

The Editor
Straits Times

Dear Sir

I refer to the article “Why mete out even a ‘token sentence’?” by Dr Lee Wei Ling published in today’s Straits Times. Dr Lee has both her facts and her law wrong.

Mr Tang Wee Sung pleaded guilty to two charges. The first charge was under section 14 of the Human Organ Transplant Act (“HOTA”). For this charge he was fined \$7,000. There was no sentence of imprisonment.

Dr Lee’s assertion that Mr Tang was “sentenced in court to a day in jail for trying to buy a kidney” is therefore factually and legally wrong.

The second charge was one under section 14 of the Oaths and Declarations Act (“ODA”). This is not a new piece of legislation. The ODA makes it an offence for a person to knowingly make a false statement in a statutory declaration. The rationale for this is not difficult to understand. When one makes a statutory declaration, one is making a statement on oath. The duty to tell the truth on oath is a basic principle of law.

Mr Tang made the following statements in his statutory declaration:

“I confirm that no money or financial gain has been or will be paid by me or on my behalf to the donor to procure his/her consent to the donation of his/her kidney and tissue to me;
I confirm that Sulaiman Damanik’s aunt (mother’s sister) married niece’s (sister’s daughter) brother-in-law.”

None of this was true. In short, he lied on oath.

Section 14 of the ODA prescribes a mandatory jail sentence for lying in a statutory declaration. The prosecution did not press for a custodial sentence beyond the minimum. The shortest sentence that a judge can mete out is one day’s jail. This is exactly what the learned District Judge did. It was not “a token sentence”. It was the minimum sentence prescribed by law.

Dr Lee asserts that the analogy is to “a criminal whose offence merited a caning sentence being spared the caning because he was too feeble to tolerate it”. She further states that “the court has never sentenced anyone to token caning”. This betrays a misunderstanding of the law. The feebleness of the offender is not a matter that affects the sentence of caning. The judge will impose whatever sentence of caning is appropriate for the offence. When it comes to the execution of the sentence, however, section 232 of the Criminal Procedure Code states that the punishment shall not be inflicted unless a medical officer certifies that the offender is fit. There is no analogy to the HOTA at all.

Dr Lee wonders whether the charges against Mr Tang were a matter of political correctness. The essential point to be underlined is that everyone is equal before the law. The rich purchaser faced exactly the same charges as the poor donor – one charge under the HOTA and one charge under the ODA. Representations were made to the Attorney-General’s Chambers to drop the charge under the ODA. These representations were not acceded to precisely because of the fundamental principle that all must be treated alike. There cannot be one law for the poor and another for the rich and influential.

The final point is Dr Lee’s assertion that “any one of us would have acted as Mr Tang did if we had been placed in the same predicament”. It is presumptuous of her to assume that she knows how other people would act, or worse, that they would act the same way as she would. In so far as she suggests that it is permissible to break the law and lie on oath when “placed in the same predicament”, this must be emphatically refuted. Everyone, rich or poor, influential or unimportant, is obliged to comply with the law. The HOTA and the ODA are acts of Parliament. It is not open to anyone to say, I disagree with the law enacted by Parliament, therefore I shall ignore it. If Dr Lee disagrees with the HOTA she is at perfect liberty to campaign to have it amended. If she feels that under some circumstances it is perfectly acceptable to lie in a statutory declaration, she may try to persuade Parliament to change the law. But until Parliament amends or repeals the HOTA and the ODA, they remain the law of Singapore.

The Rule of Law means that compliance with Acts of Parliament is not a matter of choice. No one is above the law.

Prof. Walter Woon
Attorney-General