The Misuse of Bankruptcy Law in Singapore:
An Analysis of the Matter of *Re Joshua Benjamin Jeyaretnam*, *ex parte Indra Krishnan*

By Kelley Bryan and Howard Rubin*
for Lawyers' Rights Watch Canada

OVERVIEW

Singaporean defamation law makes one radical departure from its common law roots: it does not provide any privilege over statements made by politicians in the discharge of their public duty.[1] This legal gap has led to a multitude of defamation law suits involving Singapore's politicians. Singapore's dynastic party, the People's Action Party ("PAP") has used defamation suits to stifle criticism by opposition political parties. The PAP has been uninterrupted in power since 1959, and members of the PAP have never lost a libel action or settled one without making money.[2] Many commentators, including the Inter-Parliamentary Union and Amnesty International, have noted the chilling effect of such defamation suits on the freedom of political expression in Singapore.[3]

Now the Singapore courts are supplementing this use of defamation law by allowing bankruptcy law to be used as an adjunct political tool. Typically, the courts make

---

* The authors wish to acknowledge the valuable assistance of Gail Davidson of Lawyers' Rights Watch Canada.

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

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

2 Sydney lawyer Stuart Littlemore, online: <www.singapore-window.org/sw02/020926au.htm>.

3 The Governing Council of the Inter-Parliamentary Union ("IPU") adopted a resolution regarding Mr. Jeyaretnam on March 23, 2002, in which it expressed deep regret that Mr. Jeyaretnam had been removed from Parliament, and stated that "the sequence and timing of the defamation and bankruptcy proceedings brought against Mr. Jeyaretnam suggest a clear intention to target him for the purpose of making him a bankrupt and thereby removing him from Parliament"; online: <www.ipu.org/conf-e/107.pdf>. Singapore is a member of the IPU but the resolution was adopted without a vote. See also the Amnesty International article, "J. B. Jeyaretnam – the use of defamation suits for political purposes", online: <www.amnestyusa.org/countries/singapore/index.do>.

generous damage awards in favour of the plaintiffs in such defamation cases. When the defendant is unable to pay, the plaintiffs (now judgment creditors) petition the defendant into bankruptcy. Bankruptcy, in turn, has one significant outcome: Singaporean law prohibits a bankrupt from holding a seat in Parliament. In this way, the twin swords of defamation and bankruptcy law effectively allow the PAP to silence and eliminate members of the opposition.

Such was the case for Joshua Benjamin Jeyaretnam, formerly a key opposition Member of Parliament in Singapore. Following a defamation suit, Mr. Jeyaretnam was petitioned into bankruptcy in 2001 and removed from Parliament. Three years later, in early 2004, Mr. Jeyaretnam became eligible to apply for discharge from bankruptcy. However, in April 2004, the Singapore High Court refused to grant Mr. Jeyaretnam a discharge from bankruptcy.

In refusing Mr. Jeyaretnam's application for discharge, the court has given undue weight to the rights of the creditors to obtain full payment. By law, the court is required to take other equally important factors into account. Those factors include: a bankrupt's right to rehabilitation; a bankrupt's right to avail himself of alternatives to bankruptcy; and the interests of the public in having the bankrupt discharged.

The court's emphasis on creditors' rights is especially problematic in this situation, where those creditors have deliberately waived their right to obtain satisfaction of the debt by enforcing the judgment against Mr. Jeyaretnam's co-debtors. It is also problematic because of the identity of these particular creditors who, being associated with the PAP government, have a history of using bankruptcy proceedings to stifle political dissent.

The court has a duty to safeguard the court's process by protecting the bankruptcy system from use for this collateral purpose. Further, the court has a mandate to consider the public's interest in Mr. Jeyaretnam's discharge from bankruptcy so that he can return to his former role as a consistently-elected member of the opposition.

Any independent judiciary bears the challenge of promoting a healthy democracy and fostering the public's faith in the administration of justice. This challenge is now before the Singapore Court of Appeal in Mr. Jeyaretnam's case. Mr. Jeyaretnam has been in the past the target of, in the words of the Privy Council, "misjudgments" influenced by the executive branch of government. The Court of Appeal now has the opportunity to ensure that another profound injustice does not occur.

BACKGROUND

Background of J. B. Jeyaretnam

J. B. Jeyaretnam was a prominent opposition Member of Parliament in Singapore. A lawyer and a former Senior District Judge, he was elected as Secretary-General of the Workers' Party in 1971. In 1981, he won a by-election, becoming the first non-PAP Member of Parliament since independence in 1965. The Workers' Party stands for a less regimented society, constitutional reforms, less defence spending, and a larger welfare state with more social benefits.

Mr. Jeyaretnam's political career was marked by outspoken criticism of the PAP politicians. In the words of a British author, Richard Clutterbuck:

> Jeyaretnam has been relentlessly harried by PAP members anxious to acquire merit, but he alone performs what is Parliament's primary function in a democracy – the public cross-examination of Ministers.[4]

Mr. Jeyaretnam's career was soon marked by litigation. Following his re-election in 1984, Mr. Jeyaretnam was charged with financial impropriety related to the collection of party funds. After an initial acquittal and a series of appeals, Mr. Jeyaretnam was found guilty and sentenced to a S$5,000 fine. The imposition of a fine of over S$2,000 resulted in the automatic disqualification of Mr. Jeyaretnam as a Member of Parliament, and the conviction also triggered his disbarment from the Law Society.

Mr. Jeyaretnam appealed his disbarment to England's Privy Council, then the final court of appeal for Singapore. The Privy Council allowed the appeal and emphatically stated that Mr. Jeyaretnam had been "fined, imprisoned, and publicly disgraced for offences for which [he was] not guilty" and directed the Law Society to reinstate Mr. Jeyaretnam. In its reasons, the Privy Council candidly commented:

> Their Lordships have to record their deep disquiet that by a series of misjudgments the appellant and his co-accused Wong have suffered a grievous injustice…. The appellant, in addition, has been deprived of his seat in Parliament and disqualified from practising his profession.[5]

The PAP refused to heed the Privy Council's advice to facilitate a pardon for Mr. Jeyaretnam, on the grounds that the criminal convictions had not been the subject of the Privy Council appeal. Mr. Jeyaretnam was later re-instated as a lawyer, but prevented from standing again for election until 1997, when he ran and was returned as a non-constituency Member of Parliament.

---

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

[5] *J. B. Jeyaretnam v. Law Society of Singapore*, [1989] A.C. 1.

The Singaporean electorate's consistent support for Mr. Jeyaretnam indicates that voters appreciate the necessity for a robust political opposition, and illustrates that Mr. Jeyaretnam is an integral part of the Singapore Parliament.

Chronology of events following Indra Krishnan et al. v. J. B. Jeyaretnam

November 30, 1998	Judgment granted against Mr. Jeyaretnam and 11 other defendants in a defamation suit, *Indra Krishnan et al. v. J. B. Jeyaretnam*. The damage award against all 12 defendants jointly is S$515,000.
May 31, 2000	Creditors make statutory demand for payment to Mr. Jeyaretnam.
September 23, 2000	Creditors file bankruptcy petitions against Mr. Jeyaretnam.
November 3, 2000	Creditors and Mr. Jeyaretnam enter into consent order, agreeing to payment in instalments.
January 16, 2001	Creditors terminate the instalment agreement in the consent order.
January 19, 2001	Assistant Registrar declares Mr. Jeyaretnam a bankrupt.
February 7, 2001	Appeal of the bankruptcy order dismissed by the High Court (Tan J. in Chambers).
July 23, 2001	Appeal of the bankruptcy order dismissed by the Court of Appeal.
April 24, 2004	Mr. Jeyaretnam applies for discharge from bankruptcy. Assistant Registrar refuses to grant the discharge.
May 24, 2004	Appeal from refusal of discharge dismissed by the High Court (Choo J.).
October 25, 2004	Appeal from refusal of discharge to be heard by the Court of Appeal.

Background of Indra Krishnan et al. v. J. B. Jeyaretnam

In 1995, an article in the Workers' Party newspaper, *The Hammer*, alleged that an event called the 'Tamil Language Week' was an ineffective means of advancing the Tamil language, and that a number of those involved were political opportunists beholden to the government. That article resulted in 2 libel suits against 12

defendants: A. Balakrishnan (the author of the article), Mr. Jeyaretnam (vicariously as editor of the newspaper), and other members of the Workers' Party's central committee.

In the first suit, brought by then Minister of Law, S. Jayakumar, and four other PAP Parliamentarians, the defendants agreed to apologize publicly and to pay S$200,000 in damages. In February 1998, after paying S$100,000 in three instalments, the defendants were unable to make further payments and the plaintiffs did not further pursue the matter until 2000.

The second suit was lodged by Indra Krishnan and nine other members of the 'Tamil Language Week' organizing committee, one of whom is now a PAP Member of Parliament. Although A. Balakrishnan admitted that he was wholly responsible for the article, the High Court awarded the plaintiffs S$265,000 damages and S$250,000 costs jointly against the 12 defendants.

The plaintiffs declined to enforce the judgment against any of Mr. Jeyaretnam's 11 co-defendants, although all the defendants were jointly liable. Instead, they proceeded solely against Mr. Jeyaretnam to obtain full satisfaction on their judgment. The ten creditors chose this course of action despite the fact that Mr. Jeyaretnam filed a statutory declaration that his assets would be insufficient to satisfy the judgment, and despite some indication that at least two of the co-defendants could have contributed to satisfaction of the judgment. To date, the creditors have never attempted to enforce the judgment against any of Mr. Jeyaretnam's co-defendants.

History of the bankruptcy proceedings

Two of the creditors subsequently began bankruptcy proceedings against Mr. Jeyaretnam alone, but were paid off in instalments. The remaining eight creditors made a statutory demand for payment to Mr. Jeyaretnam on May 31, 2000. When Mr. Jeyaretnam did not make payment, the eight creditors filed bankruptcy petitions against him on September 23, 2000. Those petitions were the starting point for a series of decisions that have ultimately led to the current appeals.

The debt due by Mr. Jeyaretnam to Indra Krishnan was S$27,721.66 at that time, and his total debt to the eight creditors was over $150,000. On November 3, 2000, before the bankruptcy petitions were heard, the parties entered into a consent order which suspended the bankruptcy proceedings in favour of a voluntary arrangement for satisfaction of the debt. The consent order set out a payment scheme in ten monthly instalments, running from November 2000 through to August 2001. The final clause of the consent order provided that if Mr. Jeyaretnam failed to make any of the payments according to the schedule, the creditors would be entitled to restore the bankruptcy petition, and that in that event, Mr. Jeyaretnam would consent to a bankruptcy order being made against him.

Mr. Jeyaretnam paid the first two instalments. On December 28, 2000, his solicitor wrote to the creditors' solicitors to request that Mr. Jeyaretnam be given until January 16, 2001 to pay the third instalment that was due on January 1, 2001. On January 2, 2001, the creditors agreed to an extension until noon on January 16, 2001. Mr. Jeyaretnam's difficulty in paying that instalment was largely due to a petition by the plaintiffs in the other defamation suit, Mr. Jayakumar and four other PAP members. As described above, Mr. Jeyaretnam paid S$100,000 to them in 1998, and they had not made further payment demands. Then, in December 2000, they obtained a court order to seize a sum of S$66,666.66 that Mr. Jeyaretnam had been awarded in a suit against a lawyer who owed him costs. Mr. Jeyaretnam had intended to use that sum to pay the instalment due on January 1, 2001 to the other creditors.

No payment was made by noon of January 16, 2001. In the afternoon of January 16, 2001, Mr. Jeyaretnam's solicitor wrote again to the creditors informing them that Mr. Jeyaretnam would pay the instalment on the following day. The creditors responded that same day, stating that they elected to terminate the instalment agreement and reinstate the bankruptcy petitions.

On January 19, 2001, the renewed bankruptcy petitions were heard. The Assistant Registrar found that the entire sum owing to all the creditors at that time was S$175,313. The Assistant Registrar rejected Mr. Jeyaretnam's argument that only the third instalment was due, instead finding that the entire sum had become due upon the creditors' termination of the instalment agreement. The Assistant Registrar declared Mr. Jeyaretnam a bankrupt on that date.[6]

Mr. Jeyaretnam appealed to the High Court the bankruptcy order arising from Indra Krishnan's petition.[7] In order to save costs, the other seven petitions were adjourned pending the appeal.

The appeal was heard and dismissed by Justice Tan Lee Meng in Chambers on February 7, 2001.[8] Tan J. identified the central issue on a bankruptcy petition as "whether or not the bankrupt is able to pay his debts".[9] Tan J. rejected Mr. Jeyaretnam's argument that the breach was not so serious as to justify termination of the entire agreement, and affirmed the Assistant Registrar's finding that the full sum was owing to the creditors. Tan J. stated, "Like the assistant registrar, I was satisfied that he was unable to pay his debts. As such, I saw no reason to overrule the decision of the assistant registrar."[10]

---

6 *Re Joshua Benjamin Jeyaretnam, ex parte Indra Krishnan*, Bankruptcy Petition No. 2491 of 2000 (19 January 2001).

7 On the appeal, Mr. Jeyaretnam relied on s. 7 of the Singapore *Bankruptcy Act* (Cap. 20), which provides that "the court may review, rescind or vary any order made by it under its bankruptcy jurisdiction". See *infra*, for a further discussion.

8 *Re Joshua Benjamin Jeyaretnam, ex parte Indra Krishnan*, Bankruptcy Petition No. 2491 of 2000 (12 March 2001).

9 *Ibid.* at ¶10.

10 *Supra* note 8 at ¶12.

Tan J. further held that Mr. Jeyaretnam was bound by the November 2000 consent order. Tan J. referred to the Court's power to review, rescind or vary any order made by it under its bankruptcy jurisdiction, but concluded:

> The court will intervene if a consent order is used as an engine of oppression against a debtor who is not unable to pay his debts. As it was clear that Mr. Jeyaretnam was unable to pay his debts, the question of rescinding or varying the bankruptcy order made by the assistant registrar on 19 January 2001 did not arise.[11]

Mr. Jeyaretnam appealed Tan J.'s decision to the Court of Appeal. The appeal was heard on July 23, 2001. The appeal was dismissed, with reasons for judgment given on August 7, 2001.[12] The Court of Appeal affirmed that the creditors were entitled to terminate the instalment agreement and demand the payment of all outstanding instalments.[13] The court noted that there was no evidence that Mr. Jeyaretnam could pay the full amount of the outstanding debt.[14] The court stated:

> While we recognised that the court had the power conferred under s. 7, there was nothing in the circumstances of the present case indicating that the court need invoke that provision. … [T]he fact of the matter was that neither the Assistant Registrar, nor the Judge-in-Chambers, had relied upon the appellant's consent to a bankruptcy order being made, in deciding to make the order. Neither had we in dismissing this appeal. They were satisfied, as we were, that the appellant was not able to pay up in full the outstanding debt to the respondent.[15]

As a confirmed bankrupt, Mr. Jeyaretnam was ineligible for holding public office and for practising law in Singapore. He was removed from Parliament in 2001.

Background of the present appeal

On April 24, 2004, three years after being declared a bankrupt, Mr. Jeyaretnam applied for discharge from bankruptcy, offering to pay a total of 20% of all the debts.[16] His application was opposed by the Official Assignee and by some fourteen creditors, including: the eight creditors, Prime Minister Goh Chok Tong, and Deputy Prime Minister S. Jayakumar. The Official Assignee did not allege any misconduct, but opposed the discharge because Mr. Jeyaretnam was claiming an interest in his deceased sister's estate, in particular a property in Malaysia. The Assistant Registrar refused to grant Mr. Jeyaretnam a discharge from bankruptcy.

---

11. *Supra* note 8 at ¶18.
12. *Re Joshua Benjamin Jeyaretnam, ex parte Indra Krishnan,* Civil Appeal No. 600011 of 2001 (7 August 2001).
13. *Ibid.* at ¶15.
14. *Supra* note 12 at ¶20.
15. *Supra* note 12 at ¶21.
16. The application was made under s. 124 of the Singapore *Bankruptcy Act*.

Mr. Jeyaretnam appealed that decision to the High Court. On May 24, 2004, Justice Choo Han Teck dismissed the appeal.[17] Mr. Jeyaretnam raised two grounds of appeal: (i) that he was willing to pay up to 25% of the debt or any other amount the court were to order, and (ii) that the creditors were not serious in recovering the debt and that the real reason for opposing his discharge was political.

Regarding the second argument, Choo J. concluded:

> The appellant submitted that had this application been made by anyone else it would not have been objected to by the creditors or the OA [Official Assignee]. … The incontrovertible fact remains that the administration of the appellant's assets has not been completed. It is apparent that the appellant, if not entitled, is at least staking a claim to his sister's property in Johor Bahru. From what the appellant has disclosed, the appellant's claims in Johor Bahru are being disputed and there is a serious threat of litigation. In the circumstances, it would not be fair to the creditors here if the bankruptcy order is discharged. The OA is the ideal and proper person to administer the appellant's assets, especially in such circumstances.[18]

Choo J. then discussed the balance between the "second chance" and the "prevention of fraud" considerations on a discharge application, but concluded:

> However, there are other equally important matters that the court ought to take into account. Whether the assets of the bankrupt have been fully ascertained or administered is one such matter.
>
> … I am of the view that three years, in the present circumstances, is too soon for the bankruptcy order to be discharged. It might have been different if the assets had been fully ascertained and administered, and the OA had been supportive of the application.[19]

Choo J. went on to make an astounding analogy:

> In a previous case, *Re Loo Teng Soy*, [1998] SGHC 249, I rejected an application to discharge a bankruptcy order even though the order had been in force for 11 years and the application was made by the OA. In that case, the amount involved was extremely large, amounting to $14m, and the bankrupt had previously absconded. I, therefore, counselled the virtue of patience.[20]

The Court of Appeal hears Mr. Jeyaretnam's appeal on October 25, 2004.

---

17 *Re Jeyaretnam Joshua Benjamin, ex parte Indra Krishnan (No. 2)*, [2004] SGHC 105.
18 *Ibid.* at ¶4.
19 *Supra* note 17 at ¶4-5.
20 *Supra* note 17 at ¶5.

DISCUSSION

A. Underlying Policy Considerations

Modern bankruptcy law is rooted in the fundamental principle that debtors should not be prevented from overcoming an insurmountable burden of debt. This basic principle is not only humanitarian and compassionate toward an individual debtor, but is also aimed toward the economic well-being of society as whole.

In the 19th century, English bankruptcy law began to draw a distinction between the honest but unfortunate debtor on the one hand, and the dishonest or reckless debtor on the other. At that time, bankruptcy law began to take its modern humane formulation, recognizing bankruptcy as a medium for rehabilitation of the debtor, as well as a vehicle for protecting the debtor from the disruptive forces of individual creditors' remedies.[21]

Mr. Jeyaretnam is a quintessential example of an honest but unfortunate debtor. The defamatory publication was made in the exercise of a public duty and was the type of expression which in another country would have been attributed to freedom of the press. Further, Mr. Jeyaretnam made a valiant attempt to pay some of the judgment. His creditors abandoned pursuing his co-defendants and put the whole judgment on his shoulders, an insurmountable debt for him, especially since the bankruptcy prevented him from working either as a lawyer or a Parliamentarian.

Balancing the rights of debtors and creditors

An equitable bankruptcy regime strikes a balance between the rehabilitation of debtors and the recovery of debt by creditors. The words of Mr. Justice Khoum in *Re Siam Obi Chloe, ex parte Hongkong and Shanghai Banking Corp.*,[22] are particularly resonant in the Singaporean context:

> A proper approach to an application to discharge from bankruptcy involves a consideration of the project and purpose of these new provisions of the *Bankruptcy Act* …. The *Act* was designed to meet two major conflicting concerns. One stemmed from the recognition that many an individual businessman becomes insolvent not through any fault, moral or otherwise, but through just being caught at the wrong turning of the economic cycle. It would be in the interest of society that people who had become bankrupt in such circumstances, and generally, should be given a second chance in life, so that the social cost of waste of entrepreneurial resources could be reduced. The other concern was that, without proper safeguards, people who had used dishonest or fraudulent methods in conducting their business affairs to the detriment

---

21 Professor Ian Fletcher, *The Law of Insolvency* (London: Sweet & Maxwell, 1990) at 8.

22 [1998] 1 S.L.R. 903 at ¶9.

> of their creditors might get an undeserved advantage from their own wrongdoings. The fear of people taking advantage of their own frauds is probably as old as the institution of bankruptcy itself, and it was natural that such fears were highlighted when an easier regime for discharge from bankruptcy was being proposed. The new legislation sought to strike a balance between these two major concerns.

In Canada, courts balance those same considerations in deciding whether to grant the bankrupt a discharge. Canadian courts have unequivocally stated the principle that:

> One of the prime purposes of the [Canadian *Bankruptcy and Insolvency*] *Act* is to permit an honest but unfortunate debtor to obtain a discharge from his debts subject to reasonable conditions. The *Act* is designed to permit a bankrupt to receive eventually a complete discharge of all his debts in order that he may be able to integrate himself into the business life of the country as a useful citizen free from the crushing burden of his debts.[23]

Where there is no evidence that a bankrupt is abusing the bankruptcy system or seeking to defraud creditors, and nothing in his or her conduct cries out for censure, then the balance must swing in favour of the bankrupt's discharge. In such a situation, the bankrupt's entitlement to rehabilitation will outweigh any speculative prejudicial effect to the bankrupt's creditors.

Mr. Jeyaretnam has not been guilty of any misconduct in the administration of his estate. Although he is asserting an interest in his sister's estate, that is a legitimate exercise of his private rights. Regarding rehabilitation, he has a right to be re-integrated into the economic and professional communities in which he has played so important a role in the past. He is 75 years old and should not be forced to bear the burden of this debt without being able to work, especially since his retirement years are approaching and he must provide for himself and his family.

Balancing the interests of the public

The interests of the bankrupt and the creditors must also be weighed against the interests of the public. As the Ontario Superior Court has stated:[24]

> 1. In considering the question of discharge, the Court must have regard not only to the interests of the bankrupt and his creditors, <u>but also to the interests of the public</u> …
>
> 2. The Legislature has always recognized the interest that the State has in a debtor being released from the overwhelming pressure of his debts,

[23] *Re Murray*, [1971] 2 W.W.R. 548 (B.C.S.C.) at 551.

[24] *Re Raftis* (1984), 53 C.B.R. (N.S.) 19 (Ont. S.C.) at 22. This case offers a compendious description of the many factors to be weighed and considered on an application for discharge.

> and that it is undesirable that a citizen should be so weighed down by his debts as to be incapable of performing the ordinary duties of citizenship …
>
> [emphasis added]

This principle is particularly relevant where the bankrupt is a public official. The public has an interest in not being robbed of its electoral choice by avoidable or unnecessarily prolonged bankruptcy proceedings. Further, the law of bankruptcy recognizes that bankruptcy may be a particularly onerous burden for professionals or public officials, such as Mr. Jeyaretnam, who must endure not only the usual incidents of bankruptcy, but also the inability to serve the public. An elected official has a special interest in fulfilling the mandate for which he or she was elected.

Protecting the integrity of the bankruptcy regime

Courts have a duty to safeguard the integrity of the bankruptcy system. That duty requires courts to consider whether the bankruptcy regime is being used as an instrument of oppression. Bankruptcy proceedings must not be abused in order to obtain a collateral advantage for the creditor. That principle was stated by the Lord Evershed of the Chancery Division in *Re Marjory*:[25]

> The so-called “rule” in bankruptcy is, in truth, no more than an application of a more general rule that court proceedings may not be used … for the purpose of obtaining for the person so using … them some collateral advantage to himself, and not for the purpose for which such proceedings are properly designed and exist; and a party so using … proceedings will be liable to be held guilty of abusing the process of the court and therefore disqualified from invoking the powers of the court by proceedings he has abused.
>
> On the other hand, having regard to what Jenkins L.J. called “the potent instrument of oppression” which bankruptcy proceedings (with their potential consequences upon property and status) provide, the court will always look strictly at the conduct of a creditor using … such proceedings; and if it concludes that the creditor has used… the proceedings at all oppressively, for example, in order to obtain… some other collateral advantage to himself, the court will not hesitate to declare the creditor’s conduct extortionate and will not allow him to make use of the process which he has abused.
>
> [emphasis added]

It is important to note that the tort of abuse of process need not be proved before the Court can consider the question of improper purpose. In many cases, formal proof of improper motive will not be available to the debtor. For that reason, bankruptcy

[25] [1955] 1 Ch. 600 at 623-624.

legislation has typically given a wide discretion to the courts, unfettered by the high standards required for establishing torts such as abuse of process. An "improper purpose" is "any purpose collateral to the purpose for which the bankruptcy and insolvency legislation was enacted".[26] A court will intervene whenever there is some evidence of "substantial injustice".[27]

Likewise, the court must ensure that a debtor is not abusing the bankruptcy process to escape from his or her creditors.[28] However, that concern is much less important if the bankrupt is willing to make some reasonable arrangement with his or her creditors. In this case, Mr. Jeyaretnam has offered to pay his creditors up to 25% of the judgment debt, or to make other payments as the court may order. Certainly it cannot be said that he is attempting to escape from his creditors.

B. The Statutory Framework for Discharge from Bankruptcy

Singaporean bankruptcy law is governed by the *Bankruptcy Act* (the "*BA*"), which came into force on July 15, 1995.[29] The *BA* aims to reduce the instances where parties resort to bankruptcy proceedings and to encourage the settlement of claims through voluntary arrangements. It simplifies previously cumbersome procedures, and expedites discharge from bankruptcy, particularly through its innovative Official Assignee's certificate of discharge. In 1999, amendments were made to the *BA* to extend the scope and shorten the time frame for such discharge by certificate. In general, amendments to the *BA* since 1995 are aimed to make bankruptcy less prohibitive and less prolonged.

Petitions in bankruptcy

In Singapore, a creditor is permitted to present a bankruptcy petition against a debtor only if, *inter alia*, (i) the debts are equal to or more than $10,000; (ii) the debts are for a liquidated sum payable immediately to the creditor; and (iii) the debtor is unable to pay the debt.[30]

A debtor is presumed to be unable to pay the debt if, upon expiry of 21 days after having been served a statutory demand, he or she does not comply with it.[31] The burden then shifts to the debtor to rebut the presumption by showing ability to pay.[32]

---

[26] *Re Laserworks Computer Services Inc.* (1998), 6 C.B.R. (4th) 69 (N.S. C.A.) at 85.

[27] *Re Laserworks*, *ibid.*, at 85-86. That case cites several examples of "improper purpose". For instance, enforcing bankruptcy to: get rid of a trustee; relieve third parties of contractual liabilities with the debtor; gain control over shares of a debtor; or to gain an advantage over a business competitor.

[28] *Re Izod*, [1898] 1 Q.B. 241, explained in *Re A Debtor (No. 12 of 1970)*, [1971] 2 All E.R. 1494.

[29] Cap. 20, 1996 Ed.

[30] See s. 61(1) *BA*.

[31] See s. 62 *BA*.

[32] See s. 62 *BA*, and *Re Boey Hong Khim & Anor*, [1998] 3 S.L.R. 38.

A court may make a bankruptcy order only if it is satisfied that the debt has neither been paid nor secured or compounded for.[33] The court may also, for sufficient reason, order the stay of a bankruptcy petition, either altogether or for a certain time, and on such terms and conditions as it may think just.[34] The court may also consider questions of abuse of process or improper purpose at this stage, although the Singaporean courts did not do so in Mr. Jeyaretnam's case.

Mr. Jeyaretnam's creditors petitioned him into bankruptcy on the grounds that he was unable to pay the judgment debt. At the time, however, Mr. Jeyaretnam was ready, willing, and able to pay the judgment debt in instalments according to the consent order. The creditors must have known that if they chose to accept the one late payment, then they stood a good chance of ultimately recovering the agreed amount in instalments. However, they chose to petition Mr. Jeyaretnam into bankruptcy, thereby initiating a process that would, in the normal course, result in the extinguishment of Mr. Jeyaretnam's debt to them, especially since the bankruptcy deprived Mr. Jeyaretnam of the ability to work as a professional. The fact that they appeared to be acting against their own financial interests suggests an improper or collateral purpose to their use of the bankruptcy regime.

Effect of bankruptcy on status of an individual

Aside from the general proprietary effects of bankruptcy (property vesting in the trustee, etc.) and its procedural aspects (appointment of a trustee, creditors' meetings, etc.), bankruptcy also has a profound effect on an individual's "status".[35]

In Singapore, the Constitution states that an undischarged bankrupt cannot sit as a Member of Parliament. An undischarged bankrupt is also ineligible to practice as a lawyer.

Similar laws regarding status exist in other jurisdictions. In Canada, the conduct of lawyers is governed by various provincial Law Societies. Bankruptcy does not necessarily result in the loss of a lawyer's license to practise, but it does involve restrictions on that practise. For example, the Rules of the Law Society of Upper Canada provide that a solicitor who is an undischarged bankrupt cannot, without the written consent of the discipline committee, operate a trust account – an essential element of any lawyer's practise. A bankrupt also ceases to be eligible to be or remain a Senator of Canada.[36]

Such laws regarding the impact of bankruptcy on professional status are not necessarily inherently problematic. If unchecked, however, they can be abused for political gain or personal malice.

---

[33] See s. 65(1) *BA*.
[34] See s. 64 *BA*.
[35] For an overview of this area, see the useful article by H.R. Poultney, Q.C, "The 'Status' of a Bankrupt" (1975), 19 C.B.R. (N.S.) 105.
[36] See the *BNA Act 1867*, s. 31(3).

Review of bankruptcy orders

In Singapore, England, and Canada, the court has the power to review, rescind or vary any order made by it under its bankruptcy jurisdiction.[37]

This broad and permissive statutory language gives the court a wide jurisdiction to redress any wrongs that may have arisen. Clearly, Parliament intended to give the courts the power to review of any bankruptcy order without prescribing limitations to the grounds upon which the review may be done. In doing so, Parliament recognized that injustice may arise in myriad forms, and empowered the courts to respond to those many subtle permutations of injustice.

This intention is paralleled in Singaporean law in the general powers of the bankruptcy court, which is to "have full power to decide … all … questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court considers it expedient or necessary to decide for the purpose of doing complete justice…".[38]

Automatic discharge of a first-time individual bankrupt

Bankrupts may generally apply at any time for discharge of their bankruptcy.[39] However, even if a bankrupt does not do so, the public administrator in bankruptcy may apply for the automatic discharge of the bankrupt after a certain period of time.

In England, first-time bankrupts (or those who have not been previously bankrupt within 15 years of their current bankruptcy) are generally automatically discharged from bankruptcy three years from the date of the bankruptcy order.[40]

English law provides no procedure whereby a trustee or creditors can "oppose" an automatic discharge. Thus, an automatic discharge is the norm for first-time bankrupts.[41] This result is a radical shift in social policy, and is unparalleled in Singaporean or Canadian bankruptcy law. As Professor Ian Fletcher writes:

---

37 See s. 7 *BA*; in Canada, s. 187(5) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"); and in England, s. 375(1) of the *Insolvency Act, 1986* ("*IA*"). All three jurisdictions also allow the court to annul a bankruptcy order if it appears to the court that the order ought not to have been made – see s.123(1) *BA*; in Canada, s. 181 *BIA*; and in England, s. 282 *IA*.

38 See s. 6 *BA*.

39 See s. 124 *BA*; also in Canada, s. 168.1(2) *BIA*.

40 See s. 279(1) *IA*.

41 However, if a bankrupt is failing to comply with the obligations of his bankruptcy, the receiver may apply to the court for an order that the running of time shall cease to run. After a hearing of which both the bankrupt and the trustee must have notice, the court may either specify a period for which the running of time shall cease to run, or lay down certain conditions which must be fulfilled by the bankrupt before the running of time can resume (see. s. 279 *IA*). The bankrupt may also apply at any time for the discharge of the order (see *Insolvency Rules 1986*, Rule 6.216).

> …[T]he substitution of a concept of a fixed, and relatively short, duration of the condition of bankruptcy for those debtors who respect their legal obligations while they remain undischarged, has undoubtedly marked the beginning of a fundamental adjustment in prevailing social attitudes towards bankruptcy, and towards those who undergo it. For the so-called "deserving" debtor, at any rate, the aura of menace and the near-perpetual stigma which hitherto surrounded the institution of bankruptcy cannot but have been diminished by the clarified prospect of a finite, and relatively short, interruption of the individual's normal legal status.[42]

Unlike English law, Singaporean and Canadian laws allow opposition to the automatic discharge of a first-time bankrupt. In Singapore, a first-time individual bankrupt may (but not necessarily shall) be discharged from bankruptcy three years after the bankruptcy order. After three years have elapsed, and if the debts proved in bankruptcy do not exceed $500,000, the Official Assignee may, in his or her discretion, issue a certificate discharging a bankrupt from bankruptcy.[43] Before issuing a certificate of discharge, the Official Assignee must serve notice on every creditor, who then has an opportunity to oppose the discharge.[44]

In Canada, a first-time bankrupt may be automatically discharged from bankruptcy nine months after the date of bankruptcy.[45] The trustee in bankruptcy must provide notice to the bankrupt and all proven creditors at least 15 days before the end of the nine months. The trustee must also prepare a report on the affairs of the bankrupt, the causes of bankruptcy, whether the bankrupt has fulfilled his or her duties under the *BIA*, the conduct of the bankrupt, and any other relevant fact. The report contains a recommendation as to whether or not the bankrupt should be discharged.[46] If there is no opposition, an automatic discharge will be granted. If there is opposition by any interested party, a date is set in court for the hearing of the opposition.[47]

Powers of the court on an opposed application for discharge

In certain circumstances, the courts may have jurisdiction to decide whether and on what terms a discharge is granted to a bankrupt. The circumstances triggering the courts' jurisdiction vary in different countries.

In England, because first-time bankrupts routinely receive automatic discharges, the courts' jurisdiction only arises over bankrupts who have been previously bankrupt within the last 15 years. For persons who have previously been bankrupt, the

42 Fletcher, *supra* note 21 at 288.
43 See s. 125 *BA*.
44 See s. 126 *BA*.
45 See s. 168.1 *BIA*.
46 See s. 170 and s. 170.1 *BIA*.
47 See s. 126 *BA*; in Canada, s. 170 *BIA*.

automatic discharge provisions are not available, and such persons may be discharged only by order of the court. Such bankrupts may not apply for such a discharge until five years from the date of the bankruptcy.[48]

In Canada and Singapore, because opposition is allowed to an application for discharge, the courts' jurisdiction arises on an opposed application for discharge. An opposed application for discharge may arise in two situations: (1) on an application made by the bankrupt, who may apply for discharge at any time after the bankruptcy order was made, or (2) on an opposed automatic discharge application.

Once the court's jurisdiction is triggered, the court generally has discretion to do any of the following: (a) grant an absolute discharge, (b) grant the discharge on conditions, (c) suspend the operation of the order of discharge for a specified period of time, or (d) refuse the discharge.[49]

(a) Absolute discharge

Generally, if there has been no misconduct by the bankrupt, the court may grant an absolute discharge to the bankrupt. An absolute discharge is not available if there has been misconduct by the bankrupt.

The facts which constitute misconduct are substantially similar in Singapore and Canada. They include such things as: the bankrupt failing to keep proper books of account as to sufficiently disclose the bankrupt's financial position; that the bankrupt has contributed to her bankruptcy by rash speculations or extravagant living; or that the bankrupt has been found guilty of fraud.[50]

In Mr. Jeyaretnam's case, the Official Assignee opposed the discharge at the discharge hearing, but did not make any allegations of misconduct. The Official Assignee did not suggest that Mr. Jeyaretnam committed any offence under the *BA* or any other statute. Therefore, it was open to the court to grant Mr. Jeyaretnam an absolute discharge.

(b) Conditional discharge

Even where there has been misconduct on the part of a bankrupt, the court is not bound to refuse an application for discharge of the bankruptcy. Instead, whether or not there is misconduct, the court may order a conditional discharge. In Singapore, s. 124 of the *BA* provides:

> (3) Subject to subsection (4), on an application under this section, the court may —

---

48 See s. 280 *IA*.
49 See s. 124(3) *BA*; in Canada, s. 172 *BIA*; and in England, s. 280 *IA*.
50 See s. 124(5) *BA*; in Canada, s. 173 *BIA*.

(a) refuse to discharge the bankrupt from bankruptcy;

(b) make an order discharging him absolutely; or

(c) make an order discharging him subject to such conditions as it thinks fit to impose, including conditions with respect to —
(i) any income which may be subsequently due to him; or
(ii) any property devolving upon him, or acquired by him, after his discharge,
as may be specified in the order.

(4) Where the bankrupt has committed an offence under this *Act* or under section 421, 422, 423 or 424 of the *Penal Code* (Cap. 224) or upon proof of any of the facts mentioned in subsection (5), the court shall —

(a) refuse to discharge the bankrupt from bankruptcy;

(b) make an order discharging him subject to his paying a dividend to his creditors of not less than 25% or to the payment of any income which may be subsequently due to him or with respect to property devolving upon him, or acquired by him, after his discharge, as may be specified in the order and to such other conditions as the court may think fit to impose; or

(c) if it is satisfied that the bankrupt is unable to fulfil any condition specified in paragraph (*b*) and if it thinks fit, make an order discharging the bankrupt subject to such conditions as the court may think fit to impose.

[emphasis added]

Parliament chose statutory language that clearly imbues the court with a broad discretion to fashion an appropriate order. This grant of authority to the courts reflects Parliament's interests in facilitating, to the highest degree possible, the discharge of first-time bankrupts. For instance, the court may require the bankrupt to undertake to contribute further to paying his or her creditors even after the discharge.[51] The court may also require a minimum figure to be paid to the creditors as dividend in the future. In Singapore, the *BA* further permits an order discharging the bankrupt subject to his paying a dividend to his creditors of not less than 25% or to the payment of any income which may be subsequently due to him or acquired by him after his discharge, as well as other conditions which the court may think fit to impose.[52]

---

[51] See Fletcher, *supra* note 21 at 291. In Canada, see s. 172(1),(2) *BIA*.

[52] See s. 124(4) *BA*.

A conditional discharge is the preferred result where the primary concern is the satisfaction of the bankrupt's debts to the creditors. It strikes an appropriate balance between the interests of the creditors, who may have received little payment by the time that the application for discharge is made, and the interests of the bankrupt in making a fresh start and regaining professional status.

(c) Suspension of discharge

In Singapore, the *BA* allows a narrow power to order a suspended discharge: if creditors oppose the issuance of a certificate of discharge by the Official Assignee, the court may suspend the discharge for a period not exceeding two years.[53] It is generally rare for a court to suspend a discharge in the absence of proof of misconduct, and even if ordered, the suspension will likely be relatively short.

(d) Refusal of discharge

The refusal of a discharge is generally reserved for exceptional circumstances.[54] Although the court has the power to refuse a discharge even if misconduct is not proven,[55] it is unlikely that a court will refuse a discharge if misconduct is not proven. Even if a discharge is refused, the court may fix a time period after which the bankrupt may re-apply; thus, the refusal may essentially be analogous to a suspension.

For instance, a discharge has been refused in the following circumstances: where the bankrupt has gone into bankruptcy three or more times[56]; where the bankrupt flagrantly failed to meet his statutory obligations[57]; and where the bankrupt wrongfully disposed of assets and was untruthful to the trustee.[58]

None of these circumstances are present in Mr. Jeyaretnam's case. It is difficult to understand Choo J.'s analogy of Mr. Jeyaretnam's case to the case of *Re Loo Teng Soy*, where the debt amounted to S$14 million and the bankrupt had previously absconded. While Choo J. "counselled the virtue of patience" in that case,[59] Mr. Jeyaretnam is not comparable to an absconding debtor. He is a first-time bankrupt who has made good faith attempts to pay his debt and has committed no offences under the *BA*. In short, Mr. Jeyaretnam's case does not have any exceptional circumstances that would justify the refusal of a discharge.

53 See s. 126(6) *BA*.
54 *Re Pearse* (1912) 107 L.T. 859; *Re Benjamin*, [1943] 1 All E.R. 468.
55 See s. 124(3)(a) *BA*.
56 *Re Hardy* (1979), 23 O.R. (2d) 227 (Ont. S.C.).
57 *Re Upham* (1985), 57 C.B.R. (N.S.) 134 (N.S. T.D.).
58 *Mancini (Trustee of) v. Mancini* (1987), 63 C.B.R. (N.S.) 254 (Ont. S.C.).
59 *Supra* note 17 at ¶5.

(e) Further factors to be considered on an application for discharge

In England, the *IA* does not specify what factors the court should consider in exercising its discretionary powers on an application for discharge. Thus, the court enjoys a broad discretion and has the power to fashion any remedy which strikes the appropriate balance between rehabilitation and deterrence. However, in the exercise of its discretion, the court may consider factors such as fraud or misconduct *during* the bankruptcy, but may not consider the reasons for which the bankruptcy originally arose.[60]

In Singapore and Canada, the bankruptcy statutes more specifically delineate factors to be considered by the court. In Singapore, the court will hear the Official Assignee's report of an insolvent person's affairs and conduct during insolvency before granting an absolute or conditional discharge. The factors the court will consider in making such a decision include: the bankrupt's age, health, and earning capacity; amount of payments made to the Official Assignee; whether any offence has been committed by the bankrupt person while in bankruptcy; and generally, whether the bankrupt has fully co-operated with the Official Assignee.[61]

When the bankrupt is a professional, the age of the bankrupt and the bankrupt's responsibility to provide for himself and his spouse during retirement, may swing the balance in favour of discharge.[62] As the Nova Scotia Supreme Court has stated:[63]

> In considering a discharge that involves a professional, the Courts must consider a number of factors, the bankrupt's earning capacity, the bankrupt's provable expenses, and the possible effect of denying a discharge. The Court must also consider the bankrupt's age (which is a key factor in determining his employability), and the state of his health, both physical and mental. *Re Chow* (1989), 73 C.B.R. (N.S.) 225 …:
>
>> "The success or non-success of any bankruptcy system, must to a large extent depend on the administration of the discharge provisions of the *Act*. …"

Mr. Jeyaretnam is 75 years old and finds himself unable to pursue either his profession as a lawyer or as a Parliamentarian. He has spent his life in public service, a vocation which has now been taken from him. All of these factors militate in favour of a discharge from bankruptcy, whether absolute or conditional, for Mr. Jeyaretnam.

60 *Re Barker* (1890) 25 Q.B.D. 285 at 293.
61 From the Singapore Insolvency and Public Trustee's Office website: www.minlaw.gov.sg/ipto/.
62 See *Re Irwin* (1994), 24 C.B.R. (3d) 211 (B.C.C.A.) at ¶70, where Rowles J.A. stated: "Each bankruptcy case must turn on its particular facts. In this case, it is essential to recognize that the appellant has an obligation to provide for his wife and himself during retirement and that as an aspect of rehabilitation, the appellant will have to set aside a substantial amount of his income each year to build up sufficient assets and savings to prepare for retirement."
63 *Re Taylor* (1991), 6 C.B.R. (3d) 66 (N.S. S.C.) at 73.

Effect of the discharge

Generally, a discharge releases the bankrupt from all debts (subject to some statutory exceptions), and also frees the bankrupt from all the disabilities and disqualifications to which he or she was subject during bankruptcy (such as inability to hold public office or to hold a solicitor's trust account).[64] As Professor Fletcher observes:

> The granting of his discharge has the effect of restoring the bankrupt, legally, to a state of near-normality, in that he becomes capable once again of freely entering into contractual relations, including those which involve his obtaining credit. He may also acquire and dispose of property on his own account, and may once again engage in trade.[65]

In Singapore, England, and Canada, discharges from bankruptcy are subject to a number of important statutory exceptions, including: fines or penalties owing in respect of an offence or recognizance or bail; debts for spousal or child support; debts arising out of fraud or breach of fiduciary duties; and debts for obtaining property by false pretences.[66] Certain awards of damages in civil proceedings are also not released by a discharge.[67] None of these exceptions are applicable to Mr. Jeyaretnam.

---

[64] See for instance s. 281(1) *BIA*.

[65] Fletcher, *supra* note 21 at 297-298.

[66] See s. 127 *BA*; in Canada, s. 178(1) *BIA*; and in England, s. 281(5) *IA*.

[67] In Singapore, this includes: damages for personal injury or death stemming from negligence or other breach of duty, and pecuniary liability relating to proceeds of crime (see s. 127(6) *BA*). The Singaporean provision appears to mirror the English provision, which is virtually identical (see s. 281(5) *IA*). Canadian law makes a departure from that principle by allowing a discharge from all damages in civil proceedings except for: (a) bodily harm intentionally inflicted or sexual assault, and (b) wrongful death resulting therefrom (see s. 178(1)(a.1) *BIA*).

CONCLUSIONS

The court's refusal to grant Mr. Jeyaretnam a discharge from bankruptcy will result in a grave miscarriage of justice. A discharge from bankruptcy is justified on both strictly legal and broader policy grounds.

Legal grounds

The Singapore *BA* gives the court in its bankruptcy jurisdiction a broad discretion and a virtually unfettered power to do real justice in the circumstances of any particular case. Parliament expressly gave the court far-reaching powers because it recognized that the discharge of first-time bankrupts is a desirable goal, and it therefore sought to arm the courts with the tools to facilitate discharges. The discharge of a first-time bankrupt is refused only in the rarest and most exceptional of cases.

At the discharge hearing, the Official Assignee opposed the discharge but made no allegation of misconduct against Mr. Jeyaretnam. Therefore, it was open to the court to grant Mr. Jeyaretnam an absolute discharge. Even if the court was not comfortable with granting an absolute discharge, it had the power to grant a conditional discharge on any terms it saw fit.

Mr. Jeyaretnam has demonstrated his readiness and ability to pay his creditors up to 25% of the debt. While the creditors opposed his discharge, they did not file affidavits or adduce other evidence as to why his offer of payment was unacceptable. Mr. Jeyaretnam also invited the High Court to fix an alternative sum if the court was of the view that his offer was inadequate. He has consistently indicated his willingness to cooperate with the Official Assignee and with the court.

The court could and should have exercised its discretion to grant the discharge, either absolutely or on conditions. A conditional discharge would have allowed the court to address any residual concerns about fairness to the creditors. An outright refusal of a discharge for a first-time bankrupt is never warranted when less intrusive measures are available.

Policy grounds

The court refused the discharge on the single ground that the administration of Mr. Jeyaretnam's assets had not been completed, a finding disputed by Mr. Jeyaretnam. In any event, his possible future interest in an asset would not outweigh the policy considerations that militate in favour of his immediate discharge.

The courts have a duty to protect the integrity of the bankruptcy system and to prevent abuse of the bankruptcy process. The Court of Appeal must consider that to refuse a discharge in the circumstances of Mr. Jeyaretnam's case may bring the Singaporean administration of justice into disrepute. There is a widespread

perception that the creditors who oppose Mr. Jeyaretnam's discharge have done so to prevent him from standing for public office.

This public perception is fostered in part by the fact that the creditors have chosen to pursue Mr. Jeyaretnam for payment while declining to pursue the other 11 defendants who were jointly liable for the debt. Mr. Jeyaretnam had some evidence that at least two other defendants had the ability to pay, but the creditors have never pursued those defendants. The creditors' pursuit of Mr. Jeyaretnam alone appears contrary to their interest in collecting their debt and implies a collateral purpose.

This perception is also heightened by the creditors' other actions. By choosing to petition Mr. Jeyaretnam into bankruptcy instead of accepting late payment, the creditors initiated a process that was almost certain to eventually extinguish, through a discharge, the bulk of Mr. Jeyaretnam's debt to them. Having petitioned Mr. Jeyaretnam into bankruptcy on the basis of his inability to pay the debt, the creditors now oppose a discharge on the grounds that he might have the ability to pay in the future.

The court must also give considerable weight to the bankrupt's right to rehabilitation. As stated by Khoum J. in *Re Siam Obi Chloe, ex parte Hongkong and Shanghai Banking Corp.*,[68] a proper approach to an application for discharge requires the court to consider the purpose of the *BA*, which aims to minimize the duration of bankruptcy and which seeks to implement reasonable alternatives to bankruptcy.

In this case, the Court of Appeal should question whether any significant weight ought to be given to the rights of these creditors. On the one hand, Mr. Jeyaretnam has cooperated with the Official Assignee and has offered to pay more than one-third of the judgment debt. On the other hand, the creditors deliberately waived their rights to collect the debt from the other 11 judgment debtors. Such circumstances cannot support a continued refusal to grant a discharge.

Further, the High Court failed to give sufficient weight both to the substantial prejudice to Mr. Jeyaretnam of the bankruptcy order, and to the public's interest in restoring his ability to return to public life. The public interest is of particular importance in this case. Mr. Jeyaretnam has an extraordinary record of public service as a human rights advocate: a 20-year career as Member of Parliament in Singapore, and a 42-year career as a lawyer. Clearly, the public interest lies in restoring Mr. Jeyaretnam's ability to return to public life in Singapore.

The issues at stake go beyond Mr. Jeyaretnam's personal situation. They impact on much broader issues of democracy and freedom of expression in Singapore. The fact that Mr. Jeyaretnam has been the target of many defamation suits, all flowing from public discussions of issues of public concern, has had a chilling effect on legitimate political dissent in Singapore.

---

[68] *Supra* note 22.

Privately, lawyers in Singapore have told LRWC that there is a real concern about the independence of the judiciary when it adjudicates cases with a political dimension, such as Mr. Jeyaretnam's.

Members and friends of the PAP have used defamation law as an effective tool to suppress public discussion, punish government critics, and remove opposition members. Mr. Jeyaretnam's case indicates a move by Singapore courts to now allow the members and friends of the PAP to use bankruptcy law as an adjunct tool for political oppression.

In conclusion, it is important for the Court of Appeal to give due consideration to the bankruptcy statute, jurisprudence, and policy, all of which support a discharge from bankruptcy for Mr. Jeyaretnam. It is equally important that in deciding this case the Court of Appeal signal a clear refusal to allow members of the executive branch of government to use bankruptcy law as a tool to suppress freedom of expression.

October 2004

CONTACT

Gail Davidson
Executive Director
Lawyers Rights Watch Canada
Tel: 1 604 738 0338
Fax: 1 604 736 1175
Email: lrwc@lrwc.org
Web: www.lrwc.org