

STATUTORY INTERPRETATION IN SINGAPORE

15 Years on from Legislative Reform

More than 15 years ago, the Singapore Parliament passed legislation in 1993 directing the courts to prefer an interpretation that would promote the purpose or object underlying any written law. That same legislation also contained guidance on when extrinsic materials may be referred to in ascertaining the meaning of a statutory provision, as well as the type of materials which may be considered in such circumstances. This article provides an update on the 15th anniversary of the aforementioned legislative reform on statutory interpretation in Singapore, shedding light on the remarkable transformation in the approach taken by the Singapore courts towards statutory interpretation: indeed, from an initially cautious approach, the Singapore courts have now adopted an extremely expansive view of the effects of the 1993 reform. This article outlines some problems for the future, along with the attendant suggested solutions, for further consideration. It is hoped that the account provided in this article will be of interest to the particular issue of the local approach in statutory interpretation and, more broadly, to the universal and enduring problem of the proper approach towards statutory interpretation.

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I. Introduction

1 In 1993, shortly after the seminal House of Lords decision of *Pepper (Inspector of Taxes) v Hart*¹ (“*Pepper v Hart*”) was decided,

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1 [1992] 3 WLR 1032. See, for example, T St J N Bates, “Parliamentary Material and Statutory Construction: Aspects of the Practical Application of *Pepper v Hart*” (*cont’d on the next page*)

Parliament swiftly enacted into law statutory provisions² within the then existing Interpretation Act,³ thereby heralding in a new⁴ era of statutory interpretation in Singapore. The speed with which Parliament was able to pass these enactments into law – with little, if clear and concise, debate⁵ – was perhaps a hint of the expansive approach eventually

(1993) 14 Statute LR 46; and Francis Bennion, “Hansard – Help or Hindrance? A Draftman’s View of *Pepper v Hart*” (1993) 14 Statute LR 149.

- 2 The provisions concerned were ss 9A(1)–9A(4) of the Interpretation Act (Cap 1, 1985 Rev Ed). The present edition of the Interpretation Act is the 2002 revised edition. The amending Act to the 1985 edition of the Interpretation Act was the Interpretation (Amendment) Act 1993 (No 11 of 1993).
- 3 Cap 1, 1985 Rev Ed. Since 1993, the Interpretation Act has been amended several times, but mainly indirectly due to amendments to other Acts. The only time when it was amended directly and substantively was in 1998 via the Interpretation (Amendment) Act 1998 (No 22 of 1998), which inserted s 2A, which in turn concerned the criteria for determining death, into the Act. Owing to the social importance of this amendment, there was a select committee report on the Interpretation (Amendment) Bill (No 17 of 1997) (see *Singapore Parliamentary Debates, Official Report*, vol 69, No 9 at cols 502–509) although there was no similar report for the insertion of s 9A(1)–(4) in 1993. The present edition of the Act is the 2002 revised edition but the chapter number remains unchanged.
- 4 Although, it must be said, not altogether original. Sections 9A(1) and 9A(2)–9A(4) were evidently based on s 15AA and s 15AB of the Australian Acts Interpretation Act 1901 respectively. Indeed, the wordings of the corresponding sections are substantively similar. On the Australian provisions, including their enactment, see generally, “Current Developments: Guidelines for Interpretation in Australia” (1981) Statute LR 181; “Current Developments: An Australian Symposium on Statutory Interpretation” (1982) Statute LR 172; “Current Developments: Developments in Australian on Statutory Interpretation” (1983) Statute LR 116; and “Current Developments (Comments): Amending Australia’s Interpretation Act” (1984) Statute LR 184, as well as Patrick Brazil, “Reform of Statutory Interpretation – The Australian Experience of Use of Extrinsic Materials: With a Postscript on Simpler Drafting” (1988) 62 ALJ 503. Also see the very useful account provided by D C Pearce & R S Geddes, *Statutory Interpretation in Australia* (Sydney: LexisNexis Butterworths, 6th Ed, 2006) at pp 29–38 and 78–113. For a comparison of the New Zealand statutory interpretative approach, see, for example, Kate Tokeley, “Interpretation of Legislation: Trends in Statutory Interpretation and the Judicial Process” (2002) 33 Victoria U Wellington L Rev 545 and John Burrows, “Interpretation of Legislation: The Changing Approach to the Interpretation of Statutes” (2002) 33 Victoria U Wellington L Rev 561. On the English approach, see generally, Alec Samuels, “The Interpretation of Statutes” (1980) Statute LR 86; Lord Renton, “Interpretation of Legislation” (1982) Statute LR 7; and Lord Millett, “Construing Statutes” (1999) 20 Statute LR 107.
- 5 The parliamentary debate on the Interpretation (Amendment) Bill (No 4 of 1993) took place on 26 February 1993: *Singapore Parliamentary Debates, Official Report*, vol 60, No 6 at cols 516–519. Indeed, the legislative proceedings were so concise that the Minister’s speech on the Second Reading of the Bill was finished within less than two columns of the report (cols 516–517) and only one member spoke in the ensuing “debate” (cols 517–518). The Bill was then read a third time and passed (col 519). This could be contrasted with the Australian experience, which first found life in two symposia, namely *Another Look at Statutory Interpretation*, AGPS, Canberra, 1982 and *Symposium on Statutory Interpretation*, AGPS, Canberra, 1983. The (more) detailed parliamentary background to these provisions
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adopted by the courts *vis-à-vis* the legislative reform effected by these enactments.⁶ Fifteen years on,⁷ it is perhaps timely now to provide a comprehensive update on the effects of the legislative reform.⁸ Indeed, the three broad issues addressed by the legislative reform – the approach to be taken by the courts in interpreting statutes, the circumstances in which extrinsic materials may be referred to in interpreting statutes and the type of extrinsic materials which may be referred to – have been so comprehensively examined by the Singapore courts since 1993 that there is now a body of case law sufficient to compare with other jurisdictions which have adopted similar legislative reform. Yet, with this now expansive (and expanding) body of case law giving effect to the legislative reform on statutory interpretation, there have been new problems – some yet to be identified by the courts – which demand clarification.

II. Legislative reform via the Interpretation (Amendment) Act 1993

2 Before discussing the present developments relating to statutory interpretation in Singapore, it will be helpful first to summarise the circumstances under which the legislative reform of 1993 took place, as well as the substance of the reform.⁹

were: *Parliamentary Debates 1981 (Senate)* (28 March 1981) at 2308–2315; *Parliamentary Debates 1981 (House of Representatives)* (2 June 1981) at 2893–2894; *Parliamentary Debates 1984 (Senate)* (8 March 1984) at 582–583 and (30 March 1984) 955–964; and *Parliamentary Debates 1984 (House of Representatives)* (3 April 1984) at 1287–1288, and (3 May 1984) 1746–1749 and 1790–1796. See also *Parliamentary Debates 1982 (Senate)* at (14 October 1982) 1483–1486 and *Parliamentary Debates 1983 (Senate)* (30 November 1983) at 3028–3030.

- 6 See Brady Coleman, “The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore” [2000] Sing JLS 152 at 160–161 and Low Siew Ling, “Citing Legal Authorities in Court” (2004) 16 SAclJ 168 at 183–190.
- 7 Robert Beckman & Andrew Phang, “Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore” (1994) 15 Statute LR 69 at 82–91. See also Dennis Ong, “Interpretation (Amendment) Act 1993: Flood of Light or an Exercise in Futility?” (1993) 2 Asia Business Law Review 91.
- 8 Although see Brady Coleman, “The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore” [2000] Sing JLS 152 at 160–161 and Low Siew Ling, “Citing Legal Authorities in Court” (2004) 16 SAclJ 168 at 183–190 for a brief commentary on the effect of the legislative reform in 2000 and 2004 respectively.
- 9 See also, generally, Robert Beckman & Andrew Phang, “Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore” (1994) 15 Statute LR 69.

A. *The position prior to legislative reform*

3 Prior to the legislative reform of 1993, statutory interpretation in Singapore operated within undefined and vague parameters.¹⁰ There was simply no authoritative decision from the courts outlining the proper interpretative approach to take. Neither was there any guidance on the usability of extrinsic materials in the interpretative process. It is arguable that the courts saw no need for an overarching (and binding) approach, preferring to deal with statutory interpretation on a case-by-case basis; presumably on the basis that the flexibility in approach allows the just result to be reached in each case.

4 The lack of an authoritative decision from the Singapore courts mirrored the situation in England.¹¹ Indeed, in as much as the Singapore legal system prior to 1993 followed the English system,¹² the lack of a unifying approach reflected the English position at common law, wherein several interpretative approaches existed simultaneously, the application of one seemingly interdependent on the others.¹³ The decision in *Low Gim Siah v Law Society of Singapore*¹⁴ (“*Low Gim Siah*”), in which the High Court expressly preferred the purposive approach (ie, an approach which involved the ascertainment and effecting of the purpose and intention underlying the relevant statutory provision) over the other common law approaches,¹⁵ did not end the debate over the

10 Brady Coleman, “The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore” [2000] Sing JLS 152 at 152.

11 See David Miers, “Barking Up the Wrong Tree: Determining the Intention of Parliament” (1992) 13 Statute LR 50; and Vera Sacks, “Towards Discovering Parliamentary Intent” (1982) Statute LR 143.

12 The foundation of the Singapore legal system is English law, owing primarily to the historical origins of modern Singapore, viz, it was a British Colony upon its founding in 1819 until the 1960s. As a result, developments in the English common law have traditionally had a strong influence in Singapore, even after its independence in 1965. However, after the passage of the Application of English Law Act (Cap 7A, 1994 Rev Ed), which clarified that the English common law shall be applicable in Singapore with such modifications as the local circumstances require, the Singapore courts have begun to exercise some degree of departure from the English decisions: see, generally, Andrew Phang, *The Development of Singapore Law: Historical and Socio-Legal Perspectives* (Singapore: Butterworths, 1990); Andrew Phang, “Cementing the Foundations: The Singapore Application of English Law Act 1993” (1994) 28 UBC K Rev 205; and Andrew Phang, “Of Generality and Specificity – A Suggested Approach Toward the Development of an Autochthonous Singapore Legal System” (1989) 1 SAclJ 68.

13 David Miers, “Barking Up the Wrong Tree: Determining the Intention of Parliament” (1992) 13 Statute LR 50.

14 See, for example, Robert Beckman & Andrew Phang, “Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore” (1994) 15 Statute LR 69 at 72 and Brady Coleman, “The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore” [2000] Sing JLS 152 at 152.

15 [1992] 1 SLR 166. In *Low Gim Siah*, Goh Phai Cheng JC accepted that the literal rule was “only one of the several rules of statutory interpretation” (at [23]),
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criterion under which the purposive approach was to be adopted in Singapore:¹⁶ did the purposive approach operate to the exclusion of the other approaches, or were the courts allowed to “pick and choose” from a selection of several approaches? And if so, were there any external guidelines governing their choice? Although it might have been that several members of the House of Lords had begun to adopt the purposive approach in interpreting statutes,¹⁷ even that in England did not resolve the deeper problem of the relationship between the various approaches.¹⁸ *Low Gim Siah* must, therefore, be seen against the backdrop of sustained and persistent parallel decisions which adopted varying approaches (and terminology) when interpreting statutes in Singapore prior to the 1993 legislative reform. For example, in *Wah Tat Bank Ltd v Chan Cheng Kum*,¹⁹ the High Court adopted the “plain and ordinary meaning” of a certain statutory provision without (expressly)

although he did not say authoritatively that the literal rule was no longer applicable in Singapore. In fact, he did not refer to cases wherein the literal rule was applied. The better view would, therefore, be that *Low Gim Siah* should not be regarded as a decision in which the purposive approach was adopted to the exclusion of the other common law approaches prior to the 1993 legislative reform. See also *Chan Ah Yoke v Eastern Realty Co Ltd* [1982–1983] SLR 426 and “*The Epar*” [1984–1985] SLR 409, as well as the decision of the Singapore Tax Income Board of Review in *HI v Comptroller of Income Tax* [1992] SGITBR 1, which decision was eventually reversed by the Singapore High Court in [1992] 2 SLR 472, but which decision was in turn reversed by the Singapore Court of Appeal in [1993] 2 SLR 48.

- 16 Brady Coleman, “The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore” [2000] Sing JLS 152 at 153. Indeed, Coleman points to the decision of the Singapore Court of Appeal decision of *Trustees of the Kheng Chiu Tin Hou Kong and Burial Ground v Collector of Land Revenue (Housing and Development Board)* [1992] 1 SLR 425, in which the court stated: “The fundamental rule of interpretation of a statute is to ascertain the intention of Parliament. If, the words of the statute are in themselves precise and unambiguous the court must give effect to them according to their natural and ordinary meaning, as the words themselves best declare the intention of Parliament. If, however, adhering to their grammatical and ordinary meaning would lead to some absurdity, or some repugnancy or inconsistency with the other parts of the statute, the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further ...” (at [16]). This seems to suggest that ambiguity or inconsistency was required before the legislative purpose was considered or, at the very least, a *presumption* that the legislative purpose (stated to be “fundamental” in statutory interpretation) would be expressed in plain and ordinary language.
- 17 Robert Beckman & Andrew Phang, “Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore” (1994) 15 Statute LR 69 at 71. Also see *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850; *Pepper v Hart* [1992] 3 WLR 1032 at 1057. The unitary approach or the “golden rule of construction” is most generally attributed to Lord Simon: see *Maunsell v Olins* [1975] AC 373 and *Farrell v Alexander* [1977] AC 59.
- 18 See also Randal N Graham, “A Unified Theory of Statutory Interpretation” (2002) 23 Statute LR 91.
- 19 [1972–1974] SLR 335.

considering either the purpose or intention behind the statute.²⁰ Similarly, in *The "Permina 108"*,²¹ the Court of Appeal gave the statutory provision concerned its "plain and ordinary meaning"²² because the words were "free of any ambiguity"²³ and "not reasonably capable of more than one meaning".²⁴ The Court of Appeal subsequently declined to consider extrinsic materials in the form of an international treaty to interpret the statutory provision concerned. These decisions must raise the question of the general applicability of the purposive approach prior to the 1993 legislative reform. Indeed, the then leading English authority for the purposive approach, viz, the speech of Lord Diplock in *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd*,²⁵ was not cited in any reported Singapore decision prior to 1993 as authority in articulating the purposive approach.²⁶ Likewise, *Maunsell v Olins*²⁷ and *Farrell v Alexander*,²⁸ both standing for the "golden rule of construction", which allows for departure from the literal rule and is closer to the purposive approach, had been applied only once²⁹ by a Singapore court prior to 1993. Therefore, the Singapore position prior to the 1993 legislative reform could fairly be said to be in a state of uncertainty, at least in relation to the proper interpretative approach to take in statutory interpretation. At the very least, it could not be said with confidence that the dominant interpretative approach was the purposive one.

5 In relation to the use of extrinsic materials, there existed an "understanding"³⁰ that the practice of the English courts prior to *Pepper v Hart* would be followed, in that direct judicial reference to parliamentary debates would be prohibited.³¹ At the same time, there had been some departure from the strict English approach in at least two Singapore cases prior to *Pepper v Hart* (and, hence, before the 1993

20 [1972–1974] SLR 335 at [102].

21 [1975–1977] SLR 221.

22 [1975–1977] SLR 221 at [10].

23 [1975–1977] SLR 221 at [10].

24 [1975–1977] SLR 221 at [10].

25 [1971] AC 850.

26 Although the decision was cited for other propositions, for example, in *Ling Kai Seng v Outram Realty Pte Ltd* [1991] 1 SLR 1021 for the legal requirements of a waiver.

27 [1975] AC 373.

28 [1977] AC 59.

29 That was *Maunsell v Olins* [1975] AC 373 in *Low Gim Siah v Law Society of Singapore* [1992] 1 SLR 166.

30 Robert Beckman & Andrew Phang, "Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute LR 69 at 75. See also David Miers, "Citing Hansard as an Aid to Interpretation" (1983) Statute LR 98; and S J Gibb, "Parliamentary Materials as Extrinsic Aids to Statutory Interpretation" (1984) Statute LR 29.

31 See *In Re Application by Laycock and Ong* [1954] MLJ 41.

legislative reform).³² In those cases, references to parliamentary debates featuring the Minister's Second Reading speech were made, although the question whether such references were permitted was not explicitly addressed. Likewise, reference had been made to Explanatory Statements to Bills³³ and Select Committee Reports,³⁴ but without any detailed consideration of the permissibility of such reference at law.³⁵ Quite clearly, the Singapore courts favoured recourse to extrinsic materials prior to the 1993 legislative reform where, if doing so, enabled a clearer understanding of the statute concerned. However, perhaps pulled back by the weight of English cases to the contrary, they declined to elaborate on the legal permissibility of such reference. It should, therefore, be cause of little surprise that when *Pepper v Hart* was decided, the Singapore courts very quickly cited that as authority for the approach they had already adopted informally. In *PP v Lee Ngin Kiat*³⁶ ("*Lee Ngin Kiat*") and *Tan Boon Yong v Comptroller of Income Tax*³⁷ ("*Tan Boon Yong*"), both decided within the five-month period between *Pepper v Hart* and the 1993 legislative reform,³⁸ the High Court and the Court of Appeal respectively each cited *Pepper v Hart* in support of reference to extrinsic materials; which, in both cases, included the Minister's Second Reading speech. It is interesting that the High Court in *Lee Ngin Kiat* adopted an expansive reading of *Pepper v Hart*, although it is unclear if the court was aware of this. In that case, after stating that the statutory provision concerned was, in its plain and ordinary meaning,³⁹ clear in its scope and intent,⁴⁰ the High Court none the less went on to consider the extrinsic materials to which it was

32 The two cases were *Annathurai v AG* [1987] SLR 375 and *Re Dow Jones Publishing (Asia) Inc v AG* [1988] SLR 481. For discussion, see Robert Beckman & Andrew Phang, "Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute LR 69 at 75.

33 See, eg, *In the Matter of Three Orders of the Governor in Council: Alkaff and Co v Sir Shenton Thomas* [1936] SSLR 291; *Rex v Soh Eng Chian* [1937] MLJ 247; *Moses v Moses* [1965–1968] SLR 694; and *Re Estate of Liu Sinn Min, Deceased* [1972–1974] SLR 591.

34 See, eg, *Television Broadcasts Ltd v Golden Line Video and Marketing Pte Ltd* [1988] SLR 930; *Lim Ying v Hiok Kian Ming Eric* [1992] 1 SLR 184; and *Ng Sui Wah Novina v Chandra Michael Setiawan* [1992] 2 SLR 839.

35 Robert Beckman & Andrew Phang, "Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute LR 69 at 75–76.

36 [1993] 2 SLR 181.

37 [1993] 2 SLR 48.

38 *Pepper v Hart* [1992] 3 WLR 1032 was decided on 26 November 1992, *PP v Lee Ngin Kiat* [1993] 2 SLR 181 was decided on 31 December 1992, *Tan Boon Yong v Comptroller of Income Tax* [1993] 2 SLR 48 was decided on 5 February 1993 and the Interpretation (Amendment) Act 1993 came into effect on 16 April 1993, although the Minister's Second Reading speech took place on 26 February 1993.

39 [1993] 2 SLR 181 at [29]. The exact words of the High Court were: "The new s 17, as it stands, is clear, in my opinion, in its scope and intent." [emphasis added] The expression "as it stands" suggests that it is the plain and ordinary meaning of the statutory provision the court was referring to.

40 [1993] 2 SLR 181 at [29].

referred. However, this is contrary to Lord Browne-Wilkinson's cautious statement in *Pepper v Hart* that such recourse to extrinsic materials would only be allowed if there was either an ambiguity in the statutory provision or an absurdity arising from a literal construction.⁴¹ In *Lee Ngin Kiat*, not only were these conditions not met, the court had itself confirmed that there was no ambiguity or absurdity present. As such, its use of *Pepper v Hart* was in a confirmatory, not ascertainment, sense. This might have foreshadowed the effects of the 1993 legislative reform,⁴² but was an extension rather than a strict application of *Pepper v Hart*.

6 Finally, in relation to the type of extrinsic materials which are permitted to be referred to, it must be said that this is a question inextricably bound up with the second issue discussed in the preceding paragraph. As has been seen, the Singapore courts allowed reference to a variety of different extrinsic materials prior to the 1993 legislative reform without really deciding whether such reference was permissible. Therefore, it could be said that no tolerably consistent approach was taken with respect to this third issue. A closer examination of *Pepper v Hart*, as well as the development of the applicable legal principles thereof, might have shed light on the type of extrinsic materials permitted to be referred to, but the 1993 legislative reform was to render the common law development of such principles unnecessary.

B. The background and substance of the legislative reform

7 It was against the above that Singapore's experiment with legislative reform to its statutory interpretation began, with the passing of the Interpretation (Amendment) Act 1993. The Bill was first introduced in Parliament on 18 January 1993, where it was ordered to be read a second time at the next available parliamentary sitting.⁴³ It was then read a second and third time on 26 February 1993 and passed into law, coming into effect on 16 April 1993. The pertinent sections enacted (or, more accurately, amended into the existing Interpretation Act) are as follows:

Purposive interpretation of written law and use of extrinsic materials

9A.—(1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

41 [1992] 3 WLR 1032 at 1056.

42 On which, see para 7 of this article.

43 *Singapore Parliamentary Debates, Official Report*, vol 60, No 6 at cols 516–519.

(2) Subject to subsection (4), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material —

(a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; or

(b) to ascertain the meaning of the provision when —

(i) the provision is ambiguous or obscure; or

(ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or unreasonable.

(3) Without limiting the generality of subsection (2), the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law shall include—

(a) all matters not forming part of the written law that are set out in the document containing the text of the written law as printed by the Government Printer;

(b) any explanatory statement relating to the Bill containing the provision;

(c) the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament;

(d) any relevant material in any official record of debates in Parliament;

(e) any treaty or other international agreement that is referred to in the written law; and

(f) any document that is declared by the written law to be a relevant document for the purposes of this section.

(4) In determining whether consideration should be given to any material in accordance with subsection (2), or in determining the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to —

(a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; and

(b) the need to avoid prolonging legal or other proceedings without compensating advantage.

8 As significant as this legislative reform was, the associated parliamentary debates during the Second Reading of the Bill were rather short. In the Minister's speech, the purposive approach was highlighted as being the "main amendment"⁴⁴ so as to result in the promotion of the "underlying purpose behind the legislation".⁴⁵ To a member's suggestion that the "mythical"⁴⁶ legislative intent was really attributable to the draftsman who drafted the words, the Minister strongly disagreed, stating that "in this Government, in this Cabinet, the decisions and the intentions are made by Cabinet and the Ministers which compose the Cabinet".⁴⁷ It was quite clear then that the Minister concerned did not subscribe to the view that legislative intent was undecipherable, or that it was a fiction. As for the circumstances in which the courts may make use of extrinsic materials, the Minister understandably referred to *Pepper v Hart* but perhaps inadvertently understated the effect of s 9A(2) in his speech. He said that the amendments were to "enable the Courts to have recourse to the use of Ministerial statements made in Parliament when interpreting any statute in order to ascertain the intention of Parliament should the statute be ambiguous or obscure in its purpose or if a literal reading of the statute would lead to an absurdity".⁴⁸ Whether fully intended or not, this seems to take away the use of extrinsic materials when the statutory provision concerned is neither ambiguous nor would lead to an absurdity; whereas the new s 9A(2)(a) quite clearly confers a power of reference to extrinsic materials even when there is no ambiguity or absurdity. This apparent silence over the confirmatory function of s 9A(2) was (plausibly) to have an indirect effect of the courts' earlier interpretation of this particular section, in particular when recourse to extrinsic materials could be resorted to. Above all, however, the Minister made it quite clear that in an age when the courts are flooded with "ever increasing legislation of a complexity and variety not encountered before",⁴⁹ the courts must have recourse to such extrinsic materials in order to "make well reasoned decisions" and that such materials "may well be crucial to [the courts'] deliberations".⁵⁰

9 And so, with that, the most important legislative reform of statutory interpretation in recent times was implemented in Singapore. The substance of the legislative reform is evident from both the parliamentary debates and the provisions themselves. Section 9A(1) provides that an interpretation that would "promote the purpose or

44 *Singapore Parliamentary Debates, Official Report*, vol 60, No 6 at col 517.

45 *Singapore Parliamentary Debates, Official Report*, vol 60, No 6 at col 517.

46 *Singapore Parliamentary Debates, Official Report*, vol 60, No 6 at col 518. The member had in fact compared the intention of Parliament to a "mythical beast".

47 *Singapore Parliamentary Debates, Official Report*, vol 60, No 6 at col 519.

48 *Singapore Parliamentary Debates, Official Report*, vol 60, No 6 at col 517.

49 *Singapore Parliamentary Debates, Official Report*, vol 60, No 6 at col 519.

50 *Singapore Parliamentary Debates, Official Report*, vol 60, No 6 at col 519.

object” underlying the “written law” shall be “preferred” over an interpretation that did not do so. This evidently endorses and even mandates the use of the purposive approach ahead of all other interpretation approaches.⁵¹ Section 9A(2) deals with the circumstances under which extrinsic materials may be referred to in the interpretation of any statutory provision. There are *two* circumstances envisioned: first, where use of the extrinsic materials would “confirm” the meaning of the provision in its ordinary meaning; secondly, where use of the extrinsic materials would “ascertain” the meaning of the statutory provision concerned when it is ambiguous or obscure, or its ordinary meaning would lead to an absurdity, in both circumstances taking into account the context and the purpose and object of the written law. In the elucidation of the confirmatory and ascertainment use of extrinsic materials, s 9A(2) further supports the view that it is the purposive approach to interpretation which must be adopted.⁵² Section 9A(2) is stated to be subject to s 9A(4), which provides two further considerations when the court considers whether to refer to extrinsic materials in the first place, and, if so, how much weight is to be placed on them: first, the desirability of persons being able to interpret the statutory provision purposively without recourse to extrinsic materials; and secondly, the avoidance of prolonged legal proceedings. Finally, s 9A(3) provides for the types of extrinsic materials which may be referred to, although the list is non-exhaustive.⁵³

C. *Academic views after legislative reform*

10 Early commentators following the 1993 legislative reform pointed to the practical problem of access.⁵⁴ They thought that access to old documents, especially relevant when old English statutes had been received into the law of Singapore, would be difficult to obtain. They thus suggested that, as a matter of principle, reference to parliamentary materials should be restricted to those of the Singapore Parliament after 1959, the year when Singapore achieved internal self-government. This, they made clear, was not satisfactory from a theoretical perspective but might be necessary from a practical viewpoint.⁵⁵ However, they thought

51 See Robert Beckman & Andrew Phang, “Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore” (1994) 15 Statute LR 69 at 82 and Brady Coleman, “The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore” [2000] Sing JLS 152 at 154.

52 Robert Beckman & Andrew Phang, “Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore” (1994) 15 Statute LR 69 at 83.

53 Robert Beckman & Andrew Phang, “Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore” (1994) 15 Statute LR 69 at 86.

54 Robert Beckman & Andrew Phang, “Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore” (1994) 15 Statute LR 69 at 91.

55 Robert Beckman & Andrew Phang, “Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore” (1994) 15 Statute LR 69 at 92.

that the use of extrinsic materials would generally not unduly complicate or prolong litigation even if litigants raise new arguments based on statutory interpretation.⁵⁶ Finally, the commentators suggested that the Registrars of the Supreme Court and the Subordinate Courts provide a practice direction on the use of extrinsic materials, that Explanatory Statements now be made more detailed, and that practical steps be taken to assist lawyers in gaining access to the extrinsic materials, particularly by electronic means, amongst other steps.⁵⁷ These proposals offer a glimpse into the problems foreseen at about the time of the 1993 legislative reform and provide a point to which the present developments can be compared.

III. Statutory interpretation after the legislative reform

A. Purposive approach

11 Following the 1993 legislative reform, the Singapore courts have stated that the purposive approach is the dominant interpretative approach to be used. In one of the most comprehensive surveys of the law relating to s 9A of the Interpretation Act, V K Rajah JA in the High Court decision of *PP v Low Kok Heng*⁵⁸ (“*Low Kok Heng*”) stated that, in Singapore, any discussion on the construction of statutes takes place against the backdrop of that section.⁵⁹ The learned judge opined that s 9A(1) mandated a construction promoting the legislative purpose to be preferred over one that does not promote such purpose or object.⁶⁰ Accordingly, in Rajah JA’s view, any common law interpretative approach, such as the plain meaning rule and the strict construction rule, must yield to the purposive approach.⁶¹ Indeed, this view has become so entrenched that the Court of Appeal was able in *Donald McCarthy Trading Pte Ltd v Pankaj s/o Dhirajlal*⁶² to say that it is “trite” that a court should give effect to the legislative purpose when

56 Robert Beckman & Andrew Phang, “Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore” (1994) 15 Statute LR 69.

57 Robert Beckman & Andrew Phang, “Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore” (1994) 15 Statute LR 69 at 93–94.

58 [2007] 4 SLR 183.

59 [2007] 4 SLR 183at [39].

60 [2007] 4 SLR 183at [41].

61 [2007] 4 SLR 183 at [41]. See also [44], wherein the learned judge referred to s 9A(2) of the Interpretation Act and held that the reference there to the reference to extrinsic materials when confirming or ascertaining that the meaning of the statutory provision is the “ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law” is an unequivocal rejection of the literal rule and/or any other approach suggesting that the purpose or object can be considered only when the ordinary meaning is obscure or ambiguous.

62 [2007] 2 SLR 321.

interpreting an Act of Parliament.⁶³ A great many terminologies have been used to express this purposive approach, for example: “to ascertain the true legislative intention”;⁶⁴ “to put Parliament’s intention into effect”;⁶⁵ “to [give] effect to the intention of the legislature”;⁶⁶ “to give effect to the intent and will of Parliament”;⁶⁷ or simply that the court “should prefer an interpretation that will promote the purpose or object underlying the [Act concerned]” (thereby replicating the words of s 9A(1)).⁶⁸ All of these phrases reflect that it is the legislative intent that must be given effect to. Yet, despite this largely consistent front, there exists beneath the surface underlying difficulties which require more specific consideration.

(1) *Definition of the purposive approach*

12 Ironically, despite the broadly consistent description given to the purposive approach, there appears to be no consistent meaning ascribed to the approach. The first matter is thus the *meaning* of the purposive approach. In this regard, there appears to be some confusion between the purposive approach and the circumstances in which extrinsic materials may be utilised in accordance with the purposive approach. For instance, in *Low Kok Heng*, Rajah JA stated that the purposive approach “allows the judge the latitude to look beyond the four corners of the statute, should he find it necessary to ascribe a wider or narrower interpretation to its words”.⁶⁹ Similar sentiments may be found in the early Court of Appeal decision of *Comptroller of Income Tax v GE Pacific Pte Ltd*,⁷⁰ in which the court stated that s 9A(1) of the Interpretation Act “clearly compels [the court] to put Parliament’s intention into effect and allows [the court] to look beyond the words of [the section concerned]”.⁷¹ *Prima facie*, these statements appear to

63 [2007] 2 SLR 321 at [6].

64 *Raffles City Pte Ltd v AG* [1993] 3 SLR 580 at [17].

65 *Comptroller of Income Tax v GE Pacific Pte Ltd* [1994] 2 SLR 690 at [26]. For a similar expression, see, for example, *L & W Holdings Pte Ltd v Management Corporation Strata Title Plan No 1601* [1997] 3 SLR 905 at [21]; *Nicholas Kenneth v PP* [2003] 1 SLR 80 at [24]; and *Rightrac Trading v Ong Soon Heng* [2003] 4 SLR 505 at [28].

66 *Tan Un Tian v PP* [1994] 3 SLR 33 at [45].

67 See *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201 at [45]; *PP v Heah Lian Khin* [2000] 3 SLR 609 at [45]; and *Tan Kiam Peng v PP* [2008] 1 SLR 1 at [58].

68 *Bestland Development Pte Ltd v Mani Udomkunnatum* [1996] 3 SLR 92 at [43]; *Diaz Priscillia v Diaz Angela* [1998] 1 SLR 361 at [18]; *Yusen Air & Sea Service (S) Pte Ltd v Changi International Airport Services Pte Ltd* [1999] 4 SLR 135 at [49]; *Star City Pty Ltd v Tan Hong Woon* [2001] 3 SLR 206; and *PP v Loo Kun Long* [2003] 1 SLR 28. Elsewhere it has been stated that a “generous and not a pedantic interpretation should be adopted; see also s 9A of the Interpretation Act ...”: see *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR 582 at [49].

69 [2007] 4 SLR 183 at [30].

70 [1994] 2 SLR 690.

71 [1994] 2 SLR 690 at [26].

conflate the purposive approach and the reference to extrinsic materials in aid of the purposive approach. A clearer conflation of this nature is found in *Tan Un Tian v PP*,⁷² where the High Court stated that s 9A(4), which imposes some limits on when extrinsic materials may be referred to, ought to be borne in mind when arguing for a purposive approach to interpretation.⁷³ The court evidently thought that the purposive approach was subject to s 9A(4), when in fact s 9A(4) itself advocates the purposive approach; the error was the conflation of the reference to extrinsic materials (which s 9A(4) limits) with the purposive approach (which s 9A(4) does not).⁷⁴ While it is true that the court looked at the statutory provision concerned in the context of its surrounding provisions, statements of that kind *could* lead to confusion between use of the purposive approach itself and the separate issue concerning the use of extrinsic materials. Section 9A(1) itself does not prescribe *how* the purposive approach is to be exercised; it merely provides for its *use*. Indeed, it is respectfully suggested that such a sentiment confuses the approach with the consequences of applying the approach. The purposive approach, by itself, does not mandate the use of extrinsic materials. That is a separate issue, and indeed, s 9A itself, in providing for these two issues separately via two subsections, shows that the two are not identical.⁷⁵ An appreciation of the separation in the two issues is

72 [1994] 3 SLR 33.

73 [1994] 3 SLR 33 at [34].

74 See also Robert Beckman & Andrew Phang, "Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute LR 69 at 86. For other cases which have conflated the two issues, see, for example, the decision of the High Court in *Ong Chin Keat Jeffrey v PP* [2004] 4 SLR 483, in which the High Court first said that under s 9A of the Interpretation Act, a court may refer to extrinsic materials only in limited circumstances, but then pointed out that the statutory provision concerned was not ambiguous, thereby not warranting a departure from its plain meaning (at [26]). Later in its judgment, after it had referred to parliamentary materials, it stated that even if a purposive interpretation were taken, the conclusion would still be the same (at [35]). This is another example of the conflation between the two separate issues outlined above and, indeed, hints at a greater misunderstanding that it is the purposive approach that is the *mandatory* approach. The court's passage at [35] suggests that it had taken the purposive approach as a *confirmatory* act, rather than the primary and first act. See also *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484, in which the Court of Appeal said that: "Reference can be made to extrinsic materials such as parliamentary reports to ascertain the legislative intent behind a certain enactment that is ambiguous or obscure or the literal meaning of which would lead to an absurdity. *Such a purposive approach to statutory interpretation* can be resorted to even where the provision in question is not ambiguous or inconsistent ..." [emphasis added] (at [18]). The emphasised words show the conflation mentioned above.

75 The conflation of ss 9A(1) and 9A(2) (and hence the two separate issues) appears also to affect submissions from lawyers which may in fact explain why the courts have similarly been misled. For example, in *L & W Holdings Pte Ltd v Management Corporation Strata Title Plan No 1601* [1997] 3 SLR 905, counsel for the appellant suggested that "reliance on s 9A(1) should only be allowed when there is ambiguity
(cont'd on the next page)

found in *The "Seaway"*,⁷⁶ where the Court of Appeal held that a purposive approach would "invariably" (but not always) involve reference to extrinsic materials.⁷⁷

13 A closely related issue is that of methodology. What does the purposive approach actually allow? Rajah JA in *Low Kok Heng* thought that a purposive approach should not be construed as being necessarily at odds with a literal reading of the statutory provision.⁷⁸ More importantly, he thought that statutory provisions should not, in the name of applying the purposive approach, be interpreted in a manner that goes against all possible and reasonable interpretation of the express actual wording of the provision.⁷⁹ In essence, the court is bound by the text as enacted that is being interpreted.⁸⁰ This may be compared with the decision of the Court of Appeal in *PP v Manogaran s/o R Ramu*,⁸¹ in which was held that the "cardinal rule" in statutory construction was to give effect to the intention "expressed in the provision itself", such that if the statutory wording is precise and unambiguous, then all that the court had to do was to expound the words in their ordinary and natural sense.⁸² On one reading, it could be that the court thought that the literal and purposive approaches are not in opposition, such that the purpose could find expression in the literal meaning of the statutory words. Yet, on another reading, it is arguable that the court in fact placed the literal rule *ahead* of the purposive approach without considering the point raised by Rajah JA. Rajah JA's approach also arguably finds support in the earlier (but difficult) High Court decision of *Re How William Glen*,⁸³ in which G P Selvam J held that "[t]he words of a Minister in Parliament are not the words of the statute" and that the duty of the courts is to give effect to the words of a statute.⁸⁴ However, as will be seen below, it was more probable that Selvam J had in the mind that the *stricter* literal rule applied over the

as to the meaning of a provision or when the plain and literal meaning of the words used in a provision would lead to an absurd result against the obvious intention of Parliament" before going on to cite authorities relating to the circumstances when extrinsic materials may be used (at [20]).

76 [2005] 1 SLR 435.

77 [2005] 1 SLR 435 at [25].

78 [2007] 4 SLR 183 at [50].

79 [2007] 4 SLR 183 at [52]. See also *Tan Un Tian v PP* [1994] 3 SLR 33 at [45]; *Comfort Management Pte Ltd v PP* [2003] 2 SLR 67 at [18], in which the High Court stated that if the statutory word is capable of one meaning, the courts should not give it an alternative meaning for to do so would be to perform a legislative function: "A line must still be drawn between purposive interpretation and law-making."

80 [2007] 4 SLR 183 at [53].

81 [1997] 1 SLR 22.

82 [1997] 1 SLR 22 at [34].

83 [1994] 3 SLR 474.

84 [1994] 3 SLR 474 at [14].

purposive approach when he stated the above, meaning that he was not exactly covering the same ground as Rajah JA in *Low Kok Heng*. Perhaps the best support for Rajah JA's views was stated by Andrew Phang Boon Leong J (as he then was) in *Nation Fittings (M) Sdn Bhd v Oystertec plc*,⁸⁵ in which the learned judge said that the court's purposive interpretation should be "consistent with, and should not either add to or take away from, or stretch unreasonably, the literal language of the statutory provision concerned".⁸⁶ In other words, the language is the framework, within which the legislative purpose must expressly or implicitly manifest, failing which the latter cannot be given effect to.

14 More importantly, however, Rajah JA's comments must be read in conjunction with the remarks of the Constitution of the Republic of Singapore Tribunal in *Constitutional Reference No 1 of 1995*.⁸⁷ In that case, the Tribunal cited, without express agreement, the Attorney-General's argument that the purposive approach allowed the court "to modify or reject the literal meaning of any provision to give effect to [the statutory] purpose or object, and to change the legislative words to achieve that purpose or object, once the intention of Parliament was ascertained".⁸⁸ A demonstration of the ability of the courts to effectively rewrite legislation to achieve the underlying "purpose" (as evident from the argument cited in *Constitutional Reference No 1 of 1995*) was shown by the High Court in *PP v Knight Glenn Jeyasingam*.⁸⁹ In that case, the "without prejudice" rule contained in s 23 of the Evidence Act⁹⁰ (which applies to civil proceedings) was applied to criminal proceedings on the basis that the Evidence Act was a "facilitative statute" which permitted the introduction of "common law rules not expressly provided for under the ... Act" in accordance with "the will and intent of Parliament".⁹¹ However, this is a problematic view of the "purposive approach" in that it effectively allows for the introduction of something not contemplated

85 [2006] 1 SLR 712.

86 [2006] 1 SLR 712 at [27]. Andrew Phang Boon Leong JA repeated these views in *Tan Kiam Peng v PP* [2008] 1 SLR 1 at [59].

87 [1995] 2 SLR 201.

88 [1995] 2 SLR 201 at [16]. Although *cf* Brady Coleman, "The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore" [2000] Sing JLS 152 at 156, who seems to have thought that these were the Tribunal's own words as opposed to a summary of the Attorney-General's arguments. A case more in point may be *L & W Holdings Pte Ltd v Management Corporation Strata Title Plan No 1601* [1997] 3 SLR 905, in which the Court of Appeal stated that if the legislative purpose clearly indicates that the draftsman had inadvertently overlooked something which he could have dealt with had his attention been drawn to it, it would be possible "as a matter of construction to repair that omission" (at [30]). However, this passage was in fact taken from *Mills v Meeking* (1990) 169 CLR 214 at 235, which Rajah JA in fact cited in *Low Kok Heng* as standing for the proposition he suggested above.

89 [1999] 2 SLR 499.

90 Cap 97, 1997 Rev Ed.

91 [1999] 2 SLR 499 at [58].

by the statutory words; to make matters worse, plea bargaining in criminal cases was a concept unknown at the time the Evidence Act was enacted. Hence, to say that s 23 applied to criminal proceedings was to misconstrue the intention of Parliament and replace it with the court's own perception of the purpose.⁹² Such an outcome was perhaps what Rajah JA had in mind in *Low Kok Heng*.

(2) *Circumstances in which purposive approach may be used*

15 Another point of interest concerns the circumstances in which the purposive approach can be used, bringing into focus the related issue of the *relationship* between the purposive approach and the other common law interpretative approaches. The general approach seems to be well settled, in that neither ambiguity nor inconsistency must exist within a statutory provision before a purposive approach could be adopted. This was so held by the Court of Appeal in *Planmarine AG v Maritime and Port Authority of Singapore*⁹³ (“*Planmarine AG*”).

16 However, the position was not always so clear, particularly at the onset of the enactment of s 9A. In *Comptroller of Income Tax v GE Pacific Pte Ltd*, the Court of Appeal concluded that the words of the statutory provision concerned were ambiguous before it became “necessary to search elsewhere for the intention of Parliament”.⁹⁴ While the literal words of the statutory provision concerned could of course evince the legislative intent, the court's reasoning in that case suggested that recourse to legislative intent could be had only if the words were ambiguous. Indeed, it had cited s 9A(1) *after* concluding that the words concerned were ambiguous, leading one to think that it saw the purposive approach as being predicated on a finding of ambiguity. Such a position was confirmed by the High Court in *Re How William Glen*, in which Selvam J decided quite unequivocally that “[t]he first rule for the understanding of the words of a statute is the plain meaning of the rule [*sic*]”.⁹⁵ Although the judge said that he was “mindful” of s 9A, he thought that that section did not affect the common law position,⁹⁶ and,

92 See *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR 239 at [122], in which the High Court questioned the decision in *PP v Knight Glen Jeyasingam* on this basis. Also see, for example, *Nicholas Kenneth v PP* [2003] 1 SLR 80 for another instance wherein the High Court effectively wrote into the statutory provision concerned (s 234(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed)) a scenario which the draftsman had “overlooked” but which was in line with the “intention of Parliament due to the supremacy of s 9A(1) of the Interpretation Act” (at [24]).

93 [1999] 2 SLR 1.

94 [1994] 2 SLR 690 at [25].

95 [1994] 3 SLR 474 at [14].

96 Selvam J cited *Fothergill v Monarch Airlines Ltd* [1981] AC 251 for the proposition that the purposive approach in interpreting a statute only applied where the words of the statutes are ambiguous.

therefore, the courts could not resort to the purposive approach if the words of the statute are unambiguous.⁹⁷ This, with respect, is a curious result.

17 While *Re How William Glen* was not expressly disapproved by the Constitution Tribunal in *Constitutional Reference No 1 of 1995*, the latter decision provided the first interpretation of s 9A(1) in conformity with its present construction. The Tribunal stated that it would be wrong to adopt a literal approach, even if the constitutional provision concerned was not ambiguous or inconsistent, if the literal approach did not give effect to the will and intent of Parliament.⁹⁸ As the Tribunal is not, technically, part of the main court system, conflicting dicta concerning the circumstances in which the purposive approach may be used continued to emanate from the courts.⁹⁹ One of the first decisions¹⁰⁰ to cite *Constitutional Reference No 1 of 1995* was *L & W Holdings Pte Ltd v Management Corporation Strata Title Plan No 1601*,¹⁰¹ wherein the Court of Appeal first held that the purposive approach might be applied even where there was no ambiguity or absurdity in the statutory language. This was to continue in several cases,¹⁰² as the proposition was continually refined, before the decision of *Planmarine AG*, which finally overruled *Re How William Glen* and unequivocally affirmed the present position that “there is no blanket rule that a provision must be ambiguous or inconsistent before a purposive approach ... can be

97 [1994] 3 SLR 474 at [16].

98 [1995] 2 SLR 201 at [49].

99 See, for example, *PP v Manogaran s/o R Ramu* [1997] 1 SLR 22 at [34], where the Court of Appeal stated thus: “The cardinal rule in statutory construction is to construe the statutory provision in question according to the intention expressed in the provision itself. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense.” Although *prima facie* suggesting the application of the purposive approach over the literal rule only where there was ambiguity or absurdity, this was in fact an improved position towards the present approach. This statement seems to suggest that it was in fact the purposive approach which applied consistently, but that where the words of the statute are precise and unambiguous, the legislative intent is always correctly expressed in the plain and ordinary meaning of the words. This rests on the unarticulated assumption that Parliament always speaks in clear language, although this assumption was implicitly rejected in the later approach preferring the purposive approach *even if* the statutory language was clear and unambiguous. A similar argument was rejected in *The “Seaway”* [2004] 2 SLR 577.

100 The first decision was *Poh Kay Keong v PP* [1996] 1 SLR 209 at 220, but the citation therein was not clear as to the authority *Constitutional Reference No 1 of 1995* stood for.

101 [1997] 3 SLR 905.

102 The line of cases thereafter adopting *Poh Kay Keong v PP* [1996] 1 SLR 209 and *L & W Holdings Pte Ltd v Management Corporation Strata Title Plan No 1601* [1997] 3 SLR 905 include: *Diaz Priscillia v Diaz Angela* [1998] 1 SLR 361; and *PP v Abdul Rahman* [1997] 3 SLR 186.

taken”¹⁰³ This is the present approach, as unequivocally and authoritatively confirmed in *Low Kok Heng*.¹⁰⁴ However, as with the circumstances under which extrinsic materials may be referred to,¹⁰⁵ there remain certain confusing dicta from the courts, although the occasions are thankfully few.¹⁰⁶

18 However, the application of the purposive approach in relation to penal statutes appears (still) to be in some state of uncertainty. As will be recalled, in *Low Kok Heng*, Rajah JA held that s 9A of the Interpretation Act mandated a purposive approach in the construction of all statutory provisions. He further stated that the purposive approach took precedence over all other common law principles of interpretation. Indeed, the learned judge robustly declared that “[a]ll written law (penal or otherwise) must be interpreted purposively” [emphasis added].¹⁰⁷ Notwithstanding this, Rajah JA did say that, in interpreting penal statutes, the common law strict construction rule, which mandated a construction to the accused person’s benefit, might be invoked if the statutory provision concerned remained ambiguous despite all attempts at purposive interpretation. This, it is submitted, is problematic for it assumes that the purposive approach can fail, *ie*, in some circumstances, it can be possible to fail to find the legislative intent. The confusion is further heightened in some earlier cases. In the

103 [1999] 2 SLR 1 at [22]. The Court of Appeal in fact found that *Re How William Glen* had already been overruled by the earlier decisions in *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201 and *L & W Holdings Pte Ltd v Management Corporation Strata Title Plan No 1601* [1997] 3 SLR 905.

104 See also *Yusen Air & Sea Service (S) Pte Ltd v Changi International Airport Services Pte Ltd* [1999] 4 SLR 135 at [49] (which involved the interpretation of an international convention); *PP v Knight Glenn Jeyasingam* [1999] 2 SLR 499; *PP v Heah Lian Khin* [2000] 3 SLR 609; *Credit Corp (M) Bhd v PP* [2000] 3 SLR 762; *PP v Tsao Kok Wah* [2001] 1 SLR 666; *Nicholas Kenneth v PP* [2003] 1 SLR 80; *Progress Software Corp (S) Pte Ltd v Central Provident Fund Board* [2003] 2 SLR 156; *American Express Bank Ltd v Abdul Manaff bin Ahmad* [2003] 4 SLR 780; *The “Seaway”* [2004] 2 SLR 577; *The “Seaway”* [2005] 1 SLR 435; *Chai Choon Yong v Central Provident Fund Board* [2005] 2 SLR 594; *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484; *Tee Soon Kay v AG* [2006] 4 SLR 385; and *Ng Chin Siau v How Kim Chuan* [2007] 4 SLR 809.

105 See para 21 of this article.

106 See, for example, *PP v Loo Kun Long* [2003] 1 SLR 28, in which the High Court implied that ambiguity in the statutory language permitted it to apply the purposive approach (at [11]); *Comfort Management Pte Ltd v PP* [2003] 2 SLR 67; *Ong Chin Keat Jeffrey v PP* [2004] 4 SLR 483 at [28]; and *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR 239 at [122], in which the High Court held that the concept of the “purposive interpretation” of statutes is to give effect to the legislative intent as expressed in a statutory provision by a consideration of the words and expressions used in the provision and that since the words of the statutory provision concerned are plain in meaning and purpose, there is no necessity to resort to “purposive interpretation” to discover the purpose of this section (at [122]).

107 [2007] 4 SLR 183 at [41]. See also [56]–[57].

High Court decision of *Teng Lang Khin v PP* (“*Teng Lang Khin*”),¹⁰⁸ Yong Pung How CJ endorsed the strict construction rule for penal statutes if there was ambiguity in the statutory provision concerned.¹⁰⁹ Another example serves to illustrate the conceptual uncertainty in this area: in *Forward Food Management Pte Ltd v PP*,¹¹⁰ Yong CJ advanced the proposition that the proper approach to be taken by a court in construing a penal provision is to “first consider if the literal and purposive interpretations of the provision leave the provision in ambiguity” [emphasis added].¹¹¹ He further stated that it was only after *these and other tools* of ascertaining Parliament’s intent have been exhausted,¹¹² that the strict construction rule applies. More will be said about this below.¹¹³

(3) Identification of the purpose

19 A final point under this section concerns the purpose that is being identified. Is this the purpose of the statute, stated in general terms, or is this the consequential intention concerning the specific statutory provision? The courts seem to be divided on this. On the one hand, some decisions¹¹⁴ have stated that it is the general purpose of the statute that is of importance. In *Raffles City Pte Ltd v AG*¹¹⁵ (“*Raffles City*”), which concerned the interpretation of the phrase “a storey of an approved development project” in the Property Tax Order 1967¹¹⁶ in relation to three modern multiplexes comprising of a total of 138 stories, L P Thean J (as he then was) thought that the Minister’s comments made it clear that “he certainly did not contemplate – not surprisingly as the speech was made more than 25 years ago – a construction of an immense multi-building complex with which we

108 [1995] 1 SLR 372.

109 See also the later High Court decision of *PP v Tsao Kok Wah* [2001] 1 SLR 666 in which Yong CJ first considered whether the penal provision in question was ambiguous. Having considered that it was not, he regarded the rule requiring a strict construction of penal statutes as irrelevant. Yong CJ then referred to s 9A(1) of the Interpretation Act as requiring a purposive approach over a literal approach and that that was the “real question” (at [22]). However, with respect, a better reasoning could have been that because of s 9A(1), the strict construction rule, an interpretative approach as much as the purposive approach, ought to give way in preference to the latter. It was for this reason, and not due to any lack of ambiguity, that rendered the strict construction rule inapplicable, unless, of course, it accords with the legislative intent.

110 [2002] 2 SLR 40.

111 [2002] 2 SLR 40 at [26].

112 [2002] 2 SLR 40 at [26]. See also *Comfort Management Pte Ltd v PP* [2003] 2 SLR 67 at [19] for a similar “three-step test” (at [19]).

113 See para 38 of this article.

114 See, for example, *Tan Un Tian v PP* [1994] 3 SLR 33.

115 [1993] 3 SLR 580.

116 No S 80/1967, published on 22 April 1967 pursuant to the Property Tax Ordinance 1960 (Ord 72 of 1960), now the Property Tax Act (Cap 254, 2005 Rev Ed).

are familiar today”.¹¹⁷ Instead, the learned judge found that the Minister’s comments none the less disclosed that the general purpose or object underlying the Order in question was to encourage private participation in urban redevelopment and it was pursuant to that general purpose or object that the court found for the defendants.¹¹⁸ In that case, the court did not think that Parliament was capable of thinking through each and every exact consequence of its legislation and viewed the only relevant legislative intent as being a *general* purpose or object underlying the statute concerned.

20 On the other hand, the more prevalent trend in the cases is to focus on the purpose behind a particular statutory provision. The distinction herein is whether the courts focused on the specific, consequential intention of the provision concerned, or its general purpose. For an example of the former, in *PP v Keh See Hua*,¹¹⁹ Yong CJ was able to locate an extract of the Minister’s Second Reading speech to construe the purpose of s 5(8) of the Employment of Foreign Workers Act.¹²⁰ In that case, the issue was whether s 5(8) precluded the court from treating each charge for contravention of the Act concerned as a separate and distinct offence for which a separate and distinct sentence should be passed. The relevant extract of the Minister’s speech revealed that s 5(8) was envisaged to protect a first-time offender from the mandatory jail sentence for subsequent offences by providing that all convictions at one trial be considered as one conviction. On that basis, Yong CJ decided that the *sole* purpose of s 5(8) is to protect a first-time offender from the mandatory jail sentence but did not prevent the court from sentencing him for each of the charges he faced under the Act concerned. However, it was not considered whether this actually advanced the purpose behind the Act generally or if it simply gave effect to the (purported) consequential intention *vis-à-vis* a particular provision.¹²¹ It would seem that some cases thought that the intention in question was consequential: thus, in *Toh Teong Seng v PP*,¹²² Yong CJ in the High Court referred to the Minister’s Second Reading speech of the Environmental Public Health Act¹²³ and decided that the purpose of a particular section was to deter dumping.¹²⁴ On the other hand, other

117 [1993] 3 SLR 580 at [25].

118 [1993] 3 SLR 580 at [22]–[23] and [28].

119 [1994] 2 SLR 277.

120 Cap 91A, 1991 Rev Ed.

121 Indeed, the consequences were rather severe in that case since the accused was charged with 19 charges. Having decided on the effect of s 5(8), Yong CJ imposed 19 sentences of three months’ imprisonment each, and overruled the lower court’s sentence of 38 weeks’ imprisonment on the basis of a single conviction.

122 [1995] 2 SLR 273.

123 Cap 95, 1988 Rev Ed.

124 See also, for example, *Diaz Priscillia v Diaz Angela* [1998] 1 SLR 361; *Taw Cheng Kong v PP* [1998] 1 SLR 943; *PP v Heah Lian Khin* [2000] 3 SLR 609; *PP v Tsao Kok* (cont’d on the next page)

cases have drawn the distinction, even when considering the purpose behind a *particular* statutory provision, between general purpose or consequential intention. In *The Seaway*,¹²⁵ the High Court thought that the Minister's "reference to damage to facilities at PSA" was merely "illustrative in nature" and "not intended to be exhaustive in nature and scope".¹²⁶ The importance of this distinction will be addressed below.

B. *Circumstances in which reference to extrinsic materials permitted*

21 Moving on to the circumstances in which reference to extrinsic materials is permitted, in *Low Kok Heng*, Rajah JA emphasised that extrinsic materials may be referred to by the courts even where the meaning of the provision concerned is clear in its face.¹²⁷ However, the position has not always been as clear as that stated. There was first some tentative uneasiness over the scope of s 9A(2), as evident in the first decision touching on the section itself. In *Raffles City*, Thean J seemed to refer only to the ascertainment aspect of s 9A(2), and not its confirmatory function. In ruling that s 9A(2) was merely "declaratory" and, therefore, to be applied retrospectively, the learned judge opined that s 9A(2) "allows the courts, in appropriate cases, to have recourse to additional materials ... to *ascertain* the meaning of a statutory provision" [emphasis added].¹²⁸ There was no mention of the confirmatory aspect of s 9A(2) even though Thean J made no express finding of ambiguity or obscurity. In fact, the learned judge went on to cite *Tan Boon Yong*, which accepted the application of *Pepper v Hart* in Singapore. In doing so, Thean J repeated the narrower formulation as to when extrinsic materials may be referred to in *Pepper v Hart*, apparently treating that formulation as an exact mirror of the statutory position in s 9A(2).¹²⁹

22 The early trend in the decisions was thus to pay heed only to s 9A(2)(b), which provides for the ascertainment function of extrinsic materials in the event of ambiguity or absurdity and to disregard the confirmatory aspect of s 9A(2)(a). Ironically, while the courts increased their focus on interpreting statutory provisions in their proper context, they had failed to appreciate that s 9A(2) did *not* require ambiguity or

Wah [2001] 1 SLR 666; *PP v Loo Kun Long* [2003] 1 SLR 28; and *American Express Bank Ltd v Abdul Manaff bin Ahmad* [2003] 4 SLR 780.

125 [2004] 2 SLR 577.

126 [2004] 2 SLR 577 at [43].

127 [1993] 3 SLR 580 at [45].

128 [1993] 3 SLR 580 at [19].

129 [1993] 3 SLR 580 at [20].

absurdity for extrinsic materials to be used.¹³⁰ Unfortunately, the position was later that ambiguity and absurdity were essential prerequisites prior to the reference to extrinsic materials in the difficult case of *Re How William Glen*. In that case, Selvam J affirmed the common law position that extrinsic materials could be resorted to only where the statutory words were unclear.¹³¹ As a result, ambiguity and absurdity became prerequisites before extrinsic materials could be turned to, notwithstanding the terms of s 9A.¹³²

23 The first light of change in this area came in the decision of the Constitution Tribunal in *Constitutional Reference No 1 of 1995*, in which the Tribunal repeated, but did not expressly adopt, the Attorney-General's argument that s 9A enabled the Tribunal to "look at all legislative materials to ascertain the meaning of any provision of a written law, whether or not that provision was ambiguous".¹³³ Nonetheless, it appears that the Tribunal *did* accept this argument as it later referred to extrinsic materials in apparent *confirmation* of the statutory interpretation it had adopted, without the presence of

130 See also, for example, *PP v Keh See Hua* [1994] 2 SLR 277 at 280 where mention was made to only the ascertainment function of s 9A(2), although the court did find an ambiguity in the interpretation of s 5(8) of the Employment of Foreign Workers' Act (Cap 91A, 1991 Rev Ed), the statutory provision concerned.

131 To add more confusion to the situation, Selvam J cited a 19th century English decision, *viz, Sussex Peerage's Case* (1844) 8 ER 1034 as overriding the application of a 20th century statute passed by Parliament. Thus, ironically, while the judge thought that "[t]he primary duty of the courts ... is to give effect to the words of a statute", he had, with respect, committed the error of *ignoring* the effect of s 9A(2)(a), which does not require an ambiguity or absurdity in the statutory words before extrinsic materials could be referred to (see [1994] 3 SLR 474 at 478–479).

132 It should be noted that, if what Selvam J had in mind was not the broader reference to extrinsic materials *per se* but the use of extrinsic materials to ascertain the meaning of the statutory provision, his insistence on ambiguity or absurdity may not be wrong. This is because s 9A(2) also differentiates the *use* of the extrinsic materials. Pearce and Geddes in *Statutory Interpretation in Australia* (Sydney: LexisNexis Butterworths, 6th Ed, 2006) at pp 80–81 has noted that the Australian equivalent of s 9A(2) turns on the use of the extrinsic materials: s 9A(2)(b) does not permit recourse to extrinsic materials for the purpose of departing from the ordinary meaning of the text unless either the meaning of the provision to be construed is ambiguous or obscure or in its ordinary meaning leads to a result that is manifestly absurd or is unreasonable. Section 9A(2)(a) permits recourse to extrinsic materials but only in a confirmatory sense, *ie*, the ordinary meaning of the statutory provision cannot be departed from. However, Selvam J did not seem to have this narrower conception in mind. Indeed, more broadly, the Singapore courts have not drawn this technical distinction and have treated recourse to extrinsic materials as an end in itself. Recourse to extrinsic materials is just that; there is no further discussion (expressly at least) of whether these are to be used to confirm or ascertain meaning. In any event, there is no prior finding of ambiguity or absurdity even if the extrinsic materials are used to depart from the ordinary meaning of the statutory provision.

133 [1995] 2 SLR 201 at [16].

ambiguity or absurdity.¹³⁴ The first case unequivocally to clarify the uncertainty in this regard appears to have been the High Court decision of *ACS Computer Pte Ltd v Rubina Watch Co (Pte) Ltd*¹³⁵ (“ACS Computer”), in which Warren Khoo J referred to ss 9A(2)(a) and 9A(2)(b),¹³⁶ thereby taking into account the confirmatory function of the section for the first time. The confirmatory function of s 9A(2), of course, does not require there to be ambiguity or absurdity to operate. In *Planmarine AG*, the Court of Appeal finally referred to ss 9A(2)(a) and 9A(2)(b) separately, and affirmed the confirmatory function of s 9A(2)(a), that does not require for ambiguity or absurdity to be present.¹³⁷ Later cases have generally cleared up the ambiguity in relation to the use of extrinsic materials,¹³⁸ although there remains the occasional statement from the courts which adds a degree of confusion to the entire issue.¹³⁹

24 Where extrinsic materials have not been referred to, a further point of interest concerns *how* the courts have identified the purpose underlying the statutory provision concerned. It seems that, in some cases, the courts have taken it upon themselves to formulate the purposes of the statutory provisions (or the statute) concerned without clear explanation of the bases for doing so. For example, in *Low Kok Heng*, Rajah JA articulated at the start of the judgment that the penal provisions of the Bankruptcy Act¹⁴⁰ were “intended to safeguard the interests of a bankrupt’s creditors and the wider public in so far as these diverge from those of the bankrupt”.¹⁴¹ However, despite the

134 [1995] 2 SLR 201 at [57].

135 [1998] 1 SLR 72.

136 [1998] 1 SLR 72 at [18].

137 [1999] 2 SLR 1 at [22].

138 See, eg, *American Express Bank Ltd v Abdul Manaff bin Ahmad* [2003] 4 SLR 780; *The Seaway* [2004] 2 SLR 577; and *The Seaway* [2005] 1 SLR 435.

139 See, eg, *Progress Software Corp (S) Pte Ltd v Central Provident Fund Board* [2003] 2 SLR 156, in which the Court of Appeal stated that s 9A(2) provides that extrinsic materials should be used only where the statutory provision is ambiguous, obscure or leads to ambiguity (at [24] and note the *general reference* to extrinsic materials as opposed to a specific use dependent on ambiguity or absurdity as in s 9A(2)(b)). Evidently, the court did not recall its own words in *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1 when it referred to the High Court’s comments in *Fay v PP* [1994] 2 SLR 154 that “[e]xpress enactment shuts the door to further implication” (at 157). Likewise, in *Ho Yean Theng Jill v PP* [2004] 1 SLR 254, the High Court referred to counsel’s “stubborn reliance” on parliamentary speeches to be “wholly gratuitous” since there was no dispute on the language of the statutory provision concerned, and citing only s 9A(2)(b) and not the “confirmatory” function of s 9A(2)(a) (at [29]–[30]). *Ho Yean Theng Jill v PP* was referred to in *Ong Chin Keat Jeffrey v PP* [2004] 4 SLR 483 for the same proposition (at [25]–[26]). See further *Volkswagen Financial Services Singapore Ltd v PP* [2006] 2 SLR 539 and the discussion at para 38 of this article.

140 Cap 20, 2000 Rev Ed.

141 [2007] 4 SLR 183 at [1].

authoritative nature of the declaration, the learned judge did not explain how he had come to this conclusion. Certainly, he had not consulted any extrinsic materials since this declaration came at the start of the judgment. Yet another example is *Poh Kay Keong v PP*,¹⁴² where the Court of Appeal held that the purpose of s 24 of the Evidence Act¹⁴³ “is to ensure the reliability of a confession”¹⁴⁴ without explaining how it came to this conclusion.¹⁴⁵ On balance, it is probably fair to say that more decisions accept that the purpose and object of a statute can be found within the statute itself, often from examining the statutory provision concerned in the context of its surrounding provisions.¹⁴⁶

C. *The type of extrinsic materials referable*

25 Finally, let us consider the issue of the type of extrinsic materials referable. Generally, there appears to be no closed list as to the type of extrinsic materials referable. Indeed, it seems that the courts take the general view that s 9A(3), which provides some examples of the types of extrinsic materials referable, is not exhaustive and, therefore, a wide range of materials can be referred to. This approach was confirmed in *ACS Computer*, where Khoo J held that the list of materials set out in s 9A(3) “is not exhaustive” and that the “general provision” of the section “allows reference to any material capable of assisting in the ascertainment of the meaning of the provision in the circumstances stated in s 9A”.¹⁴⁷ Thus, under s 9A(3)(b), the courts have made several references to explanatory statements relating to the Bill concerned.¹⁴⁸ As for s 9A(3)(c), which allows for reference to the Second Reading speech, the courts have made full use of this section to make the necessary

142 [1996] 1 SLR 209.

143 Cap 97, 1990 Rev Ed.

144 [1996] 1 SLR 209 at 220.

145 See also *Nicholas Kenneth v PP* [2003] 1 SLR 80; *Rightrac Trading v Ong Soon Heng* [2003] 4 SLR 505 at [28]; *Chai Choon Yong v Central Provident Fund Board* [2005] 2 SLR 594; and *PP v MX* [2006] 2 SLR 786.

146 See, for example, *Comptroller of Income Tax v GE Pacific Pte Ltd* [1994] 2 SLR 690 where the interpretation of s 24(2)(c) of the Income Tax Act (Cap 134, 1992 Rev Ed) was determined after the ascertainment of Parliament’s intention in relation to capital allowances by looking at ss 19 and 19A of the same Act.

147 [1998] 1 SLR 72 at [19].

148 See, for example, *GE Pacific Pte Ltd v Comptroller of Income Tax* [1994] 1 SLR 307; *Re Shares in Turris SEA Pte Ltd* [1995] 3 SLR 765; *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201; *PP v Sng Siew Ngoh* [1996] 1 SLR 143; *Lee Han Tiong v Tay Yok Swee* [1997] 1 SLR 298; *MCST Plan No 549 v Chew Eu Hock Construction Co Pte Ltd* [1998] 2 SLR 366; *Taw Cheng Kong v PP* [1998] 1 SLR 943; *Shell Eastern Petroleum Pte Ltd v Chief Assessor* [1999] 1 SLR 441; *PP v Heah Lian Khin* [2000] 3 SLR 609; *The Seaway* [2004] 2 SLR 577; *Master Contract Services Pte Ltd v Sevugan Kalyanasundaram* [2005] 1 SLR 475; *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484; and *Chang Mei Wah Selena v Wiener Robert Lorenza* [2008] 4 SLR 385.

reference.¹⁴⁹ For s 9A(3)(d), which allows for reference to “any relevant material in any official record of debates in Parliament”, the courts have mainly referred to general comments of Ministers prior to the introduction of the statute being interpreted,¹⁵⁰ and simply extracts of debates.¹⁵¹ Under s 9A(3)(f) read together s 9A(3), which does not limit the extrinsic materials referable, the courts have referred to previous manifestations of the Act concerned (whether local or foreign),¹⁵² Select Committee reports,¹⁵³ Law Revision Committees’

149 See, for example, *Comptroller of Income Tax v GE Pacific Pte Ltd* [1994] 2 SLR 690; *PP v Keh See Hua* [1994] 2 SLR 277; *Tan Un Tian v PP* [1994] 3 SLR 33; *Toh Teong Seng v PP* [1995] 2 SLR 273; *PP v Manogaran s/o R Ramu* [1997] 1 SLR 22; *Bestland Development Pte Ltd v Maniit Udomkunnatum* [1996] 3 SLR 92; *L & W Holdings Pte Ltd v Management Corporation Strata Title Plan No 1601* [1997] 3 SLR 905; *Diaz Priscillia v Diaz Angela* [1998] 1 SLR 361; *Taw Cheng Kong v PP* [1998] 1 SLR 943; *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1; *PP v Heah Lian Khin* [2000] 3 SLR 609; *MCST Plan No 138 v Goodview Properties Pte Ltd* [2000] 4 SLR 576; *Noor Mohamed bin Mumtaz Shah v Apollo Enterprises Ltd* [2001] 1 SLR 159; *PP v Tsao Kok Wah* [2001] 1 SLR 666; *PP v Loo Kun Long* [2003] 1 SLR 28; *PP v Louis Pius Gilbert* [2003] 3 SLR 418; *The Seaway* [2004] 2 SLR 577; *The Seaway* [2005] 1 SLR 435; *Nguyen Tuong Van v PP* [2005] 1 SLR 103; *Comptroller of Income Tax v HY* [2006] 2 SLR 405; and *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR 265.

150 See, eg, *Raffles City Pte Ltd v AG* [1993] 3 SLR 580.

151 See, eg, *Diaz Priscillia v Diaz Angela* [1998] 1 SLR 361; *Credit Corp (M) Bhd v PP* [2000] 3 SLR 762 (referring to parliamentary debates relating to a different Act than the one being interpreted although on the same subject matter of forfeiture of vehicles); *American Express Bank Ltd v Abdul Manaff bin Ahmad* [2003] 4 SLR 780; *Tee Soon Kay v AG* [2006] 4 SLR 385; and *Chang Mei Wah Selena v Wiener Robert Lorenza* [2008] 4 SLR 385.

152 This is especially so to trace the legislative history of an Act, on the presumption that Parliament’s intention at the time of enactment endures until express parliamentary amendment: see, for example, *American Express Bank Ltd v Abdul Manaff bin Ahmad* [2003] 4 SLR 780; *The Seaway* [2005] 1 SLR 435; *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484; *Tee Soon Kay v AG* [2006] 4 SLR 385; *Ng Chin Siau v How Kim Chuan* [2007] 4 SLR 809; *First DCS Pte Ltd v Chief Assessor* [2007] 3 SLR 326; *Chief Assessor v First DCS Pte Ltd* [2008] 2 SLR 724; and *Lee Chez Kee v PP* [2008] SGCA 20. However, in *The Seaway* [2004] 2 SLR 577, the High Court remarked that “[e]xcept where a statute reveals a contrary intention, every statute must always be interpreted as an ‘always speaking statute’” (at [32]).

153 See, for example, *PP v Teoh Ai Nee* [1994] 1 SLR 452; *Abdul Rahman bin Mohamed Yunoos v Majlis Ugama Islam Singapura* [1995] 2 SLR 705; *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201; *Chuan Hoe Engineering Pte Ltd v PP* [1996] 3 SLR 544; *Re Ng Lai Wat* [1996] 3 SLR 106; *Official Assignee v Housing and Development Board* [1996] 3 SLR 106; *Balwant Singh v Double L & T Pte Ltd* [1996] 2 SLR 726; *Aztech Systems Pte Ltd v Creative Technology Ltd* [1996] 1 SLR 683; *RSP Architects Planners & Engineers v Ocean Front Pte Ltd* [1996] 1 SLR 113; *Bee See & Tay v Ong Hun Seang* [1997] 2 SLR 193; *MCST Plan No 549 v Chew Eu Hock Construction Co Pte Ltd* [1998] 2 SLR 366; and *Lau Loon Seng v Sia Peck Eng* [1999] 4 SLR 408. Although there have also been references to the Minister’s Third Reading speech which took into account extracts from the Select Committee reports. Thus, while not directly referred to, these reports were in substance referred to. See also, *Chang Mei Wah Selena v Wiener Robert Lorenza* [2008] 4 SLR 385.

reports,¹⁵⁴ case law,¹⁵⁵ academic commentaries,¹⁵⁶ and even diplomatic notes exchanged in relation to international conventions.¹⁵⁷ There was even an attempt to refer to a guide published by the Ministry concerned for laypersons, but this was refused on the basis that the guide was itself ambiguous.¹⁵⁸ Indeed, it has even been implied that there is nothing to differentiate between the types of extrinsic materials referable and that the court has to determine which material better assisted the court in construing the statutory provision concerned.¹⁵⁹ Nowhere is reference to extrinsic materials more prevalent than the recent Court of Appeal decision of *Lee Chez Kee v PP*¹⁶⁰ (“*Lee Chez Kee*”), where the court referred to a plethora of materials in reaching the legislative intent behind s 34 of the Penal Code.¹⁶¹

26 However, as contrasted with the broad reading of s 9A(3) taken in the foregoing cases, there appears to be a concurrent line of cases which seek to limit the type of extrinsic materials referable. In *Lee Kwang Peng v PP*¹⁶² (“*Lee Kwang Peng*”), Yong CJ sitting in the High Court stated that s 9A(3) did not warrant the use of academic texts in construing the intention of Parliament as academic texts and the private works of draftsmen were “conspicuously absent” from the list of extrinsic materials provided in s 9A(3).¹⁶³ Yong CJ did not cite *ACS Computer*, in which the exact opposite result was reached. At least one commentator has supported Yong CJ’s approach in *Lee Kwang Peng*, by pointing to the absence of any reference by the Minister in the Second Reading speech of the Interpretation (Amendment) Bill in 1993 to any other extrinsic material apart from parliamentary materials and explanatory statements.¹⁶⁴ Yet another instance of a decision attempting

154 This includes foreign reports, particularly when the local statute had its origins in a foreign statute: see, for example, *PP v Heah Lian Khin* [2000] 3 SLR 609; and *Lee Chez Kee v PP* [2008] 3 SLR 447.

155 See, eg, *Toh Teong Seng v PP* [1995] 2 SLR 273; *The Seaway* [2005] 1 SLR 435; *PP v Low Kok Heng* [2007] 4 SLR 183 at [73] and [75]; *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484; *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR 265; *Ng Chin Siau v How Kim Chuan* [2007] 4 SLR 809; *AG v Tee Kok Boon* [2008] 2 SLR 412; *Chief Assessor v First DCS Pte Ltd* [2008] 2 SLR 724; and *Lee Chez Kee v PP* [2008] 3 SLR 447.

156 See, eg, *ACS Computer Pte Ltd v Rubina Watch Co (Pte) Ltd* [1998] 1 SLR 72; *PP v Low Kok Heng* [2007] 4 SLR 183 at [63]; *PP v Knight Glenn Jeyasingam* [1999] 2 SLR 499; *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484; *Ng Chin Siau v How Kim Chuan* [2007] 4 SLR 809; and *Lee Chez Kee v PP* [2008] 3 SLR 447.

157 See, for example, *The Seaway* [2004] 2 SLR 577.

158 *Master Contract Services Pte Ltd v Sevugan Kalyanasundaram* [2005] 1 SLR 475 at [26]–[27].

159 *The Seaway* [2005] 1 SLR 435.

160 [2008] 3 SLR 447.

161 Cap 224, 1985 Rev Ed.

162 [1997] 3 SLR 278.

163 [1997] 3 SLR 278 at [46].

164 Low Siew Ling, “Citing Legal Authorities in Court” (2004) 16 SAcLJ 168 at 187.

to limit the extrinsic materials referable is *Taw Cheng Kong v PP*,¹⁶⁵ in which M Karthigesu JA held that it was not correct to rely on earlier material to interpret subsequent legislation as if the subsequent legislation was tailored from a retrospective standpoint to fit in seamlessly with the earlier Act. He referred to ss 9A(3)(b) and 9A(3)(c) of the Interpretation Act as permitting only reference to explanatory statements or speeches relating to the Bill *in question*, and thereby found support for his proposition that when interpreting an amendment to an Act, the court must look not to the explanations to the Act itself, but the explanations to the amendment.¹⁶⁶ Although he stated that he was aware of the wide ambit of s 9A(3)(d), he did not think it wise to set a precedent for the unregulated use of original material in construing a subsequent amendment.¹⁶⁷

27 From the above examination of the present situation after the 1993 legislative reform, it appears that, despite the broad steps taken by Rajah JA in *Low Kok Heng* to clarify the present situation, several difficulties none the less persist. Nevertheless, Rajah JA's efforts are useful in so far as they represent the first truly comprehensive survey of the principles governing s 9A of the Interpretation Act. While not perfect, *Low Kok Heng* should serve as a valuable reminder that statutory interpretation is not a legal issue that can be taken for granted. The English common law position, for a start, must not be allowed to creep into the local statutory interpretation, which follows a decidedly different approach and which found genesis in Australian reforms which themselves had the aim of departing from the English common law position.¹⁶⁸ It is on this note that some of the problems existing in the local statutory interpretation approach are now highlighted, along with the attendant suggestions for the future.

IV. Problems and suggestions

A. *Issues relating to the purposive approach*

(1) *Adopting an unambiguous definition of "purposive interpretation"*

28 The first problem relates to the definition of "purposive interpretation". In the first instance, it is important not to *conflate* s 9A(1) with s 9A(3). The distinction is not merely an academic one

165 [1998] 1 SLR 943.

166 [1998] 1 SLR 943 at 960.

167 [1998] 1 SLR 943 at 961.

168 See Goh Yihan, "A Comparative Account of Statutory Interpretation in Singapore" (2008) 29 Statute LR 195 for a comparison between the Singapore and Australian provisions.

without practical consequences. Section 9A(3), as will be recalled, prescribes very specific circumstances within which reference to extrinsic materials may be permitted. While these circumstances may be construed very widely so that recourse to extrinsic materials may be permitted in any circumstances, there at least remains the *possibility* that such recourse (or, more specifically, the actual use of the extrinsic materials) be on occasion unavailable.¹⁶⁹ On the other hand, there is no such restriction on the application of s 9A(1), which mandates the use of the purposive approach. The importance of this point is that the purposive approach is not subject to the circumstances spelt out in s 9A(3). “Purposive approach” refers purely to the approach wherein the object and purpose of a statutory provision is preferred, and should not be confused with the use of extrinsic materials in *applying* the purposive approach.

29 The second, related (although more complicated), problem is the methodology of the purposive approach. As discussed above, there are two conflicting lines of cases in which the “rewriting” of legislation is or is not allowed. Some cases have, under the guise of advancing the legislative intent, effectively judicially rewritten the statute concerned. The key to resolving this issue is to be clear as to the proper function of the judge when applying s 9A of the *Interpretation Act*. As the name of the Act suggests, s 9A involves the judicial *interpretation* of a given statutory provision in the foremost and that is important for, as Aharon Barak puts it in his seminal work,¹⁷⁰ there is a difference between interpretative and non-interpretative doctrines.¹⁷¹ Barak states that the authority to alter a text is one which belongs to its author, *ie*, Parliament, and various others, but *not* to judicial interpretation. The act of interpretation is the giving of a legal text a meaning its language (explicitly or implicitly) can bear and does not involve the express rewriting of the language.¹⁷² Thus, while judges may have the authority to fill in gaps in statutes or to correct mistakes, in cases where the judge is authorised to create new text or to correct an existing text, in doing so the judge does not engage in interpretative activity but instead relies on non-interpretative doctrines.¹⁷³ Interpretation, on the other hand, ends

169 See discussion at para 22 of this article.

170 Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005).

171 Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005) at pp 14–15.

172 Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005) at p 18.

173 Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005) at p 15.

at the point at which language ends.¹⁷⁴ As Lord Steyn put it, entirely aptly:¹⁷⁵

The judge must concentrate on the different meaning which the text is capable of letting in. What falls beyond that range of possible meanings will not be a result attainable by interpretation. Principles of institutional integrity which bind all judges set those limits for judges.

30 Indeed, it is on the “principles of institutional integrity” that one finds the best reason for the courts to shy away from performing non-interpretative acts in the guise of interpretative ones. The constitutional framework and the separation of powers restrict interpreters from giving the language of the statute any meaning they desire.¹⁷⁶ While there is a legislative mandate to *interpret* the statutory provision in light of the legislative purpose, s 9A(1) also enjoins the court to interpret the *written law* (or a provision thereof), thereby implying the boundaries of the statutory language. While language is open to varying degrees of interpretation,¹⁷⁷ that does not mean that it is infinitely malleable and can be given whatever meaning the judge desires.¹⁷⁸ The law that is enacted by Parliament is the text of the statute,

174 Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005) at p 15.

175 J Steyn, “Interpretation: Legal Texts and Their Landscape” in *The Coming Together of the Common Law and the Civil Law* (B Markesinis ed) (Hart Publishing, 2000) at p 81. See also the illuminating comments of Frankfurter J in “Some Reflections on the Reading of Statutes” (1947) 47 Colum L Rev 527 at 543, where he wrote: “While courts are no longer confined to the language, they are still bound by it.” Finally, the remarks of Lord Reid in *Jones v Director of Public Prosecutions* [1962] AC 635 (at 662) are equally apposite: “It is a cardinal principle applicable to all kinds of statutes that one may not for any reason attach to a statutory provision a meaning which the words of that provision cannot reasonably bear. If they are capable of more than one meaning then one can choose between those meanings, but beyond that one must not go.”

176 Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005) at p 20. This was also alluded to by Rajah JA in *Low Kok Heng* [2007] 4 SLR 183 when he said (at [52]): “Courts must be cautious to observe the limitations on their power and to confine themselves to administering the law. ‘Purposive construction often requires a sophisticated analysis to determine the legislative purpose and a discriminating judgment as to where the boundary of construction ends and legislation begins’ (per McHugh JA in *Kingston v Keprose Pty Ltd* (1987) 11 NSWLR 404 at 423). Section 9A of the Interpretation Act should not be viewed as a means or licence by which judges adopt new roles as legislators; the separation of powers between the judicial branch and the legislative branch of government must be respected and preserved.” See also Justice E W Thomas, “The Relationship of Parliament and the Courts: A Tentative Thought or Two for the New Millennium” (2000) 31 Victoria U Wellington L Rev 5.

177 Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005) at pp 23–24.

178 Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005) at pp 23–24.

not the parliamentary debates or any other extrinsic materials.¹⁷⁹ Accordingly, the legislative purpose which ought to be effected is, strictly speaking, not part of the law as enacted, but a key element of a backdrop of considerations which the court is enjoined to take into account when determining what law the legislators actually intended. Where the purpose can be given effect to by the statutory provision, then that interpretation can be preferred. However, that is not to say that the literal rule operates *before* the purposive approach; instead, the purposive approach always applies *first* (as mandated by s 9A(1)) but where that purpose as found cannot be effected by the statutory language, then the *presumption* must be that Parliament did not ultimately (and specifically) intend for that particular provision to carry forth the general purpose of the statute. It is a *negative* connotation of intention but, none the less, the promotion of legislative intention in keeping with s 9A(1).

31 Indeed, it may well be open to the judge to impart a meaning which is linguistically unsustainable under the guise of advancing the legislative intent, but such an approach would only tear apart the framework that girds the interpretative process. It would be judicial legislation, plain and simple. It is up to the judges diligently to keep in mind the thin line that separates interpretation and invention, and what is permitted under s 9A(1) of the *Interpretation Act*. In the light of the analysis above, it is respectfully suggested that those parts of *Constitutional Reference No 1 of 1995* and *Knight Glenn Jeyasingam* which seemingly endorse the effective rewriting of statutory language in the guise of interpretation be reviewed, and that Rajah JA's warnings in *Low Kok Heng* against such acts be followed. Whereas judges can still correct mistakes in statutes and fill in gaps, those must be acknowledged not as interpretative activities, but non-interpretative ones, founded on either rules of common law¹⁸⁰ or legislation. The authority to do so, however, does not flow from s 9A(1) of the Interpretation Act.

(2) *Clarifying circumstances in which purposive approach may be resorted to*

32 The second problem concerning the circumstances in which the purposive approach may be deployed can be shortly taken. In general, there ought to be no further confusion following *Low Kok Heng*. Indeed, some of the confusion stems from merely conflation of the purposive approach and the circumstances in which extrinsic materials may be referred to. Section 9A(1) *mandates* the application of the purposive

¹⁷⁹ *Re Bolton; ex parte Beane* (1987) 162 CLR 514.

¹⁸⁰ See, eg, *Federal Steam Navigation Co Ltd v Department of Trade and Industry* [1974] 1 WLR 505, [1974] 2 All ER 97 at 100 and *Western Bank Ltd v Schindler* [1977] Ch 1 at 18.

approach regardless of the presence or absence of ambiguity or absurdity, and that should be the applicable law henceforth.

33 One specific issue, however, is the applicability of the purposive approach to penal statutes. As discussed, there appears to be some inconsistency in the application of the purposive approach, in as much as Rajah JA in *Low Kok Heng* held that the common law strict construction rule should apply if the purposive approach failed. The problem is that this approach rests on an assumption that may be incorrect. Likewise, in *Teng Lang Khin, Forward Food Management* and the “three-step test” in *Comfort Management Pte Ltd v PP*¹⁸¹ (which states that the literal, purposive and then the strict construction rule should be applied in that order, on the failure of the preceding test) rests on the unarticulated assumption that there can be no purpose behind a statutory provision such that the purposive approach can fail. However, this assumption may not be correct. Barak, for example, does not subscribe to the view that there can be no purpose relevant to interpreting the text.¹⁸² It may not be possible to discern what Parliament actually intended, but it would be possible to infer that or to impute an objective intention based on the reasonable person. There will always be a purpose behind every statutory enactment. If that is the position in relation to the non-penal statutes, which implicitly presumes that the purposive approach will always work there, then why the separate regime for penal statutes? Indeed, s 9A(1) applies to all “written law” and s 2 of the Interpretation Act defines “written law” to mean, *inter alia*, “all Acts”. It envisages a uniform regime of *all* statutes, whether penal or otherwise.

34 In the final analysis, the position in relation to the construction of penal statutes, especially the strict construction rule, seems to be unsatisfactorily related with s 9A(1). In this regard, it is also respectfully submitted that Yong CJ’s statement in *Forward Food Management* first confuses the literal and purposive approaches and, in fact, adopts a different interpretation of s 9A(1) than other cases interpreting it to mandate the use of the purposive approach. Indeed, it elevates the literal approach to the same platform as the purposive approach without explaining why, and then introduces the further requirement of ambiguity before the strict construction rule can be applied to effectively oust both the purposive and literal approaches. There, therefore, appears to be a separate interpretative regime for penal statutes which, with respect, ought to be corrected.

181 [2003] 2 SLR 67.

182 Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005) at p 119.

(3) *Identifying the purpose properly*

35 The third problem relates to the identification of the purpose, *viz*, whether it is the general purpose of the statute or the specific purpose of the statutory provision that matters. Part of the problem stems from the wording of s 9A. Whereas s 9A(1) speaks of the purpose or object underlying the “written law”, s 9A(2) and 9A(3) make separate references to the “provision of a written law”.¹⁸³ However, in the end, the real problem is not with the distinction between this general and specific purpose; indeed, it was suggested some 15 years ago that the difference in practice would not be great and that the courts would treat the two as interchangeable. This is in fact what the courts have done.¹⁸⁴

36 The more interesting problem is the distinction between what is known as abstract purpose and concrete purpose. Abstract purpose is akin to the general purpose or object behind a statute. The statute is meant to achieve a certain purpose, for example, to deter crimes, *etc*. It is non-specific, thus it is abstract; and it is non-consequentialist, thus it is, in a sense, broad.¹⁸⁵ On the other hand, concrete purpose, or “consequentialist intention” according to Dworkin,¹⁸⁶ refers to the identification of an intention by the author to reach a *particular* result in a given situation through the text created. The question, as postulated by Dworkin, is whether a judge should consider authorial intent only in so far as it influences the meaning of the text, or should a judge also consider authorial intentions about the consequences of such meaning in a given situation?¹⁸⁷ An argument has not been mounted before the Singapore courts about this distinction, although, as discussed above, when the consequentialist intention is clear, the courts have given effect to this. A more theoretical question is whether this is the correct approach, given the independence of the Judiciary in performing its interpretative function. This is something which will have to be confronted in the future.¹⁸⁸

183 See also Robert Beckman & Andrew Phang, “Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore” (1994) 15 Statute LR 69 at 83.

184 Robert Beckman & Andrew Phang, “Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore” (1994) 15 Statute LR 69 at 84.

185 Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005) at pp 126–127.

186 R Dworkin, *A Matter of Principle* (Harvard University Press, 1985) at p 35.

187 R Dworkin, *A Matter of Principle* (Harvard University Press, 1985) at p 48, and R Dworkin, “Comment” in *A Matter of Interpretation: Federal Courts and the Law* (A Scalia ed) (Princeton University Press, 1997) at pp 117–118. See also Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005) at pp 126–127.

188 Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005) at pp 126–127.

B. Clarifying circumstances in which reference to extrinsic materials permitted

37 It ought to be made clear, once and for all, that extrinsic materials can be referred to even if there is *no* ambiguity or absurdity. While the parliamentary proceedings did not emphasise the importance of the confirmatory function of s 9A(2)(a), that does not mean that that particular section ought not to be given effect. In fact, this is a very good example that the *law* which is enacted is in the words of the statute, and not in the parliamentary speeches that are made in Parliament. In this case, the law that is enacted is s 9A(2)(a) and (b), the former of which does not require ambiguity or absurdity before it applies. In fact, reading s 9A(2)(a) widely, as supported by the legislative purpose that the courts have access to extrinsic materials in order to “make well reasoned decisions”,¹⁸⁹ it is arguable that there are no boundaries to the reference to extrinsic materials. Indeed, s 9A(2)(a) allows a court to refer to extrinsic materials to *confirm* a meaning it had reached – this evidently applies in the situation where there is no ambiguity or absurdity. On the other hand, s 9A(2)(b) allows a court to refer to extrinsic materials to *ascertain* a meaning where there is ambiguity or absurdity – this covers the opposing situation of ambiguity and absurdity. As such, there is really no ground left uncovered by the permissive provisions of s 9A(2). It is, in fact, an absolutely permissive provision in that it allows reference to extrinsic materials in *all conceivable circumstances*. The only boundary may be in the *use* of the extrinsic materials: s 9A(2)(b) allows departure from the meaning as purposively determined if ambiguity or absurdity is present, whereas s 9A(2)(a) does not since it performs only a confirmatory function.¹⁹⁰ However, this is not an issue that has been dealt with at length by the Singapore courts, which seem content to rely on s 9A(2) for a very broad assisting role in interpretation. This approach could be justified on the basis that if, say, the purposively reached meaning was not ambiguous or absurd, and the court seeks extrinsic materials to confirm this meaning but, upon doing so, realises that there is now a better meaning to promote the purpose and object of the Act. If so, there is, by definition, an ambiguity or absurdity such that s 9A(2)(b) operates seamlessly to permit the court to adopt a different meaning. It might be better to treat ss 9A(2)(a) and 9A(2)(b) as operating seamlessly with one another, with one ready to take over the other should the circumstances permit upon the consideration of the extrinsic materials. This is, arguably, though maybe unintentionally, the approach adopted by the Singapore courts.

38 As for the statutory prerequisite that the extrinsic material concerned “must be capable of assisting in the ascertainment of the

189 *Singapore Parliamentary Debates, Official Report*, vol 60, No 6 at col 519.

190 See discussion at para 22 of this article.

meaning of the provision”, it will be noted that this only applies to the “ascertainment” of meaning, implying that s 9A(2)(a) is not affected. In any event, if there is ambiguity or absurdity such that s 9A(2)(b) applies, it would be difficult to think of a situation in which s 9A(2)(b) does not apply to allow for consideration of the extrinsic materials. The only difficulty is in *Volkswagen Financial Services Singapore Ltd v PP* (“*Volkswagen Financial Services*”),¹⁹¹ where Yong CJ in the High Court stated that “[p]arliamentary debates are not necessary if the wording of the statute is clear”. He then stated his concern that it was a worrying trend that lawyers were citing parliamentary speeches even when the statutory provision concerned was clear.¹⁹² *Prima facie*, Yong CJ’s remarks would seem to contradict Rajah JA’s remarks in *Low Kok Heng* that no ambiguity or absurdity be necessary for recourse to extrinsic materials, and the learned judge was alive to the problem as he sought to rationalise Yong CJ’s remarks in *Volkswagen Financial Services* by saying that there was a “relevancy” test before extrinsic materials may be relied on. Rajah JA thought that extrinsic materials had to be “relevant” before they could be relied upon. It is respectfully submitted, based on the foregoing analysis relating to the prerequisite in s 9A(2), that such a requirement is not needed. Indeed, the key to understanding Yong CJ’s statement is to appreciate that there were two separate issues at play: first, the circumstances when a court could turn to (or “consider”) extrinsic materials and, second, under those circumstances, the weight which the court should accord to the extrinsic materials. Viewed holistically, perhaps what Rajah JA (and, to some extent, Yong CJ) had in mind when he spoke of “relevancy” was the *subsequent* weight the court could ascribe to the extrinsic materials *after* it had evaluated its relevancy by way of prior *consideration*. Viewed this way, the purported test of “relevancy” finds no place in the scheme of s 9A(2). Indeed, reading the Minister’s Second Reading speech for the Interpretation (Amendment) Bill 1993, it is not at all clear that the legislative intent was that a limit should be placed on the circumstances in which extrinsic materials are referable. The court can choose *not* to place any weight on the extrinsic materials placed before it, but this is not to say that there is a rule against reliance where such materials are “irrelevant”. On one reading, indeed, it could be said that Yong CJ’s dicta in *Volkswagen Financial Services* is inconsistent with s 9A(2). Therefore, it is suggested that there be no “relevancy” criteria read into s 9A(2) when the section is quite clear that there are no conceivable circumstances in which extrinsic materials cannot be *considered* (as opposed to *used*).

191 [2006] 2 SLR 539.

192 [2006] 2 SLR 539 at [46]–[47].

C. *Limiting the type of extrinsic materials permitted?*

39 The final problem here is whether there should be a limit on the type of extrinsic materials permitted. It is suggested that there should not be a general restriction; neither should there be a general ranking of materials. Each case should depend on the situation at hand. Indeed, this is in line with the legislative intent in enacting s 9A, when the Minister stated that the courts must have recourse to such extrinsic materials to “make well reasoned decisions” and that such materials “may well be crucial to [the courts’] deliberations”.¹⁹³ For example, references to academic texts should not be readily discounted, as was the case in *Lee Kwang Peng*. Where there is evidence that a particular statute was based on the works of a certain commentator, or where a foreign statute is relevant and that statute has been commented on in an academic work, there is no reason why that academic text cannot be referred to. The danger with blanket exclusionary rules is that they tend to be over-inclusive, and may preclude reference to potentially useful extrinsic materials, thereby defeating the *object and purpose* underlying s 9A.

40 However, that is not to say that there are no legitimate concerns. For example, there was a caution on the reliance on foreign authorities in tax cases owing to our British colonial heritage and reception of the English common law in *JD Ltd v Comptroller of Income Tax*.¹⁹⁴ The court pointed out that as tax law is essentially a creature of statute, decisions from foreign jurisdictions should be treated with the appropriate degree of caution, especially where the wording of the foreign tax legislation is not identical with or not *in pari materia* with the local equivalent.¹⁹⁵ This concern should resonate not only with tax cases but with any statute, such that foreign cases or material should not be relied on as a matter of course because the local conditions would have to be taken into account. As briefly suggested, however, this is a problem best reserved to be dealt with on a case-by-case basis. While the courts should also legitimately be concerned about irrelevant citation of extrinsic materials, that should not translate into a disproportionate reaction wherein there is a blanket restriction. Indeed, there should not be a general blanket ban or restriction to unduly bind the hands of the interpretative process, bearing in mind the overriding purpose ascribed to the process by Parliament.

193 *Singapore Parliamentary Debates, Official Report*, vol 60, No 6 at col 519.

194 [2006] 1 SLR 484.

195 [2006] 1 SLR 484 at [32].

V. The future

41 Looking back 15 years and forward to the present, what had been an untidy and inconsistent approach towards statutory interpretation prior to the 1993 legislative reform has now been transformed into a set of generally consistent principles. There are still some teething problems, as set out above, but, by and large, the approach towards statutory interpretation has improved tremendously. The learned commentators¹⁹⁶ who thought *at that time* that access was to be a major problem have (fortunately) eventually been proven wrong by the passage of time and the later emergence of electronic databases. Parliamentary debates are now available over an integrated search function over LawNet; old English decisions likewise are available on more electronic databases than ever, including Google Books, which allows free browsing of old law reports past their copyright periods. The commentators' fear about lack of access to pre-1959 materials have proved largely untrue, especially since the Court of Appeal in *Lee Chez Kee* referred to a host of old materials. The concern about the irrelevant citation of extrinsic materials appears to have dissipated as well, with the present Bench seemingly more open to various arguments from parties.¹⁹⁷ Looking into the future, however, there remains scope now for the courts to iron out some of the conceptual problems highlighted so that a theoretically consistent approach in statutory interpretation can be reached. In other words, now that the practical problems of access have largely been solved, and a considerable body of case law has emerged, it is now time to concentrate on the conceptual angle of statutory interpretation and correct the problems still inherent. The leading decision of *Low Kok Heng* by Rajah JA can be the new starting point from which to pursue another 15 years of interpretative excellence.

VI. Conclusion

42 In conclusion, this article has provided an update on the 15th anniversary of the 1993 legislative reform on statutory interpretation in Singapore, shedding light on the remarkable transformation in the approach taken by the Singapore courts towards statutory interpretation. From an initially cautious approach, the Singapore courts have now adopted an extremely expansive view of the effects of the 1993 reform. This article has outlined some problems for the future, along with the attendant suggested solutions, for further

196 Robert Beckman & Andrew Phang, "Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute LR 69.

197 See "Welcome Reference for the Chief Justice: Response by the Honourable the Chief Justice Chan Sek Keong" (22 April 2006).

consideration. Still, the future for statutory interpretation in Singapore looks bright.
