

**IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
~~MAJOR TORTS LIST~~**

No: of 2011

S C 2011 00682

BETWEEN:

**CHINESE COMMUNITY SOCIAL SERVICES CENTRE INC**

Plaintiff

and

**STEPHEN MAYNE**

Defendant

**WRIT**

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Date of Document: 16 February 2011

Filed on behalf of: The Plaintiff  
Prepared by: Canaan Lawyers Tel: (03) 9620 0888  
Level 2, 395 Collins Street Fax: (03) 9620 0777  
MELBOURNE VIC 3000 Ref: JK:JC:100131

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**TO THE DEFENDANT**

**TAKE NOTICE** that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

**IF YOU INTEND TO DEFEND** the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

**YOU OR YOUR SOLICITOR** may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and

- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

**IF YOU FAIL** to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

**THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in New Zealand or in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in any other place, within 42 days after service.

**IF** the plaintiff claims a debt only and you pay that debt, namely, \$ N/A and \$ N/A for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED 16 FEB 2011



Prothonotary

A Statement of Claim is attached to this Writ.

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BETWEEN:

**CHINESE COMMUNITY SOCIAL SERVICES CENTRE INC**

Plaintiff

and

**STEPHEN MAYNE**

Defendant

**STATEMENT OF CLAIM**

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Date of Document:	16 February 2011
Filed on behalf of:	The Plaintiff
Prepared by: Canaan Lawyers	Tel: (03) 9620 0888
Level 2, 395 Collins Street	Fax: (03) 9620 0777
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**The plaintiff**

1. The plaintiff is and was at all material times –
  - (a) a non-profit registered public benevolent institution of high repute the objects of which do not include obtaining financial gain for its members or corporators and as such is able to maintain an action for defamation;
  - (b) devoted to the care and welfare of Victoria's Chinese community, including by the provision of health care and aged care services, migration assistance services, and community education and advocacy services;
  - (c) reliant on public donations and bequests from the Chinese community for the advancement of its objects;

- (c) the owner and operator of the On Luck Chinese Nursing Home in the City of Manningham;
- (d) endeavouring to secure planning approval to expand the size of the On Luck Chinese Nursing home so as to better accommodate the needs of elderly members of Victoria's Chinese community.

### **Publication**

2. On 17 February 2010 the Manningham Leader newspaper in an article headlined "Questions hover over deputy's role", reported that the defendant had accused the plaintiff of "attempt[ing] to bypass regular council planning processes" to secure planning approval for an expansion of the On Luck Chinese Nursing Home ("**the first words**"). A copy of the article is annexed hereto in Schedule A.
3. Shortly prior to the the publication of the first words in the Manningham Leader newspaper the defendant uttered the first words to the Manningham Leader newspaper –
  - (a) intending that they be published therein; alternatively,
  - (b) it was a natural and probable consequence of the defendant uttering the first words to the Manningham Leader newspaper that they would be published therein.
4. The first words were of and concerning the plaintiff.
5. Further, on 17 February 2010 the Manningham Leader newspaper published a letter to the editor written by the defendant which accused the plaintiff of engaging in conduct that set an "undesirable precedent", was "an inappropriate use of the planning tools", was lacking in "transparency", and was not engaging with "regular council planning processes" in its attempt to secure planning approval for an expansion of the On Luck Chinese Nursing Home ("**the letter**"). A copy of the letter is annexed hereto in Schedule B.
6. The defendant wrote the letter –

- (a) intending it to be published in the Manningham Leader newspaper; alternatively
  - (b) it was the natural and probable consequence of the writing of the letter that it would be published in the Manningham Leader newspaper.
- 7. The letter was of and concerning the plaintiff.
- 8. By reason of the matters referred to in paragraphs 2 to 8 inclusive hereof, the defendant is liable for the publication of the first words and the letter.

**Defamatory meanings**

- 9. In their natural and ordinary meaning the first words and the letter each meant and were understood to mean that –
  - (a) the plaintiff had breached planning laws by making an application directly to the Minister for Planning rather than to the Manningham City Council for an expansion of the On Luck Chinese Nursing Home; and
  - (b) by approaching the Minister for Planning directly, rather than the Manningham City Council, the plaintiff was duplicitous in its application for planning approval for an expansion of the On Luck Chinese Nursing Home.

**Damage**

- 10. As a result of the publication of the first words and the letter, the plaintiff's reputation has been gravely injured as a result of which he has suffered loss and damage.
- 11. Further, in respect of the causes of action pleaded herein, the circumstances are such that the plaintiff is entitled to an award of aggravated damages.

**Particulars of aggravated damages**

- (i) By letters dated 19 November 2010 and 15 December 2010 the plaintiff sought apologies and clarifications from the defendant.
- (ii) No such apologies and clarifications were made by the defendant.

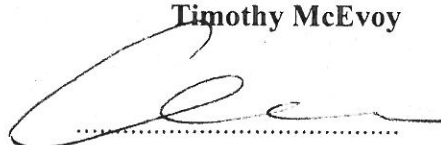
**AND THE PLAINTIFF CLAIMS:**

- A. Damages, including aggravated damages.
- B. Interest pursuant to Statute.
- C. Costs.
- D. Such further or other Orders as this Honourable Court deems fit.

Dated: 16 February 2011

**Simon Wilson QC**

**Timothy McEvoy**

A handwritten signature in black ink, appearing to read 'Timothy McEvoy', written over a horizontal dotted line.

Canaan Lawyers  
Solicitor for the Plaintiff

# Questions hover over deputy's role

THE On Luck nursing home's expansion bid has raised questions about why Manningham's Deputy Mayor Fred Chuah – who is also president of the organisation which manages the home – bypassed his own council's planning process.

At a special meeting last week, some councillors raised concerns about Cr Chuah's conflicting roles as councillor, On Luck

chairman and president of Chinese Community Social Services Centre, which owns and runs the nursing home.

Cr Chuah is also married to Kim Au, the centre's chief executive.

Cr Chuah has excused himself from council debate on the issue, but some councillors say that is not enough to negate his conflict of interest.

"This is about process. The big issue is that an elected councillor has chosen to avoid council scrutiny," Cr Ellis said.

Cr Stephen Mayne said he believed the situation put Cr Chuah's position as a councillor in doubt.

"If I was a councillor who chaired another body that attempted to bypass regular council planning processes ...

I would consider my position untenable," Cr Mayne said.

The issue was also raised in Parliament by Warrandyte state Liberal MP Ryan Smith.

Cr Chuah did not return the *Leader's* calls requesting comment about the criticism last week, instead sending a text message saying "I have no comment to make as I was not in the meeting on Wednesday".

## Undesirable precedent

KIM Au – chief of the Chinese Community Social Services Centre, which manages the On Luck Chinese Nursing Home in Donvale's Green Wedge – was last week quoted in *Manningham Leader* describing the Planning Minister as the appropriate authority to deal with the request to triple the facility to 180 beds in a \$10 million-plus expansion.

I believe this is a highly contestable claim. Councillors last week unanimously passed a report from our professional planning officers, which said "An issue of particular concern to officers is the planning process being used. For greater transparency it is considered that a consistent approach by DPCD (State Government Department of Planning and Community Development) is preferable to assess and approve any proposals for the expansion of non-conforming uses in the Green Wedge".

The planning process being used for the nursing home sets an undesirable precedent and is considered (by Manningham Council) an inappropriate use of the planning tools.

In the interests of transparency, it should also be disclosed that Kim Au is married to Manningham Deputy Mayor Fred Chuah, who was the visionary behind the original development of On Luck and still chairs the board to this day.

While I am a strong supporter of expanding residential care bed numbers across Manningham, this situation is most unfortunate and On Luck should withdraw its request to the minister and re-engage with regular council planning processes.

**Cr Stephen Mayne, Heide Ward.**

## Withdraw application

THE On Luck Chinese Nursing Home



The On Luck aged-care centre application has sparked controversy.

development application is not simply a debate about the Green Wedge or about the undisputed need for aged-care services in Manningham.

It is about the propriety of the process On Luck has used in this case to bypass the council to get the Planning Minister to alter the Manningham planning scheme and allow expansion of the facility in a zone where such developments are actually prohibited.

I note the comments of On Luck chief executive Kim Au that the proposal has always been part of the long-term plan.

In that case, one must ask why there has been no attempt to bring the matter to the attention of councillors sooner and to have it processed through council officers with transparency and public input as we might

expect of any other application.

As it was, Manningham Council and councillors were kept completely in the dark until after the application was made to the minister through state planning officers.

That this was done in early January, while council was in recess, compounds the impression of an attempt to minimise council scrutiny and avoid public awareness of a controversial proposal.

Cr Fred Chuah who, as well as being president of the organisation that owns On Luck, is Deputy Mayor of Manningham.

I trust that in the interest of good governance he will see the serious conflict of loyalties that was and is involved here and will, at the least, withdraw the application to the minister without delay.

**Cr David Ellis, Mullum Mullum Ward.**