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ARTICLES

HOW DOES THE IMPLIED FREEDOM OF POLITICAL COMMUNICATION CONSTRAIN EXECUTIVE POWER?

Kieran Pender

Three decades since the High Court recognised the implied freedom of political communication in the Constitution, the answer to the superficially simple question posed by this Article's title remains unclear. Despite robust support for the proposition that the implied freedom constrains executive power just as it constrains legislative power, the nature and extent of that constraint are underdeveloped. This Article seeks to address the uncertainty, considering three distinct but related contexts: constitutional review of statutory executive power, administrative review of statutory executive power and review of non-statutory executive power. It argues that an emerging strand of jurisprudence, if adopted, may strike an appropriate balance; resolving principled and practical concerns that plague this field. Nonetheless, gaps in the law linger, particularly in relation to the second and third contexts. The implied freedom may be turning thirty, but it has not finished growing yet.

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FREEDOM OF SPEECH IN SINGAPORE: A LIVING TREE CANNOT THRIVE WITHIN FOUR WALLS

David Tan

The freedom of speech is expressly guaranteed in Art 14 of the Singapore Constitution for every citizen of Singapore, but the courts have consistently eschewed a living tree approach to constitutional interpretation and have espoused the four walls doctrine that restricts the engagement with foreign and international sources of law that may inform or influence local constitutional interpretation. However, recent decisions of the highest appellate court in Singapore suggest that the sands are shifting. This article discusses the ambit of Art 14, and its vertical and horizontal applications. It concludes that in order for a fundamental

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| constitutional right such as the freedom of speech to flourish, its interpretation needs to take into account changes in moral values, technological development and the evolving civic culture of modern Singapore. | 727 |
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THE PUBLIC INTEREST IN REPORTING DEATH

Paul Wragg

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| Reports of tragedy are a staple feature for newspapers, certainly in the United Kingdom. Coverage reporting death can be intrusive, unwanted, and distressing for close relations of the deceased. Questions remain, though, as to whether these privacy concerns are adequately protected by law. In Australia, this question remains mainly hypothetical, given that the country has yet to recognise, formally, privacy rights through the civil law. In England and Wales, the question is more practical given that jurisdiction's misuse of private information tort, which has existed since 2004. Nevertheless, the courts are yet to consider the extent to which, if at all, the tort protects against such privacy-invading coverage or whether, instead, the purported public interest in death reporting represents a complete defence. This article argues that the public interest in such reporting is much more limited, and the prospects for tortious claims much stronger, than newspapers would have us believe. | 747 |
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FREEDOM OF SPEECH AND DEFAMATION LAW

David Rolph

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| Defamation law seeks to strike a balance between the protection of reputation and freedom of speech. How that balance is struck may need to be varied and nuanced to take into account the different types of speech and the different impacts they may have on reputation. This article examines a range of areas of Australia where the balance between these competing interests may be a source of particular tension. It examines criminal defamation. It canvasses political speech and public interest speech more generally. It then turns to consider low-level or trivial speech. Finally, it examines academic speech and the newly created protections for it under Australian law. | 761 |
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