

## Case Note

### SUBSTANTIVE LEGITIMATE EXPECTATION IN SINGAPORE ADMINISTRATIVE LAW

*Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority*  
[2013] SGHC 262

The issue of whether substantive legitimate expectation should be protected is a complex one. Other jurisdictions have arrived at different outcomes based on a myriad of reasoning. This case note examines the justifications for recognising substantive legitimate expectation and considers some potential issues that might arise in future cases.

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#### I. Introduction

1 The doctrine of substantive legitimate expectation has been accepted by the High Court in *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority*<sup>1</sup> (“*Chiu Teng*”) as part of Singapore law. This decision comes as a surprise for many, given that there has been reticence in the Singapore courts towards English developments in administrative law where the reasoning has been influenced by European Union (“EU”) law.<sup>2</sup> There were serious doubts on whether the doctrine formed part of Singapore law prior to the decision.<sup>3</sup>

2 This case note will examine the justifications for recognising the doctrine of substantive legitimate expectation in Singapore and identify some aspects of the requirements laid out in *Chiu Teng* which might deserve greater attention in future cases.

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1 [2013] SGHC 262.

2 See, eg, *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [87] and *Yeap Wai Kong v Singapore Exchange Securities Trading Ltd* [2012] 3 SLR 565 at [4]. See also Lord Irvine of Lairg, “The Modern Development of Public Law in Britain; and the Special Impact of European Law” (1999) 11 SAclJ 265 at 273–276, for a discussion on European Union law and its influence on the development of substantive legitimate expectations in England.

3 *UDL Marine (Singapore) Pte Ltd v Jurong Town Corp* [2011] 3 SLR(R) 94 at [66].

## II. Brief facts and decision in *Chiu Teng*

3 In *Chiu Teng*, the applicant is a property developer which had acquired two adjoining plots of state land for the purpose of redevelopment. To ensure that state land is used in line with the prevailing land policy, state leases would usually specify the permissible use of the land under the lease and the maximum gross floor area for the said permissible use. This is done by including a clause in the state lease which would stipulate that a differential premium (“DP”) is payable if there is a change in the use or an increase in the intensity of use beyond the permissible amount.

4 The respondent is the Singapore Land Authority (“SLA”), the authority in charge of assessing the DP payable for the lifting of the title restrictions for state land. In relation to this, SLA published two circulars and provided information on its website. The first circular, published in 2000, stated that, *inter alia*, SLA had “implemented a *transparent* system of determination of [DP]” and this is meant to “provide *greater certainty* to landowners who will now be *able to compute the DP payable themselves*” [emphasis added].<sup>4</sup> In particular, it stated that the “determination of DP will be based on the published Table of Development Charges (DC) rates” unless it does not fall within any of the Use Groups in the Table of Rates or if the application does not have a valid Provisional Planning Permission.<sup>5</sup> The second circular, published in 2007, was substantially similar to the first circular. The SLA website, as accessed on 20 January 2011, reflected similar information. However, it also showed that landowners/developers who were not satisfied with the DP payable based on the Table of Rates could write in to appeal for a spot valuation. The Terms of Use on the SLA website included a widely drafted disclaimer of representations or warranties.<sup>6</sup>

5 On or around 25 January 2011, the applicant applied to SLA to lift the title restrictions on the two plots of land for the purposes of redevelopment. On 29 November 2011, the SLA informed that “[DP] equal to 100% of the enhancement to land value as assessed by the Chief Valuer will be levied for the lifting of title restrictions”.<sup>7</sup> The DP payable was assessed to be \$44,067,828.23. This was significantly higher than the DP payable based on the Table of Rates. SLA explained that the DP payable was determined by the Chief Valuer and the Table of Rates was not adopted in determining the DP.<sup>8</sup> It was subsequently clarified that as the two plots of land were “different from conventional

4 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [6].

5 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [6].

6 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [9].

7 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [14].

8 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [19].

leasehold sites” and were “formerly directly alienated to the former owner instead of through competitive tender”, the private sector lessees would be required to pay the DP “based on the full difference (i.e. 100%) between the land values based on the proposed and original use/intensity, if allowed”.<sup>9</sup>

6 Apart from the preliminary issues of time-bar and prematurity, the two main issues identified by the court were as follows:

(a) Was the SLA’s decision to assess the DP through a spot valuation instead of abiding by the Table of Rates irrational and/or unreasonable?

(b) Should the doctrine of substantive legitimate expectation be recognised in Singapore law? If so, could the applicant avail itself of this doctrine?

This case note will focus on the second issue.

7 On the first issue, Tay Yong Kwang J observed that there were three ways of characterising the SLA’s allegedly unreasonable conduct. However, none of the three characterisations would satisfy the test of *Wednesbury* unreasonableness. On the argument that the SLA had acted unreasonably in neglecting to take into account the applicant’s legitimate expectation that the DP would be assessed based on the Table of Rates, Tay J considered that it “conflates the doctrine of substantive legitimate expectation with *Wednesbury* unreasonableness”.<sup>10</sup> Hence, this point was addressed under the issue of substantive legitimate expectation.

8 On the second issue, Tay J accepted that the doctrine of legitimate expectation should be recognised as a “stand-alone head of judicial review” and “substantive relief should be granted under the doctrine subject to certain safeguards”.<sup>11</sup> He considered that it was not inconsistent with the separation of powers to protect substantive legitimate expectation.<sup>12</sup> Further, he explained that the expectation and reliance interests of individuals (which are protected under private law in the form of contract and estoppel) should be protected under public law, subject to the overriding public interest.<sup>13</sup> He also held that there is “no difference in principle” between procedural and substantive legitimate expectations, and the reasons for protecting procedural

9 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [20].

10 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [59].

11 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [117].

12 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [105]–[109].

13 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [105]–[109].

legitimate expectation apply to substantive legitimate expectation as well.<sup>14</sup> There may be practical difficulties in distinguishing them.<sup>15</sup>

### III. Justifying the doctrine of substantive legitimate expectation

#### A. *The doctrine of substantive legitimate expectation does not unduly fetter administrative discretion*

9 A perusal of the relevant literature reveals that one of the common objections against substantive legitimate expectation is that it fetters administrative discretion.<sup>16</sup> Yet, this was not explicitly addressed in *Chiu Teng*. It is an established principle of administrative law that the decision-maker cannot fetter its discretion,<sup>17</sup> as it would be considered a failure to exercise the power vested in the decision-maker.<sup>18</sup> The rationale is that the public authority must be free to change its position in light of new circumstances. This difficulty does not arise in relation to procedural legitimate expectation, which merely requires that the public authority gives effect to the expectation of procedural fairness in the decision-making process.<sup>19</sup>

10 The common response to the fettering of discretion argument is that administrative law is, in addition to the principle of legality, also concerned with the principle of legal certainty.<sup>20</sup> As Craig pithily noted,

14 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [110]–[112].

15 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [113], citing *Centre hospitalier Mont-Sinai c Québec (Ministre de la Santé & des Services sociaux)* [2001] 2 SCR 281 at [35].

16 *UDL Marine (Singapore) Pte Ltd v Jurong Town Corp* [2011] 3 SLR 94 at [65]. See also Christopher Forsyth, “The Provenance and Protection of Legitimate Expectations” (1988) 47 *Camb LJ* 238 at 239–240; Daphne Barak-Erez, “The Doctrine of Legitimate Expectations and the Distinction between the Reliance and Expectation Interests” (2005) 11 *European Public Law* 583 at 594–595; Andrew S Y Li & Hester Wai-San Leung, “The Doctrine of Substantive Legitimate Expectation: The Significance of *Ng Siu Tung and Others v Director of Immigration*” (2002) 32 *HKLJ* 471 at 482–485; and Paul Craig, “Substantive Legitimate Expectations in Domestic and Community Law” (1996) 55 *Camb LJ* 289 at 298.

17 *Lim Mey Lee Susan v Singapore Medical Council* [2011] 4 SLR 156 at [27], citing *Registrar of Vehicles v Komoco Motors Pte Ltd* [2008] 3 SLR(R) 340 at [31]; *Lines International Holdings (S) Pte Ltd v Singapore Tourist Promotion Board* [1997] 1 SLR(R) 52 at [97]–[99].

18 *Registrar of Vehicles v Komoco Motors Pte Ltd* [2008] 3 SLR(R) 340 at [31].

19 Daphne Barak-Erez, “The Doctrine of Legitimate Expectations and the Distinction between the Reliance and Expectation Interests” (2005) 11 *European Public Law* 583 at 594–595.

20 Stanley de Smith, Harry Woolf & Jeffrey Jowell, *Judicial Review of Administrative Action*, (London: Sweet & Maxwell, 5th Ed, 1995) at pp 575–576; Paul Craig, *Administrative Law* (London: Sweet & Maxwell, 3rd Ed, 1994) at pp 672–675; Jurgen Schwarze, *European Administrative Law* (London: Office for Official  
(cont'd on the next page)

“[l]egal certainty is expressive of the individual’s perspective”, while “legality, as manifested through the non-fettering doctrine, captures the needs of the public body to develop policy”.<sup>21</sup> The principle of legal certainty reflects the expectation and reliance interest of the individual in such cases. One may also argue that the principle of legal certainty, which is also an aspect of the rule of law, should be a relevant consideration in judicial review.<sup>22</sup>

11 The “need to check against inconsistent treatment” (*ie*, the principle of legal certainty) must be balanced against the “undesirable effects of excessively fettering administrative discretion” (*ie*, the principle of legality).<sup>23</sup> In *Chiu Teng*, the balance is achieved, albeit implicitly, by giving priority to the principle of legal certainty. Unless the public authority can show that the change was necessitated by the “public interest”,<sup>24</sup> it should not be entitled to blow hot and cold and thwart the expectation and reliance interest of the individuals. Contrariwise, the court must bear in mind that “[i]f there is a public interest which overrides the expectation, then the expectation ought not to be given effect to”.<sup>25</sup> It follows that administrative discretion would not be unduly fettered and the public authorities would not be hindered from acting in public interest.

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Publications of the European Communities; Sweet & Maxwell, 1992), cited by Lord Woolf MR in *R v North and East Devon Health Authority, ex parte Coughlan* [2000] 2 WLR 622 at 653 for the “fundamental principle of legal certainty”. See also Christopher Forsyth, “The Provenance and Protection of Legitimate Expectations” (1988) 47 Camb LJ 238 at 242–244 and 255; Paul Craig, “Substantive Legitimate Expectations in Domestic and Community Law” (1996) 55 Camb LJ 289 at 299–300; Melanie Roberts, “Public Law Representations and Substantive Legitimate Expectations” (2001) 64 MLR 112 at 119; Andrew S Y Li & Hester Wai-San Leung, “The Doctrine of Substantive Legitimate Expectation: The Significance of *Ng Siu Tung and Others v Director of Immigration*” (2002) 32 HKLJ 471 at 482–485.

21 Paul Craig, “Substantive Legitimate Expectations in Domestic and Community Law” (1996) 55 Camb LJ 289 at 303. See also *UDL Marine (Singapore) Pte Ltd v Jurong Town Corp* [2011] 3 SLR 94 at [65].

22 Christopher Forsyth, “The Provenance and Protection of Legitimate Expectations” (1988) 47 Camb LJ 238 at 243–244. See also *The Seaway* [2004] 2 SLR(R) 577 at [12], where Belinda Ang J recognised that the need for legal certainty is “one of the fundamental elements of the rule of law”.

23 *UDL Marine (Singapore) Pte Ltd v Jurong Town Corp* [2011] 3 SLR 94 at [65].

24 See, eg, *Ng Siu Tung v Director of Immigration* [2002] 1 HKLRD 561 at [92]; *R v North and East Devon Health Authority, ex parte Coughlan* [2000] 2 WLR 622 at 645; and *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [111] and [117].

25 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [111] and [117].

**B. The doctrine of legitimate expectation upholds trust in public administration**

12 The importance of trust in public administration explains why legitimate expectations ought to be protected in Singapore. According to Forsyth, legitimate expectations must be upheld as they are “fundamental to good government” and “[p]ublic trust in the government should not be left unprotected” [emphasis added].<sup>26</sup> This seems to resonate with the governmental ethos in Singapore.<sup>27</sup> It must be an integral aspect of the concept of a “government by honourable men (*junzi*)”<sup>28</sup> who have the trust and respect of the population that they do not freely renege on their undertaking to the public.<sup>29</sup> Indeed, some support can be garnered from the case of *Lee Hsien Loong v Singapore Democratic Party*, where the High Court accepted (in the context of political defamation) that “human proclivity is such that people are apt to listen to those whom they trust” and that in the words of Isocrates, “the stronger a man’s desire to persuade his hearers, the more zealously will he strive to be honourable and to have the esteem of his fellow-citizens”.<sup>30</sup> The protection of legitimate expectation in administrative law would strengthen the “reciprocal trust between the citizens and the authorities” and may assuage any adversarial feelings towards the public authorities, thereby increasing the citizens’ willingness to co-operate in the implementation of governmental policies.<sup>31</sup>

13 In addition, the doctrine of legitimate expectation is further underpinned by the reliance interest of the citizens, since it is inevitable for citizens to rely on undertakings by public authorities in the conduct of their affairs. While reliance has not been considered to be an essential element of legitimate expectation in England and Hong Kong,<sup>32</sup>

26 Christopher Forsyth, “The Provenance and Protection of Legitimate Expectations” (1988) 47 *Camb LJ* 238 at 239.

27 See generally Chen Zhida, “The Nature of Judicial Review in Singapore” (2013) 31 *Sing L Rev* 79. See also *Lee Hsien Loong v Singapore Democratic Party* [2009] 1 *SLR(R)* 642 at [102]–[103].

28 Government of Singapore, *White Paper on Shared Values* (Cmd 1 of 1991) at para 41.

29 See also Government of Singapore, *White Paper on Shared Values* (Cmd 1 of 1991) at para 48, where it was stated that “[e]lected politicians and career civil servants who are entrusted with authority over their fellow citizens must exercise power responsibly, as trustees of the people”.

30 *Lee Hsien Loong v Singapore Democratic Party* [2009] 1 *SLR(R)* 642 at [102]–[103], citing *Isocrates: With an English Translation by George Norlin* (Jeffrey Henderson ed) vol 2 (Harvard University Press, 1928) at p 339.

31 Daphne Barak-Erez, “The Doctrine of Legitimate Expectations and the Distinction between the Reliance and Expectation Interests” (2005) 11 *European Public Law* 583 at 593.

32 *R (Bibi and Al-Nashed) v Newham London Borough Council* [2002] 1 *WLR* 237 at [26]–[31], citing *R v Secretary of State for Education and Employment, ex parte Begbie* [2000] 1 *WLR* 1115 at 1123–1124, per Peter Gibson LJ; Paul Craig, (cont’d on the next page)

it provides additional reasons why legitimate expectation should be protected by judicial review.<sup>33</sup> The protection of reliance interest promotes administrative efficiency as it allows citizens to take governmental policies seriously and prevents wastage of resources.<sup>34</sup>

14 Both expectation and reliance interests have been acknowledged as the justifications for the protection of legitimate expectation in Singapore. This is reflected in *Chiu Teng*, where Tay J observed that:<sup>35</sup>

... [i]f private individuals are expected to fulfil what they have promised, why should a public authority be permitted to renege on its promises or ignore representations made by it? If an individual or a corporation makes plans in reliance on existing publicized representations made by a public authority, there appears no reason in principle why such reliance should not be protected.

As such, the doctrine of legitimate expectation is particularly relevant in Singapore where trust in public authorities is highly valued.<sup>36</sup>

#### IV. Identifying potential issues with the *Chiu Teng* requirements

##### A. *Should the subjective characteristics of the applicant be considered?*

15 One of the requirements for legitimate expectation laid out in *Chiu Teng* is that the applicant must show that “it was reasonable for him to rely on the statement or representation in the circumstances of his case”. The High Court elaborated that the reliance would not be reasonable if the applicant knew or ought to have known that the statement or representation was made in error.<sup>37</sup> The applicant should

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*Administrative Law* (London: Sweet & Maxwell, 4th Ed, 1999) at p 619; *R (Rashid) v Secretary of State for Home Department* [2004] EWHC 2465 at [44]; *R (Patel) v General Medical Council* [2013] EWCA Civ 327 at [84]; *Ng Siu Tung v Director of Immigration* [2002] 1 HKLRD 561 at [109]–[110]. However, there is some indication that reliance may be an essential requirement in Malaysia, see *Darahman bin Ibrahim v Majlis Mesyuarat Kerajaan Negeri Perlis* [2008] 4 MLJ 309 at [52].

33 Daphne Barak-Erez, “The Doctrine of Legitimate Expectations and the Distinction between the Reliance and Expectation Interests” (2005) 11 *European Public Law* 583. See also Yoav Dotan, “Why Administrators Should be Bound by their Policies” (1997) 17 *OJLS* 23 at 27–28.

34 Daphne Barak-Erez, “The Doctrine of Legitimate Expectations and the Distinction between the Reliance and Expectation Interests” (2005) 11 *European Public Law* 583 at 590–591.

35 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [110].

36 See, eg, *Lee Hsien Loong v Singapore Democratic Party* [2009] 1 SLR(R) 642 at [102]–[103].

37 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [117].

not be entitled to capitalise on the erroneous statement or representation of the public authority. In addition to the veracity and accuracy of the statement or representation, the applicant must “make enquiries” if there is reason and opportunity to do so.<sup>38</sup>

16 Thus, it seems that the courts will take into account subjective characteristics of the applicant in determining if the reliance was reasonable. In *Chiu Teng*, Tay J took note that the applicant was an “experienced property developer” and concluded that it was unreasonable for the applicant to have relied on the statement or representation by the SLA.<sup>39</sup> In light of this, one might reasonably argue that subjective characteristics which would make an individual *more susceptible* to believe in and rely on the statement or representation of public authorities, such as old age or mental impairment, should be taken into account as well.

### **B. Should policy-based expectations be protected substantively?**

17 In *Chiu Teng*, Tay J relied on the term “statement or representation” without much elaboration. Hence, it is necessary to consider if the doctrine of substantive legitimate expectation should extend to cover legitimate expectations based on public announcements or publications of governmental policies (“policy-based expectations”),<sup>40</sup> or be limited to legitimate expectations based on express promises made to the applicant (“promise-based expectations”).<sup>41</sup>

18 In *R v North and East Devon Health Authority, ex parte Coughlan*, the English Court of Appeal considered that there are three possible outcomes where there is a legitimate expectation.<sup>42</sup>

19 First, the courts may decide that the public authority only needs to bear in mind “its previous *policy* or other representations” [emphasis added] and give it the proper weight when deciding to change its position.<sup>43</sup> In such a case, the courts will review the decision based on *Wednesbury* unreasonableness.

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38 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [117].

39 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2013] SGHC 262 at [124]–[127].

40 See, eg, *R v Secretary of State for the Home Department, ex parte Khan* [1984] 1 WLR 1337 (adoption policies of the Home Office).

41 See, eg, *R v Inland Revenue Commissioners, ex parte Preston* [1985] AC 835 (assurance by the Inland Revenue that it would not investigate certain matters if claimant forgoes interest relief which it claimed and paid moneys as capital gains tax).

42 *R v North and East Devon Health Authority, ex parte Coughlan* [2000] 2 WLR 622 at 645.

43 *R v North and East Devon Health Authority, ex parte Coughlan* [2000] 2 WLR 622 at 645.



20 Second, the courts may decide that there is a legitimate expectation of a procedural benefit, such as prior consultation, arising from “a *promise* or practice” [emphasis added] and therefore require that an opportunity for consultation be given.<sup>44</sup>

21 Third, the courts may decide that there is a legitimate expectation of a substantive benefit arising from “a lawful *promise* or practice” [emphasis added] and where it is so unfair to fail to honour the expectation such as to amount to an abuse of power, the courts may require that the substantive benefit be given.<sup>45</sup> In particular, it was pointed out that most cases in the third category are likely to be “cases where the expectation is confined to one person or a few people, giving the promise or representation the character of a contract”.<sup>46</sup>

22 In the subsequent case of *R v Secretary for Education and Employment, ex parte Begbie*, Laws LJ pointed out that the distinction between the first and third category does not lie in the deprivation of a substantive benefit and that the categories are “not hermetically sealed”.<sup>47</sup> In Laws LJ’s articulation of the distinction between the two categories, he focused on two criteria, namely “the *number* of individuals affected by the expectation; and the *nature* of the policy that has created the expectation” [emphasis added].<sup>48</sup> As the English Court of Appeal in *R (Patel) v General Medical Council* suggests, the number of individuals affected by the expectation is “likely to be small” because it is “difficult to imagine a case in which government will be held legally bound by a representation or undertaking made generally or to a diverse class” and “the broader the class claiming the benefit of the expectation, the more likely it is that a supervening public interest will be held to justify the change of position”.<sup>49</sup>

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44 *R v North and East Devon Health Authority, ex parte Coughlan* [2000] 2 WLR 622 at 645.

45 *R v North and East Devon Health Authority, ex parte Coughlan* [2000] 2 WLR 622 at 645.

46 *R v North and East Devon Health Authority, ex parte Coughlan* [2000] 2 WLR 622 at 646.

47 *R v Secretary of State for Education and Employment, ex parte Begbie* [2000] 1 WLR 1115 at 1129–1130.

48 Richard Clayton, “Legitimate Expectations, Policy, and the Principle of Consistency” (2003) 62 Camb LJ 93 at 99–100. See also *R v Secretary of State for Education and Employment, ex parte Begbie* [2000] 1 WLR 1115 at 1130–1131. Cf Andrew S Y Li & Hester Wai-San Leung, “The Doctrine of Substantive Legitimate Expectation: The Significance of *Ng Siu Tung and Others v Director of Immigration*” (2002) 32 HKLJ 471 at 492–494, where the authors argued that “[t]he public authority should be held to its promise even if such promise was made generally and to a large class of persons”.

49 *R (Patel) v General Medical Council* [2013] EWCA Civ 327 at [50]; *R (Bhatt Murphy) v Independent Assessor* [2008] EWCA Civ 755 at [46].

23 At this point, two brief observations can be made. First, judges can differ in their views of what might constitute a “small number” of individuals such that the representation would give rise to a promise-based expectation. For instance, the Court of Appeal in *Secretary of State for the Foreign & Commonwealth Affairs v R (Bancoult)* took the view that the press statement made to the thousands of Chagossians would give rise to a promise-based expectation.<sup>50</sup> On appeal to the House of Lords, Lord Carswell disagreed and said that “[t]he press statement was not an assurance directed towards one individual or a small number of people.”<sup>51</sup> Second, the requirement for a proportionate response suggested in *Nadarajah v The Secretary of State for the Home Department*<sup>52</sup> seems to have been doubted by Lord Mance in the House of Lords decision of *R (Bancoult) v Secretary of State for the Foreign & Commonwealth Affairs (No 2)*.<sup>53</sup> In particular, Lord Mance noted that Laws LJ considered the:<sup>54</sup>

... litmus test for departures from a previously announced promise or practice as being whether the departure represented ‘a proportionate response (of which the court is the judge, or the last judge) having regard to a legitimate aim pursued by the public body in the public interest’.

However, Lord Mance opined that he would “prefer to reserve for another case [his] opinion as to whether it is helpful or appropriate to rationalise the situations in which a departure from a prior decision is justified in terms of proportionality, with its overtones of another area of public law”.<sup>55</sup>

24 Some have argued that a clear distinction should be drawn between promises and policies, such that policy-based expectations should not be protected by substantive legitimate expectation.<sup>56</sup> Such a distinction can be supported on two reasons. First, policy decisions of public authorities generally should not be fettered and it is an inherent characteristic of policy that it is subject to change.<sup>57</sup> This explains why

50 *Secretary of State for the Foreign & Commonwealth Affairs v R (Bancoult)* [2008] QB 365 at [73] and [100].

51 *R (Bancoult) v Secretary of State for the Foreign & Commonwealth Affairs (No 2)* [2009] 1 AC 453 at [134].

52 [2005] EWCA Civ 1363.

53 *R (Bancoult) v Secretary of State for the Foreign & Commonwealth Affairs (No 2)* [2009] 1 AC 453 at [181].

54 *R (Bancoult) v Secretary of State for the Foreign & Commonwealth Affairs (No 2)* [2009] 1 AC 453 at [181].

55 *R (Bancoult) v Secretary of State for the Foreign & Commonwealth Affairs (No 2)* [2009] 1 AC 453 at [182].

56 Richard Clayton, “Legitimate Expectations, Policy, and the Principle of Consistency” (2003) 62 Camb LJ 93.

57 Richard Clayton, “Legitimate Expectations, Policy, and the Principle of Consistency” (2003) 62 Camb LJ 93 at 100.

expectations arising from policies should, generally speaking, not be protected substantively. Second, promises which are specifically directed to one or a few persons are often “unequivocal representations” which are likely to be relied upon and are less likely to have serious consequences for the administration as a whole.<sup>58</sup> This explains why expectations arising from promises, having the character of a contract,<sup>59</sup> should generally be protected substantively.

25 A distinction between policy-based expectations and promise-based expectations may be justified on the above reasons. Yet, the distinction is more of a matter of degree rather than kind. As such, it is proposed that a case-by-case analysis which takes into account all the relevant circumstances (*eg*, the number of individuals affected and the nature of the statement or representation) would be more appropriate.

## V. Conclusion

26 The decision in *Chiu Teng* is commendable as it was able to look beyond the general reticence towards English developments in administrative law where the reasoning has been influenced by EU law,<sup>60</sup> and acknowledge the need to develop the principles of judicial review for the “common good”.<sup>61</sup> The doctrine of legitimate expectation should be recognised in Singapore. It upholds the principle of legal certainty, which is a fundamental tenet of the rule of law,<sup>62</sup> and the expectation and reliance interests of individuals.<sup>63</sup> The doctrine also upholds trust in

58 Melanie Roberts, “Public Law Representations and Substantive Legitimate Expectations” (2001) 64 MLR 112 at 117.

59 *R v North and East Devon Health Authority, ex parte Coughlan* [2000] 2 WLR 622 at 646. Lord Hoffmann in *R v East Sussex County Council, ex parte Reprotech (Pebsham) Ltd* [2003] 1 WLR 348 also acknowledged that there is “an analogy between a private law estoppel and a public law concept of a legitimate expectation created by a public authority” but pointed out that public law remedies must take into account public interest and individual rights.

60 See, *eg*, *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [87]; *Yeap Wai Kong v Singapore Exchange Securities Trading Ltd* [2012] 3 SLR 565 at [4]. See also Lord Irvine of Lairg, “The Modern Development of Public Law in Britain; and the Special Impact of European Law” (1999) 11 SAclJ 265 at 273 to 276, for a discussion on European Union law and its influence on the development of substantive legitimate expectations in England.

61 *Nguyen Tuong Van v Public Prosecutor* [2005] 1 SLR(R) 103 at [88]. See also Chan Sek Keong, “Judicial Review – From Angst to Empathy” (2010) 22 SAclJ 469 at 485, where Chan CJ acknowledged that “[a]s an institution of the State, it is the duty of the Judiciary to work for the common good in dispensing justice”.

62 Christopher Forsyth, “The Provenance and Protection of Legitimate Expectations” (1988) 47 Camb LJ 238 at 243–244. See also *The Seaway* [2004] 2 SLR(R) 577 at [12].

63 See also Yoav Dotan, “Why Administrators Should Be Bound by their Policies” (1997) 17 OJLS 23, where the author articulated similar rationales like equality and generality of administrative actions and reliance interest of the citizens.

public administration, which is integral to the concept of “government by honourable men (*junzi*)”<sup>64</sup>. In this regard, the decision in *Chiu Teng* reinforces the view that the development of administrative law can and should be guided by the socio-political culture of Singapore, such that it is “sensitive to the needs and mores of the Singaporean society”<sup>65</sup>.

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64 For a discussion on the relevance of the concept of “government by honourable men (*junzi*)” in Singapore administrative law, see generally Chen Zhida, “The Nature of Judicial Review in Singapore” (2013) 31 *Sing L Rev* 79.

65 Chen Zhida, “The Nature of Judicial Review in Singapore” (2013) 31 *Sing L Rev* 79.