

THE 1980 REPRINT OF THE CONSTITUTION OF THE REPUBLIC
OF SINGAPORE. OLD WINE IN A NEW BOTTLE?

IN spite of the fact that on Singapore's independence in 1965 a new independence constitution appeared to be in the offing, and a Constitutional Commission was set up to consider the constitutional protection of minorities,¹ no new constitution has appeared, although in the intervening eighteen years Parliament has passed no less than fifteen Acts amending the Constitution.² In lieu of a new constitution we now have a Reprint, prepared by the Attorney-General under Article 90 of the Constitution of Singapore as amended by the Constitution (Amendment) Act 1979,³ (now Article 155 of the Reprint). The Reprint is operative from 31st March 1980. It does not therefore include the two amendments enacted since that date,⁴ though it does include

i) all the provisions of the Constitution of Singapore, as amended up to 31st March 1980,

ii) all the provisions of the Constitution of Malaysia applicable to Singapore by virtue of section 6 of the Republic of Singapore Independence Act 1965 ("R.S.I.A."),⁵ as amended up to 31st March 1980,

and iii) all modifications made by the President under section 13(2) of the R.S.I.A.⁶

Thus for the first time all the relevant provisions relating to the Constitution have been published together in one document. The derivation of each article of the Reprint is clearly indicated, as are the details of all relevant amendments, acts and ordinances, subsidiary legislation, and gazette notifications. The Attorney-General is to be congratulated for making the lives of lawyers, law lecturers and law students much simpler.

The powers under which the Attorney-General acted are now set out in Article 155 of the Reprint, which reads as follows:

155.— (1) The Attorney-General may, with the authority of the President, as soon as may be after the 4th day of May, 1979, cause to be printed and published a consolidated reprint of the Constitution of Singapore, as amended from time to time, amalgamated with such of the provisions of the Constitution of Malaysia as are applicable to Singapore, into a single, composite document.

(2) Thereafter, the President may, from time to time, authorise the Attorney-General to print and publish an up-to-date

¹ See the Report of the Constitutional Commission (1966), Cmd. No. 29 of 1966.

² Acts 8/65, 33/66, 7/68, 21/68, 19/69, 13/70, 40/70, 16/71 25/72, 37/72, 3/73, 5/78, 10/79, 24/80 and 7/81.

³ Act 10/79. See S. Jayakumar, "The Constitution (Amendment) Act 1979" (1979) 21 Mal. L.R. 111, and also R.H. Hickling, "Reprint of the Constitution of the Republic of Singapore" (1980) 22 Mal. L.R. 142.

⁴ Acts 24/80 and 7/81.

⁵ Act 9/65.

⁶ See S. 50/66, S. 259/66, S. 58/67, S. 88/67, S. 214/68.

Reprint of the Constitution of the Republic of Singapore, incorporating therein all amendments in force at the date of such authorisation.

(3) Any Reprint of the Constitution of the Republic of Singapore, printed and published pursuant to clause (1) or (2), shall be deemed to be and shall be, without any question whatsoever in all courts of justice and for all purposes whatsoever, the authentic text of the Constitution of the Republic of Singapore in force as from the date specified in that Reprint until superseded by the next or subsequent Reprint.

(4) In the preparation and compilation of any Reprint pursuant to clause (1) or (2), the Attorney-General shall have, *mutatis mutandis*, the powers conferred upon the Law Revision Commissioners by section 4 of the Revised Edition of the Laws Act in addition to the powers conferred on him by section 38 of the Interpretation Act.

(5) In the preparation and compilation of the consolidated Reprint pursuant to clause (1), the Attorney-General shall have the power in his discretion —

(a) to merge the existing provisions of both Constitutions, making thereto such modifications as may be necessary or expedient in consequence of the independence of Singapore upon separation from Malaysia;

(b) to re-arrange the Parts, Articles and provisions of the Constitution of Singapore and of the Constitution of Malaysia in such connected sequence as he thinks fit, omitting inappropriate or inapplicable provisions in the latter Constitution;

(c) where provisions exist in both Constitutions on the same subject matter, to include in the consolidated Reprint the provisions of the Constitution of Singapore on such subject matter and to omit the duplicated provisions appearing in the Constitution of Malaysia from the consolidated Reprint; and

(d) generally, to do all other things necessitated by, or consequential upon, the exercise of the powers conferred upon the Attorney-General by this Article or which may be necessary or expedient for the perfecting of the consolidated Reprint of the Constitution of the Republic of Singapore.

The question which inevitably arises is whether the Attorney-General has modified the Constitution, and if so in what respects. Naturally a comparison of the relevant provisions reveals that the wording of each provision of the Reprint cannot always be traced precisely to the original provisions, many of which are clearly inappropriate, as previously worded, to Singapore's independent status. Such of these anomalies⁷ as survived section 13(2) of the R.S.I.A. have been removed. In this the Reprint is both cautious and accurate,

⁷ For example the many substitutions of "Singapore" for "Malaysia" e.g., in Article 14.

even to the extent that certain transitional provisions relevant to the bringing into operation on 16th September 1963 of the Constitution of Singapore, notably Articles 157-61, have been retained even though they are spent provisions which could easily and suitably have been omitted. Where the Attorney-General has allowed himself a little drafting, as opposed to reorganisation and rationalisation, he has based his authority on provisions of the Constitution (Amendment) Act 1965* or the R.S.I.A.

In one instance however the Reprint might be regarded as controversial. Article 5(2) provides that:

... a Bill seeking to amend any provision in this Constitution shall not be passed by Parliament unless it has been supported on Second or Third Readings by the votes of not less than two-thirds of the total number of the Members thereof.

It is the effect of this provision which is the main burden of this note.

Article 5(2) reproduces Article 90(2) of the 1963 Constitution of Singapore as amended by the Constitution (Amendment) Act 1979. That Act restored the amendment provision in Article 90(2) to what it had been prior to the Constitution (Amendment) Act 1965. That Act did away with the two-thirds majority requirement, thus enabling unfettered use of amendment provision between 1965 and 1979, during which period extensive amendments brought the Constitution into line with Singapore's independent status.

The provisions of the Malaysian Constitution which were applied to Singapore by virtue of section 6 of the R.S.I.A. were unaffected by the Constitution (Amendment) Act 1979, which amended only Article 90 of the Constitution of Singapore *but did not affect section 6 of the R.S.I.A.*, which allowed the Malaysian provisions to be amended simply by a law, no special majority being required. The question which arises here then is, to what provisions of the Reprint does Article 5(2) apply?

On the face of it Article 5(2), where it refers to "any provision of this Constitution", applies to any provision of the Reprint, not any provision of the Reprint deriving from the Constitution of Singapore. This is made clear by Article 1 of the Reprint, which declares boldly "This Constitution may be cited as the Constitution of the Republic of Singapore." In the terms of Article 5(2) all provisions of the Reprint, except Part III, which has its own special procedure for amendment, and an amendment consequential on a law providing for the number of members of Parliament (see Articles 5(3) and 39(1)), come within its ambit. If so, this would mean that the Attorney-General has, acting under Article 155, in effect amended the amendment procedure by making it applicable to the Malaysian provisions, which, as has been explained, was not previously the case.

The granting of powers of the kind granted by Article 155 is not in itself exceptional or exceptionable. Indeed similar powers are

⁸ Act 8/65. For example Article 3 (sovereignty of the Republic) is entirely new, but clearly consequential on the Acts referred to in the text, and see note 10.

exercised by the Law Revision Commissioners under the Revised Edition of the Laws Act,⁹ and were exercised by the President in relation to the Constitution under section 13(2) of the R.S.I.A. There are of course dangers in such a procedure, in that powers of this kind are capable of being used in such a way as to alter the substantive rights and obligations of the subject, and this can even be done inadvertently. I suggest that in drafting Article 5(2) of the Reprint (and for that matter throughout the Reprint) the Attorney-General has acted *bona fide* and properly in the exercise of his discretion under Article 155(5). However I suggest also that, given the intention of the Constitution (Amendment) Act 1979 and given the restricted nature of the power granted by that Act, power was not granted to the Attorney-General to alter the amendment clause, which is one of, if not the most, fundamental in the whole Constitution. Parliament did in fact itself amend this clause in the very same Act which gave the Attorney-General the powers under consideration. Had they intended either to allow the Attorney-General to make what he would of the amendment clause or to amend that clause so as to make it applicable to the Malaysian provisions, they would undoubtedly have done so in specific terms. The power to amend the Constitution is a great power, which even Parliament cannot exercise except by an extraordinary procedure. It is inconceivable that somewhere between the lines of Article 155 Parliament has allowed this power to slip into the lap of the Attorney-General. Clearly the intention of Article 155, and in particular clauses 5(a) and (d) thereof, is to enable effect to be given to the substance of provisions already enacted, and the words "necessary or expedient in consequence of the independence of Singapore upon separation from Malaysia" in Article 155(5)(a) mean necessary or expedient in order to give the intended effect to provisions already enacted but now inappropriately drafted, not necessary or expedient from the point of view of public policy generally. Clause (5), read with the other clauses of Article 155, must be regarded as *ejusdem generis* therewith and not as conferring wholly extraordinary and unprecedented powers of constitutional revision. The Reprint itself, with the exception of the problem here discussed, is evidence that the Attorney-General has interpreted his powers in this manner.

Thus it follows that the regime established by section 6(2) of the R.S.I.A. still in effect applies in spite of the apparent universality of Article 5(2) of the Reprint, so that Parliament can still amend the Malaysian provisions by an ordinary law, as it could prior to the Reprint. This might be disturbing news to Singaporeans, but for the fact that Parliament clearly does not intend such an anomaly to exist, let alone to take advantage of it. Nevertheless the anomaly should be removed, in order to give Singaporeans the full measure of their rights and complete the process of constitutional integration, and I suggest it can be removed in either of two ways:

(i) Parliament could pass an Act amending Article 5(2) in such a manner as to leave it beyond doubt that the Malaysian provisions are covered by it, or

⁹ Cap. 1. See also the Revised Edition of the Laws Act 1983, Act 9/83.

(ii) Parliament could pass an Act (by a two-thirds majority) specifically adopting the Reprint as the Constitution of Singapore and as the supreme law of the Republic of Singapore for all purposes.¹⁰

The former would be adequate to solve the difficulty, but the latter would perhaps have the advantage of preempting any other doubts that might arise in future. In this way the ghost of separation will be truly laid to rest. Since this would be the last occasion probably for many years on which the amendment procedure would be considered, perhaps it would be appropriate also if Parliament could further clarify Article 5(2) by requiring that a Bill for seeking an amendment to the Constitution should show an express intention to amend the Constitution, thus laying to rest another inconvenient ghost, the doctrine of implied amendments.¹¹

A.J. HARDING

¹⁰ The words "This Constitution is the supreme law of the Republic of Singapore" and in Article 4 were added for the purposes of the Reprint.

¹¹ See *Kariapper v. Wijesinha* [1967] 3 W.L.R. 1460 (P.C.), and S. Jayakumar, *op.cit.*, p. 113.