IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 222

Originating Summons No 510 of 2018
(Summons No 2196 of 2018)

In the matter of Order 52 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed)

And

In the matter of an application by the Attorney-General for an order of committal for contempt of court

And

In the matter of Sections 3(1)(*a*) and 10(1) of the Administration of Justice (Protection) Act 2016 (No 19 of 2016)

Between

The Attorney-General

… *Applicant*

And

Wham Kwok Han Jolovan

… *Respondent*

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Originating Summons No 537 of 2018
(Summons No 2192 of 2018)

In the matter of Order 52 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed)

And

In the matter of an application by the Attorney-General for an order of committal for contempt of court

And

In the matter of Sections 3(1)(*a*) and 10(1) of the Administration of Justice (Protection) Act 2016 (No 19 of 2016)

Between

The Attorney-General

… *Applicant*

And

Tan Liang Joo John

… *Respondent*

JUDGMENT

[Constitutional Law] — [Fundamental liberties] — [Freedom of speech]
[Contempt of Court] — [Scandalising the court]

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Attorney-General
v
Wham Kwok Han Jolovan and another matter

[2018] SGHC 222

High Court — Originating Summonses Nos 510 and 537 of 2018 (Summonses Nos 2196 and 2192 of 2018)
Woo Bih Li J
17 July 2018

9 October 2018 Judgment reserved.

Woo Bih Li J:

Introduction

1 The Attorney-General ("the AG") commenced two actions, Originating Summonses Nos 510 and 537 of 2018 ("OS 510/2018" and "OS 537/2018" respectively). In OS 510/2018, the AG filed Summons No 2196 of 2018 ("SUM 2196/2018") for Wham Kwok Han Jolovan ("Wham") to be punished for contempt of court under s 3(1)(*a*) of the Administration of Justice (Protection) Act 2016 (No 19 of 2016) ("the Act"). Section 3(1)(*a*) provides for the offence of contempt by scandalising the court ("scandalising contempt"). In OS 537/2018, the AG filed Summons No 2192 of 2018 ("SUM 2192/2018") for Tan Liang Joo John ("Tan") to be punished for scandalising contempt under the same provision. Wham and Tan are collectively referred to as "the Respondents".

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2 The Act came into operation on 1 October 2017. The Respondents are the first individuals against whom proceedings were commenced for scandalising contempt under s 3(1)(*a*) of the Act. The conduct alleged to be scandalising contempt pertain to the Respondents' respective posts on their Facebook profiles. The Respondents first raised a constitutional challenge to the validity of s 3(1)(*a*), in view of their rights to freedom of speech and expression under Art 14(1)(*a*) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution"). The Respondents also denied that they committed scandalising contempt. In the case of Wham, he also alleged that his post constitutes fair criticism.

Background

3 On 27 April 2018 at or about 6.30pm, Wham published a post on his Facebook profile ("Wham's post") containing the following statement:[1]

> Malaysia's judges are more independent than Singapore's for cases with political implications. Will be interesting to see what happens to this challenge.

Wham's post also consisted of a link to an online article titled "Malaysiakini mounts constitutional challenge against Anti-Fake News Act". Wham published his post under the "Public" setting of Facebook's audience selector. According to information on Facebook's online Help Centre, sharing a post under the "Public" setting means that "anyone including people off of Facebook can see it".[2]

4 On 30 April 2018, the AG filed an application by *ex parte* OS 510/2018 for leave to apply for an order of committal against Wham for scandalising

1 Lai Xue Ying's 1st affidavit dated 30 April 2018 against Wham ("Lai's 1st affidavit-W") at p 9.

2 Lai's 1st affidavit-W at p 16.

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contempt under s 3(1)(*a*) of the Act in connection with his post. Pursuant to O 52 r 2(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), the application was supported by a statement ("the O 52 statement") which, *inter alia*, set out the grounds on which Wham's committal was sought, and by an affidavit verifying the facts relied on.

5 On 6 May 2018 at or about 11.05am, Tan published a post on his Facebook profile ("Tan's post") containing the following statement:[3]

> By charging Jolovan for scandalising the judiciary, the AGC only confirms what he said was true.

Tan's reference to "AGC" was to the Attorney-General's Chambers ("AGC").[4] Tan's reference to "what [Wham] said was true" was to what Wham said in Wham's post.[5] Tan's post also consisted of a link to Wham's Facebook profile.[6] Like Wham, Tan published his post under the "Public" setting of Facebook's audience selector.

6 On 7 May 2018, the AG filed an application by *ex parte* OS 537/2018 for leave to apply for an order of committal against Tan for scandalising contempt under s 3(1)(*a*) of the Act in connection with his post. Pursuant to O 52 r 2(2) of the Rules of Court, the application was supported by a statement which, *inter alia*, set out the grounds on which Tan's committal was sought, and by an affidavit verifying the facts relied on.

7 On 9 May 2018, I heard both OS 510/2018 and OS 537/2018 and granted both applications for leave. Thereafter, on 11 May 2018, the AG filed

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3 Lai Xue Ying's affidavit dated 7 May 2018 against Tan ("Lai's affidavit-T") at p 8.

4 Tan's affidavit dated 18 June 2018 ("Tan's affidavit") at paras 4, 7.

5 Tan's affidavit at paras 5, 7.

6 Lai's affidavit-T at para 10, p 8.

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SUM 2196/2018 and SUM 2192/2018 for the Respondents to be punished for scandalising contempt under s 3(1)(*a*) of the Act.

8 On 17 July 2018, I heard the parties on both summonses and reserved judgment.

Issues

9 Based on the parties' submissions, the following issues arise for determination:

(a) Is s 3(1)(*a*) of the Act consistent with Art 14(1)(*a*) of the Constitution and consequently valid? Art 14(1)(*a*) refers to a Singapore citizen's right to freedom of speech and expression.

(b) If s 3(1)(*a*) of the Act is consistent with Art 14(1)(*a*) of the Constitution:

(i) What are the applicable principles in relation to the offence of scandalising contempt under s 3(1)(*a*)?

(ii) Did Wham commit scandalising contempt under s 3(1)(*a*) by intentionally publishing his post?

(iii) Did Tan commit scandalising contempt under s 3(1)(*a*) by intentionally publishing his post?

10 I will address the issues *seriatim*.

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Constitutional issue

11 The preliminary issue that arises for determination is the constitutional issue: whether s 3(1)(*a*) of the Act is consistent with Art 14(1)(*a*) of the Constitution and is consequently valid.

Parties' arguments

12 Section 3(1)(*a*) of the Act and its accompanying explanation, Explanation 1 to s 3(1), state as follows:

> **Contempt by scandalising court, interfering with administration of justice, etc.**
>
> **3.**—(1) Any person who —
>
> (*a*) scandalises the court by intentionally publishing any matter or doing any act that —
>
> (i) imputes improper motives to or impugns the integrity, propriety or impartiality of any court; and
>
> (ii) poses a **risk** that public confidence in the administration of justice would be undermined;
>
> …
>
> commits a contempt of court.
>
> *Explanation 1*.—Fair criticism of a court is not contempt by scandalising the court within the meaning of subsection (1)(*a*).
>
> …
>
> [emphasis added in bold]

13 I will call the test in s 3(1)(*a*)(ii) of the Act, that the contemptuous conduct poses a risk that public confidence in the administration of justice would be undermined, the "risk" test.

14 For the "risk" test, the Respondents argued that if such "risk" includes "a remote or fanciful possibility" that public confidence in the administration of

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justice would be undermined, then this provision would violate a Singapore citizen's right to freedom of speech and expression under Art 14 of the Constitution and is therefore void.[7] Article 4 of the Constitution provides that the Constitution is the supreme law of Singapore.

15 Prior to this statutory "risk" test in s 3(1)(*a*)(ii) of the Act, the common law on scandalising contempt was that the contemptuous conduct must pose a "real risk" that public confidence in the administration of justice would be undermined (see *Shadrake Alan v Attorney-General* [2011] 3 SLR 778 ("*Shadrake Alan (CA)*") at [57]; *Au Wai Pang v Attorney-General* [2016] 1 SLR 992 ("*Au Wai Pang*") at [18]). I will call this common law test the "real risk" test. The Respondents argued that the "risk" test in s 3(1)(*a*)(ii) has no nexus with maintaining public confidence in the administration of justice.[8] They also submitted that the "real risk" test is "necessary for the offence [of scandalising contempt] to survive a constitutional right to freedom of speech".[9]

16 On the other hand, the AG submitted that the Respondents' constitutional challenge to the validity of s 3(1)(*a*)(ii) of the Act should be dismissed. The AG submitted that this provision is a legislative overruling of the "real risk" test at common law for scandalising contempt and its enactment was a valid exercise of legislative power.[10] The AG submitted that the provision is a permissible restriction under Art 14(2)(*a*) of the Constitution.[11]

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7 Wham's Written Submissions at para 5; Tan's Written Submissions at para 3(b).

8 Wham's Written Submissions at para 117.4.

9 Wham's Written Submissions at para 119.

10 AG's Further Written Submissions against Wham ("AG's FWS-W") at para 14; AG's Further Written Submissions against Tan ("AG's FWS-T") at para 14.

11 AG's FWS-W at para 7; AG's FWS-T at para 7.

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Analysis

17 The relevant constitutional provisions that pertain to a Singapore citizen's right to freedom of speech and expression are found in Arts 14(1)(*a*) and 14(2)(*a*) of the Constitution. These provisions state as follows:

> **Freedom of speech, assembly and association**
>
> **14.**—(1) Subject to clauses (2) and (3) —
>
> (*a*) every citizen of Singapore has the right to freedom of speech and expression;
>
> …
>
> (2) *Parliament may by law impose —*
>
> (*a*) *on the rights conferred by clause (1)(*a*),* such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and *restrictions designed* to protect the privileges of Parliament or *to provide against contempt of court*, defamation or incitement to any offence;
>
> …
>
> [emphasis added]

18 In the preceding paragraph, I italicised the applicable clause for Parliament to impose restrictions on a Singapore citizen's right to freedom of speech and expression in the context of providing against contempt of court. Under Art 14(2)(*a*), "Parliament may by law impose on the rights conferred by clause (1)(*a*) … restrictions designed … to provide against contempt of court". Since s 3(1)(*a*) of the Act which provides for the offence of scandalising contempt is such a restriction designed to provide against contempt of court, I find that s 3(1)(*a*) is consistent with Art 14(1)(*a*) of the Constitution and is consequently valid.

19 This finding is supported by V K Rajah J's interpretation of Art 14(2) of the Constitution in *Chee Siok Chin and others v Minister for Home Affairs and*

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another [2006] 1 SLR(R) 582 ("*Chee Siok Chin*"), which the AG and the Respondents submitted as relevant in determining the constitutional issue. In *Chee Siok Chin* at [49], Rajah J said:

> … The court's sole task, when a constitutional challenge is advanced, is to ascertain whether an impugned law is within the purview of any of the permissible restrictions. … All that needs to be established is a nexus between the object of the impugned law and one of the permissible subjects stipulated in Art 14(2) of the Constitution. … A generous and not a pedantic interpretation should be adopted; see also s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) … and *Constitutional Reference No 1 of 1995* [1995] 1 SLR(R) 803. The presumption of legislative constitutionality will not be lightly displaced.

20 The issue before the High Court in *Chee Siok Chin* was whether the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) ("MOA") was consistent with Art 14 of the Constitution. As the MOA restricts the rights to freedom of speech and expression and assembly in the interest of public order, for the MOA to be validly enacted under Arts 14(2)(*a*) and 14(2)(*b*) of the Constitution, Parliament had to consider that the MOA is a legislative fetter that is "necessary or expedient in the interest of … public order". Rajah J found this to be the case and that the MOA was validly enacted under the Constitution.

21 Section 3(1)(*a*) of the Act restricts the right to freedom of speech and expression on a different basis from the MOA. The object of s 3(1)(*a*) is to provide for the offence of scandalising contempt, and "provid[ing] against contempt of court" is one of the permissible subjects stipulated in Art 14(2)(*a*) of the Constitution. Unlike restrictions that Parliament may impose "in the interest of … public order", for which Parliament must consider them "necessary or expedient" in this regard, restrictions designed to provide against contempt of court are not similarly qualified as such under Art 14(2)(*a*). I reiterate that the presumption of legislative constitutionality will not be lightly

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displaced. Since there is a nexus between the object of s 3(1)(*a*) of the Act and one of the permissible subjects stipulated in Art 14(2) of the Constitution, s 3(1)(*a*) was validly enacted under the Constitution.

22 I will also address the Respondents' argument that the "real risk" test at common law represented the Art 14 balance that the constitutional framers carefully struck between the right to freedom of speech and expression and the protection of public confidence in the administration of justice.[12] The Respondents submitted that the "risk" test in s 3(1)(*a*)(ii) of the Act is "an abrupt and sudden departure" from that balance.

23 I am of the view that any change by legislation from the common law must necessarily be a departure from the common law. Enacting legislation is the prerogative of the Legislature (see Art 38 of the Constitution). A piece of legislation which departs from the common law, however abrupt it may appear to be, cannot *per se* suggest that the legislation is unconstitutional.

24 Article 14(2)(*a*) of the Constitution confers on Parliament the power to impose legislative restrictions on the right to freedom of speech and expression, to provide against contempt of court. Prior to the Act, s 7(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") provided that "[t]he High Court and the Court of Appeal shall have power to punish for contempt of court." Section 7 of the SCJA was repealed by s 45 of the Act when the Act came into force on 1 October 2017. Before the Act, there was no other legislative provision governing the offence of scandalising contempt. There was nothing in Art 14(2)(*a*) of the Constitution and the SCJA which precluded the courts from developing the common law on scandalising contempt as they did (in the context of the law on defamation, see *Review Publishing Co Ltd and*

[12] Wham's Written Submissions at para 117.2.

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another v Lee Hsien Loong and another appeal [2010] 1 SLR 52 ("*Review Publishing*") at [270]).

25 However, Art 14(2)(*a*) of the Constitution expressly provides that Parliament has the final say on how the balance should be struck between the right to freedom of speech and expression and the protection of public confidence in the administration of justice (see *Review Publishing* at [270]). In enacting the Act, Parliament was exercising its legislative power to impose restrictions on the right to freedom of speech and expression, designed to provide against contempt of court. In fact, Art 14(1)(*a*) provides that the right to freedom of speech and expression is subject to Arts 14(2) and 14(3). It is within Parliament's legislative power, and the purpose of Art 14, for Parliament to decide how the balance should be struck between this constitutional right and the protection of public confidence in the administration of justice. Parliament can decide the extent to which this constitutional right should be restricted.

26 Parliament has decided to enact the "risk" test in s 3(1)(*a*)(ii) of the Act to legislatively overrule the "real risk" test at common law for the offence of scandalising contempt. The result of this is that Parliament has enlarged the scope of conduct that constitutes scandalising contempt. In determining when scandalising contempt is committed, the court will now consider what the applicable principles are under s 3(1)(*a*). It is the role of the court to interpret and apply legislative provisions, as the judicial power of Singapore vests in the Singapore courts (see Art 93 of the Constitution).

27 I add that while s 3(1)(*a*) of the Act restricts the right to freedom of speech and expression, fair criticism of a court is allowed. As stated in Explanation 1 to s 3(1), fair criticism of a court is not scandalising contempt. The Act also provides other defences that may be raised against allegations of

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scandalising contempt. These defences are found in ss 14–19, and include the defence for when a person makes a report in good faith to a public authority alleging misconduct or corruption on the part of a judge (s 16). Therefore, it cannot be said that under the Act a Singapore citizen is completely unable to criticise the courts.

28 In summary, s 3(1)(*a*) of the Act is consistent with Art 14(1)(*a*) of the Constitution and is consequently valid.

Scandalising contempt under s 3(1)(*a*) of the Act

29 Since s 3(1)(*a*) of the Act is consistent with Art 14(1)(*a*) of the Constitution, I proceed to consider the applicable principles in relation to the offence of scandalising contempt under s 3(1)(*a*) of the Act.

30 The Act states in its Long Title that it is:

> [a]n Act to *state and consolidate the law of contempt of court for the protection of the administration of justice*, to define the powers of certain courts in punishing contempt of court and to regulate their procedure in relation thereto; and to make consequential amendments to certain other Acts. [emphasis added]

31 The purpose of the Act and specifically s 3(1)(*a*) to generally state and consolidate the law of scandalising contempt is confirmed in the parliamentary debates. During the debates, it was stated that Parliament has "consciously chosen to stick to the law as developed by the Singapore courts except for the one change", which is to statutorily enact the "risk" test in place of the "real risk" test at common law: *Singapore Parliamentary Debates, Official Report* (15 August 2016) vol 94 ("*Parliamentary Debates*") (K Shanmugam, Minister for Law).[13] As referred to in the explanatory statement relating to the

[13] AG's BOA against Wham ("AG's BOA-W") at Tab 11, pp 36, 39.

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Administration of Justice (Protection) Bill (Bill 23 of 2016) ("the Bill"), the Court of Appeal's decision in *Shadrake Alan (CA)* ([15] *supra*) is the seminal case that Parliament considered when codifying the offence of scandalising contempt in s 3(1)(*a*). An analysis of the applicable principles under s 3(1)(*a*) thus requires both an interpretation of the Act and an understanding of the common law on scandalising contempt prior to the commencement of the Act.

32 I will discuss the applicable principles in relation to the offence of scandalising contempt under s 3(1)(*a*) of the Act in the following order:

(a) the *mens rea* requirement;

(b) the *actus reus* requirement;

(c) fair criticism; and

(d) the defences.

At the end of this discussion at [78] below, I also provide a summary of the applicable principles.

33 The Act states that the standard of proof for establishing the offence of scandalising contempt is that of beyond reasonable doubt (s 28).

Mens rea *requirement*

34 To be liable for the offence of scandalising contempt under s 3(1)(*a*) of the Act, the only *mens rea* that is required is an intention to publish the contemptuous matter or do the contemptuous act. A person is guilty of scandalising contempt even if there was no intention to scandalise the court

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(s 3(2)). This is a codification of the *mens rea* requirement at common law (*Shadrake Alan (CA)* at [23]).

Actus reus *requirement*

35 I reproduce the *actus reus* requirement for the offence of scandalising contempt as stated in the two limbs of s 3(1)(*a*) of the Act, *ie*, ss 3(1)(*a*)(i) and 3(1)(*a*)(ii):

> **Contempt by scandalising court, interfering with administration of justice, etc.**
>
> **3.**—(1) Any person who —
>
> (*a*) scandalises the court by intentionally publishing any matter or doing any act that —
>
> (i) imputes improper motives to or impugns the integrity, propriety or impartiality of any court; and
>
> (ii) poses a risk that public confidence in the administration of justice would be undermined;
>
> …
>
> commits a contempt of court.
>
> …

36 The first limb, *ie*, s 3(1)(*a*)(i), governs the scope of conduct that can be considered as scandalising contempt. The first limb is satisfied when on an objective interpretation of the conduct in question, such conduct imputes improper motives to or impugns the integrity, propriety or impartiality of any court: see *Au Wai Pang* ([15] *supra*) at [38]–[48] where the Court of Appeal determined what the objective reading of the alleged contemptuous article was.

37 The second limb, *ie*, s 3(1)(*a*)(ii), is the "risk" test, which Parliament statutorily enacted in place of the "real risk" test at common law (as noted at [31] above). The interpretation and application of this second limb were the

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main areas of dispute between the parties. I will discuss the parties' respective submissions as I determine the applicable principles for the "risk" test. By way of an overview, the parties' arguments are largely based on the case law for the "real risk" test at common law, and the arguments are briefly as follows:

(a) the AG argued for what I will call the "categorical approach" when applying the "risk" test, that is, the "risk" test in the second limb of s 3(1)(*a*) is necessarily satisfied as long as the conduct that satisfies the first limb of s 3(1)(*a*) is that which impugns the *integrity* or *impartiality* of any court;

(b) the Respondents argued that a "risk" under the "risk" test still cannot be one that is "a remote or fanciful possibility" that public confidence in the administration of justice would be undermined; and

(c) the Respondents also argued that the court should adopt a "quantitative approach" when applying the "risk" test to consider how many individuals in Singapore are in fact aware of the alleged contemptuous conduct, or the conduct in question.

Analysis of the "risk" test

38 I will first set out the applicable principles for the "real risk" test at common law.

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39 The seminal case on scandalising contempt at common law is the Court of Appeal's decision in *Shadrake Alan (CA)*. As mentioned, this is also the case Parliament considered when codifying this offence (see the explanatory statement relating to the Bill). The Court of Appeal summarised the applicable principles for the "real risk" test in *Shadrake Alan (CA)* as such at [36]:

> … Put simply, the 'real risk' test is an adequate formulation in and of itself and requires no further theoretical elaboration. It is, at bottom, a test that means precisely what it says: ***is there a real risk that the impugned statement has undermined – or might undermine – public confidence in the administration of justice (here, in Singapore)?*** In applying this 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 … In undertaking such an analysis, the court must not substitute its own subjective view for the view of the average reasonable person as it is clear that the inquiry must necessarily be an objective one. Much would depend, in the final analysis, on the precise facts and context in which the impugned statement is made. [emphasis in original in italics; emphasis added in bold italics]

40 In determining what conduct would be considered as scandalising contempt, the Court of Appeal's judicial formulation of the applicable principles for scandalising contempt at common law did not define the scope of such conduct as s 3(1)(*a*)(i) of the Act does (see *Au Wai Pang* at [17]–[18]). At common law, all alleged contemptuous conduct had to be assessed to satisfy the "real risk" test before such conduct could be considered as scandalising contempt.

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(1) Categorical approach?

41 I first address the AG's submission that the court should adopt a categorical approach when applying the "risk" test in the second limb of s 3(1)(*a*) of the Act.

42 In *Au Wai Pang*, the Court of Appeal expressly affirmed its approach to the law on scandalising contempt as set out in *Shadrake Alan (CA)* (see *Au Wai Pang* at [31]). Before applying the applicable principles for scandalising contempt in the case before it, the Court of Appeal in *Au Wai Pang* also made the following preliminary observation at [37]:

> We have set out the above Oath of Office in order to emphasise how vital, amongst other qualities, the qualities of *judicial independence and impartiality* are in the role and function of a judge. Indeed, without judicial independence and impartiality, the concept of a judiciary in general and the office of a judge in particular become nothing more than empty shells, shorn of any meaning whatsoever. Hence, *any statement or material which impugns these qualities and suggests that they have been compromised would necessarily as well as undoubtedly undermine public confidence in the judiciary*; indeed, this would be an understatement of sorts, given the foundational nature of the aforementioned qualities. … [emphasis added]

43 The AG relied on the italicised portion in the quote from *Au Wai Pang* as set out in the preceding paragraph in arguing for a categorical approach.[14] The AG argued that as long as the conduct that satisfies the first limb of s 3(1)(*a*) of the Act is that which impugns the *integrity* or *impartiality* of any court, public confidence in the judiciary would "necessarily as well as undoubtedly" be undermined.[15] Therefore, the "risk" test in the second limb of s 3(1)(*a*) is necessarily satisfied. If, on the other hand, the conduct in question satisfies the

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14 See AG's Written Submissions against Wham ("AG's WS-W") at para 40; AG's Written Submissions against Tan ("AG's WS-T") at para 23.

15 See AG's WS-W at paras 10(b), 40; AG's WS-T at paras 12(b), 23.

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first limb only because it imputes *improper motives* to or impugns the *propriety* of any court instead, such conduct must be separately assessed to satisfy the "risk" test in the second limb. The AG did not make further submissions on how the "risk" test would be satisfied for such conduct, because the AG's case was that both the Respondents' conduct impugned the integrity and impartiality of the Singapore courts.[16]

44 The Respondents argued that such a categorical approach should be rejected, *inter alia*, on the basis that ss 3(1)(*a*)(i) and 3(1)(*a*)(ii) are presented as conjunctive requirements in s 3(1)(*a*).[17] Therefore, s 3(1)(*a*)(ii) must necessarily add a further requirement to s 3(1)(*a*)(i). If the categorical approach was adopted, it would render the "and" after s 3(1)(*a*)(i) otiose.

45 I disagree with the AG's categorical approach. I do not find this position borne out either on a purposive interpretation of s 3(1)(*a*) of the Act or from the Court of Appeal's decisions in both *Shadrake Alan (CA)* and *Au Wai Pang*.

46 First, the *actus reus* for the offence of scandalising contempt requires both limbs of s 3(1)(*a*), *ie*, ss 3(1)(*a*)(i) and 3(1)(*a*)(ii), to be satisfied. This means that the satisfaction of the first limb does not necessarily mean that the second limb is also satisfied. The two limbs are connected by way of the word "and", and this "conjunctive" requirement was expressly enunciated in the *Parliamentary Debates* (K Shanmugam, Minister for Law):[18]

> So, you have got to show that the statements impugned the integrity, propriety, or impartiality, or imputed improper motives, and you *also* have to show that there was a risk that

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16 O 52 statement against Wham ("O 52-W") at para 4; O 52 statement against Tan ("O 52-T") at para 4.

17 Notes of Evidence ("NEs") at p 90 lines 22–31, p 91 lines 1–3.

18 AG's BOA-W at Tab 11, p 35.

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> public confidence and the administration of justice would be impacted. [emphasis added]

47 Neither the terms of the first limb of s 3(1)(*a*) nor the parliamentary debates suggest that a distinction is to be drawn between the various conduct stated in the first limb – conduct impugning the integrity or impartiality of any court, on the one hand, and other conduct stated in the first limb, on the other hand. However, it may be that in a particular case, the facts which satisfy the first limb may make it easier to satisfy the "risk" test in the second limb.

48 I add that there may well be an overlap between the various conduct stated in the first limb of s 3(1)(*a*). For instance, depending on the circumstances, conduct which imputes improper motives to or impugns the propriety of any court may well impugn the integrity or impartiality of any court. If indeed the AG's submitted categorical approach was correct, the temptation would be to categorise the conduct of a respondent as one that impugns the integrity or impartiality of any court so that the "risk" test is necessarily satisfied. This would render otiose the express conjunctive requirement of the "risk" test in the second limb of s 3(1)(*a*).

49 Second, I am of the view that *Au Wai Pang* at [37] cannot be used to support the proposition that whenever the conduct in question impugns the integrity or impartiality of any court, it would necessarily pose a risk that public confidence in the administration of justice would be undermined. Such a proposition would have entirely contradicted the Court of Appeal's view in *Shadrake Alan (CA)*, where at common law, all conduct had to be assessed to satisfy the "real risk" test before such conduct could be considered as scandalising contempt.

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50 In *Shadrake Alan (CA)*, the Court of Appeal took great pains to set out that the "real risk" test was the applicable test *vis-à-vis* liability for scandalising contempt in Singapore, and not the "inherent tendency" test or the "clear and present danger" test (for the discussion and the consequent rejection of these two latter tests, see *Shadrake Alan (CA)* at [51]–[57] and [38]–[49] respectively). Of particular significance is one of the reasons for the Court of Appeal to eschew the use of the term "inherent tendency", or in other words, to reject the "inherent tendency" test. Briefly, the "inherent tendency" test, as it was first articulated by the High Court in *AG v Wain Barry J and others* [1991] 1 SLR(R) 85 ("*Wain*"), required that the conduct in question "have the inherent tendency to interfere with the administration of justice" for it to be considered as scandalising contempt (at [54]). In rejecting the "inherent tendency" test, the Court of Appeal explained as follows (*Shadrake Alan (CA)* at [56]):

> … a holistic reading of *Wain* suggests that the learned judge did *not* intend to divorce the ['inherent tendency'] test from *its actual or potential impact on public confidence in the administration of justice*. It is, in fact, axiomatic that the law in general and the law relating to scandalising contempt in particular do not – and cannot – operate in a hermetically sealed environment. That this is the case is clearly illustrated by the actual application of the law to the facts by the learned judge himself … This must surely be the case as, in our view, it would be contrary to both logic as well as commonsense for the "inherent tendency" test – or any test for that matter – to be stated only at a purely abstract or theoretical level. Indeed, even a theoretical formulation must have in view the vital sphere of *application, having regard of course to the particular facts and context of the case in which that formulation is applied.* … [emphasis in original]

51 The Court of Appeal in *Shadrake Alan (CA)* was thus of the view that to determine if the conduct in question was scandalising contempt, its actual or potential impact on public confidence in the administration of justice must be assessed. The categorical approach, which provides that conduct that impugns the integrity or impartiality of any court would necessarily pose a risk that public

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confidence in the administration of justice would be undermined, would fly in the face of this view. Put bluntly, the categorical approach ignores the particular facts and context of the case in its application.

52 The Court of Appeal in *Au Wai Pang* at [31] expressly affirmed its approach to the law on scandalising contempt as set out in *Shadrake Alan (CA)*. Accordingly, in the absence of any specific indication to the contrary, I am of the view that the Court of Appeal in *Au Wai Pang* was not changing its view from that in *Shadrake Alan (CA)*, *ie*, that at common law, all conduct, even that which impugned the integrity or impartiality of any court, had to be assessed to satisfy the "real risk" test before such conduct could be considered as scandalising contempt. I add that *Au Wai Pang* was a clear case where the contemptuous article posed a real risk that public confidence in the administration of justice would be undermined. As the Court of Appeal stated at [48]:

> … ***This insidious attack on the independence as well as impartiality of the judiciary goes to the very heart of what the (indeed, any) judiciary stands for and clearly undermines public confidence in the administration of justice.*** [emphasis in original]

53 To summarise, at common law, all conduct had to be assessed to satisfy the "real risk" test before such conduct could be considered as scandalising contempt. Even though the test now under s 3(1)(*a*) of the Act is the "risk" test, the approach is the same, *ie*, any conduct, even that which impugns the integrity or impartiality of any court, still needs to be assessed to satisfy the "risk" test before such conduct can be considered as scandalising contempt.

54 Therefore, I find that s 3(1)(*a*)(ii) of the Act is a discrete limb from s 3(1)(*a*)(i) and both limbs must be separately satisfied before any conduct stated in s 3(1)(*a*)(i) is found to be scandalising contempt.

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(2) A remote or fanciful possibility?

55 I next address the Respondents' submission that even for the "risk" test in s 3(1)(*a*)(ii) of the Act, a "risk" still cannot be one that is "a remote or fanciful possibility" that public confidence in the administration of justice would be undermined.[19] This submission was drawn from the "real risk" test at common law where a "real risk" did not include such a remote or fanciful possibility (*Shadrake Alan (CA)* at [36]).

56 As mentioned, Parliament statutorily enacted the "risk" test in s 3(1)(*a*)(ii) in place of the "real risk" test at common law (*Parliamentary Debates* (K Shanmugam, Minister for Law)).[20] While the Minister also mentioned some illustrations of conduct which meet the "risk" test (which the Respondents referred to), the Act does not define precisely what constitutes "risk" under the "risk" test.

57 The "risk" test still requires the conduct in question to pose a risk that *public* confidence in the administration of justice would be undermined. In this regard, I find it helpful to consider Quentin Loh J's views in the first instance decision of *Attorney-General v Shadrake Alan* [2011] 2 SLR 445 ("*Shadrake Alan (HC)*") on the question of "real risk" at common law, and the Court of Appeal's comments on his views when deciding the appeal in *Shadrake Alan (CA)*. Loh J commented in *Shadrake Alan (HC)* at [54]:

> … if rants made at a dinner party are shown to have been ignored, I cannot see that they would pose a real risk to public confidence in the administration of justice. Another illustration [is that] … where a letter circulated by a disappointed litigant to the Attorney-General of New South Wales and 13 Registrars of the district courts was found to be in contempt. I am in no

19 Wham's Written Submissions at para 62.

20 AG's BOA-W at Tab 11, p 38.

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> position to assess the situation in Australia or New South Wales. But I am very certain that, should the same letter be circulated to the Attorney-General, or the Registry of the Supreme Court or the Subordinate Courts, *it will not pose the slightest risk of undermining public confidence in the administration of justice*. … [emphasis added]

58 To Loh J's comments, the Court of Appeal remarked in *Shadrake Alan (CA)* at [35]:

> Finally, we would caution that the illustrations referred to by the Judge, *viz*, rants made at a dinner party and a letter circulated by a disappointed litigant to holders of high public and legal office … cannot admit of *only one* correct answer in *every* case. Much would, in our view, depend on *the precise facts and context* in which the impugned statement is made. For instance, we note that the Judge was careful to qualify his view … that there would be no contempt in the dinner party rant scenario if the rants "are shown to have been *ignored*" … because in such a case there would be *no real risk of undermining public confidence in the administration of justice*. The point we are making here is simply that having regard for the precise facts and context in which the impugned statement is made is crucial. [emphasis in original]

59 Thus, likewise, to determine if the conduct in question poses a risk that public confidence in the administration of justice would be undermined, much would depend on the precise facts and context. Loh J commented that in Singapore, a disappointed litigant's letter to holders of high public and legal office "will *not pose the slightest risk* of undermining public confidence in the administration of justice" [emphasis added]. I understand this to mean that such a letter would not have satisfied the "risk" test in s 3(1)(*a*)(ii) of the Act too because the *public* in general would presumably not have been privy to the letter, and those who were privy to it would have been more discerning.

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60 I also find instructive the following statements by the Court of Appeal in *Shadrake Alan (CA)* at [29] and [36], where the Court of Appeal was cognisant of and warned against:

> 29 … the very real danger of semantic analysis trumping practical factual considerations. The difficulty in seeking to elaborate on this particular test [*ie*, the 'real risk' test] in the abstract is obvious once we recognise that the test cannot be divorced from the factual context of each case (which inevitably admits of innumerable permutations). … Our simple point, however, is that, in this instance at least, **seeking to elaborate upon a legal test whose efficacy is to be demonstrated more in its *application* rather than its theoretical elaboration is, with respect, perhaps an approach that should be avoided**. The fact of the matter is that the great strength of the 'real risk' test lies, *inter alia*, in its practical robustness. …
>
> …
>
> 36 … Put simply, the 'real risk' test is an adequate formulation in and of itself and **requires no further theoretical elaboration**. It is, at bottom, a test that means precisely what it says: **is there a real risk that the impugned statement has undermined – or might undermine – public confidence in the administration of justice (here, in Singapore)?** … In undertaking such an analysis, the court must not substitute its own subjective view for the view of the average reasonable person as it is clear that the inquiry must necessarily be an objective one. Much would depend, in the final analysis, on the precise facts and context in which the impugned statement is made.
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> [emphasis in original in italics; emphasis added in bold]

61 I am thus of the view that it is not helpful to discuss whether a "risk" under the "risk" test includes "a remote or fanciful possibility" that public confidence in the administration of justice would be undermined. I similarly find that the statutory "risk" test is an adequate formulation in and of itself and requires no further theoretical elaboration. To promote the purpose underlying the "risk" test in s 3(1)(*a*)(ii) of the Act, the question is simply: does the conduct in question pose a risk that public confidence in the administration of justice would be undermined? This question needs to be answered objectively from the

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view of the average reasonable person, and much would depend on the precise facts and context.

(3) Quantitative approach?

62 I now address the Respondents' submission that the court should adopt a quantitative approach when applying the "risk" test in s 3(1)(*a*)(ii) of the Act.[21] Specifically, they argued that the quantitative approach should be applied to consider how many individuals in Singapore are in fact aware of the alleged contemptuous conduct, such that there is a risk that public confidence in the administration of justice would be undermined.[22] The Respondents claimed that the Court of Appeal in *Shadrake Alan (CA)* at [35] had considered a quantitative approach when discussing how there would be no contempt in the dinner party rant scenario if the rants were shown to have been ignored (see [58] above).[23] The Respondents also claimed that Parliament had demonstrated the use of a quantitative approach when giving the example of how publishing a Facebook post when "you are the Prime Minister with a million followers and everybody reads what you say" may pose a real risk of prejudicing court proceedings under s 3(1)(*b*) of the Act (*Parliamentary Debates* (K Shanmugam, Minister for Law)).[24] Section 3(1)(*b*) provides for the offence of *sub judice* contempt.

63 It seems to me that a "risk" concerns, generally, an outcome that may arise in the *future*, including the very immediate future. This outcome may also not arise. In *Shadrake Alan (CA)*, the Court of Appeal stated the "real risk" test as such: "is there a real risk that the impugned statement has undermined – *or*

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21 Wham's Written Submissions at para 71.

22 Wham's Written Submissions at para 74.

23 Wham's Written Submissions at para 72.

24 AG's BOA-W at Tab 11, p 89; Wham's Written Submissions at para 73.

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might undermine – public confidence in the administration of justice (here, in Singapore)?" [emphasis added] (at [36]). The statutory "risk" test in s 3(1)(*a*)(ii) of the Act is similarly a question of whether such public confidence has been undermined or *might be undermined*, *ie*, whether this outcome might arise in the future. The offence of scandalising contempt can thus be made out even if the conduct in question has not in fact resulted in such public confidence being undermined.

64 As such, I disagree that the court needs to consider how many individuals in Singapore are aware of the conduct in question before it can consider whether the "risk" test is satisfied. The consequences following such conduct, like how many individuals in Singapore are in fact aware of it, are not necessarily determinative of both the presence and the extent of the risk that public confidence in the administration of justice would be undermined. The Court of Appeal in *Shadrake Alan (CA)* did not require that the court adopt any quantitative approach when applying the "real risk" test at common law, and neither did Parliament for the "risk" test in s 3(1)(*a*)(ii) of the Act. On the other hand, if it is established that in fact many individuals in Singapore are aware of the conduct in question, that fact may assist to establish the existence of the "risk" for the "risk" test. I also add that since the "risk" test involves a careful consideration of the precise facts and context of the conduct in question, it would almost always be relevant to consider the *audience* of the alleged contemnor for the conduct in question. This would include consideration of the general size of such audience. I caution that unlike the quantitative approach, consideration of the *general* size of such audience does not require an accounting exercise of the number of individuals in Singapore who are, or may be, aware of the conduct in question.

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Fair criticism

65 I move on to discuss the concept of fair criticism. Explanation 1 to s 3(1) of the Act states:

> *Explanation 1*.—Fair criticism of a court is not contempt by scandalising the court within the meaning of subsection (1)(*a*).

66 Thus, under the Act, the court must also find that the conduct in question does not constitute fair criticism before the court can find such conduct to be scandalising contempt. This has to be proven beyond reasonable doubt (see *Au Wai Pang* at [18]; *Shadrake Alan (CA)* at [78]). The explanatory statement relating to the Bill explained that enacting Explanation 1 to s 3(1) was in accordance with the "provisional view" in *Shadrake Alan (CA)* with regard to the characterisation of the concept of fair criticism, and so Part 4 of the Act does not provide for a separate defence of fair criticism (the Bill at pp 40, 44; see also *Shadrake Alan (CA)* at [80], [86]).

67 Apart from following the "provisional view" in *Shadrake Alan (CA)*, Explanation 1 to s 3(1) codifies the concept of fair criticism at common law. At common law, conduct that satisfied the "real risk" test was not scandalising contempt if it constituted fair criticism (*Au Wai Pang* at [17]–[18], [30] affirming the applicable principles for scandalising contempt that were laid down in *Shadrake Alan (CA)*). Likewise, under the Act, conduct that satisfies the requirements in ss 3(1)(*a*)(i) and 3(1)(*a*)(ii), which include the "risk" test, is not scandalising contempt if it constitutes fair criticism of a court. The structure of s 3(1)(*a*) is such that the concept of fair criticism is separately provided for after ss 3(1)(*a*)(i) and 3(1)(*a*)(ii), under Explanation 1. There was no dispute between the parties on the applicable principles for fair criticism.[25]

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[25] AG's WS-W at paras 6, 8; Wham's Written Submissions at para 87.

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68 I will elaborate on the point that conduct which satisfies the two limbs of s 3(1)(*a*) is not scandalising contempt if it constitutes fair criticism of a court.

69 In *Shadrake Alan (CA)*, the Court of Appeal stated at [86] that to apply the concept of fair criticism at common law, the key question was:

> … does the impugned statement constitute fair criticism, or does it go on to cross the legal line by posing a real risk of undermining public confidence in the administration of justice – in which case it would constitute contempt instead?

This passage may give the impression that if the conduct in question constitutes fair criticism, it will not pose a real risk of undermining public confidence in the administration of justice.

70 It is also not clear from this passage whether, assuming that the conduct in question impugns, say, the impartiality of a court, and does not constitute fair criticism, this means that such conduct necessarily poses a real risk that public confidence in the administration of justice would be undermined or that the court has to go on to consider whether that real risk has been established (at common law). In Gary K Y Chan, "Contempt of Court and Fair Criticism in Singapore: *Shadrake Alan v Attorney General* [2011] SGCA 26" (2011) 11(2) Oxford University Commonwealth Law Journal 197 at p 206, the author appeared to assume the latter.

71 I am of the view that the above passage from *Shadrake Alan (CA)* should not be read to view "fair criticism" and "real risk" as being two sides of the same coin. Likewise, "fair criticism" and "risk" under s 3(1)(*a*) of the Act are not two sides of the same coin. After all, the Court of Appeal in *Shadrake Alan (CA)* had explained at [78] that if the court must find that the conduct in question

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does not constitute fair criticism before it can find such conduct to be scandalising contempt:

> … The *legal* burden … would be on the [AG] to prove beyond a reasonable doubt that the impugned statement does not constitute fair criticism, ***and*** that it presents a real risk of undermining public confidence in the administration of justice. … [emphasis in original in italics; emphasis added in bold italics]

In applying the principles for fair criticism in the case before it, the Court of Appeal also demonstrated that conduct that satisfied the "real risk" test could nevertheless constitute fair criticism and not be scandalising contempt. For instance, the Court of Appeal had found that "the 13th statement" satisfied the "real risk" test for stating that the judiciary was compliant and not independent. The Court of Appeal then proceeded to assess if that statement constituted fair criticism and would thus not be scandalising contempt (at [136]–[139]).

72 The applicable principles for determining whether the conduct in question constitutes fair criticism can be found in *Shadrake Alan (CA)* and *Au Wai Pang*. *Shadrake Alan (CA)* at [82] had also affirmed the High Court's analysis in this regard in *Attorney-General v Tan Liang Joo John and others* [2009] 2 SLR(R) 1132 ("*Tan Liang Joo John*").

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73 Fair criticism is criticism that is made in good faith and is respectful (*Tan Liang Joo John* at [15]; *Au Wai Pang* at [30]). It must, "at the very threshold", be premised on objective facts and on a rational basis (*Au Wai Pang* at [34]). The court must determine on an objective analysis of the precise facts and context whether the conduct in question constitutes fair criticism (*Au Wai Pang* at [34]). For this analysis, the court can take into account a wide range of factors, which include (see *Tan Liang Joo John* at [16], [18], [20]):

(a) the extent to which the criticism is supported by argument and evidence;

(b) the manner in which the criticism is made, which must generally be temperate and dispassionate;

(c) the party's attitude in court; and

(d) the number of instances of contemning conduct.

74 I reiterate that the issue of whether the conduct in question constitutes fair criticism is separate from that of whether the conduct satisfies the "risk" test under s 3(1)(*a*) of the Act. While there may be an overlap between the relevant facts used to determine both these issues, their respective analyses are quite different. Take for example a hypothetical where a person publishes an article in the local newspaper ranking Singapore 200th out of 200 countries in terms of judicial independence. Assume for the purposes of this hypothetical that the person publishes his article in good faith and is respectful. He elaborates in the article how this ranking was derived, and the court finds that the article is based on some reasonable criteria. Still, such a newspaper article may be considered to be impugning the impartiality of the Singapore courts and also posing a risk that public confidence in the administration of justice would be undermined, *ie*,

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the article satisfies the "risk" test. However, a court may also conclude that such an article constitutes fair criticism of the courts and is not scandalising contempt.

75 Consider now a different hypothetical where a disgruntled litigant tells only his roommate, assertively and without any reason, that Singapore is ranked 200th out of 200 countries in terms of judicial independence. Assume that the person makes this bare assertion in bad faith. While the assertion impugns the impartiality of the Singapore courts, it is likely that this assertion does not pose a risk that *public* confidence in the administration of justice would be undermined, *ie*, it is unlikely that this assertion satisfies the "risk" test, even though such an assertion does not constitute fair criticism of the courts.

76 In setting out these two hypotheticals, I have used the audience of the alleged contemnor for the conduct in question as a variable in considering whether the conduct satisfies the "risk" test. It is needless to say that the alleged contemnor's audience is not a determinative factor of whether the "risk" test is satisfied, and much would depend on the precise facts and context. I have provided these hypotheticals *only* to illustrate in an obvious manner how the analyses and considerations for fair criticism and the "risk" test can be very different.

Defences

77 The Act provides in ss 14–19 for defences that may be raised such that a person will not be guilty of scandalising contempt. All defences at common law to scandalising contempt which are not contained in the Act are repealed (s 8(2)). As mentioned, fair criticism is not a defence to the offence of scandalising concept, but the court must find that the conduct in question does

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not constitute fair criticism before it can find that such conduct is scandalising contempt. As the Respondents did not raise any of these defences in the Act for their respective cases, I will not discuss them further.

Summary of the applicable principles

78 In summary, the following are the applicable principles in relation to the offence of scandalising contempt under s 3(1)(*a*) of the Act:

(a) The standard of proof for establishing the offence of scandalising contempt is that of beyond reasonable doubt (s 28).

(b) The *mens rea* required is an intention to publish the contemptuous matter or do the contemptuous act. A person is guilty of scandalising contempt even if there was no intention to scandalise the court (s 3(2)).

(c) The *actus reus* required is first that on an objective interpretation of the conduct in question, the conduct must impute improper motives to or impugn the integrity, propriety or impartiality of any court (as set out in the first limb of s 3(1)(*a*)). Second, the conduct must be objectively assessed to pose a risk that public confidence in the administration of justice would be undermined (as set out in the second limb of s 3(1)(*a*)). Such risk is to be considered in the light of the precise facts and context and from the view of the average reasonable person. This "risk" test is an adequate formulation in and of itself and requires no further theoretical elaboration. The court must be satisfied beyond reasonable doubt of the risk that public confidence in the administration of justice would be undermined. It is not necessary to establish that the

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conduct in question has in fact resulted in such public confidence being undermined.

(d) Fair criticism of a court is not scandalising contempt (Explanation 1 to s 3(1)). Fair criticism is criticism that is made in good faith and is respectful, and must, at the very threshold, be premised on objective facts and on a rational basis. Whether the conduct in question constitutes fair criticism must be determined on an objective analysis of the precise facts and context. The offence of scandalising contempt requires that the conduct has to be proven beyond reasonable doubt not to constitute fair criticism.

(e) The Act provides in ss 14–19 for defences that may be raised such that a person will not be guilty of scandalising contempt.

Whether Wham committed scandalising contempt under s 3(1)(*a*) of the Act

79 Having stated the applicable principles in relation to the offence of scandalising contempt under s 3(1)(*a*) of the Act, I turn first to consider whether Wham committed scandalising contempt.

80 The *mens rea* requirement is satisfied. It was undisputed that Wham intentionally published his post on his Facebook profile.[26]

Parties' arguments

81 The AG submitted that Wham's post impugns the integrity and impartiality of the Singapore courts, and poses a risk that public confidence in the administration of justice in Singapore would be undermined.[27] The AG

[26] Wham's affidavit dated 14 June 2018 ("Wham's affidavit") at para 12.

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submitted that Wham's post "alleges" that the Singapore courts lack integrity and are not impartial in the discharge of judicial duties in cases in which the Singapore government or political office holders are litigants, and decide such cases in favour of them regardless of the merits.[28] The AG argued that the average reasonable person would read Wham's post as such.[29] In line with the AG's submitted categorical approach, the AG contended that since Wham's post impugns the integrity and impartiality of the Singapore courts, the "risk" test is necessarily satisfied (see [43] above).[30] Alternatively, the AG submitted at the hearing that the "risk" test is satisfied because Wham's post is published to the world at large via the Internet.[31] Further, the AG submitted that Wham's post does not constitute fair criticism,[32] because it is unreasoned, unsubstantiated and unsupported by argument and evidence.[33]

82 On the other hand, Wham first submitted that his post does not impugn the integrity and impartiality of the Singapore judiciary.[34] He submitted that there is no plausible way of reading his post to conclude that it is *alleging, or stating affirmatively,* that the Singapore courts lack integrity and are not impartial in the discharge of judicial duties in cases in which the Singapore government or political office holders are litigants.[35] Wham made the point that the AG in the O 52 statement used the verb "allege" (as quoted in [81] above),

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27 AG's WS-W at para 2.

28 O 52-W at para 4.

29 AG's WS-W at paras 17, 20.

30 AG's WS-W at para 40.

31 NEs at p 32 lines 7–10.

32 AG's WS-W at para 10(c).

33 AG's WS-W at paras 44, 46.

34 Wham's Written Submissions at para 54.

35 See Wham's Written Submissions at paras 45–46.

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meaning to "claim or assert without proof", in contradistinction to the verbs "imply" and "insinuate", meaning to suggest "without being direct".[36] Wham submitted instead that his post presupposes that the judiciaries in both Singapore and Malaysia are independent when adjudicating cases with political implications.[37] He argued that in its plain and ordinary meaning, his post merely states that the judiciary of Malaysia has greater qualities of independence when adjudicating such cases.[38]

83 Next, Wham submitted that the "risk" test is not satisfied in relation to his post. First, he emphasised that the average reasonable person would not view his post as alleging that the Singapore courts lack integrity and are not impartial in the discharge of judicial duties in cases with political implications.[39] Second, Wham submitted that the average reasonable person is unlikely to take his post with a degree of seriousness.[40] While he may be a social activist, Wham argued that he has never held himself out as a professional journalist, blogger, commentator or investigative journalist.[41] Wham also argued that his post is on his personal Facebook profile, which contains a blend of posts pertaining to trivial and light-hearted matters.[42] Third, Wham submitted that the AG neither adduced evidence as to how many individuals in Singapore have viewed his post, nor proved beyond reasonable doubt the possibility that individuals in Singapore may even view his post.[43] In line with his submitted quantitative

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36 Wham's Written Submissions at para 43.

37 Wham's Written Submissions at paras 47–48.

38 Wham's Written Submissions at para 46.

39 Wham's Written Submissions at para 68.

40 Wham's Written Submissions at para 69.

41 Wham's Written Submissions at para 70.

42 Wham's Written Submissions at para 70.

43 Wham's Written Submissions at para 78.

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approach (see [62] above), Wham also argued that only 33 people reacted to his post as at 13 June 2018, and this is a negligible fraction of Singapore's population size.[44]

84 Wham further submitted that his post constitutes fair criticism. He argued that the tone of his post is respectful, balanced, temperate and dispassionate. Wham submitted that he published his post in good faith, intending to compare the judicial philosophies of the courts in Singapore and Malaysia.[45] He also submitted that he genuinely believed in the truth of his post, which he argued is supported by actual case examples and literature on the concept of judicial independence.[46]

Decision

85 I reproduce the statement in Wham's post (see [3] above):

> Malaysia's judges are more independent than Singapore's for cases with political implications. Will be interesting to see what happens to this challenge.

*Section 3(1)(*a*)(i) of the Act*

86 I am of the view that on an objective interpretation of Wham's post, Wham's post impugns the integrity and impartiality of Singapore's judges, and thus the Singapore courts. I accept the AG's submission that Wham's post "alleges" that the Singapore courts lack integrity and are not impartial in the discharge of judicial duties in cases in which the Singapore government or political office holders are litigants, and decide such cases in favour of them regardless of the merits. I add that at the hearing, I asked counsel for the AG

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44 Wham's Written Submissions at para 84; Wham's affidavit at p 32.

45 Wham's Written Submissions at para 92.

46 Wham's Written Submissions at para 103.

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whether the scope of the "cases" referred to in Wham's post could be wider since "cases with political implications" could also include cases in which neither the Singapore government nor political office holders are litigants.[47] Counsel for the AG submitted that while this could be the case, the AG was giving Wham the most favourable interpretation for his post with the AG's submitted interpretation.

87 I find no issue with the AG's use of the verb "allege" in the AG's submitted interpretation of Wham's post in the O 52 statement. An allegation may be direct or indirect, being made by way of an express view or by way of an insinuation (see *Au Wai Pang* at [48]). The AG's submitted interpretation was thus that Wham's post alleges, directly or indirectly, that the Singapore courts lack integrity and are not impartial in the discharge of judicial duties in cases in which the Singapore government or political office holders are litigants.

88 I disagree with Wham's submission that the statement in his post that "Malaysia's judges are *more independent* than Singapore's for cases with political implications" [emphasis added] means that Singapore's judges are independent when adjudicating such cases but Malaysia's judges are more independent. By Wham's own submission, in linking to an online article titled "Malaysiakini mounts constitutional challenge against Anti-Fake News Act", Wham's post suggests that such a constitutional challenge has a better chance of success in Malaysia than in Singapore because of "the environment in Malaysia".[48] Wham's post means that Singapore's judges are more inclined to agree with the Singapore government's position as they are less independent than Malaysia's judges, *ie*, Singapore's judges are not completely independent

47 NEs at p 22 lines 6–18.

48 NEs at p 59 lines 18–20.

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and are partial to the government. Wham's post thus expressly impugns the impartiality of Singapore's judges, and thus the Singapore courts. In impugning the impartiality of the Singapore courts, Wham's post also impugns the integrity of the Singapore courts in this case since judges who are not impartial when adjudicating cases with political implications are not adjudicating such cases with integrity. As mentioned at [48] above, there can be an overlap between the various conduct stated in the first limb of s 3(1)(*a*) of the Act.

89 I find that the first limb of the *actus reus* of scandalising contempt in s 3(1)(*a*)(i) of the Act is satisfied in relation to Wham's post.

*Section 3(1)(*a*)(ii) of the Act: the "risk" test*

90 I turn to consider whether the "risk" test is satisfied, *ie*, whether Wham's post poses a risk that public confidence in the administration of justice would be undermined, in the light of the precise facts and context and from the view of the average reasonable person. To recapitulate, I have rejected both the AG's submitted categorical approach and the Respondents' submitted quantitative approach (see [54] and [64] above respectively).

91 The average reasonable person is not likely to interpret Wham's post to mean that both Malaysia's judges and Singapore's judges are independent when adjudicating cases with political implications but Malaysia's judges are more independent in this regard. Instead, I find that the average reasonable person would interpret Wham's post to mean that Singapore's judges lack complete independence when adjudicating such cases, and are thus *not impartial*. The average reasonable person would perceive this to be the point that Wham was making.

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92 When Wham's post was published on Wham's Facebook profile on 27 April 2018, there were 7,177 Facebook users "following" his Facebook profile,[49] some of whom stated in their Facebook profiles that they were living in Singapore.[50] These users following Wham's Facebook profile may see updates from his Facebook profile in their Facebook "News Feed".[51]

93 More than that, being published under the "Public" setting of Facebook's audience selector, Wham's post is published publicly online such that "anyone including people off of Facebook can see it" (see [3] above). The audience for Wham's post is the public at large since it can be viewed by anyone with Internet access. Therefore, I am of the view that Wham's post poses a risk that public confidence in the administration of justice would be undermined regardless of whether 33 or more people have in fact responded to his post. Indeed, the number of people who responded to his post does not say how many people in fact read his post. Furthermore, as discussed at [64] above, even if it can be shown that so far a limited number of people read Wham's post, that does not mean that the "risk" test is not satisfied. The court must be satisfied beyond reasonable doubt that Wham's post poses a *risk* that public confidence in the administration of justice would be undermined. It is not necessary to establish that Wham's post has in fact resulted in such public confidence being undermined.

94 Even if Wham did not hold himself out as a professional commentator or an investigative journalist and thus the risk of his post undermining public confidence in the administration of justice may be less, this does not help him on the issue of liability.

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49 Lai's 1st affidavit-W at para 5.

50 Lai Xue Ying's 2nd affidavit dated 28 June 2018 against Wham at para 8.

51 Lai's 1st affidavit-W at p 19.

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95 In the light of the precise facts and context as discussed in the preceding paragraphs, I find that Wham's post poses a risk that public confidence in the administration of justice would be undermined. The "risk" test in s 3(1)(*a*)(ii) of the Act (the second limb of the *actus reus* of scandalising contempt) is satisfied.

Explanation 1 to s 3(1) of the Act: fair criticism

96 The final question is then whether Wham's post constitutes fair criticism. Wham's post contains a bare statement impugning the integrity and impartiality of Singapore's judges. The link in Wham's post pertaining to a constitutional challenge in Malaysia also does not discuss Singapore's judges. The bare statement in Wham's post does not demonstrate how Wham was comparing the judicial *philosophies* of the courts in Singapore and Malaysia, which he submitted to be his intention. While Wham might argue that his post is supported by actual case examples and literature on the concept of judicial independence, Wham's post in and of itself is not supported by argument and evidence.

97 Fair criticism must, at the very threshold, be premised on objective facts and on a rational basis. Wham submitted that his basis for asserting that "Malaysia's judges are more independent than Singapore's for cases with political implications" was, as found in his affidavit:[52]

> … From my understanding, the Malaysian courts tend to make rulings against the executive and/or legislative branches of the Malaysian government more often than do Singapore courts of the same branches of the Singapore government. …

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52 Wham's Written Submissions at para 99; Wham's affidavit at para 26.

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Wham submitted that this understanding was in turn based on "his knowledge of at least *three* specific case examples where the Malaysian judiciary had adopted a less conservative approach (against the government) than their counterparts in Singapore" [emphasis added].[53] Wham sought to contrast three Malaysian cases with three Singapore cases to prove his point.[54] On the other hand, the AG submitted, *inter alia*, that those Malaysian cases were decided in different contexts and involved different legal provisions from the respective Singapore cases with which they were compared.[55] The AG argued that those Malaysian cases and Singapore cases thus could not reasonably have led Wham to conclude that the courts tend to rule against the government more often in Malaysia than in Singapore.

98 It is not clear whether Wham did in fact have those three Malaysian cases and those three Singapore cases in mind when he published his post. As already mentioned, his post contains a bare statement impugning the integrity and impartiality of Singapore's judges. There is no mention in his post that he had compared cases decided in Malaysia with cases decided in Singapore. Wham's explanation that his post was based on those cases could be a self-serving one, made after his post was already published.

99 In any event, I find that Wham's post has no rational basis if it was indeed based on the comparison of three Malaysian cases and three Singapore cases. Wham was not asking if Malaysia's judges are more independent than Singapore's judges for cases with political implications. He was making a general assertion as such in his post. If Wham is to be believed, his assertion was based simply on a comparison between *three* Malaysian cases and *three*

53 Wham's Written Submissions at para 95.

54 Wham's Written Submissions at paras 96–98.

55 AG's WS-W at para 38.

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Singapore cases. I find this insufficient to support his alleged understanding that the courts tend to rule against the government more often in Malaysia than in Singapore.

100 Further, I find that there is no rational basis for comparing those three Malaysian cases with those three Singapore cases, as Wham submitted, to allege that the courts tend to rule against the government more often in Malaysia than in Singapore. Wham sought to contrast the Malaysian case of *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 ("*Semenyih Jaya*") with the Singapore case of *Prabagaran a/l Srivijayan v Public Prosecutor and other matters* [2017] 1 SLR 173 ("*Prabagaran*").[56] *Semenyih Jaya* was discussing, *inter alia*, the constitutionality of s 40D of the Land Acquisition Act 1960 (Act 486) (M'sia) which empowers assessors sitting with the judge to make the final determination on the amount of compensation for the acquisition of land under the Land Acquisition Act 1960. *Prabagaran* was discussing, *inter alia*, the constitutionality of ss 33B(2)(*b*) and 33B(4) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) which relate to the certification by the Public Prosecutor that an accused person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities, and the discretion of the court not to impose the death penalty in certain circumstances. It may be that both cases discussed, amongst other issues, the judicial power of the courts, but they dealt with wholly different subject matters and entirely different legislation.

101 Wham also sought to contrast the Malaysian case of *YB Teresa Kok Suh Sim v Menteri Dalam Negeri, Malaysia, YB Dato' Seri Syed Hamid bin Syed*

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[56] See Wham's affidavit at para 23(c); NEs at p 122 lines 24–25.

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Jaafar Albar & Ors [2016] 6 MLJ 352 ("*Teresa Kok*") with the Singapore case of *Chng Suan Tze v Minister for Home Affairs and others and other appeals* [1988] 2 SLR(R) 525 ("*Chng Suan Tze*").[57] *Teresa Kok* was considering the validity of an arrest and detention made by the police under s 73(1) of the Internal Security Act 1960 (Act 82) (M'sia) (which has since been repealed). *Chng Suan Tze* was considering the legality of detention orders made by the Minister of Home Affairs under s 8(1) of the Internal Security Act (Cap 143, 1985 Rev Ed), and not of arrests and detentions made by the police under the Internal Security Act. These two cases were comparing legal provisions for different facts. The decision of *Teresa Kok* itself distinguished the powers of the Minister when detaining a person under the Internal Security Act 1960 from those of the police (see *Teresa Kok* at [46]). Further, the Singapore Court of Appeal in *Chng Suan Tze* in fact discharged the appellants from custody on a technical ground when finding that the Minister of Home Affairs failed to prove the validity of the detention orders (see *Chng Suan Tze* at [39], [41]). This result does not demonstrate that the courts tend to rule in favour of the government more often in Singapore than in Malaysia.

102 The third comparison that Wham made was between the Malaysian case of *Nik Nazmi bin Nik Ahmad v Public Prosecutor* [2014] 4 MLJ 157 ("*Nik Nazmi*") and the Singapore case of *Chee Siok Chin* ([19] *supra*).[58] *Nik Nazmi* concerned an organiser who failed to notify the relevant authority of an assembly within the time required under the Peaceful Assembly Act 2012 (Act 736) (M'sia), while *Chee Siok Chin* concerned applicants who had been holding what they described as a "peaceful protest" when they were, *inter alia*, ordered by the police to disperse because of such conduct. Both cases may have

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57 Wham's affidavit at para 23(b).

58 Wham's affidavit at para 23(a).

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generally discussed the constitutional right of assembly, but they considered vastly different factual matrices and legislative provisions.

103 I am thus of the view that there is also no rational basis for comparing the three Malaysian cases with the three Singapore cases. Wham's post thus cannot constitute fair criticism.

104 Wham's post is also very unlike the "World Economic Forum Global Competitiveness Index" which used its survey results to rank 137 countries in terms of their judicial independence,[59] and to which Wham tried to liken his post. Wham was not trying to analyse the reasons why Malaysia's judges are "more independent" or perceived to be "more independent" than Singapore's judges for cases with political implications, in the context of some discussion on judicial independence. Wham's post is based on a generalisation, which Wham must have known was the case, and he made a bare statement impugning the integrity and impartiality of Singapore's judges without providing any basis for the statement. I find that Wham's post was not made in good faith. It does not constitute fair criticism of a court as provided for in Explanation 1 to s 3(1) of the Act.

105 Therefore, I find that the AG has proven the case against Wham for scandalising contempt under s 3(1)(*a*) of the Act beyond reasonable doubt.

Whether Tan committed scandalising contempt under s 3(1)(*a*) of the Act

106 I now consider whether Tan committed scandalising contempt under s 3(1)(*a*) of the Act.

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[59] Wham's Written Submissions at paras 93–94; Wham's affidavit at pp 50–56.

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107 The *mens rea* requirement is satisfied. It was undisputed that Tan intentionally published his post on his Facebook profile.[60]

Parties' arguments

108 The AG submitted that Tan's post impugns the integrity and impartiality of the Singapore courts, and poses a risk that public confidence in the administration of justice in Singapore would be undermined.[61] The AG submitted that Tan's post alleges that there is truth to the allegation in Wham's post that the Singapore courts lack integrity and are not impartial in the discharge of judicial duties in cases in which the Singapore government or political office holders are litigants, and decide such cases in favour of them regardless of the merits.[62] The AG argued that Tan's post alleges this both (1) directly, through the words "what [Wham] said was true",[63] and (2) indirectly, by suggesting that the outcome of the AG's action against Wham in OS 510/2018 will be a forgone conclusion because the Singapore courts lack independence and will therefore rule against Wham in favour of the AG.[64] The AG submitted that the average reasonable person would read Tan's post as such.[65] The AG also submitted that Tan's post links to Wham's Facebook profile on which Wham's post remains published, thereby further publicising Wham's post.[66] In line with the AG's submitted categorical approach, the AG contended that since Tan's post impugns the integrity and impartiality of the Singapore

60 Tan's affidavit at para 6.

61 AG's WS-T at para 4.

62 O 52-T at para 5.

63 AG's WS-T at para 17.

64 AG's WS-T at para 22.

65 AG's WS-T at paras 20, 22.

66 O 52-T at para 5.

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courts, the "risk" test is necessarily satisfied (see [43] above).[67] Further, the AG submitted that Tan's post does not constitute fair criticism,[68] because it is intemperate and unreasoned.[69]

109 On the other hand, Tan submitted that Wham's post is not scandalising contempt, and thus neither is Tan's post.[70] Tan submitted in the alternative that the allegation in his post is directed at the AG and not the Singapore courts,[71] and consequently his post does not impugn the integrity and impartiality of the Singapore courts.[72] Tan argued that a reasonable interpretation of his post, which should be the interpretation ascribed to it,[73] is: the AG's action against Wham in OS 510/2018 was unnecessarily defensive of the Singapore judiciary and thus the AG "convey[s] to reasonable members of the public the impression" that what Wham said in Wham's post is true,[74] and in other words, "that there is truth to the assertion that the judiciary is not independent".[75] Following Tan's interpretation, the AG was "suppress[ing]" Wham's post through the AG's action against Wham.[76] Tan also submitted that his post links to Wham's Facebook profile and not directly to Wham's post,[77] and so Tan did not further

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67 AG's WS-T at para 23.

68 AG's WS-T at para 30.

69 AG's WS-T at para 30.

70 Tan's Written Submissions at para 3(d).

71 Tan's Written Submissions at para 26.

72 Tan's Written Submissions at para 27.

73 Tan's Written Submissions at para 28.

74 See Tan's Written Submissions at paras 27, 37.

75 Tan's Written Submissions at para 37.

76 Tan's Written Submissions at para 27.

77 Tan's Written Submissions at para 38.

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publicise or publish Wham's post.[78] At the hearing, Tan's counsel confirmed that Tan was not submitting that his post constitutes fair criticism.[79]

Decision

110 I reproduce the statement in Tan's post (see [5] above):

> By charging Jolovan for scandalising the judiciary, the AGC only confirms what he said was true.

111 I have found that Wham's post is scandalising contempt under s 3(1)(*a*) of the Act. I thus reject Tan's submission that Tan's post is not scandalising contempt simply because Wham's post is not scandalising contempt.

*Section 3(1)(*a*)(i) of the Act*

112 To find that Tan's post is scandalising contempt, Tan's post must satisfy the first limb of the *actus reus* of scandalising contempt in s 3(1)(*a*)(i) of the Act on an objective interpretation of the post. In this regard, I first deal with the AG's contention that Tan's post suggests that the outcome of the AG's action against Wham in OS 510/2018 will be a forgone conclusion. I do not accept this submission as I find it a stretch to interpret Tan's post as such. I will proceed to consider Tan's alternative submission that the allegation in his post is directed at the AGC or the AG, and not the Singapore courts.

113 Tan's alternative interpretation of his post is that the AG, by the AG's action against Wham in OS 510/2018, "convey[s] to reasonable members of the public the impression" that "there is truth to *the assertion that the judiciary is not independent*" [emphasis added] (see [109] above). I note two things about this interpretation. First, Tan understood Wham to be saying in Wham's post

78 Tan's Written Submissions at paras 3(f), 41.

79 NEs at p 52 lines 7–19.

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that the Singapore judiciary is not independent. Second, Tan also submitted an interpretation for the word "confirms" as used in his post, "the AGC only confirms what he said was true". Tan submitted that "to confirm" means "to convey to reasonable members of the public an impression". I disagree with this submission. In its ordinary meaning, "to confirm" would mean more than to merely convey an impression. "To confirm" means "[t]o corroborate, or add support to (a statement, etc.); to make certain, verify, put beyond doubt" (*The Oxford English Dictionary* vol III (Clarendon Press, 2nd Ed, 1989) at p 710).

114 Even if I were to accept Tan's interpretation for the word "confirms", Tan's post would nevertheless be regarded as impugning the integrity and impartiality of the Singapore courts. Consider the following hypothetical involving persons Alex, Bryan, Calvin and Danny. Alex declares to a group of people, "*By overreacting to Bryan's statement that Calvin is dishonest, Danny only confirms what Bryan said was true.*" In this hypothetical, Alex's statement impugns Calvin's integrity. Alex's statement is not only about Danny. It is about Danny, Bryan and Calvin, *ie*, about Danny's action, Bryan's statement and Calvin's character.

115 Likewise, even on Tan's alternative submission that he was only saying that the AG's conduct conveys the impression that the Singapore judiciary is not independent, Tan's post still impugns the integrity and impartiality of the Singapore courts. Tan claimed that the allegation in his post is directed at the AG and not the Singapore courts. However, Tan's post does not refer solely to the AG. The words "the AGC only confirms what he said was true" in Tan's post are intertwined with and repeat what Wham said in Wham's post, and the latter impugns the integrity and impartiality of the Singapore courts.

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116 Tan's post, which refers to the Singapore courts, is quite unlike the three non-contemptuous statements that Tan tried in his submissions to analogise his post to.[80] These three statements were referred to in *Shadrake Alan (CA)* as "the second statement", "the third statement" and "the 14th statement", and the Court of Appeal found that there was reasonable doubt whether these statements referred to the Singapore courts.

117 "The second statement" had mentioned how the sentence imposed in question of "only five years" was "a slap on the wrist which was arranged by the Singapore government". Without reference to the courts, "the second statement" could have referred solely to "how the Singapore government chose to bring reduced charges" on that occasion (*Shadrake Alan (CA)* at [104]).

118 "The third statement" had commented on "Singapore's legal system", and could have referred to the system exclusive of the courts (*Shadrake Alan (CA)* at [99]).

119 "The 14th statement" could be interpreted to refer solely to the allegation that "[t]he ruling party in Singapore often sues those who dare oppose it", without passing any comment on how the courts handle these cases (*Shadrake Alan (CA)* at [142]). "The 14th statement" could thus have referred solely to executive – as opposed to judicial – action.

120 I find that the message in Tan's post is: what Wham said in his post is true, and by commencing proceedings against Wham for scandalising contempt, the AG confirms this. Since Wham's post impugns the integrity and impartiality of the Singapore courts, Tan's post likewise impugns the integrity and impartiality of the Singapore courts. Tan may also be criticising the AG for

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80 Tan's Written Submissions at paras 29–35.

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commencing proceedings against Wham, but this is an additional attack on top of the attack on the Singapore courts.

121 If Tan may avoid liability for scandalising contempt on the argument that he was criticising the AG or the AGC only, then in the future, others can simply adopt a similar course of action to attack the integrity and impartiality of the Singapore courts.

122 In summary, I find that Tan's post impugns the integrity and impartiality of the Singapore courts, and the first limb of the *actus reus* of scandalising contempt in s 3(1)(*a*)(i) of the Act is satisfied.

*Section 3(1)(*a*)(ii) of the Act: the "risk" test*

123 I turn to consider whether the "risk" test is satisfied in relation to Tan's post. This analysis is similar to that in relation to Wham's post (see [90]–[95] above). To recapitulate, I have rejected the AG's submitted categorical approach (see [54] above).

124 I find that the average reasonable person would interpret Tan's post to mean first that the allegation in Wham's post that Singapore's judges are not impartial when adjudicating cases with political implications is true, and second that the AG's action against Wham in OS 510/2018 confirms this. The average reasonable person would perceive this to be the point that Tan was making.

125 Like the audience for Wham's post, the audience for Tan's post is the public at large since Tan's post was published under the "Public" setting of Facebook's audience selector and can thus be viewed by anyone with Internet access. Therefore, Tan's post poses a risk that public confidence in the administration of justice would be undermined regardless of how many people

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have in fact responded to his post.[81] Again, it is not necessary to establish that Tan's post has in fact resulted in such public confidence being undermined.

126 In the light of the precise facts and context, I find that the "risk" test in s 3(1)(*a*)(ii) of the Act (the second limb of the *actus reus* of scandalising contempt) is satisfied in relation to Tan's post.

Explanation 1 to s 3(1) of the Act: fair criticism

127 The final question is whether Tan's post constitutes fair criticism. Even though Tan himself did not submit that his post constitutes fair criticism, the offence of scandalising contempt requires that his post has to be proven beyond reasonable doubt not to constitute fair criticism.

128 Fair criticism must, at the very threshold, be premised on objective facts and on a rational basis. However, I find that Tan's post is not premised on objective facts or on a rational basis. Tan's post asserts that by commencing proceedings against Wham for scandalising contempt, the AG only confirms what Wham said in his post is true, *ie*, that Singapore's judges are not impartial when adjudicating cases with political implications. Insofar as Tan's post itself alleges that Singapore's judges are not impartial when adjudicating such cases, this allegation is not supported by argument and evidence. Tan's post also does not explain why the AG's action against Wham for scandalising contempt would necessarily imply that the allegation in Wham's post is true. I thus find that Tan's post was not made in good faith. Tan's post does not constitute fair criticism of a court as provided for in Explanation 1 to s 3(1) of the Act.

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81 Lai's affidavit-T at p 8.

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129 Therefore, I find that the AG has proven the case against Tan for scandalising contempt under s 3(1)(*a*) of the Act beyond reasonable doubt.

Conclusion

130 For the foregoing reasons, I find that the AG has proven the case against Wham beyond reasonable doubt and accordingly convict him for scandalising contempt under s 3(1)(*a*) of the Act.

131 I also find that the AG has proven the case against Tan beyond reasonable doubt and accordingly convict him for scandalising contempt under s 3(1)(*a*) of the Act.

132 I will hear counsel on the sentences for Wham and Tan respectively. I will also hear counsel on the issue of costs.

Woo Bih Li
Judge

Ng Yong Kiat, Francis SC, Sheryl Janet George and Senthilkumaran Sabapathy (Attorney-General's Chambers (Criminal Justice Division)) for the applicant;
Eugene Singarajah Thuraisingam, Suang Wijaya and Chooi Jing Yen (Eugene Thuraisingam LLP) and Choo Zheng Xi and Priscilla Chia Wen Qi (Peter Low & Choo LLC) for the respondent in OS 510/2018;
Eugene Singarajah Thuraisingam, Suang Wijaya and Chooi Jing Yen (Eugene Thuraisingam LLP) for the respondent in OS 537/2018.

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