IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 56

Originating Application No 3 of 2022

Between

Singapore Democratic Party

… *Applicant*

And

Attorney-General

… *Respondent*

In the matter of Originating Summons No 856 of 2020

Between

Singapore Democratic Party

… *Appellant*

And

Attorney-General

… *Respondent*

JUDGMENT

[Civil Procedure — Appeals — Permission]

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v
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Tay Yong Kwang JCA and Steven Chong JCA
7 June 2022

25 July 2022 Judgment without an oral hearing.

Tay Yong Kwang JCA (delivering the judgment of the court):

Introduction

1 This originating application arises out of the issuance of a Correction Direction ("CD") to the Singapore Democratic Party ("the SDP") under the Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) ("the POFMA") in respect of a statement it had published on its Facebook page. The SDP applied unsuccessfully to the relevant Minister to cancel the CD. Thereafter, the SDP appealed to the High Court under s 17 of the POFMA to set aside the CD ("the OS"). The High Court judge ("the Judge") dismissed the OS in *Singapore Democratic Party v Attorney-General* [2022] SGHC 100 ("the Judgment") and declined to set aside the CD. The SDP then filed the present originating application for permission to appeal to this court against the Judge's decision.

2 Having considered both parties' written submissions, we do not think it is necessary to have an oral hearing in court. For the reasons set out in this judgment, we dismiss the SDP's application for permission to appeal.

The factual background

The relevant publications and the CD issued to the SDP

3 We begin by outlining the relevant publications which form the background to the CD issued to the SDP.

4 On 10 April 2018, the then-Chief Executive Officer of the Housing & Development Board ("the HDB"), Dr Cheong Koon Hean ("Dr Cheong"), delivered a lecture in the IPS-Nathan Lecture Series ("the IPS Lecture"). The relevant portion of the written script of that lecture stated as follows ("Dr Cheong's Statement"):[1]

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

5 On 20 April 2018, a Straits Times forum letter from one Mr Cheang Peng Wah was published ("Mr Cheang's Forum Letter"). Mr Cheang's Forum Letter referred to Dr Cheong's remarks at the IPS Lecture and the relevant portion stated as follows:[2]

> **ALARMED BY POPULATION FIGURES**
>
> Housing Board chief executive Cheong Koon Hean, in her IPS-Nathan lecture on April 10 entitled 'Anticipating Our Urban Future – Trends, Threats And Transformation', said that Singapore's population density would increase from 11,000

[1] Applicant's Bundle of Documents ("ABOD"), Tab 1 at p 6.

[2] ABOD, Tab 2 at p 11.

> people per sq km to 13,700 people per sq km between now and 2030.
>
> This is alarming. As Singapore's land area is a mere 720 sq km, does this mean that our population size could go up to 9,864,000, or nearly 10 million, by 2030?
>
> …

6 On 24 April 2018, a letter by Mr Jaffrey Aw – the Director (Strategic Planning) of the HDB – was published in the Straits Times ("Mr Aw's Letter"). Mr Aw's Letter read as follows:[3]

> **Living density different from population density**
>
> We refer to Mr Cheang Peng Wah's letter (Alarmed by population figures; April 20).
>
> Housing Board chief executive Cheong Koon Hean's lecture was about how Singapore can anticipate its urban future and develop "liveable density".
>
> *The figures cited were, hence, on living density, and not population density.*
>
> Living density takes into account only the land available for urban areas, and excludes land used for ports, airports, defence and utilities, among others.
>
> *It would be inaccurate to extrapolate the population size from the living density figure.*
>
> [emphasis added]

7 On 3 July 2020, as part of its campaign in the 2020 Singapore Parliamentary General Elections, the SDP published a press release on its Facebook page titled "10 million population" ("the SDP Article"). The key part of the SDP Article stated:[4]

> Also, the HDB chief executive Cheong Koon Hean said that Singapore's population density would increase from 11,000 people per sq km to 13,700 people per sq km between now and

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[3] ABOD, Tab 2 at p 8; Respondent's Bundle of Documents, Tab 3 at p 7.

[4] ABOD, Tab 3 at p 10.

> 2030. Given our land area, this means that our population would go up to nearly 10 million by 2030 (http://www.straitstimes.com/forum/excerpts-from-readers-letters).

8 The hyperlink at the end of that paragraph referred the reader to Mr Cheang's Forum Letter.

9 On 4 July 2020, the Alternate Authority for the Minister for National Development ("the Minister") issued the CD to the SDP pursuant to s 11 of the POFMA. The CD identified the statement in the SDP Article quoted at [7] above ("the Subject Statement") as a false statement of fact which the SDP was communicating in Singapore and directed the SDP to insert a correction notice in the specified form at the top of the SDP Article by 5 July 2020.[5]

Procedural history

10 On 17 August 2020, the SDP applied to the Minister to cancel the CD. On 19 August 2020, the Minister refused the application. On 2 September 2020, the SDP filed the OS, seeking to set aside the CD on various grounds under s 17 of the POFMA. In particular, the SDP argued that the Subject Statement was a statement of opinion which was not covered by the POFMA and, in the alternative, that it was not a false statement of fact.[6] Initially, the SDP also contended that the CD breached Art 14 of the Constitution of the Republic of Singapore (1985 Rev Ed) (see the Judgment at [7]).

11 At the first hearing of the OS on 11 September 2020, the Judge ordered the matter to be adjourned pending the outcome of two appeals before this court where substantially similar arguments regarding the constitutionality of the

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5 ABOD, Tab 4 at pp 14–15.

6 Applicant's Written Submissions ("AWS") at para 5.

POFMA had been made. The Judge also dismissed the SDP's preliminary oral application for the OS to be heard in open court. The Judge directed that it be heard in chambers.[7]

12 The judgment in respect of the said pending appeals, *The Online Citizen Pte Ltd v Attorney-General and another appeal and other matters* [2021] 2 SLR 1358 ("*TOC*"), was delivered on 8 October 2021. In that judgment, this court upheld the constitutionality of the POFMA and ruled on the applicable burden and standard of proof in applications under s 17 of the POFMA. Consequently, counsel for the SDP indicated that it would not be pursuing its arguments on these points (see the Judgment at [7]). In *TOC* (at [163]), this court also set out a five-step analytical framework for determining whether a direction made under Part 3 of the POFMA (which includes CDs issued under s 11 of the POFMA) may be set aside under ss 17(5)(*a*) and/or 17(5)(*b*) of the POFMA ("the *TOC* Framework"):

> (a) First, the court should determine the Minister's intended meaning in respect of the subject statement that he has identified in the relevant direction. It is the subject statement as understood according to the Minister's intended meaning that the court is concerned with under the second to fifth steps of the *TOC* Framework.
>
> (b) Second, the court should determine whether the subject material makes or contains the subject statement identified by the Minister.
>
> (c) Third, the court should determine whether the identified subject statement is a "statement of fact" as defined in s 2(2)(*a*) of the POFMA,

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7 AWS at para 6.

in the sense that a reasonable person would consider it to be a representation of fact. An objective approach applies in this regard.

(d) Fourth, the court should determine (on an objective approach) whether the identified subject statement is "false" in the sense explained in s 2(2)(*b*) of the POFMA.

(e) Fifth, the court should consider whether the identified subject statement has been, or is being, communicated in Singapore.

13 On 28 March 2022, the Judge heard the OS on its merits.

The Judge's decision

14 In his Judgment issued on 10 May 2022, the Judge first set out his reasons for dismissing the SDP's preliminary application for the OS to be heard in open court. The Judge noted that the default starting position for all originating summonses, as set out in O 28 r 2 of the Rules of Court (2014 Rev Ed) ("the ROC 2014"), was that they should be heard in chambers. The POFMA did not exclude the application of this provision or specify a different starting position for applications under s 17 of the POFMA. The question was therefore whether special reasons existed to warrant an open court hearing. The Judge found that no such reasons existed. Accordingly, the Judge dismissed this preliminary application (see the Judgment at [15], [26] and [27]).

15 The Judge then applied the *TOC* Framework to the SDP's substantive application to set aside the CD under s 17(5) of the POFMA. The Judge's findings in respect of the first, second and fifth steps of the *TOC* Framework are not in issue here. For the purposes of this application, the key portions of the Judge's decision relate to the third and fourth steps of the *TOC* Framework. At

the third step, the Judge found that both sentences of the Subject Statement purported to be a report of Dr Cheong's Statement and that both were statements of fact (see the Judgment at [60] and [63]). At the fourth step, the Judge held that the Subject Statement was false for two reasons (see the Judgment at [67] and [73]–[83]):

> (a) First, the SDP had chosen to steer away from Mr Aw's Letter which made clear that the figures in Dr Cheong's Statement pertained to living density (which took into account only the land available for urban areas) and not population density. The Judge inferred from the evidence before him that the SDP was aware of Mr Aw's Letter at all material times and had deliberately substituted "living density" in Dr Cheong's Statement with "population density" in the SDP Article and applied Dr Cheong's figures for living density to Singapore's total land area.
>
> (b) Second, the SDP must have known that the density in Dr Cheong's Statement could not simply be applied over Singapore's total land area because, on a "back of the envelope" calculation, applying this figure to Singapore's total land area would yield a figure of 7.92 million persons at the time of the IPS Lecture. At that time, however, Singapore's population was not even 6.9 million persons.

16 Accordingly, the Judge dismissed the OS and declined to set aside the CD (see the Judgment at [93]). On 24 May 2022, the SDP filed the present application for leave to appeal against the Judge's decision.[8]

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8 CA/OA 3/2022, prayer 1.

Preliminary note on terminology

17 At the outset, we note that the present originating application is governed by the Rules of Court 2021 ("the ROC 2021") and not the revoked ROC 2014, as it was filed after 1 April 2022 (see O 1 r 2(3)(*b*) of the ROC 2021). Accordingly, the correct expression in the ROC 2021 and the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("the SCJA") is "permission" to appeal and not "leave" to appeal (see also *VXF v VXE* [2022] SGHC(A) 24 ("*VXF*") at [10]).

18 We also note that the parties' submissions here refer to "POFMA cases", "POFMA decisions" and "POFMA appeals".[9] For the avoidance of doubt, we use "POFMA appeals" in this judgment to refer specifically to appeals before a Judge of the General Division of the High Court under ss 17, 29, 35 or 44 of the POFMA and "POFMA decisions" to refer to a Judge's decision in such POFMA appeals refusing to set aside the Part 3 Direction, Part 4 Direction, Declaration or Account Restriction Direction against which the appeal was brought (in keeping with the wording of para 3(*m*) of the Fifth Schedule to the SCJA). We use "POFMA cases" more broadly to refer to the category of cases which includes "POFMA appeals" and "POFMA decisions".

The parties' submissions

The SDP's submissions

19 First, the SDP submits that permission to appeal should normally be granted in POFMA cases and should be denied only when there are exceptional circumstances. It argues that the principles set out in *Lee Kuan Yew v Tang*

[9] See AWS at paras 12–15, 21 and 23–27; Respondent's Written Submissions ("RWS") at paras 10–16 and 23.

Liang Hong and another [1997] 2 SLR(R) 862 ("*Lee Kuan Yew*") should not be applied in this context. The SDP also contends that the requirement for permission to appeal in POFMA cases (as set out in the Fifth Schedule to the SCJA) is anomalous and inconsistent with the wording of s 17(8) of the POFMA.[10]

20 Further, the SDP submits that even if the *Lee Kuan Yew* principles are applied, permission to appeal should be granted because the OS involves questions of general principle decided for the first time (which we refer to for convenience as "questions of general principle") as well as questions of importance upon which further argument and a decision of a higher tribunal would be to the public advantage ("questions of importance"). These questions, as framed by the SDP, are the following:[11]

(a) What are the principles (if any) that apply to applications for permission to appeal against POFMA decisions? ("the Permission Principles Question")

(b) When should a POFMA appeal be heard in open court? ("the Open Court Question")

(c) How should the third and fourth steps of the *TOC* Framework be applied to a situation where the subject statement is a report of a statement made by someone else? ("the Report of Statement Question")

(d) What is a statement of opinion for the purposes of the POFMA? ("the Opinion Question")

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10 AWS at paras 12 and 19–21.

11 AWS at paras 22–23.

The AG's submissions

21 The Attorney-General ("the AG") submits that permission to appeal should not be granted. First, the AG contends that the "singular well-established test" for granting permission to appeal is that one of the three grounds set out in *Lee Kuan Yew* must be satisfied and this test applies equally in POFMA cases.[12] Second, the AG submits that none of the questions framed by the SDP meets the two traditional grounds for permission to appeal relied on by the SDP as none of them is a question of general principle or a question of importance.[13]

Issues to be determined

22 Having regard to the parties' arguments before us, two issues arise for our determination in this application:

(a) what principles apply to permission to appeal applications in POFMA cases and whether permission to appeal should be granted in such cases as a matter of course; and

(b) whether permission to appeal should be granted in this case.

Our decision

Principles governing permission to appeal in POFMA cases

23 We first consider the issue of what principles should govern applications for permission to appeal in POFMA cases. Paragraph 3(*m*) of the Fifth Schedule to the SCJA provides expressly that permission is required to appeal against POFMA decisions (as defined at [18] above) made by the General Division of

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12 RWS at paras 10 and 14–16.

13 RWS at para 11.

the High Court. This is acknowledged by the SDP.[14] However, the SDP submits that permission to appeal should normally be granted in POFMA cases as a matter of course, based on three key assertions:

(a) First, the wording of s 17(8) of the POFMA was such that, when the POFMA was enacted, all POFMA decisions were appealable as of right to the Court of Appeal.[15]

(b) Second, what is now para 3(*m*) of the Fifth Schedule was introduced by the Supreme Court of Judicature (Amendment) Bill (Bill No 32/2019) ("the 2019 SCJ Amendment Bill") without any explanation and these "unexplained" and "recent" amendments are difficult to reconcile with s 17(8) of the POFMA.[16]

(c) Third, because POFMA decisions dispose of the parties' substantive rights, they ought to be appealable as of right to the Court of Appeal.[17]

Wording of s 17(8) of the POFMA

24 Section 17(8) of the POFMA, as originally enacted, read as follows:

> **Appeals to High Court**
>
> **17.**— … (8) There is such further right of appeal from a decision of the High Court under this section as exists in the case of a decision made by that Court in the exercise of its original civil jurisdiction.

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14 AWS at paras 18–19.

15 AWS at paras 12 and 17.

16 AWS at paras 18–20.

17 AWS at paras 15–16.

25 Section 17(8) of the Protection from Online Falsehoods and Manipulation Act 2019 (2020 Rev Ed), which was in force by the time the Judge decided the OS and by the time that the SDP filed this originating application, is materially identical, save that the provision now refers to "the General Division of the High Court" instead of "the High Court".

26 The SDP contends that the effect of s 17(8) was such that, at the time of the Second Reading of the Protection from Online Falsehoods and Manipulation Bill (Bill No 10/2019) on 7 May 2019, all decisions made under s 17 of the POFMA would have been appealable as of right to the Court of Appeal. It argues that this must have been Parliament's intention when the POFMA was enacted.[18]

27 We do not accept this argument. On a plain reading of s 17(8) of the POFMA, its effect was that the right of appeal from a decision under s 17 would be the same as that from decisions made by the High Court in the exercise of its original civil jurisdiction. In other words, s 17(8) made clear that s 34 and the Fourth and Fifth Schedules to the then-prevailing Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the 2007 SCJA") would apply equally to decisions made under s 17 of the POFMA. This was put beyond doubt by r 16 of the Supreme Court of Judicature (Protection from Online Falsehoods and Manipulation) Rules 2019 (No S 665) ("the POFMA Rules"), which provided expressly that appeals against POFMA decisions "may, in accordance with paragraph 1(*j*) of the Fifth Schedule to the Supreme Court of Judicature Act [which is now para 3(*m*) of the Fifth Schedule to the SCJA], be brought to the Court of Appeal only with the leave of the [High] Court or the Court of Appeal".

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[18] AWS at para 17.

The POFMA Rules first came into operation on 2 October 2019 together with the POFMA itself (see r 1 of the POFMA Rules).

28 There is therefore no basis for the SDP's contention that POFMA decisions were appealable as of right at the time the POFMA was enacted. Instead, both s 17(8) of the POFMA and r 16 of the POFMA Rules provide a clear indication that appeals against POFMA decisions were always intended to be subject to the same restrictions as appeals against decisions made by the High Court in the exercise of its original civil jurisdiction. This weighs against the SDP's suggestion that a different approach to permission to appeal was intended to be (or should be) applied to POFMA cases.

Legislative history of the Fifth Schedule to the SCJA

29 Turning to the legislative history of the Fifth Schedule, the SDP asserts that the requirement in para 3(*m*) of permission to appeal from POFMA decisions was introduced without explanation by the 2019 SCJ Amendment Bill. The SDP cites *R (on the application of Maughan) v Her Majesty's Senior Coroner for Oxfordshire* [2020] UKSC 46 at [44], where the UK Supreme Court noted that it would "be contrary to drafting conventions for a schedule to the Rules [in this case, the Coroners (Inquests) Rules 2013 (SI 2013/1616) (UK)] to be used to make what would clearly be a change of some consequence in the law". The crux of the SDP's submissions is therefore that it was inappropriate for this restriction on the right to appeal from POFMA decisions to be introduced by way of an amendment to the Fifth Schedule which – based on the Parliamentary debates on the 2019 SCJ Amendment Bill – purported to be merely procedural in nature.

30 However, a closer examination of the legislative history shows that the SDP's position is not correct. The provision that is now para 3(*m*) of the Fifth Schedule to the SCJA was first introduced as para 1(*j*) of the Fifth Schedule to the 2007 SCJA (as was in force from 2 October 2019 to 11 September 2020). It was not inserted by the 2019 SCJ Amendment Bill but by the Supreme Court of Judicature Act (Amendment of Fifth Schedule) Order 2019 (S 666/2019) with effect from 2 October 2019. This was the date of commencement of the POFMA itself: see the Protection from Online Falsehoods and Manipulation Act 2019 (Commencement) Notification 2019 at para 2. The requirement of permission to appeal against POFMA decisions has thus existed since the inception of the POFMA and indeed was introduced alongside s 17(8) of the POFMA.

31 A few days after the POFMA came into force, the 2019 SCJ Amendment Bill was read in Parliament for the first time on 7 October 2019. Clause 23 of this Bill repealed and re-enacted substantially the Fifth Schedule, renumbering para 1(*j*) of the Fifth Schedule to the 2007 SCJA as para 3(*m*) of the Fifth Schedule to the SCJA. On 5 November 2019, at the Second Reading of the 2019 SCJ Amendment Bill, the then Senior Minister of State for Law stated that the Bill would "facilitat[e] a better use of judicial resources and also introduc[e] procedural amendments to enhance the flexibility and also the efficiency of Court processes" (*Singapore Parliamentary Debates, Official Report* (5 November 2019) vol 94 (Edwin Tong Chun Fai, Senior Minister of State for Law)). The fact that these comments suggested that the relevant amendments were purely procedural in nature is readily explicable on the basis that the permission to appeal requirement for POFMA decisions was already in the Fifth Schedule and was not introduced by the 2019 SCJ Amendment Bill. There is therefore no basis for suggesting that the permission to appeal requirement was

somehow slipped into the Fifth Schedule by the 2019 SCJ Amendment Bill after the POFMA was enacted.

Substantive rights of the parties

32 The SDP also argues that POFMA decisions should be appealable as of right because such decisions dispose of the parties' substantive rights. The SDP relies on the Parliamentary debates on the Supreme Court of Judicature (Amendment) Bill (Bill No 25/2010) ("the 2010 SCJ Amendment Bill"),[19] which introduced the earliest iteration of the Fifth Schedule to the SCJA. As explained by the Senior Minister of State for Law at the material time, the 2010 SCJ Amendment Bill "streamline[d] and restrict[ed] appeals to the Court of Appeal on interlocutory matters", which would now be "categorised based on their importance to the substantive outcome of the case". However, "[t]he right to appeal all the way to the Court of Appeal [would] … remain for interlocutory applications that could affect the final outcome of the case" and "the right of appeal for substantive matters heard at first instance by the High Court remain[ed] unchanged". Thus, for example, a High Court Judge's decision to strike out a claim would be appealable to the Court of Appeal as of right because such a decision "means that the case can no longer proceed to trial and it would clearly put an end to the party's substantive rights" (*Singapore Parliamentary Debates, Official Report* (18 October 2010) vol 87 at cols 1369–1370 and 1385–1386 (Assoc Prof Ho Peng Kee, Senior Minister of State for Law)).

33 The SDP also refers to this court's decision in *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 ("*Dorsey James Michael*").[20]

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19 AWS at paras 13–14.

20 AWS at para 14.

This would be for the propositions that the Fifth Schedule was only intended to curtail rights of appeal against interlocutory orders made at the hearing of interlocutory applications and that Parliament had intended that an appeal to the Court of Appeal ought to remain as of right where a final order disposing of the parties' substantive rights was made (*Dorsey James Michael* at [52], [84] and [85]).

34 In our judgment, there is no legal rule that in cases where permission to appeal is required under the Fifth Schedule to the SCJA, permission ought to be granted where the decision below disposes of the parties' substantive rights. A similar argument was rejected recently in *VXF*, where the Appellate Division of the High Court held that the fact that a party's substantive rights were affected by the judgment below was "not a reason *per se* to grant permission to appeal" (*VXF* at [21]). In the same paragraph, the Appellate Division clarified that the decision of Woo Bih Li J (as he then was) in *Aries Telecoms (M) Bhd v ViewQwest Pte Ltd (Fiberail Sdn Bhd, third party)* [2017] 4 SLR 728 "does not stand for the proposition that where a substantive right is engaged and where permission to appeal would otherwise be necessary, it would follow that permission to appeal should be granted".

35 In this regard, a distinction ought to be drawn between restrictions relating to substantive matters as opposed to those concerning interlocutory matters on the one hand and restrictions relating to the subject matter of the intended appeal on the other hand. Thus, in *Kosui Singapore Pte Ltd v Thangavelu* [2016] 2 SLR 105 ("*Kosui*"), this court rejected the appellant's contention (made in reliance on, among other authorities, *Dorsey James Michael*) that an appeal had to lie as of right where the parties' substantive rights were concerned. Instead, where the relevant restriction on the right to appeal was a "subject-matter restriction", it was "irrelevant" that the decision in

question affected a party's substantive rights. For example, the contention that the right to appeal could not be excluded if the matter pertained to a substantive right was "plainly contradicted" by the requirement of leave to appeal against a summary decision on an interpleader summons, where the facts are agreed, under s 34(2)(*c*) of the 2007 SCJA (now para 3(*g*) of the Fifth Schedule to the SCJA) (see *Kosui* at [26] and [28]). In *Kosui* itself, the relevant subject-matter restriction was found in s 34(2)(*b*) of the 2007 SCJA (now para 3(*f*) of the Fifth Schedule to the SCJA), which stated that leave to appeal was required where "the only issue in the appeal relates to costs or fees for hearing dates" (see *Kosui* at [30]; see also *Lin Jianwei v Tung Yu-Lien Margaret and another* [2021] 2 SLR 683 ("*Lin Jianwei*") at [46]).

36 We would add that subject-matter restrictions on appeals could also exist in terms of the value of the claim in issue so that claims falling below a specified amount are appealable only with the permission of the court. This is essential for the good administration of justice.

37 Returning to the present application, para 3(*m*) of the Fifth Schedule to the SCJA (like paras 3(*f*) and 3(*g*)) plainly imposes a subject-matter restriction on the right to appeal. Consequently, it is irrelevant that decisions falling within the scope of this paragraph may dispose of the parties' substantive rights. According to the plain words of para 3(*m*), POFMA decisions listed in that paragraph are appealable only with permission.

Conclusion on the applicable principles

38 For the reasons that we have explained above, it is clear that POFMA decisions are not, and were not at any stage, appealable as of right to the Court of Appeal. Similarly, we do not accept the SDP's submissions that we should

apply different principles or a different legal test when considering applications for permission to appeal against POFMA decisions or the SDP's contention that permission to appeal should normally be granted as a matter of course. No justification has been shown for creating this special category of cases for the purpose of determining whether permission to appeal should be granted. On the contrary, both the wording of the relevant statutory provisions and their legislative history indicate that permission to appeal against POFMA decisions was intended to be subject to the same restrictions that apply in respect of non-POFMA decisions made by the General Division of the High Court.

39 We will therefore deal with the SDP's application on the basis that permission to appeal will only be granted if the SDP establishes one or more of the three well-established grounds set out in *Lee Kuan Yew* at [16] (and recently reaffirmed by this court in *Lin Jianwei* at [85]): (a) a *prima facie* case of error; (b) a question of general principle decided for the first time; or (c) a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage. As the SDP does not seek to rely on the first ground, only the second and third grounds are in issue in the present application.

Whether permission to appeal should be granted

40 We now consider whether each of the four questions framed by the SDP is a question of general principle or importance that would warrant the grant of permission to appeal in the present case.

The Permission Principles Question

41 The SDP frames the Permission Principles Question as follows: what are the principles (if any) that apply to applications for permission to appeal against POFMA decisions?[21]

42 The SDP's submissions on this point are the same as their arguments that permission to appeal should be granted in POFMA cases as a matter of course,[22] which we have dealt with above. We agree with the AG that the Permission Principles Question does not warrant the grant of permission to appeal as it is simply not a question that arises from the Judge's decision (which did not address this issue at all), nor is it one which would arise in the substantive appeal against the Judge's decision.[23] Instead, it arises in this application for permission to appeal and has already been addressed above.

The Open Court Question

43 The Open Court Question, as framed by the SDP, is: when should a POFMA appeal be heard in open court?[24]

44 As a preliminary point, we agree with the AG's submissions that the SDP is out of time to apply for permission to appeal against the Judge's decision to hear the OS in chambers. As noted at [11] above, the SDP's preliminary application for the OS to be heard in open court was dismissed by the Judge on 11 September 2020, although the Judge's detailed reasons for this decision were

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21 AWS at para 23.

22 AWS at para 24.

23 RWS at para 23.

24 AWS at para 23.

set out in the Judgment issued on 10 May 2022. This decision, which did not dispose of or determine the parties' substantive rights in the OS, was an interlocutory order at the hearing of an interlocutory application. Leave to appeal was required under what was then para 1(*h*) of the Fifth Schedule to the 2007 SCJA. Pursuant to O 56 r 3(1) of the ROC 2014, the SDP would have had to apply to the Judge for leave to appeal against this decision within seven days from the date of the Judge's order (by 18 September 2020). Even if leave was not required to appeal against this particular decision, the SDP would have had to file and serve its notice of appeal within one month from 11 September 2020, pursuant to O 57 r 4 of the ROC 2014. It did not do so. Accordingly, the Open Court Question would not arise for this court's determination in any appeal against the Judgment as the SDP is clearly out of time to pursue this point further.

45 Even if the Open Court Question is an issue to be decided in any appeal by the SDP against the Judge's decision, it is neither a question of general principle nor a question of importance. Its resolution involves the application of established principles to the specific facts of the present case (see *Lin Jianwei* at [86]).

46 The SDP contends that rr 11(*a*) and 11(*b*) of the POFMA Rules – being rules specific to the POFMA – should "take precedence" over the default position for originating summons hearings set out in O 28 r 2 of the ROC 2014 (now O 15 r 1(1) of the ROC 2021) in POFMA appeals.[25] Order 28 r 2 of the ROC 2014 stated that all originating summonses would be heard in chambers unless otherwise provided. Rule 5(1) of the POFMA Rules expressly requires appeals under ss 17, 29, 35 or 44 of the POFMA to be brought by way of

[25] AWS at para 25.

originating summons. Rules 11(*a*) and 11(*b*) of the POFMA Rules provide that the court hearing a POFMA appeal may "give such directions for the hearing of the appeal as the Court thinks fit" and "conduct the hearing of the appeal in such manner as the Court thinks fit".

47 On a plain reading of these provisions, the SDP's argument that rr 11(*a*) and 11(*b*) of the POFMA Rules should apply instead of O 28 r 2 of the ROC 2014 is unsustainable. As the Judge noted (at [26] of the Judgment), the POFMA could have excluded the application of O 28 r 2 or specified a different default position for applications under s 17 of the POFMA but that was not done. Rules 11(*a*) and 11(*b*) of the POFMA Rules do not provide for any default position as to the manner of hearing POFMA appeals. It is therefore clear that the default position set out in O 28 r 2 of the ROC 2014 applies even in respect of POFMA cases. In any event, a decision under rr 11(*a*) and 11(*b*) of the POFMA Rules would be the product of an exercise of discretion in the circumstances of each case, as evidenced by the words "as the [c]ourt thinks fit". Such judgment calls made after considering particular factual situations would not raise any question of general principle or importance (see *IW v IX* [2006] 1 SLR(R) 135 ("*IW*") at [27]–[28]).

48 Further, the legal principles regarding when a departure from the default statutory position in O 28 r 2 of the ROC 2014 would be justified are well established: the applicant seeking an open court hearing must show "special reasons" (*Chee Siok Chin v Attorney-General* [2006] 3 SLR(R) 735 ("*Chee Siok Chin*") at [7]). This was the test applied by the Judge (at [15] and [27] of the Judgment) and the SDP does not suggest that the Judge made any *prima facie* error in this regard. The SDP submits that the "special reasons" test should be reversed in the POFMA context so that POFMA appeals should be heard in

open court unless there are special reasons for them to be heard in chambers.[26] As we have indicated earlier, we see no justification for creating this special class of cases.

49 In so far as the SDP is arguing that "special reasons" for an open court hearing will always be present in POFMA cases, this argument is unsustainable. The SDP submits that "by definition, all POFMA hearings engage issues of public interest because the Minister is only entitled to issue a [CD] … if there is an issue of public interest".[27] However, this argument was expressly rejected by the Judge (at [11]–[12] of the Judgment) and again, the SDP does not contend that the Judge made a *prima facie* error on this point. Indeed, the Judge noted that counsel for the SDP had accepted that even if an issue was of public interest, that alone would not constitute a special reason for the matter to be heard in open court (see [26] of the Judgment). More fundamentally, the possibility of a general rule that it was in the public interest for particular categories of proceedings to be heard in open court was rejected with "no hesitation" by Andrew Phang JA in *Chee Siok Chin* at [7]. He noted in that case that "[t]here can be no universal or all-encompassing rule to this effect" as "[t]he facts and context of each set of proceedings will differ from case to case and the procedure in this regard cannot therefore be writ in stone".

50 Determining whether there are special reasons in a particular case for the matter to be heard in open court is therefore a fact-sensitive inquiry to which "no general answer can be given" (see *UD Trading Group Holding Pte Ltd v TA Private Capital Security Agent Limited and another* [2022] SGHC(A) 3 at

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26 AWS at para 27.

27 AWS at para 25.

[51]). Accordingly, the Open Court Question is not a question of general principle or importance which would warrant the grant of permission to appeal.

The Report of Statement Question

51 The SDP's Report of Statement Question is framed as follows: how should the third and fourth steps of the *TOC* Framework be applied to a situation where the subject statement is a report of a statement made by someone else?[28]

52 The third step of the *TOC* Framework requires the court to determine whether the subject statement identified by the Minister is a "statement of fact", which in turn is "a statement which a reasonable person seeing, hearing or otherwise perceiving it would consider to be a representation of fact" (s 2(2)(*a*) of the POFMA). This requires an objective approach in ascertaining whether the identified subject statement is a statement of fact (*TOC* at [158] and [163(c)]). The fourth step of the *TOC* Framework then requires the court to determine whether the identified subject statement, as understood according to the Minister's intended meaning, is "false" in the sense of being "false or misleading, whether wholly or in part, and whether on its own or in the context in which it appears" (s 2(2)(*b*) of the POFMA). This also requires an objective approach and it is thus not relevant whether the person communicating the subject statement believes it to be true (*TOC* at [159] and [163(d)]).

53 In the present case, the relevant inquiry at the third step of the *TOC* Framework is whether the Subject Statement is, objectively, a statement of fact. Applying the *TOC* principles, the Judge concluded that both sentences of the Subject Statement purported to be a report of what Dr Cheong had said in

[28] AWS at paras 23 and 28.

Dr Cheong's Statement and that both were therefore statements of fact (see the Judgment at [60]). The Judge also held that the Subject Statement was a false statement of fact for the reasons summarised at [15] above. Moreover, because the Subject Statement purported to be an accurate report of Dr Cheong's Statement, it should have taken the clarification in Mr Aw's Letter into account, as this was published in response to Mr Cheang's Forum Letter on which the SDP Article was premised (see the Judgment at [85]).

54 The SDP does not argue that the Judge made a *prima facie* error in arriving at the conclusions above.[29] Instead, the SDP's contention is that in cases where the identified subject statement is a report of a statement made by someone else, the third and fourth steps of the *TOC* Framework should be approached differently, such that the relevant question is whether the statement made by the original statement maker (here, Dr Cheong) and the statement made by the party who reports that statement and receives the CD (here, the SDP) "reasonably could be taken to mean the same thing".[30] Applying this proposed approach, the SDP submits that since "living density" and "population density" might reasonably be taken to mean the same thing, Dr Cheong's Statement was reasonably construed to mean that Singapore's population density would increase from 11,000 people *per* sq km to 13,700 people *per* sq km between then and 2030. Accordingly, the Subject Statement was not false, notwithstanding that Mr Aw's Letter may have provided an "alternative interpretation" of what Dr Cheong meant and "purport[ed] to correct" what she said.[31]

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29 RWS at para 33.

30 AWS at paras 29–32.

31 AWS at paras 29 and 33–36.

55 We are unable to accept the SDP's argument. At the third step of the *TOC* Framework, the statement of fact made by the Subject Statement was that it reported what had in fact been said in Dr Cheong's Statement. At the fourth step of the *TOC* Framework, this statement of fact was false given that Dr Cheong's Statement had referred to Singapore's "living density" (see [4] above).[32] Mr Aw's Letter then clarified that the figures cited by Dr Cheong related to "living density" rather than "population density" and explained the key difference between these two terms for the purposes of calculating population size. For this reason, the Subject Statement, viewed objectively, was false or misleading. Even if it was reasonable for the SDP to take "living density" and "population density" to mean the same thing, this is immaterial. It is not relevant that the SDP believed subjectively that the Subject Statement was an accurate report of Dr Cheong's Statement if the Subject Statement was objectively a false or misleading report of the same (see *TOC* at [159]).

56 The Report of Statement Question is therefore not a question of general principle or importance that would arise in an appeal against the Judge's decision. The issues of whether a subject statement which is a report of a statement made by someone else is a "statement of fact" and whether that statement of fact is "false" can be answered by an application of the principles set out at the third and fourth steps of the *TOC* Framework and no further explanation is needed.

The Opinion Question

57 The final question framed by the SDP is the Opinion Question: what is a statement of opinion (as opposed to a statement of fact) for the purposes of the

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[32] RWS at paras 32(b)–32(c).

POFMA?[33] The SDP submits that an important issue arising from the Judge's decision is "what formulation of words is necessary to mark a statement as an opinion for the purposes of [the] POFMA" and "how statements may be identified as opinion".[34] The key part of the Subject Statement in this regard is the second sentence – "Given our land area, this means that our population would go up to nearly 10 million by 2030" – which the SDP contends demonstrates a deductive process and marks the Subject Statement as one of opinion rather than fact.[35] The Judge, however, held that this second sentence was not merely the SDP's opinion of what Dr Cheong's Statement would mean. Instead, it was a statement of fact because it purported to be a report of what Dr Cheong's Statement had said in fact (see the Judgment at [60]).

58 In our view, the Opinion Question is not a question of general principle or importance because its resolution turns ultimately on the specific facts of each case. No general answer, much less any particular "formulation of words", can be prescribed. Although the POFMA does not define the phrase "statement of opinion", the key phrase "statement of fact" is defined in s 2(2)(*a*) of the POFMA (as set out at [52] above), which – as the Court of Appeal clarified in *TOC* at [158] – requires the court to take an objective approach in ascertaining whether the identified subject statement falls within that definition. As the AG submits, the question of how a particular statement should be construed is a question of fact and there can be no set formula because it depends on the specific facts and context.[36] The Opinion Question is therefore not a question of general principle or importance (see *IW* at [27]–[28]).

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33 AWS at para 23.

34 AWS at para 37.

35 AWS at para 38.

36 RWS at para 38.

59 The final point which the SDP relies on as raising a question of general principle or importance is "the construction of paragraphs 6B(xiii) and 6B(13) of the Ministry of Law's paper titled '*How the Protection from Online Falsehoods and Manipulation Act applies*'" ("the MinLaw Paper").[37] These paragraphs of the MinLaw Paper provide the following illustration of the distinction between a statement of opinion and a statement of fact:

> (xiii) N states that nine out of 10 jobs in Singapore went to foreigners, and sets out his methodology based on certain data that he refers to. The fact that the data is incomplete does not change the fact that this is a statement of opinion.
>
> …
>
> However, … if:
>
> …
>
> (13) In the case of (xiii) above: N cites data that is fabricated, N's statement is a false statement of fact.

60 The SDP contends that this court's guidance on what amounts to "fabricated" data would be in the public's interest and that if the meaning of certain data is disputed, "reliance on one meaning of it ought not to render that data fabricated".[38] However, the question of how these illustrations should be construed would not arise for determination on appeal. It was not contended that the Subject Statement was based on either "incomplete" or "fabricated" data and that it therefore does not fall within the scope of either para B(xiii) or para B(13) of the MinLaw Paper. Further, the Judge did not rely on these illustrations in arriving at his conclusion, based on all the circumstances of the case, that the Subject Statement was a statement of fact.

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37 AWS at para 41; Applicant's Bundle of Authorities, Tab 16.

38 AWS at para 42.

61 The Opinion Question therefore does not provide a basis for granting the SDP permission to appeal as it is not a question of general principle or importance that would arise for determination in an appeal against the Judge's decision. It also bears emphasising that the SDP has not sought permission to appeal on the ground of any *prima facie* case of error in the Judge's analysis of whether the Subject Statement was a statement of fact or opinion.[39]

Conclusion

62 For the foregoing reasons, we do not think that any of the questions framed by the SDP can be regarded as questions of general principle or importance which would arise for decision in an appeal against the Judge's decision in the OS. We therefore dismiss the SDP's application for permission to appeal.

63 Where the costs of this application are concerned, we order the SDP to pay the AG costs fixed at $6,000 (inclusive of disbursements). The usual consequential orders on the security deposit will apply.

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

[39] RWS at para 38.

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