Chee Siok Chin and Others v Minister for Home Affairs and Another
[2005] SGHC 216

Case Number : OM 39/2005, SIC 5162/2005

Decision Date : 07 December 2005

Tribunal/Court : High Court

Coram : V K Rajah J

Counsel Name(s) : First applicant in person; M Ravi s/o Madasamy (M Ravi and Co) for the second and third applicants; Jeffrey Chan and Teh Hwee Hwee (Attorney-General's Chambers) for the respondents

Parties : Chee Siok Chin; N Gogelavany; Yap Keng Ho — Minister for Home Affairs; Commissioner of Police

Administrative Law – Judicial review – Police ordering "peaceful" protestors to disperse and seizing protest paraphernalia – Protestors applying for declarations that respondents acting in unlawful and/or "unconstitutional manner" in ordering them to disperse and seizing protest paraphernalia – Whether discretionary power of police under Miscellaneous Offences (Public Order and Nuisance) Act to deal with protestors exercised arbitrarily or improperly – Sections 13A, 13B, 40 Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed)

Civil Procedure – Striking out – Police ordering "peaceful" protestors to disperse and seizing protest paraphernalia – Protestors applying for declarations that respondents acting in unlawful and/or "unconstitutional manner" in ordering them to disperse and seizing protest paraphernalia – Protestors commencing applications for declarations by originating motion and failing to name proper party to action – Whether such procedural irregularities forming grounds for striking out applications – Whether proceedings should be struck out for being vexatious, frivolous and/or an abuse of process of court – Whether proceedings should be struck out on sole ground that protestors might be prosecuted – Order 2 r 1(2), O 15 r 6, O 18 r 19 Rules of Court (Cap 322, R 5, 2004 Rev Ed), s 19 Government Proceedings Act (Cap 121, 1985 Rev Ed)

Constitutional Law – Constitution – Interpretation – Police ordering "peaceful" protestors to disperse and seizing protest paraphernalia – Protestors applying for declaration that respondents acting in unlawful and/or "unconstitutional manner" in ordering them to disperse and seizing protest paraphernalia – Whether police contravening protestors' constitutional rights to freedom of assembly, expression and speech by exercising discretionary power to deal with protestors under Miscellaneous Offences (Public Order and Nuisance) Act – Whether provisions of Miscellaneous Offences (Public Order and Nuisance) Act contravening constitutional rights under Art 14(1) of Constitution – Article 14 Constitution of the Republic of Singapore (1999 Rev Ed), s 40 Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed)

Words and Phrases – "necessary or expedient" – Article 14(2) Constitution of the Republic of Singapore (1999 Rev Ed)

Words and Phrases – "offending in his view" – Section 40 Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed)

Words and Phrases – "person" – Section 2 Interpretation Act (Cap 1, 2002 Rev Ed)

Words and Phrases – "threatening", "insulting", "harassment", "annoying" – Sections 13A, 13B Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed)

7 December 2005 *Judgment reserved.*

V K Rajah J:

1 In these proceedings, several interesting procedural and substantive issues have been raised. These issues converge in the following circumstances. The applicants seek declarations to vindicate their alleged constitutional rights of assembly and freedom of speech. The respondents on the other hand in addition to raising threshold procedural objections, also allege that the proceedings ought to be struck out on the basis that they are vexatious, frivolous and/or an abuse of process.

2 The issues raised include:

(a) the circumstances in which a civil court can hear a matter which has a close nexus to a pending criminal investigation;

(b) whether groups of four or less persons have an absolute legal immunity to act with impunity in assembling and expressing their views;

(c) the discretionary powers available to the police in dealing with persons suspected of offending salient provisions of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) ("MOA"); and

(d) the circumstances in which the exercise of a statutory discretion and/or power by the police can be reviewed.

In the ultimate analysis, the overarching issue is what the Constitution of the Republic of Singapore (1999 Rev Ed) ("the Constitution") considers "necessary or expedient" so as to strike a balance between the exercise of certain individual rights on the one hand and the perceived wider public interest on the other hand. In this context, do the applicants have a legitimate *legal* grievance?

3 While the real legal issues fall within a fairly narrow compass, both for the sake of completeness and out of deference to counsel's industry, I shall address all the points raised, including the ambit of the constitutional right of assembly.

4 Given that some of the issues raised are both complex and involved, it may be helpful at this juncture to outline the structure of the judgment. I address the various issues raised in the following schematic arrangement:

(a) Factual matrix [6] – [16]

(b) The procedural irregularities [17] – [27]

(i) Inappropriate originating process [17] – [20]

(ii) Wrong parties sued [21] – [27]

(c) Principles governing striking out [28] – [38]

(i) Frivolous or vexatious [37]

(ii) Abuse of process [38]

(d) Application of striking-out principles to the present case [39] – [40]

(e) Constitutionality of the MOA [41] – [56]

(f) A vignette of the rival contentions [57] – [59]

(g) Overview of the MOA [60] – [92]

(i) Relevant provisions of the MOA [63] – [87]

(ii) The power of arrest under the MOA [88] – [92]

(h) Reviewing the exercise of police powers [93] – [106]

(i) Analysis of the applicants' substantive case [107] – [129]

(i) The preliminary issues [108] – [115]

(ii) The principal controversy [116] – [129]

(j) Conclusion [130] – [139]

5 As there are broad and apparent similarities between some of the applicable statutory provisions and corresponding legislation in other jurisdictions, I take the liberty, from time to time, of adopting a comparative approach in examining the legal position. I also explain why some of the more recent English decisions on public order issues exert neither persuasive nor logical force given that they both reflect and apply legal and political considerations that do not and cannot extend to Singapore. It is evident that the infiltration of European law into English law has significantly reshaped English legal contours in this particular area.

Factual matrix

6 The applicants are self-professed political activists. The respondents are the Minister for Home Affairs and the Commissioner of Police. In these proceedings, commenced by way of an originating motion filed on 30 September 2005, the applicants seek the following declarations:

(1) a declaration that the Respondents acted in an unlawful and unconstitutional manner when the Applicants were ordered to disperse by the police during a peaceful protest outside the Central Provident Fund Building, Robinson Road on 11 August 2005; and

(2) a declaration that the seizure of the items by police on 11th August 2005 as specified in the affidavit herein from the Applicants during the said event was unconstitutional and the Respondents be directed to return the said items to the Applicants.

7 On 7 October 2005, the Attorney-General ("AG"), on behalf of the respondents, filed a summons in chambers application to strike out the entire proceedings on the basis that the proceedings are irregular, scandalous, frivolous or vexatious and/or that they are an abuse of the process of court. The AG has, however, not filed any affidavit disputing the applicants' affidavit of alleged facts. Instead, he has filed an affidavit exhibiting downloads from the website of a political party, the Singapore Democratic Party ("SDP") and contends that the downloads incontrovertibly demonstrate that these proceedings constitute political theatre engineered and stage-managed by the SDP and the applicants.

8 The proceedings arise as a consequence of an incident involving the three applicants and another fellow traveller on 11 August 2005. On that day, at about 12.30pm, the applicants held what

they describe as a "peaceful protest" at the walkway leading to the Central Provident Fund Building ("CPF Building") at Robinson Road. Each of them wore white T-shirts inscribed with various words in red both on the front and back.

9 Chee Siok Chin ("Chee") and Yap Keng Ho ("Yap") wore T-shirts with the words "National Reserves" and "HDB GIC" inscribed on either side. N Gogelavany ("Gogelavany") and Tan Teck Wee ("Tan") wore T-shirts with the words "Be Transparent Now" and "NKF CPF" inscribed on either side. Tan, however, is not a participant in these proceedings. In this judgment I shall hereinafter collectively and interchangeably refer to the applicants and Tan as "the protestors".

10 The protestors stood in a row along the walkway. Yap held up a placard which read "Singaporeans spend on HDB; whole earnings on CPF; life savings – but cannot withdraw when they need" above his head. Tan held up a transparency sheet with the word "Accountability" written in Chinese.

11 Soon after, a number of journalists congregated around the protestors and posed queries. Gogelavany and Chee responded. Gogelavany also handed out copies of a press statement they had prepared, the contents of which, however, have not been adduced in the applicants' affidavit. After fielding the press queries, the protestors remained on the walkway. At approximately 1.00pm they turned to face the CPF Building with their backs to the main road.

12 At about 1.15pm, several police cars and riot police vans arrived at the scene. Riot police armed with shields, batons and helmets then positioned themselves a few feet away from the protestors. In addition, about 20 uniformed policemen and women observed the "silent protest".

13 A senior police officer, Deputy Superintendent Dominic J Baptist ("DSP Baptist") subsequently approached the protestors and attempted to ascertain who was "in charge". They replied "we all [are]". DSP Baptist then told them that they were to disperse immediately. The protestors questioned the basis for the dispersal request. DSP Baptist responded that he had received a telephone call complaining that they were creating a public nuisance. The protestors persisted, seeking the *legal* basis for the dispersal order. DSP Baptist stated that the offence was one of public nuisance under the MOA. The protestors allege that DSP Baptist also asserted that the "gathering constituted a [seizable] offence and that [they] could be arrested". DSP Baptist sought further clarification, asking the protestors if they were connected to certain "booksellers" selling books nearby. They replied in the negative, assuring DSP Baptist that they would leave the scene in a few minutes. DSP Baptist walked away. About a minute later the protestors walked to the back of the CPF Building where they removed their T-shirts. The police then approached them, requesting for their identity cards. Having recorded the protestors' particulars, the police asked the protestors to hand over their T-shirts and placards for "purposes of investigation". When one of them enquired whether the items would be returned, an officer replied "maybe". The protestors duly handed the items to the police and left. It is undisputed that no force was used in the course of the incident. Nor was there any suggestion of any potential violence that might lead to a breach of peace.

14 The AG contends that the application is procedurally irregular as the mode of commencement adopted by the applicants, namely by way of an originating motion, is incorrect; it is further contended that whenever a declaration is sought, the proceedings ought to be commenced by way of either a writ or originating summons. Furthermore, in the light of s 19(3) of the Government Proceedings Act (Cap 121, 1985 Rev Ed) ("GPA") it is the AG and not the present respondents who should have been properly named as the respondent.

15 Mr Jeffrey Chan, on behalf of the AG, accepts however that these irregularities can be cured

and should not inexorably result in the striking out of the entire proceedings. That concession apart, he maintains that there is absolutely no merit in the substance of the proceedings and therefore invites the court to strike out the entire proceedings. In support of his application to strike out the entire proceedings, he contends that the alleged complaints against the police conduct during the incident which form the crux of the applicants' case are legally unsustainable and doomed to failure. He robustly contends that the applicants have no cause to complain about the police in relation to the incident; the police were factually and legally both entitled and empowered to ask the protestors to leave the scene as well as to seize the T-shirts.

16 Mr M Ravi, on behalf of the second and third applicants, takes an ambivalent position apropos the procedural irregularities. While he does not accept that the AG's points are well founded, he nevertheless vigorously contends that the proceedings cannot and ought not to be struck out *in limine*. He asserts that a matter of great constitutional importance is raised by the present proceedings. Surely, he argues, Art 14 of the Constitution allows "peaceful protests"; the applicants were merely exercising their constitutional rights on 11 August 2005.

The procedural irregularities

Inappropriate originating process

17 The applicants seek declarations that the respondents had acted in an unlawful and/or "unconstitutional manner" in ordering the applicants to disperse during their protest and in seizing the items. In England, under its original civil procedural regime, applications for a declaratory judgment could be commenced by (a) writ, (b) originating summons, or (c) by way of an application for judicial review: see Zamir, Woolf & Woolf, *The Declaratory Judgment* (Sweet & Maxwell, 2nd Ed, 1993) at para 7.03. However, in Singapore, where different governing civil procedure rules prevail, it is now plainly established that a declaration cannot be obtained by way of an application for judicial review, as the remedies for such an application are limited to the prerogative orders: *Re Dow Jones Publishing (Asia) Inc's Application* [1988] SLR 481. The AG rightly points out that, if anything, the proper procedure for the applicants to adopt is to seek a declaration to commence proceedings either by way of a writ or originating summons: see the Court of Appeal decision in *Chan Hiang Leng Colin v Minister for Information and the Arts* [1996] 1 SLR 609.

18 The applicants' present application by way of originating motion is inherently incorrect and inappropriate. Pursuant to O 5 r 5 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("RSC"), the originating motion procedure shall be used only if the RSC or any other written law expressly requires or authorises that such a procedure be employed to initiate proceedings. That is not the case here. The High Court decision of *Jigarlal Kantilal Doshi v Damayanti Kantilal Doshi* [1998] 1 SLR 211 ("*Jigarlal*'s case") at [21] appears to suggest that commencing proceedings by originating motion, where they are not required or authorised to be so begun by the RSC or by any written law, is a sufficiently fundamental irregularity to warrant striking out if an application is made at a sufficiently early stage of the proceedings.

19 That said, it must also be readily acknowledged that such an irregularity is by no means a fatal defect. Order 2 r 1(3) of the RSC stipulates that the court shall not wholly set aside any proceedings solely on the ground that the proceedings were required by any of the rules to be begun by an originating process other than the one actually employed. The court may allow appropriate amendments to be made and make an appropriate order dealing with the proceedings and/or remedial steps as it thinks fit: O 2 r 1(2) of the RSC. I note that the court in Jigarlal's case omitted unfortunately to consider O 2 r 1(3) of the RSC.

20 Pursuant to O 28 r 8 of the RSC, the court may, in a case begun by originating summons, direct that the proceedings continue as if the case had been begun by writ. Although there is no express provision in the RSC that confers a similar power on the court to convert an action begun by originating motion into an action begun by writ or originating summons, there appears to be no good reason why the court should not assess such an error with some latitude and rectify the position under its wide discretionary powers conferred by O 2 r 1(2) of the RSC. The court rules are designed essentially to facilitate workflow and not to impede legitimate legal grievances. They are the vassals and vessels and not the masters of substantive justice. In the instant case, given that there are no apparent substantial factual controversies, the proper course of action would be to direct that the proceedings continue as if they had begun by an originating summons, assuming that the proceedings are not fundamentally and irremediably flawed on other more substantive grounds.

Wrong parties sued

21 The applicants have named as respondents the Minister for Home Affairs and the Commissioner of Police in their official capacity. This is purportedly on the basis that these two persons have legal supervision of the relevant police officers. Mr Chan asserts that this is another patent irregularity as the proper party to name as the respondent is the AG himself.

22 Section 19(3) of the GPA stipulates:

> Civil proceedings against the Government *shall be instituted* against the appropriate authorised Government department, or, if none of the authorised Government departments is appropriate or the person instituting the proceedings has any reasonable doubt whether any and if so which of those departments is appropriate, against the Attorney-General. [emphasis added]

23 Pursuant to s 19(1) of the GPA, the Minister shall from time to time publish in the *Gazette* a list of Government departments that have been specifically authorised for the purposes of this Act. No such list has thus far been published. As a consequence, all civil proceedings against the Government and/or public office holders have to be commenced against the AG pursuant to s 19(3) of the GPA. The applicants should indeed have named the AG as the respondent.

24 There appears to be no provision in either the GPA or under O 73 of the RSC (which deals with proceedings against the Government) that spells out the consequences of the present transgression. In my view, guidance can be gleaned from O 15 r 6 of the RSC. This Rule addresses instances of any misjoinder or nonjoinder of parties. It emphasises that no cause or matter shall be nullified solely on account of such an irregularity. The court has the residual discretion and power to rectify the position by directing the correct party to be added or substituted as a party to the action.

25 The present misjoinder (of the Minister for Home Affairs and Commissioner of Police) as well as the non-joinder (of the AG) is in my view an entirely curable procedural irregularity. The substantive dispute or grievance that the applicants seek to resolve is plainly directed against the Government. The irregularity in question arises principally as a consequence of the peculiarities relating to proceedings against government organs, office holders or departments which require the AG to be named as the party. This, on closer scrutiny, is quite unlike the primary situations contemplated by O 15 r 6 of the RSC, where a named or joined party could be completely unrelated to the proceedings. Accordingly, if the misjoinder or non-joinder of such parties is not sufficient to vitiate proceedings, the applicants' failure to name the AG as the party to this application should not a fortiori irrevocably impede or impair the prosecution of the applicants' grievance.

26 In the result, consequential directions can also be given to substitute the AG as the

respondent. Section 19 of the GPA is essentially a facilitative provision that ensures that the names and addresses of the persons acting for these authorised departments are published and made known to the public. It is not intended to create a procedural hedgehog throwing up prickly issues as to the propriety of initiating proceedings against any state organs, governmental departments or public servants discharging official duties. The clear legislative policy is that if there is any uncertainty as to which government department to sue, the action should be instituted against the AG, as the legal representative of the Government.

27 I therefore determine that this irregularity can be cured by the appropriate substitution of the AG as the respondent. The legislative intent behind s 19 of the GPA is not to impose an inflexible mandatory rule that nullifies all procedural transgressions.

Principles governing striking out

28 Pursuant to O 18 r 19 of the RSC, an application for a striking-out order can be based on any of the following four grounds:

(a) it discloses no reasonable cause of action or defence;

(b) it is scandalous, frivolous or vexatious;

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of process of the court.

29 In addition, the court also retains a residual and inherent jurisdiction to strike out an action and/or pleadings on the basis that the proceedings are frivolous, vexatious or an abuse of the process of the court: see para 18/19/16 of *Singapore Civil Procedure 2003* (Sweet & Maxwell Asia, 2003). The existence of this jurisdiction is statutorily acknowledged by and embedded within O 92 r 4 of the RSC.

30 In what is widely regarded as the most authoritative exposition of the basis and extent of the court's inherent jurisdiction, Sir Jack I H Jacob in his celebrated article, "The Inherent Jurisdiction of the Court" (1970) 23 CLP 23 explained that such a jurisdiction is not derived from any statute or rule of law but from the very nature of the court as a superior court of law. The juridical basis of the court's inherent jurisdiction lies in its authority to uphold, protect and fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner. The inherent jurisdiction of a court is defined by Sir Jack Jacob at 51 as "the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them". It is a broad, virile and necessary jurisdiction and performs the quintessential function of justice where the court dispenses procedural justice as a means of achieving substantive justice between the parties.

31 To instil a certain degree of order and structure into this seemingly amorphous concept, it is helpful to adopt the classification by Sir Jack Jacob of the cases in which the inherent jurisdiction can be exercised. Excluding cases of contempt, he divided all other cases into three categories, namely (a) control over process, (b) control over persons, and (c) control over powers of inferior courts and tribunals. With regard to control over process, the court exerts its control through the exercise of coercive powers as well as regulatory powers. Such control over process ought to be further subdivided into (i) regulating process and proceedings, (ii) addressing abuse of process and (iii)

compelling observance of process. For present purposes, it will largely suffice to consider the category of abuse of process.

32 Sir Jack Jacob described an abuse of process at 40–41 in the following terms:

> It connotes that the process of the court must be used properly, honestly and in good faith, and must not be abused. It means that the court will not allow its function as a court of law to be misused, and it will summarily prevent its machinery from being used as a means of vexation or oppression in the process of litigation. *Unless the court had power to intervene summarily to prevent the misuse of legal machinery, the nature and function of the court would be transformed from a court dispensing justice into an instrument of injustice. It follows that where an abuse of process has taken place, the intervention of the court by stay or even dismissal of proceedings may often be required by the very essence of justice to be done, and so to prevent parties being harassed and put to expense by frivolous, vexatious or groundless litigation*. [emphasis added]

33 Proceedings are frivolous when they are deemed to waste the court's time, and are determined to be incapable of legally sustainable and reasoned argument. Proceedings are vexatious when they are shown to be *without foundation* and/or where they *cannot possibly succeed* and/or where an action is brought only for annoyance or to gain some fanciful advantage.

34 The instances of abuse of process can therefore be systematically classified into four categories, *viz*:

(a) proceedings which involve a deception on the court, or are fictitious or constitute a mere sham;

(b) proceedings where the *process of the court is not being fairly or honestly used but is employed for some ulterior or improper purpose or in an improper way*;

(c) proceedings which are *manifestly groundless or without foundation* or which serve no useful purpose;

(d) multiple or successive proceedings which cause or are likely to cause improper vexation or oppression.

35 The essence and basis of this inherent jurisdiction is largely mirrored in O 18 rr 19(1)(*b*) and 19(1)(*d*) of the RSC. Order 18 r 19 of the RSC however literally applies only to writ actions, originating summonses and petitions. The sub-rule itself makes no express reference to actions begun by originating motion. Given however that the present proceedings ought properly to have been initiated by way of an originating summons or writ, the present striking-out application can therefore be justified either pursuant to the express terms of O 18 of the RSC and/or the court's inherent jurisdiction. All said and done, the result of most applications would almost invariably be the same given that the juridicial basis of both jurisdictions largely overlap with and are consistent with each other.

36 It would be helpful at this juncture to recapitulate as well as to summarise certain broad principles which are applied and enforced by the court when it contemplates a striking-out order, whether on the basis of O 18 rr 19(1)(*b*) and 19(1)(*d*) of the RSC or pursuant to its own inherent jurisdiction. It is only in "plain and obvious" cases that the power to strike out should be exercised: *Gabriel Peter & Partners v Wee Chong Jin* [1998] 1 SLR 374 at [18]; *The Osprey* [2000] 1 SLR 281 at

[6]. A *bona fide* litigant will not be prevented from pursuing a remedy unless the substance of the claim is plainly and unquestionably unsustainable. This summary procedure is not meant to be used as a ploy to avoid embarrassing proceedings and/or to evade debatable facts and/or legal arguments. The court must be convinced that the proceedings are bound to fail when it grants such a radical peremptory remedy.

Frivolous or vexatious

37 These words have been judicially interpreted to mean "obviously unsustainable": *Attorney-General of the Duchy of Lancaster v London and North Western Railway Company* [1892] 3 Ch 274 at 277. In *Goh Koon Suan v Heng Gek Kiau* [1990] SLR 1251 at 1257, [15], Yong Pung How CJ opined that an action would be vexatious "when the party bringing it is not acting bona fide, and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result". It has also been suggested that "frivolous" and "vexatious" connote purposelessness in relation to the process or a lack of seriousness or truth and a lack of *bona fides*: see Jeffrey Pinsler, *Singapore Court Practice 2005* (LexisNexis, 2005) at para 18/19/12, p 482.

Abuse of process

38 This is the widest general ground for striking out. Needless to say, there is, by its very definition, an inevitable overlap with the other grounds. As Yong CJ succinctly emphasised in *Goh Koon Suan v Heng Gek Kiau* at 1257, [15], abuse of process characterises a proceeding which is "wanting in bona fides and is frivolous, vexatious or oppressive". The Court of Appeal in *Gabriel Peter & Partners v Wee Chong Jin* ([36] *supra*) at [22] broadly outlined what amounts to an abuse of process:

> The term, 'abuse of the process of the Court', in O 18 r 19(1)(d), has been given a wide interpretation by the courts. It includes considerations of public policy and the interests of justice. This term signifies that the process of the court must be used bona fide and properly and must not be abused. The court will prevent the improper use of its machinery. It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation. *The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and will depend on all the relevant circumstances of the case*. A type of conduct which has been judicially acknowledged as an abuse of process is the *bringing of an action for a collateral purpose* … [emphasis added]

Application of striking-out principles to the present case

39 The applicants' claim cannot be permanently impeded purely on the basis that they seek only a declaratory judgment; see O 15 r 16 of the RSC. Mr Chan accepts this but nonetheless insists that because no substantial or consequential relief is sought by the applicants, the court ought to be extremely cautious in granting a mere declaration in relation to the alleged rights. I disagree. If indeed the police acted improperly or unlawfully in relation to the incident, it can indeed be persuasively contended that there is in point of fact substantial relief sought by the applicants; namely, the vindication of the applicants' alleged constitutional rights of freedom of expression and/or freedom of assembly. Moreover, the applicants argue that their right to hold future peaceful protests could depend on the outcome of the court's ruling. It cannot be argued, as Mr Chan does, that the relief sought is *per se* wholly impractical or unsustainable. Mr Chan further contends that the application has been initiated purely for political theatre. Perhaps. Be that as it may, should any litigant regardless of his political inclination *genuinely* seek the court's assistance in vindicating or determining a legitimate grievance, the court has a duty to assess such a grievance and accord proper and

serious consideration in determining whether relief should be granted. It will not suffice to broadly label and lightly brush aside a complaint on the basis that there is a collateral motivation or purpose in initiating proceedings, if indeed veritable legal rights have been improperly curtailed or removed.

40 To succeed in striking out the instant proceedings, the AG has to show that the claim is frivolous or vexatious because it is obviously unsustainable and/or an abuse of the process of court with absolutely no prospect of success in the event of a full hearing. It must be shown with clarity and certainty that the police had the power to intervene in the protest and duly seize the T-shirts. There should be no basis or latitude for arguing that such a power was arbitrarily exercised and in any manner susceptible to judicial scrutiny. A court should only strike out a claim "when it is manifest that there is an answer immediately destructive of whatever claim to relief is made": *Ronex Properties Ltd v John Laing Construction Ltd* [1983] QB 398 at 408.

Constitutionality of the MOA

41 As the applicants tirelessly assert that their constitutional rights in relation to free speech and assembly have been infringed, it is not only appropriate but necessary when assessing the striking out application, that the subtext of this argument be immediately, fairly and squarely addressed. This arises in the context of the police having characterised their conduct as a "public nuisance" offending the MOA. Can the provisions of the MOA restrict or curtail Art 14 rights as declared in the Constitution?

42 The right to freedom of speech and expression and the right to assemble peaceably without arms are rooted in Art 14 of the Constitution. These fundamental rights are however not absolute and are circumscribed by limits clearly articulated in Art 14(2) of the Constitution. The article stipulates:

> **Freedom of speech, assembly and association**
>
> **14.**—(1) Subject to clauses (2) and (3) —
>
> (*a*) every citizen of Singapore has the right to freedom of speech and expression;
>
> (*b*) all citizens of Singapore have the right to assemble peaceably and without arms; and
>
> (*c*) all citizens of Singapore have the right to form associations.
>
> (2) Parliament may by law impose —
>
> (*a*) on the rights conferred by clause (1)(*a*), such restrictions as *it considers necessary or expedient in the interest* of the security of Singapore or any part thereof, friendly relations with other countries, *public order* or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence;
>
> (*b*) on the right conferred by clause (1)(*b*), such restrictions as it *considers necessary or expedient in the interest of the security of Singapore or any part thereof or public order*; and
>
> (*c*) on the right conferred by clause (1)(*c*), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, public order or

morality.

(3) Restrictions on the right to form associations conferred by clause (1)(*c*) may also be imposed by any law relating to labour or education.

[emphasis added]

In short, Parliament may by law impose restrictions on the rights of freedom of speech and expression and assembly if it considers such restrictions *necessary or expedient* in the interest of (a) the security of Singapore, or (b) *public order*.

43 Legislation in Singapore restricting the right to freedom of assembly includes, *inter alia*:

(a) s 141 of the Penal Code (Cap 224, 1985 Rev Ed) ("PC") which creates the offence of unlawful assembly;

(b) s 268 of the PC which makes public nuisance an offence;

(c) the Public Entertainments and Meetings Act (Cap 257, 2001 Rev Ed) which regulates the licensing of public entertainment – including lectures and talks in public places;

(d) the MOA; and

(e) the Public Order (Preservation) Act (Cap 258, 1985 Rev Ed) ("POPA") which allows the police to disperse assemblies in gazetted areas in the interest of public order.

Section 5 of the POPA empowers the Minister to make rules regulating assemblies and processions in public places and to place limits on the right to assemble freely.

44 The threshold for legitimacy in relation to any legislative fetter of rights as spelt out in Art 14(2) of the Constitution is whether the curtailment is "necessary or expedient", *inter alia*, in the interest of security or public order.

45 The Indian Constitution, on the other hand, relates and subjects the right to fetter the freedom of speech and of assembly to the touchstone of reasonableness. Article 19(3) of the Indian Constitution states:

Nothing in sub-clause (*b*) of the said clause [which provides for the freedom of assembly] shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, *reasonable restrictions* on the exercise of the right conferred by the said sub-clause. [emphasis added]

46 In the Indian context, it would therefore appear that there is a two-stage test to decide if a restriction on the right to freedom of assembly is valid: one has to consider first of all whether the restriction is reasonable, and secondly, whether it is for a purpose specified under Art 19(3) of the Indian Constitution (see M P Jain, *Indian Constitutional Law* (Wadhwa and Company Nagpur, 5th Ed, 2003) at p 982). The Indian courts therefore have the power to declare a law restricting the constitutional right of assembly invalid on the ground that it does not create and/or form a *reasonable* restriction.

47 However, even with such a constitutional imprimatur of review, the Indian courts have

exercised considerable self-restraint in the actual exercise of such a power, given that "a Court is not a second or revising Chamber from the decision of the Legislature and that it is only in the clearest case that a Court will declare a law invalid": H M Seervai, *Constitutional Law of India* (N M Tripathi Private Ltd, 3rd Ed, 1983)vol 1 at p 482. In similar vein, Sastri CJ in the leading Indian case of *State of Madras v V G Row* [1952] SCR 597 at 607 said:

> It is important … to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and *the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable*. [emphasis added]

48 This constitutes a clear acknowledgement of the need for judicial self-restraint and extreme caution when seeking to determine whether a particular piece of legislation is invalid on the ground that it is an unreasonable restriction of a constitutional right – even under the altogether different constitutional scheme in India, where the court is vested with wider powers of review. I have taken the liberty of referring to the Indian position to illustrate the point that even with the wider constitutional restraints imposed by the Indian Constitution, the Indian courts have been most reluctant to exercise their jurisdiction to strike down legislation for purportedly flouting the right of assembly or freedom of speech.

49 It bears emphasis that the phrase "necessary or expedient" confers on Parliament an extremely wide discretionary power and remit that permits a multifarious and multifaceted approach towards achieving any of the purposes specified in Art 14(2) of the Constitution. In contrast to the Indian Constitution, there can be no questioning of whether the legislation is "reasonable". The court's sole task, when a constitutional challenge is advanced, is to ascertain whether an impugned law is within the purview of any of the permissible restrictions. The touchstone of constitutionality in Singapore in relation to the curtailment of a right stipulated by Art 14 of the Constitution is whether the impugned legislation can be fairly considered "necessary or expedient" for any of the purposes specified in Art 14(2) of the Constitution. All that needs to be established is a nexus between the object of the impugned law and one of the permissible subjects stipulated in Art 14(2) of the Constitution. In relation to any restriction impugned for unconstitutionality on this test, the Government must satisfy the court that there is a factual basis on which Parliament has considered it "necessary or expedient" to do so: *Halsbury's Laws of Singapore* vol 1 (Butterworths Asia, 1999) at para 10.180. Evidence of whether the restrictions are to be considered "in the interest" of any of the stated purposes may be, *inter alia*, gleaned from the impugned Act, relevant parliamentary material as well as contemporary speeches and documents. A generous and not a pedantic interpretation should be adopted; see also s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) ("IA") and *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201. The presumption of legislative constitutionality will not be lightly displaced.

50 It is also crucial to note that the legislative power to circumscribe the rights conferred by

Art 14 of the Constitution is, *inter alia*, delineated by what is "in the interest of public order" and not confined to "the maintenance of public order". This is a much wider legislative remit that allows Parliament to take a prophylactic approach in the maintenance of public order. This necessarily will include laws that are not purely designed or crafted for the immediate or direct maintenance of public order, according to Mahendra P Singh, *V N Shukla's Constitution of India* (Eastern Book Company, 9th Ed, 1996) at p 113:

> The expression 'public order' is synonymous with public peace, safety, and tranquillity. It signifies absence of disorder involving breaches of local significance in contradistinction to national upheavals such as revolution, civil strife or war, affecting the security of the State. To illustrate, the State may, in the interests of public order, prohibit and punish the causing of loud and raucous noise in streets and public places by means of sound amplifying instruments; *regulate the hours and place of public discussions and the use of public streets for the purpose of exercising freedom; provide for expulsion of hecklers from meetings and assemblies; punish utterances tending to incite breach of the peace or riot and use of threatening, abusive or insulting words or behaviour in any public place or at any public meeting* with intent to cause a breach of the peace or whereby breach of the peace is likely to be caused, and all such acts as would endanger public safety. [emphasis added]

5 1 There is nothing irregular, arbitrary, or unusual about Parliament's right to limit the right of assembly or freedom of speech. The genealogy of Art 14 of the Constitution can be traced back to the *Report of the Federation of Malaya Constitutional Commission 1957* (G A Smith, 1957) (at para 162) where it was recommended "that freedom of speech and expression should be guaranteed to all citizens *subject to restrictions in the interests of security, public order or morality or in relation to incitement, defamation or contempt of court*" [emphasis added].

52 This approach has also in one form or the other been adopted time and again in several other jurisdictions. The tension between the individual's right to speak and/or to assemble freely and the competing interests of security and/or public order calls into play a delicate balancing exercise involving several imponderables and factors such as societal values, pluralism, prevailing social and economic considerations as well as the common good of the community. Consideration of such public policy is exceedingly complex and multifaceted. While the clarion call for unfettered individual rights is almost irresistibly seductive, it cannot, however, be gainsaid that individual rights do not exist in a vacuum. Permitting unfettered individual rights in a process that is value-neutral is not the rule of law. Indeed, that form of governance could be described as the antithesis of the rule of law – a society premised on individualism and self-interest.

53 The right of assembly can never be absolute and may be subordinated to public convenience and good order for the protection of the general welfare whenever it is "necessary or expedient". From time to time, for the common welfare and good, individual interests have to be subordinated to the wider community's interests. There is also nothing inherently wrong or unreasonable in requiring permission from the relevant authorities to be sought prior to the holding of a public meeting or assembly. This can be viewed as a facilitative arrangement.

54 The nub of the matter is that Arts 14(1)(*a*) and 14(1)(*b*) of the Constitution do not confer absolute or immutable rights. The rights conferred by these Articles can be restricted in the wider interests of, *inter alia*, the public order so that they do not impinge on or affect the rights of others. The framework of the Constitution deems it crucial and necessary to authorise the imposition of restrictions in the wider and larger interests of the community and country.

55 Returning to the MOA, it is evident from its short title that the Act was enacted for the

purpose of ensuring good order in, inter alia, public places. The long title of the MOA now states: "An Act relating to offences against public order, nuisance and property" [emphasis added]. The relevant Parliamentary debates as well as the content and purport of the MOA place beyond any doubt that the MOA has as an objective the upholding of public order.

56 Parliament has therefore considered and has intended through the MOA to impose restrictions on the freedom of speech and/or assembly that are "necessary or expedient" to ensure public order in certain situations. Accordingly, in my view, there can be no challenge as such to the constitutionality of the MOA.

A vignette of the rival contentions

57 I invited Mr Ravi to clarify whether his "constitutional argument" embraced a challenge to the legitimacy of the MOA, any of its provisions and/or any other existing legislative positions that purport to regulate the freedom of speech and/or assembly. He then clarified that this was not the thrust of his case. His case was confined to the alleged "arbitrary" exercise of police powers. As I understand it, Mr Ravi now contends only that the police had *exceeded* their powers in dealing with the applicants. He does not seek to establish that any provision of the MOA contravenes the Constitution. The main thrust of his case is that Art 14(1) of the Constitution, read with s 5 of the MOA (which only regulates the assembly of five or more persons), expressly permits four or any smaller group of persons to conduct any form of "peaceful" protest that does not or will not result in a breach of peace or public disorder.

58 Mr Chan, on the other hand, takes the position that the incident itself was not justiciable. He argues that firstly, there was no substantive matter that was justiciable. Secondly, the police were still investigating the matter. He further argues that the police were legally empowered to act in the manner they did. He maintains that the police cannot be criticised for taking the steps they took during the incident. He contends that unless it can be said that no reasonable police officer would or could have acted in like manner, the applicants have absolutely no cause for complaint. For good measure, Mr Chan also adds that it appears from the applicants' affidavit that they voluntarily left the scene and were not legally coerced into surrendering their T-shirts.

59 It would be helpful to examine the relevant provisions of the MOA and the other applicable and/or relevant statutory provisions before assessing the merits of the parties' respective contentions. Sections 13A, 13B and 40 of the MOA take centre stage in these proceedings. Mr Chan primarily relies on ss 13A and 13B of the MOA in asserting why public order offences of nuisance were "in the view" of DSP Baptist apparently committed by the protestors. Section 40 of the MOA empowers a police officer to arrest, without a warrant, a person offending the provisions of the MOA. The legislative history of the MOA and the subject provisions are relevant.

Overview of the MOA

60 The MOA came into force on 9 June 1989, when the Minor Offences Act (Cap 184, 1985 Rev Ed) was amended and renamed. Most of the provisions within the MOA relating to assemblies and processions mirror earlier provisions enacted in the Minor Offences Act. The principal changes incorporated were the enhancement of penalties for organisers of any illegal assemblies or processions and the creation of a new offence embracing persons who did not organise but who participated in illegal assemblies or processions. The increasing number of illegal processions in the late 1980s provided the impetus for these legislative reforms. In moving the second reading of the Minor Offences (Amendment) Bill (see *Singapore Parliamentary Debates, Official Report* (16 February 1989) vol 52 at col 689), the then Senior Minister of State for Home Affairs Dr Lee Boon Yang explained the

rationale underlining the new regulations relating to assemblies and processions:

> Police have to regulate assemblies and processions because we live in a densely populated country. Our streets are crowded with people and vehicular traffic. Regulation is solely to ensure that public order is maintained and to prevent congestion and annoyance caused by assemblies and processions held by all kinds of groups and organizations.

61 The next series of changes made to the MOA were effected in 1996. Three new offences were created; the most relevant for the present purposes being the new offence of using indecent, threatening, abusive or insulting words or behaviour, thereby causing fear, harassment, alarm or distress to another person. This had also been broadly encapsulated in s 13(*f*) of the Minor Offences Act. It bears mention however that s 13(*f*) of the Minor Offences Act was contravened only if the person using abusive language or behaviour intended to provoke a breach of the peace or if a breach of peace was likely to be occasioned. That sub-section only addressed conduct likely to lead to violence or public disorder that in turn could or did result in a breach of peace. It can be gleaned from the ministerial statement made during the second reading of the Amendment Bill (see *Singapore Parliamentary Debates, Official Report* (27 February 1996) vol 65 at col 697), that this was considered an unsatisfactory position because it would be relatively difficult to prove a breach of peace under s 13(*f*) of the Minor Offences Act. It was an ineffective instrument of public control, not equipped to address nuisances that harassed, alarmed or insulted without the threat of actual or potential violence. This legislative concern was the impetus for ss 13A, B, C and D of the MOA. Under the present scheme:

(a) s 13A deals with intentionally causing harassment, alarm or distress;

(b) s 13B deals with conduct likely to cause harassment, alarm or distress;

(c) s 13C deals with intentionally causing fear or provoking violence; and

(d) s 13D deals with threatening, abusing or insulting a public servant.

62 Sections 13A and 13B of the MOA draw substantial inspiration from and are largely modelled on ss 4A and 5 of the English Public Order Act 1986 (c 64) ("1986 POA"); they were both designed, and professed, to extend the ambit of the pre-existing corpus of public order offences while also widening the net to criminalising acts of nuisance and inappropriate behaviour. It is of moment to note that the subject sections concurrently afford safeguards for the right of assembly and/or free speech by expressly providing for the defence of "reasonable conduct".

Relevant provisions of the MOA

63 For the purposes of the present proceedings, the immediately relevant provisions of the MOA are ss 13A, 13B and 40. For easy reference, they are now reproduced:

> **Intentional harassment, alarm or distress**
>
> **13A.**—(1) Any person who in a public place or in a private place, with intent to cause harassment, alarm or distress to another person —
>
> (*a*) uses threatening, abusive or insulting words or behaviour; or
>
> (*b*) displays any writing, sign or other visible representation which is threatening,

abusive or insulting, thereby causing that person or any other person harassment, alarm or distress, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

(2) It is a defence for the accused to prove —

(*a*) that he was inside a dwelling-house and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, by him would be heard or seen by a person outside that dwelling-house or any other dwelling-house; or

(*b*) that his conduct was reasonable.

Harassment, alarm or distress

13B.—(1) Any person who in a public place or in a private place —

(*a*) uses threatening, abusive or insulting words or behaviour; or

(*b*) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

within the hearing or sight of any person likely to be caused harassment, alarm or distress thereby shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

(2) It is a defence for the accused to prove —

(*a*) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress;

(*b*) that he was inside a dwelling-house and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that dwelling-house or any other dwelling-house; or

(*c*) that his conduct was reasonable.

Power of arrest

40.—(1) Subject to the provisions of this Act, any police officer may arrest without warrant any person offending in his view against any of the provisions of this Act, and take him before a Magistrate's Court to be dealt with according to law.

(2) Any animal, conveyance or article concerning by or for which an offence has been committed may be seized and taken to a pound or police station unless given up sooner by order of a Magistrate's Court, until the charge is decided in due course of law.

For completeness, I should also add that s 2 of the IA defines a "person" to "include any company or association or body of persons, corporate or unincorporate", unless "there is something in the subject or context inconsistent with such construction or unless it is [in the legislation] otherwise expressly provided". There is nothing in the MOA that would indicate that "any person" (at the receiving end) should not include a corporate entity. While the words "harassment", "alarm" and "distress" can arguably be said to relate to personal feelings, which a corporate entity cannot suffer or entertain, it

ought to be emphasised that such bodies are also run in reality by persons.

64 An entity, corporate or otherwise, does not have feelings. "A company as a legal entity, cannot suffer tension, harassment and suffering" (see *Sanray Export Services Ltd v National Westminster Bank Plc* [1997] EWCA Civ 1981). Granting that it cannot be injured in its feelings, an entity can suffer injury through the loss of standing and/or goodwill: *Rubber Improvement Ltd v Daily Telegraph Ltd* [1964] AC 234 at 262. However, allegations against a corporation will often involve by necessary inference imputations against those who are responsible for its direction and control. In many recent cases, actions have been brought both by the company concerned and by one or more of its directors: *Duncan and Neill on Defamation* (Butterworths, 2nd Ed, 1983) at para 9.08, and see, for example, *Rubber Improvement Ltd v Daily Telegraph Ltd* (company and chairman); *Broadway Approvals Ltd v Odhams Press Ltd (No 2)* [1965] 1 WLR 805 (company and managing director); *Associated Leisure Ltd v Associated Newspapers Ltd* [1970] 2 QB 450 (company and directors); *S and K Holdings Ltd v Throgmorton Publications Ltd* [1972] 1 WLR 1036 (company and five directors); *London Computer Operators Training Ltd v British Broadcasting Corporation* [1973] 1 WLR 424 (company and two directors); *Fraser & Neave Ltd v Aberdeen Asset Management Asia Ltd* [2002] 4 SLR 473; *Icadam Technologies Sdn Bhd v CAD-IT Consultants (Asia) Pte Ltd* [2005] SGHC 130. The directors are entitled to claim damages for injury to their feelings, a head of damage which is not available to the corporation or company itself. *Gatley on Libel and Slander* (Sweet & Maxwell, 10th Ed, 2004) at para 7.13 neatly sums up the position through the following illustrations:

> [T]here will be cases in which the inference will be irresistible that the words refer to an individual employed by the person directly named by the words. For example, to say that "financial affairs of the University of X have been allowed to fall into chaos" would be defamatory of the finance director and perhaps of the Vice-Chancellor.

65 Directors and other officers of a corporate entity are frequently referred to as the controlling minds and directing will of a corporate entity. Any allegations of impropriety or words of insult against the corporate entity must more often than not also directly impinge on the integrity and competence of the directors and officers, who are in truth the persons being targeted even if no explicit reference is made to them. It follows that insults or abuse directed at a body can create feelings of distress, harassment or alarm amongst the directors and officers responsible for it. This ought to apply equally to unincorporated bodies where the individuals who are running the organisation can also similarly be emotionally affected.

66 Persons who are liable to suffer distress as a consequence of improper acts or comments that are targeted at the entities for which they are responsible must be protected. It would be contrary to both logic and common sense that such individuals are deprived of any protection or redress strictly because of the notion that the corporate form artificially created by the law is incapable of sustaining such injuries. The word "person" as defined in the IA certainly embraces this category of persons.

67 I am of the view that the offences of nuisance under the MOA can, when directed against a body (corporate or unincorporated), be viewed as constituting harassment and/or causing alarm or distress to those responsible for running that body. As such, offences under ss 13A and 13B can be committed, if not against corporate or incorporated bodies as persons, then certainly against the persons responsible for operating or managing such bodies. *This is particularly so when the allegations suggest financial impropriety* (see [64] above).

68 In rounding up, I should also advert to a recent legal development in England in relation to the ability of local government bodies to protect their reputations. In England, the former view that a

local government corporation had a "governing" reputation protected by the law of defamation no longer represents English law: *Derbyshire County Council v Times Newspapers Ltd* [1993] AC 534. The case, however, makes it clear that the decision itself does not affect the right of an individual member or officer of a government body to sue if the statement about the body is capable of being interpreted as referring to the individual. Indeed, the ability of the individual to sue seems to be regarded as a reason for denying such a right to the body: *Gatley on Libel and Slander* ([64] *supra*) at para 8.20.

69 It can be fairly said that this abrupt change of position in England in 1993 is not a development of the common law but rather a change of the law of a legislative rather than a judicial character: see Mahoney JA's observations in *Ballina Shire Council v Ringland* (1994) 33 NSWLR 680. In his trenchantly-worded dissenting judgment at 723, Mahoney JA also pointedly observed:

> To me, it is not apparent that, in relation to the right to defame public authorities, the balance achieved by the law of defamation is wrong or that, if it be wrong, it cannot be adjusted by anything less than a complete withdrawal of the law. *I am conscious that their Lordships spoke at a time when the topic had currency in England and that it, or a connected matter, the immoderate dealing with Royalty and those in public position, was being examined. Their conclusion that in the case of the public authorities the restrictions imposed by the law of defamation should be withdrawn was, it may be, the appropriate assessment for England of the then competing claims*. In so far as it may be relevant, I am not satisfied that that conclusion is applicable to Australia. *At the least, the correctness of the present balance and of the alternatives to withdrawal of the law of defamation from public authorities require closer examination*. [emphasis added]

I am by and large in agreement with the views of Mahoney JA and can do no better, at this juncture, than to echo and emphasise the ultimate sentence of the quote. This, however, is not an issue that I need to reach a conclusion on in the instant proceedings.

70 Coming back to the issues at hand, it bears reiteration that ss 13A and 13B of the MOA evince and encapsulate a legislative policy to address the prickly issue of limiting behaviour and/or the freedom of speech in the general public interest: see *Cozens v Brutus* [1973] AC 854 at 862. Instructive assistance as to the ambit of ss 13A and 13B of the MOA can be gleaned from *Cozens v Brutus per* Lord Reid at 862, where he declared:

> *[D]istasteful or unmannerly speech or behaviour is permitted so long as it does not go beyond any one of three limits. It must not be threatening. It must not be abusive. It must not be insulting*. I see no reason why any of these should be construed as having a specially wide or a specially narrow meaning. They are all limits easily recognisable by the ordinary man. *Free speech is not impaired by ruling them out*. But before a man can be convicted it must be clearly be shown that one or more of them has been disregarded. [emphasis added]

71 Nuisance is the Proteus of public order and can assume an infinite variety of forms. The words abusive and/or insulting should not be construed as having either an unusually wide or narrow meaning. A common-sense approach ought to be adopted in applying the statutory test to any given factual matrix. As Lord Reid in *Cozens v Brutus* at 862 put it:

> We were referred to a number of dictionary meanings of "insult" such as treating with insolence or contempt or indignity or derision or dishonour or offensive disrespect. Many things otherwise unobjectionable may be said or done in an insulting way. *There can be no definition. But an ordinary sensible man knows an insult when he sees or hears it*. [emphasis added]

72 I respectfully agree with Lord Reid's observation at 863 that in so far as the interpretation of a similar combination of words in the MOA is concerned, it would be correct to conclude that "Parliament has given no indication that the word is to be given any unusual meaning. *Insulting means insulting and nothing else*." [emphasis added]. By the same token, the words "harassment", "alarm" and "distress" should be given common-sense everyday meanings.

73 It is necessary at this point to draw attention to a salient and critical difference between s 5 of the English Public Order Act 1936 (c 6) ("POA") which was scrutinised in *Cozens v Brutus* and ss 13A and 13B of the MOA. For easy reference, I shall reproduce that English provision:

> Any person who in any public place … uses … insulting … behaviour with intent to provoke a breach of the peace or *whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence*. [emphasis added]

74 It is axiomatic that s 5 of the POA only rendered offensive, conduct that was threatening, abusive or insulting behaviour whereby a breach of peace was likely to occasioned. In relation to that section, Viscount Dilhorne in *Cozens v Brutus* at 865 observed:

> Behaviour which evidences a disrespect or contempt for the rights of others does not of itself establish that that behaviour was threatening, abusive or insulting. *Such behaviour may be very annoying to those who see it and cause resentment and protests but it does not suffice to show that the behaviour was annoying and did annoy, for a person can be guilty of annoying behaviour without that behaviour being insulting*. And what must be established to justify conviction of the offence is not that the behaviour was annoying but that it was threatening, abusive or insulting. [emphasis added]

75 In contradistinction to s 5 of the POA, ss 13A and/or 13B of the MOA are not predicated upon a requirement or an intention that the inappropriate behaviour leads to or is likely to lead to a breach of peace or public disorder. Threatened violence is also no longer a pre-requisite to ground a conviction. It is as plain as a pikestaff that Parliament intended through these nuanced provisions to proscribe conduct falling within the statutory ambit regardless of whether those engaging in inappropriate conduct intended that disorder should ensue. Indeed it is amply evident from a plain reading of s 13B of the MOA, in particular, that an intention for the conduct to be "threatening, abusive or insulting" is not even a necessary criterion. Objectivity is the touchstone for assessing the conduct in question.

76 Simply put, threats, abuses and insults embraced by s 13B of the MOA may constitute a transgression whether or not they were intended to be threats, abuses or insults. Threatening, abusive or insulting words or behaviour are simply words or behaviour that are threatening, abusive or insulting in character: *Parkin v Norman* [1983] QB 92 at 98. As McCollough J held in *Parkin v Norman* at 99:

> If the conduct in question is of this character it does not … matter whether anyone feels himself to have been threatened, abused or insulted. Insulting behaviour does not lose its insulting character because no one who witnessed it was insulted …

The manifest intent and purpose of the two sections is to promote good order in public places. It is the nature of the conduct and its effect on "any person" that grounds the offence. The emphasis in s 13B of the MOA is manifestly on conduct "likely to [cause] harassment, alarm or distress". A single person can be found to have infringed either of the two sections. These sections do not merely regulate the conduct of groups or assemblies of persons.

77 Caution, of course, has to be exercised in the employment of ss 13A and 13B of the MOA. They will often involve issues of acute factual inquiry coupled with the delicate calibration of conduct. Imprecise lines will have to be drawn between boisterous and abusive conduct; between freedom of expression and insulting or abusive conduct; between freedom of assembly and harassment. It cannot be gainsaid that there can be a point where legitimate conduct may cross the *Rubicon* and become harassment. This will always be a matter of degree and the actual concatenation of circumstances.

78 I am aware and acknowledge that currently in England, the statutory progenitors of ss 13A and 13B of the MOA, namely ss 4A and 5 of the 1986 POA are sometimes restrictively interpreted. There are a number of reasons for this. Firstly, the legislative scheme dealing with issues of public order has undergone a sea change. For instance, the Protection from Harassment Act 1997 (c 40) (UK), the Crime and Disorder Act 1998 (c 37) (UK) as well as the Human Rights Act 1998 (c 42) are now in force. Secondly, the effect of the European Convention on Human Rights and decisions of the European Court of Justice and European Court of Human Rights have significantly altered English judicial attitudes in this area of the law. Thirdly, *some* judges have taken a restrictive view of the application of the 1986 POA because of the contents of the White Paper that preceded it. I will deal with the last point first and refer to an English authority that took a pragmatic and robust view of the applicable legislation.

79 In *Chambers v The Director of Public Prosecutions* [1995] Crim LR 896, Lexis Nexis CO/3493/1994 ("*Chambers*' case"), Keene J pertinently observed:

> … [counsel] has sought to refer the Court to the White Paper, 'Review of Public Order Law', which preceded the 1986 Act. *For my part, I do not find it helpful to look at a White Paper when the bill itself which subsequently followed underwent significant changes (as this bill did) before becoming a statute. Indeed, I have grave doubts as to whether it is legitimate to look at a White Paper in these circumstances*. [emphasis added]

80 After considering the White Paper, which *prima facie* appeared to indicate that s 5 of the 1986 POA was generally intended to apply to instances such as hooligans causing disturbances, groups of youth pestering people waiting to catch public transport or to enter a hall or cinema, or someone turning out the lights in a crowded dance hall thereby causing panic, Keene J declared:

> These quotations do not indicate that any sense of insecurity was intended to be required before an offence would be committed under the proposed provision which in due course became s 5.

In rounding up his views on the ambit of s 5 of the of the 1986 POA, Keene J expansively concluded:

> As I have said, we have also been taken briefly to an extract from the Hansard debate on the bill, an extract which *Mr Ford submits shows that the s 5 offence was introduced primarily to protect the weak and vulnerable. That may be. It does not follow that others are not entitled to its protection as well*. I find Hansard in this case of little assistance when it comes to interpreting s 5(1). [emphasis added]

81 I wholeheartedly agree. There is no reason whatsoever to read ss 13A and 13B of the MOA restrictively. Parliament could have adopted quite different language if that was the intention (see *Singapore Parliamentary Debates, Official Report* (27 February 1996) vol 65 at col 697). Returning to *Chambers*' case, it ought to be also pointed out that in a concurring judgment, Pill LJ invoked the oft-quoted *dictum* of Viscount Dilhorne in *Cozens v Brutus* ([70] *supra*) at 865:

> Unless the context otherwise requires, words in a statute have to be given their ordinary natural

meaning …

While it may be faintly argued purely on the basis of the parliamentary debates (which were similar in substance to the *Hansard* debates) that there is only a narrow protected class contemplated by ss 13A and 13B of the MOA, that would not, in my view, be correct. The word "person" should be read in the light of s 2 of the IA, broadly and not restrictively (see [67] above).

82 The facts of *Chambers*' case itself are instructive. The appellants were demonstrators who persistently prevented a land engineering surveyor from attempting to use a theodolite by blocking its infrared beam with parts of their body or a placard. The central issue was whether such conduct was capable of amounting to disorderly behaviour within the meaning of that term in s 5(1) of the 1986 POA. The protestors submitted that the meaning of disorderly behaviour should be restricted to behaviour which could disrupt public security or peace of which riotous or turbulent behaviour was the best example. They additionally contended that a threat to public peace had to be present. The conviction of the appellants by the Crown Court was upheld by the Divisional Court which agreed that the deliberate and persistent conduct was likely to cause harassment to the surveyor and that it was disorderly.

83 Mr Ravi drew to my attention a subsequent decision of the English Divisional Court, *Hammond v Department of Public Prosecutions* [2004] EWHC 69 (Admin) ("*Hammond*'s case"). He relied extensively on this decision in contending that the protestors had "rights" which the police could not disrupt. I did not find the passages referred to particularly helpful. The decision itself involved the alleged "right" to demonstrate asserted by an evangelical preacher who had a sincere desire to convert others to his way of thinking. He had positioned himself in a public area with a double-sided sign bearing the words "Stop Immorality", "Stop Homosexuality" and "Stop Lesbianism". A crowd of 30 to 40 people gathered around him arguing and shouting. Some people in the crowd were angry, others aggressive or distressed; some threw soil at the preacher; one person was hit over the head with the placard. The police asked the preacher to leave. He refused. The police were of the view that the preacher was provoking violence and arrested him. The preacher was convicted under s 5 of the 1986 POA on the basis that his behaviour went beyond legitimate protest, provoked violence and disorder and interfered with the rights of others. His appeal to the Divisional Court was dismissed.

84 It is obvious that a distinct and decisive legislative and judicial transformation has taken place in England over the last decade, in particular, on the resolution and/or adjudication of public order issues. The significant changes in jurisprudence that occurred after *Cozens v Brutus* ([70] *supra*) in 1973 must be underscored and acknowledged before any reliance whatsoever is placed on some of the more recent English decisions on public order issues. May LJ in *Hammond*'s case observed right at the outset, at [6]:

> The facts of the case give rise to a generic problem which may be stated briefly thus. *Freedom of expression is an axiomatic freedom in this country, now enshrined in the Human Rights Convention and the Human Rights Act 1998*. [emphasis added]

and later at [11]:

> The questions which the justices of this court, and the way in which the appeal has been put, call into play certain Articles of the Human Rights Convention. It is necessary to recall, and in my judgment it is an important element of this appeal, that section 3(1) of the Human Rights Act 1998 provides that so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with Convention rights. That, *in the context of this case, in my judgment, means that when considering, for instance, the word*

"insulting" in section 5(1)(b) of the 1986 Act, the court has to construe it, in so far as its construction is capable of having any variation of meaning, so as to be compatible with the Convention right. [emphasis added]

85 After stressing that s 5 of the 1986 POA has now to be interpreted in a manner that is compatible with "Convention" rights, May LJ went on to explain, at [14], what these were:

> The two Convention rights relevant to this case are found in Article 10 and perhaps to a lesser extent in Article 9. Article 10 of the Convention provides:
>
> > "(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers …
> >
> > (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are *necessary in a democratic society*, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary."
>
> So it is of cardinal importance that everyone has the right of freedom of expression. That right may only be restricted in accordance with the second subparagraph of this article. One of the circumstances has to be that the restriction was prescribed by law. *Another has to be that it is necessary in a democratic society, in particular, with reference to this case, for the prevention of disorder or crime*.
>
> [emphasis added]

86 It is axiomatic that the terms and tenor of Art 10(2) of the European Convention on Human Rights are very different from Art 14 of the Constitution. In particular, the phrase "necessary in a democratic society" has been interpreted by the European Court of Justice and Court of Human Rights very generously so as to impose common legal precepts and standards within the European Union. This phrase is also the jurisprudential root of the legal concept generally referred to as the "margin of appreciation". Such a legal doctrine restricts different members of the European Union from straying too widely from perceived common standards in interpreting and applying legislation involving human rights. Practices, standards and rights can only differ within a narrow band of acceptable practices.

87 Another fundamental difference now existing between English law and Singapore law is the applicability of the notion of proportionality. This is very much a continental European jurisprudential concept imported into English law by virtue of the UK's treaty obligations. This jurisprudential approach, *inter alia*, allows a court to examine whether legislative interference with individual rights corresponds with a pressing social need; whether it is proportionate to its legitimate aim and whether the reasons to justify the statutory interference are relevant and sufficient; see *Hammond*'s case at [27]. In this context, I find the following extract from a leading English treatise (Sir William Wade & Christopher Forsyth, *Administrative Law* (Oxford University Press, 9th Ed, 2004) at p 366) helpful in illustrating, by way of a thumbnail sketch, the origins of the principle of proportionality in English law:

> In the law of a number of European countries there is a 'principle of proportionality' which ordains that administrative measures must not be more drastic than is necessary for attaining the desired

result. This doctrine has been adopted by the European Court of Justice in Luxembourg and so it *has infiltrated British law, since British law must conform to European Union law*. More significantly, it is freely applied by the European Court of Human Rights in Strasbourg, and so is taken into account in Britain under the Human Rights Act 1998. [emphasis added]

See also P P Craig, *Administrative Law* (Sweet & Maxwell, 5th Ed, 2003) at pp 617–638. Proportionality is a more exacting requirement than reasonableness and requires, in some cases, the court to substitute its own judgment for that of the proper authority. Needless to say, the notion of proportionality has never been part of the common law in relation to the judicial review of the exercise of a legislative and/or an administrative power or discretion. Nor has it ever been part of Singapore law.

The power of arrest under the MOA

88 Section 40 of the MOA first appeared in Ordinance No 13 of 1906, which consolidated and amended the law relating to minor offences. Other than a minor cosmetic modification, s 40 of the MOA retains its original tenor. It confers on a police officer a broad and general power to arrest without warrant "any person offending *in his view* against any of the provisions of [the] Act" [emphasis added]. In addition "any … article concerning by or for which an offence has been committed may be seized and taken to a … police station".

89 The phrase "in his view" appears in a wide variety of legislation and has all the characteristics of an etymological chameleon. It is clearly not a term of art with a fixed meaning. The precise meaning of this phrase depends entirely on the context of the statutory provisions in which it is employed.

90 The phrase could either refer to (a) an offence committed in the physical proximity of a police officer in question, that is to say, an offence committed "in the presence" of a police officer; or (b) whether a police officer "has reason to believe" an offence has been committed. To illustrate this, a comparison can be made between the way the phrase is employed in s 40 of the MOA and ss 34 and 114 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC").

91 In s 40 of the MOA, the juxtaposition of the phrase reads "any person *offending in his view* against any of the provisions of this Act" [emphasis added]. Similarly in s 114 of the CPC, reference is made to an injury to public property which is attempted to be "committed in his [the officer's] view". This should be contrasted with the phrase in the context of s 34(1) of the CPC which confers on a private person the right to arrest "any person who, *in his view,* commits a non-bailable and seizable offence" [emphasis added]. That private person must then hand over, without unnecessary delay the arrested person to the nearest police officer. Section 34(2) of the CPC immediately stipulates that "*[i]f there is reason to believe* that [the] person" [emphasis added] arrested comes under s 32 of the CPC, a police officer shall arrest him. Clearly if "in his view" meant "reason to believe", the latter phrase would not have been employed in s 34(2) of the CPC in marked contradistinction. It has been held that "in his view" for the purposes of s 34(1) of the CPC means either "in sight" of the private person (*per* Choor Singh J in *Metro (Golden Mile) Pte Ltd v Chua Wah Liang Paul* (oral judgment dated 13 August 1980) noted in Ivy Hwang, "Wrongful Arrest by Private Persons" (1981) 23 Mal LR 182–186), or in a more generous interpretation, to a situation where although a private person does not actually witness the offence, he is in such close proximity that he was certain an offence has been committed (*Sam Hong Choy v PP* [1999] 4 MLJ 433). While this issue does not *sensu stricto* arise in the present proceedings it would appear to me that the latter interpretation is more consistent with the intent and policy of s 34 of the CPC.

92 I have dealt with this phrase at some length as s 40 of the MOA is pivotal in the present proceedings. Mr Ravi, when queried by me, rightly accepted that the phrase "in his view" in s 40 of the MOA refers to "has reason to believe". As this interpretation is now accepted by both counsel, I will not belabour the point any further except to say that for the purposes of the incident, either interpretation may not really matter as the "protest" was still in progress when DSP Baptist requested the applicants to desist in their conduct.

Reviewing the exercise of police powers

93 Parliament confers discretions with the sole intention that they should be used to advance legislative policies and objectives. Discretions must only be exercised in accordance with the law. Discretions are never wholly unfettered. The exercise of a statutory executive discretion in Singapore is subject to judicial review unless expressly excluded by statute. The court can intervene in a decision and/or the implementation of a decision on the basis that it is *ultra vires* the statute and/or where there is illegality, irrationality or procedural impropriety in the manner in which a decision is made or implemented. Judicial review is, however, limited to the decision-making process and does not extend to a review of the merits of the decision itself. Almost invariably, findings of fact are also not within the purview of such a review: *Lines International Holding (S) Pte Ltd v Singapore Tourist Promotion Board* [1997] 2 SLR 584, *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR 644, *Chng Suan Tze v Minister of Home Affairs* [1988] SLR 132 and *Chan Hiang Leng Colin v PP* [1994] 3 SLR 662. Reasonableness does not require reasons to be stated: Wade & Forsyth ([87] *supra*) at p 365.

94 The term "*Wednesbury* unreasonableness" is a shorthand legal reference to the classical judicial approach expounded in *Associated Provincial Picture Houses, Limited v Wednesbury Corporation* [1948] 1 KB 223 ("*Wednesbury*") *per* Lord Greene MR, at 229:

> It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. in *Short* v. *Poole Corporation* [[1926] Ch 66] gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.

In short, the basis of the quashing of a decision is that it is so outrageously defiant of "logic" and "propriety" that it can be plainly seen that no reasonable person would or could come to that decision.

95 Reasonableness in arriving at a determination does not, however, mean that there should be a single inevitable approach or determination in any given matter. The essence of reasonableness is that decision makers can in good faith arrive at quite different decisions based on the same facts: there is an inherent measure of latitude in assessing reasonableness. Lord Hailsham of St Marylebone LC in *In re W (An Infant)* [1971] AC 682 at 700 sagely observed that two reasonable

persons could quite "perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable". In *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 at 1064, Lord Diplock said:

> The very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred.

96 The exercise of the power of arrest inexorably carries with it a latent tension between the constitutional right of liberty and the countervailing public interest in crime prevention and control as well as the maintenance of public order. In short, a balance between the liberty of a person and the need to uphold law and order has to be struck. Parliament has imposed limitations and safeguards to ensure that the power of the police to arrest is not arbitrarily exercised:

> (a) Firstly, except for a limited class of cases the right of arrest may not be exercised for non-seizable offences unless a warrant has been issued.
>
> (b) Secondly, a suspect, once arrested, has to be produced in court within 48 hours: Art 9(4) of the Constitution.
>
> (c) Thirdly, there is judicial oversight over any alleged arbitrary exercise of the powers of arrest.

97 While the court will be slow to question the *bona fide* exercise of an executive discretion by the police, that does not mean the court will be slow to provide the appropriate relief when legitimate grievances are indeed shown to exist. What must always be borne in mind and indeed emphasised (as *per* Lord Diplock in *Holgate-Mohammed v Duke* [1984] AC 437 at 446) is that:

> [The] lawfulness of the arrest and detention based on that suspicion [does] not depend upon the judge's own view as to whether the arrest was reasonable or not, but upon whether [the police officer's] action in arresting … was an exercise of discretion that was ultra vires under *Wednesbury* principles because he took into consideration an irrelevant matter.

98 A wide assortment of factors and imponderables is called into play when the police exercise their powers. It would be neither possible nor helpful to attempt to catalogue the myriad of circumstances that must be considered or taken into account in the exercise of such executive discretion.

99 The power of arrest is provided in a number of statutes but the primary sources remain the Constitution and the CPC. The power to arrest without warrant is strictly limited by statute. Section 32 of the CPC empowers a police officer to arrest without a warrant in specified instances. As a testament to the importance attached to the maintenance and preservation of public order, s 40 of the MOA also authorises a police officer to effect an arrest if there is reasonable cause to believe that an offence under the MOA has been committed (see [92] above).

100 When does an arrest occur? According to Lord Devlin in *Shaaban v Chong Fook Kam* [1969] 2 MLJ 219 at 220:

> An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when by words or conduct he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to

go. It does not occur when he stops an individual to make enquiries.

In other words, "arrest" means the apprehension, restraint or deprivation of a person's liberty.

101 It is settled law that a police officer may make a lawful arrest on the basis of reasonable suspicion. As Lord Devlin in *Shaaban v Chong Fook Kam* at 221 pointed out:

> Suspicion arises at or near the starting-point of an investigation of which the obtaining of ***prima facie***proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. It is indeed desirable as a general rule that an arrest should not be made until the case is complete. But if arrest before that were forbidden, it could seriously hamper the police. To give power to arrest on reasonable suspicion does not mean that it is always or even ordinarily to be exercised. It means that there is an executive discretion. In the exercise of it many factors have to be considered besides the strength of the case. The possibility of escape, the prevention of further crime and the obstruction of police enquiries are examples of those factors with which all judges who have had to grant or refuse bail are familiar. There is no serious danger in a large measure of executive discretion in the first instance because in countries where common law principles prevail the discretion is subject indirectly to judicial control. There is first the power, which their Lordships have just noticed, to grant bail. There is secondly the fact that in such countries there is available only a limited period between the time of arrest and the institution of proceedings; and if a police officer institutes proceedings without***prima facie***proof, he will run the risk of an action for malicious prosecution. The ordinary effect of this is that a police officer either has something substantially more than reasonable suspicion before he arrests or that, if he has not, he has to act promptly to verify it.

102 It is also of crucial importance to point out that there is an essential distinction between reasonable suspicion and *prima facie* proof (*per* Lord Devlin in *Shaaban v Chong Fook Kam* at 221):

> *Prima facie* proof consist of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all. … Suspicion can take into account also matters which, though admissible, could not form part of a *prima facie* case.

103 The power to arrest without warrant is a discretionary power that can be neither mechanically nor automatically exercised. To justify an arrest there must be a factual substratum, which can be adjudged to be reasonable. This factual basis can either be within the police officer's personal knowledge or reported to him. *The power to arrest also arms a police officer with a right to warn a suspected offender to desist in his conduct and/or to disperse in lieu of arrest*; see also s 211 of the CPC. In addition, the power to arrest also implies a power to detain.

104 In instances where it is alleged that the police have improperly exercised their powers of apprehension and/or arrest there are in essence just three questions to be answered (*per* Woolf LJ (as he then was) in *Castorina v The Chief Constable of Surrey* 10 June 1988, Court of Appeal (Civil Division) ("*Castorina*")):

> 1. Did the arresting officer suspect that the person who was arrested was guilty of the offence? The answer to this question depends entirely on the findings of fact as to the officer's state of mind.
>
> 2. Assuming the officer had the necessary suspicion, was there reasonable cause for that suspicion? That is a purely objective requirement to be determined by the judge if necessary on facts …

3. If the answer to the two previous questions is in the affirmative, then the officer has a discretion which entitles him to make an arrest and in relation to that discretion has been exercised in accordance with the principles laid down by Lord Greene MR in [*Wednesbury*].

In relation to the *Castorina* questions, the view of the police officer is subjective as to the fact of his suspicion and objective as to whether he had exercised his discretionary power reasonably.

105 Returning to s 40 of the MOA, the words "may arrest without warrant any person offending in his view" confers on a police officer the executive discretion to arrest a person whenever he entertains reasonable grounds for suspicion that a provision of the MOA has been offended. The existence of the grounds for suspicion is a matter of fact. Whether the facts, if they exist, amount to a probable cause for arrest, is a matter of law. I also respectfully agree that the lawfulness of the manner in which the police officer exercised his statutory executive discretion "cannot be questioned in any court of law except upon those principles laid down by Lord Greene M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*": *per* Lord Diplock in *Holgate-Mohammed v Duke* ([97] *supra*) at 443.

106 Turning to the power of the police to seize an article, this too must have a statutory basis. Section 40(2) of the MOA expressly confers on the police the power to seize an article. The seizure of that article must be "concerning by or for which" an offence has been committed.

Analysis of the applicants' substantive case

107 The crux of the applicants' claim is that Art 14 of the Constitution allows four or less persons to assemble in any public place to conduct "peaceful protests". They contend that the freedom to assemble such a number of persons is wholly unfettered as long as it does not result in a breach of peace. Can this be correct?

The preliminary issues

108 Before coming to grips with this contention it is necessary to dispose of a few other issues raised by the respective parties. Mr Chan, relying on *Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo* [1996] 2 SLR 201, *Malone v Metropolitan Police Commissioner* [1979] Ch 344 ("*Malone*") and *Imperial Tobacco Ltd v Attorney-General* [1981] AC 718, contends that the court cannot or ought not to determine the issues raised by the applicants as they are not justiciable. I do not agree with his contention. While it is axiomatic that a court will not rule on hypothetical or non-justiciable issues involving purely moral, political or social rights, the present matter cannot be construed as one that falls within such a category.

109 It is trite law that a court will not grant a declaration on abstract issues or hypothetical questions. Nor will a court generally state the position on a particular area of the law unless it is dealing with the facts of a case. Furthermore, a court will not normally make a pure declaration on a motion without ascertaining the complete facts and contentions: see *Malone* at 381–382. That issue, however, is in reality another procedural pimple that can be cured by the adoption of either the writ or originating summons procedure. The applicants are correct in asserting that the rights that they seek to vindicate (assuming they exist and have indeed been contravened) are neither illusory nor hypothetical. If indeed the police had acted arbitrarily or improperly during the incident, the law must and will afford them a remedy.

110 Mr Chan additionally contends that as the incident is currently under investigation, the present civil proceedings amounts to an abuse of process. The ruling in *Imperial Tobacco Ltd v*

Attorney-General, cited by Mr Chan, is at best of some tangential assistance. In that case, a declaration was sought by a defendant in criminal proceedings that the facts alleged by the Prosecution did not legally support a conclusion that an offence had been committed. The House of Lords held that it would not be a proper exercise of judicial discretion to make such a declaration as it would be tantamount to usurping the functions of a criminal court without binding it. This would inevitably prejudice the criminal trial one way or another. Viscount Dhilhorne observed, at 741:

> *If in this case where the declaration sought was not in respect of future conduct but in respect of what had already taken place, it could properly be granted, I see no reason why in such cases a declaration as to future conduct could not be granted*. If this were to happen, then the position would be much the same as it was before the passing of Fox's Libel Act 1792 when judges, not juries, decided whether a libel was criminal, blasphemous or obscene.
>
> Such a declaration is no bar to a criminal prosecution, no matter the authority of the court which grants it. Such a declaration in a case such as the present one, made after the commencement of the prosecution, and in effect a finding of guilt or innocence of the offence charged, cannot found a plea of autrefois acquit or autrefois convict, though it may well prejudice the criminal proceedings, the result of which will depend on the facts proved and may not depend solely on admissions made by the accused. If a civil court of great authority declares on admissions made by the accused that no crime has been committed, one can foresee the use that might be made of that at the criminal trial.
>
> *… I think that the administration of justice would become chaotic if, after the start of a prosecution, declarations of innocence could be obtained from a civil court*.
>
> [emphasis added]

111 In essence the court determined in that case that it was wholly improper for a civil court to grant a declaration after a criminal prosecution had been initiated.

112 In this matter, no criminal proceedings have commenced. In an affidavit filed only after the applicants had completed their initial round of arguments, the respondents claim that investigations into the applicants' criminal conduct are still pending. Mr Ravi pointed out in his closing oral arguments that 77 days had lapsed since the incident occurred. Yet there is no intimation that the applicants are to be prosecuted for any offence.

113 It appears to me that the facts pertaining to the incident are neither particularly complex nor confusing. On the contrary, they are quite straightforward. The applicants make no pretence of concealing either their conduct or their intent. In the normal course of events, with their customary diligence, both the Attorney-General's Chambers and the police would by now be in a position to determine whether to proceed with the prosecution of the protestors. I also note that Mr Chan was not prepared to give a commitment (or indeed any intimation) that any criminal prosecution is in the offing. He was at best ambivalent. In the circumstances of this case, would it be appropriate to found a striking-out order against the applicants' case on this ground alone? What would the position be in the eventuality that the applicants are not prosecuted? Do they then file fresh civil proceedings? At what point in time would it be proper for them to commence civil proceedings if no further steps to prosecute them are undertaken? It seems neither appropriate nor rational (assuming there are no other substantive grounds to strike out these proceedings) that the present proceedings should grind to a halt based on this ground alone. In the event that criminal proceedings are actually initiated, the AG can then, at that juncture, initiate a fresh application to strike out the proceedings on that basis. I find some comfort for my views in Woolf & Woolf*, The Declaratory Judgment* (Sweet & Maxwell,

3rd Ed, 2002) at para 4.204:

> *Thus, where a person acts or intends to act in a certain way and is faced with a possible criminal prosecution, he may bring an action before the criminal proceedings are commenced for a declaration to the effect that the act is not illegal*. The High Court will not necessarily be inhibited from making a declaration by the mere fact that the matter could be the subject of a criminal adjudication. It will, however, carefully examine the facts to see whether it is appropriate that it should determine the issue. If the criminal court, or a tribunal in whom a special jurisdiction to determine the issue is vested, is the more appropriate venue, it will be rare, if ever, that the High Court will grant a declaration. [emphasis added]

114 I ought to also put to rest another contention, in this instance, raised by the applicants. In his written submissions and during his final oral submissions, Mr Ravi briefly but fervently complained about the "discriminatory attitude" of the police and the respondents in relation to the grant of permits for assemblies. He boldly claims that this is in breach of Art 12 of the Constitution. I have to categorically reject such a baseless contention. There is absolutely no *factual* substratum for this serious but nonetheless vague assertion to be found anywhere in the applicants' brief affidavit. Nor does this particular complaint form any part of the applicants' claim for legal relief. Finally, the applicants themselves do not have the *locus standi* to raise this issue in the present proceedings as there is no evidence pointing to any of them ever having applied for any permits to hold assemblies or "protests" in the first place or to any consequential discrimination as a result of any such application.

115 I also note that Mr Ravi in his closing submissions repeatedly invited the court to rule on the applicants' originating motion as it now stands and made no application to supplement his clients' affidavit. Ms Chee associated herself with his stance. I have no choice but to conclude that the applicants have no further evidence to adduce on any of the issues they have raised. In the circumstances, the applicants are not only clutching at illusory straws in alleging discrimination, they also appear to be conjuring vapid abstractions.

The principal controversy

116 I now turn now to what in fact constitutes the principal controversy between the parties. Do the applicants have a wholly unsustainable case in relation to the alleged wrongful exercise of police powers during the incident? Put another way, are the present proceedings an abuse of the process of the court and/or frivolous and vexatious?

117 To recapitulate, Mr Ravi accepts that neither the provisions of the MOA (and in particular ss 13A and 13B) nor the relevant provisions of the CPC offend Art 14(1) of the Constitution. He however maintains that the police have no right to disrupt a "peaceful protest" of four persons or less.

118 I should perhaps, at this juncture, dispose of the other preliminary factual argument made by Mr Chan. He contends that the protestors had voluntarily left the scene and surrendered their T-shirts. There was, he adds, no element of legal coercion and consequently no basis for any legitimate complaint against the respondents and/or the police. I cannot agree with this contention. Firstly, it is clear from the affidavit evidence filed by the applicants that they had carefully planned and choreographed the "peaceful protest" and were determined to make a point. They would not have left the scene unless they were legally compelled to do so. Secondly, the respondents have not filed any affidavit to substantiate and verify Mr Chan's contention on this score.

119 Acknowledging and taking into account, as Mr Ravi has done, the legislative framework for

enforcement action in this matter, the only issue that remains is whether DSP Baptist had inappropriately or incorrectly exercised his executive discretion. Did he act arbitrarily and therefore unlawfully?

120 It has to be noted that when DSP Baptist arrived at the scene, there was a number of persons milling around. A crowd had gathered around the applicants. This included journalists and onlookers. There was no hint or suggestion of violence and/or any threatened breach of peace. In addition to the four "protestors" there were, it appears, two other persons connected with the SDP and purportedly selling books in fairly close proximity. It is undisputed that one of them was Ms Chee's brother. The applicants denied any connection between the two groups. The most striking feature of the protest would have been the words associating and linking the "CPF" (Central Provident Fund) to the "NKF" (an acronym for the National Kidney Foundation). Coupled with this were references to the "HDB" (Housing and Development Board), "GIC" (an acronym for the Government of Singapore Investment Corporation Pte Ltd), the "National Reserves" and a clarion call for "Transparency" and "Accountability" as well as a suggestion that Singaporeans were for some inexplicable reason unable to withdraw their CPF "life savings" when they needed it.

121 An objective view of the printed words on the T-shirts and the placards would leave no doubt that the protestors were neither affably nor gently raising queries; rather they were patently attempting to undermine the integrity of not just the CPF Board but also the GIC and the HDB by alleging impropriety against the persons responsible for the finances of these bodies ("the institutions"); in addition, they were calling into question the dealings of the institutions with the "National Reserves". This was a conscious and calculated effort to disparage and cast aspersions on these institutions and more crucially on how they are being managed. I cannot but take judicial notice of the fact that any attempt to link the institutions to the NKF at that point of time, 11 August 2005 and pending further public clarification, would be tantamount to an insinuation of mismanagement and financial impropriety. The governance and finances of the NKF were in July and early August 2005 caught in a swirl of negative and adverse publicity. Information and material that entered the public domain as a consequence of litigation involving its former chief executive officer, became the source of widespread and grave public disquiet. A toxic brew of inexplicable accounting practices, corporate unaccountability, lack of financial disclosure and questionable management practices created an atmosphere cogently suggesting financial impropriety. On 20 July 2005, the Minister of Health, Mr Khaw Boon Wan, announced in Parliament that the new NKF Board had appointed an accounting firm, KPMG, to commission a detailed review of the NKF's financial controls; see s 59(1)(d) of the Evidence Act (Cap 97, 1997 Rev Ed). To associate or link the institutions (and in particular the CPF) with the NKF, as it was then perceived, is to tarnish them with financial impropriety and sully their standing and integrity. Such an association does not merely allege impropriety. It was a patent attempt to scandalise the institutions and their management by association. Leaving aside for present purposes the question as to whether the words are *per se* defamatory of these corporate entities and/or their management, the issue is whether these words are *prima facie* insulting and/or abusive within the meaning of ss 13A and/or 13B of the MOA.

122 I have concluded that the reference to "a person" in these sections would certainly include those responsible for its operations and/or management. There is no contrary indication that these sections are not meant to include those responsible for managing these institutions (see [67] above).

123 I now apply the test for reviewing the exercise of police powers to the present case. The first question is whether DSP Baptist subjectively perceived that an offence was being committed under the MOA. The answer must be in the affirmative. This is evident from the fact that DSP Baptist had informed the protestors that they were committing the offence of nuisance under the MOA. The second question is whether a reasonable policeman would objectively have had reason to believe that

an offence was being committed. Surely, it would be reasonable for any police officer at the scene to conclude, without diffidence, that the words employed by the protestors were "insulting" and/or "abusive" apropos those responsible for managing the institutions. This would be a plain, common-sense impression and conclusion. It can also be reasonably concluded by any police officer that the "protest" was intended to harass those responsible for the institutions, in particular the CPF Board, as the protest was deliberately staged outside its principal premises. Remarkably, in his final oral submissions, Mr Ravi himself said as much:

> … demonstrate to protest is not unlawful in Singapore, if less than five people … *it would be distressing to some people … Of course, the CPF Board, no question*. [emphasis added]

124 The fact that Parliament did not define the word "harassment" in ss 13A and 13B of the MOA is a strong indication that this word, like the words "insult" and "abusive", is intended to be accorded a common-sense meaning. Harassment describes determined conduct which is directed at persons and is calculated to produce discomfort and/or unease and/or distress: see *Malcomson Nicholas Hugh Bertram v Naresh Kumar Mehta* [2001] 4 SLR 454. Persistent or prolonged conduct that is directed at causing distress in those responsible for discharging their duties would amount to harassment for the purposes of the subject provisions. *The essence of harassment is not just repetitive conduct but includes prolonged or persistent or sustained conduct*. A persistent course of conduct for a sustained period of time can constitute harassment. It is also germane that the protestors did not assemble at the scene for a mere split second with the intention of making a purely fleeting appearance. They remained in position for a prolonged period, and based on their own account of the incident, would have continued with the "protest" had DSP Baptist not intervened. They remained for a prolonged period that reasonable persons would have complained of and for what in the applicants' own words was intended to constitute "a protest". It did indeed amount to harassment. Interestingly, s 13A unlike s 13B of the MOA does not require the offence to take place within the hearing or sight of any person likely to be caused harassment, alarm or distress. It is also pertinent to mention albeit in passing that threatening, abusive or insulting words or behaviour can be deemed to be perceived as such by a person even though that person does not himself complain or give evidence. Nor is it necessary to receive a specific complaint from that person in order to find that the offence was committed with intent: *cf Swanston v Director of Public Prosecutions* (1996) 161 JP 203.

125 DSP Baptist's conduct does not need to be dissected or micro-analysed on the basis of what a court would conclude after a full hearing of legal submissions but rather on the basis of what a reasonable police officer, given the concatenation of circumstances, could or would have determined. Applying the test of how a reasonable police officer ought to have approached the situation, can DSP Baptist in these circumstances be faulted as having acted arbitrarily or improperly? Decidedly not. That DSP Baptist subjectively concluded that the offence of "nuisance" for the purposes of the MOA had transpired is not in issue. There is nothing to suggest on the basis of the applicants' own affidavit that the police action was irrational or that they had taken into account irrelevant considerations. In other words, the exercise of discretion cannot be described as being "*Wednesbury* unreasonable". It is hornbook law that the standard of unreasonableness, is from a jurisprudential perspective, pragmatically fixed at a very high level: "so absurd that no sensible person could ever dream that it lay within the powers of the authority" (Lord Greene MR in *Wednesbury* ([94] *supra*) at 229); "so wrong that no reasonable person could sensibly take that view" (Lord Denning MR in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* ([95] *supra*) at 1026); and "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it" (Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410).

126 DSP Baptist had a statutory duty to take lawful measures to preserve order in a public place

pursuant to s 40(2) of the Police Force Act 2004 (Act No 24 of 2004). He also had a statutory duty to prevent an offence, pursuant to s 111 of the CPC, from being committed. He had the power, pursuant to s 40 of the MOA, to exercise an executive discretion to arrest the protestors once he formed the view that there were reasonable grounds to believe that they had committed a nuisance within the ambit of the MOA. There were more than ample grounds, based on an objective test of reasonableness, for him to conclude that the protestors had contravened the provisions of the MOA. He was acting well within the scope of his powers and had properly exercised his discretion in asking the protestors to leave in lieu of arresting them. The police acted well within the scope of their powers and had properly exercised their discretion in seizing the T-shirts once they reasonably suspected that provisions of the MOA had been offended. In summary, once DSP Baptist concluded and informed the protestors that the MOA had been infringed because a "nuisance" within the legislative scheme had been and/or was being committed, it was incumbent on him to either arrest the protestors or inform the protestors that they should leave the scene or otherwise subject themselves to arrest. No force was used or threatened.

127 It was not incumbent on DSP Baptist or his colleagues to determine whether the protestors had a reasonable defence within the meaning of ss 13A and/or 13B of the MOA. Nor was he under any obligation to furnish them with the precise reasons for his assessment. I should point out in any event that the applicants have failed, most surprisingly, to so much as attempt to justify through their affidavit the factual basis for their attacks on any of these institutions. I stress again that Mr Ravi himself made no request to adduce additional facts; nor did he or Ms Chee at any point make any reference to the basis for the startling insinuations against these institutions. Significantly, the applicants did not exhibit the press statement they circulated to the journalists milling around at the scene. With regard to the gathering crowd of onlookers, it is germane to note that if a person collects a crowd of people and causes annoyance generally in the neighbourhood or obstruction to the traffic (in a public place), he would be committing a public nuisance pursuant to s 268 of the PC, see *AIR Commentaries, The Indian Penal Code* ((All India Reporter Ltd, 3rd Ed, 1980) at p 485. Mr Chan persuasively argues that "a crowd at that time would definitely cause a nuisance in that it can cause obstruction in the area". It is also pertinent that the protest was timed to coincide with the office lunch hour break. It can be inferred from this that it was also the protestors' intention to draw both interest and attention to their cause.

128 Having concluded that the police had the power and had reasonably exercised their executive discretion to disperse the protestors and seize the offending items, it now remains for the court to consider whether these proceedings can nevertheless be allowed to proceed – needless to say, in an amended form, by way of a writ or originating summons. Given that the applicants' pivotal and indeed only apparent complaint is the purported arbitrary exercise of police power, I see no justification in granting leave to cure the procedural defects. The substance of the applicants' complaint is legally unsustainable and wholly misconceived. The present proceedings are frivolous, vexatious and/or an abuse of proceedings.

129 There is one final point. If indeed as it now appears the gist of the applicants' case is the judicial review of the exercise of police powers during the incident, then it could be persuasively argued that the proper route for these proceedings ought to be by way of O 53 of the RSC, which requires leave of court before process issuance. This has not been obtained. However, as Mr Chan has not raised this issue and also in light of my determination on the disposal of these proceedings, I shall not deal with the ramifications of this particular consideration.

Conclusion

130 The applicants' claim is struck out on the basis that it discloses no legitimate legal grievance

whatsoever against the respondents and/or any other authority. The claim is inescapably flawed by its own legal and factual inadequacies and fallacies which the applicants can neither redeem nor repair. As such it is doomed to fail.

131 The applicants have persistently attempted to elevate the present proceedings to a "constitutional motion" to protect the public right of assembly. They claim that the protest was "peaceful". This cannot mask the fact that the contents of their T-shirts and the placard are *prima facie* more incendiary than an ordinary affray or a localised breach of peace. Their protest amounts to a grave attack on the financial integrity of key public institutions. Not even a modicum of effort has been made in the present proceedings to justify the attacks made on these institutions. Why? One might reasonably be inclined to think that the applicants were protesting because they had unearthed some skulduggery or chicanery prevailing in these institutions which they wished to unravel by bringing to the public's attention. However, nothing has emerged. This is also not in effect a case about the freedom of speech. The applicants' unequivocal stance seems to be that they have an unfettered right to undermine the legitimacy of public institutions without being held accountable for the consequences of their conduct. The Constitution protects no such right. It cannot. The existence of such an open-ended "right" would undermine the very existence of public governance which in turn depends on public confidence in institutional integrity.

132 Different countries have differing thresholds for what is perceived as acceptable public conduct; differing standards have also been established when it comes to the protection of public institutions and figures from abrasive or insulting conduct. There are no clearly established immutable universal standards. Standards set down in one country cannot be blindly or slavishly adopted and/or applied without a proper appreciation of the context in another. It is of no assistance or relevance to point to practices or precedents in any one particular country and to advocate that they *must* be invoked or applied by the court in another. The margins of appreciation for public conduct vary from country to country as do their respective cultural, historical and political evolutions as well as circumstances. Standards of public order and conduct do reflect differing and at times greatly varying value judgments as to what may be tolerable or acceptable in different and diverse societies. In the final analysis, the court will not only be guided but indeed be bound by the manifest intent and purport of both the Constitution and domestic legislation, not by abstract notions of permissible conduct. In so far as the interpretation of the Constitution is concerned, the following remarks made by Thomson CJ several decades ago in *The Government of the State of Kelantan v The Government of the Federation of Malaya and Tunku Abdul Rahman Putra Al-Haj* [1963] MLJ 355 at 358 remain most apposite*:*

> [T]he Constitution is primarily to be interpreted within its own four walls and not in the light of analogies drawn from other countries such as Great Britain, the United States of America or Australia.

133 The integrity of public institutions and more specifically of the persons entrusted with these institutions, forms an integral part of the foundation that grounds Singapore. It accounts in no small measure for the singularly stable and upright stature Singapore has managed to uphold. Undermining confidence in these institutions and/or the persons responsible for them without any justification, apparent or otherwise, can hardly be described as a "peaceful protest". Domestically as well as internationally, public governance in Singapore has been equated with integrity. To spuriously cast doubt on that would be to improperly undermine both a hard-won national dignity and a reputable international identity.

134 To all intents and purposes, what the applicants are in fact contending that under present legislation they are at liberty in groups of four or less to picket public institutions, question their

integrity and cast a slur on their reputation without any restraint and/or responsibility for what they may wish to say. This is premised on a fundamental misapprehension of their rights. They can certainly voice criticism if they have a veritable factual or other legitimate basis to do so. This must however be done within the parameters of the law. Public conduct cannot be transmuted at will into public nuisances.

135 Despite what the applicants think or say, the present proceedings raise no momentous constitutional issues. It is an adroit attempt to conjure an illusory right elevated on improbable legal stilts. The right of assembly and/or freedom of speech in Singapore is not itself illusory. It has, however, to be exercised responsibly and within the confines of the law. The exercise of constitutional rights is never absolute whether in Singapore or anywhere else. Rights inevitably and invariably entail some responsibilities. There is neither any authority nor basis for the extravagant proposition that an unconditional right to hold a protest or public meeting at any public place and to make statements without any restraint constitutes a fundamental right of assembly and/or free speech. In Singapore, Parliament has through legislation placed a premium on public order, accountability and personal responsibility. As Lord Reid observed with his customary incisive acuity in *Cozens v Brutus* ([70] *supra*) at 862, free speech should not "go beyond any one of three limits. It must not be threatening. It must not be abusive. It must not be insulting." Free speech is neither impaired nor impeded by ruling out such conduct. Nor is the right of assembly curtailed by expecting or exacting from citizens responsibility for their conduct. While it is axiomatic that in every democratic society those who hold office must remain open to criticism, such criticism must be founded on some factual or other legitimate basis. The object of contesting and changing government policy has to be effected by lawful and not unlawful means. Wild and scurrilous allegations should be neither permitted nor tolerated under the pretext and in the guise of freedom of speech. Disseminating false or inaccurate information or claims can harm and threaten public order.

136 The applicants appear to suggest that as long as there is no actual or threatened breach of peace, they are perfectly at liberty to say or do anything they see fit, wherever and whenever they choose to; they are misguided. They cannot but observe and abide by the civil and criminal laws of defamation, sedition, public nuisance and public order. Freedom of action invariably ends where conflicting rights and/or interests collide. Contempt for the rights of others constitutes the foundation for public nuisance. All persons have a general right to be protected from insults, abuse or harassment. Those who improperly infringe or intrude upon such a right to draw publicity to their cause, regardless of the extent and sincerity of their beliefs, must be held accountable for their conduct. The right of freedom of expression should never be exercised on the basis that opinions are expressed in hermetically sealed vacuums where only the rights of those who ardently advocate their views matter. That is entirely inappropriate. Freedom of expression when left unchecked may reach a point where protest, criticism and expression culminate in nuisance or something even more serious. The law inevitably has to intervene then.

137 All said and done, two aspects of the applicants' bold and blatant attempt to place the respondents in the dock stand out. First, the alacrity (passionately articulated through Mr Ravi) with which they invited the court to proceed promptly with the hearing and dispose of the matter, based only on the bare facts of their affidavit, suggests that they had no further factual assertions to make and that their case was complete. Secondly, I cannot ignore the total lack of a factual basis in the supporting affidavit to support the gravamen of their "protest" against the institutions concerned. There was simply no attempt or effort to illustrate that their conduct was reasonable within the meaning of ss 13A(2) and 13B(2) of the MOA. I can only conclude from this that they either did not think it necessary to justify the basis of their "protest" or could not possibly substantiate it. Which was it? Either way, this matter cannot and should not be allowed to proceed. Putting it as charitably as possible, the applicants have shown a manifest lack of conviction in their assertions. If indeed they

had found any disturbing impropriety within the walls of these institutions, they had the perfect opportunity to disclose it – in their affidavits! Their concerns and assertions would *prima facie* have been legally privileged and protected and would ultimately have been placed under the scrutiny of the court as well as before the bar of public opinion. Instead, they have consciously chosen to avoid such a compelling avenue to advance their purported concerns and reservations about these institutions. What does this demonstrate? Having proceeded with neither sagacity nor prudence, they cannot expect to be rewarded with the imprimatur of legitimacy by the court. What they have attempted to convey in their "protest" goes well beyond the legitimate cut and thrust of politics and criticism.

138 I have not concluded in this judgment that the protestors have in fact committed offences under the MOA. That is unnecessary for the purposes of the respondents' application to strike out these proceedings and is, if anything, a matter for a criminal court. Suffice it to say for the purposes of the present proceedings that the applicants have absolutely no cause for complaint against the respondents and/or the police arising from the incident. The police did not behave unlawfully and/or unreasonably during the incident.

139 The costs of the action (to be taxed if not agreed) are to be paid to the respondents by the applicants.