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Administration of Justice (Protection) Bill

Bill No. 23/2016.

Read the first time on 11 July 2016.

ADMINISTRATION OF JUSTICE (PROTECTION) ACT 2016

(No. of 2016)

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A BILL

intituled

An 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.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART 1
PRELIMINARY

Short title and commencement

1. This Act is the Administration of Justice (Protection) Act 2016
5 and comes into operation on a date that the Minister appoints by
notification in the *Gazette*.

Interpretation

2.—(1) In this Act, unless the context otherwise requires —

“court” means —

- 10 (a) the Supreme Court;
(b) any State Court;
(c) any Family Court; or
(d) any Youth Court;

15 “Employment Claims Tribunal” means an Employment Claims
Tribunal constituted under section 4 of the State Courts Act
(Cap. 321);

“judge” means —

- 20 (a) in the case of the Supreme Court, a Judge, a Judge of
Appeal and a Registrar as defined in the Supreme Court
of Judicature Act (Cap. 322);
(b) in the case of a State Court, a judicial officer as defined
in the State Courts Act and a Coroner as defined in the
Coroners Act (Cap. 63A);
25 (c) in the case of a Family Court or a Youth Court, a
judicial officer as defined in the Family Justice
Act 2014 (Act 27 of 2014);
(d) in the case of a Small Claims Tribunal, a Referee as
defined in the Small Claims Tribunals Act (Cap. 308);
or
30 (e) in the case of an Employment Claims Tribunal, a
tribunal magistrate as defined in the Employment
Claims Act 2016;

“publish” means to disseminate, distribute, exhibit, provide or communicate by oral, visual, written, electronic or other means (for example, by way of newspaper, radio, television or through the use of the Internet, subscription TV or other online communications system) to the public at large or a member of the public, and includes cause to be published, and “publication” is to be construed accordingly; 5

“Small Claims Tribunal” means a Small Claims Tribunal constituted under section 4 of the State Courts Act;

“State Court” means a State Court constituted under section 4 of the State Courts Act. 10

(2) In this Act —

(a) a court proceeding is pending from the time that it commences to the time that it is finally decided, struck out or is discontinued or deemed to be discontinued; 15

(b) a court proceeding commences —

(i) in the case of any proceeding against a person in respect of any offence (other than an appellate, revision or reference proceeding referred to in sub-paragraphs (iii) and (iv)), from the earliest of the following events: 20

(A) the issue of a notice to attend court, summons to appear before a court to answer a charge of the offence, or any other process to compel the attendance of the person to answer a charge of the offence; 25

(B) the issue of a warrant for the arrest of the person for the offence;

(C) the arrest of the person for the offence;

(ii) in the case of any proceeding other than a proceeding against a person in respect of any offence (but not an appellate or revision proceeding referred to in sub-paragraph (iii)), from the time the originating process, application for leave or other application 30

(including an application made before an originating process is filed) is filed in court;

(iii) in the case of proceedings on appeal from or for revision of a decision of a court in any proceedings, from —

(A) the time a notice of appeal is lodged or filed or an application for leave to appeal is made; or

(B) the time an application for revision is made, as the case may be;

(iv) in the case of a reference of a question of law of public interest under section 397 of the Criminal Procedure Code (Cap. 68), from the time an application for leave or a reference by the Public Prosecutor is made; and

(v) in the case of an inquiry under the Coroners Act, from the time a Coroner is informed of a death under section 11 of that Act;

(c) a court proceeding is finally decided —

(i) in a case where there is a pending appeal, reference or revision, when the appeal, reference or revision is heard and finally decided including issues relating to assessment of damages and costs of the proceeding;

(ii) in a case where no appeal or reference is pending, when the period of limitation prescribed for the appeal or reference has expired and all issues relating to assessment of damages and costs of the proceeding are heard and finally decided; or

(iii) in the case of an inquiry under the Coroners Act, when the Coroner decides not to hold an inquiry under section 25(2) of that Act or when the inquiry is concluded unless the Public Prosecutor requires the Coroner to hold an inquiry or reopen the inquiry under section 26(1) or (3) of that Act, as the case may be;

(d) a court proceeding that has been heard and finally decided will not be deemed to be pending merely by reason of the fact

that proceedings for the execution of the decree, order or sentence passed in the proceedings are pending; and

- (e) a proceeding against a person in respect of any offence is deemed to include any criminal motion, case stated, or any other application made in or for the purposes of or in connection with the proceeding.

5

PART 2

TYPES OF CONTEMPT

Contempt by scandalising court, interfering with administration of justice, etc.

10

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

15

(ii) poses a risk that public confidence in the administration of justice would be undermined;

- (b) intentionally publishes any matter that —

(i) prejudices an issue in a court proceeding that is pending and such prejudgment prejudices, interferes with, or poses a real risk of prejudice to or interference with, the course of any court proceeding that is pending; or

20

(ii) otherwise prejudices, interferes with, or poses a real risk of prejudice to or interference with, the course of any court proceeding that is pending;

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- (c) intentionally interferes with (by intimidation or otherwise) or hinders another person's access to or ability to appear in court, knowing that this person is a party, witness, advocate or judge in ongoing court proceedings;

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(d) intentionally offers any insult or causes any interruption or obstruction to any judge of any court, while such judge is sitting in any stage of a court proceeding; or

(e) intentionally does any other act that interferes with, obstructs or poses a real risk of interference with or obstruction of the administration of justice in any other manner, if the person knows or ought to have known that the act would interfere with, obstruct or pose a real risk of interference with or obstruction of the administration of justice,

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).

Explanation 2.—A publication of any matter which falls within subsection (1)(b)(i) or (ii) is not incapable of prejudicing or interfering with or posing a real risk of prejudice to or interference with, the course of any pending court proceedings, by reason only that the court is presided by a judge with legal and professional experience.

Illustration 1

A is charged for rape of *B*. *Z* publishes in a newspaper an interview with *A*'s ex-girlfriend, *Y*. In the interview, *Y* claims that *A* had previously brutally raped her and that *A* had served a long prison sentence for raping and molesting other women. The prosecution is not permitted to disclose *A*'s previous convictions during *A*'s pending rape trial. *Z*'s publication of this interview poses a real risk of prejudice to or interference with the course of pending court proceedings against *A*.

Illustration 2

A is charged for inflicting serious bodily harm on *B* outside a pub. As it was dark, *B* had difficulty recognising *B*'s assailant. *Z* posts on an Internet news site, a photo of *A* with fists clenched outside the pub with the caption, "Vicious Pub Bully Caught". The identity of *B*'s assailant is an issue in *A*'s pending trial. *Z*'s publication of *A*'s photo and caption poses a real risk of prejudice to or interference with the course of the pending court proceedings against *A*.

(2) Where any person publishes any matter or does any act referred to in subsection (1)(a), that person is guilty of contempt of court even if he or she did not intend to scandalise the court.

(3) Where any person publishes any matter referred to in subsection (1)(b), that person is guilty of contempt of court even if

he or she did not intend to cause the consequences referred to in subsection (1)(b)(i) or (ii).

(4) A statement made by a person on behalf of the Government about the subject matter of or an issue in a court proceeding that is pending is not contempt of court under subsection (1)(b) if the Government believes that such statement is necessary in the public interest.

Illustration 1

A statement made by a person on behalf of the Government factually describing the events and circumstances relating to and leading up to the death of a person (such as the acts of public officials when a coroner's inquiry into that person's death is pending) which the Government believes is necessary to address inaccurate or incorrect public allegations, is not contempt of court by virtue of subsection (4).

Illustration 2

A statement made by a person on behalf of the Government factually describing the circumstances of a riot, when criminal proceedings against a person charged with participation in that riot are pending, which the Government believes is necessary in order to inform the public of the riot, is not contempt of court by virtue of subsection (4).

(5) For the purposes of subsection (4), "necessary in the public interest" includes but is not limited to matters that are necessary in the interests of the security of Singapore or any part of Singapore, public order, public health or public finances.

(6) Where contempt of court is committed by the doing of any act mentioned in subsection (1)(c) or (d), a person is guilty of contempt of court if that person knows or ought to have known that the act would prejudice or interfere with or obstruct or pose a real risk of prejudice to or interference with or obstruction of the course of the court proceeding.

Contempt by disobedience of court order or undertaking, etc.

4.—(1) Any person who —

- (a) intentionally disobeys or breaches any judgment, decree, direction, order, writ or other process of a court; or

(b) intentionally breaches any undertaking given to a court, commits a contempt of court.

5 (2) For the purposes of subsection (1), intentional disposal by a garnishee, otherwise than in accordance with law or by leave of the court, of any property attached in his or her hands or under his or her control, is contempt of court.

(3) Without prejudice to the generality of subsection (1), a person commits a contempt of court if the person —

10 (a) being legally bound to produce or deliver any document to the court, intentionally omits to so produce or deliver up the document;

(b) being legally bound to bind himself or herself by oath or affirmation to state the truth, refuses to so bind himself or herself;

15 (c) being legally bound to state the truth on any subject to the court, refuses to answer any question demanded of him or her touching that subject by the court in the exercise of the lawful powers of the court; or

20 (d) refuses to sign any statement made by him or her, when required to sign that statement by a court lawfully competent to require that he or she sign that statement.

(4) Subject to subsections (5), (6) and (7), any contempt of court referred to in subsection (1) or (2) may be waived by the aggrieved party and such waiver relieves from liability the person who commits the contempt.

(5) The court may, in its discretion, disallow the waiver of any contempt of court mentioned in subsection (1) or (2) in any of the following circumstances:

30 (a) the Attorney-General has authorised investigations pursuant to section 22 for the contempt of court;

(b) proceedings have been commenced in respect of the contempt of court;

- (c) the contempt of court is of such a nature that it interferes with, obstructs or poses a real risk of interference with or obstruction of the administration of justice;
- (d) it would be contrary to the public interest to allow the waiver.
- (6) The court may, in granting any waiver of contempt of court under subsection (4), impose such conditions as it thinks fit. 5
- (7) To avoid doubt, contempt of court referred to in subsection (3) may not be waived.
- (8) A person who is not a party to an action commits contempt if he or she causes or abets the breach of any judgment, decree, direction, order, writ or other process of a court, with the intention of causing such breach or knowing that it would cause such breach. 10
- (9) In this section —
- “aggrieved party” means a party to the relevant proceedings for whose benefit any judgment, decree, direction, order, writ or other process of a court is given, made or issued, or any undertaking to a court is given, in proceedings other than a proceeding against a person in respect of any offence; 15
- “undertaking given to a court” includes an implied undertaking given to a court. 20

Contempt by unauthorised audio or visual recordings

- 5.—(1) Subject to subsection (4), it is a contempt of court —
- (a) to use in court any audio recorder, electronic device or other instrument for audio or visual recording or both, or to bring into court any such instrument for the purpose of audio or visual recording or both, without the leave of the court; 25
- (b) to publish or transmit an audio or a visual recording or both of court proceedings made by means of any such audio recorder, electronic device or other instrument, or any recording derived directly or indirectly from it; or 30
- (c) to use any such recording in contravention of any conditions of leave granted under paragraph (a).

(2) Leave under subsection (1)(a) may be granted or refused at the discretion of the court, and if granted may be granted subject to such conditions as the court thinks proper with respect to the use of any recording made pursuant to the leave; and where leave has been granted, the court may at its discretion withdraw or amend it either generally or in relation to any particular part of the proceedings.

(3) Without prejudice to any other power to deal with an act under subsection (1)(a), the court may order the audio recorder, electronic device or other instrument, or any recording made with it, or both, to be forfeited; and any object so forfeited must (unless the court otherwise determines on application by a person appearing to be the owner) be sold or otherwise disposed of in such manner as the court may direct.

(4) This section does not apply to the making or use of audio or visual recordings or both for purposes of official transcripts of proceedings or any other purpose authorised by the court.

Contempt by corporations

6.—(1) Where, in a proceeding for contempt of court under this Act, it is necessary to prove the state of mind of a corporation in relation to a particular conduct, evidence that —

(a) an officer, employee or agent of the corporation engaged in that conduct within the scope of his or her actual or apparent authority; and

(b) the officer, employee or agent had that state of mind,

is evidence that the corporation had that state of mind.

(2) Where a corporation commits contempt of court under this Act, a person —

(a) who is —

(i) an officer of the corporation, or a member of a corporation whose affairs are managed by its members; or

(ii) an individual who is involved in the management of the corporation and is in a position to influence the

conduct of the corporation in relation to the commission of the contempt of court; and

(b) who —

- (i) consented or connived, or conspired with others, to effect the commission of the contempt of court; 5
- (ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the contempt of court by the corporation; or
- (iii) knew or ought reasonably to have known that the contempt of court by the corporation (or contempt of court of the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that contempt of court, 10

shall be guilty of the same contempt of court as is the corporation, and shall be liable on being found guilty of contempt of court to be punished accordingly. 15

(3) A person mentioned in subsection (2) may rely on a defence that would be available to the corporation if it were charged with the contempt of court with which the person is charged and, in doing so, the person bears the same burden of proof that the corporation would bear. 20

(4) To avoid doubt, this section does not affect the application of —

- (a) Chapters V and VA of the Penal Code (Cap. 224); or
- (b) the Evidence Act (Cap. 97) or any other law or practice regarding the admissibility of evidence. 25

(5) To avoid doubt, subsection (1) also does not affect the liability of the corporation for contempt of court under this Act, and applies whether or not the corporation is found guilty of contempt of court.

(6) This section applies to an offence under this Act as if it were contempt of court under this Act and to a conviction as if it were a finding of guilt of contempt of court. 30

(7) In this section —

“corporation” includes a limited liability partnership within the meaning of section 2(1) of the Limited Liability Partnerships Act (Cap. 163A);

5 “officer”, in relation to a corporation, means any director, partner, chief executive, manager, secretary or other similar officer of the corporation, and includes —

(a) any person purporting to act in any such capacity; and

10 (b) for a corporation whose affairs are managed by its members, any of those members as if the member was a director of the corporation;

“state of mind” of a person includes —

(a) the knowledge, intention, opinion, belief or purpose of the person; and

15 (b) the person’s reasons for the intention, opinion, belief or purpose.

Contempt by unincorporated associations or partnerships

20 7.—(1) Where, in a proceeding for contempt of court under this Act, it is necessary to prove the state of mind of an unincorporated association or a partnership in relation to a particular conduct, evidence that —

(a) an employee or agent of the unincorporated association or the partnership engaged in that conduct within the scope of his or her actual or apparent authority; and

25 (b) the employee or agent had that state of mind,

is evidence that the unincorporated association or partnership had that state of mind.

(2) Where an unincorporated association or a partnership commits contempt of court under this Act, a person —

30 (a) who is —

(i) an officer of the unincorporated association or a member of its governing body;

- (ii) a partner in the partnership; or
- (iii) an individual who is involved in the management of the unincorporated association or partnership and who is in a position to influence the conduct of the unincorporated association or partnership (as the case may be) in relation to the commission of the offence; and

5

(b) who —

- (i) consented or connived, or conspired with others, to effect the commission of the contempt of court;
- (ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the contempt of court by the unincorporated association or partnership; or
- (iii) knew or ought reasonably to have known that the contempt of court by the unincorporated association or partnership (or contempt of court of the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that contempt of court,

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shall be guilty of the same contempt of court as is the unincorporated association or partnership (as the case may be), and shall be liable on being found guilty of contempt of court to be punished accordingly.

(3) A person mentioned in subsection (2) may rely on a defence that would be available to the unincorporated association or partnership if it were charged with the contempt of court with which the person is charged and, in doing so, the person bears the same burden of proof that the unincorporated association or partnership would bear.

25

(4) To avoid doubt, this section does not affect the application of —

- (a) Chapters V and VA of the Penal Code (Cap. 224); or
- (b) the Evidence Act (Cap. 97) or any other law or practice regarding the admissibility of evidence.

30

(5) To avoid doubt, subsection (1) also does not affect the liability of an unincorporated association or a partnership for contempt of court

under this Act, and applies whether or not the unincorporated association or partnership is found guilty of the contempt of court.

(6) This section applies to an offence under this Act as if it were contempt of court under this Act and to a conviction as if it were a finding of guilt of contempt of court.

(7) In this section —

“officer”, in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, and includes —

(a) any person holding a position analogous to that of president, secretary or member of a committee of the unincorporated association; and

(b) any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner;

“state of mind” of a person includes —

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person’s reasons for the intention, opinion, belief or purpose.

Common law rules on contempt

8.—(1) This Act prevails over any common law rule on contempt of court to the extent that such rule is inconsistent with any of the provisions of this Act.

(2) All defences at common law to contempt of court under this Act, not contained in this Act, are repealed.

(3) To avoid doubt, the common law rules on contempt of court continue in force except so far as they are inconsistent with the provisions of this Act.

(4) To avoid doubt, the common law rules in this section refer to both the substantive and procedural common law rules on contempt.

Inherent power of court

9. Nothing in this Act limits or affects the inherent powers of a court, including but not limited to —

- (a) the power of the High Court or the Court of Appeal to commence proceedings on its own motion for contempt of court; 5
- (b) the power of a court to cause a person to be removed from the court;
- (c) the coercive power of a court to detain a person in custody until that person complies with the court's order or direction for a period not exceeding the maximum term of imprisonment specified in section 12; 10
- (d) the power of the High Court or the Court of Appeal to issue an injunction including but not limited to an interim injunction to restrain a contempt of court; and 15
- (e) the power of a court to require a person to provide security for compliance with an order of court, the payment of any money or the performance or non-performance of any act.

PART 3

JURISDICTION AND PUNISHMENT FOR CONTEMPT 20

Power to punish for contempt

10.—(1) The High Court and the Court of Appeal have jurisdiction to try and power to punish for contempt of court.

(2) The High Court has and exercises the same jurisdiction, powers and authority in accordance with the same procedure and practice in respect of contempt committed in connection with proceedings in the Court of Appeal and contempt of courts subordinate to it as it has and exercises in respect of contempt of itself. 25

(3) The State Court, Family Court and Youth Court have jurisdiction to try and power to punish for contempt of court where the contempt is committed — 30

(a) in the face of that court other than a Small Claims Tribunal and an Employment Claims Tribunal; or

(b) in connection with any proceedings in that court.

(4) Despite subsection (3), the High Court in any particular case —

5 (a) may, either on its own motion or on the application of the alleged contemnor, order that the case be transferred to and be tried before the High Court; or

(b) must, on the application of the Attorney-General, order that the case be transferred to and be tried before the High Court.

10 **Jurisdiction over certain publications, acts and omissions outside Singapore**

11.—(1) Without prejudice to the jurisdiction and power conferred under this Act or any other written law, a court has jurisdiction to try any contempt of court and to impose the full punishment under this Act in the circumstances specified in subsections (2) to (5).
15

(2) Where the publication in relation to contempt of court was published through the Internet or other electronic media (regardless of whether it was first published in Singapore or elsewhere), the publication is taken to be published in Singapore if it was accessed
20 by members of the public in Singapore.

(3) Where the publication in relation to contempt of court was published otherwise than in subsection (2) (regardless of whether it was first published in Singapore or elsewhere), if the publication was published in Singapore.

25 (4) Where the person who commits contempt of court under section 4 is legally bound to obey or comply with the judgment, decree, direction, order, writ or other process of a court or an undertaking given to a court, regardless of whether the disobedience or failure to comply occurred in Singapore or elsewhere.

30 (5) Where the act in relation to contempt of court under section 3(1)(c), (d) and (e) (regardless of whether it occurred wholly or partly outside Singapore) directly interferes with, obstructs or poses a real risk of interference with or obstruction of the administration of justice in Singapore.

Illustration 1

A resides in a foreign country and has agreed to testify as a witness in a criminal trial in Singapore. *B* stops *A* from travelling to Singapore to testify in the trial by making in the foreign country a death threat against *A*. The Singapore court has jurisdiction under subsection (5) to try and punish *B* for contempt of court. 5

Illustration 2

A accepts a bribe from *B* in a foreign country as gratification for giving false evidence in *A*'s testimony as a witness in a civil trial in Singapore. *A* gives false evidence in the trial in Singapore. The Singapore court has jurisdiction under subsection (5) to try and punish *B* for contempt of court. 10

Punishment for contempt of court

12.—(1) Except as otherwise provided in any other written law, a person who commits contempt of court shall be liable to be punished —

- (a) subject to paragraph (b), where the power to punish for contempt is exercised by the High Court or by the Court of Appeal, with a fine not exceeding \$100,000 or with imprisonment for a term not exceeding 3 years or with both; 15
- (b) where the power to punish for contempt is exercised by the High Court in relation to contempt in the face of or in connection with any proceedings in a State Court, Family Court or Youth Court, as the case may be, with a fine not exceeding \$20,000 or with imprisonment for a term not exceeding 12 months or with both; or 20
- (c) where the power to punish for contempt is exercised by any other court, with a fine not exceeding \$20,000 or with imprisonment for a term not exceeding 12 months or with both. 25

(2) In addition to any punishment imposed under subsection (1), where a person has committed contempt in relation to the proceedings before a court, the court may refuse to hear the person until the contempt is purged or the person submits to the order or direction of the court or an apology is made to the satisfaction of the court. 30

(3) In addition to any punishment imposed under subsection (1), the court may, on its own motion or on application by the applicant in the 35

contempt proceedings, make an order that the person who has committed contempt must publish such notice, and in such manner, as the court thinks necessary to apologise for the contemptuous publication.

5 (4) An order under subsection (3) may be made subject to such exceptions or conditions (including the duration for which the notification must be made accessible to members of the public) as may be specified in the order.

10 (5) Despite subsection (1), the court may discharge the person who has committed contempt or remit the punishment or any part of it on his or her purging of the contempt, submission to the order or direction of the court or on apology being made to the satisfaction of the court.

15 (6) To avoid doubt, the court may, if the interests of justice so require, find a person guilty of contempt of court and impose the punishment under this section even though the person is absent.

Power of Attorney-General to give non-publication direction

20 **13.**—(1) The Attorney-General may, if he or she is satisfied that it is in the public interest to do so and with the leave of the High Court under subsection (7), direct the publisher of any matter to refrain from or cease publishing that matter.

(2) A direction given under this section may be subject to such exceptions or conditions as may be specified in the direction.

(3) A direction under this section may be served by such means as prescribed in rules made by the Minister.

25 (4) A direction under this section takes effect in respect of the person to whom such direction applies —

(a) from the date when such direction is served or deemed served on that person; or

(b) such later date as the Attorney-General may specify.

30 (5) Any person who fails, without reasonable excuse, to comply with a direction under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 12 months or to both.

(6) The Attorney-General may at any time suspend or cancel the direction.

(7) Leave of the High Court must be granted if the High Court is satisfied that —

- (a) on the basis of a prima facie case that the person to whom the proposed direction will apply has published the matter specified in the proposed direction; 5
- (b) on the basis of a prima facie case that the publication of such matter —
 - (i) imputes improper motives to or impugns the integrity, propriety or impartiality of any court; and poses a risk that public confidence in the administration of justice would be undermined; 10
 - (ii) prejudices an issue in a court proceeding that is pending and such prejudgment prejudices, interferes with, or poses a real risk of prejudice to or interference with, the course of any court proceeding that is pending; or 15
 - (iii) otherwise prejudices, interferes with, or poses a real risk of prejudice to or interference with, the course of any court proceeding that is pending; and 20
- (c) any exception or condition specified in the proposed direction is just and equitable.

(8) An application for leave must be made in such manner as may be prescribed in Rules of Court or Family Justice Rules except that — 25

- (a) the application must be heard without the presence of the person to whom the proposed direction applies or the author of the matter specified in the proposed direction; and
- (b) the Attorney-General is not required to give the publisher notice of the application before the hearing of the application. 30

(9) The person to whom the direction applies, or the author of the matter specified in the direction, may apply to the High Court to set

aside or vary the direction, within such period and in such manner as may be prescribed in Rules of Court or Family Justice Rules.

(10) On an application under subsection (9), the High Court may set aside or vary the direction in whole or in part if it is satisfied, on the balance of probabilities, that —

(a) the person to whom such direction applies did not publish the matter specified in the direction;

(b) the publication of such matter did not —

(i) impute improper motives to or impugn the integrity, propriety or impartiality of any court; and pose a risk that public confidence in the administration of justice would be undermined;

(ii) prejudge an issue in a court proceeding that is pending and such prejudgment prejudices, interferes with, or poses a real risk of prejudice to or interference with, the course of any court proceeding that is pending; and

(iii) otherwise prejudice, interfere with, or pose a real risk of prejudice to or interference with, the course of any court proceeding that is pending; or

(c) any exception or condition specified in the direction is not just and equitable.

(11) An application made under subsection (9) does not operate as a stay of the direction.

(12) No criminal or civil liability is to be incurred for anything done or omitted to be done with reasonable care and in good faith in complying with a direction given under this section.

(13) To avoid doubt, nothing in this section prevents the institution or continuation of proceedings for contempt of court in respect of a matter which is the subject of a direction.

(14) Every offence under this section is an arrestable offence for the purposes of the Criminal Procedure Code (Cap. 68).

(15) The Minister may make rules for the purposes of this section and for prescribing anything that is required to be prescribed.

(16) All rules made under subsection (15) are to be presented to Parliament as soon as possible after publication in the *Gazette*.

(17) In this section —

“author” means the originator of the matter published;

“publisher” means any person who publishes the matter and includes an Internet Content Provider as defined in any subsidiary legislation made under the Broadcasting Act (Cap. 28) but excludes any person or class of persons that the Minister may prescribe.

PART 4

DEFENCES TO CONTEMPT

Fair and accurate report of court proceeding not contempt

14.—(1) Subject to this section, a person is not guilty of contempt of court under section 3(1)(a) or (b) for publishing in good faith a fair and accurate report of a court proceeding or any stage of the proceeding held in public, that was published contemporaneously with, or within a reasonable time after, that proceeding.

(2) A person is not guilty of contempt of court under section 3(1)(a) or (b) for publishing in good faith a fair and accurate report of a proceeding before any court sitting in chambers or in camera, that was published contemporaneously with, or within a reasonable time after, that proceeding, except —

(a) where the publication is contrary to the provisions of any written law;

(b) where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published;

(c) where the court sits in chambers or in camera for reasons connected with public order or the security of the State; or

(d) where the information relates to a secret process, discovery or invention, or other confidential information which is an issue in the proceedings.

5 (3) A person is not guilty of contempt of court under section 3(1)(a) or (b) for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a court sitting in chambers or in camera, unless the court has expressly prohibited such publication.

10 (4) In any court proceedings, the court may, where it appears to be necessary to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose.

15 **Fair and accurate report of parliamentary proceedings not contempt**

20 **15.**—(1) A person is not guilty of contempt of court under section 3(1)(a) or (b) for publishing in good faith a fair and accurate report of proceedings in Parliament or before a committee of Parliament, that was published contemporaneously with, or within a reasonable time after, the proceedings.

25 (2) A person is not guilty of contempt of court under section 3(1)(a) or (b) for publishing in good faith a fair and accurate report of matter in a document presented to or laid before Parliament or a committee of Parliament, that was published contemporaneously with, or within a reasonable time after, the presentation or tabling of the document.

(3) To avoid doubt, nothing in this Act limits or affects the privileges, immunities and powers of Parliament.

Report in good faith made to Chief Justice, police, etc., not contempt

30 **16.**—(1) To avoid doubt, a person is not guilty of contempt of court under section 3(1)(a) by reason that he or she has made a report to the Chief Justice, the police, a law enforcement agency or any other public authority alleging misconduct or corruption on the part of a judge, being a report —

- (a) which is made in good faith; and
- (b) which discloses grounds which, if un rebutted, would provide a sufficient basis for the investigation of the allegation of misconduct or corruption.

(2) In this section, “law enforcement agency” has the same meaning as in the Criminal Procedure Code (Cap. 68). 5

Filing of pleadings and application against judge not contempt

17.—(1) A person is not guilty of contempt of court under section 3(1)(a) for filing in good faith any action, pleading, application or affidavit in court. 10

(2) Without prejudice to the generality of subsection (1), a person is not guilty of contempt of court in respect of any application he or she may make to seek the disqualification of the judge, on any ground or statement made by him or her in good faith concerning the judge of any court to that court or to — 15

- (a) any other court with equivalent jurisdiction; or
- (b) a superior court.

(3) Without prejudice to the generality of subsection (1), a person is not guilty of contempt of court in respect of any appeal that the person may lodge against a judgment, decree, direction, order or other decision of a judge of any court, on any ground or statement made by him or her in good faith concerning the judge to that court or to — 20

- (a) any other court with equivalent jurisdiction;
- (b) a superior court; or
- (c) a judge who has supervisory jurisdiction over the equivalent or superior court. 25

Innocent publication or distribution

18.—(1) A person (not being the author) exercising editorial responsibility or other control over a publication is not guilty of contempt of court under section 3(1)(a) or (b) for publishing any matter if the publication was done without the person’s authority, 30

consent or knowledge, and without any want of due care or caution on that person's part.

5 (2) A person (not being the author) is not guilty of contempt of court under section 3(1)(a) or (b) for distributing any matter if the distribution was done without the person's authority, consent or knowledge, and without any want of due care or caution on that person's part.

(3) In this section, "author" means the originator of the matter published or distributed.

10 **Publication outside Singapore**

19. A person is not guilty of contempt of court under section 3(1)(a) or (b) for publishing any matter outside Singapore if the person did not know and had no reason to believe that the publication would be seen or heard by members of the public in Singapore.

15 **No knowledge proceedings were pending**

20 **20.** A person is not guilty of contempt of court under section 3(1)(b) for publishing any matter that prejudices, interferes with, or poses a real risk of prejudice to or interference with the course of any court proceeding that is pending if the person did not know and had no reason to believe that those proceedings were pending.

Honest and reasonable mistake

25 **21.** A person is not guilty of contempt of court under section 4(1), (2) or (3) if the person satisfies the court that the failure or refusal to comply with a judgment, order, decree, direction, writ or other process of court or any undertaking given to a court was wholly or substantially attributable to an honest and reasonable failure by that person, at the relevant time, to understand an obligation imposed on the person bound by the judgment, order, decree, direction, writ, process or undertaking and that that person ought fairly to be excused.

PART 5

INVESTIGATIONS BY POLICE AND
APPLICATION OF CRIMINAL PROCEDURE CODE

Investigations by police and application of this Part

22.—(1) Where the Attorney-General — 5

(a) receives a complaint from a judge that contempt of court has been committed; or

(b) has reasonable grounds to otherwise suspect that contempt of court has been committed and that it is in the public interest to do so, 10

the Attorney-General must, in the case of a complaint made under paragraph (a) in relation to contempt of court under section 3 or 4(8), and may, in any other case, by order in writing authorise a police officer to investigate the alleged contempt as if it were an arrestable offence in such manner or mode as may be specified in that order. 15

(2) This Part applies to the alleged contempt referred to in subsection (1).

Application of Criminal Procedure Code

23.—(1) The Attorney-General may by order in writing authorise a police officer to exercise, for the purposes of any investigation under section 22, all or any of the powers in relation to police investigations given by the Criminal Procedure Code (Cap. 68) as set out in Part 1 of the Schedule. 20

(2) For the purposes of any investigation under section 22, the provisions of the Criminal Procedure Code set out in Part 2 of the Schedule apply, with the necessary modifications, as if the alleged contempt were an arrestable offence. 25

Statements recorded admissible

24. The statements made to a police officer in the course of investigations conducted pursuant to an order made under section 22 are admissible as evidence in proceedings for contempt of court under 30

this Act in accordance with section 258 or 259 of the Criminal Procedure Code (Cap. 68), as may be applicable.

PART 6

PROCEDURAL MATTERS

5 **Summary procedure where contempt is in face of court**

10 **25.**—(1) Where it appears to a court (other than a Small Claims Tribunal and an Employment Claims Tribunal), that a person has committed contempt in the face of the court, and that court is satisfied that it is necessary for immediate steps to be taken for the protection of the due administration of justice, that court may cause such person to be detained in custody, and must as soon as practicable —

- 15 (a) cause the person to be informed in writing of the contempt with which he or she is charged;
- (b) afford the person an opportunity to make his or her defence to the charge;
- (c) after taking such evidence as may be necessary or as may be offered by the person and after hearing the person, proceed, either immediately or after adjournment, to determine the matter of the charge; and
- 20 (d) make such order for the punishment or discharge of the person as may be just.

(2) Despite subsection (3), the court may direct that a person charged with contempt in the face of the court be detained in such custody as the court may specify pending the determination of the charge or be released on bail or on his or her own bond.

30 (3) The provisions under Division 5 of Part VI of the Criminal Procedure Code (Cap. 68) apply to any case where the court releases the person charged with a contempt of court on bail or on his or her own bond under this section and for the purposes of those provisions, the contempt of court is treated as a non-bailable offence.

(4) To avoid doubt and despite subsections (1) and (2), the proceedings being conducted in the court before the contempt in

the face of the court was committed may continue as the court thinks fit.

Contempt proceedings

26.—(1) Proceedings for contempt of court and the power of the court to punish the contempt of court must be exercised in accordance with the procedure set out in Rules of Court or Family Justice Rules. 5

(2) To avoid doubt, this section applies to proceedings for contempt of court even though —

(a) the Attorney-General has under section 22 authorised a police officer to investigate an alleged contempt as if it were an arrestable offence; 10

(b) the Attorney-General has under section 23 authorised a police officer to exercise all or any of the powers in relation to police investigations set out in Part 1 of the Schedule; or

(c) the Attorney-General’s consent is required under section 30 for the institution of such proceedings for contempt of court. 15

(3) The court in any proceedings for contempt of court may award costs to be paid by or to any party as it thinks fit.

(4) The Rules Committee constituted under the Supreme Court of Judicature Act (Cap. 322) may make Rules of Court prescribing the procedure for proceedings for contempt of court, the procedure for the punishment of contempt of court and the procedure under section 13(8) and (9). 20

(5) The Family Justice Rules Committee constituted under the Family Justice Act 2014 (Act 27 of 2014) may make Family Justice Rules prescribing the procedure for proceedings for contempt of court, the procedure for the punishment of contempt of court and the procedure under section 13(8) and (9). 25

(6) To avoid doubt and for the purposes of the Supreme Court of Judicature Act and the State Courts Act (Cap. 321), any originating process for contempt of court is an originating process for the purposes of service outside Singapore in the circumstances authorised by and in the manner prescribed by Rules of Court or Family Justice Rules. 30

Bail in contempt proceedings

27.—(1) When any person appears before a court in proceedings for contempt of court, the person may be released on bail by that court.

5 (2) Instead of taking bail from the person, the court may release the person if he or she signs a personal bond without sureties.

(3) The provisions under Division 5 of Part VI of the Criminal Procedure Code (Cap. 68) apply to any case where the court releases the person charged with a contempt of court on bail or on his or her own bond under this section and for the purposes of those provisions, the contempt of court is treated as a non-bailable offence.

10

(4) A court may grant bail to a person who has filed an appeal against any order or decision in accordance with section 32.

Standard of proof for contempt of court

15 28. The standard of proof for establishing contempt of court is that of beyond reasonable doubt.

Burden and standard of proof for defences

20 29. To avoid doubt, the burden of proof for proving the existence of circumstances bringing the case within any of the defences to contempt of court under Part 4 is upon the person relying on the defence and the standard of proof is on the balance of probabilities.

Consent of Attorney-General

30.—(1) No proceedings for contempt of court as defined in section 3 or 4(8) may be instituted except by or with the consent of the Attorney-General.

25 (2) To avoid doubt, proceedings for contempt in the face of the court under section 25 and any other proceedings commenced by the High Court or the Court of Appeal on its own motion do not require the consent of the Attorney-General.

Attorney-General's power to take over conduct of proceedings, etc.

31. Where proceedings for contempt of court, that were not commenced by a court, are conducted by a person other than the Attorney-General, the Attorney-General may, if he or she thinks fit, take over the conduct of the proceedings at any stage of the proceedings and continue the proceedings or, with the consent of the court, discontinue the proceedings. 5

Appeals

32.—(1) An appeal lies from any order or decision of the High Court, a State Court, a Family Court or a Youth Court — 10

(a) in the exercise of its jurisdiction to try and punish for contempt of court; or

(b) otherwise under this Act.

(2) In addition to the cases in section 34(2) of the Supreme Court of Judicature Act (Cap. 322), no appeal under subsection (1) against any order or decision of the High Court in the exercise of its appellate jurisdiction can be brought to the Court of Appeal except with the leave of the High Court or the Court of Appeal. 15

(3) The appeal or application for leave to appeal must be filed in accordance with Rules of Court or Family Justice Rules, as the case may be, as if the appeal were an appeal in civil proceedings. 20

(4) An appeal does not operate as a stay of execution unless the trial court or the appellate court so orders.

(5) The trial court or the appellate court may stay execution on any judgment, order or punishment pending appeal on such terms as to security for the payment of any money or the performance or non-performance of any act or the suffering of any punishment ordered by or in such judgment or order as to the court may seem reasonable. 25

(6) At the hearing of the appeal, the appellate court has and may exercise any power which the trial court may have exercised. 30

Enforcement of fines

5 **33.** Payment of a fine for contempt of court imposed by any court may be enforced upon the order of the court in like manner as a fine imposed by a court in criminal proceedings under the Criminal Procedure Code (Cap. 68).

PART 7

MISCELLANEOUS

Amendment of Schedule

10 **34.—**(1) The Minister may, by order in the *Gazette*, amend, add to or vary the Schedule.

(2) The Minister may, in any order made under subsection (1), make such saving or transitional provisions as may be necessary or expedient.

15 (3) All orders made under subsection (1) are to be presented to Parliament as soon as possible after publication in the *Gazette*.

Saving and transitional provisions

35.—(1) This Act does not apply to any act of contempt of court committed before the appointed day.

20 (2) Any rules of court made under or in respect of the repealed section 7 of the Supreme Court of Judicature Act (Cap. 322) or the repealed section 8 of the State Courts Act (Cap. 321) and in force immediately before the appointed day will, so far as they are not inconsistent with the provisions of this Act, continue in force as if made under this Act until they are revoked or repealed by Rules of
25 Court made under this Act.

30 (3) Any Family Justice Rules made under or in respect of the repealed section 11 of the Family Justice Act 2014 (Act 27 of 2014) and in force immediately before the appointed day will, so far as they are not inconsistent with the provisions of this Act, continue in force as if made under this Act until they are revoked or repealed by Family Justice Rules made under this Act.

(4) In this section, “appointed day” means the date of commencement of this Act.

PART 8

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

5

Consequential amendments to Bankruptcy Act

36. The Bankruptcy Act (Cap. 20, 2009 Ed.) is amended —

- (a) by deleting subsection (15) of section 83; and
- (b) by deleting subsection (5) of section 95A.

Consequential amendment to Community Mediation Centres Act

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37. Section 15 of the Community Mediation Centres Act (Cap. 49A, 1998 Ed.) is amended by deleting subsection (3).

Consequential amendment to Community Disputes Resolution Act 2015

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38. Section 30(3) of the Community Disputes Resolution Act 2015 (Act 7 of 2015) is amended by deleting the words “section 8 of the State Courts Act (Cap. 321)” and substituting the words “the Administration of Justice (Protection) Act 2016”.

Consequential amendments to Criminal Procedure Code

20

39. The Criminal Procedure Code (Cap. 68, 2012 Ed.) is amended —

- (a) by repealing Division 1 of Part XXI;
- (b) by deleting the words “The court in which the offence is committed subject to the provisions of Division 1 of Part XXI, or if not committed in a court, a” against section 175 in the First Schedule;

25

(c) by deleting the following item in the First Schedule:

5	“175	If the document or electronic record is required to be produced in or delivered to a court of justice	Ditto	Ditto	Ditto	Imprisonment for 6 months, or fine*, or both	Ditto”;
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10 (d) by deleting the words “The court in which the offence is committed, subject to the provisions of Division 1 of Part XXI, or if not committed in a court, a” against section 178 in the First Schedule; and

15 (e) by deleting the words “The court in which the offence is committed, subject to the provisions of Division 1 of Part XXI” against section 228 in the First Schedule and substituting the words “District Court”.

Consequential amendment to Family Justice Act 2014

40. Section 11 of the Family Justice Act 2014 (Act 27 of 2014) is repealed.

Consequential amendment to Parliamentary Elections Act

20 41. Section 92 of the Parliamentary Elections Act (Cap. 218, 2011 Ed.) is amended by deleting subsection (5) and substituting the following subsection:

25 “(5) Any person who wilfully refuses to obey the order of the Election Judge under subsection (4) shall be guilty of contempt of court under section 4(1) of the Administration of Justice (Protection) Act 2016.”.

Consequential amendments to Penal Code

42. The Penal Code (Cap. 224, 2008 Ed.) is amended —

30 (a) by renumbering section 21 as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

“(2) Despite subsection (1), the words “public servant” in sections 175, 178, 179, 180 and 228 does not include a judge as defined in the Administration of Justice (Protection) Act 2016.”;

- (b) by deleting the words “; or, if the document or electronic record is to be produced or delivered up to a court of justice, with imprisonment for a term which may extend to 6 months, or with fine which may extend to \$3,000, or with both” in section 175; and 5
- (c) by deleting the Illustration in section 175. 10

Consequential amendment to Presidential Elections Act

43. Section 72 of the Presidential Elections Act (Cap. 240A, 2011 Ed.) is amended by deleting subsection (4) and substituting the following subsection:

“(4) Any person who wilfully refuses to obey the order of the Election Judge under subsection (3)(a) shall be guilty of contempt of court under section 4(1) of the Administration of Justice (Protection) Act 2016.”. 15

Consequential amendment to State Courts Act

44. Section 8 of the State Courts Act (Cap. 321, 2007 Ed.) is repealed. 20

Consequential amendment to Supreme Court of Judicature Act

45. Section 7 of the Supreme Court of Judicature Act (Cap. 322, 2007 Ed.) is repealed.

Consequential amendments to Women’s Charter

46. The Women’s Charter (Cap. 353, 2009 Ed.) is amended — 25

- (a) by deleting the word “Failure” in section 50(3) and substituting the words “Despite the provisions of the Administration of Justice (Protection) Act 2016, failure”;
- (b) by deleting subsection (9) of section 65; and 30
- (c) by deleting subsection (3) of section 131.

THE SCHEDULE

Sections 23 and 34

APPLICABLE PROVISIONS OF CRIMINAL PROCEDURE CODE FOR PURPOSES OF INVESTIGATIONS UNDER SECTION 23

5

PART 1

POWERS OF INVESTIGATION INTO ALLEGED CONTEMPT

10

1. Section 6
2. All powers under Part IV
3. Section 78(2)
4. Section 81
5. Section 83
6. Section 112
7. Section 113

PART 2

15

OTHER APPLICABLE PROVISIONS OF CRIMINAL PROCEDURE CODE

1. Part IV (Information to police and powers of investigation).
2. Division 7 of Part VI (Surrender of travel document and requirement to remain in Singapore).

EXPLANATORY STATEMENT

This Bill seeks to state and consolidate the law of contempt of court and to define the powers of the Supreme Court, the State Courts, the Family Courts and the Youth Courts in punishing contempt of court and to regulate the procedure in relation to proceedings for contempt of court.

The provisions of the Bill will prevail over the common law to the extent of inconsistency. However, the common law rules will be preserved where they are not inconsistent with the provisions of the Bill (see clause 8). As stated by the Court of Appeal in *Pertamina Energy Trading v Karaha Bodas* [2007] SGCA 10, the rationale for the law of contempt is rooted firmly in the public interest in that it aims to protect the administration of justice as well as public confidence in it, which is

crucial for the rule of law and the maintenance of law and order in any civilised society.

The Bill also makes consequential amendments to certain other Acts.

PART 1

PRELIMINARY

Part 1 relates to preliminary matters.

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill.

The term “court” is defined to mean the Supreme Court, any State Court constituted under the State Courts Act (Cap. 321) and any Family Court or Youth Court constituted under the Family Justice Act 2014 (Act 27 of 2014). The Bill does not therefore apply to quasi-judicial bodies and tribunals. Commissions of inquiry and committees of inquiry are excluded. The power of such quasi-judicial tribunals to maintain discipline and to enforce their orders should be derived from the specific legislation establishing these tribunals.

The term “judge” means in the case of the Supreme Court, a Judge, Judge of Appeal and a Registrar. In the case of the State Courts, the term “judge” means a judicial officer and a Coroner. In the case of a Family Court or Youth Court, “judge” means a judicial officer. In the case of a Small Claims Tribunal, “judge” means a Referee. In the case of an Employment Claims Tribunal, “judge” means a tribunal magistrate.

The State Courts Act defines “judicial officer” to mean a District Judge, Magistrate or registrar. The Family Justice Act 2014 defines “judicial officer” to mean a District Judge or Magistrate who is designated as a judge of the Family Court or a judge of the Youth Court, or a Registrar.

The term “publish” is defined to mean disseminate, distribute, exhibit, provide or communicate by oral, visual, written, electronic or other means (for example, by way of newspaper, radio, television or through the use of the Internet, subscription TV or other online communications system) to the public at large or a member of the public. It also includes cause to be published.

Clause 2(2) defines when a court proceeding is pending for the purposes of *sub judice* contempt under clause 3(1)(b).

PART 2

TYPES OF CONTEMPT

Part 2 defines the different types of contempt of court.

Although the common law doctrine of contempt of court is traditionally divided into the criminal and the civil spheres, the line between them is not often clear (per Andrew Phang JA in *Pertamina Energy Trading v Karaha Bodas* [2007] SGCA 10). Classifying contempt into criminal and civil spheres will have an impact on costs and procedural matters. The Bill avoids classification of contempt into criminal and civil contempt. The Court of Appeal in *Shadrake Alan v Attorney-General* [2011] SGCA 26 stated that contemptuous acts are generally classified into 2 broad categories, viz. contempt by interference and contempt by disobedience. The former category (viz. contempt by interference) comprises a wide range of matters such as —

- (a) disrupting the court process itself (e.g. contempt in the face of the court, alternatively termed “*ex facie* contempt”);
- (b) acts which risk prejudicing or interfering with particular legal proceedings (“*sub judice* contempt”); and
- (c) acts which interfere with the course of justice as a continuing process (e.g. publications which “scandalise” the court and retaliation against witnesses for having given evidence in proceedings which are concluded).

The latter category (viz. contempt by disobedience) consists of disobedience of court orders as well as breach of undertakings given to a court. The Bill adopts this general classification and adopts a *sui generis* approach to classification of contempt proceedings.

Clause 3 defines contempt by scandalising the court and interference with the administration of justice. Clause 3(1)(a) provides for contempt by scandalising the court by intentionally publishing any matter or doing any act that imputes improper motives to or impugns the integrity, propriety or impartiality of the court and poses a risk that public confidence in the administration of justice would be undermined. It is not necessary for the respondent to intend to scandalise the court (clause 3(2)). The *Explanation* 1 to clause 3(1) establishes that fair criticism does not amount to scandalising the court. This is in accordance with the provisional view of the Court of Appeal in *Shadrake Alan v Attorney-General* [2011] SGCA 26 that fair criticism goes towards liability for contempt of court. In accordance with this approach, Part 4 does not provide for a separate defence of fair criticism.

Clause 3(1)(b) relates to *sub judice* contempt, which covers the intentional publication of any matter that prejudges an issue in a pending court proceeding and such prejudgment interferes with or poses a real risk of prejudice to or interference with the course of a pending court proceeding. It also covers the intentional

publication of any matter that otherwise prejudices, interferes with, or poses a real risk of prejudice to or interference with the course of a pending court proceeding. To constitute *sub judice* contempt by publication, it is not necessary for the respondent to intend the effect of the publication.

Clause 3(1)(c) relates to contempt by intentionally interfering with (by intimidation or otherwise) or hindering the access to or ability to appear in court of a party, witness, advocate or judge in ongoing court proceedings.

Clause 3(1)(d) relates to contempt by intentionally offering any insult or causing any interruption or obstruction to a judge sitting in any stage of a court proceeding. Unintentional insults or interruptions or obstructions to a sitting judge are not caught by clause 3(1)(d).

Clause 3(1)(e) relates to contempt by intentionally doing any other act that interferes with, obstructs or poses a real risk of interference with or obstruction of the administration of justice in any other manner. This would for example catch a person who frustrates the purpose of a court order even though that person is not bound by the order.

Clause 3(4) contains an exception to *sub judice* contempt under clause 3(1)(b). A statement made by a person on behalf of the Government about the subject matter of or issue in a pending court proceeding is not contempt if the Government believes that such statement is necessary in the public interest.

Clause 4 relates to contempt by disobedience of court orders or breach of undertakings given to a court. An undertaking given to a court includes an implied undertaking such as the implied undertaking not to use information given pursuant to a court order for a collateral purpose in *Pertamina Energy Trading v Karaha Bodas* [2007] SGCA 10. Private aggrieved parties are generally conferred the power to waive contempt in civil proceedings. However the court has discretion to disallow the waiver of such contempt of court in any of the following circumstances:

- (a) the Attorney-General has authorised investigations pursuant to clause 22 for the contempt of court;
- (b) proceedings have been commenced in respect of the contempt of court;
- (c) the contempt is of such a nature that it substantially interferes with, obstructs or poses a real risk of interference with or obstruction of the administration of justice;
- (d) it would be contrary to the public interest to allow the waiver.

Clause 5 defines contempt by unauthorised audio or visual recordings. This provision was modelled after section 9 of the UK Contempt of Court Act 1981.

Clause 6 imposes individual liability on an officer of a corporation for any act of contempt or an offence under the Bill which is committed by the corporation with

the officer's consent or connivance or which is attributable to any act or default on the officer's part.

Clause 7 is a similar provision applicable to unincorporated associations and partnerships.

Clause 8 repeals common law rules on contempt (both substantive and procedural law) which are inconsistent with the provisions of the Bill. All common law defences to contempt under the Bill and not found in the Bill will be repealed. The Bill does not seek to comprehensively codify the common law on contempt but will instead effect changes to and clarify the common law in certain areas. Hence, the clause provides that the provisions of the Bill will prevail over the common law to the extent of inconsistency. On the other hand, the common law rules as pronounced by the Singapore Supreme Court or applicable by virtue of the Application of English Law Act (Cap. 7A) will be preserved except so far as they are inconsistent with the provisions of the Bill.

Clause 9 clarifies that the Bill will not limit or affect the inherent powers of the court, including but not limited to —

- (a) the power of the High Court or the Court of Appeal to commence proceedings on its own motion for contempt of court;
- (b) the power of a court to cause a person to be removed from the court;
- (c) the coercive power of a court to detain a person in custody until that person complies with the court's order or direction for a period not exceeding the maximum term of imprisonment specified in clause 12;
- (d) the power of the High Court or the Court of Appeal to issue an injunction including but not limited to an interim injunction to restrain a contempt of court; and
- (e) the power of a court to require a person to provide security for compliance with an order of court, the payment of any money or the performance or non-performance of any act.

Clause 9 refers to "inherent powers" rather than "inherent jurisdiction". The Court of Appeal in *Re Nalpon Zero Geraldo Mario* [2013] SGCA 28 observed at [41] that "for conceptual clarity, perhaps, in future, it would be preferable to refer to the exercise of this right to regulate matters properly before the court as the exercise of the court's inherent powers rather than its inherent jurisdiction". As regards clause 9(a) in *Aurol Anthony Sabastian v Sembcorp Marine Ltd* [2013] SGCA 5, the Court of Appeal held that section 7(1) of the Supreme Court of Judicature Act (Cap. 322) (as it then was) preserves the court's inherent jurisdiction to protect its own process and authority by proceeding on its own motion in cases where its authority is threatened or undermined.

PART 3

JURISDICTION AND PUNISHMENT FOR CONTEMPT

Part 3 relates to jurisdiction and punishment for contempt.

Clause 10 provides that the High Court and Court of Appeal will have jurisdiction to try and power to punish for contempt of court. In addition, the High Court has the same jurisdiction, powers and authority in respect of contempt committed in connection with proceedings in the Court of Appeal and contempt of the State Courts, Family Courts and Youth Courts as it has and exercises in respect of contempt of itself. The State Court, Family Court and Youth Court have jurisdiction to try and power to punish for contempt of court where the contempt is committed in the face of the court or in connection with any proceedings in that court. However, the Small Claims Tribunal and the Employment Claims Tribunal do not have jurisdiction to try and punish for contempt in the face of the court. The clause retains the language (“power to punish for contempt of court”) used in section 7(1) of the Supreme Court of Judicature Act, section 8(1) of the State Courts Act and section 11 of the Family Justice Act 2014 (which will be repealed by clauses 45, 44 and 40, respectively). These provisions have been modified for the avoidance of doubt to include “jurisdiction to try” in addition to “power to punish for contempt of court”. The Court of Appeal in *Shadrake Alan v Attorney-General* [2011] SGCA 26 observed that Parliament has in fact provided the courts with the jurisdiction to punish for contempt in section 7(1) of the Supreme Court of Judicature Act.

The presence of the expression “have jurisdiction to try” in the clause recognises that the courts of record have the jurisdiction to try and power to punish for contempt. There is a distinction between “power” and “jurisdiction”. The Court of Appeal in *Re Nalpon Zero Geraldo Mario* [2013] SGCA 28 at [33] agreed that the terms “inherent jurisdiction” and “inherent powers” should mean different things, the former being the court’s inherent authority to hear a matter, while the latter being its inherent capacity to give effect to its determination by making or granting the orders or reliefs sought by the successful party to the dispute.

Clause 11 clarifies that a court has jurisdiction over and power to punish contempt in relation to certain publications first published outside Singapore and certain acts or omissions which took place outside Singapore.

Clause 12 prescribes the punishment for contempt of court. Where the power to punish for contempt is exercised by the High Court or by the Court of Appeal, the maximum punishment is a fine not exceeding \$100,000 or imprisonment for a term not exceeding 3 years or both. Where the power to punish for contempt is exercised by the High Court in relation to contempt in the face of or in connection with any proceedings in a State Court, Family Court or Youth Court, the maximum punishment is a fine not exceeding \$20,000 or imprisonment for a term not exceeding 12 months or both. Where the power to punish for contempt is exercised

by any other court, the maximum punishment is a fine not exceeding \$20,000 or imprisonment for a term not exceeding 12 months or both. The court has the discretion to discharge the person who has committed contempt or remit the punishment or any part of it on his or her purging of the contempt, submission to the order or direction of the court or on apology being made to the satisfaction of the court.

Clause 13 empowers the Attorney-General to issue a non-publication direction in respect of a publication. This direction can only be given with the leave of the High Court on the basis that there is a *prima facie* case that the publication fulfils the requirements set out in clause 13(7). Any exception or condition specified in the proposed direction must be just and equitable.

PART 4

DEFENCES TO CONTEMPT

Part 4 sets out the defences to contempt of court. The burden of proof for establishing a defence lies on the person relying on the defence (clause 29).

As explained above in relation to clause 3, this Bill confirms the Court of Appeal's view in *Shadrake Alan v Attorney-General* [2011] SGCA 26 that the concept of "fair criticism" goes towards liability for contempt of court. Accordingly, the defence of fair criticism is absent from Part 4.

Clause 14 sets out the defence of a fair and accurate report of a court proceeding. A person is not guilty of contempt of court under clause 3(1)(a) or (b) for publishing in good faith a fair and accurate contemporaneous report of a public court proceeding. A person will not be guilty of contempt of court under clause 3(1)(a) or (b) for publishing in good faith a fair and accurate report of a proceeding before any court sitting in chambers or in camera except under certain listed circumstances — where the publication is contrary to written law; where the court expressly prohibits the publication of information relating to the proceeding; where the court sits in chambers or in camera for reasons connected with public order or the security of the State; or where confidential information which is an issue in the proceedings is published. However, a person will not be guilty of contempt of court for publishing the text or a summary of an order made by a court sitting in chambers or in camera, unless the court has expressly prohibited the publication.

Clause 15 sets out the defence to contempt of court under clause 3(1)(a) or (b) of fair and accurate reporting of parliamentary proceedings.

Clause 16 sets out a defence to contempt under clause 3(1)(a) which is distinct from "fair criticism" for a person to make a report containing an allegation of misconduct or corruption on the part of a judge to the Chief Justice, the police, a law enforcement agency or any other public authority. The report must be made in

good faith and must disclose grounds which, if unrebutted, would provide a sufficient basis for the investigation of the allegation of misconduct or corruption. The defence is confined to the report. Therefore, a complainant who subsequently or contemporaneously publishes the same allegations to third parties will not be covered by the defence simply by reason of the fact that these comments are also concurrently contained in the report.

Clause 17 provides that a person will not be guilty of contempt of court under clause 3(1)(a) for filing in good faith any action, pleading, application or affidavit in court. A person will not be guilty of contempt of court in respect of any application he or she may make to seek the disqualification of the judge, on any ground or statement made by him or her in good faith concerning the judge of any court to that court or to any other equivalent court or a superior court. A person will not be guilty of contempt of court in respect of any appeal he or she may lodge against a judgment, an order or a decision of a judge of any court, on any ground or statement made by him or her in good faith concerning the judge to that court or to another equivalent court or a superior court. Statements in court documents which make personal attacks against judges are not made in good faith.

Clause 18 provides that a person (not being the author) exercising editorial responsibility or other control over a publication, will not be guilty of contempt of court under clause 3(1)(a) or (b) for publishing any matter, if the publication was done without his or her authority, consent or knowledge, and without any want of due care or caution on his or her part. A distributor is likewise not guilty of contempt of court under clause 3(1)(a) or (b) for distributing any matter if the distribution was done without his or her authority, consent or knowledge, and without any want of due care or caution on his or her part.

Clause 19 provides that a person is not guilty of contempt of court under clause 3(1)(a) or (b) for publishing any matter outside Singapore if the person did not know and had no reason to believe that the publication would be seen or heard by members of the public in Singapore.

Clause 20 provides that a person is not guilty of contempt of court under clause 3(1)(b) for publishing any matter that prejudices, interferes with or poses a real risk of prejudice or interference with the course of any court proceeding that is pending if the person did not know and had no reason to believe that those proceedings were pending.

Clause 21 provides a defence if a person proves that the failure or refusal to comply with a court order was wholly or substantially attributable to an honest and reasonable failure by that person, at the relevant time, to understand an obligation imposed on the person bound by the order and that he or she ought fairly to be excused.

PART 5

INVESTIGATIONS BY POLICE AND
APPLICATION OF CRIMINAL PROCEDURE CODE

Part 5 relates to investigations by the police and application of the Criminal Procedure Code (Cap. 68). Although contempt proceedings are *sui generis* and governed by the Rules of Court or Family Justice Rules (see clause 26), Part 5 allows the gathering of evidence by the police pursuant to certain powers under the Criminal Procedure Code and also allows the court to exercise certain powers under the Code.

Clause 22 provides that where the Attorney-General receives a complaint from a judge that contempt of court has been committed under clause 3 or 4(8), he or she must authorise by order in writing a police officer to investigate the alleged contempt as if it were an arrestable offence in such manner or mode as may be specified in his or her order. In any other case, where the Attorney-General has reasonable grounds to suspect that contempt of court has been committed and that it is in the public interest to do so, he or she may make such an order authorising a police officer to investigate the alleged contempt. The consequence of this order is that Part 5 will apply to the alleged contempt.

Clause 23(1) refers to powers (set out in Part 1 of the Schedule) that the Attorney-General may authorise for the purposes of investigations authorised by him or her under clause 22. Clause 23(2) serves a different purpose, which is to make applicable the other provisions of the Criminal Procedure Code (set out in Part 2 of the Schedule) that would be necessary in order for the court to deal with search and seizure, surrender of travel documents, and other provisions relating to investigations of offences that are not in the nature of powers of police officers.

Clause 24 provides that statements made to a police officer in the course of investigations conducted pursuant to the Attorney-General's order made under clause 22 will be admissible as evidence in proceedings for contempt of court in accordance with section 258 or 259 of the Criminal Procedure Code.

PART 6

PROCEDURAL MATTERS

Part 6 relates to procedural matters.

Clause 25 sets out the summary procedure where contempt is committed in the face of the court. The clause applies to all courts except Small Claims Tribunals and Employment Claims Tribunals. In *You Xin v PP* [2007] 4 SLR(R) 17, the High Court stated that the summary power to punish for contempt should be exercised only when it was absolutely necessary. That said, the High Court was also mindful that, as each case of contempt was different, the judge before whom the alleged act of contempt was committed was in a much better position than any other judge to

assess what was required to be done to safeguard the court's authority, and his or her decision to exercise the summary power to punish for contempt of court of his or her own motion was unfettered, except that the power should not be invoked lightly. The High Court in *You Xin v PP* [2007] 4 SLR(R) 17 stated that once a decision is made to invoke the summary process, it is for the judge to see that the proper procedure is followed and adequate safeguards provided. Clause 25 prescribes the safeguards suggested in *You Xin v PP*.

Clause 26 provides that proceedings for contempt of court and the power of the court to punish the contempt will be exercised in accordance with the procedure set out in Rules of Court or Family Justice Rules. Proceedings for contempt will be a *sui generis* procedure which is essentially civil in nature but which will contain criminal elements such as the criminal standard of proof, fine and imprisonment. Clause 26(2) states, to avoid doubt, that such Rules may be made even though the Attorney-General is empowered to authorise a police officer to exercise criminal powers of investigation under the Bill and even though the Attorney-General's consent is required for certain contempt proceedings. Clause 26(6) states, to avoid doubt, that for the purposes of the Supreme Court of Judicature Act and the State Courts Act, any originating process for contempt of court is an originating process for the purposes of service outside Singapore in the circumstances authorised by and in the manner prescribed by Rules of Court or Family Justice Rules. For example, section 16 of the Supreme Court of Judicature Act provides for the High Court's in personam jurisdiction where the defendant is served with an originating process outside Singapore.

Clause 27 sets out provisions relating to bail in contempt proceedings.

Clause 28 preserves the common law rule that the standard of proof for establishing contempt of court will be that of beyond reasonable doubt. The Court of Appeal in *Pertamina Energy Trading v Karaha Bodas* [2007] SGCA 10 held that the criminal standard of proof applies to all contempt proceedings.

Clause 29 clarifies that the burden of proving a defence to contempt of court under Part 4 is on the person who relies on the defence and the standard of proof is on the balance of probabilities.

Clause 30 provides that proceedings for contempt of court as defined in clause 3 or 4(8) cannot be instituted except by or with the consent of the Attorney-General. Proceedings under clause 25 where contempt has been committed in the face of the court will not require the Attorney-General's consent. Neither will contempt proceedings commenced by the Supreme Court on its own motion require such consent.

Clause 31 provides that the Attorney-General may, if he or she thinks fit, take over the conduct of contempt proceedings commenced by other persons at any stage and the Attorney-General may continue or, with the court's consent,

discontinue the proceedings. This power does not apply to proceedings commenced by a court on its own motion.

Clause 32 relates to appeals. The trial procedure is *sui generis* governed by Rules of Court or Family Justice Rules and not the summary trial procedure set out in section 230 of the Criminal Procedure Code. It is therefore not necessary to have appeals governed by the relevant provisions in the Criminal Procedure Code. Furthermore, the leave of the High Court or the Court of Appeal is required before an appeal can be brought to the Court of Appeal. This is in addition to the cases specified in section 34(2) of the Supreme Court of Judicature Act where such leave is required for an appeal to the Court of Appeal.

Clause 33 provides that a fine imposed for contempt of court may be enforced in like manner as a fine imposed by a court in criminal proceedings under the Criminal Procedure Code.

PART 7

MISCELLANEOUS

Part 7 contains miscellaneous provisions.

Clause 34 empowers the Minister to amend, add to or vary the Schedule by order in the *Gazette*.

Clause 35 provides that the Bill will not apply to any act of contempt of court committed before the date of commencement of the Bill. Pre-existing rules of court made under or in respect of the repealed section 7 of the Supreme Court of Judicature Act, the repealed section 8 of the State Courts Act or the repealed section 11 of the Family Justice Act 2014 will continue to apply as if they were made under the Bill, until they are repealed or revoked.

The Schedule sets out the applicable provisions of the Criminal Procedure Code for the purposes of investigations ordered by the Attorney-General under clause 22.

PART 8

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

Clauses 36 to 46 set out the consequential amendments to other written laws. Section 7 of the Supreme Court of Judicature Act, section 8 of the State Courts Act and section 11 of the Family Justice Act 2014 will be repealed but they will be re-enacted with modifications in clause 10 of the Bill. The definition of “public servant” in section 21 of the Penal Code (Cap. 224) in its application to sections 175, 178, 179, 180 and 228 of the Penal Code will be amended so as not to be applicable to judges, judicial officers, coroners and referees. As a result

Division 1 of Part XXI of the Criminal Procedure Code will no longer be necessary and will be repealed.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
