

## **MEDIA BACKGROUND BRIEF**

### **CONTEMPT OF COURT PROCEEDINGS AGAINST GOPALAN NAIR**

The Attorney-General has applied to court for contempt proceedings to be instituted against Gopalan Nair (the Respondent).

On 11 July 2008, the Respondent was charged with offences under the Miscellaneous Offences (Public Order and Nuisance) Act. He was tried before District Judge Leong Kui Yiu James (“District Judge Leong”) in the Subordinate Courts on various dates between 24 July 2008 and 5 September 2008. In the course of the trial, the Respondent attacked the independence and impartiality of the Singapore Judiciary and District Judge Leong by stating, *inter alia*, that the courts were being abused for political ends.

The Respondent has also attacked the independence and impartiality of the Singapore Judiciary and District Judge Leong in his web log (“blog”) “Singapore Dissident” at <http://singaporedissident.blogspot.com/> through his following two blog posts:

- (i) a blog post titled “Another classic case of trying to use the courts to silence dissent”, dated 1 September 2008;
- (ii) a blog post titled “Convicted”, dated 6 September 2008.

Through such conduct, the Respondent has engaged in a deliberate and calculated course of action to impugn the reputation of and undermine public confidence in the Singapore Judiciary, and to lower its authority in the administration of justice in Singapore.

#### **Background on contempt of court**

The courts’ power to punish conduct that amounts to contempt of court is derived from common law. This power has been recognised as part of the common law as early as the 13th century. Singapore law is based on the common law, as originally formed in England and subsequently developed by the Singapore courts after independence.

There are different types of contempt of court. Contempt of court may take the form of remarks that are designed to interfere with an on-going case by trying to

influence the judge. Another form of contempt consists of attacks on the independence or integrity of the court or judges. In this regard, anything done or published that is calculated to bring a court or a judge of the court into contempt or to lower his authority is a contempt of court. This form of contempt is commonly referred to as 'scandalising the court'.

Contempt of court is concerned with the protection of the administration of justice. One of the cornerstones of the administration of justice is that the public must be able to rely on the courts to deliver judgments free from bias or interference from others. To this end, the confidence of the public in the integrity and independence of the courts must not be undermined.

Unlike other public figures, judges do not have the liberty of entering into a public debate or defending themselves in a public forum when their integrity is attacked. The administration of justice is a matter of public interest. The Attorney-General as guardian of the public interest therefore has the responsibility to institute contempt proceedings when the integrity and independence of the courts or judges is attacked.

Contempt proceedings involve a two-stage process. In the first stage, the Attorney-General has to apply to the court for permission to institute contempt proceedings against the respondents (i.e. the persons who are said to have committed the contempt). This application is heard *ex-parte*. This means that the application does not have to be served on the respondents, who normally will not appear. The application will be heard in a judge's chambers and not in open court. The requirement for the court's permission before instituting contempt proceedings is designed to ensure that the facts presented by the Attorney-General are matters that merit the person being brought before the court to explain why he should not be punished for contempt.

If permission is granted, the proceedings will enter the second stage. This is the stage where the substantive arguments will be heard. During this stage, the respondents will be officially notified of the proceedings. A hearing date will be given. At the hearing the respondents will be have the opportunity to make their arguments in open court. In some cases the respondents choose to apologise and withdraw their allegations. This is taken into account in assessing the appropriate sanction for the contempt but does not itself negate the original contempt.

The law of contempt of court is not peculiar to Singapore. There have been cases in England, Australia and New Zealand where newspapers have been held to have been in contempt of court because they alleged bias or lack of impartiality on the part of the courts and judges.

## **The position of the Attorney-General**

In Singapore, unlike in many other countries (including England and Australia), the Attorney-General is not a politician. He is appointed by the President on the advice of the Prime Minister from persons who are qualified to become Judges of the Supreme Court. The President has a discretion in this matter and may reject the nominee if he is not satisfied of that person's suitability to fill the post. The Attorney-General may not be removed during his term of office except for misconduct.