

AUSTRALIAN LAW JOURNAL

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ON PRIVY COUNCIL APPEALS

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COUNCIL APPEALS

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Australia's legal links with Singapore include, strangely enough, the application of some Singapore laws in the Australian Territory of Christmas Island.¹ But the links derive mainly from the common inheritance of the common law resulting from periods of British colonial rule and wartime experiences involving Australian troops. Singapore was founded by Sir Stamford Raffles in 1819. It secured its independence from Britain in 1959. After a period as part of the Federation of Malaysia (1963-1965), Singapore was established as a separate independent republican State in 1965. Since then the Prime Minister of Singapore has been Lee Kuan Yew.

Until recently appeals from the Singapore Court of Appeal lay generally to the Privy Council in London. The retention of such appeals was usually justified in Singapore as justified principally by the assurance which such a line of appeal gave to the trading interests involved in the huge commercial market which has been the key to the significant

economic development of Singapore in recent years.

Australian lawyers paying close attention to the recent decisions of the Privy Council will have been surprised by its judgment in Jeyaretnam v Law Society of Singapore². In unusually strong language, Lord Bridge of Harwich concluded the judgment with an expression of

"deep disquiet, that by a series of misjudgments, the solicitor and his codefendant ... have suffered a grievous injustice". They had, he said, been "fined, imprisoned and publicly disgraced by 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 in the criminal proceedings, their Lordships have no power to right the other wrongs which the solicitor has suffered. Their only prospect of redress, their Lordships understand, will be by way of petition of pardon to the President of the Republic of Singapore".

Those who are interested in the story of Mr Jeyaretnam

who in 1981 was elected as the sole member of Parliament in opposition to the ruling Peoples' Action Party of the Prime Minister, can read of it in the Law Reports. Sadly, it is not the only instance of harassment of lawyers who support the Opposition in Singapore. Other cases illustrate the difficulties and dangers which face legal practitioners and other citizens in Singapore, particularly those who take any interest in "political" questions. These include any criticism of government measures which limit freedom of the press; calls for the independence of the legal profession and judicial independence and association with the Opposition Party which is neither Marxist nor proscribed. In the general elections in 1988, the People's Action Party secured 61% of the popular vote. It won 80 of the 81 seats in the Singapore Parliament.

Another Singapore lawyer who has paid for her opinions, and her courage in defence of the rule of law is Teo Soh Lung. She has suffered prolonged loss of liberty under the Singapore Internal Security Act (ISA). Under that Act, people may be arrested and detained without trial. Those detained frequently complain about prolonged interrogation, harsh conditions and even physical violence amounting to torture. Teo Soh Lung is a lawyer aged forty. She has specialised in providing legal services to under-privileged clients. She is one of thousands of unknown prisoners of conscience in many lands. But what has happened to her illustrates the dangers facing lawyers in nearby countries

who stand up for principles which lawyers and citizens in Australia take for granted.

Teo Soh Lung's retained Anthony Lester QC of the English Bar to challenge the legality of her detention. Mr Lester has for many years practised before the courts of various Commonwealth countries. Before proceeding to Singapore to argue Miss Teo's third attempt to obtain an order of habeas corpus in March 1989, he was banned permanently by the Singapore government from practising in the courts there in future cases. The purported ground was Mr Lester's criticism of the independence of the courts of Singapore at a private seminar in England. He denied the allegation and the courts, which had admitted him, took no action against him. The Singapore government nevertheless excluded him from practising, by use of its immigration power. It denied him in future a work permit.

Miss Teo's case has had other ramifications. She is not charged with breaking any law of Singapore. Her only "offence" has been to work for the Opposition party during an election. For her activities she was interrogated by Prime Minister Lee himself at a television hearing of a Select Committee of the Singapore Parliament. According to Mr Lester, she defended herself with moderation and courage. This did not endear her to her interrogators. Mr Lee's chief attack was on her alleged confusion between her work for the Opposition and her work as a lawyer. To head this off, she severed her links with the Opposition; but to no avail. Six

months later, with a score of others, she was arrested and detained under the ISA. It was claimed that she had undertaken a "Marxist conspiracy" to infiltrate both the Opposition and the Singapore Law Society. She and her co-detainees challenged the detention in the courts. Courageously, the Court of Appeal of Singapore (then subject to unrestricted Privy Council appeals in such cases) reversed years of local case law based on the outdated "peculiar" and now discredited majority decision adopted by the House of Lords in wartime Britain in Liversidge v Anderson.³ That judgment had severely restricted the circumstances in which courts could review government decisions. One of Law Lords (Lord Atkin) wrote a strong dissent asserting the duty of the courts, even in wartime, to ensure that the government and its agencies observed the law. His view has ultimately come to prevail, including in Australia.⁴

The Singapore Court of Appeal held that detainees under ISA, including Miss Teo, were entitled to judicial review of the constitutionality, legality and reasonableness of their detention.⁵ In the case of Miss Teo, she was released on a technical flaw in her detention order. Predictably enough, she was immediately re-arrested under a fresh detention order. She has now spent almost 18 months in solitary confinement. The present order detaining her is effective until 19 June 1989. Who knows if it will be extended? So this is the kind of lawyer Teo Soh Lung is. She suffers for her principles and her conscience. It may be assumed that

she would have been immediately released like others but for her refusal to "confess". But she will not do so.

Using its overwhelming Parliamentary majority, the Singapore government in January 1989 retrospectively amended the constitution in Singapore ⁶ and the ISA.⁷ The amendments were designed to nullify the effect of the Court of Appeal's decision on judicial review. But they went further. They abolished the right of appeal to the Privy Council in detention cases or other cases challenging alleged government oppression. Henceforth judicial review is confined to the Singapore courts and to ensuring bare compliance with ISA procedures. It was to challenge the validity of these amendments that Mr Lester proceeded to Singapore on his last case there before the ban on him came into force.

It is to be noted that Privy Council appeals have not been entirely abolished in Singapore. There is still a perceived commercial advantage to Singapore in retaining some appeals. But in cases involving the liberty of people like Miss Teo, the scrutiny of the Privy Council could be an embarrassment for Prime Minister Lee and his officials, as indeed it has been. Their Lordships don't mince words when they think things are wrong. During the argument of the last challenge in the High Court of Singapore in March 1989, the government lawyer criticised the "foreign" judges of the Privy Council. He dismissed arguments about the rule of law as based on a "vague and indefinable concept".

Meanwhile, the Law Society of Singapore has spoken out on behalf of Miss Teo who was at the time of her original detention, a member of the Council of the Law Society. Unanimously, the Council of the Society declared that it had:

"...Always found Miss Teo to be conscientious and expeditious in the discharge of whatever duties [were] assigned to her ... She has earned and enjoys the respect and goodwill of her fellow council members ... She has never in any proceedings of the council made any statements which caused us to doubt her loyalty to Singapore, nor has she aired any political views ... The council is anxious that every consideration be given to Miss Teo's case so that she may be released as soon as possible."

Bernard Levin, writing in the London Times⁹ speaks with admiration of the high intelligence and economic skills of Prime Minister Lee Kuan Yew. So would many Australian observers. But, according to Levin, in the case of Miss Teo, and other persons who dissent from Lee politically, the Singapore leader descends to "pettiness and vindictiveness ... behaviour that can truly be called persecution". This is not too harsh a judgment.

The attacks on the independence of judges and lawyers in the Asian-Pacific region have become all too frequent, particularly of late and especially in countries which share the common law tradition and were once part of the British Empire. Judges have been removed in Bangladesh. Judges have been suspended in Fiji. Civil rights lawyers have been killed in the Philippines. The Lord President and two other judges were recently removed from office in Malaysia and

three other Judges suspended. Judicial review has been limited in Singapore and a mainstream judgment of the Court of Appeal of that country on the duty of adherence to legality has been reversed. Detention without trial exists in many lands. Even in Australia, a member of a national tribunal with the designation of a Judge has been effectively removed by the simple expedient of abolishing his tribunal (Justice Staples). Fortunately, there are lawyers and other citizens of conscience who will not submit quietly to these measures.

It is ironic that the wrongs done to Miss Teo should occur in Singapore - a major "success story" of the Overseas Chinese - at precisely the same time as the strong moves have occurred in mainland China to reinforce legality, re-establish independent courts and restore democracy as a popular movement. The great American judge, Benjamin Cardozo once warned that, ultimately, freedom rests upon the will for freedom amongst the people - not the actions of judges and lawyers.⁹ But in Singapore, a supine media has prevented widespread coverage of the circumstances that led to the ban on Anthony Lester QC and the long imprisonment of Miss Teo.

Writing in her prison cell, Teo Soh Lung penned a defiant verse:

"Make me a martyr
A name I did not ask for
Make me a martyr.
A name I did not want.
All the might you have
You can throw on me.
I will try my best to survive.
Once my mind was clouded with fear

Of losing my freedom and all that I love
But now my mind is devoid of fear;
I no longer think of my freedom.
Make me a martyr
Make me a martyr.¹⁰

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1. The island was originally placed under the Straits Settlement Government. In 1958 it was transferred to Australia by the United Kingdom. For the constitutional history of Singapore, see G W Bartholomew, "Sources and Literature of Singapore Law" (1982) 2 Lawasia 1.
2. [1989] 2 WLR 207 (PC).
3. [1942] AC 206. The decision was described by Lord Reid in the House of Lords in Ridge v Baldwin [1964] AC 40, 73 as "very peculiar". See also Attorney General of St Christopher v Reynolds [1980] AC 637, at 657 (PC).
4. See eg Banks v Tasmanian Racing and Gaming Commission (1977) 119 CLR 222 at 231 and Heatley v Tasmanian Racing and Gaming Commission (1977) 137 CLR 487.
5. Chng Suan Tze & Ors v Minister of Home Affairs & Ors, unreported, Court of Appeal of Singapore, 8 December 1988.
6. Constitution of the Republic of Singapore (Amendment) Act 1989 (Sing) (Assented 26 January 1989).
7. Internal Security (Amendment Act 1989 (Sin) (Assented 28 January 1989).

8. Quoted B Levin, London Times, 10 April 1989, 12.
9. Ibid.
10. Id.