

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(CIVIL DIVISION)
SUIT NO. S2 - 23 - 41 - 2004**

BETWEEN

1. SARAWAK SHELL BHD (71978-W)
2. SHELL MALAYSIA TRADING SENDIRIAN BERHAD (6078-M)
3. SHELL REFINING COMPANY (FEDERATION OF MALAYA) BHD (3926-U)
4. SHELL TIMUR SDN BHD (113304-H)
5. SHELL EXPLORATION AND PRODUCTION MALAYSIA B.V. (993963-V)
6. SHELL OIL AND GAS (MALAYSIA) LLC (993830-X)
7. SHELL SABAH SELATAN SDN BHD (228504-T)
8. SABAH SHELL PETROLEUM COMPANY LTD (993229-W) ... PLAINTIFFS

AND

**HUONG YIU
TUONG**

... DEFENDANT

**NOTICE TO SHOW CAUSE UNDER ORDER 52 RULE 1B OF THE
RULES OF THE HIGH COURT, 1980**

To: **Huong Yiu Tuong**
Lot 845, Pujut4C
Dawai2
98100, Miri
Sarawak

1. On 24.6.04 the High Court made an Order against you, the Defendant, in this action, on inter alia the following terms:

"The Defendant, by himself, his servants or agents or otherwise howsoever, be restrained from publishing or causing to be published on the internet website "Shell Whistleblower No. 2" any statements, articles, correspondence and any other publications whatsoever, concerning the Plaintiffs' and/or "Shell Management" and/or the Plaintiffs' Management Officers and/or the Plaintiffs' servants or agents alleging that they or each or them are liars, cheats, dishonest, corrupted and practised deception and conspiracy, criminal conduct and were generally evil, and/or statements to similar effect, pending the trial of this action or further order.

The Defendant, by himself, his servants or agents or otherwise howsoever, be restrained from publishing or causing to be published any article, material correspondence, circulars in any form whatsoever containing allegations that the Plaintiffs and/or "Shell Malaysia" and/or the Plaintiffs' servants or agents are liars, cheats, dishonest, corrupted and practised deception and conspiracy, criminal conduct and were generally evil, and/or statements to similar effect, pending the trial of this action or further order".

2. You disobeyed the Order by publishing or causing to be published, the following:

The 29.1.06 publication of your Defence on the Shellnews.net website

3. You forwarded a copy of your Defence to Alfred Donovan with the knowledge that he would publish it on his website at ShellNews.net, which he did. Alfred Donovan was, for this purpose, your servant or agent.

4. Even if he was not your servant or agent, you knew, or ought to have known, from an objective assessment of Donovan's previous conduct, that if you handed the Defence to him, he would publish it. The publication of your Defence, which includes allegations of wrongdoing and fraud on the part of the Plaintiffs, is in further breach of the Order.

The 2.2.06 publication of your letter to Jyoti Munsiff on the Shellnews.net website

5. You wrote this letter to Jyoti Munsiff:

"Congratulations on your appointment as Chief Ethics and Compliance Officer for Royal Dutch Shell Plc.

As you know I am being sued by eight companies of the Royal Dutch Shell Group for alleged defamation. The relevant Shell companies have obtained a restraining order which prevents me for speaking the TRUTH in line with the United Nations Universal Declaration on Human Rights. My rights to freedom of expression have in fact been restrained for over 18 months. I had thought that Shell supported this UN Declaration, but it seems that this assumption must be incorrect. I would welcome your clarification on this point as I am sure that my analysis must be at fault?

I am also perplexed by the fact that Shell apparently allows Mr. Alfred Donovan to publish negative commentary about Shell on his website unhindered while I have been sued for articles posted by him on his website under my name? Mr. Donovan has also published an extract from a legal submission purportedly made by Shell International to the World Intellectual Property Organisation in which Shell stated that it supports the right of Mr. Alfred Donovan to criticise Shell on his website. I have also read the November 2005 email to Alfred Donovan from Shell International General Counsel Mr. Richard Wiseman in which Mr Wiseman confirms how tolerant Shell is of Mr. Donovan's postings on his website. I trust that you can appreciate why I am so puzzled at the apparent disparity in treatment. I am sure there must be a logical explanation?

It therefore seems appropriate to ask you in your new capacity whether the relevant postings by Mr. Donovan i.e. the claimed extract from Shell's submission to the WIPO and the November 2005 email from Mr. Wiseman are genuine? Surely they must be false??? Why would Shell encourage Mr. Donovan to indulge in his rights to freedom of expression while simultaneously adopting a totally different approach towards me? Something really must be seriously amiss. The answers to my questions are important if - as I assume must be the case - you genuinely want to encourage whistleblowers to speak out if they become aware of misdeeds which are in contravention of the Shell Statement of General Business Principles (SGBP).

It is surely essential in this regard that an even-handed approach is adopted in such matters so that would be whistleblowers and parties with genuine grievances are not deterred by the prospect that they could be ostracized, victimized, sacked and/or sued if they do come forward. In regards to this paragraph I am speaking of course in general terms, not about my case, as that would be inappropriate under the current ongoing litigation.

This letter also seeks confirmation from you for me to make significant inputs for improving ethics and compliance at Shell. I sincerely believe that for obvious reasons I have a unique perspective on the question of Shell employees engaging professionally in whistle blowing when faced with ethical, moral and/or legal dilemmas.

I also believe that it is fair to make readers of this communication aware that apart from the High Court Restraining Order, I am also constrained in my comments by a threat of imprisonment.

I am sure that the eight Royal Dutch Shell companies who collectively decided to sue me believe that their action is an appropriate and proportionate response to the alleged defamatory comments by one former Malaysian employee of 29 years.

*Thank you
Sincerely,
Dr. John Huong*

Note: This letter will also be copied to Mr. Alfred Donovan because his name was also mentioned."

[Our emphasis]

6. You knew and intended this letter for general circulation. That is why you copied it to Alfred Donovan. You knew that he would publish it. This is the only reason why you referred to your desire to 'make readers of this communication aware' etc. Further, the assertion that you have been prevented from 'speaking the TRUTH' is a clear publication in breach of the Order. This is an allegation that the Plaintiffs and Shell have committed wrongs and sought to mislead the court on them.

7. The allegations of misconduct against the Plaintiffs and Shell are made manifest when read with your Defence - also published on the ShellNews.net website - which makes serious defamatory allegations against companies in the Shell Group. The allegation is that the substance of your Defence is this 'TRUTH'. This is clearly a breach of the Order.

The 7.2.06 publication on the Shellnews.net website

8. You sent a detailed write-up of scandalous allegations of misconduct and wrongdoing by the Plaintiffs and Shell, which you called an 'affidavit*', to Alfred Donovan.

9. Donovan included this 'affidavit' in a comprehensive letter from him to Human Rights Watch and copied to his Shellnews.net website. The title of the piece is "The Persecution of Dr John Huong by a Multinational Giant' It makes numerous scandalous allegations against the Plaintiffs and Shell. This article states *inter alia* thus:

"SECOND LINK: A draft Affidavit which my son and I helped Dr Huong to prepare for possible use in his defence at some point. Neither he nor his lawyers have approved the draft but it does accurately set out the background facts, certainly in relation to the matters in which we have been personally involved. I appreciate that you must be busy man but I would be grateful if you would glance through the draft. I promise you that it reveals a truly extraordinary situation. If and when his lawyers review the draft I am sure that it will be shortened considerably. I believe the full version has merit in terms of revealing the overall background situation.

[http://shell2004.com/ShellNewsnet Original news stories/royal-dutch-shell-group-draft-affidavit-of-dr-john-huong-7-february-2006.htm](http://shell2004.com/ShellNewsnet%20Original%20news%20stories/royal-dutch-shell-group-draft-affidavit-of-dr-john-huong-7-february-2006.htm)

You will see from the draft Affidavit that Dr Huong is not the only Malaysian former employee of Shell who is being treated with utter contempt by Shell. They are other cases against Shell. A Judge has already decided a case brought by a group of 399 former Shell employees known as "Team A". He ruled that Shell made unlawful deductions in breach of the Employees Provident Fund Act 1951 and 1991. The case has dragged on for years and Shell is currently appealing the decision. In the meantime, members of the group are elderly, sick, and dying."

[Our emphasis]

10. A link from this article leads to another portion of Donovan's Shellnews.net website which contains your 'affidavit'.

11. You were not given leave from Court to file such an affidavit It has therefore obviously been prepared as an excuse to makes further scandalous allegations against the Plaintiffs in particular and Shell generally in the hope to secure protection under the cover of court proceedings. As Donovan was allowed to retain this draft 'affidavit', he clearly did so as your servant or agent. You 'caused' its publication in breach of the Order.

12. The affidavit is a massive 72-page scandalous inflammatory diatribe against Shell at large. Your 'affidavit' includes the following assertions:

"I believe that Shell management treated me this way in the expectation that I would either resign or adopt a servile attitude, including turning a blind eye to management violations of the Shell Statement of General Business Principles. I believe that this was the fundamental reason why Shell management was hostile towards me. I was even told by two well engineers that their team leader had instructed that I was "not to walk along his corridor". Such unprofessional childish nonsense was totally out of order because my operational geological work required me to discuss matters face-to-face with his engineers. It was also humiliating in the extreme that the Team Leader conveyed his instructions via individuals I had to work with. That was insulting to me and highly embarrassing for staff involved.

Such shabby and inhumane treatment was inflicted on me after I had consistently promoted and protected Shell's best interests during my work. My adherence to the ethical codes enshrined in the Statement of General Business Principles; the Health, Safety and Environmental policy guidelines: and the Human Resource Policy and Procedures Manual were not appreciated. Instead I was abused and crucified by Shell's management and its officials.

I believe such actions were in violation of all ethical norms and constituted serious breaches of my Human Rights under the UN Universal Declaration of Human Rights - rights which Shell purports to support.

The current defamation law suit against me by EIGHT Royal Dutch Shell companies also constitutes a breach of my rights to freedom of expression and freedom of conscience accorded to me and fellow human beings under the aforementioned United Nations Declaration.

The fact that it was deemed necessary for EIGHT Shell companies to collectively sue one unemployed Malaysian seems to be a classic case of overkill. It would have already been an uneven struggle even if only one such company had directed its wrath (and retribution) against me."

[Our emphasis]

13. There are also specific allegations of wrongdoing and misconduct against the Plaintiffs:

'There are also lawsuits in progress in Malaysia against Shell which have been brought by its former employees. One High Court case involves a group of 399 former Shell employees known as "Team A". Their action relates to deductions made by Shell to their Employee Providence Fund. A judge has already ruled that the deductions were "unlawful". Shell has appealed that decision apparently in an attempt to exploit a legal

loophole relating to time limits. This appears to be a ploy by Shell to evade its moral responsibilities to its former employees. News reports related to this distressing case are published on the Donovan website.

Current employees and employees who had resigned after 1997 were persuaded by the company to opt for a Defined Contributory Scheme (DCS). The relevant employees wrongly thought that Shell management was acting in their best interests. It turned out however to be a detrimental move for the relevant employees and a financially beneficial manoeuvre for Shell Eventually the company paid an ex-gratia payment plus adjustments for the DCS holders in early 2004 provided they were willing to sign off a letter of undertaking not to pursue legal action against the company in future.

In a related question and answer leaflet, published by Shell, employees such as me, who have been dismissed, would not be entitled to receive any such ex-gratia payments, nor the adjustment paid to other employees. Therefore, the representation by Sarawak Shell Berhad to me of the alleged benefits in the Defined Contributory Scheme and my subsequent dismissal under the most extraordinary circumstances has caused me to be prejudiced and to suffer financial loss and financial insecurity.

I too have been severely penalised by what I consider to be completely improper decisions made in respect of Shell employee pension funds. The Malaysian people are by nature (in my humble assessment) fairly docile, dedicated and basically decent human beings. The fact that several hundred hard-working and loyal Shell employees felt compelled to institute legal proceedings against their former employer speaks absolute volumes. I am truly appalled by the Royal Dutch Shell Groups' unscrupulous heartless treatment of the sick, elderly and dying, as reported by the Malaysian news media. I believe that such conduct is indeed evil and in line with Shell's management actions in other Countries e.g. Nigeria, Africa, South America, Nicaragua, Caribbean, USA, Canada, Russia, Vietnam, Philippines, Papua New Guinea, County Mayo in Ireland, etc."

[Our emphasis]

14. All the highlighted portions allege misconduct against the Plaintiffs and Shell generally and are in clear and blatant breach of the Order.

The 8.2.06 Shellnews.net publication

15. Alfred Donovan forwarded your 'affidavit' to Human Rights Watch. You then wrote to Human Rights Watch to confirm the truth of the contents of the 'affidavit' that Donovan had forwarded to them. A link to this article is found at the Donovan's ShellNetnews website under the heading 'Dr Huong confirms accuracy of dynamite indictment of Shell'. Your letter was copied to Alfred Donovan and is published with a commentary by him:

From:
Dr. John Huong
Miri 98100
Sarawak, East Malaysia

To:
Mr. James Ross
Senior Legal Adviser
Human Rights Watch HQ
350 Fifth Avenue, 34th floor
New York, NY 10118-3299 USA
Tel: 1-(212) 290-4700, Fax: 1-(212) 73&1300
Date: 8th February 2006.

Dear Mr. Ross,

This email is in connection with the communication which I believe you have received earlier today from Mr. Alfred Donovan from Shellnews.net.

I want to put on record the facts that I have not authorized publication of the Draft Affidavit and/or the Communication sent to Human Rights Watch.

The publication is entirely a matter for the Donovans.

I had not sanctioned the Draft Affidavit published on the Donovan website.

Having said that, I do not take issue with anything stated in the Draft Affidavit, bearing in mind that I am under threat of imprisonment and it would not be prudent for me to comment further on this matter other than to state in general terms that I support freedom of expression.

*Sincerely,
Dr. John Huong
Copied:
Mr. Alfred Donovan*

END OF DR HUONG LETTER TO HUMAN RIGHTS WATCH COMMENT ADDED BY ALFRED DONOVAN

I note that Dr Huong has not taken issue with the accuracy of the content of his draft Affidavit. This is unsurprising since he was the author (but not the publisher).

[Our emphasis]

16. In this letter you admit that the 'affidavit' is yours and contend that it states the truth.

17. You could have written on a 'private and confidential' basis to James Ross. You did not choose this course. Instead, you intentionally copied your letter to Donovan with the certain and clear knowledge - given recent publications - that it would be published. You thereby publicly confirmed the allegations of wrongful conduct, fraud etc alleged in your 'affidavit'. This is in breach of the Order.

18. Our clients intend to issue contempt proceedings against you for the above breaches of the Order.

19. We therefore now provide you with this formal notice for you to show cause within 10 days of its service on you, why you should not be committed to prison or fined for the above contempt.

Dated this 9^{*} day of March, 2006.

**MESSRS T H LIEW & PARTNERS
SOLICITORS FOR THE PLAINTIFFS**

This Notice to Show Cause is issued by Messrs T H Liew & Partners, solicitors for the Plaintiffs abovenamed and whose address for service is at 4-02, 4^{*} Floor, Straits Trading Building, 2, Lebuhr Pasar Besar, 50050 Kuala Lumpur.

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