POLICE POWERS : USE AND MISUSE

In 1976, a report regarding the handling of complaints against the police noted as follows:

> The performance of police duty involves the exercise of powers which closely affect the liberty and rights of the individual, and in carrying out their duties police officers are inevitably exposed to criticism and complaints. In every police force some complaints are found on examination to be justified, but there is little doubt that others are made with the object of discrediting the police.[1]

The Royal Malaysia Police have not been spared from scrutiny and criticisms. The complaints span a broad spectrum from dereliction of duty, corruption, abuse of powers, misconduct, to negligence. It was reported by the Public Complaints Bureau that the Royal Malaysia Police received the highest number of complaints from the public compared to other government departments in the first half of 1995.[2]

The admission of the former Inspector-General of Police that he had assaulted the former Deputy Prime Minister whilst the latter was in police custody had devastated the Force. Meanwhile, a senior member of the Malaysian Bar had called for an investigation to be made on the purported 'fondness' of police to shoot to kill suspects prior to arrest or investigations. The current Inspector-General of Police quickly swung into action and set up a central joint committee for the

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[1] A Working Party for Northern Ireland, Cmnd. 6475, para. 4.

[2] *New Straits Times*, 1 September 1995.

improvement of community-police relations with branches at the state level.

Thus far, calls for improvements in the police have been *ad hoc* and related to specific incidents and misdoing. The police have their own internal mechanisms to deal with disciplinary infractions amongst their men. In any case, judicial scrutiny of their actions has always served as a useful check on any abuse or misuse of powers. This article examines some of the powers of police, the modes by which the police may be checked, and the processes involved in resolving complaints against the Force.

I. A BRIEF HISTORY

When the Charter of Justice was introduced into Penang on 25 March 1807, the police system in England at that time was introduced with posts such as the High Sheriff and the Deputy Sheriff.[3] The various states of Malaya each had a police force which was para military in nature. Subsequently, there were the Straits Settlements Police Force, the Federated Malay States Police Force and the Unfederated Malay States Police Force towards the end of the nineteenth century.

Before World War II, the Police Force was not unified. It played a more military role which focused on preserving and maintaining the political power of the British and their economic interests in Malaya. During the World War II period, the Police Force was not only responsible for quelling any internal threat from anti-British groups and labour strikes, but also to safeguard the boundary areas of Kedah, Perak and Kelantan and to prevent smuggling and subversive activities. During the Japanese Occupation, the communists offered their services to oppose the Japanese when the British retreated. The Police Force fell into disarray and a decision was made to dissolve it. A Police Force under the command of the Japanese was subsequently established. Members of the British-organised Police Force were enlisted as members of the 'Kampetei' or Japanese Police.

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[3]Mohd. Reduan Asli, *Polis DiRaja Malaysia: Sejarah, Peranan dan Cabaran* (1987), Karangkraf, 9.

When the Japanese surrendered in August 1945, the British Military Administration took steps to re-establish a Police Force for the whole of Malaya. For the first time, there was a single Force covering the whole of Malaya and on 1 April 1946, this Force came to be known as the Malayan Union Police. When the Malayan Union was dissolved and replaced by the Federation of Malaya in 1948, the Federation of Malaya Police Force came into being.

The Emergency period saw the general reign of chaos and strikes instigated by the Communist Party of Malaya. Initially, the Force was handicapped by inadequate facilities, shortage of men, equipment and know-how in security intelligence work. During the years 1948 to 1952, the Force expanded rapidly and extensively. At that time, the Police Field Force, the Special Constabulary, the Special Branch and the Criminal Investigations Department were formed and expanded. At the height of the Emergency in 1952, the number of policemen rose to 75,851, of which 31,164 were ordinary members of the Force and 44,117 were special constables. There were in addition, 86,000 Extra Police Constables.[4] At the end of the decade, there were 161,281 members of the Police Force.[5]

During the Emergency, the police were involved in stamping out the communists in the jungle and in carrying out general police duties in the towns and villages. The twelve years of fighting against the communists have led to the misconception that the Force was established only for that purpose and not to provide services to the public. On 15 November 1952, the new motto of 'Ready To Serve' or 'Bersedia Berkhidmat' was introduced. The then Commissioner of Police, A.E. Young explained:

> The Police have an essential part to play in the future of Malaya. It should be the aim of the Police to become less and less a Force and more and more of a service. The Police should not only be respected for their competence and ability but they should be esteemed for their integrity, impartiality and goodwill.[6]

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[4]Appointed under section 24 of the then Police Ordinance 1952.

[5]Hassan Yusoff, 'Police Persekutuan Semasa Dharurat Pertama', Pengaman, Jan./March 1979, 61.

[6]*The Federation of Malaya and Its Police 1786-1952*, 31 Dec. 1952.

The 'Bersedia Berkhidmat' campaign, symbolised by two human hands clasped in friendship, succeeded in enhancing the quality of police work, in gaining the trust and confidence of the public, in instilling a sense of responsibility in both the public and the police to maintain peace and harmony, in strengthening the two-way relationship between the police and the public, and in developing the right personality and attitude for members of the police in line with the needs of the community at that time.

Motivated by the desire to further improve its public relations, the Force introduced the 'Salleh System' on 1 February 1968 in the Petaling Jaya Police District, and subsequently in other districts in the country. The purpose of the system was to integrate members of the Force with the community in a particular area, to enable the police to provide better and more efficient services to the community. The community, in turn, would assist the police in solving problems of security, law and order. Criminal activities could be prevented too.[7]

When Malaya achieved Independence on 31 August 1957, the Inspector-General of Police who was then the chief of police became responsible to the Minister of Home Affairs. There were ten police contingents, each headed by a State Chief of Police. On 24 July 1958, the Police Force became known as the Royal Federation of Malaya Police. When Malaysia was formed on 16 September 1963, the Police Forces of Sabah, Sarawak, Singapore and the Federation of Malaya were unified and called the Royal Malaysia Police. With the separation of Singapore on 9 August 1965, the Singapore component was removed from the main entity.

In 1952, the Police Ordinance[8] was passed to provide for the organisation, discipline, powers and duties of the Police Force and for matters incidental thereto. The Federation of Malaya Police Force was set up with the Commissioner of Police having the command, superintendence, administration and direction of the Force. The Commissioner could appoint and dismiss members of the Force. The 1952 Ordinance was replaced by the Police Act 1967[9], and revised in 1988.[10]

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[7]Mohd. Reduan Asli, 405-409.

[8]No. 14 of 1952.

[9]Act 41/67.

[10]Act 344.

Under the 1967 Act, the chief of police is the Inspector-General. The First Schedule of the Act provides the various ranks of police officers as follows:

1. *Senior Police Officers*
   - Inspector-General
   - Deputy Inspector-General
   - Commissioner
   - Deputy Commissioner
   - Senior Assistant Commissioner
   - Assistant Commissioner
   - Superintendent
   - Deputy Superintendent
   - Assistant Superintendent
   - Chief Inspector
   - Senior Inspector
   - Inspector
   - Probationary Inspector.

2. *Junior Police Officers*
   - Sub-Inspector
   - Sergeant-Major
   - Sergeant
   - Corporal.

3. *Constable*

II. THE ROYAL MALAYSIA POLICE

The Royal Malaysia Police are under the command of the Inspector-General, who is a police officer, and is responsible to the Minister of Home Affairs for the control and direction of the Force.[11] He formulates the policy on how the Force will be organised, administered and operated within the context of government policy. He also provides

[11]Police Act 1967, s. 4(1).

directions on conditions of service, personnel, recruitment, training, research and planning, internal security and public order, communications, marine police, the criminal investigation department (CID) and the special branch (SB).

In Peninsular Malaysia, the police are commanded by Chief Police Officers, whilst in Sabah and Sarawak, they are commanded by Commissioners, responsible to the Inspector-General for the day-to-day command and administration.

The Federal Constitution, which is the supreme law of the land, states that the Police Force is one of the public services.[12] The qualifications for appointment and conditions of service of persons in the Force are regulated by federal law and, subject to the provisions of any such law by the Yang diPertuan Agong (YDPA). Every member of the Force holds office at the pleasure of the YDPA.[13]

Article 140, clause (1) of the Federal Constitution provides for the Police Force Commission whose jurisdiction extends to all persons who are members of the police force. The Commission is responsible for the appointment, confirmation, emplacement on the permanent or pensionable establishment, promotion, transfer and exercise of disciplinary control over members of the Police Force.

The Commission consists of the following members:

a) the Minister of Home Affairs, who is the Chairman;
b) the Inspector-General of Police;
c) the Secretary-General of the Home Ministry;
d) a member of the Public Services Commission appointed by the Yang di Pertuan Agong;
e) not less than two nor more than six other members, appointed by the YDPA.[14]

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[12] Federal Constitution, Article 132, clause (1).

[13] Article 132, clauses (2) and (3), respectively.

[14] Article 140, clause (3).

The Police Force Commission has the power to provide for the following:

a) the organisation of its work and the manner in which its functions are to be performed, and the keeping of records and minutes;
b) the duties and responsibilities of the several members of the Commission, including the delegation to any member of the Commission or the police force or board of officers of such force or a committee consisting of members of the Commission and of the force of its powers or duties;
c) the consultation by the Commission with persons other than its members;
d) the procedure to be followed by the Commission in conducting its business;
e) any other matters for which the Commission considers it necessary or expedient to provide for the better performance of its functions.[15]

A member of the Commission, other than an ex officio member, is ordinarily appointed for a term of five years. The YDPA may in his discretion but after considering the advice of the Prime Minister, in a particular case appoint a member for such shorter term as he may determine. The member may be reappointed from time to time unless he is disqualified. He may at any time resign his office but shall not be removed from office except on the like grounds and in the like manner as a judge of the Federal Court.[16] The remuneration of the members of the Commission, other than a member for whose remuneration as holder of any other office provision is made by federal law, is provided by the law and the remuneration so provided is charged to the Consolidated Fund.[17]

In terms of employment, promotion and service related matters, it is clear that the police force is subject to the Police Force Commission. In terms of its order and peace keeping functions, the force is subject

[15] Article 140, clause (6).

[16] See Article 125.

[17] Article 143, clauses (1) and (2).

to the Ministry of Home Affairs. In one aspect of the Force's job, and that is in criminal investigations and criminal prosecution, it is subject to the directions of the Attorney-General. The Attorney-General has the power exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a syariah court, a native court or a court-martial.[18] The Criminal Procedure Code (CPC) provides that the Public Prosecutor, who is also the Attorney-General has the control and direction of all criminal prosecutions and proceedings under the Code.[19] Other penal laws also provide for certain other powers of the Public Prosecutor.

The Attorney-General's Chambers falls under the jurisdiction of the Prime Minister's Department. The Attorney-General, however, is appointed by the YDPA, who acts on the advice of the Prime Minister.[20]

III. JUDICIAL CHECKS

Judicial scrutiny in the course of legal proceedings has been identified as one of the modes of control over the police.[21] Comments by judges in the course of a trial or in their judgments do have an impact on how the Force conducts itself be it in the course of discharging its duties in criminal investigations, or when disciplining its members. Police powers may be directly regulated by the judiciary when it interprets statutory provisions and when it decides on evidential issues.

Under this heading two specific areas will be examined, namely, judicial control over the police in the criminal justice system and judicial control over the administrative power of the police.

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[18] Article 145, clause (3).

[19] S. 376(1).

[20] Article 145, clause (1).

[21] D.G.T. Williams, *The Accountability of The Police: Two Studies*, 48-50.

A. Criminal Justice System

The police play an important role in the Malaysian criminal justice system. According to the Police Act 1967, the police force is responsible for the maintenance of law and order, the preservation of the peace and security of Malaysia, the prevention and detection of crime, the apprehension and prosecution of offenders, and the collection of security intelligence.[22] In the Criminal Procedure Code (CPC), the police are given powers in several areas in the system, such as, arrest, search, investigation, and prosecution. The CPC, however, is the general law and is subject to specific provisions in penal statutes providing for the same.

(i) Arrest

Arrests may be made either with a warrant or without a warrant. A warrant of arrest is ordinarily directed to the Inspector-General of Police and all other police officers in the Federation. Any police officer may execute such warrant in any part of Malaysia.[23] The court may also issue a warrant in the name of persons other than police officers.[24] The police officer may be allowed to grant bail if the court directs him to do so by an indorsement or footnote on the warrant to that effect. Soon after the bail is taken, the officer has to forward the bond to the court.[25] The police officer who executes the warrant has to notify the substance thereof to the person arrested and if so required should show him the warrant or a copy thereof.[26] The police officer executing the warrant has to, without unnecessary delay, bring the person arrested before the court before which he is required by law to produce. Of course, if the person has taken bail, he will appear in court on the date specified in the bailment.[27]

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[22] S. 3(3).

[23] CPC, s. 40(1).

[24] Ss. (2).

[25] S. 39.

[26] S. 41.

[27] S. 42.

A police officer may arrest without a warrant in any of the instances listed in section 23 of the CPC. Subsection (2) thereof adds that this section does not limit or modify the operation of any other law empowering a police officer to arrest without a warrant. Numerous examples may be found in other statutes; some examples are sections 27(6) and 27A(5) of the Police Act 1967, and section 31(1) of the Dangerous Drugs Act 1952.

Any police officer may arrest any person who has been concerned in any offence committed anywhere in Malaysia which is a seizable offence under any law in force in that part of Malaysia in which it was committed. A seizable offence is defined as one where a warrant is not required for the suspect's arrest, whereas a non-seizable offence is one where a warrant is required in the first instance. The third column in the First Schedule of the CPC describes which offences are seizable or non-seizable. For offences in other penal statutes, where the punishment provided by law is imprisonment of less than three years or with only a fine, the offences will be non-seizable. For all other offences, the description 'may arrest without warrant' is given. Despite this, if a specific provision in a specific statute provides otherwise, that provision will prevail over the CPC.

A police officer may also arrest if there is a reasonable complaint that a seizable offence has been committed,[28] or where there is credible information that a seizable offence has been committed,[29] or where a reasonable suspicion exists that such a seizable offence has been committed.[30]

The police officer may also arrest without a warrant any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking; any person who has been proclaimed under section 44 of the CPC; any person in whose possession anything is found which may reasonably be suspected to be stolen or fraudulently obtained property and who may reasonably be suspected of having committed an offence

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[28] *Tan Kay Teck & Anor. v A.G.* [1957] MLJ 237.

[29] *Hashim bin Saud v Yahaya bin Hashim* [1977] 1 MLJ 259.

[30] Paragraph (a). See *Mahmood v Government of Malaysia & Anor* [1974] 1 MLJ 103; *Tan Eng Hoe v A.G.* [1933] MLJ 151.

with reference to such thing; any person who obstructs a police officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody; any person reasonably suspected of being a deserter from the Armed Forces of the Federation; any person found taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to committing a seizable offence; any person who has no ostensible means of subsistence or who cannot give a satisfactory account of himself; any person who is by repute a habitual robber, housebreaker or thief or a habitual receiver of stolen property knowing it to be stolen or who by repute habitually commits extortion or in order to commit extortion habitually puts or attempts to put persons in fear of injury; any person in the act of committing in his presence a breach of the peace; and any person subject to the supervision of the police who fails to comply with the requirements of section 296 of the Code.[31]

The term 'police officer' is not defined anywhere in the Code; however, following section 2(3) thereof, the Police Act 1967 may be referred to. The term is defined as 'any member of the Royal Malaysia Police'. This would include any senior police officer, any junior police officer, and a constable. For the purpose of arresting any person whom he has power to arrest without a warrant, the police officer may pursue any such person into any part of Malaysia.[32]

Although, generally, the police officer can arrest without a warrant only in seizable cases, there are two instances provided in the CPC where he may arrest without a warrant in non-seizable cases. Section 24(1) provides the first situation, that is, where any person commits in the presence of a police officer or is accused of committing a non-seizable offence and refuses on the demand of that officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false. He may be arrested by such police officer so that his name or residence may be ascertained. Section 24(3) provides the second situation, that is, where the person commits in the

[31]Paragraphs (b) to (k), inclusive, of s. 23(1).

[32]S. 26.

presence of a police officer a seizable offence or is accused of committing such an offence and on the demand of that officer to give his name and residence gives as his residence a place not within the Federation. He may be arrested by such police officer and shall be taken to the nearest magistrate.

When acting under a warrant of arrest or arresting without a warrant, the public officer has reason to believe that any person to be arrested has entered into or is within any place, the person residing in or in charge of such place shall, on demand of such person acting as aforesaid, allow him free ingress thereto and afford all reasonable facilities for a search therein.[33] If ingress to such place cannot be obtained as mentioned, it shall be lawful for the police even without a search warrant to enter such place and search therein. If need be, the officer may break open any outer or inner door, or a window to effect an entrance into such place. This power is allowed only in urgent situations where any delay may result in the person to be arrested having an opportunity to escape.[34] The police officer may break open any place to free himself if he is authorised to arrest and had lawfully entered for the purpose of making an arrest.[35]

The police officer then has to produce the person arrested before the magistrate within twenty-four hours, excluding the time taken for any journey from the place of arrest to the magistrate's court.[36] The magistrate may on the application of the police officer, order the arrestee's detention in the police lockup for a total period of fifteen days.[37] The police officer, usually the officer conducting the investigation or investigating officer (IO), has to forward to the magistrate a copy of the entries in the police investigation diary[38] to support his application.[39] The magistrate authorising the detention shall record his

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[33] S. 16(1).

[34] S. 16(2).

[35] S. 18.

[36] S. 28. See Constitution, Article 5(4).

[37] S. 117.

[38] The details of the contents of the diary are given in s. 119, CPC.

[39] *Audrey Keong Mei Cheng* [1997] 3 MLJ 477. See also *Re The Detention of R. Sivarasa and Ors.* [1996] 3 MLJ 611 and *Re The Detention of Leonard Teoh Hooi Leong* [1998] 1 MLJ 757.

reasons for so doing. In *Polis DiRaja Malaysia v Keong Mei Cheng Audrey*[40], the High Court required that the diary 'must also be replete with the grounds indicating that the information against the accused (or respondent) is well founded'.

In *Ramli bin Salleh v Inspector Yahya bin Hashim*,[41] the learned High Court judge was of the view that section 117 is an exception to section 28 and that the discretionary power to order the detention of the suspect should be exercised sparingly. The section contemplates more than one application for the detention order and the maximum period as a whole is fifteen days. The magistrate should not allow the full period as a matter of course but should weigh the seriousness of the offence and determine whether a shorter period would be sufficient to enable the police to complete the investigation. If so, such shorter period should be given. This advice is timely as magistrates were at the time issuing orders as a matter of course and for long periods.

In *Hashim bin Saud v Yahya bin Hashim & Anor.*[42], Harun J. ruled:

> The purpose of a detention under section 117 CPC therefore is to enable the police to *complete investigation*. The detention itself is subject to judicial control. The power to detain rests squarely and fully on the magistrate not the police. The magistrate is required to satisfy himself on every occasion if detention is at all necessary and if so to determine the length of time actually required to complete the investigation... If he orders detention he must record his reasons for doing so...[43]

When reasons for the detention are not given by the I.O., the High Court in *Keong Mei Cheng Audrey*[44] opined that it is 'not acceptable', implying that the detention is unlawful. It should follow that when the magistrate does not furnish grounds for the detention that the detention should be unlawful too.

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[40] [1994] 3 MLJ 296.

[41] [1973] 1 MLJ 54.

[42] [1977] 1 MLJ 259.

[43] *Id.* 262.

[44] [1994] 3 MLJ 296.

The High Court in *Saul Hamid*[45] held that a person concerned in a detention proceeding is entitled to be represented by a counsel and the burden lies on the police to prove that there will be interruptions in their investigations in the event the person is given access to his counsel.

In making the arrest, the police officer has to actually touch or confine the body of the person to be arrested unless there is a submission to the custody by word or action.[46] Arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It also occurs when by words or conduct he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go. It, however, does not occur when he stops an individual to make inquiries.[47] If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, such officer may use all means necessary to effect the arrest. In *Mahmood v Government of Malaysia & Anor.*,[48] it was held by the High Court that the police officer had not exceeded his powers under section 15(2) when he shot at two persons running away towards the dark part of the Lake Gardens at night to escape arrest.

Section 15(3) allows the police officer to cause the death of a person while effecting an arrest who is accused of an offence punishable with death or with imprisonment for life.

Whether an arrest is effected is relevant to the issue of whether a caution needs to be administered and ultimately, whether or not a statement made to the police officer is admissible as evidence in court. If there is an arrest, the caution must be administered before the statement is taken. If no caution is administered, the statement will be inadmissible. If no arrest is effected, a caution is not needed.

Two lines of decisions at the High Court level have opposing views as to whether the arrest needs to be an actual arrest or whether a constructive arrest will suffice. *Salleh bin Saad*,[49] *Lim Kin Ann*,[50]

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[45] [1987] 2 CLJ 257.

[46] S. 15(1).

[47] Per Lord Devlin, *Shaaban & Ors v Chong Fook Kam & Anor.* [1969] 2 MLJ 219.

[48] [1974] 1 MLJ 103.

[49] [1983] 2 MLJ 164.

[50] [1988] 1 MLJ 401.

and *Tan Chye Joo & Anor.*[51] required an actual arrest whereas *Tan Seow Chuan,*[52] *Johari bin Abdul Kadir*[53] and *Rosyatimah bte Neza & Anor.*[54] appeared to prefer the constructive arrest test. Indeed, *Kang Hoo Soh*[55] and *Shee Chin Wah*[56] prefer to leave it to the facts of the case to determine if there is an arrest. It is submitted that an arrest is but an arrest, be it actual or constructive.

The consequences of arresting a person contrary to the requirements in section 15 may be seen in two cases, namely, *Kok Khee*[57] and *Khor Ah Kah.*[58] In both cases, it was held that a person may lawfully resist or prevent any unlawful arrest. An unlawful arrest, however, will have no effect on the court's jurisdiction to try the suspect.[59]

(ii) Search

The police power to search is also provided in the CPC and other specific penal statutes. The search may be of a person's body or premises such as godowns, factories, private homes, shops and supermarkets.

When a person is arrested and if bail is offered but cannot be taken by the arrested person, or if bail is not offered, the person may be searched and all articles other than necessary wearing apparel found on him will be placed in safe custody.[60] Any offensive weapon may be taken away from any person upon his arrest.[61] In the case of a person lawfully in custody but is unable to give a reasonable account

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[51] [1989] 2 MLJ 253.

[52] [1985] 1 MLJ 318.

[53] [1987] 2 CLJ 66.

[54] [1989] 1 MLJ 360.

[55] [1992] 1 MLJ 360.

[56] [1998] 5 MLJ 429.

[57] [1963] MLJ 362.

[58] [1964] MLJ 30.

[59] *Saw Kim Hai & Anor.* [1956] MLJ 21.

[60] S. 20, CPC.

[61] S. 21, CPC.

of himself because of intoxication, illness, mental disorder or infancy, he may be searched for the purpose of ascertaining his name and place of abode.[62] Whenever it is necessary to search a woman, a woman police officer will have to do it with strict regard to decency.[63]

A search may be conducted in a few situations, specifically those related to stolen property and counterfeit coins and currency. The checks and safeguards upon the execution of these powers are clearly laid down in sections 62, 62A, 62B and 63 and sections 64 and 65 of the CPC. Section 64 requires that a list of all things seized in the course of the search and of the places in which they are respectively found has to be prepared by the police officer making the search and signed by him.

In *San Soo Ha*, the High Court had to consider the effects of non-compliance with this requirement. The court was of the view that the most that can be said about the failure to comply with the provision relating to the search list is that it may cast doubt upon the bona fides of the parties conducting the search and accordingly afford ground for scrutiny. If after close scrutiny the court arrives at the conclusion that the stolen articles were recovered from the possession of the accused person, it is obviously no defence to say that the evidence was obtained in an irregular manner. The law does not make such evidence inadmissible. In the instant case, the trial court had explored the evidence and decided that the stolen articles were recovered from the appellant. The failure to prepare a search list by itself would not entitle the appellant to an acquittal.

In *Chin Hock Aun*[64] the accused was charged for trafficking in dangerous drugs. The defence counsel sought to apply section 64 for assistance when the list of things seized was not prepared. The High Court held that section 64 applies only to a search conducted under chapter VI of the CPC and not one conducted under the Dangerous Drugs Act 1952 because of the clear words in the section.

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[62] S. 22, CPC.

[63] S. 19(2), CPC.

[64] [1989] 1 MLJ 509.

The police officer making a police investigation or the investigating officer (IO) may issue a written order to the person in whose possession or power any property or document is believed to be, requiring him to produce it at the time and place stated in the order. The property or document has to be necessary or desirable for the purposes of any investigation by such officer.[65] Hepworth J. in *Teoh Choon Teck*[66] explained that the property or document must have some relation to, or connection with, the subject-matter of the investigation or throw some light on the proceeding. It is not a question at that stage of whether the document is admissible or not. It may be that the thing called for may turn out to be wholly irrelevant to the inquiry. So long as it is considered to be necessary or desirable for the purpose of the investigation, the power is there.

In normal cases, the police would not apply this mode of action. They may apply for a search warrant under section 54(1) or immediately apply their powers in section 116. Here, the I.O. must consider that the production of any document or thing is necessary to the conduct of an investigation into any offence which he is authorised to investigate.

Section 435 of the CPC empowers any member of the police force to seize any property which is alleged or may be suspected to have been stolen or which is found under circumstances which create suspicion that an offence has been committed. The power is wide and covers the situation in *Chic Fashions (West Wales Ltd)* v *Jones*[67] and *Ghani & Ors.* v *Jones*.[68] Upon seizure, the police officer shall forthwith report such seizure to the officer in charge of the station, if the former is a subordinate to such officer. The officer in charge of the station or any other superior officer will then have to report the seizure to the magistrate who will make such order as he thinks fit respecting the property.[69]

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[65]S. 51, CPC.

[66][1963] MLJ 34.

[67][1968] 2 WLR 201.

[68][1969] 3 All ER 1700.

[69]S. 413, CPC. See Mimi Kamariah Majid, 'Disposal of Exhibits' [1990] 3 MLJ lx.

In *Re Kah Wai Video (Ipoh) Sdn. Bhd.*[70], a search warrant was issued for certain articles. Articles not mentioned therein were seized along with those mentioned therein. The magistrate returned to the owner those articles not included in the warrant. The High Court held that the magistrate had no authority to direct the return of the unscheduled articles seized by the police to the owners even if he had second thoughts about the propriety of his having issued the warrant of search in the first place. The order directing the return of the unscheduled articles to the owner was illegal and therefore null and void. The court continued that the police had the authority to seize the unscheduled articles by virtue of an implied extension of the powers under the warrant. For support, the court referred to and applied *Ghani & Ors. v Jones* and *Chic Fashions*. The court need not have gone so far as to apply the common law cases because section 435 of the CPC is available.

On the effect of an illegal search, the Privy Council decision in *Kuruma*[71] binds the courts in Malaysia. In that case, evidence was obtained during an illegal search. Lord Goddard C.J. said that the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained. A discretion is implied whether the court should or should not admit the evidence. The Privy Council in *King*[72] held that although the search was illegal the court had a discretion to admit the evidence obtained as a result of it. These cases were applied in subsequent cases, such as *Saw Kim Hai & Anor.*[73] and *Seridaran.*[74]

In specific penal statutes, provisions are made for the interception of communications. The statutes usually empower the Public Prosecutor to authorise a police officer to intercept, detain and open any postal article in the course of transmission by post; to intercept any message transmitted or received by any telecommunication; or to intercept or

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[70][1987] 2 MLJ 459.

[71][1955] 1 All ER 236.

[72][1968] 3 WLR 391.

[73][1956] MLJ 21.

[74][1984] 1 MLJ 141.

listen to any conversation by telecommunication. Any information obtained through these means would be admissible in evidence at the trial of any person charged with an offence under the relevant statute. Examples of such statutes are the Kidnapping Act 1961 in section 11, the Dangerous Drugs Act 1952 in section 27A and the Essential (Security Cases) Regulations 1975 in regulation 23.

(iii) Police Investigations

Police investigations usually begin with the lodging of the first information report or the police report.[75] The significance of this report is that since it is usually made early after the occurrence of an offence, the memory of the informant is fresh and therefore there is little likelihood of fabrication.[76]

The absence of a first information report does not lead to an invalid investigation by the police. In *Foong Chee Cheong*,[77] the High Court ruled that no information report being made is not itself a ground for throwing out a case. The powers of the police to investigate do not depend on chapter XIII of the CPC alone. The duties of a police officer as set out in section 20 of the Police Act 1967 include apprehending all persons whom he is by law authorised to apprehend and these duties are amplified in section 23 of the CPC. Most of these duties imply a power to investigate whether there has been an information report under section 107 of the CPC or not.

In non-seizable cases, the police do not as a matter of course commence investigation immediately. They will investigate only upon receiving an order to investigate or an OTI from the Public Prosecutor or his deputy.[78] In *Seridaran*[79] the police had gathered evidence and investigated when there was no OTI from the Public Prosecutor. The High Court held that the absence of the OTI did not affect the jurisdiction of the court to hear the charge against the offender.

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[75] S. 107, CPC.

[76] *Khwaja Nazir Ahmad* AIR (1945) PC 18.

[77] [1970] 1 MLJ 97.

[78] S. 108(1) and (2), CPC.

[79] [1984] 1 MLJ 141.

On whether the police have a duty to investigate upon the lodging of police reports, Malanjum J. in *Hassnar Hj. M.P. Ebrahim v Ibrahim Mohamad & Ors.*[80] opined that 'even if a decision is made not to launch an investigation the least the police are expected to do is to say so and the reason thereto'.[81] In this case, there was over reliance on the assertion that an investigation on a police report lodged is a matter of absolute discretion. The police should have taken some form of action or done something on the reports lodged.

The police investigating officer in seizable cases is one of the rank of Sergeant or above or any officer in charge of a police station.[82] The latter may even be a Corporal. In seizable cases, if an order to investigate is not issued, the police have a discretion whether or not to investigate. Should they decide to investigate, all those powers mentioned in sections 110, 111, 112, 116, 117 and 118 of the CPC may be applied. However, if there is an order to investigate issued by the Public Prosecutor, it appears that the police would have no alternative or discretion but to conduct investigations and apply those powers mentioned in the sections mentioned above.

Upon receipt of the first information report or any other information, the investigating officer will report the same to the Public Prosecutor unless the latter had directed that the offence is one which need not be reported to him. The officer will then proceed to the scene of the crime. He may deputise a subordinate officer to rush to the scene and arrest any suspects.[83] If he requires the attendance of any person before himself, he may issue a written order. Such person has to attend at the police station, because refusal to do so without just cause results in an offence under section 174 of the Penal Code. The person may be arrested to secure his attendance.[84]

At the police station, questioning will be conducted. Sometimes, in the course of questioning and interrogating a suspect, the police may be overzealous and cause injury. Section 330 of the Penal Code makes it an offence to cause hurt for the purpose of extorting from the

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[80] [1999] 2 CLJ 193.

[81] *Id.* 203.

[82] S. 109, CPC.

[83] S. 110, CPC.

[84] S. 111, CPC.

sufferer any confession which may lead to the detection of an offence whilst section 331 provides for the offence of causing grievous hurt for the same purpose. The maximum punishment for the first is seven years' imprisonment and for the second, ten years' imprisonment.

In the case of *Lai Kim Hon & Ors.*[85], six police officers were initially charged with culpable homicide not amounting to murder under section 304 read with section 34 of the Penal Code for intentionally causing the death of the deceased. At the end of the trial, the High Court acquitted two of the accused persons. As for the remaining four, it was satisfied that the accused did not intend to cause the deceased's death and reduced the charge to one under section 330 of the Penal Code. All four accused were found guilty and sentenced to various punishments depending on the role played by each of them: the first accused was sentenced to three years' imprisonment, the third accused to eighteen months' imprisonment, and the fourth and fifth accused to one year's imprisonment each. The four offenders appealed against their convictions and sentence, whilst the prosecution cross-appealed against the inadequacy of the sentences. The then Federal Court confirmed the convictions and sentences.

When dealing with the sentences, Suffian L.P., delivering the preliminary judgment of the Federal Court on 17 April 1980, commented as follows:

> The Police Force exists to protect the public from criminal elements, and are given wide powers of arrest, search, investigation and so on - to detect offenders, to collect evidence against them and to bring them to book. These powers are to be found in the Criminal Procedure Code and other laws enacted by Parliament, and welcomed by the people. The Police are expected to do their duty energetically and efficiently, and on the whole they do that - as witness the comparative peace and tranquillity that exist in the country. But one power the Police do not have, and it is most unlikely that Parliament and the people will give it to them, and that is power to assault and torture suspects in their custody, least of all power to kill. Parliament and the public expect the police to exercise their power in a

[85][1981] 1 MLJ 84.

> civilised and humane way. Those who exceed their powers should not expect to be protected by the law.[86]

Further on, subsequent to confirming the sentences, his Lordship said:

> But this should not be regarded as a precedent in future cases. Members of the Force who do their duty in accordance with the law will receive our and public support and encouragement; but those who treat suspects in a cruel manner can expect to receive only very severe punishments from the courts.[87]

In the case of *Muhari bin Mohd Jani and Anor.*,[88] the two accused persons were each sentenced to eighteen months' imprisonment by the sessions court for an offence under section 330 of the Penal Code. When the case was brought to the High Court for revision, the High Court enhanced the sentences to 36 months' imprisonment each because the trial court had 'missed the strong call for stiffer sentences'. The sessions court judge had relied on the case of *Lai Kim Hon & Ors.* when deciding on the sentences against the two accused without noting that Suffian L.P. in that case had expressly stated that the punishments confirmed therein should not serve as a precedent for future cases. Besides, the fact that the accused had caused the injuries whilst in the course of performing their duties should have been considered in aggravation of their sentences, instead of mitigating them as held by the trial court. Indeed, 'overzealousness which involves such blatant breaching of the law with the use of violence can never be a mitigating factor'. K.C. Vohrah J., whilst considering the appropriate sentence, commented as follows:

> Police officers are custodians of the law and they have to uphold, not breach, the law. By subjecting members of the public to acts of violence they in fact infract the very law that prohibits the inflicting of violence by any person on another person and they incalculably

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[86] *Id.* 91.

[87] *Id.* 92.

[88] [1996] 3 MLJ 116.

> undermine and subvert the confidence and trust placed by the public in our Police Force. The judge should have considered the grave injury done to the Police Force and to the public's trust in it.[89]

The interrogation by the investigating officer may be in the form of questions and answers but the recorded statement need not be in that form.[90] The answers to the questions have to be reduced to writing, although exceptions may be made in cases where it is not possible to record them in writing.[91] The person is bound to answer all questions relating to such cases put to him, although he may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture. He is bound to state the truth. Whenever possible, the answers would have to be authenticated in the form of a signature or thumbprint of the person questioned.[92] Before that, the answers must be read back to him in the language he had used and after he has been given the opportunity to make any corrections he may wish.[93] These answers are often referred to as the police statement or statement made to the police.[94]

Section 113 of the CPC provides for the admissibility of police statements and will be discussed further subsequently. Besides the police recording a statement, a magistrate may do so at any time before the commencement of the trial. The statement may then be forwarded to the magistrate, if different, conducting the trial.[95]

If there is sufficient evidence or reasonable grounds of suspicion to justify the commencement or continuance of criminal proceedings against any person, the I.O. shall require the complainant, if any, and any other person or persons who are acquainted with the circumstances of the case, to execute a bond to appear before the court to give

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[89] *Id.* 134.

[90] *Subramaniam* [1956] MLJ 58.

[91] *Jayaraman & Ors.* [1982] 2 MLJ 306.

[92] *Abdul Ghani bin Jusoh* [1981] 1 MLJ 25.

[93] *Kamde bin Raspani* [1988] 3 MLJ 289.

[94] S. 112, CPC.

[95] S. 115, CPC.

evidence at the trial of the accused.[96] Every police investigation has to be completed without unnecessary delay and as soon as it is completed the I.O. will report to the Public Prosecutor, unless otherwise directed. The names of the parties, the nature of the information, and the names of witnesses or persons who appear to be acquainted with the circumstances of the case must be given.

The issue that arises in relation to investigation is whether the police or the Public Prosecutor have the sole discretion to decide whether to investigate or not. The Federal Constitution provides in Article 145, clause (3) that the Attorney-General has the discretion 'to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah Court, a native court or a court-martial'. Clause (3A) provides that federal law may confer on the Attorney-General power to determine the courts in which or the venue at which any proceedings which he has power under clause (3) to institute shall be instituted or to which such proceedings shall be transferred. Section 376(1) of the CPC provides that the Attorney-General shall be the Public Prosecutor and 'shall have the control and direction of all criminal prosecutions and proceedings under this Code'. The question is what does 'proceedings under this Code' mean? Does it refer to judicial proceedings or proceedings before the court, which necessarily include trials, inquests and other inquiries, or does it refer to other proceedings which are non-judicial proceedings, including police investigations?

Clause (3) of Article 145 refers to 'proceedings' which, at a glance, seems to refer to all proceedings; however, on closer look, 'proceedings' was also used in relation to courts, namely, the Syariah Court, native court or court-martial. It may be assumed that 'proceedings', therefore, refer only to court or judicial proceedings. Indeed, Federal Court cases such as *Long bin Samat*[97] and *Johnson Tan Han Seng*[98] when interpreting Article 145(3) have indicated that the proceedings which are being instituted are prosecutions in court. Clause (3A) which

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[96] S. 118, CPC.

[97] [1974] 1 MLJ 152.

[98] [1977] 2 MLJ 66.

makes reference to clause (3) also refers to courts in which the Attorney-General may institute 'proceedings'.

When section 376(1) of the CPC refers to 'proceedings', is it confined to judicial or court proceedings? 'Criminal prosecutions' appearing in that subsection clearly refer to court proceedings. In section 2(1), the term 'judicial proceeding' is defined as 'any proceeding in the course of which evidence is or may be legally taken'. If the Code had intended the word 'proceedings' to include court proceedings, it surely would have used the term 'judicial proceeding'. 'Judicial proceeding' appears in sections 354 and 359. 'Proceedings' is used in certain other contexts and it sometimes means judicial proceedings and sometimes generally to include non-judicial proceedings. In section 323(1), it is obvious that it means proceedings in court because the section refers to revision of cases before any inferior criminal court by the High Court. In section 387(1), the word 'proceedings' has been held to be wide and meaning more than proceedings in court[99] although at a glance it would appear that it refers to court proceedings only. The context, therefore, needs to be scrutinised.

If the issue is viewed from another angle, that is, the criminal investigation angle, the meaning of 'proceedings' may become clearer. Chapter XIII of the CPC which provides for the police powers to investigate, makes reference to the Public Prosecutor a number of times. In section 108(2), the reference is made in relation to the order to investigate in non-seizable cases, in section 109(1) it is in relation to the power to investigate in seizable cases without the order to investigate, in section 110 it is in relation to reference to the Public Prosecutor as soon as information of the commission of a seizable offence is made, and in section 120 it is in relation to the submission of the completed investigation report to the Public Prosecutor. The equivalent provisions in the Indian CPC make no mention of the Public Prosecutor; instead, the magistrate must be informed about the information of the commission of an offence and the completed investigation report must be forwarded to a magistrate. This seems to indicate that, in Malaysia, the Public Prosecutor supervises the investigation of

[99] *Law Lexicon*, p. 1250.

offences and, thus, has the control and direction of all criminal investigations or proceedings.

If this is the position and if Article 145(3) merely refers to judicial proceedings, the question then is whether section 376(1) of the CPC, which gives the Attorney-General greater powers than those provided in Article 145(3) of the Federal Constitution, is ultra vires the Constitution? If the Attorney-General has control over police investigations, it would appear that governmental control over the police is doubly strong because the Attorney-General's Chambers comes under the purview of the Prime Minister's Department and the Attorney-General, being a public servant, is not answerable to Parliament.

(iv) Admissibility of Police Statements

In relation to the admissibility of police statements as evidence at a trial, section 113 of the CPC provides that statements made by accused persons may be admitted provided certain conditions are met. The conditions are that the recording officer must be at least of the rank of Inspector; the statement must have been made without any inducement, threat or promise; if there was an arrest, the accused must have been administered with a caution prior to the recording of the statement; the statement should be in writing, although if made orally there has to be a reasonable explanation as to why it was not recorded in writing; the statement must be authenticated either by a signature or thumbprint of the accused, unless there is a reasonable explanation why it could not be authenticated as such; the statement must have been read back to the accused in the language he had made it and after he had been given the opportunity to make any corrections. Not all of the above conditions are found in section 113; some are provided in section 112 but cases have indicated that those conditions equally apply for admissibility. Examples of the cases are *Jayaraman & Ors.*[100], *Abdul Ghani bin Jusoh*,[101] and *Kamde bin Raspani*.[102]

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[100] [1982] 2 MLJ 306.

[101] [1981] 1 MLJ 25.

[102] [1988] 3 MLJ 289.

Besides these, case-law has also added a few other conditions. The High Court in *Lee Look,*[103] *Yong Kong Hin*[104] and *Lee Chee Meng*[105] advised that if the recording officer had actively participated in the investigation of the case, the statement should not be admitted. This may be compared with the case of *Mohamed Yusof*[106] where the High Court found as a fact that the recording officer had not actively participated in the investigation. The High Court in *Teo Siaw Peng*[107] was more flexible when it ruled that the fact of knowing or seeing the exhibits whilst at the police station should not be a reason to disqualify the recording officer from recording the statement. To do so would mean that police officers in the same station would not qualify since one way or another they would know of any exhibits obtained.

The pre-occupation with the likelihood of biasness stems from the Court of Appeal's decision in *Cheong See Leong*[108] where the court drew an analogy between interpreters and judicial officers. The latter are required to be free from bias when adjudicating on any particular case before them. Therefore, if the interpreter is a member of the arresting party, the likelihood of bias on his part is present and this would result in the inadmissibility of the accused person's police statement.

There is a view which states that since section 113 does not mention anything about the status of the interpreter, it does not matter who interprets. The statement will be admissible and the only effect will be in relation to its weight and value. This view may be supported by the inclusion of the phrase 'whether concerned or not in the arrest' in other specific statutes providing for equivalent sections on admissibility.[109] Others are of the view that because of the absence of that phrase in section 113, the common law principle of likelihood of bias should apply. A conclusive ruling of the Court of Appeal or the Federal Court is awaited.

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[103] [1985] 1 MLJ 240.

[104] [1981] CLJ 178.

[105] [1991] 1 MLJ 226.

[106] [1983] 2 MLJ 167.

[107] [1993] 2 MLJ 364.

[108] [1948-49] MLJ Supp. 56.

Although section 113 of the CPC provides that there should not be any inducement, threat or promise before the statement was made, cases have considered this requirement as voluntariness or the lack of oppression. The courts have been strict in this respect as shown in the cases. In *Mohamed Yusof*[110] the High Court ruled that threat or inducement need not only be made by direct means. It is sufficient by an indirect approach, for example, from the mannerisms, speech or conduct of the person in authority. In this case, the interrogator had spoken in a rough voice and looked angry because his face was red. The statement was held to be involuntarily made. In *Selvadurai*[111] even a slight inducement was sufficient to render a statement inadmissible. Oppression was introduced through cases such as *Dato Mokhtar Hashim*[112] and *Han Kong Juan & 2 Ors.*[113] where the Federal Court and the High Court, respectively, referred to *Priestley*[114] with approval.

In *Dato Mokhtar Hashim*, the long hours and odd hours of interrogation stated in the police station diaries were suggestive of oppression. The Federal Court held that Rahmat Satiman's statement was therefore inadmissible. In *Kamde bin Raspani*[115] there were long hours of interrogation during a short period of time, namely, seventeen and a half hours. The accused was also questioned until early morning and there were two occasions of assault. The High Court held that the statement was inadmissible because, *inter alia*, the 'accused was put under tremendous physical and mental pressure in order to compel him to make the statements'.

Because every accused would like to jump on to the bandwagon of oppression, the High Court in *Chong Boo See*[116] had to caution that

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[109] See Dangerous Drugs Act 1952, s. 37A; Internal Security Act 1960, s. 75; Kidnapping Act 1961, s. 16.

[110] [1983] 2 MLJ 167.

[111] [1948-49] MLJ Supp. 43.

[112] [1983] 2 MLJ 232.

[113] [1983] 1 CLJ 245.

[114] (1965) 51 Cr. App. R. 1.

[115] [1985] 3 MLJ 289.

[116] [1988] 3 MLJ 292.

whether or not deprivation of food or drink from the time of the accused's arrest until he made the cautioned statement would have sapped his free will to resist or so undermined him physically or mentally as to cause his will power to crumble and thus to speak when otherwise he would remain silent, would depend upon subjective considerations such as his age, health, sex and personality. Here, the court considered the fact that the accused was a man of twenty-seven years, still in the prime of his life and in good health, of slightly above average intelligence and mental alertness, his station in life, and the fact that he answered questions precisely and fluently and decided that there was no oppression.

In *Mohd. Fuzi bin Wan Teh & Anor.*[117], the High Court held that it was oppressive to record a statement when the accused was still having handcuffs on. In *Chan Choon Keong*[118] the statement was not made voluntarily because the accused 'was put under tremendous physical and mental pressure in order to compel him to make a statement'.

The statutory caution which should be administered if the accused had been arrested, must not be defective. If it is, the statement cannot be admitted. In *Badrulsham bin Baharom*[119] the caution was translated into Bahasa Malaysia but the accused's non-obligation to answer any question was omitted. The caution was held to be a defective one and was improperly administered. In *Salleh bin Saad*[120] the statement was inadmissible because the caution had not been administered in full due to the absence of certain vital words and the addition of other words.

Mere reading of the caution was held to be inadequate and some explanation is required to enable the accused to understand or know the consequences of what is being read to him.[121]

Besides the CPC, many other penal statutes provide for the admissibility of police statements made by the accused persons. The conditions are almost similar to the ones mentioned in the CPC; if at all

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[117] [1989] 2 CLJ 652.

[118] [1989] 2 MLJ 427.

[119] [1988] 2 MLJ 585.

[120] [1983] 2 MLJ 164.

[121] *Mohd. Fuzi bin Wan Teh & Anor.* [1989] 2 CLJ 652.

there are differences, statements in those other statutes are a little more easily admitted because of a few provisions which grant some leeway.

(v) Prosecution

Section 20(3)(c) of the Police Act 1967 clearly empowers the police officer to conduct prosecutions. Section 377 of the CPC, however, generally confines prosecutions to police officers not below the rank of Inspector. Police prosecuting officers may prosecute in the High Court as well as in the lower courts.

Although the police may prosecute in seizable cases, it is a matter of practice for cases at the High Court to be prosecuted by a deputy public prosecutor. The police normally prosecute at the lower courts, with the higher ranking officers appearing in the sessions courts and the Inspectors or Chief Inspectors appearing in the magistrates courts. At times, deputy public prosecutors will prosecute in the sessions courts if the offence is grave or if the offender or the circumstances surrounding the case warrant it. Thus, in *Pawanteh & Ors.*[122] where the accused persons were a senior police officer and two customs officers charged with extortion and the prosecution was conducted by a relatively junior Police Inspector, Rigby J. expressed his dismay in the following manner:

> it was neither fair to the prosecuting Police Inspector, nor to the magistrate, nor, indeed, to the public that a case of this nature, length and complexity should have been left to be presented in this manner.[123]

In *Mat Radi*[124] the accused was charged with corruption and the prosecution was conducted by a Police Inspector and an Assistant Superintendent of Police. The magistrate had repeatedly expressed the view that a deputy public prosecutor should appear and conduct the pros-

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[122][1961] MLJ 214.

[123]*Id.* 218.

[124][1982] 1 MLJ 221.

ecution. When none appeared, he discharged the accused. The High Court held that the ground for the discharge was unacceptable in law and, in any case, section 377 of the CPC allows an Inspector to prosecute in seizable cases.

Although the police officer may prosecute cases in court, he is subject to the control and direction of the Public Prosecutor.[125] If the Public Prosecutor directs that the police prosecuting officer withdraws a charge before the court, the officer has to do so.[126] If the Public Prosecutor directs that the officer seeks an amendment to the charge, the officer has to apply to the court accordingly.

B. JUDICIAL REVIEW OF POLICE ADMINISTRATIVE POWER

The court which hears applications for administrative reviews is the High Court. Section 1 of the Schedule to the Courts of Judicature Act 1964 clearly provides for this. Appeals may subsequently be made to the Court of Appeal and thereafter to the Federal Court.[127] As indicated earlier, the Police Force Commission is responsible for the employment of members of the Force; however, the powers of the Commission have been delegated to certain officers. A number of cases serve to highlight judicial review of police administrative power.

The first is *Surinder Singh Kanda v The Government of the Federation of Malaya*.[128] The appellant was an Inspector of Police in the Royal Federation of Malaya Police. He was dismissed by the Commissioner of Police on the ground that he had been guilty of an offence of indiscipline. Inspector Kanda brought an action in the High Court challenging his dismissal. Rigby J. declared that his dismissal was void and of no effect. The government appealed and the Court of Appeal by a majority allowed the appeal holding that the Inspector

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[125] CPC, s. 377.

[126] CPC, s. 254.

[127] Sections 67 and 96, respectively, of the Courts of Judicature Act 1964.

[128] [1962] MLJ 169; [1962] AC 322.

was validly dismissed. He subsequently appealed to the Privy Council. The appeal raised two questions, namely, whether the Commissioner of Police had any power to dismiss the Inspector, and whether the proceedings which resulted in his dismissal were conducted in accordance with natural justice. The appellant had argued that the Police Service Commission had the power to dismiss him, not the Commissioner of Police, and that the dismissal was not conducted in accordance with the rules of natural justice.

Lord Denning, on behalf of the Board, examined Article 135(1) of the Federal Constitution which governed the first issue. That clause provided that no member of the police service should be dismissed or reduced in rank by any authority subordinate to that which, at the time of the dismissal or reduction, had power to appoint a member of that service of equal rank. Prior to Merdeka Day, the Commissioner of Police could appoint superior police officers, including Inspectors, and the Commissioner of Police could also dismiss those officers. The question was whether this law in the Police Ordinance 1952 continued to exist on 7 July 1958 when the appellant's dismissal took place.

The appellant argued that that law did not continue to exist; instead, it was replaced by the Constitution which had set up the Police Service Commission and which entrusted to them the power to appoint members of the police service. The Commissioner of Police was a power subordinate to the Commission. Articles 140(1) and 144(1) were referred to for support. The respondent, however, claimed that the words 'subject to' in both articles gave priority to existing law and preserved it intact, including the power of the Commissioner to appoint superior officers. The majority of judges at the Court of Appeal were apparently swayed by this argument; but the Board preferred the stand taken by Rigby J. at the High Court and the dissenting judge of the Court of Appeal. According to Lord Denning:

> It is true that under article 144(1) the functions of the Police Service Commission were 'subject to the provisions of any existing law': but this meant only such provisions as were consistent with the Police Service Commission carrying out the duty entrusted to it. If there was in any respect a conflict between the existing law and the Constitution (such as to impede the functioning of the Police Service Commission in accordance with the Constitution) then the existing

> law would have to be modified so as to accord with the Constitution.[129]

His Lordship subsequently referred to Article 162 which provided for the modification of laws passed prior to Merdeka Day to bring them into accord with the provisions of the Constitution. Clause (6) specifically allowed any court to do so. The Board then ruled that since Merdeka Day it was the Police Service Commission, and not the Commissioner of Police, which had the power to appoint members of the police service. The Commission, therefore, had the power to dismiss police officers and consequently, the dismissal by the Commissioner was void.

On the second issue that the appellant was not accorded the right to be heard, the Board ruled in his favour. Lord Denning said:

> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them... It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The court will not inquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The court will not go into the likelihood of prejudice. The risk is enough.[130]

In this case, the adjudicating officer of the disciplinary authority was furnished with a copy of the findings of the board of inquiry whilst the appellant was not so furnished. This amounted to a denial of natural justice as it was not correct to let the adjudicating officer hear the report of the board of inquiry unless the accused also had it so as to enable him to correct or contradict the statements in it to his prejudice. The Board declared that the dismissal of the appellant from the Federation of Malaya Police Force was void, inoperative and of no effect.

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[129] *Id.* 333.

[130] *Id.* 337.

In *Government of Malaysia v Iznan bin Osman*[131], the respondent, a police constable, had been convicted of the offence of permitting his car to be used as a public service vehicle without a licence and he was informed by the Chief Police Officer of the State of Perak that his dismissal was contemplated on the ground of that conviction. He was also informed that any representations he wished to make should be submitted and addressed to the Chief Police Officer within fourteen days. He duly submitted representations. The Chief Police Officer acknowledged receipt of the representations and wrote to say that he had decided to dismiss the respondent with effect from 19 April 1967. He informed the respondent that the latter might appeal to the Commissioner of Police within ten days. The respondent did appeal but the Inspector-General of Police decided not to interfere with the decision of the Chief Police Officer. The High Court held that the dismissal was null and void and this was confirmed by the Federal Court. The appellant appealed to the Privy Council.

The Privy Council dismissed the appeal on the ground that the provisions of the Commissioner's Standing Order and Schedule 1 of the Police Force Ordinance 1952, which authorised the dismissal of a constable by a Commanding Officer, was not in accord with the Federal Constitution prohibiting dismissal of a member of the Police Force by an authority subordinate to that which had the power to appoint him. Since the respondent was dismissed by the Commanding Officer, his dismissal was void. The effect of Article 140(1) and Article 144(1) of the Federal Constitution was again referred to and applied.

It was further held that the Commanding Officer had no power under the Police Force Ordinance to appoint a police constable and, therefore, the purported delegation by the Police Force Commission of its functions under Article 140(1) of the Federal Constitution was ineffective to delegate the power of appointment of a constable to the Chief Police Officer. The Chief Police Officer therefore had no power to appoint and could not dismiss the respondent.

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[131] [1977] 2 MLJ 1.

The same problem surrounding delegation of powers by the Police Force Commission was raised in *Zainal bin Hashim v Mohamed Hanif bin Omar & Anor.*[132] Here, the plaintiff who was a police constable was convicted of a charge under section 353 of the Penal Code. Disciplinary action was taken against him and he was eventually dismissed by the Chief Police Officer of the State of Selangor. The plaintiff claimed wrongful dismissal. The defendants contended that the Chief Police Officer had acted properly and within the confines of powers conferred by the Police Force Commission under the Instrument of Delegation of Powers and Duties. The High Court, however, looked at Article 135(1) of the Constitution and discovered that although the Chief Police Officer could dismiss the constable under the Instrument of Delegation, it was the Inspector-General of Police who could appoint the constable under the same. Citing *Iznan bin Osman*[133] as a case directly on point, the High Court held that the dismissal was void and of no effect.

Because of problems such as those in these two cases, Parliament introduced in 1976[134] the second proviso to Article 135(1) which took effect from 31 August 1957. The new proviso states that clause (1) shall not apply to a case where a member of any of the services mentioned in the clauses is dismissed or reduced in rank by an authority in pursuance of a power delegated to it by a Commission, and the proviso shall be deemed to have been an integral part of clause (1) as from Merdeka Day.

The appeal to the Federal Court by Zainal, whose dismissal occurred in 1971, was determined in 1977 after the Privy Council decision in *Iznan bin Osman*. The Federal Court allowed the government to rely on the new proviso because counsel for Zainal had been given three months' notice of the government's desire to do so, and because their Lordships thought it was right to hear the arguments on their merits. The Federal Court concluded that they had to apply the law as it stood at the hearing of the appeal.[135] The Privy Council in

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[132] [1975] 2 MLJ 262.

[133] [1977] 2 MLJ 1.

[134] *Vide* Act A354.

[135] L.A. Sheridan and H.E. Groves, *The Constitution of Malaysia* (3rd. ed.) (1979), Malayan Law Journal, 288.

Iznan bin Osman did not consider the amendment to clause (1) because of the very short notice given by the government of their desire to rely on new arguments, not because their arguments, if presented, could not be accepted.

In the *Inspector-General of Police & Anor. v Alan Noor bin Kamat*[136], the respondent had instituted a suit for wrongful dismissal claiming that the punishments inflicted on him were null and void because the proceedings were not conducted according to the rules of natural justice. He was appointed as a constable in 1969 and promoted to a Probationary Police Inspector in 1976. He received a letter from Police Headquarters in Kuala Lumpur alleging that he was guilty of three instances of irresponsible behaviour relating to his work as an investigating officer. The letter required him to give an explanation against the allegations.

The respondent wrote in a reply and after a lapse of more than a year, was informed that his explanation was not accepted and that as a punishment he was demoted to his former rank of constable, plus a total fine of three days' salary. He tendered his resignation which was yet to be accepted. The High Court gave judgment to the respondent and the appellant appealed to the Supreme Court.

The Supreme Court referred to the General Orders, Chapter D which were subsidiary legislation then applicable to public servants. Section 27 was similarly worded as Article 135(2) of the Federal Constitution providing that the right to be heard has to be accorded to the subject of any disciplinary proceedings. For proceedings in which no punishment of reduction in rank and/or dismissal is contemplated, the Disciplinary Authority had to proceed under section 29 of the General Orders. Otherwise, if the misconduct is serious as to merit dismissal or reduction in rank, as in this case, section 30 applied. That section provides, *inter alia*, that 'a statement in writing, prepared, if necessary, with the aid of the Legal Department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank' should be sent to the officer by the Disciplinary Authority. That Authority should also call upon him to state in writing within a

[136] [1988] 1 MLJ 260.

period of not less than fourteen days a representation containing grounds upon which he relies to exculpate himself.

On the issue of who was the Disciplinary Authority in this case, the Supreme Court agreed with the High Court that according to the Instrument of Delegation of Power by the Police Service Commission dated 18 February 1971,[137] the Inspector-General of Police (IGP) was the proper Disciplinary Authority, he being vested with the delegated power to take disciplinary proceedings against all senior police officers of the rank of Probationary Inspector up to and including Chief Inspector. In this case, however, it was the 'Penolong Pengarah Pengurusan (Tatatertib)' who signed the show cause letter on behalf of the Deputy Inspector-General of Police. The letter indicating the punishments might have been written on the instruction of the IGP, but this alone could not satisfy the requirement of the General Orders. 'The authority informing the punishment must be the same authority that instructs the proceeding leading to the punishment'.[138]

On the second issue of whether or not there had been sufficient compliance with section 30(2) of the General Orders, the Supreme Court held that there was none. There was nothing in the show cause letter to indicate the contemplated punishments which might have made the officer appreciate the gravity of the situation and therefore enable him to put up as convincing a representation as possible. The court emphasised that sections 29 and 30 were differently worded for a purpose and that is to indicate the gravity of the situation the officer faced. The omission on the part of the Disciplinary Authority here rendered the proceedings null and void. The appeal was dismissed.

In *Hngh Ah Leong v Inspector-General of Police & Ors.*[139], the plaintiff, a Police Inspector, was informed through a letter dated 27 March 1987 by the IGP pursuant to section 26 of the General Orders, Chapter D that disciplinary action was being taken against him with the view to his being dismissed from the service. He was asked to

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[137] P.U. (B) 548/75.

[138] *Id.* 261.

[139] [1995] 2 AMR 1993.

make written representations thereto within sixteen days from receipt of the said letter. He responded with a letter dated 16 May 1987 which was followed by a letter of dismissal from the Deputy IGP dated 5 September 1987. He contended that although both the IGP and his Deputy have the power to dismiss him, the entire process relating to the dismissal must in law be carried out by either of them and not both of them in parts. The High Court referred to the Supreme Court's decision in *Alan Noor bin Kamat*,[140] specifically where Salleh Abas LP said that the authority informing the punishment must be the same authority that instructs the proceeding leading to the punishment and held that the procedure taken in this case was 'improper'.

The plaintiff in *Syed Mahadzir bin Syed Abdullah v Ketua Polis Negara & Anor*.[141] was a Police Inspector who was compulsorily retired under the Pensions Ordinance 1951 after a medical board found him to be suffering from schizophrenia. The medical board had recommended that he either be boarded out on psychiatric grounds or that he be placed in any position not requiring the handling of firearms. The plaintiff applied for, *inter alia*, a declaration that his retirement as a Police Inspector by the defendants was of no effect and that he was still a member of the public service, and an order that the defendants pay him all arrears of pay, allowances and other emoluments due and owing to him from the date of the purported compulsory retirement.

The High Court allowed the plaintiffs application, *inter alia*, because the compulsory retirement was based on a report which was not only equivocal and ambiguous but also bereft of any element of finality as to whether the plaintiff should be boarded out from the Police Force. The defendants should not have acted on a report which was equivocal as the one in this case.

On the issue of natural justice, the High Court agreed with cases such as *Aziz bin Abdul Rahman v AG, Singapore*[142], *R v Kent Police Authority*[143] and *Ridge v Baldwin*[144] and held that the same principles

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[140] [1988] 1 MLJ 260.

[141] [1994] 3 MLJ 391.

[142] [1979] 2 MLJ 93.

[143] [1971] 2 QB 662.

[144] [1964] AC 40.

of natural justice applicable in those cases should also be applicable to cases of compulsory retirement on medical grounds, as enquiries leading to compulsory retirement are of a quasi-judicial character. Besides:

> the board is doing something of profound import, which affects a man's whole livelihood and future; his mental state is at issue ... his standing in a community and his ability to get other work and the like is also affected; his family has lost his financial support; indeed with such gloomy prospects, it is very close to the toll of the death knell over him. All such considerations make it imperative that the person concerned be entitled to challenge; to have a fair opportunity of correcting or contradicting the report or statements made and calling his own medical consultant to give his opinion to the deciding person. His own medical consultant should be entitled to have before him all the material which the board have.[145]

The defendants appealed to the Supreme Court but the appeal was dismissed on similar grounds as those given by the High Court.

In *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors.*[146], the plaintiff had appealed against a decision dismissing his claim for a declaration that his dismissal from the Police Force was null and void. According to the facts in this case, the first defendant had written to the plaintiff informing him of the Police Services Commission's intention to institute disciplinary proceedings against him. There were four charges in the letter to which the plaintiff was asked to respond within sixteen days. The response was given and certain documents which were requested were supplied to the plaintiff, after which he made a further response through a letter. No oral hearing was held. Subsequently, the first defendant informed the plaintiff of the Commission's decision to dismiss him with effect from the date of the letter. It states that the Commission had considered the plaintiff's explanations in his two

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[145] *Id.* 402.

[146] [1995] 1 MLJ 308.

letters, and other information when making its decision. The letter did not identify what the other information was.

The main submission on behalf of the plaintiff was that the deprivation of an oral hearing was an unfair procedure which resulted in the deprivation of the plaintiff's constitutional right to a reasonable opportunity to be heard. The alternative submission was that because the defendants had, when arriving at their decision to dismiss the plaintiff, taken into consideration material information which was never put to the plaintiff with an accompanying opportunity to comment upon it, the plaintiff was not given a reasonable opportunity of being heard.

Gopal Sri Ram JCA, giving the judgment of the Court of Appeal, held that there was no departure from procedural fairness by the defendants' failure to afford the plaintiff the oral hearing complained of. The charges were well drafted and contained full particulars, such that any reasonable person in the plaintiff's situation would be able to respond to the allegations made. There was therefore adequate opportunity to make representations, including the provision of documents requested by the plaintiff. The absence of an oral hearing did not occasion any prejudice to the plaintiff.

On the alternative submission, the defendants replied that the words 'other information' referred to in the dismissal letter were mere surplusage, or having no meaning. The Court of Appeal, however, could not accept this explanation. It opined that 'to imply that words uttered in such an important context, especially in a case that has to do with the deprivation of a man's livelihood and reputation, are mere surplusage is to exceed the limits of the judicial function'. Since the learned judge at the High Court had not considered this aspect of the case, the Court of Appeal held that there was a serious misdirection which had occasioned a miscarriage of justice. The decision of the High Court was set aside and an order for reinstatement was made.

In *Jaya Kummar a/l Ayadurai v Hj. Aman Shah b. Hj. Abdul Rashid & Anor.*[147], ten charges were brought against the applicant, a police constable, for disciplinary offences. At the end of an inquiry

[147] [1995] 3 AMR 2813.

conducted by the first respondent pursuant to the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970, eight of the charges were proved and the applicant was dismissed. Before the inquiry, the applicant had applied for copies of the complaint, the statements of witnesses, number of witnesses and their details, and related correspondence. There was no response to these applications. The applicant applied for an order of certiorari to quash the decision to dismiss him alleging that those documents applied for should have been given to him, and that the investigating officer should not have assisted the first respondent at the disciplinary inquiry.

The High Court referred to regulation 4(1) of the relevant statute which clearly provides that copies of documents connected with the disciplinary charge should be given to an applicant, except those documents on which privilege could be claimed in court. The court decided that when the applicant applied for the documents, it became mandatory and obligatory on the part of the first respondent to supply them unless privilege was claimed. The failure to do so struck at 'the very core of the principles of natural justice'. On the role of the investigating officer, although the first respondent had denied that the so-called investigating officer was indeed the investigating officer in this case and was merely assisting the first respondent in the inquiry, there was no denial on the part of the person himself. The order of certiorari was granted by the High Court.

The learned judge in this case did not mince his words when he expressed his views on having to allow the applicant to re-enter the Police Force when it was very clear that the applicant was not fit and worthy of membership. He commented as follows:

> The case is yet another example where certiorari is issued to quash the decision of the first respondent on a mere technicality. A scoundrel like the applicant is now free to re-enter public service as a police constable notwithstanding his conduct of irresponsibility. There is a gross miscarriage of justice in quashing the decision of the first respondent as this might inculcate the thinking that scoundrels like the applicant could easily misbehave and get away with it triumphantly. If this is the likely result of this decision, I hasten to add that the courts are there to right the wrong and adjudicate on matters brought before it solely on the available evidence and nothing else.

> An unscrupulous scoundrel, a mean rascal like the applicant too is entitled to leave the court with the feeling that he has been fairly treated. It is with a heavy heart that certiorari was issued in this case and it is hoped that the Attorney-General's Chambers who have access to all government departments in the country take the necessary steps to ensure that inquiries conducted by the police in the near future under the Regulations be conducted correctly within the confines of the law and that the officers who are responsible for drafting an affidavit-in-reply must be well versed with the law and the facts of each case so as to avoid the pitfalls as described in the early part of this judgment.[148]

In *Azman bin Abdullah v Ketua Polis Negara*[149], the appellant was demoted to the rank of Sergeant Major after disciplinary proceedings were held on 11 and 13 November 1991. There were eight charges made under the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970. The appellant filed an *ex parte* notice of motion for leave to issue an order of certiorari but it was not granted by the High Court. Before the Court of Appeal a number of grounds were raised, but two will be discussed here. The first is with regard to the appellant not being given an opportunity to be heard. Abdul Malek JCA, delivering the judgment of the Court of Appeal, found this argument 'flimsy' because it was not disputed that the appellant did attend the hearings of the disciplinary proceedings on 11 and 13 November 1991. His Lordship stressed that 'what is of vital importance is that the appellant should have a full opportunity of stating his case before the punishment is meted out'.[150] On the facts in this case, his Lordship felt it quite absurd to imagine that the appellant was not given any opportunity to cross-examine his opponent's witnesses or to state his case either orally or in writing, when the hearing actually took two days. The appeal on this ground failed.

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[148] *Id.* 2823-24.

[149] [1997] 1 MLJ 263.

[150] *Id.* 271.

The second ground of appeal was condonation. According to the facts, the appellant had applied to go on optional retirement on 1 December 1990 and the Royal Malaysia Police (RMP) had written to the Public Services Department (PSD) on the matter on 26 March 1991 furnishing all the documents and stating in no uncertain terms that it is confirmed that the appellant was free from any disciplinary action. Subsequently, on 4 October 1991, the PSD replied indicating that they had already approved the appellant's application on 29 August 1991. Following the disciplinary proceedings on 11 and 13 November 1991, the RMP wrote to the PSD on 30 November 1991 to inform them that disciplinary action had been taken against the appellant and that he had been reduced in rank from Sub-Inspector to Sergeant-Major.

The disciplinary infractions purportedly committed by the appellant dated from 30 October 1986 to 7 March 1990. Abdul Malek Ahmad JCA was of the view that the disciplinary action commenced when investigations were already initiated and this could have been before the RMP informed the person concerned of the charges he had to face. In this case, this took place through a letter dated 10 October 1991. When the PSD was informed that the appellant was free of any disciplinary action, investigations had already commenced. Hence, the RMP was aware of the infractions of the appellant which would require disciplinary action being taken. His Lordship concluded that the delay in taking action in these circumstances and based on the authorities must be an act of condonation. The appeal on this ground was allowed. The court ordered that the appellant be reinstated to the rank of Sub-Inspector from the date of the reduction of his rank to Sergeant-Major by the disciplinary authority up to the date of his previously approved optional retirement on 1 December 1991.

In *Ekambaram a/l Savarimuthu v Ketua Polis Daerah Melaka Tengah & Ors.*[151], the applicant had applied for certiorari to quash the decision of the disciplinary authority which had ordered his dismissal. The High Court dealt with three issues. The first relates to the question of whether the disciplinary authority should have informed the

[151] [1997] 2 MLJ 454.

applicant of the possibility of his dismissal from the Police Force as a result of his purported disciplinary offence. Suriyadi J. noted the two different legislation governing the discipline of police officers, one for the higher ranked officers and one for the lower ranked. Consequently, there is a difference in the way dismissal proceedings for the two levels of officers are to be conducted. For the higher ranked officers, the 1993 Regulations require the officers to be informed of the possibility of dismissal. For the lower ranked officers, the 1970 Regulations is silent on this; however, the Inspector General Standing Orders do provide that provisions in the 1993 Regulations which are not provided in the 1970 Regulations, should be applicable to Junior Police Officers and Constables.

Failure of the disciplinary authority to inform the applicant of his possible dismissal tantamounts to the authority being in breach of the rules of natural justice. As it turned out, because of the failure to inform, the applicant had pleaded guilty to the charge made against him, and he had probably not viewed the whole matter as seriously than if he were informed.

The second ground for the application was in relation to consideration of previous records of the applicant before he was accorded the opportunity to explain or reply to those records. Suriyadi J. referred to many local authorities on this point, including *Shamsiah bte. Ahmad Sham v Public Service Commission, Malaysia & Anor*[152] and *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman*[153], and concluded that a grave injustice had been done to the applicant.

The learned judge then moved on to the punishment imposed by the disciplinary authority. After scrutinising the long list of punishments which the authority could impose and the 66 offences under the Schedule provided by the 1970 Regulations, which included serious offences such as showing cowardice in the execution of one's duty, and discharging a firearm without authority or reasonable cause, his Lordship felt that dismissal for not applying for permission to purchase a car was excessive. The applicant's offence was a 'pin-prick'

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[152] [1999] 3 MLJ 364.

[153] [1995] 1 CLJ 619.

and did not merit a dismissal. The sentence was therefore irrational and disproportionate to the offence. The application in this case was granted.

IV. INTERNAL CHECKS

Bayley[154] identified five explicit features of internal control which are particularly important and they are the extent of disciplinary power possessed by the organisation, the closeness of supervision, the nature of the disciplinary process, the vitality of collegial responsibility, and socialisation in rectitude. The position in Malaysia is examined.

Although the Police Force Commission has the overall jurisdiction for the appointment, confirmation, promotion, transfer and disciplinary control over the members of the Force, these powers have been delegated to the Force by Article 140, clause (6), paragraph (b) and Article 144, clause (6) of the Federal Constitution.[155] The *Instrument of Delegation of Certain Functions, Powers, Duties and Responsibilities*, which took effect from 1 January 1986, provides for the following:

(a) 'Jawatankuasa Pemangkuan' which consists of the Minister of Home Affairs as Chairman, the Inspector-General of Police and the Secretary-General of the Ministry of Home Affairs;
(b) The Appointment and Promotion Committee which consists of the Inspector-General as chairman, and two other members of the Police Force Commission; and
(c) Delegated Officers or Board of Officers.

The 'Jawatankuasa Pemangkuan', the Appointment and Promotion Committee, the officers delegated powers by the Instrument and the Board of Officers have powers, duties and responsibilities as mentioned in Part I of the Schedule to the Instrument. Part I of the Schedule is reproduced below.

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[154] David H. Bayley, *Patterns of Policing : A Comparative International Analysis*, New Brunswick: Rutgers Univ. Press (1985), 171.

[155] P.U. (B) 621/85.

Federal Constitution
The Police Force Commission
Instrument of Delegation of Certain Functions, Powers, Duties and Responsibilities
Schedule
Part I
Delegated Chairman, Committee or Officers And Their Respective Jurisdictions

Item	Members of the Force	Delegated Chairman/ Committee/Officer	Functions, powers, duties and responsibilities delegated
1.	**Constables:** All Constables	Every Senior Police Officer of the rank of Assistant Commissioner or above	(a) Appointment, confirmation and emplacement on the permanent and pensionable establishment or above and appointment to act in and promotion to the rank of Corporal. (b) The exercise of all powers in respect of all disciplinary matters, including the power to interdict or suspend and the power to impose the punishment of dismissal or reduction in rank.

2.	All Constables	Every Senior Police Officer of the rank of Probationary Inspector up to and including Superintendent	The exercise of all powers in respect of all disciplinary matters, except the power to interdict or suspend and the power to impose the punishment of dismissal, reduction in rank, reduction of salary or deferment of increment.
3.	All Constables	Every Junior Police Officer of the rank of Sergeant up to and including Sub-Inspector	The exercise of the disciplinary powers to impose the punishment of extra guard duty, fatigue duty or extra drill for a total period not exceeding five days.
4.	**Junior Officers:** All Junior Police Officers	Every Senior Police Officer of the rank of Assistant Commissioner or above	(a) Appointment, confirmation and emplacement on the permanent and pensionable establishment and appointment to act in and promotion to a higher rank up to and including Sub-Inspector. (b) The exercise of all powers in respect of all disciplinary matters, including the power to interdict or suspend and the power to impose the punishment of dismissal or reduction in rank.
5.	All Junior Police Officers	Every Senior Police Officer of the rank of Assistant Superintendent up to and including Superintendent	The exercise of all powers in respect of all disciplinary matters, except the power to interdict or suspend and the power to impose the punishment of dismissal, reduction in rank, reduction of salary or deferment of increment.

6.	All Junior Police Officers	Every Senior Police Officer of the rank of Inspector up to and including Chief Inspector	The exercise of all powers in respect of all disciplinary matters, except the power to interdict or suspend and the power to impose the punishment of dismissal, reduction in rank, reduction of salary or deferment of increment.
7.	**Senior Officers:** All Senior Police Officers of the rank of Probationary Inspector up to and including Deputy Superintendent	Appointment and Promotion Committee	Appointment to the rank of Probationary Inspector and Probationary Assistant Superintendent and promotion to the rank of Deputy Superintendent.
8.	All Senior Police Officers of the rank of Probationary Inspector up to and including Chief Inspector	Inspector-General	(a) Confirmation and emplacement on the permanent and pensionable establishment and appointment to act in the rank of Assistant Superintendent. (b) The exercise of all powers in respect of all disciplinary matters, including the power to interdict or suspend and the power to impose the punishment of dismissal or reduction in rank.

9.	All Senior Police Officers of the rank of Probationary Inspector up to and including Chief Inspector	Deputy Inspector-General	The exercise of all powers in respect of all disciplinary matters, except the power to interdict or suspend and the power to impose the punishment of dismissal, reduction in rank, reduction of salary or deferment of increment.
10.	All Senior Police Officers of the rank of Probationary Inspector up to and including Chief Inspector	Every Senior Police Officer of the rank of Assistant Commissioner up to and including Commissioner	The exercise of all powers in respect of all disciplinary matters, except the power to interdict or suspend and the power to impose the punishment of dismissal, reduction in rank, reduction of salary or deferment of increment.
11.	All Assistant Superintendents	Inspector-General	(a) Confirmation and emplacement on the permanent and pensionable establishment and appointment to act in the rank of Deputy Superintendent. (b) The exercise of all powers, including the power to interdict or suspend, in respect of all disciplinary matters, except the power to impose the punishment of dismissal, reduction in rank, reduction of salary or deferment of increment.

12.	All Assistant Superintendents	Deputy Inspector-General	The exercise of all powers in respect of all disciplinary matters, except the power to interdict or suspend and the power to impose the punishment of dismissal, reduction in rank, reduction of salary or deferment of increment.
13.	All Deputy Superintendents	Inspector-General	(a) Appointment to act in the rank of Superintendent. (b) The exercise of all powers, including the powers to interdict or suspend, in respect of all disciplinary matters, except the power to impose the punishment of dismissal, reduction in rank, reduction of salary or deferment of increment.
14.	All Deputy Superintendents	Deputy Inspector-General	The exercise of all powers in respect of all disciplinary matters, except the power to interdict or suspend and the power to impose the punishment of dismissal, reduction in rank, reduction of salary or deferment of increment.
15.	All Superintendents	Inspector-General	The exercise of all powers including the power to interdict or suspend, in respect of all matters, except the power to impose the punishment of dismissal, reduction in rank, reduction of salary or deferment of increment.

16.	All Superintendents	Deputy Inspector-General	The exercise of all powers in respect of all disciplinary matters, except the power to interdict or suspend and the power to impose the punishment of dismissal, reduction in rank, reduction of salary or deferment of increment.
17.	All Senior Police Officers of the rank of Assistant Commissioner up to and including Commissioner	Inspector-General	The exercise of all powers including the power to interdict or suspend, in respect of all disciplinary matters, except the power to impose the punishment of dismissal, reduction in rank, reduction of salary or deferment of increment.
18.	All Senior Police Officers of the rank of Assistant Commissioner up to and including Commissioner	Deputy Inspector-General	The exercise of all powers in respect of all disciplinary matters, except the power to interdict or suspend and the power to impose the punishment of dismissal, reduction in rank, reduction of salary or deferment of increment.
19.	All Senior Police Officers of the rank of Superintendent up to and including Commissioner	'Jawatankuasa Pemangkuan'	Appointment to act in the rank of Assistant Commissioner or above for a period not exceeding two years.

Part II, III and IV of the Schedule provide for incidental powers to the relevant officers or Board of Officers.

The Royal Malaysia Police Headquarters has a special division to oversee disciplinary matters in the Force. It is called the Disciplinary Division. It processes all complaints channelled to the Police Headquarters at Bukit Aman. The complaints may source from the Attorney-General's Chambers, the Anti-Corruption Agency, the various Cabinet ministers, the media, or through direct communications by telephone, letters or in person. The Public Complaints Bureau also forwards complaints made by members of the public regarding the police.

The complaints may be on corruption, use of violence, abuse of powers, misbehaviour or inefficiency. Abuse of powers refer to, *inter alia*, the use of one's position for personal advantage. Misbehaviour or misconduct includes having a liaison with another person's spouse, marrying for the second time without permission, and buying vehicles without permission. Inefficiency relates to the discharge of the officer's duties or responsibilities, particularly where there is negligence or lack of care. The table below indicates the types of complaints received for the years 1985 until 1998. From 1985 to 1994, a span of ten years, corruption appeared to dominate the complaints. From 1995 to 1998, complaints of abuse of powers have increased significantly. Complaints on misbehaviour have been consistently high in number.

The Division will investigate the allegations and if there is evidence that a criminal offence has been committed, the case will be referred to the Attorney-General's Chambers for the next course of action. The Attorney-General's Chambers may decide that further investigations are necessary and will order to that effect or decide that a charge for a criminal offence be made out against the alleged offender. In the event of insufficient evidence, the decision may well be not to proceed to charge the individual concerned. Departmental or internal action will then be taken for a disciplinary infraction.

Below are some data on disciplinary offences and punishments therefor for the fourteen-year period of 1985 to 1998. The total figures in Table 2 do not reflect the number of offenders, however, for a particular offender might have committed more than one offence. Table 3 shows the punishments meted out for disciplinary offences. The figures here do not tally with those in Table 2 as for a particular

offence, the police officer might have been imposed more than one punishment. Others might have had their charges withdrawn subsequently. Table 4 indicates the rank of police officers who had been punished for disciplinary offences, whilst Table 5 indicates the officers who had been charged. Three offences were committed by a Deputy Commissioner of Police in 1992. The offences were one count of being irresponsible and two counts of abuse of power. He was demoted. Four Senior Assistant Commissioners were disciplined over the fourteen-year period. Over the same period, 16 Assistant Commissioners were disciplined (Table 5). Clearly, very senior officers in the Force have been brought to the book in the past. As can be expected, the lower ranks of officers indicated a large incidence of infraction as did the rank of Inspector of Police. This phenomenon may be reflective by the larger numbers of officers in those ranks compared to the more senior ranks or the lower ranks of Sub-Inspector or Sergeant-Major. Then, again, the more senior officers are generally those who have performed well in the Force and have attained promotions to be where they are. They should be the unlikely discipline-breakers.

The Public Officers (Conduct and Discipline) Regulations 1993[156] apply to officers of the Police Force and any breach of its provisions will render the officer liable to disciplinary action. The officers refer only to senior police officers as defined in the Police Act, namely, a police officer of any rank from and including the Inspector General down to and including an Inspector on probation. The Regulations cover a broad spectrum of matters including a code of conduct, dressing, entertainment, receiving or organising presents, ownership of property, living beyond one's means, serious pecuniary indebtedness, making public statements, publication of books or articles, and participation in politics. Every officer is given the duty to exercise disciplinary control and supervision over his subordinates and to take appropriate action in every breach against the Regulations. If he does not, then he is negligent in the performance of his duties and this will render him liable to disciplinary action. The procedure for a disciplinary action is laid out in detail in Part IV of the Regulations.

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[156] P.U. (A) 395.

Table 1
Types of Complaints Received By The Disciplinary Division, Police Headquarters For The Years 1985 Until 1998

NO	TYPES OF COMPLAINTS	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
1.	Use of Violence	52	88	80	80	65	42	34	17	63	25	23	36	41	38
2.	Corruption	186	235	260	288	350	320	281	202	194	194	166	142	165	120
3.	Abuse of Powers	100	195	236	215	213	166	192	180	142	125	349	288	250	302
4.	Misbehaviour	194	137	158	244	398	344	351	378	419	338	161	168	225	254
5.	Inefficiency	120	108	114	171	196	213	233	214	353	194	112	66	160	226
	TOTAL	**652**	**763**	**848**	**998**	**1222**	**1085**	**1091**	**991**	**1171**	**876**	**811**	**700**	**841**	**940**

Table 2
Disciplinary Offences For The Years 1985 To 1998

YEAR / OFFENCES	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Disobedience	838	879	1267	1499	985	696	955	879	774	814	833	950	891	833
Negligence in Performance of Duty	2346	1778	3645	2177	1497	849	1085	976	689	637	623	714	550	527
Being irresponsible	430	397	862	551	351	243	355	355	307	428	428	300	287	277
Bringing Force Into Disrepute	410	472	608	425	279	238	257	218	225	323	387	265	268	247
Dishonesty	137	122	168	172	101	135	121	75	130	217	136	128	103	138
Impertinence	086	66	126	61	29	25	18	38	17	23	20	20	14	27
Use of Force	18	18	30	20	10	11	25	5	10	10	16	11	12	12
Abuse of Power	12	7	12	23	14	17	22	45	33	19	28	39	19	30
Inefficiency	25	11	34	37	64	46	39	46	42	39	28	29	20	20
Court Conviction	96	52	83	74	49	77	48	5	43	109	46	58	73	61
Negligence*	0	0	0	0	0	0	0	0	0	0	10	14	4	6
TOTAL	**4398**	**3802**	**6835**	**5039**	**3379**	**2337**	**2920**	**2642**	**2270**	**2619**	**2555**	**2528**	**2241**	**2178**

Source: Royal Malaysia Police Headquarters.

* This category was included from 1995 onwards.

Table 3
Punishments For Disciplinary Offences - 1985 To 1998

YEAR / PUNISHMENT	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Dismissal	129	78	134	182	160	179	158	172	179	221	153	304	273	229
Reduction in Rank	2	3	4	9	5	5	3	16	3	10	6	10	12	22
Reduction in Salary	1	0	1	0	1	2	2	6	19	19	17	3	4	3
Postponement in Salary Increase	13	7	24	44	26	24	32	36	21	23	18	34	51	52
Cesser of Salary Increase	19	28	24	13	5	32	18	14	19	10	8	10	21	7
Forfeiture of Salary	0	0	0	0	0	2	1	5	13	5	23	3	5	4
Fine	1255	1048	545	925	529	309	392	411	276	399	293	251	237	260
Stiff Reprimand	840	646	809	502	472	339	1133	587	340	347	354	348	344	366
Reprimand	1257	1101	1188	1311	935	690	448	856	802	824	902	837	742	698
Warning	90	65	112	346	41	58	49	79	69	307	203	133	79	97
Extra Guard Duty*	160	175	279	387	232	187	272	180	174	188	176	270	196	178
Exhausting Duty*	133	154	194	237	237	121	198	216	73	149	161	144	120	122
Extra Drill	467	480	873	1057	698	290	252	316	199	151	171	116	124	118
Admonition	19	12	18	27	28	35	20	22	36	24	35	34	13	9
Discharge	16	5	4	0	0	2	1	21	23	16	35	32	20	13
TOTAL	**4398**	**3802**	**4289**	**5040**	**3369**	**2275**	**2979**	**2937**	**2246**	**2693**	**2555**	**2529**	**2241**	**2178**

* Punishments confined to Junior Police Officers and Constables.

Table 4

The Rank of Police Officers Involved in Disciplinary Offences For The Years 1985 To 1998

YEAR / RANK	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Dpty. Commr. of Police (DC)	0	0	0	0	0	0	0	3	0	0	0	0	0	0
Senior Asst. Commr. of Police (SAC)	0	0	0	0	0	0	2	0	0	3	0	0	0	0
Asst. Commr. of Police (ACP)	1	0	1	2	0	0	6	0	1	9	7	1	1	1
Superintendent of Police (SUPT)	4	1	3	5	8	1	13	15	10	10	4	6	1	4
Dpty. Supt. of Police (DSP)	6	1	8	5	5	10	10	21	15	26	12	21	8	9
Asst. Supt. of Police (ASP)	22	11	20	34	41	40	11	62	28	73	47	55	49	29
Chief Insp. of Police (CI)	2	2	3	5	9	7	14	31	59	161	166	103	52	56
Inspector of Police	81	51	81	204	201	175	145	215	237	302	106	54	27	71
Probationary Inspector	57	22	52	23	9	8	15	17	12	19	22	14	8	19
Sub-Inspector	3	1	1	3	2	4	2	2	0	8	5	7	2	6
Sgt. - Major	5	5	7	2	5	7	4	9	9	12	28	7	11	20
Sergeant	28	37	74	72	71	49	74	68	53	80	126	136	119	131
Corporal	120	169	138	296	171	144	239	178	176	197	224	242	207	288
Lance Corporal	0	0	0	0	0	111	207	213	145	430	1054	1431	1135	1095
Constable	3751	3233	5915	4090	2750	1676	2062	1618	1391	1124	601	391	255	210
Extra Constable	318	269	532	298	107	105	116	190	134	169	5598	2239	36330	2221
TOTAL	**4398**	**3802**	**6835**	**5039**	**3379**	**2337**	**2920**	**2642**	**2270**	**2619**	**2555**	**2529**	**2241**	**2178**

Table 5
The Rank Of Officers Who Have Been Disciplined For The Years 1985 To 1998

YEAR / RANK	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Dpty. Commr. of Police (DC)	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Senior Asst. Commr. of Police (SAC)	0	0	1	0	0	0	2	0	0	1	0	0	0	0
Asst. Commr. of Police (ACP)	1	0	1	2	0	0	3	0	1	2	3	1	1	1
Superintendent of Police (SUPT)	2	1	2	5	4	1	63	65	40	20	3	5	1	3
Dpty. Supt. of Police (DSP)	3	1	9	5	2	40	60	81	95	10	6	11	5	7
Asst. Supt. of Police (ASP)	16	7	21	24	21	21	9	24	20	39	24	51	25	18
Chief Insp. of Police (CI)	1	3	4	3	4	5	11	9	7	10	68	85	38	34
Inspector of Police	57	36	68	129	144	99	91	108	123	117	59	55	21	44
Probationary Inspector	31	14	15	19	6	5	11	9	7	10	11	0	6	14
Sub-Inspector	0	1	1	2	2	2	2	2	0	4	3	4	2	6
Sgt. - Major	3	5	5	2	5	2	3	3	5	7	13	4	11	16
Sergeant	25	31	50	53	57	41	57	50	34	51	83	86	87	93
Corporal	100	156	166	255	156	92	209	125	121	136	149	165	163	219
Lance Corporal	0	0	0	0	0	108	168	152	106	318	781	1047	880	816
Constable	3001	2572	3008	3569	2374	1144	1722	1340	992	756	398	276	212	176
Extra Constable	266	228	148	225	88	74	92	124	100	122	5547	2227	36234	17168
TOTAL	3506	3055	3499	4293	2863	1598	2388	1974	1556	1647	1703	1839	1722	1632

When a police officer is charged with an offence in a criminal court, he has to forthwith inform his Head of Department. The court Registrar or Senior Assistant Registrar has to forward to the Head of Department under whom the officer is serving the following information, namely, at the commencement of the proceedings, a report of the charge or charges against the officer; if the officer was arrested, the date and time of his arrest; whether or not the officer is on bail; such other information as is relevant; and at the end of the proceedings, the decision of the court and any information relating to appeals, if any, filed by either party.

On receipt of the report, the Head has to forward it to the Disciplinary Authority together with his recommendation as to whether the officer should be interdicted from duty. An officer who is interdicted will receive not less than one half of his emoluments as the Disciplinary Authority decides, unless and until he is suspended or dismissed.

If a conviction is entered by a criminal court, the Disciplinary Authority (DA) will suspend the officer from exercising his duties with effect from the date of his conviction, pending the decision of the DA. When the officer succeeds in his appeal against conviction, he will resume duties and be paid all emoluments which had not be paid during his interdiction and supervision. When the conviction remains even after an appeal, the Head of Department will inform the DA and will recommend whether the officer should be dismissed or reduced in rank; be imposed with any punishment other than the punishment of dismissal or reduction in rank; have his service terminated in the public interest; or not be imposed with any punishment, depending on the seriousness and nature of the offence. The officer who is acquitted by a court on a criminal charge cannot be subject to disciplinary action on the same charge.

For members of the Force other than senior police officers, the relevant statute governing discipline is the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970.[157] The disciplinary offences are listed in its Schedule and the punish-

[157]P.U. (A)86/70. The Police Act 1967 defines a 'junior police officer' as a police officer of any rank from and including a Sub-Inspector down to and including a Corporal.

ments available are dismissal, reduction in rank, deferment of increment, stoppage of increment, a fine not exceeding one month's salary, severe reprimand, reprimand, extra guard duty for a time not exceeding four hours a day for a period not exceeding five days, fatigue duty for a time not exceeding four hours a day with ten minutes rest after each hour of fatigue duty for a period not exceeding five days, and extra drill for a time not exceeding two hours a day with ten minutes rest after each hour of the extra drill for a period not exceeding five days.

The Force had in 1979 introduced the 'Sistem Kawalan Disiplin/ Dadah (SKDD)' or Disciplinary/Drugs Control System in the field of command and control at all levels. The system provides for the control of five or six constables by a Corporal; five or six corporals by a Sergeant; five or six Sergeants by an Inspector; five or six Inspectors by an Assistant Superintendent; five or six Assistant Superintendents by a Deputy Superintendent; five or six Deputy Superintendents by a Superintendent, and so on, depending upon the strength and availability of officers in the various ranks. There is no hard and fast rule regarding the number of personnel in each section headed by a commander of various ranks from Corporal upwards. The ideal number would be five. Where there is no available Corporal, Sergeant, Inspector or Superintendent in a group of five or six men, the most senior person among them should be nominated to be in charge of the section.

This system aims to provide effective control of the men at all levels. It permits the commanding officer or chief police officer to be posted with the various activities and duties to ensure efficiency without undue delay in achieving the desired results, and an effective in-service training from the highest rank downwards. It enables the commanding officer to be in complete control of every situation in the formation, and ensure that his men are alert in their work to attain a high standard of efficiency.

The commanders meet their men once a week for training in law, police methods in preventing and combating crime, directions pertaining to welfare and other related matters. The commanders are answerable to their next senior commander for the conduct and work of their men and will make it their responsibility to note the good work of their men and to give rewards for them in the form of letters of apprecia-

tion. If any of their men were to fail in carrying out their duties, appropriate action must be taken.

Incentives are provided in various forms. Various competitions in the Force all seek to encourage greater discipline, honesty and efficiency in the Force. There are competitions for the most disciplined officer and the most disciplined civilian worker, the best prosecuting officer, the best investigating officer, and the exemplary police station. Criteria are usually drawn up for purposes of evaluation and sometimes interviews are conducted before the final selection. Letters of commendation are usually given out to worthy members of the Force. Financial rewards for "extra or special services" rendered by police officers are made out from the Police Fund.[158] The statutory maximum is five hundred ringgit.[159] Members may be promoted or have their salaries increased as an incentive. The Force may also recommend its officers or members for State or Federal awards in recognition of their consistently good work.

Effective training cannot be underestimated in its role towards police efficiency and discipline. The police training programmes must not only be directed towards teaching the policeman the technical skills of his job, but also to equip him to exercise the authority which the law gives him in a professional manner, to enable him to move in a complex and inter-personal environment with the confidence which only the knowledge and ability can bring about. The police officer must therefore be educated, well-trained and be taught to exercise his powers with tact and discretion.

The United States President's Commission on Law Enforcement and the Administration of Justice had recommended that all training programmes should provide instruction on subjects that prepare recruits to exercise discretion properly, and to understand the community, the role of the police and what the criminal justice system can and cannot do. Professional educators and civilian experts should be used to teach specialised courses such as law and psychology.[160]

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[158] Police Act 1967, s. 82(2)(a).

[159] Police Fund Rule 1975, P.U. (A)142/75.

[160] *Task Force Report: The Police*, U.S. Govt. Printing Office, Washington (1967).

The Royal Malaysia Police has fifteen training centres spread all over the country, with individual areas of specialisation. Besides training in the basic operational procedures, these centres run in-service courses and refresher courses from time to time. Public relations, psychology, personnel management, and office management are some of the strictly non-police areas which are covered by some of the courses to enhance professionalism, understanding, and efficiency in police work.[161]

V. COMMUNITY CHECKS

There is no independent entity, as such, established specifically for the purpose of receiving, investigating, and resolving the citizens' complaints against the police. As indicated earlier, complaints may be lodged directly to the Police Headquarters at Bukit Aman or the respective state contingent headquarters, and they may be lodged through the various citizens' representatives or the Public Complaints Bureau.

The Public Complaints Bureau, set up in 1971, receives complaints against the civil service and subsequently channels those outside its jurisdiction to other regulatory bodies. If it receives complaints against the police, it will divert them to the Police Headquarters at Bukit Aman. The Bureau does not investigate those complaints or attempt to solve them. According to a report of complaints received in the first half of 1995, there were altogether 1,068 complaints, with the Home Ministry as targets in 328 of them. Of the main total, the police featured most often with 162 complaints.[162]

The mass media is an important mechanism of control or check over the police. Journalism has increasingly been aggressive and investigative and the media's relentless pursuit against abuses and blatant omissions have resulted in regular reports of police abuses of powers and misbehaviour. In most cases, the culprits have either been disciplined or charged in court for criminal offences.

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[161] See Cawangan Latihan, Polis DiRaja Malaysia, Bukit Aman, *Kursus-kursus di Institusi Latihan Polis - Program 1995*.

[162] The other complaints being against the National Registration Department (89 complaints), the Road Transport Department (73 complaints), and the Immigration Department (71 complaints) : *New Straits Times*, 1 September 1995.

The year 1995 and the first half of 1996 have been particularly bad for the Force but they are unparalleled to the big scandal of the former Deputy Prime Minister's assault in police custody. Its image and self-esteem took severe bashing. In August 1995, there were reports of police officers badly manhandling and assaulting two foreign journalists who were attending a conference in Kuala Lumpur.[163] The police apologised. At about the same time, there were calls by some non-governmental organisations for an inquiry into deaths at detention camps allegedly caused by ill-treatment and corruption at the camps. These camps are being administered and run by the Police Field Force.[164] The subsequent police investigation over the allegations hogged the limelight for a couple of months. In October 1995, the Attorney-General, who is also the Public Prosecutor, ordered an inquiry into the death of a mechanic whilst in police custody,[165] and the ensuing inquiry conducted in November was given prominence in the media. The verdict of the magistrate delivered on 29 November 1995 led to the subsequent charging in court of two police officers for the offence of causing hurt to extort a confession.[166] Not satisfied with the 18 months' imprisonment sentence imposed on each of the offenders, counsel for the deceased's family sought a revision of the sentences by the High Court. On 16 May 1996, the sentences were enhanced to 36 months' imprisonment.[167]

In September and October 1995, a national English language newspaper ran a survey about the Police Force and the findings were published on 16 October 1995.[168] The not very encouraging results of the survey might have been due to the restricted readership of a newspaper which is popular only amongst English language readers in urban areas. Besides, only 4,188 people responded.

In response to what the Force considered 'a bad dent' in its image, calls have been made by the then Inspector-General, his Deputy and

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[163] *New Straits Times*, 26 August 1995; *SUNDAY STAR*, 27 August 1995; *New Sunday Times*, 27 August 1995.

[164] *New Straits Times*, 26 August 1995.

[165] *New Straits Times*, 11 October 1995; *The STAR*, 11 October 1995.

[166] *New Straits Times*, 23 January 1996.

[167] *Muhari bin Mohd. Jani & Anor* [1996] 3 MLJ 116.

[168] *The STAR.*

the State Chief Police Officers for members of the Force to work harder at improving the quality of their performance and work and to avoid common infractions and misbehaviour, including corruption. In the drive against corruption, much publicity was given to the number of motorists and the general public charged in court for attempts to bribe or for bribing policemen. It was reported that over a three-month period, more than a hundred and twenty motorists had been 'detained' for attempting to bribe policemen.[169]

Members of the public who are aggrieved with police treatment or inaction are now resorting to civil litigation. A lawyer, for example, has filed a suit against the Inspector-General of Police for the alleged failure of the police to investigate reports made by him.[170] A property sales adviser sued the government, the Kuala Lumpur Chief Police Officer and the Inspector-General of Police because the police had handcuffed her in public when she was arrested for two traffic offences on 2 March 1992, and again when she was taken to the magistrate's court the following day for the charges to be read against her. The government admitted liability and agreed to pay damages.[171]

Public opinion on certain actions of or omissions by the police voiced through the media have received positive response. Letters airing grievances and injustices have been published and interviews are shown on national television. In 1994, there were arrests of footballers suspected of committing bribery and a private television station aired video clips of those footballers led in handcuffs to magistrates' courts for orders of detention for purposes of investigations. The ensuing public outcry against handcuffing suspects, such as these footballers, purportedly non-violent and co-operative, led to other footballers being produced in court without handcuffs.

The Dewan Rakyat or House of Representatives is one venue where grouses and grievances against police inefficiency and abuses of power may be highlighted by Members of Parliament. Opposition members have not in the past hesitated to raise issues for the Home Minister to

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[169] *New Straits Times*, 30 March 1996.

[170] *New Straits Times*, 7 June 1996.

[171] *New Straits Times*, 6 April 1996.

reply, elucidate or clarify and there is no reason why they will not continue to do so.

Events in the fourth quarter of 1998 and early 1999 led the Opposition Members of Parliament and the general public to call for the establishment of a Royal Commission to investigate the culprit who had caused injuries to the former Deputy Prime Minister.

On 3 February 1999, the YDPA set up a Commission,[172] appointing Commissioners and authorising them to enquire into the injuries of the former Deputy Prime Minister inflicted upon him while in the custody of the police. The YDPA acted under subsection 2(1) and subsection 3(1) of the Commissions of Enquiry Act 1950.[173] The Commissioners' terms of reference were:

1. to enquire into the injuries inflicted upon Dato' Seri Anwar Ibrahim while in the custody of the police and to determine the cause and those responsible or who had aided or abetted the cause of such injuries;
2. to recommend to the YDPA the appropriate action to be taken against the officer or officers who had caused or abetted the cause of such injuries; and
3. the enquiry undertaken by the Commission shall not enquire into the whole operations of the Royal Malaysia Police.

The YDPA also appointed the former Attorney-General/Public Prosecutor as the Conducting Officer under paragraph 3(1)(d) of the Act.[174]

During the proceedings of the Commission of Enquiry, the culprit who had caused those injuries was discovered and, consequently, the Commission recommended that he be charged under section 325 of the Penal Code read with section 511 of the same.[175] Use of the Commission of Enquiry Act 1950 was certainly effective in detecting a

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[172] P.U. (B) 83/99.

[173] Act 119.

[174] P.U. (B) 84/99.

[175] Suruhanjaya Di Raja Untuk Menyiasat Kecederaan Dato' Seri Anwar Ibrahim Semasa Dalam Tahahan Polis, 6 April 1999, p. 75.

culprit in circumstances as complicated as in this case. Pursuant to the Commission's findings, the former Inspector-General of Police was charged in the sessions court for an offence under section 325 of the Penal Code read with section 511 of the same Code.

CONCLUSION

As indicated above, there are several modes of checking and controlling the police and, in turn, encouraging accountability on their part. Judicial checks are perhaps the most important mode in the Malaysian context. The checks may take the form of adjudicating criminal charges against police officers, civil suits against excessive or abuse of police powers, or review of police administrative action. Judicial scrutiny and comments are equally important.

Disciplinary procedures are provided by statute and implemented by the more senior police officers. Although they appear to be an internal mode of control, there are safeguards and external checks. If the disciplinary proceedings disclose criminal offences, the cases will be referred to the Public Prosecutor for charges to be brought against the offenders in court. When the officer who has been disciplined is not satisfied with the punishment meted out, he may request a judicial review of his case. As illustrated, in so many cases the reviews have been decided in favour of the disciplined officer.

The courts have not been reluctant to decide in favour of accused persons in criminal cases where the admissibility of evidence obtained under certain circumstances are concerned. Indeed, as far as the admissibility of police statements and exhibits made by the accused are concerned, the courts are ever-willing to decide an inadmissibility based on very technical grounds. Police investigations therefore have to improve in efficiency and professionalism.

The role of the community cannot be ignored. With co-operation from the media, members of the public are airing their grievances and complaints more frequently and vociferously. The police should in turn obtain the co-operation from the media, to highlight police responses to those complaints, and to educate the public on the nature and intricacies of police work.

There is, therefore, no one single mode of checking or controlling the police. Aggrieved parties may resort to one of a number of avenues to forward their displeasure or complaints. Indeed, it is preferred that over-reliance on one means of redress be avoided.

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DISPUTE SETTLEMENT AND COMPROMISE : THE NEED FOR AN UNCOMPROMISING STAND

Introduction

In a recent decision by the Patents Court of the Chancery Division, Laddie J in *Unilever plc v The Procter & Gamble Co*[1] drew our attention to a policy that is currently being implemented and rigorously pursued in England, i.e., a policy to ensure, as far as possible, for cases or disputes to be settled without the need for litigation. In this case, his Lordship said:

> Although the courts have always been prepared to encourage settlement of proceedings, in the past that encouragement was of a hands-off variety. The current climate is very different. It is no longer sufficient to hope that the parties have the sense to resolve their disputes without litigation. Now parties are to be penalised if they commence proceedings without first trying to resolve their differences. This policy pervades the new Civil Procedure Rules. For example, in exercising its power to award costs, the court is to have regard, amongst other things, to the conduct of the parties both before the commencement of the proceedings and during it (rr 44.3(4)(a) and 44.3(5)(a)). In particular the court must have regard to efforts, if any, made before the proceedings were commenced in order to try to resolve the dispute (r 44.5(3)) and encourages both the defendant and the claimant to make settlement offers before the litigation has commenced (r 36). Further, even where a pre-action protocol does

[1] [1999] 2 All ER 691.