



MEDIA BRIEF

CONTEMPT OF COURT PROCEEDINGS AGAINST MR ALAN SHADRAKE

SUMMARY OF ATTORNEY-GENERAL'S ARGUMENTS

1. The contempt proceedings commenced by the Attorney-General against Mr Alan Shadrake in respect of his contemptuous statements in “Once a Jolly Hangman: Singapore justice in the dock” (“the Book”) were heard in open court by the Honourable Justice Quentin Loh on 18, 19 and 20 October 2010.

2. The Attorney-General presented arguments in support of the contempt proceedings against Mr Shadrake on the morning of 18 October 2010. Thereafter, counsel for Mr Shadrake, Mr M Ravi, responded with his arguments and concluded in the afternoon of 19 October 2010. On 20 October 2010, the Attorney-General replied to Mr Ravi’s arguments. The Attorney-General’s arguments and reply dealt with the following issues:

- (a) Policy underlying contempt proceedings;
- (b) Appropriate legal test for contempt by scandalising the court;
- (c) Scope of fair criticism; and
- (d) Import of the offending 14 Statements.

Policy underlying contempt proceedings

3. Contempt laws exist for the fundamental purpose of safeguarding the Rule of Law. Contempt proceedings are brought to repel baseless attacks on the Judiciary that threaten the Rule of Law. It is critical to the Rule of Law that the court’s authority must be respected and the law will not tolerate any conduct that impugns the impartiality, integrity or independence of the courts. The Attorney-General does not bring contempt proceedings on whims and fancies but to protect the administration of justice and the Rule of Law. The contempt proceedings have been brought against Mr Shadrake because he denigrates the Singapore Judiciary which is responsible for upholding the Rule of Law, and in so doing he is undermining public confidence in the administration of justice in Singapore.

Appropriate legal test for contempt by scandalising the court

4. Counsel for Mr Shadrake argued that the appropriate legal test to ascertain if anything said about the Judiciary amounts to contempt by scandalising the court should be whether the acts or statements lead to a “real risk” of undermining the administration of justice.

5. The Attorney-General’s position is that the appropriate legal test to determine whether acts or statements are in contempt by scandalising the court is the “inherent tendency” test. The test is whether the acts or statements have the “*inherent tendency to interfere with the administration of justice*”. Where the acts or statements tend to interfere with the administration of justice, the offence of scandalizing the court will have been committed. This is the test which has been applied consistently by the Singapore High Court in cases spanning over thirty years. The inherent tendency test is also adopted in Malaysia for contempt by scandalising the court.

6. The adoption of the inherent tendency test in Singapore takes into account the conditions and circumstances that are unique to Singapore. The principle that the test is to be shaped by a country’s unique conditions and values is recognised by other jurisdictions such as Hong Kong, Malaysia, Mauritius and South Africa. Singapore’s multi-racial, multi-religious, crowded society requires the Rule of Law to be taken seriously by all to maintain order and liberty. The small size of our Judiciary also makes the adverse effect of any allegations against the Judiciary much more significant. Caution must therefore be exercised before applying the “real risk” test adopted by other countries as these other countries have different values and circumstances.

7. The inherent tendency test does not stop a litigant with a valid complaint against a Judge from seeking redress through the appeal or review process. In addition, Article 98(3) of the Constitution prescribes a procedure for investigating a complaint against judicial misconduct. The constitutional framework in Singapore thus recognises the overriding importance of maintaining public confidence in the administration of justice and the Rule of Law. The Constitution also recognises the importance of safeguarding public confidence in the administration of justice by expressly making the right to free speech subject to the laws against contempt in Article 14(2) of the Constitution.

8. In any case, such is the egregious nature of the contemptuous stings in the 14 Statements that even on the “real risk” test argued for by Mr Shadrake’s counsel, the 14 Statements in the Book would be held to be contemptuous.

Scope of fair criticism

9. According to the case law, a criticism of a Judge or judicial decision that is (a) fair, temperate; (b) made in good faith within the limits of “reasonable argument or expostulation”; and (c) which do not impute improper motives or impugn the integrity of the Judiciary or the courts are not contemptuous because such a criticism does not have an “inherent tendency to interfere with the administration of justice”. Such a criticism is regarded in law as fair criticism. However, counsel for Mr Shadrake argued for a much

broader formulation of the doctrine of fair criticism. The Attorney-General pointed out that this argument goes against the established case law and is unsupported by any legal authority. Fair criticism is designed to balance the public interest in protecting the administration of justice against the public interest in freedom of speech. The balance is struck by examining the content of what is said, the manner in which it is said and the effect it would have, and an objective analysis of whether the statements fall within the scope of fair criticism. There is a dual requirement touching on the content of the criticism and specifically what it may not extend to as well as to the terms in which it may be expressed.

10. As was demonstrated at the hearing, the 14 Statements made by Mr Shadrake amount to a broadside attack against the entire judicial system in Singapore. The 14 Statements clearly fall outside the scope of fair criticism.

Import of the 14 Statements

11. Mr Shadrake claimed that the 14 Statements do not impugn the Singapore Judiciary. However, the Attorney-General pointed out that a reasonable person reading the Book would disagree. The title of the Book refers to the judging of the Judiciary, there is reference to “judicial scandals” in the Book and the 14 Statements directly attack the Judiciary.

12. By any objective standard, Mr Shadrake’s 14 Statements imply that the Singapore courts dispense unequal justice and decide cases according to the instructions of the Singapore Government. The Attorney-General’s position is that Mr Shadrake’s baseless and unwarranted attacks against the Singapore Judiciary are plainly and grossly in contempt of court.

13. The court has reserved judgment.

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