IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 6

Civil Appeal No 26 of 2016

Between

ATTORNEY-GENERAL

… *Appellant*

And

TING CHOON MENG

… *Respondent*

In the matter of Community Justice and Tribunals Appeal No 1 of 2015

Between

TING CHOON MENG

… *Appellant*

And

ATTORNEY-GENERAL

… *Respondent*

Civil Appeal No 27 of 2016

Between

ATTORNEY-GENERAL

… *Appellant*

And

(1) LEE KWAI HOU HOWARD
(2) XU YUAN CHEN
(3) LOH HONG PUEY ANDREW
(4) CHOO ZHENG XI
(5) LEE SONG KWANG

… *Respondents*

In the matter of Community Justice and Tribunals Appeal No 2 of 2015

Between

(1) LEE KWAI HOU HOWARD
(2) XU YUAN CHEN
(3) LOH HONG PUEY ANDREW
(4) CHOO ZHENG XI
(5) LEE SONG KWANG

… *Appellants*

And

ATTORNEY-GENERAL

… *Respondent*

JUDGMENT

[Tort] — [Harassment] — [Protection from Harassment Act] — [false statements of fact]

[Statutory Interpretation] — [construction of statute] — [purposive approach]

[Statutory Interpretation] — [Interpretation Act] — [purposive approach]

[Statutory Interpretation] — [Interpretation Act] — [extraneous aids]

Attorney-General
v
Ting Choon Meng and another appeal

[2017] SGCA 6

Court of Appeal — Civil Appeals Nos 26 and 27 of 2016
Sundaresh Menon CJ, Chao Hick Tin JA and Andrew Phang Boon Leong JA
4 October 2016

16 January 2017 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the majority consisting of Chao Hick Tin JA and himself):

Introduction

1 The present appeals concern a narrow question of law – how s 15 of the Protection from Harassment Act (Cap 256A, 2015 Rev Ed) ("the Act") is to be construed. Specifically, they concern the issues of whether the Government may invoke s 15 of the Act ("s 15") to obtain an order for a person to be prevented from or to cease publication of a false statement of fact and, if so, when it would be "just and equitable" to do so. In *Ting Choon Meng v Attorney-General and another appeal* [2016] 1 SLR 1248 ("the Judgment"), the learned High Court Judge ("the Judge") held that the Government cannot invoke s 15 and that, in any event, it would not have been "just and equitable" to grant the orders sought in the circumstances of the case.

Background

2 The respondent in Civil Appeal No 26 of 2016 ("Dr Ting"), is a director of MobileStats Technologies Pte Ltd ("MobileStats"). MobileStats was the owner of Singapore Patent No 113446 ("the Patent"), which was registered sometime in 2005. The respondents in Civil Appeal No 27 of 2016 ("CA 27/2016") are affiliated with "The Online Citizen", a website that states that it aims to be the "leading online source for social-political news and views in Singapore".

3 On 29 July 2011, lawyers for MobileStats wrote to the Ministry of Defence ("MINDEF"), alleging that military medical vehicles known as "Battalion Casualty Stations" that MINDEF had purchased from Syntech Engineers Pte Ltd ("Syntech") infringed the Patent. Notwithstanding MINDEF's invitation that MobileStats direct its complaints towards Syntech, MobileStats proceeded with Suit No 619 of 2011 ("S 619/2011") against MINDEF for patent infringement. MINDEF's defence was conducted by Syntech, who instituted a counterclaim for the revocation of the Patent on the ground of invalidity. As it turned out, S 619/2011 was discontinued mid-way through the trial due to the financial position of MobileStats, and judgment was entered on the counterclaim on 15 January 2014.

4 On 30 December 2014, Dr Ting gave an interview to the first respondent in CA 27/2016. The video of the interview and an accompanying article were uploaded on The Online Citizen on 15 January 2015. In the video, Dr Ting made a number of allegations against MINDEF, including the following: (a) that it had intended from the start to infringe the Patent and had been waiting in a "premeditated" way to revoke the Patent; and (b) that it had been conducting a "war of attrition" in S 619/2011 to deplete MobileStats'

financial resources (collectively, "the Allegations"). MINDEF responded by way of a statement posted on its Facebook page refuting the Allegations, which it said were "false and baseless". This last-mentioned statement was reproduced in full in a subsequent article published on The Online Citizen, and a link to the same was provided on the webpage hosting the original article and the video.

5 On 11 February 2015, the appellant, representing MINDEF, applied in the State Courts for an order under s 15(2) of the Act ("s 15 order") by way of an originating summons. The prayers, as amended, sought a declaration that the Allegations were false and that they not be published without the following notification:

> Statements herein which state and/or suggest to the reader that:
>
> (i) MINDEF had knowingly infringed [the Patent], with the intent to subsequently apply to revoke [the Patent] upon [Dr Ting's] legal challenge; and
>
> (ii) MINDEF waged a 'war of attrition' against MobileStats, by deliberately delaying the court proceedings in Suit 619 of 2011 and asking for more trial dates than necessary, thereby increasing legal costs,
>
> have since been declared by the Singapore Courts to be false. For the truth of the matter, please refer to MINDEF's statement [as posted on its Facebook page].

The decisions in the courts below

6 The District Judge granted the orders in terms, holding that ss 3 and 36 of the Government Proceedings Act (Cap 121, 1985 Rev Ed) ("the GPA") provided the Government the "legal right to make an application" under s 15: see *Attorney-General v Lee Kwai Hou Howard and others* [2015] SGDC 114 at [35]. He found the Allegations to be false and that it was just and equitable

to grant the orders for two reasons: (a) that the Allegations would "severely undermine public confidence in the Government and in the public institutions" if left unchecked, and (b) that they constituted a collateral attack on the judgment rendered in S 619/2011 (at [84]–[85]).

7 The Judge allowed the appeals against the District Judge's decision, finding that the question of whether the Government has the right to invoke s 15 is anterior to the application of ss 3 and 36 of the GPA, which merely ensure any such right is not prejudiced (see the Judgment at [25]). He accepted that s 15 stands apart from the rest of the Act in so far as it encompasses statements not constituting harassment, but that it is nonetheless confined to false statements that are "capable of affecting their intended subject[s] emotionally or psychologically" (see the Judgment at [41]). Accordingly, only natural persons may apply for a s 15 order.

8 Having allowed the appeals on this threshold question, the Judge nevertheless proceeded to express the view that it would not, in any event, have been just and equitable to grant a s 15 order. He held that only the second of the Allegations was false, and that although that particular statement did have the potential to bring MINDEF into disrepute, MINDEF's interests were not substantially compromised due to the triviality of the complaint and the ability of MINDEF to put forward its side of the story through the media. He also took into account the fact that The Online Citizen had taken significant steps to present MINDEF's side of the story that suggested that the veracity of the Allegations was in doubt (see the Judgment at [56] and [57]).

The respective parties' arguments in the appeals

9 The appellant submits that ss 3 and 36 of the GPA give rise to a *presumption* that the Government is entitled to apply for a s 15 order, and that there was no clear Parliamentary intent to exclude the Government from the protection of the Act. It emphasises that the objective underlying s 15 is to deal with false statements of fact and not merely harassment, and that this objective is perfectly consistent with an interpretation which extends the right to invoke s 15 to the Government and corporate entities. As to the order that should have been granted had the Government been able to avail itself of s 15, the appellant argues that the seriousness of the allegation that it had waged a "war of attrition", the complexity of the factual matrix, and the confidentiality of certain documents makes it necessary for a s 15 order to be made to correct the alleged falsehood. However, it does not appeal against the Judge's decision that the first of the Allegations was not false.

10 The respondents do not contest the submission that the accusation that MINDEF had waged a "war of attrition" is a false statement of fact. They largely rely on the reasons given by the Judge and the speeches given during the parliamentary debates. Additionally, Dr Ting submits that to read "person" in s 15 in a manner to include the Government would infringe upon his right to free speech under Art 14 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution"). In a slightly different vein, the respondents in CA 27/2016 submit that because to construe "person" in s 15 in the aforementioned manner would impose a significant burden on an individual's right to free speech, the appellant must adduce "cogent and unusually convincing evidence to rebut the presumption that Parliament did not … intend to impose [such] a significant burden".

Our decision

Issue 1 – whether the Government is a "person" under s 15

The issue stated

11 This particular issue is of the first – as well as threshold – importance in so far as the present appeal is concerned. At risk of belying the many difficulties of statutory interpretation that were evident from both the written submissions as well as oral arguments before this court, the issue that arises from s 15 can be stated simply as follows: does this provision apply *only* to human beings ***or*** does it also apply to *other* entities (such as corporations and (as was argued by the appellant in the present case) the Government)? Before proceeding to examine the issue at length, we should state that, like the Judge, we do not accept the arguments made by the appellant that centred on ss 3 and 36 of the GPA. The provisions read as follows:

> **Right of Government to sue**
>
> **3.** Subject to the provisions of this Act and of any written law, where the Government has a claim against any person which would, if such claim had arisen between private persons, afford ground for civil proceedings, the claim may be enforced by proceedings taken by or on behalf of the Government for that purpose in accordance with the provisions of this Act.
>
> **Application to Government of certain statutory provisions**
>
> **36.** This Act shall not prejudice the right of the Government to take advantage of the provisions of any written law although not named therein; and in any civil proceedings against the Government the provisions of any written law which could, if the proceedings were between private persons, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Government.

12 The appellant refers us to the decision of the majority in *Government of the State of Sarawak & Anor v Chong Chieng Jen* [2016] 3 MLJ 41 ("*Chong Chieng Jen*"), which involved a defamation suit commenced by the State Government of Sarawak and the state's financial authority against an individual. The majority of the Malaysian Court of Appeal held (at [23]) that s 3 of the Malaysian Government Proceedings Act 1956 (Act 359) (Revised 1988), which is *in pari materia* with s 3 of the GPA, gives the government "*the same right as a private individual* to enforce a claim … by way of civil action" [emphasis added]. The majority of the court were persuaded by the absence of any equivalent provision in Crown Proceedings Act 1947 (c 44) (UK) ("the CPA"), which was referred to during the Second Reading of the Malaysian Government Proceedings Bill 1956. However, that, with respect, does *not necessarily* lead to the conclusion that s 3 of the GPA was enacted to confer upon the Government the right to invoke any statutory provision. Rather, the provision is merely "a general piece of legislation to cloth [*sic*] the government the legal status to sue": see *Chong Chieng Jen* at [109].

13 In so far as s 36 of the GPA is concerned, we do not find the English Court of Appeal decision of *Town Investments Ltd v Department of the Environment* [1976] 1 WLR 1126 to be of much assistance. An issue that arose in the case was whether the Crown could take advantage of counter-inflation legislation to limit the rent that could be charged for sub-leases that it had purportedly entered into. Lawton LJ found that it could by way of s 31(1) of the CPA (which is *in pari materia* with s 36 of the GPA), consistent with the centuries-old belief that "the Crown can take the benefit of any statute although not specifically named in it" (at 1142). However, s 36 of the GPA does not specify if "to take advantage" of a provision extends to possessing a right under any statutory cause of action unless otherwise specified, and it is

noteworthy that it only contemplates civil proceedings *against* the Government.

14 We therefore agree wholly with the Judge's holding at [25] of the Judgment that ss 3 and 36 of the GPA provide only that the Government may enforce its rights by commencing legal action; these provisions say nothing as to whether the rights in question exist *in the first place*. This *anterior* question must be answered within the context of the Act itself.

On text and context

15 At this juncture (and in fairness to the appellant), it would appear to be the case that, *read alone*, s 15 would appear to be broad enough to encompass entities such as the Government. Section 15 reads as follows:

> **False statements of fact**
>
> **15.**—(1) Where any statement of fact about any person (referred to in this section as the subject) which is false in any particular about the subject has been published by any means, the subject may apply to the District Court for an order under subsection (2) in respect of the statement complained of.
>
> (2) Subject to s 21(1), the District Court may, upon the application of the subject under subsection (1), order that no person shall publish or continue to publish the statement complained of unless that person publishes such notification as the District Court thinks necessary to bring attention to the falsehood and the true facts.
>
> (3) The District Court shall not make an order under subsection (2) unless the District Court is satisfied on the balance of probabilities that —
>
> (*a*) the statement of fact complained of is false in any particular about the subject; and
>
> (*b*) it is just and equitable to do so.
>
> (4) An order under subsection (2) may be made subject to such exceptions or conditions as may be specified in the order.

> (5) An order under subsection (2) shall take effect in respect of the person to whom such order applies —
>
> (*a*) from the date when such order is served on him in such manner as may be prescribed;
>
> (*b*) where the District Court dispenses with the service of such order, from the date when the service on him of such order is dispensed with by the District Court; or
>
> (*c*) such later date as the District Court may specify.
>
> (6) The District Court may, on the application of the subject, the author, or any person to whom the order applies, vary, suspend or cancel the order.
>
> (7) In this section, "author" means the originator of the statement complained of.

16 Support for this particular interpretation includes the reference to "the subject" of the alleged false statement(s) – as opposed to the reference to a "victim" pursuant to ss 3 to 7 of the Act. There is also some (apparent) support in the language of the long title to the Act itself, which reads as follows:

> An Act to protect persons against harassment and unlawful stalking and to create offences, and provide civil remedies related thereto or in relation to false statements of fact.

17 However, the approach just described looks *only* at the ***text***. It is, in our view, also as (if not more) important to look at the ***context*** in which s 15 was promulgated. This is particularly important for at least three reasons:

(a) First, s 15 appears to be a uniquely Singaporean legal innovation inasmuch as it does not appear to have any legal counterpart in other jurisdictions.

(b) Second, s 15 appears to be the *only* provision in the entire Act that could potentially apply to entities other than human beings.

(c) Third, merely looking at the text of s 15 ***shorn of (and in isolation from) its context*** will result in a ***distortion*** of what, in our view, was ***the actual Parliamentary intention*** behind the promulgation of this particular provision.

18 In so far as the third of these reasons (above at [17(c)]) is concerned, it is trite to state that one has to ascertain what the Parliamentary intention underlying s 15 was at the time when it was promulgated. This (in turn) entails an analysis of not only the actual language of s 15 itself but also all relevant materials surrounding the actual promulgation of s 15 (including the relevant parliamentary debates). The legislative intent to be discerned is that at or around the time the law is passed: see the High Court decision of *BFC v Comptroller of Income Tax* [2013] 4 SLR 741 at [46]. It is also well-established that s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) ("the IA") *mandates* that the purposive approach be preferred over all other statutory interpretation approaches, and there is no requirement that a provision be ambiguous or inconsistent before a purposive approach can be taken: see the Singapore High Court decision of *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 ("*Low Kok Heng*") at [41] and [43]. In this particular regard, it is clear that *both* the ***text and context*** *of s 15 are of the first importance.* Put simply, what ***appears*** to be a *broad* purpose that results from a reading of ***only*** *the* ***text*** of s 15 ***disappears and gives way to the actual Parliamentary intention once regard is also had to the context in which that provision was promulgated***. It is this ***integration*** of ***text and context*** that is of the first importance in interpreting s 15 – and which is also the approach the Judge adopted in the court below (see the Judgment at [32]).

19 With these important preliminary observations in mind, we now turn to the interpretation of s 15 proper.

Section 15 and the interaction of text and context

20 We refer first to the observations by the Minister of Law, Mr K Shanmugam ("the Minister") that are ***directly related to s 15 itself***. At this juncture, we pause to note that, whilst s 9A of the IA is salutary in permitting the Singapore courts to look at the relevant Parliamentary material, wisdom must be exercised when referring to such material. It is, in our view, a useful rule of thumb to pay special attention not only to the Minister who actually moves the Bill concerned in Parliament but also (and in particular) to that part of his speech which relates ***directly*** to the clause(s) that are sought to be interpreted. Returning to the present appeal, it is useful – in light of the ambiguity in the term "person" in s 15 – to set out the Minister's observations during the Second Reading of the Protection from Harassment Bill (No 12 of 2014) ("the Bill") *in full*, as follows (see *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91 (Mr K Shanmugam, Minister for Law)):

> Let me now turn to Part III of the Bill which deals with the self-help and civil remedies. Again, there are five aspects that I would highlight.
>
> …
>
> Second, clause 11 will create a statutory right to bring an action for damages against a person who has contravened any of clauses 3, 4, 5, or 7. So quite apart from criminal sanctions, the victim can sue and claim damages against the perpetrator. Damages are, however, not recoverable where clause 6 is contravened as the harm results to the victim in his capacity as a public servant or public service worker. However, damages will still be recoverable if the same acts also contravene clauses 3, 4, 5 or 7. Such damages will be quantified by the courts in accordance with existing common law principles. We do not really need to go into that and try to codify what is long-established law.
>
> Third, victims of harassment and related anti-social behaviour under clauses 3 to 7 may apply to the Court for a Protection Order ("PO") under clause 12. So to explain to Members, this is the kind of architecture that the new law envisages. Earlier,

I have said that clauses 3 to 6 exist under current law; and that clause 7 (stalking) is new, but the remedies that the victim can get were very limited. Now, we are looking at Protection Orders and Expedited Protection Orders. The purpose of the Protection Order is to protect victims from further harassment. In this context, we also took reference from the 2001 Singapore Academy of Law Reform Committee's Report on Stalking.

…

[a] Fourth, in *striking the balance* between legislation, criminalising the conduct *and* ***self-help***, getting recourse through criminal law or claim for damages through a civil claim, *we should not make those the only avenues; that is, it should not be the case that every time a person is* ***harassed****, or experiences a wide range of conduct that* ***amounts to harassment****, the* ***victim*** *is* ***forced*** *to always* ***either*** *go and file a criminal complaint* ***or*** *bring a civil claim. There are many* ***victims*** *who will feel that as long* ***as there is some redress****, without having to claim damages, they would be* ***satisfied because*** *their* ***feelings of alarm or distress*** *would be* ***settled or as long as the truth is set out****.*

[b] *We should really* ***give*** *the people the* ***ability to help themselves*** *and try and sort out matters themselves wherever possible. Take attacks against someone* ***involving lies, untruths, inaccuracies*** *–* ***75% of those polled*** *by REACH were of the view that such conduct should,* **ipso facto***, be treated as* ***harassment****.* ***Our view*** *really is that we should not criminalise all such conduct, and that we really should keep to the definition of harassment, which already exists in the law,* ***and simply give greater remedies****.* So to be criminal, the conduct must fall under the categories listed in clauses 3 to 7. We have not changed the law, only updated it, as I have explained.

[c] *Instead, if there are falsehoods, and let us say it is* ***harassment****,* ***or*** *it is* ***borderline harassment****;* ***or*** *maybe* ***nearly harassment****;* ***or*** ***not harassment but it is a clear falsehood****, then the* ***victim*** *has* ***the right to ask the relevant parties that the falsehoods be corrected****, maybe through publication of replies, which may set out the correct facts.* ***Some victims*** *of* ***harassment*** ***may well choose that route instead of having to make a criminal complaint****, as I said earlier,* ***or launch a civil claim and claim damages****.* ***They just want the truth to be out and they do not want to escalate the matter further, and we should allow that****. So it is* ***a lower tier of remedy*** ***rather than having to go to the criminal and civil law all the time and make claims****.*

> **[d]** Of course, if the offending party or websites refuse to carry the clarification or the response, or the correction, or a notification that the true facts can be found somewhere else, or the ***victim's*** reply is not able to get the same level of visibility as the falsehood, the law should provide some recourse.
>
> **[e]** *Going back to public opinion,* ***82% of those polled by REACH felt that people should have a legal right to require that factual inaccuracies about themselves be corrected****.* ***This is the thinking behind clause 15****.* ***But*** *there will be* ***no*** *claim for* ***damages*** ***and*** *there will be* ***no criminal*** *sanctions.* ***If you choose not*** *to file a* ***criminal*** *complaint,* ***if you choose not*** *to make a* ***civil*** *claim,* ***if you choose*** *to, say, look, I* ***just want to clarify or correct*** *it in some form,* ***and the manner of correction is left to the court****,* ***then*** ***that is all that you will get****. You do* ***not*** *get* ***money****, you* ***do*** *not* ***get to send the other person to jail*** *…*
>
> **[f]** **…** As I was saying, there are no damages, no filing of criminal complaint – a simple process, self-help, which can be applied to a range of situations, but you must prove or show that there was a false statement of fact. Clause 15 therefore allows the subject of the falsehood to apply for a court order that will give the court the discretion to make an order for the publication of a notification that draws attention to the falsehood and the publication of the correct facts. This will allow readers to assess the truth. It is really for the court to decide when it will be just and equitable for the court order to be made and in what form that order should be made.
>
> [emphasis added in italics, bold italics and underlined bold italics; paragraph numbers in square brackets added]

21 In our view, the following observations can be made with respect to the Minister's speech quoted above.

22 It is clear that the Minister's focus was ***solely*** on ***human beings*** (as opposed to other entities) – as evidenced by the references (on no fewer than ***five*** occasions in his speech) to "***victims***" as well as by the references (again, on no fewer than ***five*** occasions in his speech) to "***harassment***" (excluding the references to "borderline harassment" and "nearly harassment"). Whilst this does not – at least literally – of itself rule out the fact that other entities were *definitely* excluded from the scope of s 15 itself, it is curious that there is ***no***

reference whatsoever to such other entities. ***More importantly***, the detailed speech by the Minister points, in our view, to ***a more general and universal rationale that undergirds s 15 – that s 15 was intended by Parliament to confer upon human beings (only) an additional (albeit somewhat different) remedy that was unique to Singapore in general and the Act in particular***. In the Minister's own words, this (*additional*) remedy was unique and different inasmuch as it was in the nature of a kind of "quasi" ***self-help*** *remedy*. We use the term "quasi" because it is not a self-help remedy in its purest form (for example, where an innocent party can elect to discharge himself from a contract in the event of a serious breach that justifies such an election *without more*) – an application must still be made to the court. *However*, it does partake of the nature of self-help in so far as an application pursuant to s 15 is a ***lower-tier*** *remedy* that is ***unique in at least two ways*** (see also the Judgment at [32], [38], [40] and [58], which, in fact, refer to the very same terminology ("lower tier remedy") utilised by the Minister himself in his speech (see above at [20])).

23 The ***first*** is that, *notwithstanding* the fact that the applicant might be a *victim* pursuant to ***ss 3 to 7 of the Act*** and who could therefore avail himself or herself of the *other* remedies set out in Pt III of the Act (which is entitled "Remedies"), he or she might nevertheless ***choose not to escalate the matter at hand and opt for the less drastic remedy under s 15 instead***. Such an applicant would – technically – be more appropriately termed a "*victim*" instead of a "*subject*" (the latter of which is the terminology utilised in s 15) and whom we would term a "***s 15 Applicant by Choice***" ***(this is especially evident throughout the paragraphs that we have labelled [a], [b], [c] and [e] in the Minister's speech quoted above at [20])***. ***However***, it is important, in our view, to note that such a "victim" would nevertheless ***fall within*** the

category of a "subject" ***simply because the latter is the more general genus of which the former is a species***. But, it may be asked, why, then, did the Singapore Parliament utilise the word "*subject*" in s 15? In particular, would this not support the appellant's contention in the present appeal to the effect that a broader category of persons was intended to be encompassed within s 15 as well? The short answer is that it does, but that says nothing about whether the broader category of persons includes the Government. It is important to note ***what the original Parliamentary intention was***. To reiterate, it was ***to confer upon human beings (only) an additional (albeit somewhat different) remedy that was unique to Singapore in general and the Act in particular***. And this leads us to a ***second (and quite different)*** category of ***human beings*** that s 15 was intended to encompass.

24 This ***second (and quite different)*** category of human beings comprises applicants who *would* ***not necessarily*** *be* ***"victims" within the meaning of ss 3 to 7 of the Act***. As the Minister himself pointed out in his speech in Parliament (see above at [20]), an applicant may suffer from false statements that, however, ***fall short of actually resulting in him or her being a "victim" within the meaning of ss 3 to 7 of the Act***. Such situations could include – in the Minister's own words – situations of "***borderline*** harassment", or where there is "nearly harassment", or where there is no harassment but a "clear falsehood". And it is – again, in the Minister's own words – such situations in relation to which the Singapore Parliament ***also sought to grant the applicant a remedy to*** (see the paragraph labelled [c] in the Minister's speech quoted above at [20]). Whilst not, strictly speaking, an additional remedy to that available to an applicant who is not a "victim" within the meaning of ss 3 to 7 of the Act, it is – in a manner of speaking – an "additional" remedy inasmuch as the applicant concerned would *otherwise have* ***no*** *remedy at all* (and whom,

in contrast to a "s 15 Applicant by Choice", we would term a "***s 15 Applicant Without Choice***"). Looked at in this light it is – as in the category briefly considered in the preceding paragraph – a category of applicants who are, likewise, ***afforded an additional (albeit somewhat different) remedy that is unique to Singapore in general and the Act in particular***.

25 At this juncture, it is of the *first importance* to note that it is ***precisely because the last-mentioned (second) category of applicants are not "victims" within the meaning of ss 3 to 7 of the Act that s 15 could not, first, refer to ss 3 to 7 of the Act (lest one of the* raisons d'être *of the provision itself be defeated,* viz, *to encompass this particular category of applicants as well) and, second, could not utilise the terminology of "victim" and had to utilise the terminology of "subject" instead (thus encompassing this particular category of applicants as well)***. Indeed, as we have already noted earlier (at [23]), the terminology of "***subject***" is ***broader*** than that of "victim" and would, hence, ***include both victims (ie, "s 15 Applicants by Choice") as well as other applicants who (whilst not victims) had suffered from false statements (ie, "s 15 Applicants Without Choice")***.

26 We would also caution against a chain of reasoning that almost appears to consider the respective provisions (ss 3 to 7 of the Act and s 15) as having used the terms "victim" and "subject" *in place of* the term "person". Section 15 merely states that a person applying for an order under the provision shall be *referred to* as a "subject" and, similarly, ss 3 to 7 of the Act state, respectively, that the person who is the target of the offending behaviour shall be *referred to* as a "victim". The simple reason for such persons to be referred to by another term is that the provisions each refer to two different "persons" – ss 3 to 7 of the Act involve both a perpetrator of *harassment* as well as the target of the offending acts, whilst s 15 involves both a purveyor of

falsehood and the person about whom the falsehoods concern. ***Viewed in this context, the seemingly broad language (including the word "subject) that is used in s 15 takes on a much more limited meaning than that contended by the appellant***. ***Put simply, this explains why there is a difference in the language utilised in ss 3 to 7 of the Act and s 15, both of which nevertheless apply only to human beings***.

27 The interpretation we have adopted is, in fact, also buttressed by the Minister himself in the paragraph labelled [e] in the Minister's speech (quoted above at [20]), and which is reproduced again, as follows:

> **[e]** *Going back to public opinion,* ***82% of those polled by REACH felt that people should have a legal right to require that factual inaccuracies about themselves be corrected***. ***This is the thinking behind clause 15***. ***But*** *there will be* ***no*** *claim for* ***damages*** ***and*** *there will be* ***no criminal*** *sanctions.* ***If you choose not*** *to file a* ***criminal*** *complaint,* ***if you choose not*** *to make a* ***civil*** *claim,* ***if you choose*** *to, say, look, I* ***just want to clarify or correct*** *it in some form,* ***and the manner of correction is left to the court***, ***then that is all that you will get***. *You do* ***not*** *get* ***money***, *you* ***do*** *not* ***get to send the other person to jail***. ***And it is a very simple*** –
>
> [emphasis added in italics, bold italics and bold underlined italics]

28 These observations refer clearly to applicants who are ***human beings*** (in particular, what we have termed a ***s 15 Applicant by Choice***).

What about arguments in the appellant's favour?

29 ***However***, in fairness to the appellant, this is not an end to the matter. Could it not be argued, on the appellant's behalf, that there was nevertheless an intention by the Singapore Parliament to also extend the benefit of s 15 to entities other than human beings as well? In particular, counsel for the appellant, Mr Hui Choon Kuen ("Mr Hui"), referred to the following

observation by the Minister during the Second Reading of the Bill in response to a question from Mr Pritam Singh and which we have designated in ***bold italics*** (to furnish the necessary ***context*** with regard to the analysis that follows) in the quotation below (see *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91 (Mr K Shanmugam, Minister for Law)):

> Mdm Speaker, I thank all the Members who spoke. There is overwhelming support for the Bill outside this House and unanimous support for the Bill in this House for all of its provisions. The questions raised by Members can be grouped into several common themes, which I will now address.
>
> Mr Zainal Sapari asked how we can differentiate between the expression of one's viewpoint online and the publication of anti-social comments online with malicious intent. Mr Vikram Nair has also raised similar questions.
>
> …
>
> Mr Patrick Tay proposed that an FAQ with a compendium of illustrations showing when offences are made out and when they are not made out. Mr Tay is concerned with clarifying more precisely the ambit of harassment, but there are just far too many situations to be exhaustively covered in an FAQ. Further, really whether something is or is not an offence, will have to depend on the specific circumstances surrounding the conduct or the communication at hand. And it is not desirable for us today to fetter the discretion of the courts in these matters.
>
> ***Mr Pritam Singh queried if the term "person" in the Bill extends to corporate entities. The term "person" is defined in the Interpretation Act, and where this Bill references to "persons", the Interpretation Act will apply***.
>
> Mr Patrick Tay raised a technical issue about extraterritorial effect. He said that if a person harasses another while both were out of Singapore, whether this would be caught by clause 17 of the Bill. Depending on the offence, extraterritorial jurisdiction can be founded on the offending acts being committed in Singapore, or the harassing effect being felt in Singapore, or some other similar criteria. So acts of harassment which occur entirely outside of Singapore, without any nexus whatsoever to Singapore, should not be caught. And this is consistent with international law principles on extraterritorial criminal jurisdiction.

> Mr Zainal Sapari and Mr Patrick Tay spoke on the definition of public servants and public service workers. The Bill does not seek to alter the meaning of "public servant". It follows the current and established definition of "public servant" in the Penal Code. This definition has worked well for us.
>
> The term "public service workers" is defined under clause 6 of the Bill to mean persons who provide any service which is essential to the well-being of the public or the proper functioning of Singapore. It is our intention to have subsidiary legislation which will prescribe the classes of public service workers who will be covered. This list will include public healthcare workers and – as queried by Mr Tay – also public transport workers, amongst others.
>
> [emphasis added in bold italics]

30 It is also pertinent, at this juncture, to quote Mr Pritam Singh's question (also designated in ***bold italics*** in order to furnish the necessary ***context*** with regard to the analysis that follows) (see *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91 (Mr Pritam Singh):

> It is evident that the application of sections 3 and 4 of the Bill that cover intentionally causing harassment, alarm or distress; and harassment, alarm and distress respectively, may not be so straightforward to apply in practice, notwithstanding egregious conduct. For this reason, I hope prudence is the guiding principle of the authorities in the exercise of its powers under this Bill and I welcome the Minister's remarks that the strong arm of the law will be employed in egregious cases.
>
> ***On definitions, I seek some clarification whether "persons", as used in the Bill, is to be broadly read to include corporate entities as under section 2 of the Interpretation Act or whether our courts will be left to determine this point. I ask this as there is case law from the UK, which in applying the UK Protection from Harassment Act, rules that on a proper construction of the term "person", the Act does not embrace a corporate entity.***
>
> I wanted to ask the Minister what were the thought processes of the Ministry that led to a change in the maximum sentences under the MOA covering the new sections 3, 4, 5 and 6, but I note from the Minister that this was partly in response to the feedback from the Institute of Policy Studies (IPS) Conference on Harassment and public opinion on this point.

> But I do note that with regard to the relevant provisions under the MOA and the sentences of the sections under this Bill, section 41 of the Criminal Procedure Code already provides additional legislative muscle to address violators of sections 3, 4, 5 and 6 of the Bill through the execution of a bond proportionate to an accused person's means, with or without sureties, for a period not exceeding two years.
>
> Mdm Speaker, the illustrations to a number of sections in the Bill cover the acts of school children with section 4 and 7 featuring prominently. It is evident that the Bill was drafted to also address the issue of bullying in schools. Research by the Singapore Children's Society in 2006 and 2007 on school students revealed that bullying is not infrequent, with about one in four secondary school students and one in five primary school pupils having been bullied by their peers.
>
> [emphasis added in bold italics]

31 It is significant, in our view, that the Minister's reply was ***an isolated (and, with respect, generic) observation that is sandwiched, so to speak, between a couple of responses to other questions that were asked earlier during the parliamentary debates***. More importantly, it is apparent that the observation by the Minister in reply to Mr Pritam Singh and which was reproduced in bold italics at [29] ***does not (unlike the earlier observations quoted in full above at [20]) refer to s 15 at all***. This poses considerable difficulty for the appellant, who does not dispute the Judge's starting premise that "there are other provisions of the Act in which it would not be sensible to include the Government within the meaning of the word 'person'" (see the Judgment at [33]). Put simply, the Minister could *not* have meant that *every* reference to a "person" must necessarily include "any company or association or body of persons, corporate or unincorporated". Indeed, s 2 of the IA itself does not assign the meanings defined therein where "there is something in the subject or context inconsistent with such construction". In the circumstances, the Minister's reply is, at best, ***neutral*** and therefore does not advance the appellant's case.

32 Neither does the Minister's reference to statements that are "not harassment but [are] clear falsehood[s]" advance the appellant's case very far. On the contrary, the fact that it was mentioned in the same breath as acts that constitute "borderline harassment" and "nearly harassment" lends credence to an interpretation leaning in favour of that advanced by the respondents – that statements not amounting to harassment are cut from the same cloth as those that are "borderline harassment" or "nearly harassment". If the Minister had intended for falsehoods of *any* nature to be the subject of a s 15 order, as the appellant contends, there would have been no need for these categories to have been expressly considered at all. All that he could have said was that the categories of persons who can obtain a s 15 order are simply: (a) "victims" under ss 3 to 7 of the Act who choose not to escalate the matter; and (b) "subjects" of *any* falsehoods, entirely independent of the context of harassment.

33 Finally (again, in fairness to the appellant), there is – as alluded to earlier in our judgment – a reference by Mr Hui to ***the long title*** to the Act (quoted above at [16]) which, because of its importance to the appellant's argument, we set out again, as follows:

> An Act to protect persons against harassment and unlawful stalking and to create offences, and provide civil remedies related thereto ***or in relation to false statements of fact***. [emphasis added in bold italics]

34 As a matter of general principle, it is important to bear in mind the following observations by Chao Hick Tin J (as he then was) in the Singapore High Court decision of *Chief Assessor and another v Van Ommeren Terminal (S) Pte Ltd* [1993] 2 SLR(R) 354 at [21]−[22]:

> 21 Considerable reliance was placed by counsel for Van Ommeren on the long title to the Act, "An Act to provide for the levy of a tax on immovable properties and to regulate the

> collection thereof," in particular the word "immovable". It seems to me clear that the value of the long title in interpretation is limited: see *Bennion on Statutory Interpretation (2nd Ed, 1992)* at pp 484 and 486. The learned author gives the following description of the origin and function of the long title (at p 497):
>
> > It owes its presence to the procedural rules governing Parliamentary Bills. The interpreter of the Act therefore needs to realize that the long title is drafted to comply with these procedural rules. It is not designed as an interpreter's guide to the contents of the Act. It is a parliamentary device, whose purpose is in relation to the Bill and its parliamentary progress. Under Parliamentary rules, a Bill of which notice of presentation has been given is deemed to exist as a Bill even though it consists of nothing else but the long title. Once the Bill has received royal assent, the long title is therefore vestigial.
>
> 22 The author further noted (at p 499) that "because of their mainly procedural character, mistakes are not infrequent in long titles".

35 Apart from the fact that the long title of a statute is generally of limited value in statutory interpretation, it seems to us that the long title in the Act in the present case is, at best, ***neutral***. Although it is true that the literal language of the long title may support the appellant's case, it is equally true, however, that the phrase in it, "or in relation to false statements of facts" is not inconsistent with the Parliamentary intention (noted above) to furnish ***victims of harassment and unlawful stalking and subjects of falsehoods that do not constitute harassment with the additional and/or alternative remedy of a correction of the false statements of fact***.

36 In ***summary***, there is little – or no – evidence in favour of the appellant's submission as compared to the evidence in favour of the respondents' submission. Indeed, interpreting s 15 in the manner set out above is, in our view, ***consistent with the entire scheme and structure of the Act (which would apply throughout only to the individual (and human) victims***

of harassment as well as unlawful stalking. On the other hand, interpreting s 15 in the contrary manner, as argued for by the appellant, would lead to the insertion of a right on behalf of entities (other than human beings) that would ***sit incongruously (and be out of sync) with the other provisions of the Act, especially when the Act is viewed as an integrated as well as holistic whole***. As already emphasised, the fact that at no time was there any discussion with regard to the rights of *entities* (other than human beings) pursuant to s 15 is itself telling. We say this because the extension of such a ***general*** right (as was argued for by the appellant) would *necessarily* entail a myriad of possible scenarios ***(and, more importantly, the accompanying policy issues, if nothing else, because there are so many possible organisations (both governmental and non-governmental and large as well as small) as well as possible scenarios (for example, as between organisations and individuals or as between organisations themselves) that would have merited more discussion as well as elaboration (which might even have led to the tweaking of s 15 or additional provisions or even new legislation))***. At this juncture, all that can be confidently said with regard to s 15 is – as the Judge himself correctly pointed out at [44] of the Judgment – that (given the myriad possibilities of factual scenarios) one cannot rule out the fact that recourse to s 15 might be possible even in situations where false statements are directed against entities other than human beings. As the Judge illustrated saliently, "an allegation ostensibly aimed at a corporate body might be, *in substance*, an allegation against human beings who manage that corporate body" and, if so, "it is open to those human beings to seek redress under s 15" (see *ibid*; emphasis added).

Conclusion

37 For the reasons set out above, we would dismiss the appellant's arguments with regard to Issue 1. In the premises, as the appellant has not

succeeded in crossing the *threshold* requirement embodied in Issue 1, it is unnecessary for us to decide the other issues and we would dismiss the appeal with costs and with the usual consequential orders. However, as arguments were proffered by both parties with regard to Issue 2, we will deal briefly with it (albeit by way of *obiter dicta* only). Before proceeding to do so, we should state that it is unnecessary for us – in light of the analysis and decision we have arrived at with regard to Issue 1 – to deal with the respondents' argument that s 15 is inconsistent with Art 14 of the Constitution.

Issue 2 – when is it "just and equitable" to grant a s 15 order?

38 Section 15(3)(*b*) ***additionally*** provides that the District Court shall not make a s 15 order ***unless*** the District Court is satisfied on the balance of probabilities that it is just and equitable to do so. A couple of observations may be made from the wording of the provision. First, the burden is on the applicant to ensure that the District Court is satisfied on the balance of probabilities that it is just and equitable to grant the order sought. This suggests that the applicant must engage the court with regard to considerations that go beyond the mere existence of a false statement (which is a *separate* requirement in s 15(3)(*a*)). This burden is a *separate, distinct and wider* requirement from proving that the statement is false. Second, s 15(3) is phrased in a presumptively negative fashion. The court will *not* grant the order *unless* it is false and just and equitable to do so. This suggests that the court's discretion to grant the order ought not to be exercised lightly.

39 It follows that there cannot be a presumption for the grant of a s 15 order by virtue *only* of the existence of a false statement. To hold so would be to render s 15(3)(*b*) otiose, and dilute the broad discretion conferred upon the court, which nevertheless ought not to be – as we have mentioned above –

exercised lightly. Indeed, to hold that there is a presumption that a s 15 order ought to be granted once a statement has been found to be false would be to require the respondent to show that it is *not* just and equitable for the order to be granted. This would effectively reverse the burden of proof imposed by s 15(3), which, as we have observed above, falls clearly on the applicant.

40 The question of whether it is "just and equitable" under s 15(3)(*b*) to grant a s 15 order, to our mind, involves an open-textured balancing exercise that is highly fact-dependent. The Judge also adopted a similar approach. He set out (at [58] of the Judgment) a number of *non-exhaustive* factors that should be taken into account in deciding whether it would be "just and equitable" to grant a s 15 order in the context of the present case, as follows:

> While the remedy created by s 15 of the Act might accurately be called a "lower tier" one in that the consequences of the order are not drastic, it does not follow that s 15 orders should be very readily granted as long as a statement of fact has been demonstrated to be false. Where the statement casts serious aspersions on its subject in the sense that it pertains to an important part of his or her identity, character or personality, *and* that statement causes him or her substantial emotional or psychological impact, *eg*, a false allegation concerning a person's sexual activities, it will doubtless be just and equitable to make the order. But an important countervailing consideration is that an application to court under s 15 should not be seen to be a measure of first resort where a false statement is made. ***I venture to suggest that courts should be slower to grant a s 15 order the more of the following features are present: (a) the false statement of fact is of a relatively minor nature, (b) the subject of the statement has suffered no emotional or psychological impact, (c) the subject has the means to publish widely his or her own version of the truth, and (d) the author and/or publisher of the statement has made genuine and substantial efforts to point out that the truth of the statement of fact in question is not undisputed***. [emphasis in italics in original; emphasis added in bold italics]

41 We generally agree with the Judge's analysis, and, in particular, with the four factors which he has identified. However, we reiterate that these four

factors are not exhaustive, and regard must be had to the specific factual matrix of every case. Indeed, the factors that the court takes into account in determining whether it is "just and equitable" to grant a s 15 order *cannot be exhaustive* because of the myriad of factual situations that may arise and which one cannot therefore have the prescience to foresee.

42 To this end, useful guidance may also be drawn from s 5 of the recently-enacted Community Disputes Resolution Act 2015 (Act No 17 of 2015). Section 5(2) thereof states that the court, in deciding whether it is just and equitable to grant an order (*eg*, of damages) in relation to interference with the enjoyment or use of a place of residence must consider, amongst other factors, the impact of the order on the respondent and the ordinary instances of daily living that can be expected to be tolerated by reasonable persons living in Singapore. In our view, there is no reason why these factors would not similarly be relevant in application for a s 15 order. Thus, where a false statement is made in jest, such as a satire or between private individuals with little discernible impact, it may very well be the case that an applicant would not be able to satisfy the court that it would be just and equitable to grant a s 15 order. Such situations are replete in the ordinary instances of daily living, and a certain amount of mutual tolerance should be expected between individuals who participate in the marketplace of ideas.

43 In summary, the following is a non-exhaustive list of factors which the court may consider when confronted with an application under s 15 to decide if it is just and equitable to grant a s 15 order:

(a) the nature of the false statement and the seriousness of the allegation made;

(b) the purpose of the false statement, for example, whether it is said in jest or for the purposes of satire;

(c) the impact of the statement on the subject and the degree of adverse emotional or psychological harm suffered;

(d) the degree to which the false statement has been publicised to the public;

(e) whether the subject has the means to publicise his or her own version of the truth (and on a channel that is accessible to the readers of the false statement);

(f) whether the author and/or publisher of the statement has made genuine efforts to point out that the veracity of the statement is not undisputed; and

(g) the ordinary instances of daily living that may be expected to be tolerated by reasonable persons.

44 Turning to the facts of the present case, we do not think that the applicant has demonstrated that is just and equitable to grant an order against either Dr Ting or The Online Citizen. The first point to note is that this is not a case where the two respondents could be usefully differentiated, because Dr Ting's statements were published only on The Online Citizen. It is therefore important to note the efforts that The Online Citizen took to provide a balanced view of the facts. In this regard, we find no reason to differ from the Judge's finding that The Online Citizen had already taken "significant steps to point out to readers and viewers that the truth of Dr Ting's comments was by no means beyond doubt" (see the Judgment at [57]). The Online Citizen had published MINDEF's Facebook statement in full and also

provided a link to MINDEF's statement from the article containing Dr Ting's video interview. In its statement, MINDEF left no ambiguity as to its view of the propriety of the conduct of the legal proceedings:

> ***#3 Is MINDEF out to destroy MobileStats with the prolonged court case and the demand for the payment of $580k?***
>
> *This is false. MINDEF did not initiate the legal action. It was MobileStats who inexplicably chose to sue MINDEF instead of the manufacturer. In defending ourselves, MINDEF's conduct was in full compliance with court regulations and never found lacking.*
>
> *$580k was the amount that the court decided MobileStats should reimburse MINDEF for our legal fees. Not a single cent will be kept by MINDEF. The money will go to Syntech, the BCS vendor, who honoured their legal obligation to MINDEF and bore the cost of the legal proceedings.*
>
> *When the legal actions are initiated against government agencies like MINDEF, these agencies need to respond. Public resources and monies are expended needlessly if such lawsuits are without merit. As a government organisation, MINDEF has a duty to protect our public monies. We regard such lawsuits taken against MINDEF with the utmost seriousness.*

45 As the Judge held, such efforts to present the different sides of the story should be encouraged. Additionally, MINDEF was anything but a helpless victim. It is a government agency possessed of significant resources and access to media channels. In the present case, MINDEF was able to put across its side of the story through traditional media as well as on its Facebook page. The Online Citizen had, in fact, published MINDEF's statement in full and provided a link to it from the offending article. Given all this, it is difficult to see what discernible impact the Allegations and The Online Citizen's publication of the Allegations could have had on MINDEF's reputation or public image.

46 We further note that it is only the second of the Allegations, the less serious among the two in our judgment, that is the subject of this appeal. As the Judge observed at [56] of the Judgment, while the second of the Allegations had the potential to cast aspersions on MINDEF's integrity and bring MINDEF into disrepute, it merely concerned a narrow aspect of MINDEF's conduct that did not "seriously [impugn] the core or essence of MINDEF's identity or 'character' or 'personality'". Had it been the first of the Allegations – which implied not only that MINDEF had known of MobileStats' possible rights in the Patent and yet chose to disregard it by way of its agreement with Syntech, but also that MINDEF had falsely depicted itself as an innocent infringer of the Patent – we might well have been inclined to agree with the appellant that the measures taken by The Online Citizen were insufficient and that it would be just and equitable for a s 15 order to be granted. This is because while the former could reasonably be understood as an allegation of cynical manipulation of the litigation process, the latter carried with it broad imputations of dishonesty.

47 For these reasons, even if we were to accept that s 15 applies to entities such as MINDEF, we would not have found it just and equitable to grant a s 15 order. There is little need for a s 15 order in the present case, and to grant it would be to encourage applications for no reason other than vindication of the truth. Mere vindication of the truth *alone* ***cannot*** be *the* touchstone, because, as we have explained, it does not suffice for an applicant to show a false statement to obtain a s 15 order. The applicant is required to go further.

48 We should state that our analysis as to how the discretion in s 15(3)(*b*) should be exercised is based on the premise that the District Court is already satisfied on the balance of probabilities that the offending statement is false pursuant to s 15(3)(*a*). Before we conclude, we would like to make an

observation on s 15(3)(*a*). In our view, the court should be slow to make a s 15 order unless the statements complained of are more likely than not to be false. This maintains fidelity to the language of the provision itself. However, the District Court must exercise sound judgment in arriving at this conclusion. There will be cases such as the present (in relation to the second of the Allegations) where the falsity of a statement will be readily apparent. But there will be others, as with the first of the Allegations, that can only be resolved through an extensive fact-finding exercise. In these situations, the court should consider exercising its broad discretion under O 109 r 2(7) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules") to conduct the hearing, in relation to the grant of a s 15 order, in a manner that the situation requires. But this raises a number of issues. First, the conduct of what would be effectively be a full-blown trial is antithetical to what Parliament envisioned s 15 to be – a *lower* tier remedy for "victims" under ss 3 to 7 who wish to avoid the costs and rigours of civil and criminal litigation. Second, it is unclear as to where judgments that are not obtained on the merits on the case lie within the scheme. Assume, for example, that Dr Ting had continued to assert that the Patent was valid and that MINDEF had infringed the Patent. While the appellant has obtained judgment that "[the Patent] is and always has been invalid", judgment was only obtained pursuant to a discontinuance of S 619/2011. In these circumstances, an argument could be made that the assertion that MINDEF has infringed the Patent is not necessarily a false statement of fact simply by virtue of the judgment in S 619/2011 and, even if that were incorrect, that the circumstances in which judgment was obtained should be taken into considering the extent of a s 15 order. In this regard, the Judge was clearly correct to have found that the first statement complained of was not false (see the Judgment at [47]−[51]). In other words, it is conceivable that there may be room for a distinction between *factually* false statements and

legally false statements. Against that, it can hardly be gainsaid that the harder it is for the applicant to prove his version of the truth to the public, the more he requires the public to know that the court has found it to be false. In the light of all these potential issues, our short point is simply that the District Court should exercise sound judgment as well as common sense in arriving at its conclusion. In an appropriate case, one solution might be to grant a s 15 order but on the terms that the District Court deems appropriate in the light of the constellation of facts known to it.

Conclusion

49 As already mentioned, the appellant has not succeeded in crossing the *threshold* requirement embodied in Issue 1. We would therefore dismiss the appeal with costs and with the usual consequential orders.

Chao Hick Tin
Judge of Appeal

Andrew Phang Boon Leong
Judge of Appeal

Sundaresh Menon CJ (dissenting):

Introduction

50 The present appeal turns on the meaning of s 15. The Act was passed recently and this is the first occasion an issue pertaining to its proper interpretation has come before us. In general, it is common ground that the Act is directed at conduct that amounts to harassment or illegal stalking of a sort that engenders emotions of fear, alarm or distress. Because of this, it is also common ground, that in general, the Act confers the benefit of the prescribed remedies on those who are natural persons and therefore capable of experiencing emotions. The question to be answered in this case is whether this general position extends also to s 15, which appears, on its face, to prescribe an independent standalone remedy that can be invoked even in the absence of conduct which amounts to harassment where the falsity of a statement can be proved. Flowing from this, the specific question that arises is whether s 15 may be invoked by a non-natural legal person such as the Government or whether it only avails a natural person.

The judgment below

51 The Judge held, in essence, that s 15 was part of a continuum of remedies targeted at the social problem of harassment and associated disruptive and anti-social behaviour. This continuum extends from the higher tier of remedies comprising criminal penalties and separate civil remedies for such conduct to the lower-tiered remedy in s 15 that fell short either of seeking criminal punishment or civil remedies such as damages. In this vein, he considered s 15 (and thereby its purpose and object) to be part of "a holistic or harmonious whole" that included the other provisions of the Act, even if s 15 strictly did not concern harassment (at [38] of the Judgment). Given that the

purpose and object of the other provisions was to protect persons from the detrimental emotional or psychological impact of the words or deeds of other persons, having regard to the place of s 15 in the "tiered" scheme created by the Act, the rationale behind s 15 was understood as being for the protection of persons from the similar detrimental emotional or psychological impact that flowed from false statements (at [40] of the Judgment). Following from this, the Judge held that the scope of s 15 was confined to false statements *that were capable of affecting their intended subject emotionally or psychologically*, which presupposed that the subject was a natural person who could experience these emotions (at [41] of the Judgment). He therefore dismissed the appellant's claim.

My decision

How should the purposive approach to statutory interpretation be utilised?

52 Before turning to the text of s 15, the structure of the Act and the task of construing the relevant provisions, I consider it helpful, first, to make some observations about the nature of the purposive approach to statutory interpretation. This is, after all, central to the construction of s 15. From the time that s 9A of the IA was introduced into our law in 1993, the purposive approach has been consistently regarded as an approach which is "paramount", taking precedence over any other common law principle of or approach to statutory interpretation including, among others, the plain meaning rule: see for instance *Dorsey James Michael v World Sport Group* [2013] 3 SLR 354 at [18] in which we affirmed the pronouncement of V K Rajah JA to this effect in *Low Kok Heng* at [57]. This much is uncontroversial. In fact, this view has gained such widespread acceptance that some years after the enactment of s 9A, we described as "trite" the proposition that a court should give effect to the legislative purpose when interpreting an

Act of Parliament (*Donald McArthy Trading Pte Ltd v Pankaj s/o Dhirajlal (trading as TopBottom Impex)* [2007] 2 SLR 321 at [6]).

53 But the *methodology* underlying the purposive approach tends to be less straightforward. The purposive approach as encapsulated in s 9A of the IA *directs* the court to prefer a construction that advances the objects and purposes underlying a written law over one that does not. It also *allows* recourse to extraneous materials, meaning material other than the written law in question, to construe the text that is in issue. But although s 9A expressly allows the consideration of extraneous material, a close reading of the text of s 9A reveals that the purposive approach does not *automatically or necessarily require* the consideration of any material that does not form part of the legislation in question. In fact, in s 9A(2)(*a*) and (*b*), the IA expressly prescribes three situations in which the court *may* consider extraneous material to interpret a statute. In my judgment, it is a matter of importance that the court should be satisfied that the circumstances relating to the interpretation of the statutory text in question *do in fact* bring the matter within either s 9A(2)(*a*) or (*b*) before it has recourse to any extraneous material, including the record of the parliamentary debates.

54 Before developing this analysis, I set out parts of s 9A of the IA, with appropriate emphases, as follows:

> **Purposive interpretation of written law and use of extrinsic materials**
>
> **9A.**—(1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) *shall be preferred* to an interpretation that would not promote that purpose or object.

(2) Subject to subsection (4), in the interpretation of a provision of a written law, if any material *not forming part of the written law* is capable of assisting in the ascertainment of the meaning of the provision, consideration *may* be given to that material —

(*a*) to *confirm* that the meaning of the provision is the *ordinary meaning conveyed by the text of the provision* taking into account its context in the written law and the purpose or object underlying the written law; or

(*b*) to *ascertain* the meaning of the provision when —

(i) the *provision is ambiguous or obscure*; or

(ii) the *ordinary meaning* conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law *leads to a result that is manifestly absurd or unreasonable*.

(3) Without limiting the generality of subsection (2), the material that may be considered in accordance with that subsection in the interpretation of a provision of written law shall include —

(*a*) all matters not forming part of the written law that are set out in the document containing the text of the written law as printed by the Government Printer;

(*b*) any explanatory statement relating to the Bill containing the provision;

(*c*) the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament;

…

(4) In determining whether consideration should be given to any material in accordance with subsection (2), *or in determining the weight to be given to any such material*, regard shall be had, in addition to any other relevant matters, to —

(*a*) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; and

(*b*) the need to avoid prolonging legal or other proceedings without compensating advantage.

[emphasis added]

55 The scheme of s 9A of the IA can be understood by reference to how it deals with these issues:

(a) the meaning of the purposive approach to interpretation, which is dealt with in s 9A(1);

(b) how and when extraneous material may be used to ascertain the meaning of the provision that is being interpreted, which is dealt with in s 9A(2);

(c) the types of extraneous materials that may be considered, which is dealt with, albeit not in exhaustive terms, in s 9A(3); and

(d) the considerations that guide the weight to be placed on extraneous materials, which is dealt with in s 9A(4).

56 In my judgment, it follows from this scheme of s 9A that:

(a) the purposive approach *shall* be applied by the courts;

(b) this *can* in certain circumstances, but *need not* in every case, entail the use of extraneous material to help the court ascertain the meaning of the provision that is being interpreted;

(c) whether recourse is to be had to extraneous material depends on what is provided in s 9A(1) read with s 9A(2); and

(d) even if recourse may be had to such material, the court should separately consider what weight is to be given to it.

I therefore set out my further analysis according to these points.

The purposive approach understood and applied

57 The application of the purposive approach as mandated by Parliament arises where the court discerns that there are two or more interpretations of a statutory provision, but only one of which would promote the purpose or object of the statute. This emerges from the plain language of s 9A(1) of the IA. Where that is the case, the interpretation that *does* promote the purpose or object *must* be preferred over that which does *not* do so – a clear indication that the literal rule of construction must give way to the purposive approach. But this does not mean that the two approaches must necessarily be at odds with each other in every case. A purposive interpretation simply requires one to approach the words of a statutory provision bearing in mind "the overarching and underlying purpose of that provision *as reflected by and in harmony with the express wording of the legislation* [emphasis in original]" (*Low Kok Heng* at [50]). The words of the statute are chosen by the drafter in order to convey the purpose underlying the provision. If the drafter is successful in achieving what he or she has set out to do, the applications of the literal and the purposive approaches would naturally lead to the same result (D C Pearce and R S Geddes, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 7th Ed, 2011) at para 2.15).

58 Section 9A(1) of the IA therefore comes into play principally where different approaches to statutory interpretation lead to divergent results; and it has rather more limited utility and effect where the purposive and literal interpretations of a statutory provision are coincident with each other. The application of the purposive approach, more importantly, does not allow the court to construe the provision in a manner that would do violence to the express wording; instead, it should generally be used to construe the provision "in harmony" with the express wording. The cautionary note against rewriting

an Act in the name of the purposive approach has in fact been observed on many an occasion (see *eg*, *Mills v Meeking* (1990) 91 ALR 16 *per* Dawson J).

59 It follows from this that the court's task when undertaking a purposive interpretation of a legislative text should begin with three steps:

(a) first, ascertaining the possible interpretations of the text, as it has been enacted. This however should never be done by examining the provision in question in isolation. Rather, it should be undertaken having due regard to the context of that text within the written law as a whole;

(b) second, ascertaining the legislative purpose or object of the statute. This may be discerned from the language used in the enactment; but as I demonstrate below, it can also be discerned by resorting to extraneous material in certain circumstances. In this regard, the court should principally consider the general legislative purpose of the enactment by reference to any mischief that Parliament was seeking to address by it. In addition, the court should be mindful of the possibility that the specific provision that is being interpreted may have been enacted by reason of some specific mischief or object that may be distinct from, but not inconsistent with, the general legislative purpose underlying the written law as a whole. I elaborate on this in the following two paragraphs; and

(c) third, comparing the possible interpretations of the text against the purposes or objects of the statute. Where the purpose of the provision in question as discerned from the language used in the enactment clearly supports one interpretation, reference to extraneous materials may be had for a limited function – to confirm but not to alter

the ordinary meaning of the provision as purposively ascertained; but I elaborate on this in the following section.

60 I now elaborate on the approach the court should take in determining the general legislative purpose or object of the statute. This is a point of some importance because if it is not carefully applied, the articulation of the object at either too high or too low level of generality can result in the court describing the objects or purposes in whatever terms would support the interpretation that it prefers. There is also a question as to whether this is best considered by reference to the purpose and object of the statute as a whole or of the specific provision. In this regard, there may be some ambiguity in the words of s 9A of the IA given that s 9A(1) refers to the purpose or object underlying the "written law", which would refer to the statute in general, while ss 9A(2) and (3) refer to the search for the meaning of the "*provision* of the written law" [emphasis added]. The courts have often treated the two as interchangeable – a point made in Goh Yihan, "Statutory Interpretation in Singapore: 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 ("*Statutory Interpretation in Singapore*") at p 129 – and indeed, one imagines that it would be rare to find a specific purpose which contradicts or opposes the general purpose behind the Act.

61 However, even if the purpose underlying a specific provision does not go against the grain of Parliamentary intent in enacting the statute as a whole, that purpose behind a particular provision may yet be distinct from the general purpose underlying the statute as a whole, even if it might be related to or complementary with that purpose. The specific purpose behind a particular provision should therefore be separately considered in appropriate cases. This coheres with the recent trend in our case law which suggests, as observed by Assoc Prof Goh in *Statutory Interpretation in Singapore* at p 117, that, in fact,

we tend to focus on the purpose behind *particular* statutory provisions. Given that different sections of a particular statute may target different mischiefs and that Parliament may even use the same word to mean different things (see *eg*, *Madras Electric Supply Corporation Ld v Boarland (Inspector of Taxes)* [1955] AC 667 ("*Madras Electric*")), this approach seems sensible. As described by the Federal Court of Australia in *Evans v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 276 at [16], "[u]nder the umbrella of the general object is a multitude of objects of specific provisions" and to that extent, the general object may at times cast little, if any, light on the meaning of specific provisions. It should therefore not be assumed that the specific purpose of a particular provision does not need to be separately considered to ascertain the legislative intent.

The use of extraneous material

62 As I have already observed, s 9A(1) of the IA helps us to understand the paramount importance of interpreting statutory provisions by reference to the legislative intent. But it says nothing about the *use* of extraneous material even though this is often regarded as the most innovative aspect of s 9A. When s 9A was introduced in Parliament and the Bill was read a second time, the then-Minister for Law, Prof S Jayakumar, in fact specifically stated that the purpose of the amendment was as follows (see *Singapore Parliamentary Debates, Official Report* (26 February 1993) vol 60 at col 516 (Prof S Jayakumar, Minister for Law)):

> … to enable the Courts to have recourse to the use of Ministerial statements made in Parliament when interpreting any statute in order to ascertain the intention of Parliament *should the statute be ambiguous or obscure in its purpose or if a literal reading of the statute would lead to an absurdity* [emphasis added] .

Section 9A should therefore be understood as a *permissive* or enabling provision which allows the courts to refer to extraneous materials subject to certain conditions (*Low Kok Heng* at [48]). The conditions which govern when extraneous material can be referred to are dealt with in s 9A(2), (3) and (4) which in broad terms address the matters I have outlined at [55(b)]–[55(d)] above. I begin with s 9A(2).

63 The first point to note in s 9A(2) of the IA is what is meant by what I have hitherto referred to as extraneous material. This is not the terminology used in the Act but it serves to capture in essence what the Act does contemplate; and that is "any material not forming part of the written law [and] is capable of assisting in the ascertainment of the meaning of the provision". Hence, in the endeavour to ascertain the meaning of the text contained within a statute, the court is permitted to consider any material that is not included as part of the statute. Section 9A(3) does expand on this by setting out, on a non-exhaustive basis, examples of such extraneous material. On its face, the potential range of such material is unlimited. However, in my judgment, it is limited at least by reference to the purpose for which such material may be resorted to. Section 9A(2) states that it is material which is capable of helping to ascertain the meaning of the provision. This too is broad. Nevertheless, reading s 9A(2) in context with s 9A(1), such extraneous material may be resorted to where it is capable of helping to ascertain the meaning of the provision *by shedding light on the objects and purposes of the statute as a whole, and where applicable, on the objects and purposes of the particular provision in question.*

64 I take this view for two related reasons. First, any other interpretation would have courts, and perhaps more importantly, others who need to know what the law means, floundering in a sea of material which may be completely

irrelevant to the task at hand. Indeed, one can imagine that some such extraneous material may well be inconsistent with other such material thus exacerbating the problem. Second, Parliament has expressed its will in the form of the statute it has enacted. It is only to overcome the imperfect ability of language and the limitations of the draftsman's mind that provision is made by way of s 9A to help the court give effect to what Parliament intended to achieve and this inevitably draws us back to the objects and purposes underlying the enactment. I also note in passing that this approach is in fact consistent with the Minister's statement at the second reading of the Bill to introduce s 9A of the IA, which I have referred to at [62] above.

65 Returning to s 9A(2) of the IA, the rest of that section sets out the specific ways in which and reasons for which such extraneous material may be applied. In my judgment, there are three situations in which this can be done and they each begin with a determination of the ordinary meaning conveyed by the text of the provision in question understood in the context of the written law as a whole. This context is of critical importance because it will often afford the best guide to the objects and purposes of the enactment. This is the first of the three steps I have identified at [59] (see sub-paragraph [59(a)]) above. Having identified the ordinary meaning conveyed by the text in this context, consideration *may* then be had to extraneous material, subject to s 9A(4) and subject to such material being of assistance in ascertaining the meaning of the provision, in the following three situations:

> (a) under s 9A(2)(*a*), to *confirm* that the ordinary meaning deduced as aforesaid is, after all the correct and intended meaning having regard to any extraneous material that further elucidates the purpose or object of the written law;

(b) under s 9A(2)(*b*)(i), to *ascertain* the meaning of the text in question when the provision on its face is *ambiguous or obscure*; and

(c) under s 9A(2)(*b*)(ii), to *ascertain* the meaning of the text in question where having deduced the ordinary meaning of the text as aforesaid, and considering the underlying object and purpose of the written law, such ordinary meaning is *absurd or unreasonable*.

66 In my judgment, what follows from this, as I have already foreshadowed, is that the meaning of the text in question should first be derived from its context, namely the written law as a whole, which would often give sufficient indication of the objects and purposes of the written law and even of the specific provision. This should first be done without relying on extraneous materials. It is only after the court has determined the ordinary meaning of the provision in this way that it can then evaluate whether recourse to the extraneous materials for either the confirmatory or clarificatory functions can be had, and this will usually be because it proves to be impossible to discern, without such extraneous materials, the precise objects and purposes of the enactment.

67 At first blush, it might seem as though this is an implicit return to the literal approach of the past but such a view both ignores the text of s 9A of the IA and overlooks the nuances of what I believe that text directs us to do. The text itself has already been explained. As to the inquiry that the court is undertaking before turning to extraneous materials, this is not limited to interpreting the text of the provision alone, but also takes into account the *statutory context* of the particular provision and also the *purpose and object* underlying the provision and the statute to the extent this can be discerned from the written law as a whole. In this regard, it has in fact been observed

that on balance, more decisions probably appear to accept that the purpose and object of a statute can be found *within* the statute itself, often from examining the statutory provision concerned in the context of its surrounding provisions: *Statutory Interpretation in Singapore* at p 121. One example of this can be found in *Comptroller of Income Tax v GE Pacific Pte Ltd* [1994] 2 SLR(R) 948 where we ascertained Parliament's intention in relation to capital allowances by looking at other provisions within the same statute. Extraneous materials that go outside the statute are one of the tools that may be employed to determine Parliamentary intent, and such recourse can be very useful but this is by no means essential in every case for the purpose of ascertaining Parliamentary intent.

68 There is a further point of difference from the literal approach. Because extraneous materials can be considered either to confirm or to help ascertain the meaning of a provision, there is no requirement for any ambiguity or absurdity to be found before recourse may be had to such materials (*Planmarine AG v Maritime and Port Authority of Singapore* [1999] 1 SLR(R) 669 at [22]). The Minister's speech at the second reading of the Interpretation (Amendment) Bill which introduced s 9A of the IA (at [62]) should not be read to exclude the *confirmatory* role that extraneous materials can play even where the ordinary meaning is clear because to do so would defeat the express wording of s 9A(2)(*a*).

69 Nonetheless, I consider it important that the analytical process I have outlined above is followed. Where there is ambiguity or absurdity or even unreasonableness in the interpretation that follows upon the consideration of the text in context, as I have outlined, the use of extraneous materials may enable the court to ascertain the meaning of the provision and it may then select a meaning that would not ordinarily be borne out by the text of the

provision. This is potentially a far-reaching power and it gives cause for pause since that text was chosen by Parliament. Therefore, strict adherence to the framework prescribed in s 9A as a whole is necessary to resolve the tension inherent in trying to bridge Parliament's intention with the words with which it has chosen to articulate that intention.

What weight should be placed on permitted extraneous material?

70 Having considered the meaning and use of extraneous material, I return to s 9A(4) of the IA which draws a distinction between the court's determination of whether consideration should be given to any extraneous material and the *weight* that it chooses to give to such material. This consideration is guided by reference to two factors. The first relates to the need to avoid prolonging legal proceedings without compensating advantage. The second is the desirability of persons being able to rely on the ordinary meaning of the text in its statutory context and purpose apart from extraneous materials, to understand Parliament's enactments. In this regard, two further points may be noted:

(a) In relation to statements made in Parliament in particular, it has been observed in several decisions of the English courts that these must be "clear and unequivocal" to be of any real use: Lord Nicholls of Birkenhead in *R v Secretary of State for the Environment, Transport and the Regions, Ex parte Spath Holme Ltd* [2001] 2 AC 349 ("*Spath Holme*") at 398. See also, *for example*, *R v Warner* [1969] 2 AC 256 at 279e. The danger lies in the likelihood of the court being drawn into comparing one Parliamentary statement with another, appraising the meaning and effect of what was said and then considering what was left unsaid and why (*per* Lord Bingham of Cornhill at 392 of *Spath*

Holme). In the process, it can begin to appear as if the court is being asked to construe the statements made by Parliamentarians rather than the Parliamentary enactment. In line with this, and in my judgment, more importantly, a requirement recognised by the English courts is that the statement in question must "disclose the mischief aimed at [by the enactment] or the legislative intention lying behind the ambiguous or obscure words" (*Pepper v Hart* [1993] AC 593 at 634). Lord Browne-Wilkinson has further re-stated this in terms of a requirement that the statement should be "directed to the very point in question in the litigation" because to do otherwise would "involve the interpretation of the ministerial statement in question" (*Melluish (Inspector of Taxes) v BMI (No 3) Ltd* [1995] 4 All ER 453 at 468).

(b) While I recognise that these observations were made in the context of the *admissibility* of extraneous material, an issue we do not have to contend with given the enactment of s 9A, I do consider that the concerns that underlie them are valid and that they should be considered at least when determining the *weight* to be placed on the relevant extraneous material.

71 To summarise, I regard the following principles to be relevant in using the purposive approach in statutory interpretation:

(a) The purposive interpretation of a statutory provision must be preferred to a literal interpretation that does not advance the underlying general or specific purpose or object of the enactment.

(b) The general object underlying the statute as a whole may be distinct from and hence, at times, might cast little light on the object of

a given specific provision. This should therefore be separately considered in appropriate cases.

(c) A purposive interpretation simply requires one to approach the literal wording of a statutory provision bearing in mind the underlying purpose of that provision as reflected by and generally in harmony with the express wording of the legislation. It may therefore be coincident with a literal interpretation of the provision if the draftsman is successful in expressing Parliamentary intent through the express words chosen.

(d) The court may resort to extraneous material where this helps with the ascertainment of the meaning of the provision by shedding light on the objects and purpose of the statute as a whole, and where applicable, on the objects and purposes of the particular provision in question.

(e) Extraneous material can be used only in three specific ways: (1) to confirm the ordinary meaning deduced by the text of the provision and the context of the written law; (2) to ascertain the meaning of the text when the provision is ambiguous or obscure; or (3) to ascertain the meaning of the text where the ordinary meaning is absurd or unreasonable.

(f) The court must first determine the ordinary meaning of the provision in its context, namely the written law as a whole, which would often give sufficient indication of the objects and purposes of the written law, before evaluating whether recourse to the extraneous materials for either the confirmatory or clarificatory functions can be had.

(g) The court should bear in mind – both in determining whether consideration should be given to extraneous material and in determining the weight to be accorded to such material – the need to avoid prolonging legal proceedings without compensating advantage, and the desirability of persons being able to rely on the ordinary meaning of the text in its statutory context and purpose apart from extraneous materials, to understand Parliament's enactments.

(h) In determining the weight to be placed on extraneous material, the court should further have regard to the clarity of the material and whether the statement is directed to the very point in dispute between the parties.

Against that backdrop of what I regard to be the relevant principles relating to the purposive approach to statutory interpretation, I now turn to the specific provision in dispute in the present case in its statutory context.

Whether the Government can invoke s 15 in relation to a false statement

Interpretation and analysis of s 15

72 Section 15 provides as follows:

> **False statements of fact**
>
> **15**.—(1) Where any statement of fact about any person (referred to in this section as the subject) which is false in any particular about the subject has been published by any means, the subject may apply to the District Court for an order under subsection (2) in respect of the statement complained of.
>
> (2) Subject to section 21(1), the District Court may, upon the application of the subject under subsection (1), order that no person shall publish or continue to publish the statement complained of unless that person publishes such notification

> as the District Court thinks necessary to bring attention to the falsehood and the true facts.
>
> (3) The District Court shall not make an order under subsection (2) unless the District Court is satisfied on the balance of probabilities that —
>
> (*a*) the statement of fact complained of is false in any particular about the subject; and
>
> (*b*) it is just and equitable to do so.
>
> (4) An order under subsection (2) may be made subject to such exceptions or conditions as may be specified in the order.
>
> …

The ordinary meaning of the text of the provision

73 The ordinary meaning of the text of s 15 as enacted is significant. The text refers to any falsehood which is made about "*any person*". To ascertain the ordinary meaning of "person", the first port of call should be s 2 of the IA, which contains a list of words and expressions and their respective interpretations. That provides that "person" "*include*[s] any company or association or body of persons, corporate or unincorporated" [emphasis added]. It does not seem to have been contentious that this could notionally include the Government. The plain and ordinary meaning of the text of the provision, without more, therefore indicates that "person" under s 15 can include the Government.

74 Section 15 thereafter refers to the "person" within its ambit as "the subject". This can be distinguished from the offence-creating provisions in Part 2 of the Act which refer to the "person" in those provisions as "the victim". The appellant submits that "subject" on its plain meaning encompasses a wider meaning than "victim" as the former can apply to corporate entities and other non-natural persons. The respondents, on the other hand, argue that the distinction is not material to the present issue because all

it signifies is that the "person" under s 15 need not have suffered from conduct that amounts to harassment to invoke the remedy contained under s 15.

75 In my judgment, the distinction in the text of the various provisions between "subject" and "victim" may not clearly point one way or another. It is worth noting, however, that the juxtaposition of "person" and "subject" in s 15 in contrast with the corresponding juxtaposition elsewhere of "person" and "victim" gives a hint that "person" need not and may not bear the same meaning throughout the Act. The Judge in fact accepted as a starting point that the same word need not necessarily bear the same meaning every time it is used in the same statute, as clearly illustrated by the decision of the House of Lords in *Madras Electric*. The presumption that the same word is used in the same sense throughout the same enactment must ultimately yield to the requirements of the context (at 685 of *Madras Electric*). This is in line with the respondents' argument that the meaning prescribed in s 2 of the IA would not apply if there is "something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided".

76 But it is clear that there is no express statement to the contrary within the Act to suggest that the definition of persons under the IA should not apply to s 15. Although the fairly broad interpretation of "person" (as derived from s 2 of the IA) could, on the face of it, similarly apply to ss 3 to 7 of the Act, that becomes untenable and the true meaning of "person" in those provisions naturally becomes more restricted when we consider the elements of the offences prescribed there. As I have already observed, these elements commonly refer to characteristics or emotions that can only be possessed or experienced by a natural person. For example, the person must suffer "harassment, alarm or distress" (under ss 3(1) and 7); hear, see, or otherwise perceive certain behaviour or communication (under s 4(1)); be "likely to

believe" that violence will be used and be a person whom can suffer from violence (under s 5(1)(*b*)); or be a public servant or public service worker (under s 6). By reason of these elements, there is no difficulty with reading "person" in those parts of the Act more narrowly than contemplated by s 2 of the IA. In contrast, there is *nothing* in the statutory context to otherwise confine the meaning of "person" under s 15 to natural persons.

77 The respondents further contend, as the Judge found, that s 15 should be read as part of the *range or spectrum of rights and remedies* provided for in the Act, all of which are intended to benefit the same class of persons – namely natural persons who have suffered one or more of the types of offending conduct. I do not accept this.

78 The effect of such a contention, as is apparent from the text of s 15, would be to:

> (a) limit the nature of the offending conduct that the section addresses from false statements to false statements that coincide with and at least *almost* amount to harassment even if they do not actually do so; and
>
> (b) limit the class of potential beneficiaries from any person as defined in the IA to natural persons.

79 This does not follow from the text of s 15 since that text clearly, on its terms, carries no such limitation. The effect of reading in these limitations is, in effect, to read into s 15, such words as "who is a victim of conduct falling within any of ss 3, 4, 5, 6 and/or 7 above" immediately after the opening words of s 15, "[w]here any statement of fact about any person". Hence, if the respondents are to succeed, not only must words be read into s 15, but the key

word that is used in that section must be construed otherwise than in accordance with s 2 of the IA even though the basis for departing from s 2 of the IA does not apply in this context. It is said that this is justified because, evidently, Parliament did not *intend* to create a self-standing independent remedy for false statements, despite:

(a) the clear language of s 15;

(b) the long title; and

(c) the arrangement of the Act, including the structure of the rights and remedies as provided for in every other section of the Act aside from s 15.

80 I find myself unable to agree with this and having addressed the clear language of s 15, I will address the long title and the arrangement of the Act in turn.

The statutory context

81 The long title of the Act can be understood as follows:

> An Act –
>
> (a) To protect persons against harassment and unlawful stalking; and
>
> (b) To create offences; and
>
> (c) To provide civil remedies;
>
> (i) Related thereto; or
>
> (ii) In relation to *false statements of fact*.
>
> [annotations added]

82 I accept that the long title is not conclusive of the Parliamentary intent behind the enactment of a statute. But at the same time, it is not to be ignored. Rather, in my judgment, the long title is part of the context of the written law as a whole and should properly be considered, though the weight it attracts may be affected where there are other clearer indications of legislative intent. Understanding the long title as presented above is significant because it points to a legislative intent to provide separate civil remedies that are on the one hand, related to the statutory torts or the offences of harassment and unlawful stalking, and on the other hand, related to false statements of fact which may be unrelated and in respect of which no offence is created by the Act. This is potentially significant and material because the Judge (as noted at [51] above) as well as the respondents take the view that the remedies provided in relation to false statements do not stand alone but are only lower tier remedies that are provided to the same class of victims of the same sorts of wrongs. Were this the case, then the specific reference to civil remedies in relation to false statements would seem to be unnecessary and perhaps even otiose.

83 As to the structural features of the Act, the respondents' case is that because s 15 is found in Part 3 on "Remedies" and not in Part 2 on "Offences", it should be understood to prescribe a "lower-tiered" remedy to those who are victims of harassment or conduct and where the false statement in question almost amount to harassment. I do not accept this.

84 The Act is broadly divided into four sections: Part 1 – Preliminary; Part 2 – Offences; Part 3 – Remedies; and Part 4 – General. Sections 3 to 7, which are the provisions that are said to colour the interpretation of s 15 by limiting the category of persons who can invoke those provisions to natural persons, are all to be found in Part 2 dealing with "Offences", whereas s 15 is in Part 3 providing for "Remedies".

85 The remedies that are found in Part 3 of the Act are *all* tied to the offences in Part 2, *except* for an order under s 15. Thus, the remedies under ss 11, 12 and 13 are all available "where the respondent has contravened ss 3, 4, 5, 6 or 7", and to a victim "under [those same] sections". To put it another way, where Part 2 makes the defined conduct *criminal*, Part 3 (except for s 15) provides a *civil* remedy that corresponds to an offence–creating provision in Part 2. Section 14 then follows to abolish the common law tort of harassment, and this is consequential upon the creation of the relevant statutory torts by the Act.

86 Hence, among all the sections within Part 3 of the Act, *only* s 15 provides a remedy without reference to an offence-creating section within Part 2 of the Act. Section 15 is also distinct in that it alone in Part 3 prescribes both the right which is sought to be protected (in subsection (1)) and the remedy for the violation of that right (in subsection (2)). As I have noted, all the other provisions in Part 3 essentially provide only for civil remedies that may be availed of when the rights, as defined in the corresponding offence-creating provisions in Part 2, have been violated. The same dichotomy is visible in Part 4 of the Act where s 17, which relates to the applicability of the provisions to persons outside of Singapore, contains express references to ss 3 to 7 and the remedies found in ss 12 and 13, but makes no reference to s 15.

87 In my judgment, these features are all indications that the long title as analysed above *does* reflect the legislative intent of the Act in relation to penalising false statements as a *standalone* remedy. It is certainly not dependent upon the establishment of any conduct of the sort falling within any of the offence–creating provisions of Part 2.

88 The respondents had in fact conceded that s 15 can be availed of by those who are *not* victims of the conduct proscribed elsewhere in the Act, which is a concession of considerable importance. This means that one who is not able to avail of any other remedy provided by the Act may nonetheless seek the remedy provided by s 15.

89 As will be evident shortly, this concession flowed inevitably from the reply by the Minister in the course of the parliamentary debates. But I will turn to that shortly. In my judgment, this concession was significant, and has the following consequences:

(a) It makes it unreasonable, if not impossible, to then contend that s 15 affords a remedy only to the same class of beneficiaries contemplated by the rest of the Act;

(b) It also makes it impossible to contend that s 15 is to be seen as part of the spectrum of remedies provided to the same group of persons because it is in fact a standalone remedy that may be availed of by one who may have suffered no other wrong under the Act; and

(c) It denudes the argument – that "person" in s 15 must be construed in the same way as "person" used elsewhere in the Act – of all remaining force since there is no longer any reason for thinking that the remedy in s 15 is limited to natural persons.

90 Although I have analysed this by reference to the respondents' concession, in my judgment, this is in fact wholly consistent with the analysis of the Act as I have set it out above. There is simply no basis for thinking that s 15 cannot or does not afford a standalone remedy that is distinct from all the other remedies provided in the Act.

The legislative purpose of the enactment

91 In this light, I consider that the specific purpose and object of s 15 is directed at ensuring that false statements are not irresponsibly propagated, by enabling a subject who is aggrieved by such a statement to seek an order that requires the maker of the statement to "bring attention to the falsehood and the true facts". As mentioned above, this is a distinct civil remedy that relates only to false statements of fact. It appears to be a quick and ready remedy where a party contends that a statement is false and can prove it to be so. In addition, an order obtained under s 15 has limited effect. The remedy offered does not require a take-down of the article and does not sound in damages. The publisher of the statement is not restricted from continuing to publish the statement that he has made; but he will be required to publish such notification as is deemed by the court to be necessary to bring the falsehood to the attention of the readers of the statement. This specific purpose is distinct from the general purposes and objects of the Act which are as reflected in the long title of the Act; but this specific purpose is complementary to, and certainly not incompatible with, those general purposes and objects. Indeed, as I have noted at [82] above, this purpose specifically underlying s 15 is captured within the long title of the Act.

92 Based on the foregoing analysis of s 15 and the remedy that it is directed towards, I am satisfied that the mischief that the provision seeks to address is falsehood in speech and publication and I can see no reason based on my understanding of the purpose and object of the provision to hold that the class of persons as defined under s 2 of the IA which would ordinarily apply to the meaning of "person" should be excluded, and that s 15 should be confined in its application to natural persons.

The parliamentary debates

93 Given that the ordinary meaning of s 15 based on its text, its statutory context, and its underlying purpose demonstrates that "person" thereunder includes the Government, s 9A(2)(*b*) of the IA would not apply to allow for consideration of extraneous material on the basis that the provision is ambiguous, obscure or absurd. It is certainly not unreasonable, much less is it absurd; and to the extent it is said to be ambiguous by reason of the fact that the appellant proposes a different meaning to the word "person" in s 15 from the meaning ascribed to the same word when it is used elsewhere in the Act, I consider that to be a false ambiguity because it is readily resolved by applying s 2 of the IA correctly, as explained at [73]–[76] above. That leaves s 9A(2)(*a*) which only allows for extraneous material to be relied on "to confirm that the meaning of the provision is the ordinary meaning conveyed" in the statutory context and its purpose. To the extent that the respondents seek to rely on the parliamentary debates to *depart* from the ordinary meaning of s 15, this would not be permitted under s 9A(2)(*a*).

94 Assoc Prof Goh suggests in *Statutory Interpretation in Singapore* that if the purposively reached meaning of a provision is not ambiguous or absurd but the extraneous materials do not confirm that meaning, there may, by definition, be an ambiguity or absurdity in the provision such that s 9A(2)(*b*) of the IA "operates seamlessly to permit the court to adopt a different meaning" (at p 130). With respect, I disagree. This seems to me to be at odds with the structure and the plain wording of s 9A(2), which in my view, circumscribes the use that may be made of extraneous materials to depart from the ordinary meaning of the provision read in its context only where the provision has been ascertained to be ambiguous or absurd. If this is not the case there would have been no need to separately provide in s 9A(2)(*a*) and (*b*)

the different uses that may be made of extraneous materials in various circumstances. Indeed, the two sub-sections of s 9A(2) could have been omitted altogether.

95 There is a further point in this regard. In my judgment, the important consideration at play in s 9A(2) of the IA is in fact the inherent desirability of persons being able to rely on the ordinary meaning of the statutory provision as conveyed by the text, statutory context, and purpose underlying that provision stated in s 9A(4). The need for legal certainty – as one of the fundamental tenets of the rule of law – is necessary for citizens to be able to regulate their conduct on this basis. Lord Diplock made the following observations about this aspect of the rule of law in *Fothergill v Monarch Airlines Ltd* [1981] AC 251 at 279–280:

> The source to which Parliament must have intended the citizen to refer is the language of the Act itself. These are the words which Parliament has itself approved as accurately expressing its intentions. If the meaning of those words is clear and unambiguous and does not lead to a result that is manifestly absurd or unreasonable, it would be a confidence trick by Parliament and destructive of all legal certainty if the private citizen could not rely upon that meaning but was required to search through all that had happened before and in the course of the legislative process in order to see whether there was anything to be found from which it could be inferred that Parliament's real intention had not been accurately expressed by the actual words that parliament had adopted to communicate it to those affected by the legislation.

This provides a clear rationale, in my view, for the inherent limits contained in s 9A(2), which would not generally allow the court to displace the clear meaning of a provision that has been purposively ascertained by then having recourse to extraneous material that might indicate a contrary meaning.

96 In any event, I turn to consider the extraneous materials cited by the parties in the present case. Although I do so primarily to *confirm* the meaning

of s 15 as I have purposively interpreted it, I nonetheless also consider them in the light of the respondents' arguments. I first consider the Explanatory Statement in the Bill. This however, does not add very much to what has already been stated in the text of the provision, and is therefore of limited utility.

97 Turning next to what has unsurprisingly featured most prominently in the parties' arguments – the Minister's speech in the Second Reading of the Bill – in my view, it cannot stand for the proposition for which the respondents have cited it. First, nowhere in the Minister's speech does he expressly exclude the view that s 15 can apply to non-natural persons. I accept that his speech was directed at and suggested in many places that the primary beneficiaries of the Act would be natural persons but this is unremarkable because save for s 15, it is undisputed that the Act benefits only natural persons. It therefore makes sense for the Minister to address in his speech the primary beneficiaries of the Act and how the various statutory provisions would apply to them when illustrating the operation of the statutory provisions.

98 Second, and more importantly, there are two parts of the Minister's remarks (made in his speech and during the debate) where he seemed to touch on s 15. In both these contexts, in my judgment, the Minister's remarks *confirm* the interpretation that I have arrived at. The first is where he described how a s 15 order stands in relation to the other remedies provided by the Act. It is useful here to reproduce the relevant portion of the Minister's speech (*Singapore Parliamentary Debates*, *Official Report* (13 March 2014) vol 91 (Mr K Shanmugam, Minister for Law):

> Instead, if there are falsehoods, and let us say it is harassment, or it is borderline harassment; or maybe nearly

> harassment; *or not harassment but it is a clear falsehood*, then the victim has the right to ask the relevant parties that the falsehoods be corrected, maybe through publication of replies, which may set out the correct facts. Some victims of harassment may well choose that route instead of having to make a criminal complaint, as I said earlier, or launch a civil claim and claim damages. They just want the truth to be out and they do not want to escalate the matter further, and we should allow that. So it is a lower tier of remedy rather than having to go to the criminal and civil law all the time and make claims. [emphasis added]

99 It is common ground that the reference to "a clear falsehood" that is "not harassment" was made in the context of s 15. On the basis of this passage, the Judge construed s 15 as a "lower tier of remedy" or "self-help" remedy for victims who had suffered feelings of alarm or distress which did rise to the level of harassment, or very nearly so even if they did not quite rise to that level (at [40] of the Judgment). This would suggest that there are two tiers of conduct that a hypothetical "person" might suffer from in order to avail himself of a s 15 order. With great respect, this is the danger of approaching the Minister's statement as though it is the enactment. It plainly is not and must be approached from the perspective that the Minister was looking to explain certain aspects of the operation of the Act. In any case, it is clear that the Minister spoke of three distinct tiers of conduct:

(a) a falsehood where there is also "harassment" or "borderline harassment";

(b) a falsehood where there is "nearly harassment", but where the conduct in question would not in fact amount to harassment under the legal definition of "harassment"; and

(c) a clear falsehood in the absence of any conduct which could amount to harassment.

100 The last category of persons are those who would be able to invoke a s 15 order to correct falsehoods even though they would not be able to have recourse to any of the other provisions of the Act. There is simply no other way to understand the Minister's remarks at [98] and it explains the concession made by the respondents to which I have already alluded to at [88] above. In my judgment, this can only mean that s 15 does provide a *standalone* remedy to address false statements that is distinct from the other remedies prescribed for other torts or offences in the Act. It is emphatically a standalone remedy in the sense that it *can* also be invoked even if no other remedy can be resorted to; and it remains a standalone remedy notwithstanding the fact that in some, perhaps even in many, situations, it can be resorted to as one of a number of possible remedies by those who do come within the other parts of the Act. None of this is displaced, in my judgment, by the fact that the remedy in s 15 may be seen as a lower-tiered remedy than the other remedies provided by the Act. As an objective matter of fact, it is a lower-tiered remedy than those which provide for criminal sanctions or civil remedies such as damages. But that is not material to the separate question of whether a s 15 order can only be availed of by those who may also avail themselves of the other remedies. For the reasons I have already set out, I do not consider that the remedy has such a limited application.

101 In my judgment, the foregoing analysis of the Minister's statement which I have quoted at [98] displaces the attempt to limit the scope of s 15 (see [78] above) and confirms the interpretation of the text of s 15 both on its own and in the context of the Act as a whole. This then has a further significance because if s 15 is or can be a standalone remedy, there is no basis at all for the class of its beneficiaries to be constrained by the other provisions which apply only to natural persons. The mere fact that persons who can bring

a claim under s 15 may be the same natural persons who can also pursue criminal conduct under ss 3 to 7 of the Act affords no reason in principle for excluding non-natural persons from being able to invoke a s 15 order when dealing with simple falsehoods.

102 As mentioned above, this flows from construing the word "person" in s 15 in accordance with s 2 of the IA. In this context, I turn to the second aspect of the Minister's remarks which has a bearing on this specific issue. The Minister was asked directly whether the Act would benefit corporate entities. The question was asked with reference to the position in the United Kingdom where there is broadly corresponding legislation save that it does not include s 15. The position in the United Kingdom is that only natural persons may avail themselves of the remedies in the CPA, which is also the case here save for the present question over s 15. The Minister's response was that the beneficiaries would be persons as defined in the IA. In my judgment, this confirms the ordinary meaning of the provision as I have purposively ascertained it to be. The definition of "person" under s 2 of the IA is clearly broader than natural persons and in that regard, the reference to the IA by the Minister suggests an intention to give a wider remit to the definition of "person". If the Parliamentary intent was for the Act to apply only to natural persons, the only sensible and natural response for the Minister to give in response to the question would have been a straightforward "no, the Act only benefits natural persons". This, however, was not his answer. *Moreover, the only part of the Act to which the wider meaning of the word "person" could possibly apply is s 15.*

103 The Judge, as I have already noted, dealt with the Minister's reply to the question posed by observing that the reference to s 2 of the IA is not conclusive since it provides definitions that are contextually permitted. I make

two points in relation to this. First, while the Minister's reply may not be conclusive on the issue, the question is whether it assists in the search for the meaning of s 15 and in my view, it does because any other view would mean that the Minister in fact meant to say that the class of beneficiaries was confined to natural persons but chose instead to frame his answer by reference to the IA even though this suggests the opposite. I can see no reason at all for thinking that is what he meant to do.

104 Second, the contention that the definitions in the IA are contextually limited does not help because, as I have explained at [75]–[76] above, this would affect the meaning of the word "person" in every part of the Act except s 15.

105 Therefore, in my judgment, the extraneous material in this case confirms, and in any case does not and cannot contradict the purposively ascertained ordinary meaning of s 15. It follows that non-natural persons such as the Government can invoke a s 15 order as a standalone remedy in respect of false statements of fact made against them.

Whether the GPA extends the rights of the Government

106 Before turning to the constitutionality of s 15 in the way I have interpreted it, I touch on one minor point. The Judge rejected the appellant's argument that ss 3 and 36 of the GPA read together would give the Government the *substantive* legal right to seek a s 15 order, even if we were to find that Parliament did not intend to include the Government within the scope of "person" in s 15. The Judge's reasons (at [24]–[25] of the Judgment) essentially were that the provisions of the GPA only provide that "*if* the Government has the right to seek recourse under s 15 of the Act, nothing in the

GPA prejudices that right and it may enforce the right by instituting court proceedings [emphasis in original].” I agree with the Judge’s views on this issue. The GPA cannot confer a right if the Act itself does not do so. If the Government has a right to a remedy, it must be found in the Act; and the GPA is irrelevant to this question.

Whether s 15 as interpreted impermissibly inhibits the right to free speech

107 To determine whether s 15, as interpreted above, impermissibly inhibits the right to free speech guaranteed by Art 14 of the Constitution, the nature of the inhibition contained in the provision must be analysed. Section 15 does not contemplate a take-down or *any* other remedy beyond the following:

(a) A finding of falsehood by the court on a balance of probabilities; and

(b) Contingent on such finding, the right to have such notification as deemed necessary to draw attention to the falsehood and the true facts.

108 It may be noted first that O 109 r 4 of the Rules, which governs the *procedure* relating to an application under s 15, could be construed as suggesting that an order granting the remedy may be obtained on an *ex parte* basis. In my judgment, this would be incorrect. A s 15 order is predicated on the court having made a finding that the statement of fact that is in question, is *in fact* false. The availability of any remedy rests on that determination of fact under s 15(3)(*a*). The procedure under the Rules should therefore be understood to mean that once proceedings have been initiated by an applicant,

the judge hearing the matter should give the necessary directions to enable a finding on this question of fact to be determined on a balance of probabilities.

109 Turning to the substantive question on the constitutionality of the remedy contained in s 15, in my judgment, s 15 as I have interpreted it would not impermissibly inhibit the right to free speech. It is clear that there is no absolute right to free speech. The right conferred under Art 14(1)(*a*) of the Constitution can be restricted in the wider interests of, among others, broader societal concerns such as public peace and order so that the exercise of that right does not impinge on or affect the rights of others. Whether speech may be limited entails a delicate balancing exercise between the nature of the individual's right to speak and the competing interest in limiting that speech (see *eg*, *Chee Soon Juan and another v Public Prosecutor and other appeals* [2011] 2 SLR 940 at [6]; *Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 ("*Chee Siok Chin*") at [52]), and whether in the circumstances, it is "necessary or expedient" to do so (under Art 14(2)(*a*) of the Constitution).

110 I begin with the nature of the remedy contemplated in s 15. In my judgment, the remedy afforded by s 15 is a very limited one. It does not allow the applicant to claim damages against the publisher of the statement. For that reason, the decision in *Derbyshire County Council v Times Newspaper Ltd and others* [1993] AC 534 ("*Derbyshire*"), which was cited by the respondents, can be immediately distinguished. The observations made by the House of Lords there relating to the restriction of the criticism of public bodies having an inhibiting effect on the right to free speech were made in the context of considering the legitimacy of a *threat of a civil action for defamation*. The nature of the remedy here – which is limited to the publication of a notification

to bring attention to the falsehood that has been so proved – radically changes the application of the considerations outlined in *Derbyshire*.

111 In fact, s 15 does not inhibit or prevent free speech at all or even materially limit it. A speaker is free to speak, notwithstanding s 15, even if what he says is objectively false and even if a court of law has found it to be false. Even then, the speaker may continue to publish that falsehood. But what s 15 does contemplate is that, in that event, the court may require him to draw attention to the falsehood if the court is of the view that it is just and equitable to do so (under s 15(3)(*b*)). Read in that light, s 15 does not restrict the speaker's freedom of speech, but merely constrains the publication of speech that has been proven to be false without a notification that it has been so proven and/or without a direction to where the truth may be found.

112 I turn to the interest in the speech that is sought to be protected. The respondents' arguments, which suggest that even such a limited remedy would be onerous or impermissible, are unsustainable in my judgment because a wholly unrestricted right to free speech (assuming for the moment this exists at all) does not extend to a wholly unrestricted right to deceive or to maintain a deception by not drawing attention to the falsehood. The right to free speech, or the liberty to communicate, relates to the communication of "information not misinformation": see *Reynolds v Times Newspapers Ltd and others* [2001] 2 AC 127 at 238 where Lord Hobhouse observed as follows:

> There is no human right to disseminate information that is not true. No public interest is served by publishing or communicating misinformation. The working of a democratic society depends on the members of that society … being informed not misinformed. Misleading people and … purveying as facts statements which are not true is destructive of the democratic society and should form no part of such a society. There is no duty to publish what is not true: there is no

> interest in being misinformed. These are general propositions going far beyond the mere protection of reputations.

113 False statements which are cloaked with the appearance that they can be relied on as true and accurate are in fact "destructive of the democratic society" and leads to the communication of misinformation, which is of little, if any, value.

114 To the extent the "marketplace of ideas" rationale is commonly deployed to justify a wide, if not, an unrestricted, right to free speech, we have questioned the applicability of such a rationale to *false* statements (*Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 ("*Review Publishing*") at [283]). There, we said (at [282]) that:

> … while the competition of ideas in the marketplace can lead to advances in science and knowledge to the benefit of mankind (which would justify allowing the fullest scope for exercising freedom of speech), this applies largely in the sphere of statements relating to *ideas or beliefs which cannot or have yet to be proved with scientific certainty to be either true of false* … it is usually the case that one of these ideas or beliefs will eventually come to be accepted by society as "true" in the sense of being the most accurate or the most rational, with the others either being discarded or falling into disfavour.

115 Put simply, false speech, *which has been proven as a matter of fact to be false in a court of law*, can contribute little to the marketplace of *ideas* or to advances in knowledge for the benefit of society as a whole. This is wholly different and removed from the propagation of ideas or beliefs, which may not immediately be able to be objectively discerned to be true or false, and which through an open dialogue, can then be determined by society as a whole to be "true".

116 The value of free speech depends ultimately on its nature, how it is used, where it occurs and whether it contains an assertion of fact that has been proven to be a falsehood.

117 In my judgment, there is little, if any, value in allowing the continued propagation of free speech which has been determined by a court to be false, without the concurrent notification that such speech is false and/or which contains a direction to the true facts. Such false speech cannot be justified as free speech which should be protected on the basis of any of the theoretical justifications underpinning the liberty of persons relating to free speech. Therefore, without even reaching the inquiry as to the nature of the State's interest in regulating such speech, s 15 cannot be said to be unconstitutional because the nature of the speech to which an order made pursuant to s 15 would apply is not protected under Art 14(1) of the Constitution.

118 But, in any event, even if the false speech in the present case is constitutionally protected, I would hold that s 15 is a necessary or expedient restriction on the right to free speech in the interest of public order. Restrictions on free speech are expressly permitted if such restrictions fall within the categories imposed by Art 14(2)(*a*), including, restrictions that Parliament considers to be necessary or expedient in the interest of public order. The use of the words "in the interest of" indicates a wider legislative remit than if the power to circumscribe the rights conferred by Art 14 were confined to "the maintenance of public order" (*Chee Siok Chin* at [50]). This allows Parliament to take a "prophylactic approach in the maintenance of public order" which "will include laws that are not purely designed or crafted for the immediate or direct maintenance of public order" (*Chee Siok Chin* at [50]).

119 The expression "public order" usually connotes the protection of a public physical space from disorder. But as I observed in *Lee Hsien Loong v Review Publishing Co Ltd* [2007] 2 SLR(R) 453 at [1], the Internet "is dramatically shortening the globe's communicative synapses", expanding "the potential reach and impact of any individual idea or expression" and though empowering, "also portends abuse". Given the modern context in which digital speech is exercised, especially where falsehoods can be rapidly disseminated in an unregulated Internet sphere and could conceivably threaten public order, there is no reason why false statements should not be justifiably restricted on the basis of the preservation of public order.

120 It might be argued that the case for regulation in this case is weak because there is little, if any, threat to public order from the false statement in question here. But the question of whether the balance between the right to free speech and the protection of public order has been struck in a "necessary or expedient" manner in any given case depends significantly also on the nature of the interest in that speech, and here, the observations set out at [111]–[117] above relating to the limited value that *false* speech has would be equally applicable to demonstrate that the right balance has been struck between the two competing interests.

121 I am therefore satisfied that the arguments advanced by the respondents to challenge the constitutional validity of s 15 are without merit.

Whether it is just and equitable to grant a s 15 order

122 The remaining question is whether it is just and equitable to grant a s 15 order. To answer this question, I set out again, for convenience, ss 15(2) and (3) with some emphases added:

> (2) … the District Court may, upon the application of the subject under subsection (1), order that no person shall publish or continue to publish the statement complained of unless that person *publishes such notification as the District Court thinks necessary to bring attention to the falsehood and the true facts*.
>
> (3) The District Court shall not make an order under subsection (2) unless the District Court is satisfied on the balance of probabilities that —
>
> > (*a*) the statement of fact complained of is *false* in any particular about the subject; *and*
> >
> > (*b*) it is *just and equitable* to do so.
>
> [emphasis added]

123 Based on the wording of the provision, a few observations can be made:

(a) Whether the court is satisfied that it is "just and equitable" to grant a s 15 order is a separate exercise of adjudication from whether the court is satisfied that the statement is false as is evident from the two sub-sections (under ss 15(3)(*a*) and (*b*)).

(b) There should therefore be no presumption that a s 15 order would be granted as a matter of course once it has been established that the statement in question is false.

(c) The court will have to be independently satisfied that based on the facts and circumstances presented, it is "just and equitable to do so."

(d) This appears to be a fact-sensitive inquiry based on whether the notification to be ordered is "necessary to *bring attention* to the falsehood *and* the true facts" (under s 15(2)).

124 The court appears to have a wide discretion in determining first, whether it is just and equitable to grant a s 15 order, and second, in deciding what it views as necessary to bring attention to the truth of the matter and the falsehood. This also seems to be borne out by what the Minister said during the Parliamentary Debate (*Singapore Parliamentary Debates*, *Official Report* (13 March 2014) vol 91 (Mr K Shanmugam, Minister for Law):

> The idea behind clause 15, as I earlier explained, *is to let readers judge the facts for themselves, and the court is given substantial discretion under clause 15 to decide how that should be done*. That is at the second level. So it is a tiered response – clauses 3 to 7 carry a higher level of penalties; clause 15 no penalties, *just correction, clarification, whatever the court thinks is necessary to bring the truth across*. So we try to strike a balance between the competing considerations. [emphasis added]

125 To be satisfied that it is just and equitable to make an order, the court should weigh the seriousness of the falsehood (and the likelihood of prejudice resulting from it) against the value of the speech that is published, bearing in mind other equity-based considerations in line with the express words of s 15(3)(b). In keeping with this, I consider that the factors that may be applicable in determining whether an order should be granted include, but are not necessarily limited to, the following:

(a) whether the false statement of fact is of a nature that it would not be taken at face value, such as where it appears to be facetious or a parody or satirical speech;

(b) whether the false statement is of a minor or incidental nature and is on the whole innocuous and unlikely to cause any prejudice;

(c) whether the applicant has acted in a way that was oppressive such that it would be inequitable if the remedy were to be granted; and

(d) whether the applicant had caused or contributed actively to the falsehood being stated.

126 Turning to the facts of the present case, the Judge had found that the statement of fact relating to MINDEF deliberately delaying the court proceedings as part of an effort to wage a "war of attrition" against MobileStats was, on a balance of probabilities, false (at [54] of the Judgment). The statement of fact is derived from two separate comments made by Dr Ting, one of which related to MINDEF being dilatory in finding an expert witness and the other to MINDEF asking for a 10-day trial not because this was needed but in order to cause Dr Ting to incur greater costs at trial. In my judgment, the statement of fact relating to MINDEF having conducted court proceedings in an oppressive manner is serious in that it implies that MINDEF had acted in bad faith and leveraged on its financial resources to "drag" out the proceedings, forcing Dr Ting to give up and in this way to prevent the law from taking its course. In this light, I would disagree with the Judge as to the seriousness of the statement made against MINDEF. The Judge found that the allegation was a relatively minor one which only concerned a rather narrow aspect of MINDEF's conduct – its litigation strategy (at [56] of the Judgment).

127 In my judgment, Dr Ting's comments would convey to a reader and viewer that MINDEF had conducted itself in a dishonest manner, both in general and to the court in particular, when making requests for adjournments or trial dates as it did not in actual fact require the additional time it sought. The following excerpts of Dr Ting's interview in my view demonstrate the seriousness of the falsehood alleged and what it conveys to a reader or viewer about MINDEF's identity or reputation:

> TOC: Subsequently you had to drop the case. After that you also spoke to some of your, some lawyers and can you share

> with us what is it that they said about your chances of winning the case?
>
> Dr Ting: The word they used is called a 'war of attrition'. Ok, the war of attrition. Basically they make you dry. Drag you dry. And we of course are naïve and innocent to the whole thing. when we went ahead for the court case, it was only after two years, because MINDEF has said that they could not locate and find an expert witness and they keep postponing. …
>
> During this period, MINDEF asked for, or the lawyers from MINDEF asked for a 10-day trial, not a 5-day, which we already finished in one-and-a-half day, but they asked for a 10-day trial. 10-day trial basically means that the actual costs would go up, would escalate.
>
> …
>
> So this basically means that, they also know, why they want to drag for 10 days, is a war of attrition. They basically drag us dry. So we are unable to financially fight them. …

128 As noted by the Judge (at [57] of the Judgment), The Online Citizen did publish MINDEF's Facebook statement in full and provided a prominent link to MINDEF's statement from the article containing Dr Ting's video interview. But this was insufficient in my judgment to draw attention to the falsehood and the true facts in the present case. The nub of the appellant's complaint is the false statement that MINDEF was conducting the litigation in a manner that was oppressive to Dr Ting. This was untrue for the simple reason that the litigation involving Dr Ting was in fact controlled not by MINDEF but by its contractor. The link provided to MINDEF's Facebook statement was only sufficient insofar as it drew the reader's attention to MINDEF's account of the allegations relating to MINDEF infringing MobileStats' patent, but did not contain adequate information which would be able to correct or clarify the false statement made by Dr Ting relating to MINDEF conducting a "war of attrition" against MobileStats in the court proceedings to take advantage of the fact that MobileStats would not be able to have the financial means to continue the lawsuit. The Online Citizen's

actions in providing a hyperlink to MINDEF's Facebook statement was therefore inadequate to draw attention to the true facts concerning the manner in which MINDEF conducted itself in the litigation involving Dr Ting.

129 In my judgment, in these circumstances, especially in the light of the seriousness of the false statement made which implied bad faith and dishonesty on the part of its intended subject, MINDEF, and that the order to publish a notice saying that the statement has been adjudged to be false is such a low-level restriction, I consider it just and equitable to grant the following s 15 order:

(a) No person shall publish or continue to publish the statements found at [127] of this Judgment, unless that person publishes, together with the statements, the following notification:

> Statements herein which state and/or suggest to the reader that MINDEF waged a 'war of attrition' against Mobilestats, by deliberately delaying the court proceedings in Suit 619 of 2011 and asking for more trial dates than necessary, thereby increasing legal costs, have since been declared by the Singapore Courts to be false.

130 In conclusion, given that I have found that the Government does fall within the scope of "person" under s 15, it is able to apply under the provision for relief. On the facts of the present case, and in particular in the light of the seriousness of the false statement made, in my judgment, it is just and equitable to grant the s 15 order sought by the appellant. I would therefore allow the appeals with costs here and below to the appellant, and make an order in the terms set out in the preceding paragraph.

Sundaresh Menon
Chief Justice

Hui Choon Kuen, Lam Qian Yi, Debra and Tan Zhongshan (Attorney-General's Chambers) for the appellant;
Choo Zheng Xi and Lee Hong Jet Jason (Peter Low LLC) for the respondent in Civil Appeal No 26 of 2016;
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