Contempt of Court: The Case of an Advocate Solicitor

By Loo Ngan Chor

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On 6 May 1997, Chief Justice Yong Pung How ordered the imprisonment of John Tan Khee Eng, an advocate and solicitor, for contempt of court. Tan spent seven days in jail for his contempt of the Chief Justice's court. In arriving at his decision, the Chief Justice distinguished two English cases and placed reliance on two Canadian decisions, a Malaysian decision and a Scottish decision.

The Facts

Tan had practised for more than five years and was the sole proprietor of John Tan & Company. He acted for an appellant in a Magistrate's Appeal which was scheduled for Tuesday 29 April 1997. On 28 April, Tan despatched a facsimile message to the Supreme Court that another firm of solicitors had taken over charge of the appeal and that the appellant had been hospitalised. He requested an adjournment because he sad he would be handing over the brief to the new solicitors. A staff member of the court telephoned him on receipt of the facsimile and requested his attendance in court on 29 April anyway so he could make formal application for his discharge. This is said to have been Tan's position: he said that since his client had discharged him, there was no need for him to attend court. This remained his position notwithstanding a telephone call from an Assistant Registrar restating the position stated by the staff member earlier in the day.

On 29 April 1997, Tan was absent from the hearing of the appeal. The appellant's daughter (the appellant was said to be ill and hospitalised) and the new solicitor were present. The Chief Justice adjourned the hearing to the afternoon of the same day and ordered Tan's appearance. Efforts of the court staff to communicate the order were said to be numerous and unsuccessful until about 2.10pm when they managed to speak to Tan and send him a facsimile. Tan told the court staff that he was unable to attend as he did not have a robe. The Chief Justice then ordered his appearance in court on Friday, 2 May 1997 to show cause for his absence on the afternoon of 29 April 1997. Notices to this effect were posted to his office and his home on the morning of 3 May 1997. It seemed, however, that Tan had sent a facsimile through to the court on the afternoon of 29 April stating that he would be out of town from 30 April to 5 May 1997 on urgent matters and that he could not attend court on the afternoon of 29 April because of the short notice. As Tan was absent, the Chief Justice ordered that a warrant of arrest be issued for him.

The warrant of arrest having been executed, Tan was brought before the Chief Justice on 6 May 1997. According to the records, Tan explained that he was not aware that his presence was required in order to formally seek a discharge. In respect of his attendance being required on 2 May 1997, he only became aware of this on the following Sunday when he telephoned home (presumably from out of town). Tan tendered his apologies. The Chief Justice rejected both the apology and the explanation.

The Chief Justice's Reasons

The Chief Justice found Tan's apology "lacking in conviction" and less than unreserved. He also found the explanation unconvincing in that Tan might at least have made a brief appearance in court instead of sending a facsimile. The Chief Justice said:

"You behaved in a way which indicated that you felt it your prerogative to choose whether or not to comply with a clear direction made by the court. You displayed a contemptuous and arrogant disregard for the authority of the court, and such conduct must be checked with the appropriate punishment."

The Chief Justice distinguished two English decisions [1] which held that a lawyer who absented himself from court in spite of a court direction may be discourteous but was not in contempt.

"The power to punish for contempt of court allows a court to deal with conduct which would adversely affect the administration of justice. Clearly, courts in different jurisdictions may hold different ideas about the principles to be adhered to in their administration of justice, and correspondingly, about the sort of conduct which may be inimical to the effective administration of justice."

The Chief Justice next referred to a Scottish decision [2], two Canadian decisions [3] and a Malaysian decision [4] where the courts took more robust attitudes towards a lawyer's failure to appear in court when directed to do so.

The Chief Justice concluded with the following remarks:

"In short, I do not think it useful or practicable in this case to adopt blindly the attitudes evinced by the English courts. We must ask ourselves what is important to us here in Singapore. In so far as the administration of justice by our judges is concerned, I do not think it is enough to ask, as Lord Denning MR did in Weston's *case, whether the lawyer in question intended to 'hinder or delay' court proceedings and whether court proceedings were in fact hindered or delayed. Such a test is too narrow. There are many things which a lawyer or litigant can do which do not necessarily hinder or delay court proceedings, but which nevertheless interfere with the effective administration of justice by evincing a contemptuous disregard for the judicial process and by scandalising or otherwise lowering the authority of the courts. We are inviting anarchy into our legal system if we allow lawyers or litigants to pick and choose which orders of the court they will comply with, or to dictate to the court how and when proceedings should be conducted. I reiterate my views, therefore, that your failure in the present case to appear in court when directed to do so was conduct calculated to lower the authority of the court. It was more than a matter of discourtesy which could have been dealt with simply by way of reference to the Law Society."*

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Conclusion

The Chief Justice's approach towards Tan's behaviour highlights a perhaps little-noticed fact that a very fine line divides behaviour which is mere discourtesy from that which is reasonable classified as contempt. Broadly speaking , there are two types of contempt, ie 'criminal' where words or acts obstructing or tending to obstruct or interfere with, the administration of justice, or civil, where a person disobeys a judgment, order or other process of the court, and involving a private injury[5]. If this point is correctly made, then it is quite conceivable that a lawyer's failure to attend court may, in the circumstances prevailing, really only be a civil contempt. Where the contempt is civil, committal is not usually ordered unless there is an element of fault or misconduct on the part of the contemnor[6]. It is probable that inadvertent 'double-fixing' and or absence from court in the context of the rush and welter of a hectic schedule may amount to civil contempt.

The *McKeown* case cited by the Chief Justice has also been cited in *Halsbury's Laws of England* to support the following proposition:[7]

"In order to constitute a contempt in the face of the court, it appears to be unnecessary that the act of contempt should take place wholly, or in part, in a courtroom itself, nor does it seem to be necessary that all the circumstances of the contempt should be within the personal knowledge of the judicial officer dealing with the contempt."

The significance of whether an act of contempt is committed in the face of the court lies in the question of the correct process to be adopted in trying an allegation of contempt. In this connection, the minority judges in the *McKeown* case took the view that the fact that the judicial officer concerned really did not have all the facts within his ken was not contempt in the face of the court. Their Lordships held that the appropriate procedure in that type of contempt was for the alleged contemnor to be referred to the Public Prosecutor for formal prosecution proceedings to be instituted and the case against him proved beyond a reasonable doubt.[8]

The Chief Justice's decision has set the tone for the judicial approach to be adopted where a lawyer fails to attend court despite a court direction. The test adopted is whether the lawyer's absence is 'calculated' to lower the authority of the court; intention becomes irrelevant.[9]

This approach is patently necessary to the court's inherent jurisdiction. It is nonetheless hoped that this approach would be used with an eye to the delicate and important balance to be struck between, on the one hand, the right of a litigant to counsel and the concomitant need to take reasonable account of counsel's schedule, and on the other hand, the court's declared policy of moving litigation along.

FOOTNOTES

1. *Weston v Courts Administrator of the Central Criminal Courts* [1976] 2 AER 875, a decision of the English Court of Appeal, and *Izuora v The Queen* [1953] AC 327
2. *Muirhead v Douglas* [1981] Crim LR 78
3. *R v Hill* (1976) 73DLR (3d) 621 and *McKeown v The Queen* [1971] 16 DLR (3d) 390
4. *Lai Cheng Chong v PP* [1993] 3MLJ 147
5. *Halsbury's Laws of England*, vol 9, para 2. To like effect is the judgment of Spence J (dissenting) in the *McKeown* case at p. 393
6. See para 52, vol 9, *Halsbury's Laws of England*
7. See para 5, vol 9, *Halsbury's Laws of England*
8. Spence J, at p. 397 said, *'When a contempt is in the "face of the court", in most cases it cannot be dealt with efficiently except immediately and by the very judicial officer in whose presence the contempt was committed. No other course would, in most cases, protect the due administration of justice. When, however, the contempt is not "in the face of the court", then it can be dealt with subsequently before any other tribunal, with the Attorney-General or his representative representing the interests of the state'.*
9. In *R v Hill,* it was said, '[t]he word "calculated" as used here is not synonymous with the word "intended". The meaning here in this context is found in the Shorter Oxford dictionary as fitted, suited, apt: see Glanville Williams, *Criminal Law*: General Part, 2nd ed, (1961), p. 66.

Legalcare Moves To Queensland

Queensland's Deputy Premier and Treasurer, Joan Sheldon, announced recently that Australia's largest commercial dispute mediator and insurer, *Legalcare Pty Ltd* would locate its head office in Brisbane, as it prepared for proposed expansion into the Asia-Pacific region.

Legalcare, headed by Sir Laurence Street, would provide legal expense insurance for small to medium-sized businesses, to cover most areas of potential dispute, including industrial relations, trade practices, contracts and leases.

Legalcare policy holders would be required to resolve commercial disputes through mediation prior to resorting to court process.

Mrs Sheldon suggested that the promotion of mediation in the first instance would assist in removing the pressure from Queensland's court system by reducing backlogs and costs of court processes to the Queensland government.

The small business sector could benefit from the from lower and more manageable business costs associated with commercial disputes by paying an annual premium as opposed to significant legal costs arising unpredictably.

"More Queenslanders will have access to justice through low cost policies, starting at a minimum premium of approximately $500 per annum for a small business," said Mrs Sheldon.

Sir Laurence Street said that *Legalcare* was encouraged by the Queensland government's commitment to the mediation philosophy upon which the *Legalcare* policy is based.