

**IN THE GENERAL DIVISION OF  
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2023] SGHC 87**

Originating Summons No 694 of 2021  
(Summons No 3816 of 2021)

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)

And

In the matter of Order 52 of the Rules of Court (Cap 322, R5, 2014 Rev Ed)

Between

Attorney-General

*... Applicant*

And

Xu Yuan Chen @ Terry Xu

*... Respondent*

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**JUDGMENT**

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[Contempt of Court — Administration of Justice (Protection) Act 2016]

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**Attorney-General**  
**v**  
**Xu Yuan Chen (alias Terry Xu)**

**[2023] SGHC 87**

General Division of the High Court — Originating Summons No 694 of 2021  
(Summons No 3816 of 2021)

Hoo Sheau Peng J

29 November 2022, 23 February, 1 March 2023

6 April 2023

Judgment reserved.

**Hoo Sheau Peng J:**

**Introduction**

1 In HC/OS 694/2021 (“OS 694”), the Attorney-General (the “AG”) sought leave to apply for an order of committal against Mr Xu Yuan Chen @ Terry Xu (“Mr Xu”). Having obtained such leave, on 11 August 2021, the AG filed the present application, *ie*, HC/SUM 3816/2021 (“SUM 3816”), alleging that Mr Xu committed contempt of court under s 3(1)(a) of the Administration of Justice (Protection) Act (Act 19 of 2016) (“AJPA”) by:

- (a) intentionally publishing, sometime on 27 January 2021, an article titled “Open letter to Singapore’s Chief Justice concerning omissions in ‘Opening of Legal Year 2021’ speech” (the “Letter”) with stylistic edits (the “Article”) on the website, <https://www.theonlinecitizen.com> (the “TOC Website”);

(b) intentionally publishing a post, on 27 January 2021 at about 10.20am, on the Facebook page, “The Online Citizen Asia” (the “TOC Facebook Page”), sharing the Article and reproducing an excerpt from the Article (the “Facebook Post”); and

(c) alternatively, deliberately refusing to delete the Article from the TOC Website and the Facebook Post from the TOC Facebook Page despite the demand of the Attorney-General’s Chambers (the “AGC”) on 22 June 2021 for him to do so.

2 On 8 September 2021, Mr Xu filed HC/OS 917/2021 (“OS 917”) seeking leave to apply for prohibiting orders to stop the AG from proceeding with SUM 3816, and for declarations that SUM 3816 is in breach of, *inter alia*, Article 12(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) (the “Constitution”). I dismissed OS 917 on 25 November 2021.

3 On 8 December 2021, Mr Xu appealed against my decision via CA/CA 68/2021. On 25 August 2022, the appeal was dismissed by the Court of Appeal. The Court of Appeal held, *inter alia*, that there was no breach of Article 12(1) of the Constitution and refused to grant Mr Xu leave to apply for the prohibiting orders to prevent the AG from proceeding with SUM 3816 (see *Xu Yuan Chen v Attorney-General* [2022] 2 SLR 1131 at [64] and [65]).

4 I now consider the merits of SUM 3816.

### **Background facts**

5 At the material time, Mr Xu was the Chief Editor of The Online Citizen (“TOC”), a news media platform accessible on the TOC Website. He was also the owner and one of the administrators of the TOC Facebook Page. He

admitted in his statement to the police dated 9 March 2021 that he was the “only person who has the authority to decides [*sic*] what article to publish on [the TOC Website] and the [TOC Facebook Page]”.<sup>1</sup>

6 On 27 January 2021, Ms Julie Mary O’Connor (“Ms O’Connor”) published the Letter on her blog, <http://bankingonthetruth.com>. Ms O’Connor is an Australian citizen who now resides in Australia.<sup>2</sup> She was previously a Singapore permanent resident. She departed from Singapore on 7 July 2019. Since then, she has not returned.<sup>3</sup> The content of the Letter (with Mr Xu’s stylistic edits) is set out at [8]. Sometime between 29 January 2021 and 16 June 2021, the Letter was removed from Ms O’Connor’s blog.<sup>4</sup>

7 On 27 January 2021, at about 9.12am, Mr Xu sent a Facebook message to the Facebook user “Julie O’Connor” with a link to the Letter. Mr Xu then asked, “Can repost this?”, to which the Facebook user “Julie O’Connor” replied “Yes”. Mr Xu then replied, “Thanks”.<sup>5</sup>

8 Sometime on 27 January 2021, Mr Xu published the Letter within the Article on the TOC Website. In fact, the content of the Article is identical to that of the Letter, save for some stylistic edits. I reproduce the Article below:<sup>6</sup>

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<sup>1</sup> See Tan Keng Seng’s 1<sup>st</sup> Affidavit in HC/OS 694/2021 dated 8 July 2021 (“TKS 1<sup>st</sup> Affidavit”) at para 20; See TKS 1<sup>st</sup> Affidavit at p 27, at “Q9” and “A9”.

<sup>2</sup> Julie Mary O’Connor’s Affidavit in HC/OS 917/2021 dated 25 October 2021 at para 1; TKS 1<sup>st</sup> Affidavit at para 8.

<sup>3</sup> TKS 1<sup>st</sup> Affidavit at para 8; see TKS 1<sup>st</sup> Affidavit at pp 67–70 for the screenshot of the Letter.

<sup>4</sup> TKS 1<sup>st</sup> Affidavit at para 9; see TKS 1<sup>st</sup> Affidavit at p 159 for the screenshot of the Letter on 16 June 2021 at 3.05pm.

<sup>5</sup> TKS 1<sup>st</sup> Affidavit at para 10; see TKS 1<sup>st</sup> Affidavit at p 161 for the screenshot of the conversation.

<sup>6</sup> See TKS 1<sup>st</sup> Affidavit at pp 163–165 for the screenshot of the Article.

Dear Chief Justice Sundaresh Menon,

I recently read an online comment by Jonathan Pollard, a US-based lawyer.

He wrote: *“If you build a legal system that is largely political, favours people who have money/power, favours people who know the judges and are connected to the power structure – it should not be the least bit surprising that the system is riddled with dysfunction and inequity. Likewise, it should not be surprising when the facts don’t matter, the calibre of advocacy becomes largely irrelevant, and outcomes that leave the average person speechless, confused, and shocked are par for the course.”*

Immediately Singapore sprung to my mind, especially your **Opening of the Legal Year 2021 Speech**. I was also reminded of my fight against a system which I believe is riddled with inequity due to cronyism.

In your 2021 speech, it wasn’t what you said, but what you didn’t say that I found concerning. You said, *“... the quest for a sound system of justice begins with the selection of judges with the appropriate temperament, ability and integrity and commitment to carry out their heavy responsibilities. But even so, judges are not infallible.”*

You didn’t mention that judges in Singapore were selected, in addition to the virtues mentioned, for their courage to seek/determine the truth.

Neither did you mention two very high-profile cases in 2020: that of **Li Shengwu** and that of **Lee Suet Fern**.

Yes, **Parti Liyani**, which you did mention, may have been acquitted, but the Singapore system of justice did fail her because justice delayed is justice denied. In the case of Lee Suet Fern, **a Queen’s Counsel has stated** that the findings of the Court of Three Judges were “legally unsound” and that it was a “serious error” of judgment to find Lee Suet Fern guilty of professional misconduct.

Neither you nor the Attorney-General made any mention of either of these two cases. This omission led many to question if it was because Li Shengwu and Lee Suet Fern were not prosecuted but persecuted due to a family feud between the Prime Minister and his siblings.

Ironically, Li Shengwu was charged for comments made in a private Facebook post that suggested the judiciary is not independent but is susceptible to influence/pressure from the Government. It wasn’t Li Shengwu who is undermining the

confidence in the administration of justice; it is the Courts themselves that is doing just that.

Aristotle stated, “*Courage is the mother of all virtues because without it, you cannot consistently perform the others.*”

Were those involved in prosecuting Parti Liyani, Li Shengwu and Lee Suet Fern doing so out of a fear of the political elites or as a favour to them?

To the layperson (e.g. me) the action against Parti Liyani appears to be driven by the need to protect the Liew family, while the actions against Li Shengwu and Lee Suet Fern appear to be driven by a fear of the Prime Minister.

If Lee Hsien Yang’s family members are not safe from persecution, then who is? Just how equitable is the system of justice in Singapore?

*This letter was first published on Julie O’Connor’s **blog**.*

[emphasis in original]

9 The bolded phrases in the Article above contained hyperlinks to other web pages, which I set out in the table below:

| S/N | Phrases in the Article                  | Hyperlink                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----|-----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1   | “Opening of the Legal Year 2021 Speech” | Contained a hyperlink to the webpage: <a href="https://www.supremecourt.gov.sg/docs/default-source/default-document-library/cj-speech-for-oly-2021-final.pdf">https://www.supremecourt.gov.sg/docs/default-source/default-document-library/cj-speech-for-oly-2021-final.pdf</a> , which displayed a copy of the remarks by Chief Justice Sundaresh Menon at the Opening of the Legal Year 2021 on 11 January 2021. <sup>7</sup> |
| 2   | “Li Shengwu”                            | Contained a hyperlink to the webpage: <a href="https://www.theonlinecitizen.com/2020/07/03/li-">https://www.theonlinecitizen.com/2020/07/03/li-</a>                                                                                                                                                                                                                                                                             |

<sup>7</sup> TKS 1<sup>st</sup> Affidavit at pp 79–105, TKS-4.

|   |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                 | <a href="#">shengwu-agc-contempt-proceedings-reflect-poorly-on-gvt-and-its-priorities/</a> , which displayed an article published by TOC titled “Li Shengwu: AGC contempt proceedings reflect poorly on govt ‘and its priorities’”. <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 3 | “Lee Suet Fern” | Contained a hyperlink to the webpage: <a href="https://www.theonlinecitizen.com/2020/11/24/why-prosecute-lee-suet-fern-for-helping-with-lkys-will-when-nothing-was-said-of-kwa-geok-choo-drafting-lkys-1995-will-when-she-was-a-direct-beneficiary/">https://www.theonlinecitizen.com/2020/11/24/why-prosecute-lee-suet-fern-for-helping-with-lkys-will-when-nothing-was-said-of-kwa-geok-choo-drafting-lkys-1995-will-when-she-was-a-direct-beneficiary/</a> , which displayed an article by TOC on 24 November 2020 titled “Why prosecute Lee Suet Fern for helping with LKY’s will when nothing was said of Kwa Geok Choo drafting LKY’s 1995 will when she was a direct beneficiary?” <sup>9</sup> |
| 4 | “Parti Liyani”  | Contained a hyperlink to the web page: <a href="https://www.theonlinecitizen.com/2020/11/04/the-case-of-parti-liyani-all-you-need-to-know/">https://www.theonlinecitizen.com/2020/11/04/the-case-of-parti-liyani-all-you-need-to-know/</a> , which displayed an article published by TOC on 30 December 2020 titled “The case of Parti Liyani: All you need to know”. <sup>10</sup>                                                                                                                                                                                                                                                                                                                    |

<sup>8</sup> TKS 1<sup>st</sup> Affidavit at pp 107–114, TKS-5.

<sup>9</sup> TKS 1<sup>st</sup> Affidavit at pp 117–125, TKS-6.

<sup>10</sup> TKS 1<sup>st</sup> Affidavit at pp 128–137, TKS-7.



|   |                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5 | “Queen’s Counsel has stated” | Contained a hyperlink to the web page: <a href="https://www.theonlinecitizen.com/2021/01/09/legally-unsound-for-court-of-three-judges-to-find-lee-suet-fern-guilty-of-professional-misconduct-says-leading-queens-counsel/">https://www.theonlinecitizen.com/2021/01/09/legally-unsound-for-court-of-three-judges-to-find-lee-suet-fern-guilty-of-professional-misconduct-says-leading-queens-counsel/</a> , which displayed an article published by TOC on 11 January 2021 titled “‘Legally unsound’ and ‘serious error’ for Court of Three Judges to find Lee Suet Fern guilty of professional misconduct, says leading Queen’s Counsel”. <sup>11</sup> |
| 6 | “blog”                       | Contained a hyperlink to the original Letter on Ms O’Connor’s blog.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

10 On 27 January 2021, at about 10.20am, the Facebook Post was published on the TOC Facebook Page, sharing the Article accompanied by text reproducing an excerpt from the Article. I reproduce the excerpt in the Facebook Post below:<sup>12</sup>

“In your 2021 speech, it wasn’t what you said, but what you didn’t say that I found concerning. You said, ‘... the quest for a sound system of justice begins with the selection of judges with the appropriate temperament, ability and integrity and commitment to carry out their heavy responsibilities. But even so, judges are not infallible.’”

You didn’t mention that judges in Singapore were selected, in addition to the virtues mentioned, for their courage to seek/determine the truth.

Neither did you mention two very high-profile cases in 2020: that of Li Shengwu and that of Lee Suet Fern.

<sup>11</sup> TKS 1<sup>st</sup> Affidavit at pp 139–155, TKS-8.

<sup>12</sup> See TKS 1<sup>st</sup> Affidavit at pp 238–239.

Yes, Parti Liyani, which you did mention, may have been acquitted, but the Singapore system of justice did fail her because justice delayed is justice denied. In the case of Lee Suet Fern, a Queen's Counsel has stated that the findings of the Court of Three Judges were 'legally unsound' and that it was a 'serious error' of judgment to find Lee Suet Fern guilty of professional misconduct.

Neither you nor the Attorney-General made any mention of either of these two cases. This omission led many to question if it was because Li Shengwu and Lee Suet Fern were not prosecuted but persecuted due to a family feud between the Prime Minister and his siblings."

...

11 During the two-month period from 18 January 2021 to 24 March 2021, the TOC Website attracted 5,041,423 page views (of which 4,473,549 were unique page views), while the Article on TOC's Website attracted 4,310 page views (of which 3,799 were unique page views).<sup>13</sup> As of 2.29pm on 17 June 2021, the TOC Facebook Page was "liked" by 143,718 Facebook users and "followed" by 211,343 Facebook users. As of 1.43pm on 17 June 2021, the Facebook Post had received a total of 146 Facebook reactions (comprising 118 "Like" reactions, 14 "Haha" reactions, seven "Wow" reactions, six "Angry" reactions, and one "Love" reaction), 31 comments and 44 shares.<sup>14</sup>

12 On 22 June 2021, the AGC sent a letter of demand to Mr Xu, asking him to, *inter alia*, remove and delete the Article and the Facebook Post from the TOC website and TOC Facebook Page respectively by 5.00pm on 29 June 2021.<sup>15</sup> Mr Xu refused to do so. On 29 June 2021, Mr Xu's solicitors wrote to the AGC, disputing that he had committed contempt and stating that he would

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<sup>13</sup> Xu Yuan Chen @ Terry Xu's 2<sup>nd</sup> Affidavit dated 9 November 2021 at p 5.

<sup>14</sup> TKS 1<sup>st</sup> Affidavit at para 17; see TKS 1<sup>st</sup> Affidavit at pp 239 and 247 for the screenshot of the reactions to the Facebook Post.

<sup>15</sup> TKS 1<sup>st</sup> Affidavit at para 24; see TKS 1<sup>st</sup> Affidavit at pp 268–270, TKS-24.

not give in to the AGC’s demands.<sup>16</sup> Thereafter, these contempt proceedings commenced.

### The applicable law

13 I now turn to the applicable law. The High Court’s jurisdiction to issue an order of committal and punish for contempt is embodied in s 10(1) of the AJPA. The present application concerns contempt by scandalising the court under s 3(1)(a) of the AJPA which I reproduce as follows:

**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;

...

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

...

14 The *actus reus* for scandalising contempt under s 3(1)(a) of the AJPA is the publication of any material or commission of any act that (a) imputes improper motives to or impugns the integrity, propriety or impartiality of any court, and (b) poses a risk that public confidence in the administration of justice would be undermined. The court adopts an objective interpretation of the alleged contemptuous material in question (*Attorney-General v Wham Kwok Han Jolovan and another matter* [2020] 3 SLR 446 (“*Jolovan Wham (HC)*”) at [36]) and determines the objective effect the material will have on an average

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<sup>16</sup> TKS 1<sup>st</sup> Affidavit at pp 272–275, TKS-25.

reasonable person (*Shadrake Alan v Attorney-General* [2011] 3 SLR 778 (“*Shadrake*”) at [32]).

15 As regards the meaning of “risk”, the law has departed from the previous common law test of “real risk” as articulated by the Court of Appeal in *Shadrake*. Presently, to ascertain the existence of a “risk” in this context, the court is simply guided by this central question: “Is the risk one that the reasonable person coming across the contemptuous statement would think needs guarding against so as to avoid undermining public confidence in the administration of justice?” [original emphasis omitted] (see the Court of Appeal decision of *Wham Kwok Han Jolovan v Attorney-General and other appeals* [2020] 1 SLR 804 (“*Jolovan Wham (CA)*”) at [38]).

16 The *mens rea* under s 3(1)(a) of the AJPA is that of intention. It is sufficient to prove that the contemnor intended to publish the contemptuous material, but there is no need to prove that the contemnor had an intention to undermine public confidence in the administration of justice (see s 3(2) of the AJPA and *Au Wai Pang v Attorney-General* [2016] 1 SLR 992 (“*Au Wai Pang*”) at [17(c)]).

17 According to Explanation 1 to s 3 of the AJPA, fair criticism of a court is not contempt under s 3(1)(a) of the AJPA. To constitute fair criticism, the statement must (a) have some objective or rational basis; (b) be made in good faith and be respectful; and (c) generally be expressed in a temperate and dispassionate manner (*Jolovan Wham (CA)* at [41] and *Attorney-General v Tan Liang Joo John and others* [2009] 2 SLR(R) 1132 at [15]–[23]). The legal burden falls on the AG to prove that the impugned statement does not constitute fair criticism (*Jolovan Wham (CA)* at [19]).

18 Finally, the standard of proof for establishing contempt is that of beyond a reasonable doubt: s 28 of the AJPA. Having set out the applicable legal principles, I turn to the parties' cases.

### **Parties' cases**

#### ***The AG's case***

19 As mentioned at [1] above, the AG's position is that Mr Xu's publication of the Article and the Facebook Post constitutes contempt under s 3(1)(a) of the AJPA. The AG argues that the content of the Article impugns the integrity and impartiality of the Judiciary because it imputes, *inter alia*, that (a) Singapore's legal system is "largely political, favours people who have money/power, favours people who know judges and are connected to the power structure" and is "riddled with inequity due to cronyism";<sup>17</sup> (b) local judges are *not* selected for their courage to seek or determine the truth, and "they prioritise other ends over truth-finding";<sup>18</sup> and (c) the courts' rulings against Lee Suet Fern ("Mrs Lee") and Li Shengwu ("Mr Li") in the cases against them were the result of "persecution" due to a "family feud between the Prime Minister and his siblings", and that the Judiciary is "complicit in political persecution by deciding matters under political influence".<sup>19</sup> The AG argues a risk is posed that public confidence in the administration of justice would be undermined, especially given the actual and potential reach of the Article and the Facebook Post.<sup>20</sup>

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<sup>17</sup> AG's Written Submissions ("AWS") at para 12.

<sup>18</sup> AWS at para 13.

<sup>19</sup> AWS at paras 14–15 and 22.

<sup>20</sup> AWS at paras 18–21.

20 The AG further argues that the Article and the Facebook Post do not constitute fair criticism because they did not provide any rational or evidential basis for their allegations and imputations.<sup>21</sup> The Article and the Facebook Post made no attempt to discuss the facts or merits of Mrs Lee's and Mr Li's cases, or the courts' reasoning therein, and cannot be said to be an objective assessment of the soundness of those decisions made in good faith.<sup>22</sup>

21 The AG also submits that it is no defence that the Article and the Facebook Post merely reproduced the content of the Letter, which had originally been written by Ms O'Connor, because liability for contempt is not limited to the original authors of contemptuous material. For this proposition, the AG points to s 18 of the AJPA which contemplates that a person may be liable for contempt despite not having authored the impugned material.<sup>23</sup>

22 Lastly, the AG argues, as an alternative ground, that Mr Xu's deliberate refusal to remove the Article and the Facebook Post constitutes contempt of court under s 3(1)(a) of the AJPA.<sup>24</sup> By deliberately refusing to remove the Article and the Facebook Post, Mr Xu caused the contemptuous material to continue to be disseminated for the duration that they remain online, which constitutes continuing publication.<sup>25</sup>

23 In relation to sentencing, the AG argues that the appropriate sentence is a fine of S\$20,000 to be paid within two weeks from the date of the sentence,

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<sup>21</sup> AWS at para 22.

<sup>22</sup> AWS at para 22 and 31.

<sup>23</sup> AWS at para 23.

<sup>24</sup> AWS at para 32.

<sup>25</sup> AWS at para 36.

with a term of ten days' imprisonment in default of payment of the fine.<sup>26</sup> The AG contends that (a) Mr Xu's level of culpability is high and that he showed a lack of remorse, given that he refused to apologise or remove the Article and the Facebook Post despite being notified by the AGC that the publications contained contemptuous allegations;<sup>27</sup> (b) the contemptuous allegations are grave because they attack the impartiality and independence of the judiciary;<sup>28</sup> (c) the contemptuous allegations were likely, and are likely still being, distributed widely among the public;<sup>29</sup> and (d) would-be contemnors must be deterred from repeating these allegations.<sup>30</sup>

24 The AG further submits that Mr Xu's overall culpability is greater than the contemnors in *Au Wai Pang*, *Jolovan Wham (CA)* and *Attorney-General v Li Shengwu* (Originating Summons No 893 of 2017) (Summons No 4013 of 2017) ("*Li Shengwu*"),<sup>31</sup> in which the contemnors were fined S\$8,000, S\$5,000 and S\$15,000 respectively.<sup>32</sup>

25 The AG also seeks an order for Mr Xu to delete and cease further publication of the Article and the Facebook Post. The AG refers to *Jolovan Wham (HC)* for the proposition that s 9(d) of the AJPA preserves the court's power to issue injunctions, including prohibitory and mandatory injunctions.<sup>33</sup>

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<sup>26</sup> AWS at para 38.

<sup>27</sup> AWS at para 46.

<sup>28</sup> AWS at para 47 and 53.

<sup>29</sup> AWS at para 49.

<sup>30</sup> AWS at para 50.

<sup>31</sup> Oral Judgment dated 29 July 2020 in HC/OS 893/2017 (HC/SUM 4013/2017) at Tab 3, AG's Bundle of Authorities.

<sup>32</sup> AWS at paras 54–59.

<sup>33</sup> AWS at para 62.

***Mr Xu's case***

26 Mr Xu argues that the Article and the Facebook Post do not impugn the integrity and impartiality of the Judiciary under s 3(1)(a)(i) of the AJPA because it is clear that the Letter was criticising the way AGC handles prosecutions, and not the Judiciary or the courts.<sup>34</sup> Insofar as the Letter criticises the omissions in the Chief Justice's speech at the Opening of the Legal Year 2021, it is not a scandalising comment because it amounts to fair criticism.<sup>35</sup> Mr Xu argues that s 3(1)(a)(ii) of the AJPA is also not satisfied because a reasonable person reading the Article and the Facebook Post would not conclude that they pose a risk of undermining public confidence in the administration of justice.<sup>36</sup>

27 Mr Xu contends that if it were clear that the Article and the Facebook Post were so contemptuous and posed a risk of undermining public confidence in the administration of justice, the AG would have requested for them to be taken down on 29 January 2021 when the investigations started and would not have waited until 8 March 2021 before raiding Mr Xu's premises, and until 22 June 2021 before asking Mr Xu to take them down.<sup>37</sup>

28 In relation to sentencing, Mr Xu argues that the appropriate sentence should be a fine of no more than S\$3,000 with four days' imprisonment in default of payment of the fine.<sup>38</sup> Mr Xu argues that he is less culpable than the

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<sup>34</sup> Respondent's Written Submissions ("RWS") at para 26.

<sup>35</sup> RWS at para 27.

<sup>36</sup> RWS at para 30.

<sup>37</sup> RWS at para 31.

<sup>38</sup> RWS at para 33.



contemnors in *Jolovan Wham (CA)* and *John Tan*, who were both only fined S\$5,000 with one week's imprisonment in default.<sup>39</sup>

29 As regards the AG's prayer for Mr Xu to cease and desist from future publication, while Mr Xu does not dispute that the court may grant such an order, he submits that it should not be granted. This is because the TOC "went offline in September 2021", and the TOC Website and the TOC Facebook Page "were deactivated in September 2021".<sup>40</sup> Reference was made to the cancellation of the class licence of The Online Citizen Pte Ltd ("TOCPL") by the Infocomm Media Authority ("IMDA").<sup>41</sup>

### Further submissions

30 During the hearing on 29 November 2022, Mr Xu's counsel, Mr Lim Tean ("Mr Lim"), reiterated that the TOC Website and the Facebook Page have already been removed. He also stated that the operating rights of both the TOC Website and the TOC Facebook Page have been transferred from the TOCPL to a Taiwanese entity.

31 Ms Kristy Tan SC ("Ms Tan"), counsel for the AG, however, submitted that in September 2022, both the TOC Website and the TOC Facebook Page were reactivated. The Article and the Facebook Post were still accessible to the public. Further, Ms Tan argued that Mr Xu was in control and had the power to take down the contemptuous materials.

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<sup>39</sup> RWS at paras 34–35.

<sup>40</sup> RWS at para 32.

<sup>41</sup> RWS at Tab 2.

32 As these matters were not dealt with in the affidavits filed by the parties prior to the first hearing, I directed the parties to file further affidavits followed by further written submissions to address, *inter alia*, the following matters: (a) who owned the TOC Website and the TOC Facebook Page?; (b) who had operational control over the TOC Website and the TOC Facebook Page?; and (c) whether the Article and Facebook Post were still publicly available on the TOC Website and TOC Facebook Page respectively.

33 On 30 November 2022, the AG duly filed an affidavit stating that in October 2021, IMDA cancelled TOCPL’s class licence to provide licensable broadcasting services, such as those provided on the TOC Website and the TOC Facebook Page. However, in September 2022, both the TOC Website and TOC Facebook Page were reactivated with the public announcement that the TOC “was not prohibited from operating from outside of Singapore”, and that “both the operation of the [TOC] website along with its social media platforms have been transferred to a new company that is registered in Taiwan”. Mr Xu also separately announced that he would be “relocating to Taiwan to start up a news media outlet”.<sup>42</sup> Both the TOC Website and the TOC Facebook Page remained publicly accessible as of 28 November 2022.<sup>43</sup>

34 In his affidavit dated 14 December 2022, Mr Xu stated that the operating rights of the TOC Website and TOC Facebook Page were transferred to a Taiwanese entity, Miao Yi Infotech Ltd (“Miao Yi”), before 9 September 2022. Miao Yi is a foreign entity with no connection with TOCPL.<sup>44</sup> Mr Xu further

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<sup>42</sup> Tan Keng Seng’s 3<sup>rd</sup> Affidavit dated 30 November 2022 (“TKS 3<sup>rd</sup> Affidavit”) at paras 5–6.

<sup>43</sup> TKS 3<sup>rd</sup> Affidavit at paras 7–8.

<sup>44</sup> Xu Yuan Chen @ Terry Xu’s 3<sup>rd</sup> Affidavit dated 14 December 2022 (Mr Xu’s 3<sup>rd</sup> Affidavit) at paras 8–9 and 11.

stated that the TOC Website was republished by Miao Yi on 16 September 2022 after being transferred to a web server in South Korea.<sup>45</sup> He also confirmed that while the content of the Article has been removed, the web address of the Article remains valid, with a note stating that the content had been removed due to contempt proceedings against Mr Xu.<sup>46</sup> For completeness, I note that Mr Xu made no mention about whether the TOC Facebook Page remained publicly accessible as of the date of his affidavit. Neither did Mr Xu address the specific question as to who had control over the TOC Website and TOC Facebook Page following the transfer to Miao Yi.

35 On 4 January 2023, the AG filed a reply affidavit stating that the Article was still accessible on the TOC Website as of 4 January 2023. However, its content had been replaced with the following sentence, “The letter by Julie O’Connor is removed from this post due to a contempt of court charge against Terry Xu in the Singapore Court”. Moreover, the Facebook Post also remained publicly accessible, although the link to the Article in the Facebook Post led to the amended form of the Article.<sup>47</sup> The AG also stated that, according to the “About Us” page on the TOC Website, Mr Xu remained the Chief Editor of the TOC at the time the AG’s reply affidavit was filed.<sup>48</sup>

36 In light of the above, the AG submits in its further written submissions dated 18 January 2023 that regardless of the new ownership structure of the

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<sup>45</sup> Mr Xu’s 3<sup>rd</sup> Affidavit at para 9.

<sup>46</sup> Mr Xu’s 3<sup>rd</sup> Affidavit at para 13.

<sup>47</sup> Tan Keng Seng’s 4<sup>th</sup> Affidavit dated 4 January 2023 (“TKS 4<sup>th</sup> Affidavit”) at paras 6–8.

<sup>48</sup> TKS 4<sup>th</sup> Affidavit at para 11.

TOC, Mr Xu retains the power to completely remove the Article and the Facebook Post and that he should be ordered to do so.<sup>49</sup>

37 On the other hand, in his further written submissions dated 6 February 2023, Mr Xu maintains that since the hearing on 29 November 2022, both the Article and the Facebook Post have been removed.<sup>50</sup> He also states that he has no intention to publish the same material in the future again. Accordingly, Mr Xu takes the position that the court need not make any order as regards the AG’s prayer for him to cease and desist from future publication. To be clear, Mr Xu’s position is that only the Article, and not the comments on the Article posted by the readers, has been removed from the TOC Website. Mr Xu is of the view that there is no reason for the comments to be removed as they do not form part of the Article complained of.<sup>51</sup>

38 At this juncture, I should add that Mr Xu had failed to comply with my directions given during the hearing on 29 November 2022 that parties concurrently file and exchange submissions by 18 January 2023. Moreover, Mr Xu also raised two new points in his further submissions dated 6 February 2023 as regards the removal of the Article and Facebook Post. In the premises, on 23 February 2023, I granted the AG leave to file a further affidavit (confined to addressing the two new points) and further reply submissions.

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<sup>49</sup> Applicant’s Further Written Submissions dated 18 January 2023 (“AFWS”) at paras 13 and 19–20.

<sup>50</sup> Respondent’s Further Written Submissions dated 6 February 2023 (“RFWS”) at paras 1–2.

<sup>51</sup> RFWS at paras 3–4 and 6.

39 In its affidavit dated 24 February 2023, the AG stated that the status of the Article remained unchanged from 4 January 2023.<sup>52</sup> However, the Facebook Post was no longer publicly accessible. Given that the Facebook Post was still publicly accessible at the time of the filing of the AG’s further written submissions on 18 January 2023, the AG stated that the Facebook Post was removed from the TOC Facebook Page sometime after.<sup>53</sup> Thus, it follows that the Facebook Post remained publicly accessible even after Mr Xu’s averment on 14 December 2022 that its contents had been removed.

40 The AG submits, in its further reply submissions, that Mr Xu’s assertion that he has no intention to publish the same material again is self-serving and unsupported by any averment under oath. As such, there is no reason for the court to believe this.<sup>54</sup> Mr Xu’s conduct, the AG submits, demonstrates that Mr Xu’s removal of the contemptuous material had been piecemeal, selective, belated, and demonstrates a lack of sincerity on his part. In the circumstances, an order for Mr Xu to desist from publication of the Article and the Facebook Post remains warranted.<sup>55</sup>

### **My decision**

#### ***Contempt by intentionally publishing the Article on the TOC Website***

41 I turn to the allegation that Mr Xu acted in contempt of court under s 3(1)(a) of the AJPA by intentionally publishing the Article on the TOC

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<sup>52</sup> Tan Keng Seng’s 5<sup>th</sup> Affidavit dated 24 February 2023 (“TKS 5<sup>th</sup> Affidavit”) at para 7.

<sup>53</sup> TKS 5<sup>th</sup> Affidavit at paras 9–10.

<sup>54</sup> Applicant’s Further Written Submissions in Reply dated 24 February 2023 (“ARFWS”) at paras 3–5.

<sup>55</sup> ARFWS at para 6.

Website. Turning to consider whether the *actus reus* of s 3(1)(a) is made out, I note that Mr Xu does not dispute that he published the Article.

42 The dispute accordingly centres on whether the Article imputes improper motives to or impugns the integrity, propriety, or impartiality of any court under s 3(1)(a)(i) of the AJPA. In my view, on an objective interpretation, the Article impugns the integrity and impartiality of the Singapore courts for the following reasons.

43 The Article opens by citing an online comment by “Jonathan Pollard, a US-based lawyer”, that “[i]f you build a legal system that is largely political, *favours people who have money/power, favours people who knows the judges and are connected to the power structure* – it should not be the least bit surprising that the system is riddled with dysfunction and inequity” [emphasis added]. This was followed by “Immediately Singapore sprung to my mind”. It should be clear to any reasonable reader that the author was trying to convey that Singapore’s legal system fits the descriptions by “Jonathan Pollard”, being one that favours those who have money and power and those who know judges. I agree with the AG that such insinuations, especially the insinuation that Singapore’s system favours those who have connections with judges, directly implicates the Singapore judiciary, and impugns the integrity and impartiality of the courts and judges.

44 The Article goes on to point out that the Chief Justice’s speech at the Opening of the Legal Year 2021 listed various virtues for which judges are selected, but “didn’t mention that judges in Singapore were selected ... *for their courage to seek/determine the truth*” [emphasis added]. The implication here is that Singapore judges are *not* selected for their courage to seek or determine the truth. When read together with the previous allegation that Singapore’s legal

system favours those with money, power, and connections with judges, I am of the view that a reasonable reader would interpret this portion of the Article to mean that Singapore judges are not impartial and prioritise other considerations over truth-finding in dealing with their cases.

45 The Article then refers to recent legal proceedings against Mrs Lee and Mr Li, stating that the omissions of these cases in the Chief Justice’s speech “led many to question if it was because [Mr Li] and [Mrs Lee] were not prosecuted but persecuted due to a family feud between the Prime Minister and his siblings”. The Article also stated that a Queen’s Counsel had commented that the court’s findings in Mrs Lee’s matter were “legally unsound” and a “serious error” of judgment. In that regard, the Article included a hyperlink to an article by TOC on 11 January 2021 which reported the statements of Timothy Dutton CBE QC and Sir David Thomas Rowell Lewis, the Lord Mayor of London, in which they criticised the court’s decision in Mrs Lee’s matter. Taken together, I am of the view that the Article creates the impression to a reasonable reader that the court arrived at the decision in Mrs Lee’s matter for political reasons, namely, the “family feud between the Prime Minister and his siblings”. This is, once again, a direct attack on the integrity, propriety, and impartiality of the court. The reference to “Queen’s Counsel” also conjures a false sheen of legitimacy which would cause a reasonable layperson reading the Article to form the view that there is some legitimacy to this allegation.

46 Next, the following paragraph of the Article states:

... [Mr Li] was charged for comments made in a private Facebook post that suggested the judiciary is not independent but is susceptible to influence/pressure from the Government: *It wasn’t [Mr Li] who is undermining the confidence in the administration of justice; it is the Courts themselves that is doing just that.*

[emphasis added]

I am of the view that the emphasised portion of the extract is a direct attack on the Singapore courts. It directly accuses the courts of deciding cases under political influence, rather than on their merits, thus undermining public confidence in the administration of justice.

47 The Article then raises the question, “[w]ere those involved in prosecuting Parti Liyani, [Mr Li] and [Mrs Lee] *doing so out of out of a fear of the political elites or as a favour to them?*” [emphasis added], before stating that “[t]o the layperson (e.g. me) the action against Parti Liyani appears to be *driven by the need to protect the Liew family*, while the actions against [Mr Li] and [Mrs Lee] appear to be *driven by a fear of the Prime Minister*” [emphasis added]. These sentences, *prima facie*, appear to be criticisms directed at the AGC, suggesting that it commenced actions against these individuals out of political motives. However, the Article immediately went on to pose a final question: “If Lee Hsien Yang’s family members are not safe from persecution, then who is? *Just how equitable is the system of justice in Singapore?*” [emphasis added]. The reference to “the system of justice in Singapore” necessarily includes the Judiciary. Reading these sentences together, I am of the view that a reasonable reader would understand that the criticisms were directed not only at the AGC, but also other institutions in Singapore’s legal system, which includes the Judiciary. The gist of the Article’s allegation is that the AGC and the courts are complicit in the persecution of certain people in Singapore for political reasons.

48 For these reasons, I am of the view that the Article, when read as a whole, suggests to a reasonable reader that: (a) the Singapore courts favour those who have money, power or connections with judges; (b) Singapore’s judges are *not* selected for their courage to seek or determine the truth; and (c) the courts are complicit with the AGC in the political persecution of certain



people and are deciding cases based on political reasons rather than on their merits. Therefore, I am of the view that the Article impugns the integrity, impartiality, and propriety of the courts and that s 3(1)(a)(i) of the AJPA is made out.

49 Mr Xu argues that he understood the Letter “to be a criticism of the [AGC] in the way prosecutions are handled in Singapore” and “not... as an attack on the integrity of the Singapore Judiciary or an attempt to scandalise it”.<sup>56</sup> In illustrating this, Mr Xu refers to two sentences which say, “[Mr Li] and [Mrs Lee] were not prosecuted but persecuted due to a family feud due to a family feud between the Prime Minister and his siblings”, and “Were those involved in prosecuting Parti Liyani, [Mr Li] and [Mrs Lee] doing so out of out of a fear of the political elites or as a favour to them?”. Mr Xu argues that these sentences suggest that the author is criticising the AGC, and not the Judiciary, for its role in prosecuting those individuals.

50 I see no merit in this argument. As I have explained at [47] above, the attacks were targeted at Singapore’s “system of justice” which necessarily includes the Judiciary. Just because the Article criticises the way prosecutions were handled in these cases does not mean that it cannot also be a *simultaneous* attack on the Judiciary. This is especially when there are direct attacks on the Judiciary in the earlier parts of the Article, *ie*, that Singapore’s legal system favours those who have connections with the judges, that judges are not selected for their courage to seek or determine the truth, and that the courts are undermining the administration of justice in Singapore. Reading the Letter as a whole, it is clear that while there was criticism of the way prosecutions are handled in Singapore, there was also an attack on the Judiciary’s integrity,

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<sup>56</sup> RWS at para 7.

propriety, and impartiality. This brings the Letter (and consequently, the Article which reproduced the Letter) within the ambit of s 3(1)(a)(i) of the AJPA.

51 Mr Xu also argues that Ms O'Connor is a layperson and that her criticisms of the legal system and "system of justice" in Singapore were not meant to be attacks on the courts. I find this argument unconvincing. First, I am of the view that even to a layperson, the courts will certainly be regarded as part of a country's legal system. Second, and more importantly, the question for me to decide is not what Ms O'Connor subjectively meant by the statement, but what the objective effect of the statement on the average reasonable person would be: *Shadrake* at [32]–[35]. As I have explained at [48] above, an objective, reasonable person will understand the Article to be an attack on the integrity, impartiality, and propriety of the courts. Consequently, I find that s 3(1)(a)(i) of the AJPA has been made out.

52 Next, I turn to consider whether the Article poses a risk of undermining public confidence in the administration of justice under s 3(1)(a)(ii) of the AJPA. The Court of Appeal has observed that "[a]n assertion that a Judiciary would decide matters otherwise than in accordance with the merits is self-evidently among the most serious attacks that one can make against courts and the administration of justice" and "goes to the very heart and essence of the judicial mission and oath": *Jolovan Wham (CA)* at [33]. The Article, as published on the TOC Website, was publicly available. The nature of the assertions made in the Article, as described above, is that the courts decide matters under political influence, rather than in accordance with the merits of the cases. This directly impugns the independence and impartiality of the judiciary and "would necessarily as well as undoubtedly undermine public confidence in the judiciary": *Au Wai Pang* at [37].

53 Mr Xu argues that if it was so clear that the Article and the Facebook Post pose a risk of undermining public confidence in the administration of justice, the AG would have asked him to remove the posts on 29 January 2021 when investigations started, and not have waited for months before raiding Mr Xu's home on 8 March 2021 and requesting him to take down the post on 22 June 2021. Mr Xu further claims that the delay was because the police was trying to find evidence suggesting collusion between Mr Xu and Ms O'Connor. After the investigations revealed nothing, the AG commenced the present committal proceeding to "save face".<sup>57</sup> This argument is pure speculation on Mr Xu's part, and there is absolutely nothing to suggest anything improper in the AG's conduct of these proceedings. In any event, even if there was a delay in the bringing of these proceedings, that does not alter the answer to the question as to whether the Article poses a risk of undermining public confidence in the administration of justice which is determined on an objective basis. Consequently, I dismiss Mr Xu's argument on this point and find that s 3(1)(a)(ii) has been made out on the facts.

54 Turning to consider the *mens rea* element under s 3(1)(a) of the AJPA, I note that Mr Xu does not contest this. Mr Xu was the Chief Editor and web publisher of TOC. During investigations, he admitted to intentionally publishing the Article on the TOC Website on 27 January 2021. I reiterate that there is no need to prove that the contemnor had the intention to undermine public confidence in the administration of justice (*Au Wai Pang* at [17(c)]). Therefore, the *mens rea* under s 3(1)(a) is made out.

55 Lastly, I turn to consider whether the Article constitutes fair criticism. Mr Xu argues that the Article is a fair criticism of the omissions in the Chief

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<sup>57</sup> RWS at para 18.

Justice's speech at the Opening of Legal Year 2021,<sup>58</sup> and a fair criticism of the judgments in the cases involving Mrs Lee and Mr Li. The requirements of fair criticism have been set out at [17] above.

56 I am of the view that the Article does not constitute fair criticism. Although the Article is framed as a criticism of the omissions in the Chief Justice's speech, the central message it seeks to convey is that the Chief Justice did not mention certain cases because they arose from political persecution and were not determined on their merits by the courts. No objective or rational basis is provided for the allegation that the court rulings against Mrs Lee and Mr Li were made under political influence. The mere reference to a Queen's Counsel's criticisms of the findings in Mrs Lee's case as "legally unsound" does not offer any support for the conclusion that the court's ruling in that case was the result of "persecution" against Mrs Lee. Furthermore, the allegations do not appear to be made in good faith. The allegations made in the Article impugn the integrity and impartiality of the court, which attacks the "very heart and essence of the judicial mission and oath" (*Jolovan Wham (CA)* at [33]). Not only are these grave allegations completely unsubstantiated, they are also not made in a respectful or dispassionate manner, with statements describing Singapore's legal system as being "riddled with inequity due to cronyism" and asserting that "it is the Courts themselves" that are undermining confidence in the administration of justice. Therefore, considering (a) the nature of the allegations in the Article; (b) the lack of any objective or rational basis for such allegations; and (c) the lack of good faith in making such allegations, I am of the view that the statements in the Article do not amount to fair criticism of the courts.

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<sup>58</sup> RWS at para 27 and 29.

57 As both the *actus reus* and *mens rea* under s 3(1)(a) of the AJPA are satisfied, and the Article does not constitute fair criticism, I find Mr Xu guilty of contempt by publishing the Article on the TOC Website.

***Contempt by intentionally publishing the Facebook Post on the TOC Facebook Page***

58 Next, the AG alleges that Mr Xu also committed contempt under s 3(1)(a) of the AJPA by intentionally publishing the Facebook Post on the TOC Facebook Page.

59 In relation to the element of publication, during investigations, Mr Xu admitted that he was the “owner” of the TOC Facebook Page and had sole authority to decide what would be published on it.<sup>59</sup> I agree with the AG that regardless of whether Mr Xu posted the Facebook Post himself or instructed his staff to post it (in which case he would have caused it to be published), the element of publication is satisfied.<sup>60</sup> In any case, I note that Mr Xu does not appear to dispute this element.

60 As for s 3(1)(a)(i) of the AJPA, the Facebook Post shares a link to the Article, accompanied by text reproducing the offending portions of the Article. These include insinuations that judges in Singapore are not selected for their courage to seek or determine the truth, and that Mrs Lee and Mr Li were persecuted due to a family feud between the Prime Minister and his siblings. The Article thus forms part of the Facebook Post, and the Facebook Post had published and endorsed the views expressed in the Article. My analysis at [42] to [48] applies with equal force to the Facebook Post. Therefore, I find that the

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<sup>59</sup> TKS 1<sup>st</sup> Affidavit at p 27, at “Q9” and “A9”.

<sup>60</sup> AWS at para 28.

Facebook Post imputes improper motives to and impugns the integrity, propriety and impartiality of the Singapore judiciary, and that s 3(1)(a)(i) of the AJPA is satisfied.

61 In relation to s 3(1)(a)(ii) of the AJPA, I am of the view that the Facebook Post poses a risk that public confidence in the administration of justice would be undermined. Just like the Article, the Facebook Post insinuates that the courts decide cases under political influence, rather than in accordance with their merits, which “goes to the very heart and essence of the judicial mission and oath” (*Jolovan Wham (CA)* at [33]). Furthermore, the Facebook Page had 211,343 followers as of 1.43pm on 17 June 2021,<sup>61</sup> while the Facebook Post garnered a total of 146 Facebook reactions, 31 comments and 44 shares.<sup>62</sup> The actual and potential reach of the Facebook Post further bolsters my finding that it poses a risk that the statements made in it would undermine public confidence within the meaning of s 3(1)(a)(ii) of the AJPA.

62 As for the *mens rea* requirement, Mr Xu does not seem to dispute that he published the Facebook Post intentionally. I reiterate that all the AG has to prove is that Mr Xu intended to publish the Facebook Post. There is no need to prove that he intended to undermine public confidence in the administration of justice: *Au Wai Pang* at [17(c)]. During investigations, Mr Xu admitted to having sole authority to decide what would be published on the TOC Facebook Page.<sup>63</sup> In the absence of any evidence suggesting that the Facebook Post was posted without Mr Xu’s instructions or knowledge, I find that Mr Xu had

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<sup>61</sup> See TKS 1<sup>st</sup> Affidavit at p 236 for the screenshot of the Facebook Post.

<sup>62</sup> TKS 1<sup>st</sup> Affidavit at para 17; see TKS 1<sup>st</sup> Affidavit at pp 239 and 247 for the screenshot of the reactions to the Facebook Post.

<sup>63</sup> TKS 1<sup>st</sup> Affidavit at p 27, at “Q9” and “A9”.

intentionally published the Facebook Post on 27 January 2021, and that the *mens rea* element under s 3(1)(a) of the AJPA is made out.

63 For the same reasons set out at [56], I am of the view that the Facebook Post does not constitute fair criticism. Consequently, I find Mr Xu guilty of contempt under s 3(1)(a) for intentionally publishing the Facebook Post on the TOC Facebook Page.

***Contempt by refusing to remove the Article and Facebook Post***

64 Lastly, the AG also raises the alternative argument that Mr Xu had acted in contempt of court under s 3(1)(a) of the AJPA by refusing to remove the Article from the TOC Website and the Facebook Post from the TOC Facebook Page despite the AGC's demand on 22 June 2021. At the hearing, Ms Tan clarified that this allegation is an alternative one, should liability not be found on the basis of the first two allegations. If liability is found, as is the case now, the question becomes one of whether the refusal to remove may be regarded as an aggravating factor in relation to the punishment to be imposed, to which I now turn.

***Punishment***

65 Under s 12(1)(a) of the AJPA, contemnors found liable for contempt of court under s 3(1)(a) of the AJPA may be punished with a fine of up to S\$100,000, or with imprisonment for a term not exceeding three years, or with both. The AG submits that the appropriate punishment should be a S\$20,000 fine with ten days' imprisonment in default of payment. Mr Xu argues that the fine should be no more than S\$3,000 with four days' imprisonment in default of payment.

66 In *Shadrake*, the Court of Appeal identified several non-exhaustive factors that may be considered when the court determines the appropriate sentence for scandalising contempt at common law (at [147]). These remain relevant under s 12(1)(a) of the AJPA (see *Jolovan Wham (CA)* at [49]) and include:

- (a) the culpability of the contemnor;
- (b) the nature and gravity of the contempt;
- (c) the number of contemptuous statements made;
- (d) the type and extent of dissemination of the contemptuous statements; and
- (e) the importance of deterring would-be contemnors from following suit.

67 In the present case, I am of the view that the following are relevant considerations.

68 First, Mr Xu’s culpability is high. He had carefully perused the content of the Letter, as evidenced by the stylistic edits he made when reproducing the Letter as the Article and his selection of the accompanying text for the Facebook Post. As the Chief Editor of TOC, a website which professes to be “Singapore’s longest-running independent online media platform”,<sup>64</sup> he failed to practise responsible journalism, and instead proceeded to publish scurrilous allegations against the courts in the Article and the Facebook Post to influence the opinions of TOC’s readers on the same morning (27 January 2021) that Ms O’Connor published the Letter on her blog.

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<sup>64</sup> TKS 1<sup>st</sup> Affidavit at p 173.



69 Second, Mr Xu’s culpability is aggravated by the fact that he showed a complete lack of remorse for his actions. He persisted in maintaining the Article on the TOC Website and the Facebook Post on the TOC Facebook Page even after AGC informed him that the publications contained contemptuous allegations. To date, Mr Xu has also not apologised for his actions.

70 Third, the Article and the Facebook Post are rife with grave allegations levelled against the Judiciary. As I have mentioned above at [52] and [56], the allegations go to the very heart and essence of the judicial mission and oath, insinuating that the courts decide matters under political influence, rather than in accordance with their merits.

71 Fourth, the actual and potential reach of the Article and the Facebook Post is another aggravating factor. The Article and the Facebook Post were accessible to the public at large as of 27 January 2021. As mentioned at [11] above, between 18 January 2021 and 24 March 2021, the TOC Website attracted 5,041,423 page views, while the Article on TOC’s Website attracted 4,310 page views. As of 17 June 2021, the TOC Facebook Page was “liked” by 143,718 Facebook users and had 211,343 followers, while the Facebook Post had received a total of 146 Facebook reactions, 31 comments and 44 shares.<sup>65</sup> Moreover, the Article and the Facebook Post would have been further disseminated in the sense that when a reader “liked”, “shared” or commented on the Facebook Post, it would have actively resurfaced on the news feeds of other individuals.

72 In light of the above factors, I am of the view that a fine of S\$18,000 is an appropriate sentence. Such a sentence is also in line with the sentencing

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<sup>65</sup> TKS 1<sup>st</sup> Affidavit at para 17; see TKS 1<sup>st</sup> Affidavit at pp 239 and 247 for the screenshot of the reactions to the Facebook Post.

precedents of *Au Wai Pang*, *Jolovan Wham (CA)* and *Li Shengwu*, which are as follows:

(a) In *Au Wai Pang*, the contemnor (“Mr Au”) was fined S\$8,000 for publishing an article on his blog that insinuated that the Chief Justice and Justice Quentin Loh had rescheduled certain hearings because of their vested and improper interests in upholding the constitutionality of a particular statutory provision. Mr Au removed his contemptuous article from his blog (albeit not the posts responding to the article) after the court granted the AG leave to apply for an order of committal against him (see *Au Wai Pang* at [3(d)]). Mr Au also apologised for his actions (see *Au Wai Pang* at [10]).

(b) In *Jolovan Wham (CA)*, the contemnor (“Mr Wham”) was fined S\$5,000, with one week’s imprisonment in default of payment of the fine. Mr Wham had published a short post on his Facebook profile with a bare statement that Singapore’s judges decide cases with political implications otherwise than in accordance with their merits. Mr Wham did not show any remorse for his post as he refused to remove it from his Facebook profile and apologise for his conduct, even after he was found liable for contempt.

(c) In *Li Shengwu*, Mr Li was fined S\$15,000, with one week’s imprisonment in default of payment of the fine. Mr Li had published a post on Facebook, that was viewable only by users who were his Facebook “Friends”, which conveyed that the Judiciary decides legal proceedings brought by leaders of the Government in their favour not by reason of the merits, but because it was compliant and subservient to the Government. When the AG demanded Mr Li to delete the offending post, he refused to do so. However, Mr Li amended his post to remove

the offending words and clarify what he purportedly meant. That said, Mr Li expressed no contrition and refused to participate in the judicial process of the contempt proceedings.

73 In my judgment, Mr Xu's offending conduct is more egregious than that of the contemnors in *Au Wai Pang*, *Jolovan Wham (CA)* and *Li Shengwu* and therefore warrants a higher sentence than those cases. I say this for these reasons.

74 First, in terms of standing, Mr Xu's position as Chief Editor of TOC, a media outlet of general interest to the Singapore public, makes him a more prominent figure with a wider reach compared to Mr Wham (a social activist) and Mr Au (a blogger). At the hearing, Mr Lim argued that Mr Xu is in a different position from Mr Li, who is a very public figure in Singapore, being a member of the Prime Minister's extended family. While Mr Xu, in his personal capacity, may not be a public figure, the TOC is a relatively renowned internet media outlet in Singapore, as evidenced by the millions of page views within a mere span of two months between 18 January 2021 and 24 March 2021. I agree with the AG that Mr Xu's standing, in his capacity as the Chief Editor of the TOC, is comparable in relation to Mr Li.

75 Second, the extent of publication in the present case greatly exceeds those in the cases of *Au Wai Pang*, *Jolovan Wham (CA)* and *Li Shengwu*. In *Au Wai Pang*, Mr Au only posted the contemptuous article on his blog, as compared to Mr Xu who published the contemptuous statements on the website and social media page of a media outlet of general interest to the Singapore public. In *Jolovan Wham (CA)*, Mr Wham published the contemptuous post on his Facebook account which only had 7,200 Facebook followers (*Jolovan Wham (CA)* at [20]), as compared to the 211,343 followers that the TOC Facebook

Page had. In *Li Shengwu*, Mr Li only posted his post on a “Friends only” privacy setting; it was one or more of his Facebook “Friends” who republished the Post to the general public.

76 Third, Mr Xu’s degree of culpability is also higher than those of the contemnors in *Au Wai Pang* and *Li Shengwu*. In *Au Wai Pang*, Mr Au had apologised for his actions, which was taken into account by the judge in determining the appropriate fine (see *Au Wai Pang* at [10]). In *Li Shengwu*, although Mr Li refused to delete the offending post or apologise, he amended his post to remove the offending words and to clarify what he purportedly meant. In the present case, not only did Mr Xu refuse to apologise, he also refused to remove the Article and the Facebook Post after the AGC issued him with a letter of demand on 22 June 2021. The prolonged period of publication had raised the risk of further republications of the contemptuous material by readers.

77 Although the TOC Website and the TOC Facebook Page were deactivated in September 2021,<sup>66</sup> from sometime in September 2022, the Article and the Facebook Post became fully accessible on the reactivated platforms.<sup>67</sup> While the content of the Article has since been replaced with the words, “The letter by Julie O’Connor is removed from this post due to a contempt of court charge against Terry Xu in the Singapore Court” (“the accompanying statement”), this was only done between 28 November 2022 to 14 December 2022.<sup>68</sup> As regards the Facebook Post, I note that the Facebook Post was

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<sup>66</sup> RWS at para 32.

<sup>67</sup> TKS 3<sup>rd</sup> Affidavit at paras 7 and 8; See TKS 3<sup>rd</sup> Affidavit for screenshots of the Article and the Facebook Post as of 28 November 2022 at pp 20 to 27 and 32 to 38.

<sup>68</sup> Mr Xu’s 3<sup>rd</sup> Affidavit at para 13.

eventually removed in January or February 2023.<sup>69</sup> I agree with the AG that Mr Xu's actions do not demonstrate any genuine remorse on his part. Indeed, I am of the view that Mr Xu's removal of the contemptuous material had been selective and belated, and he is more culpable than the contemnors in *Au Wai Pang* and *Li Shengwu*.

78 Therefore, I am of the view that a higher fine should be imposed on Mr Xu as compared to the contemnors in *Au Wai Pang*, *Jolovan Wham (CA)* and *Li Shengwu* and that a fine of S\$18,000 is appropriate in the circumstances. This should be paid within four weeks of the sentence. In default of payment of the fine, I impose a term of ten days' imprisonment.

***Other orders sought by the AG***

79 I now turn to the AG's prayer for an order that Mr Xu "is to delete the Article and the Facebook Post from the [TOC Website] and the [Facebook Page] respectively, and cease further publication of the Article and the Facebook Post".

80 In this connection, Mr Xu claims that the operating rights of the TOC Website and the TOC Facebook Page have been transferred to Miao Yi, and that the TOC website was republished by Miao Yi on 16 September 2022. However, it is clear that Mr Xu still has power and control over the content that is published on these platforms. First, the content of the Article was altered in or around December 2022 and replaced with the accompanying statement reproduced at [77] above.<sup>70</sup> Second, the public announcement on 16 September 2022 that TOC would be revived and relocated was made via a post on the TOC

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<sup>69</sup> TKS 5<sup>th</sup> Affidavit at paras 9–10.

<sup>70</sup> TKS 4<sup>th</sup> Affidavit at pp 8 to 9, Exhibit "TKS-32".

Facebook Page that was signed off personally by Mr Xu.<sup>71</sup> Third, the current write-up on the “About Us” page on the TOC Website still states that Mr Xu is the “Chief Editor” of TOC.<sup>72</sup>

81 These suggest to me that notwithstanding the transfer of TOC’s operating rights to Miao Yi, Mr Xu continues to play a central and active role in TOC, including controlling its online publications. In contrast, there is an absence of evidence from Mr Xu to suggest that he has no control over the contents of the TOC Website and the TOC Facebook page. In fact, he does not address this issue in his affidavit of 14 December 2022 (see [34] above).

82 As for Mr Xu’s contention that the Article has been removed from the TOC Website, this is not accurate. The title of the Article remains, with the accompanying statement reproduced at [77] above. Therefore, I order Mr Xu to delete the Article from the TOC Website. For the avoidance of doubt, Mr Xu is to remove the title of the Article and the accompanying statement from the TOC Website.

83 My order, however, does not extend to the removal of the webpage carrying the Article itself, or the accompanying comments on the webpage which are left by readers. The AG asks for the entire webpage to be taken down, so as to include the removal of the comments. The AG argues that the comments continue to breathe life into the initial contemptuous statements in the Article and prevent them from fading from the public spotlight. However, during the further hearing on 1 March 2023, Ms Tan accepted that the comments do not form part of the Article, and that the comments by themselves are not

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<sup>71</sup> TKS 4<sup>th</sup> Affidavit at p 26, Exhibit “TKS-35”.

<sup>72</sup> TKS 4<sup>th</sup> Affidavit at p 24, Exhibit “TKS-34”.

contemptuous. More importantly, the AG's application in SUM 3816 did not define the Article to include the comments on the webpage. As such, the prayer for the deletion of the Article would not include the deletion of the comments. Accordingly, I limit my order to only a deletion of the Article, including its title and the accompanying statement, from the TOC Website.

84 In relation to the Facebook Post, a deletion order is no longer necessary as it has already been removed, albeit only in January or February 2023. That said, in light of Mr Xu's cavalier attitude and lack of remorse, I am of the view that it is necessary and appropriate for me to make an order restraining Mr Xu from any future publication of the Facebook Post, along with the Article. In this connection, given his conduct thus far, I do not accept Mr Xu's bare assertion that he has no intention to republish the contemptuous material.

### **Conclusion**

85 By reason of the above, I find Mr Xu liable for contempt under s 3(1)(a) of the AJPA by intentionally publishing the Article on the TOC Website and for intentionally publishing the Facebook Post on the TOC Facebook Page.

86 I impose a fine of S\$18,000 to be paid within four weeks of the judgment. In default of the payment of the fine, Mr Xu is to serve ten days of imprisonment.

87 Further, I order Mr Xu to delete the Article (being the title and the accompanying statement concerning the removal of the content of the Article) from the TOC Website within seven days of the judgment. As explained above at [83], this does not extend to the removal of the webpage, so as to remove the comments which are left by readers.

88 As set out in [84] above, I also order Mr Xu to desist from any future publication of the Article and the Facebook Post.

89 Finally, I deal with the costs of OS 694 (which were reserved) and SUM 3816. Having heard the parties' submissions, I order costs of OS 694 fixed at \$4,000 (all in) and costs of SUM 3816 fixed at \$8,000 (all in) to be paid by Mr Xu to the AG.

Hoo Sheau Peng  
Judge of the High Court

Tan Ruyan Kristy SC, Jean Goh and Sivanathan Jheevanesh  
(Attorney-General's Chambers) for the applicant;  
Lim Tean (Carson Law Chambers) for the respondent.

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