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STATUTORY INTERPRETATION IN SINGAPORE – ANOTHER 10 YEARS ON

A Synthesis of Current Law and Review of Developments

It has been a decade (or so) since the last general academic review of statutory interpretation in Singapore. This review considers Singapore Court of Appeal cases directly involving statutory interpretation, between January 2009 and April 2020, where the court had issued written judgments. It has three key objectives. The first is to offer a synthesis of the current law on statutory interpretation in Singapore. Second, it delves more deeply into more challenging issues such when extrinsic material can be considered in purposive interpretation. Finally, it suggests what might be explored in the decade ahead to lend even more coherence to this area of law.

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I. Introduction

A. Scope of article

1 Section 9A was introduced to our Interpretation Act[2] in 1993. It is quite undoubtedly the most significant development in the law and practice of statutory interpretation in Singapore. Robert Beckman and Andrew Phang co-authored a review of the provision in 1994.[3] In 2000, Brady Coleman wrote another review taking stock of its impact.[4] Then,

1 In the writing of this piece I have benefitted considerably from my conversations with Eleanor Wong and Justin Jerzy Tan on the topic, as well as from the research assistance provided by Xavier Tan. I am also grateful to the anonymous referee for the very helpful suggestions offered. All errors, however, remain mine.

2 Cap 1, 2002 Rev Ed. Unless otherwise stated, all references to s 9A (and its subsections) in this article are to s 9A of our Interpretation Act.

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

4 Brady Coleman, "The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore" [2000] Sing JLS 152.

about a decade later in 2009, Goh Yihan penned a third review piece to examine statutory interpretation in Singapore in the 15 years since s 9A was introduced.[5]

2 A further decade or so has since passed, and it is an opportune time to take up the baton in reviewing this area of the law. In terms of primary scope, this article starts at the point where Goh had left off – that is, the start of 2009, up until April 2020. It reviews Singapore Court of Appeal cases directly involving statutory interpretation where the court had issued written judgments. There are close to a hundred of such cases within the considered period. Two specific sub-areas, however, lie outside the scope of this piece:

(a) The focus here is on the interpretation of statutes; thus, considerations that may be unique to constitutional interpretation, in so far as they exist, are not taken into account.[6]

(b) Given that this piece reviews only Court of Appeal decisions, and the Court of Appeal is generally not bound (by virtue of *stare decisis*) by other cases,[7] the interaction between principles of statutory interpretation and the constraints of *stare decisis*, if any, is also not considered.[8]

3 This article is divided into three main parts. Part II offers a summary of the past developments between 1993 and 2008 raised by Goh in his review,[9] which will provide some background to the discussion in the rest of the piece. Part III is predominantly a descriptive synthesis of the current law on statutory interpretation in Singapore, and is targeted at readers who wish to have an in-a-nutshell understanding of the law as it is.[10] Part IV delves more deeply into some specific sub-issues, such as

5 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97. He had also written several other pieces concerning statutory interpretation in Singapore (see, for example, those cited at n 61 below), but unlike his 2009 piece which was a comprehensive review of relevant cases between 1993 to 2008, his other pieces touched on more specific issues of statutory interpretation.

6 See, for example, *Wong Souk Yee v Attorney-General* [2019] 1 SLR 1223 at [63]–[65], and Marcus Teo, "Making Meaning: *Tan Cheng Bock*, the Interpretation Act and Purposive Conflicts in Constitutional Interpretation" *SLW Commentary* (October 2017).

7 *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 at [122], citing the *Practice Statement (Judicial Precedent) of the Court of Appeal* [1994] 2 SLR 689.

8 For those interested to explore such interaction, a useful place to start is probably *Chen Hsin Hsiong v Guardian Royal Exchange Assurance plc* [1994] 1 SLR(R) 591 at [13]–[14].

9 See para 11 below.

10 See paras 12–30 below.

the applicability of the principle of strict construction in Singapore, the weight to be accorded to extrinsic material in statutory interpretation, but in particular, the issue of *when* extrinsic material can be considered.[11] This part would likely be of more interest to readers who are interested in, or may have to engage with, some of the nuances and more challenging areas in statutory interpretation. Part V concludes with a brief note on what further issues might be explored in the decade ahead to lend even more coherence to this area of law.[12]

4 Much space is dedicated in Parts III and IV to the issue regarding when extrinsic material may be used because, as will be pointed out, there was an inflexion point reached on that issue in this past decade. In 2017, the Court of Appeal appeared to have held first that extrinsic material can only be considered *after* a conclusion has been made on whether the ordinary meaning of the disputed text in a statutory provision (a) is clear; or (b) is ambiguous or leads to a manifestly absurd or unreasonable result. Secondly and relatedly, it held that where the ordinary meaning of the disputed text is unambiguous (and leads to a reasonable result), even if the extrinsic material clearly shows Parliament in fact intended for the text to have a different meaning, the extrinsic material cannot be of any use whatsoever. Where the ordinary meaning is unambiguous, extrinsic material can only ever be used to *confirm* the ordinary meaning. The first holding does not seem to have been strictly applied by the Court of Appeal in more recent cases, and it will be submitted that there are good reasons that this should continue. The second holding remains purely *obiter dicta* which does not seem to have been affirmed in any subsequent cases, and it will be respectfully suggested that this *dicta* should not be adopted.

5 Be that as it may, it is overall clear that in the past decade the Court of Appeal has injected considerable clarity into certain issues that could previously be said to be unclear or confusing, and this development is warmly welcomed.

B. Gist of section 9A of the Interpretation Act

6 For ease of reference, s 9A of the Interpretation Act provides as follows:

> Purposive interpretation of written law and use of extrinsic materials
>
> 9A.—(1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether

11 See paras 31–65 below.
12 See paras 66–68 below.

that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

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

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

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

(i) the provision is ambiguous or obscure; or

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

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

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

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

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

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

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

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

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

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

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

7 Section 9A(1) makes clear that the prevailing method of statutory interpretation in Singapore is the purposive approach. This approach mandates that in interpreting statutory text, the purpose or parliamentary intention underlying the written law is paramount.

8 Section 9A(2) sets out three situations where a court may, during purposive interpretation, consider material not forming part of the statute that can assist in ascertaining the provision's meaning. Such material is commonly known as "extrinsic material"[13] or "extraneous material".[14] Section 9A(3) gives examples of extrinsic material, which include parliamentary debates (also known as Hansard) and the explanatory statement to a bill. In recognising that there is material not forming part of, that is, *outside* of the statute which contains the disputed text, one implicitly recognises that there would be material *within the four walls* of the said statute that is capable of assisting in interpretation. For simplicity's sake, this is sometimes referred to as "intrinsic material",[15] and this article adopts this terminology. The plain words of a disputed provision would obviously be one such material. The long title of the statute, marginal notes to individual provisions, and other provisions in the same statute that are useful in the interpretation of the disputed text would also be intrinsic material.[16] Because a considerable part of this article revolves around the issue of use of extrinsic material, it is imperative that the meaning of extrinsic and intrinsic material is underscored at the outset.

9 Section 9A(4) provides that when deciding whether to rely on extrinsic material or the weight to be given to such material, one should have regard to the desirability of persons being able to rely on the ordinary meaning of statutory text, as well as the need to avoid prolonging proceedings without compensating advantage.

10 Section 9A(1) is essentially *in pari materia* with s 15AA of the Australian (Commonwealth) Acts Interpretation Act 1901 ("Australian Interpretation Act") while ss 9A(2), 9A(3) and 9A(4) are *in pari materia*

13 As, for example, in *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183.

14 As, for example, in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850.

15 See, for example, Michelle Sanson, *Statutory Interpretation* (Oxford University Press, 2nd Ed, 2016) at chs 6 and 7 and Dennis C Pearce, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 9th Ed, 2019) at ch 4.

16 See, for example, Michelle Sanson, *Statutory Interpretation* (Oxford University Press, 2nd Ed, 2016) at chs 6 and 7 and Dennis C Pearce, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 9th Ed, 2019) at ch 4. See also *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [44].

with ss 15AB(1), 15AB(2) and 15AB(3) of the Australian Interpretation Act respectively. Thus, although it was not explicitly stated as such by the Singapore parliament when s 9A was introduced in 1993, it is clear where s 9A was adopted from.[17]

II. Statutory interpretation in Singapore from 1993 to 2008

11 In Goh's review, which covered developments since s 9A was introduced to the end of 2008, he made the following six key points. The first four points relate to the meaning and applicability of the purposive approach, while the latter two points are about when and what types of extrinsic material may be used.

> (a) There was at one time some lack of clarity in the cases as to the meaning of "purposive approach".[18] "Purposive approach" simply means that in interpreting statutory text, the underlying purpose or parliamentary intention of the provision is the most important consideration. Section 9A(1) mandates that this approach applies in *every case of statutory interpretation*. But some early cases seem to suggest that the purposive approach is about when extrinsic material may be used, and thus intimate that the approach does not apply in every case. However, the Court of Appeal in the 1999 case of *Planmarine AG v Maritime and Port Authority of Singapore*[19] ("*Planmarine AG*") clarified that the former is correct, and that the purposive approach applies regardless of whether there is ambiguity in the disputed statutory text. This was unequivocally reiterated by the High Court in the 2007 case of *Public Prosecutor v Low Kok Heng*[20] ("*Low Kok Heng*").
>
> (b) There were some conflicting authorities on the compatibility and relationship between the purposive approach and the literal approach. Some cases suggested that when the ordinary meaning of the statutory text is clear, the literal approach applies, and the purposive approach is of no

17 *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [40]. In particular, the High Court noted that "to that extent, Australian authorities pronouncing on the effect and application of ss 15AA and 15AB of the Australian [Interpretation] Act are helpful in explicating the ambit of s 9A of the Interpretation Act". See also Robert Beckman & Andrew Phang, "Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute LR 69 at 69 and 81.

18 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 109, 113–115, 124–125 and 127–128, paras 12, 15–17, 28 and 32.

19 [1999] 1 SLR(R) 669.

20 [2007] 4 SLR(R) 183.

relevance. Other cases explained that the two approaches are in fact compatible to the extent that the plain words used in the provision is itself (usually very clear) evidence of the underlying purpose and parliamentary intent. There is also the related issue of the extent to which purposive approach allows one to stretch or "rewrite" the plain text of a provision. There was at least one case which seemingly endorsed outright rewriting, but Goh argued in support of the cases that have instead held that the purposive approach does not allow one to interpret statutory text in a manner that goes against all possible and reasonable interpretation of the plain words.[21]

(c) There were cases that endorsed the application of the principle of strict construction in cases concerning the interpretation of penal statutes. This principle, simply put, states that when a penal provision is ambiguous, it should be construed strictly in favour of the accused person. In particular, the High Court in *Low Kok Heng* held that the principle may be invoked if the statutory provision remained ambiguous despite all attempts at purposive interpretation.[22] Goh expressed concerns about the correctness of this position. He submitted that it is "problematic for it assumes that the purposive approach can fail, *ie*, in some circumstances, it can be possible to fail to find the legislative intent".[23]

(d) In terms of discerning the underlying purpose of a provision during purposive interpretation, some cases stated that it is the general purpose or object of the statute that is crucial, while other cases focused on the purpose behind the specific disputed provision.[24] Goh observed that the more prevalent trend overall is in favour of the latter. He further opined that "in the end, the real problem is not with the distinction between this general and specific purpose; … the difference in practice would not be great and … the courts would treat the two as interchangeable".[25] He added that the more interesting problem, which would have to be confronted at some point, is the distinction between abstract purpose, which is akin to the general purpose behind a statute,

21 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 111–113 and 125–127, paras 13–14 and 29–31.

22 *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [56]–[57].

23 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 111–113 and 128, paras 18 and 33–34.

24 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 116–118, paras 19–20.

25 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 129, para 35.

and concrete purpose, which is the result or outcome to a given situation intended by the promulgation of the provision.[26]

(e) In terms of when extrinsic material can be considered in purposive interpretation, which is governed principally by s 9A(2), Goh noted that there was some initial uneasiness over the scope of s 9A(2), particularly over whether extrinsic material could play any role where there is no ambiguity in or no absurdity arising from the plain words of the disputed text.[27] He observed that it was later clarified in *Planmarine AG* and *Low Kok Heng* that extrinsic material may be referred to by the courts even where the provision's meaning is clear on its face, although "there remains the occasional statement from the courts which adds a degree of confusion to the entire issue".[28] In this regard, Goh noted that s 9A(2)(*a*) allows a court to use extrinsic material to confirm the ordinary meaning of the disputed text when there is no ambiguity or absurdity, and s 9A(2)(*b*) allows a court to use extrinsic material to ascertain a meaning where there is ambiguity or absurdity. He argued that if the ordinary meaning of a disputed texted is unambiguous and not absurd, but the extrinsic material reveals that there is in fact a better meaning to promote the underlying purpose or intent, then "there is, by definition, an ambiguity or absurdity such that s 9A(2) operates seamlessly to permit the court to adopt a different meaning". He explained that accordingly "there is really no ground left uncovered by the permissive provisions of s 9A(2). It is, in fact, an absolutely permissive provision in that "it allows reference to extrinsic materials in *all conceivable circumstances*" [emphasis in original].[29]

(f) In terms of the types of extrinsic material which a court may rely on, our courts have taken the view that the list in s 9A(3) is not exhaustive, and have relied on a wide range of extrinsic material over the years, including Hansard, previous versions of a statute in question, Select Committee reports, Law Revision Committees' reports, case law, academic commentaries and even diplomatic notes exchanged in relation to international conventions. However, there were at least two cases where

26 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 129, para 36.

27 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 118–119, paras 21–22.

28 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 119–120, para 23.

29 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 130, para 37.

the respective courts displayed reluctance to rely on certain extrinsic material. Goh opined that there should not be a general restriction, nor a general ranking of materials. While there may be situations where reliance on extrinsic material may not be prudent (for instance, relying on foreign material when the foreign statutory provision is not *in pari materia* with the local provision in question), he ultimately suggested that each case should be dealt with on a case-by-case basis.[30]

III. Synthesis of current law based on developments from 2009 to April 2020

12 There are several principles of statutory interpretation that were held or affirmed by the Court of Appeal during this past decade that can be summarised in a relatively straightforward manner. These represent the current law.

13 Although the ensuing discussion takes into account various other Court of Appeal cases, many of the principles that will be highlighted hail from what is arguably the most significant local case on the law and practice of statutory interpretation in this past decade – *Tan Cheng Bock v Attorney-General*[31] ("*Tan Cheng Bock*"). This 2017 case was decided by a specially constituted five-member Court of Appeal bench. Although it was a case involving the interpretation of constitutional provisions, the propositions held therein were based on s 9A, and s 9A applies to the interpretation of all written law, including statutes. Furthermore, many of these propositions stated in *Tan Cheng Bock* were based on the minority judgment in another Court of Appeal case decided a year prior – *Attorney-General v Ting Choon Meng*[32] ("*Ting Choon Meng*"), which concerned the interpretation of a provision in the Protection from Harassment Act.[33] Indeed, numerous cases decided post-*Tan Cheng Bock* have adopted and applied propositions elucidated in *Tan Cheng Bock* to the context of statutory interpretation.[34] Therefore, extensive references will be made below to *Tan Cheng Bock* and *Ting Choon Meng*.

30 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 121–124 and 132, paras 25–26 and 39–40.
31 [2017] 2 SLR 850.
32 [2017] 1 SLR 373.
33 Cap 256A, 2015 Rev Ed.
34 See, for example, the cases listed in the Appendix below.

A. Meaning of purposive approach

14 First, it is now clear beyond doubt that the purposive approach refers simply to the need to treat the purpose or parliamentary intent underlying statutory text as paramount, over and above anything else such as the literal meaning of the words.[35] It is about what is the most important consideration when interpreting statutes.[36] The approach requires that an interpretation that promotes the purpose or object of the written law be preferred over an interpretation that does not. It is to be applied in every case of statutory interpretation, as mandated by s 9A(1) of the Interpretation Act. In that sense, the purposive approach is distinct from the use of extrinsic material, which is the means by which one ascertains the underlying purpose or intent, and is not governed by s 9A(1).[37]

B. General framework for purposive approach

15 Second, based on s 9A(1), there are three general steps that should be applied in any attempt at purposive interpretation:[38]

> (a) Step 1: ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law (that is, the statute) as a whole. Interpretations that do violence to or go against all possible and reasonable interpretations of the provision's express wording should be excluded at this stage.
>
> (b) Step 2: ascertain the legislative purpose or object of the statute.
>
> (c) Step 3: compare the possible interpretations of the text against the purposes or objects of the statute. The interpretation which furthers the purpose of the text should be preferred to the interpretation which does not.

In step 1, one may apply and be aided by:

> (i) linguistic rules, such as *ejusdem generis* and *noscitur a sociis*;[39] and

35 *Cf* paras 11(a) and 11(b) above.
36 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [35]–[36].
37 *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [62].
38 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [37]–[38] and *Anil Singh Gurm v J S Yeh & Co* [2020] 1 SLR 555 at [29].
39 For a fairly extensive discussion and application of these two principles, see *Public Prosecutor v Lam Leng Hung* [2018] 1 SLR 659 at [104]–[165]. See also *Cupid Jewels Pte Ltd v Orchard Central Pte Ltd* [2014] 2 SLR 156 at [68].

(ii) canons of interpretation, such as the presumption that Parliament shuns tautology and does not legislate in vain, the presumption that an identical expression used in a statute should have the same meaning,[40] and that Parliament is presumed not to have intended an unworkable or impracticable result.[41]

Notably, this framework is broadly stated,[42] and in and of itself does not say anything about when extrinsic material may be used during purposive interpretation. The rest of this article will refer to this framework as the "TCB base proposition".

C. What is the relevant purpose?

16 Third, the relevant purpose or parliamentary intention is to be found at the time the relevant law was enacted, or, in certain circumstances, when Parliament subsequently reaffirms the particular statutory provision in question.[43] An exception is when the principle of updating construction applies.[44]

17 Fourth, it is always crucial to properly identify the relevant legislative purpose because casting the legislative purpose differently or at different levels of generality may result in varying and even conflicting interpretations. Additionally, the articulation of purpose at different levels of generality could also result in one describing the purpose as whatever would support one's preferred interpretation. There may be a purpose underlying a particular provision in a statute (known as the specific purpose), as well as the purpose(s) underlying a statute as a whole or the relevant purpose of the statute (known as the general purpose). It was envisaged that in most cases, the statute is a coherent whole such that any specific purpose does not go against the grain of the relevant general purpose, but is subsumed under, related or complementary to it. However, there may be the rare and exceptional situation where they conflict, and the specific purpose may be so clear that one should give effect to it even if it appears to contradict or undermine the more

40 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [58(c)(i)].
41 See also *Hong Leong Bank Bhd v Soh Seow Poh* [2009] 4 SLR(R) 525 at [40]–[41].
42 That said, this is no doubt a valuable improvement over the previous state of law where a framework to purposive interpretation had not been crystallised to this extent.
43 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [35].
44 See para 18(c) below.

general purpose.[45] These two principles add further clarity to the issue on identification of purpose.[46]

D. Important principles of statutory construction

18 Fifth, the Court of Appeal has also confirmed the applicability and scope of several important principles of statutory construction.[47] These principles apply in exceptional cases when certain narrow conditions are fulfilled.

(a) Principle of strict construction (also known as the principle against doubtful penalisation, and the rule of lenity). This principle:[48]

> … is a 'tool of last resort' to which recourse may be had only if there is genuine ambiguity in the meaning of the provision even after the courts have attempted to interpret the statute purposively. If the meaning of the provision is sufficiently clear after the ordinary rules of construction have been applied, there is no room for the application of the strict construction rule …

Nam Hong Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd[49] ("*Nam Hong Construction*"), *Public Prosecutor v Lam Leng Hung*[50] ("*Lam Leng Hung*") and *Ho Man Yuk v Public Prosecutor*[51] ("*Ho Man Yuk*") are examples where the principle was of no relevance because the respective courts found no genuine ambiguity after applying the usual steps of purposive interpretation. A very useful case in contrast is *Kong Hoo (Pte) Ltd v Public Prosecutor*.[52] It appears to be the only recent Court of Appeal case where the principle has been successfully applied in favour of the accused.

45 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [39]–[41]. See also *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [60]–[61], and *Public Prosecutor v Lam Leng Hung* [2018] 1 SLR 659 at [68]–[69].

46 *Cf* para 11(d) above.

47 This is not to say that these principles of statutory construction sit comfortably or are fully compatible with the other general principles of statutory interpretation highlighted in this part (see, for example, the points raised at paras 11(c), 16, 59(a) and 63–64 of this article). Also, the applicability of the principle of strict construction was clearly affirmed despite Goh's concerns (see para 11(c) above).

48 *Nam Hong Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd* [2016] 4 SLR 604 at [28(b)]. See also *Saravanan Chandaram v Public Prosecutor* [2020] 2 SLR 95 at [89].

49 [2016] 4 SLR 604 at [29].

50 [2018] 1 SLR 659 at [233]–[236].

51 [2019] 1 SLR 567 at [116]–[118].

52 [2019] 1 SLR 1131.

(b) Principle of rectifying construction, the applicability of which the Court of Appeal affirmed in *Kok Chong Weng v Wiener Robert Lorenz*,[53] as well as *Nam Hong Construction*.[54] It held that the following three cumulative conditions had to be fulfilled before words could be read into a statutory provision to rectify what is perceived to be an error in legislative drafting:

> (i) First, it was possible to determine from a consideration of the provision of the statute in question read as a whole what the mischief was that Parliament sought to remedy with the statute.
>
> (ii) Second, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with, the eventuality that was required to be dealt with so that the purpose of the statute could be achieved.
>
> (iii) Third, it could be stated with certainty what the additional words would be that the draftsman would have inserted and that Parliament would have approved had their attention been drawn to the omission.

Nam Hong Construction is an example of a case where the principle was applied, while *Ho Man Yuk* is a case where the Court of Appeal held that it was not appropriate to apply it.[55]

(c) Principle of updating construction. In *AAG v Estate of AAH, deceased*,[56] the Court of Appeal held that:[57]

> It is a settled principle that a statutory provision should be construed in a manner which will take into account new situations which may arise and which were not within contemplation at the time of its enactment. Such an approach is illustrated by the case of *Victor Chandler International Ltd v Customs and Excise Commissioners* [2000] 1 WLR 1296, where the English Court of Appeal held that although when enacting a provision about advertisements in 1952 Parliament could not have contemplated the means by which advertisements could now be distributed electronically, in order to prevent the provision being undermined, it was necessary and appropriate to give the expression 'advertisement' an 'always speaking' or ambulatory construction to take into account developments since

53 [2009] 2 SLR(R) 709 at [57].

54 *Nam Hong Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd* [2016] 4 SLR 604 at [29] and [53]–[59].

55 [2019] 1 SLR 567 at [113]–[115].

56 [2010] 1 SLR 769. See also *R (Quintavalle) v Secretary of State for Health* [2003] 2 AC 687 at [9].

57 *AAG v Estate of AAH, deceased* [2010] 1 SLR 769 at [30].

> the provision was originally enacted … A statutory provision should not be regarded as a historical document but a document written with an eye to the indefinite future, *ie*, that it will be applied not only to facts in existence at the time it came into force but also to conditions and circumstances which may surface in the future …[58]

The applicability of this principle in Singapore was indirectly reaffirmed more recently in *Lam Leng Hung*[59] *and Public Prosecutor v ASR*.[60] These two cases further illustrate the boundaries of when this principle may apply.[61]

E. Types of extrinsic material which may be used

19 Sixth, in terms of the types of extrinsic material that can be relied on, the Court of Appeal has referred to a very extensive range of such material. This is entirely consistent with the non-exhaustive nature of the list in s 9A(3). If *Lee Chez Kee v Public Prosecutor*[62] represents the case in the previous decade where the Court of Appeal had referred to the widest range of extrinsic material,[63] *Lam Leng Hung* (which like *Tan Cheng Bock* involved a five-member bench) would be the equivalent in this decade.[64] The types of extrinsic material relied on in this almost 300-paragraph judgment include: dictionaries, local and foreign Hansard, local and foreign case law, law commission reports, and various reference texts. Moreover, in *Nam Hong Construction*, a case involving interpretation of a licensing-related provision in the Building Control Act,[65] the Court of Appeal invited the Building and Construction Authority to furnish written submissions on the practical aspects of the licensing regime and the policy objectives which undergird it, and relied on it as a form of extrinsic material.[66]

58 On applying this principle in the context of two related statutes, see especially *Wong Souk Yee v Attorney-General* [2019] 1 SLR 1223 at [63] and [68].
59 *Public Prosecutor v Lam Leng Hung* [2018] 1 SLR 659 at [6].
60 [2019] 1 SLR 941 at [81].
61 See also Goh Yihan, "Two Contrasting Approaches in the Interpretation of Outdated Statutory Provisions" [2010] Sing JLS 530 and Goh Yihan, "Where Judicial and Legislative Powers Conflict – Dealing with Legislative Gaps (and Non-gaps) in Singapore" (2016) 28 SAcLJ 472 at 498–500, paras 64–68.
62 [2008] 3 SLR(R) 447.
63 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 121–123, para 25. See also para 11(f) above.
64 [2018] 1 SLR 659.
65 Cap 29, 1999 Rev Ed.
66 *Nam Hong Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd* [2016] 4 SLR 604 at [3]–[4] and [50].

F. Weight of extrinsic material

20 Finally, in terms of the weight to be accorded to relevant extrinsic material, a court will consider three core factors:[67]

(a) whether the material is clear and unequivocal;

(b) whether the material discloses the mischief aimed at or the legislative intention underlying the statutory provision; and

(c) whether the material is directed to the very point of statutory interpretation in dispute.

In particular, for parliamentary debates, the Court of Appeal has highlighted these specific points:[68]

(a) The statements made in Parliament must be clear and unequivocal to be of any real use.

(b) The court should guard against the danger of finding itself construing and interpreting the statements made in Parliament rather than the legislative provision that Parliament has enacted.

(c) The statements should disclose the mischief targeted by the enactment or the legislative intention lying behind any ambiguous or obscure words. In other words, the statements should be directed to the very point in question to be especially helpful.

It added that these points also apply to other types of extrinsic material.[69]

21 The affirmation of the above points by the Court of Appeal is extremely helpful.[70] The *TCB base proposition* in particular crystallises

67 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [54(c)(iv)].

68 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [52]. See also [118].

69 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [53]. See also *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [70] and *Public Prosecutor v Lam Leng Hung* [2018] 1 SLR 659 at [72].

70 There is arguably one more principle to add to the above list: Section 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) provides definitions of a list of words which are to apply when those words are used in a statute, unless "there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided". The Court of Appeal in the 2013 case of *Public Prosecutor v Adnan bin Kadir* [2013] 3 SLR 1052 at [5]–[9] held that "context" here refers not just to the other provisions of the statute containing it, but also extrinsic materials such as the legislative history of that statute, provisions of other statutes *in pari materia*, Hansard, case law *etc* (citing Francis Bennion, *Bennion on Statutory Interpretation: A Code* (LexisNexis, 5th Ed, 2008) at p 588). Quite evidently, this

(cont'd on the next page)

the general approach to statutory interpretation that has been adopted in Singapore in the previous decade and is especially welcomed.

G. When extrinsic material may be used

22 Things are more complicated when it comes to *when* extrinsic material may be used. To avoid confusion, it is necessary to understand first that extrinsic material may play *two* roles when it comes to statutory interpretation. As pointed out by the Court of Appeal in *Tan Cheng Bock*, at a basic level, one can simply look at or consult extrinsic material. It is to see what the extrinsic material says, to assess if there is anything therein relevant to the interpretation issue at hand. Beyond that, one can "consider", "rely on", "resort to", "have regard to", "have recourse to" or "use" extrinsic material, which all mean to rely on its content to some extent, to actually give it a non-zero weight in the calculus of determining purpose or parliamentary intent underlying the written law.[71] In this role, the extrinsic material has a confirmatory or ascertaining impact or influence on the conclusion on what is the interpretation that promotes purpose and intent. While one can look at extrinsic material in whatever situation one deems fit,[72] the position is currently not the same for when one can *consider* extrinsic material.

23 So when can relevant extrinsic material be *considered*? The answer is rooted in five paragraphs in the minority judgment in *Ting Choon Meng*, which are worth quoting *in extenso*:[73]

> 65 Returning to s 9A(2) of the IA, the rest of that section sets out the specific ways in which and reasons for which such extraneous material may be applied. In my judgment, there are three situations in which this can be done and they each begin with a determination of the ordinary meaning conveyed by the text of the provision in question understood in the context of the written

position would also apply to the definitions of words found in the interpretation section of individual statutes, where the definitions are always stated to likewise be subject to the relevant context requiring otherwise. Importantly, however, as mentioned at para 59(b) below, it may be that this principle no longer represents good law.

71 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [46] and [50]; *Public Prosecutor v Lam Leng Hung* [2018] 1 SLR 659 at [71]; *Wong Souk Yee v Attorney-General* [2019] 1 SLR 1223 at [48]. This can be quite confusing because the ordinary meaning of the word "consider" might be closer to what it means to simply look at a material, rather than actual reliance and use.

72 For an excellent example, see *Saravanan Chandaram v Public Prosecutor* [2020] 2 SLR 95, where the court at [53]–[87] discussed extrinsic material (such as legislative history of the disputed provisions) quite extensively at the outset to set the stage, before starting to apply the TCB base proposition from [88] onwards. See also *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [8]–[16].

73 *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [65]–[67] and [93]–[94].

law as a whole. This context is of critical importance because it will often afford the best guide to the objects and purposes of the enactment. This is the first of the three steps [in the *TCB base proposition*]. Having identified the ordinary meaning conveyed by the text in this context, consideration may *then* be had to extraneous material, subject to s 9A(4) and subject to such material being of assistance in ascertaining the meaning of the provision, in the following three situations:

> (a) under s 9A(2)(*a*), to confirm that the ordinary meaning deduced as aforesaid is, after all the correct and intended meaning having regard to any extraneous material that further elucidates the purpose or object of the written law;
>
> (b) under s 9A(2)(*b*)(i), to ascertain the meaning of the text in question when the provision on its face is ambiguous or obscure; and
>
> (c) under s 9A(2)(*b*)(ii), to ascertain the meaning of the text in question where having deduced the ordinary meaning of the text as aforesaid, and considering the underlying object and purpose of the written law, such ordinary meaning is absurd or unreasonable.

66 In my judgment, what follows from this, as I have already foreshadowed, is that the meaning of the text in question should *first be derived from its context, namely, the written law as a whole*, which would often give sufficient indication of the objects and purposes of the written law and even of the specific provision. *This should first be done without relying on extraneous material. It is only after the court has determined the ordinary meaning of the provision in this way that it can then evaluate whether recourse to the extraneous material for either the confirmatory or clarificatory functions can be had …*

67 … As to the inquiry that the court is undertaking *before turning to extraneous materials*, this is not limited to interpreting the text of the provision alone, but also takes into account the statutory context of the particular provision and also the purpose and object underlying the provision and the statute to the extent this can be discerned from the written law as a whole.

…

93 *Given that the ordinary meaning of s 15 based on its text, its statutory context, and its underlying purpose demonstrates that "person" thereunder includes the Government, s 9A(2)(*b*) of the IA would not apply to allow for consideration of extraneous material on the basis that the provision is ambiguous, obscure or absurd*. It is certainly not unreasonable, much less is it absurd; and to the extent it is said to be ambiguous by reason of the fact that the appellant proposes a different meaning to the word 'person' in s 15 from the meaning ascribed to the same word when it is used elsewhere in the Act, I consider that to be a false ambiguity because it is readily resolved by applying s 2 of the IA correctly … That leaves s 9A(2)(*a*) which only allows for extraneous material to be relied on "to confirm that the meaning of the provision is the ordinary meaning conveyed" in the statutory context and its purpose. *To the extent that the respondents seek to rely on the parliamentary debates to depart from the ordinary meaning of s 15, this would not be permitted under s 9A(2)*(a)*.*

> 94 *Assoc Prof Goh suggests in Statutory Interpretation in Singapore that if the purposively reached meaning of a provision is not ambiguous or absurd but the extraneous materials do not confirm that meaning, there may, by definition, be an ambiguity or absurdity in the provision such that s 9A(2)*(b) *of the IA 'operates seamlessly to permit the court to adopt a different meaning' (at p 130). With respect, I disagree.*
>
> [emphasis in original removed; other emphasis added]

24 Paragraph 65 of *Ting Choon Meng* appears to be affirmed by the Court of Appeal in later parts of its judgment in *Tan Cheng Bock* (separate from where it stipulated the TCB base proposition).[74] Paragraphs 66 and 67 are simply an explication of the first, and thus may be taken to have been implicitly agreed with by the Court of Appeal in *Tan Cheng Bock*. Indeed, in *Tan Cheng Bock*, the Court of Appeal applied strictly what was said in these three paragraphs by turning to extraneous material *only after* it had considered purely intrinsic material to determine whether the ordinary meaning of the disputed text was ambiguous or not.[75] Paragraphs 93 and 94 were implicitly affirmed by the Court of Appeal in *Tan Cheng Bock* when it held that:[76]

> It may be asked, if extraneous material is being considered under s 9A(2)(*a*), whether there is a real point to considering such material. If the extraneous material does not confirm the ordinary meaning – or even calls that ordinary meaning into question – the court is not permitted to use that extraneous material as a basis for departing from the ordinary meaning, as that is only permissible when reference is made under s 9A(2)(*b*) …

74 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [43], [45], [47] and [54(c)(ii)]. See also *Wong Souk Yee v Attorney-General* [2019] 1 SLR 1223 at [22].

75 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [56]–[134]. Nonetheless, it seems that referring to case law as authority for general propositions of statutory interpretation, *that is, propositions not specific to the interpretation of a particular word or phrase*, is permitted (see [58](c)(i) and [66]. See also *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 ("*Ting Choon Meng*") at [75]). This makes eminent sense. For instance, courts should certainly be allowed to cite *Tan Cheng Bock* as authority for the general framework to the purposive approach, before or at the stage of considering intrinsic material to determine whether the ordinary meaning of the disputed text is ambiguous. Separately, it might be contended that (apart from the sort of case law just mentioned) the Court of Appeal had not in fact intended to disallow recourse to any and all extrinsic material at the stage of ascertaining the context and ordinary meaning of a disputed text. In this author's view, on a close reading of *Tan Cheng Bock* and the minority judgment in *Ting Choon Meng* (see especially para 23 above), this is the less likely position. Quite apart from the fact that if this was the true intention the Court of Appeal in *Tan Cheng Bock* and the minority in *Ting Choon Meng* could readily have made such an intention express, it is also wholly unclear how such a line from among the different types of extrinsic material can sensibly be drawn (in this regard, see para 58(d) below).

76 [2017] 2 SLR 850 at [48]. See [50].

25 Paragraphs 65 to 67 of *Ting Choon Meng* can basically be distilled as such: the "context", and accordingly the "ordinary meaning" of a disputed text, as stated in s 9A(2) cannot be based on extrinsic material. It can only be based on intrinsic material.[77] It is *only after* one has relied on intrinsic material to determine whether the ordinary meaning of the disputed text is clear, ambiguous or will lead to a manifestly absurd outcome, that one may rely on extrinsic material. To the extent that this is the correct inference, this will be termed the "TCB add-on proposition 1" in the rest of this article. When the judgment is read as a whole, it is evident that the minority in *Ting Choon Meng* intended for TCB add-on proposition 1 to apply in tandem with the TCB base proposition. The Court of Appeal in *Tan Cheng Bock* agreed with this, and can be taken to have overruled any then-prevailing position to the contrary.

26 Paragraphs 93 and 94 of *Ting Choon Meng* in simple terms come down to this: if the ordinary meaning of the disputed text is unambiguous, for instance, in supporting interpretation A, then even if there is extrinsic material that shows that interpretation B is the interpretation that better promotes the underlying purpose or parliamentary intent of the written law, the extrinsic material cannot be of any use. *Specifically, it cannot be used to then say that the ordinary meaning is in fact ambiguous.* Interpretation A must prevail. This will be termed the "TCB add-on proposition 2" in the rest of this article.

27 TCB add-on propositions 1 and 2 overlap and are related, in that both are predicated on the premise that the "ordinary meaning" and "context" of disputed text as referred to in s 9A can only be based on intrinsic material. The first add-on proposition is also in a way a corollary of the second. Nonetheless, they are also distinct in that TCB add-on proposition 1 applies generally to all cases. It is, in essence, a structural constraint on when intrinsic and extrinsic material may be used. On the other hand, TCB add-on proposition 2 is a substantive constraint and relevant only in the specific situation where the intrinsic material clearly supports interpretation A whereas the extrinsic material clearly supports interpretation B.

28 TCB add-on propositions 1 and 2 represent what is arguably an inflexion point in the law here. Prior to *Tan Cheng Bock*, our courts have relied on extrinsic material more flexibly and without such rigid constraints. In particular, our courts have had less qualms considering extrinsic material in discerning the context of disputed text and whether

77 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [43].

the disputed text is ambiguous or not.[78] Indeed, in Part IV below,[79] several actual cases will be used to show that in certain (admittedly relatively rare) situations, applying TCB add-on proposition 2 would lead a court to arrive at a diametrically different result.

29 Post-*Tan Cheng Bock*, the Court of Appeal has consistently applied the TCB base proposition, though sometimes without stating so explicitly.[80] A list of representative cases usefully illustrating the Court of Appeal applying the framework in various situations is provided below.[81]

30 But the trend appears to be that TCB add-on proposition 1 has not been strictly adhered to.[82] For example, in several cases, extrinsic material such as dictionaries, legislative history, and case law (local or foreign) have been relied on if they directly assist in deciphering the ordinary meaning of the disputed text.[83] This is a movement back towards the direction of the pre-*Tan Cheng Bock* position. TCB add-on proposition 2 remains strictly *obiter dicta* because *Tan Cheng Bock* was not actually a case involving intrinsic and extrinsic material each clearly supporting differing interpretations. Neither has the Court of Appeal affirmed this proposition in any subsequent cases.

IV. Review of key developments in 2009 to April 2020

31 This part begins with a deep dive into the soundness of the two add-on propositions. Some passing comments will also be offered regarding the compatibility of the principle of strict construction with purposive approach, and the issue of weight to be accorded to extrinsic material.

78 See para 34 below.
79 See paras 42–43 below.
80 See, for example, *Chan Lung Kien v Chan Chwe Ching* [2018] 2 SLR 84 at [44]–[69].
81 See para 40 below.
82 See, for example, *Saravanan Chandaram v Public Prosecutor* [2020] 2 SLR 95 at [88(b)]; *UFN v UFM* [2019] 2 SLR 650 at [21]–[32]; and *Civil Tech Pte Ltd v Hua Rong Engineering Pte Ltd* [2018] 1 SLR 584 at [20]–[78].
83 *Saravanan Chandaram v Public Prosecutor* [2020] 2 SLR 95 at [91]; *Bi Xiaoqiong v China Medical Technologies, Inc* [2019] 2 SLR 595 at [39]; *YCH Distripark Pte Ltd v Collector of Land Revenue* [2019] 2 SLR 695 at [23]–[37]; *The Enterprise Fund III Ltd v OUE Lippo Healthcare Ltd* [2019] 2 SLR 524; *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [75].

A. Soundness of the two TCB add-on propositions

*(1) Practical differences between the TCB add-on propositions and the pre-*Tan Cheng Bock *position*

32 To recapitulate, TCB add-on proposition 1 imposes a bright line on when extrinsic material may be considered during purposive interpretation.[84] TCB add-on proposition 2 stipulates that where the ordinary meaning and legislative purpose of disputed text is shown by intrinsic material to unambiguously support interpretation A (and this interpretation does not lead to a manifestly absurd outcome), even if there is extrinsic material clearing showing that interpretation B is in fact the one which promotes parliamentary intention, interpretation A must prevail.[85]

33 TCB add-on proposition 1 requires one to start with the plain words of the disputed text, then other intrinsic material, before any consideration of extrinsic material may be had. In that sense, at the broadest level, it is not dissimilar to statutory interpretation pre-*Tan Cheng Bock*, which also generally involves consideration of plain words, other intrinsic material and extrinsic material, in that same order.

34 Nevertheless, there are pertinent differences between the two approaches. For one, the pre-*Tan Cheng Bock* position was more flexible in that extrinsic material could be considered earlier in the order, where appropriate.[86] Perhaps more crucially, the pre-*Tan Cheng Bock* position defines the "context" of the disputed text in a broader sense, in that *both* intrinsic *and* extrinsic material can go towards ascertaining what the context is. But TCB add-on proposition 1 appears to insist that only intrinsic material can be used to define the relevant context. It bears reiterating the following holding from *Tan Cheng Bock*, "[t]he court must first determine the ordinary meaning of the provision in its context, which might give sufficient indication of the objects and purposes of the written law, before evaluating whether consideration of extraneous material is necessary".[87] A prime example of the pre-*Tan Cheng Bock* position can be found in the majority judgment in *Ting Choon Meng*. In that case,

84 See para 25 above.
85 See para 26 above.
86 See, for example, *Nam Hong Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd* [2016] 4 SLR 604, *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [43]–[96], and *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd* [2009] 2 SLR(R) 814 at [140]–[158].
87 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [54(c)(ii)].

after considering the relevant plain words of the disputed provision, the majority emphasised that in applying purposive approach:[88]

> … it is clear that both the text and *context* of [the provision] are of the first importance. Put simply, what appears to be a broad purpose that results from a reading of only the text of [the provision] disappears and gives way to the *actual Parliamentary intention* once regard is also had to *the context in which that provision was promulgated. It is this integration of text and context that is of the first importance in interpreting [the provision]* … [emphasis in original omitted; other emphasis added]

The majority then went on to determine the context by immediately examining extensively (under the heading "Section 15 and the interaction of text and context") the relevant parliamentary debates,[89] and returned later to consider other points arising from intrinsic material.[90]

35 TCB add-on proposition 2 also differs from the pre-*Tan Cheng Bock* position. In the latter, even if the ordinary meaning and legislative purpose of the disputed text are shown by intrinsic material to clearly support interpretation A, if there is extrinsic material clearly showing that interpretation B is in fact the one which better promotes Parliamentary intention, interpretation B *can still* prevail. The principal outer boundaries of this position are best encapsulated in these statements from *Low Kok Heng*[91] and *Nation Fittings (M) Sdn Bhd v Oystertec plc*[92] respectively:[93]

> More importantly, it is crucial that statutory provisions are not construed, in the name of a purposive approach, in a manner that goes against all possible and reasonable interpretation of the express literal wording of the provision.
>
> … the court's purposive interpretation should be consistent with, and should not either add to or take away from, or stretch unreasonably, the literal language of the statutory provision concerned.

36 While both positions place significant presumptive weight on the plain text, it is vital to note that TCB add-on proposition 2 does not only impose a higher quantitative threshold in terms of when extrinsic material may override ordinary meaning. The difference is *also qualitative*. TCB add-on proposition 2 makes clear that what is determinative is only whether the ordinary meaning of the disputed text is ambiguous (or leads to absurdity). If it is not, extrinsic material can be of no use whatsoever

88 *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [18].
89 *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [20]–[32].
90 *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [33].
91 *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [52].
92 [2006] 1 SLR(R) 712 at [27].
93 *Nam Hong Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd* [2016] 4 SLR 604 at [30].

other than if it confirms the ordinary meaning. In contrast, the pre-*Tan Cheng Bock* position, as represented by the two statements quoted in the previous paragraph, does not explicate such a rigid restriction.

37 What the pre-*Tan Cheng Bock* position is more concerned with is (a) how much more clearly the extrinsic material supports the alternative interpretation; and (b) whether the plain text can possibly and reasonably accommodate that alternative interpretation. This can be inferred from *Low Kok Heng*. In that case, the relevant provision states that "a person is not guilty of the offence [in question] if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs". The offender there was found to have had the intent to conceal his state of affairs, but did not have the intent to defraud. Thus, the pivotal issue was whether the word "or" in the provision should be read such that for the defence to be made out the offender has to prove just one of the stated intention ("disjunctive reading"), or both ("conjunctive reading"). Although the plain meaning of the word "or" would unambiguously support the disjunctive reading[94] and there is no other intrinsic material to suggest otherwise, the court found that the relevant extrinsic material clearly supports the conjunctive reading, and that the word "or" can possibly and reasonably be read to accommodate this reading. Accordingly, it ultimately adopted the conjunctive reading.[95]

38 The practical difference between the two approaches is summarised in the following two tables:[96]

Situation	1	2		3	4	5
Intrinsic material	Supports Interpretation A	There is ambiguity/absurdity		There is ambiguity/ absurdity	Supports Interpretation A	Supports Interpretation A
Extrinsic material	Supports Interpretation A	Supports Interpretation A	Supports Interpretation B	Unhelpful	Unhelpful	Supports Interpretation B

94 *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [68], noting the trial judge's view on this.

95 To be sure though, it is not possible to make an accurate side-by-side comparison between the pre-*Tan Cheng Bock* position and the position applying TCB add-on proposition 2 because in the former, TCB add-on proposition 1 also did not apply. For instance, in *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183, the court relied on extrinsic material almost at the outset of the interpretation exercise.

96 Which is arguably a crude representation of the types of cases that may come before courts, but is sufficient for present purposes.

Outcome	Interpretation A	Interpretation A	Interpretation B	Apply common law to resolve or supplement	Interpretation A	(must be) Interpretation A
Relevant provision in s 9A	Sub-s (2)(*a*) – extrinsic material confirms ordinary meaning	Sub-s (2)(*b*) – extrinsic material ascertains meaning		Nil	Sub-s (1)	When intrinsic material clearly supports one interpretation, extrinsic material can only be used to confirm that interpretation (sub-s (2)(*a*)). Hence outcome *must be* Interpretation A

Table 1: Position under the two TCB add-on propositions

Situation	**1**	**2**		**3**	**4**	**5**
Intrinsic material	Supports Interpretation A	There is ambiguity/absurdity		There is ambiguity/ absurdity	Supports Interpretation A	Supports Interpretation A
Extrinsic material	Supports Interpretation A	Supports Interpretation A	Supports Interpretation B	Unhelpful	Unhelpful	Supports Interpretation B
Outcome	Interpretation A	Interpretation A	Interpretation B	Apply common law to resolve or supplement	Interpretation A	Can be treated as Situation 2, such that Interpretation B may ultimately be preferred

Table 2: Position under the pre-*Tan Cheng Bock* position

39 From the tables, it can be seen that in situations 1 to 4, there is no disparity in substantive outcome whether one applies the two add-on propositions or the pre-*Tan Cheng Bock* position. However, there may be a very stark difference in outcome if there is a case involving situation 5. It is acknowledged that cases involving situation 5 will likely be relatively few and far in between. One reason is that draftsmen would likely be cognisant of any clear parliamentary intent (that can be later found in extrinsic material) and accordingly draft provisions such that the ordinary meaning gives effect to such intent. Hence, the base probability of situation 5 arising would probably be low. Another reason is that the line between whether a case falls into situation 5 or 2 is whether ambiguity

is found in the disputed text after intrinsic material is considered. Yet, the threshold for what constitutes ambiguity may not be high.[97]

40 Indeed, post-*Tan Cheng Bock*, cases involving statutory interpretation that have come before the Court of Appeal appear to involve only situations 1, 2, 3 or 4. A list of representative cases falling under each of these situations is provided in the Appendix.

41 That said, it is submitted that situation 5 is by no means theoretical. There is a real chance of such cases arising, as illustrated by *Low Kok Heng*[98] and the following two cases.[99]

42 In *Dorsey James Michael v World Sport Group Pte Ltd*,[100] the Court of Appeal had to deal with a provision in the Fourth Schedule to the Supreme Court of Judicature Act,[101] which states that:[102]

> No appeal shall be brought to the Court of Appeal in any of the following cases …
>
> > *(i)* where a Judge makes an order giving or refusing interrogatories.

The issue was whether pre-action interrogatories came under this provision. The plain words of the provision are broad and without qualifications. It would be clear on this alone that pre-action interrogatories qualify. There was also nothing in other intrinsic material noted by the court as to suggest otherwise. The Court of Appeal found the provision ambiguous only because of certain extrinsic material, specifically local and foreign case law, Hansard and a law reform committee report. It concluded after an examination of these materials that Parliament clearly intended that pre-action interrogatories not be caught under the provision, and thus preferred that interpretation. Had TCB add-on propositions 1 and 2 been applied, the case would have presented situation 5 in Table 1 above, and the outcome would have had to be that pre-action interrogatories do fall under the provision.

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97 Patrick Brazil, "Reform of Statutory Interpretation – The Australian Experience of Use of Extrinsic Materials: with a Postscript on Simpler Drafting" (1988) 62 ALJ 503 at 504. See especially para 58(e) below.

98 See discussion at para 37 above.

99 For examples of such cases from other jurisdictions, see *Commissioner for Prices and Consumer Affairs (SA) v Charles Moore (Aust) Ltd* (1977) 139 CLR 449 and R S Geddes, "Purpose and Context in Statutory Interpretation" (2005) 2 UNELJ 5 at 25–31.

100 [2013] 3 SLR 354.

101 Cap 322, 2007 Rev Ed.

102 Now para 1(*k*) of the Fourth Schedule to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed).

43 In *Ramesh a/l Perumal v Public Prosecutor*,[103] the Court of Appeal had to decide whether a bailee who possessed controlled drugs for the purposes of delivery back to a bailor had possessed the drugs for the purposes of "trafficking" under the Misuse of Drugs Act.[104] "Traffic" is defined under the said statute to simply mean "to sell, give, administer, transport, send, deliver, distribute, or to offer to do any of these things". Trafficking is expressly defined broadly to include delivering. Indeed, such delivering would necessarily include transportation of the drugs, which is also defined as a form of trafficking. Further, as observed by the court, there is nothing else in the intrinsic material which is useful to the issue.[105] Consequently, if the two add-on propositions are applied, regardless of whether extrinsic material suggests otherwise, the conclusion should be that a bailee who delivers drugs back to a bailor has committed the act of trafficking. Nonetheless, the Court of Appeal reached the opposite conclusion because it recharacterised the bailee's act as "returning" the drugs and held, after considering extrinsic material, that it is ambiguous as to whether acts of returning drugs fall under "to deliver". It then found that extrinsic material shows that acts of returning drugs were not intended to be caught by the definition of "trafficking".[106] It is not clear why the court had to recharacterise the accused's act when the parties themselves agreed that the accused was intending to deliver the drugs back to the bailor.[107]

(2) Why did the Court of Appeal adopt the two TCB add-on propositions?

44 The main reasons for the Court of Appeal in *Tan Cheng Bock* adopting the two add-on propositions are twofold. The first is that s 9A(2) circumscribes our courts' entire discretion on when it may rely on extrinsic material,[108] and requires that the two propositions be adopted. In particular, TCB add-on proposition 1 must apply because "context" in s 9A(2) excludes consideration of extrinsic material.[109] TCB add-on proposition 2 must apply because s 9A(2) grants a court the power to rely

103 [2019] 1 SLR 1003.
104 Cap 185, 2008 Rev Ed.
105 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [105].
106 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [100]–[114].
107 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [51] and [77].
108 *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [53].
109 See *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [67], where the minority stated that:

> … [a]s to the inquiry that the court is undertaking *before turning to extraneous materials*, this is not limited to interpreting the text of the provision alone, but also takes into account the *statutory context* of the particular provision and also the purpose and object underlying the provision and the statute … [emphasis in original omitted; other emphasis added]

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on extrinsic material *only* in the three stated circumstances, and that does not include relying on extrinsic material to depart from ordinary meaning when there is no ambiguity or absurdity in the ordinary meaning. As explained by the minority in *Ting Choon Meng*, if it were otherwise, "there would have been no need to separately provide in ss 9A(2)(*a*) and 9A(2)(*b*) the different uses that may be made of extraneous materials in various circumstances".[110] In short, a court *cannot* adopt the pre-*Tan Cheng Bock* position because s 9A(2) does not allow it to.

45 The second reason is that s 9A(4) requires a court, when deciding whether to rely on extrinsic material, to have regard to the desirability of persons being able to rely on the ordinary meaning of the written law and also the need to avoid prolonging proceedings without compensating benefit. The two add-on propositions would give proper effect to this exhortation; hence, they *should* be adopted.[111]

(3) Section 9A(2) more likely than not supports the pre-Tan Cheng Bock position

46 With respect, there is basis to think that s 9A(2) in fact supports the pre-*Tan Cheng Bock* position (and not the two add-on propositions). In the first place, s 9A(2) itself is a statutory provision, so its interpretation must be subject to the purposive approach. This means that there is need to consider its ordinary meaning and underlying purpose or intent. It is submitted that the intent behind s 9A(2) in fact more likely than not supports the pre-*Tan Cheng Bock* position.

47 A key reason for the minority's position in *Ting Choon Meng*, which the Court of Appeal in *Tan Cheng Bock* endorsed in the form of the two add-on propositions, is that it read the word "context" in s 9A(2) to be something that can be discerned only using intrinsic material.[112] However, there is reason to question whether this can be the correct underlying intention. If one takes the general position that words in a document have meaning only in light of considerations such as its accepted meaning(s) and surrounding milieu at the time it was introduced in the document,[113]

The minority took the position that one cannot include consideration of extrinsic material in determining context ostensibly because s 9A(2) requires as such, but it is actually not at all clear how s 9A(2) imposes such a constraint. In fact, as argued at para 47 below, "context" in s 9A(2) could well be read such that it can be something ascertained also through the use of extrinsic material.

110 *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [94].

111 *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [95].

112 See para 44 above.

113 See Sundaresh Menon, "The Interpretation of Documents: Saying What They Mean or Meaning What They Say", speech delivered at the 25th Singapore Law Review

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then arguably any ascertaining of its context would necessarily include consideration of information outside the document. As Lord Steyn puts it pithily, "[l]egislative language can only be understood against the backcloth of the world to which it relates".[114] Put simply, the ordinary meaning of "context" would allow consideration of extrinsic material.

48 Even assuming that "context" in s 9A(2) means context considering only intrinsic material, it appears to have escaped attention that the word appears only in ss 9A(2)(*a*) and 9A(2)(*b*)(ii). So at most it could be said that when one is invoking those two subsections, extrinsic material cannot be relied on. Pertinently, however, s 9A(2)(*b*)(i) allows the use of extrinsic material to ascertain the meaning of a provision when *the provision* is ambiguous or obscure. That Parliament did not also explicitly use the word "context" in this subsection, when it could easily have done so, should give rise to a very strong presumption that it did not intend that the assessment of whether a provision is ambiguous be limited by whatever "context" means. A provision could be ambiguous because extrinsic material shows that it is ambiguous.[115]

49 The concern of the minority in *Ting Choon Meng* is: if the two add-on propositions do not hold, would that not mean that there was no point in explicating the three subsections in s 9A(2), in that it could just have stated generally that extrinsic material may be used to ascertain the meaning of the provision?[116] The riposte to this is twofold. For one, it should be noted that s 9A(2) and its source, s 15AB(1) of the Australian Interpretation Act, were introduced in response to there being significant uncertainty in the two respective jurisdictions as to when extrinsic material may be used.[117] Thus, adopting the pre-*Tan Cheng Bock* position would not render the subsections otiose if one accepts that they were included to explicate in detail when courts may feel free to rely on extrinsic material. This is not unlike how one would not say that illustrations and explanations accompanying a statutory provision is otiose.

Lecture (23 September 2013) at para 28, Robert Beckman & Andrew Phang, "Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute LR 69 at 71, Lord Steyn, "The Intractable Problem of the Interpretation of Legal Texts" (2003) 25 *Sydney Law Review* 5 at 6 and 12 and Ruth Sullivan, *Statutory Interpretation* (Irwin Law, 3rd Ed, 2016) at pp 71–72.

114 Lord Steyn, "The Intractable Problem of the Interpretation of Legal Texts" (2003) 25 *Sydney Law Review* 5 at 12.

115 Michelle Sanson, *Statutory Interpretation* (Oxford University Press, 2nd Ed, 2016) at p 174.

116 [2017] 1 SLR 373 at [94].

117 See *Singapore Parliamentary Debates, Official Report* (26 February 1993) vol 60 at cols 516–517 (Prof S Jayakumar, Minister for Law). See also para 54 below and Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 102–104, para 5.

50 For another, the true object of ss 9A(2)(*a*) and 15AB(1)(*a*) might have been misunderstood. Senator Hill, in the parliamentary debates introducing s 15AB(1) of the Australian Interpretation Act, surmised that the subsection was included to deal with the specific situation where parties each submit that the ordinary meaning of a provision clearly supports their respective interpretation, and the court may thus resort to extrinsic material *to confirm which of the two is the correct interpretation*.[118] It was intended to deal with a situation where there is, in the abstract, ambiguity in the provision. In this sense, the object of s 9A(2)(*a*) rests on a different conceptual plane as that for ss 9A(2)(*b*)(i) and 9A(2)(*b*)(ii). Therefore, adopting the pre-*Tan Cheng Bock* position would not in any way render the subsections otiose.

(4) The actual purpose of section 9A(2) is simply to indicate best practices in when to use extrinsic material and not to restrict the court's overall powers to use extrinsic material

51 To be sure, there were some conflicting authorities in Australia as to the proper interpretation of s 15AB *vis-à-vis* the above-mentioned issues.[119] But it turned out that the Australian courts did not need to resolve them because a crucial point was recognised – that s 15AB of the Australian Interpretation Act was never meant to limit the scope of the courts' *overall* discretion to use extrinsic material. Specifically, its true purpose was to grant the courts statutory powers, *parallel to their common law powers*, to use extrinsic material during purposive interpretation.[120] Section 15B was enacted in 1984 *in light of reluctance by the courts in the use of, and significant uncertainty in the existence and scope of, such common law powers*. Hence, the provision was enacted for two central purposes – first, to make it clear beyond doubt to the courts that they do have powers, at least in statutory form, to rely on extrinsic material, and secondly, to set out best practices on when extrinsic material may be relied on. In that regard, the constraints imposed by s 15AB, if any, are constraints on the courts' *statutory* discretion to consider extrinsic material. *Its object was not to constrain the courts' common law, and accordingly overall, discretion to consider such material.* This is *in contrast* to s 15AA, which purpose was to "override both the common law literal

118 Commonwealth (Australia), Senate, *Parliamentary Debates* (30 March 1984) at p 961. Admittedly though, it is not possible to tell from the debates whether the other lawmakers involved shared Senator Hill's view.

119 See Michelle Sanson, *Statutory Interpretation* (Oxford University Press, 2nd Ed, 2016) at pp 174–177, Dennis C Pearce, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 9th Ed, 2019) at pp 99–100, R S Geddes, "Purpose and Context in Statutory Interpretation" (2005) 2 UNELJ 5 at 14.

120 Jacinta Dharmananda, "Outside the Text: Inside the Use of Extrinsic Materials in Statutory Interpretation" (2014) 42(2) *Federal Law Review* 333 at 340–344.

approach to interpretation and the purposive approach to interpretation in its common law form".[121]

52 A misunderstanding might have arisen because during the parliamentary debates for the introduction of s 15AB, certain statements were made which may have given the impression that it was meant to impose a constraint on overall discretion. For instance, in the Senate, Senator Durack commented that:[122]

> [The Bill] is based upon a general proposition that the approach to the subject may include any [extrinsic material]. However, the proposal does confine that approach in a very important way. That approach can be made *only* where there is need to confirm that the meaning of the provision is the ordinary meaning contained by the text, taking into account its context in the Act … The second restriction on the use of extrinsic material is that it can be resorted to to determine the meaning of the provision only when the provision is ambiguous or obscure or the ordinary meaning conveyed by the text of the provision, taking into account its context and purpose, is manifestly absurd or unreasonable. [emphasis added]

53 But there are other explicit statements in the debates that should not be ignored. For instance, Senator Gareth Evans, in moving the bill in the Senate, expressed that:[123]

> [Section 15AB] respects the independence of the judiciary. Judges are neither required to nor prohibited from looking at any materials. On the other hand, the Parliament in section 15AB would be giving *a clear lead* as to the way in which extrinsic materials *can best be used* … [emphasis added]

He rounded up the debates in the Senate by repeating the same point: "*All that is happening here* is that the Parliament is endeavouring to give *a clear lead* to the courts as to the way in which extrinsic materials *can best be used* …" [emphasis added][124]

54 When the statements are read *together*, it becomes patently clear that the constraints mentioned are constraints only on the courts' statutory discretion. Section 15AB was not intended to codify or limit the courts' entire discretion on when it may use extrinsic material. Most importantly, its true purpose is a sort of *best practices guide* from Parliament to facilitate courts giving effect to parliamentary intent during

121 Dennis C Pearce, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 9th Ed, 2019) at para 2.40.
122 Commonwealth (Australia), Senate, *Parliamentary Debates* (30 March 1984) at p 955.
123 Commonwealth (Australia), Senate, *Parliamentary Debates* (8 March 1984) at p 583.
124 Commonwealth (Australia), Senate, *Parliamentary Debates* (30 March 1984) at p 963.

purposive interpretation, and so courts are free to recognise a common law discretion on the same issue, running in parallel, and to determine the scope of that discretion. In Australia, the leading authority on this is the 1997 High Court of Australia case of *CIC Insurance Ltd v Bankstown Football Club*,[125] where the court held that:[126]

> It is well settled that at common law, apart from any reliance upon s 15AB of the Acts Interpretation Act 1901 (Cth), the court may have regard to reports of law reform bodies to ascertain the mischief which a statute is intended to cure. Moreover, the modern approach to statutory interpretation:
>
> (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and
>
> (b) uses 'context' in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy.

55 Dennis Pearce, the preeminent scholar on statutory interpretation in Australia, after examining the issue on whether the equivalent of the pre-*Tan Cheng Bock* position or the two TCB add-on propositions should apply in Australia, concluded that "[t]he issue forms less importance now in view of the modern approach to statutory interpretation discussed … and the broad approach taken by the courts to the material that may be used in determining the context in which an Act is to operate".[127]

56 It is submitted that the same applies in Singapore. Although the Singapore parliament did not likewise say explicitly that s 9A was intended to be a sort of best practices guide on the use of extrinsic material, s 9A(2) was not only introduced to remedy an identical situation in Singapore as it was in Australia,[128] it is also for all intents and purposes *in pari materia*

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125 (1997) 141 ALR 618

126 *CIC Insurance Ltd v Bankstown Football Club* (1997) 141 ALR 618 at 634–635. See also *Newcastle City Council v GIO General Ltd* (1997) 191 CLR 85 at 88 and 109–113, *Stevens v Kabushiki Kaisha Sony Computer Entertainment* (2005) 79 ALJR 1850 at 1870, *R v Lavender* (2005) 218 ALR 521 at 530–531, and *Aussie Vic Plant Hire Pty Ltd v Esanda Finance Corp Ltd* (2008) 243 ALR 207 at [45].

127 Dennis C Pearce, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 9th Ed, 2019) at p 100. See also Matthew T Stubbs, "From Foreign Circumstances to First Instance Considerations: Extrinsic Material and the Law of Statutory Interpretation" (2006) 34(1) *Federal Law Review* 103, in particular at 112–113 and 123–124; R S Geddes, "Purpose and Context in Statutory Interpretation" (2005) 2 UNELJ 5 at 17–25, and generally Jacinta Dharmananda, "Outside the Text: Inside the Use of Extrinsic Materials in Statutory Interpretation" (2014) 42(2) *Federal Law Review* 333.

128 *Singapore Parliamentary Debates, Official Report* (26 February 1993) vol 60 at cols 516–517 (Prof S Jayakumar, Minister for Law). See also para 51 above,

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with s 15AB of the Australian Interpretation Act.[129] It may therefore be strongly presumed that the same underlying purpose was intended to be shared. Indeed, the overall tone of the Minister's short speech reveals that s 9A(2) was meant to *enable* and *empower* our courts *to make well-reasoned decisions*.[130] Nothing was said about constraints.[131] Interestingly, there were local cases decided shortly after s 9A(2) was enacted where the courts realised that s 9A(2) did not extinguish our courts' parallel common law discretion to rely on extrinsic material.[132] That realisation was, for reasons unclear, lost along the way.

57 The upshot is that the position regarding situation 5 (or, for that matter, all of the situations) in the tables above can be governed by common law.

*(5) The pre-*Tan Cheng Bock *position is similar to the common law position elsewhere and makes more sense*

58 The modern approach to statutory interpretation in Australia, as defined by the High Court of Australia, stands in stark contrast to the approach with the two TCB add-on propositions. It is similar to Singapore's pre-*Tan Cheng Bock* position, and is generally also the position adopted in other common law jurisdictions such as UK[133] and Canada[134] This approach to statutory interpretation makes more sense and, some may argue, is even inevitable, in the modern world for the following reasons:

Brady Coleman, "The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore" [2000] Sing JLS 152 at 153 and Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 102–104, para 5.

129 See para 10 above.

130 *Singapore Parliamentary Debates, Official Report* (26 February 1993) vol 60 at cols 516–517 and 519 (Prof S Jayakumar, Minister for Law).

131 In the years leading up to the introduction of s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed), there were several cases where the local courts had referred to extrinsic material (see the cases listed in Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 103, fnn 32–34). None of these cases involved situation 5 (per Tables 1 and 2 above), so our Parliament would unlikely have thought of constraining, much less intended to constrain, the use of extrinsic material in situation 5.

132 See especially *Raffles City Pte Ltd v Attorney-General* [1993] 2 SLR(R) 606 at [20], where L P Thean J stated that "[i]f I am wrong in applying s 9A [regarding reliance on extrinsic material in statutory interpretation], there is at any rate common law a rule parallel to that contained in s 9A". See also *Re How William Glen* [1994] 2 SLR(R) 357 at [16], where G P Selvam J arguably had the same realisation.

133 Diggory Bailey & Luke Norbury, *Bennion on Statutory Interpretation* (LexisNexis, 7th Ed, 2017) at pp 287–288.

134 Ruth Sullivan, *Statutory Interpretation* (Irwin Law, 3rd Ed, 2016) at pp 44–56.

(a) What is clearly mandated by purposive interpretation is that the purpose or parliamentary intention underlying the written law is paramount. While the plain words of the written law are often the most accurate evidence of purpose, there will be occasions where as a result of practical realities of language and drafting this is not true, and instead stronger evidence is found in extrinsic material.[135] Hence, as Matthew Stubbs puts it incisively, where the plain words of disputed text is clear but extrinsic material reveals that it is in fact an alternative interpretation that promotes purpose, it does not make sense that courts go into some form of "judicial amnesia" and disregard the extrinsic material.[136]

(b) One main reason for having some sort of bright line between intrinsic and extrinsic material in every case of statutory interpretation is to cultivate an environment where users (especially lay users) of legislation can understand the meaning of statutory provisions without having to look outside the statute. Certainly, s 9A(4)(*a*) states that this should be a relevant consideration. Nevertheless, the sheer reality is that often the ordinary meaning of statutory text can only be discerned by resort to dictionaries, legislative history, or accepted meaning of the words in society at the time the provision was enacted, and this would already involve looking outside the four walls of the statute.[137] Additionally, the Court of Appeal in *Tan Cheng Bock* accepted that in determining the ordinary meaning of disputed text, regard may be had to a myriad of linguistic canons and statutory presumptions. Strictly speaking, these are "material" that hail from outside the statute, so it is hard to see why they can be considered early on but not other relevant extrinsic material. Indeed, given how technical and complicated many of these canons and presumptions are,[138] lay users of a statute might well struggle with them far more than straightforward statements from extrinsic material.

(c) Moreover, over the years, the range and amount of relevant extrinsic material, in particular, case law interpreting

135 Ruth Sullivan, *Statutory Interpretation* (Irwin Law, 3rd Ed, 2016) at pp 71–72.

136 Matthew T Stubbs, "From Foreign Circumstances to First Instance Considerations: Extrinsic Material and the Law of Statutory Interpretation" (2006) 34(1) *Federal Law Review* 103 at 113.

137 See para 47 above.

138 See Karl N Llewellyn, "Remarks on the Theory of Appellate Decision and the Rules or Canons about How Statutes Are to Be Construed" (1950) 3(3) Vand L Rev 395. See also Anita S Krishnakumar, "Reconsidering Substantive Canons" (2017) 84 U Chi L Rev 825 at Part I.A and the materials cited therein.

statutory words, have increased substantially. Many words in legislation have already been interpreted by local or foreign courts, and it is only by referring to these cases that it becomes obvious certain statutory text is ambiguous (for example, because there is in fact a technical meaning to the words).[139] Applying the TCB add-on propositions would mean that these cases cannot be relied on to conclude that the disputed text is in fact ambiguous, and this is surely not a satisfactory state of affairs. An excellent example is where a court needs to interpret the meaning of the words "and" or "or" in a statute. If one insists on the bright line, there should be no ambiguity whatsoever. In ordinary usage, without regard to any extrinsic material, "and" simply connotes conjunctive-ness while "or" connotes disjunctive-ness. Most of the time, the only reason one would think otherwise is because it has been considered, either consciously or sub-consciously, that there exists case law which has held that these words could in some circumstances connote the opposite meaning.[140]

(d) One way to justify the two add-on propositions could be to define extrinsic material narrowly to include only certain material (such as dictionaries and legislative history but not Hansard and case law), or only material that goes towards illuminating the plain meaning (as opposed to the context or underlying purpose) of disputed text. The difficulty with this is that extrinsic material has always been understood to simply mean any relevant material not forming part of the written law.[141] Leading overseas texts on statutory interpretation have listed dictionaries and legislative history as examples of extrinsic material, together with Hansard, Select Committee reports *etc*.[142] More importantly, any line drawn would be wholly arbitrary.[143]

139 See especially *Yan Jun v Attorney-General* [2015] 1 SLR 752 at [57] and *Au Wai Pang v Attorney-General* [2014] 3 SLR 357 at [10].

140 It also would not make sense to simply say that it is settled law or that it is common ground between parties that the disputed text can have alternative interpretations (see, for example, *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [69]; *Nam Hong Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd* [2016] 4 SLR 604 at [19]; and *Wong Souk Yee v Attorney-General* [2019] 1 SLR 1223 at [46]). This would give the appearance of compliance with the TCB add-on propositions, but in reality would have had relied (indirectly) on extrinsic material early on.

141 *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [63].

142 Diggory Bailey & Luke Norbury, *Bennion on Statutory Interpretation* (LexisNexis, 7th Ed, 2017) at pp 585–646, Ruth Sullivan, *Statutory Interpretation* (Irwin Law, 3rd Ed, 2016) at pp 259–284, Michelle Sanson, *Statutory Interpretation* (Oxford University Press, 2nd Ed, 2016) at pp 178–196 and Dennis C Pearce, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 9th Ed, 2019) at pp 110–135.

143 See, for a similar view, Jacinta Dharmananda, "Outside the Text: Inside the Use of Extrinsic Materials in Statutory Interpretation" (2014) 42(2) *Federal Law Review* 333

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If dictionaries may be used to illuminate the ordinary meaning of disputed text, why should a statement from the Minister in the source Hansard indicating what Parliament thought to be the ordinary meaning not be permitted to be considered at the same juncture? If legislative history may be used to understand the context of disputed text, why should a Select Committee report which has considered the legislative history in greater detail not be allowed to be relied on in its place? In short, in the modern world, the ways in which extrinsic material may be relevant to purposive interpretation are innumerable, and so when it may be considered in the exercise should generally be decided on a case-by-case basis.[144] Applying the TCB add-on propositions would risk unnecessary under-inclusiveness.[145]

(e) Insisting on the strict constraints imposed by the two add-on propositions would also risk one finding awkward ways to circumvent them. In the UK and Australia, back when the law did not permit resort to Hansard in statutory interpretation, several justices candidly confessed to consulting Hansard in private when deciding cases and being influenced by what was said therein in coming to a conclusion.[146] Also, given that the

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at 351 ("[t]his highlights again the problematic nature of attempting to confine the use for which one can have recourse to Hansard. Focus on the assessment of the weight to be given to the material, rather than how it may be used, may yield a more rigorous use of the material").

144 See especially Jacinta Dharmananda, "Outside the Text: Inside the Use of Extrinsic Materials in Statutory Interpretation" (2014) 42(2) *Federal Law Review* 333 at 355.

145 Goh made a similar point, albeit in the context of the types of extrinsic material that may be considered: "The danger with blanket exclusionary rules is that they tend to be over-inclusive, and may preclude reference to potentially useful extrinsic materials, thereby defeating the object and purpose underlying s 9A … Indeed, there should not be a general blanket ban or restriction to unduly bind the hands of the interpretative process, bearing in mind the overriding purpose ascribed to the process by Parliament": see Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 132, paras 39–40.

146 In *Davis v Johnson* [1979] AC 264 at 266–267, Lord Denning quipped that:

> … it is obvious that there is nothing to prevent a judge looking at these debates himself privately and getting some guidance from them. Although it may shock the purists, I may as well confess that I have sometimes done it. I have done it in this very case. It has thrown a flood of light on the provision. The statements made in committee disposed completely of Mr Jackson's argument before us. It is just as well that you should know of them as well as me.

See, for similar statements from the same judge, *R v Local Commissioner for Administration, ex parte Bradford Metropolitan City Council* [1979] 2 All ER 881 at 898 and *Hadmore Productions Ltd v Hamilton* [1983] 1 AC 191 at 201. See also the other material cited in Robert Beckman & Andrew Phang, "Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute LR 69 at 73, fn 22.

meaning of the word "ambiguous" can itself be ambiguous,[147] there is the real possibility of one circumventing the two add-on propositions by concluding that there is ambiguity in the disputed text so long as there is the slightest bit of ambiguity – which would *de facto* construe the threshold out of existence.[148] Some other kinds of tension could be detected in cases after *Tan Cheng Bock*. For instance, the Court of Appeal in *Lam Leng Hung* attempted to define "ordinary meaning" but highlighted that it was difficult to explain precisely what it referred to and how it could be ascertained.[149] This is a tad curious given that the Court of Appeal in *Tan Cheng Bock* had offered a clear definition – ordinary meaning is the meaning of the disputed text taking into account its context (and purpose), based on intrinsic material.[150]

(f) The need to accord primacy to the plain words of a provision[151] does not mean that the two TCB add-on propositions must be adopted. The former can well be achieved by stipulating that plain text should always be the starting point, and given presumptive weight, especially when it is clear, in purposive interpretation. The argument in this article – and this cannot be emphasised enough – is *not* that one should depart from according primacy to plain words of a provision. Rather, it is that an absolute blanket rule or bright line, as seemingly imposed by the two propositions, is not necessary.[152] The common law and pre-*Tan Cheng Bock* positions both generally still demand primacy to plain statutory text. It is just that they accept that there may be the rare situation where extrinsic material more clearly shows that an alternative interpretation promotes parliamentary

147 This has been recognised by numerous judges and scholars. For example, Lord Oliver of Aylmerton stated in *Pepper v Hart* [1992] 2 WLR 1032 at 1043 that "[i]ngenuity can sometimes suggest ambiguity or obscurity where none exists in fact". See also Robert Beckman & Andrew Phang, "Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute LR 69 at 77 and 93 and Jacinta Dharmananda, "Outside the Text: Inside the Use of Extrinsic Materials in Statutory Interpretation" (2014) 42(2) *Federal Law Review* 333 at 343. For an extremely fascinating empirical study on this point, see Ward Farnsworth, Dustin Guzior & Anup Malani, "Ambiguity about Ambiguity – An Empirical Inquiry into Legal Interpretation" (2010) 2(1) *Journal of Legal Analysis* 257.

148 See, in particular, *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd* [2018] 1 SLR 979 at [27]–[28].

149 *Public Prosecutor v Lam Leng Hung* [2018] 1 SLR 659 at [75]–[76]. See also [133]–[134].

150 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [54(c)(ii)].

151 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [43] and [45].

152 See also Matthew T Stubbs, "From Foreign Circumstances to First Instance Considerations: Extrinsic Material and the Law of Statutory Interpretation" (2006) 34(1) *Federal Law Review* 103 at 109.

intent, and in such situations the alternative interpretation may be adopted, provided it would not stretch unreasonably the plain text of the provision.[153]

59 There are two additional reasons the TCB add-on propositions should not be adopted in Singapore.

(a) The Court of Appeal has accepted that the principle of rectifying construction can be applied in Singapore.[154] Yet, this principle is at odds particularly with TCB add-on proposition 2 because the principle precisely permits a court to rely on extrinsic material to disregard what is otherwise unambiguous statutory text, albeit in the specific instance of adding in omitted words, whereas situation 5 may more broadly involve reading down or replacing such text.

(b) The Court of Appeal had held in 2013 in *Public Prosecutor v Adnan bin Kadir*[155] ("*Adnan*") that "context" in the beginning words of the interpretation section in the Interpretation Act and other statutes includes a consideration of extrinsic material.[156] It seems quite incongruous that "context" under s 9A(2) cannot include consideration of extrinsic material, because then it would potentially be easier to adopt a contrary interpretation of a word which has been expressly defined in legislation, compared to a word which has not been so defined. That said, to the extent that TCB add-on proposition 1 remains good law, the position taken by the Court of Appeal in *Adnan* may arguably be taken to have been implicitly overruled.

60 Finally, it is fully acknowledged that users of legislation should be able to rely on the ordinary meaning of statutory text, and reliance on extrinsic material in purposive interpretation should not prolong proceedings without compensating advantage. However, s 9A(4) should be applied in light of the following:

(a) It is likely that even applying the more flexible position under common law, in the vast majority of instances where a person has to rely on a statute, the ordinary meaning is sufficiently clear to indicate how a provision should apply to one's situation. It is submitted that the number of cases our appellate

153 For a very illuminating discussion of the *equivalent* issue *vis-à-vis* contractual interpretation, see Goh Yihan, *The Interpretation of Contracts in Singapore* (Thomson Reuters, 2018) ch 9.

154 See para 18(b) above.

155 [2013] 3 SLR 1052.

156 See n 70 above.

courts have to deal with which involves statutory interpretation is not an accurate indicator of how difficult it has been for persons to rely on ordinary meaning,[157] because appellate courts by definition see only a very small fraction of cases arising from use of legislation, and there are also many other factors affecting how litigious a person or party might be.[158]

(b) Section 9A of the Interpretation Act and ss 15AA and 15AB of the Australian Interpretation Act were enacted during a time where access to extrinsic material was significantly more limited than it is today. For example, in Singapore today, Hansard (at least from 1955 onwards), as well as other extrinsic material, is freely available online. This is a far cry from the situation in 1993 when s 9A was introduced.[159]

(c) Even if applying the two add-on propositions can help save costs by reducing the number and length of proceedings involving statutory interpretation, there may well be costs incurred in other forms elsewhere. In particular, it may result in draftsmen having to spend an inordinate amount of time trying to think through every single possible scenario and draft legislation in a "perfect" way.[160] Not only is this probably in reality impossible; in the long run, this might also lead to even greater overall costs to society.[161]

157 In this regard, Sundaresh Menon CJ recently noted that the Court of Appeal's caseload has "increased steadily over the years, and is more than 50% higher today than it was in 2013", and there have also been cases of increasing complexity: see "Response by Chief Justice Sundaresh Menon" Opening of Legal Year 2019 (7 January 2019) at para 18.

158 See Koen V Aeken, Steven Gibens & Gerrit Franssen, "Litigiousness, Civil" in *Encyclopaedia of Law & Society: American and Global Perspectives* (David S Clark ed) (Thousand Oaks: Sage Publications, 2014) and Lawrence M Friedman, "Litigation and Society" (1989) 15 *Annual Review of Sociology* 17.

159 This observation was already made by Goh over a decade ago: see Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 133, para 41. See also Brady Coleman, "The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore" [2000] Sing JLS 152 at 160–161 and Robert Beckman & Andrew Phang, "Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute LR 69 at 90–94. For the position in Australia, see Matthew T Stubbs, "From Foreign Circumstances to First Instance Considerations: Extrinsic Material and the Law of Statutory Interpretation" (2006) 34(1) *Federal Law Review* 103 at 108.

160 Discussion by John Greenwell in *Symposium on Statutory Interpretation* (Australian Government Publishing Service, 1983) at p 42.

161 See Commonwealth (Australia), House of Representatives, *Parliamentary Debates* (3 May 1984) at p 1746 (Spender).

(d) Generally speaking, our courts have over the years increased their reliance on material such as foreign authorities[162] and academic texts.[163] This increase would have led to prolonged proceedings. Yet, our courts must have appreciated that consideration of such material enhances the quality of the decisions rendered, that is, there is compensating advantage. The same may be said of increased reliance, in the appropriate cases, on extrinsic material.[164] Further, permitting more flexible reliance on extrinsic material may prolong proceedings in specific cases, but might in fact encourage greater cost savings and shorter proceedings down the road because the reliance had led to more clearly and strongly reasoned decisions.[165]

(e) As will be mentioned below,[166] there are other sources of prolonging of proceedings involving statutory interpretation that could more appropriately be dealt with.

(f) Excessive and unwarranted reliance on extrinsic material in proceedings involving statutory interpretation need not be dealt with by imposing absolute constraints across all cases. It may be much better to deter such reliance by imposing costs on parties in specific cases.[167]

61 The Court of Appeal in *Tan Cheng Bock* had affirmed the two add-on propositions because it had felt that there were reasons it could

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162 Goh Yihan & Paul Tan, "The Development of Local Jurisprudence" in *Singapore Law: 50 Years in the Making* (Goh Yihan & Paul Tan eds) (Academy Publishing, 2015) at pp 195–250.

163 Cheah Wui Ling & Goh Yihan, "An Empirical Study on the Singapore Court of Appeal's Citation of Academic Works: Reflections on the Relationship between Singapore's Judiciary and Academia" (2017) 29 SAcLJ 75.

164 Stéphane Beaulac, "Parliamentary Debates in Statutory Interpretation: A Question of Admissibility or of Weight" (1998) 43 McGill LJ 287 at 316–317.

165 Brady Coleman speculated similarly 20 years ago when he said that "to the extent that certainty of law is increased by the extra interpretative resources available under section 9A, and to the extent that certainty of law reduces litigation and related costs, section 9A may arguably have caused a net reduction in legal costs, though this is obviously a speculative suggestion": see Brady Coleman, "The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore" [2000] Sing JLS 152 at 161.

166 See para 68 below.

167 Sundaresh Menon CJ has appositely suggested, extra-judicially, that "[i]nsofar as the problem involves the introduction of irrelevant material before the court, this is a practical problem that infects all proceedings, not just those involving statutory. Its remedy lies elsewhere, perhaps through the use of appropriate costs orders, rather than in pre-emptively ordering the exclusion of such material entirely": Sundaresh Menon, "The Interpretation of Documents: Saying What They Mean or Meaning What They Say", speech delivered at the 25th Singapore Law Review Lecture (23 September 2013) at para 27.

not, and should not, adopt the common law position. For all of the foregoing reasons, it is respectfully submitted that our courts *can* adopt the common law position, and there are also reasons that it should do so. The following table summarises what this author suggests the position should be in Singapore, with the corresponding sources of discretion:

<table>
<tr><th>Situation</th><th>1</th><th colspan="2">2</th><th>3</th><th>4</th><th>5</th></tr>
<tr><td>Intrinsic material</td><td>Supports Interpretation A</td><td colspan="2">There is ambiguity/absurdity</td><td>There is ambiguity/ absurdity</td><td>Supports Interpretation A</td><td>Supports Interpretation A</td></tr>
<tr><td>Extrinsic material</td><td>Supports Interpretation A</td><td>Supports Interpretation A</td><td>Supports Interpretation B</td><td>Unhelpful</td><td>Unhelpful</td><td>Supports Interpretation B</td></tr>
<tr><td>Outcome</td><td>Interpretation A</td><td>Interpretation A</td><td>Interpretation B</td><td>Apply common law to resolve or supplement</td><td>Interpretation A</td><td rowspan="2">Common law can apply so that de facto becomes situation 2, and Interpretation B may be preferred</td></tr>
<tr><td>Source of discretion on use of extrinsic material</td><td>s 9A(2)(a) – extrinsic material confirms ordinary meaning (or, free to apply common law approach)</td><td colspan="2">s 9A(2)(b) – extrinsic material ascertains meaning (alternatively, free to apply common law approach)</td><td>Free to apply common law approach</td><td>s 9A(1)</td></tr>
</table>

Table 3: Proposed position in Singapore

62 As mentioned above, TCB add-on proposition 1 has since not been strictly applied, and there are signs of movement in this aspect back towards the common law position. This trend should be continued. TCB add-on proposition 2 remains strictly *obiter dicta* because *Tan Cheng Bock* was not a case involving situation 5. Neither has the Court of Appeal affirmed it in any later cases. It is thus respectfully suggested that the applicability of that proposition be reconsidered in an opportune case. If, however, the two propositions are affirmed, it should be pointed out that they would not necessarily be compatible with principles or presumptions which are based on the modern common law approach to statutory interpretation.[168] The principle of rectifying construction is arguably a good example. Hence, it might be useful for courts to be on guard against such potential incompatibility.

168 See para 54 above.

B. Compatibility of principle of strict construction with purposive approach

63 That the principle of strict construction applies in Singapore, albeit under very narrow circumstances, is now without doubt. In his review in 2009, Goh had expressed some concerns about the compatibility of the principle with purposive approach.[169] He submitted that allowing the principle to apply (only) when there is genuine ambiguity even after the courts have attempted to interpret a provision purposively presupposes that "there can be no purpose behind a statutory provision such that the purposive approach can fail",[170] and this would be inconsistent with the view that there is always a purpose behind every statutory enactment. Further, given that the principle does not apply to non-penal statutes, he wondered whether this means that it would always be possible to identify the purpose behind non-penal statutes, but somehow there may be cases where it cannot be found *vis-à-vis* penal provisions.[171]

64 A proper examination of the extent to which the principle is compatible with purposive approach demands an entire article by itself.[172] Suffice to say that Goh's concerns seem overstated. If the approach in a trial is truth-finding, and the plaintiff is unable to find enough evidence to discharge its burden of proof, one would accept that the defendant wins the case, but would not say that truth-finding as an approach has failed in the case because there is no truth. Practically speaking, truth can only be discerned from evidence, and what had happened simply was that there was insufficient evidence to prove this truth, not that the truth does not exist in the abstract. Could the same not be said about purposive approach? When the principle of strict construction is applied, it is not that there is no purpose underlying the statute, but that practically sufficient evidence could not be found (from intrinsic and extrinsic material) to discern what that purpose is.[173] Moreover, while the principle does not apply to non-penal statutes, it is well possible for there to be insufficient evidence to ascertain the relevant purpose in non-penal statutes. In such cases, other types of statutory principles or presumptions would be applied to resolve the issue,[174] or the conclusion would simply

169 See para 11(c) above.
170 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 128, para 33.
171 Goh Yihan, "Statutory Interpretation in Singapore – 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97 at 128, para 33.
172 See, for an excellent example, Martin Friedland, "Beyond a Reasonable Doubt: Does it Apply to Finding the Law As Well As the Facts?" (2015) 62 CLQ 452.
173 See para 14 above.
174 See especially *Li Shengwu v Attorney-General* [2019] 1 SLR 1081 at [131].

be that Parliament did not intend for the statute to govern the issue in question, and the common law position can come in to supplement.[175]

C. Weight to be accorded to extrinsic material

65 On the issue of weight to be accorded to extrinsic material, the Court of Appeal has held that the statements in extrinsic material must be clear and unequivocal to be of any real use in purposive interpretation. It is not entirely clear if this means that (a) if a statement in extrinsic material, considered by itself, is not clear and unequivocal, then the court will simply disregard it; or (b) the weight that will be given is proportionate to how clear the statement is. In the latter, content in extrinsic material is not disregarded just because viewed by itself it is not unequivocal. The Court of Appeal probably meant for the latter, and it is submitted that that should be the position adopted. This is because when it comes to the assessment of weight of evidence in making factual findings, it has been rightly recognised that there may be evidence which appears not particularly helpful when considered in isolation, and it is only when several pieces of them are considered together that a conclusion one way or the other becomes much more apparent.[176] There is little reason why the same should not also apply to purposive interpretation, since content in extrinsic (and for that matter intrinsic) material are but pieces of evidence to discerning purpose or parliamentary intent.[177] And just as attempts to flood the court with excessive and irrelevant evidence *vis-à-vis* factual issues are dealt with by the imposition of costs, the same can be done if there are similar attempts with extrinsic material *vis-à-vis* statutory interpretation.[178]

V. Looking forward to the next decade

66 It is evident that in this past decade or so, the Court of Appeal has offered significantly more clarity to and guidance in multiple issues concerning statutory interpretation. A five-member bench has also been specially constituted in quite a few of the more difficult cases. These developments are deeply welcomed and appreciated. Given that statutory

175 See, for example, *ARX v Comptroller of Income Tax* [2016] 5 SLR 590 at [21]–[42]. See generally Goh Yihan, "Where Judicial and Legislative Powers Conflict – Dealing with Legislative Gaps (and Non-gaps) in Singapore" (2016) 28 SAcLJ 472 at 498–500, paras 64–68.

176 See, for example, the majority judgment in *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR 499.

177 See, for example, *Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567 at [119].

178 See para 60(f) above.

interpretation is relevant in virtually all areas of the law, this can only bode well for Singapore as a mature legal system.

67 As we move forward to the next decade, two other suggestions might be considered to refine statutory interpretation in Singapore even further. The first is a suggestion for our Parliament to amend s 9A(1) in the same way that the Australian parliament has amended s 15AA of the Australian Interpretation Act. In 2011, the latter was amended such that it reads:

> In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether that purpose or object is expressly stated in the written law or not) is to be preferred to each other interpretation.

It is submitted that this definition of purposive approach more accurately reflects ground reality in that not infrequently, the relevant intrinsic and extrinsic material would show that the choice is not actually a black-and-white one between an interpretation that promotes purpose and one that would not.[179] It is instead "a choice between two or more interpretations each of which would promote the Act's purpose or object. In such an event the interpretation that would best achieve that purpose or object must be chosen".[180]

68 The second is a suggestion for our courts to consider examining and rationalising the burden and standard of proof in statutory interpretation, as it has recently done so extensively in relation to factual disputes. In the latter, there is now extensive guidance on how much evidence must first be proffered by one side, before the evidential burden shifts to the other, and so on.[181] In terms of statutory interpretation, the approach has been less clear. At times the Court of Appeal seems to require at a particular step in the exercise positive evidence from relevant material supporting a particular interpretation, but at other times it is satisfied just because there is nothing in the relevant material supporting a contrary interpretation, or there is nothing in the material limiting

179 As was the situation in cases such as *Wong Souk Yee v Attorney-General* [2019] 1 SLR 1223.

180 Dennis C Pearce, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 9th Ed, 2019) at p 46.

181 See generally *Public Prosecutor v GCK* [2020] 1 SLR 486 and *Muhammad Nabill bin Mohd Faud v Public Prosecutor* [2020] 1 SLR 984.

a court from preferring a particular interpretation.[182] There is probably a way to rationalise this in the form of a more coherent framework.[183]

182 For example, compare the majority and minority judgment in *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373. See also generally *Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567.

183 See, *eg*, Martin Friedland, "Beyond a Reasonable Doubt: Does It Apply to Finding the Law As Well As the Facts?" (2015) 62 CLQ 452.

Appendix

Situation 0[184]

Yap Chen Hsiang Osborn v Public Prosecutor[185]

Public Prosecutor v ASR[186]

Situation 1

Saravanan Chandaram v Public Prosecutor[187]

YCH Distripark Pte Ltd v Collector of Land Revenue[188]

Public Prosecutor v Soil Investigation Pte Ltd[189]

Public Prosecutor v Lam Leng Hung[190]

Tan Cheng Bock v Attorney-General[191]

Situation 2

Wong Souk Yee v Attorney-General[192]

Zainal bin Mohamed v Public Prosecutor[193]

Nam Hong Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd[194]

184 This is a situation where intrinsic material shows clearly that the disputed text should be interpreted in a particular way, and the court saw no need to go on to examine extrinsic material.
185 [2019] 2 SLR 319.
186 [2019] 1 SLR 941.
187 [2020] 2 SLR 95.
188 [2019] 2 SLR 695.
189 [2019] 2 SLR 472.
190 [2018] 1 SLR 659.
191 [2017] 2 SLR 850.
192 [2019] 1 SLR 1223
193 [2018] 1 SLR 449.
194 [2016] 4 SLR 604.

Situation 3

Kong Hoo (Pte) Ltd v Public Prosecutor[195]

Situation 4

Ho Man Yuk v Public Prosecutor[196]

195 [2019] 1 SLR 1131.
196 [2019] 1 SLR 567.