THE CONTROL OF CORRUPTION IN SINGAPORE

(VOLUME 1)

A Thesis Presented to the University of London
for the Degree of Doctor of Philosophy
in the Faculty of Laws

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ABSTRACT

In contrast with most Asian and African nations, the Republic of Singapore has often been cited as a model state where bureaucratic corruption is minimal. What then is the secret of Singapore's success at corruption control?

This dissertation examines the factors that help to explain the effective control of corruption in Singapore, the administrative and legal methods employed to combat corruption in the Republic and the efficacy and legitimacy of such controls.

The study has been undertaken in four parts.

Part I seeks to define the elusive concept of corruption, and to examine the problems of corruption in Asia and in the developing countries, and the various physical, political, social and economic factors that support Singapore's corruption control strategy.

In Parts II and III, an attempt has been made to determine, analyse and evaluate the administrative and legal methods employed to combat corruption, especially in the public services. There is a detailed study of the scope and application of Singapore's anti-corruption laws and the workings of various law enforcement agencies involved in combating corruption.

The dissertation concludes with a general discussion of the sufficiency of Singapore's solutions and the problems ahead in the battle against the canker of corruption in Singapore.
In writing this dissertation I have become indebted to many people who have assisted me in various ways. Chiam Boon Keng suggested the topic for this study. Dr Myint Soe and Dr R H Hickling gave me considerable encouragement and support. My supervisor, Professor James Reed of the London School of Oriental and African Studies, was a kind but rigorous critic of my work. His guidance proved invaluable especially at those moments in the last seven years when I came close to abandoning this dissertation. CPIB Director Evan Yeo frankly discussed with me the workings of his Bureau and made available unpublished CPIB statistics. Former CPIB Directors R Middleton-Smith, R B Corridon and Yoong Siew Wah kindly granted me interviews in their homes in England and in Singapore. Mr Er Kwong Wah, Secretary of the Public Service Commission, and officers of the Disciplinary Section of the PSC gave me an insight into the PSC's disciplinary proceedings. I have also benefited immensely from discussions with many District Judges, Deputy Public Prosecutors, Police Officers and Advocates and Solicitors. The experience and expertise of all these persons proved invaluable as research into any aspect of corruption is notoriously difficult.

I hope that none of those who have provided assistance in my study will be disappointed with the final result.

S CHANDRA MOHAN
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INTRODUCTION

Corruption is Man's most universal social disease. Only the extent and variety of corrupt practices differ, but corruption appears to be present in all but the most primitive societies where pecuniary values are not dominant. In those societies, only God is apparently permitted to accept bribes, judging from tribal traditions of offerings and sacrifices.

Corruption is not characteristic of any one period in political history nor of any one country. It was a familiar phenomenon in Ancient Egypt and certainly played a part in the decline of Greece and Rome, the overthrow of the Stuarts in 17th Century England, the fall of Czarist Russia and the collapse of Nationalist China.

Graft, bribery, "kick-backs" and the like, were said to have lead a "hearty life" in 19th Century American society with the rise of large bureaucratic institutions in both the public and private sectors.


Other modes of corruption in America have become conspicuous in the 20th Century.

English society too has had its own share of corruption scandals from the time of the Stuarts to the Poulson affair in 1973, not to mention the "Operation Countryman" inquiries into allegations of police corruption which began in 1978. Perhaps one of the most disturbing stories of bribery and corruption to shock British conscience in modern times was unfolded during the inquiries into the London Metropolitan Police in 1969. The "fall" of Scotland Yard took place between 1969 and 1972 when numerous detectives went to jail or left the Force in disgrace.

3. For an examination of corruption in early Stuart England, see James C. Scott, "Proto-Corruption in Early Stuart England", Comparative Political Corruption (New York, 1972). The Poulson affair resulted in a number of prosecutions of civil servants, including the Secretary to the Department of Agriculture and Fisheries, and the appointment of the Royal Commission on Standards of Conduct in Public Life. The Commission's Report (Cmnd.6524, HMSO) was released in 1976.

4. See the London Times, March 6, 1980; October 1, 1982.

5. For an account of the corruption and malpractice that tarnished the reputation of Scotland Yard, see Cox, Shirley and Short, The Fall Of Scotland Yard (Penguin Books, 1977).
Corruption exists both in authoritarian and party systems of government and in capitalist and communist regimes. The difference is that in communist states corruption is not readily acknowledged, being condemned as a capitalist curse. Its extent therefore remains largely hidden, particularly in the absence of an opposition and a free press. Only in recent years have the rulers of the Soviet Union and China, for example, acknowledged the growth of corruption in their countries.

It is because corruption plays such a significant part in the political system that we cannot analyse accurately the performance of a political system or a particular government without considering the "corruption factor". How, for example, asks

6. Ibid., p.137. Corruption may be as integral to Soviet life as "vodka and kasha" observed Steven Staats in his article, "Corruption in the Soviet System", XXI Problems of Communism (1972) 40. See also 'KGB official is sacked for corruption', The Times, January 9, 1987.

7. At a Central Secretariat Meeting in Peking in 1980, Communist Party General Secretary Hu Yaobang said corruption was "related to the life and death", the existence and extinction of our party": Michele Vink, "China tries to stamp out corruption but campaign is expected to drag on", Asian Wall Street Journal, December 14, 1980.
Scott, "could we have adequately explained the rule of Boss Tweed in the New York of the 1890s, the structure of Chiang Kai-Shek's Kuomintang party, the methods of Duvalier in Haiti, or the failure of the parliamentary system in Indonesia without examining corruption?"

Corruption in international business too has become so prevalent that the matter has been considered by both the International Chamber of Commerce and the United Nations.

The International Chamber of Commerce has prepared a set of recommendations as to legislative action that ought to be taken by each government. It has further urged governments that "there must be both the political will and administrative machinery to enforce such laws". The Commission has also prepared


a self-regulatory international code of conduct to combat corrupt practices for adoption by the international business community. To what extent these proposals will help to alleviate the situation is debatable.

In August 1976, the United Nations Economic and Social Council also established a working group to draft an international agreement "to prevent and eliminate illicit payments in whatever forms in connexion with international commercial transactions". The result was the Draft International Agreement on Illicit Payments which is principally aimed at resolving the problem of the indifference of states towards corrupt international transactions. Several of the provisions of the Draft Agreement stress the need for co-operation between member states in the

10. Ibid., pp.12 to 16. The ICC also recommended that an international treaty be drawn up under the aegis of the United Nations, as a matter of urgency, to induce various governments to take measures to combat corruption and to promote co-operation between governments in order to eliminate corruption. On November 30, 1977, the Financial Times reported that the ICC has agreed to set up a panel to enforce the code of conduct without deciding on the powers of the panel in this regard.

investigation and prosecution of corrupt international transactions.

However, nowhere is corruption regarded as endemic as in Asia. Judging by many accounts, corruption in Asia has become habitual, persistent and has reached almost "plunderous" proportions. The eminent Swedish economist Professor Myrdal sees corruption in Asia as being generally on the increase in the countries of the region and as being influenced by almost everything that happens, particularly the increase of discretionary controls.

Corruption has been described as the Asian lubricant; "the oil that makes the administrative machinery operate quickly". There is a continuing anxiety over the extent of corruption in almost every

12. For a fuller discussion, see David R. Slade, op.cit.


15. J.B. Monteiro, Corruption (Bombay, 1966), p.120.
Asian country including India, Thailand, Indonesia, Taiwan, Korea, Vietnam, Laos, Burma, Bangladesh and Pakistan. Whilst in the West, corruption takes ingenuity and courage, in most of Asia corruption is regular and repetitive. Bribes are


17. This is said to have caused King Bhumibol to once remark that if he were to "solve the problem by executing people, Thailand would be left with few people": "Corruption in Asia", *Time Essay*, August 18, 1967. The nature and extent of corruption in Thailand is discussed in many papers including: H. Stockwin, "The Unholy Gross", *Far Eastern Economic Review*, November 5, 1973; James C. Scott, "Corruption in Thailand" in *Comparative Political Corruption* (New Jersey, 1972) Chapter 4.


collected openly and in numerous ways and at all levels of government. Gratuities are exacted in some areas of government with such regularity that they could be considered as institutionalised fees but with the proceeds going towards private incomes. Some academic writers have therefore been able to distinguish between "speed" payments given to expedite work and "distortive" payments given to avoid prosecution or to ignore tariffs and taxes.

Corruption is so well entrenched in many societies that anti-corruption campaigns and occasional dismissals of public servants have made not the slightest dent either in the attitude of the

20. In Thailand, the wise businessman bidding on a government contract might end his visit to a government official by letting a well-filled wallet slip to the floor and exclaiming: "Why, you've dropped your wallet with 50,000 bahts ($2,400) in it?" One foreign contractor who did just that was dumbfounded when the Thai official calmly replied, "Oh, no, I dropped my wallet with 150,000 bahts in it." Time Magazine, August 18, 1967.

bureaucracy or in public cynicism.

Venality is all the more disastrous in Asian and African countries as they can least afford it both economically and politically. Corruption is today a major obstacle to economic development and results in a great waste of human resources. It alienates a people from their government because it breeds distrust and contempt. A mass survey conducted in India in 1968, for example, confirmed that the expectation of dishonesty and corruption in government by the Indian people was very high. The survey revealed that 42% of


23. Each year over a third of the national budget finds its way into the pockets of corrupt government officials in Thailand and Indonesia: New Sunday Times (Malaysia), May 28, 1978; Rosihan Anwar, ibid. In India corruption in the administration is said to be costing the exchequer at least 8,000 million rupees (US$1 million) each year: G.S. Bhargava, op.cit., p.30. The Santhanam Committee's conservative estimate was 5 per cent of the money spent during the Second Five Year Plan for construction: Santhanam Committee's Report, op.cit., p.18.
an urban and 48% of a rural sample group thought that the majority of civil servants were corrupt.

There is ample evidence that corruption is a significant cause of political instability in Asia and has indeed made many democracies in the region untenable. For this reason, taking effective measures against corruption is "literally a question of self-preservation" warns Professor Gunnar Myrdal. Prime Minister Lee Kuan Yew of Singapore, the longest serving Prime Minister in the Commonwealth, takes a similar view. A major cause of the collapse of many Asian political regimes has been said to be the prevalence of official misconduct and corruption. This was certainly the justification given for the usurpation of power by Ne Win in Burma, Ayub Khan and Zia-ul-Haq in Pakistan, Park Chung Hee in South Korea,


25a. For a full discussion, see Chapter 111(G), post.
the communists in mainland China and, more recently, by General Ershad in Bangladesh. The traumatic political changes that have often occurred in Asian governments by coups, rebellions and surprise election results, must make Asian leaders acutely conscious that corruption has the greatest potential to destroy their legitimacy to govern. Yet they appear to do very little to curb political and bureaucratic corruption in their regimes.

Some western social scientists have sought not only to justify corruption but also to make apologies for Asian corruption on the ground that bribery stems


28. There have been coups in a number of Asian countries including Afghanistan, Burma, Bangladesh, Pakistan, Thailand, South Korea and Indonesia.

29. Former Prime Ministers Mrs Bandaranaike of Sri Lanka and Mrs Indira Gandhi of India were toppled largely as a result of allegations of corruption against their regimes. See "Bye-bye Bandaranaike", Insight Magazine, September, 1977; M. Halayya, op.cit., Chapter 4.
from historical practices of gift-giving, and nepotism, in particular, is the result of having one's first loyalty to one's family. There is little merit in this form of patronage. Asians are readily giving excuses for corruption in their societies without there being any need for western writers to exacerbate this malice.

Then it is suggested that the prevalence of corruption can quite simply be examined on the basis of race and culture. For example, in 1973, Sir Alastair Blair-Kerr traced the roots of widespread corruption in Hongkong to the Chinese and T'sing Dynasty China. Why scores of British expatriates in Hongkong had unjustly enriched themselves was, however, not explained. Nor the fact that China and Singapore, despite being predominantly Chinese, have minimal bureaucratic corruption. An examination of the pattern of corruption before the fall of South Vietnam would have similarly exploded the myth. The cadre of National Liberation Front of South Vietnam and local officials of the Saigon regime were drawn from the same cultural mileu and operated within the same society. Yet, only the Saigon officials were generally

characterised by dishonesty and malfeasance.

The root cause of corruption in Asia is not racial, historical, social or economic. It is quite plainly what one writer calls "appetitus dibitianum infinitus", or the insatiable avarice of human beings. It is avarice practised knowingly and found excessively where risk of discovery and punishment are almost non-existent.

Corruption is really a western term for a variety of misconduct, most of which were many centuries ago condemned by Asian sages and in the scriptures of Asian religions which have pre-dated Christianity. For instance, any form of misconduct that constitutes a subversion of individuality and integrity as corruption does, would certainly have offended traditional Confucian ethical codes. The Confucian theory of the "Mandate of Heaven" emphasized the Emperor's sense of virtue and justice. If he


32a. The definitions of corruption are fully examined in Chapter 1, post.
became corrupt, or tolerated this weakness in his subordinates, various natural calamities were expected to befall his land. Even in the 3rd Century B.C., the Indian sage Kautyilia was able to identify 40 different kinds of embezzlement of funds and urged his ruler to run all his ministers through an obstacle course of temptation. His book is said to read like "a modern official report on modes of corruption and corresponding punishments".

Some evidence of Asian acceptance that bribery, which is perhaps the worst form of corruption, is wrong is found in the many labels for it. The Thais call bribery "gin muong" (nation eating), the Chinese "tan wu" (greedy impunity) and the Japanese "oshoku" (dirty job). In Indonesia it is known as "pungli" or unofficial levies. Despite its tolerance in many Asian countries, in no nation is corruption called a reward or an offering or by any other virtuous name. Its


label and the very manner of its largely surreptitious takings condemns it as something patently evil.

Nor is there any want of anti-corruption laws in Asian countries or the existence of special agencies within the bureaucracy to investigate allegations of corrupt practices. It has in fact been observed that in this regard developing nations have not only adopted "the full panoply of laws and regulations" from the West, but also the "most restrictive and demanding forms available".

In contrast with most Asian states, the Republic of Singapore has often been cited as a model state where corruption has been so reduced that it does not normally enter into a citizen's relations with his government. Yet Singapore has all the pre-requisites for a corrupt society: recently acquired independence, a migrant society consisting largely of Chinese, Malays and Indians who have originated from countries with prevailing corruption, and the absence of extra-

bureaucratic institutions, such as an effective opposition in Parliament or an enlightened press given to investigative reporting, to check or expose venality within the bureaucracy. Rather strangely, prior to the 1960s when many extra-bureaucratic checks were present, corruption was rampant in Singapore.

Today, despite the fact that corruption is endemic in Asia, Singapore has gained a reputation, even among her critics, as one of the few countries in the region which have successfully controlled corruption in both the public and private bureaucracies.

In 1970, Professor Gunnar Myrdal, an eminent Swedish economist who was distressed with the extent of corruption in Asia, selected Singapore "as one of the few spots in the undeveloped world where a

37. These institutions are examined in Chapter II, post.

37a. For a fuller discussion, see Chapter X (B), post.

clean government has, with apparent success, fought corruption which otherwise, there as elsewhere, would tend to be common and on the increase".

After an examination of the problem of corruption in Asia in 1974, the Far Eastern Economic Review too labelled Singapore as the "Mr Clean of Asia" and further declared:

For many years Singapore has had the reputation of being the least corrupt of all Asian states and, indeed, with the Nixon's scandal and the recent examples of skulduggery in high offices in Britain it could probably be said to be one of the least corrupt nations in the world.

The previous year the same journal had observed that although Singapore was "almost certainly not lily-white", no other business centre was "as clean in terms of economic corruption". N.Z. Shirazi of the Canberra Times also thinks that the ruling People's Action Party can "legitimately lay claim to running one


of the cleanest administrations in South-east Asia".

There have been many other acknowledgments of Singapore's success in combating corruption. Perhaps the most glowing compliment came from Lord Shawcross, a former Attorney-General of England and Chairman of the British Press Council. In December 1975, Lord Shawcross was appointed Chairman of an ad hoc commission set up by the International Chambers of Commerce to investigate the extent to which individual countries had enacted legislation to prohibit corrupt practices and the effectiveness of their enforcement. In an address to the Hongkong Chamber of Commerce in 1977, Lord Shawcross identified Singapore, not without some exaggeration, as one of

42. N.J. Shirazi, "Where graft is weeded out", The Canberra Times, September 18, 1968.

"only two countries in which corruption no longer exists, although once it did".

This probably influenced former U.S. Secretary of State for Economic Affairs, Richard Cooper, to seek the assistance of Singapore's Prime Minister, Mr Lee Kuan Yew, to help in an American effort to develop an international prohibition against bribery. According to press reports, American officials enlisted Mr Lee's co-operation "because of Singapore's key position in Asian trading and its reputation for rectitude in business dealings".

What then is the secret of Singapore's success at corruption control? This is the principal inquiry that underlines the present study. It is hoped that an objective evaluation of Singapore's solutions will not only be useful to other countries in their fight against corruption, but that it will also help to bring about reforms in certain areas of corruption control in


the Republic of Singapore itself.

This dissertation generally examines the political, social and economic factors that help to explain, and which contribute towards the effective control of corruption in Singapore, the administrative and legal methods employed to combat corruption in the country's public and private bureaucracies and the legitimacy and efficacy of such controls.

The study is being undertaken in four parts. Part I is devoted to an examination of the concept of corruption, the problems of corruption, particularly in Asia, and to the physical, political, social and economic factors that appear to contribute to Singapore's successful anti-corruption strategy.

A substantial portion of the thesis involves the determination, analysis and evaluation of various legislative, administrative and legal methods employed for controlling corruption. These are considered in Parts II and III of this dissertation.

In Part IV, the administrative controls and checks of a quasi-judicial nature are discussed. These include the various conduct rules for public servants
and parliamentary safeguards against executive excesses. The nature and function of disciplinary tribunals which deal with corrupt public servants who are not prosecuted in court are examined. How, for example, is information relevant to the making of a decision by the Public Service Commission and its inquiring tribunals gathered, verified and analysed? How do such tribunals function and to what extent, if any, are their recommendations accepted by the Public Service Commission? Are the findings of the Commission and its tribunals subject to judicial review?

Part III of the study is devoted to a detailed examination of the scope and application of Singapore's anti-corruption laws which are designed to prevent the commission of crime, to help detect the corrupt, and to punish offenders in order to deter both the givers and takers of bribes. This principally involves the examination of the provisions of various statutes, particularly the Penal Code and the Prevention of Corruption Act, and the special rules of evidence and procedure applicable to corruption trials.

Part III also contains a study of the law enforcement machinery. The workings of various agencies within the criminal justice system are
examined. There is thus a study of the work of the Corrupt Practices Investigation Bureau, which functions directly under the Prime Minister, the Courts (including the sentencing policy in corruption cases), and the functions of the Public Prosecutor who advises the Public Service Commission on matters pertaining to the discipline of public servants and who must consent before an offender is prosecuted for corruption.

In the final part (Part IV) some of the problems associated with Singapore's efforts at combatting corruption are discussed. For example, at what price are present corruption controls being perpetuated? Are the methods employed to combat the offence more intolerable than the crime? Is the quality of the public service being injuriously affected by current methods of administrative and legal controls? Is private enterprise stifled as a result?

The dissertation is concluded with a general discussion of the sufficiency of Singapore's solutions and the problems ahead in the battle against the canker of corruption in the Republic of Singapore.
CHAPTER I

THE DEFINITION OF CORRUPTION

Any researcher on political and bureaucratic corruption, even if he is only examining corruption-control strategies, must establish a working definition that will include most of the behaviour or misbehaviour that is labelled as "corruption".

What is therefore, being attempted in this chapter is an examination of the main conceptual approaches that have been made towards analysing what is corruption, in order to adopt a definition that best suits the present study of the control of corruption in Singapore.

There is no single definition of corruption that has gained universal acceptance amongst social scientists and other scholars. All concepts generally are but instruments to examine "relevant aspects of reality and thus constitute the definitions
Definitions of corruption have varied not only to suit the nature and scope of a researcher's study, but also according to a scholar's ideological postures and the subjectivity of his own morality.

It appears from the many definitions of corruption that have been formulated, that the choice of a definition lies between a normative definition which is based on social norms articulated by political and social scientists, and a legal definition based on formal or legal norms determined by legislators and judges.

(A) Normative Definitions

If we ignore the criteria established by law to determine corrupt behaviour, how are we to judge what corruption is in society? Can we make judgments on the basis of western value systems and concepts? Can cultural conditions peculiar to a particular society be ignored? Is it legitimate to impose western

standards of political and bureaucratic behaviour even on former colonial countries? Can there be any meaningful comparative analysis of corruption without reference to western standards of probity? These are some of the many problems that confront a researcher who is anxious to identify acceptable criteria to determine deviant behaviour amongst office-holders.

Most normative definitions of corruption fall under three categories which Heidenheimer has classified as public-office-centred definitions, public-interest-centred definitions and market-centred definitions.

(1) **Public-Office-Centred Definitions**

These definitions relate to the concept of the public office and to deviations from accepted norms by public-office holders. Corruption is thus the abuse of public office for private gain.


There are many examples of public-office-centred definitions of corruption. According to David H Bayley:

Corruption, while being tied particularly to the act of bribery, is a general term covering misuse of authority as a result of considerations of personal gain which need not be monetary.

The Committee on the Prevention of Corruption appointed by the Indian Government in 1962 to review the problem of corruption in India and to suggest remedial measures, defined corruption "in its widest connotation" as including:

[The] improper or selfish exercise of power and influences attached to a public office or to the subject position one occupies in public life.


The Committee was, however, reluctant to adopt this definition throughout its inquiries as it then would have been compelled to view the problem of corruption in India "in relation to the entire system of moral values and socio-economic structure of society which we could not undertake".

The most popular of the public-office-centred definitions, since 1967, is the definition by J S Nye:

Corruption is behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence.

Nye's definition includes such conduct as "bribery (use of a reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than

merit); and misappropriation (illegal appropriation of public resources for private-regarding use). 8a

He does not, however, explain his use of the term "behaviour" although it must include both overt acts and wilful omissions. Nye concedes that his definition is not completely satisfactory in terms of "inclusiveness of behaviour and the handling of relativity of standards" as it does not consider non-legal forms of corruption, or corrupt practices with reference to non-western standards, or the public interest.

There are obvious criticisms of public-office-centred definitions. They totally disregard private bureaucratic corruption which many countries, including Singapore, are committed to stamp out. Such definitions also suffer from extensive use of such ambiguous terms as "misuse of power or authority or office", "abuse of office", "misconduct" and "misbehaviour". Again, if corruption is essentially the deviation from certain standards of behaviour in public office, how are the criteria for establishing those standards to be determined? What are the norms to be used to identify the corrupt officials?

8a. Nye, ibid.
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(2) **Public-Interest-Centred Definitions**

According to such definitions, corruption is the violation of acceptable standards of behaviour in public office with reference to the public interest.

There are two well known examples of such public-interest-centred definitions. The first is by Carl J Friedrich:

The pattern of corruption can be said to exist whenever a power-holder who is charged with doing certain things, i.e. who is a responsible functionary or office-holder, is by monetary or other rewards not legally provided for, induced to take actions which favour whoever provides the reward and thereby does damage to the public and its interest.

According to the explanation of Arnold A Rogow and H D Lasswell:

A corrupt act violates responsibility towards at least one system of public or civil order and is in fact incompatible with (or destructive of) any such system. A system of public or civil order exalts common interest over special interest; violations of the common interest for special advantage are corrupt.


A standard of conduct that would either support or violate the elusive concept of public interest would also be difficult to define in an acceptable manner. One solution may be to use public opinion as the definitional criterion. Thus only acts or omissions of public-office holders which the public label as corrupt could be so considered.

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Heidenheimer, for example, has distinguished between "black", "grey" and "white" corruption, according to the intensity and unanimity of disapproval of various groups of people, and has demonstrated that public opinion does make a difference in the incidence and consequence of most corrupt acts. According to Heidenheimer's classification, "black" corruption would include acts which a majority consensus of both elite and mass opinion would condemn and would want to see punished. "Grey" corruption would encompass acts which only some citizens, usually the elite, would want to see punished and "white" corruption would include acts that the majority of both elite and mass opinion would regard as tolerable.

With the criterion of public opinion, the problem always is in the determination of public opinion. Whose opinion is to prevail? In a pluralistic society like Singapore, with its divergent racial and religious values, such a determination would become even more difficult. A Canadian suggestion is that public interest should be measured in terms of "mass opinion, elite opinion or both". Joseph Senturia has offered another solution:

Where the best opinion and morality of the time, examining the intent and setting of an act, judge it to represent a sacrifice of public for private benefit, then it must be held to be corrupt.

Who is to decide who possesses "the best opinion and morality of the time"? Would not any such choice be arbitrary? If it is to be the elite, how is a sample of the elite that would represent the best opinion of the time to be selected? Which profession, age, sex, racial or religious groups would they come from? How often would they be consulted? As the concept of venality and integrity may vary with time and place, should the elite sample be changed each year?


Market-centred definitions of corruption have been developed in relation to supply and demand and other economic concepts. According to Jacob van Klaveren, who is frequently quoted by writers who support market-centred definitions:

A corrupt civil servant regards his public office as a business, the income of which he will ... seek to maximize. The office then becomes a "maximizing unit". The size of his income depends ... upon the market situation and his talents for finding the point of maximal gain on the public's demand curve.

The economic-market arguments, which are implicit in such definitions, are often used to justify the prevalence of corruption in under-developed countries. As Gabriel Ben-Dor has pointed out, such arguments are unconvincing and the alleged benefits of

15. Heidenheimer, op.cit., p.5. See also the definition of Robert Tilman in Heidenheimer.

16. These arguments coincide with that view of corruption which emphasises that corruption is unavoidable at certain stages of a country's development and aids both modernisation and development. For an excellent discussion of this point of view, see Gabriel Ben-Dor, "Corruption, Institutionalization and Political Development", 7 Comparative Political Studies (1974) 63. David Bayley, Heidenheimer, op.cit., p.528, also discusses the "beneficial effects of corrupt acts".
corruption to such countries appear to be "at best incidental rather than intended".

Market-centred definitions of corruption are no definitions at all. They do not define the actual concept of corruption or indicate its intrinsic qualities, but rather dwell on the economic consequences of the phenomenon. There are indeed many forms of corruption that are unconnected with market factors or resource allocation.

Most normative definitions of corruption, like those that have been examined here, are intellectually appealing and even conceptually sound, but they suffer equally from an impossibility of application. How would a researcher, for instance, begin to measure or identify corrupt practices that are only morally condemned? What section of the population would his data come from, even if he is considering a homogeneous society given to common social norms, or a developing country with a parliamentary system of government where information would be more accessible?

17. Ibid., at p.71.
Indeed a government-appointed committee which began its inquiries into the problem of corruption in India, on the basis of a normative definition of corruption, found it impossible "to give even a rough estimate of the number of corrupt government servants or the amount of money or value of the percentage of illegal gratification that may be involved". It therefore concluded its findings on the extent of corruption in India by merely reproducing statistics of complaints received by two law enforcement agencies, which obviously work with a legal definition of corruption, to help give "a measure of the prevalence of the malady".

(B) The Case for a Legal Definition

The many problems in obtaining a workable normative definition of corruption therefore make the acceptance of a legal definition more compelling. Such a definition is a more practical one to adopt, and there are obvious advantageous in working with formal or legal norms:


19. Ibid.
(a) Legal norms have the least identification problem. Prescribed and proscribed behaviour may be determined by reference to a statute and rules and regulations governing official conduct, and to judicial decisions which explain relevant provisions of the law.

(b) Statutes have heralded the beginning of many anti-corruption campaigns and are an important source to determine the concept of corruption in any particular country. Both Hongkong and Singapore, for example, began their anti-corruption campaigns in earnest by amending existing corruption laws.

(c) Laws have a positive effect on the nature, extent and consequences of most human behaviour.

(d) Law is the language of government, and official statistics, inquiries and research on corrupt behaviour are made with reference to existing anti-corruption
laws. It will thus be more convenient for a researcher examining any aspect of corrupt behaviour in a country, to work with existing legal norms to determine deviant conduct of office holders.

(e) Contemporary notions of corruption are increasingly being hinged on legal norms. This is more so in a newly independent, multi-racial society like Singapore where the only common norms are legal norms based on western standards of behaviour.

(f) It is the government, through statutes and regulations and their enforcement, that determines the norms for propriety of conduct in public and commercial affairs. The government bureaucracy has dominated other social groups and organisations and "no matter whether people like it or

20. Western standards are commonly known throughout the world. David Bayley argues that the intelligentsia, and especially the top-level civil servants in most under-developed nations, are familiar with the western label "corruption". See Bayley, "The Effects of Corruption in a Developing Nation", in Heidenheimer, op. cit., p.524.
dislike it, deviance has come to be what the government says it is".

James Scott, although accepting that "a legalistic definition has much to recommend it", has nevertheless criticised the use of legal norms to define corruption on the ground that it would raise problems in historical comparison and in comparisons between different nations, as legal norms may differ at various points of time and between countries. However, whether a normative or legal definition is adopted, there is still bound to be some degree of distortion when comparisons are made between different nations. This is due to differences in the concept of corruption, whether defined in normative or legal terms.

There may even be a greater distortion if we adopt a normative definition of corruption in view of the wider discord amongst political and social scientists as to what acceptable norms of conduct by office holders ought to be. In contrast, in the legal


concept of the most obvious and common corrupt acts, there is no significant difference either between different nations or at different periods of time in a single country. As will be demonstrated elsewhere in this chapter, statutes of a large number of both western and non-western nations, including those of the under-developed countries, have adopted basically similar legal norms, built upon the "western denotative meaning of corruption".

Before adopting a legal definition, however, one must be conscious of some central problems associated with the use of such a definition.

First, a legal definition of corruption may present problems of interpretation and comprehension largely because of a draftsman's neglect or his exuberance. The use of indeterminate language may make some definitions rather vague as, for example,

23. There appears to be some support for the much quoted view expressed by Wraith and Simpkins, in their work Corruption in Developing Countries (London: George Allan and Unwin, 1963), that corruption is essentially "wrong that is done in the full knowledge that it is wrong, for the concept of theft does not vary as between Christian and Muslim, African and European or primitive man and the Minister of the Crown".

the following definition from Article 353 of the Codigo Penal of Brazil:

A public official who solicits or receives for himself or for a third party directly or indirectly, during his term of office or prior thereto, but in connection with his position, undue advantage, or promise thereof, shall be penalised.

Other definitions, because of their specificity, pose different problems. For example, in the American state of Iowa, a person commits "commercial bribery" in the following circumstances:

It is unlawful for a person to offer or deliver directly or indirectly for the personal benefit of an employee acting on behalf of his or her employer in a business transaction or course of transactions with the person a gratuity in consideration of an act or omission which the person has reason to know is in conflict with the employment relation and duties of the employee to the employer. It is unlawful for an employee acting on behalf of his or her employer in a business transaction or course of transactions with a person to solicit or receive from the person a gratuity directly or indirectly for the personal benefit of the employee in consideration of an act or omission which the employee has reason to know is in conflict with the employment relation and duties of the employee to the employer.


Secondly, a statutory definition of corruption might include the irrelevant and exclude the obvious. The Prevention of Corruption Act of Singapore, for instance, does not make nepotism an offence but section 6(c) of the Act makes it an offence, punishable with up to five years imprisonment, for any person to knowingly give an agent or for an agent to knowingly use "any receipt, account or other document" which contains any statement which is false or erroneous or defective in any material particular" with intent to deceive or mislead the principal. Hence, whilst the criminal law does not proscribe the appointment of relatives or friends to public office, irrespective of their merit, the use by public servants of false medical certificates, claim forms for expenses or indents for the construction of a drain, attracts a five-year prison term.

27. Singapore Statutes, Rev. Ed. 1985, Cap.241. For a detailed examination of the provisions of this Act see Chapter VIII, post.
Thirdly, despite the availability of a legal definition of corruption, different agencies or components within the same criminal justice system may not be all working with similar legal norms or with legal norms alone. For example, the courts and prosecutors in Singapore work with strictly legal norms prescribed by statute. The Corrupt Practices Investigation Bureau, however, is concerned with legal norms for prosecution but with both legal and social norms for investigations and for recommending disciplinary action against public-office holders.

It is enough cause for the CPIB to investigate a Singapore public servant if he displays sudden wealth or is being entertained by persons he is dealing with, and sufficient to discipline him for misconduct for accepting and retaining undeclared gifts. It is, however, possible to prosecute him successfully in the courts only if it can be proved that these gifts constitute an illegal gratification under the Prevention of Corruption Act or the Penal Code.

31. See Chapter X(B), post.
32. Singapore Statutes, Rev. Ed. 1985, Caps.241, 224. The relevant provisions of these statutes are discussed fully in Chapters VII and VIII, post.
The interesting situation in respect of public servants in Singapore is that regulations which govern their discipline legally prescribe the use of social norms in determining propriety of their conduct in public office. Under the Public Service (Disciplinary Proceedings)(Procedure) Rules, 1970, the Public Service Commission is required to appoint a Disciplinary Committee to inquire into complaints of misconduct or neglect of duty against public officers that warrant the taking of proceedings with a view to dismissal or reduction in rank. The three-man committee, which must include a non-public servant, is obliged to determine whether the public servant complained against is, inter alia, guilty of misconduct or "conduct prejudicial to good order or discipline". Clearly, in making any such

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determination in the absence of statutory guidelines, the Committee must decide whether or not there has been deviant behaviour in public office according to its perception of the relevant non-legal norms contained in the Conduct Rules.

Therefore, despite the legal concept of corruption being entrenched in our laws, morality continues to be enforced at least in the public sector, although its violation is not that vigorously punished. On the other hand, in criminal or civil proceedings under the Singapore Prevention of Corruption Act, no evidence is admissible to show that the payment or acceptance of an illegal gratification is customary in "any profession, trade, vocation or calling". No defendant may therefore invoke a social or customary norm as a defence to corruption in a court of law in Singapore.

Fourthly, not all breaches of legal norms are punished. This partly explains why some countries are rampant with bureaucratic corruption despite having the most severe anti-corruption laws.

The force of the legal norms in a society and indeed the respect for them may vary according to

the "intensity with which they are demanded, the probability of their being sanctioned and the severity with which they are policed". Selective enforcement of legal norms results in a distinction between what Michael Reisman calls "a myth system" from "an operational code". The myth system expresses all legal prohibitions in a society, whilst the operational code indicates to both offenders and observers which legal norms may safely be violated because of non-enforcement. Hence, any visitor attempting to determine the nature or content of anti-corruption laws in a particular society may initially be misled by the "operational code" alone.

This was one of the reasons that compelled Hongkong to re-enact the Prevention of Bribery Ordinance in 1970. The new Ordinance in fact contained offences which had been part of the law of Hongkong for almost 30 years, but a restatement of the law was needed to emphasize the existence of anti-corruption laws in the Colony because corruption had for too long


37. Ibid., Chapter 1.
been "tolerated as a necessary evil, at its worst as a species of low delinquency".

Corruption appears to be more prevalent in many developing countries because cultural and social norms in those societies are visibly more tolerant of corruption as legally defined. It is in the toleration of the wrong and not in its approval or acceptance that many a corrupt society may well be distinguished from a non-corrupt one. The failure to distinguish between tolerated and accepted norms by many western writers on deviant behaviour in public office often drives them to erroneously conclude that there are substantial differences in the concept of probity between western and non-western societies. It is not surprising that in a corrupt society like Hongkong, for example, corruption is not perceived as a problem only by a section of the population that is older, less educated, more traditional and certainly


39. Corrupt behaviour, as perceived by an outsider, is thus "more open than in advanced nations where such behaviour is masked by legal subterfuge and the complexity of the deals": John Waterbury, op.cit., at p.534.
more exploited. Such people may have been compelled by their circumstances to accept corruption as a way of life. The same segment of the society became smaller when firm law enforcement gave it the opportunity to resist the so-called folk norms that support corrupt practices which essentially benefit public office holders.

(C) **Legal Definitions**

There are at least 80 countries in five continents which have passed laws to provide for the prosecution and punishment of various corrupt practices.

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40. Kugel and Cohen, *op.cit.*, have collected the anti-corruption laws of some 70 countries. In addition, reference has been made to similar laws in Sri Lanka, New Zealand, Sierra Leone, Tasmania, Uganda, Brunei, Swaziland and the Solomon Islands.
Many countries rely on the provisions of the general criminal law, such as a Penal Code, as in Argentina, Italy, Korea and Zambia; or a Criminal Code as in Romania, Brazil, Thailand and Tunisia; or a Crimes Act as in Australia and New Zealand to punish various acts and omissions that they perceive as corruption. Others have found it necessary to combat corruption with detailed and special legislation, in addition to or outside the general criminal law, such as the Prevention of Corruption Acts in Singapore and Malaysia, India and South Africa, or the Prevention of Bribery Act in Hongkong and Sri Lanka or the Anti-Graft and Corrupt Practices Act in the Philippines.

42. Ibid., Documents 5.12, 2.4, 3.16 and 1.11.
43. Ibid., Document 4.1
44. Act No.43 of 1961.
45. Kugel and Cohen, op.cit., Documents 3.11, 3.4 and 1.9.
46. Ibid., Document 3.3.
In most countries, a researcher may also have to examine other laws which punish specific forms of corruption, such as the Parliamentary Elections Act of Singapore which, inter alia, makes it an offence to give a bribe "in order to induce any elector or voter to vote or refrain from voting in Parliamentary Elections".

There may also be rules and regulations which regulate the conduct of office holders, the breaches of which may attract legal and administrative sanctions. For example, the former Republic of Ghana Constitution contained a "Code of Conduct" for public officers which prohibited a public officer from engaging or participating in the management of a private business, accepting gifts or benefits for the purpose of his official functions, or from simply directing to be done, without lawful excuse, "an act which is prejudicial to the rights of any person".


A similar Code of Conduct for Ministers which is largely based on the practice in the United Kingdom exists in Singapore.

In addition, there may be guidelines for public officers as to propriety of conduct particularly in situations where there may be a conflict of interest, such as the Canadian public servants' conflict of interest guidelines. The British National Code of Local Government Conduct provides similar guidelines for all councillors in the United Kingdom.

How has corruption then been legally defined? With the notable exception of the Republic of China, none of the countries whose statutes and regulations were examined have attempted to define corruption. Instead, they have chosen to declare what acts and

51. Cmd.2 of 1979, considered more fully in Chapter IV, post.

52. "Guidelines to be Observed by Public Servants Concerning Conflict of Interest Situations"; reproduced by Kugel and Cohen, op.cit., Document 2.5. For a detailed treatment, see Kenneth Gibbons and Donald Rowat (eds.), Political Corruption in Canada (McClelland and Stewart Ltd., 1976).

omissions of public servants and other office holders constitute corruption, corrupt transactions or corrupt practices for purposes of prosecution and punishment.

Article 2 of the Statute on Penalties for Corruption in the Republic of China sets out what is considered as corruption in China:

The seizure, theft or appropriation of state property by deception or substitution, the appropriation by extortion of the property of other persons, bribery and other illegal acts committed by workers in state institutions, enterprises, schools and agencies under the guise of taking care of the public interest.

Contrary to expectations, there were no significant differences in the concept of deviant behaviour by office holders in the statutes of the 80 countries that were examined. There were, however, differences in the specificity of the anti-corruption laws and in prescribed punishment. Punishment varied according to the status of the offender and the consequences of his corrupt acts.


55. Greece, West Germany, Columbia, Turkey and Israel, amongst others, have provided enhanced punishment for offenders who are judges, magistrates, prosecutors or arbitrators. Enhanced punishment
The totality of all relevant laws governing the conduct of office holders in many countries reveal a general agreement amongst legislators as to the two main types of deviant behaviour that may constitute corruption: bribery and misappropriation. This consensus as to the legal standards of office holders was all the more interesting as the countries represented diverse political and legal systems and were in different stages of development. It is clear, on the basis of these legal norms, that a consensus has emerged amongst most people of the world as to the acceptable standard of conduct and level of integrity of their political leaders and public servants.

Bribery appears to be the most universally condemned crime of corruption. The definition of

has also been provided by some countries if there has been loss or damage suffered as a result of the corrupt act of the public official. The Penal Code of Panama, for example, provides a longer prison term for a public servant who has been induced by a bribe to "make appointments of public employees, grant subsidies or sign contracts for his department". See Kugel and Cohan, op.cit.

56. Many countries also penalise various forms of abuse of authority by a public servant which range from simple harassment of citizens to unlawful detention.

57. The common law itself was concerned mostly with the prevention of bribery of persons involved in the administration of justice: 4 Blackstone's Commentaries 139; Halsbury's Laws of England, Vol.11, 4th edn., para 922.
bribery in the laws that were examined had very little variation in substance between countries. For example, in Ecuador, a public official is guilty of bribery if he "receives gifts or presents or accepts offers or promises for the performance of an act inherent to his duties". In Iran, a person accepts a bribe when he obtains "cash or property so as to perform an official mission, whether he does perform it or not and whether performance of such a mission was legitimate or not". And section 3 of the Australian Crimes Act defines a bribery as including:

the giving, conferring or procuring of any property or benefit of any kind in respect of any act done or to be done, or any forbearance observed or to be observed, or any favour or disfavour shown or to be shown ....

The statutes of all countries which were examined also prescribed punishment for the giver of a bribe.

There has been, however, legislative recognition of different types of bribery and,

accordingly, different forms of punishment. In the United States, many state legislatures have distinguished between commercial bribery, sports bribery and the bribery of public servants. Many countries have also drawn a distinction between the acceptance of a bribe as an inducement to do or to refrain from doing a public act from a bribe taken as a reward for the actual performance of the same act, and between bribes which are demanded and those which are received without any solicitation. Hence, the use of such terms as "advanced bribery" and "subsequent bribery" in the Penal Code of the Republic of Korea, "direct bribery" as opposed to "indirect bribery" in the Philippines Revised Penal Code, "active" and "passive" bribery in Yugodlavia and "first degree" and "second degree" bribery in New York.


63. Ibid., Document 3.13, Articles 210 and 211.

64. Kugel and Cohen, op.cit., Document 5.18: Criminal Code, Articles 325 and 326. Both types of bribery are further sub-classified as "true" and "quasi" bribery.

The legal concept of corruption that prevails in Singapore is illustrated by the main legal or formal norms that have been provided in the Prevention of Corruption Act and the Penal Code and by the principal regulations governing the discipline of public servants in Singapore. These are examined in detail in Chapters IV, VI, VII and VIII of this dissertation.

(D) Definition of Corruption to be used in this Dissertation

Having demonstrated the rationale for using a legal definition, it is now proposed to formulate a broad definition of corruption that will be used throughout this dissertation:

Corruption is conduct (other than "regulatory" bureaucratic misbehaviour such as unpunctuality, discourtesy and absence without leave) which violates or deviates from formal norms or legal rules and regulations relevant to the conduct of public and private office holders in Singapore, for considerations of private gain.


CHAPTER II

SINGAPORE

In order to better understand or evaluate the anti-corruption strategies adopted in a country, it is important to consider the environment in which these measures operate. This chapter therefore examines the physical, political and socio-economic characteristics of Singapore.

(A) Land and Location

The Republic of Singapore consists of the island of Singapore and some 57 islets within its territorial waters. Only about two dozens of these islets are inhabited and of economic importance. The main island is about 41.8 kilometres in length and 22.9 kilometres in breadth. Singapore's total land area, including the 57 islets and with some reclamation having been done, is now 620.5 square kilometres.

1. The information contained in this part was obtained from the following publications of the Ministry of Culture and the Ministry of Communications and Information, Singapore: Singapore Facts and Pictures 1986; Singapore Yearbook for the years 1980 to 1985; Singapore 1986.
Singapore is situated between latitudes 1°09'N and 1°29'N and longitudes 103°38'E and 104°06'E and lies approximately 136.8 kilometres north of the Equator, at the southern end of the Straits of Malacca. Her immediate neighbours are Peninsular Malaysia to the north, East Malaysia to the east and Indonesia to the south. Singapore is linked with Peninsular Malaysia by a 1.06 metre causeway.

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(B) History

Modern Singapore was founded in 1819 when Sir Stamford Raffles, in his search for a new British commercial centre in the East, set foot on the island. In return for the payment of an annuity of $3,000 to the Temenggong of Johore, one of two nominal owners of the island, the British secured the right to establish a trading post on the island. Its strategic location and well-sheltered natural harbour made Singapore an ideal base for protecting British commercial interests in the area.

In June 1823, by treaty, the East India Company gained complete control of trade in Singapore in return for increased pensions to the two nominal owners of the island. In 1824 the island was ceded to the company.

From its acquisition in 1819, Singapore had been established as a Residency controlled from Bencoolen. After 1824 she ceased to be a dependency of Bencoolen and a Singapore Resident was appointed to be directly responsible to the Governor-General and Council of the East India Company in India.

In 1826, Singapore and two other British settlements in Malaya (Penang and Malacca) were brought under a single administration and were called the Straits Settlements with Singapore being the centre of administration for the Settlements. The Straits Settlements remained under the control of the East India Company until 1867, when, following the Indian Mutiny, British power in India was transferred from the East India Company to the British Government.

The importance of Singapore as a port rapidly increased after the opening of the Suez Canal in 1869 which shortened the trade route between Europe and Asia. The port continued to grow to match the economic
activity of the expanding economies of South East Asia. At the turn of the 19th Century, Singapore was also firmly established as an important centre for the distribution of rubber and tin. With increased mercantile and colonial interests in the East, particularly after the British intervention in the neighbouring Malay states, Singapore became an important administrative and military base.

Despite its myth of impregnability, the Singapore fortress fell to an Asian power (Japan) in February 1942 and remained under Japanese rule until September 1945. The freedom restored after the Japanese Occupation was not only economical but also political. It was a different Singapore to which the British returned after the war. The old unquestioning faith in British protection had been weakened, if not shattered by the Japanese. Another ten years, however, were to pass before the emergence of leaders who were to challenge the British right to rule.

After a brief period under the British Military Administration, civil government was restored in Singapore. In 1946, Singapore became a separate Crown colony with all constitutional powers vested with the Governor. The Straits Settlements ceased to exist
and the remaining two Settlements of Penang and Malacca joined the Malayan Union.

The first step towards self-government was taken in 1948 when Singapore held its first election for six of the twenty-two seats in the Legislative Council. The seeds of parliamentary government were thus sown. However, it was only in 1955, following the recommendations of the Rendell Commission, that a 32-member Legislative Assembly with 25 elected members was established. The last colonial-type Legislative Assembly was dissolved on 5th February 1955 and Singapore's first ministers were sworn in on April 7, 1955.

The final steps towards self-government were taken in 1958. An all-party constitutional mission went to London and signed an agreement for self-government, but with defence and foreign affairs still in the hands of the British, on May 28, 1958.  


4. State of Singapore Act, 1958, Ch.59, 6 & 7 Eliz.2.
Constitution to be promulgated was passed by the United Kingdom Parliament in July 1958. In fresh elections held in 1959, the People's Action Party led by Mr Lee Kuan Yew won 43 of the 51 seats in the new Legislative Assembly, and Mr Lee became Prime Minister.

In 1961, Tunku Abdul Rahman, Prime Minister of the Federation of Malaya, proposed the creation of a new state of Malaysia to be made up of the Federation of Malay, Singapore, Brunei, North Borneo and Sarawak. In July 1963, the leaders of all the proposed states in the Federation of Malaysia, except Brunei, signed the Malaysia Agreement in London. Singapore's membership in the new Federation was, however, short lived. Differences between the Malaysian and the Singapore governments led to the expulsion of Singapore from the Federation in August 1965.

On 9th August 1965, Singapore became a sovereign, democratic and independent Republic. At a televised press conference that afternoon, Mr Lee Kuan Yew stressed that Singapore would be a multi-racial nation and would continue with the pursuit of its
non-communist, democratic socialist policies.

Singapore was admitted to the United Nations on 21st September 1965 and became a member of the Commonwealth of Nations in October 1965. With independence in 1965, Singapore therefore entered another phase of its eventful history, determined to survive "in Southeast Asia as a separate, distinct people".

(C) Population

The population of Singapore in June 1986 was estimated at 2.59 million. Singapore is one of the most densely populated countries in the world with a population density of 4,122 persons per square kilometre. The population is rather youthful with persons below 21 years of age forming 35.7 per cent.

Singapore is a heterogeneous society representing the main streams of the world's major civilisations. The ethnic composition of Singapore's population has, during the last fifteen years, remained substantially unchanged. In mid-1986, 76.3% of the


7. The population at the last census in 1980 was 2.4 million: Census of Population 1980, (Release No.2), Department of Statistics, Singapore.
population were Chinese, 15.0% Malays, 6.4% Indians, Pakistanis and Sri Lankans and 2.3% other ethnic groups.

Despite the racial and religious diversity, there is complete racial harmony and tolerance. This is largely due to the government's emphasis on equality accorded to all cultures and ethnic identities, which is guaranteed by the Singapore Constitution, and is best explained by a ministerial statement made when a Constitutional Commission was appointed in 1965:

One of the cornerstones of the policy of the Government is a multi-racial Singapore. We are a nation comprising peoples of various races who constitute her citizens, and our citizens are equal regardless of differences of race, language, culture and religion. Whilst a multi-racial secular society is an ideal espoused by many, it is a dire necessity for our survival in the midst of turmoil and the pressures of big power conflict in an area where new nationalisms are seeking to assert themselves in the place of the old European empires in Asia. In such a setting a nation based on one race, one language and one religion, when its peoples are multi-racial, is one doomed for destruction.


To ensure this bias in favour of multi-racialism and the equality of our citizens, whether they belong to majority or minority groups, a Constitutional Commission is being appointed to help formulate these constitutional safeguards ....

Following the recommendations of the Commission, a Presidential Council for Minority Rights was established in January 1970. The function of the Council is to examine Bills and subsidiary legislation and to draw the attention of Parliament to any legislation which is "disadvantageous to persons of any racial or religious community". Although the 21-member Council performs only an advisory role, with the exception of three categories, all Bills are required to be submitted for its report


13. Money Bills, Urgent Bills and Bills certified by the Prime Minister as affecting the defence or the security of Singapore or which relate to public safety, peace or good order: Article 78(7), Constitution of Singapore.
before they can be presented to Parliament.

Multi-racialism will no doubt continue to be a positive feature of Singapore society as school children receive an "ethnically integrated English-medium education".

(D) The Economy

Singapore, like most small countries, lacks natural resources but she has capitalised on her unique

14. Articles 78 and 80, Constitution of Singapore. No Bill considered by the Council to be discriminatory may be presented to the President for his assent, unless a motion for presentation of the Bill for the Presidential Assent has been passed by the vote of at least two-thirds of the total membership of Parliament. If an adverse report is made by the Council against a subsidiary legislation, the Minister concerned must revoke or amend the offending provision or obtain Parliamentary approval to retain the provision.


geographical position on the world's pathway of trade, a magnificent deep-water harbour and a disciplined labour force, and today has one of the most prosperous economies in Asia. Singapore's economic performance earned her the tribute from the Financial Times in 1970 of being "the Republic which boasts Southeast Asia's highest living standards and most dynamic economy which by comparison with its neighbours has grown almost too successful". In 1980 the Harvard Business School chose Singapore as the model of economic success in the Third World.

The most obvious results of Singapore's rapid growth in the last two decades have been the continuous rise in the standard of living, enhanced by a steady decline in population growth, and her increasing socio-economic reputation in the Asia region.

2. *Financial Times*, November 17th, 1970. Other indicators of a high standard of living in 1986 were: 5 persons per TV set; 2 persons per telephone; 299 persons per public bus; 930 persons per doctor; 302 persons per nurse. *Singapore 1987, Ministry of Communications and Information*, P.11.

Twenty-two years after independence was thrust upon her in 1965, Singapore enjoys a per capita income which is the highest in Asia after Japan.

The Republic is today the second busiest port in the world, the world's third largest oil refiner, home of the Asian dollar market, manufacturing base of a number of multi-national corporations and a vital communications, banking and commercial centre.

When Singapore became a self-governing state in 1959, the new political leadership considered that rapid industrialisation was the best means of providing employment and of opening up new avenues for economic growth. The government swiftly achieved its task of creating a system of incentives to attract foreign and domestic capital into a wide range of manufacturing activities, of developing an infrastructure capable of supporting industrial expansion and of training the labour force in all the trades of a modern industrial society.

Singapore continues to pursue the three aims of her economic policy: diversification of economic activities, upgrading of the skills employed in industries and the development of a wide spectrum of relevant economic skills and services. Achieving these aims has become urgent because of the world climate of protectionism, a depressing international economic environment in recent years, fluctuations in international foreign exchange markets, increasing competition from developing countries with larger pools of cheap labour and decline in prospects of international investment.

The Singapore economy is today largely based on manufacturing, trade, construction, tourism, banking and insurance, communications and other services.

Singapore's long-term economic future, in the 1990s, has been said to be in the development of "brain services" or service-oriented activities on top of an industrial base. She has recognised a clear need to develop industries in which she has distinct advantages and which would be less sensitive to international

competition. The next phase of Singapore's economic development, after the Republic has moved up from high-skilled, medium technology industries, would be centred on knowledge-intensive industries and she has made a start with the computer software industry.

An important determinate of Singapore's economic growth since independence has obviously been the quality of government the Republic has. As two Singapore economists have observed, "the whole apple cart would be upset if Singapore were not to have a stable, efficient and non-corrupt government".  

The Singapore economy is perhaps the best example of an economic system being the product of the interplay of economic and political factors. The Singapore situation has displayed almost a casual relationship between political stability and economic progress, and political stability is as much the result of the ruling People's Action Party's performance in the economic arena as it is in the dominance of the party in the state and over the trade union movement.

(E) **Government and Politics**

(1) **The Legislature**

The Legislature consists of the President of the Republic, who is the Head of State, and Parliament. The President is elected by Parliament for a term of one year.

The power of the legislature to make laws is exercised by Bills passed by Parliament and assented to by the President. However, other than three categories of Bills, no Bill may be presented for the Presidential assent unless the Presidential Council for Minority Rights has declared that the Bill does not contain any provision that would be "disadvantageous to persons of any racial or religious community".


2. Money Bills, Urgent Bills and Bills certified by the Prime Minister as affecting the defence or the security of Singapore or which relate to public safety, peace or good order: Article 78(7) Constitution of the Republic of Singapore.

3. Articles 68 and 74 of the Constitution. See also the note on "Population", ante, for more details of the functions of the Council.
Parliament

Parliament is unicameral and has 79 elected members. It has a life of five years although it may be dissolved earlier. The present Parliament, which is the sixth since Singapore became an independent nation in August 1965, was constituted by general elections held in 1984. The conduct of Parliamentary business is governed by Standing Orders adapted from those of the House of Commons at Westminster.

To qualify for election as a member of Parliament, a person must be, inter alia, a Singapore citizen, at least 21 years old, be proficient in one of the four official languages of English, Malay, Chinese and Tamil, not have been convicted of any offence and sentenced to imprisonment for a term of more than twelve months or to a fine of more than $2,000 by a Court in Singapore or Malaysia.

Voting is compulsory for every citizen who has attained the age of 21.


5. Qualifications and disqualifications for membership of Parliament are laid down in Articles 44(2) and 45(1) of the Constitution of Singapore.
The Executive

The Constitution requires the President to appoint as Prime Minister a member of Parliament who in his judgement "is likely to command the confidence of the majority of the members of Parliament". Mr Lee Kuan Yew has been Prime Minister since 1959, when his People's Action Party gained a landslide victory in the general elections.

On the advice of the Prime Minister, the President also appoints ministers, from among Members of Parliament, to form a Cabinet. The Cabinet is collectively responsible to Parliament and comprises the Prime Minister, two Deputy Prime Ministers and, presently, fourteen Ministers holding the portfolios of communications and information, culture, defence, education, environment, finance, foreign affairs, health, home affairs, labour, law, national development, community development and trade and industry. The Prime Minister's Office controls the Elections Department and, quite significantly, the Corrupt Practices Investigation Bureau.

The People's Action Party

The ruling People's Action Party was formed in November 1954. The party took part in its first elections the following year and won three out of four seats it contested for the Legislative Assembly. It was in the first City Council elections of 1957, held following the enactment of local government legislation, that the People's Action Party was to gauge the nature of its strength and degree of popular support for the Party from the electorate.

The PAP campaigned vigorously. It pledged to fight corruption and to re-organize the Council to serve the people. Its election manifesto declared, inter alia:

We do not claim that we can clean up the maladministration and corruption of years overnight but we will set about the job earnestly and vigorously. We will see to it that the City Council and the Councillors serve the people and all City Council employees are fairly treated, and that honesty and efficiency are duly rewarded.


The result was that the PAP won 13 of the 14 seats it contested, whilst the Liberal Socialist Party, which had dominated the old City Council, managed to retain only 6 seats.

The brief period of PAP administration in the City Council was quite traumatic in many ways. The PAP was then a radical party bent on obtaining support from the masses and PAP Mayor Ong Eng Guan converted the Council to what he proudly described as "the most controversial Municipal Council in the world". He delighted in ridiculing English-educated civil servants and compelled them to "volunteer" to sweep the streets and clean the beaches. Indeed the symbol of a big broom, used ostensibly to sweep away all injustices and abuses of power, featured prominently in PAP posters. Mayor Ong also established a complaints bureau in his office and personally listened to grievances of those

9. For excellent accounts of the activities of the PAP Mayor, see for e.g. W. Hanna, "Fireworks in City Hall: The Record of Singapore, City Council", American Universities Field Staff Report (Southeast Asia Series) Vo.7 No.6; Seah Chee Meow, "Bureaucratic Development and Deviant Behaviour in the Singapore contest" (unpublished paper), Department of Political Science, National University of Singapore;


11. Seah Chee Meow, op.cit., p.27.
who protested against corruption and abuse of power by bureaucrats.

In 1959, the PAP decided to make a bid to take over the reins of government in general elections scheduled for May 1959 to implement the new constitution. The Party represented itself as one "founded on principle, not opportunism" and promised the electorate "an honest and efficient government" as an alternative to the then governing Labour Front which was commonly regarded as both "divided and corrupt". The PAP projected itself as an enemy of the corrupt and its candidates dressed themselves in white to symbolize incorruptibility.

At its first pre-election mass rally in 1959, PAP Chairman, Dr Toh Chin Chye, charged the ruling Labour Front with having received political funds from the United States which the then Education Minister Chew Swee Kee had converted to his own use. PAP


Secretary-General, Mr Lee Kuan Yew, successfully demanded that a Commission of Inquiry be set up to inquire into these allegations.

Disclosures at the hearings of the Commission of Inquiry, held immediately prior to the May 1959 elections, as much as the rumours and allegations concerning these, lent an "unsavoury air which discredited the existing regime". The PAP made political capital out of these investigations which proved to be disastrous for the then ruling Labour Front. The PAP fielded candidates in all 51 constituencies in the 1959 general elections and won 43 of the seats and the right to govern Singapore. It has remained in power ever since.

The year 1987 is the twenty-eighth year of the People's Action Party's rule in the Republic of Singapore. The social, economic and political


structure of Singapore in the last twenty-eight years has undergone a remarkable change. Singapore today bears little resemblance to the Singapore of 1959 when the PAP first came into power, and is indeed envied for many of her achievements. Singaporeans have access to a comprehensive network of social services and, according to one study, are by far the "best paid, the best housed, best clothed, best fed and best schooled in South East Asia". Material well-being has been matched by "political and social stability of a degree which some visitors find almost boring".

If Singapore has been praised for her many achievements, she has been criticised for her preventive detention laws, for curbing the freedom


of the press, political repression and for the political style of some of her leaders. Opposition parties in Singapore have variously accused the government of arrogance, "of establishing a state where creative thinking is stifled, of playing on past successes to justify totalitarian actions and of having perpetuated a semi-military dictatorship."

The PAP has also disciplined trade unions which have historically been the group best organised for political agitation. The government controls trade unions through the National Trade Union Congress (NTUC). In recent years the Secretary-General of the NTUC has been a Cabinet Minister thus helping to preserve the "well-established symbiotic relationship between the political and union leaderships".


Until October 1981, the ruling PAP had won not only every election and by-election, but also every seat in Parliament since 1968. Opposition parties had been unsuccessful in persuading voters that an opposition in Parliament, particularly to a PAP government, was desirable in a democratic state. On 31st October 1981, at his sixth attempt, lawyer J.B. Jeyaretnam of the Workers' Party became the first politician to defeat a PAP candidate in an election in fifteen years.

The PAP realised that young, educated voters, eager to see an Opposition to check the Government in Parliament, might well have tipped the scales at the Anson by-election in 1981. Party leaders feared that if the trend caught on, the PAP may find itself ousted from power in the 1990s when all the experienced, older leaders finally retire. Therefore, in the months that followed the PAP defeat at Anson, PAP Members of Parliament made every effort to denigrate and discredit both Jeyaretnam and his belief that an opposition in Parliament was desirable for a democratic regime.

In the following year the PAP changed course with the Prime Minister declaring that "it was not a bad thing for the PAP that Jeyaretnam was elected", as opposition members were needed as sparring partners to keep younger Members of Parliament fit and agile.

In 1984 the Government introduced an amendment to the Constitution to ensure that there would be at least three Opposition members in Parliament, occupying "non-constituency" seats, even if the PAP won all seats. It was an obvious attempt to appease younger voters eager to see some Opposition members in Parliament. It did not have the desired effect. In the general elections held at the end of 1984 the PAP


25. Where Opposition candidates fail to win at least three seats, non-constituency Members will be declared elected on the basis of the highest percentage votes polled to ensure the presence of 3 members in Parliament from Opposition Political parties.
lost two seats and was almost defeated in another two constituencies. Opposition candidates refused to occupy the remaining non-constituency seat in Parliament.

Apart from ensuring the continuity of quality political leadership and of multi-racial harmony in the state, both the PAP and the Government are presently pre-occupied with economic and social reforms, including restructuring the economy to emphasize on highly-skilled, capital-intensive and knowledge-intensive industries and creating a national Singaporean identity.

A lone Opposition member in Parliament has not altered Singapore's political system. After 28 years of continuous PAP rule, Singapore remains "an undisputable dominant one-party system" with the PAP

26. One of the successful candidates, Mr J.B.Jeyaretnam, lost his seat in November 1986 when the High Court dismissed his appeal against conviction for making a false declaration on his party's accounts.

holding absolute power and with there being little signs of any lessening of the PAP pre-eminence. In contrast, there is at present no other political party with sufficient credit, either in terms of funds, membership, leadership or stature, even to contest all 79 seats in Parliament, let alone to form a government. The existing 19 political parties continue to give the impression of running "demoralised, part-time operations, lacking members and funds". The high success of the People's Action Party as a government is also thought to have contributed to the eclipse of a political opposition. The PAP's stress on efficiency and integrity in government has removed from political contention what are usually the most promising issues for an aspiring Opposition.

28. The Times, op.cit.

(F) **The Administration of Justice**

(1) **The Foundation of Singapore's Legal System**

Letters Patent, commonly referred to as the Second Charter of Justice, issued by the British Crown in 1826, appear to provide the foundation of the legal system of Singapore. The provision in the Charter which required the Court of Judicature in exercising its jurisdiction, "to give and pass Judgment and Sentence according to Justice and Right" has been interpreted to mean that the Second Charter of Justice introduced into Singapore, English law as it existed on November 27th, 1826, the date on which the Charter was granted.

Two important qualifications to the reception of English law were recognised from the beginning. First, only those parts of English law existing on that date which were "suitable" to local conditions and the

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inhabitants were regarded as applicable to Singapore. Secondly, it was accepted that it would be impossible to apply English law to the entire population indiscriminately without recourse to the personal laws of the various communities. When Singapore attained self-government, she began to restrict the application of personal laws even in such areas as marriage, divorce and distribution of property where traditionally Asiatic customary laws had been applied. As a result, only Muslim law continues to be significant as a system of personal law in such matters in Singapore.

With these limitations, English law as on 27th November 1826, including the common law, equity and statute law, became part of the law of Singapore. The laws of contract and tort in Singapore are still basically English law. Singapore acquired the law of


5. See for e.g. the Woman's Charter, Cap.353; Inheritance (Family Provisions) Act, Cap.138; Intestate Succession Act, Cap.146.
real property along with the rest of the English law in 1826, and, subject to some legislative changes, this remains the law. Criminal law was originally English law but in 1870, legislation modelled on the Indian Penal Code was introduced in the Straits Settlements of which Singapore was part. In the same year a Criminal Procedure Code, based on the English system of procedure, was passed to regulate criminal procedure in the Straits Settlements. The present Code, however, was taken almost entirely from the Indian Procedure Code of 1882.

In addition to the English law introduced by the Second Charter of Justice there are several areas in which English law is also applied by the Singapore courts.

First, a number of Acts passed by the English Parliament and which were originally applied in the colonies because of the imperial legislative jurisdiction of the English Parliament still continue to apply. Secondly, there are a number of specific provisions in Singapore statutes which require the Courts to apply rules of English law where there are no local statutory guidelines. The most significant of
these are section 5 of the Civil Law Act and section 7 of the Criminal Procedure Code. These compel the continuing reception of English law. Such provisions in the law may be regarded as examples of "legislation by reference" and constitute an important source of the legal legacy of the Singapore system.

Thirdly, a number of Singapore statutes have been modelled on English Acts of Parliament. In some Singapore statutes, English statutes have been copied word for word. In others, including the Prevention of Corruption Act, particular sections from an English statute have been incorporated.

Fourthly, the retention of appeals to the Privy Council from Singapore ensures the importation of English common law principles adopted by the Judicial

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7. Cap.68.


9. For e.g. the Bills of Exchange Act, Cap.23; the Carriage of Goods by Sea Act, Cap.33.

Committee. English decisions are not binding upon Singapore courts but the courts have said that they are always prepared to treat such authorities with "deference" and will follow them provided that the English cases deal with the same problem as that which the Singapore courts are called upon to solve.

The Singapore legal system, therefore, not only functions on substantive rules of English law and equity but, because of the training received by those in the administration of justice and in government, continues to adopt English rules of law and procedure.

Although there have been consolidation and codification of law and procedure with frequent political and consitutional changes in Singapore, the foundations of the legal system have remained unchanged. Singapore law has had an insufficient period of independent development to become homogenous and perhaps the task for the future is to modify the legal legacy so that there will emerge a legal system which


truly reflects the society which it governs.

(2) The Judiciary

Judicial power in Singapore is exercised by the Judicial Committee of the Privy Council, the Supreme Court and by the Subordinate Courts. The Chief Justice and the judges of the Supreme Court are appointed by the President on the advice of the Prime Minister. Before tendering his advice to the President as to the appointment of a judge, the Prime Minister is required, under Article 95(2) of the Constitution, to consult the Chief Justice.

The judiciary administers the law independently of the executive. In common with most countries in the Commonwealth, constitutional safeguards ensure judicial independence and the inviolability of judges in the exercise of their duties.

Judicial independence of Supreme Court judges has been constitutionally secured by various methods: the legal qualifications prescribed for their

appointment, security of tenure and remuneration, restrictions in Parliament on the discussion of judicial conduct and judicial immunity for acts done in the exercise of judicial authority.

(a) The Privy Council

When Singapore achieved independence in 1966, jurisdiction to hear and determine appeals from Singapore Appellate Courts was conferred on the Judicial Committee of the Privy Council by an Order passed by Her Majesty in Council, and by the Judicial Committee Act passed by the Singapore Parliament. The Privy Council is thus the ultimate appellate Court of Singapore and has the jurisdiction to reverse decisions of both the Singapore Court of Criminal Appeal and the Court of Civil Appeal.


18. See sections 3 and 7, Judicial Committee Act, Cap.148; sections 241 and 242 of the Criminal Procedure Code, Cap.68.
Singapore is one of the few countries which have retained appeals to the Privy Council after independence. She is likely to continue to do so in the foreseeable future as the existence of the right to appeal to the Privy Council in London, from decisions of Singapore courts, has been constantly emphasized by her political leaders to provide a "litmus test" of the independence of Singapore's judiciary.

(b) **The Supreme Court**

The Supreme Court consists of the High Court, which exercises both original and appellate criminal and civil jurisdiction, the Court of Appeal which exercises only appellate civil jurisdiction and the Court of Criminal Appeal which exercises appellate criminal jurisdiction.

(i) **The High Court**

The High Court has jurisdiction to try all offences committed within Singapore, on the high seas on board any Singapore registered ship or aircraft, by any Singapore citizen on the high seas or any aircraft, and any offence of piracy or hijacking of aircraft.

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20. Section 7, Supreme Court of Judicature Act, Cap.322
committed by any person.

The High Court has unlimited civil jurisdiction save that it may not try any civil matter coming under the jurisdiction of the Shariah Court (a Muslim religious court) constituted under the Administration of Muslim Law Act. It will not, of course, ordinarily try any action in contract or tort or for the recovery of monies below $50,000 as such proceedings may be bought in the lower courts.

The High Court's appellate civil jurisdiction consists of hearing of appeals from District and Magistrate courts and from other tribunals.

(ii) The Court of Appeal

Three Judges sit in the Court of Appeal to hear and determine appeals from decision of the High Court in the exercise of its civil original jurisdiction or its appellate jurisdiction. However, no appeal may be brought to the Court of Appeal against an interlocutory order or where the judgment in the court below has been given by consent of the parties, or relates to costs only, or where the amount or value of the subject

21. Section 15(1), Supreme Court of Judicature Act. Cap.322
matter of the trial was less than $2,000, unless leave of the Court of Appeal or of a Judge has been obtained.

(iii) **The Court of Criminal Appeal**

The Court of Criminal Appeal has jurisdiction to hear and determine appeals against decisions made by the High Court in the exercise of its original criminal jurisdiction. There appears to be no right of appeal to the Court of Criminal Appeal from a decision of a High Court in the exercise of its appellate criminal jurisdiction. However, the Court of Criminal Appeal may hear any question of law of public interest which has arisen in the course of a trial or an appeal before the High Court, the determination of which has affected the event of the trial or appeal.

In 1973, the Supreme Court of Judicature Act was amended to allow the Public Prosecutor to appeal against an order of acquittal made in the High Court and against a sentence imposed by a High Court Judge.

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23. Sections 29 and 34, Supreme Court of Judicature Act, Cap.322.

24. Section 44(1), Supreme Court of Judicature Act, Cap.322

25. Section 264(a), Criminal Procedure Code, Cap. 68 (1980 Reprint); sections 59(1) and 60(1), Supreme Court of Judicature Act, Cap. 322

The notice of appeal, however, must be signed by the Public Prosecutor himself.

(C) The Subordinate Courts

(i) District Courts

District Courts are presided over by District Judges who are appointed by the President on the recommendation of the Chief Justice. No person may be so appointed unless he has been, for not less than five years, a legally qualified person.

District Courts do not have any appellate jurisdiction but exercise both original civil and criminal jurisdiction. As provided by sections 20 and 21 of the Subordinate Courts Act, a District Court may hear any action founded on contract or in tort or for the recovery of money where the debt, demand or damage claimed does not exceed $50,000. It also has jurisdiction to determine actions for the recovery of immovable property where the annual value of the property does not exceed $50,000 or the rent payable

27. Section 9, Subordinate Courts At, Cap.321.
for the same property does not exceed $4000 per month. District Courts have also limited jurisdiction to grant probates and letters of administration and may try all actions arising out of the administration of such estates.

In respect of its criminal jurisdiction, a District Court may try all offences for which the maximum term of imprisonment does not exceed ten years or which are punishable with a fine only. It may, however, try any offence other than one punishable with death if the Public Prosecutor applies to the Court to try the offence and the accused consents to be so tried in the District Court.

A District Court may not impose a term of imprisonment exceeding seven years unless the offender has previous convictions or antecedents. This limitation, of court, does not apply if an Act has expressly enlarged the jurisdiction of a District Court. As offences of corruption under the Prevention of Corruption Act are punishable with imprisonment for five years, such cases are heard in the District Courts.

30. Section 7, Criminal Procedure Code, Cap. 68.
31. Section 11(3), Criminal Procedure Code, Cap. 68.
(ii) **Magistrates' Courts**

Magistrates are appointed by the President from amongst "fit and proper persons" on the recommendation of the Chief Justice. No person may be appointed a Magistrate unless he has been, for not less than one year, a legally qualified person.

Magistrates have the same civil jurisdiction as District Judges, except that they may only hear disputes where the amount claimed or the value of the subject matter in dispute does not exceed $10,000.

A magistrate may hear and determine prosecutions for offences for which the maximum term of imprisonment does not exceed three years or which are punishable with fines only. In an offence triable only by a District Court the Public Prosecutor may, nevertheless, authorise a Magistrate to try such an offence. Upon conviction, a Magistrate may only impose imprisonment for a term not exceeding two years, unless the convicted person has previous convictions or antecedents in which event the Magistrate may award the full punishment authorised by law for that offence.

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32. Section 52, Subordinate Courts Act, Cap. 321.

33. Section 8, 10 and 11(5), Criminal Procedure Code, Cap. 68.
CHAPTER III

FACTORS CONTRIBUTING TO THE EFFECTIVE CONTROL OF CORRUPTION

1. Most of the conditions that encourage corruption in many newly independent countries, have been largely controlled in Singapore. What factors in the Singapore environment favour such controls? Which of these are inherent in Singapore's environment and which have been created in order to restrain the main forms of bureaucratic misbehaviour?

The Singapore economy has been discussed in the previous chapter. Economic success has made possible the payment of good wages (to help reduce corruption) and the availability of resources for a sustained war against corruption. Also, the dominance of one political party for 28 years, has helped to support a concerted and continued anti-corruption strategy.


2. For a fuller discussion see Part (E) of Chapter II on "Government and Politics", ante.
The nature of Singapore's political authority, with the consequent development of its political institutions since the PAP assumed power in 1959, has been identified as a strength of the Singapore system. The acceptance of a new political or administrative order rests on what political scientists would call the material "outputs" of that order. In terms of material accomplishments and in the creation of a better life for its citizens, the PAP government has achieved outstanding success. At the same time, it has also relied on legal sanctions to introduce and enforce values and attitudes to which both the bureaucracy and the population were not previously committed. As Max Webster has argued, "the more legitimacy an administrative or political order is accorded, the greater the social pressure against acts that violate norms".

This chapter focuses on seven factors that have positively contributed to effective corruption control in Singapore. The quality of political leadership, which has set high standards of government morality, is perhaps the most important of these factors and is...


therefore discussed in greater detail. The others are the size of the country, literacy of population, bureaucratic efficiency, adequate anti-corruption laws and their effective enforcement, administrative checks and measures and the wage policy for public servants. Some of these factors will be examined more fully in subsequent chapters.

(A) THE SIZE OF THE COUNTRY

The impact of Singapore's physical size on its system of problem-solving is of some significance. Being a small city-state no larger than 620.5 square kilometres in area, Singapore's compact geography has made social controls more possible. According to one social scientist, the small size of the nation "facilitates the effective utilisation of several mechanisms of consensus building and the dissemination of social discipline". 5

known. For example, Opposition Member Chiam See Tong complained in Parliament, in January 1987, that before the House was informed that a Singapore government minister was under investigations for corrupt practices, "the news had been circulating two, three, four times around Singapore". Especially in an urban society like Singapore, with a population density of 4,122 persons per square kilometre, news of corrupt practices spreads very fast. In a defamation suit that he successfully brought against Opposition Member J B Jeyaretnam, who had alleged during an election rally in 1976 that Lee Kuan Yew was guilty of nepotism, the Prime Minister told the High Court:

In an urban situation like Singapore it is hazardous, to say the least, to tolerate misbehaviour or corruption. I have noticed, particularly in newly independent countries, that parties in Government tend to lose elections in their capital cities whilst holding their ground in the rural areas. I believe this is because in the city, the capital itself, people become very familiar by word of mouth of what ministers are doing. In Singapore the capital city is our total electorate, there is no countryside and if we lost our standing and respect that is the end of the matter. It is a fact of life which I have not allowed myself or colleagues to forget.


It is for this reason that the Singapore government has been anxious to refute any false allegation of corruption among government leaders by instituting appropriate criminal or civil proceedings.

(B) LITERACY OF POPULATION

According to the 1957 census of population, 52.3% of the population above the age of 10 years was literate in at least one language. Vigorous changes in the education policy and greater educational facilities including a programme of adult education, introduced by the PAP government, have greatly increased the literacy rate. The literacy rate increased to 72.2% by 1970 and to 84.0% by 1980. The general literacy rate in 1986 was 86.4%.

The consequences of higher level of education have been obvious. Citizens' awareness of their rights

8. Singapore (1987), Ministry of Communications and Information, p.11.
institutionalised complaints procedures against bureaucratic misconduct. It is hoped that increasing literacy rates in Singapore will affect both the willingness of citizens to give bribes and of officials to receive them.

(C) BUREAUCRATIC EFFICIENCY

Since assuming office in May 1959, the PAP has given priority to establishing a public bureaucracy that is dedicated to both honesty and efficiency.

Corruption in the 1950s was rampant within the public services. In 1950, the Commissioner of Police lamented that "graft is rife in government departments". Nine years later, the Chief Secretary admitted in the Legislative Council that corruption was "gnawing at the vitals not only of government but of the public".

10. Proceedings of the Legislative Council, second session (1952), Col.B 68. For a more detailed examination of corruption in the 1950s, see Chapter X (B), post.
Prior to self-government in 1959, bureaucratic dominance had a significant impact on the level of corruption in Singapore as elsewhere in the colonies. As Scott has pointed out, Colonial regimes often created a large, educated, elitist administrative service that wielded considerable power in society. Often unchecked by a strong political party or other potential competitors, this administrative organ was left "virtually uncontrolled, responsible only to itself and thus free to pursue a policy of self-aggrandisement". Such bureaucratic dominance made corruption easier because of the exalted status of individual bureaucrats. This was due to considerable differences in the status, level of education and available information between colonial civil servants and the citizens they were engaged to serve.

This significant gap between the civil servants and the citizens had a number of consequences for corruption. Firstly, civil servants could delay services deliberately or by resorting to labyrinthine

11. This discussion on the impact of bureaucratic dominance or bureaucratic corruption draws heavily on Scott, op.cit., pp.14-15.

12. Ibid., p.15.
forms and procedures or by applying a multitude of rules and regulations. Administrative delays were often deliberately contrived by civil servants in order to obtain some form of illegal gratification. Secondly, civil servants could make arbitrary decisions and thus extort illegal payments and other favours from citizens. Thirdly, helpless citizens were encouraged to offer bribes to civil servants in the hope of "transforming a distant bureaucrat into a friendly patron and thus winning a favourable decision".

Not unaware of the level of corruption in the civil service and in government before it assumed office, the PAP was determined to eradicate both corruption and bureaucratic inefficiency upon which corruption thrived. As Prime Minister Lee Kuan Yew stated many years later:

13. The Santhanam Committee, which inquired into corruption in India, found that administrative delays was one of the major causes of corruption in Indian civil service: Report of the Committee on the Prevention of Corruption in India (New Delhi: 1964), p.44.


15. For further details see Chapter II (E), ante, and the introduction to Chapters IV, VI, VII and VIII, post.

We saw the beginning of corruption in Singapore from 1955 to 1959. Corruption, favouritism distorts the whole process of government; decisions were made not on the merits of the case but on favours expected or rendered. Worse, it seeps right down all echelons of government for it is never possible to conceal corruption ... People don't see why they should be honest when they see the country going down the drain and the system breaks down; ... I had then to set austere, firm standards of absolute impartiality and integrity.

Self-government and the PAP's landslide victory in the 1959 General Elections provided the opportunity for extensive changes in the Singapore civil service. These included both structural and "attitudinal" reforms. As the new government felt that civil servants had hitherto not been responsive to the needs of the public and had a "colonial mentality", various remedial measures were adopted by the government. These are largely responsible for the high standard of efficiency and integrity that the Singapore public service is distinguished for today.


The large bureaucracy that had existed during the colonial era, with its rigid procedures and rules, was reduced by the creation of statutory bodies like the Public Utilities Board, the Economic Development Board and the Housing & Development Board. A Committee, with some senior ministers as members, was also set up to examine ways of improving the efficiency of the bureaucracy by the adoption of more efficient work methods. This resulted in the drawing up of a new set of Instruction Manuals to govern the official conduct of all public servants. In May 1959, the Organisation and Methods Branch within the Ministry of Finance was established to advise government ministries on ways to promote administrative efficiency. The responsibilities of the Branch included a general review of all government machinery and departmental organisations, detailed studies of specific systems or organisation and methods work, and a review of the design and use of all printed forms in the civil service.

19. For an analysis of the Instruction Manuals see Chapter IV, post.

At the same time, the Political Study Centre was established principally for educating senior public servants on the new political and cultural values that were relevant to an independent Singapore. In opening the Centre on 15th August 1959, the Prime Minister told senior bureaucrats:

You and I have a vested interest in the survival of the democratic state. It is in our interest to show that under the system of "one man one vote", there can be an honest and efficient government which works in the interest of the people. If we do not do our best, then we have only ourselves to blame when the people lose faith ... in the democratic system of which you and I are working partners.

In July 1962, a Central Complaints Bureau came into being in order to take swift and effective steps to eradicate discourtesy, venality, delay in the granting of public services and petty bureaucracy, and to keep the public informed of the functions of various government departments. A policy of selective retention and retirement of senior civil servants considered inefficient was introduced, together with

21. Text of a Speech by the Prime Minister at the Official Opening of the Civil Service Study Centre (mimeograph, quoted by Seah, "The Singapore ...", op.cit., p.55.

tougher disciplinary measures against public officers. These measures made clear the PAP government's intolerance of dishonesty, incompetence, delays and failures in making government services readily available to the public.

Public servants were also obliged to keep the public informed of government policies, the extent of the services provided and the constraints under which they work. The Instruction Manuals were amended to require government departments to reply to all letters of complaints in the press "promptly and fully". The Prime Minister has often insisted that the public should be informed politely of the reasons when something that is requested for cannot be done. This is to make clear that when a citizen is unable to obtain a service it is because what is required is against government policy and not because he has not "greased the right palms":

If there is a good reason why it is "No", it

23. See Chapter VI, post.
24. See Instruction Manual No.4, paragraphs J1 to J22.
25. Ibid., paragraph J40.
must remain "No"; but the man must be told politely ... But if you treat him rough and no explanation is given ... The chap goes around saying, "What a wicked stupid government". His friends in the coffee shop, all join in, and say, "Yes, I heard that if you give the clerk $500 he will forget it." And by the time the story is repeated in the seventh shop, it has become $5,000. And you've had it, and I've had it.

Administrative efficiency in the public bureaucracy in Singapore has therefore largely removed the need for citizens to resort to the payment of bribes in order to obtain services.

(D) ANTI-CORRUPTION LAWS

Singapore has not been content to merely having adequate laws against corruption remain in the books. The anti-corruption laws of the Republic are constantly reviewed in the light of judicial experience, and vigorously enforced by a special law enforcement agency called the Corrupt Practices Investigation Bureau.

27. For a detailed examination of the anti-corruption laws and the CPIB see Chapters VII, VIII and X, post.
(E) **ADMINISTRATIVE CHECKS AND MEASURES**

These consist of conduct rules and regulations relevant to official conduct and exist in all branches of the public service. Breaches of these rules may result in disciplinary action being instituted by the Public Service Commission. The conduct rules, together with the Auditor-General's supervision, the Public Accounts Committee's vigilance and other parliamentary safeguards, help to deter corrupt practices in the public service by increasing both the accountability of public servants and the risk of discovery of their corrupt behaviour.

(F) **WAGE POLICY FOR PUBLIC SERVANTS**

The government's policy of paying good wages for its employees, made possible by a buoyant economy in the last 25 years, has removed one of the main causes of corruption in the public service and helped considerably in the government's anti-corruption effort. A former Director of the CPIB has identified poor wages as a cause of bureaucratic corruption in Singapore in the 1950s, it being "axiomatic that

28. See Chapters IV to VI, *post*. 
under-paid civil servants succumb easily to bribery".
Conversely, as government leaders have argued, as
public servants are expected to be honest they must be
well paid. Thus, in a statement to Parliament in 1970,
on increases in Ministers' salaries and Members'
allowances, Prime Minister Lee Kuan Yew explained:

If Ministers in Singapore are not expected to
be scrupulously honest, then that is quite a
different matter. For then their Ministerial
salaries can be token payments for purposes of
income tax returns, whilst fortunes are
accumulated in kick-backs and rake-off, for
licences, contracts, and a hundred and one
acts of the exercise of Ministerial discretion.

The Prime Minister has often expressed the view
that it would not be possible to have men of
"ability and integrity" as political leaders unless the
nation was prepared to pay them wages at least

29. Yoong Siew Wah, "Some Aspects of Corruption",
National Youth Leadership Training Institute
Journal (1972) 54 at p.55. For similar reasons to
explain corruption in the Singapore Police Force
and the Singapore Improvement Trust (Housing
Board) see Jon S.T. Quah, "Police Corruption in
Singapore: An Analysis of its Forms and Causes",
Singapore Police Journal (1979); Administrative
Reform and Development Administration in Singapore
(unpublished Ph.D. dissertation, Florida State
University, 1975) pp.275-295.

30. Singapore Parliamentary Debates (1970), vol.30,
col.8.
"comparable with the public sector". In March 1985, he arranged for a two-hour parliamentary discussion on ministerial salaries to drive home the point that payment of good wages to political leaders was the best way to preserve Singapore's "most precious asset", namely, "an administration that is absolutely corruption free, a political leadership that can be subject to the closest scrutiny because it sets the highest standards". Lee warned that the desire to keep "a stainless surface on which no blemish can be assured to stick", which PAP political leaders of his generation had displayed, would not be "automatically transmitted on". In his view:

You chase your political leaders and ask them in the name of honour, service, duty, to make the sacrifices, and you are going to have a different quality of men here. They are going to be deceitful, duplicitous, hypocrites, unless we work out a system like the British or the Americans [of appointing ex-politicians to well paid jobs in the private sector] ... There are ways and ways of doing things and I am suggesting our way - moving with the market is an honest, open, defensible and workable system. You will abandon this for hypocrisy, you will end up with duplicity and corruption.

33. Ibid., col.1216.
His message to the people of Singapore on that occasion was: "you want honest men, make it possible for them to stay honest" by paying them well.  

Compared with other Asian countries, public servants in Singapore are well paid and their wage levels and opportunities for career advancement compare favourably with those in the private sector. Annual wage increases are recommended by the National Wages Council for both the public and private sectors. In addition, public servants are paid an extra month's wages each year as a bonus and rely on either a pensions scheme or a national social security savings scheme (Central Provident Fund) to provide financial protection after retirement or when they are no longer able to work.

34. Ibid., cols.1230, 1231.


36. For the relevant statutory provisions, see the Central Provident Fund Act, Statutes of the Republic of Singapore, 1985 Ed., cap.36.
QUALITY OF POLITICAL LEADERSHIP

Clearly, among the most important factors responsible for Singapore's success in corruption control is the quality of her political leaders who have accorded the highest priority to honesty and integrity. It is this attribute that distinguishes the political leadership in Singapore from those in the other newly independent states: exhortations for probity in public life are matched with serious efforts to ensure that this is so.

For 28 years the People's Action Party government has been led by Prime Minister Lee Kuan Yew, "the No. 1 anti-corruption zealot" who once turned down an offer of US$10 million for the release of a CIA agent. The CIA agent had been arrested while attempting to buy information from a Singapore intelligence officer.


38. For details of this episode, see Barry Newman, ibid; Albert Tien, "How Singapore Stops Corruption", Insight, January 1973, p.17.
Lee himself leads a frugal existence and is a man of modest habits, preferring to live in his own home rather than at the Prime Minister's official residence. He recently described himself as "one of the best paid and probably one of the poorest of the third world Prime Ministers", suggesting that he certainly had no illegitimate sources of income. The Prime Minister takes a personal interest in the work of the Corrupt Practices Investigation Bureau which functions within the Prime Minister's Department. According to one former Director, it is "the integrity of the man on which one founded one's efforts to work". The CPIB's tenacity and dedication in its investigations clearly reflect the Prime Minister's belief that the highest standards of rectitude are vital to the survival of both his Government and the nation.

One of the reasons the PAP won the elections in 1959 was that it was able to expose the corruption of the previous government. Its victory over the


40. R.B. Corridon in an interview with the writer in June 1982. for a fuller discussion see chapter X(B), post.

41. Discussed fully in chapter 11(E), ante.
communists too was largely because the party's founder members knew that "if we gave any hostages to fortune, we were finished". Lee has, therefore, not allowed his colleagues in the party to forget the disastrous consequences of corruption among political leaders and senior public servants. Reflecting on lessons learnt by the PAP after 20 years in ofice, the Prime Minister wrote in 1979:

The moment key leaders are less than incorruptible, less than stern in demanding high standards, from that moment the structure of administrative integrity will weaken, and eventually crumble. Singapore can survive only if Ministers and senior officers are incorruptible and efficient. We have to be different from other new nations or we shall be worse off than they are because we have not got their natural resources. Only when we uphold the integrity of administration can the economy work in a way which enables Singaporeans to clearly see the nexus between hard work and higher rewards. Only then will people, foreigners and Singaporeans, invest in Singapore; only then will Singaporeans work to improve themselves and their children through better education and further training, instead of hoping for windfalls through "powerful" friends and relatives or through greasing "contacts" in the right places.

42. Singapore Parliamentary Debates, vol.45 (1985), col.1210; volume 36 (1977), cols.440-441;

As the "core of any government" is the leadership, the Prime Minister has often maintained that the political leadership must be beyond reproach. It must set an example for public servants as it is not possible to enforce high standards of integrity in the civil service if the political leadership tolerates any corrupt behaviour amongst its own ranks. Lee has therefore often taken great pains to emphasize the need for government leaders to remain honest. When addressing new Members of Parliament on 23 February 1977, for example, he counselled:

Keep your hands clean, gentlemen.
If we allow you to put your hands in anybody's till, then we are all dead, politically. That is the first lesson.

Ten years later, in January 1987, the Prime Minister reminded Members of Parliament:

Every part of the 27½ years that we have been in office has meant a certain upholding of standards. It is very easy and very natural to allow them to slacken and to sag. We do that at our peril.

44. See for e.g. Singapore Parliamentary Debates, vol.45 (1985), col.1231; vol.34 (1975), col.1078.
45. Ibid., vol.36 (1977), col.441.
The PAP leadership has, in the 27 years the party has governed Singapore, been anxious to demonstrate that those who lead the government not only set high standards of integrity and financial rectitude but are seen to be doing so. This has been achieved in a number of ways.

(1) Prosecution of any person, however high a public office he occupies, where there is evidence of corruption

The Prime Minister has listed as one of the six basic principles that has guided the PAP government in office as "Stay clean: dismiss the venal":

We have run the government in a honest, fair and efficient manner. This is easier said than done; for once in office the temptations are great and the desire to pardon old political comrades for indiscretions is natural. We have resisted the easy way out of embarrassing and difficult situations, even when it has meant the dismissal of a former Cabinet Minister ... or the painful prosecution for corruption of a Minister of State. ... Whether it is licences for hawkers and taxi drivers, or balloting for flats, or tenders for millions of dollars' worth of government contracts, PAP members, MPs and Ministers have not taken advantage of their positions. The leadership as individuals and as a group has not allowed it and will not tolerate it.

In 1975, Wee Toon Boon, Minister of State for Environment, became the first Cabinet Minister in Singapore to be prosecuted for corruption.

In the years between 1970 and 1974 Wee had personally interceded on many occasions with civil servants in various government departments, on behalf of a wealthy Indonesian citizen named Lauw, in connection with matters which these civil servants were dealing with. As a reward for his services Wee received gratification in the form of new galvanized roofing for his home, a banker's guarantee for S$300,000 to facilitate overdraft facilities for his father to enable Wee to purchase shares, and seven air-tickets to Djarkarta for his family to go to Indonesia for a holiday. He also agreed to accept a house valued at S$532,000 built by Lauw's Company.

Wee was convicted of five charges of corruption under Section 6(a) of the Prevention of Corruption Act. In sentencing

him to 4½ years imprisonment, the trial judge observed that corruption in the public service was a grave social evil and in this case "corruption has occurred in a high place which is something more serious". 49

As the Prime Minister subsequently admitted in Parliament, the decision to prosecute Wee, a founder member of the ruling People's Action Party, was a "painful" one for him personally as Wee was his friend and "comrade, going back to 1957 in the City Council elections". However, the political leadership had no hesitation in making an example of Wee to demonstrate that an "MP or a Minister must take the consequences of any corrupt act". 50

Three weeks before Wee was charged in court, an amendment to the Parliamentary Pensions Act was rushed through Parliament to empower the government to withhold the pension of any


51. Ibid., vol.34 (1975), col.1078.
Member of Parliament who is convicted of an offence of corruption.

In 1979, another PAP stalwart was arrested by the CPIB for criminal breach of trust. On December 10, 1979, Phey Yew Kok, Chairman of the National Trade Union Congress and PAP Member of Parliament, was charged in a magistrate's court with misappropriation of union funds. Phey faced four charges of criminal breach of trust of union funds amounting to S$82,520 and another two charges of misuse of S$18,000 belonging to the unions. He subsequently fled the country while awaiting trial and is now believed to be living abroad.

In Phey's case it was again demonstrated that once there is sufficient evidence of corrupt behaviour against any person, his prosecution in a court of law must follow. Even the intervention of the Presidential candidate

52. See Chapter IX (C), post, for a fuller discussion.

53. For press reports on the case, see "Phey faces six charges", Straits Times, December 11, 1979.
and a close confidant of the Prime Minister did not assist in halting Phey Yew Kok's prosecution. The event was explained by the Prime Minister some five years later:

The Secretary-General of the NTUC [Devan Nair, who became Singapore's 3rd President in 1981] came to see me on the Saturday before Phey Yew Kok was to be charged on a Monday in 1980, and he said that grave injustice was going to be done to an innocent man. He is now the President. He asked me to intervene with the Attorney-General and stop it. Pledged, review the case. Because they spent years together in one fight, in a struggle, to build up the NTUC. How can he be sacrificed? I had the advantage of seeing the investigation papers. I picked up the phone and said, "After this lunch, see the Director of CPIB and he may show you some of the documents he showed me, and you will have no doubts whatsoever that a prima facie case has to be answered. If you still doubt that, ring me up on Sunday ... [A]nd the Secretary-General of the NTUC retreated. That is how this place is kept clean.

Ten years earlier the government had in fact shown that no corrupt public servant could hope to place himself beyond the reaches of the law for long and would be prosecuted at whatever cost to the State.

In 1969, Gerald Fernandez, former secretary

and legal officer to the Malaysia-Singapore Airlines, was investigated by the CPIB for offences of corruption. On 24 July 1969 Fernandez was arrested in Kuala Lumpur on a warrant of arrest issued by a Magistrate in Singapore. He faced two charges of corruptly accepting a gratification amounting to S$11,000 from M/s Edward Lumley & Sons Private Limited. Fernandez resisted efforts to extradite him to Singapore and in the course of extradition proceedings in Malaysia fled to the United Kingdom. On October 19, 1970, he was arrested in the United Kingdom and resisted his extradition to Singapore in protracted legal proceedings in the United Kingdom. Fernandez was finally brought to stand trial in Singapore, some two years after


56. Fernandez v Attorney-General, Malaysia, ibid.

57. For detailed account of the committal proceedings in England, Fernandez's habeas corpus application and his final appeal to the House of Lords see Fernandez v Government of Singapore & Ors., [1971] 2 All ER 691; Governor of Pentonville Prison, exparte Fernandez, op.cit.
a warrant of arrest had been issued against him in Singapore. He was found guilty and sentenced to nine months imprisonment.

More recently, in November 1986, Senior Minister Teh Cheang Wan, the Minister for National Development, was compelled to go on leave following CPIB investigations that he had taken bribes amounting to S$800,000 from a businessman and a former stock-broker in 1981. The CPIB commenced investigations into two complaints that Teh had received these bribes to assist a developer to retain a portion of a land which was earmarked for acquisition by the Ministry of Defence, and to assist another developer to purchase a piece of state land for private development.

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58. Fernandez's appeal to the High court was dismissed by the Chief Justice: (unreported) Magistrates' Appeal No 101 of 1971.

Despite the fact that Teh was a Senior Minister who had made "a signal contribution to Singapore's development", and upon whom he had publicly heaped praises less than eight months earlier, the Prime Minister authorised the CPIB to conduct full and open investigations into these complaints. Teh's offer to CPIB investigators that he would admit his guilt, step down from his post and return the S$800,000 if the Prime Minister would promise not to charge him in court was turned down.

On December 11, 1986, the CPIB referred the investigation papers in respect of one of the complaints to the Attorney-General with the recommendation that Teh be charged in court for corruption. Three days later, on December 14, Teh committed suicide by taking an overdose of Amytal barbiturate. In a suicide note


61. "But he is part of the old guard - a sense of mission, a desire to transform this place. Where are you going to get another Teh Cheang Wan?" Lee said in jest that when Teh retired from the Government to become a property developer he would be Teh's manager: Singapore Parliamentary Debates, vol.45 (1985) col.1223.
addressed to the Prime Minister, Teh stated that as "an honourable oriental gentleman, I feel it is only right that I should pay the highest penalty for my mistake".

In his statement to Parliament on the Minister's death, two weeks later, the Prime Minister took the opportunity to affirm that there was "no way a Minister can avoid investigations and a trial if there is evidence to support it".

(2) *Dismissal from public office where there is insufficient evidence for a prosecution in a court of law but sufficient facts to indicate that the office holder has been guilty of venality or abuse of public office*

Even if he is not prosecuted in court, a public servant, however high a public office he holds, is likely to be dismissed from office or otherwise disciplined if there is some evidence of his wrong doing in office.

64. For a detailed discussion of disciplinary proceedings against public officers, see chapter VI, *post*. 
On June 20, 1960, the then Minister for National Development, Ong Eng Guan, was removed from office and subsequently expelled from the PAP for acts of nepotism and misconduct in office, among other reasons.

Again, on November 7, 1968, Tan Kia Gan, another former Minister of National Development, was dismissed from the Government and removed from all public appointments because the Government was not satisfied that he had discharged "beyond reproach" his duties as its representative on the Board of Malaysian Airways.

At a Board Meeting of Malaysian Airways in August 1968, Tan had objected to the purchase of Boeing Aircraft. On the afternoon of the same day, approaches had been made to Tan by a person keen on getting an agency to sell Boeing aircraft. A few days later, the Singapore Office of the First National City Bank was contacted by a person who stated that he could


66. For press reports, see *Straits Times*, November 8, 1968.
be instrumental, for a consideration, to resolve the dispute in the Board of Directors of Malaysian Airways for the purchase of Boeing Aircraft. When questioned by the Prime Minister on September 1st, 1968, about these matters, Tan had not disclosed that one of his acquaintances had told him that he had wanted the agency of the Boeing Company to sell Boeing aircraft nor the fact that the man who had made the offer to the First National City Bank had also seen him and informed him of his arrangements with the bank.

Tan was not prosecuted in Court for offences of corruption only because there was insufficient evidence "of a nature to satisfy a Court of Law" that there had been a connection between Tan and the proposition to the bank. Nevertheless, the Government was satisfied that his conduct had given rise "to questions of impropriety which cannot be 67 condoned" and Tan was removed from public office.

67. According to the statement released by the Prime Minister's Office: Straits Times, ibid.
Speaking in Parliament on this matter some 17 years later, the Prime Minister explained:

I had to destroy him. I could not find enough evidence but it was quite clear, more than just a suspicion, that he wanted a percentage on aircraft to be bought by Malaysian Airways. After his dismissal, he was crushed.

It is not clear whether the CPIB had been called in to investigate the matter and why a trap had not been set for either Tan or the man who had made the corrupt approaches to the FNCh. The dismissal of a Government Minister in 1968, however, drove home the message that improbity would not be tolerated at all levels of government, irrespective of the status of the offender.

(3) Correction of any erroneous report in the mass media as to misconduct in public Office

In view of the Government's stand against corruption and improbity in public office and the seriousness with which the public is urged

to view such misconduct, every erroneous report in the mass media in respect of these matters is immediately corrected.

For example, a *Straits Times* report in September 1987 that Trade and Industry Minister Lee Hsien Loong, after opening a departmental store, had bought a $305 Cartier wallet with a $30 gift voucher, and had also received a Trivial Pursuit game set at a "bargain price" of $9.90, brought an immediate response from his Press Secretary in case *Straits Times* readers "might conclude that the Minister received a special privilege not extended to others". The Press Secretary wrote to point out that the Minister had been given a bill by the department store for the full price of all his purchases (less the $30 voucher) and had paid the bill. The voucher and other gifts the Minister was presented with would be handed over to the Accountant-General in accordance with paragraph 158(2) of the *Instruction Manual*. The Minister's Press
Secretary took the opportunity to emphasise:

Singapore Ministers and public servants are not allowed to accept gifts and favours. To do so is a crime under the Prevention of Corruption Act ... If the Minister wishes to keep any of the gifts, he has to pay the Accountant-General their full value; otherwise, he must surrender the items to the Government. This is the only way to maintain a clean and incorruptible Government.

(4) Commencement of legal proceedings against any person who makes a false allegation of corruption against a Government leader

In 1976, the Prime Minister brought a defamation suit against Opposition Member of Parliament, J B Jeyaretnam, over a speech that was made at an election rally on 18 September 1976. In the course of his speech Jeyaretnam had said:

I am not very good in the management of my own personal fortunes but Mr Lee Kuan Yew has managed his personal fortunes


very well. He is the Prime Minister of Singapore. His wife is the Senior Partner of Lee & Lee, and his brother is the Director of several companies, including Tat Lee Bank in Market Street; the bank which was given, with alacrity, a banking permit licence when other banks were having difficulty getting their licence.

The Prime Minister demanded an apology from Jeyaretnam as he considered these words defamatory. Jeyaretnam refused. He maintained that the words were not defamatory but also raised the defence of fair comment. The trial Judge, however, held that the words complained of bore the meaning that the Prime Minister had procured the grant of favours to the firm of Lee & Lee and to his family and that these words meant that he had been guilty of nepotism and corruption and were therefore defamatory. He awarded the Prime Minister damages in the sum of S$130,000. This decision was held by both the Court of Appeal and the Privy Council.

At the trial the Prime Minister explained why he had been compelled to commence legal proceedings

71. [1979] 2 MLJ 282.
72. [1982] 1 MLJ 239.
against Jeyaretnam although the speech had been made during an election rally:

The latitude for self-expression at an election rally does not extend to an attack on the integrity of Government. When Government makes honest errors of judgment, the public can forgive them but if the people have doubts of the Government's honesty the Government is destroyed. Hence, the failure of so many elected governments in newly independent countries. My colleagues and I were determined never to let that happen to us...

What the defendant said is not give and take. It was, if I may use a metaphor from boxing, a kick below the belt on the most vulnerable part of any politician and the defendant must have known it. I knew I had no choice but to get him to eat those words or go to trial.

Four other Opposition candidates in the 1976 Singapore General Elections, however, faced criminal charges for defamation. The charges arose from speeches they had given at election rallies in which they had alleged that the Prime Minister had unjustly enriched himself through his wife's firm and that there was

73. High Court Suit No 281 of 1977, Notes of Evidence, pp.24, 26.

therefore "no need for him to be corrupted". The defamatory statements by all the accused were identical. One of the defendants, Leong Mun Kwai, for example, had alleged that Mrs Lee Kuan Yew's law firm of Lee & Lee had been given conveyancing work in respect of low cost flats built by the Government and sold to the public under the Home Ownership Scheme:

Which law firm do you go to? To Mrs LKY's. Not LKY but his capable wife ... The price for typing several sheets of paper is $500. Very capable of making money. His wife very capable, very good at making money. 10,000 flats mean $5 million. By simple arithmetic, 100,000 flats mean $50 million. Where is the need for LKY to be corrupted?

All four defendants pleaded guilty. Leong Mun Kwai, who had two previous convictions, was sentenced to 18 months imprisonment. The other 3 defendants received terms of imprisonment between 2 and 4 months after the trial Judge had described their allegations as "scandalous and malicious". The Prime Minister subsequently


76. Ibid, Grounds of Decision.
sued the four defendants for defamation and recovered sums between S$60,000 and S$136,000. The defendants were later made bankrupts.

Not realizing that Article 45 of the Singapore Constitution disqualifies a bankrupt from being a Member of Parliament, Lee suggested in Parliament that the election laws be changed. His fear was that, undeterred by further defamation suits, bankrupt candidates may continue to make allegations of corruption against government leaders "knowing that there was no other way in which to shake the confidence the people have in the Government than by alleging corruption".

The most recent legal proceedings instituted by the Prime Minister emphasises his anxiety over allegations of corruption. In March 1987, Prime Minister Lee Kuan Yew commenced a libel suit in the High Court of Malaya at Kuala Lumpur against the Star, a Malaysian newspaper, and its editor-


in-chief, V K Chin. The Suit was in respect of two articles published in the Sunday Star on the suicide of the late Minister for National Development, Teh Cheang Wan. The articles had alleged, inter alia, that Teh had been persuaded to commit suicide during interrogations by CPIB officers and suggested that the Prime Minister was forced to make an example of Teh to prevent discovery of corruption on a large scale in Singapore.

In his Statement of Claim the Prime Minister stated that the passages in the two articles, in their natural and ordinary meaning, were understood to mean that he is dishonest, insincere and lacking in integrity and that despite his public stand for honest and firm Government, "he

79. For newspaper reports, see "PM sues Malaysian publisher and editor for libel": Straits Times, March 28, 1987; "Two reports that led to the PM's claim": Straits Times, March 30, 1987.

80. The two articles were published in the Sunday Star on February 1, 1987 ("Graft in the squeaky clean republic") and February 22, 1987 ("Second shock in graft affair").

knowingly tolerates and condones corruption on a wide scale in high places within the Republic of Singapore and its Government and civil service; and that he was pleased that the late Minister had committed suicide because his death made it possible to terminate inquiries into his activities which would have uncovered widespread corruption amongst Singapore Ministers and senior Civil Servants.

Lee has claimed exemplary damages on the ground that the defamatory words were published in Malaysia and the defendants had calculated that he, as Prime Minister of Singapore, would not have wished to submit to the jurisdiction of the High Court of Malaya by instituting proceedings in that country. The High Court Suit is expected to be heard in early 1988.

(5) **Holding of public inquiries into allegations of lapses in integrity or accepted standards of public life**

The PAP leadership has always expressed willingness to the holding of Commissions of
Inquiry, chaired by High Court Judges, into allegations of wrong doings in the conduct of Government affairs. In this it shares the observations of the Royal Commission on Tribunals of Inquiry that:

It is essential that on the very rare occasions when crisis of public confidence occur, the evil, if it exists, shall be exposed so that it may be rooted out or if it does not exist, the public shall be satisfied that in reality there is no substance in the prevalent rumours and suspicion by which they have been disturbed.

Accordingly, in 1960 the Government appointed a Commission of Inquiry to inquire into allegations of nepotism made by Ong Eng Guan, former PAP Assemblyman and Minister in the Legislative Assembly. In December 1960, Ong had alleged during the Assembly debates that certain appointments in the City Council and the Civil Service had been made because the appointees were related to the Prime Minister and the Minister for Labour and Law. The Commissioner, Mr Justice Chua, found that the

82. Report of the Royal Commission on Tribunals of Inquiry, cmd.3121, para.28 quoted by State Counsel at the Teh Inquiry.
allegations were "groundless and recklessly made and there is no justification in making them".

Indeed the Prime Minister expressed disappointment on that occasion that the Opposition in Parliament had not insisted that the charges made by Ong, a former Minister, of "malpractice and of political corruption in high places" be investigated. He pointed out that it was the duty "not only of the Government but also of the Opposition to get at the truth, and to see that when such accusations are made in public in high places they are met with".

Again, in 1962, the Government agreed to the appointment of another Commission of Inquiry


at the request of Opposition Leader, Mr David Marshall, for a High Court Judge "to investigate all specific allegations of political nepotism and improper political interference with the Civil Service and employees Statutory Bodies". However, with the dissolution of Parliament and the defeat of David Marshall in the elections that followed, the Commission was never appointed.

In December 1981, during his first speech in Parliament, Opposition Member, J B Jeyaretnam, suggested that the ruling PAP had made use of Government land and premises at Napier Road for the party's headquarters without a proper lease from the Government, and that the Prime Minister had campaigned in the 1980 General Elections with the improper use of police vehicles. This speech was made during the second reading of a Bill to amend the Prevention of Corruption Act. The Prime Minister's response was to offer to

85. *Singapore Legislative Assembly Debates*, vol.16 (1962), cols.62-98; cols.175-204.
immediately set up a Commission of Inquiry:

This is a Government that is prepared to open all the books. Make the charges and there will be a Commission of Inquiry. The Member will be given full facilities to justify and the Government will stand condemned or the Member will be found to be a liar and a hypocrite. Have your choice ... I seek no cover of privilege and I give no reason for anyone to doubt that this Government stands ready and prepared at all times to have its conduct put under the closest scrutiny ... I will not put up with innuendoes and insinuations.

When Jeyaretnam backed down from the offer to have a Commission of Inquiry appointed, the Prime Minister's angry response was:

Two allegations have been made of misconduct. I offer an open forum for all details. Instead I have an unseemly, disgusting, wriggling retreat. Let me remind him that way back in February 1955 we taught Singapore the first lesson in public accountability when we disclosed that a Labour Front Minister had received $700,000. A Commission of Inquiry was offered, immediately accepted and we proved our allegations. Those same standards we intend to honour. If there is any allegation of misconduct by any Member of this House or any Member of the Government, or official of the Government, there will be a full inquiry, a full prosecution, and every facility for the


87. Ibid., cols.331-332.
facts to be unravelled. This is the strength of this Government.

In March 1982, after PAP Assemblyman, Phey Yew Kok, had fled the country while awaiting trial on charges of misuse of union funds, Jeyaretnam demanded a Commission of Inquiry to inquire, inter alia, into the loss of monies belonging to members of the trade union, and the circumstances in which Phey was "enabled to leave the country after he had been charged in the courts".

Despite the obvious difficulties in appointing a Commission to investigate the facts of a criminal case which was sub judice, the Prime Minister assured Parliament that the Government was prepared to appoint a Commission to investigate whether there had been a "cover-up" but the Commission could not examine the evidence on which Phey's charges had been founded.

88. See the Report of the Commission of Inquiry into the $500,000 bank account of Mr Chew Swee Kee and the income-tax department leakage in connection therewith, Government Printer, Singapore, 1959. For a discussion of the Report see Chapter II(E), ante.

Jeyaretnam's reply was that the Attorney-General should enter a nolle prosequi in respect of the charges pending against Phey, in order for the Commission of Inquiry to be held, yet requiring the courts only to grant a discharge not amounting to an acquittal in case Phey was subsequently arrested. Despite the patent absurdity of this proposal, the Prime Minister was still willing to have a Commission of Inquiry without touching the evidence against Phey Yew Kok because "such an inquiry would be a credit to the Government". He was confident that any such Commission:

Will show how thoroughly and impartially an investigation was conducted against a very senior and close associate of several Ministers in the Government and of the President, and how it was relentlessly pursued until no evidence was left unturned and that he was not allowed to get away and abscond because the Government was afraid it would open up more horrendous skeletons in the cupboard. That is what I am offering, but without touching the evidence against Phey Yew Kok. Are you wanting that inquiry because I am quite happy to have it? ... Mr Speaker, Sir, I know that he is at a

90. Ibid., cols.367, 368.
loss for words. Take his time, compose himself, compose his thoughts, come back with the question at an appropriate time with an appropriate set of words which will exorcize the suspicions he has of any cover-up. Frame it in such a way that it does not touch upon the charges on which Phey Yew Kok has been brought to trial.

Jeyaretnam never returned to Parliament with any proposals for such a Commission of Inquiry to be conducted although he continued, during Question Time, to attempt to embarrass the Government by demanding to know the whereabouts of Phey Yew Kok.

The most recent Commission of Inquiry was appointed at the request of the sole Opposition Member of Parliament. On March 4, 1987, the Government agreed to a proposal by Mr Chiam See Tong for a Commission of Inquiry to be set up in respect of matters connected with the suicide of the late Minister, Teh Cheang Wan. It was, of course, a good opportunity for the Government to demolish the allegations of a "cover-up" of widespread corruption made against the Prime

The Commission's first term of reference was to inquire whether the CPIB had done all that was necessary to uncover the "corruption and criminal wrong doing" of the late Minister; whether the Bureau had been thorough in its investigations before concluding that no other Minister or government officer was involved, and, more importantly, whether there had been any attempt to "overlook, conceal or to cover-up" any information concerning corruption.

The Commission heard evidence, led by State Counsel, for 3½ days in August 1987, of how the CPIB had questioned 157 people to gather evidence of the receipt of bribes of S$800,000 by Teh and the manner in which it satisfied itself that no other government official was involved by the Malaysian Star.

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92. Examined at length earlier in this Chapter.

93. For a statement of the Commission's final terms of reference, see the Straits Times, August 22, 1987.
involved in these matters. The Commissioners concluded that it was the CPIB's relentless perseverance that led to the discovery of Teh's corruption and that the Bureau had done "as much as they could have usefully done" in their investigations.

On the remaining terms of reference, namely, the investigation of the circumstances which made it possible for the late Minister to accept the bribes, and the system generally adopted by the Ministry of National Development in the acquisition of land, the receipt of tenders and the operation of the Ministry and its related companies, the Government led no evidence. As Opposition Member Chiam had suggested the last two terms of reference, he was expected to produce evidence in respect of these. At the Inquiry Chiam failed to offer any evidence and objected to being labelled by


95. For a full report of the Commissioners' findings see Sunday Times, January 3, 1988.
the Commissioners as "accuser" or "alleger" because he had asked for the Inquiry. In the event the Commissioners heard no evidence on the last two terms of reference they had been directed by the President "to inquire into". In looking only to Chiam to produce evidence on the last two terms of reference, the Commissioners failed in their duty as investigators.

The requirement that he who persuades the Government to appoint a Commission of Inquiry into a matter of public interest should produce the evidence himself is somewhat of a startling departure from past practice in the conduct of such inquiries. The principal function of a Commission of Inquiry is to restore public confidence in the Government and "to preserve the purity and integrity of our public life". Such public confidence can only be effectively restored by an open and thorough search for

96. 'Chiam quits' inquiry into Teh affair: Straits Times, August 19, 1987.


truth. It was strange therefore, that, having advised the President to appoint a Commission of Inquiry to inquire into the Teh Cheang Wan affair, the Government was unwilling to produce evidence before it on two of the three terms of reference.

A Member of Parliament who calls for a Commission of Inquiry, like all members of the public, should certainly be invited to offer evidence before the Commission. However, to require him to produce such evidence on the principle that "he who alleges must prove his case" is to remove the difference between Commissions of Inquiry and Courts of Law. It is the Commission's function, employing a purely inquisitorial procedure, to direct investigations and to obtain evidence to determine the truth. As the Royal Commission took pains to point out, there are important distinctions between such an inquisitorial procedure and the procedure adopted in an ordinary trial:

99. Ibid., at para.30.
It is inherent in the inquisitorial procedure that there is no lis. The Tribunal directs the Inquiry and the witnesses are necessarily the Tribunal witnesses. There is no Plaintiff or Defendant, no Prosecutor or Accused; there are no pleadings defining issues to be tried, no charges, indictments, or deposition.

It would be almost impossible for a Opposition Member of Parliament to adduce evidence in respect of operating systems in a Government Department and especially of wrong-doings of public employees without being privy to inside information. Indeed, one of the reasons the Prime Minister was finally persuaded of the need for non-PAP Members of Parliament was that they "will give vent to any allegation of misfeasance or corruption or nepotism, whereas PAP Members of Parliament know that they should only take up the matter after enquiries show that allegations

99a. Thus the PAP leader's revelation in 1959 that former Minister Chew Swee Kee had received a $500,000 gift was due to the fact that they had unlawfully been given secret information from an income tax file. A Commission of Inquiry subsequently condemned this as a "deplorable and scandalous leakage of confidential information". See the Report of the Commission of Inquiry into the $500,000 Bank Account etc, op.cit., para.27.
have some shadow of truth". The Teh Cheang Wan Commission of Inquiry should therefore have heard at least general evidence led on behalf of the Government to show absence of wrong-doings by public-office holders or on the effectiveness and integrity of the existing system, for public confidence to be continuously maintained.

CHAPTER IV

ADMINISTRATIVE METHODS OF CONTROLLING CORRUPTION:

THE CONDUCT RULES

In keeping with its promise to ensure an honest administration, the People's Action Party government has, since assuming office, adopted various legal and administrative measures to control and combat corruption in the public services which by constitutional definition mean the Singapore Armed Forces, the Civil Service, the Legal Service and the Police Force.

In this and the following two chapters, various administrative measures that have been adopted to prevent, control and punish corruption in the Singapore public services will be considered.

The administrative measures may be conveniently placed under the broad classifications of preventive methods and control methods. Preventive methods

consist of conduct rules and regulations relevant to non-corrupt behaviour that exist in the four branches of the public services. Control methods include the Auditor-General's supervision, the Public Accounts Committee's vigilance and other parliamentary safeguards which help to deter corrupt practices in the public services by increasing both the accountability of public servants and the prospect of discovery of their corrupt behaviour. The enforcement of the conduct rules by disciplinary action, an acknowledged punitive method of controlling corruption, is the subject of the last chapter in this part.

(A) Instruction Manuals for Public Servants

The general responsibility for the efficiency of the machinery of government as a whole rests with the Minister for Finance. He is charged with the responsibility for civil service matters and two departments in his Ministry, the Budget Division and the Public Service Division, help to oversee the public services other than the Singapore Armed Forces.

The Public Service Division, established in January 1983, has taken over from the Budget Division all matters in respect of personnel management, including the schemes of service, service conditions
and conduct and discipline in the civil service. The Budget Division of the Ministry of Finance, however, continues to be responsible for preparing the Instruction Manuals for all the public services.

What is not clear is how the Minister for Finance, whose constitutional responsibility extends to only the civil service, is able to prescribe rules of conduct for the other public services. His attempts to do so may be an extension of the historical financial control that the Treasury has had over all government ministries which are required to seek its approval before making disbursements of public funds.

The Instruction Manuals replaced the old General Orders that prevailed during British colonial times to guide civil servants on the correct administrative and financial procedures that they were required to adopt. The preface to each Manual declares


3. The Sreenivasan Committee which was appointed in 1961 suggested a complete revision of the General Orders in the light of the new political developments in the country. A new set of Instruction Manuals were published as a result of this recommendation. In 1972, the format of the Instruction Manuals was revised. See Seah Chee Meow, "Bureaucratic Evolution and Political Change in an Emerging Nation: A Case Study of Singapore", unpublished Ph.D. dissertation, Victoria University of Manchester, 1971.
that the instructions contained in the Manuals apply to "all public officers" in Singapore. The Instruction Manuals are "management tools to be used intelligently" for the purpose of safeguarding Government money and property and to increase efficiency and productivity.

The Instruction Manuals help to eliminate deviant behaviour in the public services:

(1) Indirectly, by providing detailed rules for correct administrative and financial procedures, in order to remove or at least reduce opportunities for bureaucratic abuses and excesses and venality in the conduct of public business.

(2) Directly, by prescribing certain rules of propriety of conduct for public servants to ensure their impartiality, integrity and honesty.

4. As defined in the Interpretation Act, Cap.1: "the holder of any office of emolument in the service of the Government": Preface to the Instruction Manuals, paragraph 5.

5. Preface to the Instruction Manuals, paragraph 5.
Rules for Correct Administrative and Financial Procedures

Published in five volumes, the Instruction Manuals are issued under the authority of the Permanent Secretary (Finance). They deal with a variety of subjects including the control of public monies, budgeting and accounting in government departments, terms of service, staff welfare, conduct and discipline, procedures for obtaining stores, works and services, receipt and disposal of stores, control of furniture and equipment, government organisation and office management. They therefore play an important role in structuring the public servant's conduct "towards the correct administrative and financial procedures".

Instruction Manual No.1 on "Finance and Accounts" is issued on the delegated authority of the Minister for Finance, under the Financial Procedure

6. The five volumes have been issued on the following subjects: Finance and Accounts; Staff; Stores, Works and Services; Office and Management, and Daily-Rated Employees.

Act. It contains detailed instructions on the control of public monies, on budgeting and accounting work in government departments, the procedure for handling receipts and payments and the safe custody of monies and government properties. The responsibilities of officers principally involved in financial control, including accounting, authorising, approving and certifying officers, are laid down in detail.

Instruction Manual No.3 contains the procedure for obtaining stores, works and services and for the receipt and disposal of stores in government departments. Of particular significance are the specific provisions for contracts and purchasing procedure which describe the methods by which any department should engage private suppliers or contractors for the provision of stores, works or services and the disposal of stores by sale. A contractor found guilty of corruption will be debarred

8. Singapore Statutes, Rev. Ed. 1985, Cap.109. Enacted in 1965, the Act provides, inter alia, for "the control and management of the public finances of Singapore, and for financial and accounting procedure, including procedure for the collection, custody and payment of the public moneys of Singapore, and the purchase, custody and disposal of public property".

from tendering for government contracts for at least 10
five years.

This is an area which presents many
opportunities for bribery and other forms of corrupt 11
behaviour. Paragraph B16 of Instruction Manual No.3
therefore requires that the selection of a supplier or
contractor be accomplished by initially inviting at
least three reputable firms to state the prices at
which they are prepared to supply the required stores,
or execute the works or services. A waiver of such
competition is permitted only if the supply of stores
and services is known to be within the capacity of a
sole agent or specialist contractor or the purchase
is for surplus stores offered for sale by other
governments or private firms, or it is for any other

10. Instruction Manual No.3, paragraphs B173 to B174;
Finance Circular No.4/87. This is done on the
recommendation of the Standing Committee on
Debarment of which the Director of the CPIB
is a member. There is no appeal against the
Committee's decision in cases involving
corruption.

11. Section 10 of the Prevention of Corruption Act,
Cap.241, makes it an offence for any person to
offer any gratification to any person as an
inducement or reward to withdraw a tender made to
the government or public body or to solicit or
accept a gratification for his withdrawal from
such tender.
reason in the public interest to do so. There are
detailed rules for the opening and selection of tenders
by the Tender Boards.

Opportunistic thefts in government departments
are kept at a minimum by the requirement of Instruction
Manual No.4 to maintain a system of keeping an
inventory and requiring regular checks to ensure
effective control of the properties. The Permanent
Secretary of each ministry is made responsible for the
proper control of items of furniture, equipment and
appliances in use in Departments under his charge.

However detailed the provisions as to physical
and financial controls are, misconduct and dishonesty
will prevail unless supervising officers continue to
exercise vigilance. Defalcations have indeed occurred
in departments where the strictest financial controls
are known to exist.

For example, in 1967, the Auditor-General
reported "an unusual case of loss" in the Accountant-

12. Ibid., paragraphs B100 to B135.
Section F of this Instruction Manual has detailed
provisions for the inventory of items used in
government departments.
General's Department where a cheque for $3,400 had been mysteriously issued and encashed. Although the approving officers' signatures on the relevant documents were genuine, "the payee was unknown, the endorsement (on the cheque) irregular, the crossing altered and the payee's identity card traceable to a dead man". Again in 1971, inadequacy in internal control systems and the neglect of supervising officers to make daily checks expected in revenue collecting departments, were found to have facilitated the misappropriation of monies collected from dog licences at the Serangoon District Office, which comes under the purview of the Prime Minister's Office. There are many other instances reported by the Auditor-General in his annual reports.

What was perhaps the most outstanding case of misappropriation by a public servant was discovered by chance in the Income Tax Department in 1977. The offence was committed between October 1973 and January


1977 by Loke Foong Choo, a 24-year-old female clerk who processed refunds due to taxpayers. Loke made alterations in documents prepared for such refunds by erasing the names of taxpayers entitled to refunds and by substituting them with her aliases. She also cancelled the taxpayers' addresses and inserted the address of her department to enable her to receive the cheques. In later years she also altered the amounts of the refunds to higher figures. Although the payment bills contained erasures and cancellations, they were certified and approved by two senior officers, and Loke was able to continue with her defalcations for four years. She was only discovered when an irate taxpayer telephoned the department to inquire about his long overdue refund.

Loke was charged with criminal breach of trust of S$981,833.96 and sentenced to six years imprisonment. The trial judge also admonished the Inland Revenue Department:

There is something that has to be said in relation to the administration in the Inland Revenue Department. The civil service is one section of Administration that does not accept documents that are erased or altered by over-writing thereon.

It is certainly observed in relation to financial documents. One has to either cancel the mistake boldly or submit a new form. It seems to me that the Department should tighten its administration to prevent such offences.

(2) Rules of Propriety of Conduct of Public Servants

The Instruction Manuals also contain provisions which are directly designed to safeguard the integrity of public servants and to prevent or at least reduce venality in public office. Some provisions take the form of a code of conduct and others consist of instructions to Permanent Secretaries to ensure, especially in departments exposed to corruption, that "reasonable and adequate measures are taken to prevent corrupt practices". The remaining provisions stipulate the general control methods requiring the declaration of gifts, indebtedness and investments by public servants. Such a requirement helps to monitor a public officer's accumulation of wealth, the possibility of conflicts of interest and his susceptibility to pecuniary temptations.

After examining the provisions in Section L of Instruction Manuals Nos. 2 and 4, and Section I

in Instruction Manual No.5, one is able to formulate a code of conduct for public officers.

(a) **Financial Embarassment**

A public servant shall not subject himself to financial embarrassment. He shall not, therefore, sign a promissory note or acknowledgment of indebtedness, be an undischarged bankrupt or a judgment debtor or have unsecured debts and liabilities exceeding three months emoluments.

(b) **Conflict of Interest**

A public servant shall not place himself in such a position as to bring about a conflict between his public duties and private interests.

The term "conflict of interest" relates to "obligations which a public employee feels towards society in general, to the law he is entrusted to administer, and to other rules and regulations his department may have prescribed

to guide his official behaviour". There will be an obvious conflict of interest if the performance of an officer's public duty conflicts with his personal, private or pecuniary interests. The Instruction Manuals imply that it is of utmost importance for the maintenance of public confidence in the integrity and impartiality of public servants for public officers to strive to keep themselves absolutely free from any "real or apparent" conflict of interests. The Manuals therefore seek to guide the ethical conduct of public servants in such areas as their financial interests, outside employment, and acceptance of gifts and entertainment.

The Manuals prohibit a public servant from:

(i) borrowing money or "in any manner placing himself under a pecuniary obligation to any

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person who is subject to his official authority or who has dealings with him; 

(ii) making use of his official position or any official information to further his private interest;

(iii) using or allowing to be used his official position or the name of his ministry to support his own cause or the cause of a Staff Association, Recreation Club, Union or other private organisation;

(iv) accepting any outside employment, including engaging in any trade or business or the management of any commercial undertaking. A conflict of interest situation may appear to exist when a public servant's work enhances the financial interests of his part-time employer, especially if the officer has access to privileged information or has received special training in government service. The Instruction Manuals, however, do not forbid future employment of a public official even with a firm with which he
has transacted official business while in public service.

(v) acquiring or retaining stocks or shares or holding interest in any company or firm in Singapore that may bring his private interests into "real or apparent conflict with his public duties, or in any way influence him in the discharge of his duties". He may invest in land and houses and in public listed companies so long as these investments do not bring about a conflict of interest.

(c) **Taking of Gifts**

A public servant shall not -

(i) receive from the public any present "whether in the form of money, goods, free

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21. Many countries, including Canada and Britain, require certain classes of civil servants to obtain the permission of the Government before accepting employment in private firms, upon leaving Government Service. See generally Kernaghan, op.cit., chapter 3.

passage or other personal benefits"; 

(ii) accept for himself or his spouse, 
from any member of the public, any 
invitation or entertainment which is 
of such a character as to place himself 
under "any real or apparent obligation 
to the member of the public 
concerned"; or 

(iii) receive from another government or 
foreign mission, for services rendered, 
any gift without the prior approval of the 
Singapore government.

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23. Instruction Manual No.2(Vol.2), paragraph L155. Except on the occasion of his retirement, a public officer is also forbidden to receive "presents or tokens of value" from his subordinates or to accept invitations to be entertained by them: Instruction Manual No.2, paragraphs L155 to L157. Similar rigorous rules also apply to manual workers or daily-rated employees: Instruction Manual No.5, paragraph II.


25. Ibid, paragraph L159. If in receipt of such a present, the officer must report the circumstances to his Permanent Secretary who may permit him to retain the present on payment of the value of the gift as determined by the Accountant-General.
Public servants in Singapore are left in no doubt by administrative and legal rules and their strict enforcement, that the acceptance of gifts and hospitality is rigorously controlled in the public services. Such acceptance of gifts and entertainment may of course place a public employee in the obligation of the giver. The obligation compromises integrity and reduces efficiency. The potential danger of gifts and hospitality offered to public officers has been well explained by the Royal Commission on the Standards of Conduct in Public Life:

> The risk is that a person with corrupt intentions will use apparently innocent gifts and hospitality to assess the strength of character of public servants and, when he senses a vulnerable individual, will gradually increase his largesse to a point where the public servant finds that he has built up an improper degree of obligation to the donor.

If Poulson, the British architect whose acts of bribery of civil servants were investigated by the Commission, was an "efficient and unscrupulous exponent of this art", so was Ong Keng Kok, a Singapore building contractor. Ong was responsible for the conviction of Minister of State Wee Toon Boon on corruption charges

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and for Wee's subsequent downfall. Ong's conduct is best explained by the Prime Minister in his "lecture" to new Members of Parliament during a Parliamentary Debate on 23rd February 1977:

... His CCC member [Ong] was a contractor, building the people all sorts of buildings. He lent him Mercedes cars. You start off, first, by lending the man, "Any time you like to use my car, it is there. Why sit in a Ford? You are a Minister." But Ministers use cars only on official functions from the pool. He said, "Use my Mercedes". It started off that way. Then your appetite is whetted. Then step by step you are seduced until finally, why not ...? Once you have given a hostage to fortune, it is finished ....

Paragraph L158 of Instruction Manual No.2 instructs a public officer who has been offered a present by a member of the public to "firmly refuse and return, wherever possible, any present offered by the public". If the circumstances of the offer of the present are such that it would be "impracticable" to refuse such a present, for example, where there has been no previous notice of intention to give the present, the officer must, without delay, report the


circumstances to his Permanent Secretary and surrender the present for transmission to the Accountant-General for valuation. The public servant is then required to fill up a prescribed form giving details of the name of the donor, date of receipt of the gift, description of the gift and the reason the gift was offered and why it could not be refused.

These instructions also apply if the present has been given to a public officer's wife, child or other dependant ordinarily residing with him. Paragraph L164 of Instruction Manual No.2 holds the public officer responsible for the observance of these instructions by his dependants.

A public officer may be permitted by the Permanent Secretary to retain the present on payment of its value to the Accountant-General and after the matter has been reported to the Auditor-General. Clearly, the Instruction Manuals seek to make the taking of a present, even in the two permitted

29. Reproduced in Appendix 1 to this dissertation.
circumstances, as irksome and disadvantageous to the
officer as possible. They seem to have achieved their
purpose for civil servants in the last few years have
sent to the Accountant-General an assortment of even
such small gifts as neckties, lighters, wallets, pens
and the like. This prompted a journalist to observe:

Small or not, civil servants are taking no
chances. One might say that their spirit
of "give and take" is, at least, happily
one-sided.

Paragraph L206 of Instruction Manual No.2
further counsels all public officers to familiarise
themselves with the provisions of the Prevention of
Corruption Act and in addition reiterates that no
public officer may solicit or accept any gratification
as an inducement or reward for -

(1) performing or abstaining from performing,
or aiding in procuring, expediting,
delaying, hindering or preventing the
performance of any official act;

31. Philip Lee: 'Story behind the oddments in a

Sections 5 and 6 lay down the main offences of
corruption under the Act.
(2) aiding in, procuring or preventing the granting of any contract or advantage of any person.

It will be seen that paragraph L206 widens the scope of the prohibition against soliciting or accepting any illegal gratification as set out in the Prevention of Corruption Act. Unlike Section 6(a) of the Act, paragraph L206 does not require that the act the public servant was induced to do or rewarded for performing, be done "in relation to his principal's affairs or business". The Instruction Manuals, however, make no reference to the anti-corruption provisions in the Penal Code.

(3) Administrative Anti-Corruption Measures

The Instruction Manuals also impose upon a Permanent Secretary a duty to instil in his officers awareness of the "serious efforts of Government to get rid of all corrupt practices". In departments

33. For a detailed examination of the provisions of these Acts, see Chapters VII, VIII, post.

34. Instruction Manual No.2, paragraph L124.
particularly exposed to corruption, for example those involved in granting permits and licences and having dealings with the public, the Permanent Secretary is required to ensure that reasonable and adequate measures are taken to prevent corruption.

These measures were drawn up in 1973, following the report of a Committee set up to study the problems of corruption in the Civil Service, and include:

(a) Improving of work methods and procedures

Cumbersome work methods and procedures that delay services to the public are to be constantly reviewed so as to reduce the necessity of "speed" payments.

35. Finance Circular No.25/73 (Try 59/4-005) dated July 24, 1973. The measures were suggested by the Management Services Unit of the Ministry of Finance after they had examined procedures in government departments particularly exposed to corruption, with a view to making such procedures more effective in preventing corruption. These measures received wide publicity in the press: Straits Times, editorial on July 28, 1973: "Government move to curb graft in Civil Service", August 14, 1973.

36. The report of the Committee has been classified as a confidential document and was not available for examination.

(b) **Institution of more effective supervision**

Control systems are to be instituted in each department to ensure that discretionary powers delegated to junior officers are not abused. Work is also required to be distributed and organised in such a way that a supervisor may be able to devote sufficient time to check on the work of his staff.

(c) **Rotation of officers.**

The Instruction Manuals also require officers to be regularly and systematically rotated between operation units for the obvious reason that an officer is not given an opportunity to develop unsatisfactory relations with touts, or becomes regarded as the institution itself with omnipotent powers.

(d) **Conducting of surprise checks.**

These are to be in addition to routine checks by senior officers. Apart from assisting in discovering corrupt behaviour, surprise checks would also have a deterrent effect.
(e) **Careful selection of cashiers.**

Paragraph C40 of Instruction Manual No.1 compels the taking of "the utmost care" in the selection of officers whose duties require the handling of cash. Officers so selected are required to be permanent officers. Other factors to be considered in their selection include the officer's known character and financial background, the length of his service with the government, the average maximum amounts of cash he has to handle daily and the officer's grade.

An officer may be held personally responsible for any loss arising even from his negligence in the handling or custody of cash. A supervisor whose negligence facilitates the commission of defalcations by his staff may also be punished. For example, when the misappropriation of cash and postal stocks amounting to $15,611 by a clerical assistant at the General Post Office was found to have been facilitated by the lack of supervision of his work by
a counter supervisor and the negligence of the Post-Master, both the Post-Master and the counter supervisor were surcharged.

(f) **Reviewing anti-corruption measures**

Whatever the measures that have been instituted in a department to prevent corrupt practices, a Permanent Secretary is required to review these measures once in three to five years in order that further improvements may be made to such measures. If considered necessary, the review ought to be done in consultation with the Director of the Corrupt Practices Investigation Bureau.

(4) **Declaration of Financial Obligations and Accumulation of Wealth**

The Instruction Manuals also stipulate the general control methods that are to be followed in order to monitor a public servant's financial position, accumulation of wealth and investments in property and shares by him and his dependants. This is to ensure that a public officer is not particularly susceptible

to defalcations and venality, that his wealth is proportionate to his legitimate earnings and that he does not engage in activities that may bring about a conflict of interest.

On his first appointment to the service, before he is placed on the pensionable establishment, and annually on the 1st of July, every public servant is required to make a declaration on a prescribed form as to whether or not he is free from financial embarrassment. An officer who is financially embarrassed or who makes a false declaration of non-indebtedness renders himself liable to disciplinary proceedings which may lead to his dismissal.

Similarly, on his first appointment and annually on the 2nd of January, every public officer is required to make a written declaration, in a prescribed form, of:

39. Instruction Manual No.2, paragraph L112. The prescribed form is Form G23 reproduced in Appendix 2 to this dissertation.

40. Ibid., paragraphs 137(a), 137(b); Appendices L4 and L5, reproduced in Appendices 3 and 4 to this dissertation.
(a) all his interests or investments in shares of private and public companies, land and houses, other than the house occupied by him;

(b) all interests or investments "particularly in a private company held by his spouse or any of his dependants likely to lead to a conflict of interest".

The Permanent Secretary of each ministry is required to ascertain whether an officer's interest or investments will bring his "private interest into real or apparent conflict with his public duties or may in any way influence him in the discharge of his duties". The Permanent Secretary (Finance)(Budget), if he considers that any of the declared interests or investments will lead to a conflict of interest, may require the officer to divest himself of such interest or investment or permit him to retain it on specific terms.
The police, being a uniformed, disciplined Force responsible for the "maintenance of law and order, the preservation of the public peace, the prevention and detection of crime and the apprehension of offenders" are governed by more stringent rules of ethical conduct than other public servants. Strict discipline is demanded of policemen who, because of the nature of their work, often perform their duties alone and in public. They have also wide powers of arrest, search and seizure and exercise a wide discretion in the performance of their duties.

Police discipline emphasizes "consciousness of individual responsibility". By casting individual responsibility on every police officer for stopping and reporting any police action which is clearly an abuse of police powers, an excess of duty or otherwise

2. The Police General Orders which every police officer is bound to follow remind police officers of that: Police General Orders, paragraph A.10(1).
improper, the police have been effectively made to police themselves.

The very nature of police duties, including the exercise of powers over citizens and their dealings with people and properties taken into custody, demand additional rules to regulate their conduct. If the police officers' responsibilities are great, the temptations they are exposed to are many. These include bribery, extortion, opportunistic theft and various forms of corruption of authority.

Stringent conduct rules, improved working conditions, good wages, reduced opportunities for corruption, greater vigilance of enforcement agencies "together with the PAP government's intolerant attitude towards corruption" have contributed to a reduction in the number of Singapore police officers involved in

4. Police General Orders, paragraph A.43(5) which was inserted on May 5, 1983.

corruption in recent years.

Police conduct and disciplinary procedures in Singapore are regulated both by statutes, subsidiary legislation and administrative rules contained in the Police Force Act, Police Regulations and the Police General Orders. In addition to the Police General Orders, the Commissioner of Police also issues Force Orders (which are of a routine nature issued for the control, direction, general administration and information of the Police Force), Standing Orders, Force Directives and other circulars. Section 26 of the Singapore Police Force Act compels every police officer to obey all lawful orders given to him and to "obey and conform to Police Regulations, Police General Orders, Force Orders and Standing Orders" made under the Police Force Act.

(1) The Police Force Act, Chapter 235
Section 27(1) of the Police Force Act lists various forms of misconduct that would make a police

officer of and below the rank of Inspector liable to
disciplinary action. These include making false
statements in the course of duty, excess of duty
resulting in loss or injury to any person, engaging in
trade or other employment, and conduct "to the
prejudice of good order and discipline". Many of these
are strict liability offences.

Section 27(1) in effect lays down a code of
conduct for subordinate police officers, the violation
of which may result in disciplinary punishment
including dismissal, reduction in rank, grade or
seniority, deferment of increment, reprimand, caution
or extra duty by a commanding officer.

A police officer of and below the rank of
Inspector who is accused of any form of misconduct
listed in section 27(1) of the Police Force Act may,
instead of being dealt with by a police disciplinary
tribunal, be prosecuted in court. If convicted, he is
liable to punishment for a term of imprisonment not
exceeding three months or to a fine not exceeding $500.

8. See for example Omar Aiffin v. R, (1939)
M.L.J. 308.
10. Ibid., section 29.
(2) Police Regulations (1959)

The Police Regulations were made by the Minister for Home Affairs under Section 53(1) of the Police Force Act, which empowers him to make regulations to provide for, inter alia, discipline and punishment and for such other matters "as may be necessary and expedient for preventing abuse or neglect of duty, and for rendering the Police Force efficient in the discharge of its duties".

Part III of the Regulations deals with the procedure for the discipline and punishment of Inspectors and subordinate officers for misconduct. It is significant to note that Regulation 5 requires that every complaint against a police officer be investigated forthwith. If, as a result of the investigations, a disciplinary offence is disclosed

against a police officer of or below the rank of Inspector, he must be subject to disciplinary proceedings.

Part VII of the Regulations regulates the conduct of the Special Constabulary, a volunteer police unit, and lays down equally stringent rules of conduct. Notably, Regulation 85 forbids a member of the Special Constabulary from receiving "any article of value as a present" without the prior written permission of the Commissioner of Police.

(3) Police General Orders

These General Orders have been issued by the Commissioner of Police under section 54 of the Police Force Act which empowers him to make orders not inconsistent with the Police Force Act or the Police Regulations. These Orders may, inter alia, provide for the "discipline and the regulation and carrying out of punishment", police services and duties of every

14. The constitution, powers and duties of the Special Constabulary are regulated by Part VIII of the Police Force Act, Cap.235.
description and the manner in which they are to be carried out. They also amplify the Police Force Act, the Police Regulations and the Criminal Procedure Code.

(a) **Police Code of Conduct**

The Police General Orders are issued in four parts. Parts A and B cover matters of police administration and operations. Parts C and D deal with police investigations and procedures.

Police General Order A.10 lays down a code of conduct applicable to all officers in the Police Force. In public or in his relations with any member of the public, every police officer shall, *inter alia*:

- Endeavour always -
  - (a) to bear himself and behave in a manner to command respect;
  - (b) to be firm and even tempered in the execution of his duties;
  - (c) to be "scrupulously correct" in the use of official powers.

A police officer is therefore prohibited from accepting hospitality inspired "otherwise than by personal or approved official motives", any concession
or discount which might be offered to him through improper motives, from lending "official colour to unauthorised events", granting testimonials or collecting subscriptions otherwise than on a purely personal basis.

Due to the nature of police duties, the Police General Orders frequently emphasize the need for officers to avoid conduct that may raise any suspicion of abuse of "official position". For example, it is not permissible for a police officer to purchase, receive or obtain goods or services from accused persons, suspects, complainants or witnesses. A breach of this rule may, of course, subject the officer to disciplinary action. In Gian Singh v. Public Prosecutor, the Public Prosecutor considered it desirable to prosecute an Assistant Superintendent of Police and court prosecutor, under the Prevention

17. Ibid., paragraph A.10(2)(c).
18. Unreported District Court Case Nos. 4917-4922 of 1981. The accused was subsequently convicted and sentenced to six months imprisonment. On appeal (Magistrate's Appeal No.146 of 1981) a fine of $500 was substituted for the first charge and $50 on each of the other five charges. For press reports of the appeal see the Straits Times, November 11, 1982.
of Corruption Act, for corruptly accepting assorted fruits, one packet of minced pork, one carton of canned beer, and apples and oranges from a complainant who was determined to have a private complaint of assault prosecuted by the police.

(b) **Corruption-Control Measures**

To reduce opportunities for police corruption, the Police General Orders also insist that a police officer who finds himself "in circumstances, surroundings or company of doubtful repute or nature" remove himself from the situation as soon as possible, make an immediate entry in his pocket book and report the matter to the officer in charge of his division. The circumstances of a "doubtful nature" include "the coming into possession of a suspected illegal gratification or contraband in any form". If he ignores these precautions, the onus of proving "innocent intentions" is on the officer.

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19. The charges were under Section 6(a) of the Prevention of Corruption Act, Cap.241.


21. Ibid., paragraph A.10(6).
To help monitor police corruption closely and to prevent false and malicious accusations to which police officers on the beat are particularly vulnerable, police officers are required, before they proceed on duty and upon their return, to declare the cash and valuables carried by them and to have these declarations recorded in their pocket books. Junior officers are routinely searched at the discretion of supervising officers and frequently after police raids or other such operations entailing a search of persons or premises.

An officer found in possession of undeclared monies or property may be charged for a disciplinary offence. Such a device assists the Police Force to root out officers suspected of being corrupt but who cannot be proven to have accepted an illegal gratification whilst on duty for want of a complainant. Even where there is a complainant,

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22. Police General Orders A.10(7). Similar regulations exist in other enforcement agencies including the Immigration Department and the Customs Department. Customs officers, for example, are required on reporting for duty to record in a book the amount of money and valuables in their possession in the presence of a senior officer and to deposit these properties in their lockers before commencing their duties: Customs Departmental Order No.56(1).
possession of undeclared monies could form the basis of an alternative or additional charge.

For similar reasons, the movements of police officers throughout the day are also closely monitored through entries in a pocket book which every police officer is required to maintain as an official record. An officer is required to carry his pocket book at all times and to record details of all his personal movements throughout the day. Although movements when off duty are not required to be in detail, they should contain "sufficient details to enable the officer to account for his whereabouts when required to do so at a later date". To ensure reliability of the entries in the pocket book, these are required to be made in ink or indelible pencil, in chronological order, on serially numbered pages with no intervening space to be left blank and with no erasures being permitted. When an allegation is made against a police officer, the investigating officer or the police officer's superior officer is required to "forthwith examine the

pocket book of that police officer for relevant details and impound it if he considers it necessary.

The Police General Orders also contain detailed rules as regards registration, custody and ultimate disposal of case property, property of accused persons in custody and those found on deceased persons. A Case Property Register is maintained at every police station and gives details of description of property, date brought in and taken out of, and names of officers handling the property. The Register is frequently monitored by senior officers.

In addition to these stringent rules to ensure integrity, the conduct rules for public servants outlined in the Instruction Manuals in respect of financial embarrassment, conflict of interest, private investments, outside employment, presents and entertainments, and specific prevention of corruption measures, are all applicable to police officers. These have been reproduced in the Police General Orders

25. Ibid., paragraph C.7.
26. These have been fully examined in the earlier part of this chapter.
"in view of their general application and importance".

(C) SINGAPORE ARMED FORCES CODE OF CONDUCT

Discipline is an essential ingredient of both morale and efficiency in the Armed Forces. By joining the Singapore Armed Forces (SAF) a person does not cease to be a citizen; he only submits himself to additional statutory and administrative rules which comprise a large part of the disciplinary code essential for the proper functioning of the Forces.

Discipline in the SAF is governed by the provisions of the Singapore Armed Forces Act and by a

27. Police General Orders, paragraph A.10(8), Appendices 1 to 11.

28. It is therefore essential that every soldier should be brought to understand not only the importance, but also the purpose of discipline, that indiscipline has no place in the Army, and that in war it may have serious effects or even lead to disaster: Queen's Regulations for the Army, paragraph 5.201.

29. Section 5 of the Singapore Armed Forces Act, Cap.295, makes it clear that a person who is subject to military law can be tried in a civil court for any civil offence that he commits.

30. Ibid.
number of other instruments including:

(1) various Regulations made by the Armed Forces Council under Section 197 of the Singapore Armed Forces Act, including regulations for the conduct of summary trials by disciplinary officers and the Armed Forces Council, and rules for arrest, searches and investigation of offences committed by persons subject to military law;

(2) Ministry of Defence (MINDEF) General Orders made by the Armed Forces Council under Section 199(1) of the Singapore Armed Forces Act. These orders include orders of the Armed Forces Council, "standing orders, routine orders and other general orders published in writing in accordance with the military usage";


32. Singapore Armed Forces Act, Cap.295, Section 2.
(3) the United Kingdom Queen's Regulations in so far as they are not inconsistent with the Singapore Armed Forces Act or Regulations made thereunder or with MINDEF General Orders.

The Singapore Armed Forces Act and the MINDEF General Orders provide for matters in connection with the discipline, trial and punishment of persons subject to military law. Schedule I of the Singapore Armed Forces Act and MINDEF General Orders prescribe a code of conduct for all persons subject to military law. These persons include regular servicemen, national servicemen, reservists who have been ordered to report for enlistment of service, officers and soldiers belonging to a Commonwealth or foreign force attached to or seconded for service with the SAF, and all civilians in the service of the SAF when engaged on active service or who accompany the Armed Forces when engaged in active service.

33. Singapore Armed Forces Act, section 201(4).

34. See section 3 of the Singapore Armed Forces Act, Cap.295, which is in pari materia with section 209(1) of the U.K. Army Act of 1955.
It would appear that civil servants working with the Armed Forces during peace time are, therefore, not subject to military law, and that their conduct, even whilst working in the Armed Forces, is governed by the Instruction Manuals and disciplinary procedures applicable to civil servants.

A person subject to military law is guilty of a military offence if he, inter alia, displays conduct to the prejudice of good order or discipline, or cruel, indecent or disgraceful conduct unbecoming a member of the SAF, or dishonestly misappropriates SAF property. Such misconduct may be summarily punished by a disciplinary officer or by a Subordinate Military Court.

As Armed Forces personnel do not deal with members of the public in the manner and to the extent that other public servants do, the opportunities for venality and similar forms of self-serving behaviour in the Armed Forces are considerably less. For this reason the conduct rules for SAF officers appear to be

35. Singapore Armed Forces Act, Cap.295, sections 8, 9, 19, 27 and the First Schedule.
directed more towards forms of corrupt behaviour manifested by abuse of authority and other soldierly excesses. However, members of the SAF are also governed by rules similar to those applicable to other public servants in respect of the acceptance of gifts and entertainment from the public or foreign governments, conflicts of interest, financial embarrassment and political activity.

MINDEF General Order 4101 on the acceptance of gifts and invitations from the public may prove controversial. Although the order requires all SAF personnel to be aware that they are "not to accept or receive gifts or entertainment of any nature from the public or foreign government", paragraph 2 of the order excludes "souvenir items of no intrinsic monetary value" from the definition of a gift. This would raise questions as to whether or not a gift received is a souvenir item and, if so, whether it has any "intrinsic

36. See MINDEF General Orders 4301-05 (participation in activities outside the SAF), 4301-07 (non-indebtedness and financial embarrassment) and 4101-19 (acceptance of gifts and invitations from the public). These have been fully discussed in the earlier part of this chapter which examined the conduct rules for civil servants.
monetary value". These problems have been avoided by the Instruction Manuals for public servants which prohibit the taking of any gift.

(D) A CRITIQUE OF THE CONDUCT RULES

This chapter has focussed only on those rules of ethical conduct most closely related to the integrity and honesty of public servants in the Singapore Civil Service and Legal Service, Police Force and the Armed Forces. Some of these rules seek to regulate the conduct of public servants in relation to both their official and private conduct and demonstrate that unlike private employers, the government can impose a variety of restrictions on the conduct of its employees. Unless these restrictions are arbitrary, no question as to their unconstitutionality may arise.

37. Instruction Manual No.2, paragraphs L155 to L156, Instruction Manual No.5, paragraph II.

38. So held by the Indian Supreme Court in P. Balakotaiah v. Union of India, A.I.R. (1958) S.C. 232. In Laxmi Narain v. District Magistrate, A.I.R. (1960) All. 55, Dhavan J. observed: "It is clear that [the Constitution] does not restrict the power of the State to dispense with the services of any Government servant for conduct which it considers to be unworthy or unbecoming of an official of the State, nor does it fetter the discretion of the State as to what type of conduct it shall consider sufficiently blameworthy to merit dismissal or removal ... It can demand a certain standard of conduct from Government Servants not only when performing their official duties but in their private lives as well".
It would be impossible to lay down an exhaustive code of conduct touching on all matters of behaviour of public officers which require regulation, particularly because of the character and varied duties of public servants. It is perhaps because of this that the conduct rules in respect of all the public services have a provision to generally prohibit "conduct to the prejudice of good order and discipline". Such a rule in effect constitutes an unwritten code within a code of conduct, and requires public servants to conduct themselves not only in accordance with specific rules but also with what may reasonably be implied from them.

It is, however, important to realise as the Royal Commission on Standards of Conduct in Public Life noted in 1976 that:

Neither staff rules nor codes of conduct can make people honest or be any substitute for an individual's sense of right and wrong. In the last resort an individual can be


40. In paragraph 211 of its Report, op.cit.
guided only by his common sense and his moral sensitivity; the test is whether he judges that his behaviour could withstand public scrutiny.

Nevertheless, a written code is needed to give public servants a guide to the standards of ethical conduct which they are expected to adhere to, and of providing a statement of such standards to which they may refer when in doubt in any given situation. Written conduct rules are also important as a means of informing new recruits to the public services of what is to be expected of them and to serve as a reminder of their continuing legal and moral obligations. More importantly, a written code informs the public as to what behaviour of public servants is acceptable and what is not. The public is more likely to place confidence in formal statements of ethical standards than in any unwritten code based on "understandings, traditions and practices".

The most serious criticism that can be made of the existing conduct rules for public servants in Singapore is the difficulty, for both the public and public employees, in readily determining the acceptable standards of conduct for public servants.

41. Kenneth Kernaghan, op.cit.
This is due to two reasons. The first is the lack of codification of conduct rules and regulations not only for the public services as a whole but in each of the sectors of the public services. For example, the conduct of officers in the Civil Service and the Legal Service is regulated by the Instruction Manuals and finance circulars, the Public Service (Disciplinary Proceedings)(Procedure) Rules and the Public Servants (Disciplinary Proceedings - Delegation of Functions) Directions, in addition to some departmental rules that supplement these regulations.

Police officers are governed by some parts of the Instruction Manuals, the Police Force Act, the Police Regulations, the Police General Orders and by various Standing Orders. What is more strange is that not all police officers are even subject to the same regulations. For example, the code of conduct of

44. For example, the Customs Departmental Orders, Customs & Excise Department, Singapore.
police officers laid down in the Police Force Act is not applicable to police officers above the rank of Inspector. And the Police Regulations, which proscribe certain forms of conduct of senior police officers in the Special Constabulary, do not apply to senior police officers in the regular Force. In fact, despite the detailed provisions as regards disciplinary offences and conduct of disciplinary proceedings against police officers contained in the Police Regulations, these are not applicable to senior police officers above the rank of Inspector. They are instead subject to disciplinary procedures applicable to other public servants only because no other rules apply to them and they happen to be public servants by constitutional definition.

Again, it must be difficult for an officer in the SAF to determine what rules of conduct apply to him, in view of the proliferation of rules and regulations in the SAF. If he has the time, inclination and intellectual capacity, he must begin with the Singapore Armed Forces Act, various

47. See Parts III and IV of the Police Regulations, op.cit.

48. Cap.295, MINDEF, however, published a general code of conduct (of 6 rules) in 1967 under the authority of the Army Board.
regulations made under the Act, MINDEF Standing Orders and Directives and MINDEF General Orders. In some situations, he may well find that his conduct complained of is proscribed only by the United Kingdom Queen's Regulations to which he is subject in some situations.

Senior army officers who have to discipline their men appear to have found a way to get out of this difficulty. Army legal officers complain that senior officers who have to impose punishment for indiscipline often resort to simply alleging that the misconduct complained of, whether it is a failure to salute a senior officer or whether it is an act of dishonesty, is merely "conduct prejudicial to good order and discipline". Officers have indeed been court-martialled for "conduct to the prejudice of good order and discipline" for such varied misconduct as

49. In so far as they are not inconsistent with the Singapore Armed Forces Act or regulations made thereunder or with any MINDEF General Orders, the Queen's Regulations for the Army Royal Air Force and the Royal Navy "continue to apply to the Singapore Armed Forces": Singapore Armed Forces Act, Cap.295, section 201(4).

50. This view was expressed by several legal officers of the MINDEF Legal Department in separate interviews between October and December 1983.
failing to take proper stock checking before relinquishing a post, sleeping with a female civilian in the same room at SAF premises, entertaining unauthorised civilians at an army installation, shooting oneself in the thigh while on prowler duty, sending anonymous letters to the Provost Unit containing false and malicious allegations against other officers and failing to supervise the night training of their men.

There is an urgent need to have a single code of conduct for all public servants on the principal ethical standards that are required of them on such matters as the acceptance of gifts and hospitality, conflict of interest, outside employment and financial embarrassment. Where additional rules of conduct are needed for some sectors of the public services such as the Armed Forces and the Police Force, there ought to be another single set of instructions or manual of army

51. Yahya bin Bujang v. State, Military Court of Appeal No.1 of 1974; Lee Kim Hong, MCA No.4 of 1977; Ng Ho Nguan and 3 Others, MCA No.10 of 1972; Vejai Singh, MCA No.6 of 1977; Mohammed Ismail bin Abdul Kadir, MCA No.1 of 1976; Vijayan Nair, MCA No.8 of 1976.
or police conduct which an officer can easily consult for guidance.

The second reason for the difficulty in determining what are the precise rules of propriety of conduct in any of the public services, is the unnecessary emphasis on confidentiality of all conduct rules. For this reason even public servants in one sector of the public services are not aware of conduct rules governing the others. The public are denied access to Instruction Manuals which are not published for general circulation and information, and to Police General Orders and MINDEF General Orders which are restricted documents not available even in a public library. It does not appear to have been appreciated that public knowledge of conduct rules may prove to be an important deterrent against official misconduct.

The other problem with the existing conduct rules is the dearth of explanations of the rules, or of

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52. Some amendments to the Instruction Manuals have, however, been released to the press and have received publicity. For example, the amendment to Instruction Manual No.2, paragraph L209, requiring government departments to adopt some anti-corruption measures was prominently reported: Straits Times, July 28, 1973.
any official publication which attempts to explain the rationale of the various rules to new recruits in the public services. Rather, the conduct rules take the form of edicts handed down and which are required to be followed on pain of disciplinary action or prosecution. In emphasizing disciplinary action for disobedience, the conduct rules make it clear that they are pivoted on enforcement and punishment rather than on guidance and self-regulation.

A guide to new public officers did exist during Colonial times. Published by the Staff Training Division of the Treasury some 30 years ago, it was entitled "Serving Singapore: A Handbook for New Entrants". The book explained in simple language the meaning of public service, the structure of government and the public services, the process of administration, and general rules and conditions of public services including the code of official conduct. There was, for example, a short explanation of the rule regarding gifts, bribes and corrupt practices, which in fact was a simple summary of the relevant provisions in the General Orders:

54. Ibid., at p.14.
Gifts, Bribes and Corrupt Practices. -
For obvious reasons, you are not allowed
to ask for or to accept gifts, presents or
entertainment for any help or information
whatsoever given to the public on official
matters, either inside or outside the office.
In certain circumstances where refusal
might indicate lack of courtesy, an officer
may accept such gifts or presents, which
acceptance should then be reported to his
Head of Department and the gift sent to the
Treasury. Should you be in doubt speak to
your senior officer: he may be in a better
position to see whether the circumstances
are likely to be prejudicial to the good
name of the Service and yourself.

These defects in the structure of the present
conduct rules may affect ethical conduct of public
servants should the level of the present vigilance
fall, or should there be a successor government with a
less intolerant attitude towards bureaucratic
corruption or with priorities different from the
present political leadership.
CHAPTER V

ADMINISTRATIVE METHODS OF CONTROLLING CORRUPTION:

THE CONTROL METHODS

This chapter examines other administrative control methods which provide checks against maladministration and financial misconduct by public bureaucrats. These methods deal with the accountability of public servants and act as a powerful deterrent against corrupt behaviour. In this context, the special roles of the Auditor-General and the Parliamentary Accounts Committee, and other parliamentary safeguards will be examined.

(A) THE AUDITOR-GENERAL

The Auditor-General is the legislature's financial watchdog. He is appointed by the President on the advice of the Prime Minister in consultation with the Chairman of the Public Service Commission, and is accountable to Parliament alone. His independence is further ensured by statutory guarantees of a tenure of office similar to that of a Judge of the

High Court. The Auditor-General's remuneration, for example, is paid out of the Consolidated Fund and his terms of service cannot be altered to his disadvantage during his continuance in office. Nor can the Auditor-General be removed from office except for inability to discharge his functions because of physical or mental disability or for misbehaviour. Even then he can only be removed on the recommendation of a tribunal appointed by the President and consisting of the Chief Justice and two Judges of the Supreme Court.

The Auditor-General's function is to audit the accounts of all government departments, the Supreme and Subordinate Courts and of Parliament. He may also audit the accounts of any public authority if so

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2. The important difference of course is that the independence of High Court judges is guaranteed by the Constitution.

3. Audit Act, Cap.17, sections 3(4), 3(5). As the Auditor-General's salary is paid out of the Consolidated Fund, salary increases have to be the subject of a Motion in Parliament. See, for example, Singapore Parliamentary Debates (1981) Vol.41, col.277.

4. Ibid., Cap.17, section 3(9).

5. Audit Act, Cap.17, section 4(1).
required by written law, or upon the request of a public authority or body administering public funds and with the consent of the Minister of Finance, or on being directed by the Minister if he is satisfied that the public interest requires it. In 1972, the Auditor-General won a longstanding battle to gradually take over the audit, from commercial auditors, of all statutory institutions in Singapore, thus increasing their accountability.

Yearly statements of accounts prepared by the Ministry of Finance, including receipts and expenditure of monies by government departments, are required to be submitted to, examined and audited by the Auditor-General. The Auditor-General's annual report to the President is presented to Parliament.

The Auditor-General in examining these accounts is required by law to determine whether all reasonable

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6. Ibid., section 5.
7. See the Second Report of the Parliamentary Accounts Committee, Parl.3 of 1973. The Auditor-General has since been able to persuade the Government that the accounts of government-owned companies too should be examined under his direction.
steps have been taken by public servants, **inter alia**, to safeguard the collection and custody of public monies, to ensure that payment of money has been made in accordance with proper authority, supported by sufficient vouchers of proof of payment, and to ensure that the provisions of any law relating to monies or stores subject to his audit have been complied with.  

Another aspect of the Auditor-General's work, which is not well known, is to assist public officers in both government and statutory boards in the setting up of systems of internal financial control, the interpretation of financial rules and regulations and the maintenance of proper accounting records.  

The Auditor-General has often taken pains to emphasize that whilst his audit is designed to satisfy himself of the effectiveness of accounting controls and the compliance with statutory authority, "the accuracy of the accounts, the safe custody of cash and stores and the prevention and detection of frauds and

defalcations" remain the primary responsibility of the officers in charge of accounting in various departments and statutory institutions.

The Auditor-General does not subject even all government departments to an annual audit. Due to manpower and other constraints, only the "more vulnerable aspects of the activities" of selected government departments are audited each year. For this reason, both the Auditor-General and the Public Accounts Committee have since 1975 urged government ministries to consider assuming wider responsibilities "for self-policing", by setting up Internal Auditing Units to supplement the functions of the Auditor-General in ensuring the veracity of accounting records and to periodically review the effectiveness of their internal financial controls.

In 1982, the Auditor-General reported that the Ministry of Finance had drawn up guidelines on the setting up of


13. Ibid., para.17. See also the Report of the Public Accounts Committee, Parl.4 of 1975, para.35.
Internal Auditing Units in government departments and was in fact considering "a fresh approach to the whole spectrum of financial control" of which internal auditing was one aspect.

Indeed, in the majority of cases of theft, misappropriation and other forms of defalcations by public servants, it is not the Auditor-General's audit which results in the discovery of the offences, although it is his report which informs the public of cases where the culprits are unknown or have not been apprehended or prosecuted in a court of law. It is, however, the Audit Report which gives details of the nature and extent of the defalcations.

More importantly, the Auditor-General's report discloses the factors responsible for the commission of the offences and the proposed remedial measures from an auditor's point of view. For example, after the conviction of an administrative attache at the Manila Mission in 1976, for misappropriation of $51,211 during a two-year period, it was the Auditor-General who revealed that the offence was facilitated by the "lack

of supervision over the work of the attache, the non-compliance with financial provisions as laid down in various Instruction Manuals and the Foreign Affairs Ministry's instructions, and ineffective checks on expenditure by officers both at the Mission and at the Ministry". Following audit proposals, these weaknesses were subsequently remedied.

The Auditor-General discharges his statutory duties by examining selected internal control systems and test checking accounting and other records. These procedures are not intended to reveal all accounting errors and fraud. Indeed to even attempt to do so would be "an impossible task and the cost would be astronomical and quite incapable of justification". The Auditor-General nevertheless remains confident that his methods of audit would enable him "to discover some of the occasional serious lapses when public monies and stores have not been properly controlled or used, when there has been waste, extravagance and inefficiency, when revenue has not been all collected or when


expenditure has not been incurred in accordance with the wishes of Parliament".

The Auditor-General's report further identifies weaknesses in accounting methods and controls which could possibly lead to abuse. For example, in 1983 the Auditor-General reported weaknesses in organisational and operational computer security at the Inland Revenue Department and also drew attention to the physical security deficiencies in the computer system of the Post Office Savings Bank. The management of the Commercial and Industrial Security Corporation (CISCO) also learnt, no doubt with some embarrassment, of the Auditor-General's findings of "general laxity" in the supervision and control of the uniform store and the technical equipment store which permitted a group of CISCO officers to issue stores to themselves without any authority from supervisory officers.

17. This confidence has been expressed by a number of Auditor-Generals over the years. See, for example, the Reports of the Auditor-General for the years 1972/73, para.6; 1973/74, para.6; 1977/78, para.6; 1980/81, para 6; 1982/83, para.6.


19. Ibid., para.170.
CISCO is a statutory institution manned by police officers, is the government's principal security agency and is often engaged to review security arrangements in major institutions.

To enable him to function effectively as an independent scrutineer of the disbursements of public monies, the Auditor-General is also given wide powers under the Audit Act. Section 7 of the Audit Act, for example, empowers the Auditor-General in the performance of his functions to:

(1) call upon any person for any explanation and information which he may require in order to discharge his duties;

(2) cause a search to be made in any book, document or record in any public office and make an extract of the same; and

(3) have access to all records, books, vouchers, documents, cash, stamps, securities, stores or other property subject to his audit.

Any person so called upon for any explanation or information by the Auditor-General is legally bound to furnish the explanation or information required. Failure to give such information and the furnishing of false information are offences under the Penal Code.

The Auditor-General's effectiveness as a public watchdog is further enhanced by the fact that his report is annually presented to Parliament and thus receives parliamentary scrutiny; is published and therefore receives considerable public attention through the press; and forms the basis of the inquiries and deliberations of the Public Accounts Committee.

The comprehensive report of the Auditor-General provides information upon which Members of Parliament may raise questions in Parliament. For example, in July 1982, Opposition Member J B Jeyaretnam made reference to the audit report in respect of the Housing & Development Board's accounts for the financial years 1979/80, 1980/81 and asked the Minister for National Development whether the Board had taken steps to change

21. Ibid., section 7(3).
22. Singapore Statutes, Cap.224, sections 176, 177.
its accounting system to implement the Auditor-23
General's recommendations.

Press publicity given to the Auditor-General's report, the queries of Members of Parliament on his report and the Public Accounts Committee's deliberations have the additional advantage of bringing irregularities in public expenditure and financial misconduct by public servants to the notice of politicians. This may by itself introduce in public servants an element of fear of discovery.

In addition, the fact that the Auditor-General is obliged to bring to the attention of the Ministry of Finance "serious irregularities that have occurred in the accounting or custody of public monies or public stores" may expose corrupt officials to disciplinary action or to prosecution.

The Auditor-General, however, is not an administrative enforcement officer. His functions are


This limitation in the role of the Auditor-General's has been recognised by the Public Accounts Committee. In 1973, the Committee expressed its concern over the fact that remedial measures proposed by the Auditor-General in respect of shortcomings in the management of public funds had not been effected expeditiously despite the Auditor-General's comments "year after year". In the Public Accounts Committee's view, this was due both to the nature of the Auditor-General's advisory function and lack of attention given by ministries and departments to effect corrective measures proposed by the Auditor-General as quickly as possible.

The Public Accounts Committee therefore recommended the setting up of an "action-orientated" Watchdog Standing Committee over Financial Administration to expedite corrective action. Members of the proposed Standing Committee were to be drawn from the Ministry of Finance, the Management Services Unit and the Auditor-General's Office with adequate powers to regularly examine "areas of weaknesses, omissions and irregularities with a view to improving efficiency and effecting corrective action".

The Committee further recommended that the proposed Standing Committee should have the power to direct ministries and departments to implement appropriate remedial measures. These recommendations were, however, not received with enthusiasm by the government and were not implemented.

In an effort to compel acceptance of his recommendations, the Auditor-General has, in recent years, begun the practice of indicating in his annual report whether or not remedial measures proposed by him for obvious weaknesses in internal financial controls and management of public monies and properties have

26. Ibid., para.20.
been implemented by the government departments and statutory institutions concerned. Such a practice is meant to draw attention to departmental and institutional recalcitrants, particularly for the benefit of the Public Accounts Committee which gives considerable support to the work of the Auditor-General.

(B) The Public Accounts Committee

Accountability of the government is also emphasized by the work of the Public Accounts Committee which is probably Parliament's most powerful committee. The Committee's inquiries impose a "valuable additional discipline" on government departments and statutory institutions. It exists principally to promote efficient management of public funds voted by Parliament and plays the role of the "guardian of the public purse".


The Public Accounts Committee is appointed by Parliament under Standing Order 95(2). Its duty is "to examine the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure and such other accounts laid before Parliament as the Committee may think fit".

The Committee generally examines the annual accounts on the basis of the Auditor-General's report. It then investigates shortcomings revealed in that report, takes further evidence from witnesses on these matters and makes its own report to Parliament.

In its work, the Public Accounts Committee is greatly assisted by the Auditor-General. The Committee relies on the annual audit of the Auditor-General and his observations on various shortcomings in the management of public funds and properties, and constantly benefits from the expert advice of the Auditor-General. The Auditor-General also furnishes

the Committee with research papers on various topics of interest to the Committee, gathers information required by the Committee and monitors the progress made by various government departments and statutory institutions in the implementation of the recommendations of the Public Accounts Committee.

The Audit Department and the Public Accounts Committee obviously work together for mutual benefit. The Public Accounts Committee needs the machinery of the Auditor-General's Office to keep itself informed, and the Auditor-General depends on the Public Accounts Committee to help implement his recommendations, as the Public Accounts Committee, being a committee of Parliament, wields more political clout. Its criticisms and recommendations have a greater impact on

30. For example in 1977 the Auditor-General furnished the Public Accounts Committee with two research papers on the 'Economic Activation Committee' and the 'Fiscal Policy Implementation Committee': Report of the Public Accounts Committee, Parliamentary Papers No.2 of 1977, Appendix III. In 1983, the Auditor-General submitted a report on steps taken by ministries and statutory boards to increase productivity: Report of the Public Accounts Committee, Parl.1 of 1983, Appendix I.

31. These now appear as Appendix I to the reports of the Public Accounts Committee and are entitled "Progress Reports from the Auditor-General on the Implementation of the Recommendations made in the Reports of the Public Accounts Committee".
public servants.

For example, when the Auditor-General discovered in 1974 that part of a ransom retained by the Police as a court exhibit was missing, his queries proved unproductive. The Police Department, in an effort to fend off inquiries from the Auditor-General, initially took the position that the missing ransom money was not public money and hence not subject to the provisions of the Instruction Manuals or to the Auditor-General's audit. Obviously alarmed by this attitude and concerned with the custody of monies and other exhibits in the custody of enforcement agencies, the Public Accounts Committee summoned various Heads of Departments to inquire into "the procedures for the recording, safeguarding and disposal of firearms, narcotics and undesirable publications", and made

32. Report of the Auditor-General for the Financial Year 1973/74, Singapore National Printers, para.146. The matter was subsequently resolved by the Police agreeing to the Auditor-General's view that the ransom could be regarded as 'public stores' within the Financial Procedure Act, Cap.109.

33. Report of the Public Accounts Committee, Parl.4 of 1975, para.24. The Committee examined the Officer-in-Charge of the Arms and Explosives Branch of the Police Force, the Comptroller of Customs and Exercise, the Chief Pharmacist and an Assistant Secretary at the Ministry of Culture.
recommendations to the improvement of the custody of such exhibits. The Committee's recommendations were accepted and implemented.

Indeed, as the Commissioner for Inland Revenue found, the Public Accounts Committee can be an important ally in inter-departmental disputes, even with the omnipotent Ministry of Finance, for additional staff, equipment and office space. It is therefore in the interests of departments to co-operate with the Public Accounts Committee in its inquiries, which in recent years have been extended to cover efficiency and productivity in government departments and statutory boards.

During the course of its inquiries, the Committee may call upon Permanent Secretaries and Heads of Departments to address the Committee on comments and criticisms of the Auditor-General in respect of their

34. See the Reports of the Public Accounts Committee, Parl.4 of 1975, paras.25 to 28; Parl.3 of 1976, pp.A5 to A7.

35. See the Report of the Public Accounts Committee, Parl.2 of 1977, minutes of evidence; para.4.

36. See, for example, the Third Report of the Public Accounts Committee, Parl.1 of 1983, paras.2, 3.
departments and to generally account for their stewardship of public monies. The experience of Permanent Secretaries at these meetings is no less traumatic than that of their British counterparts:

The grilling which takes place on the basis of these reports, always highlighting what went wrong rather than what went right, is an inescapable part of every Permanent Secretary's year, for which all of them ... prepare meticulously.

Particularly in a small country like Singapore, public criticism by the Public Accounts Committee may have serious consequences for public servants in their careers, and performance before the Committee is therefore taken seriously.

The Public Accounts Committee has examined Permanent Secretaries and Heads of Departments on a variety of subjects including irregularities in the purchase of speed boats by the Marine Police, poor management of confiscated goods by the Customs Department, the loss of paintings in the National

37. Instruction Manual No.1, Ministry of Finance (Singapore), para.A68.

38. Hugo Young and Anne Sloman, op.cit., p.60.

39. For an account of the experience of British civil servants before the Public Accounts Committee, see Hugo Young and Anne Sloman, op.cit., pp.63 to 65.
Museum, disregard of financial controls in the Education Ministry, the collection of fees not in accordance with law, deterioration of road surfaces, and the purchase by the Ministry of Finance of landed property in the United Kingdom which subsequently diminished in value.

The examination of departmental witnesses on matters arising principally from the Auditor-General's report, supported by queries from members of the Committee and by Members of Parliament, serve as a constant reminder to public servants that in the management of public funds they would be constantly called to account. On the other hand, the Committee's functions cannot be evaluated purely in terms of money saved. One of its most significant contributions, as explained by a former chairman of the British Public Accounts Committee, is to maintain "a high standard of public morality in all financial matters".

The political situation in Singapore, with the dominance of one political party in Parliament, has

40. Reports of the Public Accounts Committee, Parl.2 of 1978; Parl.3 of 1976; Parl.1 of 1983.

robbed the Public Accounts Committee of its traditional non-partisan reputation. The Chairman of the Committee is appointed by the Speaker of Parliament and comes from the ruling PAP. The seven members of the Committee are required, under Standing Orders of Parliament, to be appointed by the Committee of Selection to reflect as far as possible the balance between the government benches and the opposition benches. This requirement has been irrelevant between 1963 and 1981 when all members of the Parliament belonged to the PAP. Although after 1981 there has been at least one only Opposition Member in Parliament, no Opposition Member has been appointed to the Public Accounts Committee.

However, it is not any non-partisan reputation, age, experience or expertise of its members that contributes to the authority of the reports of the Public Accounts Committee in Singapore. It is rather

42. In Britain, Opposition parties are equally represented in the Public Accounts Committee and the Chairman of the Committee is by tradition a senior member of the Opposition who has held ministerial posts. See Flegman, *op.cit.*, pp.33, 34.

43. Standing Order 95(2).
the vigour with which successive Public Accounts Committees have pursued a variety of queries raised in the Auditor-General's reports and elsewhere, the careful but independent selection of subjects for study and the extensive examination of witnesses, that compel serious consideration of the Committee's views and recommendations. The Public Accounts Committee has taken its task seriously as it probably sees its work as an opportunity for backbenchers to directly supervise the public service.

The Committee has indeed shown much initiative and independence. It has often looked beyond the annual reports of the Auditor-General to examine shortcomings in the management of public funds and properties and has commenced inquiries on the strength of questions in Parliament, newspaper reports and editorials, letters to the press, and annual reports of statutory boards. In 1977, the Committee took note of the observations of a District Judge in a

44. See, for example, the Report of the Public Accounts Committee, Parl.2 of 1978, para.65.

case involving criminal breach of trust by an officer in the Income Tax Department who had helped herself to income tax refunds, and commenced inquiries into the procedure for the making of refunds to taxpayers.

The Committee agreed with the observations of the Judge that the Inland Revenue Department ought to "tighten its administration" to prevent such defalcations by its officers.

The Committee has demonstrated that its reliance on the Auditor-General's Department does not make it the mouthpiece of the Auditor-General. It has recognised the shortcomings of the methods of

46. Public Prosecutor v. Loke Foong Choo @ Chew Lin, DAC 386 of 1977 (unreported). The Public Accounts Committee obviously considered press reports of the case as the basis of their inquiries. For press reports see the Straits Times, March 10, 1977. For a fuller discussion of the case see Chapter IV, ante.

47. Report of the Public Accounts Committee, Parl.2 of 1977, para.5.

48. Ibid., para.6.
audit of the Auditor-General and has in fact been critical of the Auditor-General's Department itself.

Although the Committee has no power of enforcement of its recommendations, its reports carry considerable weight with government departments and are taken seriously. This is apparent from ministerial statements in Parliament in recent years.

49. Since 1975 the Public Accounts Committee has recommended that in view of the increasing growth and complexity of government work and the annual audit of the Auditor-General of only selected government departments, ministries should consider wider responsibilities for 'self-policing' by setting up internal auditing units. In 1979, the Committee renewed its call for internal auditing units. See the Reports of the Public Accounts Committee, Parl.4 of 1975, para.35; Parl.4 of 1979, paras.16 to 19.

50. In 1979, for example, the Committee pointed out that only a very small percentage of the staff of the Audit Department were "sufficiently experienced and suitably qualified" and expressed its doubt of the capability of the Audit Department "to move effectively into systems evaluation, with greater emphasis on value for money and programme auditing". See the Report of the Public Accounts Committee, Parl.4 of 1979, para.27.

(C) **Other Parliamentary Safeguards**

Parliament has an obvious influence on the conduct of the administration. Various parliamentary procedures in Singapore, similar to those adopted in the House of Commons in England, increase the accountability of public servants by providing avenues for the conduct of the Government to be publicly questioned. If used correctly, these procedures can be an effective way of criticising the Government, of questioning Executive decisions, and of giving publicity to the grievances of backbenchers and of their constituents. They thus provide valuable safeguards against maladministration and are particularly important in Singapore where one political party has formed the Government for 28 years, and where parliamentary elections have been able to produce only two Opposition Member in 19 years.

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52. The conduct of Parliamentary business is governed by Standing Orders adopted from those of the House of Commons. Standing Order 104 further provides that in cases of doubt and in the case of any lacuna, the Standing Orders of the Singapore Parliament shall be interpreted "in the light of the relevant practice of the Commons House of Parliament of Great Britain and Northern Ireland".

53. See the comment on "Government and Politics" in Chapter II, ante.
The parliamentary procedures that will be considered in this part of the chapter include Parliamentary Debates and the procedure of the Adjournment Debate in particular, Public Petitions to Parliament and Question Time.

(1) Debates

The limitations of time on speeches of Members of Parliament and other strict rules of debate restrict Members in addressing Parliament at will on all the grievances of their constituents. Generally, a Member is not permitted to speak unless there is before the House a Motion or the Member is about to conclude with a Motion or amendment. No Member may speak twice on the same subject except on a point of clarification, and irrelevance and repetition of arguments are prohibited. Individual Members of Parliament must indeed function within a framework of parliamentary procedures which gives the major portion of parliamentary time and the control of proceedings to the Government.

54. See generally Erskine May, Parliamentary Practice, Twentieth Ed., Chapters 18, 19; Singapore Parliamentary Standing Orders Nos. 44, 47, 48, 54.
A sole Opposition Member in Parliament would, be unable to have a Motion before the House for debate, for want of a supporter. In 1962, former Chief Minister David Marshall, the sole Workers' Party Member of the then Legislative Assembly, had to rely on other Opposition members when he moved a Motion to call upon the PAP government to appoint a Commission of Inquiry "to investigate political nepotism and improper political interference with the civil service and employees of statutory bodies [by the PAP] and to make recommendations".

Members of Parliament are, however, less restricted when the House debates the President's address and the annual Budget Statement, and when it considers in the Committee of Supply the main estimates of expenditure. Debate on the Budget Statement lasts seven days during which the House discusses the "general principles of government policy and administration". This is an opportunity for Members

55. Singapore Legislative Assembly Debates, vol.16, col.175.

56. Standing Orders of the Parliament of Singapore, Order No. 84(1).
of Parliament to criticise government policies and executive actions. Under a ruling of the Speaker, a Member of Parliament can speak for no more than one hour during the debate on the Budget Statement.

The main estimates of expenditure for public services are considered in the Committee of Supply for five days. In order to question the work of a government Ministry or public body, a Member of Parliament has to move an amendment, which need not be supported by another Member, to reduce by a token sum any head of expenditure. This device has been well used in Singapore to question government policies and has occasionally resulted in angry exchanges between Members of Parliament and Ministers.

As a method of checking maladministration, debates in the Committee of Supply have their limitations and cannot be used to constantly call the Executive to account. Apart from this being an annual exercise, there is a "guillotine" time fixed by the

57. Singapore Parliamentary Debates (hereinafter referred to as the "Debates"), vol.41, cols.906, 907.

58. See Standing Order No. 87(2)
Speaker for the consideration of the items of expenditure of each Ministry. The Speaker also strictly enforces the rule that a Member may speak for only 10 minutes at any one time in the Committee of Supply.

(2) Adjournment Debates

A Motion for the adjournment of Parliament can be used to begin a debate on a matter of public concern or to consider a particular constituent's problem. Under the Standing Orders of the Singapore Parliament, a Member may move an adjournment of Parliament if he satisfies the Speaker that he has a definite matter of importance for discussion and is able to obtain the general assent of the House or the support of at least eight Members of Parliament for his Motion.

The adjournment debate has been utilised in Singapore "as a means of raising the grievances of

61. Standing Order No.22.
private individuals", as for example in December 1965 when there was a dispute between the Public Daily-Rated Employees Union and the Government over the implementation of a collective Agreement. In recent years the adjourned debate has only been used to raise questions on such general issues of public interest as increases in rents for HDB shophouses and broadcasting licence fees, the Government's policies on education and land transport, and the need for a modern indoor stadium.

(3) Public Petitions
The Standing Orders also permit a Member of Parliament to present to Parliament a petition he has received from any member of the public. Such a petition must contain the material allegations of the citizen and a prayer stating "the general object of the petition or the nature of the relief asked for".

63. Debates, vol.39, cols.486 to 499; vol.42, cols.1642 to 1652; vol.43, cols 79 to 87, cols.1642 to 1652.
64. Standing Order No. 17(5).
Although public petitions to Parliament are based on the historical inherent right of a citizen to petition his Sovereign, it has been held that a Member of Parliament cannot be compelled to present a petition, and any allegation of a vague or general character may be rejected. For example, a petition from Newcastle imputing notorious corruption to the House of Commons was rejected. By their very nature, public petitions are not the best of remedies to expose maladministration.

(4) Questions in Parliament

The Parliamentary Questions procedure constitutes the 'grand inquest' of the nation.

In describing the value of Question Time, President Lowell of Harvard observed:

65. Erskine May, op. cit., p.858.
68. For a detailed discussion of the Parliamentary Questions procedure see, for example, Erskine May, op. cit., Chapter 17; Chester and Bowring, Questions in Parliament, Clarendon Press: 1962.
The system provides a method of dragging before the House any acts or omissions by the departments of state, and of turning a searchlight upon every corner of the public service ... it helps very much to keep the administration of the country up to the mark, and it is a great safeguard against neglect or arbitrary conduct, or the growth of bureaucratic arrogance ....

The importance of Questions is largely due to the fact that they were developed as the exception to the strict rules of parliamentary debate which were considered earlier. Given the procedural constraints on Parliament and the composition of the Singapore Parliament, Questions are perhaps the most effective way of criticising the Government at the present time.

The Standing Orders of the Parliament of Singapore permit questions to be put to Ministers on matters within their ministerial responsibility. Questions may also be put to other Members of Parliament relating to "a bill, motion or other public matter connected with the business of Parliament for which such Members are responsible". The Standing

70. Standing Order No. 18. For detailed rules as regards notices of questions, contents and the manner of asking and answering questions, see Standing Orders Nos. 19 to 21.
Orders require seven days notice to be given in writing but the Speaker may dispense with the requirement for a written notice if he is of the opinion that the question is of an urgent character and relates to a matter of "public importance or to an arrangement of public business".

The Parliamentary Questions procedure has been widely used in Singapore in recent years as a device to obtain information from Ministers, criticise government policies and to draw public attention to the grievances of individual citizens. The number of questions asked has steadily increased. In 1960, when there was an Opposition in Parliament, 101 questions were asked during Question Time. Ten years later, in 1970, despite the absence of an Opposition in Parliament, the number of questions was 96. In 1980, PAP Members of Parliament asked 150 questions, an increase of 64% from 1970. In 1985, the number stood at 218.

Questions have ranged over a variety of subjects from the criteria for the granting of citizenship, to the rental value of government-owned

71. Standing Order No. 19(1).
72. See Table 1, post.
premises occupied by the PAP. Question Time has also been used to obtain statistics of crime, which are not routinely published in Singapore, and results of criminal investigations. For example, questions have been asked of Ministers of the extent of theft in army camps, convictions for bribery and criminal breach of trust in 1980, complaints against civil servants and the number of cases investigated and prosecuted by the Corrupt Practices Investigation Bureau.

Information on CPIB investigations into malpractices in building construction carried out for the HDB in 1966, and into complaints of corruption against former National Development Minister Teh Cheang Wan in 1986, was obtained as a result of questions in Parliament.

After his election to Parliament in 1981, Opposition Member J B Jeyaretnam, for want of discover-

73. *Debates*, vol.40, col.630; vol.41, col.1509.


75. *Debates*, vol.25, cols.617, 618; vol.26, cols.326 to 335.

76. For a fuller examination see Chapter II, ante.
ing any "major blunder or a major misdemeanour" on the part of the Government, also resorted to the Questions procedure to embarrass the Government by frequently asking about the whereabouts of Phey Yew Kok, a PAP Member of Parliament and former Secretary-General of the National Trades Union Congress, who absconded in 1980 whilst awaiting trial for offences of criminal breach of trust of union funds.

Parliamentary Question Time now occupies an important place in the daily time-table of the Singapore Parliament whenever it meets, for a number of reasons peculiar to the Singapore political situation.


78. Jeyaretnam demanded that a Commission of Inquiry be set up to inquire into the loss of union funds and the disappearance of Phey when the matter was clearly sub judice, and twice questioned the Minister for Home Affairs on the whereabouts of Phey: *Debates*, vol.41, cols.361, 362; vol.42, cols.928 to 932; vol.43, cols.315 to 318.
<table>
<thead>
<tr>
<th>Year</th>
<th>Total Number of Questions Asked</th>
<th>Number of Questions Asked by Opposition Members*</th>
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<tbody>
<tr>
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<td>43</td>
<td>-</td>
</tr>
<tr>
<td>1976</td>
<td>57</td>
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</tr>
<tr>
<td>1985</td>
<td>218</td>
<td>55 (25.2%)</td>
</tr>
</tbody>
</table>

**TABLE 1: QUESTIONS ASKED IN PARLIAMENT (1975-1985)**

(*There was one Opposition Member in Parliament from 1982 and two in 1985.)

First, with the presence of only one political party in Parliament for more than 15 years since 1965, government backbenchers were encouraged to play the role of the "Opposition within the party", to let their conscience be their guide and to speak "freely with open minds". In February 1977, the Leader of the House told Members of Parliament:

Parliament is supreme. And because all our Members come from one Party, it will be our responsibility and our duty to scrutinise, criticise where appropriate, and debate all major pieces of legislation. Ministers would welcome questions not only during Question Time but after making statements on Government policies.


80. Ibid., col.6.
This call to speak "without inhibition and without constraint" was repeated in 1978 and may well explain the significant increase in the number of Questions asked by Members of Parliament in 1977 and 1978, as shown in Table 1, above. PAP Members, however, are obviously conscious that certain areas of bureaucratic activity, particularly when it concerns their Party, are taboo. Their reluctance to ask questions of the Prime Minister and the Deputy Prime Minister is also well known.

Secondly, proceedings during Question Time have been used by a docile press to give publicity to occasional criticisms of the government by backbenchers. This is at least an important psychological exercise in a country largely fed with statements of Government achievements and supported by a press not given to independent, evaluative reporting. Members' Questions and Ministers' responses to them give the press a "safe" supply of news stories of current interest.


82. This was one of the reasons given by the Prime Minister in support of having non-PAP, non-constituent members in Parliament: see Chapter II, part (E), ante, for a fuller discussion.
Thirdly, Opposition Members of Parliament have learnt that there is no disadvantage in the lack of numbers during Question Time. Although Opposition representation in Parliament between 1981 and 1984 was no more than 1.3%, 27.5% of all Questions asked in 1982 and 25.2% of the Questions in 1985 were by Opposition Members. This, of course, was in addition to the many supplementary Questions that they asked of Ministers.

There are, however, at least two defects which dilute the effectiveness of the Parliamentary Questions procedure as a potent check on misconduct and maladministration in the public services.

The first was recognised by the Constitutional Commission appointed by the Government in 1966. The Commission advocated that the institution of the Ombudsman be introduced in Singapore because it considered the existing safeguards to protect the interests of citizens aggrieved by official decisions

83. See Table 1, ante.
to be inadequate. After examining the system of the Parliamentary Questions procedure, the Commission commented on its principal disadvantages:

[A]ny answer given is necessarily based upon an investigation of the facts carried out by the department whose conduct is under criticism and may well be, and frequently is, based upon documentary and other evidence which is not available to the complainant or the Member of Parliament asking the question. Any investigation which is made, therefore, suffers from the disadvantage that it is not conducted by an independent authority with access to all relevant evidence. In any event it is open to serious question whether Parliament in a modern state is a suitable form for investigation by means of the machinery of question and answer of allegations and maladministration except in cases of the simplest type.

An answer given in response to a Question may, of course, not always be satisfactory or illuminating.

The Prime Minister himself discovered this when he was on the Opposition Bench, as illustrated by the following example:

84. Report of the Constitutional Commission, 1966, Chapter IV. This recommendation, although accepted in principle, was shelved by the Government as it then considered that the time was not "opportune for the introduction of such an office in Singapore". The recommendation was never implemented. For a fuller discussion see Thio Su Mien, op.cit.

85. Ibid., para.61.

86. Debates, vol.6, col.36.
CORRUPT PRACTICES INVESTIGATION BUREAU
(Investigations into alleged practices by Personnel and Welfare Manager, S.H.B.)

33. Mr Goh Chew Chua asked the Attorney-General whether he is aware of investigations by the Corrupt Practices Investigation Bureau into alleged corrupt practices by the Personnel and Welfare Manager of the Singapore Harbour Board; whether he has received the report from the Bureau; and whether any prosecution is contemplated.

Mr Shanks: Yes, Sir, I am aware of the investigation referred to and I have received a report from the Bureau. The answer to the last part of the question is no, Sir.

Mr Lee Kuan Yew: Is the fact that the person investigated had only recently received an order of merit from the Crown - being an Order of the British Empire - a factor in the decision not to prosecute him?

Mr Shanks: No, Sir.

Mr Lee Kuan Yew: Is any departmental disciplinary action considered?

Mr Shanks: This is a matter on which I cannot answer authoritatively.

Mr Lee Kuan Yew: Will the Hon. The Attorney-General indicate what his advice was in the matter?

Mr Shanks: No, Sir.

Mr Lee Kuan Yew: Shame!

Indeed, the second defect of the Questions procedure is that it depends on its effectiveness almost completely on the competence of the questioner
and the honesty and attitude of the answerer.

In addition, as has been continuously demonstrated in Singapore since 1981, the nature and quality of answers to Questions also depend on the relationship between the two.

Answers to Jeyaretnam's questions, for example, have often been prefixed with remarks about his lack of understanding despite his legal training, his confusion, and even his foolishness. He was also severely rebuked during Question Time by the Prime Minister. In a House with an overwhelming majority of government backbenchers, an Opposition Member must accept occasional ridicule as part of the run of parliamentary politics. However, there was an unusual readiness by Ministers to regard Jeyaretnam's Questions as a "smear" on the Government and to impute improper

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87. Among the factors that a Minister well may take into account are whether the questioner is a Government supporter or Opposition Member, whether he is an expert on the subject matter of the question, and whether he is quick witted and likely to be able to take advantage of the device of asking supplementary questions until a satisfactory answer is given: Chester and Bowring, op.cit., pp.239, 240.


motives to him.

Jeyaretnam himself contributed to this state of affairs by a lack of direction during Question Time, inadequate research, repetition, his fondness for making general allegations just to score "a debating or publicity point", and often by a dismal ignorance of the Standing Orders of Parliament and of law.

Despite these defects in the Questions procedure, Minister's answers in most instances contain detailed information and are well reasoned. Parliamentary Questions, therefore, remain an important method of ensuring Government accountability in Singapore.


92. *Debates*, vol.41, cols.361 to 368. In August 1982, Jeyaretnam was found guilty of dishonourable conduct and contempt of Parliament for having raised a matter in the House in which he had a pecuniary interest without disclosing it and was reprimanded: *Debates*, vol.42, cols.119 to 125.

93. *Debates*, vol.41, cols.1323 to 1324.

94. Public servants take Questions asked of their Minister seriously. From the time a Question is received in a Ministry, it is given priority and the draft answer is prepared as soon as possible. The Permanent Secretary is responsible for ensuring that the answer is prepared and ready for delivery at the appointed time. See *Instruction Manual No.4*, paragraphs B140 to B151.
CHAPTER VI

ENFORCEMENT OF THE ADMINISTRATIVE MEASURES

(A) INTRODUCTION

The enforcement of administrative measures to curb corruption by punitive methods is perhaps a necessary evil. It drives home to both public servants and the public the seriousness of a government in its anti-corruption effort and has been widely used in Singapore since the PAP first formed the government in 1959.

In 1960, the new Government announced in Parliament its intention to repeal the existing Colonial regulations dealing with disciplinary procedures which had proved "unrealistic and impracticable" and the "exacting procedural requirements" which it considered had particularly hampered effective action against corrupt officers. The Government was distressed with the inordinate delay in disciplinary proceedings in cases of corruption which it believed to be due to both the archaic procedures and to ad hoc disciplinary committees on which sat civil servants who "have little time or are

lost in a mass of unnecessary details". The Minister for Home Affairs told Parliament:

From experience, it has been found that the strongest deterrent against corruption is a swift and severe retribution. When a case is prolonged for six months to one year, the effect is lost. For this reason, action will be initiated for the amendment of the regulations governing discipline, and with the approval of the PSC (Public Service Commission), the appointment of a permanent disciplinary committee with a panel of members composed of civil servants and those who are not civil servants.

As a first step towards the establishment of an efficient and speedy disciplinary procedure, disciplinary powers vested in the Yang di-Pertuan Negara (Head of State) were delegated in August 1960 to the Commissioner and Superintendents of Prisons to deal with minor disciplinary offences committed by prison officers of and below the rank of Principal Officer. Similar delegated powers were conferred upon the Controller of Customs over junior officers

2. Ibid.
In 1962, Permanent Secretaries in all ministries were also empowered to deal with any officer in their ministry found guilty of being discourteous to the public or of speaking "disparagingly of the Government in a manner calculated to bring the State into disrepute". In September 1962, new disciplinary rules were gazetted for the formal hearing of complaints against public servants accused of misconduct or neglect of duty. These regulations were subsequently amended and


consolidated in 1964 and again in 1970.

The procedure for disciplinary proceedings against public servants over whom the PSC has control is now governed by Article 110 of the Constitution of Singapore, the "most litigated" constitutional provision, and by three sets of regulations issued by the PSC under Article 116 of the Constitution:


9. S. Jayakumar, "Protection for civil servants: The Scope of Article 135(1) and (2) of the Malaysian Constitution as developed through the cases", [1969] 2 MLJ liv.


The constitutional responsibility for the disciplinary control of public servants rests solely with the Public Service Commission. Article 110(1) of the Singapore Constitution charges the Commission not only with the duty to "appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, dismiss" public servants but also to exercise disciplinary control over them. The Commission, however, has no jurisdiction over officers in the Legal Service, the Singapore Armed Forces, police officers below the rank of Inspector or over daily-rated employees.

The Public Service Commission (PSC) is an "independent authority, independent of executive control", and consists of a chairman and between five and eleven members who are appointed by the President.

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12. Constitution of the Republic of Singapore, Articles 103, 111(3). Members of the Legal Service are appointed and disciplined by the Legal Service Commission constituted under Article 111(2) of the Constitution.

on the advice of the Prime Minister. The Commissioners have security of tenure of office of between three and five years guaranteed by the Constitution. The PSC is served by a permanent secretariat manned by civil servants and headed by the Secretary to the PSC. An annual report of the activities of the Commission is presented to Parliament.

Article 104 of the Singapore Constitution purports to lay down the common law rule that, with the exception of the judges of the Supreme Court and some public officers who customarily enjoy security of tenure of office, every public servant holds office during the President's pleasure. However, this doctrine of public office at the pleasure of the Head of State appears to be somewhat qualified by clauses 3 and 4 of Article 110 of the Constitution. These clauses provide that no public servant shall be punished for a disciplinary offence with dismissal or a reduction in rank without being given "a reasonable opportunity" of being heard, and that no member of the civil service, legal service or the Singapore Police

14. Such as the Attorney-General, the Auditor-General and the Chairman of the PSC: Constitution of the Republic of Singapore, Articles 35 and 107; Audit Act, Singapore Statutes, Rev. Ed. 1985, Cap.18, section 3.
Force shall be so dismissed or reduced in rank by any authority subordinate to that empowered to appoint the member to office.

It is clear from Article 110 of the Singapore Constitution that the power of the President to dismiss permanent officers or even to reduce their ranks at pleasure has been effectively removed although the courts generally appear to be reluctant to say so.

In Government of Malaysia v. Lionel, for example, after examining identical provisions in the Malaysian Constitution, the Privy Council was merely content to hold that members of the public service have obtained "a degree of security of tenure under the

15. Most discussions of clauses 3 and 4 of Article 110 of the Singapore Constitution have centred on the question whether a public servant is entitled to one hearing or whether he ought to be given an opportunity to be heard twice - once on the allegations against him and again against the proposed penalty if found guilty. See S. Jayakumar, op.cit.; F.A. Trindade, "The Security of Tenure of Public Servants in Malaysia and Singapore", Malaya Law Review Legal Essays, 256; V.S. Winslow, "Disciplining Public Servants: The Exorcism of a Phantom Doctrine", 25 Mal. L.R. 87.

Constitution of their appointments". Again in 17 V C Jacob v. Attorney-General, the Chief Justice, although recognising that public officers in Singapore are not under the control of the executive through the President but subject solely to the authority of the PSC, nevertheless thought it necessary to explain:

The President has by virtue of Article 132 [now Article 104] a residual power of dismissal, a power however which he must exercise subject to Article 135(2) [now Article 110(3)] that is a reasonable opportunity to be heard rule - so that in practice it would be a power which will hardly, if ever, be exercised at all.

A reasonable conclusion from an assessment of the relevant constitutional provisions and the decisions of the Courts on them is that the dismissal or a reduction in rank of a public servant in Singapore can now take place only "for cause shown and not at the pleasure of the President". This is why public servants have been so litigious about dismissal and

17. [1970] 2 MLJ 133.
18. Ibid., at p.137.
19. F.A. Trindade, op.cit., p.278. Trindade argues that if a dismissal contrary to Article 110 would be held by the courts to be inoperative and of no effect, it follows that the Article in fact confers a right not to be dismissed.
reduction in rank.

As to what constitutes a reasonable opportunity of being heard under Article 110(3) of the Singapore Constitution, if it is to be "a real right which is worth anything", has been explained by the Privy Council:

1. the accused must know the case which is made against him;
2. he must know what evidence had been given and what statements have been made affecting him;
3. he must be given a fair opportunity to correct or contradict the evidence against him;
4. the adjudicator must not hear evidence or receive representations from one side behind the back of the other.

20. See L.A. Sheridan, "A Digest of Dismissal and Reduction in Rank", [1962] Public Law 260, for a discussion of Indian and Malaysian cases. For an examination of recent Singapore decisions, see Jayakumar, op.cit.; Trindade, op.cit.

21. In Surinder Singh Kanda v. Government of the Federation of Malaya, [1962] MLJ 169. For an application of this doctrine, see for example Aziz bin Abdul Rahman v. Attorney-General, [1979] 2 MLJ 93; Phang Moh Shin v. Commissioner of Police & Others, [1967] 2 MLJ 186. It has, however, been held that a public servant who is refused legal representation at a disciplinary inquiry is not denied a reasonable opportunity of being heard: V.C. Jacob v. Attorney- General, [1970] 2 MLJ 133.
Clearly, Article 110 of the Singapore Constitution does no more than enshrine the basic principles of natural justice.

(B) **Departmental Summary Punishment**

By the **Public Service (Disciplinary Proceedings - Delegation of Functions) Directions**, which came into effect on 1st July 1970, the PSC made Permanent Secretaries in all Ministries responsible for the disciplinary control of public servants in Divisions 3 and 4. According to the Commission, the main objective of these Regulations is to enable them "to exercise their managerial and disciplinary functions more swiftly and effectively with regard to certain less serious offences". In December 1970, the Commission reiterated that it was imperative that Permanent Secretaries deal promptly with disciplinary


23. Officers in Divisions 3 and 4 include those in the lower clerical and manual grades and those in the lower ranks in law enforcement agencies.

24. In a minute to all Permanent Secretaries: PSC/Circular Minute No.20/70 dated December 12, 1970.
cases in their charge as otherwise "the desired effect will be reduced or negated".

These Regulations empower a Permanent Secretary to receive complaints as regards the commission of certain minor disciplinary offences, to inquire into these complaints and, if satisfied that the officer has committed the offence, to inflict a penalty of a fine not exceeding one month's wages up to a maximum of $200, stoppage or deferment of increment of up to one year, or to issue a reprimand or a written warning to the errant officer. Where a Permanent Secretary considers that a more severe penalty ought to be imposed, he must submit a recommendation to that effect to the PSC.

The PSC has reserved to itself the power of reviewing the punishment imposed by a Permanent Secretary within one month of its imposition and to vary the penalty by way of "enhancement, reduction,

25. Ibid.


27. Ibid., clause 8.
substitution or otherwise". A penalty, however, cannot be enhanced by the PSC unless it has given the officer concerned a reasonable opportunity of being heard.

The minor offences that may be dealt with by Permanent Secretaries themselves are listed in the Schedule to the Directions. These include a variety of minor misconduct including neglect or excess of duty, discourtesy to the public, unpunctuality, wilful destruction of Government property, or "conduct prejudicial to good order or discipline" which is a convenient phrase to embrace various forms of misbehaviour. The summary departmental punishment that is prescribed by the Directions are not meant for serious forms of misconduct such as those which involve dishonesty or corruption. Complaints of misconduct and neglect of duty are considered by a Committee of Inquiry appointed by the PSC under the Public Service (Disciplinary Proceedings) Regulations, 1970.

29. Ibid. See also Attorney-General, Singapore v. Ling How Doong, [1969] 1 MLJ 154.
30. For a detailed examination of this phrase, see Chapter IV of this dissertation, ante.
As shown in Table 2 below, between the years 1973 and 1986 a total number of 437 junior officers were disciplined by Permanent Secretaries and 670 prison officers were summarily punished by the Director of Prisons under the powers delegated to them by the PSC. The number of public officers disciplined by Permanent Secretaries has steadily declined since 1977 and has remained at an average of about 11 per year from 1980. This decline may be due to a decrease in the number of disciplinary offences committed by junior public officers as well as an increase in the use of other administrative measures stipulated in the Government Instruction Manuals for dealing with officers whose work or conduct has been found wanting.

32. See Chapter IV, ante

33. Serving officers whose work and conduct are unsatisfactory may be dealt with in various ways under the Instruction Manuals. These include verbal or written warnings by Heads of Departments (para. B20, IM No.2), the withholding of increments for a specific period (para. G89, IM No.2), termination of service of the officer if a probationary, contract or temporary officer (paras. P25-32, IM No.2) and retirement in the public interest under section 9(c) of the Pensions Act, Singapore Statutes, Rev. Ed. 1985, Cap.225.
<table>
<thead>
<tr>
<th>YEAR</th>
<th>BY PERMANENT SECRETARIES</th>
<th>BY THE DIRECTOR OF PRISONS</th>
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**TABLE 2:** NUMBER OF OFFICERS DISCIPLINED BY PERMANENT SECRETARIES AND THE DIRECTOR OF PRISONS (1973 - 1986)

* Compiled from statistics published in the annual reports of the Public Service Commission.
(C) Disciplinary Proceedings for Misconduct

Misconduct and neglect of duty by public servants who are permanent officers are dealt with more formally by the PSC under the Public Service (Disciplinary Proceedings) Regulations, 1970.

Although the words "misconduct" and "neglect of duty" have been used in disciplinary regulations continuously since 1962, there has been no attempt to define them. It is unlikely that the courts would restrain the meaning of the term "misconduct" particularly when used in reference to the misbehaviour of public officers, when there is no fixed rule of law defining the degree of misconduct which will justify dismissal of a servant in the private sector. The choice of the wide terms "misconduct" and "neglect of duty" for use in the disciplinary regulations may have been intentional as they give the PSC flexibility in determining standards.


of behaviour and propriety of official conduct acceptable of a public officer.

Detailed rules for instituting and conducting disciplinary proceedings against public servants for misconduct and neglect of duty are provided by the Public Service (Disciplinary Proceedings) Regulations, 1970. Under these regulations, the PSC, upon being informed by a Permanent Secretary that a public officer has been guilty of misconduct or neglect of duty, may proceed in one of two ways.

If the PSC is of the view that the subject of the complaint is not serious enough to warrant a formal hearing before a disciplinary committee with a view to dismissal or reduction in rank, the Commission may cause an investigation into the matter. The PSC has issued guidelines to investigating officers as to the conduct of these investigations. The investigator performs only an inquisitorial function. The public


37. Regulations 3 and 4 of the 1970 Regulations.

officer under investigations must be informed in writing of the case against him and must also be given a reasonable opportunity of replying to these allegations. The investigator's report contains the reasons for his findings on the charges against the officer and an indication of the circumstances which have mitigated or aggravated the offence.

The Commission may, after considering the case against the public officer and his reply, impose a fine, stop or defer his annual increment in wages or reprimand the officer. However, upon sufficient grounds being disclosed, the PSC may require the officer to retire in the public interest without further proceedings and with or without a reduction in retirement benefits. If it so decides, the public officer must be given an opportunity to reply to the grounds upon which his retirement is contemplated.

39. 1970 Regulations, regulation 3(1). The PSC's guidelines also emphasize that in conducting the investigation, the investigating officer must act fairly, impartially and in good faith.


41. 1970 Regulations, regulation 3(2).
If the PSC is informed by a Permanent Secretary that a public officer has been guilty of misconduct or of neglect of duty which, in his view, "warrants proceedings with a view to dismissal or reduction in rank", the PSC then conducts a formal hearing of the allegations. The public officer concerned is served with formal charges of the alleged misconduct or neglect of duty and given seven days within which to exculpate himself in writing. If the officer admits the charges against him or fails to give an exculpatory statement or does not submit an exculpatory statement to the satisfaction of the PSC, the Commission is then required to appoint a Committee of Inquiry to inquire into the charges that have been preferred against the public officer.

The Committee consists of two public officers and one other person chosen from a panel of persons nominated by the PSC. Demands by the Amalgamated Union of Public Employees (AUPE) that the chairman of the inquiring committee be selected by agreement between the AUPE and the PSC and that at least one member of the Committee be nominated by the officer's

42. Ibid., regulations 4(1), 4(2).
43. Regulation 4(3).
44. Regulation 4(5).
union, have been rejected.

The two public officers on the disciplinary committee are chosen from the Ministry in which the accused official is employed but not from the same department. This ensures that the Committee is kept well informed of the nature of the officer's work and responsibilities, and that the most reasonable interpretation is put on his motives and his conduct in respect of the allegations against him. The panel of persons who are not public servants is made up of citizens drawn mostly from the commercial sector and from the professions. Panel members are normally recommended by members of the PSC on the basis of good character and the Committees of Inquiry serve as a good

45. AUPE resolution passed on December 8, 1964, after the Public Service (Disciplinary Procedure) Rules, 1964, were published: Mimbar, vol.1, no.11. The Minister of Finance described the AUPE criticism as a "hysterical outburst": Mimbar, (vol.1 no.11), January 1965.

46. Information obtained during an interview, on July 12, 1984, with officers of the PSC including Mr Er Kwong Wah, Secretary of the PSC; Mrs Lee Miew Boey, Director (Appointments, Scholarships and Discipline); Mr Lim Kit Hee, Assistant Director (Discipline); and Mr Tan Eng Siong (Disciplinary Officer). This interview will hereinafter be referred to as the "PSC Interview".
testing ground for membership of the PSC.

The evidence at the inquiry before the Committee is tendered by a public officer nominated by the Permanent Secretary and the officer under inquiry may, at the discretion of the Committee of Inquiry, be represented by an advocate and solicitor or by another public officer who must not be senior in rank to any of the two public servants on the Committee or to the officer presenting the evidence. In cases where an officer is permitted to be legally represented, evidence on behalf of the Government is presented by a legal officer from the Attorney-General's Chambers.

That legal representation at disciplinary proceedings remains solely at the discretion of the Committee of Inquiry has been much criticised. In December 1964, the AUPE passed a resolution condemning the PSC in an attempt to draw public attention to the fact that public servants had been denied "the right

48. The PSC Interview, loc.cit.
that murderers and kidnappers have in our country" of being defended by advocates of their choice.

The Government declined to comment. It also failed to respond to a recommendation in 1967 by the Civil Service Salaries Commission that, "in the interests of justice", the right to legal representation must not remain at the discretion of the Committee of Inquiry. A decision of the Singapore High Court that the right to legal representation at a disciplinary tribunal is not a requirement of natural justice has certainly not helped in this regard.

The reluctance to give a right to legal representation may be due to a fear that it might encourage the parties to conduct themselves before the Committee of Inquiry as if it were a court of law with the result that disciplinary proceedings may be


52. V.C. Jacob v. Attorney-General, [1970] 2 MLJ 133. Regulation 4(8) of the 1970 Regulations was amended less than three weeks after the Regulations were published, by the curious device of a corrigendum (S.210 of July 27, 1970) following the decision of the Chief Justice in Jacob's case that the right to legal representation was not a requirement of natural justice or the "reasonable opportunity of being heard" rule. The decision has been criticised by Winslow and Trindade, op.cit.
protracted and the advantages of tribunal adjudication lost. In recent years the PSC has accepted both in principle and in practice that it is desirable to allow public servants to be legally represented at disciplinary inquiries.

The courts have recognised that the Committee is not a court of law but a domestic tribunal charged with the duty of inquiring into the conduct of a public officer and submitting a report to the PSC. The Committee is not bound by the rules of evidence and may inform itself of "any matter in such manner as it thinks fit". At the discretion of the PSC the Committee may also re-convene to consider further evidence. At the inquiry the officer has the right to have access to information in documents which are to be tendered in evidence, to cross-examine the witnesses against him, to give evidence and to call witnesses. The regulations, however, emphasize that in the

53. The PSC has since October 1978 required its inquiring committees to consider applications for legal representation and to record the "grounds of the decisions": General Guide for the Conduct of Proceedings, etc., op.cit., para.1.


56. Ibid., regulations 4(6), 4(15).
performance of its functions the Committee of Inquiry is not to be "deemed to be a judicial or quasi-judicial body".

The Committee of Inquiry is required to submit its report to the PSC within 14 working days of the conclusion of the proceedings unless granted an extension of time by the Commission.

Regulation 4(7) provides that the record of the proceedings of the Committee shall consist of the "information" obtained by it and the Committee's report. The Regulations, however, do not state what is

57. Regulation 4(4); Heng Kai Kok v. Attorney General (1987) 1 MLJ 98. In view of the present state of development of administrative law it is difficult to appreciate why the PSC insists in maintaining the distinction between "judicial", "quasi-judicial" or "administrative" bodies, especially when it emphasizes that its inquiring committees must act fairly. In this context, see Currie v. Chief Constable of Surrey, [1982] 1 All E.R. 89; Shareef v. Commissioner for Registration of Indian and Pakistan Residents, [1966] A.C. 47; R v. Kent Police Authority, Ex parte Godden, [1971] 2 QB 662; Amalgamated Union of Public Employees v. Permanent Secretary (Health) & Anor., [1965] 2 MLJ 209.

58. Regulation 4(10). Undue delay in the outcome of disciplinary inquiries may cause hardship to an officer under inquiry. Where disciplinary proceedings for dismissal or reduction in rank are pending, a public officer may be interdicted from his duties with all or part of his emoluments being withheld. And pending disciplinary proceedings against him, a public servant is not allowed to resign or leave Singapore without the permission of the PSC: Regulations 7(1), 7(2), 13.
to constitute the information gathered by the inquiring committee or what its report should contain.

In Wong Kim Sang & Anor v. Attorney-General, Kulasekaram J held that Regulation 4 of the Public Service (Disciplinary Proceedings) Regulations, 1970, clearly showed that the Committee existed only for the purpose of "collecting information and reporting on the case" and that its conclusions on the guilt or innocence of the public officer were irrelevant:

Its function, it would appear, is not to make any finding as to whether the officer is guilty or not guilty on the charge. That is a matter left entirely to the PSC after considering the report of the Committee. If the Committee in its report makes any finding as to the guilt or otherwise on the charge preferred against the subordinate officer concerned it is purely expressing its opinion and no more, and it is at best a matter which may be taken into consideration by the PSC and is by no means binding on the PSC.

If by "information" is meant the evidence obtained at the disciplinary proceedings before the Committee, ought its "report" not to contain the Committee's assessment of the evidence gathered and its conclusions on the evidence? The members of the Committee would have had the advantage of at least

60. Ibid. at p.180.
observing the demeanour of the witnesses before them.

The PSC's view is that its Committees of Inquiry do not act "merely as a conduit pipe for transmission of the evidence adduced to the Commission in the expectation that the Commission will sift through the whole of the evidence to decide whether a charge has or has not been proved". It has impressed upon its inquiring committees that they should prepare their report "with utmost care" as they are "entrusted with the task of finding facts for the Commission".

In administrative guidelines for the conduct of disciplinary proceedings issued since at least October 1978, the PSC has advised inquiring committees as to what their report should contain:

The Report therefore should deal fully with all issues of fact in support and in disproof of each of the charges. Where there is a conflict of evidence on any issue of fact, it is incumbent upon the Committee to state which version of the facts it accepts and which it rejects. It must come to a definite conclusion based on other evidence it has accepted, on inherent probabilities or on common sense.


62. Ibid.

Statements of the Committee on these findings of facts must be clear and unequivocal. Where intention or a state of mind forms part of an event, it is also incumbent on the Committee to find and state whether such intention or state of mind existed at the material time.

Before the commencement of a disciplinary inquiry under the Regulations, the Committee is furnished with a "suggested outline" for its report which indicates that the report should be prepared under the following headings: charges against the officer, date and time of sittings, parties presenting the case, witnesses for and against the officer, list of documents and exhibits tendered during the inquiry, summary of evidence adduced, committee's deliberations, and committee's conclusions. The PSC, however, makes it clear to the Committees that they ought not to impose or recommend any penalty as the question of punishment is solely for the consideration of the PSC.

A Committee's findings are first sent to the Permanent Secretary of the officer under inquiry, for his comments, before the PSC acts on them. Where necessary, the Commission also seeks the advice of the

Attorney-General. Although the PSC is the ultimate authority for deciding whether an officer under inquiry is guilty of the charge, it will "primarily base" its decision on the findings of the Committee of Inquiry.

After considering the Committee's report, the PSC may dismiss or reduce the rank of the public officer or impose some lesser penalty such as stoppage or deferment of increment, fine or reprimand, or a combination of such penalties, or require the public officer to retire in the public interest without further proceedings, with or without a reduction in retirement benefits.

Where a public officer has been convicted of a criminal offence, the PSC is not obliged to appoint a Committee of Inquiry. After the conclusion of the officer's appeal, if any, the Commission may consider the record of the court proceedings and after giving the officer a reasonable opportunity of being heard,

66. The PSC Interview, op.cit., footnote 46.
68. 1970 Regulations, regulation 4(14). It is clear from this regulation that in considering "the facts available", the PSC need not confine itself to the Committee's report.
dismiss, reduce in rank or otherwise punish the public officer.

What is interesting is that where a public officer has been acquitted of a criminal charge by a court of law, the PSC may, nevertheless, under Regulation 11 of the 1970 Regulations, after considering the record of the proceedings, dismiss, reduce in rank or otherwise punish the officer or institute disciplinary proceedings against him. As is to be expected, this regulation has been criticised by the AUPE.

An attempt to challenge the validity of Regulation 11 on the ground that it violated a constitutional provision that grants protection against double jeopardy, failed in Mohamed Yusoff bin Samadi v. Attorney-General.

69. Ibid., regulations 8, 9.

70. See for example "Officer acquitted by court, Union questions disciplinary inquiry", The Public Employee (Vol.VIII, No.2), February 1978; "Acquitted but still under interdiction - Is this fair?", The Public Employee (Vol.VIII, No.11), November 1978.

In that case the plaintiff, a school teacher, was tried and acquitted by a Magistrate on five charges of using criminal force on four of his female students with intent to outrage their modesty. Despite his acquittal, the PSC instituted disciplinary proceedings under Regulation 4 of the Public Service (Disciplinary Proceedings) Regulations, 1970, with a view to the plaintiff's dismissal. The disciplinary charges alleged that he had been guilty of misconduct in that he had abused his position as a teacher by outraging the modesty of the same four pupils. The plaintiff then sought declarations from the High Court that Regulation 11 was *ultra vires* the Singapore Constitution, that the discretion exercised by the PSC to institute disciplinary proceedings against him was, in the circumstances, unreasonable and contrary to the principles of natural justice and further that it was improper for the PSC to proceed on the same allegations in disciplinary proceedings against the plaintiff in view of his acquittal on those charges by the Magistrate.

Mr Justice Chua refused these declarations and held that the principles of *autrefois acquit* and *autrefois convict* did not preclude the plaintiff from being subsequently subjected to a disciplinary action.
before a domestic tribunal upon the same facts; that the principle of res judicata did not apply in such situations as the parties and the accusations before the two proceedings were different; and that it was not improper for the PSC to institute disciplinary proceedings against the plaintiff as the exercise by the PSC of its powers "is not by way of punishment but rather to enforce a high standard of propriety and professional conduct".

It is clear that what Regulation 11 envisages is that regardless of the conclusions of a court of law (or a Committee of Inquiry) on the charges before it, sufficient grounds may have been established in the proceedings to enable the PSC to conclude that a public officer has been guilty of misconduct or neglect of duty to justify punishment. In Mohamed Yusoff's case, for example, the PSC took the view that despite his acquittal on the outraging modesty charges because of a lack of corroboration, the plaintiff could not be allowed to remain a school teacher as the evidence at his trial had disclosed that he had dated

72. Ibid., at p.3.
his four female students who were of tender age.

It would be wrong to conclude that the PSC acts unfairly or arbitrarily or that it treats findings of a court of law or a disciplinary tribunal, in favour of public servants, with contempt. The PSC does not often proceed against a public servant cleared of charges against him by a court or a disciplinary body. It certainly does not do so without seeking the views of the officer's Permanent Secretary and the advice of the Attorney-General. The Commission does not ignore findings of fact by a court of law. It intervenes with conclusions of its inquiring committees only in exceptional cases, for example, where the Commission feels that the committee has been influenced by irrelevant evidence, or has failed to consider the relevant issues before it, or has conducted the

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72b. The PSC Interview, footnote 46, ante. Other disciplinary authorities in Singapore take a similar view. For example, in Velayutham v. Port of Singapore Authority, [1976] 1 MLJ 210, the PSA dismissed the plaintiff for misconduct on the basis of his admission to the police of his role in the theft of 83 cartons of brandy from a PSA godown. The dismissal was subsequent to the acquittal of the plaintiff by a District Court on charges of theft after an application for an adjournment of the case by the prosecution had been refused. The dismissal was upheld by the High Court.
proceedings as if it were a court of law. Indeed, as has been seen, the available administrative guidelines and disciplinary regulations issued by the Commission all emphasize the Commission's concern with fairness towards public servants accused of disciplinary offences.

The fact remains that in the disciplinary control of public servants, the PSC has indeed wide powers. Notwithstanding the provisions of the Public Service (Disciplinary Proceedings) Regulations, 1970, the PSC may, if it considers it "desirable in the public interest that a public officer should be required to retire from the service" on grounds which cannot be suitably dealt with by specific charges under the 1970 Regulations, call for a full report from the officer's Permanent Secretary or from previous Permanent Secretaries under whom the officer has served. After giving the public officer an opportunity of replying to the complaints by reason of "which his retirement is contemplated", it may require the public officer to retire in the public interest having due

72c. The PSC Interview, ibid.
74. 1970 Regulations, regulation 6(1).
regard to "conditions of service, the usefulness of the public officer thereto and all the other circumstances of the case".

The PSC itself believes that its wide powers to act against public servants are a great deterrent against corrupt behaviour amongst public officers and it therefore plays an important role in the control of corruption in Singapore. Public servants are well aware that if found to be corrupt they are liable to be dismissed even if discovered a day before they are due for retirement. And if discovered after their retirement, they are liable to lose their pension benefits.

Statistics of disciplinary cases in Chart 1 and Tables 3 and 4 below, show the constant vigilance that the PSC and officers to whom it has delegated powers of disciplinary control maintain over public servants.

75. Ibid., regulation 6(2).
76. The PSC Interview. See footnote 46.ante.
77. Ibid. The legal consequences of corruption are fully examined in Chapter IX, post.
<table>
<thead>
<tr>
<th>OFFENCE</th>
<th>TOTAL NUMBER</th>
<th>PENALTY +</th>
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</thead>
<tbody>
<tr>
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<td>TERMINATION</td>
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<tr>
<td></td>
<td>No. %</td>
<td>No. %</td>
</tr>
<tr>
<td>Corruption and Malpractice*</td>
<td>274  57.3</td>
<td>30  10.9</td>
</tr>
<tr>
<td>Dishonesty and Embezzlement</td>
<td>155  64</td>
<td>46  29.7</td>
</tr>
<tr>
<td>Others</td>
<td>1112  418</td>
<td>120 10.8</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1541  639</td>
<td>196 12.7</td>
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**TABLE 3:**

PUNISHMENT IMPOSED BY THE PSC FOR DISCIPLINARY OFFENCES (1973-1983)

+ Permanent officers are dismissed while officers on contract have their contracts terminated. Others may be compelled to retire in the public interest under the Pensions Act, Cap.225.

* Malpractice cases are those involving the acceptance of various forms of gifts and entertainment by public servants in violation of the Instruction Manuals. Acceptance of such gifts and entertainment as a reward for or in consideration of, the performance of a public service is "corruption" within the Prevention of Corruption Act, Cap.241.

** Compiled from statistics published in the annual reports of the Public Service Commission.
CHART 1: NUMBER DISCIPLINED AND PUNISHMENT IMPOSED BY THE PSC DURING 1959-1983

(Source: Based on annual reports of the Public Service Commission for the years 1959 to 1983)
Between the twenty-five years 1959 and 1983 (Chart 1) a total number of 3,314 public officers were disciplined by the Public Service Commission. Of these, 1,856 or 56% were dismissed, retired in the public interest or had their services terminated, and 1,458 or 44% were reduced in rank, fined or reprimanded.

The figures in those Tables also confirm the vigour with which the Commission has instituted disciplinary action particularly against corrupt public officers. For example, between 1981 and 1984 (Table 4) an average of 55.7% of the disciplinary offences dealt with each year were for either corruption and malpractice or for offences involving dishonesty.

A detailed study of punishment imposed by the PSC for corruption, dishonesty and other disciplinary offences committed between the years 1973 and 1983 (Table 3) shows the severity of punishment imposed for corrupt public officers. Of 274 public servants found guilty of corruption and malpractice during this period, 57.3% were dismissed, 3.3% were retired in the public interest and 10.9% had their services
terminated. The remaining 28.7% who were not removed from public service were those found guilty of minor forms of malpractice. Of the 155 officers found guilty of offences of dishonesty and embezzlement of funds, 44.3% were dismissed, 5.8% were retired and 29.7% had their services terminated. To put it differently, 71.5% of those found guilty of corruption and malpractice and 76.8% of those found to be dishonest were removed from public office as compared with 53.2% of those found guilty of other disciplinary offences.

It is clear that an officer in the public service who is found guilty of corruption must expect at the very least to have his services with the Government terminated immediately. This is a fact that is constantly emphasized and demonstrated to public officers and helps to control corruption in the public services.
<table>
<thead>
<tr>
<th>YEAR</th>
<th>ALL OFFENCES</th>
<th>DISHONESTY AND EMBEZZLEMENT</th>
<th>CORRUPTION AND MALPRACTICE</th>
<th>OTHER OFFENCES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
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<tr>
<td>1976</td>
<td>157</td>
<td>13</td>
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<td>1977</td>
<td>198</td>
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</tr>
<tr>
<td>1981</td>
<td>102</td>
<td>21</td>
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<td>24</td>
</tr>
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<td>1982</td>
<td>88</td>
<td>21</td>
<td>23.9</td>
<td>21</td>
</tr>
<tr>
<td>1983</td>
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</tr>
<tr>
<td>1985</td>
<td>102</td>
<td>18</td>
<td>17.6</td>
<td>9</td>
</tr>
<tr>
<td>1986</td>
<td>95</td>
<td>15</td>
<td>15.8</td>
<td>22</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1343</td>
<td>175</td>
<td>13.0</td>
<td>245</td>
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</table>

**TABLE 4:** DISCIPLINARY CASES DEALT WITH BY THE PSC ACCORDING TO OFFENCE (1976 - 1986)

* Compiled from statistics published in the annual reports of the Public Service Commission.
Judicial Review of Disciplinary Action

In this part we examine the remedies available to a public officer against decisions of disciplinary officers in the exercise of delegated powers, a Committee of Inquiry appointed by the PSC or by the PSC itself in respect of disciplinary proceedings.

To the extent that the rule that public servants hold office during pleasure has been departed from by statute, a public officer is entitled to relief like any other person under the ordinary law for wrongful dismissal.

A public servant who is dissatisfied with his dismissal following disciplinary action may thus bring a suit to recover damages for wrongful dismissal, coupled with a declaration that the purported dismissal is null, void and inoperative. The quantum of damages recoverable will depend on the facts of each case and upon such factors as the loss of wages, the reasons for the dismissal, the opportunities available for alternative employment and the nature of the officer's skills.

1. See generally John E McGlyne, Unfair Dismissal Cases, Butterworths, 2nd ed.
In addition, as is clear from decisions of the Privy Council and the Malaysian Federal Court, a public servant is also entitled to recover arrears of salary because the rule of English law that a public officer cannot maintain a suit against the Crown for recovery of arrears of salary does not prevail in Singapore.

To a large extent, as has been seen, the rights of public servants against arbitrary dismissal or reduction in rank are safeguarded both by the procedural rules laid down in the disciplinary regulations, and by the fundamental requirement of natural justice enshrined in Article 110 of the Singapore Constitution that no public officer shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.

As discussed previously, procedural rules in the disciplinary regulations provide in detail


4. See the Introduction to this chapter, ante.
for, *inter alia*, the manner in which disciplinary proceedings are to be instituted against a public servant, for his exculpatory statements to be received and considered, and require that the public officer under inquiry be given an opportunity to be confronted with the evidence against him and to produce evidence in support of his defence.

However, in Singapore, the protection granted by these rules has somewhat been diluted by the High Court. In *Wong Keng Sam v. Pritam Singh Brar*, the Chief Justice held that although the *Public Service (Disciplinary Proceedings) Procedure Rules, 1964*, were statutory rules, except for such rules as are for the purpose of carrying out the object of Article 110(3) of the Constitution, they are "merely directory, and therefore any breach or non-compliance with any such purely procedural rules or sub-rule does not give a person aggrieved a legal right to redress in a court of law".

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5. [1968] 2 MLJ 158.


7. *Loc-cit.* at p.160, followed in *Leong Kum Fatt v Attorney-General*, (1986) 1 M.L.J.7, C.A. But see *In re Sambasivam*, [1970] 1 MLJ 61, where the Malaysian Federal Court in examining similar disciplinary rules for public servants took the view that the procedural provisions should be treated as mandatory and be strictly construed.
The most effective method of judicial review is of course an appeal as it is during an appeal that a court of law can review both the findings of facts and the application of the law by an administrative or adjudicatory body, examine the merits of its decision and substitute its own judgment. However, neither the Singapore Constitution nor any of the subsidiary legislation governing the conduct of disciplinary proceedings provide for an appeal to a court of law or to a quasi-judicial tribunal. Unlike the position in Malaysia and India, there is also no departmental appeal board to consider disciplinary decisions. The PSC only acts as an appellate body from decisions of a Permanent Secretary, the Commissioner of Police or the Director of Prisons under their delegated


9. A system of disciplinary appeal boards has been provided for by the Public Service Disciplinary Board Regulations, 1972. For judicial interpretation of one of its provisions, see Doraisamy v. Public Services Commission, [1971] 2 MLJ 127.

10. For a fuller discussion, see K D Srivastava, Disciplinary Action Against Government Servants and Its Remedies, Eastern Book Company, Lucknow, 4th edn. chapter XI.
powers.

It would thus appear that in most circumstances the only remedy for an aggrieved public officer against a disciplinary decision is to seek the aid of the courts by way of the prerogative order of mandamus, certiorari, prohibition or by a declaration.

The jurisdiction of the Singapore High Court to issue these prerogative orders has been inherited from the courts of the United Kingdom. Although some statutes specifically permit the High Court to issue some of these prerogative orders, the Supreme Court of Judicature Act empowers the High Court to issue to any person or authority "directions, orders or writs, including writs of the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any others for the enforcement of any of the rights


13. See, for example, the Criminal Procedure Code, Cap. 68, chapter XXXIII.
conferred by any written law or for any purpose".

The procedure for applying for these prerogative orders has been laid down in detail in Order 53 of the Rules of the Supreme Court of Singapore and the scope of the orders is governed by principles laid down in English decisions which have been followed by the Singapore courts.

In addition, Order 15, rule 16, of the Supreme Court Rules grants the High Court jurisdiction to make declaratory judgments. The rule permits the court to make "binding declarations of right whether or not consequential relief is or could be claimed". As observed in the case of Datuk Syed Kechik bin Syed Mohamed, the prevailing view appears to be that the court's jurisdiction to make a declaratory order

14. Section 18(2) read with Rule 1 of the First Schedule, Supreme Court of Judicature Act, Cap.322.


16. For a detailed examination, see M.P. Jain, op.cit.
"is unlimited save only as to its own discretion".
Although a declaratory order has no coercive force it would effectively compel a public authority like the PSC to take note of the judgment of the court and to act accordingly.

It is clear from the reported decisions in Singapore, that an order for a declaration is the most common remedy sought by public officers who have been punished for disciplinary offences. For example, in Ling How Doong v. Attorney-General and Lee Keng Kee v. Attorney-General, the plaintiffs succeeded in obtaining declarations that their dismissals by the PSC were "null and void" because they had not been given a reasonable opportunity of being heard before they were dismissed. In Phang Moh Shin, a detective police constable succeeded in obtaining a declaration that his


20. [1967] 2 MLJ 186.
dismissal from the Police Force was "void, inoperative and of no effect" on the grounds that he was not given adequate notice to meet and answer the disciplinary charges against him; there was a real likelihood of bias on the part of the police officer who conducted the initial inquiry, and that the disciplinary proceedings were not conducted in accordance with the Police Regulations.

As in England, the doctrine of ultra vires forms the basis of judicial review. The High Court may intervene in disciplinary proceedings only if a disciplinary tribunal or authority has acted in excess of its legal powers or jurisdiction or has violated the principles of natural justice. It will not examine the merits of a disciplinary decision or concern itself with the punishment imposed on a public officer. Thus, whilst prerogative orders are important in the control of the acts of Permanent Secretaries, Police Inquiry Boards, Committees of Inquiry and the PSC in some of their disciplinary functions, they cannot be used to challenge all decisions taken at disciplinary proceedings. An aggrieved public servant


may often not be able to obtain relief through the judicial process.

The High Court has held that its jurisdiction over both the Committee of Inquiry and the PSC in disciplinary proceedings allows for supervision and not review. It would only ensure that inferior disciplinary tribunals act within the "jurisdiction permitted by Parliament in its mandate to the tribunal" and that they function according to the principles of natural justice. In Wong Kim Sang & Anor. v. Attorney-General, Kulasekaram J further explained the "two fold" duty of the court in its supervisory function over disciplinary tribunals:

(1) To see that the tribunal makes the right inquiry or question within its permitted area and not outside that area and,

(2) That it acts according to natural justice in that the answer that it gives to a right inquiry or question though it may be wrong is still an answer that lies within its jurisdiction. In other words it is an answer that is open to a reasonable person to make.

24. Ibid., at p.181.
26. Ibid. at p.181.
Accordingly, in *Wong Kim Sang* the High Court refused to intervene although the PSC, in disregard of the findings of its Committee of Inquiry that the plaintiffs were not guilty of two charges of accepting bribes and of arresting an innocent person in order to screen the real culprit, had dismissed them. Kulasekaram J held that even if the evidence of the main witness was disregarded, it was still open to the PSC on the rest of the evidence placed before them to find both the plaintiffs guilty.

In *V C Jacob v. Attorney-General*, the plaintiff had sought to set aside his dismissal by the PSC on the ground that there was no basis upon which "any reasonable person or body of persons" could come to the conclusion that he was guilty of the allegations against him. In refusing to find for the plaintiff, Wee Chong Jin C J, observed:

> I cannot accept that contention for it has been said on many occasions by the courts in England - and the law on this point is the same here as in England, that the High Court in the exercise of its supervisory jurisdiction over inferior tribunals will not interfere merely on the ground of insufficiency of evidence.

27. Loc. cit. The decision has been criticised by Winslow, op. cit.


29. Ibid. at p.135.
These decisions have, of course, done no more than given effect to the "no evidence" rule developed by the English courts that unless the findings of a tribunal are completely unsupported by evidence, they would not intervene by way of judicial review. The "no evidence" rule was itself evolved to impose a limited judicial review on finding of facts as too much interference with tribunals may remove the advantages or rationale of tribunal adjudication.

Although neither the legislature nor the PSC has made any attempt to exclude judicial review of disciplinary actions by ouster or privative clauses, some restrictions in the availability of judicial review against disciplinary decisions are apparent.

First, as has been seen, because of the High Court’s view that disciplinary rules, other than


31. The view of the Singapore Courts on private clauses is similar to that of the English courts. A "no certiorari" clause in the Industrial Relations Act, for example, did not prevent the Singapore High Court from assuming jurisdiction to issue certiorari in Re Application of Yee Yut Ee, [1978] 2 MLJ 142.

those which are relevant to the constitutional requirement of a reasonable opportunity to be heard, are only directory and not mandatory, an aggrieved officer cannot rely on procedural defects to get the courts to intervene.

Secondly, because the PSC does not give accused officers access to the reports of inquiring committees on the ground of privilege, their chances of seeking judicial review are diminished. For example, a public officer may not be able to obtain an order of certiorari as he would have difficulty in showing that a principle of natural justice has been violated or that an error of jurisdiction or of law has occurred which is apparent on the face of the record. The PSC, however, has not relied on the defence of privilege to resist production of reports of its inquiring committees during proceedings in the High Court.

On the other hand, those who require the Committee of Inquiry to give reasons for its findings

33. See Chang Song Liang & Ors. v. The Attorney-General, Singapore, [1980] 2 MLJ 4. At least one writer has raised doubts as to whether a court of law would uphold such a claim of privilege: V.S. Winslow, op.cit., p.99.

ignore the nature and functions of an inquiring committee under the 1970 Regulations. A Committee of Inquiry decides nothing. It is not a decision-making tribunal nor can it be "deemed to be a judicial or quasi-judicial body" against which, for example, an order of prohibition would lie.

What is more significant is that the PSC itself is not required by law to give reasons if it decides to dismiss or impose any other form of punishment on a public officer, or if it disagrees with the findings of an inquiring committee or of a court of law. The constitutional right of a reasonable opportunity to be heard before disciplinary punishment is imposed would be meaningless if the ultimate disciplinary authority refuses to consider what it has heard or is not known to have done so. There have indeed been some misgivings about the PSC's delay in communicating its

35. 1970 Regulations, op.cit, regulation 4; Heng Kai Kok v Attorney-General, op.cit. But see Currie & Anor. v. Chief Constable of Surrey, [1982] 1 All E.R. 89, where it was held that a tribunal set up under regulations for a disciplinary hearing was a body exercising "at least quasi-judicial functions". See also R v. Kent Police Authority, Ex parte Godden, [1971] 2 Q.B. 622.


36a. See Heng Kai Kok v. Attorney-General; op.cit.
decisions even to the solicitors of officers who have been subject to disciplinary proceedings.

The question of whether the PSC ought to be required to give its reasons for disciplinary decisions has not yet been raised before the courts or considered by them. There appear to be no checks on the decision-making process of the PSC itself. What if the PSC took into consideration irrelevant evidence gathered by its Committee of Inquiry or ignored relevant information? What if there was no evidence at all on record for its decision? According to Professor Wade, recent English cases suggest a new ground of judicial review - "misunderstanding or ignorance of an established and relevant fact" or acting "upon an incorrect basis of fact". In the absence of a report or a statement of reasons from the PSC, how can it be determined with certainty in any given case whether or not the Commission has indeed acted fairly?


However, both the act of the legislature in giving the PSC unbridled executive powers of disciplinary control over public servants it believes to be guilty of misconduct or of neglect of duty, and the attitude of the courts not to impose more than minimal constraints on the disciplinary function of the PSC may well be deliberate. To make it near impossible to dismiss public servants or to impose undue restraints on disciplinary tribunals which are able to have speedier and cheaper hearings than courts of law, would thwart the efforts of the Government in maintaining an efficient, disciplined public service that is free from corruption.
THE CONTROL OF CORRUPTION IN SINGAPORE

(VOLUME 2)

A Thesis Presented to the University of London
for the Degree of Doctor of Philosophy
in the Faculty of Laws

Shunmugam Chandra Mohan
School of Oriental and African Studies
University of London
December 1987
LEGAL METHODS OF CONTROLLING CORRUPTION:

The Anti-Corruption Laws: The Penal Code

Like many Commonwealth countries, Singapore inherited her major anti-corruption legislation from the British colonial period. In subsequent years, however, she amended and expanded these statutory provisions in the light of experiences gained by her and by many of her Commonwealth partners in the enforcement of these statutes. It is the combination of her extensive anti-corruption laws and their vigorous enforcement which largely explains the Republic's success in effectively controlling corruption.

What is proposed in this and the next chapter is to examine the two main statutes which deal with corruption, namely the Penal Code and the Prevention of Corruption Act, with reference to the anti-corruption provisions in a number of other statutes.

1. Singapore Statutes, Rev. Ed. 1985, Cap.224
2. Ibid., Cap.241.
3. Including the Customs Act, Cap.70, Prisons Act, Cap.247; Parliamentary Elections Act, Cap.218; Supreme Court of Judicature Act, Cap.322; and the Subordinate Courts Act, Cap.321.
The legal consequences that follow a conviction on a corruption charge and the enforcement of the anti-corruption laws are the subject of chapters IX and X.

(A) **Evolution of the Code**

4. The Penal Code was first passed in 1871 when Singapore was part of the Straits Settlements and came into operation on 16th September 1872. It was modelled on the Indian Penal Code of 1860 drafted by 


5. Ordinance IV of 1871. This ordinance repealed the Straits Settlements Penal Code of 1870 which was never brought into operation. Prior to that, English criminal law as it stood on November 26, 1826 (the date of the second Charter of Justice) and some Imperial and Indian legislation applied to Singapore and the other Settlements. See also part (f) of Chapter II, ante, for a fuller discussion.

6. Act No. XLV of 1860.
the Law Commissioners of India headed by Lord Macaulay. The Penal Code is a codification of the general
criminal law of Singapore and is based to some extent
on the English criminal law as it was about the year
1860. It is, however, generally regarded as an
"admirable compilation of substantive criminal law"
with most of its provisions "as suitable today as they
were when they were formulated".

7. See Francis & Anor v. PP, [1960] MLJ 40 at p.41. As it differs from English law in some fundamental
respects, the Courts have frequently emphasized
that the Penal Code is not a codification of
[1936] MLJ 66 (C.C.A); PP v. Ramiah & Ors., [1959]
MLJ 204; Francis & Anor. v. PP, ibid; Vincent

8. Report of the Committee on the Prevention of
Corruption ("Santhanam" Committee), Ministry of
The Committee, nevertheless, recommended that
another chapter be added to the Penal Code to
bring together new "social offences" (such as
misappropriation of public funds, misuse of
official position in the making of contracts and
disposal of public property, and tax-evasion)
which had emerged since the enactment of the Penal
Code, some of which had been the subject of
special legislation. The Indian Law Commissioners
rejected this proposal on the grounds, inter alia,
that it would be "impracticable" to include such
offences in a general penal code and to do so
would create "innumerable difficulties apart from
marring the structure of the Penal Code": 29th
Report of the Law Commission of India, Ministry of
Although the 1871 Code has been amended from time to time, its provisions in respect of bribery and corruption have remained unaltered for more than 100 years. Until 1937, when the first Prevention of Corruption Ordinance was passed, the only statutory provisions which dealt with bribery and other forms of corruption in Singapore were those contained in the Penal Code.

(B) **Offences of Corruption under the Code**

Chapter IX of the Singapore Penal Code deals with three classes of offences, two of which can be committed by public servants alone:

(1) Bribery by public servants and the abetment of the offence of taking a gratification to corrupt a public servant: sections 161, 165 and 164;

(2) Abuse of office by public servants: sections 166 to 169; and

(3) Abetment of the offence of bribery committed by public servants: sections 162 and 163.

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Although the Penal Code obviously seeks to ensure probity in the public service by punishing corrupt public servants, their aiders and abettors, chapter IX of the Code was not intended by the drafters of the Penal Code to be an exhaustive code of conduct for public servants since they were conscious that the Government could make its own rules for the conduct of its servants beyond the provisions of a penal statute, as has been done in Singapore. Indeed, the comparative leniency of the punishment provided for the offences in chapter IX of the Code has been explained by the fact that this punishment is regarded as only part of any penalty that a corrupt public servant suffers. The other penalties include a degradation in the service and dismissal.

The drafters of the Code also deliberately omitted, from chapter IX, offences which could be committed by other members of the public too, such as

10. The conduct rules for public servants in Singapore have been fully examined in chapter IV, ante.


12. See chapter VI, ante.
cheating, criminal breach of trust and forgery as they saw "no reason for punishing these offences more severely when the Government suffers by them than when private people suffer".

(1) **Bribery**

Sections 161 and 165 of the Penal Code have made the following persons guilty of offences punishable with imprisonment for a term not exceeding three years and two years respectively:

(i) A public servant, or a person expecting to be a public servant, who obtains or agrees to obtain a gratification, otherwise than as legal remuneration, as a motive or reward for doing or forbearing to do an official act, or showing or forbearing to show any favour or disfavour in exercise of his official functions, or for doing a service or disservice with the Government, the Cabinet, a Member of Parliament or any public servant (section 161).

(ii) A public servant who accepts or agrees to accept "any valuable thing" without consideration, or for inadequate consideration, from a person or relative who has been or is likely to be concerned in any proceedings or business transacted or about to be transacted by the public servant or his subordinate (section 165).

Section 161 of the Code thus stipulates three essential ingredients of the offence of bribery:

(i) The receiver must be a public servant or a prospective public servant;

(ii) He must have obtained or received, or have agreed to obtain or receive, a gratification whether or not it is "estimable in money"; and

14. The word "gratification" has not been defined in the Code but is used in this section in its primary dictionary meaning as "anything which gives satisfaction to the recipient" and not in the sense of "reward or recompense": Promad Chandra Shekhar v. R, AIR [1951] All. 546; State v. Pundlik, AIR [1959] Bom. 543. One commentator on the Indian Penal Code thinks that the term, used in its wider sense, connotes "anything which affords gratification or satisfaction or pleasure to the taste, appetite or the mind": Hari Singh Gour, The Penal Law of India, 10th Ed., (Allahabad: Law Publishers, 1983), vol.4, p.1407.
(iii) The illegal gratification must have been received or agreed to have been received as a motive or reward for —

15. (a) Doing or forbearing to do any official act; or

(b) Showing or forbearing to show in the exercise of his official functions any favour or disfavour; or

(c) Rendering or attempting to render any service or disservice to someone with the Government or Cabinet or a Member of Parliament or public servant. Rendering service or disservice under section 161 contemplates the exercise of some direct personal influence with a public servant.

(a) The Prospective Public Servant

It is clear then that section 161 only proscribes the receiving of bribes by public servants and prospective public servants.

15. The Customs Act contains a special provision to punish a customs officer or any other person employed by the Customs Department who "accepts, agrees to accept, or attempts to obtain, any bribe, gratuity, recompense or reward for the neglect or non-performance of his duty": section 134, Customs Act, cap.70.

The prospective public servant is one who must expect to be in public office. If a person under a bona fide belief that he would assume public office accepts a bribe but subsequently fails to secure the appointment, or having assumed public office fails to do what he was paid to do, he would still be guilty of an offence. On the other hand, as is clear from the first Explanation to the section, a person who obtains a gratification by deceiving others into believing that he is about to assume public office and will then serve them, may be guilty of the offence of cheating but not of bribery under section 161.

In practice, a prosecution under section 161 would probably be brought only against public servants guilty of a corrupt transaction concluded before assuming office and against those who, having obtained the expected office, have acted corruptly as previously promised.


(b) The Public Servant

There is no definition of a public servant in the Penal Code but section 21 of the Code enumerates ten categories of public servants. These include officers in the Armed Forces, judges, arbitrators, "every officer of Government" whose duty it is to bring offenders to justice, members of the Public Service Commission, interpreters and Commissioners for Oaths, every person empowered "to place or keep any person in confinement", an officer whose duty it is to receive, keep or expand property on behalf of the Government and one whose duty it is to execute any revenue process or keep any document relating to the pecuniary interest of the Government. It is irrelevant that the officer has been employed in a temporary or permanent capacity or that there is any defect in his appointment.

The division of the ten groups of descriptions of a public servant in section 21 is neither logical nor orderly. Description (g) in section 21, for example, includes not only all employees of Government

19. In Lim Kee Butt v. PP, [1954] MLJ 35, the Court of Appeal intervened to correct the High Court which had held that a temporary police clerk was not a public servant within the meaning of the Penal Code.

law enforcement agencies but also those whose duty it is to "protect the public health, safety or convenience". The unnecessarily lengthy descriptions in paragraphs (h) and (i) are devoted entirely to officers whose duty it is to safeguard the pecuniary interests of the Government.

Those who drafted section 21 plainly laboured under the assumption that detailed descriptions result in certainty. They did not obviously benefit from the advice of Lord Halsbury who wrote, in his Preface to the first edition of the Laws of England, that "the more words there are, the more words are there about which doubts may be entertained".

The elaborate descriptions of a public servant are not without ambiguity and have not helped in determining, with certainty, who are to be included in the various descriptions of a public servant in section 21. They have also often proven inadequate and irrelevant with the passage of time and have been the subject of various amendments.

Section 21 states clearly that the words "'public servant' denote a person falling under" any of the descriptions in the section. The courts have therefore, quite rightly, taken the view that the section contains an exhaustive description of a public servant for purposes of the Penal Code. In Public Prosecutor v. Phee Joo Teik, for example, it was held that a Town Councillor was not a public servant within the Penal Code although under the illustration to section 21 which existed at that time, a City Councillor was!

The main difficulty with the descriptions of a public servant in section 21 is that they were based on the notion, prevalent when the Code was drafted, that the public service was synonymous with Government Service. The problem with such a restricted concept of a public servant in Singapore to-day is that it excludes officers in public bodies and in the many statutory boards, including the Public Utilities Board, the Telecommunication Authority and the Housing and Development Board which are responsible for providing essential public services. The descriptions certainly


23. Such as water, gas, electricity, postal services, information, communication and public housing. See the Public Utilities Act, Cap.261; the Telecommunication Authority of Singapore Act, Cap.323; Housing and Development Act, Cap.129.
exclude employees in Government-owned companies which have proliferated in Singapore and which are now subject to Government audit.

In recent years the Singapore legislature has responded to the problems created by the inadequate descriptions of a public servant in section 21 of the Code by adopting a rather circuitous remedy. Express provisions declaring certain categories of officers to be public servants within the meaning of the Penal Code have been inserted in many Acts of Parliament. This has been obviously done to prevent problems in the prosecution of officers in Government and public bodies who may be guilty of offences of corruption under the Penal Code. Thus, immigration officers, prison officers, guards and escorts employed by the Commercial & Industrial Security Corporation, special investigators of the Corrupt Practices Investigation Bureau, and railway employees have become statutory

24. See the discussion of the role of the Auditor-General in Chapter V, ante.
public servants for purposes of the application of the criminal law embodied in the Penal Code.

What is required is for the legislature to expand the description of a public servant in section 21 of the Penal Code, as has been done in India, to include every officer employed by a local authority, a public body or institution, or a Government company, or to substitute the elaborate descriptions in section 21 with a general definition of a public servant that is easily applicable and adaptable to changing circumstances.

(c) Motive or Reward

A public servant who has obtained or has agreed

25. Immigration Act, Cap.133, section 37(2); Prisons Act, Cap.247 section 20; Commercial and Industrial Security Corporation Act, Cap.47 section 11; Prevention of Corruption Act, Cap.241, section 4(1); Railways Act, Cap.263 section 35(1).

to obtain an illegal gratification must do so as a motive or reward for doing or forbearing to do an official act. The receipt of any gratification alone does not constitute an offence under section 161 of the Penal Code. Therefore a connection between the payment of the bribe and the performance of the official duty must be established before it can be said that the gratification offered was a motive or reward. It is nevertheless clear from the fourth Explanation to section 161 that a person who has received a gratification "as a motive for doing what he does not intend to do, or as a reward for doing what he has not done" still commits an offence within the section.

However, the question whether a public servant who receives an illegal gratification as a motive for doing an official act which he is not capable of doing, either because -

(a) he has no power nor authority to do the act; or

(b) has become *functus officio*, having already performed the very act for which he has accepted the bribe; commits an offence under section 161 of the Code has divided the Indian High Courts.

The first problem was considered and resolved by a Singapore court in 1949. In *Bhaskaran and 2 Ors v. R*, the appellants were convicted of abetting the offence by a public servant, under sections 116 and 161 of the Penal Code, of accepting gratification as a motive for showing favour in the exercise of his official duties. The first appellant had killed a person in a motor accident. The appellants made approaches to the police officer investigating the accident, through another officer, in order to influence the result of the investigations. The first appellant subsequently gave $200 to the investigating officer. The trial judge found that neither of the two police officers was in a position to show the favour sought by the appellants in return for the bribe, but convicted the appellants. On appeal, it was argued that for a charge under section 161 to succeed the

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favour to be shown must be one which the public servant was capable of granting. In dismissing the appeal, 29 Chief Justice Murray-Aynsley observed:

I do not understand the restrictive interpretation put on the section by the Madras and Calcutta Courts. I should have thought that illustration (c) clearly negatived it. The essentials of the offence are, being a public servant, the receipt of a reward and the motive. It is explained that "A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words (a motive or reward for doing)". In view of this I should have thought that the motive of the giver, if known to the recipient, was sufficient. It is true that in many cases a recipient of a bribe might also be convicted of cheating.

In 1955 the Indian Supreme Court handed down a similar decision in Mahesh Prasad v. State of U.P. 30 The court relied on both the fourth Explanation and illustration (c) to section 161, which are identical to those in the Singapore Code, and held that a public servant "who receives illegal gratification as a motive for doing or procuring an official act, whether or not

29. Ibid., at p.291.


31. For the text of illustration (c) to section 161 see post.
he is capable of doing it or whether or not he intends to do it, is quite clearly within the ambit of section 32. 161".

The analogous question whether a public servant who is functus officio can be guilty of accepting a bribe has not been considered by the Singapore and Malaysian Courts. The question has, however, been answered differently by various High Courts in India, with the courts in the States of Allahabad, Lahore, Nagpur, Bombay and Orissa insisting that what is essential under section 161 is not the performance of the act itself, but the undertaking given that the bribe is the consideration for some official act. Without deciding upon the question, the Indian Supreme Court has favoured the view that a public servant who is functus officio in respect of the official act for which he has accepted the bribe, is guilty under section 161 of the Penal Code.

The Indian Law Commissioners have recommended that the conflict of decisions in the High Courts of

32. Ibid., at p.71.


India on this question should be resolved by amending the fourth Explanation to section 161 to read as follows:

A motive or reward for doing. A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do or has not done, comes within these words.

(d) **Official Act**

To constitute an offence under section 161 it must also be proved that the bribe was taken in connection with the official duties of the accused as a public servant and not in respect of a private matter.

So in *Conner v. Tan Gim Sin*, an apothecary who was brought to the Straits Settlements under a contract with the Indian government to do hospital duties and who therefore refused to issue a certificate of a wounded man's condition without payment of a fee, was held to be not guilty of an offence under section 161 because there was no evidence that the issuance of the certificate by an apothecary was an official act.

The offence of bribery under section 161 is of course committed even when the bribe collected by the


public servant was in respect of the performance of a lawful act. The acceptance of "speed money" in consideration of performing lawful duties more quickly is in fact one of the most notorious forms of corruption in many underdeveloped countries. However, a number of old decisions of the courts of the Straits Settlements, when Singapore was a part of the Settlements, have held that where the accused does or forbears to do a "wrongful" act in return for a bribe, there is no offence disclosed under section 161.

Thus in R v. Shavoo, the conviction of a policeman for obtaining a gratification for not taking to the police station a milk seller, whom he had arrested after having falsely accused him of being in possession of adulterated milk, was quashed on appeal. Wood J. held that what the policeman had forborne to do was not an official act but a "wrongful" act, which disclosed no offence under section 161 of the Code but an offence of extortion in respect of which the Magistrate had no jurisdiction.

37. For a more detailed treatment see, the Introduction to this dissertation, ante. See also the Indian Supreme Court decision in Som Prakash v. State of Delhi, AIR [1974] S.C. 989 at p.993.

38. (1879) 3 Ky.116.
Again, in *R v. Low Lau Sew*, it was held that the accused, who had been charged with the offence of abetting a forest ranger by offering him a gratification to secure the release of a person illegally arrested by the forest ranger, was not guilty of an offence under the Penal Code as the act of the forest ranger was a trespass and not an official act.

Finally, in *Salleh and Husin v. R*, decided in Singapore in 1906, the convictions of the appellants for bribery and abetment of bribery under section 161 of the Penal Code were also quashed on a similar ground. In that case the appellants had approached the employer of a labourer who had been arrested and charged for arson, on the false statements of the appellants, and had requested for the payment of a bribe in consideration of giving evidence in favour of the labourer so as to obtain the latter's acquittal.

*Hyndman-Jones C.J.* held that the giving of the evidence in favour of the labourer, which was the consideration promised in return for the gratification,

39. 4 Ky.76.

40. (1906) 10 S.S.L.R. 27.
could not "properly be called an official act". He further considered whether the acts of the appellants fell under the third limb of section 161 of "rendering any service or disservice with another public servant as such", but held that to do so would be to unduly strain the language of section 161 as the words "rendering any service or disservice with another public servant as such" contemplated only the exercise of some direct personal influence with the public servant. The giving of evidence in favour of the defence, which the appellants had promised, was not a kind of "service" within section 161.

It is submitted that the cases of Shavoo, Low Lau Sew and Salleh and Husin were wrongly decided. They certainly cannot be reconciled with illustration (c) to section 161 which shows that the offence of bribery can be committed under that section even if a public servant has practised deception:

A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a grant of land for Z, and thus induces Z to give A money, as a reward for his service. A has committed an offence defined in this section.

The requirement of section 161 that the act for which the bribe was accepted should be in the nature of an "official act" is meant only to exclude from its
purview private acts which are totally unconnected with
the public servant's official duties. The Indian
decisions, as does illustration (c) to section 161,
show that the term "official act" includes acts which
are believed to be official or held out to be so.  

At any rate, the "wrongful" acts in Shavoo,
Low Lau Sew and Salleh and Husin were surely the
initial acts that were committed by the public
servants, such as the false charges in Shavoo and
Salleh and Husin and the illegal arrest of Low Lau Sew,
and not what the accused public servants subsequently
did or forbore to do to right their wrongs, in
consideration of the bribes they took. It is plain
that, whatever the wrongful acts, all the acts were
performed under the colour of public office and it is
the integrity of this office which section 161 seeks to
preserve.

41. See the Supreme Court decision in Chaturdas v.
authorities cited therein. For a comment on the
d earlier decisions, see R.K. Soonavala, The Law of
Bribery and Corruption (Bombay: 1964), Tripathi


The Indian Supreme Court took a similar view of section 161 in *Shiv Raj Singh v. Delhi Administration*. In that case the appellant, a police officer, had exacted a bribe from the mother of an illegitimate child after accusing her of concealing the child's birth and threatening to prosecute her. The court held that although the concealment of the birth of the illegitimate child was not an offence under Indian law, if a public servant obtained money from anybody on that ground, he was guilty of grossly abusing his position as a public servant and of thereby obtaining a pecuniary advantage and could be charged under section 161 of the Penal Code.

The strange effect of the three decisions in *Shavoo, Low Lau Sew* and *Salleh and Husin* is that it is not wrong for a public servant to accept a bribe to do an unlawful or wrongful act but it is an offence, under section 161 of the Code, for him to accept bribes to do a lawful act or to perform it more quickly.

(2) **Acceptance of Gifts**

Section 165 of the Penal Code is wide in its ambit, and makes it an offence for a public servant to accept or obtain, attempt to obtain or agree to accept or obtain, for himself or for another person, "any valuable thing" without consideration or for inadequate consideration from any person —

"whom he knows to have been, or to be, or to be likely to be concerned in any proceedings or business transacted, or about to be transacted, by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned".

Illustration (a) to section 165 gives a clear example of the offence:

A, a judge, hires a house of Z, who has a case pending before him. It is agreed that A shall pay fifty dollars a month, the house being such that, if the bargain were made in good favour A would be required to pay two hundred dollars a month. A has obtained a valuable thing from Z without adequate consideration.

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In *Kanapathy v. Regina*, the Privy Council had occasion to explain section 165:

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46. Noted in [1960] MLJ 27. The appellant's appeal against his conviction by a District Court was dismissed in the High Court by Buttrose J. A petition for special leave to appeal against the decision of Buttrose J. was dismissed by the Privy Council but their lordships gave reasons for dismissing the petition.
The section in its true construction makes it an offence for a public servant to accept a gift (whether palpable or disguised) from any person who is or who has at any time been concerned in a proceeding with which the public servant has been connected.

The section is certainly wider in scope than that for it also proscribes the taking of gifts from anyone who is "likely to be concerned" in any official proceeding with the public servant, which the Privy Council appears to have overlooked. Thus, according to one writer, a judge has to be particularly careful because "each and every person is potentially likely to be concerned with him". And in Public Prosecutor v. Tan Hock Sing, it was held that when a police officer, in a position to do a favour to another person likely to require such a favour, receives any money or valuable thing "without consideration or any ostensible reason", an offence under section 165 of the Code is disclosed.

In Kanapathy's case, the appellant (an Inspector of Police in the Singapore Police Force) had arrested the complainant on a charge of attempted

rape. About a month later, upon receiving instructions from the Deputy Public Prosecutor to have the charge against the complainant withdrawn, the appellant demanded and received $50 from the complainant by indicating to the complainant that he would make "some arrangements" concerning the case against him.

One of the grounds of appeal, which was held to be of no substance in the High Court, was that the appellant's conviction under section 165 of the Penal Code could not be supported because he had not accepted the gift from a person who had been concerned in a proceeding with which the appellant as a public servant had been connected. The Privy Council's view was that the appellant was manifestly concerned with the withdrawal of the charge against the appellant for unless he had made the original charge there could have been no withdrawal and it was immaterial that the appellant was not responsible for the actual withdrawal of the charge or that he had not made the application to withdraw it.

The mere taking of presents by a public servant from a person or relative of a person having official dealings with him or likely to have such dealings is therefore an offence under section 165 even without
proof that the gift was corruptly taken. It is rather curious that section 165 punishes only public servants although section 161 punishes both public servants and prospective public servants.

Unlike an offence under section 161 of the Code, no proof is also necessary that the gratification was the motive or reward for the performance of an official act before an offence is made out under section 165. Thus in the Singapore case of Salleh and Husin v. R, it was held that two police officers who had accepted a bribe for giving evidence in favour of the accused, despite having been responsible for his arrest, had not received a bribe for the performance of an official act but were guilty under section 165 of the Code of an offence of obtaining a valuable thing without consideration.

In view of the less stringent requirements of section 165, alternative charges under this section are

49. See also section 41 of the Prisons Act, Cap.247 which punishes a prison officer from "receiving or demanding any money or other consideration or undertaking any service in consideration of receiving such money or other consideration" from any prisoner or discharged prisoner, with a term of imprisonment not exceeding six months.

often preferred to those of bribery under section 161 of the Code and the Prevention of Corruption Act. For similar reasons, the appellate courts have substituted bribery convictions under other provisions of the law for those under section 165 of the Penal Code.

Clearly, section 165 attempts to prevent bribes from being taken in the form of gifts, and prohibits a public servant from taking undue advantage of persons he deals with in the course of his official duties. The section also seeks to ensure that public servants do not put themselves under any obligation, for the offering of a gift to a public servant may often be a bid for official favour.


53. The Instruction Manuals which govern the conduct of public servants in Singapore prohibit public servants from placing themselves in such a position as to bring about a conflict between their public duties and private interests and also expressly control the acceptance of gifts by public officers. See Chapter IV, ante.
The drafters of the Code were, however, at pains to explain that section 165 contains neither an absolute prohibition against the taking of gifts from any person, nor the taking of gifts other than those which can be described as "a valuable thing":

Absolutely to prohibit all public functionaries from taking presents would be to prohibit a son from contributing to the support of a father, a father from giving a portion to a daughter, a brother from extricating a brother from pecuniary difficulties. No Government would wish to prevent persons intimately connected by blood, by marriage or by friendship from rendering services to each other; and no tribunals would enforce a law which should make the rendering of such services a crime. Where no such close connexion exists, the receiving of large presents by a public functionary is generally a very suspicious proceeding; but a lime, a wreath of flowers, a slice of betel-nut, a drop of atar of roses poured on his handkerchief, are presents which it would in this country be held churlish to refuse, and which cannot possibly corrupt the most mercenary of mankind.

(3) **Punishment of Abetment by Public Servants:**

**Sections 162 to 164**

Sections 162 and 163 of the Penal Code make it an offence for any person, whether or not he is a public servant, to take a gratification from another in order to improperly influence a public servant in the

54. Note E, op.cit., pp. 81, 82.
discharge of his duties either by corrupt or illegal means or by the exercise of personal influence in return for consideration paid or promised by the third person. Whether the offender succeeds or not in what he holds out to do, he is still guilty of the offence and is liable to punishment with imprisonment for a term not exceeding three years for an offence under section 162, and to one year imprisonment for an offence under section 163.

An abettor is ordinarily liable for the same punishment as the principal offender if the offence abetted has been committed in consequence of the abetment, and to one-fourth of such punishment if the offence abetted has not been committed in consequence of the abetment. Section 164 of the Code, however, expressly provides for the punishment of public servants for the abetment of offences in sections 162 and 163 of the Code when committed in respect of

55. The term "personal influence" has not been defined but it is probably similar to "undue influence" well-known in civil law, and means such influence as dominates the will of the public servant: Gour, op.cit., p.1447.


57. Sections 109 and 116 of the Penal Code, Cap.224 discussed more fully later in this Chapter.
themselves. It is one of the "express provisions" referred to in section 109 of the Code for the punishment of abettors and provides an enhanced punishment of a term of imprisonment not exceeding three years whether or not the offence abetted by the public servant has been committed in consequence of his abetment.

As is made clear by the illustration to the section, section 164 discourages public servants from soliciting or accepting bribes through their agents:

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(4) Abuse of Office by Public Servants: Sections 166 to 169

Chapter IX of the Penal Code contains a second group of offences which are directed as much against official perversity and abuse of power by public

58. Section 109 of the Penal Code reads: "Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence" (emphasis added).
servants as against corruption.

Sections 166 to 169 of the Penal Code make it an offence for a public servant to:

(a) knowingly disobey a direction of the law as to the way in which he is to conduct himself as such public servant with intent to or knowing it to be likely that he will cause injury to any person (section 166);

(b) frame or translate any document incorrectly with intent to cause injury to any person (section 167);

(c) unlawfully engage in trade (section 168);

59. See also section 134 of the Customs Act, Cap.70, which makes it an offence, punishable with three years imprisonment, for any employee of the Customs Department to make any "collusive seizure" or to agree not to seize any goods or means of conveyance liable to seizure, or to be concerned in any way in the importation or exportation of any dutiable goods for the sole purpose of seizing them in order to collect a reward for such seizure.

60. The Instruction Manuals also prohibit a public servant from accepting any outside employment or engaging in any trade or business. See Chapter IV, ante, for a fuller discussion.
(d) purchase or bid for certain property when legally prohibited as a public servant from doing so (section 169).

These are clear instances of the abuse of public office in circumstances in which the law presumes that the injury to another person was caused for some ulterior or corrupt motive or that the public servant had taken undue advantage of his official position. The word "injury" has been widely defined in section 44 of the Code to mean "any harm whatever illegally caused to any person, in body, mind, reputation or property".

Section 166 of the Penal Code is a very comprehensive section which punishes the wilful disobedience of any express direction of law and is not merely designed to safeguard or punish a dereliction of duty. Sections 167 to 169 deal with specific instances of such wilful disobedience of the law to the detriment of others.

61. No officer of the Supreme Court or the Subordinate Courts having any duty to perform in connection with the sale of any property may directly or indirectly purchase or bid for the property: Supreme Court of Judicature Act, Cap.322, section 77; Subordinate Courts Act, Cap.321, section 66.
It is clear that sections 166 to 169 may be resorted to where there is difficulty in the prosecution of a public servant, for want of credible evidence of the receipt of an illegal gratification, for the acceptance of a bribe under section 161 or 165 of the Penal Code. For example, to use the illustration to section 166, if a corrupt bailiff wilfully disobeys the law by refusing to seize the property of a judgment debtor, with the knowledge that he is likely thereby to cause injury to a judgment creditor, he may be charged under section 166 if the evidence that he received a gratification from the judgment debtor is unsatisfactory.

(5) **Punishment for the Abetment of Bribery:**

*Sections 109 to 116*

It is significant that the Singapore Penal Code makes the receiving of a bribe, but not the giving, a substantive offence. The drafters of the original Indian Penal Code were reluctant to impose any punishment upon givers as they thought that, in the circumstances which then prevailed in India, the person who gave a bribe had no choice in the matter as bribes were exacted in the form of extortion. In this regard the drafters observed:

In the great majority of cases the receiver of the bribe is really the tempter, and the giver of the bribe is really acting in self-defence. Under these circumstances, we are strongly of the opinion that it would be unjust and cruel to punish the giving of a bribe in any case in which it could not be proved that the giver had really by his instigations corrupted the virtue of a public servant who, unless the temptation had been put in his way, would have acted uprightly.

The Indian legislature, as did the legislature of the Straits Settlements, refused to accept this view of all bribe-givers as being naive and oppressed seekers of justice. It would certainly be impossible to prevent or even control bribery by public servants without deterring the giving of bribes with the use of criminal sanctions. However, the giver of a bribe is punishable under sections 109 and 116 of the Penal Code only as an abettor of the public servant whom he bribes. Bribe-givers are not exonerated even if they have only complied with the demands of a public servant and the general defences of duress and necessity under the Penal Code are not open to them. Of course, as Cussen J. observed in Public Prosecutor v. Haji Ismail, "the same degree of moral turpitude does


not attach to the person who gives a bribe on demand or threat as to a person who himself is the tempter and offers the bribe", but both persons remain abettors.

The punishment for bribe-givers is not expressly provided for in the Penal Code. They are thus punishable under the general provisions for the punishment of abettors in sections 109 and 116 of the Code.

If the bribe is accepted by the public servant, the giver of the bribe is liable to the same punishment as the principal offender under section 109 of the Code which punishes the abetment of an offence committed in consequence of the abetment. Illustration (a) to section 109 covers such a situation:

A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

A person who gives a bribe to a public servant instigates him in the commission of the offence of bribery under section 161 or 165 of the Code.

65. See also Salleh and Husin v. R, op.cit.
And anyone who complies with the demand of a public servant for a bribe, intentionally aids by his act and therefore abets the public servant's bribery.

If the bribe is not accepted by the public servant, the public servant commits no offence but the person who offered the bribe is still punishable for abetment under section 116 of the Code which prescribes punishment for the abetment of offences not committed in consequence of the abetment. Illustration (a) to section 116 again makes this clear:

A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

Thus a person is liable to be punished as an abettor under section 116 of the Code if he offers bribes to a policeman or customs officer to induce him to release a person in custody; or offers a bribe to a police officer in order to influence him in the conduct of his investigations into a motor accident;

or offers "tea money" to a Police Inspector whom he believes has shown him favour.

The punishment provided for abetment under section 116 is one-fourth of the longest term provided for the principal offender, unless the abettor or the person abetted is a public servant whose duty it is to prevent the commission of the offence. In such an event the abettor is liable to one-half of the term of imprisonment provided for the principal offence. As pointed out by Thomson J. in Wong Poh Ching v. Public Prosecutor, it is only the maximum punishment that is affected by the distinction between sections 109 and 116. The anomaly created by these sections is that the punishment prescribed for a voluntary bribe-giver, under section 109, is less than that for one who pays on demand, under section 116.

Following the recommendation of a Parliamentary Committee, the Indian Parliament in 1952 inserted a new

71. The Indian courts have given a rather restricted meaning to this limb of section 116 and have held that a police officer is not under a general duty to prevent bribery and a person who gives him a bribe is not liable to the enhanced punishment provided by the second limb to section 116: Puran Singh and Anor. v. Emperor, 29 Cr.L.J. 601.
section 165A in the Indian Penal Code which makes the offering of a bribe a substantive offence punishable with three years imprisonment, whether the bribe has been accepted or refused.

The Singapore Code has not been similarly amended. It is unlikely that such an amendment will be made as prosecutions for corruption offences in Singapore are now almost always commenced under the Prevention of Corruption Act. The offering of bribes is a substantive offence under section 6(b) of the Prevention of Corruption Act which punishes both bribe-givers and bribe-takers with equal severity.

There are various reasons why the anti-corruption provisions in Chapter IX of the Penal Code, which were drafted more than a century ago, have for some time fallen into disuse.

There are obvious difficulties in the prosecution of corrupt public servants. By the very nature of their surreptitious dealings and the fact

73. Inserted by the Criminal Law (Amendment) Act XLVI of 1952. For a comment on section 165A of the Indian Code, see Gour, op.cit., pp. 1453 to 1460.

74. Singapore Statutes, Rev.Ed. 1985, Cap.241, examined fully in the next Chapter.
that in the majority of cases the parties to a corrupt bargain have both stood to gain, evidence of corruption is seldom forthcoming. Such considerations, however, do not relieve the prosecution of the burden of establishing a corruption charge beyond reasonable doubt.

Under section 179(f) of the Singapore Criminal Procedure Code, which governs the trial of all offences, the prosecution has to establish, at the close of its case, such evidence "which if unrebutted would warrant the conviction of the accused". At least until the controversial and clearly erroneous decision of the Privy Council in the 1981 case of Haw Tua Tau v. Public Prosecutor, the courts demanded that the prosecution had therefore to prove its case beyond reasonable doubt even before the accused could be called on to enter upon his defence.

75. This has been emphasized in some Indian decisions: Lt. Hector Thomas Huntley v. Emperor, AIR [1944] F.C.66; Ganpat Singh v. State, AIR [1967] Raj.10.

76. Cap.68.

77. [1981] 2 MLJ 49, considered more fully in Chapter X of this dissertation, post.

Further, the application of strict rules of evidence to prosecutions for corruption under the Penal Code creates difficulties for the prosecution. As the main witness in most bribery cases is the giver of the bribe who is in law considered to be an accomplice, the courts require that his testimony must be corroborated in material particulars. Although for good reasons a trial court may convict a corrupt public servant on the uncorroborated evidence of the accomplice alone, provided it has warned itself of the danger of so convicting, failure to scrutinise the evidence of such a witness is a reversible error.

In contrast, under the Prevention of Corruption Act, no witness is to be presumed to be unworthy of credit by reason only of the payment of any gratification by him to an agent or a member of a public body.

81. Singapore Statutes, 1985 Rev.Ed., Cap.241, section 24, which is more fully discussed in the second part of chapter VIII, post.
Again, the task of the prosecution in charges brought under the Penal Code, in proving not only the taking of a gratification but also the corrupt motive of the receiver has been said to impose too high a burden on the prosecution. Under section 8 of the Prevention of Corruption Act, however, proof that any gratification has been paid to a public servant raises a presumption that the gratification has been paid or given corruptly and the burden shifts to the accused to show his honesty. It is difficult to appreciate why such a presumption does not operate for prosecutions under the Singapore Penal Code as it now does under the Indian Code.

As has been noted earlier in this chapter, these difficulties have been compounded by the ambiguity in the concept of a public servant within the meaning of Chapter IX of the Penal Code; the unduly restrictive and often impossible meaning that the courts have attached to such essential ingredients of the offence of bribery under section 161 of the Code.

82. For a fuller discussion of this section, see the next chapter.

as "motive or reward" and "an official act"; and by the conflict of judicial decisions as to whether a corrupt public servant not capable of performing an official act, for which he has accepted a bribe, is guilty of bribery under section 161.

There is also some unhappiness with the Penal Code provisions because of their failure to punish the giver of a bribe as the principal offender, and the inadequacy of punishment for both the corruptor and the corrupted.

The central complaint about the Penal Code provisions, however, has always been that the offences of corruption under the Code can only be committed by public servants, or rather by those public servants who fall within the various descriptions of the term under section 21 of the Code.

Disturbed particularly by corrupt practices of solicitors' clerks who exacted gifts from their employers' clients with apparent impunity under the Penal Code, the Malayan Law Journal, the leading law
reporters, complained:

We have had occasion in these columns to allude to the lax morality of Solicitors' clerks as revealed in several cases which have come before the Courts. The disclosures of their corrupt practices were made incidentally, but the offenders were not and could not have been punished for the abuses they practised, for no law could reach them.... It is regrettable that there has been no enactment regulating the morality in this respect of the public at large. No offence is committed if bribes are offered or taken for disclosing trade secrets or for inducing workmen to leave their employment or to an agent to fix high prices for goods or for taking secret commissions.

For these reasons, the prosecution of corrupt officers and their accomplices in both the private and public bureaucracies is now almost exclusively brought under the provisions of the Prevention of Corruption Act.

84. [1937] MLJ xcv. The Prevention of Corruption Ordinance which was passed in 1937 remedied the situation.

85. [1935] MLJ xxxv.
CHAPTER VIII

LEGAL METHODS OF CONTROLLING CORRUPTION:

The Anti-Corruption Laws: The Prevention of
Corruption Act

(A) Evolution of the Act

The first piece of legislation to deal specifically with the problem of corruption in Singapore was the Prevention of Corruption Ordinance, enacted by the Straits Settlements Legislative Assembly in December 1937. According to its preamble, it was an Ordinance for the "more effectual prevention of corruption" but with the clear object of punishing givers and takers of bribes and secret commissions in both public and private business.

In respect of public servants, the Prevention of Corruption Ordinance supplemented the provisions of the Penal Code which were found to be inadequate in dealing with corruption in the public services. The provisions of the Ordinance which punished the taking and giving of bribes and secret commissions in the course of private business were introduced for the

2. Ordinance No.41 of 1937.
3. This has been dealt with at length in the last chapter.
first time in the law of Singapore, and were modelled on the English Prevention of Corruption Act of 1906.

Section 3 of the Ordinance made the corrupt receiving by or the giving of bribes to an agent, for the purpose of doing or forbearing to do any act in relation to his principal's affairs, an offence punishable with two years imprisonment or a fine of $5,000. The use by an agent of false receipts and documents to deceive his principal was also regarded as a corrupt transaction with similar consequences. Section 4 increased the punishment for those convicted of corrupt transactions in respect of contracts with the Crown or the Government to seven years imprisonment or a fine of $5,000.

In introducing the 1937 Bill, the then acting Attorney-General explained:

The Bill, Sir, is intended to strike at an evil which is generally recognised as widespread and of long standing. To eradicate it may be impossible and will at any rate take a long time. Corruption among public servants is, I am afraid we must admit, not unknown in spite of the provisions of the Penal Code. Few, if any, penal statutes are completely successful in attaining their objects, but in my submission that is no reason why the law should not equip itself with weapons to attack a recognised evil whenever possible.

4. 6 Edw. 7 c.34.

As a "weapon" to combat corruption, the ten substantive provisions of the Prevention of Corruption Ordinance of 1937 were in subsequent years found to have defects and were remedied by a series of amendments to the Ordinance.

In 1946, the punishment for corruption was increased to three years not so much for the purpose of heavier penalties being imposed on offenders, but to thereby make the offence of corruption under the Ordinance a seizable one in order to give police officers investigating corrupt transactions wider powers of arrest and investigations. Under Schedule A to the Criminal Procedure Code, in respect of crimes created by statutes other than the Penal Code, offences punishable with imprisonment for "three years upwards" are deemed to be seizable offences. It is not clear why the Legislative Council did not adopt the simple remedy of inserting a provision to declare all offences

6. Prevention of Corruption (Amendment) Ordinance, No.26 of 1946, which was passed for this purpose alone as it contained only two sections.

under the Prevention of Corruption Ordinance to be seizable.

Under Chapter XIII of the Criminal Procedure Code, a police officer investigating a non-seizable offence had none of the "special powers" that he possessed when investigating seizable offences unless he had previously obtained an order to investigate the non-seizable offence from a magistrate or the Public Prosecutor. The 1946 amendments, in making offences of corruption seizable, gave a police officer investigating an offence of corruption under the Prevention of Corruption Ordinance these "special powers" which permitted police officers to compel witnesses to appear before them, to examine any witness acquainted with the facts of the case in order to record a statement from him, and to cause a search to be made for any document or object necessary to the conduct an investigation.

8. See now section 116(2) of the Criminal Procedure Code, cap.68, for a similar provision.

In 1955, section 11 of the Ordinance was amended to permit a District Court trying an offence of corruption to impose the full penalty of two years imprisonment and $10,000 prescribed for corrupt transactions and seven years and $10,000 for corrupt transactions in relation to contracts with the Crown or with the Government. Prior to this amendment, although District Courts were empowered by the Prevention of Corruption Ordinance to try all offences of corruption under the Ordinance, their jurisdiction in respect of sentencing was limited by the Criminal Procedure Code to passing a sentence of imprisonment not exceeding three years or imposing a fine not exceeding $3,000. The important distinction between the jurisdiction to try and the jurisdiction to sentence is not one that has always been appreciated by the Singapore legislature.

It was, however, in 1960 that the present Prevention of Corruption Act took its form. Eight


11. In 1952, the fines for offences of corruption under sections 3 and 4 of the Prevention of Corruption Ordinance, 1937, had been increased from $5,000 to $10,000: Law Revision (Penalties Amendment) Ordinance, No.37 of 1952.

months after it had been swept into office, and in keeping with its determination "to stamp out bribery and corruption in the country, especially in the public services", the PAP Government introduced in the Legislative Assembly a Prevention of Corruption Bill designed "to reduce the opportunities of corruption, to make its detection easier and to deter and punish severely those who are susceptible to it and engage in it shamelessly".

The 1937 Ordinance was repealed and replaced by the Prevention of Corruption Ordinance of 1960 with more extensive provisions "to provide for the more effective prevention of corruption by remedying various weaknesses and defects which experience had revealed in the existing Prevention of Corruption Ordinance". In contrast with the short, twelve-section Ordinance of 1937, the new Ordinance had 32 sections and, as acknowledged in the Explanatory Statement to the Bill,

14. Ibid., col.377, per Ong Pang Boon, Minister for Home Affairs, in moving the Bill.
15. Ordinance No.39 of 1960 which came into operation on June 17, 1960.
was largely based on similar legislation in Malaysia, Sri Lanka and Hongkong.

The Prevention of Corruption Ordinance, 1960, inter alia, increased the punishment for corrupt behaviour, enlarged the powers of arrest, search and investigations by special investigators of a new, independent, investigatory body called the Corrupt Practices Investigation Bureau (CPIB), widened the definition of illegal gratification, granted special powers to the Public Prosecutor to authorise the investigation of bank accounts, share accounts and purchase accounts of any person suspected of


20. Op.cit. The Bill was referred to a Select Committee which received one written representation from a citizen, heard no oral evidence and suggested only minor amendments to the Bill. See the Report of the Select Committee on the Prevention of Corruption Bill, 1960 (Singapore: Government Printer, 1960).

21. Although the CPIB had been established in 1952, it was not mentioned in the Prevention of Corruption Ordinance until 1960.
corruption, gave the Public Prosecutor power to require public servants and employees of public bodies suspected of corruption to furnish sworn statements listing properties belonging to them and to members of their family, and contained special rules of evidence to aid the prosecution of persons suspected of corruption.

In subsequent years, the 1960 Ordinance was further amended, principally to increase the powers of CPIB officers and the Public Prosecutor in order to facilitate the investigation of corruption and to enable the prosecution of Singapore citizens for offences of corruption committed by them outside Singapore.

22. The 1960 Ordinance also repealed the Evidence (Special Provisions) Ordinance, No.27 of 1946, which had been passed to enable the prosecution to adduce evidence of an accused person's disproportionate wealth in prosecutions for corruption under the Prevention of Corruption Ordinance and for bribery under sections 161 and 165 of the Penal Code. Special rules of evidence are examined fully in part (C), post.

What is proposed in the remainder of this chapter is to examine the offences created under the Prevention of Corruption Act and the special rules of evidence and procedure that have been introduced by the Act to aid in the detection and prosecution of persons guilty of corruption.

(B) Offences under the Act.

The Prevention of Corruption Act makes the corrupt taking of any gratification by any person an offence. More specifically, the Act seeks to proscribe corrupt transactions by or with agents and

24. The term "gratification" used in the Singapore Prevention of Corruption Act is much wider than the word "consideration" that was used in the first Singapore Prevention of Corruption Ordinance of 1937. A "gratification" as defined in section 2 of the Act includes: (a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable; (b) any office, employment or contract; (c) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; (d) any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and (e) any offer, undertaking or promise of any gratification within the meaning of the preceding paragraphs (a), (b), (c) and (d).
bribery of Members of Parliament and members of any public body. A person who gives an illegal gratification to a public servant or private office holder is also guilty of an offence and is similarly punished as the corrupt recipient.

The Singapore legislature has not found it necessary to adopt such drastic provisions as to make it an offence for any public servant to maintain a standard of living above that commensurate with his official emoluments or to be in control of money or property disproportionate to his earnings, or to provide for mandatory minimum punishment or unduly harsh sentences for offences of corruption. Nor have special courts with lax or ambiguous rules of procedure been established for the trial of corruption cases. On the other hand, the Prevention of Corruption Act is not confined to merely punishing "official" corruption

25. Sections 6, 11 and 12 examined at length elsewhere in this chapter.

26. Cap.241, sections 5(b)(i), 5(b)(ii), 6(b), 11(a) and 12(a).


28. In Tanzania, for example, under the Minimum Sentences Act, No.29 of 1963, a maximum sentence of 20 years imprisonment and 24 strokes of the cane was prescribed for offenders convicted of corruption. Ghana, under Nkrumah, imposed a maximum sentence of 25 years imprisonment: Corrupt Practices (Prevention) Act, 1974.
as do similar laws in some Commonwealth countries, or to "habitual" corruption as does the Indian Prevention of Corruption Act.

It is plain that the ambit of sections 5, 6, 11 and 12 of the Act is sufficiently wide to cope with both the obvious and the infinitely subtle forms of corruption that are likely to emerge in any developing country. The Act is "designedly wide" and has certainly proved to be adequate in combating corruption in Singapore in the last 25 years which have seen tremendous economic, social and political changes in the country. The courts too, mindful of the mischief that the Prevention of Corruption Act was enacted to eliminate, have given these provisions a wide interpretation.


30. Act II of 1947, sections 5(a), 5(b). In order to succeed in a prosecution under these sections, the prosecution must prove that the accused took the bribes repeatedly or persistently: Local Government v. Hanmantrao, AIR [1924] Nag.19; Khersing v. Emperor, AIR [1929] Lah.41.

The Meaning of "Corruptly"

In order to constitute an offence under sections 5 and 6 of the Act, the gratification must have been given or solicited or received corruptly. The actus reus of the offences of corruption under these two sections is the soliciting, giving, obtaining, promising or attempting to obtain or give a gratification as an inducement or reward. The mens rea in respect of the actus reus is indicated by the term "corruptly". What is less obvious is the meaning of the word "corruptly" which has not been defined in either the Prevention of Corruption Act, or in the Penal Code where it is an ingredient of five offences. In attempting to determine its meaning, the courts in Singapore, Malaysia and elsewhere have sought the aid of either an English dictionary or of English decisions.

In Low Seng Wah v. Public Prosecutor, Neal J., unaware of earlier English decisions, considered himself compelled to "rely entirely upon the dictionary meaning of the word 'corruptly' in order to find out what the word 'corrupt' means":

32. Singapore Statutes, Rev. Ed. 1985, Cap. 224, sections 196, 198, 200, 219, 220. Section 162 uses the phrase "corrupt means".
34. Ibid., at p. 109.
The Concise Oxford Dictionary (I have since checked with the meanings given in the Shorter Oxford) gives the following meanings of the word: "corrupt", rotten; depraved, wicked; influenced by bribery. For myself, I have always been of the opinion that the words, "corruptly accepts" or "corrupt acceptance," of money necessarily implied an acceptance as an influence and I think the legislature in the relevant provisions of the Penal Code have made that clear by providing for an offence in respect of accepting of a valuable thing without consideration. In my opinion, the legislature by adding the words referring to, "inducement," or "reward," were doing no more than making it clear that the words, "corruptly accepts," included not only the element of inducement but also reward where the favour had been done before the money was paid and that the omission of one or other of these words is not an essential part of the charge.

In interpreting the word "corruptly" in the Tanganyika Penal Code, the East African Court of Appeal preferred to adopt the fourth meaning assigned to the word "corrupt" in the Oxford English Dictionary: perverted from uprighteous and fidelity in the discharge of a duty; influenced by bribery or the like; venal. It therefore concluded that a sum of money collected by a police officer to be handed over to the complainant in a theft case, could not be said to have been obtained "corruptly" as it was a benefit obtained for another in which the accused was entirely disinterested.

The word "corruptly" was first considered by the English courts in 1857 in Cooper v. Slade. One of the questions that the judges in the House of Lords had to answer was whether a promise to voters by the defendant, in an election circular, that their railway expenses would be paid followed by the actual payment of the travelling expenses, had been done "corruptly". The House of Lords examined section 2 of the Corrupt Practices Prevention Act 1854 which made it an offence of bribery for any person to "give or agree to give or promise any money ... to any voter in order to induce him to vote, or refrain from voting ... or to corruptly do any such act ... on account of any voter having voted or refrained from voting". The majority of the law Lords had no difficulty in finding the defendant guilty, and held that both the promise and payment were corruptly made. Speaking for the majority, Willes J. explained the term "corruptly":

I think the word "corruptly" in this statute means not "dishonestly", but in purposely doing an act which the law forbids as tending to corrupt voters, whether it be to give a pecuniary inducement to vote, or a reward for having voted in any particular manner. Both the giver and the receiver in such a case may be said to act "corruptly". The word "corruptly" seems to be used as a designation.

36. (1857) 6 H.L. Cases 746.
37. Ibid., p.773.
of the act of rewarding a man for having voted in a particular way as being corrupt, rather than as part of the definition of the offence.

38. In Bewdley Election Petition decided in 1859, Blackburn J. agreed that the word "corruptly" ought to be interpreted as Willes J. had done in Cooper v. Slade and further observed that the word did not mean "wickedly, immorally, or anything of the sort", but embraced such conduct as it was "evidently the intention of the Legislature to discountenance". And in Bradford Election Petition No. 2, Martin B. thought that the word referred to "an act done by a man knowing that he is doing what is wrong, and doing so with evil feelings and with evil intentions".

These decisions made in respect of corrupt election practices suggest that the term "corruptly" means "intentionally" which only indicates the need for the prosecution to prove mens rea. That the word "corruptly" has a similar meaning under the English Prevention of Corruption Acts was established by the

38. (1869) 19 L.T. 676 at p. 678 approved in the Launceston Case (1874) 30 L.T. 823.
39. (1869) 19 L.T. 723.
40. (1869) 19 L.T. 723 at p. 727.
In Smith, the appellant was charged under section 1(1) of the Public Bodies Corrupt Practices Act, which is similar to section 6 of the Singapore Act, for corruptly offering a gift to a mayor in order to induce him to use his influence with a borough council in favour of the appellant. The appellant's defence was that he had not made a genuine offer but had given the bribe only for the purpose of exposing corruption which he believed to exist in the mayor's office.

The trial judge ruled that whatever the plaintiff's motive, if he had intended to get the mayor's agreement to accept money for favour to be shown, the offence had been committed. He further told the jury that the meaning of the word "corrupt" was the "intent to corrupt, the intention to corrupt the person to whom the offer is made".

The Court of Appeal approved this direction and took the view that the word "corruptly" meant

deliberately offering money with the intention that it should operate on the mind of the person to whom the offer was made so as make him enter into a corrupt bargain, even if the offeror had no intention of carrying out the transaction.

41. The Malaysian and Singapore courts have adopted the English definitions of the word "corruptly". In Lim Kheng Kooi, Shepherd J. agreed with the definition of "corruptly", by Martin B. in Bradford Election Petition, as "an act done by a man knowing that he is doing what is wrong, and doing so with evil feelings and evil intentions". He thus held that the circumstantial evidence in that case that showed that the appellant, a barrister of some repute, had paid various amounts of money to an agent of his client to permit him to retain and use $5,000 which should have been returned to the client was not the payment of interest but a bribe.

41. No attempt has been made by the appellate courts in Singapore to define the term "corruptly" but trial judges in the District Courts have relied on English decisions. See for example PP v. Aiyachani s/o Veeraputhiran, (unreported) District Magistrate's Appeal No.111/79, PP v. Subramaniam, M.A. No.194/86; 1987 B.L.D. [May] 54.

42. [1957] MLJ 199.

And in PP v. Datuk Haji Harun bin Haji Idris (No.2), Raja Azlan Shan F.J. stated that the word "corrupt" was "a question of intention" and meant "doing an act knowing and evil intentions", following Lim Kheng Kooi and Bewdley Election Petition; or, following R v. Smith, "purposely doing an act which the law forbids".

The term "corruptly" was also considered briefly by Wee Chong Jin C.J. in the Singapore case of PP v. Mohamed Ali bin Mohamed Amin in 1979. In that case, two immigration officers were charged under section 6(a) of the Prevention of Corruption Act for corruptly accepting $30 as a reward for supplying information contained in passenger disembarkation forms to a tourist tout. The officers were acquitted by the trial judge as he held that the acts of the respondents in revealing information contained in the disembarkation forms to enable the tout to obtain business from incoming tourists was merely "an innocuous act in relation to their principal's affairs". In setting aside the order of acquittal,

44. [1977] 1 MLJ 15.
47 [1979] 2 MLJ 57.
the Chief Justice said:

The real point, as appears from the use of the word "innocuous" by the District Judge is whether or not on the undisputed facts the prosecution has proved there was a "corrupt" acceptance by the respondents of the $30 as a reward for what they did in relation to their principal's affairs. The fact that they had supplied a tourist tout information which was available to them only because they were immigration officers attached to the Singapore Airport for a gratification and the circumstances under which they extracted the particulars contained in the disembarkation forms and passed on those particulars to the tourist tout are strictly proof, unless rebutted, that they had "corruptly" accepted the $30 from the tourist tout.

The Chief Justice avoided giving any definition of the word "corruptly" although in an earlier appeal he had recognised that its meaning "needed to be looked into". Instead, he was merely content to hold that whether or not acceptance of a gratification is corruptly done "is a question of fact which falls to be decided on the proved facts and circumstances in each case".

The question whether dishonesty is an essential element of a "corrupt" act occupied the attention of

48. Ibid. at p.58.

the English courts for a good many years.

In Cooper v. Slade, the defendant had in fact acted in the honest belief that the payment of travelling expenses to voters was legal, but the House of Lords considered this was irrelevant for the question was not "what the defendant may have thought to be legal but what he did; and whether what he did was against the statute". However, Coleridge J., who delivered the dissenting judgment, thought that it was not enough to merely show that the defendant did the act prohibited by statute and that the term "corruptly" implied "dishonesty".

Almost a hundred years later, the view that the word "corruptly" as used at least in the Prevention of Corruption Acts means "dishonestly" received support in two cases decided under the Acts.

In Lindley, where the accused was tried at the Lincolnshire Assizes in 1957 for corruptly giving bribes to servants of a company in order to secure

contracts from the company, the jury was directed to find the accused guilty only if they were satisfied that he had "dishonestly intended to weaken the loyalty of the servants to their master and to transfer that loyalty from the master to the giver". Similarly, in Calland, where an inspector for a life insurance company had been charged with corruptly offering an agent of the Ministry of Social Security £30 a month as a reward for informing him from time to time of such names and addresses of new born children as were communicated to her in the course of her employment, Veale J. also directed the jury that corruption meant dishonestly trying "to wheedle an agent from his loyalty to his employer" and that if they thought, from the evidence that they had heard, that what the accused did was merely sharp practice but that he had not acted dishonestly, he was not guilty of corruption. Thus directed, the jury in both Lindley and Calland acquitted the accused.

It is arguable whether dishonesty is an acceptable synonym for "corruptly" or whether that ingredient ought to be introduced to govern its meaning. Must a corrupt person be necessarily

dishonest? A dishonest intent is not required for a conviction under the Singapore Prevention of Corruption Act as is clear from the decision of the Chief Justice in *Mohamed Ali*, discussed earlier, where the facts were quite similar to *Calland*. At any rate, both *Calland* and *Lindley* are no longer of any persuasive authority in view of subsequent decisions. Both decisions were disapproved in *R v. Wellburn*.

In *Wellburn*, the Court of Appeal applied the dictum of Willes J. in *Cooper v. Slade* and reiterated that the adverb "corruptly" does not mean "dishonestly" but "purposely doing an act which the law forbids as tending to corrupt".

The central question is whether in inserting the undefined adverb "corruptly" in the Prevention of Corruption Act the draftsman intended that the Act should encompass almost every "evil" transaction that can take place, or whether such acts should be circumscribed by the word "corruptly". In other words, was the word "corruptly" introduced to extend or to restrict the ambit of the Prevention of Corruption Act?


If, as is submitted, the term "corruptly" is an essential ingredient of the majority of offences created under the Prevention of Corruption Act, then what the law permits or forbids depends very much upon the legal meaning of the word "corruptly". The definitions of the term in the reported cases, however, create more problems than they solve.

First, it does not help to understand the meaning of the term "corruptly" when in defining it the courts choose to use, as they have done, such words as "corruption", "corrupt transaction", "corrupt practice", or "corrupt bargain".

Secondly, to define a "corrupt act" as an act done with "an evil intention or evil feelings or an evil mind", or as one which "embraces conduct which was the intention of the legislation to discountenance", or "something which the law forbids as tending to corrupt" is hardly helpful. Such definitions are couched in terms which are too wide and imprecise to lend themselves to precise determination or practical application. Any crime, for example, can be committed "corruptly" if one employs the criterion of "evil intention". All this lend support to the contention that the use of undefined adverbs in criminal statutes
causes uncertainty in the law.

The most serious complaint about the treatment of the word "corruptly" by the courts is in their view that the adverb adds nothing to the sections in the Prevention of Corruption Act where it appears. As Coleridge J. protested in *Cooper v. Slade*, such an interpretation makes the word "corruptly" in the Act "superfluous and otiose". It also violates a cardinal rule of statutory interpretation that a meaning must be given to every word used in a statute. The difficulty of not doing that was adequately shown in *R v. Smith* where the Court of Appeal admitted that it may have to give two different meanings for the word "corruptly" appearing in the same section: deliberately offering money as an inducement, and offering money as a reward for a completed corrupt transaction. Or rather, it had to say that the word "corruptly" meant

57. For an interesting examination of three examples of undefined adverbs commonly used in criminal statutes, see Bernard MacKenna, "The Undefined Adverb in Criminal Statutes", [1966] Crim.L.R. 548.


nothing in one part of that section and something in another part.

The fact that "corruptly" as an ingredient of the offences under sections 5 and 6 of the Prevention of Corruption Act has a definite meaning is borne out by section 8 of the Act. This section raises a presumption that a gratification was paid or received "corruptly" upon two factual ingredients being proved: (1) that the gratification was given or received by the accused; (2) that at the time of the payment or receipt he was employed by the Government or by a public body.

The word "corruptly" certainly suffers from a problem common to many undefined adverbs in that it is perhaps capable of different meanings in different sections of a statute and in different statutes. In the Penal Code where the word "corruptly" appears in five sections, it has been held that the word was not intended to connote a motive necessarily connected with

61. As explained by the Privy Council in PP v. Yuvaraj, [1969] 2 MLJ 89, which has since been applied in a number of cases including Chew Chee Sun v. PP, [1975] 2 MLJ 58; Wee Toon Boon v. PP, [1976] 2 MLJ 191. See also discussion under section 8, part (C) post. More factual ingredients need be proved under the Singapore Act than the Malaysian or English Acts.
bribery or dishonesty but is used in a wider sense as denoting conduct which is "morally unsound or debased".

Finally, to say that the word "corruptly" merely indicates the requirement of a criminal intent for offences of corruption may be unrealistic because, unless it is expressly excluded, a guilty intent is an essential element of any crime. Mens rea is certainly not negated for offences of bribery by merely deleting the word "corruptly". The innocent offering of presents are not caught within the mischief of the Act even without the word "corruptly" because the offence is not in the mere giving or taking of gifts but in doing so as an inducement or reward for an act or omission in regard to the principal's business. And the giving and offering of bribes are not promising subjects for strict liability. Indeed the word "corruptly" is not used in sections 11 and 12 of the Act which deal with the offences of bribery of Members of Parliament and members of a public body.

On the other hand, where the word "corruptly" has been substituted with the word "knowingly" in section 1(1) of the English Act (section 6(c) of our Act), the courts have been rather quick to declare that the omission is significant. What then is the difference in the criminal intent between offences committed "corruptly" and "knowingly"? Why should there be any difference on the interpretation the courts have put on the word "corruptly"?

It is also arguable whether there are good reasons for not defining the term "corruptly" in a statute although the English Court of Appeal cautioned in Wellburn, that it may be wrong to attempt to give varied definitions to "statutory words in ordinary usage:. One view is that it is the evidence that must and would sufficiently indicate to a decider of fact whether the requisite acts or state of mind of the giver or receiver of a bribe has been established to


find him guilty of having acted "corruptly". The object to the Prevention of Corruption Act is simply to prevent agents from being put in positions of temptation and it may therefore be wise to leave the judge to construe the term "corruptly" on "the proved facts and the circumstances in each case" as Wee Chong Jin C.J. suggested in Mohamed Ali. Such a view breeds uncertainty in the law as judges may differ in their conclusions on whether a defendant acted "corruptly" on similar facts, as was demonstrated in the two Mohamed Ali cases and in the recent Singapore Airlines cases.

On the other hand, there may be less difficulty in identifying what is a corrupt act or intent in the context of the Prevention of Corruption Act than in defining the elusive adverb "corruptly". It may even be undesirable to do so as the Royal Commission on Standards of Conduct in Public Life thought. The Commission declined to recommend a statutory definition


65a. [1979] 2 M.L.J. at pp.57,58, discussed earlier in this chapter and at p.398, post.

65b. Where two District Judges differed in their views as to whether stewards conveying commercial goods for reward were acting corruptly within the meaning of S.5(b)(i) of the Prevention of assumption Act, cap.241. See PP. Low Poh Hin, DAC 10559 of 1987; Straits Times, October 29, 1987.
of the word "corruptly" on the ground that it would be impossible to have a satisfactory definition of a corrupt intent that would meet all cases. It therefore considered that the better course was for the law to continue "to rely on the ordinary English word 'corruptly' to speak for itself". That is, of course, another way of saying that in deciding whether a man has acted "corruptly", within the Prevention of Corruption Act, instinct, experience and common sense are better allies of a judge or jury than any statutory guideline.

(2) **Corruption: Section 5**

Section 5 of the Prevention of Corruption Act provides for the punishment of an offence generally termed "corruption". It is wider in scope than section 1 of the English Public Bodies Corrupt Practices Act of 1889 upon which it was obviously modelled.

A person is guilty of corruption if he:

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66. See the Report, op.cit., para.56, p.18

67. 52 and 53 Vict. c.69.
(i) corruptly solicits or receives or agrees to receive for himself or for any other person any gratification, "as an inducement to, reward for or otherwise on account of any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed" (section 5(a)(i)); or

(ii) corruptly solicits or receives or agrees to receive for himself or for any other person any gratification as an inducement to, reward for or "otherwise on account of any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed", in which such public body is concerned (section 5(a)(ii)).

Section 5(a)(ii) of the Prevention of Corruption Act, like section 1 of the English Act, in making it an offence to solicit or receive a bribe as an inducement or reward for influencing any officer of
a public body, is clearly confined to punishing only acts of corruption in respect of a public office. It is a seldom used sub-section and there are only two reported decisions on the equivalent of section 5(a)(ii) of the Act in Malaysia and none in Singapore.

Obviously, a charge of soliciting for a bribe can only be preferred under section 5(a)(ii) as section 6(a) of the Act does not provide for the offence of soliciting, although the prosecution may resort to charging an offender who has merely solicited a bribe without having received it, with an attempt to commit the offence under section 6(a) itself as it covers attempts, or under section 28 of the Act or section 511 of the Penal Code.


69. Singapore Statutes, 1985 Ed., Cap.224. Although the punishment for an attempt under section 511 of the Code is generally the same as for the principal offence, the court is precluded from imposing a term of imprisonment which exceeds half the maximum term provided for the offence. No such restrictions on the courts' sentencing powers have been placed by either section 6(a) or section 28 of the Prevention of Corruption Act.
To "solicit" means only to "ask for or invite offers". Thus, in Datuk Haji Harun, the court held that the accused had corruptly solicited for a political party a gratification of $250,000 from the Hongkong & Shanghai Bank when in discussing the bank's application for alienation of a piece of land on which the bank wished to construct a new building, he asked the bank officials: "What are your views on political donations to party funds?" In PP v. You Kong Lai, Shankar J. held that if a person merely invites the payment of monies in order to use it to bribe a member of a public body, he commits the offence of corruptly soliciting, whether or not the corrupt purpose was carried out.

Section 5(a)(i) of the Singapore Act for which there is no English equivalent, in addition, prohibits any person from soliciting or receiving an illegal gratification as an inducement or reward or "otherwise on account of any person doing or forbearing to do anything in respect of any matter or transaction whatsoever actual or proposed". The Prevention of Corruption Act has not defined the word "person"

but under section 2 of the Interpretation Act a "person" includes any company or association of persons, corporate or incorporate.

Clearly, the sub-section is couched in the widest of terms and is aimed at corrupt transactions in both the public and private sectors. If 'A', a well-known hawker in Albert Street obtains a "goodwill fee" from every hawker who wishes to set up business along the same street and if the fee is collected without use of any duress, 'A' may well be committing an offence of corruption under section 5(a)(i). The precise ambit of the sub-section is unclear especially as it is seldom used and has been the subject of only one reported decision in Malaysia and none in Singapore.

73. In the Singapore case of PP v. Nagalingam, [1971] 1 MLJ 18, although the accused was charged under what is now section 5(a)(i) of the Act, the only question discussed on appeal was whether the written consent of the Attorney-General for instituting the prosecution was valid. See also Mohamed Din v. PP, [1985] 2 MLJ 251.
It is a useful sub-section as it can be invoked where no other charge under the Prevention of Corruption Act is suitable or even possible. Section 5(a)(i) may, for example, be used in the following situations:

(a) Where the accused has only solicited a bribe without having received it.

(b) Where any of the ingredients of section 6, eg. "agent", "principal" or that the agent acted "in relation to the principal's affairs or business"; or of section 11(b), eg. doing an act "in his capacity as a Member of Parliament" cannot be proved.

(c) Where a person abets an agent in obtaining a bribe in relation to the affairs of the agent's principal, as section 6(a) of the Prevention of Corruption Act does not

74. As in PP v. Nagalingam, ibid.; Mohamed Din, ibid.
75. The problems associated with these ingredients are considered fully elsewhere in this chapter. See PP v. Goh Eng Leong @ Eric, Cr Revision No.1 of 1980, where the accused was a public servant but the corrupt transaction was unrelated to his official business.
punish abettors. This was the case in PP v. Richard Liong Kuo Chi, where an architect was charged and convicted of corruptly receiving from 'Y' a bribe of $42,800 for 'S' (the managing director of a firm) as a reward for 'S' awarding a quantity surveying contract to 'Y' in respect of some construction work in S's firm.

76. Section 27 of the Prevention of Corruption Act provides punishment for abettors but does not indicate what constitutes abetment. Abetment of any offence is also punishable under section 109 of the Penal Code, Cap.224. Illustration (a) to section 109 is in respect of an abetment of the offence of bribery under section 161 of the Code. A person abets an offence if he instigates, engages in a conspiracy or intentionally aids the commission of the offence: section 107 of the Penal Code. Abetment under section 27 of the Prevention of Corruption Act has the same meaning: Chandrasekaran v. PP, [1971] 1 MLJ 153 at p.154.

77. Unreported District Court Case: Magistrate's Appeal No. 158/84; Court 4, DAC 1052/83. 'S' faced charges under section 6(a) of the Act for corruptly accepting an illegal gratification as an agent: PP v. Sim Tian Chye, unreported District Court Case: Magistrate's Appeal No. 157/84; Court 4, DAC 1050/83.
(d) Where the principal parties in a corrupt transaction are not public servants and there is no known principal. In **PP v. Ang How Pang & Anor**, for example, the accused were two hawkers charged with corruptly receiving from another hawker (Tan) a bribe of $200 on account of a proposal to buy a present for the Head of the Hawkers Department so that hawker Tan would not be harassed by the Hawkers Department.

An example of how the section was used by the Public Prosecutor as a last resort is to be found in the unreported District Court case of **PP v. Aiyachami s/o Veeraputhiran**. In that case the accused, a Singapore citizen, went to a remote village in India.

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78. Unreported District Court Case: Magistrate's Appeal No. 100/79, Court 8, DAC 3868/78.

and obtained various sums of money from a number of persons on the pretext of obtaining jobs for them in a shipping company in Bahrain. The sums collected were said to represent commissions and travel expenses. The accused then returned to Singapore and went into hiding.

It was an obvious case of cheating but as the offence was committed in India a cheating charge would have failed. Therefore, a charge under section 5(a)(i) of the Prevention of Corruption Act was preferred against him by officers of the Corrupt Practices Investigation Bureau who had investigated the case, as section 35(1) confers extra-territorial jurisdiction upon Singapore courts for offences committed under the Act by Singapore citizens abroad.

The accused was, however, acquitted without his defence being called as the trial judge held that he did not enter into any corrupt bargain with the complainants and his conduct could be best described only as dishonest, "which was not a sort of act which the Prevention of Corruption Act is intended to embrace". A conviction would certainly have followed if the accused had represented that at least a part of the monies collected were bribes for officials in
Thus in *Sim Kok Wah v. PP*, where the accused, a former Inspector with the Singapore Internal Security Branch, represented to the relatives of a man detained in Malaysia by the Malaysian Special Branch that he could obtain the release of the detainee for $500,000, most of which was to be paid to corrupt Malaysian officials and that this sum need be paid only upon the detainee's release, the trial judge held that the facts did not disclose an offence of cheating but one of corruptly soliciting a bribe under section 5(a)(i) of the Prevention of Corruption Act. The appeal against the conviction under section 5(a)(i) and sentence of six months imprisonment was dismissed by the Chief Justice.

The wide language of section 5(a)(i) of the Act in fact lends itself to the prosecution of any person involved in any corrupt bargain even if it is not in relation to the affairs of a principal or unconnected with any matter in which a public body or a public servant is concerned. The danger is that when indiscriminately used the section may extend the
offence of corruption more widely than the Legislature may have intended, a fear that the drafters of the Penal Code were acutely conscious of when considering the bribery provisions of the Code.

(3) **Corrupt Transactions with Agents: Section 6**

An agent is guilty of being involved in a corrupt transaction if he:

(i) **corruptly** accepts or obtains, or agrees or attempts to obtain from any person, any gratification as an inducement or reward for doing or forbearing to do or for having done "any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business" (section 6(a)).

A person convicted of any of these offences is liable on conviction to imprisonment for up to 5 years or to a fine of $10,000 or to both.

82. See the discussion on the corruption provisions in the Penal Code, Chapter VII, ante.

83. "Obtains" is a stronger word than "accepts" and means getting something as a result of some effort on the part of a receiver. See R K Soonavala, *The Law of Bribery and Corruption*, (Bombay:1964), p.79.

The Act, however, provides for enhanced punishment of 7 years' imprisonment if the offender has been convicted of:

(a) a corrupt transaction in respect of a contract or proposal for a contract, with the Government or any government department, or public body, or in respect of a sub-contract to execute any work in the contract; or of

(b) corruptly procuring the withdrawal of tenders for a contract with the Government or public body by offering a gratification to his competitors to withdraw from making a similar tender, or of soliciting or accepting any gratification as an inducement or reward for withdrawing his tender.

The provision for enhanced punishment for corrupt transactions in respect of government contracts has its origin in the English

85. Ibid., section 10.
Prevention of Corruption Act 1916. That Act was prompted by wartime scandals in England concerning government contracts, and was hastily passed in response to comments by a judge about the inadequacy of punishment for such offences. There was indeed no reason for the Singapore legislature to adopt similar provisions in the Prevention of Corruption Act of 1960.

Section 6(a) and section 6(b) seek to punish the taking and giving of bribes by or to agents in relation to the affairs or business of the agent's principal.

To succeed on a charge under section 6(a) of the Act, the prosecution has to prove:

86. 6 and 7, Geo.5, c.64.
87. See the Report of the Royal Commission on Standards of Conduct in Public Life, 1976, Cmnd.6524, para.46, p.16.
(1) that the accused was an agent;

(2) that he corruptly accepted, obtained or agreed to accept or attempted to obtain a gratification; and

(3) that the gratification was an inducement or reward for doing or forbearing to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to the principal's affairs or business.

(a) AGENT

The prosecution must establish not only that the person who received the bribe or to whom it was offered is an agent but that he is an agent of the principal identified in the charge.

Under section 2 of the Act, an "agent" means "any person employed by or acting for another, and includes a trustee, administrator and executor, and a

person serving the government or under any corporation or public body". It also includes a sub-contractor and any person employed by or acting for such a sub-contractor. A "principal" for purposes of section 6 of the Prevention of Corruption Act includes an employer, a beneficiary and, in the case of a person serving the Government or a public body, the Government or the public body, as the case may be. Clearly, the artificial dichotomy of employee, agent and independent contractor, so prominent in the law of tort, has been removed by the wide definitions of "agent" and "principal" under the Prevention of Corruption Act.

The courts have therefore insisted that the meaning of the term "agent" for purposes of section 6 of the Act must be determined by construing the words of section 2 alone and applying them to the holder of

90. See footnote 62 ante, and accompanying text for a comment on the meaning of "public body".

91. It has been pointed out that even on the existing terminology, some employees have wide agency powers, many agents (eg. brokers) could be called independent contractors and some independent contractors (eg. repairers) are likely to have agency powers: Boustead On Agency, 15th Ed., (1985), pp.18-79.
the office in question. In Voon Ah Shoon v. PP, the court refused to examine the Contracts Act 1950 to determine the meaning of an "agent". It rightly took the view that an agent under the Prevention of Corruption Act, which deals with criminal liability of an individual, cannot be equated with an agent under the Contracts Act which deals with only civil rights and liabilities of an individual.

There has been little difficulty in considering police officers, immigration officers, a government architect and a housing investigating officer with the Housing & Development Board as agents. In Wee Toon Boon v. PP, it was submitted that a Minister of


93. Ibid.


96. Chew Chee Sun v. PP, op.cit.


State was not an agent as he could not be, according to constitutional convention, described as a person who was a servant or employee of the Government of Singapore. This submission was rejected by Wee Chong Jin C.J. who held that for purposes of the Prevention of Corruption Act, a Minister of State was an "agent" of the government as in the performance of his duties he was clearly acting for the government, "it being necessary for the government to exercise its functions through some human agency", and in receiving remuneration for the purpose of his duties and the discharge of his responsibilities as a Minister of State he is clearly a person serving or employed by the government.

It is immaterial if the recipient or giver of the bribe receives or gives by himself or by or in conjunction with any other person. It has also been emphasised that the favour for which the bribe was collected or given need not be for the giver of the gratification. The bribes need not actually change


1. See for example the unreported District Court Case of PP v. Richard Liong Kuo Chi, op.cit., where 'L' received the bribes from 'Y' for 'S'.

2. Mohamed bin Long v. PP, [1972] 1 MLJ 76. That is made clear by the words of section 6(a) of the Act which makes it an offence for an agent to receive a bribe for "himself or for any other person". See also Ahmed Shah bin Hashim v. PP, [1980] 1 MLJ 77 at p.87.
hands for it is also an offence under section 6(a) of the Act to attempt or agree to accept an illegal gratification.

It is now settled law that the motive of an offender is irrelevant so long as he had a corrupt intent. A policeman or other agent provocateur who offers or receives a bribe for the purpose of gathering evidence of corruption commits no offence not because his motives are honourable, or, as Lord Lane thought in *R v. Mills*, that the agent-receiver does not intend to keep the money, but because he does not have the necessary mens rea for corruption. His "dominant intention", to borrow a phrase from the Privy Council, is not to bribe or receive bribes as the case may be but to gather evidence of such crime. For the purpose of the rules of corroboration an agent provocateur or police spy is not considered an accomplice by the courts in many jurisdictions as he is said not to be

4. Ibid.
particeps criminis in respect of the principal crime. The courts may, as a matter of policy, be reluctant to extend the same reasoning to private individuals who decide to take the law into their own hands as did the defendant in R v. Smith.

Section 6(a) covers the receipt of gratification for a past favour without any antecedent agreement as the word "reward" in the sub-section can be given its natural meaning of a post facto gift. The phrase "doing or forbearing to do" is equally applicable to past or future conduct as the phrase is "simply descriptive of the nature of the activity for the time being contemplated as the subject matter of the inducement or reward".


7a. In Gerald Fernandez v. PP, (unreported) M.A. No.101 of 1971, the Chief Justice rejected the argument that the corrupt acceptance of a reward, within the meaning of S.6(a), requires that the anticipation of the reward should have been a motivating factor in the showing of the favours.

Although the term "inducement" refers to future conduct, it is an offence to corruptly accept a gratification as an inducement even if the recipient has no intention of allowing the gift to influence his conduct, or having received the bribe intends to "double-cross" the giver. What is important is the purpose for which the bribe has been obtained or accepted. A connection between the granting of the favour and the demand for the gratification must be established before a gratification can be held to be an "inducement" for doing the favour under section 6(a) of the Prevention of Corruption Act. A gift can, of course, be corruptly given but innocently received and vice-versa.


10. Dictum of Lord Goddard C.J. to this effect in ibid. at p.189 applied by the Court of Appeal in R v. Mills, [1962] 3 All E.R. 298.

11. R v. Andrews Weatherfoil Ltd, op.cit., approved In Datuk Haji Harun (No.2), op.cit., at p.26. In Crown Prosecutor v. Pillai, [1948] Mad.281, it was held that no offence was committed as the payment of the money to the accused was entirely independent of the application for an export permit that was made, as it was given solely as a donation to a building fund for which monies were being collected publicly.

(b) "In Relation to the Principal's Affairs"

No major problems have arisen in the interpretation of section 6(a) or 6(b) except as to the meaning of the phrase "in relation to his principal's affairs or business".

Does the accused need to have the competence or power to do the act or give the favour for which the bribe was taken? If he does an illegal act, for which the bribe was received, or performs an unauthorised service, can he be said to be acting "in relation to his principal's affairs or business" within section 6(a) of the Prevention of Corruption Act?

The problem began with the decision of Mr Justice Murray-Aynsley, then Chief Justice of Singapore, in the case of Hiralal Badlo v. Rex, a case decided in 1950 under the 1937 Prevention of Corruption Ordinance. In that case the accused was

13. Similar problems have arisen in the interpretation of the terms "official act" under section 161 of the Penal Code and "in his capacity of a Member of Parliament" under section 12(b) of the Prevention of Corruption Act and have been considered elsewhere in this chapter.


15. Ordinance No. 41 of 1937.
convicted of giving a bribe to an army sentry who had arrested some of his friends. The sentry had suspected them of being in possession of stolen property which was subsequently found not to have been stolen. The accused offered a bribe as an inducement to show favour by releasing the detainees. The Chief Justice held that as the arrest was illegal the favour sought was not in relation to the affairs of the principal of the sentry.

The decision in Hiralal Badlo was followed by a Malaysian court in Lim Yam where the court held that as the police officer had made an illegal arrest, the offer of a bribe to him to refrain from further investigations into the alleged offence was not a favour that was sought "in relation to his principal's affairs". Again in Loh Kwang Seang v. PP, Rigby J. held that where a police officer demanded and collected money by falsely accusing his victim of having committed an offence, no offence of corruption was committed as the police officer was not acting in relation to the affairs of his principal when he made the false representations.

It is difficult to appreciate why the preservation of law and order, with the attendant apprehension of all suspected offenders, could not be said to be within the affairs of the Armed Forces or the Police or the Government. An employee who in carrying out his duties acts improperly or even unlawfully is still acting in relation to the affairs of his master. These cases, if rightly decided, will bring about an impossible result: a corrupt police officer can only be convicted of an offence under the Prevention of Corruption Act if he takes a bribe for doing a lawful act but not for doing an unlawful one. Such judicial reasoning will leave unpunished acts which the ordinary citizen would regard as corrupt conduct among public servants.

It is submitted that the phrase "in relation to his principal's affairs" was introduced to draw a distinction between an agent's private conduct and acts done under the colour of his agency. If a public servant performed an "extra-official" act such as filling out forms for which he received a fee, he would not commit an offence under section 6(a) of the Act unless the service for reward is merely a disguised form of bribery. It would, however, defeat the

avowed purpose of the Prevention of Corruption Act "to provide for the more effectual prevention of corruption" if the phrase "in relation to his principal's affairs or business" is restricted to mean "within the scope of the accused's agency or authority" as the decisions appear to suggest. Indeed, as recognised by the Privy Council, one of the mischiefs aimed at by the Act was to prevent a public officer from accepting gifts from members of the public except in circumstances in which he will be able to show clearly that he has "legitimate" reasons for so doing.  

Subsequent decisions of the courts have sought to distinguish a case where an agent initially does an illegal act, such as in Hiralal Baldo, from one where the agent merely does an act which he is not competent or authorised to do, for which the bribe was collected. The courts have held that only in the latter case does the agent act in respect of his principal's affairs.


Thus, an Assistant Home Guard Officer who collected a bribe for the purpose of recruiting a person into the Home Guard as a sergeant which he had no authority to do, and a Fisheries Assistant who received an illegal gratification as an inducement for issuing fishing licenses, although he had no jurisdiction to do so, were nevertheless held to be acting in relation to their principals' affairs. As Smith J. explained in Abdul Hamid v. PP:

Whether the accused had the power to recruit or not is immaterial: the question is for what purpose did the complainant give the money, was that purpose in relation to the affairs of the accused's principal and did the accused receive the money knowing the intention with which it was given by the complainant.

The distinction that the courts have sought to make between cases where a corrupt public servant acts illegally and where he acts beyond his jurisdiction, for purposes of construing the phrase "in relation to his principal's affairs or business," is both illogical and unrealistic. It is certainly a distinction that is inconsistent with the object and provisions of the Prevention of Corruption Act.

Section 9 of the Prevention of Corruption Act expressly provides that the acceptor and giver of an illegal gratification are guilty notwithstanding the fact that the agent did not have the "power, right or opportunity to do the act or show the favour or forbear from so doing", or that he accepted the gratification without intending to honour his part of the corrupt bargain, or that he did not in fact do so, or that any act, favour or disfavour shown by the agent "was not in relation to his principal's affairs or business."


26 In Vincent Koh, decided in that year, 27 Ambrose J. considered the decision in Hiralal Badlo to have been "nullified" by section 9(1) of the


25. Ordinance No. 5 of 1950.


Prevention of Corruption Ordinance 1960 and held that a police constable who had obtained a bribe as an inducement for showing favour to the complainant by agreeing not to take police action against him for a fictitious insurance offence, was guilty of an offence under section 6(a) of the Act "notwithstanding that such favour was not in relation to his principal's affairs". By a coincidence and unknown to Ambrose J., a Malaysian court, 4 months earlier, had also concluded that in view of section 6(1) of the Malaysian Prevention of Corruption Act, the equivalent of section 9 of the Singapore Act, it was not open to the accused to argue that he had no power to do what he promised.

At least after the decision of Wee Chong Jin C.J. in Wee Toon Boon (1976) the words "in relation to his principal's affairs or business" in section 6(a) of the Prevention of Corruption Act have been given a wide interpretation although the phrase continues to trouble some trial judges.

In PP v. Mohamed Ali & Anor and Mohamed Ali bin Mohamed Iqbal v. PP, two District Judges arrived at different decisions, on identical facts, as to whether the conduct of the accused was in relation to their principal's affairs. In both cases, the accused were immigration officers who had, in return for monetary rewards, supplied to tourist touts information as to the names of incoming tourists, their flight numbers and names of their hotels in Singapore. This information was obtained from disembarkation forms that the officers had received from passengers at the airport. There was at the time a Standing Instruction to all immigration officers that information revealed in the disembarkation forms was not to be divulged to members of the public. The accused were charged for corruptly accepting a gratification as a reward for acts done in relation to their principal's affairs. It was submitted in both cases that what the accused had done were "innocuous" acts, wholly outside the affairs or business of their principal. This submission was accepted by one judge but rejected by the other.


On appeal, Wee Chong Jin C.J. held, following the English case of Morgan v. DPP, that the words "in relation to his principal's affairs" in section 6(a) of the Act fell to be widely construed and that for a conviction under the section it need not be proved that the acts done by a person was done by him as agent on behalf of the principal, but only in relation to his principal's affairs. Strangely, section 9(1) of the Prevention of Corruption Act was not considered by either of the trial judges or by the Chief Justice on appeal. Had the trial judges considered the express provisions of section 9(1) of the Act they both would have come to the same conclusion even on their different views as to whether the misconduct of the accused was in relation to their principal's affairs.

(4) **Knowingly Giving or Using False Documents:**

**Section 6(c)**

Section 6(c) of the Prevention of Corruption Act

Act, has created the offence of "knowingly" (but not corruptly) giving an agent a false "receipt, account or other document" in respect of which his principal is interested, or, if an agent, of "knowingly" using such a document to mislead the principal. It is uncertain why such a sub-section has a place in a statute titled "Prevention of Corruption Act" and enacted for a "more effectual prevention of corruption".

It has been held that the use by the Legislature of the word "knowingly" in section 6(c) instead of the term "corruptly", as in the previous sub-sections (a) and (b), was deliberate and that the offence does not involve corruption at all. In *Sage v. Eicholz*, the respondent had paid water rates in respect of his property. In order to obtain a deduction of those rates, he handed a written "claim for empties" at one of the offices of the Metropolitan Water Board which contained a false statement that the respondent's premises had been empty for a particular


period. The officer who received the claim forwarded the document to the appellant, the Board's registration officer, who allowed the deduction. Neither the appellant nor the receiving officer knew that the claim contained a false statement.

The respondent was charged, contrary to section 1(1), paragraph 3, of the English Prevention of Corruption Act 1906, which is in pari materia with section 6(c) of the Singapore Act, with knowingly giving an agent (the receiving officer) a document which contained a false statement intended to mislead the principal (the Board). The Magistrate dismissed the case on the ground that an offence under the section was not established unless corruption of the agent or an intention to corrupt him was proved, as the operation of the Act, having regard to its title, was confined to preventing the corruption of agents.

In allowing the appeal, Bray J. observed:

The word "knowingly" does not involve "corruptly" at all. Have we any right to say

36. 6 Edw.7 c.34.
when the statute uses the word "knowingly" deliberately, instead of "corruptly", because this Act is an Act for the better prevention of corruption, that that word "knowingly" must be read as "corruptly"? In my opinion the word "knowingly" is perfectly clear and unambiguous. It does not imply any corruption, and I have no doubt that the word "corruptly" was deliberately omitted or altered there because of the great difficulty in a case of this kind in proving corruption, and probably because it was the intention to make it an offence, whether it was done corruptly or not.

Shearman J. thought that the sub-section was inserted in the Act because:

It has happened more than once that a certain abuse has brought a new statute into existence, which has then proceeded to deal not only with that abuse, but also with kindred abuses.

And Lawrence J. in the same case gave a further explanation as to why the word "corruptly" was omitted in the third paragraph of the sub-section:

That omission [of "corruptly"] is, to my mind, readily explained by the fact that it is frequently almost impossible to prove that an agent has been corrupted, and in many cases the agent may not be corrupted, but, in order to make an agent guilty of an offence, the subsection is careful to say that if any agent "knowingly" uses, with intent to deceive his principal, such a document as this, then he shall be guilty of a misdemeanour ....


39. Ibid.
Mr Justice Lawrence's views of the sub-section have, very recently, been endorsed by the Court of Appeal in *R v. Tweedie*. The Attorney-General of England too has appeared before a Royal Commission to point out the usefulness of this provision as it is at times easier to prove "the intention to mislead than to demonstrate any associated bribery".

It is perhaps for the same reasons that section 6(c) has been inserted in the Singapore Prevention of Corruption Act. The offence of using false documents has been otherwise adequately covered under the provisions of the Singapore Penal Code. Dishonest or fraudulent manufacture or use of false documents, falsification of accounts and forgery of documents for the purpose of cheating, are all offences under the Code. And it is the Penal Code provisions that the police normally resort to in charging offenders for using false documents. Officers of the Corrupt Practices Investigation Bureau, however, whose powers of investigation are provided under the Prevention of Corruption Act, prefer to use section 6(c) of the Act with which they are probably more familiar.


41. See the Report of the Royal Commission on Standards of Conduct in Public Life (1976), Cmnd.6524, para.78, p.23.


43. Ibid., sections 463, 470, 477A and 468.
It is clear that the word "knowingly" introduces a requirement of mens rea to all the elements of the offence. The courts have, however, put a strict meaning to the words "knowingly" and "with intent to deceive his principal". The knowledge that is required on the part of the defendant is actual knowledge that the document was false and not knowledge of the second degree, that is, failing to discover the truth because of his "shutting his eyes" to an obvious means of knowledge, or to constructive knowledge where he ought to have known that the document contained a false statement.

Thus in Lai Fook Kee v. PP, the appellant's conviction was quashed as the High Court held that personal knowledge of the accused that the document tendered by him was false was an essential ingredient of the charge. The trial court's failure to make any specific finding to that effect was therefore held to be an reversible error.

44. See for example Lai Fook Kee v. PP, [1970] 1 MLJ 134; PP v. Ng Chong, [1946] MLJ 68, C.A; Sinniah Sokkan v. PP, [1963] MLJ 249; and the observations of Devlin J. on the three degrees of knowledge that may be required under a statute in Roper v. Taylor's Central Garages (Exeter) Ltd, [1951] 2 T.L.R. 284 at pp.268-269.

45. Ibid., approved in Voon Ah Shoon v. PP, op.cit.
It is therefore clear that for a successful prosecution under section 6(c) of the Act it must be proved that a person who gives a false statement to an agent must make it consciously knowing it to be false, and that an agent who uses such a statement must have personal knowledge of its falsehood. As with intention, whether or not the accused had the requisite knowledge is a question of fact which must be inferred from the circumstances of the case. It is of course always open to such an accused person to prove that he acted innocently.

It is, however, sufficient for the prosecution to prove that the document was made or used with intent to deceive the principal without establishing an intent to defraud. In so holding, Hill J. in Neelakandan & Anor adopted the dictum of Buckley J. in Re London & Globe Finance Corporation Ltd which is the locus classicus on the difference between the terms "deceive" and "defraud":

To deceive is, I apprehend, to induce a man to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false. To defraud is

to deprive by deceit: it is deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action.

The central problem that has arisen in prosecutions under section 6(c) of the Act is as to the interpretation of the word "document" appearing in the phrase "receipt, account or other document" in that sub-section. What should be the form and nature of such a "document"?

In *PP v. A.G. Kyle-Little & Anor*, Abdul Hamid J. had to decide whether a pipe with false markings and writings on it was such a "document" within the meaning of the Malaysian equivalent of section 6(c) of the Singapore Prevention of Corruption Act. The learned judge, conscious that he was considering words in a penal statute, invoked the *ejusdem generis* term to hold that it was not:

49. [1971] 1 MLJ 125. In *Hashim v. PP*, [1967] 1 MLJ 251, Azmi C.J. had left open the question whether the *ejusdem generis* rule should be invoked in interpreting the section.

50. Ibid., at p.127, applied in *Voon Ah Shoon v. PP*, *op.cit.*, by Yusoff J. to hold that a local purchase order was a "document" under section 6(c) of the Act as it was a "paper writing dealing with money matters falling in the same category as receipt or account".
In the instant case, section 4(c) (our section 6(c)) uses the words "any receipt, account or other document". To my mind, a distinct genus is apparent from the words used. The words "receipt, account" would seem to possess this character, that is paper writing dealing with money matters. Thus the words "other document" I think, should be construed to refer to paper writing in the same category and possessing the same character as a receipt or account, for example, bills, cheques, indents, pay rolls and invoices.

In Nadimuthu, decided a year later in 1972, the same judge, despite applying the ejusdem generis rule, concluded, rather strangely, that a false medical certificate was a "document" within the meaning of the same section. In that case the accused, having been absent from work for two days, produced two false medical certificates to his employers. The judge held that the medical certificates must be considered as being in the same category as a receipt or account and came within the words "other document" in section 4(c) of the Malaysian Act. As the accused had been paid two days' wages on the strength of the false medical certificates, it was therefore, in his view, "unreasonable to construe that such certificates do

not deal with money matters", a view subsequently endorsed by the Federal Court.

With respect, it is difficult to understand how a medical certificate can be considered to be in the same genus as a receipt or account or other similar document. It is submitted that in interpreting the term "document", it is the character of the document itself that must be examined and not what use it is capable of being put to. The fact that a document might be used for pecuniary advantage does not make it an accounting or "money" document within section 6(c). At any rate, the judge's conclusion that the medical certificates were used to claim two days' wages is erroneous as they may have been tendered essentially for the purpose of preventing the employer from dismissing the accused for being absent from work without leave. A medical certificate is no more than a declaration of a person's ill-health and unfitness for work. It is not inherently a document dealing with money matters.

Again, it is strange that in Nadimuthu the court used the ejusdem generis principle, by which

52. Ibid., at p.75.
words having apparently a wide meaning are treated as restricted in scope by the verbal context, for an opposite purpose: to give them a very wide meaning and despite their appearance in a penal statute.

The Federal Court's decision in Nadimuthu has, however, been followed by the majority of the District Courts in Singapore in the absence of any decision on the matter by the Singapore High Court although in 55 Yip Kien Seng v. PP, a District Judge held that, even applying the ejusdem generis rule, a medical certificate could not be regarded as a "document" within section 6(c) of the Act and instead recorded a conviction for the offence of fraudulently using as genuine a forged document under sections 465 and 471 of the Penal Code.

Finally, it appears from the decision in 56 R v. Tweedie, in 1984, that a number of cases under

55. Unreported District Court Case: Magistrate's Appeal No. 111/76; Court 9, DAC 891-3/76. On appeal the sentence of 9 months imprisonment was reduced to 1 day imprisonment and a fine of $500 but the Chief Justice made no comment on the charge which had been amended by the trial judge.

section 6(c) in Singapore and Malaysia may well have been wrongly decided as the Court of Appeal decided in that case that the sub-section applies only to documents which were intended to pass between a principal and a third party and did not cover documents not intended to go to a third party. In **Tweedie**, the appellant had been charged under section 1(1) of the English Prevention of Corruption Act 1906, which is similar to section 6(c) of the Singapore Act, in respect of a false entry made by him in a document which was to be used only in the employer's business, namely, a false trading sheet containing false entries of gold and silver transactions. The document had been handed to a member of the employer's accounting staff. In explaining the decision of the court, Lawton L.J. stated:

> It would be odd drafting for the last part of this subsection to create an offence which made an employee criminally liable for using a document which did not have any connection with a third party or was not intended to go to a third party. As Hobhouse J. pointed out in the course of argument, the words "receipt" and "account" ... as a matter of the ordinary use of English, refer to documents inter partes either in creation or use. A receipt is made out to someone who has paid a debt. An account is rendered by one person to another. The words "or other document" should, in my

57. *Ibid.*., at p.139.
judgment, be construed as meaning a document which would pass inter partes. Such documents are capable of being given by a third party and then used by an employee... If the Crown's contention were right, the [subsection] would apply to any false document knowingly used by an employee with intent to deceive or mislead his employers. An employee who put a false entry on his time sheet would be guilty of the offence under the 1906 Act. Parliament could not have intended that this should be so.

Forged documents manufactured by employees and used to deceive their employers are not uncommon subjects of charges under section 6(c) of the Prevention of Corruption Act in both Singapore and Malaysia. In PP v. Neelakandan, for example, the accused was charged in respect of a document he had produced in which his out of town hotel expenses had been inflated, and in Ong Leem Peng v. PP, a clerk was convicted under the section for preparing false bills for miscellaneous charges which he had used to collect payments from his employer.

(5) Bribery by Members of Parliament: Section 11

It is clear that Members of Parliament, not being public servants within the Penal Code, are not

58. [1957] MLJ 130.

59. Unreported District Court Case: Magistrate's Appeal No. 61/80; Court 10, DAC 736-816/80. See also PP v. Ho Fook Onn, unreported District Court Case, Straits Times, April 17, 1973, where a HDB Resettlement Officer was convicted under section 6(c) for submitting false mileage claims to the Housing & Development Board.
covered by the bribery provisions in the Code.

Whatever the English position may be, it is also not in doubt that a Member of Parliament is neither an "agent" within section 6(a) of the Prevention of Corruption Act, unless he is a Minister, nor a member of a public body within section 12 of the Act. Indeed, it would be straining the language of the statute to conclude that a supreme body like Parliament is a "public body" under the Prevention of Corruption Act which has defined a public body as "any corporation, board, council, commissioner or other body which has power to act under and for the purposes of any written law relating to public health or to undertakings or public utility or otherwise to administer money levied or raised by rates or charges in pursuance of any written law".

60. The view of the Royal Commission on Standards of Conduct in Public Life in 1976 (Report, op.cit., para.307) that neither common law nor the Prevention of Corruption Act 1906 applies to the bribery or attempted bribery of a Member of Parliament in the United Kingdom has been criticised. See Graham Zellick, "Bribery of Members of Parliament and the Criminal Law", [1979] Public Law 31.

61. Wee Toon Boon v. PP, op.cit.; PP v. Datuk Haji Harun bin Haji Idris (No.2), op.cit.

In the United Kingdom, the House of Commons has resolved that the acceptance of a bribe by any Member of Parliament to influence his conduct as such Member is a breach of privilege. It is likewise a breach of privilege to offer a Member a bribe for such a purpose or to induce him to take up a question with a Minister.

Such misconduct by a Member of Parliament would similarly constitute a breach of parliamentary privilege in Singapore too because of the close affinity between the parliamentary conventions and practices of the United Kingdom and Singapore. This is further emphasized by section 3(1) of the Parliament (Privileges, Immunities and Powers) Act which provides that in addition to the privileges,

64. So resolved by the House of Commons in 1695: Common's Journal (1693-97) 331; Erskine May, Parliamentary Practice, ibid., pp.156-157.
65. See the note on "Government and Politics", Chapter II, ante.
66. Singapore Statutes, Rev. Ed. 1985, Cap.217. Further section 3(3) of the same Act makes it clear that in any enquiry touching upon any privilege of Members of Parliament, any copy of the journal or official record of proceedings of the House of Commons in the United Kingdom shall be admitted in evidence in the Singapore courts.
immunities and powers of the Singapore Parliament and its Members provided under the Act, their privileges are the same as that of the House of Commons of the United Kingdom.

In England the fact that the bribery by Members of Parliament remains only a matter of a breach of Parliament to be dealt with by Parliament, with its limited powers of punishment and inadequate machinery for investigation, has caused some concern. The Singapore Parliament has, however, thought it right to make bribery and other corrupt acts of Members of Parliament criminal offences to which the Members would be liable in a Court of Law. This may be due to a proper recognition that Parliament's ultimate sanction against a corrupt member is a mere suspension from Parliament. There is likely to be public unrest if corrupt Members of Parliament were liable to any less punishment for corruption than ordinary citizens. It is important to remember that persons convicted under the Prevention of Corruption Act are liable to imprisonment or fine, to payment of a pecuniary

67. See Graham Zellick, op.cit.
penalty and to loss of employment.

The Legislature has therefore made it an offence, under the Parliament (Privileges, Immunities and Powers) Act, for any Member of Parliament to demand or accept any "fee, gift, compensation, profit, reward, loss consideration or other advantage in respect of the promise or other compensation to any bill, resolution, matter or thing submitted or intended to be submitted for the consideration of Parliament or any committee" with a view to influencing him in his capacity as a Member of Parliament. The offence is punishable with imprisonment for a term not exceeding seven years or with a fine of $10,000. The giver of such a bribe is liable to similar punishment.

The Act also makes it an offence, punishable with two years' imprisonment, for a Member of Parliament to take part in any discussion or vote

68. Cap.224, section 13, discussed fully in the next chapter, ante.

69. See Chapter IX of this dissertation for a detailed examination of the consequences of a conviction for an offence of corruption to employees in the public and private sectors.


71. Ibid., section 34(2).
upon any matter in which he has a personal pecuniary interest without disclosing the extent of that interest.

A corrupt Member of Parliament is also liable to prosecution under the Singapore Prevention of Corruption Act.

First, section 11(b) of the Prevention of Corruption Act, following section 14 of the Ceylon Bribery Act, has made it an offence for any Member of Parliament to solicit or accept any gratification as an inducement or reward for his doing or forbearing to do any act "in his capacity as such Member". Both the Member of Parliament and any person who has offered him the illegal gratification are liable, upon conviction, to a term of imprisonment not exceeding seven years or to a fine of $10,000.

The phrase "in his capacity as such Member" was considered by the Privy Council in 1962 in Attorney-General of Ceylon v. De Livera & Anor.

In that case, the accused were convicted of giving a bribe to a Member of Parliament in order to induce him

72. Section 31.
73. Cap.224, sections 11(a) and 11(b).
74. [1963] A.C. 103. A similar conclusion was reached by the Ontario Court of Appeal which held that a Member of Parliament was acting in his "official capacity" when he was consulted by a government department in accordance with established custom: R v. Bruneau, [1964] 1 C.C.C. 97.
to withdraw a request that he had made to the Minister of Lands to acquire certain property belonging to one of the accused for the benefit of some of his constituents, whose homes had been ruined by floods. In quashing the convictions of the accused, the Supreme Court of Ceylon suggested that the test to be applied in determining whether a Member of Parliament had acted "in his capacity of a Member of Parliament" was "whether the act for the doing of which a gratification was offered was one which the Member of Parliament can do only because he is a Member of Parliament". Accordingly, the court held that in writing to the Minister the Member of Parliament had not exercised his function as a Member of Parliament as it was "something which he could have done though he was not a Member".

In reversing the Supreme Court, the Privy Council held that what a Member of Parliament did "in his capacity as such" within the meaning of those words in the Bribery Act must be ascertained by resorting to constitutional conventions and practices of the day rather than by exclusive reference to a Constitution or the Standing Orders of Parliament. Lord Viscount Radcliffe in delivering the Board's 75 opinion further explained:

75. Ibid., at pp.126-127.
Where the facts show clearly, as they do here, that a Member of Parliament has come into or been brought into a matter of government action that affects his constituency, that his intervention is attributable to his membership and that it is the recognised and prevailing practice that the government department concerned should consult the local M.P. and invite his views, their Lordships think that the action that he takes in approaching the Minister or his department is taken by him "in his capacity as such member" within the meaning of section 14(a) of the Bribery Act.

The Privy Council has, therefore, given the words "in his capacity as Member of Parliament" a wide interpretation and a Member of Parliament who takes a bribe in relation to any of the functions of his office as defined in any Act or Regulation, or according to convention and practice, is guilty of an offence under section 12(b) of the Prevention of Corruption Act.

More recently, in Attorney-General of Hongkong v. Ip Chiu the Privy Council decided that the word "capacity" was not to be equated with the term "duty". The Board held that the test in deciding whether illegal gratification had been accepted by a person to do or forbear to do an act "in the capacity of a

public servant" was not whether the act in question was legitimately within his capacity to do but "whether the gift would have been given or could have been effectively solicited if the person in question was not the kind of public servant that he in fact was".

In Ip Chiu, the respondents, who were police officers, had falsely accused a drug addict of selling heroin. After unsuccessfully searching him and his home they indicated to the victim that they wished to take him to a police station. In order to avoid being beaten up or having evidence planted on him, the victim gave them $2,000. The respondents were subsequently convicted under section 4(2)(a) of the Hongkong Prevention of Bribery Ordinance for accepting a bribe as a reward for abstaining from performing an act in their "capacity" as public servants.

Although the Board appeared to have taken a realistic view of the functions of a Member of Parliament in De Livera in regard to which the

provisions of the Prevention of Corruption Act will operate, it failed to do the same in respect of the acts of a police officer acting in the "capacity of a public servant" in Ip Chiu.

Having, however, indicated that the term "in his capacity as a public servant" in section 4(2) of the Hongkong Act ought to be widely construed, the Privy Council went on to do quite the opposite. They concluded that the convictions were wrong because the acts of planting evidence or of beating up the victim, for which the bribes were collected by the respondents, were acts "which could have been perpetrated equally well by a stranger as by a member of the police force" and hence were not done by the respondents in their "capacity" as police officers.

The Board clearly ignored the fact that the respondents had throughout acted under colour of their office as police officers. They had accused the victim of selling heroin, detained him, searched his person and his home and had thus raised fears in the mind of the victim, himself a former police officer, that evidence against him might be planted or that the respondents would assault him at the police station
where he was being taken to. Obviously, the respondents could not have effectively solicited the bribe if they were not police officers. No ordinary man could have sufficiently caused such fear in the mind of the victim as to enable him to part with the money.

Secondly, as has been seen, section 5(a)(i) of the Act is wider in scope than the equivalent provision in the English Acts, and makes it an offence for any person to corruptly solicit or receive or agree to receive for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do anything in respect of any matter or transaction whatsoever. Clearly, the section is wide enough to embrace any corrupt act of a Member of Parliament whether or not it was done "in his capacity as a Member of Parliament".

78. Ante
SPECIAL RULES OF EVIDENCE AND PROCEDURE

In enacting the Prevention of Corruption Act, the Legislature was conscious of the difficulties that may confront the Corrupt Practices Investigation Bureau (CPIB) and the Public Prosecutor in obtaining and presenting in court credible evidence of corrupt transactions. Traditional rules of procedure and evidence in criminal proceedings were therefore altered by the Act to aid in the investigation and prosecution of offenders. These include:

(1) Protection of informers from discovery:
    section 34;

(2) Admissibility of evidence of pecuniary resources as corroborative evidence of corrupt acceptance of gratification:
    section 23;

(3) Modification of the law requiring corroboratior of evidence of accomplices:
    section 24;

(4) Presumption of corruption upon proof of payment of gratification in certain cases: section 8;

(5) Examination of co-accused as prosecution witnesses: section 33; and

(6) Legal obligation upon persons questioned during investigations to give information: section 26.

Although the Prevention of Corruption Act is modelled on the English Prevention of Corruption Acts 1889-1916, none of the sections mentioned above, except section 8, appears in the English Acts. In view of the dearth of decisions of the Singapore High Courts, lower court judges continue to be guided by whatever Malaysian cases there are in the interpretation of these provisions.

(1) Protection of Informers

Clearly not all information as to the commission of offences of corruption can be obtained

by the CPIB from bribe givers or bribe takers. In the majority of cases, evidence of corrupt transactions is not forthcoming because they are conducted in secret and the participants in such crime have deprived mutual benefit. Informers therefore play an important part in CPIB inquiries and investigations and are regarded as essential in combatting corruption. This is acknowledged by the CPIB which maintains a large secret fund from which it rewards informers.

To further ensure a free flow of information to the Bureau, section 34(1) of the Prevention of Corruption Act seeks to protect informers from discovery by making any complaint as to an offence under the Act inadmissible in evidence in any civil or criminal proceeding. In addition no witness in

3. Amount authorised for the financial year 83/84 was $340,000 of which $323,270.51 was spent. See Financial Statements for the Financial Year 1983/84, Cmnd. 1 of 1985. Figures for later years are not available, being merged with "other operating expenditure".

court is "obliged or permitted" to disclose the name or address of any informer or to give any other information that may lead to his discovery. Further, if any book, document or paper which is a court exhibit or is liable to inspection in any proceeding contains an entry in which an informer is named or described or which may otherwise lead to his discovery, the court is obliged to conceal such information from view or to obliterate it in order to protect the informer from discovery.

In most cases, such information is merely a starting point for inquiry and investigation and is indeed meant to be such. It is thus generally of no concern to any person other than an investigator. Indeed, such information per se might be inadmissible being largely irrelevant, imprecise or as based upon hearsay. Where, pursuant to inquiries on an informer's information, credible evidence has been obtained to warrant a prosecution, the initial information given to the CPIB or the identity of the

5. Section 34(2).

5a. See for e.g. Leong Hong Khie v. PP [1986] 2 M.L.J. 206, where the Federal Court quashed the convictions on the ground that "the hearsay evidence of the informers was so intervowen with the testimony of the principal prosecution witness that its misreception had seriously prejudiced the fair trial of the appellants".
informer is normally unnecessary. Again, unless the infomer is the bribe giver or an eye-witness, his complaint and identity may be of little or no consequence. The difficulty of course in deciding who an "informer" is as the Prevention of Corruption Act has not defined the term. It is suggested that the term should cover any person who gives any information to the CPIB as to the commission of an offence, whether or not in the expectation of a reward.

The Act recognises that in certain circumstances insistence on the secrecy of an infomer's complaint or upon his anonymity may plainly lead to injustice. Section 34(3) therefore permits the court to require the production of the original complaint, if in writing, and allow inquiry, and to further require full disclosure of the infomer's identity in two instances:

(a) If during a trial for an offence under the Prevention of Corruption Act the court "after a full inquiry into the case" is of the opinion that the informer wilfully made a false statement in his complaint; and
(b) If in any other proceeding the court is of the view that "justice cannot be fully done between the parties" without the discovery of the informer. If, for example, the informer claims to be an eye-witness or an accomplice in the crime, it may be important to establish his identity or the falsity of his complaint to prove malice or to support a defence that the evidence of corruption was manufactured.

It is plain that under the second exception the phrase "any other proceeding" refers to proceedings already commenced, during which the court is persuaded that production of the informer's complaint and disclosure of his identity are necessary for justice to be done "between the parties" in court. It is this order of court that removes the privilege attached to an informer's complaint and the protection from discovery accorded to him by section 34(1) of the

6. It has been held that even if an informer is not an accomplice he should be treated as if he were and his evidence ought to be subject to the closest scrutiny: PP v. Gurbachan Singh, [1964] MLJ 141.
Prevention of Corruption Act. Singapore courts, however, have strained the language of section 34(3) somewhat by concluding that the second exception permits the prosecution of informers for giving false information to public servants.

It is equally clear that, under the first exception, the falsity of the complaint is material only at a trial for an offence under the Prevention of Corruption Act and not in any other proceeding. The production of a false complaint "wilfully" made by an informer would, of course, be of little assistance to the defence at the trial unless the informer is called as a witness and it is intended to impeach his credit.

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6a. Under section 182 of the Penal Code, Cap.224. See for e.g. Chia Kum Choong v PP, M.A.No.77 of 1987; PP v Tay Chee Bin & Martin Tay, M.A. No. 323 of 1985; Siah Kim Bin v. PP, M.A.No.112 of 1983. In Siah's case the court rejected submissions that the informer's complaint was privileged on the ground that "the second limb of section 34(3) applies". The appeal was dismissed by the Chief Justice who also refused to refer the question of law to the Court of Criminal Appeal: Criminal Motion No.17 of 1984, decided on September 5, 1984.

7. Under section 157 of the Evidence Act, Cap.97 the credit of a witness may be impeached by proof of former statements inconsistent with any part of his evidence. See Muthusamy v. PP, [1948] MLJ 58; Khoon Chye Hin v. PP, [1961] MLJ 105.
If any one of these two exceptions under section 34(3) does not apply, the complaint of the informer remains privileged and the anonymity of its author sacred. It seems illogical that under section 34 of the Act evidence of a false complaint to the Bureau cannot be led in a trial of any other offence disclosed by CPIB investigators, including offences of bribery and corruption under the Penal Code. As the Act itself makes no provision for the prosecution and punishment of persons who give false information to the CPIB, it would seem that an informer who makes a false complaint to an officer of the Bureau is not liable to be prosecuted although he would not be similarly protected if he gives such false information to any other public servant. Nevertheless, if the informer gives a further false statement to the CPIB he exposes himself to prosecution. This is because there is a fundamental distinction between a complaint to the CPIB which initiates an investigation and is therefore privileged, under Section 34(1) of the Act, and a statement taken in pursuance of such an investigation.

8. Singapore Statutes, Cap.224: sections 161 to 165 which have been examined in detail in chapter VII ante.


Again, if a person has not volunteered information to the CPIB but upon being questioned by an officer of the Bureau gives false information, he is liable to prosecution.

(2) **Evidence of Pecuniary Resources**

The possession of unexplained wealth even by a public servant is not *ipso facto* an offence in Singapore as it is in some countries including Hongkong and Sri Lanka. However, evidence that the accused is in possession of pecuniary resources or property disproportionate to his known sources of income or that he had obtained an accretion to his wealth for which he cannot give a satisfactory account is admissible in evidence against him.

Section 23(1) of the Prevention of Corruption

9b. Under section 177 of the Penal Code, read with section 27 of the Prevention of Corruption Act (discussed in part (6), post) for the offence of furnishing false information to a public servant while being legally bound to give information.

Act permits such evidence of the possession, by the accused, of unexplained pecuniary resources or property or accretion at the time of his alleged crime to be proved and taken into consideration by the court in any trial or inquiry into three categories of offences:

(i) offences under the Prevention of Corruption Act;

(ii) offences of bribery and corruption under sections 161 to 165 of the Penal Code;

(iii) offences of taking or offering any gratification in order to screen an offender from legal punishment or to help recover stolen property from an offender, under sections 213 to 215 of the Penal Code;

and offences of conspiracy or attempt to commit or abetment of any of these offences.

2. The word "possession" has not been defined by the Act but probably means awareness of the resources possessed, knowledge of its nature and power of disposal of it. See for example Saad Ibrahim v. PP, [1968] 1 MLJ 159; Yee Ya Mang v. PP, [1972] 1 MLJ 120.


Such evidence may be taken into consideration by the court as "corroborating the testimony of any witness" at such a trial or inquiry that the accused "accepted or obtained, or agreed to accept, or attempted to obtain any gratification" and that such acceptance or attempt was done "corruptly" as an inducement or reward. As a corrupt intent need only be proved for offences under sections 5 and 6 of the Prevention of Corruption Act, section 23(1) may be put to greater use by the prosecution for such offences.

Evidence of the possession of unexplained resources of the accused was first made admissible in evidence "as if it were a relevant fact" by a special ordinance, the Evidence (Special Provisions) Ordinance, passed in September 1946. It was then thought that the Ordinance would do "much to assist in securing the conviction of offenders".

5. As to the meaning of this undefined adverb, see part (B) of this chapter, ante.

6. Ordinance 27 of 1946 which became law on October 1, 1946. It was a two-section Ordinance based on the Indian Criminal Law (Amendment) Ordinance of 1946. The Ordinance (Rev. Ed., 1955, Cap.6) was repealed by the Prevention of Corruption Ordinance, 1960.

7. Per E.J. Davies, Attorney-General, in moving the Bill. See the Minutes of the 20th Public Session Meeting of the Advisory Council, Colony of Singapore, on September 5, 1946. See also the statement of the Objects and Reasons for the Bill, Colony of Singapore, Government Gazette Notification No. ST20, dated August 30, 1946.
Section 23(1) makes it clear that evidence of disproportionate wealth may only be considered as corroborating "the testimony" of any witness in a trial or inquiry, and such evidence, therefore, would not corroborate other forms of evidence in a corruption trial.

Section 23(2) further raises a presumption that where such resources or property are held or the accretion obtained by another person who, "having regard to his relationship to the accused person or to any other circumstances", is believed to be holding the resources or property in trust for or on behalf of the accused or as a gift from the accused, it is the accused who is in possession of such resources or property. It is clear that the sub-section is deliberately wide and pre-empts many of the problems associated with similar provisions in other jurisdictions where the fruits of corruption are largely hidden amongst resources of relatives and friends. Section 23(2) widens the scope of inquiry into other people's assets although the material for

8. Downey and Goonesekere, op.cit.
investigation might not always be difficult to obtain in view of the wide powers of the Public Prosecutor to order a disclosure of assets.

It is pertinent to note that evidence of unexplained wealth, if proved, constitutes corroborative evidence which helps to give credence to the testimony of the principal witness who is likely to be an accomplice in most cases. It thus has the effect of being supporting, independent evidence which renders it probable that the testimony of the witness in question is true and that it is reasonably safe to act upon it. However, if the evidence of such a witness as is referred to in section 23(1) (a bribe giver or his agent) is suspect or incredible, evidence of the accused's disproportionate resources is unlikely to give validity or credence to it. Evidence of

9. See section 20 of the Prevention of Corruption Act, Cap.241, and Chapter X (Public Prosecutor), post, for a fuller examination of the powers of the Public Prosecutor.

10. As to the effect of corroborative evidence, see for example R v. Baskerville 1 [1916] 2 K.B. 658 which has been followed in numerous cases in Singapore; R v. Beck [1982] 1 All E.R. 807; Cross on Evidence, 6th Ed., Chapter VII.

11. This is because the true purpose of corroboration is not to give validity to evidence which is deficient or suspect or incredible: per Lord Morris of Borth-Y-Gest in DPP v. Hester [1973] A.C. 296 at p.315. See also DPP v. Kilbourne [1973] A.C. 729 at p.745; Cross on Evidence, 6th Ed., p.227.
unexplained wealth may put an investigator upon inquiry but unless there is oral evidence sufficient for a prosecution for an offence under the Prevention of Corruption Act or under sections 161 to 165 and 213 to 215 of the Penal Code, such evidence is of little use to the Public Prosecutor.

The justification for section 23 perhaps lies in the realisation that it is difficult to prove the offence of corruption without the aid of corroborative evidence. Additionally, the possibility of a probe into the assets in the possession of persons who might have profitted from bribery and corruption acts as an effective deterrent to such misconduct. Section 23, however, does not introduce any draconian measures as it creates no offence and hence does not expose innocent persons to a real risk that their reputation and future careers could be damaged by compelling them to prove publicly that their wealth was acquired legitimately. Even without the section, public servants with unexplained wealth are likely to face disciplinary action for non-declaration of assets.  

12. Disciplinary proceedings for public servants and their code of conduct have been examined in Chapter VII, supra.
Clearly, whether the property or pecuniary resources have been corruptly acquired or enlarged depends on the explanation of the accused and to that extent the onus is on him to show legitimate acquisition. Presumably, he would have two opportunities to do so: one to the investigator and, if need be, the other to the court. The accused is now bound to give an explanation to an investigator as failure to do so may lead to an adverse inference being drawn against him in subsequent court proceedings.

The Act, however, does not indicate what would constitute a satisfactory account of the disproportionate wealth. Obviously, it would suffice if the suspect were able to persuade the investigator or the court that his excess wealth was not acquired as a result of any offence committed under the Prevention of Corruption Act or sections 161 to 165 and 213 to 215 of the Penal Code, or that it was obtained legitimately, for example, from an inheritance, lawful gift, or winnings from a public disproportionate to his known sources of income, or lottery. In deciding whether the accused's pecuniary

13. Under section 123 of the Criminal Procedure Code, Cap.68, discussed later in this chapter. For this reason the decision of Ibrahim J. in Mohamed bin Long v. PP, [1972] 1 MLJ 76 at p.78, on this point, does not apply in Singapore.
resources or property or the accretion to his wealth was "disproportionate to" his known sources of income, the court has to ask itself whether the acquisition of the total assets in the possession of the accused at the relevant date could reasonably, in all the circumstances, have been afforded out of all his known sources of income.

The question is whether he may show that the excess wealth was acquired as a result of illegal activity other than that contemplated by section 23(1) such as drug trafficking, smuggling or criminal misappropriation. In a prosecution under section 6(a) of the Prevention of Corruption Act, for example, could he explain that his disproportionate wealth was obtained from offences of bribery committed under the Penal Code which carries a lesser penalty, or would he be able to simply show that his unexplained assets do not include the amount of gratification given by the witness whose testimony is sought to be corroborated by such evidence?


15. A full bench of the Hong Kong High Court was reluctant to express an opinion on a similar question in Queen v. Ernest Hunt, [1974] H.K.L.R. 31 at p.52.
In Mahesan v. PP, the Malaysian Federal Court in considering an identical provision in the Malaysian Act (section 17) rejected the submission that the term "witness" in the section only means "bribe giver" and that if the giver was not called there was nothing to corroborate the evidence of disproportionate wealth with. In that case evidence was led through an agent of the bribe giver that on two occasions he had deposited amounts totalling $122,000 into the accused's account and there was documentary evidence to support this. It was argued on appeal that as the bribe giver had not been produced at the trial to give direct evidence of the gratification, section 17 was wrongly applied by the trial judge. In rejecting this submission, Ong C.J., who delivered the judgment of the Federal Court observed:

First, we must say with all respect, that we do not agree with an interpretation restricting the scope of the section in the manner urged upon us. It is sufficient to say that in our opinion Periasamy, being an acknowledged agent of Manickam (the bribe giver), may have his evidence corroborated under the section no less than his principal. Secondly, once it was proved that the appellant was secretly working hand in glove with Manickam for the sake of the illegal gratification ... we are of the opinion

17. Ibid., at p.260.
that the bank officer's evidence of payment by Manickam to the appellant was prima facie evidence of gratification received, thereby admitting the type of corroboration falling within section 17.

Section 17 thus appears to have been used in Mahesan for a purpose not contemplated by the section. It was unnecessary to invoke section 17 merely to show that evidence of the $122,000 deposited in the accused's bank account corroborates the testimony of the bribe giver's agent that $122,000 (the subject matter of the charges) was paid to the accused. Such evidence could have been led without invoking section 17 and without there being any need to prove that it was disproportionate to his known resources. It is because the prosecution may be unable to identify a particular payment of gratification as being among the accused's wealth that the Act permits evidence of disproportionate pecuniary resources or property or accretion to be proved and considered. This is to help establish the probability of a witness's testimony that he gave the accused an illegal gratification being true. Section 17 permits general evidence of unexplained wealth at the time of the alleged offences to indicate that the accused either has a propensity to behave corruptly, or "is in the habit of receiving
or that his unexplained wealth must include the illegal payments that he has received.

(3) Modification of the Law as to Accomplice Evidence

One of the problems in obtaining evidence of corruption is that witnesses other than accomplices are hard to come by. The common law requirement for corroborating evidence of accomplice evidence had statutory support in Illustration (b) to section 116 of the Evidence Act which, until its amendment in 1976, raised the presumption that an accomplice was unworthy of credit unless he was corroborated in material particulars. The uncorroborated evidence of an accomplice could be acted upon only after the court had warned itself of the danger of convicting the accused on such evidence.


A witness was regarded as either an accomplice or not, and the doctrine of corroboration was applied without regard to different degrees of complicity although the courts were conscious that not all bribe givers or bribe takers were equally culpable:

At one end of the scale there is the policeman or other public officer who misuses his powers to extort money from the public. At the other there is the miscreant who hopes by the offer of a large sum of money to suborn a public officer from his duty. In between there is what I think constitutes the bulk of these cases, an officer willing to accept bribes and members of the public who are quite willing to resort to bribery if they achieve their ends thereby.

The Prevention of Corruption Act in 1960 and the Evidence (Amendment) Act in 1977 sought to reduce the severity of the doctrine of corroboration as applied to accomplices.

Section 24 of the Prevention of Corruption Act provides that at any trial or inquiry into offences under the Act, under sections 161 to 165 or 213 to 215 of the Penal Code or into the offence of conspiracy or attempt to commit, or an abetment of any of these

7. Cap.103.
offences, notwithstanding any rule of law to the contrary, no witness shall be presumed to be unworthy of credit "by reason only of any payment or delivery by him or on his behalf of any gratification to an agent or member of a public body". The section owes its origin to section 13 of the Malayan Prevention of Corruption Ordinance which was introduced in 1950 to counter the then prevailing practice of the courts in invariably acquitting persons accused of taking bribes on the ground that the giver of the bribe was an accomplice and hence unworthy of credit "without even bothering to examine the giver's evidence".

It is, however, important to note that an accomplice within the section does not ipso facto become a credible witness whose evidence should be treated with a particular sanctity. Section 24 is deliberately couched in negative terms. Such a witness is not to be presumed to be "unworthy or credit" merely

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7. Cap.103.
8. Ordinance No.5 of 1950.
because he has made a payment of a gratification. Obviously, if the evidence of the witness is incredible or if his credit has been impeached, section 24 will not operate to save his credit.

Although section 24 of the Act has not been the subject of any reported High Court decision in Singapore, its equivalent has been considered in a number of Malaysian cases which have construed the section strictly. The section has not abrogated the rule as to corroboration of accomplice's evidence generally but has only introduced a limited modification.

The effect of the provision is that in the three groups of corruption offences stipulated in section 24, the mere fact that a person has made an improper payment is insufficient to render him as a witness whose evidence, if uncorroborated, is

10. See the Explanatory Statement to the Prevention of Corruption Bill (1960), op.cit., which explains the section thus: "It is provided that the giver of an illegal gratification shall not be regarded as necessarily suspect even though in strict law such person is an accomplice". See also Tengku Mahmood v. PP, [1974] 1 MLJ 110.

11. The section is in the nature of an exception to a standing rule of evidence and, as an exception, it must be construed strictly. It must not be extended: Talor J. in Daimon bin Banda v. PP, [1951] MLJ 11. See also cases cited in footnote 12, post.
untrustworthy. If the giver of the bribe has done no more than make "bare payments" in a corrupt transaction, then section 24 applied to uphold his credit. But if he is guilty of some "infamous" conduct, such as actively corrupting a public officer into accepting the bribe, or collecting bribes for a person or negotiating with others for the purpose of bribing a public servant, the ordinary rules of evidence requiring corroboration apply.

However, despite section 24, if the trial judge does not apply his mind to make an initial determination whether a witness is an accomplice or not, and, if so, if there was any need for corroboration, his conviction is likely to be quashed by the appellate court.

In Ng Kok Lian & Anor v. PP, the Malaysian Federal Court held that the section did not apply to witnesses who were bribe takers as opposed to bribe givers. The words of section 24 that a witness is not to be presumed to be unworthy of credit by reason only of any "payment or delivery by him or on his behalf"


clearly supports that view. In *Ng Kok Lian* the Federal Court was, however, not prepared to hold that a person *prima facie* becomes an accomplice on mere proof that he had received bribes as section 24 did not apply to him. It approved a number of Singapore decisions which have held that whether a receiver is an accomplice or not depends entirely on the facts of a particular case. The crucial test is whether he is *particeps criminis*.

As recognised by the United Kingdom Criminal Law Revision Committee, the doctrine of corroboration is open to criticism. The rules themselves have the disadvantage of difficulty of application, for example, as to what kind of evidence amounts to corroboration and as to whether or not a witness is an accomplice. Why indeed should there be special rules only for some categories of witnesses and for all persons in the same category? Whilst one accomplice may be giving false evidence merely to minimise his own part in the offence, there may be others with no ill-feelings.


against the accused or who may be moved to give evidence because they are repentant and wish to tell the truth. The Committee thought that the very idea that there was something about the evidence of accomplices that invariably requires a warning needed re-consideration. The warning administered to himself by a trial judge in a system where there is no jury trial, as in Singapore, that it is dangerous to convict on the uncorroborated evidence of an accomplice but that he may nevertheless so convict, is absurd.

In 1976, the Singapore legislature adopted the recommendations of the United Kingdom Committee that the common law rule requiring the corroboration of the evidence of an accomplice and the requirement for a court to warn itself should be abrogated. Section 135 of the Evidence Act was therefore amended to read:


19. Following a report of a Parliamentary Select Committee, see the Report of the Select Committee on the Evidence (Amendment) Bill, Parl.5 of 1976. The Committee's views were repeated in Parliament by the Law Minister in support of the proposed amendments: Singapore Parliamentary Debates (1975), vol.34, cols.1241 to 1247.

An accomplice shall be a competent witness against an accused person; and any rule of law or practice whereby at a trial it is obligatory for the court to warn itself about convicting the accused on the uncorroborated testimony of an accomplice is hereby abrogated.

The amendment has been adequately explained by the United Kingdom Committee whose proposals influenced it:

The effect of the [section], so far as accomplices are concerned, will be that it will be for the judge to consider whether the circumstances are such that a special warning should be given. For example, if it appears that the accomplice has a purpose of his own to serve in giving the evidence, it will be right to give an appropriate warning, but a warning will not be necessary if it is clear that there is no special reason to think that the accomplice may be lying. There will be no need to consider whether the witness is or is not an accomplice, but only what may be his motives in giving the evidence that he does ... the provision ... that the giving of a warning shall not be "obligatory" takes account of the possibility that in an appropriate case it may be right to give a direction in substance similar to that given at present in the case of accomplices.

This has been emphasized by the Singapore Legislature in the amendment to Illustration (b) to section 116 which now reads that "an accomplice is unworthy of credit and his evidence needs to be treated with caution".

The cumulative effect then of section 24 of the Prevention of Corruption Act and the amendments to section 135 and Illustration (b) to section 116 of the Evidence Act are these:

(a) A bribe giver is not to be presumed to be unworthy of credit only because he has given a bribe provided he has not taken a greater part in the corrupt transaction; and

(b) The evidence of all other accomplices, whether bribe takers or givers, can be acted upon without corroboration or the obligatory warning, even though they may be presumed to be unworthy of credit, so long as the trial court is conscious that their evidence needs to be treated with caution.

In respect of accomplices who have done no more than make a "bare" payment of a bribe, the courts have yet to consider the effect of the apparently conflicting presumptions in section 24 of the Prevention of Corruption Act and Illustration (b)

to section 116 of the Evidence Act. The former has introduced the presumption that such a witness is worthy of credit and the latter provision raises a presumption that all accomplices are unworthy of credit and their evidence ought to be treated with caution.

It is, however, suggested that whether one considers that both conflicting presumptions neutralise each other and therefore leave the case to be determined solely on the evidence of the witness, or whether section 24 incorporates a particular rule which must therefore abrogate the general rule as to accomplice evidence under Illustration (b) to section 116, the result must be the same.

The amendments to the Evidence Act have ensured the more sensible rule that a court ought to consider in every case whether there are circumstances relevant


25. See generally Craies on Statute Law, 6th ed., p.221. Section 24 makes it clear that it is to prevail over other provisions by the use of the words "notwithstanding any rule of law or written law to the contrary".
to a particular witness which require that special care ought to be taken before convicting an accused person on the strength of his evidence. Common sense, therefore, may have finally returned to the rules of evidence in respect of accomplice evidence in Singapore.

(4) **Presumption of Corruption**

The Prevention of Corruption Act further assists in the prosecution of offences of corruption under the Act by reversing the burden of proof which ordinarily lies on the prosecution in respect of a principal ingredient of the offence, namely, that a gratification was given or received corruptly as an inducement or reward. Section 8 of the Act states that in a prosecution under section 5 or 6 of the Prevention of Corruption Act:

[I]f it is proved that any gratification has been paid or given to or received by a person in the employment of the Government or any department thereof or of a public body

1. A presumption of corruption was first introduced by section 5 of the Prevention of Corruption Ordinance 1937, which raised such a presumption if a gratification was obtained from a person or agent "holding or seeking to obtain a contract" from the Government. The 1960 Act widened its scope: Wee Toon Boon v. PP, [1976] 2 MLJ 191 at p.198. The only other statute which has raised a presumption of corruption is the Customs Act, Cap.70: section 134(2).
by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body, such gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved.

Thus, as explained by Wee Chong Jin C.J. in Chew Chee Sun v. PP, where an agent, for example, is charged under section 6(a) of the Prevention of Corruption Act, to which section 8 applies, the prosecution has first to prove three factual ingredients: (a) that the gratification was paid or given to or received by the accused person; (b) that at the time of the payment, gift or receipt the accused person was in the employment of the Government or a department thereof or a public body; and (c) that the person who at the time of the payment, gift or receipt had or sought to have dealings with the Government or a department of Government or public body. Thereafter, according to Wee Chong Jin C.J., the existence of the fourth ingredient, namely,

2. The expression "any dealing with the Government or any department thereof" means "any matter with the Government of any department thereof": per Wee Chong Jin C.J. in Wee Toon Boon, ibid.

that the gratification was paid or given or received corruptly as an inducement or reward for doing or forbearing to do any act or favour in relation to the affairs of the Government or department of government or that public body, is to be presumed "unless the contrary is proved".

It is submitted, however, that the "fourth ingredient" is not one but two essential ingredients of an offence under section 6(a) that are required to be presumed under section 8: that the gratification was obtained "corruptly" (the mens rea of the offence); and that it was so obtained as an inducement or reward for doing or forbearing to do any act or favour in relation to the affairs of a government department or public body (part of the actus reus).

These presumptions under section 8 of the Act are presumptions of law and it is obligatory on the court to raise them at every trial for an offence under

4. Considered at length earlier in part (B) of this chapter, ante.

5. A gratification may be accepted "corruptly" but not in relation to the affairs of the principal. See for example Hiralal Baldo v. R, [1950] MLJ 96; Narayanasamy v. Rex, [1949] MLJ 252; Lim Yam, [1961] MLJ 29, and earlier discussion on this point, ante.
section 5 or 6 of the Prevention of Corruption Act, so long as the essential facts which attract the presumption have been proved.

In **PP v. Yuvaraj**, the Privy Council, after examining an identical provision in the Malaysian Prevention of Corruption Act, and noting that the presumption could not be applied to agents of private principals, explained the "clear" policy which underlies section 8:

Corruption in the public service is a grave social evil which is difficult to detect, for those who take part in it will be at pains to cover their tracks. The section is designed to compel every public servant so to order his affairs that he does not accept a gift in cash or in kind from a member of the public except in circumstances in which he will be able to show clearly that he has legitimate reasons for doing so.

It would, however, be wrong, as Buhagiar J. thought in **Saminathan & Ors v. PP**, that the presumption under section 8 is "nothing more than an extension of the provisions of section 106 of the Evidence Act" which provides that when any fact is

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especially within the knowledge of a person the burden of proving that fact is upon him. Section 8 compels the making of a presumption in respect of two essential ingredients of an offence alleged to have been committed by the accused. It would be wrong to proceed with a prosecution on the basis that the accused should know if they exist or not.

Perhaps the real justification in corruption cases for resorting to such presumptions of law for which the common law had a particular distaste is that corrupt transactions are "insidious in their operation, so difficult to detect and so disastrous in their results". Nevertheless, the courts have demanded that the essential facts which attract the operation of the presumptions have to be strictly proved by the prosecution beyond reasonable doubt if the presumption is to be relied upon.

The effect, and it is one which may not have been necessarily intended by the Legislature, of the


presumptions under section 8 of the Act is to reverse the traditional burden of proof in criminal trials. It now seems obvious on authority as opposed to principle that once the other facta probanda have been established by the prosecution, the "persuasive" burden as opposed to the "evidential" burden shifts to the defence. This means that the ingredients of the offences which are the subject of the presumptions under section 8 must be taken as proved against the accused unless he satisfies the court on a balance of probabilities to the contrary on a preponderance of probabilities. If the accused only bears an evidential burden, he may discharge it by adducing evidence of a reasonable possibility of the existence of the defence. As has now been confirmed by the Privy Council, which burden is imposed on the accused may well make the difference between conviction and acquittal.

12. For a fuller discussion on the difference between these burdens, see R v. Gill, [1963] 2 All E.R. 688; Cross on Evidence, 6th ed., Chapter III, section 2.

13. See for example PP v. Yuvaraj, op.cit., Kwan Ping Bong v. Queen, op.cit.


15. See Kwan Ping Bong v. Queen, ibid.
Glanville Williams has suggested that perhaps the only good reason for placing a persuasive burden on the accused lies in the fact that a degree of suspicion is felt as to the bona fides of a person's defence, coupled with the fear that a specious defence may be too readily accepted by the jury. This may not be a good reason to shift the persuasive burden to the defence for offences of corruption under sections 5 and 6 of the Prevention of Corruption Act and in a country where there is no trial by jury.

Clearly, in interpreting the phrase "unless the contrary is proved" the courts cannot ignore section 3 of the Evidence Act which has defined the word "disproved":

A fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers it non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

The Privy Council in Yuvaraj made it clear how the phrase "until the contrary is proved" in section 14

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of the Malaysian Prevention of Corruption Act, which is in pari materia with section 8 of our Act, ought to be construed:

Generally speaking, no onus lies upon a defendant in criminal proceedings to prove or disprove any fact: it is sufficient for his acquittal if any of the facts which if they existed would constitute the offence with which he is charged are "not proved". But exceptionally, as in the present case, an enactment creating an offence expressly provides that if other facts are proved, a particular fact, the existence of which is a necessary factual ingredient of the offence, shall be presumed or deemed to exist "unless he contrary is proved". In such a case the consequence of finding that that particular fact is "disproved" will be an acquittal, whereas the absence of such a finding will have the consequence of a conviction. Where this is the consequence of a fact's being "disproved" there can be no grounds in public policy for requiring that exceptional degree of certainty as excludes all reasonable doubt that that fact does not exist. In their Lordships' opinion the general rules applies in such a case and it is sufficient if the court considers that upon the evidence before it it is more likely than not that the fact does not exist. The test is the same as that applied in civil proceedings: the balance of probabilities.

This was of course the test which was approved by the English Court of Criminal Appeal in

R v. Carr-Briant, a case decided under section 2 of


the English Prevention of Corruption Act 1916, which is identical in terms to section 8 in that it provides that a consideration given is specified circumstances shall be deemed to have been given corruptly "unless the contrary is proved".

Until Yuvaraj, there was considerable difference in judicial opinion both in Singapore and Malaysia as to the degree of certainty in the non-existence of a fact which must be established in the mind of the trial judge to entitle an accused person to an acquittal, where a statute expressly imposed on him the onus of proving that it did not exist. As one writer noted, there was no more uniformity of views as to the extent of a burden reversed on specific matters than there was in respect of a burden reversed more generally by the Evidence Act.

In decisions under the Prevention of Corruption Act, the courts have, however, found little difficulty in ruling that once the presumptions of law under

21. 6 and 7 Geo.5 c.64.
section 8 are invoked, the burden on the accused is no higher than on a party to a civil action: proof on a balance of probabilities. They have generally been quite content to note that the burden placed on the accused was therefore "lighter" or "not as great" as that placed on the prosecution which had to prove a fact beyond reasonable doubt. It has not been generally appreciated, however, that to satisfy a court at a criminal trial that facts relevant to two essential ingredients of corruption do not exist upon a balance of probabilities, places a higher burden upon the accused than at an ordinary trial where the burden is not reversed. It would be insufficient if he raised a reasonable doubt on the existence of the ingredients presumed against him.

In Yuvaraj, the Privy Council rejected the argument that to demand that the accused satisfy the court upon a balance of probabilities that a fact does not exist puts too high a burden upon a defendant in


criminal proceedings where the consequence of a failure to disprove that fact would be a conviction. According to Lord Diplock, who delivered the judgment of the Board, a reasonable doubt test would be a proper test only in the absence of any statutory provision reversing the burden of proof; otherwise it would be another way of saying that the prosecution must prove all the ingredients of the offence including those that the court was obliged to presume under section 8. Such a view, according to Lord Diplock, would give "no sufficient effect to the reversal of the ordinary onus of proof by an express statutory provision that a fact which constitutes an ingredient of a criminal offence shall be deemed to exist 'unless the contrary is proved'."

It is submitted that the Privy Council's insistence that section 8 casts a persuasive burden which would require an accused person's conviction unless he is able to adduce affirmative evidence to prove the non-existence of the two essential ingredients (including the mens rea) may result in injustice.

The harshness of imposing such a persuasive burden is all the greater in that it is confined to only a particular class of defendants, namely, government servants and employees of public bodies. In respect, for example, of defendants who are agents of private principals, all the ingredients of the offences under section 5 or 6 of the Prevention of Corruption Act would have to be proved strictly beyond a reasonable doubt. In addition, all that such a defendant need do is to raise a reasonable doubt as to the existence of one of the ingredients to obtain an acquittal.

26. As in Nadarasa, the courts have been anxious to observe that proof on a balance of probabilities has no place in criminal cases where the presumptions under section 8 are not invoked and the "fundamental principle" is that the burden remains throughout on the prosecution to prove its case beyond reasonable doubt without the accused having to prove his innocence. So it would appear that the more the evidence that is strictly proved in offences under sections 5 and 6 of the Act, the lesser the burden on the accused in rebutting them!

Why should a public servant or a member of a public body be punished if he succeeds in only casting a reasonable doubt on the existence of essential facts relevant to both *mens rea* and *actus reus* that have been presumed against him? To require him to do more is in practice to expect him to prove that "his alleged innocence is more cogent and credit-worthy than his alleged guilt". Whatever then is to be made of the cherished presumption of innocence and of Lord Sankey's "golden thread" that it is the duty of the prosecution to prove a person's guilt beyond reasonable doubt, a duty that is said to never shift until the conclusion of the case? At least until the clearly erroneous decision of the Privy Council in the 1981 case of *Haw Tua Tau*, this "golden" rule was enforced with greater rigour in Singapore than in the United Kingdom as the


28. [1981] 3 All E.R. 14. In respect of trials in the Subordinate Courts and the High Court, sections 180(f) and 189(1) of the Singapore Criminal Procedure Code make it clear that when the case for the prosecution is concluded, the accused shall be called upon to enter his defence only if the court finds that the prosecution has established a case against the accused "which if unrebutted would warrant his conviction" otherwise it "shall record an order of acquittal". For almost 80 years, until the Privy Council decision in 1981, the Singapore and Malaysian Courts held that the prosecution must therefore establish a "prima facie" case beyond reasonable doubt". See for example *Ong Kiang Kek v. PP*, [1970] 1 MLJ 283 (Singapore Court of Appeal);
Singapore courts demanded not only that the prosecution must, unaided by the defence, prove the accused's guilt but that it should establish its case beyond reasonable doubt even before the accused could be called upon to make his defence.

The anomaly of the situation becomes more apparent when one considers that a public servant charged with corruptly accepting an illegal gratification under section 6(a) of the Act operates under two burdens in respect of his defence for one offence. As regards the first three ingredients he need only raise a reasonable doubt as to their existence, but in respect of the remaining two ingredients, he has to establish their non-existence on a balance of probabilities and would be convicted if he only succeeds in raising a reasonable doubt as to their existence. Of course, as the Privy Council has conceded, if in the process of rebutting the

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PP v. Sihabduin bin Haji Salleh & Anor, [1980] 2 MLJ 273 (Malaysian Federal Court). In Haw Tua Tau, op.cit., the Privy Council stated, obiter, that all that a court need consider at the end of the prosecution's case was whether there was "some evidence (not inherently incredible)", and to ask itself the question, "If I were to accept the prosecution's evidence as accurate, would it establish the case against the accused beyond a reasonable doubt?"

29. Yuvaraj, op.cit., at p.91.
presumed facts he produces evidence that falls short of disproving them on a balance of probabilities, but, even unwittingly, raises a reasonable doubt on the proven facts, he is entitled to an acquittal.

In Yuvaraj, the Privy Council was at pains to point out that although the definitions of "proved" and "disproved" in section 3 of the Evidence Act apply to both criminal and civil proceedings, it could not be supposed that the Evidence Act intended "by a provision contained in what purports to be a mere definition section to abolish the historic distinction fundamental to the administration of justice under the common law" between the burden which lies upon the prosecution in criminal proceedings to prove the ingredients of an offence beyond all reasonable doubt and the burden which lies on a party in a civil suit to prove his case on a balance of probabilities. Again as Lord Diplock observed:

The degree of probability of the existence or non-existence of a fact which is required in order for it to be "proved" or "disproved", within the meaning ascribed to those words in the Evidence Ordinance, in their Lordships' view, depends on the nature of the proceedings and what will be the consequence in those proceedings of a finding that a fact is proved or disproved.

30. Ibid.
It was therefore quite open to the Board on such an approach to state that, however a defendant's burden of proof was described, at the conclusion of a criminal case a court would still have to consider on the totality of the evidence whether the prosecution has proved all the ingredients of the offence beyond reasonable doubt.

There was certainly ample authority from many Commonwealth jurisdictions for the Privy Council to adopt such a course. In Soh Cheow Hor v. R, for example, the Singapore Court of Criminal Appeal after considering a similar reversal of onus provision in the Penal Code had found itself constrained to depart from earlier decisions to hold:

If, as a result of the evidence of the whole case, taken and considered together the jury find themselves in genuine doubt as to whether or not the case falls within one of the exceptions, then their verdict on the point must be in favour of the accused.


33. Ibid., at p.255.
In subsequent decisions the Privy Council has, however, reiterated its decision in Yuvaraj.  

In Jayasena v. The Queen, decided in 1970, the Board rejected a plea that Lord Sankey's "golden thread" be preserved for the law of Sri Lanka by holding that the burden of proof even under a statute which requires the defendant to prove the non-existence of essential facts on a balance of probabilities, was only an evidential burden. Neither has the Board been moved in subsequent cases by the strong recommendations of the English Criminal Law Revision Committee in 1972 that "both on principle and for the sake of clarity and convenience in practice", burdens on the defence should be evidential only. For example, in Kwan Ping Bong v. The Queen, an appeal from the Court of Appeal of Hongkong in 1979, Lord Diplock again declared:

... there is provision that on proof by the prosecution of the existence of certain facts some other fact shall be presumed to exist


35. Op.cit., para.140. The Committee considered it "repugnant to principle" that a court should be under a legal duty to convict an accused person if it is left in doubt as to whether or not, for example, he had the necessary guilty intent.


37. Ibid., at p.438. Emphasis added.
unless the contrary is proved (in the instant case guilty knowledge on the part of the accused), the effect of the provision is to convert an inference which at common law the jury would not be entitled to draw unless they were satisfied beyond all reasonable doubt that it was right, into an inference which they are bound to draw unless they are satisfied that on the balance of probabilities it is wrong. So they must draw it even though they think that it is equally likely to be right as to be wrong.

In the result, what is needed is a simple legislative remedy: the deletion of the words "unless the contrary is proved" in section 8 of the Prevention of Corruption Act. This would result in the placing of a mere evidential burden on the defence whilst preserving for the prosecution the advantage of the presumptions of law in section 8 of the Act.

(5) Examination of Co-Accused as Prosecution Witnesses

Whenever two or more persons are charged with any offence under the Prevention of Corruption Act or under sections 161 to 165 and 213 to 215 of the Penal Code, the court may, under section 33(1) of the Prevention of Corruption Act, require one or more of the accused to give evidence for the prosecution.

If an accused person so selected refuses to be sworn or to answer any lawful question, he may be dealt with in the same manner as any other witness who refuses to take the oath or answer questions. Such a witness is of course liable to be punished for being in contempt of court or to be prosecuted for offences under the Penal Code.

However, if the accused who is called upon to be a prosecution witness chooses to give evidence and, in the court's opinion, makes "a true and full discovery" of all matters on which he is lawfully examined he is entitled to receive a certificate of indemnity signed by the trial magistrate or judge. Such a certificate of indemnity is a bar to all legal proceedings in respect of matters raised in his evidence.

Section 33 has not been used in Singapore but an identical provision (section 19) was considered in the Malaysian case of Chandrasekaran & Ors v. PP

3. Section 33(2).
5. Section 33(3).
where it was described by Raja Azlan Shah J. as "peculiar, unparalleled and unique". The learned judge was apparently unaware that a similar section appears in the Malaysian Betting Act and the Common Gaming Houses Act. The equivalent Acts in Singapore also contain a similar provision.

The object of this strange provision may be to grant an indemnity from prosecution in a case where several persons have been involved in an offence of corruption but without the aid of the testimony of one of them all offenders may escape conviction and punishment. In this respect, section 33 is similar to section 306 of the Indian Criminal Procedure Code which permits the Chief Judicial Magistrate or a Metropolitan Magistrate to tender a pardon to a co-accused in similar circumstances.

10. For a comment on section 306, see the AIR Commentaries on the Code of Criminal Procedure (2 of 1974), (Bombay: 1982), pp.163 to 186. The rationale of the section was considered by the Indian Supreme Court in Ganeshwara, AIR [1963] S.C. 1850.
The principal question which the section gives rise to is why a court of law in an adversarial system should decide who should give evidence for the prosecution and turn State witness. Section 33 does not indicate at which stage of the proceedings the court is to make such a decision. Obviously, it would be premature to so decide until all the evidence for the prosecution has been tendered and it is considered that the prosecution has failed to present sufficient evidence to establish a case to meet. Why in that situation should any of the accused persons take the bait and give evidence when the result of a refusal to give evidence will certainly be an acquittal for all of them? After all, refusal to take the oath or to give evidence by the "chosen" only means a light sentence for contempt of court.

Again, how is the court to decide which of the accomplices should be invited to give evidence for the prosecution as the court is unlikely to know what evidence the witness would give? And when a co-accused does give evidence, how is the court to make the

11. Refusal to take the oath, without which a person cannot give evidence, is punishable with 6 months imprisonment under section 8 of the Subordinate Courts Act, Cap.321, and under section 178 of the Penal Code, Cap.224.
determination, for purposes of rewarding him with a certificate of indemnity, that he has made a "true and full discovery"? Indeed, holding out of the certificate as a "carrot" and a threat of punishment for contempt of court as a "stick" might encourage perjury.

Commenting on an identical section in the Old Common Gaming Houses Ordinance, one writer has suggested that where the co-accused does not make a "true and full discovery" he will be a discredited witness and his evidence will be rejected entirely. What then is the consequence for such a witness if the court decides to withhold its certificate of indemnity? Does the witness return to the dock? If he does, of what use, if any, is his evidence to the prosecution?

Clearly, in whatever manner a magistrate or judge exercises his discretion under this section, he is likely to be criticised. Roland Braddell's

comments, in his *Common Gaming Houses*, on his experience in two old cases where a magistrate invoked an identical section in the *Common Gaming Houses* Ordinance, supports this:

In the one, he refused the witness a certificate and yet based a conviction for playing in a common gaming house upon a portion of the evidence of that witness, and in the other the Magistrate said that he demeanour of the witness displeased him and that he did not therefore believe he had made a full disclosure, although the witness was not directly contradicted in anything to which he had sworn.

In *Chandrasekaran* the appellate court was only concerned with the trial judge's findings that a co-accused who had accepted his invitation to become a prosecution witness was a "peripheral accomplice and thus entitled to more credence than an accomplice". He was held to be in error as the appellate court pointed out that there was only one type of accomplice known to law and his evidence was required to be corroborated by independent testimony. Although in respect of the doctrine of corroboration a co-accused is not an accomplice when he gives evidence for the defence, he certainly is an accomplice when he

13. Ibid, at p.100.
testifies as a prosecution witness.

In construing section 19 of the Malaysian Prevention of Corruption Act, Raja Azlan Shah J. observed:

I have no doubt that it never was the intention of the Legislature to depart from well established principles of criminal law, that when an accused person gives evidence against the co-accused in the hope of receiving a pardon, his evidence must be even more closely scrutinised. For this reason I hold the view that, whenever an accused person is required to give evidence under section 19 of the Act, he does so in such a state of suspense that he will naturally have every inclination to minimise his own part in the prosecution; his evidence must therefore be treated with even greater caution ... in other words his evidence must meet the twin test of reliability and corroboration, i.e., he has to satisfy the court not only that his evidence is in general credible, but also that there is independent corroboration in material particulars.

The calling of a co-accused to give evidence for the prosecution is therefore unlikely to strengthen the prosecution case or cure defects in the prosecution evidence as such a witness is not only an accomplice.


but, with the prospect of receiving an indemnity from further proceedings if he performs to expectations, has the strongest motive for seeking to exculpate himself at the expense of others. He may even rise to the occasion by exaggerating his own participation in the offence in order to persuade the court that he has made a "true and full discovery".

It is therefore not surprising that section 33 of the Prevention of Corruption Act has not been invoked by the courts in Singapore. It is generally considered the function of the Public Prosecutor to determine who should give evidence for the prosecution and who should turn State witness even before the beginning of a trial. Where it has been decided that one accused who wishes to plead guilty should also give evidence against the rest, but has not been permitted to turn State witness, his case is dealt with by the courts first so that his evidence is not influenced by "his anticipation of its likely effect on his sentence".

17. For a fuller discussion on the powers of the Public Prosecutor, see Chapter X, ante.
Legal Obligation to Give Information

Sections 34, 33 and 26 of the Prevention of Corruption Act are complementary in that they attempt to ensure that information as to corrupt practices is forthcoming and that evidence sufficient to prosecute the culprits is available. As has been seen, section 34 protects informers from discovery to encourage a free flow of information to the CPIB and section 33 empowers a trial court to require a co-accused to give evidence for the prosecution in the event that, with evidence at hand, the prosecution is unable to make out a case against all the accused. Section 26 of the Act in turn compels any person having knowledge of an offence of corruption, under pain of punishment, to reveal such information when questioned by a CPIB officer.

Section 26 provides that "every person" required by any CPIB officer to give "any information on any subject", which is the duty of the officer to inquire into and which is in the "power" of the person

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1. See the discussion in parts (A) and (E) of this chapter, ante.

2. Similar but not identical provisions also appear in the Official Secrets Act, Cap.213: section 10; Customs Act, Cap.70: section 91; Immigration Act, Cap.133: section 50.
questioned to give, "shall be legally bound to give such information". The powers of a CPIB officer making any inquiry under the Act are indeed wide. Officers of the Bureau may investigate any offence under the Prevention of Corruption Act, or under sections 165 and 213 to 215 of the Penal Code, or "any seizable offence under any law" which may be disclosed in the course of an investigation. It is only in respect of investigations into a non-seizable offence that a CPIB officer needs the prior authorisation of the Public Prosecutor.

The phrase "in his power to give" probably refers to the legal authority of a person questioned to disclose information in his knowledge. Thus a public servant sworn to secrecy under the Official Secrets Act or a solicitor who is bound by professional privilege may resist disclosing information falling within the Official Secrets Act or a solicitor's privilege. Otherwise, it would appear that every


5. Evidence Act, Cap.97: section 128. The section, however, does not protect from disclosure communication made to the solicitor in furtherance of any illegal purpose.
person questioned by a CPIB officer is by law bound to disclose information in his possession and which is relevant to the officer's inquiries as section 26 imposes a "legal obligation" to give such information. Failure to do so or to answer truthfully are offences punishable under the Prevention of Corruption Act and the Penal Code.

It is significant that although a person questioned under the Criminal Procedure Code by a police officer in respect of any crime may refuse to answer any question which would have "a tendency to expose him to a criminal charge or to a penalty or forfeiture", the Prevention of Corruption Act appears

6. Section 25(d) of the Act makes it an offence punishable with 12 months imprisonment or a fine of $2,000 for any person to refuse or neglect to give any information which may "reasonably be required of him and which he has in his power to give".


8. Cap.68: section 121(2). See also section 129(3) of the Customs Act, Cap.70. In Kee Chin Thuan v. R, [1951] MLJ 138, it was held that the words "which would have a tendency to expose" show that the section was intended to be given a wide interpretation but the intention of the section is not to give any person who fears a prosecution a carte blanche to lie. See also Kurup v. PP, [1934] MLJ 17; Kandiah v. R, [1953] MLJ 64; PP v. Subramaniam, [1956] MLJ 58.
to offer no such protection or refuge. Are such statements either from witnesses or suspects then intended to be used only for purposes of investigations?

The important question is whether a statement made by an accused person, upon being informed that he is "legally bound" to give information, is a voluntary statement. Or do the words "legally bound to give information" constitute a threat or inducement sufficient to render the statement involuntary? In an effort to prevent the statements from being attacked on the ground that they were made subsequent to a threat, CPIB officers have adopted the practice of merely showing the person being questioned section 26 and allowing him to read it for himself. They thus avoid allegations by the suspect that he was threatened by the very manner or mode in which he was told that he was legally bound to give information.

The courts in Singapore have yet to decide authoritatively whether a person accused of having

9. As was done in Lim Kim Tjok v. PP, [1978] 2 MLJ 94.
10. See generally Chua Beow Huat v. PP, op.cit, at p.34 and cases cited in footnote 17, post.
committed an offence may choose to remain silent despite the legal obligation imposed by section 21 of the Prevention of Corruption Act to give information. Does the common law right of silence, for instance, remove the "power" of a person to give self-incriminating information?

In Chye Ah San v. R, in considering an identical provision in the Malayan Excise Enactment, Spencer Wilkinson J. was of the view that the word "information" has reference to information regarding the activities of other persons and did not include self-incriminating statements regarding the conduct of the person who was being questioned. He, therefore, held that the section should be read subject to the general maxim nemo tenetur seipsum accusare. The decision in Chye Ah San has been doubted in a number of subsequent cases. More recently, it has been held that that maxim has no place in a statute which contains a provision, like section 26 of the Prevention

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11. [1954] MLJ 217, following PP v. Soh Tuan Cheng, [1949] MLJ 261. These cases were decided at a time when the common law right of silence was strictly enforced.

of Corruption Act, expressly stating that "every person" is legally bound to give information:

It is "every person" that is legally bound to give information ... If a person is suspected of having committed an offence and the customs officer is satisfied by questioning him that an offence has in fact been committed, then to exclude such a person from the ambit of the words "every person" in section 97 of the Ordinance and to exclude the information obtained under that section would be to defeat the very object and purpose of that section. It would only be to give the words "every person" a meaning totally different from what those words in plain and simple language mean. It would sin against the ordinary rules of construction.

Despite prevailing doubts as to its correct interpretation, section 26 of the Prevention of Corruption Act has been the subject of only one reported decision in the last 25 years. In Lim Kim Tjok v. PP, the appellant, a police officer, was charged on various counts with receiving bribes from a bookmaker as an inducement not to take any action against bookmaking activities conducted by the bribe giver. To prove the charges against the appellant, the prosecution relied on a statement made by him to a CPIB officer under section 26 of the Act. The appellant had first denied being present at the

13. Chua Beow Huat, ibid., at p.34.
14. Ibid.
Tampines market where the offences were alleged to have been committed. He was then shown photographs placing him at the scene of the offence and which showed clearly that his denial was untrue. The appellant then asked for lenient treatment if he told "everything", but was informed by the CPIB officer to tell the truth. He was asked to read section 26 of the Act himself.

Wee Chong Jin C.J. held that in the circumstances, the statement was not admissible as it could not be said that it was "a voluntary statement not obtained by any inducement or threat".

In **Lim Kim Tjok**, Wee Chong Jin C.J. gave his views as to what he considered to be the true purport of section 26 of the Prevention of Corruption Act:

The trial judge seemed to have relied on section 26 of the Prevention of Corruption Act as a provision which enables the officers therein mentioned to tell the person who is alleged or suspected of an offence under that Act that he should tell the truth when asked to give information ... In my opinion, the effect of that section is not to alter the settled law. Its effect is to make the giving of false information an offence under section 177 of the Penal Code and to make a refusal to give information, which is within a person's power to give, an offence under section 25 of the Prevention of Corruption Act.


It is not clear as to what "settled law" the Chief Justice was making reference to: whether to the common law right of silence or to the statutory requirement that statements recorded from suspects have to be voluntary in that they ought not to have been made as a result of any promise, inducement or threat. It is, however, submitted that his view that the effect of section 26 is to make the giving of false information an offence under section 177 of the Penal Code or the refusal to give information an offence under section 25 of the Prevention of Corruption Act, is patently wrong. Liability for either of these two offences is not an effect of section 26 but a consequence of its breach. The effect of section 26 may be the diminution of the right of silence and the alteration of the law to enable CPIB interrogators to put legal pressure on suspects and yet obtain voluntary statements.

Although in Lim Kim Tjok the Chief justice left unanswered the question whether the mere drawing of a suspect's attention to his legal obligation to give information under section 26 of the Act would ipso facto render any statement an involuntary one, it is
now settled law that the mere exhortation to speak
the truth or calling attention to a provision of the
law which is the accused's duty to comply with, does
not amount to an inducement or threat to render a
subsequent statement involuntary.

Section 26 first appeared in anti-corruption
legislation in Singapore in 1960. That was a rather
significant year for it was in 1960 that the common law
right of silence of suspects was first diminished in
Singapore. Until then, section 122 (then 121) of the
Criminal Procedure Code contained the fundamental rule
that no statement made to a police officer in the
course of police investigations under the Code was
admissible in evidence. In 1960, section 122 was
amended to permit statements under a caution, similar
to the one under the English Judges Rules, to be
admitted in evidence.

Abu Bakar bin Nazmeer, op.cit.; Chua Beow Huat
v. PP, op.cit., at p.34; Commissioners of Customs
and Excise v. Harz & Anor, [1967] 1 A.C. 760 at
p.816. However, such words as "you better tell
the truth" and equivalent expressions impart a
threat or promise: PP v. Naikan, [1961] MLJ 147;
Kok Jok Sion v. PP, [1966] 2 MLJ 50; R v.
Richards, [1967] 1 WLR 653; Lim Kim Tjok, op.cit.


This amendment, however, did not apply to statements recorded by law enforcement officers who were not police officers. Section 26 was introduced by the Prevention of Corruption Ordinance of 1960 and came into effect some three months after the Criminal Procedure Code amendments were brought into force.

The use to which a statement made to a CPIB officer may be put appears to depend on the offence the officer is inquiring into. If he is investigating an offence under the Penal Code, such an investigation is deemed by the proviso to section 16 of the Prevention of Corruption Act to be a police investigation to which section 121 (now 122) of the Criminal Procedure Code applies and the officer is considered to be a police officer. However, if the CPIB officer is investigating an offence committed under the Prevention of Corruption Act or any other written law other than the Penal Code, section 122 of the Criminal Procedure Code does not


apply to him.

The significance of this wholly unrealistic and impractical distinction is this. If section 122 of the Criminal Procedure Code applies, any statement made by a witness to the officer in the course of investigations is not admissible in evidence and may be used only for the purpose of impeaching the credit of such a witness. If the witness subsequently is charged with an offence, any voluntary statement that was made by him to the CPIB officer, whether in the course of investigations or not and whether or not it amounts to a confession, is admissible in evidence and if the accused gives evidence may be used to impeach his credit. Such a statement if of an exculpatory nature may also be used in his defence because section 122(5) draws no distinction between exculpatory and inculpatory statements.

22. Sections 122(1) to 122(5) make constant reference to "police officers" and are contained in Chapter XIII of the Criminal Procedure Code which is entitled "Information to the Police and their powers to investigate". See for example Pakala Narayana Swami v. Emperor, AIR [1939] P.C. 47; Man Woo v. R, [1951] MLJ 20.

23. Criminal Procedure Code, Cap.68, sections 122(2), 122(5).

24. For examples of the use of exculpatory statements by the defence, see PP v. Mohamed Noor Jantan, [1979] 2 MLJ 80; PP v. Lim Chor Pee, [1981] 2 MLJ i.
If the investigation is one to which section 122 of the Code does not apply, then any statement recorded by a CPIB officer is governed instead by the provisions of the Evidence Act. Thus, a previous statement may be used to cross-examine and impeach the maker of the statement if he becomes a witness or to corroborate him if it is consistent with his evidence in court.

If the statement is that of the accused, his admissions would become relevant and admissible against him under section 21 of the Evidence Act which permits such admissions to be proved "as against the person who makes them or his representative in interest" but not on behalf of such persons. Exculpatory statements, therefore, would be generally inadmissible if the accused does not give evidence. This would mean that the illogical rule in the English law of evidence that permits the prosecution free use of inculpatory (self-incriminating) statements but denies the defence the full effect of exculpatory (self-serving)

25. Evidence Act, Cap.97, sections 157, 159.

26. And voluntary confessions, irrespective of the rank of the recording officer, are admissible under section 24 of the Evidence Act, Cap.97.
statements would apply.

Until section 122 of the Criminal Procedure Code was amended, there was no provision for a statement to be taken under caution in respect of investigations made by CPIB officers for offences other than those under the Penal Code. This anomaly at least was removed in 1976 when the Singapore legislature amended the Criminal Procedure Code in order to import some of the principal recommendations made by the English Criminal Law Revision Committee in its 11th Report on evidence.

The 1976 Criminal Procedure Code (Amendment) Act abolished the caution which was previously administered before a suspect in custody could be questioned. Instead, upon being charged with an offence or officially informed that he might be prosecuted for it, an accused person is now required to be served with a notice in writing, which has to be explained to him, to the following effect:

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28. Cmnd.4991. For a fuller treatment, see Chandra Mohan, op.cit.

Do you wish to say anything in answer to the charge? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general. If you wish to mention any fact now, and you would like it written down, this will be done.

Section 122(8) makes it clear that the new notice of warning must now be given by officers of all law enforcement agencies including the CPIB.

The terms of this notice, which are laid down in the new section 122(6) of the Code, do not compel an accused person to make a statement against himself but they clearly caution him of the effect of non-disclosure of any fact which the accused intends to reply upon in his defence during the trial. The fundamental difference between the old caution and the new warning under section 122(6) appears to be this. The caution emphasized an accused person's right to remain silent. The new warning encourages him to speak in that it advises him of the adverse consequences that may follow if he insists on remaining silent in matters relevant to his defence.
The new section 123 of the Code provides that when evidence is given at any criminal proceeding that, on being charged with an offence or officially informed that he might be prosecuted for it, the accused failed to mention any fact which "in the circumstances existing at the time he could reasonably have been expected to mention", the court in determining:

(a) whether it should commit the accused for trial; or

(b) whether there is a case to answer; or

(c) whether the accused is guilty of the offence charged; "may draw such inferences from the failure as appear proper".

The failure to disclose a material fact may also on the basis of such inferences be treated as corroboration of any evidence given against the accused to which the failure to disclose is material.

Despite the generality of section 123(1), it seems clear from the nature of the warning given to the accused under section 122(6) that before any inference is drawn from the accused's failure to mention a fact, the fact will have to be one relied upon in his defence at the hearing. He is not compelled to make a statement incriminating himself. He does not have to formulate defences in relation to anything else he may have done that is not relevant to the charge. It is also no offence to refuse to answer questions or to tell his
story when interrogated but if he refuses to disclose any fact relevant to his defence, he will risk having an adverse inference drawn against him at his trial.

It is important to emphasize that not every failure to disclose a fact relevant to the defence will *ipso facto* result in an adverse inference being drawn against the accused at his trial. The circumstances must determine what inferences, if any, may properly be drawn. The nature of the offence, the type of defence withheld, the characteristics of the offender (eg. whether he is inarticulate or inadequate) and the reasons for the non-disclosure are clearly relevant considerations which ought to weigh in any judicial determination.

30. For a detailed examination of the effect of the new amendments and Singapore's experience with these provisions which have diminished the right of silence, see Chandra Mohan, "Police Interrogation and the Right of Silence in the Republic of Singapore", (1986) 2 MLJ xxviii, a paper presented at the Seventh Commonwealth Magistrates' Conference in September, 1985.
The combined effect of section 26 of the Prevention of Corruption Act and section 122(6) of the Criminal Procedure Code may well be to put pressure on suspects and those involved in offences of corruption to speak to their interrogators. This is consistent with the general object of the various other special rules of evidence and procedure that have been examined in this chapter, namely, to assist in combating corruption in Singapore.
CHAPTER IX

THE LEGAL CONSEQUENCES OF CORRUPTION

This chapter examines the main legal consequences that follow a conviction for an offence of corruption. These include punishment, disqualification from holding office, liability for penalties and forfeitures and restitution in civil law.

(A) PUNISHMENT

(1) Punishment by a Court of Law

As has been pointed out in Chapter VII, givers and takers of bribes and their abettors are liable under the Penal Code to imprisonment for a term extending to three years imprisonment. Those who give or receive an illegal gratification, upon conviction under the Prevention of Corruption Act, may be sentenced to five years imprisonment unless the corrupt transaction is in respect of a contract with the Government or a public body, or the corrupt recipient is a Member of Parliament. In such an event, the maximum punishment prescribed by law is seven years imprisonment. The principles of sentencing adopted by

* See Chapter VIII, ante.
the courts in respect of offences of corruption are considered in the next chapter.

(2) Disciplinary Punishment in the Public Service

In addition, public servants guilty of acts of corruption may suffer disciplinary punishment which may range from a mere censure to dismissal from public service.

(3) Disciplinary Punishment in the Private Sector

(a) Misconduct of Employees

Employees in the private sector may also be disciplined for acts of corruption. An employee to whom the provisions of the Employment Act apply, may be dismissed without notice, under section 14(1) of the Employment Act, for misconduct "inconsistent with the fulfilment of the express or implied conditions of his service". The common law, which applies to employees who are not covered by the Act such as seamen, domestic

1. See Chapters IV and VI, ante.

2. Singapore Statutes, Rev. Ed. 1985, Cap.91. The Act applies to employees in the private and public sector except seamen, domestic servants and persons employed in managerial, executive or confidential positions.
servants and persons employed in managerial, executive or confidential positions, also permits an employer to summarily dismiss a corrupt employee.

The Employment Act does not describe the acts which would constitute "misconduct" within section 14 perhaps for good reason as it is a word of flexible meaning applicable to acts differing widely in gravity. What misconduct is sufficient to entitle an employer summarily to dismiss an employee must be determined by the circumstances of each case. There is little doubt, however, that the acceptance of any bribe or other illegal gratification by an employee or agent is grave misconduct which would entitle the employer to dismiss him.


In Boston Deep Sea Fishing & Ice Co v. Ansell, the defendant, who had been employed as the Managing Director in the plaintiff company, took secret commissions from ship-builders with whom he had entered into contracts on behalf of the plaintiff for the construction of certain fishing-smacks. The Court of Appeal held that the receipt of these commissions was a good ground for the defendant's dismissal although it had not been discovered until his dismissal had taken place on other grounds. In delivering the judgment of the court, Cotton L.J. observed:

[W]here an agent entering into a contract on behalf of his principal, and without the knowledge or assent of that principal, receives money from the person with whom he is dealing, he is doing a wrongful act, he is misconducting himself as regards his agency, and, in my opinion, that gives to his employer, whether a company or an individual, and whether the agent be a servant, or a managing director, power and authority to dismiss him from his employment as a person who by that act is shewn to be incompetent of faithfully discharging his duty to his principal.

As the Privy Council has recognised, the immediate dismissal of an employee without notice is

7. At p.357.
a strong measure. However, corruption is grave misconduct which would entitle an employer to summarily dismiss his employee for at least two reasons:

(a) It is conduct incompatible with the faithful discharge of an employee's duty which must at least be an implied condition of any contract of employment;

(b) It is a form of dishonesty which even at common law was well recognised as a ground upon which summary dismissal was permissible. A person who accepts a secret commission or gratification is not performing an honest act and demonstrates that he cannot be trusted to perform the duties which he has undertaken as a servant or agent.

(b) Misconduct of Professionals

The statutory rules which govern the professional conduct of certain categories of professional workers also prohibit corrupt conduct. A medical practitioner or dentist guilty of any

"heinous" offence or "infamous or disgraceful conduct" in any professional aspect may be prohibited from practising his profession. Similarly, an advocate and solicitor convicted of a crime implying a "defect of character" or who is guilty of "fraudulent or grossly improper conduct" in the discharge of his professional duty may be struck off the roll or otherwise disciplined by the Law Society. Dishonesty, "grave impropriety or infamous conduct" may also result in an accountant being barred from practising his profession or of being suspended from doing so for five years.

Whatever the label that has been employed by the different statutes, it is clear that every profession has practices that it bars and misconduct in relation to professional work is considered to be unacceptable. On any view of the misconduct that has

10. Medical Registration Act (Cap. 174): section 23; Dentists Registration Act, Cap. 76: section 17(1). To make good a charge of "infamous or disgraceful" conduct there must generally be some element of moral turpitude or fraud or dishonesty in the alleged misconduct: Felix v. General Dental Council, [1960] A.C. 704. See also Lim Ko & Anor. v. Board of Architects, [1966] 2 MLJ 80, F.C.

11. The Legal Profession Act (Cap. 161): section 80(2). For an example of what may constitute "grossly improper" conduct, see Rajasooria v. Disciplinary Committee, [1955] MLJ 65, P.C.

been variously described in the legislation regulating the work of professional workers, it is clear that corruption will result in a guilty member of the profession being prohibited from practising his profession or being at least suspended from so doing for a substantial period.

In the only two reported decisions on corrupt practices by professionals, it was not disputed that the corrupt conduct in question either amounted to "grave impropriety or infamous conduct" in a professional aspect or was a "grossly improper conduct" in the discharge of a professional duty.

In Tan Choon Chye v. Singapore Society of Accountants, the appellant, an accountant, was found guilty by a disciplinary committee set up by the Society of Accountants of grave impropriety or infamous conduct in a professional aspect. The charge arose from a letter sent by the Director of the Corrupt Practices Investigation Bureau (CPIB) to the Registrar of the Society informing him that the appellant had collected a $50,000 bribe from an industrialist and

had handed over this sum to a public servant in the Economic Development Board. This was done to influence the public servant's consideration of the industrialist's application for registration under the Control of Manufacture Act. The Society was of the view that as the appellant had acted as an intermediary in his capacity as a practising accountant, in connection with the bribery, his name ought to be removed from the Register of Accountants. The High Court refused to intervene.

In Re an Advocate and Solicitor, a disciplinary committee set up by the Law Society, upon the complaint by the Director of the CPIB, had little difficulty in finding the lawyer in question guilty of gross improper conduct in the discharge of his professional duty in that his law firm had made payments to a tout for bringing in accident cases.

In view of the temptations particularly open to members of some professions, the subsidiary rules

14. [1978] 2 MLJ 7. The Law Society failed in its application before the High Court requiring the solicitor in question to show cause why disciplinary punishment should not be imposed on him on other grounds.
governing professional conduct of two groups of professionals expressly prohibit their members from accepting bribes and illegal commissions. Rule 2(c) of the Code of Professional Conduct and Ethics prohibits any professional engineer from receiving directly or indirectly any "royalty, or any gratuity or commission" in respect of any patented article or process used in work in respect of which he is acting for an employer, unless such payment has been authorised in writing by his employer. Similarly, the architects' Code of Professional Conduct and Ethics prohibits a registered architect from accepting any payment or other consideration from any source other than his client or employer in connection with the works and duties entrusted to him, or from soliciting a commission or engagement or accepting any work which involves the giving or receiving of "any discount, gift or commission from any person".


The exercise of disciplinary powers by employers and professional bodies over their employees and members guilty of corrupt practices appears to be not a corrective function designed to improve their performance, but a punitive measure as corruption is considered to be a serious form of misconduct that warrants summary dismissal of an employee or the removal of a professional worker from his practice.

(B) PENALTIES

(1) Nature of the Penalty under Section 13

Those convicted of an offence of corruption under the Prevention of Corruption Act are also liable to pay a pecuniary penalty. Section 13(1) of the Act provides for a mandatory penalty to be imposed by the trial court, in addition to "any other punishment", on any person convicted of an offence committed by the "acceptance of any gratification" under the Act. Such a penalty is to be paid to the


State and not to any aggrieved principal. In 1982, a sub-section was added to section 13 to permit a court, at its discretion, to increase the penalty if outstanding offences were taken into consideration for purposes of sentencing. As no convictions are recorded for offences taken into consideration, no penalties could previously be imposed in respect of these. The amount of the increased penalty under the 1982 amendment, however, cannot exceed the total amount or value of the gratification specified in the charges taken into consideration.

Clearly section 13 of the Prevention of Corruption Act is restrictive in its scope and applies only to those offenders who have accepted a gratification. No penalty can, therefore, be imposed upon offenders convicted of offering a gratification, or on those who have been found guilty of soliciting.

19. Section 13 of the Malaysian Act provides that the court may order the penalty to be paid "within the time and to the body" specified in the order. This has led to erroneous orders being made. See for example Datuk Haji Harun Idris v. PP, [1977] 2 MLJ 155 at p.180, where the penalty was ordered to be paid to a political party.


21. In the manner prescribed by section 178 of the Criminal Procedure Code, Cap.68.

agreeing to accept or of attempting to commit any of
the offences under sections 5(a)(i), 5(a)(ii) and 6(a)
of the Prevention of Corruption Act.

The penalty that the court is obliged to impose
on any person convicted of accepting a gratification is
a sum equal to the amount of the gratification, if in
cash, or the value of the gratification if in kind.
Obviously, if the value of a gratification cannot be
assessed then no penalty can be imposed by the court.
For example, in Wee Toon Boon v. Public Prosecutor,
no penalty was ordered in respect of one of the
charges, under section 6(a) of the Prevention of
Corruption Act, where the gratification was the
personal guarantee given to a bank, by the bribe-giver,
as security for an advance made by the bank to the
accused's father. Indeed, it may not be practical or
even possible to attempt to assess the value of all
corrupt gifts.

After a penalty has been paid by the offender
does he get to keep the gifts? If he does, then the
offender suffers no additional punishment because he
may always realise the amount of the penalty from the
sale of the gift and be not out of pocket.

If he does not, then he is in a worse position than an offender who has accepted a gratification in cash and who has to pay only its equivalent by way of a penalty. The practice of the courts is not to order the forfeiture of corrupt gifts unless these have been produced in court as exhibits.

What then is the *raison d'être* of section 13 of the Prevention of Corruption Act? Is the pecuniary penalty intended to be a form of punishment or is its purpose to merely deprive a corrupt agent of his ill-gotten gains? These questions came up for consideration in the Malaysian case of *Lee Mun Foong v. PP* in 1976. In that case, the appellant was arrested in the course of a trap set by officers of the Anti-Corruption Agency and the gratification of $1,000 which he had received was recovered from him upon arrest. On appeal, Abdoolcader J. held that the provisions of section 13 of the Malaysian Prevention of Corruption Act, which is identical to the Singapore section, were applicable in every case of a conviction under the Act and were not restricted only to instances where a gratification had not been recovered. The

reasons for his conclusions were explained thus:

The penalty imposed by section 13 is an additional punishment and, in my view, the word "acceptance" in that section connotes just that and no more in the sense of taking or receiving what is offered without any relation to whether or not the gratification received has been recovered. If it were otherwise, I would have thought it would have been expressly so provided. If it were intended, as has been contended on behalf of the appellant, that the intent behind section 13 of the Act is to impose a penalty equal to the amount of the gratification only where it has not been recovered, then it might in effect well result by virtue of the joint application of the provisions of sections 13 and 30 of the Act in the person convicted being liable to disgorge twice over - by way of penalty under section 13 and a civil debt under section 30 (our section 14).

The Judge, however, referred for the decision of the Federal Court the following question of law:

Whether the provisions of section 13 of the Prevention of Corruption Act are applicable in every case of a conviction under the said Act or whether the application of section 13 is restricted only to instances where money, the subject matter of the offence, has not been recovered.

The Federal Court's answer was that the former proposition was correct and approved the reasons given by Abdoolcader J. for holding that section 13 was

applicable, whether or not the gratification was
recovered from the offender. Wan Suleiman F.J. further
observed:

What the section in my view, does seek to do is to enable the court, on conviction of a person for an offence under this Act, to vary the punishment in accordance with the quantum received as gratification because corruption is a species of offence where the enormity of the sum or sums received as gratification may otherwise make any sentence or fine imposed on conviction under punishment sections quite inadequate, in its deterrent effect. Thus where the amount is small the additional imposition will be correspondingly small.

The effect of the decision in Lee Mun Foong is that a more shrewd offender who has received and enjoyed a bribe has an advantage over one who has been arrested with the bribe money immediately upon its receipt. The former need only surrender, for purposes of the penalty, the amount he actually received and is therefore not out of pocket, whilst the latter, who has accepted but not retained the gratification, is compelled to pay a penalty equivalent to a sum that he never really had.

District Judges face greater difficulty in applying the penalty provision to cases where a number

of accused persons have been jointly charged with and convicted of accepting bribes under the Prevention of Corruption Act. A person can accept a bribe by himself or together with others in furtherance of a common intention. Two or more persons may be convicted at one trial or at separate trials (as when they have been arrested at different times, or when one has pleaded guilty at first appearance and the other has not) for the acceptance of the same gratification. Suppose a bribe of $100 was shared amongst three accused persons. Should the penalty to be imposed under section 13 reflect the actual amount of each person's share of the bribe, or should each be ordered to pay $100? Or should the trial court merely order a penalty of $100 to be paid, leaving the offenders themselves to decide on the amount of their contributions? Does section 13 of the Act permit or require a distinction to be made between joint liability in law for the offence committed and the fact of actual acceptance? Should the penalty be imposed only on the actual recipient of the gratification?

A compelling view is that the amount of the gratification stated in the charge to have been

26a Such a submission was rejected by a District Judge in PP v Kim Youn Ki, unreported District Court case in DAC 8646-8651/85, Court 26, decided on October 8, 1985.
accepted must be imposed on each offender. A penalty under section 13 of the Act constitutes additional punishment and is not a form of restitution. The actual benefit that a co-accused has obtained from the acceptance of the gratification is therefore irrelevant. Indeed, as decided by the Malaysian Federal Court in *Lee Mun Foong*, even where an accused person has derived no gain from the bribe as when trap money is recovered from him upon arrest, the mandatory penalty must be imposed.

(2) Enforcement of the Penalty

Singapore and Malaysian decisions have caused some confusion as to how an order for the payment of the penalty is to be enforced. Section 13(1) provides that the penalty "shall be recoverable as a fine". Section 224 of the Criminal Procedure Code empowers any court which has imposed a fine to allow time for the payment of a fine, to direct its payment to be made by instalments, issue a warrant for the levy of the amount of the fine by distress and sale of any property belonging to the offender, or, as a last resort, to direct that "in default of the payment of the fine", the offender shall suffer imprisonment. Since the operation of the Prevention of Corruption Act in

27. Cap.68.
1960, District Courts in Singapore have in every case where a penalty is imposed, ordered a term of imprisonment to be served in default of the payment of the penalty in the same manner in which they have affixed a default term when imposing a fine on a defendant.

In PP v. Lai Sien Kon, decided in 1978, Ajaib Singh J. stated obiter that a court had no such power to order a term of imprisonment in default of the payment of a penalty as a penalty is to be treated as a fine "only to the extent and for the purpose of its recovery as such" and is not to be so treated for the purpose of imposing a term of imprisonment in default of its payment. Some support for the dictum of Ajaib Singh J. appears in the direction of section 13(1) itself that the penalty shall be "recoverable".

28. Ordinance No. 39 of 1960 which was brought into force on June 17, 1960.

29. In Mahesan v. Malaysian Government Housing Society, [1978] 2 All E.R. 405 at p.408, it appears that no default term was fixed when the accused was ordered to pay a penalty of $122,000. Execution only realised $13,000. Similarly, in PP v. Datuk Haji Harun bin Haji Idris (No.2), [1977] 1 MLJ 15 at p.32, the order of Raja Azlan Shah F.J. was that if the penalty of $225,000 was not paid within a month, "execution was to issue". But see the dictum of Wan Suleiman F.J. in Lee Mun Foong, op.cit., at p.18.
Clearly, the provision in section 223 of the Criminal Procedure Code for imprisonment in default of payment can have no application in the recovery of the penalty. Imprisonment is punishment for non-payment and is not a discharge of a fine or penalty.

Obviously, if the views of Ajaib Singh J. are correct and the courts have no power to impose a default term, particularly if the amount of the penalty cannot be recovered from the accused by other means, then a penalty is hardly likely to constitute an additional form of punishment as section 13(1) itself suggests. It may indeed encourage offenders awaiting trial to dispose of their property to defeat section 13 which one suspects is what the accused did in Mahesan's case. In that case, although a penalty of $122,000 was ordered, only $13,000 could be recovered from the proceeds of execution on the property. Yet the accused


31. The marginal note to section 13 reads "when penalty to be imposed in addition to other punishment". Section 13(1) provides that the court shall order the payment of a penalty "in addition to imposing ... any other punishment" (my emphasis).

32. See footnote 29.
had the means to bear the cost of appeals to both the Federal Court and the Privy Council and to engage Queen's Counsel.

The opportunity for the High Court of Singapore to decide whether trial courts had the power to impose a term of imprisonment in default of payment of the penalty was presented in Re Goh Eng Leong @ Eric.

In this case the accused, a senior clerk with the Housing & Development Board, was convicted of two charges of receiving gratification, by way of loans totalling $15,000, in order to assist a printer to obtain from the HDB Union a contract to print a souvenir programme for the Union's 10th Anniversary Dinner and Dance. He was fined $3,000 on each charge and was also ordered to pay a penalty of $15,000 or suffer imprisonment for nine months.

The accused was given time to pay the penalty but although various extensions of time were allowed for the next six months, he paid only $200 towards

33. Unreported Criminal Revision No. 1 of 1980 which arose from the District Court case of PP v. Goh Eng Leong @ Eric, DAC 3458-3459/78, Court 5, decided on June 26, 1979.
the penalty. Meanwhile, all other efforts to recover the balance of the penalty from the accused failed. A warrant to levy execution was then issued but the court bailiff found no moveable property in the accused's home that could be seized. The accused was then ordered to be produced in court in order to be committed to prison in default of the payment of the penalty. He then petitioned the High Court, by way of a criminal revision, to set aside the default term that had been imposed by the trial judge on the ground that it was "wrong in law", and reliance was placed on the dictum of Ajaib Singh J. in Lai Sien Kon. After hearing both parties, Wee Chong Jin C.J. made the following cryptic order:

Although the court has power to impose a term of imprisonment in default of payment of a penalty ordered under section 13 of the Prevention of Corruption Act (Cap. 104), the default term in the circumstances of this case, should not have been imposed, and accordingly it is ordered that the default term is set aside.

No reasons were given by the Chief Justice as to why in his view the words "recoverable as a fine" in section 13(1) give a trial court powers to impose a

34. The order was made on May 7, 1980. N. Ganesan appeared for the petitioner and DPP Tan Teow Yeow for the Public Prosecutor.
default term for non-payment of a penalty. When should the court then not exercise such a power? What were "the circumstances" of the case in Re Goh Eng Leong which made the order of a default term reversible? Should such circumstances be particular to the offender or to the case against him? For example, was the fact that the accused had taken a gratification by way of a loan a material consideration? Further, why was the fact that the other remedies to recover the balance of $14,800 had been exhausted, not relevant in the determination as to whether the default term that had been imposed on the accused should be enforced?

Unfortunately, the Chief Justice’s order gives no proper guidance to trial courts as to whether they should continue to adopt the practice that has prevailed for almost three decades of fixing a default term to every order of a penalty, or when they should not enforce the default term.

It is to put a severe strain on the language to hold that a penalty is "recoverable" by imprisoning the defaulter. If the legislature had intended that it would have made it clear by express words or by adopting the simple device of excluding the very words
in question ("and any such penalty shall be recoverable as a fine") from section 13(1). In that event, all the provisions of section 224 of the Criminal Procedure Code as to the sentence of a fine, including the sentencing of the offender to imprisonment in default of its payment, would be applicable. This is because the definition of a fine under section 2 of the Criminal Procedure Code includes any pecuniary penalty or forfeiture. This has been achieved, for example, by section 96(1) of the Income Tax Act which provides that any person convicted of making a false statement in an income tax return for the purpose of wilfully evading tax, shall pay a penalty of treble the amount of tax undercharged, in addition to a fine. The section makes no mention of how such a penalty is to be enforced or recovered and for that reason all the powers of the court under section 224 of the Code would apply.

Section 224 itself makes it clear that its application is subject to any other "express provision" relating to fines. The words "recoverable as a fine"

in section 13 of the Prevention of Corruption Act are therefore a clear direction that only those limbs of section 223 as are relevant to "recovery" of the penalty shall apply.

As the Chief Justice's order in *Re Goh Eng Leong* 37 was neither reported nor noted in the law journals, very few advocates and solicitors are aware of it. Occasionally, a lawyer who is aware of it has been successful in persuading a trial court that a default term ought not to be imposed. In *PP v. Chua Chwee Hong*, 38 for example, the court was persuaded not to impose any default term in ordering the payment of a penalty of $100,000 after the accused was convicted of having received that amount as a bribe. In that case, the accused, who was 62 years old, had returned the $100,000 to the bribe-giver when the latter fell into financial difficulties, and by the time he was prosecuted, had been declared a bankrupt with no visible means of income.


38. Unreported District Court Case in DAC 3436 of 1980, Court 10, decided on October 19, 1981.
(C) FORFEITURES

(1) Forfeiture of Corrupt Gifts

The Prevention of Corruption Act contains no provision for the forfeiture of any gift or other gratification that has been received corruptly, although the payment of a penalty under section 13 of the Act of a sum equivalent to the value of the gift, has the effect of rendering it an object purchased for value.

Section 386 of the Criminal Procedure Code, however, empowers any trial court at the conclusion of criminal proceedings to order any property, in respect of which any offence has been committed, to be, inter alia, forfeited or confiscated to the State. Such power can only be exercised if the property is brought before the court. The power of a court under section 385 of the Code to order forfeiture of a gratification is clearly unaffected by any provision in the Prevention of Corruption Act and is a form of punishment additional to a penalty that is imposed.

under section 13 of the Act.

Where the bribe-money has been recovered at the time of the arrest it is normally ordered to be placed in the "Poor Box". The Poor Box Fund, set up from "time immemorial", contains proceeds of crime seized from accused persons and is mainly used for the making of grants to persons in distress whose affairs have come up in court.

Until the decision of the Appellate Court in 42 Penu Mohan Singh v. PP in September 1985, it was not clear whether any amount of gratification surrendered by the accused to CPIB officers, often described as "restitution", ought to be ordered to be paid into the "Poor Box". To make such an order would mean that an accused person who volunteers such a payment and who


41. It is not clear how or when the Fund came into existence. Records available at the Registry of the Subordinate Courts show that on July 28, 1950, in answer to a query by the Colonial Secretary, the then District Judge and First Magistrate stated that the Poor Box had come into existence "almost from time immemorial" and was similar to those maintained in Magistrates Courts in England.

would still be liable to pay a similar amount, by way of a penalty under section 13 of the Prevention of Corruption Act, would have to disgorge the amount twice.

In Penu Mohan Singh, the trial judge had ordered that $40,000 which had been surrendered by the accused to CPIB officers should be paid into the Poor Box Fund. On appeal, the Chief Justice held that the order was wrong and ordered that the $40,000 be returned to the accused to enable him to pay it towards the penalty of $1.2 million that had been imposed on him under section 13(1) of the Prevention of Corruption Act.

(2) **Forfeiture of Pensions**

An officer in the public service found guilty of "negligence, irregularity or misconduct" may have his pension withheld either wholly or partially. Obviously, a disciplinary committee will determine the degree of the officer's culpability, which in turn will influence the President in deciding whether or not to

43. Pensions Act, Cap.225: section 5(2). For a full account of disciplinary proceedings against public servants, see Chapter VI, ante.
forfeit a public officer's pension. In addition, under section 14 of the Pensions Act, a public officer's pension may be forfeited if he is sentenced to a term of imprisonment by a court in Singapore or elsewhere for any crime or offence. A public servant sentenced to imprisonment for corruption thus stands to lose his pension from the date of his conviction. A non-pensionable, corrupt officer who had opted for the Central Provident Fund scheme, however, need have no such fears.

In respect of the pensions of Ministers and Members of Parliament there is no equivalent provision to withhold their pension for any negligence, irregularity or misconduct. To introduce such provisions was considered neither practical nor appropriate since such a forfeiture of pensions would

44. Ibid. Awards and medals given to the public servant by the State will also be withdrawn. See for example, "Man guilty of graft forfeits medal", Straits Times, February 26, 1987.

45. The Central Provident Fund (CPF) is a national social security savings scheme designed to provide financial protection to workers after retirement. Both worker and employer contribute to the worker's savings. See the Central Provident Fund Act, Cap.36.
have to follow the findings of a disciplinary committee of fellow Ministers and Members of Parliament, and the responsibilities of Members of Parliament and Ministers are different from those of public officers.

An amendment to the Parliamentary Pensions Act was rushed through Parliament on March 17, 1975, and brought into effect three weeks before Minister of State Wee Toon Boon was produced in court on five charges of corruption. The amendment Act introduced a new section 12 which empowers the President to withhold any pension or gratuity granted to any Minister, Minister of State, Parliamentary Secretary, Political Secretary or Member of Parliament convicted of an offence under the Prevention of Corruption Act, or of an offence involving corruption under any other written law. In moving the Parliamentary Pensions

46. See the explanation of the Prime Minister in Parliament: Singapore Parliamentary Debates (1975), vol.34, col.1077.

47. Now Cap.219 of the 1985 Rev. Ed. For a full explanation of the Amendment Act, see Singapore Parliamentary Debates (1975), vol.34, cols.365, 1077-1078. The Act was introduced in Parliament on March 17, read a second time and passed on March 27 and brought into force on March 29.


(Amendment) Bill, the Prime Minister explained:

It is not possible to enforce high standards of integrity in the civil service if the political leadership tolerates any corrupt behaviour amongst its own ranks. An MP or a Minister must take the consequences of any corrupt act. Losing his pension is one of the least of the sanctions.

(D) DISQUALIFICATION FROM HOLDING OFFICE

Unlike the English Public Bodies Corrupt Practices Act of 1889, the Singapore Prevention of Corruption Act contains no provision barring any person convicted of an offence of corruption from holding public office. Such provisions are considered unnecessary as the Public Service Commission, which

50. *Singapore Parliamentary Debates* (1975), vol.34, col.1078. See also Chapter III(G): Quality of Political Leadership, ante.

51. See sections 2(c) and 2(d). Upon first conviction an offender forfeits any public office held by him or is incapable of being elected to such office for 5 years. In the event of a second conviction, he becomes forever incapable of holding any public office or of voting at any election in respect of seats in Parliament or in a public body.

52. Cap. 241.
is responsible for all public service appointments, is unlikely to appoint any person with a previous conviction in the public service except amongst the ranks of daily-rated employees such as garbage collectors, road sweepers and masons. All public service appointees are also screened by the CPIB.

There is, nevertheless, legislation which provides that a conviction or sentence would be a disqualification from being elected to political office or from remaining in such office:

(i) Any person convicted of a corrupt practice, which includes treating, undue influence or bribery, during parliamentary elections is incapable, for a period of seven years from the date of his conviction, of being elected as a Member of Parliament, and if already a member, the person must vacate his office: section 61(2), Parliamentary Elections Act.

53. For the attitude of the Commission towards persons convicted of corruption, see Chapter VI, ante.

54. Cap.218. A person convicted of a corrupt practice (defined in section 61(1) of the Act) is also incapable for a period of 7 years from being registered as a voter or of voting at any Parliamentary election or of being appointed as an election agent: sections 61(2) and 63 of the Act.
(ii) A person is not qualified for being elected as a Member of Parliament or to be a Member of Parliament for five years following a conviction by a court of law in Singapore or Malaysia of any offence for which he has been sentenced to imprisonment for a term of not less than twelve months or to a fine of not less than $2,000: Articles 45(1)(e) and 45(2) of the Constitution of Singapore.

It would be more logical if Article 45 disqualifies a person from holding political office upon his conviction for an offence punishable with imprisonment, or if he is sentenced to any term of imprisonment, or to imprisonment for a period of more than twelve months. It is strange that while a Member of Parliament convicted of any offence involving corruption is considered as being guilty of reprehensible conduct that would warrant the forfeiture of pension or gratuity under section 13(2) of the Parliamentary Pensions Act, he is yet a fit and proper person to hold such office. Thus, whilst

Minister of State Wee Toon Boon lost his pension, he was not disqualified from being a member of Parliament as Article 45 of the Constitution provides quite specifically that in order to be disqualified from being a Member of Parliament, a Member must be convicted and sentenced to a term of imprisonment for not less than twelve months or to a fine of not less than $2,000 for an offence. Wee had been convicted of four charges of corruption and sentenced to six months imprisonment on each charge.

The anomaly of Article 45 is further demonstrated by two recent cases, involving leaders of Opposition Parties in Singapore, which are currently under appeal.

In one case, J.B. Jeyaretnam, leader of the Opposition in Parliament and Secretary-General of the Workers' Party, and Wong Hong Toy, Chairman of the same Party, were found guilty by a District Court in October

57. See the statement of the Minister for Law in Parliament to this effect: Singapore Parliamentary Debates (1976), vol.35, cols.1024-1025. Wee saved Parliament from further embarrassment by subsequently resigning his seat.

58. Straits Times, September 26, 1985: "Jeya and Wong sentenced to 3 months' jail" and story at page 12: "Jeya won't lose MP seat".
1985 of falsely declaring that the Workers' Party accounts showed a true and fair view in a sworn affidavit submitted to the Official Assignee.

Jeyaretnam and Wong were each sentenced to three months imprisonment, but the sentence of imprisonment being less than twelve months did not cause Jeyaretnam to lose his seat in Parliament. On appeal, the sentence was varied to a fine of $5,000 and one month imprisonment with the result that Jeyaretnam had to vacate his seat in November 1986.

In the second case, Tan Chee Kien, Chairman of the Singapore United Front, was convicted in a District Court in January 1986 of negligent driving resulting in the death of another motorist, and was fined $3,500 and disqualified from driving for three years. As his appeal against conviction and sentence was dismissed by the High Court, Tan is disqualified, under Article 45(e) of the Constitution, from contesting a seat in Parliament for the next five years.

58a Wong Hong Toy & J.B. Jeyaretnam v. PP, Magistrate's Appeals Nos. 374, 375/85.

59. Unreported District Court Case No. 4929/84; Magistrate's Appeal No. 17 of 1986. For press reports see Straits Times, January 10, 1986: "$3,500 fine bars Tan from polls for 5 years". Such a consequence seems to be particularly hard when one considers that negligent driving is generally not a form of misconduct incompatible with the due and faithful discharge of an employee's duty to justify his dismissal: P.S.A v. J.B. Wallace, [1981] 2 MLJ 54, C.A.
Section 14(1) of the Prevention of Corruption Act provides that a principal may recover, as a civil debt, the amount or the money value of any illegal gratification given to his agent from either the agent or the person who gave the gratification to the agent. The section also makes it clear that no conviction or acquittal of the defendant in respect of an offence under the Act operates as a bar to proceedings for such a recovery of the amount or value of the gratification.

Section 14(1) operates independently of the penalty provision in section 13. It gives statutory recognition to the right of the principal at common law to recover the amount of the bribe from either the corrupt agent or the briber, as money had and received. Section 14(2) of the Act, in stating that sub-section (1) to section 14 shall not be deemed "to prejudice or effect any right" which the principal might have against his agent under any written law or rule of law, to recover any money, merely preserves the principal's rights to recover damages for fraud.
in excess of the amount of the bribe. Section 14 therefore does no more than re-affirm the remedies available to a principal against a dishonest agent at common law.

As one writer has observed, the law relating to the civil consequences of corruption has not been well researched because its problems have a "disconcerting way of straddling contract, tort and restitution" and because of the comparative dearth of case law.

An agent who receives a gratification forfeits any commission due to him from the principal in respect of the transaction. He may also be sued for damages for breach of his contract of employment, agency or


61. Tettenborn, ibid.

partnership and be dismissed from his employer's service. A defrauded principal may, at his option, exercise his equitable right to rescind the contract induced by the bribe and recover any money paid or property transferred under the contract, or affirm the contract and claim his profits. As held by the Singapore Court of Appeal, he also has a good defence in a claim for goods sold and delivered under a contract negotiated by agents who have collected bribes from the plaintiff.

The principal's main remedies against both the corrupt agent and the bribe-giver lie:

(a) In quasi-contract for money had and received for the amount of the bribe or secret commission; or

63. See cases cited in footnote 5, ante.


(b) In tort for any loss suffered by the principal as a result of the bribe or secret commission having been given or promised.

It is now settled law that the principal must elect before judgment between these two courses of action unless each is separately pursued against a different defendant, in which event there cannot be double satisfaction.

(1) Money Had and Received

The amount of the bribe or gratification is recoverable at common law as money had and received by the agent for the use of the principal. As Lord Wright explained in Fibrosa Spolka Akcyina v. Fairbairn Lawson Combe Barbour Ltd, the common law employs such an action as a "practical and useful, if not complete or ideally perfect instrument to prevent unjust enrichment".


The older cases did not always regard secret commissions as bribes but the present attitude of the courts was made clear by Romer L.J. in Hovenden & Sons v. Millhoff early in this century:

If a gift be made to a confidential agent with the view of inducing the agent to act in favour of the donor in relation to transactions between the donor and the agents' principal, and that gift is secret as between the donor and the agent (that is to say, without the knowledge and consent of the principal) then the gift is a bribe in view of the law.

An action for money had and received may not, however, logically lie in respect of all forms of "gratification" which fall within the wide definition of that term in section 2 of the Prevention of Corruption Act. A gratification such as an offer of protection from any penalty, for example, can only form the subject of an action for damages.

It is irrelevant that the principal has suffered no loss from the agent's misconduct or that

68. (1900) 83 L.T. 41, C.A., at p.43. The briber is regarded as a party to the agent's breach of duty even though he thought that the principal had been or would be informed of the bribe: Industries and General Mortgage Co Ltd v. Lewis, [1949] 2 All E.R. 573; Taylor v. Walker, [1958] 1 Lloyd's Rep. 490.
the briber no longer has the bribe money. Whether or not the agent has a fiduciary relationship, to accept a bribe would be inconsistent with his duty to his principal and he can, therefore, be compelled to hand over any sums so received. Thus, in Attorney-General v. Goddard, a policeman who was employed to observe and report on certain gaming houses and night-clubs but who instead accepted bribes, was required to hand these sums over to the Crown. Similarly, in Reading v. Attorney-General, a sergeant who had received bribes for assisting in smuggling goods into Cairo by wearing his full uniform and accompanying civilian lorries containing the goods, was held to be unable to claim his bribe monies which were seized by the military authorities.

To put it differently, an action for money had and received will lie whenever the defendant has obtained a benefit from his own wrong doing, for example, by giving or taking bribes at the principal's

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71. [1951] A.C. 507, H.L.
expense. Hence, the defendant's obligation to make restitution. To succeed in an action for money had and received, it is, therefore, unnecessary for the principal to prove actual loss or damage, or the existence of a fiduciary relationship, or that the agent had received a bribe in the course of his employment.

(2) **Damages for Fraud**

The principal may also recover, in tort, as damages for fraud or deceit, the loss sustained by him as a result of entering into a contract in respect of which his agent was bribed. Such an action is to be preferred to one for money had and received if the principal's loss exceeds the amount of the bribe, and as regards an action against the agent where the bribe was promised but not yet paid.

In order to help the principal recover, certain presumptions of law have been invoked by the courts.


to show that a contract influenced by bribery must be disadvantageous to the principal. These rules were established "with the view of discouraging the practice of bribery":

(1) The court will presume in favour of the principal and as against the briber and the agent bribed, that the agent was influenced by the bribe, and this presumption is irrebuttable.

(2) If the agent was a confidential buyer of goods for his principal from the briber, the court will assume as against the briber that the true price of the goods as between him and the purchaser was less than the price paid to or charged by the vendor, by any rate, the amount or value of the bribe. The court will also not inquire into the briber's motives in giving the bribe or permit any evidence to be adduced in respect of the motive.

74. Per Romer L.J. in Hovenden & Sons v. Millhoff, op.cit. at p.43. The plea of custom is barred by section 22 of the Prevention of Corruption Act, Cap. 241.
Until the decision of the Privy Council in **Mahesan v. Malaysian Government Officers' Co-operative Housing Society Ltd**, it was generally assumed on the basis of dicta in **Mayor of Salford v. Lever** and **Hovenden & Sons v. Milhoff** that the principal could recover twice over both as money had and received and in an action, in tort, for damages.

In **Mahesan**, the appellant, a director and secretary of the defendant Society, in return for a bribe of $122,000 had arranged with a third party to purchase land at $456,000 which was then immediately sold to the Society for $944,000. The nett loss to the defendants, as a consequence of the appellant's fraudulent breach of duty in failing to inform his employer that the land had been available at $456,000, was assessed at $443,000. The difference of $43,000 was due to expenses that had been incurred by the third party in removing squatters on the land.

Following dicta in **Salford's case**, the Federal court of Malaysia held that the defendants were

entitled to recover from the appellant both the bribe of $122,000 and compensation or loss suffered by them at $443,000.

The Privy Council reversed the Federal Court, and held that under common law the principal's remedies against a bribed agent and the briber, for money had and received and for damages for fraud, were not cumulative but alternative as the House of Lords had decided in United Australia Ltd v. Barclays Bank Ltd. The principal, however, need not elect between the alternatives before the time had come for judgment. As the respondents in Mahesan's case would clearly have elected for damages of $443,000 rather than for the lesser amount of the bribe of $122,000 judgment was entered for the Society for the sum of $433,000.

In insisting in Mahesan's case that the two principal common law remedies were cumulative and not alternative, the Privy Council appears to have been

78. The Federal Court's decision is reported in [1975] 1 MLJ 77.

unduly influenced by the fact that otherwise the defrauded principal would have recovered the amount of the bribe twice over. Indeed, this may well be what the law intends as a deterrent measure as public interest in discouraging bribers and bribees must be greater than any principle which seeks to prevent principals from getting undeserved windfalls. The courts have often made clear their policy of discouraging bribery and other forms of corruption and their strict attitude was previously demonstrated by allowing double recovery.

Again, as one critic has observed, there was no "reason of ineluctable necessity" why the respondent Society in Mahesan should have been compelled by the principle in United Australia to elect between the two remedies. The decision in United Australia concerned an action based on "waiver of tort" whereas the respondents' claims in Mahesan lay in restitution and

80. "The courts of law of this country have always strongly condemned and, when they could, punished the bribing of agents and have taken a strong view as to what constitutes a bribe": Cotton L.J. in Boston Deep Sea Fishing and Ice Co, op.cit., p.357. See also Hovenden & Sons v. Millhoff, op.cit. at p.43.

81. Tettenborn, p.73.
tort. Should the rules as to election in United Australia then be generalised as to apply in every case where a plaintiff has courses of action in both quasi-contract and tort? Their Lordships in the Privy Council did not direct their minds to the question whether the decision of the House of Lords in United Australia should be so extended.

It seems also clear from the judgment of the Privy Council that where the same facts give rise in law to a course of action against a corrupt agent for money had and received and to a separate course of action for damages in tort against the briber, the judgment recovered against one defendant does not prevent the principal from suing the other defendant. However, the extent that the first judgment is satisfied constitutes satisfaction pro tanto in the second action. It seems strange that at least in some situations the principal should have the choice of proceeding only against the briber, thus leaving the corrupt agent who has been the ultimate beneficiary of the bribe to enjoy his ill-gotten gains.

It is apparent from the discussion in this chapter that the legal consequences for a person found guilty of corruption are almost disastrous. Apart from suffering punishment of imprisonment or fine, dismissal from employment, forfeiture of commissions and renumeration, and possible loss of pension and gratuity if a public servant, the culprit may be required to disgorge the amount or value of the gratification at least twice over - once as a penalty under section 13 of the Prevention of Corruption Act, and again as either a civil debt for money had and received under section 14(1) of the Act or as damages in tort for fraud. All these consequences must certainly constitute a powerful deterrent against corrupt behaviour.
(A) THE PUBLIC PROSECUTOR

(1) THE ROLE OF THE PUBLIC PROSECUTOR

The Attorney-General is also the Public Prosecutor in Singapore. In that capacity he has wide powers, "exercisable at his discretion", under Article 35(8) of the Singapore Constitution, to "institute, conduct or discontinue any proceedings for any offence". This means that he is not obliged to consult anyone before deciding whether to prosecute any person for corruption. Such independence is necessary especially when the Public Prosecutor is considering charges against persons who wield some political clout.

Reiteration of the fact that the Public Prosecutor in Singapore works independently

1. Section 336(1), Criminal Procedure Code (Cap.68).
2. Singapore Statutes, Rev. Ed. 1985, Vol.1
in such matters has come from perhaps an unexpected quarter. In December 1976 and early 1977, four opposition candidates in the 1976 general elections were successfully prosecuted for criminal defamation arising from speeches that they had made during election rallies in which they had alleged that Prime Minister Lee Kuan Yew had corruptly enriched himself through his wife's law firm. Following their convictions, the Prime Minister emphasized during a BBC interview with Ludovic Kennedy that the Public Prosecutor had acted independently, without consultation with or permission from him, when he instituted prosecutions against the opposition candidates for criminal defamation.

There are no reported decisions on Article 35(8) of the Singapore Constitution, but, after examining Article 145(3) of the Malaysian Constitution, which is in pari materia with Article 35(8) of the

4. PP v. Leong Mun Kwai & Ors., discussed at pp. 131-132, ante.

Singapore Constitution, the Federal Court of Malaysia observed:

In our view, this clause from the supreme law clearly gives the Attorney-General very wide discretion over the control and direction of all criminal prosecutions. Not only may he institute and conduct any proceedings for an offence, he may also discontinue criminal proceedings that he has instituted, and the Courts cannot compel him to institute any criminal proceedings which he does not wish to institute or to go on with any criminal proceedings which he has decided to discontinue ....

The Attorney-General has a wide discretion in respect of such matters as the issue or refusal of his consent or sanction to prosecute and in the choice or withdrawal of charges, and anyone dissatisfied with his decision must seek his remedy "elsewhere" and not in the courts. He may, for example, prefer to charge an offender for a less serious offence than what the evidence discloses, or proceed under a section of a statute which provides a more severe penalty for a particular crime.


7. Long bin Samat & Ors v. PP, ibid.

In Teh Cheng Poh v. PP, the appellant complained that in deciding to prosecute him for possession of arms under the Internal Security Act, which carried the death penalty, rather than under the Arms Act, which did not make his offence a capital crime, the Attorney-General had deprived him of his constitutional right to equality before the law. The appellant's contention was rejected by both the Malaysian Federal Court and by the Privy Council. In delivering the judgment of their Lordships, Lord Diplock explained:

Under the common law system of administration of criminal justice a prosecuting authority has a discretion whether to institute proceedings at all and, if so, with what offence to charge the accused. Such a discretion is conferred upon the Attorney-General of Malaysia by Article 145(3) of the Constitution (Article 35(8) of the Singapore Constitution) ....

There are many factors which a prosecuting authority may properly take into account in exercising its discretion as to whether to charge a person at all, or, where the information available to it discloses the ingredients of a greater as well as a lesser offence, as to whether to charge the accused with the greater or the lesser. The existence of those factors to which the prosecuting authority may properly have regard and the relative weight to be attached to each of them may vary enormously between one case and another. All that equality before the law requires, is that the cases of all potential defendants to criminal charges shall be given


unbiased consideration by the prosecuting authority and that decision whether or not to prosecute in a particular case for a particular offence should not be dictated by some irrelevant consideration.

Again in *Poh Cho Ching v. PP*, a submission that the Attorney-General's conduct, in preferring a prosecution against the giver of the bribe rather than the acceptor, was a violation of Article 8(1) of the Constitution (the equal protection clause) also failed.

It is, however, clear that the Attorney-General's discretionary powers under Article 35(8) of the Constitution do not permit him to regulate criminal procedure or to decide which judge should hear the case, or to "discriminate at will" and infringe the equal protection clause of the Constitution.

Section 336(1) of the Criminal Procedure Code equally emphasizes that the Attorney-General, as Public Prosecutor, "shall have the control and direction of criminal prosecutions and proceedings". In rejecting a

11. [1982] 1 MLJ 86.

12. See for example *PP v. Lim Shui Wang & Ors*, *op.cit.*; *PP v. Datuk Harun bin Haji Idris*, *op.cit.*; *Teh Cheng Poh v. PP*, *op.cit.*
defence submission that a District Court had no jurisdiction to try an offender for an offence of kidnapping as the evidence had disclosed a more serious offence which was triable only by the High Court, a full bench of the Singapore High Court was moved to state:

If the contention of the Appellant's counsel were to be accepted, it would follow that if the record when first laid before the Public Prosecutor disclosed the possibility of an offence of a more serious nature, the Public Prosecutor would be obliged to charge the accused with the more serious offence regardless of the fact that the evidence in support of the lesser offence might be overwhelming and that in support of the more serious offence might be doubtful and unsatisfactory. In our view this is opposed to the whole spirit of the Criminal Procedure Code which is designed to give the Public Prosecutor or his Deputy a wide discretion in determining the actual charges to be preferred and in designating the court before which such charges shall be tried. (See Chapter XXXIV of the Criminal Procedure Code and in particular section 390)14

13. Bapoo v. R, [1935] MLJ 19 at p.21, per Huggard C.J., which was followed by the Malaysian Federal Court in Long bin Samat, op.cit. In Datuk Harun, op.cit, Abdooolcader J. expressed the view that section 335(1) of the Criminal Procedure Code "must certainly be circumscribed and read subject to the" provisions of Article 35(8) of the Constitution which in effect restates and is declaratory of the existing powers and duties of the Attorney-General in relation to prosecutions and criminal proceedings.

The Code has further provisions to assist the Attorney-General to achieve such control and direction of criminal proceedings. He may, for example, after committal proceedings, alter or redraw the charge against the accused, frame additional charges or direct that the accused person be discharged. He may decline further to prosecute at any stage of a trial before the High Court or a Subordinate Court. It has been held that the Attorney-General may enter a *nolle prosequi* even in the course of a private prosecution.

In addition, some statutes ensure that the Public Prosecutor has control over criminal proceedings by prohibiting prosecutions for certain offences from being instituted without reference to the Public Prosecutor. For example, no court has jurisdiction to hear a charge for the offence of criminal conspiracy or treason under the Penal Code, except upon a complaint by the Attorney-General or some officer empowered by him, or a charge of criminal defamation, except upon a complaint made by the Attorney-General or by the person


aggrieved. Further, section 9 of the Criminal Procedure Code requires a previous written sanction to be issued by the Public Prosecutor before a court can take cognizance of a number of offences under the Penal Code. Other offences under some statutes, including those under the Prevention of Corruption Act, may not be instituted without the Public Prosecutor's consent.

All criminal prosecutions in Singapore are instituted in the name of the Public Prosecutor. Prosecutions in the High Court and for seizable offences in the Subordinate Courts are conducted by

17. Criminal Procedure Code Cap.68, sections 130 to 132.


19. The Public Prosecutor's consent is now being required for an increasing number of offences under various statutes. See for example the Hijacking and Protection of Aircraft Act, Cap.124 section 9 (written consent); Martial Arts Instruction Act, Cap.171 section 38; Chit Funds Act, Cap.39, section 58; Vocational and Industrial Training Board Act, Cap.345, section 59; Official Secrets Act, Cap.213, section 14; Futures Trading Act, Cap.116, section 66.
the Public Prosecutor and his Deputies, or by advocates and persons specially authorised by the Public prosecutor. Other prosecutions in the Subordinate Courts are conducted by Police Prosecutors and other Departmental Prosecutors.

However, as a matter of policy, all prosecutions instituted by the Corrupt Practices Investigation Bureau are conducted by Deputy Public Prosecutors. There are various reasons for this. First, because offences of corruption under the Penal Code are seizable and those under the Prevention of Corruption Act need the consent of the Public Prosecutor before prosecutions may be instituted in respect of them, CPIB officers are compelled to refer their investigation papers to the Public Prosecutor. In respect of suspects who are public servants, legal advice from the Public Prosecutor must be taken in order to determine, either because of the nature of the corrupt act complained of or the available evidence, whether the suspect would be best dealt with by a disciplinary committee. Evidence before such tribunals

is led by Deputy Public Prosecutors.

Secondly, as the CPIB is a small law enforcement agency, it may not be desirable to have some of its officers to act also double as Court Prosecutors. More importantly, the CPIB does not wish to use Police Court Prosecutors to conduct prosecutions on their behalf as they are reluctant to allow police officers access to their files or to be fully aware of their methods of investigations. It will be remembered that the CPIB was formed as an agency separate from the police because of rampant corruption amongst members of the Police Force.

In addition to supervising criminal prosecutions not conducted by his deputies, the Public Prosecutor advises the Police, the CPIB and other law enforcement units and agencies on matters relating to their investigations. Following a direction from the Chief Justice in an appeal case, a Deputy Public Prosecutor has been stationed at the Subordinate Courts to vet all charges tendered in the courts, to re-examine the evidence and to generally advise prosecutors in the conduct of trials.

21. See Chapter V, ante.

22. See Part (B) of this chapter, post, entitled "The Corrupt Practices Investigation Bureau" for a fuller discussion. See also the views of Rigby J. on this matter in Loh Kwang Seang v. PP, [1960] MLJ 271 at 275.
THE ATTORNEY-GENERAL'S CONSENT
TO PROSECUTE OFFENCES OF CORRUPTION

Section 31 of the Prevention of Corruption Act provides that a prosecution for any offence under the Act "shall not be instituted except by or with the consent of the Public Prosecutor". As the section makes clear that the Public Prosecutor's consent is a condition precedent to a prosecution under the Prevention of Corruption Act, the courts have demanded that they be satisfied that the Public Prosecutor or his deputy has fully applied his mind to a particular case before granting his consent as consent "is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil of each side". For this reason, it has been held that a written sanction to prosecute is no proof of consent as a prosecution can be sanctioned, but not consented to,


without any deep consideration of a particular case.

Unlike the English courts, the courts in Singapore and Malaysia have given strict effect to the statutory restriction to the prosecution of persons accused of offences of corruption introduced by section 31 of the Prevention of Corruption Act. For example, in England, no evidence of consent need be given at the trial unless that fact is challenged. In Singapore, however, the burden of proving that the requisite consent has been obtained rests upon the prosecution. In practice, a written consent from the Public Prosecutor is required to be produced by the prosecution and is marked as a court exhibit before each trial commences. In *Lyn Hong Yap v. PP* the Court of Appeal suggested that to avoid difficulties the practice ought to be adopted of accompanying every


application for a summons or a warrant of arrest with the Public Prosecutor's consent in writing and this has been followed in Singapore.

Whilst recognising that section 31 of the Prevention of Corruption Act does not require the Public Prosecutor's consent to be in writing or to be in any particular form, the courts have nevertheless insisted that the consent must show that it relates to the particular case for which the accused has been charged and that it must contain enough facts to identify the case in respect of which the consent has been given. In the absence of this, the prosecution must prove extraneous evidence to show that the consent relates to a particular prosecution.


31. Unless the facts are such that the consent of the Public Prosecutor can be presumed: PP v. Choy Kok Kuan, (1958) 3 M.C. 200. Extraneous evidence can take the form of evidence from the DPP that he had applied his mind to the particular case and had consented (Abdul Hamid, op.cit.), or evidence to supplement inadequate facts stated in the consent: Nagalingam, op.cit.; Berwin v. Donahoe, (1915) 21 C.L.R. 1; Morarka v. King, A.I.R [1948] P.C. 82; Major Som Nath v. Union of India, A.I.R [1971] S.C. 1910. In the appellate court, the mere assurance of counsel for the Public Prosecutor, from the Bar, that the consent was in existence and available at the trial will suffice: R v. Metz, 11 Cr.App.R. 164; Lyn Hong Yap v. PP, [1956] MLJ 226, C.A.
In *PP v. Nagalingam*, the accused was charged with corruptly soliciting a bribe under section 5(a)(i) of the Prevention of Corruption Act. The consent of the Public Prosecutor read as follows:

I, TAN BOON TEIK, Attorney-General and Public Prosecutor of Singapore, in pursuance of the powers conferred on me by section 31 of the Prevention of Corruption Ordinance, 1960 (Ord. 39 of 1960: Reprint No.RS(A) 27 of 1966) and of all other powers hereunto me enabling, do hereby consent to the prosecution of one Nagalingam Mathiyooke @ Ismail bin Abdullah of Singapore for an offence under section 5(a)(i) of the aforesaid Ordinance.

At his trial the District Judge upheld a defence contention that the consent was invalid as it was not a sufficient compliance with section 31 of the Prevention of Corruption Act. On appeal, it was argued that although there was a consent to the institution of a prosecution against the accused, it was not clear whether the consent in question related to the particular case or to some other corruption case involving the accused. It was contended for the Public Prosecutor that the consent, taken with all other

circumstances of the case, clearly showed that it was given in respect of the particular case. The circumstances that were relied on for this submission were that the consent was tendered with the charges against the accused when he was first charged in court, that the accused was charged some two weeks after the consent was signed, and that a Deputy Public Prosecutor had conducted the prosecution before the District Judge.

After noting that the prosecution could have adduced extraneous evidence to show that the consent related to the particular prosecution but had failed to do so, Kulasekaram J. held:

...[T]he evidence regarding the consent must be such that it should be clear from it, as to the facts of which particular case, the Attorney-General had applied his mind and given his consent. It is not sufficient to prove this fact merely as a matter of reasonable inference.

In PP v. Lee Chwee Kiok Harun J. held that the absence of a fresh consent from the Public Prosecutor for the amended charge tendered in the course of the trial made the trial a nullity despite

33. Ibid., at p.20.
the fact that the original charge had the Public Prosecutor's consent and the amendments were only as to particulars of the charge made under the same section of the law under which the accused had been prosecuted.

These authorities place a rather narrow interpretation on the consent provisions in the Prevention of Corruption Act and do not appear to be correct on either principle or authority. There is no magic about the Public Prosecutor's consent which itself need not take any particular form. Its purpose is merely to ensure that the prosecution has been instituted only after the Attorney-General has considered it necessary. This is to protect potential defendants from oppressive and unwarranted prosecutions. It is therefore not necessary "that the Attorney-General should have considered and approved every detail of the charge as it ultimately appears in the indictment". As the English Court of Appeal observed in R v. Cain and Schollick, if the


36. Ibid.
Attorney-General considers that the person conducting the prosecution should be at liberty to pursue any charge under an Act which is justified by the evidence, "there is no objection to his giving his consent in wide terms". The Court of Appeal therefore held in that case that the Attorney-General's written consent which had merely declared his consent to the prosecution of the accused "for an offence or offences contrary to the provisions of the said Act" was valid.

There is no reason why the contents of a written consent signed by the Public Prosecutor should be subject to so much scrutiny especially in a case where the prosecution is conducted by a Deputy Public Prosecutor, as was the case in both Nagalingam and Lee Chwee Kiok. In Nagalingam, Kulasekaram J. recognised that a consent under the Prevention of Corruption Act "need not even be in writing". Why should he insist that if the consent is in writing it should then contain all the facta probanda in respect of the charge? The judge appears to have been unduly influenced by an old decision of the Privy Council in Gokulchand Dwarkadas Morarka v. King. In that case

the Privy Council considered a sanction issued under clause 23 of the Bombay Cotton Cloth and Yarn (Control) Order, 1943, which merely named the accused and the provision of the Order he had contravened. As the facts relevant to the offence were not stated either on the face of the sanction or proved by extraneous evidence to have been placed before the sanctioning authority, the sanction was held to be not a sufficient compliance with clause 23 of the Order.

An important distinction in Morarka's case was that clause 23 required a previous sanction in order to confer jurisdiction on the court to try a case under the 1943 Orders. Further, the sanction had to be issued by the Provisional Government or an officer of the Government not below the rank of District Magistrate. It was therefore important to establish what had in fact been sanctioned. In Nagalingam, what was required for the institution of a prosecution was the mere consent of the chief prosecuting authority (the Public Prosecutor). Not only was that available in writing, but a Deputy Public Prosecutor had conducted the prosecution throughout the trial.

A Deputy Public Prosecutor may himself consent to a prosecution as he may perform any of the
"functions or duties" of the Public Prosecutor under any written law. Therefore, when a Deputy Public Prosecutor appears in person to conduct the prosecution, it should be patently clear that he has consented to the prosecution. Some support for this view appears in the unreported case of Chong Tuck Loong v. PP which was decided in 1952.

In PP v. Oie Hee Koi & Associated Appeals, which was decided in 1968, the Privy Council had occasion to consider the argument that the absence of the Public Prosecutor's consent, which was required under section 80 of the Malayan Internal Security Act, was fatal to a prosecution under section 57(1) of the Act for the offence of being in unlawful possession of ammunition. The Privy Council's response to this argument was delivered by Lord Hodson:

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39. Section 336(3) of the Criminal Procedure Code Cap.68. On this point, see Abdul Hamid v. PP, op.cit., at p.232; Ng Yan Pee v. PP, op.cit., at p.254; Perumal v. PP, op.cit.


42. Ibid., at p.154 applied in PP v. Mohamed Halipah, op.cit.; Perumal v. PP, op.cit.
The answer to his objection is that the Public Prosecutor was himself the Prosecutor and his consent is implicit in his action. The provision in section 80 requiring consent is applicable where prosecutions take place, eg. before a sessions court and the Public Prosecutor is not the actual prosecutor.

The Privy Council's decision in Oie Hee Koi & Associated Appeals means that in corruption trials the nature of the consent issued by the Public Prosecutor can no longer be an issue as these trials are conducted by Deputy Public Prosecutors in the Singapore District Courts. Unfortunately, this decision of the Privy Council was not brought to the notice of the Judge in either Nagalingam or Lee Chwee Kiok although it was followed by the Malaysian Federal Court in Perumal v. PP.

Absence of a valid consent by the Public Prosecutor removes the jurisdiction of the court to hear the case and makes the trial a nullity. As this is a defect that goes to the jurisdiction of the court it cannot be cured by reason of section 396

43. [1970] 2 MLJ 265.

of the Criminal Procedure Code which provides that no procedural irregularities shall vitiate the proceedings unless they have occasioned a failure of justice. Hence, in the absence of a consent, the proper order for the court to make is that the complaint should be dismissed or the accused discharged. An order directing the accused's acquittal is wrong.

In England, since the beginning of the 19th Century, it has become increasingly common for Parliament to require the consent of the Attorney-General before proceedings could be instituted for certain offences in order to restrict the right of a private citizen to initiate a criminal prosecution for such offences. Where, as in Singapore, the criminal process cannot be invoked by private citizens for offences of corruption under the Prevention of Corruption Act, the necessity for a restriction on prosecutions by the use of the device of the Public

45. So held in Lyn Hong Yap v. PP, op.cit. It has been similarly held that the absence of a valid sanction to prosecute is not a defect that is curable under section 396 of the Code: Ng Chuan & Anor v. R, [1948] MLJ 185; Hassan v. PP, [1948-49] MLJ Supp.179, C.A.; Morarka v. King, A.I.R [1948] P.C. 82.


Prosecutor's consent becomes less meaningful. However, the use of the Public Prosecutor's consent has some advantages, especially in view of the proliferation of law enforcement agencies and units in Singapore. It ensures that a prosecution under the Prevention of Corruption Act remains under the control of the Public Prosecutor as it cannot be brought without reference to him. This is important particularly because the Prevention of Corruption Act is so widely drawn that it can be put to vexatious use and a frivolous prosecution for corruption, especially in Singapore, may be disastrous to the reputation of the citizen.

48. Apart from the Police and the CPIB, we have the Central Narcotics Bureau (CNB) and the Commercial Affairs Investigation Bureau (CAID). In addition, many statutory boards and government departments, including the Housing & Development Board, the Urban Development Board, Jurong Town Corporation, Customs, Immigration and Inland Revenue Departments and the Ministry of Environment have their own investigative and enforcement units.

49. For an examination of the provisions of the Act, see Chapter VII, ante. The purpose of requiring the consent was to protect potential defendants from oppressive prosecutions under an Act whose language was necessarily vague and general: R v. Cain and Schollick, op.cit., at p.461.

50. The sanctioning authority is placed somewhat in the position of "a sentinel at the door of the criminal courts so that no irresponsible or malicious prosecution can pass the portals of the Court of Justice"; it is to decide whether or not the credit and reputation of a citizen should be put in peril by means of a criminal prosecution: Indu Bhusan Chatterj v. State, A.I.R [1955] Cal.430; PP v. G. Sadagopan, A.I.R [1953] Mad.785.
It is not particularly clear why no consent or previous sanction of the Public Prosecutor is similarly needed for offences of bribery under the Penal Code.

The requirement for the granting of a consent for offences of corruption re-emphasizes the need for the Public Prosecutor to weigh each prosecution with exceptional care and to ensure that only those who have offended against the spirit of the law, rather than its letter, are prosecuted. Indeed the restriction on prosecutions as a consequence of the consent requirement will no doubt bring about some uniformity in the administration of the Prevention of Corruption Act.

Obviously, the Public Prosecutor will require to be satisfied before issuing his consent that the evidence is capable of at least proving a prima facie case against the accused. Allegations of corruption are easily made but are particularly difficult to

51. Although a previous sanction of the Public Prosecutor is needed for instituting a number of offences under the Penal Code: see footnote 18, ante. Section 6(1) of the Indian Prevention of Corruption Act makes it clear that no court shall take cognizance of an offence of bribery under sections 161 to 165 of the Penal Code without a previous sanction. See generally A.P. Mathur's Commentaries on the Prevention of Corruption Act, 1947, 3rd ed. (Eastern Book Company: Lucknow), Chapter VII.
sustain, and it is significant to note that before the requirement of the Attorney-General's consent to prosecute cases of corruption was introduced in England, there was a marked tendency towards a high rate of acquittals.

On the other hand, it would be wrong to think that in deciding whether or not to consent to a prosecution for an offence of corruption the Public Prosecutor would be concerned only with whether or not the evidence discloses a prima facie case against the person sought to be prosecuted. Consent can be refused on any ground, whether humanitarian, economic or even political, upon which the Public Prosecutor considers a prosecution to be inexpedient in the public interest. If the Public Prosecutor refuses his consent in a particular case, it is unlikely that the courts would intervene in view of the unfettered discretion that Article 35(8) of the Constitution and Section 336 of the Criminal Procedure Code have given the Public Prosecutor to institute, conduct and generally have control and direction of all criminal prosecutions and proceedings.

52. Edwards, op.cit., p.245.
Suppose the Public Prosecutor in Singapore refuses to consent to the prosecution of any Member of Parliament found to engage in a corrupt transaction. Would a remedy of mandamus, which is a wide remedy that has always been available against public officers to see that they do their public duty, not be available to compel the Public Prosecutor to prosecute corrupt Members of Parliament or to give his consent for such a prosecution? Is not the Public Prosecutor required to act according to the wishes of Parliament that enacted the Prevention of Corruption Act, which is an Act "to provide for the more effectual prevention of corruption"? If he does not, would the courts refuse to intervene?

It is submitted that a distinction must be made between the Public Prosecutor's duty to enforce the law in a particular case and his duty to do so in general. A decision not to prosecute a particular offender, reached upon the special circumstances of the case, would be clearly beyond judicial control. For


54. For a fuller development of this argument, see Dickens, op.cit.
such decisions, he is answerable to Parliament alone.

But if the Public Prosecutor, as a matter of principle or for undisclosed reasons, refuses to consent to the prosecution of any category of corrupt offenders, as opposed to an individual offender in a particular case, this might be considered as either a breach of his general duty to enforce the law or a failure to exercise a discretion granted to him by statute. Either ground may constitute a sufficient reason for judicial intervention.

In _R v. Commissioner of Police of the Metropolis ex p. Blackburn_, the English Court of Appeal was of the view that Chief Police Officers were answerable to the law for their general policy of law enforcement and that their policy decisions in this regard were not absolute. The Court of Appeal therefore held that the respondent could be compelled

55. Long bin Samat & Ors v. PP, [1974] 2 MLJ 152 at p.158. On 22 April 1958 the Attorney-General was questioned in the Legislative Assembly by Mr Lee Kuan Yew, then on the Opposition Bench, as to his decision not to prosecute the Personnel & Welfare Manager of the Singapore Harbour Board for corruption: Singapore Legislative Assembly Debates, vol.6, col.36. Such parliamentary control has been demonstrated in England in the Duncan Sanderson case when the conduct of Sir Donald Somervell, the Attorney-General, was investigated by a Select Committee: Dickens, op.cit. p.349.

to discharge his duty to the public to enforce the law. In that case the applicant, a private citizen, had sought an order of mandamus requiring the defendant to reverse a policy decision that no action be taken against clubs for breach of the gaming laws, unless there were complaints of cheating or the clubs had become haunts of criminals. In dealing with the argument on behalf of the Commissioner that the police were under no legal duty to anyone in regard to law enforcement, Lord Salmon observed:

If this argument were correct it would mean that insofar as their most important function is concerned, the police are above the law and therefore immune from any control by the court. I reject that argument. In my judgment, the police owe the public a clear legal duty to enforce the law. ... In the extremely unlikely event, however, of the police failing or refusing to carry out their duty, the court would not be powerless to intervene.

While accepting that the police had wide discretion as to whether or not to prosecute in any particular case, Lord Salmon made it clear that if they refused to do so for any category of offenders, their action would be a clear breach of duty that would be "so improper that it could not amount to an exercise of discretion".

57. Ibid., at pp.904-5.
A compelling argument is that as the common law right of all citizens to proceed against the offender has been displaced by the Prevention of Corruption Act by means of the exclusive consent provision contained in section 31, the remedy of judicial review is available to at least ensure that that discretion is exercised according to Parliament's intention in creating it. Some support for this approach may be obtained from the decision of the House of Lords in Padfield v. Minister of Agriculture, Fisheries and Food. In this case, the Minister had a general duty under the Agricultural Marketing Act to decide whether to refer certain complaints to a Committee of Investigation. He refused to refer a particular complaint because he found it unsuitable for investigation by means of this procedure. The House of Lords held that an Order of Mandamus ordering the Minister to refer the complaint to the Committee of Investigation ought to be issued. Speaking of the Minister's discretion to refer the complaint to the Committee, which is analogous to that of the Public Prosecutor in granting his consent to prosecute offenders of corruption under the Prevention of

Corruption Act, Lord Reid observed:

Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by instituting the Act as a whole and discretion is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.

The reluctance of the courts to consider that their jurisdiction has been ousted in any particular matter is well known. There would therefore seem to be no reason why, if the Public Prosecutor refuses his consent to the prosecution of any category of offenders, the courts should not consider that sufficient grounds exist to justify their control of the Public Prosecutor in the exercise of his powers in respect of the consent provision in the Prevention of Corruption Act.

59. Ibid., at p.1030.

60. As, for example, has been clearly demonstrated in the "ouster clauses" cases in administrative law. See generally H.W.R. Wade, Administrative Law, 5th ed. (1982), pp.598-609.
Apart from the sufficiency of the evidence and special reasons of public policy which make a prosecution undesirable, the main considerations which are generally believed to weigh with the Public Prosecutor when considering an application for his consent under section 31 of the Prevention of Corruption Act are whether the particular case falls within the mischief at which the Act is directed, which will in turn involve a determination as to the intention of Parliament, the policy of the Government in the implementation of the Act and the relevant case law on the various provisions of the Act, and whether the offender, if a public servant, may be more appropriately dealt with by a disciplinary tribunal than by a court of law.

(3) SPECIAL POWERS OF THE PUBLIC PROSECUTOR

Sections 17, 19 and 20 of the Prevention of Corruption Act have granted the Public Prosecutor special powers in order to further assist CPIB and police officers in the investigation and prosecution of corrupt offenders. Similar provisions do not appear in

the English Prevention of Corruption Acts but exist in
the Malaysian Act.

Section 17 of the Act empowers the Public
Prosecutor, "notwithstanding anything in any other
law", by an order, to authorise the Director of the
CPIB, any Special Investigator with the CPIB or any
police officer of or above the rank of an Assistant
Superintendent to make an investigation into an
offence of corruption "in such manner or mode" as may
be specified in the order. The order may authorise an
investigation of any bank account, share account or
any other account in any bank or of any safe deposit
box. Such an order may be given by the Public
Prosecutor if he is satisfied that there are reasonable
grounds for "suspecting" that an offence under the
Prevention of Corruption Act has been committed.
Presumably the bank account to be investigated must be
associated with the suspect.

Section 17(1) protects bank officers who
are required under the Public Prosecutor's order to
disclose information on clients' accounts or to produce
documents or articles deposited with them from any

to 25.
legal action by making the order of the Public Prosecutor sufficient authority for such disclosure or production. Any person who fails to disclose information or to produce documents or articles as are required under the Public Prosecutor's order commits an offence punishable with imprisonment for a term not exceeding one year or to a fine of up to $2,000 or to both such fine and imprisonment.

Sections 19 and 20 grant the Public Prosecutor the power to order inspection of bankers' books and to obtain information as to the possession and movement of property where the Public Prosecutor considers that evidence of the commission of an offence of bribery or the acceptance of any gift or gratification to screen the offender for punishment under the Penal Code, or of an offence of corruption under the Prevention of Corruption Act, by a person in the service of the Government or of a public body is likely to be found thereby. It is not clear why the powers of the Public Prosecutor in sections 19 and 20 are restricted only to the gathering of evidence of corruption by public servants.


64. Cap.224, sections 161 to 165, 213 to 215, and a conspiracy or attempt to or abetment of any such offence.
Under section 19, the Public Prosecutor may authorise the Director of the CPIB, any Special Investigator or any police officer of or above the rank of Assistant Superintendent, to enter any bank in Singapore and inspect any banker's books and make copies of relevant entries in such books. The search of banking documents may include entries relating to the suspect, his wife or child or to a person reasonably believed by the Public Prosecutor to be a trustee or agent for a suspect. The manager of a bank may also be compelled by the Public Prosecutor, under pain of prosecution, to produce copies of such accounts. It is significant, therefore, to note that sections 17 and 19 make further inroads into banking secrecy in Singapore.


67. There is no statutory provision that lays down a general rule of secrecy regarding all accounts. It is, therefore, hardly surprising that there are no reported decisions on the scope and extent of banking secrecy in Singapore. Although section 174 of the Evidence Act (Cap.97), provides that no bank officer shall be compellable in legal proceedings to produce any banker's book or to appear as a witness to prove banking transactions without an order of a High Court judge, a number of statutes have violated the
The enactment of these provisions was justified on the ground that they are useful and make "for less dilatory procedure in the investigation stage in dealing with corrupt public servants".

In addition, section 20(1) of the Prevention of Corruption Act permits the Public Prosecutor, in the course of any investigation or proceedings relating to an offence of corruption by a government servant or member of a public body, by written notice, to:

a) require the suspect or accused to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or in possession of himself, his spouse or children;

b) require such person to furnish a sworn statement in writing of any money or property sent out of Singapore;

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traditional concept of secrecy. See for example the Banking Act, Cap.19, s.42; Internal Security Act, Cap.143, s.77; Criminal Procedure Code (Cap.68), s.58(1); Income Tax Act (Cap.134), s.65B; Kidnapping Act, Cap.151, s.6.

68. Singapore Legislative Assembly Debates (1960) vol.12, col.379.
c) require any other person to furnish a similar sworn statement listing all property belonging to or in his possession, where the Public Prosecutor has reasonable grounds to believe that such information "can assist the investigation".

The wide powers of the Public Prosecutor become more apparent when one considers that section 20(1) compels public servants and bankers, who have traditionally been prevented by law from disclosing secret information in their possession or who have been guarded by secrecy provisions, to make disclosures. Thus, "notwithstanding the provisions of any written law or any oath of secrecy to the contrary", the Comptroller of Income Tax, upon receipt of a written notice from the Public Prosecutor under section 20(1) of the Act, is required to furnish all information available to him relating to the affairs of a suspect or his spouse or child and to produce any document in his possession relating to the matter. Similarly, any person in charge of any Government department or the president, chairman, manager or chief executive of any

public body may be required to produce any document in his possession that is required by the Public Prosecutor. Failure to comply with the written notice by the Public Prosecutor to furnish information or to produce documents is an offence punishable with a fine of up to $2,000 or to imprisonment for a term not exceeding twelve months or to both.

Parliament has recognised that the special powers of investigation in sections 17, 19 and 20 of the Act are indeed wide and has, therefore, made them exercisable only at the instance of the Public Prosecutor. These special powers are certainly useful in the difficult task of gathering evidence of corrupt practices and strengthen the hands of the CPIB in its work.

THE CORRUPT PRACTICES INVESTIGATION BUREAU

One of the main reasons why Singapore is able to remain "a sequin of probity on the soiled cloth of South-East Asia" is undoubtedly the efficiency of its Corrupt Practices Investigation Bureau (CPIB), a law enforcement agency primarily charged with the task of investigating and prosecuting all forms of corruption in the public and private sectors and malpractices in the public sector in Singapore. The CPIB's name in Chinese, the language of more than 76% of the population, is both formidable and forbidding: "Foul Greed Investigation Bureau", but the Bureau is generally considered by all citizens to be Singapore's most feared law enforcement agency. In the words of one observer:

In the Singapore bureaucracy, the CPIB is feared as the PAP leadership's all-seeing eye and reputed for its near-clockwork efficiency and its sophisticated operational methods.

Despite the fact that the CPIB is a small investigative agency which is barely 34 years old, the Bureau's success as a law enforcement body has been


almost phenomenal and it has gained both the respect
and confidence of the public.

The CPIB has also gained the reputation of
being one of the most efficient anti-corruption
agencies in the world and regularly helps train
officers from many parts of Asia and Africa, including
Hongkong, Malaysia, Brunei, Zambia and Tanzania.

Yet for all its success, very little is known
of the workings of the CPIB. The Bureau maintains a
low profile and is content to perpetuate the mystery
and awe that surround its existence and to remain a
silent but effective law-enforcement agency. It does
not publish statistics relating to its work nor any
report of its activities although it presents a
detailed annual report of its work to the Prime
Minister's office. Because of this and "partly
because of the nature of its work and partly because
of the lack of access to relevant data which are
3 confidential", very little research has been done on
4 the CPIB and its operations.

3. Jon S.T. Quah, Administrative and Legal Measures
   for Combating Bureaucratic Corruption in
   Singapore, Occasional Paper No. 34 (1978),
   Chopmen Enterprises, Singapore.

4. There are only two articles which give some inside
   information on the workings of the CPIB. One was
   written by a law student who was able to interview
With the assistance and co-operation of the present Director and a number of past Directors of the CPIB, and after an examination of such primary sources as parliamentary debates, financial documents, newspaper reports and annual reports of government institutions, an attempt has been made in this chapter to describe the CPIB's history and evolution and its organisation and operations. This should help to better evaluate an institution that plays a central role in the control of corruption in Singapore.


5. Mr Evan Yeo, the present Director, spoke to me on Aug. 19, 1986 and Aug. 25, 1986, on the work of the Bureau and very kindly made available various statistics. I am also grateful to Mr Wong Chooi Sen, Secretary to the Prime Minister, for his assistance in this regard. Mr R.B. Corridon granted me an interview at his home at Weybridge (Surrey), England, in June 1982 and has since taken an active interest in my work. Interviews were also granted to me by Mr R. Middleton-Smith, the first Director of the CPIB, at his home at Wadhurst, England, on Oct. 5, 1984, and by Mr Yoong Siew Wah on July 15, 1986. Unfortunately, I was unable to see the late Mr P. Rajaratnam, who was CPIB Director between 1959 and 1960 and from 1971 to 1980, before his sudden death in Brunei in 1983. This study is the poorer for this as Rajaratnam had written to say that I was "welcome to study the workings of the Bureau and how we tackle problems of corruption."
HISTORY AND EVOLUTION

The CPIB was established in late 1952 partly in response to calls from members of the Legislative Council for greater government effort in combatting corruption, and partly because of revelations by a government inquiry team of the extent of police corruption in Singapore. Prior to 1952, offences of corruption were investigated by police officers in the Anti-Corruption Branch of the Criminal Investigation Department.

Corruption in the 1950s was rampant within both the Police Force and other branches of the Public Service. Successive Police Commissioners in Singapore reported on the good relations between the public and the police being threatened by corrupt policemen and corrupt citizens. In 1950 the Commissioner of Police, Mr J P Pennefather-Evans, further lamented:

6. For a brief description of the work of the Anti-Corruption Branch, see the Annual Report of the Singapore Police Force (Government Printer, Singapore) for the years 1948 to 1952.

7. See, for example, the Annual Report of the Singapore Police Force for 1948 and 1949, Government Printer, Singapore.

There is no gainsaying that graft is rife in government departments. Although successful attacks have been made against corruption in the Police Force, the Customs Department, the Income Tax Department and other government and public bodies, there remains a very great deal of purging to be done. There is a tendency to overlook the extent to which authority can be undermined and crime and malversation can flourish if bribery is permitted to continue unchecked.

British Army officers in charge of local purchases and surplus army goods, too, were enriching themselves at the expense of local contractors. And charges of corruption during the 1951 election campaign for representatives in the Legislative Council were frequently made.

In February 1952, Mrs Elizabeth Choy, a member of the Second Legislative Council, criticized the colonial government for its "weak and feeble attempt" in fighting corruption. She told the Council:

What we must have is strong, nay, the strongest possible action to stamp out its evil before it grows to such gigantic proportions that we are unable to curb it. A few plans had been proposed by the Anti-Corruption Branch and I strongly urge that government should take the quickest possible action to put them into practice.

9. See, for example, "CID on Trail of Corruption", Straits Times, March 27, 1951; "Probe Bribery Charges Call", Straits Times, April 14, 1951.

While admitting that the state of corruption in the country was gnawing at "the vitals not only of Government but of the public", the Chief Secretary's only response to Mrs Choy's criticism was that there was "only one answer in this corruption business, and that is that the public shall come forward and give the information". This merely demonstrated the vicious circle that the colonial government was helping to perpetuate in the matter. The public were unwilling to come forward with information unless it was confident that the government was earnest in its anti-corruption efforts and the government was reluctant to improve its anti-corruption machinery without being sure of public co-operation in the matter.

The suggested proposals for reforms that Mrs Choy had referred to included an amendment to the Prevention of Corruption Ordinance to allow police officers, above the rank of Assistant Superintendent of Police, to investigate into the bank and post office savings accounts of any public servant, to use such

11. Ibid., col. B 70.
12. Ordinance No. 41 of 1937. The proposed amendments to the law were not made until 1960. For a fuller discussion, see Chapter VIII, ante.
findings as evidence in court, to separate the Anti-Corruption Branch from the Police, and to increase the strength of the Branch considerably.

There were a number of reasons why the Anti-Corruption Branch (ACB) of the Criminal Investigation Department (CID) had by then become ineffective in combatting corruption in Singapore. First, it was working under severe restraints in both manpower and other resources. In 1950, the ACB was a small police unit comprising 1 Superintendent, 1 Assistant Superintendent, 2 Inspectors and a few detectives to combat a vice "which has gripped and is waxing fat on government and, in some instances, commercial enterprise". The ACB was part of the CID which was charged with the responsibility of eradicating a number of vices including secret societies, commercial crime, prostitution, narcotics and gambling, all of which made equal demands on its time and resources. The police were succeeding in only uncovering cases of petty corruption.

13. Quah, op.cit.
Finally, the Anti-Corruption Branch's failure to be an efficient and effective anti-corruption agency was due to the prevalence of corruption amongst members of the Police Force of which it was a part. Some of the police officers and detectives involved in protection rackets connected with smuggling opium and gold and gambling were said to be "household names" in the underworld. The ACB was therefore probably regarded by a cynical public as more of a wolf employed to watch over the flock than as a conscientious watchdog.

In the result, despite widespread corruption in the country, the police received very few reports of corruption from the public. As shown in Table 4 below, in the seven years from 1946 to 1952 when the CPIB was established there were only 122 reports of corruption lodged with the police. After 1953, when the Bureau became fully operational, there was a substantial and continuous fall in the number of reports of corruption made to the police with only 3 reports being lodged in 1958 and 2 reports each in 1957 and 1959.

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TABLE 5: Reports of Corruption Made to the Police (1946 - 1959)

The establishment of an independent anti-corruption agency separate from the Police Force was finally made imperative by the findings of an investigation team that inquired into an event that

occurred in October 1951. A consignment of opium worth about $400,000 was hijacked by a gang of robbers which included a number of police officers. A special team under a Malayan civil service officer named Middleton-Smith, a senior secretary in the Labour Department, was appointed by the government to investigate the circumstances of the robbery.

16 Mr Middleton-Smith is now unable to remember details of the findings of his team, but some accounts of the report of the investigators show that the hijacking had resulted from rivalry between two police factions involved in a "protection" racket. The consignment of opium had been picked up from the beach for distribution by one group of corrupt police officers and hijacked by another. Although a number of senior police officers were implicated, only one Assistant Superintendent was dismissed and another officer retired in the public interest. The Colonial Secretary was now plainly concerned with discovering the extent of corruption in the Police Force and as to "how high it was going".


The government was finally persuaded of the necessity of setting up an anti-corruption bureau independent of the Police Force. Consequently, in October 1952, the Corrupt Practices Investigation Bureau (CPIB) was established under the Chief Secretary. Mr R. Middleton-Smith (who was responsible for giving the Bureau its name), who had headed the special investigation team in 1951, became the first Director of the CPIB. He was assisted by R.B. Corridon, who was transferred from the Special Branch in Kuala Lumpur and who was later to become the Bureau's Director, ASP Finch and a Chinese affairs officer from the CID named Listering.

At a press conference on 28th October 1952, shortly after the CPIB was formed, Mr W.L. Blythe, the Colonial Secretary, revealed that the Bureau had received "a good deal of information as to (corrupt) individuals and departments". He urged the public to give detailed information as it was important to know the system by which bribes were solicited and received, and hinted that there was a system of reward for information received. The Colonial Secretary was at pains to explain to the public that the CPIB was not

a Commission, of the kind that then existed in Malaya, which merely received evidence of corruption and put up 20 reports:

This is an executive Bureau which on receipt of information delves into that information, follows up the tracks that are produced by investigating that information and then finds the conclusion: whether it be prosecution or disciplinary action in Government Service or whatever action is necessary.

In the early years of its formation, the CPIB was plagued with numerous problems. To begin with, it experienced great difficulty in gathering evidence against corrupt public servants. Even at the best of times evidence of corrupt transactions is not readily forthcoming, but the war had just ended seven years earlier and the climate was still one of fear and distrust. The public were afraid to report offences of corruption and almost no officer was willing to identify a corrupt colleague or senior officer.

In some government offices, such as the Singapore Improvement Trust, a symbiosis existed between corrupt expatriate and the local junior officers because they


needed each other to carry out corrupt transactions successfully.

As was to be expected, the Bureau was resented by the police. Police officers were not exactly ecstatic over a new law enforcement agency that had emerged largely because of their own failings and one which they perceived to have been ostensibly set up to police the police.

Officers of the Bureau also found that they did not have a free hand in investigating and prosecuting all offences of corruption and especially those committed by persons with influence in "high" places. Corridon, for example, remembers investigating a senior police officer in the CID only to be subsequently told to leave the man alone as the suspect's seniors were pleased with his anti-secret society work in the Police Force. Even as late as April 1958, Mr Lee Kuan Yew, who was then on the Opposition Bench, expressed his


24. Ibid.
disgust at the refusal of the Attorney-General to disclose reasons in Parliament for not prosecuting or taking disciplinary action against the corrupt Personnel & Welfare Manager of the Singapore Harbour Board, an expatriate officer, who was subsequently shipped home.

The difficulties encountered by CPIB officers in investigating senior civil servants were compounded by the fact that until 1970, the CPIB was placed under various ministries and was required to function on the instructions of Permanent Secretaries in those ministries. Until it came under the fold of the Prime Minister's Office in 1970, the Bureau was successively under the Chief Secretary's Department, the Ministry of Home Affairs, the Attorney-General's Chambers and the Ministry of Law & National Development.

Finally, until June 1960, the CPIB received no statutory recognition of its existence. Consequently, the powers of investigation of its officers were undefined and uncertain. Could they

25. Singapore Legislative Assembly Debates, vol.6, col.36.
continue with investigations that disclosed an offence but not that of corruption? Were CPIB investigators police officers for the purpose of exercising the powers of investigations under the Criminal Procedure Code? If they were not, what powers of investigation, if any, did they have? That this was a matter that also caused some judicial concern is shown in the judgment of Murray-Aynsley C.J. in the 1954 case of 27 Lian Teck Chew v. R:

Considerable difficulty was caused in presenting the case in the court below by section 125 of the Criminal Procedure Code. The investigation was carried on under the auspices of a non-statutory body known as the Corrupt Practices Investigation Bureau. It was, however, treated, rightly or wrongly, as a police investigation for the purpose of that section, with the result that statements made by the appellant were excluded.

In investigating non-seizable offences (offences punishable with less than 3 years imprisonment), CPIB officers had no powers to require witnesses to attend before them in order to examine them or record statements from them. Nor did they have powers of arrest or search and seizure without a warrant from a magistrate. As a result, they adopted

the rather circuitous process of proceeding against a suspect initially in respect of seizable offences under sections 161 to 165 of the Penal Code and later amending the charges under the Prevention of Corruption Ordinance.

It took a change of government and new legislation before the existence of the CPIB was even acknowledged in an Act of Parliament and for CPIB officers to be conferred powers of investigations similar to those of police officers.

The Prevention of Corruption Ordinance of 1960 made provision for the first time for the appointment of the Director and officers of the CPIB and for the appointment by the Director of special investigators. The Ordinance also granted the Director and his officers powers to arrest persons concerned with...
seizable offences under the Ordinance, to search and seize incriminating documents under a warrant issued by a Magistrate or the Director of the CPIB unless such a warrant would result in delay sufficient to "frustrate the object of the search", and the power to require a suspect to give information on the circumstances leading to the commission of the offence.

Until 1963, however, neither the Director nor his Special Investigators had powers to require the attendance before him, for the purpose of questioning, any person believed to be acquainted with the circumstances of a case under investigation or to record a statement following such questioning. Police officers on the other hand had been empowered, at least in seizable offence, to summon suspects before them for questioning and to record voluntary statements from them from 1960 when such statements were first made admissible in evidence.

31. See now sections 17, 18, 21 and 26 of the Prevention of Corruption Act, Cap. 241.

32. See the Prevention of Corruption (Amendment) Ordinance, No. 6 of 1963, sections 16A and 16B.

33. For a fuller discussion, see Chapter VIII (C)(6), supra; Chandra Mohan, op.cit.; Chandra Mohan, "Police Interrogation and the Right of Silence in the Republic of Singapore, [1986] 2 MLJ xxviii.
It was only in 1966 that the Prevention of Corruption Act was amended to permit CPIB investigators to exercise all the "special powers" of investigation conferred by the Criminal Procedure Code on police officers investigating seizable offences. Section 16 of the 1960 Ordinance was amended to enable CPIB officers investigating offences of corruption under the Penal Code or the Prevention of Corruption Act or any seizable offence, without an order from the Public Prosecutor, to require witness to attend before CPIB officers, to question and record statements from them, to search for documents and other relevant exhibits and to require witnesses to execute a bond to ensure their appearance in court.

Therefore, despite considerable difficulties in obtaining evidence of corruption, CPIB officers were denied the same powers of investigation as police officers until some 14 years after the CPIB was first established. As has been previously seen, their present powers to investigate into non-seizable

34. No. 10 of 1966.

35. See now section 16 of the Prevention of Corruption Act, Cap.241 and section 118 of the Criminal Procedure Code, Cap.68.

36. Chapter VIII (C), ante.
offences, to examine bankers books and documents or to require information as to the position of property by third parties are all subject to an order issued by the Public Prosecutor.

(2) STRUCTURE AND ORGANISATION

Unlike in Hongkong, there is no legislative instrument in Singapore which describes either the functions or the duties of the CPIB or its officers. Although the CPIB clearly plays both enforcement and preventive roles in corruption control, there is very little public knowledge of the Bureau's preventive work. The absence of a published report of its activities and of a public relations committee to publicise its preventive work, coupled with the publicity given in the media for its enforcement activities, have resulted in the Bureau being generally considered only as a law enforcement agency.

37. Section 12 of the Hongkong Independent Commission Against Corruption Ordinance, 1974, lists the duties of the Commissioner which include educating the public against the evils of corruption and enlisting public support in combating corruption.
The CPIB's functions, however, may be listed as follows:

a) the investigation of corruption in both the public and private sectors and malpractices in the public sector;

b) the review of administrative weaknesses in the public sector that provide avenues for corruption;

c) the screening of officers for appointments and promotions in the public service.

The Bureau's administrative structure is shown in the organisation chart below. To function more effectively, the CPIB is divided into three branches:

a) The Investigations Branch.
b) The Data Management & Support Branch.
c) The Administration Branch.

Chart 2: Organisation Chart of the CPIB (as at 1st June 1986)
Each unit in the Investigation Branch is headed by a Senior Assistant Director or Assistant Director who is in overall charge of the unit which examines complaints of corruption and malpractice received by the CPIB and which it considers worth pursuing. Investigation papers that are prepared by the investigators are then sent to the Director of the CPIB. The Director in turn reviews the evidence gathered by the special investigators and, if satisfied with the investigations, submits the investigation papers to the Attorney-General's Chambers for a final decision as to whether to prosecute the suspect in court or, if he is a public servant, to subject him to disciplinary proceedings. The Director makes a recommendation in this regard in all cases having regard to only the strength of the evidence. Although his recommendations carry much weight, the final decision remains with the Public Prosecutor. Unlike its Malaysian counterpart, the CPIB does not have a Prosecution Branch manned by lawyers to handle prosecutions in court.

40. As informed by Senior Deputy Public Prosecutors during interviews with them.
The Data Management & Support Branch is responsible for developing the Bureau's Computer Information Systems which will be fully operational in 1987. It is this branch which spearheads the Bureau's corruption prevention strategies.

A three-man research unit in the Branch undertakes research into the working procedures of corruption-prone public service departments to discover if there are existing administrative weaknesses which encourage corruption or are conducive to it. The Research Unit has, for example, examined such diverse matters as containers' clearing and sealing procedures in the Port of Singapore Authority, record keeping in the Development & Building Control Division of the Ministry of National Development and admission procedures of the Ngee Ann Polytechnic.

The Research Unit frequently examines cases of corruption that have been successfully investigated with a view to analysing new methods and opportunities for corruption that have emerged in government departments and which require preventive and other remedial action. For example, CPIB revelations of a

million dollar souvenir magazine racket, in which civil servants were bribed or tricked into sponsoring magazines which were then held out to have been "government sponsored", resulted in the Finance Ministry ordering all government employees "to stop giving patronage to souvenir publications".

The Bureau's senior officers are also available for consultations when Permanent Secretaries review the anti-corruption measures in their departments once in three to five years as required by the Instruction Manuals.

The Data Management & Support Branch also undertakes the delicate task of screening public service officers for appointments and promotions in the public service and those considered for scholarships and training courses for any record of corrupt activities. In this regard, the Bureau is fair and only reports an officer's proven acts of corruption or brings to the notice of the Public Service Commission or the department concerned signed reports of corruption against the officer, which are currently

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42. Straits Times, July 30, 1969. For other examples, see Jon S.T. Quah, op.cit., footnote 3.

43. More fully discussed in Chapter IV, ante.
under investigation. In addition, the Bureau also screens applicants for citizenship and government contracts. The CPIB received 43,049 requests for screening in 1983, 60,347 in 1984 and 56,623 in 1985. The number of requests fell in 1985 as the screening of contractors was largely done by a new central agency, the Construction Industry Development Board.

The Administration Branch is engaged in such support services as planning and finance and personnel administration.

The Bureau does not have a public relations or a community relations branch as does the Hongkong ICAC to publicise its activities or to educate the public against the evils of corruption or to promote moral standards or civil responsibility.

44. "The Yeo Interview", op.cit., footnote 5.
45. CPIB statistics.
46. The Hongkong ICAC's Community Relations Department had in 1984 a staff strength of 253 and had two divisions - the Mass Media and Education Division and a Liaison Division which maintained local offices in densely populated districts. See the Annual Report of the ICAC for 1984, Government Printer, Hongkong.
The CPIB plainly does not see the need to give publicity to its existence in order to encourage the public to come forward with information to the Bureau or even to create public awareness of Singapore's anti-corruption laws.

In the last 34 years, the Bureau has already won both public recognition and confidence with an impressive record for law enforcement. This partly helps to explain why the CPIB has received an average of 1,400 reports and other information each year for the last 11 years.

Indeed, because of existing public support for the Bureau's work, it might be considered offensive to maintain a campaign to publicise the Bureau's existence or to exhort the public not to offer bribes to the extent as is done in Hongkong, in posters and advertisements, or even to educate the citizens on Singapore's anti-corruption laws. Rather, the subject of the Bureau's education programmes have been public

47. See Table 7.2, post, and the accompanying text for a fuller discussion.

servants. The Bureau's senior officers participate in regular courses attended by government officers and those employed in the statutory boards to appraise them of the nature of corrupt practices in Singapore, the common areas and opportunities for corruption and the methods employed to subvert public officers. The Director also regularly

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>POPULATION</th>
<th>STRENGTH OF CIVIL SERVICE</th>
<th>ANTI-CORRUPTION AGENCY</th>
<th>YEAR ESTABLISHED</th>
<th>STAFF STRENGTH</th>
<th>BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>SINGAPORE</td>
<td>2.53 m</td>
<td>69,298</td>
<td>Corrupt Practices Investigation Bureau (CPIB)</td>
<td>1952</td>
<td>74</td>
<td>S$ 4.09 m (£ 1.51 m)</td>
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<tr>
<td>MALAYSIA</td>
<td>15.26 m</td>
<td>868,000</td>
<td>Anti-Corruption Agency (ACA)</td>
<td>1967</td>
<td>1,100</td>
<td>M$17.09 m (£ 5.69 m)</td>
</tr>
<tr>
<td>HONGKONG</td>
<td>5.39 m</td>
<td>170,051</td>
<td>Independent Commission Against Corruption (ICAC)</td>
<td>1974</td>
<td>1,172</td>
<td>HK$125.17 m (£12.90 m)</td>
</tr>
</tbody>
</table>

**TABLE 6:** Comparison of 3 Anti-Corruption Agencies (1984).

lectures to senior civil servants at the Civil Service Institute on the pattern of corruption in Singapore and on the implication of the Republic's anti-corruption laws.

The CPIB is a small agency when one considers the size of the civil service of 69,298 (excluding an almost equal number of Statutory Board employees) that it principally monitors. As shown in Table 6 above, in 1984, the Bureau operated with a staff strength of 74 and a budget of £1.51 million. During the same year, the Hongkong ICAC watching over a civil service of 170,051 (about 3 times that of the Singapore civil service) had a staff of 1,172 (almost 16 times more than the CPIB staff strength) and a budget of £12.09 million (8½ times the CPIB budget). The Singapore Bureau has, however, demonstrated that there is no obvious co-relation between the size of an anti-corruption agency and its effectiveness in controlling corruption.
The CPIB began in late 1952 as a small enforcement agency with limited financial resources. As shown in Table 7 below, from an initial allocation of $502,200 in 1953, of which only $199,035.08 were utilised, the budget allocated to the Bureau has increased to $4,329,910 for the financial year 1986/1987. The Bureau's budget increased by 221.1% from $282,850 in 1963 to $625,270 in 1973, and again by 489.6% to $3,061,230 in 1983. When one considers the amounts in fines and penalties recovered from offenders brought to court by the CPIB, the cost to the State in running the Bureau is little. For example, in 1984, whilst the actual expenditure of the CPIB amounted to $3,451,542.77, the amount of fines and penalties amounted to 75.9% of this amount or $2,619,638.32.


50. Financial Statements for the Year 1984/85; CPIB statistics.
<table>
<thead>
<tr>
<th>YEAR</th>
<th>MANPOWER</th>
<th>OTHER EXPENDITURE</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td></td>
<td>AMOUNT</td>
<td>%</td>
<td>AMOUNT</td>
</tr>
<tr>
<td>1953</td>
<td>(Not Available)</td>
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<td>502,200</td>
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<tr>
<td>1958</td>
<td>213,560</td>
<td>84.39</td>
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<tr>
<td>1959</td>
<td>207,270</td>
<td>84.36</td>
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<td>1960</td>
<td>178,710</td>
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<td>215,790</td>
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<td>1968</td>
<td>251,770</td>
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<tr>
<td>1978/79</td>
<td>895,290</td>
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<td>322,900</td>
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<td>1983/84</td>
<td>2,189,390</td>
<td>71.51</td>
<td>871,840</td>
</tr>
<tr>
<td>1986/87</td>
<td>2,661,700</td>
<td>61.47</td>
<td>1,668,210</td>
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</table>

**TABLE 7:** CPIB Budget Allocation for Selected Years between 1953 and 1986.

At least from the 1960s, lack of finance was not one of the Bureau's problems. Unlike many heads

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of government departments, no Director of the CPIB has felt compelled to curtail the activities of his organisation or make stringent administrative adjustments because of financial constraints. In fact, according to Yoong, it was understood that additional funds would always be made available to the Bureau if these were needed.

It is interesting to note from Table 7 that although the coming into power of the People's Action Party in 1959 had no obvious effect on the finances of the CPIB, the transfer of the Bureau to the Prime Minister's Office in 1970 brought a significant 186.5% increase in the Bureau's budget allocation.

The budget allocation of $4.3 million for 1986/87 is made up of a sum of $2.6 million for

51. For example, in May 1977 the Commissioner of Inland Revenue appeared before the Public Accounts Committee to bitterly complain how the Ministry of Finance had constantly refused his applications for increases in manpower, equipment and office space, resulting in $22.2 million in taxes not being collected: Report of the Public Accounts Committee, Parl.2 of 1977, pp. E1-E22.


53. Even making allowances for the fact that because of changes to government account keeping in that year, the allocation in 1970 was for a 15-month financial year.
manpower expenditure (61.5%) and $1.66 million (38.5%) for other expenditure incurred in the operations of the Bureau. These include maintenance, rent, utilities, equipment, supplies and materials.

Another head of operating expenditure from a secret vote and variously described in financial documents as "other services" and "special services" has been allocated a substantial sum of $380,000 for the financial year 1986/1987. Part of this sum has been set aside for some of the Bureau's surveillance operations of a highly confidential nature with the balance being reserved for the payment of informers who give information to the CPIB on various acts of corruption and malpractices. A system of financial rewards for information given has existed from the time the CPIB was established in 1952.


55. Ibid. Even in 1976 when this vote of expenditure was last described as "special services" the amount allocated was $200,000. For the Financial Years between 1982 and 1985 the amounts allocated were $300,000, $340,000 and $350,000 respectively. See the Financial Statements for the years 1976, 1982-1985.

56. It was announced at a press conference by the Colonial Secretary: "Blythe: Battle Against Graft Fraternity On", Singapore Tiger Standard, October 29, 1952.
In the last 15 years, the Bureau has experienced a growing reluctance of informers to accept payment for information given by them. In a recent case, an informant who had helped expose a big corruption racket was even distressed when told that he was entitled to a reward. The fact that more and more citizens are coming forward to give information to the CPIB only because of a genuine desire to keep clean the conduct of public and private businesses, augurs well for the future. In the final analysis, a high standard of public morality remains one of the most potent weapons for combatting corruption.

STAFF

The CPIB began in a small office at the Supreme Court Building with a staff which included only five investigators and supervisors. In the early years of its formation, the Bureau was staffed by officers seconded from the Police Force and from various government ministries. A number of police officers

58. Establishment List 1953, Colony of Singapore.
of proven integrity were brought over to the CPIB to occupy the posts of senior investigators and supervisory staff. Their investigative skills were necessary to detect and prosecute cases of corruption as the Bureau had insufficient trained staff of its own. In 1963, all police officers, except those serving in senior posts, were replaced with civilian officers. Until the present day, the post of the Director has been filled by officers who have held senior appointments in the Police Force.

Until 1966, neither the government nor the Public Service Commission concerned itself with the appointment of special investigators and this was a matter left entirely to the Director of the Bureau. After 1966, the Public Service Commission recruited officers directly into the CPIB from amongst graduates and GCE 'A' Level holders. Such recruits are first required to undergo at the Police Academy the same basic training as is required of Probationary Inspectors of Police. CPIB investigators are also sent abroad for training, principally in the United Kingdom, United States of America and Hongkong.

60. Tan Teow Yeow, op.cit.
As shown in Table 8 below, staff strength increased by 65.5% from 36 in 1965 to 55 in 1975, and by another 77.5% to 71 in 1985.

<table>
<thead>
<tr>
<th>Year</th>
<th>No.</th>
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<td>1965</td>
<td>36</td>
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<tr>
<td>1969</td>
<td>33</td>
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<td>1970</td>
<td>50</td>
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<td>1971</td>
<td>51</td>
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<td>1975</td>
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<td>1980</td>
<td>76</td>
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<tr>
<td>1984</td>
<td>74</td>
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<tr>
<td>1985</td>
<td>71</td>
</tr>
<tr>
<td>1986</td>
<td>71</td>
</tr>
</tbody>
</table>

**TABLE 8:** CPIB Staff Strength for Selected Years between 1965 and 1986

The Bureau presently has a staff of 71 employees which includes the Director, Deputy Director, a Senior Assistant Director, 3 Assistant Directors and 54 investigators. The remaining employees are engaged in support services such as planning, record keeping and financial and personnel administration. Of the 71 officers presently with the Bureau, 60 or 84.5% are involved in investigative and supervisory duties and 11 or 15.5% with administrative duties. In addition, the

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CPIB obviously has to rely upon professional experts such as auditors, architects and engineers to assist in its investigations into some cases of corruption.

The difficult tasks of recruiting, training and retaining honest and efficient investigators remain. Investigators are required to be dedicated, persevering and to work long and irregular hours as corruption does not occur only during office hours. The terms and conditions of service are explained to them on their enlistment and they are told that it is for this reason that they are paid a high salary and enjoy Division I status in the Civil Service. Junior officers work in shifts to remain on duty for 24 hours 7 days a week to receive complaints of corruption from members of the public.

There was some public concern in 1978 when 6 out of 28 CPIB investigators resigned within the first 5 months of the year over alleged dissatisfaction with work and conditions within the Bureau. Although newspaper reports of the resignations only brought the


63. For press reports, see "CPIB hit by spate of resignations", Straits Times, May 15, 1978.
response that "there is no room for slackers in the CPIB" from the then Director of the Bureau, the afternoon paper New Nation was moved to comment editorially on the resignations:

Whatever the reasons for the resignations, law enforcement by anti-corruption officers is expertise not easily replaced. Graft needs experienced handling if it is to result in a court conviction. There can be no doubt that the vacancies that have arisen will be filled. It has to be so because of the special responsibility the department carries. One of the chief reasons for Singapore's success lies in the thoroughly uncompromising manner in which the CPIB does its unenviable work. Because the CPIB cannot for a moment lower its guard, there cannot but be concern over the increased workload now placed on the shoulders of those who stayed and the other implications of those resignations.

The staff problems of 1978 have not repeated themselves. The Bureau has been fortunate in that it has developed a core of efficient, honest and dedicated investigators who are committed to the cause of controlling corruption in Singapore. Staff morale is high because of the status that CPIB officers enjoy as members of a totally independent, elite and successful anti-corruption agency which functions under the Prime

64. Rajaratnam, op.cit.
Minister.

The age-old question as to who is to police the police, however, remains more acutely with the CPIB. The Bureau's officers exercise immense powers, are generally "result orientated" and, unlike police officers, are not obliged to adhere to any written code of conduct in respect of their official duties. The CPIB functions very much on its own particularly in the absence of advisory or watchdog groups or of

66. That the Bureau's independence is important for staff morale has been proved in Hongkong where a partial amnesty granted by the Governor, following police protests in 1977, as a result of which 83 outstanding investigations against policemen were discontinued created a "drop in morale among many of its (ICAC) staff". See the Annual Report of the ICAC for 1983, Government Printer, Hongkong, p.22.

67. Except for the provisions in the Instruction Manuals which apply to all civil servants. Police officers are in addition governed by Police General Orders, the breach of which may subject them to disciplinary proceedings. See Chapter VII post, for a fuller discussion.

68. Hongkong, for example, has four advisory committees to help the ICAC: The Advisory Committee on Corruption which advises the Commissioner on any aspect of the problem of corruption and scrutinises the ICAC's policies and annual reports; the Operations Review Committee which reviews all complaints of corruption received by the ICAC; the Corruption Prevention Advisory Committee which reviews ICAC reports about policies and procedures of government departments which may be conducive to corruption and the Citizens Advisory Committee on Community Relations. For more details, see the Annual Report of the ICAC and Ten-Year Review, 1983, op.cit.
any parliamentary scrutiny of an annual report of its activities.

Some lapses in rectitude and propriety in the official conduct of CPIB officers which have surfaced in the last 30 years, emphasize the need for vigilance to keep away or remove from the ranks of the Bureau, officers who are potentially corrupt.

In 1965, for example, Chua Boon Swee, former CPIB Special Investigator, and Yip Thin Choy, a Government Building Inspector, were jointly convicted under the Prevention of Corruption Act of giving a bribe of $5,000 to Special Investigator Lim Meng Wee in order to induce Lim to extract incriminating documents from a CPIB file which was to be offered in evidence at disciplinary proceedings against the building inspector. Another CPIB officer was charged with assaulting a suspect during interrogation at the Bureau in 1969. In February 1970, CPIB Special Investigator Kallyapan was convicted of forging four cheques which he had seized whilst investigating alleged malpractices.


70. See Ee Yee Hua v. PP, [1969] 2 MLJ 123.
by some police officers in respect of the Airport Auxiliary Police Welfare Fund. Again in 1985, another special investigator was charged with abetting a businessman in cheating the Urban Rural Authority by displaying a photo-copy of the officer's special car label to park at the Hill Street Centre where the CPIB is situated.

In a small Bureau of 60 investigators, it is of course neither possible nor desirable to devise elaborate monitoring procedures whereby one half of the Bureau's staff is constantly watching the other half. Rather, as the present Director of the Bureau believes, given the high morale of the Bureau staff who are constantly instilled with expectations of a high standard of behaviour, it is self-regulation, discipline and strict enforcement of behaviour codes that must best ensure a high standard of integrity amongst the Bureau's officers.

Complaints of serious misconduct against the Bureau's officers are few and far between with only one

73. Ibid.
complaint in 1985 of the commission of an offence. Although the officer reported against was more guilty of foolishness in permitting his friend to use his special car label, he was charged in court to bring home to the rest of the staff the high standards of propriety that are expected of them. That officers of the Bureau are zealous of their reputation is illustrated by another case where an officer was dismissed from the service for using the Bureau's facilities to conduct his personal business during office hours, only after his own colleagues had told on him.

(5) **CPIB INVESTIGATIONS**

In the 11-year period between 1975 and 1985, as shown in Table 9 below, the CPIB received 15,793 reports and other types of information. Of these, 7,958 or 50.4% were anonymous petitions; 4,147 or 26.2% information obtained from known CPIB sources; 2,410 or 15.3% were complaints from members of the public received at the Bureau and 1,278 or 8.1% were reports received from various government departments and Statutory Boards. It is plain that in its war

74. Ibid.
75. Ibid.
against corruption the CPIB cannot function merely on the small number of signed reports of corruption and malpractice lodged at the Bureau.

The fact that not all information given to the Bureau is in respect of offences of corruption shows the confidence that the public have in the CPIB. And although the CPIB has in the last three decades helped to "clean out" the Police Force and restore its image, the public still prefer to take complaints of corruption to the Bureau rather than to a police station. As shown in Table 9 below, of 2,514 complaints of corruption lodged by members of the public between 1975 and 1984, 2,264 or 90.1% were made to the CPIB as compared with 250 or 9.9% to the police. Until 1980, the police received less than 5% of all reports of corruption.

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</thead>
<tbody>
<tr>
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<td>233</td>
<td>278</td>
<td>307</td>
<td>260</td>
<td>204</td>
<td>196</td>
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<td>96.7</td>
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<td>69.8</td>
<td>97.3</td>
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<td>20</td>
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<td>12</td>
<td>7</td>
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<td>309</td>
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<td>211</td>
<td>285</td>
<td>265</td>
<td>185</td>
<td>157</td>
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TABLE 9: Complaints of Corruption Made by the Public to the CPIB and the Police (with percentages) in the Years 1975 to 1984

* Compiled from statistics obtained from the CPIB and the Criminal Investigations Department, Singapore.
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<tr>
<td>Anonymous Petitions</td>
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<td>649</td>
<td>652</td>
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<td>521</td>
<td>437</td>
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<td>278</td>
<td>307</td>
<td>260</td>
<td>204</td>
<td>196</td>
<td>185</td>
<td>180</td>
<td>146</td>
<td>146</td>
<td>2410</td>
</tr>
<tr>
<td>Reports received from departments and Statutory Boards</td>
<td>83</td>
<td>64</td>
<td>129</td>
<td>188</td>
<td>130</td>
<td>117</td>
<td>102</td>
<td>144</td>
<td>115</td>
<td>80</td>
<td>126</td>
<td>1278</td>
</tr>
<tr>
<td>Total No. of reports and information received</td>
<td>1127</td>
<td>1164</td>
<td>1529</td>
<td>1615</td>
<td>1351</td>
<td>1685</td>
<td>1516</td>
<td>1563</td>
<td>1572</td>
<td>1312</td>
<td>1359</td>
<td>15793</td>
</tr>
<tr>
<td>No. of reports/information investigated</td>
<td>831</td>
<td>767</td>
<td>961</td>
<td>889</td>
<td>742</td>
<td>1050</td>
<td>912</td>
<td>1025</td>
<td>977</td>
<td>861</td>
<td>952</td>
<td>9967</td>
</tr>
<tr>
<td>Percentage of reports/information investigated over those received</td>
<td>73.7</td>
<td>65.9</td>
<td>62.9</td>
<td>55.0</td>
<td>54.9</td>
<td>62.3</td>
<td>60.1</td>
<td>65.6</td>
<td>62.2</td>
<td>65.6</td>
<td>70.1</td>
<td>63.1</td>
</tr>
</tbody>
</table>

**TABLE 10:** Type and Number of Reports and Information Received and Investigated by the CPIB (1975 - 1985)

* Source: CPIB.
Anonymous petitions appear to be the main source of information as to corruption and malpractice received by the CPIB. Between 1975 and 1985, the Bureau received an average of 700 such petitions per year. The Bureau, however, only investigates anonymous information which bears sufficient details of alleged corrupt practices. As is to be expected, a small percentage of petitions are likely to be no more than vindictive and malicious complaints. In respect of these, the CPIB attempts to trace the petitioners as it takes a dim view of those who give false information. Such persons are liable to be prosecuted and between 1982 and 1985, 14 persons, including one government officer, were prosecuted for making false reports or giving false information to the Bureau.

Of the 15,793 reports and information received between 1975 and 1985 (see Table 10), 9,967 or 63.1% were investigated. The remaining 5,826 or 36.9% included vague and absurd allegations that were discarded, and complaints of minor offences or bureaucratic misbehaviour that were referred to the departments concerned. Since 1980, the percentage of reports and information that the CPIB has found

76. CPIB statistics.
capable of investigations has exceeded 60%, with such reports amounting to 65.6% in 1984 and 70.1% in 1985.

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>REPORTS RECEIVED</th>
<th>REPORTS INVESTIGATED</th>
<th>No. CHARGED</th>
<th>No. CONVICTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPIB (Singapore)</td>
<td>7,648</td>
<td>4,825</td>
<td>560</td>
<td>354</td>
</tr>
<tr>
<td>ICAC (Hongkong)</td>
<td>11,356</td>
<td>5,282</td>
<td>2,121</td>
<td>1,420</td>
</tr>
</tbody>
</table>

* Compiled from statistics from the CPIB and Annual Reports of the ICAC (HK) for the years 1980-1984.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TYPE OF OFFICER</strong></td>
<td><strong>Government Officers</strong></td>
<td><strong>Statutory Board Employees</strong></td>
<td><strong>Sub-Total</strong></td>
<td><strong>Private Sector Employees</strong></td>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>490</td>
<td>402</td>
<td>575</td>
<td>668</td>
<td>580</td>
<td>486</td>
<td>533</td>
<td>576</td>
<td>529</td>
<td>401</td>
<td>504</td>
</tr>
<tr>
<td></td>
<td>118</td>
<td>141</td>
<td>204</td>
<td>127</td>
<td>106</td>
<td>187</td>
<td>204</td>
<td>221</td>
<td>328</td>
<td>223</td>
<td>257</td>
</tr>
<tr>
<td></td>
<td>608</td>
<td>543</td>
<td>779</td>
<td>795</td>
<td>686</td>
<td>673</td>
<td>737</td>
<td>797</td>
<td>857</td>
<td>624</td>
<td>761</td>
</tr>
<tr>
<td></td>
<td>9.9</td>
<td>46.4</td>
<td>47.5</td>
<td>49.2</td>
<td>50.8</td>
<td>39.9</td>
<td>48.6</td>
<td>51.0</td>
<td>54.5</td>
<td>47.6</td>
<td>56.0</td>
</tr>
<tr>
<td></td>
<td>519</td>
<td>621</td>
<td>750</td>
<td>820</td>
<td>665</td>
<td>1012</td>
<td>779</td>
<td>766</td>
<td>715</td>
<td>688</td>
<td>598</td>
</tr>
<tr>
<td></td>
<td>46.1</td>
<td>53.4</td>
<td>49.1</td>
<td>50.8</td>
<td>49.2</td>
<td>60.1</td>
<td>51.4</td>
<td>49.0</td>
<td>45.5</td>
<td>52.4</td>
<td>44.0</td>
</tr>
<tr>
<td></td>
<td>1127</td>
<td>1164</td>
<td>1529</td>
<td>1615</td>
<td>1351</td>
<td>1685</td>
<td>1516</td>
<td>1563</td>
<td>1572</td>
<td>1312</td>
<td>1359</td>
</tr>
</tbody>
</table>

**TABLE 12:** Reports/Information Received (with percentages) by CPIB According to Government Officers, Statutory Board Employees and Private Sector Employees, in the years 1975 to 1985

It appears that more than half the complaints of corruption or malpractice brought to the attention of the CPIB are in respect of employees in the private sector. Of the 15,793 reports of corruption and related offences received by the Bureau between 1975 and 1985, 5,744 or 36.4% were against government officers; 2,116 or 13.4% were against statutory board employees and the remaining 7,933 or 50.4% were against private sector employees (see Table 12 above). In 1980, the percentage of complaints of commercial sector corruption that the CPIB was asked to

* Source: CPIB.*
investigate reached as high as 60.1%, with the majority of complaints being in respect of the receipt of illegal commissions and "kick-backs". And as shown in Table 14 more than half of those charged in court by the Bureau came from the private sector.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Officer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Government Officers</td>
<td>431</td>
<td>400</td>
<td>523</td>
<td>426</td>
<td>268</td>
<td>325</td>
<td>285</td>
<td>398</td>
<td>348</td>
<td>335</td>
<td>415</td>
</tr>
<tr>
<td>Statutory Board Employees</td>
<td>110</td>
<td>141</td>
<td>204</td>
<td>102</td>
<td>76</td>
<td>108</td>
<td>115</td>
<td>123</td>
<td>219</td>
<td>155</td>
<td>232</td>
</tr>
<tr>
<td>Sub-Total</td>
<td>541</td>
<td>541</td>
<td>727</td>
<td>528</td>
<td>344</td>
<td>433</td>
<td>400</td>
<td>521</td>
<td>567</td>
<td>490</td>
<td>647</td>
</tr>
<tr>
<td>Private Sector Employees</td>
<td>290</td>
<td>226</td>
<td>234</td>
<td>361</td>
<td>398</td>
<td>617</td>
<td>512</td>
<td>504</td>
<td>410</td>
<td>371</td>
<td>305</td>
</tr>
<tr>
<td>TOTAL</td>
<td>831</td>
<td>767</td>
<td>961</td>
<td>889</td>
<td>742</td>
<td>1050</td>
<td>912</td>
<td>1025</td>
<td>977</td>
<td>861</td>
<td>952</td>
</tr>
</tbody>
</table>

**TABLE 13:** Reports/Information against Government Officers, Statutory Board Employees and Private Sector Employees investigated (with percentage over those received) in the years 1975 to 1985

* Source: CPIB.

This is in stark contrast with the situation in Hong Kong where, until recently, ICAC investigations into the payment of commissions in the private sector met with protests as they were considered to be "interferences" into Chinese customary business practices. See, for example, the Annual Report of the ICAC for 1983, op.cit., at p.27.
The growing increase in the number of complaints to the CPIB of corruption in the private sector may be due to a number of reasons: public demand for higher standards of commercial morality; less tolerance of different standards of probity between public and private sector employees that have existed for many years and, to a large measure, to public recognition of the CPIB as an effective law enforcement agency.

Mass media publicity of the Bureau's successful investigations and of court convictions of corrupt officials may well be inducing citizens and private sector employers to expect the CPIB to do the same for the commercial sector.

With the task of investigating about 800 reports of corrupt practices in both the public and private sectors each year, CPIB investigators are already being kept fairly busy. The Bureau's priority is in investigating cases of corruption in the public service and in the various statutory boards and it cannot afford to reduce its firm and continuous efforts to control public sector corruption. Although it has acted on every credible complaint of corruption in the private sector, the CPIB may not be able to do so much longer if the number of complaints of private sector
corruption continues to rise at the present rate. As it is not intended to expand the CPIB into the kind of giant organisation that its Hongkong counterpart is, the Bureau may well be compelled in the future to be more selective in utilizing its limited resources in combatting corruption in the commercial sector. One solution may be for the Bureau to help contain the problem of increasing private sector corruption by making available to the business sector its experience and expertise on corruption prevention measures by way of an advisory service.

At any rate, judging by the statistics for the years 1975 to 1985 (Table 13 above), the complaints against private sector employees at present appear to be less credible. Of the 9,967 reports and other information found capable of investigations, only 4,228 or 53.3% were those in respect of private sector employees as compared with 72.3% of complaints against government officers and 74.9% against statutory board employees. Unfortunately, no statistics are available to show the outcome of investigations into those complaints that were pursued against each category of employees. However, statistics for the years 1975 to 1985 (Table 14 below) show that the majority of persons

78. See Table 5, ante.
charged in court by the CPIB were employees from the private sector.

<table>
<thead>
<tr>
<th>ACT</th>
<th>COURT ACTION</th>
<th>CHARGED</th>
<th>CONVICTED</th>
<th>RATE OF CONVICTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prevention of Corruption Act (Cap.104)</td>
<td>a</td>
<td>264</td>
<td>169</td>
<td>64.02%</td>
</tr>
<tr>
<td></td>
<td>b</td>
<td>77</td>
<td>59</td>
<td>76.62%</td>
</tr>
<tr>
<td></td>
<td>c</td>
<td>413</td>
<td>335</td>
<td>81.11%</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td></td>
<td>754</td>
<td>563</td>
<td>74.67%</td>
</tr>
<tr>
<td>Penel Code (Cap.103)</td>
<td>a</td>
<td>37</td>
<td>22</td>
<td>59.46%</td>
</tr>
<tr>
<td></td>
<td>b</td>
<td>10</td>
<td>8</td>
<td>80.00%</td>
</tr>
<tr>
<td></td>
<td>c</td>
<td>131</td>
<td>111</td>
<td>84.73%</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td></td>
<td>178</td>
<td>141</td>
<td>79.21%</td>
</tr>
<tr>
<td>Other Acts</td>
<td>a</td>
<td>20</td>
<td>15</td>
<td>75%</td>
</tr>
<tr>
<td></td>
<td>b</td>
<td>14</td>
<td>13</td>
<td>92.86%</td>
</tr>
<tr>
<td></td>
<td>c</td>
<td>27</td>
<td>27</td>
<td>100%</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td></td>
<td>61</td>
<td>55</td>
<td>90.16%</td>
</tr>
<tr>
<td>All Acts</td>
<td>a</td>
<td>321</td>
<td>206</td>
<td>64.17%</td>
</tr>
<tr>
<td></td>
<td>b</td>
<td>101</td>
<td>80</td>
<td>79.21%</td>
</tr>
<tr>
<td></td>
<td>c</td>
<td>571</td>
<td>473</td>
<td>82.84%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td>993</td>
<td>759</td>
<td>76.44%</td>
</tr>
</tbody>
</table>

**TABLE 14:** Persons Charged and Convicted Following CPIB Investigations in the Years 1975 to 1985

**Note:**
- a = Government Officers
- b = Statutory Board Employees
- c = Private Sector Employees

**Source:** Compiled from CPIB statistics.
Between 1975 and 1985, 993 persons were charged in court as a result of CPIB investigations. Of these, 571 or 57.5% were private sector employees, 321 or 32.3% government officers and 101 or 10.1% Statutory Board employees. Private sector employees therefore appear to be over represented as defendants in respect of all statutes under which persons were charged and convicted following CPIB investigations in the period under review.

Of the 993 persons charged, 754 or 75.9% were charged for offences under the Prevention of Corruption Act, 178 or 17.9% under the Penal Code and 61 or 6.1% for offences under other statutes. Of those charged 759 or 76.4% were convicted. As shown in Table 14, the conviction rate was the highest (90.2%) for offences under statutes other than the Penal Code and the Prevention of Corruption Act, and lowest for offences under the Prevention of Corruption Act (74.7%). This again emphasises the difficulties in gathering and presenting in court, cogent evidence of corruption.

It is interesting to compare the conviction rates between cases investigated by the CPIB and Hongkong’s ICAC. For the years 1980 to 1984 (see
Table 11 above), the difference in the conviction rate between cases investigated by the anti-corruption agencies in Singapore and Hongkong was hardly significant and stood at 63.2% and 66.9% respectively.

<table>
<thead>
<tr>
<th>DEPARTMENT/MINISTRY</th>
<th>OFFICERS CHARGED IN COURT</th>
<th>OFFICERS REFERRED FOR DISCIPLINARY ACTION</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Police</td>
<td>69</td>
<td>51.1</td>
<td>301</td>
</tr>
<tr>
<td>Customs</td>
<td>27</td>
<td>20.0</td>
<td>63</td>
</tr>
<tr>
<td>Prisons</td>
<td>13</td>
<td>9.6</td>
<td>24</td>
</tr>
<tr>
<td>Education</td>
<td>8</td>
<td>5.9</td>
<td>103</td>
</tr>
<tr>
<td>Environment</td>
<td>8</td>
<td>5.9</td>
<td>155</td>
</tr>
<tr>
<td>PWD</td>
<td>6</td>
<td>4.4</td>
<td>28</td>
</tr>
<tr>
<td>Defence</td>
<td>-</td>
<td>-</td>
<td>28</td>
</tr>
<tr>
<td>Immigration</td>
<td>4</td>
<td>2.9</td>
<td>34</td>
</tr>
<tr>
<td>TOTAL</td>
<td>135</td>
<td>15.5</td>
<td>736</td>
</tr>
</tbody>
</table>

**TABLE 15:** Government Departments and Ministries Which Had the Most Number of Officers Charged in court or Referred for Disciplinary Action by the CPIB for the Years 1978 to 1985

* Source: Compiled from statistics from the CPIB, Singapore.*
Not unexpectedly, the majority of the public servants who are charged in court or referred for disciplinary action for offences of corruption come from departments which deal most frequently with the public. Of 871 officers from government departments which had the most corrupt officers between 1978 and 1985, 370 or 42.5% were from the Police Force, 163 or 18.7% from the Ministry of Environment and 90 or 10.3% from the Customs Department (See Table 15). Of the 135 officers charged in court during the same 7-year period, 69 (51.1%) were police officers, 27 (28%) were customs officers, 13 (9.6%) were prison officers and 8 (5.9%) were officers from the Education and Environment Departments. Of the 736 government officers referred for disciplinary action in the years 1978 to 1985, 301 or 40.9% came from the police, 155 or 21.1% from the Ministry of Environment, 103 or 14.0% from the Education Ministry and 28 or 3.8% came from the Ministry of Defence and Public Works Department.

The CPIB has had sufficient time in the last three decades to experiment with new ideas and techniques and to perfect methods with which to combat corruption. As is to be expected, the Bureau maintains secrecy over details of its investigative methods.
Successive directors have in the few interviews granted to the press, and one suspects largely for the benefit of public and private sector employees, deliberately given the impression that the Bureau's officers are everywhere and watching everything in the hope that this would act as a deterrent to corrupt practices. For example, in 1980, former Director Rajaratnam in an interview with the Wall Street Journal stated:

If anybody is asking for bribes we'll pick him up. We investigate, we take them to court, we plug loopholes, we get results. We move around - all over. You want to keep Singapore corruption free you have to have your tentacles everywhere.

The Bureau is known to keep surveillance on civil servants suspected of living beyond their means. Although traps are laid for the corrupt, the Bureau does not use spies or employ agent provocateurs.

A typical trap set for a corrupt civil servant was


80. Ibid.

81. The "Corridon", "Yoong" and "Yeo" Interviews, op.cit., footnote 5.
described by a former Director, R.B. Corridon:

It became our duty to set a trap for a caretaker of Government holiday bungalows who was discovered to be allowing unauthorised persons to occupy bungalows which fall vacant unexpectedly. Arrangements were made for a special investigator to book a holiday bungalow in an assumed name for one week. The officer vacated the bungalow after four days and unauthorised persons were seen to be using it soon afterwards. Meanwhile, in the hope of being offered the vacated bungalow, the special investigator, now describing himself as a visitor from Malacca, had telephoned to the caretaker and asked if he had any accommodation to offer. The caretaker said he had none but could make his own Government quarters available for the week-end for a payment of ten dollars. This, of course, he had no authority to do. Two other special investigators then moved into his bungalow with explicit instructions that when it came to vacating, they were to make no mention of payment until this was requested by the caretaker himself. As expected, a demand for the ten dollars was made by the caretaker and the trap was sprung.

The CPIB does not use agent provocateurs because of the "extreme distaste" with which they are considered by courts of law. Mr R.B. Corridon, who was associated with the CPIB since it was established in 1952, and who served as Director of the Bureau between 1954 and 1956 and again from 1963 to 1968,


83. Ibid., p.7. See also Mohamed bin Sidin v. R, [1950] MLJ 166; Chew Swee Tiang v. PP, [1964] MLJ 291, C.A.
was particularly against the use of agent provocateurs because of his bad experience with them during his Special Branch days. Although certain offences can perhaps only be detected by the use of such persons and some law enforcement agencies like the Central Narcotics Bureau frequently rely on agent provocateurs, offences of corruption may not lend themselves to such methods of detection. Although an agent provocateur is not an accomplice, it would be difficult to support a conviction for corruption based only on the bare evidence of such a witness.

The use of such agents to obtain evidence of corruption against public servants might also cause embarrassment to the Bureau. In dealing with civil servants, on the basis of reports received of their alleged corrupt nature, CPIB officers who act as agent provocateurs run the risk of being arrested as section 30(2) of the Prevention of Corruption Act requires a public officer to whom any gratification is corruptly offered or given to arrest the offeror or giver and to hand over the offender to the nearest police station.

84. "The Corridon Interview", op.cit., footnote 5. See also his article on the subject, op.cit.


Another reason for not using agent provocateurs is that the CPIB already receives sufficient credible reports of corruption to keep its investigators fully occupied without having to resort to such questionable methods.

There has been praise for the CPIB from various quarters, particularly from the foreign press. In December 1967, Finance Minister Dr Goh Keng Swee, a man of few words, also complimented the CPIB for "doing a good job of work" and gave an example of how, following CPIB investigations into corrupt practices in his Ministry, 12 officers were charged in court. More recently, the Prime Minister has spoken of the CPIB as being "thorough and professional", and a Commission of Inquiry appointed to inquire whether the Bureau had done all that was necessary the corrupt acts of a Cabinet Minister, reached a similar conclusion.

How then does one evaluate the work or measure the success of an anti-corruption agency like the CPIB? By the nature and extent of its law enforcement activity? Or by the success in its investigations, the

87. See, for example, Tien, op.cit.; Newman, op.cit.


conviction rate of those it has prosecuted, its reputation, or by the degree of public support and confidence it commands? By all of these criteria, the Bureau has of course been successful in its work.

The CPIB was established in 1952 when corruption was rampant in Singapore. Largely as a result of the efforts of the CPIB, corruption is now kept well under control to the lower echelon of the public service and to minor "kick-backs" and commissions in the private sector. The Bureau has undoubtedly helped to set higher standards of probity in the public service and to make the vast majority of the population accept and expect new standards of official conduct with regard to gifts, bribes and commissions.

The Bureau has earned public confidence in its determination to root out corruption in Singapore. This is shown not only by the number of complaints and other forms of information that the CPIB has continuously received, but, as has been seen, in the high percentage of credible information and reports received.

90. See Table 10, ante.
Public confidence in the Bureau is high because the CPIB is regarded as an independent and effective law enforcement agency that is prepared to investigate any report of corruption or malpractice in both the public and private sectors, irrespective of the status of the suspect or the magnitude of the corrupt transaction.

Between 1982 and 1985, for example, 127 professionals and executives in both the government and private sectors were convicted in court following charges brought against them by the CPIB. Corrupt officials of all ranks, from garbage collectors to Cabinet Ministers, have been pursued with equal vigour. The Bureau has brought charges in court against a government Minister and a Member of Parliament of the ruling People’s Action Party. Another Minister was dismissed following the Bureau’s investigations, while a third committed suicide before he could be produced in Court.

91. CPIB statistics.

92. Minister of State Wee Toon Boon, and Member of Parliament Phey Yew Kok who fled the country whilst awaiting his trial. For a fuller discussion of these cases, see Chapter III, ante.

93. In November 1968, National Development Minister Tan Kia Gan was stripped of all his public appointments. For details see chapter 111, ante.

93a. See chapter 111, ante for details of the Teh Cheang Wan case.
The justification for prosecuting in court postmen, sweepers and refuse collectors for receiving small amounts of money as gifts or "ang pows" (traditional red packets) even during the festive season is plain. First, these workers are daily-rated employees upon whom the threat of the ultimate disciplinary punishment of dismissal has little effect. Because of a shortage of such workers their chances of being re-employed after their dismissals are good. Secondly, the receipt of tokens of gratitude have a rather insidious way of developing into demands for services rendered. They also encourage discriminatory services between the givers and the non-givers, and ultimately between the "haves" and the "have-nots". Court prosecutions, with the attendant publicity in the media, further demonstrate to the public that corruption in any form is wrong and that to successfully eliminate the evil, there must be a total commitment to root it out wherever and whenever it occurs.

The CPIB has been responsible for uncovering many forms of corrupt practices at various levels of government and in the commercial sector. The Bureau,

94. For press reports of such cases, see for example "Postmen who took 'ang pows' fined", Straits Times, October 18, 1975; "Postman too polite to refuse ang pows", Straits Times, March 27, 1976; Barry Newman, op.cit., Tien, op.cit.
for example, exposed widespread corruption in 1967 in both the Import & Export Office and the Housing & Development Board, intervened to stop a million dollar souvenir magazine racket involving corrupt civil servants in 1969, put an end in 1970 to employees in the Public Utilities Board and the Port of Singapore Authority from being regularly entertained by businessmen with whom they were having official dealings, discovered a protection racket by more than 100 traffic policemen involved in collecting monthly bribes from transport companies in 1971 and uncovered the sale of school examination papers in 1979.

There certainly has been criticism of the Bureau, especially in respect of some of its methods of obtaining evidence of corruption. Soon after he was elected in Parliament in December 1981, Opposition Member, Mr J.B. Jeyaretnam complained that it was


"not uncommon" that CPIB officers had "very often abused the law in the investigations that they have conducted into offences which they are empowered to investigate". In one case at least, there was also judicial disapprobation of over-zealous CPIB officers who had been made "to spring into action by false allegations of vindictive complainants". There were many complaints in court by accused persons in the 1970s, which were widely reported in the press, of the use of questionable methods to extract confessions from suspects. It was not infrequently alleged that suspects had been placed in small but very cold air-conditioned rooms or threatened with being detained without trial under the Criminal Law (Temporary Provisions) Act if they did not co-operate with the investigators. Whilst the vast majority of these allegations proved to be groundless and were hence rejected by the courts, the frequency with which


these were made in the 1970s was disconcerting.

The CPIB has total independence and its officers have vast powers. Some of these are obviously necessary if corruption is to be kept under control. Nevertheless, the public must not be made to fear that injustice might be done to individuals because of high-handed action or misplaced exuberance of CPIB officers. The conduct of the Bureau's officers must never lead to public revulsion against the CPIB as this will inevitably result in suspects receiving a large measure of undeserved public sympathy. Without public condemnation of the corrupt, there can be little public support for an anti-corruption agency.

Since the beginning of the 1980s, however, the CPIB has begun to move into a new phase of life during which it may be important that it remains as efficient as it has been effective. The CPIB's agency was largely built in the 1960s and 1970s by such pioneering Directors as Corridon, Rajaratnam, and, to some extent,

by Yoong Siew Wah. Evan Yeo's contribution in the 1980s lies in the development of a greater degree of sophistication and more professionalism in the CPIB's operational methods as part of the Bureau's increasing efficiency. He sees the Bureau playing a wider role in Singapore's anti-corruption strategy, without there being any let-up in the intensity of the CPIB's law enforcement efforts.

Yeo, who understudied Rajaratnam from April 1978 and took over the directorship in 1980, accepts that the pursuit of the corrupt regardless of the consequences to the innocent is unacceptable and that there can be no substitute for honest, painstaking investigations and the gathering of admissible evidence by fair and efficient means. It is perhaps no coincidence that there has been a marked decrease in recent years of allegations made in court against CPIB officers. Less frequent challenges to statements given by suspects to the Bureau's officers on grounds of involuntariness have also helped to reduce the length

5. R.B. Corridon first served with the CPIB when it was established in 1952. He returned to be the Director between 1954 and 1956 and again from 1963 to 1968. P. Rajaratnam was Director between 1959 and 1960 and between 1971 and 1980. Yoong Siew Wah headed the Bureau from 1968 to 1971.
of corruption trials. The Bureau has also noticed a growing increase in the number of accused persons pleading guilty to the charges against them. Confronted with the kind of evidence that is now being gathered by the CPIB, the guilty now appear to be more willing to own up.

Given that corruption has in recent years been at minimal levels, it may now be propitious for the Bureau to shed its total law enforcement image to which only detection and deterrence have been relevant goals. It must also learn to operate more as an anti-corruption agency and to devote itself equally to preventive and educative functions. Yeo already places some emphasis on public support for the CPIB, the education of public officers, and on greater inter-departmental co-operation. This has meant greater participation of senior CPIB officers in education programme for public servants, the setting up of an increasing number of liaison committees

8. For example with the Police and the newly established Mass Rapid Transport Corporation which has awarded numerous contracts for the construction of Singapore's underground train system: "The Yeo Interview", op.cit.
designed to explore anti-corruption measures, and a greater regard for bureaucratic sensitivities. For example, in respect of complaints against public servants that are referred to the Permanent Secretaries of various Ministries for departmental action, the CPIB is now content to leave Permanent Secretaries to exercise their own discretion in the matter without exerting pressure through the Public Service Commission as was done previously. Such a move can only result in reports of malpractices being more readily brought to the attention of the CPIB by the departments concerned.

Director Evan Yeo is deeply anxious to drive home the message that the battle against corruption is one that must be fought by all public servants and not by the CPIB alone. And Yeo is not alone in acknowledging that the CPIB owes its success in no small measure to the high level of commitment of the

Singapore political leadership, under Prime Minister Lee Kuan Yew, to the goal of eliminating corruption in Singapore.

(C) THE COURTS

It is clear that the efficacy of the anti-corruption strategies in any country must be considered in the context of the main components of the criminal justice system. The temptations of both citizens and public officers who are inclined towards corrupt practices cannot be deterred except by subjecting both to significant risks of detection, apprehension, conviction and sentence.

If gains from corrupt behaviour appear far to outweigh the risks involved and if law enforcement officers themselves are led to believe that conscientious work is a waste of time and effort because of weaknesses in the administration of

10. For a more detailed treatment of this, see Chapter III, ante. Dr Jon Quah has developed what he calls "a matrix of anti-corruption strategies" by juxtaposing the adequacy of anti-corruption measures and the commitment of political leadership: Quah, "Bureaucratic Corruption in the ASEAN Countries: A Comparative Analysis of their Anti-corruption strategies", Journal of Southeast Asian Studies (1982), vol.XIII, no.1, pp. 175-176.
justice, bureaucratic corruption may continue to rise. The Blair-Kerr Report of Hongkong, in 1973, clearly recognised that:

Unless potential corrupters and crown servants who are prepared to accept bribes feel certain that, if caught and prosecuted, they will be severely dealt with by the courts, there is little hope that this scourge of corruption will ever be eradicated by the ordinary judicial process.

The Knapp Commission, which inquired into the extent of police corruption in New York, concluded from their investigations that the manner in which many policemen perform their duties is "strongly affected by their opinions of how well the prosecutors and judges are performing theirs".

In Singapore, "lenient" sentences of the courts have been said to have contributed to a spectacular rise in sexual and property offences and to have put at

1. As has been shown by the findings of the Knapp Commission in New York: The Knapp Commission Report on Police Corruption, George Braziller (New York: 1972), chapter 21.
2. Quoted by Mary Lee: "Work Suspended", Far Eastern Economic Review, August 21, 1981, p.32. However, Hongkong's Chief Justice Denys Roberts has expressed the view that the certainty of being caught is a much stronger deterrent than imposing more severe sentences: ibid.
risk public co-operation with the police in their fight against crime.

Being the heart of any legal system in a democracy, the courts therefore have an important role to play in the fight against corruption. The role of the courts can be effectively performed only if they are seen to view the scourge of corruption as a serious problem, to demonstrate that they are as concerned with controlling corruption as the rest of the community, and if they are sufficiently organised to be able to do so. In this regard, the performance of the courts must be largely measured by the manner in which they (a) interpret the anti-corruption legislation; (b) treat offenders brought before them; and (c) articulate their abhorrence for corruption and for the corrupt.

Are the courts, for example, giving proper effect to the provisions of the Prevention of

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4. See the speech of Home Affairs Minister Chua Sian Chin in moving the Penal Code (Amendment) Bill, 1984, which introduced minimum sentences of imprisonment for these offences: Singapore Parliamentary Debates (1984), vol. 44, cols. 1861-1870. The evidence to support the proposition that "lower" sentences of the courts had contributed to increasing crime was weak.
Corruption Act which was enacted "to provide for the more effectual prevention of corruption"? In PP v. Yuvaraj, Lord Diplock, for example, pointed out that section 14 of the Act must be interpreted with the policy which underlies the section in mind, which is "to compel every public servant so to order his affairs that he does not accept a gift in cash or in kind from a member of the public except in circumstances in which he will be able to show clearly that he had legitimate reasons for doing so".

The use and interpretation of Singapore's anti-corruption legislation by the courts has been examined fully in Chapters VII and VIII. What will be considered in this chapter is the performance of the courts in two key areas:

1) the administration of the courts in respect of the hearing and disposal of charges of corruption; and

1) the sentencing of offenders found guilty of corrupt practices.

5. Singapore Statutes, Rev. Ed. 1985, cap.241; the preamble.

(1) **DISPOSAL OF CASES OF CORRUPTION**

All corruption cases are heard and disposed of in the District Courts in Singapore. Offences under sections 5 and 6 of the Prevention of Corruption Act, under which most of these prosecutions are brought, carry a maximum punishment of 5 years imprisonment or a fine of $10,000 or both. Such cases are therefore beyond the jurisdiction of the Magistrate's Courts. Although under the Subordinate Courts Act a person with 5 years experience after his legal education qualifies to be a District Judge, the 14 judges presently on the District Court Bench have an average of 16 years legal experience each.

The District Courts are housed in an ultra modern Subordinate Courts building which was opened in 1975. The building houses 36 courts, including the 12 District Courts.

The lower judiciary is particularly conscious that the universal problems of court congestion and trial delays, if unchecked, lead to mismanagement and

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7. See Chapter II(F), ante, for a detailed examination of the powers of all the courts in Singapore.

inefficiency in the administration of justice. Innovations have been introduced to reduce trial delays and protracted hearings and to improve rigid trial procedures which contribute to congestion. Court administration is in the hands of a legally trained Registrar and his deputies, assisted by a staff of 235, who take care of the administrative and all pre-trial and interlocutory matters, thus leaving judges free to hear cases.

All court diaries are centrally controlled by a "Control" Court, manned by a Deputy Registrar, which ensures even distribution of cases and monitors congestion as and when it arises. To ensure the optimum use of judicial time, the Control Court also filters out cases to hearing courts which have become free either because an accused has pleaded guilty, or a


10. For a full description and analysis of the judicial administration of the Subordinate Courts, see the unpublished paper by Marican, Sin, Ng and Chow entitled "The Administration of Justice in the Subordinate Courts" (1985).

11. The Control Court system was implemented on April 2, 1984. For press reports, see "The heart of justice goes out to all ...", The Straits Times, April 3, 1984. The system has also been examined by Marican, Sin, Ng and Chow, ibid.
civil claim has been settled or a hearing adjourned for any reason. This prevents a considerable wastage of judicial time and helps eliminate a situation that occurs in many jurisdictions where despite a long backlog of cases, most hearing courts appear to be free on a working day. Cases which are expected to take no more than half a day of hearing such as those for offences of assault, consumption of drugs, regulatory offences and minor civil disputes, form the bulk of the "filter" cases. Between April 1984 and April 1986, for example, an additional 5,593 cases were dealt with by the courts through the "filter" system.

Changes in criminal procedure have also assisted in speeding up court trials. For example, the 1972 amendments to the Criminal Procedure Code allow the admission of written statements by witnesses, in lieu of oral testimony, provided certain conditions are complied with. Both parties must agree to the admissibility of the statement, which must be signed by the witness with a declaration that his statement


is true and that the witness is aware that he would be liable to prosecution if he has wilfully stated any untruths. Formal admission of facts without proof was also introduced in that year in criminal proceedings.

However, although 3 years ago a District Court case could be heard within 4 to 6 months of the accused being first produced in court, it now takes about 10 months for a case to be heard. This delay has been brought about by a tremendous increase in the volume of fresh cases brought to court and by the transfer in 1986 of a large number of High Court civil cases as a result of an increase in the District Court jurisdiction. The transfer itself was made imperative because of the accumulating backlog of cases in the High Court. In 1983, there were 5,750 criminal cases and 9,657 civil cases tried in the District Courts. In 1985, the figures were 11,845 and 16,802 respectively; an increase of 103% in criminal cases and 86.9% in civil cases before District Judges in 2 years.


15. For more facts and figures, see the speech of the Chief Justice at the opening of the Legal Year in 1985: [1985] 1 MLJ vi.

A move to increase the number of District Judges is now being planned to cope with the problem.

Inevitably, competing claims are made for priority in the hearing of cases before the District Courts. Priority certainly is accorded to cases where defendants have been remanded in custody pending trial, or where witnesses are old or ill or are about to leave the jurisdiction.

At present the courts do not generally give priority to the hearing of corruption cases unless specially requested to do so by the prosecutor. Corruption cases involving senior public servants and which arouse public interest are, however, fixed for hearing as soon as the parties are ready for trial. Minister of State Wee Toon Boon, for example, was charged on April 19, 1975, and tried 9 weeks later on June 30, 1975.

It is particularly important that corruption cases be speedily heard and concluded in the interests of both the accused and his employers. It is unreasonable to expect an employer to continue to permit an employee, charged with corruption, to work for him for a long period until the conclusion of the
trial. A public servant is interdicted on half-pay until the outcome of his trial. If convicted, he is interdicted on no pay until he has exhausted his appellate remedies or, if no appeal has been lodged, has been dismissed by the Public Service Commission. The public servant meanwhile remains in the service of the government and is consequently unable to find other work to support himself and his family. Trial delay therefore may cause undue hardship to an accused person and his family.

Despite problems inherent in gathering and adducing evidence in cases of corruption, the likelihood of conviction of those charged in court following CPIB investigations seems very strong. As shown in Table 14, 90.2% of those charged in the Subordinate Courts by the CPIB in the years 1980 to 1985 were convicted. Further, 79.2% of those charged for various offences under the Penal Code and 74.7% of those charged under the Prevention of Corruption Act were convicted. The chances of the convicted

17. See the Public Service (Disciplinary Proceedings) Regulations, 1970, regulations 7 and 10.

18. For details of disciplinary proceedings against public servants, see Chapter VI, ante.

19. Ante.
succeeding on appeal appear to be no more than in the non-corruption cases. As shown in Table 16 below, during the 6-year period from 1980 to 1985, 76.5% of those convicted of corruption had their appeals dismissed as against 77.3% of those convicted of other offences. The difference of 0.8% in the conviction rate between the two categories of cases is hardly significant in view of the small number of appeals in corruption cases. In respect of appeals against sentence, 58.3% of those who appealed against their sentence in corruption cases failed in their appeals as against 82.5% of appellants in non-corruption cases.

<table>
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<tr>
<th>RESULT OF APPEAL</th>
<th>CORRUPTION CASES</th>
<th></th>
<th>OTHER CASES</th>
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<td>Against Acquittal</td>
<td>Against Sentence</td>
<td>Against Conviction</td>
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<td>(23.5)</td>
<td>(41.7)</td>
<td>(22.7)</td>
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<td>1</td>
<td>14</td>
<td>266</td>
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<td>(100.0)</td>
<td>(58.3)</td>
<td>(77.3)</td>
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<tr>
<td>TOTAL:</td>
<td>17</td>
<td>1</td>
<td>24</td>
<td>344</td>
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Table 16:* Results of Appeals from the Subordinate Courts Heard in the High Court (with percentages) During 1980 to 1985.

* Compiled from information obtained from the Subordinate Courts, Singapore.
SENTENCING OF OFFENDERS

Judges in many jurisdictions are known for their reluctance in identifying the principal aim of sentencing or in generally formulating any comprehensive sentencing philosophy. Singapore judges are no exception. However, it is in the sentencing of offenders convicted of offences of corruption that the local courts have been moved to articulate a coherent sentencing policy and to lay down some guidelines for sentencing the corrupt.

The Prevention of Corruption Act itself, apart from prescribing the maximum punishment of 5 years imprisonment and a $10,000 fine for most offences, and without proscribing the making of orders

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20. As Professor Nigel Walker has pointed out, sentencers are reluctant to discuss the rationale of what they are doing. Even the Court of Appeal in England has not attempted to outline a coherent philosophy of sentencing. Consequently, the sentencing philosophy of the English courts has been described as "eclectic". See Nigel Walker, Sentencing: Theory, Law and Practice, Butterworths (London: 1985), pp. 106-107. For an interesting examination of sentencing practices in Singapore, See Peter English, "Sentencing in Singapore", 23 Mal.L.R. (1981)1.

21. Cap. 241: sections 5 and 6. Offences of corruption involving government contracts or works or Members of Parliament carry a 7-year prison term: See chapter IX(A), ante, for an examination of punishment for offences of corruption.
under the Probation of Offenders Act, gives trial judges a wide discretion in the choice of sentence. The pattern of sentences handed down for offences of corruption is not, therefore, unlike in England, affected by the punishment provided by statute.

(a) The Functions of Punishment

The reported decisions in both Singapore and Malaysia make it clear that those who are convicted of corrupt practices, particularly if they are civil servants, ought to expect to be dealt with severely. The functions of such punishment may be described as follows:

(i) As a General Deterrent

In a country where every attempt is being made to eliminate corruption, a severe sentence is regarded as essential for the purpose of deterring the corrupt. As the former Chief Justice of Singapore, Mr Justice

22. Cap. 252. Sections 5 and 8 of the Act empower a court to place an offender on probation, or to make an order of absolute or conditional discharge.

Alan Rose, pointed out in *Wong Cheong Kim v. PP*, it is "essential not only that he (a public officer) should be incorruptible but he should manifestly appear to be incorruptible". The principle of individual deterrence may of course be irrelevant for public servants convicted of offences of corruption while in office as the conviction itself would result in their removal from public office.

In *Tay Choon Nam v. R*, the court thought that a sentence for an offence of corruption should be an "exemplary" one as such cases were numerous and it was extremely difficult to obtain sufficient and satisfactory evidence upon which to secure a conviction. In calling for exemplary sentences for such offences, the court could not have meant that mitigating factors in a case should be ignored, but that offences of corruption should generally attract a sentence of sufficient severity to "make an example" of the offender in order to deter the potentially corrupt.

Other reasons for the appellate courts to

26. For examples of cases of corruption in which mitigating factors have been considered, see footnote 58, post.
apply the principle of general deterrence for sentences in corruption cases have been stated as being "to ensure that members of the administration are not corrupt", and to prevent persons in power "from not only exposure to temptation but a semblance of temptation".

In R v. Teo Cheng Lian and R v. Leck Kwee Ser, the Public Prosecutor appealed against the imposition of a fine of $50 on each of the appellants who had offered bribes to public servants on the ground that a fine was inadequate as a deterrent to bribery and corruption. In accepting that a fine was unlikely to deter offences of corruption, Gordon Smith J. made the following observations which have since been quoted in many lower court judgments:

Bribery and corruption of officialdom is like a cancer which may grow and destroy the whole body as, I conjecture, is illustrated by recent events in China. Operative treatment at the commencement may or may not be a cure but it is

30. Ibid. at p.171, approved in New Tuck Shen v. PP, [1982] 1 MLJ 27 at p.31. See also Richard Liong Kuo Chi v. PP, Magistrate's Appeal No. 158/84.
worth trying. Like Caesar's wife, officials, (including Judges) must be above suspicion and lack of confidence in this respect strikes at the whole foundation of good Government. In my opinion the learned Magistrate failed to take these matters into consideration and I therefore feel justified in varying the sentences passed by him.

More recently, in confirming a sentence of six months imprisonment on a charge of corruptly giving a gratification of $1,000 to a Government engineer, Ambrose J. held that in cases of corruption it was necessary to impose a sentence of imprisonment as a fine has no deterrent effect. The mere fact that a prosecutor does not address the court on sentence is immaterial and obviously no reason for dealing leniently with corrupt offenders.

In recent years, however, with corruption having been more firmly controlled, the appellate courts have been less reluctant to set aside sentences of imprisonment for a bribe-giver, especially if he had


32. PP v. Chew Ah Hock, [1956] MLJ 67, per Wilson J. The judge further stated that the practice of asking for a specific sentence was not one which should be encouraged. Sentence of 3 months imprisonment was raised to one of 9 months imprisonment. See also New Tuck Shen v. PP, [1982] 1 MLJ 27.
(ii) As an "Anti-Impunity" Device

In sentencing corrupt offenders, Judges have also expressed sentiments which may suggest an "anti-impunity" version of deterrence as a justification for punishing offenders. Such a principle assumes that penalties ensure allegiance to the criminal law by demonstrating that the law is not to be infringed with impunity. As explained by Gross:

Punishment for violating the rules of conduct laid down by the law is necessary if the law is to remain a sufficiently strong influence to keep the community on the whole law-abiding ... Without punishment ... the law becomes merely a guide and exhortation to right conduct ... The threats of the criminal law are necessary, then, only as a part of a system of liability ensuring that those who commit crimes do not get away with them. The threats are not laid down to deter those tempted to break the rules but rather to maintain the rules as the set of standards that compel allegiance in spite of violations ....

33. See for example Ng Kok Jooi v. PP, [1974] 2 MLJ 150 and cases cited in footnotes 63 to 66, post.


35. Ibid. Quoted by Walker, op.cit., at p.103.
Thus, in Haji Abdul Ghani bin Ishak & Anor v. PP, in sentencing a Malaysian Assemblyman to 12 months imprisonment for indulging in corrupt practices, Wan Yahya J. was persuaded to observe:

My sentence, therefore, must reflect the gravity of the offence and serve as a warning to those who have so far eluded the powers of detection that the day of reckoning will surely arrive often sooner than they think.

The "anti-impunity" view, however, implies that substantial sentences not only have an effect upon potential offenders but also on people "whose marginal deterribility or moral restraint, as the case may be, needs reinforcement now and again".

In Singapore, despite the absence of any empirical support, the efficacy of deterrence has not been questioned. Deterrence has been accepted by

36. [1981] 2 MLJ 230. See also, Straits Times report of November 8, 1978: "It's jail if you take bribes, CJ warns Customs men"

37. Ibid., at p.243.


the legislature as the theoretical foundation for programmes of crime control. The Government further believes criminal activity to be related inversely to the severity of punishment, and minimum sentences have therefore been introduced for many categories of offences.

(iii) As a Symbolic Function

The courts also appear to use severe sentences for corruption offences as a symbolic or expressive function to show the community's abhorrence for crimes of this nature. This is what Professor Nigel Walker calls "the Sargeant effect", after the 1974 decision of the English Court of Appeal in *James Henry Sargeant*. In making observations on the "classical" principles of sentencing in *Sargeant*, Lawton L.J.

40. See the speech of Home Affairs Minister Chua Sian Chin, *op.cit.*, in moving the Penal Code (Amendment) Act, 1984, which provided for minimum sentences to be imposed in certain categories of sexual and property offences. Minimum sentences also exist under other statutes such as the Misuse of Drugs Act, Cap.185, the Immigration Act, Cap.133 the Criminal Law (Temporary Provisions) Act, Cap.67, and the Betting Act, Cap.21.

41. For a fuller discussion, see Walker, *op.cit.*, pp. 101 to 103.

There is, however, another aspect of retribution which is frequently overlooked: it is that society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand courts must not disregard it. Perhaps the main duty of the court is to lead public opinion.

These observations appear to imply that sentences of the courts, especially when publicised, must be of such a kind as to increase public disapproval of the offences in question. Sentences imposed to mark public condemnation of what is perceived to be grave or inexcusable misconduct are of course based on the concept of denunciatory retribution. Those who support such a symbolic function of punishment consider it as a means of inculcating or reinforcing desirable moral attitudes towards the offences in question.

43. Ibid., at p.77.

In a small country like Singapore where corruption was once rampant and where every effort is now being made to control corruption, a severe sentence for the corrupt would help shape and sustain the community's intolerance for such offences. Certainly the Corrupt Practices Investigation Bureau hopes that public attitude towards reporting offences of corruption will improve with the publicity given in the media for convictions and sentences for such offences.

In respect of corruption offences, the "Sargeant effect" has in fact been considered in local decisions since Yuvaraj v. PP, which was decided by the Privy Council five years before Sargeant. Lord Diplock's famous words in Yuvaraj that "corruption in the public service is a grave social evil which is difficult to detect" has since been followed in a number of cases in Singapore to support deterrent sentences of imprisonment.

45. See the discussion on the CPIB, ante.
46. [1969] 2 MLJ 89.
In Chew Chee Sun v. PP, for example, Wee Chong Jin C.J. observed that Diplock's words "apply with greater force in Singapore" as regards corruption in the public service. In that case, the appellant, an executive architect and planner with the Ministry of National Development, was convicted of two charges of receiving bribes totalling $5,000 as an inducement for showing favour to a private construction company "by adopting a lenient supervision over the work carried out by the construction firm for the Robinson Road Landscaping Project". His sentence of 18 months imprisonment was affirmed on appeal.

(b) The Sentencing Practice of District Judges

As no statistics on court sentences for offences of corruption have been maintained by the courts, the police or the CPIB, it was not possible to make any detailed analysis of the sentencing practices of District Court judges in respect of corruption offences. Twenty-one judgments, written by 9 District Judges during the years 1980 to 1985, that were made available were instead examined to see if the

49. [1975] 2 MLJ 58.

50. Twenty-nine judgments were examined of which twenty-one were in respect of conviction and sentence.
principles and considerations that influence judicial thinking could be ascertained, and, in particular, to determine if the judges were following the guidelines set by the appellate courts in sentencing the corrupt.

From these judgments, it appears that judges are generally inclined to impose custodial sentences on corrupt public servants, however small the amount of gratification taken. A driving tester who took $1,000 to pass a candidate for a driving test, and an Assistant Health Inspector who received $400 not to issue a summons against a building contractor for violating health regulations, were sentenced to 7 months imprisonment and 5 months imprisonment respectively. Again a prison warder, who obtained $200 for illegally supplying cigarettes to an inmate at the Drug Rehabilitation Centre, received a sentence of 9 months imprisonment.

Where a term of imprisonment was imposed by the District Judges, it was said to have been for one of the following reasons:

52. Noor Rashid bin Ismail, Magistrate's Appeal No. 137 of 1981.
(i) to deter the commission of similar offences
to deter others;

(ii) to ensure clean and efficient administration;

(iii) as the offence had tarnished image of public office;

(iv) corruption is a grave social evil;

(v) corruption is regarded in Singapore as serious;

(vi) public interest demands a severe sentence.

It would thus appear that both the principles of general deterrence and denunciatory retribution, as laid down by the appellate courts, are applied by District Courts in sentencing offenders convicted of offences of corruption.

The appellate courts are also more inclined towards upholding substantial sentences for corruption offences because, despite the Prevention of Corruption Act giving the sentencer a wide discretion in the choice of sentence, the very nature of these offences
limit sentencing options. Many of the usual mitigating factors that are often urged upon the courts during the sentencing process are absent in cases of corruption. For example, the absence of previous convictions for offenders who are public servants must weigh very little with the courts because public servants are expected to be persons of good character and are employed on that basis.

The English courts have taken a similar view. In Sporle, for example, the appellant had been convicted on a number of charges of bribery and corruption in relation to the building contracts of the Battersea Metropolitan Council when he was a member and chairman of the Housing Committee of the Council. He was sentenced to 6 years imprisonment. Although Lord Chief Justice Widgery considered this to be a case of "a man of perfect character who has done a great deal of exceptionally good work for the community" but had committed a breach of trust, he nevertheless thought that the courts had always "rightly taken the view that such cases must be marked with a substantial sentence of imprisonment."

55. Ibid., at p.46.
Other mitigating factors, such as the loss of a job as a consequence of the conviction and hardship caused to the family if a custodial sentence were to be imposed on the offender, become less meaningful for offences of corruption as such factors are common to all offenders.

As it to be expected, the status of a corrupt offender, especially if he is a public servant, is relevant to sentence. Thus, a public servant placed in a position of trust, a senior public servant in the Land Office, Members of Parliament, Cabinet Ministers, a Chief Fire Officer, an executive engineer, a government architect and a senior officer in the Air Force have all received substantial terms of imprisonment. At the hearing of the appeal against conviction and sentence by Minister of State Wee Toon Boon, it was submitted that the sentence of 18 months imprisonment was out of proportion to the offences of which the appellant had been convicted because, inter alia, no harm was suffered by the Government, no wrong

decisions were taken as a result of the appellant's acts, and the appellant had gained very little from the offences. While accepting that these submissions were correct on the facts, in the opinion of the Chief Justice "the real gravamen, as far as the appellant is concerned, is the fact that the offences were committed by him while he held ministerial office".

The appellate courts have, however, indicated that the fact that the accused had pleaded to the charge, the loss of pension that the conviction would entail or inordinate delay in the conclusion of the trial would be considered as mitigating factors.

In respect of offences of corruption, the courts have clearly not departed from the old view that the punishment must fit the crime. The acceptance of general deterrence as the main principle of sentencing probably justifies the choice of a tariff sentence as opposed to an individualised measure. The circumstances of the offence, rather than those of the

57. Ibid., at p.199.

offender, therefore appear to weigh more with the courts in their choice of both the kind and quantum of sentence. The nature of the corrupt act, the harm done, if at all, in the commission of the offence and the amount gained by the accused would all be relevant considerations. A bribe taken to expedite a matter for instance, would be considered differently from one obtained to distort a decision that the accused was under a duty to make. Corruption in the commercial sector is viewed less seriously than that in the public sector although the courts may well respond to the sharp increase in private sector corruption by handing down more deterrent sentences in the future. Prison sentences are now being imposed by District Judges only on those private sector employees who have occupied positions of trust and who have received bribes over a considerable period of time or who have taken substantial amounts.

59. Discussed more fully in Part (B) of this chapter, ante.

60. See, for example, Wilkinson, Magistrate's Appeal No. 3 of 1981 (18 months imprisonment); Neo Thian Teng, Magistrate's Appeal No. 1 of 1981 (6 months imprisonment); Ong Chuan An, Magistrate's Appeal No. 202 of 1982 (8 months); Krishna Jeyaram, Magistrate's Appeal No. 228 of 1984 (3 years).
The courts have also recognised that there are varying degrees of culpability under the Prevention of Corruption Act and have reflected this in their sentences. For example, as a general rule, the giver of a bribe is dealt with less severely than a receiver. Although the Prevention of Corruption Act prescribes similar punishment for both the giver and receiver of bribes, the courts have, for example, shown leniency to those who have felt compelled to give bribes only because they had reason to believe that the bribe was expected by a public servant in view of delays in the performance of his duty; those who were motivated by fear of being charged in court when apprehended, or who did not wish to be inconvenienced by spending long hours in police stations and in courts awaiting trial for minor infringements of the law. Obviously, the same degree or moral turpitude does not attach to a person who gives a bribe on demand or


62. Cap.241: section 6. For the position under the Penal Code, see the relevant discussion in chapter VII, ante.


64. Ng Kok Jooi v. PP, op.cit.
threat as to a person who is himself the tempter. Thus a member of a syndicate involved in smuggling drugs or in illegal gambling who offers bribes to public officers to avoid arrest and prosecution, "corrupts the establishment of law and order" and should expect to be treated with "as much severity, if not more severity than public servants who accept bribes".  


66. Ng Kok Jooi, op.cit. In Pravit Limapongpas, Magistrate's Appeal No. 357 of 1984, the member of a bookmaking syndicate was sentenced to 8 months imprisonment by a District Court for offering $40,000 to a football team for losing a game. His appeal was dismissed.
CONCLUSION

This study, done over a period of more than seven years, of the problems associated with corrupt practices and of one country's total efforts to control corruption, for purposes of this dissertation, has been particularly enlightening. They have of course enabled a better understanding of Singapore's political and socio-economic environment in which the anti-corruption measures operate, and have provided a fascinating insight into the complex legal and administrative machinery that must be brought into operation to combat an offence of the nature of corruption. More importantly, the examination of the control of corruption from different perspectives - that of the legislator, law enforcement officer, prosecutor, administrator, employer and of a judge, has resulted in a better realisation of the immense difficulties in developing a just and effective anti-corruption strategy.

A definition of any deviant behaviour that is examined must logically precede a useful explanation of the proposals for its control. What became increasingly clear in the course of writing this
dissertation is that corruption is an elusive concept which, though often easily recognised, creates difficulties in definition. This conceptual problem with corruption has been compounded by the fact that academicians and social scientists are unable to agree on an acceptable definition of it, legislators in almost 80 countries have avoided defining what corruption is and judicial attempts at such definition in many jurisdictions are unsatisfactory.

In this concluding chapter it is proposed to recapitulate the Singapore experience at corruption control, to present a general critique of her anti-corruption strategy and to discuss some of the problems ahead in the battle against corruption in the Republic of Singapore.

It is hoped that this study of Singapore's multifarious approach towards corruption control will provide useful lessons for some countries' comprehension of and contribution to the ultimate control of "one of the most recalcitrant

1. These difficulties have been considered fully in Chapter 1, ante.

2. Only China has attempted a statutory definition of corruption: Chapter 1, ante.

3. See for example the discussion on the meaning of "corruptly" in Chapter VIII, ante.
characteristics of public and private life of yesterday or today anywhere in the community of man".

(A) **THE SINGAPORE EXPERIENCE**

Clearly, with the degree of freedom from corruption that she presently enjoys, Singapore is a significant example for countries which are determined to eradicate corruption. In eliminating the more serious forms of corruption and in substantially reducing its incidence, the Republic has shown that for a determined nation the problem of corruption is not an insoluble social problem. Singapore has demonstrated that, given an honest political leadership, an anti-corruption climate can be cultivated and circumstances in which corruption will diminish in public life can be brought into existence.

A country must of course adopt crime control measures and instrumentalities that best suit the political, legal, administrative and socio-economic systems that have been developed in the country. Indeed, Singapore's total approach to corruption

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control would have achieved less success had the Government, for example, neglected the economic well-being of the population or failed to establish an efficient civil service not given to dilatory or labyrinthine procedures. The technical competence, in terms of trained staff, sophisticated methods of investigations and detection and other available resources that permit the combat of corruption has been made possible by the country's economic success. The high standard of living that Singaporeans enjoy, which is the highest in Asia after Japan, the high literacy rates and the fact that the Singapore bureaucracy is not characterised by low wages have all helped in the country's anti-corruption efforts.

There are certainly special factors present in Singapore, such as the small size of the country which makes for greater control and the dominance of one political party for 28 years, which have helped to support and sustain a concerted anti-corruption strategy. However, factors which have often been identified as ensuring the existence of probity in public life, such as the evolution of responsible

5. Ante, Chapters II and III.
6. Ante, Chapter II.
political parties, strong pressure groups and a
critical press, are also notably absent in the country.

Based upon Singapore's experience which has been examined in the preceding chapters of this dissertation, it is possible to determine many general, preventive and punitive factors and measures that may be regarded as corrective of corruption in most societies.

Singapore's more direct methods of controlling corruption are impressive. These include the various conduct rules for public officers, such as the provisions of the Instruction Manuals, which seek to limit opportunities for corruption; the constant revision in public service departments of such routine anti-corruption measures as improving work methods and procedures, effective supervision and rotation of officers dealing with the public in departments which are susceptible to corruption; the vigilance of the Auditor-General and the Public Accounts Committee, suitable parliamentary safeguards, adequate

7. Fully discussed in Chapter IV, ante.
8. Ante, Chapter V.
anti-corruption laws and effective enforcement of both administrative and legal measures.

Singapore's anti-corruption strategy is distinguished by the Republic's total approach towards corruption control and by the fact that this has been successfully done without the adoption of any harsh, unjust or disreputable methods. Although Singapore legislation, for example, now requires minimum sentences of imprisonment to be imposed for a variety of offences from drug trafficking to robbery, allows certain categories of offenders to be caned and permits detention without trial for gangland offences, the battle against corruption has been waged without such aids. Whatever legal

9. See Chapters VI to X, ante.
10. See for example the Misuse of Drugs Act, Cap.185 section 29; Penal Code, Cap. 224, sections 392 to 396; Immigration Act, Cap. 133, section 56.
11. Mandatory sentences of caning have been prescribed for offences under a number of statutes including the Misuse of Drugs Act, ibid., section 29; Penal Code, Cap. 224, sections 385, 392, 394, 397, 458A; Vandalism Act, Cap. 108, section 3; Arms Offences Act, Cap.14, sections 6, 8; Corrosive and Explosive Substances and Offensive Weapons Act, Cap. 65, sections 6, 7.
12. Under the Criminal Law (Temporary Provisions) Act, Cap. 67, passed during colonial times because of the reluctance of witnesses to testify in court.
presumptions that exist in Singapore to assist the prosecution to prove its case against the corrupt are no different from those in the laws of many countries including the United Kingdom.

The effectiveness of the Singapore system to control corruption presently rests primarily on:

(1) the favourable political and socio-economic environment;

(2) an honest Government led by a Prime Minister who is determined to eradicate corruption;

(3) a co-operative public willing to give information on all suspected corruption in private and public business;

(4) adequate anti-corruption laws which are widely interpreted by the courts;

(5) a supportive criminal justice system which subjects the corrupt to substantial risks of detection, apprehension, conviction and punishment;

13. For a detailed examination of these presumptions, see part (C) of Chapter VIII, ante.
(6) an independent, effective and efficient Corrupt Practices Investigation Bureau;

(7) sufficient administrative checks and measures which seek to eliminate opportunities for corruption; and

(8) an efficient Public Service Commission determined to discipline corrupt public servants through speedy disciplinary procedures.

It is unlikely that the many checks and measures against corruption which presently exist in the public bureaucracy can be increased without affecting its efficiency. In January 1987, after he had made a ministerial statement on the death of a Senior Minister who had committed suicide whilst under investigations for corrupt practices, the Prime Minister told Parliament:

As for the system, there can be no sudden burst of creative management which will put up new trip-wires all over the place. The system has evolved over the decades with checks and balances ... We cannot conceive of any more trip-wires. If we can, we might be like some of these houses with burglar alarms where the tenant regularly trips them up, and not the burglar.

(B) A CRITIQUE OF SINGAPORE'S ANTI-CORRUPTION STRATEGY

The Republic's anti-corruption strategy is not without flaws. It is too dependent for its success upon the continued existence of honest political leaders for whom combatting corruption is a high priority, and upon the level of vigilance of an efficient and effective law enforcement agency such as the CPIB.

For various reasons and despite numerous administrative measures designed to curb corruption within the public service, the war against corruption has for long been viewed by public servants as one that concerns only the Government "watchdog" - the CPIB. Given the Bureau's "secret police" reputation, co-operation from government departments has been less than enthusiastic. Until quite recently, the Directors
of the CPIB did not sufficiently drive home the message that the battle against corruption in the public service is one that must be fought by all public servants.

In view of the deplorable state of corruption when the PAP first came into power in 1959 and the Government's determination to root out the evil at all costs, the consequent relentless pursuit of the corrupt by the Bureau has had a strange toll on the quality of public service. Some consequences of this, according to foreign observers, are bureaucratic rigidity and a lack of initiative and flexibility that come from civil servants' observance of all the rules to the letter. These are all traits that have been attributed to public servants' hesitation "to take decisions which might be misconstrued".

A former Head of the Civil Service has also publicly chastised administrative officers for not taking decisions that go against printed rules, for being unconcerned with "the aim and objective or the

15. See Chapter X, ante, for a discussion on the Corrupt Practices Investigation Bureau.


17. Ibid., at p.19.
purpose of any subject or matter that they have to
deal with" but instead, of taking "the easy way out by
falling back on rules and regulations". Another said
upon his retirement that civil servants in Singapore
should simply "do more thinking". That some of the
fears of civil servants are not unwarranted, is shown
by the following warning to over-zealous CPIB officers
by a District Judge, when he acquitted a police
sergeant charged with accepting a $250 bribe, without
calling his defence:

An honest man who discharges his law
enforcement duties without fear and without
being influenced by the character of the
person who is under investigation ought not
to be placed in a situation where he has to
constantly look behind his shoulders for
over-zealous CPIB officers who have been made
to spring into action by false allegations of
vindictive complainants.

18. Extracts from a talk by Mr Howe Yoon Chong to
members of the Administrative Services Association
of Singapore on 15th May, 1975 (mimeo). For
similar complaints from Members of Parliament,
see Singapore Parliamentary Debates, vol. 34,
col. 382; Second Report of the Public Accounts
Committee, Parl. 3 of 1976, paras 9, 10.

19. "Bogaars: Civil Servants Should Do More Thinking",
Management Development, October, 1981.

20. "Rebuke for over-zealous CPIB officers", Straits
Times, November 27, 1976.
Rather ironically, whilst many a corrupt civil servant in Asia is known to follow all rules to the letter merely to obtain a bribe in the form of a "speed" payment, some honest public servants in Singapore feel compelled to be similarly inflexible for fear that they may otherwise be suspected of favouring a citizen for pecuniary benefit.

A multitude of Public Service Conduct Rules which largely appear to be pivoted on enforcement and punishment rather than on guidance and self-regulation, and fear of CPIB inquiries have helped foster such a blind adherence to rules and regulations.

Due to a lack of codification of the various rules of conduct in the public service and an unnecessary emphasis on confidentiality of these rules, both public officers to whom these rules apply and members of the public have difficulty in determining

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20a. Some recent changes, however, have been made to the Instruction Manuals in this regard. Whereas previously it was made clear to public servants that failure to comply with the Manuals constituted "an offence which may render the offender liable to disciplinary proceedings", the preface to these Instructions Manuals now emphasise that the Manuals are but "management tools to be used intelligently".
with certainty the acceptable standards of conduct in all the public service sectors.

As observed elsewhere in this thesis, the CPIB must move away from its role as a law enforcement agency enforcing punitive measures and operate more fully as an anti-corruption agency that is able to devote itself equally to preventive and educative functions in controlling corruption. At any rate, the Bureau can never successfully be the sole guardian of bureaucratic morality and can only remain as independent and as efficient as the politicians in power permit it to remain so.

The CPIB itself will continue to face increasing problems in the years ahead. Should it concern itself only with keeping the public service clean? Should it ignore the growing number of complaints against private sector corruption? Can it afford to continue to devote its limited manpower resources to investigating complaints of private sector corruption which between 1975 and 1985 constituted 50.2% of all complaints received by the Bureau? Should

21. For a fuller treatment, see "A Critique of the Conduct Rules", ante, Chapter IV (D).

22. Ante, Chapter X.
high standards of public morality be strictly enforced at the risk of stifling private enterprise? Is it ever possible for public servants to remain honest in the midst of rampant commercial corruption?

The combination of anti-corruption laws which are effectively enforced by the CPIB and the various administrative measures, the compliance of which is ensured by the Public Service Commission on pain of disciplinary punishment, has demonstrated the seriousness of the Government in its anti-corruption efforts. What is unclear, however, is in what circumstances a public servant is liable to be disciplined instead of being prosecuted in a court of law. Although both CPIB officers and Deputy Public Prosecutors maintain that it is the quantum of evidence that decides whether an errant public servant should face criminal or disciplinary proceedings, it is unrealistic to accept that every breach of the anti-corruption laws will result in a court prosecution.

23. See Chapter X, ante.
(C) THE PROBLEMS AHEAD

Thirty-five years after the Bureau was set up and after more than 28 years of continuous PAP rule, traditions of integrity and probity, impelled by a strong public conscience, are yet to emerge in Singapore.

The fact remains that for all the Government's efforts at curbing corruption, a number of senior public servants including three Ministers and a Member of Parliament, all belonging to the ruling Party, have been discovered to have indulged in corrupt practices in the last two decades. Despite the strict enforcement of administrative and legal measures, the CPIB continues to periodically uncover corruption rackets involving public servants. There has also been an alarming increase in such corruption-related offences as opportunistic theft, criminal misappropriation and cheating. Why does such corruption continue to exist at all?

In Singapore, in particular, corruption may be the symptom of an affluent, materialistic society which has for far too long nurtured values which are
acquisitive. To quote a senior Minister:

If the average Singaporean has any philosophy at all, it has its basis in the pursuit of material wealth. Money is the source of his dreams and I suspect of his nightmares as well. The only time he might lose interest in it is when he is dead ... They spend money for one purpose only - to flaunt their wealth, to impress on others that they possess as much money if not more than others.

The Minister's judgment of his countrymen has received some support from the findings of a survey carried out by the Singapore Sunday Times in June 1981.

When asked what they value most in life, 61% of those interviewed listed the opportunity to make money as the second-most important goal in life; the first being a clean environment - some 62%. According to one explanation, the first choice of a clean environment by pragmatic Singaporeans was a logical allocation of priorities because "a clean environment ensures a longer life expectancy and a sound health without which the pursuit of money would be of a tragically brief duration".


25. The results of the survey were published in the Sunday Times on June 7 and June 14, 1981.

26. Rajaratnam, op.cit., p.16
The Government's present attempts to improve the Singaporean's appreciation of the arts is part of its efforts to extend his "intellectual and cultural horizons beyond immediate material gratification."

The problem in Singapore is to instil in the bureaucrat a sufficient sense of right and wrong, to strengthen his will to resist temptation and to increase his moral sensitivity. Ultimately, as the Royal Commission on Standards of Conduct in Public Life recognised in England, the test is whether a public servant judges that his behaviour could withstand public scrutiny.


28. See the Commission's Report, Cmnd. 6524, para. 211. It is hoped that the Government's present emphasis on religious knowledge and moral education in schools and the present movement "towards excellence in schools" will help better the standards of integrity.

28a. As he must. In a ministerial statement in Parliament in January, 1988, the Prime Minister announced that CPIB investigations into allegations of financial wrong doing and improper conduct in office against the Attorney-General revealed that these were unfounded. He added: "All those excercising authority must be prepared to have their actions in their official capacity examined, and must stand ready to justify these action publicly": Straits Times, January 18, 1988.
In the Singapore context, the next and final stage in corruption control may be the adoption of what criminologists call the "control theory" in crime prevention. Such a theory assumes that deviant behaviour results when an individual's bond to society is weak or broken. The control theory, therefore, suggests that the appeal of certain types of crime could be offset by strengthening an individual's attachments and commitments to others in the society and to conventional institutions. These bonds inhibit deviance because they represent value norms that may be lost or jeopardised by deviance or make offenders feel guilty when they misbehave.

The PAP is likely to remain in power for many years in the foreseeable future. What is hoped is that its penchant for probity will result in a gradually better educated public getting used to high standards of integrity in the public and private sectors, and that consequently public opinion will sufficiently grow to become a potent weapon against corruption. Obviously, no future Government can afford to be complacent about corrupt practices if a vigilant public, to which venality has become abhorrent, is not

prepared to tolerate it. When such a favourable social climate is created, social controls to prevent corruption will become increasingly more relevant and effective than disciplinary and punitive measures.

In the final analysis, it is only the conscience of a nation that can best uphold moral standards in the conduct of both public and private business in a country. As Prime Minister Lee Kuan Yew told Parliament recently:

The strongest deterrent is in a public opinion which censures and condemns corrupt persons, in other words, in attitudes which make corruption so unacceptable that the stigma of corruption cannot be washed away by serving a prison sentence.

A country is not quite set on the path to eliminate corruption until the politicians, the bureaucrats and the public are equally able to feel a sense of moral indignation towards all forms of corrupt practices and are united in their commitment to combat corruption.

30. During Question Time following a ministerial statement over the death of Senior Minister Teh Cheang Wan who committed suicide whilst under CPIB investigations. For press reports, see Straits Times, Asian Wall Street Journal, January 21, 1987. For a fuller discussion of the Teh Cheang Wan case, see Chapter III, ante.
APPENDIX 1

VALUATION OF GIFTS RECEIVED BY GOVERNMENT OFFICERS

This form should be completed in triplicate and submitted in duplicate to Accountant General with the remaining copy for departmental file.

To: Permanent Secretary
Ministry of _____________________________

In accordance with paragraph L89/L90 of Instruction Manual No 2, I submit herewith the gift/s* received for transmission to the Accountant-General for valuation.

1) Name & Designation of Recipient _____________________________

2) Name of Donor _____________________________

3) Date of Receipt _____________________________

4) Reason for gift/s*
   (offered and why)
   *if they could
   not be refused

5) A | B | C

   Description of gift/s* (Attach List if space is insufficient) | Valuation by AG | Recipient wishes to retain after valuation

   (i) | | |
   (ii) | | |
   (iii) | | |
   (iv) | | |
   (v) | | |

Date _____________________________

Signature of Recipient _____________________________

PART II

To: Accountant-General

The gift/s* mentioned above *is/are forwarded for your valuation.

I hereby give approval for the officer to retain the gift/s* on payment of the assessed value.

Date _____________________________

Permanent Secretary _____________________________

PART III

To: Permanent Secretary
Ministry of _____________________________

The gift/s* *has/have been valued as indicated in column (B) in item 5 of Part I above.

Date _____________________________

Accountant-General _____________________________

PART IV

Accountant-General

1) The officer wishes to retain the gift/s* as indicated in column C in item 5 of Part I. The officer does not wish to retain the gift/s*.

2) I forward $ __________________ in *cash/cheque as payment. Please allow __________________ to collect the gift/s*.

Date _____________________________

Permanent Secretary _____________________________

G 185 — Budget

*Delete as necessary
SINGAPORE CIVIL SERVICE
DECLARATION OF
*NON-INDEBTEDNESS/INDEBTEDNESS

NOTES
1 Office should delete Section A or B below, as appropriate, before issuing this Form
to an officer.
2 This declaration must be completed by every officer on the following occasions:
   (1) On his/her first appointment to the Service
   (2) Before his/her emplacement on the pensionable establishment
   (3) Annually within the first three weeks of July
3 An officer who declares that he is financially embarrassed as defined in the In­
structions overleaf, will be required to state the debts and liabilities on a separate
sheet of paper.

Name: ________________________________
NRIC No.: ____________________________
Ministry/Department: ____________________
Designation: __________________________

SECTION A (To be completed on first appointment or before
emplacement on the pensionable establishment)
1 I have read and understood the instructions overleaf and
   declare that I *am/am not free from financial embarrassment.
2 *Details of my debts are attached.

SECTION B (To be completed annually in July)
1 I have read and understood the instructions overleaf and
   hereby declare that during the last 12 months ended
   30th June 19..., I *was/was not free from financial
   embarrassment.
2 *Details of my debts are attached.

Date: __________________________

*Delete as necessary

Signature of Declarant

023-1/81
APPENDIX 3

Name of Officer: 
Substantive Appointment: 
Ministry/Department: 
Date of First Appointment: 

DECLARATION OF INVESTMENTS (A)

I declare that as at 2nd Jan 19...(date of first appointment), the details of my investments are as follows:—

(a) Shares of Non-listed Public Company
   (i) No. of shares
   (ii) Name of Company
   (iii) Whether approval of Permanent Secretary (Finance) (Budget) has been obtained for retention of the shares.

(b) Shares of Listed Public Company
   (i) No. of shares
   (ii) Name of Company
   (iii) Whether approval of PS (Finance) (Budget) has been obtained for acquisition of the shares (ie for new issues obtained through private placement).

(c) Shares of Private Company
   (i) No. of shares held by officer
   (ii) Name of Company
   (iii) Paid-up Capital
   (iv) Nature of Business
   (v) List of Directors/Partners and their occupation
   (vi) Date and manner of acquisition (viz through inheritance, gift or purchase) of shares
   (vii) Whether approval of PS (Finance) (Budget) has been obtained for retention of the shares.

(d) Land/Houses (Other than the house used as my residence)/Other Property.

........................................
(Signature)
........................................
(Date)

*Quote reference
(Note: A 'Nil' Return is necessary)
APPENDIX A

Name of Officer:

Substantive Appointment:

Ministry/Department:

Date of First Appointment:

DECLARATION OF INVESTMENTS (B)

I declare that as at 2nd Jan 19 (or date of first appointment) to the best of my knowledge, my spouse (or any other member of the family who is dependent on me) has/have the following investments:

(a) Shares of Non-listed Public Company

(i) No. of shares
(ii) Name of Company

(b) Shares of Listed Public Company

(i) No. of shares
(ii) Name of Company

(c) Shares of Private Company

(i) No. of shares held
(ii) Name of Company
(iii) Paid-up Capital
(iv) Nature of Business
(v) List of Directors/Partners and their occupation
(vi) Date and manner of acquisition (viz through inheritance, gift or purchase) of shares

(d) Land/House (other than the house used as residence)/Other Property

........................................
(Signature)

........................................
(Date)

*Name of spouse/dependent member(s) of family to be given.

(Note: A 'Nil' Return is necessary)
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