

## CONSTITUTIONAL LAW

**Suit against judges – Representation – Personal or official capacity – Whether judges could be represented by the AGC – Federal Constitution, Article 145**

*Messrs Tai Choi Yu & Co, Advocates v The Court of Appeal & Ors*

[2016] 7 CLJ 750, High Court, Sabah & Sarawak

**Facts** The plaintiff is a law firm, which initially appealed to the Court of Appeal (the first defendant) presided by the second and third defendants, who were two of three judges in that Court of Appeal. The plaintiff's appeal was struck out by an Order of the Court of Appeal. The plaintiff's application for leave to the Federal Court was also refused. The plaintiff then sought, in the High Court, for a declaration that the Order of the Court of Appeal is null and void. In the High Court, the defendants were represented by the Attorney-General's Chambers ("AGC"). The plaintiff argued that the defendants could not be represented by the AGC, because the first defendant is an independent arm established under the Federal Constitution on the principle of separation of powers, whilst the second and third defendants hold office under contract and were sued, in their personal capacities. The plaintiff applied for an order that the defendant's memorandum of appearance filed by the AGC and its representation of the defendants should be set aside or struck off.

**Issue** The issue was whether the second and third defendants could be represented by the AGC.

**Held** In dismissing the application, the High Court held that the acts committed by the second and third defendants were in the course of hearing the appeal which is a judicial proceeding, and it was in the course of work in relation to the office which is established under the Federal Constitution. Thus, the Attorney General was under a mandatory duty to provide the defendants with legal representation in order to defend and protect the office and institution of the administration of justice in Malaysia. Article 145 of the Federal Constitution also grants ample power to the Attorney General to represent the Government and anybody or person performing any functions under the Federal Constitution.