

Rule of Law in Singapore: Independence of the Judiciary and the Legal Profession in Singapore¹

A. INTRODUCTION

To the casual observer, Singapore appears to be a cosmopolitan city-state with a functioning democracy based on the rule of law. After a century as a British colony, Singapore became self-governing in 1959 and gained full independence from Britain in 1965.² As a former colony, it inherited a political system which includes a single chamber Parliament and a common law legal system which, since the *Magna Carta*, has enshrined the principles of the rule of law and an independent bar and judiciary. A legal system based on the rule of law “would not be possible without independent lawyers who are able to pursue their work freely and without fear of reprisals. Indeed, independent lawyers play a key role in defending human rights and fundamental freedoms at all times, a role which, together with that played by independent and impartial judges and prosecutors, is indispensable for ensuring that the rule of law prevails, and that individual rights are protected effectively.”³

In Singapore, members of Parliament are elected every six years, with the leader of the majority party becoming the prime minister. The head of state is the president, an elected and largely ceremonial role, but with veto powers in selected areas, such as national reserves and the power

¹ Prepared by Kelley Bryan with assistance from Gail Davidson and Margaret Stanier for Lawyers Rights Watch Canada. Kelley Bryan is a member of the Law Society of Upper Canada. Gail Davidson (ret) and Margaret Stanier are members of the Law Society of British Columbia.

² It had earlier been ceded to the East India Company in 1824.

³ *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, Chapter 4; United Nations Office of the High Commissioner for Human Rights, www.ohchr.org/english/about/publications/docs/CHAPTER_4.pdf.

to recommend clemency for people sentenced to capital punishment.⁴ Executive power is exercised by the government. The judiciary is nominally independent of the executive.

Many, however, question whether these are indicators of a healthy democracy free from oppression and authoritarianism, or whether they are merely symbolic trappings that mask deeper problems. In the 1959 elections, the People's Action Party (PAP), led by Lee Kuan Yew, took power and formed the government. The PAP has won all eleven general elections since.⁵ In fact, in nearly fifty years, the PAP has never won less than 95 percent of the parliamentary seats, and in recent years a large number of PAP candidates have run unopposed.⁶ Lee Kuan Yew's son, Lee Hsien Loong, is currently prime minister pursuant to a transfer of power within the Lee family that took place in 2004.

After coming to power in 1959, the PAP secured the Singapore economy by establishing a predictable, seamless platform for foreign investors and markets. Singapore transformed itself into an economically prosperous, highly efficient market based on capitalist policies. The PAP, under an effectively one party system, was able to pass legislation and exercise executive power unopposed. Singapore typically scores high on the rule of law and control of corruption indicators on the World Bank's worldwide governance indicators.⁷ Notably, though, the definition of the World Bank's rule of law indicator focuses on the predictability of rules with

⁴ The *Constitution of Singapore* was amended in 1991 to permit the president to be elected by popular vote. However, only one president has been directly elected to date: Ong Teng Cheong who served from 1993 to 1999. In the 1999 and 2005 presidential elections, the president-elects took power by virtue of all other candidates having been disqualified by the Presidential Elections Committee on grounds under Article 19 of the Constitution. In 2005, the government-endorsed presidential candidate was re-elected without ballot after his opponents were deemed unqualified: see for instance, John Burton, *Singapore president wins new term as elections panel disqualifies rival*, Financial Times (August 15, 2005) www.ft.com/cms/s/0/f9c337ea-0d28-11da-ba02-00000e2511c8.html.

⁵ Elections Department Singapore website, Parliamentary general elections results: www.elections.gov.sg/past_parliamentary.htm.

⁶ *Ibid.*

⁷ World Bank, Governance Matters 2007, Worldwide Governance Indicators, 1996-2006, Access Governance Indicators: http://info.worldbank.org/governance/wgi2007/sc_chart.asp#.

respect to economic interactions, and importantly, the extent to which contractual and property rights are protected.⁸

In contrast, Singapore's scores on the World Bank's voice and accountability indicators are strikingly low. In 2006, Singapore was ranked in the lowest 25th to 50th percentile amongst 212 countries, a category it shares with East Timor, Malaysia, the Philippines, Indonesia and Thailand.⁹ The voice and accountability indicators measure various aspects of the political process, civil liberties and political rights. These indicators reflect the extent to which citizens of a country are able to participate in the selection of governments. Also included in this category are measurements of the independence of the media, which serves an important role in holding monitoring those in authority and holding them accountable for their actions.¹⁰

This paper discusses key aspects of the current state of the rule of law in Singapore: the ability of citizens to participate in the selection of governments; the independence of the judiciary; and independence of the bar and the ability of lawyers to advocate for their clients.

B. THE ABILITY OF CITIZENS TO PARTICIPATE IN THE SELECTION OF GOVERNMENTS

As noted above, the PAP has controlled the Singapore government since independence in 1959. This uninterrupted reign of power stems in part from the PAP's transformative management of the country's economy, but predominantly from the PAP's concerted and thinly-veiled efforts to eliminate any political opposition. While voting procedures in Singapore are considered to be "fair and free from tampering,"¹¹ the development of a robust political opposition has been hindered by limits on basic democratic freedoms and by the government's control and use of the electoral process as an instrument for political dominance. As will be discussed below, the government also uses defamation suits and assignments in bankruptcy to disqualify members of

⁸ World Bank Global Governance Dept. and Development Research Group, *Governance Matters III*, Policy Research Working Paper 3106, Aug. 2003 at pp. 3-4:
<http://info.worldbank.org/governance/wgi2007/pdf/govmatters3.pdf>.

⁹ *Supra* note 6.

¹⁰ *Supra* note 7.

¹¹ US Department of State, *Annual Human Rights Report, Singapore, 2006*:
<http://www.state.gov/g/drl/rls/hrrpt/2006/78790.htm>.

opposition parties from running for office. This practice has disintitiled some, such as J.B. Jeyaretnam and Dr. Chee Soon Juan, and serves to discourage others from participating fully in public affairs and politics. In so doing, the PAP has handicapped a basic political right intrinsic to the rule of law: the right of citizens to change their government. While citizens are nominally able to elect representatives, elections are therefore less than free and fair.

Citizens of Singapore are entitled to universal suffrage at 21 years of age. Voting in general elections is compulsory, with penalties imposed (including being struck off the voters' register) for those who fail to vote without excuse.¹²

Use of defamation and bankruptcy laws to oppress political opposition

Singaporean defamation law makes one radical departure from its common law roots: it does not provide any privilege over statements made by politicians in the discharge of their public duty.¹³ This legal gap has permitted the PAP to use defamation actions to stifle and punish criticism by opposition politicians. As a result of the lack of defences, members of the PAP have never lost a libel action or settled one without making money.¹⁴ Many commentators, including the Inter-Parliamentary Union and Amnesty International, have noted the chilling effect of such defamation suits on the freedom of political expression in Singapore.¹⁵

¹² Elections Department Singapore website, *Voting is compulsory*: www.elections.gov.sg/compulsory.htm.

¹³ Singapore is the only common law country that does not allow a defence of qualified privilege for statements made in the discharge of some public or private duty, whether legal, social or moral. A useful overview of defamation A useful overview of defamation law in Singapore is provided by Gail Davidson and Howard Rubin, Howard Rubin Q.C. and Gail Davidson, *Defamation in Singapore: Report to LRWC in the Matter of Joshua Benjamin Jeyaretnam and Two Appeals in the Court of Appeal of the Republic of Singapore*: www.lrwc.org/pub2.php?sid=18#22. Also noteworthy are the words of Raymond Brown in *The Law of Defamation in Canada*, 2nd ed. (Scarborough, Ont.: Thomson Canada Ltd., 1999) at 1-8:

Protection of reputation is not the only measure of the cultural and democratic quality of a society. Equally revealing is the extent to which the law protects such fundamental notions as freedom of speech and the press. Without such freedom, the government and its officials, and those who otherwise occupy positions of influence and wield extensive power and authority, could not be made fully accountable or responsive to the citizens; and the ideas and opinions which mould and enlighten that citizenry, and encourage a vigorous and robust debate in governmental affairs, might not be exposed to public view.

¹⁴ Australian: *Singapore use libel laws to silence critics*, quoting Sydney lawyer Stuart Littlemore: www.singapore-window.org/sw02/020926au.htm.

¹⁵ The Governing Council of the Inter-Parliamentary Union adopted a resolution regarding these tactics used against opposition leader Mr. Jeyaretnam on March 23, 2002, in which it expressed deep regret that Mr. Jeyaretnam had been removed from Parliament, and stated that "the sequence and timing of the defamation and bankruptcy

Typically, the courts make damage awards in the hundreds of thousands of dollars in favour of the plaintiffs in political defamation cases. When the judgment debtor is unable to pay, the judgment creditor petitions the defendant into bankruptcy. Bankruptcy, in turn, has one significant outcome: Singaporean law prohibits a bankrupt from holding a seat in Parliament. In this way, the twin swords of defamation and bankruptcy law effectively allow the PAP to silence and eliminate members of the opposition.¹⁶

Such was the case for Joshua Benjamin Jeyaretnam, lawyer, former Senior District Judge and Member of Parliament for the Workers' Party. J.B. Jeyaretnam was twice disqualified from serving as a Member of Parliament through the use of court proceedings that have been discredited as resulting in significant injustice by the Privy Council, the International Commission of Jurists, the Inter-Parliamentary Union, Amnesty International, Lawyers' Rights Watch Canada and others. Court proceedings were used to remove Mr. Jeyaretnam from parliament after his re-elections in 1984 and 1997.

J.B. Jeyaretnam was first elected as a Member of Parliament for the Workers Party in 1981, thereby becoming the first opposition candidate to be elected to parliament since independence. He was re-elected in 1984. J.B. Jeyaretnam was an articulate critic of PAP policies and programs. In the words of a British author, Richard Clutterbuck:

Jeyaretnam has been relentlessly harried by PAP members anxious to acquire merit, but he alone performs what is Parliament's primary function in a democracy – the public cross-examination of Ministers.¹⁷

proceedings brought against Mr. Jeyaretnam suggest a clear intention to target him for the purpose of making him a bankrupt and thereby removing him from Parliament": www.ipu.org/conf-e/107.pdf. Singapore is a member of the IPU but the resolution was adopted without a vote. See also the Amnesty International articles, *J. B. Jeyaretnam – the use of defamation suits for political purposes* (October 14, 1997): www.amnestyusa.org/countries/singapore/index.do, and *Defamation suits threaten Chee Soon Juan and erode freedom of expression* (November 1, 2001): www.amnestyusa.org/countries/singapore/index.do.

¹⁶ Kelley Bryan and Howard Rubin, Q.C., *The Misuse of Bankruptcy Law in Singapore: An Analysis of the Matter of Re Joshua Benjamin Jeyaretnam, ex parte Indra Krishnan*, Lawyers' Rights Watch Canada (October 2004): www.lrwc.org/pub2.php?sid=41.

¹⁷ *Conflict and Violence in Singapore and Malaysia* (London: Graham Bush (Pte.) Ltd., 1984) at 325.

Following his re-election in 1984, Mr. Jeyaretnam was charged with financial impropriety related to the collection of Workers Party funds. After an initial acquittal and a series of appeals, Mr. Jeyaretnam was found guilty and sentenced to a fine of S\$5,000. The sentence, imposing a fine of over S\$2,000, resulted in the automatic disqualification of Mr. Jeyaretnam as a Member of Parliament; the conviction triggered his disbarment from the Law Society. Mr. Jeyaretnam appealed his disbarment to England's Privy Council, then the final court of appeal for Singapore. The Privy Council allowed the appeal and stated that Mr. Jeyaretnam had been "fined, imprisoned, and publicly disgraced for offences for which [he was] not guilty". The Privy Council found that Mr. Jeyaretnam had been wrongly removed from Parliament and disbarred. The Privy Council directed the Law Society to reinstate Mr. Jeyaretnam and recommended that the Singapore government pardon him. In its reasons, the Privy Council stated:

Their Lordships have to record their deep disquiet that by a series of misjudgements the appellant and his co-accused Wong have suffered a grievous injustice. They have been fined, imprisoned and publicly disgraced for offences of which they were not guilty. The appellant, in addition, has been deprived of his seat in Parliament and disqualified for a year from practising his profession. Their Lordships order restores him to the roll of advocates and solicitors of the Supreme Court of Singapore, but, because of the course taken by the criminal proceedings, their Lordships have no power to right the other wrongs which the appellant and Wong have suffered. Their only prospect of redress, their Lordships understand, will be by way of petition for pardon to the President of the Republic of Singapore.¹⁸

The Singapore government refused to follow the Privy Council's recommendation to pardon Mr. Jeyaretnam and, soon afterwards, peremptorily abolished the right of the appeal to the Privy Council for all Singaporeans.¹⁹

After discharging his debts, Mr. Jeyaretnam was reinstated as a lawyer and regained eligibility to stand for office in the 1997 general election. By virtue of the number of votes he won, he received a seat in Parliament. Shortly after this election, Senior Minister Lee Kwan Yew, Prime Minister Goh Chok Tong and other senior PAP members filed suits against Mr. Jeyaretnam alleging that a statement made in the course of his election campaign was defamatory. The alleged defamatory words of Mr. Jeyaretnam were: "Mr. Tang Liang Hong has just placed before

¹⁸ *J. B. Jeyaretnam v. Law Society of Singapore*, [1989] A.C. 1, [1988] 2 All E.R. 193 (P.C.).

¹⁹ *Our Courts*, Singapore Supreme Court website: <http://app.supremecourt.gov.sg/default.aspx?pgID=43>.

me two reports he has made against, you know, Mr. Goh Chok Tong and his people.”²⁰ Mr. Tang was a Workers Party candidate who had filed police reports alleging that Goh and others had defamed him by calling him ‘anti-Christian’ and a ‘Chinese chauvinist’. As Mr. Jeyaretnam was concluding his rally speech, Mr. Tang placed copies of his police reports on the lectern and informed Mr. Jeyaretnam that the reports had been made. The only statement made by Mr. Jeyaretnam was the simple truth; that is, that the police reports had been filed.²¹ The Prime Minister was awarded S\$600,000.00 for the publication of the same materials by Mr. Tang and sought a further S\$200,000.00 plus costs against Mr. Jeyaretnam.

The trial of this defamation action was condemned by the International Commission of Jurists, which had sent an international observer, Stuart Littlemore, Q.C., to the hearings, as a “parody of justice”.²² This will be discussed in more detail in the section below respecting the independence of the judiciary.

Mr. Jeyaretnam was again sued for defamation relating to a 1995 article published in the Workers’ Party newspaper, which alleged that an event called the ‘Tamil Language Week’ was an ineffective means of advancing the Tamil language, and that a number of those involved were political opportunists beholden to the government. That article resulted in two libel suits against twelve defendants: A. Balakrishnan (the author of the article), Mr. Jeyaretnam (vicariously as editor of the newspaper), and other members of the Workers’ Party’s central committee. One of these lawsuits was brought by Minister of Foreign Affairs S. Jayakumar and four other PAP Parliamentarians; the other by Indra Krishnan and nine other members of the Tamil Language Week organizing committee, one of whom became a Member of Parliament for the PAP. Damages and costs of S\$510,000 were awarded jointly against all the defendants. Two of the plaintiffs subsequently commenced bankruptcy proceedings against Mr. Jeyaretnam alone and he was pronounced a bankrupt the day after he failed to pay one of the agreed-upon payments. The

²⁰ International Commission of Jurists, *Report to the International Commission of Jurists Geneva, Switzerland on a Defamation Trial in the High Court of Singapore, Goh Chok Tong v. J. B. Jeyaretnam* (August 18-22, 1997): www.icj.org/news.php?id_article=3334&lang=en and www.singapore-window.org/icjibrep.htm.

²¹ *Ibid.*

²² *Supra* note 19.

Court of Appeal confirmed the bankruptcy order in spite of Mr. Jeyaretnam's offer to pay the remaining damages and he was automatically removed from Parliament in 2001.

In 2004, when Mr. Jeyaretnam became eligible for discharge from bankruptcy, the Assistant Registrar, High Court and finally the Court of Appeal refused his application for discharge. In so doing, the courts considered as the overriding factor the rights of the creditors to demand full payment and did not give due consideration to the bankrupt's right to rehabilitation and the public interest in having Mr. Jeyaretnam discharged from bankruptcy so that he could return to his former role as a consistently elected member of the opposition.²³ Only in 2007 has he been discharged from bankruptcy and regained his qualifications.²⁴ As a result of the defamation actions and bankruptcy, Mr. Jeyaretnam was prevented from standing in the 2001 and 2006 general elections.

The case of J. B. Jeyaretnam illustrates the PAP's use of the courts and the law to stifle and eliminate political opposition. Singaporean residents are thereby deprived of the benefit of having government policies tested in Parliament and in the public arena of free and open debate. As a result, the ability of Singaporeans to select their governments based on a free exchange of ideas, an essential component of the rule of law, is lacking.

Stringent limits on freedom of assembly

The *Constitution of the Republic of Singapore* provides the right to peaceful assembly but permits Parliament to impose restrictions "it considers necessary or expedient" in the interest of security, public order, or morality.²⁵ The PAP has used this power to restrict freedom of assembly, with the manifest goal of hobbling the activities of opposition political parties. Public assemblies of five or more persons, including political meetings and rallies, require police

²³ *Supra* note 15.

²⁴ Leong Wee Keat, *Jeyaretnam reinstated as an attorney after appeal is accepted*, Channel News Asia (September 20, 2007), online: www.channelnewsasia.com/stories/singaporelocalnews/view/300915/1/.html.

²⁵ *Constitution of the Republic of Singapore*, S.I. 1963, No. 1493 (G.N. Sp. No. S 1/63), as amended, s. 14(2).

permission;²⁶ although in 2004 the government relaxed rules so that citizens no longer need permits for some indoor speaking events. As a result of the requirement for government pre-approval, spontaneous public gatherings or demonstrations are prohibited irrespective of their purpose.

The government also closely monitors political gatherings regardless of the number of persons present. During the International Monetary Fund and World Bank Joint Annual Meetings held in Singapore in September 2006, the government refused to issue permits for any public demonstrations. Accredited NGOs were allowed to protest in the lobby of the conference hall. On September 9, immigration officials asked three activists from People for the Ethical Treatment of Animals to leave the country for having planned to stage a public protest. On September 12, the government announced it would bar 27 individuals representing eight NGOs from entering the country to attend the conference.²⁷ They were deemed a threat to security and public order. The decision was amended on September 15 to permit 22 of the 27 to enter the country. Then on September 16, police prevented Dr. Chee Soon Juan, prominent human rights campaigner and leader of the Singapore Democratic Party, from carrying out a protest march.²⁸ After a 'Freedom March' on Human Rights Day, December 10, participants were threatened with prosecution.

Plain-clothes police officers routinely monitor political gatherings. In July 2005 the police attended and disrupted a gathering convened for the launch by Dr. Chee Soon Juan, of his book, *The Power of Courage: Effecting Political Change in Singapore through Nonviolence*. After his presentation, the police questioned Dr. Chee and confiscated for further investigation a video of peaceful protests by Hong Kong residents that had been projected as a backdrop to Dr. Chee's

²⁶ *Miscellaneous Offences (Public Order and Nuisance) (Assemblies and Processions) Rules* (Cap. 184, R. 1, 2000 Rev. Ed.).

²⁷ Some of the individuals and groups barred had in fact been invited by the World Bank and IMF, triggering rebuke of Singapore by those organizations and by World Bank President Paul Wolfowitz. The NGOs included the International NGO Forum of Indonesia, or Infid ; Focus on the Global South, based in Thailand, and the World Development Movement, based in Britain. Please see: Steven R. Weisman and Wayne Arnold, *Singapore's Barring of Some Activists Prompts a Response*, The New York Times (September 9, 2006): www.nytimes.com/2006/09/09/business/worldbusiness/09singapore.html?ref=business; and *Singapore rapped over protest ban*, BBC News (September 8, 2006): <http://news.bbc.co.uk/2/hi/business/5326692.stm>.

²⁸ *Supra* note 10.

presentation on his book. The police seized the video because Dr. Chee did not have a permit for public display of the video.²⁹

On September 30, 2007, Singapore police disrupted an event organized by Dr. Chee outside the Myanmar embassy to protest that country's brutal crushing of the recent democratic uprising in Myanmar. Police indicated that the assembly was illegal and that the case was being investigated because more than five people gathered in order to sign the petitions, some of whom lingered after signing.³⁰ In a media release, Singapore police called this action "...the latest by Chee in a series of similar incidents of staging illegal assemblies as acts of civil disobedience against the Singapore authorities."³¹ Although Singapore, as the current chair of ASEAN, spoke out strongly against brutality in Myanmar, Singapore's position has been cited as hypocritical given that extensive economic relations with Myanmar, which have thrown a lifeline to the junta to blunt economic and political sanctions from the United States, the European Union and other states.³² For example, according to Jane's Intelligence Review (Dec. 1998), in 1998 Singapore supplied Myanmar with a purpose-built factory to manufacture assault rifles and ammunition.³³ On October 8, 2007, Dr. Chee was again arrested by Singapore police for alleged illegal assembly, at the start of a 24-hour vigil outside the main Singapore government offices. Their application for a permit for a vigil outside the Myanmar Embassy had been rejected.³⁴ A Singapore Democratic Party statement indicated that the vigil was aimed "at raising awareness of the Singapore government's exploitation of the situation in Burma."³⁵

Dr. Chee has been sued, fined and imprisoned on many occasions for his peaceful promotions of public debate on matters of public interest and for his promotion of human rights in Singapore.

²⁹ *Ibid.* See also: LRWC press release, *Government uses fear to stifle freedom of expression* (July 18, 2005): www.lrwc.org/pub2.php?sid=59.

³⁰ *Protest Activities Outside the Myanmar Embassy*, Singapore Police Force, Media Release (September 30, 2007), : www.spf.gov.sg/mic/2007/070930_policestatement.htm.

³¹ *Ibid.* Please see also the Youtube video of the protest and the police intervention online at: www.youtube.com/watch?v=6r9W5AXza9I.

³² Amando Doronila, *Asean double talk*, *Inquirer* (October 6, 2007): http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=92627.

³³ Janes: <http://jir.janes.com/public/jir/index.shtml>.

³⁴ A video of their arrest can be seen at www.singaporedemocrat.org.

³⁵ www.singaporedemocrat.org/articleburmaprotest16.html.

In 1993, three months after contesting a by-election as a member of the Singapore Democratic Party, he was accused of misuse of funds and fired from his position neuropsychology post at the university. Since then he has been fined, imprisoned and bankrupted as a result of a defamation suit brought by Lee Kwan Yew and Goh Chok Tong.

By use of these measures, as well as by blatantly manipulating electoral boundaries and establishing “block” votes to disqualify opposition members in some constituencies,³⁶ the PAP has maintained its super-majority in Singapore’s Parliament since 1959. In the 2006 general elections, the PAP, led by Lee Kuan Yew’s son Lee Hsien Loong, won 82 of 84 seats. If, by continued use of defamation and bankruptcy actions and restrictions on freedom of assembly, Singaporean voters are deprived of access to a free and open political debate, then it is likely that the PAP’s dynasty will continue into the foreseeable future.

C. THE INDEPENDENCE OF THE JUDICIARY

Judicial independence has been called “the lifeblood of constitutionalism in democratic societies”.³⁷ Courts must be independent from “all other participants in the justice system”.³⁸ As such, the essence of judicial independence is that the “relationship between the judiciary and other branches of government be depoliticized” (emphasis in original).³⁹

Judicial independence must be distinguished from judicial impartiality. Impartiality is the state of mind or attitude of a particular judge or tribunal in relation to the issues and parties in a particular case. Judicial independence is the status or relationship of the judicial branch to the other branches of government.⁴⁰

³⁶ Jeremy Grace, Delimitation Equity Project, USAID, *Singapore: Drawing Districts to Ensure Super-Majorities in the Parliament*: http://aceproject.org/ace-en/topics/bd/bdy/bdy_sg#ref1.

³⁷ *Beauregard v. Canada*, [1986] 2 S.C.R. 56 at page 70h.

³⁸ *Beauregard v. Canada*, [1986] 2 S.C.R. 56 at page 73f.

³⁹ *Reference re Provincial Court Judges*, [1997] 3 S.C.R. 3 at para. 131.

⁴⁰ *R. v. Valente*, [1985] 2 S.C.R. 673 at page 685f-j. Please see also: *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judges' Assn. v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conférence des juges du Québec v. Québec (Attorney General)*; *Minc v. Québec (Attorney General)*, 2005 SCC 44, [2005] 2 S.C.R. 286, paras. 4-7.

Judicial independence is comprised of both an individual and an institutional component. The individual dimension relates to the independence of the particular judge. The institutional dimension relates to the independence of the court on which the judge sits. An individual judge may exhibit the essential conditions of judicial independence but if the court over which he or she presides is not independent of the other branches of government, then he or she cannot be said to be an independent tribunal.⁴¹

The principles of judicial independence are entrenched in international instruments including the *Universal Declaration of Human Rights*,⁴² the *International Covenant on Civil and Political Rights*,⁴³ the *Basic Principles on the Independence of the Judiciary*,⁴⁴ and the *Commonwealth (Latimer House) Principles on the Three Branches of Government*.⁴⁵ While Singapore has not ratified the *International Covenant on Civil and Political Rights*, the *Latimer House Principles* were endorsed by Commonwealth Heads of Government at their summit in Abuja, Nigeria, in December 2003.⁴⁶ Article IV of the Principles states:

IV) Independence of the Judiciary

An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The function of the judiciary is to interpret and apply national constitutions and legislation, consistent with international human rights conventions and international law, to the extent permitted by the domestic law of each Commonwealth country.

To secure these aims:

(a) Judicial appointments should be made on the basis of clearly defined criteria and by a publicly declared process. The process should ensure:

⁴¹ *R. v. Valente*, [1985] 2 S.C.R. 673 at page 687i-j.

⁴² Article 10: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." Adopted and proclaimed by General Assembly Resolution 217 A(III), December 10, 1948.

⁴³ United Nations Office of the High Commissioner for Human Rights, *International Covenant on Civil and Political Rights*, Articles 2 and 14: www.ohchr.org/english/law/ccpr.htm.

⁴⁴ United Nations Office of the High Commissioner for Human Rights, *Basic Principles on the Independence of the Judiciary*: www.ohchr.org/english/law/indjudiciary.htm.

⁴⁵ *Commonwealth (Latimer House) Principles on the Three Branches of Government: Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government*: www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7BACC9270A-E929-4AE0-AEF9-4AAFEC68479C%7D_Latimer%20House%20Booklet%20130504.pdf

⁴⁶ Commonwealth News release, *Commonwealth (Latimer House) Principles on the Three Branches of Government to be launched*, Communications And Public Affairs Division, Commonwealth Secretariat, www.thecommonwealth.org/press/31555/34582/37665/commonwealth_latimer_house_principles_on_the_thr.htm

equality of opportunity for all who are eligible for judicial office;
appointment on merit; and

that appropriate consideration is given to the need for the progressive attainment of gender equity and the removal of other historic factors of discrimination;

(b) Arrangements for appropriate security of tenure and protection of levels of remuneration must be in place;

(c) Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought;

(d) Interaction, if any, between the executive and the judiciary should not compromise judicial independence.

Judges should be subject to suspension or removal only for reasons of incapacity or misbehaviour that clearly renders them unfit to discharge their duties.

Court proceedings should, unless the law or overriding public interest otherwise dictates, be open to the public. Superior Court decisions should be published and accessible to the public and be given in a timely manner.

An independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the judiciary.

The objective characteristics of judicial independence must include security of tenure, financial security and administrative independence.⁴⁷ To ensure independence of the judiciary, judges' term of office, independence, security, remuneration, conditions of service, pensions and age of retirement must be determined and adequately secured by law.⁴⁸

Objective components of judicial independence are absent in Singapore

These core objective characteristics of an independent judiciary are patently absent from Singaporean law. Singapore's lower courts are Magistrate and District Courts that handle minor civil and criminal matters. Appeals from lower court decisions are brought to a single judge of the High Court sitting as a court of appeal. In more significant civil and criminal matters, cases are heard at first instance before a single judge of the High Court. Appeals are made to the Court

⁴⁷ *Supra* note 43.

⁴⁸ *Ibid*, Art. 11.

of Appeal or Court of Criminal Appeal, composed of a panel of three High Court judges sitting in their appellate jurisdiction.⁴⁹

All Magistrate and District Court judges are civil servants. District Court judges are treated as members of the executive and routinely shuffled between, for instance, the Attorney General's office and the bench. They have no guarantee of tenure.

Only fourteen persons have been appointed as High Court judges.⁵⁰ These same ten judges sit as appeal judges in minor civil and criminal cases, as well as trial and appeal judges in important civil and criminal cases. Their individual independence is therefore crucial to the integrity of the judicial system.

At least half of the High Court judges have either no tenure or very limited tenure. For instance, two of the fourteen High Court judges are designated as Judicial Commissioners, a designation which amounts to a one- or two-year probationary term during which the government can review a new judge's rulings before granting full tenure.⁵¹

Even when granted, tenure is limited by the executive's ability, through its control of the legislature and the office of the president, to remove judges with tenure. One striking example was the case of Senior District Judge Michael Khoo. Judge Khoo adjudicated at the trial level the financial impropriety charges against opposition Member of Parliament J. B. Jeyaretnam (discussed above). In 1983, Mr. Jeyaretnam, then the leader of the Workers' Party, was charged with making a false statement about the Party's accounts and fraudulently transferring Party funds to thwart creditors (creditors at that time included the PAP pursuant to a defamation action). The dispute centered on three donations, totaling S\$2,600, which Mr. Jeyaretnam insisted, had not been given to the Party, but to which the government insisted the Party had title.

⁴⁹ *Supra* note 18.

⁵⁰ *Ibid.*

⁵¹ Beatrice S. Frank, Joseph C. Markowitz, Robert B. McKay and Kenneth Roth, *The Decline in the Rule of Law in Malaysia and Singapore: Part II – Singapore, a Report of the Committee on International Human Rights* (January/February 1991) *The Record of the Association of the Bar of the City of New York*, vol. 46, no.1, pages 7-85 at page 65.

In January 1984, Judge Khoo acquitted Mr. Jeyaretnam of the false statement and fraud charges and convicted him of another count of fraud, for which he imposed a fine that was insufficient to cause Mr. Jeyaretnam to lose his seat in Parliament. Seven months later, Judge Khoo lost his judgeship and was transferred to the Attorney General's office. He later left government service. Although the government denied that the transfer was a reaction to the Jeyaretnam decision, Prime Minister Lee Kuan Yew suggested otherwise when during a Parliamentary debate in July 1986, he stated,

“...there was very good grounds why, if a person can make such a series of misfindings of fact and two misfindings of law in one simple case [referring to the Jeyaretnam case], he should be transferred to the Attorney-General's Chambers.”⁵²

Another judge later imposed on Mr. Jeyaretnam a fine high enough, to result in Jeyaretnam's disbarment from law and disqualification from Parliament. (This was the decision eventually overturned by the Privy Council, as discussed above.)

Confidence in the independence of the judiciary is lacking

In addition to legal safeguards, judicial independence depends upon the public perception that the objective components exist. The question is not only whether the court is free, but also whether the court is reasonably seen to be free to perform its adjudicative role without interference.⁵³ The public's perception respecting these components must be buttressed by a tradition of independence, the strength of which “is measured not only by its observance but also by the intensity of the reaction to its violation”.⁵⁴

The Singapore courts, when adjudicating commercial cases, which do not involve interests of PAP members or their associates, may be relied upon to administer justice according to the law.

⁵² Nigel Holloway, *A case of privilege* (September 25, 1986) Far Eastern Economic Review. Please see also Beatrice S. Frank, Joseph C. Markowitz, Robert B. McKay and Kenneth Roth, *The Decline in the Rule of Law in Malaysia and Singapore: Part II – Singapore, a Report of the Committee on International Human Rights* (January/February 1991) The Record of the Association of the Bar of the City of New York, vol. 46, no.1, pages 7-85, at page 66.

⁵³ *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 47 at para. 47.

⁵⁴ *Supra* note 40 at page 701a.

In this regard, Singapore judges have an overall international reputation for the integrity of their judgments.⁵⁵ In cases involving PAP litigants or PAP interests, however, many see the Singapore judiciary as amenable to control by the will of the executive. In the case of J.B. Jeyaretnam, discussed above, the International Commission of Jurists released a report on its representative's observations of the High Court in the trial of Lee Kuan Yew's defamation action against Mr. Jeyaretnam relating to the 'election rally' remarks (discussed above).⁵⁶ The observer, Stuart Littlemore, Q.C., an Australian lawyer specializing in defamation, concluded that the most troubling aspect of the decision was the court's "undue deference" to the plaintiff, then prime minister, Goh Chok Tong. Mr. Littlemore indicated that Mr. Goh "came to court as an ordinary citizen, not as prime minister, but it was impossible to escape the impression that the judge treated Mr. Goh as a litigant of higher status than he was entitled to". The court found that the words spoken ("Mr. Tang Liang Hong has just placed before me two reports he has made against, you know, Mr. Goh Chok Tong and his people") were defamatory – but on grounds of "lesser meaning imputation" which the plaintiff had not pleaded. Mr. Littlemore questioned whether this had been done to give the prime minister especially favourable treatment to avoid the embarrassment of losing his case. The trial judge also awarded aggravated damages to Mr. Goh on the basis that defence counsel's cross-examination of Mr. Goh was "a baseless attack" which "aggravated the hurt caused to Mr. Goh". Mr. Littlemore concluded that nowhere else in the common law world could it have been said that the cross-examination was anything but properly vigorous and relevant.

The principal role of an independent judiciary is to uphold the rule of law. If the judiciary is to exercise a truly impartial and independent adjudicative function, it must be allowed to be free of repercussions from such outside influences. As stated by one Canadian judge: "A society where people know their rights are guaranteed by fair laws which apply in the same way to all citizens equally, and are applied in an open and public way by an independent and impartial judiciary, is

⁵⁵ Francis T. Seow, *Beyond Suspicion? The Singapore Judiciary* (Yale Southeast Asia Studies, Monograph 55: Connecticut, 2007).

⁵⁶ *Supra* note 19.

always a secure and stable society.”⁵⁷ If the rule of law is to flourish in Singapore, it will require the (so far absent) oversight of a truly independent judiciary free from outside influences.

D. THE ABILITY OF LAWYERS TO ADVOCATE FOR THEIR CLIENTS

In Singapore, lawyers representing causes or clients unpopular with the PAP risk drastic repercussions, including criminal prosecutions, civil suits, detention, economic ruination, disbarment and loss of entitlement to run for public office.

A strong and independent legal profession is a fundamental aspect of the rule of law.⁵⁸ If lawyers cannot advocate vigorously for their clients, free from intimidation, no matter what the issue, then the rule of law is unquestionably tainted.

This principle is emphasized in Part VIII of the *Latimer House Guidelines For The Commonwealth*, which provides in Article 3: “An independent, organized legal profession is an essential component in the protection of the rule of law.”⁵⁹ To uphold the rule of law, lawyers must be free to stand between the state and the citizen and to criticize and call into question the actions of the state.⁶⁰ According to Principle 16 of the United Nations *Basic Principles on the Role of Lawyers*:⁶¹

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

⁵⁷ Justice F.B. William Kelly, *An Independent Judiciary: The Core of the Rule of Law*, The International Centre for Criminal Law Reform, online: www.icclr.law.ubc.ca/Publications/Reports/An_Independent_Judiciary.pdf, at p. 20.

⁵⁸ Rule of Law Resolution passed by the IBA Council on September 26, 2005.

⁵⁹ The *Guidelines* are an Annex to the *Latimer House Principles*, *supra*, note 44.

⁶⁰ Gail Davidson, Tami Friesen and Michael Jackson, Q.C., *Lawyers And The Rule Of Law On Trial – Sedition In Malaysia* (2000), online: www.lrwc.org/pub2.php?sid=10 at p. 23.

⁶¹ *Basic Principles on the Role of Lawyers*, United Nations High Commissioner for Human Rights, online: <http://www.ohchr.org/english/law/lawyers.htm>.

Furthermore, “where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”.⁶²

Detention

Singaporean history has shown that lawyers who advocate against government interests may face detention under Singapore’s draconian *Internal Security Act (ISA)*.⁶³ The ISA authorizes a police officer to detain any person whom he or she has “reason to believe... has acted or is about to act or is likely to act in any manner prejudicial to the security of Singapore.”⁶⁴ A detainee can, on order of the Minister responsible for internal security, be detained for a period of up to two years. The Minister can also impose conditions on the detainee’s release, including curfews, restrictions on mobility and prohibitions against addressing public meetings or holding public office or taking part in any political activities. In addition, the President may direct that the detention be extended for “a further period or periods not exceeding two years at a time”.⁶⁵

The most striking example of detention as a mechanism of deterring free advocacy was a rash of ISA arrests instituted by the PAP in 1987-88. At that time, the so-called Operation Spectrum resulted in the detention, without trial, of 22 professionals, social activists, students, and Roman Catholic church workers, alleged to be plotting to violently overthrow the government and replace it with a Marxist state.⁶⁶ One detainee was former lawyer Teo Soh Lung. In her career, she had been a founding member of the Law Society’s criminal legal aid programme. Prior to the time of her arrest in 1987, she was the legal counsel to an organization called the Geylang Catholic Centre for Foreign Workers, and her work for that organization included facilitating English language lessons and assisting Malaysian and Filipino workers in Singapore in claims for wages and damages for physical abuse. She was also a supporter of the opposition Workers’ Party and had tangled with Lee Kuan Yew in 1986 during a select committee hearing respecting the role of the Law Society. Ms. Teo was detained in the wave of arrests for the alleged “Marxist

⁶² *Ibid.*, Article 17.

⁶³ Chapter 143, online: http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-143.

⁶⁴ ISA, ss. 8 and 74.

⁶⁵ ISA, section 8(2).

⁶⁶ Singapore Window, ‘Marxist Plot’ revisited: www.singapore-window.org/sw01/010521m2.htm.

conspiracy" and held, without charge or trial, for more than two years.⁶⁷ None of the detainees were ever charged with a crime or given any opportunity to challenge the government's allegations against them. In fact, many of the detainees did not even know each other prior to their arrests.⁶⁸

Another example is the case of Singapore's former solicitor general and member of the PAP inner circle, Francis Seow. After serving with distinction (including the receipt of the Public Administration Gold Medal) under Lee Kuan Yew, Mr. Seow left public service and entered into private law practice in 1972. In 1985, he was elected president of the Law Society. In that role, he first came to be labelled as an anti-government troublemaker when the Law Society, under his leadership, commented adversely on proposed amendments to legislation that would authorize the Singapore government to restrict the distribution of foreign publications which addressed Singaporean politics. Then in the crackdown in 1988, Mr. Seow was retained by two lawyers, Teo Soh Lung, and Patrick Seong, who were imprisoned under the 1988 *Internal Security Act* crackdown. Mr. Seow filed for *habeas corpus* on behalf of his clients. When he attended at the prison on May 6, 1988 to advise his clients that the hearing of the *habeas corpus* application had been adjourned, Mr. Seow was himself detained under the *Internal Security Act*. He was held in detention without any stated grounds, charge or trial, for 72 days and was released, subject to restrictions on his freedom of movement and association, as a result of pressure by international human rights organizations.⁶⁹ Mr. Seow left Singapore and now lives in exile in the United States, where he became a Fellow based in the Department of Asian Studies at Harvard University.

Economic consequences

⁶⁷ *Singapore Releases Lawyer*, New York Times (June 3, 1990): <http://query.nytimes.com/gst/fullpage.html?res=9C0CE4DE1E3CF930A35755C0A966958260>.

⁶⁸ *Supra* note 50 at page 29.

⁶⁹ *Ibid* at p. 53. Please see also Marc Rerceretnam, *The 1987 ISA Arrests and International Civil Society Responses to Political Repression in Singapore* (2005), Asia Rights Journal, vol. 5: <http://rspas.anu.edu.au/asiarightsjournal/Rerceretnam.pdf>. www.unl.edu/scarlet/v5n33/v5n33qa.html. Please see also *Q&A: Repression takes unusual forms in Singapore*, Scarlet (University of Nebraska) (December 1, 1995): www.unl.edu/scarlet/v5n33/v5n33qa.html.

Even those lawyers who are not subjected to the more extreme form of backlash described above suffer less tangible but equally deterrent consequences in terms of the economic viability of their practices. Singaporean lawyer M. Ravi reports that he lost many of his commercial litigation and intellectual property clients after he argued a case in which he vigorously and publicly opposed the use of the death penalty for minor drug offences. M. Ravi found that his commercial clients could not run the risk of having a lawyer publicly advocating a position critical of government, especially in a country where the bench is so small that counsel's notoriety is not easily forgotten.⁷⁰

In October 2006, a panel of three Singapore judges suspended M. Ravi from the practice of law for one year. M. Ravi was described by the Singapore Democrat as “the only lawyer in Singapore willing to take on cases with political overtones” and as bringing international attention to “the lack of the rule of law and the violation of human rights in the city-state.”⁷¹ Ravi has represented Singapore human rights advocate Dr. Chee Soon Juan on a number of occasions. Prior to his suspension he had represented Dr. Chee in a libel action brought by Prime Minister Lee Hsien Loong and Lee Kwan Yew.

The Singaporean public and business community does not have a perception of the government's administrative neutrality. For instance, lawyers whose clients depend on the government for permits and licenses are wary of handling cases, which oppose the government in any form – an extraordinarily broad application of “soft” conflict principles. As one lawyer for a small commercial firm stated, “We would not handle political cases because it would affect our clients, which depend on the government for licenses and other things.”⁷² The former president of the Law Society has been quoted as saying that Singapore is “too small a place”, such that, “except for open political opponents, no one will touch such cases.”⁷³ The cumulative result is that legal representation for clients or causes unpopular with the PAP is simply too expensive financially and professionally.

⁷⁰ M. Ravi, *Hung at Dawn* (Singapore: Orion Books, 2005) at p. 150.

⁷¹ *Support M. Ravi in his time of need*, Singapore Democratic Party, (October 29, 2006): www.singaporedemocrat.org/articleravicase3.html.

⁷² *Supra* note 50 at page 47.

⁷³ *Ibid.*

E. CONCLUSION

A number of factors amply demonstrate that Singapore is not governed by the rule of law.

These factors include: a demonstrated lack of independence of lawyers to stand between the state and citizens without fear of reprisals, inadequate statutory safeguards of the independence of the judiciary, a perception of executive influence over the judiciary in cases involving PAP interests, the stifling of public debate regarding issues of public importance through laws restricting freedom of assembly and freedom of expression to a degree incompatible with democracy, the threat of arbitrary arrest and detention through use of the ISA, and, the use, by members of the executive and the PAP, of defamation suits to punish and incapacitate government critics and members of opposition parties.

Indicated as curative measures are: ratification by Singapore, of the *International Covenant on Civil and Political Rights* and enactment of the law reforms required to bring domestic legislation into compliance with the ICCPR and also with international standards safeguarding the independence of the judiciary and that of lawyers, protecting freedom of expression and freedom of assembly and preventing arbitrary detention.

I think this is the case in the great majority of authoritarian states: on the surface, because of repression, everything seems frozen, but when the sun comes out and the ice melts, you find that there was a lot of life underneath all along.

~ Aung San Suu Kyi

October 17, 2007

Lawyers Rights Watch Canada
Vancouver BC Canada V6K 2V5
lrwc@portal.ca; www.lrwc.org