



高等法院

The High Court

電話 Tel: 2825 0496
傳真 Fax: 2524 4116
本函檔號 Our Ref.:
來函檔號 Your Ref.: HCA No. 2337/2016

4 May 2018

Dear Sir/Madam,

Re: HCA 2337/2016

I forward herewith a copy of the Decision in respect of the above mentioned action for your kind retention.

Yours faithfully,


(Geoff CHEUNG)
for Registrar, High Court

Parties:

Messrs Lily Fenn & Partners
Solicitors for the Plaintiff
Ref: LF/K/201716986/AS

Messrs P.T. Yeung & Tang
Solicitors for the 1st and 2nd Defendants
Ref: PY-4594/7644/16

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO 2337 OF 2016**

BETWEEN

KOO MING KOWN

Plaintiff

and

Rev. Mr. MOK KONG TING
(President of the Baptist Convention of Hong Kong) 1st Defendant

Rev. Mr. LAM SAU KWONG 2nd Defendant

CHAN CHI MONG, HOPKINS 3rd Defendant

THE BAPTIST CONVENTION OF HONG KONG 4th Defendant

Before: Deputy High Court Judge To in Chambers

Date of Hearing: 28 November 2017

Date of Decision: 4 May 2018

DECISION

Introduction

1. This is an appeal from the decision of Master Andy Ho made on 17 July 2017 ordering, *inter alia*:

- (1) that the 1st and 2nd defendants' application to strike out the plaintiff's claim be dismissed (the "striking out application");
- (2) that the plaintiff be granted leave to join Chan Chi Mong, Hopkins ("Chan") and The Baptist Convention of Hong Kong ("BCHK") as the 3rd and 4th defendants respectively in this case; and
- (3) that the plaintiff be granted leave to amend the statement of claim.

A 2. The plaintiff is an alumnus and former honorary director of the
B Hong Kong Pui Ching Schools (the “Schools”), comprising of the Hong
C Kong Pui Ching Primary School (the “Primary School”) and the Hong Kong
D Pui Ching Middle School (the “Middle School”). He is also a contributor to
E the funds for educational purposes of the Schools through substantial
donations made over a long period of time.

F 3. BCHK is a body corporate which runs and manages the Primary
G School and Middle School. The 1st defendant is the President¹ of BCHK and
H the Chairman of its Council. The 2nd defendant is the Executive Secretary
I of BCHK. Chan was the supervisor of the Middle School until 2017 and is
J currently the supervisor of the Primary School, whose appointment was approved
K by the Permanent Secretary for Education (the “Permanent Secretary”).

L 4. On 9 September 2016, the plaintiff commenced the present
M action against the 1st and 2nd defendants. On 28 November 2016, the 1st and
N 2nd defendants took out the striking out application. Then, on 23 March
O 2017 and 11 July 2017, the plaintiff applied respectively to join Chan and
P BCHK and to re-amend the statement of claim.

Q 5. The plaintiff claims for declaratory relief that:

- R (1) Chan is not a “fit and proper person” within the meaning of the
S Education Ordinance (Cap 279) to serve or continue to serve as
T the supervisor of the Primary School;
U (2) further or alternatively, the appointment of Chan as the supervisor
V of the Primary School ought to be revoked with immediate effect.

¹ In the heading of the Re-Amended Writ of Summons, the 1st defendant is described as “President”, but in paragraph 2 of the Re-Amended Statement of Claim, he is described as “Chairman”. The facts set out in paragraphs 2 and 3 above is based on the Articles of Association of BCHK.

A *The background* A

B 6. The relevant background of this case can be gleaned from the B
C following paragraph of the pleadings filed by BCHK in HCA 946/2003 (on C
D appeal to the Court of Appeal in CACV 2/2007) concerning the trademark
“培正”²: D

E “For over a century, not only has the 1st Plaintiff [Pei Zheng Middle E
F School (the Guangzhou predecessor the Pui Ching Schools in Hong F
G Kong)] been in the service as a provider of quality education to G
H numerous students, but the 1st Plaintiff has also, through the members H
of its school board and with the assistance of its alumni, established and/or
administration of other primary and secondary schools under and by
reference to the name ‘培正’ and the red and blue insignia of ‘培正’
throughout southern China, including Hong Kong and Macau.”

I 7. At the heart of this case is the plaintiff’s fight for the good name I
J and reputation of the Schools by ensuring that the Primary School is not J
K subject to the control of Chan, whose integrity the plaintiff considered highly K
L questionable. On the plaintiff’s case, Chan, who was previously appointed L
M by BCHK as the supervisor of both the Primary School and the Middle School M
and who still continues to serve as the supervisor of the Primary School, is not
a “fit and proper person” for that appointment in that:

- N (1) Chan represented to the Hong Kong Christian Council that he has N
O the qualification of “Ph.D., M.B.A., B.Sc (Eng)”;
P (2) Chan has claimed on a number of occasions that his Ph.D. degree P
Q was obtained in 2007 from The European University of Ireland;
R (3) on 25 February 2000, it was reported that The European University Q
of Ireland was operating without official sanction;
S (4) on 14 November 2005, the scandal of bogus degrees awarded by S
The European University of Ireland was exposed;

T ² *Pei Zheng Middle School & The Baptist Convention of Hong Kong v China Pui Ching Educational T*
U *Foundation Ltd & Others* CACV 2/2007, 6 August 2007, para 3, citing para 3(a) of BCHK’s statement U
V of claim therein V

(5) on 24 September 2011, it was reported that The Higher Education Authority had expressed concern about the unlicensed operation of The European University of Ireland;

(6) the plaintiff has taken steps to confirm that the Ph. D. degree purportedly granted by The European University of Ireland is not a valid degree granted by an accredited degree-awarding authority; and

(7) it was further confirmed that The European University of Ireland was a limited company registered in Ireland which ceased to exist since 2010.

8. The plaintiff's complaint to BCHK against Chan's integrity, his misrepresentation of his doctorate qualification, and his fitness as supervisor of the Primary School was met with a public notice dated 18 December 2015 issued by BCHK defending Chan. BCHK purported to justify Chan's continuation in the office of supervisor by saying that "the educational qualification of the nominee is not a requirement for the appointment". The plaintiff considered BCHK's approach irresponsible and unsatisfactory. He thought BCHK should have investigated Chan and his academic qualification and provided an account of the serious matter. But despite his repeated complaints from December 2015 to August 2016 that it was wrong for BCHK to defend Chan and to have allowed him to stay in his position as supervisor without resolving the issue of his integrity, the 1st defendant and BCHK failed and/or refused to carry out any investigation or to take any appropriate action. This led the plaintiff to commence the present action against the 1st and 2nd defendants and further to seek to amend the amended writ of summons and amended statement of claim to join Chan and BCHK as necessary parties.

A *The legal principles applicable to striking out, joinder and amendment of*
B *pleading*

C 9. The principles applicable to striking out and amendment of
D pleadings are trite. Counsel have no dispute that the following principles
E are applicable.

F 10. An order to strike out would only be granted by the court in plain
G and obvious cases. Disputed facts are to be taken in favour of the party sought
H to be struck out. The claim must be obviously unsustainable, the pleadings
I unarguably bad and it must be impossible, not just improbable, for the claim
J to succeed before the court will strike it out. The burden lies on the party
K applying: see *Hong Kong Civil Procedure*³, *Ha Francesca v Tsai Kut Kan*
L *(No 1)*⁴, *Yiu Ka Fung Vincent v Info-Vantage Ltd*⁵.

M 11. Where an application to amend a statement of claim which is
N sought to be struck out has been made, the court's approach would be to deal
O with the striking out application on the basis of the facts as pleaded in the
P proposed amendments. If on that basis, the amended pleading should not be
Q struck out, then the application to amend should be allowed and the
R striking-out application dismissed: see *Hong Kong Civil Procedure 2017*.⁶

S 12. Pursuant to Order 15, rule 6 of the Rules of the High Court ("RHC"),
T all parties to the dispute should be brought before the court at the same time
U such that the dispute may be resolved effectively and fully determined
V without delay, inconvenience and expense of separate actions and trials even
if there is no cause of action against the intended party: *Lin Man Yuan v Kin*

³ At para 18/19/4

⁴ [1982] HKC 382 (CA), 392

⁵ CACV 96/2014, 3 July 2015

⁶ At para 18/19/4

A *Ming Holdings International Ltd*⁷. There is no need to show merit or to
B prove the strength of one's case: see *Wong Shan Shan v IO of Yue Wah*
C *Mansion*⁸.

D 13. Under Order 20, rule 5, all amendments which are necessary to
E enable the real questions and controversy between the parties to be decided
F should be allowed unless it will result in prejudice to the other party which may
G not compensated for in costs. The principle has been stated by Lord Brandon
H in *Ketteman v Hansel Properties Ltd*⁹ as follows:

H "First, all such amendments should be made as are necessary to enable
I the real questions in controversy between the parties to be decided.
J Secondly, amendments should not be refused solely because they
K have been made necessary by the honest fault or mistake of the party
L applying for leave to make them: it is not the function of the court to
M punish parties for mistakes which they have made in the conduct of
N their cases by deciding otherwise than in accordance with their rights.
O Thirdly, however blameworthy (short of bad faith) may have been a
P party's failure to plead the subject matter of a proposed amendment
Q earlier, and however late in the application for leave to make such
R amendment may have been, the application should, in general be
S allowed, provided that allowing it will not prejudice the other party.
T Fourthly, there is no injustice to the other party if he can be
U compensated by appropriate order as to costs."

M These principles remain the guiding principles after the Civil Justice Reform:
N see *Topwell Corp Ltd v Kwan Kam Kee*¹⁰. Unless it is clear that the proposed
O amendments will not succeed at trial, leave should be given to the plaintiff to
P amend, leaving the issue to trial for determination.

Q 14. It is trite that joinder and amendment are together designed to
R save rather than to destroy and to cure which is capable of cure in relation to

S ⁷ [2012] 3 HKLRD 550, at paras 15 – 28 *per* Deputy High Court Judge M Chan (as she then was),
applied in *Xu Shengheng v Cheung Kwan* HCA 291/2009, 22 July 2013, at paras 58 – 59 *per* L Chan J

T ⁸ HCA 1086/2013, 28 January 2015 at paras 31 – 32, *per* Deputy High Court Judge Kent Yee

T ⁹ [1987] 1 AC 189, at 212F–H

U ¹⁰ [2014] 5 HKLRD 1 (CA)

A the pleadings: see *Hong Kong Civil Procedure 2017*¹¹. In relation to the
B defendants' striking-out application, it is necessary for the court to consider all
C the proposed re-amendments of the plaintiff, inclusive of the joinder of Chan
and BCHK as new parties.

D *Legal principles on court's jurisdiction to grant declaratory relief*

E 15. Counsel also have no dispute about the legal principles governing
F the court's jurisdiction in granting declaratory relief. They also refer me to
G the same authorities. Order 15, rule 16 of the RHC is a convenient starting
H point to consider this jurisdiction. This rule provides:

I "No action or other proceeding shall be open to objection on the
J ground that a merely declaratory judgment or order is sought thereby,
and the Court may make binding declarations of right whether or not
any consequential relief is or could be claimed."

K In fact, the court's power to grant declaratory relief is not derived from this
L rule, but from its inherent jurisdiction. This rule only reflects the width of
M this inherent jurisdiction. The following is what Lord Brandon said of this
N inherent jurisdiction in the House of Lords decision in *In re F (Mental Patient:
Sterilisation)*, albeit in an entirely different context¹²:

O " I turn, fourthly and lastly, to the jurisdiction to make declarations.
P I do not think that it is right to describe this jurisdiction as being
Q under R.S.C., Ord. 15, r. 16. The jurisdiction is part of the inherent
jurisdiction of the High Court, and the rule does no more than say
R that there is no procedural objection to an action being brought for a
S declaration whether any other kind of relief is asked for or available
or not."

T From the above dictum and the rule, it is plainly obvious that the court's
U jurisdiction to grant declaratory relief is extremely wide. The jurisdiction
V

¹¹ At para 15/6/1

¹² [1989] 2 WLR 1025 (HL), at 1074E-F

may be exercised whether the applicant has any cause of action or whether any relief is sought or available or not.

16. The court's jurisdiction to grant declaratory relief was considered by Clough JA in *Ip Cheung Kwok v Ip Siu Bun & Others*¹³. His Lordship referred to the leading English Court of Appeal authority of *Guaranty Trust Co of New York v Hannay & Co*¹⁴ on the requirements necessary to invoke the court's jurisdiction and the test to be applied in the exercise of that jurisdiction. He said¹⁵:

“ Lord Goff cited with approval at p. 1091 E–F the following dictum of Pickford LJ in *Guaranty Trust Co of New York v Hannay & Co* [1915] 2 KB 536 (C.A.) at p. 562:

‘ I think therefore that the effect of the rule [now RHC Order 15, rule 16] is to give a general power to make a declaration whether there be a cause of action or not, and at the instance of any party who is interested in the subject matter of the declaration.’

Lord Goff also cited with approval at p. 1091 G–H the often cited passage in the judgment of Bankes L.J. in the *Guaranty Trust* case at p. 572 which includes the following dictum:

‘ There is, however, one limitation which must always be attached to it, that is to say, the relief claimed must be something which it would not be unlawful or unconstitutional or inequitable for the court to grant or contrary to the accepted principles upon which the court exercises its jurisdiction. Subject to this limitation I see nothing to fetter the discretion of the court in exercising a jurisdiction under the rule to grant relief, and having regard to general business convenience and the importance of adapting the machinery of the courts to the needs of suitors I think the rule should receive as liberal a construction as possible.’

I am fortified in the view I have expressed above by the fact that in *Maerkle v British Continental Fur Co Ltd* [1954] 1 W.L.R. 1242 (C.A.) and *Thorne District Council v Bunting* [1972] Ch 470 the court did not treat the question of locus for declaratory relief in each case as raising a strict jurisdictional issue but as raising the question whether the court's jurisdiction to grant declaratory relief was properly exercisable.”

(My emphasis underlined.)

¹³ CACV 79/1988, 25 October 1989

¹⁴ [1915] 2 KB 536 at 562

¹⁵ At paras 54 – 57

Thus, to invoke this jurisdiction, the applicant does not need to have a cause of action against the adverse party. What he needs to establish his *locus* is to show he has a real interest in the subject matter of the declaration, ie the *lis* (the “real issue requirement”).

17. The same approach was also adopted by the later English Court of Appeal in *In re S (Hospital Patient: Court’s Jurisdiction)*¹⁶. In the exercise of that discretion, the court adopts a practical utility approach and will not impose nice tests to determine the precise legal standing of the applicant. The rationale was as follows:

“ ... it can be suggested that where a serious justiciable issue is brought before the court by a party with a genuine and legitimate interest in obtaining a decision against an adverse party the court will not impose nice tests to determine the precise legal standing of that claimant.

....

.... If the law were powerless to give practical help in cases such as this, the invitation to others similarly placed in future to take the law into their own hands, with the risk at least of unseemly tussles and at worst of violence, would be obvious. This is pre-eminently an area in which the common law should respond to social needs as they are manifested, case by case. Any statutory rule, unless framed in terms so wide as to give the court an almost unlimited discretion, would be bound to impose an element of inflexibility which would in my view be wholly undesirable.”

18. Thus, in determining whether an applicant has the necessary interest in the subject matter of the declaration, the court adopts the practical utility approach by asking the question whether the court’s jurisdiction to grant declaratory relief was properly exercisable instead of applying nice tests as if it were raising a strict jurisdictional issue.

19. As for the meaning of “interest” in this context, I think it useful to refer to the meaning given by Lord Fraser in the Scottish case of *R v IRC*

¹⁶ [1996] Fam 1 at 18 – 19; [1995] 3 All ER 290 at 302 – 303

A *Ex p National Federation of Self-Employed and Small Businesses Ltd*¹⁷. It A
B meant a real interest of a material character to be enforced or protected as B
C opposed to a merely academic or hypothetical question or one raised out of C
D curiosity. The law is the same in England. In *Re S (Hospital Patient: Court's D*
E *Jurisdiction)*¹⁸, the English Court of Appeal had to consider the rival claims E
F by the wife and son on the one part and the cohabitee on the other to the right F
G to care for an adult patient incapable of expressing his wishes in respect of G
H his treatment or care. The Court of Appeal adopted the following principle H
I derived from Lord Dunedin's speech in *Russian Commercial and Industrial I*
J *Bank v British Bank for Foreign Trade Ltd*¹⁹: J

K " The rules that have been elucidated by a long course of decisions in K
L the Scottish courts may be summarized thus: The question must be a L
M real and not a theoretical question; the person raising it must have a M
N real interest to raise it; he must be able to secure a proper contradictor, N
O that is to say, someone presently existing who has a true interest to O
P oppose the declaration sought." P

Q The English Court of Appeal also quoted the following simple statement of Q
R Lord Goff in *In re F (Mental Patient: Sterilisation)*²⁰: R
S

T " Here the declaration sought does indeed raise a real question; it is T
U far from being hypothetical or academic. The plaintiff has a proper U
V interest in the outcome, so that it can properly be said that she is V
seeking relief in the broad sense described by Bankes L.J."

Hence, in addition, an applicant has to show that he has a real interest of a
material character to be enforced or to protect or a genuine and legitimate
interest in obtaining a decision from the court against an adverse party (the
"real interest requirement"). In other words, he has to show he has an interest
in the outcome of the relief sought as oppose to actually obtaining that relief
in his favour. The other side of the same coin is that he has to show that the

¹⁷ [1982] AC 617 at 646

¹⁸ [1996] Fam 1; [1995] 3 All ER 290

¹⁹ [1921] 2 AC 438, at 448

²⁰ [1990] 2 AC 1, at 82

A adverse party is a proper contradictor, ie someone who also an interest to
B oppose (the “proper contradictor requirement”).

C 20. Thus in summary, an applicant seeking to invoke the court’s
D jurisdiction to grant declaratory relief has to show:

- E (1) that he has a real interest in the subject matter of the declaration
F (the real issue requirement);
G (2) that he has a real interest in obtaining a declaration against the
H adverse party (the real interest requirement); and
I (3) that the adverse party is a proper contradictor (the proper
J contradictor requirement).

I *The grounds for striking out*

J 21. The defendants’ grounds for striking out the plaintiff’s claim are:

- K (1) lack of standing to sue;
L (2) avoidance of streamline procedure under Order 53 of the RHC;
M (3) the absence of a proper contradictor;
N (4) internal management of BCHK;
O (5) no claim against the 1st and 2nd defendants (I shall deal with this
P head under (3)); and
Q (6) frivolous, vexatious and abuse of the legal process.

Q *Lack of standing to sue*

R 22. Mr Chong, counsel for the 1st and 2nd defendants, submits that a
S plaintiff does not have the necessary standing to bring a claim for declaratory
T relief unless he could establish a logical connexion between the relief sought
U by him and the complaint of fault allegedly committed by the defendant.
V

A This ground is in fact directed at the real issue requirement and real interest
B requirement. Mr Chong said that in this action, the subject matter of the
C dispute as formulated in the plaintiff's Re-Amended Statement of Claim is
D "the good name and reputation of [the Primary School]". It was alleged that
E Chan's false claim of having a doctorate degree has injured the good name and
F reputation of the Primary School. He then referred to the plaintiff's
G affirmation filed in opposition to the defendants' summons for striking out in
H which the plaintiff asserted that he does not have personal interest in the
I outcome of these proceedings and that his motive is to protect the reputation
J of the Primary School and Middle School. Mr Chong submits that any
K damage to the goodwill and reputation of the Primary School caused by Chan
L for not being a "fit and proper person" will not cause any loss or damage to
M the plaintiff. Hence, he argues that the plaintiff has no *locus* to bring a claim
N for declaratory relief.

K 23. Though Mr Chong appreciates that a cause of action is not
L necessary to support a claim for declaratory relief, he fails to appreciate that
M what the plaintiff needs to show is a real interest in the subject matter of the
N declaration, a real interest in the outcome of the claim for relief and a proper
O contradictor. Even though the subject matter of the dispute as formulated by
P the plaintiff in his Re-Amended Statement of Claim is "the good name and
Q reputation of [the Primary School]", the material issue raised is whether Chan
R should be removed from the office as supervisor of the Primary School for
S not being a "fit and proper person". Under sections 30(1)(b) and 35(1) of
T the Education Ordinance, being a "fit and proper person" is an essential or
U fundamental requirement for a manager and a supervisor of a school. It is the
V plaintiff's case that by reason of Chan's highly questionable conduct as outlined
in paragraph 7 above (largely in relation to his claim to have a doctorate degree)
he is not considered a "fit and proper person" to be appointed or to continue

A to serve as supervisor of the Primary School. The resolution of this issue in
B controversy would have the important effect of securing compliance with the
C statutory requirements as well as protecting and maintaining the good name
D and reputation of the Schools. Hence, the plaintiff's request that the question
E as to whether Chan is a "fit and proper person" as a school supervisor is a real
F and not a theoretical question for which it is proper to seek a decision from
G the court.

24. Next, Mr Chong argues that the plaintiff has no real interest in
H the outcome of the proceedings. He suggests that the plaintiff is merely a
I busybody and is not entitled to the relief sought. He quoted the following
J dictum of Megarry VC in *Malone v Metropolitan Police Commissioner*²¹ in
K support of the proposition that the relief sought must affect the plaintiff himself:

L " True, a plaintiff who seeks such a declaration may have no cause of
M action; but it suffices if he is claiming 'relief.' This, I think, means
N relief from '[some] real liability or disadvantage or difficulty' which
O affects him (see *Thorne Rural District Council v. Bunting* [1972] Ch.
P 470, 477, 478), and not mere matters of interest or curiosity or the like."

Mr Chong also draws support for *Malone* from the English Court of Appeal case
Q of *In re S (Hospital Patient: Court's Jurisdiction)*²², in which *Malone* was cited.

R He quotes the following dicta of Sir Bingham MR²³ :

S " (4) ... in cases of controversy and cases involving momentous
T and irrevocable decisions, the courts have treated as justiciable any
U genuine question as to what the best interests of a patient require or
V justify. In making these decisions the courts have recognised the
desirability of informing those involved whether a proposed course
of conduct will render them criminally or civilly liable; they have
acknowledged their duty to act as a safeguard against malpractice,
abuse and unjustified action; they have recognised the desirability, in
the last resort, of decisions being made by an impartial, independent
tribunal.

²¹ [1979] Ch 344 at 352H-353A

²² [1996] Fam 1

²³ At 18E-G

(5) ... It cannot of course be suggested that any stranger or officious busybody, however remotely connected with a patient or with the subject matter of proceedings, can properly seek or obtain declaratory or any other relief (in private law any more than public law proceedings). But it can be suggested that where a serious justiciable issue is brought before the court by a party with a genuine and legitimate interest in obtaining a decision against an adverse party the court will not impose nice tests to determine the precise legal standing of that claimant.”

25. It is true that the plaintiff is not seeking any personal relief in his favour. He is seeking a declaration that Chan is not a “fit and proper person” and/or that he be removed from his position as supervisor. That is not anything which would affect or benefit the plaintiff personally. However, what the plaintiff needs to show in this respect is that he has an interest in the outcome of the claim for declaratory relief as oppose to his obtaining a personal relief for himself. I do not think by that dictum Megarry VC was imposing a strict requirement that relief means “some real liability or disadvantage or difficulty” which affects the applicant because it would be blatantly inconsistent with Order 15, rule 16 which expressly provides that the court may make binding declarations of right whether or not any consequential relief is or could be claimed. I think his Lordship was quoting those types of relief as examples of what he tagged on the latter part of that dictum, “not mere matters of interest or curiosity or the like”. On the question of *locus* for declaratory relief, the courts have always adopted a liberal approach. In *Ip Cheung Kwok v Ip Siu Bun & Others*, Clough JA said that the court did not treat the question of *locus* as raising a strict jurisdictional issue but as raising the question whether the court’s jurisdiction to grant declaratory relief was properly exercisable. In *In re S*, which was relied on by Mr Chong, Sir Bingham MR also held that in the exercise of that jurisdiction, the court adopts a practical utility approach and will not impose nice tests to determine the precise legal standing of the claimant. This is the yardstick to be applied.

A 26. Whether the plaintiff has shown an interest in the outcome of the
B proceedings is question of fact. On the unchallenged facts pleaded, which
C must be assumed in favour of the plaintiff, he is an alumnus and former
D Honorary Director of the Schools who has a real interest in protecting and
E maintaining the good name and reputation of the Schools by ensuring that the
F Primary School is not controlled by a person who is “unfit and improper” and
G not qualified for appointment as supervisor under the Education Ordinance.
H He has made substantial donations to the Schools amounting until about 2014
I close to around \$30 million. Such donations speak for the genuineness and
J legitimate interest of the donor in the well-being of the Schools, his interest
K in protecting and maintaining their good name and reputation. The plaintiff
L must have real interest in seeing to that not only the donation is and would
M continue to be applied for the proper administration of the Schools, including
N the Primary School, and the well-being and education of its students. He
O certainly has a genuine interest in seeing to that the Primary School is placed
P under the supervision of a manager whose conduct and integrity is beyond
Q reproach. It would put the Primary School into ridicule if its supervisor
R obtained a fraudulent doctorate degree and professes himself to be the holder
S of a proper doctorate degree to the sponsoring body of the Schools. The
T plaintiff’s position is far from that of a stranger to the Schools, an ordinary
U alumnus, or someone who out of general generosity made some occasional
V donations. He is a committed alumnus and donor truly interested in the well-
being of the Primary School. He could not be regarded as a busybody.

27. I note that the donations were not made to BCHK, but to the
Schools. However, the Primary School not being itself a legal entity is not
capable of holding assets. Whilst the donors, including the plaintiff, no doubt
thought that their donations were made for the educational or ancillary purposes
of the Schools and were indeed made to the Schools, in reality, the donations

A have become funds received and controlled by BCHK. On the other hand, A
B BCHK's mission extends vastly beyond the administration of the Primary School B
C and Middle School. It is the sponsoring body of at least 12 schools using C
D the name of "Pui Ching". That does not in any way reduce the plaintiff's D
interest in the well-being of the Primary School and its students.

E 28. Furthermore, the students of the Primary School are receiving E
F education from the Primary School. They are beneficiaries of BCHK, if not F
G just the Primary School itself. But they are in no position to challenge the G
H propriety of the appointment of the supervisor. They are, like the patient 'in H
I *In re S*, incapable of expressing their wishes in respect of the quality of I
J education they receive from the Primary School. They are the silent J
K beneficiaries who have all the more needs of a "guardian" like the plaintiff to K
protect their interest insofar as the quality of the education they receive in the
Primary School is concerned.

L 29. All in all, I consider the plaintiff has demonstrated a real interest L
M in the subject matter of the declaratory relief and a real interest in the outcome M
N of these proceedings.

O *Avoidance of streamline procedure under Order 53 of the RHC* O

P 30. Mr Chong attacks the plaintiff's action as an avoidance of the P
Q streamline procedure under Order 53 of the RHC by challenging the statutory Q
R regime for appointment of supervisors and therefore an abuse of process. The R
S appointment and removal of school supervisors is regulated by sections 34 to 39 S
T of the Education Ordinance. The Permanent Secretary for Education is vested T
U with power to appoint the first and subsequent supervisors and to remove the U
V appointed supervisors. A sponsoring body as an applicant for registration of V
the school is entitled to make recommendation for the appointment of the

A first supervisor only. In respect of the subsequent appointments, it is the
B management committee which makes recommendation for the Permanent
C Secretary's approval: section 38(1). The Permanent Secretary may refuse to
D approve the appointment of a supervisor on the ground that the nominee is
E not a "fit and proper person to be the supervisor": section 35(1). The tenure
F of the office of the appointed supervisor continues until the Permanent
Secretary removes him as supervisor and/or a school manager, or the
supervisor resigns of his own volition: section 36.

G 31. On the basis of these provisions, Mr Chong argues that neither the
H sponsoring body nor its officers who sit in the school management committee
I have power to remove a supervisor. Nor is it a prerequisite requirement for
J the Permanent Secretary to act on the recommendation of the sponsoring body
K or the school management committee to remove a supervisor. The Permanent
L Secretary's decision whether to appoint or remove a person as a supervisor is
M an exercise of his power under the Education Ordinance which is amendable
N to judicial review. He therefore argues that it is an abuse of legal process by
O seeking redress by a claim in private law for infringing of rights which are
P protected by public law.

Q 32. With respect, that is a wishful reading of the Ordinance. What
R Mr Chong did not refer to was section 38. Under the statutory regime, the
S management committee of the school has power to remove a supervisor who
T is not acceptable to the majority of the committee and recommend to the
U Permanent Secretary to approve another nominee as supervisor: section 38(1).
V The Permanent Secretary shall appoint that nominee unless he is of the opinion
that the nominee is not a fit and proper person: section 38(2) and section 35.
Nothing in the provisions referred to by Mr Chong or in any other provisions
of the Ordinance could prevent a committee member, willing in the faithful

A discharge of his duty as a committee member, from persuading his fellow
B members to pass a resolution to the effect that the supervisor is no longer
C acceptable as supervisor. The committee shall then be under a statutory duty
D pursuant to section 38(1)(e) to recommend another manager within one month
E for the approval of the Permanent Secretary. The Permanent Secretary may
F remove the supervisor under section 37(d) and shall, pursuant to section 38(2),
G appoint the nominee as supervisor. The management committee or BCHK, to
H which the management committee reports or is accountable, is not powerless
I in the removal of a supervisor and in recommending appointment of a
J replacement.

33. On the other hand, it is not the public duty of the Permanent
Secretary to actively involve himself in the management of the school and
appointment of its supervisor. These are functions within the realm of the
management committee. The Permanent Secretary's function in the approval
of supervisor is a passive one, being to approve the appointment of the first
supervisor recommended by the sponsoring body or a nominee recommended
by the management committee subsequently, subject to his residual power to
screen out any nominee whom he regards as not being a fit and proper person
to be a manager or supervisor.

34. Article 59 of the Articles of Association of BCHK provides:

“ [BCHK] shall use its best endeavors to ensure that all school(s)
managed by itself or under its direct or indirect supervision are operated
in all respects to the full satisfaction of the Permanent Secretary for
Education and in the best interest of the students, including but not
limited to ensuring compliance with the applicable legislation and such
other requirements as specified from time to time by the Permanent
Secretary for Education.”

As it is a statutory requirement that a supervisor must be a “fit and proper
person”, BCHK, the Council and the management committee have a primary

A duty to ensure that its nominee is a “fit and proper person” for appointment as
B supervisor; and once appointed, continues to a person of such, and if not
C acceptable as such a person or on any other grounds, to seek his removal by
D invoking the process under section 38(1)(e) and 38(2). The management
E committee cannot leave it to the Permanent Secretary to police the discharge
F of the management committee’s duty by regularly reviewing if the supervisor
is a fit and proper person or continues to be acceptable by the management
committee.

G 35. The plaintiff’s claim is against the 1st and 2nd defendants, Chan
H and BCHK, not against the Permanent Secretary. He is not challenging the
I Permanent Secretary’s approval of Chan’s appointment or his refusal to revoke
J Chan’s appointment. In fact, insofar as revocation of Chan’s appointment is
K concerned, the procedures for revocation of his appointment has not been
L invoked and no decision in that regard has yet been made by the Permanent
M Secretary. The plaintiff is seeking the defendants to properly discharge their
N duty by investigating his complaint and, if found justified, to cause the
O management committee to invoke the procedure under section 38(1)(e) and
P section 38(2). In effect, he is seeking the management committee, through
Q the defendants, to pass a resolution that Chan is not acceptable as a supervisor
R and to recommend a replacement to be appointed by the Permanent Secretary.
S The Permanent Secretary’s earlier decision to approve Chan’s appointment and
T what the plaintiff is seeking to do are wholly separate matters. While the
U decision of the Permanent Secretary in approving or in removing a supervisor is
V amenable to judicial review, that cannot afford protection against a claim by an
interested person against the defendants for their failure to properly discharge
their duty. The defendants who have an interest in opposing the plaintiff’s
claim cannot force the plaintiff down the path of judicial review to avoid
opposing the claim against them for their own failure to perform their duty.

I therefore do not think it necessary to consider the defendants' argument on judicial review.

Absence of a proper contradictor

36. Mr Chong argues that the proper contradictor for the plaintiff's claim is the Permanent Secretary and not BCHK. The basis of his proposition is that BCHK has no power under the Ordinance to revoke a supervisor's appointment. That basic premise, as I have found, is founded on an erroneous reading of the provisions of the Education Ordinance and a misunderstanding of the statutory regime for appointment and removal of supervisors.

37. Mr Chong also referred me to the plaintiff's actions in HCA 2334/2016 and HCA 2336/2016 in which the plaintiff's actions against the Permanent Secretary and the Chief Secretary for their approval of Chan's appointment as supervisor of the Primary School had been struck out. He therefore argues that a declaratory relief against the 1st and 2nd defendants and BCHK even if granted will not compel the Permanent Secretary to remove Chan, and will therefore serve no purpose. It is not clear what was the basis for the striking out. But the plaintiff's case for declaratory relief is well set out and, if successful and followed through could lead to Chan's removal by invoking the procedure under section 38(1)(e) and 38(2).

38. Mr Chong argues that the Primary School is an institute founded exclusively for educational purpose and hence, is a charitable trust. As the court's jurisdiction over charitable trusts is to be invoked by the Secretary for Justice as *parens patriae*, the Secretary for Justice is the proper person to represent the interest of the charitable trust.

A 39. Then, Mr Chong further submits, quoting *Ip Cheung Kwok v Sin*
B *Hua Bank Trustee Ltd*²⁴, that the court will not exercise the discretionary power
C to grant a declaration in the absence of a party whose interest will be affected by
D the declaratory judgment, namely the Permanent Secretary and the Secretary for
E Justice. But I do not see how a declaration that Chan is not a “fit and proper
F person” to serve or continue to serve as a supervisor of the Primary School
G would affect the interest of the Permanent Secretary or the Secretary for Justice.
H As I have indicated, the function of the Permanent Secretary in the appointment
I of supervisor is a passive one. If the management committee considers a serving
J supervisor is not acceptable, it shall be the Permanent Secretary’s duty to revoke
K his appointment. The Permanent Secretary as well as the Secretary of Justice
L has no interest in Chan’s removal or the appointment of a particular supervisor.

J 40. My real concern is whether the defendants are proper contradictors
K to the plaintiff’s claim for declaration. Under its articles of association, BCHK
L has not more than 10,000 members. Under article 38, it has the following
M officers:

- M (1) a President;
- N (2) a 1st Vice President;
- O (3) a 2nd Vice President;
- P (4) a 3rd Vice President;
- Q (5) an Honorary Secretary;
- R (6) an Honorary Assistant Secretary;
- S (7) an Honorary Treasurer; and
- T (8) an Internal Auditor.

S 41. Under article 39, the operations of BCHK shall be managed by
T the Council which is the supreme authority of BCHK when general meetings

U ²⁴ [1990] 1 HKLR 497 at 511 F–G, 514 H–J, *per* Clough JA

V

are not being held. Under article 44, officers of BCHK shall be officers of the Council in the following manner:

- (1) the President shall be the chairman of the Council;
- (2) the 1st Vice President shall be the 1st Vice chairman of the Council;
- (3) the 2nd Vice President shall be the 2nd Vice chairman of the Council;
- (4) the 3rd Vice President shall be the 3rd Vice chairman of the Council;
- (5) the Honorary Secretary shall be the Honorary Secretary of the Council;
- (6) the Honorary Assistant Secretary shall be the Honorary Assistant Secretary of the Council;
- (7) the Honorary Treasurer shall be the Honorary Treasurer of the Council; and
- (8) the Internal Auditor shall be the Honorary Internal Auditor of the Council.

42. Under article 45, the Council may employ for BCHK an Executive Secretary, Deputy Executive Secretary, Assistant Executive Secretaries and a paid staff.

43. Under article 46, the Council may recommend to BCHK in its general meeting the setting up of any department to carry out any of the affairs of BCHK and for the removal of any department. One of these departments is the Education Department which oversees the management committee of the Primary School. Accordingly, the Council has direct authority and responsibility through the Education Department over the management committee of the Primary School.

44. The plaintiff sues the 1st defendant in his capacity as the Chairman of BCHK (presumably meaning the "President") and the 2nd defendant in his

A capacity as the General Secretary of BCHK (presumably meaning the
B "Honorary Secretary"). In the light of the constitution of BCHK as I have
C outlined above, the 1st defendant is in fact the President of BCHK as well as
D the Chairman of the Council which is the supreme authority of BCHK. The
E 2nd defendant, who is named "Lam Sau Kwong", was the person who signed on
F the Public Notice under the title as Executive Secretary. He is neither the
G General Secretary as pleaded nor the Honorary Secretary according to the
H articles of association. Mr Mok SC, leading counsel for the plaintiff, has
I erroneously submitted that the Public Notice was signed by the Chairman and
J General Secretary. It was issued by BCHK under the authority of the
K 1st defendant as President of BCHK and Chan Wai Sang as Honorary
L Secretary of BCHK. Neither the 1st defendant nor Chan Wai Sang signed on
M the Public Notice. The 2nd defendant signed under his title as Executive
Secretary. Presumably, his signature was put on the Public Notice for the
purpose of authentication. He is not the Honorary Secretary of BCHK and
not a member of the Council, but a salaried employee occupying the position
of Executive Secretary of BCHK. Probably, the plaintiff has mistaken Lam
Sau Kwong for Chan Wai Sang.

N 45. The plaintiff also wrote to Chan directly by email asking for
O clarification about his doctorate degree. But Chan did not respond.
P Despite the overwhelming evidence offered by the plaintiff, BCHK
Q presumably without first making any full or proper investigation and/or
R giving any satisfactory account as requested, disregarded the evidence
S submitted and issued the Public Notice on 18 December 2015 defending Chan
T and concluded that the accusation of integrity against Chan (in the context of
U his false claim for his doctorate qualification) was unfounded. It was not
V stated at all in the Public Notice that there was any or any serious
investigation made into the substance of the plaintiff's complaint. As can be

A noted from the 2nd defendant's defence, other than not admitting the plaintiff's
B accusation that Chan made a false declaration of his doctorate qualification, he
C advanced no indication whatsoever that the 1st or 2nd defendant or indeed
D BCHK have ever taken the plaintiff's complaint seriously or have taken any
E or any serious steps to investigate the complaint or a positive case that the
F doctorate degree was awarded by a degree awarding and accredited university.
G It is therefore plain that the 1st and 2nd defendants and BCHK have turned a
H blind eye to the plaintiff's complaint and openly taken the stance that the
I plaintiff's complaint was unsubstantiated and should be ignored. Between
J 24 December 2015 and 22 September 2016, the plaintiff wrote no less than six
K emails to the 1st defendant and BCHK repeating his complaint. They were
L all ignored. The court is the only forum where the issue of Chan's fitness as
M supervisor of the Primary School could be ventilated.

46. Mr Chong referred me to the case of *Yu Hung Hsua Julie v The Chinese University of Hong Kong*²⁵ in which an associate professor of the university sought a mandamus to oblige the dean and vice chancellor to intervene in the examination panel's decision. Chung J held that there was no legal basis for contending that the dean and vice chancellor had power or was under a duty to intervene in the examination panel's decision. Likewise, Mr Chong argues, a recommendation for appointment of supervisor is a decision collectively made by the Council and under BCHK's constitution the 1st and 2nd defendants have no power to override the Council's decision. It is not clear from the judgment in *Yu Hung Hsua Julie* what was the basis of the court's decision. I must assume that case turns on its own fact and on the construction of the constitutional documents of the university. That decision may have no bearing on the present case.

²⁵ HCAL 47/2015, unreported, 30 November 2015

A 47. The issue of the Public Notice was an act of BCHK. The Council
B is the supreme authority of BCHK. In an action against BCHK, it would not
C be inappropriate to sue the Council, including each and every member of the
D Council, as its supreme authority. I have found, by virtue of article 58 of
E BCHK's Articles of Association that BCHK, the Council and the management
F committee have a primary duty to ensure that its nominee for appointment as
G supervisor is a "fit and proper person"; and once appointed, continues to a
H person of such, and if not acceptable as such a person or on any other grounds,
I seek his removal by invoking the process under section 38(1)(e) and 38(2).
J Accordingly, the members of the Council have an interest to oppose the
K plaintiff's claim. They must be appropriate contradictors. The Council, as the
L supreme authority of BCHK, has overall responsibility and vicarious liability
M for the management committee. If a declaration to the effect that Chan is not
N a "fit and proper person" is made, it is difficult to see how and why the
O Council acting properly would not in the ordinary course of event give effect
P to the declaration by causing the management committee to take appropriate
Q steps. Chan, whose fitness is called in question, of course has an interest in
R opposing the plaintiff's claim. Hence, the Council, including the 1st defendant
S and each and every other member, and Chan are appropriate contradictors.

O 48. However, the position of the 2nd defendant is wholly different. He
P is not a member of the Council or a member of the management committee of
Q the Primary School. His position is a paid Executive Secretary of BCHK who
R signed on the Public Notice to authenticate the document. He acted at the
S direction of the Council or BCHK. He is in no position to give effect to the
T declaration, if made. He has no interest in opposing the plaintiff's claim.
U He could not be a proper contradictor. For this reason, the Re-Amended
V Statement of Claim must be struck out as against the 2nd defendant. I suspect
Chan Wai Sang was intended by the plaintiff to be the 2nd defendant. But I

A cannot speak on the plaintiff's behalf. In any event, if BCHK is joined, A
B there is no need to amend the name of the 2nd defendant. The plaintiff and B
C his legal team made a mess of the capacity or identity of the 1st and 2nd C
D defendants. He has to be penalised in costs. D

E *Internal management of BCHK* E

F 49. Mr Chong, quoting *Hong Kong Housing Services for Refugees* F
G *Ltd v SJ*²⁶, argues that BCHK as a corporate body for charitable purpose G
H holding the Primary School and its property absolutely, as its own property H
I and not as a trustee. The only limitation to its power is that it could not act I
J *ultra vires* its power and duties specified in its constitution. Next, he argues J
K that the internal management rule applicable to body corporates applies K
L equally to a charitable corporation. Thus the court has no jurisdiction to L
M intervene in the internal management of BCHK unless it has acted *ultra vires*. M
N He quoted a number of examples. As the cases show, they all turn on the N
O question of construction of the constitution of the body corporates, but do not O
P establish the general principle contended by Mr Chong that whatever a body P
Q corporate does within its powers is unchallengeable by an interested person if Q
R it is in breach of any duty or obligation owed by the body corporate. R

S 50. First, Mr Chong quoted the case of *Ex parte Berkhamstead Free* S
T *School*²⁷ in which the master and usher of a charity school founded by statute T
U misappropriated the property of the school but its visitor refused to remove U
V them. It was held that the visitor had exclusive jurisdiction over the internal V
management of the charity school:

²⁶ [1999] 4 HKC 292, per Ribeiro J (as he then was), at 301F, citing *Liverpool and District Hospital for Diseases of the Heart v Attorney General* [1981] Ch 193, and *Vernon's Will Trusts* [1972] Ch 300

²⁷ (1813) 35 ER 270

A “ This is a Royal Foundation under which the Master and Usher are A
B Corporators. As long as they remain so, and the Visitor does not B
C think proper to remove them, they must in a Court of Justice have the C
D Enjoyment of all the Revenues, which belong to them by the same D
E Instrument, that gives them the Corporate Character. ...” E

D The exclusive internal management rule clearly turned on the construction of D
E the instrument creating the foundation. E

F 51. In *Reg v Hull University Visitor, Ex p Page*²⁸, Lord Browne- F
G Wilkinson said: G

H “ ... It is established that, a university being an eleemosynary charitable H
I foundation, the visitor of the university has exclusive jurisdiction to I
J decide disputes arising under the domestic law of the university. This J
K is because the founder of such a body is entitled to reserve to himself K
L or to a visitor whom he appoints the exclusive right to adjudicate upon L
M the domestic laws which the founder has established for the regulation M
N of his bounty.” N

O That was a case of judicial review in which the House of Lords adopted the O
K statutory *ultra vires* theory based on the proposition that the power had been K
L conferred on the decision-maker on the underlying (and fictional) assumption L
M that the power was to be exercised only within the jurisdiction conferred, in M
N accordance with fair procedures, and reasonably in a *Wednesbury* sense. It N
O had all to do with construction of the domestic law or constitutional O
P document of the body corporate. P

Q 52. Next, Mr Chong referred to *Thomas v Bradford University*²⁹ in Q
R which Lord Griffiths said: R

S “ As the jurisdiction stems from the power to provide and administer S
T the domestic law of the foundation, it can as a general rule be said T
U only to apply to those who are members of the foundation because U
V only they are subject to those domestic laws. Nevertheless the V

T ²⁸ [1993] AC 682 at 695 H

U ²⁹ [1987] 1 AC 795 at 815

jurisdiction has always been held to apply both to admission to and removal from office in the foundation”

This dictum had all to do with construction of the domestic law applicable to members of the University. It had nothing to do with a claim by a non-member for breach of its duty and obligation under public law.

53. In the present case, who to be appointed as members of the management committee or whom to be nominated as the supervisor are all matters of internal management. The court has no jurisdiction to dictate BCHK’s choice of supervisors. But BCHK is operating schools in Hong Kong subject to the provisions of the Education Ordinance. The fitness for appointment of a supervisor in accordance with the statutory regime as opposed to the appointment of a particular qualified individual is clearly a matter of public interest and not just a matter of internal management of BCHK. BCHK has an obligation to discharge its duties in the management of the business and affairs of the Schools in a fair, accountable and transparent way. As the plaintiff asserted, integrity is the most important element in the education field. The public would rely on the academic qualification of the supervisor to assess the capability of the management of the Schools. If so, the false declaration of academic qualification by Chan may well give the general public the false impression as to the capability and integrity of the management committee of the Primary School and the quality of the education it offers. The nomination of supervisor clearly goes beyond matters of internal management to which the court should not have access.

Frivolous, vexatious and abuse of the legal process

54. Mr Chong attacks the plaintiff’s case as frivolous, vexatious and abuse of the legal process on two fronts. First, he quotes my decision in *Koo*

A *Ming Kown v Pacific Online Ltd*³⁰ in which I held it would be frivolous and A
B vexatious to continue with an action which is obviously unsustainable and that B
C using the process of the court to continue with such an action would be an C
D abuse of the legal process. Though the plaintiff herein was also the plaintiff D
E in that case and one of the issue was also Chan's integrity arising out of his E
F false declaration of his doctorate qualification, the context is wholly different. F
G That case was about Chan's appointment as a non-executive director in a G
H public company. In the present case, the facts indicate at least there is a H
I *prima facie* case for declaratory relief. I

H 55. Alternatively, the defendants alleged that the plaintiff has an H
I ulterior motive in bringing this action to embarrass and humiliate the 1st, 3rd I
J and 4th defendants by using Chan's academic qualification. In furtherance of J
K the said motive, the plaintiff has been pursuing an extra legal relief by way of K
L mock trial involving the public through directing mass media to publish articles L
M about Chan's academic qualifications and emails to the 1st defendant that were M
N also forwarded to members of the alumni association and other schools under N
O the Pui Ching family. O

N 56. The defendants refer, in particular, to an allegation made by N
O the alumni of the Primary School, including the plaintiff, prior to the O
P commencement of the present proceedings. The allegation was that BCHK P
Q and one of its affiliated schools have misappropriated funds and resources of Q
R the Primary School. Since then, the alumni, including the plaintiff, have R
S advocated for reform of the management of the Primary School, enhancing S
T the transparency of its management, and setting up an incorporated management T
U committee of the Primary School in lieu of the present management committee. U
V BCHK rejected the proposal of setting up an incorporated management V

³⁰ HCA 2333/2016, unreported, 16 May 2017, at para 31

A committee of the Primary School. The defendants allege that in order to pressurize BCHK into acceding to the alumni's request, the plaintiff and other alumni then started a campaign and a series of litigation against BCHK and its officers. The campaign includes:

- (1) distributing fliers outside the Primary School and the church of which Chan is a member, at the time when the plaintiff could not say for sure that Chan's doctorate degree was conferred by an unauthorized degree awarding institute;
- (2) giving information to the media in order to raise widespread criticism in the public arena about Chan's academic qualification and his credibility;
- (3) copying letters and emails from the plaintiff to the 1st defendant and Chan to the media, government officials, public bodies and the general public, to raise widespread criticism in the public arena about Chan's academic qualification and credibility;
- (4) using abusive language and remarks to the 1st defendant and Chan; and
- (5) publishing a congratulation note on the local newspaper to raise public concern about Chan's academic qualification.

57. In addition, the plaintiff commenced two actions against two public companies in which Chan was a director seeking his removal on the ground of his false declaration of his doctorate qualification: *Koo Ming Kown v Pacific Online Ltd*³¹ and *Koo Ming Kown v Talent Property Group Limited*³². Both actions were struck out. He commenced action in *Koo Ming Kown v Eddie Ng Hak-Kim*³³ seeking the former permanent secretary of Education Bureau to revoke Chan's appointment as supervisor. That action was also struck out.

³¹ HCA 2333/2016, unreported, 16 May 2017

³² HCA 2335/2016, unreported, 18 August 2017

³³ HCA 2334/2016, unreported, 21 June 2017

A He commenced action in *Koo Ming Kown v Carrie Lam Cheng Yuet-Ngor*³⁴ A
B accusing the former Chief Secretary of failing to take concrete steps to B
C investigate the conduct of Chan. That action was also struck out. Mr Chong C
D relies on those actions as evidence of the plaintiff's ulterior motive in hurting D
E Chan or seeking relief against him in commencing those legal proceedings. E

F 58. The defendants rely on the campaign and these actions as evidence F
G that the plaintiff's claim herein is an abuse of legal process by using this action G
H to pressurize the defendants into a compromise over the proposal of setting up H
I an incorporated management committee for the Primary School which, from I
J the alumni's perspective, is more transparent and effective. Mr Chong J
K quotes the following dicta of Bridge LJ in *Goldsmith v Sperrings Ltd*³⁵ in K
L support of his argument: L
M

J "In my judgment, one can certainly go so far as to say that when a J
K litigant sues to redress a grievance no object which he may seek to K
L obtain can be condemned as a collateral advantage if it is reasonably L
M related to the provision of some form of redress for that grievance. M
On the other hand, if it can be shown that a litigant is pursuing an
ulterior purpose unrelated to the subject matter of the litigation and
that, but for his ulterior purpose, he would not have commenced
proceedings at all, that is an abuse of process."

N 59. Motive, particularly ulterior motive, is very often a matter of N
O inference from proven facts. I have no disagreement with the dictum of O
P Bridge LJ. The question is whether it can be shown that the plaintiff herein P
Q is pursuing an ulterior purpose unrelated to the subject matter of these Q
R proceedings and, but for his ulterior purpose, he would not have commenced R
S these proceedings at all. S

T ³⁴ HCA 2336/2016, unreported, 21 June 2017 T

U ³⁵ [1977] 1 WLR 478 at 503 F-G U
V

60. I have no doubt that the campaign was directed at Chan's false declaration of his doctorate qualification. The actions involved may not be commendable as a means of resolution of dispute. They may be excessive and annoying from Chan's or BCHK's point of view. But as Mr Mok SC suggests, the plaintiff's exercise of his right of freedom of expression is guaranteed by Article 27 of the Basic Law. There is nothing to suggest that the actions had gone beyond what was civilized and peaceful. If Chan or BCHK consider the actions excessive and infringement of their rights, they may seek legal redress against the plaintiff for defamation and/or malicious falsehood, if any of them has valid basis that the plaintiff's complaints are false and/or unjustified. Charity begins at home. So does integrity. The school, particularly the Primary School, is the place to nurture and foster it. I can feel the sense of grievance the plaintiff and other members of the alumni have against Chan who is the figure head and symbol of the Primary School whom the students and their parents look to as model of integrity, but who to their knowledge was guilty of dishonourable conduct in falsely claiming a doctorate qualification. I cannot draw as the only irresistible inference that the actions in the campaign were commenced for the purpose of forcing a compromise for setting up an incorporated management committee. In fact, I would think the contrary. Those actions would not stop even if a compromise along that line is reached without removal of Chan as supervisor.

61. As for the four legal actions, I think it more likely than not that they were instituted to vent the plaintiff's anger at Chan for the same reason. They were commenced rather stupidly and probably without any or any proper legal advice. For the same reasons, I am unable to draw as the only irresistible inference that those actions were commenced for the purpose of forcing a compromise for setting up an incorporated management committee.

A 62. Even if the campaign and those four actions were carried out with
B the ulterior motive as alleged, it has little bearing to the question whether
C these proceedings are pursued with that same ulterior motive. Again, I cannot
D draw as the only irresistible inference that they are. The defendants have
E failed to show that the action is an abuse of the legal process.

F 63. No allegation has been made that the plaintiff's allegations are
G scandalous. The plaintiff has presented a good *prima facie* case for
H declaratory relief, which is not bound to fail. His action cannot be described
I as frivolous and vexatious.

H *Conclusion*

I 64. For the above reasons, I find that the plaintiff has made out a good
J *prima facie* case against the 1st, 3rd and 4th defendants and that he is entitled to
K declaratory relief, but not as against the 2nd defendant. Accordingly, I allow
L the appeal to the extent that the Re-Amended Statement of Claim be struck
M out and the action dismissed as against the 2nd defendant with costs including
N the costs before the master. All the other orders of the master are upheld. I
O also make an order that the plaintiff shall have costs of the appeal against the
P 1st defendant with certificate for two counsel; and the 2nd defendant shall have
Q costs of the appeal against the plaintiff.

(Anthony To)
Deputy High Court Judge

R Mr Johnny Mok SC and Ms Teresa Wu, instructed by Lily Fenn & Partners,
S for the plaintiff

T Mr K M Chong, instructed by P T Yeung & Tang,
U for the 1st and 2nd defendants
V