IN THE SUBORDINATE COURTS OF THE REPUBLIC OF SINGAPORE

Originating Summons No. 385 of 2008/P

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

And

In the matter of Section 8(1) of the Subordinate Courts Act, Chapter 321

And

In the matter of Order 52 of the Rules of Court

Between

The Attorney-General
(No ID No. exists)

…Applicant

And

Gopalan Nair
(United States Passport No. 057586744)

…Respondent

SUBMISSIONS OF THE ATTORNEY-GENERAL

Submitted by:

The Attorney-General's Chambers
1 Coleman Street
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I. INTRODUCTION

1. Pursuant to leave granted by District Judge Ronald Gwee on 31 October 2008,[1] the Attorney-General now applies to this Honourable Court for an order of committal for contempt of court against Gopalan Nair ("the Respondent").[2]

II. SERVICE OF DOCUMENTS

2. In accordance with Order 52 rule 3(4) of the Rules of Court (Cap 322, R 5), the relevant court papers pertaining to this application were served on the Respondent on 1 November 2008, more than 8 clear days before the hearing of this application. The affidavit of Mr. Mohamad Fahmi bin Yusoff, affirming the fact of service on the Respondent, was filed on 5 November 2008.[3]

III. THE GROUNDS FOR THE APPLICATION

3. The grounds for the application are stated in the Statement filed pursuant to Order 52 rule 2(2) of the Rules of Court on 30 October 2008 ("the Statement")[4] in seeking leave to apply for an order of committal against the Respondent.[5] The Statement is supported by affidavits of Station Inspector Lim Yaw Ping Francis[6] and Senior Staff Sergeant Joe Ng Suan Teck,[7] both of which were filed on 30 October 2008.

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[1] Tab E, Applicant's Bundle of Authorities ("ABD") (Volume II).
[2] Tab F, ABD (Volume II).
[3] Tab G, ABD (Volume II).
[4] Tab B, ABD (Volume I).
[5] Tab A, ABD (Volume I).
[6] Tab C, ABD (Volume I).
[7] Tab D, ABD (Volume I).

4. The Respondent committed contempt of court by:

(a) making various statements on 25 August 2008, 29 August 2008 and 5 September 2008 to District Judge Leong Kui Yiu James ("District Judge James Leong") who was then trying him for offences of using abusive words towards public servants in the execution of their duties under section 13D(1)(a) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184), and disorderly behaviour under section 20 of the same Act; and

(b) scandalising the court through the publication of the following two posts on the web log ("blog"), "Singapore Dissident", at the Internet address http://singaporedissident.blogpost.com/:

(i) a blog post titled "*Another classic case of trying to use the courts to silence dissent*", dated 1 September 2008; and

(ii) a blog post titled "*Convicted*", dated 6 September 2008.

5. As at the time this Submission was prepared, the Respondent has not filed any affidavit denying these facts.

IV. THE LAW OF CONTEMPT

6. It is well established at common law that conduct amounting to Contempt of Court is punishable by the courts. This principle has been enacted in Singapore in section 7(1) of the Supreme Court of Judicature Act (Cap 322) which expressly empowers the High Court and the Court of Appeal to punish for contempt of court. Similar powers are

conferred on the Subordinate Courts under section 8(1) of the Subordinate Courts Act (Cap 321) ("SCA"). The process for invoking the power to punish for contempt by way of an order of committal is set out in Order 52 of the Rules of Court.

7. The different conduct that amounts to contempt of court and punishable as such by the courts has been established by case law. In the main, such conduct may be broadly divided into two main categories. The first category comprises disobeying court orders and breaking undertakings given to the court. The second category, which is of relevance in the instant case, comprises conduct that would interfere with the due administration of justice.

8. This broad category includes conduct such as disrupting the court process by contemptuous behaviour in the face of the court, and interfering with the course of justice. The making of statements or actions which "scandalise" the court is an example of conduct that interferes with the course of justice and is punishable as contempt of court. In this regard, the classic statement of Lord Russell of Killowen CJ in *R v Gray* [1900] 2 QB 36 ("*Gray*")[8] at 40, on what amounts to a contempt of court, is authoritative:

> Any act done or writing published calculated to bring a court or a judge of the court into contempt or to lower his authority, is a contempt of court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the courts is a contempt of court. The former class belongs to the category which Lord Hardwicke LC characterized as "scandalising a court or a judge".

9. The above passage has been accepted by courts in Singapore as good law: *Attorney-General v Pang Cheng Lian & Ors* [1972 – 1974] SLR 658 ("*Pang Cheng Lian*")[9] at 662A-B, *Attorney-General v Wong Hong Toy* [1982 – 1983] SLR 398 ("*Wong Hong Toy*")[10] at 403D-E, *Attorney-General v Wain & Ors (No. 1)* [1991] SLR 383

[8] Tab A, Applicant's Bundle of Authorities ("ABA").
[9] Tab B, ABA.
[10] Tab C, ABA.

("*Wain*")[11] at 394G-I, and *Attorney-General v Lingle & Ors* [1995] 1 SLR 696 ("*Lingle*")[12] at 700D-E.

10. The law of contempt and its rationale, as well as its limits, were explained by Rich J in *R v Dunbabin*, *ex p Williams* (1953) 53 CLR 434 at 442 – 443 as follows:

> Any matter is a contempt which has a tendency to deflect the court from a strict and unhesitating application of the letter of the law or, in questions of fact, from determining them exclusively by reference to the evidence. But such interferences may also arise from publications which tend to detract from the authority and influence of judicial determinations, publications calculated to impair the confidence of the people in the court's judgements because the matter published aims at lowering the authority of the court as a whole or that of its judges and excites misgivings as to the integrity, propriety and impartiality brought to the exercise of the judicial office. The jurisdiction is not given for the purpose of protecting the judges personally from imputations to which they may be exposed as individuals. It is not given for the purpose of restricting honest criticism based on rational grounds of the manner in which the court performs its functions. The law permits in respect of courts, as of other institutions, the fullest discussions of their doings so long as that discussion is fairly conducted and is honestly directed to some definite public purpose. The jurisdiction exists in order that the authority of the law as administered in the courts may be established and maintained.

This passage has been referred to in *Wain* (at 398A) and in *Lingle* (at 701C-E).

11. In the House of Lords decision of *Attorney-General v Times Newspapers Ltd* [1974] AC 273[13] at 309, Lord Diplock set out the main purpose of the law of contempt in the following terms:

> Contempt of court is punishable because it undermines the confidence not only of the parties to the particular litigation but also of the public as potential suitor, in the due administration of justice by the established courts of law.

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[11] Tab D, ABA.
[12] Tab E, ABA.
[13] Tab F, ABA.

12. Lord Diplock's dictum has been applied by the Courts of Singapore in *Pang Cheng Lian* at 661F-G. More recently, in *You Xin v Public Prosecutor and another appeal* [2007] 4 SLR 17 ("*You Xin*"),[14] V K Rajah JA observed, at [14], that:

> It is important to note that it is justice itself that is flouted by contempt of court, *not* the individual court or judge who is attempting to administer it. The overriding object of contempt of court is not merely to protect the dignity of the courts but essentially to protect the administration of justice.

A. Powers of the Subordinate Courts to deal with contempt of court

13. Prior to 1996, the Subordinate Courts only had jurisdiction to deal with contempt occurring in the face of the court. The historical rationale for this distinction was noted by Lai Siu Chiu J in *Attorney-General v Chee Soon Juan* [2006] 2 SLR 650 ("*Chee Soon Juan*")[15] at [9]:

> Historically, the common law drew a distinction between acts of contempt in the face of the court (contempt *in facie curiae*) and acts of contempt outside the court (contempt *ex facie curiae*). The jurisdiction of *inferior* courts of record to summarily punish contempt without a jury was restricted to punishment of acts of contempt in the face of the court and not outside the court (*The Queen v Lefroy* (1873) LR 8 QB 134). Conversely, *superior* courts of record such as the High Court had the jurisdiction to punish for contempt both *in facie curiae* and *ex facie curiae*.

14. However, with the amendment of the SCA, vide the Subordinate Courts (Amendment) Act (Act No. 4 of 1996), section 8 of the SCA was amended to confer jurisdiction on the Subordinate Courts to deal with both contempt committed in the face the court (which jurisdiction it already possessed under common law) and as contempt committed in connection with any proceedings in the subordinate courts. Section 8 now reads:

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[14] Tab G, ABA.
[15] Tab H, ABA.

Contempt
8. —(1) The subordinate courts shall have power to punish for contempt of court where the contempt is committed —

(a) in the face of the court; or
(b) in connection with any proceedings in the subordinate courts.

(2) Where contempt of court is committed in the circumstances mentioned in subsection (1), the court may impose imprisonment for a term not exceeding 6 months or a fine not exceeding $2,000 or both.

(3) The court may discharge the offender or remit the punishment if the court thinks it just to do so.

(4) In any case where the contempt is punishable as an offence under section 175, 178, 179, 180 or 228 of the Penal Code (Cap. 224), the court may, in lieu of punishing the offender for contempt, refer the matter to the Attorney-General with a view to instituting criminal proceedings against the offender.

15. At the Second Reading of the Subordinate Courts (Amendment) Bill on 5 December 1995,[16] the Minister for Law explained the rationale for amending section 8 of the SCA:

> Sir, the main amendment in this Bill relates to contempt of court. The provisions in the Subordinate Courts Act concerning contempt of court are unsatisfactory because contempt of court includes contempt in the face of the court and contempt not in its face. Contempt in the face of the court essentially relates to activities within the court where the court has personal knowledge of the circumstances giving rise to the contempt. Examples would be interrupting court proceedings or refusing to answer questions before a court without lawful excuse. Contempt of court not in its face is wider in that it renders activities both in and outside of the court punishable. This is regardless of whether it is within the court's personal knowledge. Examples would be scandalising the court or refusing to comply with a court order. Under the amendments, the Subordinate Courts presently have the power to punish a person for contempt of court only where contempt is committed in the face of the court. Under the present provisions, the Subordinate Courts are unable to deal with matters which give rise to contempt not in its face. This is clearly inadequate. This lacuna will be remedied by an amendment which seeks to amend section 8 of the Subordinate Courts Act. In other words, Sir, with the amendments proposed, the Courts will be able to punish for contempt both in the face as well as not in the face of the court.

[16] Tab I, ABA.

16. Hence, from the foregoing, it is clear that contempt of court (in the form of scandalising the court or otherwise), both *in facie curiae* and *ex facie curiae* (where it is in connection with proceedings in the subordinate courts) can be punished by the Subordinate Courts.

B. Contempt in the face of the court

17. The Respondent s committed contempt in the face of the court through the various statements made to District Judge James Leong on 25 August 2008, 29 August 2008 and 5 September 2008.

18. As noted above, contempt in the face of the court is one of the recognised forms that contempt of court may take. In *You Xin*, V K Rajah JA noted, at [17], that:

> The Privy Council in *Izuora v The Queen* [1953] AC 327 sagaciously stated (at 336) that it was not possible to particularise the acts which can or cannot constitute contempt in the face of the court. In general, contempt in the face of the court may be said to comprise the unlawful interruption, disruption or obstruction of court proceedings. As Lord Goddard said in *Parashuram Detaram Shamdasani v King-Emperor* [1945] AC 264 ("*Parashuram Detaram Shamdasani*") at 268:
>
> > For words or action used in the face of the court, or in the course of proceedings, for they may be used outside the court, to be a contempt, they must be such as would interfere, or tend to interfere, with the course of justice. No further definition can be attempted.

19. However, interruptive or disruptive conduct is not the only conduct that can constitute contempt in the face of the court. In *Chee Soon Juan*, Lai Siu Chiu J clearly recognised, at [15] – [17], that disruptive conduct is but one example of contempt in the face of the court:

> 15 Mr Ravi representing the Respondent had submitted that his client's conduct was not tantamount to contempt "in the face of the court" because the assistant registrar did not find the Respondent's conduct disruptive of proceedings. He

relied on extracts from C J Miller's textbook, *Contempt of Court* (Oxford University Press, 3rd Ed 2000) at para 4.19 in support. On the contrary, he submitted, the Respondent had, in a respectful and non-disruptive manner at the bankruptcy hearing, read out to AR Low the bankruptcy statement which he had tendered as his submissions.

16 Disruptive behaviour was indeed one example cited in Miller's textbook of what amounted to contempt "in the face of the court". Another illustration in Miller's textbook of contempt "in the face of the court" (at para 4.27) was "insulting or disrespectful behaviour *even though it falls short of being physically obstructive*" [emphasis added].

17 The notes of evidence recorded by AR Low at the bankruptcy hearing contained the following extracts:

> Court: Do you admit the debts?
> Respondent: I refuse to answer any questions. I have a statement to make.

After the Respondent had tendered the bankruptcy statement to AR Low, the notes of evidence further recorded:

> Respondent: I believe I am in this situation right now because of the process of the courts. Before you adjudicate on this matter [Reads from four-page statement (the bankruptcy statement)].

I rejected his counsel's submission. I agreed with the Second Solicitor-General ("the SSG") who appeared for the Applicant, that in refusing to answer any questions posed by AR Low and then reading in court the bankruptcy statement that contained passages which scandalised the Judiciary, the Respondent displayed a defiance that was aimed at interfering with the authority and proper functioning of the court, and at impairing the public's respect and confidence in the Judiciary.

20. It is clear from the above passages in *Chee Soon Juan* that conduct which is insulting and disrespectful would constitute contempt in the face of the court.

C. Scandalising the court

21. The Respondent has also committed contempt of court by scandalising the court through the publication of his blog posts. In the Privy Council decision of *Chokolingo v*

Attorney-General of Trinidad and Tobago [1981] 1 All ER 244[17] at 248F, Lord Diplock had occasion to explain the term "scandalising the court" as follows:

> 'Scandalising the court' is a convenient way of describing a publication which, although it does not relate to any specific case either past or pending or any specific judge, is a scurrilous attack on the judiciary as a whole, which is calculated to undermine the authority of the courts and public confidence in the administration of justice.

22. A line of local cases has established that scandalising the court by mounting baseless attacks on its integrity or making unwarranted allegations of bias and lack of impartiality, amounts to contempt of court and will be punished as such.

23. In *Pang Cheng Lian*, the Respondents participated in the publication of an article entitled "Singapore – Selective Justice" in *Newsweek* magazine. The article contained various statements which scandalised the Singapore Judiciary by imputing to it a lack of independence from the People's Action Party. Wee Chong Jin CJ held that scandalising the court was one kind of conduct punishable as contempt of court. In that instance, the Learned Chief Justice expressed his opinion that the allegations made in that article in *Newsweek* magazine that the courts of Singapore will always be biased in favour of the government was "grossly offensive" and attacked the whole of the judiciary of Singapore. It was the worst form of "scandalising" of the court" and merited a severe penalty.

24. In *Wong Hong Toy*, the issue before the court centred on a letter of appeal issued by the Worker's Party to members of the public after it lost two defamation suits and had to pay the costs of the actions. The Respondent was the then-Chairman of the Workers' Party. Although no direct allegation was made against the court, it was held that the said letter of appeal was crafted with care and deliberation, and by giving incomplete and inaccurate facts about the dismissed law suits, had been calculated to provoke and excite

[17] Tab J, ABA.

in the minds of the public an impression that the court, in dismissing the defamation suits, had lacked impartiality or was biased, and that the Workers' Party had been unfairly treated. The Respondent was found to be in contempt of court. The court held that the High Court would exercise its jurisdiction to punish those who scandalised the court in words or acts done to bring the Singapore Judiciary into disrepute.

25. In *Attorney-General v Zimmerman & Ors* [1984 – 1985] SLR 814 ("*Zimmerman*"),[18] the Respondents had participated in the publication of a political article in an issue of the Asian Wall Street Journal. At the trial, it was not disputed that the article was in contempt of court. TS Sinnathuray J nevertheless identified those statements which questioned the integrity and impartiality of the courts and which alleged that the courts were not independent and could be dictated to by the Government, to be in contempt of court. The learned Judge held, at 817B-C, that:

> The statements that I have enumerated are without doubt irresponsible and offensive statements calculated to bring the judiciary of Singapore into contempt or to lower its authority. The statements in so many words question the integrity and impartiality of the courts. The outrageous allegation made in them is that our courts are not independent, that they do not decide on the evidence, the law and the arguments openly placed before them, and that they are influenced by outside considerations, in particular that the courts can be dictated to by the government. The statements are clearly calculated to undermine public confidence in the proper functioning of our courts.

26. *Wain* is another local authority that puts beyond doubt that scandalising the court or a judge is a contempt that will be punished. In *Wain*, the High Court held, at 397E-F, that:

> [S]ince the case of *A-G v Pang Cheng Lian* [1975] 1 MLJ 69, it is settled law that any publication which alleges bias, lack of impartiality, impropriety or any wrongdoing concerning a judge in the exercise of his judicial function which has terminated is a contempt of court.

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[18] Tab K, ABA.

27. In *Lingle*, the Respondents participated in the publication of an article entitled "The Smoke Over Parts of Asia Obscures Some Profound Concerns" in an issue of the *International Herald Tribune*. The article referred to an "intolerant regime in the region" that suppressed dissent by "relying on a compliant judiciary to bankrupt opposition politicians." Although the article did not make any express reference to the Singapore Judiciary, the court found on the evidence before it that the offending passage referred to, and was intended to refer to, the Singapore Judiciary. In finding the Respondents in contempt of the court, the High Court held, at 702D-E, that:

> An allegation of partiality or impropriety on the part of a judge or court is contempt of court because such an allegation is *'clearly meant to shake public confidence in the administration of justice'* (see the Privy Council decision in *Badry v DPP of Mauritius* at p 305).

28. Most recently, in *Chee Soon Juan*, the Respondent, at a bankruptcy hearing before an assistant registrar of the Supreme Court, read out a statement in which he alleged that the Singapore Judiciary was biased and unfair, and that it acted against opposition politicians at the instance of the Singapore Government. After the hearing, the Respondent read and distributed the statement to media representatives outside the courtroom, and also copied the documents to persons and organizations within and outside Singapore. Lai Siu Chiu J found that the Respondent was in contempt of court. In doing so, she noted that:

> 30 The position in Singapore regarding the offence of scandalising the court is well settled. Any publication which alleges bias, *lack of impartiality*, impropriety or any wrongdoing concerning a judge in the exercise of his judicial function falls within the offence of scandalising the court: *Wain*'s case at 397, [49]. A number of local cases including *AG v Pang Cheng Lian* [1972 – 1974] SLR 658, *AG v Wong Hong Toy* and *AG v Zimmerman* have established that mounting unfounded attacks on the integrity of the Judiciary or making allegations of bias and lack of impartiality, is contempt of court.
>
> 31 Liability for scandalising the court does not depend on proof that the allegedly contemptuous publication creates a "real risk" of prejudicing the administration of justice; it is sufficient to prove that the words complained of have the "inherent tendency to interfere with the administration of justice" (*per*

> Sinnathuray J in *Wain*'s case at 397, [50]). In addition, the offence is also one of strict liability; the right to fair criticism is exceeded and a contempt of court is committed so long as the statement in question impugns the integrity and impartiality of the court, *even if it is not so intended* (see *AG v Lingle* [1995] 1 SLR 696 at 701, [13]).

29. It is noteworthy that in the same case, Lai Siu Chiu J also addressed the arguments of the Respondent which were based on cases decided elsewhere in the Commonwealth. She recognised that:

> 23 As a preliminary observation, case law from the Commonwealth cited by counsel for the Respondent and in particular recent jurisprudence from the UK had to be treated with considerable caution because of the differing legislation in those countries. To begin with, the position in UK has become statutorily regulated by the Contempt of Court Act 1981 (c 49) ("the 1981 UK Act"). Admittedly, the UK position on scandalising the court still falls to be regulated by the common law since the 1981 UK Act does not address the offence of scandalising the court. I should point out, however, that the UK's accession to the European Convention on Human Rights and Fundamental Freedoms ("the European Convention") has indirectly incorporated the jurisprudence of the European Court of Human Rights ("the European Court") and pegs the UK position on the offence of scandalising the court to the standard imposed by the European Convention.

30. Lai Siu Chiu J then went on to set out what should be the position in Singapore in the following terms:

> 25 Conditions unique to Singapore necessitate that we deal more firmly with attacks on the integrity and impartiality of our courts. To begin with, the geographical size of Singapore renders its courts more susceptible to unjustified attacks. In the words of the Privy Council in *Ahnee v Director of Public Prosecutions* [1999] 2 AC 294 at 305–306:
>
> > In England [proceedings for scandalising the court] are rare and none has been successfully brought for more than 60 years. But it is permissible to take into account that on a small island such as Mauritius the administration of justice is more vulnerable than in the United Kingdom. *The need for the offence of scandalizing the court on a small island is greater* … [emphasis added]
>
> 26 Further, in Singapore, judges decide both questions of law and fact, unlike in the UK where questions of fact are left to the jury. As explained by

> T S Sinnathuray J in *AG v Wain* [1991] SLR 383 ("*Wain*'s case") (at 394, [34]), the fact that the administration of justice in Singapore is "wholly in the hands of judges" must weigh heavily in the application of the law of contempt here; any attacks on a judge's impartiality must be "firmly dealt with" (*ibid*).
>
> 27 As rightly pointed out by Yong Pung How CJ in *Re Tan Khee Eng John* [1997] 3 SLR 382 (at [13]–[14]):
>
>> The power to punish for contempt of court allows a court to deal with conduct which would adversely affect the administration of justice. *Clearly, courts in different jurisdictions may hold different ideas about the principles to be adhered to in their administration of justice, and correspondingly about the sort of conduct which may be inimical to the effective administration of justice.* …
>>
>> … I do not think it would be useful or practicable in this case to adopt blindly the attitudes evinced by the English courts. *We must ask ourselves what is important to us here in Singapore*.
>>
>> [emphasis added]
>
> …
>
> 29 The offence of scandalising the court falls within the category of exceptions from the right to free speech expressly stipulated in Art 14(2)(*a*). Article 14(2)(*a*) clearly confers Parliament with the power to restrict a person's right of free speech in order to punish acts of contempt. Pursuant to Art 14, Parliament has, by way of s 7(1) of the SCJA, empowered the High Court and the Court of Appeal with jurisdiction to punish for "contempt of court". These provisions amount to statutory recognition of the common law misdemeanour of contempt of court: (see *Wain*'s case ([26] *supra*) at 394, [35]). This power under s 7(1) of the SCJA to punish for contempt would undoubtedly extend to the offence of scandalising the court as that is a form of contempt recognised by Singapore law (*AG v Wong Hong Toy* [1982 – 1983] SLR 398; *AG v Zimmerman* [1984 – 1985] SLR 814). The Respondent's submissions on this point were therefore entirely devoid of merit.

31. There can now thus be no question that the offence of scandalising the court falls within the category of exceptions from the right of free speech in Art 14(2)(a) of the Constitution. The power under section 8(1) of the SCA to punish for contempt of court undoubtedly extends to the offence of scandalising the court which is a form of contempt recognised by Singapore law.

V. THE CONTEMPT COMMITTED BY THE RESPONDENT

A. The evidence in gist

32. The Respondent was charged on 11 July 2008 with one count of using abusive words towards public servants in the execution of their duties under section 13D(1)(a) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184), *vide* MAC No. 3211 of 2008, and one count of disorderly behaviour under section 20 of the same Act, *vide* MAC No. 3212 of 2008. The Respondent claimed trial to these two charges, and his case was tried before District Judge James Leong in Subordinate Court No. 6 on various dates between 24 July 200 and 5 September 2008.

33. On 25 August 2008, in the course of the trial and after the Prosecution had closed its case, the Respondent uttered the following statement in open court:[19]

> *Earlier, having heard the Prosecution witnesses so far in this criminal case in the Republic of Singapore despite the fact that there is a claim of rule of law, thee* (sic) *is no jury and we have decision by judge alone, which has been shown in a series of cases, especially in politically motivated defamation cases especially against opposition politicians where the law has been used to silence dissent, there has not been seen to be even a modicum of justice.*

34. Subsequently, on the same day, District Judge James Leong asked the Respondent if he wished to recall or cross-examine any of the prosecution's witnesses following an amendment made to the charge in MAC No. 3211 of 2008. The Respondent then stated in open court:[20]

> *Do not wish to do so as I frankly do not have any faith or belief that I will get a fair trial in this Court. Any attempt on my part to recall these witnesses*

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[19] Tab C, ABD (Volume I), Exhibit LYPF-3: Notes of Evidence in *Public Prosecutor v Gopalan Nair* (MAC Nos. 3211-3212 of 2008) on 25 August 2008, at 470E-471B.
[20] Tab C, ABD (Volume I), Exhibit LYPF-3: Notes of Evidence in *Public Prosecutor v Gopalan Nair* (MAC Nos. 3211-3212 of 2008) on 25 August 2008, at 476A-B.

would only be a waste of my time since I believe the result will be the same in any event.

35. In response to the Prosecution's closing submissions, the Respondent made the following statements on 29 August 2008 in open court:[21]

> *We know that over the entire history of Singapore, Courts used as a tool to silence oppression by persecuting political opposition. I am a former politician in Singapore. I have continued to criticise administration. Argument must be taken with a pinch of salt. There is an IBA Report. Judges in Singapore allow themselves to be used as a political tool. I contend I am being prosecuted because of who I am and not what I did.*

36. On or about 1 September 2008, the Respondent published a blog post titled "***Another classic case of trying to use the courts to silence dissent***", dated 1 September 2008, on his blog, "Singapore Dissident", at the Internet address http://singaporedissident.blogpost.com/. In this blog post, he commented on his ongoing trial before District Judge James Leong:[22]

> *What I wanted to write about in this blog post is to show you one more time how the Singapore court uses the law for its political ends. Yet another shameful instance of it.*
>
> *I have never been under any illusions that I would ever win any case in Singapore, simply because my name is Gopalan Nair.*
>
> …
>
> *And it is the timing of the cases that shows how pathetic the Singapore courts and their judges are; out to achieve the political ends of their master Lee Kuan Yew and his government.*
>
> *The verdict and the sentencing on the disorderly behaviour case is set for Sept 05, 2008 in Court 6, 2008. The blogging case in the High Court is set to begin on Sept 08, 2008 in the High Court. Perfect timing, don't you think. I will be convicted on Sept 05, 2008 on a Friday in the Subordinate Courts. The Singapore state controlled press will carry the story that I was convicted and punished on*

[21] Tab C, ABD (Volume I), Exhibit LYPF-4: Notes of Evidence in *Public Prosecutor v Gopalan Nair* (MAC Nos. 3211-3212 of 2008) on 29 August 2008, at 577A-C.
[22] Tab D, ABD (Volume I), Exhibit JNST-1 at pages 5-6 of 38.

Saturday, Sept 06, 2008. On Monday, I will go to trial in the High Court; already having been branded as one who has gone about being disorderly and has hurled insults at policemen. Makes it much easier to convict him in the blogging case, in the eyes of Singaporeans, as one who has already been convicted of disorderly behaviour and for insulting policemen.

37. On 5 September 2008, District Judge James Leong found that the Prosecution had proven the two charges beyond reasonable doubt, and convicted the Respondent accordingly. Following his conviction, the Respondent, when responding to the Prosecution's submissions on sentence, stated in open court:[23]

Secondly, DPP makes a great deal of the way I had conducted my defence to show that a deterrent sentence must be imposed. In trying to prove his point, he makes a lot about how I feel towards the courts of this country and how I feel it is being abused for political ends. This is the opinion I have of these courts and no amount of threats and punishment can make me change that view.

38. The Respondent was sentenced by District Judge James Leong on 5 September 2008 to pay a fine of $2,000 for the offence in MAC No. 3211 of 2008 (in default of which he was to serve 2 weeks' imprisonment), and to pay a fine of $1,000 for the offence in MAC No. 3212 of 2008 (in default of which he was to serve 1 week's imprisonment). The Respondent has since paid the fines.

39. On or about 6 September 2008, the Respondent published a blog post titled **"*Convicted*"**, dated 6 September 2008, on his blog, "Singapore Dissident", at http://singaporedissident.blogpost.com/. In this blog post, he commented on his conviction by District Judge James Leong:[24]

The surprising thing about this name business is that this man, Mr. Koy, as well as the judge himself had flatly refused to give their full true names at all.

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[23] Tab C, ABD (Volume I), Exhibit LYPF-5: Notes of Evidence in *Public Prosecutor v Gopalan Nair* (MAC Nos. 3211-3212 of 2008) on 5 September 2008, at 591C-D.
[24] Tab D, ABD (Volume I), Exhibit JNST-1 at pages 2-4 of 38.

Although I cannot really say why this police officer from Central Police Station Vickneswaran s/o Sockalingam, Peter Koy and Judge James Leong were so determined to hide their full true names, I can make an intelligent guess. As they are aware that I write this blog, and that it is well read, and as there is a possibility that I may even write a book on this whole unhappy episode, they rather remain unknown to avoid embarrassment. They probably don't want the world to know what they have to do for a living.

I had also pointed out that I had no respect for the Singapore judiciary which has been seen to be used as a political tool to silence dissent.

…

I told the judge that if it makes him happy, I could say I am sorry, but truly I am not; since it is impossible for someone to have remorse for a crime he did not commit. Saying sorry will therefore not do any good, neither for me nor for the judge. Just because the judge James Leong says I am guilty, does not make me so.

…

I have no doubt in my mind, knowing how the legal system in Singapore works that the sentence imposed on me by the judge was already predetermined well before I walked into court. You see, it was not a criminal trial at all, but a political exercise from the start. The court was yet again being used by the Lee Kuan Yew dictatorship just as they have done for the entire history of Singapore since 1959, for a political purpose. It was to punish an openly known critic of the Singapore government so as to send a message to every other Singaporean that criticizing the government means trouble. And therefore they should not do it.

…

But alas he is weak. He cuts a pathetic figure. A man, because of his circumstances, having to do things that he does not really want to do. He knows that his employment as a judge in the Singapore courts depends on the patronage of Lee Kuan Yew and his friends. He also knows that Lee demands his judges to punish political opponents of the government. And therefore to keep his job as a judge, he has no choice but to find me guilty. The sentence imposed upon me, and the timing of the dates of the sentencing were, in all probability, all decided for him by the Minister for Law in consultation with Lee Kuan Yew and his friends.

…

I only wish one day, this man will have the courage of his conviction either to tell this government in no uncertain terms that he is not a politician, and if they wish dirty work to be done, they should find someone else. And if the government refuses he should just walk out like a self-respecting man with his head high on

his shoulders and with his pride intact. Alas, that may be too much to ask in this fear-ridden island of Singapore.

B. Contempt in the face of the court committed by the Respondent

40. The utterances of the Respondent set out at [33] – [35] and [37] above, which were made publicly and recorded by District judge James Leong in his Notes of Evidence, conveyed the following effects:

(a) that there has been no justice in "politically motivated defamation cases" heard in Singapore courts;

(b) the Respondent would not get a fair trial as District Judge Leong had already decided the outcome of the trial;

(c) that Singapore courts are tools to silence political dissent;

(d) that Judges in Singapore allow themselves to be used as political tools; and

(e) that Singapore courts were being abused for political ends.

These are plainly contempts in the face of the court. They are not only insulting and disrespectful but also amount to a public attack against District Judge James Leong and the whole of the Singapore Judiciary.

C. The Respondent has scandalised the Court by publishing the blog posts

41. The Respondent has also scandalised the court by posting the two blog posts as described at [36] and [39] above. These blog posts were preserved by Senior Staff Sergeant Joe Ng Suan Teck on 12 September 2008.

42. Postings in a blog that is publicly-accessible through the Internet are no different from publication of an article in a newspaper that is to be circulated. Indeed, many major newspapers now exist online. It just cannot be that words in the print version of a newspaper that scandalises the court would be punishable as contempt of court while the same words would not be contemptuous if published on the Internet in a publicly accessible blog. Utterances and actions that are in contempt of court do not lose their nature as such merely because they are carried in a different media.

43. It is patently obvious that all these blogs in issue scandalised District Judge James Leong and the Singapore Judiciary. They convey, in no uncertain terms, that

(a) District Judge James Leong was using the law for political ends;

(b) The Respondent would never succeed in any court hearing in Singapore because of who he is, regardless of the merits of his case;

(c) District Judge James Leong and the Singapore Judiciary are not independent from the present ruling party in Singapore, who is their master;

(d) District Judge James Leong had arranged for the Respondent to be convicted on 5 September 2008 so as to discredit him before the commencement of his criminal trial in the High Court on 8 September 2008 and did so to achieve the political ends of his master;

(e) District Judge James Leong was ashamed of his own occupation and was thus determined to hide his full name from the Respondent;

(f) District Judge James Leong had already predetermined the sentence before the commencement of the trial, this and the date of sentencing having been decided for him by the Minister for Law and Mr Lee Kuan Yew (who is the Minister Mentor);

(g) District Judge James Leong allowed himself to be used for a political purpose, namely to punish a critic of the Singapore government to deter other critics;

(h) District Judge James Leong depended on the patronage of the government for his employment as a Judge and had to find the Respondent guilty to keep his job; and

(i) District Judge James Leong had, out of fear, allowed himself to be used to do the "dirty work" of the government.

44. These allegations impugn the impartiality of District Judge James Leong and the Singapore Judiciary. They seek to undermine the very foundations of what it means to hold judicial appointment and to exercise judicial functions. The statements by the Respondent suggesting that District Judge James Leong and the Singapore Judiciary are not independent and are subject to pressure from the government amounts to contempt of court: *Zimmerman* at 817B-C. In *Chee Soon Juan*, it was held by Lai Siu Chiu J at [36] that accusing "*the Singapore Judiciary of favouring the interests of the Government and failing to discharge its functions impartially*" constituted the offence of scandalising the court.

45. On 8 September 2008, the Respondent claimed trial in the High Court to a charge of insulting a public servant sitting in judicial proceedings, an offence under section 228 of the Penal Code (Cap 224); he was accordingly tried before Kan Ting Chiu J in

Criminal Case No. 23 of 2008. On 15 September 2008, whilst the Respondent was being cross-examined during these proceedings, he was asked about the authorship of the blog posts found at http://singaporedissident.blogpost.com/. The Respondent admitted to authorship of the posts found on the blog, as the following excerpt shows:[25]

> Q: Now Mr Nair, is the web blog at internet address, http://siinaporedissident.blogspot.com maintained by you?
>
> A: Your Honour, I don't see the purpose of this. I have already said this, that all along, it is mine.
>
> Court: Answer the question. It is relevant because the web blog is where the message which is the statement of this charge appears. Yes.
>
> Accused: Yeah, I mean all the time I've said it's mine.
>
> A: So yes, Sir, for the umpteen time, this is mine.
>
> Court: Yes.
>
> Q: Now, I refer to this blog as the Singapore Dissident blog for short henceforth.
>
> …
>
> Q: Now Mr Nair, are you the author of all the posts on the Singapore Dissident blog?
>
> A: Yes, I am.
>
> Q: And you have been making these posts on --- you've been making these posts on the blog since December 2006?
>
> A: Yes, that's correct.
>
> Q: Has anyone else made any post on the Singapore Dissident blog?
>
> A: No, as far as --- as far as my understanding, no.
>
> …

[25] Tab C, ABD (Volume I), Exhibit LYPF-7: Notes of Evidence in *Public Prosecutor v Gopalan Nair* (Criminal Case No. 23 of 2008) on 15 September 2008, at pages 59-60.

Q: Am I right to say that a password is required to gain access to and to post articles on the pod ---

A: Yes.

Q: --- on the blog?

A: Yes.

Q: And apart from yourself or --- apart from yourself, does any one else have access to this password?

A: Er, the answer to that question is I don't believe any one else has, er, placed any blogs other than myself.

Q: So are you then saying that you take responsibility for all the blogs, all the posts that appear on the Singapore Dissident blog?

A: To the best of my knowledge, yes.

There is thus no doubt that the material statements in the blog posts dated 1 September 2008 and 6 September 2008 were written and published by the Respondent.

46. It is the law that the Respondent's conduct in scandalising the court must be firmly dealt with. In the words of TS Sinnathuray J in *Wain* at 394D-E:

> [B]ecause judges in Singapore are judges of facts, the contempt of scandalising the court by imputing bias to a judge, or attacking his impartiality, his propriety and integrity in the exercise of his judicial functions, must be firmly dealt with. This is for the reason that such imputations and allegations strike at the very core of the functions of a judge. Such accusations are harmful to public interest and are clearly calculated to undermine public confidence in the administration of justice and must necessarily lower the authority of the courts.

In *Pang Cheng Lian*, Wee Chong Jin CJ held, at 660I – 661A, that an "allegation attacking the whole of the judiciary of this country is the worst form of 'scandalising' of the court meriting the infliction of a severe penalty".

D. The Respondent's intent

47. It is settled law that the offence of contempt of court does not require a determination of the intent of the alleged contemnor. There is no necessity for evidence to be presented to show that the Respondent intended to commit the contempt before he can be cited and punished for his misconduct: *Wain* at 395G-I; *Chee Soon Juan* at [31]. This notwithstanding, it was patently clear that the Respondent, in making the above-mentioned statements during his trial before District Judge Leong, and in his blog posts dated 1 September 2008 and 6 September 2008, intended to attack the independence and impartiality of the Singapore Judiciary in general, and District Judge James Leong in particular.

48. The Respondent's contempt in the face of the court took on a more audacious slant when, in his first blog post dated 1 September 2008, he constructed allegations of a grand conspiracy to discredit him, based on the date of his sentencing. Following his conviction, the Respondent was even more vindictive and vituperative in his blog post dated 6 September 2008, launching into disparaging attacks against the character and office of District Judge James Leong. This escalation of contemptuous remarks made by the Respondent was plainly indicative of his intention to bring the administration of justice in Singapore into disrepute.

VII. CONCLUSION

49. The Singapore Judiciary is one of the fundamental pillars of our nationhood. It is central to our system of government and rule of law. It interprets the law not only as between citizens *inter se*, but also between the Executive arm of the government and citizens. The Constitution provides for a Judiciary that is independent of the Executive and the Legislative arms of government. Judges have sworn an oath to faithfully

discharge their judicial duties and do right to everyone without fear or favour, affection or ill-will and to preserve, protect and defend the Constitution.

50. Singapore has come a long way since attaining nationhood. It has made great economic progress while enjoying peace and social stability. This has been due, in no small part, to the competence and efficiency of our legal system, which is centered around an independent Judiciary administering justice through law in a fair and impartial manner. This has been widely recognised throughout the world and has resulted in our Judiciary being consistently ranked as the best, or among the best, in the world today.

51. The present application citing the Respondent for contempt of court is being made by the Attorney-General in his capacity as guardian of the public interest. It is being made to ensure that the Singapore Judiciary it is not undermined by scurrilous and unjustified assaults on its dignity and its reputation, which can, if unchecked, erode public confidence in this important national institution. The assault on the Singapore Judiciary and District James Judge Leong launched by the Respondent must thus be met by all those who treasure the rule of Law in Singapore, and our present way of life.

52. The Subordinate Courts is where the bulk of the criminal and civil cases in Singapore are dealt with. To many members of the public, this is the face of justice that they see and come into contact with. Attacking the independence and impartiality of Subordinate Court judges should be viewed as a grave affront to the authority and administration of justice in Singapore. The Respondent has, through his utterances in court to District judge James Leong and the statements published by him in his blog on the Internet, committed contempt in the face of the District Judge James Leong and also scandalised the Judge as well as the Singapore Judiciary.

53. The Attorney-General submits that this is an appropriate instance for this Honourable Court to invoke its powers to punish for contempt of court and to punish the Respondent accordingly.

Dated this 12th day of November 2008

JEFFREY CHAN WAH TECK
DEPUTY SOLICITOR-GENERAL
FOR ATTORNEY-GENERAL