Contempt of Court: The Case of an Advocate Solicitor

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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.