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Resolution Adopted at the 75th Annual General Meeting of the Malaysian Bar Held on 13 March 2021

Resolution for the Abolition of Scandalising the Judiciary as a Form of Contempt of Court, Repeal of Section 114A Evidence Act, and Enactment of a Contempt of Court Act

WHEREAS:

(1) The Federal Court, in its 4-1 judgment dated 19 Feb 2021, found *Malaysiakini* guilty of contempt, whereby this was the contempt of scandalising the court/Judiciary, for which *Malaysiakini* was fined RM500,000. This was in relation to five comments posted by this online media under a news report, where the five commenters were not cited for contempt. A perusal of the judgment sees that the Court failed to do an independent comprehensive evaluation of the said five comments to determine whether there were in fact contemptuous or not. Just because the alleged contemnor(s) admitted, this should not have stopped the court from making a thorough analysis and determination of whether the comments were in fact contemptuous or not.

(2) In this case, the draconian section 114A of the Evidence Act was used.

114A Presumption of fact in publication

(1) A person whose name, photograph or pseudonym appears on any publication depicting himself as the owner, host, administrator, editor or sub-editor, or who in any manner facilitates to publish or re-publish the publication is presumed to have published or re-published the contents of the publication unless the contrary is proved.

(2) A person who is registered with a network service provider as a subscriber of a network service on which any publication originates from is presumed to be the person who published or re-published the publication unless the contrary is proved.

(3) Any person who has in his custody or control any computer on which any publication originates from is presumed to have published or re-published the content of the publication unless the contrary is proved.

(4) For the . . .

(3) It must be pointed out that, after this new section 114A was inserted vide amendment that came into force on 31 July 2012, there were many calls for its repeal.

(4) This section also shifts the burden of proof to the alleged contemnor, when rightly the burden of proof should remain on those who allege, more so when it concerns posts/statements made by third parties. This burden should be not limited to the fact of the making of statements, but also the intention (*mens rea*).

(5) Vide a media statement dated 13 Aug 2012 entitled "Repeal section 114A of the Evidence Act 1950", the Malaysian Bar called for its repeal. SUHAKAM took a similar position, as reported on 25 Aug 2020 in the *Sinar Harian*.

(6) The Malaysian Bar also participated in the STOP 114A public campaign. The Bar took part in the Internet Blackout Day on 14 Aug 2012 (Tuesday), in support of the initiative by the Centre for Independent Journalism to create awareness about the negative impact of the recently introduced section 114A of the Evidence Act 1950. As such, the Malaysian Bar website was not operational on 14 Aug 2020.

(7) The fact that the Federal Court heard the matter in the first instance, the right to the two appeals was denied. The right to appeal is fundamental to the administration of justice, enabling the ability to higher courts to review and correct mistakes of lower courts. The absence of the right of appeal could be argued to be a denial of the basic right to a fair trial.

(8) This — not being a direct disobedience of an explicit Federal Court order — provides no justification as to why the Federal Court should be the court of first instance. It could have and/or should have been heard by the High Court, and this would have preserved the rights to appeal. A Contempt of Court Act is needed.

(9) The other concern is the very high fine of RM500,000 being imposed on a small independent alternative media site, which will also impact negatively on our freedom of expression and opinion, and also media freedom.

(10) A Contempt of Court Act is needed that will indicate clearly what is contempt, and what will be the penalties to be imposed to the different kinds of penalties. Since 1999, the Malaysian Bar has been calling for the enactment of a Contempt of Court Act. The Bar has also submitted a draft Bill.

(11) With this Federal Court decision, once again the archaic contempt of scandalising the Judiciary/courts has been revived, and the best way for the abolition of this contempt is by the passing of a law by Parliament.

(12) A similar motion was tabled in 2020 which, by reason of the COVID-19 pandemic, had to be withdrawn to keep our then-AGM short. Herein below, content similar to the 2020 motion is included, with some amendments.

(13) In 2019, Attorney General Tommy Thomas initiated two different contempt proceedings, being the contempt of scandalising the Judiciary (also sometimes referred to as scandalising the court or scandalising judges) against two lawyers. One lawyer was subsequently found guilty and sentenced to 3 months' imprisonment, and a fine of RM40,000, in default 30 days' jail.

(14) The re-emergence of this contempt of scandalising the Judiciary again in Malaysia, forces us in Malaysia to consider again this contempt, and determine whether it should be abolished or retained. In the UK, this type of contempt was abolished in 2012.

(15) This contempt is akin to similar provisions found in the Sedition Act that seem not so much interested in the truth or investigating allegations, but rather simply whether these statements and/or expression may have a negative impact on public perception of the Judiciary or judges. Truth may not even be a defence. *Mens rea* is also irrelevant.

(16) In these times where we place great importance on freedom of speech, opinion and expression, and note that even the United Nations and most member states have recognised the human rights defender whose duty includes to highlight alleged wrongdoings, this continued existence of the contempt of scandalising the Judiciary may have the undesirable effect of deterring the highlighting of possible wrongdoings, including corruption, of judges or within the Judiciary.

(17) We are at an age that we ought to welcome the highlighting of wrongs amongst judges and the Judiciary, which would then allow for us to weed out the "bad apples" or put in place mechanisms to overcome the problems, where the end result will be a clean and independent Judiciary and a system of administration of justice, which we can all be proud of.

(18) It must be pointed out that the Malaysian Bar and its lawyers have historically said and done things that may reasonably also be considered to be instances of the contempt of scandalising of the Judiciary, which thankfully many a past Attorney General and/or others did not elect to initiate contempt proceedings.

(19) We recall the statements and actions about judges and/or the Judiciary following the 1988 Judicial Crisis, and later the issue of a Chief Judge holidaying with a lawyer, then the issue about a former Chief Justice immediately after retirement joining a law

firm, and many others that have been raised by the Bar and/or its lawyers, and even others.

(20) Most of these have resulted NOT in the commencement of contempt proceedings but discussions for reform, the formation of a Royal Commission of Inquiry, and other positive changes.

(21) However, we also recall the case of Manjeet Singh Dhillon, the then-Secretary of the Malaysian Bar, who was found guilty of the contempt of "scandalising the Judiciary", and the sentence imposed was a fine of RM5,000, in default 3 months' imprisonment. This was in relation to what was stated in an affidavit that was in the case the Malaysian Bar had commenced against Tun Dato' Abdul Hamid (the then-Chief Justice).

(22) We also recall the case of Murray Hiebert, a journalist of the *Far Eastern Economic Review* ("FEER"), who was found guilty of contempt of court, amongst others, the contempt of scandalising the Judiciary. He authored an article entitled "See You In Court" published in FEER in the edition of 23 Jan 1997. The article was about the wife of a prominent judge who sued the Kuala Lumpur International School when her 17-year-old son was dropped from the debating team. The article allegedly suggested the case moved through the legal system unusually quickly because the boy's father was a judge. This Canadian was found guilty and sentenced to 6 weeks in prison.

(23) We recall also the call by some quarters for contempt proceedings against a sitting Attorney General. In response to the Court of Appeal decision, "The department's stand is that rape cases require deterrent sentencing to reflect the abhorrence and revulsion of the public towards such crimes … This aberration of justice for those who most need the protection of law must be rectified," said the statement signed by the then-Attorney General, Tan Sri Abdul Gani Patail (*The Star*, 5 Sept 2012). The question raised there was, amongst others, whether the phrase "aberration of justice" amounted to contempt, ie the contempt of scandalising the Judiciary.

(24) The above Attorney General's statement was in response to the public uproar after former national youth squad bowler Noor Afizal Azizan and electrician Chuah Guan Jiu were bound over for five years and three years respectively on a RM25,000 good behaviour bond after being found guilty of statutory rape.

(25) Queries have also been made in the public arena as to whether statements in a speech made by immediate past Attorney General, Tommy Thomas, during the opening of the Legal Year 2019 could also be a contempt of scandalising the Judiciary. He said, amongst others, that "**The administration of justice has not been immune from the cancer of corruption** which spread in the conditions created by the former government…". "The scandals that involved judges, lawyers, prosecutors and litigants for at least three decades since the Judicial Crisis of 1988 are too well known, and no reminders are required for this morning's audience."

(26) These statements or expressions, which clearly lead to contempt of court proceedings, the contempt of scandalising the Judiciary, being initiated, have in most cases resulted in reforms and improvements in the Judiciary. The Judicial Appointments Commission today is one such reform.

(27) Freedom of expression and opinion is a human right that ought to be respected and protected, even if sometimes it may later be found that it was based on wrong or false facts.

2019 Contempt of Scandalising the Judiciary cases

(28) In 2019, Attorney General Tommy Thomas initiated 2 contempt proceedings, being the contempt of scandalising the Judiciary (also referred to sometimes as scandalising the court or scandalising judges) against 2 lawyers.

(a) Arunachalam Kasi — The Federal Court on Tuesday (April 23) sentenced lawyer Arunachalam Kasi, better known as Arun Kasi, to 30 days' jail and also a fine of RM40,000, in default 30 days' jail, after finding him guilty of contempt of court over his two statements criticising the proceedings and decision of a court case. (*Star*, 23 Apr 2019). The Federal Court had earlier granted an ex-parte application for leave by Attorney General Tommy Thomas to initiate contempt proceedings against a lawyer who had allegedly criticised the proceedings and decision of a court case. (*NST*, 27 Feb 2019).

(b) This was in connection to 2 articles he had written entitled "How a dissenting judgement sparked a major judicial crisis" and "Tommy Thomas must look into arbitration centre that sparked judicial crisis".

(c) Muhammad Shafee Abdullah — The High Court, on 1 Mar 2019, allowed Attorney General Tommy Thomas to start contempt proceedings, after the court was satisfied there was a *prima facie* case. Shafee had allegedly said, amongst others, that victory for Najib was possible "if the judge is straight, if witnesses are not coached, and if evidence is not fabricated".

(d) On 31 July 2019, High Court allowed lawyer Muhammad Shafee Abdullah's bid to set aside an order for contempt proceedings obtained by Attorney General Tommy Thomas against him for allegedly undermining the administration of justice. Judge Mohd Firuz Jaffril ruled that the application filed by the Attorney General was lacking in particulars on the contempt charges. Firuz added the alleged contempt complaint against Shafee about "scandalising the court" was nowhere to be found in the Attorney General 's application. (*FMT*, 31/7/2019)

UK abolished scandalising the Judiciary as form of contempt of court in 2012

(29) In the UK, when the Attorney General of Northern Ireland commence this similar "archaic" contempt proceedings, it resulted in finally the abolition of scandalising the Judiciary as a form of contempt of court.

(30) Extracts from the House of Lords Hansard states this — "The law of scandalising the Judiciary could have been left in the moribund state in which it has rested for many years. However, the Attorney-General for Northern Ireland unwisely chose earlier this year to seek to breathe life into it by bringing a prosecution, later dropped, against Peter Hain MP for some critical comments he had made in his autobiography concerning a Northern Ireland judge. That prosecution had two main consequences. First, it substantially increased the sales of Mr Hain's book and, secondly, it led to this amendment."

(31) On 10 Dec 2012, the House of Lords UK Parliament vide Amendment 113A, abolished the contempt of scandalising. The new section entitled "**Abolition of scandalising the judiciary as form of contempt of court' Section (1) states, '(1) Scandalising the judiciary (also referred to as scandalising the court or scandalising judges) is abolished as a form of contempt of court under the common law of England and Wales.**" This is now law.

(32) Some of the relevant comments, as extracted from the Hansard of the House of Lords (which is attached) are as follows:

- It is no longer necessary to maintain as part of our law of contempt of court a criminal offence of insulting judges by statements or publications out of court. The judiciary has no need for such protection' (Lord Pannick)
- '…. the wise judge—and he, if I may say so, was a very wise judge—normally ignores insults out of court.' (Lord Pannick)
- Judges, of course, are as entitled as anyone else to bring proceedings for libel, and some have done so.' (Lord Pannick)
- '…that the amendment is not designed to encourage criticism of the judiciary. Much of the criticism to which judges are subjected is ill informed and unsubstantiated. However, even where criticism is unjustified, it should not be a criminal offence. (Lord Pannick)
- "It may be necessary to clarify that the abolition of this offence does not affect liability for behaviour in court or conduct that may prejudice or impede particular proceedings" (Lord Lester)

- ...He will remember that the other antique and archaic speech crimes of sedition, seditious libel, defamatory libel, obscene libel and blasphemous libel were all abolished by the previous Government and Parliament for similar reasons connected with free speech. (Lord Lester)

- Although abolishing this crime in this country will make very little difference because the law is entirely obsolete, it will make a difference in the rest of the common law world. (Lord Lester)

- …The special sanction for judges remains unnecessary. My reasons remain the same. Judges have to be hardy enough to shrug off criticism, even if it is intemperate or abusive, which has happened; even if it is unfair and ill-informed, which has certainly happened; and even if it is downright deliberately misleading, the same applies…I speak from some knowledge. I have been scandalised on several occasions in the course of criminal trials at which I was the presiding judge without a jury. It was intemperate, certainly ill-informed and extremely offensive. I was deeply offended and hurt, but I certainly did not consider attempting to ask anyone to invoke the special procedure of scandalising the court. If anyone had suggested it, I would have firmly discouraged him at that time, which is a good many years ago now. (Lord Carswell)

- …that it is better not to introduce any such offence into the law but simply to leave it at abolishing the offence of scandalising…My reasons are three. First, **special protection of judges immediately invites criticism from those who are all too ready to give vent to it**. Secondly, if a judge had to give evidence in such proceedings, it would create a further and better opportunity for intrusive cross-examination and create a field day for publicity for critics of the judiciary. Thirdly, as I have said before, **judges have to put up with these things; they have to be robust, firm and, on occasions, hard-skinned enough**. (Lord Carswell)

(33) Interestingly, the 26th Sultan Azlan Shah Law Lecture was delivered by the same Lord David Pannick, QC entitled "Scandalising the judiciary: criticism of judges and the law of contempt" on 5 Sept 2012 at the Mandarin Oriental Hotel.

(34) **Our Malaysian judges are wise and strong, and they too like the judges of UK, should no longer fear criticisms of themselves or their decisions by anyone**.

(35) The argument **that we are a young democracy, after 60 plus years, should not be used as a reason not to abolish the scandalizing the judiciary contempt.** This lame excuse has been used in the past to keep bad laws and also not having democratic election to choose our community leaders, members of the local government (Local Council) and/or Senators.

(36) After all, we already acknowledged that young people of 18 years and above are mature enough to vote. The Bar, and the Government too, has now acknowledged

that a young lawyer is "mature enough" to stand for Bar Council Elections, and even to be appointed President of the Malaysian Bar. So too, are Malaysians now mature enough to exercise their democratic rights at all levels of government, and certainly we are "mature" enough to see the death of the SCANDALISING THE JUDICIARY AS FORM OF CONTEMPT in Malaysia.

(37) It must be remembered that Malaysian judges, if needed can always commence personal defamation suits against anyone, if they choose to do so. Hence there is no longer the need to maintain the contempt of scandalising the Judiciary in Malaysia.

(38) It is sad that we have not heard anything about the allegation or suspicion of corrupt practices allegedly raised by Arunachalam Kasi in his article, where he also lodged a report to the Malaysian Anti-Corruption Commission (MACC). After all, former Attorney General, also acknowledged.

Contempt of Court Act

(39) In the absence of and/or delay in enacting a Malaysia Contempt of Court Act, there arises uncertainty.

(40) The need for a Contempt of Court Act emerged in 1999 in the public sphere, and it is also a matter that lawyers and the Malaysian Bar have talked about.

(41) Parliament to date has not imposed any restriction by law relating to contempt of court under Article 10(2) of the Constitution. As such the common law provision under section 3 of the Civil Law Act 1956 is preserved.

Section 3(1) of the Civil Law Act 1956 reads:

> *Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the court shall:*
>
> *(a) in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7th day of April 1956;*
>
> *(b) in Sabah, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on the 1st day of December 1951;*
>
> *(c) in Sarawak, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on the 12th day of December 1949, subject however to subsection 3(ii):*
> *Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the*

States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

(42) Parliament has the power to enact a clear law relating to Contempt of Court in Malaysia, and it is time to do so now.

THEREFORE, it is hereby resolved:

(A) That scandalising the Judiciary as form of contempt of court be abolished in Malaysia, and

(B) That the Malaysian Bar call on the Malaysian Government to enact a Contempt of Court Act;

(C) That the Bar Council do the needful to help draft and ensure that a just Contempt of Court Act is enacted soonest;

(D) That the Bar Council and the Malaysian Bar do the needful to ensure that our fundamental freedom of expression, freedom opinion and press freedom is always respected and protected, including the right of everyone, as Human Rights Defenders to freely highlight alleged or suspected wrongdoings, rights violations and/or injustices without retaliation by the government and/or other alleged perpetrators.

(E) That the Malaysian Bar reiterates its call for the REPEAL of Section 114A Evidence Act 1950;

(F) That the Malaysian Bar calls for the RIGHT TO FAIR TRIAL, which includes also the right to 2 Appeals be protected; and

(G) That the Bar Council do the needful to give effect to this Resolution, even if it means launching needed campaigns and exercising our right of peaceful assembly for, amongst others, the repeal of section 114A and abolition of 'scandalizing of judiciary/courts' contempt.

ADDENDUM

Extract from the Hansard of the House of Lords when it decided to abolish scandalising of the Judiciary as a form of contempt of Court

(https://publications.parliament.uk/pa/ld201213/ldhansrd/text/121210-0001.htm#1212107000682

10 Dec 2012: Column 85

House of Lords
Monday, 10 December 2012.
2.30 pm…

Amendment 113A

Moved by Lord Pannick

113A: After Clause 23, insert the following new Clause—

"Abolition of scandalising the judiciary as form of contempt of court

(1) Scandalising the judiciary (also referred to as scandalising the court or scandalising judges) is abolished as a form of contempt of court under the common law of England and Wales.

(2) That abolition does not prevent proceedings for contempt of court being brought against a person for conduct that immediately before that abolition would have constituted both scandalising the judiciary and some other form of contempt of court."

Lord Pannick: My Lords, this amendment seeks to abolish the crime of scandalising the judiciary in England and Wales. I am delighted that the Minister has added his name to this amendment. The amendment is also signed by the noble Lord, Lord Lester of Herne Hill, who has played a leading role in arguing for reform of this area of the law. The amendment is also in the names of the noble and learned Lord, Lord Carswell—a former Lord Chief Justice of Northern Ireland—and the noble Lord, Lord Bew.

I can explain the reasons for this amendment very briefly. It is no longer necessary to maintain as part of our law of contempt of court a criminal offence of insulting judges by statements or publications out of court. The judiciary has no need for such protection. As the noble and learned Lord, Lord Carswell, explained in Committee, the wise judge—and he, if I may say so, was a very wise judge—normally ignores insults out of court. The noble and learned Lord, Lord Brown of Eaton-under-Heywood, made a similar point in a case he decided, as he may recollect. Judges, of

course, are as entitled as anyone else to bring proceedings for libel, and some have done so.

The law of scandalising the judiciary could have been left in the moribund state in which it has rested for many years. However, the Attorney-General for Northern Ireland unwisely chose earlier this year to seek to breathe life into it by bringing a prosecution, later dropped, against Peter Hain MP for some critical comments he had made in his autobiography concerning a Northern Ireland judge. That prosecution had two main consequences. First, it substantially increased the sales of Mr Hain's book and, secondly, it led to this amendment.

When we debated this subject in Committee on 2 July, the Minister gave a cautious welcome to the amendment but said, very properly, that the Government wished to consult on the matter. As a result of the debate in this House, the Law Commission expedited the publication of a consultation paper on 10 August in which it proposed that the offence of scandalising the judiciary should indeed be abolished.

I emphasise that the amendment will not affect other aspects of the law of contempt of court and in particular the powers of the judge to deal with any disruptions during court proceedings. I also emphasise that the amendment is not designed to encourage criticism of the judiciary. Much of the criticism to

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which judges are subjected is ill informed and unsubstantiated. However, even where criticism is unjustified, it should not be a criminal offence.

The amendment will not affect the law in Northern Ireland or Scotland, in the latter of which the offence is known as "murmuring judges". I understand that in Northern Ireland more consultation is required. It is ironic that the impetus for this amendment came from the Peter Hain case in Northern Ireland, and now the anachronistic law that led to that case is to be abolished in England and Wales but not in Northern Ireland. I hope that the Minister can give us an indication of when consultations with Northern Ireland will be completed and a decision reached.

Meanwhile, I am delighted by the historic decision which I hope that this House will take tonight to approve an amendment abolishing the offence of scandalising the judiciary in England and Wales. As Justice Albie Sachs said on this subject in a judgment in the Constitutional Court of South Africa in 2001, respect for the courts will be all the stronger,

"to the degree that it is earned, rather than to the extent that it is commanded".

I beg to move.

Lord Lester of Herne Hill: My Lords—

The Minister of State, Ministry of Justice (Lord McNally): My Lords, I wonder if my noble friend will give way. I want to intervene now because what I am going to say will help the shape of the debate. I realise that my noble friend and a number of noble and learned Lords may wish to contribute. I in no way want to cut short or pre-empt that debate, but I hope that my comments will establish the context for them to comment on what the Government intend to do.

As the noble Lord, Lord Pannick, told us, we considered a similar amendment to this in Committee in July. I said that the Government were sympathetic to the concerns raised about the offence of scandalising the judiciary but we wished to consider the issue further and to consult others. In particular, before moving to reform or abolish this offence, we wished to consider whether such a step could result in a gap in the law or have an unwanted side-effect.

As the noble Lord, Lord Pannick, told us, in this we had the benefit of the work of the Law Commission, which was and is currently reviewing the law on contempt of court. As the noble Lord said, it kindly brought forward the element of its review considering scandalising the court and published a paper for public consultation in August. The commission considered three options in its consultation paper—to retain, abolish or replace the offence—and it has concluded that the offence should be abolished without replacement. Its analysis was in-depth, examining the human rights aspects and considering the arguments for and against the various options.

The consultation closed in October, and the commission published a summary of responses last month and a summary of its conclusions yesterday. I was pleased to see that several noble Lords responded with their views, and that members of the judiciary and other legal professions were also well represented. Of 46 responses, some from organisations, 32 were in

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favour of abolition. The remainder expressed a variety of views, most favouring a replacement offence, but I note that only two favoured retaining the offence in England and Wales, at least for now.

We have also noted other views, such as those expressed by noble Lords in Committee, and have concluded that it is right that this offence should be abolished. We therefore support the amendment. However, we also noted the Law Commission's observation in its paper that:

"It may be necessary to clarify that the abolition of this offence does not affect liability for behaviour in court or conduct that may prejudice or impede particular proceedings".

We support that view that abuse of a judge in the face of the court, or behaviour that otherwise interferes with particular proceedings, should remain a contempt. The new

clause includes a provision that will ensure such behaviour will remain subject to proceedings for contempt of court.

In contrast to the amendment we debated in Committee, which extended to Northern Ireland, this amendment applies to England and Wales only, as the noble Lord, Lord Pannick, explained. In July, I said that we would be consulting the devolved Administrations; noble Lords must remember the criminal law is a devolved matter in both Northern Ireland and Scotland. Scandalising the judiciary is also a common law offence in Northern Ireland. As I have said, we consulted with the Minister of Justice, David Ford, who has confirmed that he does not wish the Westminster Parliament to legislate on behalf of the Northern Ireland Assembly on this offence. Similarly, the Scottish Government have also confirmed that they do not wish us to legislate on their similar common law offence of murmuring judges. Given that this is a devolved matter in both jurisdictions and under the terms of the Sewel Convention, we wish to respect the wishes of the Scottish Government and Northern Ireland Assembly in this matter.

I am grateful to my noble friend Lord Lester and the noble Lord, Lord Pannick, for bringing this matter before the House. The Government are happy to support this amendment, and through it the abolition in England and Wales of the offence of scandalising the judiciary. I hope that my intervention at the start of the debate does not prevent other noble Lords and noble and learned Lords from making observations on where we are and where we are going.

4 pm

Lord Lester of Herne Hill: My Lords, I declare a former professional interest in that I acted for the Northern Ireland Human Rights Commission in the aborted contempt proceedings in relation to Peter Hain and his publisher. I am extremely grateful to the Attorney General for Northern Ireland for his entirely misguided decision to move for committal because, but for that, I would not be standing here in support of the amendment. We owe everything to the Attorney General because it was that which caused me to contact the Law Commission and the Government, and to discuss the matter with my friend, the noble Lord, Lord Pannick, in the first place.

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It is important that the Government have decided to do what we have just heard from the Minister, and that is most welcome. However, I pay tribute to the previous Government, and I see the noble Lord, Lord Bach, in his place when I say this. He will remember that the other antique and archaic speech crimes of sedition, seditious libel, defamatory libel, obscene libel and blasphemous libel were all abolished by the previous Government and Parliament for similar reasons connected with free speech.

So far as blasphemy was concerned, for the reasons given by the Minister, it was decided that, although we could abolish that offence in Britain, we could not do so in Northern

Ireland. We left it to Northern Ireland to do so itself, and we thought that it would be easy to do there because Northern Ireland already had a law on incitement to religious hatred that was rather stricter than what we have in this part of the kingdom. However, nothing has happened on that issue in Northern Ireland because there is institutional paralysis about doing anything of the kind. I know that this matter has concerned the Northern Ireland Human Rights Commission, and exactly the same problem arises now. Even though the amendment springs from a problem that arose in Northern Ireland, I am doubtful as to whether the Northern Ireland Government will agree to bring their common law into line with what we are doing in England and Wales. However, given that two other supporters of the amendment know far more about Northern Ireland than I would ever know, I shall not say more about that matter.

I should like to make one other point. Although abolishing this crime in this country will make very little difference because the law is entirely obsolete, it will make a difference in the rest of the common law world. All the textbooks, including that of the noble Lord, Lord Borrie, say the same thing, which is that, although this is an outmoded and archaic offence, there remain many parts of the common law world where it is enforced. The most notorious example occurred in Singapore last year, where Mr Alan Shadrake, who wrote a book criticising the Singapore judiciary's attitude towards the death penalty, was committed for contempt, sentenced to prison, fined and told to pay legal costs. This gentleman, who is about my age and a distinguished senior writer, was condemned in that way, with the Singapore Court of Appeal applying its view on our case law and this offence. By abolishing the offence today we do not really change much in this part of the world because, apart from what happened in Northern Ireland, it is simply never invoked anymore. However, it will send an important message across the common law world. That is another reason why I am so delighted that the Government have decided to take this course.

Lord Carswell: My Lords, I support this amendment. I spoke briefly in Committee and I intend to be brief again today, particularly in view of the way in which the House has so far received the amendment and what the Minister has said.

Since that debate in Committee, the Law Commission has published this admirable consultation paper, which contains a full and helpful discussion of the issues, the principles and the possible solutions. My view, which

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was very direct and brief in Committee, remains unchanged. The special sanction for judges remains unnecessary. My reasons remain the same. Judges have to be hardy enough to shrug off criticism, even if it is intemperate or abusive, which has happened; even if it is unfair and ill-informed, which has certainly happened; and even if it is downright deliberately misleading, the same applies.

I speak from some knowledge. I have been scandalised on several occasions in the course of criminal trials at which I was the presiding judge without a jury. It was intemperate,

certainly ill-informed and extremely offensive. I was deeply offended and hurt, but I certainly did not consider attempting to ask anyone to invoke the special procedure of scandalising the court. If anyone had suggested it, I would have firmly discouraged him at that time, which is a good many years ago now.

After I read the Law Commission consultation paper, I considered quite seriously whether there was room for the possibility of a new and more specific offence, penalising possibly deliberate and malicious targeting of a judge by making untrue and scandalous allegations into something of a campaign. I am persuaded, however, that it is better not to introduce any such offence into the law but simply to leave it at abolishing the offence of scandalising.

My reasons are three. First, special protection of judges immediately invites criticism from those who are all too ready to give vent to it. Secondly, if a judge had to give evidence in such proceedings, it would create a further and better opportunity for intrusive cross-examination and create a field day for publicity for critics of the judiciary. Thirdly, as I have said before, judges have to put up with these things; they have to be robust, firm and, on occasions, hard-skinned enough.

The Law Commission, in my view, was right in its provisional conclusions and I hope that when the report has been considered, the responses will confirm that. I would certainly support the amendment that the offence should simply be abolished.

Finally, as noble Lords have said, this of course does not apply in Northern Ireland. The authorities there will form their own view and take their own course. I cannot and do not in any way speak for them, nor have they consulted me about such provisions. I have to say, and I hope that they will take this into account, that I cannot see any reason why judges in Northern Ireland should have any different protection from judges in England and Wales against scandalising. I think the same considerations apply, and having been a judge there for 20 years, I would certainly not wish to see any differentiation.

Lord Beecham: My Lords, I echo the remarks made by the Minister and by other noble Lords. We are entirely supportive of the amendment, and glad that the Government have agreed to take matters forward in the way that the noble Lord indicated.

Lord McNally: My Lords, I will clarify a point raised by the noble Lord, Lord Pannick. The Justice Committee in Northern Ireland recently agreed to proceed with an amendment to its Criminal Justice Bill that would see this offence repealed. I am sure that

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the words uttered by the noble and learned Lord, Lord Carswell, about his own experience will carry great weight. However, this is a devolved matter for Northern Ireland.

Lord Pannick: I am grateful to all noble Lords who spoke.

Amendment 113A agreed.