inter se

Academy Publishing

contents

IN FOCUS

03 The Honourable Chief Justice Chan Sek Keong shares his views on contempt of court issues.

06 Harry Elias SC examines the ambit of acts of contempt in relation to lawyers' conduct.

12 Ang Cheng Hock SC and Tay Yong Seng provide an overview of the law of civil and criminal contempt.

18 Jeth Lee speaks to members of the legal fraternity to find out what contempt of court means to them.

27 A look at the recent decision on the law on contempt of court for scandalising the judiciary.

INSIGHTS

34 Yap Teong Liang gives guidance on how to deal with challenges in family law practice.

SIDE BAR

44 Adrian Tan brings us true-life examples of contempt of court around the world.

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EVERYTHING must come to an end and after publishing *Inter Se* (and its predecessor) for 22 years, we are sad to announce that this July 2011 issue will be its swansong. It has been quite an experience.

Inter Se began as a simple way of disseminating information and reaching out to our members. It started as a four-page *SAL Newsletter*, which only narrated past events and announced forthcoming activities, that soon morphed into something bigger to include case and legislation updates and thought-provoking articles.

With progress came change, bringing about other effective avenues for SAL to further its objectives: e-alerts to members; a tier-1 journal for articles; and online services in the form of LawNet and Singapore Law Watch for legislation and case updates.

This final issue (unlike another defunct publication's) contains no crosswords nor "libels or any hidden mocking messages"; the absence of which is due solely to a lack of any grouse to air, and not out of deference to the law on defamation, *vis-à-vis* contempt which is the theme for this issue.

The proofs were ready for publication in July 2010 when, as Murphy's law would have it, news broke of *Alan Shadrake*'s case just as we were about to go to print. Aware that the subject matter was *sub judice* and the issue incomplete if the court's decision was excluded, we thus put the issue on hold till final judgment was delivered, and a case summary could be included. The judgment of the High Court in *Alan Shadrake*'s case was delivered on 3 and 16 November 2010 (see [2011] 2 SLR 445, [2011] 2 SLR 506) and by the Court of Appeal on 27 May 2011 (see [2011] SCCA 26): see also p 27 of this issue for a commentary on the decision of the Court of Appeal.

We hope you will enjoy this last issue of *Inter Se*.

We have a number of people to thank:

Chief Justice Chan Sek Keong and the **Executive Committee** – for their complete trust and unending good humour shown to the team in charge.

Contributors – who unfailingly delivered despite their heavy professional schedules. This periodical would be nothing without their input.

Adrian Tan – our witty but unwitting "freelance writer" who most likely assumed his Jan–Jun 2008 issue contribution would be a one-off request.

Our Chief Executive and the **Editorial Committee** – *Inter Se*'s think tank members who still had the energy to come up with themes and sub-topics after a long day at work.

Mediactive – the graphic designers (since May 2003) who came through each and every time even though the given timeframe for completion mysteriously and progressively became shorter with each passing issue.

And lastly, our **readers** who have supported us through the years.

Thank you!

Q & A WITH CHIEF JUSTICE CHAN SEK KEONG

THE HONOURABLE CHIEF JUSTICE CHAN SEK KEONG SHARES HIS VIEWS ON CONTEMPT OF COURT WITH *INTER SE*.

Last year, and more recently in your Opening of the Legal Year speech this January, you spoke about proceedings relating to contempt of court. Why is this an important issue, and have there been any specific events or trends that have prompted your comments?

This is an important issue because it affects public confidence in the integrity and impartiality of the courts in deciding disputes especially where the contempt directly impugns these judicial values. Specifically, what I had in mind was the contempt committed by a few youths wearing T-shirts imprinted with a picture of a kangaroo, and also the contempt committed by an officious bystander

from a foreign country against one of our High Court judges in relation to a matter which did not concern him.

Do you see the laws relating to contempt of court in Singapore developing similarly to or differently from those in other jurisdictions? Are there any aspects of the Singapore judicial, political or social system that would have a unique impact on the nature or penalties for contempt of court proceedings here?

The law on contempt of court is fairly well developed in Singapore. There are many kinds of contempt. The more controversial kind is that known as "scandalising" the court. It covers allegations such as that the Judiciary is not independent or impartial or that the judges are pro-Executive in all cases involving the Government, *ie*, politically corrupted, or that they have "prostituted" themselves, all implying that they are not fit to hold judicial office, and that they have made a mockery of their oath of office. It is important to remember this type of contempt is a common law offence. The rationale of punishing such kind of contempt is to uphold the authority of the court which is an indispensable institution for the administration of justice. Judges from other common law jurisdictions may be more tolerant of abuse and opprobrium being flung at them, but that does not mean that we should follow their example. We do not mind criticism, even harsh criticism, of the merits or justice of our decisions, on grounds that are not related to our fitness to hold judicial office.

Many critics consider that the law of contempt is obsolete in modern times, and some have suggested that the best way to deal with all allegations and defamatory remarks against judges is for the judges to ignore them, however baseless they may be. Those who do not hold judicial office may not fully appreciate or share the same sense of responsibility that a judge holds with regard to his office. Scurrilous remarks, unless firmly dealt with, would inevitably undermine public confidence in the Judiciary. This is the reason why the courts punish contemnors, and not, as some people seem to think, to immunise and protect themselves from criticism in their work or to restrict freedom of speech. Courts have always accepted criticisms which do not impugn their integrity or good faith, such as, that the reasoning of a judge is flawed or that he had omitted to take into consideration precedents or material facts. We see such criticisms all the time, particularly in academic journals, and no such author has ever been taken to task for what he has written.

> "Judges from other common law jurisdictions may be more tolerant of abuse and opprobrium being flung at them, but that does not mean that we should follow their example."

You have said that at present, punishments for contempt of court are unlimited and at the discretion of the judges, although the courts have exercised great restraint in the past. Until such offences have been put into statutory form, what kinds of contempt of court offences should be considered particularly serious, and what guidelines should be borne in mind by the courts in meting out punishments?

I have mentioned the more serious offences in my previous comments. Any baseless allegation that a judge is not independent, especially *vis-à-vis* the Executive or that he is corrupt or which undermines public confidence in him or her as a judge, is serious. As for punishments, the courts have been, up to now, reluctant to sentence contemnors to imprisonment, except for periods that serve as a warning to them not to repeat their contempt. They have refrained from imposing deterrent sentences on contemnor. I cannot say whether this will change, as it must depend on the circumstances of each case, especially the gravity of the contempt.

Do you envisage any difficulties in the drafting or enforcement of legislation relating to contempt of court offences, and what precautions should be taken to prevent these?

No, to the first part of the question. None, to the second part of the question so long as the draftsman is familiar with the general principles of contempt and the rationale of the law of contempt. India enacted a contempt of court statute some time ago. Other common law jurisdictions may also have done likewise. Of course, the draftsman should also take into account the current state of the law of contempt in common law jurisdictions. Future developments in the law can also be provided for by enacting an appropriate provision similar to s 5 of the Criminal Procedure Code, save that the referenced jurisdiction may be widened to include all common law jurisdictions. *IS*

Inter Se thanks the Chief Justice for agreeing to this interview.

> "Courts have always accepted criticisms which do not impugn their integrity or good faith, such as, that the reasoning of a judge is flawed or that he had omitted to take into consideration precedents or material facts. We see such criticisms all the time, particularly in academic journals, and no such author has ever been taken to task for what he has written."

FROM COURTESY TO CONTEMPT

THE DISTINCTION BETWEEN COURTESY AND CONTEMPT IS EXPLAINED WITH THE HELP OF TWO CASE SCENARIOS INVOLVING PRACTITIONERS.

By **Harry Elias SC, Founder and Consultant, Harry Elias Partnership LLP***

> “Of all the places where law and order must be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society.” [1]

ANY conduct, which has undue interference with the administration of justice, must be treated with severity. Singapore, like many other jurisdictions, protects the administration of justice by empowering judicial officers[2] to hold persons accountable for conduct amounting to contempt of court. Contempt of court can take two forms: contempt in the face of the court and contempt in connection with proceedings. The consequences of contempt can be either criminal or civil in nature. There have been many cases recently involving contempt proceedings commenced against members of the public. The obligations not to cause a contempt of court also extend to legal practitioners in their conduct before the court. In this article, I will try to explain the notion of contempt, particularly with regard to lawyers. In doing so, I will cover those instances of conduct by lawyers, which have been considered by our courts in the context of contempt of court.

In particular I will be discussing the cases of *Ram Goswami v Public Prosecutor* [1983–1984] SLR(R) 694 (in which I had a personal involvement) and *Re Tan Khee Eng John* [1997] 1 SLR(R) 870.

RAM GOSWAMI

Goswami was an advocate and solicitor. He agreed to represent two accused persons (“the clients”) at a trial in the District Court in return for an agreed sum, to be paid before the commencement of trial. The clients only paid part of the agreed sum by the first day of the trial. Nevertheless, Goswami acted for them and defended them during the Prosecution’s case, and submitted that there was no case to answer. The trial was then adjourned to 25 June 1983 for the District Judge to consider whether to call the Defence. The balance of the agreed sum was still not paid and Goswami informed the clients that if it were not paid by 25 June 1983, he would

* The Author would like to acknowledge the assistance of S Suressh, Partner, Harry Elias Partnership LLP and A Sangeetha, Trainee, Harry Elias Partnership LLP.

1 *Morris v Crown Office* [1970] 2 QB 114 at 122, per Lord Denning MR.

2 Subordinate Courts Act (Cap 321, 2007 Rev Ed) s 8; Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) s 7.

apply to the court to discharge himself. The day came and the balance was not paid. Goswami informed the court that his clients failed to give him instructions since the last hearing and failed to pay the agreed fees despite repeated promises to do so. In this regard, he applied for a week's adjournment or alternatively to be discharged. The District Judge refused his application and found him in contempt of court, requiring him to show cause. Goswami explained the grounds for applying for a discharge and apologised to the court. The District Judge rejected his explanation and he was fined $500.

> "Any conduct, which has undue interference with the administration of justice, must be treated with severity."

On appeal, the then Chief Justice Wee Chong Jin set aside the conviction and refunded the fine. In essence, the appeal was allowed because the court felt that Goswami's case did not go so far as to be beyond the limits of non-cooperation or refusal to comply with the court's directions so as to warrant being considered a contempt of court. The court held that Goswami had not intended to delay or hinder the trial of the clients and the court held that Goswami's refusal to carry on did not amount to an interference with the course of justice.

In the judgment, the Chief Justice highlighted that Goswami's refusal to carry on with the trial meant that the clients had to either conduct their defence in person, or engage another lawyer to defend themselves. Only in the later case would there have been a need for an adjournment. However, the District Judge did not ask the clients whether they were willing to conduct their own defence. In the event, had the trial judge done so and the accused persons were willing to conduct their own defence, this would mean that the trial could continue and there would not be any interference with the course of justice.

Even if the clients had asked for an adjournment to engage new lawyers, the Chief Justice was of the view that Goswami's refusal to continue acting did not amount to contempt. In this, he relied on the observation of Stephenson LJ in *Weston v Central Criminal Court* [1977] QB 32 at 46 that not every failure to co-operate or assist the court is a contempt. Stephenson LJ cited with approval the decision of the Privy Council in *Joseph Orakwue Izuora v The Queen* [1953] AC 327 where the barrister's application to be excused from court attendance was granted. Later at the same hearing, the court withdrew the permission. The next day, the barrister did not attend court and provided no communication to the court. He was held in contempt for his absence. On appeal, the Privy Council held that the barrister's discourteous conduct might have been a disregard of his duty to his client but that would not be contempt.

The imperative issue is when a conduct will be more than discourtesy. Goswami's explanation to the court was neither discourtesy nor contempt. It was a breakdown of client-solicitor relationship due to the non-payment of agreed costs. However, it should be noted that the Chief Justice did not address the question of whether a lawyer can discharge himself on the ground that he had not been paid his fees. When the client refuses to pay the agreed fees and does not keep to his side of the bargain, it seems logical and very practical for the lawyer to cease representing the client. After all, in the commercial world, where a service provider is not paid for its services, it is the most natural thing for the service provider to withhold its services.

This is exactly what Goswami did. He exercised his right to discharge himself when he was not paid his agreed fees. The fees is an important element in the relationship between lawyer and client. Many lawyers face the problem of bad debts, and of trying to "chase" clients for the moneys they promised to pay. Would it then be fair for lawyers to be forced to act for clients without a prospect of being paid?

In civil practice, it is only in very exceptional cases that a lawyer will be precluded from discharging himself when he has not been paid.[3] The courts have recognised that the constitutional right to counsel does not allow an accused person to avoid paying his lawyer. The right only entitles the accused person to be represented by the counsel of his choice if the counsel is willing and able to represent him.[4] In other words, if counsel is not paid, he is perfectly entitled to discharge himself because he is not willing to represent the accused person.

It should be borne in mind that Goswami's decision to discharge himself was not a last minute thing. He had given prior notice to the clients that he would be doing so if they did not pay him by the date stipulated. The clients failed to pay, and failed also to engage substitute lawyers to take over the case. If there was any disruption to the administration of justice because of his discharge, it is just as much caused by the clients' action as Goswami's, if not more so.

TAN KHEE ENG

In the next case of *Re Tan Khee Eng John*, the then Chief Justice Yong Pung How directed Tan, an advocate

3 See *Singapore Civil Procedure 2007* (G P Selvam gen ed) (Sweet & Maxwell, 2007) at paras 64/5/2–64/5/5.

4 *Balasundaram s/o Suppiah v Public Prosecutor* [1996] 1 SLR(R) 853.

and solicitor, to appear in court at a stipulated date and time. Tan, however, failed to attend the hearing despite being informed by the court staff and despite the court waiting for almost one-and-a-half hours that afternoon. When asked to show cause, Tan apologised to the court and explained that he had faxed the court staff a letter before the hearing date to inform that the client had discharged him. In addition, on the afternoon of the hearing, Tan had faxed another letter to explain to the court that he had other important business to attend to and requested that the hearing be re-fixed. The Chief Justice did not accept the explanation forwarded by Tan and committed him to prison for seven days because Tan's conduct was calculated to lower the authority of the court.

THE COURTESY AND CONTEMPT DISTINCTION

The facts in these two cases are different and, I submit in each case, the courts have reached the right result. The difference in outcome is naturally based on the different facts.

Firstly, unlike Goswami, Tan failed to attend court. Although that, in itself, does not make him liable for contempt, Tan's priority in attending to another business matter over a scheduled court hearing seems to suggest that court hearings are unimportant. Moreover, after being informed that court attendance was necessary, Tan still refused to attend the scheduled court hearing and made the court wait. Such behaviour is more than discourtesy; it is a rather blatant disregard of the court's authority. Goswami, however, attended court and made his circumstances known to the District Judge. It can be said that Goswami, although he declined to follow the court's order to continue to act for the clients, did acknowledge the authority of the court, and thus could not be said to be lowering the court's authority.

Secondly, the reasons for the contemptuous act are important in the analysis of the cases. Tan's reasons for non-attendance were many. Tan informed the court staff that he would not be attending the hearing to apply for leave to discharge himself despite being told to do so. He was then asked to attend court to explain his absence. Again, Tan did not attend court claiming he was given very short notice and did not have a counsel's robe. Instead, he wanted to write into court to explain. None of the reasons was legitimate justification for his absence in court. Goswami, on the contrary, had a valid reason to not continue the trial. His clients did not pay the fees that they had agreed to despite many requests for payments. Accordingly, Goswami exercised his prerogative to discharge himself.

Jeffrey Pinsler SC, in his book on *Ethics and Professional Responsibility*[5], opined that the courts' approaches in Goswami's case and Tan's case were different, and that Goswami's case might be decided differently today.[6] With all due respect, I do not agree with Pinsler. The decisions in both the cases sit in well together and are consistent. For Tan, the court gave him a chance to appear and discharge himself but he did not do so. That was where he acted beyond discourtesy. Goswami, in contrast, appeared before the court to explain his reasons. His act did not cross into contempt because he always acted with respect to the court system and its procedures.

Despite often being cited as a vague notion, contempt of court is necessary to protect the courts and the administration of justice. The harsh stance taken against those who set upon lowering the standing of the courts, reiterates the importance of public confidence and trust in the existence of courts. While discourtesy may be dealt with by the Law Society, contempt is a blatant disregard that cannot be endured or allowed to breed. As officers of the court, we lawyers should seek to protect the standing and integrity of the court.

The time has come for a judicial pronouncement by the High Court that an advocate and solicitor, whether in a civil or criminal case, is entitled to discharge himself on the basis of non-payment of his fees without incurring any breach of professional duty or being in contempt of court. *IS*

5 Academy Publishing, 2007.

6 Jeffrey Pinsler SC, *Ethics and Professional Responsibility – A Code for the Advocate and Solicitor* (Academy Publishing, 2007) at p 139.

In Focus

CONTEMPT OF COURT

AN OVERVIEW OF THE LAW OF CIVIL AND CRIMINAL CONTEMPT, AND A LOOK AT RECENT DEVELOPMENTS IN THE FACE OF COMMUNICATION AND TECHNOLOGICAL ADVANCES.

By **Ang Cheng Hock SC, Partner, Allen & Gledhill LLP and Tay Yong Seng, Senior Associate, Allen & Gledhill LLP**

INTRODUCTION

Contempt of court is a doctrine rooted in the public interest. It exists not to vindicate the dignity of the court or the self-esteem of individual judges, but to protect the administration of justice and the integrity of legal proceedings.[1]

Contempt is traditionally classified as being criminal or civil. Generally, criminal contempt is seen as an act which threatens the administration of justice (*eg* scandalising the Judiciary), while civil contempt involves disobedience of a court order or breach of an undertaking given to court by a litigant.

The line between the two forms of contempt is sometimes not clear. For example, a person who breaches a court injunction also interferes with the administration of justice, as it is in the public interest that court orders are obeyed in general. Accordingly, he is punished with the object of enforcing not just the rights of the party who obtained the injunction, but also protecting the authority of the court which ordered the injunction.[2]

Nevertheless, the "criminal-civil" divide is a useful tool in describing the main forms of contempt, and this article will adopt this terminology in discussing contempt.

CIVIL CONTEMPT

Civil contempt is the ultimate recourse for a litigant seeking enforcement of a court order. The court's power to punish for civil contempt is quasi-criminal in nature.

Accordingly, the thresholds for establishing civil contempt are quite high.

First, the person alleging contempt has to prove (on the criminal standard of "beyond a reasonable doubt" which applies to all forms of contempt) that the alleged contemnor had "refused or neglected" to obey the court order.[3]

In this regard, "refuse or neglect" implies a conscious act of volition, unlike a phrase like "fail or omit" which indicates a mere failure to comply. Hence the High Court has held that the impecunious debtor who cannot satisfy a judgment is outside the scope of committal proceedings, as he cannot be said to have "refused or neglected" to pay.[4]

1 *AG v Hertzberg* [2009] 1 SLR(R) 1103.

2 *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC* [2007] 2 SLR(R) 518.

3 Order 45 r 5(1)(*a*), Rules of Court (Cap 322, R 5, 2006 Rev Ed).

4 *P J Holdings Inc v Ariel Singapore Pte Ltd* [2009] 3 SLR(R) 582.

Instead of contempt, the proper recourse against such a debtor would be bankruptcy or winding-up proceedings, or some other form of execution proceedings.

Second, where any procedural step for the exercise of the contempt jurisdiction is prescribed, that rule should be scrupulously observed and strictly complied with.[5]

Applying this principle, the Court of Appeal in *QU v QV* [2008] 2 SLR(R) 702 held that it is contrary to established notions of justice to punish a person for contempt for breaching a court order that directs a person to do a positive act, where the order does not specify the time for doing so. This is because the person subject to the order would not know when an omission to do the positive act would constitute a breach of the court order or not.

Finally, given that the punishment for contempt can involve the draconian punishment of imprisonment, it is a measure of the last resort. Hence, the courts commit a person to prison for contempt only after other alternative options for securing compliance have been exhausted.[6]

CRIMINAL CONTEMPT

Criminal contempt is taken seriously in Singapore, with the Judiciary, the Government, and Attorney-General's Chambers all taking an active role.

The Judiciary takes a very grave view of contempt. Thus, the learned Chief Justice has written: "... the respect and support of the public is crucial to the independence of the Judiciary as an institution ... For acts or words amounting to contempt of court, the law provides that every person can be punished, from the President, the Prime Minister, down to the man in the street."[7]

This view is shared by the Government. The Minister for Law, Mr K Shanmugam, has said that: "In order to make sure that we protect the integrity of the judiciary, and to make sure that people's confidence in the judiciary is not affected, you have to be very, very strict about anyone who attacks the judiciary in scurrilous ways, or calls into question its independence."[8]

The Attorney-General plays the role of enforcer. He sees "the administration of justice ... [as] a matter of public interest". Accordingly, as "guardian of the public interest", the Attorney-General has "the responsibility to institute contempt proceedings when the integrity and independence of the courts of judges is attacked".[9]

5 *Allport Alfred James v Wong Soon Lan* [1988] 2 SLR(R) 520.

6 *P J Holdings Inc v Ariel Singapore Pte Ltd* [2009] 3 SLR(R) 582.

7 The Honourable the Chief Justice Chan Sek Keong, "Securing and Maintaining the Independence of the Court in Judicial Proceedings" (2010) 22 SAcLJ 229.

8 Zakir Hussain, "Integrity of judiciary must be protected", *The Straits Times* (5 June 2008).

9 Attorney-General's Chambers note on contempt proceedings against Melanie Kirkpatrick, published on the Attorney-General's Chambers' website at http://www.agc.gov.sg/docs/Media_Brief_Contempt_of_Court_Melanie_Kirkpatrick_Wall_Street_Journal.pdf.

FORMS OF CRIMINAL CONTEMPT

Criminal contempt can take different forms. It can be conduct calculated to denigrate the court, or lower its authority, by attacking the court's independence or integrity. It can also take the form of interference with on-going court proceedings.

The doctrine of criminal contempt does not exclude fair and objective criticism of judicial decisions. But, as the learned Chief Justice has written in his SAcLJ article cited above, "criticism of judgments should not lead to the denigration of judges" (see also *Attorney-General v Tan Liang Joo John* [2009] 2 SLR(R) 1132).

In recent years, criminal contempt has appeared in various forms in Singapore: written articles, spoken words, or conduct.

WRITTEN ARTICLES

In 2008, the Wall Street Journal Asia published two articles, and a letter from Dr Chee Soon Juan on Singapore. The publications contained insinuations of bias, lack of impartiality and lack of independence on the Judiciary, and implied that the Judiciary was subservient to Mr Lee Kuan Yew.

The High Court found the corporate publisher and proprietor of the journal, Dow Jones, liable for contempt.[10] The High Court also subsequently found the individual editor responsible for contents of the articles liable for contempt.

SPOKEN WORDS

Criminal contempt can take place within the courtroom itself when an individual verbally scandalises the judge, or engages in acts of disruption, defiance and interference.

In *Lee Hsien Loong v Singapore Democratic Party* [2009] 1 SLR(R) 642, two of the litigants, who appeared in person, repeatedly disregarded and disobeyed the court's directions to desist from asking irrelevant questions in cross-examination, and even openly and blatantly accused the judge of being biased in their closing submissions. The two litigants were found guilty of contempt.

CONDUCT

Contempt took on a more unusual form in *Attorney-General v Tan Liang Joo John* [2009] 2 SLR(R) 1132. In that case, three individuals wore T-shirts each imprinted with what appeared to be a picture of a kangaroo dressed in a judge's gown, within and in the vicinity of the Supreme Court.

Even without the use of words, the message was clear. As the court found, "a powerful and evocative image has as much inherent power as a written article to shake public confidence in our justice system. Images can convey messages and meaning by implication and association."

In this case, the T-shirts were a reference to the expression "kangaroo court" in relation to a defamation case that was proceeding in the High Court. All three individuals were found guilty of contempt.

10 *AG v Hertzberg* [2009] 1 SLR(R) 1103.

> ... the indiscriminate or inappropriate use of audio recorders by the public in court can distract litigants, or cause embarrassment or inhibition to nervous witnesses...

NEW DEVELOPMENTS

Legislation

Contempt of court has traditionally been found in the common law. However, the Judiciary has expressed its view that contempt should be clarified, and codified in a statute. The Ministry of Law is currently working on the legislation.

Being ancient in origin, the rules of contempt also need to evolve with advances in communication and technology, through legislation or case law.

Audio recordings

For instance, while audio technology can enable the verbatim recording of proceedings, the indiscriminate or inappropriate use of audio recorders by the public in court can distract litigants, or cause embarrassment or inhibition to nervous witnesses especially if the subject matter is sensitive.[11]

Hence, it is a contempt of court in England to use audio recorders in court without permission (Contempt of Court Act 1981 (c 49) (UK), s 9). In Singapore, the recent 2010 amendment to the Rules of Court has made it contempt to make any audio recording of any hearing without the approval of the court.[12]

Contempt over the internet

The use of the internet means that contempt can be committed very quickly, cheaply and to a very wide audience. This issue will become more prominent as the use of the internet becomes more prevalent.

11 *Arlidge, Eady and Smith on Contempt* (Sweet & Maxwell, 3rd Ed) at pp 755, 758.

12 Order 38A r 4, Rules of Court (Cap 322, R 5, 2006 Rev Ed).

There has not been much case law dealing with internet contempt. However, defamation law has developed rapidly to deal with libellous statements published on the internet. These principles may provide useful guidance in relation to articles on the internet which are in criminal contempt of our courts.

Hence, it is suggested that, like defamation, a person who publishes such an article on the internet should take the risk that it can be read anywhere in the world, and may be liable for contempt in Singapore if the article can be downloaded and read here (see the defamation cases of *Metropolitan International Schools v Digital Trends* [2009] EWHC 1765 at [31] and *King v Lewis* [2005] EMLR 45).

Accordingly, even if such an article is published overseas, the Singapore Judiciary should have jurisdiction to punish the contemnor here. As a key organ of the State, so long as there is interference with its authority in Singapore, the Judiciary has a legitimate basis for protecting its authority in Singapore from external attack (see by analogy the defamation case of *Metropolitan International Schools v Digital Trends* [2009] EWHC 1765 at [34]).

Anonymous users on the internet pose problems of enforcement. In the US, a professional model complained in a New York court of an anonymous blog on the popular website, blogger.com, which contained statements libellous of her – the blog called her a "skank". After proving in court that the statements were libellous, the plaintiff successfully persuaded the court to compel Google, the operator of blogger.com, to disclose the blogger's identity. She turned out to be a rival model.

Despite the availability of legal solutions to deal with anonymity like that devised in New York, there may still be practical difficulties with enforcement. For instance, the website operator hosting the statements which are in criminal contempt of our courts may be based abroad and not subject to compulsion by a Singapore court.

It is often argued that in such cases it may be inappropriate to make any order at all. On the other hand, there may still be tangible advantages for the court to make an order for contempt even if it cannot be enforced directly.

In these cases, the primary object of an order for contempt would not be an injunction to prevent further publication, but a reasoned judgment for the salutary purpose of vindication. This would be in line with the original objective of contempt of court – to preserve and uphold the authority of the court (see also *Arlidge, Eady and Smith on Contempt* (Sweet & Maxwell, 3rd Ed) at p 62). *IS*

In Focus

VIEWS ON CONTEMPT OF COURT

WHAT DOES CONTEMPT OF COURT MEAN TO YOU? JETH LEE FINDS OUT WHAT COMES TO MIND FOR CERTAIN INDIVIDUALS.

By **Jeth Lee, Associate, Allen & Gledhill LLP**

CONTEMPT of court proceedings is a common law mechanism that protects public confidence in the administration of justice. Iinterviewed the former Attorney-General Professor Walter Woon SC, Amarjeet Singh SC, Professor Thio Li-Ann, Adjunct Professor Kevin Tan and Rachel Leow, a fourth-year law student at the National University of Singapore, to seek their views as to the role of contempt of court in Singapore society, the current governing rules and the desirability of introducing legislation. Here are their thoughts on the matters at hand.

What is the role of contempt of court in Singapore?

Prof Woon SC: The courts play a central and vital role in the rule of law in Singapore. While it is permissible to disagree with a judgment, it is not permissible to attack a judge personally just because the decision is not to someone's liking.

The Attorney-General's Chambers has taken a strict approach to contempt of court. There may be robust debate about the correctness of a decision, the desirability of a particular law or the appropriateness of a particular policy. All these are acceptable and even to be encouraged in a democratic society. But the judges who apply the law should not have their motives questioned or be subjected to vulgar vituperation for doing their duty.

Lest there be any doubt about this, people should be reminded of article 29(2) of the Universal Declaration of Human Rights (10 December 1948): "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

Note that our law on contempt is the common law as it was developed in England until English law was codified. Our Constitution is based on that of India, article 19(2) of which provides that the right to freedom of speech and expression shall "not prevent the operation of a law which relates to libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State".

Mr Amarjeet Singh SC: Contempt of court is a common law doctrine which is concerned with interference with the administration of justice and the public confidence placed in it. As with any other jurisdiction, the role of contempt of court proceedings in Singapore is concerned not so much with protecting the dignity of the court but with allowing the courts to function with impartiality and authority, to maintain law and order and, where attempts are made to compromise these values, to punish such offenders.

Mr Amarjeet Singh SC

Prof Thio Li-ann

Prof Walter Woon SC

Adjunct Prof Kevin Tan

Ms Rachel Leow

Prof Thio: The law on contempt of court is an express ground for restricting free speech under article 14 of the Constitution of the Republic of Singapore (1999 Rev Ed). It is thus a limitation on free speech which is not exceptional in any jurisdiction. What is more important is what this limit on speech is designed to serve and the value of free speech – they are interests to be traded off against one another. Where the constitutional balance is to be struck, is the question.

Free speech is not an end in itself. It is designed to serve objectives such as truth, democratic argument and accountability. There is no right to misinformation, as the House of Lords in *Reynolds v Times Newspapers Ltd* [1993] 3 All ER 961 affirmed. Thus, untruthful or inaccurate speech has scant constitutional value and warrants little, if any, protection. Speech that confuses, distorts and misleads undermines public debate and only facilitates misinformed opinions.

That said, citizens in a democratic society must have the right, where a basis exists, to criticise the workings of institutions. This aids both accountability and transparency – facets of the rule of law. It also serves both the individual interest in speaking and the public interest in hearing and evaluating critical speech. This is balanced against the public interest in ensuring that the court's reputation is not impugned by scurrilous, abusive and recklessly false allegations. What is important is that neither interest should be treated as a trump, but both public interests in critical speech and in maintaining judicial reputation should be optimalised and given due weight. Not every criticism of the court will harm the administration of justice. For instance, sour grape litigants are bound to gripe and one must have faith in the maturity of citizens to discern truth from falsehood and give due credit to the hardiness of the court in withstanding criticism.

Contempt of court law is designed to protect judicial reputation (not the reputation of the individual judges) in order to safeguard public confidence in the administration of justice, but this must also be balanced against the interest in subjecting all government bodies to well-founded criticism and scrutiny. Justice Prakash put it best in *Attorney-General v Tan Liang Joo John* [2009] 2 SLR(R) 1132 ("T*an Liang Joo*") when she stated (at [22]) "[w]e ought not to be so complacent as to assume the judges and courts are infallible or impervious to human sentiment". Further, in affirming that there was legitimate criticism, she gave reasons for the purpose of free speech. She stated (at [19]) that "temperate, balanced criticism allows for rational debate about the issues raised and thus may even contribute to the improvement and strengthening of the administration of justice. Scurrilous and preposterous attacks … are likely to have the opposite effect". A shouting person is not interested in engagement but only in abuse and insult. People who speak to public matters should demonstrate civility and maturity rather than crassness and carelessness towards the truth. They should seek to inform debate, not distort and mislead. It is a balancing act and the court should be restrained before finding speech contemptuous, as there is the danger they will be seen to be acting in their own interests. Corruption should be exposed. Poor judicial reasoning should be critiqued. But criticisms of judicial acts should rest on reasonable argument and not bare assertion.

> "It is a balancing act and the court should be restrained before finding speech contemptuous, as there is the danger they will be seen to be acting in their own interests."
>
> **Prof Thio Li-ann**

Adjunct Prof Tan: There are two main functions of contempt of court proceedings. The first is to ensure that orders and instructions of the court are obeyed; and the second, is to ensure that nothing is done to hamper the work of the court or hinder or impinge on its independence in the conduct of judicial duties.

Ms Leow: Contempt of court protects the administration of justice and the functioning of the court system for the benefit of litigants and the general public. There appears to be an emphasis on protecting the reputation and integrity of the courts and judges.

What are your views on the current common law rules governing contempt of court?

Mr Amarjeet Singh SC: What is the appropriate test to determine contempt of court where it is alleged that the court has been scandalised by a person's conduct or publication? Have our courts adopted the correct test? The questions posed need some conceptual clarification.

The law has developed tests for determining whether on the facts there has been contempt, namely, the "inherent tendency" test and the "real risk" test. In contrast, the fair criticism test is a test that is apposite to the law of defamation. Judges trying contempt cases are circumspect about drawing parallels between the law of contempt and defamation although both relate to the rights to freedom of speech and expression.

Broadly speaking, the allegation of scandalising a court or judge is considered as the equivalent of defamation of the court or individual judge. In *Attorney-General v Hertzberg Daniel* [2009] 1 SLR(R) 1103 ("*Hertzberg*"), the learned trial judge held that the parallels between the two branches of law should not be drawn as they exist for different purposes. The law of contempt protects the administration of justice and preservation of the public interest, whilst the law of defamation protects an individual's reputation. As such, the judge rejected the application of the defence of fair criticism as such a defence would further expose the integrity of the courts to unwanted attacks. The judge also added that a defence of justification, if mounted, would also likely fail as that would be tantamount to a judge trying the contempt to try the conduct of the judge.

The court went on to deal subsequently with the appropriateness of the other two tests. In both the *Hertzberg* and *Tan Liang Joo* cases, the courts upheld the inherent tendency test. The real risk test, which is now employed in the UK, Australia and Canada, was rejected. In the case of *Tan Liang Joo*, the learned judge acknowledged that the real risk test in other common law jurisdictions was adopted to protect the right to free speech and expression there and that the broader inherent tendency test was considered to inhibit the right to freedom of speech and expression to an unjustifiable degree.

However, the judge went on to reason that the limits to be placed on freedom of speech and expression depend on the social mores of a country and would vary among nations. Due to Singapore's small size and the fact that judges decided both issues of law and fact, contempt had to be more firmly dealt with through the inherent tendency test. This approach is in harmony with stated common law principles. In a recent appeal from the Mauritius Supreme Court, the Privy Council stated that the need for the offence of scandalising the court on a small island is greater than in the UK as justice is more vulnerable in the former.

Plainly then, tensions do exist between the proponents of the freedom of expression and the adherents that support protection of the Judiciary from baseless attacks. Yet, there must exist reasonable restrictions upon expression or publication that fairly protect the rights and reputations of others. It is in determining these restrictions that difficulties have no doubt arisen.

Ms Leow: The inherent tendency test that is currently applied is too strict compared to the real risk test which strikes a better

balance between freedom of speech and the need to protect the administration of justice. The fair criticism defence has been applied too narrowly given the broad reading of *mala fides*. The defences of fair comment and justification are also not recognised. Overall, the rules are very harsh.

What are your views on the current penalty guidelines for contempt of court?

Mr Amarjeet Singh SC: Contempt of court law in Singapore, apart from the applicable common law, exists in various statutes. The Penal Code (Cap 224, 2008 Rev Ed) deals with contempt in connection with the furnishing of false information and the refusal of signing statements or the taking of oath. Section 8 of the Subordinate Courts Act (Cap 321, 2007 Rev Ed) provides for an upper limit of punishment in the Subordinate Courts. The Criminal Procedure Code (Cap 68, 1985 Rev Ed) has somewhat similar provisions, allowing Subordinate Court judges to punish for contempt or to refer the case for prosecution. These provisions have served to inform the public of the penalties in respect of contemptuous acts and to guard against excessive penalties.

Order 52 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) and section 7 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) empower the High Court and Court of Appeal to punish contempt with no upper limit of sentence. This is presumably set to meet the contingency of the worst cases. However, any sentence imposed by the High Court can at any time be reduced or remitted by it where an accused purges his contempt. This is in contrast to the Contempt of Court Act 1981 (UK) which provides a ceiling for punishment of contempt with imprisonment of two years in a superior court and one month in an inferior court.

A sound principle was recommended by the High Court in *You Xin v Public Prosecutor* [2007] 4 SLR(R) 17 ("*You Xin*") where the court said that the power to imprison should only be imposed in the most serious cases. The court further added that the seriousness of the contempt could be judged by reference to the likely interference with the administration of justice and the culpability of the offender, the latter being the key factor.

On a review of the cases thus far in Singapore, the sentences imposed by the courts have been restrained and reasonable – especially where a genuine apology is tendered to the court. The exercise by the court of its discretion in sentencing for contempt, helped by the general guidance contained in *You Xin*, should remain.

Is legislation the way to go? If so, what are the proposals you would make if legislation were promulgated?

Mr Amarjeet Singh SC: The Contempt of Court Act 1981 (UK) introduced a strict liability rule in respect of publications which tended to interfere with the administration of justice pertaining to legal proceedings. A "substantial risk" test was adopted. Essentially, the concern in the UK was over juries being influenced by newspapers and other forms of communication making revelations about cases initiated. The new law banned such commentary if a warrant of arrest

in respect of a crime suspect had been issued or upon his arrest until his discharge or acquittal. The common law applies outside this limitation.

No similar problem appears to exist in Singapore necessitating legislation. Here, all questions of law and fact are decided by a judge. Judges are unlikely to be influenced by similar publications. The existence of statutory provisions in Singapore alongside developed common law principles, dealing with both civil and criminal contempt, has served the community well.

However, if legislation is contemplated, then it must be comprehensive and consolidate all statutory and common law principles applied locally (subject to any reform adopted) so that it is a convenient one-stop reference on the law of contempt in both civil and criminal cases. Whilst a ceiling may be set in respect of the penalties to be imposed, no minimum penalties should be set because of the multifarious nature of the offence and because the court has the coercive power of demanding an appropriate apology or have the contemnor do something in compliance – all of which have the effect of restoring the court's primacy.

Adjunct Prof Tan: Yes, I think legislation is a good way to go. I would insert a "real likelihood" test into the proposed legislation. In other words, the words uttered or written should have a real likelihood of bringing the courts into disrepute or challenging its independence.

Ms Leow: Yes, legislation is preferable. Since we appear to have abandoned recent common law developments in contempt and a more protective attitude is taken towards public figures, legislation would be more theoretically defensible than basing current contempt rules on traditional rationale. It would also be more certain, especially regarding sentencing guidelines. *is*

Inter Se thanks Prof Walter Woon SC, Mr Amarjeet Singh SC, Prof Thio Li-ann, Adjunct Prof Kevin Tan and Ms Rachel Leow for their time in granting us this interview.

SHADRAKE ALAN v ATTORNEY-GENERAL [2011] SGCA 26

A LOOK AT THE RECENT DECISION ON THE LAW ON CONTEMPT OF COURT FOR SCANDALISING THE JUDICIARY.

By **Justin Yeo Rong Wei and Calvin Liang Hanwen, Justices' Law Clerks, Supreme Court of Singapore**

ON 27 May 2011, the Court of Appeal handed down its judgment in Shadrake Alan v Attorney-General1 ("Shadrake").

The judgment has yet to be the subject of detailed commentary. However, a preliminary examination of the judgment in *Shadrake*[2] suggests that it clarifies the law on contempt of court for scandalising the judiciary ("scandalising contempt") in a number of ways. This article provides a brief background to the case as well as a summary of the various issues raised in the judgment.[3]

1 *Shadrake Alan v Attorney-General* [2011] SGCA 26.

2 *Shadrake Alan v Attorney-General* [2011] SGCA 26.

3 Readers are advised to read the judgment in *Shadrake Alan v Attorney-General* [2011] SGCA 26 in full in order to better understand the court's decision.

BACKGROUND TO THE APPEAL

This case arose from an application by the Attorney-General ("the Respondent") to commit Alan Shadrake ("the Appellant"), the author of *Once a Jolly Hangman: Singapore Justice in the Dock*[4], for scandalising contempt in relation to fourteen statements contained in the book.

In the High Court, the trial judge ("the Judge") found that eleven of the fourteen impugned statements amounted to scandalising contempt (reported in *Attorney-General v Shadrake Alan*[5] *("Shadrake 1 (HC)")*). He sentenced the Appellant to six weeks' imprisonment and a fine of $20,000 (in default of which, two weeks' imprisonment, to run consecutively to the first term of imprisonment) (reported in Attorney-General v Shadrake Alan[6]).

4 Alan Shadrake, *Once a Jolly Hangman: Singapore Justice in the Dock* (Strategic Information and Research Development Centre, 2010).

5 *Attorney-General v Shadrake Alan* [2011] 2 SLR 445.

6 *Attorney-General v Shadrake Alan* [2011] 2 SLR 506.

On appeal, the Appellant argued that: (a) the Judge had erred in his statement of the test for liability for scandalising contempt. In particular, the Appellant contended that whilst the Judge correctly adopted the label of a "real risk" test, he erred in defining the *content* of the said test; (b) the Judge had erred in his interpretation of the statements held to have given rise to the contempt; and (c) the sentence meted out by the Judge was manifestly excessive.

THE COURT OF APPEAL'S REASONING

The Court of Appeal heard the appeal on 11 April 2011 and delivered its judgment on 27 May 2011. It dismissed the appeal and, while differing from some of the findings of the Judge, upheld the sentence meted out.

The Court of Appeal began by observing that the law relating to contempt of court operated against the broader legal canvass of the right to freedom of speech that was embodied both within Article 14 of the Constitution of the Republic of Singapore[7] (the "Constitution") as well as the common law.[8]

The issue was one of balance: just as the law relating to contempt of court ought not to unduly infringe the right to freedom of speech, by the same token, that right was not an absolute one, for its untrammelled abuse would be a negation of the right itself.[9]

The Court of Appeal also reiterated the sentiment of the Judge below that scandalising contempt was a public injury rather than a private tort.[10] The fundamental purpose of the law on contempt was to ensure that public confidence in the administration of justice was not undermined; it was not intended to protect the dignity of judges.[11]

THE TEST FOR LIABILITY

The Court of Appeal considered, in detail, the legal principles relating to the test for liability for scandalising contempt.

Rejection of "inherent tendency", adoption of "real risk"

The Court of Appeal in *Shadrake*[12] noted that although the decision of *Attorney-General v Wain Barry J*[13] *("Wain")* was interpreted in subsequent decisions of the High Court to have established the test for liability as that of "inherent tendency" (*viz*, that the words complained of must have an inherent tendency to interfere with the administration of justice), there did not appear to be any clear authority for such a test.[14] Indeed, it noted that a holistic reading of *Wain*[15] suggests that the decision did not intend to divorce the test for liability from the *"actual or potential impact on public confidence in the administration of justice"* [emphasis in original].[16] However, given the potential for controversy and misunderstanding, the Court of Appeal agreed with the Judge that adopting the "real risk" test was preferable because it conveyed precisely the nature of the test for liability to layperson and lawyer alike.[17]

The content of the "real risk" test

Eschewing attempts to "elaborate upon a legal test whose efficacy is to be demonstrated more in its application rather than its theoretical elaboration" [emphasis in original],[18] the Court of Appeal held that *"the 'real risk' test is adequate in and of itself and, hence, does not require further elaboration"* [emphasis in original].[19] The "real risk" test meant precisely what it said, *viz*, is there a real risk that the impugned statement has undermined – or might undermine – public confidence in the administration of justice (here, in Singapore)?[20] Despite holding that the "real risk" test required no further theoretical elaboration,[21] the Court of Appeal found it necessary to make several clarifications regarding the test.

First, the Court of Appeal clarified that in determining whether there was a "real risk", the court concerned must make an objective decision as to whether or not that particular statement would undermine public confidence in the administration of justice, as assessed by the effect of the impugned statement on *the average reasonable person*.[22]

Disagreeing with the Judge in *Shadrake 1 (HC)*[23], the Court of Appeal held that the concept of "the public" *cannot* differ according to different factual matrices (although the Court of Appeal noted that these matrices were the relevant backdrop against which to ascertain whether or not public confidence in the administration of justice had been – or might have been – undermined).[24]

Second, the Court of Appeal clarified that in applying the "real risk" test, the court must avoid either extreme on the legal spectrum, *viz*, of *either* finding that contempt has been established where there is only a remote or fanciful possibility that public confidence in the administration of justice is (or might be) undermined; *or* finding that contempt has been established *only* in the *most* serious situations (such as where there is a "clear and present danger" of public confidence being undermined).[25] In this regard, the Court of Appeal rejected the Appellant's counsel's contention that a "real risk" arises only when there is "clear and present danger"

7 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint).

8 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [17].

9 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [17].

10 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [21].

11 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [21].

12 *Shadrake Alan v Attorney-General* [2011] SGCA 26.

13 *Attorney-General v Wain Barry J* [1991] 1 SLR(R) 85.

14 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [52].

15 *Attorney-General v Wain Barry J* [1991] 1 SLR(R) 85.

16 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [56].

17 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [57].

18 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [29].

19 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [29].

20 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [36].

21 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [29] and [36].

22 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [32].

23 *See Attorney-General v Shadrake Alan* [2011] 2 SLR 445 at [52].

24 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [34].

25 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [29] and [36].

of undermining public confidence, because:[26] (a) the two tests were clearly *not* the same as the latter would encompass the former but not *vice versa*;[27] (b) the "clear and present danger" test was inextricably linked to the United States' *unique* culture and constitutional position (*ie*, the First Amendment to the United States Constitution), which did not represent the position in most Commonwealth jurisdictions in general and Singapore in particular;[28] and (c) the "real risk" test was already a weighty test which paid more attention to the *balance* between the right to freedom of speech on the one hand and its abuse on the other.

THE CONCEPT OF FAIR CRITICISM

Fair criticism – liability or defence?

A few commentators in this issue of *Inter Se* have referred to "fair criticism" as a *defence*.[29] This was also the characterisation adopted by the Judge in *Shadrake 1 (HC)*.[30]

After undertaking an extensive survey of the Commonwealth case law, legislation and the reports of various law commissions and committees, the Court of Appeal found that it was ambiguous as to whether the concept of fair criticism was a (a) separate defence; or (b) an issue of liability forming an integral part of the process of analysis as to whether or not the impugned statement was in contempt in the first place.[31] However, the Court of Appeal noted that the precise approach to adopt was not merely a theoretical issue as it had implications on the burden of proof. In the final analysis, the Court of Appeal found that the *nature, tenor and thrust* of the Commonwealth authorities were more consistent with the concept of fair criticism as going towards *liability*.[32] Given that scandalising contempt was *quasi-criminal* in nature, this approach had the additional benefit of ensuring that the alleged contemnor was not disadvantaged *vis-à-vis* the burden of proof inasmuch as the *evidential* burden would be on the alleged contemnor while the *legal* burden would be on the applicant to prove beyond a reasonable doubt that the impugned statement did not constitute fair criticism.

The applicable principles vis-à-vis fair criticism

The Court of Appeal held that the various factors set out (albeit non-exhaustively) in *Attorney-General v Tan Liang Joo John*[33] remained instructive.[34] The court would apply the concept of fair criticism, bearing in mind the following question: does the impugned statement constitute fair criticism, or does it go on to cross the legal line by posing a real risk of undermining

26 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [38].

27 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [39].

28 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [41].

29 See Jeth Lee, "Views on Contempt of Court", *Inter Se* (July–December 2011) at pp [24]-[32].

30 *Attorney-General v Shadrake Alan* [2011] 2 SLR 445 at [70]–[76].

31 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [58]–[77].

32 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [68] and [80].

33 *Attorney-General v Tan Liang Joo John* [2009] 2 SLR(R) 1132 at [15]–[23].

34 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [86].

public confidence in the administration of justice – in which case it would constitute contempt instead?[35]

In so far as the *scope* of fair criticism was concerned, the Court of Appeal rejected two arguments raised by the Respondent. First, the Court of Appeal found that limiting the scope of fair criticism to criticism that *did not* call into question the independence, impartiality and integrity of courts was *overly restrictive on* the ambit of fair criticism.[36] Indeed, this would render the concept of fair criticism *nugatory*, since most allegedly contemptuous statements, by their very nature, call into question the independence, impartiality and integrity of courts.[37]

35 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [86].

36 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [84].

37 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [84].

Second, the Court of Appeal found that limiting the scope of fair criticism to criticism raised through the formal legal avenues (*eg*, the relevant court proceedings or the removal mechanism provided for in Article 98(3) of the Constitution) was too onerous a limitation on the right to free speech.[38] In the court's view, an alleged contemnor should not be precluded from proffering fair criticism merely because he or she did not have the means, or did not choose, to air his or her *rationally supported* criticisms via any of the formal legal avenues.[39]

APPLICATION OF THE LAW TO THE IMPUGNED STATEMENTS

On the facts, the Court of Appeal disagreed with the Judge's finding that the second and fourteenth statements were in contempt. However, it agreed with the Judge's finding that the first, fourth, fifth, seventh, eighth, ninth, tenth, eleventh and thirteenth statements were in contempt. The Court of Appeal was firm in its view that these nine statements:[40]

> scandalised the very core of the mission and function of

38 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [85].

39 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [85].

40 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [143].

the judiciary. More than that, their cumulative effect reveals a marshalling of a series of fabrications, distortions and false imputations in relation to the courts of Singapore.

The Court of Appeal continued by emphasising that:[41]

> [w]hile the Appellant is free to engage in the debate for or against capital punishment, he is not free to deliberately and systematically scandalise the courts in attempting to substantiate his case against capital punishment.

SENTENCING

The Court of Appeal began its analysis on sentencing by noting that sentencing, by its very nature, was neither an exact science nor an arbitrary exercise of raw discretion.[42] The court concerned was to follow guidelines, but these were not to be applied as if they were writ in jurisprudential stone.[43] In this regard, the Court of Appeal outlined, non-exhaustively, some of the more common sentencing guidelines in the context of contempt proceedings.[44] It went on to clarify that *there was no starting-point of imprisonment for the offence of scandalising contempt*.[45]

The Court of Appeal also disagreed with the Judge's granting of a discount in the sentence in order to signal that the courts have no interest in stifling legitimate debate on the death penalty and other areas of law, holding that:[46]

> [i]t is clear that debate on the death penalty as well as other areas of law has been – and will *always* be – open to all. *However*, when conduct crosses the legal line and constitutes scandalising contempt, it is *no longer legitimate* and, *ex hypothesi*, a discount cannot be accorded to the contemnor for doing the very thing which is an *abuse* of the right to free speech in general and the right to engage in *legitimate* debate with regard to the topic (or topics) concerned in particular. [emphasis in original]

Nonetheless, the Court of Appeal affirmed the sentence meted out by the Judge, because: first, the Respondent did not file a cross appeal against the Judge's decision on both liability as well as sentence; and, second, two of the statements originally found to be contemptuous by the Judge were not in fact contemptuous.

CONCLUSION

This case raised – in some instances for the very first time before the Court of Appeal – important issues relating to the law of contempt. In addressing these issues, the Court of Appeal clarified certain aspects of the law relating to scandalising contempt. *is*

41 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [143].

42 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [146].

43 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [146].

44 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [147].

45 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [148].

46 *Shadrake Alan v Attorney-General* [2011] SGCA 26 at [154].

THE ETHICS OF FAMILY LAW PRACTICE

GUIDANCE ON DEALING WITH THE CHALLENGES FACED BY FAMILY LAW PRACTITIONERS.

By **Yap Teong Liang, Proprietor, T L Yap & Associates**

INTRODUCTION

The practice of family law is both challenging and unique in that it offers the practitioner, in the course of advising the client and in the conduct of the case, the opportunity to address the financial purse strings of the children and wife and provision of a roof over their head, and to shape families in one way or another. The advice which a family law practitioner gives to the client may have a positive or negative impact on the client and perhaps even to the extent of the children involved in the dispute.

The family law practitioner therefore has an important and essential role to play as the family unit, whether kept intact or broken down, is nevertheless still an important part of the fabric of society. Family law disputes, whether resolved

amicably or which are emotionally charged and acrimonious undoubtedly comes at a cost to those involved in the dispute. For these reasons, the family law practitioner's ethical obligations are critical, serious, extensive and meaningful.

There are no guidelines or best practices specifically setting out the ethical obligations of family lawyers. The starting point ought to be the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("Rules"), case law and a touch of common sense. As a first step, it might be argued that a family law practitioner ought to explore the possibility of reconciliation with the client rather than delving into the rights and obligations a spouse has in divorce proceedings and ancillary matters.

LEGAL PROFESSION (PROFESSIONAL CONDUCT) RULES

Rule 54 of the Rules states that: "Subject to these Rules, an advocate and solicitor shall conduct each case in such a manner as he considers will be most advantageous to the client *so long as it does not conflict with the interests of justice, public interest and professional ethics.*"

The advocate and solicitor's duty not to mislead or deceive the court is entrenched in r 56 of the Rules which states that: "An advocate and *solicitor shall not knowingly deceive or mislead the Court,* any other advocate and solicitor, witness, Court officer, or other person or body involved in or associated with Court proceedings."

Of equal importance for the advocate and solicitor to note is r 59(*a*) of the Rules which governs the drafting of affidavits or pleadings. This rule provides that:

> An advocate and solicitor shall not contrive facts which will assist his client's case or draft any originating process, pleading, affidavit, witness statement or notice or grounds of appeal containing—
> (*a*) any statement of fact or contention (as the case may be) which is not supported by his client or instructions ...

The fundamental principles which can be culled from the rules set out above are firstly, the advocate and solicitor's duty to advance his client's interests is subject to his position of officer of the court and his duty to assist in the administration of justice. Secondly, the advocate and solicitor must not accept instructions if to do so would contravene any rule of law or ethics or would otherwise be improper in the circumstances of the case and thirdly, the advocate and solicitor must not contravene any law or rule of ethics concerning the manner in which he obtains instructions to act.

Further guidance on an advocate and solicitor's ethical obligations can be gleaned from three cases. In *Wee Soon Kim Anthony v Law Society of Singapore* [1988] 1 SLR(R) 455, Chan Sek Keong JC (as he then was) said (at [21]): "It is not for an advocate and solicitor, whether in his capacity as counsel or solicitor, to believe or disbelieve his client's instructions, unless he himself has personal knowledge of the matter or unless his client's statements are inherently incredible or logically impossible. His duty to his client does not go beyond advising him of the folly of making incredible or illogical statements."

In *Public Trustee v By Products Traders Pte Ltd* [2005] 3 SLR(R) 449, V K Rajah J (as he then was) said (at [57]): "In the final analysis, solicitors, as officers of the court, must in their dealings with the court, acknowledge that their obligations to the court reign supreme, over and above their client's and their own interests."

In *Yee Chang & Co Ltd v N V Koninklijke Paketvaart Maatschappij* [1958] MLJ 131, a case involving a settlement during the course of litigation and when one of the parties refused to follow the agreement reached, Whyatt CJ said "... a solicitor owes a duty to the Court to conduct litigation with due propriety and to assist in promoting in his own sphere the cause of justice. *If therefore, a solicitor becomes aware in the course of proceedings that his client is obstructing the interests of justice, it is his duty to advice his client as to the conduct which he ought to follow and if the client still persist[s] in his wrong conduct, he should decline to act for him further.*"

With these fundamental principles, I now explore some scenarios which a family law practitioner may encounter in the course of his instructions in a family dispute.

DUTY TO CONSIDER BEST INTERESTS OF FAMILY AND CHILDREN?

There is no duty imposed on an advocate and solicitor to consider what is in the best interests of the family as a whole and of the children. The Rules and case law do not impose such a duty. To determine what is in the best interests of the children, the family law practitioner is guided by the law on the approach of the courts in dealing with issues on custody care and control and access of the children in giving his advice to the client. The family law practitioner ought not to impose his personal views on the issue.

However, it could be argued that as part of the family law practitioner's duty to the client, the advocate and solicitor ought to advise the client of the nature and scope of the fiduciary duty a parent owes a child and the concept of the best interests of the child. In educating the client of his or her obligations as a parent and the factors the court will take into account as a matter of law in deciding issues of custody care and control, and for that matter access, the family law practitioner can steer the client to take into account the best interests of the child.

A family law practitioner should refrain from suggesting to a client who seeks custody care and control of a child of the marriage that he or she should remove the child from the other parent or to take the child out

of jurisdiction without first obtaining a court order. Whilst it may seem that by giving such a suggestion it satisfies the client's objective, the family law practitioner may inadvertently be acting against the child's and client's interests when the matter eventually comes before the court.

If a client insists that access should not be granted to the other parent or that access should be reduced, it is prudent on the part of the family law practitioner to find out the reasons for the client taking such an approach rather than simply informing the other side of the client's position and litigating the issue in court. The reasons of the client may not be good reasons which the court would accept. If so, the client should be advised that his position may be untenable in court and to reconsider some form of access.

COMMUNICATION WITH WELFARE OFFICER/ COUNSELLOR OR CHILD PSYCHIATRIST

Is it ethical for a family law practitioner to communicate directly with the welfare officer/counsellor or child psychiatrist who is preparing the welfare report? If the court calls for a welfare report to be prepared by the Ministry of Community Development Youth and Sports or for a Custody Evaluation Report or is appointed by the court pursuant to r 41 of the Women's Charter (Matrimonial Proceedings) Rules 2005 (Cap 353, R 4, 2006 Rev Ed), the Letter of Instruction to the expert witness is copied to the other side. Similarly, there should not be direct communication with the child psychiatrist without the other side being copied on the correspondence. However, if the child expert is jointly appointed by both parties by agreement, there is scope for the contention that a party should be able to communicate directly with the expert. It is suggested that even in such a case, notification should be given to the other side of such communication.

PREPARING CLIENT FOR INTERVIEW

The client will be interviewed by the welfare officer/counsellor or child psychiatrist in the course of the preparation of the welfare report. What is the extent to which a family law practitioner can prepare the client for the interview? It is proper to prepare the client by explaining the process and procedure of how such interviews are carried out and the purpose of the interviews. Part of the legal advice is to explain to the client this process. However coaching or telling the client what to say should be avoided. The report prepared by the welfare officer/counsellor or child psychiatrist is submitted to the court as evidence which the court can rely on to make a decision. The interview of the client is akin to a witness giving evidence.

A situation may arise where the child may want to know directly from the family law practitioner about the interviews, instead of hearing it from the parent. In a similar vein, the process and procedure can be explained but the child should not be told what to say to the welfare officer/counsellor or child psychiatrist.

BREACHING A COURT ORDER

A family law practitioner must avoid giving any advice or making an application to court which is tantamount to assisting the client to breach a court order. An illustration is provided by Jeffrey Pinsler SC in *Ethics and Professional Responsibility*[1] where the client instructs the solicitor to make an application to court to allow the client to travel with the child to Malaysia for the Christmas holidays. The real intention of the client (and this is known to the solicitor) is to obtain the passport of the child to travel to

1 Jeffrey Pinsler SC, *Ethics and Professional Responsibility – A Code for the Advocate and Solicitor* (Academy Publishing, 2007) at p 116, para 05-033.

Indonesia, which breaches the court order. The solicitor must advise the client that he would be in breach of his duty to the court if such an application was made as he would be deceiving the court and the ultimate purpose is to breach a court order.

Even if the solicitor is unaware of the client's intention but suspects that the client intends to breach the court order or deceive the court, the solicitor should advise the client of his legal position in having to comply with the court order.

It is instructive to note the comment by the learned author that "very special care is necessary when an advocate and solicitor's actions affect children".

FULL AND FRANK DISCLOSURE

A party has the obligation to make full and frank disclosure of his assets and means. If the solicitor is informed by the client that he has an asset, for example, a bank account or a property, which he does not want his spouse to know about and hence does not wish to disclose such information in his affidavit of assets and means, it would be incumbent on the solicitor not to partake in the non-disclosure. Instead, the solicitor should advise the client of the legal obligations to make full and frank disclosure and the fact that the client will be signing the affidavit of assets and means under oath, and any false information provided may expose the client to perjury. Sometimes the client will ask the solicitor, in a similar scenario, what he should do. To represent the client's interest, it may be tempting for the solicitor to suggest that the client not disclose the existence of the asset on the pretext that it is for the other side to discover the non-disclosure. This would be a wrong approach as the obligation to make full and frank disclosure rests with the deponent of the affidavit.

Rules 57 and 58 of the Rules set out circumstances when an advocate and solicitor ought to discharge himself from acting for a client. Rule 57 provides that:

> If at any time before judgment is delivered in any case, an advocate and solicitor becomes aware that his client has committed perjury or has otherwise been guilty of fraud upon the Court, the advocate and solicitor—
> (*a*) may apply for a discharge from acting further in the case; or
> (*b*) if required to continue, shall conduct the case in such a manner that it would not perpetuate the perjury or fraud.

Rule 58 makes it the duty of the advocate and solicitor to cease to act. It provides that:

> An advocate and solicitor shall cease to act for a client if—
> (*a*) the client refuses to authorise him to make some disclosure to the Court which his duty to the Court requires him to make;
> (*b*) the advocate and solicitor having become aware during the course of a case of the existence of a document which should have been but has not been disclosed on discovery, the client fails forthwith to disclose it; or
> (*c*) having come into possession of a document belonging to another party by some means other than the normal and proper channels and having read it, he would thereby be embarrassed in the discharge of his duties by the knowledge of the contents of the document.

MEDIATION

Is there an ethical obligation on the part of a family law practitioner to inform the client of the benefits of mediation as an alternative dispute resolution process to enable parties to reach a settlement as opposed to litigation in court? There is a strong arguable case that there is such an obligation. Although mediation in the Family Court process is voluntary, the client should know the alternative ways of resolving the marital dispute. Further, by being able to take ownership of the outcome of the dispute by agreeing to the terms of settlement, the client avoids the possibility of a dissatisfactory outcome following a court decision. It avoids an appeal and saves cost for the client. Time is also saved as the dispute is resolved faster and in the interests of the parties and the children as they

can move forward in their lives. These positive factors gravitate towards the obligation of a family law practitioner informing the client and perhaps even to the extent of encouraging an attempt at mediation. It is only if mediation is not successful that parties have to litigate in court.

LITIGANTS IN PERSON

In divorce proceedings, the family law practitioner may encounter the litigant in person as his opponent instead of a fellow advocate and solicitor. What then are the ethical obligations imposed on the solicitor? The basic fundamental approach is to inform the litigant in person that he should seek independent legal advice as the family law practitioner cannot advise him and must avoid being put in a position of conflict. It must be made clear to the litigant in person that you do not represent his interest and you are not his solicitor.

Guidance can be sought from rr 25, 53A and 30 of the Rules. Rule 25 states that: "During the course of a retainer, an advocate and solicitor shall advance the client's interest unaffected by .... (*b*) any interest of any other person."

Rule 53A states that: "An advocate and solicitor shall not take unfair advantage of any person or act towards anyone in a way which is fraudulent, deceitful or otherwise contrary to his position as advocate and solicitor or officer of the Court."

Rule 30 states that:

> (1) An advocate and solicitor or any member of his law firm or any director or employee of the law corporation of which the advocate and solicitor is a director or an employee shall decline to advise a person whose interests are opposed to that of a client he is representing on any matter and shall inform such person to obtain independent legal advice.
> (2) If the person does not obtain such independent legal advice, the advocate and solicitor is under a duty to ensure that the person is not under an impression that his interests are protected by the advocate and solicitor.

The litigant in person may be emotional, unreasonable and aggressive in his dealings with the family law practitioner. He may even be abusive. It is suggested that communication be reduced in writing to avoid misunderstandings of telephone conversations, and meetings with the litigant in person be kept to a minimal and have a third party present during the meetings, if possible. The family law practitioner has a duty to the court to assist the court in a hearing where the litigant in person is present and may not know the procedures of the court.

RELATIONSHIP BETWEEN FAMILY LAW PRACTITIONERS

The family law practitioner should not become personally involved in the client's case. To do so may mean that the solicitor loses objectivity and "becomes the client". Care should be taken when writing letters to the other side based on client's instructions. The use of inflammatory, sarcastic, rude or inappropriate language and threats must be avoided as it serves to be counter-productive. The appropriate respect and courtesy must be accorded to a fellow member of the profession. The parties are already embroiled in a dispute between themselves and there is no need for the solicitors to be embroiled in a dispute amongst themselves, in the course of representing their clients. A family law practitioner with a clear objective mind, coupled with a conciliatory approach, will go a long way in helping the parties resolve their marital dispute.

CONCLUSION

The challenge family law practitioners face daily is to find the delicate balance of having to follow the client's instructions (often the pressure exerting, emotional, non-objective client), failing which there may be serious repercussions, and the duty to the court, the administration of justice and his fellow advocate and solicitors. In the event of doubt, it is always preferable to err on the side of caution when faced with an ethical issue.

A best practices guideline for professionalism in the practice of family law should be created. Such a best practices guideline will be an important first step in helping to guide family law practitioners in their work in representing clients in marital disputes which are often emotional and traumatic for the client and the children involved. *IS*

ROB LYE & KON
ADVOCATES & SOLICITORS

AS YOUR HONOUR DISPLEASES

A PUPIL RESEARCHES TRUE-LIFE EXAMPLES OF CONTEMPT OF COURT AROUND THE WORLD.

By **Adrian Tan, Director, Drew & Napier LLC**

To Pupil Master
From Yoof bin Naif, Pupil
Messrs Rob Lye & Kon, Advocates & Solicitors

OPINION ON CONTEMPT OF COURT

1. You have asked me to research the law regarding contempt of court.

2. Contempts of court have traditionally been classified as being either criminal or civil. In England, the general approach has been that a criminal contempt is an act which so threatens the administration of justice that it requires punishment from the public point of view; whereas, by contrast, a civil contempt involves disobedience of a court order or undertaking by a person involved in litigation (*Arlidge, Eady & Smith on Contempt* (Sweet & Maxwell, 3rd Ed, 2005) at p 143).

3. Punishment for contempt of court is available in the United States as well. In *Avista Management v. Wausau Underwriters Insurance* US Dist Court Mid Dist Fla (June 6, 2006), a hotel investment firm sued an insurance company for allegedly not paying an insurance claim. The opposing lawyers bickered from the start, unable to agree on any matter. They were not even able to agree on a venue to depose a witness, and referred the matter to court. United States District Judge Gregory A Presnell was not amused. After chastising the attorneys for not being able to agree on even the most simplest of things, Judge Presnell issued his written ruling:

> *[T]he Court will fashion a new form of alternative dispute resolution, to wit: at 4:00 P.M. on Friday, June 30, 2006, counsel shall convene at a neutral site agreeable to both parties. If counsel cannot agree on a neutral site, they shall meet on the front steps of the [Courthouse]. Each lawyer shall be entitled to be accompanied by one paralegal who shall act as an attendant and witness. At that time and location, counsel shall engage in one (1) game of 'rock, paper, scissors.' The winner of this engagement shall be entitled to select the location for the 30(b)(6) deposition to be held somewhere in Hillsborough County during the period July 11-12, 2006.*

4. The two chastened lawyers met a day later. Not surprisingly, they agreed on the venue. They did not need to play rock, paper, scissors, but they realised that if they didn't, they would technically be disobeying a court order. They applied to court for permission not to play the game. The judge agreed, holding, "With civility restored (at least for now), it is ordered that the motion is granted."

5. The wisdom of the judge is shown in the phrase "at least for now". Clearly, he was very familiar with litigators.

6. It is important to obey all court orders, not just those which one finds important. In a Darwin Magistrates Court, a magistrate warned a woman whose cell phone had rung that she and "anyone else in court" would get into trouble if they did not turn their phone off. Minutes later, a 17-year-old let his mobile phone ring with the music of American rapper Akon before he answered the call while sitting in the front row of the court. The magistrate told the teen, "If I hear one more word from you, you're going to be in custody." The teen, being a teen, could not resist the challenge, and so answered, "My bad." The magistrate sent the teen to the court cells for three hours.

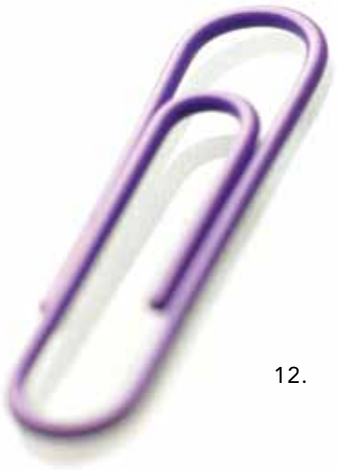
7. "One of the problems that seems to be developing within our community," the judge opined from the bench, "is that there is so much time devoted by schools and others to telling people what their rights are, without the corresponding lessons being taught as to what people's obligations are."

8. Parents of defiant teenage children may wish to consider moving to Darwin.

9. Please note that the contempt of court in the above case was the refusal to obey the court's instruction not to utter "one more word". It was not the ringing of the mobile phone *per se*. Indeed, the *Orlando Sentinel* reported a case where a woman's cell phone was thrown in the trash after it rang in Circuit Judge Anthony Johnson's courtroom. Circuit Judge Johnson found McRoy, 28, in contempt after she admitted she didn't check to see whether her phone was off when her sister, who had used it outside the courtroom, returned it. The judge ordered the phone to be destroyed. Sadly for the anti-cellphone crowd, the appeals court said Circuit Judge Johnson did not have sufficient legal grounds to hold McRoy in contempt.

10. Unfortunately for McRoy, she has still not been able to locate her phone.

11. One may be in contempt of court even when one is silent. The *Wall Street Journal* reported that a North Carolina judge held an attorney in contempt in January 2008 for reading Maxim magazine during a court session. Judge Kevin Eddinger held lawyer Todd Paris in contempt after he saw him reading Maxim magazine with "a female topless model" on the cover, according to the court order. When Judge Eddinger gave Paris a chance to respond he apologised and stated that "in his view the magazine was not pornography, was available at local stores and that he did not intend contempt," the order said. Judge Eddinger fined Paris $300, gave him a 15-day suspended jail sentence that remains in effect for a year and placed him on unsupervised probation, according to the order.



12. It is unclear whether the Singapore edition of the magazine would excite the same response, but we do not recommend that you test this issue in our courts unless you have strong compelling reasons.

13. There are many arguments available to resist a charge of contempt of court, but one of the least successful examples must be that of New Zealand lawyer Dr Rob Moodie – he appeared in court to answer contempt charges for unauthorised disclosure of confidential information. He decided to contest the charge by dressing as a woman.

14. "I will now, as a lawyer, be wearing women's clothing," he said. "The deeper the coverup, the prettier the frocks." He also said that he would prefer to be called "Miss Alice" in court.

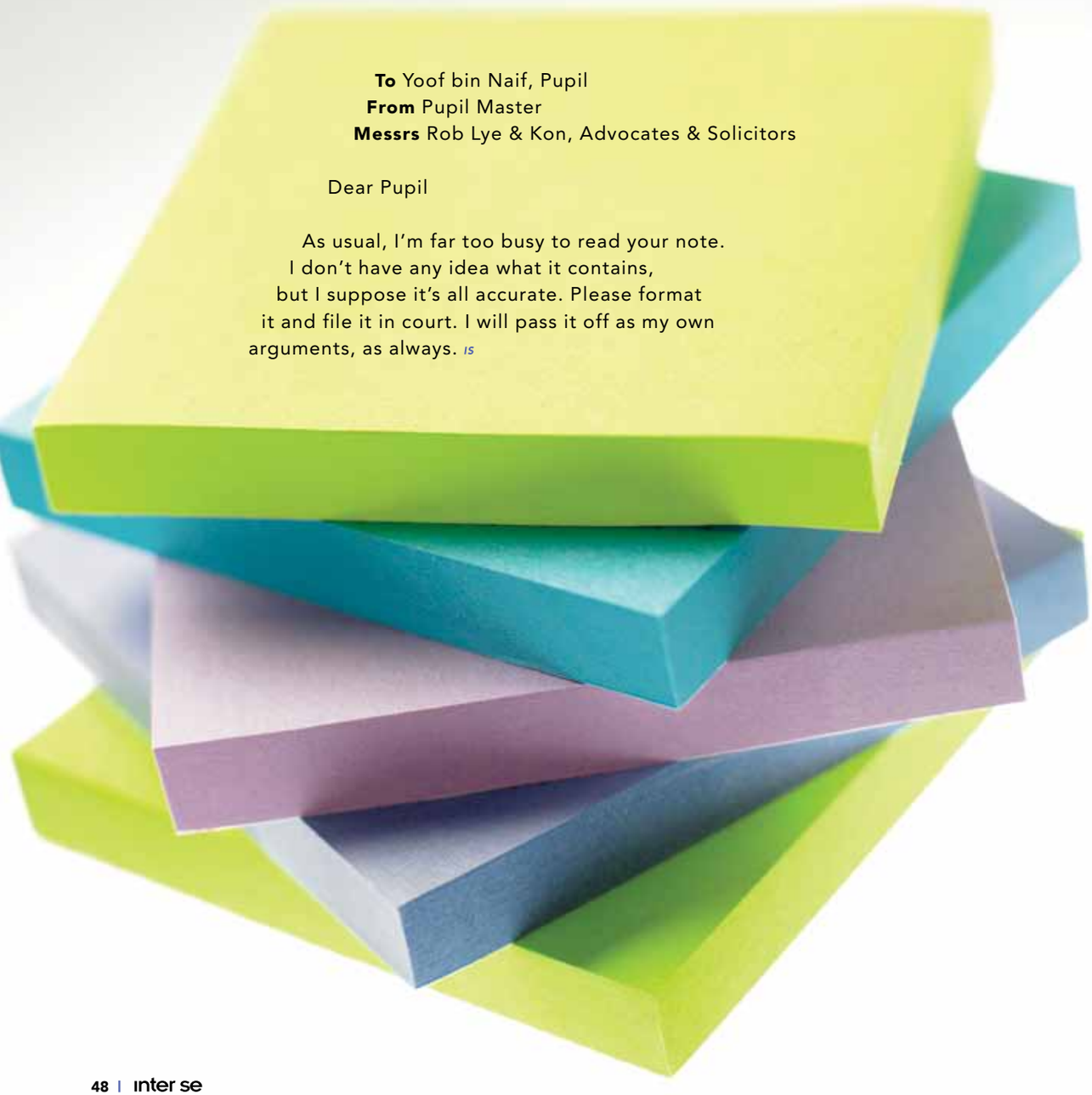
15. Unfortunately, the Australian High Court was not persuaded by the ingenuity of Dr Moodie's arguments, and found him in contempt for disclosing confidential information. After the ruling was announced, Dr Moodie declared that he would no longer practice law at all, nor would he continue to wear dresses, because he no longer needed to appear "in a 19th-century Alice-in-Wonderland environment that allows pomp, self-importance and deference to the court to eclipse the truth." After discussing matters with his wife and his clients, he made a U-turn and confirmed that he would continue to practise, and continue to wear dresses.

16. Sometimes, being in contempt of court may bring unexpected benefits. The *Independent newspaper* of Ireland reported that a homeless alcoholic was jailed by the Dublin District Court for contempt. The court had grown weary of the disturbance that Anthony Walshe was causing after an earlier reprimand did not work. Impatient for his case to be heard, Walshe cheekily quipped when his trial date was set: "Thanks judge, I'm off to watch the Ryder Cup."

17. The courtroom erupted in laughter, but Judge Mangan failed to see the humourous side, and said Walshe had "pushed matters too far". He held Walshe in contempt of court and sentenced him to seven days in prison. After Walshe apologised for his Ryder Cup quip, his lawyer explained that he was an alcoholic.

18. Since Walshe purged the contempt, his sentence was reduced to spending the weekend in jail. He was hauled off to Mountjoy Prison, where inmates were free to watch the Ryder Cup live on cable television.

19. I trust the above research meets your requirements.



To Yoof bin Naif, Pupil
From Pupil Master
Messrs Rob Lye & Kon, Advocates & Solicitors

Dear Pupil

As usual, I'm far too busy to read your note. I don't have any idea what it contains, but I suppose it's all accurate. Please format it and file it in court. I will pass it off as my own arguments, as always. *IS*