

CONSTITUTIONAL LAW IN SINGAPORE

FOURTH EDITION

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Table of Contents

The Author	3
List of Abbreviations	15
General Introduction	17
§1. AN OUTLINE OF SINGAPORE CONSTITUTIONAL HISTORY	17
I. The Straits Settlements Period (1819–1942)	17
II. The Japanese Occupation (1942–1945)	18
III. The Colony of Singapore (1946–1958)	19
IV. The Rendel Constitution (1955)	19
V. Constitutional Talks and Self-Government (1956–1958)	20
VI. Merger and Separation (1963–1965)	21
VII. Post-1965 Developments	22
A. The Aftermath of Independence	22
B. The Wee Chong Jin Commission	23
C. Changes to the Judiciary	24
D. Entrenching Singapore's Sovereignty	25
E. Changes to the Parliamentary System	26
F. The Elected President	28
G. Amendment to Citizenship Laws	29
VIII. Conclusion	29
§2. FORM OF GOVERNMENT	30
I. General	30
II. Separation of Powers	31
§3. STATE TERRITORY	32
§4. POPULATION	34
Part I. Sources of Constitutional Law	37
Chapter 1. Treaties	37
Chapter 2. The Constitution	40
§1. TYPIFICATION	40

Table of Contents

§2. PROCEDURE FOR AMENDING THE CONSTITUTION	
§3. HIERARCHY	
Chapter 3. Legislation	
Chapter 4. Case Law as Judicial Precedent	
Chapter 5. Unwritten Law	
§1. CUSTOM	
§2. CUSTOMARY INTERNATIONAL LAW	
Chapter 6. Administrative Regulations and Orders	
Part II. Form of Government	
Chapter 1. General	
Chapter 2. Head of State	
§1. INTRODUCTION	
§2. SINGAPORE'S PRESIDENTIAL EXECUTIVE: A SHORT HISTORY	
I. Introduction	
II. The Elected President: The Proposals	
III. The Final Scheme	
§3. PRESIDENTIAL ELECTIONS	
§4. TERM OF OFFICE, POWERS AND IMMUNITIES	
§5. REMOVAL OF THE PRESIDENT	
§6. ENTRENCHMENT OF OFFICE	
§7. SUBSEQUENT CHANGES	
§8. THE INDONESIAN LOAN CONTROVERSY	
§9. CONSTITUTIONAL REFERENCE NO. 1 OF 1995	
§10. THE PRESIDENT EXERCISES HIS DISCRETION	
§11. SOME UNIQUE ASPECTS OF THE PRESIDENCY	

Table of Contents

§12. THE HEAD OF STATE'S DISCRETION	61
I. Appointment and Dismissal of the Prime Minister	61
II. Proroguing and Dissolving Parliament	63
III. Discretion During an Emergency	64
IV. Justiciability of the President's Discretion	65
§13. CONCLUSION	66
Chapter 3. The Legislature	67
§1. A HISTORICAL OUTLINE	67
§2. THE UNICAMERAL NATURE OF SINGAPORE'S PARLIAMENT	69
§3. QUALIFICATIONS OF MEMBERS	69
§4. DUTIES OF MEMBERS	71
§5. PARLIAMENTARY PRIVILEGE	71
§6. LIFE OF PARLIAMENT	72
§7. PRINCIPAL OFFICERS OF PARLIAMENT	73
I. The Speaker	73
II. The Clerk of Parliament	73
III. The Whip	74
IV. Leader of the House	74
§8. PARLIAMENT'S COMMITTEES	75
I. Committee of the Whole House	75
II. Select Committees	75
III. Sessional Committees	76
IV. Government Parliamentary Committees	76
Chapter 4. Making Law in Singapore	78
§1. INTRODUCTION	78
§2. RULE FORMULATION	78
I. Introduction of Bills in Parliament	79
II. The Second Reading	79
III. The Committee Stage	79
IV. The Third Reading	80
V. The Presidential Council for Minority Rights and the Presidential Assent	80
§3. SUBSIDIARY LEGISLATION	81

Table of Contents

§4. LEGISLATIVE POWERS IN AN EMERGENCY	
§5. SOME SINGAPORE INNOVATIONS	
I. The Town Councils and Team MPs	
II. The NMP Scheme	
III. The Community Development Councils	
§6. SOME CLOSING THOUGHTS	
§7. REPRESENTING THE PEOPLE: ELECTIONS IN SINGAPORE	
I. Constituencies and Constituents	
II. Types of Membership	
III. Qualifying to Stand	
IV. Qualifying to Vote	
§8. CONDUCT OF ELECTIONS	
I. Nomination Day	
II. Campaigning	
III. Polling Day	
§9. POLITICAL DONATIONS	
§10. IS SINGAPORE'S ELECTORAL SYSTEM IN NEED OF REFORM?	
§11. CONCLUSION	
Chapter 5. The Executive	
§1. INTRODUCTION	
§2. SINGAPORE'S CABINET TODAY	
§3. SINGAPORE'S PRIME MINISTER	
§4. MINISTERS AND MINISTRIES	
§5. POLICY FORMULATION, DECISION-MAKING AND COLLECTIVE RESPONSIBILITY	
§6. CHOOSING THE PRIME MINISTER AND CABINET	
§7. THE EXECUTIVE: AN ELECTED DICTATORSHIP?	
Chapter 6. The Judiciary	
§1. INTRODUCTION	

Table of Contents

§2. JUDICIAL POWER: MEANING, NATURE, CONTENT AND SCOPE	106
§3. JURISDICTION OF THE COURTS	108
I. General	108
II. Original and Appellate Jurisdictions	108
III. Inherent Jurisdiction	108
IV. Review Jurisdiction	110
V. Judicial Review Jurisdiction	111
VI. Supervisory Jurisdiction	112
VII. Revision Jurisdiction	113
§4. ESTABLISHING JURISDICTION AND <i>LOCUS STANDI</i>	113
§5. LIMITS ON JUDICIAL REVIEW	116
I. Political Questions	117
II. Legislative Prohibition	118
III. Laches	118
IV. Prerogative Powers	118
V. Judgments of Superior Courts	118
VI. Res Judicata	118
§6. PUBLIC LAW REMEDIES	119
§7. DOCTRINE OF PROSPECTIVE OVERRULING	119
§8. CONSTITUTION OF SINGAPORE'S JUDICIARY	119
I. The Court of Appeal	120
II. The High Court	120
III. Family Justice Courts	122
IV. The State Courts	122
V. Coroner's Courts	124
VI. The Small Claims Tribunal	124
§9. THE SHARIAH COURT AND MAJLIS UGAMA ISLAM SINGAPURA	124
§10. JUDICIAL INDEPENDENCE	125
I. Appointment and Tenure of Judges	125
II. Security of Remuneration	125
III. Judicial Commissioners and Senior Judges	125
IV. Contempt of Court	126
§11. CONCLUSION	128
Chapter 7. Independent Non-political Bodies in the Legislative or Executive Branch with an Advisory or Supervisory Task	130

Table of Contents

Table of Contents

§1. PRESIDENTIAL ELECTIONS COMMITTEE	
§2. COUNCIL OF PRESIDENTIAL ADVISERS	
§3. PRESIDENTIAL COUNCIL FOR MINORITY RIGHTS	
Part III. Citizenship and the Administration of Justice	
Chapter 1. Rules Concerning Nationality and Relevance of Nationality	
§1. INTRODUCTION	
§2. ACQUISITION OF CITIZENSHIP	
I. Citizenship by Birth	
II. Citizenship by Descent	
III. Citizenship by Registration or Enrolment	
IV. Citizenship by Naturalization	
§3. PROOF OF CITIZENSHIP STATUS	
§4. LOSS OF CITIZENSHIP	
I. Renunciation	
II. Cancellation	
III. Deprivation	
Chapter 2. Fundamental Rights and Liberties	
§1. THE PROTECTION OF HUMAN RIGHTS IN THE CONSTITUTION	
§2. FUNDAMENTAL LIBERTIES UNDER SINGAPORE'S CONSTITUTION	
§3. INTERPRETING FUNDAMENTAL LIBERTIES	
§4. PROTECTION OF LIFE AND LIBERTY	
I. Meaning of 'Life' and 'Personal Liberty'	
II. Meaning of 'In Accordance with Law'	
III. Death Penalty and Life Imprisonment	
§5. RIGHTS OF AN ACCUSED PERSON	
I. Writ of Habeas Corpus	
§6. THE RIGHTS OF ARRESTED PERSONS: ARTICLE 9(3)	
I. The Right to Be Informed of the Grounds of Arrest	
II. The Right to Consult Counsel	
III. Ambit of the Right to Counsel	

IV. Conclusion	150
§7. PROTECTION AGAINST SLAVERY AND FORCED LABOUR: ARTICLE 10	150
I. Slavery	151
II. Forced Labour	152
III. Prison Sentences	152
§8. PROTECTION AGAINST RETROSPECTIVE CRIMINAL LAWS: ARTICLE 11	152
I. Amending the Constitution Retrospectively	153
II. Retrospective Changes in Procedure	153
III. Removal of Sentencing Discretion	155
IV. Protection Against Double Jeopardy	156
V. Meaning of 'Same Offence'	157
VI. Preventive Detention	158
VII. Common Law Doctrine of Autrefois Convict	158
§9. EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAW: ARTICLE 12	159
I. Introduction	159
II. Meaning of Discrimination	160
III. The Problem of Classification	161
IV. Equality in Criminal Prosecutions	164
V. Non-discrimination Against Citizens	165
VI. Positive Discrimination under the Constitution	165
§10. FREEDOM OF SPEECH AND EXPRESSION	167
I. Introduction	167
II. Constitutional Provisions and Qualifications	167
III. Regulating Speech Through Licensing	168
IV. Freedom of the Press	169
V. Express Constitutional Grounds for Enacting Derogating Laws	171
VI. Restrictions Under the Criminal Law	171
VII. Free Speech in Parliament	172
VIII. Official Secrets	172
IX. Defamation	173
X. Contempt of Court	175
XI. Public Morality	175
§11. FREEDOM OF ASSEMBLY	175
§12. FREEDOM OF ASSOCIATION	176
§13. FREEDOM OF RELIGION	177
I. Introduction	177
II. Historical Flashpoints in Race-Religion Relations	178
III. Constitutional Safeguards	179
IV. The Meaning of 'Religion'	180

Table of Contents

V. The Protection of Minors	
VI. Content and Extent of Religious Liberty	
Chapter 3. Judicial Control of Administrative Action	
§1. ADMINISTRATIVE LAW UNDER A WRITTEN CONSTITUTION	
I. Controlling Delegated Legislation	
II. Informal Rules or Guidelines	
III. Judicial Review of Administrative Action	
§2. PRECEDENT OR JURISDICTIONAL FACTS	
§3. ERRORS OF LAW	
I. The Control of Substantive Discretion	
II. The Grounds of Judicial Review	
§4. ILLEGALITY	
§5. IRRATIONALITY	
§6. PROCEDURAL IMPROPRIETY	
§7. PROPORTIONALITY?	
§8. LEGITIMATE EXPECTATIONS	
I. Limits to Judicial Review	
§9. CONSTITUTIONAL LIMITATION ON JUDICIAL REVIEW	
§10. STATUTORY EXCLUSION OF JUDICIAL REVIEW: OUSTER CLAUSES	
I. Subjective Powers	
II. Conclusion	
Chapter 4. Emergency Laws	
§1. SPECIAL POWERS AGAINST SUBVERSION AND EMERGENCY POWERS	
I. The ISA: Constitutional Issues	
§2. THE RECITAL	
§3. INCONSISTENCY WITH OTHER PROVISIONS	
I. Judicial Review of Executive Detention	
§4. RIGHTS ON INITIAL ARREST	
§5. BAD FAITH OR <i>MALA FIDES</i>	

Table of Contents

§6. 'SATISFACTION': SUBJECTIVE OR OBJECTIVE TEST?	200
§7. PROCEDURAL GROUNDS OF CHALLENGE	202
Selected Bibliography	203
Index	213

161. Singapore's presidency is unique. While still essentially ceremonial, the President has fairly extensive powers to veto Government legislation. Even under the pre-1991 scheme, the President is vested with discretion in several areas, and the courts cannot generally question his exercise of this personal discretion unless there is a clear breach of the Constitution. In the last decade, Parliament seems to rethink its original intention to give the President wide scrutiny powers over government companies and actions. The amendments that have been made to the scheme since 1991 clearly evince an intention to narrow down the extent of the President's power under the Constitution.

Chapter 3. The Legislature

§1. A HISTORICAL OUTLINE

162. During the time of the Norman kings, there existed in England a Great Council or *Magnum Concilium* which was an assembly of landowning barons and ecclesiastics. Although they owed allegiance to the King, the King was forced to consult them on all matters of taxation. As time went on, a second smaller body of semi-professional advisors known as the *Curia Regis* or King's Court or Council was formed to deal with judicial problems which were beyond the scope of the ordinary law courts. Their meetings came to be known as *concilium regis in parlamento* or 'the king's council in parliament'. The word 'parliament' was from the French *parlement* and roughly translates into 'talking shop'. Both the Great Council and the King's Council sat together to discuss affairs of state. In 1254, a great advance was made in representative government when each sheriff was told to send two knights from the shires to attend Parliament as the people's delegates. During the mid-nineteenth century, Parliament consisted of representatives from the cities, the boroughs and the shires.

163. By the fourteenth century, Parliament had organized itself into two Houses: the Lords (consisting of the higher clergy and the barons) and the Commons (which was largely made up of the knights of the shires, burgesses and representatives of the lower clergy). The strong leadership of the Tudors, especially under King Henry VIII (1491-1547) and Elizabeth I (1533-1603), concentrated much power in the monarchy and it was not till the Civil War and the Glorious Revolution of 1688 that Parliament, especially the Commons, regained much of their former powers. Within the Commons, there developed two factions - the Whigs and the Tories - who were ancestors of present-day British political parties. King William III (1650-1702) initially chose his council of officers from both factions but when this became impractical, he chose them from the party in the majority. During the time of Queen Anne (1665-1714), this council became a distinctly policymaking organ and is the predecessor of the modern-day Cabinet. In the last two centuries, Parliament in England has remained largely unchanged even though the House of Lords has lost much of its powers.

164. The history of representative government in Singapore is a relatively short one.⁹⁷ From the time the British arrived in 1819 up till its transfer from the Indian Office to the Colonial Office in 1867, the administration of law and order in Singapore was haphazard and highly inadequate. There was no elected representative municipal government in the Straits Settlements until 1857 and public opinion was vent through petitions, newspapers, town meetings, the chambers of commerce and the Grand Jury. The transfer of the Straits Settlements to the Colonial Office in 1867

97. See Kevin Y.L. Tan, *Parliament and the Making of Law in Singapore*, in *The Singapore Legal System* 123-159 (Kevin Y.L. Tan ed., Sing. U. Press 2d ed. 1999).

made it a Crown Colony with Singapore as its capital and this brought about the needed changes. A colonial constitution was introduced and the Colonial Governor appointed a Governor who was expected to rule with the help of an Executive Council and a LegCo.

165. The Governor was empowered to convene and prorogue the Council to initiate legislation and to assent to, veto or reserve Bills 'for the Royal pleasure'. In 1867, the Executive Council comprised the Governor, the Officer Commanding Troops in the Straits and six senior officials. The LegCo was made up of members of the Executive Council, the Chief Justice and four non-officials nominated by the Governor. The Executive Council which formed a sort of Cabinet was not responsible to the LegCo, and Official Members were bound to support the Governor. The non-official members were not bound as such and could speak their minds according to the dictates of their conscience on all matters. The Governor's executive supremacy was maintained and remained intact till the advent of World War II. Although many changes were proposed and championed, the system remained fixed, and the LegCo remained primarily an advisory body to air the views of various communities.

166. Following the turmoil of World War II, a colonial-style Singapore Constitution was introduced. From 1946 to 1948, Singapore was ruled by the Governor with the help of an advisory Executive Council consisting entirely of officials and nominated non-officials. There were ten members in the Executive Council (six officials and four nominated members) and the LegCo did not have any non-officials. By 1947, the movement towards self-government was already in progress and as a first step, a new constitution to be implemented in 1948 created an Executive Council with an official majority and a LegCo with nine officials and three non-officials, of whom four would be nominated by the Governor, three chosen from the chambers of commerce and the remaining six elected by adult British subjects who had been resident in Singapore for one year prior to the election. Thus, however, excluded the bulk of the migrant population who were not granted citizenship.

167. In 1953, Sir George Rendel headed a commission to review the Constitution, and the Commission recommended keeping local government separate from the central government, a single-chamber Legislative Assembly of thirty-two members (twenty-five elected councillors, three ex officio ministers and four nominated non-officials). They also recommended the replacement of the Executive Council by a council of nine ministers: three appointed by the Governor and the remaining six recommended by the leader of the strongest party in the Legislative Assembly who would also enjoy many of the functions of a Prime Minister. With the implementation of the Rendel Constitution in 1955, Singapore saw, for the first time, a meaningful form of representative government, although essential matters such as external affairs, internal security and defence remained in the hands of the British.

168. These arrangements did not last long. The Constitutional Talks of 1956 and 1957 resulted in the granting of a new constitution in 1958 which provided for internal self-government and which created a Legislative Assembly of fifty-one members elected on the basis of adult suffrage.⁹⁸ The British retained control over foreign affairs and external defence but could only suspend the Constitution in an emergency.

169. When Singapore became independent as a constituent state of the Federation of Malaysia in 1963, control over foreign affairs, defence and security laid in the hands of the central government, but it retained wide-ranging powers over finance, labour and education. Singapore was accorded fifteen seats in the 159-member federal legislature but retained her own executive government, her Legislative Assembly and her own Head of State: the Yang di-Pertuan Negara. Independence and separation from Malaysia in 1965 necessitated changes in her constitution. The renaming of the Legislative Assembly as 'Parliament' was the only change insofar as the legislative branch of government was concerned, and as Singapore was no longer a part of the Federation, it ceased to have the fifteen seats in the federal legislature.

§2. THE UNICAMERAL NATURE OF SINGAPORE'S PARLIAMENT

170. Singapore's Parliament is unicameral in that it is made up of only one chamber. Presently, there are 104 seats in Parliament. Of these, 93 are occupied by elected MPs, while the other 11 seats are occupied by 9 Nominated MPs and 2 Non-Constituency MPs. A two-chamber house was rejected by both the Rendel Commission (1954) as well as the Wee Chong Jin Constitutional Commission (1966). Several reasons were offered: (a) Singapore's small size which obviated the need for special representation of certain provinces, tribes or communities; (b) the fear that the second chamber would only represent special interest groups; (c) a second chamber would make the structure of government overly cumbersome and complicated; (d) insufficiency of manpower; and (e) the danger that it would perpetuate racial and other differences.

§3. QUALIFICATIONS OF MEMBERS

171. Under the Constitution, there are two categories of MPs: (1) elected members (from both GRCs and SMCs); (2) NCMPs who are not directly elected but obtained the highest number of votes from among the defeated candidate.

172. The qualifications of candidates wishing to stand for election are set out under Article 44 of the Constitution. To qualify, a person must be: (a) a citizen of

98. See Singapore (Constitution) Order in Council, 1958; see also O. Hood Phillips, *The Constitution of the State of Singapore*, Pub. L. 50 (1960); and L.A. Sheridan, *Singapore's New Constitution*, MLJ xxv (1959).

Singapore; (b) over the age of 21; (c) resident in Singapore at the date of nomination; (d) able to take an active part in the proceedings in Parliament; and (e) is not blind, be able to read and write one of the official languages of Singapore. In addition, she must also be a registered voter and not be disqualified under one of the provisions of Article 45.

173. A person may be disqualified from standing in an election if he or she is of an unsound mind; (b) is an undischarged bankrupt; (c) holds an office of profit; (d) fails to lodge 'any return of election expenses'; or (e) voluntarily exercises or acquires citizenship in a foreign country. Other disqualifications include being convicted of an offence entailing a term of imprisonment of one year or more or a fine exceeding SGD 2,000 or conviction of an offence under any law relating to elections to Parliament. Such disqualifications may be removed by the President under Article 45(2), and if not so removed, shall automatically cease to apply after 12 months. No person can at the same time be an MP of more than one constituency.

174. An MP's seat becomes vacant when Parliament is dissolved.⁹⁹ A vacancy can also occur if a member: (a) ceases to be a citizen of Singapore; (b) ceases to be a member or is expelled from his or her political party; (c) resigns his or her seat; or (d) absents himself or herself for 'two consecutive months in each of which sitting of Parliament ... are held' without the Speaker's permission.¹⁰⁰ In February 2012, Yaw Shin Leong, MP for Hougang Constituency was sacked from the Workers' Party and thereby lost his seat in Parliament. His sacking precipitated a constitutional challenge to the Prime Minister's discretion on calling a by-election to fill the vacancy. The Court of Appeal held that in the event a vacancy in Parliament occurs, the Prime Minister was constitutionally required to call a by-election although it may be done 'within a reasonable time', taking all relevant factors into account. Resignations by the PAP's Michael Palmer in 2012 and David Ong in 2016 also led to by-elections in Punggol East and Bukit Panjang constituencies respectively.

175. The question as to whether a by-election required when a single seat in a GRC is vacated arose in *Wong Souk Yee v. Attorney-General*.¹⁰² In that case, a member of the Marsiling-Yew Tee GRC, Mdm Halimah Yacob resigned to contest the 2016 Presidential Election. The Government took the position that there was no requirement to call a by-election in such an instance. The matter turned on the interpretation of Article 49 of the Constitution which provides:

49.—(1) Whenever the seat of a Member, not being a non-constituency Member, has become vacant for any reason other than a dissolution of Parliament, the vacancy shall be filled by election in the manner provided by or under any law relating to Parliamentary elections for the time being in force.

99. Article 46(1).

100. Article 46(2).

101. *Vellama d/o Marie Muthu v. Attorney-General* [2013] 4 SLR 1.

176. The Court of Appeal held that given that there was an apparent contradiction between Article 49(1) (which required a by-election to be held even if a single seat becomes vacant), and Article 46 (which specifies the only grounds under which a vacancy may arise), Article 49(1) must be read to apply only to vacancies in SMCs and not to GRCs. The court added that as section 24(2A) of the Parliamentary Elections Act provided that in the case of a GRC, no writ of election shall be issued 'for an election to fill any vacancy unless all the Members for that constituency have vacated their seats in Parliament' it was Parliament's clear intent that no by-election be required unless *all* the seats in a GRC is vacated.

§4. DUTIES OF MEMBERS

177. Elected Members of Parliament (MPs) must represent their constituents by bringing their problems and difficulties to Parliament's attention. Members are also expected to hold the Executive accountable for its actions. This duty is not an unfettered licence to criticize the Government. The Westminster system assumes a Parliament dominated by two main parties with the Opposition's Shadow Cabinet controlling the Government by holding them accountable for their actions. Opposition MPs also help curb the Government's legislative initiative by questioning them with well-prepared speeches in debate.

178. However, this ideal has no bearing on reality in Singapore. The PAP's total monopoly of Parliament from 1968 to 1981 and its continued dominance of it since does not allow for such forms of control. Indeed, the PAP was so dominant that from 1965 to 1981, backbenchers often took on the role of 'opposition members'. This form of control is both restricted and unrealistic and amounted to little more shadow boxing. Under the Westminster model, strict party discipline is taken very seriously, and no matter how critical PAP members may be of Government policy, they must vote according to the party line. At best, members who disagree vehemently with the Government's position abstain from voting or absent themselves when the vote is being taken. In this scenario, Parliament's ability to function as a restraint on the use of executive power is seriously undermined. This institutional problem is further compounded by PAP MPs' reluctance to criticize Government policies.

§5. PARLIAMENTARY PRIVILEGE

179. For MPs to perform their duties without harassment or undue influence from the public or the Government, they are given a special status carrying with it certain powers, privileges and immunities. These are contained in the Parliament (Privileges Immunities and Powers) Act and are 'the same as those of the Commons House of Parliament of the United Kingdom and of its Speaker, members or Committees at the establishment of the Republic of Singapore'.

180. Essentially, these privileges and immunities enable the members to speak and debate freely in Parliament. They protect members from repressive measures or

legal actions by the Government and others. Parliament has power to summon witnesses, experts and other persons, call for records or papers to assist their Committee work. These powers also enable Parliament to punish recalcitrant members of the House or members of the public who abuse their parliamentary privileges.

181. The main privileges and immunities pertain to the freedom of speech to immunity from arrest in certain cases. Under section 5 of the Parliament (Privileges, Immunities and Powers) Act, speeches made in the course of debate or parliamentary proceedings are not 'liable to be impeached or questioned in any court of law or commission of inquiry, tribunal or any other place whatsoever out of Parliament'. Furthermore, a member shall not be liable to legal proceedings whatsoever on account of any matter or thing brought up before Parliament or committee. He or she may be arrested or detained in respect of any civil proceedings if he or she is either attending, sitting or returning from any parliamentary proceeding.

182. Offences for which members may be punished include failure to comply with rules, orders or summons of Parliament, the use of violence or force against the Speaker or fellow members, publishing false reports or creating a disturbance in the precincts of the House. There are, of course, several other offences like failure to disclose pecuniary interest and corruption, but it would not be practical to list them all here. Section 20(1) allows Parliament to commit a member to a term of imprisonment 'not extending beyond the current session of Parliament' as well as a fine that member up to a maximum of SGD 50,000.

§6. LIFE OF PARLIAMENT

183. The Constitution stipulates 'unless sooner dissolved', the life of each session of Parliament shall be five years.¹⁰³ The President can dissolve Parliament at any time if he is advised by the Prime Minister to do so' and if the Prime Minister commands the confidence of the majority of the Members of Parliament. This matter is dealt with in greater detail in Chapter 5. A general election must be held within six months of Parliament's dissolution.

184. Under Article 64(1) of the Constitution, there must be a session of Parliament 'once at least in every year', and Parliament must sit for a new session within six months of the last sitting of the previous session. Parliament is prorogued at the end of each session of Parliament.

103. Article 65(4).

§7. PRINCIPAL OFFICERS OF PARLIAMENT

I. The Speaker

185. The Speaker presides over Parliament. The rules of procedure are found in the Standing Orders of Parliament. Following a general election, Parliament must elect a Speaker. The Speaker need not be a Member of the House although someone who does not qualify to stand as an MP cannot be elected. Traditionally, the Speaker is also an MP, but this has not always been the case. Singapore's first Speaker, Sir George Oehlers (1908-1968), was not a Member of the House when he was elected Speaker.

186. Generally, the Speaker's job is to preside over Parliament and to regulate the conduct of debate. He or she also tries to ensure that the voice of the minority is heard and rules on matters of procedure and order from which there are no appeals. The Speaker is the guardian of Parliament's prestige and honour and is thus empowered to mete out punishments to errant members.

187. The Deputy Speaker performs all the duties of the Speaker in the Speaker's absence. He or she is elected in the same manner as the Speaker except that the presiding officer in this instance is the Speaker himself or herself.

II. The Clerk of Parliament

188. The Clerk of Parliament is the House's chief permanent officer. He or she is appointed by the President upon consultation with the Speaker and the Public Service Commission and may only be removed by a two-thirds vote in Parliament. In such an instance, only the President on consultation with the Speaker can remove him or her.

189. The Clerk and Assistant Clerks form part of the Secretariat of Parliament. Their main duties are to assist the Speaker in the regulation and conduct of all matters connected with the business and proceedings of Parliament and its Committees; process all notices of Bills, motions, questions and other business handed in by Members of Parliament in accordance with Standing Orders; conduct research into parliamentary procedures, examine whether there are any difficulties in the working of the Standing Orders and build up memoranda to ensure uniformity of practice and procedure in Parliament; be responsible for the publication of the Votes and Proceedings and the Parliamentary Reports (often referred to as 'Hansard', after the Hansard family who used to publish parliamentary reports for the House of Commons); and attend to matters of administration relating to Parliament, its members, staff, accounts and premises.

190. The office of the Clerk of the House is a very specialized one and demands great expertise in legislative procedure and parliamentary administration. He or she

has custody of all votes and proceedings, records, Bills and other documents presented to or laid before Parliament and advises the Speaker and members in matters of procedure. The Clerk also administers oaths, presides over the election of the Speaker and is responsible for the printing and circulation of all Bills and Orders. When Parliament is in session, the Clerk sits at the Table in front of and behind the Speaker's Chair wearing his or her traditional black gown.

III. The Whip

191. The word 'whip' is an abbreviation of an eighteenth-century French term 'whipper-in'. The whipper-in kept the hounds from straying from the pack; this is analogous to what Government and Opposition Whips do in Parliament. Whips are party disciplinarians tasked with rounding up party support during votes, ensuring that members are present during other occasions. This is essential to a parliamentary system of government that depends heavily on strong party discipline.

192. In Singapore, there is only the Government Whip as there is no formal opposition to require an Opposition Whip. There are also two Deputy Government Whips. The Whip ensures the efficient and smooth running of the parliamentary machinery. He or she lists the speakers for each item of business and estimates the time likely to be required for each item and thereby assists the House to complete its business on time. He or she also ensures efficient communication within the House, her party, and ensures that backbenchers vote in line with the party's stand. MPs may vote according to their conscience only after he or she has lifted the Whip.

193. The Whip is directly responsible to the Leader of the House and the Prime Minister. His or her other duties include advising the Government on matters of parliamentary business and procedure and maintaining a close liaison with Ministers. In regard to parliamentary business which affects their departments. In carrying out his or her duties, the Whip must work closely with the Leader of the House.

IV. Leader of the House

194. Back when English Prime Ministers were also peers of the realm, they often had to be present in the House of Lords and thus were absent from the House of Commons. To represent them, they appointed a leading Minister as the Leader of the House. According to Sir William Gladstone (1809-1898), four-time Prime Minister of Britain, the Leader of the House, 'suggests, and in a great degree fixes the course of all principal matters of business, supervises and keeps in harmony the actions of his colleagues, takes the initiative on matters of ceremonial procedure and advises the House in every difficulty as it arises'.¹⁰⁴

104. See William Ewart Gladstone, *Kin Beyond Sea*, in his collection, *Gleanings of Past Years* (1843-1878 241 (C Scribner's Sons 1886).

195. Under Parliament's Standing Orders, the leader is responsible for making representations to the Speaker on urgent matters of public interest that may require sittings. He or she also advises the Speaker on the sitting arrangements within the House. In the Prime Minister's absence, the leader expresses the sense of the House on formal occasions, such as in moving motions of thanks or congratulation. The Leader of the House is also responsible for arranging Government business and the legislative programme in the House (in consultation with the Government Whip), advising the House on any difficulty which may arise and moving procedural motions relating to the business of the House on formal occasions.

§8. PARLIAMENT'S COMMITTEES

196. There are two types of parliamentary committees: (1) those established under the Standing Orders of Parliament, and (2) those established by the PAP and as Government Parliamentary Committees (GPCs). Parliamentary committees provide a closer and more in-depth study of government business and also act as a minor check on the executive. In the case of Select Committees, they also provide an opportunity for the public to present their views directly to Parliament.

I. Committee of the Whole House

197. A Committee of the Whole House comprises all members of the House. In fact, it is the Whole House in a less formal capacity and a Chairman (who is the Speaker) presides. Whenever the House goes into committee, the Speaker leaves the Chair, and the Mace is removed from the Table by the Serjeant-at-Arms and placed in the lower brackets. The Speaker then assumes the Chairmanship of the Committee but does not sit at the Speaker's Chair. Instead, he or she assumes his or her seat at the Table, and he or she enjoys all the powers as the Speaker except that he or she cannot inflict serious forms of punishment on members. The House may resolve itself into a Committee of the Whole House to consider any matter although they must do this when Parliament considers Bills. Usually, the Committee of the Whole House will deliberate Bills that are uncomplicated, are of a regulatory measure or are minor amendments. Major or controversial Bills or amendments like the Organ Transplant (Amendment) Act 2004 are usually committed to Select Committee for more detailed consideration.

II. Select Committees

198. Select Committees are small committees appointed by Parliament for a specific purpose. Usually, it is to scrutinize a particular piece of legislation, for example, the Copyright Bill 1986 and the Constitution (Amendment) Bill 1991. Select Committees are appointed for this purpose only if the Bill is complex, controversial or has a wide-ranging impact. They have the power to send for persons,

papers and records in the fulfilling of their function and are accountable to the Whole House by way of a report in which they express their findings.

III. Sessional Committees

199. Under the Standing Orders, Sessional Committees may be established. Each sessional committee consists of a Chairman (usually the Speaker) and members. Membership in these committees should, as far as possible, reflect a balance between the Government benches and the Opposition benches in Parliament. There are currently seven Sessional Committees: (1) Committee of Privileges; (2) Public Accounts Committee; (3) Estimates Committee; (4) Standing Orders Committee; (5) House Committee; (6) Public Petitions Committee; and (7) Committee of Privileges.

200. The Committee of Selection is responsible for informing Parliament whenever any member has been appointed to any of the Committees. The job of the Public Accounts Committee is to 'examine accounts showing the appropriation of money granted by Parliament to meet public expenditure and such accounts laid before Parliament'. The Estimates Committee is charged with the duty to 'examine any Estimates, to report what economies consistent with the policy implied in the Estimates might be effected' and 'suggest the form in which the Estimates might be presented'. These Estimates form the subject matter of the Finance Minister's Budget which contains estimates of revenue and expenditure for the fiscal year. They also show the assets and liabilities of the country.

201. The Standing Orders Committee's duties are to consider from time to time matters pertaining to the Standing Orders of Parliament and to make recommendations for any necessary amendments. The House Committee's duty is to 'consider and advise the Speaker upon all matters connected with the comfort and convenience of Members of Parliament', while the Public Petitions Committee considers all petitions referred to it. Finally, the Committee of Privileges is charged with the handling of 'any complaint of breach of privilege or any matter which appears to affect the powers and privileges of Parliament' and to report on them to Parliament.

IV. Government Parliamentary Committees

202. Early in 1987, then First Deputy Prime Minister Goh Chok Tong proposed forming GPCs, each focusing on a specific area affecting the future of Singapore. These GPCs are not like parliamentary committees since they are organs of the Government. They have no constitutional status but are instead an initiative of the PAP Government. Goh cited three main reasons for setting up GPCs. First, more participation from the MPs was needed, especially in a Parliament dominated by one party. Second, the public would also have a say in policies through the resource panels. Third, it would strengthen our democratic institutions and take us into the twenty-first century.

203. These GPCs are limited to MPs from the governing party, and they closely monitor the policies of particular ministries with the help of resource panels, comprising experts and interested laypersons. They provide a wider range of views in Parliament and help cabinet ministers refine policies. They also serve as sounding boards and provide valuable feedback and suggestions to the relevant ministries on issues of public interest. The number of GPCs corresponds with a government ministry, and each consists of five backbenchers, and is chaired by one senior member. Each GPC is backed by a twelve-member resource panel, and their task is to concentrate on a particular area affecting the Government of the country examining all intended Bills in that area and in some instances, they will be consulted even before the Bill is drafted.

204. The creation of GPCs was a step in the right direction given the state of oppositional representation in Parliament. Its use as simulated critics of Government legislation will definitely be far more effective than expecting backbenchers to take on the role of Opposition members. Furthermore, the level of debate and discussion on each policy has, in my opinion, reached a greater level due to the specialized nature of the GPCs and the utilization of experts outside of Parliament. This has led community leaders and professionals to participate more actively in the affairs of state, albeit behind the scenes.

Chapter 4. Making Law in Singapore

§1. INTRODUCTION

205. Under Article 58 of the Constitution, 'the power of the Legislature to make laws shall be exercised by Bills passed by Parliament and assented to by the President'. Only the people's elected representatives have power to make law since they are deemed to have the support and acquiescence of their constituents. Ideally, they should introduce measures and laws that reflect the aims and aspirations of the people. However, this is seldom the case in Westminster-style parliaments as legislative initiative often comes from the Government.

206. In Singapore, this problem is compounded by the fact that at both the legislative and actual lawmaking stages, MPs assume a muted and passive role, ceding its once exclusive domain in favour of the executive. Chan Heng Chee's article entitled 'The Role of Parliamentary Politicians in Singapore'¹⁰⁵ argues that MPs lack legislative initiative and that almost all legislation comes from the Government acting on its own initiative or on the advice of senior civil servants. This is illustrated by the fact that only three Private Members' Bills have been enacted into law: the Titular Roman Catholic Archbishop of Singapore Bill (initiated by PAP backbencher P. Selvadurai in 1974); the Maintenance of Parents Bill (initiated by PAP backbencher Walter Woon in 1994); and the Prevention of Human Trafficking Act (initiated by PAP backbencher Christopher de Souza in 2014). During the passage of Bills in Parliament, MPs are again reluctant to speak out against Bills and policies. The Government is thus able to set its goals and values for society through laws passed in Parliament. Nonetheless, Parliament performs the crucial symbolic role of legitimizing both the Government's rule and the laws it passes through established and accepted procedures.

§2. RULE FORMULATION

207. Bills may be introduced by individual members or by the Government. Private Member Bills are rare, as we have seen above. Government Bills typically originate in the various ministries and government departments and are drafted by the Attorney General's Chambers (AGC). Before they are drafted, the Cabinet members in principle, agree to the Bill. Next, the Permanent Secretary of the Ministry initiating the legislation will prepare a draft of the Bill or a detailed statement of its proposed contents and refer it to the AGC. The Bill will normally contain a provision enabling subsidiary legislation to be made. Once the Bill has been printed and approved by the AGC, a copy of the Memorandum to the Cabinet is sent to the Permanent Secretary for the Ministry of Law for approval before submission to the Cabinet.

105. Chan Heng Chee, *The Role of Parliamentary Politicians in Singapore*, 1 Legis. Stud. Q. 42 (1976).

I. Introduction of Bills in Parliament

208. Any member may introduce a Bill into Parliament provided sufficient notice is given to the House. The period of notice is two clear days for Government Bills, and four clear days for Private Member Bills. Bills that either directly or indirectly provide for tax collection, state expenditure involving the Consolidated Fund or matters relating to the financial obligations of the Government may not be introduced or moved unless it is recommended by the President and signified by a Minister.

209. On the actual day of the Bill's introduction, the member introducing the Bill will read aloud the long title of the Bill and then present the Bill to the Clerk at the Table. The Clerk will then read aloud the short title of the Bill. The Bill will then have been introduced into Parliament with no questions put, and this is known as the First Reading of the Bill. After this, a date will be fixed for the Second Reading of the Bill.

II. The Second Reading

210. After the Bill's First Reading, the Clerk will: (a) publish the Bill in the *Gazette*; (b) print the Bill; and (c) circulate it to members. All this must be done at least seven clear days before the Second Reading. If an amendment is to be made to the Bill after the First Reading, two clear days' notice of amendment, signed by a cabinet minister, must be given to the Clerk. This does not, however, include Urgent Bills which may be read three times and passed within the day.

211. During the Second Reading, the Minister moving the Bill usually delivers a speech outlining the objectives of the Bill. Members will then debate the Bill. At the end of the debate, a motion is put 'That the Bill be now read a Second Time'. At this point, a vote is taken on which there may or may not be a division. Once the Bill passes its Second Reading, it moves on to the *Committee Stage*.

III. The Committee Stage

212. After the Second Reading, the Bill will be committed either to a Select Committee or to the Committee of the Whole House. If the Bill goes to Select Committee, a Chairman and his or her committee are appointed and given powers to call persons, records and other documents and must list their findings and recommendations in a Select Committee Report. If the Bill is not being committed to Select Committee, the House resolves itself into the Committee of the Whole House and deliberates the Bill in great detail, going through each clause. The Committee may only discuss the details of the Bills and not its underlying principles.

213. At the *Committee Stage*, amendments to the Bill may be made but the Bill cannot be rejected outright since that power is reserved for the House. After the Bill

has been dealt with in Committee, a report must be made to the House. The known as the *Report Stage*. The Chairman of the Select Committee or of the Committee of the Whole House (whichever the case may be) will report the findings of the Committee to Parliament. If amendments are made, the amendments are put to the House, and they may either be accepted or rejected although the latter alternative is rarely the case. Once the House accepts the amended Bill, a motion is moved that 'The Bill be read a Third Time.'

IV. The Third Reading

214. The Third Reading is similar to the Second Reading although the debate is usually far more limited. Amendments to correct errors or oversights may be made with the Speaker's permission, but no amendments of a material character may be made. The Minister moving the Third Reading may again make a speech outlining the changes made and perhaps explain what repercussions the legislation will have. At the end of the debate, the Bill is put to a vote and once accepted will have been passed by Parliament. However, further steps are needed before the Bill becomes law.

V. The Presidential Council for Minority Rights and the Presidential Assent

215. After the final reading and before the Bill is presented to the President for his or her assent, the Speaker will send an authenticated copy to the Presidential Council for Minority Rights for its consideration. The Council must consider the Bill and make a report to the Speaker within thirty days. This thirty-day limit may be extended if the Bill is particularly complex or difficult. If the Council presents no report within the time limit, it is presumed that no provision of the Bill creates a differentiating measure.

216. The Presidential Council for Minority Rights is established under Part IV of the Constitution.¹⁰⁶ It comprises a Chairman (appointed for three years), not more than ten members appointed for life and not more than ten members appointed for three years appointed by the President on the Cabinet's advice. To qualify for membership, a person must be a Singapore citizen, resident in Singapore and at least 21 years old. He or she must not be of unsound mind, an undischarged bankrupt, have been convicted of an offence carrying a term of imprisonment lasting one year or more or a fine of SGD 2,000 or more.

106. See Thio Su Mien, *The Presidential Council*, 1 Sing LR 2 (1969); David S. Marshall, *The Presidential Council*, 1 Sing LR 9 (1969); Francis Khoo, *The Presidential Council*, 1 Sing LR 14 (1969); Gerald de Cruz, *The Presidential Council*, 1 Sing LR 20 (1969); and S. Jayakumar, *Singapore's Presidential Council - An Advisory Organ for Parliament on Human Rights*, IV (2-3) *Hum. Rights* J. 477-492 (1969).

217. It is the particular function of the Council 'to draw attention to any Bill or to any subsidiary legislation if that Bill or subsidiary legislation is, in the opinion of the Council, a differentiating measure'. However, three types of Bills are exempted from the Council's scrutiny: 'Money Bills', Bills on a Certificate of Urgency and Bills which affect the defence, security, public safety, peace or good order of Singapore. A 'differentiating measure' is defined in Article 68 of the Constitution as:

any measure which is, or is likely in its practical application to be, disadvantageous to persons of any racial or religious community and not equally disadvantageous to persons of other such communities, either directly by prejudicing persons of that community or indirectly by giving advantage to persons of another community.

218. If the Council issues an adverse report, Parliament can either amend the Bill and resubmit it to the Council or proceed to present the Bill for the Presidential Assent in spite of the adverse report. The latter course of action is only feasible if Parliament passes the motion for presentation by 'an affirmative vote of not less than two-thirds of the total membership of Parliament'. If the report presented to Parliament is not adverse, then it goes to the President for his or her assent without further delay. Once the President assents to the Bill, it becomes an Act of Parliament, that is law. Of course, the President may, in areas where his or her personal discretion is invoked under the Constitution - such as budgets or the raising of loans or giving of guarantees by the Government - refuse to assent to a Bill duly passed by Parliament.

219. An Act comes into force only at the date of its publication in the *Gazette*. The publication date of a law and its commencement date are two different things. An Act may be published in the *Gazette* but may not be in force because of a clause providing for the date of commencement to be decided by the Minister. Often the date of commencement depends on the drafting of necessary subsidiary legislation.

§3. SUBSIDIARY LEGISLATION

220. Due to time constraints and other practical considerations, Parliament delegates legislative powers to the Executive. Many Acts contain provisions empowering the Minister in charge to promulgate necessary subsidiary legislation. To prevent abuse by the Executive, all subsidiary legislation is made pursuant to its parent Act. Under the ultra vires doctrine, the Minister cannot promulgate legislation which is not substantially or procedurally provided for in the parent act. Procedures for promulgating subsidiary legislation vary from Act to Act. Generally, subsidiary legislation is drafted by legal officers acting on behalf of the AG based on a draft prepared by the responsible Permanent Secretary.

221. All subsidiary legislation is also subject to the Presidential Council for Minority Rights' scrutiny. The Minister in charge must, within fourteen days of the