 27 November 1990. He is a Member of Parliament for Tanjong Pagar GRC. LKY is a founding member of the PAP, and he has been a member of its Central Executive Committee since 1954. He is also the chairman of the Government of Singapore Investment Corporation ("GIC").

84 CSJ is the secretary-general of the SDP. CSC, CSJ's sister, is a member of the Central Executive Committee of the SDP. Both CSJ and CSC are prominent figures in the SDP. The SDP and its candidates, led by CSC, contested in Sembawang GRC against Mr Khaw Boon Wan, the Minister of Health, and his team in the 2006 general election.

85 It was not denied by the Defendants that the publication of the Libel in *The New Democrat Issue 1* in February 2006 was part of the SDP's strategy in the 2006 general election to discredit the Plaintiffs and enhance the SDP's public image as well as its candidates' chances at the polls. Significantly, the publication of the Libel was unprovoked. It was also not denied that the Defendants exploited and sensationalised the NKF Saga to inflict maximum damage to the reputation and public image of LHL and LKY respectively. CSJ and CSC continued to sell and distribute *The New Democrat Issue 1* to the public even after the Plaintiffs' lawyers demanded an apology.

86 There is no doubt that the allegations made against the Plaintiffs in *The New Democrat Issue No 1* were the gravest imaginable. The Libel was as serious for the Plaintiffs as any allegation which imputed dishonesty could be. The most serious types of defamation are those that touch on the core

attributes of the plaintiff's personality, namely, matters such as his integrity, honour, courage, loyalty and achievements (see *Gatley on Libel and Slander* ([20] *supra*) at para 9.2). To illustrate, in *Lee Kuan Yew v Vinocur* [1995] 3 SLR 477 ("*Vinocur (No 1)*"), allegations of nepotism and corruption were held to be "an attack on the very core of [the plaintiffs'] political credo" (at 491, [55]), which placed utmost importance on the honesty and integrity of the Singapore government. In *Vinocur (No 1)*, the defendants apologised via an apology published in a newspaper. The High Court awarded $350,000 to the then Prime Minister, Mr Goh Chok Tong ("Mr Goh"). LKY, who was then the Senior Minister, and LHL, who was then the Deputy Prime Minister, were each awarded $300,000.

87 Similarly, in *Lee Kuan Yew v Tang Liang Hong* [1997] 2 SLR 91 ("*Tang Liang Hong (HC)*"), the offending remarks published in *Yazhou Zhoukan*, Chao Hick Tin J stated, meant that (*inter alia*) the Plaintiffs:

> (a) were guilty, or were reasonably suspected to be guilty, of corruption or other criminal conduct in respect of their purchases of apartments at the developments called "Nassim Jade" and "Scotts 28" from Hotel Properties Ltd;
>
> (b) had conducted themselves in such a way as to warrant an investigation by the Commercial Affairs Department and/or the Corrupt Practices Investigation Bureau ("CPIB"); and
>
> (c) had managed to cover their tracks and avoid any criticism or adverse finding in the inquiry by Dr Richard Hu and Mr Koh Beng Seng into their purchases of the above properties because the inquiry had been conducted with insufficient competence or skill by the said Dr Hu and Mr Koh.

88 In respect of Suit No 1116 of 1996 and Suit No 172 of 1997, Chao J held in *Tang Liang Hong (HC)* ([87] *supra*) that the allegations of corruption, criminal conduct and a cover-up of misdeeds were calculated to disparage both LKY (then the Senior Minister) and LHL (then the Deputy Prime Minister). Chao J found those false allegations to be a vicious attack on the Plaintiffs' political credo, and acknowledged that the false allegations would have a serious impact on the Plaintiffs' personal integrity and political life in the way expressed by Chua J in *Lee Kuan Yew v Seow Khee Leng* ([73] *supra*). There, Chua J said (at 838, [25]):

> Allegations of corrupt and criminal conduct are very grave charges, especially if they are made against the Prime Minister of a country. Such charges unless challenged head on would destroy the plaintiff [*ie*, LKY], as moral authority is the cornerstone of effective government. If this moral authority is eroded, the government cannot function.

89 In *Lee Kuan Yew v Seow Khee Leng* ([73] *supra*), the defendant slandered the plaintiff at a political rally. Chua J held that the offending words meant that the plaintiff, as the Prime Minister and the person in control of the CPIB:

> (a) had deliberately allowed one Phey Yew Kok to escape from Singapore after embezzling more than $6m of union funds;
>
> (b) had assisted, connived at or condoned Members of Parliament and government ministers who were from the PAP corruptly enriching themselves; and
>
> (c) would reject any attempt by the public to have the conduct of such Members of Parliament and government ministers investigated.

The inference there was that the plaintiff was guilty of corrupt and criminal conduct in the discharge

of his office and, while holding that office, had contrived to bring about the unlawful enrichment of sycophants; by implication, the plaintiff was wanting in honesty and integrity as well as unfit for office.

90 Reverting to *Tang Liang Hong (HC)* ([87] *supra*), the substantive defendant, Mr Tang Liang Hong ("Mr Tang"), appealed against the quantum of damages awarded by Chao J in Suit No 1116 of 1996 and several other actions. With regard to Suit No 1116 of 1996, the Court of Appeal in *Tang Liang Hong (CA)* ([21] *supra*) opined (at [164]) that a fair and reasonable award would be a sum of $400,000 for LKY and a sum of $350,000 for LHL. As each of them had already received $450,000 from some of the other defendants, no further award of damages was made. Consequently, Chao J's awards of $550,000 and $500,000 to LKY and LHL respectively were set aside.

91 Three other actions were considered on appeal by the Court of Appeal in *Tang Liang Hong (CA)* ([21] *supra*). In Suit No 2524 of 1996 and Suit Nos 187 and 244 of 1997, Mr Goh, as Prime Minister, sued Mr Tang in respect of statements made by the latter on three separate occasions. The first statement imputed that Mr Goh had committed a criminal offence and was a liar; the second statement, that Mr Goh (among others) had, by taking out defamation suits, abused the court process as a political weapon to destroy Mr Tang financially and politically; and the third statement, that Mr Goh was not an honest person and/or a man of integrity or worthy of trust. The Court of Appeal considered the first statement to be the most serious, followed by the third statement and, finally, the second statement. The appellate court noted that the three statements in the actions were closely related, having arisen out of the same underlying saga, and took into account their cumulative effect and the extent to which they had exacerbated the hurt to Mr Goh's feelings. Thean JA observed that, in assessing damages, the court had to have regard to the overall "totality" (*id* at [137]) of the awards in the sense that "the awards in their totality" (*id* at [160]) would have to reflect a "fair and reasonable [figure] that would compensate Mr Goh for the aggregate harm and injury inflicted" (*ibid*). The damages awarded by the High Court were moderated and assessed at $270,000 in Suit No 2524 of 1996, $200,000 in Suit No 187 of 1997 and $230,000 in Suit No 244 of 1997. The aggregate of the awards so ordered was $700,000.

92 In *Goh Chok Tong v Chee Soon Juan (No 2)* [2005] 1 SLR 573, the defendant, CSJ, had in the course of campaigning during the 2001 general election alleged that the plaintiff, Mr Goh, was very wrong in taking the people's moneys in the sum of $17bn and lending it to the Indonesian government. It was contended that the defendant had falsely accused the plaintiff of being dishonest and unfit to hold office because the latter had concealed from or misled Parliament and the public about the $17bn loan made by the Singapore government to Indonesia and had continued to evade the issue because he had something discreditable to hide about the transaction. The defendant apologised and undertook not to make further allegations or statements to the same and similar effect. However, the defendant retracted the apology and claimed that the alleged compromise agreement between the parties was invalid as it was the product of duress and intimidation. As for the plaintiff's claim for defamation, the defendant in his defence denied that the words were defamatory. He also pleaded the defences of justification, qualified privilege and fair comment. The plaintiff applied for summary judgment. The application was first heard by a senior assistant registrar, who entered interlocutory judgment for the plaintiff based on the compromise agreement and the defamation claim. The defendant appealed. The appeal was dismissed by M P H Rubin J, who affirmed the decision of the senior assistant registrar. Kan Ting Chiu J, who heard the assessment of damages, held (*id* at [51]) that the defendant knew that the allegations which he had made were false, but refused to admit that and tried instead to delay the progress of the legal proceedings against him. The hearing of the assessment of damages had also been unduly delayed by the defendant. In that case, the defendant did not file his affidavit of evidence-in-chief and was absent at the hearing to assess damages. The due date for reply submissions in writing was 20 September 2004. The defendant likewise did not file

any written submissions. He wrote on 16 September 2004 to the Chief Justice for the hearing to be reconvened so that he could cross-examine the plaintiff. The parties attended before Kan J on 30 September 2004. The defendant was directed to file his affidavit by 13 October 2004 stating the grounds of his application. Subsequently, the defendant did not proceed with his application to cross-examine the plaintiff. The defendant also did not file his written submissions. Kan J held that an award of $300,000 was appropriate. He took into consideration the seriousness of the charge of wrongdoing in relation to the alleged $17bn loan, the unfounded defence of justification, the plaintiff's office, the number of defamatory statements made, the persistence and hostility shown by the defendant when the statements were made and the wider republication of the statements.

93 In the related case of *Lee Kuan Yew v Chee Soon Juan (No 2)* [2005] 1 SLR 552, Kan J opined that the defendant's allegations, unless challenged head-on, demolished in a court of law and met with a substantial award of damages, would destroy the plaintiff's reputation and moral authority. Kan J awarded damages in the sum of $200,000.

94 In the Present Actions, the Plaintiffs testified that the false allegations that they were dishonest and unfit for office cast very serious aspersions on their character and integrity. The reputation, character and integrity of LHL and LKY, it was submitted, were critical to the effective discharge of their respective functions and responsibilities as the Prime Minister (*vis-à-vis* LHL) and as the Minister Mentor as well as the chairman of the GIC (*vis-à-vis* LKY). As LKY testified at para 32 of his affidavit of evidence-in-chief filed on 16 November 2007:

> Allegations that I have perpetuated a corrupt political system, covered up facts to avoid criticism, been guilty of corruption, nepotism and criminal conduct and condoned corruption in Government institutions is clearly calculated to cause maximum harm and damage to my reputation, moral authority and ability to effectively discharge my functions and responsibilities.

95 LHL's written testimony is to the same effect.[note: 47]

96 Equally relevant are LHL's answers to Mr Ravi's questions on this subject in cross-examination:[note: 48]

Q: Would you agree that the opposition – other opposition parties secured better results than the SDP?

A: Yes, your Honour, obviously.

Q: Where is the damage to you, Mr Lee, to your reputation, when the SDP faired [*sic*] most poorly in the elections, compared to other opposition parties?

A: Your Honour, the SDP faired [*sic*] poorly because of [its] incompetence in the elections. It was not because what [the SDP] said was not poisonous. It was poisonous, and if we had not acted to draw the sting and to establish, clearly, amongst all Singaporeans that this matter was going to be tested in court and we had every intention of disproving what the SDP was not saying but smearing and alleging vaguely, I think the outcome could well have been quite different.

Q: Therefore, your reputation was enhanced as a result of this defamation proceeding?

A: Mr – your Honour, I don't think anything in what [*The New Democrat*] has published has been to do me any favours. All I am seeking to establish is that [*The New Democrat*] published lies, falsehoods, defamations, without substance or basis, and what I have held out to be in Singapore,

namely to lead a government which is based on integrity, on meritocracy, on honesty, on competence, that is indeed what I'm doing, and not what the SDP claims, that this is a government based on power, and based on greed. And that is a very important position which must be upheld; because if it is not, everything else falls apart.

97 Similarly, LKY's replies to Mr Ravi's questions during cross-examination attested to the effect which the publication of the Libel had on the Plaintiffs' reputation:[note: 49]

[Q]: … Mr Lee, in your opinion, do you think [the] majority of people believe what Dr Chee says?

A: We have not done a public poll, and it's not possible for us to say, with certainty, what percentage of the population believes him. But if you go by the election results, they [*ie*, the SDP] scored 27 per cent of the votes in Sembawang, so obviously 27 per cent of the people in Sembawang decided that what Mr Chee and his – and his supporters were saying in the campaign, repeating – repeatedly – that the Singapore government is run like the NKF, we would have – that was put to the test. So there's [27] per cent in Sembawang. And that's with vigorous campaigning on the PAP's side. So you cannot dismiss the effect of such repeated attempts to discredit the reputation of the leaders of the PAP.

…

Q: Mr Lee, did you – have you suffered any damage to your reputation, or is your integrity still intact after the defamatory statements have been uttered?

A: I haven't carried out a poll, but I'm quite sure at least 80 per cent would consider my integrity intact. But I cannot say it's 100 per cent.

98 At the conclusion of the cross-examination, the Plaintiffs' testimony that the Libel would have had some negative effect on their reputation was not dispelled.

99 In a previous defamation action (*viz*, *Lee Kuan Yew v Chee Soon Juan* [2003] 3 SLR 8), CSJ had given an undertaking to LKY not to repeat or publish the libellous statement that LKY was dishonest and unfit for office (*id* at [12]). The republication of the false allegations of corruption, nepotism, cover-up and criminal conduct in *The New Democrat Issue 1* cast very grave and serious aspersions on LKY once again, and also assailed his reputation, his honour and his core attributes of honesty and integrity.

100 I should now bring in the other allegation of dishonesty in the Articles, namely, that the Plaintiffs had sued their critics for defamation despite knowing such criticisms to be true, thereby effectively suppressing from the public financial abuses and improprieties in the Government in the same way that Durai used defamation suits to stop the abuses and excesses in the NKF from being made known to the public. The sting, as I said at [63] of *Lee Hsien Loong (HC)* ([3] *supra*), is that the Plaintiffs brought the earlier defamation actions not to vindicate their reputation, but to suppress allegations which were true and which they knew to be true. It is not difficult to appreciate the gravity of this particular libel and its aggravating features. At the same time, in rejecting the interlocutory judgments entered against them, the Defendants have continued to maintain without any shred of evidence that the "use, or rather abuse of defamation laws in this country has led to a situation where wrong-doings cannot be exposed" (*id* at [63]). Their resolve was to introduce at the Assessment Hearing the unsubstantiated contentions in the joint affidavit which CSJ and CSC filed on 11 July 2006 to resist the Summary Judgment Applications ("CSJ's and CSC's joint O 14 affidavit") that "defamation suits are used for political purposes",[note: 50] that the "tactic of using the courts fools no one; the

government is clearly bent on stifling its critics"[note: 51] [emphasis in original omitted] and that "defamation suits are being used by the Executive to intimidate and deter those Singaporeans holding dissenting views"[note: 52] [emphasis in original omitted]. Indeed, CSC, when cross-examining LHL, asked about the number of defamation suits which LHL had commenced. That line of questioning was directed at the alleged abuse of defamation actions to silence the opposition and, in this regard, it was an attempt to assert the truth of the Libel. Separately, Mr Ravi sought to justify the admission of such material as contextual background which has been listed in para 8 of the Amended Defence under the section titled "Particulars of Public Interest" as follows:

> ...
>
> (v) The use by PAP politicians of defamation litigation against political opponents ...

101 Mr Ravi's "contextual" argument was fanciful and simply untenable. First, his approach is impermissible in law: The Defendants, in mitigation of damages, cannot go into evidence which, if proved, would constitute a justification of the Libel. Second, item (v) of the section in para 8 of the Amended Defence titled "Particulars of Public Interest" (reproduced at [100] above) was not relied upon as a plea in mitigation of damages where CSJ and CSC were concerned (in the case of the SDP, no defence was filed at all). In addition, O 78 r 7 of the Rules of Court was not complied with. I have already dealt with the consequence of non-compliance with O 78 r 7 earlier (see *Chong Siew Chiang v Chau Ching Geh* ([24] *supra*); see also generally [22]–[29] above).

102 The allegations in the Libel, as I held in *Lee Hsien Loong (HC)* ([3] *supra*), were false and cast a slur on the integrity and honesty of the Plaintiffs. Freedom of expression is not a right that has no bounds. Every individual, irrespective of colour, creed or religion, has a right to reputation which the law of defamation will protect. The law of defamation presumes the good reputation of the plaintiff (see David Price, *Defamation Law, Practice & Procedure* (Sweet & Maxwell, 3rd Ed, 2004) at para 20.08). This presumption (which is rebuttable) is not surprising as it is long recognised that the good reputation of an individual (meaning, his character) is of utmost importance to one's personal and professional life, for human proclivity is such that people are apt to listen to those whom they trust. In the words of Isocrates:[note: 53]

> [T]he man who wishes to persuade people will not be negligent as to the matter of character; no, on the contrary, he will apply himself above all to establish a most honourable name among his fellow-citizens; for who does not know that words carry greater conviction when spoken by men of good repute than when spoken by men who live under a cloud, and that the argument which is made by a man's life is of more weight than that which is furnished by words? Therefore, the stronger a man's desire to persuade his hearers, the more zealously will he strive to be honourable and to have the esteem of his fellow-citizens.

103 Plainly, and I so find, the false allegations contained in the Libel would immensely undermine the Plaintiffs' personal lives and political reputation and the extent to which people are prepared to trust them. If the Plaintiffs are not publicly vindicated, the false allegations will have an immense and lasting damage on their political reputation and their moral authority as leaders. As Lord Hailsham made clear in his speech in *Cassell & Co Ltd v Broome* ([73] *supra*), the plaintiff is entitled to damages sufficient to vindicate his reputation because (at 1071):

> [I]n case the libel, driven underground, emerges from its lurking place at some future date, [the plaintiff] must be able to point to a sum awarded by a jury [or a judge] sufficient to convince a bystander of the baselessness of the charge.

(2) Malice

104 Malice was evident and established in the Present Actions. First, malice could be inferred from the very publication of the patently false allegations and from the Defendants' efforts to perpetuate the myth that these allegations were true. Second, the conduct of the Defendants showed, and I so find, that they acted in malice as they were intent on injuring the Plaintiffs as widely and gravely as possible. In addition, there was other conduct on the part of CSC and CSJ such as not keeping the other members of the SDP's Central Executive Committee informed of the publication of the Libel. Notably, CSC and CSJ did not refute the assertion by four members of the Central Executive Committee that the Libel was published in *The New Democrat Issue 1* without their knowledge.[note: 54] That piece of evidence was telling for it pointed to the strong desire of CSJ and CSC to wound the Plaintiffs' political reputation.

105 CSC did not challenge the Plaintiffs' testimony that she harboured a deep-seated hatred for them. As for CSJ, there was no evidence to dispel the Plaintiffs' testimony that he too harboured a deep-seated hatred for them. CSJ's denial in court that he did not hate LKY was nothing more than the rhetoric of a cross-examiner, and must not be confused with evidence given under oath; neither did his disdainful retort qualify as evidence under oath to contradict LHL's testimony that CSJ harboured a deep-seated hatred for him. This was what CSJ said to LHL:[note: 55]

> This much I will say, Mr Lee; that for me to hate someone, that someone would have to have done something big and controversial. Your claim to legitimacy, to fame right now, is because you are the son of Mr Lee Kuan Yew, so don't flatter yourself. I do not hate you, because you're really not worth the time and the effort.

106 To LKY, he said:[note: 56]

> On the contrary, Mr Lee, I don't hate you, honestly. From the bottom of my heart, I don't hate you; I feel sorry for you. I think you cut a pitiable figure, but I don't hate you. You see, I think you derive a lot of pleasure in what you do, but I don't think you find any joy in life ...

107 Of course, speaking generally, CSJ, in indulging in such insulting and offensive cross-examination, took the risk of increasing the damages payable to the Plaintiffs, which risk did eventually materialise.

(3) Circulation of the Libel

108 On the scale of the publication of the Libel, CSC suggested in her cross-examination of LHL that the circulation of *The New Democrat Issue 1* was limited to only 0.001% of the population. There was no evidence to back up this assertion. Not only were 5,000 copies of *The New Democrat Issue 1* sold, but the English article mentioned at [1] above ("the English Article") was also posted on the SDP's website. Once posted on the SDP's website, the circulation of that article became much wider, thereby reaching a very large segment of the English-speaking public. In re-examination, LHL clarified that even though 5,000 copies of *The New Democrat Issue 1* were sold, those who originally received a hard copy could have handed it on, and, as for the English Article posted on the SDP's website, the Internet-savvy community would have read it online. As LHL elaborated:[note: 57]

> [E]ach time a copy was sold, the same [libel was] being repeated and broadcast to a crowd because this was not just a distribution from a shop, but [CSJ], [CSC] and several others going around, bruting it about as broadly as possible, as loudly as possible, to achieve as much impact as possible.

109 It is therefore not an unreasonable inference that the number of persons to whom the Libel was communicated would have snowballed especially during the 2006 general election with the local newspapers covering the walkabouts of the SDP's candidates. For instance, and this was not denied by the Defendants, on or about 22 April 2006, CSJ told a crowd at Chong Pang market in Yishun that the Plaintiffs had sued him to suppress information relating to the NKF Saga. The incident was reported in an article by Ben Nadarajan and Azrin Asmani entitled "Chee: No apology, we'll keep selling newsletter" in the 23 April 2006 edition of *The Sunday Times* (at p 4) as follows:

> Tables were set up, party banners hung and a defiant Dr Chee Soon Juan, with a portable sound system in hand, started talking.
>
> …
>
> "We're not afraid of them [*ie*, the Plaintiffs]. Why sue us? Because the information in our newsletter [*ie*, *The New Democrat*] is very important and they don't want you all to see it," said Dr Chee.
>
> "They are scared that with the information we have, you would know the real situation with the NKF."

110 On another occasion (and this was again not denied), CSC and CSJ suggested at a public rally at Marsiling that the Plaintiffs had sued them to bully them and to gain political mileage, and urged the public to buy *The New Democrat* and pass it on to their relatives and friends. This incident was reported in *Today* on 24 April 2006 in an article by Loh Chee Kong titled "SDP carries on" as follows:

> Defying the looming prospect of legal action over its remarks on the National Kidney Foundation (NKF) saga, members of the Singapore Democratic Party (SDP) yesterday continued selling their party's newsletters containing the alleged defamatory statements about the Government's involvement.
>
> Led by their chief, Dr Chee Soon Juan, nine party members and volunteers went to Marsiling and stopped at coffeeshops to address the morning crowd.
>
> …
>
> Four other [Central Executive Committee] members – Ms Chee Siok Chin, Mr Christopher Neo, Mr Mohamed Isa Abdul Aziz and Mr Francis Yong – were present yesterday. Using a portable sound system, Dr Chee and three SDP members told the crowd they were not cowed by the threat of legal action which showed that the PAP are "most afraid" of their party.
>
> Dr Chee urged the audience to pass on the newsletters – which sold briskly at $2 a copy – to friends and relatives, saying: "Help us speak up for you."
>
> While PM Lee had said he was advised by his lawyers to take action after reading the newsletter last Thursday, Ms Chee questioned the timing of the suit, as the SDP had made its stand on the NKF [S]aga "very clear" in the last few months.

111 As would be expected, following its initial publication in *The New Democrat Issue 1*, the Libel reached a large segment of the public. The Defendants' public announcement of their refusal to apologise on each occasion drew greater attention to the Libel. It was not denied that, on or about 26 April 2006, at a public forum on the 2006 general election, CSJ repeated some of the defamatory

statements and urged his audience to read *The New Democrat Issue 1*. His speech at the public forum was reported in an article in the 27 April 2006 edition of *The Straits Times* (see Warren Fernandez, "PM, MM seek aggravated damages from the SDP" *The Straits Times* (27 April 2006) at p 1).

The subjective effect of the Defendants' conduct on the Plaintiffs' feelings

112 I turn now to the subjective effect on the Plaintiffs' feelings arising not only from the publication of the Libel itself, but also from the Defendants' conduct thereafter up to and including the hearing of the Summary Judgment Applications and the Assessment Hearing itself. It is well established that any conduct by a defendant calculated to add to the hurt caused to the plaintiff's feelings by the publication of the defamatory material can be taken into account as an aggravating factor in assessing the damages to be awarded.

113 On the facts of the Present Actions, it seems to me that a major element in assessing compensation has to be the subjective impact of the Defendants' conduct upon the Plaintiffs' feelings. Given the number of aggravating factors in the Defendants' conduct that manifested themselves at different stages of the proceedings, Mr Singh argued that the only possible inference to be drawn from the Defendants' behaviour from start to finish was that the Plaintiffs' complaint of false allegations was being treated dismissively or even with contempt by the Defendants. For a proper assessment of Mr Singh's contention, it is necessary to follow through in chronological order the Defendants' conduct in the course of the proceedings so as to determine to what extent such conduct should impact upon the question of compensation.

(1) General observations on the Defendants' conduct

114 For a start, the Defendants did not dispute the Plaintiffs' written testimony. The manner in which the Defendants conducted the proceedings was calculated to attract wide publicity as they persisted in perpetuating the Libel to the end. Having read and heard the Plaintiffs' evidence, it is plain, and I am satisfied, that the impact of the false allegations of dishonesty, corruption, nepotism, perpetuation of a corrupt political system, cover-up of facts to avoid criticism and condoning of corruption in government institutions was hurtful to the Plaintiffs' feelings, and this injury to their feelings was greatly aggravated by the Defendants' conduct throughout the proceedings, right down to the Assessment Hearing, during which all the allegations in the Libel were relentlessly maintained and pursued.

115 Furthermore, any conduct that unreasonably protracts the proceedings commenced to seek vindication of false allegations, as was demonstrably the case here, is an aggravating factor. It was aptly observed by Chua J in *Lee Kuan Yew v Seow Khee Leng* ([73] *supra*) at 837, [21] that the proceedings in that case were conducted on the defendant's instructions in a vexatious manner. Chua J held that the frivolous defence mounted by the defendant and the various unmeritorious applications which he made had denied the plaintiff of an opportunity of vindicating his reputation for almost three and a half years, thereby substantially aggravating the damages to be awarded for injury to the plaintiff's feelings. In the Present Actions, the Assessment Hearing was first fixed for hearing on 12 May 2008, 20 months after the Summary Judgments were entered on 12 September 2006. Interlocutory judgment against the SDP was obtained earlier on 7 June 2006.

116 In addition, the cross-examination of the Plaintiffs by CSJ and CSC proceeded in an insulting and offensive manner, and was designed to publicly indict a political regime by attacking the Plaintiffs' integrity and suitability to hold office. Seeing that the questions posed by CSJ and CSC had little or nothing to do with the quantification issue, I was of the view that these questions were meant to

discredit, insult, embarrass and humiliate the Plaintiffs in public. Their approach was similar to that adopted by counsel in *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 3 SLR 337. In that case, counsel for the defendant pursued a line of questioning which was unsupported by the evidence, and the cross-examination of the plaintiff was insulting and denigrating. The Court of Appeal found the cross-examination of the plaintiff on a wide range of accusations to be baseless attacks on the latter's honesty and integrity. The Court of Appeal (at [56]) held:

> [W]e think that the trial judge was correct when he identified that Mr Carman [the defendant's counsel] had put his case with the driving force of a strong one and then failed to call any evidence to support it. The trial judge found that this was 'to indulge in pure rhetoric' and to make 'an attack on the integrity of the plaintiff as Prime Minister'. Having reviewed the notes of evidence, we also agree that, in doing so, Mr Carman was only playing to the gallery, and [was] not attempting to elicit evidence relevant to the issues before the court. There is no doubt in our minds that the wide range of accusations [which] he made against Mr Goh [the plaintiff] on the stand amounted to an attack on his integrity, character and suitability for his position as Prime Minister of Singapore. Not only that, but, as the trial judge found, they amounted to a baseless attack, which, we think, aggravated the hurt caused to Mr Goh, for which he is entitled to compensation.

117 Similarly, in *Lee Kuan Yew v Davies* [1989] SLR 1063, the High Court noted (at 1113–1114, [134]) that repeated attempts were made in cross-examination to put to the plaintiff, LKY, matters which had no relevance to the issues before the court and which were embarked upon purely for the sake of publicity. In that case, the defamatory publication was an article in the *Far Eastern Economic Review* which touched on the arrest of 16 persons in connection with a clandestine communist network. It imputed:

(a) dishonourable and discreditable conduct and motive on the part of LKY;

(b) an attack by LKY on the Catholic church in Singapore; and

(c) a dishonourable and improper use by LKY of the powers under the Internal Security Act.

There was no retraction or apology. The offensively-put questions in cross-examination were held to have increased the hurt to the feelings of LKY. LKY, who was then the Prime Minister, was awarded damages of $230,000.

118 In the Present Actions, CSC and CSJ did not appear to mind running the risk of increasing the damages which they would be liable to pay by their insulting and offensive cross-examination of the Plaintiffs when there seemed to be hardly any justification for that kind of bad behaviour.

119 I will now examine the Defendants' conduct in detail so as to assess what bearing such conduct has on the compensation to be awarded to the Plaintiffs. In this connection, I will first summarise what has happened chronologically in the proceedings to date.

(2) The Defendants' conduct up to the entry of the Summary Judgments

120 The Plaintiffs complained about the Libel within days of the defamatory publication coming to their attention. The fourth to the ninth defendants apologised, and the Present Actions were not eventually pursued against them (see [2] above). In contrast, the Defendants refused to apologise and persisted in perpetuating the Libel to the end. Their refusal to apologise and their repetition of the Libel are relevant to the assessment of damages. For instance, in an article entitled "Media

Release: No need for *wayang*, just answer questions on NKF scandal" dated 21 April 2006 posted on the SDP's website, CSJ again stated that "the way [the] NKF was governed [was] very similar to the way Singapore [was] governed by the PAP – with arrogance, bullying, and non-transparency". At the Assessment Hearing, the Defendants illegitimately dragged in material to justify the Libel, thereby aggravating the damages which I eventually awarded to the Plaintiffs. I will deal with this later on.

121 The false allegations were gravely defamatory; yet, despite their seriousness, the SDP did not file a defence to the Plaintiffs' claims. Mr Ravi entered an appearance on 2 May 2006 for all of the Defendants. Later, on 17 May 2006, Mr Ravi wrote to Drew & Napier LLC to advise that he was no longer acting for the SDP and that his firm would not be filing a defence on behalf of the SDP. Mr Ravi, however, filed a joint defence on behalf of CSJ and CSC on 10 May 2006. The Amended Defence, which Mr Ravi filed on behalf of CSJ and CSC the following day (*ie*, on 11 May 2006), was an unmeritorious defence. As stated, both CSC and CSJ relied on justification, qualified privilege and fair comment, but did not plead any facts in support of these common law defences.

122 The Defendants, upon learning that the Plaintiffs were intending to apply for summary judgment against CSJ and CSC, posted on the SDP's website on 14 June 2006 a letter of the same date which CSJ and CSC had sent to the Plaintiffs. In that letter, CSJ and CSC reiterated their decision not to apologise and, at the same time, mocked the Plaintiffs for thinking of applying for summary judgment just to avoid an open trial. They wrote: "Such an application would become a laughing stock of the world." The letter concluded: "It is most unbecoming of a Minister Mentor and [a] Prime Minister. If you have the temerity to sue us over the article, at least have the courage to face us in court." That was not all. CSJ and CSC filed Originating Summons No 1203 of 2006 ("OS 1203/2006") to challenge the constitutionality of the summary judgment procedure set out in O 14 of the Rules of Court. That was a patently baseless application filed in an attempt to impede the Summary Judgment Applications by dragging out the proceedings, thereby frustrating an early vindication of the Plaintiffs' reputation (see *Lee Hsien Loong (HC)* ([3] *supra*) at [15]).

123 As stated earlier (at [74] above), the Present Actions feature several elements of aggravation which place them in a class of their own, distinct from previous cases. Chronologically, the first of these is the staged exit adopted by CSJ and CSC on 12 September 2006 so as to force an adjournment of the hearing of the Summary Judgment Applications and, in turn, delay the proceedings (see *Lee Hsien Loong (HC)* ([3] *supra*) at [4]–[17]). It should be noted that the hearing of those applications had already been adjourned once on 11 September 2006 on account of Mr Ravi's illness. On 12 September 2006, CSJ and CSC walked out of court in an attempt to force a further adjournment of the hearing. The existence of a clear pattern on the part of CSJ and CSC to walk out on proceedings whenever it suited their purpose was noted by the Court of Appeal, which viewed that behaviour as a serious abuse of process that could not be lightly papered over (see *Lee Hsien Loong (CA)* ([11] *supra*) at [67]). Andrew Phang Boon Leong JA, who delivered the decision of the Court of Appeal, accepted that this pattern of behaviour was aimed at delaying the summary judgment proceedings (*id* at [65]). Second, that conduct, coupled with the fact that CSJ's application for an extension of time to file his appeals against the Summary Judgments was inexplicably delayed for seven months and, furthermore, was taken out in the midst of the parties taking directions to prepare for assessment of damages, is further evidence of the Defendants' delaying tactics. The late application by CSJ for an extension of time to appeal added to the Plaintiffs' frustrations at being unable to obtain an early vindication of their reputation. Third, the Defendants rejected the Summary Judgments even though the Court of Appeal noted in its written grounds of decision of 6 November 2007 that it was difficult to fault the High Court's decision to enter summary judgment in favour of the Plaintiffs, and, in the result, concluded that CSJ's intended appeals on the substantive merits of the Summary Judgments were hopeless (*id* at [71]–[74]). As Phang JA said (*id* at [70]):

> It is clear, in our view, that the Judge was entirely justified in holding that an adjournment could not be granted not only because the defendants [*ie*, CSC and CSJ] were apparently seeking to drag out the proceedings but also (and, more importantly, in our view) because they had walked out on the proceedings in an attempt to coerce the Judge into granting them an adjournment ... In the circumstances, the present applications for extending the time for appealing against the Judge's decision in the [S]ummary [J]udgment [A]pplications were wholly without merit. In short, they did not meet the very low threshold criteria laid down by the factor presently considered inasmuch as *the applicant's [*ie*, CSJ's] intended appeals were indeed hopeless*. [emphasis added]

124 Prior to applying for an extension of time to appeal against the Summary Judgments, CSJ wrote to the Chief Justice on 27 September 2006 and 8 March 2007 to request that the hearing of the Summary Judgment Applications be "re-opened".[note: 58] He complained that an adjournment should have been granted on 12 September 2006. Not only was the request made without any legal basis, but it was also based on an entirely unmeritorious reason. At the end of the day, CSJ's and CSC's posturing and delaying tactics, added together, constituted a significant aggravating factor.

(3) The Defendants' conduct from 12 to 28 May 2008

125 The Striking-Out Applications were originally listed for hearing on 12 May 2008 and, immediately thereafter, the Assessment Hearing was to start (see [4] above). Notices of objections to the contents of the Defendants' AEICs that set out substantially the same grounds as those which Mr Singh raised at the Striking-Out Applications had been filed by the Plaintiffs months earlier pursuant to orders of court.

126 The Defendants made several oral applications on the morning of 12 May 2008. These applications and the arguments made by the respective parties thereon are discussed in Part D of this judgment (see [224]–[249] below). It is sufficient at this point to say that as I was minded to and did grant the application to adjourn the Assessment Hearing as well as the hearing of the Striking-Out Applications, I disregarded the period of the adjournment in assessing the damages to be awarded to the Plaintiffs. The time spent on the hearing of the Defendants' applications that I recuse myself from presiding over the Striking-Out Applications and the Assessment Hearing was also disregarded for the reasons stated at [146] below. As for the other oral applications made by the Defendants, I found them to be mere diversions that inevitably prolonged the proceedings.

127 Moving on to the adjourned hearing of the Striking-Out Applications on 22 May 2008, the Defendants' AEICs were ultimately struck out as they contained irrelevant and/or scandalous matters. My reasons for this conclusion have already been stated earlier at [14]–[70] above. Suffice it to say that the one and a half days that were set aside for the hearing of the Striking-Out Applications – *ie*, the whole of 22 May 2008 and the afternoon of 23 May 2008 (there was no hearing in the morning on 23 May 2008 in order to accommodate CSJ's request to start at 2.30pm so that he could escort his family to the airport) –turned out to be inadequate. The hearing spilled over to the morning of 26 May 2008, the first day of the Assessment Hearing.

128 The adjourned hearing of the Striking-Out Applications on 22 May 2008 was peppered with yet more oral applications made by the Defendants, some spontaneous and others, probably pre-planned. These oral applications were in the main diversions that inevitably prolonged the proceedings. For instance, there were unmeritorious attempts to open afresh matters that had already been decided earlier. The various oral applications made during the adjourned hearing of the Striking-Out Applications on 22 May 2008 are discussed at [235]–[242] below.

129 Turning to the Assessment Hearing itself, CSJ's and CSC's malevolent stance towards the

Plaintiffs was full-blown at that hearing. At that highly-publicised hearing, CSJ and CSC played out the two broad objectives stated earlier (at [78] above), namely:

(a) to air their political grievances *vis-à-vis* the current system of government in Singapore; and

(b) to (i) indict a political regime, (ii) discredit, insult, humiliate and embarrass the Plaintiffs and (iii) denigrate the Judiciary.

Of relevance in this assessment of damages is CSJ's and CSC's objective of, *inter alia*, discrediting and embarrassing the Plaintiffs as this objective concerns the Plaintiffs directly. The conduct and the motive of CSJ and CSC in this regard were among the elements to which I attached importance in deciding whether aggravated damages ought to be awarded for the injury to the Plaintiffs' feelings. As for the objective of denigrating the Judiciary, it relates strictly to the separate matter of contempt of court, which is discussed in Part C of this judgment (see [155]–[223] below).

130 In their cross-examination of the Plaintiffs, the Defendants said that they wanted to show that the Plaintiffs' standing and integrity were not unblemished, contrary to what the Plaintiffs claimed. However, the line of questioning pursued by the Defendants was totally irrelevant to their stated objective for it was aimed instead at justifying the Libel based on the meaning of the Disputed Words and on defences that were no longer open for debate at the assessment stage.

131 Dragging in material (such as the matters listed in para 8 of the Amended Defence under the section titled "Particulars of Public Interest" (reproduced at [45] above))[note: 59] to justify the Libel by the back door is, in my judgment, a legally impermissible tactic, and it is also an aggravating factor in so far as injury to the Plaintiffs' feelings is concerned. The Defendants' questions confirmed time and again that, on the quantification issue, there was really no genuine dispute of fact or law to be resolved. The manner in which cross-examination was conducted by CSJ and CSC was intended to hold the Plaintiffs up to public vilification, ridicule and humiliation. It was meant to denigrate and insult the Plaintiffs *vis-à-vis* a wide range of matters such as freedom of speech, the electoral system in Singapore and detention under the Internal Security Act, all of which were outside the scope of the Libel as well as the quantification issue. For instance, CSC brought in the Libel and attacked LHL on the stand with this insulting and offensive question on nepotism, one of the topics raised by the Defendants which was irrelevant to the quantification issue:[note: 60]

Q: Do you think that if your father had not been the former Prime Minister of Singapore, and that's none other than Lee Kuan Yew, you would still be the Prime Minister of Singapore today?

132 On the defamatory statement that a corrupt political system had been set up by LKY and perpetuated by LHL for the benefit or financial gain of the political elite, CSC asked, again bringing in the Libel and with a view to attacking LHL on the stand:[note: 61]

[CSC]: Well, I – do you know that as – I mean as the leader of the country, that your government deprives Singaporeans of much-needed welfare for the poor, elderly and infirmed, that HDB prices [*ie*, the prices of Housing Development Board flats] are artificially inflated, and that many of us are not able to draw on our CPF [Central Provident Fund] savings, even though we have tens of thousands of dollars in there, and all this time when Singaporeans are left rather ignored –

Mr Singh: Objection, your Honour.

[CSC]: – by the government –

Court: Sustained.

[CSC]: – you live your life as a millionaire minister.

133 There were also other irrelevant questions on freedom of speech, elections, detention under the Internal Security Act, welfare for the poor, the prices of Housing Development Board ("HDB") flats and the like. For instance, CSJ asked LHL about the price of HDB flats as follows:[note: 62]

[CSJ]: ... Is the information about the labour cost of building HDB flats available to the public?

134 CSJ's questions to LHL about the GIC is another example of a line of questioning that was irrelevant to the quantification issue. CSJ asked whether LHL agreed with him that the GIC operated in secrecy, whether LHL believed that the funds with the GIC belonged to the people, whether LHL was the vice-chairman or deputy chairman of the GIC and how the GIC's funds had been invested.[note: 63]

135 CSJ asked LKY about the detention of dissidents as follows:[note: 64]

[CSJ]: ... Let's talk about integrity, Mr Lee. Is this the same integrity that you're referring to when you jailed Mr Chia Thye Poh for 32 years, when you imprisoned without trial Dr Lim Hock Siew for 17 years, when you deprived them all –

Continuing, he asked LKY about reviewing past detentions made under the Internal Security Act:[note: 65]

[CSJ]: ... Mr Lee, will you say, categorically, right now, that you will allow a full and fair investigations into the – all your [Internal] Security Act detentions over the years?

136 In relation to the electoral system in Singapore, CSJ asked LKY:[note: 66]

[CSJ]: ... Mr Lee, tell us right now, are you up for a free and fair fight during elections?

137 Again on the same topic, he asked:[note: 67]

> [CSJ]: ... Even a citizen of this country, who is not a member of a political party, has the right to freedom of speech, association and assembly –
>
> Mr Singh: And the question is?
>
> [CSJ]: – are you going to allow these people their rights, or are you going to sit there and continue to curtail their rights? A simple answer, Mr Lee.

138 CSJ's questions relating to the award made by The Kuala Lumpur Society for Transparency and Integrity to LKY in September 2000 in recognition of the latter's success in stamping out corruption in Singapore were quite irrelevant to the quantification issue as they pertained to issues of liability. Similarly, questions on the rule of law in Singapore and how the International Bar Association as well as other international organisations such as the International Commission of Jurists and the World Bank regarded Singapore were irrelevant as they concerned issues of liability and, further, were an attempt to reintroduce matters in the CSJ affidavit that had already been struck out.

139 The cross-examination of LHL by Mr Ravi on behalf of the SDP was also irrelevant to both the

Libel and the quantification issue. If anything, the cross-examination centred on issues of liability. The cross-examination proceeded on whether the previous defamation actions brought by the Plaintiffs against members of opposition parties had been a ploy to split (*inter alia*) the SDP and stifle the opposition, whether those defamation suits were for the purposes of defending the Plaintiffs' reputation or the reputation of the Government, whether LKY's family controlled Singapore and whether Singaporeans had a right to ask that Singapore be freed from the Plaintiffs' control. LHL was also questioned on whether he disliked CSJ's political doctrine, another topic which clearly had nothing to do with the assessment of damages. Similarly, Mr Ravi questioned LKY on issues of liability. For example, his questions touched on the capacity in which LKY had brought Suit 262, LKY's knowledge of postings on the Internet relating to the integrity of the Government and his tolerance of such postings as well as the option of mediation as an alternative dispute resolution mechanism in the Present Actions.

140 From the examples given at [131]–[139] above (and there were other instances of similar conduct during cross-examination), it is clear that the Defendants were demonstrably bent on introducing and exploring matters which were irrelevant to and inadmissible for the purposes of the quantification issue. There was unbridled and offensive cross-examination of the Plaintiffs in public by CSJ and CSC. There were political questions, speeches and assertions made without evidential basis. The performance of CSJ and CSC was directed at foreign interest groups, newspapers, new media (*eg*, Internet discussion groups) as well as the public in Singapore. In essence, CSJ and CSC used the court proceedings for the ulterior purpose of indicting the present political system in Singapore, which had nothing to do with the judicial decision to be made in this assessment of damages (see also [129] above). Their conduct, I find, undoubtedly exacerbated the Plaintiffs' indignation and increased the hurt to the Plaintiffs' feelings of pride and dignity. I am satisfied that the acts relied upon by the Plaintiffs as aggravating factors were part of a joint endeavour by CSC and CSJ and, by extension, the SDP to, *inter alia*, humiliate and embarrass the Plaintiffs. There was little of significance in the conduct of CSC and that of CSJ to distinguish between these two defendants.

141 Finally, a fundamental point that emerged from the cross-examination was that, at the end of the Assessment Hearing, the Defendants had not elicited in cross-examination any facts in evidence to challenge or undermine the Plaintiffs' case and had failed to address the facts in relation to the quantification issue, which facts are also the basis on which I am to assess the damages to be awarded to the Plaintiffs.

Non-aggravating factors for the purposes of assessing damages in the Present Actions

Breach of the injunctions granted by the court on 12 September 2006

142 Before the Assessment Hearing, the Defendants, sometime in May 2008, posted the English Article on the SDP's website despite the injunctions restraining CSJ and CSJ from republishing the Libel (these injunctions were granted on 12 September 2006 pursuant to the Summary Judgment Applications (see *Lee Hsien Loong (HC)* ([3] *supra*) at [87]–[88])). Mr Singh submitted that repetition of the Libel breached the injunctions, and relied upon such breach as an aggravating factor that increased the damages which the Plaintiffs were entitled to in respect of the publication of the English Article in *The New Democrat Issue 1*. In my view, in so far as the posting of the English Article on the SDP's website in *May 2008* is concerned, that is not a factor aggravating the damage or harm occasioned to the Plaintiffs by the publication of the Libel in *The New Democrat Issue 1* in *February 2006*. If anything, the posting of the English Article on the SDP's website in May 2008 may be viewed as the subject of a separate complaint, *ie*, as the basis of a separate cause of action if publication is proved. Independently, the posting of the English Article might also be the subject matter of contempt proceedings, given that such posting was made in breach of injunctions granted by the

court.

143 That said, conduct of the defendant that reinforces the negative impact of the original publication (which, in the present context, is the publication of the Libel in *The New Democrat Issue 1*) and exacerbates the ongoing damage (namely, injury to the plaintiff's feelings) – for example, conduct such as persisting in a plea of justification in the course of cross-examination of the plaintiff – is capable of aggravating the damages to be awarded to the plaintiff. It is such conduct on the part of the Defendants that forms the basis of the Plaintiffs' claim for aggravated damages, which conduct I have taken into consideration as discussed at [112]–[141] above.

Acts in contempt of court: Scandalising the court and breach of court orders

144 In the course of the Assessment Hearing, CSC and CSJ made statements that clearly scandalised the court. Oftentimes, the court's rulings on the relevancy of the line of questions pursued by the Defendants in their cross-examination of the Plaintiffs were ignored with impunity by the former. Such matters pertain to acts in contempt of court and are not to be taken into account in assessing damages. This can be seen from *Tang Liang Hong (CA)* ([21] *supra*), where the Court of Appeal observed that Mr Tang had no qualms in "treating the orders of court with utter contempt and ... uttering scandalous and contemptuous remarks about the courts" (at [134]). Even though Mr Tang's conduct was deplorable and in contempt of court, that conduct was said to be irrelevant to the issue of damages (*ibid*). In that case, Mr Tang showed total disregard for a Mareva injunction and a receivership order made against him on 27 January 1997 and 17 February 1997 respectively. As a result of non-compliance, the plaintiffs obtained orders striking out Mr Tang's defences and, in consequence, interlocutory judgments were entered against him. Following the High Court's decision to strike out his defences, Mr Tang, at a press conference, launched a wide and scathing attack on the Judiciary, the Cabinet and the police, and showed utter contempt for the earlier orders of the court. Thean JA agreed with Chao J's observations of Mr Tang's conduct at [85] of *Tang Liang Hong (HC)* ([87] *supra*). A narration of Mr Tang's contemptuous remarks are found at [68] of *Tang Liang Hong (HC)*. For instance, Mr Tang referred to the "instant justice of the PAP judicial process" (*ibid*); he questioned whether the PAP's leaders were "more equal than others before Singapore courts" (*ibid*); and he alleged that the PAP's leaders "[could] easily get instant judgment on preset terms, instant justice" (*ibid*). As stated above, these scandalous and contemptuous remarks were noted by the Court of Appeal, but Thean JA said that such conduct of Mr Tang was not relevant to the issue of damages, although, if Mr Tang had been within the jurisdiction, contempt proceedings might well have been mounted against him (see *Tang Liang Hong (CA)* at [134]).

Unsuccessful recusal applications

145 There were two recusal applications made by the Defendants in May 2008 in connection with the Striking-Out Applications and the Assessment Hearing. In 2006, there had been two similar applications in relation to OS 1203/2006 (*ie*, CSJ's and CSC's constitutional challenge to the use of the summary judgment procedure in defamation proceedings (see [122] above)), one directed at Woo Bih Li J (see *Chee Siok Chin v AG* [2006] 4 SLR 92 ("*Chee Siok Chin (No 1)*")) and the other directed at me (see *Chee Siok Chin v AG* [2006] 4 SLR 541 ("*Chee Siok Chin (No 2)*")). CSJ and CSC succeeded in the former application as Woo J for his own reasons agreed to recuse himself from presiding over the hearing of both OS 1203/2006 and the Summary Judgment Applications. There were in total three recusal applications involving myself as the presiding judge, namely, the two applications in May 2008 mentioned above and the earlier application made in respect of OS 1203/2006.

146 Mr Singh argued that the recusal applications made at the May 2008 hearings were part and parcel of the Defendants' ploy to delay the proceedings. If those applications were successful, the

proceedings would have to be adjourned for another judge to take over the matter. Even though I ultimately dismissed the recusal applications because they were baseless and without merit, on the authority of *Tang Liang Hong (CA)* ([21] *supra*), I did not take these failed applications into account as an aggravating factor in relation to the issue of damages, and I have, accordingly, excluded that element in the assessment of damages. As Thean JA explained in *Tang Liang Hong (CA)*, Mr Tang's failed recusal application in that case was not relevant to the issue of damages because "damages [were] awarded to compensate the plaintiffs for the harm and injury they [had] suffered and not to punish Mr Tang for his improper conduct" (*id* at [135]). The plaintiffs, Thean JA said, had their remedy in costs in that they could ask the court to order Mr Tang to pay costs on a solicitor-and-client basis *vis-à-vis* that application (*ibid*). I am mindful that CSJ and CSC are bankrupts, but that fact does not detract from the principle in question.

The amount of damages to be awarded to the Plaintiffs

147 I now turn to apply to the facts of the Present Actions the principles and guidance provided by comparable past libel awards. Mr Singh annexed to his closing submissions dated 28 May 2008 ("the Plaintiffs' Closing Submissions") a schedule of past awards in defamation actions involving government ministers in Singapore between 1985 and 2005. I have discussed the more appropriate ones earlier in this judgment (see [86]–[93] and [116]–[117] above). In the light of the egregious nature of the Defendants' conduct and the seriousness of the defamatory comments, this case features the worst aggravating factors amongst those reported in the local law reports thus far. There are also special elements here that put this case in a class of its own (see [123] and [129] above). In addition, I have taken into consideration the purchasing power of money today (see [73] above).

148 For injury to reputation, the most important factor is the gravity of the libel. In the Present Actions, there were serious allegations of corruption, dishonesty, nepotism and financial impropriety which the Defendants persisted in maintaining without foundation to the end. The Libel struck at the core of the Plaintiffs' life achievements and personalities. As such, they were attacks on the core attributes of each plaintiff's political reputation, personal integrity and personality. In my judgment, the more serious and the graver the allegations made against the Plaintiffs, the more the public is misinformed and the Plaintiffs harmed since the allegations are not true.

149 There was no retraction or apology at all by the Defendants and the scale of publication was wide. Equally, the Plaintiffs have established to my satisfaction that the Libel was actuated by malice. I have also taken into account the position, standing and reputation of LHL and LKY respectively when deciding on the quantum of damages needed for each of them to vindicate his reputation.

150 Mr Ravi contended that the Plaintiffs' reputation remained good despite the Libel and, as such, nominal damages of $0.50 should be awarded against the SDP. In a similar vein, CSJ suggested nominal damages of $1. This same argument – *viz*, that the plaintiff's reputation remains good and, therefore, damages should be nominal – was considered and held to be fallacious in *Tang Liang Hong (CA)* ([21] *supra*). I adopt the same reasoning as that of the Court of Appeal in that case and reject the Defendants' contentions in the Present Actions. A fundamental point always to be remembered is the purpose of compensatory damages in defamation actions. In *Tang Liang Hong (CA)*, counsel for the appellant, Mr Charles Anthony St John Gray QC, argued that none of the plaintiffs had in any objective sense suffered damage in that their feelings were not injured and they retained their respective offices, jobs, homes, families and circles of friends. Thean JA, delivering the judgment of the Court of Appeal, gave two reasons for rejecting this argument: First, it ignored the compensatory objectives of an award of damages in a defamation suit. A defamation action, Thean JA explained, was fundamentally an action to vindicate a plaintiff's reputation because he had been falsely defamed. Damages were intended *both* as a *vindication* of the plaintiff to the public because his

reputation had been injured and as a *consolation* to him for the wrong done. Second, damages for defamation, in Thean JA's view, were not to be quantified by reference to the depreciation in the value of the plaintiff's reputation. Ultimately, the award in total must be sufficient to satisfy the purposes for which damages for defamation were awarded, namely, for "vindication of reputation, compensation for injury to reputation and solatium for injured feelings" (*per* Brennan J in *Carson v John Fairfax & Sons Limited* (1993) 178 CLR 44 at 72, which was cited with approval by Thean JA at [112] of *Tang Liang Hong (CA)*).

151 In the present case, the Defendants have ignored the legal position that a plaintiff in a defamation suit is presumed to have suffered damage to his reputation by reason of the defamation. It is settled law that the plaintiff who is an individual is not required to prove that he has suffered financial loss or even that any particular person has thought the worse of him as a result of the publication complained of. Simply put, the law presumes (and the burden is on the defendant to rebut the presumption) that some damage will flow in the ordinary course of things from the mere invasion of the plaintiff's right to reputation (see *Arul Chandran v Chew Chin Aik Victor JP* [2001] 1 SLR 505 at [54], approving Bowen LJ's proposition in *Ratcliffe v Evans* [1892] 2 QB 524 at 528). That presumption aside, in cases like the present, aggravation and vindication are important elements, to which I now turn.

152 As discussed above, there was injury to the Plaintiffs' feelings by the Defendants' conduct of the proceedings. Given the Defendants' unfounded and persistent assertions that the Libel was true despite the interlocutory judgments entered against them, I am entitled to take and have taken into consideration, as a ground for aggravating the damages to be awarded, the Defendants' attempt to establish the truth of the Libel under the pretext of cross-examining the Plaintiffs to elicit evidence of the latter's alleged general bad reputation in the form of facts or incidents in each plaintiff's life which tend to establish the truth of the Libel. The same applies to the Defendants' attempts to cross-examine the Plaintiffs on irrelevant and/or scandalous matters under the pretext of "contextual background", which is also not permissible. More pertinently, the questions posed to the Plaintiffs on the stand were political questions which could hardly qualify as legal questions for the purposes of quantifying damages. The certified transcript of the notes of evidence ("the Certified Transcript") showed that the Defendants were playing to the gallery. The Libel was also exacerbated by CSJ's and CSC's insulting behaviour and disgraceful conduct during the cross-examination of the Plaintiffs. As I pointed out earlier, the Plaintiffs were subjected to insulting behaviour and more than unpleasant cross-examination, which increased their sense of having been ridiculed and humiliated. That, and the amount of publicity generated by the Assessment Hearing, obviously had an effect on the Plaintiffs' feelings towards the proceedings as a whole. In their own way, the Defendants were out to damage the Plaintiffs' political reputation from the time the Libel was published and are continuing to do so. For example, at a rally organised by the SDP on or about 5 May 2006 (and this was not denied), CSC, CSJ and other members of the SDP unfurled a banner that said "FREE Singapore from the LEEs!"[note: 68] In addition, the strain of litigation is a factor to be taken into account in assessing damages. In most cases, this factor is alleviated to some extent by the fact that the successful plaintiff will receive the costs of the litigation. However, in the Present Actions, the Plaintiffs will have to bear the costs of the proceedings given that both CSJ and CSC are bankrupts.

153 In assessing the appropriate level of damages to award, I have not overlooked Thean JA's caution in *Tang Liang Hong (CA)* ([21] *supra*) that the damages awarded for defamation must not be exorbitant. At the same time, I am mindful that the damages in the present case must be set at a level that is commensurate with and proportionate to the gravity of the Libel and the egregious behaviour of CSJ and CSC. One must not be left with the impression that the Libel is "cheap" based on the level of award ordered.

154 I have come to the conclusion that a fair and reasonable figure is $500,000 for LHL and $450,000 for LKY. After taking into account the sum of $170,000 which each plaintiff has received in settlement from the fourth to the ninth defendants as well as from three other persons who apologised for the Libel and were not sued, a suitable award of damages is, and I so order, the sum of $330,000 for LHL and the sum of $280,000 for LKY. The Defendants are to be jointly and severally liable for these sums. Pursuant to my earlier orders made at the hearing of the Summary Judgment Applications on 12 September 2006 (see *Lee Hsien Loong (HC)* ([3] *supra*) at [87]–[88]), CSC and CSJ are to pay the costs of the Assessment Hearing, which are to be taxed on an indemnity basis. I likewise order the SDP to pay the costs of the Assessment Hearing on an indemnity basis.

Part C: The Committal Proceedings

155 This part of the judgment relates to the Committal Proceedings, which comprised two separate sets of proceedings for contempt of court, one against CSC and one against CSJ. At the end of the proceedings, CSC and CSJ were found guilty of showing contempt to the court and to the proper administration of justice. CSC was sentenced to ten days' imprisonment. As for CSJ, he was sentenced to 12 days' imprisonment. Both contemnors have since served their sentence. CSJ (but not CSC) has appealed against both the finding of contempt and the sentence which was passed upon him.[note: 69]

156 The circumstances that led to the committal orders against CSC and CSJ were these. The cross-examination of the Plaintiffs by CSC was every bit as rancorous as that conducted by CSJ. Many a time, the questions posed in cross-examination were ruled to be irrelevant as they related to liability and were also political questions that had nothing to do with the assessment of damages. CSC and CSJ were told that the courtroom was not the proper forum for them to raise such political questions, but they did not care. They continued to use the court as a convenient theatre to air their political grievances and arouse political controversy, and, under the guise of cross-examination, persisted in raising wide-ranging questions of high political content. They also indulged in "soapbox tactics" by making political speeches not for the purposes of the judicial decision to be made in this assessment of damages, but for the purposes of playing to the public gallery, local and foreign media as well as foreign interest groups which have been following this well-publicised case.

157 To this end and from this perspective, not only did the behaviour of CSC and CSJ subvert the object of the litigation process (which is aimed at resolving disputes in an orderly and civilised manner), but their behaviour also reflected their complete disregard for the judicial process. As stated, their objective was to question the Plaintiffs on issues which were distinctly of a political nature. Political questions are certainly not legal questions. CSJ and CSC knew that. But, they did not care, and, imbued with the fervour of their own personal and political agenda, their further stratagem was to make use of the time allotted to them for their oral closing submissions to launch a frontal attack against the Bench and the Judiciary in general by accusing the court of bias and of prejudging the quantum of damages to be awarded to the Plaintiffs. The fact remains that this deliberate frontal attack against the Bench was made in the knowledge that the Defendants had no case at all, given the unchallenged legal and factual merits of the Plaintiffs' respective cases on the quantification issue.

158 Needless to say, those who conduct themselves in court, whether as litigants in persons, counsel or witnesses, must do so with the proper sense of responsibility and civility. The objective of the Committal Proceedings, which were initiated at the court's own motion, was to decide whether the behaviour of CSJ and CSC had fallen below the standard of basic courtroom courtesy and fair criticism so as to constitute contempt in the face of the court. The incidents forming the basis of the charges against CSC and CSJ respectively must be viewed in the full context of their personal and

political agenda, the leeway given to litigants in person conducting their own cases and other extenuating circumstances, if any. CSJ and CSC were experienced litigants and not "legal babe-in-the woods", to borrow the description used by Phang JA in *Lee Hsien Loong (CA)* ([11] *supra*) at [59]. They were intelligent litigants with a good command of English, and had the capacity to put forward their respective cases. Although they represented themselves, Mr Ravi was there to assist them. Even so, the court gave considerable leeway to CSJ and CSC given that they were, technically speaking, litigants in person, a fact which Mr Singh noted in the Plaintiffs' Closing Submissions. He observed (*ibid*):

> 3. They [*ie*, CSC and CSJ] came to Court with one shared objective: to make a mockery of the process of the Courts, to demean our Judges and to degrade the standing of our Judiciary.
>
> 4. They were extended every courtesy by Your Honour. They reciprocated with loutish behaviour, shouting like hooligans. Your Honour treated them with civility. They responded with a witch's brew of hate and venom. Your Honour gave them every opportunity and facility to present their case. They reacted by making false allegations against Your Honour, including bias.

159 In summary, the incidents of misbehaviour by CSC and CSJ included disregard and disobedience of the court's orders to desist from pursuing irrelevant lines of questioning during cross-examination. In addition, there was conduct which scandalised the court. On the facts and circumstances of this case, I was of the view that it was not only proper but also imperative for the court, on its own motion, to cite CSC and CSJ for contempt. In this regard, the factors which appeared to me to be important were these:

> (a) the public interest in the administration of justice requires a public response from the judge where the open defiance of the authority of the court has become public knowledge, thereby demeaning the court's authority; and
>
> (b) the administration of justice also requires public confidence in the Judiciary, and, if that is at risk, it will impair and bring the administration of justice into disrepute.

160 During the Assessment Hearing, I had intimated that I would deal with the behaviour of CSJ and CSC on Wednesday, 28 May 2008 (see further [198] below). The charges against them, as formulated, are annexed to this judgment (see Annex A for the charge against CSC and Annex B for the charge against CSJ). A record of the misbehaviour constituting the alleged incidents of contempt in the face of the court may also be found in the Certified Transcript.

161 On the evening of 28 May 2008, typewritten copies of the charges as formulated, together with extracts of the Certified Transcript for the proceedings on 26 and 27 May 2008 with the relevant parts highlighted in yellow (for CSC) and blue (for CSJ) ,were made available to CSJ and CSC. It is worth stating at the outset that CSC and CSJ did not dispute the statements recorded in the Certified Transcript that were attributed to them. After the charges were read out, CSC and CSJ were asked if they wished to explain why they should not be cited for contempt. CSJ requested for time to respond and suggested a return date of 30 May 2008. The matter was duly adjourned to 2.30pm on Friday, 30 May 2008. The audio recordings for the hearing on 26, 27 and 28 May 2008 were collected by CSJ on, respectively, 27, 28 and 29 May 2008.

162 At the adjourned hearing on 30 May 2008, Mr Ravi, representing CSC, applied for an adjournment of the Committal Proceedings as he wanted a full set of the hard copy of the Certified Transcript for the entire assessment proceedings. I did not find that a compelling excuse for an adjournment and thus declined CSC's application for an adjournment. In this regard, I took into consideration the fact

that Mr Ravi and CSC had been present throughout the three days over which the Assessment Hearing was held, and were fully aware of what had happened throughout. They were reminded of this by Mr Singh in his oral submissions on 28 May 2008, where he described the Assessment Hearing in these words:[note: 70]

> Then, they say, your Honour, that when they came to court, they expected equality of treatment. Your Honour, everybody who's been through these courts, and your court, has received equality of treatment. But what they demanded was special treatment. They demanded the right, and they assumed to themselves, they arrogated to themselves, the right to shout at you, to disregard what you're saying, to drown out your voice, to come in whenever they want to come in despite your directions, to ask questions despite you stopping them, and they say that they did not receive equal treatment.

163 As for CSJ, at the adjourned hearing on 30 May 2008, he explained that he had engaged Mr Jeyaretam as his counsel, but the latter was unable to attend court on that day. CSJ requested an adjournment of the Committal Proceedings until the week of 16 June 2008 (a period of slightly more than two weeks) to accommodate Mr Jeyaretnam's schedule. I was not minded to grant such a long adjournment. However, as a matter of courtesy to Mr Jeyaretnam, I adjourned the proceedings against CSJ to Monday, 2 June 2008. I also directed that it was to be a final adjournment.

164 I should add that, on Friday, 30 May 2008, CSJ was informed of the additional incidents of contempt that occurred on 28 May 2008 as he was making his closing submissions ("the 28 May 2008 incidents"). These were read out to him on Friday, 30 May 2008. He was told to explain at the adjourned hearing on Monday, 2 June 2008 why he should not be cited for contempt in respect of the 28 May 2008 incidents as well. A fresh copy of the charge against CSJ which included the 28 May 2008 incidents (see Annex B) was provided to Mr Jeyaretnam on 2 June 2008 before the start of the proceedings.

The law on contempt of court

165 The oft-cited passage on the broad principles which underlie the law on contempt of court is that taken from the speech of Sir John Donaldson MR in *Attorney-General v Newspaper Publishing Plc* [1988] Ch 333, which was quoted with approval recently in *You Xin v PP* [2007] 4 SLR 17 ("*You Xin*"). Sir Donaldson noted at 368 of *Attorney-General v Newspaper Publishing Plc*:

> The law of contempt is based upon the broadest of principles, namely, that the courts cannot and will not permit interference with the due administration of justice. Its application is universal.

166 Interference with the due administration of justice may take different forms. The observations of Yong Pung How CJ in *Re Tan Khee Eng John* [1997] 3 SLR 382 at [14] are instructive on the sort of conduct that can constitute interference with the administration of justice:

> There are many things which a lawyer or a litigant can do which do not necessarily hinder or delay court proceedings, but which nevertheless interfere with the effective administration of justice by evincing a contemptuous disregard for the judicial process and by scandalising or otherwise lowering the authority of the courts.

167 In the present case, it was the contemptuous disregard by CSC and CSJ for the judicial process and their conduct of scandalising the court that got them into trouble and cited for contempt in the face of the court. Contemptuous disobedience of court orders not only scandalises, but also lowers the authority of the court. On this, the commentary in David Eady & A T H Smith, *Arlidge, Eady &*

Smith on Contempt (Sweet & Maxwell, 3rd Ed, 2005) at para 10.132 is apposite:

> Where ... a litigant [in person] persistently introduces a matter which is both irrelevant and scandalous, then the court may treat this as contempt.

168 It is settled law in Singapore that it is contempt of court to scandalise a court or a judge (see *Attorney General v Pang Cheng Lian* [1972-1974] SLR 658 ("*Pang Cheng Lian*") and subsequent cases such as *Attorney General v Wong Hong Toy* [1982-1983] SLR 398 ("*Wong Hong Toy*"), *Attorney General v Zimmerman* [1984-1985] SLR 814 ("*Zimmerman*"), *Attorney General v Wain (No 1)* [1991] 2 MLJ 525, *Attorney General v Lingle* [1995] 1 SLR 696 ("*Lingle*") and, more recently, *AG v Chee Soon Juan* [2006] 2 SLR 650).

169 Case law indicates two strands of authorities under which contempt by scandalising the court may be committed. The first strand of authorities concerns scandalising the court by imputing bias to a particular judge in the discharge of his or her functions as a judge (see *Rex v Editor of the New Statesman, ex parte Director of Public Prosecutions* (1928) 64 TLR 301). T S Sinnathuray J in *Wong Hong Toy* ([168] *supra*) held that attacks on the integrity or the impartiality of a judge or a court constituted contempt of court. Such an attack undermines public confidence in the administration of justice (*per* Sinnathuray J in *Zimmerman* ([168] *supra*) at 817, [9]). The confidence of the public in the Judiciary is of utmost importance, and it must not be allowed to be shaken by baseless attacks on the integrity or the impartiality of the courts or the judge (*id* at 817–818, [13], citing the Australian High Court's decision in *Gallagher v Durack* (1983) 57 ALJR 191).

170 The second strand of authorities under which contempt by scandalising the court may be committed concerns more general allegations levelled at the Judiciary as a whole. Wee Chong Jin CJ in *Pang Cheng Lian* ([168] *supra*) found that an article in the 11 November 1974 issue of *Newsweek* scandalised the court. Amongst other things, the article alleged that "in the courts in Singapore, it makes a vital difference whether it is the government or the opposition that is in the dock" (*id* at 660, [11]). The article was published after the trial judge had given judgment in two defamation actions brought by the Workers' Party, an opposition party, against, *inter alia*, a PAP candidate standing for election in the 1972 general election and before an appeal by the Workers' Party against the trial judge's dismissal of its actions was lodged. The allegation, said Wee CJ, imputed to the Singapore judiciary a complete lack of impartiality in every case in which the parties before the court were, on one side, the Government and, on the other side, a party in opposition to the ruling political party (*ie*, the PAP). It insinuated that the courts of Singapore had been and would always be biased and partial in favour of the Government. Wee CJ opined that this allegation attacked the whole of the Singapore judiciary and was the worst form of scandalising of the court. Commenting on that case, Sinnathuray J in *Wong Hong Toy* ([168] *supra*) stated at 403–404, [26]:

> I ... go further to say that because [the] class of contempt [committed in *Pang Cheng Lian*] is concerned with the protection of the administration of justice, especially the preservation of public confidence in the honesty and impartiality of the courts, there need not even be any proceedings pending in the courts [for a person] to commit contempt [by] scandalizing the court. The reported cases in England as well as in other Commonwealth countries referred to at the hearing bear out this proposition. … In my judgment our High Court will exercise its summary jurisdiction to punish those who scandalize the court in words or acts done calculated to bring into contempt the future administration of justice in our courts. This summary jurisdiction will of course be exercised with the greatest of care.

171 The background to the case of *Lingle* ([168] *supra*) was the publication of an article in the *International Herald Tribune* ("*IHT*"). The author, a senior fellow of the National University of

Singapore, referred in the article to "intolerant regimes in the region" (*id* at 699, [3]) that suppressed dissent by "relying upon a compliant judiciary to bankrupt opposition politicians" (*ibid*). The Asia editor of the *IHT* explained that he had understood the reference to be to Asian military and communist regimes such as China, Burma (now known as Myanmar), Vietnam and North Korea, and not to Singapore. He conceded that a reference to a "compliant judiciary" (*ibid*) would constitute a contempt which was scandalous of the Judiciary. The editor's explanation was rejected and he was fined for contempt.

172 By contrast, it has long been clear that fair criticism made in good faith of a judge in a particular case, or of the administration of justice generally, is permissible. As Lord Atkin said in *Ambard v Attorney General for Trinidad and Tobago* [1936] AC 322 at 335:

> [W]hether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, *in good faith*, in private or public, the public act done in the seat of justice. The path of criticism is a public way: the wrong-headed are permitted to err therein: provided that members of the public abstain from imputing improper motive to those taking part in the administration of justice, and are *genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice*, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken, comments of ordinary men. [emphasis added]

173 The criticism of a judge's conduct or the conduct of the court does not constitute contempt of court so long as fair criticism is not exceeded, *ie*, so long as the criticism is fair, temperate, made in good faith and not directed at the personal character of a judge or at the impartiality of a judge or a court (see *Halsbury's Laws of England* vol 9(1) (Butterworths, 4th Ed Reissue, 2003) at para 433). It follows that the facts forming the basis of the criticism must be accurately stated. On the subject of what qualified as fair criticism, Sinnathuray J in *Wong Hong Toy* ([168] *supra*), citing and adopting the reasoning in the Australian High Court's decision in *The King v Fletcher* (1935) 52 CLR 248, held that an untruthful statement of facts upon which the comment was based might vitiate a comment which might otherwise be considered "fair". He also agreed with O'Bryan J in *R v Brett* [1950] Vict LR 226 at 229 that the motive of the writer was an important element in determining whether the criticism was fair (*per* Sinnathuray J in *Wong Hong Toy* at 405–406, [37]). Similarly, Evatt J in *The King v Fletcher* (at 257–258) said:

> Fair criticism of the decisions of the Court is not only lawful but regarded as being for the public good; but the facts forming the basis of the criticism must be accurately stated, and the criticism must be fair and not distorted by malice ...

174 Recently, Lai Siu Chiu J in *AG v Chee Soon Juan* ([168] *supra*) reaffirmed two propositions. First, once fair criticism is exceeded, contempt of court is committed. Second, liability for scandalising the court does not depend on proof that the allegedly contemptuous publication creates a "real risk" (*id* at [31]) of prejudicing the administration of justice. Lai J said (*ibid*):

> [I]t is sufficient to prove that the words complained of have the "inherent tendency to interfere with the administration of justice" (*per* Sinnathuray J in *Wain's* case at 397, [50]). In addition, the offence is also one of strict liability; the right to fair criticism is exceeded and a contempt of court is committed so long as the statement in question impugns the integrity and impartiality of the court, *even if it is not so intended* (see *AG v Lingle* [1995] 1 SLR 696 at 701, [13]). [emphasis in original]

175 I now come to the court's power to punish for contempt. The power to punish for contempt of court is important as it allows a court to deal with conduct that affects the administration of justice (as to which, see Yong CJ in *Re Tan Khee Eng John* ([166] *supra*) at [13]). The power of the High Court to punish for contempt is found in s 7(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), which provides:

> The High Court and the Court of Appeal shall have power to punish for contempt of court.

176 The power to punish for contempt enables justice to be administered in a regular and orderly way. Order 52 r 4 of the Rules of Court provides that the court has jurisdiction to proceed on its own motion in any case of contempt. The rule provides:

> Nothing in Rules 1, 2 and 3 shall be taken as affecting the power of the High Court or Court of Appeal to make an order of committal of its own motion against a person guilty of contempt of Court.

177 This power to punish may be exercised summarily in a case of contempt in the face of the court. Lord Denning MR in *Morris v Crown Office* [1970] 2 QB 114 said (at 122):

> The phrase "contempt in the face of the court" has a quaint old-fashioned ring about it; but the importance of it is this: of all the places where law and order must be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at it strike at the vey foundations of our society. To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it. It is a great power – a power instantly to imprison a person without trial – but it is a necessary power.

178 It was made clear by V K Rajah JA in *You Xin* ([165] *supra*) that the summary power to punish for contempt should be exercised only when it was absolutely necessary. That said, Rajah JA was also mindful that, as each case of contempt was different, the judge before whom the alleged act of contempt was committed was in a much better position than any other judge to assess what was required to be done to safeguard the court's authority, and his decision to exercise the summary power to punish for contempt of court of his own motion was unfettered, save that the power should not be invoked lightly. Thus, it is for the judge presiding over the proceedings in which contempt of court is said to be committed to decide whether to invoke the summary process to punish for contempt of court or to refer the matter to the Attorney-General to decide what is to be done. The factors relevant to the exercise of the judge's discretion to invoke the summary process include the importance of ensuring that anyone who interferes with the administration of justice during the course of a trial is dealt with promptly. Such a decision entails assessing whether it is necessary to deal with the alleged act of contempt immediately or whether the matter can be deferred until after the trial (see further [185]–[194] below). Once a decision is made to invoke the summary process, it is for the judge to see that the proper procedure is followed and adequate safeguards provided. The appearance of rough justice attending the summary process is mitigated by following the safeguards suggested in *You Xin* at [46]–[79].

179 I now turn to the penalty for contempt of court. Such penalty can take the form of either a term of imprisonment or a fine. In deciding the appropriate punishment for the act of contempt in question, the court considers, first, the likely interference with the due administration of justice and, second, the culpability of the offender (see *AG v Chee Soon Juan* ([168] *supra*) at [57], approving *Regina v Thomson Newspapers Ltd, ex parte Attorney-General* [1968] 1 WLR 1 at 4). In assessing these factors, the court has to look at the nature of the contempt, the identity of the contemnor, how the contempt was committed and, if publication was involved, the kind of publication and its extent (see

Sinnathuray J in *Zimmerman* ([168] *supra*) at 824, [50]).

180 Offences involving scandalising the Singapore courts have in the past generally been punished by fines only. In *AG v Chee Soon Juan* ([168] *supra*), the act of scandalising the court was done by reading a contemptuous statement criticising, *inter alia*, the lack of independence of the Singapore judiciary before the very court which was to hear the bankruptcy petition against the contemnor; this factor distinguished the case from the previous cases. Lai J held that such conduct merited punishment by imprisonment (*id* at [61]). In *You Xin* ([165] *supra*), the appellants, during their trial for the offence of having knowingly participated in an assembly without a permit, interrupted court proceedings by turning their backs on the trial judge and chanting (*id* at [8]–[10]). Rajah JA agreed that such contemptuous conduct was clearly "a blatant and perturbing affront to the administration of justice" (*id* at [87]) which warranted a sentence of imprisonment (*id* at [79]).

181 With these principles in mind, I now turn to the Committal Proceedings proper.

The proceedings against CSC and CSJ in the Present Actions

182 In the Committal Proceedings, the material incidents, as set out in the charges, were not challenged by CSC and CSJ; neither did they dispute what each of them did and said at the Assessment Hearing. There was also no retraction or apology from CSC and CSJ. Mr Ravi, on behalf of CSC, defended the Committal Proceedings on the basis that the summary process to punish for contempt of court should not be invoked as the Assessment Hearing was already over and, accordingly, there was nothing left of the proceedings to disrupt. The matter, he argued, should instead be referred to the Attorney-General for a decision on whether committal proceedings should be commenced. Allied to the first argument was Mr Ravi's complaint that no prior notice was given that CSC might be cited for contempt. He claimed that it was the court's duty to warn the contemnor on the spot so as to prevent repetition of the same or similar conduct. In making this submission, Mr Ravi appeared to be saying that the summary process could be invoked only after warning the contemnor and adjourning the proceedings so as to give the contemnor a period of time to cool off. I shall discuss these arguments in detail below. It is sufficient to say at this point that I disagreed with Mr Ravi's contentions. The court has the discretion to defer both the issue of whether contempt in the face of the court has been committed and, if so, the punishment to be meted out until after the trial at which the alleged acts of contempt occur. The judge is not prevented from invoking the summary process even though the trial is over. There is also no legal requirement to forewarn a contemnor for contempt in the face of the court. In any event, the present case was not one where committal orders were made without giving CSC and CSJ an opportunity to defend the charges against them.

183 Coming back to my narration of the events of 2 June 2008, Mr Jeyaretnam, who appeared on behalf of CSJ, made two applications. The first was that the Committal Proceedings should be referred to another judge. I rejected his application for the reasons explained below. Having failed in that application, Mr Jeyaretnam next sought an adjournment of the Committal Proceedings in so far as CSJ was concerned as he (Mr Jeyaretnam) was not fully prepared to argue the case. I did not accede to this request. I was of the view that it was incumbent upon counsel to decline a brief if counsel, for one reason or another, was unable to argue the case on the date fixed for the hearing. Moreover, I had already made it known on 30 May 2008 that the adjournment of the Committal Proceedings to 2 June 2008 was to be a final adjournment (see [163] above). The proceedings on the morning of 2 June 2008 were stood down for 40 minutes at the request of Mr Jeyaretnam. When the hearing resumed, Mr Jeyaretnam informed me that CSJ had discharged him as counsel and that CSJ would represent himself. CSJ did not dispute what he did and said at the Assessment Hearing. He merely claimed that it was not his intention to commit contempt of court.

The arguments made at the Committal Proceedings

184 I start with Mr Ravi's arguments on behalf of CSC before turning to Mr Jeyaretnam's application that the Committal Proceedings be referred to another judge.

(1) Lack of jurisdiction to invoke the summary process after the conclusion of the trial at which contempt of court is committed

185 Mr Ravi relied on the English Court of Appeal decision of *Balogh v St Albans Crown Court* [1975] 1 QB 73 ("*Balogh*"), in which it was said that the power to punish for contempt should be exercised by the court of its own motion "only when it [was] urgent and imperative to act immediately" (*id* at 85, *per* Lord Denning). By that, Mr Ravi was, I believe, suggesting that it was wrong of me to deal summarily with the issue of contempt after the Assessment Hearing had come to an end. In this regard, Mr Ravi's argument was directed at the court's jurisdiction to punish for contempt of court. He read the headnote of *Balogh*, which, on his interpretation, suggested that I had no jurisdiction to deal with the alleged acts of contempt in the Present Actions because it was not imperative for the court to act immediately to "[ensure] that a trial *in progress or about to start* [could] be brought to a proper and dignified end" [emphasis added] (*id* at 74). In this regard, Lawton LJ had commented in *Balogh* (at 92–93) that:

> In my judgment this summary and draconian jurisdiction [to punish for contempt of court] should only be used for the purpose of ensuring that a trial in progress or about to start can be brought to a proper and dignified end without disturbance and with a fair chance of a just verdict or judgment.

186 Mr Ravi also relied on *You Xin* ([165] *supra*) in support of his proposition that the court should not invoke its power to summarily punish for contempt of court once the trial at which contempt was committed had come to an end. In that case, Rajah JA recognised that the summary process for dealing with contempt in the face of the court might entail charging the contemnor on the spot, with the judge formulating the charge and then asking the contemnor to show cause as to why he ought not to be immediately convicted. I do not read Rajah JA as limiting the application of the summary procedure only to cases where it is necessary to preserve the integrity of a trial which is in progress or about to begin and where immediate punishment is required because of urgency, such that it is imperative for the court to act immediately so as to "nip and suppress the problem at the earliest stages" (see *Bok Chek Thou v Low Swee Boon* [1998] 4 MLJ 342 at 346, which Rajah JA cited with approval in *You Xin* at [40]).

187 The justification for the summary process is that it provides a speedy and efficient means of trying the alleged act of contempt. Admittedly, there are the perceived dangers that the summary process, *inter alia*, may have the appearance of rough justice and contravene the rule of natural justice encapsulated by the maxim "*nemo iudex in sua causa*" (no one shall be a judge in his own cause). However, in the final analysis and on balance, Rajah JA did not jettison the summary process, and this is clear from [41] of *You Xin* ([165] *supra*), where he opined that:

> Balancing the dangers and justifications for the summary process, *it seems right that the disruption or interruption of the trial process should be punishable summarily*. However, the summary process for dealing with contempt in the face of the court is summary in the extreme and it therefore is natural that there is judicial solidarity to the effect that this summary process should not be resorted to unless absolutely necessary ... [emphasis added]

188 Rajah JA concluded at [45] of *You Xin* ([165] *supra*) that there should be no added constraints

on the court when it invoked the summary process to punish for contempt of court:

> [A]part from laying down the general proposition that the summary process is not to be invoked unless absolutely necessary, *there should not be fetters as to when the summary process can be invoked*. To do so would be to tie the hands of the courts in maintaining order to further the administration of justice; the courts must be trusted to invoke the summary process only in the appropriate situations. [emphasis added]

189 The proposition that the circumstances in which a court may invoke the summary process is not limited to instances of preserving the integrity of a trial which is in progress or about to begin was accepted by the English Court of Appeal in *R v Santiago* [2005] 2 Cr App R 24 ("*Santiago*"). In that case, Hooper LJ adopted (at [13]) Mustill LJ's statement in *Joseph Griffin* (1989) 88 Cr App R 63 at 69 that:

> We should add that *certain dicta (for example, in* Balogh*) may be read as suggesting that the court has no jurisdiction to adopt the summary process unless the matter is urgent. We doubt whether this is strictly accurate.* In our view, the question of urgency or no is material, not to the existence of the jurisdiction but as to whether the jurisdiction should be exercised in preference to some more measured form of process. [emphasis added]

190 At [19] of *Santiago* ([189] *supra*), Hooper LJ explained that the principle laid down in *Balogh* ([185] *supra*) had since been tempered by the English Court of Appeal in *Wilkinson v S* [2003] 1 WLR 1254 ("*Wilkinson*"). In the result, the test as to when the summary process to punish for contempt of court can be invoked is now not as strict as that laid down in *Balogh*. Apart from this change in judicial approach, the present case is also distinguishable from *Balogh* on its facts.

191 In *Balogh* ([185] *supra*), the contemnor, a solicitor's clerk, decided to enliven a pornography case which he was attending by releasing nitrous oxide, commonly known as "laughing gas", into the court. He was arrested before he could carry out his plan, which was to slip up to the roof via the public gallery of the adjoining courtroom and, from there, release the gas into the ventilation system serving the courtroom where the pornography trial was taking place. Having been brought before Melford-Stevenson J, who was himself not presiding over the pornography case, the contemnor was sentenced to six months' imprisonment for contempt. His appeal to the English Court of Appeal was allowed on the ground that his acts, although preparatory to committing an act of contempt, had not reached the stage when they constituted an attempt to commit contempt of court, still less did they constitute the completed offence of contempt. Of significance was the question of whether the situation called for immediate punishment. In *Balogh*, the contemnor was already in custody on a charge of stealing and there was no immediate need to punish him for contempt (*id* at 85, *per* Lord Denning). All three members of the English Court of Appeal were in agreement that, even if what the contemnor had done amounted to contempt of court, the judge should not have exercised his jurisdiction to punish the contemnor summarily.

192 As for when the summary process to punish for contempt of court may be invoked, Hale LJ in *Wilkinson* ([190] *supra*) said (at [19]) that the summary procedure was not limited to instances of preserving the integrity of a trial which was in progress or about to begin. It was entirely proper to invoke the summary procedure even though the immediate hearing was over, particularly where there were ongoing proceedings between the same parties. Hale LJ added (at [20]) that once a judge had decided that it was proper to invoke the summary procedure, the judge had to ensure that the process was "as fair as possible for the alleged contemnor, consistent with its being a summary procedure" (*ibid*).

193 In the subsequent case of *Santiago* ([189] *supra*), Hooper LJ concluded at [27] that:

> [A] judge is entitled to defer taking action on a *prima facie* contempt. He may adjourn the issue of whether a contempt was committed and any issue of punishment until later. *The fact that the trial is over or the fact that there is no immediate need to take action does not prevent the judge from later taking action.* Indeed he should not take action immediately if to do so would be unfair to the defendant. [emphasis added]

194 In my judgment, a judge, following incidents of intemperate and obstreperous behaviour by a person in court, is entitled to defer until a later date both: (a) the issue of whether contempt has been committed, and (b) if so, the appropriate punishment to impose. In the present case, I did not deem it necessary to interrupt the Assessment Hearing for immediate action to be taken against CSC and CSJ for contempt of court. In fact, it was sensible to defer the summary process for dealing with contempt of court until after the examination of witnesses and oral closing submissions were over. It must be remembered that the Assessment Hearing was fixed for three days. In the time allocated, there was to be cross-examination of witnesses, with closing submissions to be made on 28 May 2008 as advised by Mr Ravi. Interrupting the cross-examination for a summary hearing of the contempt charges against CSC and CSJ would have meant curtailing the time for cross-examination and would in turn have precipitated an adjournment of a hearing which had already been postponed once before. If anything, deferring the summary process until after the Assessment Hearing was over enabled procedural safeguards to be observed, thereby making the summary process as fair as possible (see *Wilkinson* ([190] *supra*) at [20], *per* Hale LJ).

195 Both CSC and CSJ were given an opportunity to explain their conduct and why they should not be cited for contempt. They consulted lawyers, and had the opportunity to defend the respective charges against them as well as make submissions on what would be an appropriate punishment if contempt of court were made out. Despite being given the opportunity to reflect on the situation, CSC did not apologise for her behaviour; for that matter, neither did CSJ. I should mention for completeness that, after I adjourned the committal proceedings against CSJ to 2 June 2008 as a courtesy to Mr Jeyaretnam, CSJ thought of engaging Mr Ravi instead as his counsel and asked for a short break to consult with Mr Ravi. He subsequently decided not to switch counsel. In the end, CSJ acted in person. As just stated, he did not offer an apology. His only excuse was that he had not intended to commit contempt. He did not make any submissions on the appropriate punishment.

(2) Failure to warn CSC and CSJ before citing them for contempt

196 Mr Ravi submitted that a warning should be given before citing a contemnor for contempt in the face of the court. This same argument was previously raised by Mr Ravi as counsel for CSJ in *AG v Chee Soon Juan* ([168] *supra*). In rejecting this proposition, Lai J said (at [21]):

> [T]here is no requirement in O 52 of the Rules [of Court (Cap 322, R 5, 2004 Rev Ed)] or at common law that a court, in whose face an act of contempt is committed, must first warn the alleged contemnor that he will be cited for contempt if he does not curb his contemptuous behaviour. What the textbook authorities do say (including David Eady & A T H Smith, *Arlidge, Eady & Smith* on Contempt (Sweet & Maxwell, 3rd Ed, 2005), Nigel Lowe & Brenda Sufrin, *Borrie & Lowe*, *The Law of Contempt* (Butterworths, 3rd Ed, 1996) and Miller's *Contempt of Court* ...) is that a court summarily citing a person for contempt must give him the right to *reply* to the charge, before finding him liable of the offence. [emphasis in original]

197 The absence of any prior warning to the contemnor is thus not a bar to the court invoking its power to punish for contempt of court. As pointed out by Lai J in *AG v Chee Soon Juan* ([168] *supra*)

at [21] (see the passage quoted at [196] above), there is no requirement either at common law or under legislation to forewarn the contemnor. Since contempt in the face of the court is committed during a trial or hearing and is usually spontaneous, it seems somewhat incongruous to insist on a warning to the contemnor not to commit a future act of contempt before citing him (if he ignores such warning) for contempt. Whilst the judge may (where it is possible to do so) issue a warning to desist the contemnor from disorderly conduct, the lack of a warning in itself has no legal implications and raises no legal impediments to the court's exercise of its power to punish for contempt of court. By contrast, it is in cases where the objective is to secure compliance with an underlying court order which has been breached that a warning is ordinarily given to prompt the contemnor to purge the contempt. In that situation, a warning is proper before the court exercises its contempt of court jurisdiction.

198 In the Present Actions, I had stated in no uncertain terms that the questions asked by CSC and CSJ in cross-examination had nothing to do with the issues which were before me for judicial determination. The questions which CSC and CSJ posed were political questions, not legal questions, and were best debated outside the courtroom. That was communicated to CSJ and CSC, but they persisted in asking questions with high political content during the cross-examination of both LHL and LKY. In the result, there were repeated rulings on the irrelevancy of questions which had nothing to do with the assessment of damages. I took cognisance of the misbehaviour, and I announced in court on Tuesday, 27 May 2008 that I would deal with the matter on Wednesday, 28 May 2008, which I duly did.[note: 71] CSC and CSJ were apprised on Wednesday, 28 May 2008 of the incidents constituting contempt of court, and they were given sufficient opportunity to explain why they should not be cited for contempt. In the circumstances, Mr Ravi's argument that prior warning was necessary before the court exercised its power to punish for contempt in the face of the court was misconceived and ill-founded.

(3) Referral of the Committal Proceedings to another judge

199 As mentioned earlier (see [183] above), Mr Jeyaretnam applied for the Committal Proceedings to be conducted by another judge. He argued that this was to avoid any perception that the judge presiding over the Committal Proceedings might not be impartial. The issue was one of the appearance of bias. I turned down the application. I should point out that Mr Ravi made no such application on behalf of CSC and it can thus be assumed that this issue of apparent bias was not a matter of concern to her.

200 In *You Xin* ([165] *supra*), Rajah JA did not say that the judge before whom the act of contempt was committed should remit the ensuing committal proceedings to another judge. In fact, Rajah JA did not think that such a requirement had to be observed at all for the situation envisaged in *You Xin* involved the punishment for contempt being "imposed by the judge sitting in the court at the time even if the contempt [was] directed against the judge himself" (*id* at [34]). At [36]–[37] of his judgment, Rajah JA explained that whilst a person should not be a judge in his own cause, this objection could be easily answered in the context of proceedings for contempt of court with the simple reply that it was the dignity of the judicial process that was being protected, and not that of the court or the judge. In any case, the adoption of strict procedures in contempt proceedings ought to minimise any impression of injustice. The word "injustice" in my view encompasses the same issue of apparent bias that was put to me by Mr Jeyaretnam. The latter stressed that he was not saying that I would not adjudicate the Committal Proceedings impartially, but that, to avoid the risk of any appearance of bias on my part, another judge should deal with the matter.

201 In any case, the decision to have another judge conduct the committal proceedings is a matter wholly within the discretion of the judge before whom the act of contempt is committed. Rajah JA

stated in *You Xin* ([165] *supra*) at [44] that there would be little basis for an appellate court to interfere with the exercise of judicial discretion in this regard if the judge's conduct did not disqualify him for bias, and also provided the judge accorded the contemnor the procedural safeguards in the summary process (as to which, see *You Xin* at [46]–[79]).

202 In the present case, the misbehaviour by CSC and CSJ, the manner in which the words that scandalised and impugned the dignity of the court were spoken, the gestures which accompanied the words and the effect of those words and gestures on the people in court were best appreciated by me as the judge conducting the Assessment Hearing since the incidents cited in Annex A and Annex B occurred before me. Whilst another judge has the same jurisdiction as I did to deal summarily with the contempt committed by CSC and CSJ, what happened at the proceedings before me is unlikely to be fully appreciated by another judge by his reading the Certified Transcript and/or his listening to the audio recording of the proceedings. As the judge before whom the acts of contempt took place, I was best placed to assess what was required to be done, as compared to some other court dealing with the matter some weeks or months later. I had seen the case develop day after day. Moreover, there was no dispute as to the essential acts that had occurred before me and the words that had been used. I had also accorded to CSC and CSJ the procedural safeguards to ensure that the summary process was as fair as possible (see [195] above). To reiterate, CSC and CSJ were given an opportunity to explain their conduct. Both were also given an opportunity to explain why they should not be cited for contempt. They consulted lawyers and had the opportunity to defend the respective charges against them as well as submit on the appropriate punishment to be meted out. Accordingly, it was open to me to continue to deal with the Committal Proceedings.

203 As stated, at the adjourned hearing of the Committal Proceedings on 2 June 2008, CSJ had little to say. He did not deny what he had said or done in the course of the Assessment Hearing. He did not retract any of his statements, nor did he offer an apology. All he said was that he had not had any intention to commit contempt of court. I took that to mean that he had not intended to scandalise the court or behave in a contemptuous manner. Not only did I not believe CSJ's assertion in this regard, that assertion also could not pass muster as a legally valid defence to a charge of contempt. In *Wong Hong Toy* ([168] *supra*), Sinnathuray J made it clear that a person charged with contempt of court could not be heard to say that he did not intend to commit contempt if in fact he did commit the offence (*id* at 404, [29]). This principle was affirmed by Lai J in *AG v Chee Soon Juan* ([168] *supra*) at [31].

The charges against CSC and CSJ

(1) The first charge: Disobedience of court orders such that the administration of justice was interfered with

204 With regard to the occasions where CSC and CSJ acted in defiance of court orders by persistently fielding irrelevant questions during cross-examination (see the incidents set out in Annex A and Annex B), their refusal to comply with the court's lawful order that they stop their irrelevant line of questioning patently interfered with the due administration of justice. Above all, their disobedience of the court's orders must be viewed in the full context of their wholesale disregard for the judicial process, as evinced by their blatant use of the court as a convenient and well-publicised arena to air their political grievances and scandalise the court. Under the guise of cross-examination, CSC and CSJ asked political questions that, by nature, were foreign and completely irrelevant to the matters which I had to decide on in assessing the quantum of damages to award for the Libel. This is evident from the questions themselves, which covered a wide range of irrelevant topics such as freedom of speech, the detention of Chia Thye Poh and control of the media (see the matters delineated at [131]–[138] above). Whilst considerable leeway is usually given to litigants in person in

terms of the manner in which they conduct themselves and their cases in court, the outrageous behaviour of CSJ and CSC in the Present Actions cannot be permitted by the court. Their intention throughout the Assessment Hearing was not to demolish or dent the Plaintiffs' evidence by eliciting answers in cross-examination which would go towards reducing or mitigating the quantum of damages, but to use this highly-publicised hearing as an occasion to indict a political regime, publicise their personal and political agenda as well as stir up political controversy. That objective galvanised them into perpetuating the myth of a defence which they well knew to be legally non-existent; they were also aware that, in so doing, they would interfere with the due administration of justice. Despite the court ruling time and again that their questions in cross-examination were irrelevant as the courtroom was not the proper place for them to publicly protest against anything which displeased them politically and/or to publicly proclaim their political views (whatever those views might be), CSC and CSJ persisted in bringing up irrelevant questions of obvious political content. Their determination to go against the court's rulings on relevancy manifested their blatant disobedience, and constituted a classic example of contempt palpably calculated to "interfere with the effective administration of justice by evincing a contemptuous disregard for the judicial process and by scandalising or otherwise lowering the authority of the courts" (*per* Yong CJ in *Re Tan Khee Eng John* ([166] *supra*) at [14]). Such contemptuous conduct cannot be overlooked, for to do so would result in dire consequences for the judicial system as a whole. As Yong CJ rightly pointed out (*ibid*):

> We are inviting anarchy in our legal system if we allow lawyers or litigants to pick and choose which orders of court they will comply with, or to dictate to the court how and when proceedings should be conducted.

205 Clearly, CSC and CSJ used the court of law as a convenient venue to launch political protests from the soapbox, particularly since there was extensive press coverage of the Assessment Hearing. Such behaviour must be sternly and firmly punished. If left unchecked, it is capable of diminishing the authority of the court, thereby leading to the increased flouting of court orders as a result of ordinary citizens forming the erroneous impression that intemperate and obstreperous behaviour is acceptable in a courtroom. The contempt committed by CSC and CSJ was clear as well as flagrant. The interests that needed to be protected were the due administration of justice and the authority of the court.

(2) The second charge: Scandalising the court

206 As stated earlier, at the Assessment Hearing, CSC and CSJ chose to leave the legal and factual merits of the Plaintiffs' cases unanswered, and instead adopted "soapbox tactics" that culminated in a frontal attack against the Bench and the Judiciary in general in which they accused the court of bias and of prejudging the damages to be awarded to the Plaintiffs. This frontal attack on the court and such contemptuous conduct must likewise be dealt with firmly for the reasons stated in the preceding paragraph.

207 In CSC's case, she directly accused the court of bias. This insult, which scandalises the court, amounts to contempt calculated to interfere with the due administration of justice. Scandalising a court or a judge amounts to contempt for it undermines public confidence in the judicial system. The power to punish for this form of contempt of court is exercised in order to uphold the proper administration of justice.

208 As for CSJ, he said that he was not taking issue with me personally, but with my office.[note: 72] A reference to a judge's conduct in his or her official, as opposed to personal, capacity amounts to contempt of court. The law of contempt exists to protect public confidence in the administration of justice. The offence of contempt is not committed by attacks upon the personal reputations of individual judges as such. As stated in C J Miller, *Contempt of Court* (Oxford University Press, 2000)

at para 12.05 (quoting from Prof Goodhart's article, "Newspapers and Contempt of Court" (1935) 48 Harv LR 885, at 898):

> Scandalising the court means any hostile criticism of the judge *as judge*; any personal attack upon him, unconnected with the office he holds, is dealt with under the ordinary rules of slander and libel. [emphasis added]

209 CSJ imputed dishonesty to the decisions which I have made in the course of the proceedings in the Present Actions. He declared that the entire process had been "quite hideous".[note: 73] He criticised the court by saying, "you have chopped off our legs, you have lopped off our arms, and you expect us right now to continue on with this assessment of damages".[note: 74] He proclaimed, "I couldn't make this up, even if I wanted to, how much justice has been gagged, bound up, kicked, rape, quartered, and then, at the very last moment, the dagger plunged right through."[note: 75] Continuing, he said to the court: "In another time and place we could perhaps be good friends; but I have to take issue with your position as a judge and what you have done, as well as the decisions you have made in this courtroom. To that extent, I will fight you with every fibre of my being for the sake of justice."[note: 76]

210 Accusations or imputations of bias or lack of impartiality are easy to make, but are often unsupported by any shred of evidence. Crucially, on what basis did CSC and CSJ found their allegations of bias or partiality in the Present Actions? They said that their allegations were based on my previous decision at the hearing of the Summary Judgment Applications on 12 September 2006, when I had refused to grant a further adjournment of the hearing and had proceeded to hear the Summary Judgment Applications in their absence – after, it is crucial to note, they had walked out on that hearing. My recent decision in the Striking-Out Applications to strike out the Defendants' AEICs and my dismissal of CSC's and CSJ's spontaneous oral applications made at the May 2008 hearings were also cited.

211 As stated (see [172]–[173] above), fair criticism of a judge's decision made in good faith is acceptable. It is naïve to think that judges' decisions are never beyond reproach. But, the criticisms of bias and lack of impartiality in the present case went far beyond fair criticism. Pausing here, it is worth noting that Mr Ravi for the SDP did not adopt or endorse CSC's and CSJ's allegations of bias, lack of impartiality, prejudice and prejudgment of the quantum of damages to be awarded. Reverting to CSC's and CSJ's closing submissions, the accusations of impropriety therein were based on distorted facts and spurious reasons. They traversed old grounds such as my refusal to adjourn the hearing of the Summary Judgment Applications on 12 September 2006 even though Mr Ravi was ill at that time, and again accused me of being biased against them at that hearing. In this regard, they relied on passages from the certified transcript of the notes of arguments for the hearing on 12 September 2006 ("the 12 September 2006 notes of arguments"), which passages the Court of Appeal had found to have been quoted out of context (see *Lee Hsien Loong (CA)* ([11] *supra*) at [75]). These submissions were disingenuous, for CSC and CSJ completely ignored the decision of Phang JA on the very issues raised at the hearing of CSJ's application for an extension of time to file his appeals against the Summary Judgments. In his written grounds of decision, Phang JA examined the relevant extracts of the 12 September 2006 notes of arguments and two documents tendered to the appellate court. The first document was a copy of a medical certificate dated 23 September 2006 ("the Medical Certificate"); the second was a letter dated 30 July 2007 from the same doctor who had issued the Medical Certificate. The Court of Appeal's reasons for rejecting the two documents as evidence of Mr Ravi's medical condition on 11 and 12 September 2006 are stated at [92]–[107] of *Lee Hsien Loong (CA)*, while the appellate court's reasons for rejecting the argument of alleged bias are stated at [75]–[90] thereof. The CSJ affidavit claimed that the defence filed by CSC and CSJ had raised triable issues. Significantly, however, and this was noted by the appellate court, CSJ, at the

hearing of his application for an extension of time to appeal, did not question the substantive merits of the Summary Judgments. As Phang JA noted (*id* at [121]):

> The applicant [*ie*, CSJ] ... failed completely to address the main reasons why the Judge did not grant the defendants [*ie*, CSJ and CSC] an adjournment on 12 September 2006. In particular, he failed to explain why he and [CSC] had simply walked out on the proceedings that day. He also failed to explain why the defendants' case with regard to the [S]ummary [J]udgment [A]pplications was not hopeless; indeed, this particular issue was not addressed at all. His arguments, which were premised on alleged bias on the part of the Judge as well as on a medical certificate and a letter wholly unrelated to the proceedings concerned [*ie*, the Medical Certificate and the letter dated 30 July 2007 mentioned above] ... were not only irrelevant and misconceived but also lacked any merit.

212 There was also the matter of the striking out of the Defendants' AEICs. I allowed the Striking-Out Applications due to the strong merits of the Plaintiffs' arguments. Other decisions that went against the Defendants at the May 2008 hearings were inevitable as CSC's and CSJ's oral applications were simply ill-founded and untenable. CSC and CSJ were also unhappy at my decision to sit through lunch on 27 May 2008 for the cross-examination of LKY. There was, however, in fact a short break at 12.25pm before the cross-examination resumed at 12.55pm.

213 As noted earlier, CSJ and CSC were out to denigrate the court for their own political gain. It did not matter to them that they were distorting the truth so as to give a misleading impression that they actually had a viable defence to the Plaintiffs' claims but were denied their day in court. This disingenuous stance was repeated at the May 2008 hearings both in chambers and in open court. In so doing, CSC and CSJ sought to recycle the scandalous suggestion (which, perhaps, first emerged in the 1970s with the case of *Pang Cheng Lian* ([168] *supra*)) that Singapore judges are incapable of discharging their judicial duties impartially when it comes to defamation cases involving, on one side, members of the ruling party (*ie*, the PAP) and, on the other side, members of an opposition party. This suggestion presupposes that whenever a defamation action involving the PAP and/or its members is before the court, the PAP and/or the party members concerned will interfere with the judicial process so as to procure a favourable verdict, or, alternatively, that the judge presiding over the case will violate his judicial duty and decide the case in a way that will please or curry favour with the PAP and/or the party members concerned. Any such suggestion is generally easy to make, but difficult to substantiate without proof of the precise nature of the wrongdoing or the improper pressure, dishonesty and/or abuse of power and authority exercised by the plaintiff concerned. The latter is precisely the threshold that has to be reached for the purposes of substantiating an allegation of interference with the judicial process or judicial wrongdoing, and it is not an unrealistic burden because it is no different from the one placed on a litigant in any other civil case.

214 As the case of *Lee Kuan Yew v Vinocur* [1996] 2 SLR 542 ("*Vinocur (No 2)*") illustrates, it is easy to question judicial independence and impartiality, but, at the end of the day, the accusation has to be backed up by hard evidence; otherwise, it will naturally collapse. In *Vinocur (No 2)*, the libel was contained in an article entitled "The smoke over parts of Asia obscures some profound concerns" published in the 7 October 1994 issue of the *IHT*. The offending part of the article was as follows (*id* at 544, [2]):

> Intolerant regimes in the region reveal considerable ingenuity in their methods of suppressing dissent … Others are more subtle: relying upon a compliant judiciary to bankrupt opposition politicians …

215 The *IHT*'s executive editor, its Asia editor and its publisher, who were among the defendants,

apologised for having published the impugned passage in the article. In their apology, they acknowledged that the passage could be understood as suggesting that the plaintiff (LKY) had sought to suppress political activity in Singapore by bankrupting opposition politicians through court actions in which the plaintiff relied on a compliant judiciary to find in his favour without regard to the merits of his case. Included in the apology was a statement that this kind of suggestion was unfounded and that they did not associate themselves with it. The author of the article, in contrast, did not apologise. He did not enter an appearance to defend his article, and judgment in default of appearance for damages to be assessed was entered against him. S Rajendran J observed, firstly (*id* at 545, [10]):

> An independent and impartial judiciary is a fundamental pillar of our society. Every judge of the Supreme Court is required by the Constitution to take an oath that he will discharge his duties 'without fear or favour, affection or ill-will' to the best of his abilities. To allege that the judiciary is compliant to the wishes of the plaintiff; to say or imply that the judiciary will find in favour of the plaintiff, whatever the merits of the plaintiff's case, is to undermine and degrade the judiciary.

216 A compliant judiciary must mean lack of independence. What is this independence about and from whom? Nothing specific was suggested in *Vinocur (No 2)* ([214] *supra*). Rajendran J pointed out (*id* at 546, [12]), and this was his second observation, that, if the author of the article had done a careful study of the cases instituted by the plaintiff against the plaintiff's political opponents and was able to show that, in all or the majority of the cases, the plaintiff had succeeded even though there was no merit in his claims, the author could perhaps draw the conclusion that the plaintiff had succeeded in those cases because of a compliant judiciary. In such a situation, the author could have raised the defence of justification or, perhaps, fair comment. But, the author chose not to pursue any of these courses of action. He did not even want to defend the plaintiff's claim. It appeared to Rajendran J that the author chose not to defend the claim because he knew that he had made the offending statement recklessly and had no defence whatsoever.

217 Not unlike the author of the impugned article in *Vinocur (No 2)* ([214] *supra*), the SDP did not file any defence in the Present Actions. Mr Ravi, who was then representing CSJ and CSC, filed the Amended Defence on 11 May 2006, which CSJ admitted had been drafted with the assistance of a Queen's Counsel (see [15] above). Amongst other things, the defamatory remarks in the Articles assert that the Plaintiffs' past defamation cases were brought to suppress financial abuses and improprieties in the Government. A pleading which seeks to justify this grave accusation must be supported by proper facts and the facts must in turn be proved in evidence. I have highlighted in *Lee Hsien Loong (HC)* ([3] *supra*) that, in CSC's and CSJ's joint O 14 affidavit, CSC and CSJ "all but admitted that they had no evidence which could remotely justify the Disputed Words" (*id* at [69]). The Defendants' AIECs, which were struck out, suffered from the same deficiency. Damaging and speculative assertions were recklessly made by CSC and CSJ against the Judiciary on the basis of inconclusive, unsubstantiated and unverifiable material. For my part, I can confidently assert that cases heard before me – and the Present Actions are no different – are considered and decided solely on their legal and factual merits.

218 In the circumstances, the frontal attack by CSC and CSJ against the Bench was flagrant and ill-founded. The truth of the matter is that CSJ and CSC had nothing worthwhile to say in their closing submissions *vis-à-vis* mitigation or reduction of damages, and their way out of this predicament (so it appeared) was to find fault with the court. The words which formed the subject matter of the contempt charges against them (as set out in Annex A and Annex B) and/or the connotations imputed by those words *ex facie* amounted to contempt of court in that they constituted an attack on the integrity of the court in the discharge of its fundamental role of dispensing justice with objectivity and

while remaining politically neutral at all times.

219 For the reasons stated above, I found CSJ and CSC to be guilty of contempt in the face of the court. Contempt of court was committed as the statements set out in Annex A and Annex B impugned the integrity and the impartiality of the court even if CSC and CSJ had not so intended. The consequence of those attacks by CSC and CSJ in the course of cross-examination and in their oral submissions, as detailed in Annex A and Annex B, was to undermine public confidence in the Judiciary, which would in turn impair the due administration of justice and bring the administration of justice into disrepute. It is important to bear in mind that knowledge by the public of such behaviour, left unchecked, is capable of diminishing the authority of the court, leading to would-be contemnors flouting court orders with impunity. This sort of attack in a small country like Singapore has the inevitable effect of undermining the confidence of the public in the Judiciary, and, if confidence in the Judiciary is shattered, the due administration of justice inevitably suffers.

The punishment imposed by the court

220 Having found CSC guilty of contempt of court by her disobedience of court orders and her acts of scandalising the court, I asked Mr Ravi to submit on the appropriate punishment. At Mr Ravi's request, the matter was adjourned over the weekend to Monday, 2 June 2008. At the adjourned hearing, mitigation was advanced on behalf of CSC to persuade me to take a more lenient view. I can appreciate that, in any hard-fought case, there will almost always be directness and sometimes asperity, and, in such cases, some leeway must all the more be given to litigants in person in the manner in which they conduct their cases. Notwithstanding these considerations, I did not for a moment accept that CSC's behaviour resulted from the combined effects of the stress of the Assessment Hearing, her limitations as a litigant in person in respect of the law of libel and the rules of cross-examination, and "fervo[u]r, exuberance and outspokenness", [note: 77] to borrow Mr Ravi's words. If there was any truth in his mitigation submissions, Mr Ravi, on behalf of CSC, would have offered an apology. In my judgment, her behaviour on all counts amounted to contempt in the face of the court.

221 As far as CSJ was concerned, all he said was that he had not intended to commit contempt. I did not accept for a moment his declaration. As a matter of law, intention is not a legally valid and relevant consideration where the offence of contempt of court is concerned. In my judgment, CSJ's behaviour on all counts likewise amounted to contempt in the face of the court.

222 The gravity of the conduct of CSC and CSJ in relation to the acts of contempt in issue was such that their conduct deserved to be punished with nothing less than imprisonment. In deciding on the length of the sentence, I took into consideration the gravity of the contempt, the seriousness of the occasion in which the various acts of contempt were committed and the importance of deterring would-be contemnors from following suit. Imprisonment was an appropriate punishment in the present case also because the disobedience of court orders and the scandalous attack on the integrity and the impartiality of the judge were deliberate.

223 For CSC, I sentenced her to imprisonment of ten days. As for CSJ, I sentenced him to imprisonment of 12 days. I should add with regard to CSJ that, although this was the second time that he was jailed for scandalising the court, he did not prolong the committal hearing. The length of imprisonment which I imposed on him took into consideration his brevity in mitigation after Mr Jeyaretnam withdrew as his counsel.

Part D: The oral applications made at the May 2008 hearings

The oral applications made on 12 May 2008

224 The Defendants made a number of oral applications in connection with the Striking-Out Applications. One oral application was for the Striking-Out Applications to be heard in open court, failing which the second and follow-on oral application was for permission for what CSJ called a "trial observer" to sit in at the hearing in chambers. The trial observer was identified as a "Mr Saha" from the Malaysian Bar Council. The third oral application was an application that I recuse myself from presiding over the Striking-Out Applications and the Assessment Hearing ("the 12 May 2008 recusal application"); CSJ also wanted this particular oral application to be heard in open court. The fourth oral application was the Defendants' application to adjourn the hearing of the Striking-Out Applications for seven days. The first three applications were, for the reasons which I shall come to, at best preliminary "skirmishes".

Request for the Striking-Out Applications to be heard in open court and for a trial observer to be present

225 The Striking-Out Applications were brought by way of Summons No 1574 of 2008 (*vis-à-vis* Suit 261) and Summons No 1575 of 2008 (*vis-à-vis* Suit 262). Summonses are normally heard in chambers. Order 32 r 11 of the Rules of Court provides as follows:

> **11.**—(1) All summonses, applications or appeals shall be heard in Chambers, subject to any express provision of these Rules, any written law, any directions of the Court or any practice directions for the time being issued by the Registrar.
>
> (2) Any matter heard in Court by virtue of paragraph (1) may be adjourned from Court into Chambers.

226 The Defendants' reason for asking for the Striking-Out Applications to be heard in open court – and this was not the first time that they made an application of this nature (see, *eg*, *Chee Siok Chin (No 2)* ([145] *supra*)) – was the same as the reason invoked in their previous applications, namely, since the Present Actions involved politicians, the proceedings should be heard in open court in the full glare of the public. That reason in itself was not, in my view, a compelling reason for departing from the norm of hearing summonses in chambers. In OS 1203/2006, CSJ and CSC likewise wanted the action to be heard in open court on the ground that, *inter alia*, it raised "constitutional issues which were of public interest" (*id* at [15]). That application was rejected as no satisfactory reason was advanced for departing from the normal practice of hearing originating summonses in chambers (*ibid*). With regard to the Defendants' second oral application on 12 May 2008 (*viz*, for a trial observer to be present), I likewise found no compelling reason to depart from the norm by permitting a trial observer to be present in proceedings held in chambers. The Defendants said that they wanted Mr Saha to be present at the hearing of the Striking-Out Applications so that he could observe and report on those proceedings, but they did not satisfactorily establish any justifiable basis as to why they needed Mr Saha to do that. The simple and obvious reason was that there was no basis for this second oral application. In the circumstances, the second application was also denied.

The 12 May 2008 recusal application

227 The third oral application by CSJ and CSC on 12 May 2008 (*ie*, the 12 May 2008 recusal application) was, first, for me to recuse myself from presiding over the Striking-Out Applications and the Assessment Hearing. They also wanted that recusal application to be heard in open court for, as CSJ put it, "transparency's sake". By that, CSJ was referring to the "perception" that the Judiciary was not entirely impartial in defamation suits taken out by members of the PAP against members of

the opposition. Mr Singh objected to the 12 May 2008 recusal application, pointing out that in two previous recusal applications made in 2006 in respect of OS 1203/2006 (see [145] above), the applications had been made and heard in chambers. In neither instance was there a request for the recusal application concerned to be heard in open court. There was, Mr Singh argued, no basis whatsoever for the 12 May 2008 recusal application to be heard in open court. I agreed.

228 It was not said whether the 12 May 2008 recusal application was founded on actual or apparent bias; in this regard, no distinction was made at the hearing. The grounds of the 12 May 2008 recusal application were that I was biased and that such bias stemmed from my refusal to adjourn the hearing of the Summary Judgment Applications on 12 September 2006 even though Mr Ravi (the then counsel of CSC and CSJ) was ill. Moreover, I was said to have made some remarks about CSJ at the hearing of the Summary Judgment Applications that again suggested that I was biased against CSJ and CSC. I have in *Lee Hsien Loong (HC)* ([3] *supra*) explained why the request for an adjournment on 12 September 2006 was not granted, and it was not due to Mr Ravi's absence from court (*id* at [4]–[17]). As I have also pointed out at [211] above, CSJ had in *Lee Hsien Loong (CA)* ([11] *supra*) canvassed the very same complaints before the Court of Appeal, which upheld my decision not to adjourn the hearing on 12 September 2006. The appellate court also found that there was no bias on my part as alleged based on what was said at the hearing in chambers on 12 September 2006. CSC's argument was that summary judgment had been entered against him and CSC without their being given their day in court despite their having filed a defence. He contended that it was because the court ruled that there was no defence that summary judgment was entered against him and CSC. Significantly, however, at the hearing of his application for an extension of time to appeal against the Summary Judgments, CSJ did not advance as a reason for his application the argument that his defence in the Present Actions had merits. In any case, the Court of Appeal did consider the substantive merits of CSJ's defence and concluded that any intended appeal would be hopeless (see *Lee Hsien Loong (CA)* at [121]). Despite the Court of Appeal's decision, the same complaint of bias was advanced as the ground for the 12 May 2008 recusal application. CSJ's explanation was simply that the decision of the Court of Appeal in *Lee Hsien Loong (CA)* would not dispel the impression of judicial bias held by the public in Singapore and beyond when it came to defamation cases in which members of the PAP were pitted against members of the opposition. By implication, CSJ's argument on bias extends to the Judiciary in general. That argument is completely unsubstantiated and unfounded (as to which, see generally [213]–[217] above).

229 Moving on to other points which CSJ brought up on 12 May 2008 but which were not canvassed before the Court of Appeal in *Lee Hsien Loong (CA)* ([11] *supra*), the first concerned Mr Ravi's medical certificate from a dentist stating that Mr Ravi was unfit for duty on 11 September 2006 (see *Lee Hsien Loong (HC)* ([3] *supra*) at [6]). (I should, at this juncture, point out that the Summary Judgment Applications were originally scheduled to be heard on 11 September 2006, but were subsequently adjourned to the following day – *ie*, 12 September 2006 – as Mr Ravi was, so the court was told, ill.) CSJ and CSC tried to argue that since I had expressed doubts on 11 September 2006 as to whether that medical certificate was legitimate because blue ink and black ink had been used (*ibid*), I should at least have adjourned the hearing of the adjournment application on 11 September 2006 so that the dentist could attend court to explain the apparent discrepancies in the medical certificate. It was also argued that as that medical certificate was Mr Ravi's medical certificate, I had, in doubting its validity, cast aspersions on Mr Ravi. In my view, these arguments were dud points made without a proper reading of the relevant passages in my written grounds of decision for the Summary Judgment Applications. There, I had stated that, far from rejecting the medical certificate, I accepted it as it stood since it was just for one day and since, by the time that certificate was tendered to the court in the afternoon on 11 September 2006, a good part of the day's hearing had already been lost (see *Lee Hsien Loong (HC)* at [7]).

230 Finally, CSJ raised the so-called "complaint" against Mr Ravi for not attending court on 12 September 2006. The Registrar had written to the Law Society of Singapore ("the Law Society") about Mr Ravi's absence from court on that day. CSJ tried to use that "complaint" to the Law Society to support the 12 May 2008 recusal application. He wanted to know if I had made a complaint against Mr Ravi to the Law Society and submitted that, if I had done so, it would be a ground for me to recuse myself from presiding over the Striking-Out Applications and the Assessment Hearing. I asked Mr Ravi to tell me under what section of the Legal Profession Act (Cap 161, 2001 Rev Ed) the Law Society had written to him. He was not ready with the information, which I found surprising. Be that as it may, I made it clear that as I had not made a complaint to the Law Society under s 85(3) of the Legal Profession Act, if the Law Society had written to Mr Ravi pursuant to the Registrar's letter, then, by logical deduction, the Law Society must have done so pursuant to s 85(2) of that Act.

231 In this regard, I should also state that Woo J's decision in *Chee Siok Chin (No 1)* ([145] *supra*) did not assist CSJ's contention as set out in the preceding paragraph at all. In that case, Woo J had expressly stated (*id* at [8]) that "criticism, reprimand or a complaint of a judge [did] not *per se* disqualify the judge from hearing the same counsel in a separate case, or even [in] the same case, unless there [was] personal animosity on the part of the judge towards counsel". No such animosity was suggested in the present proceedings. If anything, the mere fact that the incident giving rise to the "complaint" against Mr Ravi arose in proceedings over which I was presiding (*ie*, the hearing of the Summary Judgment Applications on 12 September 2006) was too tenuous and speculative a basis for me to recuse myself from dealing with the Striking-Out Applications and the Assessment Hearing. In my view, a good deal more is required to establish apparent bias on the part of the judge.

232 At the outset of the hearing on 12 May 2008, Mr Ravi had informed the court that the SDP was not making the 12 May 2008 recusal application; the applicants were CSJ and CSC only. That being the case, Mr Singh rightly pointed out that, as the above "complaint" involved Mr Ravi, who was acting only for the SDP in the Striking-Out Applications and the Assessment Hearing, CSC and CSJ had no business complaining about alleged bias since Mr Ravi was not acting for them and since, more pertinently, the SDP was not asking for a recusal. In other words, Mr Singh's point was that if the SDP, as Mr Ravi's client, did not have any concern about my presiding over the Striking-Out Applications and the Assessment Hearing, CSC and CSJ could not use my alleged bias against Mr Ravi as a reason to make the 12 May 2008 recusal application. A shift in CSC's and CSJ's stance then occurred after the lunch break. Before the adjournment for lunch, CSJ asked for time to confer with Mr Ravi *vis-à-vis* the 12 May 2008 recusal application. After lunch, CSJ informed the court that the SDP was making that application alongside CSJ and CSC, but Mr Ravi himself was not making the application on behalf of the SDP. I make two points by way of observations. First, the SDP was represented by counsel. Thus, if the SDP wanted to be a party to the 12 May 2008 recusal application, Mr Ravi must make the appropriate application on behalf of the SDP. It was not for CSJ to take over that role from Mr Ravi, who was still the SDP's counsel on record. Second, the impression given was that Mr Ravi, as counsel, could have made such an application on his own behalf if he had wanted to. If that is right, it would mean that Mr Ravi could take a course of action that was independent of his client's position. That seemed to me to be odd and, as a matter of practical reality, it is unlikely to find instances of counsel taking a separate and different course on his own behalf distinct from his client's course of action. Counsel is quite often described, not in a pejorative sense, as the "hired gun". In a hard-fought case, directness and sometimes asperity are commonly displayed, and, in the course of a trial or a hearing, the relationship between the judge and counsel (just like the relationship between the judge and a litigant in person (see [220] above)) could become strained, with both sides betraying some signs of emotion. Assuming, for the sake of argument, that what occurs between the judge and counsel can be interpreted as potentially amounting to apparent bias, a recusal application, if necessary, would invariably be made on behalf of the client as it would be the client, and not counsel personally, who has a vested interest in the outcome of the case and,

thus, in having the case tried by an impartial judge. In the scheme of things, there is hardly any purpose and reason for counsel to apply on his own behalf for a judge to disqualify himself.

233 For the reasons stated at [228]–[232] above, I dismissed the 12 May 2008 recusal application with costs to be taxed.

234 I turn now to the fourth and final oral application made by the Defendants on 12 May 2008, which was for the Striking-Out Applications to be adjourned for seven days. That application rested on the ground that CSC, CSJ and Mr Ravi needed more time to digest the written submissions and authorities tendered by Mr Singh in support of the Striking-Out Applications. These written submissions and authorities were served on CSC, CSJ and Mr Ravi on the evening of Friday, 9 May 2008. In my view, the Defendants' request for a seven-day adjournment was a last-minute application as the Defendants had been served with the Striking-Out Applications as early as 11 April 2008. By asking the court to adjourn the Striking-Out Applications for seven days, the Defendants were in effect asking the court to vacate the dates set aside for the Assessment Hearing. That request, if granted, would result in the usual attendant inconvenience to the other party (*viz*, the Plaintiffs) and their witnesses. Notwithstanding those matters, in exercise of the court's discretion, I granted the adjournment sought and re-scheduled the hearing of the Striking-Out Applications for 22 May 2008 instead. I granted the adjournment to, *inter alia*, give the Defendants more time to go through the written submissions and authorities tendered by Mr Singh as well as to give them (since it was raised at the hearing on 12 May 2008) a further opportunity to assess their respective positions should the Plaintiffs succeed in the Striking-Out Applications. I should also point out that, given that the hearing of the Striking-Out Applications was an integral part of the Assessment Hearing, it was accepted by the Defendants that appeals, if any, relating to their various oral applications and the Striking-Out Applications would be taken up all at one go together with the court's eventual ruling on the award of damages. The Defendants' acceptance of this particular point was a weighty consideration for, as at 12 May 2008, 20 months had already lapsed since the Summary Judgments were obtained on 12 September 2006 (in the case of the SDP, there had been an even longer lapse of time as the interlocutory judgment against it was entered on 7 June 2006).

The oral applications made on 22 May 2008

235 At the adjourned hearing on 22 May 2008, CSJ again asked for the Striking-Out Applications to be heard in open court. This oral application was made on account of an alleged dispute over a statement which the press had attributed to Mr Ravi, namely, a statement that the court had said that latitude would be given to the Defendants in cross-examination at the Assessment Hearing. Drew & Napier LLC disagreed, stating that the court had not said such a thing. By way of background, after an adjournment of the Striking-Out Applications was granted on 12 May 2008, some time was spent finding suitable dates for the hearing of those applications and the Assessment Hearing. Along the way, CSJ queried whether cross-examination of the Plaintiffs would still take place if the Defendants' AEICs were struck out. For convenience, the relevant portions of the court's notes of arguments for the hearing on 12 May 2008 ("the 12 May 2008 notes of arguments") are reproduced below:

> Ct: Dr Chee, I'm going to rule now. I'm going to allow the application for adjournment. I do not see this as one of a split hearing *i.e*. striking out and Assessment of Damages [taking] place on different dates. As for duration of adjournment, I will hear parties after taking instructions on availability of witnesses.

DS [Mr Singh]: Would it be correct to understand that the [Assessment Hearing] will be this week or the next week?

Ct: Yes.

MR [Mr Ravi]: 15 mins?

Ct: Yes[.] Stand down. 5.05pm

Resume: 5.25pm

Ct: Yes, what's the scheduling like? Just to let you know, I checked with the [R]egistry and I'll be able to hear this on the 20th. Registry tells me they can fix this case for next week.

CSJ: What do you mean by no split?

Ct: For the purpose of adjournment, the striking out and Assessment of Damages are to be heard as a whole because Mr Ravi informed me that he took instructions and any appeal will be heard together.

CSJ: If striking out fails we continue?

Ct: Yes.

CSJ: If the [P]laintiffs' application to strike out succeeds then it will affect our defence. If our affidavits are struck out then what about our right to appeal.

DS: This was what I was talking about earlier. Mr Ravi said he had spoken to Dr Chee and Ms Chee about it.

CSJ: No. The things were going too fast. Mr Singh should have answered the question; don't put the blame back on us.

Ct: When I granted the adjournment, my ruling was that this was not to be a split case.

CSJ: So you are not taking [the] point that [the Striking-Out] [A]pplications shouldn't be [heard] on the same day?

Ct: Yes.

CSJ: So if [the Defendants' AEICs are] struck out we're left at a disability.

Ct: This is my ruling.

CSJ: Your ruling must make sense.

Ct: It makes eminent sense in light of what Mr Ravi said.

CSJ: No, you heard Ravi but you didn't hear us.

DS: If Mr Ravi is saying now that his instructions are incorrect then I ask [your Honour] to reconsider your decision on adjournment because this was an important point.

Ct: Yes, it was important.

MR: My client is concerned about the effect on the cross-examination in [the] absence of the affidavits. I've been trying to explain that they can still cross-examine on the [Plaintiffs'] affidavits.

CSJ: Plaintiffs' counsel will say that the cross-examination of the [P]laintiffs must not in anyway put the positing [*sic*] in our affidavits. This is where our concern is, it's a legitimate one. It comes back to the point why Mr Singh refuses to inform the court why the striking out application [*ie*, the Striking-Out Applications] must be held on the same day as the Assessment of Damages.

Ct: The important point is what Mr Ravi told me earlier. That he has taken instructions and that was that the issues on appeal will be dealt with collectively. He said that it will not be a situation where the [D]efendants are seeking to appeal one application on its own.

CSJ: *As long as we get the assurance that if the striking out of our affidavits is successful and we go into the Assessment of Damages, [we] can still cross-examine the [P]laintiffs.*

Ct: *Yes on the [P]laintiffs' case based on their AEICs.*

MR: *I did assure them that latitude will be given.*

Ct: What's the scheduling like now?

[emphasis added]

236 After the hearing on 12 May 2008, CSJ wrote on the SDP's website that it was clearly recorded that the Defendants would be given latitude to cross-examine the Plaintiffs. The version then changed on 22 May 2008, when it was said that I had on 12 May 2008 nodded in agreement in response to Mr Ravi's remark that "latitude [would] be given" to the Defendants in cross-examination ("Mr Ravi's remark on cross-examination"). I took the trouble to explain that, given Mr Singh's assertion about the unique rules governing the admissibility of evidence in mitigation of damages and given what I had said in court on 12 May 2008 as recorded in the 12 May 2008 notes of arguments, I would not have agreed that latitude would be given to the Defendants to cross-examine.

237 I was certainly not conscious that I had nodded in affirmation to or in agreement with Mr Ravi's remark on cross-examination on 12 May 2008 as the Defendants claimed. Mr Singh informed me that neither he nor his team members had seen me nod. Frankly, the Defendants were clutching at straws in pursuing this point. A nod may be interpreted as an affirmation, but it must first and foremost be seen and understood in its proper context and, in the present case, particularly in the light of the prevailing situation on 12 May 2008 and the question that was asked. A nod may simply be a signal from the judge to counsel to move on. It must be remembered that, at the time of the exchange set out in the passage reproduced at [235] above, the parties were in the midst of finding dates that would accommodate the schedule of all the litigants, their counsel and the witnesses called by the Plaintiffs. In any case, the alleged nod could not be interpreted as an affirmative response to Mr Ravi's remark on cross-examination given that I had said earlier that the cross-examination of the Plaintiffs would be confined to "the [P]laintiffs' case based on their AEICs" (see the passage reproduced at [235] above).

238 Dissatisfied with the explanation which I gave on 22 May 2008 (see [236] above), CSC repeated her lack of confidence in the court's impartiality. She commented that it troubled her that a nod could not be taken as a sign of affirmation, and renewed the Defendants' application that I recuse myself from presiding over the Striking-Out Applications and the Assessment Hearing. Mr Singh rightly submitted that what had happened in court that morning (*ie*, the morning of 22 May 2008) was nothing more than a clarification, based on the 12 May 2008 notes of arguments, of the proceedings that had occurred on 12 May 2008, which had taken a turn that CSC did not like. An adverse clarification can never, as Mr Singh emphasised, amount to bias. The Defendants' application on 22 May 2008 that I recuse myself from presiding over the Striking-Out Applications and the Assessment Hearing was based on a nod which I had no recollection of. Such a tenuous ground for making a recusal application was bound to be rejected, and I accordingly dismissed the Defendants' renewed recusal application.

239 The Defendants then renewed their application for the Striking-Out Applications to be heard in open court. I dismissed the application because no valid grounds were put forward. As Mr Singh rightly pointed out, disagreement between the parties as to what transpired at a hearing in chambers is never a good reason to then have the matter adjourned from chambers to open court instead since the matter can usually be resolved, as was the case here, by reference to the judge's notes of the hearing in question.

240 CSJ next asked, via the audio-recording application (see [5] above), that the proceedings in chambers *vis-à-vis* the Striking-Out Applications be recorded. That application, which was being made for the first time, would – if granted – entail holding the hearing in a room with audio-recording facilities (and *not*, as Mr Singh had initially understood, with transcribers from the Supreme Court's official transcription service provider sitting in). I acceded to CSJ's application, being mindful that, up to that point of the proceedings on 22 May 2008, the hearing of the Striking-Out Applications had not started yet and the whole morning had been spent on the Defendants' various oral applications.

241 Initially, Mr Singh opposed the audio-recording application on the ground that there was no basis for it since there was no suggestion that proper notes of the hearing in chambers could not be taken. He pointed out that the Defendants might want the audio recording of the hearing in chambers for a collateral purpose, namely, to use the information in the audio recording in contempt of court and to scandalise both this court in particular and the Judiciary as a whole, thereby bringing our judicial system into disrepute. Mr Singh submitted that it was not that the Defendants wanted the audio recording to assist them in their arguments. He added that his concern was mainly with the delay that would result if the audio-recording application were granted. CSJ said that there was no truth to Mr Singh's allegations that the audio-recording application was intended to cast aspersions on the

Judiciary. He said that having the hearing in chambers audio-recorded would save time and avoid future misunderstanding. I did not accept that an audio recording of the proceedings would resolve the controversy generated by my alleged nod of the head on 12 May 2008 (see [236]–[237] above). The 12 May 2008 notes of arguments were clear and there were no ambiguities to be resolved save for the alleged ambiguity as to whether I had nodded in agreement to Mr Ravi's remark on cross-examination (reproduced at [235] above), a point which the Defendants persisted in pursuing. Be that as it may, since Mr Singh's main concern (namely, that the arrangements for an audio recording of the hearing of the Striking-Out Applications would further delay the proceedings) would not in fact materialise, I allowed the audio-recording application. I made it clear, however, that although the Striking-Out Applications would consequently be heard in a courtroom, the hearing there would still be treated as a hearing in chambers.

242 There was one other oral application which CSJ wanted to re-open, namely, the issue of a "split" hearing of the Striking-Out Applications and the assessment of damages (see the extract from the 12 May 2008 notes of arguments reproduced at [235] above). Mr Ravi sensibly suggested that this request be made later, if necessary, after the hearing of the Striking-Out Applications. By this time, the entire morning of 22 May 2008 had gone. The hearing of the Striking-Out Applications did not start until close to 3.00pm that day. As it turned out, the hearing of those applications eventually concluded only on the morning of 26 May 2008. The Assessment Hearing started thereafter at 2.30pm on the same afternoon.

The oral applications made on 26 May 2008

243 The hearing of the Striking-Out Applications took place on 22, 23 and 26 May 2008. After the Defendants' AEICs were ordered to be struck out, CSJ applied for an adjournment of the Assessment Hearing so that the Defendants could appeal against the striking-out orders as well as consider the position which they should adopt at the Assessment Hearing given that they now had no affidavits of evidence-in-chief. The Defendants asked for a couple of weeks to prepare for their cross-examination of the Plaintiffs. I did not allow this application. It is common for objections to affidavits of evidence-in-chief to be taken at a trial without allowing time for an intervening appeal that disrupts the trial process. As Mr Singh rightly pointed out, it is integral to the trial process that the trial judge rules on objections to affidavit evidence. Any appeal against a particular court order excluding evidence does not operate as a stay of the proceedings, and, as is often the case, such an appeal is usually taken at one go together with an appeal against the decision on the substantive action if the outcome of that decision is adverse to the party who wishes to pursue the former appeal (*ie*, the appeal against the order striking out evidence). At worst, if the excluded evidence is found on appeal to be crucial, a re-trial may be ordered by the appellate court. I was not persuaded by CSJ's argument that the Defendants needed time to consider how to cross-examine the Plaintiffs without the Defendants' AEICs, which was different from saying that the Defendants wanted to adjourn the Assessment Hearing so that they could consider making an appeal against my striking-out orders. The hearing on 12 May 2008 had already earlier been vacated upon the Defendants' successful application for an adjournment then. At that same hearing (*ie*, the hearing on 12 May 2008), the effect of a striking out of the Defendants' AEICs on the cross-examination of the Plaintiffs had already been clarified. At that point in time, it was clear that the Assessment Hearing was to follow immediately after the hearing of the Striking-Out Applications. Besides, by the time the hearing of the Striking-Out Applications concluded on the morning of 26 May 2008, the Defendants had already had a further ten days prepare for the Assessment Hearing. In my view, there was no compelling reason to again vacate or adjourn for a second time the Assessment Hearing, which was scheduled to start at 2.30pm on 26 May 2008. I should add that, at the commencement of the Assessment Hearing proper, CSJ again tried to have the assessment of damages adjourned, citing the same reasons as those which he had earlier given in chambers. When his application was turned down, CSC stepped in to seek an

adjournment. She declared that she was feeling poorly from an infection that had caused her face to become swollen, and wanted the afternoon to rest as well as get some remedy for her condition. Mr Singh, objecting to the application, reminded the court that CSC had earlier in the morning informed that court that she was on medication for her condition and had also sought the court's indulgence to be permitted to take short breaks so that she could take her medication. Mr Singh also pointed out that CSC had not tendered any medical certificate to attest to her alleged inability to attend court. Seeing that CSC would not be required to be on her feet that afternoon and that the Assessment Hearing would be recorded, I decided to proceed with the Assessment Hearing in the afternoon of 26 May 2008 as scheduled. For the record, I should add that the court acceded to CSC's request for a short break in the course of Mr Ravi's cross-examination of LHL and subsequently adjourned the hearing for the day upon CSC's application to this effect made at around 5.30pm.

244 There was one other application by CSJ, which was made in open court. He asked for a direction that LKY absent himself during the cross-examination of LHL as he would be asking both of the Plaintiffs the same questions. I found that application misplaced as LKY was not a witness in Suit 261. He was in court to testify in his own action (*ie*, Suit 262) and was to take the stand after cross-examination of LHL was completed. Various journalists called by the Plaintiffs were to follow thereafter as witnesses for both of the Present Actions. This arrangement as to the order of witnesses had earlier been agreed to by the parties before a senior assistant registrar. On hearing my refusal to accede to CSJ's application, CSC protested, voicing her displeasure at the ruling that LKY could remain in the courtroom during cross-examination of LHL.

The oral applications made on 27 May 2008

245 On the morning of 27 May 2008, which was the second day of the Assessment Hearing, Mr Singh relied on the events of 26 May 2008 and the cross-examination of LHL that same afternoon (*ie*, the afternoon of 26 May 2008) to, *inter alia*, apply for a time limit to be imposed for the cross-examination of the Plaintiffs. Two reasons were advanced by Mr Singh. The first concerned case management. Mr Singh pointed out that the time which had been allotted for the Assessment Hearing as a whole had to be divided up between time spent on adducing and challenging evidence and time spent on oral submissions, and noted that Mr Ravi had said that he wanted to make his closing submissions orally. The second reason given by Mr Singh was that the present case was one where the party seeking to cross-examine was persistently dwelling on matters which were irrelevant and which were designed to insult, annoy and scandalise the witnesses being cross-examined. In such a case, it was submitted, strict timelines should be imposed by the court. I allowed Mr Singh's application. I agree that the court has the power to control and check lengthy and irrelevant cross-examination, and to ensure that the purpose of cross-examination (which is to elicit the truth of the evidence) is not defeated or frustrated as a result of cross-examination being used for an ulterior or improper purpose or as a means of insulting, harassing and annoying the witness. It seemed to me that CSJ had on 27 May 2008 every intention of continuing with his rancorous cross-examination of LHL and going into irrelevant questions of obvious political content which had nothing to do with the quantification issue, just as he had done on the previous day (*ie*, on 26 May 2008). On 26 May 2008, which was also the first day of the Assessment Hearing, CSJ had made it clear that he wanted to ask LHL many questions including "questions to do with the entire situation [that is] going on in Singapore right now".[note: 78] With the ulterior objectives of the Defendants in full view, it was proper for the court to impose a time limit for the cross-examination of the Plaintiffs. Irrelevant questions that had nothing to do with the quantification issue would be guillotined, which was in fact what ultimately happened. It is settled law that a judge has a discretionary power to control cross-examination in terms of, *inter alia*, how far the cross-examination may go and how long it may last for. It is in the interests of the administration of justice to keep a check on cross-examination for protracted and irrelevant cross-examination not only increases the costs of litigation, but also wastes time and public

resources (see Ratanlal Ranchhoddas & Dhirajlal Keshavlal Thakore, *Ratanlal & Dhirajlal's The Law of Evidence* (Wadhwa & Co, 22nd Ed, 2006) at p 1550). In a similar vein, Viscount Sankey LC in *Mechanical and General Inventions Company, Limited and Lehwess v Austin and The Austin Motor Company, Limited* [1935] AC 346, after noting that irrelevant and lengthy cross-examination did not assist the court, added to the costs of litigation and wasted public resources, went on to comment (at 359) on the need for cross-examination to be carried out with courtesy to the witness. He said (at 360):

> [A] protracted and irrelevant cross-examination ... becomes indefensible when it is conducted, as it was in this case, without restraint and without the courtesy and consideration which a witness is entitled to expect in a Court of law. It is not sufficient for the due administration of justice to have a learned, patient and impartial judge. Equally with him, the solicitors who prepare the case and the counsel who present it to the Court are taking part in the great task of doing justice between man and man.

246 What this means is that the purpose of cross-examination will be defeated by persistent irrelevant questions which do little to elicit evidence which assists the court in deciding the case at hand or to undermine the other party's case. Likewise, as was the case in the Present Actions, if cross-examination is carried out for an ulterior or improper purpose and is used as a means to insult, humiliate or harass the witness, then the court should exercise its powers to either stop the cross-examination altogether or impose a time limit on cross-examination. In *Govind v State of Madhya Pradesh* [2005] Cri LJ 1244, the High Court of Madhya Pradesh, in the context of cross-examination by the Defence of the Prosecution's witnesses in a criminal trial, said at [26]:

> It is true that the purpose of the cross-examination is to bring the truth on record and to help the Court in knowing the truth of the case, but if the purpose of the cross-examination is to harass the witness and to ask irrelevant questions, the purpose of cross-examination is defeated and frustrated. Such a lengthy cross-examination does neither help the Court either in finding the truth or in evaluating the evidence, nor [does] it [help] the accused but [instead] damages the defence case and compels the Court to record conviction of the accused persons.

247 Continuing (*id* at [27]), the court referred to its power to control cross-examination if it was too lengthy and where the process was being abused:

> The Court must also ensure that cross-examination is not made a means of [harassing] or causing humiliation to the [witness].

248 In the present case, it was obvious after the first day of the Assessment Hearing (*ie*, 26 May 2008) that the cross-examination conducted by the Defendants was replete with irrelevant questions and, further, that LHL was questioned in a discourteous, insulting and intemperate way calculated to humiliate and embarrass him on the stand. There was every reason to expect that the Defendants would adopt the same method to cross-examine LKY. I noted too that at the hearing of the Striking-Out Applications, Mr Ravi had disclosed that the Plaintiffs would be examined on the topics listed in para 8 of the Amended Defence under the section titled "Particulars of Public Interest". These topics were, however, ruled in the course of the Striking-Out Applications to have nothing at all to do with either the quantification issue or the Libel. In other words, it was clear that the Defendants, in their cross-examination of LKY, likewise intended to pursue an irrelevant line of questioning. This was an important factor in my decision to impose a time limit on the cross-examination of the Plaintiffs. In addition, the imposition of such a time limit would help to ensure that there would be enough time left for the parties to make their oral closing submissions. I accordingly ordered that the cross-examination of LHL was to be completed within one hour from the start of cross-examination on

27 May 2008 and that the cross-examination of LKY was to be limited to two hours in total. Subsequently, an extra ten minutes was added to enable CSC to pose her questions to LKY.

The oral applications made on 28 May 2008

249 The parties attended court on 28 May 2008 to make their oral closing submissions. Mr Ravi began his address with a preliminary application. He wanted this court to review and set aside the Summary Judgments as LKY had allegedly said in cross-examination that the Plaintiffs were suing as the Government and not as private individuals. In that connection, he also asked for an adjournment for the matter to be heard another day. Mr Singh explained that Mr Ravi had misunderstood LKY's evidence. LKY had not said that he was suing the Defendants for the Government. Mr Singh submitted that the law required LKY to sue as an individual; however, if LKY failed in his defamation action against the Defendants, not only he but the Government too would be damaged in terms of their reputation. I agreed with Mr Singh. Moreover, I had already ruled in the course of hearing the Summary Judgment Applications that the Plaintiffs had brought the Present Actions "not in their official capacity, but as private citizens" (see *Lee Hsien Loong (HC)* ([3] *supra*) at [35]), and there was no appeal against that particular aspect of my decision. It was too late in the day for Mr Ravi to raise in this manner the point concerning the capacity in which the Plaintiffs were suing. It was not a matter which I had the power to review. Accordingly, I dismissed the application.

Conclusion: The damages awarded for the Libel

250 To summarise, the award of damages for LHL is the sum of $330,000 and that for LKY is the sum of $280,000. As stated at [154] above, the costs of the Assessment Hearing are to be taxed on an indemnity basis and paid by the Defendants to the Plaintiffs.

Annex A: The charge against CSC

The second defendant in the conduct of her defence did act in a manner which scandalized the Court, adversely affected the administration of justice and impugned the dignity and authority of the Court, by way of the following actions:

(1) The second defendant consistently disregarded and disobeyed the Court's directions to desist from asking irrelevant questions during cross-examination of the Plaintiffs' witnesses, and subsequently interrupted the Court while the Court was enforcing such directions.

(i) At around 11:44 am on 27 May 2008, during the cross-examination of Mr Lee Hsien Loong, the second defendant ignored repeated directions by the Court to move to the next question as her question had been disallowed.

(ii) At around 3:06 pm on 27 May 2008, during the cross-examination of Mr Lee Kuan Yew, the second defendant repeatedly ignored directions by the court to cease her questions in relation to the contents of a DVD video entitled "One Nation Under Lee", despite being told by the Court that her question was irrelevant.

(2) The second defendant also scandalized and impugned the dignity of the Court on the following instances:

(i) At around 4:10 pm on 26 May 2008, following the third defendant's application for

Mr Lee Kuan Yew to leave the court room, the second defendant said "Your Honour, I cannot believe what is happening in this courtroom ever since two weeks ago', 'And I cannot believe, your Honour, that you will sit there, as a justice of law, and allow this to happen.'. Subsequently, the second defendant said 'your rulings have eroded my confidence in my being given a fair trial in your court and which is why, twice – twice – I had asked for you to recuse yourself. You had refused, and now you've allowed this – this pitiful charade to happen". The second defendant concluded by stating "Your Honour, you are in charge of this court. You profess to uphold justice. Please, I ask you, to not just have those in mere words, but really, to practice this upholding of justice as a Supreme Court Judge."

(ii) At around 10:40 am on 27 May 2008, the second defendant said to the Court, "you already crippled us by not giving us a trial, at the assessment of damages, and then you further crippled us by allowing the striking out of our defence. And then, when Mr Ravi told you that he explained to the both of us, second and third defendants, that you will be giving us the latitude to cross-examine the Lees, you nodded your head, but you say you don't remember doing that.' Further, the second defendant then said, at around 10:48 am, 'Now I ask you, your Honour – not that I have very much hope in this, but – I ask you to give us – you've already taken away our defence, you've denied us a trial, and I ask you not to limit – not to impose this guillotine which literally means chopping off – you've already chopped off our arms, our legs – what do you want next, our heads?'

(iii) At around 11:45 am on 27 May 2008, the second defendant said to the Court, 'So do I take it that every time Mr Singh objects, it is automatic that you sustain his objections? … So far every question I've asked has been objected to, and you've upheld that.'

(iv) At around 5:29 pm on 28 May 2008, the second defendant in her closing submissions, refused to address the relevant issues, and instead accused the Court of having made up its mind from the beginning of the proceedings, having denied the defendants every opportunity to defend themselves, and having dismissed the defendants' applications no matter how sound they were. The second defendant also asserted that the Court was mesmerized by what the Plaintiffs had to say, and made no attempt to hide its prejudice.

Annex B: The charge against CSJ

The third defendant in the conduct of his defence did act in a manner which scandalized the Court, adversely affected the administration of justice and impugned the dignity and authority of the Court, by way of the following actions:

(1) The third defendant consistently disregarded and disobeyed the Court's directions to desist from asking irrelevant questions during cross-examination of the Plaintiffs' witnesses, and subsequently interrupted the Court on numerous occasions while the Court was enforcing such directions.

(i) At around 11:05 am on 27 May 2008, the third defendant continued to ask Mr Lee Hsien Loong questions about 'fixing the opposition' in spite of the Court ruling that such questions were irrelevant. Following the Court's repeated warnings to the third defendant, the third defendant said to the witness 'Don't hide behind your counsel. Come out right here. Be a real leader.'

(ii) At around 2:10 pm on 27 May 2008, during the cross-examination of Mr Lee Kuan Yew, the third defendant raised questions on certain publications, the reference to which had

earlier been disallowed by the Court. When the Court directed that 'The witness is not required to answer', the third defendant continued to ask the witness and goaded the witness by saying 'So you don't want to answer that.'

(iii) At around 2:25 pm on 27 May 2008, during the cross-examination of Mr Lee Kuan Yew in relation to declassified documents from London and on Lim Chin Siong, the third defendant interrupted the Court no less than 7 times, and persisted in inviting the witness to answer the question without regard to the Court's direction to cease the line of questioning.

(iv) At around 2:40 pm on 27 May 2008, during the cross examination of Mr Lee Kuan Yew, the third defendant blatantly disregarded the Court's direction that questions on freedom of assembly were irrelevant, and continued to question the witness and repeatedly interrupted both the Court and the witness in his response.

(2) The third defendant also scandalized and impugned the dignity of the Court on the following instances:

(i) Prior to the cross-examination of Mr Lee Hsien Loong on 26 May 2008, the third defendant addressed the court and declared 'the entire process quite hideous'. 'You have chopped off our legs, lopped off our arms, and you expect us to continue with the assessment of damages?'

(ii) At around 4:00 pm on 26 May 2008, the third defendant repeatedly raised queries on the identity of certain individuals in the courtroom, even though the Court had already addressed the query.

(iii) At around 10:10 am on 27 May 2008, the third defendant repeatedly interrupted plaintiffs' counsel during his application for guillotine times to be imposed for the cross examinations of Mr Lee Hsien Loong and Mr Lee Kuan Yew on 27 May 2008. The third defendant also ignored the Court's directions to sit down and wait for his turn to address the Court on this matter.

(iv) The third defendant during the making of his closing submissions on 28 May 2008, alleged bias and a lack of impartiality by the Court in the following remarks (at pp 65–85 of the transcript of 28 May 2008):

(a) '**I couldn't make this up, even if I wanted to, how much justice has been gagged, bound up, kicked, rape, quartered, and then, at the very last moment, the dagger plunged right through.**'

(b) **'In another time and place we could perhaps be good friends; but I have to take issue with your position as a judge and what you have done, as well as the decisions you have made in this courtroom. To that extent, I will fight you with every fibre of my being for the sake of justice.'**

[emphasis in bold in original]

[note: 1]See Summons No 1574 of 2008 filed in Suit 261 and Summons No 1575 of 2008 filed in Suit 262.

[note: 2]See para 13 of the statement of claim for Suit 261 and para 17 of the statement of claim for Suit 262.

[note: 3]*Ibid*.

[note: 4]See para 26 of the statement of claim for Suit 261.

[note: 5]See para 33 of the statement of claim for Suit 262.

[note: 6]See the certified transcript of the notes of evidence ("the Certified Transcript") for the hearing on 28 May 2008 at p 65.

[note: 7]See para 10 of Mr Ravi's written submissions dated 22 May 2008 filed on behalf of the SDP ("the written submissions for the SDP").

[note: 8]*Ibid*.

[note: 9]See para 12 of the written submissions for the SDP.

[note: 10]See para 6 of the CSJ affidavit.

[note: 11]*Id* at para 7.

[note: 12]*Id* at para 8.

[note: 13]*Id* at para 11.

[note: 14]*Id* at para 16.

[note: 15]*Id* at para 18.

[note: 16]*Ibid*.

[note: 17]See para 19 of the CSJ affidavit.

[note: 18]See para 6 of the written submissions for the SDP.

[note: 19]See p 4 of the CSJ affidavit.

[note: 20]*Id* at para 21.

[note: 21]*Id* at para 22.

[note: 22]*Ibid*.

[note: 23]See para 24 of the CSJ affidavit.

[note: 24]*Id* at para 10.

[note: 25]*Id* at para 16.

[note: 26]*Id* at para 26.

[note: 27]*Id* at para 9.

[note: 28]*Id* at para 8.

[note: 29]*Id* at para 27.

[note: 30]See para 3 of the Seow affidavit.

[note: 31]*Id* at para 4.

[note: 32]*Id* at para 5.

[note: 33]*Id* at para 8.

[note: 34]*Id* at para 9.

[note: 35]*Id* at para 12.

[note: 36]*Id* at para 15.

[note: 37]*Ibid*.

[note: 38]See para 3 of the Seow affidavit.

[note: 39]*Id* at para 13.

[note: 40]*Id* at para 14.

[note: 41]*Id* at para 16.

[note: 42]*Id* at para 9.

[note: 43]*Ibid*.

[note: 44]See para 15 of the Seow affidavit.

[note: 45]*Ibid*.

[note: 46]See para 9 of the written submissions for the SDP.

[note: 47]See para 32 of LHL's affidavit of evidence-in-chief filed on 16 November 2007.

[note: 48]See the Certified Transcript for the hearing on 26 May 2008 at pp 49–50.

[note: 49]See the Certified Transcript for the hearing on 27 May 2008 at pp 95–96 and p 99.

[note: 50]See CSJ's and CSC's joint O 14 affidavit at para 44.

[note: 51] *Id* at para 47.

[note: 52] *Id* at para 48.

[note: 53] See *Isocrates: With an English Translation by George Norlin* (Jeffrey Henderson ed) (Harvard University Press) at vol 2, p 339.

[note: 54] See para 71 of the Plaintiffs' closing submissions dated 28 May 2008.

[note: 55] See the Certified Transcript for the hearing on 27 May 2008 at p 51.

[note: 56] *Id* at p 134.

[note: 57] *Id* at p 77.

[note: 58] See CSJ's letter to the Chief Justice dated 8 March 2007.

[note: 59] See the Certified Transcript for the hearing on 23 May 2008 at pp 19–20.

[note: 60] See the Certified Transcript for the hearing on 27 May 2008 at p 62.

[note: 61] *Id* at pp 73–74.

[note: 62] *Id* at p 46.

[note: 63] *Id* at pp 34, 36, 38 and 39.

[note: 64] *Id* at p 126.

[note: 65] *Id* at p 143.

[note: 66] *Id* at p 153.

[note: 67] *Id* at pp 154–155.

[note: 68] See para 102 of LHL's affidavit of evidence-in-chief filed on 16 November 2007.

[note: 69] See the notice of appeal dated 30 June 2008 filed by CSJ in Civil Appeal No 86 of 2008.

[note: 70] See the Certified Transcript for the hearing on 28 May 2008 at pp 111–112.

[note: 71] See the Certified Transcript for the hearing on 27 May 2008 at p 157.

[note: 72] See the Certified Transcript for the hearing on 28 May 2008 at p 85.

[note: 73] See the Certified Transcript for the hearing on 26 May 2008 at p 5.

[note: 74] *Id* at p 7.

[note: 75] See the Certified Transcript for the hearing on 28 May 2008 at pp 64–65.

[note: 76] *Id* at p 85.

[note: 77]See the Certified Transcript for the hearing on 2 June 2008 at p 14.

[note: 78]See the Certified Transcript for the hearing on 26 May 2008 at p 14.