

Contact Persons:

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Bahari Yeow Tien Hong
Partner
DID: +603 6208 5856
Fax: +603 6201 0122
Email: yth@lh-ag.com

Adlin Abdul Majid
Partner
DID: +603 6208 5816
Fax: +603 6201 0122
Email: aam@lh-ag.com

Eunice Chan Wei Lynn
Partner
DID: +603 6208 5872
Fax: +603 6201 0122
Email: cwl@lh-ag.com

G Vijay Kumar
Partner
DID: +603 6208 5870
Fax: +603 6201 0122
Email: vkq@lh-ag.com

Ang Hean Leng
Partner
DID: +603 6208 5809
Fax: +603 6201 0122
Email: ahl@lh-ag.com

Free Speech and Truth Trump Reputation

Dato' Dr Low Bin Tick v Datuk Chong Tho Chin

Persons making police reports enjoy absolute immunity from being sued for defamation. That has been the law laid down since 2013,^[1] the rationale by the Federal Court being that it was intended to encourage the public to engage with the police and to allow the truth to surface.

Unlike other jurisdictions, the defence is absolute and cannot be defeated if it is proven the police report was made maliciously.

Earlier this week (Tuesday, 8 August), the Federal Court^[2] extended this defence of absolute privilege to reports and letters of complaint made to other statutory authorities having investigative powers; that is, the Malaysian Anti-Corruption Commission (formerly the Anti-Corruption Agency) ("MACC") and the Registrar of Societies ("ROS").

The court acknowledged the risk that such immunity would operate to the advantage of "the untruthful or malicious or revengeful or self-interested or even demented" makers of reports and letters of complaint, but weighed that against the public advantage in having such statements which would go towards eliciting the whole truth.

It concluded that as a matter of public policy and public interest, such a category of speech — reports and letters of complaint to statutory authorities having investigative and enforcement powers, in particular the police, the MACC and the ROS — was worthy of absolute protection. In effect, the Federal Court tilted the balance towards protection of free speech over that of reputation.

At the same time, not all types of complaint would necessarily be fully protected. In particular, the Federal Court did not extend the immunity to complaints to the Bar Council, mainly because the parties were not contending that such letters should be absolutely privileged. A letter of complaint to the Bar Council may be defended on qualified privilege, which in turn can be defeated by malice.

A question the Federal Court left unresolved was whether absolute privilege would extend to republication of such reports in a public setting or in social media. In May 2017,^[3] the Court of Appeal ruled that the act of reading a police report to reporters waiting outside the police station enjoyed the defence of absolute privilege, as did the

republishing of the police report by the press, giving effect to the concept of ancillary privilege. In principle, the same ancillary privilege should extend to the reports and letters of complaint that the Federal Court has now ruled are protected by absolute privilege.

An application for leave to appeal to the Federal Court from the Court of Appeal on ancillary privilege is pending.

The grounds of judgment of the Federal Court may be viewed [here](#).

Ang Hean Leng and Caleb Sio Yeang Der

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

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[1] *Lee Yoke Yam v Chin Keat Seng* [2013] 1 MLJ 145 (FC)

[2] *Dato' Dr Low Bin Tick v Datuk Chong Tho Chin* Federal Court Civil Appeal No 02-73-10/2015(W)

[3] *Zahida binti Mohamed Rafik v Noor Azman bin Azemi* [2017] MLJU 670; <[http://www.kehakiman.gov.my/directory/judgment/file/W-02\(NCVC\)\(W\)-393-03-2015.pdf](http://www.kehakiman.gov.my/directory/judgment/file/W-02(NCVC)(W)-393-03-2015.pdf)>