ENHANCEMENT OF THE RULE OF LAW AND PROMOTION OF THE PUBLIC INTEREST—THE ROLE AND FUNCTION OF THE PROSECUTION SYSTEM IN SINGAPORE

*Francis Tseng**

I. ORGANIZATION AND OVERVIEW

A. The Attorney-General as Public Prosecutor

All prosecutions in Singapore come under the control and direction of the Attorney-General, in his role as the Public Prosecutor.

2. The office of the Attorney-General is constituted by virtue of Article 35 of the Constitution of the Republic of Singapore, which also provides that the Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence. Section 336(1) of the Criminal Procedure Code of Singapore further provides that "[t]he Attorney-General shall be the Public Prosecutor and shall have the control and direction of criminal prosecutions and proceedings under this Code". The Criminal Procedure Code applies, by virtue of section 3, to all offences under the Penal Code and all offences under any other written law. The Attorney-General cannot be removed from office except by the President acting on the advice of the Prime Minister, and with the concurrence of a tribunal consisting of the Chief Justice and two other judges of the Supreme Court, and then only for the reason that he is unable to discharge the functions of his office or for misbehaviour.

3. The Attorney-General has secure tenure of office and is thus able to carry out his duties independently and without fear or favour, to ensure that law and justice are upheld impartially and without discrimination.

4. The structure of the Attorney-General's Chambers is shown at Appendix A.

B. Deputy Public Prosecutors

5. Section 336(3) of the Code empowers the Attorney-General to appoint any officers or persons to assist him or to act as his deputies in the performance of any of the functions or duties of the Public Prosecutor. Such appointments will be gazetted in the Government Gazette.

6. In practice, Deputy Public Prosecutors (DPPs) are appointed from legally qualified persons who are legal officers in the Legal Branch of the Singapore Legal Service. These legal officers are appointed by a constitutional commission, the Legal Service Commission under Article 111 of the Singapore Constitution. The Legal Service is made up of two branches, the Judicial Branch and the Legal Branch.

7. The legal officers assigned to perform the duties of Deputy Public Prosecutors are posted to the Criminal Justice Division of the Attorney-General's Chambers, where they undergo intensive initial training for three months, followed by training on the job as well as by way of in-house seminars and external or overseas training courses. All junior DPPs are attached to more senior

* Deputy Head, Crime Division, Deputy Public Prosecutor, Senior State Counsel, Attorney-General's Chambers, Singapore.

DPPs who act as their mentors, advise them and closely supervise all their work.

8. Legal Officers of the Singapore Legal Service are liable to serve in any position in the Legal Branch or the Judicial Branch of the Legal Service. These include the subordinate judiciary, the registry of the Supreme Court, the Attorney-General's Chambers, the Legal Aid Bureau, the Registry of Land Titles and Deeds, the Registry of Trade Marks and Patents, the Registry of Companies and Businesses, the office of the Official Assignee and Public Trustee, and the legal departments of some Government Ministries. Legal Officers can be and are transferred from time to time to different postings to meet the exigencies of staffing the various appointments as well as for their career development.

C. Organizational Structure

9. The Criminal Justice Division of the Attorney-General's Chambers is the organizational extension of the Attorney-General's function as Public Prosecutor. The Head of the Division presently reports directly to the Attorney-General on any matters in connection with criminal prosecutions. The Head is assisted by a Deputy Head, who acts in his place whenever necessary. In ranking below the Deputy Head are the senior DPPs who are the "mentors" of the Division. The remainder of the DPPs are each directly supervised by one of these "mentors".

10. At present, apart from the Head and Deputy Head, there are 8 senior and 58 junior DPPs, making a total of 68 officers in the Criminal Justice Division. There are, however, 9 vacancies which can be expected to be filled when the new intake of legal officers come in from now till the end of this year.

11. There are also some DPPs who specialise in prosecuting commercial crime cases. They are attached to a unit called the Commercial Affairs Department which comes under the wing of the Ministry of Finance. These DPPs are also legal officers of the Singapore Legal Service and take instructions directly from the Attorney-General. The Commercial Affairs Department is headed by a Director, who is also a senior DPP.

12. The law also allows prosecutions of simple criminal cases to be undertaken by experienced police officers attached to the Prosecution Branch of the Police Force. When such officers conduct prosecutions, they function under the direction and control of the Public Prosecutor and his deputies, and independently of the Police Force insofar as their prosecutorial duties and responsibilities are concerned.

13. There also are lay prosecutors attached to Government departments and statutory bodies. These prosecutors may not be qualified in law. They are authorised by the Public Prosecutor to prosecute only in cases involving laws which their departments or bodies are charged under those laws with enforcing. Such cases are usually very simple ones, and where any complex question of law or fact is involved, the help of the Criminal Justice Division will be sought.

II. THE ROLE OF THE PROSECUTOR

A. Investigation

14. In Singapore, the Public Prosecutor is not involved in the investigation of offences, which is entirely within the province of the various investigation and enforcement agencies. He is, however, empowered to authorise investigations to be carried out in certain cases, e.g., he may authorise the Director of the Corrupt Practices

Investigation Bureau or any police officer to investigate the bank account, share account, expense account or any other account which may be relevant in a corruption case.

15. Since prosecutors do not conduct investigations, they do not interview suspects or accused persons at any stage. Such interviews are left entirely to the police or other law enforcement agency.

16. DPPs may, on occasion, interview witnesses prior to going for trial for the purpose of ascertaining their credibility or clarifying complicated matters. These interviews are not required under the law to be officially recorded, and any notes taken by the DPP are solely for his own use. Where the DPP feels it is necessary to do so, the investigating officer will be asked to record a statement or further statement as the case may be from the witness after the interview.

17. In order to secure the attendance of witnesses for such interviews, prosecutors have to fall back on the powers of the police to require witnesses to attend before them for the purpose of obtaining information. These powers are found in section 120 of the Criminal Procedure Code. The police will then arrange for a deputy public prosecutor to be present at the interview of the witness, and the interview may be carried out in the office of the DPP. In practice, however, very little resistance from witnesses in respect of such interviews is experienced.

B. Arrest

18. An arrest is made only where there is a reasonable suspicion of a seizable offence having been committed. Arrests made without good grounds may subject the arresting officer (and the Government, vicariously) to civil actions for false imprisonment (or wrongful arrest). Generally, if the police or other enforcement officers are in any doubt, they will seek the advice of a deputy public prosecutor before proceeding to effect an arrest. It is, however, only the enforcement agency and not the prosecution that has the power to effect an arrest under the law. It is also the enforcement agency (and not the prosecution) that applies for warrants from the Courts for the arrest of persons where these are required under the law.

19. Under Article 9(4) of the Singapore Constitution and section 36 of the Criminal Procedure Code, a person who is arrested has to be produced before a magistrate within 48 hours of the arrest. When that person is brought before the magistrate and if the investigations are incomplete or if the prosecution is otherwise not ready to proceed with the case, at least a holding charge has to be read to him. Where the investigation agency requires more time to investigate, and requires to have custody of the accused for that purpose, an application may be made by the prosecutor to the court for the accused to be remanded in the custody of the investigation agency. A magistrate may only remand a accused person for a period not exceeding 7 days at any one time, but a District Court, not being subject to this restriction, may remand the accused person (in theory at least) until the date of trial. In practice, even District Courts do not grant custody of accused persons to investigation agencies for more than 7 days at any one time, and applications for extension of periods of custody are closely scrutinised. Investigators have to provide good reasons for applications for custody and even more so or applications for extension of custody.

20. There are, of course, other reasons as well for detention of accused persons pending trial which have nothing to do with the prosecution. These include detention as a result of inability to raise bail, or in

capital cases or cases of offences punishable with life imprisonment, where no bail is allowed under the law.

C. Search and Seizure

21. Search and seizure, being part of the investigation process, are not within the domain of the prosecution. The investigation agencies use their own discretion as to when these should be carried out, and make the requisite applications to court for warrants where such are required. However, these agencies may seek legal advice from the Criminal Justice Division if necessary.

D. Advantages and Disadvantages of the System

22. The separation of investigative and prosecutorial functions involves to some extent a duplication of expertise. Investigators will need to know some law in order to know what to look for, and prosecutors will need to have some knowledge of investigation policies and procedures in order to explain such matters in court and to counter arguments put forward by the defence. Legal expertise is less accessible at the initial stages of investigation as the lawyers are only brought into the picture when the cases are almost ready to be brought to court.

23. With proper training and experience, investigators can easily acquire a working knowledge of law and legal procedures. Prosecutors also do not take long to obtain sufficient familiarity with investigative processes to enable them to function effectively. There has been a recent move in Singapore by enforcement agencies to get the Attorney-General's Chambers involved in the more serious or complex cases at an earlier stage so that legal advice and prosecution experience can be made available to assist the investigators in gathering evidence which can be used for the ultimate purpose of prosecution in court. This new approach helps to minimise last minute investigations to cover areas of inquiry which would be otherwise be raised by the prosecution only when the case is being prepared for trial.

24. The separation of investigative and prosecutorial functions, in my opinion, ensures that no one involved in the entire process is provided with any motivation whatsoever to achieve a conviction which is unjust or based on fabricated evidence. To the contrary, investigating officers will be wary of fabricating evidence or confessions because they know that their work will be closely scrutinised by an independent officer who will have to prosecute the case in court and will therefore be on the look-out for any weaknesses in the case he is going to present. The investigator's job is merely to obtain whatever evidence he can and place it before the prosecutor, who then has to assess whether that evidence will be sufficient to persuade a court to convict. Where the evidence gathered from the investigations is insufficient, the prosecutor will not prosecute but will withdraw the charges. He is under no duty whatsoever to prosecute every case that is investigated. On the other hand, being from a different branch of the government service, he is also not the administrative supervisor of the investigator and has no say in the investigator's promotions or career path. Accordingly, neither the investigator nor the prosecutor will be tempted to secure a conviction by unjust means.

25. The position could be very different if the prosecutor is put in charge of investigating as well as prosecuting the case. Unless adequate safeguards are built in, an officer put in overall charge of a case might be tempted, in the interest of furthering his own career, to secure as many convictions as he possibly can, and

might resort to achieving this at all costs, even to the extent of fabricating evidence or ordering this to be done by officers subordinate to himself. In systems in which prosecutorial and investigative functions are combined, safeguards will accordingly have to be put in place to protect against that. Prosecutors who do not act independently of the investigations may also lose their objectivity and become biased in their assessment of the evidence.

26. It has been suggested that having prosecutors take on investigative functions avoids subjecting suspects to unduly long detention and unwarranted trials, and that the success of such a system has been borne out by statistics of the conviction rates achieved. Under the Singapore model, there is no fear of any undue detention or unwarranted trial because the Public Prosecutor assumes control as soon as any prosecution is initiated. Caution must always to be exercised when relying on statistics, as the conclusions reached on the basis of statistics may not necessarily reflect the true position.

27. What may work well for one country may not, because of prevailing circumstances, work as well for another. I would like to suggest that it may be more meaningful to look at whether the people subject to a particular system of criminal justice live under fear of (a) becoming victims of crime and (b) being prosecuted for something they did not do. If they do not, then the system, however it operates, must be functioning well.

E. The Prosecution Process

28. Initiation of prosecution is done by the enforcement agency charged with investigating the offence, usually but not always with the prior concurrence of a deputy public prosecutor. In the case of private prosecutions, it is done of the application by a person aggrieved to a magistrate, who will, if an offence is made out on the face of the complaint, issue either a summons or a warrant of arrest to compel the attendance in court of the person complained against. Private prosecutions are permitted by law only in relatively minor offences, and the complainants will have either to prosecute their cases themselves or to engage private lawyers to do so on their behalves. Whatever the case, all prosecutions come under the control and supervision of the Public Prosecutor and his deputies upon commencement. The Public Prosecutor may, in the exercise of his discretion, step in and take over the conduct of any private prosecution, to either continue with the proceedings with one of his deputies in charge of it, or to discontinue it.

29. To ensure that the Public Prosecutor applies his mind before prosecutions for certain offences are initiated, the written sanction, consent or authorisation of the Public Prosecutor as the case may be is required before cognizance can be taken by a court of those types of offences. This prevents any enforcement agency or private person from using the criminal process for those offences without the knowledge of the Public Prosecutor. Examples of such offences are corruption, forgery, giving of false evidence or false information to a public officer, criminal conspiracy, and offences against the state. In addition, prosecutions for every offence tried in the High Court (which generally hears cases in which the penalty is capital punishment or life imprisonment) and all criminal appeals are required by law to be conducted by the Public Prosecutor or one of his deputies, and prosecution for every seizable offence before a District Court is required to be conducted by the Public Prosecutor, a deputy public prosecutor, or an advocate, officer or other person specially authorised by the Public Prosecutor.

F. Preliminary Inquiry

30. In the case of a prosecution before the High Court, there is an additional step which has to be taken before trial. A preliminary inquiry before a magistrate has to be conducted by a deputy public prosecutor or some other officer authorised. The evidence is produced before the magistrate, and only if the magistrate finds that there are sufficient grounds for committing the accused person for trial will the case be sent up to be heard before the High Court. If the magistrate finds that there are insufficient grounds to commit the accused person for trial, he will discharge him. This procedure provides yet another check before any person is prosecuted for a serious offence.

G. Advice and Directions of the Public Prosecutor's Office

31. When cases are referred by an investigating agency to a deputy public prosecutor for advice, the DPP may approve the initiation or continuance of the prosecution, instruct further investigations to be conducted, or direct that the charge be withdrawn or that no action is to be taken against the suspect. In seeking such advice, the enforcement agency will have to produce to the DPP all the investigation papers, including the statements of the various witnesses and the suspects, photographs and sketch-plans, medical and other reports, investigation diaries and summaries of the facts. On occasion, the DPP may also call for the investigation papers on his own motion or interview the witnesses before giving directions regarding the prosecution of any case.

32. In general, the Attorney-General's Chambers will normally proceed to direct that prosecution be proceeded with when there is a *reasonable prospect of securing a conviction*, given that the burden of proof in criminal cases is that the case must be proved *beyond reasonable doubt*. It should be borne in mind that in the vast majority of cases, the prosecution in an adversarial system such as the one we have in Singapore does not have the benefit of fully considering the defence case before trial. Neither does the prosecution have the benefit of interviewing the accused persons prior to the trial for the purpose of assessing their credibility or the merits of their defence. All that is available to the prosecution up to that stage are the statements recorded by the investigators from the accused persons, who may not have disclosed everything in their possession or knowledge to the investigators. The assessment whether there is "*a reasonable prospect of securing a conviction*" is, therefore, based on whatever reliable evidence there is access to.

33. We consider that unless there is a reasonable chance on the available evidence that a conviction will eventually result, it may not be fair to an accused person to put him or her through the rigours of a public trial. Being tried for an offence involves expense for the defendant, who may have to pay his lawyers' fees. A defendant also has to go through the inconvenience of appearing in court, and his reputation may also suffer from having to defend himself in public against a criminal charge. The mental torture of undergoing a trial also adds to the reasons why a person should not be put through a trial unless there are good grounds for believing that conviction would follow.

34. In order to ensure good and consistent decisions in capital and more serious cases, the Attorney-General's Chambers Criminal Justice Division has set up a system in which every such case is reported by the prosecuting DPPs to a panel consisting of three or more senior DPPs (or "mentors"), who have equal say in the recommendation made. The recommendation is passed

through the Head (or Deputy Head) of the Division, who adds his suggestion to the panel's and forwards the entire file to the Attorney-General for the final decision. In this way, the Attorney-General gets the assistance of the two most senior levels of officers before he reaches his decision. The decision is thus not left to a single officer to make, but is taken at the very highest level, with the combined assistance of the most experienced officers.

H. Exercise of the Discretion Not to Prosecute

35. It is not in every case where there is good evidence that the Public Prosecutor will direct that the offender be prosecuted. Mitigating factors are taken into consideration in deciding whether or not to proceed with prosecution, and not infrequently, warnings are issued in lieu of prosecution where there are good grounds for doing so. These grounds may include sympathetic considerations; the age or immaturity of the offender; the provocation or temptation provided by the victim; remorse or rehabilitation of the offender; low degrees of culpability, contribution to the offence or guilty intent; and voluntary disclosure of the offence and/or restitution on the part of the offender.

36. In addition to the cases which the prosecution does not proceed with, there is another category of offences which are listed as being compoundable under the Criminal Procedure Code. Such offences may be compounded by the victim with the consent of the court, and while any objection on the part of the prosecution will be taken into consideration by the court in deciding whether or not to give the requisite consent, the final say on whether an offence is to be compounded or not belongs to the court and not the prosecution. Composition of an offence has the effect of an acquittal, and the accused person is thereafter discharged from further having to attend the court proceedings. The composition of offences can be done only after the accused has been indicted. Only relatively minor offences mainly affecting particular victims individually are listed as compoundable in the Criminal Procedure Code.

I. Remedies Where the Public Prosecutor Decides Not to Prosecute

37. The discretion given to the Public Prosecutor regarding prosecution is a very wide one. In theory, it might be possible for a private person who is aggrieved by a decision of the Public Prosecutor to apply to the Supreme Court for a prerogative writ known as a *writ of mandamus* to compel the Public Prosecutor to prosecute. This has however never been tested in practice. It seems fairly likely that a court would generally be extremely reluctant, on grounds of public policy, to force the Public Prosecutor to disclose the reasons underlying the exercise of his discretion; and there is decided authority for the proposition that the courts will not interfere with the Public Prosecutor's choice of the charge to be proceeded on.

J. Plea Bargaining

38. This is done solely between the prosecution and the defence, and it usually involves negotiations for a reduced number of charges and/or an amendment to less serious charges in exchange for which the accused will agree to plead guilty. The court is never brought into the negotiations, and in fact the practice is to keep all such communications from the court in order to avoid prejudicing the judge. If, for example, the judge is asked to comment on the sentence an accused person may expect if he were to plead guilty, an impression may be given at that stage that the accused person is in fact guilty. If negotiations break down, another judge would have to hear the case, to avoid

any possibility of prejudice. If the judge is not brought into the negotiations in the first place, the parties can negotiate more freely, without fear that what they say may be used against them in the event that negotiations break down.

39. Where an accused person pleads guilty before the court to a non-capital charge, the proceedings will consist of the court ensuring that the accused person understands the nature and consequences of his plea. A statement of the relevant facts on which the prosecution relies is then read out and the accused person is asked whether he admits those facts. If the facts are admitted *without qualification*, the court will convict the accused person on his plea of guilty and proceed with the sentencing process. If the accused person pleads "not guilty" or qualifies the facts read out, the court will order the hearing of a trial. For capital cases, trial hearings will be conducted regardless of the pleas given by the accused persons.

40. The benefit to the State that accrues from plea bargaining lies in the fact that expensive court time is saved if an accused person pleads guilty. The savings in manpower, in paying the salaries of the judicial officers and court staff, and those of the prosecutors and their supporting staff may be considerable. The freeing of courts also results in other accused persons being able to have their cases heard earlier. At the same time, a plea of guilty is a mitigating factor in favour of the accused.

41. However, the prosecution is always mindful of the need for deterrence when it considers matters raised in plea bargaining, and always endeavours to see that a balance is struck between the benefits mentioned and the other objectives of the criminal justice system.

42. The Attorney-General's Chambers does not initiate plea bargaining with accused persons, especially those who are not represented, in order to avoid situations in which the prosecution may be accused for trying to intimidate suspects. All accused persons or their counsel are free however to write in making representations and all such representations will be accorded due consideration by a deputy public prosecutor.

K. Immunity from Prosecution

43. Offenders may, on every rare occasions, be offered immunity from prosecution if they agree to testify against their accomplices. Such offers are sometimes made where it would not otherwise be possible to obtain evidence against any person involved in the offence. Rather than let *all the* offenders get away scot-free, the prosecution may select one or more of those involved and offer immunity in exchange for their testimony against the others.

44. Generally, it is the investigator who initiates the move to offer immunity. In our experience, we have hardly ever come across any accused person offering in representations made to a deputy public prosecutor to testify for the prosecution in exchange for an assurance that he will not be prosecuted. More often, when an accused person offers to testify for the prosecution, what is asked in exchange is a reduced charge or a reduced number of charges. This demonstrates the attitude taken by the prosecution in Singapore—that wherever possible, it will insist on at least *some* punishment for every guilty person.

45. The investigator has no authority to make an offer of immunity, but may approach the accused persons with the suggestion and gauge their reactions. Thereafter, the investigator will refer to the Attorney-General's Chambers for approval

to make the promise to the person(s) chosen. The request by the investigator is dealt with at the highest level of the Criminal Justice Division, before it is referred to the Attorney-General for his decision.

46. Offers of immunity are made only on very rare occasions. More often than not, a deputy public prosecutor will prefer not to proceed at all than to offer immunity. Great care is taken by the Attorney-General's Chambers to ensure that the accused persons proceeded against are really guilty and that there is no possibility of any miscarriage of justice before a suggestion to offer immunity to any accomplice is agreed to.

L. Judicial System

47. The courts for the administration of criminal justice in Singapore consist of:

a. the High Court,
b. District Courts, and
c. Magistrates' Courts.

District Courts and Magistrates' Courts are collectively termed "Subordinate Courts".

48. In addition, there are two levels of appeal courts. The High Court in the exercise of its appellate jurisdiction hears appeals from District Courts and Magistrates' Courts, while the Court of Appeal hears appeals from the original jurisdiction of the High Court.

49. At the bottom of the ladder, Magistrates' Courts have power to hear and determine prosecutions for offences for which the maximum term of imprisonment provided by law does not exceed 3 years. District Courts have jurisdiction to try all offences for which the maximum term of imprisonment does not exceed 10 years, and the High Court has unlimited jurisdiction to hear any offence punishable by the laws of Singapore.

50. The structure of the Judiciary is set out in Appendix B.

M. Trial Statistics

51. The numbers of trial hearings prosecuted by the Attorney-General's Chambers for 1995 and 1996 are shown in Appendix C. In 1996, the number of 2504 trials in the Subordinate Courts was handled by an average of 31 DPPs, making a total of about 6 to 7 trials per DPP per month. This includes time for preparation for the trials, interviews of witnesses, familiarisation with the facts of the cases and research on the law. In contrast, 38 DPPs dealt with only 67 cases in the High Court during the same period of time. The stark difference is accounted for by the fact that 2 DPPs are assigned to prosecute each High Court case, and the 38 DPPs also handled 247 Magistrates' Appeals, 23 appeals to the Court of Criminal Appeal, 25 Criminal Revision proceedings and 19 Criminal Motions. The cases handled by these 38 DPPs involve much more work per cases, and generally the more senior DPPs are assigned to do this type of work. In addition, most of the other work listed in Appendix C is also done by these 38 DPPs.

N. Fixing of Trial Dates

52. After accused persons are charged in court, there usually follows a period when matters preliminary to trial have to be attended to. Investigations may have to be completed, advice may have to be sought by enforcement agencies from a deputy public prosecutor, plea bargaining may be attempted, and counsel may need time to take instructions from their clients. The progress of these matters is closely monitored by the court, and parties are required to return to report to the court periodically. When all such matters have been completed and the cases are ready for trial, the court will fix a pre-trial conference for each case. In the pre-trial conference, matters such as agreement on certain facts,

crystallization of issues, and the exchange of certain evidence, particularly documentary evidence are attended to before the judge. Dates are then allocated according to the time that the judge, assisted by the parties, estimates to be necessary for the hearing of each particular case.

O. Trial

53. At the commencement of the trial, the charge is read to the accused person. This is done even if it had been read out to him previously on other dates. The accused person is then asked whether he is guilty of the offence or whether he claims to be tried. If the accused person pleads guilty, the court will have to satisfy itself that he understands the nature and consequences of his plea, and if so, will convict him of the offence. If the accused claims to be tried, the court will proceed to hear the evidence.

54. The prosecution has to call its witnesses first. The discretion as to which witnesses to call and in what order lies solely with the prosecutor. Each witness is first examined in chief by the prosecution, meaning that the prosecution has to elicit the evidence from its witness by asking questions in such that the answer is not suggested to the witness. Thereafter, the witness may be cross-examined by the accused person or his counsel. Cross-examination is not subjected to the same restriction as examination in chief. When the cross-examination is concluded, the witness may be re-examined by the prosecutor. Re-examination is confined to clarifying matters raised in cross-examination, and, as in the case of examination in chief, leading questions may not be asked.

55. After the prosecution has called all its witnesses, the court has to determine whether a *prima facie* case has been made out, which if unrebutted would warrant the conviction of the accused. Before doing so, the court will hear submissions from both the prosecution and the defence. If the court finds that no such case has been made out, it will record an order to acquittal. Otherwise, the court will call upon the accused to give evidence in his own defence, and will explain to him the effect of not doing so.

56. If the accused person elects to give evidence, his testimony has to be taken before that of any other witness for the defence. All witnesses for the defence are examined in chief by the accused or his counsel, cross-examined by the prosecution, and re-examined in much the same manner as the prosecution witnesses before them. Where there is more than one accused person, each witness (including the accused persons themselves if they elect to testify) may be cross-examined on behalf of any other accused person jointly charged in the same trial.

57. At the close of the case, the prosecution and the defence may again address the court. If the court finds the accused not guilty, it will record an order of acquittal and discharge him provided no other charge is pending against him. If the court finds the accused guilty of the charge, it will convict him of the same and proceed to pass sentence.

P. Some Burdens of Proof

58. At the close of the case for the prosecution, the court is not required to weigh the evidence or the credibility of the witnesses, but only to determine whether on the evidence before it, if such evidence, not inherently incredible, be true, all the ingredients of the charge have been made out.

59. If the accused, after having been called upon by the court to give evidence in his own defence, refuses to testify, the court

may, in determining whether he is guilty of the offence, draw such inferences from that refusal as may appear proper, including inferences which may be adverse to the accused.

60. The burden at the conclusion of all the evidence is somewhat different from that at the close of the prosecution's case. In order that a conviction be recorded, the court has to find that the prosecution has proved it case *beyond reasonable doubt*.

Q. Sentencing

61. Before proceeding to pass sentence, the court will want to hear from the prosecution regarding the antecedents of the accused person. The prosecutor will read out the antecedents if any and the accused will be asked if he admits those antecedents. If he does, the antecedents will be taken as proved, otherwise a hearing will be conducted for the antecedents to be proved.

62. The defence will then be given a chance to make a plea in mitigation to the court. This plea must be confined to matters which do not call in question the legality or validity of the conviction. The prosecution may dispute any part of the plea in mitigation, and if not withdrawn by the defence, a hearing may be conducted for the disputed portion to be adjudicated upon. The prosecution may also in certain cases address the court on the sentence to be imposed. This is not a right as such prescribed in any statute, but is a practice which has developed. The courts generally take the attitude that it does not hurt to hear what the prosecution has to say. The judge can always disregard what the prosecutor says if he does not agree.

63. As a matter of practice, the prosecution's address on sentence does not touch on the *quantum* or tariff, only on the factors which may be seen to aggravate the offence, and in some cases on the *type* of sentence that the prosecution is asking the court to impose. The most common instance in which the prosecution will address the court on sentence is where a deterrent sentence is asked for on grounds of public policy or because of the circumstances of the case.

R. Victim Impact Statements

64. Of late, a practice has developed whereby after recording a conviction, the court may call for a statement from the victim in respect of the impact that the crime in question has had on him or her. This statement is used to assist the court in assessing sentence. In the past, only on rare occasions did the court ask to hear from the victim. Now this procedure has been formalized and judicial officers are actively encouraged to call for such statements in appropriate cases.

65. Although arrived at independently by the judiciary in Singapore, this practice of calling for such statements would meet with the approval of a rising school of thought known as "Victimology", which is currently gaining popularity, particularly in Europe, New Zealand and the U.S.A. This school urges that the rights of victims of crime should be taken seriously and treated as no less important than the rights of accused persons.

66. The prosecution has undertaken the task of assisting the court in obtaining such statements. Instructions will be given by a deputy public prosecutor to the investigating officer to contact the victim for this to be done. Sometimes, when the prosecution intends to address the court on sentence, instructions will be given in advance for a statement to be prepared, even without the court calling for it.

67. The investigating officer will contact the victim and inform him or her that it is

proposed that a statement setting out the impact the offence has had on the victim be tendered to assist the court in deciding on the appropriate sentence for the offender. The victim is informed that he or she is at liberty to refuse to mention anything which he or she does not want to be brought to the court's attention for this purpose, but any information given in the statement has to be true and correct, and any false information would render the victim liable to criminal prosecution. The victim is also told that a copy of the statement may be made available to other persons such as the accused, defence counsel, and the media, and that he or she may be cross-examined on any matter relevant to it.

68. After the statement is recorded, a deputy public prosecutor will tender it to the court for consideration before sentence is passed.

S. Appeals

69. The conviction rates in 1996 for some of the more serious offences tried in the High Court are set out in Appendix D. The rates of conviction and acquittal are consistent with the prosecution's policy of proceeding only where there is a reasonable prospect of securing a conviction.

70. Any person (including the Public Prosecutor) who is dissatisfied with any judgement, sentence or other order pronounced by a District or Magistrate's Court in a criminal matter to which he is a party may appeal to the High Court, subject to the following restrictions:

a. where an accused person has pleaded guilty, there can be no appeal except as to the extent or legality of the sentence; and
b. when an accused person has been acquitted, there shall be no appeal except by the Public Prosecutor.

71. The High Court may also on its own motion call for the record of proceedings of any case heard in a District or Magistrate's Court and deal with it as if an appeal had been field.

72. Appeals from judgements or sentences of the High Court may be made to the Court of Appeal in the exercise of its criminal jurisdiction. The Public Prosecutor may appeal against the acquittal of any person or on the ground of the inadequacy of any sentence passed.

73. In 1996, out of a total of 33 appeals to the High Court by the prosecution, 18 were allowed, 11 were dismissed and 4 were withdrawn. The High Court allowed a total of 50 appeals by accused persons and dismissed 93, and 19 were withdrawn during the same period. The figures show that accused persons filed about 5 times as many appeals as the prosecution.

74. The corresponding figures for appeals to the Court of Appeal decided in 1996 are as follows:

• Prosecution

Filed	Allowed	Dismissed	Withdrawn
4	1	3 (1 by dissenting judgement)	Nil

• Defence

Filed	Allowed	Dismissed	Withdrawn
44	2	32	10

75. It can be seen from the above figures that the prosecution files very few appeals to the Court of Appeal compared to the defence. The reason for this is that where there is a death sentence passed, an appeal will almost inevitably follow, although a person sentenced to death is not compelled by law to file an appeal.

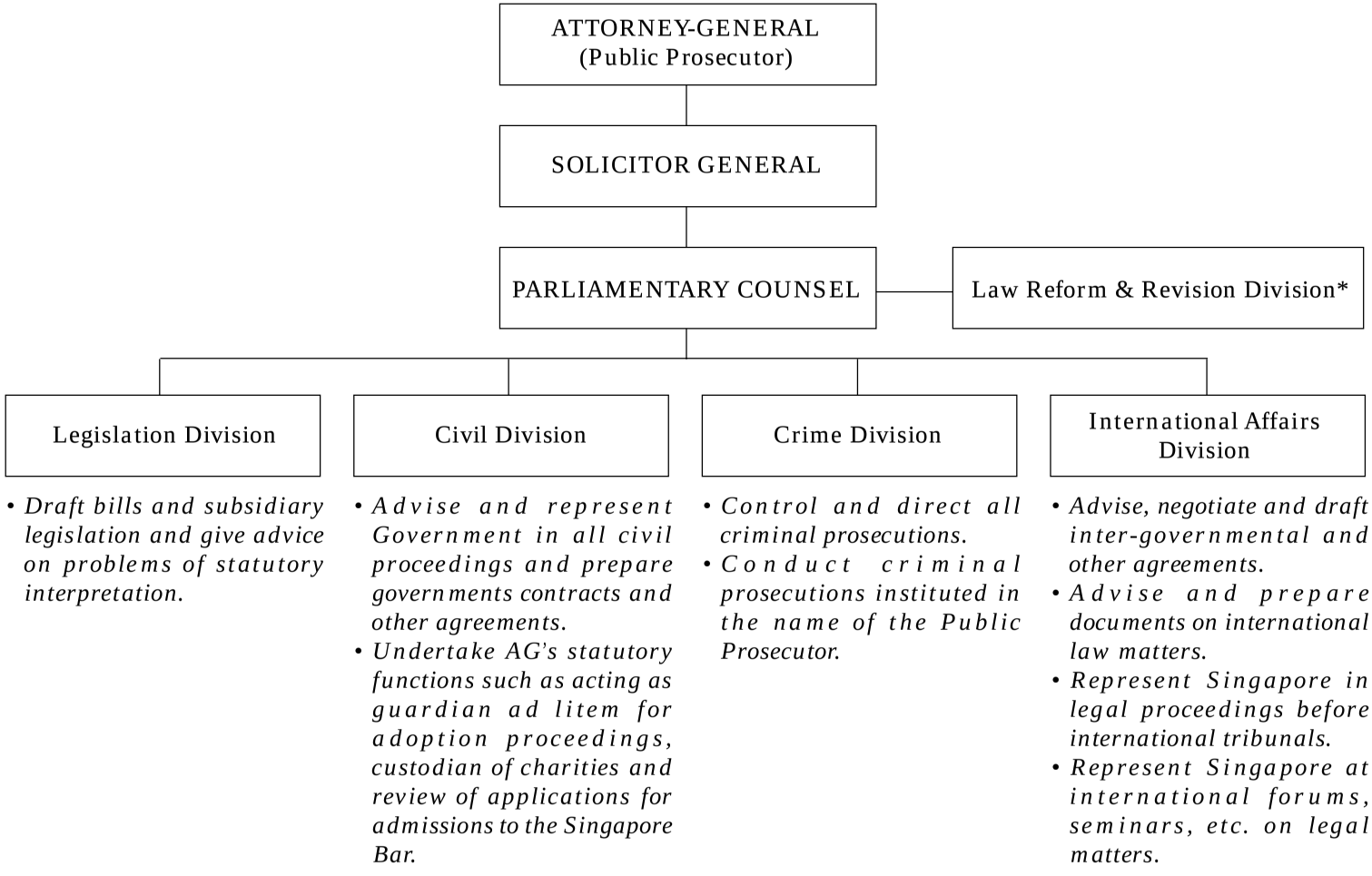
76. Appeals by the prosecution to the Court of Appeal against acquittals in capital cases have hardly ever been allowed. To the best of my memory, there have been only two such cases previously, in which acquittals in drug trafficking cases were overturned on appeal and the offenders were sentenced to death by the Court of Appeal. The case in 1996 which was dismissed with a dissenting judgement was the closest to which an acquittal in a murder case has ever come to being overturned on appeal. There has however been one murder case in the past in which the prosecution's appeal against an acquittal without the defence being called was allowed. The case was sent back to the High Court for the defence to be called upon, and the accused was convicted after the High Court heard the defence. There have, however, been several drug trafficking cases in which cases were similarly sent back to the High Court for the defence to be called. Some resulted in acquittals and one in a conviction after the defences were heard.

III. MISSION

77. The mission statement of the Attorney-General's Chambers Criminal Justice Division is: "To promote a just criminal justice system by pursuing a fair and impartial policy in the prosecution of offenders". Towards this end, the prosecution in Singapore seeks to give due consideration to, and to balance the rights of all those affected by the system—the social community, the accused and the victim—in supplementing the efforts and endeavours of the Judiciary in providing prompt, enlightened and transparently fair administration of criminal justice.

APPENDIX A

STRUCTURE OF ATTORNEY-GENERAL'S CHAMBERS



APPENDIX B

STRUCTURE OF THE JUDICIARY

CONTROL OF APPEAL
(Chief Justice & 2 Judges of Appeal)

- *Appellate civil jurisdiction for claims exceeding $30,000 or otherwise leave is required.*
- *Appellant criminal jurisdiction—appeals from High Court in exercise of its original criminal jurisdiction and question of law from a subordinate court appeal to the High Court.*

HIGH COURT
(Chief Justice, 12 Judges, 4 Judicial Commissioners)

- *Original civil jurisdiction for claims exceeding $250,000.*
- *Original criminal jurisdiction for all offences under Singapore law committed within Singapore and on board Singapore-registered ships and aircraft; offences committed by Singapore citizens on high seas aircraft and offences committed by any person amounting to piracy on the high seas and hijacking or aircraft.*
- *Appellate civil jurisdiction—appeals from the District and Magistrate's Courts for claims exceeding $5,000 or otherwise leave is required. Also appeals from other tribunals if the law so provides.*
- *Appellate criminal jurisdiction—appeals from the District and Magistrate's Courts and any points of law reserved by such a Court.*

SUBORDINATE COURTS

District Court

- *General civil jurisdiction for claims up to $250,000.*
- *General criminal jurisdiction for offences punishable with fine up to $10,000, imprisonment up to 7 years, or caning up to 12 strokes (for male offenders) or any lawful combination of these punishments.*

Magistrate's Court

- *General civil jurisdiction for claims up to $30,000.*
- *General criminal jurisdiction for offences punishable with fine up to $2,000, imprisonment up to 2 years, or caning up to 6 strokes (for male offenders) or any lawful combination of these punishments.*

Corner's Court

To ascertain causes and circumstances of all unnatural deaths.

Juvenile Court

Try offences committed by offenders below 16 years.

Family Court

Deal with family law matters and adoptions.

Small Claims Tribunals

Deal with claims up to $10,000 or $20,000 by consent of both parties.

Court Mediation Centre

Provide a forum for disputants to resolve disputes involving family and juvenile matters, small civil claims and Magistrate's complaints without adjudication.

APPENDIX C

CRIME DIVISION

Types of Files/Matters	Number of New Files	
	1995	**1996**
General Advice	600	590
Attending to Representations of Accused Persons or Their Counsel	4183	3967
Considering Requests from Private Parties for Fiats	220	262
Coroner's Inquiries	49	95
Preliminary Inquiries	70	49
Subordinate Court Trials	1613	2504
High Court Trials	108	67
Magistrate's Appeals	259	247
Criminal Appeals	73	23
Criminal References	3	0
Criminal Revisions	28	25
Criminal Motions	43	19

APPENDIX D

1996 CONVICTION RATES FOR SERIOUS OFFENCES

	Convicted after Trial	Plead Guilty	Convicted on Reduced Charge	Acquitted
Drugs	28	9	0	4
Rape	4	10	0	1
Unnatural Offences	1	1	0	1
Murder	7	0	2	3
Homicide	3	11	0	0
Arm Offences	1	2	0	1
Robbery	2	2	0	0