Ting Choon Meng *v* Attorney-General and another appeal
[2015] SGHC 315

Case Number : Community Justice and Tribunals Appeals Nos 1 and 2 of 2015

Decision Date : 09 December 2015

Tribunal/Court : High Court

Coram : See Kee Oon JC

Counsel Name(s) : Choo Zheng Xi and Jason Lee (Peter Low LLC) for the appellant in CJTA 1; Eugene Thuraisingam and Suang Wijaya (Eugene Thuraisingam LLP) for the appellants in CJTA 2; Hui Choon Kuen and Lam Qian Yi Debra (Attorney-General's Chambers) for the respondent; Chen Jie'an Jared (WongPartnership LLP) as amicus curiae.

Parties : Ting Choon Meng — Attorney-General

Tort – Harassment – Protection from Harassment Act – False statements of fact

[LawNet Editorial Note: The appeals to this decision in Civil Appeals Nos 26 and 27 of 2016 were dismissed (by a 2:1 majority) by the Court of Appeal on 16 January 2017. See [2017] SGCA 6.]

9 December 2015 Judgment reserved.

See Kee Oon JC:

1 These were two appeals against the decision of the District Judge to grant the Attorney-General an order under s 15 of the Protection from Harassment Act (Cap 256A, 2015 Rev Ed) ("the Act") in respect of certain allegedly false statements that had been made by Dr Ting Choon Meng ("Dr Ting"), the appellant in Community Justice and Tribunals Appeal No 1 of 2015 ("CJTA 1"), and published on a website called "The Online Citizen" by the appellants in Community Justice and Tribunals Appeal No 2 of 2015 ("CJTA 2"). The order which the District Judge granted was that those statements could not be published unless they were published together with a notification clarifying that the statements had "since been declared by the Singapore Courts to be false", and that the truth of the matter could be found in a separate statement published by the Ministry of Defence ("MINDEF").

2 Broadly speaking, the allegedly false statements concerned a patent dispute between Dr Ting's company MobileStats Technologies Pte Ltd ("MobileStats") and MINDEF. MobileStats had commenced an action in the High Court in 2011 alleging that MINDEF's purchase and use of a particular vehicle constituted an infringement of a patent that it owned. But MobileStats subsequently discontinued the action in the midst of the trial, which resulted in the revocation of its patent on the ground of invalidity. Later, Dr Ting gave an interview to The Online Citizen in which he commented on that patent dispute, and the Attorney-General's position is that two false statements of fact emerged from the interview. The first was that MINDEF had knowingly infringed MobileStats's patent with the intention of applying subsequently to revoke that patent. The second was that MINDEF had deliberately delayed the proceedings in the High Court as a "war of attrition" against MobileStats.

Factual background

3 Sometime in 2005, MobileStats successfully registered a patent known as Singapore Patent

No 113446 ("the Patent"). The subject of the Patent was what was known as a "mobile first aid post", and this was essentially a vehicle designed to deliver medical services quickly and simply in disaster or combat situations or other emergencies. Sometime in 2009, following a tender exercise, MINDEF awarded a contract to a company called Syntech Engineers Pte Ltd ("Syntech") under which MINDEF agreed to purchase from Syntech a number of medical military vehicles known as "Battalion Casualty Stations".

4 On 29 July 2011, lawyers for MobileStats wrote to MINDEF demanding that MINDEF immediately cease the use of the Battalion Casualty Stations on the basis that these vehicles infringed the Patent. MINDEF replied several days later on 4 August 2011 explaining that it had done no more than purchase the vehicles from a vendor, namely Syntech, and that it had made this purchase on Syntech's contractual warranty that Syntech had obtained and/or would obtain all necessary intellectual property rights. MINDEF thus invited MobileStats to direct its complaints towards Syntech instead.

5 In the event, MobileStats opted to proceed against MINDEF. In September 2011, it filed Suit No 619 of 2011 ("Suit 619") in the High Court alleging that MINDEF had infringed the Patent. Although the Attorney-General was named as the defendant, the defence against MobileStats's action was conducted by Syntech. This arrangement accorded with the terms of the contract between MINDEF and Syntech: cl 40.2 provided that Syntech would indemnify MINDEF against all loss, damage or expense arising out of any claim for infringement of intellectual property rights in respect of the vehicles, and cl 40.4 provided that, in the event that a claim of that sort was made against MINDEF, Syntech would "conduct any litigation" in such a way that MINDEF would remain able to use the vehicles without interference. Syntech was not content merely to resist MobileStats's claim. It instituted a counterclaim alleging that the Patent was invalid and ought to be revoked.

6 The first two days of trial in Suit 619 took place on 2 and 3 July 2013, about 21 months after the commencement of the action. Further trial dates in January 2014 were subsequently taken, but the action did not reach that stage because MobileStats indicated on 3 January 2014 that it did not intend to proceed further with Suit 619. As a consequence, on 15 January 2014, judgment was entered on Syntech's counterclaim, and the Patent was held to be invalid and ordered to be revoked.

7 Almost a year later, on 30 December 2014, Dr Ting gave an interview to Mr Howard Lee, an editor of The Online Citizen and the first appellant in CJTA 2. This interview was recorded on video and edited into a presentation of 27 minutes' duration, and the final product was uploaded on The Online Citizen on 15 January 2015. The video was published together with an article by Mr Howard Lee entitled "Inventor forced by Mindef to close company over patent rights". In the video, Dr Ting was shown making the following comments:

(a) Sometime around 2005, Dr Ting had an encounter with the Army's (then) Chief Medical Officer, one Brigadier-General Dr Wong Yue Sie ("Dr Wong"), in which Dr Wong saw MobileStats's mobile first aid post, which was the subject of the Patent, and told Dr Ting that he was "very interested to make for military". They subsequently exchanged e-mails, in the course of which Dr Wong acknowledged that the vehicle was "under patent" but indicated that he "wants to talk to Civil Defence first" and "to see how he can get around" the Patent. Thus it was "already an intention from the start" to infringe the Patent.

(b) After MobileStats had commenced legal proceedings in 2011, Dr Ting was informed that Syntech had written to MINDEF stating that Syntech had "checked with [its] legal adviser" and learnt that the Patent "has no novelty", meaning that it was possible to "revoke" the Patent in court. This showed that MINDEF was "waiting to be challenged" by MobileStats and had been

planning all along, in a "very premeditated" way, to "do something like revocation".

(c) The lawyers opposing MobileStats in Suit 619 had said that they were conducting a "war of attrition" designed to bleed MobileStats "dry", and in this connection, it had taken nearly two years for the case to proceed to trial "because MINDEF has said that they could not locate and find an expert witness and they keep postponing".

(d) MINDEF's lawyers had "asked for a 10-day trial, not a 5-day", and "10 day trial basically means that the actual costs would go up, would escalate"; MINDEF's intention was to "drag for 10 days" as part of a "war of attrition" designed to render MobileStats "unable to financially fight" Suit 619.

8 MINDEF responded to Dr Ting's comments with a statement that was posted on its "Cyberpioneer" Facebook page. In this statement, MINDEF alluded to "online articles alleging that the mobile battalion casualty station … bought by MINDEF had infringed [the Patent] for [MobileStat's] 'Mobile First Aid Post'", and to suggestions apparently made in those articles that "MINDEF is forcing MobileStats to close down, so as [*sic*] take over the patent rights". MINDEF said that "all these accusations are false and baseless", and proceeded to state, among other things, that (i) the High Court had ruled that the Patent was invalid, (ii) the patent dispute was in actuality one between MobileStats and Syntech, with MINDEF being nothing more than a "consumer", so that MobileStats's action against MINDEF was akin to Apple suing Samsung handphone users instead of Samsung Electronics for alleged infringement of Apple's intellectual property rights, and (iii) MINDEF could not have set out to destroy MobileStats through a "prolonged court case" since MINDEF had not initiated the court action.

9 MINDEF's statement was subsequently reported in a number of national newspapers. The statement was also reproduced in full by The Online Citizen in an article entitled "Mindef responds to allegations over patent rights". In addition, The Online Citizen provided a means of accessing MINDEF's statement directly from the webpage containing Mr Howard Lee's article and the accompanying video of Dr Ting's interview. That is to say, between the headline and byline of Mr Howard Lee's article was displayed the text "Update: MINDEF has issued a response via its cyberpioneer magazine facebook. (read here)" which contained a link to MINDEF's statement.

Proceedings under the Act before the District Judge

10 Before the District Judge, the Attorney-General took exception to the comments that Dr Ting had made in the video which The Online Citizen had published. To be precise, the Attorney-General considered that, from the four sets of comments made by Dr Ting that I have described above (at [7]), two false statements of fact about MINDEF could be derived or distilled. I should mention that the Attorney-General's position was made clear only at a fairly advanced stage of the proceedings before the District Judge. The Attorney-General had initially put forward the following prayers in its originating summons:

1. The following italicized and put in bold statements of fact about the Ministry of Defence are declared to be false:

Group 1

(a) "[MobileStats] actually have encounter with the Chief Medical Officer of army at the time…he actually saw our vehicle and he told us that he is very interested to make for military…we been exchanging email and then he said yes this is under patent but he wants to

talk to Civil Defence first. And then he want to see how he can get around it. This is his actual word to me that he'll 'try to get around it'. So I reminded him that this is under, I mean it is patented in Singapore. Anyway nothing heard after that. That is at least about two years before we discover that the MINDEF has already made this. ***So that was already an intention from the start."***

(b) "…when [MobileStats] begin…the legal process…this letter came…and gist of this whole letter is that the vendor [Syntech] is made aware and he knows that MINDEF is concerned that this may infringe our [MobileStats's] patent and therefore this letter was written to MINDEF telling him that we [Syntech] know your concerns but don't worry we have checked with our legal adviser. This patent has no novelty…This patent if we are challenged can go to court to revoke basically. So what I [Dr Ting] am saying is this letter actually show you that not only they [MINDEF] want to make. ***Not only that they [MINDEF] know who owns the patent, they are not going to license the patent. And they are waiting to be challenged. They will do something like revocation. So it is a very premeditated."***

Group 2

(c) "The word they [lawyers whom Dr Ting had spoken with] used is called 'a war of attrition'…basically they make you dry. Drag you dry… ***When we went ahead for the court case, it was only after two years, because MINDEF has said that they could not locate and find an expert witness and they keep postponing."***

(d) "… ***MINDEF asked for, or the lawyers from MINDEF asked for a 10-day trial, not a 5-day…but they asked for a 10 day trial. 10 day trial basically means that the actual costs would go up, would escalate…So this basically means that, they [MINDEF] also know, why they want to drag for 10 days, is a war of attrition. They basically drag us dry so we [MobileStats] are unable to financially fight them."***

2. No person shall publish or continue to publish the statements mentioned in paragraph 1, unless that person publishes, together with the statements, the following notification:

"Statements herein which state and/or suggest to the reader that:

(i) MINDEF had knowingly infringed [the Patent], with the intent to subsequently apply to revoke [the Patent] upon [Dr Ting's] legal challenge; and

(ii) MINDEF waged a 'war of attrition' against MobileStats, by deliberately delaying the court proceedings in Suit 619 of 2011 and asking for more trial dates than necessary, thereby increasing legal costs,

have since been declared by the Singapore Courts to be false. For the truth of the matter, please refer to MINDEF's statement [as posted on its Facebook page]."

11 Framed in this manner, the Attorney-General's initial position appeared to be that there were altogether *four* statements of fact which it was alleging to be false, these statements corresponding to the four sets of Dr Ting's comments that I have set out at [7(a)]–[7(d)] above. It also appeared that the Attorney-General's position was that any alleged falsity was confined to the parts emphasised in bold italics. Subsequently, however, the Attorney-General applied to amend its originating summons to clarify that its case was that there were *two* false statements of fact, one derived from those of Dr Ting's comments that fell under the heading "Group 1" and the other derived

from the comments under the heading "Group 2". These statements were, first, that MINDEF had "knowingly infringed" the Patent held by Dr Ting "with the intent to subsequently apply to revoke his patent upon his legal challenge", and second, that MINDEF had "deliberately delayed the court proceedings" in Suit 619 as a "war of attrition" against MobileStats.

12 The District Judge allowed the Attorney-General's application to amend its originating summons. In response, counsel for Dr Ting sought permission to file a further affidavit to address the amended originating summons, but the District Judge declined to grant it. In my judgment, it would have been more prudent to allow Dr Ting to file a further affidavit because the amendments to the Attorney-General's originating summons seem to me to have altered the substance of its case. I grant that the alteration was by no means a radical one, but in the absence of any compelling reason to deny permission to file a further affidavit in response, I incline to the view that such permission should have been granted.

13 Fortunately, as will become apparent, I do not think that the outcome of the present appeals turns on this. In this judgment I therefore proceed on the premise that the Attorney-General's position is that there are *two* false statements of fact that are derived or distilled from the four sets of comments made by Dr Ting in the video as set out at [7(a)]–[7(d)] above.

The law

14 The Attorney-General seeks relief under s 15 of the Act. The Act is a relatively new piece of legislation, having come into force in November 2014. Its long title states that it is an Act "to protect persons against harassment and unlawful stalking and to create offences, and provide civil remedies related thereto or in relation to false statements of fact". The use of the disjunctive "or" just before the reference to false statements of fact suggests that, even though the Act is named the "Protection from Harassment Act", harassment is not its sole concern. Rather, it is concerned also with false statements of fact whether or not such statements amount to harassment.

15 This view of the Act is supported by a consideration of its provisions. The word "harassment" is used in ss 3, 4 and 7 of the Act, and on those occasions the word is used within a larger phrase, which is "harassment, alarm or distress". These sections of the Act create offences that are punishable by fine or imprisonment, and s 11 of the Act further provides that civil proceedings may be brought by the victim against the offender in connection with the commission of these offences, and the court may award damages to the victim in those proceedings. I describe these provisions briefly:

(a) Section 3 makes it an offence for a person to behave or communicate in a "threatening, abusive or insulting" way with the intention of causing, and actually causing, "harassment, alarm or distress" to a victim;

(b) Section 4 makes it an offence to behave or communicate in a "threatening, abusive or insulting" way towards a victim who is likely to be caused "harassment, alarm or distress"; and

(c) Section 7 makes "unlawful stalking" an offence, and defines this as engaging in a course of conduct which involves acts or omissions associated with stalking and which causes "harassment, alarm or distress" to a victim, provided that there was an intention to cause such "harassment, alarm or distress" or at least knowledge that this was a likely outcome.

16 In contrast, the word "harassment" is absent entirely from s 15 of the Act. This provides that, where a false statement of fact about a person is published, the court may order, to the extent that it would be "just and equitable" to do so, that the statement shall not be published unless the

publisher also publishes such notification as the court thinks necessary to bring attention to the falsehood and the true facts. Moreover, whereas the acts causing "harassment, alarm or distress" in ss 3, 4 and 7 give rise to criminal and civil liability, no offence is created in relation to the false statements of fact contemplated in s 15, and there is no similar provision that civil proceedings for damages may be brought in relation to these statements. Hence it appears that there is a sense in which s 15 covers different ground from ss 3, 4 and 7 of the Act. For ease of reference I set out here the relevant parts of s 15:

> **False statements of fact**
>
> **15.**—(1) Where any statement of fact about any person (referred to in this section as the subject) which is false in any particular about the subject has been published by any means, the subject may apply to the District Court for an order under subsection (2) in respect of the statement complained of.
>
> (2) … the District Court may, upon the application of the subject under subsection (1), order that no person shall publish or continue to publish the statement complained of unless that person publishes such notification as the District Court thinks necessary to bring attention to the falsehood and the true facts.
>
> (3) The District Court shall not make an order under subsection (2) unless the District Court is satisfied on the balance of probabilities that —
>
> (*a*) the statement of fact complained of is false in any particular about the subject; and
>
> (*b*) it is just and equitable to do so.

Parameters of the appeals

17 It is evident from the terms of s 15 of the Act that, in seeking relief under this provision, the Attorney-General does not allege that criminal offences have been committed and does not seek damages from any of the appellants in CJTA 1 and CJTA 2. The only remedy sought is that, so far as Dr Ting's comments are found to contain false statements of fact about MINDEF, there should be an order that these comments are not to be published unless accompanied by a notification bringing attention to the falsehoods and the true facts. In the present case, the precise notification that MINDEF seeks is that Dr Ting's statements "have since been declared by the Singapore Courts to be false", and that the "truth of the matter" is to be found in MINDEF's statement posted on its Facebook page.

18 The Attorney-General's application gives rise to three issues. The first is the threshold legal issue of whether the Government has the right to invoke s 15 of the Act: this issue may be cast as a question of the interpretation of the word "person" in s 15(1). In the event that this is answered in the affirmative, the second issue is whether Dr Ting's comments contain statements of fact about MINDEF that are false. If this too is answered in the affirmative, a third issue arises, which is whether it would be "just and equitable" to grant the Attorney-General the order sought.

19 On all three issues the District Judge found in favour of the Attorney-General. He held that the Government did have the right to apply for an order under s 15 of the Act, that Dr Ting's comments in the video published on The Online Citizen did contain two false statements of fact about MINDEF, and that it was just and equitable to grant the Attorney-General the order sought. In the appeals before

me, the appellants in CJTA 1 and CJTA 2 challenge the District Judge's decision in all three respects. I will therefore consider each of the three issues in turn.

First issue: whether the Government may invoke s 15 of the Act

20 The first issue involved a novel question of law and for that reason a young *amicus curiae*, Mr Jared Chen, was appointed to assist on this issue only. Mr Chen's submissions supported the position taken by the Attorney-General, which was that the Government had the right to seek an order under s 15 of the Act. I should at the outset record my gratitude for his valuable assistance in these appeals.

21 I do not propose to set out or to summarise in detail the submissions made by the parties at this juncture. I will instead address the submissions in the course of my reasoning and analysis. Having said that, I might mention now that the *amicus* and the Attorney-General placed some reliance on ss 3 and 36 of the Government Proceedings Act (Cap 121, 1985 Rev Ed) ("GPA"), while the appellants in CJTA 2 called in aid the English House of Lords decision of *Derbyshire County Council v Times Newspapers Ltd and others* [1993] AC 534 ("*Derbyshire*"). All the parties also made reference to the Parliamentary debates regarding the Act. I consider that it would be convenient to deal first with the GPA and *Derbyshire* before proceeding to the Parliamentary debates, and so that is what I shall do.

The Government Proceedings Act

22 The pertinent provisions of the GPA, ss 3 and 36, provide as follows:

> **Right of Government to sue**
>
> **3.** 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.
>
> …
>
> **Application to Government of certain statutory provisions**
>
> **36.** This Act shall not prejudice the right of the Government to take advantage of the provisions of any written law although not named therein; and in any civil proceedings against the Government the provisions of any written law which could, if the proceedings were between private persons, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Government.

23 The District Judge held that ss 3 and 36 of the GPA, read together, "clearly provides the Government the legal right to make an application under section 15(1) of [the Act]": see his grounds of decision, published as *Attorney-General v Lee Kwai Hou Howard and others* [2015] SGDC 114, at [35]. Both the *amicus* and the Attorney-General endorse this view. The gist of their argument is that these provisions of the GPA give the Government the right to take the benefit of s 15 of the Act unless there is specific provision to the contrary, and in the absence of any express exclusion of the Government in s 15 of the Act, or anywhere else in the Act for that matter, the Government has the right to invoke s 15.

24 I am unable to accept this argument. The Government's right to pursue claims in legal proceedings in s 3 of the GPA is made subject to the provisions of the GPA itself and "any written law", which must include the Act. Hence, if the exercise of interpreting s 15 of the Act yields the conclusion that the Government has no right to the remedy therein, s 3 of the GPA cannot override that interpretation. As for s 36 of the GPA, this stipulates that the GPA does not prejudice any right of the Government to take advantage of the provisions of any written law, including the Act. By its terms, it presupposes the existence of a right enjoyed by the Government; s 36 of the GPA thus does not answer the anterior question of whether the Government even enjoys any right at all under s 15 of the Act.

25 My point is simply that ss 3 and 36 of the GPA do not add anything to the analysis of whether the Government may invoke s 15 of the Act. Those provisions in the GPA go only so far as to provide that, *if* the Government has the right to seek recourse under s 15 of the Act, nothing in the GPA prejudices that right and it may enforce the right by instituting court proceedings. The anterior question of whether the Government has such a right remains to be answered, and it is a question that must be answered having regard not to the GPA but to the structure of the Act and the purpose of s 15 and what Parliament intended in enacting the provision, so far as that can be gleaned.

The* Derbyshire *principle

26 The appellants in CJTA 2 rely on *Derbyshire* in the following way. They say that the case establishes the proposition that the Government may not sue for defamation, the reason being that it was "of the highest public importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism", and even the "threat of a civil action for defamation must inevitably have an inhibiting effect on freedom of speech" (see *Derbyshire* at 547F–G). This principle that the Government must be open to "uninhibited public criticism" means that it cannot have the right to correct false statements of fact that is conferred by s 15 of the Act.

27 The *amicus* took a different view. He argued that, in the first place, it was questionable whether *Derbyshire* is good law in Singapore, and even if it was, the Government's inability to sue in defamation did not necessarily mean that it could not avail itself of s 15 of the Act given that the limited nature of the relief afforded by that provision was quite different from an award of damages. In other words, even if the Government should be precluded from suing in defamation because the prospect of having to pay damages would have an "inhibiting effect" on freedom of speech, the consequences of an order under s 15 of the Act for the defendant were nowhere as serious as an award of damages, and hence it could not be said that allowing the Government to invoke s 15 would have a similar "inhibiting effect".

28 In my judgment, I do not need to reach any firm conclusion on the correctness of the arguments advanced by the *amicus*. I need only say that, just as with ss 3 and 36 of the GPA, *Derbyshire* does not add anything to the analysis of whether the Government may invoke s 15 of the Act. Even if *Derbyshire* is good law in Singapore, and even if *Derbyshire* suggests that the Government should have no recourse at all when false statements of fact are made against it, it is entirely within Parliament's prerogative to repudiate *Derbyshire* by the enactment of contrary legislation. The true question is whether, on a proper construction of s 15 of the Act, the relief under that provision is available to the Government; if it is available, *Derbyshire* cannot stand in the way, and if it is not available, it is so regardless of *Derbyshire*.

Parliamentary debates

29 I turn now to the Parliamentary debates to see what light they shed on the interpretation of

s 15 of the Act. It should be noted at the outset that, during the debates, there was in fact a direct question posed as to how the word "person" in the Act was generally to be interpreted. The question was asked by Mr Pritam Singh whether the word should be "broadly read to include corporate entities as under section 2 of the Interpretation Act or whether our courts will be left to determine this point" (*Singapore Parliamentary Debates*, *Official Report* (13 March 2014) vol 91). The response of the Minister for Law Mr K Shanmugam was: "The term 'person' is defined in the Interpretation Act, and where this Bill [*ie*, the Act] references to 'persons', the Interpretation Act will apply".

30 Section 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("the Interpretation Act") states that the meaning of "person" includes "any company or association or body of persons, corporate or unincorporate". But it also provides that the word may take on a different meaning where "there is something in the subject or context inconsistent with such construction" or where it is "otherwise expressly provided". Thus, if there is in the context of s 15 of the Act something that militates against defining the word "person" so broadly as to include entities other than human beings, the definition prescribed in the Interpretation Act cannot apply. For this reason I consider that the reference to the Interpretation Act in the Parliamentary debates is not determinative of the question of whether "person" as it is used in s 15(1) of the Act includes the Government.

31 There are other portions of the Parliamentary debates in which the Minister for Law spoke specifically about s 15 of the Act and its relationship with the rest of the Act, and in my view those portions do illumine to some degree the scope and purpose of the provision. The relevant parts of the Minister's speech during the debates are fairly extensive, and I will shortly summarise the key points that emerge from there, but for convenient reference I will also set out these parts in full and emphasise in italics the specific portions I will return to later in my judgment:

> Fourth, in striking the balance between legislation, criminalising the conduct and selfhelp, getting recourse through criminal law or claim for damages through a civil claim, we should not make those the only avenues; that is, it should not be the case that every time a person is harassed, or experiences a wide range of conduct that amounts to harassment, the victim is forced to always either go and file a criminal complaint or bring a civil claim. There are many victims who will feel that as long as there is some redress, without having to claim damages, they would be satisfied because their feelings of alarm or distress would be settled or as long as the truth is set out.
>
> *We should really give the people the ability to help themselves and try and sort out matters themselves wherever possible.* Take attacks against someone involving lies, untruths, inaccuracies – 75% of those polled by REACH were of the view that such conduct should, *ipso facto*, be treated as harassment. Our view really is that we should not criminalise all such conduct, and that we really should keep to the definition of harassment, which already exists in the law, and simply give greater remedies. So to be criminal, the conduct must fall under the categories listed in clauses 3 to 7. We have not changed the law, only updated it, as I have explained.
>
> Instead, if there are falsehoods, and let us say it is harassment, or it is borderline harassment; or maybe nearly harassment; or not harassment but it is a clear falsehood, then the victim has the right to ask the relevant parties that the falsehoods be corrected, maybe through publication of replies, which may set out the correct facts. Some victims of harassment may well choose that route instead of having to make a criminal complaint, as I said earlier, or launch a civil claim and claim damages. *They just want the truth to be out and they do not want to escalate the matter further, and we should allow that. So it is a lower tier of remedy rather than having to go to the criminal and civil law all the time and make claims.*

Of course, if the offending party or websites refuse to carry the clarification or the response, or the correction, or a notification that the true facts can be found somewhere else, or the victim's reply is not able to get the same level of visibility as the falsehood, the law should provide some recourse.

Going back to public opinion, *82% of those polled by REACH felt that people should have a legal right to require that factual inaccuracies about themselves be corrected. This is the thinking behind clause 15.* But there will be no claim for damages and there will be no criminal sanctions. If you choose not to file a criminal complaint, if you choose not to make a civil claim, if you choose to, say, look, I just want to clarify or correct it in some form, and the manner of correction is left to the court, then that is all that you will get. You do not get money, you do not get to send the other person to jail.

…

… As I was saying, there are no damages, no filing of criminal complaint – a simple process, selfhelp, which can be applied to a range of situations, but you must prove or show that there was a false statement of fact. Clause 15 therefore allows the subject of the falsehood to apply for a court order that will give the court the discretion to make an order for the publication of a notification that draws attention to the falsehood and the publication of the correct facts. This will allow readers to assess the truth. It is really for the court to decide when it will be just and equitable for the court order to be made and in what form that order should be made.

…

… to sum up, what we are really doing today is to: *look at the consequences to the victims, and ask whether those consequences – that threat, abuse, alarm, distress – need to be protected against; and then decide for ourselves, the extent to which the law should intervene and give remedies, or whether we should just leave the situation alone.*

Antisocial and disruptive behaviour, if left unchecked, will strike at the heart and foundations of our society, and the concept of the rule of law. Public opinion is strong and clear: Harassment is not acceptable. We must do something about it. And the law must deal firmly with those who harass others.

We have responded with a Bill that provides a calibrated and graduated response to harassing conduct, so as to better protect our people from harassment and related antisocial behaviour.

Our thinking underlying the Bill is as follows: as far as possible, we keep the strong arm of the law to the background. But where it is serious, civil and criminal remedies must be applicable.

…

If, supposing the offensive content does not cross the threshold set out in clauses 3 to 7, or if for some reason the victim does not wish to avail himself or herself of clauses 3 to 7 and wishes to proceed with the lesser remedy, in either of those situations, the victim can obtain a court order under clause 15 to make sure that the falsehood is set right and the true facts are brought out clearly. The idea behind clause 15, as I earlier explained, is to let readers judge the facts for themselves, and the court is given substantial discretion under clause 15 to decide how that should be done. That is at the second level. *So it is a tiered response – clauses 3 to 7 carry a higher level of penalties; clause 15 no penalties, just correction, clarification, whatever the*

court thinks is necessary to bring the truth across. So we try to strike a balance between the competing considerations.

[Emphasis mine]

32 In my view, two important points emerge from a holistic consideration of these parts of the Minister's speech. The first is that the falsehoods which s 15 of the Act was designed to address may not amount to harassment. The second is that the Act was intended to create a "calibrated and graduated" "tiered response" to the problem of harassment and related anti-social behaviour, with the civil and criminal penalties prescribed in relation to ss 3 to 7 being reserved for the most serious cases, and the relief under s 15 being a "lower tier of remedy" which takes the form of "self-help".

Decision

33 In considering this issue of whether the Government is a "person" within the meaning of s 15 of the Act such that it may avail itself of the relief under that provision, I start from the premise that there are other provisions of the Act in which it would not be sensible to include the Government within the meaning of the word "person". In ss 3 and 7, for instance, two different persons are contemplated, one being the perpetrator of the harassment and the other being the victim, and since those provisions envisage an intention on the part of the perpetrator to cause "harassment, alarm or distress" to the victim, both perpetrator and victim must be human beings as only human beings may experience harassment, alarm or distress or form an intention to cause another to experience that.

34 This is but the starting point. I accept that, as the *amicus* argued, a word may not bear the same meaning every time it is used in the same statute. This is clearly illustrated by the English House of Lords decision of *Madras Electric Supply Corporation Ld v Boarland (Inspector of Taxes)* [1955] AC 667. That case involved certain income tax rules, and the issue there was whether the meaning of "person" in a particular rule included the Crown. It is not necessary to examine the reasoning in any detail because the pertinent point can be simply put in this way. There was some other part of the income tax rules in which the meaning of "person" necessarily excluded the Crown, but this was thought not to present an impediment to holding that the meaning of the same word included the Crown in the rule in question. Lord MacDermott acknowledged that it was a "presumption that the same word is used in the same sense throughout the same enactment", but he opined that such a presumption "must yield to the requirements of the context" (at 685).

35 The *amicus* and the Attorney-General argue that, in the context of s 15(1) of the Act, the meaning of "person" must be wide enough to include the Government. Relying on the words of the Minister for Law in the Parliamentary debates, as well as the long title and the scheme of the Act, they contend that s 15 is quite distinct from the other provisions of the Act. Those other provisions are designed to deal with harassment and unlawful stalking, which could be considered a sub-species of harassment, but s 15 is concerned with false statements of fact regardless of whether that amounts to harassment. The Attorney-General points out that s 15 is unique among the provisions of the Act in that it was not based on similar provisions in foreign legislation, and it argues that this is further reason to treat s 15 as standing apart from the other provisions of the Act. The *amicus* contends that s 15 stands apart in another way, which is that it prescribes neither criminal nor civil liability but creates only the narrow and limited remedy of requiring the publisher of a false statement to clarify that it is false.

36 Given this distinction between s 15 and the rest of the Act, the *amicus* and the Attorney-General say that the sole purpose of s 15 is to ensure that false statements are not irresponsibly propagated, and it would undermine that purpose if some false statements were not subject to the

control of s 15 just because the subject of those statements is the Government. Put another way, it would promote the purpose and object of s 15 to include within its ambit *all* false statements, including those made against the Government. The *amicus* argues that s 15(3) provides adequate safeguard against the risk of abuse of s 15 by requiring not only that the statement of fact complained of be false but also that it be "just and equitable" to grant the relief sought, and that there is thus no need to impose a further requirement regarding the nature or identity of the subject of the false statement.

37 I accept that, strictly speaking, s 15 of the Act does not concern harassment even though at first blush that may seem incongruous since it appears within legislation that is called the Protection from Harassment Act. It is wide enough to encompass even false statements of fact that do not strictly amount to harassment, whereas the other provisions of the Act target nothing less than harassment; to this extent, I agree that s 15 stands apart from the other provisions. Indeed, this is one of the key points I identified as having emerged from the Parliamentary debates. But in my judgment it does not inexorably follow 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, and this brings me to the other key point that can be discerned from the Parliamentary debates.

38 As the Minister for Law explained, s 15 of the Act should be seen as creating a "lower tier of remedy" in a "tiered response" to the social problem of harassment and associated disruptive and anti-social behaviour. The higher tiers consist of the criminal penalties prescribed in ss 3 to 7 of the Act and the civil remedies provided for in s 11. What this means is 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. The purpose and object of s 15 should thus be assessed in the light of the purpose and object of the other provisions.

39 In my view, the purpose and object of ss 3 to 7 and 11 of the Act is to protect persons from the detrimental *emotional or psychological impact* of the words or deeds of other persons, as is evident from the references to "harassment, alarm or distress" in ss 3, 4 and 7 and the fear of violence in s 5 and the requirement that such deleterious emotional or psychological effects must have arisen before those provisions of the Act may be invoked. The Act thus recognises that the emotional or psychological impact occasioned by such conduct can be severely disruptive and traumatising or even devastating to a person's well-being, and that is the reason it has created a tiered system of reliefs or remedies that together form a coherent response to this social problem. Section 15 is part of that system and so its purpose is to be construed in the light of that overall design of the Act.

40 Therefore, even though s 15 of the Act makes no overt reference to the emotional or psychological impact of a false statement of fact, its place in the "tiered" scheme created by the Act means that the underlying if unexpressed rationale for providing protection against false statements is that these statements have a detrimental emotional or psychological impact on their intended subject even if they do not rise to the level of harassment. Returning to the words of the Minister for Law in the Parliamentary debates excerpted above at [31], the "lower tier of remedy" in s 15 was instituted as a "self-help" remedy because it was thought that there were "many victims who will feel that as long as there is some redress, without having to claim damages, they would be satisfied because *their feelings of alarm or distress* would be settled or as long as the truth is set out" [emphasis mine]. The Minister also summarised the broad philosophy animating the entire Act thus: "look at the consequences to the victims, and ask whether those consequences – that threat, abuse, *alarm, distress* – need to be protected against; and then decide for ourselves, the extent to which the law should intervene and give remedies" [emphasis mine]. These references to "feelings of alarm or distress" strongly suggest that the emotional or psychological impact of a false statement of fact on

the subject of that statement is the true mischief that s 15 endeavours to address.

41 It follows that the scope of s 15 is not so wide as to encompass all false statements but is confined to *false statements that are capable of affecting their intended subject emotionally or psychologically*, which presupposes that the subject of the false statement is a human being, endowed with sentient consciousness and capacity to feel the impact of such falsehood. In this connection, it is pertinent to recall the Minister for Law's observation in respect of the "thinking" behind s 15, which took into account the poll on REACH showing that "*people should have a legal right* to require that factual inaccuracies about themselves be corrected" [emphasis mine]: the collective noun "people", as distinct from "persons", generally contemplates only human beings. It is also pertinent in my view that the Minister had prefaced his observations on s 15 by pointing out that "we should really give the people the ability to help themselves and try and sort out matters themselves wherever possible". Hence, in my judgment, the meaning of "person" in s 15(1) of the Act excludes the Government, and the Government may not avail itself of the remedy under s 15 of the Act.

42 I acknowledge the point made by the *amicus* that the requirements which must be met under s 15(3) of the Act before an order under s 15 will be made do not include any express requirement pertaining to the nature or identity of the subject of the false statements of fact. Rather, there is little more there than the requirement that it be "just and equitable" to make a s 15 order. But, in my opinion, reading s 15 purposively and in harmony with the rest of the Act leads to the conclusion that s 15 was not intended to extend beyond certain false statements of fact, *viz*, those capable of affecting their subjects emotionally or psychologically, and a consequence of this is that there is effectively an *inherent* requirement that the subject of the false statement be a human being.

43 It might then be contended that this interpretation of s 15 renders nugatory or meaningless the "just and equitable" requirement in s 15(3) because, on the premise that only false statements that affect their subjects emotionally or psychologically fall within the scope of s 15, the necessary existence of some emotional or psychological impact means that it will always be "just and equitable" to make an order. I take the contrary view, however, that it is possible to envisage situations in which a false statement has such impact on its subject but it would nonetheless not be "just and equitable" to grant a s 15 order. For instance, the maker and/or publisher of the statement may have given the subject of the statement a fair opportunity to respond to it, and a court might take the view that justice does not require the making of an order in all the circumstances of the matter; or the subject might himself be guilty of such mendacious conduct towards the maker and/or publisher that it would not be "just and equitable" to order that the false statement be clarified.

44 Having held that only human beings may avail themselves of the remedy under s 15 of the Act, I should clarify that this does not necessarily preclude recourse to s 15 whenever false statements are directed against entities other than human beings. The reason is that, as V K Rajah J (as he then was) observed in *Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 at [64], allegations against corporate bodies "will often involve by necessary inference imputations against those who are responsible for its direction and control". This means that an allegation ostensibly aimed at a corporate body might be, in substance, an allegation against the human beings who manage that corporate body. If that is so, it is open to those human beings to seek redress under s 15 of the Act, and nothing in my decision in these appeals should be taken to exclude that possibility; whether or not a s 15 order is subsequently made in their favour is, of course, a separate matter altogether that will depend on the facts of the particular case. In these appeals, however, relief under s 15 of the Act is sought not by any human officer within the Government but by the Government itself, and in my opinion this is not something that is available to it.

45 The Attorney-General's application for an order under s 15 of the Act thus fails at this threshold stage. On this basis alone, the appeals in both CJTA 1 and CJTA 2 should be allowed. Nevertheless I shall go on to consider the remaining issues as full arguments were heard on those points.

Second issue: whether there were false statements of fact

46 To reiterate, the Attorney-General's position is that the following two false statements of fact may be derived from Dr Ting's comments in the video published on The Online Citizen:

(a) MINDEF had knowingly infringed the Patent, with the intent to apply subsequently to revoke the Patent upon Dr Ting's legal challenge; and

(b) MINDEF had deliberately delayed the court proceedings in Suit 619 as a "war of attrition" against MobileStats.

Allegation that MINDEF had knowingly infringed the Patent

47 In relation to the first statement, MINDEF contends that it is false for the following reasons. First, since the High Court in Suit 619 had revoked the Patent upon MobileStats's discontinuance of the proceedings, it had adjudged the Patent to have been invalid *ab initio*, meaning that there never existed any patent to infringe. Second, MINDEF had received from Syntech a written warranty that Syntech had obtained or would obtain all relevant intellectual property rights to the Battalion Casualty Stations that MINDEF was purchasing, and hence MINDEF could not have intended to infringe any patent. Third, MINDEF had obtained from Syntech nothing more than a *licence* to use Syntech's intellectual property rights in relation to the vehicles, which demonstrated that MINDEF had had no interest in *owning* those rights and so would not have had reason to engineer a conspiracy to steal any rights from Dr Ting. Fourth and finally, since Syntech was the party that controlled the litigation in Suit 619, MINDEF could not have planned to get the Patent revoked by those legal proceedings.

48 MINDEF's essential point, aside from the contention that the Patent was incapable of being infringed since it was void all along, is that it would have had neither motive nor opportunity to get the Patent revoked by way of Suit 619, and so it could not have "knowingly" infringed the Patent with the intention of applying subsequently to revoke it. I accept that it is factually true to say that (i) MINDEF had obtained a written warranty from Syntech as to intellectual property rights, (ii) MINDEF acquired nothing more than a licence to use those rights, and (iii) Syntech had conduct of the litigation in Suit 619. But, in my view, these facts do not quite meet Dr Ting's statement head-on.

49 Dr Ting's narrative was this: a few years before MINDEF purchased the Battalion Casualty Stations, he had some contact with Dr Wong, who was then the Army's Chief Medical Officer; in the course of their interactions Dr Wong expressed interest in MobileStats's mobile first aid post and acknowledged that it was patented, but indicated that he would seek to "get around" the Patent. It was for this reason that Dr Ting alleged that MINDEF had all along taken the view that the Patent would not be an impediment to its acquisition of vehicles similar to MobileStats's mobile first aid post, and this was why he said that MINDEF's challenge to the Patent in Suit 619 was "premeditated". Hence, in my judgment, for MINDEF to show that Dr Ting's first statement of fact is false, it must at the very least challenge Dr Ting's assertion that there was correspondence between him and Dr Wong in which the latter made known his intention to "get around" the Patent. This MINDEF has not done and Dr Ting's assertions thus remain unrebutted. One reason for this state of affairs appears to be that Dr Wong unfortunately passed away in 2010, before the commencement of Suit 619. MINDEF explained that there was thus no opportunity to secure Dr Wong's response on this alleged conversation. The absence of direct contest to Dr Ting's allegation regarding Dr Wong is therefore

entirely understandable and in no way reflects poorly on MINDEF, but it does mean that there is a dearth of material contradicting that allegation upon which the court might act.

50 What MINDEF has done instead has been to focus on events at a later point in time, *ie*, the execution of an agreement to purchase the Battalion Casualty Stations from Syntech and the subsequent litigation in Suit 619. But if it is true that at a prior juncture a senior officer of MINDEF had expressly intimated an intention to "get around" a patent owned by Dr Ting that had not yet been held to be revoked, it would appear that an intention at least to disregard or work around the Patent may be attributed to MINDEF from the objective meaning of those words. There is no doubt that, as events transpired, it became impossible to infringe the Patent because it was adjudged in Suit 619 that the Patent had never been valid, but this does not affect the truth of the statement that, long before such judgment was handed down, there could have been an intention on MINDEF's part to "get around" the Patent. It is simply a question of Dr Wong's state of mind when he spoke to Dr Ting and future events cannot change that state of mind. Moreover, if Dr Wong had indeed said what Dr Ting ascribes to him, MINDEF's subsequent conduct could be cast in a quite different light. MINDEF depicts itself as an "innocent purchaser" which relied on a warranty from Syntech only to be caught unwittingly in the cross-fire of a dispute that was substantially between MobileStats and Syntec, but unless Dr Ting's descriptions of his communications with Dr Wong are squarely rebutted, it remains a real possibility that MINDEF was fully aware when it purchased the vehicles from Syntech that these vehicles might infringe the Patent, and that MINDEF dealt with this by getting Syntech to take on the risk of a patent infringement action ensuing. It is not to the point to say that MINDEF had no interest in *owning* the intellectual property rights to the Battalion Casualty Stations, because that is entirely consistent with an intention to purchase and *use* the vehicles in such a way as would infringe the Patent.

51 In the circumstances, I am unable to see how it can be established on a balance of probabilities that Dr Ting's narrative of his communications with Dr Wong is false. On this premise, given the two competing possibilities, *viz*, (i) MINDEF was a mere "innocent purchaser" of vehicles from Syntech and had no intention to infringe the Patent, or (ii) MINDEF was cognisant of the possibility that the vehicles might infringe the Patent but decided to purchase them anyway on the basis that Syntech would bear any liability for infringing intellectual property rights, I cannot say that the former is more likely to be true than the latter. Both are equally plausible on the available evidence. Therefore I am not able to conclude that the first statement of fact impugned by the Attorney-General is false.

Allegation that MINDEF had deliberately delayed proceedings in Suit 619

52 The second statement of fact which the Attorney-General complains of is that MINDEF deliberately delayed the court proceedings in Suit 619 as a "war of attrition" against MobileStats. This single statement is in fact derived from two separate comments made by Dr Ting: one comment was that MINDEF had been dilatory in finding an expert witness and the other was that MINDEF had asked for a 10-day trial when it was initially meant to last just five days. The Attorney-General says that the latter comment is clearly untrue because counsel for MobileStats is recorded as having agreed to a trial of 10 days' duration, but it does not seem to have addressed the former comment directly. That said, the Attorney-General's broader point is that it was Syntech that was conducting the litigation, meaning that MINDEF would not have had any interest in delaying the proceedings, and that, in any event, MINDEF would not have been in a position to bring about such delay.

53 I accept that Dr Ting's comment that MINDEF had delayed the proceedings in Suit 619 by asking for a 10-day trial is false. There was in evidence before me the notes of a hearing in which counsel for MobileStats is recorded as having said "Agree five days not sufficient" and having indicated that six days would be needed just for cross-examination and re-examination of all of

MINDEF's – or Syntech's – witnesses. It is thus evident that the extension of the trial beyond the five days originally designated for that purpose was not part of a design by MINDEF to drag matters out.

54 More fundamentally, I accept that MINDEF was not the party conducting the litigation in Suit 619. It was Syntech that appointed and instructed counsel to resist MobileStats's action and bore the expense involved. Given this situation, I consider that MINDEF would have no interest whatsoever in delaying the proceedings, and since Syntech made the decisions in the litigation any design to delay would have been Syntech's initiative and not MINDEF's. I am therefore satisfied on a balance of probabilities that the second statement of fact derived from Dr Ting's comments is false.

Third issue: whether it would be just and equitable to grant the order sought

55 The final question for consideration is whether it would be just and equitable to grant an order under s 15 of the Act in relation to the second statement of fact derived from Dr Ting's comments, which statement has been shown to be false. I should reiterate that the question is academic given my view that the Government may not invoke s 15 but I shall discuss it anyway since parties argued the point.

56 I do not propose to set out an exhaustive list of factors that should be taken into account in deciding whether it would be "just and equitable" to grant a s 15 order. I shall say only that, in the circumstances of this case, I do not think it would be just and equitable to make the order sought by the Attorney-General. I accept that the statement I have found to be false can be construed as having cast aspersions on MINDEF's integrity and having the potential to bring MINDEF into disrepute, as noted by the District Judge. But quite apart from the fact that MINDEF was not capable of being affected emotionally or psychologically by the statement, it is difficult to see how its interests more generally were compromised to any substantial extent by that particular false allegation that it had delayed legal proceedings as part of a "war of attrition" against MobileStats. As the allegation was disputed, MINDEF could and did put across its version of the facts online and in traditional media in a fairly extensive manner. In any event, the allegation was a relatively minor one in the sense that it concerned a rather narrow aspect of MINDEF's conduct, *ie*, its alleged litigation strategy, and cannot be said to have gone anywhere near seriously impugning the core or essence of MINDEF's identity or "character" or "personality". Where this is so, I do not think an order under s 15 should be made as a matter of course lest the court's resources be unduly burdened by an over-abundance of applications under s 15 of the Act.

57 Another important reason why it would not be just and equitable in my view to grant the Attorney-General a s 15 order is that The Online Citizen had already taken significant steps to point out to readers and viewers that the truth of Dr Ting's comments was by no means beyond doubt. It is not disputed that although The Online Citizen did not concede that it had made any false statements, it not only published MINDEF's Facebook statement in full but also provided a prominent link to MINDEF's statement from the article containing Dr Ting's video interview. Such efforts to present each party's side of a story ought to be encouraged, and in my judgment they would be discouraged if s 15 orders were made as a matter of course despite these efforts having been made. It is not immediately evident why "only a s 15(2) order would do" and why publication of MINDEF's statement alone would be insufficient in the circumstances.

58 While the remedy created by s 15 of the Act might accurately be called a "lower tier" one in that the consequences of the order are not drastic, it does not follow that s 15 orders should be very readily granted as long as a statement of fact has been demonstrated to be false. Where 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. But an important countervailing consideration is that an application to court under s 15 should not be seen to be a measure of first resort where a false statement is made. I venture to suggest that courts should be slower to grant a s 15 order the more of the following features are present: (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.

59 I offer these observations while reiterating that I do not wish to be understood as having set out an exhaustive collection of factors that courts should consider in deciding whether it would be just and equitable to grant an order under s 15 of the Act. I would say only that the four features I have identified in the preceding paragraph are present in these appeals, and that their cumulative effect is that it would not be just and equitable to make the order sought by the Attorney-General.

Conclusion

60 I therefore allow the appeals in CJTA 1 and CJTA 2. This follows from my decision that the Government may not invoke s 15 of the Act, but even if I had decided otherwise on that issue or if I have erred in arriving at that decision, I would have reached the same result because I do not think it would be just and equitable to grant the order sought by the Attorney-General in relation to the single statement of fact that I have found to be false. I will hear submissions on costs.