Tan Chor Chuan and Others v Tan Yeow Hiang Kenneth and Others
[2005] SGHC 177

Case Number : Suit 261/2004

Decision Date : 28 September 2005

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Gregory Vijayendran, Prakash Pillai and Melvin See (Wong Partnership) for the plaintiffs; Alvin Tan Kheng Ann and Raymond Wong Chin Teck (Wong, Thomas and Leong) for the defendants

Parties : Tan Chor Chuan; Yap Swee Chee; Ee Boon Peng Lawrence; Ong Chong Ghee; Rolles Rudolf Jurgen August; Chern Seng Pau; Yung Yew Kong; Nelly Menon; Tan Lian Seng — Tan Yeow Hiang Kenneth; Chan Lai Fung; Chia Chung Mun Alphonsus; Tan Lian Ann; Nicholas Giles Aplin; Yeo Kok Ching Alan; Chong Yeh Shen Jason; Goh Hin Tiang; Lim Ting Fai Lawrence; Seow Yongli; Wong Loong Tat

Tort – Defamation – Fair comment – Defendants making defamatory statements in response to proposed issues to be discussed at meeting raised by plaintiffs – Requirements for defence of fair comment to be made out – Whether defence of fair comment failing due to defendants' failure to plead facts forming basis of comment

Tort – Defamation – Justification – Defendants making defamatory statements in response to proposed issues to be discussed at meeting raised by plaintiffs – Whether natural and ordinary meaning of defamatory statements true in substance and in fact

Tort – Defamation – Qualified privilege – Defendants making defamatory statements in response to proposed issues to be discussed at meeting raised by plaintiffs – Whether issues raised amounting to attack on character and conduct of defendants – Whether publication of defamatory statements motivated by malice and disproportionate response to attack

28 September 2005

Andrew Ang J:

1 This is a libel action brought by nine members of the Singapore Chess Federation ("the SCF") against the 11 members of the SCF Executive Council ("the Exco") personally. With a view to saving time and costs, the respective plaintiff's claims which originated from the same publication have been brought under the same writ as one legal action.

2 The libel allegedly arose from certain statements ("the Offending Words") published by the defendants in an appeal ("the Appeal") addressed to members on 2 January 2004 (and subsequently posted on the SCF website on 12 January 2004) in response to a requisition dated 30 December 2003 ("the Requisition") for an extraordinary general meeting ("EOGM") submitted by 24 members of the SCF (inclusive of the plaintiffs) listing 12 matters to be discussed and, if thought fit, to be the subject of appropriate resolutions. These matters were as follows:[note: 1]

1. No one with commercial interest (being a stakeholder or occupying an executive function in a chess company) should hold any position, neither executive nor otherwise in the SCF.
Reason: Conflict of Interest.

2. "National Coaches" appointed by the SCF should not also be trainers of a private company.
Reason: Conflict of Interest.

3. The criteria for selection and acceptance for National Representation and into Platinum squad should be spelt out clearly.
Reason: For transparency.

4. The "National" Junior Squad should comprise of no more than 10 players for each age category.
Reason: The squad size is too big.

5. The fees for the Junior Training Squad should be reduced.
Reason: Some members are reeling from the impact of the economic downturn. From 1998 to 2002, the fees have increased on 3 occasions from $120 to $220.

6. The roles of the Honorary General Secretary and the Organising Secretary should be spelt out clearly.
Reason: To avoid confusion over their respective functions.

7. The various Committees and/or Subcommittees of SCF and its members together with the terms of reference should be published on the SCF website.
Reason: For transparency and member's information.

8. The ASEAN Age-Group tournament should not be used as a qualifier for entry into the Platinum Squad.
Reason: Not all Singapore Youth can afford to participate.

9. The games from important qualifiers or titled tournaments should be made available to SCF members.
Reason: For the benefits of all SCF members.

10. All the rules and regulations governing any tournament, qualifier and titled tournaments should be made known in advance.
Reason: For fair play.

11. The membership figures should be updated and posted on the SCF website.
Reason: For general information of members.

12. The Executive Council of the SCF, led by President, Mr Kenneth Tan, be asked to step down. Election of new office bearers should then be held.

Reason: No confidence in management.

3 When the Exco received the Requisition, they were upset to say the least. This led to the Appeal to the members by the President (the first defendant) on behalf of the Exco. Despite its length, it is necessary to set it out in full in order to appreciate the context in which the Offending Words (set out by me in bold italics) were made. It read as follows:[note: 2]

Dear member

SCF EOGM ON FRIDAY 16 JAN 04 AT 1900 HRS AT SCF PREMISES IN BISHAN STREET 13.

On behalf of the EXCO, I apologise for having to impose on your valuable time to deal with an effort by 24 of our members to remove the existing Singapore Chess Federation (SCF)

Executive Committee.

According to these members, of which 10 are first time members who only signed up in the last few months and have not been involved in any prior SCF activities till now, they have lost confidence in the EXCO's management capabilities and would like to elect new office bearers to run the SCF. Please see the attached document submitted to SCF on 30 Dec 03.

When this EXCO was resoundingly elected in an open forum (many of us twice in the last three years), all of us took the position that we were here to make a real difference to Singapore Chess – to put Singapore on the world map of chess – where we should belong. Over the past three years, it is our belief that this team has delivered on our promises selflessly and with full and unstinting dedication to improving the status of chess in Singapore despite our extremely busy private lifes and careers.

We have put in place a highly successful Junior Training programme that even other countries acknowledge has resulted in Singapore now being a regional chess power and which our neighbours want to emulate. After just 3 short years, we have added 2 IM norms, 7FMs, 10 Golds in the ASEAN chess games and 4 SEA games medals to Singapore's chess fraternity. 13 players (11 juniors and 2 adults) were given Singapore Sports Council Sports Excellence awards. We can categorically say, there had been no similar period of renaissance in the past 45 years of Singapore chess.

Our recent SEA games debut, spear headed by our juniors were extremely commendable – exceeding even the Singapore National Olympic Committee's expectation and those of our opponents who were predominantly experienced GMs and IMs who play chess for a living. No deserving person has been denied a place to participate in our Junior Training programme if they could not afford it and had informed the SCF of their distressed financial situation. When they do express the need for financial assistance, many have been given such assistance from the SCF's pool of limited funds, painstakingly garnered by being constantly aware of the need to balance our books and with dedicated effort to raise funds from multiple sources in a difficult economic environment.

We have also managed to turn around the dire financial state the SCF was. Just three years ago the SCF had a projected deficit of close to $80,000. Today, the SCF is financially comfortable to pursue our plans to further expand our efforts to bring a world class quality chess experience to all Singapore based chess players – for instance bringing more quality events for all chess players – those just starting out, the enthusiasts and those wishing to honourably represent the country – hopefully positioning ourselves to do well in the coming Asian Games and Olympiads where we hope to make an honourable debut befitting Singapore. We have also put in place programmes to train quality arbiters to run more tournaments and events for you professionally and also many public outreach programmes such as running chess teaching clinics in our libraries and schools for all Singaporeans, not just SCF members.

All the other issues raised by these 24 members in their requisition are either mischievous or selectively inaccurate to achieve the effect desired – to misrepresent and therefore to remove the SCF EXCO for reasons best known to these 24 members. Let me explain.

The EXCO represented below can categorically state that none of us were or are involved in any commercial chess enterprises. All of us are volunteers whose sole objective was to leverage on our collective strengths to bring Singapore chess to new heights – to return to Singapore society

what we have gained from it many years earlier.

All decisions made by the EXCO have been transparently made according to clearly published guidelines, be it in selection of players to don national colours or procurements placed on the web. Decisions are clearly documented down in SCF EXCO minutes which are available for members perusal upon request.

When the SCF have had to hire administrators or seek services to help the SCF run our wide range of activities they have also been done on the basis of an open public tender so as to obtain the best possible service for the SCF in the most economical manner given our limited and stretched resources. All decisions made by the EXCO on selection and procurement were in full accordance with guidelines posted on the SCF website for all to see. These guidelines have been on the website for the past 3 years and have constantly been updated in accordance with members' feedback. Such detailed and publicly available guidelines never existed before this EXCO took over.

Yes, there could be issues on why some of the fees charged by the SCF could be perceived as high but I hope you would appreciate the SCF's dilemma. We are not exactly a financially well endowed organisation. We operate in Singapore where costs are not the same as those in the region. Given these constraints, the EXCO has taken the decision not to compromise on quality of whatever service we provide to our members as this could only have a long term detrimental effect on how chess is positioned in Singapore for all chess players current and our children who deserve better. All services are procured through an open tender and the SCF would have been more than happy to take better offers if available. It would have been even better if we could have more volunteers to run various SCF programmes and if you could volunteer your time and services, this would certainly be appreciated.

Other requirements in the requisition by these 24 members such as providing information on membership numbers and details, terms of reference of various EXCO members etc are displayed prominently in the SCF office for all members to view. I am sure most of you know where these information can be publicly viewed and obtained, but perhaps our new members who have signed this petition have not been here or visited the SCF premises to notice the easy availability of such information for all.

While it appears on surface that points 1 to 11 of the requisition document would suggest that the current SCF EXCO have been derelict in their duties to serve members and Singapore well, perhaps the conclusion could be that ***the objective of these 24 members is merely to remove the EXCO – point 12 of the requisition, for reasons in which only they know. Could the first 11 points be mere misrepresentations of the reality with the intention to mislead? We will leave you to judge***.

The SCF's selection and procurement guidelines are prominently displayed on the SCF website for all to access. The EXCO's day jobs and designations are also prominently displayed. Even our financial accounts are clearly posted both in the SCF website and the Singapore Sports Council (SSC). Many of the changes done recently by the SCF to improve further the quality of our administration and performance of our national players – the selection and appointment of national coaches, changes to the SCF constitution, the hiring of full time administrative staff to manage our affairs – were done openly, in full consultation with members and to align ourselves to the SSC's corporate governance requirements. We wanted to put in place the building blocks of a sustainable system that can bring us to greater heights both nationally and internationally.

On behalf of the EXCO, if you think we have done a good job to bring chess in Singapore to the level where it is today for all to benefit – your children, the amateur, the person willing to don Singapore colours to represent the country honourably – I would like to request that you please attend the EOGM on Friday 16 Jan at 1900 hrs and show us your full support by voting in favour of the EXCO and personally vote down the requisition by these 24 members. You have to be there in person, this is a constitutional requirement.

The EXCO has worked tirelessly to give all chess players – the future, current and our young a good chess environment to flourish. We will have to ask ourselves as members, do we really want to go back to the old days of a constantly struggling SCF, living from hand to mouth, not knowing whether we are even able to execute a simple local chess tournament the month ahead because of lack of organisational and financial resources, with constant disagreements on where chess should move for the future, and never knowing whether we can be a true National Association representing Singapore's interest honourably and well at an international level? If this situation is truly what you want going forward, the existing EXCO will gladly step down enbloc and allow these 24 members, of which 10 are first timers who have joined the SCF only in the past few months, to take over YOUR FEDERATION and dictate how things should be run. If not, please attend this EOGM and give us a resounding majority to continue serving you and Singapore even better now that the SCF is on an even firmer footing than ever before.

Thank you for your time and we really hope you could help us make a real difference to Singapore chess by attending the EOGM in person, vote and make your voice heard resoundingly.

Kenneth Tan

President

On behalf of the SCF EXCO –

Kenneth Tan, President

Alphonous [*sic*] Chia, Vice President

Chan Lai Fung, Vice President

Tan Lian Ann, Vice President

Nick Aplin [*sic*], Hon General Secretary

Alan Yeo, Hon Treasurer

Jason Chong, Council Member

Lawrence Lim, Council Member

Wong Loong Tat, Council Member

Seow Yong Li, Council Member

Goh Hin Tiang, Council Member

John Wong, Council Member

It can be seen from the Appeal that in drumming up support for the Exco, the President was also refuting what were perceived as allegations of conflict of interest, lack of transparency and mismanagement, *inter alia*, in the Requisition.

4 The Appeal dated 2 January 2004 was sent out to the members together with a notice of EOGM (to be held on 16 January 2004) issued by the Honorary General Secretary of the SCF ("the Notice of EOGM"). This led to an exchange of correspondence between the requisitionists' solicitors, Wong Partnership, and M/s Wong Thomas & Leong ("WTL") acting for the Exco. By letter of 13 January 2004, Wong Partnership contended that the Notice of EOGM was invalid as fewer than 14 days' notice had been given, the envelope containing the notice having been stamped 3 January 2004 and some requisitionists having received their notice only on 5 January 2004. Wong Partnership further objected to the sequence in which the items of the Requisition were to be dealt with. They argued that Item 12 (calling for the Exco members to step down) should not have been placed first on the agenda. Instead, the 11 other items (which they called "Administration Matters") had first to be considered so that they would be the basis upon which Item 12 (the "Step Down Matter") was considered. Finally, it was contended that, contrary to the Requisition which required that the items be discussed before a vote was taken, the Notice of EOGM made no mention of any discussion.

5 For the foregoing reasons, Wong Partnership required the Exco to call off the EOGM failing which they would apply for an injunction to restrain the convening of the EOGM.

6 Through WTL's reply of 14 January 2004, the Exco refused to call off the meeting and dismissed the reasons advanced by Wong Partnership for so doing as spurious. Apart from maintaining that the Notice of EOGM had in fact been dated and mailed on 2 January 2004, WTL further pointed out that it did not lie in the requisitionists' mouth to complain about late notice since, as originators of the Requisition, they would have had advance notice of the meeting ahead of all other members. The Exco expressed puzzlement why the very people who requisitioned for an EOGM should insist that it be called off. It was also put to the requisitionists that, if they genuinely wished to have a meeting, they could have called for the order of the items in the agenda to be restored to conform to that in the Requisition rather than to demand that the meeting be called off.

7 By a rejoinder of 16 January 2004 (the date fixed for the EOGM), Wong Partnership sought to refute the Exco's contentions. They pointed to a distinction between knowledge of a requisition and knowledge of a meeting convened pursuant thereto. They maintained that there had been insufficient notice of the EOGM. They reiterated that the Administration Matters had to be discussed ahead of the Step Down Matter "so that the discussion of the Administration Matters would become the principal consideration for the Step Down Matter".[note: 3] Finally, they pointed out that their complaint, that the Notice of EOGM did not provide for any discussion of the items, had gone unanswered. They concluded that there indeed would be no discussion and notified the Exco that their clients therefore considered that their attendance at the meeting would be meaningless.

8 In the result, the meeting was held without the requisitionists and the Exco received resounding support from those attending. Parenthetically, it should be pointed out that not a few of those attending were new members who had joined as a result of recruitment efforts by members of the Exco or others supportive of them. To be fair, it should also be noted that among the

requisitionists were members who had joined within a few months before the Requisition.

9 Shortly before the aforesaid correspondence between the parties' solicitors, a parallel train of events commenced in relation to the Appeal of 2 January 2004. Pursuant to a decision taken at a meeting of the defendants on 10 January 2004 to discuss preparations for the EOGM, the defendants posted the Requisition, the Notice of EOGM, a reminder to attend the EOGM and the Appeal on the SCF website on 12 January 2004. On 15 January 2004, in the midst of the exchange of correspondence between Wong Partnership and WTL on the validity of the Notice of EOGM, each of the defendants received a letter from Wong Partnership alleging that, by the Offending Words in the Appeal, the defendants had defamed the plaintiffs, and threatening legal proceedings. WTL replied on Kenneth Tan's behalf on 16 January 2004 denying liability, and on 4 January 2004 on behalf of the remaining defendants to like effect. It is unnecessary to mention several other letters in between in which counsel maintained their respective positions. This impasse led to the present action.

10 Pursuant to an order of court made by consent between the parties, it is common ground between them that the Offending Words carry one or more of the following defamatory meanings:[note: 4]

(a) The plaintiffs were dishonest and/or mischievous and/or untruthful and/or deceitful in requisitioning the EOGM.

(b) The plaintiffs had "ulterior and/or a hidden agenda" in requisitioning the EOGM.

(c) The plaintiffs had distorted and misrepresented facts with a view to removing the Council for reasons best known to them.

(d) The plaintiffs hoped to influence the decision of members of the SCF at the EOGM through dishonesty and/or mischief and/or untruthfulness and/or deceit.

(e) The plaintiffs were trouble-makers who were out to cause mischief for the Exco.

11 The defendants put up the defences of justification, fair comment and qualified privilege.

12 Before going into the defences, it is necessary to examine more closely the 12 items in the requisition, the perception of the members of the Exco upon receipt of the same, and the reasons offered by the plaintiffs for putting forth the items in the requisition. Whereas the defendants' perception of the requisition is relevant to the defences of fair comment and qualified privilege, the plaintiffs' reasons for the requisition as found by the court pertain more to the defence of justification. The following is a brief chronology of the main events relating to the Requisition:

30 December 2003	The Requisition delivered to the Exco
2 January 2004	The Exco issued the Appeal Letter which commented on the Requisition
12 January 2004	The Exco posted the Appeal on the SCF website

16 January 2004	The Exco distributed its tabulated response to the items in the Requisition at the EOGM
14 February 2004	The Exco wrote to requisitionists requesting reasons for each of the resolutions proposed by them
28 February 2004	Wong Partnership replied to the Exco requesting legal basis for the Exco's request
25 November 2004	The plaintiffs filed their affidavits of evidence-in-chief stating for the first time their detailed reasons for putting forth the Requisition.

I should also add that much of the Affidavit of Evidence-in-Chief of Nelly Menon (the eighth plaintiff) was adopted by each of the other plaintiffs. In particular, each of the other plaintiffs adopted the evidence of Nelly Menon on the background to the action and on the following issues:

(a) the background to the Requisition;

(b) the basis and reasons for the Requisition and the matters specified therein;

(c) the reasons and/or basis for the decision by the requisitionists not to attend the EOGM of 16 January 2004;

(d) the manner in which the defendants conducted the EOGM and/or the voting during the EOGM;

(e) the Appeal;

(f) the post-EOGM conduct of the defendants in seeking explanations from the plaintiffs with respect to their absence from the EOGM; and

(g) the commencement of the action herein and the Order of Court by consent dated 5 July 2004.

Similarly, each of the defendants (other than Kenneth Tan) confirmed the facts deposed to in Kenneth Tan's Affidavit of Evidence-in-Chief to be true in so far as those facts referred or related to them.

Item 1: "No one with commercial interest (being a stakeholder or occupying an executive function in a chess company) should hold any position, neither executive nor otherwise in the SCF. Reason: Conflict of Interest."

13 According to the defendants, the wording of Item 1 suggested to them that one or more

members of the Exco had commercial interests in a chess company concurrently with the office they held as such Exco member(s). They pointed in particular to the wide ambit of the words "neither executive nor otherwise" as being intended to include members of the Exco. The executive positions in the SCF were those of organising secretary ("OS") and assistant organising secretary ("AOS"). The Exco members, being non-executive, were included by the words of extension "nor otherwise". In response, the Exco stated in the Appeal as follows:[note: 5]

> The Exco represented below can categorically state that none of us were or are involved in any commercial chess enterprises. All of us are volunteers whose sole objective was to leverage on our collective strengths …

In their tabulated response of 16 January 2004, the Exco explained that apart from John Wong who was a self-employed chess trainer, none of the members of the Exco was involved in any company providing chess services. They further explained that whilst the OS, Ignatius Leong ("Leong"), was a stakeholder in a chess company, the award of chess training contracts was by open tender. (I should mention that under a contract with the SCF, Intchess Asia Pte Ltd ("Intchess"), of which the OS is a director and shareholder, provides chess training services to trainees.)

14 It was submitted on behalf of the defendants that the defendants viewed Item 1 as questioning their integrity in that it suggested that one or more amongst them was in a conflict of interests situation. The defendants also contended that Item 1 suggested that they had wittingly or unwittingly allowed the OS to take improper advantage of his position; Item 1 therefore questioned their integrity and/or competence.

15 On the other hand, the plaintiffs submitted that each and every item in the Requisition had a legitimate basis and was not baseless or frivolous. In regard to Item 1, they contended that the crux of the conflict issue was Leong's appointment as OS whilst concurrently he had a commercial interest in Intchess and another company known as Asean Chess Academy. They further contended that the issue concerning Leong's conflict of interests was longstanding and known to the defendants.

16 In reliance upon the evidence of the fourth defendant, Tan Lian Ann, who agreed that Items 1 and 2 referred to or were referable to Leong, the plaintiffs contended that such evidence by the fourth defendant who was present at the 31 December 2003 "Exco meeting" to discuss the Requisition precluded any argument to the contrary in the defendant's closing submissions.

17 If the implication is that by the fourth defendant's presence at the Exco meeting he would have communicated his views as set out in the evidence, such a suggestion is unwarranted. As was pointed out by counsel for the defendants, after agreeing that Item 1 referred to Leong, the fourth defendant had clarified that this view was because of his meeting with Nelly Menon on 30 November 2003. He further said that the rest of the Exco did not know of the meeting because he had agreed with Nelly Menon that their conversation was to be kept confidential. Besides, despite the plaintiffs' protestations, it must be noted that, by reason of the wide language of Item 1, it would be well nigh impossible to suggest that it was meant to refer only to Leong. Indeed, in the cross-examination of the defendants, counsel for the plaintiffs had tried to discover whether members of the Exco might be in a position of conflict by reason of any relative having an interest in a chess services provider!

Evidence at trial

18 At the trial, it emerged that the only person whom the plaintiffs singled out as being in a position of conflict was the OS. Nelly Menon gave evidence that she did not have John Wong in mind when the Requisition was submitted. When asked why the Requisition did not make it clear that it was

in relation to the OS that Item 1 was raised, she first said it would have made the Requisition too lengthy. This clearly was less than convincing and she subsequently changed her reason to say that the requisitionists did not want to name any person but wanted to put down the item as a matter of principle.

19 Given that the discussion at the EOGM contemplated by the requisitionists would not be meaningful without specificity and substantiation, such an answer was not credible. As if in recognition of this, Nelly Menon followed up in the next sentence to volunteer that it would be apparent that it referred to the OS. To a further question, she then admitted that it would be impossible not to mention the name. When asked whom she had in mind by the words "nor otherwise", she replied that it referred to no one but was just a statement of principle for debate.

20 Counsel for the defendants submitted that this answer was highly implausible and inconsistent with what she had earlier said with regard to John Wong. She had said that under Item 1 she did not have John Wong in mind because the latter was a single person and did not have the duties of the OS with respect to whom there would be greater conflict. On that basis, it would follow that there ought not to have been any need to debate a statement of principle as regards other office holders in the SCF either. Why then the inclusion of the words "nor otherwise"? Counsel for the defendants therefore contended that the wide wording in Item 1 was chosen to give the impression that the members of the Exco were caught in a position of conflict as well.

21 Significantly, the plaintiffs' submissions did not rebut this point. Instead, their submissions concentrated on demonstrating that "[their] perception of Leong's conflict was legitimate" and that this item of requisition was not frivolous or baseless. In gist, their main points were as follows:

(a) Leong as OS is a key personnel of the SCF.

(b) Despite his key position in the SCF, he also has a commercial interest in Intchess and Asean Chess Academy, both of which are chess service providers to the SCF.

(c) Kenneth Tan conceded that it was probably Leong and/or Intchess who drafted the 2003 contract between Intchess and SCF for the provision of chess training services. (However, he also said that the draft contract underwent amendments and adjustments by the SCF. Given that there were amendments and adjustments, I would not have thought that the drafting of the contract by Intchess or Leong was objectionable).

(d) Leong sat in at all the Exco meetings and was privy to deliberations and information not available to any other potential chess training provider. This point was in contention between the parties. Although the ninth defendant, Lawrence Lim, did agree with counsel for the plaintiffs that Leong sat in at all the Exco meetings and was privy to the Exco deliberations, he clarified in re-examination that when there was discussion on a sensitive matter such as the tender (presumably for chess training services) or remuneration for Leong, the latter would be asked to leave the room. This was also the testimony of the other defendants which counsel for the plaintiffs dismissed as rehearsed testimony. For my part, I would regard it as highly unlikely that Leong would have been permitted to listen in on deliberations in which he or his companies had an interest. (Given the senior positions held by certain of the defendants in their working life and, therefore, their familiarity with such a fundamental point, to suggest that they flouted such a basic procedural requirement is to allege wanton impropriety on their part. But as I understand it, the plaintiffs deny even suggesting that the Exco members were in a position of conflict!)

(e) Instead of the Honorary Treasurer, Leong presented the SCF cash balances to the Exco

at meetings of the latter. (I would not regard this *per se* as a particularly apposite example of a conflict of interests. I might add that it is not of great moment that a full-time executive of an organisation assists the Honorary Treasurer in reporting on the cash balances. What was of concern to me was that in his testimony the seventh plaintiff, Yung Yew Kong, vacillated on this point.)

(f) Leong made recommendations to the Exco on the selection of players to represent Singapore and for the Platinum Squad (a prestigious group of trainees from which candidates for national representation are chosen). This point is dealt with in Item 2 of the Requisition.

(g) Intchess and Asean Chess Academy employees dealt with chess training enquiries when the OS was not available to deal with them, fuelling the perception that the SCF and these private companies were run by the same management. (The first plaintiff, Tan Chor Chuan, confessed to having been conscience stricken for having referred chess training enquiries to Intchess while he was assistant OS. However, when he was cross-examined on this, he admitted that he had never been instructed to refer chess training enquiries to Intchess but had done so of his own volition.)

(h) Members of the Exco appeared to enjoy a close relationship with Leong because he was the person who, on his own evidence, brought them into the Exco.

Other examples were given to show that the OS was close to certain of the Exco members.

22 The plaintiffs concluded from the foregoing that Leong "was in a position to benefit from his position as Organising Secretary". However, they stated that it was not their case that he was in fact benefiting from his position, the principle of the matter being the more important issue as far as the plaintiffs were concerned.

23 The defendants questioned the *bona fides* of the requisitionists, in particular, the plaintiffs, in raising Item 1 given that they had said they only wanted to debate the principle of the matter and that they had no evidence of any actual benefit by the OS. In my view, the *bona fides* of the plaintiffs cannot be called into question merely because they wanted to debate the matter on principle. However, more credence to the charge may be found in other submissions by the defendants, *viz*,

(a) that Item 1 questioned their integrity as it bore the suggestion that some of the Exco members were in a position of conflict; and

(b) that it questioned their integrity and/or competence as it bore the suggestion that the Exco had wittingly or unwittingly allowed the OS to take advantage of his position.

24 The first submission has already been dealt with. No satisfactory answer to this submission was given by the plaintiffs. Given the ambit of the wording in Item 1, it was unarguable that the Exco members were included. I therefore disbelieved Nelly Menon's evidence that Item 1 was meant to refer only to the OS. I am satisfied that the plaintiffs sought to tar the Exco members with the same brush as that for the OS. The conclusion could well be formed that this was in aid of Item 12. Nelly Menon should have been careful not to ride a moral high horse on what she called a "matter of principle" had she reflected on her own conduct in the past. She had previously stood for election to the SCF Exco in March 2003 at a time when she had an interest in PowerChess Asia Pte Ltd ("PowerChess"), a chess training provider. As contended by counsel for the defendants, it suggested that there was no real conviction in putting forth Item 1. In an endeavour to explain away this

incongruity, Nelly Menon testified that she did not intend to be on the Exco even though she had accepted the nomination to be a council member; her intention was only to assist John Wong by "breaking votes". However, she was unable to explain how the eventual results showed that she had assisted John Wong.

25 I now turn to the second of the defendants' submissions, *viz*, that Item 1 questioned their integrity and/or competence as it bore the suggestion that the Exco had wittingly or unwittingly allowed the OS to take advantage of his position. One key point made by Nelly Menon in her Affidavit of Evidence-in-Chief (which was adopted by all the other plaintiffs) was as follows:[note: 6]

> In view of his role within the SCF, it was clear that Mr Leong was in a position to advance [Intchess] ahead of any other competing companies engaged in the provision of chess services in that he was in a position, if he so desired, to influence the SCF procurement process.

The plaintiffs did not show that the SCF procurement process was influenced in any way by Leong. For the reasons earlier gone into, I did not believe that he was present at sensitive meetings which discussed matters in which he or his companies had an interest (see [21(d)] above). Nor did I believe that his putting up a draft of the 2003 contract for the provision of chess training services by Intchess to the SCF prejudiced the latter; the SCF made "amendments and adjustments" to the draft before the contract was signed.

26 Another complaint, that three boys in the under-ten age group had been selected for the Platinum Squad even though they had not achieved the rating of 1,600 points fizzled out when Nelly Menon disclosed that one of the three boys was a trainee under PowerChess (Nelly Menon's own company) and she was unaware whether the other two were Intchess trainees. The fact that one of the boys allegedly favoured was a PowerChess trainee ran counter to the tenor of the allegations against the OS. Yet it did not deter the plaintiffs from citing this incident (in Nelly Menon's Affidavit of Evidence-in-Chief) as the reason for putting forth Item 3 in the Requisition.

27 The defendants submitted that the plaintiffs had not pointed to anything to show that the OS had influenced the SCF procurement process or done any other act which amounted to an abuse of his position. The plaintiffs, of course, said that this was not their case. My own view is that even if there was any wrongdoing by the OS, the plaintiffs have not shown that the members of the Exco were or ought to have been aware of such abuse of his position; criticism of the Exco would therefore be unwarranted.

28 In the light of the foregoing and taking into account that, to the knowledge of Tan Chor Chuan (if not others amongst the plaintiffs) the Exco was looking for a replacement for the OS in 2003, it is understandable that the Exco members would have felt hard done by with regard to Item 1.

Item 2: "'National Coaches' appointed by the SCF should not also be trainers of a private company. Reason: Conflict of Interest."

Perception of the Exco

29 To the Exco, the link between Items 1 and 2 was obviously the OS as he had an interest in the private companies which provided the national coaches. The Exco's response as set out in the Appeal was as follows:[note: 7]

> Many of the changes done recently by the SCF to improve further the quality of our administration and performance of our national players – the selection and appointment of

national coaches, … were done openly, in full consultation with members and to align ourselves to the SSC's [Singapore Sports Council's] corporate governance requirements.

In their tabulated response of 16 January 2004, the Exco explained that the appointment of national coaches was decided by the Selection and Training Committee based on "available candidates and also the resource constraint".[note: 8] It was submitted on behalf of the defendants that, as in the case of Item 1, implicit in this item was the suggestion of a lack of integrity and/or competence on the part of the Exco.

Evidence at trial

30 Paragraph 42(b) of the Affidavit of Evidence-in-Chief of Nelly Menon stated as follows:[note: 9]

> This item was a corollary of the first item. The issue was that the national coaches appointed by the SCF were also at the same time employees of either ICA [Intchess] or ACA [Asean Chess Academy], both of which are owned by Mr Leong.

The paragraph further asserted that students training under Intchess or Asean Chess Academy could have an unfair advantage "given the OS' central position in the SCF". During cross-examination, Nelly Menon agreed with the suggestion that the removal of Leong from his position as OS would solve the problem. He would then no longer sit in at meetings of the Exco and the Selection and Training Committee and would cease to be Training Administrator.

31 On the basis of the plaintiffs' avowed stand in regard to Item 1, *ie*, that the crux of the conflict problem was Leong, their concern would be addressed once Leong relinquished his position as OS. His stepping down would at the same time remove the concern in Item 2.

32 Given that the solution to the plaintiff's avowed concern in Item 1 would also address the concern in Item 2, the defendants submitted that Item 2 was unnecessary and that it was included to foster the impression that there were more problems in the SCF with a view to providing another basis for Item 12.

Plaintiffs' submissions

33 The submissions of the plaintiffs (in particular paras 108 and 109) were effectively directed at the conflict involving Leong; the plaintiffs admitted that Item 2 was a corollary of item 1. This lent support to the defendants' contention that Item 2 was unnecessary.

34 As regards the substance of the complaint against Leong, *viz*, that he recommended which players were to be selected, the evidence is divided. The fourth defendant, Tan Lian Ann, testified that although Leong presented a list of the players, it was supposed to be based on guidelines set by the Selection and Training Committee. This was also the evidence of Leong, except that he went on to say that the players' results in the respective events were also supplied to the Selection and Training Committee. On the other hand, the ninth defendant, Lawrence Lim, agreed with the plaintiffs' counsel that, as it appeared in the minutes of the Selection and Training Committee meeting, the Committee looked at the list prepared by Leong and agreed to the line-up.

35 I find that Leong did prepare the list of players and that it was put up for the approval of the Selection and Training Committee. He was supposed to prepare the list based on the guidelines set by the Selection and Training Committee. To the extent that the guidelines left any room for the exercise

of discretion, it is possible that Leong might on occasion have found himself in a position of conflict. However, the ultimate decision was the Selection and Training Committee's. More importantly, the plaintiffs failed to show any instance of favouritism towards players trained by Leong's companies. As noted in [26] above, Nelly Menon's complaint that three boys in the under-ten age group had been favoured fizzled out when she disclosed that one of them was a trainee under PowerChess (Nelly Menon's own company) and she was unable to say who trained the other two. One would have thought that conflict of interests having been made so much of, the plaintiffs would have come up with some evidence to show that their fears were well founded. After all, as I understand it, the ratings of those selected to join the training squads were shown on the SCF website. This lack of evidence no doubt accounts for the stance taken by the plaintiffs that it was not their case that Leong was in fact benefiting from his position and that they were concerned only with the principle of the matter.

Item 3: "The criteria for selection and acceptance for National representation and into Platinum squad should be spelt out clearly. Reason: For transparency."

The Exco's perception

36 It was submitted on behalf of the defendants that, viewed objectively, Item 3 suggested that there was a shortcoming or ineptitude on the part of the Exco in failing to spell out clearly the criteria for selection of the players for National Representation and for the Platinum Squad. In response to this, the Exco stated in the Appeal that:[note: 10]

> All decisions made by the EXCO on selection and procurement were in full accordance with guidelines posted on the SCF website for all to see. These guidelines have been on the website for the past 3 years and have constantly been updated in accordance with members' feedback. Such detailed and publicly available guidelines never existed before this EXCO took over.

37 In their tabulated response of 16 January 2004, the Exco highlighted the fact that the guidelines had been on the SCF website since 2002. Indeed, according to the defendants, they were the ones who initiated the publication of the guidelines on the SCF website and yet they were being criticised for lack of transparency. To the Exco, this item gave a false impression to the members that the guidelines were unavailable or unclear. Besides, juxtaposed against the question of conflict in Items 1 and 2, the suggestion that there was a lack of transparency carried the implication that the Exco members were not open about matters because of the conflict of interests on their part.

Evidence at trial

38 During cross-examination, Nelly Menon admitted that she knew that the guidelines were on the SCF website before she put forth the requisition. She had also exhibited the guidelines in her affidavit of evidence-in-chief. The guidelines clearly stated the ratings required for each category. What emerged as the reason for putting forth Item 3 was that "the requisitionists knew of players under the age of 10 who had SCF ratings below that of the requisite 1600 as per the Guidelines, but who were still included in the Platinum Training Scheme".[note: 11]

39 Nelly Menon named three boys in the under-ten age group who had been selected for the Platinum Squad despite their failure to meet the requisite 1,600 points under SCF ratings. The defendants submitted that the reason advanced by the plaintiffs through Nelly Menon's Affidavit of Evidence-in-Chief really amounted to a complaint that the guidelines were not followed and not that they were unavailable or unclear. They further submitted that that reason, which was belatedly offered only at the exchange of Affidavits of Evidence-in-Chief, also served to reinforce the initial

response of the defendants that Item 3 was misleading; the reason given did not justify the complaint.

40 In her testimony, Nelly Menon said that Item 3 was put up on the basis of feedback from parents. However, when questioned further, she could not name any of them other than Seow Lay Tin who, as it turned out, wanted to know why another son of hers had not been selected and not why her son Ian had been chosen. Nelly Menon later stated that she did not know whether the parents who gave her feedback even knew about the three boys who had been selected despite their not meeting the criteria.

41 The defendants therefore submitted that Item 3 was not put forth on the strength of feedback from parents but originated with the requisitionists. They further pointed out that the plaintiffs did not adduce any evidence to justify their reference in Item 3 to "National Representation". The defendants submitted that the reference to "National Representation" was inserted to foster the impression that the problem was serious.

42 Finally, on the issue of transparency, it was argued on behalf of the defendants that the fact that Nelly Menon was able to determine from the SCF website the ratings of the three boys who had not achieved the requisite 1,600 points served to demonstrate that there was indeed transparency.

43 The defendants concluded that, in the absence of a reasonable basis for the requisitionists to put forth Item 3 in the manner that they did, the plaintiffs' intention must have been to tar the Exco in preparation for Item 12.

Plaintiffs' submissions

44 The plaintiffs' submissions did not dwell at length on the issue raised by Nelly Menon that three boys in the under-ten age group had been selected for the Platinum Squad. Instead, counsel argued that the criteria for selection into the Platinum Squad were not clearly spelt out because a significant level of discretion was involved in the selection of players. This clearly departed from what Nelly Menon stated in her Affidavit of Evidence-in-Chief which was as follows:[note: 12]

> The issue in relation to this item of the Requisition was that there were instances of players who were selected for the Platinum Training Scheme even though they were not qualified in accordance with the Guidelines. For example, the Requisitionists knew of players under the age of 10, who had SCF ratings below that of the requisite 1600 as per the Guidelines, but who were still included in the Platinum Training Scheme. The Requisitionists therefore wanted this issue to be discussed at the EOGM in order to ascertain the exact criteria for selection into the Platinum Training Scheme.

45 Kenneth Tan accepted that the guidelines did provide for some discretion and that although the factors to be taken into account had been set out, no weightage had been indicated against each factor. Did this mean that the guidelines were unclear? I do not think so. In effect, what the plaintiffs' submissions called for was a removal or curtailment of the Selection and Training Committee's discretion and not clarity in the guidelines.

46 Incidentally, as regards the acceptance of players for training under the Platinum Training Scheme even though they had not qualified under the guidelines, I am satisfied that there was no favouritism involved. As Kenneth Tan explained, the SCF had paid for 24 places in the Platinum Training Scheme. If fewer than 24 qualified under the guidelines, the remaining places would be given to those next in line according to merits even though the latter had not strictly qualified.

Item 4: "The 'National' Junior Squad should comprise of no more than 10 players for each age category. Reason: The squad size is too big."

47 The Exco was of the view that this was not an issue that warranted discussion at an EOGM. Items 4 to 9 and 11 have been characterised by the requisitionists as administrative issues. In para 42(d) of her Affidavit of Evidence-in-Chief, Nelly Menon explained that the requisitionists intentionally introduced these issues "so as to maximise the time spent at the EOGM and to obviate the need to initiate another EOGM to address any further outstanding issues".[note: 13]

48 The defendants countered, however, that it was not necessary to raise those matters at an EOGM (presumably because they could as easily be dealt with at the next annual general meeting). They contended that the position taken in the statement was disingenuous and was contrived as part of an *ex post facto* justification for inclusion of those items. The perception of the defendants was that those items were raised as a prelude to Item 12, to show that the SCF was not well managed.

49 In their tabulated response of 11 January 2004, the Exco pointed to the need to have a "healthy pipeline of young players to be groomed into top players"[note: 14] and that a certain "critical mass" was required for this. The proposal in Item 4 would have reduced the National Junior Squad from 200 to 120 members. The reason offered by the plaintiffs was that a large squad devalued the position of a national player. It is difficult to appreciate how significant the reduction in number to 120 members would be in boosting their prestige. To my mind, the reason seems somewhat implausible.

Item 5: "The fees for the Junior Training Squad should be reduced. Reason: Some members are reeling from the impact of the economic downturn. From 1998 to 2002, the fees have increased on 3 occasions from $120 to $220."

50 The evidence shows that there were two increases and not three. More importantly, although the fees had increased from $120 to $220, on a per hour basis they had actually dropped substantially. According to Kenneth Tan, the fees of $120 charged in 1998 were for five or six lessons of two hours each whereas the $220 in 2002 paid for about ten lessons of three hours each. Moreover, as stated in the Appeal:[note: 15]

> No deserving person has been denied a place to participate in our Junior Training programme if they could not afford it and had informed the SCF of their distressed financial situation. When they do express the need for financial assistance, many have been given such assistance from the SCF's pool of limited funds, painstakingly garnered by being constantly aware of the need to balance our books and with dedicated effort to raise funds from multiple sources in a difficult economic environment.

Given the above, it is understandable why the Exco viewed this requisition as misleading.

51 I should add some comments here on the evidence of the first plaintiff, Tan Chor Chuan, formerly the Assistant Organising Secretary who later joined PowerChess. He gave evidence that he believed the SCF fees were not competitive. But when he was further cross-examined, it emerged that the SCF fees were clearly more competitive. His excuse that he had forgotten that PowerChess lessons were for one and a half hours and Intchess lessons were twice as long was incredible.

52 The fees charged by SCF and PowerChess were no secret and the plaintiffs were people active in the chess community. Indeed, the first, fifth, sixth, eighth and ninth plaintiffs were associated with PowerChess. The defendants therefore submitted that the requisitionists were using

Item 5 as a prelude to Item 12.

Item 6: "The roles of the Honorary General Secretary and the Organising Secretary should be spelt out clearly. Reason: To avoid confusion over their respective functions."

53 The reason offered by Nelly Menon in her Affidavit of Evidence-in-Chief is that the OS or his assistant had been responding on behalf of the Honorary General Secretary to correspondence relating to the SCF and that there was a perception that the OS ran the SCF. Nicholas Giles Aplin, the Honorary General Secretary, accepted that this was a legitimate item.

Item 7: "The various Committees and/or Subcommittees of SCF and its members together with the terms of reference should be published on the SCF website. Reason: For transparency and member's information."

54 As the Exco accepted this suggestion, nothing further needs to be said.

Item 8: "The ASEAN Age-Group tournament should not be used as a qualifier for entry into the Platinum Squad. Reason: Not all Singapore Youth can afford to participate."

55 Objectively viewed, the item seems to assert as fact that the ASEAN Age-Group tournament was a necessary qualification for entry into the Platinum Squad. The defendants averred that this item was inaccurate. In the Exco's tabulated response of 16 January 2004 it was stated that no deserving player would be denied a place just because he did not participate in the ASEAN Age-Group tournament and that there was no suggestion anywhere in the selection guidelines that this would be the case.

56 Although Nelly Menon gave the impression that the item was put up as a result of feedback from parents, she was unable to name any of them. Nor was she able to name any player who had been unable to participate in the ASEAN tournament because of a lack of funds. As contended by counsel for the defendants, this called into question the motive of the requisitionists in putting up this item.

Item 9: "The games from important qualifiers or titled tournaments should be made available to SCF members. Reason: For the benefits of all SCF members."

57 In their tabulated response of 16 January 2004, the Exco disagreed saying that the inclusion of such games on the website could put Singapore players at a disadvantage when playing international tournaments. This was further confirmed by the fourth defendant, Tan Lian Ann, who said,[note: 16]

> This is your secret kung fu, you do not pass it to someone else. So my answer would be, "You must be crazy, no serious chess player would give that away".

Tan Lian Ann was not challenged on this in cross-examination. However, the plaintiffs' counsel sought to counter his evidence by submitting that if this was correct, no professional chess player would allow his games to be published.

58 Assuming this to be so (and I do not think there is any dispute as to the existence of, as distinct from the reasons for, such publication), it is unarguable that there is more to be learnt from the games of the grand masters than from those of amateur Singapore players amongst the SCF trainees. Why then the need for publication of the games of the latter? Nelly Menon's answer was

that a junior player might not expect to learn some of the very sophisticated moves of grand masters but might want to learn from his peers before learning from grand masters. Another reason offered by her under cross-examination was that publication would also make it transparent for everybody to see if all games had been properly played out.

Item 10: "All the rules and regulations governing any tournament, qualifier and titled tournaments should be made known in advance. Reason: For fair play."

59 According to the defendants, they perceived the reason advanced for this item to be provocative, suggesting as it did that there had been a lack of fair play due to the failure of the Exco to make known the rules and regulations for tournaments and qualifiers in advance.

60 Besides, it was not for the Exco to set the rules of the game. The Exco guessed that possibly the requisitionists might have meant to refer to the guidelines for selection. They, accordingly, responded as follows in their tabulated response:[note: 17]

> Unclear what this issue is about. One would assume that all players should know that the FIDE Laws of Chess would apply in all tournaments. If the issue is about selection guidelines with respect to say the National Qualifiers, these are all posted on the SCF website.

Evidence at trial

61 The reason the plaintiffs eventually gave in the Affidavit of Evidence-in-Chief of Nelly Menon for putting forth this item was that there had been instances of "material discrepancies between the rules and regulations of particular tournaments and the SCF Guidelines".[note: 18] The sole example given was of the SCF Guidelines for SEA Games 2003 – Selection and Training. She pointed out that whereas the guidelines stated that any player was eligible to compete, the entry form restricted entry to players with an SCF rating of 1,600 points or more.

62 The defendants submitted, and I think rightly, that the reason given for this item lacked credibility. It was trivial in the extreme. Surely, as she admitted under cross-examination, there could be no possible objection to imposing a minimum entry requirement of a mere 1,600 points. Besides, as the defendants pointed out, the example given did not illustrate the problem complained of in Item 10. Furthermore, the expression "fair play" proffered as the reason for the requisition suggested that certain players had been either favoured or disadvantaged by the alleged failure to publicise the rules and regulations in advance.

63 Belatedly, Nelly Menon attempted to salvage her contention by relating an incident in which a young player, who had broken down and cried midway through a game, had been given extra time. This incident had not been referred to at all in her Affidavit of Evidence-in-Chief. Besides, even if that incident did take place, it would have been an instance of departure from established rules of play of which no complaint had been made to the Exco. It did not arise because of a failure to make the rules and regulations known in advance.

Item 11: "The membership figures should be updated and posted on the SCF website. Reason: For general information of members."

64 In their tabulated response of 16 January 2004, the Exco stated that the membership figures were updated at every annual general meeting and that they were also easily obtainable from the SCF office and posted on the notice board. The Exco also stated that the suggestion could easily have been raised with them without the need for an EOGM. They therefore perceived that Item 11 was

meant to give the impression that the SCF, for some reason, wanted to conceal the numbers.

65 Whereas the Requisition cited the reason for Item 11 as being for the general information of members, Nelly Menon's Affidavit Evidence-in-Chief stated that a proper record of membership was important for the purposes of ascertaining the SCF's receivables in terms of the different categories of membership fees. Further, it emerged from the evidence that what the requisitionists were requesting for was more frequent updating of the membership figures. When asked by the court how important the point was, Nelly Menon said that, as a matter of interest, she wanted to be able to reconcile numbers in terms of receivables as well as to look at the growth in membership, in particular the junior membership which comprised more than 1,000 members.

66 Further on in evidence, she highlighted that certain junior members might have unwittingly paid membership fees twice and that therefore an issue arose as to whether there was double counting of the number of junior members. (Defence counsel seemed to think the witness was referring to double counting of the fees paid by junior members). In any case, in Nelly Menon's view, this gave rise to an accountability question which the requisitionists wanted to look into. She agreed, however, that to be able to tell whether there was double counting, it was not enough for the requisitionists to have the updated membership figures. They would also need to have the membership revenue. Strangely, no request had been made for the membership revenue to be disclosed as well.

67 Defence counsel submitted therefore that this was another implausible reason suggested *ex post facto* to justify Item 11. It was suggested that if the requisitionists truly had revenue in mind, they would have stated it. (To put things in perspective, it should be pointed out that the junior membership fee is only $5 per year. Therefore, even with a membership of 1,000, the amount involved is just $5,000. It seems rather unlikely that, on its own, this would have generated such interest.)

Item 12: "The Executive Council of the SCF, led by President, Mr Kenneth Tan, be asked to step down. Election of new office bearers should then be held. Reason: No confidence in management."

68 There is no gainsaying that the Exco took this requisition to mean what it said. The plaintiffs, however, maintained that they did not have any intention to remove the Exco. They attributed the inclusion of this item entirely to their legal adviser, Chandra Mohan. This was critical to the plaintiffs' case. If they did have an intention to remove the Exco, then Items 1 to 11 could more readily be viewed as preparatory grounds for so doing. In that event, the defence of justification could more easily be made out.

69 The defendants contended that the position taken by the plaintiffs (*ie*, that they did not intend to remove the Exco) was contrived belatedly. Their argument for so saying may be summed up as follows:

(a) Their position was never conveyed to the defendants until the exchange of Affidavits of Evidence-in-Chief in November 2004. Even then this was not stated categorically.

(b) The plaintiffs had many opportunities to make their position clear but did nothing to dispel what *ex hypothesi* they would have thought was an erroneous impression on the part of the defendants.

(i) Firstly, they would have seen it from the Appeal where the Exco stated that the requisitionists intended to remove the Exco for reasons best known to themselves.

(ii) From having acquired, on 11 to 12 January 2004, copies of the e-mail exchanged among the defendants, they would have also seen what the perceptions of the defendants were in regard to the Requisition.

(iii) In response to Wong Partnership's letter of 13 January 2004, WTL's reply of 14 January 2004 contained the following sentence:[note: 19]

> Our clients would have thought that such would have been your clients' perception as well given the fact that they obviously view the situation as serious enough to seek our clients' removal from office. [emphasis added]

Despite knowing that the defendants believed that the primary motive of the Requisition was to remove the Exco from office, the plaintiffs did nothing to dispel this "misconception" of the defendants. In Wong Partnership's reply dated 16 January 2004 to WTL's letter of 14 January 2004, the plaintiffs referred directly to the sentence cited above and said:[note: 20]

> As for the last sentence in paragraph 11, your clients' are entitled to [their] own views about our clients' perceptions.

Their reply did not correct WTL's statement of alleged fact that the requisitionists intended to remove the defendants from office. It was a glaring omission given the position taken by the plaintiffs. The omission was even more difficult to understand when, in that exchange, the plaintiffs made the point that it was important for them to have a discussion of the items. It would have been most logical for the plaintiffs also to have stated that their intention was to have a discussion of the items and not to remove the defendants. That would have highlighted the importance of the discussion as an end in itself.

(iv) When the fifth defendant, Nicholas Giles Aplin, wrote to the requisitionists asking for reasons why they asked for the Exco to step down, Wong Partnership replied demanding to know the legal basis for the request. No attempt was made to dispel the defendants' perception.

(v) The plaintiffs' position was not clearly pleaded in their Reply. In paras 7(8) and 7(9) of the Defence, the defendants had pleaded the intention of the plaintiffs to remove the Exco. In their Reply, the plaintiffs ought to have pleaded that they did not have such an intention. This was a material fact and ought to have been pleaded so as not to take the defendants by surprise at the trial. Instead, in para 3(2)(i) of the Amended Reply, they pleaded as follows:[note: 21]

> The Plaintiffs had raised 12 matters "*to discuss and if thought fit to pass necessary and appropriate resolutions for each and/or most of these matters*" in the Requisition. It was therefore patently false *and / or selectively inaccurate* to make the statement contained in the Offending Words that "the objective of these 24 members is merely to remove the EXCO – point 12 of the requisition". [emphasis added]

and in para 3(2)(ii) they averred:

> The Defendants were aware that there were only 24 members who had signed the Requisition and that was an insufficient number to remove the Executive Council at the EOGM. It was therefore patently false to make the statement in the Offending Words that the objective of the Plaintiffs in issuing the Requisition was to "merely to remove

the EXCO" as stated in the Offending Words.

> By disputing that the objective of the 24 requisitionists was "merely to remove the Exco", the plaintiffs left open the question whether one of the objectives was to do so. Why could they not have made a categorical denial if it was not their intention to do so? Indeed, it might be inferred that, by averring in para 3(2)(i) of the Amended Reply that it was "selectively inaccurate" for the defendants to make the statement that "the objective of these 24 members is merely to remove the Exco", the plaintiffs admitted that the removal of the Exco was one of their objectives.

70 The defendants therefore submitted that the only possible explanation for this omission of a categorical denial in the plaintiffs' correspondence and pleadings is that the plaintiffs contrived this position sometime between the close of pleadings and the filing of their affidavits in November 2004.

Justification

71 I go on now to the first of the defences – justification. As stated by Tay Yong Kwang J in *Oei Hong Leong v Ban Song Long David* [2005] 1 SLR 277 at [94]:

> … The defence of justification requires a defendant to prove that the words in issue, in their natural and ordinary meaning, were true in substance and in fact. In *Sin Heak Hin Pte Ltd v Yuasa Battery Singapore Co Pte Ltd* [1995] 3 SLR 590 at 598–599, [31], it was held:
>
> > In order to establish the defence of justification, a defendant must prove that the defamatory imputation is true and he must prove the truth of the very imputation complained of. He must also prove the truth of all the material statements in the libel, ie he must justify everything that the libel contains which is injurious to the plaintiff.
>
> This does not mean the court should engage in a meticulous examination of every word in question or every detail of fact. It suffices that the substance or the gist of the libel has been justified: *Aaron v Cheong Yip Seng* [1996] 1 SLR 623; s 8 of the Defamation Act.

Gatley on Libel and Slander (Sweet & Maxwell, 10th Ed, 2004) states to similar effect at para 11.9:

> [F]or the purposes of justification, if the defendant proves that "the main charge, or gist, of the libel" is true, he need not justify statements or comments which do not add to the sting of the charge or introduce any matter by itself actionable. "It is sufficient if the substance of the libellous statement be justified; it is unnecessary to repeat every word which might have been the subject of the original comment. As much must be justified as meets the sting of the charge, and if anything be contained in a charge which does not add to the sting of it, that need not be justified.

72 The parties agreed that the Offending Words bear one or more of the defamatory meanings ascribed to them in [10] above. There was no dispute as to the construction to be placed on the Offending Words. The defendants pleaded as being true in substance and in fact the first statement in the Offending Words which read as follows:[note: 22]

> All the other issues raised by these 24 members in their requisition are either mischievous or selectively inaccurate to achieve the effect desired – to misrepresent and therefore to remove the SCF EXCO for reasons best known to these 24 members.

The defendants did not include in the plea of justification the second statement in the Offending Words which was as follows:[note: 23]

> [T]he objective of these 24 members is merely to remove the EXCO – point 12 of the requisition, for reasons in which only they know. Could the first 11 points be mere misrepresentations of the reality with the intention to mislead? We will leave you to judge.

However, the main charge or gist of the libel in the first statement quoted above is the same as that in the second. Justification of the main charge in the first statement would be justification of the same in the second statement as well. It is unnecessary to justify the remaining words which do not add to the sting of the charge.

73 I should also mention that the allegations in the particulars of justification as to the personal grievances each of the plaintiffs had with the Exco do not strictly go to justification. Instead, they are there presumably to show that each of the plaintiffs had a motive for removing the Exco and therefore to lend credence to the defendants' plea of justification. The plea of justification will succeed if, on the evidence before me, I am satisfied on the balance of probabilities that the plaintiffs were being untruthful, mischievous or selectively inaccurate in raising the issues in the Requisition with a view to the removal of the Exco irrespective of their individual reasons for so doing or the absence of any. The two questions that need to be answered are:

(a) whether the plaintiffs intended to remove the Exco; and

(b) whether they were untruthful, mischievous or selectively inaccurate in raising the first 11 issues in the Requisition with a view to that end.

Did the plaintiffs intend to remove the Exco?

74 I accept the submissions of defence counsel that the evidence pointed convincingly to an intention on the part of the plaintiffs to remove the Exco for the following reasons:

(a) Firstly, Item 12 of the Requisition unequivocally proposed that the Exco be asked to step down to make room for new office bearers to be elected.

(b) As the requisitionists viewed many members of the Exco as being personally close to the OS, the removal of the OS would not have solved the alleged conflict of interests of which the requisitionists complained. The most effective solution was to have a new Exco with no ties to the OS. Nelly Menon in para 42(a)(vi) of her Affidavit of Evidence-in-Chief referred to this close personal relationship between the OS and the members of the Exco. She named Kenneth Tan, Alphonsus Chia, Nicholas Giles Alpin and Goh Hin Tiang as amongst those close to the OS. In her oral evidence, she added Alan Yeo, Lawrence Lim and Wong Loong Tat. As such, the plaintiffs' case was that at least a majority of the Exco enjoyed a close personal relationship with the OS. Those relationships would not end with the removal of the OS from his position. Intchess would still be in a favoured position because of these personal ties. The Exco therefore had to be removed.

(c) This view was reinforced by a remark Nelly Menon made in a conversation she had with Tan Lian Ann on 30 November 2003 after the EOGM of that date. Tan Lian Seng (the ninth plaintiff) testified that Nelly Menon had told his brother, Tan Lian Ann (the fourth defendant), that "she had lost faith completely in the Exco because the Exco is just a puppet of Ignatius Leong".[note: 24] Tan Lian Seng stated this in answer to a question why the requisitionists did

not bring up the items in the Requisition with the Exco before requisitioning for an EOGM. His testimony was that, in his presence, Nelly Menon had brought up to Tan Lian Ann all the wrongdoings of the OS and that Tan Lian Ann had then suggested that she should bring the matter up with the Exco. To that, her response was the remark quoted above. In his testimony, Tan Lian Ann confirmed the conversation. In his account, he recalled that her response was "but the Exco had condoned his behaviour, they are his puppets".[note: 25]

Given her views, it would not have been enough to remove the OS. The Exco had to go as well. That she harboured this intention perhaps accounts for her failure to mention the conversation with Tan Lian Ann despite having been questioned many times in cross-examination why she had not brought up that item in the Requisition for discussion with the Exco. Instead, her lame answer was "I would have had to write so many letters to the Exco for so many different things."[note: 26]

In the light of the unfavourable evidence, Nelly Menon asked to take the stand again. The court granted permission after cautioning plaintiffs' counsel that the probative value of Nelly Menon's further evidence upon such re-call might be questioned given the circumstances. She then testified in her examination-in-chief that when Tan Lian Ann suggested to her to air her complaints of conflict of interests to the Exco, her answer was "You are in the Exco and I am telling you now."

This was clearly inconsistent with Tan Lian Seng's and Tan Lian Ann's evidence as recounted above. Besides, when Tan Lian Ann was asked in cross-examination whether the rest in the Exco knew of his meeting of 30 November 2003 with Nelly Menon, his reply was that they did not "because I had an understanding with Nelly that that meeting was confidential, off-the-record, and I respected that confidentiality".[note: 27] If her reply had truly been "You are in the Exco and I am telling you now", it was even more inexplicable why she did not disclose the conversation of 30 November 2003 with Tan Lian Ann when she was asked several times why she did not bring matters up with the Exco. Besides, her later testimony was inconsistent with the launching of the Requisition on 30 December 2003. If she had regarded her conversation with Tan Lian Ann as being, in effect, with the Exco, she would have followed up on the conversation to see if there was any response before proceeding with the Requisition. There is no evidence that she did. Indeed, preparations for the Requisition were well under way even before the 30 November 2003 meeting. As such, it seems clear that Nelly Menon never intended that Tan Lian Ann should speak to the Exco. Her intention was to remove the Exco.

(d) The evidence shows that there were discussions amongst some of the requisitionists whether the removal of the Exco should be included in the Requisition even before they sought the advice of Chandra Mohan. This information was volunteered by Tan Lian Seng and confirmed by him in response to a specific question by defence counsel. It stood in sharp contrast to the evidence of Nelly Menon who had averred that Item 12 had been included on the advice of Chandra Mohan for the sake of "completeness" although the requisitionists did not intend to remove the Exco.

When perhaps Tan Lian Seng realised that his evidence was damaging to the plaintiffs' case, he contradicted his earlier testimony and said that Chandra Mohan was the first person to raise it. This was his position at the end of the hearing on 17 January 2005. The next day, however, after having been confronted with the transcripts of the previous day, he admitted that Item 12 had been discussed amongst the requisitionists before they went to see Chandra Mohan. I am of the view that in truth that was what had happened.

A cornerstone of the plaintiffs' case was that it was never their intention to remove the Exco and that Item 12 came about only as a result of advice received from Chandra Mohan. It appeared to me that this cornerstone was built on sand.

One of those whom Tan Lian Seng named as having been present at the discussion amongst the requisitionists before they went to see Chandra Mohan was Lawrence Ee. The latter was asked to recollect what transpired at the discussion and whether it was before the meeting with Chandra Mohan. Unfortunately, he repeatedly said that he could not remember. What little could perhaps be gleaned from his evidence was:

(i) that there were discussions amongst the requisitionists regarding Item 12;

(ii) that possibly, after one such meeting, the rest of the discussants went to see Chandra Mohan without him; and

(iii) that he went to see Chandra Mohan only once.

However, the Affidavit of Evidence-in-Chief of Chandra Mohan made several references to Lawrence Ee showing that he was a "regular" at meetings with Chandra Mohan. Defence counsel therefore alleged that Lawrence Ee feigned ignorance as to when the rest went to see Chandra Mohan as he himself had attended the meetings.

(e) The evidence of a witness for the defendants, Mark Chan Chee Keong, categorically stated that Nelly Menon and Tan Chor Chuan told him at a meeting in late December 2003 that "they were intending to requisition an Extra-Ordinary General Meeting … of the SCF to remove the Executive Council".[note: 28] His evidence was unchallenged in cross-examination.

(f) The evidence of the plaintiffs' witness, Christopher Lim Boon Seng, lends further support. In his Affidavit of Evidence-in-Chief, he stated that sometime in October 2003 the third, eighth and ninth plaintiffs ("the said plaintiffs") approached him to discuss issues concerning the governance of the SCF and that they informed him that there was much dissatisfaction within the general membership of the SCF about the way the SCF was being run. He testified that he was told that if the issues of governance were made out, then the Exco might be asked to step down. To his question "if the Exco stepped down, do you have anybody to stand up", he testified that Nelly Menon "mentioned that *there were people who would be ready*, but the issue was not so much to ask the entire team to step down"[note: 29] [emphasis added]. This contradicted Nelly Menon's evidence on the stand where she said:[note: 30]

> We had no intention and *we did not even have an alternative slate*. If you ask Exco to step down, you must have office bearers to take over. We had not planned any alternative slate. [emphasis added]

(g) The objection that the requisitionists took to Exco's putting Item 12 first on the agenda for the EOGM gave away their true intentions. Such juxtaposition would not have mattered unless the intention of the requisitionists was for the wave of disgruntlement that they hoped to build up in the discussions concerning the first 11 items to carry the vote on Item 12. This was supported by the testimony of Yung Yew Kong (the seventh plaintiff) in answer to questions by the court. His evidence was consistent with that of Nelly Menon who testified that:[note: 31]

> The spirit of the requisition was to *discuss the items and give the members an opportunity to decide after that*. But you are not giving members an opportunity to decide because you

are having a voting first and *that is putting the cart before the horse*. [emphasis added]

(h) The requisitionists' demand in their lawyers' letter of 13 January 2004 that the EOGM be called off is further evidence, in my view, that their intention in the Requisition was to remove the Exco. I believe that the true reason why they insisted that the meeting be called off was that they had learnt from the defendants' internal e-mail that they were going to be out-voted as the Exco was counting on more than a hundred members for support. It would otherwise have been difficult to understand why, having prepared for months to requisition the EOGM, they would seek to call it off – resorting as they did to objections as to inadequacy of notice, lack of express provision for discussion and the juxtaposition of Item 12. I shall deal with each of the objections briefly.

(i) Unlike the common law rule that a meeting might be invalidated by a defect in notice, s 392(2) of the Companies Act (Cap 50, 1994 Rev Ed) provides, *inter alia*, that a deficiency of notice or time does not invalidate any proceeding unless the court is of the opinion that such procedural irregularity caused a substantial injustice. In any event, as earlier observed, it lay ill in the mouth of the requisitionists to object to inadequacy of notice.

(ii) Wong Partnership's letter of 16 January 2004 stating that their clients would not be attending the EOGM that day because they inferred from WTL's reply that there would be no discussion is unconvincing, to say the least. As lawyers they must surely have known that before any vote is taken at a requisitioned meeting there had to be a discussion.

(iii) Nelly Menon was asked why, instead of seeking to call off the meeting, Wong Partnership's letter of 13 January 2004 did not ask for Item 12 to be placed last on the agenda and for confirmation that there would be discussion of the items. She first said that the meeting was invalidly convened and also that there had been no attempt to change the juxtaposition of Item 12 despite the requisitionists having mentioned it.

When pressed that Wong Partnership's letter of 13 January 2004 did not ask for restoration of the juxtaposition or to insert the words "to discuss" in the agenda, she said:[note: 32]

I believe that it has been made known to the Exco, I think even through Mr Mohan's efforts, that this was wrongly placed, the whole requisition had taken on a different character. So the Exco was aware of this and *I am quite sure that my lawyers would have conveyed this* in one form or the other to the lawyers for the Exco. [emphasis added]

She must have been taken aback when, contrary to her confident assertion, counsel on both sides confirmed that there had been no communication between them thereon prior to 13 January 2004. As to her claim that the Exco knew of the requisitionists' complaints regarding the agenda through Chandra Mohan, she was forced to admit that Chandra Mohan had only spoken to the Singapore Sports Council and that she did not know if the latter had communicated it to the Exco.

Then followed a telling twist to the tale. When she was further pressed why there was no request for the EOGM agenda to be amended, an entirely new reason emerged. She brought up the defendants' internal e-mail that had been sent to PowerChess by one or more persons unknown and claimed that those "really shocked and horrified us and we consulted our lawyers and felt that this was really done in very bad faith and there was really no reason for us to go to such an EOGM".[note: 33] This answer was patently inconsistent with her previous answer

mentioned above. That answer was premised upon an approach having been made to the Exco through her lawyers and/or Chandra Mohan. The last answer sought to justify why no approach had been made to the Exco! Nelly Menon claimed to have consulted Wong Partnership on the e-mail. However, the e-mail was not mentioned anywhere in Wong Partnership's letters of 13 and 16 January 2004.

Nelly Menon's last reason was not mentioned anywhere, neither in the correspondence nor in the pleadings, nor even in the Affidavits of Evidence-in-Chief of the plaintiffs. And yet, when they were on the stand, all the plaintiffs echoed the same sentiment: they were shocked when they saw the e-mail. Counsel for the defendants therefore suggested that after Nelly Menon gave her evidence to this effect, the other plaintiffs simply fell in line.

It could not be that they did not mention the e-mail earlier in order to surprise the defendants at trial. Their possession of copies of the e-mail had already been disclosed at the discovery stage before their Affidavits of Evidence-in-Chief were filed. As I indicated earlier, my view is that they chose to stay away from the EOGM principally because they knew that they could not remove the Exco. They could not have expected the Exco to put up no resistance. So the prospect of a battle was unlikely to have been the reason why they stayed away, Kenneth Tan's colourful and intemperate words in the e-mail notwithstanding.

75 I return to further consider the plaintiffs' case that it was Chandra Mohan who first suggested the addition of Item 12. On this basis, the plaintiffs maintained that they did not intend to remove the Exco. It was also submitted, *albeit* inferentially, that the evidence of Chandra Mohan was to be preferred to that of Tan Lian Seng. A choice between the two was not ineluctable. Chandra Mohan may not have been informed of the previous discussions amongst certain of the requisitionists. The two are therefore reconcilable. I also note that Chandra Mohan only drafted a set of questions and not the actual Requisition; the requisitionists did not appear to be totally reliant on him. In particular, Item 12 in its final form was actually drafted by Tan Chor Chuan, Nelly Menon and Tan Lian Seng.

76 Even assuming *arguendo* that truly the addition of Item 12 was first suggested by Chandra Mohan, the evidence earlier reviewed showed that thereafter the requisitionists willingly embraced Item 12. Even if an intention to remove the Exco had not been formed earlier, it was formed after Chandra Mohan suggested Item 12.

Were the plaintiffs untruthful, mischievous or selectively inaccurate?

77 There is no gainsaying that under the constitution of the SCF the requisitionists were entitled to requisition the EOGM. However, if in the exercise of that right they put up items in the Requisition which unfairly suggested wrongdoing on the part of the Exco, it cannot be that the Exco could not defend themselves by putting up a suitable rebuttal within the bounds set by the law.

78 In this case, upon reading Items 1 and 2 of the Requisition, one readily forms the impression that the Exco members could either be in a position of conflict themselves or have allowed or condoned the OS taking improper advantage of his position in the SCF, in particular in the procurement process and in the selection of trainees for the Platinum Squad. However, no evidence at all was furnished of any instance of such abuse of his position. On the contrary, the plaintiffs declared that they merely intended to say that he was in a position to take advantage if he so wished. This certainly was not the impression an objective reader would have come away with after reading the Requisition. I therefore find that the plaintiffs were mischievous in putting up these items.

79 Item 3 of the Requisition also suggested that there was a lack of transparency because the criteria for selection and acceptance for "national representation" and into the Platinum Squad were not spelt out clearly. In truth, the guidelines had been on the SCF website since 2002 on the initiative of the defendants. The plaintiffs also did not adduce any evidence to justify their reference in Item 3 to "national representation". Their counsel's submissions sought to justify the inclusion of Item 3 by saying that there was a significant level of discretion involved in the selection of players and that therefore the criteria were unclear.

80 However, the plaintiffs' reason for the inclusion of Item 3, as disclosed in Nelly Menon's Affidavit of Evidence-in-Chief and in her oral testimony, was that there were instances of players having been selected for the Platinum Training Scheme even though they were not qualified under the guidelines. (In that context, the earlier mentioned example of the three boys in the under-ten group was cited.) As was submitted by defendants' counsel, the reason given really amounted to a complaint that the guidelines had not been followed and not that they were unclear. The reason given did not justify the complaint. Besides, the complaint itself was satisfactorily answered by Kenneth Tan as we observed earlier when Item 3 was considered. Clearly, Item 3 was misleading and suggested some blameworthiness on the Exco's part. In my view, it was mischievous and selectively inaccurate.

81 Item 10 of the Requisition gave the impression that the rules and regulations governing tournaments were not known in advance. Further, by giving "fair play" as the reason for Item 10, the requisitionists suggested that there had been a lack of fair play. If the suggestion was true, the blame would clearly fall on the Exco for failing to make the rules and regulations known in advance. From the evidence, it became clear that the impression given was false and accordingly the suggestion of a lack of fair play on account thereof was, to my mind, mischievous.

82 Having recounted the more obvious examples from amongst the first 11 items in the Requisition, it is not necessary for me to revisit the remainder of the items of which, it must be said, Items 6 and 7 seemed innocuous.

83 I am satisfied that the defendants have justified the libel as against each of the plaintiffs.

Fair comment

84 Contrary to my indication when oral judgment was given, I am of the view that, for technical reasons arising from the defendants' pleadings, this defence ought to fail. To succeed in this defence, four requirements must be met:

(a) The statement must be comment and not fact.

(b) There must be a sufficient factual basis for the comment.

(c) The comment must be one which a person could honestly hold.

(d) The comment must be on a matter of public interest.

85 On the face of the Appeal, it was sufficiently clear that there were facts based upon which the comment could be made. Unfortunately for the defendants, the facts identified in the pleadings as supporting the comment were not the facts stated in the Appeal. Instead, the pleaded facts were those in paras 7 and 9 of the Re-Re-Amended Defence. Paragraphs 7(1) to 7(7) were facts which were not stated or summarised in the Appeal and therefore not brought home to the publishee. In the same way, para 7(10) did not qualify as a supporting fact for the comment. Paragraph 7(10) referred

to the defendants' tabulated response of 16 January 2004. At the time of the publication of the Appeal on the SCF website on 12 January 2004, the tabulated response had not been released. A reader of the Appeal therefore could not have seen any of the grounds set out in the tabulated response as being the basis for the comment. Only parts of paras 7(11) and 7(12) could be said to touch upon grounds covered in the Appeal. Paragraphs 7(14) and 7(15) were wholly irrelevant to the defence as they covered events that took place after the publication. Similarly, para 9 of the Re-Re-Amended Defence did not cover the supporting facts.

86 In view of the paucity of facts pleaded which could properly form the basis of the comment, my conclusion is that the defence of fair comment ought to fail.

Qualified privilege

87 Inasmuch as a person under physical attack is entitled to use reasonable force to defend himself, where his character or conduct has been attacked, he is entitled to repel such attack and any defamatory statements he may make about his attacker is accorded privilege so long as they are published *bona fide* and relevant to the accusations made. *Gatley on Libel and Slander* quotes *Brewer v Chase* 80 NW 575 (1899) at 577:

> The law justifies a man in repelling a libellous charge by a denial or an explanation. He has a qualified privilege to answer the charge; and if he does so in good faith, and what he publishes is fairly an answer, and is published for the purpose of repelling the charge, and not with malice, it is privileged, though it be false.

Gatley on Libel and Slander goes on to state:

> Mere retaliation, which cannot be described as an answer or explanation, is not protected, but the defendant is not required to be diffident in protecting himself and is allowed a considerable degree of latitude in this respect and the law does not concern itself with niceties in such matters. The central difficulty here is to distinguish between mere retaliation and attacking the credibility of your opponent in legitimate self-defence.

In the present case, only two questions stand in the way of a successful plea of qualified privilege. These are: (a) whether the Appeal was published with malice; and (b) whether the publication was proportionate to the attack.

88 "Malice" is a term of art to denote a dominant improper motive for the publication of a defamatory statement. Lord Diplock's statement of the law in this regard in the context of qualified privilege in *Horrocks v Lowe* [1975] AC 135 is generally regarded as the classic exposition. I quote extracts from his Lordship's judgment at pp 149–151:

> The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another, save in the exceptional case where a person may be under a duty to pass on, without endorsing, defamatory reports made by some other person.
>
> Apart from those exceptional cases, what is required on the part of the defamer to entitle him to the protection of the privilege is positive belief in the truth of what he published or, as it is generally though tautologously termed, "honest belief." If he publishes untrue defamatory matter

recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false.

…

Even a positive belief in the truth of what is published on a privileged occasion — which is presumed unless the contrary is proved — may not be sufficient to negative express malice if it can be proved that the defendant misused the occasion for some purpose other than that for which the privilege is accorded by the law. The commonest case is where the dominant motive which actuates the defendant is not a desire to perform the relevant duty or to protect the relevant interest, but to give vent to his personal spite or ill will towards the person he defames. If this be proved, then even positive belief in the truth of what is published will not enable the defamer to avail himself of the protection of the privilege to which he would otherwise have been entitled. There may be instances of improper motives which destroy the privilege apart from personal spite. A defendant's dominant motive may have been to obtain some private advantage unconnected with the duty or the interest which constitutes the reason for the privilege. If so, he loses the benefit of the privilege despite his positive belief that what he said or wrote was true.

Judges and juries should, however, be very slow to draw the inference that a defendant was so far actuated by improper motives as to deprive him of the protection of the privilege unless they are satisfied that he did not believe that what he said or wrote was true or that he was indifferent to its truth or falsity. The motives with which human beings act are mixed. They find it difficult to hate the sin but love the sinner. Qualified privilege would be illusory, and the public interest that it is meant to serve defeated, if the protection which it affords were lost merely because a person, although acting in compliance with a duty or in protection of a legitimate interest, disliked the person whom he defamed or was indignant at what he believed to be that person's conduct and welcomed the opportunity of exposing it. It is only where his desire to comply with the relevant duty or to protect the relevant interest plays no significant part in his motives for publishing what he believes to be true that "express malice" can properly be found.

There may be evidence of the defendant's conduct upon occasions other than that protected by the privilege which justify the inference that upon the privileged occasion too his dominant motive in publishing what he did was personal spite or some other improper motive, even although he believed it to be true.

Malice

89 The plaintiffs contended that each of the defendants was actuated by express malice in the publication of the Offending Words because of the following:

(a) the defendants' admission that they had a collateral purpose and, in the plaintiffs' submission, a dominant improper motive, in publishing the Offending Words;

(b) the defendants' internal e-mail communications;

(c) the manner, mode, timing and extent of publication of the Offending Words;

(d) the defendants' knowledge that the Offending Words were untrue and/or that the defendants were recklessly indifferent to their truth and/or did not have an honest belief in their truth; and/or

(e) the defendants' conduct at the EOGM.

Absence of honest belief

90 I shall deal first with the plaintiffs' contention in para (d). From my review of the items in the Requisition and, in particular, the perception of the defendants, it was clear that the defendants did believe the Offending Words to be true. The plaintiffs' contention otherwise was unfounded. I should also point out that the plaintiffs' counsel was wrong to suggest in para 30 of his submissions that it was for the defendants "to discharge their burden of proof that they had an honest belief". The onus was on the plaintiffs to prove malice.

Dominant improper motive

91 Whilst I agree that the Appeal as a whole served two purposes, *viz*, to repel the attack by the requisitionists and to garner support for the EOGM, I do not agree that the dominant and improper motive in publishing the Offending Words was to garner support. Clearly, in publishing the Offending Words, the dominant motive was to answer the attack mounted by the requisitionists. That members may thereby be influenced not to support the requisitionists is purely incidental even if such result might be viewed as being likely. Indeed, *Braddock v Bevins* [1948] 1 KB 580 (a case not cited by the parties) is authority for the proposition that the privilege is not lost to a candidate in an election because he makes the statement to draw votes away from the other and to damage the latter's reputation before the electorate. That some parts of the Appeal (other than the Offending Words) did indeed solicit support for the Exco is irrelevant.

Internal e-mail

92 It is unarguable that the language used by the first defendant was intemperate and did him no credit. However, one must pay heed to Lord Diplock's caution to "be very slow to draw the inference that a defendant was so far actuated by improper motive as to deprive him of the protection of the privilege".

93 As paraphrased in *Gatley on Libel and Slander* ([71] *supra*) at para 16.3:

> Positive belief in the truth of what is published will usually protect the defendant unless he can be proved to have misused the occasion. Judges … should be slow to draw the inference that he has misused the occasion, and the defendant's desire to use the occasion for its proper purpose must be shown to have played no significant part in his motives if malice is to be found.

94 Whilst not seeking to excuse the first defendant for the language, one can understand how indignant he and his colleagues on the Exco must have felt when what they perceived to be baseless suggestions were made as to their competence and integrity. It was in the context of "rallying the troops" for the EOGM that he used with reference to the requisitionists, the words/phrases "neuter", "flush, fight and destroy the diehards", "dregs", "completely mischievous" and "miscreants". His sense of indignation and outrage at what he perceived to be a "sneak attack" in which the Exco was "unfairly attacked" is clearly evident from his words. At the trial he did admit that some of the words were a bit harsh and that he would not have used them in a public forum as distinct from the private correspondence between him and his Exco colleagues.

95 I should say that the Offending Words in the Appeal (which incidentally was drafted on or before 2 January 2004 at least five days before the e-mail in question) do not appear to me to be so actuated by spite, animosity or intent to injure as to constitute malice. It contained none of the

impugned language of the e-mails. When the Appeal was posted on the website on 12 January 2004, the text remained the same.

96 I am not satisfied that the defendants, in putting up the Appeal, misused the occasion of qualified privilege. It seems rather far-fetched to conclude from the e-mails that the defendants' desire to repel the attack by the requisitionists played no significant part in the motives. Whilst one might not have chosen the same words as the first defendant, the indignation and outrage was understandable; he should not forfeit the defence of qualified privilege merely on account thereof.

97 In the passage cited earlier from *Horrocks v Lowe* ([88] *supra*), although Lord Diplock did allude to the possibility that a finding of malice could be made notwithstanding the conclusion that the defendant held an honest belief, he emphasised that judges should be very slow to find a defendant malicious on the ground that he was prompted by the dominant motive of injuring the plaintiff. Eady J in *Branson v Bower* [2002] QB737 at [8] went so far as to say that he had never come across such a finding.

Conduct at EOGM

98 Plaintiffs' counsel submitted that the references to the plaintiffs made by the defendants at the EOGM were proof of the defendants' malicious state of mind. However, I found the examples given to fall far short. They showed the defendants to have said little more than what the Offending Words conveyed.

Manner and timing of publication of the Offending Words

99 The plaintiffs' submissions repeatedly stressed that the defendants were actuated by express malice in publishing the Appeal. To this end, they described the objective behind the Offending Words as character assassination and the casting of aspersions. As I have already held, apart from the words being admittedly defamatory, I would not have thought they were egregious.

100 The fact that the requisitionists were identified on the website, in my view, has been made too much of. The Requisition had been set out in full on the website together with the Appeal, *inter alia*. Why should their identities be a secret? Particulars of their membership status were included probably to show (as was suggested by the defendants) that some of the requisitionists were new members recruited for the purpose of the Requisition.

Extent of publication

101 Finally, I come to the extent of the publication. Was its circulation disproportionate to the attack? The Requisition was made to the Exco and circulated amongst members. Why was it necessary for the Appeal to be put on the SCF website?

102 The defendants submitted that as they did not know the extent to which the rumours or allegations of the Exco's alleged malfeasance had spread, they felt that it was their duty, or at least, that they had an interest in rebutting the allegations by publishing the Appeal on the website.

103 I note that although Kenneth Tan, in his evidence, did refer to such rumours, the reason for the publication of the Appeal on the SCF website was "[t]o ensure that our membership was fully apprised".[note: 34] He stated, under cross-examination, that the Exco did not intend at any time to tell the world and that the Exco members probably had not considered the repercussions of so doing; he added that if they had done so, they would have done better.[note: 35]

104 I am of the view that the posting of the Appeal on the website was a disproportionate response: see *Oei Hong Leong v Ban Song Long* [2005] 3 SLR 608 at 610, holdings 5 and 6 of the headnote.

105 For this reason, I hold that the defendants have failed in their defence of qualified privilege. Nevertheless, given my holding that the defence of justification has been made out, I grant judgment in favour of the defendants.

[note: 1]2AB.408-409

[note: 2]2AB.373-376

[note: 3]3AB.711

[note: 4]BP.106-106

[note: 5]2AB.374

[note: 6]2BA.392, para 42(a)(v).

[note: 7]2AB.375

[note: 8]4BA.902

[note: 9]2BA.393, para 42(b).

[note: 10]2AB.374

[note: 11]2BA.394, para 42(c).

[note: 12]2BA.394-395, para 42(c).

[note: 13]2BA.395, para 42(d).

[note: 14]4BA.902

[note: 15]2AB.373

[note: 16]In lines 19 to 21 of p 126 of the Transcript dated 26.1.2005

[note: 17]4BA.903

[note: 18]2BA.395, para 42(e).

[note: 19]2BA.425

[note: 20]2BA.428

[note: 21]BP.46

[note: 22]2AB.374

[note: 23]2AB.375

[note: 24]In lines 24 and 25 of p 35 of the Transcript dated 18.1.2005

[note: 25]In lines 6 and 7 of p 119 of the Transcript dated 26.1.2005

[note: 26]In lines 15 and 16 of p 80 of the Transcript dated 11.1.2005

[note: 27]In lines 9 to 11 of p 128 of the Transcript dated 26.1.2005

[note: 28]4BA.1052, para 2.

[note: 29]In lines 24 and 25 of p 12, and line 1 of p 13, of the Transcript dated 24.1.2005

[note: 30]In lines 21 to 25 of p 132 of the Transcript dated 11.1.2005

[note: 31]In lines 10 to 15 of p 135 of the Transcript dated 11.1.2005

[note: 32]In lines 11 to 17 of p 119 of the Transcript dated 11.1.2005

[note: 33]In lines 24 and 25 of p 125, and in lines 1 and 2 of p 126, of the Transcript dated 11.1.2005

[note: 34]4BA.809, para 9.

[note: 35]In lines 7 to 19 of p 165 of Transcript dated 26.1.2005