

❖ CAMPAIGNS

Malaysia

Karpal Singh

- ABOUT KARPAL SINGH
- LRWC OPINION
- LRWC ACTIONS
- INVESTIGATION
- RECENT DEVELOPMENTS
- RECOMMENDED READING

Letter Writing Campaigns

ABOUT KARPAL SINGH

On January 14, 2000, Mr. Singh was arrested on a charge under Malaysia's Sedition Act.

The sedition charge against Mr. Singh was unprecedented in that it was based on words alleged to have been spoken by Mr. Singh in court while conducting the defence of his client, Anwar Ibrahim, former Minister of Finance and Deputy Prime Minister of Malaysia on charges of sodomy. If convicted, Mr. Singh could have received a jail sentence of up to three years. During the trial Mr. Ibrahim was noted to be losing weight and hair. Defence counsel obtained a urine sample from Mr. Ibrahim and sent it, under a pseudonym, to the Gribbles Pathological Laboratory in Australia. The pathologist's report indicated a level of arsenic in Mr. Anwar's creatine was 230 ug/g. A normal reading would have been below 17 ug/g.

The sedition charge is based on the allegation that Karpal Singh, on September 10th 1999, while in court representing Ibrahim, expressed the concern that somebody might be trying to murder his client. At the time, trial judge Justice Arifin Jaka, Karpal Singh and lead prosecutor Attorney General Tan Sri Mohtar Abdullah were discussing a report that seemed to indicate that Ibrahim, who had been in custody for over a year, was suffering from arsenic poisoning. Karpal Singh was calling for an inquiry into his client's in-custody treatment; the Attorney General, as lead prosecutor, was disavowing the need for an inquiry and suggesting Anwar Ibrahim had perhaps been poisoned, not by people in high places, but by supporters.

In court, on September 10 1999, Mr. Singh produced the report to the trial judge, Arifin Jaka J., and commented:

“It could well be that someone out there wants to get rid of him...even to the extent of murder...I suspect people in high places are responsible for this situation.”

Those words were said by Mr. Singh in the course of calling for the hospitalization of Mr. Ibrahim and an inquiry as to how he came to be poisoned while in custody.

One year earlier Mr. Singh’s client had been severely beaten while in custody by a ‘person in a very high place’, the Malaysian Chief of Police, Abdul Rahim Noor. A Royal Commission of Inquiry concluded that the Malaysian Chief of Police Abdul Rahim Noor had delivered potentially lethal blows to Anwar while he was in custody, bound and blindfolded.

As a result of his open court remarks, Karpal Singh was been charged as follows:

That you on 10th September 1999 at about 9:10 a.m. in the High Court Kuala Lumpur in the Federal Territory of Kuala Lumpur in the trial of Public Prosecutor v. Dato’ Seri Anwar bin Ibrahim (WPPJ45-51-95) and Public Prosecutor v. Sukma Darmawan Sasmitaat Madja (WWPJ45-26-99) during the course of your submissions over the issue in relation to allegations of arsenic poisoning of Dato’ Seri Anwar bin Ibrahim did utter the following seditious words, namely,

“It could well be that someone out there wants to get rid of him...even to the extent of murder. I suspect people in high places are responsible for the situation.”

and you have thereby committed an offence under section 4(1)(b) of the Sedition Act, 1948 (act 15) punishable under section 4(1) of the same Act.”

This was the only known charge of sedition ever in the Commonwealth brought against a lawyer for remarks made in open court in the defence of a client.

Background

Karpal Singh has been a prominent advocate of human rights in Malaysia for over 30 years. He is the Deputy Chairman of the opposition Democratic Action Party and was a Member of Parliament for the State of Penang from 1978 to November 1999. Prior to that, Mr. Singh was a State Assemblyman for the State of Kedah from 1974 to 1978.

In 1987 Amnesty International declared Mr. Singh a prisoner of conscience when, during the October 1987 ‘Operation Lalang,’ he was arrested under the Internal Security Act and imprisoned until January 1989 without charge or trial. Mr. Singh was released by order of the court in March 1988 in response to a habeas corpus application, but was re-arrested by the police hours later.

Karpal Singh is a leading opponent of the death penalty in Malaysia.

The Malaysian Bar Council convened an emergency meeting to discuss the prosecution of Mr. Singh and its loss of confidence in the judiciary. In November 1999, the Malaysian Government, in Civil Case No. S2-23-93-1999, sought an injunction to prevent the Malaysian Bar Council from meeting to have that discussion on the grounds that anyone participating in the discussion would be committing sedition. On November 19, 1999, Justice Dr. Kamalanthan Ratnam granted the injunction sought by the Attorney General.

Amnesty International has declared Anwar Ibrahim to be a prisoner of conscience whose prosecution was politically motivated.

Campaign Results

On January 14 2002, after much argument about the status of both Malaysian and foreign observers, Malaysia's new Attorney General Datuk Gani Patail (previously the lead prosecutor in PP v. Anwar Ibrahim) announced that the sedition charge was being withdrawn.

LRWC OPINION

LRWC viewed the charge against Karpal Singh as:

- a grave violation of the privilege that protects lawyers, judges and litigants from criminal and civil liability for words spoken during court proceedings,
- an alarming precedent that not only undermined Mr. Singh's right and duty as a lawyer to fully represent the best interests of his client, but also infringed his right to freedom of expression and
- a violation of international human rights standards.

The Law Society of British Columbia and the Federation of Law Societies of Canada, as regulators were concerned:

- about the global independence of lawyers and wanted to communicate that concern to the Bar Council of Malaysia, it must be of concern to us
- that lawyers in Malaysia, a substantial trading partner of Canada's, did not appear to enjoy even the basic constitutional and advocacy rights Canadians lawyers take for granted.

LRWC ACTIONS

Preparation of a summary of the facts and legal proceedings relevant to threats to Karpal Singh's right and duty to fully represent his client.

Letters to the Malaysian Human Rights Commission and the Attorney General of Malaysia, amongst others expressing concern.

Correspondence with other human rights organizations promoting and protecting advocacy rights including the Bar Human Rights Council of England and Wales, the International Commission of Jurists, the International Bar Association and Amnesty International.

Preparation and distribution of a **Press Release**.

LRWC produced an article, “**Lawyers and the Rule of Law of Trial: Sedition in Malaysia**” examining the validity of the sedition charge against Mr. Singh within the contexts of: Malaysian national law, international laws and standards, common law principles including rule of law principles and lawyers’ privilege and contemporary jurisprudence.

Richard Gibbs Q. C. attended the Karpal Singh sedition trial in Kuala Lumpur, Malaysia on January 14, 2002.

The Executive Committee of the Law Society of British Columbia (LSBS) asked Richard C. Gibbs, Q. C., then Vice-President of the LSBC to attend Karpal Singh’s sedition trial as a joint representative of LRWC, LSBC and the Federation of Law Societies of Canada and to report on the independence of the Bar in Malaysia, the independence of the Judiciary in Malaysia, and the fairness of the trial.

INVESTIGATION

Richard Gibbs Q. C., then Vice-President of the Law Society of British Columbia, attended the Karpal Singh sedition trial in Kuala Lumpur, Malaysia on January 14, 2002. Mr. Singh’s trial had previously been adjourned 3 times: from July 2000 to May 2001 and finally from October 2001 to January 14 2002. David Gibbons Q. C., Bencher of the Law Society of British Columbia and defense counsel Richard Fowler were scheduled to attend to hold a watching brief of Mr. Singh’s trial both in July 2000 and May 2001. When the trial commitments of Gibbons and Fowler precluded their attendance at October 2001 scheduled trial date, Mr. Gibbs offered to attend.

On October 16, 2001 the trial was again adjourned when lawyers representing the Bar Human Rights Committee of England and Wales, (BHRC), the International Commission of Jurists (ICJ) and the Western Australia Bar were already in Kuala Lumpur to monitor the trial. Mr. Gibbs not yet left B.C. when the adjournment was granted. Counsel attending for the BHRC reported that after Mr. Singh had made an application to have the foreign lawyer-observers on record, counsel retired to the judge’s chambers. Upon their return to the courtroom it was announced that the trial had been adjourned by agreement to January 14, 2002.

Mr. Gibbs attended Mr. Singh's January 14 2002 trial as a representative of LRWC, the Law Society of BC and the Federation of Law Societies of Canada. The Federation of Law Societies of Canada and the Law Society of B.C. each adopted resolutions that Mr. Gibbs attend Karpal Singh's trial and report on the independence of the Bar and the Judiciary in Malaysia and the fairness of the sedition trial of Karpal Singh.

On January 14 2002, after much argument about the status of both Malaysian and foreign observers, Malaysia's new Attorney General Datuk Gani Patail (previously the lead prosecutor in PP v. Anwar Ibrahim) announced that the sedition charge was being withdrawn! The Attorney General's statement began by acknowledging that the office of the Public Prosecutor had "received numerous representations from domestic and international legal bodies...seeking a reconsideration of the pending charge..." The Attorney General concluded by saying that after reconsidering the representations, the public interest and 'circumstances' he was withdrawing the charge against Mr. Singh.

LRWC believes that 'representations from international legal bodies' refers to two legal analyses: Michael Birnbaum QC & James Laddie, *Re Karpal Sing: An Opinion*, (2000) written for BHRC and G. Davidson, T. Friesen & M. Jackson, *Lawyers and the Rule of Law on Trial: Sediton in Malaysia* (2000) for LRWC.

The continuing willingness of LRWC and other international lawyers groups to send lawyers to monitor and report on the trial may well have been one of the 'circumstances' that resulted in the sedition charge being withdrawn.

While in Kuala Lumpur, Mr. Gibbs met with members of the Malaysian bar and the Bar Council and with the Canadian High Commissioner to Malaysia.

RECENT DEVELOPMENTS

The Sediton Act is still in force in Malaysia although no other charges have been laid against lawyers since the charge against Mr. Singh was withdrawn in January 2002.

RECOMMENDED READING

Lawyers and the Rule of Law on Trial: Sediton in Malaysia, G. Davidson, T. Friesen, M. Jackson, Q. C., (LRWC, Vancouver, May 2000).

Re Karpal Singh: An Opinion, Michael Birnbaum, Q. C. and James Laddie. (2000).
www.barhumanrights.org.uk

Justice in Jeopardy: Malaysia in 2000, International Commission of Jurists, Commonwealth Lawyers' Association, and Union Internationale des Avocats. (2000).
www.ibanet.org

❖ CAMPAIGNS

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LETTER WRITING CAMPAIGNS

ZAINUR ZAKARIA

Lawyer Zainur Zakaria was summarily convicted of 'contempt in the face of the court' on November 1998 and sentenced to 3 months in jail. As defense counsel for former Deputy Prime Minister, Anwar Ibrahim, he was bringing an application to have two of the prosecutors removed from the case on the grounds that they had been involved in attempting to fabricate evidence against Anwar Ibrahim and therefore would be called as witnesses. In support of the application was filed the affidavit of Anwar to which was attached the statutory declaration of the lawyer to whom the prosecutors were alleged to have made their proposals. Mr. Zakaria was convicted and sentenced after being given 30 minutes to apologize. In September 2000, the Malaysian Court of Appeal dismissed his appeal and in January 2001 the Federal Court heard his final appeal and judgment is reserved. Mr. Zakaria was free on bail pending appeals. Mr. Zakaria's appeal was dismissed at the Court of Appeal level and in June 2001 the Federal Court, Malaysia's highest court, set aside both Mr. Zakaria's conviction for the contempt of scandalizing the court and the three-month custodial sentence. The appeal to the Federal Court was heard in January 2001 and judgment was reserved until June 2001.

Zainur Zakaria is a prominent Malaysian lawyer, former Chairman of the Malaysian Bar Council (Malaysian lawyers governing body) and is on the Supreme Council of the opposition Keadilan Party. He ran for office in a Kuala Lumpur riding in November 1999 and was defeated by less than 200 votes in an election that the Canadian government concluded had "serious irregularities." Until his conviction for contempt he was one of the defense lawyers for former Deputy Prime Minister Anwar Ibrahim.

LRWC was concerned that:

- Zainur Zakaria's conviction offended Malaysian national law, the common law that is part of Malaysian law and the minimum standards regarding rights to representation and rights to advocate that have been accepted as forming the foundation of both democracies and the rule of law.
- the conviction of Zainur Zakaria was contrary to the Federal Constitution Articles 5(1), 7(1) and 10(1)(a). The citation for contempt contravened the rights to representation set out in the Basic Principles on the Role of Lawyers, Articles 1, 13, 14, and 15. The duty of governments and courts to ensure that lawyers are free

to provide full representation without threat to their personal safety are further outlined in Articles 16 to 22.

- Zainur Zakaria's conviction also contravened the principles set out in the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, (Declaration on Human Rights Defenders) Articles 5, 9(1), 9(3)(a) & (c), 11, 12, 17 and 18(2)
- Such use of contempt doesn't only preclude fair trials by preventing full representation but also prevents a proper analysis of the law and prohibits meaningful discussion of cases before the court.
- The resulting prejudice to fair trials is inevitable in criminal trials where the accused is always against the state, where the authorities that gather the evidence must be open to question as a part of the process of elucidation of the truth. Such a use of contempt powers tends to contribute to destroying belief in the law and legal system as an effective alternative to brute force.
- the ambiguity of the offence of scandalizing the court allows judges to pursue their personal predilections thereby entrusting the limits of advocacy rights to the moment-to-moment judgment of the judge whose sensibilities have been offended by some behaviour of counsel.

LRWC wrote letters to the **Malaysian Human Rights Commission** urging the Commission to uphold the various principles relating to lawyers' advocacy rights by calling for an acquittal as an intervener. LRWC also wrote to the **Attorney General of Malaysia** asking him, as chief law officer of Malaysia to order an investigation of the allegations of evidence fabrication. The Malaysian Human Rights Commission saying that our concerns will be considered.