

Lawyers' Rights Watch Canada

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IN THE MATTER OF AN ADDENDUM TO THE REPORT TO LAWYERS' RIGHTS WATCH ON THE TRIAL OF B. J. JEYERETNAM AS A RESULT OF OBSERVATIONS ON THE TRIAL OF CHEE SOON JUAN By Howard Rubin

Introduction

In 2001 this observer reported to Lawyers' Rights Watch of Canada in respect of two civil appeals in the Court of Appeal of the Republic of Singapore, civil appeal number 600023 of 2001 between Joshua Benjamin Jeyaretnam, the appellant, and Lee Kuan Yew, the respondent and former prime minister, presently senior minister of the Government of Singapore, heard July 25, 2001, judgment registered August 22, 2001, and in respect of civil appeal number 600011 of 2001 between Joshua Benjamin Jeyaretnam, the appellant, and Indra Krishnan, heard July 23, 2001 and dismissed, and reasons for judgment given August 7, 2001. Concerns were then expressed about the independence of the Singapore bar in politically motivated defamation suits.

This report is an addendum on the issue of independence of the bar in those kinds of cases, as a result of observations made at the trial of Dr. Chee Soon Juan, in February 2003. It is the recommendation of this observer that Human Rights organizations support a universal globalized right of a litigant in a lawsuit or criminal proceeding involving government party members, to be represented by a defense lawyer of his choice even if that person is a lawyer from another country. There is a serious concern that members of the bar in Singapore are reluctant to take on these types of lawsuits, and it should be the right of the defendant to decide whether he needs foreign representation. In Dr. Chee's case the courts decided that he was not entitled to foreign Queens Counsel, because the case was not complex enough. It is the litigant who ought to be able to decide whether he wants a Queens Counsel from outside Singapore, and not the courts.

Dr. Chee Soon Juan

Dr. Chee Soon Juan, a neuropsychiatrist and leader of the democratic party, an opposition party in Singapore, was sued by government members, including Lee Kuan Yew, the senior minister in the Prime Minister's office and a cabinet minister of the government and the former Prime Minister of Singapore, as well as Goh Chok Tong, the current Prime Minister of Singapore, for defamation purportedly made in the course of campaigning for the 2001 general elections of Singapore. The contested words said to be defamatory were made at a public election rally on October 28, 2001 in a campaign speech. Apparently Dr. Chee and Prime Minister Goh had crossed each other's paths during a walkabout that morning. Dr. Chee told the people at the election rally that he had asked Prime Minister Goh, "what happened to our money? What happened to this \$17 billion?" The Prime Minister was said to have not responded and Dr. Chee told the audience that this would be the

first question that a Mr. Ling would ask if they were elected to Parliament. Dr. Chee then said: -

You must be very careful that you don't give the entire government this free reign to take your money and use it without any opposition keeping it in check. And that is the same question that I want to ask Mr. Lee Kuan Yew today. Address this point. I want to ask the media to publish this point. And you see for yourselves tomorrow my friends, see for yourself whether the media is going to publish it or not.

...That is very important. So Mr. Lee Kuan Yew, I challenge you, tell us about this \$17 billion you loaned to Sarharto.

With the election imminently approaching, Dr. Chee was a part of a slate of five Democratic Party candidates in the election. If any one member of his slate withdrew, he would be ineligible in the election, as the slate had to have the full compliment of five members. When the Prime Minister and the former Prime Minister threatened to sue for defamation or in lieu take an apology from Dr. Chee to keep the slate in tact (that is, to prevent one or more of his members from withdrawing over the threat of being sued) Dr. Chee apologized and in the second apology he expressed the following: -

I hereby also undertake not to make any further allegations or statements to the same or similar effect. I also wish to state that I have agreed to pay Mr. Lee Kuan Yew damages by way of compensation and to indemnify him for all the costs and expenses incurred by him in connection with this matter.

The demand letter, condition 11 from Lee Kuan Yew, states: -

Our client requires your written confirmation that you will comply with these conditions [i.e., they wanted an apology] along with your offer for damages, no later than 10:00 a.m. on 2nd November, 2001, failing which our instructions are to commence legal proceedings against you.

It has been successfully argued in Singapore that these apologies constitute a contract of compromise binding on the defendant. Essentially in Singapore the issue then turns to whether the parties can agree on the amount of damages. In *Shanmugam Jayakumar & Anor v. Jeyaretnam J. B. & Anor* [1997] 2 S.L.R. 172, Justice Sellsman explains that it is impliedly agreed by the plaintiffs that they will not ask for full damages they would otherwise be entitled to in the following words at page 184:-

Additionally, the plaintiffs for their part, impliedly agreed not to ask for the full damages they would otherwise be entitled to. Their honour and reputation would be restored effectively. The damages they were entitled to were therefore reduced substantially. Indeed their foregoing full damages was the real consideration for the contract of compromise.

The plaintiffs argue that Dr. Chee breached the contract of compromise. They say:-

However, in breach of the compromise, the defendant failed to make an offer of damages to the plaintiff. The plaintiff was therefore left with no choice but to enforce the compromise by commencing these proceedings to recover the damages and costs he is entitled to. The question of damages will be left for assessment at a later state in the event the plaintiff succeeds in this application.

This law of “contract of compromise” has been elevated to an art form in Singapore and used by government members to silence opposition candidates in elections. The government consistently sued B.J. Jeyaretnam in defamation until they reduced him to a bankrupt and had him removed from the rolls as a lawyer and from Parliament over statements made in political campaigns.

Issue with Respect to Lawyers’ Advice

The lawyers in Singapore will consistently advise opposition members that their only choice is to apologize or not defend a defamation action or else the damages they face will exponentially increase.

Dr. Chee faced this advice with his first lawyer when sued by government members in 1993 for defamation in his asserting that he did not misuse university postage funds. Dr. Chee had been fired for the alleged misuse. He was sued for defamation in asserting that he had been wrongfully dismissed from the University, because he had publicly said that he had not misused the postage funds. Taking his lawyer’s advice, he did not defend the defamation suit. The damages and costs in related defamation suits exceeded Singapore dollars \$300,000.00. It is of importance that the firing was politically motivated¹

The net result is that the lawyers in Singapore do not want to defend these political defamation cases.

It is difficult to tell whether the courts have created a line of exuberant damage awards in politically motivated defamation cases or whether they are simply doing what courts sometimes do and that is to attempt to follow the line of least resistance with respect to the current government in power. To put it another way, if the United States had the type of laws and jurisprudence that Singapore has with respect to defamation, then Richard Nixon would have successfully sued the Washington Post for defamation. It is this state of law and the reluctance of the judiciary in Singapore to create a judicially enhanced protection for freedom of speech of politicians in elections that has led to a state of affairs where effectively the government can silence opposition members in elections. There is no defence of qualified privilege in Singapore, because the judiciary will not challenge the government and because the lawyers do not want to take on these cases.

1. U.S. Department of State (Bureau of Democracy, Human Rights and Labour) Country Reports on Human Rights Practises, Singapore, 1993 describes the firing as politically motivated. The plaintiff’s were all government party members.

As a Result, the Opposition Politicians in Singapore have Wanted to Have the Benefit of Senior Counsel or Queen's Counsel from Outside of Singapore in their Defence in Defamation Cases

The government of Singapore (the plaintiffs in the case against Dr. Chee) have repeatedly changed the law whenever they felt that their efforts to silence opposition politicians were going to be inhibited in court. [In 1998 when B. J. Jeyaretnam successfully appealed an issue to the Privy Counsel, the government legislated to the effect that there would no longer be any appeals to the Privy Counsel].

In 1991 the government amended the legislation by restricting access to Queens' Counsels and the amendment required the courts to take into account two additional requirements: (1) that the case must be of sufficient difficulty and complexity; and (2) the circumstances of the case.

As a result, it was not the subjective views of the plaintiff that he could not obtain counsel, or the view of the plaintiff that his case was so complex that he required outside counsel that rule, but rather it was left to the court to decide whether the plaintiff's case was complex enough and the circumstances of the case were such that the plaintiff should be entitled to have counsel from outside of Singapore.

And uniquely, the legislation and rules require that the Attorney General be served, that he be paid his costs of the application to certify outside counsel in the sum of Singapore dollars \$1,000.00, and that the Attorney General be entitled to oppose the application. Dr. Chee first sought to have a Queen's Counsel, Stewart Littlemore, admitted to argue his defence. The court rejected this on the ground that Stewart Littlemore was not of good character, because he had inappropriately criticized the court's handling of the defamation cases of B.J. Jeyaretnam. Dr. Chee then applied to have two other counsel admitted to argue his defence, a Queen's Counsel, William Henric Nicholas from England, and a Queen's Counsel, Martin Lee Chu Ming from Hong Kong. In both instances the Attorney General appeared in court and opposed the appointment of outside counsel. It was their argument that Stewart Littlemore was not of good character and could not be relied on as a person who will defend the court and could not be relied upon to assist the court.

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