

EXECUTIVE SUMMARY

Complying with gag orders to protect victims and other vulnerable parties in sensitive court cases

This article sheds light on what a gag order is, including the rationale for imposing one and how it works.

Gag orders are generally issued by the Court to protect the identities of minors and victims in sexual offences. The imposition of such orders allows witnesses to testify during trials, without fear of embarrassment from public scrutiny.

It is important to note that gag orders do not only prevent the direct identification of the protected parties, but also the publication of any composite information which may lead to their identification. A breach of gag order is an offence, and the person may be liable for prosecution, which may then result in a fine or imprisonment, or both.

Speak and act cautiously to avoid breaching gag orders

One day, Xiaoming discreetly told Xiaoma from the next class that his classmate, Xiaoli, had been sexually assaulted in public. Badly traumatised, she was absent from school for the past two weeks.

Xiaoming whispered, "I heard that the offender has been arrested and imprisoned. Whatever you do, don't tell anyone else about this secret." Xiaoma was shocked, but could not resist disclosing the secret, which proceeded to spread like wildfire.

Xiaoli became the talk of the town, and the scrutiny and judgment from her peers caused her even more distress.

This is the reason why the Courts issue gag orders in appropriate cases: to protect minors, victims of sexual offences, vulnerable parties, and so forth. The order prohibits members of the public and media from disclosing any information that could reveal the identity of a victim or a witness.

In this issue of "Know the Law", we invite Deputy Senior State Counsels from the Attorney-General's Chambers' (AGC) Crime Division, Mr. Wong Woon Kwong and Mr. Winston Man, to explain the ambit of gag orders and how the public should speak and act cautiously to avoid further harm to the parties concerned.

Gag orders are generally issued by the Court in cases involving, but not limited to, sexual offences and minors.

Gag orders have also been issued by the Court to enable witnesses to testify freely during trials, without fear of embarrassment from public scrutiny.

A Court issues a gag order pursuant to its powers under either Section 7 (3) of the State Courts Act or Section 8 (3) of the Supreme Court of Judicature Act.

Mr. Man pointed out that in certain cases, the Court may also specify that the identity of accused persons cannot be made public; for example, if the accused and victim are familiar with each other, or are relatives or colleagues. This is to ensure that victims or other vulnerable parties cannot be identified by virtue of their relationship with the accused.

Last October, a 26-year-old Yale-NUS college student allegedly took upskirt and shower videos of female students while on campus. Faced with 24 counts of insulting a woman's modesty, he requested through his lawyer, to prohibit the disclosure of his identity on the grounds of protecting the victims, an application that was later approved by the Judge.

In the application, his lawyer pointed out that there were not many Yale-NUS students in the same batch (only about 210 students in total) as the accused, and that publicising his name might result in the victims' identities being revealed. In addition, the four victims involved in the 21 charges that the accused committed were his roommates in a mixed dormitory.

Mr. Wong emphasised that even if no gag order is imposed, existing legal provisions would still restrict the publication of certain information in certain cases.

Examples would include Section 35 of the Children and Young Persons Act, which prohibits the publication of photographs and personal information, such as the name, address and school, of any child or minor under 16 years old who is involved in court proceedings, unless it is in the interest of justice and is permitted by the Court or the Minister.

Gag orders may also be issued in civil cases

Section 153(4) of the Women's Charter prohibits the publication of information pertaining to female victims of sexual offences. Similarly, Section 425A(1) of the Criminal Procedure Code prohibits the publication of information that identifies complainants, or alleged victims of sexual offences or child abuse.

In addition to criminal cases, gag orders may also be issued in civil cases.

Tan Hee Joek, an experienced lawyer, pointed out in an interview that, pursuant to the Family Justice Act, gag orders are issued in all cases tried in the Family Justice Court to protect the identities of the persons involved.

He said that it is usually not easy to apply for a gag order in a civil case. A Judge will only order the media and public not to disclose case information in extremely rare cases involving state secrets or other special circumstances.

If the person whose identity is being protected dies, it is up to the Court's discretion whether or not to issue a gag order

If the person whose identity is being protected is no longer alive, the Court does not need to issue a gag order, unless the publication of a victim's or accused's name compromises the identities of other potential witnesses.

In September last year, a case involving the burnt remains of a body found in a metal pot at Chin Swee Road shocked the nation. Initial investigations revealed that the accused persons, a 31-year-old male and a 30-year-old female, had allegedly caused the death of their two-and-a-half-year-old daughter in a flat unit in 2014.

After the case was brought before the court, the media was prohibited from reporting the accused persons' identities in order to protect the identities of the victim and her family members. However, members of the public uploaded photographs of the accused persons and their family members on Facebook, which were then shared and reposted by thousands of people.

At that time, AGC received several reports of gag order breaches and subsequently directed an investigation into the matter. The authorities also appealed to all communities to refrain from speculating about the case or publicising any comments that might obstruct or interfere with the judicial process while criminal proceedings were ongoing.

As the abovementioned case is still before the courts, it is inappropriate to comment on it further.

However, Mr. Wong explained that, in general, if a case involves other witnesses whose identities warrant protecting, the Court will thoroughly consider whether a gag order should be issued, even if the victim is no longer alive.

The importance of gag orders cannot be ignored, as it involves several layers of consideration. If the identities of these victims or witnesses are not protected, they may be reluctant to testify in Court for fear of unnecessary distress.

This is especially true in an internet age, where the public can easily search for relevant information online, even after 10 or 20 years. These records may accompany them throughout their lives. "As a result, victims may be reluctant to report the crimes they have encountered, particularly those involving sexual offences."

Gag orders also apply to those whose identities are being protected

Those whose identities are being protected are also subject to gag orders. If they intentionally disobey the gag order, they can be prosecuted for contempt of court.

According to Mr. Wong, as the court order clearly states that no person shall disclose relevant information, a victim can also breach this order if he/ she publicly discloses their identity or any information that would lead to their identity being disclosed.

If the victim does not wish for his/ her identity to be protected, the Court may refrain from issuing a gag order in the first place. However, in cases where there are other legal provisions restricting the publication of identity information, the victim may still breach the law if he/she publicises that information.

Mr. Man pointed out that the public must pay special attention to the fact that not only will directly publicising the identity of protected persons constitute a breach, the disclosure of composite information that can reveal the identities of the protected parties may also constitute a breach.

To further elaborate, persons with insider knowledge may publicise limited but specific case related information on their Facebook accounts or blogs. Even if they think that the reach of their posts is small and sharing such information should not be of concern to anyone as the protected persons are not identified directly, their actions may constitute a breach as long as the information they put out is likely to reveal the identity of protected persons. At the same time, netizens who read such posts on the internet and idly forward the information may also be in breach of the gag order.

Persons who breach gag orders may be prosecuted, resulting in a fine or imprisonment, or both. AGC will decide whether to prosecute on a case by case basis.

The severity of punishment will depend on the specific provision which has been contravened. For example, breaching a gag order under Section 7(3) of the State Courts Act will incur a fine of up to \$5,000, or imprisonment for a term not exceeding 12 months, or both.

Public and media statements that obstruct, interfere with, or are likely to obstruct or interfere with, the judicial process would also be deemed as contempt of court. Those who are liable for

contempt of court may face a fine of up to \$100,000, or imprisonment for a term not exceeding three years, or both.

Generally speaking, a gag order does not expire, unless the order clearly states its expiry date. However, it is possible to apply to Court to lift a gag order.

Mr. Wong gave an example of a case in which the prosecution requested that a gag order be lifted during an appeal. However, the Judge felt that the identity of the accused should not be publicised, even though the case had entered the appeal process, as the identity of the victim could be revealed. As a result, the prosecution's application was rejected.