



MEDIA RELEASE

ENHANCING ACCESS TO COURTS

Judicial Review

In order to promote the development of judicial review by our courts in the twin branches of public law : constitutional law and administrative law, Chambers will engage with the Bar and the Rules Committee, to repeal the requirement in Order 53 Rule 3(3) of the Rules of the Court 2012 that all cause papers be served on Chambers.

Pending the coming into effect of such amendment, Chambers, from henceforth, dispenses with the requirement of such service on it. This is particularly so when the majority of judicial review cases concern employment disputes between employers, on the one side, and trade unions or individual employees, on the other, often emanating from awards of the Industrial Court. Such disputes are intrinsically private in nature, and have no public element in them. For such cases, it is preferable to treat them like ordinary litigation by private parties which does not involve the government.

Even in the category of cases involving challenges to decisions of the Executive or statutory corporations, which necessarily would involve the public interest, service is henceforth dispensed with at the leave stage under Order 53. Hence, Chambers will give effect to the letter and spirit of the two stage procedure under Order 53. It is for the Applicant to satisfy the Court on an ex-parte basis, that the threshold, however small, has been satisfied.

There is however one exception. In cases where Chambers will represent the Respondent at the *inter-partes* stage, we reserve the right to appear by Counsel at the leave stage. Likewise, if we are invited by the Court to assist it.

Chambers also recognises the importance of promoting judicial review as a means of developing public law. To that end, we shall not, unless exceptional circumstances warrant it, seek costs in the event it succeeds in judicial review proceedings. Likewise, Chambers expects adverse parties and their Counsel to reciprocate, so that the jurisprudence already developing in our courts that public law litigation should be “cost free” would become an established feature of Malaysian Law.

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