

LAW OF CONTEMPT

A. What are the key principles of the Law of Contempt?

The general principle is that disobedience of a court order can amount to contempt. The law of contempt is integral to the administration of justice. Its overarching purpose is to promote the confidence of the public in the integrity of the system of justice and supremacy of the law. *Oswald's Contempt of Court (3rd edn)* offers a definition in the following terms:

“... Contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with, or prejudice parties, litigants or their witnesses during trial.”

The imperative of safeguarding the dignity and integrity of the Federal Court, the Court of Appeal and the High Courts is encapsulated in *Art. 126 of the Federal Constitution*, conferring on the courts the power to punish for contempt, a provision which is similarly found in *s. 13 of the Courts of Judicature Act 1964*.

Contempts are generally of two types. In the case of *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors [2012] 2 CLJ 849*, Arifin Zakaria CJ succinctly explained the point in the following manner:

Contempt has been reclassified either as (1) a specific conduct of contempt for breach of a particular court order; or (2) a more general conduct for interfering with the due administration or the course of justice. This classification is better explained in the words of Sir Donaldson MR in *Attorney-General v. Newspaper Publishing Plc*:

Of greater assistance is the reclassification as (a) conduct which involves a breach, or assisting in the breach, of a court order; and (b) any other conduct which involves an interference with the due administration of justice, either in a particular case or, more generally, as a continuing process, the first category being a special form of the latter, such inference being a characteristic common to all contempts per Lord

Diplock in *Attorney-General v. Leveller Magazine Ltd* [1979] AC 440 at 449.

In an earlier decision of the Federal Court of *Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd* [2002] 4 CLJ 401, Haidar FCJ held that contempt of court is interference with the due administration of justice and that more importantly the categories of contempt are never closed.

It is well established that committal proceedings are criminal in nature since the same involve the liberty of the alleged contemnor. In *Re Bramblevale Ltd* [1970] 1 Ch 125 Lord Denning MR in his characteristic inimitable style stated the principle on the applicable standard of proof for contempt proceedings:

A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt.

Accordingly, the law has additionally provided for procedural safeguards to be adhered to, not only before one can be ordered to be committed, but also even prior to the commencement of the committal proceedings. A fundamental safeguard is the requirement for leave, as embodied in *O. 52 r. 3 of the Rules of Court 2012*.

B. Order 52 of the Rules of Court 2012 (“ROC”)

B(i) Who can apply for Committal proceeding?

Any party to any cause or matter can apply.

B(ii) What is the procedure?

Pursuant to *O. 52*, committal for contempt of court therefore involves a two-stage process. The first is the leave application and secondly, if leave is granted, an application for an order for committal may then be filed within 14 days after the granting of leave (*O. 52 r. 4 (2)*). *Order 52* does not however elaborate on the test to be applied when evaluating the suitability of acceding to any leave application but it is

crucial that the two documents specified in *O. 52 r. 3(2)* to be in support of the leave application be thoroughly examined. These are affidavit verifying the facts relied on and the statement ("**O.52 Statement**") describing amongst others, the following:

- a) name and description of the applicant;
- b) the name, description and address of the person sought to be committed; and
- c) the grounds on which his committal is sought.

B(iii) What is the test for Court to grant leave?

Requirement for Prima Facie Case

Our review of the relevant case law authorities suggests that it should by now be considered settled law that leave to file committal proceedings will be granted if a prima facie case of contempt can be established.

In the case of *Wee Choo Keong v. MBf Holdings Bhd & Anor and Another Appeal [1993] 3 CLJ 210*, Abdul Hamid Omar LP, delivering the judgment of the Supreme Court, stated as follows:

In the appeals before us, leave to issue committal proceedings has been granted. This means that the learned High Court judge has accepted that there was a prima facie case for contempt against the appellants. It may well be that on the hearing of the motion proper, the appellants will be acquitted of any charge of contempt...

In *Dato' Oon Ah Baa & Ors v. Eagle & Pagoda Brand Teck Aun Medical Factory & Ors [2003] 7 CLJ 81* the High Court made the following observation:

In other words, the test required to be met before leave is granted is that the applicant must satisfy that there is a prima facie case of contempt (see *Ngu Yen v. Canada (Minister of Citizenship And Immigration) [1996] FCJ No. 1478 (TD) (QL)*).

The following passage in a decision of the High Court in *Foo Khoon Long v. Foo Khoon Wong* [2009] 1 LNS 850; [2009] 9 MLJ 441 is no less instructive:

At the time when the court had granted leave on 11 June 2007, it is pertinent to observe that there was only a prima facie case of contempt which was based on an ex parte application. In other words, it is merely a vetting process on an ex parte basis to consider if there was a prima facie [case] of contempt and the court did not go into the merits...

The case of *Foo Khoon Long* referred to earlier had already suggested that the prima facie test involves "merely a vetting process". A decidedly more detailed endeavour to define the scope of leave in this context can be found in a recent case of *Tan Kang Ho v. Mao Sheng Marketing (M) Sdn Bhd & Ors* [2015] 4 CLJ 113, where the High Court, after reviewing the relevant legal position and noting the absence of the meaning of "prima facie" case and on the standard of proof required for leave to commence committal proceedings, stated the following principles concerning the leave requirement:

- (a) the purpose of the leave requirement is to ensure that there is no abuse of the committal procedure. The leave requirement acts as a sieve to ensure that there is a prima facie basis for the committal application;
- (b) the purpose of the leave requirement is to prevent abuses of the committal procedure. Such a purpose may be fulfilled without the need for such a high standard of proof beyond all reasonable doubt;
- (c) a prima facie case of contempt of court is satisfied if:
 - (i) the statement and verifying affidavit show that the respondent in question has committed a specie of contempt of court, for example, the respondent has breached an injunction or court order; and
 - (ii) the contents of the verifying affidavit should not be inherently improbable; and
- (c) the court should keep an open mind and not make any finding of fact as an application for leave to commence committal proceedings is made on an ex parte basis (without hearing the respondent) and the respondent

may still raise a reasonable doubt at the end of the committal proceedings.

Thus, given the fundamental features relevant to leave application; it being ex parte, the test being prima facie with a lower standard of proof and where the focus is on the adequacy of the O.52 statement. This is well in accord with the principle enunciated in the case of *Wee Choo Keong* as referred to earlier. This is also consistent with the rule that, at the leave stage, the court should not venture into deliberating on the merits of the committal application as the alleged contemnor should, at the committal stage, be afforded the full opportunity to answer and challenge the allegations against him by filing an affidavit in reply for that purpose.

B(iv) If Leave Granted then the Court will hear the Committal Proceedings

If leave is granted, an application for an order for committal may then be filed within 14 days after the granting of leave (*O. 52 r. 4 (2)*).

B(v) What is the standard of proof for Committal Proceedings?

For a charge of contempt to succeed, it has to be proven beyond reasonable doubt.

[See: *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors [2012] 2 CLJ 849 FC*]

To proof beyond reasonable doubt involves two aspects. While one is the legal burden on the Applicant to prove its case beyond reasonable doubt the other is the evidential burden on the contemnor to raise a reasonable doubt. Both these burdens can only be fully discharged at the end of the whole case when the contemnor has closed its case. Therefore, a case can be said to have been proved beyond reasonable doubt only at the conclusion of the hearing upon a consideration of all the evidence adduced before the Court.

B(vi) Principles on Committal Proceedings

1) Nature of the Court Order

For example, a consent order is not an order of the court in the true sense with directions. In this instance, the Court did not decide anything on the merits. The Court only recorded the agreement of the parties and set the seal of the court on it. No directions or decision was made by the Court in the proceedings. A consent order is evidence of a contract between the parties. It is binding on the parties. Any variation to the consent order would require the consent of the parties.

2) Term of the Court Order

In certain well defined and precisely worded Court orders, ie, where there was an undertaking that had been given to the Court or where the Court order was otherwise of a coercive nature, the breach of such the Court order would constitute an act of contempt of court.

3) Any difficulty of interpretation of the Court Order

If the Court order is not free from interpretive difficulty and there was an inherent ambiguity, any interpretation must be construed in favour of the contemnor since committal proceedings are quasi criminal in nature.

As such, the we are of the view that abovesaid legal principles are well established for contempt of court, nonetheless we anticipate this area of law shall have rooms for development.