

HONG KONG / JUDGMENT

LEE CHING AND ANOTHER v. LAU MAY MING

COURT

Court of First Instance

DECIDED

26 April 2007

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bjbj HCA108/2005 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE ACTION NO. 108 OF 2005

BETWEEN LEE CHING 1st Plaintiff LAM WING MAN, FANNY 2nd Plaintiff and LAU MAY MING
Defendant

Before : Hon Poon J in Court Dates of Hearing : 3, 6 10, 13 14 November 2006 and 19 January 2007
Date of Handing Down Judgment : 26 April 2007

J U D G M E N T

AUTONUMOUT This is a libel action. For easy reference, this judgment is divided into the following parts : Part Paragraph Nos. I. BACKGROUND 2 29 A. SPS 2 8 B. The parties 9 10 C. The Open Letter 11 13 D. A summary of the parties pleaded cases 14 23 E. The trial 24 29 II. CENTRAL ISSUES ON LIABILITY 30 32 III. ISSUE (1) REFERENCE TO THE PLAINTIFFS 33 35 IV. ISSUE (2) MEANING OF THE WORDS 36 47 V. ISSUE (3) WHETHER THE WORDS ARE 48 DEFAMATORY? VI. DISCUSSION OF THE EVIDENCE 52 164 A. An overview 52 53 B. Recruiting police volunteers 54 55 C. Differences over the 36th Training Session 56 64 D. The resignations 65 73 E. When the defendant became aware of 74 the resignations F. Calling of the 4/8/04 Board Meeting and 98 127 the ensuing disputes G. The 4/8/04 Board Meeting 128 H. The AGM 129 135 I. The Review Meeting and 136 138 the 7/8/04 Board Meeting J. Terminating the plaintiffs membership 139 161 K. The Open Letter 162 L. The Announcement Meeting 163 164 VII. ISSUE (4)(A) IS THE DEFENCE OF 165 174 JUSTIFICATION MADE OUT? A. The 1st Imputation 165 169 B. The 2nd to 4th Imputations 170 171 C. The 5th Imputation 172 D. Conclusion 173 174 VIII. ISSUE 4(B) IS THE DEFENCE OF

175 183 QUALIFIED PRIVILEGE MADE OUT? A. Qualified privilege 175 179 B. Irrelevant matters 180 183 IX. ISSUE 5 IS THE DEFENCE OF QUALIFIED 184 205 PRIVILEGE DEFEATED BY MALICE? A. Absence of honest belief 186 196 B. Improper motives 197 200 C. Maintaining non-maintainable defence 201 202 of justification D. Inconsistent or contradictory statements and 203 204 hostility towards the plaintiffs E. Conclusion 205 X. QUANTUM 206 215 XI. ORDERS 216 218 I. BACKGROUND A. SPS AUTONUMOUT Suicide Preventio urrounding area who are despairing or in distress by assisting and befriending such persons and enabling them to receive emotional support from volunteers serving SPS and also in accordance with SPS s procedures by referring such persons to professional and others having specialist skills; and

(2) to raise awareness of the risks of suicide and ways in which such risks can be recognized and addressed. AUTONUMOUT SPS s membership consists of volunteer members; and

(b) such number of co-opted member as the Board deems necessary and appointed by the Board from time to time . AUTONUMOUT The members of the Board may appoint one of their members to be the chairperson of the Board and may at any time remove him/her from that office AUTONUMOUT SPS has a number of officers, including director, secretary, treasurer and publicity officer. The director is either appointed by the Board or elected by members in general meeting . He shall on behalf and subject to such directions by the Board be responsible for and have absolute authority and control over the day-to-day conduct and management of SPS . The director has the power, among other things , to terminate the appointment of any member (other than a co-opted member) if he decides that termination is in the best interests of SPS AUTONUMOUT SPS has several committees. Those feature in these proceedings are the Training Committee () and the Befriending Services Committee (). The TC provides training to volunteers of SPS. The function of the BSC is to maintain the quality of services provided by SPS, to monitor review and recommend the appropriate duty shift of each volunteer. AUTONUMOUT It is not in dispute that only devoted volunteers who have passed the probation period are eligible to serve in the TC and BSC. At the material times, members of the TC were the plaintiffs, Mr Joe Ching Wing (), Mr James Chan Hin (James), Mr Horace Yiu Yeung (Horace) and Ms Cynthia Pao Yee (Cynthia). Members of the BSC were Ms Wong Fun (Wong), Ms Alice Yip Wing Wai (Alice) and Mr Ming Lam (Ming). Three staff members of SPS served as officials in the TC and BSC. They were Mr Vincent Ng (Vincent), Ms Anna Choi (Anna) and Ms Ling (Leeling), the program manager. They attended meetings of the committees and assisted the implementation of policies or projects proposed by the committees. B. The parties AUTONUMOUT The 1st plaintiff is a serving policeman. The 2nd plaintiff is a housewife. Both of them were experienced and dedicated volunteer members of SPS. At the material times, they were governors of the Board. The 1st plaintiff was the vice-chairperson, the 2nd plaintiff the secretary. They also served as members of the TC between early 2000 and 24 June 2004 when they resigned. On 20 August 2004, their membership was terminated by the director, Mr David Pong Chun Yee (David). AUTONUMOUT The defendant is a principal environmental officer with the Environmental Protection Department (). She has a long history of voluntary work. Trained in the Samaritans many years ago, she had worked as a volunteer in Nepal for seven years

and in local agencies such as the Leprosy Mission and had since left SPS. C. The Open Letter AUTONUMOUT The present dispute arose out of a letter issued by the defendant in her capacity as the chairperson of the Board to all SPS members on 21 August 2004 (the Open Letter), following the termination of the plaintiffs membership. A copy of the Open Letter can be found at pp. 179-181 of Trial Bundle C. AUTONUMOUT The parts that the plaintiffs complained of are extracted below 0& & vu-N g N(W2 zMRxe g;N-^ 0 NFO S6^- N \;N-^2 0 0(0& & R0WjY v.z.z N ;N-^ bk N R \a 0 0(0(W2 Y!k-N S;N-^ 0 0(ction on 18 January 2005. AUTONUMOUT In the Statement of Claim (), the plaintiffs pleaded that the Words referred to and were understood to refer to them. They then pleaded in paragraph 7 of the SOC the various meanings that the Words in their ordinary and natural meaning or alternatively, in their inferred meaning, meant and were understood to mean AUTONUMOUT The plaintiffs complained that by reason of the publication of the Words, they have been injured in their reputation and have been caused acute distress and hurt to their feelings. They asked for an injunction, damages including aggravated damages and an apology. AUTONUMOUT The defendant raised a number of points in the Amended Defence. AUTONUMOUT First, while the defendant admitted that the words volunteer governors in Paragraphs 6 and 8 of the Words were understood to refer to the plaintiffs, she did not admit that Paragraph 7 referred to them. AUTONUMOUT Second, the defendant made no admission to the ordinary and natural meaning or the inferred meaning of the Words as contended in paragraph 7 of the SOC. AUTONUMOUT Third, the defendant denied that the Words were defamatory. AUTONUMOUT Fourth, the defendant raised the defence of justification if the Words bore or meant or understood to refer to the plaintiffs and bear any of the meanings alleged in paragraph 7 of the SOC. However, on the 1st day of the trial, when Mr Ng, appearing for the plaintiffs was opening their case, Mr Kwan, counsel for the defendant, R0WjY v.z.z N In reply to the defence of qualified privilege, the plaintiffs pleaded malice. They alleged that the defendant used the occasion to publish the Words out of spite or animosity against them and with an intent to injure them or arouse controversy. Further, the defendant did not honestly believe that the Words or what was meant by them were true or she was reckless as to whether or not they were true or false. E. The trial AUTONUMOUT At the trial, the parties gave oral evidence and called various witnesses (Woodas), who first joined SPS in October 2000 and was a governor of the Board at the material times;

- (3) Joe, a medical doctor by profession and a member of SPS since 1999; and
- (4) Alice, a member of SPS since 1995. AUTONUMOUT For the defendant, the witnesses are :
 - (1) David;
 - (2) Mr Betty Lee Ha (Betty), a member and group leader of SPS;
 - (3) Mr Wong Kwok Hing (Wong), a chief inspector of police, who gave evidence in his personal capacity; and

(4) James. The defendant also adduced by way of hearsay notice a statement of Ms Wong Kwai Po (Pearl), a member and group leader of SPS (Pearl s Statement). AUTONUMOUT The parties and their witnesses all adopted their witness statements as evidence-in-chief. AUTONUMOUT I digress to make three general observations. First, the parties have given and adduced evidence on various events, which gave rise to a number of factual disputes. Some factual disputes are either irrelevant to the central issues or of peripheral significance only. For present purposes, I will not dwell on those matters, although I have already considered all the evidence with care before arriving at my determination on the central issues. Second, as will be seen in a moment, it is common ground that Leeling, as the program manager, was responsible for the daily administration of SPS. The defendant gave evidence on Leeling s conduct on certain important events. But she had not called Leeling to corroborate her evidence. There is no explanation as to why the defendant did not do so. That being the case, I will approach what the defendant has said about Leeling with extra caution. Third, both Mr Ng and Mr Kwan have made lengthy submissions. I have carefully considered all their submissions although I will not discuss every single point taken by them in this judgment. AUTONUMOUT I now turn to the central issues on liability. II. CENTRAL ISSUES ON LIABILITY AUTONUMOUT The central issues on liability arising from the pleadings are :

- (1) Whether the Words are referable to the plaintiffs?
 - (2) Whether the Words bear the meaning as contended by the plaintiffs?
 - (3) Whether the Words are defamatory?
 - (4) If yes :
 - (a) Whether the defence of justification is established?
 - (b) Whether the defence of qualified privilege is established?
 - (5) If the answer to Issue (4)(b) is yes, is the defence of qualified privilege nevertheless defeated by malice? AUTONUMOUT The scope of Issue 4(a) is now subject to the abandonment of the defence of justification as noted in paragraph 21 above. AUTONUMOUT I now proceed to deal with the issues in turn. III. ISSUE (1) REFERENCE TO THE PLAINTIFFS AUTONUMOUT As noted, the defendant admitted that Paragraphs 6 and 8 were referable to the plaintiffs but made no admission as to Paragraph 7 on this point. AUTONUMOUT On the first day of the trial when Mr Ng was opening the plaintiffs case, Mr Kwan indicated that the allegation in Paragraph R0WjY v.z.z N n as to Paragraph 7 can possibly stand. And there can be little doubt from the evidence that Paragraph 7 did refer to the plaintiffs. I accordingly find that Paragraph 7 referred to the plaintiffs as well. AUTONUMOUT This disposed of Issue (1). IV. ISSUE (2) MEANING OF THE WORDS AUTONUMOUT As noted, the meanings of the Words as contended by the plaintiffs are set out in paragraph 7 of the SOC, which read :
- (1) The plaintiffs are irresponsible and not performing their proper duties to SPS.

- (2) The plaintiffs are colluding with each other to level accusations at the defendant.
- (3) The plaintiffs are power-hungry and are colluding with each other in a series of inappropriate and illegal tricks to remove the defendant from the position of chairperson of SPS.
- (4) The plaintiffs are colluding with each other in a series of inappropriate and illegal tricks to get themselves appointed as chairperson of SPS.
- (5) The plaintiffs have spread rumours and slanderous statements in order to undermine the coherence and quality of services of SPS.
- (6) The plaintiffs have made malicious slanders about the defendant that seriously affected her health which eventually forced her to resign as chairperson of SPS. AUTONUMOUT Kwan did not accept that the Words carried all the meanings as ascribed by the plaintiffs. He only accepted the following :
 - (1) the plaintiffs did not perform their function as volunteer governors;
 - (2) the plaintiffs made a series of allegations against the defendant;
 - (3) there were power struggles involving inappropriate and unlawful plans;
 - (4) there were rumours and slanders which would harm SPS and the people it served;
 - (5) there were repeated accusations by the plaintiffs against the defendant; and
 - (6) the defendant decided to resign as chairperson. AUTONUMOUT The applicable legal principles for determining the natural and ordinary meanings of allegedly defamatory words are well established. They may be briefly stated as follows. AUTONUMOUT First, the words complained of in a libel action are to be construed in their natural and ordinary meaning, i.e. in which reasonable people of ordinary intelligence, with the ordinary person's general knowledge and experience of worldly affairs, would be likely to understand them. The question is what would the words convey to the mind of the ordinary, reasonable, fair-minded reader? See Gatley on Libel and Slander, 10th Edn, para. 3.15 at pp. 92 and 93. AUTONUMOUT Second, the ordinary and natural meaning of words may be either the literal meaning or it may be implied or inferred or an indirect meaning; any meaning that does not require the support of extrinsic facts passing beyond the general knowledge but is a meaning which is capable of being detected in the language used can be part of the ordinary and natural meaning. The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge, and not fettered by any strict legal rules of construction would draw from the Words : Jones v. Skelton [1963] 1 WLR 1362, per Lord Morris at pp. 1370-1371, quoted in Gatley, para. 3.16 at p. 94. AUTONUMOUT Third, it is necessary to take into consideration, not only the actual words used, but the context of the words and the persons to whom the communications were made : Nevill v. Fine Arts & General Insurance Co. Ltd [1987] AC 68, per Lord Halsbury LC at p. 72. AUTONUMOUT With the above principles in

mind, I look at Paragraphs 6 to 8 in turn. AUTONUMOUT In Paragraph 6, two imputations plainly arose. First, the plaintiffs had failed to discharge their function as governors of the Board to perform conciliation but led mass resignations instead. Second, they had laid many wrongful accusations against the defendant as chairperson. Although the word wrongful was not used in Paragraph 6 to describe the accusations laid against the defendant, when Paragraph 6 is read together with Paragraph 7 where constant rumours and slanders and Paragraph 8 where malicious slanders were used, the accusations referred to therein must mean wrongful accusations. AUTONUMOUT In Paragraph 7, two imputations also arose. First, the plaintiffs had used or were involved in a series of inappropriate and illegal tricks to seize power. Second, the plaintiffs had spread rumours and malicious slanders against the defendant, threatening to undermine SPS's coherence and quality of services.

AUTONUMOUT In Paragraph 8, two imputations similarly arose. First, the plaintiffs had slandered the defendant maliciously. Second, the defendant was at the AGM mentally and physically exhausted partly because of the plaintiffs' malicious slanders. And because of her mental and physical condition, the defendant decided to resign. AUTONUMOUT To sum up, I find the following imputations arose out of the Words on a natural and ordinary meaning :

- (1) The plaintiffs had failed to perform their function as governors, having failed to conciliate but led mass resignation instead (the 1st Imputation).
- (2) The plaintiffs had spread rumours and malicious slanders and laid wrongful accusations against the defendant as chairperson of SPS (the 2nd Imputation).
- (3) Such rumours, malicious slanders and wrongful accusations threatened SPS's coherence and quality of service (the 3rd Imputation).
- (4) Such malicious slanders partly contributed to the plaintiff's mental and physical exhaustion, which led to her decision to resign at the general meeting on 7 August 2004 (the 4th Imputation).
- (5) The plaintiffs had used or were involved in a series of inappropriate and illegal tricks to seize power (the 5th Imputation). AUTONUMOUT For completeness, I note that the substance of the 1st to 5th Imputations is the same as those pleaded in paragraph 7 of the SOC, although the expressions do not exactly tally with one another. V. ISSUE (3) WHETHER THE WORDS ARE DEFAMATORY? AUTONUMOUT Generally speaking, a defamatory imputation is one to the plaintiff's discredit; or which tends to lower him in the estimation of others; or causes him to be shunned or avoided; or exposes him to hatred contempt or ridicule : see Gatley, para. 2.1 at pp. 28-29; applied by Cheung J (as he then was) in *Drummond v. Kwaku* [2001] 1 HKLRD 604, at p. 629C-E. AUTONUMOUT Kwan argued that the 1st to 4th Imputations may not necessarily lower the plaintiffs in the estimation of right-thinking members of society generally. With respect, I disagree. The sting of the 1st Imputation is that the conduct of the plaintiffs, who had failed to discharge their functions as governors in such circumstances, is either irresponsible or dishonourable. This is plainly defamatory : see Gatley, para. 2.19 at p.

50. The 2nd to 4th Imputations in essence say that the plaintiffs were libellers, slanders and scandalmongers. The 3rd and 4th Imputations then respectively state the consequences of the plaintiff's wrongful conduct of spreading rumours, wrongful accusations and malicious slanders :
- (a) it threatened the coherence of SPS and the quality of its service; and it adversely affected the defendant's health. These imputations are plainly defamatory : see Gatley, para. 2.19 at p. 49. AUTONUMOUT Kwan conceded that the 5th Imputation is defamatory. His concession must be right and is consistent with authorities : see e.g. Australian Consolidated Press Ltd v. Bond, 56 ACTC 14 and Lee Man Kin v. Wang Mei Chun & Others, HCA2876/2003, unreported, 19 August 2005, Deputy Judge L. Chan. AUTONUMOUT For the above reasons, I find that each of the 1st to 5th Imputations is defamatory. VI. DISCUSSION OF THE EVIDENCE A. An overview AUTONUMOUT A proper determination of Issues
- (4) and (5) requires findings to be made on facts, some of which are hotly disputed. A fuller discussion of the evidence is therefore in order. To preface the discussion, an overview of the major events is set out below. Date Events April/May 04 SPS recruited police volunteers. May/June 04 Differences about the 36th Volunteer Training Preparatory Training Course Session for police and non-police volunteers (the 36th Training Session) arose. 17 24/6/04 Members of the TC and BSC, including the plaintiffs, resigned. The 1st plaintiff issued a resignation declaration on behalf of all resigning members dated 24/6/04 (the Resignation Declaration). 23/6/04 A preparatory meeting for the trainers of the 36th Training Session was held (the Preparatory Meeting). 24/6/04 The 36th Training Session began. 25/6 18/7/04 The defendant went on leave. [0(}%`|Tr| 0(rector of SPS and expel those who are causing trouble David's Email). 7/8/04 The AGM was held. Right after the AGM, members, including the plaintiffs and the defendant, stayed behind and had a review meeting (the Review Meeting). The Board also held its meeting (the 7/8/04 Board Meeting). 20/8/04 The plaintiffs' membership was terminated at the urgent Board Meeting (the 20/8/04 Board Meeting) held at David's office. 21/8/04 The defendant issued the Open Letter to all members of SPS. 27/8/04 An announcement meeting was held in which Leeling and the defendant explained to concerned members why the plaintiffs' membership was terminated (the Announcement Meeting). AUTONUMOUT I now come to the evidence. B. Recruiting police volunteers AUTONUMOUT In about April or May 2004, a proposal was made to recruit police volunteers. On 3 May 2004, the 1st plaintiff, the defendant, Leeling and another staff member met with representatives of the police. Shortly before the meeting, there was a short discussion between the 1st plaintiff and the defendant in which he raised his concerns. It is the defendant's case that the 1st plaintiff was concerned that the police volunteers would hijack SPS and that they joined SPS for enhancing their promotion prospect. The 1st plaintiff's case is that he welcomed the police recruits but he was concerned about the training method. AUTONUMOUT I will return to this aspect when I come to the question of malice. C. Differences over the 36th Training Session AUTONUMOUT The response from the police volunteers was good. For the first time, about a group of 40 police recruits would join the 36th Training Session, which was to commence on 24 June 2004. AUTONUMOUT Various

members of the TC and BSC disagreed with the staff as to how to conduct the 36th Training Session. I need not dwell on details. In gist, the staff proposed a segregated training for police and non-police recruits. Some members favoured a joint training. At the joint meeting held by the TC and BSC on 16 June 2004 (the Joint Meeting), attended by eight members including the plaintiffs, it was unanimously agreed that the police and non-police recruits were to be trained together at one venue. AUTONUMOUT It is the undisputed evidence of the plaintiffs that after the Joint Meeting, on 17 June 2004, Ming conveyed the proposals of the Joint Meeting to Leeling and asked her to implement them for the 36th Training Session but she refused. The staff then issued a notice stating, among other things, that the proposals reached at the Joint Meeting had aroused comments and from individual volunteers. It then set out a so-called Win Win Situation proposal made by the staff.

AUTONUMOUT The plaintiffs and some other members of the TC held a further meeting with the staff including Leeling on 19 June 2004. The staff insisted on having the separate training. AUTONUMOUT On 23 June 2004, the Preparatory Meeting was held. It is the 2nd plaintiff s evidence that the staff told the trainers that the separate training would be adopted and that the mode of separate training was approved by both the TC and BSC. She was very upset by the staff s lie. She together with Alice and Wong immediately told the meeting that that was not the case. Alice and Wong also said that they were very disappointed and told the meeting that they had already resigned from the BSC

AUTONUMOUT Betty also attended the Preparatory Meeting. Her evidence is that the Meeting was very chaotic. Different members had different views and the views of the TC did not necessarily represent all the members. The staff said that different members had different views over the training method and that TC though that the best way was to have a joint training. Betty recalled that when she came into the meeting she heard that a member was reading out his/her resignation and her attention was focused on the resignation. Under re-examination, she said the Resignation Declaration (which was dated 24 June 2004) was read out at the Meeting. AUTONUMOUT On balance, I prefer the 2nd plaintiff s evidence to Betty

- s. If what Betty said were correct, then the staff was just reporting the differences to the trainers. That would not have so upset the 2nd plaintiff, Alice and Wong and, as will be seen later, prompted the plaintiffs to resign from the TC. Further, I am unable to accept Betty s evidence, which only came about in re-examination, that the Resignation Declaration was read out at the Preparatory Meeting . I think Betty had probably confused the Resignation Declaration with what Alice and Wong said about their resignations at the Meeting. AUTONUMOUT For completeness, I will deal with a point raised by the evidence of the defendant, James and Betty, which is this. They all said in their witness statements that members of SPS had different views on the mode of training for the 36th Training Session and the rejection of the plaintiffs proposal came not only from the staff but also those members involved in the 36th Training Session, which on the evidence before me must mean members of the TC and BSC. And it is the defendant s case that the 1st plaintiff had failed to refer the disputes between members over the training method to her as

chairperson under the SPS's Constitution for determination. His failure was given by Leeling at the Announcement Meeting (held on 28 August 2004) as one of the reasons why the 1st plaintiff's membership was terminated. However, even on their own evidence, the only member of the TC and BSC who might have different views on the training method was Horace. Under cross-examination, both the defendant and James said that only Horace had different views. (But it should be noted that at the Review Meeting, Horace said that he agreed with the decision of the Joint Meeting albeit with some reluctance.) Betty said that members of TC and BSC did not have different views over the training method. In any event, there is no evidence to suggest that the difference between Horace and other members of TC and BSC, if any, warranted a reference to the defendant as chairperson for determination. AUTONUMOUT Accordingly, I reject the evidence of the defendant, Betty and James that the plaintiffs' proposal on the training method for the 36th Training Session was rejected not only by the staff but also by SPS members as alleged. It follows that the purported reason for terminating the 1st plaintiff's membership on the ground that he had failed to refer to the defendant the alleged differences between members over the 36th Training Session cannot possibly stand. D. The resignations AUTONUMOUT It is the plaintiffs' evidence that the staff's conduct had invariably caused a breakdown of working relationship of the committee members and the staff. What followed was a series of resignations of the members. AUTONUMOUT On 17 June 2004, shortly after he had met with Leeling who refused to carry out the proposals of the Joint Meeting, Ming resigned from all the positions he held in SPS including that in the nZi0W]/f1u S Nckvu 0(Wdk O_N!q ve\L S0RiQMO v& & 0 wanted to resign. The 1st plaintiff said he would call other members of TC and informed them of what the staff had done at the Preparatory Meeting. On 24 June 2004, the 1st plaintiff told the 2nd plaintiff that he and other members of TC (Joe and Cynthia) would also resign. He asked if a resignation declaration should be issued. The 2nd plaintiff agreed and asked him to issue one for all others. The 1st plaintiff then issued the Resignation Declaration. AUTONUMOUT Thus as at 24 June 2004, all the three members of the BSC and four out of the six members of the TC had resigned. AUTONUMOUT Despite their resignations, all the resigning members except Ming continued to take part in the 36th Training Session. In particular, the 1st plaintiff was responsible for team leading in seven out of the nine sessions of the preparatory course and had acted in the capacity as a trainer to train all team members in two out of the seven sessions. In the end, the 36th Training Session was successfully completed. AUTONUMOUT The defendant has not adduced any evidence that is capable of contradicting the plaintiffs' evidence on the resignations as summarized above. But she said the plaintiffs leading the resignations referred not to the date of the resignations but their power to influence others. This is a new allegation which arose during her oral testimony. In any event, it has no substance at all. For the evidence clearly shows that the resigning members made up their mind on their own. They were not influenced by the plaintiffs as alleged. AUTONUMOUT I accept the plaintiffs' evidence and find that they and other members of the TC and BSC resigned because of the breakdown of the working relationship between the members and the staff and that they had not led the mass resignation as alleged. AUTONUMOUT Kwan sought to rely on two matters to support the defendant's case

that the plaintiffs led mass resignations. He first relied on Betty's evidence that the Resignation Declaration was read out at the Preparatory Meeting. This I have already rejected. He next submitted that the decision of some resigning members to resign before the plaintiffs had to be considered against the background that the plaintiffs were members of the Board and were looked upon as leaders amongst volunteers. Alice said she asked the 1st plaintiff to announce the resignations because he was senior. And the Resignation Declaration was issued in the 1st plaintiff's name. In my view, even accepting that the plaintiffs were respected because of their position and seniority in SPS, it is not evidence that capable of proving directly or otherwise that they had led mass resignations as alleged. I can see no substance in Mr Kwan's submission at all. E. When the defendant became aware of the resignations AUTONUMOUT The parties hotly disputed as to when the defendant came to know about the resignations and read the Resignation Declaration. The plaintiffs case is that the defendant was made aware of the resignations on 24 June 2004. The defendant's case is that she only became aware of the same on 19 July 2004 when she returned to Hong Kong from leave. Their evidence is summarized below. AUTONUMOUT On 24 June 2004 at 15:06, the 1st plaintiff emailed a copy of the Resignation Declaration to Leeling, copied to the defendant (the 24/6/04 Email). The 24/6/04 Email was sent to the defendant's email address at SPS (the Chairperson Address) and EPD (the EPD Address). After sending the email, the 1st plaintiff called the defendant at her direct line and had a conversation with her. What the parties had said is in dispute. AUTONUMOUT The 1st plaintiff said that he informed the defendant about the resignations of the committee members and told her that he had already emailed her the Resignation Declaration. AUTONUMOUT The defendant said that the 1st plaintiff told her that he had sent an email to her and asked if she had read it. She said she did not have time as she was busy at work/ meetings. The 1st plaintiff had not told her about training problems but just asked her to read the email when she was free. The telephone conversation was very short as she was in a hurry to a meeting. The 1st plaintiff did not tell her what the email was about or that it was urgent. As she was talking to the plaintiff, she glanced at the computer screen but did not notice any pop-up suggesting the existence of incoming mail. She then left her office for the meeting and did not go back that day. AUTONUMOUT The defendant further explained that the Chairperson Address could only be accessed at the SPS office in Tung Tau Estate. She had never sent or received emails via that Address. However, SPS's staff had established an autolink so that emails to the Chairperson Address would be re-directed to the EPD Address. Sometimes, there were problems with the autolink. Further, she could only read emails sent to the EPD Address at her office. But there were occasions where the emails to the EPD Address were not received instantaneously because of delay in the network system from the EPD headquarters to her regional office. AUTONUMOUT The defendant went on to say that later that evening, Leeling called her and informed her that the agenda for the coming AGM was resolved and ready to be issued. When the defendant inquired about the 24/6/04 Email, Leeling said that it was about training and everything was under control and the training would start that evening. The defendant was given the impression that all was well and running smoothly. AUTONUMOUT Separately, it is the 2nd plaintiff's evidence that on 24

June 2004, when she called the defendant to discuss about the agenda for the AGM, she took the opportunity to tell the defendant about the resignations. The defendant said that the 2nd plaintiff discussed with her about the agenda only. AUTONUMOUT Between 25 June and 18 July 2004, the defendant went on leave. It is her evidence that for most of that period, she was not in Hong Kong and could not read emails. She put aside all matters concerning SPS. When she returned from leave on 19 July, she discovered there had been disputes and mass resignations on 24 June 2004. It was only then that she read the 24/6/04 Email. (At the Announcement Meeting, the defendant said that she was not aware of the events until Patrick, a volunteer, called her after her return from leave.) After she found out the truth, she scolded Leeling for lying to her on 24 June 2004. Leeling then said that she could deal with the matter as she had persuaded volunteers to carry out the training. According to the defendant, Leeling was covering up rather than outright lying. AUTONUMOUT I have carefully considered the evidence. On balance, I accept the plaintiffs evidence that they told the defendant about the resignations at the telephone conversation they each had with the defendant on 24 June 2004. In light of the importance of the resignations, it is only reasonable for them to do so. On the other hand, I am unable to accept the defendant's evidence for a number of reasons. AUTONUMOUT First, the resignations of the committee members, including the plaintiffs who were dedicated and experienced volunteers, at the eve of the 36th Training Session, were plainly an acutely important matter. James even said in evidence that it was unprecedented in SPS's history. If not properly addressed, the repercussions and damage to SPS would be very serious indeed. The defendant as chairperson should be informed of the same forthwith. It is simply incredible for Leeling, a senior staff member of SPS responsible for its daily administration, to have lied to the defendant or covered up the matter when she asked about the 24/6/04 Email on 24 June 2004. AUTONUMOUT Second, when Leeling received the 24/6/04 Email in the afternoon, she was fully aware of the fact that it had already been copied to the defendant. Once the defendant read the Email herself, she would find out what had actually happened. Any lie or covering up by Leeling could be easily exposed. Would she lie to the defendant or cover up the matter in such circumstances? I think probably not. AUTONUMOUT Third, the defendant's allegation that she had not read the 24/6/04 Email until she returned from leave on 19 July 2004 does not sit well with other emails exchange between 27 and 30 June 2004. AUTONUMOUT It is the undisputed evidence of the 2nd plaintiff that on 27 June 2004 at 23:57, she sent to the defendant an email (the 27/6/04 Email) attaching the amended minutes of the 4th Board Meeting at the Chairperson Address. On 28 June 2004, an email purportedly sent by the defendant from the email address Administration (SPS) the Administration Address) attaching the revised minutes addressed to Leeling was sent to members of the Board including the plaintiffs (the 28/6/04 Email). By the 28/6/04 Email, Leeling was asked to send the minutes to members of the meeting. The 2nd plaintiff said after receiving the 28/6/04 Email, she responded by sending an email on 30 June 2004 (the 30/6/04 Email) to the defendant at the Chairperson Address. AUTONUMOUT The defendant said that the 27/6/04 Email was sent to the Chairperson Address which would have been directed to the EPD Address. But as she was on leave, she could not read the 27/6/04 Email or

the minutes attached at the time. She further said that had not sent out the 28/6/04 Email. The Email was sent out from the Administration Address. According to her understanding, one needed the password to have access to the computer located at the SPS Centre in Tung Tau Estate and she did not have the password. She did not go to the SPS office during her leave and she had never used the SPS computer. Thus it seemed that somebody else had used her name to send it out. In any event, the amendments to the minutes could not have been made by her as she was not familiar with typing Chinese words and her practice was to make a handwritten version and then send them by fax to SPS for passing on to the 2nd plaintiff. Looking at the amendments, the defendant thought that they were made by somebody familiar with the shifts and duties of the volunteers. AUTONUMOUT As to the 30/6/04 Email, the defendant said that after she came back from leave, there were lots of emails. She only read the minutes attached but did not pay attention to the emails.

AUTONUMOUT On the evidence before me, I fail to see why anyone would have in the name of the defendant revised the draft minutes prepared by the 2nd plaintiff, sent out the 28/6/04 Email and directed Leeling to forward the revised minutes to members as if he/she were the chairperson of SPS. Further, such conduct is highly improper and disturbing. But no action whatsoever had been done to follow it up. That is simply incredible. I reject the defendant's evidence that she had not read the 27/6/04 Email and that she had not sent out the 28/6/04 Email. AUTONUMOUT In my view, the 27/6/04 Email and the 28/6/04 Email demonstrate beyond doubt that the defendant had access to her email address, be it the Chairperson Address or the EPD Address, on 27 and 28 June 2004 and that she had utilised her email address at the time. By that time, the 24/6/04 Email (attaching the Resignation Declaration) must have already arrived at both Addresses. And the defendant must have read the 24/6/04 Email by then (even assuming that she did not do so on 24 June 2004). In other words, the allegation that she only read the 24/6/04 Email and learnt about the resignations on 19 July 2004 is, in light of the 27/6/04 Email and the 28/6/04 Email, demonstrably false. This is why the defendant had to and did lie about those Emails. AUTONUMOUT Fourth, the defendant's case does not sit well with subsequent email exchanges between her and the 1st plaintiff in July and August 2004. AUTONUMOUT The 1st plaintiff recorded in an email dated 6 July 2004 (the 6/7/04 Email) that he had informed the defendant about the resignations by telephone on 24 June 2004. In her email reply dated 23 July 2004, the defendant made no denial about this point. Under cross-examination, the defendant said that she did not directly deny this point in her email. But the truth is, there was no simply no denial at all. AUTONUMOUT The 1st plaintiff made another record about the telephone conversation on 24 June 2004 in another email dated 4 August 2004 (the 4/8/04 Email (P1)). To this email, the defendant made no reply at all. The defendant explained that when responding to the 1st plaintiff's emails, she would tackle the problems that seemed to her to be most important, that is, the resignations, rather than arguing point by point on every single issue. Further, at the Announcement Meeting, she did say that she became aware of the resignations only on 19 July 2004. AUTONUMOUT In my view, it was apparent from the 6/7/04 Email and 4/8/04 Email (P1), the 1st plaintiff was concerned about the defendant's lack of response since 24 June 2004 when he told her about the resignations. It is only reasonable for the defendant to

refute him if he had not told her about the resignations on 24 June 2004 as alleged. Further, her explanation that she would tackle with problems that appeared to be most important is inconsistent with her another email dated 31 July 2004 and sent out by Leeling on her behalf on 2 August 2004 (the 31/7/04 Email) where she refuted the 2nd plaintiff over, among other things, the 2nd plaintiff s allegation as to the tone used by the two of them at a telephone conversation on 28 July 2004, which does not seem to be an important matter. (I will return to those matters in Section F below.) AUTONUMOUT Finally, as to what she said at the Announcement Meeting on this point, I am of the view that it was simply self-serving. I will not attach any weight to it. AUTONUMOUT Kwan sought to rely on Pearl s Statement to support the defendant s case that the 1st plaintiff did not tell her about the resignations on 24 June 2004. Pearl said that the 1st plaintiff had on 24 June 2004 asked her to send a declaration to other trainers, which she agreed without asking for details. She thought it was only a routine matter. But when she received the Resignation Declaration that evening, she realized what it was. So she did not send it to other trainers. By email dated 25 June 2004, she told the defendant what had happened. Mr Kwan submitted that Pearl s email may be indicative of the 1st plaintiff s tendency to seek to allege he had said something which he never said, as in the case of his informing the defendant of the mass resignations in the telephone conversation on 24 June 2004. Mr Kwan proceeded on the assumption that what Pearl stated in her email was true. However, Pearl has not come to court to testify. The veracity of her version of the event has not been tested under cross-examination. I will not attach any weight to Pearl s evidence. On the other hand, the 1st plaintiff said that when he called Pearl, he had already told her that it was the Resignation Declaration. The 1st plaintiff was not shaken under cross-examination. I accept his evidence. Accordingly, I reject Mr Kwan s submission. AUTONUMOUT For these reasons, I find that the defendant had received the 24/6/04 Email on 24 June 2004; that the plaintiffs had told her about the resignations on 24 June 2004; that she was fully aware of the resignations by then and not until 19 July 2004 as alleged; and that she had read the 24/6/04 Email either on 24, 27 or 28 June 2004 and not 19 July 2004 as alleged. F. Calling of the 4/8/04 Board Meeting and the ensuing disputes AUTONUMOUT Pursuant to Rule 29 of SPS s Constitution, the secretary may call a board meeting upon the requisition of not less than one-third of all the members of the Board. AUTONUMOUT The 1st plaintiff said that after 24 June 2004, he had called the defendant s office and left message asking her to deal with the resignations. But he received no reply. He therefore sent the defendant the 6/7/04 Email. On about 8 July 2004, he discussed with other governors including the 2nd plaintiff and they decided to call an urgent Board meeting. AUTONUMOUT As noted above, on 23 July 2004, the defendant sent an email to reply to the 6/7/04 Email. AUTONUMOUT The 2nd plaintiff said that on 28 July 2004, she called the defendant three times but could not reach her. She left a message with her secretary. The defendant did not return her call. The 2nd plaintiff then proceeded under Rule 29 of SPS s Constitution and at 15:15 on 28 July 2004, sent an email to the Board members to call th N 0. that the Notice for the 4/8/04 Urgent Meeting was issued before there was any discussion or consultation with the defendant as to the date, the venue and the contents of the agenda. AUTONUMOUT At 15:55 on 28 July 2004, the defendant sent an email

to the 2nd plaintiff copied to the Board members, stating that she already had a commitment on 4 August 2004 and suggesting that the urgent board meeting be held on 7 August 2004. AUTONUMOUT The defendant then called the 2nd plaintiff at about 16:00 on 28 July 2004. The 2nd plaintiff said that the defendant insisted that the calling of the urgent Board meeting without her prior approval was disrespectful to her and the defendant was agitated. The defendant denied that she was agitated. She said she was just trying to discuss with the 2nd plaintiff and it was the 2nd plaintiff who cut her short by giving an excuse that she had an appointment with a doctor and hung up on the defendant in the midst of her enquiry. AUTONUMOUT On 29 July 2004, the 2nd plaintiff wrote an email to the defendant responding to her email dated 28 July 2004. Separately, two of the board members who had requisitioned the urgent board meeting had indicated by email dated 28 and 31 July 2004 that another date would be agreeable to them. AUTONUMOUT It is the 2nd plaintiff's evidence that on 31 July 2004 she made three telephone calls to the defendant at her direct line but there was no answer. She also called her office number. The handset was lifted but there was no sound and then the telephone was hung up. The defendant's evidence is that 31 July 2004 was a Saturday. Both she and her secretary were on leave. AUTONUMOUT On 31 July 2004, the defendant then issued the Clarification Letter to all Board members, members of the TC and BSC and the staff. There she stated yY(u }, { NF\ eZf N R-^KN N(Wdk Ndkb_ 0 0 On 1 August 2004, the 2nd plaintiff sent an email to the defendant, referring to the telephone calls she made to the defendant on 31 July 2004 and the message she left with her asking her to chair the urgent board meeting. The 2nd plaintiff also asked the defendant if she was not available on 4 August 2004, then when she would be available before 7 August 2004. The 2nd plaintiff said she needed to contact concerned members of TC and BSC once the date was confirmed. AUTONUMOUT By another email dated 2 August 2004 at 02:35, the 2nd plaintiff informed the defendant that a Board member would be available on 3 August 2004 (first choice) and 5 August 2004 (second choice). AUTONUMOUT On 2 August 2004 at 13:22, the defendant sent an email (dated 31 July 2004) to Leeling and asked her to forward the 31/7/04 Email attached to the Board members for her. In the 31/7/04 Email, the defendant dealt with the calling of the 4/8/04 Meeting, the 2nd plaintiff's email dated 29 July 2004 and the telephone conversation between the two of them on 28 July 2004. Leeling followed the direction accordingly. AUTONUMOUT At 17:17 on the same day, the defendant sent out another email to Leeling and asked her to send it out to all Board members. There the defendant replied to the 2nd plaintiff's email of the same date. She said 7 August 2004 was her preferred date. AUTONUMOUT On 4 August 2004, the 2nd plaintiff sent out an email at 02:15, responding to the 31/7/04 Email and the Clarification Letter which she received by mail (the 1st 4/8/04 Email (P2)). She pointed out that the calling of the 4/8/04 Meeting was legal pursuant to Rules 29 of SPS's Constitution. As to the reasons for calling the 4/8/04 Meeting, she referred to a letter she wrote to the defendant attached to the email (the Letter). The Letter basically set out the plaintiffs attempts to contact the defendant and the email exchange between the parties, which I have summarised above. AUTONUMOUT The 1st plaintiff sent the 4/8/04 Email (P1) at 09:24 on 4 August 2004 to support the 2nd plaintiff's calling of the 4/8/04 Board Meeting. He said that matters about the resignations should be

sorted out in advance of the AGM where queries about the resignations would most likely be raised. AUTONUMOUT The defendant said Leeling was very concerned about the plaintiff's decision to forge ahead with the 4/8/04 Board Meeting. She therefore asked Leeling to forward the Clarification Letter again in case some members had not received it. Leeling then i ;N-^ }%`|Tr| TNgckHQ NZf(TGP-N N(Wdk|Tr| T,gW & & O& & & ,g N;N-^ N(W8 & & vz k)R 0 0 h specifically reserved SPS's legal rights, was highly controversial. AUTONUMOUT The 2nd plaintiff responded by sending an email at 13:48 on 4 August 2004 (the 2nd 4/8/04 Email (P2)), querying why the defendant had to issue the Urgent Appeal to all members of SPS and stating that the Urgent Appeal 0 \-N [0. b \,{ vz k)R]Gw0R1\}Y u 0. [0. for the 2nd plaintiff as secretary to call the 4/8/04 Board Meeting under Rule 29 of SPS's Constitution. AUTONUMOUT Second, the whole purpose of the Clarification Letter, read objectively, is to stop the 4/8/04 Board Meeting. In her witness statement, the defendant said that she issued the Clarification Letter in order to avoid confusion about the meeting date. I am unable to accept this allegation. There is no confusion about the date. Unless and until it was changed, it would be held on 31 July 2004. The defendant also said that the agenda had a problem because the second item, which related to the resignation of Anna, should not be discussed by the Board in the presence of the resigning members of the TC and BSC. This the 1st plaintiff agreed under cross-examination. But plainly, the thrust of the Clarification Letter, read objectively, is to tell the recipients that the calling of the 4/8/04 Board Meeting had not been approved (to reissue the Clarification Letter, clearly indicates the defendant herself intended to use it to dissuade governors from attending the 4/8/04 Board Meeting. AUTONUMOUT In my view, the defendant's evidence on the date and agenda of the Clarification Letter is a mere afterthought made up to refute the plaintiffs case that she wanted to stop the 4/8/04 Board Meeting from taking place as intended by the plaintiff because she regarded the calling of that Board Meeting as being disrespectful to her and that she was offended by the plaintiffs persistence in go ahead with it as scheduled. AUTONUMOUT Third, I find that contrary to the defendant evidence, the Urgent Appeal was issued with her prior knowledge and approval. AUTONUMOUT As noted, the defendant said in her witness statement that Leeling issued the Urgent Appeal attaching the Clarification Letter. That is all what she had said about the Urgent Appeal in her witness statement. However, under cross-examination, she said for the first time that the Urgent Appeal was not authored by her and that it was sent out without her prior approval and knowledge. Leeling had not even discussed the contents of the Urgent Appeal before sending it out. The defendant first came to know about the Urgent Appeal only when she came back from a meeting on that day. She did not understand the contents. So she questioned Leeling about it. Leeling said she wanted to use the defendant's name in order to give the Urgent Appeal more weight. The defendant asked Leeling what she meant by reserving all legal rights. Leeling said as she had worked in other centers before, safety was a paramount concern and that she anticipated many concerned volunteers might come to the SPS centre which was not big enough to accommodate them. The defendant said she anticipated that volunteers might be concerned about what reserving all legal rights mean and Leeling should explain the reason should they query about it. As to why she did not respond to the 2nd 4/8/04 Email

(P2), the defendant said it was up to Leeling to undo what she had done. AUTONUMOUT The defendant s allegation that the Urgent Appeal was issued without her prior knowledge or approval does not withstand a moment of closer scrutiny :

- (1) While Leeling did say at the AGM that she drafted the Urgent Appeal for the defendant and she said at the Announcement Meeting that %`|Tr| 0, aintiffs whether by email or at the AGM, the Review Meeting or the Announcement Meeting that the Urgent Appeal was sent without her prior knowledge or approval, when it had caused much controversy among the members.
- (3) It also defies common sense for the defendant not to respond to the 2nd 4/8/04 Email (P2) but to leave the matter to Leeling for explanation, when any inaction on her part would most likely cause misunderstanding and unnecessarily tense her relationship with the plaintiffs further.
- (4) The first sentence of the Urgent Appeal expressly referred to the receipt of an email from the 1st plaintiff, which in the circumstance must mean the 4/8/04 Email (P1). The 4/8/04 Email (P1) was sent to the defendant at the EPD Address. The defendant initially denied that she had received the Email. She said Leeling got the Email and then called her. When further pressed, the defendant said that Leeling would check all the emails sent to the chairperson. This must be wrong in light of the fact that the 4/8/04 Email (P1) was sent to the EPD Address and not the Chairperson Address. There is simply no suggestion that Leeling had access to the EPD Address. The defendant was obviously making it up as she went along. Her evidence is also inconsistent with what took place at the Review Meeting. Leeling said that the defendant gave her the information in the 1st sentence of the Urgent Appeal. The defendant did not deny it there and then.
- (5) Given the importance of such allegation, it is simply incredible for the defendant not to mention it in her witness statement in the first place. This is no doubt a fabrication. I reject her allegation without any hesitation. AUTONUMOUT By issuing the Urgent Appeal, the defendant was determined and doing her best to stop the 4/8/04 Board Meeting from proceeding. She even resorted to the reservation of legal rights. Her and Leeling s explanation as to why legal rights had to be reserved is simply absurd. The intention of that paragraph is clear : SPS reserved all legal rights in connection with the 4/8/04 Board Meeting including those it might have against the plaintiffs who persisted in holding the 4/8/04 Board Meeting. In my view, the defendant and Leeling made up such a bad excuse at the time because they wanted to alleviate the damage done by the reservation. The defendant maintained it at the trial because she wanted to play down the effect of the reservation, which underlined her firm determination and intention at the time. AUTONUMOUT By issuing the Urgent Appeal to all members of SPS, the defendant had caused the dispute between her and the plaintiffs over the calling of the 4/8/04 Board Meeting to spill over to the members arena at large. On the evidence before me, this is clearly unnecessary and unwarranted. I can see no justification at all. For completeness, I wish to say this. Although no reliance has been placed on it to justify the action of sending the Urgent Appeal to all

members of SPS, the first sentence of the Urgent Appeal did say that the plaintiffs had sent notice to all members of SPS asking them to attend the urgent board meeting. That is wrong because they had only sent notice to the governors of the Board, those committee members of the TC and BSC who were involved in the 36th Training Session and the staff only. Under cross-examination, the defendant first said she came to know about the mistake for the first time when she was being cross-examined about it. But as early as 20 August 2004, at the Announcement Meeting, the 1st plaintiff or the defendant wanted to dissociate herself as much as possible from the Urgent Appeal because it clearly shows that she was determined and doing her best to prevent it from proceeding, which lends support to the plaintiffs case that she was offended by the calling of the 4/8/04 Board Meeting. And having given poor and incredible evidence, she has failed miserably in such attempt. AUTONUMOUT For the above reasons, I find that although the calling of the 4/8/04 Board Meeting was entirely legitimate even without her prior approval or knowledge, the defendant regarded it as being disrespectful to her and that she was offended by it and the plaintiffs persistence to proceed with the 4/8/04 Board Meeting despite her stated desire to hold the urgent board meeting after the AGM on 7 August 2004. G. The 4/8/04 Board Meeting AUTONUMOUT In the end, the 2/8/04 Board Meeting went ahead as scheduled but only the plaintiffs attended. H. The AGM AUTONUMOUT Chronologically, the next relevant event is David s Email (dated 3 August 2004). However, as will be seen in a moment, David s Email should be more conveniently considered together with the dismissal of the plaintiffs. I will therefore jump to the AGM held on 7 August 2004. AUTONUMOUT It is the defendant s case that shortly before the AGM, some gossip emails were circulating among the members. The emails produced as evidence in support of her case are emails between an anonymous member and Woodas. That member raised various matters against different members, including abuse of power and their intention of joining the coming election at the AGM. Woodas made a brief response. It is important to note that the matters mentioned by that member are not substantiated by any evidence before me. AUTONUMOUT It is also the defendant s case that shortly before the AGM, she knew that the 1st or the 2nd plaintiff had sent out a letter with chronology which is highly critical of her. But she was not aware of the contents by then. She did not recall having come across the letter and thought that she might have missed reading it when she was inundated with emails at the time. Horace told her roughly about the contents. On 12 August 2004, Leeling forwarded to her the 1st 4/8/04 Email (P2) with the Letter. AUTONUMOUT The defendant s evidence on this point is supportable by the fact that her email address did not appear as one of the recipients in the 1st 4/8/04 Email (P2). The 2nd plaintiff explained that when she sent the 1st 4/8/04 Email (P2), she was replying to Leeling s email sent out from the Administration Address on 2 August 2004 attaching the 31/7/04 Email. She was not aware that the defendant s email address was not included as one of the recipients . I note that this explanation only emerged in her oral testimony. But I find it reasonable and accept it. I fail to see any reason why the 2nd plaintiff had to deliberately send the Letter to others behind the defendant s back. I will return to the Letter when I come to the Announcement Meeting where the defendant sought to deal with the contents of the Letter in detail. AUTONUMOUT In her witness statement, the defendant said that she

knew that the plaintiffs wanted to kick her out of SPS. Even though what they had said about her in the Letter that they had circulated was untrue, she did not want to quarrel with them. She wanted to make peace with them, particularly when she had planned to resign after finding a suitable replacement. If the plaintiffs brought her down, the conflicts in SPS 0& & g`O0W W\$\vQ/f g}Y NsSBf VT{bT N0R`O N & & 0 e plaintiffs were involved in power struggles with a view to removing her from SPS. AUTONUMOUT The AGM proceeded peacefully. One of the matters discussed was the post of director. It is common ground that the post of director had been left vacant since Nancy left in June

2004. According to the minutes of the AGM, it was resolved [GR1u 0 0T rs relating to the resignations, the problems of communication, and the way forward to prevent future problems from recurring. At one stage, she said let bygones be bygones. The defendant s evidence is that causes of the problems were identified, and a working group to sort out details of the issues and work out guidelines was established. AUTONUMOUT Kwan submitted that when the conflicts seemed resolved and members were hoping to move on harmoniously, the plaintiffs suddenly raised their discontent about communication again and query about the content of the Urgent Appeal. This, counsel submitted, shows that they still harboured grudges against the defendant. With respect, I disagree. Having looked at the transcript of the Review Meeting carefully, I think it was fair for the plaintiffs to raise those matters in the course of reviewing the problems including those relating to Urgent Appeal. It cannot be said that their conduct shows that they harboured grudges against the defendant. AUTONUMOUT The 7/8/04 Board Meeting was held after the Review Meeting. The defendant, the 1st plaintiff and James were elected as chairperson, vice chairperson and secretary respectively. J. Terminating the plaintiffs membership AUTONUMOUT It would appear from the evidence, viewed objectively, that the disputes arising from the 36th Training Session, the resignations of the TC and BSC members, the calling of the 4/8/04 Board Meeting, the issue of the Clarification Letter and the Urgent Appeal should have come to an end after 7 August 2004. Regrettably, that was not the case. The matter took a sharp turn, which resulted in the dismissal of the plaintiffs from SPS at the 20/8/04 Board Meeting. AUTONUMOUT I would preface the discussion of the evidence pertaining to the plaintiffs dismissal by one observation. I am not concerned with the correctness of the decision to dismiss the plaintiffs. I need to deal with such evidence because it is important for two reasons : (a) they shed considerable light on the defendant s credibility; and (b) the defendant s conduct is relevant to the question of malice. AUTONUMOUT On the dismissal of the plaintiffs, the defendant had this to say in her witness statement after referring to the receipt of the 1st 4/8/04 Email together with the Letter on 12 August 2004
63. I was concerned about the flutter of criticisms, rumours, gossips, slanders among volunteers that habitually circulated in SPS, and it became particularly acute just before the 7 August 2004 AGM. I also bore in mind similar conflicts arose just before the previous AGM in November 2003, when there were election of volunteer members to the Board of Governors and the power struggle became intensified. Various statements showing concern reminded me of the confrontative situation in November 2003 such as:](WA N}Y a0R N*Y g&T g b _j ly

during the time of election of volunteers to the Board of Governors in November 2003 and recently, when slanders and accusations were made against one another could be unlawful. They also suggested that the whole process from the time in about the previous AGM in November 2003 to the recent events appeared to show hidden plans amongst various members or factions of members. Some pointed out to me that the two Plaintiffs, by leading the mass resignations, exacerbated the already power torn situation in SPS, disrupting gravely the harmony and unity; and that this action without consulting me first was a breach of the constitution.

65. I was urged to stop the fluster of rumours, slanders, and power struggle that became culture to SPS over the years, as this has seriously disrupted the harmony and subsequently affected the callers in need.
66. Various SPS staff and members complained about the behaviour of 1st and 2nd Plaintiffs to me. There was considerable pressure from various SPS members to terminate their membership. I felt very painful at that time. I condoned 1st and 2nd Plaintiff for making the various allegations against me. In fact, I had asked for their forbearance at the 7th August 2004 AGM. I had also decided not to raise issue with their insistence of holding the [4/8/04 Board Meeting].
67. All along, I had kept the SPS patron Mrs. Wendy Kwok and other Board members informed of the power torn situation and the need to inculcate a culture of love and forbearance in SPS, as can be seen in the various letters, emails to the patron, Mrs. Wendy Kwok and a Board members Marianna Cheng and other members and my reports.
68. I therefore sought the views of the patron, Mrs Wendy Kwok and her nephew [David]. The patron returned my call early afternoon on 19th August 2004. [David] agreed to be Director and terminate 1st and 2nd Plaintiffs membership and it was agreed to have an urgent Board Meeting . As the patron would be out of town the following week and she would like to be present at the meeting and so it was agreed to have the meeting on the next day. The venue was fixed at [David s] office.
69. On 20 August 2004, the meeting was delayed as we waited for the patron to arrive. Then [David] said we should start as his aunt was not a Board member and he could take care of business. In the middle of the meeting, the patron arrived. For her benefit, we recapitulated the business discussed and then continued the meeting. Board members in turn expressed their views about the termination of the 1st and 2nd Plaintiffs. The majority supported the termination. [David] as Director of SPS informed the board that he would sign the letters for terminating the membership of the 1st and 2nd Plaintiffs. The Board also approved that the Programme Manager would become the Deputy Director to assist the Director with the day-to-day running of the SPS Centre. AUTONUMOUT According to the defendant, one of the main reasons why the plaintiffs were dismissed was that they were involved in power struggles, which was R0WjY v.z.z N in the alleged power struggles. Mr Kwan, however, submitted that the defendant had an honest belief that they were so involved at the time.

Whether or not she had such honest belief relates to the question of malice. I therefore propose to deal with this aspect of the case when I come to Issue (5). AUTONUMOUT As noted, only the director has the power under SPS s Constitution to terminate membership of any member. And the post of director had left vacant since Nancy s departure in June 2004. The A [GR1u discussion at the AGM was only about the existence of the post and not whether to fill it. I have looked at the relevant transcript of the AGM, which is not conclusive. In gist, the defendant asked for views about the post of director. Discussions then followed. And the defendant concluded by saying that the post of director is mentioned in various parts of SPS s Constitution and that amending the Constitution need to be further considered. She suggested that the matter be discussed by the Board and then any proposal would be decided at AGM. It seems that the transcript lends support to the defendant s version. However, it is also a fact that the AGM did not decide to fill the post of the director there and then. In my view, the difference of the parties case does not really matter. What does is the fact that as at 7 August 2004 there was no urgency in appointing the director. Indeed, the defendant accepted under cross-examination that no one ever said at the AGM that it was urgent to fill the post of director. AUTONUMOUT However, what was not made known to the members at the AGM on 7 August 2004 is that David had already agreed on 3 August 2004 to be appointed as director. On 3 August 2004, the defendant called David, who was then in San Francisco, USA. David returned her call. They then discussed about the situation at SPS. In his oral testimony, David said that the defendant put forward the proposal that he assumed the position of director and released the duty of those causing trouble. He said he would consider. After the telephone conversation, David s Email was sent to the defendant at 21:52. The relevant part read Upon serious reconsideration, I would agree to be acting-Director of SPS and expel those who are causing trouble. If necessary, I will confront them in person. However, I will need plenty of evidence on hand so that I can be fully prepared. Although he did not name any persons in David s Email as the trouble makers, David said he had the plaintiffs in mind. Thus as at 3 August 2004, David had, upon the defendant s suggestion, agreed to act as director to dismiss the plaintiffs from SPS. AUTONUMOUT Significantly, the defendant made no reference to David s Email at all in her witness statement. She explained under cross-examination that it was because David s Email was not relevant or was relatively relevant only. This must be wrong. David s Email is undoubtedly highly relevant. It tends to undermine her case she only played a very reluctant role in dismissing the plaintiffs. (I will come back to this part of her case in a moment.) In my view, there is another reason why the defendant chose to distance herself from David s Email. In paragraph 68 of her witness statement, the defendant said David agreed to act as director on 19 August 2004. David s Email contradicts her evidence on two aspects : (a) the date on which David first agreed to act as director was 3 and not 19 August 2004; and (b) David agreed to expel the plaintiffs as early as on 3 and not 19 August 2004. AUTONUMOUT As noted, there was apparently no urgency to fill the post of director after the AGM on 7 August 2004. Then what was the justification for appointing David on 20 August 2004? Under cross-examination, the defendant said for the first time in these proceedings that there was chaos after the AGM and she need a director to resolve the chaos. She said she received a call from a senior police

officer called Charlie Cheung on or before 18 or 19 August 2004 that the 1st plaintiff called him and told him that police joining SPS was to hijack or control SPS and for promotion . The defendant said Cheung did not tell her when the alleged conversation took place. She further said she mentioned the alleged conversation with Cheung at the 20/4/04 Board Meeting. I have no doubt that this new allegation is a recent fabrication which she made up as she went along to justify the haste appointment of David. For completeness, I also note that in her re-examination, the defendant referred to what Leeling said at the Announcement Meeting. What Leeling said, however, does not assist her a bit. For Leeling said the 1st plaintiff called the responsible officer of the police volunteers raising his concerns about the police volunteers taking over SPS in mid July 2004. This is not evidence that the plaintiffs had caused chaos between 7 and 20 August 2004 as alleged.

AUTONUMOUT I am satisfied on the evidence before me that the main purpose of appointing David is to expel the plaintiffs. This is borne out by David s evidence on the defendant approaching him on 3 August 2004 and David s Email. Further evidence in support is that David was apparently not the best choice for director. For it is not in dispute that he was mainly responsible for fund raising. He did not attend board meetings regularly or take part in the daily administration of SPS. Upon his appointment, Leeling had to be appointed deputy director to assist him. AUTONUMOUT In his evidence, David said that he, some other board members and the plaintiff had a discussion about the situation of SPS on or about 17 August 2004. They had even explored the possibility of resolving SPS. That may well be true. But I do not think it has any bearing on the central issues before me.

AUTONUMOUT I now come to the notice calling the 20/8/04 Board Meeting (the Notice of the 20/8/04 Board Meeting). It was issued by James as secretary. And the defendant was aware of the contents before it was sent out. It only contained two items on the agenda

1. Problems on the Development of Volunteers.
2. A.O.B. It mentioned nothing about David s appointment or termination of the plaintiffs membership. These items gave the impression that the 20/8/04 Board Meeting would discuss some general and unspecific matters which no particular significance at the time.

AUTONUMOUT Some of the Board members, including the plaintiffs, did not attend the 20/8/04 Board Meeting. AUTONUMOUT On any view, the Notice for the 20/8/04 Board Meeting is misleading. This David readily accepted in his oral testimony. Initially, the defendant maintained that it was not misleading. She said they wanted to have an open discussion about the matter to see if other alternative existed. This is simply incredible. Finally, she had to and did admit that with hindsight the Notice was misleading.

AUTONUMOUT However, the defendant tried to justify the decision of not informing the plaintiffs about the actual business to be transacted at the 20/8/04 Board Meeting by resorting to : (a) it was not necessary to inform the plaintiffs about the decision to dismiss them under SPS s Constitution; and (b) the alleged practice of Samaritans to expel members without informing them. This is again in my view something that she made up as she went along. On any view, it was only fair to give the plaintiffs the right to be heard at the 20/8/04 Meeting. In the end, she accepted with hindsight that it would be fair to inform the plaintiffs

of the actual business of the 20/8/04 Board Meeting. AUTONUMOUT In my view, the way in which the Notice of the 20/8/04 Board Meeting was drafted was deliberate. It wanted to mislead the recipients as to the true purpose of the 20/8/04 Board Meeting. In the event that the plaintiffs chose not to appear, they could be expelled forthwith in their absence. And the defendant was fully aware of it. AUTONUMOUT I digress to make one observation. The way David dealt with the dismissal of the plaintiffs was, with respect, less than satisfactory. He was presented with the emails exchange between the parties by the defendant. He was briefed by the defendant on the situation of SPS, which must also include her disputes with the plaintiffs. He had however not heard from the plaintiffs. One would reasonably expect him to discuss with them about the matter before dismissing them. That he had done. David accepted that the Notice of the 20/8/04 Board Meeting was misleading in that it did not state that termination of the plaintiffs membership would be discussed. He also accepted that it would be unfair to the plaintiffs if they were dismissed without given an opportunity to be heard. He even expected them to have been informed of the proposal to appoint him as director and to dismiss them from SPS. He expected them to come to the 20/8/04 Board Meeting. As it turned out, the plaintiffs were absent. But David did not see it fit to adjourn the meeting to enable the plaintiffs to attend and to explain their case before other Board members. AUTONUMOUT I now return to the defendant s theme that she played a reluctant role in dismissing the plaintiffs. She defendant relied on a number of matters in support. AUTONUMOUT First, she said she agreed to such a course after she had taken advice from knowledgeable people. But she had been singularly unable to name the people that she had taken advice from. AUTONUMOUT Second, she said she had received complaints from various members about the plaintiffs behaviour and she was urged to take action. But what the plaintiffs had done all took place before 7 August 2004. The defendant herself said at the Review Meeting : let bygones be bygones. There is no evidence before me to suggest that the plaintiffs had since 7 August 2004 spread rumours or otherwise misbehaved themselves which justified their dismissal. Although the defendant received the Letter on 12 August 2004, it was sent out by the 2nd plaintiff back on 4 August 2004. It cannot possibly be evidence to show that the 2nd plaintiff had spread rumours or slanders against the defendant between 7 and 20 August 2004. As noted, she said for the first time under cross-examination that the plaintiffs had caused chaos to SPS. This I have already rejected. AUTONUMOUT Third, she said the decision to terminate the plaintiffs was only made at the 20/8/04 Board Meeting. But this is flatly contradicted by her own evidence in paragraph 68 of her witness statement (19 August 2004) and David s Email (3 August 2004). AUTONUMOUT Finally, she repeatedly said it was David s decision to expel the plaintiffs and not hers. Strictly it is correct that under SPS s Constitution, only David as director had the power to expel the plaintiffs. But the defendant had no doubt played an important role in the process. She approached David as early as 3 August 2004; she proposed to David that he should act as director to expel the plaintiffs; she briefed David about SPS s situation which must include her disputes with the plaintiffs; she provided with David the emails exchange between her and the plaintiffs; and she was aware of the contents of the Notice of the 20/8/04 Board Meeting before it was issued but acquiesced in its misleading contents. AUTONUMOUT

When the evidence pertaining to calling of the 4/8/04 Board Meeting and the dismissal of the plaintiffs, which I accept, is considered in the round, my findings are as follows. The defendant was so offended by the 2nd plaintiff's calling of the 4/8/04 Board Meeting and the plaintiffs insistence of forging ahead with it despite her stated intention to the contrary, that she had since harboured grudges and animosity against them. She then approached David as early as 3 August with a view to dismissing them from SPS. At the AGM and the Review Meeting on 7 August 2004, she acted as if she wanted to calm the disputes down. But actually she was continuing with her plan to procure the dismissal the plaintiffs from SPS without ado, which succeeded in the end. AUTONUMOUT For completeness, I will deal with the evidence of Mr Wong briefly. In his witness statement, Mr Wong seemingly has given evidence which tends to support the defendant's case. But when he was cross-examined about the details of his version of the events, he often said he could not remember or recall or that he had no knowledge. He also readily accepted that the story he was told by the defendant was one-sided and he had never contacted the plaintiffs, whom he did not know or meet before, to verify the story. In such circumstances, I agree with Mr Ng that his evidence is of little value. I will not attach any weight to it. K. The Open Letter AUTONUMOUT On 21 August 2004, the defendant issued the Open Letter to all members of SPS. As to why it was necessary to issue the Open Letter, the defendant said in her witness statement thus

71. A Notice of the Announcement Meeting was prepared and was sent out on 21st August 2004 together with a letter to SPS members. As the termination of the 1st and 2nd Plaintiffs had become well known in SPS and rumours were spread, it was necessary to stop such rumours by giving members the necessary information about the matters that had taken place in SPS. Accordingly, the Open Letter was issued with the Notice of the Announcement Meeting so that members had the opportunity to raise any question at the Announcement Meeting and I could clarify them. L. The Announcement Meeting AUTONUMOUT The Announcement Meeting was then held to explain to members the reasons for the termination. David did not attend. Leeling attended and explained the matter on his behalf. The defendant attended and gave her own views on the matters. After giving a speech on her feelings, she dealt with the Letter point by point by way of a transparency projected by an overhead projector. I do not think it is necessary to dwell on details. It is basically the plaintiffs version against the defendant's, which depends on their credibility. As I have demonstrated above, the defendant is a thoroughly bad witness. On the other hand, I find the plaintiffs truthful and reliable. They have given consistent and unshaken evidence. I therefore reject the defendant's version and accept the plaintiffs'. In any event, what the plaintiffs said in the Letter does not, in my view, amount to wrongful accusations, rumours or malicious slanders. The defendant had gone much over the top in so alleging. AUTONUMOUT I now turn to the defence of justification. VII. ISSUE (4)(A) IS THE DEFENCE OF JUSTIFICATION MADE OUT? A. The 1st Imputation AUTONUMOUT To recap, the 1st Imputation is that the plaintiffs had failed to perform their function as governors, having failed to conciliate but led mass resignation and made wrongful accusations against the defendant as chairperson of SPS

instead. AUTONUMOUT The defendant has to prove :

- (1) that the plaintiffs had failed to do conciliate; and
- (2) that the plaintiffs had led mass resignation. AUTONUMOUT As to (1), it is trite that the evidence that the defendant can lead in support of a plea of justification is governed by the particulars of justification; the ambit of admissible evidence will be defined by the content of these particulars : see Gatley, para. 33.9 at pp. 996-997. Mr Ng submitted that nothing in the particulars of justification pleaded by the defendant would justify the defamatory meaning that the plaintiffs were in breach of their function or duty to do conciliation. It is not even pleaded in those particulars that the plaintiffs had failed their duty in this regard. I agree. AUTONUMOUT As to (2), I repeat my findings in paragraph 72 above. AUTONUMOUT For these reasons, I find that the 1st Imputation is not justified. B. The 2nd to 4th Imputations AUTONUMOUT The 2nd to 4th Imputations can be conveniently dealt with together. As observed, they contain the common sting that the plaintiffs were libellers, slanders and scandalmongers, which the defendant must prove to be true. AUTONUMOUT The defendant relied on the emails exchange preceding the AGM and the Letter and her response made at the Announcement Meeting. I refer to my findings in paragraph 163 above and rule that she has failed to justify the 2nd to 4th Imputations. C. The 5th Imputation AUTONUMOUT As noted, the defendant no longer seeks to justify the allegation in Paragraph 7 of the Words that the plaintiffs were involved in ROWjY v. Z. Z N TONUMOUT I next come to the defence of qualified privilege. VIII. ISSUE (4)(B) IS THE DEFENCE OF QUALIFIED PRIVILEGE MADE OUT? A. Qualified privilege AUTONUMOUT For present purposes, the following statement of law is sufficient. A privileged occasion is occasion where the person who makes a communication has an interest, or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential. See Adam v. Ward [1917] AC 309 per Lord Atkinson at p. 334. AUTONUMOUT Ng submitted that the occasion in which the Open Letter was published was not an occasion of qualified because under SPS s Constitution, the chairperson has no power to dismiss any member. The power rests with the director. And the director is not obliged to give any reason for dismissal. Thus the defendant was not under any duty to explain to the members about the plaintiffs dismissal. He further submitted that whether there is a duty for a the purpose of qualified privilege is a question of law and it is therefore not sufficient that the defendant honestly believed that it was his duty to speak : see Gatley at para. 14.15 at p. 393. AUTONUMOUT I fully accept that under SPS s Constitution, the defendant is not under a legal duty to explain to members the reason for the plaintiffs dismissal. However, she as the chairperson was plainly under a duty, commensurate with her office and within the reasonable expectation of the members, to do so and the members had a corresponding interest in knowing the reasons for the dismissal, especially when the plaintiffs were long-serving, dedicated and senior members of SPS. In fact, what the defendant did was consistent with what happened when Bruce and Sheeta were dismissed from the Board in November 2003. At the AGM held on 17 January 2004, the defendant in her capacity as the chairperson did explain the reasons

for their removal from the Board, although she was not involved in the process of deliberation of their removal. AUTONUMOUT Ng next complained that it was unnecessary and unwarranted for the defendant to send the Open Letter indiscriminately to all members of SPS when the Announcement Meeting had already been fixed for the purpose of explaining to members why the plaintiffs membership was terminated. On the evidence before me, the plaintiffs dismissal had plainly aroused much controversy and concerns among many members. Many members might attend the Announcement Meeting. It was accordingly reasonable for the defendant to issue the Open Letter to all members before the Meeting. AUTONUMOUT For the above reasons, I find that the Open Letter was published on an occasion of qualified privilege. B. Irrelevant matters AUTONUMOUT Ng went on to submit that even if the occasion was privileged, it does not protect matter which is irrelevant to the occasion : Adam v. Ward, per Lord Loreburn at p.

340. He contended the 5th Imputation is irrelevant as is confirmed and supported by the fact that the defendant did not mention about any illegal or inappropriate plots on the part of the plaintiffs to seize power. AUTONUMOUT The test of relevance is not whether the statement complained of is strictly necessary for or logically relevant to the discharge of the duty or protection of the interest which is the foundation of the privilege. Where the statement has any reference to the subject matter of the privilege, or is in any way pertinent or germane to it, it is material only as evidence of malice to take the case out of the privilege : Gatley, para. 14.62 at p. 436. AUTONUMOUT Applying this test, I am of the view that it is cannot be said that the 5th Imputation is wholly unconnected with the theme of the Open Letter or that it is entirely irrelevant. The defendant was explaining in the Letter the reasons why the plaintiffs were dismissed, which included the 5th Imputation. AUTONUMOUT I reject Mr s submission. I next turn to the question of malice. IX. ISSUE 5 IS THE DEFENCE OF QUALIFIED PRIVILEGE DEFEATED BY MALICE? AUTONUMOUT The plaintiffs pleaded a total of 18 sub-paragraphs of particulars of malice in the Re-Amended Reply. In his closing submissions, Mr Ng categorized them under four grounds :

- (1) No honest belief in the truth of the defamatory statements or was reckless as to whether they are true or false.
- (2) The defendant published the Open Letter with improper motives.
- (3) Maintaining a plea of justification which is bound to fail.
- (4) Inconsistent or contradictory statements by the defendant and overt hostility towards the plaintiffs. AUTONUMOUT I will deal with them in turn. A. Absence of honest belief AUTONUMOUT In Harrocks v. Lowe, Lord Diplock said at pp. 140H-150C The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another, save in the exceptional case where a person may be under a duty to pass on,

without endorsing, defamatory reports made by some other person. Apart from those exceptional cases, what is required on the part of the defamer to entitle him to the protection of the privilege is positive belief in the truth of what he published or, as it is generally though tautologously termed, honest belief. If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false. But indifference to the truth of what he publishes is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true. The freedom of speech protected by the law of qualified privilege may be availed of by all sorts and conditions of men. In affording to them immunity from suit if they have acted in good faith in compliance with a legal or moral duty or in protection of a legitimate interest the law must take them as it finds them. In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value. In greater or in less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognize the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfection of the mental process by which the belief is arrived at it may still be honest, that is, a positive belief that the conclusions they have reached are true. The law demands no more. AUTONUMOUT Counsel s debate is very much focused on the question whether the defendant had the honest belief that the plaintiffs were involved in a series of inappropriate and illegal tricks to seize power. Mr Kwan submitted that she did by taking a number of points. For present purposes, I need only deal with the following matters relied on by Mr Kwan in order not to over burden this judgment, although I have already considered them all carefully. AUTONUMOUT Kwan referred to the defendant s allegation on the alleged power struggle within SPS which she first saw in November 2003 shortly after she joined SPS. The power struggle was allegedly led by two members called Bruce and Sheeta. But the undisputed evidence shows that Bruce and Sheeta were dismissed by reason of their misconduct. Nancy said in paragraph 6 of her witness statement v NvuL 0 0 is part of her evidence at all. Further, what Nancy said is consistent with the contemporaneous documents. In her email date 14 November 2003 to the defendant, Nancy asked her to sign the removal letter for expelling Bruce and Sheeta from the Board. Nancy mentioned nothing about power struggle at all. In the removal letter which was signed by all Board members including the defendant, again no allegation of power struggle was laid against Bruce and Sheeta. It stated that they were dismissed because of m PiQMO O& & 0 r, which does not support her case on power struggle. Further, when the defendant was asked to elaborate what power Bruce and Sheeta could seize, she only said that it had something to do with Nancy. This is of course false in light of Nancy s unchallenged evidence. I have no doubt that it is a recent fabrication. I reject the defendant s evidence. AUTONUMOUT I am not satisfied that there was power struggle back in November 2003 as alleged by the defendant. I agree with Mr s submission that the defendant made this up in order to boost her case that there had been power struggle that she needed to deal with after she became the chairperson and

that the plaintiffs were involved in such power struggle. AUTONUMOUT Kwan relied on the defendant's allegation that she knew that the plaintiffs wanted to kick her out of SPS. But there is no evidence to substantiate the allegation that the plaintiffs wanted to kick her out at all. I cannot see how the defendant could have honestly held such belief. AUTONUMOUT Kwan relied on the defendant's allegations on the plaintiffs' conduct to support her perception of their involvement in seizing power such as :

- (1) They had had led mass resignations in June 2004.
- (2) They kept her at the dark about the mass resignations and she only came to know about it on 19 July 2004.
- (3) The 2nd plaintiff deliberately did not send the Letter to her at the time.
- (4) The Letters contained false allegations against the defendant.
- (5) The plaintiffs had caused chaos to SPS. I have already rejected all these allegations. AUTONUMOUT Kwan referred to the defendant's oral evidence that the power that the plaintiffs wanted to seize took two forms. For formal power, the plaintiffs wanted to get rid of the defendant as chairperson. This I must reject in the absence of any supporting evidence. For informal power, the plaintiffs wanted to control and influence others to yield by using drastic measures like mass resignations and spearing untrue slanders against her. In light of my findings on those matters, there is simply no substance in this allegation at all. The defendant then referred to the allegation that the 1st plaintiff's worry that the police volunteers would take over SPS. She said the plaintiffs were afraid that their control and influence in SPS would be undermined. Whether or not the 1st plaintiff did say that he feared that police recruits joining SPS would take over SPS and they joined for promotion is disputed. If need be, I accept the 1st plaintiff's evidence that he did not. But even if he did, I fail to see how the defendant could have honestly read his concerns in the way as she did. In my view, it is a mere afterthought. AUTONUMOUT Kwan referred to certain events after the issue of the Open Letter as evidence to corroborate the defendant's case that there were power struggle before. He first referred to the Announcement Meeting and submitted that the power struggle became more apparent after the plaintiffs' dismissal. I have viewed the video clip of the Meeting and read the transcripts of the Announcement Meeting carefully. Members put questions to Leeling and the defendant about the plaintiffs' dismissal. In the middle of the Meeting, the plaintiffs were allowed to join. The atmosphere of the Meeting was certainly not friendly. Occasionally it was charged emotionally. But I fail to see how it supported any power struggle as alleged. Mr Kwan next referred to a purported EGM held on 25 September 2004 to release the defendant from all position in SPS. Obviously, the EGM was held because some members were extremely dissatisfied with the defendant's conduct in handling the plaintiffs. Again, I fail to see how one can reasonably regard that as power struggle. Finally, Mr Kwan referred to the defendant's evidence that at the end of 2004, a group led by Mr Albert Cheng, legislative councillor, tried to intervene in SPS's affairs. This may or may not be true. But it is not evidence that there was power struggle at the time

when the Open Letter was issued. AUTONUMOUT Kwan submitted that the defendant subjectively believed in the truth of the Words. I disagree. The evidence before me has overwhelming established that she either did not honestly believe in those wholly untrue statements or was reckless as to whether those statements were true or not when she published the Open Letter. See Lee Man King, per Deputy Judge L. Chan at para. 52 and Drummond v. Kwaku [2000] 1 HKLRD 604, per Cheung J (as he then was) at p. 645F-G. AUTONUMOUT She is guilty of malice on this ground. B. Improper motives AUTONUMOUT If a defendant publishes the defamatory words is guilty of malice if his sole or dominant purpose is to harm the plaintiff : see Gatley, para. 16.5 at p. 513. AUTONUMOUT I have already found that the defendant harboured grudges and animosity against the plaintiffs. She pretended at the AGM as if she wished to calm the things down but was actually proceeding with her plan to procure the dismissal of the plaintiffs. Then right after their dismissal, she issued the Open Letter. When her conduct is considered in the round, I am satisfied that she published the Letter which contained those untrue and defamatory imputations complained of with the dominant motive to air her personal animosity against them and to injure them. AUTONUMOUT Kwan asked me to take into account, among other things, the defendant s experience in voluntary work and her overall attitude in the whole saga. I did but remain firmly of the view that she had the dominant motive of injuring the plaintiffs when she published the Open Letter. AUTONUMOUT She is also guilty of malice on this ground. C. Maintaining the non-maintainable defence of justification AUTONUMOUT In Gatley, the learned editors said at para. 32.42 at p. As malice can be inferred from the defendant s conduct at any time, whether before or after publication, his actions during the course of litigation, and his demeanour and attitude at trial, may be relied upon as indicative of malice. Thus malice proved to have existed at the time of trial may well be believed to have existed at the time the words were published. It has been stated that the pleading of the defence of justification may be evidence of malice, but clearly this cannot be a general rule, as raising such a plea is consistent with a belief in the truth of the words, and it is probably only applicable where the defence is put forward recklessly, or with knowledge that it is unsustainable. The same approach should be adopted as regards persisting, unsuccessfully, with the plea of justification at trial: of itself, such conduct is not evidence of malice, but a jury may infer malice if the defendant refuses to withdraw the defence at trial having called no evidence to support it, or it is abundantly plain that the defamatory statement is untrue. AUTONUMOUT On the evidence before me, I am satisfied that the defendant put forward the defence of justification in relation to the 1st to 5th Imputations with knowledge that it is unsustainable. But she had withdrawn the defence on the 5th Imputation only. She is thus guilty of malice. D. Inconsistent or contradictory statements and hostility towards the plaintiffs AUTONUMOUT The learned editors of Gatley also said at para. 32.42, supra Answers given by the defendant in the course of his evidence at trial, and his demeanour in the witness box, displaying, e.g. overt hostility towards the plaintiff, can be urged upon the jury as indicating malice. So too, that the defendant has lied whilst giving evidence, but some caution should be exercised before basing a finding of malice on these grounds. AUTONUMOUT It will be sufficient to dispose of this ground by referring to the fact that,

despite her counsel's abandonment of the defence of justification on the allegation that the plaintiffs were involved in R0WjY v.z.z N

Conclusion

AUTONUMOUT For the above reasons, I rule that the defence of qualified privilege is defeated by malice. X. QUANTUM AUTONUMOUT I finally come to the question of quantum. The plaintiffs claimed for both general damages and aggravated damages. I will briefly discuss the applicable principles as follows. AUTONUMOUT In *Hung Yuen Chan Robert v. Hongkong Standard Newspaper Ltd* [1996] 4 HKC 519, Le Pichon J (as she then was) summarised the general principles for awarding general damages thus The objective is to restore the plaintiff, as far as money can do so, to the position he would have been in if the tort had not been committed. See *Duncan & Neill, Defamation*, op.cit para 18.04. Where there has been no retraction or apology, an order for damages is the only solatium available to the plaintiff. In the recent Court of Appeal decision in *Cheung Ng Sheong Steven v Eastweek Publisher Ltd* [1995] 3 HKC 601, it had to consider the question of damages for libel. It accepted (at p 613D-F) the submission that damages for libel must provide for several disparate elements, not only damage to esteem and reputation. They also must be sufficient to publicly and demonstratively and absolutely vindicate the plaintiff and to compensate for seriously injured feelings (*Yu Kwong Chu v Consolidated Newspapers Ltd* (A258/86, unreported) at p 30 not only caused by the original libel but all the subsequent aggravation thereof down to the verdict, which would restore the plaintiff pride and confidence (*McCarey v Associated Newspapers Ltd* (No 2) [1964] 3 ALL ER 947 at 958). They must enable the plaintiff to convince a bystander the baselessness of the charge if the libel driven underground, emerges from its lurking place at some future date (*Cassell & Co v Broome* [1972] 1 ALL ER 801). AUTONUMOUT In *Chu Siu Kuk Yuen v. Apple Daily Ltd* [2002] 1 HKLRD 1, Yuen J (as she then was) said at p. 124D-F that aggravated damages are still compensatory in nature. There the learned judge, having found no evidence of malice, did not award any aggravated damages. AUTONUMOUT The failure of the defendant to apologize or his persistence with the plea of justification may aggravate the damages : *Gatley*, para. 9.14 at p. 245; *Sutcliff v. Presdram Ltd* [1991] 1 QB 153, per Nourse LJ at p. 184E-F. AUTONUMOUT A plea of justification which is not made good at the trial may form the basis of an award of aggravated damages : *Mak Shiu Tong v. Yue Kwok Ying* [1005] 1 HKLRD 33, per Ribeiro PJ at p. 46F-G. AUTONUMOUT Ng has referred to and drew comparison from a number of authorities on quantum including *Kan Chung Nin Tony v. Li Kwong Ming* [1987] 1 HKC 487, *Ming Kee Manufacturing Ltd v. Man Shing Electrical Manufactory Ltd* [1992] 2 HKLR 357 and *Drummund v. Kwaku*. For my part, I do not think much assistance can be derived from such comparison. Each case essentially depends on its own facts. As observed by Le Pichon J in *Hung Yuen Chan Robert v. Hongkong Standard Newspaper Ltd* at p. 536G-H As the circumstance of each libel are likely to differ and the factors to be taken into account depend on the facts of each individual case, it is difficult to extrapolate from previous awards unless there are significant similarities AUTONUMOUT Here, when assessing general damages, I bear in mind the undisputed fact that the plaintiffs were long-serving, experienced, dedicated and loyal volunteers of SPS. But the Words, especially the 5th Imputation, seriously

attacked and undermined their personality, integrity and loyalty to SPS. And the harm was done to them before all members of SPS, the Open Letter having been circulated to all of them.

AUTONUMOUT Further, given the defendant s malice in publishing the Open Letter, it is only right to award aggravated damages. In this connection, I refer to my findings on malice in Part IX above. The fact that the defendant did not offer any apology to the plaintiffs when she was asked to do so by the letter before action is, in the circumstances of the present case, also a relevant factor that supports an award of aggravated damages. AUTONUMOUT Having carefully considered all the circumstances, I shall award as general damages HK\$200,000 and aggravated damages HK\$200,000 to each of the plaintiffs. XI. ORDERS AUTONUMOUT I will enter judgment against the defendant :

- (1) for the 1st plaintiff in the sum of HK\$400,000 with interest at the judgment rate from the date of writ until payment;
- (2) for the 2nd plaintiff in the sum of HK\$400,000 with interest at the judgment rate from the date of writ until payment; and
- (3) for both plaintiffs an injunction restraining the defendant whether by herself, her servants or agents or otherwise howsoever from publishing or causing to be published the Words or similar words. AUTONUMOUT In the SOC, the plaintiffs prayed for an apology. But Mr Ng has, rightly so in my view, not pursued it. I will therefore make no order. AUTONUMOUT Finally, costs should follow the event. I will make an order nisi that the defendant do pay the plaintiffs the costs of the action, including any costs reserved, to be taxed if not agreed. (J. Poon) Judge of the Court of First Instance High Court Mr Lawrence Ng, instructed by Messrs Arculli Fong & Ng, for the 1st and 2nd Plaintiffs Mr Thomas T.H. Kwan, instructed by Messrs F. Zimmern & Co., for the Defendant Rule 2 of SPS s Constitution. Rule 6. Rule 21. Rule 27. Rule 32. Rule 35. See Rule 35(a) to (f). Rule 9(b). James later became a governor of the Board and the secretary at the Board Meeting held on 7 August 2004. See paragraph 138 below. I will set out those meanings in paragraph 36 below. It is not clear if on a natural and ordinary meaning, the defendant meant that the slanders were laid at the AGM on 7 August 2004 or that the plaintiffs slanders (without specifying when they were laid) made her feel mentally and physically exhaustive at the AGM. The way in which Paragraph 8 was written is capable of giving rise to both readings. For their resignations, see paragraph 67 below. As will be seen in Section D, the evidence which I accept is that the Resignation Declaration was issued by the 1st plaintiff on 24 June 2004 in the afternoon. See paragraph 62 above. See paragraph 21 above. See paragraph 6 above. See paragraph 135 above. See paragraph 146 above. See paragraph 21 above. See paragraphs 72, 97, 132, 146 and 163 above. Incidentally, in the end it was the plaintiffs who were expelled from SPS and not the defendant. See par 1udk 1udk N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V 1udk &`#\$ &`#\$ XoFQ XoFQ XoFQ XoFQ XoFQ XoFQ AYw& jo3x 9J,td cYCMT jK=s AYw& jK=s cYCM X# 4 & 6" ABC-j.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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