

When the Bar Goes on Trial

Nick Cowdery QC reports on the trial (and tribulations) of Vice-President of the Malaysian Bar, Manjeet Singh Dhillon

Members of the Bar Council might well shudder at the prospect of facing goal sentences for acts done as the Bar's representatives - but that is precisely the present position of the Vice-President of the Malaysian Bar, Manjeet Singh Dhillon.

Malaysian Bar

The Malaysian Bar differs from ours in that it is a statutory body corporate pursuant to the Legal Profession Act 1976 having a statutory Bar Council, office holders, rights and duties. It comprises every advocate and solicitor in the country (where there is a fused profession): about 2,600 members.

The Malaysian Bar has been singularly courageous in its defence of basic principles which we in Australia take for granted:

- . The doctrine of separation of powers
- . The rule of law
- . The independence of the judiciary
- . The independence of the Bar - phrases which roll off our tongues like the unthinking recitation of a liturgy, but which to our Malaysian neighbours and brothers and sisters in law are ideals to be kept daily to the fore in the face of constant threat from politicians.

The events giving rise to the proceedings against Manjeet Singh Dhillon illustrate the added difficulties facing practitioners in such an environment.

Dismissal of the Judges

On 26 March 1988 the Lord President of the Supreme Court (equivalent to our Chief Justice of the High Court) wrote a letter to the King with copies to the nine hereditary Rulers and all Supreme Court and High Court judges. The letter had been approved by a meeting of 20 Supreme Court and High Court judges. It was couched in respectful terms and drew to the King's attention the judges' concern at continuing public criticism of the judiciary by the Prime Minister. It gave rise to the following events:

- . the King, on the advice of the Prime Minister, suspended the Lord President and appointed a tribunal to investigate and report upon what were to become 5 allegations of misconduct against him. (The Attorney-General framed the allegations and assisted the tribunal which was chaired by the next senior judge, Tan Sri Abdul Hamid Omar).
- . upon the recommendation of the tribunal the Lord President was dismissed.
- . Tan Sri Abdul Hamid Omar became Lord President.

In the meantime, however, on 2 July 1988 (while the tribunal was still sitting) Tan Sri Abdul Hamid Omar, then Acting Lord President and chairman of the tribunal, on notice that an urgent application was about to be made for an order for Prohibition against the tribunal, directed the Supreme Court

staff:

- . to keep the court rooms closed;
- . not to assist in convening any court sitting;
- . not to sign any order that might be made;
- . to keep the Seal of the Court under lock and key.

Despite this action a bench of 5 judges did sit and ordered the tribunal not to report to the King until further order. The order was served on the tribunal which complied with it.

On the representation of the Acting Lord President to the King the 5 judges were then suspended and a second Tribunal was appointed to hear allegations against them said to have arisen out of the convening of the special sitting.

Another full court (including the chairman of the second tribunal - who later disqualified himself from sitting on it) then set aside the order of 2 July 1988.



Manjeet Singh Dhillon

Upon the recommendation of the second tribunal 2 of the 5 judges (including Tan Sri Wan Sulciman who had presided on 2 July 1988) were dismissed.

Implications

It is clear even from this cursory account that there are significant questions about:

- . The Prime Minister's motives for recommending to the King the suspension of the former Lord President and the establishment of the first tribunal merely on the basis of the letter.
- . The propriety of the present Lord President's refusal to disqualify himself from sitting on the first tribunal, considering that he had been at the judges' meeting which approved the sending of the letter, and that if the former Lord President were dismissed he, as the next senior judge, could expect to succeed to that office. (The Lord President had insisted he was appointed to the tribunal by a Royal Command which he was not at liberty to disobey: surely a mediaeval notion, out of place in a modern constitutional monarchy and democracy operating under the rule of law).
- . The motives of the Lord President for and the propriety of his actions on 2 July 1988, particularly since he was a party to the intended application.
- . The Lord President's motives for recommending the suspension of the 5 judges and the establishment of the second tribunal.

The Bar's Role

The Malaysian Bar has for many years, in a consistent and principled fashion, resisted assaults by politicians upon the foundations of a true democracy. At considerable cost to its members it has spoken and acted fearlessly, as a corporation and individually, in constant defence of basic principles.

It came forward without reward in defence of the former Lord President, the suspended (and dismissed) judges and the independence of the judiciary. Such is its commitment to integrity in practice that certain senior advocates, whose appella to work was the mainstay of their practices, have refused to appear in the Supreme Court while the Lord President remains in office. The professional and financial costs can be imagined.

Dato' Param Cumaraswamy, a past president of the Malaysian Bar and a human rights lawyer of world stature, has been tried and acquitted on a charge of sedition for a moderate criticism of action by the local equivalent of the Parole Board. The government sought to deal with him under the Internal Security Act. In sympathy, Singapore has barred him from entry, even in transit.

At general meetings of the Bar on 9 July 1988, 18 March 1989 and 22 April 1989 it was resolved (almost unanimously) that contempt proceedings be instituted by the Bar in the Supreme Court against the (now) Lord President for his actions on 2 July 1988. Manjeet Singh Dhillon on 25 April 1989 affirmed an affidavit which was filed in support of the application, expressly as (then) Secretary of the Malaysian Bar and on its behalf. It was the Bar's application, not his. In the affidavit Manjeet Singh Dhillon recited the relevant events of mid 1988 and of 2 July 1988 and stated the way in which it was alleged those actions of the Lord President amounted to contempt of the Supreme Court.

The paragraphs later complained of were:

"7. The Respondent on the 2nd day of July 1988 did commit contempt of the Supreme Court by attempting to prevent, frustrate and interfere with the sitting of the Supreme Court in connection with the application by the Lord President for the abovesaid Injunction as follows:..." (There followed a recitation of factual allegations).

"9. The facts in paragraph 6 [sic - it should be 7] above disclose that the Respondent being a party to the proceedings initiated by the Lord President and any appeal or application therefrom to the Supreme Court abused his official position as Acting Lord President of the Supreme Court by taking the actions particularly described in paragraph 6(a) and (e) [sic] to prevent, frustrate and to interfere with a sitting of the Supreme Court to hear a matter in which the Respondent himself was a party thereto. As such the aforesaid action of the Respondent constitute [sic] contempt of court of the grossest imaginable. [sic] Contempt apart, the aforesaid conduct of the Respondent also constitutes misbehaviour within the meaning of Article 125 of the Federal Constitution deserving his removal from office."

"11(c) I further verily believe that, if the allegations set out above are established as a fact, the abovenamed Respondent has sought to deny justice and the recourse to legal reliefs and remedies available to all persons under the law as enshrined in the Federal Constitution and his conduct as aforesaid is there-

fore an affront to the dignity and impartially [sic] of the Courts.

(d) These acts of the abovenamed Respondent, constitute the most flagrant and gross contempt of Court in that they amount to an exercise of powers for improper motives and an interference with the course of justice. I verily believe that they were intended to deny access for and to prejudice the rightful remedies of Tun Dato' Haji Mohamed Salleh bin Abas in this Honourable Court."

It was alleged that these paragraphs scandalised the Lord President. The paragraphs quoted were said to be improper expressions of conclusions and opinions by the Respondent going beyond legitimate and permissible criticism and expressed with malice.

The application against the Lord President was made and argued and eventually dismissed on 29 April 1989 on "technical grounds" - the merits were not decided. A similar fate befell a similar application by Tan Sri Wan Sulaiman (who had presided on 2 July 1988).

On 18 May 1989 the application was made against Manjeet Singh Dhillon: but it was in reality a move against the Malaysian Bar.

The Trial

I attended the trial from 4 to 7 June 1990 as observer for Lawasia, the International Commission of Jurists, Australian Section, the International Bar Association and the Commonwealth Lawyers' Association. I also carried motions from our Bar Council which were delivered to the Malaysian Bar Council and placed in its records. They read:

"This Council deplors any action on the part of the Government of Malaysia which in any way prejudices or subverts the independence of the Malaysian judiciary, the Bar of Malaysia or the rule of law in Malaysia; and supports the said Secretary, the Malaysia Bar Council and the Bar of Malaysia in resisting, in accordance with law, any attempt on the part of the Government of Malaysia to in any way prejudice or subvert the independence of the Malaysian judiciary, the Bar of Malaysia, or the role of law in Malaysia."

There were 3 other observers at the trial: Margrit Benton for the American Bar Association, Makhdoom Ali Khan for the International Commission of Jurists, Geneva, and J.B. Jeyaretnam for the Regional Council for Human Rights in Asia. Ms. Benton is a lawyer and the wife of an American lawyer practising in Singapore; Mr Khan is a lawyer practising in Karachi; and Mr Jeyaretnam is a former lawyer and politician from Singapore.

The Attorney-General, Malaysia (Tan Sri Abu Talib Othman) argued the application himself. He appeared with a junior (T.S. Nathan) but had no other obvious support.

The Respondent was represented by:

Raja Aziz Addruse, immediate Past President of the Malaysian Bar (who had acted for the former Lord President in 1988 and for Dato' Param Cumaraswamy in 1985/6).

- Cyrus V. Das, Member of the Bar Council (who had also appeared in the earlier proceedings).
- Darryl Goon, a Member of the Bar Council.
- Jagjit Singh, a Member of the Bar Council.
- Tara Sidhu, a past President of the Malaysian Bar, Member of the Bar Council and immediate Past President of Lawasia.

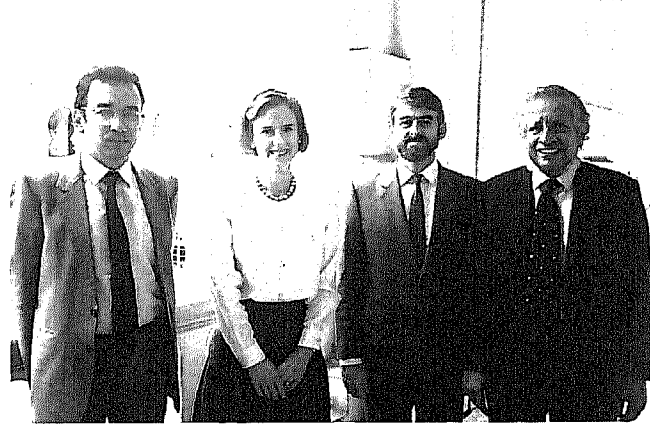
The argument was divided between the quietly spoken and scholarly Raja Aziz and Cyrus Das, an articulate and forceful advocate. The standard of advocacy on that side of the record was extraordinarily high.

The President of the Bar (S. Theivanthiran), Ghazi Ishak (who argued an unsuccessful application by 307 lawyer would-be interveners) and others lent assistance.

The press gallery was full. The public gallery was full for most of the time. Security outside of the court, initially strict, was relaxed as the hearing proceeded - and after the observers had been photographed.

The trial was heard by Tan Sri Harun Hashim (who had once declared UMNO, the Prime Minister's political party, illegal), Datuk Mohamed Yusof and Datuk Gunn Chit Tuan. The trial to all appearances was conducted with fairness, propriety and impartiality, as all agreed. However, in a unique case the test for justice and the rule of law will be in the final decision.

It is a unique case - neither side was able to produce a precedent which even approached the context in which the statements were made, the nature, form and purpose of the statements, or the capacity in which the maker was acting.



*Observers at the trial
(l to r) Makhdoom Ali Khan, Margait Benton, Nicholas Cowdery QC, J.B. Jeyaretnam*

Side Issue

The former Lord President (Tun Salleh Abas) has written with journalist K. Das a book about his experiences entitled "Mayday for Justice". The book is an intensely personal account of Tun Salleh's experiences and the recitation of events is coloured by his subjective interpretation. Nevertheless, it is a powerful work and a damning indictment of those whose actions resulted in his dismissal.

A further publication in book form entitled "Judicial Misconduct" by P.A. Williams QC of New Zealand, has been published. It is obviously an apology in reply to "Mayday for Justice". It is appallingly written and highly selective in its treatment of the events of 1988 and 1989. Although Mr Williams puts himself forward as a leading Queen's Counsel of international reputation his name may well be unfamiliar to many, if not most, readers. The book was published by Pelanduk Publications (a Malaysian organisation) and contains a disclaimer by the publisher who

states that the contents of the book are entirely the personal views of the author and "expressly disclaims all and any liability to any person arising from the printing, sale or use of the materials in the book". Enough said. □

Footnote:

Not quite enough said.

In July 1990 there was published in Malaysia an answer to Mr Williams' book by Raja Aziz Addruse entitled "Conduct Unbecoming: in Defence of Tun Mohd Sallah Abas". It is a detailed and tightly argued rebuttal of the Williams whitewash by one who was there.

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Young Ones

Episode 1 (Counsel was George Thomas)

Cor: Young J

Counsel: "Is your Honour going to sleep?"

Young J: "No Mr. Thomas. I promised to hear you without interruption and that's what I'm doing."

Counsel: "Well has your Honour got to do it with your Honour's eyes closed?"

Episode 2

Cor: Young J

Oakes: (Sotto voce, but audible) "You need a Young loading for coming up here."