

# **PUBLIC PROSECUTOR**

**Vs**

**SHAHIRANSHERIFFUDDIN BIN SHAHRANI MUHAMMAD**  
**(BYIC No: 00-278239)**

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**In the Magistrate's Court of Brunei Darussalam**  
**Criminal Trial No. 843 of 2017**

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DPP Muhammad Qamarul Affyian bin Abdul Rahman for Public Prosecutor.

Defendant in absentia represented by Pg Md Khairul Nizam bin Pg Hj Mohd Yassin.

## **JUDGMENT**

The Defendant is charged with one count of publishing seditious publication under section 4(1)(c) of the Sedition Act, Chapter 24. He pleaded not guilty and claimed trial to the single charge.

The charge reads as follows:

‘That you, on the 16<sup>th</sup> of July 2017, in Brunei Darussalam, did publish a seditious publication, to wit, a post on your personal Facebook page named ‘Shahiran S.Leong’:

- a) “We must dissent #brunei”
- b) “Fuck you MORA. Fuck you.”
- c) “Go back to your stupid useless ministry and start investigating why all the sexual offenders are Ugama teachers instead of trying to destroy people’s livelihoods like this.”
- d) “Dear Bruneians, why are we letting these fuckers destroy our lives and the future of our kids.”

With seditious intention pursuant to section 3(1)(a) and 3(1)(g) of the Sedition Act, Chapter 24 and that you have thereby committed an offence under section 4(1)(c) and punishable under s4(1) of the said Act.

## **Statement of Agreed Facts**

The Prosecution and Defence agreed on the following facts:

- a) The Defendant is Shahiransherifuddin bin Shahrani Muhammad. He is a 39 year old Bruneian.
- b) On the 14<sup>th</sup> July 2017, a Borneo Bulletin newspaper article titled ‘Halal certification compulsory for all in F&B business’ was published by Azaraimy HH. (Tendered and marked as P3a)
- c) On the 16<sup>th</sup> July 2017, the Defendant then shared and posted a comment on his personal Facebook page regarding the Borneo Bulletin newspaper article (P3b)
- d) A police report was then lodged regarding the said Facebook comment. A First Information Report [FIR] was then produced on the 19<sup>th</sup> July 2017 at 1645 hours. (P3c)

The Prosecution called 5 witnesses.

PW1 – Hajah Juliana Binti Hj Junaidi

PW2 – Dr Hazri bin Haji Kifle

PW3 – Pg Anuar Husaini bin Pg Hj Rambli

PW4 – Haji Abdul Aziz bin Haji Akop

PW5 – Insp Mikhail Abdullah

The Prosecution relied on several documents as part of its case against the Defendant and they were marked as follows:

P1 – Charge sheet

P2 – Prosecution’s opening speech

P3 – Statement of Agreed Facts

P3a – Annex A of SOAF, Borneo Bulletin newspaper article

P3b - Annex B of SOAF, Def’s Facebook comment

P3c – Annex C of SOAF – FIR dated 19/7/17

P4 – List of Prosecution witnesses

P5 – S.117B statement of PW1

P6 – S.117B statement of PW2

P7 – Attachment of other Facebook posts

P8 – S.117B statement of PW3

P9 – S.117B statement of PW4

P10 - S.117B statement of PW5

### **The Prosecution’s Case**

#### PW1 – Hajah Juliana Binti Haji Junaidi

PW1 is the Assistant Director of Human Resources at the Ministry of Health. She gave evidence that on the 17<sup>th</sup> July 2017, a Facebook comment posted by the Defendant was brought to her attention. The comment was regarding a Borneo Bulletin news article titled ‘Halal Certification Compulsory for all in F&B Business’. (P3a.) She explained that the comment had gone viral on WhatsApp and that the Defendant had used abusive words and contained baseless allegations in his Facebook comment. The offending comment was directed towards the Ministry of Religious Affairs, namely:

- i. “We must dissent #brunei”
- ii. “Fuck you MORA. Fuck you”
- iii. “Go back to your stupid useless ministry and start investigating why all the sexual offenders are Ugama teachers instead of trying to destroy people’s livelihoods like this”  
; and
- iv. “Dear Bruneians, why are we letting these fuckers destroy our lives and the future of our kids?”

On the 18<sup>th</sup> July 2017, PW1 called the Defendant before a panel to give an explanation for his actions. She further told the court that on 19<sup>th</sup> July 2017, she wrote a letter to the Director of Public Service for disciplinary action to be taken on the Defendant. On the same day, she also received instructions from her superior to lodge a police report regarding the matter. A police report (P3c) was subsequently made.

#### PW2 – Dr Hazri bin Haji Kifle

PW2 told the court that at the material time, he was Deputy Permanent Secretary at the Ministry of Health.

On the 17<sup>th</sup> of July 2017, PW2 testified to Court that he received a screenshot via WhatsApp regarding the comment that the Defendant posted on Facebook (P3b). He told the Court that he had received the said comment from Pg Amir Husaini Pg Hj Rambli (PW3), the Head of Corporate Communications Unit at the Ministry of Health who had also informed him that the comment had gone viral.

PW3 had informed him that he had discussed the issue with the Defendant but that the Defendant maintained it was his right to make a complaint. PW2 told the Court that he later told PW3 to revoke the Defendant's access to the Ministry of Health social media accounts.

PW2 testified that following discussion with a Senior Management Team, it was agreed that a panel with the Defendant would be held on the 18<sup>th</sup> of July 2017 to get an explanation. At the panel meeting, the Defendant admitted to posting the comments on his Facebook and on the same day, the Disciplinary Action Committee discussed and agreed to take disciplinary action against the Defendant.

On the 19<sup>th</sup> July 2017, PW2 then instructed PW1 to lodge a police report. He explained that he did so because the Defendant used the words 'we must dissent' which he believed to have an element of inciting the public to think negatively towards the Government.

Upon further inspection by PW2 on the Defendant's Facebook account, he found that the Defendant had previously posted abusive words towards the Government. He then provided these screenshots to Court, marked as P7.

#### PW3 – Pg Anuar Husaini Pg Hj Rambli

PW3 was the Defendant's supervisor during his time at the Corporate Communications Unit at the Ministry of Health. He told the court that he has known the Defendant since 2008 when they were both working at the Health Promotion Centre, Ministry of Health.

On the 17<sup>th</sup> July 2017, PW3 told the court that he received a viral WhatsApp message regarding a comment which the Defendant posted on Facebook. He received the same message from more than ten different sources.

Upon receiving the said message, he called the Defendant to his office and asked the Defendant to explain himself. The Defendant became emotional and gave a reason that he disagreed with the Borneo Bulletin article.

PW3 then told the Court that he referred the matter further to PW2 who instructed him to tell the Defendant to remove the comment. When PW3 informed the Defendant to remove the comment, he did not remove it immediately. It was only later in the morning that PW3 checked the Defendant's personal Facebook page and saw that the Defendant had finally removed it.

PW3 told the Court he is 'friends' with the Defendant on Facebook and testified that the Defendant has about 1000 friends on Facebook.

#### PW4 – Haji Abdul Aziz bin Haji Akop

PW4 is a Ministry of Religious Affairs officer. He gave evidence that Majlis Ugama Islam Brunei (MUIB) is responsible for the new halal certification amendments.

PW4 testified in court that he received the viral Facebook comment regarding the Borneo Bulletin article using the words 'Fuck you' against the Ministry of Religious Affairs.

He told the court that the Defendant was misinformed as to the new halal certification guidelines is not compulsory for cosmetic businesses and that the Borneo Bulletin news article had correctly and clearly explained the new halal certification guidelines.

PW4 also testified that the comments in P3b had caused anger in the Majlis Ugama Islam Department and the Syariah Affairs Department. He explained that His Majesty the Sultan and Yang Di-Pertuan is the Head of Religion in this country and that the Defendant's derogatory remarks can be interpreted as going against His Majesty and the concept of Melayu Islam Beraja.

He told the court that other than causing anger with the remarks made, it affected the lives of Bruneians who live by the philosophy of Melayu Islam Beraja in exercising loyalty to His Majesty. He said further that if the people do not agree with new laws and rules, there were better ways to address it than by posting comments on Facebook Social Media. He said it was not the Brunei way to do so and that there were other ways like meeting with the relevant departments.

#### PW5 – Insp Mikhail Abdullah

PW5 is the IO in this case. He testified in Court using his s.117B statement tendered and marked as P10. PW5 gave evidence that on the 19<sup>th</sup> July 2017, he was informed that a report was lodged at Berakas police station informing the police that a civil servant has posted a Facebook comment using offensive words inciting hatred towards the Government of Brunei Darussalam.

PW5 testified further that a statement was recorded from the Defendant where the Defendant agreed that he was the person who published the Facebook comment on the 20<sup>th</sup> July 2017. The matter was then brought to the District Crime Officer Brunei Muara who gave instructions for the Defendant to be released on police bail. Based on the evidence and facts of the case, PW5 found that the Defendant had posted a seditious publication on his Facebook page.

#### **Defence Case**

The Defence elected not to submit on no case to answer and upon the Court ruling that there was a case for the Defendant to answer, the Defendant entered his Defence and was the sole witness.

The Defendant testified using a statement under s.117B which was tendered and marked as D2.

The Defendant told the court that on the 16<sup>th</sup> July 2017, he logged into his Facebook account under the name of 'Shahiran S Leong' where he read his cousin's status regarding the new Halal Licensing guidelines. He opened the Borneo Bulletin news article link and read it. He told the Court that he was interested in the Halal licensing guidelines and had attended the talk organized by Dare on the subject.

The Defendant went on further to state that the news article presented a different picture from what he understood at the talk. He had understood the guidelines to be sympathetic towards small business which were the subject of his concern as his cousins were planning to make hand soaps for their business. Upon reading the article and finding that the article seemed to impose the requirement of hiring Halal Supervisors, the Defendant became angry for his many unemployed friend and family who he said , had set their hopes on starting home based business as a means of obtaining income. The Defendant then saw the Licensing Guidelines as a costly hindrance and in an angry rant, posted comments on his Facebook page.

The Defendant explained further that he saw he had about 50 likes and 70 shares of the comment. It concerned him and he realized that the comments sounded far more insulting especially considering the fact that he is a government officer. He then changed the post settings to private so those who have shared it would not be alerted.

The next day, his superior PW3 told him to delete the post, He initially resisted because it was just a personal post. He told the court the court that he did not immediately delete it because he had urgent work matters and only managed to delete it at lunchtime.

In cross examination, he explained that he used the hashtag #Brunei on the Facebook comment so that it would be easier to find later on his page. He also explained that he never meant it to go viral as the Facebook comment was too long. He did not delete the comment and only made it private because people who had viewed it would get a notification. The statement ‘We must dissent #brunei’ was said by the Defendant to be a reference to a video game.

## **ISSUE(S) AT HAND**

With both parties having agreed on the publication of the Facebook comment, the remaining and only issue is whether the Defendant published P3b with a seditious intention under s.3 of the Sedition Act, Chapter 24.

The law of sedition is a technical and difficult area of the law and largely untested in the Brunei context. The case before me is only the 2<sup>nd</sup> prosecution of a sedition charge but the 1<sup>st</sup> involving a full blown hearing. The 1<sup>st</sup> prosecution in 2006 in the Magistrates’ Court resulted in an appeal before Judge Dato Paduka Steven Chong against sentence in **Isa bin Hj Jaya, William bin Rahman and Tuah bin Sabang vs PP [Criminal Appeal No 10 of 2006]**.

With no Brunei authorities to refer to, as to the approach to be adopted in adjudicating a sedition case, I have had no choice but to undertake extensive research into how courts in relevant jurisdictions have dealt with various issues.

It is useful firstly, to examine the contemporary and widely cited definition of sedition and for this we must go back to Sir James Stephen’s definition of it in the **Digest of the Criminal Law (Digest, 3<sup>rd</sup> edition, Article 91)** where he said:

“A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, her heirs, or successors, or the government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty’s subjects to attempt otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to raise discontent or disaffection amongst Her Majesty’s subjects, or to promote feelings of ill-will and hostility between different classes of such subjects.”

In **Reg v Burns & Ors (1886) 16 Cox CC355**, Cave J said “Stephen J is a judge of very great accuracy, and for every proposition there laid down there is to be found undoubted authority. He goes on to point out what sort of intention is not seditious.” Article 93 of the Digest reads:

“An intention to show that Her Majesty has been misled or mistaken in her measures, or to point out errors and defects in the government or constitution as by law established, with a view to their reformation, or to excite Her Majesty’s subjects to attempt by lawful means the alteration of any matter in Church or State by law established, or to point out, in order to their removal, matters which are producing, or have a tendency to produce, feelings of hatred and ill will between classes of Her Majesty’s subjects, is not a seditious intention.”

Stephen’s definition founds its way into the Criminal Code of the Gold Coast. Section 326 sub-s 8 of the Criminal Code of the Gold Coast, 1936 Revision, c9 provides:

“A ‘seditious intention’ is an intention

- (1) To bring into hatred or contempt or to excite disaffection against the person of His Majesty, His heirs or successors or the Government of the Gold Coast as by law established; or
- (2) To bring about a change in the sovereignty of the Gold Coast; or
- (3) To excite His Majesty’s subjects or inhabitants of the Gold Coast to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the Gold Coast as by law established; or
- (4) To bring into hatred or contempt or to excite disaffection against the administration of justice in the Gold Coast; or
- (5) To raise discontent or disaffection amongst His Majesty’s subjects or inhabitants of the Gold Coast; or
- (6) To promote feelings of ill-will and hostility between different classes of the population of the Gold Coast.

It is not a seditious intention –

- (a) To show that His Majesty has been misled or mistaken in any of his measures; or
- (b) To point out errors or defects in the government or constitution of the Gold Coast as by law established or in legislation or in the administration of justice with a view to the reformation of such errors or defects; or

- (c) To persuade His Majesty's subjects or inhabitants of the Gold Coast to attempt to procure by lawful means the alteration of any matter in the Gold Coast as by law established other than that referred to in para (2) of this sub-section; or
- (d) To point out with a view to their removal any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the Gold Coast.

Provided that none of the acts or things mentioned in provisos (a), (b), (c) and (d) shall be deemed to be lawful if they are done in such manner as to effect or be likely to effect any of the purposes (1) to (6) which are declared in this section to be a seditious intention.

'Seditious words' are words expressive of a 'seditious intention.'

In both the Stephen and the Criminal Code of the Gold Coast definitions, an intention to achieve on or more of the objects specified in the definition is an essential ingredient of the crime of sedition. How this intention is to be proved is provided in Article 94 of the Digest (4<sup>th</sup> edition), Stephen said:

"In determining whether the intention with which any words were spoken, any document was published, or any agreement was made, was or was not seditious, every person ***must*** be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself."

I now reproduce the relevant parts of our Sedition Act, Chapter 24.

S.4 (1)(c) of the Sedition Act Chapter 24 provides that:

'Any person who prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication is guilty of an offence.'

S.2 of the Sedition Act, Chapter 24, states that:

'Publication' includes all written or printed matter and everything, whether of a nature similar to written or printed matter or not, containing any visible representation, or by its form, shape, or in any manner capable of suggesting words or ideas and every copy and reproduction of any publication.

'Seditious publication' means a publication having a seditious intention.

Sections 3(1)(a), 3(1)(g) and 3(2) of the Sedition Act, Chapter 24, provides that:

3(1) A seditious intention is an intention -

- (a) To bring into hatred or contempt or to excite disaffection against His Majesty the Sultan and Yang Di-Pertuan or the Government;

- (b) To excite the inhabitants of Brunei Darussalam to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Brunei Darussalam as by law established;
- (c) To bring into hatred or contempt or to excite disaffection against the administration of justice in Brunei Darussalam;
- (d) To raise discontent or disaffection amongst the inhabitants of Brunei Darussalam;
- (e) To promote feelings of ill-will and hostility between different classes of the population of Brunei Darussalam;
- (f) To directly or indirectly lower or adversely affect, or otherwise bring into derogation, the rights, status, position, discretion, powers, privileges, sovereignty or prerogatives of His Majesty the Sultan and Yang Di-Pertuan, his Successors, His Consort or other members of the Royal Family; or
- (g) To directly or indirectly lower or adversely affect the standing or prominence of the National Philosophy of Melayu Islam Beraja (known in English as Malay Islamic Monarchy);

But an act, speech or publication is not seditious by reason only that it intends –

- i. To show that His Majesty the Sultan and Yang Di-Pertuan or the Government has been misled or mistaken in any of their measures;
- ii. To point out errors or defects in the Government or Constitution of Brunei Darussalam as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects;
- iii. To persuade the inhabitants of Brunei Darussalam to attempt to procure by lawful means the alteration of any matter in Brunei Darussalam as by law established; or
- iv. To point out with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Brunei Darussalam.

(2) In determining whether the intention with which any act was done, any words were spoken or any document was published was or was not seditious, every person ***shall*** be deemed to intend the consequences which would naturally follow from his conduct at the time and in the circumstances in which he so conducted himself.

We can see at once the unmistakable resemblance of Stephen's definition that has been incorporated into our laws, save for the fact that in determining intention, there is a distinction between Stephen's definition which utilizes the word 'must' and s.3(2) which utilizes the word 'shall'.

The Defence in their submissions touched on this point to illustrate the standard of proof required for intention which I will address in due course.

It is usual for our courts to refer to Singapore and Malaysian cases to interpret similar provisions where guidance from Bruneian cases cannot be drawn upon. In most cases, legislative provisions in neighboring jurisdictions are ‘pari materia’ to Brunei laws. In the case of the Sedition Act however, although the 2 jurisdictions have similarly incorporated Stephen’s definition of sedition, there is a significant difference where intention is concerned. In Singapore and Malaysia, **intention is irrelevant.**

I now reproduce the relevant section which are ‘pari materia’ in those 2 jurisdictions mentioned:

S.3(3) “For the purpose of proving the commission of any offence under this Act, the intention of the persons charged at the time he did or attempted to do or made any preparation to do or conspired with any person to do any act or uttered any seditious words or printed, published, sold, offered for sale, distributed, reproduced or imported any publication or did any other thing shall be deemed to be irrelevant, if in fact the act had, or would, if done, have had, or the words, publication or thing had a serious tendency.”

This being the case, Singapore and Malaysian authorities are somewhat limited as references as to how ‘intention’ is to be approached. This was touched on by counsel in their submissions on the issue of ‘intention’. Counsel had pointed out that there was a lack of appreciation of the law by the Prosecution and that they had misguidedly relied on authorities from Malaysia, having quoted **Public Prosecutor v Ooi Kee Saik & Ors [1971] 2 MLJ 108** where the Honourable Judge elaborated on the application of the Sedition Act in Malaysia stated:

‘In my view, what the Prosecution have to prove and all that the prosecution have to prove is that the words complained of, or words equivalent in substance to those words, were spoken by the accused. Once that is proved, the accused will be conclusively presumed to have intended the natural consequences of his verbal acts and it is therefore sufficient if his words have a tendency to produce any of of the consequences stated in s.3(1) of the Act. It is immaterial whether or not the words complained of could have the effect of producing or did in fact produce any of the consequences enumerated in this section. It is also immaterial whether the impugned words were true or false. And it is not open to the accused to say that he did not intend his words to bear the meaning which they naturally bear.’

On this point, I must agree with Counsel. In so far as the approach to intention is illustrated, this cannot be an approach to adopt within the Brunei context.

Defence counsel then invited the Court to consider the case of **Director of Public Prosecutions v Billy [2010] LSCA 13**, a judgment of the Court of Appeal of Lesotho which has a like for like construction of our s.3(2) of the Sedition Act. The relevant Lesotho provisions are reproduced at para 3 of the judgment.

Counsel for the Defence submits Clayden FJ’s interpretation of s.3(2) of Lesotho’s Sedition Proclamation, 1938 in **Buchanan v R R&N 523 (FSC)** as seen in the extract below and (they rely on the underlined section of the extract):

*‘One difficulty arises on the words of sub section (2) and its use of the word ‘deemed’. This sub section could mean that natural consequences of a publication must be taken as having been intended, irrespective of other facts which might show that they were not intended. If that were so, the Court would be in a position similar to that discussed by LORD HALSBURY in Sheperd v Broome [1904] AC 342 at 345:..’it is a painful duty to treat that as fraudulent which in truth was no fraudulent.. The statute, rightly or wrongly, contemplated the possibility of there being no actual fraud, and intentionally enacted that even if there were no fraud in the ordinary sense...such prospectus should be deemed fraudulent.’ If this were the proper construction, it is difficult to see why the words ‘seditious intent’ and ‘intent’ were used at all in the section. For if a publication were calculated to cause ill-will and hostility between classes, or any of the consequences set out in sub-paragraphs (i) to (iv), the crime would be committed because the intent was deemed to be present, and all that it would have been necessary to enact would have been that it was a crime to publish matter calculated to bring about the enumerated consequences. What may be called the non seditious acts, set out in sub paragraphs (a) to (d), would be the only matters in which actual intent was of importance. But the section does consistently use the word ‘intent’ and that it is the intent which makes the crime is apparent from the very definition of ‘seditious publication’ in s.54. And by s.53G(2) itself, its provisions are to be used in determining whether the intention was seditious or not. Obviously, the non seditious acts enumerated in sub paragraphs (a) to (d) are not the only circumstances in which an intention may not be seditious. Indeed that these acts have to be classified as non-seditious is indication that but for that classification, they might be held to be done with seditious intent. Section 53G(2) bears every indication of having come from Article 115 of Stephen’s Digest of the Criminal Law, ....., but otherwise the wording is identical except that ‘shall’ is used instead of ‘must’. That article has a heading ‘Presumption as to Intention’ and is based on cases dealing with presumption. In both *The King v Burdett* 4 B & Ald 95; 106 E.R 873 and *The King v Harvey*, 2 B & C 257: 107 E.R 379, there are passages in most of the judgments showing plainly that what was spoken of was an inference which would be drawn from the publication itself in the absence of contrary evidence. In the criminal law, the maxim that a man is presumed to intend the natural consequences of his acts is ordinarily a rebuttable presumption. And the use of the word ‘shall’ instead of ‘must’ is another indication that the word ‘deemed’ was not meant to allow artificial intention to shut out actual intention. For these reasons sub section 2 must be interpreted to allow of the consideration of evidence outside the publication itself in deciding whether or not there was sedition intention.’*

This was endorsed by the Court of Appeal in **Billy** at para 36. The endorsement read:

‘I agree with Clayden FJ’s interpretation of the section. I accordingly cannot accept the contention advanced by the respondent’s attorney that s.3(2) does not shift the burden of proof to the defence. In my view, for the reasons given in the Buchanan decision, it creates a rebuttable presumption, of a kind preserved in Lesotho by s.12(11)(a) of the Constitution.’

In that case, the COA, however, found that the presumption created by s.3(2) did not come into operation by reason of the fact that it was not clear that ‘the consequences which would naturally follow’ from what the respondent said at the relevant time and under the circumstances then prevailing, would have been the removal of the Prime Minister by unlawful means.

It is the Defence’s contention that the Prosecution must show other extrinsic evidence to show the seditious intention as merely coming out with the publication is not enough to return a judgment of conviction.

Upon a closer reading of s.3(2) of our Sedition Act, I am not convinced that the section gives rise to a rebuttable presumption. I prefer the approach adopted by the High Court of Fiji, another Commonwealth jurisdiction, in the recent case of **State vs Josaia Waqabaca, Criminal Case No HAC 361 of 2016**, decided on the 22<sup>nd</sup> May 2018, where the interpretation of s.66(2) of the Crimes Act was discussed at length.

S.66(2) of the Crimes Act reads:

‘In determining whether the intention with which any act was done, any words were spoken, or any document published was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.’

It will be seen that it mirrors our s.3(2) Sedition Act.

In that case, the argument was made by counsel for the Prosecution that s.66(2) creates a presumption that the accused has intended the consequence which would naturally follow from his seditious conduct. Accordingly, it was argued that the Prosecution only has to prove that the article written by the Defendant was seditious after which the Court could presume that the Defendants intended the natural consequences of their respective seditious acts, unless the contrary is proved by the Defence on the balance of probabilities.

The learned Judge Rajasinghe had this to say on this issue. At para 22 of the judgment he stated:

***“In order to impose a legal burden of proof on the defence, the law has to expressly stipulate that there is a presumption unless the contrary is proved. Section 66(2) of the Crimes Act has not specifically stated that there is a presumption of the seditious intention unless the contrary is proved. The section or the law that creates such a rebuttable presumption must have specifically and expressly stated that such presumption exists.”***

In the Brunei context, a good example would be found in s.121(1)(a) of the Customs Order 2006, where a person who is proved to have had in possession or custody or under his control anything containing any dutiable, prohibited or uncustomed goods shall, **until the contrary is proved**, be presumed to have had such dutiable, prohibited or uncustomed goods in his possession.

S.121(1)(a) Customs Order 2006 has specifically and expressly stated that ‘it shall be presumed until the contrary is proved’, shifting the legal burden on the Defence. Nowhere in s.3(2) of the Sedition Act are such words used to achieve the same effect.

The learned Judge in Waqabaca, went further in analyzing the definition of ‘deemed’ and the definition of ‘presumption’ as defined by Black’s Law Dictionary, 10<sup>th</sup> Edition at paras 24 and 25 of the judgment.

He concluded that the word ‘presumption’ has a more conclusive meaning unless the contrary is proved compared to the word ‘deem’. The word ‘deem’ in his view, allowed the court to construe a fact that could not be actually existing.

At paras 27 and 28, he had this to say:

*“27. Section 66(2) of the Crimes Act, has actually provided an assistance, in order to determine the seditious intent of the accused. Accordingly, in order to determine whether the intention of any act or any document was published is seditious, the court can deem that the accused has intended the natural consequences of such an act or the publication. In order to determine the said natural consequence, the court has to take into consideration the time and the circumstances under which the said act or the publication was done.*

*28. Actually, this deeming provision has allowed the court to construe an objective intention. However, the onus is still on the prosecution to adduce evidence to establish and prove what the accused intended to convey in committing this offence. The prosecution has to prove beyond reasonable doubt that the said deemed intention of the accused is the only inescapable and undisputable inference of the intention of the accused. Therefore, I do not concur with the submissions made by the learned counsel for the prosecution in respect of the definition and the application of S.66(2) of the Crimes Act.”*

Upon close scrutiny of the 2 Commonwealth cases of Billy and Wacaqaba, although I disagree that s.3(2) of our Sedition Act creates a rebuttable presumption, it is abundantly clear that **both** authorities call for extrinsic evidence of ‘intending the consequences which would naturally follow from his conduct at the time and in the circumstances in which he so conducted himself’, over and above, proving the publication of an article with a ‘seditious intention’.

That being so, I agree with the Defence that the Prosecution’s task is threefold:

- 1) To prove that something was published;
- 2) That these published comments come under one of the limbs of s.3(1) of the Sedition Act as having seditious intention;
- 3) That the Defendant intended for the comments to be seditious in the manner s.3(2) provides for how the intention is to be determined.

I now turn to the ingredients of the offence.

### 1) PUBLICATION OF THE FACEBOOK COMMENT

As stated earlier, parties have agreed on the publication of the Facebook comment.

### 2) DO THE PUBLISHED COMMENTS COME UNDER s.3(1)(a) AND s.3(1)(g) OF THE SEDITION ACT AS HAVING SEDITIOUS INTENTION?

The Defence submit that an objective test is to be applied in determining whether the comments have been proved to have a seditious intention. I agree. This was endorsed by the Court of Appeal in **Safwan**, relying on **PP v Ooi Kee Saik & Ors [1971] 2 MLJ 108** at para 6.

#### The offence under s.3(1)(a)

But before discussing what amounts to a seditious intention, it is prudent to discuss the meaning of the words found in s.3(1)(a), that is, ‘**hatred, contempt or disaffection**’. Although Defence counsel have submitted that the Prosecution have misguidedly relied on authorities from Malaysia, I am of the view that the misguided reliance is confined to the reliance of the Malaysian authorities only in so far as the interpretation of intention is concerned under s.3(3). Therefore, the Malaysian authorities, along with other Commonwealth authorities, in my view, continue to be a useful reference in determining what amounts to a seditious publication for the purposes of the charge before me.

At this juncture, I also believe it is important to note that each definition of seditious intention provides a distinct foundation for a separate count of sedition. For this proposition, I rely on the case of **Chihana (MSCA Criminal Appeal No 9 of 1992) [1993] MWSC 1 (28 March 1993)** where the learned Appeal judges said at page 10 of the judgment:

*‘The definitions of s.50(1) of the Penal Code should be construed disjunctively and not cumulatively. We are reinforced in this view by the use of the word ‘or’ at the end of each paragraph, clearly indicating that they are to be treated as alternatives.’*

S.50(1) of the Malawi Penal Code is pari material to our s.3(1) Sedition Act.

Turning back to the definition of the words in s.3(1)(a), ‘**hatred, contempt or disaffection**’, what is meant by these words?

On this issue, I am guided by the decisions of other courts where they have interpreted similar statutory provisions.

In **R v Chihana**, the Court of Appeal stated that:

**“It seems to us that it is not necessary to look to principles of English common law in order for us to know what ‘hatred, contempt or disaffection’ means. Those words, in our judgment, must be given their ordinary grammatical meaning. We must, of course, look to the decisions**

of other courts where they have interpreted similar statutory provisions and this we have done.”

They went on to say:

*“It is trite law that in interpreting an enactment, the Court should have regard to merely to the literal meaning of the words but also to take into consideration the antecedent history of the legislation, the purpose and the mischief it seeks to suppress. In the Wallace Johnston v R case (1940) AC 231, the Privy Council was interpreting similar statutory provisions as enacted in our s.50(1)(a). The words which the Court was interpreting in that case were ‘to bring into hatred or contempt or to excite disaffection’... similar to those used in s.50(1)(a) of the Penal Code. The Privy Council held in that case that the words of the definition were clear and unambiguous and that incitement to violence was not a necessary ingredient of the crime and that the criminal code of the Colony of the then Gold Coast nowhere required proof of violence.”*

The fact that incitement to violence is not an ingredient of the offence is also endorsed by Malaysian authorities. Judge Chan in **PP vs Param Cumaraswamy (No 2)** [1986] 1 MLJ 518 stated:

*“And Wallace Johnson v The King [1940] AC 231 has laid down that since the law is contained in a code [here I must borrow the words of Raja Abdul Aziz] ‘the court must look for the ingredients of the offence from the codified law and not import principles which have been established by English case law, and that, accordingly, there cannot be imported into the offence (as created under the codified law) the additional ingredient of incitement to violence or inciting others to public disorder.”*

Hatred and contempt are defined in the Oxford Dictionary (7<sup>th</sup> edition) at pages 331 and 149 and is stated as follows :

“Hate – feel very strong dislike for”

“Contempt – the feeling that a person or thing is worthless or unworthy of respect”

The word ‘disaffection’ was discussed in a recent Court of Appeal case **Muhammad Safwan bin Ananh @ Talib v PP and another appeal** [2017] 1 MLJ 620. In that case, the **Param** case (see reference above) was also referred to for His Lordship Judge NH Chan’s views at p524 pars D-G and further at paras B-D p 525 where he stated:

*“Disaffection: I shall start with ‘disaffection’. Disaffection, in the context of sedition, does not mean the absence of affection and regard, it means disloyalty, enmity and hostility: See per Latham CJ in Burns v Ransley at p 109. See also Dixon J in the same case , at p 115:*

*Disaffection is a traditional expression, but it is not very precise. It means an estrangement upon the part of the subject in his allegiance which has not necessarily gone as far as an overt act of a treasonable nature or an overt breach of duty. It supposes that the loyalty and attachment to*

***Authority, upon which obedience may be considered to depend, is replaced by an antagonism, enmity and disloyalty tending to make government insecure.”***

From this recent case, it is clear that this definition of ‘disaffection’ is still the widely accepted definition of the word for its application in the context of sedition.

The offence under s.3(1)(g)

It has not gone unnoticed that the Prosecution did not address the concept of the National Philosophy of Melayu Islam Beraja (known in English as Malay Islamic Monarchy). It appears that the Prosecution have thought it unnecessary to explain the concept, which I find most unfortunate as it should not be taken for granted that all are familiar with the semantics of it.

There can be no reference to other jurisdictions as to what is meant by the Philosophy of Melayu Islam Beraja or in English as Malay Islamic Monarchy. It is unique to Brunei as its National Philosophy and the upholding of it is a regular theme in His Majesty the Sultan and Yang Di-Pertuan’s Titahs to his subjects.

Whilst the Constitution does not expressly enshrine the National Philosophy of Melayu Islam Beraja (known in English as Malay Islamic Monarchy) within the doctrine, the National Philosophy is endorsed in Article 42(1)(e) of the Constitution where it states:

***s.42.(1) Except with the prior approval of His Majesty the Sultan and Yang Di-Pertuan, a Member of the Legislative Council shall not introduce or propose, and the Legislative Council shall not proceed upon, any Bill, any amendment to any Bill , or any motion, petition or business which, in the opinion of His Majesty, the Sultan and Yang Di-Pertuan, falls within any of the following classes:-***

***(e) ‘any Bill, motion, petition or business that may have the effect of lowering or adversely affecting or indirectly the standing or prominence of the National Philosophy of Melayu Islam Beraja (known in English as Malay Islamic Monarchy).***

The principle by which a court can take notice of facts that are notorious in the community is known as judicial notice. The general principle guiding judicial knowledge was stated by Isaacs J in **Holland v Jones (1917) 23 CLR 149** at 15304:

***‘The only guiding principle – apart from statute- as to judicial notice which emerges from the various recorded cases appears to be that wherever a fact is so generally known that every ordinary person may be reasonably presumed to be aware of it, the court ‘notices’ it either simpliciter if it is at once satisfied of the fact without more, or after such information or investigation as it considers reliable and necessary in order to eliminate any reasonable doubt.’***

In this case, therefore, I am taking it upon myself to take judicial notice of the fact that Melayu Islam Beraja or Malay Islamic Monarchy is the National Philosophy of Negara Brunei Darussalam as endorsed by the above article 42(1)(e) of the Constitution.

### The application of the objective test

For the purposes of applying the objective test as to whether the comments had a seditious intention, I again refer to the Malaysian and Commonwealth authorities for guidance.

However, In relation to s.3(1)(a) of the Act, and the manner in which it is discussed in the Malaysian authorities, I must remind myself that judges in the Malaysian jurisdiction have to draw a line between the right to freedom of speech and sedition. In Malaysia, the right to freedom of speech is a constitutional right.

**In Brunei Darussalam, however, there is no such constitutional right.** The natural consequence being that there is absolutely no room for political comment other than in the manner provided by the exceptions in s.3(1)(i) – (iv) of the Sedition Act as follows –

- (h) To show that His Majesty the Sultan and Yang Di-Pertuan or the Government has been misled or mistaken in any of their measures;
- (i) To point out errors or defects in the Government or Constitution of Brunei Darussalam as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects;
- (j) To persuade the inhabitants of Brunei Darussalam to attempt to procure by lawful means the alteration of any matter in Brunei Darussalam as by law established; or
- (k) To point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Brunei Darussalam.

Further, in applying an objective test as to whether the comments had the necessary seditious intention, the comments must be read as a whole. This was submitted by the Prosecution who relied on the case of **PP v Fan Yew Teng [1975] 1 MLJ 176** and I agree that this is the proper approach to be adopted.

Last but not least, in applying the objective test I am guided by the Fiji High Court Case of **Waqabaca** where Judge Rajasinghe said at para 32:

*“In applying this objective test, the court can take into consideration the context or the circumstances under which this article was written or published. Accordingly, the court is required to consider the nature of leadership, their behaviours in social, financial and cultural spheres, the effect or the influence of the issues that have been discussed in the article, the social, financial, historical and demographical context of these 2 classes of the population in Fiji. Accordingly, it is the onus of the prosecution to present evidence to establish the prevailed circumstances or the context, under which this article was written and published in order to determine the meaning of it.”*

Having identified all the necessary considerations for the application of the objective test, I address my mind to the evidence and the submissions before me.

The Prosecution submit that the tone of the speech and the words used in P3b read as a whole were such that the Defendant knew, or ought to have known that it will excite disaffection in the mind of its readers towards the Government of Brunei. The Defendant called the Ministry of Religious Affairs ‘fuckers’ and ‘useless’ alleging that Ugama teachers were sexual offenders. He went further to say that the Ministry of Religious Affairs was destroying livelihoods and the future of children.

The Prosecution also submit that the Defendant did not immediately take down the comment even after receiving many likes and shares about it. Even after being confronted by PW4 and receiving momentum of shares with regards to the comment, he insisted it was just a personal post. The Prosecution submits that the Defendant had no remorse but in fact, basked in the attention he received from posting the comment.

The Defendant has used the hashtag #Brunei. He told the Court that this is out of habit so the comment is searchable on his profile at a later date. The Prosecution submits that this is a fabrication on the Defendant’s part.

The Defendant told the court that he is well versed in social media. He even explained to court that he has received training in Malaysia and Singapore regarding the use of social media. The Prosecution submits that the only reason the Defendant used the hashtag #Brunei is because he wanted to get attention and he wanted the comment to go viral. He wanted to garner shares and likes by making it searchable to all users of Facebook. He knew at all times that using the hashtag #Brunei would mean a larger audience especially when the Defendant had around 1000 friends on Facebook.

The Prosecution also submit that the Defendant called for an uprising when he posted the comments and that it had nothing to do with a video game. He made it not to a particular section of the population but for the entire population of Brunei. This is why he used the hashtag #Brunei following ‘We must dissent’. Furthermore he addressed the entire population of Brunei in his comment when he asked ‘Dear Bruneians, why are we letting these fuckers destroy our lives and the future of our kids?’

The Prosecution submits that the manner and construction of the comments was to arouse or stimulate in the minds of Bruneians, a feeling of antagonism, enmity and disloyalty tending to make government insecure.

Lastly, the Prosecution submits that the Defendant’s Facebook comments is full of hatred and bitterness clearly directed against the Government and that it was carefully crafted to excite disaffection amongst the people in the country against the Government of Brunei. The fact that PW1, PW2, PW3 and PW4 were all alarmed after reading the said comment and took the necessary steps shows that the comment is expressive of a seditious tendency. PW5 also told the Court that he thought there was an element of sedition when the comment was shown to him.

The Defence in reply to the Prosecution's submissions submit that the publication is not prima facie seditious. The Defence go on further to state that none of the Prosecution witnesses has testified in what way the publications are seditious under the said sections. The Defence submit that there was no evidence to show that the Defendant had done anything that can be construed to further any supposed act of sedition. What the Defendant did, only began and ended with the publication and that therefore, according to the law, the Defendant had no seditious intention.

The Defence submit that there was no evidence shown that 'the Defendant had no remorse, but in fact basked in the attention that he received from posting the comment.' The Defence rely on the fact that PW3 had no issues with the time it took the Defendant to remove the post as PW3 himself stated that the Defendant had work to complete.

In Para 39 of their submissions, the Defendant submits that there is nothing in the comments that is full of hatred and bitterness as there is no evidence to support that. In any event, by case law, it does not amount to being seditious. The Defence submit that nothing in the evidence of PW1, PW2, PW3 and PW4 indicated their alarm at the seditious tendency of the comments. As for PW5, the Defence submit that if sedition was a part of the investigation, this would have been reflected in D1, the Defendant's statement.

The Defendant was clear in his police statement and in his evidence in court that the publication was only made in a fit of anger. The Defence submits that if he was to be prosecuted for the perceived offence of sedition, there would be no need for a disciplinary action prior to the police report. It is further submitted that because the MOH had referred him to a psychiatrist, no one had thought he was trying to get the nation to rise against the Government or challenge the prominence of MIB.

Lastly, the Defence quote para 32 of the case of Billy which states:

***"In this regard, Young J was correct in my view in R v Ngono in pointing out, in the passage quoted by the trial court that the path of criticism is a public way in which even the wrong headed are entitled to wander provided that they act bona fide. The respondent's criticism of the Independent Electoral Commission may well have been unfounded and 'wrong headed' but in the absence of a suggestion that it was not made in good faith, it is difficult to see how it can bring the Crown home in this matter."***

#### **My findings following the above submissions are as follows:**

Upon taking into consideration the factors outlined in **Wacaqaba** in applying the objective test, in particular, the nature of leadership, their behaviours in social, financial and cultural spheres and the effect or the influence of the issues that were discussed in the article, I am satisfied that the comments read as a whole, did have seditious intention to bring into hatred or contempt or to excite

disaffection against His Majesty the Sultan and Yang Di-Pertuan or the Government under s.3(1)(a) Sedition Act for the following reasons:

- 1) The Defendant's defence that the comments were merely an angry rant is nothing more than a bare denial of the seditious nature of the comments. The fact that he chose NOT to rely on any of the defences set out in s.3(1)(i) – (iv) in my view, goes to show that he realized he could not make out a defence based on the evidence presented to the court. The Defendant had attended a talk organized by DARE about the Halal licensing guidelines where he would have had the opportunity to present his grievances as well as gain information **BEFORE** he went on to post the comments. If the Defendant claims to have been angered by the misreporting of the article and in his statement D1, he claims he was angry at Borneo Bulletin for not explaining the process very well, he would have directed his gripe at the Borneo Bulletin and not the Ministry of Religious Affairs or at least have mentioned Borneo Bulletin along with the Ministry of Religious Affairs in the posting.

The posting, full of hatred and bitterness is clearly directed at the Government and it is doing exactly what Strachey J, in **Queen Empress v Balagangadhar Tilak (1897) 22 Bom 112** said, must not be done:

*“But if he goes on beyond that, and whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of its readers – as for instance, by attributing to it every sort of evil and misfortune suffered by the people, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people – then he is guilty under the section, and the explanation will not save him.”*

Further, the sentiment was clearly directed at an Authority, the Ministry of Religious Affairs, which according to His Lordship J Chan in **Param No 2**, is clearly a requirement implicit in the definition of the words ‘discontent’ and ‘disaffection’. Disaffection means disloyalty, enmity and hostility against Authority.

- 2) The words were deliberately couched in emotive vein in order to achieve the desired effect. I reject the Defendant's claim that the words ‘We must dissent’ #Brunei was merely a gaming reference and that he didn't know what it meant. The Defendant is a graduate from Queens University Belfast with an Honours equivalent in Medical Science. He displayed a good command of the English language in court and unsurprisingly, chose to give evidence in court in English. Given his angst at the Halal licensing guidelines at the relevant time, the use of the word ‘dissent’ which is defined as “express disagreement with an official or widely held view” (see Oxford English Dictionary, 7<sup>th</sup> edition, it is glaringly apparent that he wanted to convey **exactly that** to the Ministry of Religious Affairs. The Defendant had used carefully chosen words which were cleverly phrased. The tone of the speech and the words used were such that the Defendant knew or ought to have known that they would

create hate, contempt or excite disaffection against His Majesty the Sultan and Yang Di-Pertuan or the Government.

Whilst the Defence argue that some of the comments amount to no more than profanity, the nature of the abusive comments within the posting along with use of the words “We must dissent # Brunei” and given that the Ministry of Religious Affairs was the target of these postings, read as a whole, (borrowing the words of His Lordship Raja Azlan Shah J), “*used naturally, clearly and indubitably, has the tendency of stirring up hatred, or contempt against the Government.*” Further, the comments, in my view fall squarely within the definition of ‘disaffection’ as discussed in **Param** and endorsed in **Safwan**. In light of the fact that His Majesty the Sultan and Yang Di-Pertuan is also the Head of Religion in Brunei Darussalam, as stated in Article 3(2) of the Constitution, and this is a fact that is known or ought to be known by each and every one of His Majesty’s subjects, I reject the notion that such comments can only amount to an angry rant and it is my finding that bearing in mind the limits placed on free speech and expression, I entertain no doubt that the posting has gone beyond what is sanctioned by law.

- 3) I disbelieve the Defendant’s evidence in cross examination that he hashtags things from habit to make it easier to find things. He had told the court that he rarely talks about Brunei in his profile and thought that Brunei seemed like an appropriate hashtag for the comments he posted. However, when questioned later on to confirm that he put the hashtag #Brunei, he answered ‘yes, I always do that’. It was clear that the Defendant was desperately grasping at straws, and getting lost in it all, trying to show that the use of hashtags was not significant. Against the fact that he is trained in managing social media accounts, I find it difficult to accept that the Defendant did not anticipate the larger reach of his comments by use of the hashtag #Brunei. He had 1000 Friends on his Facebook. Even without the use of a hashtag, he would have had a substantial audience, what more with use of a hashtag which makes a posting searchable to ALL users of Facebook. In any event, I rely on Judge Raja Azlan Shah’s findings in **PP v Oh Keng Seng [1977] 2 MLJ 206** that:

***“...I should think that words having a tendency to bring about hatred or contempt etc, of any Ruler or against any Government, or to promote feelings of ill will and hostility among the various ethnic groups etc. can be uttered before a handful of persons and yet be seditious under our law.”***

- 4) As I stated earlier, there is no constitutional right to freedom of speech in the Brunei Constitution. There is no room for political comment other than for the purposes stated in s.3(1)(i) – (iv). The Defendant being a civil servant and a highly educated one at that, trained in managing social media, should have known that even if he was legitimately trying to show that the Government was for example, misled or misinformed, he should not have used a social media platform to convey his disagreement with the Halal Licensing

Guidelines. He himself admitted this in his police statement D1, in addition to admitting that he could have just contacted the MORA officer about it.

The excerpt from his statement reads:

***“In the afternoon, I saw one of my friends took the link and posted it. And there was actually someone responded on the link and said that the home businesses are exempted from this and they don’t need Halal Officers. I felt ashamed of this and pointless. I could have just contacted the MORA officer about this.”***

- 5) Even if I accept that there was no evidence on the part of the Prosecution to substantiate the witnesses’ claims of being alarmed by the postings as submitted by the Defence, it is irrelevant. In **PP vs Karpal Singh [2012] 4 MLJ 443**, the Court of Appeal had held that to prove that the words were seditious in that case, the Prosecution need not prove that the words uttered by the accused had caused actual violence or actual adverse reaction. The opinion of the witnesses’ who had heard the alleged seditious words did not determine and was not relevant consideration of whether the words were seditious. It was the court that must decide whether the words were seditious or not: Public Prosecutor v Mark Koding [1983] 1 MLJ 111. Therefore, the fact that PW5 also did not seemingly investigate for the offence of sedition, has no bearing on whether the posting in this case were seditious in nature.

Turning to the offence under s.3(1)(g), upon taking into consideration the factors outlined in **Wacaqaba** in applying the objective test, in particular, the nature of leadership, their behaviours in social, financial and cultural spheres and the effect or the influence of the issues that were discussed in the article, I am satisfied that the comments read as a whole, did have seditious intention to directly or indirectly lower or adversely affect the standing or prominence of the National Philosophy Melayu Islam Beraja (known in English as Malay Islam Monarchy) for the following reason:

I accept the evidence of PW4 that the comments affected the lives of Bruneians who live by the philosophy of MIB in exercising loyalty to His Majesty and that if people do not agree with new laws and rules, there are better ways to address it than posting comments on Facebook social media and that it is not the Brunei way. Although the Defence in submissions submit that it amounts to a tenuous attempt to justify s.3(1)(g), I cannot ignore the fact that no challenge was made to PW4’s evidence.

The following is an extract of the only questions put to PW4 in Cross Examination by Defence Counsel:

***Qn – Do you know when the complaint to Religious Enforcement unit was made?***

***Answer – As far as I remember, last year in July***

***Qn – The reaction from MORA is of anger. Is that correct?***

*Yes, and also disappointed*

*This anger and disappointment was due to the contents of the comments or words used?*

*Words that were used.*

In taking judicial notice of the National Philosophy of Melayu Islam Beraja, the Court, by virtue of s.57(2) of the Evidence Act, the Court may resort for its aid, to appropriate books or documents of reference.

In order to decide whether the postings had the seditious intention to directly lower or adversely affect the standing or prominence of the National Philosophy of Melayu Islam Beraja (MIB), I have referred to the book titled ‘**The Malay Islamic Monarchy, A Closer Understanding**’ written by Pehin Jawatan Luar Pekerma Raja Dato Seri Utama Dr Ustaz Awang Hj Md Zain bin Haji Serudin (2013).

Chapter 2 of the book titled ‘Understanding’ is most instructive.

On page 32, and I reproduce the relevant passage :

“the nation of a Malay Islamic Monarchy shall be maintained with the following vision:

- 1) To protect and defend the nation’s independence, sovereignty and democracy base on the teaching of Islam according to Ahli Sunnah Wal Jamaah belief, and on the basis of justice, honesty, independence and with the guidance and blessings of Allah;
- 2) To strive in obtaining and ensuring the peace, security and the well being of citizens;
- 3) To preserve friendship of the international community on the basis of mutual respect towards territorial independence, sovereignty, equality and integrity of all countries independent from external interference.

(the underlined passage is my emphasis)

On page 33, excerpts of His Majesty’s Titah are reproduced. I highlight the most relevant excerpt for our purposes:

***“We shall continue to adhere to the principles of the Malay Islamic Monarchy, as a source of ethics and culture of the people of Brunei, which has made them the distinguished honour of being a courteous and loyal nation.”***

It is the author’s findings that His Majesty’s Titah has enabled the Malay Islamic Monarchy to be illustrated as:

1. The concept of Malay Islamic Monarchy is of the highest and most significant value;
2. The principles of the Malay Islamic Monarchy are sources for ethics and culture;
3. The principles of the Malay Islamic Monarchy are to mould a triumphant, courteous and loyal race;

4. The concept and spirit of the Malay Islamic Monarchy befits the centre of each approach and aspect of life.

The words ‘courteous and loyalty’ are defined by the author.

At page 38, courteous behaviour is said to must be evident in speech and behaviour. Illustrations are made of what is courteous behaviour from a speech perspective and behaviour perspective.

At page 40, loyalty is discussed as being loyal to the Sultan because the Sultan is the patron and leader, loyal to the homeland and faithful to religious beliefs.

At page 42, the definitions and summary of a Malay Islamic Monarchy is a most useful reference and last but not least, most relevant for the purpose of the task at hand is seen at page 51 in discussing the Bruneian Identity.

The author states:

“The Malay Islamic Monarchy also reflects the Bruneian identity. The philosophy of the Malay Islamic Monarchy embodies the nature of the Bruneian identity namely:

.....

- 3) love and obedience with undivided duty to the legacy of the king;
- 5) applying the noble and praiseworthy Malay culture based on Islam, which includes a noble character, good moral fiber, loyalty to the King, respect for parents, elders, teachers, scholars, leaders, descendants of the Prophet SAW and respecting each other;
- 6) practising a culture that does not conflict with Syarak teachings as representative of a Brunei national characteristics
- 8) acting, interacting, speaking, dressing and working within limits appropriate to the needs of Malay culture and Islam.

Drawing from this highly useful source, there is no doubt in my mind that in the use of profanity, directed towards the Ministry of Religious Affairs, the publicizing of a baseless allegation against religious teachers on a social media platform about a highly sensitive issue concerning religion , knowing full well or having ought to know, that His Majesty the Sultan and Yang Di-Pertuan is the Head of Religion in Brunei Darussalam, the comments read as a whole did indeed carry seditious intention.

Last but not least,

- 6) DID THE DEFENDANT INTEND FOR THE COMMENTS TO BE SEDITIOUS IN THE MANNER S.3(2) PROVIDES FOR HOW THE INTENTION IS TO BE DETERMINED?**

I concur with the Defence that to determine intention in the manner it is to be determined, there must be extrinsic evidence to show the seditious intention. Coming out with the publication is not enough to return judgment of conviction.

However, I do not agree with the Defence that the Prosecution has not provided any evidence of this.

For the purposes of proving seditious intention under s.3(1)(a) and s.3(1)(g), I am satisfied that the Defendant intended the consequences which would naturally follow from his conduct at the time and in the circumstances in which he so conducted himself for the following reasons:

- 1) I found the Defendant's evidence incredibly contradictory. It is in evidence that the Facebook posting received many shares and likes. The Defendant in his s.117 B statement had stated at para 6, that on the 16<sup>th</sup> July 2017, he checked his Facebook around lunchtime and noticed that it had 2 likes and 1 comment. The next time he checked his Facebook, it was the morning of 17<sup>th</sup> July 2017 when he saw 50 likes and 70 shares. He was concerned and in his own words ***“I reread what I wrote carefully and realized that the post sounded far more insulting especially considering the fact that I am a government officer’ and changed the post setting to private so that those who had shared it wouldn’t be alerted that the post was gone.”***

YET, despite his concern about his post and even after being advised to delete the post by his superior, the Defendant resisted and justified his actions by saying it was just a personal post, (para 7 of his s.117B statement). And even though the Defendant finally deleted the post, he had taken his own sweet time to delete it to finish completing his work. Clearly, having been called by his superior to be confronted about the post was not a serious enough consequence for the Defendant to be concerned further as claimed. While it is expected that a confrontation by a superior would cause the Defendant to react immediately and remove the posting, it seemed to me that the Defendant was stirred by the number of likes and shares, hence why he refused to delete the post and defend it by saying it was a personal post as opposed to airing his concern to his superior that deleting it would create an alleged notification, triggering a wave of sharing of the screen shot instead.

- 2) The Defendant is trained in managing social media platforms. It follows that he would know the ins and outs of the reach of audiences and this was gallantly displayed by the Defendant himself in explaining tactical measures in controlling notifications. The Defendant had 1000 friend on his Facebook. He says only 200 of his friends are Bruneians and therefore his post was not addressed to the whole of Brunei. On this point, I find the argument is a feeble one. The fact that out of 1000 friends, 800 are not from Brunei , should have made the Defendant even more careful about the content of his postings. The question of Brunei's standing in the eyes of international observers should also have been an

important consideration in posting the impugned comments. In any event, I again rely on Raja Azlan Shah's findings in **PP v Oh Keng Seng [1977] 2 MLJ 206** that it is enough for a handful of people to make up an audience.

Upon the evidence presented to me by both the Prosecution and the Defence, I am satisfied beyond reasonable doubt that the Prosecution have proved their case on the charge preferred against the Defendant. I therefore find the Defendant guilty of the said charge and convict him accordingly.



**LAILATUL ZUBAIDAH BINTI HAJI MOHD HUSSAIN**  
**Senior Magistrate**  
**12<sup>th</sup> December 2019**