ADMINISTRATION OF JUSTICE (PROTECTION) BILL 2016

SECOND READING

PARLIAMENT, 15 AUGUST 2016

MINISTER FOR LAW, MR K SHANMUGAM SC

Madam Speaker,

1 I beg to move, "That the Bill be now read a Second Time".

I. Introduction

2 Madam Speaker, this Bill seeks to set out in statutory form the law of contempt; and the processes in enforcing the law.

3 In my speech, I will deal with the need to set out the laws in written form. I will then take Members through the clauses in the Bill and in doing so, I will deal with concerns that have been raised; and some of the points that have been made as reflected in the Motion of Amendment which has been filed.

II. The Need to Set Out the Law in Writing

4 Madam Speaker, contempt of court was famously described by a jurist as "the Proteus of the legal world, assuming an almost infinite diversity of forms".

5 He said this because the law on contempt, developed through common law, over several hundred years, and covering different facets, thus to many including lawyers, is often a mystery. They don't understand it fully because of its diverse forms.

6 It is the only criminal law in Singapore that is based on case law. This is not satisfactory because criminal laws must be set out in statute.

7 Former Chief Justice Chan Sek Keong made this point. He pointed out the law on Contempt in Singapore was an anomaly. He said all our criminal laws are based on statute, whereas the law on contempt was not; and the punishment for contempt is unlimited, unlike other criminal laws

8 CJ requested that I consider putting it in statutory form, and I agreed with him that I will do so.

9 In many Commonwealth countries, such as the United Kingdom, Australia and New Zealand, the law started as a common law offence, and the need for setting it out in writing has been recognised.

10 Let me now turn to the Bill.

III. The Bill

11 Clause 2 of the Bill sets out the interpretation of the key terms used in the Bill. For example: the Courts to which the Bill applies; and when a Court proceeding is considered "pending".

12 The heart of the Bill is found in clauses 3 and 4.

13 These clauses set out conduct which amount to contempt:

- Disobeying court orders;
- Interfering with Court proceedings;
- *Sub judice* contempt; and
- Scandalising the Court.

14 There are other ancillary types of contempt, which are also dealt with in this Bill.

15 Let me start with contempt that is committed by disobeying Court orders.

(A) Disobeying Court Orders - Contempt

16 The Court often directs a person to do something; or not to do something.

17 If he intentionally disobeys, that is contempt. That, in essence, is the current law.

18 Clause 4 sets that out. For example, take a case where a former spouse applies for maintenance for herself and her children. In cases where Courts order maintenance, and if the husband refuses to comply and deliberately chooses not to pay, his former wife and the children suffer. They may depend on the maintenance to pay for their schooling fees, even their basic necessities.

19 We undertook significant reforms to the family justice system. Amongst other things, we improved the enforcement of maintenance orders. That has helped.

20 But there are ex-spouses who simply refuse to obey maintenance orders, despite their ability to pay. There are also those cases where, for example, the wife disobeys an order granting the husband access to the children. For such people, the threat of a significant jail term can help. They may become more likely to obey Court orders.

21 Under this law, the defaulter can be punished if he intentionally chooses to disobey the Court's order.

22 On the other hand, there is a need to be fair to the person who, if he honestly and reasonably did not understand what the Court had ordered, and the Court takes the view that he ought reasonably to be excused.

23 Clause 21 of the Bill provides for a defence in such cases. The provision is intended at those who intentionally disobey court orders. The Court will have to take into account the seriousness of the breach and whether the breach is intentional, in deciding whether to proceed and how to proceed.

24 I have given an example of an order from the Family Court which is disobeyed. The rule of course applies to other types of Court Orders as well.

25 To sum up, defaulting parties will face serious consequences if they intentionally disobey Court orders. Such disobedience often takes place in the lower Courts, including the Family Court.

26 Most disputes are heard and resolved in the lower Courts. We have therefore raised the maximum punishment vis-à-vis the lower Courts, to send a clear signal that such conduct will not be tolerated.

27 The intent is to allow lower Courts to deal with the more serious contemptuous conduct that can occur before those Courts. This will complement other changes we are making to the civil and family justice systems. The intent is to protect more vulnerable parties. They can then receive the full protection of the law.

28 Now, let me deal with contempt by interfering with Court proceedings.

(B) <u>Interference with Court Proceedings</u>

29 Clause 3(1)(c) deals with the situation where there is interference with court proceedings.

30 It is a fairly straightforward provision.

31 This can occur where someone disrupts Court proceedings, interferes with witnesses, or intimidates them. Likewise, when someone interferes with, or intimidates:

- Judges;
- Parties;
- Lawyers;
- Witnesses.

32 Court proceedings should be sacrosanct. They should be free from all of these extraneous interferences.

33 Secondly, within the same rubric, Clause 3(1)(d) deals with the situation where someone disrupts court proceedings by his own conduct.

34 The offence is made out where a person intentionally insults or causes any interruption or intervention, to any judge who is sitting in any stage of a court proceeding. For example, where a person shows up in Court, starts shouting from the public gallery of the Court room, and interrupting on-going Court proceedings.

35 The Court is a place where serious issues are dealt with, some affecting life and liberty. There is no place for disruptive or insulting behaviour.

36 Similarly, Clause 3(1)(e) also deals with the situation where any other act would interfere, obstruct or cause real risk of interfering or obstructing with the administration of justice.

37 The overarching purpose is to ensure court proceedings are respected and allowed to complete their full course without facing obstruction or interference from persons.

38 These provisions reflect the current law.

(C) *Sub Judice* Contempt

39 I will now turn to discuss *sub judice* contempt, set out in Clause 3(1)(b) of the Bill.

40 In essence, *sub judice* contempt deals with conduct, for example, publishing something that would prejudge an issue in pending Court proceedings; and such prejudgment either prejudices or interferes with on-going Court proceedings; or poses the real risk of doing so. So it's conjunctive.

41 This clause again reflects the current law.

42 Every year, approximately 60,000 criminal charges are dealt with by the State Courts. More are dealt with by the High Court. There are thousands of civil cases in the lower Courts and in the High Court.

43 Every party to a criminal or civil case is entitled to a fair trial and every one facing a criminal charge is entitled to the benefit of the presumption of innocence.

44 These are fundamental pillars of our justice system.

45 Persons in court cases should not face prejudgment by the media or by the public, in a way which whips up sentiment and creates a real risk of interfering with their trials.

46 Not every comment will be *sub judice*. Parties to civil proceedings frequently make comments. Lawyers do as well, while their client's case is on-going. The test is whether it prejudices or interferes with on-going court proceedings, or poses a real risk of doing so. So you have to show that it prejudices, or interferes, or poses a real risk.

47 On these questions, one may have to consider a whole host of factors, including:

- Who made the comment;
- The content of the comment;
- The extent of the publication;
- The likely impact on the trial,

And these are all matters for the court.

48 Let me deal with some of the questions that have been raised about this provision. As I do so I should make clear: the Clause reflects existing common law. It doesn't change the common law.

49 The suggestions and requests are therefore requests to change the law as it now stands.

50 One suggestion is to add in the word "seriously" before "prejudice" in Clause 3(1)(b), so that the contempt is actionable only if it "seriously prejudices" Court proceedings.

51 I would say this is not right.

52 Consider what, in effect, is being proposed with such a suggestion. If we agree to it, we are then saying it is okay if the trial is prejudiced, as long as it is not seriously prejudiced.

53 Think about it: a person is a defendant in a criminal trial, he could face years in prison. Do we really want say it is okay to prejudice his right to a fair trial? What happens to the presumption of innocence, and the basic right to a fair trial?

54 You balance that against someone's wish to comment on the proceedings, which prejudices the proceedings. You balance the chap in Court, who is facing the criminal charge; you balance his rights against somebody else's desire to comment on those proceedings. Not just comment, comment in a way that prejudices those proceedings. That is a right we have to balance against the right of free trial and presumption of innocence.

55 Is it okay for such a commentator to say: yes, I prejudiced the trial, but I didn't seriously prejudice the trial? Do we want that?

56 Why should someone's right to comment, sitting in the security of his home, be given precedence over the right to a fair trial, and prejudice a person who faces a jail sentence?

57 Isn't it better to wait for the trial to be over, for the facts to be established, before comments are allowed?

58 Again, I emphasise – it's not all comments. What are the prescribed comments? They are those which prejudice a fair trial, or pose a real risk of doing so. Comments which do not fall into that category are not within the clause.

59 After the judgment, one can comment as he or she wishes; on the judgment; on the conduct of the parties.

60 The words of a New Zealand Chief Justice put it well:

"If Joe Public is accused of an offence of which he believes he is innocent, he will not wish to be tried in the media. When charges are laid in Court, the public must be assured the issues will be decided in the Court and nowhere else."

61 As Members of the House, ask yourself, each one of you, bring it to the personal level. Say someone you know is facing a criminal trial; do you want the world saying he is guilty, before his guilt or innocence is established? Do you want his right to a fair trial to be prejudiced, and then someone to come and say: yes, I prejudiced, but I did not seriously prejudice it? Do you think that makes good policy?

62 Another comment that is made against this provision – is that it "curtails free speech". You know, to raise this spectre is by itself not an argument. One has to go beyond the rhetoric. Get to the specifics. What is being curtailed? What does the clause provide? What is the right that is being curtailed?

63 You can comment on policies; you can debate public issues What you cannot do, is to say something that actually prejudices a specific case, or has a real risk of prejudicing a specific case.

64 That legal position has worked well for us all these years.

65 If you want to change the law, if you want the right to prejudice on-going cases, you have to put cogent reasons why; why your right to speak and prejudice an on-going trial should override someone else's right to a fair trial.

66 It is for the same reason that I cannot agree to any suggestion that Clause 3(1)(b) be qualified by some general provision that provides for discussion by the public as a defence.

67 Again, what you are saying is that an observer's right to speak as he wishes should override a person's right to a fair trial. Doesn't matter if the trial itself is prejudiced as a result.

68 You know most of the people who get charged in the State Courts, they are ordinary folks. They don't write fancy blogs. They are not lawyers, MPs or journalists – not usually anyway. They find themselves on the wrong side of the law. Do we really want to say, in this House, to the ordinary man in the street that it is okay for his trial to be prejudiced, and it is okay for him to be unfairly treated because it is incidental to someone else's right to comment?

69 Honourable Members, the people who are the loudest on these issues are usually the people who can take care of themselves.

70 We are here to protect all Singaporeans, including those voices which are not heard – the majority. We are trustees of their interests. It will be quite shocking for us to say that the rights of someone who wishes to comment should be put above the rights of the person who is facing a trial, for a fair trial.

71 It is shocking for us to say to such a defendant: it's okay, my friend, your trial has only been a little bit prejudiced. So what, if the chances of you being found guilty have increased?

72 If we are not strict, it can easily get out of control – and the Courts will lose control. As has happened in other places.

73 Let us say there is a high profile child rape case. Child is dead, there is obviously a lot of unhappiness among the general public, and it's high profile, a lot of interest. Let's say the defendant comes from a certain background. It can be race, it can be religion, it can be education level, sexual preferences, doesn't matter – some background.

74 Assume the national media were to publish prominent articles on a daily basis, saying that people of that particular background, that race, or religion or educational level or sexual preference, are prone to committing these types of offences; and such people should be severely dealt with Can such a campaign colour the public mood?

75 We don't have juries, true. But we have witnesses, and we have expert witnesses as well; people who go to Court to give evidence. Do we want them to be put under pressure?

76 Say an expert takes the view on the mental state of the defendant, which will potentially give the defendant a defence. Do you want the mass media to carry articles which suggest that such defences are phony and should not be allowed, such defendants should be severely punished?

77 Do we want to get into arguments discussing the media's right to discuss matters of public interest versus the individual's right to a fair trial? Because the media will say, and has said in other countries, defence through psychologists and psychiatrists is a matter of public of interest. Of course, they are matters of public interest. But there is a time and place to discuss it. It can be discussed after the trial is over. It's not as if these discussions are prevented.

78 When a public mood is created, everyone in the trial will be under pressure, including the Judge. They are human too.

79 Any expert who wants to give evidence on behalf of the accused runs the risk of being tainted, in the opinion of the public. He does it first time, and say he gets a lot of flak. Do you think he will want to do it a second time, or a third time?

80 Prosecution will also be placed under enormous pressure to charge and to secure a conviction. The Public Prosecutor's decision to charge should not depend on public opinion.

81 And in the conduct of the trial, I have earlier talked about expert witnesses. Think of other witnesses. Would they become reluctant to testify because their evidence is contrary to public opinion? Or would they modify their perception of the evidence?

82 And the public, having already formed an opinion of guilt, would they be able to accept the Court's decision to acquit? Would they even bother reading the Court's judgment, or just assume that the Court must have been wrong?

83 Whatever the outcome, the credibility of the trial, the court, would be irretrievably damaged. If the court orders a severe sentence, public will assume this was because of the media campaign. If the court acquits the defendant, says the defence succeeds – public will assume the opposite: that the judge wanted to show that he had not been influenced by the media, or at least some members of the public could assume that.

84 In either case, the public will question the integrity of the outcome.

85 How then is the Judge to react in the face of all these conflicting sources of pressure?

86 That is why our law provides – you can make your comments, just wait for the proceedings to be over. These are comments which can prejudice the trial. Other comments, you can make at any time.

87 Wait for the facts to be established; don't create your own facts. Those have to be established by the Court, whether it's a Coroner's Inquiry or a trial. After that, then you can comment

- On the defendant;

- On the case;

- On the judgment;

- On the general practice, on the general policies;

- On any matter really, subject to other laws.

88 Our judicial system has worked for us. Let's keep the system as pristine as possible, and protect it from outside influence. That way, you know you have a good system; a system that will deliver justice, and give everyone a fair trial.

89 There are many examples from other countries, where trial by media takes place.

90 Some of you would find the name "Amanda Knox" familiar. She, together with two others, was accused of killing her flatmate. The international media went to town with the story. Barely a month after the incident, one newspaper published that the victim "it seems, died for no other reason than that she had the terrible misfortune to find herself sharing an apartment with 'Foxy' Knoxy". That's the moniker they gave her.

91 This conclusion was based on comments that were passed by some unidentified persons. Some newspapers labelled her a "killer" or "psycho-killer", before the courts had finally determined the matter.

92 Reading these articles the natural inclination would be, for a member of the public, to agree with the tone of the articles, to conclude that the suspect was guilty, even before investigations had been completed.

93 Ask yourselves, was this fair? Is this fair? Often, they are based on assertions and evidence that would not stand the test of scrutiny of a court process. And in fact, Ms Knox was eventually acquitted.

94 How does all this hype affect proceedings?

95 Italy's highest Court, the Court of Cassation, observed that:

"Certainly, the unusual hype of the story, caused not only by the dramatic mode of death of a 22-year-old… but also by the nationality of the people involved… and therefore by the international repercussions of the story, caused the investigations to suffer a sudden acceleration, which in the frantic search for one or more culprits to be delivered to international public opinion certainly did not facilitate seeking the substantial truth."

96 This is not the type of justice system we want. And we do not want to get into arguments with commentators as to whether what they said may have prejudiced the trial but it was necessary in the public interest. Nor do we want to get into an argument where they say: well, prejudicing the trial was incidental to my right to speak.

97 Those with more resources or better access to media can also abuse such a system. They will take advantage if we are not strict. For example, by starting media campaigns to pressure an accused to plead guilty, or a victim to settle out of court.

98 Justice can become a function of how closely connected one is to media sources, or how wealthy one is.

99 And what happens after the media prints an article that unfairly assumes you are guilty, when you are in fact innocent? The public won't be able to tell which facts are true, false or irrelevant. How then will you clear your name in public? Will the public believe what you say, after a series of articles of such a nature?

100 It can affect

- you;
- your safety;

- your family's safety;

- your career;

- your standing in society,

all this before the Court has decided on your guilt or innocence. And if the defendant complains, it will be argued that the matters were discussed in the public interest, and the prejudice was only incidental.

101 In effect, the question therefore, when considering these other suggestions, is whether you want to undermine the presumption of innocence, and whether it is fair to do so.

102 If you want to reverse burdens, that has to be done statutorily for specific public policy reasons.

103 It is for these reasons that we have a process for determining guilt or innocence before the Courts, where evidence is tested and scrutinised; where unreliable evidence is excluded; and where the Court makes findings based on a detailed analysis of the law and facts.

104 The public and media are also free to debate the merits or demerits of our legislation, even if there are on-going cases involving such legislation.

105 Current law and the law as set out in the Bill are the same, and one is not prevented from advocating one's position, for example, on the death penalty even if a capital trial is going on.

106 Academics, media outlets publish commentaries on a Judge's decision, even when an appeal is pending.

107 These are not prohibited.

108 Commenting on a Judge's reasoning is unlikely to pose a real risk of prejudicing the appeal outcome.

109 We have not changed the law. Such commentaries are allowed today, and if the Bill gets passed, they will continue to be allowed under the Act.

110 In coming up with this approach, we have of course considered the approach in other jurisdictions. The UK has set a higher bar before you can find a person guilty of *sub judice* contempt.

111 It did so, at least partly, to bring its law in line with European Union law.

112 The UK act came about after the European Court of Human Rights decided, in one case, that the decision of the UK courts did not satisfy the test under the European Convention of Human Rights ("ECHR").

113 However, the Australian and New Zealand Courts have taken a different position from that of the United Kingdom. Each country will decide for itself what is best in its own interests, and our Courts have set out what the test is for us.

114 We have to chart our own course, and decide what is in our best interests.

115 Our Courts have expressly rejected the approach taken in the UK *inter alia* for the reason that the UK position has been impacted by it being subject to the ECHR.

116 I now turn to clause 3(4) of the Bill, which says: A person who issues a statement on behalf of the Government will not be liable for *sub judice*, notwithstanding pending court proceedings, if it is in the public interest to do so:

117 What does this clause cover? This happens today, on a regular basis, even before the law.

118 Take the example where there is spread of infectious disease, maybe something like SARS. Say it could potentially be due to negligence, maybe even fraud, on the part of some hospital staff. Let's say police are investigating and proceedings are likely; and say a Coroner's Inquiry has been announced.

119 Nevertheless, the Government must be able to come out, and to set out the facts, as it knows them. The public needs to know what is happening; what is the likely infection spread; crucially, what are the risks to individuals; and what happened at the hospital, as best known at that point in time by the Government.

120 Take another example. Say a bank suffers a run due to massive fraud by an employee. The bank may commenced action immediately and may have obtained injunctions. Meanwhile, bank runs can be contagious, dangerous; they can have serious consequences for the economy. The Government must come out and state the facts and the position, and hopefully reassure the public.

121 It cannot wait for the on-going court proceedings to end before informing the public about some matters.

122 As I said, if you look back, it is not unusual for the Government to come out and make these statements. It is not targeted at any particular individual, it is not targeted at the case per se. It is about what happened, so that the public can go about their affairs in a more informed way, where there is a specific public interest to do so.

123 The Government statements are usually crafted sensitively to try and avoid prejudicing proceedings while informing the public, because their own lives, well-being also needs to be protected.

124 And so far, in all of the statements that the Government has issued, there has been no suggestion that these actions have prejudiced any proceedings. So the Bill seeks to set out what is happening, and what has happened over many years.

125 In one or two cases, it was alleged that the statements should not have been made, and the Courts have clarified the position. For example, in Lau Swee Song, the Court considered the Government's responsibility to come out and deal with matters publicly.

126 The Government will only be allowed to give a factual account and state its position, and that statement will not preclude the Court from exercising its judicial power in relation to the issues at hand.

127 Clause 14 of the Bill permits a fair and accurate report of on-going proceedings that is in good faith, published contemporaneously, or within a reasonable time after the proceedings, unless such publication would otherwise be contrary to the law, order of court or relates to confidential matters.

128 It also provides that there is no liability if the publisher did not know or have reason to believe that the proceedings were pending.

(D) <u>Contempt by Scandalising the Court</u>

129 Now, let me turn to contempt by scandalising the court.

130 That is set out in Clause 3(1)(a).

131 The Courts are integral to a well-functioning democracy. People must have faith and confidence in them, and people must have faith and confidence in the administration of justice. That is critical for any society.

132 Baseless attacks on the Judiciary erode trust; affect confidence in the administration of justice.

133 This principle is well-recognised.

134 Let me quote former Chief Justice Chan Sek Keong. In 2011, he said this:

"The rationale of punishing such kind of contempt is to uphold the authority of the court which is an indispensable institution for the administration of justice... We do not mind criticism, even harsh criticism, of the merits or justice of our decisions, on grounds that are not related to our fitness to hold judicial office... Those who do not hold judicial office may not fully appreciate or share the same sense of responsibility that a judge holds with regard to his office. Scurrilous remarks, unless firmly dealt with, would inevitably undermine public confidence in the Judiciary."

135 The High Court of Australia has observed that:

"The authority of the law rests on public confidence, and it is important for the stability of society that the confidence of the public should not be shaken by baseless attacks on the integrity or impartiality of courts or judges."

136 The New Zealand Courts have said:

"Extravagant and inflammatory language, calculated not only to incite disapproval of particular decisions, but also to shake confidence in the courts themselves, and provoke discontent and ill-feeling, is considered so plainly contrary to the public interest as to constitute an offence calling, in proper cases, for the application of the summary power for punishing for contempt... Criticism may be strong and forceful, but it is not to be couched in the language of abuse and invective."

137 I have quoted from other jurisdictions to really explain the rationale for the rule. The precise application of the law of course varies from country to country.

138 Clause 3(1)(a) provides that it is contempt of court to impute improper motives, or impugn the integrity, propriety or impartiality of any court, and, so this is conjunctive, if what you do or publish poses a risk that public confidence in the administration of justice will be undermined.

139 So you've got to show that the statements impugned the integrity, propriety or impartiality, or imputed improper motives, and you also have to show that there was a risk that public confidence in the administration of justice would be impacted.

140 Two questions: Why do we need this? And what exactly is being curtailed?

141 If you allow constant attacks; attacks, say of bias or corruption, over time, the public perception of the Judiciary will be affected.

142 This, I think, is self-evident, and I will explain later with reference to one country.

143 I asked for some research in related fields. There is a recent psychological study led by a Vanderbilt University researcher. It showed that false statements which were repeated, even when the participants knew better, caused participants to later believe the statements were true.

144 This is called the "illusory truth" effect.

145 Assume there are blatant and unsubstantiated falsehoods about the judiciary repeated often enough. It will affect public confidence in the judiciary.

146 Let me give another example. An empirical analysis was conducted of British press coverage of the 2009 Ian Tomlinson scandal. This involved a newspaper vendor who died in the midst of police handling protesters at London's G20 summit. He died after being pushed by a police officer.

147 Based on the empirical analysis, commentators concluded:

"the emergence of the press politics of outrage, is undermining trust not just in the political class as individuals – now a well-rehearsed debate – but in entire institutions".

148 That means it is undermining confidence and trust in entire institutions, beyond the politicians.

149 Likewise, in Singapore, if you allow baseless attacks on the Judiciary, you get erosion of trust in the Judiciary.

150 This does not mean no criticism of the Judiciary is allowed. I read out the extracts from the different judges, including former Chief Justice Chan Sek Keong. So that's not understood much by people, they think that scandalising contempt precludes any kind of criticism.

151 It does not mean protecting Judges from being criticised in their personal conduct, for example, outside of their conduct as Judges. If they have behaved badly, they can be criticised. It does not mean that you cannot criticise their judgments; it does not mean that you cannot criticise the way they have conducted trials. As long as no improper motives are ascribed.

152 When people lose confidence in the Judiciary, your entire administration of justice gets affected.

153 So that is on one side. Weigh that against what is it that you are seeking to proscribe. You are proscribing specific attacks of:

- Bias;
- Corruption;
- Favouritism;
- Scurrilous abuse; and
- Other allegations of such nature.

154 Nothing prevents you from attacking the reasoning of the Judge; attacking policies reflected in the Judgments, and you are entitled to the full latitude of fair criticism.

155 What is prohibited, therefore, is quite narrow and there is a further condition before the offence is made out. What you say must pose a risk of erosion of public confidence.

156 Under common law in Singapore, the test is "real risk". In the Bill, the test is "risk". The different heads of contempt, clauses 3 and 4: what amounts to contempt, the Bill sets out the law as it stands now. This is the one change to the current law in the clauses, on the substantive elements of contempt.

157 I will discuss the reasons for our approach in the Bill.

158 The Judiciary and the administration of justice is a hugely precious asset for us. We inherited it from the UK, and have made it better, and we must continue to protect it.

159 Common law, as applied in Singapore, does not allow our Courts to be debased or scandalised, and Singaporeans, as well as international institutions, hold our Courts in very high regard.

160 Let me give you some statistics.

161 My Ministry conducted a survey recently on how Singaporeans view our Courts. 92 per cent said they had trust and confidence in our legal system; 96 per cent agreed that Singapore is governed by rule of law.

162 Separately, the State Courts conducted a survey on Court users last year. More than 90 per cent had confidence in the fair administration of justice by the State Courts; agreed that the State Courts independently carried out justice according to the law; and agreed that the State Courts administered justice with integrity.

163 That is an enviable position to be in.

164 The Judiciary is truly an institution that is held in the highest esteem by Singaporeans.

165 That is the very foundation of the Rule of Law. The greater the prestige of the Courts, the greater the authority, and the greater the respect from everyone for that authority.

166 As was stated by an Australian Court in 1994:

"… it is important to remember that… the justification for proceedings for contempt of court… lies not in the protection of the reputation of the individual judge… but in the need to ensure that… courts are able effectively to discharge the functions, duties and powers entrusted to them by the people."

167 As another Court, this time in Ireland in 1991, put it:

"[The contempt] is not committed by mere criticism of judges as judges, or by the expression of disagreement – even emphatic disagreement – with what has been decided by a court. The right of citizens to express freely, subject to public order, convictions and opinions is wide enough to comprehend such criticism or expressed disagreement.

Such contempt occurs where wild and baseless allegations of corruption or malpractice are made against a court so as to hold (sic) the judges'... to the odium of the people as actors playing a sinister part in a caricature of justice."

168 Again, I refer to these cases mainly for the expression of the principle on why we have this rule – scandalising the Court.

169 Singaporean cases are the ones that matter, and the underlying philosophy of the Singaporean cases is similar. When you have a situation where the Courts are respected, then the administration of justice proceeds smoothly. Justice can be delivered fairly, firmly, and people – whether or not they are satisfied with a judgment – nevertheless trust the system.

170 And internationally, what is the standing of our Courts? There are many published papers on this. The World Bank ranked us in the 95th percentile for Rule of Law. The Political and Economic Risk Consultancy ranked us second in Asia, on quality of our judicial and legal system.

171 So the point is this: on one side, the Courts administer justice. Respect for them, respect for their authority, is a key pillar of society, a fundamental public good for the well-functioning of society.

172 On the other hand, weighing against that, what is being curbed? The right of an individual:

- To abuse the Judiciary;
- To say Judges are biased and corrupt,
- To scandalise the courts.

173 People have the right, as I have said more than once, to criticise judgments, to criticise policies, to disagree with rulings, and to discuss all of them.

174 Remember: those who attack the Judges fall within a wide spectrum – from the idealistic, to those who are constitutionally sour, to those who are outright dishonest.

175 Some will criticise out of true idealism; some will keep repeating falsehoods, or manufacturing facts. Some will exploit the position by making personal attacks, sensationalising based on falsehoods, for pecuniary profit. It has happened.

176 So you weigh: on one side, you have the sanctity of the Judiciary, and the confidence reposed in the Judiciary. On the other side, we have some people's desire to launch personal attacks against Judges.

177 Which is more important? That is the weighing that one has to do.

178 In a case in Hong Kong, a newspaper accused the local Judiciary of being biased against them. Amongst other things, it described the judges as "swinish white-skinned judges" and "pigs", and "judicial scumbags and evil remnants of the British Hong Kong government".

179 Ask yourself, what is the benefit of publishing this type of thing, apart from some perverse form of personal satisfaction from the writer's perspective?

180 It is that which is prohibited in Singapore.

181 The Bill makes clear that fair criticism is not prohibited, and "fair criticism" is defined in case law. Academics have for many years written articles to criticise judgments.

182 As I have earlier explained, fair and accurate reporting that is made in good faith will also not be caught.

183 Let me emphasise again: this Bill is not about protecting Judges. And I should say, by the way, this is also not about protecting the Government. It has nothing to do with the Government; it is about Judges.

184 Judges should be held to high standards of accountability, like other public servants. Clause 16 allows a report to be made to the Chief Justice or relevant authorities on the Judges' conduct. That can include the Corrupt Practices Investigation Bureau. If there is judicial misconduct, report them. This is Singapore – it will be investigated.

185 Similarly, Clause 17 allows any aggrieved party to file a case or application in Court to seek the disqualification of a Judge.

186 Weighing the importance of maintaining the sanctity and reputation of the Judiciary, we have decided that it should be contempt if one imputes improper motives, impugns the integrity, propriety or impartiality of a Court; and that poses a risk of undermining public confidence in the Judiciary.

187 If one calls a Judge a "biased swine", then let us not have arguments as to whether he only risked undermining the sanctity of the Judiciary, as opposed to whether he really risked undermining the sanctity of the Judiciary.

188 Our Judiciary is of fundamental importance; I have laid out to you the different factors – and this is a policy call if we want to go this way. It is for us to decide which is the right approach.

189 It is not about the Government, it is not about Members of Parliament; it is about the Judiciary – Judges, not in their personal capacity, but Judges performing their duties. Judges who cannot respond and defend themselves. Policy call, as to why we should give them protection.

190 Members may say yes, but why not the current level of protection as in the common law, which is real risk? I have explained why. I want to make sure that it is pristine.

191 This will give us strong anchoring in the Rule of Law, which in itself is of basic, fundamental importance to our people.

192 Second, quite importantly – the first is the fundamental reason, that alone is enough but going beyond it – it allows Singapore to be the pre-eminent vibrant legal centre in the region.

193 That has tremendous value to Singapore. Look at the number of large law firms in Singapore – substantial, given the size of our economy. Larger economies do not have as many large law firms.

194 Look at the quality of the profession in Singapore, and the international work it gets. Look at the number of foreign lawyers who are here. Look at the work that is done out of Singapore, benefitting us and our economy, which has got no connection to Singapore.

195 We stand out in Asia, as the jurisdiction of unchallenged independence, impartiality, great judiciary, good lawyers. That is what I am seeking to protect.

196 Look at the Singapore International Commercial Court ("SICC"). We invited some of the eminent Judges from around the world to sit on it, and they agreed. Why did they agree? Because they have a reputation, and we will protect them too.

197 They accept and hear international cases which have little or no connection or Singapore. I do not think any other country in Asia could have set up an SICC; they could have set it up but it would not succeed. It will succeed in Singapore.

198 There are tremendous benefits from the confidence that comes from us being a vibrant, strong, first-rate legal centre, with the Judiciary as its central core.

199 Look at the Singapore International Arbitration Centre; it is now the top arbitration body in Asia. Why do you think that has happened? If we did not have a reputation for the Rule of Law, that would not have happened.

200 Again, if you allow baseless attacks on a regular basis, you will not have the same perception.

201 I looked at all of this, I looked at the common law. The Judges developed the common law based on a strict legal precedent perspective, but we in the Ministry have a larger policy perspective in terms of the other bits and pieces and aspects of the whole legal spectrum.

202 On that basis, in this one area, let us make it even stricter.

203 Look at the impact on the economy – travel, tourism, hospitality. If we succeed in making Singapore a legal hub, it will have tremendous positive impact on the economy.

204 We have a real chance to do that, provided we get it right.

205 Weigh that against, I keep coming back to this point, what is it that is being curbed. Most of us would not want to get out of bed and say something about a Judge being a swine. It is that which is being curbed; allegations that a Judge is biased.

206 You weigh the public good against what is being proscribed and in my view, the balance is clear.

207 There are countries where a view has been taken that more latitude should be given to attack judges. It is a question for each society, each country, to decide – as these other countries have themselves acknowledged.

208 In the words of the New Zealand Court:

"[T]he complex process of balancing the values underlying free expression and fair trial rights may vary from country to country, even though there is a common and genuine commitment to international human rights norms. The balancing will be influenced by the culture and values of the particular community… The result of the balancing process will necessarily reflect the Court's assessment of society's values."

209 Now, Honourable Members, let me turn to what the British High Commission has said last week and I will deal with that.

IV. The British High Commission's Intervention

210 It appears that on 12 August 2016, the British High Commission issued a statement:

"The UK will continue to urge Singapore and all countries which retain 'Scandalising the Judiciary' to abolish it."

211 This is surprising. If the British High Commission was really serious and sincere, one would have expected them to touch base and talk to us.

212 So, what is the purpose of issuing a public statement the weekend before a Parliament debate? The purpose seems to be to try and influence the debate, which is quite improper.

213 It gets more curious. MFA contacted the British High Commission and asked the High Commissioner what this was all about.

214 He said that the comment was made by his press office in response to a question posed by Reuters, and was not specific to Singapore. It was issued on Friday, on the eve of this debate; it says it urges Singapore and all countries to abolish the scandalising the judiciary offence – and he said it was not specific to Singapore.

215 With the deepest respect to the High Commissioner, one can only say this answer is extremely intriguing. Very interesting, very intriguing.

216 If you want to intervene in a debate and make a comment, then at least have the courage of your convictions and not beat a hasty retreat at the first question.

217 There are a few points I would like to make about the comment from the British High Commission.

(A) <u>Which Countries did the British High Commission Make This Comment To?</u>

218 First, which countries did the British High Commission make this comment to? Did the British High Commission see fit to make such comments to the Australians? To the New Zealanders? To the Irish? They also criminalise scandalising the Court.

219 Or is it that only some ex-colonies are privileged to get such advice from the British High Commission? If so, I wonder what is the distinction, that we are so privileged?

220 I should make clear that the laws in respect of scandalising, and the defences available, vary from country to country – even as between Australia and New Zealand, Ireland and us.

221 We have consciously chosen to stick to the law as developed by the Singapore Courts, except for the one change I have mentioned.

(B) <u>Circumstances under which Britain abolished the offence of scandalising the Court</u>

222 Second, I am not sure that the British High Commission is aware of the circumstances in which the offence of scandalising the Court had been abolished in the UK in 2013.

223 The Law Commission Report of 2012 recommended the abolishment of this offence for the following reasons:

- The Law Commission noted that "there [was] a great deal of extremely abusive online material concerning judges". That was the situation in the UK.
- The Law Commission also acknowledged that the UK judiciary had lost the deferential respect it used to enjoy, and noted that "the change is one to be regretted".

224 They were of the view that such a situation could no longer be reversed. The offence had limited symbolic value, as everyone was scandalising the court anyway. It was happening frequently, and was rarely prosecuted in the UK.

225 The Law Commission also considered that the offence was in principle an infringement of freedom of expression, which was a basic right under the European Convention on Human Rights.

226 While the Law Commission did not believe that the existence of the offence was contrary to the European Convention, they felt that there was a risk that particular prosecutions may be disapproved by reason of the ECHR.

227 So they recommended that the offence be abolished, because the standing of the Courts was already damaged in the public's opinion – a point that they noted with "regret". Keeping the law in the books, under such circumstances served no purpose. The damage was irreversible; it was beyond repair.

228 Britain of course has had an interesting history with its membership in the EU. But I am not sure Britain's experience of changing the law, to conform with European human rights laws, is completely relevant to us.

229 The statistics and surrounding facts suggest what the Law Commission said about the standing of the UK Courts is in fact true.

230 The Lord Chief Justice of the UK said, in his Report to Parliament earlier this year:

"[T]here has, overall, been a widespread feeling [amongst judges] of not being valued or appreciated for their work."

231 A Judicial Attitude Survey amongst salaried Judges in England and Wales Courts and UK Tribunals was conducted in September 2014. Its results showed almost two-thirds (62 per cent) of all judges said that members of the judiciary are respected by society less than they were 10 years ago. Respect had gone down. Two-thirds thought that.

232 96 per cent of all judges thought they were not valued by the media. Only 4 per cent thought that they were valued by the media. So almost every single one of them did not feel valued, and two-thirds felt they were less respected.

233 Half of all Judges saw media representation of Judges (56 per cent) and public misunderstanding of the Judiciary (59 per cent) as factors driving changes.

234 Decline in judicial morale has been reflected in the increasing difficulty in recruiting and retaining Judges, especially senior Judges in the UK.

235 In a public perception survey on the UK criminal justice system conducted in 2013/2014, 64 per cent of the respondents were confident of the fairness of the criminal justice system in the UK. Meaning 36 per cent did not say that they were confident. One-third did not say that they were confident in the fairness of the system.

236 Only 31 per cent of the respondents were confident that the courts were effective at giving punishments which fit the crime.

237 Do not get me wrong, I have the highest regard for the higher Courts of the UK; and the quality of their best lawyers. They are truly amongst the best in the world.

238 But it does not follow that:

- how the UK Government has treated its Judges;
- how it has paid them;
- how it has resourced them;
- how it has protected the Judiciary as an institution,

offer a good model for us to follow.

239 We have taken a different approach. Our Judges are paid properly; the Judiciary is protected from being scandalised; the Judiciary is properly resourced; and we try and retain the prestige of our Judiciary.

240 These are the facts.

241 It is quite astonishing that the British High Commission should give us advice to follow what Britain did.

242 Britain found itself in an untenable position, a difficult situation. Their Judiciary did not have the standing or the respect that it used to enjoy. The Law Commission, reluctantly, recommended that the offence of scandalising the Courts be abolished, because the situation had gotten to a stage where it was no longer possible to reverse what was happening.

243 Did the British High Commissioner know these facts when the advice was offered?

244 If the High Commissioner knew the facts, then that does not speak well of them because we are not in the position Britain found itself in.

245 I have given you the survey data on how our Courts are viewed by our public. We are in a healthy, good, and enviable position, and we are not about to short change our Judiciary. We are not struggling, or swimming against the tide of public opinion, as Britain was.

246 If the British High Commission did not know these facts, and yet gave the advice, then again it does not speak too well.

247 Before I leave this point, I should deal with one other point.

248 Everyone knows the best British lawyers are extremely good; their senior Judges are exceptional – world class; and their system is known for its independence.

249 Then why is it that their Judges feel undervalued, under attack, and the public confidence is not exceptionally high?

250 A significant part of the reason is because of the media. It wields an undue amount of power in Britain, with significant influence on politics, finds profit in attacking the Judiciary, and has been allowed to attack the Judiciary.

251 The uncomfortably close relationship between the British media and its political leaders, and its impact on public policies is widely acknowledged and criticised.

252 In one of his final speeches as British Prime Minister, Mr Tony Blair lamented that in the UK, the

"relationship between public life and media is now damaged in a manner that requires repair. The damage saps the country's confidence and self-

belief; it undermines its assessment of itself, its institutions; and above all, it reduces our capacity to take the right decisions, in the right spirit for our future."

253 In 2011, the British Government commissioned the Leveson Inquiry. The Inquiry said:

- That *"the evidence clearly demonstrates that, over the last 30-35 years and probably much longer, the political parties of UK national Government and of UK official Opposition, have had or developed too close a relationship with the press in a way which has not been in the public interest…"*

- That politicians considered that their control of the supply of news and information to the public, in return for the hope of favourable treatment by sections of the press, was *"necessary to* counteract *the attempts of some sections of the press to discredit their motives and distort the policies that they seek to promote"*.

254 When asked why he was so opposed to the European Union in an interview a few years ago, Mr Rupert Murdoch famously said:
"That's easy. When I go into Downing Street they do what I say; when I go to Brussels they take no notice".

255 There have been numerous commentaries examining the impact of corrosive criticism by the British media, on the public perception of institutions.

256 It is a fairly straightforward point: you let the media attack institutions, including the Judiciary; over time, trust in the institutions will erode.

257 A Judiciary which is not protected, which is underpaid, and which feels undervalued; over time, this will take its toll.

258 Britain may be able to face all of this and still be successful. We will not be so lucky.

259 The changes in Britain have not been for the better. We have decided, consciously, not to go that way. We are upholding standards that have gone down in Britain; standards which have gone down, and have led to a loss of respect and coarsening of society.

260 The Dutch Prime Minister, this year, described Britain as a country that "has collapsed - politically, economically, monetarily and constitutionally".

261 Britain may well succeed despite reaching a situation where it was described in these terms. It is one of the largest economies in the world, it has the capacity to deal with the issues it faces and succeed.

262 But for us, if ever we are in a situation where a serious person like the Dutch Prime Minister describes us as a collapsed state, we will truly be in trouble.

263 Let me turn from this larger background, to the specifics. On the offence of scandalising the Court, I think I have been clear why I reject the British approach.

264 And as for the British High Commissioner, he should spend some time studying the facts.

265 We have a good Judiciary, it can be world-class. Let us make it happen. This Bill alone is not going to make it happen, but it is a part of the total picture.

V. Other Areas Relating To The Law Of Contempt

266 Madam Speaker, apart from setting out the tests on contempt, there are also a number of provisions of general applicability.

267 First, Clause 12 of the Bill sets out the maximum punishment for committing contempt. Currently, the common law imposes no limits on punishing an offender for committing contempt of Court, although certain statutory limits are imposed on the State Courts.

268 Clause 12 sets out what the maximum punishments are. The Court of Appeal and High Court can punish contempt with a fine not exceeding $100,000, or not exceeding three years' imprisonment, or both.

269 For other Courts, the maximum punishments are lower, namely, a fine not exceeding $20,000, or not exceeding 12 months' imprisonment, or both.

270 These are maximum punishments; it is for the Courts to determine the appropriate punishment, after taking into account all the facts of the case before them, for example, how serious or aggravated the conduct was.

271 These maximum punishments apply to all types of contempt – including those who fail to comply with Court orders, some of which involve corporate defendants and potentially large sums of monies. For example, they could have moved millions of dollars in contempt of Court.

272 The maximum punishments are not far off from punishments which have previously been meted out by our Courts for contempt.

273 Earlier this year, the Court of Appeal sentenced a man to 8 months' imprisonment for disobeying a Court order to pay his wife maintenance and for failing to pay her share of marital assets in divorce proceedings.

274 The prescribed maximum punishment must take into account the possibility of even more egregious acts of contempt being brought before our Courts and also repeated contempt, second time, third time, fourth time.

275 As I said earlier, former Chief Justice Chan had also requested that the statute set out the limits.

276 Second, the Bill provides that contempt of court can be committed in Singapore, even if some of the acts had occurred outside Singapore. And that is similar to criminal law in Singapore in other contexts as well.

277 We live in an increasingly inter-connected world; contemptuous conduct can occur outside Singapore, but its harmful effects on the administration of justice may be felt in Singapore, by Singaporeans. For example, if a plaintiff decides to wage a media campaign against the defendant from outside Singapore, when proceedings are on-going in Singapore, or where one party prevents a witness from travelling to Singapore to give evidence in a Singapore trial.

278 But all the limbs as to what amounts to contempt must, of course, be satisfied.

279 Where contemptuous articles are published through the internet, contempt of court is committed if it is accessed by a member of public in Singapore.

280 Under Clause 19 of the Bill, for publications taking place outside Singapore, the publisher is not guilty of contempt if he or she did not know and had no reason to believe that the publication would be seen or heard by members of the public in Singapore.

281 Contempt of Court is also committed where the disobedience or failure to comply with our Court's order occurred outside Singapore.

282 The key test is whether the contemptuous act directly interferes with, obstructs or poses a real risk of interference with or obstruction of the administration of justice in Singapore.

283 There is no reason why a person should be permitted to circumvent contempt laws by publishing contemptuous statement or performing contemptuous acts overseas, if the intention is to impact Singapore.

284 Thirdly, there is a need to provide a fast remedy that would allow contemptuous material to be removed before widespread harm is caused.

285 Clause 13 of the Bill permits the Attorney-General to apply to the High Court for leave to direct a publisher to not publish, or stop publishing, material that is contemptuous. The AG must be satisfied that it would be in the public interest to do so before making such an application.

286 The High Court will grant leave if *prima facie*, the identity of the publisher and the contemptuous nature of the material are shown.

287 The author of the statement or the publisher can apply to the High Court to set aside or vary the directions. If the publisher takes the view that it is not contemptuous, he can apply to Court to set aside the direction.

288 If the Court takes the view that the material is not contemptuous after hearing the publisher, the publisher would be free to publish the material without restriction.

289 Fourthly, there is a defence of innocent publication or distribution under Clause 18 of the Bill. A person, who is not the author, but otherwise has control over a publication, would not be guilty of committing scandalising contempt or *sub judice* contempt if the publication or distribution was done without that person's authority, consent or knowledge, and if that person had acted with due care or caution.

290 Finally, the Bill has written the rules on contempt of court into statute which I have already explained and all the available defences, to provide certainty to the public.

291 To avoid ambiguity, the Bill provides that the Act, if passed, will prevail over any rules of the common law that could be inconsistent with the Bill.

292 However, there is a need to maintain flexibility for the Courts to develop other areas of the law on contempt, especially given the pace of change so the courts have that power.

VI. Conclusion

293 Madam Speaker, we have a strong justice system – one that is well-respected by Singaporeans, and those around the world.

294 This Bill will help maintain the integrity of the system and I have taken some care to deal with every clause and all the different arguments and explained our rationale.

295 I know Members have come with pre-prepared speeches, but I would ask Members that in the light of the answers that I have given, you may want to consider your speeches and deal with the points I have raised as well. That will make the response much more efficient.

296 Madam Speaker, I beg to move.