

Can a public body sue for defamation?



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IT IS clear from case law that individual workers in public bodies may sue a citizen they feel has defamed them as civil servants or politicians. However, it is not clear in law currently whether the public bodies they work for may also sue citizens for defamation. This is because no such case had ever come before the courts. Until now.

This issue was dragged into the spotlight following a suit provoked by the Council of Private Education's (CPE) threat to sue a blogger for defamation. The blogger applied in April to the High Court to declare that a public body was not entitled under common law to sue a citizen. Both parties have now dropped all legal action, but the issue persists.

Singapore Management University (SMU) law professor Eugene Tan says he "can't recall a case of a public body suing an individual

for defamation here". He feels that public bodies may have chosen not to sue to avoid criticism that they were muzzling critics. Threatening to sue may just be part of the process of seeking a remedy like a retraction, correction or apology, Prof Tan felt.

Three issues of interest remain. The first is whether a public body suing a private citizen for defamation chills free speech.

In Britain, *Derbyshire County Council v Times Newspapers Ltd* (1993) laid down the principle in common law that a public body is barred from suing a citizen for defamation because this would discourage free speech.

In *Goh Chok Tong v Jeyaretnam* [1997], the Singapore High Court referred in its ruling to "the question whether Singapore law, being premised on English common law, should follow suit" to adopt the *Derbyshire* principle. But since the case involved a politician and not a public body suing an individual, the High Court left it to the Court of Appeal to deal with the issue if and when a public body should ever sue a citizen.

As Mr M. Ravi, the blogger's lawyer noted, the *Derbyshire* principle is accepted in other common law nations like Canada, Australia,

India and Malaysia.

In a clutch of cases, local courts have also cited the principle in passing, with seeming approval, albeit only to contrast it with the individual public servant's right to sue for defamation.

SMU law professor Chen Siyuan feels that these local cases did not "expressly confirm that *Derbyshire* applies here. They only talked about what *Derbyshire* did not say": they said that the principle bars public bodies from suing citizens for defamation but does not expressly bar individual public servants from doing so.

Still, these cases suggested to Prof Chen that local courts may rule that the principle does apply in Singapore. One example is *Tang Liang Hong v Lee Kuan Yew* [1997] in which the Court of Appeal rejected the argument that *Derbyshire* implied individual public officers may not sue for defamation, noting it only restricted the right of public bodies to do so.

So the nation's highest court had seemingly accepted without further discussion that *Derbyshire* did apply to public bodies here. However, Prof Chen adds, a court today could still reject *Derbyshire*.

Prof Tan added that a court to-

day would likely regard *Derbyshire* "warily" and may rule that public bodies suing citizens for defamation wouldn't affect free speech seriously. Where individuals are concerned, the courts do not see free speech as unbridled such that it is even permitted to damage an individual's reputation, Prof Tan noted. He felt the courts would likely apply the same reasoning to public bodies, and rule they can sue citizens for defamation.

In any case, punishing citizens for spreading malicious untruths about someone or some body does not curtail free speech. It is only the abuse of free speech in spreading malicious falsehoods that is being punished, not the right to free speech itself.

The second issue is whether CPE is a governing body covered by the principle. In the *Derbyshire* case, the House of Lords argued that the basis for barring public bodies from suing citizens was the critical public interest in free speech rights of citizens to criticise those who govern them in a democratic society.

In his submissions for CPE, Mr Aaron Lee of Allen & Gledhill argued curiously that the CPE "is not a government body. The 'Government' does not include

statutory bodies": being unelected bodies, they don't govern.

But Senior Minister of State for Education and Law Indranee Rajah said at a private education conference in April that the Private Education Act was passed, under which CPE was set up, because "the lack of a strong regulatory framework ... threatened to bring the entire [private education] sector into disrepute (so) the Government had to act to protect ... students and safeguard Singapore's reputation in education".

So the CPE was formed as the regulator of private educational institutions. Some offences in the Act are even punishable with both fine and jail time. The CPE is thus no advisory board or non-governmental organisation (NGO). It is clearly governmental in function. In fact, it is accountable to the education minister who answers to Parliament. So this unusual argument is moot.

The third issue is whether public funds should be used by a public body to sue citizens. Mr Ravi argued in his submissions that the CPE should not do so as the source of those monies are the taxes that citizens pay.

But does it matter where the funds come from, if they are not il-

legal? Even if this blogger did contribute some small amount to the CPE's kitty, how does that logically translate into a ban on the CPE's ability to sue any citizen?

Some may argue that the huge financial resources of public bodies pitted against the average citizen is plainly unfair. But why is it then not also unfair to the financially well-off to be barred from suing others of lesser means?

Moreover, Prof Tan felt that the public body might have to spend time and other resources to defend itself by means other than suits if it were not able to sue for defamation.

This might affect its efficiency and effectiveness in serving the public. Finally, there are statutory boards with charitable functions such as Muis (the Islamic Religious Council of Singapore) or the Hindu Endowment Board that should be able to sue if defamed, just as other charities can do.

In all, public bodies ought to be able to sue citizens. But so that good-faith criticism is not thereby discouraged, they should only be able to ask for retractions, corrections and apologies, not damages, unless they suffer clearly verifiable financial losses.

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