Attorney-General v Tan Liang Joo John and Others
[2009] SGHC 41

Case Number : OS 1242/2008, 1244/2008, 1246/2008

Decision Date : 18 February 2009

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Jeffrey Chan Wah Teck, Jennifer Marie, Gillian Koh-Tan and Lee Jwee Nguan (Attorney-General's Chambers) for the applicant; Chia Ti Lik (Chia Ngee Thuang & Co) for the third respondent; First and second respondents in person

Parties : Attorney-General — Tan Liang Joo John; Isrizal Bin Mohamed Isa; Muhammad Shafi'ie Syahmi Bin Sariman

Contempt of Court – Civil contempt – Respondents wearing T-shirt imprinted with picture of kangaroo in court building – First respondent posting or acquiescing in online posting of photograph of respondents wearing the T-shirts – First respondent relying on defence of fair criticism – Respondents blaming publication on third party – Respondents refusing to apologise – Whether liable for contempt of scandalising the court – Whether publication a necessary element of liability – Whether defence of fair criticism applicable – Scope of defence of fair criticism – Appropriate sentence – Whether loss of employment a mitigating factor

18 February 2009

Judith Prakash J:

Introduction

1 These were applications by the Attorney-General ("the Applicant") seeking orders of committal against Tan Liang Joo John ("the First Respondent"), Isrizal bin Mohamed Isa ("the Second Respondent") and Muhammad Shafi'ie Syahmi bin Sariman ("the Third Respondent") (collectively "the Respondents") for contempt of court. Orders for the applications to be tried at the same time were made by a Senior Assistant Registrar on 29 October 2008.

2 The ground upon which the applications against the Respondents were made was that they had scandalised the Singapore judiciary in the following manner:

> (a) in respect of all the Respondents, by publicly wearing a white T-shirt, imprinted with a palm-sized picture of a kangaroo dressed in a judge's gown (I shall refer to this as the "contemning T-shirt"), within and in the vicinity of the Supreme Court on 26 May 2008, when a hearing (the "assessment of damages hearing") was being held before Justice Belinda Ang in Court No 4B of the Supreme Court for the assessment of damages payable by Chee Soon Juan, Chee Siok Chin and the Singapore Democratic Party to Minister Mentor Lee Kuan Yew and Prime Minister Lee Hsien Loong in defamation actions instituted by the Minister Mentor and the Prime Minister (in Suit No 262 of 2006 and Suit No 261 of 2006 respectively);
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> (b) additionally, in respect of the First Respondent only:
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> > (1) by publicly wearing the contemning T-shirt within and in the vicinity of the Supreme Court on 27 May 2008, during the continuation of the assessment of damages hearing; and

(2) by pointing to the picture of the kangaroo on the contemning T-shirt and saying, "This is a kangaroo court", to Minister Mentor Lee Kuan Yew when the latter walked past him outside Court No 4B of the Supreme Court on 26 May 2008; and

(c) by posting, or acquiescing in the posting of, an article entitled "Police question activists over kangaroo T-shirts" which appeared on the Singapore Democratic Party ("SDP") website on 27 July 2008 ("the SDP article"), which article was accompanied by a photograph of the Respondents wearing the contemning T-shirts and standing outside the main entrance of the Supreme Court building ("the photograph of the Respondents").

3 The Applicant contended that the Respondents had engaged in a deliberate and calculated attempt to scandalise the Singapore judiciary by stigmatising it as a kangaroo court which, according to *Black's Law Dictionary* (Brian A Garner ed, West Publishing, 8th Ed, 2004 at 382), is:

1. A self-appointed tribunal or mock court in which the principles of law and justice are disregarded, perverted, or parodied...

2. A court or tribunal characterized by unauthorized or irregular procedures, esp. so as to render a fair proceeding impossible.

3. A sham legal proceeding.

…

4 The Applicant had originally relied on identical affidavits in support of the applications against all the Respondents. The Second Respondent applied by way of Summons No 4761 of 2008 to strike out the affidavits or parts thereof on the basis that those parts did not pertain to his conduct and were irrelevant. In the hearing before me on 4 November 2008, the Applicant contended that there appeared to be an intention linking all the incidents from 26 to 27 May 2008 and the posting of the SDP article on the SDP website. Thus, the entire chain of events had to be put before the court in order for me to determine the precise extent of the Second Respondent's culpability. I granted the Second Respondent's application in large part. Since the applications against the Respondents were to be tried at the same time, the evidence of the entire chain of events would be before me. The Second Respondent should, however, only have to answer for his own actions, not the actions of others, and thus only evidence relating to his conduct was admissible in the application against him. I bore this in mind in arriving at the sentences of each of the Respondents.

5 On 24 November 2008, I found each of the Respondents liable for the contempt of scandalising the court. After hearing the parties' submissions on sentence on 27 November 2008, I sentenced the First Respondent to 15 days in prison and the Second and Third Respondents to seven days in prison each. I now give the reasons for my decision.

The Respondents' cases

6 The First Respondent submitted that his wearing of the contemning T-shirt was an act of fair criticism and self-expression, done in the hope that the Singapore judiciary would "improve from strength to strength". He also argued that when he had first turned up at the Supreme Court on 26 May 2008 wearing the contemning T-shirt, he had not been told by the security personnel that the T-shirt was objectionable. The First Respondent contended that he had never intended that the photograph of the Respondents should be widely circulated. Rather, the photograph was wanted for private commemoration or remembrance and it would never have been circulated had it not been for

reportage by the Straits Times. He admitted that he had access and some editorial say in the SDP website, but stated that the SDP had only posted the SDP article and the photograph of the Respondents after the police started investigating the Respondents' alleged contempt. The purpose of the posting was to provide information on the investigations to the public. The First Respondent also denied telling the Minister Mentor that the picture on his T-shirt was of a kangaroo court.

7 The Second Respondent submitted that he had had no intention to commit any contempt or scandalise the Singapore judiciary. He had only changed into the contemning T-shirt on 26 May 2008 in reaction to an incident between him and the police officers at the Supreme Court while he was in the queue during lunchtime (*ie*, the decision to do so was neither wholly rational nor calculated). He too argued that he had not been warned on 26 May 2008 that wearing the contemning T-shirt would amount to contempt of court. The Second Respondent submitted that the image on the T-shirt could be interpreted in various ways and thus it was not proven beyond reasonable doubt that it amounted to contempt of court in the manner asserted by the Applicant. His position was that the contemning T-shirt in fact depicted a dressed wallaby.

8 Counsel for the Third Respondent conceded the liability of his client. Thus, I will deal with his submissions when I discuss the Respondents' sentences below.

The Respondents' liability for scandalising the court

9 The jurisdiction of the Singapore court to punish for contempt is given statutory effect by s 7(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), which provides that: "The High Court and the Court of Appeal shall have power to punish for contempt of court." It is settled law in Singapore that it is a contempt of court to scandalise a court or judge (see *Attorney-General v Pang Cheng Lian* [1972-74] SLR 658 at 661; *Attorney-General v Wong Hong Toy* [1982-1983] SLR 398 at 403; *Attorney-General v Zimmerman* [1984-85] SLR 814 at 817; *Attorney-General v Wain (No 1)* [1991] SLR 383 at 394, 397; *Attorney-General v Lingle* [1995] 1 SLR 696 at 700; *Attorney-General v Chee Soon Juan* [2006] 2 SLR 650 at 658; and, more recently, *Lee Hsien Loong v Singapore Democratic Party* [2008] SGHC 173 at [168]).

10 The classic exposition of the law which has now been accepted as part of our law (see, for example, *AG v Wain (No 1)* at 394) is found in *R v Gray* [1900] 2 QB 36, in which Lord Russell of Killowen stated (at 40):

> Any act done or writing published calculated to bring a Court or a judge of the Court into contempt, or to lower his authority, is a contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke LC characterised as "scandalising a Court or a judge".

11 The *raison d'etre* for the offence of scandalising the court (and indeed contempt of court in general) is the preservation of public confidence in the administration of justice (see *AG v Wong Hong Toy* at 403; *Lee Hsien Loong v Singapore Democratic Party* at [169]–[170]). This has been recognised by courts throughout the Commonwealth. The High Court of Australia, for example, stated in *Gallagher v Durack* (1983) 45 ALR 53 at 55:

> The authority of the law rests on public confidence, and it is important to the stability of society that the confidence of the public should not be shaken by baseless remarks on the integrity or impartiality of courts or judges.

12 To establish contempt the law does not require that a complainant prove that the act or words created a real risk of prejudicing the administration of justice. It is sufficient for the claimant to prove beyond reasonable doubt that the act or words complained of had the inherent tendency to interfere with the administration of justice (*AG v Chee Soon Juan* at [31]; *AG v Wain (No 1)* at 397; *Attorney-General v Hertzberg Daniel* [2008] SGHC 218 ("*AG v Hertzberg Daniel*") at [34]). An act or statement has such an inherent tendency if it would convey to an average reasonable reader or viewer allegations of bias, lack of impartiality, impropriety or any wrongdoing concerning a judge (and, *a fortiori,* a court) in the exercise of his judicial function (*AG v Hertzberg Daniel* at [31]), in the circumstances that obtained at the time of the act or words (*AG v Wain (No 1)* at 399).

13 It follows that, although Lord Killowen referred to an act which is "calculated" to bring a court into contempt, the intention of the alleged contemnor is irrelevant in establishing liability for the contempt (*Lee Hsien Loong v Singapore Democratic Party* at [221]; *AG v Chee Soon Juan* at [31]; *AG v Wain (No 1)* at 395). Intention becomes relevant only when the court determines the appropriate sentence (*AG v Wain (No 1)* at 395; *AG v Lingle* at 701).

14 Fair criticism does not amount to contempt of court. In an oft-cited passage from *Ambard v Attorney-General of Trinidad and Tobago* [1936] 1 All ER 704 ("*Ambard*"), Lord Atkin elaborated that (at 709):

> But whether the authority and position of an individual judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.

15 It is apparent from Lord Atkin's reasoning, however, that there are limits to the right of fair criticism. The criticism must be made in good faith and must also be respectful. In determining whether *mala fides* has been proved, the court can take into account a wide range of factors.

16 One relevant factor is the extent to which the allegedly fair criticism is supported by argument and evidence. There must be some reason or basis for the criticism or else it would amount to an unsupported attack on the court. In the early English decision of *R v White* (1808) 1 Camp 359n, Gross J decided that the censure of a judge and jury in an article constituted contempt of court because:

> [The article] *contained no reasoning or discussion* but only declamation and invective … written not with a view to elucidate the truth but to injure the character of individuals, and to bring into hatred and contempt the administration of justice in this country.
>
> [Emphasis added]

17 As Lord Russell of Killowen stated in *R v Gray* (at 40):

> Judges and Courts are alike open to criticism, and if *reasonable argument or expostulation* is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court.

[Emphasis added]

18 Another relevant factor is the manner in which the alleged criticism is made. The criticism must generally be expressed in a temperate and dispassionate manner, since an intention to vilify the courts is easily inferred where outrageous and abusive language is used (see *Borrie & Lowe: The Law of Contempt* (Nigel Lowe & Brenda Sufrin, Butterworths, 3rd Ed, 1996 ("*Borrie & Lowe*") at p 349). Lord Atkin stipulated that fair criticism needs to be "respectful" (see *Ambard*). In *R v Police Commissioner of the Metropolis, Ex parte Blackburn (No. 2)* [1968] 2 WLR 1204 (at 1207), Salmon LJ stated that "no criticism of a judgment, however vigorous, can amount to contempt of court, providing it keeps within the limits of reasonable courtesy and good faith". Similarly, in *Halsbury's Laws of England* Vol 9(1) (Butterworths, 4th Ed Reissue, 1998) it is said that (para 433):

> [C]riticism of a judge's conduct or of the conduct of a court, even if strongly worded, is not a contempt provided that the criticism is fair, *temperate* and made in good faith and is not directed to the personal character of a judge or to the impartiality of a judge or court.
>
> [Emphasis added]

19 Such 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, on the other hand, are likely to have the opposite effect. As Mortimer VP noted in *Wong Yeung Ng v Secretary for Justice* [1999] 2 HKC 24 ("*Wong Yeung Ng*") (at 44):

> Bona fide, balanced and justified criticism is susceptible to reasoned answer or even acceptance. Sustained scurrilous, abusive attacks made in bad faith, or conduct which challenges the authority of the court, are not susceptible to reasoned answer. If they continue unchecked they will almost certainly lead to interference with the administration of justice as a continuing process.

20 Apart from the two factors discussed above, courts have also taken into consideration such factors as the party's attitude in court (see, for example, *R v Vidal* (1922) Times, 14 October, cited in *Borrie & Lowe* at p 349 n 15) and the number of instances of contemning conduct (see, for example, *R v Glanzer* (1963) 38 DLR (2d) 402). The list of relevant factors is not closed. The court is entitled to take into account all the circumstances of the case which in its view go towards showing bad faith.

21 There is another, more contentious, limit on the right of criticism. It appears from the English authorities above that the act or words in question must not impute improper motives to nor impugn the integrity, propriety and impartiality of judges or the courts (see, for example, *Ambard*; *Halsbury's Laws of England*; see also *Borrie & Lowe* at pp 350–352). The rationale for this second limit is explained in *Borrie & Lowe* as follows (at pp 350–51):

> The courts are particularly sensitive to allegations of partiality, it being a basic function of a judge to make an impartial judgment. The law goes to some lengths to ensure that a judge has no personal interest in the case, his decision being considered void and of no effect if bias is proved: nemo judex in sua causa. Allegations of partiality are treated seriously because they tend to undermine confidence in the basic function of a judge.

22 The need to maintain public confidence in the administration of justice must, however, be balanced against the public interest in rooting out bias and impropriety where it in fact occurs. We ought not to be so complacent as to assume that judges and courts are infallible or impervious to

human sentiment. Thus, I have some sympathy for the view expressed in the New Zealand case of *Solicitor-General v Radio Avon Ltd* [1978] 1 NZLR 225 (at 231):

> If this were the law [that allegations of improper motives, bias or impropriety could not constitute fair criticism] then nobody could publish a true account of the conduct of a judge if the matter published disclosed that the judge had in fact acted from some improper motive. Nor would it be possible, on the basis of facts truly stated, to make an honest and fair comment suggesting some improper motive, such as partiality or bias, without running the risk of being held in contempt.

23 The fear of baseless imputations of bias or impropriety is unfounded as the court is able to take into account factors such as the existence of evidence for such allegations under the requirement of *bona fides*. To my mind, therefore, the second limit on the right to criticise is unnecessary and potentially overly restrictive of legitimate criticism.

24 Applying the law to the facts of the cases before me, I shall deal first with the Second Respondent's submission that the contemning T-shirt could be interpreted in various ways. Given the entire context in which the T-shirt had been worn (*viz*, in and around the Supreme Court, at the same time as the assessment of damages hearing related to Suit No 262 of 2006 and Suit No 261 of 2006), I concluded that a reasonable viewer would apprehend that it was a reference to the expression "kangaroo court" and intended to cast aspersions on the way in which the assessment of damages hearing was being conducted in particular and the Singapore justice system in general. This was especially since the Second Respondent could not give any satisfactory explanation why he put on the T-shirt depicting (as he claimed) a dressed wallaby. He merely gave the vague explanation that it was a reaction to the police officers wanting to inspect the T-shirt when he arrived at the Supreme Court on 26 May 2008.

25 The First Respondent did not deny that he had worn the contemning T-shirt within and in the vicinity of the Supreme Court on 26 May 2008 (as well as in its vicinity on 27 May 2008) and that he had distributed similar T-shirts inside the Supreme Court on 26 May 2008. He also admitted that he had some editorial say in the SDP website, and did not deny being in some way involved in the posting of the SDP article and the photograph of the Respondents on the SDP website. Instead, he claimed that these acts were done in the spirit of fair criticism. I did not agree with him. No reasons accompanied the assertion (by the image on the T-shirt) that the court was a kangaroo court. Far from expressing his criticism in a temperate manner, the First Respondent had chosen to make a statement by wearing the T-shirt and, even worse, inciting others to wear it within the court's premises. This amounted to a deliberate and provocative attack on the court, falling far outside the realm of fair and reasoned criticism.

26 The Second Respondent also did not deny wearing the T-shirt within and in the vicinity of the Supreme Court on 26 May 2008. Instead, he asserted that he had had no intention to scandalise the Singapore judiciary. However, as I have set out above, intention is irrelevant in establishing liability for the contempt. Furthermore, the Second Respondent's assertion that he had had no intention to scandalise the Singapore judiciary was doubtful in the light of his subsequent refusal to apologise for his acts on the basis that it would go against his conscience.

27 The First and Second Respondents tried to blame others for their acts. The question of whether the Straits Times should be held liable for circulating the photograph of the Respondents was, however, irrelevant to the question of the Respondents' liability. The element of publication is only necessary for establishing defamation. Contemning conduct can take many forms. Although the offence of scandalising the court is commonly committed by publication in a print medium (see for example, *AG v Pang Cheng Lian*; *AG v Wain (No 1)*; *AG v Lingle*) or broadcast on television or radio

(*Solicitor-General v Radio Avon Ltd* (cited in [22] above) and *Solicitor-General v Radio New Zealand Ltd* [1994] 1 NZLR 48), pictures have been held to scandalise the court (*Attorney-General v Blomfield* (1914) 33 NZLR 545), as have physical acts (*You Xin v Public Prosecutor* [2007] 4 SLR 17 ("*You Xin*")), spoken words (*Secretary for Justice v Choy Bing Wing* [2005–06] 11 HKPLR 480 ("*Choy Bing Wing*") (although combined with written words in that case) and words displayed on a poster (*R v Vidal* (1922) Times, 14 October, cited in *Borrie & Lowe* at p 340 n 12). It was also irrelevant for the First and Second Respondents to argue that the police officers at the Supreme Court had not told them that the T-shirt was objectionable. The police officers were under no duty to warn them that they were potentially committing a contempt of court.

28 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 fact, images can sometimes have an impact that the spoken or written word will not (*Mafart v Television New Zealand Ltd* [2006] 3 NZLR 534 at [69]; see also *Australian Capital Television Pty Ltd v Commonwealth of Australia (No 2)* (1992) 108 ALR 577 at the text to n 137). However, in the present case, the Respondents' actions were as eloquent as the image on the contemning T-shirt. The Respondents had posed for the photograph of the Respondents at a location where it was obvious that they would be seen by and photographed by the press (not to mention that the First Respondent had distributed the contemning T-shirts within the Supreme Court and was also involved in the posting of the SDP article on the SDP website). It was clear to me that this case was about much more than merely wearing a T-shirt. The conduct of the Respondents communicated to an average member of the public the Respondents' conviction that the Singapore courts are "kangaroo courts" as defined in [3] above.

29 I have already mentioned that the counsel for the Third Respondent had conceded that his client was liable for scandalising the court. For the sake of accuracy and completeness, I note that counsel for the Third Respondent had also raised the arguments that the Third Respondent was merely engaging in fair criticism, that the Straits Times should be held responsible for publishing the photograph of the Respondents and that the Respondents had merely posed for the photograph for private remembrance and commemoration. I have already discussed these arguments and my views apply equally to the Third Respondent. In particular, the argument that the Respondents posed for the photograph of themselves for private remembrance and commemoration rang hollow since counsel for the Third Respondent was unable to satisfactorily explain what exactly they were commemorating.

30 For all these reasons, I found that the First Respondent was in contempt of court by wearing the contemning T-shirt within and in the vicinity of the Supreme Court on 26 May 2008 (as well as in its vicinity on 27 May 2008), distributing similar T-shirts in the Supreme Court on 26 May 2008, and being involved in or acquiescing in the posting of the SDP article and the photograph of the Respondents on the SDP website. I also found that the Second and Third Respondents were in contempt of court by wearing the T-shirt within and in the vicinity of the Supreme Court on 26 May 2008.

The sentences

31 The penalty for contempt of court can take the form of either a fine or imprisonment and there is no limit on the amount of the fine or duration of imprisonment (*AG v Chee Soon Juan* at [57]; *Lee Hsien Loong v Singapore Democratic Party* at [179]). In reaching a decision on the sentence, I bore in mind that "[t]he object of imposing the penalty for the offence of scandalising the court is to ensure that the unwarranted statements made by the contemnor about the court or the judge are repelled and not repeated" (*Gallagher v Durack* at 57). The relevant factors for consideration include: the nature and gravity of the contempt; the seriousness of the occasion on which the contempt was committed; the importance of deterring would-be contemnors from following suit; and the culpability

of the contemnor (see *Lee Hsien Loong v Singapore Democratic Party* at [179]–[180] and [222]). Fines as the penalty for scandalising the court are no longer the norm (*AG v Chee Soon Juan* at [61]). The appropriate sentence can only be determined by looking at the particular facts of each case (*Soong Hee Sin v PP* [2001] 2 SLR 253).

32 In *AG v Chee Soon Juan*, the respondent had read out a statement at the hearing of a bankruptcy petition against him, in which he alleged, *inter alia*, that the Singapore judiciary was biased and unfair. Noting that the contemptuous statement had actually been read before the court and the respondent's lack of contrition or any attempt to withdraw his offending remarks, Lai J held that the respondent's conduct amounted to "sheer, unmitigated contempt" sufficient to warrant a sentence of imprisonment. She sentenced the respondent to one day's jail and a $6,000 fine, with seven days' jail in default. The respondent chose not to pay the fine and had to serve a sentence of eight days' imprisonment in total.

33 In *You Xin* (cited in [27] above), the contemnor had disrupted Subordinate Court proceedings by chanting (together with a few others) with her back to the court despite being asked by the district judge to stop. The High Court declined to revise the sentence of two days' imprisonment passed by the court below.

34 During the recent case of *Lee Hsien Loong v Singapore Democratic Party*, the contemnors had disregarded and disobeyed the court's directions to desist from asking irrelevant questions during cross-examination of the plaintiffs' witnesses in an assessment of damages hearing. Furthermore, they had made scurrilous and unfounded remarks attacking the impartiality of the court, which I need not repeat here (see *Lee Hsien Loong v Singapore Democratic Party* at Annexes A and B). Sentences of 12 days' imprisonment and 10 days' imprisonment respectively were imposed on the two contemnors.

35 Terms of imprisonment have also been imposed in other jurisdictions for the offence of scandalising the court. In *Gallagher v Durack*, a union leader's appeal against a conviction for contempt of court was allowed. Rather unwisely, he then gave a statement on television, saying that he believed that the main reason for the court allowing the appeal was that the rank and file of the union had walked off their jobs. The High Court of Australia found that this imputation that the court had bowed to outside pressure in reaching its decision was an imputation of "a grave breach of duty by the court" (*Gallagher v Durack* at 55). It also noted the union leader held an important office and was well-known to the Australian public (*Gallagher v Durack* at 56). Taking these factors into account, the High Court refused to grant leave to appeal against the sentence of three months' imprisonment.

36 In a recent decision of the Supreme Court of New South Wales, *Re Bauskis* (5 September 2006) (unreported), the contemnor had in defiance of a judge's direction to leave, remained in court whilst wearing a T-shirt containing the words "Trial by jury is democracy". He had also participated in shouting and verbal abuse against the judge when the judge refused to proceed by way of trial by jury. Noting that this amounted to "contumacious contempt, which occurs where the behaviour of the contemner has been shown to be aimed at the integrity of the courts and designed to degrade the administration of justice" (*Re Bauskis* at [5]) and that the contemnor had remained defiant throughout, the Supreme Court of New South Wales sentenced him to fourteen days' imprisonment.

37 It is also worth noting two earlier Hong Kong decisions. In *Wong Yeung Ng*, the contemning act was the publication of a series of abusive and scurrilous articles which expressed the view that the Oriental Press Group (a group of companies which published the popular Oriental Daily News newspaper in Hong Kong) was the target of a biased judiciary pursuing a conspiracy of political persecution started under the former colonial government. Noting the relatively small size of Hong

Kong's population and the ease with which information spreads to a substantial portion of the population (per Mortimer VP at 44), as well as the sustained nature of the attack (per Mayo JA at 55 and Leong JA at 61), the Hong Kong Court of Appeal upheld the sentence of four months' imprisonment. In *Choy Bing Wing*, the Court of First Instance sentenced the contemnor to six months' imprisonment for making serious written and verbal accusations against a judge of bias and impropriety in an attempt to secure the judge's recusal from hearing his appeal.

38 The contemnors' conduct in the cases before me was not as serious as that in *Wong Yeung Ng* and *Choy Bing Wing* but nevertheless was of a grave and serious nature. In determining the sentences, I took into account the following aggravating factors. First, the imputation that the Singapore courts are "kangaroo courts" was a serious and scurrilous insult that struck at the foundation, the body and the spirit of the justice system in Singapore. The message was that justice cannot be obtained in our courts and that our legal proceedings are a sham. This is the worst form of insult possible against a court system and merited a harsher punishment than was imposed in the cases of *You Xin*, *AG v Chee Soon Juan* and *Lee Hsien Loong v Singapore Democratic Party*. It was imperative that a clear message be sent to potential contemnors that such attacks on the judiciary are not acceptable.

39 The respondents were deliberately unforthcoming on many of the circumstances surrounding their contemning acts. For example, the Second and Third Respondents did not give any clear account of how and why they came to wear the contemning T-shirts on 26 May 2008. Nor did the First and Third Respondents explain what exactly it was they had come to court to "commemorate" by wearing the contemning T-shirts. This lack of cooperation weighed against them in the determination of their sentences.

40 Although I had given the Respondents the opportunity to apologise for their acts, they refused to apologise and demonstrated a lack of contrition in making reference to their "conscience" and "personal convictions". I have already noted above that the Second Respondent's declaration that he had to live by his conscience sat oddly, to say the least, with his earlier submission that he had had no intention to impugn the impartiality of the court. This bolstered my conclusion that he had been less than forthcoming with me.

41 The First Respondent was particularly recalcitrant. His expositions on the futility of punishment showed a lack of repentance that aggravated the offence. For example, he stated in the course of making submissions on sentence:

> Allow me, your Honour, to give another example, also one that I frequently see in the course of my work that brings detriments to many people's lives. And I'm quite sure, your Honour, you might have come across this too in your own experience. Sometime[s] a boy or a girl, a child that is – might have done something kind of in a grey area, parents disapprove of it, scolded them, beat them up, the child cry and asked why the parents beat them, parents try to explain perhaps, sometimes they don't. Child don't understand why they are punished. Parents punished them more, harder. "You apologise or else", but child doesn't know why, because he doesn't see what's wrong with his action. Parents beat them more and very often this has got very adverse consequence to their relationship to the family. And I see a lot of this, I counsel people on these things. And here I am in a similar situation, not with my parents but with a higher authority. But the parallel, I'm sure you can see, "You apologise or else". Well, until I'm convinced that what I did was wrong, I cannot apologise.
>
> [sic]

Subsequently, he added (Notes of Evidence for 24 November 2008 at p 91):

> I forgot to mention earlier on in my illustration that, you know, some of my client[s] were as young as 5 years old, who rather have more caning than to say sorry. Not because they love pain but because they really don't see what's wrong with what they did.
>
> [sic]

42 It has also been noted that the First Respondent had actively distributed the contemning T-shirts in the Supreme Court building. He was also involved in the posting of the SDP article on the SDP website. Thus, the First Respondent's culpability was much greater than that of the Second and Third Respondents.

43 There were no mitigating factors in favour of the Respondents. Counsel for the Third Respondent submitted that I should be lenient in my sentencing of the Third Respondent since he never intended for the image of the contemning T-shirt to be broadcast far and wide, and since Singapore is a civilised and educated country where people are able to form their own opinions as to the acts of the Respondents. Although I noted that the Third Respondent is a young man (he is still serving national service), he must have understood what was happening when the members of the press took photographs of them wearing the contemning T-shirts outside the Supreme Court. The question was not whether there was a real risk that Singaporeans would lose their confidence in the administration of justice, but whether the Respondents' acts had the inherent tendency to undermine confidence in the administration of justice.

44 The First and Second Respondents also pointed out that they had already lost employment by virtue of the proceedings against them but I thought this could not be a mitigating factor in their favour. Loss of employment will generally not be taken into account except in special cases (see for example, *Knight v Public Prosecutor* [1992] 1 SLR 720). Every person who faces court proceedings may potentially find his sources and flow of income threatened and if the court were to take this into account there would effectively have to be an automatic discount in sentences.

45 The Respondents' conduct amounted to contumacious contempt aimed at the integrity of the courts and was designed to degrade the administration of justice. Having considered all the circumstances, I came to the conclusion that a custodial sentence was appropriate.