

THE JUDICIARY AND ENVIRONMENTAL GOVERNANCE IN SINGAPORE

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Introduction

Singapore is one of the smallest and most densely populated countries in the world, with a land area of only 710 square kilometers¹ and a population of just over five million in 2010 (a density of some 7,100 persons per square kilometer).² Strategically situated at the tip of the Malay Peninsula, it is at the crossroads of Southeast Asia. It is a secular, multi-racial, multi-religious community of Chinese, Malays, Indians and other races, with a per capita income that is the highest in Asia, having overtaken that of Japan.³

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1. Statistics Singapore, <http://www.singstat.gov.sg/stats/keyind.html#popnarea> (last visited Nov. 17, 2010). Singapore has added to its land area by reclamation of land from the sea. Its land area was 581.5 square kilometers (224.5 sq mi) in the 1960s; see Singapore Facts & Figures, http://edb.gov.sg/edb/sg/en_uk/index/why_singapore/singapore_facts_and_figures.html (last visited Nov. 17, 2010).

2. Statistics Singapore, <http://www.singstat.gov.sg/stats/keyind.html#popnarea> (last visited Nov. 17, 2010).

3. In 2010, the per capita GDP was SGD\$53,143 (US \$40,879 at S\$1.3 to US \$1.00). Singapore Statistics, <http://www.singstat.gov.sg/stats/keyind.html> (last visited Nov. 17, 2010). See also Coutry Comparison: GDP – Per Capita (PPP), <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html> (last visited Nov. 17, 2010).

Historically, Singapore was a crown colony, achieved self government in 1959, was part of Malaysia for a brief while, and became a sovereign state on August 9, 1965. It has since been governed by the same political party that won the first elections, the People's Action Party. This has inured to its advantage, as Singapore has the remarkable distinction of moving "from the Third World to the First" in the space of some four decades, as states the title of the autobiography of its first prime minister, Lee Kuan Yew.⁴ Much of this success must be attributed to Lee, who was largely the chief architect of its success and continues to play a significant role as Minister Mentor. Lacking in natural resources, Singapore has built on its strategic location, natural deep harbor, and its people, and developed a strong economy based on trade and services.

In the early years, Singapore faced the same problems that beset developing countries today. These include the lack of proper sewage disposal facilities, highly polluted rivers and river basins, indiscriminate waste disposal leading to land contamination and water pollution, poor health management systems leading to outbreaks of typhoid and cholera, polluted air from old and inefficient gas works, and frequent floods due to poor drainage.

But today, Singapore's air and water quality are well within World Health Organization (WHO) standards.⁵ All inland waters support aquatic life, the coastal waters meet recreational water standards, and the physical environment is one that is "clean and green." All homes receive piped, potable water – indeed, Singapore's water management has won numerous awards. The streets are swept and garbage is disposed of daily. Refuse is collected daily by licensed contractors, incinerated and the ash sent to an off-shore landfill site. Life expectancy averages 81.4 years, and infant mortality is low, at 2.1 percent for every 1,000 live births.⁶ Three-point-eight percent of its GDP is spent on national health care.⁷ Singapore also has one of the best public housing schemes in the world. Eighty-four percent of the

4. LEE KUAN YEW, *FROM THIRD WORLD TO FIRST – THE SINGAPORE STORY: 1965-2000 – SINGAPORE AND THE ASIAN ECONOMIC BOOM* (2000).

5. See NAT'L ENV'T AGENCY (NEA), *ANNUAL REPORT 2008-09* (2009), available at http://web1.env.gov.sg/cms/ar2009/content/nea-annual_report.pdf.

6. Statistics Singapore, <http://www.singstat.gov.sg/stats/keyind.html> (last visited Nov. 17, 2010).

7. See Ministry of Health, "Healthcare System," <http://www.moh.gov.sg/mohcorp/hcsystem.aspx> (last visited Nov. 18, 2010).

population live in government-subsidized public housing, in twenty-six new towns built by the Housing & Development Board (HDB).⁸ These are high-rise apartments purchased from the HDB on ninety-nine-year leases. Singapore also has a highly efficient public transport road and rail system. It applies the “polluter pays principle” in its transportation policies, discouraging the use of private motor vehicles by increasing the costs of motoring through innovative taxes and electronic road pricing.⁹

Singapore’s strict laws and their enforcement have ensured a low crime rate and provided a safe environment for its residents. Sound environmental management policies have secured a “clean and green” physical environment. A “clean” government has ensured that funds are available for the building of an excellent environmental infrastructure. Sound economic and land-use planning policies have ensured the preservation of green areas for nature conservation and recreation. Indeed, in 2009, Singapore was commended for being “one of the cleanest and most welcoming cities in the world” by the World Bank in its World Development Report 2009.¹⁰

So how did Singapore pursue a policy of rapid industrialization while ensuring the cleaning up of its environment? What role did the judiciary play in this? The fact is that a clean and green environment was part of the first Prime Minister Lee Kuan Yew’s strategy in wooing investors in the early years.¹¹ A healthy and pleasant living environment continues to play an important role in ensuring that Singapore remains an attractive place for investors, for talented migrants, and for its own citizens.

Singapore has made full use of the law to control unsociable behavior. It is well known for its draconian anti-litter policy. Littering is an offense that carries a penalty of a fine of up to S\$1,000¹² and the

8. See Housing & Development Board History, <http://www.hdb.gov.sg/fi10/fi10320p.nsf/w/AboutUsHDBHistory?OpenDocument> (last visited Nov. 18, 2010). Only Singapore citizens and permanent residents are allowed to purchase HDB apartments.

9. See Lin-Heng Lye, *Environmental Taxation in the Management of Traffic in Singapore*, in VII CRITICAL ISSUES IN ENVIRONMENTAL TAXATION: INTERNATIONAL AND COMPARATIVE PERSPECTIVES, at 205-225 (Lin-Heng Lye, Janet Milne, Hope Ashiabor, Larry Kreiser & Kurt Deketelaere, eds., Oxford University Press 2009).

10. See WORLD BANK, WORLD DEVELOPMENT REPORT 2009, Overview (2009), available at http://siteresources.worldbank.org/INTWDR2009/Resources/4231006-1225840759068/WDR09_01_Overviewweb.pdf.

11. See Lee, *supra* note 4.

12. *Environmental Protection and Management Act* ((EPMA) § 17, Cap. 95, 2002

possibility of a Corrective Work Order (CWO).¹³ The law even requires that buses provide litter bins.¹⁴ It is the only country that has banned the sale of chewing gum,¹⁵ and imposes a fine for not flushing a public toilet after its use. Acts of vandalism, where the damage to private or public property is done with an indelible substance, carry a maximum fine of S\$2,000 and imprisonment of up to three years, plus mandatory caning (three to eight strokes).¹⁶ There are also laws to protect the natural environment. It is an offense to cut or collect any plant or tree in any nature reserve, national park or public park, or to kill, take or keep any wild animal or bird without a license. All these offenses, and many more, carry a fine of at least S\$1,000. Some offenses carry mandatory jail terms for a second or subsequent offense, such as illegal dumping, or discharging a toxic substance into inland waters.¹⁷ In the case of illegal dumping, the vehicle that was used may also be forfeited.¹⁸

First-time offenders are either let off with a warning or may have their offenses compounded if they are minor. This means that the case may be settled without entering a conviction, if the defendant admits the offense and agrees to pay a reduced fine.¹⁹ Only a few cases relating to the environment appear before the higher courts each year. This saves the prosecution time and effort and also serves to warn the offender against future breaches of the law. These laws have been judiciously applied by the courts, which have often construed them as

Rev. Ed. Sing.) [EPMA]. The exchange rate is approximately S\$1.30 to US\$1.00 as of November 2010.

13. EPMA, §§ 21A – 21E; *Environmental Public Health (Corrective Work Order) Regulations* (2000 Rev. Ed. Sing.) (Corrective Work Orders will be discussed *infra*). It is also an offense to spit.

14. EPMA, § 23.

15. The importation of chewing gum for sale was first prohibited in 1992, with the passing of the *Control of Export and Imports (Chewing Gum) Order*. Singapore has now partially lifted this ban, and from January 1, 2004, has allowed the sale of therapeutic chewing gum; see *Regulation of Imports and Exports (Chewing Gum) Regulations* (S. 632/2003 Sing.; amended S 407/2006), available at http://www.customs.gov.sg/NR/rdonlyres/94D7408B-AC51-406F-A7CD-1A62774443F7/26605/RegulationofImportsandExports_ChewingGum_Regulation.pdf.

16. *Vandalism Act* (Cap. 341, 1985 Rev. Ed. Sing.).

17. EPMA, *supra* note 12, §§ 20, 21.

18. See *Illegal dumping: Seized lorry to be auctioned*, THE STRAITS TIMES, Mar. 11, 2008.

19. See Frequently Asked Questions What Is Composition, http://app.sub.courts.gov.sg/Data/Files/File/criminal_faqs_composition.pdf (last visited Nov. 18, 2010).

imposing strict liability, emphasizing the need for Singapore to have a clean environment. The fact that Singapore is also ranked as the least corrupt country in Asia helps in enforcement.²⁰ Where cases are prosecuted, they are either brought before a magistrate's court or the District Court, depending on the severity of the penalty. The former Chief Justice Yong Pung How took a special interest in criminal appeals and his reported judgments form the main source of reported cases on pollution laws.

This paper examines the role of the judiciary in environmental governance in Singapore. It must be emphasized at the outset, that laws are only a part of environmental governance and management. Indeed, there should be few cases before the courts if the environment is properly managed by the relevant authorities. This is the case in Singapore. Singapore has a well integrated environmental management system that works effectively, particularly in relation to pollution control. Complaints are quickly investigated by officers from the National Environment Agency (NEA), which administers the environmental laws relating to pollution and public health.²¹ The laws vest the authorities with very wide powers of enforcement.²² These powers have not been abused, as the government is honest — government officers who are corrupt are dealt with very severely.²³

Legal Structure

Sources of Law

Singapore has two sources of law. The first is English common law as developed in England and imported to Singapore. Statutory laws passed by Parliament ("primary laws") and regulations, rules,

20. See Political and Economic Risk Consultancy: Singapore March 2010, <http://www.asiarisk.com/subscribe/siindex.html> (last visited Nov. 18, 2010); see *S'pore least corrupt nation*, THE STRAITS TIMES, Mar. 9, 2010). See *Prevention of Corruption Act, Ordinance 39 of 1960*, Cap. 241, 1993 Rev. Ed.

21. These are the Environmental Protection and Management Act (EPMA) and the Environmental Public Health Act (EPHA) and their subsidiary laws.

22. These include the power of entry, search and seizure, as well as the power of arrest. See Part XI, "Enforcement" §§ 41-50, *Environmental Protection and Management Act*, Cap. 94A, 2002 Rev. Ed.; Part X, "Enforcement" §§ 81-88, *Environmental Public Health Act*, Cap. 95, 2002 Rev. ed.

23. This is not to say that there is no corruption, but the few cases that surface are dealt with severely. See *Prevention of Corruption Act, Ordinance 39 of 1960*, Cap. 241, 1993 Rev. Ed.; *Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act, Act 29 of 1992*, Cap. 65A, 2000 Rev. Ed.; see also *Public Prosecutor v. Lim Choong Hiang* [2004] 220, District Court (environmental health officer convicted of three charges under the Prevention of Corruption Act).

orders and notifications (“subsidiary laws”) form the second source.²⁴ Subsidiary legislation is passed by the relevant ministers under enabling legislation and published in the *Government Gazette*.²⁵

Sources of Environmental Law

Environmental law in Singapore comprises statutory law as well as common law principles of tort which serve as constraints on a landowner’s use of his land. There are also “soft laws” such as guidelines, codes of practice, and directions issued by the Ministry of Environment and Water Resources (MEWR) National Environment Agency (NEA), as well as other ministries such as the Ministries of National Development, Law, and Manpower. The “soft laws” issued by the NEA include Codes of Practice on Pollution Control and on Environmental Health, as well as the Revised Singapore Green Plan presented at the World Summit on Sustainable Development in Johannesburg, South Africa, June 2002, and revised in 2006.²⁶

Judicial System

The Judiciary

The judiciary comprises the Supreme Court (composed of the High Court and the Court of Appeal), and the Subordinate Courts (comprising the District Courts, Magistrates’ Courts, Family Court, Juvenile Court, Coroner’s Court and the Small Claims Tribunal).²⁷ Appeals to the Judicial Committee of the Privy Council were abolished in 1994. The jury system was abolished in 1970. A

24. Primary laws may be found at Singapore Statutes Online, <http://statutes.agc.gov.sg/> (last visited Nov. 18, 2010). Subsidiary laws may be found on the website of Lawnet as well as the websites of relevant enforcement authority, such as the NEA’s website at Legislation, http://app.nea.gov.sg/cms/htdocs/category_sub.asp?cid=180 (last visited Nov. 18, 2010). See also LawNet, http://www.lawnet.com.sg/lnrweb/c/portal/layout?p_l_id=1 (last visited Nov. 18, 2010).

25. See HELENA H. M. CHAN, *THE LEGAL SYSTEM OF SINGAPORE* (1995); *THE SINGAPORE LEGAL SYSTEM* (Kevin YL Tan ed., Singapore University Press 2d ed. 1999).

26. MINISTRY OF THE ENV’T & WATER RES., *SINGAPORE GREEN PLAN 2012* (2010), available at <http://app.mewr.gov.sg/web/Contents/Contents.aspx?ContId=1342>. See also MINISTRY OF THE ENV’T & WATER RES., *NEW TARGETS* (2010), available at <http://app.mewr.gov.sg/data/ImgCont/1342/Targets.pdf>.

27. SING. CONST., Part VIII – The Judiciary, Arts. 93-101; Yeo Tiong Min, *Jurisdiction of the Singapore Courts*, in *THE SINGAPORE LEGAL SYSTEM* 249-296; Walter Woon, *The Doctrine of Judicial Precedent*, in *THE SINGAPORE LEGAL SYSTEM* 297-323.

Presidential Council for Minority Rights is established under Part VII of the Constitution. Judges of the Supreme Court enjoy security of tenure and can only be removed in the circumstances set out in the Constitution.²⁸ Judicial commissioners may be appointed to exercise the functions of a judge for short periods of time.²⁹

Jurisdiction for Hearings

Jurisdiction for the different courts varies, depending, in criminal cases, on the maximum sentence for the particular offense, and in civil cases, on the amount of the claim. District and Magistrates Courts have original criminal and civil jurisdiction. District Courts try civil cases for claims of up to S\$250,000, and offenses for which the maximum term of imprisonment does not exceed ten years.³⁰ Magistrates' courts try criminal cases for which the maximum term of imprisonment does not exceed three years, and civil cases where the claim does not exceed S\$60,000.³¹ They also conduct preliminary inquiries into offenses with a view to committal for trial by the High Court. The Juvenile Court deals with offenses by children who are sixteen years old or younger. The High Court has unlimited jurisdiction in both civil and criminal cases, but all criminal cases carrying the death penalty must be tried by the High Court. The Court of Appeal is the final appellate court of Singapore. It hears appeals, whether civil or criminal, from the High Court, and determines questions of law reserved for its decision by the High Court.

As the laws that protect the environment usually carry fines not exceeding S\$20,000 and imprisonment not exceeding two years, infringements of these laws are heard by the Magistrates' Courts. Fines of up to S\$100,000 can be imposed for serious breaches of the law and these cases will be heard by District Courts (e.g., Section 17 Environmental Protection and Management Act – discharge of toxic substances into water courses – fine up to S\$100,000 for a second or subsequent offense plus imprisonment from one month to twelve months). Hefty fines of up to S\$1 million can be imposed on cases

28. SING. CONST., *supra note 27*, art. 98.

29. *Id.*, arts. 94(4), 95.

30. The Subordinate Courts (Variation of District Court Limit) Order 1997, S 333/97.

31. The Subordinate Courts (Variation of Magistrate Court Limit) Order 1999, S 263/99.

involving pollution of the marine environment by oil under the Prevention of Pollution of the Sea Act (PPSA).³² Offenses carrying such heavy penalties would normally be heard by the High Court, but Section 32 of the PPSA expressly empowers District and Magistrates' Courts to try these offenses.³³

ENVIRONMENTAL LAW AND GOVERNANCE IN SINGAPORE

The Singapore Constitution does not contain any provision relating to the environment and is silent on environmental rights.³⁴ While the common law tort actions of nuisance, negligence, trespass and the rule in *Rylands v. Fletcher* continue to apply,³⁵ comprehensive statutory laws have been passed to govern pollution control³⁶ and protect the natural environment³⁷ as well as public health.³⁸

Environmental Challenges

Unlike nations which have large land space with considerable natural resources and indigenous populations, Singapore is a tiny city state with a largely urban population. It is largely dependent on the external world for food supplies, with little of its food grown locally. In other jurisdictions, the exploitation of natural resources has given rise to many environmental and social problems, and has prompted the courts to examine the fundamental principles of environmental law, and to apply these principles in appropriate cases. These

32. Act 18 of 1990, Cap. 243, 1999 Rev. Ed.

33. It should be noted that the Muslim community is governed by a separate system of law in relation to family matters, administered by separate courts and judicial officers under The Administration of Muslim Law Act. This establishes the Syariah Court and its Appeal Board. See *The Administration of Muslim Law Act*, Act 27 of 1966, Cap 3, 1999 Rev. Ed. See also Syariah Court Singapore, http://app.syariahcourt.gov.sg/syariah/front-end/SYCHome_E.aspx (last visited Nov. 18, 2010).

34. In contrast, see CONST. (1987), Art. II, (Phil.), "The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature." See also INDIA CONST. art. 48A, "The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of this country." Article 51A(g) provides "It shall be the duty of every citizen of India to protect and preserve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures." INDIA CONST. art. 51A(g).

35. *Rylands v. Fletcher*, L.R. 3 H.L. 330 (1868).

36. See, e.g., The Environmental Protection and Management Act; Prevention of Pollution of the Sea Act.

37. See generally Parks and Trees Act, National Parks Act, Wild Animals and Birds Act, Endangered Species (Import and Export) Act.

38. Environmental Public Health Act.

principles include:

- the polluter pays principle;
- the precautionary principle;
- inter-generational and intra-generational equity;
- the principles of sustainable development;
- the need for public participation;
- the requirement for environmental impact assessments.

Thus, the Philippines Supreme Court, in recognition of the principles of inter-generational equity, has pushed the borders of *locus standi*,³⁹ allowing an action to stop the logging of forests to be brought on behalf of present and future generations of Filipino children.⁴⁰

Courts from the Indian sub-continent have even gone further. They have taken cognizance of environmental problems and applied the precautionary principle, as well as the polluter pays principle, in many cases. They have recognized that non-government organizations may have *locus standi* to bring actions relating to the environment (as in the case of the Bangla-Desh Environmental Lawyers Association (BELA)). They have pushed for an interpretation of fundamental principles such as the right to life, to encompass the right to a healthy life, free from pollution.⁴¹

Singapore's courts have not been faced with such challenges, due largely to the fact that Singapore has a good environmental management system. The cases that have come before the Singapore courts and which are reported in the law reports, relate mainly to littering and illegal dumping of wastes; the cleansing of public toilets; noise pollution; pollution of the marine environment; and trade in endangered species. Each of these will be considered briefly in turn.

While Singapore has not seen a single citizen's suit in regard to

39. See also the cases in Chapter 11, *Judicial Decisions and Alternative Dispute Resolution in 1 CAPACITY BUILDING FOR ENVIRONMENTAL LAW IN THE ASIAN PACIFIC REGION, APPROACHES AND RESOURCES* 705-804 (Donna Craig, Nicholas A Robinson & Koh Kheng-Lian, eds., Asian Development Bank 2002).

40. See *Minors Oposa v. Dep't of Env't & Nat. Res.*, G.R. No. 101083, July 30, 1993, reprinted in 33 *ILM* 1993.

41. See *Shela Zia v. W.A.P.D.A.*, P.L.D. 1994 SC (Supreme Court of Pakistan) 693; *Dr Mohuidin Farooque v. Bangladesh & Ors.*, 17 BLD (AD) 1997, Vol. XVII, 1-33; *M.C. Mehta v. Kamal Nath*, (1977) 1 S.C.C. 388; and other cases and materials in Chapter 11, *Judicial Decisions and Alternative Dispute Resolution, CAPACITY BUILDING FOR ENVIRONMENTAL LAW IN THE ASIAN PACIFIC REGION, APPROACHES AND RESOURCES*, op. cit.

the environment, it should be emphasized that environmental issues are not without controversy. There have been a few situations involving the state's proposals to develop or reclaim ecologically sensitive areas for purposes of development, which may well have prompted litigation between NGOs or concerned citizens and the state, had they arisen in a different jurisdiction. But in Singapore, they were resolved amicably without litigation and are not within the scope of this paper.⁴²

Littering and Illegal Dumping

Anti-Litter Laws

It is an offense to litter or dump refuse into drains or watercourses (Section 17, Environmental Public Health Act (EPHA)).⁴³ Any person who commits such an offense "may be arrested without warrant by any police officer or authorised officer," charged, and fined up to S\$1,000 (in the case of a first conviction), S\$2,000 (in the case of a second conviction) and S\$5,000 for a third or subsequent conviction.⁴⁴ The offense may be compounded for not less than S\$500, where the penalty is a fine not exceeding S\$5,000 (section 104). These laws are enforced by officers from the National Environment Agency.

In *Public Prosecutor v. Yong Heng Yew*,⁴⁵ the respondent had thrown a cigarette butt onto the floor of a shopping center. He did not deny the act, but asserted that the prosecution was further required to show that it was his intention to walk off without properly disposing of the cigarette butt. He was acquitted by the District Court.

However, on appeal, it was held that the offense of littering is a strict liability offense.⁴⁶ Chief Justice Yong Pung How held that the prosecution had only to show that an accused committed the physical act of throwing away refuse voluntarily and deliberately, not by accident or automatism. Once the act of throwing away refuse was shown to be a deliberate (and not accidental) act, the prosecution need not go further to show the presence of some blameworthy state of mind.

42. See discussion in Lye Lin Heng, *A Fine City in a Garden – Environmental Law and Governance in Singapore*, SING. J. LEGAL STUDIES 68-117, at 108-117 (2008).

43. Act 14 of 1987, Cap. 95, 2002 Rev. Ed.

44. EPHA, § 21(1)(c).

45. [1996] 3 S.L.R. 566, Yong Pung How CJ.

46. See Chan Wing Cheong, *Requirement of Fault in Strict Liability*, 11 SING. ACAD. L.J. 98 (1999).

The Corrective Work Order (CWO)

In 1992, a new punishment, the Corrective Work Order (CWO), was introduced in lieu of a fine for littering.⁴⁷ A CWO can only be imposed on a person who is above sixteen years old and charged with littering or illegal dumping of waste. The work is to be performed under the supervision of a supervision officer and involves the cleaning of a public place.⁴⁸ Prosecutors will seek a CWO if the offending litter is large, such as food wastes, cans, drink cups or tissue paper. An offender with an earlier minor littering offense that was compounded may also be given a CWO.

Chief Judge Yong Pung How, has given a robust interpretation to this law, emphasizing that “[a]s a general rule, it may be said that the more callous or cavalier the offender is in his act of littering, the more culpable he is. Together with factors such as the number of previous offenses and the seriousness of the littering offense, this would be relevant in determining the length of time to which he will be ordered to perform a corrective work order.”⁴⁹ This was the case of *Public Prosecutor v. Lim Niah Liang*, where the accused had pleaded guilty to one charge of throwing a cigarette butt into a drain.⁵⁰ He had committed the same offense four years prior to the instant offense, and that offense had been compounded for S\$200. For this second offense, the prosecution applied for a CWO, contending that he was a “repeat offender.” This was rejected by the magistrate, who took the view that the prosecution had failed to discharge its burden that a CWO should be imposed, as there was only one previous compounded offense committed four years ago.

This was reversed on appeal by Chief Judge Yong who stated that evidence of previous convictions was not a pre-condition for the imposition of a CWO; that the implementation of section 21A(1) depended either on evidence of commission of previous similar offenses, or on evidence that a serious littering offense had been

47. This was initiated in 1992. *Id.*, §§ 21A – 21E; *Environmental Public Health (Corrective Work Order) Regulations* (2000 Rev. Ed. Sing.) [*EPH (CWO) Regulations*]. See *Public Prosecutor v. Lim Niah Liang* [1997] 1 S.L.R. 534 (improperly disposing of a cigarette butt may warrant a CWO if there is evidence of commission of previous offenses).

48. *EPH (CWO) Regulations, id.*, r. 6(2).

49. [1997] 1 S.L.R. 534, at 541, per Yong Pung How, CJ.

50. See *id.*

committed. For the purpose of showing that an offender was “recalcitrant,” it would suffice to rely on evidence that he had previously committed the same offense on at least one occasion. He need not have been convicted of the offense. Chief Judge Yong imposed a two-hour CWO and returned the respondent the fine of S\$300 imposed by the magistrate.

Illegal Dumping

It is an offense to dump or dispose of any refuse, waste or any other articles from a vehicle in a public place or to use a vehicle for the purposes of such dumping (section 20(1) EPHA). Persons may be arrested without warrant by any police officer or public health officer, and fined up to S\$50,000 or imprisoned up to twelve months or both. The vehicle used may also be forfeited. For subsequent offenses, imprisonment is mandatory (from one month to one year) and the fine is doubled to a maximum of S\$100,000.⁵¹

(a) Fines

When it was first passed, the fine was S\$1,000, doubling to S\$2,000 in the case of a subsequent offense. In *Chandra Kumar v. P.P.*,⁵² the appellant was tailed by enforcement officers while driving a motor vehicle. He dumped a load of wood waste. He was convicted and was fined the maximum of S\$2,000, and the vehicle used was forfeited under section 20(4) EPHA. On appeal to the High Court, Chief Judge Yong commented that the maximum fine was “woefully inadequate. A range of fines of up to S\$100,000 would be a better tool in combating illegal dumping than forfeiture. Fines are precise, amenable to variation and therefore more likely to be effective.”⁵³ Soon thereafter, the fine was raised to S\$10,000 in 1996 (Act 2 of 1996), and thereafter, to S\$50,000 in 1999 (Act 22 of 1999) and S\$100,000 for a subsequent offense. It can be surmised that the observations of Chief Judge Yong were clearly noted by the authorities and swift steps were taken to amend the law.

(b) Forfeiture of vehicle used

Motor vehicles in Singapore are very costly, due to substantial

51. These penalties were raised from a S\$1,000 fine to a maximum fine of S\$20,000 in 1996 (Act 2 of 1996, effective February 2, 1996 (S 38/96), and further increased in 1999 (Act. 22 of 1999) to S\$50,000.

52. [1995] 3 SLR 123.

53. *Chandra Kumar v. Public Prosecutor* [1995] 3 SLR 123.

taxes imposed on their importation and use. Chief Judge Yong mentioned that forfeiture of a vehicle worth tens, if not hundreds, of thousands of dollars would be quite wrong when a fine of at most S\$2,000 may be levied. He observed that a comparison between the value of the vehicle and the gravity of the offense would be necessary. Thus, in *Chandra* it was held, on appeal, that forfeiture of the vehicle was not an appropriate punishment for offenses of this nature as “it is an inflexible tool. The illegal dumping of refuse is an offense which is capable of gradations in seriousness.”⁵⁴

It should also be noted that in *Toh Teong Seng v. P.P.*,⁵⁵ notwithstanding that the word “shall” is used in relation to forfeiture, (“a court on convicting any person of an offense. . . shall . . . make an order for the forfeiture of the vehicle”), this was construed as *directory* and not *mandatory*.⁵⁶

Meaning of “public place”

Section 20(1) EPHA requires the illegal dumping to be in a “public place.” So, what is a “public place”? In *Toh Teong Seng v. Public Prosecutor*,⁵⁷ Chief Judge Yong applied section 9A, Interpretation Act, and examined the speeches of the then Minister for the Environment, Dr. Ahmad Mattar, in order to ascertain what was the purpose of section 20 EPHA. He then declared that as the purpose of section 20 is to deter dumping, “whether the public has access to the place or not is not relevant. If the title to the place is in the state, then public funds will have to be expended in removing the rubbish regardless of whether the public has access to the place.”

In *P.P. v. Lim Ah Heng*,⁵⁸ it was held that a military training area which is a protected place, is also a “public place.” Chief Judge Yong stated that any place to which the public had access, whether in fact or in right, was a “public place” for the purposes of section 20(1) EPHA.

54. *Id.*, at para. 35.

55. [1995] 2 S.L.R. 273.

56. It should however be noted that forfeiture clauses are read strictly in other offenses and many finance companies had their motor vehicles forfeited, the courts declaring that the onus was on the corporation to check their customers. See also *Volkswagen Financial Services Singapore Ltd. v. Public Prosecutor* [2006] 2 S.L.R. (R) 539 (vehicle used to commit robbery, theft and snatch theft); *Public Prosecutor v. Mayban Finance (Singapore) Ltd.* [1997] 3 S.L.R. (R) 216 (vehicle used to transport illegal workers).

57. *Toh Teong Seng v. Public Prosecutor* [1995] 2 S.L.R. 273.

58. [1999] 1 SLR 827.

Therefore, it followed that a place could qualify as a “public place” even if the public did not have a right of access, as long as it was established that they did in fact go there.⁵⁹

Public Health – Clean Public Toilets

In July 1989, laws were passed to ensure clean toilets, making it an offense not to flush a public toilet after its use, and requiring public toilets to be kept clean and provided with adequate amounts of soap and toilet paper.⁶⁰ NEA officers conduct regular inspections of public toilets to ensure they are clean. But continued policing for toilet flushing has not been found to be necessary, particularly as automatic flushing sensors are now installed in public toilets. Enforcement is targeted instead, at the managers of buildings that provide toilets for the public.

It has been held (again, by Chief Judge Yong) that the duty to maintain public conveniences in a building under section 58(2) EPMA (now section 55) is one of strict liability and non-delegable.⁶¹ Thus, the management corporation of a building cannot absolve themselves of liability by employing cleaners to clean the public conveniences and by implementing a regular cleaning scheme. The offense is committed once the conveniences are not maintained to the requisite standards.

Noise

Singapore has passed laws to control noise from factories,⁶² construction sites,⁶³ and traffic.⁶⁴

Noise pollution from construction sites is regulated by the EPMA and the EPM (*Control of Noise at Construction Sites*)

59. *Public Prosecutor v. Lim Ah Heng* [1999] 1 S.L.R. 827; *Chandra Kumar v. Public Prosecutor* [1995] 3 S.L.R. 123; *Ang Poh Chuan v. Public Prosecutor* [1996] 1 S.L.R. 326.

60. *Environmental Public Health (Public Cleansing) Regulations* (2000 Rev. Ed. Sing.), r. 16, 16A. See Simon Tay, Chairman, Nat'l Env't Agency, Address at the World Toilet Summit 2004, Beijing, China: “The Horizontal Society: Citizens, Civility and Public Toilets” (2004) (available at <http://app.nea.gov.sg/cms/htdocs/article.asp?pid=2469>).

61. *M.C. Strata Title No. 641 v. Public Prosecutor* [1993] 2 S.L.R. 650.

62. EPMA, *supra* note 12, §§ 28-30; *Environmental Protection and Management (Boundary Noise Limits for Factory (Premises) Regulations* (S. 156/99 Sing.).

63. *Environmental Protection and Management (Control of Noise at Construction Sites) Regulations* (2008 Rev. Ed. Sing.).

64. *Environmental Protection and Management (Vehicular Emissions) Regulations* (S. 291/99 Sing.).

*Regulations.*⁶⁵ Under the *EPMA*, the Director of Pollution Control may, by written notice, specify the plant or machinery that can or cannot be used, the hours during which the works may be carried out, and the level of noise or vibration which may be emitted from the premises (or at any specified part of those premises) during specified hours. Failure to comply entails a daily fine of up to S\$10,000, or imprisonment of up to three months, or both.⁶⁶

The Regulations specify the allowable noise standards that can emanate from a construction site. These standards were amended on October 1, 2001,⁶⁷ and again on October 1, 2007,⁶⁸ to provide for more stringent noise limits for noise generated at night for construction sites that are within 150 meters of residential premises. These regulations do not require that all construction work cease at night, but they do require that contractors schedule their construction activities such that they comply with the permissible noise limits at all times.

Most complaints about noise relate to construction sites. A few cases on noise have come before the District Courts. In *Public Prosecutor v. China Construction (South Pacific) Dev. Co. Pte Ltd.*,⁶⁹ the defendant company faced two charges for failing to ensure that noise emitted between 10 p.m. and 11 p.m. was within the permissible limit. The noise meters had recorded the noise limits at 59.8 decibel adjusted (dBA) and 58.3 dBA on two occasions, when the permissible limit was 55.0 dBA. The district judge rejected the argument of *de minimis non curat lex*, saying:

Parliament has deliberately made it an offense for any owner or occupier of a construction site to exceed the maximum permissible limit prescribed by the regulations. It would lead to an absurd result if the *de minimis* principle can be applied to exempt an offender from being convicted of an act which has been made an offence by Parliament. . . . As Singapore becomes more built up, construction activities are increasingly located nearer to residential sites. . . . Contractors must actively ensure that their site activities do not give rise to public health problems. . . . As such, contractors must take appropriate steps to minimize nuisance to residents. . . . Therefore, a clear signal must be sent out

65. 2008 Rev. Ed. Sing.

66. *EPMA*, *supra* note 12, § 28.

67. S. 276/2001 Sing.

68. S. 145/2007 Sing.

69. [2006] SGDC 100.

to reflect the seriousness of complying with the regulations.⁷⁰

However, a plaintiff who sought an injunction and damages against a construction company for excessive noise lost her case in a trial that lasted six days, and was made to pay costs at S\$45,000 plus reasonable disbursements. The defendant was building an underground train station for the MRT (Mass Rapid Transit). The district judge said:

...The construction ... is undeniably a massive project involving extensive piling and excavation works. Inevitably, some inconvenience will be caused to residents in the vicinity by the generation of noise and dust. Inconvenience, however, is not and cannot be equated with an actionable nuisance. I am of the view that the Plaintiff has not proved on a balance of probabilities that she has a cause of action in nuisance against the defendants. . .

Was the court more influenced by the fact that this was a public project? Would the burden on a plaintiff have been easier to discharge if the facts involved an activity that had little public benefit? The fact is that the law allows construction work to proceed day and night, every day of the week, subject to permissible noise limits. The plaintiff had stated unequivocally at the trial that she wanted the defendants to stop work on Sundays and public holidays even if the noise emitted during these times was within the permissible limits. It is, therefore, clear that an action in nuisance cannot be maintained so long as the noise is within the permissible limits set by the law.

Trade in Hazardous Substances

In *Public Prosecutor v. Sinsar Trading Pte Ltd.*, a company was charged with selling 114,187.50 kg of hazardous substances (glacial acetic acid) of more than 98% concentration in 525 drums without a license, in breach of section 22(1) EPCA.⁷¹ These drums were being loaded onto a ship for export to North Korea. It was not disputed that pure glacial acetic acid was a hazardous substance, nor was it disputed that the company did not possess a license under the EPCA. What was disputed was whether a "sale" had taken place, as defined

70. *Id.*

71. [2005] S.G.M.C. (Magistrates Court). *See also* *Public Prosecutor v. Sinsar Trading* [2004] S.G.H.C. 137 (High Court) (relating to sentencing, per Yong Pung How, CJ).

by the EPCA and various arguments were made regarding the wording of the EPCA as well as the Poisons Act. On the assertion that section 22(1) was only intended to regulate the importation of chemicals into Singapore which could lead to pollution of the Singapore environment, and that it could not have been the intention of Parliament to control the export of hazardous substances that were transhipped through Singapore with the goods never landing in Singapore, the magistrate disagreed. Taking a responsible, global view, Magistrate Adriel Loh said:

I accept that the Parliamentary Debates are silent on this. However, given the close and inter-related world in which we live and the impact of the actions in one country on another, I am of the view that there is a pressing and recognizable need for co-operation and comity among nations. Therefore I cannot exclude the possibility that this consideration had operated on the mind of the draftsman and that it was within the consideration of Parliament to also regulate, where possible, polluting substances being exported from Singapore.

The company was found guilty and fined S\$5,000.

Food Safety

It has also been held that the possession of food unfit for human consumption, in breach of section 40(1) of the EPHA, is an offense of strict liability. In *P.P. v. Teo Kwang Kiang*,⁷² Teo was found in possession of a basket of snow peas which were contaminated and unfit for human consumption, but had not yet been inspected. He pleaded that he would not sell them until they had been inspected by the health inspector and found fit for human consumption. The prosecution claimed that section 40(1) is a provision imposing absolute liability and *mens rea* was not required to be proved. The lower court however, disagreed, and he was acquitted. This decision was overturned on appeal by the public prosecutor. In convicting the respondent, Judge Rajendran held that while there was a presumption that *mens rea* was required for the conviction of a criminal offense, this presumption could be displaced “where the statute is concerned with an issue of social concern and public safety where it can be shown that the creation of strict liability will be effective to promote the objects of

72. [1992] 1 S.L.R. 9.

the statute by encouraging greater vigilance to prevent the commission of the prohibited act.”⁷³ Declaring that, “[t]he policy of the act is quite clearly the protection of the public: it is designed to prevent the sale of food for human consumption where the food is dangerous to human health . . . ,”⁷⁴ the learned judge took the view that “approval or otherwise by the ministry is an irrelevant consideration. The offense is committed if the respondent has in his possession any article of food intended for human consumption which is unfit for such purpose.”⁷⁵

Pollution of the Marine Environment

As the world’s busiest port in terms of shipping tonnage, and a major importer of crude oil for its refineries, pollution of the marine environment, particularly from oil and chemical spills and collisions at sea, is a serious concern for Singapore. The Straits of Malacca and the Straits of Singapore are extremely busy waterways. Despite the large traffic volume and the increase in ship fueling and bunkering operations there are few cases of marine pollution by oil or garbage thrown from ships at sea in Singapore.⁷⁶

A host of laws and regulations govern pollution from oil tankers and from ships at sea. The Prevention of Pollution of the Sea Act (PPSA) was passed in 1980,⁷⁷ with numerous subsidiary laws. It is administered by the Maritime and Port Authority. It prescribes measures to prevent pollution of Singapore waters, from both land-based sources and apparatus as well as from dumping from ships.

Through the years, an efficient emergency response plan has been instituted to deal with such incidents. The concerted actions of the NEA, Singapore’s National Water Agency (PUB), the Maritime and Port Authority (MPA) and the Singapore Civil Defence Force (SCDF) ensure that oil and other spills are dealt with quickly to limit and contain the environmental pollution that arises. The oil companies also have their emergency response plans, as has Jurong

73. *Id.* at 11.

74. *Id.* at 13.

75. *Id.* at 14.

76. A system of waste collection from ships is in place. Barges collect garbage from ships at sea daily. These are taken to incineration facilities onshore, and the ash thereafter is taken on barges to the off-shore landfill at Pulau Semakau. See Chia Joshua Yeong Jia, *Pulau Semakau*, NAT’L LIBRARY BD. SING., Oct. 12, 2007, http://infopedia.nl.sg/articles/SIP_1008_2010-03-22.html.

77. Cap. 243, 1999 Rev. Ed. Sing.

Island. Exercises are held at regular intervals.⁷⁸ The Oil Spill Response and East Asia Response Limited (OSR/ EARL) run special courses for dealing with such emergencies.⁷⁹

In *Jupiter Shipping Pte Ltd. v. Public Prosecutor*,⁸⁰ an accidental overflow occurred while a ship was receiving fuel oil from a bunker barge. The resulting oil slick covered an area of some 1,500 square meters. Although they were first offenders and had pleaded guilty, Jupiter was fined S\$10,000, which was significantly higher than the usual range of fines for the offense. They appealed, arguing that the sentence was manifestly excessive. It was common ground between the parties that the offense under section 7 was one of strict liability, in their case merely requiring proof of a discharge of oil from a ship into Singapore waters. While pleading guilty to the offense, the appellants also argued that the spillage had been caused through no fault of theirs; that the unlawful discharge had occurred because the bunker barge supplying the fuel oil had done so at a rate faster than that requested by the Hudson Bay crew, and one that the ship's tanks were unable to handle. Chief Judge Yong confirmed that the fine was "not manifestly excessive but perfectly reasonable," observing that Singapore had undertaken obligations under international law to ensure that her seas and environment be kept clean and free of pollution. "In the light of growing awareness of the damaging effects of oil pollution on a national as well as a global scale, and in order to combat this, it is imperative that the courts regard offenses of pollution with the utmost gravity. Parliament has evinced its concern for the seriousness of these offenses by making them ones of strict liability."⁸¹

Endangered Species

Singapore ratified the Convention on International Trade in Endangered Species (CITES) in 1986, and passed the Endangered

78. See, e.g., MPA, "International Chemical and Oil Pollution Conference and Exhibition (Icopce) 2005 to Focus on Opportunities and Challenges in the Oil, Chemical and Gas Industries," http://www.mpa.gov.sg/sites/global_navigation/news_center/mpa_news/mpa_news_detail.page?filename=nr050926.xml (last visited Nov. 18, 2010).

79. See Oil Spill Response, http://www.oilspillresponse.com/prepared_training.html (last visited Nov. 18, 2010) (oil spill response courses at operational, supervisory or managerial level).

80. [1993] 2 S.L.R. 69.

81. *Id.*

Species (Import and Export) Act (ESA) in 1989.⁸² It prohibits trade in endangered animals, plants and their by-products, unless with a permit from the Agri-Food and Veterinary Authority (AVA), which is the agency that implements this law. The 1986 Act was criticized for its poorly drafted penalties, particularly as they were on a “per species” basis and not on a “per specimen” basis.⁸³ The maximum fine was S\$5,000 per species, doubling to S\$10,000 for a second or subsequent offense, and/or imprisonment of up to twelve months.

In the early days, courts were lenient in their sentences. Offenders without a prior record were often given less than the maximum penalty. Thus, a businessman who attempted to smuggle some 16,000 eggs of the highly-endangered sea turtle (Appendix I of CITES) was only fined S\$2,000, after he pleaded guilty.⁸⁴ As they were all of the same species, there was only one charge and the maximum penalty was S\$5,000 for a first offender. However, a steady progression can be discerned in the attitude of the courts in viewing such offenses more severely. By the late 1990s, first-offenders were often fined the maximum of S\$5,000.⁸⁵ By 2002, courts imposed the maximum fines as well as custodial sentences on offenders, and also required them to pay for the cost of upkeep and repatriation of the animals. Thus, a man who smuggled 1,000 star tortoises was fined the maximum of S\$5,000, jailed for eight weeks, plus was ordered to pay S\$10,820 for the cost of upkeep and repatriation of the tortoises.⁸⁶

In *Public Prosecutor v. Kuah Koh Choon*,⁸⁷ Chief Justice Yong Pung How gave a robust interpretation to the act, convicting a young man, Kuah, of possession of two Lear’s Macaws without a permit. As Chief Judge Yong noted, these birds are native to Brazil, and are extremely

82. Cap 92A, 2000 Rev. Ed.

83. See Lye Lin Heng, *The Implementation of the Convention on International Trade in Endangered Species (CITES) in Singapore*, 21 J. Int’l Wildlife L. & Pol’y 46-63 (1999).

84. See *PPD foiled bid to smuggle 16,000 turtle eggs*, THE STRAITS TIMES, Jan. 17, 1996. The turtles were estimated to have a value of S\$6,400 based on the price offered by restaurant owners for fresh turtle eggs. They were partially cooked and none could be saved.

85. In 1997, some 500 star tortoises (protected under Appendix II, CITES) were seized from a small supermarket. The company and its manager were each fined S\$5,000 the maximum under the Act for first offenders. *Endangered tortoises seized from mini-mart*, THE STRAITS TIMES, June 5, 1997.

86. See *Jail and fine for smuggling 1,000 tortoises*, THE STRAITS TIMES, Aug. 3, 2002. See also the writer’s letter to the press commenting on this case, *Tighten law on endangered species*, THE STRAITS TIMES, Aug. 10, 2002.

87. [2001] 1 S.L.R. 292.

rare. With a population of only 130 in the wild, they are on the brink of extinction. The birds were found in Kuah's premises.

Kuah's defense was that the birds were bought before the act came into force, and they could not therefore have been imported in contravention of the act. The prosecution adduced expert evidence to establish that the birds were younger than eight years of age in 1998, when they were examined. The trial judge held that the evidence of the expert witness was unreliable, as his method of determining the age of the birds was unproven. Kuah was thus acquitted. Despite his acquittal, the trial judge exercised his discretion to forfeit the two birds. The prosecution appealed against the acquittal and Kuah appealed against the forfeiture of the birds.

The High Court allowed the appeal against acquittal and dismissed the appeal against forfeiture. The accused was sentenced to the maximum one year's imprisonment and the maximum fine of S\$10,000 for possession of two Lear's Macaws without a permit. Chief Judge Yong held that the prosecution need only prove three elements for a charge to be made out under the act: (1) possession, (2) of a scheduled species, (3) which must have been imported in contravention of the act. There is no requirement for the prosecution to establish when the birds were imported. Chief Judge Yong pointed out that:

The prosecution committed a grave error by conceding at the trial below that it had the burden to prove that the Lear Macaws were imported after the act came into force. A plain reading of the relevant provisions of the act shows that for a charge under § 4(2) to be made out, there is never a requirement to show *when* the birds were imported. The trial judge was clearly misled by this concession of the prosecution, which led to his misinterpretation of the law.⁸⁸

Chief Judge Yong also emphasized that the charge pertained to possession and not import.

"As long as possession of a scheduled species, on a date after the act came into effect, is proved, the offense is made out if there has been no requisite import permit. The great emphasis on expert evidence to prove the age of the birds, during the lengthy trial was totally irrelevant since the charge had already been proven."

88. *Id.* at 296-297.

Next, Chief Judge Yong considered the appropriate sentence to impose on Kuah. The prosecution gave evidence of his past offenses which involved attempts to smuggle various endangered species, use of forged permits, and possession of illegally acquired wildlife. Counsel for Kuah pleaded that these offenses were committed when he was a young boy, that the forfeiture of the birds was already a penalty, and that he should not be punished any further.

Chief Justice Yong noted that the birds were extremely rare and on the brink of extinction. He also noted from Kuah's past acts, that Kuah was obviously not an amateur — he had extensive knowledge of birds, had papers published in international journals on aviculture and ornithology, and he had some 600-800 birds in his residence at the time of the discovery of the Lear's Macaws. Chief Judge Yong emphasized that:

... a deterrent sentence had to be imposed to reflect how seriously Singapore regards its obligations under CITES. Singapore has committed itself to cooperating with other countries to preserve their endangered species and Kuah's actions went against this spirit of cooperation. Therefore, I felt that youth was no excuse for Kuah's contravention of the act. He was clearly cognizant of his actions and committed crimes of a similar nature repeatedly without any semblance of repentence. ... a fine would be grossly inadequate in the circumstances. The maximum fine would hardly have any punitive effect whatsoever since one Lear's Macaw alone could be worth more than \$10,000. Therefore, to underline the seriousness of the offense, I imposed the maximum sentence of one year's imprisonment and a fine of \$10,000 with six months' imprisonment in default therefore.

The 1989 act was repealed in 2006 and replaced with a new Endangered Species (Import and Export) Act 2006.⁸⁹ This new law raises the maximum fine to S\$50,000 for each scheduled species (but not to exceed in the aggregate S\$500,000), or to imprisonment for a term not exceeding two years or to both fine and imprisonment. The new law also applies to specimens in transit. Officers from AVA have wide powers of enforcement including powers to investigate and powers of entry, search, and seizure. Infringements have declined substantially since the passing of this new act.

89. Act 5 of 2006, coming into operation on Mar. 1, 2006, amended by S 290/2006, S 103/2007, S 152/2007.

Conclusion

In conclusion, it is submitted that the paucity of cases relating to the environment is testimony to Singapore's sound environmental management system. From the few cases that have appeared before the courts, it is clear that the judiciary is aware of environmental concerns and is mindful of responsibilities even beyond our shores. In the interpretation of environmental statutes, the courts have applied the "purposive" interpretation, and emphasized that these laws provide for strict liability. Singapore's courts have, however, not yet been challenged by the environmental tensions that have plagued larger countries with considerable natural resources. There may yet be a case in the future, brought by an individual or a non-government organization, to challenge a proposed development project on grounds of damage to the environment. It remains to be seen how far the judiciary will go in implementing the principles that have since developed in this "new" field called environmental law.

