

## Dreaded defamation

*It's time to rethink Singapore's most chilling speech law.*

Anyone who engages in public debate needs to beware of defamation laws, which serve as electric fences deterring irresponsible attacks on people's reputations. That's true anywhere, but what's unusual about Singapore is how much government leaders feel they need to depend on this protective barrier, and how power-packed is the shock it delivers when anyone tries to cross the line. The government says it is so sensitive about defamation only because it places an exceptionally high value on having a clean reputation. But whatever the reasons for its proclivity to launch libel suits, the effect on public debate is not in doubt: it is one of the main reasons people are fearful of criticising the government too openly. There's little chance of Singapore becoming a more open society if the government does not outgrow its penchant for libel suits.

This does not mean we should abandon defamation law. People do need to be able to safeguard their reputations from lies that are said about them. Your reputation is intangible, but when it's tainted, the effects can be material and severe, harming your ability to make a living and to function in society. Article 14 of the

Singapore Constitution, which upholds the right to freedom of speech and expression, specifically states that parliament can limit this right with defamation law. Even in the freest of societies and in international human rights law, the right to free speech doesn't completely protect expression that defames others (Chapter 18). Over the decades, however, democracies have given more space to political speech because of its importance in promoting participatory democracy and keeping governments accountable. Since the 1960s, the United States has set an exceptionally high bar for public officials who want to sue, such that most don't even try. Britain's 2013 defamation law has also moved in this direction, giving more latitude to the press to run stories on matters of public interest. Singapore's courts, though, have stuck with tradition and opted not to give more protection to political speech.

Lee Kuan Yew, and later his successors, regularly invoked defamation law, particularly in battles with opposition politicians and foreign media. Opposition politicians successfully sued for defamation include J.B. Jeyaretnam (in multiple cases spanning three decades), Seow Khee Leng (in the 1980s), Tang Liang Hong (1990s), and Chee Soon Juan (2000s). These cases were usually brought because they alleged dishonesty, corruption or abuse of power on the part of government leaders. Damages have ranged from around \$200,000 to \$300,000 per plaintiff. Tang Liang Hong was ordered to pay more than \$8 million to 13 plaintiffs.

Foreign media have gotten sued when they suggested that members of the Lee family have gotten to where they are thanks to their illustrious surname, or when they implied that Singapore's leaders are corrupt, including by claiming they have silenced critics in order to conceal wrongdoing. The now extinct *Far Eastern Economic Review*, Malaysia's *Star* newspaper, the *International Herald Tribune* (precursor to the *International New York Times*), and the Bloomberg financial news agency all had to pay up. Other cases have probably been settled out of court without coming to light.

All in all, impugning the honour of Singapore government leaders without proof is as advisable as trying to steal a favourite

bone from an unchained Rottweiler. Two cases in the 1990s showed how sensitive the government could be. One centred on a commentary in the *International Herald Tribune* that didn't actually mention Singapore. Lee Kuan Yew's lawyers, nonetheless, managed to persuade the court that his reputation was being attacked. The newspaper eventually settled.

The other case saw Jeyaretnam sued for stating in an election rally speech that his teammate Tang Liang Hong had just handed him two police reports lodged against Prime Minister Goh Chok Tong and other leaders. (Ironically, Tang filed the police reports because he himself felt he had been defamed by government leaders when they called him an anti-Christian, Chinese chauvinist.) Jeyaretnam's matter-of-fact one-liner was judged to imply that Goh had done something wrong worthy of police investigation. The trial judge awarded only \$20,000 in damages, feeling that Goh's lawyers had overstated their case. The Court of Appeal upped the award to \$100,000.

Jeyaretnam's successor as Workers' Party leader, Low Thia Khiang, has been criticised by opposition supporters for being too careful, but when you remember what he's witnessed, it's not surprising Low has decided to err on the side of caution. Foreign media that regularly report on Singapore also learnt their lesson, passing stories on Singapore politics through an extra layer of legal checks before publication. For a while, it looked as though political defamation suits would become a thing of the past.

Then, a whole new breed of inexperienced critics appeared: the bloggers. The democratisation of dissent (now, anybody can loudly disparage Singapore's leaders) resulted in the democratisation of punishment (now, even a one-man-operated blog like Alex Au's *Yawning Bread* would merit the nerve-wracking attention of the Istana and Drew & Napier).

When informed that their articles were defamatory, most bloggers, including Au, averted lawsuits by apologising promptly and taking down their posts. But in 2014, activist Roy Ngerng refused to kowtow, thus becoming the first individual blogger to

be sued for defamation by a government leader. The High Court ordered Ngerng to pay damages of \$150,000.

The way Singapore leaders use defamation law is not one of the more admired features of their governance model. Even when Singaporeans believe a critic was wrong, many consider defamation suits to be an excessive response. The PAP has heard it all, and is able to roll out rehearsed rejoinders on cue. First, it argues it is operating entirely within Singapore defamation law, which is available to any person whose reputation has been wrongly attacked. Second, it asserts that democratic debate should be based on truthful claims, and if opponents cannot agree on important facts, it is best to arrive at the truth in open court.

The first argument is legalistic, explaining Singapore's defamation law and how the judiciary works. The idea is to establish that the PAP's lawsuits and their outcomes have been consistent with our laws. These clarifications don't really settle the debate, because a lot depends on what one means by the rule of law. Legal scholars have pointed out that the government prefers a thinner conception of rule of law, hinging on whether rules and procedures have been followed. Critics, on the other hand, are pushing for a thicker understanding of rule of law that emphasises the impact on people's democratic rights. The latter standpoint would take more seriously how libel suits have a chilling effect, undermining our constitutionally recognised right to freedom of expression. Furthermore, robust criticism of the powerful is so essential for democracy that it needs extra leeway. From this perspective, public officials should not get to sue as easily as private citizens.

But even if you accept PAP leaders' first argument, this only establishes that they have the prerogative to use defamation law the way they have. According to the law, they can. What this doesn't answer is whether they should. In civil law, it is entirely up to the aggrieved party whether to take action. Just because you are allowed to use a weapon doesn't mean you must.

That's where the government's second argument comes in. This is a political argument: the government says it has to take such

matters to court to demonstrate that critics' allegations are untrue. This is not a persuasive line. Defamation trials are hardly fail-safe diviners of truth. The main problem is that the burden of proof is on the defendant. In other words, it is up to the defendant to prove—through a financially draining process—that his accusations were true. The plaintiff does not have to prove that he was innocent of the allegations. When a defendant loses a defamation suit, it may simply mean that he was unable to substantiate his claims to the court's satisfaction—not necessarily that what he said was untrue.

An example of this emerged in one of Singapore's most traumatic corruption scandals, centred on National Kidney Foundation chief T.T. Durai. Durai sued *The Straits Times* for an article that reported his excesses, like gold bathroom fittings and first-class air travel. During the dramatic 2005 trial, the newspaper was able to show that the article was accurate, precipitating both the collapse of Durai's lawsuit and his eventual conviction on corruption charges. In this case, the law worked as it's supposed to. However, it emerged during the trial that Durai had successfully used defamation law to silence two earlier accusers. The individuals he sued in 1998 realised they could not compete with Durai's resources. They settled and paid damages and costs rather than risking a costly trial. Durai did not have truth on his side, but he was able to use defamation law to muffle critics and prolong his corrupt reign over Singapore's largest charity for seven more years. He only got his comeuppance when he made the mistake of suing an organisation with an even bigger legal budget than his own. *The Straits Times'* lawyer was none other than the formidable Davinder Singh, to whom government leaders regularly entrust their own defamation suits.

I'm not suggesting that any of the offending statements that attracted government defamation threats and suits were true. Indeed, most defendants did not even try to use the truth defence; they usually argued that their words did not mean what the government said they meant. For example, when Jeyaretnam was sued for telling the rally crowd about Tang Liang Hong's police

report, his defence was that his words and actions meant something more innocent than the malicious innuendo the government perceived.

Rather, my point is that libel law is an imperfect litmus test of truth, and that members of the public intuitively understand this. Therefore, as a matter of practical politics, defamation suits are neither a necessary nor sufficient instrument for settling debates. The government's own actions have implicitly acknowledged this. There have been instances where its leaders have chosen not to sue despite being obviously defamed. The non-suit everyone was talking about in 2017 involved the allegations against the prime minister by his siblings Lee Wei Ling and Lee Hsien Yang. But the most bizarre example of official self-restraint occurred when dissident lawyer Gopalan Nair literally asked to be sued. In 2008, he fired off a blog calling Lee Kuan Yew and Lee Hsien Loong "tin pot tyrants" and describing their alleged abuses of power. He went on to say that, by Singaporean standards, his blogs were undoubtedly defaming the Lees. He provided his hotel room number (he was visiting from the United States, where he lived) and said he was now within the authorities' reach. "What are you going to do about it?" he asked. Nair was jailed for contempt of court—but the Lees chose not to sue him for defamation.

Because the government is aware that a judge's verdict is not the final word in political debates, it continues to use its public communication to get its arguments across, even after it has prevailed in court. In the Roy Ngerng case, for example, the lawsuit was just a sideshow in a major effort to prove that, contrary to critics' claims, the Central Provident Fund is a well-managed and trustworthy institution. If most Singaporeans feel assured, it is because Tharman Shanmugaratnam won them over with persuasive data, and not because Ngerng lost in court.

Furthermore, only a tiny fraction of political debates could ever end up in court. Most of the time, the government's actions are attacked without defaming any individual politician, so libel suits are not even an option. Many of these non-libellous criticisms are

no more truthful than the defamatory statements that have been taken to court. Yet, despite the fact that government leaders couldn't drag the critics before the judges, they have been able to win over most of the people, most of the time. The government defends its integrity and its competence by delivering results and countering critics' arguments in parliament, in the press, in social media, and in face to face interactions—without any help from the courts.

The government is selling itself and the public short if it believes that this legal weapon is still needed to secure its long-term reputation. Most citizens trust that ministers are not personally corrupt. As for the minority who think otherwise, it is fanciful to imagine that the PAP can change their minds through defamation suits. They will probably get more convinced that the government is silencing dissent because it cannot survive a free marketplace of ideas.

One way for the government to wean itself off its addiction to defamation suits is to switch to seeking the right of reply. Under the Protection from Harassment Act, which came into force in 2014, a victim of “false statements of fact” can seek a court order requiring that the offender stop publishing the falsehood unless he inserts a notice setting the record straight. If the court agrees to issue this right-of-reply order only on condition that the victim won't get greedy and also sue for defamation, such a law could be a major improvement. It would reduce elected officials' use of excessively punitive libel law and replace it with the less chilling and more reasonable right of reply.

Libel suits are a pointless way to settle political debates, with more costs than benefits. They preach to the choir, while pushing the unconverted even further away. Government leaders should review how they have used this law and what it has actually accomplished. An honest appraisal might conclude that it's just an old habit that is hard to shake off—more muscle memory than a rational response to the communication challenges that come with democratic debate.

## Holding the press

***The media are free to earn profits, but not popular support.***

Singapore's news media industry underwent a shake-out in 2017, with smaller newspaper titles succumbing to financial pressures. This shouldn't have come as a surprise. Other advanced industrial economies had suffered more crippling closures many years earlier. What was noteworthy about Singapore, though, was the absence of public mourning when the newspapers' deaths were announced.

It was different in 1971. The troubled *Singapore Herald* carried front-page news of a "Save the Herald" bid led by public intellectuals such as Tay Kheng Soon and Tommy Koh. It didn't succeed: that was the paper's final issue. But it tells us that there was once a more affective connection between the people and the press in Singapore.

A key reason for the change in public attitudes is of course the internet (Chapter 21). People feel much less dependent now on big news organisations. But that's not the whole story. The shift in Singaporeans' attitudes to the press predates the world wide web and social media. It started when Lee Kuan Yew restructured the newspaper industry in the 1970s, turning it away from championing public opinion and community identities, and toward boosting



shareholder value and the government's agenda. Lee's intervention was designed to allow the press to survive financially while also making it incapable of satisfying the public emotionally. The system, which has lasted more than four decades, gave the media enough autonomy to perform a generally solid professional service, but never to side with the people against the government.

At its core is a unique piece of legislation enacted in 1974, the Newspaper and Printing Presses Act. Singapore Press Holdings, the publishing behemoth that owns *The Straits Times* and all of the country's other daily newspapers and their online vehicles, operates under this law. The other half of Singapore's duopolistic news media scene is more straightforwardly government-controlled. Mediacorp, which monopolises local television news and is a major online news provider, is wholly owned by Temasek.

The NPPA ended the local tradition of cause-driven journalism, turning newspapers into profit-oriented and non-adversarial establishment institutions. The law requires newspaper companies to be listed on the stock exchange, with no shareholder controlling 12 per cent or more of its stock. This rule was ingeniously counter-intuitive. Through most of the 20th century, conventional wisdom held that a government that wanted to control a newspaper would have to own it. Lee was a couple of decades ahead of other rulers in understanding that the profit motive needn't be incompatible with political control, as businessman-publishers might be quite happy to cooperate with a pro-market government like the PAP. He had learnt from his battle with the Chinese-language media that the truly bothersome owners were headstrong publishers like *Nanyang Siang Pau's* Lee Eu Seng, who put his ideals ahead of profit and even personal safety—he ended up detained for five years under the Internal Security Act.

The way to pre-empt such trouble, Lee Kuan Yew realised, was to ban individual- and family-controlled newspapers, and spread ownership thinly across many shareholders to dilute the influence of any single one of them. It's no coincidence that many of the world's most fiercely independent newspapers are or were family-

owned: *The New York Times* and *Washington Post* in the United States, and *The Hindu* and *The Indian Express* in India, for example. When faceless conglomerates take over newspapers, they often install tamer editors.

The NPPA also introduced a management share system to guarantee that newspapers wouldn't stray. Shares must be divided into two classes, ordinary shares and management shares, with management shares pumped with 200 times the voting power of ordinary shares. The government dictates who gets to be classed as management shareholders. Non-government companies Great Eastern Life Assurance and its parent, OCBC Bank, are the two largest holders of SPH management shares. Others entrusted with super-voting stock include NTUC Income, Singapore Telecom, DBS Bank and United Overseas Bank. Their common trait is that they are corporations deeply invested in Singapore's political stability.

The NPPA allows the government to stack the SPH board with loyalists. Since the 1980s, the company's chairman has never come from the media industry; the post has always been handed to a former senior public servant or minister. Since the 1990s, even the SPH chief executive position has been reserved for trusted former civil servants. As for who should run the newsrooms day to day, Lee and his successors reluctantly acknowledged that the group editor and chief editor positions were best left in the hands of experienced journalists. However, nobody is given a top job unless the prime minister is convinced of his political reliability. Since the late 1980s, newspaper editorships have been professional-cum-political appointments. The editor serves the audience only to the extent that this does not conflict with cabinet's wishes.

It's not the case that the government intervenes in every news story that relates to its work. I've met many civil servants who are mystified by the notion that the press is government-controlled, because this does not tally with their experience. Every day, the mainstream media contain news and views that officials wish they didn't. Unlike China's *Xinhua* and *People's Daily*, say, Singapore's Channel NewsAsia and *The Straits Times* have enough autonomy to

pursue angles that don't make the government look great. But only up to a point. The moment government leaders sense that they may lose control of the agenda, phone calls are made to editors to suppress unwelcome lines of journalistic inquiry or commentary.

When queried about Singapore's limited press freedom, the government's stock answer is that we can't afford to take risks with the extremely sensitive topics of race, language and religion. But the government's pressure tactics are used more often to police out-of-bounds markers that have nothing to do with such sensitive topics. They are about making the executive branch's job easier, by guiding public opinion on matters that are politically controversial. This is in line with the PAP's belief—first articulated by Lee Kuan Yew in 1971—that press freedom must be “subordinated” to the “primacy of purpose of an elected government”.



Despite these controls, the media are trusted by most Singaporeans most of the time. According to government surveys, around three-quarters of respondents are satisfied with the quality of newspapers. The communications marketing firm Edelman conducts annual global surveys of trust in institutions. These show Singaporeans' trust in media to be as high as in the Netherlands, which ranks among the world's freest media environments. It's tricky interpreting such data, because high trust could be a function of either the media's objective trustworthiness, or successful indoctrination of the audience—the same Edelman study puts China's population among the very top in trust in media. Such caveats aside, the Singapore press has met the market test more successfully than liberal critics assume. Circulation falls are in line with global trends. On the whole, Singapore's mainstream media have not performed worse financially than most of their counterparts in liberal democracies.

There are a few reasons why Singaporeans haven't turned their backs on the media in larger numbers. The simplest explanation is

that there is much more to life than politics. On most non-political fronts, Singaporeans can count on the national media for relevant and reliable accounts of what's going on. Furthermore, the government has a huge impact on people's lives from cradle (baby bonuses) to beyond the grave (exhumations for cemetery clearances). Regardless of their political orientation, people in Singapore need to keep up with what the government is thinking and doing in multiple arenas—its latest procedures for primary school admissions; land releases that will affect property prices; adjustments in rules for using Medisave; new financial incentives to promote business activity. If you're looking for timely and accurate information about any of this, you need news organisations that are close to the government.

Of course, beyond providing basic information, most people would also like media to speak up for them. A lot of the time, Singapore's press is able to fulfil that role within its available political space. After all, the PAP is usually on the same page as the people—it wouldn't have survived as long as it has if it weren't—so there's often no contradiction between journalism that serves the public and journalism that serves the government. However, there will always be some issues where public opinion deviates from the views of those in power. This is usually when a free press shows its value; when an independent newspaper stands up to powerful interests, becomes the people's champion and earns their loyalty. But this is precisely when Singapore's media controls kick in. On politically controversial issues, instead of pressuring the government to listen to the people, the press has to persuade the people that the government is right.

Hence, the media's chronic inability to meet the aspirations of a large proportion of Singaporeans. This has gone on for so long that many members of the intelligentsia have given up hope. They used to get angry. Now, they just laugh. Most have low-to-zero expectations. Some intellectuals go so far as to say that press freedom has become a non-issue, since Singaporeans now have access to the workaround solution of the internet. That's like saying

that Wikipedia, TED Talks and free e-learning courses mean academic freedom doesn't matter. It does, because universities and their professors still perform a role that the internet can't replace. Similarly, large, formal news organisations are still needed to produce regular, sustained and comprehensive journalism for a city state as busy and complex as Singapore. It's vital that we push our media—and more importantly their political masters—to improve their quality.



We journalists used to comfort ourselves with the observation that the situation was gradually improving. After all, journalists haven't been locked up under the ISA since the 1970s. The government's media relations have also become more professionalised. But, especially since the 2011 general election, things have gone into reverse gear. Based on what insiders say and what we see published, the government micromanages the media more now than 20 years ago. Practices that used to be absolute no-no's in the past are beginning to creep in, like journalists letting officials approve angles or even check entire stories before publication. When I worked at *The Straits Times* in the 1990s, we got the sense that the Goh Chok Tong government understood it was not in its own interests to crush the national media's credibility underfoot. Today's PAP appears no longer to care. For government-related stories that are even mildly controversial, the media switch into news-avoidance mode. Negative facts are buried deep in the story. Uncomfortable questions are not asked.

The public is not fooled, but that doesn't seem to bother government officials who handle the media. They appear to consider it a good day's work if headlines and story angles match the government press releases and talking points. Goh Chok Tong once stated that he did not want a "subservient" press or "government mouthpiece". Today's officials evidently do.

There have also been cultural changes in the newsrooms. In the

1990s, my top editors were pro-PAP, but they had been socialised into the profession before Lee Kuan Yew restructured and transformed the media in the 1980s. As a result, they had a deep sense of what would be lost if they gave in too easily to every government request. They made it clear to us that it was their job, not ours, to negotiate with the government and to decide how to balance the professional with the political. At our level, we were instructed to think only of our readers; we were scolded and shamed when we got slow or lazy, or wrote stories that sounded like government releases. That generation of editors has left, and the newsrooms are now under journalists who've only known the PAP system. Some seem to have decided to take the path of least resistance.

My former big boss, group editor-in-chief Cheong Yip Seng—a true believer in the Singapore system and whose conservatism used to frustrate me when I worked under him—spotted the warning signs. His 2012 post-retirement book, *OB Markers: My Straits Times Story*, was a stout defence of the symbiotic relationship between *The Straits Times* and the PAP. But he also counselled a new generation of politicians to give editors the respect and space to carry out their jobs professionally. The establishment didn't get the message, choosing to react as if Cheong had broken the magician's code, betraying too many secrets about the inner workings of government–press relations.

When Lee Kuan Yew suppressed the authoritarian instinct to nationalise the press outright, it was probably because he saw the value of professional editors who could independently decide how to act in the nation's interests, rather than mindlessly await instructions from government. By those standards, there are already signs that the system is failing. When Lee Hsien Loong collapsed during his 2016 National Day Rally speech, the mainstream media showed itself incapable of thinking on its feet. The national broadcaster appeared shell-shocked. Seized by the fear of saying anything that would get them in trouble, they said nothing, unable even to recount what everyone in the auditorium

had seen with their own eyes. Textbook advice on crisis communication says you must never create an information vacuum, because this will be filled by irresponsible rumour and speculation. The mainstream media's live coverage on television and online did just that.

If Singapore journalism underperforms, it is not for want of talent. There are still skilled individuals within Singapore newsrooms. There's also a reserve army of young and extremely able journalists who could be drawn into service. Many have left the profession they love out of frustration. Others are flying high in some of the world's best news organisations, including *The New York Times*, *The Wall Street Journal*, BBC, Reuters, Bloomberg, and other agencies. I sometimes fantasise about all these talented Singaporeans coming together to produce the kind of news media that will earn their society's respect and loyalty. It won't happen within my productive life. But perhaps one day.