

**REPORT OF THE
ROYAL COMMISSION OF ENQUIRY
INTO THE DEATH OF TEOH BENG HOCK**

**PRESENTED TO SERI PADUKA BAGINDA
YANG DI-PERTUAN AGONG ON
THE 22ND JUNE 2011**

**BY
COMMISSIONERS**

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[CHAIRMAN]**

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THE COMMISSIONERS



From left : YBhg Dato' Dr Bhupinder Singh, YABhg Dato' Haji Abdul Kadir Sulaiman, YBhg Dato' Selventhiranathan Thiagarajah, YBrs Professor Dr Mohamed Hatta Shahrrom

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REPORT OF THE ROYAL COMMISSION OF INQUIRY INTO THE DEATH OF TEOH BENG HOCK

Introduction

[1] On the 16th July 2009 [“the 16th”], at about 1.30pm a security guard attached to a commercial company occupying premises in a multi-storey building known as Plaza Masalam [“Plaza Masalam”] in Shah Alam, Selangor, discovered the body of a male person lying face down on the 5th floor exterior landing of the building. He was later identified as Mr Teoh Beng Hock [“TBH”], a Malaysian Chinese who was the political secretary to an executive councillor of the State government of Selangor.

[2] A day earlier, on the 15th July 2009 [“the 15th”], TBH was taken in by officers of the Selangor Malaysian Anti-Corruption Commission [“the Selangor MACC”] for questioning at its headquarters located on the 14th floor of Plaza Masalam.

[3] Police who arrived at the scene on the 16th confirmed that TBH was dead. The police investigating officer for this case was one ASP Ahmad Nazri Zainal [“ASP Nazri”]. Since he classified this case as one of sudden death, a coroner’s inquest proceeded under section 337 of the Criminal Procedure Code. After interrupted hearings stretching over seventeen months, the coroner on the 5th January 2011 returned an open verdict. He was unable to rule out either suicide or homicide as the cause of death.

[4] There was a public outcry over this decision, particularly from the family members of TBH who demanded that a Royal Commission of Inquiry be set up to investigate into the death of TBH while in the custody of a law-enforcement agency, namely, the Selangor MACC.

Royal Commission of Inquiry

[5] Acceding to this request, the Yang di-Pertuan Agong, acting pursuant to section 2 (1) (d) and section 3 (1) of the Commissions of Enquiry Act 1950 ["COE Act"], on the 26th January 2011 appointed us as Commissioners for this Royal Commission of Inquiry ["the RCI"] with the following terms of reference:

1. "to enquire whether or not there was any impropriety in the conduct of the examination of Teoh Beng Hock in the course of an investigation into a Shah Alam report number 0052/2009 by the Malaysian Anti-Corruption Commission in relation to its standing orders and practices and to recommend any appropriate action, where necessary; and
2. to enquire into the death of Teoh Beng Hock and the circumstances surrounding and contributing to his death."

[6] The timeframe mentioned in our letter of appointment to complete this inquiry and to render a report to the Yang di-Pertuan Agong was three months from the date of the issuance of our commission. This was the 25th April 2011. But pursuant to our request to the Yang di-Pertuan Agong, this period was extended to the 25th June 2011.

Representation

[7] We commenced taking evidence in this inquiry on the 14th February 2011, after settling preliminaries and procedures in meetings from the 29th January 2011 onwards. Aside from the conducting officers assisting the RCI, four parties sought representation by advocates under section 18 of the COE Act. They were:

1. the Bar Council of Malaysia;
2. the MACC;

3. the State government of Selangor;
4. the family of TBH.

[8] Soon after their application was allowed, counsel for the family of TBH, Mr Karpal Singh and Mr Gobind Singh Deo, requested for an adjournment of the inquiry due to their engagement as counsel in the trial of the former deputy prime minister Dato' Seri Anwar Ibrahim on a criminal charge for sodomy in the High Court at Kuala Lumpur. Further, both were of the view that the conducting officers assisting the RCI would be biased since they were officers from the Attorney-General's Chambers.

[9] Mr Malik Imtiaz Sarwar ["Mr Malik Imtiaz"], counsel representing the State government of Selangor, appeared to share this view. When we decided against granting the adjournment and the discharge of the conducting officers as we found no basis of their being biased or to have a tendency towards bias at that stage, Mr Karpal Singh and Mr Gobind Singh Deo informed us that they had instructions to subject our decision to judicial review by the High Court.

[10] Subsequently, when this did not materialise, further arguments were submitted to us by these counsel that there was a pending application by the Attorney-General of Malaysia to have the decision of the coroner reviewed. According to them, this should be disposed of before the RCI continued with its task. In addition, there was a demand by them that the Chairman of the RCI should recuse himself since he is a sitting judge of the Federal Court of Malaysia. We believed that the primary objective for raising these grounds was to compel the RCI to adjourn its proceedings. When this was turned down, both Mr Karpal Singh and Mr Gobind Singh Deo on the 16th February 2011 declared that they would not be participating in this inquiry since they did not wish "to lend legitimacy" to it. The next day, Mr Malik Imtiaz followed suit, citing as an additional reason that the RCI should not hear evidence afresh but adopt that disclosed at the coroner's inquest, an approach with which we disagreed.

Procedure adopted

[11] The procedure adopted by the RCI during this inquiry was similar to that of previous Royal Commissions of Enquiry. The conducting officers after consulting us and the remaining represented parties, provided a list of witnesses to be called. All these witnesses turned up to testify. They were questioned extensively and intensely by us and counsel for the represented parties. Some of them were examined against statements made by them to the police, investigation diaries, declassified investigation papers and other documents requested by us and provided for by the Malaysian Anti-Corruption Commission [“the MACC”] and police as well as exhibits tendered during the coroner’s inquest. We must state that to a large extent the MACC was cooperative in supplying the materials we requested.

[12] Though counsel representing the remaining parties were supposed to be impartial in assisting us to arrive at the truth of what happened to TBH on that fateful night of the 15th and early morning of the 16th, except for the conducting officers, each side took a diagonally opposite approach in their questioning of the witnesses and submissions made. Dato’ Sri Muhammad Shafee Abdullah, counsel for the MACC, defended the MACC officers called to testify, while the team of lawyers from the Malaysian Bar [“the Bar”] questioned them extensively, protractedly and relentlessly to ensure that “no stone was left unturned” to arrive at the truth. This mode of questioning was beneficial to us since it enabled us to view the evidence from different perspectives.

[13] To assist us in our own investigation was Mr Michael Leslie Squires [“the investigator”] whose services were secured through the public prosecutor under section 16 (2) of the COE Act. He was an ex-police officer from Liverpool, England and was the former chief investigator of the Independent Commission Against Corruption [“the ICAC”] of Hong Kong. Mr Squires was able to conduct some investigations which were of assistance to us but of greater importance to us was his input on the investigation and interrogation procedures and practices adopted

in other jurisdictions. This enabled us to understand how questioning should be conducted to get maximum results properly and lawfully rather than to employ unscrupulous techniques to obtain the same.

The standard of proof

[14] To come to a finding of fact by us, there must be a particular level of proof to satisfy us. For the standard of proof required, we have based our finding on a balance of probabilities sliding to proof beyond reasonable doubt [see *Briginshaw v Briginshaw and another (1938)* 60 CLR 336, 362].

[15] We adopted this approach for the reason that our finding may cause serious damage to the reputation of some individuals but this must be measured against the death of a person while in the custody of a law-enforcement agency, where the only witnesses are persons whose conduct is being investigated. Further, there are the inherent and harsh realities of meeting “a blue wall of silence” based on brotherhood ties among officers of the organisations involved.

Second term of reference

[16] Of the two terms of reference referred to us, the first is much dependent on our investigation and findings on the second. And since there will be a substantial degree of overlapping between the two, we approach our report by dealing first with the second term of reference before returning to the first.

[17] To fully appreciate our finding, we propose to illustrate the facts before proceeding to give our decision with reasons therefor.

Facts

[18] The State government of Selangor at the time of TBH's death was controlled by the Pakatan Rakyat, a coalition of parties in opposition

at the Federal government level. Each state assemblyman in the State of Selangor was granted an allocation of RM500,000.00 per annum from the state coffers for projects and programmes carried out in his constituency. But not all state assemblymen were allowed to decide on how this should be applied. Such privilege was only reserved to those from the party in power of the day. A Selangor state executive councillor had an additional allocation of RM100,000.00 per annum on top of his standard allocation.

[19] There was no uniform approach on how to spend this allocation. Much depended on the preference of the entitled state assemblymen to decide on how this was to be used. But it must be borne in mind that any expenditure incurred on a single project was not to exceed a sum of RM20,000.00.

[20] The expenses for the projects undertaken were paid out by the respective District Office or Land Office where the constituency was located.

[21] In the constituency of Seri Kembangan, the state assemblyman at the material time was Yang Berhormat [“the Honourable”] Ean Yong Hian Wah [“YB Ean”]. He was and is also an executive council member of the State government of Selangor. During our inquiry, we were informed that he elected to spend his allocation on “small projects” and “programmes” for the years 2008 and 2009.

[22] Small projects involved civil construction works such as repairing damaged drains, fences, retaining walls and the like. Programmes involved the staging of events to foster better understanding and rapport among persons residing in the area. An example was the “Pesta Tanglung” [*Lantern Festival*] and another was the promotion of the release of a certain member of the Pakatan Rakyat who was in detention under the Internal Security Act [“the ISA”] at the material time as well as for the abolition of that Act [though we find it strange that such a struggle should fall within the ambit of “mesra rakyat” (*citizens’ gathering*)].

[23] From June 2009 right up to the 1st March 2010 [when he was transferred out], the deputy director of the Selangor MACC was one Hishamuddin Hashim [“HH”]. As deputy director, he was in charge of investigations and intelligence-gathering by the Selangor MACC in the State of Selangor. It is of interest to note that he appeared to have absolute authority to investigate anyone whom he suspected to be involved in any corrupt practice in the state without even informing or obtaining the consent of his superiors in the MACC headquarters in Putrajaya [“HQ”] or his superior on the ground, the director of the Selangor MACC. Fortunately, we were informed by the current deputy chief commissioner of the MACC that this shortcoming has been rectified and that certain categories of cases dealt with by the MACC in any state now require approval and consent from HQ before investigations can commence.

[24] Around the 21st June 2009, HH said that he received information from a source which alleged that Selangor state assemblymen entitled to the use of the allocation were engaged in submitting false claims and that certain Pakatan Rakyat state assemblymen were using the allocation in the interest of their political parties instead of for the benefit of the public. The source suggested that claims submitted by these state assemblymen be investigated. This information received by HH was reduced into writing and tendered as an exhibit marked I 207.

[25] Acting on this information, HH ordered his subordinate, Mohamad Anuar Ismail [“Anuar”] on the 24th June 2009, to file a formal written complaint to say that the state assemblymen of Selangor had filed false claims to the District Office for programmes which did not take place and suggested action be taken to ascertain whether any offences set out in the Malaysian Anti-Corruption Commission Act 2009 [“MACC Act”] had been committed. Anuar filed this complaint on the 13th July 2009 [exhibit I 61].

[26] Following from this, numerous documents from various District Offices and Land Offices in Selangor where such claims were managed were seized. This attracted much publicity and was extensively reported in the local media.

[27] Then on the 14th July 2009, HH gave a briefing to his officers outlining the plan for an operation. He focused on two areas: Seri Kembangan which is the constituency of YB Ean and another known as Kampung Tunku which is under a different state assemblyman. He then directed that there should be nine teams, each engaging in different activities, for example, one to check with the registry of businesses to ascertain who the proprietors of the firms were which had made claims for projects or programmes while another was to search various targeted premises for incriminating evidence.

[28] Facing insufficient manpower, HH requested for officers from other MACC branches in Selangor as well as from HQ to assist. Anuar was appointed by HH as the investigating officer [“the IO”] for this operation despite there being available another more senior officer, Hairul Ilham Hamzah [“Hairul Ilham”], who was the head of investigations in the Selangor MACC. All in all, thirty-three officers were involved and on the morning of the 15th, HH commanded them to proceed. Further, HH decided that Anuar was to take on Seri Kembangan whilst Hairul Ilham was to concentrate on Kampung Tunku.

Events in the SUK building

[29] Anuar and his team of four officers first went to the service centre of YB Ean in Seri Kembangan. On being informed that the claims in question were dealt with by YB Ean’s office at the state secretariat building [“the SUK building”] in Shah Alam, Selangor, he together with his men proceeded there on the same afternoon of the 15th. At about 3.00pm at the 15th floor office of YB Ean they met TBH. According to Anuar, after identifying himself he requested TBH to deliver to him

and his team documents concerning claims under the allocations for the years 2008 and 2009. He and his team intended to check these against four suspicious documents which they had extracted from the files taken from the District Office and Land Office. TBH complied and provided the documents required. However, instead of limiting their investigation to this, one accompanying officer by the name of Mohd Najeib Ahmad Walat ["Najeib"] probed into the laptop of TBH. He found four suspicious documents [D94, D95, D96 and D97 in exhibit I 197, ie exhibits D94 to D97]. These were said to be drafts and involved quotations for projects paid out under the allocation.

[30] Soon thereafter, YB Ean, upon being notified by TBH through the mobilephone of the presence of MACC officers, rushed to his office from a sitting of the Selangor state assembly to meet with Anuar and his team. He was accompanied by a large number of reporters. A heated exchange of words took place between YB Ean and Anuar centred mainly on the MACC's right of entry without a search warrant. Intimidated by the presence of the reporters in YB Ean's office who were roaming around freely, Anuar and his team left and withdrew to the car park of the SUK building. He then met Hairul Ilham who happened to be also there on his assigned mission. After receiving further instructions from HH as to what to do, Anuar and his team, accompanied by Hairul Ilham, returned to YB Ean's office. There he met TBH again. Not long thereafter YB Ean came back to the office, and this time he requested his lawyer to be present. Mr Manoharan s/o Malayalam ["Manoharan"], his lawyer, arrived shortly thereafter and further verbal arguments ensued, centring on the demand by Anuar to bring in TBH for questioning at the Selangor MACC office. A picture depicting this scene was captured by a newspaper reporter from "*The Star*" and was published the next day.

[31] Eventually a compromise was reached whereby TBH was encouraged to go with Anuar and his team. According to Manoharan, Anuar had promised him that he, Manoharan, could accompany TBH to

be interviewed but was later “played out” or deceived by Anuar when he was not even allowed to see TBH in the Selangor MACC office.

[32] According to Anuar, when he met TBH in YB Ean’s office, TBH was restless and walking up and down. This view was supported by the testimony of Najeib who was examining TBH’s computers. In the opinion of Manoharan, TBH at that material time was shocked to see all the computers seized. But after speaking with and requesting TBH to cooperate with the MACC officers, Manoharan observed that TBH was more cheerful and ready to go with Anuar and his team.

[33] TBH left with Anuar’s team shortly before 6.00pm on the 15th in his own car. He was in fact escorted by two MACC officers. One Mohd Hafiz Izhar Idris [“Hafiz”] carried the central processing unit [“CPU”] of the computer seized from YB Ean’s office and sat at the rear of TBH’s car. The other was Mohamad Azhar Abang Mentaril [“Azhar”] who carried TBH’s laptop and sat next to TBH who drove the car. Though Anuar and Hafiz insisted that TBH had kept his laptop with him throughout the journey, this was contradicted by video pictures captured on the closed-circuit television camera [“cctv”] at the entrance to Plaza Masalam on the fourth floor. They explicitly showed Azhar carrying a bag with TBH’s laptop inside, while TBH had nothing in his hands except a mobilephone which he was speaking into.

TBH at Selangor MACC

[34] At about 6.15pm at the reception area of the Selangor MACC office, Anuar met TBH. Obviously TBH was brought there to await Anuar’s direction. Here, Anuar again observed that TBH was walking up and down as if he was looking for something. This prompted Anuar to inquire of TBH whether he [Anuar] could be of help. We found this rather strange when it was Anuar who had insisted that TBH be brought in for questioning. Then, according to Anuar, TBH inquired whether he could contact his lawyer through his mobilephone. This request was

acceded to and TBH made a call. When this was completed, Anuar demanded that TBH switch off his mobilephone. To ascertain whether this was complied with, Anuar took TBH's mobilephone to examine it but returned the same to him with instructions to keep it in his bag. Hafiz, who was also at the reception area at that time, observed the first part of what took place but was uncertain whether or not Anuar returned the mobilephone to TBH.

[35] This aspect of the evidence was crucial when it became apparent that TBH was one of those who are addicted to this modern means of communication and who, when deprived of his mobilephone, would become completely disorientated and helpless in the situation he was in. His obsession with this gadget is confirmed by his very close colleague Miss Ooi How Oon ["Mandy"] and his fiancée Ms Soh Cher Wei ["Ms Soh"] as well as by his family members. Mandy described TBH as a person who could not live without his mobilephone. And Ms Soh added that TBH spent a lot of time on his mobilephone talking to his family and friends. An illustration of his need to communicate through this means was when he called YB Ean to inquire where Manoharan was. Soon after, he contacted Manoharan to find out where he was.

"Calming therapy"

[36] Perceiving it as an excellent idea to "calm" TBH down, Anuar placed TBH in a section of the Selangor MACC office called Bahagian Pendidikan Masyarakat, commonly known as "Pen Mas". There were some sofas: two single-seaters and a three-seater. But instead of allowing TBH to be alone to collect himself, Anuar ordered some officers to be his "companions". There were six to seven of them at one time, beginning with Hafiz, followed by Azhar and others. Occasionally, Anuar would come around to watch over the situation. The instruction by Anuar to one of these officers, Azhar, was to collect information from TBH of his background: whether he was married, his educational qualifications, his previous employment and the like. This was completed in just ten

minutes. Surprisingly, Hafiz also asked the same questions but confessed that this was done with the intention of getting to know TBH. In addition, another officer Sachianandan a/l Krishnasekar ["Sachi"] also repeated this line of questioning.

[37] TBH was kept in this situation from approximately 6.30pm to 10.40pm. But most of the officers who were there to "accompany" him recalled that TBH kept very much to himself, he was quiet, tired and only answered questions when asked. In fact, at one stage, TBH asked Sachi as to when he would be able to go home. Sachi informed him that this would presumably be after his statement had been recorded.

[38] Also during this time at the Pen Mas area, TBH was approached by Najeib who had discovered the four allegedly incriminating documents in TBH's laptop while in the SUK building. Intending to access TBH's email account to again have access to these four documents, he required TBH to type his password into the laptop. TBH complied and these four documents were subsequently downloaded and printed by Najeib and given to Anuar.

[39] In the meantime, at another part of the office, Hairul Ilham, having taken over the IO's job temporarily from Anuar [since Anuar had left after 8.00pm to attend to his personal domestic affairs, ie to fetch his maid from the airport and take her to his house], ordered one officer by the name of Arman Alies ["Arman"] to examine four files containing documents obtained from the District Office and Land Office. They related to claims made under YB Ean's allocations for the years 2008 and 2009. Arman was from HQ and was brought in specially for the purpose of this operation. The relevance of Arman to this inquiry is that he subsequently "interviewed" TBH in relation to these documents.

[40] According to Arman, he looked through some of the documents and singled out those that appeared suspicious. Not long after, Hairul Ilham gave him another four documents [exhibits D94 to D97] and requested

him to check on how the prices of the items in those documents were determined and whether the firms which made the claims from the allocation actually did exist. Instead of carrying out this task by himself, Arman asked TBH to assist. Further, he also made a request for another officer to help out. Hairul Ilham agreed and assigned him one Selangor MACC officer by the name of Ashraf Mohd Yunus ["Ashraf"].

"Interview" by Arman and Ashraf

[41] TBH was called in for this "interview" before these two officers at about 10.45pm on the 15th. It took place in a large meeting room close to HH's office. Instead of going through the documents and asking questions, Arman reversed the method and adopted an inquisitorial approach. He gave the documents he had to TBH and demanded that TBH search the four files to locate documents which corresponded with the exhibits D94 to D97. According to both Arman and Ashraf, TBH was unable to locate them. Then, exceeding their specific scope of duty, they grilled TBH on all those documents in the four files, nit-picking as to why TBH had signed on some approval forms for the claims against YB Ean's rubber stamp. This was done despite TBH's name being legibly written on the documents to show that he was signing for and on behalf of YB Ean. Questions were directed to TBH on the alleged non-compliance with certain Treasury directives on the award of contracts, namely, that there should be at least three separate quotations before a contract could be awarded and that the amount for the contract should not exceed RM10,000.00 [as both Arman and Ashraf feigned ignorance of this amount having been increased to RM20,000.00 by a Selangor government circular which also permitted direct awards of such contracts].

[42] Another important aspect of this "interview" is that both these officers extracted from TBH the password to his private email account, a matter which vexed TBH very much, causing him great concern and distress. We will discuss this later in this report.

[43] Both Arman and Ashraf agreed that TBH was unable to answer many of the questions asked. Most of the time, according to these two officers, TBH was silent and just flipped through the documents in the four files given.

[44] This so-called interview did not terminate until 12.45am on the 16th. So the entire time taken by Arman and Ashraf to question TBH was about two hours. Notes made of this “interview” were handed over to Hairul Ilham but mysteriously they could not be located for production in this inquiry for us to examine.

[45] Ashraf maintained that throughout this “interview” he played no part in questioning TBH. During the entire two hours, aside from going out to collect a copy of the Treasury directives [which were no more applicable] and fetching TBH a glass of water to drink, he was tagging documents referred to him by Arman.

[46] While TBH was being “interviewed” by Arman and Ashraf, YB Ean turned up at the 14th floor of Plaza Masalam at about 11.45pm with a lady lawyer. They demanded to see TBH. Hairul Ilham refused the request but assured them that TBH would be released at about 5.00am the following morning. Feeling frustrated YB Ean left.

Meeting with Lee Wye Wing

[47] After the “interview”, Ashraf led TBH back to the Pen Mas area. There TBH was surprised to meet a person called Lee Wye Wing [“Lee”], whom he knew. Lee had also been brought in for questioning. His episode in the encounter with the Selangor MACC will be elaborated upon later. However, at this stage, we shall focus on what transpired between the two of them in the early hours of the 16th at the Pen Mas area. According to Lee, the meeting between them lasted approximately ten to fifteen minutes. Strangely, they were allowed to be alone together and during this time they exchanged experiences on how they had been taken in. They had to speak softly for fear that officers passing through the area could listen in.

[48] TBH, according to Lee, complained that the MACC officers had taken away his mobilephone and laptop. He also lamented that he should not have disclosed to the officers his password to his email account. Then he inquired from Lee whether there was any necessity to have three quotations before a contract could be awarded. Further, he complained that he had requested for his lawyer to be present but did not manage to meet him. Generally, Lee observed that TBH had many things on his mind. From Lee's perception, this could also be due to the uncertainty of what was going to happen to them next and concern over the claim by the MACC officers on the requirement for three quotations before a contract could be awarded. Lee disclosed that TBH would not have known of such a requirement since his work did not involve such things. In fact Lee said that he [Lee] would be in a better position to explain this since it was within the scope and ambit of his work [a matter upon which we shall elaborate later]. The meeting ended when TBH was taken away for his statement to be recorded.

[49] Anuar returned after completing his domestic chores at about mid-night on the 15th, ie going into the morning of the 16th. He was then told by Hairul Ilham to hand over the four files, the exhibits D94 to D97, the notes taken by Arman during his "interview" of TBH, and another set of documents marked as exhibits I 206A, I 206B, I 206C and I 206D [which we shall clarify later as to how they were secured] to one officer by the name of Nadzri Ibrahim ["Nadzri"], who was directed by Hairul Ilham to record TBH's statement. Nadzri had complied accordingly but instead of following Hairul Ilham's direction immediately after receiving it at 12.30am on the 16th, Nadzri took his time and only commenced recording TBH's statement one hour later at 1.30am. This process was only completed at 3.30am. TBH purportedly signed the statement. This statement, which is only a photocopy of the purported original, is marked as exhibit I 69. We did not have sight of the original. According to Nadzri, there was a toilet break in the midst of recording this statement. The toilet break took five to ten minutes.

Recording of statement

[50] We were enlightened by Nadzri that the recording of TBH's statement took the form of questions and answers. A question would be posed by Nadzri with documents shown to TBH and TBH would answer it. The answers given by TBH would then be keyed into the computer by Nadzri in the form of a narrative and shown to TBH to approve before the next question was asked.

[51] Nadzri observed that during this exercise TBH was serious and was constantly looking down. His hands were in between his thighs. He was quiet and yawned frequently. He also sighed repeatedly and hardly moved.

[52] According to Nadzri, Anuar did enter the room while TBH's statement was being recorded. Anuar did not say anything of significance except to inquire casually whether things were "OK".

[53] The other thing that happened during the recording of TBH's statement was the admission by Nadzri that he had raised his voice at TBH and remarked: "Kalau you penat, saya pun penat juga sebab saya taip statement" [*"If you are tired, I am also tired since I have to type the statement"*]. We find this outburst rather unnecessary and uncalled for. First, it is from an officer carrying out his duty. He should have been more professional in his approach. And if he was indeed tired, he should have asked to have been relieved and to have been replaced by another officer. Second, TBH was not a suspect. He was a witness called in to assist the Selangor MACC in its investigation. Courtesy should have been accorded to him. Thus, such treatment of him by Nadzri was certainly unwarranted. Further, if this process was tedious, it could easily have been adjourned to another day unless, of course, there was an agenda to put pressure on TBH by continuing to record his statement in these circumstances.

[54] After the recording of TBH's statement, Nadzri had gone searching for Anuar, Hairul Ilham having gone home at about 3.00am on the 16th. Nadzri found Anuar sleeping in the prayer room [*surau*] which was situated next to the meeting room. He was instructed by Anuar to leave the documents and TBH's statement on his [Anuar's] table, and to inform TBH to go home. According to this witness, when he told TBH of this, TBH requested to be allowed to remain in the office to rest. Nadzri then agreed to this but warned TBH not to wander around. Nadzri claimed to have told Anuar of this and that the latter had agreed.

Events after 3.30am on the 16th

[55] Ashraf said that, at about 4.40am on the 16th, while he was walking past the waiting area outside Nadzri's room, he noticed TBH lying on a sofa. TBH had requested for a drink and Ashraf had fetched it for him from the pantry. After this, Ashraf claimed to have departed for home leaving TBH where he was, lying on the sofa in this area.

[56] Then there was another officer called Raymond Nion anak John Timban ["Raymond"] who affirmed that he saw TBH lying on the sofa in this location when he was about to leave for home at about 6.00am on the 16th.

[57] Anuar, though being the IO for the operation, elected to sleep until the next morning in an area supposedly most accessible to the public: at the reception partitioned by a screen. He did not wake up until 8.30am on the 16th when many of the staff had reported for work. Anuar explained that he had chosen this area because it was easily accessible to his officers to consult him. Strangely, however, many officers who passed this area did not even see him there.

[58] At about 8.30am on the 16th, after waking up from his slumber, Anuar declared that he was informed by a lady officer called Norsiah of a bag she noticed at the sofa in front of Nadzri's room. When Anuar

subsequently returned to his room, he saw this bag which he believed had been brought in by TBH the day before. It was on the floor by the side of the sofa in the area as described by Norsiah. Beside this bag was a mobilephone. He took possession of these and placed the mobilephone on his table and the bag on a chair in his room. He did not check the contents of the bag. We are puzzled by this rather careless and indifferent attitude adopted by Anuar in relation to the bag and the mobilephone.

[59] We would have thought that Anuar as the IO should have been more vigilant and concerned with what was in the bag. For all intents and purposes it might have been packed with explosives to blow the Selangor MACC office up as the office would no doubt be stored with incriminating evidence against suspects. Further, it defied logic not to be curious particularly when the purported owner of this bag was nowhere to be seen. A look at its contents may have given some clues as to who he was and where he could possibly be.

[60] But believing that TBH may still be in the office, Anuar went around looking for him. He was later joined by Hairul Ilham who had by then turned up for work. They could not find TBH but took no further steps to determine where he was. We would have thought that the following elementary steps would have been adopted to locate TBH: first, of course, was to look inside his bag; second, was to contact the night security guard, one Mohd Khairudin Denan ["guard Khairudin"] and inquire whether he had seen TBH leaving; third, was to contact Nadzri [the officer who recorded TBH's statement] to ascertain whether TBH actually stayed the night.

Discovery of body

[61] At about 1.30pm on the 16th, an officer by the name of Azeem Hafeez Jamaluddin ["Azeem"] heard someone shouting from below the MACC office that a person had fallen from the building. He rushed

down accompanied by some other officers. The body was lying on the landing at the 5th floor of Plaza Masalam.

[62] Soon thereafter Anuar and Hairul Ilham were informed and Anuar, upon seeing the body, ascertained that it was that of TBH. When they contacted HH, who was at HQ at that time, they were told by HH to go immediately to HQ for a briefing on the incident. When they arrived at the car park of HQ, they were told by HH on the mobilephone to turn back and proceed straight to the Shah Alam police station to make a report of the incident. But when they reached the police station, HH commanded them to return to the Selangor MACC office. So until this day no police report has been made by any Selangor MACC officer concerning the death of TBH.

[63] Both Anuar and Hairul Ilham, instead of going straight back to the office from the police station as ordered, called for an escort from the Selangor MACC. According to them, they feared for their safety. Apparently, a large crowd had gathered at the Selangor MACC premises demanding an explanation as to how this could have happened to TBH who was supposed to have been only interviewed by the Selangor MACC as a witness but instead had been found dead.

[64] Anuar was even more paranoid in his reaction. On his way to HQ with Hairul Ilham as instructed by HH, he instead deviated home to inform his wife of the incident and for her to take safety precautions. He said he felt vulnerable since "*The Star*" newspaper had his picture published that morning arguing with Manoharan in the presence of TBH. Counsel for the Bar however interpreted the deviation to his home as an act of repentance for Anuar to confess to his wife for whatever unlawful actions he had taken against TBH.

[65] The police commenced their investigation not long after TBH's body was discovered. This included forensic work on the premises as well as on the deceased. The latter was done by forensic pathologists. A detailed account of their work will be disclosed and discussed later.

[66] That evening, ie on the 16th, all relevant personnel of the Selangor MACC involved in the operation remained in the premises. But before that, the top brass of the MACC in the person of Dato' Seri Abu Kassim Mohamed, the then deputy chief commissioner, and Datuk Mohd Shukri Abdul ["Datuk Shukri"], the then national director of investigations, were present at the Selangor MACC office. They were briefed on the situation. Dato' Seri Abu Kassim Mohamed in fact instructed all the MACC personnel involved to speak the truth and to cooperate with the police in their investigation. The police recorded cautioned statements on the evening of the 16th and the days that followed from all those involved.

Police investigation - "the note"

[67] In the course of police investigation into the death of TBH, ASP Nazri took possession of TBH's bag. The contents of this bag were emptied. Among the things found were sheets of paper which ASP Nazri considered to be not significant at that time. He did not carry out further investigation into these sheets of paper until prompted to do so by Dr Badi'ah Yahya ["Dr Badi'ah"], a forensic psychiatrist appointed to assist the MACC to ascertain the state of mind of TBH from the psychological aspect. Dr Badi'ah had inquired of ASP Nazri whether there had been anything left behind by TBH which may amount to a suicide note, having regard to her experience in similar cases involving sudden death suspected to be suicidal. But only much later did ASP Nazri take a look again at the documents found in the bag. When he found a note written primarily in Chinese characters, he requested a colleague to translate it to him. When he realised that the note may be of significance, he brought it to the attention of his superior who then ordered him to send it to the chemistry department for analysis of the handwriting. The note was only produced at the inquest before the coroner on the 9th August 2010, after the inquest had commenced. We marked this note ["the note"] as exhibit I 168 (a) in the inquiry before us.

[68] The note was on of an A4-sized sheet of paper and on it were writings in Chinese characters and a few Bahasa Malaysia words. A particular part had been scratched out in the note. At the inquest before the coroner, a Chinese interpreter had translated this note as follows:

“Ou Yang

Dalam keadaan tidak menyalin fail dalam computer saya, mereka telah mengambil semua computer itu. Mereka asyik menyalahkan kamu.

Minta maaf.

Tidak mengerti tapi pura-pura mengerti, akhirnya menyusahkan kamu.

Saya kata, ‘mendapat kelulusan YB’

Mereka berdegil menaip jadi ‘mengikut arahan YB’

Saya tidak dapat membantu kamu, maaf.

Minta maaf, saya sangat penat, selamat tinggal.”

[Translated freely from Bahasa Malaysia into English by us it reads:

“Ou Yang

In a situation without having copied the files into my computer, they took all the computers. They keep on blaming you.

Sorry.

Do not understand but pretend to understand, ending up in making it difficult for you.

I said, ‘Obtained YB’s approval’

They were stubborn and typed it to become ‘according to YB’s direction’

I am unable to assist you, sorry.

Sorry, I am very tired, goodbye.”]

[69] The request made by ASP Nazri to the chemistry department was to determine whether the note could have been written by TBH. For the purpose of analysis, aside from the note, ASP Nazri also handed the following documents to the chemistry department to be used as samples of TBH's handwriting:

1. a photocopy of a statement recorded by Nadzri from TBH with the bottom part of each page containing a purported signature of TBH;
2. a photocopy of TBH's national registration identity card ["NRIC"] where he had purportedly initialled on the side;
3. an original visa credit card with TBH's name printed thereon and bearing on the reverse side a signature purported to be that of TBH;
4. a notebook containing the purported handwritings of TBH.
[All of these are collectively referred to as "samples"].

[70] On the 14th October 2009, a chemist from the chemistry department by the name of Wong Kong Yong ["Mr Wong"], after examining the writing on the note and comparing it with the samples, proffered the following opinion:

"The Chinese handwriting in documents BH 1 [the note] and BH 4 [the notebook of TBH] were probably written by the same person and the examination of [the] Bahasa Malaysia handwriting on documents BH 1 and the notebook BH 4 were written by the same person. The initials on document BH 1 and BH 2 [TBH's statement] were most probably written by the same person."

[71] Suspecting Mr Wong may have erred in his opinion, the Bar questioned Mr Wong protractedly until Mr Wong had to admit that his examination of the note was handicapped by the following.

[72] First, the standard used for comparison had not been proved to be the handwriting of TBH. In short, the handwriting in the samples used for comparison had not been proved to be that of TBH. For this reason, his opinion at best was that the writing on the note was purportedly that of TBH and not that it was that of TBH.

[73] Second, the first and second samples [TBH's statement and his NRIC respectively] were photocopies. They were not originals. According to Mr Wong, a photocopy of any document may leave marks such as dark smudges, dots and even lines on the document, depending on the generation of the photocopy. And in respect of the signature of a person, one could not tell from a photocopy the strength, shading, and pressure applied by the author which was necessary for comparison work.

[74] Though we accept that there are natural variations in the writing and signature of a person, the shortcomings highlighted by Mr Wong, which handicapped him, cast grave doubts on the value of his opinion. These shortcomings touched on the fundamental requirements to determine the authenticity of TBH's writing on the note. And without the original of TBH's writing, we were unable to accept Mr Wong's opinion that it was indeed TBH who wrote the note.

[75] In addition to this, the undue delay in tendering the note at the first available opportunity created suspicion of its authenticity. The note was first brought to the attention of the coroner more than a year after it was purportedly found by ASP Nazri. His indifferent attitude, despite being prompted by Dr Badi'ah earlier [who had given him a checklist to investigate whether there was a possible suicide note as a person who commits suicide may most likely leave behind such a note] cannot be translated as mere carelessness or neglect. In fact, this created mistrust in us on the authenticity of this document, ie the note. In the light of these circumstances and the shortcomings in Mr Wong's opinion, we attached no weight to the note in our deliberations.

Tan Boon Wah

[76] Tan Boon Wah was the *de facto* proprietor of a firm known as Merit Link Enterprise ["Merit Link"]. The proprietor was his wife. Merit Link supplied one thousand five hundred pieces of Malaysian flags intended for a programme staged by YB Ean in 2008. The cost of these flags was RM2,400.00. Payment for this was made from the allocation entitlement of YB Ean. Suspecting that the flags had not been supplied, the Selangor MACC officers searched Tan Boon Wah's house in Cheras, Kuala Lumpur, at about 4.00pm on the 15th. When Tan Boon Wah informed them that he had to fetch his wife from work as well as his child, they left but returned an hour later at 6.45pm to continue with their search. There was no search warrant for this exercise. Finally at 7.45pm, they took Tan Boon Wah to their office on the 14th floor of Plaza Masalam. They also seized his mobilephone, passports, bank books and Merit Link's rubber stamp.

[77] When they arrived at the office at 8.45pm, Tan Boon Wah was placed in a small room measuring 10' x 10'. The light in the room was not switched on. There was a single chair with one of the roller wheels missing. The only other piece of furniture was a drawer cabinet. As the light was not turned on, the only light coming into the room was from the outside where a pingpong table was placed. He was kept here for an hour. Then, suddenly, he heard his name being called out aloud and the light in the room was turned on. Two officers came in. One of them was identified as Bulkini Paharuddin ["Bulkini"].

[78] At forty-eight years of age, Bulkini was much older than the other officers involved in this operation. He was not from the Selangor MACC but was one of those who had been brought in from HQ for the operation. We believe that he considered himself an old hand in interrogation techniques, or "interviews" as the Selangor MACC officers involved in this operation constantly called it. According to Tan Boon Wah, Bulkini and his team employed various methods to intimidate him

and to try and make him admit that he did not supply the goods but had received and pocketed the money instead. Methods employed were mostly psychological, ranging from keeping the room dark, belittling him for producing one child only after five years of marriage, threatening to bring his child into the office so she would cry upon seeing the pathetic state her father was in, accusing him of being unkind to his family by not wanting to return home early by cooperating with the MACC, threatening to strike him with a pouch, forcing him to stand straight without moving and made to look afar [and while this was happening he was ridiculed by other officers playing pingpong outside the room], calling him "Cina bodoh" [*stupid Chinese*], pointing a finger directly at him and close to the bridge of his nose, deriding his position as a municipal councillor, and threatening to hit him if he refused to cooperate. At one time, Bulkini even sat on the floor to question him while Tan Boon Wah was directed to sit on the damaged chair. Another method employed was to try and pressure him to work with the Selangor MACC so as not to make Bulkini angry. Of course, all these assertions were denied by Bulkini and the officers involved.

[79] Another aspect of the evidence was that Bulkini said that at about 2.30am on the 16th after he had finished questioning Tan Boon Wah and briefed HH of Tan Boon Wah's recalcitrant attitude, he had told Tan Boon Wah to go home and to bring the relevant documents required the following day, ie on the 16th. Tan Boon Wah instead had chosen to stay in the office to wait for his wife to produce these documents. This was after Bulkini had allowed Tan Boon Wah to communicate with his wife. This assertion of Bulkini that Tan Boon Wah was free to go was contradicted by the following evidence.

[80] First, Bulkini had not consulted anyone in authority to permit Tan Boon Wah to leave. Second, though Bulkini had briefed HH on Tan Boon Wah's refusal to admit the accusation levelled at him, there was no evidence that HH had permitted Bulkini to release Tan Boon Wah. Third, if Tan Boon Wah had been released but had chosen to

stay instead, then there was no reason why Tan Boon Wah should have remained to have his statement recorded on the 16th up to as late as 11.30am. His statement could have been recorded much earlier. Fourth, why had Tan Boon Wah not been issued a demand notice to produce documents when he had supposedly been released by Bulkini whereas in fact he was furnished with such demand notice in the late morning of that day after his statement had been recorded? If this was the requirement, Bulkini did not comply with it when he had offered to release Tan Boon Wah. Fifth, Tan Boon Wah only had his belongings returned to him on the 16th after his statement had been recorded. And Tan Boon Wah had to acknowledge receipt for them. If he could have been released earlier, there would have been no necessity for these subsequent actions. Sixth, if Tan Boon Wah's wife was to have brought those documents, should Bulkini then not have been interested to examine them to ascertain whether Tan Boon Wah had been telling the truth after he had been accused of lying over so many hours? Instead, Bulkini chose to leave at 3.30am and Tan Boon Wah's wife never appeared with the documents, which could only mean that Bulkini fabricated this piece of evidence.

[81] Apart from this, there were two important aspects of Tan Boon Wah's and Bulkini's confrontation pertinent to our inquiry. First is the claim by Bulkini that at about 2.15am on the 16th, after questioning Tan Boon Wah, and allowing him to remain in the small room which Bulkini claimed that Tan Boon Wah preferred to be in [something we find hard to comprehend], Tan Boon Wah went searching for Bulkini at the pantry of the office. He requested for a drink and to be allowed to ease himself in the toilet. Since the toilet was right next to the pantry, Bulkini accompanied him there despite the fact that he was in the midst of his meal. Bulkini asserted that at the entrance of the toilet, he saw a male Chinese about the same height as Tan Boon Wah who was also about to enter the toilet. After Tan Boon Wah had gone in but before the toilet entrance door was shut, he heard Tan Boon Wah shouting in Mandarin "Ni loh!", translated by Bulkini to mean "You lah!". Deciding that his meal took priority over what these two might be talking about,

Bulkini returned to the pantry to finish his meal. Tan Boon Wah went back to where he had come from. Bulkini never saw the other male Chinese again.

[82] Some three weeks after the death of TBH, Bulkini decided to make a further police statement on the 20th August 2009, the first having been recorded on the 31st July 2009. In this further statement he claimed that the person whom Tan Boon Wah had shouted at on the morning of the 16th was in fact TBH. Though admitting that he had not at the material time known TBH, he said that he had recognised him from a picture shown on the television news broadcast at 8.00pm on the 16th, lying dead in Plaza Masalam. What prompted his recollection that it was the same man he met at the toilet were the clothes worn by TBH on that day: white pants and a dark jacket. He explained that he had not mentioned this earlier for the reason that he needed to be certain. But as time went by it became apparent to him that it must have been TBH who Tan Boon Wah saw at the toilet and had shouted at.

[83] Tan Boon Wah, though admitting that he did see Bulkini at the pantry that evening at about the time stated, denied that he either saw TBH or spoke to him. Instead, Tan Boon Wah affirmed that he met TBH on his second visit to the toilet. However, he could not recall the exact hour but claimed that no officers were there then. On this occasion, he uttered to TBH: "Beng Hock, you are still here?" In response Tan Boon Wah recalled that TBH could have replied by uttering, "Em". However he was not certain of this. Since he was in a hurry to ease himself he did not engage in further conversation with TBH. But when he came out of the toilet, TBH was gone. He then went back to the small room to sleep until 10.00am on the 16th.

[84] Though we are still narrating the facts of this case here, we think it appropriate at this stage to express our view on the issue of whether there was such an encounter between TBH and Tan Boon Wah and that Tan Boon Wah had indeed uttered the words "*Ni loh!*" at TBH.

[85] The purpose of Bulkini introducing this alleged piece of evidence was basically to support the theory that some parties involved in the claims under YB Ean's allocation were blaming TBH for disclosing the scheme of arrangement between suppliers of goods and YB Ean which the Selangor MACC was investigating.

[86] Having considered the evidence, it is our view that this assertion of Bulkini was fabricated. The reasons now follow.

[87] First, Bulkini never mentioned this meeting of TBH and Tan Boon Wah in the toilet as witnessed by him in his first police statement made soon after the event. By that time he would have seen the picture of TBH lying dead on the 5th floor of Plaza Masalam. Instead, this disclosure was left to be made almost three weeks later. The lapse of time renders this contention dubious.

[88] Second, in order for Bulkini to recognise TBH by the clothes he wore there should have been a full-length picture of TBH lying dead. We are doubtful whether such a picture disrespectful of the deceased would have been telecast in any of our national television networks, bearing in mind the sensitivities involved.

[89] Third, Bulkini's description of TBH as being almost the same height as Tan Boon Wah was contradicted by a photograph tendered as exhibit I 219. It showed TBH and Tan Boon Wah together with TBH standing a head taller over Tan Boon Wah.

[90] Fourth, we are unable to accept Bulkini's claim that his recollection of the incident and recognition of TBH could improve with time. This is contrary to normal human recollection of events past.

[91] Fifth, the toilet was located just outside the pantry. Some simple direction from Bulkini would have sufficed. Tan Boon Wah has no physical infirmities and as such there was no need for Bulkini to

have interrupted his meal to accompany Tan Boon Wah to the toilet. Additionally, Bulkini occupied a superior position in the investigation *vis-a-vis* Tan Boon Wah.

[92] Sixth, given that Bulkini was an experienced officer as proved by his long service with the MACC, we were surprised that Bulkini made no attempt to pick up any continuation of the alleged conversation between TBH and Tan Boon Wah in the toilet. This was compounded by four factors: one, Bulkini speaks and understands Chinese, having been educated in a Chinese school up to primary six level where the medium of instruction in Chinese schools in this country is in Mandarin. And both TBH and Tan Boon Wah were conversing in Mandarin. Two, as an experienced officer and given the circumstances of an ongoing operation, he should have been more interested in gathering intelligence, more so when such a golden opportunity presented itself in the form of these two witnesses who were perhaps sharing vital information which could have assisted the investigation. Three, the alleged exclamation of “Ni loh!” by Tan Boon Wah to TBH should have piqued Bulkini’s curiosity to follow up with what was to continue between the two of them. But, instead, his preference to finish his meal took precedence over the likelihood of a scoop. Four, he was already in front of the entrance of the toilet and it would not have been difficult for him to have remained there a little longer to listen in. Any reasonable man would have done so given the circumstances at that time.

[93] Having regard to these numerous contradictions and those previously highlighted, we hold that this piece of evidence from Bulkini is unworthy of credit and should be rejected.

***Lee Wye Wing* [“Lee”]**

[94] Lee was a project and programme agent. He arranged and put together different parties to carry out projects and programmes funded under YB Ean’s allocation. In the course of doing so, he also prepared

the documentation to secure the approval and payment of the completed works. He worked closely with YB Ean and inevitably with TBH, as the political secretary to YB Ean.

[95] On the 15th, he received instructions to be present at the Selangor MACC office. He arrived at 4.30pm the same day and met Sachi, who was presumably in charge of questioning him. When he saw Sachi, the first thing Sachi did was to demand that he place his mobilephone on Sachi's table. And then Sachi directed him to sit at an area where there was a sofa. Sachi proceeded to interrogate him by informing him that the Selangor MACC had enough evidence to charge him with an offence. He was then shown a number of documents. He recalled two programmes associated with these documents: Pesta Tanglung [*Lantern Festival*] and the campaign to abolish the ISA. According to Sachi, the things ordered for these programmes had not been supplied but money had been claimed and collected in respect of them. Further, Sachi accused Lee of using the allocation for political purposes. Sachi then demanded that he produce documents such as receipts for the purchases he had made for the programmes. Though Sachi did not use violence on him, he had raised his voice and acted in an aggressive manner when questioning him.

[96] Between 6.00pm and 8.00pm on the 15th, Lee was kept in the pantry. There he met his partner Wong Hong Chae, the proprietor of Syarikat Hong Chae, a firm which had undertaken some projects and programmes for YB Ean. He was not permitted to speak to him. And then at or about 8.00pm, he was driven by a team of the Selangor MACC officers to his home in Seremban to collect documents. He was supposed to hand over to them receipts which supported his claim that the work under the programmes and projects had been carried out. These officers did not search his house. He provided them with receipts, bank books and statements. His computer CPU was however seized.

[97] A set of documents given by Lee to these officers that evening were the first pages of exhibits I 206A, I 206B, I 206C and I 206D. These were four sheets of handwritten notes depicting the distribution of funds received from the four programmes completed and claimed for under YB Ean's allocation. Accompanying each of these four pages were supporting documents such as approval letters, confirmation of the jobs completed, invoices, approvals by the District Office for payments and photographs taken of the events.

[98] After this exercise was completed, Lee was taken back to the 14th floor of Plaza Masalam. They arrived around midnight. He was then placed at the Pen Mas area where he met TBH who was already there. There is no necessity for us to repeat what transpired between them as this has been discussed earlier. Lee was kept there until 2.00am on the 16th when his statement was recorded.

[99] The recording of Lee's statement took three hours. It did not finish until 5.00am on the 16th. Then at about 6.00am he had breakfast at the pantry and there he met Tan Boon Wah for the first time. Though he had heard of Tan Boon Wah and knew that he had provided the sound system for some of the programmes, Lee had not met him before. They spoke but were reprimanded by officers accompanying them and told to use only Bahasa Malaysia to converse. Lee stayed there until 10.30am when one of the officers received a phone call to say that he was to be released. He then left Plaza Masalam immediately.

[100] Except for the ten to fifteen minutes spent with TBH at the Pen Mas area around 12.00am on the 16th, Lee did not see TBH again. He learned from his niece Lee Kee Hiong at about 5.00pm on the 16th that TBH was dead.

[101] Subsequently, after the investigation into the use of YB Ean's allocation was taken over by HQ from the Selangor MACC, Lee provided further documents to the new investigating officer, Ahmad Shafik Abdul

Rahman [“IO Shafik”], to justify that the claims and payments for the programmes and projects were aboveboard.

[102] What is significant in Lee’s testimony was the insight into the arrangement for the expenditure of YB Ean’s allocation for projects and programmes. Lee first explained the difference between a project [which he termed a “small project”] and a programme, as described earlier. Then he elaborated that for small projects, because of the requirement to use Class F contractors who could be bumiputras only, he arranged with a Malay friend of his, one Mohd Harun Abdullah [“Harun”], to set up a number of bumiputra firms. When YB Ean required certain civil works to be done in his constituency or for the constituency that he had adopted [since opposition state assemblymen were not provided with the allocation, assemblymen from the ruling party in the State of Selangor would adopt their constituencies so that residents in these constituencies would also benefit from the allocation], he would prepare for submission a form known as “Borang A”. YB Ean was required to sign on this. It was a request for the required works to be carried out.

[103] According to Lee, TBH did assist him in preparing some of these forms by filling in the particulars into a template he had provided to TBH. This was to save time since TBH could complete this and give it to YB Ean to sign immediately. This form would then be forwarded to the respective District Office or Land Office for processing. Work would not start until the approval from one of these offices was obtained. And when the works were completed, Lee would prepare the invoice for the contractor concerned to request for payment. YB Ean would then have to sign a form known as “Borang B” to confirm that the works requested had been completed. Payment would not be made until the technical staff of the respective District Office or Land Office had inspected the works and confirmed that the costs for the items specified in the claim were in accordance with the standard amount set down by regulations. Only when the respective officer was satisfied as to this would payment be made from these offices to the contractor.

[104] As for programmes, though the procedure was somewhat similar to small projects, the amount to be spent depended on YB Ean's budget. When YB Ean decided to stage, for example, the Pesta Tanglung at a cost of RM10,000.00, Lee had to work within this budget. Documentation leading to this claim was found in exhibit I 206C. For programmes there was no necessity to use a bumiputra firm since it did not involve civil works.

[105] We noticed some shortcomings in this procedure. There was no quotation tendered prior to the approval for a programme. Though Lee [and Lee Kee Hiong whose role we shall discuss shortly] confirmed that he had to work within the budget, there was no one to verify as to whether the goods and services supplied for the programme were of the value claimed. At least for a small project, there were the standard charges laid down by regulations to gauge the cost of works carried out. But none of this applied to programmes.

[106] According to Lee, TBH had signed on behalf of YB Ean on some of the Borang B. He had typed his name on these forms and put his signature on them except that he had affixed YB Ean's rubber stamp on the place where he had signed. Since there had been no express declaration that he had signed this document for and on behalf of his principal YB Ean, we were of the view that the MACC officers seized upon this to capitalise on their threat that TBH had committed an offence.

[107] The next area of contention was the first page of each of the exhibits I 206A, I 206B, I 206C and I 206D. All these concerned programmes. In fact one of them [exhibit I 206D] had nothing to do with YB Ean. It was for a different constituency, namely, Kampung Tunku. The state assemblyman there had also engaged the services of Lee and he had used a firm known as WSK Services to carry out the programme. The proprietor of WSK Services at the material time was Lee's wife.

[108] The distribution of the proceeds listed out on these four first pages of the said documents attracted some interest in the MACC officers, particularly the consistent payments to DAP Serdang Aman in three of these [exhibits I 206A, I 206B and I 206C] and another to "DAP Malaysia" [exhibit I 206D]. Lee and Lee Kee Hiong subsequently explained that these were for repayment of advances made by this political organisation for the respective programmes. In the case of repayment to the DAP Serdang Aman, we were told that YB Ean had a service centre there. He had used the DAP set-up for this purpose. Apparently, contractors and suppliers for the small projects or programmes would go there to request for payment first since the District Office or Land Office would take one to two months to process their claims. Thus, when payment was finally received from the District Office or Land Office, reimbursement had to be made to the political party, ie the DAP.

[109] We find this rather odd when the parties involved in this process were unable to exclude political parties from involvement in government projects. The allocation was from the budget of the state government. It was supposed to be spent for the residents living in a particular area in the state. A political party should not be involved in assisting financially in such activities. Otherwise it would attract accusations, as it did in this case, that such fund or part of it was channelled back to the political party. We are unable to comprehend here as to why a contractor or an agent undertaking to stage a programme or to carry out a small project required the financial assistance of a political party to tide him over for the period while awaiting payment from the District Office or Land Office. Surely anyone doing business should have capital of his own or should make arrangements for the same.

[110] Further, Lee had subsequently provided to IO Shafik a number of receipts issued by the DAP for the reimbursement of the monies advanced after HQ had taken over the investigation of the case. But none of the receipts was an exact match to the amount reimbursed to the DAP as listed out in the first page of each of the exhibits I 206A,

I 206B, I 206C and I 206D. Nevertheless, despite this and based on the explanation provided by Lee, and the non-availability of TBH as an important witness, the MACC decided that the investigation into the suspected impropriety as to the use of YB Ean's allocation be stopped.

Lee Kee Hiong ["Ms Lee"]

[111] Ms Lee is the niece of Lee. She is a Klang municipal councillor and an active member of the DAP. She was the general manager of DAP Malaysia from 2003 to 2008.

[112] Ms Lee described herself as a programme co-ordinator and had worked as part-time staff in her uncle's set-up WSK Services and Hong Chae Enterprise [in the latter of which Lee and Wong Hong Chae were in some sort of partnership]. She focused only on programmes where payments were made from the allocation. We believe that while Lee took care of the paperwork, Ms Lee did the groundwork, like getting the suppliers, arranging for services, ensuring attendance of participants and arranging the publicity for the programmes. When YB Ean had an idea for a programme with a budget, she would be contacted and would try to work within the amount allotted for it. She claimed that she also prepared the accounts for the programme that was carried out. She was also the author of the first page of each of the four sets of documents [exhibits I 206A, I 206B, I 206C and I 206D].

[113] Although Ms Lee insisted that she did not solicit for these programmes, records showed that most of them were given to either Hong Chae Enterprise or WSK Services.

[114] Ms Lee said that she had known TBH when he was a reporter and was instrumental in getting him to join the DAP as a member. Though Ms Lee maintained that she did not discuss the price of the programmes with TBH, she contradicted herself when she said that TBH had given his opinion at times that some items charged were excessive.

[115] Counsel for the MACC suggested that there were improprieties in the staging of the programmes where there could have been kickbacks to the DAP from the expenditure incurred. He applied to us to demand from Lee receipts to match each advance made by the DAP and the subsequent reimbursement for it. We refused his application on the ground that this was not within our terms of reference. Further, if the MACC had desired to pursue its investigation into this, it could have exercised its discretion to do so rather than to make use of the RCI.

Mohd Harun Abdullah [“Harun”]

[116] Harun was candid enough to admit that he had arranged with Lee for the use of a number of bumiputra firms to carry out projects under the allocation. To this end he had set up firms where his wife and relatives were proprietors. He could not be a proprietor because he was blacklisted by the banks from operating a bank account. The operators of the bank accounts for these firms were the actual proprietors but in practice Lee controlled the bank accounts. The proprietors would sign blank cheques which Harun would then hand over to Lee. None of the proprietors or Harun himself had carried out any of the works awarded. As consideration for this arrangement, Harun would receive 5% to 10% of the amount paid for each project as commission. Examples of this were reflected in exhibits I 206A, I 206B, I 206C and I 206D, though involving different firms.

[117] At the request of the Selangor MACC, Harun arrived at the 14th floor of Plaza Masalam at about 3.00pm on the 15th. He was made to wait in the waiting room while the officer in charge seemed to “keluar masuk, keluar masuk” [“moving in and out”] except to engage with him. He could not understand this when it was the Selangor MACC which had wanted him to be present for questioning. He felt very anxious. It was not until after some four hours later at 7.00pm that he was called in for questioning. This only took an hour. It was finished by 8.00pm. The officer who recorded his statement did not tell him to leave. Instead,

he was informed to wait for Lee to come back from Seremban before he could go. This was a clear and obvious indication of cross-checking one witness's statement with that of another which was being carried out by those involved in the operation on the evening of the 15th and into the 16th.

[118] After Harun's statement was recorded, he was asked to wait in an area outside Nadzri's room where there was a sofa. At about 2.00am on the 16th when there was still no indication that he would be released, he used his mobilephone [which surprisingly was not confiscated] to call a friend who worked in HQ. He related his predicament to her, a lady by the name of Saemah. Saemah asked to speak directly to any of the officers in the premises. Harun then opened the door to a room nearby and found TBH having his statement recorded. The officer recording TBH's statement asked him to look for another officer to attend to him. He then found another officer who happened to pass by and handed him his mobilephone for the officer to speak to Saemah. After this conversation between the officer and Saemah, Harun was released. This was further confirmation that a witness was not allowed to go home after his statement had been recorded. In Harun's case, if not for the intervention of Saemah, Harun would have been forced to wait into the morning of the 16th, as happened with the other witnesses.

Decision on the second term of reference

[119] Having considered all the evidence in its entirety, we found that TBH was driven to commit suicide by the aggressive, relentless, oppressive and unscrupulous interrogation to which he was subjected by certain officers of the MACC who were involved in the ongoing operation by the Selangor MACC on the night of the 15th and into the morning of the 16th.

[120] Our reasons to support this finding are as follows.

Forensic pathological aspects

Chronology

[121] Soon after the body of TBH was discovered, forensic pathologists Dr Khairul Azman Ibrahim ["Dr Khairul"] from Hospital Tengku Ampuan Rahimah, Klang ["the Klang hospital"] and Dr Prashant Naresh Samberker ["Dr Prashant"] from the University of Malaya Medical Centre were called in to assist in the investigations.

[122] Dr Khairul and Dr Prashant examined the body at the scene at 7.30pm on the 16th. *Rigor mortis* was established in all the limbs. The body was then transferred to the Klang hospital for postmortem examination at 9.10pm on the 16th. They jointly conducted the autopsy on TBH at 12.00pm on the 17th and a joint report was produced by them on the 24th July 2009. That report was produced before us as exhibit I 42.

[123] During the inquest the coroner, prompted by an opinion given on the first postmortem examination by one Dr Khunying Porntip Rojanansunan ["Dr Porntip"], a forensic pathologist from Thailand, who was engaged by the State government of Selangor, ordered Dr Shahidan Mohd Noor ["Dr Shahidan"] to conduct a second postmortem examination on TBH. Dr Porntip had opined that TBH had been beaten with a piece of wood over the back of the thighs, an object had been thrust up his anus and that he had been manually strangled.

[124] However, it must be emphasised that Dr Porntip was not present at the first postmortem examination conducted at the Klang hospital and she based her opinion on photographs and the first postmortem report which had been sent to her. These photographs had been taken by the police and were somewhat lacking in clarity. Dr Prashant had taken his own photographs at the first postmortem examination but these were not tendered at the inquest. We came to know of their existence when

Dr Prashant informed us during this inquiry that he had, on his own, taken photographs as well. By consent of all parties, the photographs taken by Dr Prashant were tendered in evidence before us and marked as exhibit I 190. The importance of these photographs became evident during the testimony of the forensic pathologists before us and will be elaborated upon later in this report. The photographs taken by Dr Prashant were admittedly clearer and of better quality than those taken by the police and sent to Dr Porntip.

[125] Dr Shahidan conducted the second postmortem at the Sungai Buloh Hospital on the 22nd November 2009. He produced an undated report which we marked as exhibit I 82.

[126] Present at the second postmortem examination was Professor Dr Peter Vanezis [“Professor Vanezis”] from the United Kingdom [“the UK”] who attended the examination as an observer on behalf of the MACC. He later produced a report dated the 16th December 2009 which was marked as exhibit I 90. Dr Porntip was also present as an observer on behalf of the State government of Selangor. She later produced a report dated the 25th January 2010. This was marked as exhibit I 89 in the inquiry before us.

[127] At the coroner’s inquest, a barrage of questions was directed at the forensic pathologists we have mentioned above, exploring in minutiae the various possibilities of how the death of TBH could have come about. They verged on the realm of speculation which we should avoid. We had instead focused on probabilities based on the evidence before us and not on possibilities. For this we shall deal with the various aspects of the case.

Time of death

[128] Except for Dr Porntip, all the other forensic pathologists who testified before us agreed that the estimated time of death of TBH

was between 7.15am and 11.15am on the 16th. Dr Porntip said that she was unable to give her views on this because she had not been physically present at the material time to see the body of TBH. As both Dr Prashant and Dr Khairul were at the scene not long after its discovery we considered that the time of death of TBH was as stated by them.

Position of the body when found

[129] The position of TBH's body when found on the 5th floor of Plaza Masalam on the 16th was eight feet six inches from the wall of the building and three feet six inches from the outer boundary wall.

[130] According to the evidence of all the forensic pathologists taken together with the pattern of injuries sustained by TBH, which we shall discuss shortly, the injuries sustained by TBH were consistent with those of a person falling from a height. Further, one Dr Sallehuddin Muhamad ["Dr Sallehuddin"], an associate professor at the University of Technology Malaysia, who had carried out simulation tests at Plaza Masalam on falling objects, also confirmed that based on the position where TBH's body was found, TBH would have fallen from a height and from a window above, which was believed to be the one marked as I 63j on the sketch plan [exhibit I 63] of the Selangor MACC office on the 14th floor of Plaza Masalam. The height of the window on the 14th floor from the level at which TBH's body was found on the 5th floor measured one hundred and eight feet.

[131] The window on the 14th floor was directly above the place where TBH's body was found. The window had a width of two feet ten inches and opened out swivelling upwards from the bottom. It opened out to a maximum extent of three feet eight inches when fully extended to an angle of forty-five degrees. According to Professor Vanezis, a person would have been able to climb out of this window when it had been opened and extended. Since this window was directly above where

TBH's body was found, we believe that TBH must have exited from this site. Further, various MACC officers who were familiar with the area had testified that this window was never locked. It was frequently opened by officers for ventilation when smoking in the area.

Pattern of injuries

[132] TBH suffered fractures of the bones of the legs and feet. Some of these fractures were seen on x-rays to be overlapping each other in that the bones were out of their natural alignment as a result of the fall from a height which TBH sustained, as agreed by all the forensic pathologists who testified before us. When TBH fell, he landed feet first on the ground, leading to severe fragmented fractures of the bones of the feet with overlapping fractures of both lower limb bones. It was also agreed by them that TBH was conscious when he fell. According to Professor Vanezis, TBH was consciously trying to absorb the pressure of the fall as an instinctive reaction. We are in complete agreement with this view and conclude that TBH fell from the window on the 14th floor and was conscious when he fell.

[133] TBH also suffered fractures in the pelvic region. They were mainly of the sacrum and the coccyx. In respect of these, all the forensic pathologists agreed that they were due to the initial impact of the fall when TBH landed on his feet and buttocks almost simultaneously.

[134] Further injuries suffered by TBH were fractures of the ribs and manubrium sterni [chest bone]. However, the x-rays of the chest by themselves did not reveal a fracture of the manubrium sterni. But Dr Prashant maintained that such fracture was due to the bending outwards at the junction of the manubrium and sterni and would not have shown up on the x-rays. We agree with him since the junction of the manubrium and sterni is a cartilage and it would have caused a subluxation in this region, resulting in a fracture. Such a fracture together with those of the ribs in our opinion was consistent with TBH having fallen from

a height owing to the force transmitted upwards from the legs to the chest when the body hit the ground.

[135] TBH also had linear fractures of the skull and haemorrhaging on the surface of the brain. According to Dr Prashant and Dr Khairul, these fractures were due to the transmitted forces from the legs upwards through the mandible [jaw bone] and into the skull as a result of the fall. Professor Vanezis was more general in his opinion and explained that these fractures were due to secondary impact as a consequence of the fall. Dr Porntip, however, attributed this to a pre-fall injury, ie of TBH having been hit by a blunt object before he fell.

[136] We disagree with Dr Porntip. If TBH had been hit by a blunt object and had suffered such severe injury of the head, he could not have consciously walked to the window to exit therefrom. And if, on the other hand, TBH had been unconscious and thrown out of the window, he would not have landed first on his feet and then on his buttocks almost simultaneously, and finally on his hands. According to Professor Vanezis, the duration TBH to impact the ground in a fall from a height of one hundred and eight feet would have been at a rate of approximately thirty-two feet per second. This would not have given him sufficient time to recover consciousness to take the instinctive defensive action that he took in attempting to break his fall.

[137] On the other hand, if TBH had been conscious and forced out of the window, there would most probably have been a struggle with his aggressors. Inevitably, this would have resulted in TBH having defensive injuries on his body, indicating a struggle. There were no such injuries found by the forensic pathologists. Then there would also possibly have been foreign sources of deoxyribonucleic acid ["DNA"] transmitted onto his body and clothing by the aggressors. But Dr Seah Lay Hong ["Dr Seah"], a forensic scientist from the chemistry department who conducted the DNA analysis on TBH and his clothing, detected no foreign sources of DNA in the fingernail clippings of TBH and on the

back outer side of his jacket except for one which later turned out to be that of a person known as Gopala. This person had died as a result of a road accident and a postmortem examination was carried out on him just prior to that on TBH. Hence, there had been contamination of that portion of TBH's jacket as a result of the transmission thereon of Gopala's DNA, owing to the postmortem table not having been scrubbed clean completely.

[138] When Dr Prashant and Dr Khairul conducted the first postmortem examination on TBH, they found a fracture of the mandible [jaw bone] with bruising in the region. From the photographs taken at this postmortem by Dr Prashant, they noticed a very light pink stain over the neck region. Dr Prashant, Dr Khairul and Professor Vanezis attributed this to hypostasis, ie postmortem staining. Dr Porntip, however, held the view that this was due to manual strangulation. Based on the evidence of the other forensic pathologists, we were unable to accept her view as the clear photographs taken by Dr Prashant were proof that the blood in this area had seeped into the muscles as a result of the fracture of the mandible, leading to postmortem staining.

[139] We found Dr Porntip's view to be extremely speculative and therefore unacceptable. In our opinion, this light pink stain on the neck was most certainly due to postmortem staining. It could not have been the result of a bruise as claimed by Dr Porntip since it was not seen by Dr Prashant and Dr Khairul at the first postmortem examination. This stain was due to the blood from the fracture of the mandible [jaw bone] seeping into the region of the neck, simulating a bruise after TBH had died.

[140] Our view is further reinforced by Professor Vanezis who said that if TBH had been strangled before his death, there would have been petechial haemorrhages in the eyes [pinpoint bleeding spots]. Such spots were completely absent in TBH's eyes, a fact that even Dr Porntip admitted.

[141] Another factor that ruled out manual strangulation was the absence of a fracture of the hyoid bone and laryngeal cartilages [structures in the neck]. These would have been damaged had strangulation occurred.

[142] From the photographs taken at the first postmortem examination, there were tramline abrasions measuring two centimetres by a half centimetre found over the chest region of TBH. The Bar voiced its suspicion that this could have been caused by physical abuse inflicted on TBH before he died. But this suspicion was demolished when both Professor Vanezis and Dr Porntip said that these tramline abrasions were caused by the folding and creasing of the clothes worn by TBH at the time when he fell.

Clothing and personal belongings

[143] Photographs taken at the scene where TBH fell and during the first postmortem examination showed a number of tears on TBH's trousers. The first was right across the buttock region. Another was at the knee area. The third was beside the zipper of the trousers. According to all the forensic pathologists, such damage to the clothing is commonly seen in cases of a fall from a height. This would have included the belt which TBH was wearing which was severed near the buckle.

[144] The Bar further voiced its suspicion that this tear on the belt could have been caused by TBH being held dangling by the belt out of the window on the 14th floor and that the belt snapped under his weight. We do not believe this was the case as there was no evidence in support of this, and further both Professor Vanezis and Dr Porntip acknowledged that such tear in the belt would be common in cases of falls from heights resulting from forces exerted during the fall.

[145] Still on the belt, Dr Seah found three contributors of male DNA types on it. Two of the contributors were identified. One was TBH himself and another was Gopala. Then there was the third which Dr Seah said she could not identify against all those whose DNA samples she had

taken. This included all the MACC officers who had been involved in the case as well as the police officers and hospital personnel who had come into contact with TBH after his death. By this process of elimination, we exclude the possibility of any of the MACC officers involved in this case from having resorted to such techniques as holding TBH by the belt and dangling him from a height.

Conclusion on forensic pathologists' evidence

[146] Having considered the evidence as a whole on this aspect of the case, we hold the view that TBH fell out of the window on the 14th floor of Plaza Masalam on the morning of the 16th directly above the place where his body was found later.

Interrogation

[147] TBH was taken to the Selangor MACC office for questioning just before 6.00pm on the 15th. His attendance, though purportedly upon invitation, was secured through insistent pressure unlike Lee's and Harun's attendance where they turned up voluntarily as requested. In TBH's case, he was accompanied by the MACC officers to the Selangor MACC office after a commotion and some unpleasant exchanges and arguments at the SUK building. In fact, he was escorted there. We were not surprised that given the harassed condition he was in, he was unsettled when he met Anuar in the reception area on the 14th floor of Plaza Masalam. He was forced to go immediately and his mobilephone was confiscated by Anuar. To add to this, Manoharan who did turn up at the Selangor MACC was not allowed to see TBH as promised. TBH was kept in the dark of this fact by the MACC officers.

First Interrogation

[148] Then TBH was taken to the Pen Mas area. There he underwent a so-called "calming therapy" designed by Anuar. Instead of leaving TBH alone to ease his nerves as a reasonable man would left him to

do, TBH was verbally assaulted by a pack of officers numbering six to seven at one time or other during this period who were told to “chat” with him “to calm him down”. Repeated questions from them of his background were asked. This could have been easily secured by Azhar who was officially told by Anuar to carry out this task.

[149] Though Anuar, the creator of this method of interrogation, pleaded ignorance of this inhumane treatment, we are of the view that it was done with a particular objective: to break down TBH’s resistance and to force him to say what they wanted. An indication of this was what happened at the time when TBH first arrived at the Selangor MACC office. Anuar who met him at the reception area immediately asked TBH what he could do to help. This is something unusual to do when you invite someone to your premises.

[150] To our mind, this was a tacit invitation by Anuar hinting that TBH should “rat” on his boss, YB Ean, so that TBH would be able to extricate himself from the oppressive atmosphere that he found himself in, having regard to the fact that TBH had already had a run-in with Anuar at the SUK building when the intention of the Selangor MACC to target YB Ean had become apparent.

[151] The therapeutic treatment designed by Anuar to calm TBH down through a “chat” at the Pen Mas area must have had a profound effect on him. He had to endure this torture for four hours. As observed by his “companions” of this “chat”, TBH was reserved, quiet most of the time, kept to himself, and only answered questions when asked. Such a description of TBH’s mood fits the characteristics of a person who was being intimidated.

Second Interrogation

[152] The second stage of the interrogation came from Arman and Ashraf. Though these MACC officers attempted to describe this process

as an interview we find it to be more like an inquisition. Arman and Ashraf assumed the role of inquisitors. They turned the four files over to TBH and demanded that he find for them matching documents to those obtained from TBH's laptop. They then went further by picking out suspicious documents from the four files and demanded an explanation from TBH without first investigating into the matter themselves. In fact, they exceeded the instructions given to them by Hairul Ilham to only find documents in the four files which corresponded to those from TBH's laptop.

[153] Further, during this process, Arman and Ashraf would have instilled doubts and fear into TBH by declaring that Treasury directives require for the calling of three tenders before a contract could be awarded. There was also a claim by them that some of the contracts had exceeded the permitted limit of RM10,000.00. Of course this was not true. Under a Selangor government circular dated the 13th August 2008, namely, Surat Pekeliling Perbendaharaan Bil 6 Tahun 2008 [in English, Treasury Circular Letter No 6 of 2008], YB Ean could award a contract directly to any contractor without the need for a tender exercise, and further the permitted maximum price for each of these contracts had been increased to RM20,000.00.

[154] Perhaps, to give them the benefit of the doubt, both Arman and Ashraf may not have known of this. But, as responsible MACC officers they should have ascertained what the real position was before making such accusations. On the other hand, if both Arman and Ashraf had known about this, then they were intentionally exploiting TBH's lack of knowledge or ignorance with false information deliberately aimed at confusing him. This was deplorable and must have caused severe anxiety to TBH as reflected in his conversation with Lee soon after this interrogation session. According to Lee, TBH would not have been in a position to know the detailed requirements for projects and programmes and that he, Lee, would have been the best person to have been questioned about this.

[155] Another aspect of this interrogation of concern was the ability of Arman and Ashraf to extract from TBH his password to his private email account. To many of us, this may be equivalent to disclosing our pin number of our ATM card. At least in the case of an ATM card, the extractor may be allowed to withdraw a limited amount of our money at any one time before such unauthorised access is reported. But in the case of an email account, all our personal information and data would be exposed immediately and permanently. This is a gross violation of a person's rights. TBH would have been very disturbed over this and his disappointment and regret in divulging his password to Arman and Ashraf was further mirrored in his conversation with Lee.

[156] We are of the view that this regret and concern of TBH over these matters remained festering within him. An indication of this could be seen from his behaviour when his statement was being recorded by Nadzri. This was further reflected in his being silent and being deep in thought when he met Tan Boon Wah near the toilet. Instead of being excited and surprised to see a fellow individual in a similar distressful situation, he maintained a distance and was virtually silent.

[157] From the evidence adduced, we are of the opinion that both Arman and Ashraf were specially selected by HH [though disguised as instructions coming from Hairul Ilham] to carry out this interrogation of TBH. They did not ostensibly happen to be there and available as everyone else was busy. In fact there was an excess of officers that evening, so much so that many were told to go home after a certain time. But Arman and Ashraf were instructed to remain for this special task despite both having prior engagements to attend court hearings the next day.

[158] HH must have realised that this was an important and delicate task to be performed since TBH was most likely the "go-between" person of YB Ean in relation to the contractors or suppliers. And for HH to find evidence to prove his suspicion, he had to focus on TBH to disclose any irregularities or perceived irregularities that may have been

committed by YB Ean regarding the allocation. Arman was certainly a bully and Ashraf, going by past records, was known to be successful in securing evidence, according to his superior Hairul Ilham. Furthermore, Arman and Ashraf knew each other well and had worked very well together previously as stated by Arman. From police records tendered in this inquiry by one DSP Kamaruddin Awang from the Selangor police criminal investigation section, out of the twenty cases reported against the Selangor MACC officers for assault, Ashraf was involved in fourteen of them and was positively identified by a majority of those who had made the reports against him.

[159] From this, we doubt Ashraf's role that evening was limited to that of an office boy, just tagging documents shown to him by Arman, and that he took no part in questioning TBH. Such perfunctory work, in our opinion, did not require one person specifically to perform. Arman could have done this himself since he had handed over the four files to TBH to do the work for him. There was no need for Ashraf to be present unless he had a more active role to play. From the way Ashraf answered questions by giving selective answers due to feigned memory loss at appropriate times, we found his evidence most unreliable. Having taken into account all the relevant facts, we conclude that though no force involving physical violence may have been applied to TBH that evening, threats of physical harm were most probably used by Arman and Ashraf when interrogating him.

Third Interrogation

[160] The third stage of the interrogation kicked in when Nadzri recorded TBH's statement. Initially, we thought this process would have involved TBH repeating the answers that he had given to the questions which Arman and Ashraf had asked of him. And, therefore, Nadzri would have just repeated the same questions and typed out those answers as previously given. But this turned out to be another forum of interrogation. Nadzri started afresh and questioned TBH all

over again. This covered even his background which TBH had spent four hours earlier repeatedly relating to the six to seven officers at the Pen Mas area where he was first taken. Proof of this can be seen from TBH's statement [exhibit I 69] recorded by Nadzri. Though Nadzri may have been assisted by Arman's notes taken during Arman's and Ashraf's interrogation of TBH, yet Nadzri took two hours to accomplish his mission which often times as disclosed previously was very tiring for both parties. In fact we were puzzled over this inordinate length of time taken. If Arman and Ashraf had asked all the pertinent questions and TBH had provided the answers [if we are to believe Hairul Ilham who stated that he was satisfied that TBH was ready to have his statement recorded], then this process should have been over in next to no time unless of course: (a) Arman and Ashraf had not been asking questions directly related to the documents, thus requiring Nadzri to start afresh, or (b) Nadzri deliberately prolonged this process to torture TBH mentally and disorientate him to agree to turn against his boss out of despair.

[161] In the course of examining this aspect of the evidence, we failed to understand why the Selangor MACC adopted this approach of assigning a first set of officers to do the preliminary interview or interrogation of TBH at the Pen Mas area, followed by another set of officers, ie Arman and Ashraf, to interview or interrogate him in a separate room, and yet have another officer, ie Nadzri, to repeat the same process but this time also to record his statement. This is not only duplicitous of work but contravenes sections 30 (1) (a) and 30 (8) of the MACC Act.

[162] Section 30 (1) (a) of the MACC Act provides:

“An officer of the commission investigating an offence under this Act may order any person to attend before him for the purpose of being examined orally in relation to any matter which may, in his opinion, assist in the investigation into the offence.”

[163] Section 30 (8) of the MACC Act says:

“An officer of the commission examining a person under paragraph (1) (a) shall record in writing any statement made by the person and the statement so recorded shall be read to and signed by the person, and where such person refuses to sign the record, the officer shall endorse thereon under his hand the fact of such refusal and the reasons therefor, if any, stated by the person examined.”

[164] From a perusal of these sections, we are of the opinion that the law requires an officer who calls in a person for examination before him to also complete the task of recording his statement. Based on this interpretation of the above provisions, we are of the view that what Anuar did by sending in a group of interrogators under the pretence of calming TBH, followed by Arman’s and Ashraf’s interrogation or inquisition of TBH, was against the law. Such unlawful intimidatory tactics would have had grave consequences upon his mind and would have been a culminating factor that drove him to suicide.

[165] Returning to Nadzri’s recording of TBH’s statement, we find that this process added further strain and duress on TBH. This, as we have said, was the third occasion that TBH was questioned. This time it was worse. His answers were vetted by Nadzri who then restructured them before typing them into his computer for TBH to approve. As we have observed, this exercise was demanding with documents having to be referred to and checked. And for TBH, we find that he would have had to be careful with his answers since they were reduced to writing and could be used to incriminate him as well as others. Taken at this time of the night and soon after the tormenting repeated interrogating experiences, TBH had reacted aggressively to cause Nadzri to remark, “Kalau you penat, saya pun penat juga sebab saya taip statement” [*If you are tired, I am tired also because I am typing the statement*]. This must have been the reaction of Nadzri in response to some words or

acts by TBH. From this we can gather that TBH was utterly frustrated, disappointed and angry. Further with such an utterance from Nadzri in the form of a rebuke, TBH could have been driven further to want to “escape” from it all.

[166] What we have described up to this stage are without doubt, in our opinion, factors contributing immensely to TBH’s decision to take his life. However, we believe that there must have been something that happened between 3.30am [after the recording of TBH’s statement was completed] and 7.00am [the earliest estimated time of his death] on the 16th that broke the camel’s back, so to speak, that propelled TBH to commit suicide.

TBH was not released after his statement was recorded

[167] Contrary to what various officers, particularly Anuar and Nadzri, portrayed to the effect that TBH chose to remain in the Selangor MACC office after his statement had been recorded, we hold a completely different view. We believe that he was not released. He was still under detention by the Selangor MACC.

[168] Our reasons are these. First, TBH’s attendance at the Selangor MACC office was practically effected by force. He had no choice as to the time of the “interview” and if it was convenient for him. Evidence has shown that he had no choice but to follow Anuar and his men immediately. On top of that, he was also escorted. Under such circumstances we cannot for a moment perceive that TBH would have desired to remain a single minute longer if he was indeed free to go. In fact this desire of his was made known to Sachi when he asked Sachi at the Pen Mas area as to when he could go back after having waited for a long time there.

[169] Second, since cross-checking of witnesses’ statements was practised at the material time, TBH would have had to remain in the

premises to wait for Lee's and Tan Boon Wah's statements to be recorded. Lee only had the recording of his statement completed at 5.00am on the 16th and Tan Boon Wah at 11.30am also on the 16th.

[170] Third, none of the material witnesses such as Lee, Tan Boon Wah and even Harun was allowed to go home after their statements had been recorded. As for Harun, he had to use his "connection" to the officer at HQ to secure his release. So this effectively demolishes the so-called common practice in the Selangor MACC that once a witness' statement has been recorded, the witness is free to go.

[171] Fourth, if TBH had actually been allowed to leave by Nadzri on the purported instruction of Anuar, there was no reason why TBH should not have been issued with an official notice to bring in further supporting documents demanded by Nadzri as was done with Tan Boon Wah. This would have completed the formality for the exercise of his release.

[172] Fifth, there was a written memo issued by HH to all his officers in June 2009 that an officer should always accompany a guest or witness while he remains on Selangor MACC premises. This came about after a previous incident where a visitor at the 14th floor of Plaza Masalam had wandered unauthorised into Anuar's room. Nadzri would not have gone against this memo unless he had secured a replacement to keep a watch over TBH until he left.

[173] Certain Selangor MACC officers who testified before us were at pains to create an impression that their office was much sought after as a place of refuge, for example, in the case of Lee to wait for his wife to bring documents while lying down uncomfortably on the sofa where he just could not sleep due to stress; Tan Boon Wah not wanting to go home because he had had an argument with his wife and preferred to remain in his small room and sleep on the floor; TBH not wanting to leave because he was too tired or too embarrassed to face YB Ean and preferred again the comfort of the sofa outside Nadzri's room.

[174] This did not make sense to us. Photographs tendered of the premises revealed that it was a working office. It was government premises where security and safety should have been paramount. It did not have the trimmings of a hotel or even a resthouse. And given the mental condition of these witnesses who were accused of wrongdoing instead of being asked to assist in clarifying matters, we believe that none of them would have preferred to stay a single minute longer if they have been released. The impression given by these Selangor MACC officers was certainly not acceptable to us and is an extremely poor excuse to support their contention that TBH, Lee and Tan Boon Wah were at liberty to leave but were so enamoured of the MACC office and the treatment they received that they chose not to leave despite being free to do so.

HH's active participation and involvement

[175] HH had, from his own testimony and that of many of his officers, been conspicuously absent from all the ongoing activities that went on in his office throughout the evening of the 15th and early morning of the 16th. The impression given was that he stayed cloistered in his office appearing only on one occasion to go to the toilet and common prayer room [*surau*] and then leaving for home at about 6.26am on the 16th to take his children to school and returning to the office at about 8.30am that day. According to him, he did not take an active part in this operation except to act as a mentor to his subordinates. He did not give directions on the mode and form of the interviews or interrogations nor did he have knowledge of who conducted them and in respect of whom. He asserted definitely that he did not cross-check on the results from the interviews or interrogations at that material time.

[176] We found him to be arrogant, given to falsehoods, untruthful and uncompromising in his stand. His falsehoods, particularly of his non-active involvement in the entire operation at the material time, were exposed from the contradictory statements he made before us. But more

compelling was the confirmation from two of his own officers, namely, Azeem and Azian who were brave enough to reveal towards the later part of our proceedings the actual role of HH in this operation despite the fact that HH was their superior and still holds a senior position in the MACC as director of the MACC Negeri Sembilan.

[177] According to them, HH was actively involved in the entire operation from the very start. He was the one who gave all the instructions and directions on how the witnesses were to be interviewed and interrogated and by whom. HH had attempted to exclude himself from this responsibility and instead shift it all to Anuar. He had called for a meeting on the evening of the 16th [after the death of TBH was discovered] of officers from the Selangor MACC who were involved in the operation to brief them on this. We find no reason to doubt these two witnesses. In fact, there is contemporaneous evidence to support this where Azian, worried about this deceit, had texted a message to Anuar on his mobilephone to urge Anuar to expose the truth of HH's actual involvement.

[178] We will now point out some discrepancies in HH's evidence of his purported non-active involvement. First, Anuar as the IO of the operation did not even know that Tan Boon Wah had been brought in for questioning. This is unusual since Anuar was supposed to be the coordinator.

[179] Second, Bulkini reported to HH directly of the negative result of his interrogation of Tan Boon Wah. According to the chain of command and for the purpose of co-ordinating the entire operation, Bulkini should have told Anuar, and not HH, of this.

[180] Third, Anuar was purportedly sleeping the entire early part of the morning of the 16th away despite being in charge of synchronising the results of the interrogation of the witnesses [TBH, Lee, Tan Boon Wah and Harun] who were still being detained on the 14th floor of Plaza Masalam.

[181] Fourth, HH had claimed that he did not know that the person whom he saw at the pantry at 5.45am on the 16th was Tan Boon Wah and did not question him about his presence there at such an unearthly hour. This was most unusual when, just a month earlier in June 2009, HH had himself issued a written circular to all his officers that witnesses and visitors in the Selangor MACC office should be accompanied at all times. This purported indifferent attitude of HH in relation to the presence of Tan Boon Wah at the pantry implies that he must have known that Tan Boon Wah was still around because of the ongoing operation and he would have in fact given direct instructions that Tan Boon Wah should not be released.

[182] Sixth, HH admitted that cross-checking of information extracted from various witnesses in the Selangor MACC office was a norm. If Hairul Ilham had gone home at around 3.00am and Anuar was sleeping throughout the early part of the morning of the 16th and information from TBH and Lee and perhaps Tan Boon Wah [if he decided to change his mind to bend to the wishes of the Selangor MACC officers] was coming in, who was then doing the cross-checking? With HH remaining in his room and being passionately involved in this operation, it would have been he who was doing this job. While doing this, he would have also given instructions to various officers involved to do what he considered appropriate.

[183] We did describe HH as being passionately involved in this entire operation. From the start we observed that he was convinced of the truth of the information he had received. However, he was fully aware of the fact that the information was grounded on the belief of the informant that Selangor state assemblymen were receiving monies from the allocation without the programmes being held or the projects being carried out.

[184] As the information was grounded on a mere belief and without supporting facts, HH should have exercised every caution as the

complaint was serious in nature and involved the State government of Selangor because, as practised, the allocation was not available to the state assemblymen in the opposition. Instead of carrying out some basic groundwork to satisfy himself as to the veracity of that information, he launched a full-scale operation involving a large number of witnesses and mobilised the whole Selangor MACC and sought manpower support from other MACC offices as well for this purpose. Though documents related to claims on the allocation were previously secured from various District Offices and Land Offices, these were not thoroughly checked as could be seen from the instructions given by Hairul Ilham to Arman to check the four files for incriminating evidence when this should have been carried out much earlier. Other examples of an absence of groundwork were the instances where Bulkini and Sachi accused Tan Boon Wah and Lee respectively of not carrying out certain programmes or projects when this ought to have been first verified.

[185] An elementary approach would have been to have interviewed various independent persons who had attended the organised functions for the programmes to check if the programmes were held or to have visited the project sites to check whether the projects had been completed. Such an approach could have also involved the questioning of the officers of the District Office or the Land Office who had certified that the programmes were held and the projects were carried out.

[186] Next, questions were directed at witnesses pulled in that evening of the 15th on the suspected inflated price of items supplied. We are at a loss to understand why the Selangor MACC did not check this out earlier with various suppliers for such items to find out their market price. And even on the suspicion that there were kickbacks to the DAP from these programmes and projects, common sense would have dictated that it would have been prudent to demand from the DAP a reply to these allegations and to require the production of relevant receipts if the monies paid out to the DAP were indeed the reimbursements of advances made earlier.

Anonymous letter

[187] In the course of the inquiry, an anonymous letter dated the 5th August 2009 on the letterhead of HQ came to light. Purportedly written by the MACC officers of Malaysia it was addressed to the chief commissioner of the MACC. It alleged the corrupt practices, misconduct and abuse of power committed by HH in connection with the cases involving TBH and Dato' Seri Dr Mohamad Khir Toyo, the former menteri besar [*chief minister*] of the State of Selangor. HH was said to be directly involved in the investigation in connection with the alleged misuse of funds allocated to YB Ean. The letter was marked as exhibit I 256 in this inquiry.

[188] HH, in the course of the inquiry, testified that he was shown the letter and it was clear that it had received the attention of his superior, the chief commissioner. However, there was no evidence to suggest that a formal investigation on the matter had been carried out, given that the MACC has very wide powers to set its investigation machinery in motion. By section 29 of the MACC Act, a report may be made orally or in writing, and in the present matter before this RCI, the information that set the investigation machinery of the MACC in motion had purportedly been conveyed to HH merely over the telephone.

[189] HH had been with the MACC for about nineteen years at the material time and, as stated earlier, was the deputy director of the Selangor MACC at the time of the incident, holding the rank of senior assistant commissioner 1. Based on the evidence gathered during this inquiry, it was clear indeed that HH was in full control of the investigation in this case, and he was not merely giving formal directions in the capacity of a superior over his subordinates in the organisation. During the period of the operation, twice in a day, once in the morning and again in the late evening or at night, officers involved in the operation would brief him of the progress made and he on his part would give specific directions as to the further conduct of the operation. Even

when the officers were on the ground, they would call him on their mobilephones for directions should they encounter any problem in the operation, or he would call them to give directions.

[190] In amplification of these facts, it must be noted that HH had received the information of the alleged corruption involving the Selangor state assemblymen at least by the 21st June 2009, after which he directed Anuar to formally lodge a report to initiate investigations into the matter and appointed him as the IO. On 13th July 2009, Anuar lodged the report adverted to earlier, which sparked off the operation in question. It was HH who directed Anuar and Hairul to obtain documents from the District and Land Offices. According to the evidence, on the 15th he was in his room throughout the day ostensibly doing his normal work while at the same time directing the operation from 5.00pm that evening. He never left his room except to go out to the toilet and the prayer room [*surau*] for prayers.

[191] Around 5.45am on the 16th, he left his room and then for home and returned to the office at 7.15am. He attended the daily briefing by the officers involved in the operation at 8.30am. Around 11.30am, he left the office for HQ for a discussion on purported unrelated matters with officers there, and after that he left for the Attorney-General's office in relation to other matters. En route, around 2.00pm, he said he received a call from Anuar informing him of the death of TBH. He directed Anuar and Hairul to join him immediately at HQ. But before they arrived, he and the deputy chief commissioner left for the Selangor MACC office.

[192] We were unable to accept the testimony of HH as related above as the truth, taking into account the activities that were going on during the evening of the 15th right up to the morning of the 16th on the 14th floor of Plaza Masalam just outside HH's room. No reasonable man would be able to accept as true the story of HH that he was not at all concerned with what was actually happening on the premises of

the Selangor MACC right under his nose and which involved several witnesses, including TBH, who had been summoned or brought in by his officers under his direction and were in their care and custody. No person in his right mind would believe that HH would have been content to just remain in his room on the same floor where all the activities referred to in this report were going on and was merely waiting to give directions to the officers involved in the operation as and when they needed his advice. Such a stance was contrary to his action in leaving for home in the early morning hours of the 16th to take his children to school and then rushing to be back in the office for the morning briefing on the operation by his officers. This certainly was not the action of a man who had no personal interest in the ongoing operation, having regard to the further fact that he had virtually gone without sleep the whole of the 15th and the morning of the 16th.

[193] On the testimony adduced before us, however, there was no direct evidence to prove that HH had a hand in the death of TBH. But as the seniormost officer involved in the operation and being physically present in the office when the officers involved in the operation were interrogating TBH virtually without let, he should be held responsible for the actions taken by him and his officers which propelled TBH to commit suicide. We shall elaborate further on this aspect of the evidence under the heading "*Fourth interrogation*" which now follows, apart from what has been stated above.

Fourth Interrogation

[194] We agree with the submissions of the Bar that HH was just too stubborn [such trait was also displayed when he gave evidence before us] to retreat from his mistake in mounting such a massive operation, particularly when it had received wide and extensive press coverage. To overcome his disappointment at the negative results obtained from these witnesses up to that stage, he must have resorted to a personal and more aggressive interrogation of TBH since TBH, as we have

explained, held the vital link between YB Ean and the suppliers or contractors, and if anything were to be made to “stick” on YB Ean, it would have to be through TBH.

[195] We believe that he must have been assisted upon this foray by Anuar and Ashraf. We name Anuar because his alibi had been proved to be false. As disclosed, hardly anyone saw him sleeping at the place he claimed to be at between the hours after 3.30am and 7.00am on the 16th. Even guard Khairudin who said that he saw Anuar sleeping in the visitor’s area [*ruang tetamu*] pointed out an area which was different from the area where Anuar claimed to have slept at. The evidence of guard Khairudin itself was not credible as he was found to have with him a prepared script while testifying in the witness box which proved beyond peradventure that he had been coached. Further, Anuar lied about the role he had played in order to cover up for HH. And on top of these factors, he was a trusted senior officer of HH who was prepared to sacrifice himself for HH, the other such officer Hairul Ilham having gone home by that time.

[196] As for Ashraf, we found it most unusual for him to fetch TBH a glass of water at about 4.40am on the 16th. This established three things. First, Ashraf was around during this time. Second, though TBH knew where the pantry was and could have gone there himself to get a drink of water, yet he demanded Ashraf’s services. This was most extraordinary in view of Ashraf’s poor track record on physical abuse of suspects, which made it unlikely that he would entertain a demand from a person who was inferiorly situated in relation to him at that point in time. Though TBH was termed a “witness”, he was treated more like a suspect. Third, was the rather impolite and demanding nature of the request: “Hoi! Saya mahu minum air” [*Hoi! I want to drink water*]. This could be said to be downright rude, yet Ashraf complied. From this we drew the inference that Ashraf was not thoughtful and generous in performing this service but had done so out of remorse for some of the improper things that he and those involved had done to TBH during the hours of 3.30am to 7.00am on the 16th.

[197] The acts committed by these three persons, namely HH, Anuar and Ashraf, were most probably in the form of another round of intensive interrogation of TBH to coerce him into making a statement that it was YB Ean who directed him to commit unlawful acts in handling the allocation. This session must have been very taxing on TBH both physically and mentally. He had been deprived of sleep throughout that night and into the morning and had had to endure persistent, aggressive and unscrupulous questioning. His physical condition as described by Ashraf when fetching him the glass of water was that TBH had moved to sit in an upright position very slowly. This fourth interrogation session, to our minds, must have been the final straw that broke the camel's back.

Raymond

[198] Before we came to this finding, we did take into consideration the evidence of Raymond who had testified that he saw TBH at 6.00am on the 16th lying on the sofa outside Nadzri's room. If this was true, then TBH must have committed suicide after 6.00am on the 16th. This would fit into the estimated time of death of TBH which was between 7.15am and 11.15am on the 16th, as determined by the forensic pathologists. However, despite this, we entertained grave reservations over Raymond's evidence. In our opinion, he was not a reliable witness and was used by those responsible for TBH's death to distance them from their wrongdoings by creating an impression that TBH was not only alive at 6.00am on the 16th but was also resting comfortably and peacefully on the sofa outside Nadzri's room.

[199] Raymond had said that he recognised TBH at 6.00am that morning because he had first seen him prior to this in the Pen Mas area around 12.00am on the 16th talking to one other Chinese person. At that time he had happened to pass by that area on his way to the administrative section to get some writing paper. Next, he had said that he recognised TBH from "*The Star*" news printout shown to him by

Anuar earlier, of the latter arguing with Manoharan with TBH standing in the middle. This had been taken at the SUK building. We found this claim of Raymond difficult to accept for the following reasons. First, when Raymond purportedly saw TBH at the Pen Mas area, he did not know who TBH was. He only had had a glance at the two Chinese persons sitting in this area. He had not looked directly at their faces. He had only seen their backs and their heads. Second, even though TBH's face appeared in the internet news which was downloaded and shown to him by Anuar prior to his coming to know that TBH had died, we doubt that he would have taken particular notice of TBH. The focus then was on Anuar who took pains to show off to his colleagues that he was being featured in the media. Third, the particular location where Raymond said he had seen TBH at 6.00am was dark. And if he had not got close to TBH, he could not have been certain that it was indeed TBH. Fourth, what had brought Raymond to the area was the coincidence that he was on his way out of the 14th floor of Plaza Masalam from his room. This was not his usual route. He said that he had to come this way because he had forgotten to bring his access card that was required to open some doors along his normal route. We found this strange when other MACC officers informed us that almost all the internal doors of the office that evening were disarmed for the purpose of the operation in order to facilitate the movement of officers, including those not from the Selangor MACC office, to enable them to move about freely. So this excuse of Raymond to use a different route to leave his room was highly suspicious.

[200] Raymond in our opinion was used as a time-marker by those concerned with TBH's death. Aside from all the contradictions exposed to support our view, there was another factor: his punch card to indicate the time of his entry into and exit from the office. His punch card indicates that he had punched out at 6.04am on the 16th and then virtually immediately at 6.05am on the same day, it shows that he had punched in again. When questioned on this rather curious act of his, he explained that he did so with the intention of not returning to the

office that day. We found this most illogical. First, if he was going to attend court that day during office hours, there was no necessity for him to have punched in since it would have been physically impossible for him to come back to the office while he was in court. Second, if he had punched in to indicate that he was in the office at 6.05am on the 16th, when would he then punch out since he did not intend to return to the office that day? We were in agreement with the Bar that this punching in and punching out almost simultaneously was to create the firm impression that he was in the office at the material time.

[201] As it became obvious to us that Raymond's evidence was tailored to fit certain objectives, which in this case dovetailed those of the MACC officers responsible for TBH's death, we rejected his evidence as being unworthy of any weight or consideration in respect of the time he claimed to have seen TBH at 6.00am on the 16th.

Forensic psychiatric aspects

[202] To understand the probability that TBH took his own life, the traits of his character and the changing states of his mind as a result of what he underwent on the 15th and the 16th must be first understood.

[203] Character comprises the aggregate features and traits that form the individual nature of a person or thing. It is also defined as a moral and ethical quality of a person. It is sometimes used interchangeably with the term personality which is the sum total of the physical, mental, emotional, and social characteristics of the individual: see Dictionary.com.

[204] State of mind is defined as:

- (a) a temporary psychological state; and
- (b) the state of the person's cognitive processes:
see Dictionary.com.

[205] An individual's state of mind is related to his character and personality. Despite the term "mind" which denotes mental status, the function and influence of the emotion [which would influence the mind in many conditions] must not be ignored. This state of mind is most of the time predictable, especially in normal and in expected situations. But in trying times and when severely-negative life events are experienced, such as when stress [physical, emotional or mental, or all of them together] is overwhelming, the state of mind of the individual could not only undergo profound changes but would become unpredictable: see *Social and Emotional Influences on Decision Making and the Brain*, by Maurico R Delgado & James G Dilmore, 9(2) *Minnesota Journal of Law, Science & Technology*, 899-912 (2008); *Study: Emotion rules the brain's decisions* [http://www.usatoday.com/tech/science/discoveries/2006-08-06-brain-study_x.htm].

[206] It must be mentioned at this juncture that the state of mind of an individual held in custody should be of utmost concern to his custodians. Their sensitivity towards the psychological state of their detainee reflects a humanely commendable attitude. This should prevent abuse of those held in custody by detainers: see *Liability and Wrongful In-Custody Deaths* by Darrell L. Ross, in *Sudden Deaths in Custody* by Darell L Ross & Theodore C Chan, ed 2006, Totowa, New Jersey, Humana Press: 173-202.

The psychiatrists

[207] To enlighten us on the psychological aspects of TBH's mind, were three psychiatrists. They were supplied with relevant documents tendered during this inquiry and had interviewed family members, friends and colleagues of TBH. Each of the psychiatrists gave us his/her expert opinion on the matter and these were tendered to us. The three psychiatrists who submitted their reports to us were:

- (a) Dr Badi'ah, a forensic psychiatrist and Dr Nor Hayati Ali ["Dr Hayati"], a community psychiatrist from the Ministry of Health of Malaysia, who prepared a joint report at the request of the MACC; and

- (b) Professor Paul Edward Mullen [“Professor Mullen”], Emeritus Professor of Forensic Psychiatry, Monash University, Australia, who was brought in by the Bar and prepared a report at their request.

[208] In his report, Professor Mullen furnished the following opinion and made the following observations, which we summarise and also quote below.

[209] TBH, according to Professor Mullen, “...was firmly in the lowest risk group for suicide when he was taken into MACC custody.” And if TBH “...did kill himself, things were likely to have occurred both to undermine his psychological stability and to frighten him literally to death. Also, his concern for his family, and for his future wife and mother of his child, could have been turned into a weapon against him by a totally unscrupulous interrogator, as could his loyalty and sense of responsibility to his colleagues.”

[210] Professor Mullen then stressed that certain interrogation techniques would turn “...a law-abiding citizen with no prior experience of being in the power of apparently unconstrained authority, particularly if they were cut off from all contact with sources of help and support...” suicidal as “[p]eople do not kill themselves because they have a method to hand, they use the methods at hand if they have become suicidal. The window from which TBH fell would have presented an obvious and easily accessible method. That there is such a large window so easily opened on the 14th floor of any offices, let alone an interrogation centre, is to me extraordinary.”

[211] Professor Mullen was of the further opinion that “...it would be remarkable for anyone to voluntarily remain in a place where he had been interrogated for eight hours in preference to returning home. TBH could not but have been aware of the anxiety of friends and family about his state. Given his enthusiasm for texting and phoning it is very

difficult to understand that he would not have immediately reassured them, whatever the time.”

[212] According to Dr Badi’ah and Dr Hayati, TBH came from an intact family and had a stable job. Having no history of mental illness, impulsivity or substance abuse, TBH would be in the low-risk category for suicide. In fact, he was looking forward to his wedding and his fiancée was then pregnant. However, both Dr Badi’ah and Dr Hayati were quick with their reservation that nevertheless, “literature review for suicide in custody showed that the protective factors in the general population may not have the same effect compared to people in custody.”

[213] Dr Badi’ah and Dr Hayati further pointed out that during the few weeks prior to TBH being questioned by the MACC, he had had to face and deal with two life-impacting events which could have added stress to his life. These would have changed his habits and demeanour subsequently. They were:

- (a) the bringing forward of the date of his wedding from the original set date in 2010 to the 13th October 2009 upon discovering that his fiancée was pregnant; and
- (b) the gathering of the documents by the Selangor MACC from the District and Land Offices insinuating a misappropriation of the allocation by his boss YB Ean.

According to these two doctors, these could be regarded by TBH as a potentially threatening situation.

Character of TBH

[214] From his family members and friends, we were able to have a clear description of TBH’s character traits. He was hardworking, diligent, responsible, devoted to his family, loved children, and was faithful to his boss YB Ean. He appeared to be cruising along fine in life, and

there was good reason to believe that the future appeared promising. As a member of the DAP and the political secretary of YB Ean, TBH must have been devoted to its cause. His friends and family members found him trustworthy and pleasant. He was seen to become angry if and when the situation warranted it. Not known to demonstrate extreme emotions, he was never seen to succumb to rage.

Psychological changes

[215] Psychologically, although a wedding and the preparation for it could have been a positive life event for TBH, it could also have brought stress to him: see Holmes-Rahe *Social Readjustment Rating Scale* in *Journal of Psychosomatic Research*, (1967) Vol. 11, pp 213-218. Adding this to the negative life events, it could have been worse.

[216] However, despite the Selangor MACC commencing inquiries and investigation in June 2009, of which TBH must have become aware, he was still able to take things in his stride and manage the usual stresses and challenges of life.

[217] But when he was taken in by Anuar on the 15th, TBH shifted psychologically from the low-risk group to the high-risk group for suicide. We shall now proceed to deal with the events which, in our opinion, pushed him into that stage.

[218] When the MACC officers raided YB Ean's office and started a search there, the first person he wanted to contact after communicating with his boss, YB Ean, was his lawyer, Manoharan. TBH appeared to have been propelled into a fear-inducing situation as shown by the pattern of calls that he made when the MACC officers were conducting their investigation in the office. He needed reassurance from his colleagues, hence the calls he made. He was pacified when given the chance by Anuar to discuss his concerns privately for a few minutes with both YB Ean and Manoharan in the SUK building before he was taken away to

the Selangor MACC office. But when he was not allowed to see both of them after that when he was in the Selangor MACC office, he was cut off from the outside world. The sense of isolation was intense as was demonstrated by his behaviour as described by all those who came into contact with him on the 15th and the 16th. Added to this was the deprivation of the use of his mobilephone.

[219] It was an accepted fact that TBH found companionship in his mobilephone. It was also an instrument most often used by him to relieve his stress. The analysis made on TBH's mobilephone-call pattern showed that he would call his friends and family at regular daily intervals. Taking his mobilephone away would have meant robbing him of his means to reality and sanity. And the MACC officers did just that. Thus, for the first time in his life, TBH found himself totally and completely isolated from the outside world and thrust into desolation.

[220] Another factor which had serious implications on TBH was the surrendering of his laptop to the officers of the MACC, and worse than this was being forced to divulge to the MACC officers the password to his email account. As this held the key to many things private, TBH must have felt that his privacy was violated under duress, and the secrets of his life were in the open. This was a gross violation of TBH's personal right, which would have compounded his anxiety and worry.

[221] TBH must have arrived at the Selangor MACC a harassed and unsettled man. This turn of events in his life was very sudden. But before he was able to recover, other devastating situations were foisted upon him that precipitated him beyond the threshold of his tolerance.

[222] TBH underwent four stages of interrogation as related earlier. His interrogators later claimed that these were interviews to extract information from witnesses like TBH. But other witnesses testified that techniques employed would range from mild interviews to harsh interrogation. All these interrogators were known to have applied intimidating approaches during the interrogation they carried out.

[223] Even at the outset, the first stage of interrogation was proven to be already a psychological burden on TBH. This “therapy” created by Anuar lasted for four hours, during which TBH was found to be reserved and quiet. Keeping to himself, he was only answering questions when asked.

[224] Arman and Ashraf behaved like inquisitors in an inquisition at the second stage of the interrogation. They instilled doubts and fear into TBH as regards the Treasury directives that required for the calling of at least three tenders before a contract could be awarded. But if both of them intentionally exploited TBH’s ignorance or lack of knowledge of the new set of rulings and directives of the State government of Selangor on this matter, their effort to confuse and cause anxiety to TBH was most deplorable indeed.

[225] During his interrogation, TBH had to face MACC interrogation heavyweights like Arman the bully [who would manipulate his witness to obtain evidence], Ashraf the abuser [who was Machiavellian in his method to secure evidence] and HH the arrogant leader [who would have no qualms in lying as long as his ends were achieved, regardless of the means employed].

[226] HH was described by MACC officer Azian as a workaholic. As a boss, he also instilled fear in his officers. Opportunities for promotion rested mainly in his hands. The whole range of interview-interrogation techniques would have been employed by his officers and himself to satisfy his desire to obtain results in the shortest possible time. Thus, it was not at all surprising that most of his officers, save two strong souls [Azeem and Azian] who pointed out the truth, had the inevitable habit of lying.

[227] The third stage of interrogation by Nadzri only worsened TBH’s plight. This stage only served to demonstrate how unscrupulous the interrogator could be. Nadzri repeated the whole process of the previous

stages of questioning and interrogating TBH. He took two hours to complete an excruciatingly laborious session which proved to be trying for both parties. TBH had to bear the weight of abusive and intense interrogation because he was the vital and sole link between YB Ean and the contractors and suppliers for the projects and programmes. Breaking TBH would mean the attainment of a much sought after result to get at YB Ean.

[228] Despite the habitual denials by the MACC officers-cum-interrogators, it could be safely concluded that their interrogation methods ranged from earnest and intensive questioning to outright psychological intimidation and physical threats. Since this had been their approach, there was no reason to believe that TBH had received different and less aggressive treatment as compared with the rest.

[229] By the time the fourth or final stage of the interrogation was over, TBH would have been almost a mental and physical wreck. When Ashraf fetched him a glass of water [demanded impolitely by TBH], TBH was said to have sat up very slowly.

[230] These intense stages of interrogation must have created serious doubts in TBH's mind as regards his actions in relation to his duties as YB Ean's political secretary. Signing his name but affixing YB Ean's seal, the absence of at least three quotations before the awarding of a project or programme, the alleged kickbacks to the DAP, the direct awards of projects, and fixing prices to goods required for projects also weighed heavily on his mind.

Contributing factors

[231] We note that TBH's relationship with his boss, YB Ean, was a mutually cordial and respectful one. TBH had never been found by his family members and close friends to have complained about the latter. Thus, attempts to plant ideas of betrayal of his superior would have been very stressful to TBH.

[232] There were also other contributing factors such as:

- (a) sleep deprivation;
- (b) an uncomfortable and unfamiliar environment; and
- (c) being held in custody for a long time.

Conclusion on forensic psychiatric aspects

[233] Tormented by this predicament, TBH experienced a change in his state of mind. And in a matter of hours, this change transformed him from being in the low-risk group for suicide into the high-risk group. The doubts, extreme emotional conflict and the immense feeling of guilt were all intolerable. Finally, precipitating the irreversible crisis that happened to him between 3.30am and 7.00am on the 16th, was the last straw that broke the camel's back. Finding no viable strategies to surmount the hurdle of accusations levelled, he found himself unable to escape from the suffocating quagmire in which he was trapped. Losing all hope, TBH would have felt trapped and have succumbed to despair. Since the window on the 14th floor was either open or could be easily opened and it was conspicuous and easily accessible near where he was on the sofa outside Nadzri's room, TBH would have found that the only way for escape from the torment he was undergoing was by jumping out of the window, even though it meant taking his own life.

First term of reference

[234] In relation to our terms of reference, as stated earlier, we have approached the issues by dealing with the second term of reference first and then with the first. To recapitulate, the first term of reference reads as follows:

- "1. to enquire whether or not there was any impropriety in the conduct of the examination of Teoh Beng Hock in the course of an investigation into a Shah Alam report number 0052/2009

by the Malaysian Anti-Corruption Commission in relation to its standing orders and practices and to recommend any appropriate action, where necessary.”

[235] The facts relating to the taking of TBH from his office on the 15th floor of the SUK building to the Selangor MACC office on the 15th has been dealt with earlier in this report and we shall not repeat those facts here except to allude to them where necessary.

[236] During the course of the inquiry the MACC made available to this Commission its applicable standing orders at the material time of the investigation. It also answered certain questions posed and explained certain aspects of its operations.

Search warrant

[237] It was the stand of the Selangor MACC that all the persons who were questioned or interviewed in the investigation then underway were called in for questioning or interviewing as witnesses and not as suspects. However, we note with concern that officers of the MACC involved in the investigation acted under a misapprehension of the law when they purportedly exercised their powers under the MACC Act.

[238] In carrying out their raids on the various places referred to earlier in this report for the purposes of their investigation, the officers purported to invoke sections 30 and 31 of the MACC Act as well as other provisions in the Act. It was not denied that the officers raided the various places without any form of authorisation as required under section 31(1) of the MACC Act. For convenience, we reproduce hereunder the whole of section 31 which reads as follows:

“31. Power of search and seizure

(1) Whenever it appears to the public prosecutor or an officer of the commission of the rank of chief senior

assistant commissioner or above as authorized by the public prosecutor upon information, and after such inquiry as he thinks necessary, that there is reasonable cause to suspect that in any place there is any evidence of the commission of an offence under this Act, he may by written order direct an officer of the commission to –

- (a) enter any premises and there search for, seize and take possession of, any book, document, record, account or data, or other article;**
- (b) inspect, make copies of, or take extracts from, any book, document, record, account or data;**
- (c) search any person who is in or on such premises, and for the purpose of such search detain such person and remove him to such place as may be necessary to facilitate such search, and seize and detain any article found on such person;**
- (d) break open, examine, and search any article, container or receptacle; or**
- (e) stop, search and seize any conveyance.**

(2) Whenever it is necessary so to do, an officer of the commission exercising any power under subsection (1) may–

- (a) break open any outer or inner door or window of any premises and enter therein to, or otherwise forcibly enter the premises and every part thereinto;**
- (b) remove by force any obstruction to such entry, search, seizure or removal as he is empowered to effect; or**

(c) detain any person found in or on any premises, or in any conveyance, searched under subsection (1), until such premises or conveyance has been searched.

(3) Whenever it appears to an officer of the commission that there is reasonable cause to suspect that there is concealed or deposited in any place any evidence of the commission of any offence under this Act and such officer has reasonable grounds for believing that, by reason of delay in obtaining a written order of the public prosecutor or an officer of the commission of the rank of chief senior assistant commissioner or above under subsection (1), the object of the search is likely to be frustrated, he may exercise in and in respect of such place, all the powers mentioned in subsections (1) and (2) as if he were directed to do so by an order issued under subsection (1).

(4) No person shall be searched under this section except by a person who is of the same gender as the person to be searched.”

[239] Section 31(1) enables the public prosecutor [which would include a deputy public prosecutor], or an officer of the MACC of the rank of chief senior assistant commissioner or above who has been authorised to that effect by the public prosecutor, to empower an officer of the MACC to act under section 31. It is to be noted that the officer who purports to act under section 31 must in the first place be authorised by the public prosecutor to do so only upon information which is to be conveyed to the public prosecutor and after such inquiry as the public prosecutor thinks necessary to satisfy him that there is reasonable cause to suspect that in any place there is any evidence of the commission of an offence under the MACC Act. Then the public prosecutor may by written order direct that officer to do any of the things specified in the various paragraphs of section 31(1) enumerated above.

[240] It therefore becomes crystal clear that an officer of the MACC cannot exercise the powers of search and seizure under section 31 without a written order from the public prosecutor, or an officer of the MACC of the rank of chief senior assistant commissioner or above who was been authorised so to do by the public prosecutor.

[241] In the course of the inquiry before this Commission, Hairul Ilham as well as HH were questioned as to where they derived their powers of search and seizure. They glibly answered that it was pursuant to section 31. We note with concern that there was a purported claim that oral authorisation by a deputy public prosecutor in the misty past had been given and that this in turn had devolved upon the Selangor MACC officers. But on further questioning, we were unable to elicit from any officer the name of the deputy public prosecutor concerned. Furthermore, on his own testimony, HH held the rank of senior assistant commissioner only at the material time and not that of **chief** senior assistant commissioner so as to bring him within the ambit of section 31(1) for any authorisation from any deputy public prosecutor to have legal effect.

[242] In the light of the foregoing, the purported exercise of powers under section 31 by the MACC officers was fatally flawed in that they had not been authorised by a deputy public prosecutor or a lawfully authorised chief senior assistant commissioner to exercise the powers conferred by section 31 as such authorisation must of necessity be in writing to circumvent any challenge that may be raised in relation to the authenticity of the authorisation. Furthermore, even if HH [despite the lack of rank and the absence of any written authorisation] had been so authorised by a deputy public prosecutor, he still needed to give a written order to his officers to act under section 31. This was not done.

[243] On the other hand, the officers of the MACC contended that when they act under section 31(3), the authorisation and the written

order under section 31(1) do not come into play. Therefore, by invoking section 31(3), they said that they could proceed to act off their own bat as it were without any referral back to a deputy public prosecutor or an officer of the MACC of the rank of chief senior assistant commissioner or above who had been accordingly authorised by a deputy public prosecutor pursuant to section 31(1).

[244] We are unable to accept such a distorted interpretation of the provisions of section 31. Section 31(3) can only come into play where officers of the MACC enter premises as properly authorised under section 31(1) and then a situation arises where, in the premises under search, there is reasonable cause to suspect that there is concealed or deposited in those premises any evidence of the commission of an offence under the MACC Act. Again, the officer having such reasonable cause to suspect must base his suspicion on reasonable grounds for believing that, by reason of the delay in obtaining a written order under subsection (1), the object of the search is likely to be frustrated. Then only, and only then, may he exercise all the powers mentioned in subsections (1) and (2) of section 31 as if he had been appropriately directed pursuant to an order issued under subsection (1).

Recommendations on powers of search

[245] In this context, we wish to stress our concern over the cavalier attitude exhibited by the MACC officers in disregarding the intention of parliament embodied in section 31(1) of the MACC Act and arrogating to themselves a power that the law did not, and does not, confer. As the officers of the MACC are involved in investigating offences not only under the MACC Act but also under various other laws which may have somewhat similar provisions as section 31, we recommend that all officers of the MACC should have a sound grounding in the various facets of the applicable laws and in the interpretation of those laws before they are allowed to venture into the field of active operations.

[246] Officers of the MACC conduct searches under the provisions of section 31 of the MACC Act which are similar to the search provisions found in many other jurisdictions throughout the world in that they require the prior authorisation of a judicial authority of that of a senior officer to conduct searches. In certain exigencies, this requirement is waived and a search may be conducted on the officer's own authority in order to preserve evidence which might otherwise be destroyed and the search frustrated by the delay in applying for a search warrant or such authorisation.

[247] In fact the MACC is in a better position than most other law-enforcement agencies ["LEA"] around the world in that it is maintaining the authority of a senior officer to issue warrants in the form of written orders to search. This is not usually the practice and the issuing of such warrants is largely reserved to the judiciary.

[248] In the investigation in question, it was admitted by a number of the MACC officers that there were no written orders in existence under section 31(1) of the MACC Act for any of the searches conducted. This was despite the fact that such authorisation could have been obtained from a deputy public prosecutor attached to the MACC or a senior officer of the MACC who was of or above the rank stipulated in section 31(1). Rather the officers relied on their perceived powers under section 31(3) to conduct the searches. The searches conducted were clearly an abuse of those powers as there was no reason to believe that there was any likelihood of the searches being frustrated on account of any delay in obtaining the required authorisation.

[249] In addition, two senior officers, namely, HH and Hairul Ilham, relied on the existence of a chief secretary's circular of 1984 which, they alleged, allows the search of government offices without warrant or authorisation. Even if this were true, the circular requires the issuance of an official letter from the chief commissioner of the MACC authorising the search [a more onerous requirement than obtaining a

search authorisation by way of a written order under section 31(1)] and, in any event, such an administrative circular was clearly superseded by the MACC Act and the provisions of section 31.

[250] More disturbingly, the MACC officers indicated in evidence that this was the usual practice, and it would appear that this is not an unusual practice in the MACC as a whole. Parliament clearly intended that the provisions of section 31(3) were only for emergency use in exigent circumstances. However, it would appear that the MACC officers have adopted them as common practice, fostering a view that the MACC can search without warrant or authorisation. Other LEA which also have such provisions include the Malaysian police, the ICAC of Hong Kong, the UK police, and other LEA around the world. However, in all circumstances the use of these powers generates a report to justify that use.

[251] We therefore recommend the following in relation to the standard operating procedures [“SOP”] of the MACC regarding search:

- (a) that the commonplace use of section 31(3) cease forthwith;
- (b) that the use of the alleged authority under the chief secretary’s circular of 1984 cease forthwith;
- (c) that, in general, properly issued warrants or written authorisations be used as the basis for all searches by MACC officers;
- (d) that, the issue of those warrants or written authorisations be properly justified in writing;
- (e) that the use of section 31(3) be restricted to ongoing operational circumstances where there is a real and present belief that failure to act will result in the destruction or loss of evidence. The use of section 31(3) should be confined to exceptional circumstances to emphasise the rule that

a written order should always be obtained, save in clear instances where evidence may be in the process of being tampered with, removed and/or destroyed;

- (f) that, if possible, time should be taken to advise the relevant senior officer [or deputy public prosecutor] of the requirement by telephone in order that he may issue a verbal authority and a written authority may be quickly brought into existence;
- (g) that, in either case, immediately after the search, and, in any event within twenty-four hours, a full written justification for the search and use of section 31(3) powers [or telephone justification] be made to the relevant senior officer [or deputy public prosecutor] who will then indicate a retrospective agreement in writing;
- (h) that a record be kept of such occurrences which are to be reviewed regularly by a deputy public prosecutor at senior level in the Attorney-General's Chambers.

[252] These suggested amendments to procedures can be accomplished by the issue of new SOP regarding searches and incorporated into the training programme for officers. If this is not considered appropriate, then consideration might be given to additional legislation through an amendment to the MACC Act.

Applicable standing orders

[253] The applicable standing orders at the relevant time when TBH and the other witnesses were required to assist in the investigation were the following:

- (a) *Perintah Tetap Ketua Pengarah BPR Malaysia Bab B (Siasatan) Bil 2/1998 - Prosedur Memerintah Kehadiran dan Merekod Pernyataan Saksi Di Bawah Subseksyen 22(1)(a) dan Subseksyen 22(8) Akta Pencegahan Rasuah 1997* [**“SO No 2/98”**]

[Standing Order of Director General of ACA Malaysia Chapter B (Investigation) No 2/1998 – Procedure on Order to Attend and Recording of Statement of Witness under Subsection 22(1)(a) and Subsection 22(8) of the Anti-Corruption Act 1997 (“SO No 2/98”)]

- (b) *Perintah Tetap Ketua Pengarah BPR Malaysia Bab B (Siasatan) Bil 7/1998 – Prosedur Penggeladahan Di Bawah Seksyen 23 Akta Pencegahan Rasuah 1997 [“SO No 7/98”]*

[Standing Order of Director General of ACA Malaysia Chapter B (Investigation) No.7/1998 – Procedure on Search under Section 23 of the Anti-Corruption Act 1997 (“SO No 7/98”)]

- (c) *Perintah Tetap Ketua Pengarah BPR Malaysia Bab B (Siasatan) Bil 12/1998 Prosedur Penyitaan Harta Alih [“SO No 12/98”]*

[Standing Order of Director General of ACA Malaysia Chapter B (Investigation) No12/1998 – Procedure on Seizure of Movable Property (“SO No 12/98”)]

[254] Subsequent to TBH’s death, the MACC made improvements to its standing orders pertaining to the treatment of witnesses through the introduction of the following:

- (a) *Perintah Tetap Ketua Pesuruhjaya Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) Bab B (Siasatan) Bil 2 Tahun 2010 Prosedur Memerintahkan Kehadiran dan Merekodkan Pernyataan Orang Yang Diperiksa (Saksi) Di Bawah Subseksyen 30(1) (a) dan Subseksyen 30(8) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009.*

[Standing Order of Chief Commissioner of the Malaysian Anti-Corruption Commission (MACC) Chapter B (Investigation) No 2 of 2010 – Procedure on Order to Attend and Recording of Statement of Person Examined (Witness) under Subsection 30(1)(a) and Subsection 30(8) of the Malaysian Anti-Corruption Commission Act 2009].

This standing order repealed SO No 2/98.

- (b) *Perintah Tetap Ketua Pesuruhjaya Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) Bab B (Siasatan) Bil 7 Tahun 2010 – Prosedur Pengggedahan Di Bawah Seksyen 31 Akta Suruhanjaya Pencegahan Rasuah Tahun 2009.*

[Standing Order of Chief Commissioner of the Malaysian Anti-Corruption Commission (MACC) Chapter B (Investigation) No 7 of 2010 – Procedure on Search under Section 31 of the Malaysian Anti-Corruption Commission Act 2009].

This standing order repealed SO No. 7/98.

- (c) *Perintah Tetap Ketua Pesuruhjaya Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) Bab B (Siasatan) Bil 17 Tahun 2010 - Prosedur Penyitaan Harta Alih Di Bawah Seksyen 33 Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009.*

[Standing Order of Chief Commissioner of the Malaysian Anti-Corruption Commission (MACC) Chapter B (Investigation) No 17 of 2010 – Procedure on Seizure of Movable Property under Section 33 of the Malaysian Anti-Corruption Commission Act 2009].

This standing order repealed SO No 12/98.

However SO No 2/98, SO No 7/98 and SO No 12/98 were in force at the time of TBH's death.

[255] When the MACC officers raided YB Ean's office on the 15th, they seized a laptop and a CPU under section 33 of the MACC Act.

[256] When TBH was brought to the Selangor MACC office at about 6.15pm that day, we observe that he was subjected to what was

euphemistically called an “interview” by various MACC officers in four different stages which culminated in the recording of his purported statement under section 30(8) of the MACC Act between 1.30am and 3.30am on the 16th. We note with concern the manner in which TBH was “interviewed” in stages by the MACC officers. The various stages of interrogation have been extensively dealt with in the earlier part of this report and we need not repeat them here.

Breaches of applicable standing orders

[257] Among the submissions made by the parties was the submission that “suspects under investigation by the MACC are granted more legal rights than witnesses and that despite the limited scope of protection afforded to witnesses, there were nevertheless several infractions of the MACC’s standing orders.” We agree and list the following infractions:

- (a) The search of YB Ean’s office and seizure of TBH’s laptop and CPU without authorisation and a written order under section 31(1) of the MACC Act was in breach of orders 3.4, 4, 5 and 6 of SO No 7/98 and of order 4.2 of SO No 12/98.
- (b) As the operation had commenced sometime in June 2009, the failure of the MACC officers to obtain authorisation and a written order under section 31(1) to seize the laptop and the CPU was totally unjustifiable as there was no basis for suspicion that evidence would be tampered with, removed and/or destroyed. In addition thereto, the failure of the MACC officers to take photographs of and label the laptop and the CPU, and the places from where these items were seized as well as prepare a sketch plan of the same, was in breach of order 4.4.2 of SO No 12/98.
- (c) Four documents that were printed out from TBH’s laptop [exhibits D94 to D97] comprised two quotations and two invoices which apparently formed the plank upon which the suspicion of the MACC was launched that there was something

improper in the claims made. However, these four documents were not printed out in TBH's presence for his verification. Neither was he asked to sign any seizure list regarding the four documents. This is in breach of orders 4.4.1 and 4.4.4 of SO No 12/98. In these circumstances, the authenticity of these four documents is moot.

- (d) It was the contention of the MACC that TBH cooperated with its officers voluntarily and therefore there was no requirement for its officers to comply with the various standing orders as well as the written law applicable, including section 31. In our view such a contention should never be countenanced for the simple reason that authorities such as the MACC when challenged as to their failure to comply with standing orders and the law may then well say that as the witnesses had cooperated voluntarily, there was no requirement for compliance with the standing orders and laws. If witnesses challenge this and say that they did not act voluntarily, the MACC will be in no position to defend its stand.
- (e) The failure of the MACC to issue a written order to TBH to be examined orally to assist in investigations was in breach of order 4.1 of SO No 2/98.
- (f) The MACC contended that legal counsel for YB Ean and TBH had advised them to cooperate with the MACC as its officers were empowered under the law to do what they did. Notwithstanding that advice, it is our view that the relevant provisions of the law should have been observed and correctly applied so that the public would be protected. Further, Arman and Ashraf who had earlier "interviewed" [in fact interrogated] TBH pursuant to section 30(1) of the MACC Act did not subsequently record TBH's statement under section 30(8). It was Nadzri who did this and this was in breach of order 4.2.1 of SO No 2/98.

- (g) The use of Nadzri's own words when recording TBH's statement without recording the latter's own words gives rise to uncertainty as to which parts of the statement were the actual answers of TBH and which were not. This was in breach of order 4.2.5 of SO No 2/98.
- (h) The omission of the words "Tandatangan Pegawai Yang Memeriksa" "*Signature of Examining Officer*" on the last page of TBH's statement at the portion where Nadzri purportedly signed off as the recording officer was in breach of order 4.2.9 of SO No 2/98.

Treatment of witnesses and suspects

[258] We observe that TBH was originally "invited" to be a witness in the ongoing investigation by the MACC. However, the circumstances surrounding his decampment from the SUK building, his being escorted to the MACC office, his being interviewed/interrogated by the MACC officers, the recording of his statement immediately after such interview/interrogation and his remaining in the care, custody and control of the MACC officers after the statement was recorded, all point to TBH being transformed from being a prospective witness to being a prospective suspect. The MACC officers contend that TBH was free to leave after his statement had been recorded but that he elected to remain in the MACC office.

[259] We find it impossible to believe that he would want to remain in the MACC office after having being detained there for almost twelve hours. We find the failure of the MACC officers to release TBH after his statement had been recorded amounted to cruel conduct and punishment inflicted on purpose. We would therefore recommend that all proceedings in any MACC office be recorded on closed-circuit television [cctv] so that there can be no dispute whether witnesses are detained or kept in the offices of the MACC against their own free will or whether it can be said that they are "voluntarily there as guests of the MACC".

[260] We are of the view that the legal rights of both witnesses and suspects should be enacted as part of the MACC Act because the same will become transparent and accessible to the Malaysian public through such enactment. Providing for these rights through the standing orders would not safeguard the public as their observance would largely depend on the absolute discretion of the MACC officers concerned and would not be transparent in light of the usual classification of such standing orders as “official secrets”, to which the public will not be privy. It is a cardinal principle of transparency and the democratic process for a witness or a suspect to know what his rights are when he is called upon to assist in an investigation or when he is taken into custody.

[261] In the course of the inquiry, we were concerned by the total lack of consideration for human sensitivities exhibited by the majority of the MACC officers. We were shocked to hear that racial expletives appeared to be the stock in trade of the interrogation procedure adopted by certain of the MACC officers in this case and in another. We hasten to add that such usage was of course denied by the officers concerned but we have no reason to doubt that the same had been uttered having regard to the whole background circumstances in which the interrogation took place.

[262] We are of the view that the recruitment process of MACC officers should include psychological evaluation to assess their suitability for investigative work in the MACC and that they should further be given psychological counselling to apprise them of racial and religious sensitivities as well as the different levels of the breaking point which individuals would have when subjected to severe or intense interrogation.

Proposed improvements

[263] Submissions put in included a non-exhaustive list of issues and proposals for our consideration “as a means to improving the legal protection to be afforded to witnesses assisting in an MACC investigation”.

We have taken note of those submissions and reproduce below our views on some of them as expressed during the course of this inquiry. Some of the proposals in those submissions coincide with our views and we reproduce them below with modifications.

Qualifications and training

- [264] (a) All MACC officers who are to be employed and/or to carry out functions as surveillance/raiding/enforcement and investigating officers should at the minimum have completed tertiary education.
- (b) MACC officers who are to be employed and/or to carry out functions as surveillance, raiding, enforcement and investigating officers should undergo a more extensive and comprehensive training programme. They ought to be examined and only enlisted for service if they meet the required standards. Such examination and training should include psychological evaluation and psychological counselling respectively.
- (c) The continuing education and training of all MACC officers should be made compulsory.

Infrastructure

- [265] (a) The infrastructure of MACC premises and offices should be improved and upgraded. Every MACC office should be equipped with cctv, surveillance cameras to record the movements and actions of every person who enters or leaves the office or any of its rooms.
- (b) There should be a specified waiting room for witnesses to be placed in while waiting to be interviewed or to have their statement recorded. Officers should wait with the witnesses to prevent anything untoward happening and also to prevent

witnesses involved in the same investigation from communicating with each other. Witnesses should not be required to wait for more than thirty minutes except for good reason.

- (c) There should be specified rooms for the interviewing and recording of the statements of witnesses ["interview rooms"]. Interviews should only be conducted in these rooms and statements should also be recorded in these rooms. They should be located on the ground floor of the MACC office and should not be locked during the interviewing or statement-recording session. This will enable the superior officers of the interviewing or recording officers to check on them from time to time to ensure that the interview or the recording of the statements is done properly and in accordance with the law.
- (d) Interview rooms should be equipped with one-way glass mirrors to promote transparency in the interview process and to prevent allegations of force being used, having regard also to our earlier recommendation that all proceedings in MACC offices be recorded on cctv.
- (e) All interviews and recording of statements of witnesses should be captured by way of video or audio recording and equipment should be installed in the rooms for this purpose.
- (f) There should be a computerised system recording the entry and exit of all persons into MACC offices including details such as the time, the purpose of the visit and details of the person with whom he or she entered or exited the premises. This system should be complemented by a witness logbook which must be signed by the witnesses and the MACC officers.
- (g) There should be proper rooms for MACC officers to rest and/or sleep in if work requires them to lengthen their stay in the office. MACC officers should no longer be allowed to sleep

in their rooms. Evidence led during the proceedings was to the effect that officers had a rest area in the office but it was not comfortable. They also slept wherever they could when they needed to rest. This is not conducive to efficiency at work as resting under the conditions they mentioned, for example, sleeping on one's work table, will not give proper rest and put one in the correct frame of mind to do one's work, thereby impacting on how one deals with witnesses and potential suspects.

Calling up witnesses

[266] Section 30(1) of the MACC Act enables an MACC officer investigating an offence under the Act to order any person to attend before him to be examined orally in relation to any matter under investigation or to produce any book or other stipulated document which may be required for the purpose of the investigation.

[267] MACC officers are also given police powers under the Criminal Procedure Code ["the CPC"]. Section 111(1) of the CPC is so worded that where a police officer investigating an offence requires the attendance before him of any person, then he "**may by order in writing**" require the attendance before him of that person [emphasis added].

[268] We observed that during the operation in question the MACC officers without exception relied on verbal orders which were given to require the attendance of witnesses at the Selangor MACC office. While we recognise that the urgency of the matter may necessitate the giving of verbal orders to attend, such practice must be observed with care. In the inquiry before us, witnesses testified that when they questioned the authority of the MACC officers to do what they were doing, they were informed very curtly that the law empowered them to do so. This extended to the extent of the officers not even properly showing their authority cards before proceeding to question the witnesses.

[269] We are of the view that MACC officers should in all instances produce their authority cards as required under section 8 of the MACC Act when conducting any operation and not act in the high-handed manner that they did in the present case by not even properly showing their authority cards before proceeding to question the witnesses.

[270] We are also of the view that, except where the urgency of the situation requires acting otherwise, all MACC officers acting under section 30(1) of the MACC Act should issue a written order for witnesses to attend before them. In the present case, witnesses testified that when they questioned the authority of the MACC officers to do what they were doing, they were informed very curtly that the law empowered the officers to do so.

Witnesses to be accompanied

[271] Any witness or suspect under investigation by the MACC should at all times be accompanied and escorted by a designated MACC officer who must regularly report the movement of the witness to the investigating officer to ensure that he is kept informed of the state and movements of the witness. We cannot overstate the need for this as events have shown that where witnesses or suspects are left to range unattended in the MACC office, there would be the probability of untoward incidents occurring. This practice would have the added advantage of meeting challenges of any physical or mental abuse inflicted on the witness as there would be a person unconnected with the investigation who would have had the charge of the witness [except when interviews or interrogation are in progress] and who would then be in a position to state what took place in the event the question arises.

Interviewing and statement-recording

[272] A view was expressed that interviews and the statement-recording of witnesses should only be conducted during office hours, namely, between 9.00am and 5.00pm, and that each session must last for no

more than one hour at a stretch, and breaks between each session should be no less than fifteen minutes each. It was observed that even on the accounts of most MACC officers who conducted interviews and recorded statements in this operation, the officers said that they regularly stayed overnight and were tired as they had to work for long hours.

[273] The MACC, on the other hand, was of the view that the present practice of the statement-recording of witnesses being continued beyond working hours as necessitated by the circumstances of the case should continue. Reliance was placed on the case of ***Datuk Seri Ahmad Said Hamdan and others v Tan Boon Wah*** [2010] 6 CLJ 142 in support of its stand.

[274] Tan Boon Wah who was the plaintiff in the above case was a witness in the inquiry before us and the case itself emanated from the investigation carried out by the MACC pursuant to the complaint made in Shah Alam report No 0052/2009.

[275] We were apprised of facts in the inquiry which did not surface in the proceedings in the High Court and the Court of Appeal. We found that Tan Boon Wah was kept at the MACC office for a lengthy period of time to put pressure on him and to inconvenience him. He was present in the MACC office on the evening of the 15th, ostensibly for the purpose of his assisting in the ongoing investigation as a witness. However, we found that he was not only interviewed but was interrogated in circumstances that should not be permitted. He was confined in a room and left there with no lights on, left to sleep on the floor [when not being questioned], and was not allowed to go home even though his presence at the Selangor MACC office was not required after about 2.30am on the 16th.

[276] We observed that he was subjected to intense pressure and threat of physical violence, and verbal insults were heaped on him which included racial slurs. We have no reason, having observed his

demeanour, to doubt that this was what happened and we therefore reject the testimony of the MACC officers to the contrary in the form of denials. His statement was only recorded in the late morning of the 16th, a long time after his interrogation by the MACC officers was over. This gives the lie to the testimony of the MACC officers that he chose to stay behind after being released as he wanted to wait for his wife to bring the required documents over to the Selangor MACC office. His wife never came with the documents and despite that his statement was recorded later that morning. This can only mean that what Tan Boon Wah said was true, namely, that he was purposely made to remain in the Selangor MACC office after the officers were done with him around 2.30am that morning.

[277] In situations like this where a decision has to be made as to whether to accept the evidence of one witness while rejecting that of others, it would have helped immensely had there been cctv recording of what took place. We would stress that any cctv recording system that is implemented in MACC offices should be tamperproof so that there can be no possibility of the recording being doctored.

[278] While accepting that the authorities have to act to investigate cases of corruption and other crimes to protect society at large, the gathering of evidence to so protect society should be done within the law with sufficient safeguards to protect the rights of the individual.

[279] In relation to the recording of statements outside office hours, we would propose that in exceptional circumstances, where the discontinuance of the recording of the statement of a witness would have an adverse impact on the investigation, the recording should be allowed to continue beyond office hours but with sufficient rest periods and attention being given to the witness' physical and mental condition and well-being. This is important because, as long as the witness is in the care of the MACC, the MACC is liable for his well-being and should the witness be kept for long hours and suffer any deterioration in his health, the MACC should be held accountable.

[280] We are of the view that provision should be made in either the MACC Act or in subsidiary legislation made thereunder for this protection to be accorded to witnesses and not for the same to be incorporated in the standing orders of the MACC. It is important to have legislative protection of this right of the witnesses and for the exceptional circumstances to be spelt out in the law itself.

[281] It is to be emphasised that witnesses are asked to attend for the recording of their statements and to otherwise assist in investigations in furtherance of society's objective to eradicate corruption. It therefore behoves the authorities to treat witnesses humanely to obtain their cooperation. We observe that in this case certain witnesses were treated so hostilely as to be counterproductive.

[282] Witnesses who are summoned to MACC offices should be made comfortable and provided basic amenities such as food and beverages without having to ask for the same, depending upon the length of time that they are in the MACC offices.

[283] We are of the view that witnesses should be informed, in plain and simple terms in a language that they understand, of their right to inform their family and/or friends about their whereabouts, in particular, that they are at the MACC assisting in investigations. We accept that this right may be curtailed in specified and exceptional circumstances clearly defined by the MACC Act.

[284] To enable witnesses to communicate with family and/or friends, the MACC should provide them with the facilities to make one telephone call or allow some other form of communication with the family member or friend in the presence of an MACC officer for the specific purpose of informing that person of their whereabouts. However, this right may be restricted in circumstances where such communication could result in an adverse effect on the investigation by the MACC. This right and its curtailment in specified and exceptional circumstances should be clearly defined in the MACC Act or in subsidiary legislation.

Limitation on seizure

[285] A proposal that the personal items of witnesses should not be required to be seized or handed over to the MACC before the course of their interviews and statement-recording is acceptable, except where it is necessary for any particular personal item to be handed over so as not to interfere with investigations.

[286] Upon the completion of the witness interview or statement-recording, an official document should be generated and acknowledged stating the details of the session and whether the witness is required to return again with documents or for further statements, and if so, the return date and time. We are of the view that this will be a record of what has transpired, encouraging transparency.

[287] It is imperative that the investigating officer at all times play an active role to coordinate the interview and recording process of the witness. This is because he is in charge overall of the investigation. From what was disclosed to us at the inquiry, the investigating officer in TBH's case, Anuar, was away on a personal matter for a lengthy period of time and then, on his return to the MACC office, went to sleep while TBH's statement was being recorded. As the officer responsible for the investigation, he should have been alert and present throughout and should have attended to TBH's welfare at the end of the recording of his statement.

[288] We are therefore of the view that a provision spelling out the responsibilities of the investigating officer should be incorporated in the SOP of the MACC. That said, we do not for a moment accept Anuar's testimony that he went to sleep at the MACC office upon his return from running his personal errand that night right through until the next morning on the 16th when such a large operation in which he had a starring role to play was ongoing.

[289] Witnesses should not be called in for questioning if independent verification or background checks can be made without their attendance and assistance at the MACC. Such independent verification and background checks should be carried out speedily before the witnesses are called in for questioning. This will obviate any need for witnesses to be detained for lengthy periods of time at the offices of the MACC while the background checks and independent verification are being carried out. Every investigation should be supervised and coordinated by the investigating officer. There should be a clear chain of command and time periods stipulated for the investigation papers to be delivered to the public prosecutor or his deputy.

Separation of prosecutorial and investigative functions

[290] The Bar proposes that for the MACC to be, and to be seen as, fully independent, the MACC Act should incorporate and confer prosecutorial powers on a person or body of persons within the MACC to conduct the prosecution of cases ["MACC independent prosecutor"]. It is of the view that the MACC should no longer have to refer investigations to the Attorney-General's Chambers for supervision or decisions on prosecutorial matters. In this regard the Bar proposes the amendment of section 5(6) of the MACC Act to remove the conferment of the deputy public prosecutor's power on the chief commissioner, as the office of the MACC independent prosecutor is established.

[291] We are not in favour of such a proposal and are of the view that its implementation will not in any way improve the present system. At present, deputy public prosecutors from the Attorney-General's Chambers are stationed with the MACC to give directions and conduct the prosecution of cases. We note that the placing of such officers with the MACC eventually detracts from their independence owing to their direct association with the MACC officers on the ground. We are of the view that the deputy public prosecutors dealing with the MACC should instead distance themselves physically from the MACC by being

stationed in an appropriate division of the Attorney-General's Chambers. This will make them more independent and not be influenced by the MACC officers on the ground. This is to take account of human frailty because in all relationships or official dealings, physical proximity will bring parties closer together and of necessity result in the overlooking of certain faults or weaknesses in the persons whose official acts are to be scrutinised. In this regard, we record our concern over the presence of certain deputy public prosecutors at the briefings of the MACC after the death of TBH and their involvement in summoning intended witnesses for discussion before the testimony of those witnesses was adduced at this inquiry.

[292] We note though that the placing of the deputy public prosecutors with the MACC is intended to facilitate investigations because their presence on the ground will expedite consultation. If this practice is to continue, then there should be a check and balance in that the investigation papers should ultimately be reviewed by senior deputy public prosecutors in the Attorney-General's Chambers to ensure that the deputy public prosecutors with the MACC have acted professionally, independently and properly, without fear or favour.

Maintenance of records

[293] All investigation diaries, witness statements and documents referred to in the diaries and statements should be properly maintained. Insofar as investigation diaries are concerned, we stress that they should be maintained in a contemporaneous form and in such a way that they are incapable of being tampered with or altered under any circumstances. Only one investigation diary per officer should be maintained in one investigation. More than one diary in one case should not be generated by an officer, as happened in the present case. In this inquiry, we were shocked to learn that officers maintained more than one investigation diary in the same case, that the diaries were not maintained on a contemporaneous basis, that they were improved upon over time and

subsequently prepared so as to be corroborative of and consistent with one another when scrutinised.

[294] This practice is far removed from the purpose for which an investigation diary is maintained, namely, to be a contemporaneous document of current events as they unfold to be recorded in print, and not for reliance to be placed on fallible human memory when recorded very much later. Investigation diaries must be maintained in a form that is tamperproof and not capable of subsequent embellishment.

Prevention of abuse of powers

[295] In the course of the inquiry, we were exposed to a number of instances of blatant abuse of powers by the Selangor MACC officers and the other officers involved in the operation. The investigation into the allegations of corruption by the MACC showed scant regard for the law in the pursuit of the MACC to produce results.

[296] We propose that the law be amended to prevent further abuses and misinterpretation of the law and to afford protection to witnesses and suspects against human-rights abuses as well as to take a more balanced approach in the fight against corruption. In this regard, the issue of “guarding the guards” becomes paramount. In the words of Lord Acton [*In Letter to Bishop Mandell Creighton, 1887*]:

“Power tends to corrupt, and absolute power corrupts absolutely.”

[297] It would appear that parliament, in its objective to eradicate corruption, gave wide-ranging powers to the MACC by enacting the MACC Act. This, to our mind, was laudable but unfortunately any law will only be as good as the persons enforcing it. Opportunities for abuses of powers are rife in the MACC Act. Unless the persons who are entrusted with the enforcement of the Act are persons of integrity and good character, the enforcement of the law will lead to abuses, as was revealed to us in the course of the inquiry. Instances of the frailty

of human nature and character and the heady arrogance of power came into clear display when TBH and other witnesses were under investigation by the MACC officers. We observed that while the MACC Act gives wide-ranging investigative powers to the MACC, at the same time certain the seniormost MACC officer is given the prosecutorial powers of a deputy public prosecutor. This combination of investigative and prosecutorial powers in the same individual is anathematic to a freely functioning democracy where the rights of the citizen to be safeguarded from abuses of power should be paramount.

[298] Section 5(6) of the MACC Act enables the conferment of the powers of a deputy public prosecutor on the chief commissioner of the MACC. We do not for a moment in any way say that this is intended to reflect adversely on the personage occupying the office of the chief commissioner. Rather, it is intended to safeguard the public against an abuse of power and we would therefore propose that that subsection be deleted from the MACC Act. In addition, it is noted that the officers of the MACC have the powers of the police as stated in section 70 of the MACC Act. This concentration of police [investigative] and prosecutorial powers in the hands of the MACC could lead to abuses of power and corruption.

[299] There must be a proper system of checks and balances to prevent any abuse of powers. The MACC Act in various provisions gives the powers of the public prosecutor [which includes the powers of a deputy public prosecutor] to an officer of the MACC of the rank of chief senior assistant commissioner or above as authorised by the public prosecutor. We are of the view that the provisions in the various sections of the MACC Act containing the clause “or an officer of the commission of the rank of chief senior assistant commissioner or above as authorised by the public prosecutor” should be deleted: please see, for example, sections 31(1), 35(1), 43(1), 44(1), and 45(1) of the MACC Act.

[300] The testimony of MACC officers such as Arman, HH and Hairul Ilham is demonstrative of the fact that there is a strong sense of

arrogance amongst the Selangor MACC officers who testified under the belief [in our view, mistakenly] that they were not accountable to anyone in the exercise of their powers and of how they perform their duties in the exercise of what they perceive were their legal powers under the MACC Act.

[301] The several provisions in the MACC Act that provide for powers of search and/or raid without a warrant or authorisation from the public prosecutor to be exercised only in instances of dire need where there was a likelihood of evidence being destroyed if recourse were to be made to the public prosecutor have been used by the MACC officers when searching the houses of witnesses and suspects although they knew full well that this was an ongoing operation which had commenced in June 2009 and therefore the matter should have been reverted to the public prosecutor for authorisation.

[302] In this regard, we would recommend that SOP be generated to make it very clear that the powers of search and seizure without a warrant or authorisation from the public prosecutor are only to be exercised in cases of emergency where recourse to the public prosecutor would lead to the destruction or dissipation of evidence or documents.

Complaints

[303] At present, section 15(1) of the MACC Act provides for the setting up of a complaints committee with the following functions:

- (a) to monitor the handling by the MACC of complaints of misconduct which are non-criminal in nature against officers of the MACC; and
- (b) to identify any weaknesses in the work procedures of the MACC which might lead to complaints and where it considers appropriate to make such recommendations as to the work procedures of the MACC as it deems fit.

[304] We observe that the complaints committee can only monitor the handling of such complaints of misconduct by the MACC but the power to take action on such complaints is still with the MACC. Further, the monitoring function is confined to complaints of misconduct which are non-criminal in nature. The function of the complaints committee in paragraph (b) of section 15(1) is in the nature of making recommendations to the MACC as it deems fit. Whether these recommendations are adopted or discarded is at the discretion of the MACC.

[305] We accordingly note that the complaints committee is not a complaints committee *per se* but rather one to be kept informed of the progress in relation to the investigation of complaints of non-criminal misconduct made against the officers of the MACC.

[306] We were informed by the investigator that the MACC has a unit which is termed the management and professionalism division [“the MPD”] which oversees non-criminal complaint investigations against MACC officers. The function of the MPD [the name of which was changed to the excellence and professionalism division] is to conduct investigation of complaints of misconduct which is non-criminal in nature against officers and staff of the MACC. In certain cases or complaints of criminal behaviour, the MPD needs to deal with the police especially in confirming the result of their investigation. We have been informed that the MPD conducts random inspections and audits on an annual basis and conducts seminars to instil professionalism and integrity.

[307] The MPD has the characteristic short reporting line of an internal affairs unit reporting directly to the deputy chief commissioner and chief commissioner of the MACC. The MPD also reports some matters to the complaints committee, undertakes investigations at the direction of that body, and acts as a secretariat for the complaints committee.

[308] We were also informed that the MPD had stated that it is its responsibility “to acknowledge the complainant within twenty-four

hours on receiving the complaint [for online complainant and where there are the particulars of the complainant], to take action or conduct investigation within two months after opening the investigation file, to inform the result of the investigation to the complainant within five working days after completing the investigation". In addition, as the complaints committee secretariat it arranges committee hearings on matters which the committee deems to be of interest. Members of the public can make complaints by letter, telephone or online. Anonymous complaints are accepted but it is not clear whether critical comments made in the media of allegations against individual MACC officers or MACC offices are considered to be complaints.

[309] The MPD also stated that part of its terms of reference was "to conduct investigation on non-criminal offences and to make recommendations on the weaknesses in the work procedures" whereas the police are in charge of investigations into criminal offences. It was stated that although the police conduct the investigations, the MPD still takes the necessary internal action "in order to curb the problem or to control the situation". However, the head of the MPD admitted that there was no system in place, even now, to ensure that complaints of criminal activity made to the police are referred to the MPD, stating that the fault does not lie with the MPD as "no one tells us". This was also confirmed by testimonies before us in the inquiry.

[310] We recommend an expansion of the terms of reference for the MPD to include the following:

- (a) A responsibility to ensure standardisation of SOP.
- (b) Random inspection of offices and procedures on a more proactive basis than the annual inspection conducted at present, giving particular attention to all operational matters such as daily diary entries, investigation diaries, interview rooms, and all matters pertaining to investigation and the

interview of witnesses and suspects. Any shortcomings in any of these areas should result in disciplinary proceedings not just for the officers concerned but also for their immediate supervisors.

- (c) As and when the MACC obtains an appropriate computer system, the MPD can undertake a remote overview of computer use and access. In the short term and as a result of the infraction identified during the inquiry, we would suggest an immediate overview and inspection of all computers in use in the MACC to ensure that they are being appropriately used.
- (d) Greater access to the public with the complaints procedure being publicised in each MACC office lobby.
- (e) The MPD should report directly to the chief deputy commissioner who has overall responsibility for discipline and punishment.
- (f) An increased role for the complaints committee as the current climate of media and public speculation makes it unlikely that self-investigation and complaint action by the MACC will be acceptable.
- (g) Transparent reporting of all investigations by the MPD to the complaints committee in a monthly activity report with a requirement for the deputy chief commissioner to explain any delay in writing.
- (h) The complaints committee is to ratify any findings and punishments.
- (i) The requirement of any officer under police investigation to report himself to the MPD subject to a disciplinary infraction for any failure to do so.

- (j) The requirement for any supervisory officer to report the fact of a police investigation involving any officer under his command to the MPD subject to a disciplinary infraction for failing to do so.
- (k) The MPD is to have a responsibility to make a decision as to the interim handling of an officer [interdiction, removal from contact with the public etc] during police investigation, subject to ratification by the complaints committee.
- (l) A revamped performance pledge and mission statement to reflect public service.

[311] We anticipate that these procedures may lead to an increase in frivolous or malicious complaints but have been advised that this is the best practice adopted across first-class LEA worldwide. Criminal or civil action can be taken against persons who make malicious or frivolous complaints if there is sufficient evidence available. In the current climate of media and public speculation, it is unlikely that self-investigation and complaint action by the MACC will be acceptable and therefore we would suggest an increased role for the complaints committee.

[312] Overall, we would recommend that, certainly in the short term, the MPD should follow a robust and proactive strategy so as to bring the organisation quickly to a disciplined state. We would also suggest the inclusion of the phrase “discipline and inspection” in the title of the MPD so that there is no misunderstanding of the role it is intended to play. As with many other areas of inquiry, we would suggest that the review of the MPD to make specific recommendations is necessary. Any changes identified can probably be dealt with within existing SOP. However, if it is seen to be necessary, amendments can be made to the MACC Act.

Training by MACA

[313] During the course of the inquiry, the investigator was directed to obtain information from the Malaysian Anti-Corruption Academy ["MACA"] to gain an understanding of the current training programmes extant at MACA. We were given to understand that MACA is involved in training officers of other LEA on an international basis. However, given the shortcomings of the MACC officers as is obvious from the contents of this report, we are of the view that there should be a revamping of MACA by an in-depth study of its facilities and the content of the training courses that it provides.

[314] From testimony before us, it would also appear that MACA is expending its efforts in the international training sphere with a number of international training courses planned. While this may be laudable, it should not neglect its own officers' requirements in the meantime.

[315] Having regard to the foregoing, we see it fit to make the following recommendations:

- (a) There should be a comprehensive review of the facilities and training provided by MACA. The trainees for each course should be of a manageable number to have maximum benefit, and not be too many as appears to be the present practice.
- (b) That review should consider the need for cultural, ethical and professional input from inspirational and international speakers from a wide variety of backgrounds.
- (c) All training should contain elements stressing integrity and cultural awareness, and ego, anger and stress management, and self-esteem evaluation.
- (d) Training should be concentrated on new recruits and those officers involved as investigating officers and/or operational staff.

- (e) The investigating officers and operational staff should attend at least one training course a year in order to maintain standards.
- (f) There should also be continuous professional development ["CPD"] courses for officers to enhance their standard of performance.

Interview standards

[316] During the course of this inquiry, there was a considerable amount of discussion regarding the standard of interview practised at the Selangor MACC office in relation to this case and other cases in which police reports had been made against certain officers of the Selangor MACC. In light of the numerous instances of complaints from persons interviewed and the recurring methods reported, there seems little doubt that interview techniques ranging from "robust" to "brutal" were commonplace. The officers themselves claimed to have used "psychology" in their interviews and therefore it is just as likely that the interviews resulting in physical injuries and complaints are only the most significant and that many interviews conducted will have been oppressive. These techniques seem to have had the tacit approval of the senior officers at the Selangor MACC.

The PEACE model

[317] Not only are these techniques in violation of lawful practice but are also seen to be ineffective by international law-enforcement agencies, ie LEA. The majority of international LEA use persuasive interview techniques with regard to both witnesses and suspects. In particular, we have been informed that the British police service has codified this practice into the PEACE model of interview, and that this model is used by all British police forces and by all other British LEA, from the customs and excise [which deals with criminal behaviour similar

to policing roles] down to the food standards agency. This model has also been successfully exported to various LEA and quasi-LEA bodies around the world including the ICAC of Hong Kong.

[318] The PEACE model interview is a non-coercive method of interview based upon preparation, engagement, account, closure and evaluation. The structure as set out in the UK police national investigative interviewing course is as follows:

- P** Planning and Preparation
- E** Engage and Explain
- A** Account [clarify and challenge]
- C** Closure
- E** Evaluation

[319] We consider the PEACE approach to be very professional and are told that it has been shown to be effective in obtaining good information and intelligence from witnesses whilst maintaining their commitment to assisting LEA, and at the same time being a method which convinces suspects to yield information about their own, and accomplice, involvement, without attendant complaints and the likelihood of such evidence being ruled out.

[320] We have been informed that the PEACE model was evolved by an academic who was able to study British police interview techniques because of the adoption of audio and video recording of interviews. In his study, conducted over some years, he concluded that “the main weaknesses that were identified were a lack of preparation, a general ineptitude, poor technique, an assumption of guilt, unduly repetitive, persistent and laboured questions, a failure to establish relevant facts and the exertion of too much pressure”. [Most, if not all, of these factors can be attributed to the officers of the MACC involved in the TBH investigation, even if one ignores the allegations of brutality]. The

PEACE model emerged as a codification of the good and successful interview techniques which he observed as well as a rejection of the bad practice identified.

[321] We have been further informed that the PEACE model is now the standard training package for UK investigators and without such training [and refresher courses] they are not allowed to conduct interviews. The same policy has been adopted elsewhere in the world. We would recommend that Malaysia follows suit.

[322] From the evidence adduced at the inquiry, we observed a statistical anomaly of complaints of alleged physical assault against officers of the Selangor MACC [twenty out of fifty-nine reports for the whole MACC nationwide over a five-year period]. This tends to indicate that MACC officers in the country as a whole generally do not indulge in physical interviewing techniques. However, that is not to say that they do not have the same weaknesses of interview techniques identified in the UK before as these weaknesses are generally found in LEA populations which have not had PEACE or similar training.

Facilities for interviewing

[323] The interview rooms in the Selangor MACC office were totally unsuited to purpose. There was a lack of appropriate furniture [and some of the furniture present lent itself to oppressive interview techniques]; there were health and safety issues regarding the offices; there were security issues; there was a total lack of good interview psychology.

[324] We have been informed that in the UK and in other jurisdictions [for example, with the ICAC in Hong Kong], there has been an adoption of audio and video recording of interviews. Such recordings are available to both the defence and the court and to the wider general public should defendants release the recording to the media. Without proper training of MACC officers, the weaknesses identified above are all too

apparent and lead to cases being lost, embarrassment to the agency, damage to officers' careers and potential civil suits.

[325] The MACC, we have been given to understand, is embarking on a programme of having video interview rooms in all of its offices. All MACC officers will need to become conversant with the use of the equipment installed for this purpose but, and more importantly, the need to become able to interview in this medium. This training needs to be conducted before video interviewing is rolled out. Otherwise, the MACC risks being discredited by the leak of poor interviews [whether they be too timid and fail or are too aggressive and lost]. We have been advised that the ICAC in Hong Kong has been using this equipment for more than fifteen years and reports that more than 95% of interviews go either unchallenged or are accepted by the court. The remainder are lost on technical points with no adverse complaints. However, these interviews are conducted on video by officers who are trained in interviewing techniques.

Recommendations

[326] In light of the foregoing, we recommend:

- (a) that the MACC embark on a concentrated programme of interview-development courses;
- (b) that the PEACE model be adopted across the MACC;
- (c) that only officers who have successfully completed such a course should conduct interviews;
- (d) that the rollout of video interview rooms should be postponed until officers using them are adequately trained;
- (e) that SOP regarding interviews should be enhanced;
- (f) that MACC offices should be equipped with proper interview rooms.

Status of invited persons

[327] During the course of the inquiry, there was evidence of considerable confusion between the status of various persons “invited” to the MACC for interview, whether as suspects or witnesses. Evidence before us and apocryphal stories indicated that witnesses will be kept waiting for considerable periods of time; there is no SOP regarding their treatment; there is confusion as to their status as an accomplice or a co-conspirator. Evidence before us indicated that there is no process in existence to record the time spent at the MACC premises by any person other than one placed under arrest. The latter’s movements etc are then regulated by law.

[328] It is suggested that the MACC should adopt a standard procedure for dealing with witnesses and suspects invited for interviews and that this process should be fully recorded in a purpose-designed booklet which is kept and is available for scrutiny. A soft-back book with stapled numbered pages should be considered for use to obviate any suggestions of tampering. Entries in the book should be consecutively numbered and timed. The full details of the person being interviewed should be entered into the first page of the book together with a signed declaration by that person that he is attending at the MACC voluntarily for the purpose of interview or providing a statement.

[329] Persons being required to give statements should be declared as witnesses or suspects, and that status should be recorded. Suspects should be cautioned and advised of their rights and that fact should be recorded.

[330] It is quite possible that the person might be invited to attend for interview as a witness and that, during the course of the interview, upon an examination of documents, and consideration of the available evidence, the investigating officer takes a view that the person is actually an accomplice or a co-conspirator and therefore a suspect. At

that time, the investigating officer should caution the person and advise him of his rights and record all of those facts. The person should be invited to sign the record.

[331] The status of a person as a witness or suspect is not to be based on an assessment by the investigating officer as to whether that person will be charged with any offence or used as a witness by the prosecution in some later proceedings. The investigating officer does not have the authority to make such an assessment. Any person who is implicated in a criminal act as an accomplice or as a co-conspirator is a suspect and should be treated as such. Any decision as to the later granting of immunity from prosecution or to use as a witness is a matter for the decision of the public prosecutor.

[332] Invited persons should have their arrival and their departure at the MACC office recorded by the guard at the security gate or entrance.

[333] Concerns has been expressed of the time invited persons spend in the MACC premises and the fact that witnesses are kept waiting for lengthy periods of time to give simple statements. Therefore it is suggested that an initial time limit of, perhaps, four hours should be imposed for an invited person to remain in the premises. That time limit does not alter the fact that a person who is attending voluntarily is free to leave at any time but rather it is an administrative requirement for the MACC officers to comply with.

[334] After this initial period, invited persons should be asked to indicate by signature that they have no complaint and no objection to remaining with the MACC for the purpose of recording their statements/ being interviewed. In addition, an officer senior to the interviewer should satisfy himself that the continuation is justified and sign off on the record. Justification might include having to provide a lengthy statement, interruptions as to consult legal counsel, interruptions to consult documents and the like. This process should be repeated every

two hours thereafter to a maximum of, perhaps, twelve hours after which the invited person should be released or arrested.

[335] The adoption of such a procedure can be accomplished by the publication of an amended SOP and by the provision of the relevant document together with instructions to officers in training and in the field. Should this not be considered feasible, then legislation should be considered.

[336] We are of the view that the death of TBH should not be in vain and all attempts should be made to improve the functioning of the MACC and the administration of criminal justice in the country as a result of our inquiry into the workings of the MACC. The evidence adduced showed that the MACC officers were prepared to go to great lengths to lie. One glaring example is that of HH, a very senior officer, who was overall in charge of operations on that fateful 15th evening and spilling over into the early hours of the morning of the 16th. In testimony before us, he was adamant in his stand that he had no knowledge whatsoever that complaints of assault and use of force had been lodged against officers under his charge with the police. However, his lie was exposed with startling clarity when DSP Kamaruddin Ismail from the Selangor police produced a letter written by HH himself in 2008 responding to police inquiries in relation to the complaints of assault and related abuses of power that had been lodged against MACC officers under his command.

[337] That HH and others under his command lied in this inquiry is borne home by the testimonies of Azeem and Azian, the two MACC officers who were courageous enough to testify that attempts were made to get them to say that HH was not directly involved in the operation and that it was Hairul Ilham who was in charge.

[338] Counsel for the MACC submitted that HH had nothing to gain by distancing himself from the operation and the events that transpired at

the Selangor MACC office from the night of the 15th to the morning of the 16th. We are unable to accept this contention for the simple reason that a person had been found dead whilst he had been in the custody and care of the Selangor MACC.

[339] HH was not only the seniormost officer who was in overall command of the operation but, as expressed earlier in this report, we believe that he was actively involved in the ongoing interrogation of TBH. He not only was involved but he also unleashed his officers to do his bidding in order to get results within that night and morning come hell or high-water. He was clearly accountable for what transpired at the Selangor MACC during the period in question, and the submission of counsel for the MACC falls flat in the face of these facts.

Cooperation with other authorities

[340] During the course of the inquiry we noted with great consternation the extreme lack of cooperation shown by the Selangor MACC to the police in the latter's attempts to investigate the complaints of assault and other offences made against its officers. It was indeed a high-handed response by the Selangor MACC officers who refused to attend when required to be present at identification parades which the police wanted to hold. It was also the height of temerity for them to require the police to come to them at the Selangor MACC office to take their statements. The police lamented on the total lack of cooperation by the Selangor MACC officers which could be characterised as obstructive in that they had failed to submit to be interviewed as witnesses, failed to respond to letters from the police written under the CPC and failed to give them access to documents.

[341] Internationally, LEA take complaints of criminal activities by their officers very seriously and are at pains to cooperate with the investigating authorities. In the UK, this position is legislated for with the formation of the independent police complaints commission, for example,

whilst in Hong Kong the ICAC and the Hong Kong police force, we are advised, have a long-standing agreement on the subject. In both these jurisdictions, complaints investigations are initiated immediately and cooperation is given completely and without demur.

[342] We therefore propose that the standing orders of the MACC incorporate a provision therein whereby responsible officers in the MACC are to be enjoined to give complete cooperation in the investigative process of the police and other LEA. To that end, all communication from those authorities should be acknowledged immediately and responded to on a priority basis. We would recommend that timeframes for this be specified and that response should be within forty-eight hours and not later than one week, on pain of possible disciplinary action being taken for failure to comply. MACC officers required for interview as witnesses should make themselves available for interview within, for example forty-eight hours, with the delay only permitted if justified by personal circumstances in the view of the LEA concerned. MACC officers required for interviews as suspects should also make themselves similarly available, subject to their right to counsel and to remain silent in the exercise of their right against self-incrimination. Access to documents which may be relevant, such as visitor logs, investigation diaries and personal diaries should be allowed, subject to claims of privilege which should be justified to the public prosecutor.

Investigations relating to accomplices

[343] The MACC is charged with the investigation of all offences of corruption. The core areas of responsibility can be divided into LEA/ government department, government/political, and private sector. The MACC [and other anti-corruption bodies in the world] are fond of proclaiming that they have a very difficult area of human activity to investigate in that corrupt relationships are of a “satisfied-customer” nature. They claim that this makes their area of responsibility unique and that, in order to be successful, they need “draconian” legislation

and a relaxation of the normal rules, allowing them to compel self-incrimination by various means. Whilst it is true that there is a secretive nature to corrupt transactions ["secret commissions"], this is also true of other areas of criminal activity such as money-laundering and white-collar fraud such as insider trading.

[344] Within the Selangor MACC there seems to have arisen a requirement that, because of the secretive and conspiratorial nature of the crime, it is necessary, above all else, to obtain verbal evidence from "witnesses" to these acts who are, by definition, actually accomplices. Although the MACC Act specifies that accomplices do not need corroboration merely because they are accomplices, it is obvious that prosecutions based only on accomplice evidence are inherently dangerous as a "turned" accomplice can always "turn" again.

[345] From reports we note that this has apparently been happening with some regularity in recent MACC cases and has not been assisted by the fact that the evidence before this Commission indicates that the methods used to secure the "cooperation" of such accomplices are not the best. Furthermore it would appear that having turned accomplices, the MACC does not make any real effort to bind them to the prosecution but would rather rely on threat of prosecution should they recant their statements.

Alternative methods of gaining evidence

[346] At this juncture we think it appropriate to discuss other, alternative, methods of gaining evidence.

Document examination

[347] Whilst the obvious corroboration to accomplice evidence is documentary in nature, there does not seem to be a tradition of examining and analysing all of the documents in a case and relying on minor points of circumstantial correlation to prove a case. Rather the MACC

seems to want to find blatantly fraudulent documents. More often than not the falsification of documents in corruption cases is a subtle affair. We would suggest that the MACC needs to recruit or train officers who are more knowledgeable in audit and accountancy and who have actual experience in these fields, for instance in forensic accounting [rather than possessing mere academic qualifications].

Recruitment of professionals

[348] We were informed that the ICAC in Hong Kong accomplished this by headhunting two experienced forensic accountants out of a major company and then had them head up a unit of young officers who had academic accountancy qualifications but no real experience. Over the following few years cases with accountancy requirements were referred to the unit which rendered assistance and gained experience at the same time. Recruits with accountancy qualifications are rotated through to gain experience and then go on to general duty sections. This is recommended for adoption by the MACC.

Review of abused processes

[349] In many instances public perception of corrupt activity on the part of individuals may lead to an investigation. However, it may be that the activity identified is one which is semi-legitimate, although morally wrong. Rather than investigate such activity over and over again and come up with the same legalistic problems which fail to allow prosecution [and lead to public dissatisfaction], the MACC should conduct a review of the abused processes and make well-thought-out arguments for legislative amendments to the law to allow law drafters to take necessary action.

Integrated approach

[350] One of the major roles of a supervisory officer in a sophisticated investigation is to manage the various roles and ensure that the best

evidence is made available to the prosecutor without compromising the security and identity and techniques of the intelligence-gathering cadre. However, it is critical that as much use as possible is made of all of these techniques and that they are used in conjunction with each other rather than separately.

Recommendations for change of attitudes of MACC officers

[351] It is clear from evidence presented to the RCI that there are serious weaknesses in the attitudes at the Selangor MACC office. These include:

- (a) brutality in interviews;
- (b) poor interview skills;
- (c) poor reporting;
- (d) arrogance;
- (e) poor relationship with the public and other agencies;
- (f) insufficient use and understanding of the capacity of modern technology;
- (g) possible problems with interaction between intelligence-gathering and evidence-gathering;
- (h) lack of discipline.

[352] It may be that the Selangor MACC is a single bad example within the entire MACC system. However, this is unlikely to be the case and it is more likely that the weaknesses identified at Selangor need to be addressed across the whole of the MACC, to a greater or lesser degree. Training, counselling and a tightening of SOP and discipline can effect a short term "fix" to junior ranks. However, if the organisation is to change its attitudes, the change has to be undertaken at all levels and, most particularly, in middle management.

[353] Characteristically it is middle-aged, male, middle managers in established and conservative organisations who are most resistant to change. They invariably exhibit all of the classic symptoms of denial: anger, blame transference and the like when faced with the need for systemic change.

[354] It is worth noting that the most “unreformed” witness before the RCI was HH whilst even the junior officers indicated a need for better training and exhibited some degree of embarrassment and remorse.

[355] Whilst initial change can be enforced in the short term, real change to an organisation such as the MACC must come from within to be truly effective. Imposed change will invariably be resented, resisted and subverted. Critical to change are the middle managers who must either be convinced to assist in the process of change or be made to leave.

[356] The failings in the Selangor MACC which have been identified largely rest in the operational area, contributed by inadequate training. The MACC officers involved in operations as an enforcement body have day-to-day contact with the public and it is critical to the success of the MACC as a whole that these officers have the respect and assistance of the public.

[357] At the Selangor MACC that contact seems to have degenerated to such an extent that it became confrontational with members of the public, whether witnesses or suspects, being viewed as “the enemy”. In Selangor, respect for the MACC appears to have deteriorated within the public and that attitude seems to have spread due to media involvement to include the whole of the public of Malaysia in all ethnic and socio-economic groups. This problem needs immediate address for the MACC as a whole to regain the confidence of the public.

[358] In order for there to be effective changes to training, SOP and discipline within the operational units, the middle managers must be

brought on board as part of the process and, indeed, should be the authors of the change process.

[359] In order to recognise their own failings and responsibilities [as well as those of their subordinates], the managers need to be guided through the process by experienced professionals who have a background in change and best practices in the law-enforcement environment. As stated above, the middle managers to be involved are likely to be resentful and resistant and only peer involvement is likely to convince them of the efficacy of change. In this context, we are of the view that it would be better to identify a group of professionals both from outside and within Malaysia who share the LEA/disciplined service ethos and who can bring particular skills to bear to analyse and identify the changes needed and then conduct a seminar for middle managers to secure their involvement.

Conclusion

[360] We recognise that the MACC is necessary as an instrument of society in furthering its desire to eradicate corruption in all its multifaceted forms. To this end, the MACC was created and given wide-ranging powers to make it effective in achieving society's aim.

[361] However, the conferment of extensive powers on the MACC without the necessary checks and balances will inevitably result in those powers being abused. Such abuse becomes difficult to prove as the only witnesses would most likely be those officers whose conduct is being investigated. As we have stated, the investigation into this will bring in its wake the inherent and harsh realities of meeting "a blue wall of silence" based on brotherhood ties among those officers.

[362] The characteristics of this "blue wall of silence" came amply into play in the present case as evidenced by the untruths spouted by the MACC officers to cover up the nefarious activities that took place on

the 15th and the 16th. This clinging to brotherhood ties by those officers has resulted in our facing extreme difficulties in gathering evidence to arrive at the truth.

[363] But what is most saddening and regrettable is that the operation that the Selangor MACC embarked upon led to the death of TBH, a promising young man in the prime of life who had everything to look forward to. His family was robbed of a son and brother, his fiancée of a husband and his then unborn child of a father. We can feel the pain and anguish that they must have suffered and continue to suffer as a result of the callous machinations and attitudes of the MACC officers who were involved in the operation. We express our heartfelt sympathies on the loss that the family of TBH and his fiancée and son have had to bear and continue to bear. We can only hope that time will assuage their pain.

[364] It has been said in another context that custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of law. We are of the view that the bulwarks of the rule of law have to be strengthened to eliminate any form of torture or cruel, inhuman or degrading treatment whether it occurs during investigation, interrogation or otherwise by a law-enforcement agency such as the MACC.

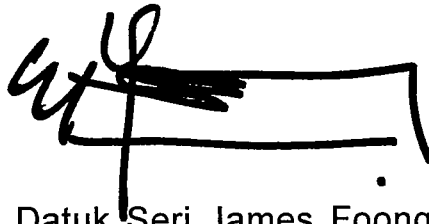
[365] Abuses can be prevented if those entrusted with authority to enforce laws ensure that the laws are executed fairly, objectively and with justice foremost in mind. Otherwise society will suffer.

[366] The officers of the MACC should in fact be the guardians of the MACC Act and be persons of impeccable character and integrity who exercise their powers with an even hand, a steady eye and an unswerving allegiance to justice for the generation of public confidence in the MACC, together with the checks and balances proposed by us in place so that what had happened in this case will hopefully not recur. As for what did happen, we have made our findings in this report and

we therefore leave it to the relevant authorities to take the necessary action.

[367] We are most conscious of the fact that an anti-corruption body such as the MACC is indispensable in a democracy such as ours. Our findings and recommendations in this report are therefore directed at the individual officers involved and are not meant to be an excoriation of the MACC as a whole *per se*. The recommendations are intended to improve and rebuild the MACC as a well-respected institution. We have every confidence that the MACC will rise to the challenge and will become a shining example of a law-enforcement agency to be emulated by others in the world.

Dated the 15th June 2011



Tan Sri Datuk Seri James Foong Cheng Yuen
Chairman



Dato' Haji Abdul Kadir Sulaiman
Member



Dato' Selventhiranathan Thiagarajah
Member



Dato' Dr Bhupinder Singh
Jeswant Singh
Member



Professor Dr Mohamed
Hatta Shaharom
Member

Acknowledgement

Throughout the entire process of our mission we, the Royal Commission of Inquiry, have been ably assisted by a great number of people and organisations. Without them our undertaking would not have come to fruition. For this, we are exceedingly grateful to them and wish to acknowledge our sincere appreciation to the following persons and organisations:

1. The secretary of the RCI, Dato' Saripuddin Kasim, the Director-General of the Legal Affairs Division of the Prime Minister's Department of Malaysia.
2. All the officers and staff of the secretariat of the RCI seconded from the Legal Affairs Division of the Prime Minister's Department of Malaysia.
3. The Chief Registrar of the Federal Court of Malaysia who allowed us to use certain premises in the Kuala Lumpur Court Complex to conduct our inquiry and to complete our report.
4. Mr Amarjeet Singh a/l Serjit Singh, Mr Awang Armadajaya bin Awang Mahmud and Ms Kwan Li Sa, the conducting officers appointed under section 3(1)(d) of the COE Act.
5. Dato' Sri Muhammad Shafee Abdullah and his team of lawyers and assistants representing the interests of the MACC.
6. Mr Christopher Leong and his team of lawyers and assistants representing the Malaysian Bar.
7. Mr Michael Leslie Squires, the investigator whose services we secured through the public prosecutor under section 16(2) of the COE Act.

8. The MACC, particularly its current chief commissioner, Dato' Seri Abu Kassim Mohamed for his support in declassifying many relevant documents pertaining to the subject-matter of this inquiry.
9. Formis Sdn Bhd for kindly installing and maintaining the audio visual recording system throughout the proceeding.
10. The reporters from the news media for dutifully and faithfully reporting on the proceedings of this inquiry.
11. The Royal Malaysian police for their assistance in providing security arrangements throughout this inquiry.
12. Mr Karpal Singh and Mr Gobind Singh Deo, lawyers for the family of TBH, who participated at the initial stage of this inquiry.
13. Mr Malik Imtiaz and his team of lawyers acting for the State government of Selangor who participated at the initial stage of this inquiry.
14. The family, friends and former colleagues of TBH who testified before us as well as all other witnesses who appeared during this inquiry.
15. And to all others who we may have omitted through inadvertence.