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Restricting publication of false statements using section 15 of the Protection from Harassment Act

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Restricting Publication of False Statements Using Section 15 of the Protection from Harassment Act

- AG v Lee Kwai Hou Howard [2015] SGDC 114 ("Lee (DC)")
- Ting Choon Meng v AG [2016] 1 SLR 1248 ("Ting (HC)")

Introduction

An article accompanied with a video interview, published on a website called The Online Citizen ("TOC"), alleged that the Ministry of Defence ("MINDEF") had: (i) knowingly infringed a patent belonging to one Dr Ting Choon Meng's company; and (ii) conducted a "war of attrition" by deliberately delaying Court proceedings. MINDEF applied for an order under s 15 of the Protection from Harassment Act (the "PHA")[1] that statements to this effect not be published except if accompanied by a notice (in fixed terms) that the statements "ha[d] since been declared by the Singapore Courts to be false" together with a link to a Facebook post by MINDEF that set out the "truth of the matter".[2] The respondents (appellants) were Dr Ting (who gave the interview); the writer of the article which repeated the statements in the video; and the editors and staff of TOC.

Section 15 of the PHA empowers the District Court to make such an order if:

1. there is a statement of fact;

2. published;

3. about a person;

4. false in any particular about that person; and

5. it would be "just and equitable" to grant such an order.[3]

The matters in contention were points 3, 4, and 5. District Judge Bala Reddy found in favour of the Government on these points, holding that the Government had the right to make the application; both statements were false; and that it would be "just and equitable" for the order to made. His Honour also held that there was no infringement of art 14 of the Constitution ("art 14"). On appeal, See Kee Oon JC found in favour of the respondent-appellants in whole on points 3 and 5 and partly on point 4, holding that the Government was not a "person" within the meaning of s 15; only one of the statements was false; and an order under s 15 would not be "just and equitable"; his Honour did not mention Art 14.

This case merits close examination for several reasons. It is the first High Court decision on the scope of s 15 of the PHA; it raises questions about the very purpose of s 15 and how it fits in with other provisions in the Act. Moreover, it raises important issues about the relations between private actors and the State: not only could it arguably have raised constitutional issues, it is also the first reported case on ss 3 and 36 of the Government Proceedings Act ("GPA"),[4] which is otherwise thought of as being an Act about the Government as defendant, not plaintiff. It even engages matters relevant to the broader field of media regulation in the internet age, such as the problem of how the law is to respond to the risk that falsehoods are repeated so fast and widely that Court orders against the original statement-maker risk being rendered ineffectual. Let us begin our analysis with the content in question.

The Article and the Video

While the video appeared on the same page as the article, it was hosted separately on the video hosting website www.vimeo.com and could thus conceivably have been seen by someone who had not seen the article. Neither Court considered this point: DJ Reddy specifically ordered a notification to be included in the first and last few seconds of the video only "[a]s long as the video interview is carried on TOC or via any link from TOC",[5] while See JC held that it would not be "just and equitable" to require any notifications at all as TOC had "provided a prominent link to MINDEF's statement from the article" (emphasis added).[6]

This criticism does not change the result as this point was not See JC's only reason for declining to grant the

order. More interestingly, it appears that DJ Reddy's granting of the prayers sought by MINDEF would have covered the video anyway without his Honour having to make, in the exercise of his discretion, a specific order targeted at the video.[7]

This latter point emerges from a careful reading of the prayers sought by MINDEF. Prayer 2 had always been for an order that the statements described in prayer 1 not be published without the notification.[8] At first, the word "statements" was used in prayer 1 to refer to the specific quotations from the Article.[9] However, MINDEF later had prayer 1 amended such that the quotations from the Article were now said to be the text from which the statements were "derived";[10] the word "statements" now referred to the points made by the Article, not the exact words. Hence, the video **had** made the statements mentioned in the amended prayer 1, and prayer 2 **did** cover not only the article, but also the video.

Whether one definition of "statement" is preferable to the other was not explicitly addressed by either Court; it remains an open question.

Who is the Target of a Section 15 Order?

If the argument in the previous paragraphs is correct, prayer 2 would also have covered **any** other instance of the statements made by **anyone** in **any forum**, even if not a direct quotation from the article or the video.

One might think that this is at odds with the fact that the focus of the proceedings was always on the TOC article and video. The respondents, who were described as being the "subject of [the] order",[11] were TOC staff and not, for example, anybody else who had discussed or linked to the article; moreover, the reasons why See JC declined to make the order were reasons relating to the conduct of **TOC in particular**.[12]

This problem may be traced to the drafting of s 15 of the PHA itself. Section 15(2) only gives, in **general** terms, the Court the power to order that "**no person** shall publish or continue to publish the statement" without a notification accompanying it (emphasis added). Yet s 15(5) refers to the **specific** "person to whom such order applies", while O 109 r 4 of the Rules of Court states that the Court may give directions for the service of the application on "each person to whom the section 15(2) order is to apply".

On the strict reading of s 15(2), all s 15 orders are binding on **all** persons. There is nothing wrong with this *per se*: so are certain other Court orders, eg reporting restrictions. However, practical concerns of enforcement aside (should ignorance be a defence to contempt by disobedience?), this would raise the problem of how to decide who has standing to apply under s 15(6) for the order to be varied: in the extreme, the floodgates would be thrown open to potentially vexatious claims, which may themselves have a harassing effect on the original applicant.

On the other hand, to treat s 15 orders as binding on **specific** persons would mean that every time someone made the statements – and, as MINDEF's amended pleadings suggest, "statements" can refer to assertions **however phrased** – a fresh order would have to be sought – a different set of floodgates would be thrown open, allowing the falsehood to be perpetuated by persons other than the original respondents.[13]

This links to a second problem: if the order is to be made against specific people, **which** people? The respondents having conceded the point,[14] DJ Reddy remarked simply that the respondents were named as such because they were "in one way or another responsible for the management of TOC" and "part of the TOC organisational structure"; they did not have to have "editorial control". The judgments leave open the problem of what degree of connection there must be between the published statement and those named as respondents.

The Problem: Can the Government Get a Section 15 Order?

Thus, there are practical difficulties no matter what the scope of s 15 orders is thought to be. The way out must begin with an analysis of the purpose of s 15 – is it to protect one's **general** interest in being spoken of and thought of truthfully, or one's interest against **particular** falsehoods perpetuated by *particular* persons? As we shall see, the answer is bound up with See JC's analysis of **what kind of statements** s 15 targets. The objective of this analysis was to see **who** can apply for a s 15 order – in particular, whether the Government can.

Let us begin with the threshold issue on which DJ Reddy and See JC differed: did the Government have a right to get a s 15 order in the first place; and, if so, what was the source of the right? There are three possibilities: the GPA; the common law; and the PHA itself.

Arguments Based on the GPA

Section 3 of the GPA provides that:

> Subject to the provisions of this Act and of any written law, where the Government has a claim against any person which would, if such claim had arisen between private persons, afford ground for civil proceedings, the claim may be enforced by proceedings taken by or on behalf of the Government for that purpose in accordance with the provisions of this Act.

Section 36 adds that:

> This Act shall not prejudice the right of the Government to take advantage of the provisions of any written law although not named therein …

The District Court held that the "very clear wording" of ss 3 and 36 of the GPA "provides the Government the legal right to make an application under s 15(1) of the PHA".[15] See JC disagreed, holding that an argument based on these provisions that the Government can make use of s 15 of the PHA is circular: it makes sense to say that the "right of the Government to take advantage of a statute is "not prejudice[d]" **only if** it has such a right in the first place.[16]

Problems with Section 3

It is respectfully submitted that See JC's rejection of the argument from s 3 was right for the additional reason that the provision is problematically drafted.

The first problem is with the phrase "has a claim … which would, if such claim had arisen between private persons, afford ground for civil proceedings". To "ha[ve] a claim" can have two possible meanings:

1. Interpretation (i): to have made a claim (ie an allegation that one has certain legal rights); or

2. Interpretation (ii): to have legal grounds for a valid legal claim (ie to actually have those legal rights).

But both interpretations have their problems.

Interpretation (ii) fits better with common usage: "A **has** a claim against B" is generally used to mean that A will succeed against B in Court. It also fits better with the words "claim had arisen" (as opposed to, say, "claim had been brought").

On the other hand, interpretation (ii) is tautologous: a "claim" simply is something that "afford[s] ground for civil proceedings", for it is absurd for someone to have legal rights but no remedial proceedings to enforce them[17] – *ubi ius, ibi remedium* ("where there is a right, there is a remedy"). By contrast, interpretation (i) would explain why s 3 empowers the Government to "enforce" the claim – not just to **attempt** to assert it, but to **actually enforce** it – only if it would "afford ground for civil proceedings", ie be accepted by the Court as enforceable.

A second problem is that the purpose of s 3 is unclear.

One possibility is that it says how the Government may enforce a claim when it has one: it may do so "in accordance with the provisions of this Act". But this would render otiose ss 16 and 17(2), which also provide that "proceedings by … the Government … shall … be instituted and proceeded with in accordance with the provisions of this Act and not otherwise".

Another possibility is that s 3 (titled "Right of Government to sue") is meant to add to art 37(2) of the Constitution ("The Government may sue and be sued"), by saying that what the government may sue for is "[s]ubject to the provisions of this Act and of any written law". But this, too, would say nothing. All written laws, including the rest of the GPA, have force in and of themselves; they do not need to be enabled separately by a provision like s 3.

Can the Common Law Override See JC's Arguments about Section 36?

It is arguable that, at common law, the Government may bring a statutory claim whenever a private person may. In *Town Investments v Department of Environment*, the Court of Appeal of England and Wales was faced with an argument identical in effect to See JC's conclusion: counsel had argued that the word "right" in the UK equivalent of s 36 of the GPA means "right, if any". The Court of Appeal rejected this contention, citing the principle that "[t]he Crown can take the benefit of any statute although not specifically named in it".[18]

DJ Reddy said that the statute "codified" this principle,[19] perhaps following the English Court's view that the statute was a "recogni[tion]" of this principle.[20] With respect, this was not correct: for the reasons See JC gave, the wording of the statute does not support the idea that the common law principle **explains** the statute. But the English Court also said that the principle was, **separately from the statute**, a "principle accepted for centuries" in line with the "consensus of weighty legal opinion over two centuries".[21] One might ask whether, by virtue of s 3 of the Application of English Law Act,[22] this is the true position at common law in Singapore too.

On the other hand, this principle may be distinguished as being particular to the constitutional arrangement in England: it may be traced to archaic (and perhaps arcane) cases such as *Willion v Berkley* (1561), in which one Judge remarked that "the King, though not named in statutes, shall take advantage of them as another shall do" because "inasmuch as all justice, tranquillity, and repose is derived from the King, as the fountain thereof, the law shews him special favour in all his business and things, as being the cause and origin thereof".[23] Such views are repugnant to modern ideas of the principle of legality and constitutional supremacy. Besides, as Scrutton LJ observed in 1926, these *dicta* are of dubious value: they may merely have been "taken out by a text-writer and repeated for centuries until it was believed that [the rule] must have some foundation".[24] Moreover, *Town Investments* may be distinguished from the present case as it involved the Crown seeking to take advantage of a statutory **defence** rather than a **cause of action**.

Moreover, there is the same potential problem of circularity as with the GPA: it may well be that the Act as properly construed confers a "benefit" only upon a set of persons which does not include the Government. But, here, we bump into a **second** sort of circularity. Whether or not the Government may make use of a statute depends not on the GPA, the Interpretation Act, or the common law alone, but rather on the construction of the statute in question (here, the PHA); but the process of construction is informed by presumptions laid down by, *inter alia*, the common law, such as in *Town Investments*. Besides, s 15 purports to apply to all legal subjects; and if the Government is a legal subject just like any other private person, what reason is there to think that **any** Act should make special provision for the Government? This would risk crossing the boundary from acceptable statutory interpretation into unacceptable judicial rewriting of statutes.

These vexing problems may explain why DJ Reddy did not rely heavily on the case law mentioned above, while See JC did not mention it at all. Moreover, the problems with the GPA in general explain why See JC saw fit to focus the analysis on the PHA itself.

See JC's Examination of the PHA

Though both Judges were responding to the issue which the parties had framed as whether the Government may make use of s 15 of the PHA, everything they said about the Government's position could have applied more generally to all legal persons which are not individuals. With this in mind, we now examine See JC's reasoning process.

See JC could have held that, as a matter of law, a s 15 order could never be "just and equitable" within the meaning of s 15(3)(b) when the applicant was the Government. However, his Honour instead took a different approach: he answered the question of **who** can obtain an order ("who" question) by first addressing **what kinds of statement** can be targeted by an order (the "what" question), then holding that the Government could, as a matter of fact, **never** be on the receiving end of such a statement (emphasis added).

This approach was justified on the basis that when what became the Act was before Parliament, the Minister introducing it had stated that the "who" question should be answered by reference to the definition of "person" within s 2(1) of the Interpretation Act ("IA"),[25] but the definitions laid down by s 2(1) were all said to be overridable by "something in the subject or context inconsistent with such construction".[26]

The problem with this approach is: if the s 2(1) definitions are **always** overridable by the statute being interpreted, why have them at all? The key to answering this question must be a principled approach as to what degree of inconsistency is required (and the inconsistency proven by what amount of evidence) before the s 2(1) definition

is overridden. Unfortunately, See JC did not put forth such principles. As we shall see, his Honour had only shown that the application of the definition of "person" in s 2(1) of the IA as including "any company or association or body of persons, corporate or unincorporate" would lead to **questionable** results, but not **absurd** results; and the evidence as to the role of s 15 (from both *Hansard* and the PHA itself) is so ambiguous that a degree of questionableness is inevitable.

The "What" Question

As for the "what" question, his Honour held that the words "any person" in s 15 only included natural persons, because s 15 was meant to a remedy for the wrongs defined in ss 3-7 or lesser variants thereof, all of which boil down to "emotional or psychological impact" and can therefore only be targeted at human beings with "sentient consciousness and capacity to feel the impact".[27]

Section 15 is an anomaly within the general scheme of the Act. At first glance, the Act distinguishes between:

1. wrongs, such as causing fear of violence (Part 2, titled "Offences"); and

2. remedies to redress those wrongs, such as protection orders (Part 3, titled "Remedies").

Section 15 stands out because, unlike ss 3-7 (in Part 2), it does not create a criminal offence; but, unlike ss 11-14 (in Part 3), it does not **only** describe a remedy for the wrongs in Part 2. As See JC pointed out,[28] it also defines wrongs **not** covered by Part 2 because it covers statements which are false even if no act prohibited by ss 3-7 is committed.

Hence, the scope of s 15 is not entirely clear; it cannot be inferred from the text of the Act alone. See JC held that there is nothing to suggest that "s 15 is wide enough to encompass **all** false statements of fact whether they are made against human beings or corporations or the Government"[29] (emphasis in original). But this by itself does not say exactly **which** false statements are covered by s 15.

See JC's answer to this question was: statements which have "detrimental emotional or psychological impact" but nonetheless "do not rise to the level of harassment".[30] The reasoning was that Parliament intended s 15 orders to be part of a "'calibrated and graduated' 'tiered response' to the problem of harassment and related anti-social behaviour" alongside other alternatives such as damages, protection orders, and criminal sanctions, such that "s 15 should be considered part of a holistic or harmonious whole that includes the other provisions of the Act even if s 15 does not strictly concern harassment".[31]

A problem, however, lies in an ambiguity in Hansard: the Minister for Law, discussing what would become s 15, had in mind **both** situations where "the offensive content does not cross the threshold set out in [ss] 3 to 7" (ie s 15 creates a new tier of **wrong**) **and** where it **does** but "the victim … wishes to proceed with the lesser remedy [only]" (ie s 15 creates a new tier of **remedy** for the **same** wrongs as in ss 3-7).[32] How do we identify the former sort of case where the content does not cross the threshold set out in ss 3-7, yet it is still "offensive"? Indeed, one could argue that the very purpose of legislation on harassment is to set a legal limit on what kinds of "detrimental emotional or psychological impact" the law is to be concerned with, and that the legislative answer is: **only** impacts covered by the phrase "harassment, alarm, or distress" – otherwise, the law may be turned into an excuse for people vexatiously to haul others to Court about even the most trifling annoyances. On this view, not **any** false statements are covered, but only those amounting to **harassment**, **alarm**, **or distress**, but **not** (*contra* See JC) any other lower level of detrimental emotional or psychological impact.

An alternative possibility is that Parliament wished to declare a view that **any** false statement is *ipso facto* harassing, alarming, or distressing to the subject of the statement – in other words, that there is now a legal interest in being talked about not only respectfully, but also accurately. The Minister for Law made this precise point: "75% of those polled by REACH" thought that "attacks against someone involving lies, untruths, inaccuracies" "should, *ipso facto*, be treated as harassment"; while it would be overkill to "criminalise all such conduct", there would be a right to "ask the relevant parties that the falsehoods be corrected" **even if** it was "**not harassment but it is a clear falsehood**" (emphasis added).[33] On this view, what was "tiered" was not just the system of **remedies**, but also the set of **wrongs**. This view is further supported by the fact that, as we shall see, it is possible that s 15 orders may be targeted at persons other than the original publisher. Thus, it might well be that **all** false statements are caught by s 15 (though not by ss 3-7) regardless of emotional or psychological impact (or lack thereof).

The point is that the High Court was not **certainly** right to conclude that that the s 15 covers false statements that cause psychological or emotional impact not amounting to harassment, alarm, or distress. The scope **may** be

broader or narrower. The ambiguity in *Hansard* suggests that the best approach to interpretation is one that follows the strict words of s 15, which makes no reference to any form of psychological or emotional impact at all.

The "Who" Question

Even if this analysis is rejected, does it follow from See JC's conclusion on **what kind** of statements are covered that the Government can **never** be on the receiving end of such statements? The starting point is that, as See JC rightly held, it was definitely open to the individuals in charge of MINDEF to apply for s 15 orders.[34] Moreover, as pointed out in *Chee Siok Chin v Minister for Home Affairs* ("Chee"), a statement about a body often "involve[s] by necessary inference imputations against those who are responsible for its direction and control".[35] Seen in this light, does it really matter whether the applicants act in their own names or in that of the organisation in the capacity of the leaders of which they have been harassed?

It would be different if the applicants had applied for compensation under s 11, for then the question of who the applicants (plaintiffs) are might change the quantum of damages, and would definitely affect whether the damages go into the public coffers or the personal hands of the affected individual. But since a s 15 order creates obligations on the respondents without corresponding rights for the applicants, it is unlike a private claim and more similar to the public action in *Chee* (albeit initiated by a private party). In *Chee*, the applicants were held to have been lawfully ordered to disperse on the grounds of having caused "harassment, alarm, or distress" through a demonstration notwithstanding that their words only referred to entities which "d[o] not have feelings" – they **had** caused "harassment, alarm, or distress to those responsible for running th[ose] bod[ies]".[36] The matter of (in that case) who the targets of the statements were, or (in this case) who the applicants were, would make no difference: it would not affect who the respondents should be or change the terms of the order.

MINDEF could still have had standing to apply for a s 15 order even though it itself had felt no emotional impact: s 15 only requires that the statement be "about" the applicant, not that the applicant has suffered. (At the same time, the reason why the managers also had standing to apply in their own names was because the statement was, following the reasoning in *Chee*, **also** "about" MINDEF's managers.)

The principle behind this argument is further buttressed by s 19(2)(e) of the PHA, which envisages, and provides for the making of Rules of Court to facilitate, "persons who may bring proceedings for an order under section 12, 13 or 15 and all other civil proceedings under this Act, **on behalf of** … any … person making an application under this Act" (emphasis added). The text of s 15 says that it is "the subject" of the statement in question who may apply for an order. Thus, what s 19(2)(e) adds is the possibility of actions being brought "on behalf of" the subject. Therefore, even if only individuals and not the Government are held capable of being "the subject", it is **in principle** possible for the Government to bring proceedings "on behalf of" these individuals, even if Rules of Court have not (yet) been made to state **explicitly** how this can be done. It is thus not inconceivable that, had such Rules of Court existed, MINDEF could have achieved the same result as what it wanted in the present case by stressing that it was applying "on behalf of" the managers rather than as "the subject".

All this having been said, this would not have made a difference because of the final hurdle in s 15(3)(b) that it must be "just and equitable" for the order to be made.

"Just and Equitable"

See JC did not attempt to propose an exhaustive list of factors which make the granting of an order "just and equitable",[37] but identified four guiding factors: "(i) the false statement of fact is of a relatively minor nature, (ii) the subject of the statement has suffered no emotional or psychological impact, (iii) the subject has the means to publish widely his or her own version of the truth, and (iv) the author and/or publisher of the statement has made genuine and substantial efforts to point out that the truth of the statement of fact in question is not undisputed".[38]

It is notable that, while See JC had said that the scope of s 15(1) is concerned **solely** with "emotional or psychological impact",[39] "emotional or psychological impact" is only **one** factor in the "just and equitable" test and is not by itself conclusive. Thus, factors (i) and (ii), taken together, allow the Court to countenance arguments that, though the victim has suffered "emotional or psychological impact", the victim has done so because of over-sensitiveness. This will be useful for filtering out vexatious claims.

At the same time, it is heartening that See JC added a proviso to prevent Courts from being too eager to hold that the victim is over-sensitive: "[w]here the statement casts serious aspersions on its subject in the sense that it pertains to an important part of his or her identity, character or personality, and that statement causes him or her substantial emotional or psychological impact, eg a false allegation concerning a person's sexual activities, it

will **doubtless** be just and equitable to make the order" (emphasis added).[40]

On the facts, See JC held that the statements in question only pertained to MINDEF's "alleged litigation strategy" as a matter of its "conduct", not its "identity or 'character' or 'personality'".[41] One might make the counter-argument that the statements contained implied assertions not only about the nature of the conduct, but also that: (i) it was wrongful; and (ii) those responsible had the type of character that led them to engage in wrongful conduct. Perhaps, then, the "identity, character or personality" test is still open to further refinement. Nonetheless, this test is to be praised for striking a balance between the freedom of speech and the rights of those being spoken about. A stronger criticism is the conceptual difficulty that whether a statement targets one's "identity, character or personality" is **also** touched on at the stage of the "what" question; it would be better, as discussed above, for it to be considered **only** at the "just and equitable" stage.

Article 14 of the Constitution

The District Court summarily dismissed the respondents' constitutional arguments, evidently because they were unclear. It appears, from their focus on the constitutionality of s 15 only "insofar as it relates to statements about the government",[42] to have been little more than a repetition of that founded on *Derbyshire CC v Times Newspapers Ltd*: that it is an "undesirable fetter on freedom of speech", and hence (in Singapore) unconstitutional, for the Government to bring certain actions such as defamation (or, presumably, s 15 orders) against citizens.[43] If this was the argument, it is *prima facie* problematic, not only for the reasons suggested in *Chee Siok Chin*,[44] but also because at the time freedom of speech in English Courts was purely a common law concept,[45] whereas, in Singapore, the starting point must be art 14. It does lead one to wonder, however, how s 15 of the PHA (and, for that matter, the PHA in general) is compatible with art 14. It is regrettable that the point had not been pushed more strongly before the Courts.

Article 14(1)(a) starts with the proposition that "every citizen of Singapore has the right to freedom of speech and expression", but art 14(2)(a) qualifies this by empowering Parliament to impose on this right "such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of Court, defamation or incitement to any offence". With which limb is s 15 concerned? It is clearly not national security; international relations; public order;[46] Parliamentary privilege; or prevention of contempt of Court or incitement to offences. It is not anti-defamation: a s 15 order only requires that the statement be false, not that it be damaging to one's reputation. A better candidate may be "morality", but this is uncertain as there appears to be no case law on the meaning of "morality".

Therefore, if the applicants wished to bring a constitutional challenge, they ought to have made a clearer argument that s 15 is *ultra vires* art 14(1)(a) *in toto*. There are two possible replies: (i) that s 15 is justified under art 14(2)(a) on the grounds of "morality"; (ii) that s 15 is not even a *prima facie* violation of the art 14(1)(a) right because the concept of "freedom of speech and expression" in art 14(1)(a) inherently contains **built-in** limitations other than those **added** by art 14(2)(a). Either way, the result would have been more fertile ground for development of the jurisprudence on the freedom of speech in Singapore.

Conclusion

Besides identifying possible areas for further development in future, we have argued that the decision that s 15 orders are not available to corporate bodies is not necessarily unquestionable, but that the ultimate result was correct because of the "just and equitable" test. What therefore emerges is a regime that aims to protect not only **participation**, but also **equality of bargaining power**, in the "marketplace of ideas": some ideas should not be in the marketplace at all; others can be but only if countervailing ideas can compete fairly. Despite the criticisms offered above, See JC's exposition of the "just and equitable" test is to be welcomed, and will be the most significant impact of this case for future s 15 cases. The most significant area for future development appears to be the issue of applications made by representatives of other persons.[47]

This case could have involved the difficult problem of finding a theory of the State and its legal personhood: is the starting point that the Government is subject to the same benefits and burdens of law as any private person, or that the Government is *sui generis*? And what can demonstrate legislative intention to depart from this starting point? A discussion of such issues would have been fascinating, but it is just as well that the Courts did not engage them head-on: as a result of the Courts' approach, this case will play a key role in developing the law not only on proceedings by the Government in general, but also proceedings under the PHA brought by all corporate bodies. It is this too, and not only the fact that the Government was involved, for which this case should be borne in mind.

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* BA Jurisprudence (Oxon), BCL (Oxon). The author is grateful to the anonymous referee for the valuable comments received. This article reflects the author's personal views only.

Notes

1 Cap 256A, 2015 Rev Ed.
2 Applicants' submissions cited in *Lee (DC)* at [4] and [61] and *Ting (HC)* at [10].
3 s 15(1) PHA read with s 15(3) PHA.
4 Cap 121, 1985 Rev Ed.
5 *Lee (DC)* at [88].
6 *Ting (HC)* at [57].
7 As his Honour did at *Lee (DC)* at [87]-[88].
8 Quoted in *Lee (DC)* at [59].
9 Quoted in *Lee (DC)* at [4].
10 Quoted in *Lee (DC)* at [61].
11 This is not to be confused with the idea of the "subject" of the **statement**, which is defined in s 15(1) as the person whom the statement is about, and hence who would be applying for the s 15 order.
12 *Ting (HC)* at [57].
13 On this note, see generally the discussion of the nature of online content by Choo Zheng Xi and Fong Wei Li, "When Citizen Journalism Crosses the Line: Does the Harassment Act Have an Online Bite?", *Singapore Law Gazette* (June 2014).
14 *Lee (DC)* at [22].
15 *Lee (DC)* at [32]-[38].
16 *Ting (HC)* at [24]-[25].
17 *Ashby v White* (1703) 2 Ld Raym 938 at 953; 92 ER 126 at 136.
18 [1976] 1 WLR 1126, 1141H-1142H.
19 *Lee (DC)* at [32].
20 [1976] 1 WLR 1126, 1141H-1142H.
21 *Ibid*.
22 Cap 7A, 1994 Rev Ed.
23 *Willion v Berkley* (1561) 1 Plowd 223 at 242-243; 75 ER 339 at 370-372. For an overview of authorities of similar vintage, see Street, "The Effect of Statutes upon the Rights and Liabilities of the Crown" (1948) 7(2) *University of Toronto Law Journal* 357, 373-374. See also *Blackstone's Commentaries on the Laws of England* (First edition, 1765), Book 1, Ch 7, pp 261-262, http://avalon.law.yale.edu/subject_menus/blackstone.asp (accessed 17 December 2015).
24 *Cayzer, Irvine & Co v Board of Trade* [1927] 1 KB 269 at 294-295.
25 Cap 1, 2002 Rev Ed.
26 *Ting (HC)* at [29]-[30], referring to *Singapore Parliamentary Debates*, *Official Report*, vol 91 (13 March 2014, 3.34 pm) (Mr Pritam Singh) and vol 91 (13 March 2014, 5.53 pm) (Mr K Shanmugam)
27 *Ting (HC)* at [38]-[41].
28 *Ting (HC)* at [37].
29 *Ting (HC)* at [37].
30 *Ting (HC)* at [40].
31 *Ting (HC)* at [32], [38], referring to *Singapore Parliamentary Debates*, *Official Report*, vol 91 (13 March 2014, 6.00 pm) (Mr K Shanmugam)
32 *Singapore Parliamentary Debates*, *Official Report*, vol 91 (13 March 2014, 6 pm) (Mr K Shanmugam).
33 *Singapore Parliamentary Debates*, *Official Report*, vol 91 (13 March 2014, 2.18 pm) (Mr K Shanmugam).
34 *Ting (HC)* at [44].
35 *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 [64] at [121] ("*Chee*").
36 *Chee* at [64]-[67].
37 *Ting (HC)* at [56].
38 *Ting (HC)* at [58].
39 *Ting (HC)* at [40].
40 *Ting (HC)* at [58].
41 *Ting (HC)* at [56].
42 Respondents' submissions, quoted *Lee (DC)* at [78].
43 [1993] AC 534 at 549C ("*Derbyshire*").
44 *Chee* at [68]-[69].
45 *Derbyshire* was decided based on English common law, not jurisprudence from the European Court of Human Rights: *Derbyshire* at 551F-G.
46 For completeness, there was a remark in *Chee* that "[d]isseminating false or inaccurate information or claims can harm and threaten public order", but this must be read with caution as it was in the context of the holding of a public demonstration; the crux of public order appears to be *physical* threats to public peace: see generally *Vijaya Kumar s/o Rajendran v AG* [2015] SGHC 244 at [31]-[32].
47 See also the discussion on this point by Gregory Vijayendran and Lester Chua, "An Act to End All Acts of Harassment?", *Singapore Law Gazette* (June 2014).