

**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

Originating Summons        )  
No. 232 of 2009/T         )

In the matter of an application by the Attorney-  
General for orders of committal for contempt

And

In the matter of Section 7(1) of the Supreme  
Court of Judicature Act, Chapter 322 (2007  
Revised Edition)

And

In the matter of Order 52 of the Rules of Court  
(2006 Revised Edition  
Between

**Attorney-General**  
(No ID No. exists)

...Applicant

And

**Melanie Kirkpatrick**

...Respondent

**ATTORNEY-GENERAL'S SUBMISSIONS**

1. This is an application for an order of committal for contempt of court against the Respondent. The grounds of the application are set out in the Statement (pursuant to Order 52, rules 2(2) of the Rules of Court) filed in these proceedings on 25 February 2009, and the affidavits filed on behalf of the Applicant on 25 February 2009 and 4 March 2009. On 13

March 2009, this Honourable Court granted the Applicant leave to apply for an order of committal against the Respondent.

2. This application is connected to *Attorney-General v. Daniel Hertzberg, Christine Glancey and Dow Jones Publishing Company (Asia), Inc.* [2008] SGHC 218. On 25 November 2008, this Honourable Court found Dow Jones Publishing Company (Asia) Inc., the Proprietor and Publisher of The Wall Street Journal Asia (“WSJ Asia”), guilty of contempt of court and ordered it to pay a fine of \$25,000 and legal costs of \$30,000.
3. According to the information provided by the Respondent’s solicitors (exhibit “**HS-4**” in the affidavit of Hema Subramanian filed in these proceedings on 25 February 2009), the Respondent has been a Deputy Editor of The Wall Street Journal’s (“WSJ”) editorial page since April 2006 and is also a member of WSJ’s editorial board. She supervises and has oversight over the day-to-day operations of the international operations of WSJ’s editorial page which includes the ‘Editorials and Opinion’ section of WSJ Asia. The Respondent bears the final editorial responsibility for the contents of the ‘Editorials and Opinion’ section of WSJ Asia.

4. The Respondent has committed contempt of court by allowing the publication and distribution of the following articles and letter in the 'Editorials and Opinion' section of WSJ Asia:
  - (a) First Article by an unnamed author: "Democracy in Singapore – Two court cases reveal much about the city-state's lack of freedoms", published on 26 June 2008;
  - (b) Letter by Dr Chee Soon Juan: "Produce the Transcript, Show the Truth", published on 9 July 2008 ("the Letter"); and
  - (c) Second Article by an unnamed author: "Judging Singapore's Judiciary – the International Bar Association weighs in", published on 15 July 2008.
  
5. The First Article and Second Article appeared in WSJ Asia's 'Editorials and Opinion' section under the rubric "Review and Outlook". It is clear that the 2 articles represent the editorial opinion of WSJ Asia. The Letter also appeared in WSJ Asia's 'Editorials and Opinion' section under 'Letters to the Editor'. The offending statements in the First Article, Second Article and the Letter are set out in the Statement filed in this action. The offending statements in the First Article, Second Article and the Letter are those which this Honourable Court decided in the earlier

contempt proceedings against Dow Jones Publishing Company (Asia), Inc. constituted contempt of court.

6. The First Article, Second Article and the Letter, individually and taken together, impugn the integrity, impartiality and independence of the Singapore Judiciary. It is implied in these 3 publications that the Singapore courts do not dispense justice fairly in cases involving political opponents and detractors of Minister Mentor Lee Kuan Yew and other senior government figures, and that the courts facilitate the suppression of political dissent or criticism in Singapore through the award of damages in defamation actions. As this Honourable Court pointed out in its Grounds of Decision dated 25 November 2008 in the earlier contempt proceedings, the First Article alleged that the Singapore courts do not decide defamation actions on their merits but for the ulterior purpose of penalising political dissent – see paragraph 41 of the Grounds of Decision. As for the Second Article, this Honourable Court found that it “was in fact insinuating insidiously that the Singapore judiciary is not independent and impartial in cases involving the ruling party or its interests...Clearly therefore, the Second Article is also in contempt of court.” – see paragraph 51 of the Grounds of Decision. With regard to the Letter, this Honourable Court found that it necessarily implied that the Singapore court did not decide the case against Dr. Chee Soon Juan on its merits but was compliant to Mr. Lee

and/or was prejudiced against Dr. Chee. Accordingly, this Honourable Court decided that the Letter constituted contempt of court and made it clear that although the Letter was written by a reader, the publisher had a duty to ensure that it did not contain matters that are in contempt of court – see paragraph 47 of the Grounds of Decision.

7. In *Attorney-General v. Daniel Hertzberg, Christine Glancey and Dow Jones Publishing Company (Asia) Inc.* [2008] SGHC 218, the Publisher and Proprietor of WSJ Asia was punished for contempt. The Publisher and Proprietor is a corporate entity. A corporate entity acts through individuals. The editing and publication of offending materials in a newspaper are carried out by individuals. The conviction of the Publisher of WSJ Asia for contempt would not be a sufficient deterrence to editors who are responsible for the contents of WSJ Asia. The Applicant's objective in bringing these proceedings against the Respondent is to ensure that the editor who is responsible for the publication of the 3 offending items in WSJ Asia is held accountable for her actions. The Applicant's understanding of the representations from the Respondent's solicitors that the Respondent is in charge of the day-to-day operations of the 'Editorials and Opinion' section of the WSJ Asia and has final editorial responsibility over its contents is that the Respondent is directly responsible for the publication of the 3 offending items in WSJ Asia .

8. The Respondent's solicitor (Mr. Philip Jeyaretnam, S. C.) who was present at the hearing of the Applicant's application for leave, informed this Honourable Court that the Respondent does not dispute —
  - (a) the finding of this Honourable Court in *Attorney-General v. Daniel Hertzberg, Christine Glancey and Dow Jones Publishing Company (Asia), Inc.* [2008] SGHC 218 that the First Article, the Second Article and the Letter ("the 3 offending items") contained passages that scandalise the Singapore Judiciary; and
  - (b) her responsibility as Editor (with final editorial responsibility) for the publication of the 3 offending items in WSJ Asia.
  
9. The rule of law is taken very seriously in Singapore. In a multi-ethnic, multi-cultural, multi-religious crowded society, the only way that order and liberty can be maintained is if there is strict adherence to the law by all. The rule of law is essential for the protection of the rights of citizens and non-citizens alike, their liberty and their freedom to pursue happiness. The courts are the ultimate arbiters when the rights of one person clash with those of another. To undermine the authority of the courts and the respect due to the judges is to strike at the very foundation of a modern democracy.

10. The fact that the Respondent and others in WSJ Asia may disagree with the laws of Singapore pertaining to freedom of speech and expression does not give any of them the licence to undermine the institutions which uphold the rule of law in this country. It is for each society to decide on the limits to be placed on freedom of speech and expression, in order to maintain harmony amongst its people. The balance that is struck in the home country of the Respondent does not apply universally as the standard for the rest of humanity.
  
11. It is established law that an editor who had edited the offending article in question bears personal liability for contempt (*Attorney-General v. Lingle & Others* [1995] 1 S.L.R. 696). Similarly, it is trite law that an editor who approves an article for publication is personally liable for the contemptuous statements in the article. See *Attorney-General v. Wain & Others (No. 1)* [1991] 2 M.L.J. 525; *Attorney-General v. Wain & Others (No. 2)* [1991] 2 M.L.J. 537; *Attorney-General v. Zimmerman & Others* [1984-1985] S.L.R. 814; *R v. Odhams Press Ltd & Others* [1957] 1 Q.B. 73; *R v Evening Standard Co. Ltd* [1954] 1 QB 578; and *R v Bolam and Others, ex parte Haigh* (1949) 93 The Solicitors' Journal 220. As Lord Goddard CJ pointed out in *R v. Odhams Press Ltd & Others* (at p 83), "... that the editor takes responsibility for what is published in his paper ... was held to be a rule of law in *Regina v Evening Standard Co. Ltd.*".

It suffices to say that this rule was applied by the Singapore High Court in *Attorney-General v. Lingle & Others* where Justice Goh Joon Seng said that the second respondent in that case who was the editor “was liable for contempt of court for the publication because he was the person who exercised ultimate and overall control.” – see [1995] 1 SLR 696 at 711H. In fact, Justice Goh in *Lingle* observed that “The editor is liable even if he had no knowledge of the publication.”.

12. The case law cited in the preceding paragraph shows that an editor with the final responsibility over the publication of an article is personally liable for any contemptuous statements in the article. In the present case, in as much as the Respondent has final responsibility over the contents of the ‘Editorials and Opinion’ section of the WSJ Asia, she has a duty to take reasonable care to ensure that matters which are in contempt of court are not published in the WSJ Asia, including devising a system that would prevent contempt of court by publication. That this is the law may be seen from *R v. Beaverbrook Newspapers Ltd. & Others* [1962] NI 15; *R v. Odhams Press Ltd & Others* [1957] 1 Q.B. 73; *Attorney-General v. Zimmerman & Others* [1984-1985] S.L.R. 814; *Attorney-General v. Wain & Others (No. 1)* [1991] 2 M.L.J. 525; and *Attorney-General v. Wain & Others (No. 2)* [1991] 2 M.L.J. 537. Indeed, in *Attorney-General v. Wain & Others (Nos. 1 and 2)*, the Singapore High Court held that the editor has a duty to vet material given to him for

publication to ensure that there was nothing in it that would make the publication of it a contempt of court. In the present case, as the Editor having final editorial responsibility over the contents of the 'Editorials and Opinion' section of WSJ Asia, the Respondent has a duty to ensure that the matters published in WSJ Asia's Editorials and Opinion' section are not in contempt of court. By her editorial decisions that led to the publication of the First Article, the Second Article and the Letter, the Respondent failed in that duty and committed contempt of court.

#### Considerations relevant to sentencing

13. In assessing the proper sanction to be imposed on the Respondent, it is submitted that the principles to be applied are denunciation (to drive home the point that such behaviour is unacceptable), specific deterrence (to prevent a recurrence of such behaviour) and general deterrence (to signal to others that such behaviour will be dealt with severely). The aggravating factors in this case are set below (paragraphs 14-19).
14. First, the Respondent is a repeat offender. She was the author of the article the publication of which in The Asian Wall Street Journal (as WSJ Asia was then known) was found to be in contempt of court in *Attorney-General v. Zimmerman & Others* [1984-1985] S.L.R. 814. At the time of her writing of that article, the Respondent was a Features

Editor and worked on the editorial page of the Journal. In *Zimmerman*, the Court found that the article had been “written contrary to the best journalistic practices that one would have expected from an international newspaper, like the journal” and that the Respondent had gotten most of her facts wrong. She tendered an apology to the Court (see paragraph 6 of her affidavit filed in the *Zimmerman* case) and was fined \$4,000.

15. In *Attorney-General v. Daniel Hertzberg, Christine Glancey and Dow Jones Publishing Company (Asia), Inc.* [2008] SGHC 218, the previous convictions of the Publisher of WSJ Asia were taken into account. This Honourable Court stated in that case that although the previous convictions had taken place in October 1985 (*Zimmerman*) and December 1989 (*Wain*), “that is not a very long period of time in the context of corporate history”. It is submitted that a similar consideration applies to the Respondent. She has been in the employment of Dow Jones since 1980 and has been engaged in the work of WSJ in various editorial capacities (including as a member of WSJ’s Editorial Board since April 1992, Assistant Editor of WSJ’s editorial page in April 1992, Associate Editor responsible for the WSJ’s ‘Review and Outlook’ column in October 2001, and Deputy Editor of WSJ’s editorial page since April 2006 – see her biography available online at [http://www.opinionjournal.com/bios/bio\\_kirkpatrick.html](http://www.opinionjournal.com/bios/bio_kirkpatrick.html)). As the editor responsible for WSJ’s editorial page’s international operations, she is

responsible for the editorial content of WSJ Asia, WSJ Europe and the Far Eastern Economic Review. Given her extensive and continued involvement in Dow Jones and WSJ since her conviction in 1985, it is submitted that her earlier conviction of contempt is a relevant factor to be taken into account in the sanction to be imposed on her for her present contempt.

16. Secondly, unlike the case of *Zimmerman* (and also the cases of *Attorney-General v. Wain* and *Attorney-General v. Lingle*) which only involved one offending article, in this case, there are 3 offending publications, namely, the First Article, the Second Article and the Letter, which were all published during a 3-week period. The 3 publications repeatedly targeted the integrity, impartiality and independence of the Singapore Judiciary. It cannot be gainsaid that the publication of the First Article, the Second Article and the Letter (read individually and with each other) over a 3-week period has the inherent tendency to interfere with the administration of justice in Singapore and undermine public confidence in the Singapore Judiciary. The repeated attacks against the Singapore Judiciary within such a short period of time could not have been without design or deliberation – they in fact point to a pattern of undermining public confidence in our courts.

17. Thirdly, the First Article and the Second Article are editorial pieces representing the editorial opinion of WSJ Asia and they have been crafted in an insidious way to influence the sophisticated readership of WSJ Asia that the Singapore judiciary is not independent and impartial. In this regard, this Honourable Court pointed out in its Grounds of Decision that the “Second Article was an editorial piece carefully crafted to appear on the surface as a mere report of the IBA report but was in fact insinuating insidiously that the Singapore judiciary is not independent and impartial in cases involving the ruling party or its interests.” – see paragraph 51 of the Grounds of Decision. Given that the Respondent supervises and has oversight over the day-to-day operations of the international operations of WSJ’s editorial page (including the ‘Editorials and Opinion’ section of WSJ Asia), she plays a significant part in the commission of the contempt of court.
18. Fourthly, as the Editor having final editorial responsibility for the contents of the ‘Editorials and Opinion’ section of WSJ Asia, the Respondent is personally responsible for the publication of the First Article, the Second Article and the Letter (read individually and with each other) over a 3-week period that was evidently aimed at interfering with the administration of justice in Singapore and undermining public confidence in the Singapore Judiciary.

19. Fifthly, the Respondent has not apologised nor stated explicitly that she accepts that the courts of Singapore apply the law of Singapore without fear or favour. Nor has she undertaken not to make any further imputations against the integrity, impartiality and independence of the courts and judges of Singapore in future. As explained in the affidavit of Hema Subramanian filed on 4 March 2009, after the conviction of the Publisher and Proprietor of WSJ Asia for contempt in *Attorney-General v. Daniel Hertzberg, Christine Glancey and Dow Jones Publishing Company (Asia), Inc.*, the Applicant had intimated to Rodyk & Davidson LLP (the solicitors of the Respondent in these proceedings as well as the Respondents in the earlier contempt proceedings) that the Applicant will not proceed with or institute committal proceedings against any of the editors of WSJ Asia if its Publisher or any of its editors acknowledge certain uncontroversial facts that go towards confirming the integrity and independence of the Singapore Judiciary, but the Respondent chose not to avail herself to this option. The acknowledgements sought by the Applicant are:

- (i) that the opinions expressed in the 2 editorial articles published in WSJ Asia on 26 June 2008 and 15 July 2008 were intended to criticise Singapore's law of defamation, and not to impugn the impartiality and independence of the Singapore Judiciary;

- (ii) that there was no intention to suggest in the 2 editorial articles that the Singapore Judiciary is complicit in an abuse of the judicial process in order to suppress political dissent or criticism, or that it misapplies the laws of Singapore or declares the laws of Singapore in bad faith;
  - (iii) that under Art. 98 of the Constitution of the Republic of Singapore, the Judges of the Supreme Court of Singapore have security of tenure until the age of 65 and that to date, no Judge of the Supreme Court of Singapore has been removed from his office before the expiry of the term of his office; and
  - (iv) that our Subordinate Courts judges come under the control of the Legal Service Commission which is an independent body established under Art. 111 of the Constitution of Republic of Singapore and comprising the Chief Justice, Judges of the Supreme Court, the Attorney-General, the Chairman of the Public Service Commission and members from the private sector.
20. The Respondent is the human face personally responsible for the contemptuous statements that scandalise the Singapore Judiciary. It is submitted that a substantial fine should be imposed on the Respondent. While the fine should not be financially crippling, it should be of an

amount that will cause sufficient financial hurt to the Respondent so that the Respondent is brought to realise the consequences of her actions and is sufficiently induced to refrain from further attempts to undermine the courts and judges of Singapore.

21. This is the third time in the last 23 years that publications in WSJ Asia have impugned the integrity, impartiality and independence of the Singapore Judiciary. The Applicant submits that a sufficiently deterrent sanction needs to be imposed on the Respondent to dissuade her and other like-minded individuals, whether in the employ of Dow Jones or other media companies, from engaging in a brand of journalism that seeks to denigrate the Singapore Judiciary.
  
22. In *Attorney-General v. Wain & Others (No. 2)* [1991] 2 M.L.J. 537, the Court found the Editor and the Proprietor/Publisher equally liable for contempt, and fined them \$4,000 each. It is submitted that, particularly in light of the Respondent's responsibilities as Editor, her previous conviction for contempt of court and the fact that the Respondent has not to date apologised for her actions, the amount of the fine to be imposed on the Respondent should not be less than the fine imposed on the Publisher/Proprietor of WSJ Asia in *Attorney-General v. Daniel Hertzberg, Christine Glancey and Dow Jones Publishing Company (Asia), Inc.*

23. As in the earlier connected contempt proceedings against Dow Jones Publishing Company (Asia), Inc., the Respondent should bear the costs of these proceedings. Accordingly, the Applicant respectfully seeks an order from this Honourable Court for the Respondent to pay the legal costs of and occasioned by these proceedings.

Dated this 18th March 2009

DAVID CHONG GEK SIAN, S. C.

*for* ATTORNEY-GENERAL