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Right Of Government To Sue Individuals For Defamation

Contact Persons:

Datuk D P Naban
Senior Partner

+603 6209 5405
naban@rdslawpartners.com

Rosli Dahlan
Partner

+603 6209 5420
rosli@rdslawpartners.com

Kenny Lam Kian Yip
Senior Associate

+603 6209 5400
kenny@rdslawpartners.com

Louis Liaw
Senior Associate

+603 6209 5400
louis@rdslawpartners.com

In the recent case of *Chong Chieng Jen v Government of State of Sarawak & Anor*, the Federal Court held that a public authority has the right to bring a civil suit against an individual for defamation.

This alert examines the reasoning behind this decision and its significance to defamation suits brought by a public authority against individuals.

Background Facts

The Appellant (Chong Chieng Jen), a Sarawak state assemblyman and Member of Parliament had alleged that the financial affairs of the Sarawak State Government had been mismanaged. These allegations were published in a daily newspaper, an online news portal, as well as in a leaflet of his political party. The Respondents, the Sarawak State Government and the State Financial Authority, sued the Appellant over his allegations.

In his defence, the Appellant argued that the Respondents had no *locus standi* to sue him in defamation as it is against the right to freedom of speech and expression guaranteed under Article 10 of the Federal Constitution. He also contended that to allow defamation suits by public bodies against individuals would be contrary to public policy and public interest.

The High Court's Decision

The Kuching High Court dismissed the Respondents' claim. In coming to its decision, the High Court adopted the common law principle known as the *Derbyshire Principle* stipulated in the English case of *Derbyshire County Council v Times Newspaper Ltd & Ors*. The House of Lords had held that government bodies, whether central or local, do not have the right to sue for defamation as it is contrary to the public interest. Thus, in this case, the High Court ruled that the state

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government did not have the right to maintain the defamation action. The Respondents appealed to the Court of Appeal.

The Court Of Appeal's Decision

The Court of Appeal by a majority decision reversed the High Court's decision and held that the Respondents have the right to sue for defamation. The Court of Appeal based its decision on the following grounds:

- Section 3 of the Government Proceedings Act 1956 (GPA 1956) provides for the government to sue a private individual for defamation; and
- A government's reputation could be injured by libel if the impugned words tended to lower its reputation in the estimation of right-thinking members of the public or exposed it to hatred, contempt or ridicule.

The Appellant was granted leave to appeal to the Federal Court.

The Legal Issues At The Federal Court

The questions considered by the Federal Court were whether:

- Section 3 GPA 1956 precludes the *Derbyshire Principle* to be extended to the Respondents; and
- Section 3(1)(c) of the Civil Law Act 1956 precludes the *Derbyshire Principle* from being applied against the Respondents.

The Appellant contended that the right to freedom of speech and expression enshrined in Article 10 of the Federal Constitution should not be unduly fettered. As a matter of constitutional principles and good governance, citizens should have the right to query the expenditure of public funds by the state government.

On the other hand, the Respondents argued that the *Derbyshire Principle*, being part of English common law is not part of the Malaysian jurisprudence. The Respondents'

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right to sue for defamation was a statutory right conferred by Section 3 GPA 1956 and not a common law right. Another line of argument put forward by the Respondents was that the constitutional right to freedom of speech and expression was not absolute but curtailed by various limitations and restrictions.

The Federal Court's Decision

The Federal Court unanimously upheld the Court of Appeal's decision and dismissed the appeal on the basis that:

- The *Derbyshire Principle* is not applicable in Malaysia; and
- The right to freedom of speech and expression guaranteed under Article 10 is subject to the law of defamation.

The Federal Court held that Section 3 GPA 1956 confers a statutory right to the government to sue in civil proceedings, which includes the right to sue for defamation. There was nothing in the 1956 Act that restricts or prohibits the government from bringing an action for libel. Furthermore, by virtue of Section 3 of the Interpretation Acts 1948 and 1967, the words 'written law' in Section 3 GPA does not include the common law of England. Hence, the *Derbyshire Principle* is inapplicable.

The Federal Court referred to the *Vickneswary RM Santhivelu* case where it was held that courts should not import the common law from other countries where legislation has clearly provided for the principle of law to be applied. The Federal Court also referred to the *Steven Phua Cheng Loon* case which held that a common law principle would not apply where there is already a written law in force on the same matter.

Furthermore, it was also held that the Respondents' statutory right to sue for defamation does not infringe the Appellant's fundamental right to freedom of speech and expression. In this regard, the Federal Court referred to the *PP v Azmi bin Sharom* case which held that the right of the freedom of speech are restricted by virtue of Article 10(2)(a) of the

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Federal Constitution and that Parliament is authorised to enact any laws it deems necessary including legislation providing for defamation.

Based on the above authorities, the Federal Court concluded that the Respondents indeed have the right to sue and maintain an action for defamation against the Appellant. Accordingly, the case was remitted back to the High Court to be heard on its merits.

Commentary

As part of a functioning democracy, every individual is allowed to make legitimate criticism of public bodies in order to hold them to the highest possible standards. However, the right to the freedom of speech must not be taken as a licence to make untrue statements.

The decision in *Chong Chieng Jen* confirms that public bodies have the *locus standi* to bring an action for defamation against private individuals. Anyone who abuses the right to freedom of speech by making untrue statements subjecting public bodies to hatred, contempt or ridicule will do so at the peril of a potential defamation suit.

Authored by Nur Hanina Mohd Azham, who is a pupil with the firm's Dispute Resolution practice. She read law at the University of Warwick.

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