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PROVIDING FOR CONTINGENCIES—THE AWARD OF PROVISIONAL DAMAGES IN SINGAPORE

ACD (by her next friend B) v. See Mun Li[1]

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I. INTRODUCTION

The lump sum, once and for all, payment is by far the most common form of damages awarded in civil claims. It is generally favoured by claimants and defendants alike—by the former because it enables them to draw a line under the stressful experience of litigation, and by the latter because it permits them (or their insurers) to calculate accurately at the end of the trial the final cost of compensation. It is also the most efficient system in terms of the administration of justice, as it limits the involvement of the courts to the single occasion on which the award is made. However, nowadays legislation in most jurisdictions provides for other forms of damages, including the award of provisional damages to take account of a possible event or development which might in future increase the extent of a claimant's injuries. Recently, the High Court of Singapore was for the first time called upon to consider the factors relevant in making an award of provisional damages. In a careful analysis, which drew extensively on the equivalent English law provisions, the Assistant Registrar, Teo Guan Siew, offered a clear indication of the circumstances in which it would be appropriate for a provisional order to be made.

II. THE FACTS

The claimant was a ten-year old girl who, at the age of six, had been knocked down by a car driven by the defendant. She had sustained serious head injuries in the accident, which resulted in permanent damage to her pituitary gland. This led her to suffer, *inter alia*, from a diabetic condition, central diabetes insipidus, and a hormonal problem, cortisol deficiency, which inhibited her growth. The conditions required her to take constant medication, including nightly injections of growth

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1 [2009] SGHC 217 [*ACD*].

hormones. The defendant's liability for the accident was agreed at 65%, and the evidence of the claimant's doctors with respect to the injuries was not disputed. However, quantification of damages was complicated by the possibility that the claimant might go on to develop an additional medical condition, also associated with the damage to her pituitary gland. This condition was sexual hormonal deficiency—a condition which would manifest itself only at around the age of thirteen, when it would prevent her from undergoing spontaneous puberty. In the circumstances, the Assistant Registrar made a provisional order allowing the claimant to apply for further damages within five years if she did indeed develop the condition. Since this was the first reported Singapore case involving a provisional order, he provided written reasons to explain his decision.

III. The Judgment

The starting point for the judgment was the court's power to make an order for provisional damages under Singapore law. Under paragraph 16 of the First Schedule of the *Supreme Court of Judicature Act*,[2] the court has:

> Power to award in any action for damages for personal injuries, provisional damages assessed on the assumption that a contingency will not happen and further damages at a future date if the contingency happens.

In addition, Order 37 rule 8 of the *Rules of Court*[3] provides that:

> (1) The Court may, on such terms as it thinks just and subject to the provisions of this Rule, make an award of provisional damages if the plaintiff has pleaded a claim for provisional damages.
> (2) An order for an award of provisional damages shall specify the contingency in respect of which an application may be made at a future date, and shall also, unless the Court otherwise determines, specify the period within such application may be made.

As the Assistant Registrar pointed out, neither the *Supreme Court of Judicature Act* nor the *Rules of Court* explain what will qualify as a 'contingency'. In the absence of legislative clarification or local precedents, he therefore turned to English law for guidance.[4] Noting that the starting point in awarding damages under English law was, and remained, the aim of finality in the administration of justice, he observed that this had led to the general rule that damages should be assessed on a once and for all basis—as stated by Lord Pearce in *Murphy v. Stone-Wallwork (Charlton) Ltd*:

> Our courts have adopted the principle that damages are to be assessed at the trial once and for all. If later the plaintiff suffers greater loss from an accident than was

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[2] Cap. 322, 2007 Rev. Ed. Sing. A similar provision is to be found in the *Subordinate Courts Act* (Cap. 321, 2007 Rev. Ed. Sing.), sections 32 and 52.

[3] Cap. 322, R. 5, 2006, Rev. Ed. Sing. [*the Singapore Rules of Court*]. The rules came into operation on 1 July 1993 by virtue of the *Rules of the Supreme Court (Amendment) Rules* S.264/93. (The Subordinate Courts have similar powers by virtue of the *Rules of the Subordinate Courts (Amendment No. 2) Rules* S.279/93.)

[4] *ACD*, *supra* note 1 at para. 7.

> anticipated at the trial, he cannot come back for more. Nor can the defendant come back if the loss is less than was anticipated. Thus, the assessment of damages for the future is necessarily compounded of prophecy and calculation. The court must do its best to reach what seems to be the right figure on a reasonable balance of probabilities…[5]

However, there had come to be widespread concern that the once and for all principle could lead to harsh and unjust results, particularly in cases involving personal injuries. Where a claimant faced the prospect of developing a serious condition as a result of his injuries, compensation awarded at the date of trial might prove wholly inadequate, and in such circumstances "…it may well be in the interests of justice that a final award of damages should not be made until sufficient time has elapsed for a reliable prognosis of the plaintiff's medical condition".[6] For this reason, a statutory exception to the once and for all rule had been introduced for personal injury cases under the *Supreme Court Act*,[7] section 32A of which provides:

> (1) This section applies to an action for damages for personal injuries in which there is proved or admitted to be a chance that at some definite or indefinite time in the future the injured person will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration in his physical or mental condition.
> (2) …provision may be made by rules of court for enabling the court, in such circumstances as may be prescribed, to award the injured person—(a) damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration in his condition; and (b) further damages at a future date if he develops the disease or suffers the deterioration.

The Assistant Registrar recognised the inherent similarities between Singapore and English law with respect to provisional awards, but also pointed to three important differences. The first was that the English provisions referred to a 'chance' rather than a 'contingency.' The second was that under English law the 'chance' had to be proved or admitted, while under Singapore law the contingency simply had to happen. The third was that English law required a serious disease or serious deterioration, whereas under Singapore law there was no such requirement.[8]

The Assistant Registrar went on to examine English authorities interpreting section 32A. The first was *Willson v. Ministry of Defence*,[9] in which the claimant, an employee in a naval dockyard, injured his ankle at work. The medical evidence showed that his ankle joint would degenerate, with the possibility that he might develop arthritis as a result. In his action for damages against his employers, the claimant sought an award of provisional damages, arguing that if he developed arthritis so severe that he required surgery or had to change his employment, he would require a further award of damages. Examining the meaning of 'chance' in section 32A, Scott Baker J. concluded that the legislature had deliberately used a wide word, which could encompass anything from a *de minimis* possibility to a

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5 [1969] 1 W.L.R. 1023 (H.L.) at 1027.
6 *Deeny v. Gooda Walker Ltd. (No. 3)* [1995] 1 W.L.R. 1206 (Q.B.D.) at 1214, per Philips J.
7 (U.K.) 1981, c. 54 [*the U.K. Act*].
8 *ACD*, *supra* note 1 at para. 11.
9 [1991] 1 All E.R. 638 (Q.B.D.) [*Willson*].

probability. Although the prospect must be "measurable rather than fanciful",[10] a chance would not have to be substantial in order to be measurable, and the threshold was satisfied on the facts of the case. However, Scott Baker J. went on to hold that the claimant could *not* establish that this chance would lead to a 'serious deterioration' in his condition, since the expression suggested something beyond the ordinary deterioration inevitably associated with progressive osteoarthritis.[11] The decision whether or not to make an order for provisional damages would require a court to take account of "the degree of risk and the consequences of the risk".[12] While section 32A had created a valuable statutory exception to the once and for all basis for awarding damages, the balance between the general situation in which a lump sum payment would be awarded and the exceptional one in which the claimant would be permitted to return to court was a delicate one. Only where there was "a clear and severable risk…a clear-cut event which, if it occurs, triggers an entitlement to further compensation"[13] would the section come into play.[14]

In striking the balance referred to by Scott Baker J., the position of the defendant would also be relevant. In this respect, the Assistant Registrar referred to *Adan v. Securicor Custodial Services Ltd.*,[15] a somewhat unusual case in which the issue was whether the claimant's condition might actually improve, rather than deteriorate. Although this meant that section 32A was inapplicable, the court in *Adan* nevertheless considered the general implications of provisional orders from the perspective of the defendant, concluding that it was "inherently undesirable and oppressive" to expose a defendant's insurers to "uncertain liability…for an indefinite period of time".[16]

Finally, the Assistant Registrar referred to *Cowan v. Kitson Insulations Ltd. and ors*,[17] a case in which the court had considered the implications of a claimant choosing not to seek a provisional award. In *Cowan*, the defendant had exposed the claimant to asbestos, with the result that the claimant had a 10 to 15% risk of developing asbestosis, a similar risk of developing lung cancer, and a slightly lower risk of developing mesothelioma. Although he could have sought provisional damages, he opted for final assessment at the date of trial. Counsel for the defendant urged the court not to overcompensate him, given that it was his own choice not to ask for a provisional order. However, the court rejected such a line of argument and did its best to factor into the final award the risks the risks of contracting the various diseases, observing that the claimant was "not to be disadvantaged in any way by seeking a final assessment now".[18]

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[10] *Ibid*. at 642.
[11] *Ibid*.
[12] *Ibid*. at 644.
[13] *Ibid*.
[14] The Assistant Registrar observed that in this respect Scott Baker J.'s views echoed the sentiments expressed in the earlier case of *Patterson v. Ministry of Defence* [1987] C.L.Y. 1194 [*Patterson*], that: " … generally speaking, it appears … desirable to limit the employment of this … statutory power to cases where the adverse prospect is reasonably clear-cut and where there would be little room for later dispute whether or not the contemplated deterioration had actually occurred".
[15] [2004] EWHC 394 (Q.B.) [*Adan*].
[16] *Ibid*.
[17] [1991] 1 P.I.Q.R. Q.19 [*Cowan*].
[18] *Ibid*.

Having examined the English cases, the Assistant Registrar summarised the applicable principles to be gleaned from them:

(a) The 'chance' under section 32A must be measurable rather than fanciful.
(b) There must be a clear and severable risk rather than continuing deterioration, *i.e.* there must be a clear-cut event that would trigger the entitlement to apply for further compensation.
(c) Account must be had to the degree of risk and the consequences of the risk, *i.e.* the severity of the nature of the illness or deterioration and its detrimental effect on the claimant.
(d) A balancing exercise must be undertaken to determine whether justice is better served by a once-an-for-all assessment or by giving the claimant the liberty to return to apply for further damages in the future.
(e) A claimant should not be prejudiced for deciding not to utilise the option of applying for a provisional order: the court would do its best in the circumstances to consider the risks of future medical complications in arriving at an award for immediate damages.[19]

The Assistant Registrar considered these principles to be sensible, and was of the view that they ought, in broad terms, to be equally relevant in the Singapore context—subject to the caveat that "in applying these principles, the court should have regard to the differences in wording of our provisions from their U.K. equivalent".[20] To the list, he added the fact that a court must consider the period of time for which a provisional order would remain in effect, since in conducting the balancing exercise referred to in (d), it would be important (as indicated by the court in *Adan*) to avoid the danger of exposing a defendant to potential liability for an indefinite period.

Applying the relevant principles to the facts of *ACD*, the Assistant Registrar had little difficulty in concluding that a provisional order would be appropriate. While observing that the claimant's pleadings—which did not clearly identify the specific nature of the contingency—could have been improved upon, and that "claimants will be well-advised to plead with clarity and specificity the exact medical condition or disease that is to form the contingent event which gives rise to the right to seek further compensation",[21] he was satisfied from the evidence of the claimant's two specialist doctors that the prospect of the claimant developing sexual hormonal deficiency was "a clear and severable risk as opposed to mere deterioration or progression of a particular pre-existing illness".[22] The fact that the specialists had not expressed in percentage terms the risk of the deficiency occurring (a risk which, if it eventuated, would require her to have sexual hormonal therapy for the rest of her life) neither prevented it from being measurable nor rendered it fanciful. In unchallenged evidence, both specialists had stated that she might not undergo a spontaneous puberty. It was clear from *Willson* and subsequent cases that the threshold for establishing a measurable chance was not high,[23] and the cases in which provisional orders had

[19] *ACD*, *supra* note 1 at para. 20.
[20] *Ibid*. at para. 21.
[21] *Ibid*. at para. 24.
[22] *Ibid*. at para. 25.
[23] *Ibid*. at para. 29. In this respect, the Assistant Registrar referred to Gordan Exall and John H. Munkman, eds., *Munkman on Damages for Personal Injuries and Death*, 11th ed. (U.K: LexisNexis, 2004), which

not been made were distinguishable.[24] Moreover, the absence of a requirement in the Singapore provisions that the relevant contingency must be proved or admitted (as would be necessary for an equivalent chance under section 32A of the *U.K. Act*) suggested that the local courts should take a broad view of the circumstances when deciding whether or not to award provisional damages.[25] Finally, it would become clear at puberty whether or not the claimant, who was already ten years of age, had developed the relevant condition. Even on the most conservative estimate, the provisional order need only last for five years before the parties returned to court, thus addressing any concerns that the defendant's insurers might be faced with uncertain liability for an extended period of time.[26] On balance, the need to keep open the possibility of compensating the claimant for what might turn out to be essential, and expensive, medical treatment outweighed the defendant's right to determine the exact extent of liability at trial. The provisional order awarding immediate damages for the claimant's existing injuries and the right to return to court within five years if she developed sexual hormonal deficiency would, therefore, be granted.[27]

IV. Discussion

The actual decision in *ACD* is neither controversial nor surprising. Indeed, it appears to be a paradigm provisional damages case—involving precisely the kind of situation which one would assume Parliament to have had in mind when the relevant legislation was introduced. The facts lent themselves perfectly to an order for provisional damages, the analysis of the Assistant Registrar was thorough and well reasoned, and the result was just and equitable.

As an exercise in statutory interpretation, however, the case is a little less straightforward. This being the first reported provisional damages case in Singapore, there were no local cases to which the Assistant Registrar could refer.[28] In the circumstances, he turned directly to the equivalent English law—both the legislation and

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documented an unreported case, *O'Kennedy v. Harris* (9 July 1990), in which a provisional order for damages was made even though the relevant risk (of epilepsy) was only 0.25%.

[24] *Ibid*. at para. 31. In *Willson* there was no clear and severable risk; in *Cowan* the claimant himself chose not to seek provisional damages, and in *Adan* the situation fell outside the legislation.

[25] *Ibid*. at para. 30. The Assistant Registrar referred to the views of Professor Jeffrey Pinsler in Jeffrey Pinsler, ed., *Singapore Court Practice 2006* (Singapore: LexisNexis, 2006) at paras. 37/7-10/3.

[26] *Ibid*. at para. 32.

[27] The Assistant Registrar also dismissed the argument made by counsel for the defendant that under the *Limitation Act* (Cap. 163, 1996 Rev. Ed. Sing.), section 24, the claimant, as a minor at the date of the accident, could have deferred the three-year time-limit for bringing her personal injuries claim until she reached 21, which would have allowed her to wait and see whether she developed sexual hormonal deficiency. The problem with this, as the Assistant Registrar observed, would have been that during the intervening period she would have received no damages to compensate her for the cost of treating the other conditions caused by the accident. *Ibid*. at para. 33.

[28] Under the *Interpretation Act* (Cap. 1, 2002 Rev. Ed. Sing.), section 9A(1), in "the interpretation of a provision of a written law, an interpretation which would promote the purpose or object underlying the written law (whether or not that purpose or object is expressly stated in the written law shall be preferred to an interpretation that would not promote that purpose or object". In theory, therefore, the starting point for the judgment should have been section 9A, and reference to any materials which might have helped to clarify the aims behind the introduction of awards for provisional damages in Singapore (section 9A(2)). However, since no relevant parliamentary or pre-parliamentary documents specifically addressed the meaning of 'contingency' or the specific circumstances in which provisional damages

the cases interpreting that legislation—even though (as he recognised) there were a number of differences between the Singapore and U.K. provisions.

In the absence of local precedents interpreting a statutory provision, the practice of looking to see how courts in other jurisdictions have interpreted statutory provisions which are *in pari materia* is, of course, well-established. In order for a foreign statutory provision to be regarded as *in pari materia*, it is not necessary that it be identical in all respects to the local one. Rather, what is required is that the subject matter of the two provisions be broadly the same. In the circumstances, the Assistant Registrar was, therefore, perfectly entitled to consider English cases interpreting the U.K. legislation on provisional damages, while bearing in mind the key differences between the legislation in the two jurisdictions—these being the reference in the *U.K. Act* to a chance rather than a contingency, the fact that under the *U.K. Act* the chance must be proved or admitted, and the requirement under the *U.K. Act* that the chance must relate to a serious disease or serious deterioration.

The only respect in which the Assistant Registrar's use of English law might be questioned relates to the way in which he dealt, or failed to deal, with the relevant differences. For while he directly addressed the second difference—the lack of a requirement under the Singapore provisions for the contingency to be 'proved' or 'admitted,' which he suggested should lead to a broad approach in this jurisdiction to the circumstances in which a provisional award should be made[29]—he did not specifically discuss either of the other two. Although it is implicit from his approach to the cases and the principles he drew from them that he regarded the English 'chance' to be effectively synonymous with the Singapore 'contingency', he did not overtly articulate this view. More significantly, in stating that a provisional award would be appropriate in this case only because sexual hormonal deficiency was "a clear and severable risk as opposed to mere deterioration or progression of a particular pre-existing illness,"[30] the Assistant Registrar seems automatically to have regarded Singapore law as requiring a severable risk either of a new condition or of something approximating a 'serious deterioration' in an existing one, even though the legislation refers simply to the occurrence of a contingency.

In a practice pamphlet on provisional damages published in 1999, the Working Papers Committee of the Subordinate Courts examined a number of the same issues.[31] Taking as its starting point the dictionary definition of 'contingency' as "a thing dependent on an uncertain event; a thing that may happen at a later time; a condition that may or may not be present in the future; a chance occurrence", the Committee went on—also without drawing any distinction between a 'contingency' and a 'chance'—to accept the English approach in cases such as *Willson*[32] that a chance must be measurable rather than fanciful and must relate to a clear and severable risk.[33] Furthermore, while recognising that "[t]he Singapore provisions are

should be awarded, reference to the purpose of the legislation would not have furthered the Assistant Registrar's analysis, and it is therefore unsurprising that he did not allude in his judgment to section 9A.

[29] *ACD*, *supra* note 1 at para. 30, referred to *supra*, text accompanying note 25.

[30] *Ibid*. at para. 25 as referred to *supra* text accompanying note 22.

[31] Singapore, Subordinate Courts of Singapore Working Papers Committee 1999, *Provisional Damages*, (Singapore: Subordinate Courts Practice Pamphlets) [*Working Papers Committee Pamphlet*].

[32] *Supra* note 9. The pamphlet also refers to *Patterson*, *supra* note 14, and *Allott v. Central Electricity Generating Board* (19 December 1988, unreported).

[33] *Working Papers Committee Pamphlet, supra* note 31, at 5-6.

wider than the English provisions as they are applicable in any 'contingency' and are not confined to chances that the injured plaintiff will develop some serious disease or suffer some serious deterioration in his physical or mental condition",[34] the Committee also concluded that "[t]he contingency on which an order…is based ought to be sufficiently clear-cut and precise…and an order [should] usually not be given for gradual deterioration of the plaintiff's condition with time".[35] Thus, notwithstanding the Assistant Registrar's failure in *ACD* specifically to address the fact that he was applying certain aspects of English law in spite of the differences between the U.K. and Singapore legislation, his approach appears consistent with intended practice.

While it is appropriate that provisional damages be awarded only in exceptional circumstances—where the compensation available under a normal once and for all lump sum payment would be patently inadequate—in choosing to follow the U.K. regime so closely, Singapore has adopted a system which a number of commentators have criticised as unnecessarily restrictive.[36] In neither jurisdiction do the rules allow for more than one application for provisional damages to be made,[37] and critics of the U.K. regime have pointed to the potential unfairness of this restriction,[38] as well as the fact that the unfairness is compounded by the need for a precisely defined, clear and severable risk to be identified at the date of trial.[39] They ask why, having recognised an area of law that needed reform, the legislators in the U.K. then felt "…such an irresistible urge to circumscribe the reforming rules to such an extent as to make them almost useless."[40]

Of course, in *ACD* the Assistant Registrar indicated that, in Singapore, a broader approach should be taken to the circumstances in which a provisional order may be made, and it is true that in this jurisdiction a contingency need not actually be proved or admitted.[41] Moreover, based on the legislative provisions alone, the courts here would certainly be free to take a more liberal attitude to what constitutes a relevant contingency. For example, under the provisions, the possibility that a leg injury might lead to a gradual, but possibly debilitating, deterioration in a claimant's ability to

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[34] *Ibid*. at 1.

[35] *Ibid*. at 7.

[36] For a summary and discussion of the perceived weaknesses see, *e.g*., U.K., Law Commission, *Structured Settlements and Interim and Provisional Damages* (Consultation Paper No. 125) (London: Her Majesty's Stationery Office, 1992), at 76-84.

[37] See O. 37 r. 10(6) of the *Singapore Rules of Court*, *supra* note 3, which provides that: "Only one application for further damages may be made in respect of each contingency specified in the order for the award of provisional damages." The equivalent U.K. provision is to be found in the *U.K. Act*, *supra* note 8, r. 41.3 of which states that: "Only one application for further damages may be made in respect of each disease or type of deterioration specified in the award of provisional damages."

[38] See Simon Deakin *et al.*, eds., *Markesinis and Deakin's Tort Law*, 6th ed. (Oxford: Clarendon Press, 2008) [*Markesinis and Deakin*] at 970, who gave the example of a claimant whose legs are injured and who might subsequently develop arthritis. They ask whether, if he were to develop arthritis in one leg, he would then have to wait to see whether it developed in the other leg before returning to court, and observe that "[i]t would be unfair to suggest that he wait until the other leg was also affected by the disease; but it would be equally unfair to limit his subsequent increase of damages to include the arthritis in the one leg."

[39] *Ibid*. The writers note that "the courts seem to take an overly narrow view on the question whether the subsequent event is a serious deterioration or an ordinary deterioration or development."

[40] *Ibid*.

[41] *ACD, supra* note 1, at para. 30, referred to *supra* notes 25 and 29 and accompanying text.

walk could justify an award of provisional damages, allowing the claimant to return to court at a time when the pace and severity of any deterioration have become apparent. However, the adoption of the requirement from the English jurisprudence that there be a clear and severable risk means that, in practice, such a case is very unlikely to fall within the parameters for awarding provisional damages, and that only the risk of a new condition, or of a significant deterioration in an existing one, will normally be regarded as constituting a relevant contingency. While these requirements are not in theory quite as restrictive as those in the U.K.—where any new condition must take the form of a 'serious disease', and any deterioration in an existing condition must also be 'serious'—the practical implications of the distinction are likely to be minimal. And when one adds to the 'clear and severable risk' requirement the Assistant Registrar's statement that "claimants will be well-advised to plead with clarity and specificity the exact medical condition or disease that is to form the contingent event"[42] it seems highly probable that the Singapore practice on provisional damages will broadly mirror that of the U.K.[43] This is by no means ideal, since the best one can say of the provisional damages regime in that jurisdiction:

> …is that [it]…is still in its formative stages. One must, therefore, hope that the courts will be responsive to calls to liberalise their present position on this issue before judicial accretions (such as *Willson*) make this task truly impossible.[44]

V. Conclusion

As the first reported case to make an order for provisional damages in Singapore, *ACD* is an important decision, and one which offers potential guidance to future courts.[45]

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[42] *Ibid*. at para. 24, referred to *supra* note 21 and accompanying text.

[43] Although with respect to the precision with which the claim is made, the Singapore courts might take a slightly less rigid approach, if the Assistant Registrar's willingness in *ACD* to order provisional damages notwithstanding the deficiencies in the pleadings is any guide.

[44] *Markesinis and Deakin*, *supra* note 38 at 970.

[45] Note, however, that in a decision reported as this note was going to print, the Court of Appeal in *Koh Chai Kwang v. Teo Ai Ling* (*by her next friend, Chua Wee Bee*) [2011] SGCA 23 made an award of provisional damages without referring to the decision in *ACD*. The case concerned a motorcycle accident in which the claimant, then aged seventeen, was knocked down by the defendant. She suffered brain injuries, and the High Court awarded her $414,000, mostly for loss of future earnings (the sum reflecting a 40% reduction to take account of her contributory negligence). On appeal by the defendant's insurers, the Court of Appeal—in a decision which dealt primarily with the circumstances in which it is appropriate to award damages for loss of future earnings and/or for loss of earning capacity—reassessed the claimant's damages and held that she should receive only $120,000 immediately, but that she would be entitled to claim a further sum in four years (with an outside window of six years) if her employment prospects failed to improve. Chao Hick Tin JA, delivering the judgment of the court, observed, as the Assistant Registrar had done in *ACD*, that while paragraph 16 of the First Schedule of the *Supreme Court Act* was modelled on s. 32A of the *U.K. Act*, it was "drafted much more widely than the English provisions" (para. 50), and that, under Singapore law, the contingency which justified an order for provisional damages need not be confined to a serious deterioration of the claimant's physical or mental condition, there being "no reason why the contingency could not relate to some future fact or circumstance, so long as the occurrence of that fact or circumstance is something which can be objectively determined" (para. 51). Chao JA acknowledged (at para. 53) the necessity for precision in defining the relevant contingency—which in this case was whether the claimant's injuries, and her consequent failure to complete her polytechnic studies, would detrimentally affect her competitive position. The need for there to be a 'clear and severable risk' was not raised on the facts, since the issue was whether the claimant would recover sufficiently to succeed in the workplace, *not* whether something would occur to worsen her situation.

The outcome on the facts was unquestionably correct, and the Assistant Registrar's analysis is admirably clear. That being said, however, the extensive adoption of English law principles in the face of significant differences between the Singapore and U.K. legislation substantially circumscribed the potential for provisional orders to be made in this jurisdiction. Although it is highly unlikely that the legislature will now wish to intervene in what is essentially a judicial matter, the narrowing of the broad legislative wording in *ACD* is, if nothing else, an interesting example of statutory interpretation which is at the same time creative and conservative. Only time will tell whether this interpretation results in deserving claimants in future cases being deprived of the right to seek provisional damages.