IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 5

Magistrate's Appeal No 9033 of 2020/01

Between

Pigg, Derek Gordon

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 32 of 2021

Between

Pigg, Derek Gordon

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Statutory offences] — [Prevention of Corruption Act (Cap 241, 1993 Rev Ed)]
[Criminal Procedure and Sentencing] — [Sentencing] — [Appeals]

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Pigg, Derek Gordon
v
Public Prosecutor and another matter

[2022] SGHC 5

General Division of the High Court — Magistrate's Appeal No 9033 of 2020/01 and Criminal Motion No 32 of 2021
See Kee Oon J
9, 26 July, 30–31 August, 13 October 2021

12 January 2022 Judgment reserved.

See Kee Oon J:

1 At the District Court, the appellant was convicted on eight charges under s 6(*a*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA") for corruptly accepting gratification from Mr Yong Hock Guan Dennis ("Yong"). The appellant was sentenced to 15 months' imprisonment and ordered to pay a penalty of S$270,000.

2 In this appeal, the appellant seeks an acquittal on all eight charges as well as a reduction in his sentence in the event his conviction is upheld. The appellant also filed CM 32/2021 ("the Criminal Motion") to adduce further evidence in the form of seven statements given by Yong to the Corrupt Practices Investigation Bureau ("CPIB") in the course of investigations (collectively, the "Statements").

Background facts

3 At the material time, the appellant was a manager of global strategic sourcing for the Asia Pacific region at Transocean Eastern Pte Ltd ("Transocean"),[1] while Yong was the senior sales manager of Mid-Continent Tubular Pte Ltd ("MCT").[2] MCT was Transocean's supplier.[3] Transocean purchased tubular goods and services from MCT on eight occasions, and this formed the factual backdrop of the eight charges against the appellant.[4]

4 In 2015, Yong pleaded guilty to 15 charges, two of which were charges under s 6(*b*) read with s 29(*a*) of the PCA for engaging in a conspiracy with Mr Ong Eng Kee ("Ong"), MCT's managing director, to give bribes to the appellant. Yong also admitted and consented to having a further 31 charges taken into consideration for the purposes of sentencing, amongst which nine were for abetting the giving of corrupt gratification. Yong was convicted and sentenced in November 2015 to a total of 52 months' imprisonment. He was also ordered to pay a penalty of S$183,279.16: *Public Prosecutor v Yong Hock Guan Dennis* [2016] SGDC 12 ("*Yong Hock Guan*") at [1]–[3] and [15]–[16]. At the time of this appeal, Yong had served his sentence.

Proceedings below

5 In 2017, the appellant was charged with eight counts of corruptly accepting gratification from Yong. In October 2018, just before the close of the Prosecution's Case before the District Judge ("DJ"), the charges against the

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1 ROP at p 925 (NE dated 1 April 2019 at p 3 lines 5–8).

2 ROP at p 38 (NE dated 10 April 2018 at p 10 line 5).

3 ROP at p 218 (NE dated 11 April 2018 at p 53 lines 7–18).

4 ROP at pp 1542, 1560, 1573, 1587, 1599, 1648, 1655, 1698 and 1709 (P4, P7, P10, P13, P16, P19, P22, P25, and P28).

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appellant were amended.[5] The appellant was convicted on the amended charges, which were similarly worded save for the particulars as to the date of the offence, the amount of gratification and the goods or services transacted:[6]

> You… are charged that, on or about [date in charge], in Singapore, being an agent, *to wit*, a Supply Chain Manager in the employ of [Transocean], did corruptly accept from one Yong Hock Guan Dennis, a Sales Manager in the employ of [MCT], gratification in the amount of [amount in charge] for yourself, as a reward for having done an act in relation to your principal's affairs, *to wit*, having agreed to purchase [tubular goods / services related to tubular goods] for Transocean from [MCT] at a price above the lowest price which you could have negotiated for Transocean, and you have thereby committed an offence punishable under Section 6(a) of the Prevention of Corruption Act, Chapter 241.

The eight charges involve a total gratification of S$270,000 and the date of the offences fall within 6 July 2007 and 3 November 2009.

6 Yong, the giver of the bribes, was the key Prosecution witness. Before the DJ, the Prosecution's case was largely premised on Yong's evidence. Yong testified that the appellant had suggested building in a kickback into each transaction between MCT and Transocean.[7] There was no fixed amount for the bribes but Yong would generally set aside 1 to 2% of the total price. Yong would also pocket a portion of the bribe set aside by MCT, and this was agreed to by the appellant.[8] Upon receiving a purchase order from Transocean, Yong would submit a request for cheque to Ong for his approval. The request would reflect

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5 Footnote 1 of *Public Prosecutor v Derek Gordon Pigg* [2020] SGDC 278 ("GD").

6 ROP at pp 8–15.

7 ROP at pp 39, 541–542 and 1988 (NE dated 10 April 2018 at p 11 lines 4–11; NE dated 22 October 2018 at p 102 line 19 to p 103 line 10; Prosecution's Closing Submissions dated 14 August 2019 ("PCS") at para 28(a)).

8 ROP at pp 40, 541 and 1988 (NE dated 10 April 2018 at p 12 lines 10–23; NE dated 22 October 2018 at p 102 lines 19–23; PCS at para 28(b)).

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the purpose as "marketing expense". After Ong approved his request, Yong would submit it to MCT's accounts department, which would then issue a payment voucher.[9] The bribes were paid to the appellant in cash on eight occasions.[10]

7 The appellant's case was that Yong was lying. Save on one occasion, the appellant had not received any monies from Yong, who had pocketed all the alleged bribes for himself.[11] On the sole occasion that he did receive monies from Yong, that was nothing more than a goodwill gift.[12] Even if the appellant was found to have accepted monies from Yong, the other elements of the offence had not been satisfied for all eight charges.[13]

8 The District Judge accepted Yong's evidence and convicted the appellant. His key findings are as follows (see *Public Prosecutor v Derek Gordon Pigg* [2020] SGDC 278 ("GD") at [28]–[36], [37]–[55] and [61]–[62]):

(a) Yong's testimony that he bribed the appellant and that the appellant first hinted that he wanted something out of each transaction was "truthful, coherent and convincing".

(b) The appellant was untruthful in denying that he received the monies and that there was anything wrong in him receiving monies from Yong.

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9 ROP at pp 41–42 and 1989 (NE dated 10 April 2018 at p 13 line 15 to p 14 line 24; PCS at para 28(c)).

10 ROP at pp 49–50, 1987 and 1994 (NE dated 10 April 2018 at p 21 line 23 to p 22 line 1; PCS at paras 27 and 44).

11 ROP at p 3047 (Closing Submissions for the Defence dated 14 August 2019 ("DCS") at paras 8–9).

12 ROP at p 3138 (DCS at para 184).

13 ROP at pp 3107, 3160 and 3161–3168 (DCS at paras 130, 214 and 215–227).

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Facts relating to the Criminal Motion

9 On 29 March 2021, the appellant filed the Criminal Motion to adduce the Statements as further evidence on appeal. The Statements consist of the following seven statements:

(a) Statement recorded by Senior Special Investigator ("SSI") Jane Zhang on 5 March 2013 at 1730 hrs ("1st CPIB Statement");

(b) Statement recorded by SSI Xie Mingyin ("SSI Xie") on 25 March 2013 at 1445 hrs ("2nd CPIB Statement");

(c) Statement recorded by SSI Xie on 18 April 2013 at 1530 hrs ("3rd CPIB Statement");

(d) Statement recorded by SSI Xie on 6 June 2013 at 1515 hrs ("4th CPIB Statement");

(e) Statement recorded by SSI Xie on 6 August 2013 at 1435 hrs ("1st CBT Statement");

(f) Statement recorded by SSI Xie on 6 January 2014 at 1545 hrs ("7th CPIB Statement"); and

(g) Statement recorded by SSI Xie on 6 January 2014 at 1700 hrs ("2nd CBT Statement").

The Prosecution did not rely on the Statements and hence they were not adduced in the proceedings below. In fact, the Prosecution did not disclose the Statements to the appellant until 9 February 2021,[14] nearly one year after the trial had concluded. The events leading up to this disclosure are as follows.

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[14] Derek Gordon Pigg's Affidavit in Support of Criminal Motion to Adduce Further Evidence dated 29 March 2021 ("DGP") at para 19.

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10 On 31 March 2020, approximately one month after the proceedings below had concluded, the Court of Appeal released its written grounds of decision in *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 ("*Nabill*"), wherein the court held at [39] that the Prosecution is under a duty to disclose a material witness's statement to the accused.

11 The DJ's written grounds of decision was released on 4 December 2020.[15] In view of the Court of Appeal's determination in *Nabill*, counsel for the appellant wrote to the Prosecution on 5 January 2021 requesting, *inter alia*, copies of the Statements.[16] The Prosecution responded via a letter dated 9 February 2021 (the "9 February Letter"), taking the position that there was no additional material that was subject to disclosure pursuant to *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar*") or *Nabill*. Nevertheless, the Prosecution decided to voluntarily disclose the Statements.[17]

The Criminal Motion

12 Both parties filed written submissions for the Criminal Motion and the substantive appeal on 29 June 2021. On 9 July 2021, I heard both parties on whether the Statements ought to be adduced as further evidence on appeal.

Parties' submissions

13 The appellant submitted that this court should exercise its power under s 392 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") to take further evidence or direct the trial court to take further evidence because the test in *Ladd v Marshall* [1954] 1 WLR 1489 (the "*Ladd v Marshall* test") had been

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15 ROP at p 1496.

16 DGP at para 18 and pp 429–430.

17 DGP at para 19 and pp 431–435.

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satisfied.[18] According to the appellant, the Statements disclosed grave and material inconsistencies in several respects, including these three areas:

(a) Yong lied about giving bribes to the appellant on one occasion and had falsely implicated the appellant in his act of corruption.[19]

(b) The quantum of bribes the appellant was allegedly supposed to receive and the formula used to calculate the bribes.[20]

(c) The precise quantum that Yong allegedly passed to the appellant and whether there was an agreement or understanding that Yong was entitled to pocket a quarter of the alleged bribes.[21]

14 The appellant argued that if this court allowed the Criminal Motion, then it must mean that the Statements were relevant to the issues at hand and an acquittal should be ordered because the Prosecution had breached its *Kadar* obligations in failing to disclose the Statements at the proceedings below.[22] The appellant stressed in his oral submissions that substantial prejudice would be caused if a remittal or retrial was ordered due to the long delay taken in prosecuting this case.

15 The Prosecution initially proceeded on the assumption that the appellant was not alleging a *Kadar* breach[23] and focused its written submissions on how

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18 Appellant's Skeletal Submissions dated 29 June 2021 ("Appellant's June Submissions") at paras 27–28.

19 Appellant's June Submissions at paras 34–47.

20 Appellant's June Submissions at paras 48–53.

21 Appellant's June Submissions at paras 54–56.

22 Appellant's June Submissions at paras 137–148.

23 Respondent's Submissions on Applicant's Criminal Motion dated 29 June 2021 ("Respondent's CM Submissions") at para 13.

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the criterion of relevance in the *Ladd v Marshall* test was not satisfied.[24] The Prosecution's submissions in this regard were two-pronged. First, before asking if the Statements are relevant, they must be admissible.[25] However, the appellant had not identified any legal basis for admitting the Statements.[26] Second, there was simply no factual basis for the Criminal Motion as there was no material inconsistency or serious discrepancy in Yong's evidence in court and the Statements.[27] After having had sight of the appellant's written submissions, the Prosecution argued that there had been no *Kadar* breach in its oral submissions. None of the inconsistencies raised by the appellant were in fact material because the appellant had cherry-picked extracts from the Statements and mischaracterised them. It also submitted that if this court found that the *Kadar* disclosure obligations had been breached, an acquittal was not appropriate and this court should either remit this case to the trial judge or take additional evidence itself under s 392(1) of the CPC.

Decision on the Criminal Motion

16 After considering the parties' submissions, I found that the Prosecution's omission to disclose the Statements (except for the 3rd CPIB Statement) at the proceedings below constituted a *Kadar* breach. On 26 July 2021, I informed the parties of my decision to take additional evidence from Yong myself pursuant to s 392(1) of the CPC (the "CM Decision"). In doing so, I made brief oral remarks and I now elaborate on my reasons for the CM Decision.

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24 Respondent's CM Submissions at paras 17–28.

25 Respondent's CM Submissions at paras 18–20.

26 Respondent's CM Submissions at para 28.

27 Respondent's CM Submissions at paras 31 and 33.

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Breach of Kadar disclosure obligations

17 To fulfil its *Kadar* disclosure obligations, the Prosecution must disclose to the Defence material which takes the form of (*Kadar* at [113]):

(a) any unused material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused; and

(b) any unused material that is likely to be inadmissible, but would provide a real (not fanciful) chance of pursuing a line of inquiry that leads to material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused.

These only include material that tend to undermine the Prosecution's case or strengthen the Defence's case. Moreover, the phrase "material … that might reasonably be regarded as credible and relevant" refers to material that is *prima facie* credible and relevant: *Kadar* at [114].

18 I was satisfied that the Statements (except for the 3rd CPIB Statement) fell within the ambit of the second limb (at [17(b)] above). There were material inconsistencies between the Statements in question and Yong's oral evidence in relation to the quantum of bribes he allegedly paid the appellant (the "Bribe Amounts Paid and Pocketed") as well as whether there was a percentage-based "formula" that was allegedly adopted in determining how much the appellant would receive for each transaction (the "Bribe Formula"). The relevant Statements also revealed that Yong lied about giving bribes to the appellant on one occasion. While he maintained in his earlier statements that he passed monies to the appellant sometime in July 2008, he admitted in his later statements that he did not pass anything to the appellant on this occasion and

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had in fact misappropriated the entire sum (*ie*, S$99,008) which MCT set aside as bribes for the appellant (the "S$99,008 Lie").

19 On the issue of the Bribe Formula, Yong originally alleged in his 1st CPIB Statement that "[t]he bribes for [the appellant] are calculated base[d] on 3% (per joint) of the quotation price sent to them."[28] However, in the trial below, Yong categorically stated that no formula was used to calculate the quantum of bribes for the appellant.[29]

20 Next, across his statements and oral testimony, Yong gave inconsistent accounts on the Bribe Amounts Paid and Pocketed in relation to the 1st, 2nd, 3rd and 8th Charge against the appellant. In particular, Yong's evidence as to the amount of bribes he converted for his own use shifted as time progressed, and this in turn affected his account as to the bribe amounts he allegedly paid to the appellant.

21 The DJ accepted Yong's oral testimony that he handed the appellant the following amounts (GD at [32]–[33]):[30]

(a) 1st Charge: S$60,000;

(b) 2nd Charge: S$40,000;

(c) 3rd Charge: S$40,000;

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28 Appellant's Bundle of Documents vol 2 ("ABOD") at pp 6–7 (1st CPIB Statement at para 13).

29 ROP at p 198 (NE dated 11 April 2018 at p 33 lines 8–23).

30 ROP at pp 63–64, 82, 88–89, 96–97, 101–102, 114–115, 118–119 and 128 (NE dated 10 April 2018 at p 35 line 12 to p 36 line 5, p 54 lines 19–22, p 60 line 20 to p 61 line 5, p 68 line 20 to p 69 line 1, p 73 line 20 to p 74 line 7, p 86 line 19 to p 87 line 2, p 90 line 23 to p 91 line 5, p 100 lines 18–23)

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(d) 4th Charge: S$30,000;

(e) 5th Charge: S$50,000;

(f) 6th Charge: S$5,000;

(g) 7th Charge: S$40,000; and

(h) 8th Charge: S$5,000.

The DJ also found that these figures were "largely consistent" with Yong's testimony that he kept approximately 25% of the cash "marketing expenses" for himself. The figures set out in Yong's oral testimony were entirely consistent with those set out in Yong's 1st CBT Statement.[31] They were also broadly consistent with Yong's 4th CPIB Statement and 1st CBT Statement which recorded that Yong kept 25% of the cash "marketing expenses" on average,[32] as well as with Yong's 7th CPIB Statement and 2nd CBT Statement wherein he claimed that he kept approximately 25% of the "marketing expenses".[33]

22 Though the figures provided by Yong in his oral testimony were consistent with his position in the later statements, they were inconsistent with the figures provided in his earlier statements, namely the 1st and 2nd CPIB Statements. Yong's 2nd CPIB Statement recorded that Yong kept S$650 for

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31 ABOD at pp 237–241 (1st CBT Statement at paras 10–12, 14 and 16–19).

32 ABOD at pp 237–241 (1st CBT Statement at paras 10–12, 14 and 16–19); ABOD at p 231 (4th CPIB Statement at para 102); ROP at p 1538 (Exhibit P2-1); ROP at pp 1556–1558 (Exhibit P5); ROP at p 1569 (Exhibit P8); ROP at p 1582 (Exhibit P11); ROP at p 1595 (Exhibit P14); ROP at p 1644 (Exhibit P17); ROP at p 1651 (Exhibit P20); ROP at p 1694 (Exhibit P23).

33 ABOD at pp 292 and 297 (7th CPIB Statement at para 118; 2nd CBT Statement at para 32).

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himself and passed S$9,000 to the appellant for the 8th Charge, which was S$4,000 more than the figure he gave in his oral testimony and in his 1st CBT Statement.[34] Yong's 1st CPIB Statement also threw up inconsistencies regarding the quantum of bribes given to the appellant for the 1st, 2nd and 3rd Charges. In this statement, Yong claimed that he would "usually round down the [bribe monies] to the closest ten thousand dollar[s]" and keep the remaining for himself. He even set out the amount given to the appellant and the amount he pocketed:[35]

Charge No.	**Amount of "marketing expenses"**[36]	**Amount given to appellant**	**Amount Yong pocketed**[37]	**Percentage of bribe which Yong would have pocketed**
1	S$78,806.00	S$70,000	S$8,806.00	11.17%
2	S$50,388.31	S$50,000	S$388.31	0.77%
3	S$50,330.00	S$50,000	S$330.00	0.66%
4	S$39,331.10	S$30,000	S$9,331.10	23.72%
5	S$59,985.79	S$50,000	S$9,985.79	16.65%
6	S$7,540.00	Not stated	Less than ten thousand	
7	S$46,189.47	S$40,000	S$6,189.47	13.4%
8	S$9,650.00	Not stated	Less than ten thousand	

34 ABOD at p 63 (2nd CPIB Statement at para 70).

35 ABOD at pp 9–15 (1st CPIB Statement at paras 25, 27, 29, 34, 38 and 41).

36 ROP at p 1538 (Exhibit P2-1); ROP at pp 1556–1558 (Exhibit P5); ROP at p 1569 (Exhibit P8); ROP at p 1582 (Exhibit P11); ROP at p 1595 (Exhibit P14); ROP at p 1644 (Exhibit P17); ROP at p 1651 (Exhibit P20); ROP at p 1694 (Exhibit P23).

37 ABOD at pp 9–15 (1st CPIB Statement at paras 25, 27, 29, 34, 38 and 41).

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For the 1st, 2nd and 3rd Charges, it was readily evident that there was a discrepancy of S$10,000 between Yong's account in his 1st CPIB Statement on the one hand, and his 1st CBT Statement and his oral testimony on the other (see at [21] above).

23 As for the S$99,008 Lie, Yong was shown a payment voucher when his 1st CPIB Statement was recorded, indicating that MCT had set aside S$99,008 as "marketing expenses". Yong explained in his 1st CPIB Statement that he had collected a cheque for this amount from MCT's accounts department, and after encashing this cheque, he handed the appellant S$90,000 and kept the remaining amount for himself.[38] He later claimed in his 1st CBT Statement that he only gave the appellant S$80,000.[39] However, when his 7th CPIB Statement was recorded five months later, Yong confessed that he did not pass the appellant any monies for this transaction and had kept the full sum of S$99,008 for himself.[40]

24 Properly considered, the inconsistencies that appeared in the Statements (except for the 3rd CPIB Statement) tended to weaken the Prosecution's case and strengthen the Defence's case. Yong's credit could potentially have been undermined if he had been confronted with these inconsistencies, especially since they concerned details regarding his allegation that he passed bribe monies to the appellant – an allegation which founded the *actus reus* of the charges against the appellant, and which the appellant firmly denied. Yong's credit was significant to the outcome of this case given that Yong was the only witness capable of giving direct evidence of the bribes that were allegedly obtained by

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38 ABOD at pp 12–13 (1st CPIB Statement at paras 35–36).

39 ABOD at p 240 (1st CBT Statement at para 15).

40 ABOD at p 291 (7th CPIB Statement at para 117).

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the appellant. Ong testified that he had discussed with Yong that they could pay the appellant bribes in the region of 1 to 3% of the order price,[41] but Ong did not have personal knowledge of whether Yong did in fact give the appellant monies. Whether this was done resided exclusively within the knowledge of Yong and the appellant. Since Yong claimed that he personally passed the gratification to the appellant in cash, there was also no documentary evidence corroborating this. As a result, much of the case against the appellant hinged on Yong's credit and credibility.

25 That said, the S$99,008 Lie would potentially undermine Yong's credit and credibility to a lesser extent than his inconsistencies regarding the Bribe Formula and the Bribe Amounts Paid and Pocketed. It did not appear plausible that Yong had an ulterior motive for eventually coming clean about the $99,008 and exonerating the Applicant entirely on this score only very late in the course of investigations. Nevertheless, Yong was dishonest initially, and taken alongside the inconsistencies in the other two aspects, his initial lie could not be assumed to be of no import.

26 Unfortunately, while the Statements (except for the 3rd CPIB Statement) threw up these inconsistencies which could have potentially undermined Yong's credit and credibility, they were not disclosed to the appellant before or at the proceedings below, and the appellant did not have the opportunity to cross-examine Yong on these points. Had the relevant Statements been available to the appellant at the proceedings below, the appellant would have been able to capitalise on these three inconsistencies to further discredit Yong under cross-examination or seek to impeach his credit, bearing in mind that the appellant's

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41 ROP pp 599–600, 615–617, 620 (NE dated 23 October 2018 at p 17 line 7 to p 18 line 8, p 33 line 5 to p 35 line 7, and p 38 lines 18–23).

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case theory had always been that Yong was lying about paying bribes to the appellant.

27 Although the Statements were presumptively statutorily inadmissible (see s 259(1) of the CPC), the inconsistencies revealed by the Statements in question opened up additional lines of cross-examination which Yong could have been subjected to, and provided a real chance of leading to admissible oral evidence from Yong which would *prima facie* be credible (since it would have been made under oath) and relevant (*ie*, having a bearing on the appellant's guilt or innocence). Since Yong was the one who gave the Statements, he would be expected to be able to clarify whether the inconsistencies in respect of the Bribe Formula and the Bribe Amounts Paid and Pocketed were a result of untruthfulness, or human fallibility in communication, retention and/or recollection. He was also in a position to explain his reason for coming clean about the S$99,008 only nearly ten months after investigations commenced. Yong's responses upon being confronted with these inconsistencies could either undermine or reaffirm his credit and credibility as the key Prosecution witness. Put another way, his responses would *prima facie* have a potential bearing on whether his evidence that he gave bribes to the appellant ought to be believed or rejected.

28 Consequently, I found that the Statements (except for the 3rd CPIB Statement) should have been disclosed pursuant to the Prosecution's *Kadar* obligations.

Remedying the Kadar breach

29 A *Kadar* breach does not automatically cause a conviction to be overturned: *Lim Hong Liang v Public Prosecutor* [2021] 5 SLR 626 ("*Lim Hong Liang*") at [21] citing *Kadar* at [120] and *Mia Mukles v Public Prosecutor*

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[2017] SGHC 252 at [48]. Rather, the first step is to ascertain what the consequences of the *Kadar* breach ought to be. For the purposes of this inquiry, the court should consider the following non-exhaustive list of factors:

(a) the effect of the breach on the evidence against the accused;

(b) how the breach prejudiced the accused;

(c) whether steps can be, or have been, taken to remedy the prejudice caused; and

(d) the causes of the breach, including the conduct of the Prosecution.

As rightly noted by Aedit Abdullah J, a balancing exercise weighing these specific factors as well as the broader objectives of the administration of justice has to be carried out: *Lim Hong Liang* at [22]. In this regard, an acquittal is only warranted where the *Kadar* breach constitutes a material irregularity which occasions a failure of justice: *Lim Hong Liang* at [21]. After deciding the outcome that ought to have flowed from a *Kadar* breach, the next question to consider is whether the court has the power to bring about that outcome: *Lim Hong Liang* at [24].

30 Here, an outright acquittal was inappropriate as the Statements (except for the 3rd CPIB Statement) did not clearly indicate that the conviction must be unsafe. A witness's credit and credibility must be closely scrutinised in the light of all the evidence before the court, including the witness' explanation (or lack thereof) for the discrepancies: *Kwang Boon Keong Peter v Public Prosecutor* [1998] 2 SLR(R) 211 ("*Kwang Boon Keong Peter*") at [21]; *Loganatha Venkatesan and others v Public Prosecutor* [2000] 2 SLR(R) 904 ("*Loganatha*") at [56]. Without giving Yong an opportunity to explain the

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aforementioned inconsistencies, it could not be safely said that these inconsistencies strongly pointed towards an acquittal.

31 In my judgment, the appropriate course of action was to allow counsel for the appellant to further cross-examine Yong on the three defined areas of inconsistencies highlighted above at [18]. Putting Yong through further cross-examination on these three areas would adequately rectify the key prejudice caused to the appellant, that is, the deprivation of an opportunity to confront Yong with these three points of inconsistencies and fully test his credit and credibility. Since the *raison d'être* of taking further evidence was to hear whether Yong would have any reasonable explanation to offer for these inconsistencies, a retrial *de novo* was not called for. Ordering a retrial or a remittal for the trial judge to record further evidence would also further delay the conclusion of this matter. This was inappropriate given that much time had already passed since the offences were allegedly committed back in 2007 to 2009.

32 Section 392(1) of the CPC confers on the appellate court the power to take additional evidence itself if it thinks such evidence is necessary. It is not disputed that the criteria of non-availability and reliability in the *Ladd v Marshall* test were satisfied; the third criterion of relevance was also clearly fulfilled for the same reasons set out above at [24]–[27]. As an expedited hearing before me could be scheduled, I exercised my power under s 392(1) of the CPC to take additional evidence from Yong myself. I hasten to add that this was done under the rather unique and exceptional circumstances which warranted further evidence being taken by the appellate court.

33 For the avoidance of doubt, and in line with the observations in *Lim Hong Liang v Public Prosecutor* [2020] 5 SLR 1015 at [16] and [29], the

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Statements (save for the 3rd CPIB Statement) were allowed to be adduced not as evidence of the truth of their contents but for the purpose of giving Yong an opportunity to explain the inconsistencies under further cross-examination.

The Magistrate's Appeal

34 Yong underwent further cross-examination on 30 and 31 August 2021 (the "Further Hearing"). Though I had not ordered for the 3rd CPIB Statement to be adduced, I allowed counsel for the appellant to rely on that statement during cross-examination since the Prosecution did not take objection to this. However, as the analysis below will indicate, the 3rd CPIB Statement did not actually reveal inconsistencies in Yong's evidence.

35 The appellant and the Prosecution then put forward revised submissions in the Magistrate's Appeal based on the additional evidence taken. I now consider whether the appellant's appeal against conviction should be allowed or dismissed, having regard to Yong's further oral evidence at the Further Hearing.

Conviction

36 The following four requirements must be proven beyond a reasonable doubt to sustain a conviction under s 6(*a*) of the PCA (*Kwang Boon Keong Peter* at [32]; *Public Prosecutor v Leng Kah Poh* [2014] 4 SLR 1264 ("*Leng Kah Poh*") at [20]):

(a) Acceptance of gratification.

(b) Inducement or reward (for the conferment of a benefit).

(c) An objective corrupt element in the transaction.

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

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37 The DJ found that all four elements were met and convicted the appellant. On appeal, the appellant challenges the DJ's findings that he accepted gratification from Yong and that he knew that the alleged bribe(s) were intended for the alleged purpose stated in the charge, *viz*, to reward him for agreeing to purchase goods and services from MCT above the lowest price he could have negotiated. Accordingly, only the first and fourth elements set out above are contested. I will deal with these two issues *seriatim*.

Did the appellant receive bribe monies from Yong?

(1) Parties' submissions

38 The main plank of the appellant's case is that Yong's credit ought to be impeached: there are far too many material contradictions in his evidence which Yong was unable to provide an explanation for.[42] The appellant highlights four categories of inconsistencies in Yong's evidence which allegedly go to the heart of the charges against the appellant:[43]

(a) how Yong allegedly calculated the quantum of bribe monies that were to be given to the appellant (*ie*, the Bribe Formula);

(b) how Yong allegedly calculated the amount of bribe monies that he would pocket for himself, including whether there was any agreement between him and the appellant in that regard (the "Pocketed Amount Formula");

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42 Appellant's Submissions dated 1 October 2021 ("Appellant's Submissions") at para 75.

43 Appellant's Submissions at paras 2 and 76.

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(c) how much Yong passed to the appellant and how much Yong pocketed for himself (*ie*, the Bribe Amounts Paid and Pocketed); and

(d) the fact that Yong resiled from his initial claim that he handed the appellant bribe monies of S$90,000 (*ie*, the S$99,008 Lie).

39 The third category (*ie*, the Bribe Amounts Paid and Pocketed) is said to be the most critical category of inconsistencies for which Yong was completely unable to provide an explanation during the Further Hearing. The Prosecution has therefore failed to prove, whether beyond a reasonable doubt or at all, that the appellant received any monies from Yong.[44] Yong's inability to explain the various inconsistencies in his evidence for the other three categories also lead to the conclusion that the Prosecution has not proven that there was any arrangement between the appellant and Yong, whether in terms of the calculation of the bribes or the amounts which Yong claimed he was entitled to pocket.[45]

40 The appellant's overarching case theory is that Yong, who was living beyond his means, had pocketed all the "marketing expenses" for himself and sought to minimise his own liability by falsely claiming that some of the "marketing expenses" were paid to the appellant as bribes. Yong's evidence on the amounts he gave the appellant kept fluctuating because he was trying to figure out what story he could sell to the CPIB.[46]

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44 Appellant's Submissions at paras 4 and 7.

45 Appellant's Submissions at para 8.

46 Appellant's Submissions at paras 71–74.

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41 The Prosecution, on the other hand, maintains that the DJ's findings on Yong's credibility remain correct even after taking into account the evidence adduced at the Further Hearing.[47] While Yong was unable to explain some of the inconsistencies during cross-examination at the Further Hearing,[48] this was largely due to the lapse of time and the absence of an opportunity for Yong to refresh his memory in relation to the Statements. When Yong had the benefit of his Statements during re-examination, he was able to explain the inconsistencies or show why his position had changed.[49] More importantly, the effect of all the changes in Yong's evidence was to incriminate himself further while exculpating the appellant.[50] It also bears noting that only the inconsistencies in relation to the Bribe Formula and the Pocketed Amount Formula affect all eight charges against the appellant. The inconsistencies surrounding the Bribe Amounts Paid and Pocketed only affect four of the charges. The final inconsistency relates to the sum of S$99,008, which is not the subject matter of any charge against the appellant.[51] In any event, none of the inconsistencies undermine Yong's core evidence that he had paid bribes to the appellant while keeping some sums for himself.[52]

42 As regards the appellants' case theory, the Prosecution submits that it makes no sense.[53] Amongst other reasons, the end result of Yong's admissions was that he was convicted and sentenced for corruption, in relation to the bribe

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47 Respondent's Submissions dated 1 October 2021 ("Respondent's Submissions") at para 20.

48 Respondent's Submissions at paras 23–24.

49 Respondent's Submissions at para 25.

50 Respondent's Submissions at para 25.

51 Respondent's Submissions at para 22.

52 Respondent's Submissions at para 25.

53 Respondent's Submissions at para 66.

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monies he gave the appellant, and criminal breach of trust, in relation to the sums he kept for himself; he then testified at trial with nothing more to gain.[54]

(2) Analysis

43 In view of the parties' submissions, the question whether the appellant accepted bribe monies from Yong hinges on whether Yong's credit has been impeached and the related issue of whether Yong had a motive to falsely implicate the appellant. As noted, Yong was the only witness capable of giving direct evidence of whether and how much bribes were allegedly paid to the appellant.

(A) IMPEACHMENT: APPLICABLE LEGAL PRINCIPLES

44 To impeach a witness's credit is to disparage or undermine his character and moral reliability and worth, so as to show that his testimony in court should not be believed because he is of such a character and moral make-up that he is one who is incapable of speaking the whole truth under oath and should not be relied on: *Kwang Boon Keong Peter* at [19].

45 The procedure for impeachment is set out in s 157(*c*) of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act") which reads:

[54] Respondent's Submissions at para 67.

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> **157.** The credit of a witness may be impeached in the following ways by the adverse party or, with the consent of the court, by the party who calls him:
>
> …
>
> (*c*) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

This provision allows for the impeachment of a witness's credit by proof of a former statement inconsistent with any part of his evidence in court which is liable to be contradicted. As Yong Pung How CJ held in *Kwang Boon Keong Peter* at [21], the mechanics for the proof of the former inconsistent statement are found in ss 147(1) and 147(2) of the Evidence Act.

46 Sections 147(1) and 147(2) of the Evidence Act operate through a three-step procedure, as laid down in the oft-quoted case of *Muthusamy v Public Prosecutor* [1948] MLJ 57 (see *Kwang Boon Keong Peter* at [21]):

(a) The court must first read the witness' former statement in question.

(b) If the court determines that the difference between the former statement and his oral testimony amounts to a serious discrepancy or a material contradiction so as to affect the credit of the witness, the court may permit the witness to be asked whether he made the alleged statement. If the witness denies having made it, then the matter must either be dropped or the document must be formally proved by calling the writer or by proving in some other way that the witness did make the statement.

(c) If the witness admits making the former statement or is proved to have made it, then the two conflicting versions must be carefully

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> explained to him and he must have a fair and full opportunity to explain the difference. If the witness can, then his credit is saved.

47 After going through this procedure, the witness' credibility stands to be assessed as a whole together with the rest of the evidence (*Kwang Boon Keong Peter* at [21]). This is why Yong CJ held that it is apt for the court to make a ruling on the impeachment proceedings at the close of the case, instead of immediately after the close of the impeachment exercise. The same view was echoed in *Loganatha* at [56]:

> In our opinion, there is no requirement that the trial judge must, at any stage of the trial, make a ruling on whether the credit of the witness is impeached. *All that is required is that the court* ***must consider the discrepancies and the explanation*** *proffered by the witness for the purpose of an* ***overall assessment of his credibility****. …*
>
> [emphasis added]

The assessment of the discrepancies and the explanation provided must be directed towards the ultimate inquiry of whether the witness should not be believed because he is untruthful under oath and an unreliable witness. If so, the witness' credit must be impeached.

48 It is also well-settled that the impeachment of a witness's credit does not necessarily entail a total rejection of all his evidence. The court must carefully scrutinise the whole of the evidence to determine which aspect might be true and which aspect should be disregarded: *Public Prosecutor v Somwang Phatthanasaeng* [1990] 2 SLR(R) 414 at [43].

(B) PRELIMINARY MATTERS

49 Before delving into the analysis of whether Yong's credit has been impeached, I make two preliminary points.

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50 First, it is undisputed that Yong made all the Statements, and as I have found above, the Statements (except the 3rd CPIB Statement) contained allegations which are inconsistent with his oral evidence at trial.

51 Second, the appellant should not have identified a category of inconsistencies labelled the "Pocketed Amount Formula" (see above at [38(b)]). This category deals with inconsistencies as to (a) how Yong calculated the amount he would pocket for himself, and (b) whether there was any agreement between him and the appellant in that regard. Yong's conflicting positions on how he determined the amount he would pocket arise from the same sources as his inconsistent positions on the Bribe Amounts Paid and Pocketed. There is therefore no need for a standalone category for the former.

52 As for whether there was an agreement that Yong could pocket some of the bribe monies, this was not a material inconsistency I identified in delivering the CM Decision. While Yong took apparently conflicting positions as to whether this arrangement was in the form of an express agreement or an implicit understanding,[55] this was merely a minor inconsistency which barely undermines Yong's allegation that he had passed bribe monies to the appellant. It is insufficient to cast a doubt on Yong's central position throughout the Statements and oral testimony, which was that there was some arrangement, be it spoken or unspoken, between Yong and the appellant that Yong could keep some of the "marketing expenses". Yong's evidence of such an arrangement presupposes the existence of a corrupt arrangement between the appellant, and therefore points towards a finding that Yong did in fact pass some of the "marketing expenses" to the appellant as bribes, but this still had to be

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55 ABOD at p 19 (1st CPIB Statement at para 55); ABOD at p 231 (4th CPIB Statement at para 103); ABOD at p 246 (1st CBT Statement at A2); ROP at p 200 (NE dated 11 April 2018 at p 35 lines 9–25).

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considered alongside whether Yong was able to account for his various inconsistent positions on the Bribe Formula, the Bribe Amounts Paid and Pocketed, and the S$99,008 Lie. As mentioned at [27] above, these inconsistencies could potentially lead to lines of inquiry which reveal that Yong did not in fact bribe the appellant. It was at the Further Hearing that these lines of inquiry were explored.

53 I turn next to set out Yong's explanations for the inconsistencies identified in the CM Decision, *ie*, the S$99,008 Lie, the Bribe Amounts Paid and Pocketed and the Bribe Formula.

(C) THE THREE AREAS OF INCONSISTENCIES

(I) THE S$99,008 LIE

54 At the Further Hearing, Yong was afforded the opportunity to explain why he had lied about the sum of S$99,008 and why he had a change of heart to come clean subsequently. Yong said that at the start of the investigations, he lied about the S$99,008 not because he intended to push the blame to the appellant,[56] but because he was afraid that he would go to jail.[57] Even as investigations progressed, Yong's conscience did not prick him enough to tell the CPIB that he took the entire amount of S$99,008 for himself.[58] However, he eventually decided to come clean about pocketing the entire sum for two reasons. First, SSI Xie contacted Yong and told him that the buyer denied receiving payments. Yong was frightened by what SSI Xie said and thus decided

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56 NE dated 31 August 2021 at p 116 lines 7–17.

57 NE dated 31 August 2021 at p 114 line 14 to p 115 line 23.

58 NE dated 30 August 2021 at p 131 line 11 to p 132 line 8; ABOD at p 232 (4th CPIB Statement at para 105).

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to admit that he had taken the sum of S$99,008 for himself.[59] He also thought that it was better for the CPIB to hear an admission from him rather than for them to find out the truth subsequently, since there was a paper trail showing that he paid the option fee for a new three-room condominium unit during the same period of time.[60] Second, he claimed that this lie had been bothering him.[61] He candidly acknowledged at the Further Hearing that he made a "wrong judgment" by falsely implicating the appellant previously.[62]

(II) THE BRIBE AMOUNTS PAID AND POCKETED

55 The next area of material inconsistency relates to the Bribe Amounts Paid and Pocketed. As a preliminary point, I will first consider the appellant's claims that Yong gave "at least seven to eight versions of evidence" in respect of the amounts he pocketed and "numerous conflicting accounts of how much he allegedly passed to the [a]ppellant".[63] Exhibit T2, which is annexed to the appellant's submissions, summarises the alleged inconsistencies in Yong's evidence relating to how much he was entitled to pocket.[64] As the Prosecution pointedly observes, "[e]ven on a cursory examination of T2, it is clear that this number was an exaggeration and that many of the purported 'inconsistencies'

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59 NE dated 30 August 2021 at p 128 lines 14–22, p 129 lines 8–17, p 130 lines 21–24, p 132 lines 14–18.

60 NE dated 30 August 2021 at p 134 lines 4–9.

61 NE dated 30 August 2021 at p 129 line 20 to p 130 line 16 (read with NE dated 31 August 2021 at p 66 line 24 to p 68 line 11); NE dated 30 August 2021 at p 140 lines 12–18 (read with NE dated 31 August 2021 at p 68 line 25 to p 70 line 12).

62 NE dated 30 August 2021 at p 129 line 25 to p 130 line 6.

63 Appellant's Submissions at paras 57 and 61.

64 Appellant's Submissions at paras 55–56.

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were overblown."[65] The number of inconsistent accounts of how much Yong allegedly gave the appellant was also overstated.

56 In fact, there are only two broad variants of how Yong determined the amount to pocket for himself. The first is that he would round down the "marketing expenses" to the nearest ten thousand dollars and pocket the balance. This is found in his 1st CPIB Statement. The second is that he pocketed *approximately* 25% of the "marketing expenses". This version can be found in Yong's 4th CPIB Statement,[66] 1st CBT Statement,[67] 7th CPIB Statement[68] and oral testimony before the DJ.[69] These two versions are highlighted above at [21]–[22].

57 According to the appellant, Yong said in his 3rd CPIB Statement that he did not pocket anything. The appellant interprets the following sentence in the 3rd CPIB Statement to mean that Yong passed the appellant the entire sum which MCT designated as "marketing expenses":[70]

> … [The appellant] had agreed to accept the amount MCT invoiced Trans[o]cean in return for us giving him a cash 'marketing expense' of US$34,430/-, or 1.14% of MCT's profit margin, as a reward which I personally passed to [the appellant].

This sentence was repeated seven times for seven other transactions, with variations in the amount of "marketing expense". For the ninth transaction described in the 3rd CPIB Statement, Yong stated that "[he] had passed a cash

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65 Respondent's Submissions at para 46.

66 ABOD at p 231 (4th CPIB Statement at para 103 (read with para 102)).

67 ABOD at p 246 (1st CBT Statement at para 28).

68 ABOD at p 292 (7th CPIB Statement at para 118).

69 ROP at p 200 (NE dated 11 April 2020 at p 35 lines 14–16).

70 ABOD at p 80 (3rd CPIB Statement at para 81).

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'marketing expense' of US$51,440/-, or about 1.58% of MCT's profit margin, to [the appellant] as a reward."[71] These sentences, read on their own, appear to support the interpretation advocated by the appellant.

58 However, such an interpretation ignores the context in which the 3rd CPIB Statement was recorded. The 3rd CPIB Statement was a continuation of Yong's 1st CPIB Statement and 2nd CPIB Statement. In these two earlier statements, Yong described the corrupt transactions he had with the appellant and consistently took the position that he pocketed some of the "marketing expenses" set aside by MCT. The focus of the 3rd CPIB Statement was thus to identify the MCT invoices which correspond to each corrupt transaction described in his earlier two statements.[72] This was the issue which Yong directed his mind to when making the 3rd CPIB Statement; he did not intend to put on record a different position regarding the amount he actually gave the appellant. This is buttressed by the fact that before the 3rd CPIB Statement was recorded, Yong read his 1st CPIB Statement and 2nd CPIB Statement and told the CPIB that he had no amendments to make.[73] In other words, at the time the 3rd CPIB Statement was recorded, he stood by his position that he pocketed a portion of the "marketing expenses". In any case, Yong's position at the appellant's trial remained fully consistent with his admission that he did pocket some of the "marketing expenses". Properly understood in its context, while the language in the 3rd CPIB Statement had been imprecise, it could not be said to reflect Yong's position that he had passed the *entire* "marketing expense" to the appellant for each transaction.

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71 ABOD at p 80 (3rd CPIB Statement at para 80).

72 See ABOD at pp 77–84 (3rd CPIB Statement at paras 73–74, 80–82 and 84–90).

73 ABOD at p 77 (3rd CPIB Statement at para 72).

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59 This conclusion is reinforced by Yong's oral testimony at the Further Hearing. He repeatedly disagreed with counsel for the appellant's suggestion that he had told the CPIB in his 3rd CPIB Statement that he passed all the "marketing expenses" to the appellant.[74] He firmly insisted that he told the CPIB that he took a portion of the "marketing expenses" but could not recall when he said this,[75] presumably due to the lapse of time and the lack of an opportunity to read through all the Statements before he took the stand at the Further Hearing.

60 Next, the appellant claims that Yong said in his 1st CPIB Statement that S$6,000 was given to the appellant in relation to the 8th Charge.[76] This allegedly added to the inconsistencies surrounding Yong's evidence on the 8th Charge. However, the 1st CPIB Statement stated that this S$6,000 was paid in respect of a transaction involving the sale of crane booms.[77] The transaction in connection with the 8th Charge concerned the sale of tubular goods. Yong also explained during the Further Hearing that this S$6,000 was paid in relation to Transocean's purchase of crane booms, which is a separate transaction from the order for tubular goods.[78]

61 Finally, the appellant seeks to argue that the last two statements, the 7th CPIB Statement and the 2nd CBT Statement, represent Yong's position that he was not sure about the exact amounts he had given to the appellant. According to the appellant, this position conflicts with Yong's earlier statements where he

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74 NE dated 30 August 2021 at p 49 line 11 to p 53 line 7 and p 59 lines 19–24.

75 NE dated 30 August 2021 at p 63 lines 14–23 and p 64 lines 9–12.

76 T1.

77 ABOD at p 19 (1st CPIB Statement at para 57).

78 NE dated 30 August 2021 at p 108 line 22 to p 109 line 10; NE dated 31 August 2021 at p 45 line 18 to p 48 line 21.

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was able to articulate the sums he allegedly handed the appellant.[79] With respect, this is an unfair characterisation of Yong's evidence. As with the 3rd CPIB Statement, the 7th CPIB Statement and 2nd CBT Statement have to be read alongside Yong's earlier statements. In both the 7th CPIB Statement and 2nd CBT Statement, Yong had the opportunity to read through his earlier statements and chose to make only one amendment to his earlier statements concerning the S$99,008 Lie.[80] Implicitly, Yong was affirming what he had said in his earlier statements. More importantly, in Yong's earlier statements, he should not be understood as claiming that he was absolutely certain of the *exact* sums he had given the appellant. The very first statement was the 1st CPIB Statement, which was given approximately three years after the bribe in the 8th Charge was allegedly paid. Yong must thus be understood as providing a figure based on his best recollection of events. There is therefore no conflict between Yong's 7th CPIB Statement and 2nd CBT Statement on the one hand, and his earlier statements on the other.

62 I therefore reaffirm my conclusion that the only inconsistencies on the Bribe Amounts Paid and Pocketed are those set out above at [21]–[22].

63 I now proceed to set out Yong's further evidence on this point. At the Further Hearing, Yong testified under cross-examination that he could not recall why he came up with these variants in the quantum of bribe for the 1st Charge.[81] When counsel for the appellant asked Yong to account for the inconsistencies in the quantum for the other charges, Yong responded that he might have made

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79 T1; See NE dated 31 August 2021 at p 9 line 21 to p 10 line 10.

80 ABOD at p 291 (7th CPIB Statement at para 116) and at p 296 (2nd CBT Statement at para 30).

81 NE dated 30 August 2021 at p 86 line 20 to p 87 line 8; NE dated 31 August 2021 at p 9 line 21 to p 13 line 6.

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errors at the time his statements were taken but he could not recall why he made those errors.[82]

64 However, Yong was able to offer some explanation for the change in the quantum of bribes during re-examination once he was directed to the relevant part of his 4th CPIB Statement, which read:[83]

> 101 I am now informed by the recording officer that based on my previous statement, *it was calculated that I had stated giving to [the appellant] over S$400,000/- in cash 'marketing expenses['], out of which I had stated that I kept over S$40,000/- for myself* without his permission.
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> 102 The recording officer then asks me whether I found the figures in Paragraph 101 to be accurate. I wish to say that ***on average, I would have kept 25% of the cash 'marketing expenses' meant to be given to [the appellant] for myself.*** 25% is a rough estimate of mine, so I cannot say for sure how much of each cash 'marketing expense' I was supposed to pass to [the appellant] I ended up keeping for myself. ***But based on adding up the amount of cash 'marketing expenses' I had stated in my last statement was for [the appellant], I had given over S$300,000/- to [the appellant] while I kept over S$100,000/- for myself. This means that the figure of S$40,000/- I stated I had kept for myself in my last statement is not accurate.***
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> [emphasis added]

In re-examination, Yong explained that he checked through the figures in his previous statements and noticed that they were inaccurate based on his recollection that it was agreed that he could keep one-quarter of the "marketing expenses" for himself.[84]

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82 NE dated 31 August 2021 at p 13 line 9 to p 14 line 8.

83 NE dated 31 August 2021 at p 97 line 25 to p 98 line 21.

84 NE dated 31 August 2021 at p 99 line 21 to p 100 line 16.

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(III) THE BRIBE FORMULA

65 As noted above at [19], Yong appeared to have put forward two versions of how he calculated the quantum of bribe monies to be given to the appellant. The appellant, however, submits that Yong gave a third account of how he calculated the bribes to be paid to the appellant: he used a "rough formula" which the appellant was aware of.[85] This version was allegedly contained in Yong's 3rd CPIB Statement and 4th CPIB Statement. I set out the relevant portion of Yong's 3rd CPIB Statement:[86]

> 76 … What [the appellant] had in mind would be given to him is about 2 to 3% of the invoiced amount to [Transocean], but that is not possible all the time due to the low profit margins and other expenses which MCT had to bear. So on average, what [the appellant] was given is actually about 1.5% of the invoiced amount to [Transocean].

66 In a similar vein, the 4th CPIB Statement stated that "[the appellant] would normally want 3%, but MCT usually can only afford to give him 1.5% to 2.0%."[87] In truth, this alleged "third version" is consistent with Yong's oral testimony that "no formula" was used to calculate the quantum of bribes payable to the appellant. To Yong, a "formula" referred to a method of calculation that is closely adhered to.[88] As is readily apparent from this alleged "third version", there is a margin of variability in the percentage of the invoiced amount he set aside for the appellant, which coheres with Yong's oral evidence that he did not strictly follow any fixed "percentage" formula in arriving at the bribe amount.

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85 Appellant's Submissions at paras 40(b) and 41.

86 Appellant's Submissions at para 41; NE dated 30 August 2021 at p 40 line 10 to p 41 line 7; ABOD at p 78 (3rd CPIB Statement at para 76).

87 ABOD at p 232 (4th CPIB Statement at para 105).

88 NE dated 31 August 2021 at p 52 line 22 to p 53 line 5.

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67 The appellant also points out that this "third version" gives rise to an inconsistency as to whether the appellant knew how much he would be receiving as bribes.[89] However, the appellant's knowledge in this regard is not related to the issue of whether Yong used a percentage-based "formula" to determine how much the appellant would receive for each transaction. This much was acknowledged in the appellant's own submissions.[90] More fundamentally, this is not a material inconsistency. The appellant's awareness as to how much bribe monies he would be receiving for each transaction is not sufficiently probative of whether the appellant did in fact receive bribes from Yong as stated in the charge, or whether the appellant knew that the alleged gratification was a reward for agreeing to transact at a price above the lowest price possible, these being the two main issues for this court's determination given the way the appellant's case was framed.

68 For the foregoing reasons, the analysis will proceed on the basis that Yong only gave two inconsistent accounts on the Bribe Formula. These two versions are set out above at [19]. I now consider Yong's responses when confronted with this inconsistency.

69 At the Further Hearing, Yong stood by his testimony in the trial below, *viz*, no formula was used to calculate the bribe amounts.[91] He explained that the sentence in the 1st CPIB Statement, "[t]he bribes for [the appellant] are calculated base[d] on 3% (per joint) of the quotation price sent to them",[92] only meant that he used the 3% figure as a guideline of the amount to set aside for

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89 Appellant's Submissions at paras 47–52; NE dated 30 August 2021 at p 40 line 10 to p 41 line 7 and p 74 line 25 to p 76 line 10.

90 Appellant's Submissions at para 51.

91 NE dated 30 August 2021 at p 28 line 25 to p 29 line 10.

92 ABOD at pp 6–7 (1st CPIB Statement at para 13).

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the appellant when preparing the quotation. According to Yong, after he put in a quotation, there would still be negotiations leading to the purchase order, and the profit margin for MCT and the bribe amount for the appellant would have to be reduced due to cost considerations and other factors.[93] As his foremost consideration was to ensure that MCT was still making a profit, it was difficult to calculate the bribe amount using a formula.[94] Curiously, however, Yong later accepted that he had used the 3% formula at paragraphs 25, 27, 29, 34, 36, 38 and 41 of the 1st CPIB Statement to explain the actual bribe payments made to the appellant.[95]

(D) WHETHER YONG'S CREDIT HAS BEEN IMPEACHED

70 Having considered the additional evidence from Yong alongside the rest of the evidence in the round, I find that Yong's credit has not been impeached.

71 In relation to the S$99,008 Lie, I place weight on the fact that Yong owned up to his earlier dishonesty and came clean with the truth in the course of investigations. Yong's testimony at the Further Hearing demonstrates that he did not have any sinister, ulterior motive for admitting that he took the entire sum of S$99,008. Admittedly, Yong did not come clean solely because he was remorseful – he was motivated in part by the belief that the CPIB would soon discover that he kept the entire sum of S$99,008 for himself. Even then, this was merely a pragmatic consideration which factored into Yong's decision to come forward with the truth. It is wholly insufficient to render Yong an untrustworthy witness.

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93 NE dated 30 August 2021 at p 28 lines 2–17, p 30 lines 22–24 and p 43 lines 8–15; NE dated 31 August 2021 at p 60 lines 6–9.

94 NE dated 30 August 2021 at p 31 lines 5–14.

95 NE dated 30 August 2021 at p 47 lines 5–23.

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72 As regards the inconsistencies in respect of the Bribe Formula and the Bribe Amounts Paid and Pocketed, they arise out of Yong's earlier statements on the one hand (*ie*, the 1st and 2nd CPIB Statements), and Yong's later statements and oral testimony on the other. At the Further Hearing, Yong affirmed the position he took in his later statements and oral testimony,[96] and effectively disavowed what he said in the earlier statements.

73 Objectively assessed, it is likely that Yong was confused when he gave evidence on the Bribe Amounts Paid and Pocketed in his earlier statements. The 1st CPIB Statement was recorded approximately three years since the bribes were paid. It is thus entirely plausible that Yong made a genuine mistake in his earlier statements (*ie*, the 1st CPIB Statement and the 2nd CPIB Statement), and only realised this in his 4th CPIB Statement when he was presented with a comparison between the aggregate sums he allegedly gave the appellant and the amount he allegedly pocketed for himself, as derived from his previous statements (see above at [64]). On the other hand, given that Yong readily acknowledged that the figures in the earlier statements were inaccurate without being confronted with any evidence to the contrary by SSI Xie, it is rather inconceivable that Yong had fabricated the numbers in his earlier statements and was tailoring his evidence as the investigations progressed.

74 The appellant's submissions were based largely on how Yong could not come up with sensible explanations when confronted with the inconsistencies regarding the Bribe Amounts Paid and Pocketed.[97] This ignores the fact that Yong repeatedly stated that he "cannot remember" why there were conflicting

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96 NE dated 30 August 2021 at p 28 line 25 to p 29 line 10; NE dated 31 August 2021 at p 89 line 8 to p 90 line 5.

97 Appellant's Submissions at paras 62–65.

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versions in his evidence. In other words, he had trouble coming up with an explanation why there were inconsistencies because he was unable to recall what went through his mind many years ago. The 1st CPIB Statement was given approximately three years after the bribe in the 8th Charge was paid. Nearly eight years after his statements were recorded and three years after he testified before the DJ in 2018, Yong was recalled as a witness at the Further Hearing. He did not have the opportunity to refresh his memory as to what he said at trial or to the CPIB. Understandably, he would face considerable difficulty explaining why there were inconsistencies in his evidence along the way. Yong did not appear to me to be an evasive witness. If at all, he was somewhat inarticulate but this, along with his inability to recollect why he took certain positions back when he gave the statements, should not be held against him.

75 The inconsistency as regards the Bribe Formula was also due to Yong's poor articulation when the 1st CPIB Statement was recorded. As Yong explained, what he really meant by the phrase, "based on" a 3% figure, was that the 3% figure was used as a broad guideline. Even though Yong used the 3% figure in other parts of the 1st CPIB Statement to explain the actual bribe payments made to the appellant (see above at [69]), his evidence had always been that the 3% figure was merely a guideline and he did not stick closely to any method of calculation because his priority was to make a profit for MCT. This was the consistent position he took at the proceedings below as well as at the Further Hearing.

76 In this connection, I address for completeness the appellant's argument that Yong's concept of the 3% figure being an initial guideline that was subject to subsequent negotiations was a dishonest afterthought. According to the appellant, this contradicted several paragraphs (such as paragraph 25) in the 1st CPIB Statement, which suggested that the 3% figure was a settled, post-

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negotiation figure.[98] However, in my view, it is not entirely clear on the face of those paragraphs whether this was what Yong really meant. In addition, at another segment of Yong's 1st CPIB Statement, Yong claimed that "[t]he bribes for [the appellant] are calculated base[d] on 3% (per joint) of the *quotation price* sent to them" [emphasis added].[99] This indicated that the 3% figure was indeed used as a guide to kick start negotiations. In these circumstances, I am unable to accept the appellant's contention that Yong's concept of the 3% figure being an initial guideline was a dishonest claim.

77 Arguably, even if Yong had conceded that he must have lied in his earlier statements, this did not inexorably mean that the entirety of his subsequent evidence was lacking in credibility. This applies with equal force to the S$99,008 Lie Yong told in his first few statements. A trier of fact must give careful consideration to the witness' lies as well as to his or her explanation (or lack thereof) for those lies in determining his creditworthiness (*Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2021] 1 SLR 67 at [273]), and it bears reiterating that the assessment of a witness's creditworthiness calls for a holistic appreciation of the material put before the court.

78 In this connection, the veracity of Yong's evidence and his creditworthiness were reinforced by the fact that shifts in his evidence only served to further incriminate himself while exculpating the appellant. Through the changes in the quantum of bribes for the 1st, 2nd, 3rd and 8th Charges, as well as the fact that Yong came clean about the S$99,008 Lie, Yong admitted to taking a total of S$124,008 more for himself than he initially acknowledged. The amount the appellant would have been liable for was correspondingly

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98 Appellant's Submissions at paras 45(b)–45(e).

99 ABOD at pp 6–7 (1st CPIB Statement at para 13).

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reduced. This fortifies the reliability of Yong's evidence because as a matter of logic, a statement that is made against the interests of its maker is inherently more reliable: *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 at [102].

(E) WHETHER YONG HAD ANY REASON TO FALSELY IMPLICATE THE APPELLANT

79 Crucially, it has also not been shown that Yong had a motive to lie and falsely implicate the appellant. It is for the Defence to first establish sufficient evidence of a motive to make a false allegation (*Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 at [102]). Only where the Defence adduces sufficient evidence of this motive so as to raise a reasonable doubt in the Prosecution's case, would the Prosecution have to prove that there was no such motive (*Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749 at [48], following *Goh Han Heng v Public Prosecutor* [2003] 4 SLR(R) 374 at [33]).

80 In the present case, the appellant has not discharged his burden. The appellant's case theory was that Yong had pocketed all the "marketing expenses" for himself. In order to minimise his own liability, Yong falsely claimed that some of the "marketing expenses" was paid to the appellant as bribes. He had to admit to taking some of the bribe monies because he could not avoid the fact that he had made big-ticket purchases which left a paper trail. For the same reason, Yong's evidence on the amounts he gave the appellant kept fluctuating because he wanted to see what he could get away with.[100]

81 Quite apart from the fact that the shifts in Yong's evidence further incriminated himself and correspondingly reduced the appellant's criminal liability, the appellant's case theory is speculative. It is unsupported by evidence even after the Further Hearing and remains implausible. Yong had nothing to

[100] Appellant's Submissions at paras 72 and 73.

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gain since he had already pleaded guilty and had been duly sentenced even before the appellant was charged (see [4]–[5] above).

82 There is simply no evidence that Yong had in fact taken all the bribe monies for himself and wanted to falsely implicate the appellant to reduce his culpability. Neither is there evidence that Yong was crafting his evidence on the amount he pocketed based on the paper trail for his big-ticket purchases. There is no indication that Yong shifted his position on the amount of bribes he pocketed upon being confronted with his big-ticket purchases. Rather, as reflected in the 4th CPIB Statement which was adduced at the Further Hearing, the recording officer merely asked Yong to confirm the accuracy of the earlier figures he gave, and Yong, *on his own initiative*, corrected the amounts and further incriminated himself in the process.

83 Counsel for the appellant submits that Yong admitted that his evidence as to how much he pocketed was strongly influenced by what he felt could be traced back to him.[101] For this, reliance is placed on Yong's acceptance of counsel's suggestion at the Further Hearing that throughout the CPIB investigations, he realised that he could not explain his purchase of certain big-ticket items and had to decide how much to admit he had taken since there was a paper trail.[102] I do not agree with counsel's characterisation of Yong's evidence. Yong was not saying that he tailored the quantum he pocketed according to the paper trail he left behind. Instead, he was saying that he had to ascertain how much he had taken, because the existence of the paper trail meant that he had to face up to the fact that he had taken some of the bribe monies. This understanding is buttressed by the fact that this suggestion by the

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101 Appellant's Submissions at para 70.

102 NE dated 30 August 2021 at p 132 line 19 to p 133 line 1.

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appellant's counsel was made on the back of several questions testing the veracity of Yong's reasons for admitting that he took the full sum of S$99,008 for himself.[103] In this context, Yong must have understood counsel for the appellant's suggestion to mean that he had to admit to taking some of the bribe monies, and accordingly recall how much he had taken, because there was a paper trail.

84 The most that can be said from this is that Yong was not completely altruistic when he chose to admit that he pocketed some of the bribe monies, in that he was motivated by the pragmatic consideration that there was evidence which showed that he must have taken some of the bribe monies. This, however, is wholly insufficient to impugn Yong's credit or indicate that Yong harboured a motive to make false allegations against the appellant. A witness may believe that he has no choice but to admit to a wrongdoing, but this does not mean that the details of what he admitted to must necessarily be false, or that he must have been trying to absolve himself of liability by falsely implicating others. A witness who finds himself in such a situation may very well still do his best to recall and reveal the truth. This was the case on the instant facts. As argued by the Prosecution,[104] Yong's corrections to his evidence and his eventual testimony in court were not attempts to exaggerate the involvement of the appellant. They were the opposite. His willingness to take the initiative to correct his evidence when he noticed there were mistakes, and thereby further incriminate himself in the process, is not only uncharacteristic of someone trying to downplay his own criminal liability, but also serves to demonstrate that he was trying his best to put forward the true state of affairs.

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103 NE dated 30 August 2021 at p 128 line 23 to p 132 line 18.

104 Respondent's Submissions at para 59.

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85 Notably, the appellant's case theory intrinsically does not make much sense. The essence of the appellant's case is that Yong was a self-serving witness who in fact dishonestly pocketed *all* the "marketing expenses" for himself but sought to minimise his own criminal liability by falsely claiming that he gave *some* of it to the appellant as bribes. It is hard to fathom why Yong would admit to giving bribes to the appellant and keeping some for himself for each transaction if he truly wanted to minimise his criminal liability. Such an admission would still cause Yong to incur criminal sanctions for corruption in respect of the amounts given to the appellant, *as well as* for criminal breach of trust in respect of the substantial amounts he dishonestly kept for himself. Yong was still exposing himself to prosecution for the full sum of the "marketing expenses" for each transaction. This would not be very far from the situation he would have been in if he had confessed to keeping all the "marketing expenses" for each transaction for himself. By implicating the appellant as the recipient of the bribes, this did not have the effect of minimising Yong's own criminal liability.

86 Indeed, Yong was charged for both corruption and criminal breach of trust. When Yong pleaded guilty in 2015, the proceeded charges against him included one charge for conspiring with Ong to pay a bribe of S$78,806 to the appellant, another for conspiring with Ong to pay a bribe of S$99,008 to the appellant (which was eventually not paid), and an amalgamated charge of criminal breach of trust for keeping part of the "marketing expenses" for himself on five occasions in 2008. He also admitted and consented to have a further 31 charges taken into consideration for the purposes of sentencing. These included nine counts of abetting the giving of corrupt gratification and two counts of criminal breach of trust: *Yong Hock Guan* at [1]–[3] and [13].

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87 It bears emphasising that even before Yong pleaded guilty in 2015, he consistently maintained that he took a portion of the "marketing expenses" and gave the rest to the appellant as bribes. He was already prepared, right from the beginning, to expose himself to criminal liability for the full sum of "marketing expenses" for each deal, be it for dishonestly converting a portion for his own use or as a giver of a bribe. It is difficult to conceive how Yong's admission was an attempt to minimise his criminal liability in any way.

88 In these circumstances, there is no discernible reason for Yong to deviously drag the appellant down with false allegations of complicity as the recipient of the bribes. It is noteworthy that the appellant never advanced his case on the basis that Yong harboured any malice or ill-will towards him or was falsely implicating him in order to protect the true recipient of the bribes. Accordingly, there is no need for the Prosecution to prove the absence of a motive, since the appellant has not put forward a tenable basis on which such a motive can be shown or inferred.

Did the appellant accept the gratification with guilty knowledge?

89 The second issue pertaining to the appellant's conviction is whether the appellant accepted the gratification from Yong with guilty knowledge. The element of guilty knowledge requires the recipient of a bribe to know or realise that what he did was corrupt by the ordinary and objective standard. In particular, not only must there be a *quid pro quo* between the gift received or promised and the dishonest benefit or gain conferred against the principal's interests, the agent must perceive this to be so. The recipient must recognise that the gift is meant to act as an improper influence on his actions: *Leng Kah Poh* at [21] and [26]. In view of the charges against the appellant, the appellant can be said to have the requisite guilty knowledge if he knows that the gratifications

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he received from Yong were rewards for him having agreed to purchase goods and services for Transocean from MCT at a price above the lowest possible price.

90 I agree with the DJ's finding that there was evidence showing that the appellant accepted the gratification with guilty knowledge (GD at [62]). The key piece of evidence which the DJ relied on in support of this finding was Yong's testimony that it was the appellant who first hinted that he wanted something out of the business, out of each transaction. Indeed, Yong consistently maintained in his oral evidence that it was the appellant who had hinted that he wanted a bribe. Pertinently, Yong testified that the appellant suggested that some monies could be set aside on every quotation that resulted in a purchase contract.[105]

91 Having arranged for a kickback to be built into each transaction, it is untenable for the appellant to argue that he was unaware that the benefit he was meant to confer, in exchange for the bribe, was his agreement to transact above the lowest price he could negotiate.[106] It must have been plain and obvious to the appellant that MCT was ready to accept a price that was lower than the stated purchase price for each transaction – the bribe scheme entailed the appellant taking a portion of the price paid by Transocean, and MCT obtaining an amount that was less than the price reflected on the purchase order. However, the appellant could not transact at the lowest possible price, otherwise there would be no room for his share of the deal. The appellant had structured the scheme such that he must agree to purchase, on behalf of Transocean, at prices higher

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105 ROP at p 39 (NE dated 10 April 2018 at p 11 lines 4–11); ROP pp 541–542 (NE dated 22 October 2018 at p 102 line 19 to p 103 line 10).

106 Appellant's Submissions at paras 106.

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than the lowest possible prices, so as to receive gratifications paid out of the stated purchase price. He cannot now disavow knowledge of this *quid pro quo*.

92 Against this, the appellant points to Yong's oral testimony where he mentioned that the bribe scheme was subject to Ong's approval, but he never told the appellant whether Ong gave his approval.[107] However, as Yong testified, there was no need for him to communicate Ong's approval to the appellant.[108] It is implicit that Ong had approved the scheme from the time Yong began to pass the bribe monies to the appellant. The appellant did not need an express confirmation of Ong's approval to know that each of the cash amounts he had received from Yong were pursuant to the bribe arrangements he initiated.

93 Finally, the appellant also argues that there is no evidence showing that he knew how the alleged bribes would be factored into each transaction, in particular, whether it would be paid out of MCT's profit margin, or from Transocean's pockets.[109] This argument is unmeritorious. There is no need for the appellant to know of such details to possess the requisite guilty knowledge. In either case, the fact remained that MCT was prepared to transact at a price lower than the one reflected on the purchase order, and the appellant was plainly aware of this since he asked for the bribe monies to be built into the price Transocean paid.

Conclusion on conviction

94 I am satisfied that the DJ had not erred in finding that the appellant received gratification from Yong with guilty knowledge. I therefore dismiss the

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107 Appellant's Submissions at paras 98–99.

108 ROP at p 180 (NE dated 11 April 2018 at p 15 lines 19–23).

109 Appellant's Submissions at para 102.

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appellant's appeal against his conviction for all eight charges under s 6(*a*) of the PCA.

Sentencing

95 As I have upheld the appellant's conviction for all eight charges, his appeal against sentence falls to be considered.

The decision below

96 The DJ used an indicative starting sentence of eight months' imprisonment for the 1st Charge and calibrated the sentences for the remaining charges according to the amount of gratification involved in each charge. In arriving at the eight-month sentence for the 1st Charge, the DJ considered that there was a need for parity with the sentences meted out to Yong and Ong. Yong and Ong, as givers of the bribe, were sentenced to six months' imprisonment for a charge corresponding to the 1st Charge faced by the appellant. Using this as a reference point, the DJ gave an uplift to eight months' imprisonment for the appellant on the basis that the appellant's culpability was higher than Yong's. For this, the DJ relied on several factors, including the fact that the appellant had initiated the corrupt scheme and abused his position of trust (GD at [70]–[71] and [74]–[75]).

97 After determining the individual sentences for each charge, the DJ found that the one-transaction rule should not be applied and ordered the individual sentences for three charges to run consecutively. This resulted in an aggregate sentence of 15 months' imprisonment (GD at [80]). He also rejected the Defence's submission that a one-third sentencing discount should be given on account of delay in the prosecution of the case. In particular, he found that the Defence's assertion that the appellant suffered mental anguish, anxiety and

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distress due to the uncertainty of being subject to investigations and having his charges hanging over his head was not supported by any cogent evidence. No other evidence was adduced to show that the lapse of time resulted in real injustice or prejudice to the appellant (GD at [83]).

Parties' submissions on sentencing

98 The appellant submits that the 15 months' imprisonment ordered by the DJ is manifestly excessive and that the appropriate sentence should be four to seven months' imprisonment.[110] According to the appellant, the DJ erred in three respects. First, the DJ erred in using the initial indicative sentence of eight months' imprisonment for the 1st Charge with reference to Yong's and Ong's individual sentences, and then calibrating the remaining sentences accordingly. Several reasons are given for this, including the fact that the appellant had a limited role to play in the scheme,[111] Yong and Ong's charges involved greater quanta of gratification,[112] and Transocean did not suffer any real detriment.[113] Second, the appellant submits that the DJ erred in ordering three sentences to run consecutively.[114] Lastly, the appellant contends that the DJ failed to deal with the case of *Public Prosecutor v Lee Seng Kee* [2018] SGDC 230 ("*Lee Seng Kee*") and as a result, was wrong in finding that there had not been any inordinate delay in the prosecution of the matter. *Lee Seng Kee* related to the prosecution of another accused person who had given bribes to Yong. The accused in *Lee Seng Kee* was charged approximately one and a half years after Yong pleaded guilty. On account of the delay in investigations and prosecution,

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110 Appellant's Submissions at para 17.

111 Appellant's Submissions at paras 114–115 and 118.

112 Appellant's Submissions at paras 119–120.

113 Appellant's Submissions at paras 123–128.

114 Appellant's Submissions at paras 134–136.

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the District Court in *Lee Seng Kee* discounted the accused's sentence by about one-third. Relying on this decision, the appellant argues that he should likewise be entitled to a sentencing discount since the charges were also brought against him one and a half years after Yong was sentenced.[115]

99 In response, the Prosecution submits that the sentences imposed by the DJ are in no way manifestly excessive. As the appellant was more culpable than Yong and Ong, the DJ was justified in imposing higher individual custodial terms for each of the appellant's eight charges as compared to those imposed on Yong and Ong's corresponding charges.[116] The Prosecution also contends that the DJ correctly held that the one-transaction rule did not apply,[117] and that there was no inordinate delay in prosecution which warranted a sentencing discount. Any delay was attributable to the appellant's non-cooperation with investigations, and there is no evidence that the delay caused actual prejudice to the appellant.[118]

Decision on sentencing

100 While the general starting point is that the giver and recipient of the gratification ought to be given similar sentences, this need not be rigidly adhered to. As Sundaresh Menon CJ held in *Public Prosecutor v Marzuki bin Ahmad and another appeal* [2014] 4 SLR 623 at [45]:

> … [T]he principle of parity of sentencing as between the giver and the recipient of gratification *cannot be viewed or applied as an inflexible and rigid rule*. Although the general principle is that the giver and the recipient of gratification are equally culpable, many other factors must also be considered when

115 Appellant's Submissions at paras 137–142.

116 Respondent's Submissions at paras 97–102.

117 Respondent's Submissions at paras 104–106.

118 Respondent's Submissions at paras 107–119.

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> deciding on the sentence to be imposed on the particular accused person who is before the court. These factors may relate to the *degree of culpability of each individual offender* in committing the corrupt acts, as well as *circumstances unique to each offender* …
>
> [emphasis added in italics]

In the present case, there is no need to observe parity with the sentence imposed on Ong and Yong. An important factor which the DJ had considered was that Ong and Yong had pleaded guilty whilst the appellant claimed trial. The fact that Yong pleaded guilty was expressly stated as one of the considerations weighing on the court's mind when his individual sentences for the proceeded charges were determined: *Yong Hock Guan* at [11] and [13]. Although no written grounds were issued in respect of Ong's sentence, it can reasonably be assumed that his plea of guilt must have been taken into account in the court's determination of the sentence as well.

101 The appropriate sentence thus falls to be determined by reference to the factual matrix of the appellant's case. In my view, the reasons relied upon by the DJ sufficiently justify the individual sentences imposed in respect of each charge. First, the appellant solicited the corrupt payments from Yong. This increases the appellant's culpability as it reveals that the appellant was driven by greed and personal gain. The High Court in *Public Prosecutor v Tan Kok Ming Michael and other appeals* [2019] 5 SLR 926 had recognised that receiving parties who solicit gratification are more culpable (at [99(g)(iv)]). Second, the appellant's offences displayed a flagrant abuse of trust. At the time the offences were committed, the appellant was a manager of global strategic sourcing for the Asia Pacific region at Transocean.[119] He was entrusted with the responsibility of negotiating prices with MCT, and the contracts he managed in

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119 ROP at p 925 (NE dated 1 April 2019 at p 3 lines 5–8).

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this case ran into the millions. By arranging for bribe payments to be made out of the amounts Transocean paid to MCT, the appellant took advantage of the trust Transocean reposed in him and acted entirely against Transocean's interests. Third, even though the quantum of bribes he accepted from Yong was less than the amount Yong and Ong had conspired to give him, he still accepted a substantial amount (*ie*, S$270,000).

102 When weighed against these considerations, the fact that the appellant was only a recipient of bribes and had a minimal role to play in the implementation of the scheme hardly made a dent in his culpability. The appellant's argument that Transocean did not suffer any real detriment is also a non-starter. The very fact that the kickback was built into the purchase price meant that Transocean was paying more than was necessary for MCT's goods and services. Therefore, I am not persuaded by the appellant's arguments that the individual sentences ordered by the DJ are manifestly excessive.

103 The DJ was also correct in holding that three individual sentences should be ordered to run consecutively. Quite apart from the fact that each corrupt payment accepted by the appellant related to a different commercial transaction, the one-transaction rule is ultimately an evaluative rule directed towards the enquiry as to whether an offender *should* be doubly punished for offences that have been committed simultaneously or close together in time. In the present case, the multiplicity of offences over time and the substantial amount involved warrants the imposition of three consecutive sentences to reflect the severity of the crimes committed by the appellant. Having regard to the totality principle, the global sentence is not disproportionate or manifestly excessive.

104 On the issue of whether there has been inordinate delay, counsel for the appellant relies on the one and a half year delay from the time Yong was

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sentenced in November 2015 to the time the appellant was charged in May 2017, as opposed to the overall time taken since investigations commenced against the appellant in 2013. Indeed, time should only start running from November 2015, when Yong was sentenced. As a result of the appellant's complete denial of the offences, the Prosecution, as a matter of strategy, is entitled to secure Yong's conviction, including his sentence (since Yong's plea of guilt could be qualified by his mitigation), before pressing charges against the appellant. The question which then arises is whether the one and a half years the Prosecution took to bring the present charges against the appellant since the time Yong was sentenced amounted to inordinate delay warranting a sentencing discount.

105 The appellant places significant emphasis on the District Court's decision in *Lee Seng Kee*, a prosecution linked to the present matter. However, the present case is distinguishable from *Lee Seng Kee*. First, the court in *Lee Seng Kee* at [68] found that there had been significant and unjustifiable delay in investigations and prosecution because the accused in that case faced four relatively straightforward charges. As there are twice the number of charges in the present case, the delay in charging the appellant following Yong's conviction cannot be so readily characterised as inordinate. Second, the court in *Lee Seng Kee* at [69] accepted that the delay had prejudiced the accused because the Prosecution in that case did not dispute that the accused was prejudiced in the manner highlighted by the Defence. When the accused in *Lee Seng Kee* filed an appeal in respect of his sentence, the Prosecution again did not contest that the delay had prejudiced the accused. On the other hand, the Prosecution in the present case is disputing that the appellant had suffered actual prejudice. In

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particular, it submits that the appellant's assertion that he suffered anguish or anxiety was a bare one.[120]

106 I agree with the DJ and the Prosecution that there is no evidence of actual prejudice caused to the appellant. Hence, I uphold the DJ's finding that the delay in prosecution did not warrant any sentencing discount.

Conclusion on the Magistrate's Appeal

107 For the reasons stated above, I am satisfied that the DJ had correctly found the appellant guilty of the offences, and that the sentence imposed is not manifestly excessive. I therefore dismiss the appeals against conviction and sentence.

See Kee Oon J
Judge of the High Court

Wong Hin Pkin Wendell and Andrew Chua Ruiming (Drew & Napier LLC) for the appellant and applicant;
David Koh and Janice See (Attorney-General's Chambers) for the respondent.

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120 Respondent's Submissions at paras 118–119.

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