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Beyond Pepper v. Hart: The legislative reform of statutory interpretation in Singapore

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Beyond *Pepper* v. *Hart*: The Legislative Reform of Statutory Interpretation in Singapore

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One of the major controversies in the area of statutory interpretation has centred on the use of parliamentary materials as extrinsic aids by courts in interpreting legislation. The English courts long prohibited any reference to parliamentary materials.[1] Legislation was passed in Australia in the 1980s to allow liberal reference to parliamentary materials in the courts.[2] More recently, a seminal decision of the House of Lords in 1992 in *Pepper (Inspector of Taxes)* v. *Hart*[3] introduced significant flexibility into the hitherto rigid proscription followed in the English courts, although it did not go as far as the legislative reforms in Australia. *Pepper* v. *Hart* was immediately applied by courts in Singapore in two cases.[4] Shortly thereafter, in early 1993, the Singapore Parliament passed legislation[5] modelled on that in Australia. Like the legislation in Australia, it also directs courts to give statutory provisions an interpretation which would promote the object or purpose underlying the statute. This article will examine these developments and assess their likely impact on the practice of the courts in Singapore.

The plan of the instant article is as follows. Part I briefly lays down the background to the Singapore amendments, including the endorsement and

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[1] See generally, *Cross on Statutory Interpretation* (2nd edn, Bell and Engle, 1987) at 150–65, and Bennion, *Statutory Interpretation* (2nd edn, 1992) at Part XIV.

[2] See generally, Pearce and Geddes, *Statutory Interpretation in Australia* (3rd edn, 1988) at 45–9.

[3] [1992] 3 WLR 1032.

[4] *Public Prosecutor* v. *Lee Ngin Kiat* [1993] 2 SLR 181; *Tan Boon Yang* v. *Comptroller of Income Tax* [1993] 2 SLR 48.

[5] The legislation was contained in the Interpretation (Amendment) Act 1993 (No. 11 of 1993), which amended the Interpretation Act (Cap. 1, 1985 rev. edn). The Explanatory Statement is attached to the Interpretation (Amendment) Bill (Bill No. 4/93). The parliamentary debate on the Bill, including the Minister's speech on Second Reading, took place on 26 Feb. 1993: *Parliamentary Debates Singapore, Official Report*, vol. 60, No. 6 at cols. 516–19. The Act came into operation on 16 Apr. 1993.

application of *Pepper* v. *Hart*. Part II sets out the amendments proper and proceeds with the substantive analysis of the statutory provisions themselves. It analyses not only the sources of the amendments, but also possible interpretations as well as interpretive difficulties that may arise. Part III looks to the *future*—in particular, the implications in the eminently practical sphere of lawyers' advice and arguments, viewed from the perspectives of both substance as well as tactics. In a related and no less practical vein, it will suggest that the immense technological advances of the last decade can be harnessed to not only meet some of the standard objections to the use of extrinsic materials, but also to facilitate the work of the lawyers themselves. It will also venture some suggestions for changes in the practices of the Attorney General's Chambers in order to better achieve the underlying spirit behind the amendments themselves.

The analysis in this article will necessarily be comparative in nature. Whilst acknowledging that the Singapore experience is in some ways unique, there may be, it is submitted, lessons for other countries, especially those contemplating a break from the rigidities embodied within the present common law rules. This is the broader spirit that underlies the instant article and, indeed, transcends its more particularistic arguments.

I. The Background

The brief background in this Part will centre on the two primary issues covered by the recent amendments: first, the interpretation of legislative provisions in light of their object and purpose, and, secondly, the use of parliamentary materials as aids to construction.

a. Interpretation to Promote Object and Purpose

i. The three traditional approaches

It is often stated and generally accepted that the function of courts when interpreting statutes is to fulfil the 'intention of Parliament'. In so doing the courts have developed various principles or approaches to the interpretation of statutes. The three traditional approaches followed by the English courts were the mischief rule, the literal rule, and the golden rule.[6] In its 1969 report the United Kingdom Law Commission traced the historical development of the three traditional approaches, and criticized them.[7] In its conclusions, the

[6] See generally, Farrar and Dugdale, *Introduction to Legal Method* (3rd edn, 1990) at 144–55; Lord Renton, 'Interpretation of Legislation' [1982] Stat. LR 7.

[7] *The Interpretation of Statutes* (Law Com. No. 21, 1969) at 14–20.

Law Commission stated that there is a tendency by the courts to overemphasize the literal meaning of a provision at the expense of the meaning to be derived from other possible contexts, including the 'mischief' or general legislative purpose which may underlie a provision.[8] The Law Commission therefore recommended the adoption of legislation to provide specifically that one of the principles to be applied in the interpretation of Acts was that 'a construction which would promote the general legislative purpose underlying the provision in question is to be preferred to a construction which would not'.[9] A clause containing this provision was included in the Interpretation of Legislation Bill introduced by Lord Scarman, but this Bill was never passed by the United Kingdom Parliament.[10]

ii. The purposive approach

In the 1970s many members of the House of Lords began to adopt what some writers describe as a purposive or unitary approach toward the interpretation of statutes.[11] These approaches are supposed to integrate the most useful elements of the various approaches just mentioned, as well as fulfil the spirit behind the enterprise of statutory interpretation. i.e., the ascertainment of, and the giving effect to, the purpose and intention underlying the statutory provisions concerned. Indeed, the common feature in these modern approaches is that the words of a provision are always interpreted in their context, including the object or purpose underlying the statute.

iii. Determining object and purpose

How is the purpose or statutory objective determined? In many cases a statutory provision can be interpreted in light of its object and purpose without having to refer to any materials outside the Act itself. It is permissible for the courts when interpreting a statute to take judicial notice of the time and circumstances which existed at the time the legislation was passed, including

[8] Ibid., at 48–9.

[9] Appendix A, Draft Clauses, clause 2 (a): ibid., at 51. The Law Commission noted that it avoided using the word 'mischief' because it has an archaic ring and suggested that legislation was only designed to deal with an evil and not further a social purpose. For this reason it used the expression 'general legislative purpose underlying the provision': see para. 48 and n. 175, at p. 48.

[10] Attempts to get this Bill passed failed twice; for the general legislative background, see Bennion, 'Another Reverse for the Law Commissions' Interpretation Bill' (1981) NLJ 840; HL Debs, vol. 405, cols. 276–306 (13 Feb. 1980); HL Debs, vol. 418, cols. 64–83 (9 Mar. 1981) and 1341–7 (26 Mar. 1981); HL Debs, vol. 419, cols. 796–7 (13 Apr. 1981). See also, the Renton Report, *The Preparation of Legislation* (Cmnd. 6053, 1975) at 139 *et seq.*

[11] See generally, Farrar and Dugdale, above, n. 6, at 153–4. The oft-cited authority for the purposive approach is that of Lord Diplock in *Kammins Ballrooms Co. Ltd* v. *Zenith Investments (Torquay) Ltd* [1971] AC 850. And see, most recently, *Pepper* v. *Hart* [1992] 3 WLR 1032 at 1057. The unitary approach is most generally attributed to Lord Simon. He articulated this approach, which he referred to as 'the golden rule of construction', in *Maunsell* v. *Olins* [1975] AC 373 and in *Farrell* v. *Alexander* [1977] AC 59.

information relating to legal, social, economic, and other aspects of the society in which the statute is to operate.[12]

iv. Pre-parliamentary materials as extrinsic aids

The English courts did allow recourse to certain extrinsic aids to assist it in ascertaining the mischief. The courts allowed recourse to 'pre-parliamentary materials' such as government white papers or reports of Select Committees of Parliament. Since such reports were public and were made prior to the time legislation was introduced in Parliament, they were considered as part of the background information which was available to the draftsman, and which could be referred to by the courts to assist it in ascertaining the mischief which the statute was intended to remedy. It remained doubtful and problematic whether such reports could be referred to to assist the court in ascertaining the meaning of a provision.[13] Also, it has now been accepted in England that the courts can be more liberal in their recourse to extrinsic aids when interpreting statutes which implement international treaties.[14]

v. The position in Singapore

What, then, of the Singapore position? There appear to be very few cases in which judges discuss the approach they are following, or in which they refer specifically to the statutory objective or purpose of the Act generally or of the particular provision. They are more likely to refer to the 'intention of Parliament'. At the same time, there seems to have been no general criticism that the courts tended to take an excessively literal approach when interpreting statutes. However, in the recent decision of *Low Gim Siah* v. *Law Society of Singapore*,[15] Goh Phai Cheng JC expressly adopted the purposive approach.[16]

[12] Law Com. No. 21, above, n. 7, at para. 46.

[13] See generally *Black-Clawson International Ltd* v. *Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591; the subsequent (albeit extra-judicial) reversal of opinion by Lord Wilberforce (then objecting against such reference) should also be noted: see Lord Wilberforce, 'A Judicial Viewpoint' in *Symposium on Statutory Interpretation*, Canberra, 5 Feb. 1983 at 8. See also *Attorney General's Reference (No. 1 of 1988)* [1989] 2 All ER 1 at 6.

[14] In interpreting such legislation courts may refer to the international treaty which the statute is intended to implement, and sometimes to the *travaux préparatoires*, or preparatory work, giving rise to the treaty, such as the official commentary to the treaty or the official record of the international conference which adopted the treaty. See generally, Bennion, above, n. 1, at 459–66. The leading decision is *Fothergill* v. *Monarch Airlines Ltd* [1981] AC 251.

[15] [1992] 1 SLR 166.

[16] Ibid. at 173, and citing the Singapore decisions of *Chan Ah Yoke* v. *Eastern Realty Co. Ltd* [1983] 2 MLJ 100 and *'The Epar'* [1985] 2 MLJ 3; see also the learned judge's decision in the Singapore Income Tax Board of Review Case of *Tan Boon Yong* v. *Comptroller of Income Tax* (unreported; Income Tax Board of Review Appeal Nos. 1 to 3 of 1986); reversed by the High Court in [1992] 2 SLR 472, the decision of which was reversed, in turn, by the Court of Appeal: see [1993] 2 SLR 48.

b. Parliamentary Materials as Extrinsic Aids[17]

i. English position prior to Pepper v. Hart

The use of parliamentary materials has been, until the decision in *Pepper* v. *Hart*, consistently eschewed by the English courts.[18] A great number of reasons have traditionally been given,[19] although from a strictly judicial perspective, the following have been most often cited as well as emphasized: the prohibition of reference to parliamentary proceedings in courts without the permission of Parliament itself; the problems centring on the separation of powers; the lack of ready access to such materials; the problems of reliability that would ensue, due, in no small part, to the cut and thrust of debate and the volume of published proceedings; as well as the enormous drain on time and resources that would ensue if reference to parliamentary proceedings were permitted. There was also the problem of the so-called 'split-level statute', i.e., that the court would be required to construe two documents instead of one; this problem is, of course, related to the preceding problems just mentioned, centring on access, reliability, time, and resources.[20]

There was a not insignificant portion of literature that argued very strongly for changes (in varying forms and degrees) in the practice of the English courts with respect to the use of Hansard.[21] This view was supported by the fact that several notable English judges made it clear that they had consulted Hansard in private.[22]

[17] See generally, *Cross on Statutory Interpretation*, above, n. 1, at 150–65 and Bennion, above, n. 1, Part XIV, and Gibb, 'Parliamentary Materials as Extrinsic Aids to Statutory Interpretation' [1980] Stat. LR 29 at 32–3.

[18] See e.g., the oft-cited House of Lords cases of *Beswick* v. *Beswick* [1968] AC 58; *Black-Clawson International Ltd* v. *Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 and *Davis* v. *Johnson* [1979] AC 264, as well as *Hadmor Productions Ltd* v. *Hamilton* [1983] 1 AC 191. There was a limited exception of sorts with regard to statutes passed in order to give effect to the United Kingdom's obligations under the EEC Treaty, but which does not really fall within the rubric of the parliamentary process as traditionally conceived: see e.g., *Pickstone* v. *Freemans plc* [1989] AC 66 and *Lister* v. *Forth Dry Dock and Engineering Co. Ltd* [1989] 1 All ER 1134.

[19] See e.g., the very convenient summaries given in Victorian Parliamentary Legal and Constitutional Committee, *A Report to Parliament on the Proposals Contained in the Interpretation Bill 1982* at 74–5; Scutt, 'Statutory Interpretation and Recourse to Extrinsic Aids' (1984) 58 ALJ 483 and Burrows [1986] NZLJ 220. See also the judgment of Lord Browne-Wilkinson in *Pepper* v. *Hart* [1992] 3 WLR 1032 at 1054.

[20] See e.g., Gibb, above, n. 17, at 36–7; Dickerson, *The Interpretation and Application of Statutes* (1975) at 173; and Samuels, 'The Interpretation of Statutes' [1980] Stat. LR 86 at 96.

[21] See e.g., Cretney, 'Judicial Blinkers' (1969) 119 NLJ 301; Gibb, above, n. 17; JFAJ, 'The Leedale Affair' [1983] BTR 70; Rawlinson, 'Tax Legislation and the Hansard Rule' [1983] BTR 274; but cf. Lord Roskill in 'Some New Thoughts on Statutes, New and Stale' [1981] Stat. LR 77 at 82 and Law Com. No. 21, above, n. 7, at 36.

[22] Leading the debate was the then Master of the Rolls, Lord Denning. See e.g., *Davis* v. *Johnson* [1979] AC 264 at 276–7; *R* v. *Local Commissioner for Administration, ex p. Bradford Metropolitan City Council* [1979] 2 All ER 881 at 898; and *Hadmore Productions Ltd* v. *Hamilton* [1983] 1 AC 191 at 201. In 1981, the then Lord Chancellor, Lord Hailsham, admitted to consulting Hansard: see HL Debs, vol. 408, col. 1346 (26 Mar. 1981). In Australia, Mr Justice Lionel Murphy also admitted to consulting Hansard. See *Symposium on Statutory Interpretation*, above, n. 13, at 39. See, also, Mr Justice Anthony Mason, also speaking in an extra-judicial capacity: ibid., at 83.

It might be added that at least one reason for the proscription on the use of parliamentary debates had clearly been rendered obsolete by later developments: this was the requirement that permission be obtained from Parliament before details of its proceedings could be cited in court; this requirement was removed by the House of Commons in 1980.[23]

Further, on a practical level, it might also be asked whether cases pertaining to points of statutory interpretation would inevitably involve research into extrinsic materials.[24] Even if they did, it has been very pertinently pointed out that '[m]any materials wholly accepted by all jurisdictions and all levels of courts as relevant to judicial decision making are not necessarily available to all practitioners and judges'.[25] However, it would only be fair to point out that in the United States of America, where there has been great liberality with regard to the use of parliamentary proceedings, such liberality has not been uniformly welcomed.[26]

Another issue with respect to parliamentary materials in England is whether the exclusionary rule applies to Explanatory Memoranda and to the speech of the government minister on the Second Reading of the Bill in Parliament. The Explanatory Memorandum which is attached to a public Bill when it is introduced in Parliament explains the contents and objects of the Bill, and is intended for use by Members of Parliament. When the Bill is passed and reprinted, the Explanatory Memorandum is dropped. The practice in England is that such Explanatory Memoranda are subject to the exclusionary rule for parliamentary materials, and may not be referred to by the court. In England the exclusionary rule also applies to the speech of the government minister or promoter on the Second Reading of the Bill, in accordance with the general prescription against the use of parliamentary debates referred to above.[27]

[23] See generally, HC Debs, vol. 975, cols 167–97 (3 Dec. 1979) and HC Debs, vol. 991, cols 879–916 (31 Oct. 1980); as well as Leopold, 'References in Court to Hansard' [1981] PL 316 and Miers, 'Citing Hansard as an Aid to Interpretation' [1983] Stat. LR 98.

[24] See e.g., Victorian Parliamentary Legal and Constitutional Committee, *A Report to Parliament on the Proposals Contained in the Interpretation Bill 1982* at 98.

[25] Ibid., at 83. See, also, Pearce in *Symposium on Statutory Interpretation*, above, n. 13, at 66.

[26] Foremost among the critics has been Professor Reed Dickerson: see e.g., *The Interpretation and Application of Statutes* (1975) at Ch. 10; 'Statutory Interpretation in America: Dipping into Legislative History—I' [1980] Stat. LR 76; 'Statutory Interpretation in America: Dipping into Legislative History—II' [1980] Stat. LR 141. Compare, also, Starr, 'Observations About the Use of Legislative History' [1987] Duke LJ 371 with Mikva, 'A Reply to Judge Starr's Observations' [1987] Duke LJ 380 (who, at 381–2, points to the presence, in America, of a written constitution against which the validity of, *inter alia*, statutes have to be measured and who, at 384–5, argues for more interaction and collaboration between judges and legislators alike). See also Note, 'Why Learned Hand Would Never Consult Legislative History Today' (1992) 105 Harv. LR 1005 where a major argument made is to the effect that legislators might deliberately 'doctor' the legislative record for tactical reasons (see, to like effect, the argument of Starr, above, at 376–7 and Gibb, above, n. 17, at 36).

[27] See Bennion, above, n. 1, at 454–9. Bennion does point out that, despite the general rule, there have been examples of English judges referring to the speech of a government minister on the Second Reading of the Bill. In its 1969 Report the Law Commission discussed the question of Explanatory Memoranda in some detail. See Law Com. No. 21, above, n. 7, at 38–43.

ii. Singapore position prior to Pepper v. Hart

It has been generally understood in Singapore that the practice of the English courts would be followed, and that direct judicial reference to parliamentary debates would be prohibited.[28] However, the practice of Singapore courts in two recent cases indicates a willingness to relax the rule prohibiting reference to Hansard with regard to the speech of the minister at Second Reading. First, there was a 1987 High Court decision where the minister's Second Reading speech was referred to, without any reasoning on the question of whether it was permissible for the court to refer to parliamentary materials.[29] Secondly, the question of whether it was permissible to refer to the minister's speech at Second Reading was expressly raised in another 1988 High Court case, *Re Dow Jones Publishing (Asia) Inc.* v. *Attorney-General*. In the High Court, despite the objection of opposing counsel, Sinnathuray J allowed the Attorney-General to read from Hansard the speech of the minister of state when he moved Second Reading of the Bill.[30] In the Court of Appeal in the same case, Chan Sek Keong J, delivering the judgment of the court, did not deal directly with the issue of whether it was permissible to read the minister's speech at Second Reading from Hansard. He stated that the court did not have to refer to Hansard; instead, he quoted relevant portions of a newspaper report on the minister's speech in Parliament.[31] He thereby abided by the strict letter of the exclusionary rule, but, arguably, not its spirit.

The practice of Singapore courts with respect to Explanatory Statements to Bills has also been ambiguous.[32] There is no case in which the court has discussed the issue in any detail. However, there are several older Singapore cases in which the court referred to such statements without addressing the issue of whether it was permissible to do so.[33] In a 1989 case in the High Court, counsel for the defendants referred to the Explanatory Statement to the Bill, but counsel for the plaintiff objected on the ground that reference to Explanatory Statements was not permitted by law. Chan Sek Keong J avoided the issue by deciding the case in the defendant's favour without relying on

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

[29] See the Singapore High Court decision of *J Annathurai* v. *Attorney-General* [1987] 2 MLJ 585.

[30] [1988] 2 MLJ 414. Sinnathuray J stated that he accepted that there were good reasons for the rule of restraint not allowing recourse to Hansard. However, he stated that he allowed reference in this case for two reasons: first, to give the background facts relating to the 1986 amendments, and secondly, to demonstrate that the newspaper concerned knew or ought to have known of the reasons for the amendments.

[31] [1989] 2 MLJ 385.

[32] These statements, which are attached to the Bill, briefly summarize the content and purpose of the Bill concerned. They usually give a brief description of the purpose of each of the clauses in the Bill, and are usually phrased in a very terse and non-technical fashion. In earlier times, they were known as *Objects and Reasons*.

[33] See e.g., *Re Estate of Liu Sinn Min, Deceased* [1974] 2 MLJ 9; *Moses* v. *Moses* [1968] 1 MLJ 96; *Rex* v. *Soh Eng Chiang* [1937] MLJ 247; and *In the Matter of Ordinance No. 135 (Municipal) and of the Singapore Improvement Ordinance 1927 and In the Matter of Three Orders of the Governor in Council: Alkaff and Co.* v. *Sir Shenton Thomas* [1936] SSLR 219.

the Explanatory Statement.[34] The position of the Privy Council has also been unclear.[35]

The practice of the courts in Singapore with respect to Select Committee Reports is also unclear. In England such reports are often made *prior* to the introduction of legislation. They are therefore classified as pre-parliamentary materials, and can be referred to under the rules which apply to official reports.[36] In Singapore, however, Select Committee Reports are not pre-parliamentary in nature; Bills are committed, if at all, to Select Committee *after* their Second Reading in Parliament. Such reports are part of the parliamentary proceedings and they would fall under the same proscription as exists for parliamentary debates. This issue has received no significant local judicial discussion. In fact, there have been several local cases which have referred to Select Committee Reports, without addressing the question of whether it is permissible to do so.[37]

iii. The decision in Pepper v. Hart

The arguments for the introduction of records of parliamentary debates in the common law context have recorded a major breakthrough in the recent House of Lords decision of *Pepper* v. *Hart*.[38] The key passage in the case is, it is submitted, to be found in the leading judgment of Lord Browne-Wilkinson as follows:

> 'My Lords, I have come to the conclusion that, as a matter of law, there are sound reasons for making a *limited modification* to the existing rule (*subject to strict safeguards*) unless there are constitutional or practical reasons to outweigh them. In my judgment, subject to the privileges of the House of Commons, reference to Parliamentary material should be permitted *as an aid to the construction* of legislation which is *ambiguous or obscure* or *the literal meaning* of which *leads to an absurdity. Even in such* cases references in court to Parliamentary material should only be permitted where such material *clearly discloses* the *mischief* aimed at or the *legislative intention* lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as at present advised I cannot foresee that any statement other than the *statement of the minister or other promoter of the Bill* is likely to meet these criteria.'[39]

Although a breakthrough, the approach in *Pepper* v. *Hart* is, as the reader can discern, fraught with warnings of caution—and understandably so, in the

[34] *Ventura Navigation Inc* v. *Port of Singapore Authority* [1989] 3 MLJ 349.

[35] Although there is no Privy Council case from Singapore which addresses the issue, there is a case on appeal from Malaysia in which the Privy Council took no clear stance: *Chin Choy* v. *Collector of Stamp Duties* [1981] 2 MLJ 47.

[36] See above, n. 13, and the accompanying main text.

[37] See e.g., *Television Broadcasts Ltd* v. *Golden Line Video and Marketing Pte Ltd* [1989] 1 MLJ 201; *Lim Ying* v. *Hiok Kian Ming Eric* [1992] 1 SLR 184; *Ng Sui Wah Novina* v. *Chandra Michael Setiawan* [1992] 2 SLR 839.

[38] [1992] 3 WLR 1032.

[39] [1992] 3 WLR 1032 at 1056 (emphasis added).

light of the entrenched and longstanding nature of the proscription hitherto adhered to by the English courts. The following main points, it is submitted, emerge.

First, there must be either an ambiguity in the language sought to be construed or an absurdity arising from a literal construction of the language concerned. In this regard, the following observations by Lord Oliver of Aylmerton are especially apposite:

> 'It is, however, important to stress the limits within which such a relaxation is permissible and which are set out in the speech of [Lord Browne-Wilkinson]. It can apply only where the expression of the legislative intention is *genuinely* ambiguous or obscure . . . *Ingenuity can sometimes suggest ambiguity or obscurity where none exists in fact* . . .'[40]

There is no doubt, however, that despite the very appropriate warning just quoted, much discretion would continue to underlie the entire process of ascertainment.

Secondly, even if the threshold requirement of ambiguity or possible absurdity is met, the material sought to be consulted must 'clearly disclose' the mischief or legislative intention underlying the language interpreted. This, it is submitted, is a matter of degree and, like the ascertainment of the threshold requirement, involves not a small amount of discretion on the part of the court concerned.

Thirdly, it would appear that the only parliamentary material that would (clearly, at least) pass muster at the present time is the minister's Second Reading speech. This, of course, considerably narrows the ambit of an already cautious liberalization and may well provide the most practical safeguard in so far as it is clear and unambiguous,[41] although in egregious cases, flexibility and consequent justice would be sacrificed by this very narrow approach. The answer in such situations might be to accept the possibility for recourse to other materials, a point which was very wisely alluded to in the careful language utilized by Lord Browne-Wilkinson. It should, however, also be acknowledged that although the concept as well as physical ascertainment of the minister's Second Reading speech is clear and unambiguous, this may not necessarily be the case with the actual content of the speech itself, bringing into play all the problems associated with the 'split-level statute' referred to earlier;[42] in the New South Wales Court of Appeal decision of *Australian Broad-*

[40] Ibid. at 1042–3 (emphasis added). Cases in the United Kingdom subsequent to *Pepper* v. *Hart* appear, however, to have taken a more liberal approach to the admissibility of extrinsic materials. See generally, St John Bates, 'Judicial Application of *Pepper* v. *Hart*' (1993) *Journal of the Law Society of Scotland* 251–5.

[41] And cf. Gibb, above, n. 17, at 37. The New South Wales Court of Appeal in *Louinder* v. *Stuckey* [1984] 2 NSWLR 354 did not appear to hold strong views either way, although this may be attributed, in part at least, to the rather uncertain character of the Australian position, at least prior to the enactment of section 15AB of the Acts Interpretation Act 1901 and its state counterparts. Reference may also be made to *Regional Director of Education, Metropolitan East, Department of Education NSW* v. *International Grammar School Sydney Ltd* (1986) 7 NSWLR 302.

[42] See above, n. 20, and the accompanying main text.

casting Corporation v. *Redmore Pty Ltd*,[43] McHugh JA (as then was) sounded the following pertinent note of caution:

> 'It would be a misuse of the beneficial power to consult materials such as the Minister's Second Reading Speech if the Court was to substitute an examination of the ambiguities of that speech for an examination of the ambiguities of the Act.'[44]

It would thus appear that in exercising its discretion as to whether or not the minister's Second Reading speech should be considered, the court would do well to steer clear of speeches which are patently ambiguous.[45] Another possible problem with such a speech turns on its use as a political instrument which may itself be highly simplified at that.[46] Yet another possible difficulty arises in situations where the legislation concerned has been altered during its passage, thus rendering a comparison with the original wording of the Bill at the time the Second Reading speech was delivered imperative.[47] However, if, as just suggested, other parliamentary materials could be looked at, this potential emaciation of the Second Reading speech might not prove to be fatal.

There were only two problems which were perceived as significant obstacles by the House in allowing reference to parliamentary materials: the practical one of accessibility, and the constitutional one centring on the possible infringement of the freedom of speech and debate in Parliament under Article 9 of the Bill of Rights. In so far as the constitutional objections were concerned, the learned Lord of Appeal could discern no infringement of Article 9 of the Bill of Rights.[48]

On the issue of accessibility, Lord Browne-Wilkinson was of the view that 'such practical difficulties can easily be overstated', especially having regard to the fact that the legal practitioner coped with many analogous problems (such as those pertaining to statutory instruments) everyday, that the safeguards noted above would provide sufficient constraints, and that the experience in Australia and New Zealand had not resulted in any significant increase in costs.[49] It should, of course, be noted that it was precisely the practical difficulties that prompted the Lord Chancellor, Lord Mackay of Clashfern, to dissent on this point; he was of the view that virtually every issue of statutory construction would necessarily satisfy one of the threshold requirements men-

[43] (1987) 11 NSWLR 621.

[44] Ibid., at 637. Reference may also be made to the observations of Fitzgerald J in *Federal Commissioner of Taxation* v. *Trustees of the Lisa Marie Walsh Trust* (1983) 48 ALR 253 at 278.

[45] It is admitted that such phraseology may appear to beg the question; this is probably due to the nebulous nature of discretion in the first instance.

[46] See per Mr Spender (North Sydney) in *Parliamentary Debates 1984 (House of Representatives)* at 1748 (3 May 1984). See, also, Corry, 'The Use of Legislative History in the Interpretation of Statutes' (1954) 32 Can. Bar Rev. 624 at 631–2.

[47] See per Kirby P in *Regional Director of Education, Metropolitan East, Department of Education NSW* v. *International Grammar School Sydney Ltd* (1986) 7 NSWLR 302 at 309.

[48] Ibid. at 1059–60. And cf. the Singapore Parliament (Privileges, Immunities and Powers) Act, Cap. 217, 1985 rev. edn.

[49] [1992] 3 WLR 1032 at 1058–9.

tioned above, thus resulting in the need to consult the parliamentary record.[50] Further, academic commentators on the case have pointed out that the court may have understated the problems of accessibility.[51]

It should be noted that the members of the House of Lords in *Pepper* v. *Hart* justified their relaxation of the rule not by referring to the object or purpose underlying the legislation, but by reference to the terms 'mischief' and 'intention'. Lord Browne-Wilkinson expressly rejected any distinction between these two terms (as had been done for pre-parliamentary materials); he thought that 'the distinction between looking at reports to identify the mischief aimed at but not to find the intention of Parliament in enacting the legislation is highly artificial'.[52] It should also be noted that Lord Griffiths did acknowledge that the courts now adopt a 'purposive approach' which seeks to give effect to the true purpose of legislation.[53]

iv. Application of Pepper v. Hart in Singapore

As already mentioned, there are at least two very recent Singapore decisions which have endorsed and applied *Pepper* v. *Hart*. The first, *Public Prosecutor* v. *Lee Ngin Kiat*,[54] involved the interpretation of section 17 of the Misuse of Drugs Act,[55] in particular the Misuse of Drugs (Amendment) Act 1990[56] which effected an amendment to the said provision. Although Amarjit Singh JC found the amended provision to be clear, he nevertheless went on, on the authority of *Pepper* v. *Hart*, to look at the legislative history behind the provision, in particular, the minister's Second Reading speech moving the 1990 Amendment Act. He justified his reference to the parliamentary materials by stating that 'if there is any obscurity in this regard, as contended by Defence Counsel, reference may be made to the amendments' legislative history'. It is respectfully submitted that the strict threshold conditions laid down by Lord Browne-Wilkinson in *Pepper* v. *Hart* did not really give the court in the instant case the option to resort to the relevant legislative history. There had to be a real and existing ambiguity. The ambiguity should not have been assumed, as it was in this case. It could be argued that in this case the judge was using the legislative history to *confirm* the meaning he had reached by examining the provision alone. The case demonstrates that it might be difficult in practice to apply the threshold conditions set out by Lord Browne-Wilkinson in *Pepper*

[50] Ibid. at 1037–8. Cf. the views of Lord Bridge of Harwich and Lord Griffiths, ibid., at 1039 and 1040, respectively.

[51] Davenport, 'Perfection—But at What Cost?' (1993) 109 LQR 149 at 152–4.

[52] [1992] 3 WLR 1032 at 1042–3. See, also, Lord Wilberforce, in an extra-judicial capacity, in *Symposium*, above, n. 13, at 8 and Law Com. No. 21, above, n. 7, at 30. This distinction had hitherto attracted a great deal of academic criticism: see e.g., Gibb, above, n. 17, at 34. See, also, per Samuels JA in the New South Wales Court of Appeal decision of *Louinder* v. *Stuckey* [1984] 2 NSWLR 354 at 358 and Victorian Parliamentary Legal and Constitutional Committee, *A Report to Parliament on the Proposals Contained in the Interpretation Bill 1982* at 80–1.

[53] *Pepper* v. *Hart* [1992] 3 WLR 1032 at 1040.

[54] [1993] 2 SLR 181.

[55] Cap. 185, 1985 rev. edn.

[56] No. 38 of 1989.

v. *Hart*. If counsel argue that a provision is ambiguous, and support their argument on how it should be interpreted with a reference to the legislative history of the provision, the court is likely to hear the arguments, rather than rule that since the provision is clear, no arguments on legislative history will be entertained.

The second Singapore decision is that of the Court of Appeal in *Tan Boon Yong* v. *Comptroller of Income Tax*,[57] which is even more recent. Chao Hick Tin J, who delivered the judgment of the court, also referred to the minister's Second Reading speech with regard to the construction of sections 14 and 15 of the Income Tax Act.[58] The learned judge also gave a useful and succinct survey of the position preceding *Pepper* v. *Hart*, and his following observation is also worth noting:

> 'While this court recognises the problem of costs we are unable to see why in principle Parliamentary reports may not be looked at if, as in the present case, reference to reports would greatly facilitate the court in determining the intention of Parliament in introducing the amendment to s. 15(1)(j) [of the Income Tax Act] in 1979. Here, we have a ministerial statement giving the reasons why the amendment was made. There was no controversial discussion in the House. This is precisely the sort of situation where the exception propounded by Lord Browne-Wilkinson should apply.'[59]

It is worthy to note, also, that in the present case, the court held that a literal application of the provision in question would have led to an absurdity, and it would therefore appear that this was, in fact, a case where the threshold requirement laid down by Lord Browne-Wilkinson in *Pepper* v. *Hart* had indeed been satisfied.

II. Statutory Reform

a. The Provision and its Probable Source

The provision that forms the focus of this Part is section 9A of the Interpretation Act,[60] which was inserted by section 2 of the Interpretation (Amendment) Act 1993.[61] Section 9A reads as follows (emphasis provided):

> 9A. *Purposive interpretation of written law and use of extrinsic materials.*[62]
>
> (1) In the interpretation of a provision of a *written law*,[63] an interpretation that would *promote the purpose or object underlying the written law* (whether that purpose

[57] [1993] 2 SLR 48.
[58] Cap. 134, 1992 rev. edn.
[59] *Tan Boon Yong*, above, n. 57, at 55.
[60] Cap. 1, 1985 rev. edn.
[61] No. 11 of 1993, above, n. 5. We shall not be dealing with the other amendments effected by this Act.
[62] This is the marginal note.
[63] As defined in the parent Act (s. 2, Cap. 1, 1985 rev. edn), the section would apply with equal force to *subsidiary legislation*. See n. 75 below.

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.

The *source* of section 9A(1) on the one hand and section 9A(2)–(4) on the other would appear to lie in section 15AA and section 15AB of the Australian Acts Interpretation Act 1901,[64] respectively, although there are some significant differences in wording which will be noted in due course.[65] Section 15AA was

[64] See generally, [1981] Stat. LR 181; [1982] Stat. LR 172; [1983] Stat. LR 116; and [1984] Stat. LR 184. See, also, the very useful article by Brazil, 'Reform of Statutory Interpretation—The Australian Experience of Use of Extrinsic Materials: With a Postscript on Simpler Drafting' (1988) 62 ALJ 503. And for detailed parliamentary background to these provisions, see, generally, *Parliamentary Debates 1981 (Senate)* at 2308–15 (28 May 1981); *Parliamentary Debates 1981 (House of Representatives)* at 2893–4 (2 June 1981); *Parliamentary Debates 1984 (Senate)* at 582–3 (8 Mar. 1984) and 955–64 (30 Mar. 1984); and *Parliamentary Debates 1984 (House of Representatives)* at 1287–8 (3 Apr. 1984), 1746–9 and 1790–6 (3 May 1984). Reference may also be made to *Parliamentary Debates 1982 (Senate)* at 1483–6 (14 Oct. 1982) and *Parliamentary Debates 1983 (Senate)* at 3028–30 (30 Nov. 1983).

[65] It may be noted that many Australian state jurisdictions have modelled their legislation on sections 15AA and 15AB of the Federal Act: see e.g., sections 33 and 34 of the New South Wales Interpretation Act 1987 (No. 15 of 1987); section 11B of the Australian Capital Territory Interpretation Ordinance 1967 (No. 48 of 1967), which was introduced by section 6 of the Interpretation (Amendment) Ordinance 1985 (No. 24 of 1985) and which does not have the equivalent

first introduced in 1981 by section 115 read with Schedule 1 to the Statute Law Revision Act 1981.[66] It is very similar to clause 2(a) of the Interpretation of Legislation Bill, first formulated by the United Kingdom Law Commission in 1969.[67] Section 15AB was introduced by section 7 of the Acts Interpretation Amendment Act 1984.[68] Indeed, to go a stage further back into history, certain parts of the Australian provisions[69] and clearly the general philosophy behind them can be traced to Lord Scarman's Interpretation of Legislation Bill in the United Kingdom, which Bill, ironically perhaps, never saw the legislative light of day, despite two valiant attempts to secure its passage through Parliament.[70]

b. The Singapore Provision Analysed

There will, given the extremely recent vintage of the section 9A of the Singapore Interpretation Act, be no local judicial interpretations of the section (although reference may now be made to the *Postscript* below). What follows, therefore, is our analysis of the language of the provision aided, where applicable, by reference to (principally) Australian decisions.

i. Purposive approach

Section 9A(1) endorses the purposive approach to the interpretation of statutes by providing that an interpretation which promotes the purpose or object underlying the written law is to be preferred to one which would not. The minister's statement in Parliament at Second Reading of the Bill makes it clear that one of the purposes of the Bill is to highlight the importance of adopting the purposive approach.[71]

The language of section 9A(2) also supports the argument that it is the purposive approach to interpretation which is to be followed. Section 9A(2) provides that the words of a provision should be given the ordinary meaning conveyed by the text taking into account its context in the written law and the purpose or object underlying the written law. It provides that the purpose or object, as well as the context, are to be considered when determining the ordinary meaning. This is a clear rejection of the literal rule and any other

of section 15AB(2)(c), (f) and (h); and sections 18 and 19 of the Western Australian Interpretation Act 1984 (No. 12 of 1984). Section 35 of the Victorian Interpretation of Legislation Act 1984 is worded somewhat more broadly. For background to the provision, see, generally, Scutt, above, n. 19, and Victorian Parliamentary Legal and Constitutional Committee, *A Report to Parliament on the Proposals Contained in the Interpretation Bill 1982*.

[66] No. 61 of 1981.

[67] See Law Com. No. 21, above, n. 7, at 51.

[68] No. 27 of 1984. See also section 6 of this Act which made the necessary changes to the then section 15AA. Compare, also, section 15AB with clause 1 of the United Kingdom Interpretation of Legislation Bill, first formulated by the Law Commission in 1969: see Law Com. No. 21, above, n. 7, at 51. However, a major difference lies in the rejection of references to records of parliamentary proceedings: see ibid., at 36 and per Lord Scarman in HL Debs, vol. 405, col. 282 (13 Feb. 1980) and HL Debs, vol. 418, col. 68 (9 Mar. 1981).

[69] This is clearly the case with section 15AA.

[70] See above, n. 10.

[71] Above, n. 5 at col. 517.

approach which suggests that the purpose or object can be considered only when the ordinary meaning is obscure or ambiguous. Section 9A(4)(a) contains similar language.

In so far as section 9A(1) and section 9A(2) endorse an approach which has only been expressly adopted occasionally in Singapore,[72] they formally legitimize the purposive approach to the interpretation of statutes. The probable impact will be that counsel will be more likely to support their interpretation with arguments based upon purpose and object, and that judges will be more likely to refer specifically to arguments based upon purpose and object to support their conclusions.

On the other hand, it should be borne in mind that in the United Kingdom as well as Australia, the relatively uncontroversial (even unexceptional) nature of the provision which is the equivalent to section 9A(1) has been repeatedly stressed.[73] It can be argued that while perfectly acceptable as expressing the general philosophy and spirit behind the enterprise of statutory interpretation, section 9A(1) does not really help on a *practical* level. This rather neutral outcome appears to be confirmed by the judicial reception toward section 15AA of the Australian Acts Interpretation Act where, for the most part, the provision is merely referred to, with no further particular guidance forthcoming from the judgments themselves.[74]

One possible difficulty with the language of the section 9A(1) as well as section 9A(2) may lie in the reference to 'the purpose or object *underlying the written law*',[75] when the more appropriate inquiry might, in a given situation, really turn on the purpose or object of a *provision* of a particular written law, rather than the broader purpose of the written law itself. Two possible (and contrasting) interpretations are possible. First, it might be argued that to ascertain the very specific purpose or object of a provision might be unrealistic and/or too time-consuming. It might, on the other hand, be argued that it is not at all unusual for a particular statute to have a great many objects and purposes which are embodied either within particular individual provisions or sets of provisions.[76] Clearly, the legislature must have, or at least ought to have been, aware of the distinction between the entire statute or written law on the one

[72] See above, n. 16.

[73] See e.g. (in the United Kingdom) HL Debs, vol. 405, cols. 278–9, 287, 290, 298 and 306 (13 Feb. 1980); HL Debs, vol. 418, cols. 68, 77, 78, and 81 (9 Mar. 1981); and (in Australia) *Parliamentary Debates 1981 (House of Representatives)* at 3437.

[74] See e.g., *GTK Trading Pty Ltd* v. *Export Development Grants Board* (1981) 40 ALR 375 at 383; *Burns* v. *Australian National University* (1982) 40 ALR 707 at 715; *Parke Davis* v. *Sanofi* (1982) 43 ALR 487 at 490; *Supetina Pty Ltd* v. *Lombok Pty Ltd* (1984) 59 ALR 581 at 584; *Re the News Corporation Ltd* (1987) 70 ALR 419; *Repatriation Commission* v. *Kohn* (1989) 87 ALR 511; and *Trevison* v. *Federal Commission of Taxation* (1991) 101 ALR 26.

[75] The term 'written law' is defined in s. 2(1) of the Interpretation Act (Cap. 1, 1985 rev. edn) itself as meaning 'the Constitution and all previous Constitutions having application to Singapore and all Acts, Ordinances and enactments by whatever name called and subsidiary legislation made thereunder for the time being in force in Singapore'.

[76] The best example of the latter would be a *Part* of the statute concerned. See, also, Bennion, above, n. 1, at 662 and Miers and Page, *Legislation* (2nd edn, 1990) at 188–91.

hand and the individual provisions thereof on the other. This is evident from a reading of the remainder of section 9A itself: subsection (2) refers to 'the ascertainment of the meaning of the *provision*', whilst subsection (3) is even clearer, referring to 'the interpretation *of a provision of a written law*'.[77]

In *practice*, however, it is suggested that, notwithstanding the distinction drawn in the preceding paragraph between the purpose or object of the written law and the more specific purpose or object of a provision of a written law, courts are likely to treat both as interchangeable. In so far as it is possible to ascertain the specific purpose or object of a particular provision of a written law, such purpose or object is likely to be of assistance to the court in ascertaining the meaning of the provision. It is much less likely that the *general* purpose or object underlying the written law, taken as a whole, would be of much assistance to the court in ascertaining the meaning of a specific provision within that written law.

ii. Circumstances in which the court can refer to extrinsic materials

There are two alternative circumstances in which the court can refer to extrinsic material which is capable of assisting in the ascertainment of the meaning of a provision. The first circumstance is found in section 9A(2)(a), which provides that extrinsic materials can be utilized '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'. The second alternative circumstance is embodied within section 9A(2)(*b*), which provides that extrinsic materials can be considered 'to *ascertain* the meaning of the provision' either where 'the provision is *ambiguous or obscure* (paragraph (i)), *or* where the 'ordinary meaning' would lead to 'a result that is *manifestly absurd or unreasonable*' (paragraph (ii)).

A question arises with respect to the use of the word 'confirm' in section 9A(2)(a). The whole thrust of the word, especially when compared to the subsequent paragraph (b), connotes the absence of ambiguity in the language sought to be construed. If this be the case, why should there be further confirmation? At least two explanations are possible.

First, it might be argued that section 9A(2)(a) is a statutory recognition of what goes on in practice in any event, as evidenced by the extra-judicial statements of eminent judges, some of which have already been expressly referred to above.[78]

Secondly, section 9A(2) is modelled on section 15AB of the Australian Interpretation of Legislation Act which is, in turn, modelled on Articles 31 and 32 of *the Vienna Convention on the Law of Treaties*.[79] And there is more than ample

[77] Though cf. *Norcal Pty Ltd* v. *D'Amato* (1988) 15 NSWLR 376 at 388–9.

[78] See above, n. 22. And cf. *Attorney General's Reference (No. 1 of 1988)* [1989] 2 All ER 1 at 6.

[79] See Pearce and Geddes, above, n. 2, at 45 ('Both the underlying philosophy and the drafting of s 15AB owe something to Articles 31 and 32 of the Vienna Convention on the Law of Treaties.'). Article 31 provides that 'a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose'. Article 32 provides that recourse may be had to supplementary means of interpretation

evidence that in so far as the interpretation of *international treaties* is concerned, the *practice* has, in the main, encompassed, *inter alia*, the concept of *confirmation*.[80] The issue that arises here, we submit, is whether such a practice, which has its roots in *international* law, can apply equally to the interpretation of essentially *domestic* legislation. It would appear that an equally strong argument could be made that this is in fact the practice with regard to the interpretation of domestic legislation, which was precisely the first argument considered above. Indeed, Professor Dickerson has observed, from an American perspective, thus:

> 'Because [using extrinsic materials to confirm meaning] . . . is *realistic* in *recognising* the *widespread psychological need for reassurance in hard cases*, it makes sense not to deny the court the opportunity to look for *confirmation* of an interpretation *otherwise made probable by text and context*, even if confirmation takes it beyond what is also available to the legislative audience . . . [Extrinsic materials] may be used to support, but *not to overturn*, meaning-in-context. . . . Acceptance of Lord Renton's belief that legislative history should not be cited in court would help prevent confirmatory use from becoming abuse.'[81]

Whilst the observation just quoted takes a much narrower approach than that advocated in section 9A, the stress on the psychological aspects is both practical as well as welcome, and should not, under any circumstances, be gainsaid.

As explained earlier, the second circumstance in which the court may refer extrinsic materials is set out in section 9A(2)(b). The reference to 'manifest' absurdity or unreasonableness in section 9A(2)(b)(ii) clearly connotes a relatively strong case and thus eschews any arbitrary holding that the requirement contained therein has been satisfied.[82]

Section 9A(2)(b), like section 9A(2)(a), has its roots not only in its Australian counterpart, but also in Article 32 of the Vienna Convention on the Law of Treaties. There is, it is submitted, nothing remarkable about this. Indeed, there

in order *to confirm* the meaning resulting from the application of Article 31, or *to determine* the meaning when the interpretation according to Article 31, *inter alia*, leaves the meaning ambiguous or obscure. See the Vienna Convention on the Law of Treaties, UN Doc. A/CONF. 39/27 (1969), (1969) 63 *American J. Int'l Law* 875, (1969) 8 *Int'l Legal Materials* 679. The influence of Article 31 of the Vienna Convention can be seen in the language of section 9A(2), as both refer to the ordinary meaning, the context and the purpose or object. The influence of Article 32 can also be seen in the language of section 9A(2), as both allow recourse to supplementary materials to confirm the meaning of a provision. See, also, generally, the discussion in the main text below.

[80] See e.g., the commentary to the Convention itself, *The Vienna Convention on the Law of Treaties, Travaux Préparatoires* (compiled by Wetzel, 1978) at 255; Sinclair, *The Vienna Convention on the Law of Treaties* (2nd edn, 1973) at 142; Brownlie, *Principles of Public International Law* (4th edn, 1990) at 630; and *Oppenheim's International Law* (9th edn, 1992 Jennings and Watts, eds) at 1276.

[81] Dickerson, 'Statutory Interpretation in America: Dipping into Legislative History—I', above, n. 26, at 84 (emphasis added). See, also, by the same author, 'Statutory Interpretation in America: Dipping into Legislative History—II', above, n. 26, at 147.

[82] See, also, the remarks, in a common law context, by Lord Oliver of Aylmerton in *Pepper* v. *Hart*, [1992] 3 WLR 1032 at 1042–3.

is some evidence in the judgment of Lord Mackay of Clashfern LC in *Pepper* v. *Hart* which suggests that either Article 32 of the Vienna Convention on the Law of Treaties and/or section 15AB of the Australian Acts Interpretation Act 1901 in fact constituted the basis of appellant counsel's argument in that case. His argument was rejected by the learned Lord of Appeal, but it was accepted by the majority of the House[83]—albeit with *modifications*.[84]

Section 9A(4) sets out two further considerations that can guide the court in the exercise of its discretion under the preceding two subsections. The first deals with the desirability of persons being able to rely on the ordinary meaning of the provision conveyed by the text taking into account its context and the purpose or object of the written law. The second deals with the need to avoid prolonging legal proceedings. These two considerations are to guide the court as to whether it should consider the material in the first place, or, if it does, the weight it should be given.

Finally, it should also be noted that section 9A(2) expressly abolishes the distinction between the use of extrinsic materials for the ascertainment of the mischief underlying the Act in question and the use of such materials to help ascertain the meaning of the actual provisions of the Act itself.[85] This change is to be found in the phrase 'capable of assisting in the ascertainment of the *meaning* of the provision', and is, it is submitted, a welcome development, given the artificiality of the distinction itself.[86]

iii. What parliamentary materials can be referred to as extrinsic aids?

Section 9A(2) is a *general* provision which provides that where one of the alternative circumstances in which there may be resort to extrinsic materials exists, there may be reference to 'any material not forming part of the written law [which] is capable of assisting in the ascertainment of the meaning of the provision'. This language is very broad, and on a literal construction, might allow reference to items such as academic commentaries. It could, however, be argued that the *context* of section 9A taken as a whole indicates otherwise; in particular, section 9A(3) suggests that such material should either be contained in official records or be expressly declared to be relevant by the written

[83] See [1992] 3 WLR 1032 at 1037 (emphasis added): 'The principal difficulty I have . . . is that in Mr. Lester's submission reference to Parliamentary material as an aid to interpretation of a statutory provision should be allowed only with leave of the court and where the court is satisfied that such a reference is justifiable: (a) to confirm the meaning of a provision as conveyed by the text, its object and purpose; (b) to determine a meaning where the provision is ambiguous or obscure; or (c) to determine the meaning where the ordinary meaning is manifestly absurd or unreasonable.'

[84] The main difference being the omission by the court of the argument centring on confirmation, as a perusal of the crucial passage in Lord Browne-Wilkinson's judgment quoted above, above, n. 39 will reveal.

[85] See, generally, above, nn. 13 and 52, and the accompanying main text. See, also, *Lisafa Holdings Pty Ltd* v. *Commissioner of Police* (1988) 15 NSWLR 1 at 18.

[86] As we have seen (above, n. 52), *Pepper* v. *Hart* also abolishes this distinction; indeed, the similarities between section 9A and *Pepper* v. *Hart* need to be explored further, as we shall attempt to do below.

law concerned. It is submitted that this is the preferable view to take, given that even on this relatively narrower approach, there will be possible arguments centring on 'floodgates'.[87]

Section 9A(3) sets out more specific materials that the court can utilize as aids to interpretation, 'without limiting the generality of subsection 9A(2)'. Subsection (b) makes it clear that the Explanatory Statement to a Bill is included, and subsection (c) makes it clear that the minister's speech at Second Reading is included. Remaining statements and speeches which are printed in the Official Report of the Parliamentary Debates would be included under subsection (d). It might be wondered whether the reference to the minister's Second Reading speech in subsection (c) is redundant, since such a speech would clearly fall within subsection (d). It is suggested that implicit within this peculiar arrangement is the assumption that the minister's Second Reading speech is of *relatively greater* (at least potential) significance than records of the rest of the debates referred to in subsection (d).

Subsections (a), (e), and (f) of section 9A(3) refer, respectively, to various material set out in, referred to in, or declared by the written law to be relevant. Subsection (a) seems to be intended to make clear that everything in the official text of the written law could be utilized. This would clearly obviate, for example, that argument that explanatory footnotes in the printed version of an Act are to be ignored by the court. It would also lay to rest any doubts with regard to the admissibility of long titles, preambles, and marginal notes. Subsection (e) provides that the court can refer to any treaty or other international agreement that is referred to in the written law. This is somewhat narrow, as domestic legislation implementing international agreements may not always specifically refer to the treaty it is implementing. English case law, in fact, provides for greater use of extrinsic aids by courts when interpreting statutes implementing international treaties than is allowed by this subsection. Subsection (f) gives Parliament the discretion to specifically provide in a written law that a particular document may be a relevant document. It might be advisable for the draftsman to utilize this provision in statutes which implement international treaties; they could specifically provide that certain preparatory materials, in addition to the international treaty, are relevant documents when interpreting that statute.

The most glaring omission in section 9A(3) is that it does not specifically provide that Select Committee Reports can be referred to. This is unfortunate because in Singapore it is usually the most important and controversial Bills which are referred to a Select Committee, and the Select Committee often recommends amendments, the respective objects of which are usually set out in its Report. Select Committee Reports are published by the Singapore Parliament, but they are not part of the Official Records of the Parliamentary

[87] This submission would presumably not affect reference to academic writings for the purpose of secondary citation of such extrinsic materials, although it would be pointless to do this, given the present liberalization.

Debates. The Official Records contain the discussion and consideration of the Report of the Select Committee, but not the Report itself. It therefore was unfortunate that the draftsman chose not to include the following subsection from the Australian legislation on which the Singapore Act is modelled, which reads as follows (emphasis added):

> '(c) any relevant report of *a committee of the Parliament* or of either House of the Parliament that was made to the Parliament or that House of the Parliament *before* the time when the provision was *enacted;*

If such a subsection had been included in section 9A(3), it would have made it clear that the courts could refer to Select Committee Reports.

However, the failure to include such a subsection in the Singapore legislation may not be as serious as it appears, and the court may still be able to refer to Select Committee Reports. The specific subsections set out in section 9A(3) must be read subject to the opening words of the subsection itself, namely, that these materials may be considered '[w]ithout limiting the generality of subsection (2)'. In other words, the particular paragraphs in section 9A(3) are not exhaustive.[88] Indeed, section 9A(2) refers to 'any material not forming part of the written law [which] is capable of assisting in the ascertainment of the meaning of the provision'. There is a good argument that these provisions are broad enough to allow the court to refer to Select Committee Reports.

Section 9A(2) might also be used to allow the reference to any Comparative Tables which are attached to a Bill. If a draft Bill repeals a previous Act, Comparative Tables are sometimes attached to the Bill after the Explanatory Statement. The Comparative Tables usually list the sections of the repealed Act, and indicate whether they have been repealed, and if not, the number of the corresponding clause in the Bill. Comparative Tables may also show the source(s) of the clauses of the Bill if it is based upon an older Act or a statute from another jurisdiction. These tables are very useful when analysing a statute. There seems to be no good reason why the court should not be able to refer to them if it can refer to the Explanatory Statement.

There is a second subsection which is included in the equivalent section in the Australian legislation, but which was not included in section 9A(3) of the Singapore legislation. It is section 15AB(2)(b) of the Australian Acts Interpretation Act, which reads as follows (emphasis added):

> (b) any relevant report of a *Royal Commission, Law Reform Commission, committee of inquiry or other similar body that was laid before either House of the Parliament* before the time when the provision was enacted.

The omission of section 15AB(2)(b) is understandable in view of the different circumstances that obtain in the Singapore context. Although there is presently a Law Reform Committee under the purview of the Singapore Academy of

[88] See, also, *Federal Commissioner of Taxation* v. *Murray* (1990) 92 ALR 671 at 684 and *Repatriation Commission* v. *Davis* (1990) 94 ALR 621 at 632.

Law, there is no formal body in Singapore similar to the English Law Commission. Should such a body ever be established in Singapore, it might be advisable to amend the section to include such a subsection, even though the broad wording of section 9A(2) read with the opening words of section 9A(3) might be sufficiently wide to encompass the reports of such a body in any event.

iv. Some interpretive guidance from Australia

We will take a very brief look at how sections 9A(2) and (3) might be interpreted and, in this regard, the obvious source of aid would be the Australian case law. Given the constraints of space, however, no attempt will be made to deal in any great detail with such case law, adequate summaries of which already exist.[89]

The Australian case law suggests that section 9A(1) setting out the purposive approach is not likely to have a significant impact in actual cases. The equivalent section of the Australian legislation is merely cited without much, if any, elaboration.[90]

In so far as sections 9A(2) and (3) are concerned, certain broad points emerge from the Australian case law construing section 15AB of the Acts Interpretation Act 1901. The Australian courts have held that extrinsic materials can be utilized to confirm the ordinary meaning of a particular provision, even if it is otherwise clear on its face, although such materials cannot be utilized to alter its meaning.[91] They have also held that such extrinsic materials are not necessarily determinative of the issue at hand.[92] It is submitted that these points are unexceptional inasmuch as they accord with a plain reading of section 9A(2) and (3). The very concept of 'confirmation' in section 9A(2)(a) implies a prohibition against alteration; on the other hand, the reference to the word 'may' in the section indicates that such extrinsic materials as are 'capable of assisting in the ascertainment of the meaning of the provision' are only factors to be considered, and no more.[93]

The major problems of construction would therefore appear to lie more in the application of section 9A[94] and centre on much broader difficulties, such

[89] See e.g., Pearce and Geddes, above, n. 2, at 30–2 and 45–9; Brazil, above, n. 64, at 505 onward; Bryson, 'Statutory Interpretation: An Australian Judicial Perspective' [1992] Stat. LR 187.

[90] See above, n. 74.

[91] See e.g., *Commissioner of Australian Federal Police* v. *Curran* (1984) 55 ALR 697 at 706–7; and *Gardner Smith Pty Ltd* v. *Collector of Customs, Victoria* (1986) 66 ALR 377 at 383–4. Such alteration can only be effected if the conditions in section 9A(2)(b) are satisfied: see e.g., *Re Australian Federation of Construction Contractors, ex p. Billing* (1986) 68 ALR 416 at 420 and *Australian Broadcasting Tribunal* v. *Bond Corporation Holdings Ltd* (1989) 86 ALR 424 at 429.

[92] See e.g., *R* v. *Bolton, ex p. Beane* (1987) 70 ALR 225 at 227–8 and 238; *Lisafa Holdings Pty Ltd* v. *Commissioner for Police* (1988) 15 NSWLR 1 at 18 and 26; *Repatriation Commission* v. *Davis* (1990) 94 ALR 621 at 632; and *Barry R Liggins Pty Ltd* v. *Comptroller-General of Customs* (1991) 103 ALR 565 at 572–3. And cf. the emphasis sometimes placed on the minister's Second Reading speech: see e.g., *Commissioner of Australian Federal Police* v. *Curran* (1984) 55 ALR 697 at 707 and (in the common law context) *Pepper* v. *Hart*.

[93] See, also, *R* v. *Kean and Mills* [1985] VR 255 at 259.

[94] Though cf. *Re Gill and Department of Industry, Technology and Resources* (1985) 1 VAR 97, where oral evidence was permitted to be given to the President of the Administrative Appeals Tribunal of Victoria, albeit by one of the original sponsors of the legislation construed! It should, however,

as the very viability of the specific items enunciated in section 9A(3) as well as the need for reasoned and commonsensical application of judicial discretion in both the admission of as well as the weight to be accorded to the various extrinsic materials.[95]

v. Policy reasons in support of the amendments

Shortly after the English House of Lords signalled that they were willing to allow limited recourse to the use of parliamentary materials as extrinsic aids in interpreting statutes, the Singapore Parliament chose to adopt a more sweeping approach. First, the legislation highlights the importance of the courts adopting a purposive approach to the interpretation of statutes. Secondly, whereas *Pepper* v. *Hart* is limited in scope and places emphasis on the minister's speech at Second Reading, the legislation makes it clear that the courts can also have recourse to Explanatory Statements, the full record of the Parliamentary Debates and, arguably, Reports of Select Committees. The legislation resolves the problems relating to the use of Explanatory Statements[96] (and arguably Select Committee Reports), and gives the court the discretion to consult a wider range of parliamentary materials relating to the legislative history of statutes. It also makes it clear that the materials can be consulted to determine or confirm the meaning of provisions, not just to discover the mischief they were intended to cure.

It can also be argued that some of the reasons for the reluctance of the English courts or Parliament to adopt a more sweeping approach do not apply in Singapore, at least in so far as the more current local statutes are concerned. First, given the present political situation, with the dominance of one political party, there is hardly likely to be more heat than light generated in debates in Parliament.[97] Secondly, the argument that lawyers will have to sift through hundreds of pages of documents does not apply in Singapore. Explanatory Statements are quite brief, the debates on most Bills are only a few pages in length, and only a small number of Bills are referred to Select Committees. Thirdly, because Singapore is a very small jurisdiction, the arguments concerning the inaccessibility of parliamentary materials are likely to carry less weight. In a city–state like Singapore it should be relatively easy for all mem-

be noted that the Victorian counterpart of section 9A of the local Act is phrased much more broadly: see above, n. 65.

[95] Though cf., perhaps, the issue of the 'cut-off' date (if any) for extrinsic materials sought to be introduced via section 9A: see the Australian High Court decision of *Hunter Resources* v. *Melville* (1988) 77 ALR 8.

[96] In his speech in Parliament on second reading, the minister stated that there were conflicting local cases in relation to the use of explanatory statements attached to Bills: above, n. 5, at col. 517.

[97] The proportion of opposition Members of Parliament is only a tiny fraction of the total composition of Parliament, and has been so for over two decades. Indeed between 1968 and 1981, no opposition Members of Parliament were elected into Parliament. It might, however, be argued that the political context could change radically, and virtually overnight as well. If political conditions do change the special arguments centring on local conditions would lose much, if not all, of their force.

bers of the legal profession to have access to the relevant parliamentary materials. Suggestions will be made in the next section on how such materials could be made more accessible.

III. The Future

There are, however, practical problems of access that will arise from the peculiar local circumstances of Singapore with respect to the legislative history of some statutes. Records from after the conclusion of world war two, and clearly from internal self-government in 1959 to date, are relatively accessible.[98] However, the same cannot be said with regard to pre-war records, in particular, the *Legislative Council Proceedings of the Straits Settlements*. There are very few copies available and, of these, most are on microfilm, thus reducing access considerably.[99] There is yet a further practical problem. There is both general as well as specific reception of English statute law in Singapore, the former generally applying to pre-1826 statutes and the latter applying (by virtue of section 5 of the Civil Law Act[100]) to the reception of both past as well as current English commercial statutes.[101] Problems relating to accessibility would be even more acute with regard to such English statutes, especially very old statutes.[102]

[98] Apart from privately owned copies of the *Singapore Parliamentary Debates* (and its predecessor series), the level of ownership of which we cannot, of course, ascertain, the following institutions do have copies of such reports: the Attorney General's Chambers, the National Library, the National University of Singapore Central and Law Libraries, the Ministry of Education as well as Parliament House itself. Certain other institutions also have holdings of such reports, to varying degrees; these include: certain Polytechnics, the Institute of Southeast Asian Studies, and the Nanyang Technological University Library. There are also holdings in the Supreme Court Library, the Subordinate Courts Library, the Singapore National Bibliography, and the Public Works Department, although the exact extent of holdings is not clear from available records. It is submitted, however, that there are sufficient numbers of copies, having regard to the ready access to photocopying facilities. One other suggestion might be to compile Second Reading speeches into official volumes, although the possible relative economic inefficiency might militate against such an enterprise.

[99] These are available in the National Library and the National University of Singapore Central Library. There are also partial holdings in the Institute of Southeast Asian Studies library. To the best of the writer's knowledge, whilst there are 'hard copies' of these reports, they are far from complete, and owing to their age, are not generally available for photocopying. At this juncture, we would like to express our thanks to the staff of the National University of Singapore Law Library for their assistance in gathering the information for the purposes of this as well as the preceding note.

[100] Cap. 43, 1988 rev. edn.

[101] The very recently enacted Application of English Law Act 1993 now consolidates and renders certain the prior position by, *inter alia*, listing English statutes which are applicable in Singapore. For accounts of the prior position, see, generally, Phang, 'Reception of English Law in Singapore: Problems and Proposed Solutions' (1990) 2 *Singapore Academy of Law Journal* 20, and the literature cited therein; and Bartholomew, 'English Statutes in Singapore Courts' (1991) 3 *Singapore Academy of Law Journal* 1.

[102] See e.g., per Viscount Bledisloe in HL Debs, vol. 418, col. 1342 (26 Mar. 1981). The availability of reports of English parliamentary debates in Singapore appears to be confined to academic institutions. The absence of a comprehensive set of such debates in the Supreme Court as well as subordinate court libraries exacerbates the problems. It should be noted that even in the

Given the immense practical problems briefly outlined in the preceding paragraph, it is submitted that it would be advisable if the Singapore courts were, as a matter of principle, to limit reference to parliamentary materials to those of the Singapore Parliament after 1959, the year of internal self-government. Though less than satisfactory from a theoretical perspective, the courts might also hold that no records of *English* extrinsic materials should be admissible when interpreting English statutes which are applicable in Singapore.[103] The same principle should apply to Singapore statutes which are modelled on English statutes or those of another jurisdiction.[104]

It seems unlikely in the Singapore context that the use of parliamentary materials as extrinsic aids will unduly complicate or prolong litigation. However, should that become a problem, courts have the power to penalize litigants who raise irrelevant arguments based on parliamentary materials. In addition, recent changes to the fee structure for the hearing of cases in court are likely to discourage indiscriminate reference to records of parliamentary proceedings by counsel. The court fees charged after certain stipulated minimum times are now relatively steep, and are intended, in fact, to cut down the time taken for hearings.[105]

The new amendments are likely to result in some changes in the practice of lawyers in cases involving the interpretation of statutes. Litigation lawyers would do well to research the parliamentary materials in any case which involves a question of statutory interpretation. If their case can be supported with arguments based on the parliamentary materials, they should present alternative arguments. They should argue that the extrinsic materials sought to be relied upon are either to confirm the interpretation proposed or, in any event, to aid in ascertaining the meaning of the provision which is otherwise ambiguous or obscure, or whose ordinary meaning would lead to a result

National University of Singapore where holdings are comprehensive, many of these reports are to be found scattered in the closed stacks; this is not at all surprising in view of the limited use to which such publications have hitherto been put.

[103] Given the fact that there are problems of accessibility to English parliamentary debates even in England, Davenport, above, n. 51, there would be an even greater problem in Singapore if lawyers were expected to cite debates of the English Parliament when a question of interpretation arose with respect to an English statute which is applicable in Singapore.

[104] Practical problems are likely to arise with respect to modern Acts modelled on English Acts. An example is the State Immunity Act (Cap. 313, 1985 rev. edn). It is based upon the UK State Immunity Act 1978 (1978, c. 33), and most of its provisions are identical to those of the UK Act. Section 3(1)(a) of the UK Act removes immunity with respect to a 'commercial transaction' entered into by a state. The initial draft of this provision which was contained in the State Immunity Bill was amended in the House of Lords after criticisms by Lord Wilberforce and Lord Denning: Hansard, HL Debs, vol. 388, cols. 66–7, 71–3 (17 Jan. 1978); vol. 389, col. 1501–6 (16 Mar. 1978), as cited in Crawford, 'International Law and Foreign Sovereigns: Distinguishing Immune Transactions' (1983) 44 *British Yearbook of International Law* 75 at 107. If the corresponding provision in the Singapore Act, s. 5(1)(a), were to come up for interpretation, should the court be able to refer to the official record of the debates of the House of Lords as material providing evidence of the purpose and object of the provision? The language of s. 9A(2) is broad enough to include such debates, but would it be desirable as a matter of policy, given the inaccessibility of UK parliamentary records in Singapore? See, also, above, nn. 102 and 103.

[105] The Rules of the Supreme Court (Amendment) Rules 1993, No. S 211/1993.

that is manifestly absurd or unreasonable. If lawyers plead their case in the alternative, the threshold requirements embodied in section 9A(2) would not, in all likelihood, limit reference to such materials in any case in which counsel felt they supported his case. Indeed, given both the inherent nuances of, and ambiguities in, language referred to right at the outset of the present article, the alternative plea of ambiguity or obscurity is always on the cards.[106]

As lawyers begin to refer more to the use of parliamentary materials as extrinsic aids, the courts may find it desirable to issue a practice direction on the use of extrinsic materials. Such a practice direction would require that the party intending to rely on extrinsic materials give written notice of such intention to the other party and to the Registrar of the court, together with a copy of such extrinsic materials.[107]

One would expect that the amendments allowing wider recourse to parliamentary materials as extrinsic aids might also result in minor changes in the practice of the Attorney General's Chambers, which drafts most legislation. Previously the Explanatory Statement and the minister's speech at Second Reading were for the sole benefit of the Members of Parliament; they were often brief and in laymen's language. Because they now may be considered by the court when interpreting the statute, more care is likely to be taken in their drafting. They are likely to become more detailed, and to contain more language suitable for lawyers and judges rather than laymen.[108] It should be noted that Australian Parliament has been concerned with the contents of Explanatory Memoranda and the question of whether they should be endorsed by Parliament.[109]

It is also hoped that practical steps will be taken by the Attorney General's Chambers to assist lawyers in gaining access to the relevant extrinsic aids. Such steps have been taken in Australia. Since 1985, there has been a notation at the end of each Act which indicates the dates on which the Bill was considered for Second Reading in the House and in the Senate. Since the official records of the Parliamentary Debates in Singapore do not always contain a detailed subject index, it would be very useful to members of the legal profession if a similar practice were adopted in Singapore.

In the Singapore context, it would also be extremely useful if two other notations are indicated at the end of Acts in the Government Gazette Acts Supplement and on the front page of Acts in the Revised Edition of the Statutes

[106] Reference may also be made to the remarks by Kirby P in *Yuill* v. *Corporate Affairs Commission of New South Wales* (1990) 20 NSWLR 386 at 398.

[107] Such a practice direction was issued in New South Wales: Practice Note 31, [1984] NSWLR 635, as noted in the article by Mr Justice Bryson, above, n. 89, at 202; the House of Lords also issued a Practice Direction on 1 Feb. 1993 which states that 'Supporting documents, including extracts from Hansard, will only be accepted in exceptional circumstances': [1993] 1 WLR 303.

[108] In the parliamentary debate on the Bill, Assoc. Professor Walter Woon, a nominated Member of Parliament, suggested that the minister as the Parliamentary draftsmen to expand on the explanatory notes in the Bills: *Parliamentary Debates*, above, n. 5, at col. 518.

[109] See e.g., per Senator Gareth Evans (Victoria—Attorney General) in *Parliamentary Debates 1984 (Senate)* at 964 (30 Mar. 1984).

of the Republic of Singapore. First, it would make the Explanatory Statement easier to locate if the year and number of the Bill are indicated.[110] Secondly, if the Bill is referred to a Select Committee of Parliament, it would be easier to locate the Report of the Select Committee if the citation and date of the Report are indicated.[111]

The amendments are likely to create a greater demand among lawyers and interested institutions for copies of Bills (because they contain the Explanatory Statement) and for copies of the Parliamentary Debates and Select Committee Reports. The Attorney General's Chambers may want to consider printing more copies of these documents, and making an effort to circulate them more widely. Such measures were taken in Australia.[112]

The Attorney General's Chambers may also want to consider the feasibility of adapting the already well-developed computer data and networking systems in order to facilitate reference to official reports of Parliamentary Debates, Explanatory Statements, and Reports of Select Committees. If such steps were taken it would scotch any arguments with regard to the lack of accessibility of the materials.[113] Professor Dickerson has, however, pointed out that '[e]ven the computerization of legislative history is an inadequate answer to nonavailability, because it tends to widen the already wide gap between the well-heeled litigant and the financially ill-favoured one'.[114]

IV. Conclusion

Whether or not an increase in the use of parliamentary history as extrinsic aids under section 9A leads to more justice and reasoned judgments in cases of statutory interpretation is dependent very much on the judges themselves. To be sure, restraint and good sense by practitioners is not only desirable but also imperative. The courts provide the ultimate check, not only in the form of penalization from the perspective of costs, but also in setting out guidelines, in elaborating upon section 9A itself, and, in the final analysis, providing the type of vision that would help carry the Singapore legal system into the twenty-first century—and beyond.

[110] Bills (including the Explanatory Statement and Comparative Tables) are published in the Government Gazette Bills Supplement. It is difficult to locate Bills in Singapore because there is no correlation between the Bill number and the Act number, and because there is no index or table indicating the numbers of Bills.

[111] As indicated earlier, Reports of Select Committees are not published in the Official Record of Parliamentary Debates, but are published separately. This makes usually it relatively difficult to locate the Report of the Select Committee.

[112] See generally, Brazil, above, n. 64, at 510, and Pearce and Geddes, above, n. 2, at 46.

[113] And cf. per Lord Griffiths in *Pepper* v. *Hart* [1992] 3 WLR 1032 at 1040: 'I cannot agree with the view that consulting Hansard will add so greatly to the cost of litigation, that on this ground alone we should refuse to do so. Modern technology greatly facilitates the recall and display of material held centrally.'

[114] Dickerson, 'Statutory Interpretation in America: Dipping into Legislative History—II', above, n. 26, at 153.

Postscript: Raffles City Pte Ltd v. *The Attorney General, Singapore*

Since this article was accepted for publication, the Singapore High Court considered section 9A for the first time in *Raffles City Pte Ltd* v. *The Attorney General, Singapore.*[115] The case related to the computation of property tax concessions on an approved development project. The issue for interpretation was the meaning of the phrase 'a storey of an approved development project' in the Property Tax Order 1967.[116] Counsel for both parties presented arguments based on the intention of the order in support of their respective interpretations.

The judge, L.P. Thean J, stated that in resolving the point of interpretation, 'it would be helpful to look at available materials to ascertain the true legislative intention in enacting the Order'.[117] The main basis for the court referring to extrinsic materials was section 9A. As an alternative basis for referring to such materials, the judge stated that if he was wrong in applying section 9A, he could nevertheless rely on the 'parallel'[118] common law rule set out in *Pepper* v. *Hart*[119] and adopted in Singapore in *Tan Boon Yong* v. *Comptroller of Income Tax.*[120]

Before applying section 9A, the court stated that the immediate question was whether the section was applicable in a case in which proceedings had commenced prior to the time the section had come into operation. The court ruled that section 9A operated retrospectively and that it therefore was applicable in the present case. It reasoned that the section was retrospective because it was a declaratory enactment which was akin to a definition provision, only wider and more general in scope.[121]

The materials which the judge referred to were comments of the then Minister of Finance in Parliament on 5 December 1966 in the course of delivering the Annual Budget Statement.[122] The minister was announcing incentives

[115] [1993] 3 SLR 580. See also now *Chen Hsin Hsiong* v. *Royal Exchange Assurance* plc [1994] 2 SLR 92 and *PP* v. *Keh See Hua* [1994] 2 SLR 277.

[116] No. S 80/1967, published on 22 April 1967 pursuant to the Property Tax Ordinance, 1960 (Ord. 72 of 1960), now the Property Tax Act (Cap. 254, 1985 rev. edn).

[117] Above, n. 115, at 585.

[118] Ibid., at 587. It is unclear what this particular reference means, for section 9A clearly encompasses a potentially wider scope than the rule in *Pepper* v. *Hart*.

[119] Above, n. 3.

[120] Above, n. 4.

[121] The learned judge observed that 'section 9A does not change the meaning of any existing law but simply allows the courts, in appropriate cases, to have recourse to additional materials . . . to ascertain the meaning of a statutory provision. It merely provides an aid to interpretation and seeks to clarify existing law'. This point is arguable inasmuch as it could be contended that the application of section 9A may, in certain cases at least, result in the reversal of the existing law sought to be interpreted. In addition, and looked at from another perspective, it could be argued that insofar as the then existing law with regard to the use of extrinsic materials in construing a statutory provision is concerned, section 9A actually changed the existing law embodied in *Pepper* v. *Hart*. A possible argument that might, however, have supported the learned judge's decision on this point is centred on the proposition that section 9A is procedural or evidential and is therefore retroactive. The learned judge preferred, however, to premise his decision on the basis that section 9A was a 'declaratory enactment'.

[122] *Parliamentary Debates Singapore, Official Report*, vol. 25, No. 7 at col. 459 (5 Dec. 1966).

relating to urban redevelopment which were to be implemented in the next budget year (1967). At the time of the comments, the Order in question had not been laid before Parliament. Since it was not published in the Government Gazette until the following April, it is not even clear whether the precise wording of the Order had been finalized at the time of the minister's comments.

Although the court quoted the language of subsection 9A(2), it did not state whether it was referring to the minister's comment to confirm the ordinary meaning or to ascertain the meaning of a provision which was ambiguous or obscure. One could conclude, however, that the court was of the opinion that the phrase in question was ambiguous, at least when applied to the facts of the case at hand. The court also quoted subsection (3)(d), making it clear that it was citing the minister's comment in Parliament because it fell under the category of 'any relevant material in any official record of debates in Parliament'.

As material capable of *assisting in the ascertainment of the meaning of the provision*, the minister's comment in Parliament was helpful only in that it provided evidence of the *general purpose or object underlying the written law*, i.e., the contemplated Order. The court found that the minister's statement did make clear that 'the *object* of the grant of property tax concessions is to encourage private participation in urban redevelopment . . .'[123] However, it appears that the court did not find the minister's statement of much use in ascertaining the precise meaning of the provision as it applied to the facts of the case at hand. The court observed that the minister's comment made it clear that 'he certainly did not contemplate—not surprisingly as the speech was made more than 25 years ago—a construction of an immense multi-building complex with which we are familiar today'.[124] However, the court concluded that the minister's statement could not be taken as supporting the plaintiff's contention on how the provision in question should be interpreted.

Although the court did not find the minister's statement particularly helpful in determining how the phrase 'a storey of an approved development project' should apply to the multi-building complex in this case, it did support its decision on the construction of the phrase with a reference to the object of the Order. It stated that in its opinion 'the construction contended on behalf of the defendant was more consistent with the object of the Order',[125] and it therefore accepted this construction. Since the minister's comment had been accepted as evidence of the object of the Order, it was of some assistance to the court in ascertaining the meaning of the particular provision.

Section 9A(2) allows consideration of extrinsic material which is capable of assisting in the ascertainment of *the meaning of a provision*. It does not specifically allow consideration of extrinsic material on the ground that it provides

[123] Above, n. 115, at 588 (emphasis added).
[124] Ibid., at 589.
[125] Ibid., at 590.

evidence of the *general purpose or object underlying the written law*, or of the *specific purpose or object of a particular provision*. However, as this case demonstrates, where extrinsic material provides evidence of the purpose or object of the written law generally or of the purpose or object of the particular provision in question, such material may, in fact, assist in the ascertainment of the meaning of the provision. The court is therefore likely to allow consideration of the extrinsic material in such situations.

The court stated in this case that even if section 9A were not applicable because it was not retrospective, the minister's statement could have been referred to under the 'parallel'[126] common law rule enunciated in *Pepper* v. *Hart*. The court's reasoning suggests it could conclude that since the provision was ambiguous, reference could be made to parliamentary material which clearly disclosed the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words.[127] However, this assumes that the minister's statement with respect to the proposed property tax concessions was the equivalent of the statement of the minister or other promoter of the Bill at the Second Reading stage. This may not be so, since the Order was not before Parliament when the statement was made, and it is not even clear whether the Order had been finalized at that time. It also assumes that the minister's statement 'clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words'.[128] It is not clear whether the minister's comment in this case would satisfy this criteria; it may have disclosed the general legislative intent behind the Order, but not the legislative intent behind the ambiguous or obscure words in question in this case.

This case is also unusual in that it refers to statements in Parliament about the legislative intent underlying a piece of subsidiary legislation rather than an Act of Parliament. Subsidiary legislation in Singapore is usually issued by the minister concerned without being laid before Parliament, and it is usually not discussed in Parliament. In the Singapore context, therefore, there are not likely to be similar statements or other extrinsic materials which would provide assistance in the interpretation of most subsidiary legislation.

Finally, this case also suggests that given the opportunity, lawyers may sometimes go to great lengths to find statements in the parliamentary records which might in some way support their argument (provided, of course, that the stakes warrant such an approach). Because ministers seldom make comments in Parliament on subsidiary legislation, it is somewhat surprising that a search of the parliamentary records was even undertaken in this case. And once it was decided to search the parliamentary records, it could not have been easy to locate the statement in question in this case. Thus, the fears expressed by some who were reluctant to open the door to recourse to Hansard and other legislative materials because of the potential drain on time and resources, may prove not to have been wholly unfounded.

[126] See, above, n. 118.
[127] See, above, n. 39 and accompanying quotation.
[128] Ibid.