Tey Tsun Hang *v* Public Prosecutor
[2014] SGHC 39

Case Number : Magistrate's Appeal No 114 of 2013

Decision Date : 28 February 2014

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Mr Peter Cuthbert Low (Peter Low LLC) for the appellant; Mr Andre Jumabhoy, Ms Kok Shu En and Ms Yau Pui Man (Attorney-General's Chambers) for the respondent.

Parties : Tey Tsun Hang — Public Prosecutor

Criminal Procedure and Sentencing – Statements – Voluntariness

Criminal Law – Corruption – Prevention of Corruption Act

28 February 2014 Judgment reserved.

Woo Bih Li J:

Introduction

1 This is an appeal against conviction and sentence. The appellant was convicted in the district court by the trial judge ("the TJ") of six charges punishable under s 6(*a*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("the Act").

2 The appellant is a 42-year-old man who was, at the material time, an associate professor employed by the National University of Singapore ("NUS"). He was attached to the Faculty of Law. He was charged with corruptly receiving six acts of gratification from one of his students at the material time, Darinne Ko Wen Hui ("Ms Ko"), as an inducement for showing favour to Ms Ko in relation to the affairs of his principal, NUS, that is, showing favour in his assessment of Ms Ko's academic performance. The six acts of gratification were as follows:

(a) a Mont Blanc pen worth $740 in May 2010 (DAC 27011/2012);

(b) two tailor-made shirts ("the CYC shirts") worth $236.20 on 22 June 2010 (DAC 27012/2012);

(c) an iPod Touch ("the iPod") worth $160 in May 2010 (DAC 27013/2012);

(d) payment of a restaurant bill ("the Garibaldi Bill") for $1,278.60 on 21 July 2010 (DAC 27014/2012);

(e) sexual intercourse on 24 July 2010 (DAC 27015/2012); and

(f) sexual intercourse on 28 July 2010 (DAC 27016/2012).

3 The appellant was sentenced to two months' imprisonment each for the first four charges and

three months' imprisonment each for the final two charges. The sentences in DAC 27014/2012 and DAC 27015/2012 were ordered to run consecutively and the rest concurrently. The aggregate sentence was five months' imprisonment.

4 The TJ also made an order to forfeit the Mont Blanc pen (and pouch) and the iPod, and directed the Corrupt Practices Investigation Bureau ("CPIB") to dispose of these items as the CPIB thinks fit. The TJ also ordered the appellant to pay a penalty of $278.60 (as the TJ agreed that the appellant had reimbursed Ms Ko $1,000 of the Garibaldi Bill) and $236.20 (the value of the CYC shirts).

5 Notwithstanding the appeal against conviction and sentence, the appellant decided to serve his sentence first. He was released from prison on home detention on 17 September 2013. He completed his home detention on 5 October 2013. I understand from the Prosecution that the appellant has paid the penalties.

Issues before the court

6 There are four main issues on appeal:

(a) whether six statements made by the appellant to the CPIB between 5 April 2012 and 24 May 2012 ("the Statements") should have been admitted as evidence;

(b) whether s 8 of the Act applied. This provision shifts the evidential burden of proof to an accused person when certain conditions are satisfied;

(c) whether the elements of each offence were made out; and

(d) if so, whether the aggregate sentence was manifestly excessive.

The law on corruption

7 It is necessary to have a clear framework of the law within which a discussion of the issues, the TJ's decision, the cases of the parties, and my eventual decision is possible. I begin by setting out the relevant provisions in this case.

The relevant statutory provisions

8 Section 6(*a*) of the Act reads as follows:

> **6**. If —
>
> (*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;
>
> …
>
> he shall be guilty of an offence …

The wording of s 6(*a*) of the Act is substantially similar to that of s 1 of the Prevention of Corruption Act 1906 (6 Edw 7 c 34) (UK) ("the UK 1906 Act") in the United Kingdom ("the UK").

9 Gratification is defined in s 2 of the Act as follows:

> "gratification" 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 paragraphs (a), (b), (c) and (d) ...

10 Sections 8 and 9(1) of the Act, both of which could apply to a s 6(*a*) offence, read as follows:

> **8**. Where in any proceedings against a person for an offence under section 5 or 6, 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 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, that 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.
>
> **9.**—(1) Where in any proceedings against any agent for any offence under section 6(*a*), it is proved that he corruptly accepted, obtained or agreed to accept or attempted to obtain any gratification, having reason to believe or suspect that the gratification was offered as an inducement or reward for his doing of forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person in relation to his principal's affairs or business, he shall be guilty of an offence under that section notwithstanding that he did not have the power, right or opportunity to do so, show or forbear or that he accepted the gratification without intending to do so, show or forbear or that he did not in fact do so, show or forbear or that the act, favour or disfavour was not in relation to his principal's affairs or business.

11 The applicability of s 8 in the case before me depends on whether NUS is a "public body". Section 2 defines "public body" as follows:

> "public body" means any corporation, board, council, commissioners 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 ...

I should mention that there may be a typographical error in that the words "undertakings or public utility" should read as "undertakings of public utility". The latter wording is found in the definition of a

"public body" in the Federation of Malaya's Prevention of Corruption Ordinance 1950 (Ordinance No 5 of 1950) (Malaya) ("the Malayan 1950 Ordinance"). The explanatory statement of the bill for the Singapore Prevention of Corruption Ordinance 1960 (Ordinance No 39 of 1960) (which is the predecessor of the Act) states that a number of provisions in the Malayan 1950 Ordinance have been incorporated in the bill.

The elements of the offence

12 The elements of an offence under s 6(*a*) of the Act are set out in *Kwang Boon Keong Peter v PP* [1998] 2 SLR(R) 211 ("*Peter Kwang*") at [32] as follows:

(a) acceptance of gratification;

(b) as an inducement or reward (for any act, favour or disfavour to any person in relation to the recipient's principal's affairs or business);

(c) there was an objective corrupt element in the transaction; and

(d) the recipient accepted the gratification with guilty knowledge.

Actus reus

13 The first element, the acceptance of the gratification, is the physical criminal act which is also known as the *actus reus*. The *actus reus* of the offence is thus complete even if the recipient has not yet had any opportunity to show favour to the giver in relation to the recipient's principal's affairs.

14 Section 9 further clarifies this position by stating that the actual act of showing favour to the giver is not necessary to establish the *actus reus* of the offence. Section 9 goes one step further to preclude the recipient from raising as a defence the fact that the recipient did not have the power to, and did not in fact, show favour to the giver in relation to his principal's affairs: see *PP v Victorine Noella Wijeysingha* [2013] 2 SLR 1001 at [4].

Mens rea

15 Where a charge is made against the recipient, the question is also whether the recipient possessed a criminal intent, also known as the *mens rea*. The second to fourth elements set out at [12] concern the *mens rea*. In this respect, the intention of the recipient is paramount: see *Yuen Chun Yii v PP* [1997] 2 SLR(R) 209 ("*Yuen Chun Yii*") at [69]–[70]. However, evidentially, the intention of the giver is also important as it sheds light on the recipient's *mens rea*. Thus, the context of the gift is important. In *Yuen Chun Yii*, the court found that the nature of the relationship between the recipient and the giver, as well as the apparent intention of the giver, was part of the context which allowed it to make a finding that the recipient could not have had the necessary *mens rea*.

16 The second element relates to the causal, or consequential, link between the gratification and the act the gratification was intended to procure (or reward). The third element relates to whether that act was objectively dishonest in the entire transaction.

17 Although the second and third elements are conceptually different, they are part of the same factual enquiry. The question is whether the recipient received the gratification believing that it was given to him as a quid pro quo for conferring a dishonest gain or advantage on the giver in relation to

his principal's affairs. The court has treated these two elements together in its assessment of whether an offence is made out. Thus, the causal, or consequential, link between the gratification and the act of favour alleged to be procured was examined in *Teo Chu Ha v PP* [2013] 4 SLR 869 ("*Teo Chu Ha*") and *Yuen Chun Yii* under the rubric of an objective corrupt element.

18 Tan Boon Gin in *The Law of Corruption in Singapore* (Academy Publishing, 2007), commenting on the paradigm of corruption locally, also treats the second and third elements as part of the same factual enquiry. The author observes that the essence of corruption is as follows (at para 3.4):

> The paradigm of corruption has already been alluded to earlier. To recap, it is a situation involving three parties – A, the briber; B, the recipient of the bribe; and C, the person to whom B owes a *duty*. **The purpose of A bribing B is to cause B to act in A's interest, and against the interest of C**, in breach of B's duty. This is consistent with the natural and ordinary meaning of the words "corrupt" and "corruption" as defined in the Oxford dictionaries. [emphasis in italics in original; emphasis added in bold]

19 Yong Pung How CJ in *Yuen Chun Yii* (at [71]) and *Chan Wing Seng v PP* [1997] 1 SLR(R) 721 ("*Chan Wing Seng*") (at [26]) sought to elucidate the meaning of an objective corrupt element. He drew on the dictionary definition of the word "corruption" as a "perversion of a person's integrity in the performance of (especially official or public) duty or work by bribery etc". Added to this is the ordinary meaning of the word "corrupt": to "[i]nduce to act dishonestly or unfaithfully; bribe" (see *Chan Wing Seng* at [26]). In a similar vein, Choo Han Teck J observed in *Leng Kah Poh v PP* [2013] 4 SLR 878 (at [8]) that "dishonesty is a basic element in the offence of corruption", although it is not the only element in the offence.

20 It is thus not enough that the purpose of the gratification is to cause the recipient to perform an act of favour towards the giver in relation to the recipient's principal's affairs. The objective corrupt element implies the feature of dishonesty. Identifying the nature of the act of accepting the gratification as "dishonest" is important because it gives shape to the word "corruptly" in s 6(*a*) of the Act. If the focus were merely on the acceptance of the gratification as an inducement to show favour to the giver, the word "corruptly" used in s 6(*a*) of the Act would be redundant.

21 It is possible for a recipient to be guilty of corruption even if the giver did not intend to make the gratification as a quid pro quo. If the recipient believed that the gratification was being given to him so that he would confer a dishonest gain or advantage on the giver even if he could not or did not intend to perform that act of favour, the necessary intention is still established. If the recipient intended to lead the giver to believe that he would confer such an advantage as a result of receiving the gratification, then the requisite intention is *a fortiori* established.

22 A recipient of an act of gratification may show that he did not believe that the purpose of the gratification was a quid pro quo for a dishonest gain or advantage.

23 For example, the recipient may show that the gratification was accepted by him as a gift. I am using the word "gift" in this judgment to denote a gift *simpliciter*, in contradistinction from "gratification", to connote a situation where something is received without believing that the giver expects a dishonest gain or advantage.

24 This is demonstrated in both *Chan Wing Seng* and *Yuen Chun Yii.* If an act of gratification is given as a gift and no more, then it is not received as an inducement to confer a dishonest gain or advantage on the giver because it is not given as a quid pro quo. There should not be anything dishonest in accepting a gift and there would not be an objective corrupt element in the transaction.

The High Court in *Chan Wing Seng* and *Yuen Chun Yii* adopted the latter reasoning. It found that when the recipients accepted the alleged gratifications, they did so without any ulterior motive as they regarded the alleged gratifications as gifts and no more.

25 A second example is where the recipient shows that his acceptance of the act of gratification was received for a service rendered or a thing supplied which was not, in itself, dishonest. An example would be where a waiter receives a tip as a reward for providing good service to a customer in relation to his employer's restaurant business. Where the practice of tipping is intended to promote good service, the waiter's receipt of this gratification would be honest. Without more, the inference would be that the person giving the tip did not intend to confer a dishonest gain or advantage on the waiter for his service.

26 The fourth and final element relates to knowledge: did the recipient know that the advantage sought to be conferred was corrupt? The High Court in *Chan Wing Seng* elaborated on the fourth element as follows (at [23]–[24]):

> 23 I should clarify that "corrupt intent" actually refers to whether the accused knew or realised what he did was corrupt by the ordinary and objective standard. This is a subjective test and a more accurate formulation of what this court meant when it stated in [*PP v Khoo Yong Hak* [1995] 1 SLR(R) 769] that "the giving must be accompanied by a corrupt intent". Thus, guilty knowledge is required.
>
> 24 Bearing in mind the aforesaid, it becomes apparent that the giver might have given, thinking and believing that his actions were corrupt, but unbeknown to him, the transaction was perfectly legitimate. Likewise, a transaction could have a corrupt element, but there was no guilty knowledge because the giver was operating under a mistaken belief that it was legitimate to give. In both cases, the offence would not be made out.

I will say more on the fourth element later.

The presumption under s 8 of the Act

27 Section 8 applies if:

(a) it is proved that the accused person received the acts of gratification, and

(b) the giver has or seeks to have any dealing with the employer of the accused person, and

(c) the accused person is employed by a "public body" for the purposes of the Act.

If s 8 applies, the presumption is that the *mens rea* is made out. It will be presumed that the recipient believed that the giver was expecting to obtain a dishonest gain or advantage for the act of improper gratification and that the recipient had the guilty knowledge discussed as the fourth element.

28 The wording of s 8 of the Act is substantially similar to that of s 2 of the Prevention of Corruption Act 1916 (6 & 7 Geo 5 c 64) (UK) in the UK ("the UK 1916 Act"). Lord Lane CJ explained the effect of s 2 of the UK 1916 Act in *R v Braithwaite (Frank Wilson)* [1983] 1 WLR 385 (at 389E–G) as follows:

> ... [W]hen the matters in that section have been fulfilled, the burden of proof is lifted from the

shoulders of the prosecution and descends on the shoulders of the defence. It then becomes necessary for the defendant to show, on the balance of probabilities, that what was going on was not reception corruptly as inducement or reward. In an appropriate case it is the judge's duty to direct the jury first of all that they must decide whether they are satisfied so they are sure that the defendant received money or a gift or consideration, and then to go on to direct them that if they are so satisfied, then under section 2 of the [UK 1916 Act] the burden of proof shifts.

29 Thus, the evidential burden of proof shifts to the recipient. The recipient can then rebut this presumption by evidence of an innocent explanation, proven on a balance of probabilities: see *R v Mills (Leslie Ernest)* (1979) 68 Cr App R 154. The legal burden of proof remains with the Prosecution throughout.

Background facts

The events from January to April 2010

30 The appellant taught an Equity and Trusts class at NUS. In January 2010, Ms Ko enrolled in this class. She became acquainted with the appellant. Ms Ko took her examination for the Equity and Trusts class on 27 April 2010.

31 In late February or early March 2010, the appellant requested for student volunteers from the Equity and Trusts class to assist him with research for his new book on the same subject. There were no volunteers. On 8 April 2010, the appellant selected ten students to assist him with the research. Ms Ko was among those selected.

The events of May 2010 including the gift of a Mont Blanc pen and pen pouch

32 In early May 2010, the appellant met with Ms Ko and the nine others selected for an hour-long briefing on the research to be done. Ms Ko's role was to collate the research done by the other students and perform consistency checks. After this briefing, Ms Ko and the appellant began communicating daily via email and a chat programme embedded within an internet email service known as Gmail ("Google Talk").

33 At the end of the second week of May 2010, Ms Ko gave the compiled research to the appellant. The appellant took Ms Ko to lunch, allegedly to thank her for her assistance. The lunch lasted three and a half hours, during which the appellant spoke to Ms Ko about his accomplishments.

34 Thereafter, Ms Ko began to spend more time with the appellant, mostly in the appellant's office. While in the appellant's office, the appellant and Ms Ko would listen to music together on Ms Ko's iPod.

35 On 26 May 2010, Ms Ko bought a Mont Blanc pen for $740, and an accompanying pen pouch. Sometime between 26 and 31 May 2010, Ms Ko gave the appellant the Mont Blanc pen and pen pouch with a gift card (D64).

36 Ms Ko's exam results were released on 31 May 2010. Two hours before they were due to be released, the appellant called Ms Ko. He told Ms Ko over the phone what her grades and confidential class ranking were. The appellant also tried to persuade Ms Ko not to go on an exchange programme to Duke University in the United States of America ("USA"). He told her that if she remained in NUS, she could do even better academically.

The events of June 2010 including the payment for the CYC shirts and the gift of an iPod

37 In June 2010, the appellant and Ms Ko met every Saturday at his office. Ms Ko assisted the appellant in formatting chapters for his new book. Ms Ko was, at the time, interning in a law firm. The appellant would meet her for lunch twice or thrice a week in addition to communicating electronically with Ms Ko daily.

38 The appellant and Ms Ko also discussed the possibility of the appellant meeting Ms Ko in the USA while she was there on an exchange programme in the second half of 2010. On 3 June 2010, Ms Ko emailed the appellant a suggested travel itinerary for a proposed trip together to San Francisco from 17 to 24 September 2010.

39 On 6 June 2010, the appellant emailed a friend to ask her how much the Mont Blanc pen given by Ms Ko would have cost. He claimed at trial that this was so that he could pay Ms Ko back. The appellant's friend replied on 10 June 2010 with the estimation that the value of the Mont Blanc pen was $750 and the pen pouch was $150.

40 The appellant also emailed Ms Ko on 7 June 2010 with a write-up on Chopin. This was because the Mont Blanc pen which she had given him in late May 2010 had a Chopin design.

41 On 8 June 2010, Ms Ko made an appointment at the USA Embassy on the appellant's behalf so that the appellant could obtain a visa to visit the USA. She emailed the appellant details of the appointment date and a list of documents which the appellant would have to bring for that appointment.

42 On 12 June 2010, Ms Ko's boyfriend discovered the emails exchanged between Ms Ko and the appellant. He concluded that they were in a romantic relationship. Ms Ko's boyfriend told Ms Ko's father of the relationship between the appellant and Ms Ko. Her father was very angry and told her to break off the relationship she had with the appellant. Ms Ko sent the appellant an email on the same day, which was blind copied to her boyfriend and her father and which read as follows:

> Hi,
>
> Whatever has happened was purely a mistake on my part and I cannot and will not see you/talk to you or come into contact with you ever again. This is for the best. I have sent you all the research I have done thus far and I'm afraid you will have to find another person to complete the rest of the research you had intended for me to do. I will be returning everything you have given me in your Locker sometime this month.
>
> Goodbye.
>
> Ms Ko

Two days after sending the email, Ms Ko and the appellant resumed regular contact.

43 On 22 June 2010, Ms Ko and the appellant made a trip together to CYC The Custom Shop to tailor some shirts for Ms Ko. While they were there, a staff of the shop suggested that the appellant also tailor some shirts. The appellant acquiesced. Ms Ko paid for his two shirts, *ie*, the CYC shirts.

44 In late June 2010, Ms Ko presented the iPod along with another gift card (D68) to the appellant. She had pre-loaded all the songs which they had listened to together onto the iPod.

The events of July 2010 including the payment of the Garibaldi Bill and two acts of sexual intercourse

45 In July 2010, the appellant asked Ms Ko to coordinate a thank you dinner on the appellant's behalf for former students who had helped the appellant with his research. Ms Ko picked Garibaldi Italian Restaurant & Bar ("Garibaldi") as a suitable venue and arranged for a suitable date for the dinner.

46 On 19 July 2010, Ms Ko booked the appellant's flights to visit her at Duke University from 17 to 25 September 2010. She forwarded the travel itinerary to the appellant's email on the same day.

47 The thank you dinner took place on 21 July 2010. During the dinner, Ms Ko sat on the appellant's right. She alleged that when the bill was presented, the appellant pushed the bill towards her. This act came as a surprise to her. Ms Ko noted that she had a credit card which entitled her to a 15% discount and she decided to pay the bill without protest. The bill came to $1,278.60. Ms Ko thought that the appellant would subsequently reimburse her. He did not do so immediately. She received $1,000 from him six months later, in January 2011, after Ms Ko sent the appellant a reminder via text message.

48 On 24 July 2010, just over a week before Ms Ko was due to leave for the USA, she went to visit the appellant in his office. They started kissing on the appellant's sofa. Their emotions heightened and they had sexual intercourse. This was Ms Ko's first time having sex.

49 Ms Ko's 21st birthday fell on 29 July 2010. On 28 July 2010, the appellant took Ms Ko out for dinner to celebrate her birthday. After dinner, the appellant asked if he could stop by his office to pick something up. Ms Ko acquiesced. When they entered the appellant's office, the appellant shut the door and locked it behind them. They had sexual intercourse for a second time on the sofa in the appellant's office.

The events of August and September 2010

50 In early August 2010, Ms Ko left for a fall semester exchange programme in the USA. Prior to her departure, Ms Ko wrote the appellant a farewell card (D70) and a farewell note (D69). The appellant received the farewell card before Ms Ko's departure. The farewell note, which was dated 2 August 2010, was received by the appellant after Ms Ko had departed for the USA.

51 After Ms Ko arrived in the USA, she remained in contact with the appellant via email and video chat. Ms Ko said that she found out in late August 2010 that she was pregnant by the appellant and she subsequently underwent an abortion. She claimed that she was encouraged by the appellant to get an abortion because he told her that he did not have money and did not want to keep the baby.

52 From 17 to 25 September 2010, the appellant visited Ms Ko in the USA. He stayed with Ms Ko. Ms Ko testified during trial that while the appellant paid for his flights, she paid for his food and shopping expenses during this visit.

53 During the appellant's visit to Ms Ko in September, Ms Ko's boyfriend got suspicious and checked Ms Ko's email. He found out about the appellant's visit and that the appellant and Ms Ko had been continuing their romantic relationship in secret. He called Ms Ko's parents and informed them of Ms Ko's relationship with the appellant. Ms Ko's mother became distressed and made Ms Ko promise to break off her relationship with the appellant. Ms Ko complied. She did not contact the appellant from the time he left the USA on 25 September 2010 until her return to Singapore in January 2011.

Events after Ms Ko returned from the USA

54 Ms Ko returned to Singapore in January 2011. Upon her return, she texted the appellant, requesting that he reimburse her for her payment of the Garibaldi Bill. By this time, she had forgotten the exact sum she had paid. She agreed to accept $1,000 as reimbursement and he handed her cash for that sum in an envelope. Ms Ko testified that her relationship with the appellant after her return was that of a formal teacher/student relationship.

55 On 30 May 2011, Ms Ko emailed the appellant twice to ask whether it was worth asking for a review of the marks for her paper on Partnership Law. The appellant's response to this email was not included in evidence at the trial.

56 On 8 August 2011, Ms Ko and her best friend, Kenneth Teo ("Mr Teo"), approached the appellant to direct them in their respective directed research papers. Ms Ko wanted to do her directed research paper on the topic of Cross-Border Insolvency. This was Ms Ko's intended area of specialty upon leaving law school. The appellant acquiesced.

57 On 15 August 2011, Ms Ko also started taking a Personal Property Law class taught by the appellant. Ms Ko earned a "B" grade in the class on Personal Property Law. She obtained an "A" grade in her directed research paper.

The appellant's arrest and statements

58 In the morning of 2 April 2012, a team of officers from the CPIB went to the residence of the appellant to bring him to the CPIB for investigation into the events recounted in the preceding paragraphs. They were informed that he had already left for work. Due to traffic conditions, another team was despatched to the appellant's office at NUS. Before they reached his office, the appellant had learned of the earlier visit to his residence. He quickly sent emails to colleagues and to a solicitor, Mr Peter Cuthbert Low ("Mr Low"), whom he intended to engage. Eventually, the appellant was brought by the second team from his office to the CPIB that day. CPIB officers conducted an interview with the appellant, but did not manage to record a statement from him as he appeared to be unwell. An ambulance was called and the appellant was warded in Alexandra Hospital that evening. He was discharged on 5 April 2012.

59 After his discharge, the appellant gave the Statements between 5 April 2012 and 24 May 2012 to various CPIB officers. The Statements were as follows:

(a) a statement recorded by Bay Chun How ("Mr Bay") on 5 April 2012 (PS6);

(b) a statement recorded by Wilson Khoo ("Mr Khoo") also on 5 April 2012 (PS7);

(c) a statement recorded by Mr Khoo on 10 April 2012 (PS8);

(d) a statement recorded by Teng Khee Fatt ("Mr Teng") on 17 May 2012 (PS9);

(e) a statement recorded by Mr Teng on 18 May 2012 (PS10); and

(f) a statement recorded by Mr Teng on 24 May 2012 (PS11).

60 During the trial, the appellant challenged the admissibility of the Statements. He claimed that the Statements had been extracted from him by threats, inducements and promises, and when he

was oppressed and mentally unwell.

61 The appellant also gave six cautioned statements to the CPIB on 26 July 2012. However, the appellant did not challenge the admissibility of these statements.

62 Ms Ko gave three statements to the CPIB on the following dates:

(a) a statement recorded by SSI Png Chen Chen on 2 April 2012 (PS1);

(b) a statement recorded by Mr Khoo on 28 April 2012 (PS1A); and

(c) a statement recorded by Mr Khoo on 4 May 2012 (PS1B).

The TJ's decision

63 I will briefly summarise the decision of the TJ before proceeding to deal with the issues.

The TJ's decision on the admissibility of the Statements

64 An ancillary hearing was held to determine the issue of admissibility of the Statements. At the conclusion of the ancillary hearing, the TJ held that the Prosecution had proved beyond reasonable doubt that the appellant had made the Statements voluntarily.

65 The TJ came to that conclusion based on his finding that the CPIB officers were truthful witnesses. The TJ stated that the appellant's evidence was inconsistent and found that he exaggerated and fabricated some details of fact.

66 The TJ also declined to accept expert medical evidence on the condition of the appellant. The TJ found that the voluntariness of the Statements was not affected by any purported medical condition that the appellant was suffering from or any psychoactive medication that he was consuming at the material time.

67 The TJ accordingly admitted the Statements.

The TJ's decision on the substantive issue of corruption

68 The TJ concluded that the appellant did receive the acts of gratification and the only question that remained was one of *mens rea*.

69 The TJ found that the appellant's receipt of the gratification triggered the presumption in s 8 of the Act because NUS is a "public body" for the purposes of the Act as it provides the public utility of education and administers government funds. It was not disputed that Ms Ko had and would have dealings with NUS which employed the appellant at the time the acts of gratification were received by him. The appellant thus bore the burden of rebutting the presumption on a balance of probabilities. The TJ found that the appellant had not discharged this burden of proof. The TJ nevertheless went on to find that even if s 8 did not apply, the Prosecution had proved its case on all six charges beyond reasonable doubt.

70 The TJ rejected the appellant's contention that the appellant was in a mutually loving relationship with Ms Ko. The TJ found that the appellant had not been a truthful witness. The TJ characterised the appellant's relationship with Ms Ko as "love with an ulterior motive". The appellant had taken advantage of Ms Ko "in a corrupt manner" (see [469] of the TJ's grounds of decision found

at *PP v Tey Tsun Hang* [2013] SGDC 165, which I will refer to as "the GD"). The TJ found that the appellant had solicited the acts of gratification from Ms Ko.

71 Although the TJ found that only the appellant's intention was relevant, he also examined the gratification from the point of view of Ms Ko's intention.

72 The TJ relied on Ms Ko's first statement to the CPIB where she stated that her acts were done so that she would "be in [the appellant's] good books" and so that she would "not be unduly prejudiced" if she took any of his modules in the future. The TJ came to the conclusion that Ms Ko's acts were committed with the intention that the appellant would show favour to her in her academic pursuits.

73 Ms Ko changed her position in her third statement to the CPIB and in her oral evidence at trial. She said the reason for her acts was that she had a crush on the appellant and that they were in a relationship. The TJ allowed the Prosecution's application to impeach Ms Ko's credit, specifically in relation to her oral evidence. The TJ placed more weight on Ms Ko's first statement. He stated that her later evidence was unreliable as it was made to exculpate her from having a corrupt intent to bribe the appellant.

74 The TJ concluded that it was Ms Ko's intention to make the acts of gratification so that the appellant would show favour to her. The TJ concluded that the second, third and fourth elements of each offence were made out.

75 In a separate judgment on sentencing (see *PP v Tey Tsun Hang* [2013] SGDC 166), the TJ found that there were many aggravating factors. The appellant had initiated the illicit relationship with Ms Ko; he wasted the court's time by challenging the admissibility of the Statements at trial; and he deliberately destroyed the integrity of a public body, NUS. These were all taken into account in the sentence he arrived at (see [3]–[4] above).

The first issue: admissibility

Parties' cases on admissibility

76 On appeal, Mr Low narrowed the challenge on the admissibility of the Statements to three grounds. The first was that the Statements were procured by threats and inducements. The second was that the Statements were made under oppressive circumstances. The third related to the appellant's medical condition and the side-effects of the psychoactive medication.

77 On the first ground, the appellant made numerous allegations. He alleged that CPIB officers had threatened to arrest his wife upon her return to Singapore. He alleged that CPIB officers had threatened to communicate damning information to his mother, who had a weak heart. He alleged that CPIB officers had threatened a painful death if he did not confess. He claimed that the CPIB officers had attempted to induce him to confess by telling him that confessions had already been lined up, and by leading him to believe he would be helped if he cooperated.

78 On the second ground, the appellant complained of badgering and frisking by the CPIB officers, and that the interview room was too stuffy and cold.

79 On the third ground, the appellant claimed that the TJ had erred in rejecting the evidence of medical experts that the appellant was suffering from an acute stress disorder when the Prosecution did not have any medical expert to rebut the diagnoses of the appellant's medical experts. The

appellant also alleged that he was on psychoactive medication at the time the Statements were recorded. Mr Low submitted that the combined effect of the medical condition and the medication rendered the Statements involuntary.

80 Counsel for the Prosecution, Mr Andre Jumabhoy ("Mr Jumabhoy"), argued that the allegations of threats and inducements and of oppressive circumstances were not borne out. The testimonies of Mr Khoo, Mr Bay and Mr Teng were consistent and reliable, and were to be preferred over the appellant's evidence.

81 Mr Jumabhoy argued that there was no need to call for rebuttal expert medical evidence and that the TJ was entitled to come to his own conclusions as to the appellant's medical condition. Mr Jumabhoy challenged the diagnoses of the doctors by reference to the International Classification of Diseases ("ICD-10") and the Diagnostic and Statistical Manual of Mental Disorders ("DSM-IV") diagnosis guidelines. Mr Jumabhoy also asserted that the extrinsic facts showed that the appellant was lucid, could understand questions, and could respond to them appropriately.

The court's decision on admissibility

82 The admissibility of statements from the appellant is governed by s 258(3) of the Criminal Procedure Code 2010 (Cap 68, Act 15 of 2010) ("the CPC"). There is a subsequent edition of the CPC in 2012. Section 258(3) and the accompanying explanations read as follows:

> (a) 258 – …
>
> (3) The court shall refuse to admit the statement of an accused or allow it to be used in the manner referred to in subsection (1) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused grounds which would appear to him reasonable for supposing that by making the statement he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.
>
> *Explanation* 1—If a statement is obtained from an accused by a person in authority who had acted in such a manner that his acts tend to sap and have in fact sapped the free will of the maker of the statement, and the court is of the opinion that such acts gave the accused grounds which would appear to the accused reasonable for supposing that by making the statement, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him, such acts will amount to a threat, an inducement or a promise, as the case may be, which will render the statement inadmissible.
>
> *Explanation* 2—If a statement is otherwise admissible, it will not be rendered inadmissible merely because it was made in any of the following circumstances:
>
> (*a*) under a promise of secrecy, or in consequence of a deception practised on the accused for the purpose of obtaining it;
>
> (*b*) when the accused was intoxicated;
>
> (*c*) in answer to questions which the accused need not have answered whatever may have been the form of those questions;

(*d*) where the accused was not warned that he was not bound to make the statement and that evidence of it might be given against him; or

(*e*) where the recording officer or the interpreter of an accused's statement recorded under section 22 or 23 did not fully comply with that section.

83 The Prosecution bore the burden of proving beyond reasonable doubt that the Statements were made voluntarily. Prior to the enactment of the CPC in its present form, the provisions governing the admissibility of an accused's statements were found in s 24 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA") and s 122(5) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the CPC 1985"). The provisions in both the EA and the CPC 1985 were substantially similar: both related to threat, inducement and promise. The difference was that the former applied to confessions made by an accused, while the latter applied to all statements made by an accused. Courts have frequently referred to s 24 of the EA and s 122(5) of the CPC 1985 collectively as the test of voluntariness (see *Seow Choon Meng v PP* [1994] 2 SLR(R) 338 ("*Seow Choon Meng*") at [30]) despite such a term not being expressly used in either of the provisions.

84 Section 258(3) of the CPC has consolidated the provisions of the EA and the CPC 1985. Under the current statutory framework, the test of voluntariness is found entirely in s 258(3) of the CPC: it applies to determine the admissibility of *all* statements made by an accused, whether or not they are confessions.

85 The test of voluntariness was explained in *Gulam bin Notan Mohd Shariff Jamalddin and another v PP* [1999] 1 SLR(R) 498 ("*Gulam bin Notan*") at [53] as follows:

> … The test of voluntariness is applied in a manner which is partly objective and partly subjective. The objective limb is satisfied if there is a threat, inducement or promise, and the subjective limb when the threat, inducement or promise operates on the mind of the particular accused through hope of escape or fear of punishment connected with the charge ...

86 The common law concept of oppression developed separately from the law relating to threat, inducement and promise. Its roots were in the English common law (*R v Priestley (Martin*) (1966) 50 Cr App R 183; *R v Nicholas Anthony Prager* [1972] 1 WLR 260 ("*Prager*")).

87 The common law concept of oppression was adopted in Singapore and subsumed under the rubric of voluntariness. As the Court of Appeal in *Gulam bin Notan* observed (at [53]), "the common law concept of involuntariness by oppression in [*Prager*] has been subsumed under s 24 of the [EA]". While oppression was accepted as a distinct ground for a finding of involuntariness, its relationship with the concept of threat, inducement or promise was unclear. In *Yen May Woen v PP* [2003] SGCA 29 ("*Yen May Woen*"), the Court of Appeal remarked (at [20]) that:

> … Oppression may not strictly speaking come under the rubric "inducement, threat or promise" in [s 24] of the [EA] and s 122(5) of the [CPC 1985] as it may not involve external factors as inducements, threats and promises do. …

88 The common law definition of oppression is incorporated in the present CPC under Explanation 1 of s 258(3): any circumstance or act which tends to sap and did sap the free will of the accused. Section 258(3) of the CPC, however, rationalises oppression *within* the framework of threat, inducement or promise. Explanation 1 thus states that if "a person in authority who had acted in such a manner that his acts tend to sap and have in fact sapped the free will of the maker of the statement … such acts *will amount* to a threat, inducement or promise" [emphasis added]. This is in

contrast with the position prior to the enactment of the current CPC (see *Yen May Woen* cited at [87] above).

89 Section 258(3) of the CPC does not change the substantive law on oppression despite the conceptual shift in approach. This is borne out by the legislative intent behind the enactment of s 258(3) of the CPC. At the second reading of the Criminal Procedure Code Bill (Bill No 11 of 2010), Mr K Shanmugam, Minister for Law and Second Minister for Home Affairs, stated that the "admissibility test developed by our Courts in [*Seow Choon Meng*] and [*Gulam bin Notan*], is now *codified in Explanation 1 to clause 258*." [emphasis added] (see *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 cols 415-416).

90 Thus, the following observations of the Court of Appeal in *Seow Choon Meng* (at [33]) continue to apply to s 258(3) of the CPC:

> … Oppression in this context [of statements made during police investigations] relates to the methods and manner of interrogation preparatory to and during the making of statements. It has been said that oppressive questioning may be described as questioning which by its nature, duration or other attendant circumstances, including the fact of custody, excites hopes, such as the hope of release, or fears, or so affects the mind of the person being interrogated that his will crumbles and he speaks when otherwise he would have remained silent - questioning in circumstances which tended to sap and did sap, the free will of the person interrogated: *per* Edmund Davis LJ in *R v Prager* [1972] 1 All ER 1114. At the same time, it has been said that the court's approach should not be such so as to form a clog on the proper exercise by the police of their investigating function, and, indeed, on the administration of justice itself: *per* Lord Hailsham in *DPP v Ping Lin* [1975] 3 All ER 175 at 183. Robust interrogation is, in our opinion, an essential and integral aspect of police investigation. However, as was observed by L P Thean J in *Sim Ah Cheoh* … if the questioning is too vigorous or prolonged, it becomes oppressive, with the result that a doubt arises as to whether the statement or the answers have been caused by any fear or threat so as to render the statements or answers to the questions inadmissible.

91 I note that Explanation 1 of s 258(3) of the CPC refers to the acts of a person in authority which tend to sap and have in fact sapped the free will of the maker of the statement. However, in *Seow Choon Meng*, it was stated (at [33]) that the oppressive questioning may arise from the nature, duration or other attendant circumstances of the questioning. This suggests that there may be oppression even if there is no overt act from a person in authority such as a specific threat, inducement or promise. Since the legislative intention was not to depart from what was said in *Seow Choon Meng*, it seems therefore that notwithstanding the reference in Explanation 1 to the act of a person in authority, no such overt act is required to constitute oppression or rather to constitute a threat, inducement or promise in the words of s 258(3).

92 There is also another ground of involuntariness. It concerns situations where the maker of the statement is suffering from a medical condition, and/or was taking drugs or medication such that he is unable to give his statements voluntarily. The test in such cases is whether the appellant's mind went with his statement: see *Garnam Singh v PP* [1994] 1 SLR(R) 1044 ("*Garnam Singh*") at [31]. In this category of cases, the allegation is essentially that the person giving the statement is in such a state of delirium that he does not know or understand what he is saying, or appreciate the circumstances in which he made the statements.

93 Notwithstanding the structure of s 258(3) of the CPC, the appellant has contested the admissibility of the Statements on each of the three grounds, namely: the presence of threats and

inducements; the presence of oppressive circumstances and the presence of a medical condition and/or medication that affected the voluntariness of the Statements. In other words, he treated oppressive circumstances as being different from threats and inducements. For convenience, I will adopt his approach as it makes no material difference to the outcome. The Prosecution relied on the evidence of the respective CPIB officers who recorded each of the Statements to establish that they had been made voluntarily.

The threats

94 On appeal, Mr Low narrowed the alleged threats to three main types of threats: (1) threats to the appellant's wife; (2) threats to the appellant's mother; and (3) threats to the appellant's life.

95 In relation to the first group of threats, Mr Low directed my attention to six allegations which the appellant put to Mr Teng, Mr Khoo and Mr Bay. On two occasions, the appellant suggested to Mr Bay that during the recordings of his first two statements on 5 April 2012, Mr Teng had called Mr Bay to tell him to "lift CIQ on the [appellant's] spouse". [note: 1] According to the appellant, the word "CIQ" was a reference to an order for arrest for the appellant's wife. Mr Bay denied having said the alleged word.

96 The third allegation concerned the same incident. The only difference was that this involved Mr Khoo instead of Mr Bay. The appellant asked Mr Khoo whether he had received a call from Mr Teng on 5 April 2012 to lift CIQ on the appellant's spouse. Mr Khoo's response was as follows: "May I clarify what is CIQ?" [note: 2] When he was told that this meant "arrest upon landing in Changi", Mr Khoo stated that he was "unaware of such an event". [note: 3] Mr Khoo's evidence in this regard was consistent with Mr Bay's evidence.

97 The fourth and fifth allegations pertained to what Mr Bay had said during the interview process three days earlier, on 2 April 2012. No statement was recorded at this time as the appellant became unwell that evening. The appellant suggested to Mr Bay that he had on two occasions "specifically made repeated threats to [the appellant] to arrest his spouse at Changi Airport" upon her arrival and impound her passport if necessary. [note: 4] Mr Bay again denied these allegations.

98 The final allegation involved Mr Teng. The appellant suggested to Mr Teng during cross-examination that Mr Teng had told the appellant on 2 April 2012 that CIQ meant arrest upon landing at Changi. [note: 5] According to the appellant when he was cross-examined, the first time that he had heard of the acronym CIQ being used in that way was when Mr Teng threatened to "CIQ" his wife upon her return. [note: 6] Mr Teng denied that he had said this to the appellant.

99 I now turn to the second group of threats: those allegedly made against the appellant's mother. These threats were allegedly made by Mr Bay on 2 April 2012 when Mr Khoo, Mr Bay, CPIB Special Investigator Michael Oh Yong Ban and CPIB Special Investigator Hasvind Elangovan visited the appellant's house with the appellant to retrieve certain items. Mr Bay had allegedly told the appellant in his mother's presence and in Hokkien, a language the appellant's mother understood, that he would "tell your mother you [f…] others' daughters. You can [f…] the old ones. You can [f…] the young ones too. See what your mother do or say." The appellant allegedly pleaded with Mr Bay not to tell his mother these words as his mother had a weak heart. Mr Bay then allegedly retorted that if the appellant's mother were to die, it would be because the appellant had been unfilial. [note: 7] The appellant put forward his version of events to Mr Bay. Mr Bay categorically denied these allegations.

100 The third group of threats which the appellant maintained on appeal were allegedly made against the appellant's life. The appellant suggested to Mr Teng that Mr Teng had told the appellant in Hokkien on 17 May 2012 words to the effect "I stab you once, you die beautifully with your legs straight. But if you insist, I will stab you tens of times, you will die a most horrendous death." [note: 8] Mr Teng responded that this was "not true" and that he had only realised that the appellant spoke Hokkien in the course of interviewing the appellant a day later, on 18 May 2012.

101 The appellant also alleged that Mr Teng had spoken to him in Mandarin words to the effect that Mr Teng, "could allow [the appellant] to die without much suffering, or there shall be greater calamity on [his family] and [himself]". [note: 9] This was also denied by Mr Teng, who stated that he only realised that the appellant could speak Mandarin during a conversation on 18 May 2012.

102 The Prosecution pointed out that even if the words were said, the appellant would not have interpreted these words literally as a threat to kill him. In fact, the appellant had admitted in cross-examination that he was aware that these words were meant metaphorically. I am of the view that this was not sufficient to negate the seriousness of the words if they were uttered. The appellant testified at trial that he interpreted the words as a threat to his family life and livelihood. [note: 10] He testified that he had made confessions in his statement recorded on 17 May 2012 because of this threat.

103 An appellate court's power of review in respect of findings of fact based on the veracity and credibility of witnesses is very limited: see *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 ("*Tat Seng Machine Movers*") at [41]. There was nothing specific that the appellant pointed to which showed that the TJ's finding on the credibility and consistency of the CPIB officers on the issue of the threats was plainly wrong.

104 The appellant did not say that he told Mr Low or Dr Tommy Tan ("Dr Tan"), who examined the appellant on 9, 11 and 16 April 2012, about these threats. Apparently, the appellant informed Dr Michael Yong Ken Hwee ("Dr Yong"), a psychiatrist with Alexandra Hospital, about threats to his life but he did not specify what the threats were. The appellant stated during trial that he had "complained" to his senior colleagues. [note: 11] He did not state who these "senior colleagues" were and he did not state what he had told these colleagues. Nor did any of them give evidence to say that the appellant had mentioned the threats.

105 Two of his colleagues, the Dean of NUS's Faculty of Law Professor Simon Arthur Chesterman ("Prof Chesterman") and Associate Professor Tracey Evans Chan ("Assoc Prof Chan") took the stand. They gave evidence that the appellant had complained of his physical and mental condition. However, they did not mention the alleged threats. An email from Prof Chesterman to Mr Khoo dated 25 May 2012 (D59) stated that based on what the appellant had told Prof Chesterman, the appellant had "made statements while stressed and anxious which, when calmer, he suggests were made in error." This email was written in response to Mr Khoo's request to verify the accuracy of parts of the Statements. Prof Chesterman told Mr Khoo in this email that he believed that the appellant may "be saying things, and even signing statements, that he is not sure of, or which he thinks you might want him to say" because of his medication and the stress he was under. Prof Chesterman also offered to speak to the CPIB officers about this. Notably absent from this email is any suggestion that the appellant had told Prof Chesterman that the CPIB officers had threatened him.

106 The appellant made more allegations about threatening or intimidating conduct from the CPIB officers when he was on the stand than when he was cross-examining them. For example, when he was giving evidence, he alleged that on 2 April 2012, when he was at the CPIB, Mr Bay had entered a

room where he was in. Mr Bay then stared at him, slammed his (Mr Bay's) hand on a table and pointed a finger at him. He also alleged that on 10 April 2012 when he was driving his car to the CPIB with Mr Bay and Mr Khoo inside the car, Mr Bay made various humiliating remarks to him in the presence of Mr Khoo. Yet the appellant did not mention these allegations to Mr Bay when he was cross-examining Mr Bay. Indeed the appellant admitted that he had made more allegations against Mr Bay, Mr Khoo and Mr Teng in his evidence than had been put to each of them.

107 Furthermore, when asked about the exact allegations that he was making about the CPIB officers, the appellant answered as follows: [note: 12]

> I'm in no position, nor do I have the legal basis, to make serious criminal allegation against any officer and let me please repeat it: I do not want to and I have no wish to make serious allegations against any officers of CPIB in criminal nature.

108 It seems to me that the appellant had adopted a machine gun approach and made whatever allegations he wished to make against the CPIB officers, both when he was cross-examining them and when he was on the stand, without caring about the truth of his allegations. That is why he did not bother to match his evidence with the questions he put to the CPIB officers and he simply added multiple allegations in his evidence. That is also why he resiled from his position and said he did not wish to make serious allegations against them. There was no reason for me to disagree with the TJ's conclusion on this and I reject the appellant's allegations about the threats made against him.

The inducements

109 There were two alleged inducements. The first was from Mr Bay. The appellant had asked Mr Bay whether, during the journey on 2 April 2012 from the appellant's home to the CPIB headquarters, Mr Bay had "continuously pressured" the appellant to confess with words such as "got so many photos you still want to deny ah?" Mr Bay also allegedly told the appellant that he had lined up Ms Ko and the appellant's previous students and that they had confessed to corruptly giving the appellant gifts. Mr Bay allegedly then concluded that the appellant should "tell [his] side of the story to save [himself]". [note: 13] Mr Bay denied this allegation.

110 The second allegation was made against Mr Teng. The appellant had asked Mr Teng whether he had uttered to the appellant words to the effect that if the appellant cooperated, he would find a way to help the appellant. [note: 14] Mr Teng denied this.

111 The appellant faced the same problem with these allegations as he did with the alleged threats. For example, he did not mention them to Mr Low or Dr Tan or Dr Yong or to his colleagues and he said he did not want to make serious allegations against the CPIB officers. In the circumstances, I agree with the TJ that these allegations were not made out.

Oppression

112 Mr Low submitted that there had been oppression which made the statements involuntary and that the TJ should have excluded the Statements. Mr Low raised four factors in this respect: (1) Mr Bay had admitted to badgering the appellant; (2) the interview room was too cold; (3) the room was too stuffy; and (4) a body search was conducted on the appellant.

113 The litmus test for oppression is whether the investigation was, by its nature, duration or other attendant circumstances, such as to affect the accused's mind and will such that he speaks when he otherwise would have remained silent.

114 It is apposite to bear in mind the observations of the Court of Appeal in *Yeo See How v PP* [1996] 2 SLR(R) 277 ("*Yeo See How*") that the person in authority does not have an obligation to remove all discomfort. The appellant in *Yeo See How* had complained that he was very cold and was suffering from gastric pains. He alleged that he had asked the investigator for medicine for his gastric pains but had been told that there was no such medicine. The Court of Appeal observed at [40]:

> Some discomfort has to be expected - the issue is whether such discomfort is of such a great extent that it causes the making of an involuntary statement. Since the discomfort here was clearly not great, we did not see any doubt was raised that the statement was involuntary.

115 The first allegation that Mr Low raised was one of badgering. Mr Bay agreed that he had badgered the appellant. During re-examination, Mr Jumabhoy asked Mr Bay what his understanding of badgering was. Mr Bay responded: "Pestering and pestering". [note: 15] I find that "pestering" is not enough to constitute oppression which would affect admissibility. It is not surprising to find an element of pestering in the process of investigation as investigators try to find answers especially if they suspect that a person is being evasive. Furthermore, the appellant did not put to Mr Bay or the other CPIB officers that the pestering was so intense that his mind and will were sapped.

116 The second allegation is that the interview room was too cold. However, the appellant did not directly question the CPIB officers about the temperature of the room or how it affected him. The appellant instead asked Mr Bay questions such as whether he noticed that the appellant had a white towel wrapped around him. He did not ask Mr Bay whether he agreed that the interview room was too cold and that the conditions were so oppressive that they sapped the appellant's free will.

117 I also observe that the second and third allegations, which both related to events on 2 April 2012, were contradictory. The third allegation was that the room was too stuffy. Mr Low pointed out that the appellant had complained about this upon his admittance to Alexandra Hospital. At para 7 of a medical report by Dr Yong dated 18 September 2012, it was stated that the appellant "claimed that the interrogation room was stuffy and "no air" and he felt like he could not breathe." [note: 16] It was unclear to me how the room could be stuffy and at the same time cold. Furthermore, the alleged stuffy condition and its effect on the appellant was again not put to the CPIB officers to offer them a chance to respond or deny the allegation.

118 The final allegation was that a body search had been conducted on the appellant. Mr Bay's evidence was that he had frisked the appellant over the appellant's clothing before the start of the interview on 2 April 2012. [note: 17] I do not think that a body search would have constituted oppression on 2 April 2012, much less three to eight days later (after he had rested in hospital) when PS6, PS7 and PS8 were recorded or one month later when PS9, PS10 and PS11 were recorded. Moreover, it was again not put to the CPIB officers that the frisking incident so troubled the appellant that it affected the voluntariness of the Statements.

119 I am of the view that the pestering and the frisking of the appellant do not constitute oppression. I do not accept that the room was too cold or too stuffy. Even if either of these allegations were true, I do not accept that they operated to affect the appellant's will adversely.

The effect of the appellant's medical condition and medication

120 Mr Low relied on the diagnoses of Dr Yong and Dr Tan, and their prescriptions of psychoactive medication to the appellant. Mr Low argued that these were evidence that the Statements were

given involuntarily, and that the evidence of the doctors could not be challenged by the TJ.

121 The threshold for impugning a statement on the ground of involuntariness due to a medical or psychological condition is a high one. In *Garnam Singh*, the Court of Appeal emphasised (at [31]) that:

> ... in order for the effects of withdrawal from drugs to affect the drug user's medical and psychological condition to render any statement he makes to be involuntary, he must be in a state of near delirium, that is to say, that his mind did not go with the statements he was making.

In that case, the accused was a drug addict who claimed that he was experiencing drug withdrawal symptoms when his statement was recorded. The Court of Appeal held that the statement was voluntary. In arriving at its conclusion, the Court of Appeal stated (at [31]) that the medical evidence did not describe "how the effects of withdrawal from drugs affected the appellant's medical and psychological condition". Instead, the medical evidence indicated that the effects of drug withdrawal had worn off by the time the accused's statement was recorded.

122 Similarly, in *Gulam bin Notan*, an accused who was suffering from methamphetamine withdrawal claimed that his statement was involuntary. The Court of Appeal observed (at [54]) that the accused was able to understand the questions which were asked, and thus concluded that the statements were voluntary.

123 *PP v Dahalan bin Ladaewa* [1995] 2 SLR(R) 124 ("*Dahalan bin Ladaewa*") is the only reported local case where the court found that the accused's medical condition affected the voluntariness of his statement. There, the accused was a heroin and erimin addict who had consumed both drugs on the morning the statement was recorded. He claimed that he could not remember what he had said in his statement. Rajendran J distinguished the case before him from *Garnam Singh*. In *Garnam Singh*, the accused had been in hospital for five days before the statement was recorded; the window of time would have allowed for the effects of drug withdrawal to abate. In contrast, Rajendran J found that the statements in the case before him had been recorded on that very morning, when the effects of drug withdrawal were at its peak.

124 The above analysis is important for two reasons. First, it establishes the high threshold before the court finds that a statement was not voluntary due to a medical condition. Second, it illustrates the two distinct stages of the voluntariness enquiry in which medical evidence is relevant. The first stage concerns the diagnosis of the medical condition of the accused. The second stage concerns the effect of such a medical condition on the accused's ability to make a voluntary statement.

125 The medical evidence came principally from three doctors:

(a) Dr Ong Ee Wei Sharon ("Dr Ong"), third-year medical officer at Alexandra Hospital at the relevant time;

(b) Dr Yong, a consultant psychiatrist, as well as the Director of Psychiatry for Alexandra Hospital, who has been practicing psychiatry for about ten years; and

(c) Dr Tan, a psychiatrist.

Dr Ong and Dr Yong gave evidence at the ancillary hearing. Although Dr Tan had undergone an eye procedure and was on hospitalisation leave at the relevant tranche of the ancillary hearing, I note

that the appellant had initially elected not to call Dr Tan as a witness at all. At a pre-trial conference on 26 December 2012, the Defence had said that it would not be calling him as a witness. However, during the ancillary hearing on 18 January 2013, the appellant indicated that he would be calling Dr Tan eventually. [note: 18] He gave the reason that because Mr Khoo was referring to some information in his investigation diary, he (the appellant) decided to refer to a report from Dr Tan. I find this a lame excuse. If Dr Tan was as important a witness as the appellant was suggesting, then the appellant would have decided to call him as a witness regardless of what Mr Khoo's evidence would be. The appellant had not made any arrangement for Dr Tan to be available at the relevant tranche of the ancillary hearing. Dr Tan eventually gave his evidence during the Defence's case, after the TJ had ruled that the Statements were made voluntarily and, consequently, were admissible as evidence.

126 Dr Ong's review of the appellant focused predominantly on his physiological rather than psychiatric condition. This was apparent when she was asked whether the appellant was "in full possession of his mental faculties", and whether he could "make decisions" at the time he was released. Dr Ong did not answer the question, but instead responded that that was a decision for the psychiatrist in charge, Dr Yong. [note: 19] Dr Yong and Dr Tan, both psychiatrists, gave evidence on the appellant's psychiatric condition. The subsequent portion of the analysis will thus focus primarily on the evidence of Dr Yong and Dr Tan, as the appellant is claiming that the existence of a psychiatric condition, rather than a physiological one, affected the voluntariness of the Statements.

127 I turn now to the medical evidence relevant to the first stage of the inquiry: the diagnosis of the medical condition that the appellant was suffering from, if any.

128 According to para 4 of a report dated 18 September 2012 (D44) by Dr Yong [note: 20], the appellant was seen by two doctors when he was at Alexandra Hospital's emergency department on 2 April 2012. One of the two doctors was Dr Tsu Boon Hsiung who diagnosed the appellant with altered mental state. The appellant was reviewed on 3, 4 and 5 April 2012 by other doctors, one of whom was Dr Ong. [note: 21]

129 Dr Yong first examined the appellant on 3 April 2012. He also saw the appellant on 5 April 2012 to clear the appellant for discharge from the hospital, and again on 12 April 2012 at the out-patient specialist clinic. Dr Yong explained that altered mental state is a term used by physicians to describe an abnormality of functioning of the patient's mind. It is "a form of diagnosis that is vague and usually it means that they are not certain what … the cause [is]". [note: 22] After Dr Yong's examination of the appellant on 3 April 2012, Dr Yong diagnosed the appellant as suffering from acute stress disorder. [note: 23] Dr Yong stated that acute stress disorder is a form of anxiety disorder caused by exposure to traumatic events, or from perception of threat either directly to the person or to his family members. He explained that a person suffering from such a condition may experience dissociative symptoms and feelings of de-realisation and de-personalisation. [note: 24]

130 Dr Tan examined the appellant on 9, 11 and 16 April 2012. [note: 25] Dr Tan diagnosed the appellant with acute stress reaction, which was characterised by the appellant exhibiting a depressed mood, anxiety, and psychomotor retardation.

131 The diagnoses of Dr Yong and Dr Tan appeared to be slightly different. The former referred to an "acute stress disorder", while the latter referred to an "acute stress reaction". However, the evidence of Dr Yong was that the terms are merely different labels for what is, in substance, the same medical condition. The former is a label adopted by the ICD-10 diagnostic tool, while the latter is a label adopted by the DSM-IV. [note: 26] I will use the label "acute stress disorder" in this judgment

to refer to the medical condition in question.

132 The TJ did not accept either Dr Yong's (at [186]–[190] of the GD) or Dr Tan's (at [608]–[629] of the GD) diagnoses that the appellant was suffering from an acute stress disorder. In doing so, the TJ acknowledged Dr Yong's remarks that psychiatry could not empirically measure a condition; an accurate diagnosis depended largely on the information that the psychiatrist was able to obtain from the patient (at [188] of the GD).

133 The TJ was of the view that Dr Yong's diagnosis was not accurate as it was premised on false or inaccurate information provided by the appellant. The TJ found that the appellant had exaggerated to Dr Yong the length, conditions and circumstances of the CPIB investigation on 2 April 2010 (at [187]–[190] of the GD). Further, para 9 of Dr Yong's report dated 18 September 2012 (D44) stated that the appellant had said that his life was threatened and that he was worried about his safety. The TJ noted that there was no threat of physical harm or death to the appellant or to his family, which is a requirement for an acute stress disorder under DSM-IV (at [189] of the GD). This is in line with my conclusion that no threat was made against the appellant, let alone a threat against his life.

134 The TJ also did not accept Dr Tan's diagnosis for a number of reasons.

(a) First, Dr Tan's diagnosis was inconsistent with the diagnostic guidelines in the ICD-10 (at [608] and [614] of the GD). Dr Tan suggested that the stressor giving rise to acute stress disorder could be cumulative and also that severe stress could cause the acute stress disorder to extend beyond a few days. Both of these suggestions were contrary to the ICD-10 guidelines.

(b) Second, Dr Tan's opinion on the stressor shifted in an attempt to maintain conformance with the ICD-10 guidelines. Dr Tan first relied on the CPIB interrogations *per se* as the stressor. After realising that they were insufficient to amount to an exceptional stressor, Dr Tan attempted to rely on the fearful consequences of conviction on top of the appellant's fear of the CPIB investigations (at [608] of the GD).

(c) Third, Dr Tan's report dated 27 August 2012 (in which his diagnosis was contained) was incomplete because it was based solely on Dr Tan's interview with the appellant (at [609] of the GD). Dr Tan did not have the opportunity to interview the appellant's colleagues and family members, which would have provided a firmer basis for the diagnosis.

(d) Fourth, Dr Tan's report was premised on incorrect information (at [612]–[614] and [618]–[622] of the GD) which was provided solely by the appellant. Dr Tan gave evidence that his diagnosis was based on: the appellant's fear of being locked up forever; the appellant's fear that his wife would be arrested on her return from overseas; and the appellant's fear that he would lose his family and livelihood. In respect of the first factor, the TJ concluded that the fear must have been irrational, because the appellant was a former District Judge who must have known he could not be detained for more than 48 hours. In respect of the second factor, the TJ concluded that no one had threatened the appellant with physical harm or death to himself or his family. This is in line with my conclusions above. In respect of the third factor, the TJ concluded that the fear was irrational, as it was always open to the appellant to find another job, and there was nothing at that time which suggested the appellant's family would leave him.

(e) Fifth, the appellant's ability to give a coherent account of the relevant facts to Dr Tan on 9 April 2012 was inconsistent with the appellant suffering from symptoms of dissociated amnesia (at [615]–[617] of the GD).

(f) Sixth, the appellant did not experience an extreme stressor in the sense contemplated by the ICD-10 guidelines. The stressors listed in the diagnostic guidelines, such as multiple bereavements and natural catastrophes are "extreme with a sense of finality". In contrast, the stressors which Dr Tan stated gave rise to the acute stress disorder were "neither extreme nor final…[they] were potential risks purportedly internalised by the [appellant]" (at [623] of the GD). Further, the appellant's claim that the consequences of conviction was a stressor was inconsistent with his behaviour at the trial and the results of the medical examination conducted in the midst of the trial (at [624]–[628] of the GD).

135 The TJ was doubtful of the factual premises of Dr Yong's and Dr Tan's diagnoses even though Dr Yong was of the view that the appellant was not faking his symptoms. [note: 27] The TJ found that "the [appellant] was not truthful, and…had a tendency to malinger" (at [613] of the GD). The TJ's finding was based on the report of Dr Gwee Kenji ("Dr Gwee") (D92), a Senior Clinical Forensic Psychologist at the Institute of Mental Health ("IMH"). The report was admitted without objection. It utilised the Test of Memory Malingering and the Weschler Memory Scale, and had concluded that the appellant's memory functions were "not as deficient as the…results suggest" because "he did not put in his best effort on the memory tests." [note: 28] Dr Gwee's report arose from an application made by the appellant for psychiatric evaluation on his fitness to stand trial midway through proceedings on 18 April 2013. [note: 29] Both the Prosecution and the appellant agreed to an IMH assessment to determine the appellant's fitness for trial. Dr Gwee was the psychologist and Dr Bharat Saluja ("Dr Saluja") was the psychiatrist who assessed the appellant. Consequently, the TJ concluded that since the "*sole* source of reference and basis" for Dr Yong's and Dr Tan's diagnoses were their interviews with the appellant, the accuracy of the diagnoses were accordingly suspect.

136 The TJ was not obliged to accept either Dr Yong's or Dr Tan's evidence without question. This is so even though the Prosecution did not produce expert evidence to the contrary. The observations of V K Rajah JA in *Sakthivel Punithavathi v PP* [2007] 2 SLR(R) 983 (at [76]) are apposite:

> What is axiomatic is that a judge is not entitled to substitute his own views for those of an uncontradicted expert's: *Saeng-Un Udom v PP* [2001] 2 SLR(R) 1. Be that as it may, a court must not on the other hand unquestioningly accept unchallenged evidence. *Evidence must invariably be sifted, weighed and evaluated in the context of the factual matrix and in particular, the objective facts*. An expert's opinion "should not fly in the face of proven extrinsic facts relevant to the matter" *per* Yong Pung How CJ in *Khoo James v Gunapathy d/o Muniandy* [2002] 2 SLR(R) 414 at [65]. In reality, substantially the same rules apply to the evaluation of expert testimony as they would to other categories of witness testimony. Content credibility, evidence of partiality, coherence and a need to analyse the evidence in the context of established facts remain vital considerations; demeanour, however, more often than not recedes into the background as a yardstick. [emphasis added]

The TJ did precisely what he was meant to do: he sifted, weighed and evaluated Dr Yong's and Dr Tan's evidence in the context of the medical literature which Dr Yong and Dr Tan referred to and in the context of the overall evidence. I conclude that the TJ was not plainly wrong in declining to accept the diagnoses of Dr Yong and Dr Tan.

137 If the TJ was wrong in reaching this conclusion, the second stage of the enquiry becomes critical: whether the appellant's medical condition affected the voluntariness of the Statements. In this respect, the appellant relied on the cumulative effect of the psychoactive medication he was consuming at the time when the Statements were recorded as well as his medical condition.

138 I will first address the impact of the psychoactive medication on the appellant during the recording of the Statements. The appellant was unclear, both at trial as well as at the appeal, as to what his case was on the impact of the psychoactive medication on voluntariness. It was perhaps this lack of clarity that resulted in the dearth of medical evidence on the side-effects of the psychoactive medication.

139 The appellant was prescribed three types of psychoactive medication by Dr Yong on 5 and 12 April 2012: (1) Escitalopram to treat anxiety and depression; (2) Alprazolam to treat anxiety attacks; and (3) Diazepam to treat insomnia. Dr Tan also prescribed the appellant Lexotan and Valdoxan. Lexotan is a sleeping tablet while Valdoxan is an anti-depressant. Dr Yong gave evidence on the symptoms each of the psychoactive medications was prescribed to treat. However, neither Dr Yong nor Dr Tan addressed the impact of the medication on the appellant's ability to understand questions and respond voluntarily to them during the interviews with the CPIB officers when the Statements were recorded.

140 During the trial, the appellant's case continually shifted in respect of the impact the medication had on voluntariness. The appellant first alleged that at the interview with Mr Bay on 5 April 2012, the medication had the effect that the appellant "could not remember the exact dates, times and places the sexual intercourse took place". [note: 30] Mr Bay denied that the appellant raised this issue with him.

141 The appellant next alleged that on 10 April 2012, the medication had "knocked [him] out" [note: 31], making him "extremely fatigued" [note: 32] and sleepy. [note: 33]

142 The appellant finally alleged that when he was interviewed by Mr Teng on 17 and 18 May 2012, he "was no longer in a position to engage with [the interviewer]". [note: 34] The appellant did not elaborate on what he meant by "no longer in a position to engage", nor did he give any specific factual examples to substantiate what this assertion meant.

143 On appeal, Mr Low did not clarify what the appellant's case was on the impact the psychoactive medication had on the voluntariness of the Statements.

144 I find it difficult to accept the appellant's contention that the psychoactive medication affected the voluntariness of the Statements.

145 First, I find it highly improbable that the same medication could have produced these varying side-effects during the recording of the different statements. There is no medical evidence which supports this contention.

146 Second, both Mr Teng and Mr Bay denied that the appellant had raised his distressed state to them. For example, Mr Teng testified that he had told the appellant that he need not record a statement on 17 May 2012 if he felt unfit to do so. [note: 35] There was no reason for me to disbelieve their testimonies.

147 Third, the appellant's behaviour at trial was inconsistent with his argument that the psychoactive medication affected his ability to make the Statements voluntarily. Throughout the course of the trial, the appellant's prescription of psychoactive medication was: 15 mgs of Escitalopram daily; half-tablets of 0.25mgs of Alprazolam thrice daily; and 5 mgs of Diazepam every night. [note: 36] This was exactly the same prescription which Dr Yong [note: 37] gave to the appellant

on 5 April 2012 [note: 38] and 12 April 2012. [note: 39] Further, in the appellant's review with the IMH to determine his psychiatric fitness to continue with the trial, he had told the IMH psychiatrist, Dr Saluja, that "he [the appellant] had been taking extra tablet (*sic*) of alprazolam, diazepam and escitalopram during the trial." [note: 40] The medication the appellant was taking during the trial was therefore the same (possibly even more, if the information the appellant supplied to the IMH psychiatrist was accurate) as that during the period when the Statements were recorded. One would have expected the effects of the psychoactive medication to manifest itself in the appellant's performance at trial at a level similar to that when the Statements were being recorded. Yet, there was nothing to suggest that the appellant's behaviour at the trial was adversely affected by the psychoactive medication. In fact, the TJ observed (at [641]–[642] of the GD) that the appellant "had a lucid mind, and was able to think and communicate clearly during the trial…[t]hroughout the trial, he was able to engage in sharp exchanges with the prosecution."

148 In the circumstances, I find that there is no evidence to suggest that the psychoactive medication had any impact on the appellant's ability to make voluntary statements beyond the effects that the appellant's medical condition had on him. I shall now address the effects of the appellant's medical condition.

149 Dr Yong gave evidence that a person suffering from acute stress disorder experiences dissociative symptoms. This may result in a person being in a dazed state, being unable to recall the traumatic event that triggered the disorder, or becoming emotionally detached. Dr Yong nevertheless emphasised that even though dissociation results in "a detachment of emotion…*the thinking process…still carries on*" [emphasis added]. [note: 41] Dr Yong also stated that he would not have discharged the appellant on 5 April 2012 if he was not of the opinion that the appellant was medically fit. To give further context, Dr Yong stated that he had known at the time he examined the appellant that: the appellant was a detainee wanted by the CPIB for questioning; law enforcement agencies sometimes question suspects at length; and after discharge "[the appellant] *was going back to CPIB*" [emphasis added]. [note: 42] Fully apprised of these circumstances, Dr Yong discharged the appellant after examining him. Consequently, on Dr Yong's evidence, the effect of acute stress disorder and the impact it had on the appellant, did not, in and of itself, reach the threshold of involuntariness required under the *Garnam Singh* test.

150 Dr Tan did not give detailed evidence on the effect of acute stress disorder on the appellant's ability to provide voluntary statements. Dr Tan said he had informed Mr Low after examining the appellant on 9 April 2012 that the appellant "was not fit to continue further interview with the CPIB." [note: 43] That statement does not shed any light on the impact of the medical condition on the appellant. Not being fit for an interview could mean one of many things. It could mean that the appellant's free will would be more susceptible to being sapped upon rigorous questioning. It could mean that the appellant was more likely to break down and be unable to answer questions upon being examined. It could also mean that the appellant would be more prone to becoming unwell if he was subject to further interviews. Dr Tan was not examined or cross-examined on precisely what he meant by that statement.

151 On the contrary, Dr Tan gave evidence that he was able to elicit personal information, in a considerable amount of detail and particularity, through his interview with the appellant. [note: 44] Dr Tan further acknowledged that the appellant was able to provide a "comprehensive account" of the events that took place between 2 and 9 April 2012. [note: 45] Although Dr Tan described the appellant as "retarded", [note: 46] what Dr Tan meant was that it took him (Dr Tan) a longer time to get answers from the appellant than it would have taken with "a normal functioning person". [note: 47]

There was no suggestion from Dr Tan that the appellant was in such a frail mental state that he was unable to comprehend questions or unable to give clear, detailed and well-reasoned answers. It is difficult to see how taking a longer time to give answers alone would amount to being unfit for further interviews.

152 However, I recognise that Dr Tan may have been suggesting that the appellant's lucidity, when interviewed at the clinic, was not indicative of his state at the CPIB, where the conditions were so traumatic that the appellant was unable to continue with further interviews. The difficulty with such a position is that the factual evidence of the appellant's actions points to a contrary conclusion. The appellant attended an interview at the CPIB office on 5 April 2012 after he was discharged from hospital. Two statements (PS6 and PS7) were received on that day. The appellant went to the CPIB on 9 April 2012. He then went to the CPIB on 10 April 2012 when the third statement (PS8) was recorded. He subsequently returned on 17, 18 and 24 May 2012 for interviews where other statements (PS9, PS10 and PS11) were recorded from him. In respect of this, I mention two points.

153 The first relates to the appellant's attendance at the CPIB office on 5 April 2012. The appellant gave evidence that on 5 April 2012, prior to his discharge, a doctor told him that "a medical cert, hospitalisation leave, has been issued already for [the appellant] till 8 April …" and suggested that the appellant should "just rest here, lie in bed, rest". [note: 48] The appellant knew that a bed in a Class C ward where he was warded was not very expensive. Nevertheless he remained adamant and told the doctor that: "[t]he moment you deem me fit for discharge, I want to sort out the misunderstanding with CPIB." [note: 49] Accordingly, Dr Yong examined him. The appellant was certified fit for discharge and released. Immediately after discharge, the appellant returned to the CPIB.

154 The reason why the appellant went to the CPIB on 5 April 2012 is disputed. Mr Bay said that although he had initially wanted the appellant to return to the CPIB upon his discharge from hospital, he changed his mind on 5 April 2012 as he had decided to wait for the appellant's medical certificate to lapse. However, it was the appellant who telephoned him that day, at around 2 pm, saying that he wanted to go to the CPIB to give a statement. The appellant asked if a car would be sent to bring him to the CPIB and Mr Bay told him that since it was his decision to go there, he should make his own way there. Mr Bay said twice more that the appellant had declined his proposal to have the recording done another day and it was the appellant who insisted on having his statement recorded that day. [note: 50]

155 The appellant did not challenge Mr Bay immediately on these assertions. It was only at the end of his cross-examination of Mr Bay that he put it to Mr Bay that he had ordered the appellant to go to the CPIB on 5 April 2012. Mr Bay disagreed. [note: 51]

156 When the appellant was cross-examined at the ancillary hearing, he gave three reasons why he was keen to go to the CPIB on 5 April 2012 after his discharge from hospital:

(a) first, it was because he was keen to clear his name;

(b) second, it was to collect his car which he had left there; and

(c) third, he had been ordered to go there by Mr Bay. [note: 52]

157 It is quite clear to me that it was the appellant who decided on his own volition to go to the CPIB on 5 April 2012. That is why he did not challenge Mr Bay's evidence initially. He did not even attempt to establish that Mr Bay's evidence was untrue beyond putting it to Mr Bay that he had

ordered the appellant to attend. The reason about wanting to collect his car was his attempt to mask the reality that it was he who had voluntarily decided to go there to clear his name. He then gave the weak reason that he wanted to collect his car, a reason which he did not suggest to Mr Bay when Mr Bay was being cross-examined. This was not a situation where he only wanted to collect his car and was somehow coerced into attending an interview.

158 The appellant's very act of insisting on discharge, and his voluntary return to the CPIB immediately thereafter, undercut his contention that the interrogations with the CPIB were so traumatic that they amounted to a stressor that caused an acute stress disorder which led to the involuntariness of the Statements. Dr Yong gave evidence that a person under the effects of acute stress disorder would avoid returning to a place where the trauma from the stressor could be relived. Yet the appellant himself wanted to return to the CPIB office to "giv[e] an explanation" even though he knew that he was involved in an "official investigation" and that what he said would "be officially recorded". [note: 53]

159 The second point relates to the appellant's return to the CPIB even after the appellant had seen Dr Tan on 9 April 2012. After the appellant's appointment with Dr Tan that morning, on the same day, the appellant returned to the CPIB to hand over some items requested by the CPIB. The appellant was then asked whether he was able to provide a statement. He said that he was not feeling well. He left without making a statement. The appellant then returned to the CPIB again on 10 April 2012 to hand in a printer, which he had forgotten to bring down to the CPIB the previous day. The appellant's evidence was that at that point in time, he was aware of Dr Tan's advice that he was not fit to be interviewed by the CPIB. The appellant said he had told Mr Khoo, the recorder of the statement on 10 April 2012, that "Dr Tommy Tan recorded in his patient's note I wasn't fit for interview." [note: 54] But this was not put to Mr Khoo when Mr Khoo was being cross-examined. In any event, the appellant made a statement on that day. Mr Khoo, on the other hand, gave evidence that it was the appellant himself who volunteered to give a statement on 10 April 2012. [note: 55]

160 The appellant said that he had to cancel an appointment he had with Dr Tan on 10 April 2012 in order to attend at the CPIB that day. The insinuation was that he could not even keep his appointment with Dr Tan because the CPIB was insisting on his attendance. Yet, if he wanted to, he could have asked Dr Tan or Mr Low to inform the CPIB that he was not fit to attend an interview that day and indeed that he had to consult Dr Tan that same day.

161 It seems to me that the appellant chose to cancel his appointment with Dr Tan. Later, he decided to make it seem as though he had no choice but to do so.

162 After 10 April 2012, the appellant gave further statements on 17, 18 and 24 May 2012 to Mr Teng. It is true that the appellant was required by the CPIB to attend at the 24 May 2012 session. However, if he was indeed in no state to be interviewed and if he was being coerced to attend all the interviews between 10 and 24 May 2012, why then did he not seek help from Dr Tan and Mr Low to notify the CPIB that he ought not to be interviewed? Apparently, he did not tell Dr Tan or his solicitors that he was being coerced to attend and was saying things which he could not understand or remember.

163 The appellant suggested that his mind was so fragile that he yielded and gave the statements. Although his memory of what transpired at some of the sessions appeared to be quite vivid, he said that he had little memory of the session on 10 April 2012 and that he could hear nothing for the second half of the session on 17 May 2012.

164 It is clear to me that the appellant was capable of making, and did make, the decision to be interviewed by the CPIB at the material times. He was also capable of understanding questions and giving relevant answers to those questions. I find his evidence that he had little memory of what transpired on 10 April 2012 and that he could not hear anything in the second half of the session on 17 May 2012 to be unconvincing. For example, he did not mention such specifics to Dr Tan or anyone else. The upshot of the expert and factual evidence is that the medical condition did not cause the appellant to be delirious or cause his mind not to go with the statements he was making. It was only as an afterthought that the appellant made a self-serving suggestion to Prof Chesterman that the Statements may not have been given voluntarily. This suggestion was alluded to by Prof Chesterman in an email to Mr Khoo dated 25 May 2012 (see above at [105]) expressing the potential involuntariness of the Statements recorded from the appellant.

165 As for the six cautioned statements which the appellant gave to the CPIB on 26 July 2012, there was no satisfactory explanation from him as to why these statements were given voluntarily but the Statements were not, even though he was supposed to have been suffering from a medical condition from 2 April 2012 until and during the trial in 2013. I find that even if the appellant was suffering from acute stress disorder, it did not affect the voluntariness of the Statements.

166 In the circumstances, there is no reason for me to conclude that the TJ's decision on the admissibility of the Statements was plainly wrong. I am of the view that the Statements were correctly admitted as evidence. The weight to be given to the Statements is another matter.

The second issue: whether s 8 of the Act applied

167 The applicable law on corruption has been set out above at [8] to [26]. Before examining whether the elements of the offence have been made out, it is necessary to determine where the evidential burden of proof lies. This rests on the applicability of s 8 of the Act. It was not disputed that the appellant did receive the acts of gratification and that Ms Ko did have dealings with NUS both before and after the acts of gratification had taken place. Therefore, the issue is whether NUS is a "public body" within the definition provided in s 2 of the Act.

Parties' cases on the applicability of s 8 of the Act

168 The appellant submitted that the TJ had erred in law by characterising NUS as a "public body". The appellant argued that the purpose of s 8 was to reverse the burden of proof only for government, civil, and public servants. The appellant argued that NUS professors and employees could not be considered government, civil or public servants.

169 Mr Low conceded that "public body" should be interpreted widely but he nevertheless maintained that NUS still fell outside the definition of "public body". NUS had become autonomous since its corporatisation; NUS was no longer accountable to the Auditor-General or the government and could spend its money as it pleased.

170 The Prosecution submitted that "public body" should be interpreted widely to include any body that carried out a public purpose. Notwithstanding NUS's corporatisation, it continued to serve "the public and national interest", and was thus a public body.

171 The Prosecution also argued that NUS was a body for public utility, through which the Government furthered its objects of providing tertiary education. NUS was publicly funded and obliged to comply with the accountability framework between itself and the Minister for Education ("the Minister"); it was obliged to comply with policy directions on higher education issued by the Minister;

it was subject to continuing and significant control by the Minister.

172 The Prosecution argued in the alternative that NUS was a corporation to administer money levied or raised by rates or charges in pursuance of any written law, because it receives government funding.

173 Finally, the Prosecution submitted that the appellant's argument that s 8 of the Act only applied to government, civil or public servants was a non-starter. Such an argument was foreclosed by the plain wording of s 8 of the Act.

The court's decision on the applicability of s 8 of the Act

The scope of a "public body" in s 2 of the Act

174 Assuming that there is a typographical error, an undertaking "of public utility" is a "public body" as defined in s 2 of the Act. If there is no typographical error, a corporation is a public body if it "has power to act under and for the purposes of any written law relating to…public utility". The difference does not affect the outcome in the present case. There is also the limb, "or otherwise to administer money levied or raised by rates or charges in pursuance of any written law." The TJ found that NUS was a public body because NUS fulfilled a public purpose, or alternatively, because NUS administered public funds.

175 On appeal, the Prosecution relied on four authorities which it claimed supported a wider proposition that s 2 should be read broadly to include any body that exercised or fulfilled a public purpose:

(a) the UK House of Lords decision in *Director of Public Prosecutions v Holly* [1978] 1 AC 43 ("*Holly*");

(b) *Top of the Cross Pty Ltd and another v Federal Commissioner of Taxation* (1980) 50 FLR 19 ("*Top of the Cross*");

(c) *PP v Tan Sri Kasitah* [2009] 6 MLJ 494 ("*Tan Sri Kasitah*"); and

(d) *United Malacca Rubber Estates Bhd v Pentadbir Tanah Daerah Johor Bahru* [1997] 4 MLJ 1 ("*United Malacca*").

Mr Low did not challenge this broader proposition which the Prosecution was asserting. I will address each of the cases raised by the Prosecution.

(1) *Holly*

176 *Holly* concerned the interpretation of s 4(2) of the UK 1916 Act. It reads as follows:

> ... [T]he expression "public body" includes, in addition to the bodies mentioned in the last-mentioned Act, local and public authorities *of all descriptions*. [emphasis added]

177 The "last-mentioned Act" in s 4(2) of the UK 1916 Act refers to the UK Public Bodies Corrupt Practices Act 1889 (52 & 53 Vict c 69) (UK) ("the UK 1889 Act"). The UK 1889 Act defined a public body at s 7 as follows:

> The expression "public body" means any council of a county or county of a city or town, any

> council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law or otherwise to administer money raised by rates in pursuance of any public general Act, but does not include any public body as above defined existing elsewhere than in the United Kingdom …

178 The question before the House of Lords was whether the North Thames Gas Board was a "public body" within s 4(2) of the UK 1916 Act. This turned on whether the North Thames Gas Board fell within the definition "local and public authorities *of all descriptions*" [emphasis added]. The House of Lords accepted the decisions of the Court of Appeal and the Central Criminal Court at first instance. It agreed with a definition adopted by the Court of Appeal that a "public authority" is "a body…which has public or statutory duties to perform". The House of Lords held that the North Thames Gas Board was a public authority, and therefore, a public body within s 4(2) of the UK 1916 Act.

179 Lord Edmund-Davies' observation in *Holly* (at 54D–E) that it was difficult to imagine any wording which could be wider than s 4(2) of the UK 1916 Act was made in respect of the phrase "public authorities of all descriptions".

180 In my view, the definition of "public body" considered in *Holly*, and the question before the House of Lords in that case is substantially different from the question before me in relation to s 2 of the Act. *Holly* does not lend any support to the Prosecution's submission that a public body includes, without more, any body which exercises or fulfils a public purpose.

(2) *Top of the Cross*

181 The next case which the Prosecution referred to was the *Top of the Cross* decision by the Supreme Court of New South Wales.

182 *Top of the Cross* is clearly distinguishable because it concerned the scope of s 62A of the New South Wales Income Tax Assessment Act 1936 (Cht) (NSW). The provision governed tax deductions for expenditure incurred by a taxpayer for a franchise which would later become the property of the Commonwealth of Australia. The Supreme Court of New South Wales found that the motel the appellants were operating in Tullamarine airport was a project of public utility. It held that the appellants qualified for the tax deductions. The provision considered in *Top of the Cross* was facilitative in nature; it allowed tax deductions for projects which the Commonwealth of Australia had effectively sub-contracted. The phrase "public utility" was read widely to give effect to the policy of allowing tax deductions for such franchises. =

183 In contrast, the case before me concerns a penal statute. The principle is that penal provisions should be construed strictly. The following observation of Winn J in *R v Newbould* [1962] 2 QB 102 (at 106) on the principle of construction is apposite notwithstanding that he was overturned on the substantive issue relating to s 4(2) of the UK 1916 Act:

> ... [U]nless I feel convinced that it is sound in law, it would seem to be unwarrantable for me to rule in a sense gravely adverse to a man accused of this serious criminal charge, because, as [counsel for the accused] has reminded me, not only juries but a judge concerned with a criminal charge should always, as I understand it, give the benefit of any real doubt to the accused man.

(3) *United Malacca*

184 I turn now to the two Malaysian cases cited by the Prosecution. The first, *United Malacca*, did not concern corruption. It concerned the Malaysian Land Acquisition Act 1960 (Act 486) (Malaysia). The Malaysian Land Authority sought to acquire certain land for the second Singapore-Malaysia Causeway Project. Under the statute, declarations of such acquisitions were required to contain a reference that the State authority was of the opinion that the undertaking was one of public utility. One of the questions in *United Malacca* was whether the declaration contained such a reference.

185 The court addressed what would count as an undertaking of public utility in the course of its judgment. While the court cited *Top of the Cross* as authority for the proposition that "public utility" should be interpreted widely, such an interpretation was not necessary. The works under the project fell within the paradigm example of "public utility": they comprised a road network system, the second causeway, water pipelines, and the infrastructure for transmission of electricity and telecommunications. In the court's own words, the works would "without question have appeared in ordinary language to have an undertaking of public utility" (at 14E).

186 Further, the same objection to *Top of the Cross* holds true in relation to *United Malacca*: the provision in consideration *did not concern a penal provision*. I do not think that *United Malacca* provides support for the proposition that "public utility" in s 2 of the Act should be read widely for the purposes of the Act.

(4) *Tan Sri Kasitah*

187 The second Malaysian case, *Tan Sri Kasitah*, concerned corruption. There, the appellant faced two charges. The first was a corrupt practice charge under the Emergency (Essential Powers) Ordinance (Ordinance No 22 of 1970) (Malaysia) ("the Malaysian Ordinance 22/1970"). The second was a cheating charge under s 417 of the Malaysian Penal Code (FMS Cap 45) (Malaysia). Both charges arose from the same series of acts. The appellant was a director of the board of the Sabah Land Development Board ("SLDB"). He was alleged to have received shares from the giver in exchange for having the SLDB board approve the transfer of SLDB shares to the giver. To ensure that the SLDB board approved the transfer, the appellant deceived the SLDB board by concealing certain important information relating to the transaction.

188 In order for the appellant to be convicted under s 2(1) of the Malaysian Ordinance 22/1970, he had to be an employee of a public body. The court had to determine whether the SLDB was a public body. For the purposes of the Malaysian Ordinance 22/1970, s 2 of the Malaysian Prevention of Corruption Act 1961 (Act 57) (Malaysia) ("the 1961 Malaysian PCA"), defined "public body" as follows:

> 'public body' includes —
>
> ...
>
> (d) Any corporation, council, board, commissioners or other body which has power to act under and for the purpose of any written law in force in Malaysia or any part thereof relating to local government, public health or undertakings of public utility, or otherwise has power to administer funds belonging to any Government in Malaysia, or money raised by rates, taxes or charges in pursuance of any written law in force in Malaysia or any part thereof …

Paragraph (d) of s 2 of the 1961 Malaysian PCA is substantially similar to the definition of "public body" in s 2 of the Act.

189 The SLDB came under the direct charge of the Minister for Resource Development and

Environment and could only undertake projects with the guidance and consent of the Minister for Finance, Minister for Resource Development and Environment, and the Chief Minister of Sabah. It had been established under the Sabah Land Development Board Enactment 1981 (Sabah No 23 of 1981) with the purpose of promoting and carrying out projects for land development and settlement. The SLDB had been described in evidence as a semi-government body. The appellant also agreed that the SLDB was not created for commercial purposes.

190 The court found that even though the SLDB had been corporatised, it could only undertake projects and sell shares under the supervision and with the consent of the Chief Minister of Sabah and Ministers for Finance and Resource Development and Environment. It was therefore a public body within the meaning of s 2 of the 1961 Malaysian PCA (see *Tan Sri Kasitah* at [79]–[81]).

191 I do not find that *Tan Sri Kasitah* is authority for the Prosecution's argument that the words "public body" should be interpreted to include any body which exercises a public purpose. The reasoning of the court in *Tan Sri Kasitah* related to the extent of ministerial and government control which was maintained over the SLDB, even to the extent of controlling the sale of its shares. The court also reasoned that the SLDB was a body constituted by statute which could be described as a semi-governmental body. *Tan Sri Kasitah* suggested that the definition of a "public body" would rest on the extent of government control exercised over it and the manner of its constitution, or, in other words, whether it was a creature of statute.

192 Upon consideration of the cases above, I find that there is little support for the Prosecution's wider contention that s 2 must include any body which exercises or fulfils a public purpose.

Whether NUS falls within the s 2 definition of a public body

193 I will now address the question of whether NUS falls within the s 2 definition of "public body". This will necessitate a consideration of NUS's historical and juridical origins and its subsequent development.

194 NUS began as a medical school in 1905 pursuant to a petition for the same sent to the Governor of the Straits Settlements. The medical school was constituted in June 1905 under Ordinance No 15 of 1905. It became a full-fledged university on 8 October 1949 under the name University of Malaya by the University of Malaya Ordinance 1949 (Ordinance No 12 of 1949). In 1959, the University of Malaya was split into two different establishments: one in Singapore and one in Kuala Lumpur. In 1959, the Nanyang University Ordinance (Ordinance No 27 of 1959) was passed to give statutory basis to the university in Singapore as an educational institution. It was renamed the University of Singapore in 1962.

195 NUS was officially established under its new (and current) name in 1980. Again, this was done by statute, the National University of Singapore Act (Act 21 of 1980) ("the 1980 Act"). The 1980 Act governed the establishment, functions, powers and day to day operations of NUS. The university constitution was annexed to the 1980 Act as Schedule 1. If NUS wanted to change its constitution, it would have to obtain an order of amendment from the Minister as it did in 2000 with the National University of Singapore Act (Amendment of University Constitution) Order 2000 (S 356/2000) and in 2004 with the National University of Singapore Act (Amendment of University Constitution) (No 2) Order 2004 (S 470/2000).

196 The history of NUS reveals that it was a body created and governed by statute. It was not until 2005 that NUS was corporatised pursuant to the National University of Singapore (Corporatisation) Act (Act 45 of 2005) ("the Corporatisation Act").

197 The appellant stressed that the intent of the corporatisation was to make NUS an autonomous university. He relied on the speech of the Minister at the second reading of the relevant bill on 21 November 2005 in support of his submission.

198 The Prosecution pointed out that NUS was still subject to government control.

199 I set out below extracts of what the Minister said at the second reading of the relevant bill on 21 November 2005 (see *Singapore Parliamentary Debates, Official Report* (21 November 2005) vol 80 col 1854):

> In April 2004, we initiated the University Autonomy, Governance and Funding review, what I will call the UAGF review, to find an appropriate model of autonomy for our three universities. The UAGF Steering Committee, chaired by the 2nd Permanent Secretary of Education, LG(NS) Lim Chuan Poh, released its preliminary report and recommendations in January this year. Its key recommendation was to corporatise NUS and NTU into not-for-profit public companies limited by guarantee, or in short, to make them Autonomous Universities. SMU, which was already established as a public company limited by guarantee, has always been an Autonomous University.
>
> The Ministry's International Academic Advisory Panel (IAAP) met in January 2005 and discussed extensively the recommendations of the UAGF. It strongly endorsed the move to transform NUS and NTU into Autonomous Universities, just like SMU, to enable them to achieve teaching and research excellence, raise their international standing and enhance their students' learning experience. The IAAP also made several useful observations. These included the need for university education at the three universities to remain accessible and affordable. There must also be greater accountability with increased autonomy. The IAAP endorsed the enhanced accountability framework for the Autonomous Universities, which assures the public that the universities' missions remain aligned with our national strategic objectives and that the quality of university education continues to be enhanced.
>
> …
>
> The granting of autonomy to NUS and NTU will, fundamentally, not just be about a change in relationship between Government and universities but about a change in the internal culture of our universities. Autonomy is the catalyst for the change in internal culture. It will bring greater collective ownership and more proactive participation from amongst all the university stakeholders – the Council (or what will soon be called the Board of Trustees after corporatisation), the university management, faculty, staff and students and, quite importantly, the alumni of the universities.
>
> The three Autonomous Universities will remain key institutions in Singapore. The Government remains committed to providing them substantial funding. …
>
> Next, the issue of accountability. It is critical that we strike the right balance between autonomy and accountability. We have to give our universities the freedom to set their own directions, to differentiate themselves and to forge their own distinctive cultures. In this regard, the NUS and NTU (Corporatisation) Bills are in line with the thrust of the existing SMU Act. The new legislation aims to safeguard the Government's strategic interest in the university sector but give the universities the autonomy to be nimble and responsive in a rapidly evolving landscape. The Bills are crafted with this balance in mind. The approach we have taken is to retain those clauses from the existing NUS and NTU Acts which are still relevant, with some modifications in the new

Acts where necessary, and to include new clauses arising from the UAGF recommendations. …

Role of Government

It will remain the Government's responsibility to steer the strategic direction of the overall university sector and ensure that our three universities meet strategic national priorities. This is provided for in clause 5. It will largely be operationalized through the Policy Agreement that will be signed between the Ministry and the university, as part of the enhanced accountability framework that is being put in place.

Strong governance structures are critical to the success of the university. As such, the Minister for Education will continue to appoint the university's Board of Trustees (BOT), as provided for in clause 6. We must appoint the right people as Trustees. …

Enhanced accountability

The enhanced accountability framework for the Autonomous University, as reflected in the new clause 4, will comprise the following:

Firstly, a Policy Agreement to be signed between each university, in the present instance, NUS, and the Ministry of Education that stipulates the key policy parameters articulated by MOE which the university must abide by in order to receive Government funding. …

Secondly, a Performance Agreement, besides the Policy Agreement I just spoke about, which will be formulated by the university and agreed to by the Ministry of Education. This is the university's ex-ante declaration of what it is setting out to achieve in the areas of teaching, research, service and organisational development. This Agreement will be reviewed every five years. In addition, the Ministry and each university will work out and agree on the number of graduates to be trained by the university in broad clusters of disciplines on an annual basis. The performance of the university will be reviewed annually in the four areas of academic teaching and curriculum, research outcomes and training, contribution and service to the wider community, and organisation development matters. It would include such issues as the breadth of the curriculum that the universities are seeking to achieve, things such as the number of cross faculty modules that undergraduates are required to cover, and the percentage of students that the universities intend to send for overseas exposure through exchange programmes.

Thirdly, the existing Ministry of Education's Quality Assurance Framework for Universities (QAFU) that includes an on-site external validation of the university's performance by an MOE-commissioned external review panel. QAFU already exists. …

In order to ensure that the Autonomous Universities remain fully accountable for the use of public monies, the new clause 9 provides for the Ministry to have continued full and free access to all records relating to financial transactions of the university company, and to be able to make such records available to the public.

The Minister for Education's consent would also have to be sought for the university's functions cited in clause 7 of the Bill, such as the disposal of property, winding-up of the university company, as well as the addition, deletion or alteration of the university company's constituent documents.

The Ministry is mindful that we want to give our universities the autonomy they need to excel,

and not to be encumbered by unnecessary procedures and processes. I am confident that we will be able to find the right balance between autonomy and accountability, and that the processes of accountability will not be burdensome.

200 I accept that the intent behind the Corporatisation Act was to grant autonomy to NUS but the speech of the Minister makes it clear that NUS was not being transformed completely. NUS was not being granted complete autonomy but "increased autonomy". While the Minister did refer to NUS and other universities as autonomous universities and to the granting of autonomy to NUS, it is clear that the autonomy was not intended to be complete. Hence, the Minister's emphasis on striking the right balance between autonomy and accountability. Various provisions in the bill, and now in the Corporatisation Act, are on "enhanced accountability" as the Minister put it.

201 The appellant also submitted that the model adopted for NUS was that of the Massachusetts Institute of Technology ("MIT"), a private university, as the Minister had referred to MIT in his speech. However, the Minister referred to MIT only in the context of emphasising that NUS was not to be for profit, just like MIT.

202 Another one of the appellant's main arguments was that the staff of NUS cannot be characterised as civil or public servants as they are not employees of the civil service nor do they hold a public office. The appellant submitted, by way of example, that Prof Lily Kong, a Vice-Provost of NUS, is a member of the Public Service Commission and hence is not eligible for appointment to any public office by virtue of Art 105(6) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint).

203 The appellant also pointed to the 13 February 1960 Parliamentary debate on the Act. His case was that Parliament's purpose in enacting the Act was to provide for a stricter control of public and civil servants only, because they should be held to a higher standard.

204 The Prosecution argued that that debate was irrelevant because the wording of s 8 clearly indicated that any employee of a public body would fall under s 8 and s 8 was not restricted to the public or civil service nor to public servants.

205 I agree with the Prosecution's submission about the words of s 8 which apply to any "person in the employment of…a public body [to whom gratification has been paid or given to or who has received gratification] by or from a person or agent of a person who has or seeks to have any dealing with…any public body". The only criterion, on a plain reading of s 8, is that the recipient be in the employment of the public body in question.

206 There is also no suggestion that Parliament intended a double requirement that the recipient must be employed by the "public body" *and* also be a public officer or civil servant. In other words, NUS need not be a public body for every purpose. It may be a "public body" for the purposes of the Act only, even though its employees are not public or civil servants.

207 I come now to a statement made by Mr Ong Pang Boon, the Minister for Home Affairs in 1960 which the appellant relied on for his argument that s 8 applies to public and civil servants only. Mr Ong had stated the rationale behind the Act during the 13 February 1960 Parliamentary debates as follows (see *Singapore Parliamentary Debates, Official Report* (13 February 1960) vol 12 col 376):

> The Government is deeply conscious that a Government cannot survive, no matter how good its aims and intentions are, if corruption exists in its ranks and its public services on which it depends to provide the efficient and effective administrative machinery to translate its policies

into action.

It is true that Mr Ong's emphasis was on the government and its public services but his statement was made in respect of the entire legislation and was not confined to s 8. It was not disputed that the Act applies to all. Therefore, his statement did not assist the appellant on the interpretation of s 8.

208 I accept that NUS is not a semi-governmental body which was the finding in *Tan Sri Kasitah*. Although there are some similarities between SLDB and NUS in government supervision, NUS has much more autonomy. Nevertheless, notwithstanding that autonomy, the accountability framework in the Corporatisation Act and the fact that NUS is open to the public for tertiary education lead me to conclude that NUS is a "public body" for the purposes of the Act in that it is an undertaking of public utility. If there is no typographical error, then it is a corporation which has power to act under and for the purposes of the Corporatisation Act relating to public utility, namely, public tertiary education.

209 In the circumstances, it is unnecessary for me to decide on the alternative limb which the Prosecution was relying on, that is, that NUS is a corporation which has power to act under the Corporatisation Act "to administer money levied or raised by rates or charges in pursuance of any written law".

210 I thus find that s 8 applied to reverse the evidential burden of proof. The appellant bore the burden of proving on a balance of probabilities that his receipt of the six acts of gratification was not made with the requisite *mens rea*.

The third issue: whether the elements of each offence were made out

211 This is a convenient point to recollect the four elements of an offence under s 6(*a*) of the Act. The first is the acceptance of gratification. The second is that the gratification was an inducement or reward. The third is that there was an objective corrupt element in the transaction. The fourth is that the recipient accepted the gratification with guilty knowledge. The first element makes up the *actus reus*, while the other three elements constitute the *mens rea*.

Parties' cases on the elements of the offences

212 The appellant claimed that there was no objective corrupt element. The six acts which formed the basis of the charges were gifts made pursuant to a mutually loving relationship; they were expressions of Ms Ko's love for him. It never crossed the appellant's mind that they were given with an expectation that he would show Ms Ko favour in assessing her academic performance. The appellant argued that the TJ erred in finding that the relationship was a one-sided affair. The TJ did not take into account new evidence such as the cards, emails and a note Ms Ko had written to him; the TJ was wrong in not allowing the appellant's application to recall Ms Ko as a witness on the new evidence; the TJ also did not consider the gifts the appellant had given to Ms Ko; and the TJ was wrong to impeach Ms Ko.

213 The appellant argued that he had made repayment for Ms Ko's acts. This was based on two chequefoils in his chequebook.

214 The Prosecution argued that the acts were objectively corrupt when viewed in the context within which they occurred. The parties were in an unequal position, and this gave rise to a *prima facie* case that the act was received as an inducement to show favour. The appellant had attempted to groom Ms Ko by dropping hints of his influence and power over her academic results at NUS. In this

regard, the Prosecution relied on the Statements (from the appellant) and Ms Ko's first statement. The Prosecution argued that the TJ was right to impeach Ms Ko and place more weight on her first statement than on her third statement or her oral evidence.

215 The Prosecution also argued that the appellant knew the transaction was corrupt, and had the requisite guilty knowledge. The appellant had known that his conduct was prohibited under NUS's policies. The elements of the respective offences under s 6(*a*) were therefore satisfied, and had not been rebutted by the appellant on a balance of probabilities.

The court's decision on the elements of the offences

The actus reus

216 It is common ground that the appellant received the six acts of gratification from Ms Ko. Nevertheless, the appellant stressed that he had fully reimbursed Ms Ko for the Mont Blanc pen and pouch, the CYC shirts, the iPod and the Garibaldi Bill. It was unclear whether he was alleging the $2,500 reimbursement so that the *actus reus* was not even made out or whether he was disputing the *mens rea* of each offence. I will deal with the $2,500 reimbursement allegation preliminarily before moving on to the main bone of contention between the parties which was in respect of the *mens rea*.

217 The appellant said that he had handed Ms Ko a cheque of $2,500 sometime after 8 July 2010. When he realised that the cheque had not been encashed, he said he handed her cash of $2,500 about two or three days before she departed for the USA on 3 August 2010. The $2,500 was supposed to include his advance estimate of the cost of the Garibaldi dinner. As evidence of the cheque, the appellant referred to two chequefoils (D12 and D12A). The latter, D12A, contained a bit more information as it was a chequefoil with a date "2/7" which in context meant 2 July 2010. It also had the following details: "DWHKo (+ dinner 8/7/10)" and the withdrawn amount was $2,500. D12 had less information and I need not say more about it. In written submissions, the appellant criticised the TJ for not allowing forensic ink-dating or handwriting evidence to be given on D12A to establish that it was indeed written on or about 2 July 2010.

218 The TJ had various reasons for rejecting the allegation that the appellant had reimbursed Ms Ko $2,500. I need only set out some of the TJ's reasons.

219 First, Ms Ko herself denied having received the cheque for $2,500 or cash of $2,500 from the appellant. Her evidence was that she had subsequently asked the appellant, after she returned to Singapore in January 2011, to reimburse her for the Garibaldi Bill. As she had forgotten the amount of the bill she asked him for $1,000 and he did give her cash of $1,000 but not $2,500. The TJ was of the view that Ms Ko's evidence was fatal to the appellant's allegation that he had given her $2,500 whether by cheque or cash (at [409]–[410] of the GD).

220 Secondly, the date on D12A, which was in loose sheet form and not in a booklet, was 2 July, *ie*, meaning 2 July 2010, and the date of a dinner indicated thereon was 8 July 2010. However, the dinner at Garibaldi was on 21 July 2010 instead. The TJ reasoned that it was impossible for the appellant to have estimated the cost of the Garibaldi dinner in advance as it was an *a la carte* dinner and the guests were free to order food and drinks (at [425] of the GD).

221 Thirdly, the appellant had said in oral evidence that the $2,500 cash was withdrawn from a bank. Yet he could not say when he withdrew that sum from the bank. Nor did he produce any bank statement to substantiate this allegation. Indeed, when he was pressed in cross-examination to say when he withdrew the sum from the bank, the appellant changed course and started to suggest that

there might have been sufficient cash at home. He then said he could not remember where the $2,500 in cash came from (at [427]–[428] of the GD).

222 Fourthly, if the appellant had indeed reimbursed Ms Ko $2,500, why then did he hand her cash of another $1,000? It was not disputed that he did hand her $1,000 upon her request. Ms Ko's evidence was that the $1,000 was for reimbursement of the Garibaldi Bill. I note that the appellant said that he had handed Ms Ko $1,000 because Ms Ko had said that her mother wanted the money "back". [note: 56] However, the appellant did not ask Ms Ko how he came to be owing her mother money if that was untrue, as he was suggesting. Nor did he suggest to Ms Ko in her cross-examination that the $1,000 that she received was an additional sum or that it was her mother who wanted this sum.

223 I add the following observations. If the appellant had truly intended to pay for the CYC shirts, why did he not make payment at the CYC shop there and then? Furthermore, the appellant acknowledged that he did not specifically inform Ms Ko that the $2,500 included his estimate of the cost of the Garibaldi dinner. This was peculiar if his version were true.

224 As regards the appellant's argument that the TJ ought to have allowed his application for forensic ink-dating and handwriting evidence to be given, I do not see how that exercise would have helped him as such evidence would not be able to indicate whether the cheque was in fact issued and if so for what purpose. That exercise would not have addressed the obstacles in the way of his allegation. Furthermore, it was not disputed that the handwriting on D12A was his.

225 I too am of the view that the allegation that the appellant had reimbursed Ms Ko $2,500 was a fabrication. Therefore, the appellant cannot rely on it to dispute the *actus reus* or *mens rea*.

226 I add that a loan would still count as the *actus reus* for the purposes of the Act (see above at [9]).

The mens rea

The intention element

227 The crucial question in the present case relates to the second and third elements: whether the appellant received the gratification believing that it was given as a quid pro quo for granting her a dishonest gain or advantage.

228 The alleged dishonest gain or advantage in question was showing favour to Ms Ko in the appellant's assessment of her academic performance. The appellant's case was not that showing favour to Ms Ko in his assessment of her academic performance was not corrupt. His case was that he did not think that Ms Ko was giving him the gratification to obtain favour from him in his assessment of her academic performance. Nor did he receive the acts of gratification on that basis. He thought that they were gifts.

229 Mr Jumabhoy impressed upon me during the oral hearing of the appeal that the context is all important in ascertaining intention. I agree. Indeed, the appellant did not disagree with this submission. Therefore, the nature of the relationship between the appellant and Ms Ko was important. The appellant alleged that this was a mutually loving relationship. The TJ found that it was not.

230 Some of the evidence pertaining to the relationship was oral evidence given by the appellant and Ms Ko on the stand. There were also cards, notes and emails in evidence. However, such

evidence was produced by the appellant late. The appellant's own emails to Ms Ko were comparatively few. The threshold for disturbing the TJ's findings on appeal is, as I have mentioned earlier, whether his assessment was "plainly wrong or against the weight of the evidence": see *Tat Seng Machine Movers* at [41].

231 With this in mind, I assess the evidence before me starting with the evidence which the appellant was relying on to establish a mutually loving relationship between Ms Ko and him.

232 First, the appellant pointed to cards, a note and emails which Ms Ko sent to him in the course of their alleged relationship. In my view, these cards, a note and emails showed what Ms Ko thought. They shed little light on whether Ms Ko's feelings were in fact reciprocated. They were therefore equivocal evidence about the alleged mutually loving relationship.

233 Second, the appellant pointed to the fact that he also gave Ms Ko gifts. Ms Ko did not deny this. She admitted that the appellant gave her "books and stuff" [note: 57] and that she had returned "everything he had given me save for my birthday present, which was a bottle of wine. These consisted of a bag and a lot of books." [note: 58] However, the appellant did not go further to cross-examine Ms Ko about these gifts. The appellant also did not elaborate on the value of those gifts in his own evidence. This was a glaring omission in the appellant's evidence particularly in the light of the fact that part of the appellant's testimony was that the value of the Mont Blanc pen and iPod was "very small… from [his] perspective". [note: 59] If the appellant wanted to show that he gave as much as he had received (as he suggested during the trial), then it would have made sense for the appellant to talk about the equivalence in value of his gifts. He did not.

234 Third, the appellant pointed to emails which he sent to Ms Ko. In one of these emails dated 4 September 2010 (D75), the appellant had found a Chinese love poem and sent it to Ms Ko. The appellant says that this showed that he loved her. The TJ doubted the sincerity of this email as he took note of the fact that the appellant had not come up with the poem himself but had copied and pasted it from the internet. I do not think that the origin of the poem necessarily meant that there was no mutually loving relationship. However, I find that this email was also equivocal. Sending Ms Ko a love poem was equally consistent with a desire to make Ms Ko think that he loved her.

235 Fourth, the appellant said that he paid for his own expenses during his visit to Ms Ko in the USA in September 2011. However, even if the appellant paid for his own expenses, this did not show that the appellant returned Ms Ko's affection.

236 I come now to the evidence which the TJ referred to when he concluded that there was no mutually loving relationship.

237 The TJ noted that the appellant never mentioned the mutually loving relationship in any of the Statements or in any of the cautioned statements even though the admissibility of the latter was not challenged and even though the appellant had engaged Mr Low before he gave all of the Statements and the cautioned statements.

238 Instead, the appellant had made various incriminating statements against himself in the Statements. For example:

(a) In para 54 of PS7, he said, "I also had sex with Darinne in anticipation that she would want some favour from me in return in future in the form of better grades. The favour I had given was the "A" grade I had given her for the Cross Border Insolvency Paper".

(b) In para 98 of PS9, he said, "I persuaded her to remain in Singapore because I was in love with her. I told her that I loved her at the lunch." Yet in para 120 of PS9, he stated:

> The recorder asked for the reason why I wanted to make love with Darinne Ko. I wish to say that it was done with guilty intent. It was corrupt gratification. It was given for future references and her good grades. There was no love. The recorder asked me why I have earlier on said that I loved her. I was wrong and I have never in love before. I took it as corrupt gratification from Darinne Ko.

(c) In para 121 of PS9, he said, "The 2nd sexual intercourse was taken with the same corrupt motive and purpose."

(d) In para 167 of PS10, he said that Ms Ko's motive for various acts of gratification "was with guilty intent. It is because she expected me to show her favour and helped her get into justice law clerk and an international law firm. I think that she is guiltier than I am."

239 The TJ was of the view that the initial lack of mention of a mutually loving relationship was in stark contrast to how the mutually loving relationship became the appellant's full blown defence at the second tranche of his trial in 2013 after the court in *PP v Ng Boon Gay* [2013] SGDC 132 ("*Ng Boon Gay*") acquitted the accused there. In that case, the court found that the accused and the giver had a mutually loving relationship and that the transactions in question were not corrupt.

240 The appellant sought to counter this observation of the TJ with the following arguments.

241 First, he said that Ms Ko had said in her first statement that she loved him. However, this was not evidence that her feelings were in fact reciprocated even if she believed that they were.

242 Second, the appellant said he had a very long day at the CPIB on 26 July 2012 when his six cautioned statements were recorded and so he omitted to mention the mutually loving relationship. His focus was on the allegations of threat and inducement and also on oppression. In my view, this is not a logical argument. If in fact he believed that the relationship was a mutually loving one, it would only be natural for him to mention it.

243 Third, the appellant said that as he was a married man, there was a real possibility of matrimonial and familial break-up should the mutually loving relationship be disclosed. I find this argument to be without merit. The acts of gratification and especially the acts of sexual intercourse were undisputed. It was obvious that there was some sort of relationship between Ms Ko and him. He was being investigated for corruption which is a serious offence. He could and would have disclosed the mutually loving relationship, if it was true, and he could have said that the loving relationship had ceased if he was concerned about his marriage and family. He did not.

244 In my view, the appellant did not adequately explain his omission to mention the mutually loving relationship in the Statements or his cautioned statements.

245 As for the appellant's reliance on the cards, a note and emails from Ms Ko, I have mentioned above that they show Ms Ko's feelings for him and they were equivocal as to whether her feelings were reciprocated.

246 As for his emails to her, I have dealt with one above about a poem. There were other emails from him to her which were affectionate like "I long for you, Evey" (in his email dated 6 August 2010) (D74) and "I am missing you again, Evey" (in his email dated 7 August 2010) (D74). On the other

hand, the TJ said (at [460]–[461] of the GD) that the appellant was not affectionate in his written communication with Ms Ko and that he was terse, sometimes to the point of being curt. For example, after she had detailed in an email her efforts on his visa application for his visit to the USA, his reply dated 9 June 2010 (D66) was simply, "Many thanks, Do not change. Once I am back from Australia, I will gather the rest of documents".

247 The TJ noted para 27 of Ms Ko's first statement in which she said that she had to pay for the appellant's expenses, when he flew to the USA in early September 2010 to visit her, because the appellant did not have so much money. Ms Ko elaborated in that paragraph that she had paid for all the things he bought and the meals they had. The appellant said in oral evidence that he paid for his own expenses in the USA but he did not challenge Ms Ko on this part of her statement.

248 The TJ also noted that in para 26 of her first statement, Ms Ko said that she had learned from a pregnancy urine test done on 20 August 2010 that her test was positive. She had told the appellant about this. He then told her "to get rid of it and he also said he has no money to send to me". On the other hand, in para 57 of PS7, the appellant said that he did not ask Ms Ko to abort the child because he would like to have another child as he had only one daughter but he did not want his family to know about the child. In para 125 of PS9, the appellant was asked why he wanted to keep the child when he said he had no love for Ms Ko. He replied that it was because he had only one child and would like another one. However, the appellant did not question Ms Ko on her version. Furthermore, I find his excuse for allegedly wanting to keep the child unconvincing if, as he said then, he did not love her. In any event, there was no reason for Ms Ko to lie about this and, as mentioned, he did not challenge her on her version. In my view, Ms Ko's version was true and his was not.

249 The TJ noted that the appellant was drawing a comfortable salary of S$225,000 a year as at 18 February 2010 when Ms Ko was a student and not drawing a salary. In my view, the appellant's salary was evidence that the appellant had lied when he said he had no money to send to her. Indeed, he did not demonstrate at trial that he was in fact financially strapped. In my view, his response to Ms Ko on learning about her pregnancy revealed the truth, *ie*, that he did not truly love her.

250 In the circumstances, I am of the view that there was ample evidence to support the TJ's conclusion that there was no mutually loving relationship and it was a one-sided relationship. Certainly the TJ was not plainly wrong in this finding.

251 However, the fact that it was a one-sided relationship did not necessarily mean that the second and third elements of each offence were established. As regards the second element, the TJ was of the view that even if s 8 of the Act was not triggered, the first statement from Ms Ko and the Statements (from the appellant) constituted evidence that the acts of gratification were received as an inducement (at [530] of the GD).

252 As regards the third element, the TJ found that the appellant had initiated the relationship by inviting Ms Ko out for lunches and impressing her with his academic and other achievements (at [538] of the GD). The appellant had advised Ms Ko on her academic prospects and he knew it would be very likely that he would teach her in her final year at NUS (at [540]–[541] of the GD) .

253 The appellant had hinted that he needed a fountain pen by telling her that he had lost one when he actually had not. Two days after receiving the Mont Blanc pen, the appellant told Ms Ko about her confidential class rank and her results before they were officially released (at [543] of the GD). As for the appellant having checked the price of the Mont Blanc pen, the TJ was of the view that the appellant did so not to reimburse Ms Ko but so that he could gauge her generosity and

continue to take advantage of her. When the appellant discovered that Ms Ko was generous and appeared wealthy, the appellant became more blatant in his requests. When he noticed that she had an iPod, he had lamented that it would be "cool" to have an iPod thereby suggesting to her that she should buy him one. He made her pay for the CYC shirts and the Garibaldi Bill. The gifts were expensive. He also initiated the two acts of sexual intercourse.

254 The TJ was also of the view that the corrupt intention of the appellant manifested itself even after the six acts of gratification. The appellant had told Ms Ko that he would pay for his air-ticket for his visit to the USA but she would have to bear his expenses as he did not have so much money. Indeed Ms Ko paid for his purchases and meals (at [562] of the GD).

255 The appellant had breached the Conflict of Interest Policy for NUS Staff and the NUS Policy on Acceptance of Gifts by Staff. The appellant had failed to disclose the relationship and the expensive items he received. The TJ was aware that a contravention of some rules did not necessarily constitute a corrupt element (as per *Chan Wing Seng* at [2]). However, he was of the view that the appellant's breaches demonstrated that the appellant knew that what he did was dishonest and wrong (at [546]–[568] of the GD).

256 The TJ was of the view that the status of the appellant and of Ms Ko were clearly disproportionate. There was an obvious imbalance of power and the appellant had abused his position and power (at [537] of the GD).

257 The TJ was therefore satisfied that the appellant had a corrupt intention in respect of all the six acts of gratification. In his view, there was a corrupt element from the ordinary and objective standard of a reasonable person. The appellant had intentionally abused his position and taken full advantage of Ms Ko. Objectively, the appellant's conduct was depraved, corrupt and dishonest (at [570] and [572] of the GD).

258 The TJ also considered the evidence of Ms Ko on the issue of the second and third elements. She had given three statements to the CPIB. As mentioned above (at [72]), she had in her first statement said that the first four acts of gratification were made so that she would be in the appellant's good books and she would not be unduly prejudiced by him. In her third statement, she retracted this motive and repeated in her oral evidence that there was no such intention.

259 Ms Ko had in her oral evidence alleged that her first statement was given on 2 April 2012 under oppressive circumstances including coercion. The TJ noted that she was brought to the CPIB by CPIB officers at about 9.10am on 2 April 2012. The recording of her first statement was from 9pm on 2 April 2012 to 2.30am on 3 April 2012. At about 3.30am on 3 April 2012, Ms Ko's father arrived at the CPIB to fetch her home. She was released unconditionally.

260 Ms Ko had also alleged in oral evidence that Mr Teng had coerced her. She said that he had told her that she was not cooperating because the evidence she was giving was not making out the elements of the charge against the appellant. Mr Teng allegedly told her that corruption was a two-sided offence and he could very well decide to charge her instead. She also alleged that Mr Teng had said that it was possible for him to ask the Prosecution to use her statement without calling her to testify and that if she cooperated, she would be able to carry on with her life and begin her career upon graduation. She alleged that she had agreed with Mr Teng that she would give evidence to fulfil all the elements of the charges against the appellant. She said it was Mr Teng who had suggested the phrase "undue prejudice" after she resisted using the word "favour".

261 Mr Teng disputed Ms Ko's allegations against him. His evidence was that she was "very alert

and full of energy" when she met him in the evening of 2 April 2012 just before the first statement was recorded. He said that before he proceeded with recording her statement he had asked her if she was well to give a statement and she replied she was fine with doing so. While Ms Ko did appear a bit tired in the midst of the recording, he had constantly asked her if she wanted a break but she declined.

262 Notwithstanding the long time that Ms Ko had spent at the CPIB from 9.10am on 2 April 2012 to 2.30am on 3 April 2012 (when the recording ended), the TJ noted that she was not continuously interviewed. There were long periods when she was alone including meal times for her. Importantly, the TJ noted that at the end of the recording of her statement, Ms Ko was alert enough to correct errors, make amendments and insert handwritten notes in her statement. Moreover, even on Ms Ko's own oral evidence, she was the one who insisted, during the recording of her statement, that the sexual intercourse was purely out of love.

263 The TJ also noted that on 3 April 2012, Ms Ko engaged a lawyer to represent her. Yet when Ms Ko's second statement was recorded on 28 April 2012, she did not seek to retract any part of her first statement even though she testified that she gave the second statement voluntarily. She had only said it was recorded in the middle of her examinations. The second statement was mostly to identify certain items and appeared neutral in content.

264 It was only in Ms Ko's third statement given on 4 May 2012 that she changed the reason for some of the acts of gratification, that is, where she had said that the reason was so that she would be in the appellant's good books and she would not be unduly prejudiced by him. In her third statement, she said that the reason was because she had a crush on the appellant and she thought they were in a relationship. He was her lover. The TJ was of the view (at [402]–[403] of the GD) that she was changing her evidence because on 28 April 2012 (the date of her second statement), she was informed that she would be placed on bail of $20,000 and her passport would be taken from her. She was told that she was not to leave the country without permission from the CPIB. The TJ reasoned that she must have consulted her lawyer again after 28 April 2012 and realised that she too might be charged for an offence. This explained why she changed her evidence on 4 May 2012. It was to exculpate herself.

265 The TJ was of the view that her subsequent oral evidence was for that same purpose, *ie*, to exculpate herself after she realised that what she had said in her first statement might incriminate herself. As mentioned above at [73], the TJ impeached Ms Ko's credibility. He placed more weight on her first statement than on her third statement and her oral evidence on the question regarding her reason for the first four acts of gratification. He found her third statement and oral evidence to be unreliable (at [405] of the GD).

266 As regards the two acts of sexual intercourse, Ms Ko had consistently maintained in her statements and oral evidence that these were done out of love.

267 However, the TJ was of the view that Ms Ko did not resist the advances of the appellant as she wanted to be in his good books so that in future, he would give her good grades for subjects which she took under him (at [570] of the GD). The TJ was also of the view that the advantage of having somebody on the inside, looking out for her, would have been a temptation which was too much for her, or any student for that matter, to resist (at [658] of the GD). This was demonstrated by the fact that she disclosed her unique identification number ("UIN") when she sent him an email dated 30 May 2011 (P27) to seek his advice on whether to appeal a grade on a subject which was not taught by the appellant. With the UIN, the appellant would know which script or paper was hers.

268 As regards the fourth element of the offence enunciated in *Peter Kwang*, the TJ was of the view that the appellant knew that what he did was corrupt. In particular, the appellant had said as much in his long statements especially PS6, PS7, PS9 and PS10 (at [580] and [656] of the GD). The TJ was aware that the appellant had retracted the Statements. However, he was of the view that the confessions therein were true. In any event, the TJ was of the view that even without the retracted confessions, the evidence against the appellant was overwhelming (at [603] of the GD). As mentioned above (at [70]), the TJ was of the view that the appellant had not been truthful in his oral evidence.

269 I will now state my views on the evidence in respect of the second and the third elements. It is worth remembering that while the crux of the matter is the intention of the appellant, the intention of the giver, Ms Ko, is an important factor in assessing the appellant's intention.

270 I will deal with the evidence of Ms Ko first. It will be remembered that it was only after the appellant began to give his oral evidence that he produced new evidence such as cards and a note from Ms Ko and emails between Ms Ko and him. The contents of three cards and the note from Ms Ko were, in my view, particularly significant. I will now elaborate on them.

The Mont Blanc Pen

271 The first act of gratification was a Mont Blanc pen and pouch. It was accompanied by a gift card (D64). These were given to the appellant sometime between 26 and 31 May 2010. Ms Ko had already sat for her exams at that point.

272 The appellant claimed that this was a gift of love. During trial and in her first statement, Ms Ko claimed that her intention was to give the pen to the appellant as a belated birthday present although she did not communicate to the appellant at the time that it was a birthday gift. [note: 60] She had chosen a pen as a gift because the appellant had told her over Google Talk that he had lost his fountain pen. Her oral evidence was that it did not take place within the context of a romantic relationship, although she admitted to having had a "slight crush" on him at the time. [note: 61]

273 The gift card (D64), however, throws more light on her feelings for him. It painted a picture of a girl who had more than just a "slight crush" on the appellant at the material time. The gift card reads as follows:

> To dearest Tsun Hang,
>
> The one who never fails to make me smile…
>
> Omnia Vincit Amor [Latin for "love conquers all", or a reference to a famous Carravagio painting of the same name]
>
> Dearest dinosaur,
>
> I know this will never replace you [sic] BCL pen which brought you luck for 15 years but I hope it will bring you some form of luck as you set out to achieve all your dreams and ideals. Every prolific writer should have a pen. Also, I pray that you will not forget me when I leave and hopefully, you will occassionally [sic] remember me when you write. I know that you will certainly be in my heart every moment even though you will be 15884 km [the distance between Singapore and Duke University, where Ms Ko was to go on exchange] away.

With love

D

The CYC shirts

274 The CYC shirts were bought for the appellant on 22 June 2010. Ms Ko's version of events, which the TJ accepted, was that they had gone to CYC together to get shirts tailored for her. A staff at the shop, Akira Goh, suggested that the appellant also tailor some shirts. Ms Ko helped the appellant to choose the make of the shirts and the monogram to be applied to the shirts. They then went to the cashier together. The cashier asked them whether they were going to pay together. According to Ms Ko's first statement, the appellant responded in the affirmative. Ms Ko was surprised but proceeded to make payment for the appellant's shirts as well as her own. This part of her evidence was not challenged by the appellant.

275 It was not disputed that at the time the CYC shirts were given, the appellant and Ms Ko were spending a lot more time together than at the time the appellant received the Mont Blanc pen from her. The appellant and Ms Ko were even discussing plans for the appellant to visit Ms Ko in the USA (see above at [38]). Their relationship was close enough that it caused Ms Ko's then-boyfriend and father concern when it was brought to their attention. Ms Ko's then-boyfriend even assumed from the Google Talk logs that Ms Ko and the appellant were in a mutually loving relationship, and both Ms Ko's father and Ms Ko's then-boyfriend decided to put an end to that relationship by demanding that Ms Ko write an email to the appellant on 12 June 2010 to end things (see above at [42]).

276 There was nothing which suggested that Ms Ko's sentiments had changed from the time she gave him the pen and pouch to the time when she paid for the CYC shirts.

The iPod

277 Ms Ko gave the appellant the iPod in late June 2010. Ms Ko testified that part of the reason why she had given the iPod to the appellant was that he had occasionally lamented during their times together that it would be "cool" if he had an iPod.

278 Ms Ko had loaded the iPod with songs which she and the appellant had listened to in their time together. This would have taken some time and effort; she bought the iPod in late May 2010 but did not present it to the appellant until late June 2010. Ms Ko testified, and the TJ accepted, that she loaded the songs into the iPod as a romantic and sentimental gesture.

279 The iPod was accompanied by a gift card (D68), which reads as follows:

To: Tsun Hang

Our love is like a work of art,

Your name is forever etched in my heart;

I love the way you smile and grin,

It makes my heart soar from deep within;

I never dreamt that I would be so blessed…

> I have found my soul mate…
>
> It's more than just fate.
>
> Vi veri universum vivus vici [A latin phrase meaning "By the power of truth, I, while living, have conquered the universe"]
>
> Darinne.

This card reinforced the point that her strong feelings for the appellant had not changed.

The Garibaldi Bill

280 The payment of the Garibaldi Bill was an act of gratification to the appellant on 21 July 2010 in a similar way to the CYC shirts, *ie*, it came as a surprise to Ms Ko when the appellant slid the Garibaldi Bill over to her to pay. Ms Ko's testimony was that she expected the appellant to reimburse her for the bill, but that she was happy for it to be a gift if the appellant did not eventually reimburse her.

281 The Garibaldi dinner took place two days after Ms Ko had booked the appellant's flights to the USA for him to visit her. Ms Ko also occupied a position of prominence at the appellant's right during the meal. Again, there was no evidence to suggest that Ms Ko's feelings of infatuation as evidenced in the above chronology had changed.

The two acts of sexual intercourse

282 Ms Ko stated in her first statement that she was very happy and wanted to have sexual intercourse with the appellant. [note: 62] She added in her third statement that she had sex with the appellant on 24 July 2010 because, in her words, she "thought [she] loved him in light of him telling [her] that he loved [her]". [note: 63] During trial, Ms Ko testified: [note: 64]

> [The CPIB recorder] initially wanted me to write that in the context of the six charges, that all these had happened because I wanted favour from [the appellant]… And I told him that I refused to write that because I did not require any favour from any professors. *Moreover, I told him that the last two charges [the two sex acts] I would not taint in any way, shape or form…with any compromise*. [emphasis added]

283 Ms Ko wrote the appellant a farewell card (D70) before she departed for the USA in the first week of August and shortly after both acts of sex. The appellant received the card before she left. The card read as follows:

> My darling Tsun Hang,
>
> Thank you – for the past 2 weeks. They have been like an amazing dream and now I almost dread reality. I will miss snuggling in your strong arms feeling warm and safe; your kisses your loving touch and your sweet whispers. Most of all, thank you for letting me into your heart and letting me love you and for loving me so unconditionally. I'm not sure how much I can see you over the next few weeks but I'm awaiting your arrival in SF. I pray you'll never forget me and darling, know that you will ALWAYS be in my heart. I'm yours and yours alone.
>
> With all my love

Darinne (Evey)

When I'm with you the rest of the world ceases to exist,

My head is filled with you alone

& [sic] everything else a hazy mist;

I know that the odds against us are vast;

But I believe that our true love will last.

No matter how far we may be,

physically apart,

You will constantly be on my mind

and in my heart.

When I gaze into your eyes and

you into mine,

My heart tells me that our souls

are intertwined.

My darling I love you –

my prince, my soulmate…

let's never part.

284 Ms Ko also wrote a farewell note (D69) for the appellant. This note was dated 2 August 2010, and was received by the appellant after Ms Ko's departure for the USA. It reads as follows:

Dear Tsun Hang,

Thank you for the most wonderful summer ever. I treasure & fondly remember every moment we have spent together – the meals we shared, the jokes we had, the smiles we exchanged, the words we spoke, the pictures we took, the kisses we shared… Amidst your bouts of jealousy, have faith in us and in what the future holds. The hurdles, no matter how high and many, are surmountable. While I wait for you in the USA, be patient with those around you but ultimately remember that you are in control. I'll always be there for you to talk to – geography cannot better us. Thank you for loving me & know that I will always love You.

Darinne

285 The Prosecution objected to the admissibility of the new evidence as the appellant was not the maker of the new evidence (except for his emails to Ms Ko) which he was producing. Ms Ko was the maker and the evidence was not being produced through her. Nevertheless, the TJ allowed the new evidence to be admitted. [note: 65]

286 When the appellant applied to have Ms Ko recalled as a witness, the Prosecution objected. The TJ rejected the appellant's application to re-call Ms Ko as a witness. [note: 66] Unfortunately, the GD does not explain why the TJ rejected the application.

287 The GD made very little reference to the contents of the three cards and the note from Ms Ko which I mentioned above. For example:

(a) At [460] of the GD, the TJ observed that unlike Ms Ko, there was no evidence that the appellant had given her cards or letters. He did not start emails with "Hi Baby" like Ms Ko's email on 8 June 2010 or use phrases like "Dearest (Darinne)" or sign off his emails with the phrase "With Love". [note: 67]

(b) At [467] of the GD, the TJ said that from Ms Ko's "love messages it seemed that the [appellant] gave her the impression that he loved her. From the evidence it was a relationship with an ulterior motive, that is, the [appellant] took advantage of [Ms Ko] in a corrupt manner". The evidence the TJ was referring to was evidence other than the new evidence.

(c) At [571] of the GD, the TJ said that the integrity of the anonymous marking system practised by NUS no longer applied to Ms Ko as the appellant would have recognised her handwriting from her several handwritten love cards.

288 The first two references at [460] and [467] of the GD were in the context of the question as to whether there was a mutually loving relationship between Ms Ko and the appellant. While the reference at [571] of the GD was in the context of determining whether the third element of each offence had been satisfied, it was confined to the point that the appellant would have been able to recognise Ms Ko's handwriting.

289 In my view, the TJ had underestimated the importance of the new evidence and in particular the three cards and the note I mentioned above. Perhaps that is why he did not allow the appellant's application to re-call Ms Ko as a witness.

290 I am of the view that the importance of these cards and the note was that they constituted contemporaneous evidence of Ms Ko's feelings and her intention at the time of the acts of gratification. Certainly they constituted more contemporaneous evidence than her three statements and her oral evidence.

291 In my view, the TJ was incorrect in comparing Ms Ko's first statement with her third statement and her oral evidence only. There were effectively three sets of evidence from her and not two:

(a) the cards and the note from her;

(b) her statements to CPIB; and

(c) her oral evidence at trial.

292 I find that the TJ erred in refusing leave for Ms Ko to be re-called to the stand to be cross-examined on the new evidence in so far as it comprised documents from her. Ironically, the Prosecution mentioned (at [126] of its Written Submissions for the hearing of this appeal on 16 October 2013) that Ms Ko was not given an opportunity to comment on the new evidence because the appellant did not produce them when she was on the stand. Yet it was the Prosecution who objected to her recall. The Prosecution submitted that the new evidence did not support the appellant's case in any event as it did not shed further light on the circumstances as to how the gifts came to be given, save for the card which accompanied the Mont Blanc pen which, the Prosecution submitted, showed that the appellant had lied when he said that he had not told Ms Ko that he had lost a pen.

293 I am of the view that even though the card accompanying the Mont Blanc pen showed that the appellant had lied when he denied telling Ms Ko that he had lost a pen, this only illustrated that the relationship was not the mutual one that he had portrayed. The card was still evidence of Ms Ko's intention which has an important bearing on the second and third elements of each offence as the appellant's intention is not considered in isolation. As mentioned above, Ms Ko's state of mind, when she wrote the cards and the note, was significant in understanding the context of the transactions in question and what the appellant would have understood the intention behind the gratification to be. I do not agree with the Prosecution's submission that, at the very highest, further oral evidence from Ms Ko would only show Ms Ko's state of mind and not the appellant's. As I elaborated above, Ms Ko's state of mind is a significant evidential factor in assessing the appellant's state of mind.

294 At this point, I would mention that it has come to my attention that in *Ng Boon Gay*, the District Court said (at [117]) that, "[t]he existence of an intimate relationship between the accused and Ms Sue [the alleged giver of acts of gratification] negates the presence of any corrupt element in the instant case". I will not state the proposition in such absolute terms. In my view, the existence of an intimate relationship between the giver and the recipient (who is the accused) is a factor to be considered in the assessment of the overall evidence. If the act of gratification was made in the course of that relationship, the relationship would ordinarily be strong evidence negating any corrupt intention on the part of the giver or the recipient. Nevertheless, I accept that it is possible that an act of gratification is made and/or received with a corrupt intention even if done in the course of an intimate relationship. Thus, for example, it was possible that even though Ms Ko was in love with the appellant, her intention behind an act of gratification was to solicit a dishonest favour from him in her academic pursuits and that he too understood this to be her intention.

295 The TJ also appeared to consider this possibility as he went on to conclude that Ms Ko did not resist the appellant's advances because she wanted to be in his good books so that he would give her good grades and this temptation was too much for her to resist (see [267] above).

296 However, the Prosecution did not present its case along the possible scenario that I mentioned above. Otherwise it would have been the one applying for Ms Ko to be re-called as a witness. Its position was that recalling Ms Ko would not assist the appellant.

297 Fortunately for the appellant, the contents of the three cards and the note speak for themselves. I add that if these documents and their contents had not been admitted into evidence because Ms Ko was not re-called, then the decision not to allow her to be recalled was not only wrong. It would also have led to a failure of justice which would in turn be reason enough to set aside the convictions.

298 I find that the cards and the note reinforced the point that Ms Ko was in love with the appellant throughout the period of the six acts of gratification.

299 The two cards, D64 and D68, show that Ms Ko gave the appellant the Mont Blanc pen and pouch and the iPod as a gift, with no expectation of a favour about better grades. Ms Ko thought that her feelings for the appellant were reciprocated. She would not have thought that there was a need to be in his good books or that he might be unduly prejudiced against her. She was already in his good books and more than that, or so she believed. Correspondingly, the appellant must have known from their relationship and the two cards that she was infatuated with him. There was nothing to suggest from the contemporaneous evidence that he believed that she wanted something more than his love in return for the pen, the pouch and the iPod.

300 As for the CYC shirts and the Garibaldi Bill, Ms Ko did not even intend to make a gift of the CYC shirts and the Garibaldi dinner initially, let alone to make a gift with a corrupt intention. The gifts came about because the appellant indicated that she was to pay for the CYC shirts and the Garibaldi Bill. True, he succeeded in getting her to pay for them but that was because he knew she was infatuated with him. Her feelings for him throughout the relevant period were reinforced by the farewell note (D69) and the farewell card (D70).

301 The main evidence that Ms Ko was making the acts of gratification because she expected the appellant to show favour to her by giving her better grades was her first statement to the CPIB and the Statements from the appellant. Even then, it will be remembered that her first statement clearly stated that the acts of sexual intercourse were done out of love.

302 I do not think that the TJ was plainly wrong in his assessment that her allegation of oppression and coercion, in respect of her first statement, was not made out. However, this did not mean that all the contents of her first statement should be accepted without question. As for the Statements (from the appellant) which were admitted as evidence, the weight to be given to them was another matter. People do say things which are untrue for a variety of reasons.

303 For example, while the circumstances surrounding the recording of Ms Ko's first statement on 2 April 2012 (and 3 April 2012) did not amount to oppression, it must be remembered that she was at the office of the CPIB for a long time that day, that is, from 9.10am on 2 April 2012 to 2.30am on 3 April 2012 (when the recording ended). She may have said things because she believed that that was what the CPIB wanted from her and she wanted to go home. True, she did not seek to withdraw any incriminating information from her first statement when she gave her second statement but she may have wanted her second statement to be consistent with her first or perhaps she did not give the first statement as much thought as she ought to have.

304 Likewise, while the Statements from the appellant were given voluntarily, there was no denying that he was under pressure. Furthermore, there were undisputed false assertions in the Statements on other matters although the TJ was of the view that these had been planted by the appellant to distract the CPIB.

305 It is not necessary for me to reach a conclusion as to why Ms Ko and the appellant made incriminating statements about their intentions if they were untrue. As I have said, the three cards and the note constituted contemporaneous evidence. Their statements did not. Their oral evidence was consistent with the contemporaneous evidence on their intentions. I am of the view that the TJ erred in not giving more weight to the contemporaneous evidence.

306 Ms Ko's evidence on the subsequent events also show that Ms Ko had no plans to "collect" on

the acts of gratification given to the appellant by taking classes under the appellant's supervision.

307 Ms Ko chose the appellant as a supervisor for her directed research paper because she thought that his teaching a class on International and Comparative Insolvency (LL4123) in the following semester implied that he had some expertise in the area.

308 Ms Ko testified that there were two other experts in the field of insolvency. One, Assoc Prof Chan, was on sabbatical and the other specialised in domestic insolvency. Ms Ko further testified that she did not ask the latter professor to supervise her because, in her words, she was "under the impression that [he] was not particular fond of [her], so he might say no". [note: 68] In the following semester, when Assoc Prof Chan returned, Ms Ko took another directed research paper under Assoc Prof Chan's tutelage, and earned an "A" grade.

309 Ms Ko also testified that the appellant tried to persuade her to do a paper on equity and trusts, his area of interest. Ms Ko refused. She said she told him that she would look for someone else if he was not interested in supervising her. It was only then that the appellant agreed to supervise her.

310 As for the Personal Property class, Ms Ko testified that she had chosen to take this elective class because it was an important topic and her best friend, Mr Teo, had persuaded her to take the course together with him. Mr Teo was also with Ms Ko when she asked the appellant to supervise her for her directed research paper and Mr Teo also took a directed research paper under the appellant's supervision.

311 The TJ did not reject the above evidence of Ms Ko but yet he stressed that she had (deliberately) disclosed her UIN to the appellant in the email dated 30 May 2011 when she was seeking his advice on whether to appeal a grade on a subject (which was not taught by him) (see [267] above). In my view, he was wrong to place so much weight on that disclosure in the light of her evidence on the circumstances of how she subsequently came to enrol in other courses or subjects. Secondly, she could have simply told the appellant orally what her UIN was without stating it in an email at the time when she believed that he loved her and when the acts of gratification were done. Thirdly, the TJ noted that the appellant would have recognised her handwriting from her cards (see [287(c)] above). Therefore, there was no need for her to deliberately disclose her UIN to him. Most importantly, Ms Ko was not asked to explain why she had disclosed her UIN. Hence, it was unsafe to make too much from that disclosure.

312 I am of the view that the TJ's reasoning that Ms Ko, like any other student, would not have been able to resist the temptation to have somebody on the inside looking out for her was overly cynical. Furthermore, the TJ's reasoning does not cohere with his view that she was an innocent victim being exploited by the appellant. Was she being exploited by him or were they each trying to make use of the other? The TJ appeared to conclude that it was both which is not logical. In my view, it was not both. She was being exploited by him and the TJ erred in concluding that she was trying to get better grades from the appellant when the six acts of gratification were given.

313 In the circumstances, I conclude that Ms Ko did not have any intention to seek favour from the appellant in her academic pursuits for any or some or all the acts of gratification.

314 I come now to the appellant's intention. I have already mentioned above that he would have known from the cards and the note that Ms Ko was infatuated with him. As in the context of the discussion about evidence from Ms Ko, I am also of the view that the contemporaneous evidence carries more weight than the statements from Ms Ko and from the appellant. The contemporaneous

evidence was consistent with the oral evidence of Ms Ko and of the appellant when they denied that the acts of gratification were given as an inducement for a favour from the appellant in the form of his giving her better grades.

315 I reject the Prosecution's argument that the appellant's corrupt intention was evidenced by the hints he had dropped to Ms Ko of his influence. The "strongest" part of that argument was the appellant's disclosure to Ms Ko of her confidential class ranking and her grades before they were officially released. Mr Jumabhoy submitted that this was a deliberate ploy by the appellant to show that he had power over Ms Ko's academic career and that he could give her better grades if she gave him acts of gratification.

316 In my view, the appellant's disclosure of confidential information to Ms Ko was equivocal. It could be put down to his strategy to win her over so as to take advantage of her, but that is different from saying that this was to make her think that he could influence her grades.

317 The disclosure of Ms Ko's confidential class ranking took place after Ms Ko had completed her second year at NUS and before she started her third year. At the material time, the appellant and Ms Ko were both aware that she would be going to the USA on an exchange programme for the first half of Ms Ko's third year. The appellant would not have any influence over her grades while she was there. The appellant was also not teaching any compulsory courses for Ms Ko's third and fourth years. It would have been more natural for Ms Ko to think that the appellant was disclosing the information because he was returning her feelings of affection. On the appellant's part, the more logical inference is that he made this disclosure to win her over but not necessarily to make her think that she could gain some dishonest advantage.

318 I reject the Prosecution's suggestion that because the appellant tricked Ms Ko into coming into his office on the night of 28 July 2010 (*ie*, the second occasion), this showed that he had a corrupt intent. All that this showed was that the appellant wanted to manipulate the situation so that Ms Ko would have sex with him. There was nothing in this ruse that suggested that Ms Ko believed that sex was being given in exchange for the appellant's favour in her academic pursuits or that he wanted Ms Ko to believe that.

319 The Prosecution's case that the appellant was "grooming" Ms Ko and making her believe that she could get better grades if she gave him the six acts of gratification was not borne out by the contemporaneous evidence. As she was in love with him, the appellant would be able to manipulate her into giving him gifts without needing to suggest that Ms Ko would get better grades in return.

320 It seems to me that the TJ concluded that the second and third elements of the offence had been made out because the appellant had breached NUS policies and because he had abused his position as a lecturer when he had exploited Ms Ko. While the TJ accepted that the breach itself did not necessarily amount to a corrupt intention, he was of the view that the breach and the exploitation did. Hence the TJ's conclusion that the appellant's conduct was depraved, corrupt and dishonest. I am of the view that the TJ had wrongly equated conduct which is morally reprehensible with conduct which is legally wrong. I agree that the appellant had exploited Ms Ko. His conduct was morally wrong but that is not corruption for the purposes of the Act. Exploitation does not necessarily amount to corruption under the Act. The gap is not filled in by the appellant's breach of NUS policies. True, the failure to disclose the relationship and the gifts demonstrated that he did not want others to know about them but, in the circumstances, the failure is not clear evidence of a corrupt intent. As he was exploiting her, it is no surprise that he did not want to disclose his relationship with her.

321 For the reasons given above, I find that the TJ was plainly wrong in finding that the second

and third elements were made out. The appellant did make out his case on them and successfully rebut the presumption under s 8. The acts of gratification were not given or received as an inducement for the appellant to favour Ms Ko with better grades. Accordingly, there could not be an objective corrupt element.

Guilty knowledge

322 The TJ also found that the fourth element of the offence was made out. In the light of my conclusion on the second and third elements, the fourth element is academic. I will however make the following brief observations as I have some doubts about it as a matter of law.

323 First, the court observed in *Yuen Chun Yii* (at [70]) that the crux of the matter was the intention of the recipient. However, in *Chan Wing Seng* (at [23]-[24]), it was suggested that a recipient may not be corrupt if he had a corrupt intention but a different state of knowledge. With respect, this appears to be inconsistent.

324 Second, I am of the view that if the intention of the recipient is adjudged to be objectively corrupt, then it is unclear why that recipient should be absolved of all liability simply because he thought that what he was doing was legitimate. The objective standards of corruption should apply equally to all.

325 Allowing the recipient's subjective knowledge to come into play could lead to arbitrary results. For example, a recipient who is a police officer who genuinely believes that it is acceptable to receive a sum of money from a suspect because the recipient comes from a society that believes that this is lawful conduct may validly claim that the fourth element is not made out. I doubt that this is the law in Singapore but I will say no more.

Conclusion

326 For the reasons above, I allow the appeal against conviction and set aside the convictions for the charges DAC 27011/2012, DAC 27012/2012, DAC 27013/2012, DAC 27014/2012, DAC 27015/2012 and DAC 27016/2012.

327 The appellant decided to serve his aggregate sentence before the appeal was heard. The sentences are nonetheless set aside. The order of forfeiture of the Mont Blanc pen (and pouch) and the iPod is set aside. The items are to be returned to the appellant. The order imposing penalties of $278.60 and $236.20 is set aside. As he has paid these sums of money, they are to be refunded to him.

328 There are two observations I wish to make.

329 First, the appellant was on bail pending appeal but decided to surrender and commence serving his sentence before the appeal was heard. The Registry of the Supreme Court was mindful of this and had fixed early hearing dates for his appeal so that his appeal would be heard before he had completed serving his sentence. However, the appellant's counsel made a written request for later hearing dates and a pre-trial conference was conducted to fix these dates. In taking later dates, the appellant was aware that he might complete serving his sentence before his appeal came up for hearing. Had the appeal been heard before the appellant completed serving his sentence, the High Court could have made an appropriate oral order or judgment after hearing the appeal pending the release of the written judgment or grounds of decision. However, it was the appellant who pressed for the hearing to be deferred to a later date as he said that he needed more time to give meaningful

instructions to his counsel. The Registry acceded to his request.

330 Secondly, although the appellant may consider that my decision has vindicated him, it will be obvious that my decision vindicates him of the charges only. This court does not condone the way he abused his position and exploited Ms Ko. He took advantage of her to satisfy his greed and his lust. He did not even take responsibility when she told him that she was pregnant. Instead, he lied to her that he had no money when he told her to get rid of the baby. He is a man without honour. The way he conducted his defence at trial also reflected poorly on him. For example, he employed a machine gun approach for his allegations of threats. He made many allegations against the CPIB officers, some of which he did not put to them when they were being cross-examined by him. Ultimately, he even said in the trial that he was not making serious allegations against them and yet pursued some of these allegations in the appeal. He did not even have the courtesy to inform his own counsel that he would not be appearing at the hearing of his own appeal until ten minutes before the scheduled time for the hearing. I hope he takes a long hard look at himself and changes for the better.

[note: 1] Notes of Evidence ("NE"), 17/1/2013, p 27 lines 11-17 and p 35 lines 2-5.

[note: 2] NE, 18/1/2013, p 80 lines 13-16.

[note: 3] NE, 18/1/2013, p 80 lines 17-19.

[note: 4] NE, 17/1/2013, p 38 lines 11-15 and p 39 lines 8-10.

[note: 5] NE, 21/1/2013, p 81 lines 17-20.

[note: 6] NE, 4/4/2013, p 6 lines 19-23.

[note: 7] NE, 17/1/2013, p 40 lines 4-17.

[note: 8] NE, 22/1/2013, p 34 lines 11-22.

[note: 9] NE, 22/1/2013, p 34 line 23 to p 35 line 20.

[note: 10] NE, 4/4/2013, p 3 lines 8-22.

[note: 11] NE, 6/5/2013, p 82 lines 11-16.

[note: 12] NE, 3/4/2013, p 6 lines 20-25.

[note: 13] NE, 17/1/2013, p 43 lines 5-15.

[note: 14] NE, 22/1/2013, p 11 lines 6-12.

[note: 15] NE, 17/1/2013, p 63 lines 24-25.

[note: 16] Exhibit D44 at para 7 (Record of Appeal ("ROA") Vol 6, p 364).

[note: 17] NE, 17/1/2013, p 63 lines 11-15.

[note: 18] NE, 18/1/2013, pp 41-42.

[note: 19] NE, 5/4/2012, p 69 lines 12-17.

[note: 20] Exhibit D44 at para 4 (ROA Vol 6, p 363).

[note: 21] Exhibit D44 at paras 8-15 (ROA Vol 6, pp 365-366).

[note: 22] NE, 4/4/2013, p 103 lines 17-19.

[note: 23] NE, 4/4/2013, p 93 line 24-25 to p 94 lines 1-9.

[note: 24] NE, 4/4/2013, p 93 lines 11-17.

[note: 25] Exhibit D101 (ROA Vol 6, pp 588-589).

[note: 26] NE, 4/4/2013, p 107 line 8 to p 108 line 3

[note: 27] NE, 5/4/2013, p 33 at lines 18-24.

[note: 28] Exhibit D92 (ROA Vol 6, p 500).

[note: 29] NE, 18/4/2013, p 4 at lines 22-25 to p 5 at lines 1-7.

[note: 30] NE, 9/4/2013, p 87 lines 13-19.

[note: 31] NE, 1/4/2013, p 80 lines 2-8.

[note: 32] NE, 2/4/2013, p 22 line 25.

[note: 33] NE, 2/4/2013, p 49 line 25 to p 50 line 1.

[note: 34] NE, 22/1/2013, p 32 line 18 to p 33 line 1.

[note: 35] NE, 22/1/2013, p 32 line 23 to p 33 line 1.

[note: 36] Exhibit D91, Dr Saluja's Report dated 2/5/2013 at p 5 (ROA Vol 6, p 493).

[note: 37] NE, 5/4/2013, pp 18-20.

[note: 38] Exhibit D55, Dr Yong's Medical Case Notes dated 5/4/2012 (Vol 6, p 390).

[note: 39] Exhibit D45, Prescription slip issued by Dr Yong dated 12/4/2012 (ROA Vol 6, p 368).

[note: 40] Exhibit D91, Dr Saluja's Report dated 2/5/2013 at p 5 (ROA Vol 6, p 493).

[note: 41] NE, 5/4/2013, p 12 lines 23-25.

[note: 42] NE, 5/4/2013, p 20 line 15 to p 21 line 10.

[note: 43] Exhibit D101 (ROA Vol 6, p 588).

[note: 44] NE, 8/5/2013, p 82 line 23 to p 83 line 4.

[note: 45] NE, 8/5/2013, p 82 line 23 to p 83 line 4.

[note: 46] NE, 8/5/2013, p 57 line 25.

[note: 47] NE, 8/5/2013, p 57 line 20 to p 58 line 5.

[note: 48] NE, 1/4/2013, p 77 lines 10-16.

[note: 49] NE, 1/4/2013, p 79 lines 3-5.

[note: 50] NE, 16/1/2013, p 82, pp 84-85

[note: 51] NE, 17/1/2013, pp 50-51

[note: 52] NE, 3/4/2013, pp 37-39.

[note: 53] NE, 3/4/2013, p 40 lines 16-25.

[note: 54] NE, 3/4/2013, p 102 lines 13-17.

[note: 55] NE, 18/1/2013, p 708 lines 14-20.

[note: 56] NE, 17/4/2013, pp 63 and 83.

[note: 57] NE, 10/1/2013, p 72 lines 20-23.

[note: 58] NE, 10/1/2013, p 99 lines 16-18.

[note: 59] NE, 6/5/2013, p 106 lines 2-3.

[note: 60] NE, 11/1/2013 p 84 lines 22–24.

[note: 61] NE, 11/1/2013 p 84 lines 5–12; Exhibit PS1, para 10 (ROA Vol 5, p 261).

[note: 62] Exhibit PS1 at para 24 (ROA Vol 5 p 265).

[note: 63] Exhibit PS1B at para 55 (ROA Vol 5, p 369)

[note: 64] NE, 14/1/2013, pp 28–29.

[note: 65] NE, 15/4/2013, pp 14-27.

[note: 66] NE, 6/5/2013, pp 150-152.

[note: 67] Exhibit D79 (ROA, Vol 6, p 448).

[note: 68] NE, 14/1/2013, p 67 lines 10-17.