

# MCCHR STRATEGIC LITIGATION TRAINING FOR THE MEDIA

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## *A Facilitator's Manual*

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**MCCHR**  
**STRATEGIC**  
**LITIGATION**  
**TRAINING FOR**  
**THE MEDIA**

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*A Facilitator's  
Manual*



**MCCHR**

**Malaysian Centre  
for Constitutionalism  
and Human Rights**

Kuala Lumpur  
2014

*Strategic Litigation Training for the Media:  
A Facilitator's Manual*

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## INTRODUCTION

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Editors often say the best way for a rookie reporter to learn about journalism is to do the actual reporting and learn the ropes along the way. Reporting from the courts, where journalists provide news coverage of interesting cases ranging from murder to defamation to celebrity divorces, is seen as good training ground on how to practise good journalism. News reports of court cases can be the platform to put into practice the principles of good journalism—accuracy, fair reporting, diversity of sources, and clear and concise writing. Reporters can convey the details of the case in a news article, which employs the conventional inverted pyramid fashion—the judgment or the most interesting testimony revealed for the day in the introductory sentence, followed by details of the testimony or the case. Important points are placed at the top half and less important ones at the bottom half to make it easier for copy-clearers and sub-editors to cut the last sentences to fit it in the allocated space.

With the advent of online portals, the length of a story is no longer a key issue. However, whether published in print or online, the straightforward writing style in which court stories are delivered remains. While this no-nonsense format works well for murder cases or run-of-the-mill criminal breach of trust situations, the emerging importance of human rights in Malaysian society and the use of the courts to challenge laws or policies that violate constitutional protections or human rights necessitate a different kind of court reporting.

Lawyers and activists use critical court cases to provoke discussion within society and to raise awareness on human rights issues. Over and above the trial, these cases become entry points to promote the human rights discourse and spark discussions about public attitudes on fundamental liberties.

For the media to play its role in informing the public on the importance of the case and its relevance to the average person, journalists who report on these trials need a good understanding of court procedures. This will enable them to expand the ways with which a typical court story could be written. Journalists can pitch new ideas to their editors—to do a follow-up story or write a feature piece on the implications of the case on the public.

Equally important is the protection for journalists and the media organisations they work for. In providing coverage on issues, which could be seen as contentious, journalists must have the necessary knowledge in relation to libel in Malaysia and on how media practitioners can defend and protect themselves from lawsuits. In addition, in an environment in which media laws are restrictive—especially for print and broadcast media—and journalists are being investigated for providing coverage on issues deemed seditious by the state, knowing how to deal with authorities and what protection is available for them under the law is always useful. This part of the module is perhaps the one least likely to be covered by existing trainings for journalists.

Big news organisations in Malaysia have the resources to run trainings on libel and protection for journalists at all levels—from those who report the news to those who clear the articles and come up with the headlines and captions for the pictures before it is published. However, online portals—often small set-ups with a tiny pool of journalists and limited resources but nevertheless are an important part of Malaysia's media landscape—may not be able to part with their resources to train journalists on these issues. In that respect, making this manual available for anyone's use will benefit small media start-ups the most.

The manual is not exhaustive, but it does provide the basic building blocks of a good training on three key areas: libel, court process and procedures, and the safety and protection concerns of journalists. We urge civil society actors and journalist groups to use the material freely.

## HOW TO USE THIS FACILITATOR'S MANUAL

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There are three modules in this manual, and each can run as a stand-alone training, with each taking an average of half a day. Before going into more details, here are some guiding principles and useful tips to help ensure a successful training.

**Listen and Participate**—As much as possible, the tone of the training is participatory. The training methodology uses a combination of lectures and hands-on exercises to ensure the training covers all the crucial information of what could be a complex process and to optimise the learning process. Trainers will draw from the experiences of the participant journalists to set the stage for an effective learning environment.

**Use Real Case Studies**—Journalists are likely to find the material more interesting and useful if it is relevant to their real-life situation. In all the trainings we ran, we used the interview method, which journalists are familiar with. People who were directly involved in actual court cases—whether lawyers for the plaintiff or someone who challenged a ministerial decision or action in court—get to sit in the hot seat as reporters grill them, just like in a press conference. These techniques will also help the trainers establish how the material and subject matter have a direct relevance to the practice of journalism in Malaysia.

**Capture What Was Said**—It may be useful to appoint a rapporteur who will record the proceedings of the training, capturing key questions and concerns which came up, and identifying ways in which the training can be improved in future. The organisers may also be able to cull follow-up actions on the issue from these notes for their advocacy.



**Target Audience**—Many media organisations—especially print and online—have at least one journalist who cover the courts. Big media houses sometimes have a team covering the various types of courts in multiple locations. These journalists with a few years of experience are the natural participants to be recruited for this training. However, to diversify the types of coverage, which can be given to court cases, organisers are encouraged to broaden the scope of invitees to include journalists who write for other sections of the media apart from news. They could be writers from the feature section, senior journalists who write analytical pieces, and columnists who contribute to the myriad publications, whether print or online. And those in the newsroom who are called copy-clearers—these are experienced journalists, including editors and sub-editors, who prepare a story—edit, cut to fit the space, give a headline, choose the pictures to illustrate the story and caption the photographs—for publication.

**Scout for People**—The biggest challenge in running a training is to ensure there are enough participants. Trainers can work with organisers to lobby editors to send their reporters. Ensure enough resources are put into getting a reasonable number—20 would be ideal—from a variety of backgrounds and experiences to enable good discussions to take place. Send the invites to journalists whom you have identified as having an interest in human rights or court reporting and try these tactics—pique the interest of editors and reporters with a compelling invitation letter, make follow-up calls, pitch to different sections of the media, and promise scoops to journalists in exchange for their attendance. Twist arms if you need to.

**Scout for Materials**—The trainers can identify which articles are to be used as case studies for analysis and discussion and make enough photocopies to be handed out. The use of actual cause papers, samples of coverage in media of key trials, and real-life instances of reporters and their dealings with authorities will help set the stage for a training which participants will find useful and relevant.

# INTRODUCTION SESSION

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## Objectives

- To introduce the training and get the journalists to be comfortable enough to share their experiences;
- To identify the participants' expectations;
- To establish ground rules.

**Time Allocation:** 45 minutes

**Materials Required:** Ball/flower, mahjong paper, marker pens/crayons/magic markers, whiteboard, flip chart, masking tape

## Background Information/Notes for Facilitators:

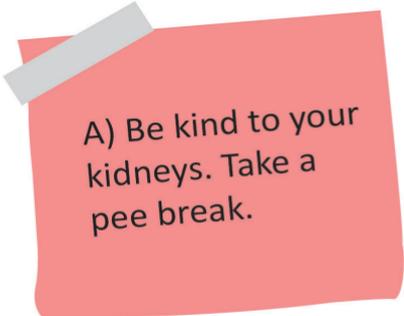
Ice-breakers are important to introduce participants to each other, to enable them to open up during the following activities, which deal with substantive issues. Getting participants to start talking about themselves will help them to share their personal experiences later.

1. Introduce the Trainer, Resource Persons, Organisers, support staff, and rapporteur.
2. Share some background information to establish why the training is useful for them.
3. Get the participants to introduce themselves by giving their names, name of media they work for, the number of years they have been a journalist. These instructions should be written on the whiteboard or on mahjong paper and put up where everyone can see. If there is time, get the participants to choose someone they have never met before, interview them, and introduce them to the group. If there is not enough time, throw a ball or pass a flower and the person who catches/gets it will have to introduce herself, and at the end of it, throw the ball or pass the flower to the next person and the process continues until all get to answer those questions.
4. Ask each participant to jot down at least one expectation she has of the training. Ask what those are and the facilitator will write them out on a mahjong paper. Identify which ones will be covered during the training—make references to the training programme—and for the ones that won't be covered, give some ideas on what they can do. At the end of the last activity, make references to the expectations checklist to identify the key expectations that have been met.

5. Ask participants to develop ground rules or guidelines for all the participants to ensure that the training runs smoothly, participants respect each other, there is optimum participation and there is a safe space for dialogue and exchange of opinions and ideas. Ask participants for suggestions to ensure ownership of the ground rules and buy-in to follow them throughout the training. Ensure some key points are there, for example: safe space; respect; keeping to the time; diversity of opinions; mobile phone on silent; one person speaking at a time/no side “conferences”, i.e. no talking while another person is. Write these down on the mahjong paper as the participants make the suggestions and you get the consensus, and put up the paper on the wall. Refer to the ground rules throughout the training if needed.
6. Invite a support staff to quickly share administrative matters—locations for the rest-rooms, meals, prayer room, parking fees, etc.
7. Do a quick run-through of the training programme and the reading or reference material provided in the training kit.

Here is a sample of the programme for Introduction Session:

Time	Activity
8:30-9 a.m.	Registration + Breakfast
9-9:45 a.m.	Introduction Session <i>Conducted by Trainer</i>



A) Be kind to your kidneys. Take a pee break.



b) If it rings loudly, we'll make sure it creates a splash – in the pool

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*Some examples of ground rules*

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# LIBEL

## Objective

- To provide journalists with the necessary knowledge in relation to libel in Malaysia.

## Subjects

- Constitutional protection of free speech
- Criminal Defamation
- Defamation Law
  - Libel and slander
  - Who can sue? Who can be sued?
  - What is Defamatory?
  - Publication
  - Defences
- Defences to Libel
  - Justification, i.e. the truth
  - Privilege - Absolute vs Qualified
  - Fair comment on a matter of public interest
  - Innocent dissemination/unintentional defamation

## Activities

- A. What Must the Plaintiff Prove?
- B. How Can a Publication Defend Itself
- C. Group Work
- D. Help Your Lawyers Help You

**Duration:** 3 hours 30 minutes, including a break

**Materials Required:** Mahjong paper, marker pens/crayons/magic markers, whiteboard, flip chart, masking tape.

## Hand-outs:

1. Defamation Law in Malaysia: Plaintiff's case
2. Defamation Law in Malaysia: Case for the Defence
3. Case Studies
4. Strategic Litigation

### Background Information/Notes for Facilitators:

The Trainer will need to do the following:

1. Start by explaining how crucial it is for journalists to understand libel, an issue, which is often in the background for editors and media owners. Even for small media portals, libel is something they have had to deal with, as seen by the defamation lawsuits against online media. Defamation is sometimes used to stop media from reporting on issues that have huge implications for the parties involved.
2. Stress that the threat of being sued will be there but it should not stop reporters and editors from providing coverage on public interest issues; there are ways for journalists and media organisations to mitigate the situation.
3. Introduce the Resource Person who will be providing the information about libel in Malaysia. The Resource Person is ideally a practising lawyer, to establish expertise on the subject matter and to share relevant content, experiences and actual cases.
4. Divide the content into two parts, with a tea break in between, to address mental fatigue.

## A. What Must the Plaintiff Prove?

**Time Allocation:** 1 hour

Whilst every Malaysian enjoys the right of freedom of speech in article 10 of the Federal Constitution, this freedom may be restricted by defamation laws. There are two broad categories of defamation—criminal defamation and civil defamation. Civil libertarians have long fought against criminal defamation, as it could be used to stifle freedom of expression. Whilst criminal defamation is viewed as problematic, for the purposes of this training, the focus will not be on criminal defamation but rather on civil defamation as Malaysian journalists tend to be faced with this issue (of civil defamation).

Civil defamation includes libel and slander—the former pertains to the written form or broadcast on television or radio and the latter relates to spoken words. To prove libel, a plaintiff must prove three essential elements—the material was published; it was published to a third party; and the publication was defamatory.

A publication is defamatory if it lowers the reputation of the plaintiff amongst right thinking members of society; it injures the plaintiff's reputation by exposing him or her to hatred, contempt or ridicule; or it tends to make the plaintiff shunned or avoided. The intention of the defendant is irrelevant.

See **Hand-out 1** for notes on this session.

## B. How Can a Publication Defend Itself?

**Time Allocation:** 45 minutes

What happens if a journalist or a newspaper is being sued for libel? There are several defences available:

- **Justification/truth.** The defendant must prove, on a balance of probability, that what was published was the truth.
- **Privilege.** There are two types of privileges—absolute privilege and qualified privilege. Absolute privilege are things that are said in Parliament, during Court proceedings, reports of Court proceedings (provided that it is fair, accurate and contemporaneous) and conversations between heads of states. On the other hand, qualified privilege can be used to protect complaints or information passed under a public or private legal, social or moral duty to another individual with a duty to receive;
- **Fair comment on a matter of public interest;**
- **Innocent dissemination/unintentional defamation.**

See **Hand-out 2** for the notes on this session.

### C. Group Work

**Time Allocation:** 45 minutes

1. Divide the participants into smaller groups of between five and seven participants each.
2. Provide participants with two case studies, preferably if these case studies are based on current issues (see **Hand-out 3** for sample case studies).
3. Explain to participants that their tasks include: identifying the key points, what went wrong, and what could have been done differently to avoid being sued. Write these tasks on a mahjong paper or on the whiteboard so the participants can refer to them.
4. Ask each group to record their answers to the tasks on a mahjong paper and appoint a person to present it.
  - Give participants 15 minutes to discuss and five minutes for each group to present.
  - Give participants a very short break to give time for the Trainer to prepare for the next activity.

## D. Help Your Lawyers Help You

**Time Allocation:** 45 minutes

1. Put up all the written presentations in the middle where the participants can see. Do this while the participants are on their short break.
2. Using different coloured marker pens, identify the points in the third task of the Group Work activity earlier—what could have been done differently—based on these clusters:
  - Provide the basic facts of the story
  - Fair comment
  - Public interest
  - Newsworthiness
3. To segue into this activity, point out that even in instances where journalists are threatened with a suit, there are steps to be taken, which the journalist participants themselves have identified. Point out where on the groups' presentation papers. This helps link the previous group discussion session with this one.
4. Invite the Resource Person (lawyer) to identify what reporters can do to help themselves if they were in similar situations as in the case studies. Suggestions the Resource Person can include in the sharing:
  - Doing their ground work on the issue being reported
  - Keeping their notebook or digital audio recording of the interview
  - Mapping out what was done to ensure fair and balanced reporting
  - When faced with a possible lawsuit, find a lawyer with a human rights background to ensure the case is also looked at through the freedom of expression lens.
5. Invite the journalists to also make suggestions on what else they think can be done.
6. Point out that issues related to professional standards of journalism will be addressed in more detail in the next module on Protection of Journalists.

7. Briefly introduce the idea of strategic litigation. Journalists will be able to see the direct link between this strategy used by lawyers and activists and their rights and functions as a journalist. Please refer to **Hand-out 4** for Strategic Litigation notes. Cull what would be useful in the training for journalists to fit the timeframe.

Here is a sample of the programme for this module:

Time	Activity
9:45-10:45 a.m.	A. Libel: What Must the Plaintiff Prove? <i>Conducted by Resource Person (lawyer)</i>
10:45-11:15 a.m.	Tea break
11:15-12 p.m.	B. Libel: How Can a Publication Defend Itself? <i>Conducted by Resource Person (lawyer)</i>
12-12:45 p.m.	C. Group Work Discussion and Feedback/Presentation by Groups <i>Conducted by Trainer and Resource Person (lawyer)</i>
12:45-1:15 p.m.	D. Help Your Lawyers Help You <i>Conducted by Trainer and Resource Person (lawyer)</i>
1:15-2:15 p.m.	Lunch Break

# COURT PROCESS AND PROCEDURES

## Objective

- To increase participants' knowledge of court procedures, with a view to contribute to creative and accurate development of media articles and news.

## Subjects

- Malaysian Courts
  - Hierarchy
  - Jurisdiction
  - Ranking (Section 8 of the Courts of Judicature Act 1964)
  - Governing rules
  - Mode of Commencement
- Filing of Cause Papers
  - Writ of Summons
  - Originating Summons
- Judicial Review
  - Procedures
  - Grounds of Challenge
  - Illegality
  - Irrationality
  - Procedural Impropriety
  - Proportionality
  - Legitimate Expectation

## Activities

- A. Legal Structure and the Courts
- B. Judicial Review and Court Documents
- C. Case Study
- D. Bridge Between the People and the Court

**Duration:** 3 hour 15 minutes, including a break

**Materials Required:** Mahjong paper, marker pens, whiteboard, flip chart, masking tape

## Hand-outs:

5. Notes on Malaysian Court: Legal Structures and Procedures

WRIT OF SUMMONS

MANDAMUS

HABEAS CORPUS

ORIGINATING SUMMONS

CERTIORARI

QUO WARRANTO



### Background Information/Notes for Facilitators:

The Trainer will need to do the following:

1. Start by establishing the importance of understanding court process and procedures, which is especially relevant to reporters who provide coverage for court cases and copy-clearers in the newsroom who edit such stories.
2. Introduce the Resource Person who will be providing the information about court process and procedures in Malaysia. The Resource Person is ideally a practising lawyer, to establish expertise on the subject matter and to share relevant content, experiences and actual cases.
3. Have a tea break after the first activity before continuing with the next session on Judicial Review.
4. After the tea break, carry out an energiser activity as post-lunch activities are a challenging time and it is important to keep the participants awake and ensure they are alert enough to be able to absorb the new information presented to them:
  - Write on the whiteboard the words: - “I am ALIVE, AWAKE, ALERT, ENTHUSIASTIC”;
  - Ask participants what sort of action can go with the words “alive”, “awake”, “alert”, and “enthusiastic”. For example—stretch or pretend to rub the eyes (for “awake”), jump or a boxing move or zombie-like movement (for “alive”), pretend one is looking through a pair of binoculars (for “alert”); and any dance move or jerky body movement (for “enthusiastic”). Note: Choose only one action to go with each adjective;
  - Together with participants, sing the words above to the tune of the popular song “If you are happy and you know it”, and do the action that has been chosen to accompany each adjective;
  - Ask participants to repeat the song, but at a faster pace;
  - Make sure everyone in the room takes part in this fun activity to wake them up for the next session.

## A. Legal Structure and the Courts

**Time Allocation:** 45 minutes

The highest court of the land is the Federal Court; this is followed by the Court of Appeal, High Court and the Sessions and Magistrates' Court.

There are two ways of commencing a civil litigation in Malaysia—a Plaintiff either files a writ of summons or an originating summons. A writ of summons is used when the suit involves substantial disputes of facts and an originating summons is used when a question of law is involved.

For a writ of summons, it will need to be filed in the Court, sealed, and served on the Defendant. Once the writ is served on the Defendant(s), both parties will have to appear before a Registrar within a specified period of time. Thereafter, the Defendant will file their defence and the Plaintiff will have the opportunity to file a Reply-to-Defence. Once pleadings are closed, the case goes through case management and then to a trial.

As regards originating summons, the summons will need to be filed in Court, sealed and served on the Defendant(s). After parties appear before a Registrar, the Defendant will file an Affidavit-in-Reply, followed by filing of an Affidavit-in-Reply by the Plaintiff. Subsequently, the case proceeds to trial.

## B. Judicial Review and Court Documents

**Time Allocation:** 45 minutes

Of interest for strategic litigation is the judicial review process as many test cases are filed by a person who has been adversely affected by a decision, action or omission of a person exercising his or her public duty or function. In a judicial review application, the remedies available include:

- **Habeas corpus.** Produce the body; this is particularly relevant for persons illegally detained;
- **Mandamus.** To force a public authority to do something that it is obliged by law to do but is refusing (eg. deliver passport, change name in an identification card);
- **Prohibition.** To stop proceedings in a lower court or tribunal (eg. to stop medical proceedings);
- **Quo warranto.** To stop someone from acting in an office he is not entitled to (for example, the Dato' Seri Ir. Hj. Mohammad Nizar Bin Jamaluddin v. Dato' Dr. Zambry Bin Abd. Kadir);
- **Certiorari.** To quash (or cancel) an order made by a public authority;
- **Injunction.** An order to stop doing something;
- **Damages;**
- **Declaration.** To seek a declaration as to status or entitlement to a right.

For more information on this, please refer to **Hand-out 5** on the Malaysian Court: Legal Structures and Procedures.

## C. Case Study: Press Conference or Interview

**Time Allocation:** 1 hour 30 minutes

Following the formal input by a lawyer on court process and procedures, this activity is designed to provide journalists with the opportunity to use some of the knowledge gleaned from the lecture sessions and interviewing skills they already have. It is also an opportunity for the Organisers to highlight a strategic litigation case that is linked to their own advocacy work.

It is ideal if the Resource Person who will be interviewed by the journalists for the interview session is involved in an actual court case, whether as a lawyer or a plaintiff/applicant. If the interviewee agrees that the session is for public consumption, the Trainer can ask participants for ideas on potential follow-up stories based on the interview. This session will be carried out in a press conference style, where the interviewee is facing the journalists, who will be told that the scenario is outside a courtroom and their assignment is to find out more about the case that they have been assigned to cover.

### **If the interviewee is a lawyer**

1. Provide cause papers of a strategic litigation case to the journalists. This way, the journalists will be able to see the documents in an actual court case and help reinforce some of the new information that has been shared in the previous session.
2. Set up the room in a press conference style where the lawyer (presiding at the press conference) is sitting at the head of the room.
3. Ask participants to start questioning the lawyer as if the lawyer had just come out of a court hearing of the strategic litigation case provided to them earlier.
4. Give the lawyer who is the interview subject the following instructions:
  - Hold on to cause papers and only give them to the journalists if asked;
  - Do not offer information or explanation about the case unless specifically asked by the journalists;
  - Make a note of questions that could have been asked in order to get all or most of the relevant details related to this case, such as background facts of the case, parties in the case, remedies sought, legal/constitutional issues invoked, the court's decision, reasons for the decision, and impact of the decision.
5. After the last question is asked, announce that the press conference is over and hand the session back to the lawyer.
6. Ask the lawyer to point out which information was not asked and why it is pertinent to the media report. It is good to reinforce learning by making references to information from the previous lecture session; this should be done throughout the session, when applicable.

### **If the interviewee is a plaintiff/applicant**

1. Provide cause papers to participants so that participants are able to acquaint themselves with the facts of the case.
2. Set up the room in a press conference style where the plaintiff/applicant is sitting at the head of the room.
3. Highlight to participants, the fact that someone from a group directly affected by the case is available to be interviewed by participants.
4. Invite the participants to question the plaintiff/applicant as if he or she is giving a press conference after a court hearing of his or her case.
5. Be sensitive to the plaintiff/applicant's level of comfort when answering the questions put forth by the journalists. If at any point in time in the interview, it looks as if things are getting too heated, step in, give the "time-out" sign and consult the plaintiff/applicant about what to do next.
6. If the plaintiff/applicant cries, set the tone for the incident; treat it as a matter of fact and not something to be fussed over too much. Exercise empathy and reassure the plaintiff/applicant that he or she is not alone. Use what is happening to also highlight the maxim of "minimising harm", a key issue in journalism ethics. The human impact of a human rights violation is real and in some instances, is very painful for the person directly affected by it. This revelation can be very powerful for the journalist because a concept or idea has been given a human face; human rights and the violation of them are no longer something only discussed by lawmakers or activists, and neither is it something buried in some document written in jargon not understood by the average person.
7. Before the interview with the plaintiff/applicant, ask a senior journalist who is the Resource Person for the next activity to take notes of which questions were relevant or important but not asked. Also, ask the senior journalist to note down other ways in which to ask for the same information, in line with journalism ethics.
8. Identify the good questions and highlight those, too. Good journalistic practices should be acknowledged and encouraged, and this can be done in the next activity.
9. Thank the plaintiff/applicant for having the courage to be in the hot seat.

## D. Bridge between the People and the Court

**Time Allocation:** 1 hour 25 minutes

Here are some guidelines on how to run this session:

1. Discuss with the Resource Person—ideally a senior journalist or a media academic who has had extensive newsroom experience—which strategic litigation case to highlight. Involve the Organisers in this process because they will be able to give ideas on which case is most useful to highlight the difference in coverage.
2. Hand out the two sample articles to the participants—one is an average news story while the other provides better coverage of the same case.
3. Ask the journalists to compare the two articles in the following broad issues:
  - Angle of the article
  - Sources quoted
  - The article genre—news, opinion column, editorial, feature (education, lifestyle, entertainment, etc)
  - Messages conveyed
4. Ask the journalists to answer these key questions:
  - What is the story angle?
  - Who were used as sources?
  - Is the group most affected by the court case identified in the article?
  - Where did this article appear—news, opinion column,

editorial, feature (education, lifestyle, entertainment, etc)

- What messages are communicated in the story?
  - What are the good points in the article?
  - What could be done better?
  - If you were assigned to write this, how different would it be?
  - What are the challenges you would face as a journalist to write this differently?
  - What are other angles that can be used?
5. Write the above on the whiteboard or on a piece of mahjong paper. It is better to have it pre-written on a mahjong paper so that the participants can refer to them.
  6. Give the journalists about five minutes to read through the two sample articles, guided by the tasks, which have been established above. If there is enough time, get them to discuss their “answers” with the person next to them.
  7. Ask the participants to share answers to the questions above and ensure everyone gets to share at least one answer.
  8. Write the key words on the whiteboard. Where relevant, acknowledge and encourage good journalistic practices in the articles. Journalists are humans too, and could use some recognition when their colleagues get it “right”.
  9. Before closing the final session for the day, identify key points that came up, which will be discussed tomorrow. Use this as a hook to ensure the participants come back for the next day’s session.
  10. Highlight an issue which will be discussed in Module 3 that is useful to their work as a journalist; this is to encourage them to come back for the next session.

Here is a sample of the programme for the Court Process and Procedures module:

Time	Subject Matter
2:15-3 p.m.	A. Legal Structure and the Courts - The new Combined Court rules - Writ and Originating Summons <i>Conducted by Resource Person (lawyer)</i>
3-3:15 p.m.	Tea break
3:15-4 p.m.	B. Judicial Review - What can you ask for? Court Documents - Notice, affidavit, etc <i>Conducted by Resource Person (lawyer)</i>
4-4:45 p.m.	C. Case study: press conference or interview <i>Conducted by Trainer and Resource Person (lawyer or plaintiff/applicant)</i>
4:45-5:30 p.m.	D. Bridge Between the People and the Court—Things to Look Out For When Reporting Cases <i>Conducted by Trainer and Resource Person (senior journalist)</i>

## PROTECTION OF JOURNALISTS



---

### **Objectives**

- To increase awareness on the safety and protection concerns of journalists;
- To provide knowledge on police powers in their interaction with journalists.

### **Subjects**

- Professional standards
  - Source verification
  - Accurate attribution
  - Fact check
  - Reliable research/information/resources
- Dealing with calls from authorities
- Dealing with questioning by the Police
  - Section 112 and Section 113 statements
  - Right to remain silent
  - Search by the police
  - Seizure of computers, laptops and notebooks
- Freedom of expression
  - Right to freedom of opinion
  - Right to seek, receive and impart information
  - Protection of all forms and means of expression
- Restrictions to freedom of expression
  - Provided by law
  - Necessary, proportionate and legitimate
  - Respect for rights and reputation of others
  - National security
  - Public order
  - Public health or morals

### Activities

- A. Recap of the Previous Day
- B. Professional Standards
- C. Role-play
  1. Dealing with Calls from Authorities
  2. Brought to the Police Station, Search, Seizure
- D. Constitutional Provisions and Universal Standards for Journalists

**Duration:** 4 hours 5 minutes, including a break

**Materials Required:** Mahjong paper, marker pens, whiteboard, flip chart, masking tape, souvenir or “gift” for correct answers for the recap session (for example, apple, or merchandise from the organisation), coloured paper, magic pens/crayons.

### Hand-outs:

6. Principles of Journalism
7. The Red Book (excerpts)
8. Excerpts of the International Covenant on Civil and Political Rights (ICCPR) and the Federal Constitution

### Background Information/Notes for Facilitators:

1. Start by thanking everyone for attending the final module of the training.
2. Before going into the substantive part of this module, go through some highlights of the earlier ones to reinforce the learning process.

## A. Recap of the Previous Day

**Time Allocation:** 10 minutes

1. For this session, ask the participants: “What was the one session that you enjoyed most yesterday?” When the participant provides an answer, the person will get a “gift”, which could be a piece of merchandise from the organisers, or a fruit for something different. Use the 5W’s and 1H of journalism—Who, What, When, Where, Why and How—to get them to elaborate on their answers. Always tie their answers to a time when the session happened, for example, in the morning or after tea, or to an event, for example, the interview with the lawyer/plaintiff, to jog their memory.
2. Try to get all the participants to contribute and, if necessary, identify the sessions that they did not name. Highlight an example that may have caught people’s attention the day before or something new they just discovered.

## B. Professional Standards

Time Allocation: 35 minutes

Before starting this session, an important role of media to be highlighted is the watchdog role as the eyes and ears of the public.



Here are some guidelines on how to run this session:

1. Draw out issues from earlier sessions about court reporting, which are inextricably linked to the principles and ethics of journalism.
2. Ensure these relevant highlights from earlier sessions include:
  - The importance of fair and balanced reporting of trials;
  - Diversity of sources;
  - Groups directly impacted by the case are identified in the article;
  - How these groups are described.
3. Explain to participants that information about the case will help them understand the court proceedings and provide the context for the trial. Emphasise that it is important to read up on the case beforehand and as much as possible, note down what was said. Suggest to participants that they should identify any terms that they do not understand and follow-up with the lawyers on what they mean.
4. Explain that central to media communicating these issues to the public, are the principles of good reporting. While this may be something that journalists have already encountered at some point in their careers, it pays to revisit this as reminder of their role in society. Journalists, given the fast pace of their profession and the environment in which they operate, often do not get a chance to reflect on issues like this.

5. Ask the participants what the key principles are. Write it down on a mahjong paper and fill in the gaps after the exercise is done, guided by this list<sup>1</sup>:
  - Accuracy
  - Verification
  - Independence
  - Watchdog role
  - Forum for debate and discussion of public interest issues
  - Making the significant interesting and relevant
  - Maintain comprehensive and proportionality of news
6. Ask the participants if their own media organisations have an in-house document for ethics or principles of journalism.
7. Point out the existence of the Malaysian National Union of Journalists' Code of Ethics. Look over it quickly to flag that it needs updating.
8. Identify code of ethics or principles of journalism from other organisations, which are used widely as reference by practicing journalists the world over, for example, Poynter Guiding Principles for the Journalist, or the Society Of Professional Journalists Code Of Ethics.
9. Ask the journalists if they think it is a useful exercise for Malaysian journalists to come up with their own Principles or a revised Code of Ethics. Ask what process this will entail. This is to gauge the level of understanding on some of the external challenges faced by journalists in Malaysia, and the institutional and legal impediments to their role as watchdog.

<sup>1</sup> Pew Research Centre, 'Principles of Journalism (Pew Research Journalism Project, 2014) <<http://www.journalism.org/resources/principles-of-journalism/>> accessed 4 January 2014.

## C. Role Play

To kick off the next two sessions, ask the participants for situations or examples in which journalists have had interactions with the police. Ensure these examples are included:

- Crime reporters often have a close working relationship with the police. They call the police stations daily to ask for interesting cases that can be highlighted in the media. Crime reporters often meet with the policemen to build familiarity, which may pave the way for “scoops”<sup>2</sup>.
- Journalists have been called up for questioning on some reports they wrote. Give the example of Chinese language media *Sin Chew Daily* journalist Tan Hoon Cheng who was arrested under the Internal Security Act 1960 for reporting the allegedly racist statement of UMNO politician Ahmad Ismail who was campaigning for the Permatang Pauh by-election in 2008<sup>3</sup>. She was released 16 hours later. Then Home Minister Syed Hamid Albar explained that the reporter was arrested “for her own good”<sup>4</sup>.
- Police personnel have come to the media office to question journalists about cases that the police are investigating and to seize laptops, notebooks, and computer hard drives, such as what happened to online media Malaysiakini<sup>5</sup>.
- During the Bersih 3 rally for free and fair elections, at least 13 photographers and TV journalists who were covering the protest were beaten up and some had their equipment damaged while being attacked by policemen in uniform. One was hospitalised and a few had their memory cards taken away and not returned. To date, no policemen have been found guilty of these crimes against journalists<sup>6</sup>.

<sup>2</sup> Scoops are exclusive stories that could be the product of investigative reporting and sheer hard work on the part of the journalist. Another way with which scoops can happen is when a source, in this instance, from the police, divulges some information specifically to one journalist and not others. Because of the exclusivity of the story, it may mean a front-page byline for the journalist.

<sup>3</sup> Teresa Kok, 'Sin Chew reporter arrested under ISA' (*The Star Online*, 12 September 2008) <<http://www.thestar.com.my/story.aspx?file=/2008/9/12/nation/20080912221723>> accessed 4 January 2014.

<sup>4</sup> Cindy Tham, 'Sin Chew reporter released after one day under ISA detention' (*The Nut Graph*, 13 September 2008) <<http://www.thenutgraph.com/sin-chew-reporter-released-after-one-day-under-isa-detention/>> accessed 4 January 2014.

<sup>5</sup> 'Police raid Malaysiakini' (*Malaysiakini*, 20 January 2003) <<http://www.malaysiakini.com/news/14246>> accessed 4 January 2014; and 'Police seize Malaysiakini laptop in sedition probe' (*Malaysiakini*, 6 December 2012) <<http://www.malaysiakini.com/news/14246>> accessed 4 January 2014.

<sup>6</sup> Khaw Lake Tee, Mahmood Zuhdi bin Ab Majid and Detta Samen, 'Laporan Siasatan Awam ke atas Insiden Semasa dan Selepas Perhimpunan Awam Pada 28 April 2012' (Suhakam 17 April 2013).

These examples of the different types of relationships between journalists and police personnel will help set the stage for the next two sessions.

Here is a guide on what to do before either scenario can take place:

1. Ask for a show of hands from the participants for those who have had dealings with the police.
2. Take note of those who said yes—they will be very good candidates to act in Scenario 1 and 2.
3. Find out what types of interaction the journalists may have had with the police. You may invite them to briefly share with their colleagues what happened. Some may be positive—where the policemen assisted the journalist in his professional capacity—or neutral—where the policemen processed their application for a tag to cover a protest rally and everything went smoothly. Take note of these examples. Do not get a discussion going just yet; that will happen while the scenario is being played out.
4. Introduce the Resource Persons for the Role Play activity—a lawyer with criminal law background would be the ideal person to provide legal input while a senior journalist can give pointers on what to do in the newsroom under such situation.

## **Scenario 1: Dealing with Calls from Authorities**

**Time Allocation:** 45 minutes

1. Pick two participants to play the characters: one plays the Investigating Officer (IO) calling the journalist at his or her office to find out more information for a case, while the other plays the journalist whom the IO wants to speak to. The “actors” will be facing their colleagues. The two Resource Persons will flank the “actors”.
2. The acting out of the scenario has no script and the conversation is organic. At any point in this “phone call”, when an explanation is required, or when a point needs to be made—whether legal or journalistic—the Trainer will say “cut”, and turn to the participants and or the Resource Persons to solicit their views and advice. This instruction is to be announced so that everyone in the room knows what to do, even if they do not know how Scenario 1 will unfold.

## **Scenario 2: What to Do When You Are Brought to the Police Station for Questioning**

**Time Allocation:** 45 minutes

1. Pick two participants to play the characters: one plays the IO in the interview room, while the other plays the journalist who is giving the statement. The sitting arrangement is the same as Scenario 1.
2. Just like in Scenario 1, there is no script and the conversation is organic. Similarly, when an explanation is required, or when a point needs to be made—whether legal or journalistic—the Trainer will say “cut”, and turn to the participants and or the Resource Persons to solicit their views and advice. This instruction is to be announced so everyone in the room knows what to do, even if they do not know how this role play will unfold.

Here is a guide for the Trainer and Resource Persons on what to look out for and point out to the participants at relevant moments when both role play scenarios are being acted out:

- A journalist should always be on his/her guard when dealing with the police. Any conversation with the police—whether friendly or formal—should be treated with caution.
- A journalist must inform his/her colleagues and supervisor if he/she is asked to give his/her statement. They may be able to help him/her with tips on what to do, accompany him/her to the police station, and to ensure that the media's legal adviser is able to assist the journalist before and accompany him/her during the questioning.
- It is advisable for a journalist who is a union member to inform the union office bearers if he/she is going to be questioned by the police. Anything involving government officials which has an impact on a journalist's work should be of concern to the National Union of Journalists.
- The only information that the journalist is obliged to provide are his/her personal particulars: name, age, address and occupation.
- A journalist, like everyone else, has the right to legal representation and should thus exercise this right. Apart from the legal adviser (from the media organisation), he/she may contact another lawyer, preferably someone with a human rights background. A journalist must insist he/she is accompanied by a lawyer during police questioning.
- Before a journalist is to be brought in for questioning, insist on getting the request in writing. This will help clarify which provision in the Criminal Procedure Code (CPC) he/she is brought under and what the implications are. This information will also be useful for the lawyer.
- If the journalist is brought in for questioning under Section 112 of the CPC, he/she is bound to answer all questions except those that can incriminate him/her. If an answer may incriminate him/her in a court proceeding, he/she may choose to remain silent and instead, say: "I would like to exercise my right to silence".

- Any statement made to the police officer under Section 113 of the CPC can be used in court.
- There is nothing to say that a request for a section 112 or 113 statement under the CPC has to be at a police station. While this may work for the journalist—for example, he/she can request for it to be at a meeting room in his/her office—it may also work against him/her. For example, the police may want to meet him/her in an informal setting, over a cup of *teh tarik*. Remember that there is a purpose behind these meetings—information is being gathered for some purpose. Always proceed with caution.
- As much as possible, a journalist should preserve the confidentiality of his/her sources. Whether to divulge or not is a matter for the court to decide, not something to be negotiated over the telephone or at the police station. The default position is not to disclose.
- However, if this matter is brought to court, there is no dishonour in giving the source away because ultimately, there is no law that protects journalists should they remain steadfast in keeping the identity of the source secret. Journalists should not be compelled to pay the price of going to jail for contempt of court; to divulge or not is a decision only he/she can make.
- If a journalist has access to a story, which has a high potential of putting his/her in a position where he/she has to reveal the source and, for various reasons, he/she cannot afford to go to prison, he/she can opt out: pass the story and contact to another colleague who is not in the same position.
- Note that some journalists do not even tell their bosses who their source is; especially if they have any doubt the identity may be revealed, even if inadvertently.

At the end of this session, provide the handout—the Red Book pamphlet—to all the participants. The Red Book, produced by a group of lawyers who call themselves TANGKAP under the auspices of the Bar Council, provides basic information to the public about their rights when faced with the police.

## **D. Constitutional Provisions and Universal Standards for Journalists**

**Time Allocation:** 25 minutes

Any training that aims to not only provide knowledge but also encourage and empower journalists to play their role of providing information effectively and critically, will not want to end on a low note. There is plenty for the average Malaysian journalist to wrestle with, be it in himself/herself, in the newsroom, in the corridors of power and in the eyes of the public. There is lack of confidence in pitching story ideas; self-censorship; pressure from media owners—whether political parties or business entities; and the lack of accountability by the authorities where journalists are beaten up or their equipment damaged by authorities, in the course of doing their job. To top it off, there is the continuing downslide of Malaysia's position in press freedom ranking by Reporters Without Borders and a growing public disenchantment of establishment media, especially print, television and state-funded media, as bearers of credible news.

The last substantive session seeks to introduce to the practitioners of this noble profession that their role as the Fourth Estate is anchored in the highest law of the land and inspired by the ideals of the Universal Declaration of Human Rights (UDHR) and the ICCPR. Article 19 of the UDHR guarantees freedom of expression and is the cornerstone for the media. It is a rights framework that allows the free expression of the human person and the free flow of ideas and information. However, this fundamental right comes with restrictions but restrictions on very narrow terms. It is thus important that participants recognise both the rights and the restrictions of article 19 of the UDHR and the ICCPR.

These are suggested guidelines on how to conduct this session:

1. Ask participants how is freedom of expression guaranteed under international law and the Federal Constitution?
2. Explain to participants the principle of article 19 of the UDHR, including the different aspects of freedom of expression, such as freedom to seek, impart and receive information.
3. Ask participants the difference between the guarantee of freedom of expression in article 19 of the UDHR and article 10 of the Federal Constitution.
4. To ensure that participants learn about the elements of article 19 of the UDHR, pose the following questions to the participants:
  - Why do our legislators value freedom of expression? Why is it so important?
  - Why is it important that you have the right to express yourself?
  - What is speech? Does it include symbolic speech?
  - Can opinions be restricted?
  - Right to seek, receive and impart information, what does that mean to you? If the government refuses to register a newspaper, what rights have been violated?
  - Right of access to information. What does this guarantee access to? Any type of information? If the government charges RM5 for access to some statistical report you need, does it infringe your right to information?

5. Ask participants when freedom of expression can be restricted.
6. Go through the different grounds allowed under article 19 of the ICCPR to limit freedom of expression.
7. To ensure that journalists appreciate the elements needed before freedom of expression may be limited, ask participants the following questions:
  - Where do we find the limits? How do we define the boundaries?
  - Can the government pass a law, which says “it shall be forbidden to publish books which violate Malaysian values”?
  - Can governments restrict hate speech?
  - We hear a lot about national security and it is being used a lot by the government to curb a lot of freedoms. Is it a legitimate restriction to freedom of expression? If yes, what is national security? Give a few scenarios of legitimate and illegitimate restrictions to freedom of expression.
  - Are there justifications to regulating the media? If there are, what are they?

Apart from freedom of expression, it is equally important for participants to identify and suggest the types of support that are available for journalists to address many of the challenges they face in carrying out their duty.

Here are some guidelines on how to run this session:

1. Write down three questions on the whiteboard, in the exact order as below:
  - Q1: What is the biggest challenge I have faced so far as a journalist?
  - Q2: What is the biggest challenge faced by Malaysian journalism?
  - Q3: Why am I a journalist?
2. Give the participants about five minutes to write down each answer on a separate piece of paper. They can write down as many answers as they want. The last question should be written on a separate piece of paper. Suggest they spend a bit more time reflecting on the last question; this should be a personal reflection because journalists do not often get to ask themselves this existential question.
3. After the time is up, get each participant to talk to his/her neighbour and compare notes. Do this for three to five minutes.
4. While the discussion is happening, use a red marker to draw broken lines to divide a mahjong paper into four quadrants.
5. Once the time is up, ask the participants for some of the interesting personal challenges they heard. It could be something they did not expect, or something they have in common, or something new or shocking. Write the answers on the top-left quadrant as and when they are being shared. The top-left quadrant is for challenges of a “personal” nature.
6. Ask the participants to share the challenges faced by journalism in Malaysia. If the answer is related to their own “media organisation” (for example. their editors and office-mates, work conditions in their office, etc), write what is shared on the bottom left quadrant.

7. If the answer is related to “laws and the authorities, including the courts”, slot them on the bottom-right quadrant. Reserve the top-right quadrant for challenges that come from “society”.
8. Once most of the challenges are mapped out in the four quadrants, highlight some key ones. Given Malaysia’s restrictive environment, not just on media but applicable to other spheres as well, the challenges will seem insurmountable. Get suggestions from the journalists on how to address these problems.
9. Identify existing solutions or support. For the personal quadrant, solutions could be about attending trainings to build up knowledge; hosting in-house discussion sessions using film, documentaries and books; sharing of problems with authorities between colleagues for support; and setting up a formal group for online media journalists. Some challenges would require major law reform, strategic litigation, campaigns, pressure from the public; setting up of community and indigenous media; drafting of laws to prevent direct ownership of media by political parties, etc.
10. Ensure the Federal Constitution provisions and universal standards for journalists are part of the discussion to link existing protection to address the challenges. Link this to the presentation in the first module on Libel, which mentions UDHR and the Federal Constitution.
11. Get the participants to look at their answers for Q3. Ask them to highlight the opportunities that have been identified collectively that can improve the reason behind why they became a journalist.

12. Get them to write their names down and pass their answers to Q3 to the Trainer and Organisers so that you can get a sense of their motivations for being a journalist. If the answer is related to “laws and the authorities, including the courts”, slot them on the bottom-right quadrant. Reserve the top-right quadrant for challenges that come from “society”.
13. Once most of the challenges are mapped out in the four quadrants, highlight some key ones. Given Malaysia’s restrictive environment, not just on media but applicable to other spheres as well, the challenges will seem insurmountable. Get suggestions from the journalists on how to address these problems.
14. Identify existing solutions or support. For the personal quadrant, solutions could be about attending trainings to build up knowledge; hosting in-house discussion sessions using film, documentaries and books; sharing of problems with authorities between colleagues for support; and setting up a formal group for online media journalists. Some challenges would require major law reform, strategic litigation, campaigns, pressure from the public; setting up of community and indigenous media; drafting of laws to prevent direct ownership of media by political parties, etc.
15. Ensure the Federal Constitution provisions and universal standards for journalists are part of the discussion to link existing protection to address the challenges. Link this to the presentation in Libel module, which mentions UDHR and the Federal Constitution.
16. Get the participants to look at their answers for Q3. Ask them to highlight the opportunities that have been identified collectively that can improve the reason behind why they became a journalist.
17. Get them to write their names down and pass their answers to Q3 to the Trainer and Organisers so that you can get a sense of their motivations for being a journalist.

Here is a sample of the programme for the Protection Of Journalists module:

Time	Subject Matter
8:30-9 a.m.	Registration + breakfast
9-9:10 a.m.	A. Recap of the Previous Day <i>Conducted by Trainer</i>
9:10-9:45 a.m.	B. Professional Standards - Source Verification - Accurate Attribution - Fact Check - Reliable Research/Information/Resources <i>Conducted by Trainer and Resource Person (journalist)</i>
9:45-10:30 a.m.	C. Role-play Scenario 1: Dealing with Calls from Authorities <i>Conducted by Trainer and two Resource Persons (journalist and lawyer)</i>
10:30-10:50 a.m.	Tea break
10:50-12:35 p.m.	C. Role-play (continued) Scenario 2: Brought to the Police Station—Search, Seizure <i>Conducted by Trainer and two Resource Persons (journalist and lawyer)</i>
12:35-1:05 p.m.	D. Constitutional Provisions and Universal Standards for Journalists <i>Conducted by Resource Person</i>

# WRAP-UP SESSION

**Time Allocation:** 10 minutes

**Background Information/Notes for Facilitators:**

1. Pre-write the questions below on a mahjong paper and put it up where everyone can see:

What is the best session? Why?  
(Informative, relevant, fun, etc)

Which session could be done better? How?

2. Ask the participants to spend five minutes to think about and write down their answers to the two questions.
3. Towards the end of the five minutes, thank the organisers, staff, rapporteur, trainers/Resource People, and last but not least, a big hand for the participants who have shared their thoughts and ideas over the duration of the training.

Here is a sample of the programme for Wrap-up Session:

Time	Activity
1:05-1:15 p.m.	Wrap-up Session
1:15-2:30 p.m.	Lunch

# HAND-OUT 1

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## DEFAMATION LAW IN MALAYSIA: PLAINTIFF'S CASE

By Seira Sacha Abu Bakar and K. Shanmuga

### *Protection under the Federal Constitution*

#### Article 10

- (1) Subject to Clauses (2), (3), (4) -
  - (a) Every citizen has the right to freedom of speech and expression;

### *Restriction under the Federal Constitution*

#### Article 10

- (2) Parliament may by law impose (a) [on the right to freedom of speech and expression], such restrictions as it deems necessary or expedient
  1. in the interest of the security of the Federation or any part thereof,
  2. Friendly relations with other countries,
  3. Public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or
  4. To provide against contempt of court,
  5. defamation, or
  6. Incitement to any offence.

#### Article 4

- (2) The validity of any law shall not be questioned on the ground that -
  - (b) It imposes such restrictions as are mentioned in Article 10(2) but those restrictions were not deemed necessary or expedient by Parliament for the purposes mentioned in that Article....

### *Contrast with International Human Rights Law: International Covenant on Civil and Political Rights, Article 19*

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

## Free Trade in Ideas

*Abrams v United States* 250 U.S. 616 (1919)

A Russian immigrant was convicted for sedition for distributing a leaflet condemning the President for sending troops to fight in defence of Soviet Russia during WW1. The US Supreme Court upheld the conviction for sedition. But Oliver Wendell Holmes J's dissent has now effectively become the law in the US. He famously said: "*the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment*" (p. 630)

## *Criminal Defamation*

Criminal Defamation (Chapter XXI, Penal Code)

- Section 499: publication of an imputation about a person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person.
- May be defamation even if imputation about a dead person, or against a company.
- Not defamation unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.
- Numerous exceptions and illustrations within the section.

Criminal Defamation Punishment—Sections 500-502

- Prison for 2 years or fine (unspecified amount) or both.
- Person who defames.
- Printer who knows or has good reason to believe printed material contains defamatory matters.
- Seller who knows printed material contains defamatory matters.

### Civil Defamation

#### Difference between Written & Spoken

- Libel
  - When written or broadcast on TV or Radio.
  - Plaintiff does not need to prove he or she actually suffered any damage.
- Slander
  - Purely oral.
  - Plaintiff must prove damage suffered except in certain limited cases.

#### Plaintiff must prove:

- Something was published .
- It was published to a third party.
- The publication was defamatory, *i.e. it tended to lower the reputation of a person amongst right thinking members of society.*

#### When something is considered defamatory?

- “lowering the claimant in the estimation of right thinking people generally”.
- “injuring the claimant’s reputation by exposing to hatred, contempt or ridicule”.
- “tending to make the claimant be shunned or avoided”.

#### Context

- An article must be read in context, and isolated words cannot be read.
- Headlines alone cannot be read—entire article must be read in context.
- Intention is irrelevant—it is what an ordinary reader would think when reading the words.

#### Innuendo

- “False” innuendo: ordinary meaning of words as would be generally understood, or implications. E.g. accusations in the guise of questions.
- “True” innuendo: where some other facts must be proved to show that certain persons who read will understand it differently, E.g. newspaper called *Liberace* “fruit flavoured”, Plaintiff had to prove that public understood this as being a homosexual: *Liberace v Daily Mirror Newspapers* (1959).

Issue of law

- Are the words “capable” of being defamatory.
- I.e. could any reasonable person consider these words as defamatory.

Issue of facts

- Are the words in fact defamatory.
- This distinction generally only relevant in cases with jury trials.

Who can sue for libel:

- Individuals who are still living.
- Cause of action for libel does not survive plaintiff’s death.
- Trading companies, only in respect of defamations affecting their trading reputation.
- Trade unions (but they or their officers cannot be sued).

Who (arguably) cannot sue:

- Governments and local authorities (but FELDA can!).
- The estates of dead persons.
- Societies—their office bearers must sue, and say the libel is understood as referring to them.

## HAND-OUT 2

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### DEFAMATION LAW IN MALAYSIA: CASE FOR THE DEFENCE

By Seira Sacha Abu Bakar and K. Shanmuga

#### *Civil Defamation—Main Problems*

- Reversal of burden of proof—Plaintiff is assumed to be of good character and that words defamatory of him or her are untrue.
- The defendant must prove the truth of the words published.
- For libel, the plaintiff does not need to prove actual damage to reputation has been suffered, as opposed to all other civil claims.
- Amount of damages are in the discretion of the Judge. Very large amounts have been known, and this creates a stifling effect on freedom of expression. See:
  - *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun* [2000] 4 MLJ 77, FC
  - *Liew Yew Tiam & Ors v Cheah Cheng Hoc & Ors* [2001] 2 CLJ 385, CA
- Contrast position in the USA for defamations against “public figures” *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)
  - The Court held that the US Constitution’s First Amendment protects the publication of all statements, even false ones, about the conduct of public officials except if made with actual malice (i.e. with knowledge that they are false or in reckless disregard of their truth or falsity).
- Burden of proof shifted back to plaintiff to prove defendants maliciously published the false statement
- Actual damage must be proved

#### *Defences:*

- Justification, i.e. the truth
  - Privilege—Absolute or Qualified
  - Fair comment on a matter of public interest
  - Innocent dissemination/Unintentional defamation
1. Justification
    - The defendant must prove that the words he said were true on a balance of probability.
    - For a newspaper, this is a very onerous task, especially depending on the seriousness of the allegation.
    - However, if truth is proven, it’s a complete defence.

## 2. Absolute Privilege

Certain **occasions** when no libel suit can be brought:

- In Parliament, or in documents issued by Parliament.
- In Court or proceedings like Court (e.g. tribunals, royal commissions of inquiry, etc).
- Lodging a police report is also protected *Lee Yoke Yam v Chin Keat Seng (2012) Fed Ct.*
- Fair, accurate and contemporaneous report of proceedings publicly heard before any court: s.11, Defamation Act 1957.
- Conversations between heads of state.

## 3. Qualified Privilege

- Traditionally, qualified privilege is given when publication on occasions when there is a defence provided the person saying it was not malicious.
- A person with a duty to report something to another person who has an equal and corresponding duty to receive that report:
  - a. Statements made in reply to an attack, or in defence of one's own reputation.
  - b. Referral letters, etc.
- A fair and accurate report of Parliamentary and judicial proceedings.

## 3. Reynolds Privilege

Name comes from English House of Lords decision in *Reynolds v Times Newspapers (1999)*

- Albert Reynolds, the former Taoiseach (Prime Minister) of Ireland was accused in an article in the Times to have lied to Parliament to help his friend be appointed President of the High Court.
- The House of Lords in a case that changed defamation law set out 10 principles which should be considered in balancing a newspaper's right to publish and the need to protect the right to reputation.

10 points of Reynolds privilege (non-exhaustive):

1. Seriousness of the allegation.
2. Nature of the information, and is it a matter of public concern.
3. Source of information.
4. Steps taken to verify the information.
5. Status of information.  
(e.g. already subject to investigation?)
6. The urgency of the matter. (Commenting that news is often a perishable commodity.)
7. Was comment sought from the plaintiff.
8. Whether the article contained the gist of the plaintiff's side of the story.
9. Tone of the article. Newspapers can query or call for investigation, and need not adopt allegations as statements of fact.
10. Circumstances of the publication, including the timing.

*Jameel v Wall Street Journal Europe* (2006):

- Clarified that the Reynolds list was not a hard and fast rule. Just because you didn't satisfy every criteria (for instance, getting the other side's version) was not fatal if other factors were there.
- In that case, there was great urgency to publish the story which was also of great public importance, relating to the fact that the plaintiff was involved in terrorism funding.
- The Court held that the paper had acted responsibly in all the circumstances, as part of serious investigative journalism.

*Flood v Times Newspapers Ltd* (2009):

Online publication that was true when published, but now is false and defamatory due to subsequent events must be removed.

- Originally, plaintiff was subject of internal police investigation concerning the leak of Home Office extradition documents relating to Russia's most wanted criminal suspects.
- Investigation later found no evidence to support Flood's involvement. The Times did not publish the outcome of the investigation and left its original article online.

Canadian Supreme Court

Two cases: *Grant v Torstar* & *Quan v Cusson* (2009):

- Established a similar form of defence in Canada.
- Extended Reynolds' privilege to anyone who published (given developments in technology).
- Characterised defence as "responsible communication".
- 2 stage test:
  - 1st: Is it communication in the public interest?
  - 2nd: Was it responsible?

Factors to see if it was responsible:

- (a) Seriousness of the allegation;
- (b) How important was it in the public interest?
- (c) How urgent was it.
- (d) Status and reliability of the source.
- (e) Was Plaintiff's side of the story sought and accurately reported;
- (f) Was inclusion of the defamatory statement justifiable.
- (g) Whether the defamatory statement's public interest lay in the fact that it was made rather than its truth.

5. Reportage

Last factor in Canadian case:

- "Whether the defamatory statement's public interest lay in the fact that it was made rather than its truth."
- Slowly being recognised as a form of qualified privilege.
- Newspaper says it was just reporting what someone said, and the fact it was said is itself newsworthy.

6. Fair Comment

- Comments which a fair and reasonable person may make based on facts which are true.
  - The publication must show in general terms the basic facts.
  - Comments must be fair in the circumstances.
  - Comment must be honestly held.
  - Must be on a matter of public interest.
- Classic example is a review of a movie or restaurant.

## HAND-OUT 3

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### CASE STUDIES

#### Case Study 1: Advise John

Early last week, a video went viral on the internet showing a forum at UUM. The speaker is seen berating a student (a Malaysian of Indian ethnicity called Bawani) who had questioned the speaker's (pro-government, anti-Opposition) statements.

Then, a Facebook posting surfaced allegedly from one Norhayati Saiddin, an UMNO member, who is alleged to have made disparaging comments about Bawani in relation to the video.

In her Facebook posting, Norhayati Saiddin wrote:

“Deii Bawani.. kalau mau pendidikan percuma tanggechi pergi ler belajar sana India... you mother land.. sana tanggechi boleh dapat pree... ammak!!” (Bawani... if you want free education, go and study in India, your motherland. There you can get free...)

“Untung lorrr... dulu India banyak duduk estet... itu jamban pun lu orang tarak tau... sekarang India org banyak mahu sebab itu BN ada perintah ini negeri.” (It’s a privilege.. before Indians mostly lived in estates. They didn’t even know toilets. Now Indians have a lot of demands that is why BN rules this country.)

An online newspaper, [www.thisismalaysia.com](http://www.thisismalaysia.com), an award winning online news portal, published an article (“the Impugned Article”) together with a screen capture of the facebook posting. The article does not show on the face of it that the online portal approached Norhayati for her views before they published the article.

Now, Norhayati Saiddin has written a lawyer’s demand notice claiming RM100 million in damages. She says that it was not her Facebook page, but that of an imposter and that she never wrote those words. She says her website is easily available and the reporter could easily have contacted her. Alternatively, the reporter could have contacted her through her real Facebook page itself.

The reporter, John, admits that he did not make any attempt to contact her. However, he did search the web and found no website at all for Norhayati. He also saw that the same story was reported elsewhere, and so he felt it was fine to print the story.

## Case Study 2: Advise Jane

Jane, a reporter from [www.thisismalaysia.com](http://www.thisismalaysia.com), an award-winning online news portal, had an exclusive interview with a former BN politician who had joined the Opposition, Dato Paduka Seri Utama Ahmad bin Mat.

Ahmad, in the course of an interview, made a statement accusing a Minister, Dato Terutama Paduka Seri (Dr.) Ali bin Jerai, of having orchestrated the murder of a young model, who had died in mysterious circumstances, strangled in her apartment in Tivoli Villas. Ahmad said he would be releasing more details of this at a press conference in two days time, but refused to give more details. He however gave Jane permission to publish the news first.

Jane saw another reporter from a rival online news portal coming into the office of the politician as she was leaving. She suspected the other reporter was going to get the same information, and wanted to make sure her newspaper got the scoop.

The paper therefore immediately published the news, without asking the Minister for his comments.

That evening, the Chief of Police of KL announced that it was in fact Ahmad who had been arrested as a suspect for the murder. The following day, Ahmad was charged in Court. The Minister made a press statement showing proof that he was out of the country during the period in question, and showing photographs that suggested it was in fact Ahmad who had been having an affair with the model.

The Minister has threatened to sue the newspaper, and other newspapers who had republished [thisismalaysia.com](http://thisismalaysia.com)'s report, for RM100 million.

## HAND-OUT 4

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### STRATEGIC LITIGATION

By Long Seh Lih

#### ***What is strategic litigation?***

Whilst litigation is concerned with only the parties involved, that is, individual justice, strategic litigation goes a step further and seeks social and legal change, which will have an impact on the larger population and the government. It essentially uses the power of the Courts to change laws and policies to defend and promote constitutional protections and human rights.

#### ***Why do strategic litigation?***

There are several reasons for undertaking a strategic litigation case:

- To bring about social change and advance human rights in Malaysia;
- To change laws or policies that violate constitutional protections or human rights;
- To ensure that laws are interpreted in accordance with human rights standards;
- To change public attitudes on human rights issues;
- To provoke discussion within society and to raise awareness on a human rights issue.

#### ***What is the strategy involved?***

When commencing a strategic litigation case, a comprehensive strategy is needed to ensure widespread effect on human rights. In Malaysia, the inconsistency of the Courts in applying existing national and international laws provides an opportunity for the lawyers of the Centre to give Courts guidance in human rights. As such, in almost all strategic litigation cases filed by the Centre, lawyers of the Centre integrate international human rights law in their arguments.

Strategic litigation is essentially an instrument of advocacy. As strategic litigation is concerned with the effects that these cases will have on society at large, the struggle is more often than not, beyond a Court decision. Attention generated by filing test cases is an effective way of attracting media interest and to get the media involved in the cause. The attention and awareness would not only foster discussion on the issues but could also translate to support the case and its cause. In addition, filing test cases creates a record of the injustices that underlie these cases; even if these cases do not succeed, violations of human rights are highlighted and could potentially lay a foundation for future efforts to succeed.

Advancing human rights through Court cases is a long and protracted process—in reality the process usually involves filing a number of cases and using different approaches. Challenges and appeals to the highest Court of the land are necessary but more important, they contribute towards sustaining effort made over a number of years. As such, legal support for such cases is important to sustain the momentum and constant pressure on the Courts.

Last but not least, lawyers taking up strategic litigation cases should always bear in mind the safety of complainants and others related to the case. Because of the nature of these cases (involving serious human rights violations), attention is inevitably drawn to the complainants. As such, the principle of ‘do no harm’ should be the overarching concern for lawyers.

### ***When do we resort to strategic litigation?***

Before a case is chosen for strategic litigation, lawyers need to ask themselves these questions:

- Is there a legal issue, which relates to a broader human rights problem in Malaysia?
- Would a Court decision be able to address that problem?
- Would a Court decision have a broad effect?
- How great is the potential for media coverage?
- What are the resources available to fund test cases?
- Is there a sympathetic complainant who has standing to commence strategic litigation?
- Are there good experts available?
- How strong are the legal claims? How will they be regarded by the Courts and legal system?
- How likely are you to receive a favourable decision from the Courts?
- Would there be any backlash or other political reactions or repercussions if the claim in Court is successful or unsuccessful?
- Is the environment conducive for that particular case?

<sup>7</sup> Some parts of this section are extracted from Equal Justice Initiative (2009) <<http://www.eji.org/>> accessed 4 January 2014; Centre for Child Law, *Strategic Impact Litigation for Children's Rights: Centre for Child Law Report on Selected Cases 2004-2011* (2011); 'Children's Rights: A Guide To Strategic Litigation' (Child Rights International Network 2014) <<http://www.crin.org/en/library/publications/childrens-rights-guide-strategic-litigation/>> accessed 4 January 2014; Public Interest Law Clearing House, *PILCH Strategic Plan 2010-2012*; Brian Kearney-Grieve, *Public Interest Litigation: Summary of a meeting of organisations from Northern Ireland, the Republic of Ireland, South Africa and the United States* (The Atlantic Philanthropies, 2011); and Peter Reading, *The Importance of Strategic Litigation: The Experience in Britain* (Equality and Human Rights Commission, 2010).



## HAND-OUT 5

# MALAYSIAN COURT - LEGAL STRUCTURES AND PROCEDURES

By Seira Sacha Abu Bakar

### *Malaysian Court: Hierarchy*



### *Malaysian Court: Jurisdiction*

- Magistrates Court: RM2,501.00—RM25,000.00
- Sessions Court: RM25,001.00—RM1,000,000.00
- High Court: RM1,000,000.00& above

### *Malaysian Court: Ranking*

(Section 8 of the Courts of Judicature Act 1964)

- Chief Justice
  - President of the Court of Appeal
  - Chief Judge of the High Court in Malaya
  - Chief Judge of the High Court in Sabah & Sarawak
  - Judges of the Federal Court (9)
  - Judges of the Court of Appeal (27)
  - Judges of the High Court
  - Judges of the Sessions Court
  - Magistrates
- 
- Malaysia's highest court is the Federal Court. Previously, we had the Supreme Court & Privy Council but appeals to Supreme Court were abolished in 1963 and thereafter, appeals to Privy Council were abolished in 1985.
  - The Malaysian Court procedures are governed by the Rules of Court 2012 (which came into effect in August 2012) ("RC 2012").
  - Previously, the lower court and the high court are governed by separate rules, ie. the lower courts by the Subordinate Court Rules 1980, and the high courts by the Rules of High Court 1980. But now the rules have been combined under the RC 2012.
  - As for the appellate courts (Court of Appeal & Federal Court), they also have their separate governing rules, ie. the Rules of the Court of Appeal 1994 and the Rules of the Federal Court 1995.

### **Malaysian Court: Mode of Commencement**

- Where there are substantial disputes of facts

Writ of Summons (O.5 r.2 RC 2012)

- Where question of law is involved

Originating Summons (O.5 r.3 RC 2012)

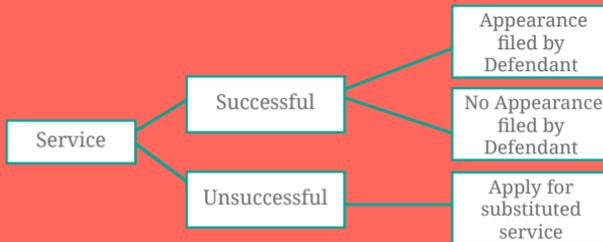
### **Filing of cause papers**

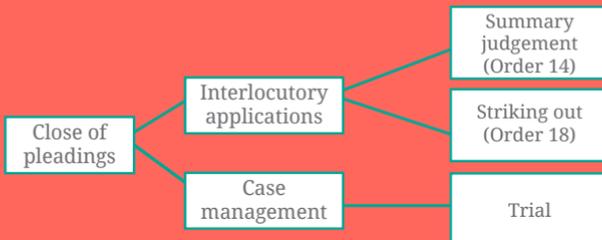
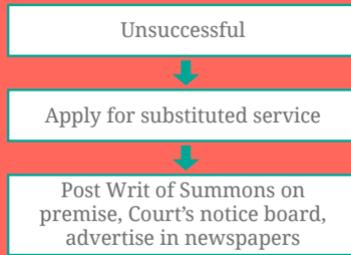
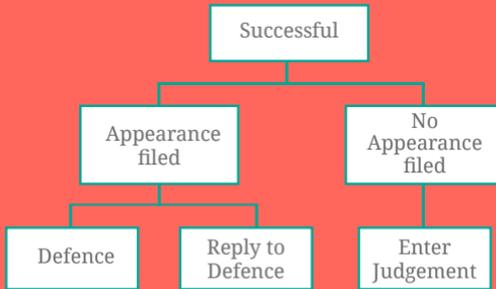
- All originating cause papers will be filed at the respective court registry.
- At this point in time, all the cause papers are ‘unsealed’.
- Meaning: they have yet to be ‘processed’ by the court.
- Once the documents are ‘sealed’, the procedures proper begin.

### **Writ of summons (O. 6 RC 2012)**

- Upon extraction from court, the plaintiff would need to serve the sealed Writ of Summons and Statement of Claim on the defendant.
- On the face of the Writ of Summons also, there is a return date for parties to appear before the Registrar.
- The plaintiff has 6 months to attempt to serve the Writ on the defendant (O.6 r.7 RC 2012).
- If he cannot serve on time, he can apply for an extension of time.

### **Writ of Summons: Service**

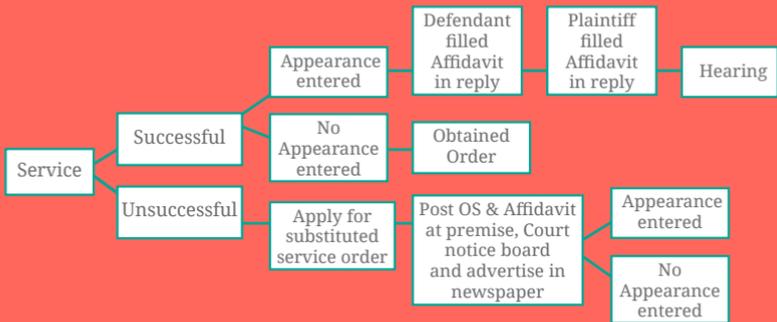




### **Originating Summons (O. 7 RC 2012)**

- Upon extraction from court, the Plaintiff would need to serve the sealed OS and Supporting Affidavit on the Defendant.
- On the face of the OS, there is a return date for parties to appear before the Registrar.
- The plaintiff has 6 months to attempt to serve the OS on the defendant.
- If he cannot serve on time, he can apply for an extension of time.

### **Originating Summons: Service**



### **Judicial Review**

- Judicial Review is usually filed by any person who is adversely affected by the decision, action or omission in relation to the exercise of the public duty or function.
- An application for Judicial Review is an application where the applicant is seeking for the remedies specified in paragraph 1 of the Schedule to the Courts of Judicature Act 1964.
- What are these remedies? Paragraph 1 of the Schedule to the CJA 1964:

Power to issue to any person or authority directions orders or writs, including writs of the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any others, for the enforcement of the rights conferred by Part II of the Constitution, or any of them, or for any purpose.

Habeas corpus	Produce the body. For the persons being illegally detained
Mandamus	To force a public authority to do something that it is obliged by law to do but is refusing (eg. Deliver passport, change name in IC)
Quo warranto	To stop someone from acting in an office he is not entitled to (eg. Nizar vs Zambry)
Prohibition	To stop proceedings in a lower court or tribunal (eg. Stop medical proceedings)
Certiorari	To quash (or cancel) an order made by a public authority

***Other Remedies:***

- Injunction
  - Order to stop doing something.
  - Permanent (after full trial) or interim (before trial, to preserve status quo).
  - Not possible to get permanent injunction against government; may be possible to get interim injunction.
- Damages
- Declaration
- A declaration as to status or entitlement to a right. It is not an “order” in that it does not compel the person to do something.
- Usually coupled with a request for a remedy with more bite, but not necessary.
- Unthinkable for Government to ignore a Court declaration.

### ***Judicial Review: Procedure***

Order 53, Rules of Court 2012

- Must first get Leave. Must apply within 3 months of decision or date decision communicated to you, whichever is later
- Must file in Court:
  - Form 109
  - Statement (a concise summary of facts, grounds for challenge and relief sought)
  - Affidavit
- No need to serve on the other side unless:
  - You are asking for a stay of the decision, i.e. for a temporary suspension of the decision until the case is fully heard.
  - You are late, and asking for extension of the time limit of 3 months.
- Leave stage: no need to serve on other side, but must serve on Attorney General (AG).
- AG is served not as lawyer for other side, but as “guardian” of public interest”.
- Purpose of leave is to filter out frivolous or vexatious complaints, so as not to slow down the good and expeditious administration of government.
- If leave is given, notice to call up substantive application for hearing [Form 110B] must be filed within 14 days.
- Application, Statement & Affidavit now served on other side.
- Usually served on AG again, but not necessarily since many public authorities are now privatised.
- During the substantive hearing, Court has power to order Government to produce documents, and has power to order witnesses to be cross examined.
- Rarely used: judicial review is looked at as examining for procedure rather than questioning the substance of the decision itself.

<b>Illegality</b>	Ultra vires; beyond power—where something is done contrary to legislation
<b>Irrationality</b>	So outrageous in its defiance of logic that no reasonable decision maker in similar circumstances would have made such a decision
<b>Procedural impropriety</b>	Breach of the rules of natural justice, or of statutory rules of procedure designed to provide a fair process
<b>Proportionality</b>	The infringement of individual rights was disproportionate to the legislative aim

### ***Judicial Review: Illegality***

Unconstitutional

- Article 4(1) of the Federal Constitution: the High Court can declare any law inconsistent with the Federal Constitution as null and void.
- More commonly, the decision maker has not followed the governing law.
- E.g. Law says TNB can enter land to build “posts”.
- TNB used law to build “pylons”.
- Landowner challenges that this is not allowed by law.

### ***Judicial Review: Irrationality***

Wednesbury unreasonableness:

- So outrageous in its defiance of logic that no reasonable decision maker in similar circumstances would have made such a decision.
- Takes its name from an English case of the same name.
- Difficult concept
  - Difficult to say when it will be used.
  - Leaves a lot to subjective opinion of Court.
  - But useful when decision of government clearly perverse.

### ***Judicial Review: Procedural Impropriety***

The rules of natural justice:

- *Audi alteram partem*: hear the other side.
  - Every person has the right to a fair hearing.
  - Must give adequate notice as the allegations against that person.
  - Must give a reasonable opportunity to prepare for the hearing, and to be defended by a legal practitioner.
- *Nemo iudex in sua causa*: no person shall be a judge in his own cause—essentially, the rule against bias or apparent bias.
- Limits:
  - The extent of these rights differs from case to case. The standards are higher depending on the nature of the right that is being infringed.
  - Parliament may legislate to remove these rights to a fair trial, e.g. PPPA's licensing regime for newspapers.

### ***Judicial Review: Proportionality***

- Recently added to the list. Mainly added to English law through European Union law.
- In Malaysia, it is now part of our law through Article 8 of our Federal Constitution which guarantees all persons are equal under the law and are entitled to the equal protection of the law. E.g.
  - You have a right to privacy. The government has an obligation to promote and protect the health and safety of the community.
  - Can the Govt require you to disclose that you are HIV+ to your employer? What about to your spouse?
  - It may be proportionate to require that you disclose to your spouse.
  - It may be disproportionate to disclose to your employer, unless you work in a place with a higher chance of exchanging bodily fluids.

### ***Judicial Review: Legitimate Expectation***

- Usually considered as part of the main 4 grounds of challenge.
- Deals with situation where the Government has behaved or given assurances of a certain kind of behaviour, and then does something different.
- Procedural and Substantive:
  - Procedural deals with cases where government's behaviour suggests you will be given a procedural right which you do not have under the Act, e.g. show-cause notice.
  - Substantive deals with cases where government's behaviour makes believe expect to be conferred a substantive right, e.g. annual renewal of licenses indefinitely.
- Usually, procedural more likely to be accepted.

## HAND-OUT 6

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### PRINCIPLES OF JOURNALISM

#### NUJ Malaysia Code of Ethics<sup>10</sup>

1. Respect for truth and for the right of the public to truth is the first duty of the journalists. To defend the freedom of the Press, to deal with the professional conduct of its members and to maintain high ethical standards in journalism.
2. In pursuance of this duty he will defend the twin principles: freedom in the honest collection and publications of news; and the right of fair comment and criticism.
3. The journalist reports only in accordance with the facts of which he knows the origin. He will not suppress essential information of falsify documents.
4. He will use only fair methods to obtain news, photographs and documents.
5. Any published information which is found to be harmfully inaccurate he will do his utmost to rectify.
6. He will observe professional secret regarding the source of information obtained in confidence.
7. He will regard as grave professional offences the following:
  - Plagiarism;
  - Calumny, slander, libel and unfounded accusations;
  - The acceptance of a bribe in any form in consideration of either publication or suppression.
8. He recognises in professional matters, the jurisdiction of his colleagues only; he excludes every kind of interference by governments or others.

<sup>10</sup> 'About Us' (National Union of Journalists Peninsular Malaysia 2011) <<http://www.nujm.org/nuj/about.php>> accessed 4 January 2014.

## **Poynter Guiding Principles for the Journalist<sup>11</sup>**

### **Seek Truth and Report it as Fully as Possible**

- Inform yourself continuously so you in turn can inform, engage, and educate the public in a clear and compelling way on significant issues.
- Be honest, fair, and courageous in gathering, reporting, and interpreting accurate information.
- Give voice to the voiceless.
- Hold the powerful accountable.

### **Act Independently**

- Guard vigorously the essential stewardship role a free press plays in an open society.
- Seek out and disseminate competing perspectives without being unduly influenced by those who would use their power or position counter to the public interest.
- Remain free of associations and activities that may compromise your integrity or damage your credibility.
- Recognise that good ethical decisions require individual responsibility enriched by collaborative efforts.

### **Minimise Harm**

- Be compassionate for those affected by your actions.
- Treat sources, subjects, and colleagues as human beings deserving of respect, not merely as means to your journalistic ends.
- Recognise that gathering and reporting information may cause harm or discomfort, but balance those negatives by choosing alternatives that maximise your goal of truth-telling.

<sup>11</sup> Bob Steele, 'Guiding Principles for the Journalist' (Poynter 13 August 2002) <<http://www.poynter.org/latest-news/everyday-ethics/talk-about-ethics/1751/guiding-principles-for-the-journalist/>> accessed 4 January 2014.

## **Project for Excellence in Journalism: Principles of Journalism<sup>12</sup>**

The first three years of the Project for Excellence in Journalism involved listening and talking with journalists and others around the country about what defines the work. What emerged out of those conversations are the following nine core principles of journalism:

### **1. Journalism's first obligation is to the truth**

Democracy depends on citizens having reliable, accurate facts put in a meaningful context. Journalism does not pursue truth in an absolute or philosophical sense, but it can—and must—pursue it in a practical sense. This “journalistic truth” is a process that begins with the professional discipline of assembling and verifying facts. Then journalists try to convey a fair and reliable account of their meaning, valid for now, subject to further investigation. Journalists should be as transparent as possible about sources and methods so audiences can make their own assessment of the information. Even in a world of expanding voices, accuracy is the foundation upon which everything else is built—context, interpretation, comment, criticism, analysis and debate. The truth, over time, emerges from this forum. As citizens encounter an ever greater flow of data, they have more need—not less—for identifiable sources dedicated to verifying that information and putting it in context.

### **2. Its first loyalty is to citizens**

While news organizations answer to many constituencies, including advertisers and shareholders, the journalists in those organizations must maintain allegiance to citizens and the larger public interest above any other if they are to provide the news without fear or favor. This commitment to citizens first is the basis of a news organization's credibility, the implied covenant that tells the audience the coverage is not slanted for friends or advertisers. Commitment to citizens also means journalism should present a representative picture of all constituent groups in society. Ignoring certain citizens has the effect of disenfranchising them. The theory underlying the modern news industry has been the belief that credibility builds a broad and loyal audience, and that economic success follows in turn. In that regard, the business people in a news organization also must nurture—not exploit—their allegiance to the audience ahead of other considerations.

### **3. Its essence is a discipline of verification**

Journalists rely on a professional discipline for verifying information.

<sup>12</sup> Pew Research Center, 'Principles of Journalism' (Pew Research Journalism Project 13 August 2014) <<http://www.journalism.org/resources/principles-of-journalism/>> accessed 4 January 2014.

When the concept of objectivity originally evolved, it did not imply that journalists are free of bias. It called, rather, for a consistent method of testing information—a transparent approach to evidence—precisely so that personal and cultural biases would not undermine the accuracy of their work. The method is objective, not the journalist. Seeking out multiple witnesses, disclosing as much as possible about sources, or asking various sides for comment, all signal such standards. This discipline of verification is what separates journalism from other modes of communication, such as propaganda, fiction or entertainment. But the need for professional method is not always fully recognized or refined. While journalism has developed various techniques for determining facts, for instance, it has done less to develop a system for testing the reliability of journalistic interpretation.

#### **4. Its practitioners must maintain an independence from those they cover**

Independence is an underlying requirement of journalism, a cornerstone of its reliability. Independence of spirit and mind, rather than neutrality, is the principle journalists must keep in focus. While editorialists and commentators are not neutral, the source of their credibility is still their accuracy, intellectual fairness and ability to inform—not their devotion to a certain group or outcome. In our independence, however, we must avoid any tendency to stray into arrogance, elitism, isolation or nihilism.

#### **5. It must serve as an independent monitor of power**

Journalism has an unusual capacity to serve as watchdog over those whose power and position most affect citizens. The Founders recognized this to be a rampart against despotism when they ensured an independent press; courts have affirmed it; citizens rely on it. As journalists, we have an obligation to protect this watchdog freedom by not demeaning it in frivolous use or exploiting it for commercial gain.

#### **6. It must provide a forum for public criticism and compromise**

The news media are the common carriers of public discussion, and this responsibility forms a basis for our special privileges. This discussion serves society best when it is informed by facts rather than prejudice and supposition. It also should strive to fairly represent the varied viewpoints and interests in society, and to place them in context rather than highlight only the conflicting fringes of debate. Accuracy and truthfulness require that as framers of the public discussion we not neglect the points of common ground where problem solving occurs.

### **7. It must strive to make the significant interesting and relevant**

Journalism is storytelling with a purpose. It should do more than gather an audience or catalogue the important. For its own survival, it must balance what readers know they want with what they cannot anticipate but need. In short, it must strive to make the significant interesting and relevant. The effectiveness of a piece of journalism is measured both by how much a work engages its audience and enlightens it. This means journalists must continually ask what information has most value to citizens and in what form. While journalism should reach beyond such topics as government and public safety, a journalism overwhelmed by trivia and false significance ultimately engenders a trivial society.

### **8. It must keep the news comprehensive and proportional**

Keeping news in proportion and not leaving important things out are also cornerstones of truthfulness. Journalism is a form of cartography: it creates a map for citizens to navigate society. Inflating events for sensation, neglecting others, stereotyping or being disproportionately negative all make a less reliable map. The map also should include news of all our communities, not just those with attractive demographics. This is best achieved by newsrooms with a diversity of backgrounds and perspectives. The map is only an analogy; proportion and comprehensiveness are subjective, yet their elusiveness does not lessen their significance.

### **9. Its practitioners must be allowed to exercise their personal conscience**

Every journalist must have a personal sense of ethics and responsibility—a moral compass. Each of us must be willing, if fairness and accuracy require, to voice differences with our colleagues, whether in the newsroom or the executive suite. News organizations do well to nurture this independence by encouraging individuals to speak their minds. This stimulates the intellectual diversity necessary to understand and accurately cover an increasingly diverse society. It is this diversity of minds and voices, not just numbers, that matters.

## **Society of Professional Journalists Code of Ethics<sup>13</sup>**

### **PREAMBLE**

Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility. Members of the Society share a dedication to ethical behavior and adopt this code to declare the Society's principles and standards of practice.

### **SEEK TRUTH AND REPORT IT**

**Journalists should be honest, fair and courageous in gathering, reporting and interpreting information.**

#### **Journalists should:**

- Test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible.
- Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.
- Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.
- Always question sources' motives before promising anonymity. Clarify conditions attached to any promise made in exchange for information. Keep promises.
- Make certain that headlines, news teases and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent. They should not oversimplify or highlight incidents out of context.
- Never distort the content of news photos or video. Image enhancement for technical clarity is always permissible. Label montages and photo illustrations.
- Avoid misleading re-enactments or staged news events. If re-enactment is necessary to tell a story, label it.
- Avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story.
- Never plagiarise.
- Tell the story of the diversity and magnitude of the human experience boldly, even when it is unpopular to do so.

<sup>13</sup> SPJ National Convention, 'Code of Ethics' (Society of Professional Journalists 1996).

- Examine their own cultural values and avoid imposing those values on others.
- Avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance or social status.
- Support the open exchange of views, even views they find repugnant.
- Give voice to the voiceless; official and unofficial sources of information can be equally valid.
- Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresent fact or context.
- Distinguish news from advertising and shun hybrids that blur the lines between the two.
- Recognise a special obligation to ensure that the public's business is conducted in the open and that government records are open to inspection.

### **MINIMISE HARM**

Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.

Journalists should:

- Show compassion for those who may be affected adversely by news coverage. Use special sensitivity when dealing with children and inexperienced sources or subjects.
- Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief:
- Recognise that gathering and reporting information may cause harm or discomfort. Pursuit of the news is not a license for arrogance.
- Recognise that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention. Only an overriding public need can justify intrusion into anyone's privacy.
- Show good taste. Avoid pandering to lurid curiosity.
- Be cautious about identifying juvenile suspects or victims of sex crimes.
- Be judicious about naming criminal suspects before the formal filing of charges.
- Balance a criminal suspect's fair trial rights with the public's right to be informed.

### **ACT INDEPENDENTLY**

**Journalists should be free of obligation to any interest other than the public's right to know.**

**Journalists should:**

- Avoid conflicts of interest, real or perceived.
- Remain free of associations and activities that may compromise integrity or damage credibility.
- Refuse gifts, favors, fees, free travel and special treatment, and shun secondary employment, political involvement, public office and service in community organizations if they compromise journalistic integrity. Disclose unavoidable conflicts.
- Be vigilant and courageous about holding those with power accountable.
- Deny favored treatment to advertisers and special interests and resist their pressure to influence news coverage.
- Be wary of sources offering information for favors or money; avoid bidding for news.

**BE ACCOUNTABLE**

Journalists are accountable to their readers, listeners, viewers and each other.

**Journalists should:**

- Clarify and explain news coverage and invite dialogue with the public over journalistic conduct.
- Encourage the public to voice grievances against the news media. Admit mistakes and correct them promptly.
- Expose unethical practices of journalists and the news media.
- Abide by the same high standards to which they hold others.

*The SPJ Code of Ethics is voluntarily embraced by thousands of journalists, regardless of place or platform, and is widely used in newsrooms and classrooms as a guide for ethical behavior. The code is intended not as a set of “rules” but as a resource for ethical decision-making. It is not — nor can it be under the First Amendment — legally enforceable.*

*The present version of the code was adopted by the 1996 SPJ National Convention, after months of study and debate among the Society’s members. Sigma Delta Chi’s first Code of Ethics was borrowed from the American Society of Newspaper Editors in 1926. In 1973, Sigma Delta Chi wrote its own code, which was revised in 1984, 1987 and 1996.*

## HAND-OUT 7

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### THE RED BOOK (CONCISE VERSION)

#### Police and Your Basic Rights<sup>14</sup>

##### 1. POLICE STOPS YOU

###### 1.1. Not in uniform, ask for identification

Say: “Please, show me your Police authority card”.

###### 1.2. Police authority card

Red : Suspended Police Officer. He has no authority to do anything to you. Walk away.

Other colours:

Blue : Rank of Inspector and above

Yellow: Below the rank of Inspector

White : Reserve police

Note his name and ID number

###### 1.3. In uniform

Note his name and ID number on his uniform.

###### 1.4. Police vehicle

Note the number plate of the patrol car or motorcycle.

##### 2. POLICE QUESTION YOU WHEN STOPPED

###### 2.1. Your identification

Only give your name, ID card number and address.

###### 2.2. The police ask other questions

Politely ask “Am I under arrest?”

###### 2.3. When you are under arrest

You are arrested if the police:

tells you “yes”;

does not allow you to leave/want to take you to the Police Station; or

handcuffs you

If you are not under arrest, you may walk away/refuse to follow him back to the Police station or anywhere else, if asked.

###### 2.4 When you cannot be arrested

The police cannot arrest you just because you are a potential witness and want to take a statement from you (112/Witness Statement).

<sup>14</sup> Malaysian Bar Council, *Police and Your Basic Rights* (2009).

### **3. QUESTIONING BY POLICE WITHOUT ARREST**

#### **3.1. 112 Witness Statement**

When the police are investigating a case and think you have information/knowledge about the case, the police may examine you and take down your answers (s112 Witness Statement).

#### **3.2. Informal/Formal Request**

Most times, the police make an informal request that you give a s112 Witness Statement. If the place and time is convenient to you, cooperate. If not, tell the police you will do so at a convenient place

If you completely refuse to cooperate, the police can issue a formal order in writing, signed by an investigating officer (Police Officer) to ask you to cooperate.

If you disobey a Police Order, you cannot be arrested. However, it is an offence and the police may request the Magistrate to issue a warrant against you to compel you to cooperate.

#### **3.3. Giving a s112 Witness Statement**

You have the right to ask a lawyer to accompany you. This is advisable.

In giving a 112/Witness Statement, you may refuse to answer any question/remain silent if the answer is likely to expose you to a criminal offence.

Bring along a notebook or writing paper with you (Personal Notes).

Write down every question asked in your Personal Notes.

Make sure you understand every question asked.

Take your time and think carefully before writing your answers in your Personal Notes.

Read your answers to the Police Officer questioning you.

Keep your Personal Notes for future reference.

#### **3.4. Signing your 112/Witness Statement**

Before signing your statement, read the questions and your answers written by the Police Officer carefully.

Compare the statement you are asked to sign with your Personal Notes.

You have the right to make any corrections/changes to the statement before signing.

Sign your signature immediately below the last sentence of your statement.

## **4. POLICE ARREST YOU**

### **4.1. Ask: “Why am I under arrest?”**

An arrest is unlawful if you are not informed of the reason.

### **4.2. Do not resist an arrest**

The Police have the right to use reasonable force to arrest you if you resist.

### **4.3. Ask: “Which Police station are you taking me to?”**

The arresting Police Officer must immediately take you to the nearest Police station and no other place.

### **4.4. What to do when arrested**

You have the right to make a telephone call to:

1. Relatives;
2. Lawyer

You may also call a nearby Legal Aid Centre. Inform them: you have been arrested; the time, place and reason of the arrest; the Police station you will be taken to

### **4.5. What happens after arrest**

You may be detained up to 24 hours: at the Police station, or in a lock-up to “assist” police investigation.

## **5. YOUR RIGHTS AFTER ARREST & DURING DETENTION**

### **5.1. Right to consult a lawyer**

Once you request for the presence of a lawyer, you have a right to consult the lawyer at the Police Station. The Police must accord you a reasonable period of time for the lawyer to meet you and for consultation to take place. The Police can, however, deny you this right, if the delay in questioning you may cause the occurrence of another crime or cause danger to others.

### **5.2. Clothing**

You are allowed to have one set of clothing on you in the lock-up.

### **5.3. Personal belongings**

The police must record and put all your personal belongings in safe custody. Your personal belongings must be returned to you upon your release.

### **5.4. Welfare**

You are allowed to take bath two times a day.

If you are sick, you have the right to receive immediate medical attention.

You are to be given proper and adequate food and water during detention.

### **5.4. How long can the Police detain you**

The police can only detain you up to 24 hours for investigation.

The duty of the police is to complete investigation within 24 hours and to release you as soon as possible.

If the police cannot complete investigation within 24 hours, the police must bring you before a Magistrate for a remand order to extend your detention beyond 24 hours ("Remand Order").

## **6. REMAND ORDER BY MAGISTRATE AFTER ARREST**

### **6.1. Who is a Magistrate**

A Magistrate is a judicial officer. He/She has power to make a Remand Order to detain you for more than 24 hours.

### **6.2. Purpose of Remand Order**

It is to give more time to the Police to complete their investigation and decide whether there is evidence to charge you for an offence.

The Police cannot ask for a Remand Order only for the purpose of taking a statement from you.

### **6.3. How long is a Remand Order**

When the Police bring you before a Magistrate for a Remand Order, the Police must give reasons to the Magistrate why it is necessary to detain you beyond 24 hours.

The Magistrate's duty is to consider carefully the reasons given by the Police.

The Magistrate may order a Remand detention of between 4 to 7 days. The Police may return at the expiration of this time period and apply for a 2nd Remand Order. For this 2nd Order, the Magistrate may extend the detention for another 3 to 7 days.

The Magistrate, after careful consideration of the reasons given by the Police, has discretion:

- not to make a Remand Order; or
- make a Remand Order for a period shorter than that asked by the Police.

The Police can make more than one application for a Remand Order. Altogether, you cannot be detained longer than 15 days.

#### **6.4. What to say when you are brought before a Magistrate for remand**

Tell the Magistrate:

- you want legal representation and to contact the LAC and your family;
- you want medical treatment because you are sick or have been beaten;
- if the Police had threatened or beaten you during detention;
- if you had been denied proper food/water/clothing, toilet or necessary medical attention during your detention;
- whether the Police had carried out any investigation during your detention.

#### **6.5. Ask for a shorter Remand Order from the Magistrate**

Before the Magistrate makes the Remand Order, ask for a shorter remand period asked by the Police. Give reasons (Example: "I will cooperate with the Police in their investigation", "I will be available" etc).

## **7. BODY SEARCH WITHOUT ARREST**

### **7.1. When can this be done**

If you are at a place (example: karaoke/clubs/entertainment outlets) where the Police are conducting a raid or looking for something (example: drugs), the Police may search your body/bags without arresting you.

This must be done in the presence of a Police Officer who is an inspector or of a higher rank.

## 7.2. What to do

- Do not allow the Police officer to put his hands into your pockets or bags.
- Take out your belongings one by one. Each time, say “Purse”, “keys”, “ID card”, etc.
- When your pockets/bags are empty, turn your pockets/bags inside out.

## 7.3. Your rights

- A female can only be body searched by a female Police Officer.
- All body searches must be carried out with decency Example: cannot touch your private parts).
- There is no law requiring you to strip naked.

# 8. BODY SEARCH UPON ARREST

## 8.1. When Police can do so

- The Police have power to search your body for any object relating to the suspected offence.
- The body search must be conducted in a confined place. It is your right to be bodily searched in private.

## 8.2. Type of Body search

The law allows the Police to conduct 4 types of body search:

1. “pat down” search - *act of searching outer clothing*
2. Strip search - *to search for concealed evidence, object, contraband or weapon. Can only conducted with the authorization of an officer ranked Inspector and above*
3. Intimate search - *to search beyond the mouth, nose and ears. Can only be conducted with the authorization of an officer ranked Assistant Superintendent (ASP) and above*
4. Intrusive search - *to determine the existence of objects etc in the body. Must be conducted by Government Medical Officer or Medical Officer. Can only be conducted with the authority of the Officer in charge of the Police District (OCPD)*

If you are forced to strip naked/threatened if you do not strip naked:

- Protest
- Remember the Police Officer’s name
- Lodge a report after the incident

## **9. QUESTIONING BY POLICE AFTER ARREST**

### **9.1. Identity of the Police Officer questioning you**

Note the name/rank of the Police Officer questioning you.

### **9.2. Right to remain silent**

The Police Officer will first make friendly conversation/talk (example: ask you about your family and friends etc). Be polite. Do not be afraid to remain silent. This is your right.

Other than giving your Personal Particulars, you have the right to remain silent.

If you choose the right to remain silent, say: "I will answer in Court".

### **9.3. Written Statement by you during investigation**

The Police Officer will ask you questions and then write down your answers. You are only obliged to give your full name, age, address and occupation (Personal Particulars).

The Police cannot threaten or force you into making statements. If you have been threatened, beaten or forced, lodge a police report against the Police Officer at first opportunity. This is your right.

### **9.4. Written statement is not to be used as evidence**

Any statement you make to the Police during investigation cannot be used as evidence. But you may use the statement to support your defence during Trial.

## **LEGAL AID CENTRES (LAC)**

Kuala Lumpur: 03-2691 3005/03-2693 2072

Selangor: 03-5510 7007/03-3281 2428

Negeri Sembilan: 06-6013 844

Melaka: 06-2845 519/06-2864 514

Johor: 07-2235 698

Perak: 05-2550 523

Kedah & Perlis: 04-7333 467

Kelantan: 04-7448 660

Pahang: 09-5159 244/09-2969 410

Pulau Pinang: 04-2617 451/04-3108 451

## HAND-OUT 8

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### **THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)**

#### ARTICLE 19

- (1) Everyone shall have the right to hold opinions without interference.
- (2) Everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a. For the respect of the rights or reputations of others;
  - b. For the protection of national security or of public order (ordre public), or of public health or morals.

### **THE FEDERAL CONSTITUTION**

#### ARTICLE 10

- (1) Subject to Clauses (2), (3) and (4)— (a) every citizen has the right to freedom of speech and expression.
- (2) Parliament may by law impose— (a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence;
- (3) Restrictions on the right to form associations conferred by paragraph (c) of Clause (1) may also be imposed by any law relating to labour or education.
- (4) In imposing restrictions in the interest of the security of the Federation or any part thereof or public order under paragraph (a) of Clause (2), parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of part iii, Article 152, 153 or 181 otherwise than in relation to the implementation thereof as may be specified in such law.

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The Malaysian Centre for Constitutionalism and Human Rights is the corporate social responsibility component of Liberal Banter Sdn. Bhd. The Centre or more fondly known as Pusat Rakyat LoyalBurok, implements two programmes—strategic litigation and UndiMsia!, a civic education initiative. Within its strategic litigation component, the Centre undertakes test cases and carries out training for lawyers and media personnels.

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For the past two years, the Malaysian Centre for Constitutionalism and Human Rights has been organising trainings on strategic litigation for the media. The strategic litigation trainings were the first of its kind in Malaysia and as such, much of the training modules and methodology were modified and fine-tuned to ensure that the training achieved its desired objectives. To ensure posterity and to share the experience, knowledge and information to other trainers interested in strategic litigation training, the Centre developed the Strategic Litigation Training Manual for the Media.

This manual was developed based on drafts used for two sets of training held in Kuala Lumpur in 2012 and 2013. The manual is not exhaustive but it does provide the basic building blocks of a good training on three key areas: libel, court process and procedures, and the safety and protection concerns of journalists. We urge civil society actors and journalist groups to use the material freely.

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