



## **MEDIA BRIEF**

### **CONTEMPT OF COURT PROCEEDINGS AGAINST MR ALAN SHADRAKE – SUMMARY OF JUDGMENT DELIVERED ON 3 NOVEMBER 2010**

1. The Honourable Justice Quentin Loh delivered his judgment this morning in the contempt proceedings commenced by the Attorney-General against Mr Alan Shadrake.
2. The proceedings, which had been brought against Mr Shadrake in respect of 14 statements made in his book “Once a Jolly Hangman: Singapore justice in the dock” (“the Book”), were heard in open court by Justice Loh on 18, 19 and 20 October 2010.

#### **Summary**

3. Justice Loh found Mr Shadrake guilty of the offence of contempt by scandalising the court in respect of 11 of the 14 statements and convicted him accordingly.
4. The hearing has been adjourned to 9 Nov 2010 for counsel to address the Court on sentencing and costs.

#### **Appropriate legal test for contempt by scandalising the court**

5. On the appropriate legal test to determine whether the impugned statements scandalised the Court, Justice Loh declined to adopt the “inherent tendency” test (whether the acts or statements had the inherent tendency to interfere with the administration of justice) which had been applied by the High Court in previous cases.
6. Reasoning from first principles and policy considerations, Justice Loh noted that the “universally accepted rationale for this area of the law of contempt is the preservation of public confidence in the administration of justice”. It therefore followed that the doctrine should only capture conduct which had a *real risk, as opposed to a remote possibility*, of affecting public confidence in the administration of justice (“the real risk test”).

7. Justice Loh made it clear that the real risk test was based on the *potential*, and not merely the actual, effect of the impugned statements, and that it did not require a serious or grave risk of affecting public confidence in the administration of justice before contempt could be established. Rather, the real risk test excluded only *de minimis*, remote and fanciful risks. Any greater risk, even a “small likelihood”, would still fall within the scope of contempt under the real risk test. In other words, the risk “must have substance, but need not be substantial”.

8. Applied in this manner, Justice Loh expressed a doubt as to whether there was in fact any significant difference between the “real risk” test and the “inherent tendency” test previously applied by the High Court.

9. Justice Loh further said that whether there is a real risk of affecting public confidence in the administration of justice is an objective question of fact to be determined in light of all the circumstances of the case, including the author and nature of the publication, the scope of its dissemination, and bearing in mind local conditions.

### **Defences in defamation and fair criticism**

10. In considering the available defences, Justice Loh reaffirmed that the defence of justification in defamation law did not apply in contempt proceedings.

11. It was undisputed that fair criticism would not amount to contempt of court. To fall within the scope of fair criticism, Justice Loh held that the following criteria had to be satisfied:

- (a) There should be some objective, rational basis for the criticism and the basis should be stated together with the criticism so that readers can evaluate its merits. The more serious the criticism made, the more cogent must be the arguments and facts cited in support of it.
- (b) The criticism should be made in good faith. This means that the person must genuinely believe in the truth of the criticism made. A person who acts in reckless disregard of the truth or falsehood of his criticism cannot avail himself of the defence of fair criticism.
- (c) The criticism should be respectful. The criticism can be outspoken and need not be couched in refined terms but abusive, intemperate or outrageous language should not be used.

## **Application of the law to the 14 Statements**

12. Applying the legal principles set out above to the 14 impugned statements in the Book, Justice Loh found Mr Shadrake guilty of contempt by scandalising the court in respect of 11 of the 14 statements.

13. Three of the statements were not found to be in contempt. In respect of 2 of the statements, Justice Loh gave Mr. Shadrake the benefit of doubt as to whether they referred to the Judiciary. As for the 3<sup>rd</sup> statement, Justice Loh found that, taken in its context, it did not allege any wrongdoing or impropriety on the part of the Courts.

14. In respect of the 11 statements that were found to be in contempt, Justice Loh held that the statements posed a real risk of undermining public confidence in the administration of justice.

15. Justice Loh scrutinised the 11 statements in the context of Mr. Shadrake's claim that he was an investigative journalist and that his book was a product of months of investigative journalism. The Judge noted however that Mr. Shadrake did not produce any evidence of his investigations during the hearing. Instead, the Judge found that Mr. Shadrake had distorted his sources for his own purposes and made grave and sweeping allegations of misconduct against the Singapore Judiciary. The Judge said that "Mr. Shadrake's technique is to make or insinuate his claims against a dissembling and selective background of truths and half-truths, and sometimes outright falsehoods". As the 11 statements were made by Mr. Shadrake "without any rational basis, or with reckless disregard as to their truth or falsehood", they were not protected by the defence of fair criticism.

## **Conclusion**

16. Justice Loh concluded his judgment by emphasising that the case against Mr Shadrake was not about the debate over the death penalty. The Judiciary will protect every citizen's right to engage in such debate, even if it is critical of the courts. However, when the debate goes beyond the limits of fair criticism, as was the case with Mr. Shadrake, the law must step in. The Judge affirmed that the law of contempt was necessary to "bring to task those who make dishonest, unwarranted or baseless attacks" against the Judiciary "to ensure that the public's confidence in the administration of justice does not falter".

3 November 2010

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