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Prosperity versus individual rights?

Human rights, democracy and the rule of law in Singapore

July 2008

**An International Bar Association
Human Rights Institute Report**



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Contents

Executive summary	5
A. Introduction	11
B. A brief political and economic history of Singapore	13
C. Singapore's conception of human rights	17
D. Singapore's international rankings	21
E. Current human rights issues	23
1. Freedom of expression	23
Singapore's obligations under international law	23
The use of defamation laws to stifle political opposition and expression	26
<i>Joshua Benjamin Jeyaretnam</i>	30
<i>Tang Liang Hong</i>	35
<i>Chee Soon Juan</i>	37
Restrictions on the freedom of the press	39
<i>Far Eastern Economic Review</i>	40
<i>International Herald Tribune</i>	41
<i>The Economist</i>	41
<i>FinanceAsia</i>	42
Government control over the media in Singapore	42
<i>Asian Wall Street Journal</i>	44
Restrictions on the internet	45
<i>Sintercom</i>	47
<i>Chen Jiahao</i>	48
2. The independence of the judiciary	49
<i>Judge Michael Khoo</i>	55
<i>The trend of the courts in defamation cases</i>	59
<i>The courts in the Jeyaretnam appeal</i>	60
3. Rights of assembly	62
<i>Falun Gong – Mrs Ng Chye Huay and Mrs Cheng Liujin</i>	64
4. The role of the Singapore Law Society in promoting law reform	65
F. Conclusion	69
G. Recommendations	71

Executive summary

A. Introduction

The International Bar Association's Human Rights Institute (IBAHRI) has investigated a number of areas of concern about the rule of law, democracy and human rights in Singapore. An earlier version of this report was shared with the Singapore Government and the Singapore Law Society for their response and comments. IBAHRI's continuing concerns are outlined in this report and recommendations are made to address them.

The research leading to this paper commenced in the preparation for the International Bar Association's (IBA) 2007 Annual Conference, held in Singapore in October. Considerable efforts were made to consult with interested parties, including the Singapore Government and the Singapore Law Society,

This paper considers Singapore's history and conception of human rights, and conducts an evaluation of Singapore's standing in the international community. Following this, a range of human rights concerns is examined, including freedom of expression (including the use of defamation legislation to hinder opposition activities and restrictions on the freedom of the press and the internet); the independence of the judiciary (including allegations of executive influence, the trends of the courts in defamation cases and the approach of the court in a specific case); freedom of assembly; and the role of the Singapore Law Society in promoting and discussing law reform.

B. A brief political and economic history of Singapore

Singapore was founded as a British Colony in 1819 by Sir Stamford Raffles and gained internal self-government in 1959. In that same year, Prime Minister Lee Kuan Yew won outright majority in the Legislative Assembly with the People's Action Party (PAP), which has retained power ever since. In 1965, full independence was achieved.

Only three opposition parties have been able to secure parliamentary representation since the 1967 Constitution was adopted: The Workers' Party, the Singapore Democratic Party and the Singapore People's Party. Various pressures, including reports of threatened housing restrictions and the constitutional requirement for members of parliament to resign if expelled from their elective party, limit opposition activities and secure full backbencher support for the government.

The PAP has ushered in strong economic growth that has improved consistently since independence. Despite an initially poor economic outlook, the Singapore Government implemented economic policies that enabled Singapore's economy to develop exponentially. Throughout Singapore's dramatic economic boom, the PAP has closely supervised and regulated its development. Singapore now stands as one of the world's wealthiest countries – an impressive development from the bleakness of its 1950s economy.

The attitude of the Singapore Government, and indeed apparently of many Singaporeans, is that their hard-won economic growth and relative freedoms are worth their restricted liberties. Regardless, it is important to assess where Singapore stands on issues such as human rights, democracy and the rule of law, in accordance with standards outlined and accepted by the international community.

C. Singapore's conception of human rights

Singapore has long asserted that human rights concepts and principles are dominated by Western perceptions and champions an 'Asian values' argument regarding their application in Singapore.

It is acknowledged that Singapore enjoys an excellent economy and a high standard of living. However, civil and political rights cannot be ignored. It is the view of the United Nations (UN), which is shared by the IBAHRI, that human rights – whether civil and political or economic, cultural and social – are fundamental and universal and are derived from values shared throughout all cultures and justice systems.

D. Singapore's international rankings

Singapore ranks highly in international recognition of its economic competitiveness, liberal trade policies, property rights, legal efficiency and business standards, but its rankings are very low regarding its recognition and implementation of human rights and democracy. In judicial and legal system rankings, Singapore has also performed well in international assessments.

E. Current human rights issues

1. Freedom of expression

Singapore's obligations under international law

Singapore has not ratified the International Covenant on Civil and Political Rights (ICCPR), which formally guarantees the right to freedom of expression. However, Singapore is nonetheless bound by international customary law protections of freedom of expression.

The Constitution of Singapore also provides for freedom of speech and freedom of expression, albeit with broad restrictions permissible. Legislation that has been promulgated pursuant to these provisions permits significant restriction of freedom of speech and the press by the Singapore Government. The Singapore Government's position is that the freedom of speech and expression, both under international law and under Singaporean law, is not absolute. This is correct, but there are limitations on how far these restrictions are permissible.

It would seem that Singapore goes beyond recognised constraints. Provisions that allow the restriction of freedom of expression beyond these limits are inconsistent with established customary international law and should be repealed.

The use of defamation laws to stifle political opposition and expression

Defamation is both a criminal offence and a civil action in Singapore.

Generally, criminal defamation is censured by the international community, as there are civil remedies available and defamation may impact negatively on free expression and democratic debate.

Singapore's defamation laws are of concern when read in conjunction with its Constitution.

Singapore's Constitution provides that a person who is an undischarged bankrupt or has been convicted of an offence and either sentenced to imprisonment for at least one year or fined at least S\$2,000, is not eligible to stand for parliament. These provisions have the potential to be used to prevent political opponents from standing for office for significant periods of time.

It further appears that in practice, PAP officials have indeed initiated a series of defamation suits that have been won against opposition figures. They have defended such actions on the basis that reputation of public officials must be protected. No PAP leader has ever lost a defamation suit against an opposition figure in court. Critics have stated that the defamation suits initiated by PAP leaders have led to the current climate of self-censorship in Singapore, both regarding political speech and within the news media.

Three cases of the government are considered in the report: those of Mr Joshua Benjamin Jeyaretnam (former Workers' Party leader); Tang Liang Hong (former candidate of the Workers' Party); and Dr Chee Soon Juan (leader of the Singapore Democratic Party).

Restrictions on the freedom of the press

The Singapore Government strictly regulates national and international press observations on Singapore. To consider these in practice, the cases of major international and Asian newspapers (*Asian Wall Street Journal* and *International Herald Tribune*) and weeklies (*Far Eastern Economic Review* (FEER), *Asiaweek* and *The Economist*) are considered.

Government control over the media in Singapore

The Singapore Government has the power to appoint and dismiss all members of staff and all directors of Singapore Press Holdings (SPH), which is the main newspaper publisher in Singapore.

The Newspaper and Printing Presses Act (NPPA) is the primary piece of legislation regulating the printed media industry. The NPPA appears to go further than a mere 'right of reply' and incorporates numerous restrictions on newspaper companies. A number of publications have found their circulation restricted under this NPPA, including the *Asian Wall Street Journal*, *Time*, the FEER and *The Economist*. These cases are considered further in the report.

Restrictions on the internet

Singapore has high internet access rate and minimal limited access websites. However, Singapore uses licensing arrangements and other controls to regulate internet content. To illustrate this, the cases of Sintercom and Chen Jiahao are considered in the report.

2. The independence of the judiciary

Singapore is bound by international and domestic laws requiring the independence of the judiciary. Despite this, there are concerns about the objective and subjective independence and impartiality of Singapore judges. Such concerns include the rotation of judges with legal service positions, the lack of tenure for many judges and the extension of contracts beyond the age of 65 at the Prime Minister's pleasure.

To examine the situation in practice, various cases are considered, including the transfer of Senior District Judge Michael Khoo; the trend of the court in defamation cases to decide in favour of PAP officials and to award disproportionately high damages; and the court in the Jeyaretnam appeal.

3. Rights of assembly

Customary international law also protects the freedom of assembly, although Singapore has not ratified the ICCPR. Singapore's approach to freedom of assembly should be considered in light of its history, in which two devastating riots took place in the 1950s and 1960s. Singapore's Constitution protects freedom of assembly, but this is stringently limited.

It is noted that Singapore is in the process of relaxing its restrictions on public assembly, and such developments are encouraged. However, restrictions on opposition applications for permits and the arrests of two Falun Gong practitioners are considered in this report.

4. The role of the Singapore Law Society in promoting law reform

The IBA is firmly of the view that law societies must be active participants in the legal environment. One of the key principles of a functioning law society is independence, both in the way in which it is run and in the actions it legitimately undertakes. Law societies should also contribute to law reform.

Legislation in Singapore restricts the independence of the Singapore Law Society and restricts its ability to comment on law reform. Comments made by the government about the role of the Singapore Law Society are also of concern, reflecting a disregard for the true role of law societies. The Singapore Law Society is currently not fulfilling its mandate to speak out on law reform issues in Singapore.

F. Conclusion

Despite debates between many nations as to the exact spectrum of human rights, fundamental and universal human rights cannot be considered culturally specific, but derive from the cultures of all countries. Human rights are universal and indivisible. In the modern era of globalisation, isolationist policies and attitudes are no longer tenable. The international community has a role to play in commenting on practices that are perceived to fall short of international standards. The IBAHRI strongly encourages Singapore to increase its engagement with the international community, and to take steps to implement international standards of human rights throughout Singapore.

A strong and robust rule of law requires respect for and protection of democracy, human rights – including freedom of expression and freedom of assembly – and an independent and impartial judiciary. The IBAHRI is concerned that, despite many positive achievements, the Singapore Government is currently failing to meet established international standards in these areas. The IBAHRI looks forward to continuing engagement with the Singapore Government and the Singapore Law Society on these issues.

G. Recommendations

The IBAHRI identifies 18 recommendations and calls upon the Singapore Government to implement them as a matter of urgency.

A. Introduction

The International Bar Association's Human Rights Institute (IBAHRI) has investigated a number of areas of concern about the rule of law, democracy and human rights in Singapore. The IBAHRI shared an earlier version of this report with the Singapore Government and the Singapore Law Society for their response and comments. The IBAHRI has taken all their comments into account in preparing this final report. Our continuing concerns are outlined and recommendations are made to address them. The IBAHRI would like to thank the Singapore Government and the Singapore Law Society for their responses to the draft report and looks forward to future dialogue and engagement on issues in Singapore of concern to the international community.

In order to understand Singapore's current climate, this paper conducts a brief political and economic history of Singapore, noting in particular the rapid and successful economic development that has taken place since its independence. The paper then considers Singapore's conception of human rights and assesses whether this conception accords with international standards. An investigation of Singapore's rankings on international surveys is undertaken, which indicates that there are clear inconsistencies between Singapore's very high rankings in areas such as business and anti-corruption levels, and Singapore's very low rankings in areas including freedom of expression.

Following this background, the paper examines a number of specific human rights issues in Singapore. Freedom of expression, and its status under international law, is considered first. Reports of a number of cases whereby the combination of Singapore's Constitution and defamation laws have been used by the Singapore Government allegedly to stifle political opposition and expression are examined, including those of Mr Joshua Benjamin Jeyaretnam, Mr Tang Liang Hong and Dr Chee Soon Juan.

Restrictions on the freedom of the press are then considered, particularly in cases where the government has acted in response to perceived criticisms against it. Cases involving the *Far Eastern Economic Review*, *The International Herald Tribune*, *The Economist* and *FinanceAsia* are examined. The paper then considers the role of the Singapore Government in controlling the media in Singapore, particularly through the Newspapers and Printing Presses Act (NPAA). A specific case involving the use of that Act against the *Asian Wall Street Journal* is considered. Restrictions on the internet are also examined, with particular attention paid to two cases: Sintercom, a former Singapore political website; and Mr Chen Jiahua, a former blogger.

This paper then examines the independence of the judiciary and investigates allegations of executive influence or control over the judiciary. In particular, the transfer of Judge Michael Khoo is examined in depth. Further, the trends of the court in defamation cases involving government litigants, and in particular the amount of damages that are awarded in such cases is examined, as is the approach of the court in the *Jeyaretnam* case, which has been strongly criticised.

Singapore's approach to freedom of assembly is then examined, with particular attention paid to the arrests of Falun Gong participants. Progress in relaxing what appears to be strict freedom of

assembly laws is welcomed, but continuing concerns about assembly restrictions remain.

Finally, the role of the Singapore Law Society in promoting and discussing law reform is considered, and concern is noted over both restrictions placed on its legitimate activities by the government and the recent comments made by the Attorney-General of Singapore. Further, the IBAHRI is concerned that the Singapore Law Society did not respond more fully to the draft version of this report and considers that the Law Society is not fulfilling its responsibilities to speak out on law reform issues.

This report is not intended to be an exhaustive consideration of human rights issues in Singapore. However, the report outlines a number of immediate and continuing areas of concern. The report concludes with 18 recommendations which the IBAHRI calls on Singapore to implement as a matter of urgency.

B. A brief political and economic history of Singapore

Originally a British Colony founded by Sir Stamford Raffles in 1819, Singapore first became a separate Crown Colony in 1946 and gained internal self government in 1959. In the same year, full elections saw Prime Minister Lee Kuan Yew win outright majority in the Legislative Assembly with the People's Action Party (PAP), which has retained power ever since. In 1963 Singapore joined the Federation of Malaya, but withdrew in 1965, officially achieving full independence. In 1965 the position of President was also created.

The PAP's monopoly over Singaporean politics continued until 1981 when the first opposition politician was elected. In 1990 Lee Kuan Yew stepped down as Prime Minister, first taking the role of Senior Minister and then through his current position of Minister Mentor in the Prime Minister's office, in which he remains a serving member of the Cabinet and continues to wield considerable influence. His successor was Goh Chok Tong. The current Prime Minister, Lee Hsien Loong (the son of Lee Kuan Yew), succeeded Goh Chok Tong as Prime Minister in 2004. President Sellapan Rama (SR) Nathan has served as President since 1999. President Nathan was reappointed president in August 2005 after the Presidential Elections Committee disqualified three other would-be candidates, resulting in the cancellation of scheduled elections.¹ The Singapore Government's explanation for the disqualification of the candidates is as follows:

'Under the Singapore Constitution, candidates for the presidency must have executive and financial experience in the public sector, a statutory board or a top company for at least three years, as the President of Singapore plays an important role in safeguarding the financial reserves of Singapore. The [Presidential Elections] Committee announced publicly its reasons for rejecting the three applications. The Committee was of the view that the three applicants did not satisfy the requirements set out in the Constitution as they had not held a similar or comparable position of seniority and responsibility in any other organisation or department of equivalent size or complexity in the public or private sector, which was required for the office of the Presidency. In other words they did not meet the qualifications set out in the Constitution.'²

Arguably, given the PAP's domination throughout almost every facet of business and public life, it may not be possible for such stringent requirements to be met without strong linkages with the PAP. This is of concern to the state of democracy in Singapore.

Only three opposition parties have been able to secure parliamentary representation since the 1967 Constitution was adopted: The Workers' Party, the Singapore Democratic Party and the Singapore People's Party. Allegations have been made that the PAP has threatened opposition-supporting electorates during election campaigns with restricted housing upgrades and transport

1 *The CIA World Factbook* (Central Intelligence Agency of the United States of America). Available at www.cia.gov/library/publications/the-world-factbook, accessed 22 November 2007.

2 Letter from Mark Jayaratnam, Deputy Director, Legal Policy Division for Permanent Secretary, Ministry of Law, Singapore Government to the IBA (9 April 2008).

access.³ Further, it should be noted that an unusual constitutional provision requires that members of parliament who are expelled from the party in which they were elected must resign from the parliament.⁴ This is likely to secure constant and full support of backbencher PAP members for the government.

While the dominance of the PAP raises concerns for the state of democracy in Singapore, the positive developments that have come alongside this political monopoly must be acknowledged.

When the PAP first came to power, the economic future of Singapore looked bleak. High levels of unemployment, undeveloped infrastructure and a per capita Gross Domestic Product (GDP) of S\$1,306 (US\$427) signified 1950s Singapore.⁵ Its underdeveloped economy and little to no natural resources gave Singapore a poor future forecast. The achievement of independence for Singapore initially impacted badly on Singapore's economy due to the loss of Britain's monetary contribution to Malaya's GDP.⁶ Following this, Singapore's withdrawal from the Federation of Malaya in 1965 resulted in the loss of access to nearby rich resources and much of Singapore's domestic market.⁷

Despite these hurdles, the PAP implemented economic policies that enabled Singapore's economy to develop dramatically. The key to this development was the PAP's core objective of maintaining an open trading regime, in order to ensure non-inflationary and long-term economic growth.⁸ During the early 1960s the service sector was very much the focus of industry.⁹ The products Singapore wished to export were manufactured primarily by large multinational corporations (MNCs); hence international trade barriers were removed in order to encourage international business to relocate to the area.¹⁰ A booming global climate meant that MNCs were actively seeking a low-wage and politically stable location in which to situate their factories, just as Singapore was opening its economic borders.¹¹

Throughout Singapore's dramatic economic boom, the PAP has closely supervised and regulated its development.¹² Unlike other Asian economies such as Hong Kong, the Singapore Government has shown little willingness to relinquish control to the free market. Instead, the government has very deliberately implemented policies designed to encourage and support foreign investors in specific sectors of the market.¹³ The dramatic impact of the PAP's economic policies is evident when it is

3 The Straits Times, 29 December 1996 quoted in Defence of the 1st and 2nd defendants, *Lee Kuan Yew v Review Publishing Company Ltd and Hugo Restall* Suit no 540 of 2006 available at www.asiasentinel.com/images/stories/pdf/defencelky.pdf.

4 Article 46(2)(b).

5 'The 1960's a time of turbulence and economic uncertainty', Economic Development Board, Government of Singapore. Available at www.edb.gov.sg/en_uk/index/about_us/our_history/the_1960s.htm, accessed 13 May 2008; Singapore Statistics: per Capita GDP at Current Market Prices (published by the Singapore Government, updated February 2008). Available at www.singstat.gov.sg/stats/keyind.html, accessed 13 May 2008.

6 Jonathan Rigg, 'Singapore and the 1985 recession', *Asian Survey*, Volume 28, Number 3 (March 1988) pp 340–352, at 341 (published by The University of California).

7 *Ibid.*

8 Singapore: Summary of Government report, Trade Policy Review Body (World Trade Organisation). Press release available at www.wto.org/english/tratop_e/tp33_e.htm#Government%20report, accessed 13 May 2008

9 Jonathan Rigg, see above, note 6.

10 Pang Eng Fong, 'Planning the economy for a Surprise-free future', *Singapore towards the Year 2000* (Swee-Hock Saw & Saw Swee-Hock, National University of Singapore Press, 1981) pp 34–43, 35. Available at <http://books.google.co.uk/books?id=4BehHf10N28C&pg=PA34&lpq=PA34&dq=%221959+1979%22+singapore+economic+development&source=web&ots=ot7Vsr1ovt&sig=2nRf0kUNHTH HU1K9iNOR1QK9IKQ&hl=en#PPA34,M1>.

11 Kevin Grice and David Drakakis-Smith, 'The role of the State in shaping Development: Two decades of growth in Singapore', *Transactions of the Institute of British Geographers*, Vol 10.3 (1985) pp 347–359, 354.

12 *Ibid.*

13 Jonathan Rigg, see above, note 6.

considered that Singapore's 2007 GDP was valued at S\$52,994 (US\$35,163) per capita.¹⁴ Singapore therefore now stands as one of the world's wealthiest countries – an impressive development from the bleakness of the 1950s economy. However, it must be acknowledged that some commentators claim that the PAP's focus on social and economic development was deliberately undertaken to consolidate PAP power.¹⁵

Singapore's high development level is recognised internationally. Singapore scores highly on the United Nations' Human Development Index (HDI), and ranks 25th among 177 countries.¹⁶ Its high life expectancy of approximately 79.4 years places Singapore 19th in the world.¹⁷

The attitude of the Singaporean Government, and indeed apparently of many Singaporeans, is that their hard won economic growth and relative freedoms are worth restricted liberties. This is evident in the 1986 speech of backbencher Dr Augustine Tan, during a parliamentary debate that will be investigated in further detail below. Dr Tan stated:

'There is a need to try and enshrine those values that have proven their worth to Singapore, a need to build institutions that will endure in order to ensure a prosperous future for our nation... the early sixties government leaders spent much time and effort at nation building, values like ruggedness, hard work and discipline were propagated. Meritocracy became a household word. Incorruptibility of government and of bureaucrats made Singapore stand out from other developing countries. Law and order was established. Through laws like section 55 that effectively beat the gangsters. Workers accepted the need for industrial peace and discipline. The result was unprecedented economic development, uninterrupted for 24 years. I believe... there is a continuing need to inform and to educate our public, especially our younger generation, about the basic values and institutions that we need for our survival and indeed our prosperity. We should not take it for granted... that everybody understands and accepts our tried and trusted values and institutions. We need to try and explain patiently why we need section 55? Why we need the Internal Security Act? Why we need to have Work Permit regulations? Why we need meritocracy? What is the role of the parliament and MPs? How does the judiciary function? How our economy works? And how we work to ensure that our leaders and bureaucrats are clean, honest, people of integrity. If we can do this... despite people like the two MPs of the Opposition, we shall build a secure and prosperous Singapore.'¹⁸

It is therefore important to acknowledge at the outset that the Singapore Government has indeed been successful in improving the living standards of its people. However, it is also important to assess where Singapore stands on issues such as human rights, democracy and the rule of law, in accordance with standards outlined and accepted by the international community. Singapore does

14 Singapore Statistics: per Capita GDP at Current Market Prices, see above, note 5.

15 See, for example, Garry Rodan, *Singapore 'Exceptionalism'? Authoritarian Rule and State Transformation*, Working Paper no 131 (Asia Research Centre, Murdoch University: Perth, May 2006).

16 'The Human Development Index: Going beyond income', reported by the United Nations Development Programme, 2007/2008. Available at http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_SGP.html, accessed 13 May 2008.

17 *Ibid.*

18 Report of Commission of Inquiry into Allegations of Executive Interference in the Subordinate Courts (Paper CmD 12 of 1986) Singapore Hansard, 29 July 1986.

not exist in a vacuum; it is a member of the international community and therefore legitimately may be subject to external criticism. Singapore's impressive economic development does not exempt it from international scrutiny. It has been questioned why there is a suggestion by some observers that Singapore has 'some "special" circumstances which allow an economically successful dictatorship controlled by an autonomous executive to receive dispensations from having a more democratic, transparent and robust set of power and institutional arrangements at its centre'.¹⁹

¹⁹ Affidavit of Ross Ronald Worthington, *Oakwell Engineering Limited v Enernorth Industries Inc* (Ontario Superior Court of Justice, Court file no 04-CV-271121CM3). Dr Worthington is a Professor of Governance and a specialist in East Asia governance, public sector reform and judicial reform. He has published extensively on Singapore.

C. Singapore's conception of human rights

Singapore has long asserted that human rights concepts and principles are dominated by Western perceptions and champions an 'Asian values' argument regarding their application in Singapore. This argument is based on a number of premises. First, while Singapore accepts that cultural differences do not justify violations of basic human rights, it asserts that Asian, and particularly Confucian, values should be taken into account when considering the implementation of human rights in Singapore. The Asian values argument predominantly asserts priorities such as the responsibility of the individual to the society and the role of the family. Thus, in the case of Singapore and other Asian nations, historical-cultural legacies arguably interpret human rights with a communitarian emphasis. Such arguments assert the primacy of duty to the community over individual rights.²⁰

Second, cooperation is purportedly preferred over coercion and trust in the authority and dominance of state leaders is expected.

Finally, the Asian values argument claims that social and economic rights take precedence over civil and political rights. This precedence is based upon the claim that the restriction of civil and political rights in certain circumstances is justified if it enables economic growth and social cohesion. Singapore asserts that civil and political rights are immaterial when people are destitute and society is unstable, thus such rights may be suspended to facilitate the means by which the government can adequately meet the economic and social needs of the nation.²¹ However, it is unclear how this argument can remain in train given Singapore's considerable economic success and prosperity.

The Singapore Government has defended its position, stating that:

'It is best to conceive of rights as those norms and values that enable societies to progress and individuals to have opportunities to develop their potential to the best of their abilities. In Singapore, our growth and prosperity over the years have, through judicious planning, careful management and sound investments, translated into progress in Singaporeans' well-being in terms of life expectancy, adult literacy rate, prevalence of criminality, and access to clean water, sanitation and health services. The Singapore Government remains committed to ensuring a high degree of peace, freedom, prosperity and personal security for all Singaporeans. The Government also pays special attention to the protection and welfare of vulnerable or special groups.'²²

It is acknowledged that Singapore enjoys an excellent economy and a high standard of living. However, even after disregarding the problem of accepting the primacy of economic and social rights, civil and political rights cannot be ignored.

20 Simon Tay S C, 'Human Rights, Culture, and the Singapore Example', *McGill Law Journal*, 1996, Vol 41, p 745. Available at <http://lawjournal.mcgill.ca/abs/vol41/4tay.pdf>, accessed 22 November 2007.

21 'What Are Human Rights? – The Nature and Sources of Human Rights' (Singapore Institute of International Affairs). Available at www.siaonline.org/what_are_human_rights, accessed 22 November 2007.

22 Letter from Mark Jayaratnam to the IBA, see above, note 2.

In 1993, the World Conference on Human Rights released the Vienna Declaration and Programme of Action²³, which stated:

‘1. The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.

...

5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

6. The efforts of the United Nations system towards the universal respect for, and observance of, human rights and fundamental freedoms for all, contribute to the stability and well-being necessary for peaceful and friendly relations among nations, and to improved conditions for peace and security as well as social and economic development, in conformity with the Charter of the United Nations.

...

8. Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.

...

10. The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.
As stated in the Declaration on the Right to Development, the human person is the central subject of development.

²³ United Nations General Assembly, A/CONF.157.23, (12 July 1993), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument).

While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.’

In response to the Asian values alternative, it is the view of the United Nations (UN), which is shared by the IBAHRI, that human rights – whether civil and political or economic, cultural and social – are fundamental and universal and are derived from values shared throughout all cultures and justice systems. Furthermore, under the UN Charter, all UN Member States have committed themselves to affirming fundamental human rights.

D. Singapore's international rankings

A useful tool to assess Singapore's standing in accordance with international standards is to consider its rankings in international surveys considering a range of factors.

Unsurprisingly, Singapore ranks highly in international recognition of economic competitiveness, liberal trade policies, property rights, legal efficiency and business standards, but its rankings are very low regarding its recognition and implementation of human rights and democracy.

For the 13th year in a row, Singapore has been ranked second (after Hong Kong) of 157 countries in the Heritage Foundation's 2007 Index of Economic Freedom.²⁴ This is judged on ten criteria, including trade policy, government intervention, monetary policy, foreign investment and property rights. Singapore was ranked first of out of 178 economies for 'ease of doing business' in the World Bank's Doing Business 2008 report²⁵ and third of 61 countries in the International Institute for Management Development's (IMD) 2006 World Competitiveness Yearbook, receiving the second highest score for 'ease of doing business.'²⁶ The Singapore Government considers that these rankings evidence its strong support for the rule of law.²⁷

In judicial and legal system rankings, Singapore has also performed well in international assessments. In Transparency International's Corruptions Perceptions Index 2006, which measures the degree to which corruption is perceived to exist among public officials and politicians, Singapore ranked fifth in the world. Similarly, in an Asian-only based report, the Political & Economic Risk Consultancy's Asian Intelligence Report 2006, strong commendation of Singapore's judicial system was made, stating: 'Within Asia Hong Kong and Singapore are the only two systems with judiciaries that rate on a par with those in developed Western societies...'.²⁸

Under the World Bank's Governance Indicators, Singapore also ranks very highly in areas such as the rule of law and control of corruption, with most rankings currently being at the very top ranking (90–100 per cent).²⁹ However, in the same report, Singapore ranks much lower on voice and accountability, which measures the degree to which citizens are able to participate in selecting their government and enjoy free expression, freedom of association and a free media, ranking approximately 60 per cent. This means that 60 per cent of countries rank lower on this area than Singapore, while 40 per cent rank higher. Lower rankings were also evident in the 2007 Worldwide Press Freedom Index prepared by Reporters Without Borders, in which Singapore ranked 141st out of 169 nations. The Freedom of the World 2007 report also only ranked Singapore as 'partly free' with scores of five for political rights (from one–seven, with one being the most free) and four for

24 *Index of Economic Freedom 2007*, The Heritage Foundation. Available at www.heritage.org/index/topten.cfm, accessed 10 November 2007.

25 *Doing Business 2008*, World Bank. Available at www.doingbusiness.org, accessed 28 January 2008.

26 *World Competitiveness Yearbook: Ease of Doing Business*, (IMD) accessed 3 December 2007. Available at www.imd.ch/research/publications/wcy/upload/Overall%202006.pdf#search=%20IMD%20World%20Competitiveness%20%22, accessed 3 December 2007.

27 Letter from Mark Jayaratnam to the IBA, see above, note 2.

28 *Asian Intelligence Report 2006*, Political and Economic Risk Consultancy quoted in letter from Mark Jayaratnam to the IBA, see above, note 2.

29 *Singapore: Governance Matters 2007* (World Bank: 2007). Available at http://info.worldbank.org/governance/wgi2007/sc_chart.asp.

civil liberties.³⁰ Other countries with similar rankings generally are those in a much lower stage of development than Singapore, such as Afghanistan and Sudan. The Singapore Government rejects the Press Freedom Index, stating:

‘The Press Freedom Index drawn up by Reporters sans frontières is based largely on a particular media model which favours the advocacy and adversarial role of the press. We have a different media model in Singapore – that of a free and responsible press whose role is to report news accurately and objectively.’³¹

Finally, Singapore also ranked second to last on the latest (2005) Alliance for Reform and Democracy in Asia’s (ARDA) Asia Democracy Index, which measures and evaluates democracy, good governance and the status of human rights among Asian governments, receiving a low score of 30.42 (on a scale of 0–100).³² Only Myanmar scored worse.

30 *Worldwide Press Freedom Index 2007*, Reporters Without Borders. Available at www.rsf.org/article.php?idarticle=11715, accessed 3 December 2007.

31 Letter from Mark Jayaratnam to the IBA, see above, note 2.

32 *Asia Democracy Index 2005* (Alliance for Reform and Democracy in Asia), Available at www.asiademocracy.org/content_view.php?section_id=11&content_id=567, accessed 3 December 2007.

E. Current human rights issues

1. Freedom of expression

Singapore's obligations under international law

Unlike the vast majority of the world's countries (160 of 192), Singapore has not ratified the International Covenant on Civil and Political Rights (ICCPR), which formally guarantees the right to freedom of expression. However, Singapore is bound by international protections of freedom of expression for a number of reasons.

First, Singapore, as a Member State of the UN, is bound by the UN Charter to respect fundamental human rights. Many commentators define 'fundamental human rights' as those outlined in the Universal Declaration of Human Rights (UDHR). Article 19 of the UDHR guarantees freedom of expression:

'Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'

Second, in addition to the obligations under the UN Charter, many of the provisions of the UDHR are now considered to have attained customary status at international law. The United Nations High Commissioner for Human Rights has stated that:

'Many of the provisions of the Declaration have become part of customary international law, which is binding on all states whether or not they are signatories to one or more multilateral conventions concerning human rights. Thus what started its existence as a solemn but non-binding proclamation of rights and freedoms has, at least in some respects, acquired through state practice the status of universal law.'³³

Some commentators take this further. For example, the UN has stated:

'Over the years, the commitment has been translated into law, whether in the forms of treaties, customary international law, general principles, regional agreements and domestic law, through which human rights are expressed and guaranteed. Indeed, the UDHR has inspired more than 80 international human rights treaties and declarations, a great number of regional human rights conventions, domestic human rights bills, and constitutional provisions, which together constitute a comprehensive legally binding system for the promotion and protection of human rights.'³⁴

³³ Mary Robinson, 'Statement by the High Commissioner for Human Rights at the European Colloquy Organised by the Council of Europe' held in Strasbourg on 2 September 1998. Available at www.unhchr.ch/hurricane/hurricane.nsf/0/8C062FE8D843A200802566740050E0E8?opendocument, accessed 1 November 2007.

³⁴ *The Foundation of Human Rights Law*, United Nations. Available at www.un.org/events/humanrights/2007/ihr.html.

Hans Corell, then-Under Secretary General for Legal Affairs for the UN, has stated:

‘The UDHR has had enormous importance in influencing the thinking in the field of human rights during its fifty years in existence. In the meantime, and because of this, the Declaration has undergone a metamorphosis. There are those who would challenge this, but I would argue that the Declaration has now developed into another and higher category of international law. From its “soft law” nature in 1948, it has developed into customary international law, ie, norms binding upon all States, because of their general acceptance and application. Thus, today UDHR is binding on all States, or *erga omnes*, as is often said in a Latin legal/technical term. This means that States have to look at the Declaration with even greater respect today. Also, it gives citizens, non-governmental organizations, and the business community a more solid platform from which to argue in defence of human rights. The very important work that is done by non-governmental organizations, such as Amnesty, should be mentioned in particular. ...The Declaration now stands as a bulwark in the defence of human rights. Certainly, arguments can be made about the exact meaning of some of its articles. A close analysis of the provisions and their history also gives room for different opinions. But there is no doubt that the Declaration has an important role to play also today and will continue to play an important role in the future. It has acquired binding force as customary international law.’³⁵

Freedom of expression is widely recognised as one of the key human rights in the UDHR, largely because it impacts significantly on other human rights. It is also a key element in a democratic state as it protects the opportunity for different viewpoints to be aired and discussed, and governments to be criticised and lobbied. Therefore, one can safely argue that Singapore is bound by customary international law to protect freedom of expression.

Third, Singapore has also acceded to the Convention on the Rights of the Child, which protects and ensures freedom of expression for under 18-year-olds. Article 12 of the Convention states:

‘1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.’

Article 13 of the Convention states:

‘1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

³⁵ Hans Correll, *The Meaning and Role of the Universal Declaration of Human Rights: Address by Hans Corell Under-Secretary-General for Legal Affairs* (1998 Tällberg Workshop: Human Rights and the Free Market – Is the Business of Human Rights also the Business of Business?) 26 June 1998. Available at www.un.org/law/counsel/english/address_06_26_98.pdf.

- (a) For respect of the rights or reputations of others; or
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.’

The fact that Singapore is bound by treaty to guarantee freedom of expression for children further reinforces the argument that Singapore is required under international law to respect freedom of expression for all.

Fourth, as a Member of the Commonwealth, Singapore has committed itself to freedom of expression through the Commonwealth Heads of Government Meetings. The Commonwealth Heads of Government declared, in the 2001 Coolum Declaration, that they ‘...stand united in our commitment to democracy, the rule of law, good governance, freedom of expression and the protection of human rights’.³⁶

The Constitution of Singapore also provides for freedom of speech and freedom of expression. Article 14 of the Singapore Constitution states:

- ‘(1) Subject to clauses (2) and (3) –
 - (a) every citizen of Singapore has the right to freedom of speech and expression;
 - (b) all citizens of Singapore have the right to assemble peaceably and without arms; and
 - (c) all citizens of Singapore have the right to form associations.’

However, Clause (2) of the Article states:

- ‘(2) Parliament may by law impose –
 - (a) on the rights conferred by clause (1) (a), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence;
 - (b) on the right conferred by clause (1) (b), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof or public order; and
 - (c) on the right conferred by clause (1) (c), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, public order or morality.’

³⁶ See the Harare Commonwealth Declaration, Zimbabwe, 1991 and the Declaration of Commonwealth Principles, Singapore, 1971, referred to in James Gomez, *Freedom of Expression and the Media in Singapore* (Article 19: London, December 2005).

Furthermore, Clause (3) states:

‘Restrictions on the right to form associations conferred by clause (1)(c) may also be imposed by any law relating to labour or education.’

Legislation that has been promulgated pursuant to these provisions permits significant restriction of freedom of speech and the press by the Singapore Government. The Singapore Government’s position is that the freedom of speech and expression, both under international law and under Singaporean law, is not absolute. This is correct, and warrants further examination. Although freedom of expression may be restricted, there are limitations on how far these restrictions are permissible.

Article 29(2) of the UDHR provides that:

‘In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.’

According to the Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR,³⁷ I(viii) (37): ‘A limitation to a human right based on the reputation of others shall not be used to protect the state and its officials from public opinion or criticism’. Further, the Human Rights Committee has stated in relation to the right to free expression, that ‘when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself;... they may only be imposed for one of the purposes set out... and they must be justified as being “necessary” for that State party for one of those purposes.’³⁸

It would seem that Singapore goes beyond these recognised constraints. Provisions that allow the restriction of freedom of expression beyond these limits are inconsistent with established customary international law and should be repealed.

The use of defamation laws to stifle political opposition and expression

Defamation is both a criminal offence and a civil action in Singapore. The Defamation Act 1957, which covers defamation from a civil perspective, broadly defines defamation and covers libel and slander. Section 499 of the Penal Code makes defamation a criminal offence. It should be noted that the Defamation Act provides for substantial damages to be awarded to ‘vindicate the reputation of the plaintiff’.

The first concern relating to these defamation laws is the continued use of defamation as a criminal offence. Criminal law generally deals with acts that have an impact on society as a whole, whereas civil law is primarily concerned with disputes between private parties. The protection of

³⁷ Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR, I(viii) (37) (1985). Available at www.legislationline.org/legislation.php?tid=219&lid=7155&less=false.

³⁸ General Comment No 10: Freedom of Expression (Art 19): 29/06/83. CCPR General Comment No 10 (19th session, 1983).

reputation can be achieved through the civil system, rather than through criminal charges.³⁹ Article 19, a prominent and respected free expression organisation, reports that ‘criminal defamation laws are increasingly viewed as an unjustifiable limitation on freedom of expression’.⁴⁰ Although many countries retain criminal defamation as an offence, states are increasingly moving towards abolishing it as a crime. This is due to the very strong impact criminal defamation laws can have on free expression, as opposition members, journalists and others face prison sentences, hefty fines and criminal records as the price for stating their views.⁴¹

In 2002, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Organisation of American States Special Rapporteur jointly declared in 2002:

‘Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.’⁴²

In countries where criminal defamation remains in place, Article 19 strongly recommends the following: the abolition of excessive sanctions, including prison sentences and heavy fines; prohibiting public officials and bodies from instituting criminal defamation actions; and ensuring the existence of adequate defences.⁴³

These defamation laws, when read with the Singapore Constitution, are of considerable concern to democracy in Singapore. Section 45 of the Constitution provides:

‘Disqualifications for membership of Parliament

45. –

- (1) Subject to this Article, a person shall not be qualified to be a Member of Parliament who –
- (a) is and has been found or declared to be of unsound mind;
 - (b) is an undischarged bankrupt [emphasis added];
 - (c) holds an office of profit;
 - (d) having been nominated for election to Parliament or the office of President or having acted as election agent to a person so nominated, has failed to lodge any return of election expenses required by law within the time and in the manner so required;
 - (e) has been convicted of an offence by a court of law in Singapore or Malaysia and sentenced to imprisonment for a term of not less than one year or to a fine of not less than \$2,000

³⁹ *Ibid.*

⁴⁰ *Defamation ABC: A Simple Introduction to Key Concepts of Defamation Law* (Article 19: November 2006).

⁴¹ *Ibid.*

⁴² UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, *Joint Declaration* (10 December 2002). Available at www.osce.org/documents/rfm/2002/12/190_en.pdf.

⁴³ *Defamation ABC*, see above, note 38.

and has not received a free pardon [emphasis added]:

Provided that where the conviction is by a court of law in Malaysia, the person shall not be so disqualified unless the offence is also one which, had it been committed in Singapore, would have been punishable by a court of law in Singapore;

- (f) has voluntarily acquired the citizenship of, or exercised rights of citizenship in, a foreign country or has made a declaration of allegiance to a foreign country; or
 - (g) is disqualified under any law relating to offences in connection with elections to Parliament or the office of President by reason of having been convicted of such an offence or having in proceedings relating to such an election been proved guilty of an act constituting such an offence.
- (2) The disqualification of a person under clause (1)(d) or (e) may be removed by the President and shall, if not so removed, cease at the end of 5 years beginning from the date on which the return mentioned in clause (1)(d) was required to be lodged or, as the case may be, the date on which the person convicted as mentioned in clause (1)(e) was released from custody or the date on which the fine mentioned in clause (1)(e) was imposed on such person; and a person shall not be disqualified under clause (1)(f) by reason only of anything done by him before he became a citizen of Singapore.
- (3) In clause (1)(f), “foreign country” does not include any part of the Commonwealth or the Republic of Ireland.’

Therefore, if a potential candidate is either convicted of defamation as a criminal offence and is either imprisoned for one year or fined with at least S\$2,000, or if they are liable to pay damages in a civil suit so large as to bankrupt them, the Constitution in Singapore provides that they are ineligible to stand for election. In the case of being bankrupt, they are ineligible to stand until the bankruptcy has been discharged, and in the case of being prosecuted, they are ineligible to stand for election for five years. Therefore, these provisions have the potential to be used to prevent political opponents from standing for office for significant periods of time.

The Singapore Government has pointed out – correctly – that other Constitutions have similar provisions. The Constitution of Australia, in section 44, states that:

‘44. Any person who –

- (i.) Is under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or citizen of a foreign power: or
- (ii.) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer [emphasis added]: or

- (iii.) Is an undischarged bankrupt or insolvent [emphasis added]: or
- (iv.) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or
- (v.) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons: shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.’

It should be noted that in the Australian Constitution, the disqualification does not apply to fines only, but is limited to terms of imprisonment. The law of England and Wales has a similar restriction, applying to a one year term of imprisonment only. However, aside from fines also being exclusionary, it is not the drafting of the legislation and constitution themselves that cause concern, but the way in which they appear to be being used to restrict opposition activities.

The Singapore Government’s position regarding the allegation that the combined use of Article 45 of the Constitution and the defamation laws may be abused to hinder political opposition is that it is not the motivations of those bringing defamation suits that are of concern:

‘What matters is the substantive content of the laws upon which such suits are adjudicated and the due process accorded to all parties... When anyone sues in defamation, he or she is putting his or her own reputation on the line. It is open to the defendant to prove that what is said is true. A plaintiff who sues opens his or her actions to public scrutiny and regular cross-examination in court. Plaintiffs, including government officials, have been rigorously cross-examined in court in defamation cases...

The law of defamation is sensitive and nuanced enough to differentiate fair criticisms on the one hand, innocent, unintended or careless remarks on the other hand, and malicious falsehoods in the third category. The law also ensures that fair and justified comments, even if defamatory, will not necessarily get its maker into trouble.’⁴⁴

However, this is not how others regard the situation. Lawyers’ Rights Watch Canada has stated that ‘the twin swords of defamation and bankruptcy law effectively allow the PAP to silence and eliminate members of the opposition’.⁴⁵ The International Commission of Jurists⁴⁶ (ICJ) has stated:

⁴⁴ Letter from Mark Jayaratnam to the IBA, see above, note 2.

⁴⁵ Kelley Bryan, ‘Rule of Law in Singapore – Independence of the Judiciary and the Legal Profession in Singapore’ (Lawyers’ Rights Watch Canada: 17 October 2007). Available at www.lrwc.org/documents/LRWC.Rule.of.Law.in.Singapore.17.Oct.07.pdf, accessed 12 November 2007.

⁴⁶ The International Commission of Jurists (ICJ) is a highly respected organisation dedicated to the primacy, coherence and implementation of international law and principles that advance human rights. What distinguishes the ICJ is its impartial, objective and authoritative legal approach to the protection and promotion of human rights through the rule of law. The ICJ has received a number of leading international human rights awards including the first European Human Rights Prize by the Council of Europe, the Wateler Peace Prize from the Carnegie Foundation, the Erasmus Prize by the Paremium Erasmianum Foundation and the United Nations Award for Human Rights. The ICJ holds consultative status with the United Nations Economic and Social Council, the United Nations Educational, Scientific and Cultural Organisation, the Council of Europe and the African Union.

‘Singapore’s Leadership has a longstanding reputation for using defamation actions as a mechanism for removing opposition members from the Singapore parliament: far from tolerating critical remarks (not even those spoken or written in the heat of an election campaign), Messrs Goh and Lee have been swift to commence actions, to succeed with them, and to obtain such unconscionably high damages (and costs) as to bankrupt their opponents.’⁴⁷

PAP officials have indeed initiated a series of defamation suits that have been won against opposition figures. In defence of their defamation suits against opponents, Mr S Jayakumar, the Deputy Prime Minister and Minister for Law, stated at the IBA Rule of Law Day that ‘the government has an old-fashioned notion that for leaders to be credible their reputation with the public is vital. The people expect that every minister will protect his reputation – if not, then they have no business being in government’.⁴⁸

The likelihood that defamation suits are being used intentionally to restrict opposition activities is further increased when comments by PAP officials during parliamentary debates are considered. In one case (considered further below) when concerns about the continuing extension of the Chief Justice’s tenure by the Prime Minister were expressed by an opposition member, then-Prime Minister Lee Kuan Yew stated that such an allegation was ‘a remark which I hope he will have an opportunity outside this Chamber to expand on’.⁴⁹ Given the history of defamation suits by PAP officials in Singapore, this suggestion to repeat the allegations outside of parliamentary privileges appears to be a serious threat against one of only two opposition members at that time.

Critics have stated that the defamation suits initiated by PAP leaders have led to the current climate of self-censorship in Singapore, both regarding political speech and within the news media.⁵⁰ Dissenting political opinion is further deterred by reports that no PAP leader has ever lost a defamation suit against an opposition figure in court.⁵¹ This has raised further questions about the independence of the judiciary in Singapore (considered below) when considering free expression cases. The limits on freedom of expression and the use of the Constitution and defamation laws in this way is well illustrated in the cases of Mr Joshua Benjamin Jeyaretnam (former Workers’ Party leader), Tang Liang Hong (former candidate of the Workers’ Party) and Dr Chee Soon Juan (leader of the Singapore Democratic Party).

Joshua Benjamin Jeyaretnam

Former Workers’ Party leader and Senior District Judge Joshua Benjamin (J B) Jeyaretnam was elected to parliament in a by-election in 1981, breaking the PAP’s 16-year parliamentary monopoly. He was re-elected in 1984. However, in 1986 he was accused of the misuse of party funds. He was

47 Stuart Littlemore, QC, *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*. Available at www.singapore-window.org/icjbbrep.htm.

48 Jonathan Ames, ‘Impassioned debate at the rule of law session’, *International Bar News* (December 2007), pp 15–17.

49 Report of Commission of Inquiry into Allegations of Executive Interference in the Subordinate Courts (Paper CmD 12 of 1986) Singapore Hansard, 29 July 1986.

50 *Country Report on Human Rights Practices 2005: Singapore* (US Department of State: 8 March 2006). Available at www.state.gov/countries, accessed 25 September 2007.

51 John Berthelsen, ‘No Surprise Here, Singapore’s Lee Family Wins in Court’, *Asia Sentinel*, 24 February 2007. Available at www.asiasentinel.com/index.php?option=com_content&task=view&id=393&Itemid=31, accessed 5 September 2007.

acquitted at first instance (by Justice Michael Khoo, considered further below), but the appeal was upheld and a retrial heard by a District court. Mr Jeyaretnam applied for the retrial to be heard before the High Court, which would have allowed an appeal to be taken to the Privy Council, but this was rejected and he was convicted at retrial. As a result of his conviction, he was expelled from Parliament and disbarred from the Singapore Law Society. Mr Jeyaretnam was able to appeal only his disbarment to the Privy Council in London, which strongly criticised the original conviction and concluded in obiter dicta that Mr Jeyaretnam had not committed the offences for which he had been found guilty.⁵² The Privy Council stated:

‘Their Lordships have to record their deep disquiet that by a series of misjudgments the solicitor and his co-defendant Wong have suffered a grievous injustice. They have been fined, imprisoned and publicly disgraced for offences of which they were not guilty. The solicitor, 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 solicitor 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.’⁵³

The President refused the petition for pardon in May 1989, as Mr Jeyaretnam ‘had not expressed any sense of remorse, contrition or repentance in respect of the crimes for which he was now convicted’.⁵⁴

It should be acknowledged – as the Singapore Government points out – that the Privy Council’s comments on the case were later labelled as being ‘most unusual’ by Justice Brooke, an English High Court Judge, as the prosecuting authority was not party to the proceedings. However, the surrounding text in Justice Brooke’s judgment highlights the reasons behind why the Privy Council took this extreme step under the circumstances:

‘At all material times up to 1988 the Judicial Committee of the Privy Council was the court of final appeal for Singapore not only for solicitors who have been struck off the roll but also for defendants in criminal trials who had been tried at first instance in the High Court or whose cases, after a trial at first instance by a district judge, raised questions of law of public interest which the High Court judge who heard their appeal was willing to reserve for the decision of the Court of Criminal Appeal.

In the Plaintiff’s case both his original trial and his retrial on one charge were conducted by a district court judge. In due course the Privy Council was to be critical of a decision by one Singapore judge not to transfer the retrial to the High Court and the decisions by two other Singapore judges not to reserve to the court of Criminal appeal questions of law

52 At the time the Privy Council was Singapore’s highest Court of Appeal. *Jeyaretnam v Law Society of Singapore* [1988] 3 MLJ 425.

53 *Jeyaretnam v Law Society of Singapore* [1988] 3 MLJ 425.

54 Inter-Parliamentary Union Resolution Case No Sin/01 Joshua Jeyaretnam – Singapore, adopted without a vote by the Council at its 170th session (Marrakesh 23 March 2002).

which the Privy Council considered to be of public interest. If either of these courses had been taken, the Privy Council would have had jurisdiction to hear the Plaintiff's appeals in some or all of the cases in which he had been convicted. It was in these circumstances, where the Privy Council as the final court of appeal in serious criminal cases in Singapore felt that the Plaintiff's right of recourse to it had been blocked by wrong decisions taken by Singapore judges dealing with a district court case, that it expressed itself as emphatically as it did, even though it was not itself seized with an appeal against the criminal convictions and had no jurisdiction at all in respect of them. It was a most unusual, perhaps unique situation, and the Parliament of Singapore has now taken steps to ensure that it does not occur again.⁵⁵

In 1995, the Workers' Party newspaper was sued for criticising Tamil Language Week and its supporters, resulting in two libel suits against Mr Jeyaretnam as editor, and others.⁵⁶ One of the suits was made by the Tamil Language Week organising committee, one of whom later became a PAP Member of Parliament.⁵⁷ After large damages of S\$200,000 and S\$265,000 plus costs were awarded to the plaintiffs in both cases, bankruptcy proceedings were commenced against Mr Jeyaretnam but were suspended upon the agreement to pay the damages by instalment.⁵⁸

Due to these fines, Mr Jeyaretnam remained barred from standing for re-election until 1997, when he was reinstated to parliament as a non-constituency member; one of just three opposition members out of 85 of the Singapore Parliament.⁵⁹ In the same year, he was sued for allegedly defaming Goh Chok Tong, Lee Kuan Yew and other PAP leaders during an election campaign rally. Amnesty International has reported that Mr Jeyaretnam was interrupted during his speech by fellow parliamentary candidate Tang Liang Hong (considered further below) placing documents on the podium in front of him, following which Mr Jeyaretnam allegedly stated: 'And finally, Mr Tang Liang Hong has just placed before me two reports he has made to police against, you know, Mr Goh Chok Tong and his people.'⁶⁰ Tang Liang Hong had made the police reports alleging that the PAP leadership had defamed him by publicly labelling him an 'anti-Christian, Chinese chauvinist'.⁶¹ Subsequently, the Prime Minister claimed Mr Jeyaretnam's statement was defamatory and was awarded S\$20,000 (being S\$10,000 in damages with aggravated damages of S\$10,000) plus 60 per cent of the plaintiff's costs. The aggravated damages were for the defendant's QC's 'wide-ranging attack on the credit and credibility of the Prime Minister' during cross-examination although there had not been objection made by the plaintiff's QC.⁶² In making this award, the 'high standing and reputation of the plaintiff' was also taken into account, without further reason given, thereby indicating that the Prime Minister was given special consideration in court, possibly breaching the international fair trial standard that all persons are equal before the courts.⁶³ The court of first

55 *Jeyaretnam v Mahmood et al* (1991 Eng Q B).

56 Inter-Parliamentary Union Resolution, see above, note 52.

57 *Ibid.*

58 *Ibid.*

59 *Ibid.*

60 Amnesty International, 'JB Jeyaretnam – The Use of Defamation Suits for Political Purposes', 15 October 1997. Available at web.amnesty.org/library/Index/engASA360041997?OpenDocument&of=COUNTRIES\SINGAPORE, accessed 25 September 2007.

61 *Ibid.*

62 Stuart Littlemore, QC, see above, note 45.

63 *Ibid.*

instance agreed that the words themselves were not defamatory, but imported the background against which Mr Jeyaretnam made his comments, concluding that ‘the defendant’s words... carry the suggestion that the plaintiff may, in making those allegations against Mr Tang have done something wrong’ and therefore found in favour of the plaintiffs for a ‘lesser meaning’ not actually argued by the plaintiffs.⁶⁴ The damages were then increased upon Mr Jeyaretnam’s appeal to S\$100,000 plus costs. Given that the reports had been made to the police, and that Mr Jeyaretnam had not stated anything as to the veracity of the claims themselves, it is unclear how defamation could reasonably have been found in this case. Bankruptcy proceedings were again delayed by an agreement to pay the damages in instalments.⁶⁵

The ICJ sent a trial observer to the appeal hearing in this case. The ICJ concluded that the court’s finding of the words as defamatory indicated that ‘the Court was unduly compliant to the government’.⁶⁶ Further, the ICJ found that ‘the finding of malice was insupportable and indicative of the Court’s bias’.⁶⁷ The ICJ also found that the court’s decision to excessively increase the high assessment of damages was not established by precedent, as the only two cases cited by the court did not involve actions brought by government officials.⁶⁸ Further, Stuart Littlemore QC, the observer in the case, stated that ‘it would be unfortunate indeed if the judge’s articulation of a lesser meaning imputation were irregular within the Singapore judicial system – because it would strongly suggest that the Prime Minister had been given specially favourable treatment to avoid the embarrassment of losing his case.’⁶⁹

Mr Jeyaretnam was declared bankrupt one day after he failed to pay an agreed instalment to the Tamil Language Week plaintiffs in January 2001.⁷⁰ His appeals against the bankruptcy order were rejected in July 2001. In accordance with Singapore’s Constitution, Mr Jeyaretnam was again expelled from parliament, banned from practising as a lawyer and prevented from standing as a candidate in the 2001 elections until he repaid the debts or his bankruptcy status was discharged.⁷¹ Significantly, bankruptcy proceedings and claims for the payment of outstanding damages were not made against any of the other plaintiffs involved in the Tamil Language Week case, suggesting that Mr Jeyaretnam was specifically targeted.

Lawyers’ Rights Watch Canada conducted a second trial observation for Mr Jeyaretnam’s appeal against the bankruptcy declaration in July 2001. This was carried out due to ‘a concern that defamation proceedings against Mr Jeyaretnam and other government critics have impaired the right of Singaporeans to fully engage in professions that carry with them the duty or responsibility to, when necessary, be critical of government.’⁷² The observers found that the Court of Appeal failed to consider the issue of abuse of process:

64 *Ibid.*

65 Inter-Parliamentary Union Resolution, see above, note 52.

66 ‘Singapore – ICJ Condemns Parody of Justice in Singapore’ International Commission of Jurists (11 September 1998). Available at www.icj.org/news.php?id_article=3334&lang=eng.

67 *Ibid.*

68 *Ibid.*

69 Stuart Littlemore, QC, see above, note 45.

70 Inter-Parliamentary Union Resolution, see above, note 52.

71 *Ibid.*

72 Gail Davidson and Howard Rubin, *Defamation in Singapore: Report to LWRC in the Matter of Joshua Benjamin Jeyaretnam and Two appeal in the Court of Appeal of the Republic of Singapore*. Available at www.lwrc.org/pub2.php?sid=18.

‘The dominant purpose of the Krishnan case appeared to be to prevent Mr Jeyaretnam from further criticising the government of Singapore and to remove him from public office by disqualifying him from continuing to sit as a Member of Parliament and by barring him from membership in the Law Society of Singapore. The collateral purpose arguably should have lead to a dismissal of the petition in bankruptcy. The Court of Appeal was asked to consider this error, but nowhere in the reasons for judgement do they address this issue of collateral purpose and abuse of process.’⁷³

The observer noted that ‘in each and every common law country except for Singapore there is a defence of qualified privilege... Under Singapore law there appears to be no such defence. The court will presume that the speaker intended to assert the truth of the matter being raised. This creates a chill and leads to... a concern with respect to freedom of expression’.⁷⁴

Lawyers’ Rights Watch Canada further noted the following:

‘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 he could return to his former role as a consistently elected member of the opposition. Only in 2007 has he been discharged from bankruptcy and regained his qualifications.’⁷⁵

The Inter-Parliamentary Union (IPU) in considering this case reported that the Singapore authorities have stated that the Tamil Language Week case was ‘really a private matter between Mr Jeyaretnam and ten private citizens who felt that they had been defamed’.⁷⁶ Further, in relation to the targeting of Mr Jeyaretnam for payment of the debt, the authorities have reportedly written ‘it is quite natural for the Plaintiffs to go against Mr Jeyaretnam who is the editor of the official Party publication, the Hammer, which published the offending article’. Further, the authorities have stated that ‘Mr Jeyaretnam’s problem is not that PAP leaders want to drive or keep him out of Parliament but that he makes wild allegations too readily’.⁷⁷ Given then-Prime Minister Lee Kuan Yew’s overt invitation for Mr Jeyaretnam to repeat allegations outside parliamentary privilege in 1986 and set out above, combined with the fact that only Mr Jeyaretnam was pursued for bankruptcy, such a claim appears questionable. The IPU also dismissed this claim, noting that ‘in the Krishnan case he [Jeyaretnam] is not the author of the incriminating article; therefore [IPU] cannot share the view of the authorities that, unlike PAP members, “he makes wild allegations too readily”’.⁷⁸

Amnesty International and Lawyers’ Rights Watch Canada expressed concern that:

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Kelley Bryan, see above, note 43.

⁷⁶ Inter-Parliamentary Union Resolution, see above, note 52.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

‘Amnesty International and Lawyers’ Rights Watch Canada are concerned that the Singaporean government may be using libel laws in a manner that amounts to a violation of the fundamental right to freely hold and peacefully express one’s opinions. Such use of the libel laws and the awarding of damages, which are not clearly in proportion to the harm suffered by the victim, run the risk of having a serious chilling effect on freedom of expression in Singapore... Amnesty International and Lawyers’ Rights Watch Canada are concerned that a number of defamation suits against opposition members and perceived government critics, resulting in large damage awards, may have failed to achieve the requisite balance between protection of reputation and protection of freedom of expression and as such may be inconsistent with international norms protecting the fundamental right to freedom of expression.’⁷⁹

In April 2008 Mr Jeyaretnam announced the formation of the Reform Party, after having paid his way out of bankruptcy in 2007. He stated ‘The most important thing is that what we have to bring about – and I’m saying it quite seriously – is the liberation of our people, the empowerment of our people.’⁸⁰

Tang Liang Hong

Another case of concern relates to Mr Tang Liang Hong, a trained lawyer and a member of the Workers’ Party. In 1997 Mr Tang presented himself as an opposition candidate, standing for the Workers’ Party in the general elections.⁸¹ He garnered increasing support in the Cheng San constituency as an outspoken critic of many aspects of the PAP regime. Importantly, Mr Tang spoke candidly during election rallies, in which he voiced particular concerns over the Hotel and Properties Limited (HPL) controversy. The HPL controversy concerned properties sold by HPL to a number of high-level government officials at a substantially discounted rate.⁸² Public scrutiny of this issue prompted an informal inquiry, which was conducted by the monetary authority. The monetary authority went on to conclude that there had been no impropriety on the part of any parties involved.⁸³ Mr Tang criticised the legitimacy of the inquiry, questioning in one Chinese weekly magazine: ‘Why wasn’t this matter handed over to the professional body like Commercial Affairs Department or Corrupt Practice Investigation Bureau?... They would be more detached and their reports would have been more convincing to the people.’⁸⁴ Mr Tang further questioned whether HPL, being a publicly listed company, had discharged its duty to shareholders to obtain the best price for its property development.⁸⁵ He clearly expressed his desire to raise the HPL issue again

79 *Singapore: International trial observer to attend Court of Appeal as former opposition leader JB Jeyaretnam faces possible expulsion from parliament*, Amnesty International/Lawyers’ Rights Watch Canada (20 July 2001). Available at www.amnesty.org.uk/news_details.asp?NewsID=13875.

80 Seth Mydans, ‘Singapore’s grand old man of political opposition is back’ *International Herald Tribune*, 12 May 2008.

81 Statement of case for the appellant (Court of Appeal Republic of Singapore, Suit No 63/1997, Para 3.2). Available at www.tangtalk.com/sc63.html.

82 *Ibid* at para 2.6

83 Francis T Seow, ‘The Politics of Judicial institutions in Singapore’ (Lecture, Sydney Australia 1997). Available at www.singapore-window.org/1028judi.htm.

84 *Ibid*.

85 *ibid*.

in the public arena, using it as a political tool against the PAP, claiming that ‘this will be their death blow.’⁸⁶

In the lead-up to the 1997 elections, Lee Kuan Yew, Goh Chok Tong, cabinet members and PAP leaders strongly criticised Mr Tang. Amongst other comments, Mr Tang was labelled as an anti-Christian, anti-Islamic, anti-English education, Chinese chauvinist. In response to the serious allegations branded against him, Mr Tang filed two police reports citing PAP members as having made false statements and of provoking religious groups to hate him.⁸⁷

On 30 December 1996 a national newspaper, The Straits Times, published statements made by Mr Tang which challenged the PAP leaders, suggesting that they had engaged in a criminal conspiracy to discredit him. Although some reports suggest that Goh Chok Tong and Lee Kuan Yew released the contents of Tang Liang’s complaints to the mass media generally, they were among the 11 PAP members who initiated a total of 13 defamation suits against Mr Tang in response to these published comments.⁸⁸

In May 1997, Justice Chao Hick Tin assessed and awarded damages against Mr Tang for the unprecedented sum of over S\$8 million.⁸⁹ In the lead-up to the trial, heard in March 1997, all defences submitted by the defendant were struck out.⁹⁰ This was a rapid decision made by Goh Joon Seng J, taken a mere two hours after being assigned to the case.⁹¹ The only grounds given were that Mr Tang had failed to comply with the terms of Orders of 27 January (a *mareva* injunction) and 17 February 1997 (an order appointing a receiver).⁹²

In response to the judgments entered against him, Mr Tang lodged a round of appeals, appealing against: (i) Lai Kew Chai J’s refusal to recuse himself for apparent bias;⁹³ (ii) the 12 striking out orders made by Goh Joon Seng J; (iii) Lai Kew Chai J’s decision to strike out his defence; and (iv) Chao Hick Tin J’s assessment of damages in all of the 13 defamation actions. All in all, Mr Tang launched 14 appeals against the various orders made.⁹⁴ However, with the exception of one (which concerned quantum for damages), every appeal was struck out.⁹⁵

Regarding the only point of appeal which was not dismissed, the Court of Appeal found that the judge had erred in the first instance by applying the same set of aggravating factors, where more than one award was to be made to the plaintiff. This process had led to overblown awards which were hugely disproportionate to the aggregate harm and injury occasioned.⁹⁶ Therefore, the Appeal Court held that the PAP leaders were only entitled to one set of costs.⁹⁷ However the Court of Appeal

86 Goh Chok Tong v Tang Liang Hong High Court, Lai Kew Chai J [1997] 2 SLR 641, Para 34.

87 Amnesty International News, 17 September 1997. Available at <http://asiapacific.amnesty.org/aidoc/ai.nsf/2409a336a83fd4e480256ef400540aa8/3432a1e92bdf69a08025690000692e65!OpenDocument>.

88 Stuart Littlemore, QC, see above, note 45.

89 ¹⁶ *Lee Kuan Yew & Anor v Tang Liang Hong & Ors & other actions* 1997 3 SLR 91, paragraph 119 (Schedule of damages).

90 Court of Appeal, Civil Appeal Suit No 64/1997. Available at www.tangtalk.com/sc64.html.

91 *Ibid.*

92 *Ibid.*

93 The appellant claimed that the apparent bias impacted on the validity of the *Mareva* injunctions and receivership order.

94 *Tang Liang Hong v Lee Kuan Yew & Anor & other appeals* CA 1998 1 SLR 97.

95 *Ibid.*

96 *Ibid.*

97 *Ibid.*

maintained that Mr Tang had to pay the bulk of the legal costs incurred by the PAP.⁹⁸

On 7 February 1998, Mr Tang was declared bankrupt, following an application apparently instigated by Lee Kuan Yew.⁹⁹ Mr Tang issued a statement publicly deploring the Court's conclusions and openly refusing to give the PAP 'a single cent'.¹⁰⁰ As an undischarged bankrupt, Mr Tang remains prohibited from holding a seat in Parliament. At the present time he is under self-imposed exile in Australia.¹⁰¹

Dr Chee Soon Juan

Dr Chee Soon Juan was born in 1962 and holds a PhD in neurophysiology from the University of Georgia. In 1992 he joined the Singapore Democratic Party (SDP), and shortly afterwards became its Secretary General, which he remains. He lectured in psychology at the National University of Singapore until 1993. Three months after contesting a by-election against then-Prime Minister Goh Chok Tong, Dr Chee was sacked for allegedly misappropriating research funds; a charge he denied and protested against through a hunger strike. The head of his department at that time, and the person who accused him of the crime was reportedly a PAP member of parliament. Dr Chee has clashed with the Singapore Government on numerous occasions, some of which are outlined below. Dr Chee has not yet been elected to Parliament.

In 2001, Dr Chee was sued by Lee Kuan Yew and former Prime Minister Goh Chok Tong for defamation during the 2001 election poll. The defamation was linked to Dr Chee's questioning of a government loan of US\$10 billion previously offered to former President Suharto of Indonesia. Dr Chee was purportedly unable to obtain a lawyer, as the president of the Association of Criminal Lawyers of Singapore, Subhas Anandan, had allegedly stated that he would represent murderers, thieves and even terror suspects but would not act for dissidents in Singapore.¹⁰² Dr Chee's application for a foreign Queen's Counsel was rejected, and he reports that a summary judgment with S\$500,000 damages was made against him.¹⁰³ After losing on appeal, in February 2006 Dr Chee was declared bankrupt after failing to pay the damages.¹⁰⁴ In addition to being prevented from standing for election, he has also reported that he has been banned from campaigning for his SDP colleagues and from appearing in public election rallies.¹⁰⁵ It should be noted that in August 1999, Dr Chee applied twice to hold public rallies, and was rejected on both occasions.

In September 2006, Dr Chee held a rally during the World Bank and IMF annual meetings. He had applied for a permit, but this was refused. The Singapore Government has stated that all outdoor demonstrations and processions would not be allowed during the meetings.¹⁰⁶ Although he was

98 *Ibid.*

99 Walter Fernandez, *The Strait Times*, 4 December 1997. Available at www.singapore-window.org/1204st.htm.

100 Tang Liang Hong, *Press Statement* (self-published: 13 February 1998). Available at www.tangtalk.com/pres0213.htm.

101 *Statement of case for the appellant*, see above, note 79.

102 John Berthelsen, see above, note 49.

103 Letter from Chee Soon Juan dated 15 February 2007. Available at www.singaporedemocrat.org/articleiba.html, accessed 20 November 2007.

104 Amnesty International, see above, note 102; Fayen Wong, 'Opposition Leader Declared Bankrupt', Reuters, 10 February 2006. Available at www.singapore-window.org/sw06/060210re.htm, accessed 20 November 2007.

105 Letter from Chee Soon Juan, 15 February 2007, see above, note 101.

106 Letter from Mark Jayaratnam to the IBA, see above, note 2.

approached by police officers, he was not arrested.¹⁰⁷ In the same month, the Attorney-General filed contempt of court charges against Dr Chee regarding his behaviour during his bankruptcy petition when he criticised the judiciary.¹⁰⁸ In June 2006, Dr Chee was charged with eight counts of speaking in public without a licence and violating the Public Entertainments and Meetings Act (PEMA).¹⁰⁹ He was initially fined S\$5,000, with an order that he be imprisoned for five weeks if he failed to pay the fine.¹¹⁰ He did not pay the fine and was eventually jailed. Dr Chee has recently lost another defamation case initiated by Lee Kuan Yew and Prime Minister Lee Hsien Loong.¹¹¹ The article in question that prompted this case concerned a scandal involving misuse of funds in the National Kidney Foundation, a government-run charity. The article effectively implied that corruption in the Foundation was not disclosed as the government insisted on secrecy in all government-run funds. Although the article did not mention Lee Kuan Yew or Lee Hsien Loong, the court found defamation based on the conclusion that the statements were defamatory by inference. In this case, the defendants did not answer the defamation claim and therefore defaulted, which makes it difficult to assess the value of the claims. It should be noted that there is reportedly a chance that the SDP will be dissolved as a result of this case. Of interest in this case is the court's decision that where reference is made to a class of persons – such as the government as a whole – every individual member of that class may have a cause of action. The court in this case rejected that there is any greater latitude to make statements about public figures or matters of public concern, and held that the two plaintiffs had a right to sue. During the damages assessment, Dr Chee represented himself and has been cited for contempt by the court.¹¹² The cross-examination of the plaintiffs was reportedly limited by the court to two hours each. Reportedly, Dr Chee has now been imprisoned for contempt of court following that hearing.

The Singapore Government's consideration of the situation regarding Dr Chee is as follows:

'Dr Chee has, in between elections, repeatedly flouted Singapore's laws on public order and insisted on going to jail instead of paying a fine to build up his dissident image...

That Dr Chee flouted the law at this time and at other times suggests that he may consider himself above the rule of law, when the law in question is one that he does not agree with.'¹¹³

Throughout the ongoing clashes between the government and Dr Chee, PAP officials have made numerous harsh criticisms of Dr Chee, both publicly and under parliamentary privilege. It certainly appears that Dr Chee has been made a target by the Singapore Government, and that their criticism of him has gone far beyond a reasonable standard.

107 Gillian Wong, 'Protestors Distribute Flyers After Police Prevent Free Speech March' (Associated Press: 19 September 2006). Available at www.singapore-window.org/sw06/060918AP.HTM, accessed 20 November 2007.

108 'Opposition Leader Charged with Contempt of Court' (Reuters: 1 March 2006). Available at www.singapore-window.org/sw06/060301r1.htm, accessed 20 November 2007.

109 'Opposition Leader Jailed and Fined' (Dow Jones Newswires: 17 March 2006). Available at www.singapore-window.org/sw06/060317dj.htm, accessed 20 November 2007.

110 Letter from Mark Jayaratnam to the IBA, see above, note 2.

111 The information in this section is taken from the Bundle of Pleadings and Interlocutory Documents, *Lee Hsien Loong v the Singapore Democratic Party, Dr Chee and Ors*.

112 Seth Mydans, 'Critic confronts Lee in Singapore Court', *International Herald Tribune* (29 May 2008). Available at www.iht.com/articles/2008/05/29/asia/sing.php.

113 Letter from Mark Jayaratnam to the IBA, see above, note 2.

However, it must also be noted that the government not taken action against those participating in democratic debate at certain times. For example, at the annual IBA Rule of Law Day, held as part of the IBA's Annual Conference in Singapore, Mark Ellis, Executive Director of the IBA, insisted that the meeting be open to the public in order to ensure an open and lively debate on rule of law issues. Included in the audience was Dr Chee, who made strong statements against the government and its human rights record. The Rule of Law Day was a public event, and despite significant delays, the IBA was eventually granted a licence from the Singapore Government for the public to attend. The resulting debate was vigorous and no action was taken following the session against those speaking.

Restrictions on the freedom of the press

In 1988, during a speech to the American Society of Newspaper Editors, Lee Kuan Yew made the following statement:

‘We cannot allow [the press] to assume a role in Singapore that the American media play in America, that of invigilator, adversary and inquisitor of the administration.’¹¹⁴

Both national and international press observations on Singapore are strictly regulated by the Singapore Government. The government has taken major international and Asian newspapers (Asian Wall Street Journal and International Herald Tribune) and weeklies (Far Eastern Economic Review, Asiaweek and The Economist) to court over defamation suits and in some cases has restricted their circulation in Singapore. As recently as October 2007 the Financial Times avoided a costly law suit by paying unspecified damages and publishing an apology that accepted its claims of nepotism were groundless. These lawsuits appear to have caused the media to remain silent for fear of extensive and expensive suits and may have created an atmosphere of self-censorship amongst journalists. In addition, the government guidelines for acceptable publishing are vague and largely unwritten, leading journalists to err on the side of caution.¹¹⁵ One commentator has described it as ‘the incremental and persistent harriving of the press’ so that ‘most reports on Singapore have become so uncritical as to be verbatim press releases crafted by Singapore’s self-promoting Information Ministry’.¹¹⁶ The Singapore Government’s position is that ‘politicians have the same right as everyone else to protect their reputation; and... there is nothing exceptional about defamation law in Singapore’.¹¹⁷ However, political debate is a necessary part of the democratic process and should be encouraged at all costs. Defences, including the defence of qualified privilege for comments made about public officials, should be available to ensure that democratic debate takes place.

Defending the restrictive media laws at a meeting with journalists in December 2004, then-Senior Minister Lee Kuan Yew (former Prime Minister 1959–1990, current Minister Mentor and father to the current Prime Minister Lee Hsien Loong) said that the role of journalists in Singapore is to play

¹¹⁴ Lee Kuan Yew quoted in Defence of the 1st and 2nd defendants, see above, note 3.

¹¹⁵ World Press Freedom Index, see above, note 28.

¹¹⁶ Christopher Lingle, in David Birch, *Singapore Media – Communication Strategies and Practices* (Melbourne: Longan Cheshire, 1993), at 106.

¹¹⁷ Letter from Mark Jayaratnam to the IBA, see above, note 2.

a part in the nation's development and not, as is common in the West, to be adversarial in nature. 'We are not that daft... we know what is in our interests and we intend to preserve our interests.'¹¹⁸

Restrictions on the press are well illustrated in four cases; the Far Eastern Economic Review; the International Herald Tribune; The Economist and the financial website FinanceAsia.

*Far Eastern Economic Review*¹¹⁹

In 1989, then-Prime Minister Lee Kuan Yew sued the author, editor, publishers and printers of the Far Eastern Economic Review (FEER) for libel stemming from an article published within it. The article followed on from the arrest and detention of 16 alleged communists in May 1987, ten of whom were closely involved with the Catholic Church. Following comments made by two Catholic priests following the arrests, the government instructed the Archbishop to restrain his priests from making statements. The FEER then published an article entitled 'New light on detentions: Catholic priest answers Jayakumar's allegations', which included, inter alia, two paragraphs against which Lee Kuan Yew took exception. According to the court report, these were:

'A member of the Church delegation said that it was hard to believe this was not an attack against the Church. The real target seemed not to be the 16 [detainees] who were merely scapegoats, but rather the four priests.

...

Yong also told the priests that as he was leaving the meeting accompanied by Lee, he was shown into a room where a press conference had been called without his knowledge. He reported that he felt "cornered" and confirmed before television cameras that he had no way to disprove the statement signed by Cheng. But he also said that he had added: "I will take things at their face value for now." This sentence, however, was omitted from the statement as shown on state run television and published in the Straits Times.'

Lee Kuan Yew claimed that these paragraphs defamed him and sought damages for libel, claiming the statements were actuated by express malice. Justice Thean granted aggravated damages of S\$230,000 and inferred that the ordinary meaning of the first paragraph was that Lee Kuan Yew had threatened to use the ISA powers against the four priests, and therefore, that he was against the Catholic Church. Further, Justice Thean held that the words were defamatory as they imputed dishonourable and discreditable conduct on Lee Kuan Yew which lowered him in the estimation of right thinking people. Justice Thean considered these allegations in light of Singapore's multiracial and multi-religious society, in which tolerance was prevalent. Justice Thean rejected all the defences. He found that although the matter was one of public interest, the priest did not state the words reported and that a fair-minded person could not honestly hold the views expressed in the article. Finally, the court found that the libel was against Lee Kuan Yew both as a man and as the Prime Minister of Singapore.

¹¹⁸ World Press Freedom Index, see above, note 28.

¹¹⁹ The information in this section is taken from the court report: *Lee Kuan Yew v Davies & Ors* 1 SLR 1063.

In 2006, Lee Kuan Yew and Lee Hsien Loong brought another action against the FEER. This article was entitled ‘Singapore’s “Matryr” Chee Soon Juan’, which included an interview with Dr Chee. The Lees demanded both an apology and withdrawal of the statements. The FEER published the Lees’ letters and offered a clarification, which was refused. In its defence, the FEER filed extensive pleadings in April 2007.¹²⁰ Among the defences claimed are: justification, qualified privilege, public interest, neutral reportage and lack of defamatory impact.

It is worth noting that the defendants tried twice to admit an English QC to defend them. The first application was rejected by the High Court, and the appeal to the Court of Appeal was also rejected. The second application had the same result. The plaintiffs opposed these applications strongly. The need for an English QC was reportedly because no Singapore Senior Council agreed to assist with the case.

In order to avoid a full court trial, the defendants applied for summary judgments, and these applications were heard in the Singapore High Court by Woo Bi Li J on 15–16 May 2008. Judgment has currently been reserved.

*International Herald Tribune*¹²¹

On 7 October 1994, the International Herald Tribune (IHT) published an article entitled ‘The Smoke Over Parts of Asia Obscures Some Profound Concerns’. The article was published in response to an article published earlier in the IHT by Kishore Mahnunami of the Ministry of Foreign Affairs. The article referred to ‘an intolerant regime in the region’ that suppressed opponents by ‘relying upon a compliant judiciary to bankrupt opposition politicians’. The Attorney-General of Singapore claimed that the article was clearly in reference to Singapore, which would have been obvious to anyone reading the article. He claimed contempt of court as the article implied that Singaporean judges were controlled by government interests as they awarded very large damages in civil suits initiated by government politicians.

The court held that courts are subject to fair criticism, but this right is not absolute. Further, the court held that the ‘right to criticize is exceeded, and contempt of court committed, if the publication impugns the integrity and impartiality of the court, even if it is not so intended’.

Ironically, given the large number of defamation suits initiated by government officials, and the high damages awarded in these cases, followed by a tendency for bankruptcy proceedings to be initiated, the court concluded that the ordinary reader would have inferred that the country referred to was Singapore. Consequently, the article was held to be clearly referring to the Singaporean judiciary, and was therefore held in contempt of court. The court fined the IHT a total of S\$20,500.

¹²⁰ Defence of the 1st and 2nd defendants, see above, note 3; Defence of the 1st and 2nd defendants, *Lee Hsien Loong v Review Publishing Company Ltd and Hugo Restall Suit No 540 of 2006*. Available at www.asiasentinel.com/images/stories/PDF/defenceclky.pdf.

¹²¹ The information in this section is taken from the court report: *Attorney general v Lingle & Ors* 1995 1 SLR 696.

The Economist

In 2004, *The Economist* published an apology on its website for an article entitled ‘Temasek, First Singapore, Next the World’. Temasek Holdings is a Singapore government holding company that controls 40 listed Singaporean companies with a market worth of around S\$60 billion. The article focussed on Temasek’s rapid expansion since Ms Ho Ching (wife of then-Deputy Prime Minister Lee Hsien Loon) had been promoted to the head of the organisation. The article noted the appointment of PAP-linked persons to state companies and noted a number of circumstances in which Temasek had achieved better than average results through business arrangements with other state-linked companies.¹²² The article welcomed, but doubted, the true commitment of Temasek to become more transparent.¹²³ Two weeks later, *The Economist* printed a full apology and reported that it had paid S\$390,000 in damages as well as the Lees’ legal costs in an out-of-court settlement.¹²⁴

FinanceAsia

In 2005, *Reporters sans frontières* reported that after the Hong Kong-based *FinanceAsia* was threatened with a lawsuit for posting an article claiming links between a Singaporean investment company and the government, it apologised and agreed to pay significant compensation.¹²⁵ The regional online magazine had published an article describing Temasek Holdings as ‘the Lee family trust’.¹²⁶ Undisclosed damages were paid to Prime Minister Lee Hsien Loong, Senior Minister Goh Chok Tong, Minister Mentor Lee Kuan Yew and Temasek and its board members.¹²⁷

Many Singaporean publications facing defamation suits initiated by the government have been criticised for their unwillingness to fight such suits and for the readiness at which they issue public apologies and pay compensation. Yet, considering that the alternative is a lengthy and expensive trial, the predecessors of which have never been lost by PAP members, and the possibility that the government may cut circulation of the publication in Singapore leading to financial ruin, it is evident why such action may be taken.¹²⁸

Government control over the media in Singapore

The Singapore Government has the power to appoint and dismiss all members of staff and all directors of Singapore Press Holdings (SPH), which is the main newspaper publisher in Singapore. The government also has the power to approve and remove all holders of shares in SPH, causing concern that the coverage of domestic events, foreign relations, editorials and controversial issues are skewed towards government policies and the opinions and values of government leaders.¹²⁹ The

122 Michael Blackman, ‘Temasek: First Singapore, next the world’, *The Economist* (United Kingdom: 12 August 2004). Available at www.singapore-window.org/sw04/040812e1.htm.

123 *Ibid.*

124 Gomez, see above, note 34.

125 *Singapore Annual Report 2006* (Reporters Sans Frontiers). Available at www.rsfo.org/article.php3?id_article=17360, accessed 20 November 2007.

126 ‘Singapore: Magazine apologises to Singapore’s top leaders’, *The Straits Times*, 17 September 2005. Available at www.asiamedia.ucla.edu/article-southeastasia.asp?parentid=29947, accessed 20 December 2007.

127 US State Department Country Report 2005, see above, note 48.

128 World Press Freedom Index, see above, note 28.

129 Gomez, see above, note 34.

Singapore Government denies this to be the case.¹³⁰ One report stated:

‘Opposition politicians complain of unfair coverage, not without some justification. The press does not seem to subscribe to the theory that the opposition is an indispensable pillar of democracy, and therefore inherently newsworthy regardless of its quality. Instead, opposition politicians must satisfy editors that they are offering serious and credible ideas, before they are deemed worthy of more than minimal coverage.’¹³¹

However, the Singapore Government has stated that:

‘The Government does not get involved in the day-to-day running of newspapers or dictate the presentation of news. SPH and all other media companies in Singapore operate their companies as commercial enterprises.

The robust debates reflecting diverse public opinion in our newspapers on recent issues, such as the decision to allow Integrated Resorts with Casinos and Means Testing for Healthcare subsidies, as well as objective coverage of the General Elections are proof that diverse values and opinions are reflected, not just the Government’s. Diverse views of the public are also evident in print and online forum letters and on our radio talk shows... The foreign media are free to report on developments in Singapore. The only condition – which is only fair – being that Government reserves the right of reply to distorted and tendentious reports.’¹³²

The Newspaper and Printing Presses Act (NPPA) is the primary piece of legislation regulating the printed media industry. The Singapore Government has stated that:

‘The intent of the NPPA is to protect public interest, prevent manipulation by foreign elements to glorify offensive viewpoints and to prevent newspapers from being used as instruments of subversion.’¹³³

However, it appears upon closer inspection of the NPPA that it goes further than a mere ‘right of reply’ that is the only purported condition on newspaper coverage in Singapore. The NPPA incorporates a number of restrictions on newspaper companies, including the following:

- no one may become a substantial shareholder or a direct or indirect controller of a newspaper company without obtaining the approval of the Minister;
- applications to become a controller or substantial shareholder may be rejected if the Minister is not satisfied that the person is fit and proper, the newspaper company will continue to conduct its business prudently, and that it is in the national interest;
- failure to comply with the NPPA is a criminal offence, punishable by both fines and imprisonment; and

130 Letter from Mark Jayaratnam to the IBA, see above, note 2.

131 Cherian George, ‘Singapore: Media at the Mainstream and the Margins’, in Russell H K Heng (ed), *Media Fortunes, Changing Times: ASEAN States in Transition* (Singapore: Institute of Southeast Asian Studies, 2002).

132 Letter from Mark Jayaratnam to the IBA, see above, note 2.

133 *Ibid.*

- newspapers may not receive funding from foreign sources without the prior approval of the Minister.

The Minister may also declare any newspaper published outside of Singapore to be a newspaper engaged in the domestic politics of Singapore, which may not be sold or distributed by any person without the approval of the Minister. Failure to comply with this is an offence, punishable by S\$50,000 and/or two years' imprisonment.

This level of control over printed media in Singapore and on the distribution of foreign material likely to be critical of the Singapore Government appears to go far beyond the claim that it is only the right to reply that is available to the Singapore Government. The Singapore Government rejects that there is a problem here, stating:

‘What is important to Singapore and Singaporeans, in our development as a cosmopolitan global city, are fundamentals such as good governance, a safe environment, our performance as a cohesive and resilient society, and our ability to respond effectively to challenges and connect with the world as part of a globalised economy. Our media have been sensitive to Singapore’s national and community interests, enabling contribution to nation-building, thereby strengthening the resolve and resilience of Singaporeans. There is no reason why Singapore should unthinkingly adopt a model favoured by some other countries which have their own socio-political circumstances.’¹³⁴

A number of publications have found their circulation restricted under this NPPA, including Time, the FEER and The Economist. One example of the use of the NPPA was evident in 1987, and relates to the circulation of the Asian Wall Street Journal.

*Asian Wall Street Journal*¹³⁵

In 1987, the Minister of Communications and Information declared that the Asian Wall Street Journal (AWSJ) was a foreign newspaper engaging in the domestic politics of Singapore, and restricted its circulation under the NPPA. This was as a result of the AWSJ’s refusal to publish official government replies to earlier articles. Dow Jones Publishing Co, the AWSJ’s owners, applied to the High Court to quash this decision, but this was dismissed. They then appealed to the Court of Appeal claiming that: there were insufficient facts to support the exercise of his power; the Minister had not directed himself properly; the Minister took into account irrelevant factors; the Minister acted in breach of his duty to act fairly; and the Minister had acted unreasonably.

The court dismissed the appeal, holding that the Minister did not need to be satisfied of any condition before ordering a publication’s restricted circulation under the NPPA. The claimed irregularities in the decision making were rejected by the Court of Appeal. The court noted that the words of the NPPA of ‘engaging in’ domestic politics implied ‘interfering’ or ‘meddling’, but did not require this to be for the purposes of furthering the interest of any political or non-political group in

¹³⁴ *Ibid.*

¹³⁵ The information in this section is taken from the court report: *Dow Jones Publishing Co (Asia) Inc v Attorney-General* [1989] 1 SLR 70.

Singapore. In his judgement, Justice Chan Sek Keong stated:

‘Translated into the domestic politics of Singapore, the meddling need not be for or against the policies of any political party, or the interests of any non-political group in Singapore. It is simply involving oneself in some matter, in this case the domestic politics of Singapore where such involvement is neither solicited nor welcomed by those who are concerned with or affected by such matters, ie, the people of Singapore. As an illustration, if the AWSJ were to publish an article or an editorial comment advising or exhorting the people of Singapore on the moral or ethical principles or cultural values that should be accepted or rejected as part of the national ideology of Singapore, it would be wholly appropriate in this regard to describe such activity as engaging in the domestic politics of Singapore. In our view, the fact that the advice is intended to be constructive or otherwise is not relevant. What the expression imports is that the domestic politics of Singapore is for Singaporeans and any attempt by non-Singaporeans to take part in it in any form or manner directly or indirectly is engaging in such politics.’

The breadth of the areas outlined in this definition is very broad, and reflects Singapore’s lack of engagement with the international community.

In defending the freedom of its media, the Singapore Government has pointed to a survey in which seven in ten Singapore citizens expressed confidence in Singapore’s media, while Press Freedom House reported a freedom ranking of 69 per cent,¹³⁶ which is the highest reported confidence amongst developed countries in Southeast Asia. It should be noted that the Press Freedom House scoring system scores 0–30 for countries having a ‘free’ media, 31–60 for a ‘partly free’ media and 61–100 for countries with a ‘not free media’, so Singapore’s score of 69 per cent equates to ‘not free’.¹³⁷ Further, the report to which the government points as evidence of the confidence of Singapore’s citizens in the media states that residents were more likely to express confidence in the quality and integrity of their media, where their country’s media was ranked as ‘not free’.¹³⁸ Conversely, most citizens of countries with media ranked as ‘free’ were likely to express a lack of confidence in their media. Consequently, confidence in the media and freedom of the media are not necessarily positively correlated.

It should be questioned why such strict controls over the media are necessary, if – as the government asserts – the media has been sufficiently sensitive to what the Singapore Government defines as Singapore’s national and community interests. Further, it remains unexplained why foreign media critical of Singapore should be so strictly controlled, when Singapore and Singaporeans are ostensibly preoccupied with other priorities. Further, if Singaporeans are in favour of their government and its actions, the Singapore Government should have nothing to fear from allowing publications – whether domestic or foreign – to criticise and question it.

136 Cynthia English, *Quality and Integrity of World’s Media Questioned*. Available at www.gallup.com/poll/103300/Quality-Integrity-Worlds-Media-Questioned.aspx.

137 Press Freedom House 2007, *Singapore report*. Available at www.freedomhouse.org/template.cfm?page=251&year=2007.

138 Cynthia English, see above, note 134.

Restrictions on the internet

In 2005, Singapore held a high internet access rate of 67.2 per cent of the population, with 64.6 per cent of households having internet access and 73.7 per cent of households owning at least one personal computer.¹³⁹ There are three main Internet Service Providers (ISPs): SingNet, StarHub and Pacific Internet.¹⁴⁰ SingNet (Singapore's largest ISP) is a subsidiary of SingTel, a public telecommunications company which is largely owned by Temasek Holdings, a company associated with the PAP.¹⁴¹ The Chief Executive Officer of SingTel is the brother of the current Prime Minister Lee Hsien Loong.¹⁴² Temasek Holdings is also the majority shareholder in StarHub.¹⁴³

The Singapore Government reports that 'Anyone can set up a website, including political ones, on the Internet'.¹⁴⁴ Similarly, as attested by the Singapore Government, internet websites are easily accessed in Singapore. In favourable comparison to its neighbours, Singapore limits access to only 100 websites, tending to focus on pornography, illegal drugs and religious fanaticism. The 2007 OpenNet Initiative's survey confirms this, stating that 'Singapore engages in minimal internet filtering'.¹⁴⁵ The report notes that Singapore has one of the highest internet usage rates in the world. However, the report goes on to argue that Singapore 'employs a combination of licensing controls and legal pressures to regulate internet access and to limit the presence of objectionable content and conduct online'.¹⁴⁶ In particular, the report criticises the use of 'restrictive laws, political ties to the judiciary, and ownership and intimidation of the media' and the use of defamation suits by government plaintiffs against criticisms.¹⁴⁷

The Media Development Authority (MDA) regulates access to the internet through the issuance (or withholding) of website licenses.¹⁴⁸ In addition, it also regulates internet material by licensing ISPs through which all local users are required to route their internet connections.¹⁴⁹ The MDA Internet Code of Practice (1997) specifies the type of material forbidden from accessing, posting and discussing, and the responsibilities of internet providers. The Code of Practice prohibits material that is 'objectionable on the grounds of public interest, public morality, public order, public security, national harmony, or is otherwise prohibited by applicable Singapore laws'.¹⁵⁰ The Singapore Government reports that the MDA consults with the public to inform it of sites that are considered to be offensive or objectionable. However, the list of objections is vague, and has the potential to be used to repress dissenting opinion. Section 17 of the MDA Act stipulates that the MDA may investigate if it has reasonable grounds to suspect that any provisions of its code have been infringed. After the investigation, if the MDA concludes there has been an infringement, it is obliged to give

139 *Asia Internet Usage and Population Statistics*. Available at www.internetworldstats.com/stats3.htm, accessed 20 November 2007 (citing International Telecommunication Union data).

140 James Gomez, see above, note 34.

141 *Ibid.*

142 *Ibid.*

143 *Ibid.*

144 Letter from Mark Jayaratnam to the IBA, see above, note 2.

145 Singapore OpenNet Survey 2007. Available at <http://opennet.net/sites/opennet.net/files/singapore.pdf>.

146 *Ibid.*

147 Singapore OpenNet Survey 2007, see above, note 143.

148 James Gomez, see above, note 34.

149 *Ibid.*

150 Section 4, MDA Internet Code of Practice 1997. Available at www.mda.gov.sg/wms.www/devnpolicies.aspx?sid=161, accessed 20 November 2007.

written notice to the party concerned who is entitled to make representations. Section 26 of the Act sets out in detail the directions which the MDA may make, including an order to cease the conduct in question or impose financial penalties. Failure to comply with such orders amounts to an offence.

It is also possible to sue for defamation for information published on the internet. Section 3 of the Defamation Act states that: ‘For the purpose of the law of libel and slander, the broadcasting of words by means of telecommunication shall be treated as publication in a permanent form.’ As stated, websites which deal with topics such as religion and politics have to register with the MDA. This registration requires the editors and publishers of the website to sign a declaration accepting ‘full responsibility for the contents... including contents of discussion groups carried on it’, thus giving the government a principle figure to sue if a defamation suit should arise.¹⁵¹ This in itself is not unusual, as other countries, including the United Kingdom, have similar provisions.

To understand these restrictions in practice, the cases of Sintercom and Chen Jiahao will be considered.

Sintercom

Sintercom (the Singapore Internet Community) published uncensored chat rooms and other information reputed to depart from pro-government reports.¹⁵² Article 19, a freedom of expression organisation, has reported that Sintercom was informed by the Singapore Government (through the Singapore Broadcasting Authority (SBA), MDA’s predecessor) that registration of their website as political was necessary ‘to emphasise the need for content providers to be responsible and transparent when engaging in the propagation, promotion or discussion of political issues’.¹⁵³ Further, Article 19 stated that Sintercom decided to close down due to the powers exercisable over the site and its owner following registration and the vague limitations outlined in the Code of Practice.¹⁵⁴ At the time, Dr Tan Chong Kee, Sintercom’s founder, stated:

‘Here in Singapore, we don’t say many things because we are afraid that someone’s listening. We’re always looking over our shoulders when we say something sensitive. But the moment we know it’s okay to do so, we speak up. The Internet gives users that freedom through anonymity. Sintercom was created to let people say “that’s what I think”.

[Now], the Sintercom.org website will be closed down... Registering Sintercom with SBA means that I have to be responsible for everything posted on the website, and SBA’s Code of Practice has clauses like “against the public interest, public order or national harmony” and “offends against good taste or decency”. I feel a lot of content in Sintercom can already be interpreted as unacceptable. If I put up similar content in future, I may get into trouble. That is why I sent in already published content to SBA for clearance, so there can be some certainty to what the law says. But SBA would only say “all Internet content providers whether registered with SBA or not, are required to exercise judgment

151 *Ibid.*

152 James Gomez, see above, note 34.

153 *Ibid.*

154 *Ibid.*

and ensure that the contents on their websites comply with the SBA Internet Code of Practice”.¹⁵⁵

In response to criticisms of the Sintercom situation, the Singapore Government has stated:

‘In the 12 years that the Class Licence has been in place, only a very small handful of ICPs have been asked to register with MDA as political websites. Sintercom was asked to register with then-Singapore Broadcasting Authority because it was deemed to operate a website promoting political causes. There were no restrictions placed on Sintercom over what they could post or discuss. The other websites asked to register include those operated by political parties in Singapore and the Think Centre, which is registered as a political society in Singapore. Except for Sintercom, none of these have chosen to cease operations and they have not been restricted from expressing their views.’¹⁵⁶

Further, despite apparent pressures on the media, many political blogs and websites commented widely on the 2006 elections.¹⁵⁷ However, some blogs have not been allowed to continue functioning.

Chen Jiahao

Mr Chen Jiahao was a chemical physics PhD candidate at the University of Illinois in the United States who published an internet blog entitled ‘Caustic Soda’. Online newspaper reports state that on 22 April 2005 he received an e-mail, from Mr Philip Yeo, Chairman of the Singaporean Agency for Science, Technology and Research (A*STAR), which notified him that the government was considering legal action against his blog.¹⁵⁸ Mr Yeo allegedly claimed Mr Chen’s blog contained ‘untrue and serious accusations against A*STAR, its officers and other parties’ (A*STAR said his comments constituted defamation against the agency’s chief Philip Yeo) and threatened Mr Chen with ‘legal consequences unless the objectionable statements were removed and an acceptable apology published.’¹⁵⁹ Mr Chen has stated that over the next three days, he was sent 11 e-mails demanding that he remove ‘all’ the posts on his blog or face legal action for defaming A*STAR.¹⁶⁰ Out of over 400 posts on his blog, Mr Chen has stated that only approximately ten mentioned Mr Yeo or A*STAR by name. All of these posts were on policies made by A*STAR.¹⁶¹ The exact content of the blog is no longer available online, so it is not possible to identify specifically what was stated. Mr Chen reportedly requested clarification on which material was offensive, but was told to remove everything and issue an unreserved apology.¹⁶² Mr Chen, known online as ‘AcidFlask’, then issued a public apology, shut down his blog and promised to avoid making similar statements in the future, thereby avoiding a defamation suit.¹⁶³

155 Alfred Siew, ‘Speaking your mind online without fear’, *Computer Times* (22 August 2001). Available at www.singapore-window.org/sw01/010822ct.htm.

156 Letter from Mark Jayaratnam to the IBA, see above, note 2.

157 *Internet Filtering in Asia* (OpenNet Initiative). Available at http://opennet.net/sites/opennet.net/files/Regional_Overview_Asia.pdf.

158 Christine Chiao, ‘Internet Controls Not Just About Blocking Sites, Says Report’, *Asia Media* (12 September 2005). Available at www.asiamedia.ucla.edu/article.asp?parentid=29743, accessed 25 October 2007.

159 *Ibid.*

160 Letter from Chen Jiahao (student) to Valerie Tan (journalist), 3 May 2005. Available at www.escapefromparadise.com/NewFiles/Chen.html, accessed 15 October 2007.

161 *Ibid.*

162 Christine Chiao, see above, note 156.

163 *Ibid.*

2. The independence of the judiciary

While Singapore has not ratified the ICCPR, Article 10 of the UDHR states:

‘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.’

As considered above, many commentators consider the UDHR to have reached the status of customary international law, so respect for the independence of the judiciary, as a key element to a fair trial, is very likely to be mandatory under customary international law. This argument is supported by a number of other instruments on the topic of judicial independence, including the following.

The Latimer House Principles on the Three Principles of Government¹⁶⁴ were endorsed by the Commonwealth Heads of Government at their summit in Abuja, Nigeria in December 2003. 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: 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

164 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.

Available at www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7BACC9270A-E929-4AE0-AEF9-4AAFEC68479C%7D_Latimer%20House%20Booklet%20130504.pdf.

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.’

As a member of the UN General Assembly, Singapore should also have regard to the provisions of the UN Basic Principles on the Independence of the Judiciary, which states:

‘Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.’

It is important to recognise the multi-faceted concepts of judicial independence and impartiality. Judicial independence is well set out in the Canadian Supreme Court case of *Valiente v the Queen*, in which the court stated that judicial independence:

‘... connotes not only a state of mind but also a status or relationship to others – particularly to the executive branch of government – that rests on objective conditions or

guarantees... [This] involves both individual and institutional relationships: the individual independence of a judge as reflected in such matters as security of tenure and the institutional independence of the court as reflected in its institutional or administrative relationships to the executive and legislative branches of government.¹⁶⁵

By contrast, judicial impartiality refers to ‘a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case’.¹⁶⁶ The UN Human Rights Committee has confirmed this, holding that the notion of impartiality ‘implies that judges must not harbour preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties’.¹⁶⁷ The European Court of Human Rights has identified two requirements to the concept of judicial impartiality, being a subjective element and an objective element. The subjective element requires that a judge may not hold any personal prejudice or bias.¹⁶⁸ The objective element looks at whether there are ascertainable facts that may raise doubts as to the impartiality of judges.¹⁶⁹ In cases where there are such ascertainable facts, the court noted that ‘even appearances may be of a certain importance... [as] what is at stake is the confidence which the courts in a democratic society must inspire in the public and above all in the parties to the proceedings.’¹⁷⁰

Article 98 of the Singapore Constitution provides:

‘Tenure of office and remuneration of Judges of Supreme Court
98.

- (1) Subject to this Article, a Judge of the Supreme Court shall hold office until he attains the age of 65 years or such later time not being later than 6 months after he attains that age, as the President may approve.
- (2) A Judge of the Supreme Court may at any time resign his office by writing under his hand addressed to the President, but shall not be removed from office except in accordance with clauses (3), (4) and (5).
- (3) If the Prime Minister, or the Chief Justice after consulting the Prime Minister, represents to the President that a Judge of the Supreme Court ought to be removed on the ground of misbehaviour or of inability, from infirmity of body or mind or any other cause, to properly discharge the functions of his office, the President shall appoint a tribunal in accordance with clause (4) and shall refer that representation to it; and may on the recommendation of the tribunal remove the Judge from office.
- (4) The tribunal shall consist of not less than 5 persons who hold or have held office as a Judge of the Supreme Court, or, if it appears to the President expedient to make such an appointment, persons who hold or have held equivalent office in any part of

165 *Valiente v the Queen* 2 SCR 673 (1985).

166 *Ibid.*

167 Communication No 387/1989, *Arvo O Karttunen v Finland* (views adopted on 23 October 1992), in UN Doc GAOR, A/48/40 (vol II) 120.

168 *Daktaras v Lithuania European Court of Human Rights* (judgment 10 October 2000).

169 *Ibid.*

170 *Ibid.*

the Commonwealth, and the tribunal shall be presided over by the member first in the following order, namely, the Chief Justice according to their precedence among themselves and other members according to the order of their appointment to an office qualifying them for membership (the older coming before the younger of 2 members with appointments of the same date).

- (5) Pending any reference and report under clause (3), the President may, if he, acting in his discretion, concurs with the recommendation of the Prime Minister and, in the case of any other Judge, after consulting the Chief Justice, suspend a Judge of the Supreme Court from the exercise of his functions.
- (6) Parliament shall by law provide for the remuneration of the Judges of the Supreme Court and the remuneration so provided shall be charged on the Consolidated Fund.
- (7) Subject to this Article, Parliament may by law provide for the terms of office of the Judges of the Supreme Court, other than their remuneration.
- (8) The remuneration and other terms of office (including pension rights) of a Judge of the Supreme Court shall not be altered to his disadvantage after his appointment.
- (9) Notwithstanding clause (1), the validity of anything done by a Judge of the Supreme Court shall not be questioned on the ground that he had attained the age on which he was required to retire.
- (10) The President may, in his discretion, grant leave of absence from his duties to the Chief Justice and, acting on the advice of the Chief Justice, to any other Judge of the Supreme Court.'

In Singapore, judges are accountable to the Legal Service Commission, headed by the Chief Justice and the Attorney-General. Magistrates and district judges do not enjoy security of tenure and are rotated to various positions within the Legal Service, as determined by the Legal Service Commission, which appears to be an overlap between the executive and judicial branches and a breach of the separation of powers doctrine.

This system was set out by then-Prime Minister Lee Kuan Yew during the debate of the Judge Khoo inquiry. Mr Lee stated:

'The [Legal Service] Commission consists of the Chief Justice and one Judge (High Court Judge), the Attorney-General, three Judges – two Judges and one on the prosecuting side, making three, and three neutral members from the PSC (the Chairman and two others). The Attorney-General cannot say, "I don't like that Magistrate because he acquitted. Transfer him". It is the Chief Justice who decides who moves out from his Courts or who moves into his Courts. And Subordinate Courts and Judges have to be controlled. They are controlled by the Legal Service Commission.'¹⁷¹

¹⁷¹ Singapore Hansard 29–30 July 1986, see above, note 47.

Further, the PAP asserts that the Attorney-General is not a member of the Executive, unlike in Britain. ‘He is a Minister, a lawyer in the governing party takes over the job. And he decides who to prosecute, who not to prosecute. But not in accordance with party affiliations.’¹⁷² This distinction is confusing, and the assertion that the Attorney-General is not a member of the executive does not accord with the generally accepted definition of the executive branch held by most common law jurisdictions.

The Singapore Constitution provides for the Attorney-General’s independence.

‘Attorney-General

35.

- (1) The office of Attorney-General is hereby constituted and appointments thereto shall be made by the President, if he, acting in his discretion, concurs with the advice of the Prime Minister, from among persons who are qualified for appointment as a Judge of the Supreme Court.
- (2) When it is necessary to make an appointment to the office of Attorney-General otherwise than by reason of the death of the holder of that office or his removal from office under clause (6), the Prime Minister shall, before tendering advice to the President under clause (1), consult the person holding the office of Attorney-General or, if that office is then vacant, the person who has last vacated it, and the Prime Minister shall, in every case, before tendering such advice, consult the Chief Justice and the Chairman of the Public Service Commission.
- (3) The Prime Minister shall not be obliged to consult any person under clause (2) if he is satisfied that by reason of the infirmity of body or mind of that person or for any other reason it is impracticable to do so.
- (4) The Attorney-General may be appointed for a specific period and, if he was so appointed, shall, subject to clause (6), vacate his office (without prejudice to his eligibility for reappointment) at the expiration of that period, but, subject as aforesaid, shall otherwise hold office until he attains the age of 60 years:

Provided that —

- (a) he may at any time resign his office by writing under his hand addressed to the President; and
- (b) the President, if he, acting in his discretion, concurs with the advice of the Prime Minister, may permit an Attorney-General who has attained the age of 60 years to remain in office for such fixed period as may have been agreed between the Attorney-General and the Government.

¹⁷² *Ibid.*

- (5) Nothing done by the Attorney-General shall be invalid by reason only that he has attained the age at which he is required by this Article to vacate his office.
- (6)
- (a) The Attorney-General may be removed from office by the President, if he, acting in his discretion, concurs with the advice of the Prime Minister, but the Prime Minister shall not tender such advice except for inability of the Attorney-General to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and except with the concurrence of a tribunal consisting of the Chief Justice and 2 other Judges of the Supreme Court nominated for that purpose by the Chief Justice.
- (b) The tribunal constituted under this clause shall regulate its own procedure and may make rules for that purpose.
- (7) It shall be the duty of the Attorney-General to advise the Government upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President or the Cabinet and to discharge the functions conferred on him by or under this Constitution or any other written law.
- (8) The Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.
- (9) In the performance of his duties, the Attorney-General shall have the right of audience in, and shall take precedence over any other person appearing before, any court or tribunal in Singapore.
- (10) The Attorney-General shall be paid such remuneration and allowances as may from time to time be determined and such remuneration and allowances shall be charged on and paid out of the Consolidated Fund.
- (11) Subject to this Article, the terms of service of the Attorney-General shall either —
- (a) be determined by or under any law made under this Constitution; or
- (b) (in so far as they are not determined by or under any such law) be determined by the President.
- (12) The terms of service of the Attorney-General shall not be altered to his disadvantage during his continuance in office.
- (13) For the purposes of clause (12), in so far as the terms of service of the Attorney-General depend upon his option, any terms for which he opts shall be taken to be more advantageous to him than any for which he might have opted.'

The Chief Justice, Attorney-General and Supreme Court judges enjoy security of tenure until 65 years of age. However, after age 65 years they hold their position at the will of the President. This is of significant concern, and casts doubt on the independence of all decisions made by judges. From the date of their appointment, the possibility that the extension of their tenure may later be decided at the will of the Prime Minister affects the appearance of all their decisions. Lee Kuan Yew has defended the extension of the Chief Justice in the mid-1980s, when he stated:

‘The Chief Justice reached 65, retirement age, in 1982. I had no choice but to ask him to continue. First, because there is no better man to take the job; second because if I appointed any other Judge, they were all so young. They would be there for a very long time and the mistake would be a very costly one.

In 1985, the three-year extension expired and the situation did not improve. He has another three-year extension. I do not know whether there will be an improvement. I do know that it is a Bar that is barren of talent. I have said so in this House and I explained it in the 1985 Budget debate, 1982 Budget debate, special lawyers’ professional allowances, to retain them. Every year our best students go into medicine, and then engineering, and now the computer science.¹⁷³

Tenure is not guaranteed for all other judges, including High Court judges. This can be seen in the case of those High Court judges who are designated as Judicial Commissioners, a position which creates a one- to two-year probationary term during which the government may review a new judge’s rulings before granting full tenure.¹⁷⁴ This review process sheds significant doubt on the validity of all of the judge’s rulings until tenure has been granted. Where tenure is granted, the executive arguably retains the power to remove judges, whether through the Executive’s actual (through the Attorney-General) or apparent influence in the Legal Services Commission, or through the situation of judges who are carrying out their roles with the expectation that their tenure will be extended on the decision of the Prime Minister following their 65th birthday.

A case that warrants consideration is the transfer of Senior District Judge Michael Khoo.

Judge Michael Khoo

Judge Khoo adjudicated the trial in which Mr Jeyaretnam was charged with the misuse of party funds. In 1984 Judge Khoo acquitted Mr Jeyaretnam of some of the charges made against him but convicted him of another count of fraud. The penalty he imposed for this offence was a fine that was insufficient to cause Mr Jeyaretnam to lose his seat in Parliament.

Later that year, Judge Khoo lost his position as a judge and was transferred to the Attorney-General’s office, which he left shortly afterwards. The Chief Justice at the time confirmed when questioned that the decision to transfer Judge Khoo was his own decision. The Chief Justice reportedly stated that Judge Khoo was transferred as he had erred in law by finding that the prosecution had failed to

¹⁷³ *Ibid.*

¹⁷⁴ 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* (The Record of the Association of the Bar of the City of New York, January/February 1991), vol 46, no 1, pp 7–85 at 65.

prove a prima facie case and had acquitted Wong and Jeyaretnam without calling on them to enter their defence.¹⁷⁵

However, many critics doubted that the decision was made freely, and suspected executive influence, whether actual or implied. Although the government vehemently denied that the transfer was in response to the Jeyaretnam decision, during a parliamentary debate, then Prime Minister Lee Kuan Yew suggested otherwise when 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 [the Jeyaretnam case], he should be transferred to the Attorney-General’s Chambers.’¹⁷⁶

Mr Jeyaretnam’s response to this was as follows:

‘He [the Prime Minister] does not say that the man [Judge Khoo] was transferred because he acquitted Jeyaretnam and Wong. He says the man was transferred because he had made six misdirections of facts and two misdirections of law. But whatever it is, the undisputed fact remains he was transferred because he had acquitted Jeyaretnam and Wong. And in doing so he says the man made six mistakes. Now, who says he made the mistakes? A single Judge of the High Court says he made the mistakes. And I have tried to point out yesterday that I have been barred from appealing against that judgement of the single Judge of the High Court.’¹⁷⁷

The Singapore Government has also said:

‘A Commission of Inquiry, chaired by a High Court Judge, exhaustively investigated the allegations of executive interference in the transfer of Mr Michael Khoo. The Commission’s key finding was that there was no truth to Mr Jeyaretnam’s allegations of Executive interference in the Subordinate Courts. Lastly, the Commission found that there was no doubt that at no time had any member of the Executive interfered with the functions of the Chief Justice and the Attorney-General and that there was nothing improper in the transfer of Mr Khoo.’¹⁷⁸

The Commission of Inquiry was considered by the Parliament on 29 and 30 July 1986. The debate surrounding the Commission of Inquiry’s findings was vigorous and lengthy. The motion to accept the report included strong criticisms of Mr Jeyaretnam. Professor Jayakuma, then-Minister for Home Affairs and Second Minister for Law, moved:

‘That this Parliament... deplores as dishonourable the conduct of the member for Anson in pleading Parliamentary Privilege to evade having to give evidence on his allegations of Executive interference, allegations he had made on several occasions in this House, all of which were calculated to undermine confidence in the independence, impartiality and integrity of the

175 Singapore Hansard 29–30 July 1986, see above, note 47.

176 *Ibid.*

177 *Ibid.*

178 Letter from Mark Jayaratnam to the IBA, see above, note 2.

Subordinate Courts Judiciary... [This debate] is not about the Opposition. It is not about freedom of speech... the issue concerns a far more grave, a far more serious matter. The issue is about fundamental institutions and basic values of our society, an issue concerning standards of political integrity. It is about irresponsible attempts to bring into total disrepute our major institutions to destroy the integrity and thereby undermine the stability of our society's key institutions... [Mr Jeyaretnam's] unfounded attack on the Judiciary is a clear example of this attack. His allegations... can have only two consequences. Within Singapore, it will undermine the confidence of our people in the integrity of our judicial system. And for persons abroad, it will undermine the confidence of investors who have multi-million-dollar investments and contracts in Singapore and who expect and who have the right to expect that disputes will be settled in accordance with the law, facts and evidence... When politicians, Members of the House, make such scurrilous statements about the Judiciary, should they be allowed to do so freely? We say no. Such scurrilous, scandalous, contemptible statements must never be allowed to pass without the closest scrutiny.¹⁷⁹

Given the extremely suspicious timing of and circumstances under which Justice Khoo was transferred, fully warranting a Commission of Inquiry, this criticism of Mr Jeyaretnam appears extreme. Mr Jeyaretnam responded to these comments as follows:

'My only concern in bringing up this matter before the House is to safeguard the independence of the Judiciary, to see that it is seen by the public outside to be independent, manifestly independent. And I said that this was vital to any society which believed in democracy and in a stable society. So I refute again this scandalous, outrageous, statement made by the Minister for Home Affairs that I attacked the Judiciary and made scurrilous remarks on the Chief Justice.'¹⁸⁰

Mr Jeyaretnam criticised the appointment of a High Court judge as the Commissioner on this Inquiry; the specific choice of Glenn Knight to assist the Commission (whom he alleged had biases about the situation); and the terms of reference on which the Commission was based.¹⁸¹ Further, he pointed out that the Chief Justice, who transferred Judge Khoo, was holding his position at the pleasure of the Prime Minister, as he had passed the age of 65 and had been appointed, in accordance with the Constitution, for additional three-year periods by the Prime Minister.¹⁸² Finally, Mr Jeyaretnam noted that Judge Khoo was not transferred to a parallel position, but was transferred to a position two levels below his position as a judge.¹⁸³

Responding to Mr Jeyaretnam's criticisms, Prime Minister Lee Kuan Yew stated:

'I take him [Mr Jeyaretnam] seriously and at face value that he is suggesting at this late hour that there has been skulduggery, that there was grave impropriety in the way in which he has been convicted of an offence in the Subordinate Courts, acquitted of several charges on the same trial, had his acquittal reversed, sent back for re-trial and in the

179 Singapore Hansard 29–30 July 1986, see above, note 47.

180 *Ibid.*

181 *Ibid.*

182 *Ibid.*

183 *Ibid.*

meantime we had fixed the Judge so that he would be under a different Judge and he would be convicted. They are very grave allegations and I am ready to be X-rayed, cat-scanned, taken apart.’¹⁸⁴

During the parliamentary debate, Mr Jeyaretnam raised examples of other judges who had been transferred following the issuance of a decision against government interests, which were provided to the Commissioner and not investigated during the inquiry.

PAP members spoke passionately against Mr Jeyaretnam’s claims. Dr Augustine Tan, another MP, stated:

‘if the Executive had indeed wanted to persecute Mr Michael Khoo, then anyone who is not stupid would certainly not do it in that blatant way. In so short a time, after giving that judgement acquitting the Member for Anson [Mr Jeyaretnam] and his colleague on four out of five counts, he was transferred. It is too obvious a way to do things. If there is anything that we can hold against the Government or credit the government with, it is that it is not a Government that is stupid. The people are extremely intelligent and the sensible way to do it, if one wanted to do it, would be to wait a year or so and quietly transfer the person and not to do it like that.’¹⁸⁵

The motion to criticise Mr Jeyaretnam was opposed by opposition member Mr Chiam See Tong, who stated:

‘Over the past 25 years – this is only an observation – there is only one Party ruling this country and he has become a very dominant figure in Singapore. And I believe – I think it is a true observation – that he dominates the universities, the Civil Service, statutory boards (I think even Members of Parliament). I have the privilege of sitting just across and could see for myself that when the Prime Minister walks in, everyone sits up. It is like a school teacher coming into Parliament... It is not the Prime Minister’s fault that he dominates the country. In fact, I think foreign observers also noted that. One Canadian reporter says, “How can you fight George Washington?” Well I am not fighting the Prime Minister. I am in politics because I want to help make Singapore a better place to live in... A journalist... likens the Prime Minister to a Banyan tree. I wonder you have seen a Banyan tree. The roots grow down and they grow more, and the roots grow down and they spread and spread. I have seen such a tree, really the biggest one in the world, in India. It is true that nothing grows under the Banyan tree... My observation in Singapore today is that we have got this dominant figure. And what is the result?... members of the Civil Service... may have been influenced by... the dominant figure of the Prime Minister.’¹⁸⁶

The Prime Minister rejected this, stating:

184 *Ibid.*

185 *Ibid.*

186 *Ibid.*

‘I do my job to maintain the system so that it will last, what we have built can survive the creator generation. This is a very serious problem. And if they do not know how to deal with roughnecks, like the Member for Anson, then this whole thing will go upside down. I would never allow any challenge to the integrity of the system to go past and it should never be allowed. Therefore, we shall have this opportunity to hear the Member for Anson add the essential ingredients that will transform this picture and show that there were reasons why Judges as they wrote their judgements were looking over their shoulders, fearful, transferred out, demoted, humiliated and therefore all judgements went in accordance with the wishes of the Government or the Prime Minister. It is an absurd, ludicrous proposition.’¹⁸⁷

The proposal to remove the words criticising Mr Jeyaretnam was rejected and the motion accepting the report and criticising Mr Jeyaretnam was passed by all MPs and rejected only by Mr Jeyaretnam and Mr Chiam, the only non-PAP officials in the Parliament at that time.

Despite the strenuous defence of the PAP in this case, the circumstances surrounding the transfer of Judge Khoo remain suspect and cast doubt on the impartiality and independence of the judiciary in Singapore in cases involving opposition members.

It is worth noting that following this debate, the Singapore Government introduced changes to parliamentary privileges, increasing the penalties that could be imposed by a Parliamentary Privileges Committee, including imprisonment, suspension, reprimand or a fine of up to S\$50,000 for ‘any dishonourable conduct, abuse of privilege or contempt’ or alternatively, could remove the immunity of the member from civil action.¹⁸⁸

The view of the Singapore Law Society in this case is also worth noting:

‘[Judge Khoo was] in the first cohort of 12 lawyers to be conferred the title of “Senior Counsel” by the Supreme Court. [The claim that the judiciary is completely controlled by the will of the executive in cases involving PAP litigants] is unsupported by any credible evidence. The Law Society believes that the Judiciary in Singapore decides cases only in accordance with the principles of our laws as they understand them.’¹⁸⁹

The trend of the courts in defamation cases

Another area in which the independence of the judiciary is of concern is the cases involving the courts hearing defamation claims initiated by PAP officials. As examined above, the slim likelihood of the successful defence of an action, combined with the extraordinarily high damages awarded in defamation cases involving PAP officials sheds doubt on the independence of the judiciary in these cases.

¹⁸⁷ *Ibid.*

¹⁸⁸ See section 20 Parliament (Privileges, Immunities and Powers) Act 1985.

¹⁸⁹ Letter from Michael Hwang, President of the Law Society of Singapore to Ambassador Emilio Cardenas and Justice Richard Goldstone of the International Bar Association’s Human Rights Institute, dated 25 April 2008.

The courts in defamation cases have substantial discretion in awarding judgment and damages. Under Orders 14 (Summary Judgment) and 78 (Defamation Actions), the court has substantial discretion to resolve the case without a hearing in open court and to permit the quantum of damages to be determined by a Registrar in chambers.

The assessments of damages in cases involving PAP litigants are also of significant concern. During his observation of the Jeyaretnam case, Stuart Littlemore QC was provided with a list of all defamation actions heard to completion between 1959 (when the PAP came to power) and 1997 (when the observation took place). These are reproduced in the tables below.

Defamation cases in Singapore 1959–1997¹⁹⁰

(a) Actions by PAP litigants

Year	Litigants	Damages awarded
1979	Lee Kwan Yew v Jeyaretnam	S\$130,000
1988	Lee Kwan Yew v Seow Khee Leng	S\$250,000
1989	Lee Kwan Yew v Jeyaretnam	S\$230,000
1990	Lee Kwan Yew and his son, Goh Chok Tong v International Herald Tribune	S\$650,000
1994	Lee Kwan Yew v International Herald Tribune	S\$400,000
1996	Lee Kwan Yew & son v Tang Liang Hong	S\$1,050,000
1997	Various PAP Cabinet ministers v Tang Liang Hong	S\$5.825 million
1997	S Jayakumar, S.Vasoo, K. Shanmugam, R. Sinnakaruppan and Chandra Das v The Workers' Party and 12 of its leaders	S\$200,000 and rights to greater damages waived by claimants
1999	R Ravindram MP	S\$265,000

(b) Actions by non-PAP litigants

Year	Litigants	Damages awarded
1969	Lawyer (imputation of insolvency)	S\$7,350
1981	Lawyer (imputation of dishonesty)	S\$25,000
1992	Architect (imputation of unethical conduct)	S\$45,000
1992	Architect (imputation of fraud)	S\$60,000
1994	Bank (imputation of negligence)	S\$50,000
1995	Importer (imputation of bogus goods)	S\$100,000
1996	Company (imputation of incompetence)	S\$20,000

In the information above, it is evident that in just six cases, PAP officials have been awarded over S\$9 million in damages. This excludes those cases, such as the one discussed above regarding the Financial Times, which were settled out of court. Meanwhile, the total for all seven non-PAP litigant

¹⁹⁰ Stuart Littlemore, QC, see above, note 45; Affidavit of Ross Ronald Worthington, see above, note 18.

cases is just S\$307,350. This disparity is of serious concern for the independence of the judiciary.

The courts in the Jeyaretnam appeal

An examination of the criticised court in the Jeyaretnam appeal also warrants consideration.

The Privy Council in London, when considering Mr Jeyaretnam's appeal against his debarment, noted that the same judge, Chief Justice Wee Chong Jin, heard both the appeal from Mr Jeyaretnam's acquittal and the disciplinary proceedings leading to his disbarment. This was based on an apparent misunderstanding of section 95(6) of the Legal Profession Act, which provides that proceedings involving disciplinary proceedings 'shall be heard by a court of three judges of whom the Chief Justice shall be one'.¹⁹¹

The Privy Council noted that objection was taken to Wee Chong Jin CJ sitting on the disciplinary hearings on the ground that his presence would be inappropriate. The Privy Council found that 'the requirement in section 95(6) of the Legal Profession Act that the Chief Justice should be a member of the court hearing disciplinary proceedings was directory; that accordingly, the court erred in law in holding that it was mandatory that the Chief Justice should sit and, in the circumstances, he should have disqualified himself from membership of the court'.¹⁹² Further, the Court stated:

'It would be absurd that the Chief Justice should not be able to disqualify himself from sitting if the advocate and solicitors facing disciplinary charges was either a close relative or a sworn enemy or for any other good reason. The refusal of the objection was unfortunate because the court was to be invited to go behind and condemn Wee Chong Jin CJ's own decision on the appeals from Judge Khoo and his later refusal to reserve questions of law for the Court of Criminal Appeal. It was quite unacceptable that he should preside. Justice might be done, but certainly could not be seen to be done.'¹⁹³

Further, the Privy Council found that 'There was no basis for Wee Chong Jun CJ disagreeing with the trial judge's assessment of the chairman's evidence... Wee Chong Jin CJ's judgment was manifestly in error.'¹⁹⁴

The Privy Council also criticised the decision of the Singapore court to refuse to transfer the re-trial to the High Court, which would have allowed appeal to the Court of Criminal Appeal and then to the Judicial Committee of the Privy Council. The Privy Council stated:

'Their Lordships must confess their astonishment that Thean J, in refusing this application, held that any attempt to re-open the issue or go behind Wee Chong Jon CJ's ruling would be an abuse of the process of the court. It was further urged that as a secretary general and chairman of a political party in opposition to the party in power facing a charge with such serious implications, the solicitor and Wong should, in any event, be tried by the High

¹⁹¹ *Joshua Benjamin Jeyaretnam Appellant v Law Society of Singapore Respondent* [1989] 2 WLR 207 at 208.

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

Court not the district court. Thean J dismissed this as irrelevant.¹⁹⁵

Shortly after this decision, appeals to the Privy Council were abolished by Singapore. While not unusual in itself, this sudden reversal of previously strong support for the final appeal system casts doubt on the intentions behind the abolition. Further, Goh Chok Tong criticised the Privy Council's decision in the Jeyaretnam appeal, alleging that it had exceeded its role and was 'playing politics'.¹⁹⁶

3. Rights of assembly

Customary international law also protects the freedom of assembly, although Singapore has not ratified the ICCPR.

The UDHR states:

'Article 20.

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.'

It is worth noting that there is no limit to freedom of peaceful assembly under the UDHR. The ICCPR develops this further:

'Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.'

Singapore's approach to freedom of assembly should be considered in light of its history.

In 1950, the three-day Maria Hertogh riots (sparked by a custody battle over a Dutch Catholic girl allegedly informally adopted by a Muslim Malay woman) resulted in 18 deaths and 173 injured.

In 1964, racially-based riots between Malays and Chinese consisting of two separate five-day riots resulted in 22 deaths and 461 injured. Consequently, the Singapore Government has maintained strict control over public gatherings in order to prevent widespread riots and violence.

Article 14 of the Constitution of Singapore stipulates that all citizens have the right to assemble peaceably and without arms.¹⁹⁷ However, in practice, those rights guaranteed under the Constitution are limited by the authorities as Parliament has the power to impose restrictions 'it considers necessary or expedient in the interest of security, public order, or morality'.¹⁹⁸ Outdoor protests and

¹⁹⁵ *Ibid.*

¹⁹⁶ Francis T Seow, see above, note 81.

¹⁹⁷ Section 14, *Constitution of the Republic of Singapore*, 1999 Revised Edition. Available at <http://statutes.agc.gov.sg>.

¹⁹⁸ Section 14(2), *Ibid.*

marches are required to obtain a permit under the PEMA.¹⁹⁹ Some international commentators report that permits are refused regularly, but the Singapore Government maintains that applications are granted regularly. Without recourse to the precise statistics, it is difficult to report what the true status is for freedom of assembly in Singapore.

The PEMA acts as a challenge to the constitutional guarantee and the Asian Human Rights Commission has claimed that it is often used to convict and imprison citizens 'who attempt to voice their opinions or criticism of the government's handling of social and political issues'.²⁰⁰ Further, the Asian Human Rights Commission claims that government-backed and supported organisations frequently hold public marches and assemblies, yet permits are never required.²⁰¹ The Singapore Government has strongly objected to the Asian Human Rights Commission's claims, and rejects any suggestion that government-backed and supported organisations are given special treatment.²⁰²

There appears to have been a tendency for the PEMA to be applied rigorously to opposition candidates. For example, Mr Jeyaretnam has twice been held to infringe the PEMA and Dr Chee has received penalties at least four times.²⁰³

The Speakers' Corner at Hong Lim Park is the only outdoor place in Singapore that doesn't require a permit in order for someone to demonstrate, and was created in 2000 as a venue for outdoor political speeches. In 2004, its use was expanded to include performances and exhibitions. However, speakers also have to register with the local police and there are restrictions on which issues can be canvassed, specifically related to race or religion. The Singapore Government reports that it is considering liberalising the use of the Speakers' Corner for use as a site for more political activities including demonstrations.²⁰⁴ These developments are welcomed and encouraged.

Public assemblies of five or more people, including political meetings, require police approval in many cases. However, in 2004, the Singapore Government exempted all indoor public talks from the PEMA's licensing requirements, provided that the organisers and speakers are Singapore citizens, and that the speeches do not touch on race or religion.

The Singapore Government rejects criticisms of its record for freedom of assembly, stating:

'There are Constitutional restrictions to ensure that assemblies do not result in acts against the security of the nation, or cause damage to persons or property. Experiences in other countries have shown that demonstrations can often spiral out of control, resulting in mob violence. In Singapore, the 1950 Maria Hertogh riots and the 1964 race riots both started as peaceful assemblies but ended up with 54 dead, 736 injured, and significant damage to property. The two riots also touched on topics of race and religion. These concerns remain

199 Section 3, *Public Entertainments Meeting Act*. Available at http://agcvldb4.agc.gov.sg/non_version/cgi-bin/cgi_getdata.pl?actno=2001-REVED-257&doctype=PUBLIC%20ENTERTAINMENTS%20AND%20MEETINGS%20ACT%0A&date=latest&method=whole.

200 'Singapore Urgent Appeal' (Asian Human Rights Commission: 24 October 2002). Available at www.ahrchk.net/ua/mainfile.php/2002/313, accessed 15 October 2007.

201 'Denial of Freedom of Assembly, Expression' (Asian Human Rights Commission: 12 October 2007). Available at www.ahrchk.net/ua/mainfile.php/2006/2614, accessed 15 October 2007.

202 Letter from Mark Jayaratnam to the IBA, see above, note 2.

203 James Gomez, *Free Speech and Opposition Parties in Singapore* (self published). Available at www.jamesgomeznews.com/articles/Free_Speech-Oppn_Parties_In_Spore_290705.pdf.

204 Letter from Mark Jayaratnam to the IBA, see above, note 2.

relevant today. The UDHR and many other international instruments accept that freedom of expression is not an absolute right, but rather there can be constraints for meeting the requirements of “morality, public order and the general welfare”. Similarly, rather than being a “challenge” to the constitutionally guaranteed right of assembly, laws such as PEMA concretise what is expressed in our Constitution.²⁰⁵

However, other commentators believe that further changes are necessary. Academic Kevin Tan stated:

‘I think the recent announcement of waiver of permits for indoor meetings goes a long way to reduce the impact of PEMA. However, the PEMA still gives the police too much power to decide how the right to free speech and assembly are to be exercised in Singapore. They have too much discretion to decide whether or not to grant a permit and to designate where the meeting or speech will take place.’²⁰⁶

It has been reported that opposition applications for permits are often denied. For example, Mr Jeyaretnam has been refused permits at least three times and Dr Chee has been refused permits at least twice.²⁰⁷

Falun Gong – Mrs Ng Chye Huay and Mrs Cheng Liujin

The US State Department has reported on the case of two Singapore Falun Gong practitioners, Mrs Ng Chye Huay and Mrs Cheng Liujin, who were arrested and charged with assembly without a permit. The two women assert that this was an unjust accusation and they were simply practising Falun Gong exercises in the Singapore Marina City Park and introducing passers by to Falun Gong and explaining the cruel persecution of Falun Gong in China. According to the US State Department, the Singapore police claimed practising meditation together was a gathering and thus they participated in an assembly,²⁰⁸ an offence punishable under Rule 5 of the Miscellaneous Offences (Public Order and Nuisance) (Assemblies and Processions) Rules read with section 5(1) of the Miscellaneous Offences (Public Order and Nuisance) Act, Chapter 184. The court found both women guilty and punished them with heavy financial penalties.

The Singapore Government’s response to this case stated:

‘As reported in court, on 23 February 2003, both Mdm Ng and Mdm Cheng were seen to be distributing Falungong-related flyers, together with five other Falungong members were close by them [sic], to members of the public. Mdm Ng was also found to be in possession of six uncertified VCDs on Falungong activities on this occasion. Prior to this, Mdm Ng and Md Cheng had also broken the law on several occasions.’²⁰⁹

205 Letter from Mark Jayaratnam to the IBA, see above, note 2.

206 Kevin Tan, quoted in James Gomez, see above, note 198.

207 James Gomez, see above, note 198.

208 ‘Singapore’, *International Religious Freedom Report 2005* (US Department of State: 8 November 2005). Available at www.state.gov/g/drl/rls/irf/2005/51529.htm, accessed 17 October 2007.

209 Letter from Mark Jayaratnam to the IBA, see above, note 2.

It should also be noted that section 8(2)(b) of the Maintenance of Religious Harmony Act allows the Minister to make a restraining order against any person who is in a position of authority in a religious group, where the Minister is satisfied that the person has or is attempting to carry out activities to promote a political cause, or a cause of any political party while, or under the guise of, propagating or practising any religious belief.

4. The role of the Singapore Law Society in promoting law reform

The IBA is firmly of the view that law societies must be active participants in the legal environment. One of the key principles of a functioning law society is independence, both in the way in which it is run and in the actions it legitimately undertakes. Consequently, while a law society may be established by legislation and must cooperate with the government to ensure that all people have access to legal services, it must not be subject to undue interference from the government or from any other source.

The UN Basic Principles on the Role of Lawyers states:

‘Principle 23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognised standards and ethics of the legal profession.’

The role of law societies in law reform is illustrated by the UN Human Rights Committee in 1998 when it found that the adoption by Belarus of a Presidential Decree on the Activities of Lawyers, which gave competence to the Ministry of Justice for licensing lawyers and also obliged lawyers to be members of an association (the Collegium) which was controlled by the Ministry, undermined the independence of lawyers.²¹⁰

Another of the key principles of an effective law society is its contribution to law reform in its country. Lawyers are in an appropriate position to contribute to law reform as they know how the legal system is working on a daily basis. A law society can enhance this advantage by speaking for the profession with a single voice.

In Singapore, the Law Society is established under the Legal Profession Act. Its purposes are set out under section 38, which provides:

‘Purposes and powers of Society

38. — (1) The purposes of the Society shall be —

(a) to maintain and improve the standards of conduct and learning of the legal profession in

²¹⁰ (UN Doc GAOR, A/53/40, para 134).

Singapore;

- (b) to facilitate the acquisition of legal knowledge by members of the legal profession and others;
- (c) to assist the Government and the courts in all matters affecting legislation submitted to it, and the administration and practice of the law in Singapore [emphasis added];
- (d) to represent, protect and assist members of the legal profession in Singapore and to promote in any manner the Society thinks fit the interests of the legal profession in Singapore [emphasis added];
- (e) to establish a library and to acquire or rent premises to house the library, offices of the Society or amenities for the use of members;
- (f) to protect and assist the public in Singapore in all matters touching or ancillary or incidental to the law [emphasis added].'

Although section 38(1)(c) appears to bestow on the Singapore Law Society the right to comment on legislation, the provision that such matters or legislation be 'submitted to it' reportedly prohibits the Singapore Law Society from commenting freely on issues of law reform. This was introduced in 1986, following the Law Society's criticisms of the government proposals to restrict distribution of foreign newspapers in Singapore if the newspapers engaged in the domestic politics of Singapore. During the parliamentary debate on the issue, Lee Kuan Yew reportedly stated:

'It is my job as Prime Minister in charge of the government to put a stop to politicking in professional bodies. If you want to politic, you form your own party... you think you can be smarter than the government and outsmart it, well, if you win, you form the government. If I win, we have a new Law Society. It is as simple as that.'²¹¹

Therefore, although the legislation itself is ambiguous and does not overtly include a prohibition, the circumstances through which this came about and the comments of the Prime Minister at the time constitute a clear threat. This is of extreme concern, and has no place in a democratic society. Further, it seems to conflict with the other responsibilities of the Singapore Law Society highlighted above in the same section.

This threat is supported by legislation. Section 4 of the Societies Act states:

'Registration of specified societies and refusal to register.

4. —

- (1) Subject to this section the Registrar shall upon application by any society specified in the Schedule (referred to in this Act as a specified society) and on payment of the prescribed fee register the society.
- (2) The Registrar shall refuse [emphasis added] to register a specified society if he is satisfied

²¹¹ Lee Kuan Yew quoted in Defence of the 1st and 2nd defendants, see above, note 112.

- that —
- (a) the rules of the specified society are insufficient to provide for its proper management and control;
 - (b) the specified society is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Singapore [emphasis added];
 - (c) the application for registration does not comply with the provisions of this Act or any regulations made thereunder;
 - (d) it would be contrary to the national interest for the specified society to be registered [emphasis added]; or
 - (e) in the case of any specified society which is a political association, its rules do not provide for its membership to be confined to citizens of Singapore or it has such affiliation or connection with any organisation outside Singapore as is considered by the Registrar to be contrary to the national interest.
- (3) The Registrar may refuse to register [emphasis added] a specified society if —
- (a) he is satisfied that the specified society is a branch of or is affiliated to or connected with any society which has been dissolved under section 24 or under any previous written law relating to societies or which has been previously refused registration;
 - (b) a dispute exists among the members of the specified society as to the persons who are to be officers or to hold or to administer any property of the specified society; or
 - (c) it appears to him [emphasis added] that the name under which the specified society is to be registered —
 - (i) is likely to mislead members of the public as to the true character or purpose of the specified society or so nearly resembles the name of some other society as is likely to deceive the members of the public or members of either society;
 - (ii) is identical to that of any other existing society; or
 - (iii) is in the opinion of the Registrar undesirable [emphasis added].
- (4) Any person aggrieved by the decision of the Registrar under this section may within 30 days from the date of the decision appeal to the Minister whose decision shall be final.
- (5) The Registrar shall, by notification in the Gazette, publish such particulars as he thinks fit in respect of every specified society registered under this section.’

The emphasised passages in this act are problematic for a number of reasons. First, they are vague and not defined. Second, they leave much to the discretion of the Registrar. Third, they have the

potential to be used to inhibit the activities of the Singapore Law Society in commenting on law reform, should such comments be unwelcomed by the government. It is the opinion of the IBAHRI that such limitations breach the UN Basic Principles on the Role of Lawyers, as set out above.

Consequently, the IBAHRI is very concerned by comments reported recently to have been made by Attorney-General Walter Woon. For example, Attorney-General Woon has been quoted as stating:

‘We have to be careful when we think about public law, and not to confuse law with politics. There are many people who think if a decision is made and they don’t like it, then this is something the law can correct. There is a line between a political decision and a legal decision.’²¹²

Attorney-General Woon’s comments were reportedly made in response to the Law Society’s launch of a committee dedicated to encouraging ‘the promotion and discussion of public and international law issues’. Further, the IBAHRI is very concerned by Attorney-General Woon’s reported comments that the issue of human rights is ‘now a religion among some people... You have, like in some religions, the fanatics. And it’s all hypocrisy and fanaticism to set the views, as the leading spokesmen, of what is acceptable and what’s not’.²¹³ The IBAHRI considers that such statements fail to recognise the increasing importance of international law, as developed and practiced by states.

The IBAHRI welcomes the development of this new committee by the Singapore Law Society, and strongly encourages the Society to take a greater role in commenting on law reform in Singapore. The IBAHRI is concerned that the Singapore Law Society did not respond more fully to the draft version of this report and considers that the Law Society is not fulfilling its responsibilities to speak out on law reform issues. A number of comments made by the Singapore Law Society in its response support this analysis. The comments causing concern for the IBAHRI include the following:

‘The Law Society only proposes to comment on those issues in the paper which comes within its legitimate areas of competence. Several of the issues raised are matters for the Singapore Government, and it would be inappropriate for the Law Society to comment on matters that are outside its knowledge or ability to control.’

‘It is part of the Government’s political philosophy that there should be a certain measure of censorship in Singapore, and it is not the place of the Law Society to comment on matters which extend beyond the purely legal.’

‘Whether the existing laws [controlling public gatherings] are too strict is a political decision, and the Law Society has no comments in that regard.’²¹⁴

The IBAHRI remains very concerned about the status of the Singapore Law Society and urges the society to take a more active role in speaking out on law reform issues in Singapore.

212 Loh Chee Kong, ‘Politics, law and human rights “fanatics”: AG Walter Woon’, *Today Online, Singapore*, 30 May 2008. Available at www.todayonline.com/articles/256617.asp.

213 *Ibid.*

214 Letter from Michael Hwang SC, President of the Law Society of Singapore, to the IBAHRI dated 25 April 2008.

F. Conclusion

Despite debates between many nations as to the exact spectrum of human rights, fundamental and universal human rights cannot be considered culturally specific, but derive from the cultures of all countries. Whilst different countries and regions may prioritise civil and political rights over economic, social and cultural rights, or vice versa, it cannot be claimed that one type of rights can permanently take priority over the other. Singapore's economic development has been effective and impressive, and the standard of living of its residents is very high. However, Singapore cannot continue to claim that civil and political rights must take a back seat to economic rights, as its economic development is now of the highest order. In the modern era of globalisation, isolationist policies and attitudes are no longer tenable. The international community, through the mechanisms of the United Nations, regional forums and non-governmental human rights bodies, has a role to play in commenting on practices that it perceives to fall short of international standards. The IBAHRI strongly encourages Singapore to engage with the international community in a more constructive manner, and to take steps to implement international standards of human rights throughout Singapore. It is imperative that Singapore now takes its place as a leader in the region, not only in business and economic development, but in human rights, democracy and the rule of law.

A strong and robust rule of law requires respect for and protection of democracy, human rights – including freedom of expression and freedom of assembly – and an independent and impartial judiciary. The IBAHRI is concerned that, despite many positive achievements, the Singapore Government is currently failing to meet established international standards in these areas.

Freedom of expression ensures that differing viewpoints are voiced and taken into consideration in democratic processes. It provides checks and balances for government action, through the questioning of such action by the media, opposition parties, law societies and other stakeholders. Freedom of expression is recognised now as a fundamental human right and is protected throughout the world, including in other countries where concern for economic stability is of prime importance. The reports of opposition candidates being targeted for criticising the government are of significant concern and threaten democracy and the rule of law in Singapore. As stated by Lawyers' Rights Watch Canada: 'In balancing the right to freedom of expression with the right to protect reputation, freedom of expression (in the absence of proven malice) must always prevail where the right to criticise and question government is being exercised.'²¹⁵

Similarly, the apparent climate of fear and self-censorship surrounding the press in Singapore causes disquiet. A free and dynamic media provides an environment in which both Singaporeans and others can discuss issues of concern and relevance to them. This is an essential element of a democratic state. The increasing tendency for high profile and respected publications to pay large out-of-court settlements to avoid litigation with PAP officials and the continued run of success within in-court claims is worrying. Government control over many aspects of the media, whether exercised

²¹⁵ Gail Davidson and Howard Rubin, see above, note 70.

actively or through self-censorship, suggests that there is no truly free press operating within the country. While internet access is good, the limitations on the posting of information and personal responsibility for website hosts is similarly of concern when viewed in light of Singapore's history of using the courts to curb freedom of expression.

The judiciary in Singapore has a good international reputation for the integrity of their judgments when adjudicating commercial cases that do not involve the interests of PAP members or their associates. However, in cases involving PAP litigants or PAP interests, there are concerns about an actual or apparent lack of impartiality and/or independence, which casts doubt on the decisions made in such cases. Although this may not go so far as claimed by some non-governmental organisations, which allege that the judiciary is entirely controlled by the will of the executive,²¹⁶ there are sufficient reasons to worry about the influence of the executive over judicial decision making. Regardless of any actual interference, the reasonable suspicion of interference is sufficient. In addition, it appears that some of the objective characteristics of judicial independence, including security of tenure, separation from the executive branch and administrative independence may be absent from the Singapore judicial system.

The IBAHRI also remains concerned about the limitations on free assembly, and the reports that peaceful assemblies have resulted in harsh fines and prison sentences. The IBAHRI welcomes the Singapore Government's recent relaxation of some assembly laws and hopes to see this trend continue.

The IBAHRI is concerned by the apparent limitations on the Singapore Law Society's role in shaping law reform, and hopes that progress such as the establishment of an international and public law committee will develop. Further, the IBAHRI strongly encourages the Singapore Government to recognise, guarantee and protect the right of the Singapore Law Society to debate and promote law reform in Singapore. The IBAHRI is concerned that the Singapore Law Society is not fulfilling its mandate to speak out on law reform issues in Singapore.

The IBAHRI looks forward to continuing engagement with the Singapore Government, the Singapore Law Society, civil society and other interested parties on these issues.

²¹⁶ See, for example, *Ibid.*

G. Recommendations

The IBAHRI calls on Singapore to implement the following recommendations:

Recommendation one: Singapore should ratify the ICCPR without reservations and implement its provisions at the earliest opportunity.

Recommendation two: Singapore should immediately bring its restrictions on free expression in line with recognised international customary law.

Recommendation three: Singapore should immediately abolish defamation as a criminal offence, or in the alternative and should abolish heavy sanctions for defamation offences; prohibit public officials from instituting criminal defamation; and review the existing defences to ensure they are in line with international standards.

Recommendation four: The Singapore Government should pass legislative limits on civil defamation pay-outs, and certainly on cases initiated by government officials.

Recommendation five: A defence of qualified privilege for comments made about government officials should be made available and enforced by the courts in appropriate cases.

Recommendation six: The Singapore Government should take steps to encourage, not discourage, opposition participation and debate.

Recommendation seven: Singapore Government officials should stop initiating defamation claims for criticisms made in the course of political debate.

Recommendation eight: The Singapore Government should increase the freedom of the press – both domestic and foreign – to report on political issues impacting on the people of Singapore.

Recommendation nine: The Newspaper and Printing Presses Act should be amended so as to ensure that there are checks and balances on the decision to restrict the circulation of publications under the Act.

Recommendation ten: The Newspaper and Printing Presses Act should be amended to allow reasonable comment on the domestic politics of Singapore by foreign publications.

Recommendation eleven: Singapore should remove personal responsibility for internet hosts for information published on their hosted sites or should clarify the limitations on material that may not be posted.

Recommendation twelve: Steps should be taken to ensure that internet bloggers are free to make reasonable statements in the public interest.

Recommendation thirteen: Security of tenure should be granted to all judges.

Recommendation fourteen: Transfer of judges between executive and judicial roles should be abolished.

Recommendation fifteen: The situations in which demonstrations may take place should be expanded to include all peaceful assemblies.

Recommendation sixteen: Limitations on penalties for peaceful assembly should be introduced as a matter of urgency.

Recommendation seventeen: The Singapore Government should respect the right of the Singapore Law Society to engage in debate on law reform and should immediately repeal the prohibition on the Singapore Law Society commenting on legislation.

Recommendation eighteen: The Singapore Law Society should ensure that it is actively participating in law reform debates on a wide range of issues, as that is its responsibility as a law society.