Public Prosecutor *v* Marzuki bin Ahmad and another appeal
[2014] SGHC 166

Case Number	: Magistrate's Appeals Nos 273 of 2013/01 and 273 of 2013/02
Decision Date	: 27 August 2014
Tribunal/Court	: High Court
Coram	: Sundaresh Menon CJ
Counsel Name(s)	: Grace Lim, Eunice Lim and G Kannan (Attorney-General's Chambers) for the appellant in Magistrate's Appeal No 273 of 2013/01 and the respondent in Magistrate's Appeal No 273 of 2013/02; Nirmal Singh (Raj Kumar & Rama) for the respondent in Magistrate's Appeal No 273 of 2013/01 and the appellant in Magistrate's Appeal No 273 of 2013/02.
Parties	: Public Prosecutor — Marzuki bin Ahmad

Criminal Procedure and Sentencing – Sentencing – Principles

Criminal Procedure and Sentencing – Sentencing – Penalties

27 August 2014

Sundaresh Menon CJ:

Introduction

1 Magistrate's Appeal No 273 of 2013/01 ("MA 273/2013/01") and Magistrate's Appeal No 273 of 2013/02 ("MA 273/2013/02") were cross-appeals against the sentence imposed by the district judge ("the DJ") in *Public Prosecutor v Marzuki Bin Ahmad* [2013] SGDC 428 ("the GD"). The former was filed by the Public Prosecutor, and the latter, by Mr Marzuki bin Ahmad ("the Accused").

2 The Accused was charged under s 6(*a*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("the PCA"), which reads as follows:

> **Punishment for corrupt transactions with agents**
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> **6.** If —
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> (*a*) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne 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 his principal's affairs or business;
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> …
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> he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment not exceeding 5 years or to both.

A total of 13 charges were brought against the Accused. Six of those charges were proceeded with

and he pleaded guilty to all of them. In respect of those six charges ("the charges proceeded with"), the Accused had received a total sum of $25,000 pursuant to a number of loans which he had corruptly obtained, namely, one loan of $20,000 and five loans of $1,000 each. A further seven charges were taken into consideration for the purposes of sentencing. Those seven charges ("the charges taken into consideration") concerned a number of loans for a total sum of $6,500 and one attempt to obtain a further loan of $5,000. The DJ sentenced the Accused to six months' imprisonment for the charge involving the loan of $20,000 and one month's imprisonment for each of the five charges involving a loan of $1,000. He ordered the six-month imprisonment term and two of the one-month imprisonment terms to run consecutively, with the remaining one-month imprisonment terms to run concurrently, making an aggregate term of eight months' imprisonment.

3 The PCA further provides for the imposition of a penalty where a person is convicted of an offence involving the acceptance of gratification in contravention of any provision of the PCA. This is found in s 13, which provides as follows:

> **When penalty to be imposed in addition to other punishment**
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> **13.**—(1) Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within such time as may be specified in the order, a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine.
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> (2) Where a person charged with two or more offences for the acceptance of gratification in contravention of this Act is convicted of one or some of those offences, and the other outstanding offences are taken into consideration by the court under section 148 of the Criminal Procedure Code 2010 for the purpose of passing sentence, the court may increase the penalty mentioned in subsection (1) by an amount not exceeding the total amount or value of the gratification specified in the charges for the offences so taken into consideration.

The DJ ordered the Accused to pay a penalty of $25,000 under s 13(1) in respect of the sums involved in the charges proceeded with, but declined to make an order against the Accused under s 13(2) in respect of the sums involved in the charges taken into consideration.

4 MA 273/2013/01 and MA 273/2013/02 (collectively referred to hereafter as "these Appeals") concerned both the length of the imprisonment term that the DJ imposed as well as the DJ's decision on the penalty orders under both ss 13(1) and 13(2).

5 As to the imprisonment sentence, the Prosecution contended that the sentence imposed by the DJ was manifestly inadequate, and sought an aggregate imprisonment term of at least 12 months. The Accused, on the other hand, sought to have the sentence reduced to a term of no more than six months' imprisonment on the grounds that the aggregate sentence of eight months' imprisonment was manifestly excessive

6 As to the penalty order under s 13(1), the Accused sought a reduction in the aggregate amount which he was to pay as a penalty from $25,000 to $11,500. The Prosecution, on the other hand, appealed against the DJ's decision not to make a penalty order under s 13(2) and, accordingly, sought a penalty order for the aggregate sum of $31,500.

7 These Appeals were heard on 17 April 2014, at which hearing, I raised an issue concerning s 13. As noted above, the gratification in this case took the form of a number of loans. Some of these had been repaid by the time the Accused was tried, while others remained outstanding. Both the Prosecution as well as the DJ proceeded on the basis that for the purposes of s 13, a loan of money should be treated in the identical way as an outright gift of money. I was not satisfied that this was correct in principle. I therefore directed the parties to file further submissions on this issue. After receiving and considering the further submissions, I gave my decision on 27 May 2014.

8 In MA 273/2013/01, I dismissed the Prosecution's appeal to enhance the aggregate sentence of eight months' imprisonment, but allowed its appeal against the DJ's decision not to order a penalty under s 13(2). I ordered the Accused to pay a sum of $6,500 as a penalty under s 13(2).

9 In MA 273/2013/02, I dismissed the Accused's appeal to reduce the aggregate sentence of eight months' imprisonment, but allowed his appeal against the DJ's decision to order a penalty of $25,000 under s 13(1). That penalty order was substituted with an order that the Accused pay a penalty of $5,000 under s 13(1).

10 In summary, I sentenced the Accused to an aggregate of eight months' imprisonment and a penalty under s 13 of $11,500 (consisting of a penalty of $5,000 under s 13(1) and a penalty of $6,500 under s 13(2)). I now give the reasons for my decision.

Background facts

11 The Accused is a 64-year-old male. He was employed as an Assistant Property Executive by Jurong Town Corporation ("JTC") at the material time. In that capacity, he was tasked to conduct periodic checks and inspections at premises leased out by JTC to ensure that the lessees complied with applicable local laws and regulations as well as with the terms of their leases. The Accused was obliged to report any infringements to his supervisors at JTC and also to the relevant authorities or agencies.

12 The gratification in this case was given by one Chew Wee Kiang Allen ("Allen"), who was then the General Manager of Multi Star Dormitory Pte Ltd and Miles Technology Pte Ltd, two companies in the business of providing lodging for foreign workers in Singapore. The dormitories run by these two companies include those situated at Nos 2, 16 and 18 Fan Yoong Road, which premises are owned by JTC. Allen was responsible for the operations of the Fan Yoong Road dormitories.

13 In July 2007, the Accused became acquainted with Allen when he conducted inspections at one of the Fan Yoong Road premises. The Accused discovered that foreign workers were being housed at the premises even though certain approvals from the Urban Redevelopment Authority and the Singapore Civil Defence Force had yet to be obtained at that time.

14 The Accused indicated to Allen that he was in need of money. They subsequently came to an understanding that the Accused would forbear from reporting the non-compliance that he had discovered, in exchange for which Allen would extend some loans to the Accused.

15 Over a period of more than a year, the Accused received $31,500 by way of loans from Allen and attempted to obtain a further loan of $5,000 from the latter. These formed the basis of the charges against the Accused described earlier (at [2] above).

The decision below

The imprisonment sentence under s 6(a)

The imprisonment sentence under s 6(a)

16 In determining the term of imprisonment to impose on the Accused, the DJ first addressed the sentencing precedents that were cited to him by the Prosecution as the relevant precedents in this case.

17 Specifically, the Prosecution cited the three cases below:

(a) In *P Panner Selvam s/o Palanisamy v Public Prosecutor* Magistrate's Appeal No 136 of 1993/01 (unreported), the offender was an Assistant Labour Officer attached to the illegal employment enforcement unit of the Ministry of Labour. He claimed trial to a charge of corruptly attempting to obtain sexual gratification from a suspect as an inducement for recommending that no action be taken against her. He was sentenced to 12 months' imprisonment.

(b) In *Public Prosecutor v Tan Hock Chuan* Magistrate's Appeal No 292 of 1993/01 (unreported), the offender, a former detective police constable, attempted on 25 occasions to obtain gratification in the form of free illegal lottery bets as an inducement for forbearing to take action against an illegal lottery collector. The amount of gratification which the offender attempted to obtain totalled $12,310. He was also found guilty of accepting cash gratification of $200 and $3,500 on two occasions from the illegal lottery collector for the same forbearance. He was sentenced to six months' imprisonment for each charge, and six of those imprisonment terms were ordered to run consecutively, making an aggregate sentence of three years' imprisonment.

(c) In *Ung Chaing Hai v Public Prosecutor* Magistrate's Appeal No 302 of 1998/01 (unreported), the offender, a senior station inspector in charge of the gambling squad at the Central Police Division, was convicted of ten charges of corruptly accepting gratification amounting to $17,280 from a gambling den operator in exchange for tipping off the latter about planned police raids. He was sentenced to two years' imprisonment on the first charge and one year's imprisonment on each of the remaining charges. The two-year imprisonment term and one of the one-year imprisonment terms were ordered to run consecutively, making an aggregate sentence of three years' imprisonment.

18 The DJ took the view that the aforesaid cases were not directly applicable because they involved offences that related directly to perverting the course of justice. In those cases, the giver of the gratification had been able, as a result of the corrupt act, to evade enforcement action that had been planned or would have been taken by the authorities. The DJ considered the Accused's acts to be of a less serious nature as they concerned regulatory or contractual breaches. The DJ therefore declined to follow the sentencing precedents cited by the Prosecution.

19 The DJ also rejected the Prosecution's submissions on the applicability of the principle of parity of sentencing as between the giver and the recipient of gratification. This principle rests on the premise that, all other things being equal, the parties on both sides of a corruption offence (*ie*, the giver and the recipient of gratification) are equally culpable and should be subject to similar sentences. As Allen had been sentenced to 12 months' imprisonment for giving the gratification to the Accused, the Prosecution submitted that that should be the starting point for sentencing the Accused. The DJ chose not to apply the principle of parity of sentencing on the basis that Allen was "a hard core [*sic*] and recalcitrant criminal" (see [35] of the GD), having previously been convicted of various offences including robbery, kidnapping, housebreaking, vandalism and cheating. In contrast, "the [A]ccused had a clean record and was convicted for the first time in his life at the age of 63 years old" (see likewise [35] of the GD).

20 The DJ also rejected the general mitigating factors raised by counsel for the Accused, Mr Nirmal

Singh ("Mr Singh"), because they were either not legally relevant mitigating factors or not borne out by the facts.

The penalty order under s 13

21 As to the penalty order under s 13, the Prosecution submitted that the penalty imposed should be a sum of $31,500, which was the total amount of all the loans received by the Accused from Allen. It argued that a literal reading of s 13 suggested that the sum ordered to be paid as a penalty (also referred to hereafter as a "penalty sum" where appropriate to the context) had to be set by reference to the amount of gratification received by the Accused. The Prosecution contended that it should not matter that the gratification took the form of loans, or even that some of the loans had already been repaid by the Accused.

22 The Accused, on the other hand, argued that no penalty order should be made under s 13 in respect of the sum of $20,000 which he had already repaid to Allen. Instead, the Accused contended, he should only have to pay $11,500 as a penalty under s 13, including a sum of $6,500 under s 13(2) in respect of the charges taken into consideration.

23 The DJ rejected both parties' contentions and ordered the Accused to pay a penalty sum of $25,000 under s 13(1), being the total amount of the loans in the charges proceeded with.

24 The DJ agreed with the Prosecution's submission that on a literal interpretation of s 13, the court had to order any person who was convicted of accepting gratification to pay a penalty equal to the amount of that gratification (see [40] of the GD). He reasoned that since the Accused had received a total of $25,000 under the charges proceeded with, that was the amount which had to be disgorged. The repayment of the sum of $20,000 "did not change this fact" (see [41] of the GD) as far as the DJ was concerned.

25 The DJ, however, took into account the Accused's repayment in declining to exercise his discretion under s 13(2) to order the Accused to disgorge the sum of $6,500 that he had received under the charges taken into consideration.

My decision

The imprisonment sentence imposed by the DJ

26 The Prosecution's appeal against the imprisonment sentence imposed by the DJ was based on two grounds. First, the Prosecution submitted that the DJ had erred in fact and law in failing to give sufficient consideration to the principle of parity of sentencing as between the giver and the recipient of gratification. The DJ, it was said, had accorded excessive weight to Allen's antecedents in declining to sentence the Accused to a similar term of 12 months' imprisonment, and had not given sufficient weight to the active manner in which the Accused had solicited the gratification from Allen. Second, it was said that the DJ had erred in fact and law in coming to the view that the Accused's acts did not have the effect of perverting the course of justice. As a result, the Prosecution maintained, the DJ had applied the wrong sentencing precedents in arriving at his decision.

27 As for the Accused, in his appeal to reduce the imprisonment term imposed by the DJ, he in essence repeated the same mitigating factors which he had raised before the DJ.

The general approach to sentencing for s 6(a) offences

28 In arriving at my decision on the appropriate term of imprisonment to impose on the Accused, I reviewed a number of sentencing precedents for offences under s 6(*a*). From these precedents, it became apparent that when sentencing an offender for such offences, it would be relevant to have regard to a number of factors as follows:

(a) Whether the offence was committed by a public servant.

(b) What the value of the gratification was.

(c) The nature of the offender's corrupt acts and the seriousness of the consequences of those acts to the public interest. In this regard, corrupt acts that have the object and/or effect of perverting the course of justice or affecting public health and safety stand out as egregious. The different nature and consequences of each corrupt act will attract different degrees of disapprobation.

(d) The offender's seniority and position within the organisation which is his principal for the purposes of s 6(*a*), and the nature of the duty owed to that organisation, which duty was compromised by the offender's corrupt act.

(e) The level of control enjoyed by the offender over whether any action would be taken or forborne to be taken as a result of his corrupt act.

This list of factors is not exhaustive, and all other relevant factors must be considered according to the circumstances of the case.

Application of the general approach to the present case

29 In this case, the Accused was a public servant. The term "public servant" is not defined in the PCA. However, JTC is a body corporate established by statute pursuant to s 3 of the Jurong Town Corporation Act (Cap 150, 1998 Rev Ed), and s 10 of that Act deems every employee of JTC to be a "public servant" within the meaning of the Penal Code (Cap 224, 2008 Rev Ed).

30 The gratification in this case, which amounted to a total of $31,500 in loans as well as an attempt to obtain a further loan of $5,000, was substantial and well in excess of the sums involved in some of the precedents that were cited to me.

31 While the nature and the consequences of the Accused's actions were not so serious as to constitute perverting the course of justice by undermining the law enforcement process, they nonetheless had the potential to affect public safety. The premises in respect of which the requisite permits had not been issued might well have been unfit to house foreign workers, and as a result, the occupants might have been exposed to danger. That said, I placed no weight on this consideration in the end because there was nothing in the Statement of Facts that conclusively established it.

32 The Accused, although not in a particularly senior position in JTC, nonetheless held a position of trust and had a duty to report the very matters which he forbore to report. In this regard, he seriously compromised the duty that he owed to JTC.

33 Having considered these factors, I agreed with the DJ that the sentencing precedents relied upon by the Prosecution were not entirely apposite. Those were all cases in which, as a direct consequence of the offenders' corrupt acts, the givers of the gratification had been able to avoid detection and punishment for their criminal activities. Moreover, as the accused persons in those

cases were directly involved in the law enforcement process, their failure to carry out their professional duties with integrity and honesty had, all the more, an adverse impact on law and order in Singapore. For instance, in the cases involving illegal gambling, police officers whose core function was to apprehend offenders involved in and put a stop to illegal gambling had, in exchange for gratification, allowed the givers of the gratification to continue with their criminal activities and, in the process, inflict more harm on society.

34 In the present case, the Accused was not in the same position. His acts did not threaten to undermine the law enforcement process in the same way. For one, the Accused was tasked to *check* for adherence by JTC's lessees to the terms of their leases and other applicable statutory provisions. Moreover, the Accused was, in a sense, a step removed from the law enforcement process, in that although he was in charge of conducting checks and inspections of premises leased out by JTC, he was ultimately not empowered to decide on any enforcement action that might be taken against lessees who breached the terms of their leases and/or other applicable statutory provisions.

35 Given these circumstances, I found two of the cases relied upon by the Accused to be of greater relevance, namely, *Sundara Moorthy Lankatharan v Public Prosecutor* [1997] 2 SLR(R) 253 ("*Sundara Moorthy Lankatharan*") and *Mohd bin Ahmed Ibrahim v Public Prosecutor* Magistrate's Appeal No 231 of 1991/01 (unreported) ("*Mohd bin Ahmed Ibrahim*").

36 In *Sundara Moorthy Lankatharan*, the offender was a Higher Technician employed by the Housing and Development Board. He was convicted after a trial of one charge under s 6(*a*) of the PCA of obtaining gratification in the form of a loan of $4,000 from the Managing Director of a company as an inducement for forbearing to show disfavour to the company in the course of overseeing safety aspects of construction work that the company was carrying out. He was sentenced to three months' imprisonment.

37 In *Mohd bin Ahmed Ibrahim*, the offender, an Assistant Technician with the Telecommunication Authority of Singapore, was charged with 32 counts of corruptly receiving bribes from a colleague. He pleaded guilty to five charges, with the rest of the charges taken into consideration. His colleague, who had rented an apartment to conduct betting activities, had wanted to tap the telephone lines of a number of major runners and bookmakers so that he could eavesdrop on their conversations. He had persuaded the offender to tap the relevant telephone lines. In return, the offender had received $300 a week for a period of eight months. The offender was sentenced to two months' imprisonment on each charge. Two of the sentences were ordered to run consecutively, making a total of four months' imprisonment.

38 *Sundara Moorthy Lankatharan* involved a public servant who, although not a law enforcement officer, was responsible for monitoring safety at construction sites and whose corrupt acts could potentially have affected public safety. This was similar to the situation in the present case. However, I also noted that the amount of gratification received in this case was much larger than that received by the offender in *Sundara Moorthy Lankatharan.* As for *Mohd bin Ahmed Ibrahim*, although the offender committed a serious breach of the law by tapping the telephone lines of others, the amount of the gratification involved was again significantly less than that involved here. In the premises, by reference to these two precedents, the appropriate term of imprisonment to impose on the Accused in this case should be longer than the imprisonment sentences meted out in the said precedents.

The application of the principle of parity of sentencing

39 Apart from citing the general principles applicable to sentencing for s 6(*a*) offences, the

Prosecution placed particular reliance on the principle of parity of sentencing, which contemplates that unless there is good reason for doing so, the court, in sentencing a party to a corrupt transaction, should not depart from the sentence imposed on his counterparty in the same transaction. In this case, Allen had been sentenced to 12 months' imprisonment. The Deputy Public Prosecutor, Ms Grace Lim ("Ms Lim"), submitted that the DJ's reason for departing from the sentence meted out to Allen was not defensible because he had placed excessive weight on Allen's previous antecedents, which had mainly been for property and abduction offences. Furthermore, the antecedents dated back at least ten years and were in no way related to the present offence of corruption. It was submitted that Allen's long hiatus from breaking the law also meant that he could not be considered a recalcitrant offender who manifested "a marked and progressive proclivity towards criminal activity or a cavalier disregard for the law" (see *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [16]), such that dissimilar antecedents could be regarded as relevant for sentencing purposes.

40 I accepted Ms Lim's submission that the DJ had placed undue emphasis on Allen's antecedents. Where the offender's previous convictions are for unrelated offences, these should generally not be considered in sentencing. It is also true that Allen's antecedents related to offences committed a very long time ago, and therefore did not reflect a pattern of or tendency towards repeat offending so as to constitute an aggravating factor.

41 However, I was not persuaded by Ms Lim's argument that the principle of parity of sentencing should be applied without qualification, such that the Accused's sentence of imprisonment should similarly be for an aggregate term of 12 months. Ms Lim's submission was premised on the decision of Yong Pung How CJ in *Chua Tiong Tiong v Public Prosecutor* [2001] 2 SLR(R) 515 ("*Chua Tiong Tiong*"), where it was observed as follows (at [21]):

> In [*Lim Poh Tee v Public Prosecutor* [2001] 1 SLR(R) 241], I endorsed the general principle that in most cases the giver of gratification bears equal culpability to that of the receiver. Sentences meted out should therefore be similar in terms. There are cases where a giver will not warrant a similar punishment as that of the receiver, such as when a giver was under compulsion or some form of pressure to give. In that situation, it is reasonable to punish the receiver more harshly than the giver. Conversely, there are instances where a giver bears equal, if not more, culpability than the receiver, and this is when the giver intends to corrupt the establishment of law and order for his private gain, and/or gives or offers bribes to pervert the course of justice. In these cases, the giver deserves more punishment. In my view, the appellant fell squarely into the latter category.

42 This extract from *Chua Tiong Tiong* must be read in the light of Yong CJ's earlier decision in *Lim Poh Tee v Public Prosecutor* [2001] 1 SLR(R) 241 ("*Lim Poh Tee*"). The offender in *Lim Poh Tee* was the recipient of the gratification given by the offender in *Chua Tiong Tiong* ("Chua"). The two cases therefore concerned the same corrupt transaction, save for the respective roles of the offenders. Both cases also involved appeals against the respective sentences passed, with the decision in *Lim Poh Tee* issued almost five months before the decision in *Chua Tiong Tiong*.

43 Chua, the appellant in *Chua Tiong Tiong*, was a well-known illegal moneylender who had been involved in a number of other instances of corruption, where the recipients of the gratification had similarly been charged under s 6(*a*) of the PCA (see *Hassan bin Ahmad v Public Prosecutor* [2000] 2 SLR(R) 567, *Fong Ser Joo William v Public Prosecutor* [2000] 3 SLR(R) 12 and *Public Prosecutor v Sim Bok Huat Royston* District Arrest Case No 33174 of 1999 (unreported)). One of the arguments raised by the offender in *Lim Poh Tee* on appeal to the High Court was that his sentence of 30 months' imprisonment was much longer than the imprisonment sentences meted out to the other

offenders who had received gratification from Chua. Yong CJ dismissed this argument, explaining as follows (at [30]):

> … [W]hile consistency in sentencing was a desirable goal, this was not an inflexible or overriding principle. The different degrees of culpability and the unique circumstances of each case play an equally, if not more, important role. Furthermore, the sentences in similar cases may have been either too high or too low: *PP v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 at [26], following *Yong Siew Soon v PP* [1992] 2 SLR(R) 261 at [11]. It was readily apparent upon a closer examination, that there were several significant crucial differences in the facts of the present appeal which clearly warranted a comparatively higher sentence.

44 Yong CJ then addressed the next argument raised by the offender in *Lim Poh Tee*, *viz*, that the 30-month term of imprisonment imposed on him was disproportionate to the 18-month term of imprisonment imposed on Chua by the trial judge, explaining (at [36]):

> … [T]here is no rigid or inflexible rule that the giver or acceptor of such bribes be treated with equal severity. As I emphasised earlier, while consistency in sentencing is desirable, the varying degrees of culpability and the unique circumstances of each case play an equally, if not more important role. *The sentence imposed on the accomplice may also have been too high or too low.* I was thus not inclined to be fettered by the sentence which was imposed on Chua [by the trial judge]. [emphasis added]

45 In my judgment, the effect of these remarks, taken together, is that the principle of parity of sentencing as between the giver and the recipient of gratification cannot be viewed or applied as an inflexible and rigid rule. Although the general principle is that the giver and the recipient of gratification are equally culpable, many other factors must also be considered when deciding on the sentence to be imposed on the particular accused person who is before the court. These factors may relate to the degree of culpability of each individual offender in committing the corrupt acts, as well as circumstances unique to each offender (bearing in mind too the general approach to sentencing for s 6(*a*) offences set out earlier at [28] above). Leaving that aside, in the case of a party to a corrupt transaction who is sentenced after his counterparty in the same transaction has been separately sentenced, it could also be that the sentence imposed on the counterparty in the earlier decision might have been too high or too low by reference to the applicable sentencing precedents. The court must always have the flexibility, when sentencing a party to a corrupt transaction, to depart from the earlier sentence imposed on his counterparty in the same transaction where that is the appropriate course of action to take.

46 Having reviewed the sentencing precedents relevant to these Appeals, I found that a sentence of 12 months' imprisonment for the Accused would be inappropriate. I therefore declined to apply strictly the principle of parity of sentencing in this case.

My ruling on the imprisonment sentence

47 In my judgment, the appropriate sentence of imprisonment in this case was to be determined having regard to:

(a) the factors set out at [28]–[38] above;

(b) the fact that this was the first offence committed by the Accused, and that he had done so at an advanced age; and

(c) the sentence that was imposed on Allen.

Having regard to these matters, I was satisfied that the Accused should be subject to a term of imprisonment that was longer than that imposed in the relevant precedents (see above at [36]–[38]), but shorter than that imposed on Allen. In all the circumstances, I found that the aggregate imprisonment sentence of eight months which the DJ imposed was neither manifestly excessive nor manifestly inadequate, and I declined to disturb it.

The DJ's decision on the penalty order provided for under s 13

48 I turn now to the second aspect of these Appeals, namely, the DJ's decision to order a penalty sum of $25,000 under s 13(1) of the PCA and to make no order under s 13(2). Crucial to this aspect of these Appeals was the question of whether gratification that took the form of a *loan* of money should be treated differently from gratification that took the form of a *gift* of money.

49 Ms Lim, in her further submissions, argued that no distinction should be drawn. She advanced three reasons for this:

(a) First, she argued that on a plain reading of s 13, whenever the court convicted a person of a corruption offence committed by accepting gratification in the form of money ("money gratification"), the penalty sum imposed under s 13 should be equal to the amount of money received, regardless of whether the money was received as a gift or as a loan. For ease of discussion, I shall hereafter refer to this reading of s 13 as "the Prosecution's interpretation of s 13".

(b) Second, Ms Lim submitted that the Prosecution's interpretation of s 13 was in line with Parliament's objective in enacting the section, which was to provide for a punitive measure over and above the other punishments available under the PCA to deter corruption.

(c) Third, Ms Lim contended that it would be conceptually and practically unworkable to adopt a reading of s 13 which required the court to differentiate between money gratification in the form of a gift and money gratification in the form of a loan, and to assess the value of the money gratification differently in each of these situations for the purposes of quantifying the penalty sum payable.

50 In response, the Accused submitted as follows:

(a) Section 13 was not intended to serve an additional punitive purpose. Rather, its object was to prevent corrupt wrongdoers from keeping or benefiting from the spoils of their crimes. While this would have the effect of deterring would-be offenders, this was not to be seen as a further form of punishment for the convicted offender.

(b) In deciding on the quantum of the penalty sum payable under s 13, the court should consider the interests of justice, including, in particular, the principle of proportionality. An offender who had accepted money gratification in the form of a loan and who had subsequently repaid that loan should not be penalised more severely than an offender who retained the money gratification.

(c) The court was able to assess the value of money gratification for the purposes of making a penalty order under s 13, and where necessary, expert evidence could be led. In any case, the investigating authorities would be able to assist the court by producing evidence of the value of

the money gratification concerned.

51 I considered these submissions and arrived at my decision on the appropriate orders to make under s 13 in this case after determining the following issues:

(a) Does the wording of and the purpose underlying s 13 necessitate the conclusion that the penalty sum imposed must be equal to the amount of money received in every case where the gratification takes the form of money gratification ("the Quantum of Penalty Sum Issue")?

(b) Is it conceptually and practically unworkable for the court to assess the value of money gratification in the form of, specifically, a *loan* for the purposes of quantifying the penalty sum payable under s 13 ("the Assessment of Value Issue")?

The Quantum of Penalty Sum Issue

52 Ms Lim's submission on the Quantum of Penalty Sum Issue was, in essence, a reiteration of the Prosecution's interpretation of s 13, namely, that in every case involving money gratification, the penalty sum imposed under s 13 should be equal to the amount of money received, regardless of whether the money was received as a gift or as a loan. Her main argument in support of this submission was that the Prosecution's interpretation of s 13 was necessitated by the language used in as well as the legislative purpose of the section. She developed this argument in three stages as set out below.

53 First, she argued that s 13 distinguished between money gratification and gratification which did not take the form of money.

54 Second, she relied on the *reddendo singular singulis* principle of statutory interpretation, which is explained in Oliver Jones, *Bennion on Statutory Interpretation* (LexisNexis, 6th Ed, 2014) at p 1121 in the following terms:

> **Section 388 *Reddendo singular singulis principle***
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> Where a complex sentence has more than one subject, and more than one object, it may be the right construction to *render each to each*, by reading the provision distributively and applying each object to its appropriate subject. A similar principle applies to verbs and their subjects, and to other parts of speech.
>
> COMMENT ON CODE S 388
>
> The *reddendo singular singulis* principle concerns the use of words distributively.
>
> *Example 388.1* The typical application of this principle is where a testator says 'I *devise and bequeath* all my *real and personal* property to B'. The term *devise* is appropriate only to real property. The term *bequeath* is appropriate only to personal property. Accordingly, by the application of the *reddendo singular singulis* principle, the testamentary disposition is read as if it were worded 'I devise all my real property, and bequeath all my personal property, to B'.
>
> *Example 388.2* If an enactment spoke of what was to happen when 'anyone shall draw or load a sword or gun …' this would similarly be read as 'anyone shall draw a sword or load a gun …'
>
> [emphasis in original]

55 To illustrate how the *reddendo singular singulis* principle would apply to s 13, the section is reproduced again here:

> **When penalty to be imposed in addition to other punishment**
>
> **13.**—(1) Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or *if the value of that gratification can be assessed*, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within such time as may be specified in the order, a sum which is equal to the amount of that gratification or *is, in the opinion of the court, the value of that gratification*, and any such penalty shall be recoverable as a fine.
>
> (2) Where a person charged with two or more offences for the acceptance of gratification in contravention of this Act is convicted of one or some of those offences, and the other outstanding offences are taken into consideration by the court under section 148 of the Criminal Procedure Code 2010 for the purpose of passing sentence, the court may increase the penalty mentioned in subsection (1) by an amount not exceeding the total amount or value of the gratification specified in the charges for the offences so taken into consideration.
>
> [emphasis added in underlining and italics]

56 The *reddendo singular singulis* principle, applied to s 13, would entail that the underlined words "if that gratification is a sum of money" relate only to the underlined words "a sum which is equal to the amount of that gratification", while the italicised words "if the value of that gratification can be assessed" relate only to the italicised words "is, in the opinion of the court, the value of that gratification". On this basis, Ms Lim submitted that in cases involving money gratification, there was no room for the court, when deciding on the penalty sum payable under s 13, to undertake an assessment so as to come to an opinion on the value of the money gratification concerned. Instead, the court was obliged in such circumstances to order the payment of a penalty sum that was equal to the amount of money received.

57 Third, Ms Lim pointed out that s 13 did not distinguish between different types of money gratification; in particular, no distinction was drawn between money gratification in the form of a gift and money gratification in the form of a loan. Therefore, she submitted, the amount of the penalty sum should not be affected by whether the money gratification was given as a gift or as a loan.

58 I agreed with the first stage of Ms Lim's argument. It is true that s 13 distinguishes between money gratification and gratification which does not take the form of money. This is evident on a plain reading of the provision. Particular instances where the gratification does not take the form of money would, for example, be where a valuable object or even some sort of favour is given or extended. The point of the distinction is simply to make it clear that even if the gratification concerned is not in the form of money, a penalty order may nonetheless be made by reference to its value.

59 The second and third stages of Ms Lim's argument, on the other hand, were less compelling. My key reservation about these aspects of her argument was this: although a loan of money and a gift of money both result in the recipient having the use of money, there is a substantial difference between the two, and there is no evident reason to think that Parliament intended to constrain the court's ability to make orders that are tailored to meet the justice of each case. Ms Lim's argument assumed that in all cases involving money gratification, it was the sum of money itself (rather than the ability to use that money for a period of time) which constituted the gratification. That was also the premise

of her submission that the value of money gratification would not change regardless of whether the sum of money in question was given as a loan or as a gift.

60 With respect, this was an erroneous assumption. Where money gratification is given as a gift, it will plainly be correct that the sum of money received is itself the gratification, and that the value of the gratification is the amount of money received. That, after all, is the value of money. In contrast, where money gratification is given as a loan, it is the recipient's ability to use that money for a period of time that constitutes the gratification, and therefore, the value of the gratification is not necessarily the amount of money loaned. At least in cases where the loan has been repaid, the value of the gratification will more likely be the cost of having the use of those funds from the time of receipt to the time of repayment.

61 This approach is also consistent with the purpose of s 13, which, in my judgment, is primarily to ensure that offenders are not able to retain their ill-gotten gains. In the case of money gratification in the form of a loan that is subsequently repaid, there will generally be no question of ill-gotten gains being retained.

62 Indeed, the view that an offender who receives money gratification in the form of a loan and who subsequently repays that loan nonetheless remains liable to a penalty order under s 13 *for a sum equivalent to the amount originally received* seems wrong for at least three reasons:

(a) First, the policy of the law must generally be to encourage an offender to take action to purge his wrongdoing and also to incentivise a person to adhere to his undertakings, at least where to carry out the undertakings does not entail the commission of a wrong. Accordingly, it seems to me that the law should be construed so as to encourage borrowers (even corrupt ones) to repay their loans. And by parity of reasoning, I would extend this to the corrupt recipient of money gratification in the form of a gift who later has a change of heart and wishes to return the gift. The latter scenario is not one which I need to deal with in these Appeals, but it seems to me that the policy of the law should not discourage or, worse, penalise such a change of heart. The Prosecution's interpretation of s 13 would, however, cut against this.

(b) Second, the effect of the Prosecution's position on s 13 is that an offender who receives money gratification in the form of a loan and who subsequently repays the loan would be worse off than one who does not make repayment; and likewise, an offender who receives money gratification in the form of a gift and who later has a change of heart and returns the money would be worse off than one who does not have such a change of heart. This seems wrong in principle. To take the case of the corrupt recipient of money gratification given as a loan who does not repay the loan, if such a recipient were to be made subject to a penalty order, on no basis could it be said that he is being punished by this. He never had any entitlement to the money which he received, and the effect of the penalty order is only to force him to disgorge the money which he unlawfully received. However, if a corrupt recipient of money gratification given as a loan has already repaid the loan and is then made subject to a penalty order for the same amount, the penalty order in effect acts as a fine over and above any other sentence imposed on him. Yet, if anything, the corrupt recipient in the latter scenario is less worthy of disapprobation than the corrupt recipient in the former scenario.

(c) Third, it seems clear that if the gratification concerned had not been money gratification but something else of value (say an expensive car), then in assessing the value of the car for the purposes of imposing a penalty order, the court would have been bound to distinguish between a gift of that car on the one hand, and a loan of that car for, say, a weekend on the other. If this is correct, as it seems to me to be, then it would be artificial and arbitrary to contend, as the

Prosecution did, that this approach should not apply in cases where the gratification consists of money gratification given as a loan.

For these reasons, I found the Prosecution's interpretation of s 13 untenable. In my judgment, applying the *reddendo singular singulis* principle in the construction of s 13 would not help to resolve the Quantum of Penalty Sum Issue. Rather, the focus should be on discerning the purpose underlying the section.

63 At the core of the Prosecution's submission on the Quantum of Penalty Sum Issue was the contention that s 13 served a punitive purpose in order to enhance its deterrent effect on would-be offenders. Ms Lim argued that s 13 did not serve only to deprive offenders of the benefits of their corrupt acts. Rather, she contended, it also sought to punish them. On that basis, she submitted that the law was and should be indifferent to whether an offender would be penalised twice over in some cases due to s 13 operating as a punitive measure instead of as a mere mechanism for disgorgement.

64 In support of her submission, Ms Lim referred to the speech made by the Minister for Home Affairs ("the Minister") at the second reading of the Prevention of Corruption Bill (Bill 63 of 1960), where the Minister explained as follows (see *Singapore Parliamentary Debates, Official Report* (13 February 1960) vol 12 at col 380):

> Clause 13 [which was later enacted as s 13 of the Prevention of Corruption Ordinance 1960 (Ord 39 of 1960), the then equivalent of s 13(1) of the PCA] empowers a Court to order a person found guilty of accepting an illegal gratification to pay a penalty equal to the amount of that gratification in addition to any other punishment imposed, and such penalty shall be recoverable as a fine. This will act as a deterrent because, in addition to the penalty for the offence, the culprit is called upon to pay the amount he had taken as a bribe.

With respect to Ms Lim, I failed to see how the aforesaid speech ("the Minister's second reading speech") advanced her argument. The Minister was simply saying that an offender would be made to disgorge the gratification received and that this would also serve to deter would-be offenders. The deterrent effect of s 13 arises not because it is meant to be additionally punitive, but because would-be offenders know that if they are caught, they will not only face the prospect of punishment, but will also have to surrender their corrupt gains. More fundamentally, Ms Lim's submission fails to recognise that in some cases, a penalty order under s 13 would not operate as a punishment at all. In fact, and rather counter-intuitively, s 13 would only have a punitive effect in those cases where the offender either has tried to expunge his wrong by returning the gratification received or (if he received money gratification in the form of a loan) has adhered to his obligation to repay the loan.

65 Ms Lim also argued that if s 13 were seen not as being punitive in nature, but rather, as being directed at disgorgement only, then no penalty sum could be ordered under s 13 in any case involving money gratification in the form of a loan that was subsequently repaid by the recipient. She submitted that this could not have been what Parliament intended. I did not agree with Ms Lim's contention that a penalty sum could never be imposed in such a situation. This argument assumes – incorrectly – that there is no *value* in obtaining a loan if it is later repaid, when in fact, as noted above, the benefit to the recipient of the loan is the *use* of the money that he would have had from the time of receipt to the time of repayment. There is no reason why such a benefit cannot be valued.

66 As against all this, Mr Singh drew my attention to case law that ran contrary to Ms Lim's arguments. He referred to *Public Prosecutor v Teng Cheow Hing* [2005] SGDC 38 ("*Teng Cheow Hing*"), where the district judge (at [25]) interpreted the Minister's second reading speech (as set out

at [64] above) to mean:

> … that the purpose and object of section 13 PCA is to eliminate the ability of offenders to benefit from their corrupt activities by disgorging the bribes from the culprit who accepted it. That will act [as] a strong deterrent to potential offenders.

67 In *Teng Cheow Hing*, the offender was convicted under s 6(*a*) of the PCA of corruptly accepting various loans amounting to $3,100. Of that sum, $1,500 was used by the offender for his own benefit (although he subsequently repaid this sum to the giver), while the remaining $1,600 was in the form of cheques that were seized by the Corrupt Practices Investigation Bureau ("CPIB") before the offender had encashed them. The district judge did not order the offender to pay a penalty under s 13 in respect of the $1,600 seized by CPIB, and explained this (at [34]) in the light of his interpretation of the purpose of s 13:

> … [T]he legislative scheme of section 13 PCA … is not to penalise the offender twice over, that is, to make him out of pocket of another sum equal to the gratification when the gratification has already been disgorged from him either by the seizure by the authorities or [by] the offender voluntarily having surrendered it to the authorities.

It should, however, be noted that the district judge *did* order the offender to pay a penalty sum in respect of the $1,500 which the latter used for his own benefit before he eventually repaid it. The correctness of this aspect of the district judge's decision is questionable, and I shall discuss it further at [74]–[75] below.

68 The district judge's approach in *Teng Cheow Hing* to the cheques of $1,600 which were not encashed by the offender was consistent with the decision of A P Rajah J in *Tan Kwang Joo v Public Prosecutor* [1989] 1 SLR(R) 457, where the offender was convicted under s 6(*a*) of the then equivalent of the PCA (*viz*, the Prevention of Corruption Act (Cap 104, 1970 Rev Ed)) for corruptly obtaining gratification in the form of a subcontract valued at $266,027.041 for Star-Tile General Contractor, in which the offender's brother-in-law had an interest. The factual situation in that case, although not identical to that in these Appeals, was analogous. Rajah J declined to impose a penalty order, explaining as follows (at [5]):

> … In my view [s 13] unequivocally and clearly concerns itself only with the situation "where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act". Here the appellant was convicted of obtaining a gratification for Star-Tile General Contractor. It is not in dispute that the appellant personally did not receive the said sum of $226,027.41 or any part of it. This section in my view was intended to prevent corrupt wrongdoers from keeping or benefiting from the spoils of their crimes. I cannot imagine that the Legislature ever intended that in similar circumstances such as these, a convicted accused had to be called upon to pay a penalty in respect of a sum which he himself clearly did not receive, accept or obtain for himself.

69 In my judgment, s 13 of the PCA is not meant to operate as an additional punitive measure. Thus, it should not be construed in such a way as to render an offender who receives money gratification in the form of a loan and who subsequently repays the loan liable to a penalty order to pay a further sum equivalent to the amount of the loan.

70 This, however, requires some elaboration. There are problems with drawing a line that focuses solely on this difference between money gratification given as an outright gift and money gratification given as a loan. At what point in time is that inquiry to be undertaken? Is it an inquiry driven solely by

the subjective intentions of the giver and the recipient at the time of the corrupt transaction? Or should the court examine events that have transpired since the corrupt transaction?

71 In my judgment, the answer to these questions is to be found in a correct articulation of the purpose underlying s 13. That purpose is primarily to ensure that the recipient of the gratification concerned (whether in the form of money or otherwise) is not in a position to retain the benefit of that gratification. It would follow from this that the court, in determining whether the gratification concerned was given as a gift or as a loan, is not confined to examining only the subjective intentions of the giver and the recipient at the time of the corrupt transaction. After all, the parties may have intended their transaction to be a loan, but if the recipient does not repay or return the gratification, he should be treated for the purposes of s 13 as if he had been given rather than lent that gratification. I have thus far focused primarily on the situation where the gratification concerned is *money* gratification given as a *loan* which is subsequently repaid by the recipient because that is the scenario in the present case. But, the principle, as seen in cases such as *Teng Cheow Hing*, is a wider one. The question of whether or not a penalty order should be made and (where such an order should be made) the basis upon which the penalty sum should be quantified should not ultimately be determined by whether or how the recipient has used or spent or even lost the gratification. Instead, the key question is whether the recipient has retained the benefit of the gratification. In my judgment, the underlying principle in general is that a penalty order for a sum equivalent to the sum of money received by the recipient will not be appropriate where: (a) the recipient has returned or repaid the money to the giver; or (b) the money has been disgorged from the recipient, whether voluntarily or otherwise. This is because if the position were otherwise, then the effect of the penalty order would go unreasonably beyond the objective of stripping away from the recipient the benefit that he corruptly received.

72 Section 13(1) provides that where the gratification takes the form of money gratification, the penalty sum imposed is to be "a sum which is equal to the amount of [the] gratification". In my judgment, where such gratification is paid to the recipient in circumstances where he is not expected to and in fact does not return it, "the amount of [the] gratification" will be the sum of money received. Where, however, money gratification is paid to the recipient as a loan and is subsequently repaid by the recipient, then "the value of [the] gratification", as explained above (at [60] and [65]), is not to be equated with the sum of money received. Rather, in such circumstances, the gratification may be quantified for the purposes of s 13 either by reference to the value to the recipient of having had the use of that sum of money from the time of receipt to the time of repayment or by some other method that would not amount to additionally penalising the offender, who has already repaid the money.

73 The DJ, in declining to take this view, relied on the cases of *Teng Cheow Hing* and *Tang See Meng v Public Prosecutor* [2001] SGDC 161 ("*Tang See Meng*"). In my judgment, the correctness of the former is questionable as far as that part of the money gratification which the offender repaid to the giver is concerned (see [67] above), while the latter may be distinguished on its facts.

74 In *Teng Cheow Hing*, the district judge held that the offender was liable to pay $1,500 (out of a total of $3,100 which he corruptly obtained by way of loans) as a penalty under s 13, even though he had already repaid that sum to the giver of the gratification. The district judge reasoned (at [37]):

> … The givers are, in law, not legally entitled to claim the loan monies as they are the subject matter of the corruption offence and also regarded as the proceeds of the crime. The act of the accused in returning the loan monies to the givers cannot be regarded as restitution to the person who is legally entitled to possession of the monies. … [T]he accused is still "accountable" for that part of [the] gratification.

75 With respect, the fact that the repayment in such a scenario may not be regarded as restitution as a matter of law does not entail that the repayment is therefore a fact which may be ignored when it comes to sentencing and the imposition of penalty sums. The furthest the argument can go is that because the recipient of money gratification in the form of a loan is under no legal obligation to repay the loan, if he has not in fact made repayment, he can be treated, for the purposes of both sentencing and penalty orders, as though he received the money concerned as a gift. Indeed, the recipient *should* be treated in that manner to the extent to which he has not repaid the money lent to him. But, once the recipient has repaid the loan, this would be a relevant fact that cannot be ignored for the purposes of sentencing and the making of penalty orders. *Teng Cheow Hing* was therefore incorrectly decided on this point (although, as mentioned earlier, the district judge in that case was right not to impose a penalty sum in respect of the $1,600 worth of cheques which were seized by CPIB before the offender could encash them).

76 In *Tang See Meng*, the offender, the contracts manager of a company, received a total of $140,000 in cheques in exchange for awarding contracts to the giver. The amount of gratification received by the offender was in dispute, in that the offender claimed that he took only $70,000 out of the $140,000 after the cheques were encashed. On that basis, the offender argued that he should only be liable to pay a penalty sum of $70,000 under s 13. The district judge rejected this argument and ordered a penalty sum of $140,000 since the offender had received cheques amounting to that sum in total. She reasoned that the offender's argument required the court to inquire into how the offender had used the gratification received, and she was not prepared to do that. The district judge explained as follows (at [99]):

> Section 13 does not require the court to consider the myriad ways in which an accused may dispose of the gratifications he accepts; and nothing in counsel's submissions persuaded me that such a gloss should be read into the provision. A detailed inquiry into precisely what an accused chose to do with a monetary gratification after taking receipt of it would merely enmesh the court in tortuous hair-splitting: what if the accused gave half of the cash to someone else not minutes after receiving it, but within the hour? What if the accused gave some of the money to charity? What if he carelessly lost all the money through a hole in his pocket? What if he were robbed of half the cash minutes after receiving it? The permutations are virtually limitless.

77 The principle that the court should not be concerned with how a recipient uses or applies his ill-gotten gains is undoubtedly correct as a general principle. But, in cases where the recipient subsequently returns or repays (whether in full or in part) the money gratification received, this principle does not thereby render the fact of such return or repayment irrelevant when it comes to the question of whether a penalty order under s 13 should be made and if so, for what amount.

78 There remains one further point to be considered. I said earlier (at [71] above) that the court may examine events after the corrupt transaction to determine whether a penalty order should be made and (if such an order should be made) what the basis of quantifying the penalty sum should be. But, is there a cut-off point beyond which subsequent events should be ignored? This question does not need to be answered in these Appeals and no submissions were directed at this issue, but the point should be noted for consideration in future cases. In the case of money gratification in the form of a loan which is subsequently repaid by the recipient, the consequence of the repayment is that the corrupt giver is not out of pocket to the extent of the repayment; whereas the consequence of a penalty order is that he remains out of pocket because while the penalty order has the effect of disgorging the sums which the recipient had received, this is not done in favour of the giver. On one view, the policy of the law to incentivise an offender to repay money gratification given to him as a loan (see above at [62(a)]) should not extend to situations where the recipient knows or should be taken to know that in any event, he will not be able to retain any corruptly-obtained gratification.

Any repayment made in such circumstances may have less to do with the recipient's desire to honour his undertaking to repay the money or purge his wrongdoing, and more to do with his preferring to repay the giver instead of being made subject to a penalty order. I express no conclusive views on this here and leave it for fuller consideration on an appropriate occasion in due course.

The Assessment of Value Issue

79 As mentioned earlier, in cases involving money gratification given as a loan that is subsequently repaid (whether in full or in part) by the recipient, the value of the gratification cannot be equated with the amount of money received and will instead have to be separately assessed. It is to this that I now turn.

80 The Assessment of Value Issue underpinned Ms Lim's third submission (see [49(c)] above) as to why, in determining the penalty sum to be paid under s 13 in respect of money gratification, no distinction should be drawn between money gratification in the form of a gift and money gratification in the form of a loan. Ms Lim argued that a loan of money could not be treated as being of less value than a gift of the same sum of money because in both cases, the recipient obtained the same amount of money. According to Ms Lim, if the court were to treat a loan of money as being of less value than an outright gift of the same sum of money, it might be difficult to ascertain the economic value of a loan as opposed to a gift: "[t]he fine comparisons which may be drawn, and the obstacles to proper valuation, are potentially limitless and will so mire a court in fine calculations as to render section 13 practically inoperable".

81 I did not accept Ms Lim's argument. First, as explained earlier, money gratification will only be treated as a loan if (and to the extent to which) the money received has in fact been repaid. In that setting, it cannot seriously be disputed that the loan of the money has less economic value to the recipient than an outright gift of the same sum of money. Second, in those circumstances, the primary mischief of s 13 would have been addressed: the recipient would not have retained the tainted gratification. Third, in that situation, what the recipient would have had is the benefit of the *use* of the money received from the time of receipt to the time of repayment. This ought to be capable of assessment, by expert evidence if necessary, should the Prosecution wish to pursue it. Any difficulty in assessing the value of money gratification in the form of a loan that is subsequently repaid by the recipient should not deter the court from doing justice in each individual case.

82 Indeed, s 13 of the PCA itself recognises the need to value the gratification received in cases where the gratification is in the form of a piece of art or jewellery or an expensive car. Hence, there is no reason in principle not to take the same approach where the gratification takes the form of, specifically, *money* gratification in the form of a loan that is subsequently repaid by the recipient.

The appropriate orders to be made under s 13 in the present case

83 For the foregoing reasons, in my judgment, the DJ ought to have taken into consideration the fact that the Accused had repaid the sum of $20,000 to Allen. This repayment of $20,000 was not contested by the Prosecution either in the court below or in these Appeals. The Accused therefore retained only $5,000 out of the $25,000 which he received as gratification under the charges proceeded with. This sum of $5,000, although received by the Accused as a loan, should be treated as having in effect been received by him as a gift since it was not repaid. Thus, for the purposes of the penalty sum payable under s 13(1), "the amount of [the] gratification" was $5,000.

84 In addition, the Accused received the further benefit of the use of the loaned amount of $20,000 from the time of receipt to the time of repayment. There was, however, no evidence before

the court or submissions by either party as to how this benefit should be valued. Therefore, I did not think it appropriate to take any amount in respect of this benefit into account for the purposes of s 13(1). Accordingly, I ordered that the penalty sum of $25,000 imposed by the DJ under s 13(1) be set aside and be substituted with a penalty sum of $5,000.

85 The Accused also retained as gratification loans amounting to $6,500, which formed the basis of the charges taken into consideration. Since the sum of $6,500 was not repaid, I was satisfied that the value of that gratification was $6,500.

86 It was within my discretion whether or not to order a penalty to be paid under s 13(2) in respect of this sum of $6,500. In this regard, Mr Singh rightly accepted that the Accused should pay this sum as a penalty since it had not been repaid to Allen. I therefore exercised my discretion under s 13(2) and ordered the Accused to pay the said sum as a penalty.

Conclusion

87 In the circumstances, I did not disturb the aggregate term of imprisonment of eight months that was imposed by the DJ. I set aside the penalty order under s 13(1) for the sum of $25,000 and replaced it with a penalty order for the sum of $5,000. I also made a penalty order under s 13(2) for the sum of $6,500, resulting in an aggregate penalty sum of $11,500 under s 13.