

ROYAL COMMISSION OF ENQUIRY INTO THE DEATH OF TEOH BENG HOCK

SUBMISSION OF THE MALAYSIAN BAR

Dated 25th day of May 2011

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EXECUTIVE SUMMARY

“...The Courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilized society governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity...”

“...The Courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judiciary itself, which if it happens, will be a sad day, for anyone to reckon with.”

(Pradesh Munshi Gautam (dead) and Others v State of Madhya Pradesh AIR 2005 SC 402)

“If you once forfeit the confidence of our fellow citizens you can never regain their respect and esteem. It is true that you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time.”

~ Abraham Lincoln ~

This Commission is entrusted to perform a very important function. Whilst investigation into the cause of death of Teoh Beng Hock constituted a substantial part of the open inquiry and remains an

important issue, the open inquiry provided classic evidence of the saying that an institution is only as good as its people. It is important that the officers of MACC tasked with preventing, detecting and eradicating corruption possess the qualities of integrity, independence and intelligence, what may be conveniently referred to as the three “I”s.

Whilst the Commissioners have recognised that MACC as an institution must be preserved and its image, reputation and functioning enhanced, it must also be recognised that this can only be brought about if the people entrusted with the powers of the institution were brought to task for abuse. The Malaysian Bar’s submission quite extensively reviewed the facts and, we hope, brings into sharp focus the abuse of power of the officers of MACC Selangor.

It is no coincidence that MACC Selangor ranks highest in terms of police reports filed alleging abusive treatment whilst in custody.

In the presentation of our submission, we first deal with the second issue of reference and then the first. The reason for this is that the facts relevant to the inquiry and recommendations revolve around the cause for Teoh Beng Hock’s death.

The improvements arising from this factual matrix are consequential.

The submission is divided in parts. In content, it first sets out the role of the Malaysian Bar followed by the terms of reference and the brief facts including the status of investigations into Teoh Beng Hock’s death at the time of commencement of this inquiry. It then addresses the handicap that the Commission faced in its investigation.

The submission then through various topics, takes us through the events leading up to the operation carried out by MACC Selangor on 15.07.2009, the raid on YB Ean Yong's office, the seizure of the laptop and CPU, the requirement by MACC Selangor for Teoh Beng Hock to attend at their office for questioning and the events that transpired in MACC Selangor till his death, and thereafter.

The submission also deals with MACC's operation as a whole and the effect of the particular investigation directly or indirectly in respect to Teoh Beng Hock.

It is submitted that MACC owes a duty of care to a person brought into its premises at their invitation or insistence. This is discussed in the context of accepted international norms, the right to life protection under Article 5 of the Malaysian Federal Constitution and ss. 304 and 304A of the Penal Code in respect of the offences for culpable homicide not amounting to murder and causing death by negligence.

One would have expected the MACC to have led the charge in this inquiry to ascertain the truth and thereby restore its credibility. Instead, it failed to draw a distinction between itself and the officers, and chose to align itself with its officers who may have been involved, responsible and/or privy to the cause of death of Teoh Beng Hock. The absence of separate representation is telling. MACC as a whole chose to defend the actions of its officers rather than assist in the investigation. The MACC adopted the posture of a defendant throughout the course of this inquiry.

The Commission has had to deal with witnesses primarily from MACC who have either been evasive, misleading and/or lied. It has also been

shown that the MACC had suppressed, tampered with and destroyed evidence.

In the circumstances, it has been a difficult task to piece together the evidence to establish what actually transpired at Plaza Masalam leading to Teoh Beng Hock's death.

The facts and information gathered in this inquiry has shown that the main plank of MACC's contention, that is, that Teoh Beng Hock committed suicide is untenable and has been eliminated.

The facts and information gathered in this inquiry has also eliminated the possibility of death by natural causes and non-culpable accident.

This leaves only the possibility of culpable accident or homicide, both of which MACC must be held accountable and liable.

The more difficult task was to identify the individual culprits. We believe that a forceful submission supported by cogent evidence and the facts has been put together which identified the culprits. The fact of a cover up by MACC was discovered.

This Commission is called upon to send a strong and clear message to all law enforcement agencies in Malaysia.

- Abuse of power will not be tolerated.
- Human dignity of suspects/witnesses must be preserved and respected.

- Perjury and/or concealment of facts will be severely punished.
- Law enforcement agencies have a duty of care to persons in their custody.
- Law enforcement agencies bear the burden to explain death in custody or suspicious death of suspects/witnesses.

With this in mind, the Malaysian Bar has proposed the necessary recommendations that would reflect the gravity of the offences perpetrated, and attempt to regain public faith in a necessary institution in a functioning democracy with a rule of law.

PREFACE

ROLE OF THE MALAYSIAN BAR

On 07.02.2011, the Malaysian Bar informed the Commission of Enquiry that it wished to participate in the inquiry as a concerned party pursuant to s.18 of the Commissions of Enquiry Act, 1950 on the grounds that the matters under reference involved an inquiry into the conduct of officers of a law enforcement agency, its practices and Standing Orders with regard to the examination and handling of a witness, and the circumstances relating to a death in custody.

It is pertinent to note that the circumstances relating to the death in custody of Teoh Beng Hock was not only a matter of immediate and particular concern to persons directly affected by his tragic and untimely death, but it had become a focal point of public concern and disquiet with regard to the wider public interest in the manner in which a law enforcement agency, in this instance, the Malaysian Anti-Corruption Commission, conducts itself.

There has been much dissatisfaction and outrage in the manner in which the Malaysian Anti-Corruption Commission had conducted itself before and after the incident under inquiry. Such conduct by the Malaysian Anti-Corruption Commission had lent itself to public distrust and an erosion of confidence in the Malaysian Anti-Corruption Commission, resulting in the institution of this Commission.

The matters under reference and subject of inquiry therefore concerns matters pertinent to the administration of the criminal justice system.

The Malaysian Bar has consistently involved itself and provided its assistance in matters of such public concern; voicing its opinion and upholding the cause of justice without regard to self-interest.

The objects of the Malaysian Bar provide that it shall uphold the cause of justice without regard to its own interest or that of its members, uninfluenced by fear or favour; and to protect and assist the public in all matters touching ancillary or incidental to the law.

Lord Steyn, former Lord of Appeal of the House of Lords, stated in a speech reproduced in the New Law Journal dated 16.10.1998 at page 1525:-

“It is to the Judiciary that the citizen must look for protection from abuses by the Executive and for the vindication of his right against the state. But without an independent Bar and the jury system, the Judiciary would be unequal in its task. Together the Bar, the Judiciary and the Jury is a guarantee of the quality of our democracy. For my part I regard a highly qualified, independent and courageous Bar as of central importance in our system.”

The above statement on the role and importance of the Bar read in the context of the Malaysian Legal Profession Act has a wider application to all matters concerning the cause of justice and the administration of justice.

The Malaysian Bar thus has a statutory duty to take interest, to be involved and concerned in this inquiry.

On 14.02.2011, the Malaysian Bar was admitted by the Commission to participate in this inquiry as a concerned party and to be represented by counsel. The role and purpose of the Bar in this inquiry has been to represent the public interest, the legal profession, and to assist the Commission in its investigation under reference to arrive at or uncover the truth.

As a consequence of its participation in the open hearing of this inquiry from 14.02.2011 to 10.05.2011, the Bar is tendering its submission herein on the terms of reference, facts and issues arising therefrom, which includes some observations on certain aspects of the inquiry undertaken.

GLOSSARY OF ABBREVIATIONS

We set out below a list of abbreviations for names and terms commonly used in this submission as follows:-

MACC Officers

Amin	:	Mohd Amin Bin Ahmad, MACC Klang (IW52)
Anuar	:	Mohd. Anuar Bin Ismail, MACC Investigating Officer for the 52/2009 Operation (IW24)
Arman	:	Arman Bin Alies (IW22)
Ashraf	:	Mohd Ashraf Bin Mohd Yunus (IW20)

Asrul	:	Asrul Ridzuan bin Ahmad Rustami
Azeem	:	Azeem Hafeez Bin Jamaluddin (IW57)
Azhar	:	Mohamad Azhar Bin Abang Mentaril (IW43)
Azian	:	Azian Binti Umar (IW15)
Bulkini	:	Bulkini Bin Paharuddin (IW38)
Dato' Ja'afar	:	Dato' Ja'afar Bin Mahad
Dato' Sama	:	Dato' Samarajoo A/L Manikam (IW34)
Dato' Shukri	:	Dato' Mohd Shukri Bin Abdull (IW25)
Effezul	:	Effezul Azran Bin Abdul Maulop (IW45)
Fauzi Maslan	:	Mohd Fauzi Bin Maslan (IW44)
Fauzi Shadollah	:	Mohd Fauzi Bin Shadollah (IW47)
Hadri	:	Hadri Bin Hashim (IW51)
Hafiz	:	Mohd Hafiz Izhar Bin Idris (IW39)
Hairul	:	Hairul Ilham Bin Hamzah (IW23)
Hassan	:	Mohammad Hassan Bin Zulkifli (IW53)
Hishamuddin	:	Hishamuddin Bin Hashim, the then Deputy Director of MACC Selangor Officer (IW26)
Joehan	:	Joehan Clay Agong
Khairul Anuar	:	Khairul Anuar Bin Alias (IW46)
Nadzri	:	Mohd Nadzri Bin Ibrahim, the MACC Officer who allegedly recorded TBH's statement (IW21)
Najeib	:	Mohd Najeib Bin Ahmad Walat (IW48)
Nicholas	:	Nicholas Francis Bangkugon (IW54)
Raylan	:	Mohd Raylan Bin Mohd Isa
Raymond	:	Raymond Nion Anak John Timban (IW30)
Ridzuan	:	Mohd Ridzuan Bin Samsur (IW4)
Sachi	:	Sachianandan A/L Krishnasekar (IW49)

Shafik : Ahmad Shafik Bin Abdul Rahman @ Alwee (IW50)

Sharil : Mohd Sharil Fairouz bin Arbain

Yusmizan : Mohd Yusmizan Bin Mohd Yusof (IW56)

Zulkefly : Zulkefly Bin Aziz (IW55)

Zurinawati : Zurinawati Binti Zulkifli (IW16)

Police Officers

ACP Omar : ACP Omar Bin Mammah

ASP Nazri : ASP Ahmad Nazri Bin Zainal, the Police Investigating Officer (IW1)

C/Insp Mazli : C/Insp Mazli Bin Jusoh @ Che Kop (IW8)

D/Kpl Suliman : D/Kpl Suliman Bin Tajuddin

DSP Kamaruddin : DSP Kamaruddin Bin Ismail (IW37)

DSP Sharul : DSP Sharul Bin Othman (IW2)

Insp Zaidi : Insp Mohd Zaidi Bin Abu Hassan (IW9)

Insp Zulaimi : Insp Mohd Zulaimi Bin Md Zuber (IW6)

L/Kpl Rostam : L/Kpl Mohd Rostam

Attorney General Chamber's Officers

AG : Attorney General, Tan Sri Abdul Gani Patail

Dato' Kamaluddin : Dato' Kamaluddin Bin Md Said

DPP Abazafree : DPP Mohd Abazafree Bin Mohd Abbas

DPP Kevin : DPP Kevin Morais

SFC Dato' Abdul Razak : SFC Dato' Abdul Razak Bin Musa

Experts

Assoc. Prof. Salleh	:	Assoc. Prof. Sallehuddin Bin Muhamad (IW59)
Dr. Badi'ah	:	Dr. Badi'ah Binti Yahya (IW70)
Dr. Nor Hayati	:	Dr. Nor Hayati Binti Ali
Prof. Mullen	:	Prof. Dr. Paul Edward Mullen
Prof. Vanezis	:	Prof. Dr. Vanezis Petrakis Savva (IW27)
WKY	:	Document Examiner, Chemistry Department (IW32)

Items/Documents/Terms

Mystery Note	:	the note containing handwritten Chinese characters and Bahasa Malaysia words marked as Exhibit I-168(a)
ID	:	Investigation Diary
NRIC	:	National Registration Identification Card
NOP	:	Commission's Notes of Proceedings
ADUN	:	State Assemblyman (Ahli Dewan Undangan Negeri)

Other Individuals

Boon Wah	:	Tan Boon Wah (IW29)
Cher Wei	:	Soh Cher Wei (IW66)
Esther	:	Esther Lew Swee Yoong (IW31)
Harun	:	Mohd Harun Bin Abdullah (IW64)
Kee Hiong	:	Lee Kee Hiong (IW62)

Mandy	:	Mandy Ooi Haw Voon (IW61)
TBH	:	Teoh Beng Hock
Wye Wing	:	Lee Wye Wing (IW36)
YB Ean Yong	:	YB Ean Yong Hian Wah (IW65)

Institutions

AGC	:	Attorney General's Chambers
Commission	:	Royal Commission of Inquiry
MACC	:	Malaysian Anti-Corruption Commission

SECTION 1

The Commission of Enquiry and Observation on Various Parties

TERMS OF REFERENCE

1.1 The Terms of Reference¹ of the Commission are:-

- (a) To enquire whether or not there was any impropriety in the conduct of the examination of TBH in the course of an investigation into a Shah Alam Report Number 0052/2009 by the MACC in relation to its Standing Orders and practices and to recommend any appropriate action, where necessary; and
- (b) To enquire into the death of TBH and the circumstances surrounding and contributing to his death.

THE COMMISSION AND PARTIES

1.2 The Commission to inquire into the death of TBH ("**Commission**") was issued by the Yang di-Pertuan Agong pursuant to s. 2(1) of the Commission of Enquiry Act, 1950 ("**the Act**") on 26.01.2011.

¹ NOP Volume 1 pages 1 – 2

- 1.3 The Commissioners who were appointed by the Yang di-Pertuan Agong are Yang Arif Tan Sri James Foong (as Chairman), Y. Bhg. Dato' Hj Abdul Kadir Sulaiman, Y. Bhg. Dato' Selventhiranathan, Y. Bhg. Professor Dr. Mohamed Hatta Shaharom and Y. Bhg. Dato' Dr. Bhupinder Singh.
- 1.4 The Secretary of the Commission is Y. Bhg. Dato' Saripuddin Kasim.
- 1.5 The Yang di-Pertuan Agong had pursuant to s. 3(1)(d) of the Act prescribed for and appointed conducting officers to assist the Commission. They are:-
- (a) Amarjeet Singh a/l Serjit Singh²
 - (b) Awang Armadajaya bin Awang Mahmud³
 - (c) Kwan Li Sa⁴
- 1.6 The parties appearing at the Commission pursuant to s. 18 of the Act on the 14.02.2011 were as follows:-
- (a) MACC - represented by Masri bin Mohamad Daud together with Heikal bin Ismail⁵. Dato' Sri Muhammad Shafee bin Abdullah appeared as lead counsel from 16.02.2011.⁶

² Exhibit C-1

³ Exhibit C-2

⁴ Exhibit C-3

⁵ NOP Volume 1 page 5

⁶ NOP Volume 1 page 82

- (b) The family of TBH - represented by Karpal Singh and Gobind Singh.⁷
- (c) The State Government of Selangor - represented by Malik Imtiaz Sarwar.⁸
- (d) The Malaysian Bar - represented by Christopher Leong, Nahendran Navaratnam, S. Sivaneindiren, Cheow Wee and Edmund Bon⁹. Robert Low was later enlisted.

1.7 For reasons already stated upon the record of proceedings of this Commission, the family of TBH had withdrawn themselves from the inquiry on 16.02.2011.¹⁰ and the State Government of Selangor had done likewise on 17.02.2011.¹¹

1.8 The Commission commenced its public hearing on 14.02.2011, and it was announced that the Commission intended to proceed with such public hearing until completion of its inquiry.

1.9 At the outset of this inquiry, the Commissioners announced that it had three months to complete its work and that it intended to sit daily in public at the Kuala Lumpur High Court, unless there is a need to visit certain locations, until completion of the inquiry. The Commission had done this, save for the occasion of the visit to Plaza Masalam on 17.02.2011. The duration of the

⁷ NOP Volume 1 page 7

⁸ NOP Volume 1 page 7

⁹ NOP Volume 1 page 10

¹⁰ NOP Volume 1 page 112

¹¹ NOP Volume 1 page 149

Commission was subsequently extended by two months to 25.06.2011.

1.10 The documents and exhibits were provided to the parties on 14.02.2011 and 16.02.2011. The first witness was called on 17.02.2011 and the last was called on 10.05.2011, whereupon the parties were directed to tender their respective written submission by 25.05.2011.

1.11 There were in total 70 witnesses called to render oral evidence and provide information to the Commission. Of these, there were 16 expert witnesses who assisted the Commission, they are as follows:-

- Zaraiha Binti Awang (toxicologist)
- Saiful Fazami Bin Mohd Ali (chemist)
- Insp. Zaidi Bin Abu Hassan (forensic analyst – mobile phone)
- Chief Insp. Mazli Bin Jusoh (fingerprint specialist)
- DSP Sharul Othman Bin Mansor (forensic specialist)
- Dr. Khairul Azman Bin Ibrahim (forensic pathologist)
- Dr. Prashant Naresh Samberkar (forensic pathologist)
- Dr. Shahidan Bin Md Noor (forensic pathologist)
- Professor Dr. Vanezis Petrakis Savva (forensic pathologist)
- Dr. Khunying Porntip Rojanasunan (forensic pathologist)
- Dr. Seah Lay Hong (forensic scientist)
- Wong Kong Yong (document examiner)

- Associate Professor Sallehuddin Bin Muhamad (Associate Professor of Mechanical and Aeronautical Engineering)
- Dr. Badi'ah Yahya (consultant forensic psychiatrist)
- Dr. Nor Hayati Ali (consultant community psychiatrist)
- Professor Dr. Paul Edward Mullen (forensic psychiatrist)

1.12 The inquiry has been exhausting for the Commissioners and parties. Witnesses have been many and the exhibits voluminous. It is our view that the inquiry would have been further enhanced had the Commissioners been given the time before the public sitting of the inquiry to peruse and apprise themselves thoroughly of all matters and events which preceded the inquiry, perused the notes of proceedings of the Coroner's Inquest, examined the evidence and exhibits obtained prior to the inquiry, understand the nature of the MACC 52/2009 operation, and study the police investigation.

1.13 All of this would have enabled the Commissioners, before the public hearing of the inquiry, to apply their minds as to why the police investigation was inconclusive, why the Coroner's Inquest rendered an open verdict, and to set out a plan as to what areas required further investigation, how such investigation ought to be effected and be more incisive in the questioning and inquiry of witnesses. Such further investigations may have required the Commissioners directing the police or the independent investigator to look into and gather further evidence before the public sitting of the inquiry.

- 1.14 The parties ought to have been given more time to peruse and digest all of the relevant documents and information provided to them on 14.02.2011 and 16.02.2011 to enable the parties to have been more helpful to the Commission.
- 1.15 After the public hearing of the inquiry, it may have been advantageous to have allocated time for 'stock taking' as to the state of the evidence and information thus far gathered, and whether further investigation followed by further public hearing was required.
- 1.16 The public hearing of an inquiry is an essential element of the inquiry process. It is important to ensure public scrutiny and accountability, and thus fulfil the *raison d'être* of a Commission of Enquiry, namely, to address public interest and concern in the subject matter under inquiry. Nevertheless, there are certain matters of investigation and probing in the course of an inquiry that by its nature requires the element of surprise. One such instance in the course of this inquiry concerned the Bar's application for the seizure of the computers and laptops of the MACC officers. This application was made after it was revealed in the hearing that the MACC officers had been tampering with their evidence. The requisite element of surprise was lost. MACC was instead asked to cooperate by surrendering to the Commission their computers and laptops. They took an inordinate time to do so, and after several reminders. The examination of these computers and laptops show that there were no longer any data whatsoever left in the computers and laptops, save for traces of surfing on pornographic websites.

- 1.17 The Commission also announced that they intended to seek the assistance of independent investigators, and whose names would be disclosed in due course. The Bar had requested the Commissioners to seek the assistance of and appoint a foreign law enforcement agency for this role and task. The reasons being that such an agency would have the requisite resources, manpower, expertise and experience. More importantly, such an agency would be less likely to be cowed by having to investigate the conduct of MACC officers, and would be seen to be independent.
- 1.18 In this regard, the Bar had informed the Commission that the Hong Kong Police Force had been contacted and they had indicated their willingness to assist if an official request were to be made. This was not taken up. We are of the view that the appointment of such an agency would have been advantageous to the work of the Commission. In the event, an individual was appointed the investigator for the Commission.
- 1.19 The appointment of the investigator should have taken priority in the order of things. The investigator should have been instrumental in filling in the gaps and evidence gathering brought about by the inadequate and amateurish police investigation, and the unexplained and apparent lack of supervision by the AGC. The MACC officers ought to have been questioned in private by the investigator before taking them in the public inquiry. In law enforcement agencies, its officers are trained to follow a chain of command and not to break ranks. If the truth were to be garnered, it would be extremely unlikely to

happen in a public hearing under the full glare of the media and watchful eye of their colleagues. The inquiry ought to have tailored its procedure to cater for this.

- 1.20 This inquiry was running on a tight time schedule. This ought not to have been the case. The Bar is of the view that an inquiry into a matter such as the one under reference, namely, into a suspicious death or death in custody cannot be limited and defined by a deadline or time limitation.

“Custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot whisk away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchanism. No civilised nation can permit that to happen.”¹²

- 1.21 The purpose of this Commission is to answer the 2 matters under reference, to as far as possible do and achieve what was not done or achieved by the police investigation and the Coroner’s Inquest, to address public interest in the matters

¹² D.K. Basu v. State of West Bengal (1997) AIR SC 610 at page 618, para 22. Article 21 of the Indian Constitution is in *pari materia* with Article 5 of the Malaysian Federal Constitution.

under reference, and to allay public fears and misgivings in relation to a law enforcement agency in Malaysia. These objects would be defeated if the primary driving force determining the course of this Commission is time rather than the obtainment of the truth.

- 1.22 The Bar had made two applications for further investigation, namely, for independent forensic computer experts to examine and analyse the computers and laptops that were taken from the MACC officers¹³ and for a forensic physicist to assist in ascertaining answers to questions concerning the fall by TBH from Plaza Masalam.
- 1.23 The application for further expert examination by forensic computer experts was pertinent after it had been shown that there were no information and data in these computers and laptops. The fact that these computers and laptops are devoid of any work documents, templates and other information clearly shows that there has been a 'clean up'. This would have been clear evidence of MACC destroying information and evidence, and preventing this Commission from discovering the truth.
- 1.24 The independent forensic computer expert would have been able to determine when they were 'cleaned up' and how they were 'cleaned up'. The said experts would also have been able to retrieve deleted data and information, save if the 'clean up' was thoroughly done by an expert. This in itself would have

¹³ The Bar's letters to the Commission dated 18.04.2011 and 25.04.2011

been telling as such a complete and thorough 'clean up' requires specific skills. The forensic computer expert would have been able to advise as to the retrieval of such deleted data and information from the MACC servers.

1.25 The Bar had contacted such forensic computer experts, and provided to the Commission the name and contact details of the forensic computer experts who had indicated their willingness to assist.

1.26 The 2nd application¹⁴ was for the engagement of a forensic physicist to assist the Commission in ascertaining the manner and by what means TBH could possibly have exited the window on the 14th floor of Plaza Masalam; whether and by what means TBH could have fallen from a place other than the said window; whether an ordinary person falling from a height of 30 meters or more could have controlled his fall; whether the landing by TBH on his feet was coincidental, for example, whether exiting head first could still have resulted in TBH landing on his feet; the mechanics and play of force (direction etc.) that would have been required to have severed TBH's belt completely; how this may or may not be consistent with TBH's fall.

1.27 The Bar had contacted an eminent forensic physicist who had indicated his willingness to assist, and provided to the Commission his name and contact details. This forensic physicist has experience in examining and determining cause

¹⁴ The Bar's letter to the Commission dated 05.05.2011

and manner of death from great height, and was instrumental in the outcome of a recent high profile criminal case in Australia.¹⁵

1.28 Unfortunately, the Commission informed the Bar that it could not accede to both its applications by reason of time constraint.

1.29 In respect of the Mystery Note which MACC is relying on as being a suicide note, the Bar had sought to question the psychiatric experts on the types and categories of suicide notes, the characteristics and features that are usually found in or which make up a suicide note.¹⁶ This would inform as to the rationale for a person contemplating suicide to even write such a note, and therefore to whom such a note would usually be addressed, and where such a note would usually be placed by that person so that there is assurance that the note would be found and that the person finding the note would be left in no doubt that it was a suicide note. This line of inquiry was obviously pertinent and important, for example, it would on the facts of this case and in the circumstances of known events in TBH's life, answer the questions to whom TBH would have addressed a suicide note if he wrote one, the likely contents of it, and whether he would have filed it away with other documents in his knapsack or placed it prominently to be found and identified as his last communication. The Bar was permitted to only ask questions in clarification strictly in areas the Commissioners deem required clarification.

¹⁵ R v. Wood (2008) NSWSC 1273, 4 Dec 2008

¹⁶ NOP Volume 50 pages 18794 – 18799

- 1.30 The Bar had sought to question YB Ean Yong, based on his familiarity with the manner TBH spoke and wrote Mandarin and his use of phrases, whether the manner of speech and phrases used in the Mystery Note would have been the manner TBH would have expressed himself. This line of questioning was not permitted.¹⁷
- 1.31 The utility and significance of this line of questioning may have been of greater importance if either of the psychiatric opinions had leaned in favour of suicide.

COMPLICITY AND FACTORS ADVERSELY AFFECTING THE INQUIRY

- 1.32 The work of this Commission cannot be looked at in isolation or divorced from matters preceding it. This Commission has come about as a result of a confluence of past events. These past events have given rise to much public consternation and concern with respect to the death of TBH whilst in custody, or at least in the premises, of MACC, the subsequent police investigation and the Coroner's Inquest which ensued thereafter.
- 1.33 This Commission has the advantage of hindsight, to evaluate events passed and discern the reasons for them. It is in the interest and to the benefit of this inquiry that it is able to do so.

¹⁷ NOP Volume 48 pages 18202 – 18212 and pages 18376 - 18380

1.34 The Bar submits that there are factors arising from the events preceding this Commission that ought to be highlighted and brought to the fore so that the evidence and information gathered, and the conduct of witnesses and parties displayed in the course of this inquiry may be discerned and seen in perspective of events giving rise to this Commission.

1.35 In this regard, the Bar sets out for the attention and consideration of this Commission pertinent factors which in the view of the Bar has adversely affected the course of this inquiry.

1.36 The work of the Commission was disadvantaged, and in a significant respect hindered, by the following factors:-

- The inadequate and amateurish police investigation into the death of TBH;
- The attitude and conduct of MACC;
- The unexplained and apparent lack of proper supervision or oversight by AGC in the police investigation;
- The complete destruction and refurbishment of the scene at the known premises of MACC on the 14th and 15th floors of Plaza Masalam;
- The passage of more than 1 ½ years since the incident under inquiry.

Inadequate and Amateurish Police Investigation

- 1.37 It has become apparent in the course of this inquiry that the police investigation into the death of TBH was woefully lacking in depth and width, and indeed substance. One is left with the clear impression that the police investigation was superficial, and perhaps artificial. That this could happen is shocking, bearing in mind that such police investigations are usually, if not always, supervised and overseen by the AGC. More is said with regard to the AGC below.
- 1.38 The police investigation into the incident commenced on 16.07.2009. The investigating officer was given instructions by his superior officer to complete his investigations within 7 days.¹⁸ The Prime Minister announced on 22.07.2009 that the police investigation into the matter would be wrapped up within days, and a Coroner's Inquest would be commenced to inquire into the death of TBH.¹⁹
- 1.39 ASP Nazri registered his sudden death report investigation papers with the Magistrate on or about 23.07.2009 to facilitate the commencement of the Coroner's Inquest. The Magistrate set the inquest to commence on 29.07.2009.²⁰ The then Selangor police chief announced on 27.07.2009 that the police have wrapped up their investigation into TBH's death, save for

¹⁸ NOP Volume 5 page 1334

¹⁹ Thestar online report dated 22.07.2009

²⁰ Exhibit I-91 (ASP Nazri's ID page 30)

tying up loose ends.²¹ As announced by the then Selangor police chief on 25.07.2009, the police investigation into the death of TBH was closed before the commencement of the Coroner's Inquest.²² Whatever further police investigations there were, were extremely limited and only at the instructions of the coroner.

- 1.40 The police were just about on the dot with purportedly completing their investigations in 7 days. It is not surprising therefore that the police investigation fell well short of what was required and expected.
- 1.41 If it is the practice that police investigations are stopped upon the institution of a Coroner's Inquest, then such inquest should not have been instituted prior to completion of a thorough police investigation.
- 1.42 The correct position should be that upon the institution of a Coroner's Inquest, the police investigation should nevertheless continue. However, such police investigation should be reported to the coroner from time to time, and be subject to any directions that the coroner may issue. In other words, the police investigation does not cease or is not held in abeyance, but would carry on in the ordinary manner, and would in addition be subject to any directions for further investigation in any areas that a coroner deems appropriate. Ideally, we should have permanent Coroners' Courts established, which may be in

²¹ Sun2Surf (The Sun online news portal) report on 27.07.2009.

²² Asiaone News (online news portal) report on 25.07.2009

circuit form. In addition, there ought to be coroners who are appointed and specifically trained as coroners.

1.43 In this instance, it appears that the police investigation into TBH's death ceased or was held in abeyance upon the institution of the Coroner's Inquest (save for the following up on the delivery of outstanding reports from the various Chemistry Departments). Thereafter, the records show that the police only took further steps when expressly directed by the coroner, and these were few, namely, on 3 occasions that being:-

- (a) Taking samples of stains on the 14th floor of Plaza Masalam's emergency staircase;
- (b) Taking of Hishamuddin's DNA samples;
- (c) Exhumation of TBH for the 2nd autopsy

1.44 Fundamental and rudimentary police work was absent in many respects, and we set out some instances as follows:-

Immediate Questioning of MACC Officers

- (a) The incident involving TBH's death occurred at or from the premises of MACC at Plaza Masalam whilst TBH was in their premises. The MACC officers at those premises, in particular the officers who were involved in the 52/2009 operation, are immediately material witnesses or potential suspects. The police did not immediately ensure that

these MACC officers were gathered and segregated for the purpose of questioning and taking of their statements on 16.07.2009 itself.

One would have thought that this would have been one of the priority items in investigating a death in custody. The only statement the police took was from Nadzri at 10:15pm on 16.07.2009, and this was after a 'taklimat', that is, a briefing session by Hishamuddin to the MACC officers.²³

This permitted the MACC officers who would have been materially crucial to the police investigation to have been interfered with. It is in evidence in this inquiry that most of the MACC officers involved were summoned to MACC's Putrajaya office for a briefing. ASP Nazri's entry in his ID on 23.07.2009 at 1:00pm states as follows:-

ASP Nazri's ID at page 28 - 29

"Saya kemudiannya telah menyambung percakapan pegawai Hairul Ilham dan antara soalan yang ditanyakan mengapa selepas kejadian, kebanyakan pegawai SPRM menghilangkan diri pada 16.07.2009 dan beliau memberitahu atas arahan Ketua Bahagian

*Operasi Tuan Hishamuddin pergi ke Putrajaya untuk taklimatkan kes kepadanya yang berada di Putrajaya pada masa itu."*²⁴

²³ NOP Volume 43 page 16221 Volume 45 page 16980 - 16983

²⁴ Exhibit I-91 (ASP Nazri's ID pages 28 – 29)

3 things may be gleaned from the above, namely:-

- (i) It would appear that ASP Nazri did ask for all the relevant MACC officers to be questioned on 16.07.2009 but was informed that they were all not available;
- (ii) That ASP Nazri did not inquire as to why these MACC officers were not available and as to their whereabouts; and
- (iii) That ASP Nazri did not insist that these MACC officers immediately present themselves and be made available for questioning by the police.

It is also in evidence that a large number of the MACC officers involved in the 52/2009 operation were gathered at MACC Selangor on the evening of 16.07.2009 for a 'taklimat' by Hishamuddin, and at several other briefings thereafter.²⁵ The MACC officers were briefed and instructed by Hishamuddin to streamline their stories.²⁶

Mobile Phones of MACC Officers

- (b) The mobile phones of the MACC officers involved in the 52/2009 operation were not immediately seized. The

²⁵ NOP Volume 49 pages 18670 – 18671; NOP Volume 45 pages 16980 – 16981; NOP pages 16287 - 16289

²⁶ NOP Volume 45 pages 17019

mobile phones of Hairul, Anuar, Ashraf, Azeem and Nadzri were only seized on 23.07.2009 and sent for analysis on the same day. Hishamuddin's 2 mobile phones and 2 SIM cards were seized and sent for analysis on 13.08.2009.

The short messaging system texts (**"SMS text messages"**) that would be extracted from the mobile phones would have been crucial evidence showing the communications between the MACC officers principally involved in this matter. The results of the analysis of these mobile phones were produced at the inquiry.

The results show that there were almost no communications between these principal officers in the days following the incident, in particular, there were no communications regarding the incident. The absence of such SMS text message communication is glaringly surprising given the seriousness and implications of the incident. This unusual absence of communication would in itself point to a cleaning up of the SMS text messages.

One of the exceptions to the above are the 2 SMS text messages from Azian to Hairul on 17.07.2009 at 7.19pm and 19.07.2009 at 3.46pm, which are highly incriminating in nature. This would appear to have been missed out in the cleaning of the SMS text messages. In this regard, it is pertinent to note that Hairul's replies to Azian are missing.

What about the others? An analysis of the communications between the other officers involved in the operation would have also been just as important. Where the principal officers may have been concertedly more careful in their communications, it is not unusual for the lesser involved officers to be less so. This is bearing in mind that Amin, who was part of Hairul's team, stated that there was already discussion by a group of officers at the MACC Klang office on the morning of 16.07.2009 that someone had died at MACC Selangor office.²⁷ It did not go unnoticed that this candid revelation came from an MACC officer who has since left MACC.

Amongst this group was Raylan, another officer who was involved in the 52/2009 operation. Amin stated that he was informed by the group of officers that a MACC Klang officer who had gone to the MACC Selangor office that morning, had told them of the death upon his return to the MACC Klang office that same morning.

This shows that MACC Selangor had already known of TBH's death early in the morning of 16.07.2009, but had collectively concealed the incident and lied about it. The examination of the CCTV recording showed that Roslan Bin Jari and another officer known as Abdullah were 2 MACC Klang officers who had gone to the MACC Selangor office at Plaza Masalam on 16.07.2009 at

²⁷ NOP Volume 43 page 16268

approximately 8.39am and left the premises at approximately 9.36am. Roslan Bin Jari was one of the officers in the MACC team led by Bulkini that went to question Boon Wah at his house. Another officer could have been the source of this early information as to the death of TBH was Zulkefly. Zulkefly is an MACC officer from the Klang office. He was part of Bulkini's team that investigated Boon Wah that night. He is also the officer Anuar said he slept with in the surau on the 14th floor in the early morning hours of 16.07.2009. Zulkefly had stated in his s.112 statement to the police that he had left Plaza Masalam at 3.15am to go home. However, the examination of the CCTV shows that he left Plaza Masalam at 6.59am on 16.07.2009.

The point to note here is that the officers do have 'careless' chatter, and it was important for the police to have seized all their hand phones as part of the investigation.

Mobile Phone Service Providers

- (c) The police, as part of their investigation, should also have obtained the SMS text message contents of the mobile phones of the MACC officers from the various mobile phone service providers. The purpose and utility of this is obvious. Any investigation is about information and evidence gathering; it is not so much about what one wishes to find, but what one may find that may aid in

discovering what transpired by looking into and probing all avenues.

The various mobile phone service providers have informed the Commission that they do not have access to nor store or keep SMS text message contents. This is contrary to other information that is known, namely:-

- (i) A complaint by a Noor Haslina Abdullah, a CEO of a private college in Kuala Terengganu, against Celcom Axiata Bhd. She is reported to have received on 11.03.2010 a package which contained pages of contents of her SMS text messages and a pen drive containing recordings of her phone conversations. She has filed a suit against Celcom Axiata Bhd vide Kota Bahru High Court Suit No: 23 – 6 – 2010 and Kota Bahru High Court Suit No: 23 – 5 – 2010.
- (ii) The information from Dato' Sri Muhammad Shafee that he too is a victim of invasion of privacy, whereby the contents of his SMS text messages were obtained without his consent.

Seizure of MACC Computers, Laptops and Main Servers

- (d) The computers and laptops of the MACC officers involved in the 52/2009 operation were not seized and examined. This would have been an obvious source of information as

to what happened in the said operation, the purpose and perhaps the real motivation for the operation, the roles each MACC officer played, and the steps and actions taken by them. It may in addition, like the mobile phones, reveal communications (for example, by emails) before and after TBH's death that would have been useful in the police investigation.

This source of evidence and information would have been significant because it has been revealed in the current inquiry that the computers and laptops that were taken by this Commission for analysis had all of its contents and information expunged and deleted (save for traces of the relevant MACC officers having surfed porn sites). One only does this if there is information that is sought to be hidden.

The explanation by the MACC officers was that they hardly ever used their computers. This runs contrary to the evidence that MACC had computerised their offices and operations sometime since 2004; that each MACC officer is issued or assigned a computer for the purpose of their work; that there are standard document templates²⁸ (example, their investigation diaries, for recording of statements, search warrants, etc.); that all MACC officers are required to use these various templates in the course of their work, in particular, in filling out their investigation

²⁸ NOP Volume 36 pages 13481 – 13484)

diaries; that all MACC officers irrespective of their role in an investigation are required to fill in and file such investigation diaries²⁹; that the computer systems of MACC officers are networked³⁰ (which means that they are all connected to central or main servers).³¹

Further, some officers are also issued with laptops. Clearly therefore, they are required to use it. AA's laptop was taken by the Commission and analysed and was likewise found to have been devoid of any documents and information save for traces of internet surfing and music downloads. AA's explanation was that his laptop was infected by virus sometime in June – August 2010 and had to reformat his computer. The analysis of his laptop found no evidence that it was infected by virus or that it was subsequently repaired.³² Again, this blatant tampering and destruction of evidence in itself speaks volumes.

Had the police adopted its usual operating procedure of immediately seizing these computers at the commencement of its investigation into TBH's death, these information and evidence would have been intact and available.

²⁹ Exhibit I-194 N6 page 59 (Anuar's SMS text to ASP Nazri)

³⁰ NOP Volume 36 page 13475

³¹ NOP Volume 36 page 13478

³² Interim Report re Computers and Phones by M.L. Squires

The police should have also seized and examined the central or main servers of MACC for any relevant information and evidence. In particular, documents or emails that may have been deleted on the individual computers may still have been available on the main server. This is bearing in mind that all emails, particularly incoming emails would be stored on the main server. Unfortunately, the police did not do this as part of the investigation.

It ought to be noted that in a police investigation into a suspicious death, it would be an unacceptable reason that such computers, laptops and main servers were not taken for examination as they were required by the MACC for their work. When it comes to an investigation into such a death, the MACC cannot be exempted from being subject to a thorough police investigation. A check with forensic computer experts would reveal that it would have been possible, and in fact a usual practice, for the forensic computer experts to copy the entire data from such computers, laptops and servers for the purposes of their examination and analysis. Thus making available these computers, laptops and servers for MACC's purposes.

Private Emails

- (e) The police did not ask for the private email accounts and passwords of the MACC officers who were involved in the 52/2009 operation for the purposes of their investigation.

One would have thought that this was an obvious thing to do in a search for evidence and information that may be helpful, for instance, the MACC officers themselves had sought this information from TBH and investigated TBH's private email account as part of MACC's 52/2009 investigation.

Forensic Examination of 14th and 15th Floor of Plaza Masalam

- (f) It is evident that the police investigation into the death of TBH had confined its initial forensic examination (by a forensic team from IPK Selangor) of the premises in question merely to the window on the 14th floor which was suspected from which TBH exited the building, the sofa on the 14th floor on which TBH was alleged to have slept from 3.30am on 16.07.2009 and the landing on the 5th floor where TBH's body was discovered. Only the area of the 14th floor window in question and the landing of the 5th floor were cordoned off as restricted areas with police taping on 16.07.2009.

One would have thought that it should be basic procedure to have cordoned off the entire premises of MACC at Plaza Masalam (the known premises being the entire 14th floor and part of the 15th floor) for police investigations; at least until the police have interviewed and questioned all of the MACC officers involved, ascertained the movements of such officers and TBH at the premises in question and therefore would be in a position to determine

which parts of the said premises were required to remain cordoned off and preserved for continuing police investigation. This is to ensure the integrity of the scene and preserve whatever physical evidence that may be relevant.

There was no forensic investigation of the rest of the office, for example, the surau where Anuar said that he was sleeping with Zulkefly n the morning of 16.07.2009, or the 'bilik ruang tamu' next to the reception where MAI said he was sleeping with the security guard Khairuddin.

As it transpired, it was only on the 4th day after TBH's death that a 2nd police forensics team from Bukit Aman was despatched to MACC's office at Plaza Masalam for the purpose of forensic investigation of the "*Bilik Mesyuarat Utama*" where it is said TBH was questioned, the room of Nadzri where it is said TBH's statement is recorded, at the 14th floor window in question, and the "*Ruang Tamu*" at the "*Pendidikan Masyarakat (PENMAS)*" area in which TBH was said to have been offered food at approximately 9.30pm. Not surprisingly, this forensic investigation did not turn up anything useful. A faint shoeprint was said to have been found on the bottom sill of the window in question. However, the forensic team did not lift this shoeprint. DSP Sharul stated that the shoeprint was very light, and thus indicated that whoever left it had not put his or her body weight on the sill.

Fingerprints

- (g) The 1st forensic team from IPK Selangor had found and discerned several fingerprints on the window sill and glasspane of the window in question, but had not proceeded to lift the said prints for investigation. C/Insp Mazli stated that there were not enough characteristics seen in the fingerprints to make a positive identification. He stated that one requires six to eight discernable characteristics to make such identification. In this instance, they could only discern three to four characteristics per fingerprint. There were about six fingerprints found.

As we see the matter, there are broadly three stages in fingerprint examination, namely, locating, lifting and analysis. Once a fingerprint is located, one would have thought that it should be lifted for analysis under appropriate equipment. In this instance, an on the spot analysis without equipment appears to have been done, resulting in the fingerprints not being lifted. This does not appear to be a correct approach. The fingerprints should have been lifted to be properly examined and analysed under proper magnification equipment. It may have turned out that there were more characteristics when viewed under magnification.

At the minimum, a negative identification may have been possible, that is, a comparison of the three to four

characteristics of each of the fingerprints against a person's fingerprint could have eliminated that person as having left the prints on the window. This process did not occur to the police.

Section 112 Statements

- (h) As stated above, the police did not immediately ensure that the relevant MACC officers were gathered and segregated for the purpose of questioning and taking their statements. Save for Nadzri's statement, the rest of the statements were taken on 17.07.2009. All statements, including Nadzri's, were taken after the MACC officers had attended a briefing by Hishamuddin. These witnesses were not segregated when called to give their statements. They were all placed in the same room, and permitted to move and discuss freely.

It appears from the ID/papers of ASP Nazri that there was no further action taken to investigate and verify the account of events in the statements given by these MACC officers. There was no investigation of the contents of the 112 statements. There was no cross-checking of their stories, no verification of alibis (for example, Effezul's explanation on his sudden departure to Kota Bahru).

“Dairi Perharian Rasmi” of Anuar

- (i) It is recorded in ASP Nazri’s ID that the police did not seize the Dairi Perharian Rasmi of Anuar or any of the other MACC officers involved in the 52/2009 operation. ASP Nazri had only obtained a certified photocopy of an extract of Anuar’s *“Dairi Perharian Rasmi”* consisting of 10 blank pages, save for a short notation. It was certified by another MACC officer.

This is so obviously ridiculous that it should require no further elaboration. Do the police accord such courtesies to any other persons in a suspicious death investigation? There is also no record or evidence that the police asked all the other MACC officers for their Dairi Perharian Rasmi.

MACC Officers’ IDs

- (j) It is recorded in ASP Nazri’s ID that he had telephoned Anuar on 21.07.2009 at 8.40pm to ask for Anuar’s ID. Anuar informed ASP Nazri that the MACC investigations in question began on 15.07.2009, and since TBH’s death Anuar did not have time to write his ID. As we now know, this is not true – the MACC investigation started on or about 24.06.2009 upon the instructions of Hishamuddin.³³

³³ Exhibit I-207

Further, this request by ASP Nazri was on the 6th day of TBH's death. There was ample time for Anuar to have written his ID, especially since the events surrounding the MACC investigation and TBH was now of utmost importance. One would have expected that the MACC officers, particularly those who had nothing to hide, would take the first opportunity to record these matters whilst it was fresh in their memories.

ASP Nazri was also informed by Anuar that all MACC officers who were involved in the MACC investigation were required to write their IDs.³⁴ Strangely, the police made no request to seize these IDs.

TBH's Laptop

- (k) TBH' laptop was not surrendered to the police by MACC. It was not seized by the police because ASP Nazri was instructed by his superiors not to do so.³⁵ This is evidence not least for the purpose of verifying the statements of the relevant MACC officers as to what they say they were investigating; what they were doing, the evidence they say they obtained; whether the documents alleged to have been found in the laptop are there, if so, in what form; whether there was any tampering, etc.

³⁴ Exhibit I-194 N6 page 59

³⁵ NOP Volume 3 page 1944

Alleged TBH's Statement

- (l) Although it is not recorded in ASP Nazri's ID, the police must have seized TBH's statement as part of their investigation. It is of course an important piece of evidence. However, it is recorded in his ID that the Inspector General of Police had on 20.07.2009 ordered ASP Nazri to return TBH's statement to MACC and not to take any copies of the same. As a result, the original of the TBH statement is now missing, and this Commission is handicapped in some ways for it.

The instruction not to seize TBH's laptop for the purpose of the police investigation and the order to return TBH's statement to MACC and not to take any copies of the same is extraordinary, bearing in mind that TBH's laptop and statement are vital pieces of evidence in any police investigation into his death and the circumstances surrounding it.

This speaks volumes as to the seriousness or otherwise that the police investigation was accorded. This combined with the factors enumerated herein as lacking in the police investigation gives a disturbing impression that the police were incompetent or the investigations were deliberately wanting.

The importance of a proper, thorough and independent police investigation into a suspicious death or into death in

custody cannot be gainsaid. As stated in *Anguelova v Bulgaria* (App no 38361/97) [2002] ECHR 38361/87:-

“144. The Court finds, therefore, that the investigation lacked the requisite objectivity and thoroughness, a fact which decisively undermined its ability to establish the cause of Mr. Zabchekov’s death and the persons responsible. Its effectiveness cannot, therefore, be gauged on the basis of number of reports made, witnesses questioned or other investigative measures taken.

145. The applicant alleged, in addition, that failure of the investigation in her case was the result of a general problem of lack of independence, impartiality and accountability on the part of the authorities handling investigations of police ill-treatment...

146. The Court finds that there has been a violation of the respondent State’s obligation under Art. 2(1) of the Convention to conduct an effective investigation into the death of Mr. Zabchekov.”

The Attitude of MACC as an Institution and its Officers

- 1.45 We have in a letter to the Commissioners dated 18.04.2011 echoed the views of the Commissioners that an institution performing the functions like the MACC is important and in the public interest.

- 1.46 We have heard evidence that the MACC is to a large extent modelled after the internationally reputed ICAC of Hong Kong.
- 1.47 This Commission is given the golden opportunity to examine why two institutions which are allegedly modelled on the same platform are world's apart in terms of repute, public perception and functioning.
- 1.48 The attitude of the MACC and the way they have conducted themselves in this Inquiry perhaps provides some insight.
- 1.49 What we have is a death in custody. This is a serious matter. A person who was not even a suspect but from whom, according to MACC, assistance was being sought in an investigation was found dead. He was last seen in MACC premises. A family is left to grief. A young woman is left to raise a child on her own. A young baby will never know the father.
- 1.50 Instead of leading the charge into trying to discover the truth, we have only been visited upon with lies after lies from the MACC officers.
- 1.51 Whilst under normal circumstances you cannot visit the action of individuals who may have gone on a frolic of their own upon the institution, this is not the case here.
- 1.52 MACC the institution, has chosen to defend these individuals. It has engaged a senior criminal lawyer to represent them.

Throughout the inquiry, he made no secret of the fact that he was participating in the Inquiry as defence counsel.

- 1.53 Instead of aligning themselves with the Commission and allowing each witness whether from MACC or otherwise to be questioned, examined and broken down to discover the truth, they chose to coordinate their story and adopt a non-cooperative approach. There is ample evidence of this right from the day of the incident.
- 1.54 An institution is only as good as the people who run it. In this case, as alluded to above, there was a concerted effort amongst the powers that be at the MACC and the AGC to coordinate their story and cover up the truth.
- 1.55 This accounts for the meeting in MACC Putra Jaya on the day of the death. It is submitted that Hishamuddin went there in the morning of 16.07.2009 itself to brief the upper brass what happened. An ex-MACC officer confirmed that MACC Klang knew of the incident on 16.07.2009 morning itself. The whole alleged discovery at 1.30pm by Siti Zabedah Binti Yahaya (IW3) is therefore fiction and part of the cover up. Whilst Siti Zabedah binti Yahaya may have truly discovered the body as stated, MACC officers knew well before because they were there when the incident happened. This is also why Hishamuddin Hashim and the upper brass never felt the need to go and see the body on the 5th floor, a natural reaction if one is dumbfounded by the incident.

- 1.56 This is also why institutionally, MACC chose to conceal the truth about Hishamuddin Hashim heading the operations. They chose to conceal what was truly being investigated on the night of 15.07.2009. They chose to conceal the fact that TBH was not released at 3:30am on 16.07.2009. They chose to conceal the fact that TBH's handphone was taken away from him. Most importantly, MACC and AGC directed their officers only to answer questions posed and not volunteer information to the coroner's inquest and to this Commission, a shocking instruction emanating from two law enforcement agencies.
- 1.57 The fact that serious breaches of alleged MACC Standard Procedures and Directives have gone unpunished leads to the irresistible conclusion that the alleged breaches did not indeed take place but is part of the institutionalised cover up.
- 1.58 For example, none of the MACC officers contemporaneously prepared their investigation diaries. They may have done so, but all were discarded and suppressed from this Commission save and except for five MACC officers. In either case, it is more likely that this was to allow for the coordination of their story.
- 1.59 Investigation diaries of other officers were not volunteered but had to be fished out in the course of this Inquiry. They lied by claiming they had not prepared the investigation diaries and that they were allegedly not required to prepare one.

- 1.60 Computer or phone records were mysteriously unavailable and/or have been tampered with. When requested by the Commissioners, there was considerable delay in providing the computers for examination by MACC.
- 1.61 There is strong reason to believe that some honest MACC officers were extremely unhappy with the stance taken by MACC as a whole but were hamstrung in voicing their grievances.
- 1.62 We believe this emanated in the anonymous letter dated 05.08.2009³⁶ written on MACC's letterhead. The letter was written clearly and in a comprehensible manner unlike most "surat layang" which are written in gibberish. The authenticity of the letterhead to date has never been questioned. It is a cry from within from a few good apples in a basket full of rotten ones. That cry was ignored. The investigation into the anonymous letter by the police is laughable.
- 1.63 The absence of any investigation by MACC itself as an institution into the letter is most revealing. There is truth in its contents.
- 1.64 Without any further investigation but by merely referring to existing exhibits and through questioning, this Commission was able to establish:

³⁶ Exhibit I-256

- (a) That the whole operation on 15.07.2009 was in all likelihood politically motivated as alleged in the anonymous letter. There was no groundwork done prior to dragging in seven witnesses and unnecessarily detaining them.
- (b) That Hishamuddin Hashim was indeed in charge of the operations on 15.07.2009 to try his level best to find wrongdoing on the part of the assemblymen as alleged in the anonymous letter.
- (c) That Hishamuddin Hashim did direct the MACC officers involved in the operations to lie about Hishamuddin Hashim's involvement in the operations as alleged in the anonymous letter.

1.65 We are therefore left to wonder what a full and thorough investigation could reveal. Pardon the expression but there is certainly something rotten in the house of MACC as our detailed submission below will reveal.

1.66 It is the duty of this Commission to make recommendations including but not limited to what we will suggest below to put things right.

1.67 We cannot agree more with the Commission that this country needs an institution like the MACC. Serious efforts must be made to improve its reputation and standing both locally and internationally. It cannot be denied that after the 2nd death recently, this must be at its lowest ebb.

Supervision and Oversight by the AGC

1.68 The AGC has supervision and oversight of all police investigations, as well as the MACC investigation in the 52/2009 operation (the MACC has no prosecutorial discretion and power). ASP Nazri had briefed and updated the AGC on his investigation into TBH's death, and instructions were given to ASP Nazri as to further conduct of his investigation. ASP Nazri reported 4 times to the AGC, twice of which was to the Attorney General/Public Prosecutor. It is therefore surprising that the state of the police investigation was so wanting.

1.69 As stated above, the state of the police investigation into the death of TBH leaves one with the clear impression that the police were negligently incompetent or deliberately so. Either scenario is very disturbing bearing in mind that the police investigation was supervised or overseen by the AGC. Why, for instance, would the IGP have of his own volition ordered the return of an important piece of evidence without taking copies or was he ordered to do so? The reason given for this order was that the TBH statement was "rahsia SPRM".³⁷ Does this mean that the investigation into a suspicious death or death in custody involving MACC is subordinated to the MACC operation? In this connection, the MACC operation would have also been under the supervision or overseen by the AGC.

³⁷ Exhibit I-91 (ASP Nazri's ID page 18)

1.70 The Attorney General had on 20.07.2009 directed that the police investigation into the death be completed immediately.³⁸ This is not an instruction one would usually expect, and is certainly not an encouraging direction, in a case that requires particularly careful and detailed investigation, namely, an investigation into the suspicious death of a person in the custody of a law enforcement agency.

1.71 During the several briefings by the police, the AGC would have known that the police investigation was far from complete, for example, that there had yet been no investigation and verification of the contents of each of the 112 statements given by the MACC officers involved. In fact, the police were still taking the initial 112 statements until 31.07.2009 from several MACC officers involved in the MACC operation.³⁹ This underscores the fact that the police could not have been anywhere close to completing their investigations. A perusal of the investigation papers confirms this. ASP Nazri stated to the Commission that:-

ASP Nazri's NOP Volume 5 page 1334:

*"Untuk pengetahuan Yang Arif, dalam menyiapkan kertas SDR ini daripada hari pertama sehingga kertas SDR dikemukakan kepada Majistret, saya hanya mempunyai 7 hari sebelum IP ini disiapkan dan diserahkan kepada Majistret, dan di dalam 7 hari ini, saya terpaksa membuat semua, segala-gala yang telah disiapkan di dalam IP ini. Untuk makluman, Yang Arif."*⁴⁰

³⁸ Exhibit I-91 (ASP Nazri's ID page 18)

³⁹ Exhibit I-199. s.112 statements of Effezul Azran bin Abdul Maulop, Mohd. Amin bin Ahmad, Azian binti Umar, Mohd. Fauzi bin Maslan, Bulkini bin Paharuddin and Zulkely bin Aziz.

⁴⁰ NOP Volume 5 page 1334

- 1.72 At the time the police closed their investigation (as announced on 25.07.2009), they had merely done what could be described as initial ground work. Despite this, the AGC permitted or accepted the closure of the police investigation into the death of TBH. Why would the AGC do so?
- 1.73 The above is compounded by the MACC subsequently being represented by officers of the AGC at the Coroner's Inquest, whereat they pushed the position that TBH committed suicide. There was at that time no basis for taking such a line.
- 1.74 Dr. Badi'ah's evidence is that she was contacted in mid-August 2009 to assist with investigating the possibility of suicide. This was pursuant to a request by ASP Nazri and DPP Abazafree.⁴¹ In the ultimate, Drs. Badi'ah and Nor Hayati Ali's psychiatric report could not conclude there was suicide; she informed this Commission that it was inconclusive.⁴² The psychiatric report was neither produced at the Coroner's Inquest nor in this inquiry; thus, we are unable to ascertain what exactly was stated in the report. There is a subtle difference between 'could not conclude there was suicide' and 'it was inconclusive'. For our purposes, the difference is without a distinction as it would mean that there is no evidence or indicators of suicide.
- 1.75 This psychiatric report was handed to DPP Abazafree.⁴³ However, the said report was not produced and tendered in the

⁴¹ Exhibit I-255 page 1

⁴² NOP Volume 50 pages 18905 - 18906

⁴³ Dr. Badi'ah's NOP Volume 50 page 18904

Coroner's Inquest, and neither were Drs. Badi'ah and Nor Hayati Ali called as witnesses.⁴⁴ This is unacceptable conduct. The duty of parties in a Coroner's Inquest is to assist the inquest to seek answers, and to produce all relevant documents, be it incriminatory or exculpatory. The position of MACC as an institution at the Coroner's Inquest ought to have been that they seek and welcome the truth. The suppression of the psychiatric report, whilst pursuing a line of suicide at the Coroner's Inquest is disreputable and possibly contemptuous.

1.76 To understand the extent of this conduct, we set out a chronology of pertinent events concerning the Mystery Note. Although this is lengthy, it is necessary and important. The chronology is as follows:-

- (a) Zurinawati saw TBH's knapsack on the floor next to the sofa in front of Nadzri's room at 8.30am on 16.07.2009;⁴⁵
- (b) However, Anuar stated that he saw TBH's knapsack and mobile phone on the sofa in front of Nadzri room at about 9am on 16.07.2009;⁴⁶
- (c) Anuar then placed TBH's knapsack and mobile phone in his room when he could not find TBH;⁴⁷

⁴⁴ Dr. Badi'ah's NOP Volume 50 page 18907 - 18908

⁴⁵ NOP Volume 8 page 2478

⁴⁶ NOP Volume 19 page 7228

⁴⁷ NOP Volume 20 pages 7223 - 7224

- (d) Zurinawati states she saw the TBH's knapsack in Anuar's room after 2.00pm on 16.07.2009, and subsequently saw it again on the sofa in front of Nadzri's room between 4.00pm to 5.00pm that day;⁴⁸
- (e) ASP Nazri went to the 14th floor of Plaza Masalam and examined the sofa at 3.10pm that day. He did not make any notation in his ID about seeing TBH's knapsack;⁴⁹
- (f) At 5.00pm that day, ASP Nazri was shown TBH's knapsack on the sofa in front of Nadzri's room by Zurinawati;⁵⁰
- (g) ASP Nazri, together with D/Kpl Suliman and L/Kpl Rostam, took the knapsack to the small guard room next to the reception area of MACC's office to examine the contents;⁵¹
- (h) ASP Nazri took the knapsack back to his office at IPD Selangor at 12.30am on 17.07.2009. He examined the contents of the knapsack together with D/Kpl Suliman and L/Kpl Rostam, and proceeded to type into his computer a list of the said contents. The Mystery Note is not listed as a content of the knapsack;⁵²

⁴⁸ NOP Volume 8 page 2502

⁴⁹ Exhibit I-91 (ASP Nazri's ID page 2)

⁵⁰ Exhibit I-91 (ASP Nazri's ID page 4)

⁵¹ Exhibit I-91 (ASP Nazri's ID pages 4 – 5)

⁵² Exhibit I-91 (ASP Nazri's ID page 8)

- (i) ASP Nazri also listed out the contents of the knapsack in his ID. The Mystery Note is not listed amongst the contents;⁵³
- (j) L/Kpl Rostam records ASP Nazri's police report on 18.07.2009 listing out the contents of TBH's knapsack. The Mystery Note is not listed amongst the contents. It is also pertinent to note that TBH's NRIC is also not listed as an item found;⁵⁴
- (k) Coroner's Inquest commenced with preliminaries on 29.07.2009, and proceeded to the substantive hearing on 05.08.2009. The police announced that they have completed their investigation before the commencement of the Coroner's Inquest;⁵⁵
- (l) On 14.08.2009, ASP Nazri calls Dato' Dr. Suaran Singh (Head of Psychiatric Department for Malaysia) for assistance to ascertain whether TBH committed suicide;⁵⁶
- (m) The official request for psychiatric expert assistance was issued on 18.08.2009, and relevant documents/materials were forwarded to Drs. Badi'ah and Nor Hayati Ali;
- (n) Drs. Badi'ah and Nor Hayati Ali sends a "*Laporan Awal Pemeriksaan Psikologi Fasal Kematian*" dated 26.08.2009

⁵³ Exhibit I-91 (ASP Nazri's ID page 8)

⁵⁴ Exhibit I-199

⁵⁵ Sun2Surf (The Sun online news portal) report on 27.07.2009.

⁵⁶ NOP Volume 50 page 18924

requesting for additional information and documents.⁵⁷

One of the items was for ASP Nazri and DPP Abazafree to ascertain if there was a suicide note;

- (o) ASP Nazri responded with providing further documents on 10.09.2009. There was no suicide note;⁵⁸
- (p) On the same day, Dr. Badiah visited the MACC office at Plaza Masalam with ASP Nazri. She reminded ASP Nazri about the significance of finding a suicide note, and asked to examine TBH's knapsack to see if she could find any notes that could be a suicide note. ASP Nazri did not allow her to examine the knapsack;⁵⁹
- (q) Dr. Badiah then specifically asked ASP Nazri "to go back and check properly" TBH's knapsack for any notes that may be a suicide note;⁶⁰
- (r) ASP Nazri did not revert to her as to whether or not he had found any such note;⁶¹
- (s) It is to be noted that although ASP Nazri appears to have entered into his ID his interactions and dealings with various other experts, for example, the DNA expert, the various chemists and the forensic pathologists, his ID

⁵⁷ Exhibit I-255

⁵⁸ NOP Volume 50 pages 18891 - 18892

⁵⁹ NOP Volume 50 pages 18895 - 18898

⁶⁰ NOP Volume 50 pages 18898 - 18899

⁶¹ NOP Volume 50 pages 18899 - 18900

strangely does not record any of the above events involving the forensic psychiatrists save for the entry on 07.10.2009;

- (t) According to ASP Nazri's ID, the first and only entry recording events with Dr. Badi'ah is his entry of 07.10.2009 which states that he had called Dr. Badi'ah on 07.10.2009 who had informed him it is usual in cases of suicide for there to be a suicide note, and she requested him to check whether there was any such note by TBH. She stated that it would be difficult for a psychiatrist to make any conclusion without such a note;⁶²
- (u) According to the same entry in ASP Nazri's ID, he then did a search of TBH's knapsack and came across a handwritten note containing Chinese writing and Malay words '*mendapat kelulusan YB*' and '*mengikut arahan YB*'. The Mystery Note also had a signature on its right side middle portion;⁶³
- (v) Suspecting something significant, he immediately asked ASP Lim Chi Jiun to translate the Mystery Note. The translation appears in his ID. He immediately contacted DPP Abazafree, who instructed him to meet Dato' Kamaluddin bin Md. Said, the Head of Appellate and Trials at the AGC, at 10am 08.10.2009 at Putrajaya. ASP Nazri also immediately informed his superior officers,

⁶² Exhibit I-91 (ASP Nazri's ID page 39)

⁶³ Exhibit I-91 (ASP Nazri's ID page 40)

namely, DSP Kamaruddin, ACP Omar, and Datuk Hasnan. ASP Nazri was instructed by ACP Omar to obtain handwriting samples of TBH for the purpose of Jabatan Kimia analysis;

- (w) In the meantime, ASP Nazri creates a new list of the contents of TBH's knapsack, however, there is no police report made in respect of this alleged new list of contents of TBH's knapsack;
- (x) At the meeting on 08.10.2009, Dato' Kamaluddin directed ASP Nazri to obtain Chinese handwriting samples of TBH from his friends and school;
- (y) On 09.10.2009, ASP Nazri sends the Mystery Note with other documents for comparison to the Chemistry Department at Petaling Jaya for handwriting analysis to determine if the Mystery Note was written by TBH;⁶⁴
- (z) The Chemistry Department sends its completed report dated 14.10.2009 to ASP Nazri;⁶⁵
- (aa) On 20.10.2009, ASP Nazri was directed by DPP Abazafree to send the Mystery Note together with further documents and other items to the Chemistry Department

⁶⁴ Exhibit I-91 (ASP Nazri's ID page 43)

⁶⁵ Exhibit I-171

for additional analysis to determine if the Mystery Note was written by TBH;⁶⁶

- (bb) Drs. Badi'ah and Nor Hayati Ali's psychiatric report dated 22.10.2009 was handed to DPP Abazafree on 22.10.2009 or a few days after that.⁶⁷ DPP Abazafree had asked Dr. Badi'ah if she could change her psychiatric report if there is new positive evidence, and according to Dr. Badi'ah neither she nor Dr. Nor Hayati Ali were contacted with any new "positive evidence";⁶⁸
- (cc) On 29.10.2009, Jabatan Kimia sends its completed report dated 26.10.2009 to ASP Nazri;⁶⁹
- (dd) None of this was informed to Drs. Badi'ah and Nor Hayati Ali. ASP Nazri met with Dr. Badi'ah shortly after her psychiatric report was handed to DPP Abazafree but apparently ASP Nazri showed her the Mystery Note without a translation. It also appears that Br. Badi'ah was not informed of the various steps taken with regards the Mystery Note to ascertain the handwriting of TBH;
- (ee) Dr. Badi'ah stated that she was not requested to do anything and was not contacted until this Commission of Enquiry. It appears that nothing else was done by the

⁶⁶ Exhibit I-91 (ASP Nazri's ID page 40)

⁶⁷ NOP Volume 50 page 18934

⁶⁸ NOP Volume 50 pages 18906 - 18907

⁶⁹ Exhibit I-172

police and the AGC with regard to the Mystery Note until almost one year later;

(ff) The Mystery Note was dramatically made public at the Coroner's Inquest on 09.08.2010, and subsequently produced as evidence on 20.09.2010. It was reported that the AGC said that they did not realise the Mystery Note was a suicide note.⁷⁰ Even then there was no psychiatric report on the Mystery Note;

1.77 The above chronology reveals startling inconsistencies, illogical and inexplicable events and conduct.

1.78 Although the AGC and the police deemed it fit as early as 14.08.2009 to request for expert psychiatric assistance from the Psychiatric Department of Malaysia to ascertain whether TBH committed suicide, they appeared to have inexplicably disregarded the persistent advice and request by Dr. Badi'ah to "check properly"⁷¹ TBH's knapsack for any notes that may be a suicide note. The police only did so almost 2 months later, that is, 07.10.2010.

1.79 ASP Nazri explained that he had not earlier listed the Mystery Note as part of the contents of TBH's knapsack because he assumed it was merely a work related document due to the words "*mendapat kelulusan YB, mendapat arahan YB*".⁷²

⁷⁰ Thestar online report dated 9.08.2010

⁷¹ NOP Volume 50 page 18899

⁷² NOP Volume 5 page 1333; Exhibit I-91 (ASP Nazri's ID page 52)

However, ASP Nazri stated that on 07.10.2009, he re-examined the contents of TBH's knapsack and became suspicious when he saw the Mystery Note because of the same words "*mendapat kelulusan YB, mendapat arahan YB*".⁷³ His explanation for the 'discovery' of the Mystery Note offends logic.

1.80 The Mystery Note was sent (twice) to WKY for comparative analysis to ascertain whether the Mystery Note was written by TBH. WKY was not asked to examine and test the Mystery Note for authenticity, in particular, whether the writings and initial were forged, traced, pasted or emplaced on the paper.⁷⁴ The Mystery Note was also never forensically examined for fingerprints or DNA left possibly by sweat or body oil/residue to ascertain whether TBH's fingerprints or DNA would be on the Mystery Note. This defies common sense, particularly when its authenticity has been questioned and contested. These would have been obvious requirements of a bona fide investigation.

1.81 After the 'discovery' of the Mystery Note and receipt of the 2 reports from WKY dated 14.10.2009 and 26.10.2009, the AGC and police did not provide this information to Dr. Badi'ah. After the repeated request by Dr. Badi'ah for a search of THB's knapsack, ASP Nazri met with her after her psychiatric report dated 22.10.2009 to show her the Mystery Note. There was no other reason proffered for this meeting. The meeting was specific to the Mystery Note. Yet, we are told that only the

⁷³ Exhibit I-91 (ASP Nazri's ID page 51)

⁷⁴ Note: WKY stated in evidence that although he was not requested to test for authenticity, he nevertheless did test for pasting but did not state this in his report. He stated that it is reflected in his work sheets. However, a perusal of these work sheets does not reveal any such testing.

Mystery Note was shown to her. There was no translation and she did not ask for one. We are also told that she was not requested to re-look or examine further the matter. This was indeed a strange meeting if one were to believe it. Thereafter, it appears that the AGC and the police had put away the Mystery Note for no fathomable reason.

1.82 Bearing in mind that:-

- the AGC and police initiated the investigation into the possibility of suicide by TBH, which would have served the interest of MACC; and
- the specific request made by DPP Abazafree to Dr. Badi'ah if she would change her psychiatric report in the event he is able to provide her with 'positive evidence',

the apparent complete inaction with regard to the Mystery Note calls into question the origin of the Mystery Note, its authenticity, the truthfulness of the evidence that nothing was done regarding the Mystery Note, and the conduct of the AGC, police and MACC in this entire affair.

1.83 The AGC on 09.08.2010 sought to explain this incredulous sequence of events and conduct by the AGC and the police in a press statement, extracts of which are as follows:-⁷⁵

⁷⁵ Thestar online news report dated 9.08.2010

- The AGC was startled when the discovery of the Mystery Note was made known, and had thereafter caused further investigation to be carried out;
- According to the investigation officer it was not found when he first searched the deceased's sling bag after the incident;
- The note was immediately translated and there was sufficient cause to send it to be analysed by a document examiner of the Chemistry Department. The said note was sent on 09.10.2009 and subsequently on 20.10.2009;
- The document examiner prepared his reports and they were considered by the AG himself who was not convinced of the authenticity of the note due to insufficient samples to verify the handwritings in particular the Chinese characters;
- The AG was of the view that the note should not be tendered until and unless the investigation officer could provide satisfactory explanation as to its discovery;
- However, recently the investigation officer owned up by admitting that he did in fact find the note when he searched the sling bag on 17.07.2009 but did not realise the significance of it as there were other documents found and that they were written in both Chinese and Roman characters;

- As a result of this the AG decided to put the note in and directed the investigation officer to explain this in court to avoid any repercussion in future and let the Coroner decide on its weight after considering the explanation by the investigation officer and the document examiner report;
- There is no suppression or withholding of evidence and that the decision for not tendering it earlier was made based on the document examiner's report as well as the discovery of the note which gave rise to suspicion;
- The AGC will tender a document as evidence only and until it is satisfied that any shroud or suspicion surrounding it is lifted.

1.84 It is to be noted that as at 09.08.2010 nothing had materially changed from October 2009. There was no new report by WKY. Even when the AGC decided to 'reveal' the Mystery Note one year later, they still apparently did not get a psychiatric report on it. Why? The obvious answer is that they did attempt but could not obtain a favourable expert psychiatric report to state that the Mystery Note was by its nature and circumstance a suicide note and that TBH committed suicide.

1.85 In this regard, it is telling that in relating the background to the matter, the AGC studiously did not reveal the fact that the AGC

and police had as early as August 2009 started to look along the lines of suicide. The entire episode with regards to the request for expert psychiatric assistance, the advice and request from Dr. Badi'ah for information, in particular, with regard to the significance of a suicide note, and the report of 22.10.2009, is omitted. As will be submitted herein below, this silence and lack of candour in this aspect by the AGC and police is carried through into this inquiry.

- 1.86 It is inconceivable that the AGC and the police would not have and did not inform Dr Badi'ah, or some other psychiatric expert, of the discovery of the note and sought her expert advice or opinion. The inconclusive report dated 22.10.2009 would have taken this into account. If they did not seek Dr Badi'ah's advice, and in fact kept her in the dark, then they would have and must have sought the advice of some other expert. The AGC and the police did not just do nothing. The AGC and the police did not produce at the Coroner's Inquest and in this inquiry the expert psychiatric report they must have obtained.
- 1.87 There was no reason for the AGC and the police not to have the note and its translation provided to a psychiatric expert. There was every reason for them to have in fact done so. They are asking this Commission and the public to believe the unbelievable.
- 1.88 ASP Nazri's ID does not record any of his dealings with Dr. Badi'ah before and after the alleged 'discovery' of the mystery note, save for the one entry of 07.10.2009 when it is alleged he

‘discovered’ the said note. Unlike his dealings and requests for assistance from the other experts and their reports; his ID does not record his request for expert psychiatric assistance, the purpose for it, the correspondences and the meetings with Dr. Badi’ah, her repeated advice to them that a person committing suicide would or should have left a suicide note, her repeated request for them to look for it, and her report dated 22.10.2009 2009.

1.89 His ID is also unusual in that it does not state the date or dates he prepared and wrote the various entries into his ID. It appears therefore to have been prepared in one go (which would be against Standing Orders which requires a contemporaneous recording of events), and thus contrived to create entries of events, including his alleged conversation over coffee in March 2010 with D/Kpl Suliman and L/Kpl Rostam,⁷⁶ to explain the sudden discovery of the Mystery Note in order to lend credence to it.

1.90 The AGC and the police did not produce the psychiatric report dated 22.10.2009 at the Coroner’s Inquest, and have not produced it in this Inquiry. In fact, they have studiously and deliberately not disclosed to this inquiry any of the events commencing from 14.08.2009 with regard to their interaction with Dr. Badi’ah, save for the conversation between ASP Nazri and her on 07.10.2009. They did not disclose the existence of the psychiatric report dated 22.10.2009. These facts came to

⁷⁶ Exhibit I-91 (ASP Nazri’s ID page 51)

light literally at the last hour of the last day of the hearing at this inquiry from Dr. Badi'ah's evidence.

- 1.91 As the Coroner's Inquest was drawing to its close, the AGC and MACC made a decision in August 2010 to 'reveal' the Mystery Note, and at the same time to suppress any unfavourable psychiatric report they have obtained, including the report dated 22.10.2009. They ran this as a gambit in the hope that the Coroner's Inquest would buy it, or at least to add confusion to the proceedings. It is to be noted that the AGC and MACC have fared no better here as the new report tendered by Drs. Badi'ah and Nor Hayati Ali in this inquiry also makes no conclusion of suicide.
- 1.92 The complicity of the AGC and police is further carried through in this inquiry, in particular, with the revelation that SFC Dato' Abdul Razak and another DPP had met with, coached and instructed the MACC officers not to volunteer and not to be forthcoming with any information unless specifically asked.⁷⁷ This was designed and intended to protect the MACC officers, and to hamper and subvert the work of this Commission. This was done for the benefit and with the complicity of MACC.
- 1.93 Another instance of such complicity pertains to the NRIC of TBH. ASP Nazri's police report recorded on 18.07.2009 at 2.23pm does not list TBH's NRIC as an item found and

⁷⁷ NOP Volume 49 pages 18670 - 18671

contained in TBH's knapsack.⁷⁸ This is significant because it shows that TBH's NRIC was not returned by MACC to TBH and therefore TBH was in fact not released as alleged by MACC. However, ASP Nazri's ID listed TBH's NRIC as the first item found in TBH's knapsack.⁷⁹ As stated above, it is important to note that this ID appears not to have been written contemporaneously with events as required. This is further evidence that ASP Nazri's ID was written at one go and tailored to corroborate MACC's evidence of having released TBH at about 3.30am on 16.07.2009. In the aftermath of this unfortunate incident resulting in the demise of TBH, there is complicity between the AGC, police and MACC in a myriad of ways.

1.94 The statement by the AGC that it was "startled" by the discovery of the Mystery Note is, to borrow the same words, startling. It is akin to a situation of the authority's investigation of a murder, looking for the murder weapon and is startled when they do discover the murder weapon. The fact that the AGC proceeded to 'reveal' the Mystery Note and tout it as TBH's suicide note in the face of the above show that the AGC, police and MACC are complicit and acting in concert.

1.95 Why would they do this? The answer is obvious; to cover up the truth and to prevent this Commission from uncovering it. Suicide is a fiction on the facts of this case, contrived and sought to be pushed through the Coroner's Inquest and in this inquiry to

⁷⁸ Exhibit I-199 ASP Nazri's police report.

⁷⁹ Exhibit I-91 (ASP Nazri's ID page 8)

mask the truth, namely, that either MACC had unintentionally caused TBH's death or they had killed him. Resources and connivance would not be marshalled in this fashion otherwise.

SECTION 2

Fact and Fiction

BRIEF BACKGROUND

2.1 The brief facts preceding the untimely and tragic death of TBH are as follows:-

- (a) TBH, who was 30 years old and the political secretary for YB Ean Yong (ADUN and Executive Committee Member of the Government of the State of Selangor) was found dead on 16.07.2009 on the 5th floor landing of Plaza Masalam; the building in which MACC's office was located.
- (b) It is stated that on or about 21.06.2009 MACC Selangor obtained information from an undisclosed source ("*Nota Maklumat*")⁸⁰ that Pakatan Rakyat ADUN:-
 - were making false claims by falsifying documents to withdraw State constituency allocations from the District Office (each assemblyman has an annual allocation of RM500,000.00; ADUNs who are also members of the State executive committee are instead allocated RM600,000.00);

⁸⁰ Exhibit I-207

- such monies are alleged to be usually channelled to proxies before it is “returned” to the Assemblymen.
- (c) On 23.06.2009, MACC officers attended at the Petaling District Office to seize files relating to the allocation spending of the Pakatan Rakyat Assemblymen.
- (d) On 13.07.2009, Anuar, who was later appointed as the Investigating Officer (“IO”), made a report (“**Borang Aduan 52/2009**”) pursuant to s. 29(1) of the Malaysian Anti-Corruption Act, 2009 (“**MACC Act**”). He stated that he was instructed to do so by his superior, the then Deputy Director of MACC Selangor Hishamuddin.⁸¹
- (e) The “*Borang Aduan 52/2009*” stated that information was received that in the years 2008 and 2009, Selangor State Assemblymen had withdrawn or utilised their annual allocations by producing documents to the District Office containing false particulars, that is, that they had undertaken programmes in their respective constituencies when there were no such programmes. It is stated that the “*Borang Aduan 52/2009*” was made to commence investigations under the MACC Act⁸².
- (f) The following are to be noted:-

⁸¹ Exhibit I-198 page 157 and I-204 page 2

⁸² Exhibit I-61 and I-197(a) Folio AA

- (i) The Complaint in the “*Borang Aduan*” is different from the information in the “*Nota Maklumat*” in that:-
- the Borang Aduan 52/2009 makes no mention of “ADUN-ADUN Pakatan Rakyat”, but instead refers to “*Ahli-Ahli Dewan Undangan Negeri Selangor*”;
 - the nature and ambit of the alleged offence complained of in the “*Borang Aduan*” is different from that stated in the “*Nota Maklumat*”;
- (ii) The “*Borang Aduan 52/2009*” is the document that commenced the investigation into the matters contained therein. This is the requirement under ss. 29(1) and (3) of the MACC Act. The “*Nota Maklumat*” is not a report of an offence for the purpose of s. 29 of the MACC Act for the reason, inter alia, that it was not signed by the person making the report.
- (iii) Hence, the offence which MACC was investigating at the material time pursuant to the “*Borang Aduan 52/2009*” was that Selangor ADUNs had withdrawn or utilised their annual allocations by producing documents to the District Office containing false particulars, that is, that they had undertaken

programmes in their respective constituencies when there were no such programmes.

- (iv) Further, the seizure of the files and documents on 23.06.2009 from the Petaling District Office was without legal basis.
- (v) It was stated that even after MACC had seized the files and documents from the Petaling District Office they had not done any ground work.⁸³ Anuar admitted further that they did not even have an action plan when they commenced the operations.⁸⁴
- (vi) The above is from Anuar's evidence that he was appointed as the IO only on 15.07.2009 itself.⁸⁵
- (g) Pursuant to the "*Borang Aduan 52/2009*" and the appointment of Anuar as the IO, a massive MACC operation was launched to investigate the alleged offence set out in "*Borang Aduan 52/2009*" on 15.07.2009. This operation involved approximately 33 officers from MACC Selangor, Klang and Putrajaya. On the morning of 15.07.2009, a briefing for all the officers was conducted and chaired by Hishamuddin and Hairul on the 14th floor of Plaza Masalam in Shah Alam. The purpose of the

⁸³ NOP Volume 21 pages 7812 to 7828 and Volume 23 pages 8227 – 8239

⁸⁴ NOP Volume 23 pages 8455 to 8463

⁸⁵ NOP Volume 23 page 8239

briefing was specific to the constituencies of Seri Kembangan and Kampung Tunku only⁸⁶.

- (h) All the MACC officers involved were divided into teams with instructions to bring in witnesses for interrogation and to seize documents and equipment in order to facilitate the investigation⁸⁷. All of this was done without ground work or a proper action plan. As observed and pointed out by the Commissioners, it became apparent several times in the course of this Enquiry that there was no real basis or “*asas*” for the operation, and that a ‘fishing expedition’ was being launched⁸⁸.
- (i) One of the teams, headed by Anuar (comprising of 4 other MACC officers), were assigned to YB Ean Yong, the ADUN for Seri Kembangan. Anuar and his team first went to YB Ean Yong’s office at Seri Kembangan and were informed that the relevant files or documents were not there but were instead at YB Ean Yong’s office at the SUK building.
- (j) Anuar and his team then went to YB Ean Yong’s office at the SUK building. They arrived there at approximately 3.45pm. Anuar had asked for TBH⁸⁹. He requested TBH to produce documents in relation to the YB Ean Yong’s allocations for 2008 and 2009. Anuar and his team then

⁸⁶ Exhibit I-198 (ID of Anuar); Exhibit I-204 (ID of Hairul)

⁸⁷ *ibid.*

⁸⁸ NOP Volume 13 pages 4462 – 4469; NOP Volume 21 pages 7780 – 7801

⁸⁹ Exhibit I-199 (A12); NOP Volume 19 page 6692

proceeded to examine the documents and the computers in the office. Anuar did not have a warrant or written authority from the Public Prosecutor for entry to the premises and to conduct a search. TBH informed Anuar that he wished to inform YB Ean Yong of what was happening to which Anuar consented.⁹⁰

(k) YB Ean Yong arrived at his office at approximately 4.00pm together with a group of reporters. YB Ean Yong asked Anuar for his identification card. Anuar refused to produce his identification card and merely informed YB Ean Yong that they were from MACC. YB Ean Yong asked whether they had a warrant, and Anuar said no. Anuar and his team left YB Ean Yong's office. Anuar stated that he felt uncomfortable with the presence of the reporters. He however returned to YB Ean Yong's office at approximately 4.30pm with Hairul's team. They insisted on examining the documents and computers in YB Ean Yong's office. YB Ean Yong telephoned YB Manoharan to seek legal advice⁹¹.

(l) YB Manoharan arrived at YB Ean Yong's office at approximately 5.30pm, and had a discussion with him and TBH in the meeting room for approximately 15 minutes. It was decided that they would cooperate with MACC and

⁹⁰ Exhibit I-204 page 3

⁹¹ Exhibit I-199 (A54) page 2

facilitate their investigation. They then confiscated YB Ean Yong's CPU and TBH's laptop⁹².

- (m) Anuar had also required TBH to accompany them to MACC's office at Plaza Masalam for questioning and recording of his statement. YB Manoharan had informed Anuar that he wished to be present. Anuar agreed to this. YB Manoharan informed TBH that he would meet TBH at Plaza Masalam⁹³.
- (n) TBH drove to Plaza Masalam in his own vehicle escorted by two MACC officers. He arrived at Plaza Masalam at approximately 6pm. He had called and texted YB Ean Yong for YB Manoharan's mobile number. TBH spoke with YB Manoharan at approximately 6.14pm. YB Manoharan informed TBH that he was in the car park at Plaza Masalam and would see him shortly⁹⁴. That was the last time TBH had been seen by or had communication with any person outside of MACC's office at Plaza Masalam⁹⁵.
- (o) YB Manoharan arrived at the MACC office on the 14th Floor at Plaza Masalam shortly thereafter, but was refused access to TBH⁹⁶.

⁹² Exhibit I-62

⁹³ Exhibit I-199 (A45) pages 2 – 3

⁹⁴ NOP Volume 46 page 17110

⁹⁵ Exhibit I-199 (A45) page 3

⁹⁶ Exhibit I-199 (A45) page 3

- (p) The rest of the facts and circumstances concerning TBH whilst he was in the custody of MACC at their premises at Plaza Masalam until the time his death was publicly known are matters of contention, and are dealt with further on in this submission.

2.2 There was a huge public outcry following TBH's death. There were calls from various quarters urging for the formation of a Royal Commission of Enquiry to investigate the death of TBH.

2.3 The Prime Minister, Datuk Seri Najib Razak, announced on 22.07.2009 that the cabinet has agreed to hold an inquest into TBH's death, and also to set up a Royal Commission to enquire into MACC's investigative procedures and to determine if there were any human rights violations when TBH was being interrogated. He stated that the police would be wrapping up their investigations within days. Imperatively, the Prime Minister also said that:-

*"We want to establish the truth and nothing but the truth...it is important for us to ensure that public faith and confidence in important institutions"*⁹⁷

2.4 The police investigation papers into the sudden death report of TBH were ultimately registered with the court at Shah Alam on or about 23.07.2009, and the Magistrate minuted that the

⁹⁷ Malaysiakini report dated 22.09.2009 by S. Pathmawathy. <http://malaysiakini.com/news/109051>. See also The Star Newspaper report dated 22.07.2009 by Zulkifli Abd. Rahman & Dharmender Singh <http://thestar.com.my/news/story.asp?file=/2009/7/22/nation/20090722172058&sec=nation>

inquest would commence from 29.07.2009. The hearing proper of the inquest eventually commenced on 05.08.2009. The coroner's inquest took approximately 14 months, that is, until the 04.11.2010. After hearing the testimony of 37 witnesses, the learned coroner returned an open verdict on the 05.01.2011⁹⁸.

- 2.5 As a result of the open verdict, and the ensuing wide spread dissatisfaction, the calls for a Royal Commission to also investigate the death of TBH were renewed afresh. The Government eventually acceded to this public demand, and announced on 07.01.2011 that the Royal Commission to be issued would also inquire into the death of TBH – this being the 2nd Term of Reference of the Commission.

MACC'S OBJECTIVE IN THIS INQUIRY

- 2.6 In order for MACC as an institution and its officers to be absolved from any wrongdoing in relation to the death of TBH, it is the Bar's contention that MACC has set out to establish the following:-

- (a) The primary position which MACC wants the world at large to believe is that TBH was released from custody. For otherwise, TBH's death remains as a death in custody for which MACC would be liable.

⁹⁸ Exhibit I-199 (Verdict of TBH's Coroner's Inquest)

- (b) But release from custody *per se* is not enough as TBH would still be in the premises of MACC. Hence, MACC goes on to contend that whilst TBH was officially released, TBH nevertheless, on his own volition, chose to remain in the MACC premises. But, MACC officers must also distance themselves, physically or otherwise.
- (c) Further, in order to establish that TBH was released from custody, MACC would need to show that personal effects of TBH would have been given back or were with TBH. These would include TBH's mobile phone and/or NRIC.
- (d) Then, MACC would need to account for the periods of time that TBH was in custody, his time of purported release up until the discovery of his death.
- (e) But the above is insufficient. To absolve MACC of any culpability they need to establish suicide as a theory.

2.7 To set about the concoction of their story and version of events, they attempted to weave a uniform and consistent set of evidence. This is where the MACC encounters problems as unearthed and unraveled before this Commission. Examples abound:-

- (a) To streamline their story, there must be a concerted effort to synchronise versions of events and storyline. This is evident through various discussions and meetings post the incident. It is also evident that most of the MACC

officers would, through no coincidence, be said to have avoided and moved away from the area where TBH is said to have exited from the window after a specific time, that is, approximately 3.30am.

- (b) Whenever there is evidence which does not fit their concocted story, something must be done. These would be effected through lies, suppression and destruction of evidence. This is evident from the testimony of the MACC witnesses, the investigation diaries, computer records and phone records.
- (c) There is a further problem for MACC. Some evidence are plainly not there or obviously contrary to the truth. Again, something must be done. These would be effected through lies and more lies, however illogical or implausible, and what can loosely be described as the planting or manufacturing of evidence. This is evident in the following non-exhaustive manner:-
 - First, it was imperative for MACC to establish that TBH was released from the custody in order for MACC to run their suicide theory.
 - Second, for TBH to be said to be released, it was necessary for MACC to say and show that TBH's mobile phone was either not seized or returned.

- Third, to say that TBH was released and was on his own, purported sightings of TBH are said to have occurred throughout the time he was there, that is, time markers.
- Fourth, to feign ignorance of TBH's death, the discovery thereof must come as a surprise, that is, no one within MACC is said to have known until the time the security officer of Hwang DBS discovered the body.

2.8 In a nutshell, what MACC sought to do, as will be elaborated in the course of this submission, is to effect a plan to cover up and perpetuate the cover up. The cover up is concerted.

2.9 Given the great lengths and depths of the efforts made in this cover up, the reasonable inference is that the cover up was effected to protect, amongst others, superior officers of MACC who were present at the material time. In this context, the highest ranking officer in the MACC at the material time involved in the 52/2009 operation was Hishamuddin.

SECTION 3

Circumstances surrounding TBH's Death

TBH: WITNESS OR SUSPECT

- 3.1 The Bar contends that even though TBH was a mere witness, he was however treated like a suspect from the moment he was 'escorted' from the SUK building to Plaza Masalam on the evening of 15.07.2009.
- 3.2 The reason we say this is because of the following evidence that had been led in the inquiry which were as follows:-
- (a) This operation had started in June 2009 when the relevant files had been seized from the Pejabat Tanah Daerah. The files had been examined by MACC prior to the raid on 15.07.2009. TBH who was then the personal aide to the ADUN of Seri Kembangan was required to assist in the verification and explanation of some documents.

If TBH was a mere witness, there was no urgency for TBH to be requested to go to MACC office that very same evening his office was raided by MACC. The fear that TBH would change or tamper with any evidence was baseless and unfounded since MACC had already seized all the files from the Pejabat Tanah Daerah.

- (b) TBH had driven his own car to Plaza Masalam. However, 2 MACC officers, Azhar and Hafiz, were instructed by Anuar to accompany TBH in the car.

A witness who is to assist in an investigation voluntarily should not be 'escorted' to the required location. TBH was 'escorted' because he was in fact treated like a suspect and MACC was concerned that he might flee and not cooperate with them.

- (c) TBH's mobile phone was taken away from him upon his arrival at the MACC office contrary to what Anuar had testified. Hafiz testified that he saw Anuar going through the contents of TBH's mobile phone.⁹⁹ He further confirmed that TBH did not have his mobile phone with him when he met TBH at PENMAS as the mobile phone was still with Anuar.

Anuar, however, denied seizing TBH's mobile phone. He claimed he merely asked TBH to keep the mobile phone in the knapsack. Anuar testified that he found TBH's mobile phone next to the knapsack the next morning. He then kept both the knapsack and the mobile phone in his room.¹⁰⁰ We submit that in actual fact TBH's mobile phone was seized the moment he was brought to MACC office. TBH's mobile phone was at all times in Anuar's possession. That would also explain why there were no

⁹⁹ NOP Volume 41 page 15317 – 15374

¹⁰⁰ NOP Volume 21 page 7630

records of calls made and SMS text messages sent after 3.30am on 16.07.2009. TBH was treated like a suspect.

- (d) TBH was instructed upon arrival at the MACC office to sit at the PENMAS area. At all material times, whilst he was seated there, TBH was always 'accompanied' and surrounded by more than 2 officers at any one time.

In fact, there was evidence that at some juncture, there were about 7 officers with him at the PENMAS area. Most of them admitted that they had spoken to TBH and had asked about his background. Their actions, we submit, were calculated to intimidate him because he was treated like a suspect as opposed to calming him down as alleged by Anuar.¹⁰¹

- (e) There was also evidence that TBH was left sitting in the PENMAS area without being questioned and/or interviewed about anything more than his background for almost 4 hours at a stretch. If true, this again was done to tire him physically and mentally because he was treated like a suspect. A suspect who is physically and mentally tired would be disorientated and succumb to the pressure of giving the answers that the MACC wanted.
- (f) TBH was also 'interviewed' by numerous officers throughout the time he was in the MACC premise from the

¹⁰¹ NOP Volume 19 pages 6927 – 6935

time he was brought there. His statement was only recorded by Nadzri at 1.30am on 16.07.2009 which was almost seven hours after he was brought in. One would record a statement of a witness soonest possible when the witness is alert and fresh as opposed to when he is tired. Clearly, TBH was treated like a suspect and the length of time taken before his statement was recorded was simply to tire him out both physically and mentally.

- (g) We submit that TBH was actually arrested and treated like a suspect. We say this because in the 112 statement by Azhar recorded on the 19.07.2009 he stated that he had received a call from one Fauzi regarding the death of TBH. The words uttered by Fauzi to Azhar were:-

*“Teoh yang kami **tangkap** semalam telah mati”.*¹⁰²

On the other hand, Hafiz¹⁰³ stated that Bulkini had called him to enquire whether TBH whom they had arrested the night before had died. The words uttered by Bulkini were:-

*“OKT yang sama **tangkap** itu dia telah mati?”*¹⁰⁴

OKT can either mean ‘orang kena tuduh’ or ‘orang kena tangkap’. Either way it meant that TBH was a suspect. Both these statements which were contemporaneous with

¹⁰² Exhibit I-199 (A13)

¹⁰³ Exhibit I-199 (A14)

¹⁰⁴ NOP Volume 41 page 15359

the event clearly indicate that TBH was arrested and was treated as a suspect at the material time. This is further confirmed when Hafiz reiterated under cross-examination that during the briefing for the said operation, the teams were divided into “*Team Pemeriksaan, ada juga Team Tangkapan*”.¹⁰⁵

- (h) TBH’s laptop was seized¹⁰⁶ by MACC at the SUK building during the raid. The laptop was in the knapsack carried by Azhar as identified in the CCTV footages. Hafiz confirmed that the laptop was handed over to Anuar upon his arrival at MACC office.¹⁰⁷ A witness’s possession is never seized unless he is treated as a suspect as was the case here.
- (i) Hafiz was asked at the inquiry about the time he had spent with TBH at PENMAS and whether he had asked TBH about the alleged false invoices. In his attempt to reply, he said these “*Apa berlaku selepas sejam kami jaganya? Apakah tindakan diambil dalam tempoh masa tersebut?*” *Jawapan awak, “Semasa dalam kawalan kami...”* The words “*jaga*” and “*kawalan*” can only mean that TBH was being watched and was under their control. In other words, TBH was treated like a suspect and not just a mere witness.¹⁰⁸

¹⁰⁵ *Ibid.* page 15368

¹⁰⁶ Seizure List – Exhibit I-62

¹⁰⁷ NOP Volume 41 page 15316

¹⁰⁸ *ibid.* page 15383

- (j) There is evidence at the inquiry that a witness is at liberty to roam around and to leave the MACC office as and when he so wishes. A witness has that option because he is not a suspect and has not been arrested. However, a witness may become a suspect subsequently if there is evidence pointing towards that in the course of the interview or when his statement has been recorded.

Anuar had given evidence at the inquiry that TBH was not allowed to leave until his statement was recorded. This would mean that TBH had no option at the material time if he had wanted to leave. In other words, TBH was treated like a suspect and not just a mere witness.¹⁰⁹

3.3 The Bar therefore submits that by reason of all the combined factors above clearly show that TBH was in fact treated like a suspect by MACC and not just a mere witness. Since TBH was treated like a suspect, the methods and/or techniques in interrogating him was one which was more aggressive and/or confrontational in nature normally employed by MACC as testified by several MACC officers in this inquiry. Why did the MACC lie about such an innocuous issue as to whether TBH was a witness or a suspect?

3.4 The Bar takes the position that the reason for this is because MACC did in fact employ methods and/or techniques of interrogation which was more aggressive on TBH because it

¹⁰⁹ NOP Volume 19 pages 6966 – 6967

treated him like a suspect and in the course of its approach, some untoward incident had happened to TBH. By reason of this, MACC had to distance itself from claiming that TBH was a suspect and treated as one.

TBH'S MOBILE PHONE

- 3.5 It is submitted that TBH's mobile phone, was taken from him upon entry into MACC's office and was never returned to him. TBH did not have access to his mobile phone after his conversation with YB Manoharan (**"Manoharan"**). The mobile phone issue is another key time marker of the MACC cover-up.
- 3.6 According to Hafiz, TBH was brought from YB Ean Yong's office at SUK escorted by Hafiz and Azhar in TBH's car.¹¹⁰ TBH did not speak to the officers throughout the journey but he was frequently talking on his mobile phone.¹¹¹
- 3.7 When they arrived at MACC at about 6.00pm, Hafiz was holding TBH's CPU while Azhar was holding TBH's laptop which was in TBH's knapsack.¹¹² This fact is corroborated by the CCTV pictures on 15.07.2009 at about 6.00pm showing Azhar entering Plaza Masalam's lobby carrying the knapsack.¹¹³

¹¹⁰ NOP Volume 41 page 15310

¹¹¹ NOP Volume 41 pages 15312 – 15313

¹¹² NOP Volume 20 pages 7407 – 7410

¹¹³ Exhibit I-4 page 3, picture 2 and page 4, picture 3

- 3.8 Hafiz was instructed by Anuar to leave the CPU on the floor in front of Anuar's room. Anuar took TBH's laptop as Azhar went to the toilet. When Hafiz was leaving the CPU in front of Anuar's room, Hafiz saw Anuar taking TBH's mobile phone and checking the contents. Hafiz was then instructed to take the CPU and to leave it by the side of the sofa at PENMAS.¹¹⁴
- 3.9 At about 6.30pm and after leaving the CPU at PENMAS, Hafiz proceeded to sit with TBH at the sofa and starting chatting with him for about 15 minutes. Azhar later came over to the sofa and Hafiz left to the toilet and for a drink at a restaurant downstairs.¹¹⁵
- 3.10 Hafiz confirmed that during the time TBH was at the sofa in PENMAS, TBH's mobile phone was still with Anuar who had taken it to the front rest area for inspection.¹¹⁶
- 3.11 According to Anuar, TBH was seen pacing up and down the MACC counter upon arrival at MACC and was trying to contact his lawyer, Manoharan, using his mobile phone. Anuar allowed him to do so and after TBH spoke (to Manoharan according to Anuar) on the phone for a few minutes, Anuar informed TBH that MACC does not allow witnesses or visitors to use their mobile phones in the office. Anuar requested TBH to switch off

¹¹⁴ NOP Volume 41 pages 15315 – 15321

¹¹⁵ NOP Volume 41 pages 15322 – 15333

¹¹⁶ NOP Volume 41 pages 15371 – 15374

his mobile phone which TBH did and placed it in the knapsack he was carrying.¹¹⁷

3.12 When questioned, Anuar confirmed that it was MACC's policy not to allow witnesses to use their mobile phones. A witness will be told to switch off the mobile phone, and if the witness refuses to do so, MACC officers will proceed to seize the mobile phone. If the person is a suspect, the mobile phone will be seized immediately upon arrest of the suspect.¹¹⁸

3.13 Anuar's version contradicts Hafiz's version of events. Anuar said that TBH placed it in the knapsack he was carrying whereas Hafiz said that Anuar took TBH's mobile phone. But what is clear is that TBH did not have access to his mobile phone after his telephone conversation in the presence of Anuar.

3.14 TBH's mobile phone was never returned to him. MACC's version of events that TBH's mobile phone was given back to TBH when he was purportedly allowed to leave at about 3.30am is not credible. The purported 'discovery' of the mobile phone is very much in doubt.

3.15 At about 9.30am on 16.07.2009, Anuar said that he found TBH's mobile phone by the knapsack. Upon this alleged 'discovery', he and Hairul purportedly walked around the MACC

¹¹⁷ Exhibit I-204 page 4

¹¹⁸ NOP Volume 21 pages 7683 – 7686

office in ‘search’ of TBH.¹¹⁹ Anuar placed the mobile phone on his desk in his room and the knapsack on the floor of his room¹²⁰ for ‘safety’ as TBH could not be found.

3.16 The Bar submits that Anuar’s alleged discovery of the mobile phone with the knapsack is concocted:

- (a) Norsiah Binti Baharom (**“Norsiah”**) said that at about 8.00am on 16.07.2009, she saw a knapsack on the floor and she had asked Anuar about it. She did not mention sighting a mobile phone.¹²¹ Anuar confirms in his ID that Norsiah asked him about the knapsack. Anuar makes no reference to being asked by Norsiah about the mobile phone.¹²²
- (b) Zurinawati said that at about 8.30am on 16.07.2009, she saw a knapsack on the floor next to the sofa in from of Nadzri’s room. Again, she did not mention sighting a mobile phone.¹²³
- (c) Zurinawati then said that about 2.00pm to 3.00pm on 16.07.2009, while assisting Azian to compile the chronology of events at Anuar’s room, she saw the

¹¹⁹ NOP Volume 21 pages 7683 – 7686

¹²⁰ Exhibit I-204 page 5

¹²¹ Exhibit I-199 (A20) page 2

¹²² Exhibit I-204 page 5

¹²³ Exhibit I-199 (A35) page 2; NOP Volume 8 pages 2477 – 2479 and pages 2519 – 2523

knapsack again on Anuar's guest chair.¹²⁴ No mention is made of TBH's mobile phone.

- (d) At about 5.00pm, when ASP Nazri asked Zurinawati about the knapsack, she said by coincidence, she saw the knapsack on the sofa. She did not know who had placed the knapsack on the sofa again. She told Nazri that when she first saw the knapsack in the morning, it was on the floor by the side of the sofa and not on the sofa.¹²⁵
- (e) ASP Nazri confirms Zurinawati's statement. It is not known who had moved the knapsack from Anuar's room to the sofa between the time Zurinawati saw the knapsack at 2.00 – 3.00pm and when she spoke to ASP Nazri.¹²⁶ Once again, there is no mention of the mobile phone.

3.17 It is disconcerting, to say the least, that despite the opportunities to do so, Anuar did not hand over TBH's mobile phone he was holding for more than 2 days until it was seized by ASP Nazri on 18.07.2009 at about 9.40pm at IPK.¹²⁷ Anuar said that he could not hand over the mobile phone to ASP Nazri on 16.07.2009 because he was fearful of leaving MACC.¹²⁸ He also did not hand over the mobile phone on 17.07.2009 when his statement was taken by the police at about 9.55am at IPK.

¹²⁴ NOP Volume 8 pages 2488 – 2493

¹²⁵ Exhibit I-91 pages 4 – 5; NOP Volume 8 pages 2501 – 2505

¹²⁶ NOP Volume 4 pages 1203 – 1204

¹²⁷ Exhibit I-91 pages 15 – 16

¹²⁸ NOP Volume 21 pages 7630 – 7632

3.18 The Bar submits that at all material times, Anuar was in possession of TBH's mobile phone. Anuar admits this as much. Under examination, he agreed that nobody else knew that the mobile phone in his room belonged to TBH and Anuar had possession of it until he handed it to the police.¹²⁹

3.19 The story becomes more sinister. A review of the relevant calls and SMS text messages in respect of TBH's mobile phone reveals the following:¹³⁰

ACTIVITY	DETAIL	COUNTERPARTY
Last Dialed Call	15.07.2009 6.15pm	YB Ean Yong
Last Received Call	15.07.2009 6.09pm	Unknown number 03-79658787
Last Missed Call	15.07.2009 5.19pm	Kee Hiong
Last Sent SMS	15.07.2009 6.11pm <i>"Give me Manoharan phone number."</i>	YB Ean Yong
Last Received SMS	15.07.2009 5.56pm <i>"[--text is in Chinese characters--]"</i> (Read)	Kim Boon

¹²⁹ NOP Volume 21 pages 7636 – 7637

¹³⁰ Exhibit I-51

- 3.20 There was no apparent activity in respect of TBH's phone from the last phone call at 6.15pm on 15.07.2009 (call made to YB Ean Yong) to 5.16pm on 16.07.2009 where a SMS text message was sent to the phone from an unknown number (012-5172324) was read. Thereafter, seven other SMS text messages were read up to the 18.07.2009, the last SMS text message received at 11.44am, and it being the last SMS text message read from TBH's mobile phone.¹³¹
- 3.21 Bearing in mind that ASP Nazri had only seized TBH's mobile phone from Anuar on 18.09.2009 at 9.40pm, and Insp Zaidi testified that when analysing the SMS text messages he did not open any of the same to read them.¹³² The conclusion is that the person in possession of the mobile phone before it was given to ASP Nazri must have opened and read the SMS text messages, that is, Anuar. Why was this so?
- 3.22 The Bar submits that in truth, Anuar was in possession of TBH's mobile phone from the time TBH first stepped into MACC's office on 15.07.2009 until it was surrendered to ASP Nazri on 18.07.2009. Without reason to doubt the veracity of Hafiz's evidence,¹³³ Hafiz's version of events should be accepted. In other words, Anuar took away TBH's mobile phone upon entry into MACC office for inspection. The mobile phone was not placed in TBH's knapsack as alleged by Anuar.¹³⁴

¹³¹ Exhibit I-51 pages 71 – 73

¹³² NOP Volume 3 pages 696 – 700

¹³³ As opposed to the evidence of Anuar who is an interested witness implicated in the death of TBH.

¹³⁴ Even on Anuar's version, he allegedly found TBH's mobile phone outside the knapsack.

- 3.23 Anuar kept TBH's mobile phone at all times from the time TBH entered MACC and the version of events related by Anuar strongly suggests that Anuar needed to distance himself from the fact of his possession of the mobile phone.
- 3.24 The Bar submits that the mobile phone was at all times on the desk of Anuar. He said that he found the mobile phone by the knapsack and subsequently left it on his desk for safekeeping. Anuar's version was to 'align' it with the fact that TBH's mobile phone was on Anuar's desk upon seizure of the same. This was an important factor for MACC and Anuar to maintain in order for them to advance the position that TBH was released at 3.30am and subsequently committed suicide. This has now been debunked.
- 3.25 The above show that in fact TBH's mobile phone was in MACC's possession at all times and only they could have opened and read TBH's SMS text messages after his death. If MACC was not responsible for TBH's death, there would have been no need to have concocted this ruse about TBH's mobile phone having been returned to him and that TBH was released at 3.30am.

TBH'S 'INTERVIEW': ARMAN AND ASHRAF

- 3.26 It is the Bar's position that in a case where a person is under the custody of law enforcement agencies, it is for the authority to satisfactorily explain the movement, treatment and state of

the person in custody. The burden is on the law enforcement agency. The manner of interrogation of TBH by Arman and Ashraf for more than two hours left much to be desired, and raises many questions including a suspicion that Arman and Ashraf may have done more to TBH than they are prepared to reveal.

3.27 The Bar submits that the death of TBH had very much to do with the manner and results of the interrogation conducted that night on TBH (and Boon Wah), which is not confined to the session TBH had to endure with Arman and Ashraf.

3.28 In this part of our submission, we will focus on the interrogation of TBH by Arman and Ashraf, and the subsequent recording of TBH's statement by Nadzri. It will be deduced on an objective basis that there was little, if any, useful information obtained from Arman and Ashraf's interrogation of TBH. It is not surprising that this was the case because Arman and Ashraf did not know very much about the 52/2009 operation and it is said that their instructions were only to check documents, ask preliminary questions about TBH's background, on TBH's authority to sign on behalf of YB Ean Yong, and on the tender and award of projects documents.¹³⁵

3.29 The sequence of events regarding TBH's interrogation by Arman and Ashraf started when Hairul instructed Arman before the briefing by Hishamuddin at about 8.30pm to 9.00pm to

¹³⁵ NOP Volume 6 pages 4360 – 4363 and page 4407

check the 4 hard cover files seized from the Land Office and to uncover any suspicious claims or transactions. These files were given to Hairul by Anuar.

3.30 Ashraf received instructions from Hairul in Hairul's room following Hishamuddin's instructions to assist in the interview of TBH with Arman.¹³⁶

3.31 Subsequently, and after consultation with Hishamuddin, Hairul handed 4 other documents¹³⁷ allegedly printed from a computer related to the investigation to Arman. Hairul specifically instructed Arman to check if the same were in the four hard cover files that he was going through.¹³⁸ This is where the evidence is blurred and strongly suggests the consistency in Hishamuddin's attempt to distance himself from the investigations that night.

3.32 Hairul at the inquiry said that it was Arman who suggested that the 4 documents be checked with TBH himself as these documents were said to have been printed from TBH's laptop.¹³⁹ However, Hairul in his ID recorded that earlier at the briefing by Hishamuddin at about 8.30pm to 9.00pm, he had already been instructed by Hishamuddin for Arman to conduct the interview of witnesses in the office. Hairul by that time had already carried out the instructions of Hishamuddin and had already instructed Arman and Ashraf to interview and 'check' documents with

¹³⁶ NOP Volume 5 pages 3899 – 3902

¹³⁷ Exhibit I-197(c) D94 – D97

¹³⁸ NOP Volume 16 pages 5517 – 5546

¹³⁹ NOP Volume 16 pages 5524 – 5525

TBH.¹⁴⁰ Hairul's suggestion that the 'checking' of documents with TBH was instigated by Arman cannot be true.

3.33 Arman was permitted by Hairul to use the main meeting room to 'check' documents,¹⁴¹ and Arman asked Ashraf to bring TBH to the main meeting room.¹⁴² The purported 'interview' of TBH by Arman and Ashraf started at about 10.00pm for more than two hours.¹⁴³

3.34 It is important to recall that the four documents at hand during the interrogation were the following:-

- (a) 1 Fizami Construction invoice dated 02.09.2008;¹⁴⁴
- (b) 1 Syarikat Aris invoice dated 02.09.2008;¹⁴⁵
- (c) 1 MKMN Enterprise quotation dated 02.09.2008;¹⁴⁶ and
- (d) 1 M.A. Bina Melor Enterprise quotation dated 03.09.2008.¹⁴⁷

3.35 There were no documents at that stage in respect of the supply of flags by Merit Link Enterprise. It is surmised that no questions regarding the flags supplied by Merit Link Enterprise were asked from TBH by Arman and Ashraf.

¹⁴⁰ Exhibit I-204 page 12

¹⁴¹ NOP Volume 15 pages 5138 – 5140

¹⁴² NOP Volume 11 pages 3893 – 3895

¹⁴³ NOP Volume 11 pages 3629 – 3632

¹⁴⁴ Exhibit I-197(c) D94

¹⁴⁵ Exhibit I-197(c) D95

¹⁴⁶ Exhibit I-197(c) D96

¹⁴⁷ Exhibit I-197(c) D97

3.36 Arman and Ashraf did not ask detailed questions of TBH. They were only checking documents (*“semak dokumen”*). Ashraf did not ask any questions of TBH. He left it to Arman. Arman said that he only asked global questions of TBH – about his background and some personal details. He referred TBH to the documents in the Land Office files for verification, for example, whether TBH approved or signed those documents. Arman did not ask TBH about the 4 documents in detail – only about why those documents were in his laptop, and whether the projects were carried out.¹⁴⁸ According to Arman, much of the time was taken with TBH being asked to leaf through the 4 hard cover files to find the 4 documents allegedly printed from TBH’s laptop.

3.37 Ashraf said that he was only instructed to assist Arman to check and tag documents (*“semak dokumen”*)¹⁴⁹ and did not speak to TBH for two hours. It is said that Arman and Ashraf spent time chatting to each other while waiting for TBH to answer the questions posed.¹⁵⁰ Ashraf only left the room twice during the two hours interview – first, to take a glass of water for TBH and second, to take the Treasury guidelines on the need to have quotations for Government projects.¹⁵¹ Ashraf never looked TBH face-to-face or in the eye during the two hours but he agreed that looking someone eye-to-eye is something that is very common in friendly non-confrontational ‘interview’.¹⁵² Arman

¹⁴⁸ NOP Volume 13 pages 4345 – 4380

¹⁴⁹ NOP Volume 11 pages 3884 – 3885

¹⁵⁰ NOP Volume 12 pages 4015 – 4016

¹⁵¹ NOP Volume 11 pages 3900 – 3901 and page 3632

¹⁵² NOP Volume 12 pages 4003 – 4006

though speaking to TBH also did not do the same.¹⁵³ At all times, TBH was looking down and flipping documents in the files and writing notes in his notebook. He appeared as if he was preoccupied.¹⁵⁴ This is unusual for an occasion which was supposedly a ‘friendly interview’ according to Arman and Ashraf.

3.38 After ‘interviewing’ TBH for more than two hours from about 10.00pm to 12.45am, Arman and Ashraf reported back to Hairul on the results of the investigation, and said that the purpose of the interrogation had been achieved (*“capai”*).¹⁵⁵ At this juncture, it is unclear what exactly had been achieved from the interview.

3.39 First, Arman and Ashraf were unable to locate the 4 documents allegedly printed from TBH’s laptop. Second, TBH was purportedly unable to answer questions regarding the 4 documents.¹⁵⁶

3.40 Arman informed Hairul that in respect of the 4 documents, TBH could not give a clear explanation but promised to return with documents to clarify the same.¹⁵⁷ Effectively there was little information provided by TBH to Arman and Ashraf because Arman and Ashraf had little background knowledge, if any, of the particular investigation regarding TBH, and limited instructions from Hairul.

¹⁵³ NOP Volume 14 pages 4989 – 4994

¹⁵⁴ NOP Volume 11 pages 3609 – 3612

¹⁵⁵ NOP Volume 11 pages 3902 – 3907

¹⁵⁶ NOP Volume 11 page 3907

¹⁵⁷ Exhibit I-204 pages 13 – 14 and Exhibit I-198 pages 107 – 117

3.41 It was quite obvious from the examination of Ashraf and Arman at the inquiry that they did not do any 'groundwork' before 'interviewing' TBH. They cannot be faulted for this as they were specifically instructed to interview TBH at very short notice, and the instructions they received appeared to be in a nature of a preliminary enquiry.

3.42 Throughout the inquiry, it was evident to any layperson that more had happened during the interrogation of TBH than meets the eye, *inter alia*:-

(a) That Ashraf, who was said not to have been initially involved in the 52/2009 operation, was specifically called back into the office to be on standby. It is incredible that for more than two hours Ashraf was only tagging documents like an office clerk and Arman was asking general questions of TBH which could have been done by independent verification. When TBH was said to have been unable to answer questions, Arman would on occasion wait for up to 20 minutes for an answer. During that 'waiting time', Arman and Ashraf would chat among themselves.¹⁵⁸

(b) Ashraf's explanation on how an 'interview' is conducted, and how an 'intelligence statement' is taken in fact confirms that an intelligence statement was being taken from TBH by Arman and Ashraf.¹⁵⁹ Arman reiterated

¹⁵⁸ NOP Volume 12 pages 4015 – 4017

¹⁵⁹ NOP Volume 12 pages 3986 – 3990

Ashraf's statement when Arman said at the MACC's Complaints Committee that the 'interview' of TBH was to obtain an intelligence statement for the purpose of giving information to the recording officer.¹⁶⁰

- (c) Ashraf when questioned earlier on 28.08.2009 at the Coroner's Inquest into the death of TBH admitted that he did take part in the interrogation of TBH.¹⁶¹ Yet Ashraf rigorously maintained at the inquiry that only Arman did the questioning, and Ashraf never uttered a word to TBH.¹⁶² Ashraf's version at the inquiry does not sit comfortably with his admission that he had immediately after TBH's statement was recorded by Nadzri at about 3.30am read TBH's statement.¹⁶³

The question that arises is why Ashraf, a person purportedly disinterested in the investigations and who said he did not question TBH felt the need to read TBH's statement. It is submitted that Ashraf read TBH's statement immediately after it was recorded by Nadzri because Ashraf was in fact more involved in the 52/2009 operation than what has been said.

- (d) Although Arman and Ashraf said that Arman was writing notes of TBH's 'interview' and Arman later gave the notes

¹⁶⁰ NOP Volume 15 pages 5093 and 5100 and Exhibit I-198 page 112

¹⁶¹ Exhibit I-201(c) Coroner's Notes of Proceedings dated 28.8.2009 Evidence of Mohd Ashraf Bin Mohd Yunus pages 8 – 12 at the Inquest No. 88-100-09

¹⁶² NOP Volume 12 pages 4078 – 4085

¹⁶³ NOP Volume 12 page 4011 and 4013

in three A4-sized sheets of paper containing the results of the 'interview' to Hairul, these handwritten notes of Arman have to date not been produced by MACC.¹⁶⁴ These crucial notes are important as a reflection of what actually went on during the interrogation of TBH. The inability of MACC to produce these notes raises questions about the nature of Arman and Ashraf's 'interview'.

- (e) No food was given to TBH for an entire two hours.¹⁶⁵ Arman in his 112 statement to the police pointedly said that TBH was not allowed to rest and be given food:-

"S. SEMASA PROSES TEMUBUAL, ADAKAH SAKSI DIBENARKAN UNTUK BEREHAT DAN DIBERI MAKAN?"

J. TIDAK ADA.

APAKAH MAKANAN DAN MINUMAN YANG DIBERIKAN KEPADA SAKSI SEPANJANG BELIAU BERADA DI PEJABAT SPRM?

J. SAYA TIDAK TAHU."

- (f) TBH did not leave the room although Arman and Ashraf justified that TBH never asked to leave the room.¹⁶⁶ However if TBH wanted to leave the room they would

¹⁶⁴ NOP Volume 13 pages 4406 – 4410; NOP Volume 14 pages 4979 – 4984 and Exhibit I-204 page

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¹⁶⁵ NOP Volume 15 pages 5134 – 5135

¹⁶⁶ NOP Volume 12 pages 4016 – 4017

have questioned and stopped him from leaving, and obtained instructions from their senior officers.¹⁶⁷ In effect, TBH would not be free to leave as he wished despite MACC's position that TBH freely volunteered to be 'interviewed' as a witness.

- (g) The revelation that Arman had amended and edited his 1st Investigation Diary to produce a 2nd one before the inquiry, and Ashraf not writing an Investigation Diary in respect of the 'interview' of TBH is telling.¹⁶⁸ Arman further 'padded-up' his subsequent Diary on key points and in particular, he added that no force was used on TBH (*"tidak ada kekerasan digunakan terhadap Teoh"*).¹⁶⁹ A person with nothing to hide would see no necessity to improve on a document which is supposed to be written contemporaneously.
- (h) Despite attempts by Arman and Ashraf to explain the differences in the methods of an 'interrogation' and an 'interview', and their use of the term 'interview' in respect of TBH, the facts bear out that Arman and Ashraf did not merely 'interview' TBH.¹⁷⁰ TBH was treated as an accomplice, that is, a suspect and MACC needed a confession or admission of wrongdoing from him.

¹⁶⁷ NOP Volume 12 pages 4016 – 4018

¹⁶⁸ NOP Volume 14 pages 4962 – 4978

¹⁶⁹ Exhibit I-204 page 18 item 32 *cf.* Exhibit I-198 page 175 item 32

¹⁷⁰ NOP Volume 15 pages 5071 – 5100

3.43 In hindsight, the objective analysis of TBH's interrogation revealed very little, if any, of the purported misuse of funds or wrongdoing. This stems from the evidence produced thus far. However, the relevant state of play at that time is revealed in Arman's statement as to his analysis - whether real or imagined – that he was on to something that could implicate TBH as an accomplice to an offence. In Arman's evidence before the MACC Complaints Committee on 26.08.2009 he said, without more, that he had found TBH as an 'accomplice' within the definition of the MACC Act:-¹⁷¹

"Tuan Ravindran: Semasa temu bual anda dengan Teoh dalam masa 2 jam, adakah anda dapati Teoh boleh implicate dalam kes ini?"

PP Arman: Dari segi pemahaman dan pemerhatian saya nampak, saya dapati adalah rakan sejenayah dalam akta kita."

3.44 The Bar submits that Arman's view, namely, that TBH was an accomplice, was reported to his superior and precipitated MACC's actions *vis-à-vis* TBH on the night of 15.07.2009 and on the morning of 16.07.2009. From a mere witness, TBH had become a suspect, and was treated like one. From the time TBH entered MACC office, he became a prime target either as the main accused or an accomplice. Numerous officers took

¹⁷¹ Exhibit I-198 page 117

turns to 'interview' him before his interrogation by Arman and Ashraf. MACC thought that they had a 'slam-dunk' case, and they needed to expedite the investigations to obtain TBH's confession or admission.

- 3.45 The interrogation of TBH, planned by Hishamuddin from as early as 8.30pm to 9.00pm starting with Arman and Ashraf's interrogation, hastened through the night. Hishamuddin had a personal interest in the outcome of the investigation as he initiated the same on a tip-off, and the media glare resulting in widespread publicity had the nation paying close attention to the 52/2009 operation. There was no evidence against TBH but MACC had to obtain a result that very night and therefore had to get the result by any means possible from TBH.

TBH'S STATEMENT: NADZRI

- 3.46 It was crucial for Anuar as Investigation Officer¹⁷² of the 52/2009 operation to take TBH's statement that same night after Arman and Ashraf's interrogation. Arman had opined that TBH was an 'accomplice' in the alleged misuse of YB Ean Yong's allocated funds and the investigations had to be expedited for a 'result'. Anuar said that it is common practice to take statements overnight¹⁷³ to avoid the witness changing his or her story later.¹⁷⁴

¹⁷² NOP Volume 21 page 7648

¹⁷³ NOP Volume 21 pages 7655 – 7658

¹⁷⁴ NOP Volume 16 pages 5573 – 5626

3.47 At about 12.30am on 16.07.2009, instructions were given by Hairul to Nadzri to record TBH's statement.¹⁷⁵ Nadzri did not know who TBH was at that material time as Nadzri was not part of the raiding team who went to YB Ean Yong's office.¹⁷⁶ Nadzri was instructed by Hairul to record TBH's statement and ask questions regarding two 'important' matters, namely, who were the owners of the companies and how TBH obtained the quotations under investigations. Nadzri was only informed that TBH is the secretary to the Seri Kembangan Assemblyman and that the case under investigation was for false claims.¹⁷⁷ He was at that time not given any documents by Hairul. The documents were to be given later by Anuar.¹⁷⁸

3.48 At about 1.15am, Anuar instructed Nadzri to record TBH's statement and handed Nadzri 4 sets of claims containing letters of order ("*Pesanan Kerajaan*"), invoices, vouchers, Form A, Form B and photographs, 2 'quotations' and 2 letters. An early investigation note ("*nota pemeriksaan awal*") was also given to Nadzri.¹⁷⁹ Documents that Arman and Ashraf allegedly tagged together with the brief notes jotted down by Arman for the 2 hours 'interview' with TBH were not given. Anuar did not read through the notes allegedly written by Arman during the 'checking' of the documents with TBH as if the process of 'checking' documents was not relevant at all.¹⁸⁰

¹⁷⁵ NOP Volume 12 page 4252

¹⁷⁶ NOP Volume 24 pages 8613 – 8614

¹⁷⁷ NOP Volume 12 pages 4254 – 4257; NOP Volume 24 pages 8615 – 8618

¹⁷⁸ NOP Volume 24 pages 8620 – 8621

¹⁷⁹ NOP Volume 12 pages 4267 – 4270; NOP Volume 21 pages 7646 – 7650; NOP Volume 24 pages 8615 – 8620; NOP Volume 24 pages 8635 – 8654 and Exhibit I-204 pages 8 – 9

¹⁸⁰ NOP Volume 21 pages 7647 to 7652

3.49 For clarity, Nadzri received 8 documents, namely:-

- (a) 4 stapled sets of claim documents:-
 - (i) regarding WSK Services in respect of the event of support and solidarity for YB Teresa Kok;¹⁸¹
 - (ii) regarding Hong Chae Enterprise in respect of the Tanglung children's programme;¹⁸²
 - (iii) regarding WSK Services in respect of the Tanglung procession programme;¹⁸³
 - (iv) the 4th set of claim documents is unclear because there are two versions of what was allegedly given by Anuar to Nadzri.

First, Anuar said that Hairul had given him 4 claim documents which Anuar then handed over to Nadzri, and apart from the 3 claim documents referred to above, that are, (a), (b) and (c), the 4th document related to the supply of flags by Merit Link Enterprise.¹⁸⁴

¹⁸¹ Exhibit I-197(b) D41/a – h

¹⁸² Exhibit I-197(b) D38/a – h

¹⁸³ Exhibit I-197(b) D42/a – h

¹⁸⁴ NOP Volume 20 pages 7430 – 7433; NOP Volume 21 pages 7742 – 7766; NOP Volume 22 pages 7893 – 7894

Second, Hairul said that he gave 4 claim documents which did not have documents pertaining to Merit Link Enterprise.¹⁸⁵ The 4th document which Hairul purportedly handed to Anuar was in relation to WSK Services' claim for a peoples' visit in the Kampung Tunku constituency.¹⁸⁶

Nadzri (who probably is the most important person to verify the documents said that he does not remember what documents were given to him.¹⁸⁷

If one accepts that the questioning of TBH by Nadzri as recorded in TBH's statement¹⁸⁸ is authentic and accurate, one would note that questions regarding the supply of flags by Merit Link Enterprise were asked and answered.¹⁸⁹ Apparently, 7 documents consisting of a voucher dated 17.11.2008, a Government Order No. AE 012620 (*"Pesanan Kerajaan"*), a letter dated 04.11.2008, a letter dated 23.11.2008, Form A dated 23.11.2008, Form B and photographs of

¹⁸⁵ Exhibit I-206 A – D and NOP Volume 21 pages 7742 – 7775

¹⁸⁶ NOP Volume 18 pages 6469 – 6478

¹⁸⁷ NOP Volume 24 pages 8644 – 8649

¹⁸⁸ Exhibit I-197(a) (A17) appearing to be the second statement where parts of which have been cancelled whereas Exhibit I-69 appearing to be the first statement without any cancellations.

¹⁸⁹ Exhibit I-197(a) (A17) pages 11 – 13

the National Day (showing that flags were given out) event were referred to TBH by Nadzri.¹⁹⁰

It may therefore be surmised that Anuar had indeed given Nadzri documents pertaining to Merit Link Enterprise for purposes of the statement. It is uncertain why Hairul chose to selectively omit reference to the Merit Link Enterprise documents in his testimony at the inquiry.

(b) 2 'quotations':

(i) 1 Fizami Construction invoice dated 02.09.2008;¹⁹¹

(ii) 1 Syarikat Aris invoice dated 02.09.2008.¹⁹²

(c) 2 letters:¹⁹³

(i) 1 dated 09.12.2008 regarding the registration of the hawkers' association;

(ii) 1 dated 23.09.2008 from a fire victim, Muthusamy a/l M. Maruthan seeking financial assistance.

¹⁹⁰ Exhibit I-197(a) (A17) appearing to be the second statement where parts of which have been cancelled whereas Exhibit I-69 appearing to be the first statement without any cancellations.

¹⁹¹ Exhibit I-197(c) D94

¹⁹² Exhibit I-197(c) D95

¹⁹³ Only the letter dated 23.09.2008 is found in Exhibit I-205(b). The other letter dated 09.12.2008 is not part of Exhibit I-205(b).

3.50 At about 3.35am, Nadzri allegedly informed Anuar that TBH's statement had been taken and Anuar, without looking at the statement, had purportedly instructed for TBH's release.

3.51 The following points must be noted about the statement-recording process of TBH by Nadzri:-

- (a) With limited background information and only 8 documents at hand with an early investigation note, Nadzri could not make much headway in obtaining any incriminating information from TBH. It is impossible to imagine that Nadzri had adequate knowledge of the facts to put the questions to TBH *per* TBH's statement. Nadzri himself admitted that the documents with him were insufficient, and TBH was to return with more documents.¹⁹⁴ Nadzri, not sufficiently knowing the facts of the investigation, could not probe any deeper than he did *per* TBH's statement, assuming the same is authentic.
- (b) Many parts of the answers in TBH's statement were Nadzri's own words, and not those of TBH.¹⁹⁵ MACC has todate been unable to produce the original statement allegedly recorded by Nadzri of TBH on the morning of 16.07.2009. The authenticity of the copy of the statement before the inquiry cannot be proven. Did TBH actually sign the statement? Was the statement a pre-prepared document? Was the statement taken in parts?

¹⁹⁴ NOP Volume 24 page 8638

¹⁹⁵ NOP Volume 24 pages 8738 – 8797

- (c) The chain of evidence regarding the ‘mysterious’ Merit Link Enterprise’s documents is unclear as the said documents are not found in MACC’s Investigation Papers.¹⁹⁶

First, MACC has failed to satisfactorily explain why they chose to cancel out parts of TBH’s statement including the Merit Link Enterprise’s questions and answers, and drop further investigations into the supply of flags by Merit Link Enterprise.¹⁹⁷

Second, it is unclear how and when the Merit Link Enterprise documents were obtained and by whom. Given that TBH was not apparently asked about the flags issue in the interrogation by Arman and Ashraf, it appears that Nadzri was confronting TBH for the first time on the issue of Merit Link Enterprise. It is no coincidence that at the time TBH’s statement was being recorded, Boon Wah was under interrogation on the same issue by Bulkini and Effezul. It is also of note that the Merit Link Enterprise questions were the last 7 questions appearing in TBH’s statement which leads one to conclude that TBH’s questioning ended on those issues.¹⁹⁸

- (d) Since we are now able to decipher precisely the documents used at TBH’s statement-recording, it can be

¹⁹⁶ Exhibit I-197(a), (b) and (c)

¹⁹⁷ NOP Volume 22 pages 7910 – 7919

¹⁹⁸ Exhibit I-197(a) (A17) pages 11 – 14

seen that there was little, if any, evidence to implicate either TBH or YB Ean Yong. Given that the same deduction may be made after the interrogation by Arman and Ashraf, and yet Arman saw fit to consider TBH an ‘accomplice’, it is submitted that TBH was being treated more as a suspect than as a witness. There is also sufficient evidence to prove that in truth and fact, TBH was not released after his statement was recorded at approximately 3.35am on 16.07.2009.

- (e) Anuar, without reading TBH’s statement could not have made any informed decision whether to release TBH or not. He said he ‘trusted’ Nadzri.¹⁹⁹ It is inconceivable that Anuar would have released TBH in view of the continuing state of urgency where MACC was under immense pressure to obtain ‘results’ that evening,²⁰⁰ and where the Merit Link Enterprise flags issue was vigorously pursued by the numerous interrogation sessions the 2 key witnesses – Boon Wah and TBH – had to endure throughout the night.

3.52 The Bar submits that the instruction to release TBH was never made by Anuar that night. The assertion that Nadzri, on the instructions of Anuar, released TBH is inherently incredible. If the need for TBH to remain for further questioning had ceased, and TBH’s mobile phone and NRIC were returned to him, TBH

¹⁹⁹ NOP Volume 21 pages 7651 – 7652

²⁰⁰ NOP Volume 22 pages 7947 – 7949

would have immediately used his mobile phone or at least left in his car parked below.

- 3.53 As Boon Wah's statement related to TBH and the latters' involvement in the Merit Link Enterprise claim, cross-referencing of the information obtained between MACC officers had to be done, in particular, to ascertain whether TBH had asked Boon Wah to mark-up the price of flags.²⁰¹
- 3.54 Cross-referencing is usually the responsibility of the IO but by about 3.40am, Anuar was alleged asleep and Hairul had allegedly left the building. Anuar²⁰² and Hairul²⁰³ the two leaders of the 52/2009 operation, were strangely out of circulation and no longer involved.
- 3.55 The highest-ranking officer at MACC at that time was Hishamuddin who had a direct hand in picking Arman and Ashraf to interrogate TBH and Bulkini to interrogate Boon Wah.
- 3.56 Why did MACC cancel out the last 7 questions of TBH's statement in respect of the issue of the flags supplied by Boon Wah and Merit Link Enterprise.²⁰⁴ Bearing in mind the urgency of the investigations that night; the heightened importance of the issue placed by Anuar, Hairul and Hishamuddin; the length of time Boon Wah was made to stay in MACC office; and that both TBH and Boon Wah were questioned on the flags, it is

²⁰¹ NOP Volume 17 pages 6030 – 6031

²⁰² NOP Volume 21 page 7652 and pages 7792 – 7794

²⁰³ NOP Volume 17 pages 6335 – 6336

²⁰⁴ Exhibit I-197(a) (A17) pages 11 – 13 and NOP Volume 22 pages 7892 – 7922

unusual for MACC to have removed this part from its investigations, and decided not to pursue the same.²⁰⁵

3.57 The Bar submits that the supply of flags by Merit Link Enterprise was a major component of the chain of contributory factors which led to TBH's death. MACC now wants to give us an impression that TBH's questioning had nothing to do with Boon Wah, and *vice versa* when in fact it did.²⁰⁶

3.58 The Bar submits that the interrogation of TBH persisted and continued throughout the early hours of the morning of 16.07.2009, and something happened to TBH caused by an officer or officers of MACC that led to his death. With respect to this, it is important to bear in mind significant factors sought to have been advanced by MACC at this inquiry; one of which is the story that TBH's mobile phone and NRIC were said to have been returned to TBH, and that he was released and no longer the responsibility of MACC. It has been shown that TBH's mobile phone and NRIC were in fact not returned.

RECORDING PROCESS OF WITNESSES ILLEGAL

3.59 The procurement of evidence by MACC into alleged misuse of funds by YB Ean Yong was flawed and illegal.

²⁰⁵ Boon Wah's statement given on 16.07.2009 (Exhibit I-208) and the 7 documents referred to TBH, regarding to the supply of flags by Merit Link Enterprise are not part of MACC's Investigation Papers (Exhibit I-197(a)).

²⁰⁶ Exhibits I-69 and I-208; NOP Volume 21 pages 7745 – 7820; NOP Volume 22 pages 7850 – 7921; NOP Volume 32 pages 11616 – 11632; NOP Volume 47 pages 17845 – 17846

Raiding Of Premises

3.60 The Bar submits that MACC violated s. 31 of the MACC Act in respect of the search and seizure of items at the office of YB Ean Yong and at the houses of Boon Wah and Wye Wing:

- (a) Section 31(1)(a) of the MACC Act states that if there is 'reasonable cause to suspect that in any place there is any evidence of the commission of an offence under the Act', a written order may be issued to an officer of the MACC to enter any premises and there search for and seize any book, document, record, account or data. The written order is to be issued by the Public Prosecutor or an officer of the Commission of the rank of Chief Senior Assistant Commissioner or above as authorised by the Public Prosecutor upon information, and after such inquiry as he thinks necessary.
- (b) It is not in dispute that MACC in this case did not obtain a written order that authorised the search and seizure of documents at the office of YB Ean Yong and at the houses of Boon Wah and Wye Wing.
- (c) MACC justified its actions by resorting to s. 31(3) of the MACC Act citing that MACC commonly uses such powers.²⁰⁷

²⁰⁷ NOP Volume 18 pages 6736 – 6739; NOP Volume 30 pages 11170 – 11179

- (d) A close reading of s. 31(3) reveals that it should only be invoked in exceptional circumstances where there is clear and present danger that evidence is or will be destroyed. The words of the subsection bear this out:

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

(emphasis ours)

- (e) MACC had started investigations into the alleged abuse of funds in June 2009 when the relevant files were seized from the Land Office. It had ample time to obtain the requisite written order under s. 31(1). No justification has been forthcoming why this was not done. No assertion has been made by MACC that it suspected that there would have been attempts to destroy or conceal evidence on the part of TBH, Boon Wah or Wye Wing.

- (f) The reverse occurred. TBH co-operated with the MACC on advice of his counsel, and similarly Boon Wah and Wye Wing when MACC officers proceeded to search their homes.
- (g) In the course of the inquiry, it became clear that instructions were communicated to MACC officers to expedite investigations into YB Ean Yong's case and results had to be obtained on the night of 15.07.2009. The 52/2009 operation was a 'sensitive' case²⁰⁸. This was the biggest ever operation against lawmakers of the State Government led by the national opposition political party, Pakatan Rakyat, with about 30 to 40 officers involved, surrounded by media scrutiny and publicity.²⁰⁹ TBH's death must be viewed in this context of urgency.

Interviews and Interrogation of Witnesses

3.61 The Bar submits that MACC had violated s. 30(1)(a) read with s. 30(8) of the MACC Act in respect of the oral examination and statement-recording of TBH, Boon Wah and Wye Wing:

- (a) MACC officers at the inquiry confirmed that TBH was brought in for questioning under s. 30(1)(a).²¹⁰

²⁰⁸ NOP Volume 17 pages 6027 – 6029

²⁰⁹ NOP Volume 18 pages 6374 – 6375

²¹⁰ NOP Volume 12 pages 3981 – 3982; NOP Volume 14 pages 4944 – 4945; NOP Volume 16 pages 5889 – 5891; NOP Volume 18 pages 6633 – 6634; NOP Volume 18 pages 6688 – 6689 and 6965 – 6967; NOP Volume 24 pages 8698 – 8703

TBH was brought to MACC office on 15.07.2009 by Anuar, Hafiz and Azhar. He was then led to the PENMAS area and different officers took turns to interview TBH including Hafiz, Azhar, Amin, Shaheed Bin Md Azali, Gunashilen a/l Ramalingam and Sachi.²¹¹ No formal written statement was recorded at that stage.²¹²

At about 9.40pm to 10.40pm, TBH was then interrogated by Arman and Ashraf for about 2 hours.²¹³ No formal written statement was recorded.

It was only at about 1.30am that TBH's formal written statement was recorded by Nadzri. Nadzri was not involved in TBH's earlier interviews and interrogation. The statement-recording session allegedly ended at 3.30am.²¹⁴

- (b) On the other hand, Boon Wah was interviewed and interrogated by Bulkini and Effezul, on 15.07.2009 at about 10.00pm to 16.07.2009 at about 2.00am.²¹⁵ No formal written statement was recorded.²¹⁶

It was only at about 11.30am that Boon Wah's formal written statement was recorded by Hassan who was not

²¹¹ NOP Volume 41 pages 15321 – 15322 and page 15489; NOP Volume 43 pages 16010 – 16013

²¹² Exhibit I-199 (A96) page 2; (A32) page 3; (A26) page 3; (A93) page 2 and (A13) page 4

²¹³ NOP Volume 11 pages 3601 – 3604; NOP Volume 13 pages 4346 – 4677

²¹⁴ NOP Volume 24 page 8816

²¹⁵ NOP Volume 32 pages 11507 – 11540; NOP Volume 42 pages 15580 – 15582

²¹⁶ Exhibit I-199 (A91) page 6

part of the earlier interrogation. The statement-recording session ended at 1.30am.²¹⁷

- (c) Wye Wing was interviewed and interrogated by Sachi and another officer on 15.07.2009 at about 5.00pm.²¹⁸

It was only at about 1.45am that Wye Wing's formal written statement was recorded by Hadri. Hadri was not part of the earlier interview and interrogation. The statement-recording session ended at 5.45am.²¹⁹

- (d) Section 30(1)(a) must be read with s. 30(8). Section 30(8) reads as follows:

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

(emphasis ours)

²¹⁷ NOP Volume 44 pages 16350 – 16355

²¹⁸ NOP Volume 38 pages 14147 – 14155; NOP Volume 43 page 15965

²¹⁹ NOP Volume 43 pages 16178 – 16179 and Exhibit I-199 (A32) page 3

The subsection envisages that the same officer who examines the witness under s. 30(1)(a) must also be the officer who records the written statement of the witness under s. 30(8) of the MACC Act. As shown above, the same officers who first interviewed and/or interrogated TBH, Boon Wah and Wye Wing under s. 30(1)(a) did not also record their statements under s. 30(8).

ALLEGED RELEASE AT 3.30AM

3.62 The Bar will contend that TBH was never released after his statement was recorded at 3.30am on 16.07.2009 based on the following reasons:-

- (a) TBH had been described by Mandy as a person who couldn't live without his mobile phone. Cher Wei, his wife, also testified that TBH spent a lot of time on his mobile phone with his family and friends. Anuar had testified that he had instructed TBH to put the mobile phone into the knapsack when he was brought to MACC's office the day before.²²⁰

However, according to Anuar, he found TBH's mobile phone in the morning of 16.07.2009 on the floor next to

²²⁰ NOP Volume 21 page 7618

the knapsack resting by the sofa which was outside Nadzri's room.²²¹

If indeed TBH was released at 3.30am on 16.07.2009, and that TBH's mobile phone was found outside his knapsack it would mean that TBH would have taken it out upon his alleged release. However, it begs the question that TBH having been described by Mandy and Cher Wei as a person who cannot live without his mobile phone, it would be strange and unreasonable that he did not SMS or call any of his family members, his boss, that is, YB Ean Yong and/or friends at all after that, notwithstanding that it was in the wee hours of the morning. This is especially so when most had known TBH had gone to MACC's office the evening before to assist in investigation.

It can only lead to the irresistible conclusion that Anuar had lied about not seizing TBH's mobile phone **AND** that TBH was not released at 3:30am as alleged.

- (b) According to Nadzri, TBH was supposed to return to MACC's office with some documents the next day. If indeed TBH was released, it was strange that TBH was never issued the MACC 004/009 Form which was required as a matter of procedure and law²²². This was the

²²¹ NOP Volume 20 pages 7219 – 7221

²²² s. 30(1)(a) of the MACC Act

same form which was issued to Boon Wah²²³ when he was released and was required to produce the documents requested for by MACC on the next day. Again, we submit that the truth of the matter is that TBH was never released.

- (c) It is in evidence that the investigating office, Anuar, did not even bother to read TBH's statement when Nadzri handed it to him notwithstanding the fact that he claimed it was important that TBH's statement be recorded in the wee hours of the morning of 16.07.2009²²⁴ to ensure the information they wanted was recorded and TBH did not get opportunity to change his story. It goes to show that TBH was in fact not released yet after his statement was recorded because MACC had the intention to keep him until MACC had read and was satisfied with TBH's statement.
- (d) It is also in evidence that other witnesses that were present during the same period of time at the MACC's office were not released even though they have had their statements recorded. Those witnesses were Wye Wing²²⁵ and Harun.²²⁶ Similarly, we submit that TBH was put in a similar position as MACC had needed to cross-check the statements.

²²³ Exhibit I-220 Tab C page 11 – *Perintah Menghadiri Pemeriksaan*

²²⁴ NOP Volume 21 page 7651

²²⁵ NOP Volume 38 pages 14246

²²⁶ NOP Volume 47 pages 17929 – 17930

- (e) The last statement recorded amongst the witnesses brought in on 15.07.2009, according to the NOP, was that of Boon Wah which was only completed at 1.35pm on 16.07.2009.²²⁷ Wye Wing's statement was completed at 5.00am.²²⁸ Needless to say cross-checking of the said witnesses' statements was required and evident through most of the MACC's officers' testimonies. This need for cross-checking by MACC requires that the witness not be released until they are satisfied with it.
- (f) Dr Badi'ah in her testimony had inferred that it was obvious TBH did not want to leave MACC premise even though he had been released because he was afraid to face his colleagues and to produce the documents wanted by MACC.²²⁹ The basis upon which she came to this inference and conclusion was not stated. The Bar submits that it was more obvious to infer that TBH did not leave the MACC premise after his statement was recorded because he was in fact never released. With the greatest of respect, Dr Badi'ah's inference was without any basis whatsoever and the Bar's inference is more probable and plausible.

TBH himself had asked when he would be allowed to leave MACC's office when he was initially brought there. It is therefore most bizarre that TBH would choose to rest

²²⁷ NOP Volume 32 pages 11583 – 11588

²²⁸ NOP Volume 38 page 14197

²²⁹ NOP Volume 50 page 18856

and/or sleep at MACC's office if indeed he had been released especially more so when his car was parked outside the MACC's office and TBH's office at the SUK building was minutes away from Plaza Masalam.

- (g) It would appear from the testimonies of MACC's officers that the only material questioning, if any at all, was done by Arman [Ashraf is said to have only assisted in tagging the documents] because all the other officers who had come into contact with TBH at the MACC's office in particular at the PENMAS area denied interviewing and/or interrogating him in substance. In fact, Arman and Ashraf who had interviewed TBH in the meeting room testified at the inquiry that they did not ask him any questions at all but were merely examining documents.

Due to the publicity surrounding the raid on the ADUN office earlier in the day, MACC was under immense pressure to obtain results that evening. The recording done by Nadzri revealed nothing except for TBH's background and also identification of certain documents. Hence, TBH was not released at 3.30am as alleged but kept for further questioning thereafter. It was crucial for MACC to get a "positive" statement from TBH that day because the purported statement recorded by Nadzri amounted to nothing.

- (h) The disappearance of TBH's **ORIGINAL** statement recorded by MACC further handicapped this inquiry to

determine whether TBH did in fact sign the said statement. The Bar had at this inquiry challenged the authenticity of the signatures appearing on the first and the last page of the statement. The failure to determine the authenticity of TBH's signature throws more doubt as to whether he was in fact released at 3.30am on 16.07.2009.²³⁰

- (i) Nadzri had prepared 2 IDs in respect of his recording of TBH's statement. He claimed that the 2nd ID was prepared just before this inquiry started. The 2nd ID had more details and he admitted that it was an improvement compared to the 1st ID.²³¹ It was further admitted by him that he did so after consultation with Anuar particularly in respect of the timeline.²³²

The Bar respectfully submits that the timeline would include the time of whether TBH was in fact released. It would be within reason to suggest that the time that TBH was allegedly released as stated by Nadzri would have been tampered with and a fiction invented by MACC to streamline its story that it did not know what happened to TBH after 3.30am.

- (j) The surrounding circumstances in relation to the discovery of TBH's original NRIC calls into question as to

²³⁰ NOP Volume 25 pages 9050 – 9060

²³¹ NOP Volume 25 pages 8995 – 9038

²³² *ibid.* page 9013

whether TBH was actually released. TBH's NRIC was never listed by ASP Nazri in his police report dated 18.07.2009²³³ as an item found in his knapsack. However, in an about twist, the NRIC was listed in his ID (date prepared unknown) as an item found in the wallet which was discovered in the knapsack.²³⁴

The reason TBH's NRIC was not listed as an item in the police report was because it was never there as it was still in MACC's possession. The entries in ASP Nazri's ID which was not dated were doctored. It was in their possession because TBH was never released. It surprisingly found its way into being listed as an item in ASP Nazri's ID.

TBH: SIGHTINGS

- 3.63 There is no reliable evidence as to when TBH was last seen in the morning of 16.07.2009 save for 1.00am when Wye Wing had a conversation with TBH at the PENMAS area and the indeterminable time after 2.30am when Boon Wah passed by TBH at the pantry. The evidence of the MACC officers as to the whereabouts of TBH is clearly contrived and wholly unreliable. Boon Wah is unable to say with certainty as to the time he last saw TBH. Bulkini's evidence of allegedly having seen TBH at

²³³ Exhibit I-199 page 34

²³⁴ Exhibit I-91

around 2.30am on 16.07.2009 after which a quarrel ensued with Boon Wah was inconsistent, unreliable and contradicted by Boon Wah.

3.64 Raymond's evidence of having seen TBH at 6.00am proved to be unbelievable.

3.65 Khairuddin's evidence that he saw TBH's bag at about 7.00am is not credible when taking his testimony as a whole.²³⁵

3.66 Ashraf is wholly unreliable as a witness and his evidence ought not to be accepted.

3.67 Relevant Evidence:

- (a) Bulkini
- (b) Raymond
- (c) Khairuddin
- (d) Boon Wah
- (e) Ashraf

Bulkini's Evidence

3.68 Bulkini is a MACC officer stationed in Putrajaya. He was part of the additional manpower seconded to MACC Selangor for the purposes of the operation on 15.07.2009. Bulkini claims to have seen TBH in or around 2.15am when he was showing Boon

²³⁵ NOP Volume 37 pages 13916 – 13923

Wah where the toilet was. At this inquiry, Bulkini claims that as he and Boon Wah were walking towards the toilet from the pantry he saw a gentleman wearing white pants and a black jacket coming from the opposite direction and entering the toilet. He claims that he opened the toilet door to usher Boon Wah in and turned to head back to the pantry. As he was walking back he claims to have heard a voice shouting in Mandarin the words “*ni loh!*”

3.69 In examination, Bulkini’s evidence was shown to be unreliable by the following:

- (a) There was no mention at all of the alleged incident in the toilet or to TBH in Bulkini’s 1st 112 statement²³⁶ given to the police on 31.07.2009. Mention was made for the 1st time in Bulkini’s further statement to the police given in the AG’s office in Putrajaya on 20.08.2009²³⁷. When examined on this material omission, the only reason that Bulkini could proffer was that he wanted to be sure of the evidence he was giving and that he only identified TBH after seeing his picture in the news. However, it was clearly established that news reports carrying TBH’s pictures appeared as early as 16.07.2009. In his 1st 112 statement, Bulkini confirmed that he had seen the news on TV3 on 16.07.2009 itself at 8.00pm. In the circumstances, his explanation for the material omission is incomprehensible.

²³⁶ Exhibit I-199 (A91) page 5

²³⁷ Exhibit I-199 (A91) page 9

- (b) At the Inquest, Bulkini had given evidence as to what transpired at the toilet at 2.15am. However, at the Inquest he alleged that Boon Wah entered the toilet 1st before TBH. This is clearly inconsistent with his evidence before this inquiry.²³⁸
- (c) Bulkini claims that Boon Wah and TBH are about the same height.²³⁹ **Exhibit I-219** which is a photograph that includes Boon Wah and TBH clearly shows that there is a significant difference in height between the two of them.
- (d) In his 1st 112 statement, Bulkini said that the words allegedly uttered in the toilet when translated says “*ini lu punya pasa!*”.²⁴⁰ In this Inquiry, Bulkini gave evidence that the Mandarin words uttered were “*ni loh!*” which when translated by Bulkini means “*engkau lah*”.²⁴¹ Once again this material difference renders his evidence wholly unreliable.
- (e) Bulkini claims that when he accompanied Boon Wah to the toilet, TBH came from the opposite direction. This would mean that TBH although coming to the toilet from Nadzri’s room would have taken the long route to the toilet when he could easily have turned left outside Nadzri’s room and come through the corridor where Hadri and Ahmad Razib bin Annuari’s room is to reach the pantry

²³⁸ Exhibit I-201(c) page 61; cf. NOP Volume 40 page 14956

²³⁹ NOP Volume 40 pages 15113 – 15118

²⁴⁰ Exhibit I-199 (A91) page 9

²⁴¹ NOP Volume 40 page 14959

and then the toilet. This evidence is once again improbable.²⁴²

- (f) At the inquiry under examination²⁴³, Bulkini eventually admits that it is possible that he was mistaken as to the identity of the person he allegedly saw entering the toilet at the material time.
- (g) When giving his 1st statement to the police on 31.07.2009 after having seen TBH's pictures on the news, Bulkini to a specific question by the police as to whether he had seen TBH on the night of 15.07.2009 till 8.00am on 16.07.2009 anywhere in the MACC office specifically answered that he had not seen TBH at all.²⁴⁴
- (h) Bulkini confirms that on the night of the operation, the officers did receive instructions not to allow the witnesses to interact, talk to each other or have any form of discussion.²⁴⁵ His evidence therefore of a possible argument in the toilet between witnesses seems incredible. When this was pointed out, his attempt to reason out of this incredible evidence by alleging that he did not know if TBH was a witness or an officer defies logic. If TBH was an officer, it would be a normal reaction to enter the toilet to defend a colleague in a potentially volatile situation. The fact that he claims that he just

²⁴² Exhibit I-63

²⁴³ NOP Volume 40 page 15120

²⁴⁴ Exhibit I-199 (A91) page 7

²⁴⁵ NOP Volume 40 page 15124

turned around and walked back to the pantry to finish his dinner renders his story unbelievable.²⁴⁶

- (i) Bulkini was inconsistent when questioned about whether he had prepared an ID. Initially, several times he had stated that he did not prepare any ID.²⁴⁷ When pressed further, suddenly he changed his evidence and contended that he had indeed prepared an ID.²⁴⁸ He now alleges that the ID was prepared 2 or 3 days after TBH's death. Quite incredibly, this ID which MACC Selangor claims not to have had, contains particulars of the incident at the toilet with the Chinese gentleman with the black jacket and white pants. The authenticity of the ID is thus suspected and disputed. It is even more incredible that reference to this incident is thought important enough to be recorded in an ID but does not appear in the 1st 112 statement to the police given after the ID is allegedly prepared. Further, the alleged ID is not even signed by Bulkini.²⁴⁹
- (j) Bulkini is an unreliable witness for many reasons:
- Bulkini had been identified by Boon Wah as one of the officers who had threatened and intimidated him during the interrogation. Bulkini's new method of interviewing Boon Wah by lying on the floor whilst the witness sat on a chair was a revelation in itself.

²⁴⁶ NOP Volume 40 pages 15122 – 15126

²⁴⁷ NOP Volume 40 pages 15152 – 15157

²⁴⁸ NOP Volume 40 page 15158

²⁴⁹ Exhibit I-244

Bulkini denied that he had threatened and/or intimidated Boon Wah notwithstanding that Boon Wah's answers to the questions asked is said to have been most unsatisfactory because he could not remember many things. Both Bulkini and Efezul had corroborated each other in terms of the fact that no force or psychological techniques were used on Boon Wah even though Boon Wah had given a very precise account of what had taken place in that empty room opposite Raymond's room. Bulkini who admitted carrying a waist pouch however denied lunging it at Boon Wah and pointing his finger menacingly close to his face whilst uttering threats.²⁵⁰ Bulkini was one of the officers who admitted to have briefed Hishamuddin directly on 15.07.2009 and 16.07.2009 notwithstanding that the leader in his team was Hadri.²⁵¹

- Bulkini's version in allowing Boon Wah to go back at 11.00pm on 15.07.2009 was not consistent with his story that he permitted Boon Wah to speak with his wife at 2.30am on 16.07.2009.²⁵²
- Bulkini's evidence is also unbelievable because he had apparently left for home at 3.47am whilst the

²⁵⁰ NOP Volume 32 pages 11541 – 11551; Volume 40 pages 15027 – 15033 and pages 15042 – 15050

²⁵¹ NOP Volume 40 pages 15053 – 15059

²⁵² NOP Volume 40 pages 14975 and 15062 – 15064

witness he had interviewed for five hours, Boon Wah, decided to wait at MACC office.²⁵³

- The timeline with regards to Bulkini's affidavit in reply to the civil suit filed by Boon Wah was also inconsistent with the time stated by Bulkini during this inquiry. Bulkini had given three different accounts of the time as to when he was at the pantry when Boon Wah wanted to go to the toilet. This is purported to have happened at 2.00am (in his 112 statement to the police)²⁵⁴, 2.15am (at this inquiry)²⁵⁵ and 2.30am (in his further 112 statement to the police)²⁵⁶.
- Bulkini in his 112 statement claimed to have been eating alone at the pantry but in his further statement stated that he was eating with Effezul and Hadri.²⁵⁷ When questioned on this, Bulkini replied initially that the police had excluded this information but subsequently he claimed that he was not asked by the police.²⁵⁸

(k) Believing Bulkini's evidence that he let Boon Wah sit on the chair whilst he lay down on the floor while interviewing him really requires a leap of faith. We have heard a lot of

²⁵³ NOP Volume 40 pages 14971 – 14975 and pages 15061 – 15062

²⁵⁴ Exhibit I-199 (A91) page 6

²⁵⁵ NOP Volume 40 pages 14953 – 14955

²⁵⁶ Exhibit I-199 (A91) page 9

²⁵⁷ Exhibit I-199 (A91) page 6 and page 9

²⁵⁸ NOP Volume 40 pages 15095 – 15097

evidence from MACC officers which has crossed by far the boundaries of reasonableness. This is one of them.²⁵⁹

- 3.70 **Conclusion:** The evidence of Bulkini that he allegedly saw TBH at the toilet area around 2.15am ought to be rejected for the reasons mentioned above and for the fact that Boon Wah denies that the incident as described by Bulkini ever took place.

Raymond's Evidence

- 3.71 Raymond is an officer of MACC Selangor stationed in Shah Alam, Selangor. He claims to have seen TBH at 6.00am on 16.07.2009 lying on the sofa outside Nadzri's room as he was leaving the MACC premises. In examination, the credibility of his evidence was challenged and this led to the revelation that Raymond's role may have been as a time marker to supplement MACC's version of events intended to cover up the truth. We say this for the following reasons:

- (a) Raymond's room at the office is situated at the upper right hand portion of **Exhibit I-63**. It is next to Hairul's room and the ping pong area. Despite its location on the extreme right, Raymond claims to have exited the office by walking past the pantry and the area of the relevant window where TBH was said to have fallen and past Nadzri's room down the long corridor and the "*Unit Siasatan*" and heading into

²⁵⁹ NOP Volume 40 page 15028 – 15029

the “*Unit Pentadbiran*” and coming up again into the “*ruang legar utama*” to exit into the lift lobby area.

When questioned as to why he took this long route to exit the office, the only explanation he could give was that he did not bring his access card on that day and that the long route was the only way he could exit the office without having to use an access card to reach the “*ruang legar utama*”. After extensive examination on **Exhibit I-63**, it was established that the route through the pantry past the toilet and the janitor’s room turning left at the surau would also not require an access card and was a much shorter route. Raymond could offer no explanation when confronted with this fact.²⁶⁰

- (b) In examination Raymond also conceded that he could not be sure that the person he saw lying at the sofa was TBH²⁶¹. He was not involved in any duties in which he had to deal with TBH and never spoke to TBH²⁶². He never saw TBH face to face.²⁶³ His only alleged encounters with TBH is when he allegedly either saw the back of him or a side profile for a fleeting moment at about 12.00am at the PENMAS area and a two to three second glancing at 6.00am as he passed Nadzri’s room in the dark.²⁶⁴

²⁶⁰ NOP Volume 32 pages 11789 – 11790

²⁶¹ NOP Volume 35 pages 12784 – 12785

²⁶² NOP Volume 32 page 11691; Volume 35 page 12830

²⁶³ NOP Volume 35 page 12831

²⁶⁴ NOP Volume 35 page 12731 and pages 12779 – 12785

He also claims to have seen a half photo of TBH from the internet shown to him by Anuar on 15.07.2009 night.²⁶⁵

He confirmed that his identification of TBH may have arisen as a result of suggestions put to him in discussions with other MACC officers on 16.07.2009 night.²⁶⁶

- (c) The fact that Raymond chose to deliberately clock out at 6.04am and clock in again at 6.05am on 16.07.2009 is strongly suggestive of Raymond being used as a marker to substantiate MACC's cover up story. On other occasions where Raymond did not show up for work in the morning but went straight away for operations from his home, he merely made remarks on his punch card without the need to punch in twice.²⁶⁷
- (d) Raymond could not even confirm if the person lying on the sofa was awake, had fainted and/or was dead.²⁶⁸
- (e) Raymond stated that he let himself out of the office without his access card by using the switch button, but he could not correctly identify where the switch button to unlock the main door was located at the reception desk.²⁶⁹

²⁶⁵ NOP Volume 35 pages 12819 – 12820

²⁶⁶ NOP Volume 35 pages 12784 – 12785 and pages 12790 – 12791

²⁶⁷ NOP Volume 35 page 12792 and pages 12801 – 12805

²⁶⁸ NOP Volume 35 page 12783

²⁶⁹ NOP Volume 35 pages 12829 – 12830

- (f) Khairuddin, the security guard on duty within the MACC premises claims that Raymond left the office by opening the main door using his access card.²⁷⁰
- (g) Raymond's testimony is also unreliable because at this inquiry he claims to have been in his room from 11.00pm on 15.07.2009 to 6.00am on 16.07.2009 leaving only once to go to the toilet at about 1.00am.²⁷¹ In the circumstances he could not have seen TBH at the PENMAS area at 12.00am as claimed by him in his 1st 112 statement to the police.²⁷²

3.72 **Conclusion:** Raymond's testimony is in the circumstances unreliable and cannot be regarded as cogent evidence of TBH being alive at 6.00am. A careful perusal of Raymond's testimony reveals that Raymond remembered little else except specific times which we submit he was coached to say.

Khairuddin's Evidence

3.73 Khairuddin is a security officer employed by MACC Shah Alam Selangor. He was on duty on the night of 15.07.2009 beginning at 12.15am till 8.00am. Khairuddin claims to have seen TBH at about 1.30am near the "*Bahagian Pentadbiran*". He also claims that at about 7.00am, he saw a bag at the sofa area outside Nadzri's room but that there was nobody around.

²⁷⁰ NOP Volume 37 page 13720

²⁷¹ NOP Volume 32 pages 11768 – 11770

²⁷² Exhibit I-199 (Raymond Nion's 112 statement)

3.74 Khairuddin has been wholly discredited as a witness and we urge this Commission not to have any regard for his testimony. This is clearly evidenced by the following:

- (a) Khairuddin lied on the stand when questioned about a diary he was referring to. When asked by the Commissioners whether they could have a look at the diary, Khairuddin claimed that the diary was empty. This was proven to be a lie when inspection of the diary revealed that it contained notes relevant to the inquiry at hand.²⁷³
- (b) Khairuddin had with him on the stand typed written questions and answers which appear not to be notes to refresh his memory but coaching as to how to answer questions.²⁷⁴
- (c) Khairuddin is a security guard under the employ of MACC. His job would naturally be to ensure safety and security in the MACC office after office hours. He gave evidence that he usually periodically makes rounds around the office to ensure that everything is in order. His job is also to turn off the lights/air-conditions if they are left on and there are no officers left. Khairuddin was told by the security guard he relieved by the name of Amran that there were many officers in that night. This was through a telephone call at

²⁷³ NOP Volume 37 pages 13959 – 13962; Exhibit I-232(a)

²⁷⁴ Exhibit I-231

about 11.00pm.²⁷⁵ Yet when Khairuddin came to the office, he claimed that the atmosphere was quiet and that there was nobody around.²⁷⁶

Despite what he witnessed contradicting what he was told by Amran, Khairuddin's evidence before this Commission is that he did not do any rounds in the office on that night. In his 1st statement to the police, Khairuddin claimed that he sat at the counter area and slept intermittently until 6.30am. He claimed that he did not do his rounds because there were still MACC officers working that night. It is submitted that Khairuddin's evidence is inherently improbable and contradictory.²⁷⁷

- (d) Khairuddin's evidence is also unreliable because whilst he claims he was at the counter area until 6.30am, he claims that he did not see Hishamuddin leave the premises before 6.30am.²⁷⁸
- (e) Khairuddin's evidence that he had seen TBH around 1.30am walking alone contradicts the recording officer, Nadzri's evidence that he accompanied TBH from PENMAS to his room and began recording his statement at 1.30am.²⁷⁹

²⁷⁵ NOP Volume 17 page 13502

²⁷⁶ NOP Volume 17 pages 13506 – 13507

²⁷⁷ Exhibit I-199, Khairuddin's 112 statement

²⁷⁸ NOP Volume 37 page 13724

²⁷⁹ NOP Volume 24 pages 8703 – 8704; Exhibit I-204 page 8

- (f) Further, in Khairuddin's 1st 112 statement to the police, he did not mention anything about sighting TBH at 1.30am. The sighting was only mentioned in a further statement given to the police. This omission on such a material fact once again leaves much to be desired from his evidence.²⁸⁰
- (g) Khairuddin's evidence that he did not confront the person he saw wandering alone in the office at the "*Bahagian Pentadbiran*" at such an hour although he did not recognise the person as an officer of MACC is neither credible nor believable. This is especially so when in his own evidence, a witness wandering unattended like that is unusual.²⁸¹
- (h) At about 7.00am, Khairuddin claims to have seen the sofa area outside Nadzri's room and his evidence in his 1st report to the police is that he saw a bag on the said sofa.²⁸² In his further statement²⁸³, Khairuddin claims that the bag was to the left of the sofa. He now claims he is unsure as to whether the bag was on the sofa or on the floor. It is submitted that this change in his testimony is to allow for his evidence to complement evidence of other MACC officers regarding the location of the bag.

²⁸⁰ Exhibit I-199, Khairuddin's 112 statement; Exhibit I-229 (A1) page 2 of 4

²⁸¹ NOP Volume 37 pages 13843 and 13847

²⁸² Exhibit I-199, Khairuddin's 112 statement

²⁸³ Exhibit I-229 (A1)

It is further submitted that the location where Khairuddin is alleged to have spotted the bag from (the area just to the left of the store alat tulis located on the bottom left side of **Exhibit I-63**²⁸⁴) does not allow for a clear view of the sofa outside Nadzri's room. Khairuddin's evidence is even more unbelievable given the fact that as a security guard confronted with a situation of an unattended bag, Khairuddin did not bother to check the same.²⁸⁵

- (i) Khairuddin's further statement to the police recorded more than 1 and the half years later appears to have far more detail than his 1st statement to the police. He now gives greater detail of having seen Anuar. We submit that this is for the purpose of giving Anuar an alibi. Secondly, he is now able to identify positively that it was Raymond who left the office at 6.00am. Finally, he now describes an incident of having seen TBH at 1.30am walking alone from the PENMAS area to the "*Bahagian Pentadbiran*".²⁸⁶
- (j) In his further 112 statement to the police²⁸⁷, which is an improved version from his 1st, Khairuddin gave evidence that apart from seeing Raymond leaving the MACC premises at about 6.00am, he did not see anybody else leaving or entering the MACC premises. His evidence is unbelievable considering that the following officers left

²⁸⁴ NOP Volume 37 pages 13915 – 13916

²⁸⁵ NOP Volume 37 page 13923 – 13926

²⁸⁶ Exhibit I-229, Khairuddin's further 112 statement

²⁸⁷ Exhibit I-229, Khairuddin's further 112 statement

and entered MACC between 12.15am and 6.30am on 16.07.2009.

Time (16.07.2009)	Going In / Out	Name of MACC Officers
00:31:14	IN	Hassan
00:32:28	OUT	Khairul Anuar
		Joehan
00:51:40	IN	Raylan
		Azeem
		Azian
00:51:48	IN	Asrul
00:55:04	IN	Anuar
01:03:46	OUT	Azeem
01:09:22	OUT	Azian
		Asrul
		Raylan
01:14:09	IN	Azeem
01:35:16	OUT	Sachi
01:38:47	IN	Sachi
01:48:22	OUT	Nor Razid bin Mohd Aripin
		Arman
02:37:57	OUT	Hassan
		Mohd Redzuan bin Mohd
		Najeib
02:49:30	OUT	Ashraf
02:53:58	IN	Ashraf
02:55:01	OUT	Hairul
		Sharil

Time (16.07.2009)	Going In / Out	Name of MACC Officers
03:07:06	OUT	Azeem
03:44:08	OUT	Bulkini
03:45:57	Hanging around lobby	Bulkini
03:47:17	IN	Bulkini
03:47:28	OUT	Bulkini
04:00:56	OUT	Yusmizan
	OUT	Nadzri
05:12:34	OUT	Ashraf
06:10:47	OUT	Raymond
06:26:51	OUT	Hishamuddin

Note: The above information was derived from the joint viewing and inspection of the CCTV by the Bar and MACC officers.

3.75 Despite this clear evidence, between 12.15am and 6.30am, Raymond is the only person Khairuddin claims to have seen leaving the MACC premises.

3.76 **Conclusion:** It is trite law that once a person is found to have lied when giving testimony on oath, the rest of his testimony must be viewed with circumspect and only accepted if there are cogent reasons for doing the same (see **Karumalay Vanniyan & Anor v Ananthan Rethinam [2005] 2 CLJ 429**). Khairuddin not only lied but the whole of his testimony is also incredible and unreliable. His evidence, we humbly submit should be disregarded altogether.

Boon Wah's Evidence

- 3.77 Boon Wah is a businessman and was one of the witnesses brought in to the MACC office at Plaza Masalam on 15.07.2009. Whilst his wife owns Merit Link Enterprise, he effectively manages and runs it. Boon Wah gave evidence that he did not go to the toilet within MACC's premises at 2.15am as alleged by Bulkini, Boon Wah only went to the pantry to get some water.²⁸⁸ He consequentially denies any alleged argument with TBH in the toilet as alleged by Bulkini.²⁸⁹
- 3.78 In his 112 statement to the police on 20.07.2009, Boon Wah said that he saw TBH at the pantry area at a time described in his 112 statement as "*lebih kurang awal subur*". When examined as to the time he is alleged to have seen TBH, Boon Wah could not confirm the time because he did not have a watch and both his mobile phones by that time had been taken away by the MACC officers.²⁹⁰ Boon Wah also informed the Commission that those were not his words as he does not use a phrase like "*awal subur*".
- 3.79 Boon Wah did pass by TBH at the pantry area at an indeterminable time after 2.30am after he had woken up from a nap. On this occasion, which is a different occasion from the one claimed by Bulkini, Boon Wah said that he could see

²⁸⁸ NOP Volume 32 pages 11552 – 11554

²⁸⁹ NOP Volume 33 pages 11953 – 11956

²⁹⁰ NOP Volume 32 pages 11556 – 11557

through the window ahead that the sky was still dark²⁹¹ when he was walking out of the pantry after going to the toilet.

- 3.80 **Conclusion:** In the circumstances, the only conclusion that one can draw from Boon Wah's evidence is that he had seen TBH some time after 2.30am. However, the precise timing cannot be determined.

Ashraf's Evidence

- 3.81 Ashraf was a MACC officer attached to the Shah Alam, Selangor office. He claims to have given TBH some water to drink at around 4:45 am on 16.07.2009. It is our contention that Ashraf is one of the suspects involved in the death of TBH. On this ground alone, his evidence should be viewed with circumspect.

- 3.82 In this case however, over and above the fact that he is a suspect, Ashraf has been a wholly untrustworthy witness due to the inconsistent and unreasonable evidence he has given. This can be summarised as follows:

- (a) Ashraf expects this Commission to believe that his role in interviewing TBH was merely clerical. He claims that he only tagged documents and asked no questions at all.²⁹²
This evidence is even more incredible when one takes

²⁹¹ *ibid.* pages 11638 – 11639

²⁹² NOP Volume 12 pages 4120, 4123 and 4124

into account that Ashraf played no role whatsoever during the operation that day but was called back to the office specifically to be on standby for interview purposes.²⁹³ Further, at the Coroner's Inquest²⁹⁴, Ashraf confirmed that he was actually involved in the questioning of TBH which is contradictory to his evidence at the inquiry.²⁹⁵

- (b) Ashraf had no credible reason for remaining in the office after he had finished interviewing TBH at 12.30am. It is submitted that he remained in the office till approximately 5.00am because he continued to be on standby as MACC had not finished interviewing TBH.²⁹⁶ His explanation at the inquiry that he had work to finish contradicts his evidence given in his 112 statement to the police and his evidence at the Coroner's Inquest where he said that he went back to his room to rest.²⁹⁷
- (c) Ashraf's claim that the style of questioning TBH on that night was even softer than Tuan Awang's and Professor Hatta's questioning of Ashraf in this inquiry is an affront to common sense.²⁹⁸

²⁹³ NOP Volume 11 pages 3646

²⁹⁴ Exhibit I-201 (Jilid 2) page 9

²⁹⁵ NOP Volume 12 page 4081

²⁹⁶ NOP Volume 12 pages 3942, 3943, 3948 and 3954

²⁹⁷ NOP Volume 12 pages 3939 – 3948

²⁹⁸ NOP Volume 11 page 3625

- (d) Ashraf appeared throughout his examination at the inquiry to have had selective memory. This is a fact even commented upon by the Commissioners.²⁹⁹
- (e) Ashraf alleges that at about 4.45am, TBH called out to him as he was leaving his room to ask for some water.³⁰⁰ It is inexplicable why TBH would have asked Ashraf to get him some water when evidence was led that TBH had gone to the toilet by himself around 2.30am and therefore would have known where the pantry was and again to the pantry sometime after 2.30am. Secondly, it is also inexplicable as to why Ashraf having given evidence that it is his understanding that a member of the public within MACC premises must always be supervised would not have questioned TBH as to why he was alone and still in MACC premises.³⁰¹
- (f) Again incredibly, although Ashraf was involved in the interview, he claims not to have prepared an ID. It must be noted that TBH was found dead very soon thereafter. The absence of an ID in such serious circumstances renders Ashraf more liable for suspicion.³⁰²
- (g) There have been some deletions in the SMS text message records and call records from Ashraf's mobile phone between the period of 15.07.2009 to 16.07.2009.

²⁹⁹ NOP Volume 11 page 3635; Volume 12 page 4188

³⁰⁰ NOP Volume 11 pages 3720 – 3721

³⁰¹ NOP Volume 12 pages 3966 – 3967

³⁰² NOP Volume 11 page 3805

Even the alleged call placed by Hairul to Ashraf at about 6.00pm to 7.00pm on 15.07.2009 asking him to come back to the office to be on standby is not in the records.³⁰³

The few damaging SMS text messages obtained in other MACC officers' mobile phones leads one to believe that the deletions were deliberate and part of the cover up operation to conceal the truth.

- (h) Ashraf has 14 police reports filed against him by suspects interrogated by him alleging abuse. This is the highest number of reports against any one MACC officer.³⁰⁴ In total **Exhibit I-235** contains 20 police reports and Ashraf is name in 14 of them. Identification parades were conducted by the police and Ashraf was positively identified in 13 cases. These complaints are corroborated by medical reports.
- (i) Although the 15.07.2009 operation was such a big operation involving many of the MACC Shah Alam officers, Ashraf claims not to have known anything about this operation prior to being asked to interview TBH with Arman. We humbly submit that this claim by him is inherently improbable.³⁰⁵

3.83 Conclusion: Ashraf's evidence too should be disregarded in total. Apart from being a suspect, he is clearly taking this

³⁰³ NOP Volume 11 pages 3645 – 3646 and pages 3825 – 3832

³⁰⁴ Exhibit I-235

³⁰⁵ NOP Volume 12 pages 4094 – 4095

Commission for a ride with the unbelievable evidence given that he expects all of us to swallow.

- 3.84 In the circumstances, there is no time confirmation of any sighting of TBH after 2.30am. Boon Wah says that he took a nap at 2.30am. When he woke up, he went to the toilet. On the way at the pantry, he saw TBH. He cannot confirm the time.³⁰⁶

MACC OFFICERS: MOVEMENTS AND STUDIOUS AVOIDANCE

- 3.85 If we were to trace TBH's movement according to the evidence of the MACC officers on the night of 15.07.2009 and the early hours of 16.07.2009, it would be approximately as follows:

- (a) 6.00pm to 10.00pm: PENMAS area³⁰⁷
- (b) 10.00pm to 12.30am: "*Bilik Mesyuarat Utama*"³⁰⁸
- (c) 12.30am to 1.30am: PENMAS area³⁰⁹
- (d) 1.30am to 3.30am: Nadzri's room³¹⁰
- (e) 3.30am onwards: At the sofa outside Nadzri's room³¹¹

- 3.86 This section of our submission will focus on the movement of the MACC officers in the top left section of the MACC office at **Exhibit I-63** from 3.00am onwards. The top left section is

³⁰⁶ NOP Volume 32 pages 11559 – 11560

³⁰⁷ Exhibit I-204 page 4

³⁰⁸ Exhibit I-204 page 7 and NOP Volume 11 pages 3629 – 3632

³⁰⁹ Exhibit I-199, Raymond Nion's 112 statement

³¹⁰ NOP Volume 24 page 8816

³¹¹ NOP Volume 25 pages 8943 – 8944 and pages 8953 – 8955; Exhibit I-204 page 9

known as the “*Unit Siasatan*”. It is the area where the **I-63j**³¹² window is located. It is also the area where Anuar, Nadzri, Hadri, Azian, Zurinawati, Asrul, Sharil, and Ashraf’s rooms are located amongst others. It is also the area where the sofa outside Nadzri’s room is located. It is alleged that TBH was last spotted on this sofa.³¹³

Nadzri

- 3.87 If he is to be believed, it is his evidence that after he had finished recording TBH’s statement, he left MACC’s premises at around 3.55am.³¹⁴ Therefore after 3.55am, Nadzri allegedly was not at the top left section of **Exhibit I-63**.

Anuar

- 3.88 Anuar the Investigating Officer claims to have been sleeping on the sofa at the “*Unit Siasatan*” in front of his room from 2.00 am till 3.35am.³¹⁵
- 3.89 Anuar allegedly thereafter went to the toilet and then went to sleep at the surau which is located at the bottom centre of **Exhibit I-63** right next to the “*Bilik Mesyuarat Utama*”.³¹⁶

³¹² Exhibit I-63

³¹³ Exhibit I-63

³¹⁴ NOP Volume 25 pages 8949 – 8955; Exhibit I-204 page 9

³¹⁵ Exhibit I-204 page 4

³¹⁶ Exhibit I-204 page 4

3.90 It is his evidence that because the floor was hard and uncomfortable, he then went to sleep at the “*Bilik Tamu*” next to the “*Ruang Legar Utama*” from 5.00am till about 8.30am.³¹⁷ Therefore after 3.30am. Anuar was not at the top left section either of **Exhibit I-63**.

Azeem

3.91 Azeem gave evidence that after returning from Seremban having searched Wye Wing’s house, he allegedly rested in his room from 11.00am till 3.00am. He also claims that he went home at 3.00am³¹⁸. Therefore after 3.00am, Azeem too was not at the top left section of **Exhibit I-63**.

Hadri

3.92 Hadri was involved in the operation and was assigned to investigate Merit Link Enterprise. He returned to the office at about 9.45pm and gave a briefing at about 10.00pm on 15.07.2009. He rested at the ping pong area from 11.30pm till about 1.30am after which he took Wye Wing’s statement.

3.93 After finishing the statement at 5.45am. Hadri slept at Effezul’s room, instead of his own room, until 9.00am. Since completing the interview at about 5.45am, Hadri never went to his room at the top left section. Therefore Hadri was never at the top left section of **Exhibit I-63** after 3.00am although it is reasonable to

³¹⁷ Exhibit I-204 page 5

³¹⁸ NOP Volume 45 pages 16883, 16865 and 16875

expect that a person would find his room rather than another's more comfortable to sleep in.³¹⁹

Nicholas

3.94 Nicholas was part of the team led by Khairul Anuar who investigated Shaharun Enterprise in Kajang. He returned to the office at 5.30pm.³²⁰ Nicholas was in his room from 8.00pm. He finished his work with his witness Encik Harun at about 1.00am. At about 2.30am, Nicholas claims to have slept in Ridzuan's room, instead of his own room, which is in the middle right area of **Exhibit I-63**. He claims to have slept there until 9.00am with Ahmad Razib bin Annuari. Therefore after 3.00am till 7.00am again, Nicholas was never in the top left section of **Exhibit I-63**.³²¹

Joehan

3.95 Joehan headed a team that went to Sungai Buloh to locate a person named Muhammad Liwauddin and take his statement. Liwauddin was brought back to the office at 6.00pm. His statement was recorded between 6.30pm and 7.45pm. Joehan carried on working in his room till 11.45pm when he was asked to attend to YB Ean Yong at the reception. After that Hairul came to his room and told him that he could leave. Joehan left

³¹⁹ NOP Volume 43 pages 16172, 16179, 16183 and 16185

³²⁰ NOP Volume 44 page 16379

³²¹ Exhibit I-199; NOP Volume 21 pages 16396 – 16401 and page 16407

the office at about 12.26am on 16.07.2009.³²² Therefore again between 3.00am and 7.00am on 16.07.2009. Joehan too was not at the top left section of **Exhibit I-63**.

3.96 **Note:-**

- (a) Azian binti Umar left at 1.00 am³²³
- (b) Zurinawati binti Zulkifli was not involved in the operations³²⁴ and she came in to work at 8.30am on 16.07.2009.
- (c) No evidence was given from Mohd Khairi bin Ali Nordin, Nelmy binti Amrizal, Hairuzzaki bin Mohd Yusof, and Rosfiza binti Hashim.

3.97 **Conclusion:** Analysing the evidence, we submit the following.

- (a) The fact that Khairy, Nelmy, Hairul Zafei, Rosfiza and Zurinawati were not at their respective rooms in the top left section of **Exhibit I-63** between 3.00am and 7.00am is not an issue as they were not involved in the operations.
- (b) The fact that Azian, Joehan, Azeem Hafeez and Mohd Nadzri bin Ibrahim were not in the top left section of **Exhibit I-63** between 4.00am and 7.00am is also not an issue as they had gone home and there is evidence of that.

³²² Refer to CCTV taken from the Plaza Masalam

³²³ NOP Volume 7 page 2181

³²⁴ NOP Volume 8 page 2477

- (c) However the evidence of Anuar, Hadri and Nicholas as to their whereabouts between 3.30am and 7.00am is highly suspicious. Anuar was allegedly the Investigating officer for the whole operation. That is quite an important role. Yet his evidence is that from about 8.30pm till 1.00am on 16.07.2009, he was not in the office. From 2.00am till 8.30am, he slept at different areas. Importantly after 3.30am, the two locations he claims to have slept are located far away from the top left section of **Exhibit I-63**. He claims to have slept in the surau from 3.30am till 5.00am. He then claims to have slept at the “*Bilik Tamu*” next to the main lobby from 5.00am till 8.30am. Anuar himself gave evidence that the sofa outside his room was one of the most comfortable places to sleep in the office. He gave evidence that he needed to be in an area where other officers could contact him.³²⁵ If this is so, then Anuar should have been sleeping in his own room as that is the most obvious place for someone to look for him.
- (d) Apart from being the IO, Anuar led the team that brought TBH to MACC. His attempt to get the Commission to believe what can only be described as his lackadaisical attitude to the whole investigation and the statement elicited from TBH is we hope an attempt in futility. His evidence is far fetched to say the least.

³²⁵ NOP Volume 19 page 7130

- (e) Hadri offered no reasonable explanation as to why he would choose to sleep in a room with Efezul apart from saying that his room was too small.³²⁶ Nicholas's reason was even more unbelievable. He claims to have slept in Ridzuan's room with Ahmad Razib bin Annuari. His reason was that he was too lazy to go back to his room.³²⁷
- (f) What remains are the three time markers specifically appointed to debunk the fact that any wrongdoing or incident could have happened before 6.00am. The 1st is Ashraf who claims to have given TBH a glass of water at 4.45am. The 2nd is Raymond Nion who gave evidence that he saw TBH at the sofa outside Nadzri's room at 6.00 am. And the 3rd is Khairuddin whose role was to mark the time that TBH had disappeared. This time marker is 7.00am.
- (g) We have earlier submitted our reasons why these three persons testimony cannot withstand scrutiny and/or ought not to be relied upon. We now urge this Commission to consider why Anuar, Hadri and Nicholas wanted this Commission to believe that they were nowhere near the top left section of **Exhibit I-63** between 3.30am and 7.00am. Quite obviously, something happened to TBH during that period. The unreasonable evidence as to their whereabouts is intended to distance themselves from the critical area and consequentially their involvement or

³²⁶ NOP Volume 43 page 16183

³²⁷ NOP Volume 44 pages 16399 and 16401

knowledge of what happened to TBH. We submit that this accords with our submission that there is a concerted act to cover up by MACC. This is yet another strand that forms the rope.

(h) For completeness, over and above the fact that persons who would in the ordinary course have been expected to be seen in the top left section of **Exhibit I-63** were avoiding the area like a plague, it is also to be noted that apart from the specific time markers referred to above, none of the material officers involved in the operation confess to having gone to the top left section of **Exhibit I-63** that night:-

- Hishamuddin who was in the office all night until approximately 6.20am on 16.07.2009³²⁸ claims never to have gone to the top left section of **Exhibit I-63**.³²⁹
- Hairul who claims to have instructed Nadzri to take TBH's statement³³⁰ never checked on the progress in Nadzri's room at the top left section of **Exhibit I-63**. He claims to have left the office at approximately 3.30am.³³¹
- Bulkini who is from MACC Putrajaya was involved in questioning Boon Wah. Not having a room, he

³²⁸ Exhibit I-45 (CCTV)

³²⁹ Exhibit I-199 (A18) page 7

³³⁰ Exhibit I-199 (A17) page 3

³³¹ Exhibit I-204 page 14

claims to have been at the pantry, at the room opposite Raymond's where Boon Wah was held and Effezul's room.³³² Again, Bulkini makes no mention of going to the top left section of Exhibit I-63 till the time he left at approximately 3.45am.³³³

- Zulkefly is a MACC officer from Klang. He claims to have been in the surau from 11.00pm till the time he left at approximately 3.15am on 16.07.2009.³³⁴ Zulkifli lied. He was caught out by the CCTV where it was shown that he left at 6.59am on 16.07.2009.³³⁵ Interestingly he too claims never to have gone to the top left section of **Exhibit I-63**.³³⁶
- Effezul is a MACC officer involved in questioning Boon Wah. He was in the office all night and only left Plaza Masalam on 16.07.2009 at 2.45pm.³³⁷ In the course of his evidence, he admits to being in several places at the office but not at the top left section of **Exhibit I-63**.³³⁸
- Arman is a MACC officer from Putrajaya. He was involved in questioning TBH. After finishing the interview, he claims to have chatted with Hairul

³³² Exhibit I-199 (A91) page 9

³³³ Exhibit I-199 (A91) page 6 and Exhibit I-45 (CCTV)

³³⁴ Exhibit I-199 (A92) page 3

³³⁵ Exhibit I-45 (CCTV)

³³⁶ NOP Volume 44 pages 16465 – 16478 and pages 16494 - 16516

³³⁷ Exhibit I-199 (A79) page 3

³³⁸ NOP Volume 43 pages 15577 – 15583 and 15648 – 15651

outside Hairul's room at the Unit Siasatan till the time he left at approximately 1.50am.³³⁹ Again, Arman's movement does not involve the top left section of **Exhibit I-63**.

- (i) Having available and comfortable sofas as attested by Anuar and air conditioning as attested by Khairuddin, it begs the question why there is studious avoidance by MACC officers in being placed anywhere in the top left section of **Exhibit I-63** where the window **I-63j**³⁴⁰ is after 3.00am.

TIME MACC KNEW OF TBH'S DEATH

3.98 All the pathologists had agreed that TBH had died much earlier prior to the discovery of the body and one of them, Prof. Vanezis, upon being examined, stated that TBH could have possibly died **even before 6:00am** on 16.07.2009.

3.99 The Bar submits that, notwithstanding it appears that the first time TBH's body was purportedly discovered at 1.35pm on 16.07.2009³⁴¹ by a 3rd party, MACC had knowledge of the death even prior to that. The reasons we say this are as follows:-

³³⁹ Exhibit I-199, Arman's 112 statement page 3; Exhibit I-45 (CCTV)

³⁴⁰ Exhibit I-63

³⁴¹ Notes of Proceeding Volume 1 page 174

- (a) The news that TBH had died came **as early as 1.00pm**. This was through an officer by the name of Azhar who was informed by Fauzi Shadollah. Azhar had dismissed it as a joke but later contacted Hafiz at 1.10 – 1.15pm to enquire whether there was any news from MACC Selangor. It was only at 6:00pm that Azhar could confirm the news because Hafiz read the news which was reported in Malaysiakini website. Azhar even though surprised with the news did not call any of his superiors to enquire further regarding the news of TBH's death. This is most bizarre considering the fact that Azhar himself was involved in the operation and had interviewed TBH at the PENMAS area on the evening of 15.07.2009.³⁴²
- (b) Here Fauzi Maslan purportedly read the news of TBH's death on the internet **at or about 1.30pm** on 16.07.2009 when he was in Putrajaya but he was not sure on which website. He remembered that he had telephoned Bulkini and Hafiz to enquire about TBH's death. It is most bizarre that he could have read about TBH's death on the internet if the body was first discovered at or about 1.35 pm on 16.07.2009. Given the allowance of 30 minutes as error, it would have still been most unlikely for the news to be uploaded onto the internet so quickly.³⁴³
- (c) In this instance, Fauzi Shadollah was informed about TBH's death by a telephone call from Amin **before**

³⁴² Notes of Proceeding Volume 41 pages 15514 – 15534

³⁴³ Exhibit I-199 (A88)

1.00pm on 16.07.2009. He however did not enquire from Amin his source of information. It was only later that he saw the press conference on the news in the evening regarding TBH's death. Strangely Fauzi Shadollah did not enquire with any of his superiors or colleagues regarding this news.³⁴⁴ He further admitted that he had gone to Azhar's room at 1.00pm on 16.07.2009 to tell Azhar that the witness they had brought to MACC Selangor office the day before had died.

- (d) The time of the news of TBH's death was pushed back even earlier in so far as the witness named Amin was concerned. He told the Inquiry that he had heard the news about TBH's death **10 or 15 minutes before 1.00pm** on 16.07.2009 when he overheard a conversation at his office. He remembered that there was a group of officers chatting in the office, 2 of whom were identified as Puan Nora Binti Bahrin and Raylan. He claimed that when he approached the group to ask about the death, none of them knew anything about how TBH came to his death. Amin then phoned Fauzi Shadollah at 1.00pm on 16.07.2009 to inform the latter.

Strangely, like all the other witnesses before him, Amin did not call any of his superiors to enquire about the death. He had given a 112 statement to the police on

³⁴⁴ Notes of Proceeding Volume 42 pages 15776 – 15783

30.07.2009.³⁴⁵ He however could not offer a reasonable explanation as to why he did not inform the police regarding the conversation he overheard except to say that it was because the police did not ask him.

Amin further confirmed that there was a meeting (amongst the many other “meetings”) involving Dato’ Shukri at Putrajaya together with other officers involved in the said operation a month after the incident to discuss generally about TBH’s death whereby he claimed that the meeting was purely to give moral support.³⁴⁶ There appears to have been many meetings or general discussions and to give moral support. The Bar questions the veracity of the purpose stated for these meetings.

THE MYSTERY NOTE

3.100 The Bar contends that from all the testimonies given and evidence tendered, the Mystery Note remains a mystery and not a suicide note for reasons as follows:-

- (a) The Mystery Note was purportedly found by ASP Nazri amongst sheets of paper in a knapsack belonging to TBH. It is a matter of contention however when did he actually discover the Mystery Note. It is important to note that the

³⁴⁵ Exhibit I-199 (A93)

³⁴⁶ Notes of Proceeding Volume 43 pages 16232 – 16295

knapsack was found at the MACC premise on 16.07.2009. An initial inspection on 17.07.2009 by IW 1 resulting in a police report dated 18.07.2009³⁴⁷ where the list drawn up by him did not include this Mystery Note. This Mystery Note was also not listed specifically in his (undated) Investigation Diary although he did make a mention of “a few sheets of paper”.

Sometime in October 2009, after the Coroner’s Inquest had started, upon being prompted by Dr. Badi’ah, a psychiatrist appointed to assist MACC, ASP Nazri claimed that he found this Mystery Note after having inspected the knapsack again. He informed DPP Abazafree and was directed by Datuk Kamaluddin to send the Mystery Note to the Chemistry Department³⁴⁸ on 09.10.2009 and the result was received on 14.10.2009³⁴⁹. Upon DPP Abazafree’s instruction, the Mystery Note and some other exhibits were again sent to the Chemist, WKY for further analysis. The 2nd report was subsequently given back to ASP Nazri on 26.10.2009.³⁵⁰ This Mystery Note and/or the result of the examination were never revealed until it was first made public at the hearing of the Inquest on 09.08.2010³⁵¹.

³⁴⁷ Exhibit I-199: Police Report No. SEK 11/005213/09

³⁴⁸ Exhibit I-91

³⁴⁹ Exhibit I-171: Chemist Report dated 14.10.2009

³⁵⁰ Exhibit I-172: Chemist Report dated 26.10.2009

³⁵¹ The Star Online Report dated 09.08.2010

The date that the Mystery Note was actually discovered by ASP Nazri is in doubt. Did he discover the Mystery Note in October 2009? ASP Nazri testified at the inquiry that he actually discovered it on 17.07.2009. ASP Nazri claimed that when he was going through the knapsack on 17.07.2009, he saw those sheets of paper which included the Mystery Note but did not think much of it because it was written in Chinese. Apparently, he told his colleagues not to list those sheets of paper down since he thought then that it was insignificant.

It was only sometime in March 2010 that the same colleagues reminded him that the Mystery Note he found in October 2009 was in fact amongst the sheets of paper that he saw on 17.07.2009.³⁵² We however submit that the time and the manner in which the Mystery Note was actually discovered are highly questionable and remain doubtful. The fact that the revelation of it more than a year after the Coroner's Inquest had started throws further doubt as to the existence of the Mystery Note.

- (b) The mysterious circumstances in which the knapsack "appeared" and "disappeared" before reappearing again on the evening of 15.07.2009 as testified by Azian and Zurinawati further throw doubt to the existence of the Mystery Note. The knapsack was positively identified by Azian as the same one she saw in Anuar's room when

³⁵² Notes of Proceeding Volume 5 pages 1315 to 1362 and page 1733

she went into his room to look for TBH's identification card on the request of ASP Nazri. Who moved the knapsack continues to remain a mystery. Anuar claimed that he had put the knapsack in his room on the 16th morning when he could not locate TBH.

However, there is no evidence as to who had moved the knapsack from Anuar's room to the sofa on the 16th evening. Zurinawati testified that she saw the knapsack on the floor near the sofa at or about 8.36am when she arrived for work in the morning. Zurinawati also saw the knapsack in Anuar's room when she went into the room to assist Azian to prepare the chronology of events as requested by their superior. Zurinawati testified that the knapsack suddenly reappeared again on the sofa between 4.00 – 5.00 pm that evening when she was speaking to ASP Nazri. However, she did not know who had moved the knapsack.³⁵³

- (c) We submit that the MACC officers' nonchalant attitude and conduct showed that they were in fact not 'surprised' at all with the 'morning discovery' of the knapsack because it was in their possession at all material time and something had already happened to TBH.

Anuar who was the investigating officer in the said operation testified that he saw TBH's knapsack by the

³⁵³ Notes of Proceeding Volume 8 page 2501

sofa on the morning of 16.07.2009. Anuar claimed that TBH had purportedly been released after he had completed the recording of his statement at 3.30am.³⁵⁴ He also claimed that TBH had requested to rest for a while after that and that TBH would have had no means to leave the office at that hour. However, his conduct and mannerism that morning when he saw TBH's knapsack being left behind were most bizarre. He had merely informed Hairul of his discovery of the knapsack and they did a cursory search for TBH outside Anuar's room only. He claimed that he then took the knapsack and placed it in his room because TBH was required to return to the MACC office later in the day with some documents.

It is in evidence that MACC's office premise is considered a high security area. Notwithstanding Anuar's statement that TBH would be returning³⁵⁵, it is most unacceptable that he did not appear concerned that a knapsack was being left behind unattended by a witness who had been called and who had purportedly been released by MACC. It is most unusual therefore that the simplest task of telephoning TBH to enquire as to why his knapsack was still in the office or TBH's whereabouts did not even cross his mind. This was not done because the answer is obvious – MACC already knew what happened to TBH and where he was. Further, TBH's mobile phone was in his possession.

³⁵⁴ Notes of Proceeding Volume 20 page 7249

³⁵⁵ *ibid.* page 7250

- (d) The Bar submits that it would be most dangerous to draw a conclusion that the Mystery Note was written by TBH. Firstly, the handwriting in the Mystery Note had not been proven to belong to TBH which could be seen from the examination of the document examiner, WKY.³⁵⁶ WKY's opinion was completely destroyed by the fact that he admitted at the inquiry that he did not compare the handwriting in the Mystery Note to an **admitted sample** of TBH's handwriting. An admitted sample is defined as a sample which is not disputed and proven to be the handwriting of a particular person. WKY's analysis was done by comparing the handwriting in the Mystery Note to other samples which have not been proven to be TBH's handwriting and are in dispute as well.

Further, WKY explained that in order to make a comparison, he needed at least 4 – 5 samples of the same words or Chinese characters. In this case, he could only identify 1 or 2 such words. As for the comparison of the initial found on the Mystery Note, WKY used TBH's statement which is a document in dispute.

The TBH's statement he used was also a photocopy. WKY stated in evidence that it is not reliable to base a comparison analysis with a photocopied document as it

³⁵⁶ Notes of Proceeding Volume 34 pages 12694 – 13580

contains “trash” and the stroke, strength and shading of the writing and signature cannot be ascertained³⁵⁷.

- (e) The Bar submits that the 2 translations³⁵⁸ propositioned and tendered in the inquiry left much to be desired. The Bar had intended to ask TBH’s former employer, YB Ean Yong on Mandarin nuances and phrases that TBH was accustomed to using in his daily communication but was unable to pursue this line of questioning as it was disallowed by the Commissioners because they were of the view that YB Ean Yong was not a language expert.³⁵⁹

However, YB Ean Yong stated that TBH often wrote the former’s press statements and speeches in Mandarin, sometimes even delivering them on his behalf. YB Ean Yong would thus be familiar with TBH’s manner of speech and use of phrases. It would have been important to have heard what YB Ean Yong would have said about the language or the term of phrases used in the Mystery Note.

We submit that without the opportunity to enquire into the real meaning and the context of how and when certain words were normally used in daily conversations and in writing by TBH, we are not in the position to say whether TBH wrote the Mystery Note and if so, what he meant in

³⁵⁷ Notes of Proceeding Volume 36 pages 13589 – 13598

³⁵⁸ Exhibits I-173 & I-188

³⁵⁹ Notes of Proceeding Volume 48 pages 18195 – 18212

it, for example, the words “*Zai Jian*” in Mandarin could either mean “goodbye” or “see you again”.

- (f) If TBH wrote the Mystery Note, the state of mind of TBH would be relevant in deciding whether the Mystery Note was in fact a suicide note. If we assume that the Mystery Note was written by TBH, the contents in the Mystery Note cannot be interpreted to amount to a suicide note because TBH was considered to be in the lowest risk group for suicide. Evidence that TBH was going to marry and the prospect of fatherhood make it extremely unlikely that he would commit suicide. This is supported in Prof. Mullen’s report where he had opined that TBH fell in the lowest risk group for suicide.³⁶⁰

There was nothing in TBH’s statement given to MACC to suggest any wrongdoing or that it was playing in his mind at the material time. In the examination of Nadzri by MACC’s counsel, he clearly stated that the words “*mendapat arahan YB*” or “*mendapat kelulusan YB*” did not appear at all in TBH’s statement.

Nadzri also testified that he never insisted TBH to say things which he did not agree to. This could only mean:- since the words “*mengikut arahan YB*” or “*mendapat kelulusan YB*” did not appear in TBH’s statement, the Mystery Note allegedly written by TBH did not have any

³⁶⁰ Exhibit I-256B

effect at all on TBH's state of mind to lead him to suicide (which is denied). To the contrary, TBH in his statement to MACC said:-

*"Saya menyediakan surat ini bukan atas arahan YB"*³⁶¹.

On what basis therefore did MACC insist on the theory that TBH committed suicide? There was nothing in TBH's statement recorded by Nadzri to suggest that TBH was **forced** to say "*mendapat arahan YB*" or "*mendapat kelulusan YB*".

The fact that TBH's **Original** statement is missing was only discovered by chance when the Bar challenged the authenticity of TBH's signatures appearing on the 1st and the last page of the statement.³⁶² We are now left in doubt as to what was actually recorded by Nadzri between 1.30 – 3.30am on 16.07.2009 which MACC alleged could have led TBH to commit suicide.

- (g) The circumstances surrounding the discovery of the Mystery Note would come into question. It was alleged that ASP Nazri had discovered the Mystery Note as early as 17.07.2009. ASP Nazri's ID³⁶³ however stated that he found the Mystery Note on 07.10.2009 after being

³⁶¹ Exhibit I-197 A17 page 5

³⁶² Notes of Proceeding Volume 12 pages 9050 – 9063. An application for analysis of the signatures was made by the Bar and granted by the Commissioners but up to the end of this Inquiry, TBH's Original statement could not be traced.

³⁶³ Exhibit I-91 page 39

prompted by Dr. Badi'ah to search for any notes which might be left behind by TBH.³⁶⁴

Subsequent to the prompting by Dr. Badi'ah, ASP Nazri then went to see Dr. Badi'ah to show her the Mystery Note **without** any translation. This however took place after Dr. Badi'ah had already submitted her inconclusive report. It was no surprise therefore when Dr Badi'ah testified that she was asked by DPP Abazafree whether she could write a supplementary report in the event positive evidence was discovered.³⁶⁵ The manner in which the Mystery Note was suddenly discovered after the inconclusive report was most startling and perplexing to say the least.

If ASP Nazri's evidence were to be accepted, then ASP Nazri, his superior as well DPP Abazafree and Datuk Kamaluddin of AGC knew of the Mystery Note and its translation on 07.10.2009. This was well before Dr. Badi'ah and Dr. Nor Hayati's psychiatric report dated 22.10.2009. This being the case, it is inconceivable that the police and AGC would not have immediately shown the Mystery Note and its translation to Dr. Badi'ah and Dr. Nor Hayati for their expert opinion. The only conceivable conclusion from this is that they must have shown the Mystery Note and its translation to their psychiatric

³⁶⁴ Notes of Proceeding Volume 50 page 18948

³⁶⁵ *ibid.* pages 18930 – 18956

experts, who would have told them that the contents of the Mystery Note do not bear out a suicide note.

- (h) Assuming that the Mystery Note was indeed written by TBH and in considering whether it amounts to a 'suicide note', it begs the following questions:- Why would TBH leave a 'suicide note' in his knapsack where it is filed away with other papers if he had intended someone to find it? Why would TBH leave a 'suicide note' in 'enemy territory' when he was apparently free to leave? His car was downstairs. Why didn't he drive a short distance to his office to prepare and leave a suicide note there when it would be found by 'friendly people'? Why would he leave a 'suicide note' when he can SMS especially so when his mobile phone was allegedly never seized from him?

One who wants to leave a 'suicide note' would ensure that it can be found by someone close to him and that there would be no doubt that it would be recognised as a 'suicide note'. That night, TBH was in 'enemy territory'. There is no guarantee that the 'suicide note' would reach his loved ones or his friends. He would be better off calling or SMS texting the people he wanted to direct his 'suicidal intention' to.

The answer is obvious. TBH did not commit suicide and had no intention to. If TBH had written the Mystery Note, he had left that Note to his employer, YB Ean Yong, as

opposed to his family or his loved ones because it was **NOT** a 'suicide note'. He wrote that Note to inform his boss because he may have been worried that something might happen to him that night due to the events that he had experienced since he was escorted to MACC office. He did not call or SMS because he never had his phone with him as it had been seized the moment he arrived at the MACC office.

WINDOW AND THE SHOE PRINT

- 3.101 ASP Nazri, the Investigating Officer who had investigated the cause of TBH's death said that he identified the said window³⁶⁶ as the place of the incident based on what he was told by Insp Zulaimi³⁶⁷
- 3.102 Insp Zulaimi when examined on why he had identified the said window, stated that he was told by Ridzuan, the maintenance officer of Plaza Masalam that the MACC officers told him that the deceased was one of their witnesses.³⁶⁸ When Insp Zulaimi went to the 14th floor together with ASP Nazri, Insp Zulaimi spoke to several MACC officers and one of them mentioned that the incident happened through the **I-63j**³⁶⁹ window. Insp Zulaimi then informed ASP Nazri of the same.³⁷⁰

³⁶⁶ I-63j in Exhibit I-63

³⁶⁷ NOP Volume 4 pages 1149 and 1172 – 1173

³⁶⁸ NOP Volume 10 page 3438

³⁶⁹ Exhibit I-63

³⁷⁰ NOP Volume 10 pages 3440 – 3441

- 3.103 In the circumstances, no investigation whatsoever was carried out by the police to determine the location the incident happened and/or if there could have been another or different scene of crime or incident.
- 3.104 We are therefore left with no alternative but to meticulously examine the evidence tendered at this inquiry in respect of the relevant window to determine if we can conclusively say that **I 63j**³⁷¹ is the window from which TBH fell to his death.

Facts that Render Evidence Led in respect of the Window Unsafe

- 3.105 The window area was only secured by the police at about 3.25pm on 16.07.2009.³⁷² TBH's death could have taken place working backwards at any time before 11.00am right until 12.00am on 16.07.2009. Given this scenario, the window area was not secured for a period ranging from 4½ hours to 15½ hours from the time of TBH's death.³⁷³
- 3.106 The window when secured by the police was found to be open leaving a gap of approximately 15 inches.³⁷⁴
- 3.107 Many officers went to the window to look at the body.³⁷⁵ Najeib gave evidence that at around 2.30pm on 16.07.2009, he closed

³⁷¹ Exhibit I-63

³⁷² NOP Volume 4 page 1146

³⁷³ NOP Volume 26 pages 9674 – 9675

³⁷⁴ NOP Volume 2 page 313

³⁷⁵ NOP Volume 8 pages 2514 – 2515

the window.³⁷⁶ When ASP Nazri inspected the window, it was open again.

- 3.108 In short the crime or incident scene area was severely contaminated before being secured. Further the area could even have been contaminated before the crime or incident as it was a smoker's corner frequented by several officers.

Inexplicable Absence of Markings/Evidence at the Window

- 3.109 Despite the high traffic of people at the window, at the time the police carried out its forensic examination at about 5.00pm on 16.07.2009³⁷⁷, the following was the result.

- (a) The dust on the window frame was not disturbed.³⁷⁸
- (b) There was one oil mark on the glass.³⁷⁹ C/Insp Mazli took a swab to test for hair oil comparison with that of TBH. However when questioned at the inquiry C/Insp Mazli was not sure if any comparison was done with hair samples from MACC officers.³⁸⁰ No test was produced for comparison with the strand of hair taken from TBH.

³⁷⁶ NOP Volume 20 page 15867 and page 15869

³⁷⁷ NOP Volume 2 page 314

³⁷⁸ *ibid.* pages 378 and 393

³⁷⁹ *ibid.* page 305

³⁸⁰ *ibid.* pages 490 – 491

(c) The handle of the window was broken and was never located.³⁸¹

(d) There were six fingerprint marks which according to the police forensic expert, C/Insp Mazli contained insufficient characteristics for positive identification. Therefore no lifting was done. However, when examined by the Commissioners, C/Insp Mazli confirms that this was an omission as a process of elimination could have been done to try and exclude suicide.³⁸²

3.110 A second forensic examination conducted three days later suddenly revealed the appearance of a shoeprint at the bottom window frame where it joins the wall.³⁸³

3.111 However, DSP Sharul who conducted the second examination on 19.07.2009 himself confessed that he did an evaluation on 19.07.2009 when he was at the 14th floor of Plaza Masalam and was of the opinion that there was too much contamination for any examination to be conducted. He did not want to conduct any examination, but was ordered to do so.³⁸⁴ Further, DSP Sharul stated under examination that the shoeprint was a light one where the person had not put his whole weight on it.³⁸⁵ DSP Sharul also confirmed that the shoeprint was visible with the

³⁸¹ *ibid.* pages 302 – 303

³⁸² *ibid.* page 503

³⁸³ *ibid.* page 548

³⁸⁴ NOP Volume 3 pages 657 – 658

³⁸⁵ NOP Volume 1 page 654

naked eye although it was clearer with the crime light.³⁸⁶ C/Insp Mazli confirmed that he had inspected the area (where the shoeprint was found three days later) on the day of TBH's death and he found no shoeprint there.³⁸⁷ DSP Sharul's evidence is also inconsistent. He stated at the Coroner's Inquest that he did not use a crime light but used his naked eyes. At this inquiry he insisted that he had used the crime light.

3.112 In examination, C/Insp Mazli confirmed that he did not do his own investigation to determine if **I-63j**³⁸⁸ is the window where the incident occurred. He also confirmed that he never inspected or examined any other window apart from **I-63j**.³⁸⁹

3.113 **Conclusion:** There is no evidence of anyone holding the side of the window or sitting at the window. There is also no evidence of any altercation taking place at the window. In the circumstances, if TBH was conscious, it is a highly contentious issue as to whether **I-63j**³⁹⁰ was the window where the incident is alleged to have occurred in the absence of tampering and/or a clean-up of the window area. The absence of evidence of signs, markings or disturbances that would either indicate suicide or foul play where TBH was in a conscious state is conspicuous.

³⁸⁶ *ibid.* page 646

³⁸⁷ *ibid.* pages 598 - 601

³⁸⁸ Exhibit I-63

³⁸⁹ Exhibit I-63 ; NOP Volume 2 page 458

³⁹⁰ Exhibit I-63

- 3.114 It would of course be a different matter if TBH was unconscious when falling out of the window I-63j.³⁹¹ The absence of signs/markings, disturbance at the window area would in such circumstances not be as conspicuous because there would have been no struggle and no issue of TBH himself climbing out of the window.

MACC: CLEAN UP OF COMPUTERS AND MOBILE PHONES

Mobile Phones

- 3.115 In order to assist in the investigation, the police had seized five mobile phones on 23.07.2009 that belong to the following persons:-

- (a) Hairul;
- (b) Azeem;
- (c) Ashraf;
- (d) Anuar; and
- (e) Nadzri.

- 3.116 Hishamuddin's two mobile phones were only seized on 14.08.2009.

- 3.117 The inadequacies of the police investigation into the mobile phone records have already been submitted upon above. The

³⁹¹ Exhibit I-63

deliberate act of filtering the phone calls and SMS text message contents will now be elaborated upon.

Hairul's Phone Records

- 3.118 The phone call records from Hairul's mobile phone only shows call records beginning from 22.07.2009. It is our submission that prior call records were deliberately deleted.
- 3.119 An attempt to explain the absence of prior 22.07.2009 records by claiming that it arose from an automatic deletion due to limited storage capacity of the phone is debunked by the numerics. 5 dialled calls, 15 received calls and 9 missed calls remain in the record.³⁹² If deletion is due to the phone capacity, the number of dialled, received and missed calls would be the same as the capacity before it is automatically deleted in each category, that is, dialled, received and missed calls would be the same.
- 3.120 As far as the SMS text records are concerned, a clear example of an SMS text having been deleted is the fact that Hairul's responses to Azian's messages on 17.07.2009 and 19.07.2009 are not in the phone record.³⁹³

³⁹² Exhibit I-194 (N3) pages 55 – 57 of 131

³⁹³ *ibid.* pages 95 – 96 of 131

Azeem's Phone Record

3.121 Coincidentally, Azeem's call record too only starts from 22.07.2009. Call records prior to this date appear to have been deleted. Azeem's phone record contains 34 dialled calls, 8 received calls and 5 missed calls.³⁹⁴ For reasons stated in the submission on Hairul above, the said cannot arise from auto deletion. No SMS's appear in Azeem's handphone on 16.07.2009 and 17.07.2009.³⁹⁵

3.122 Fortunately for this Commission, Azeem when put on the stand under oath chose to tell the truth when confronted with damaging SMS texts. He confirmed that there was a cover up.

Ashraf's Phone Record

3.123 Ashraf's call records only begin from 16.07.2009 at about 7.30pm. His dialled call record begins with an entry on 16.07.2009 at 9.47pm.³⁹⁶ His received call record only begins from 16.07.2009 at 7.30pm³⁹⁷ and his missed call record begins from 16.07.2009 at 8:05pm.³⁹⁸ Far from being a coincidence, it is submitted that this is evidence of deletion of records. Further, a perusal of Ashraf's SMS text messages reveal that there are

³⁹⁴ *ibid.* pages 64 – 68 of 80

³⁹⁵ *ibid.* pages 70 – 76 of 80

³⁹⁶ Exhibit I-194 Tab N5 page 50 of 199

³⁹⁷ *ibid.* page 38 of 199

³⁹⁸ *ibid.* page 60 of 199

only incoming messages. The outgoing messages have been deleted.³⁹⁹

Anuar's Phone Records

3.124 Anuar, unlike the others does not appear to have deleted his phone records.⁴⁰⁰

Nadzri's Phone Records

3.125 According to Insp Mohd Zaidi, Nadzri's phone records could not be obtained.⁴⁰¹

Hishamuddin's Phone Records

3.126 Hishamuddin had two phones which were only seized in August 2009. There were no records of calls whatsoever for any date save and except 12.08.2009. As far as SMS text messages are concerned, there are no records for the period 15.07.2009 till 17.07.2009 from his 1st phone and two SIM cards. His 2nd phone could not be analysed.⁴⁰² The absence of call records for this period 15.07.2009 till 17.07.2009 evidences deletion. This is more so by the following:-

³⁹⁹ *ibid.* page 63 to 103 of 199

⁴⁰⁰ Exhibit I-194 Tab N6

⁴⁰¹ Exhibit I-194 page 5 of 5

⁴⁰² Exhibit I-196; NOP Volume 11 pages 3574 – 3575

- (a) Ashraf's phone record clearly shows that he placed a call to Hishamuddin on 17.07.2009 at 1.15am⁴⁰³
- (b) Anuar's phone record clearly shows that he placed a call to Hishamuddin on 15.07.2009 at 3.42pm, 3.47pm, 4.48pm⁴⁰⁴, and 11.19pm⁴⁰⁵, on 16.07.2009 at 2.13pm, 2.17pm, 3.43pm⁴⁰⁶, 3.44pm, 3.46pm, 3.47pm, 3.51p.m, 3.56pm, and 3.57pm⁴⁰⁷, and on 17.07.2009 at 3.52pm, 3.52pm⁴⁰⁸, 6.28pm⁴⁰⁹
- (c) Anuar's phone record shows that he received a call from Hishamuddin on 16.07.2009 at 2.16pm⁴¹⁰ and on 17.07.2009 at 3.54pm.⁴¹¹

Computers

3.127 In the course of the inquiry, it was uncovered that several MACC officers had tampered with their IDs producing new and improved versions for this inquiry. They are Anuar, Nadzri and Arman.

⁴⁰³ Exhibit I-194 N5 page 50 of 199

⁴⁰⁴ Exhibit I-194 Tab N6 page 100 of 183

⁴⁰⁵ *ibid.* page 98 of 183

⁴⁰⁶ *ibid.* page 95 of 183

⁴⁰⁷ *ibid.* page 94 of 183

⁴⁰⁸ *ibid.* page 91 of 183

⁴⁰⁹ *ibid.* page 90 of 183

⁴¹⁰ *ibid.* page 53 of 183

⁴¹¹ *ibid.* page 52 to 53 of 183

- 3.128 Evidence was also elicited that IDs were prepared based on a standard format or template that was available from MACC's computer system.
- 3.129 Evidence was given that rather than have a physical book called an Investigation Diary, the MACC officers typed their entries onto the form appearing in their computer and printed out these forms thus constituting the Investigating Diary (ID).
- 3.130 As only five MACC officers provided their investigation diaries at the commencement of this Commission, an application was made by the Bar for the production of the IDs of all MACC officers involved in the operation on 15.07.2009.
- 3.131 The Commissioners chose to obtain these documents with the cooperation of MACC. Much time was wasted. The end result was that MACC informed the Commissioners that no other IDs were available. Through the examination of MACC officers it was discovered that MACC had not been candid as five other MACC officers confessed to having prepared an ID. They are Bulkini, Efezul, Zulkefly, Hadri and Hassan. An examination of the computers of all relevant MACC officers by the Forensic computer experts in the circumstances would have proved to be of immense value. Khairuddin, the security guard at MACC was caught referring to a typewritten question and answer text whilst on the witness stand. This obviously emanated from a computer. Forensic examination of the said computer may have cast some light as to the persons orchestrating the cover up story.

- 3.132 Some damaging SMS text messages which were not cleaned up by the MACC officers were discovered. This was strongly suggestive of the fact that the MACC officers were communicating with each other about the incident. Every mode of communication including emails ought to have been investigated at the earliest opportunity.
- 3.133 It is disappointing that no thorough investigation was conducted on the computers at the earliest opportunity. The report by Michael Squires was preliminary.⁴¹² To date we have not seen the final report. The suggestion by the Malaysian Bar to engage forensic computer experts was rejected by the Commissioners purely due to constraints of time.⁴¹³
- 3.134 The technical report on the ability to recover email and other data by MACC itself is of no value without independent verification.⁴¹⁴

MACC: INVESTIGATION DIARIES

- 3.135 The Bar submits by law and by practice, an ID has to be prepared contemporaneously with events in an investigation. This is plainly known to all MACC officers as it is taught to them during their basic training when they join the Commission.

⁴¹² Interim Report re Computers and Phones prepared by M.L Squires

⁴¹³ Letter from Christopher Leong, Counsel for Malaysian Bar to the Commissioners dated 25.04.2011 and the reply from the Commissioners to the said letter dated 06.05.2011

⁴¹⁴ "Technical Report on ACA/MACC Email System"

Anuar himself had in one of his SMS text to ASP Nazri confirmed this.⁴¹⁵

3.136 Dato' Shukri had also testified in this inquiry that basic training is given to MACC officers with regards to the preparation of an ID. He further agreed that an ID has to be made contemporaneously with an event. He was also of the view that only one ID to be made for each investigation. Dato' Shukri told the inquiry that MACC never taught its officers to amend its ID once it has been completed.⁴¹⁶

3.137 Throughout this inquiry, it had been evident that there were 4 categories relating to investigation diaries:-

(A) ID which by law and by practice has to be prepared contemporaneously with the investigation but **NOT PREPARED.**

(B) ID which was not prepared contemporaneously and later **AMENDED AND/OR TOUCHED UP/PADDED.**

(C) ID which was not prepared contemporaneously and was **NEVER PRODUCED** to this inquiry until under examination.

(D) ID which was prepared but **CANNOT BE TRACED.**

⁴¹⁵ Exhibit I-194 N6 page 59 of 60

⁴¹⁶ NOP Volume 31 pages 11324 – 11335

3.138 At the onset of the proceedings, MACC had only produced to the Inquiry 5 IDs prepared in relation to this operation. MACC claimed that these are all there is. The 5 IDs were the ones prepared by Anuar, Nadzri, Hairul Ilham, Arman and Najieb. All these IDs, except for Najeib and Hairul, fall into Category B. These IDs were not only amended, touched up and/or padded but were also not made contemporaneously. These amended IDs, not surprisingly, were more detailed but only in relation to *inter alia* the timeline, the sightings of TBH and his demeanour at various junctures of time, specific events and cross-corroboration amongst the officers themselves as to what had purportedly transpired on the 15.07.2009 and 16.07.2009. For example, in the amended ID of Arman he added these following words:-

“Semasa semakan dokumen dibuat tidak ada kekerasan digunakan terhadap Teoh dan saya lihat beliau tidak banyak bercakap dan ada membuat beberapa catatan di dalam sebuah buku hitam milik beliau.”⁴¹⁷

3.139 Another example is where Arman had deleted these following words which appeared in his 1st ID:-

“Semasa itu tidak ada menunjukkan Teoh marah ataupun tertekan memandangkan sesi yang dibuat adalah semakan dokumen sahaja.”⁴¹⁸

⁴¹⁷ Exhibit I-204 page 18

⁴¹⁸ Exhibit I-198 page 175

3.140 It can be gleaned that there is a dual purpose for the addition and the deletion above. The addition was a self-serving statement to show that there was no force used on TBH by MACC. The deletion, on the other hand, was necessary because it showed that TBH was not angry or pressured at all during the examination of the documents contrary to what the MACC wants us to believe that he was uneasy and worried throughout his time in MACC.

3.141 Hairul's ID, on the other hand, was made at the end of September or early October 2009⁴¹⁹ after having the benefit of time to align and streamline the story that MACC wanted the authorities to believe. Najeib, on the other hand, is only significant insofar as the printing of the 4 invoices are concerned. His ID was amongst the first to be prepared⁴²⁰ and it is no surprise that there were glaring mistakes in respect of the timeline which he had allegedly handed those invoices to Hairul and Anuar.

3.142 There was evidence during the inquiry that the categories aforementioned existed. The list is summarised as follows:-

Category A: IDs not prepared

- Ashraf at page 3805
- Fauzi at pages 15785 to 15786
- Sachi page 16033
- Amin at pages 16285 to 16286

⁴¹⁹ NOP Volume 8 page 6227

⁴²⁰ NOP Volume 42 page 15854 – 15855

- Nicholas at page 16419
- Azeem at page 17044

Category B: IDs prepared but subsequently amended

- Anuar at pages 7551 to 7568
- Nadzri at pages 8994 to 9009
- Arman at pages 4855 to 4891

Category C: IDs prepared but not produced until questioned at the inquiry

- Bulkini (Exhibit I-244) at pages 15156 to 151564
- Effezul (Exhibit I-245)
- Zulkefly (Exhibit I-250)
- Hadri (Exhibit I-251)
- Hassan (IW 53) (Exhibit I-252)

Category D: ID which was prepared but cannot be traced.

- Azhar at pages 15527 to 15530
- Fauzi at pages 11561 to 15564

3.143 The Bar therefore contends that the IDs produced thus far at best are merely self-serving statements and should be viewed with suspicion particularly where it serves to protect the interest of MACC. The Commissioners have had the benefit of listening to the testimonies of the MACC officers as well as observing their demeanour when giving evidence in relation to the IDs. The weight to be attached to the truthfulness of these IDs would be entirely up to Commissioners.

- 3.144 It should be highlighted as well that there were many discrepancies and inconsistencies between the contents in these IDs and their respective 112 statements given to the police.
- 3.145 The Bar submits that there was a concerted, coordinated and aligned attempt to tamper with evidence amounting to lies and deceit for a cover up as to the actual cause of TBH's death.

MACC: 112 STATEMENTS

- 3.146 The Bar submits that the 112 statements of the MACC officers were all designed to cover up all the loopholes and gaps in MACC's stories and to streamline the inconsistencies that had surfaced. There was a concerted effort which included the AGC to cover up the events that actually took place on that fateful night. The 112 statements were anything but the truth. Some of the contents of the 112 statements, if not all, are lies, fabrications and concoctions, all for the sole purpose of suppressing the truth. We say this because:-

In the course of the investigation by the police into the death of TBH, 112 statements had been taken from the MACC officers. The Bar wishes to highlight in particular the testimonies of 2 MACC officers viz. Azian and Azeem.

- 3.147 Azian was recalled on the last day of the inquiry. She gave evidence that between 8.00pm – 9.00pm on 16.07.2009, there was a meeting chaired by Hishamuddin involving all officers who took part in the operation. Azian claimed that at this meeting, Hishamuddin had asked some officers as to their respective roles which they had played in the said operation. Apart from that, she claimed she did not hear anything else.⁴²¹
- 3.148 The fact of this particular meeting and the names of the attendees are corroborated by the evidence of Azeem.⁴²² He had testified at this inquiry that most of the officers involved in the said operation stayed back in the office on 16.07.2009 purportedly because of the crowd building up at Plaza Masalam. Hairul, Anuar, Hadri, Khairul Anuar and Efezul were some of the officers that Azeem saw that night.⁴²³
- 3.149 The Bar submits that the reason they had “camped out” in the MACC office that night was because they intended to discuss, strategise and streamline their stories as by then the police had summoned the relevant officers to present themselves for their 112 statements to be recorded.
[See 112 Statements Table below]
- 3.150 Azian further testified that there was another meeting held by MACC at the Headquarters at Putrajaya chaired by Dato’ Shukri, the Director of Investigation of MACC, DPP Kevin from

⁴²¹ NOP Volume 49 pages 18669 – 18675

⁴²² NOP Volume 45 pages 16975 – 16987

⁴²³ NOP Volume 45 pages 16987 – 16991

the AGC together with all officers involved in the said operation including Hishamuddin, Hairul and Anuar.

- 3.151 At this meeting, the officers were “guided” and “coached” by Dato’ Shukri as well as DPP Kevin as to how to answer questions at the Inquest. Azian, when asked, admitted that she was aware that there were several other meetings called by MACC but she did not attend.⁴²⁴ Azeem in fact testified that SFC Dato’ Abdul Razak who was the Senior Federal Counsel in the Prosecution Department of MACC was also present.⁴²⁵
- 3.152 Azian also testified that most of MACC officers had been asked to go to the police headquarters at Shah Alam starting from the night of 16.07.2009 to enable their 112 statements to be recorded. However, most the 112 statements were recorded on the night of 17.07.2009 and thereafter.
- 3.153 Azeem testified that while waiting for their 112 statements to be recorded at the police headquarters in Shah Alam on the night of 17.07.2009, he together with the other MACC officers present at IPD Shah Alam discussed amongst themselves as to how to ‘handle’ the questions by the police.⁴²⁶
- 3.154 This inquiry further heard evidence of the SMS text communication between Azian and Hairul at or about 7.00pm on the evening of 16.07.2009 the contents of which clearly

⁴²⁴ NOP Volume 49 pages 18675 – 18683

⁴²⁵ NOP 45 pages 17012 – 17013

⁴²⁶ NOP Volume 45 Pages 17002 – 17007

showed that there were clear instructions by Hishamuddin to all the MACC officers to distance him from the whole operation.

- 3.155 It is also evident in the SMS texts that they had been directed to tell lies. Azian was in great pains to clarify the part about having to make statements which are not true. The SMS text reads as follows:-

"Tn, bebudak ni mntak tlg jgnlah suruh diaorg wat pernyataan yg x btl, kes ni kes besar tn, melibatkan nyawa org, kalo tipu skali nnt bkali2 kena tipu, kalo sorg tipu nnt

ramai lagi yg kena sokong penipuan 2. Tn saya rasa sedih sgt apa yg tjadi kt sprm slangor, mgkn Tuhan nak trnkan bala pd kita. Kita terlalu mengejar material, kita abaikan perintahnya..cuba tn hitung brpa byk kali dah kita meeting dan tggikan mahgrib. itu solat, x kira yg lain2. Saya rasa kita hrs periksa dr kita sblm tdg jari pd org lain, sbg pemimpin, bla anak buah x smbhyg, kita pun ada shm kt situ. Say bg pndapat saya je..sy pun x bape pndi tg

*agama ni, tplg pd tn mcamana nak trime. Kita hdp x lama kan tn.*⁴²⁷

- 3.156 She claimed that the instruction was only to lie about the role of Hishamuddin in the whole of the operation and not anything else. This clarification is however watered down by her subsequent revelation under intense examination when she admitted in this inquiry that she had anticipated the questions

⁴²⁷ Exhibit I-194 N3 page 95 of 131

on the said SMS texts and she had been **prepared** for the same.

- 3.157 She testified that she was **prepared** on the SMS texts questioning by her superior prior to this inquiry and had been coached by Senior Federal Counsel, Dato' Abdul Razak. It was even more shocking that she was "advised" to only answer questions if asked. In other words, she was asked not to volunteer any information.⁴²⁸ We state that she did not tell the Commission the whole truth about what was actually instructed at the meeting chaired by Hishamuddin on the evening of 16.07.2009. The relevant SMS text is reproduced as follows:-

*"2la tuan, saya risau kalo tindakan kita makan diri sendiri. Tpkan siapalah kita kan.Saya fhm..apapun kita doa yg tbaik utk jab kita"*⁴²⁹

- 3.158 Against this background, the Bar submits that all the MACC officers' 112 statements recorded by the police are tainted and its contents must be viewed with great suspicion as to its truthfulness. We append hereinbelow the consolidated table containing the relevant 112 statements of the MACC officers, the date, time and place they were recorded. All of these were given **AFTER** the meeting and briefing by Hishamuddin on the evening of 16.07.2009.

⁴²⁸ NOP Volume 49 pages 18686 – 18734

⁴²⁹ Exhibit I-194 N3 page 96 of 131

112 STATEMENTS TABLE

WITNESS	1ST RECORDING	2ND RECORDING	3RD RECORDING	4TH RECORDING
Mohd Nadzri Bin Ibrahim <i>*Testified at Inquest on 17.09.2009</i>	2215 hrs of 16.07.2009 at Pejabat Jenayah IPD Shah Alam [A19]	24.08.2009 at Pejabat Peguam Negara, Tingkat 5. [A19]	-	-
Raymond Nion Anak John Timban <i>*Testified at Inquest on 17.09.2009</i>	0300 hrs of 17.07.2009 at Pejabat SIO IPD Shah Alam [A34]	29.07.2009 at Bilik Penolong Kanan Penguasa, Pejabat MACC Tingkat 14, Plaza Masalam [A34]	-	-
Mohd. Anuar Bin Ismail <i>*Testified at Inquest on 18.09.2009, 24.08.2009, 25.08.2009 & 26.08.2009.</i>	0955 hrs of 17.07.2009 at Pejabat KJSJ IPK Selangor [A12]	24.08.2009 at Pejabat Peguam Negara, Tingkat 5. [A12]	25.08.2009 at Pejabat Pegawai Penyiasat Jenayah IPD Shah Alam [A12]	-

WITNESS	1ST RECORDING	2ND RECORDING	3RD RECORDING	4TH RECORDING
Hairul Ilham Bin Hamzah <i>*Testified at Inquest on 14.10.2009</i>	2200 hrs of 17.07.2009 at Pejabat D4 IPK Selangor [A17]	23.07.2009 at Pejabat MACC Tingkat 14, Plaza Masalam [A17]	30.07.2009 at Pejabat MACC Tingkat 14, Plaza Masalam [A17]	24.08.2009 at Pejabat Peguam Negara, Tingkat 5. [A17]
Hadri Bin Hashim	2200 hrs of 17.07.2009 at Pejabat D4 IPK Selangor [A24]	28.07.2009 at Pejabat Penyiasat Jenayah IPD Shah Alam [A24]	24.08.2009 at Pejabat Peguam Negara, Tingkat 5. [A24]	-
Azeem Hafeez Bin Jamaluddin	2357 hrs of 17.07.2009 at Pejabat D4 IPK Selangor [A23]	-	-	-
Mohd Ashraf Bin Mohd Yunus	0010 hrs of 18.07.2009 at Pejabat MACC Tingkat 14, Plaza Masalam [A15]	23.07.2009 at Pejabat MACC Tingkat 14, Plaza Masalam [A15]	24.08.2009 at Pejabat Peguam Negara, Tingkat 5 [A15]	-

WITNESS	1ST RECORDING	2ND RECORDING	3RD RECORDING	4TH RECORDING
Mohd. Yusmizan B. Mohd. Yunus	0100 hrs of 18.07.2009 at Pejabat Jenayah (D9) IPPK [Exhibit Number not clear]	-	-	-
Khairul Anuar Bin Alias	0130 hrs of 18.07.2009 at Pejabat D4, IPK Selangor [A27]	29.07.2009 at Pejabat MACC Tingkat 14, Plaza Masalam [A27]	30.07.2009 at Pejabat Pegawai Penyiasat Jenayah, IPD Shah Alam [A27]	-
Mohd Najieb Bin Ahmad Walad	0320 hrs of 18.7.2009 at Pejabat D9, IPK Selangor [Exhibit Number not clear]	-	-	-
Arman Bin Alies	0355 hrs of 18.07.2009 at Pejabat D9 JSJ IPPK Selangor [Exhibit Number not clear]	-	-	-

WITNESS	1ST RECORDING	2ND RECORDING	3RD RECORDING	4TH RECORDING
Hishamuddin Bin Hashim <i>*Testified at Inquest on 14.10.2009</i>	2130 hrs of 19.07.2009 at IPPK Selangor [A18]	24.08.2009 at Tingkat 5, Jabatan Peguam Negara [A18]	-	-
Mohd Hafiz Izhar B. Idris	2130 hrs of 19.07.2009 (Location unknown) [Exhibit Number not clear]	-	-	-
Mohamad Azhar Bin Awang Menteri	2205 hrs of 19.07.2009 at Pejabat D1 IPK Selangor [A13]	-	-	-
Zurinawati Binti Zulkifli	1135 hrs of 22.07.2009 at Pejabat D11 [A35]	-	-	-
Mohammad Hassan Bin Zukifli	2100 hrs of 27.07.2009 at Pejabat IO [A78]	28.07.2009 at Pejabat Penyiasat Jenayah IPD Shah Alam [A78]	-	-

WITNESS	1ST RECORDING	2ND RECORDING	3RD RECORDING	4TH RECORDING
Efezul Azran Bin Abd Maulop	2100 hrs of 27.07.2009 at IPD Shah Alam [A79]	28.07.2009 at Pejabat Penyiasat Jenayah IPD Shah Alam [A79]	24.08.2009 at Pejabat Pegum Negara, Tingkat 5 [A79]	-
Mohd Amin Bin Ahmad	2100 hrs of 30.07.2009 at Pejabat SIO, IPPD Shah Alam [A93]	-	-	-
Azian Binti Umar	1545 hrs of 31.07.2009 at Pejabat D7 IPK Selangor [A86]	-	-	-
Mohd Fauzi Bin Maslan	1545 hrs of 31.07.2009 at IPK Selangor [A88]	-	-	-
Bulkini Bin Paharuddin	1600 hrs of 31.07.2009 at Pejabat Jenayah [A91]	-	-	-

WITNESS	1 ST RECORDING	2 ND RECORDING	3 RD RECORDING	4 TH RECORDING
Zulkefly Bin Aziz	1615 hrs of 31.07.2009 at JSJ IPK, Selangor [A92]	-	-	-

3.159 It would be observed that **ALL** the 112 statements were recorded **AFTER** the meeting chaired by Hishamuddin between 8.00pm to 9.00 pm on 16.07.2009. It is further observed that in respect of some of the further 112 statements taken, they were recorded at the AGC in Putrajaya. Some of the *Further* 112 statements were taken **AFTER** the Coroner's Inquest had started for example Nadzri's 2nd Recording, Raymond's 2nd Recording, Anuar's 2nd and 3rd Recording, Hairul's 4th Recording, Hadri's 3rd Recording, Ashraf's 3rd Recording and Effezul's 3rd Recording.

3.160 It is further noted from the Table above that the need for further statements arose **AFTER** the MACC officers had themselves testified or **AFTER** their colleagues had testified at the Coroner's Inquest. These will include all the officers who were requested to give further statements. These self-serving further statements which were recorded at the AGC should not be given any weight at all. We further venture to state that an adverse inference should be drawn against these further statements.

3.161 As observed from the Table above, some of the further statements were recorded at the AGC in Putrajaya. It is most unusual for a Section 112 of the Criminal Procedure Code statement to be recorded by the police at any other place apart from the police station unless there were special circumstances permitting it. We submit that the “special circumstances” in this case was the need for the powers that be to tailor, streamline and coordinate the “defence” in support of the theory which MACC intends to put across in explaining the circumstances surrounding the untimely death of TBH.

BOON WAH’S EVIDENCE

3.162 In respect of the witness Boon Wah, the Bar submits that he is a credible, consistent and truthful witness. Arising therefrom, Boon Wah’s ought to be accepted and preferred over any contrary evidence sought to be adduced by MACC. Boon Wah’s evidence include:-

- (a) His prolonged and unnecessary detention at MACC, including the chronology of events that transpired from the time the MACC officers turned up at his house in the afternoon of 15.07.2009 right up to his detention and subsequent release.⁴³⁰

⁴³⁰ NOP Volume 32 pages 11494 – 11602

- (b) That he was not allowed to leave the premises of the MACC throughout the night of 15.07.2009 right up until his official release at approximately 1.35pm on 16.07.2009.⁴³¹
- (c) The assertion by Bulkini and/or the MACC that he was allowed to leave at 2.53am on 16.07.2009 but chose to remain at the MACC overnight to await his wife who will be bringing the documents in the morning is contrived and manufactured by the MACC.⁴³²
- (d) The nature and manner of the questionable and unacceptable interrogation tactics employed by Bulkini and Efezul on him, including the torture, mental or otherwise, and verbal assaults inflicted upon him.⁴³³
- (e) That he did not have occasion to bump into TBH at the toilet in the premises of the MACC at approximately 2.00am to 2.30am as alleged by Bulkini. Consequently, the alleged conversation or altercation where Boon Wah is alleged to have uttered the words “*Ni lor*” in Mandarin did not happen and was contrived or manufactured by Bulkini.
- (f) In this context and in terms of chronology, Boon Wah had only gone to the pantry (and not to the toilet) for a drink of water shortly after 2.00am on 16.07.2009, accompanied

⁴³¹ *ibid.* 11507 – 11583

⁴³² *ibid.* pages 11654 – 11655

⁴³³ *ibid.* pages 11511 – 11516. pages 11522 – 11553, pages 11567 – 11569 and pages 11572 – 11573

by Bulkini, and thereafter made a call to his wife. Boon Wah then slept on the floor in the room opposite Raymond's.⁴³⁴

- (g) That the time in which he did bump into and see TBH, fleetingly at the pantry, is in essence at large, qualified only in the sense that it was after 2.30am on 16.07.2009 but well before dawn as it was still dark outside. This is from his description of the environment outside the building as seen through one of the windows.⁴³⁵
- (h) In this context and in terms of chronology, Boon Wah was sleeping in the room where he was interrogated earlier. He had woken up twice to go to the toilet. On the first of these occasions, he saw TBH at the pantry, albeit fleetingly. Reason being, Boon Wah was rushing to the toilet and upon returning from the toilet, TBH was no longer at the pantry.⁴³⁶
- (i) That in the course of having his statement taken, commencing at approximately 11.30am on 16.07.2009, there was a noticeable change in the conduct and attitude of the MACC officer and also the atmosphere at the premises of MACC at approximately 12.30pm on 16.07.2009, as if something had happened.⁴³⁷

⁴³⁴ *ibid.* pages 11552 – 11555

⁴³⁵ *ibid.* pages 11635 – 11640

⁴³⁶ *ibid.* pages 11558 – 11565 and pages 11683 – 11685

⁴³⁷ NOP Volume 32 pages 11578 – 11602

- (j) That the only transaction connected to Boon Wah, being investigated by the MACC, was in relation to the one-off supply of flags by Merit Link in the princely sum of RM2,400.00.⁴³⁸
- (k) On the one-off supply of flags transaction, the flags were indeed supplied at the Hari Merdeka Rakyat Mesra programme held and that TBH was not involved in any price fixing activity with Boon Wah. In this context, the latter had given a quote which was within the budget stipulated. We should also add that this is consistent with the evidence of YB Ean Yong who has said that he was the person who ultimately approves pricing.⁴³⁹
- (l) Despite the repeated assertions on the part of Boon Wah, to the effect that the flags were in fact supplied and that there was no collusion on the part of TBH with him on the price fixing, MACC refused to accept the same and instead persisted with their interrogation tactics and continued detention of Boon Wah. This, despite the fact that, MACC had in their possession photographic evidence showing that the Hari Merdeka activity was indeed held and carried out, replete with flags. Further, the MACC had also not made any verification or done ground work with the “*Pejabat Daerah*” as to whether there was any foul play in relation to them approving the payment for the supply.

⁴³⁸ NOP Volume 32 pages 11624 – 11625

⁴³⁹ NOP Volume 32 pages 11618 – 11624

3.163 That Boon Wah's evidence is credible, consistent and truthful may be gleaned from the NOP at this inquiry, his police report⁴⁴⁰ in relation to his complaint against the MACC for the abuse and torture and the evidence proffered by him⁴⁴¹ at the Coroner's Inquest.

- (a) In relation to his said police report, there are in fact no material inconsistencies or contradictions with his evidence before this inquiry. The said police report was sufficiently contemporaneous to the event of his detention and does set out, albeit in broader and general terms, the allegations of abuse, torture and detention.
- (b) The material events, in terms of chronology, nature, particulars and description are consistent.
- (c) Boon Wah had subsequent to his detention instituted a civil claim⁴⁴² against MACC. To this end, he had also filed an affidavit in support of his claim. Attempts were made, by the MACC at this inquiry, seeking to discredit him by reason of the contents of his affidavit, specifically, that there were no allegations of abuse or torture stated in the affidavit. This does not detract from his police report lodged earlier. The answers proffered were credible, consistent and truthful.

⁴⁴⁰ Exhibit I-218

⁴⁴¹ I-201(E) pages 1162 – 1164

⁴⁴² Exhibit I-220

- (d) As to the said civil claim, regard must be had to the fact that the same was limited in nature and context to the interpretation of the time MACC was allowed to question its witnesses, that such a claim was filed upon legal advice which he took and accepted and that ultimately, given the nature of the abuse and torture levelled, none of these had occasioned any physical injury. Of significance also would be Boon Wah's assertions that he had followed his lawyer's advice and that he was also not vengeful. It is also to be noted that the police report was lodged prior to this civil claim.
- (e) In legal parlance, the demeanour of Boon Wah during the course of him giving testimony also supports our contention as to his credibility. He remained steadfast throughout in relation to the aspects of questioning pertaining to him and noticeably also showed his emotions and sympathy for TBH when questions were posed to him of TBH.⁴⁴³

3.164 Conversely, the evidence of Bulkini leaves much to be desired. We have addressed the same substantially in Section 3 – TBH: Sightings of this submission. We would respectfully adopt the same for this aspect of our submission.

⁴⁴³ NOP Volume 33 pages 12102 – 12103

HISHAMUDDIN BIN HASHIM

3.165 The Bar contends that the inquiry has revealed a concerted plan to cover up the death of TBH. There was, and is, an elaborate on-going effort to synchronise the testimony of MACC officers. The key protagonist in this cover-up, and who had something to cover up, is Hishamuddin.

The Role of Hishamuddin

3.166 Drawing from direct evidence, and tying the threads of circumstantial evidence produced at the inquiry, Hishamuddin is one person whose testimony must be treated with extreme caution.

3.167 To recap, the chronology of events bear out that as early as June 2009, Hishamuddin had initiated investigations into the alleged misuse of funds by certain Pakatan Rakyat lawmakers. On 15.07.2009 at Hishamuddin's briefing about 8:30 to 9:00pm, a concerted plan was hatched by Hishamuddin in view of the urgency of the investigation to obtain 'results' that night itself. Hishamuddin instructed that Ashraf, the MACC weapons officer who has had a slew of assault reports⁴⁴⁴ made against him to be on 'standby'. Hairul carried out Hishamuddin's instructions and ordered Ashraf to return to the MACC office to assist in the

⁴⁴⁴ These assault reports are supported by medical reports.

interrogation of the MACC's 'star' witness, TBH,⁴⁴⁵ with Arman.⁴⁴⁶

- 3.168 It was also on Hishamuddin's instructions that Arman, a MACC Putrajaya officer known to be diligent in the MACC circles, be instructed to stay back to conduct the interrogation of TBH. Hishamuddin allowed all the officers from MACC Putrajaya to return home save for Arman and Bulkini for they were needed to interrogate witnesses that night.⁴⁴⁷
- 3.169 Hairul carried out Hishamuddin's instructions that Arman and Ashraf were to 'interview' TBH, while Bulkini and Effezul were to 'interview' Boon Wah. It is no coincidence that Hishamuddin's desired officers namely, Ashraf, Arman and Bulkini interrogated TBH and Boon Wah.
- 3.170 It was highly unusual that Ashraf and Arman who were not part of the Anuar-led team who raided YB Ean Yong's office and brought back TBH conducted the interrogation of TBH. The team which raided YB Ean Yong's office included Hafiz and Azhar who were available but not asked to 'interview' TBH. After the 'interview' by Arman and Ashraf, Arman had viewed TBH as an accomplice, and not a mere witness. The Bar submits that during the course of the inquiry, Hishamuddin has emerged as one MACC officer both interested in the outcome of the 52/2009 operation and is implicated in TBH's death

⁴⁴⁵ NOP Volume 29 pages 10584 – 10587

⁴⁴⁶ NOP Volume 11 pages 3863 – 3864; NOP Volume 12 pages 4027 – 4028; NOP Volume 17 pages 6002 – 6004 and 6087 – 6090 and Exhibit I-204 at page 12

⁴⁴⁷ Exhibit I-204 page 12

- 3.171 Despite frequent attempts to hide his role in the 52/2009 operation on the night TBH died, the evidence taken as a whole uncovers both the opportunity and motive for Hishamuddin to have gone out of his way to personally (and with the assistance of MACC officers) obtain information from TBH required for the investigations. It is necessary in this submission to analyse the evidence of Hishamuddin read with the evidence of other key personnel to uncover that which has been attempted to be covered up.
- 3.172 The initial suspicion that Hishamuddin had something to hide about the events on the night of 15.07.2009 and the morning of 16.07.2009 is found in the admission of a MACC officer, Azeem. In his 112 statement to the police, Azeem said that Hishamuddin had instructed all the male MACC officers to standby in the office between 8.00 to 8.30pm on 16.07.2009.⁴⁴⁸ A meeting in the night was then called and chaired by Hishamuddin. Only MACC Selangor officers attended the meeting, and there were less than 20 officers. Hishamuddin asked general questions of the officers about what happened on the night of 15.07.2009 and the morning of 16.07.2009. No detailed questions were asked by Hishamuddin about the movements of TBH, how TBH fell or who was the last person to see him.⁴⁴⁹

⁴⁴⁸ Exhibit I-199 (A23) page 4

⁴⁴⁹ NOP Volume 45 pages 16975 – 16987. It is also of note that when Hishamuddin was allegedly told by Anuar on 16.07.2009 at about 2.00pm that TBH's body was found, Hishamuddin showed no apparent interest to return to the office and verify the information.

- 3.173 Anuar, Hairul, Hadri, Khairul Anuar and Efezul were present at the meeting. Azeem was unsure if Bulkini and Ashraf were at the meeting. After the meeting, Azeem stayed back in the office as there were people at the entrance of the building and he feared for his safety. He stayed in the office until he gave his statement to the police on 17.07.2009 near midnight.⁴⁵⁰
- 3.174 After the death of TBH on 16.07.2009, Azeem said that there was a series of meetings and briefings called regarding the incident where Hishamuddin was present. These meetings and briefings were to discuss how the MACC officers were to answer questions at the Coroner's Inquest or at Commission. It was anticipated then that a Commission would be called to investigate TBH's death.⁴⁵¹
- 3.175 Officers in the meetings and briefings were asked by Hishamuddin to say that Hairul was in charge of the investigations and operation which led to TBH's death, and not Hishamuddin. Hairul was present in the said meetings and briefings.⁴⁵²
- 3.176 Besides the coaching of MACC officers, the conduct of Hishamuddin is more nefarious. Hishamuddin had attempted to pervert the cause of justice by using his authority to influence MACC officers to give a different account of events than that which actually occurred on the night of TBH's death. One

⁴⁵⁰ NOP Volume 45 pages 16988 – 16991

⁴⁵¹ NOP Volume 45 pages 17066 – 17068

⁴⁵² NOP Volume 45 pages 17017 – 17020 and pages 17068 – 17069

instance of this is found in a SMS text message sent by, Azeem. Azeem was requested on 23.07.2009 to meet with Dato' Shukri and DPP Kevin, at 3.00pm the next day. Azeem retorted by asking the purpose of the meeting and cautioned that it would be an exercise in futility if Hishamuddin was present at the meeting as the account of the events would be changed:-⁴⁵³

“Utk apa. Nanti cite jd lain jgk selagi hh ada.”

3.177 At various unspecified times after the discovery of TBH's body, Azeem had discussions, telephone conversations and exchanged SMS text messages with officers who were mostly from the Selangor MACC Investigation Unit, namely, Asrul, Sahril, Mohd Khairi Bin Ali Nordin, Nadzri, Hadri, Nicholas, Anuar, Nelmy Binti Amrizal, Ashraf, Yusmizan and Zurinawati. The conversations included issues as the 'time of death' and problems with MACC officers.⁴⁵⁴

3.178 Before the statements of the MACC officers were taken by the police, there were discussions on how they would answer the questions posed by the police. Immediately after giving his statement, Azeem was asked and informed other officers about the answers he gave in his statement. Anuar and Hairul also

⁴⁵³ Exhibit I-194 (Lampiran N4) page 73 and NOP Volume 45 pages 17038 – 17043

⁴⁵⁴ NOP Volume 45 pages 16998 – 17002

asked while Hishamuddin, indirectly through Anuar, sought the same from Azeem.⁴⁵⁵

3.179 For the purpose of answering questions at the Coroner's Inquest into TBH's death, MACC legal counsel, SFC Dato' Abdul Razak and DPP Kevin called separate meetings of MACC officers at MACC's headquarters in Putrajaya. Senior officers including Hishamuddin, Anuar and Hairul attended the meetings chaired by Dato' Shukri. The instructions were to answer according to the respective 112 statements given to the police.⁴⁵⁶

3.180 In gist, the string of available SMS text messages before the inquiry and as explained by Azeem is cogent evidence that MACC was extremely concerned that the truth into the events that led to TBH's death would emerge. MACC's top brass instructed, approved and condescended to – with the advice and assistance of legal officers from the AGC – initiatives aimed at crafting a version of events far from the truth to exonerate the MACC, namely, to lay the blame for TBH's death on himself, concocting a theory of suicide, and not to cooperate in investigations.⁴⁵⁷ As an example, Azian was referred to her SMS text message to Hairul and specifically advised by SFC Dato' Abdul Razak before she gave evidence at this inquiry not to volunteer information to the Commission.⁴⁵⁸

⁴⁵⁵ NOP Volume 45 pages 17002 – 17012

⁴⁵⁶ NOP Volume 45 pages 17012 – 17017

⁴⁵⁷ NOP Volume 45 pages 17019 – 17044 and Exhibit I-194 (Lampiran N4) pages 70 – 73

⁴⁵⁸ NOP Volume 45 pages 17019 – 17044 and Exhibit I-194 (Lampiran N4) pages 70 – 73

3.181 Although Hishamuddin was undoubtedly in control and in charge of the overall 52/2009 operation that night,⁴⁵⁹ Hishamuddin had throughout the course of his testimony at the inquiry attempted to distance himself from key events on 15.07.2009 and 16.07.2009.⁴⁶⁰ He continuously passed the buck to Anuar and Hairul, who in turn passed the buck among themselves. A critical analysis of the evidence of Hishamuddin, Hairul and Anuar would uncover consistent but nuanced denials, admissions and avoidance of responsibility citing that another officer was in charge.⁴⁶¹

3.182 This consistency in the evidence of key MACC personnel is significant. If Hishamuddin had nothing to hide, there would be no necessity to go out of his way to have instructed his officers to downplay his role:-

(a) Azeem was sure, even when questioned by MACC counsel (who quite obviously wanted a different answer), that Hishamuddin was the *de facto* leader of the operation.

(b) Azian confirmed that Hishamuddin was in charge of the 52/2009 operation, and any matter on the investigation needed to be referred to Hishamuddin for his decision.⁴⁶²

⁴⁵⁹ Exhibit I-201(c) – Coroner’s Notes of Proceedings dated 14.10.2009 Evidence of Hishamuddin bin Hashim page 3 at the Inquest No. 88-100-09

⁴⁶⁰ NOP Volume 17 pages 5956 – 5963 and pages 5966 – 5969; NOP Volume 18 pages 6660 – 6673.

⁴⁶¹ NOP Volume 22 pages 8012 and 8022

⁴⁶² NOP Volume 49 page 18701 and pages 18749 – 18750

- (c) Hishamuddin gave instructions and divided the MACC teams of officers. Hishamuddin supervised and administered matters in respect of the operation, and not Hairul.⁴⁶³
- (d) Hairul only took instructions from Hishamuddin, and was Hishamuddin's "*orang suruhan*".⁴⁶⁴
- (e) Azeem's position on the role of Hishamuddin in the 52/2009 operation was put to Hishamuddin during examination and he (Hishamuddin) vigorously denied it.⁴⁶⁵
- (f) Hishamuddin had directly instructed MACC officers to lie by saying that it was Hairul who led the investigations. Regarding this instruction by Hishamuddin, Azian sent a SMS text message⁴⁶⁶ to Hairul, and she cautioned Hairul to inform the MACC officers not to lie:-⁴⁶⁷

"Tn, bebudak ni mntak tlg jgnlah suruh diaorg wat pernyataan yg x btl, kes ni kes besar tn, melibatkan nyawa org, kalo tipu skali nnt bkali2 kena tipu, kalo sorg tipu nnt ramai lg yg nak kena sokong penipuan 2. ..."

⁴⁶³ NOP Volume 45 pages 17048 – 17053

⁴⁶⁴ NOP Volume 45 pages 17045 – 17046

⁴⁶⁵ NOP Volume 28 pages 10406 – 10423

⁴⁶⁶ Exhibit I-194 (Lampiran N3) page 95

⁴⁶⁷ NOP Volume 49 pages 18686 – 18704

- 3.183 In examination, she said she sent the SMS text message to Hairul because she felt Hairul could advise the MACC officers regarding Hishamuddin's instructions.

The Anonymous Letter from MACC Officers dated 05.08.2009

- 3.184 We now know that the police investigations conducted into the death of TBH *per se* and for purposes of the Inquest were insufficient. Of immediate relevance is the anonymous letter from MACC Officers dated 05.08.2009 written on MACC's official letterhead and setting out various allegations of misconduct against Hishamuddin.⁴⁶⁸ This letter triggered the Coroner at the Inquest into TBH's death to order further investigations.
- 3.185 Leaving the inadequacy of the police investigations aside, the first allegation against Hishamuddin in the said letter reads as follows:-

"i) TP telah memberikan arahan kepada semua pegawai-pegawai SPRM yang terlibat dalam operasi itu, untuk tidak melibatkan beliau langsung dalam kes ini. Sebenarnya beliaulah yang memberikan semua arahan di dalam operasi ini dan juga operasi-operasi lain di SPRM Selangor..."

⁴⁶⁸ Exhibit I-256

3.186 This allegation has been proved before the inquiry by the evidence of Azeem and Azian described above.⁴⁶⁹

3.187 A further allegation against Hishamuddin in the said letter pertains to his failure to punch out when he purportedly left MACC office at about 6.10am – 6.15am:-

“v) Kami mengesyaki berdasarkan maklumat yang diperolehi bahawa TP tidak mengetuk kad perakam

waktunya (punch-card) semasa beliau hendak balik daripada pejabat pada 16hb Julai 2009, 6.10pagi. Ini penting kerana ia boleh membuktikan bahawa TP adalah orang yang terakhir melihat Teoh. Persoalannya, kenapa beliau tidak mengetuk kad perakamnya sedangkan beliau adalah seorang yang selalu mengetuk kadnya. Untuk rekod, beliau adalah seorang yang teliti dengan kad perakamnya.”

3.188 This allegation has been proved before the inquiry by a perusal of Hishamuddin’s punch card which shows no record of the alleged time he left the building. It however shows an entry on 16.07.2009 time-stamped 7.55am.⁴⁷⁰ In examination of Hishamuddin, he admitted that he did not punch out although it would have taken him less than three seconds to do so, and he had the occasion to look at the clock by the wall next to the

⁴⁶⁹ NOP Volume 45 pages 17017 – 17020 and pages 17068 – 17069

⁴⁷⁰ Exhibit I-214

punch card machine. He said that he did not punch out because he would be returning to the office later.⁴⁷¹

3.189 It may now be inferred that the said letter was written – as signed by MACC officers – who had credible ‘inside information’.

3.190 The other allegations in the said letter directly related to TBH’s death include:-⁴⁷²

- (a) That Hishamuddin who was directing operations on 15.07.2009 and 16.07.2009 was acting in complot with an individual named as one, ‘Khir Toyo’.
- (b) That Hishamuddin evaded the taking of his DNA sample for purposes of the police investigation and thereafter, finally giving his DNA sample in the privacy of his own office room.
- (c) That Hishamuddin employs a unique method of interrogation where he would hold and lift a person by his belt from the front and shake him vigorously.
- (d) That Hishamuddin had instructed his officers to wipe away fingerprints on the window where TBH had purportedly fallen from.

⁴⁷¹ NOP Volume 28 pages 10470 – 10475 and pages 10553 – 10560

⁴⁷² Exhibit I-256

3.191 The investigations by ASP Nazri and his team into all the allegations in the anonymous letter from MACC Officers were inadequate. It was reported to the Coroner of the Inquest that there was no evidence substantiating any of the allegations save that Hishamuddin did not punch out.⁴⁷³ The Bar has reasoned the insufficiency of police investigations in this case suggesting complicity with MACC in a cover-up.

Hishamuddin the Man

3.192 It is commonly said that a demeanour of a person speaks volumes. It was evident throughout Hishamuddin's time on the stand at the inquiry, that the nature of the man Hishamuddin was exhibited for all to judge. Hishamuddin's body language and tone when answering questions was defensive when cornered and menacingly aggressive when repeatedly exposed. Hishamuddin is short-tempered and arrogant. Even his own officers are afraid of him as he is fierce (*"garang"*).⁴⁷⁴ Hishamuddin would not admit of mistakes or wrongdoing even when confronted with clear evidence to that effect. He will not hesitate to lie, and has been economical with the truth.

3.193 It is left for the eminent Commissioners to opine on Hishamuddin's credibility. The Bar however submits that anything short of holding that Hishamuddin is someone who may not be trusted will be a travesty of justice; not only for the

⁴⁷³ Exhibit I-201(b) – Coroner's Notes of Proceedings dated 19.08.2009 Submission of counsel pages 1 to 5 and Coroner's Notes of Proceedings dated 24.08.2009 Submission of counsel pages 1 to 5 at the Inquest No. 88-100-09

⁴⁷⁴ NOP Volume 49 pages 18747 – 18752

Malaysian public but for the very institution established to enforce Malaysian's anti-corruption law, MACC.

3.194 Hishamuddin, throughout his examination particularly by the Bar, was evasive, aggressive and defensive, unreasonable and illogical, to the extent of lying about his role on the night of 15.07.2009 and morning of 16.07.2009. Some key instances suffice:-

- (a) The crux of Hishamuddin's mischief lies in his attempt, at any given opportunity, to distance himself from the investigations that fateful night of 15.07.2009. He would lay much of the responsibility for any substantive action of the investigations on Hairul and Anuar. Bearing in mind that every decision regarding the 52/2009 operation required a decision from Hishamuddin, he would go to the extent of denying that he was in charge even after Hairul went home and Anuar fell asleep.⁴⁷⁵

It cannot be gainsaid that Hishamuddin asserted he was in his room from about 9.00pm on 15.07.2009 till about 5.45am on 16.07.2009 when he purportedly left the building.⁴⁷⁶ This was a continuous period of more than 8 hours he was in his room. He said he slept during most of this time.

During this time however, MACC officers came to his room to update him on the progress of investigations, namely, Hadri,

⁴⁷⁵ NOP Volume 28 pages 10402 – 10403

⁴⁷⁶ NOP Volume 27 pages 9783 – 9804

Hairul, Khairul Anuar, Mohan a/l P. Mutaiyah and Bulkini. It is said that Anuar did not meet with Hishamuddin during that period.⁴⁷⁷

Hishamuddin was in the office for the whole period even after Anuar slept at the office “*surau*” and Hairul went home. Yet, Hishamuddin denied he was ever in control of investigations that night.

- (b) The trinity of Hishamuddin, Anuar and Hairul were the leaders of the operations. If Anuar and Hairul had relinquished ‘control’, so to speak, of the operation when interrogation of witnesses were still going on, who was in charge?⁴⁷⁸ It baffles that no one was in charge. This position was put to Hishamuddin who continued to say that he did not take control of the investigations.⁴⁷⁹
- (c) Hishamuddin initially evaded a direct question about the speed of the investigations, then flatly said there was no need to be expeditious about the investigations, but finally admitted that investigations had to be conducted swiftly on 15.07.2009.⁴⁸⁰ Hishamuddin is in any case known to be a workaholic and one who desired to obtain ‘results’ of investigations quickly.⁴⁸¹

⁴⁷⁷ NOP Volume 30 pages 11149 – 11151

⁴⁷⁸ NOP Volume 22 pages 8020 – 8027

⁴⁷⁹ NOP Volume 28 pages 10402 – 10403

⁴⁸⁰ NOP Volume 28 pages 10429 – 10433

⁴⁸¹ NOP Volume 49 pages 18756 – 18753

- (d) Hairul said that it was Hishamuddin at the briefing at about 8.30pm to 9.30pm on 15.07.2009 who instructed all the assisting MACC officers from Putrajaya to be let off duty save for Arman and Bulkini as they were needed to interview witnesses in the office.

Hairul in his Investigation Diary specifically recorded this:-⁴⁸²

“Saya kemudian dipanggil oleh Tn Hishamuddin di bilik pejabat beliau dan beliau telah meminta maklum balas berkaitan operasi tersebut disebabkan P/Psk Anuar tiada di pejabat pada masa tersebut. Pada masa tersebut juga Ps Hadri ada bersama untuk memaklumkan perkembangan pasukan beliau. Saya memaklumkan berkenaan Status Pegawai HQ yang dipinjam untuk operasi ini bagi mendapat arahan selanjutnya. Selepas itu saya telah terima arahan untuk memaklumkan kepada semua pegawai HQ bahawa mereka telah dibenarkan pulang kecuali Arman dan Bulkini kerana mereka diperlukan untuk menemubual saksi yang ada di pejabat.”

Hishamuddin denied that he instructed Arman and Bulkini to stay back, and said that he only directed Hairul to continue investigations.⁴⁸³

Hishamuddin lied.

⁴⁸² Exhibit I-204 page 12 and NOP Volume 17 pages 6081 – 6088

⁴⁸³ NOP Volume 28 pages 10440 – 10453

- (e) Hairul said that it was Hishamuddin at the same briefing who instructed that Ashraf be put on standby to interview witnesses in the office.

Hairul in his Investigation Diary recorded this:-⁴⁸⁴

“Tn Hishamuddin juga mengarahkan saya agar memberitahu kepada Ashraf untuk standby bagi membuat temubual tersebut.”

When Hishamuddin was asked to recollect whether he gave this instruction, he said he was unsure.⁴⁸⁵

Hishamuddin lied.

- (f) Bulkini said at about 10.00pm on 16.07.2009, he was instructed by Hishamuddin to brief him on the status of the investigation and interrogation of Boon Wah. Hishamuddin then gave further instructions to Bulkini regarding Boon Wah. This fact was recorded in Bulkini’s Investigation Diary⁴⁸⁶ and his 112 statement,⁴⁸⁷ and was repeated in oral testimony⁴⁸⁸ at the inquiry.

However, Hishamuddin described his conversation with Bulkini as a ‘chance encounter’ of former colleagues in MACC Selangor⁴⁸⁹ chatting and catching up. Bulkini in that conversation told

⁴⁸⁴ Exhibit I-204 page 12

⁴⁸⁵ NOP Volume 28 pages 10444 – 10445

⁴⁸⁶ Exhibit I-244 pages 6 – 7

⁴⁸⁷ Exhibit I-199 (A91) pages 5 – 6

⁴⁸⁸ NOP Volume 40 pages 15052 – 15060

⁴⁸⁹ Bulkini was at the material time stationed in MACC Putrajaya.

Hishamuddin that the witness Boon Wah was not cooperating. Hishamuddin asked Bulkini to continue interrogating Boon Wah.⁴⁹⁰

Hishamuddin lied.

- (g) DSP Kamaruddin said that before TBH's death, the MACC had been reluctant to cooperate with the police in respect of the numerous assault reports made against MACC officers.⁴⁹¹ In particular, requests by the police for documents and/or the presence of MACC officers for the conduct of identification parades had gone unheeded. For instance, in reply to a request for 10 MACC officers to complete an identification parade, Hishamuddin had in a letter dated 28.05.2008 stated that MACC was unable to comply with the request.⁴⁹²

Hishamuddin, in his testimony before the inquiry, denied that he had any knowledge of police reports made against MACC officers.⁴⁹³

Hishamuddin lied.

- (h) Not only has Hishamuddin lied on oath, Hishamuddin, when cornered, becomes aggressive even to the point of sounding illogical and unreasonable. Two instances suffice:-

⁴⁹⁰ NOP Volume 28 pages 10446 – 10453

⁴⁹¹ NOP Volume 40 pages 14774 – 14782

⁴⁹² Exhibit I-236

⁴⁹³ NOP Volume 29 pages 10576 – 10583

- (i) The Chairman of this Commission expressed his frustration by a string of illogical answers given by Hishamuddin but Hishamuddin was steadfast to the point of taunting the Chairman and retorting that his answer was indeed logical (*"ini logik namanya"*).⁴⁹⁴
- (ii) Second, in answering the Chairman's question whether holding a witness for 17 hours namely, Boon Wah, was reasonable or otherwise, Hishamuddin maintained that it was reasonable.⁴⁹⁵ Hishamuddin's answer flies in the face of logic.

Hishamuddin's movements on 15.07.2009 and 16.07.2009

3.195 Raymond, despite our position that he was 'used' as MACC's time marker who purportedly sighted TBH, unwittingly contributed to the uncovering of the MACC's cover-up, in particular the movements of key personnel, including Hishamuddin, in the wee hours of 16.07.2009. While the Bar maintains the position that Raymond is an unreliable witness, he failed to follow the 'script'.

⁴⁹⁴ NOP Volume 28 page 10465. It is worth reproducing the exchange between the Chairman and Hishamuddin:

"Y. A. Chairman: Tetapi Encik Bon kata you ground work is not be...not done yet. You tanya apa soalan?"

IW 26: Ah, itu ground work juga. Process ground work panggil saksi itu pun ground work juga.

Y. A. Chairman: Kalau itu ground work, this one we have gone through all your people.

IW 26: Yang Arif...

Y. A. Chairman: Ah. In fact I'm so tired of going through with you. You all you give some answer which is so illogical.

IW 26: Ini logik namanya."

⁴⁹⁵ NOP Volume 30 pages 11068 – 11069

3.196 Raymond's 112 statement to the police on 17.07.2009 revealed that at about 5.00am on 16.07.2009, he saw Ashraf, Hadri, Nadzri, Sachi and Hishamuddin in the office. However, he was not sure if they were still in the office or had gone home when Raymond left the office at 6.00am.⁴⁹⁶

3.197 Raymond was more specific when examined by the Coroner at the Inquest into TBH's death:-⁴⁹⁷

"Q: Memang tidak nampak sesiapa pada masa itu?

A: Sebelum saya balik adalah. Dalam lebih kurang pukul 5:00 – 5:45 pagi, ada beberapa pegawai yang lalu seperti Mohd Nazri, Tuan Hishamudin dan Tuan Anuar.

Q: Di mana terserempak dengan mereka?

A: Dia orang lalu depan bilik saya.

Q: Menghala ke mana?

A: Saya tidak ingat dia hanya lalu sahaja."

3.198 Taking Raymond's 112 statement to the police and his evidence at the inquest together, Raymond places, at the minimum, Nadzri and Hishamuddin seen walking past his room at 5.00am. He also confirms Nadzri walking past his room once between

⁴⁹⁶ Exhibit I-199 (A34) page 3

⁴⁹⁷ Exhibit I-201(c) – Coroner's Notes of Proceedings dated 17.09.2009 Evidence of Raymond Nion Anak John Timban page 77 at the Inquest No. 88-100-09

5.00 to 5.45am⁴⁹⁸ and that Nadzri was looking for Anuar at 5.00am.⁴⁹⁹ Anuar was not asleep as he claimed. At the inquiry, Raymond alluded to his 112 statement and evidence at the inquest as accurate.⁵⁰⁰

3.199 Raymond's evidence is disturbing. The evidence of Nadzri, Anuar and Hishamuddin regarding their own movements and whereabouts at the said 5.00pm to 5.45am contradict Raymond's assertions. In respect of Hishamuddin, Raymond pushes the time back having seen Hishamuddin last before 5.00am.⁵⁰¹

3.200 The Bar submits that contrary to the impression the MACC officers, in particular Hishamuddin, Hairul and Anuar, wished to portray to the inquiry, the inquiry has thrown up a continuing plot hatched by cunning individuals. The MACC has attempted not only to pervert the course of justice by covering up the truth of the circumstances surrounding TBH's death but also manufactured evidence and diverted our attention away from the contributory factors that led to TBH's death. The evidence is consistent with the overall scheme which is emphasised by Azian's SMS text message to Hairul, and as will be shown below, that TBH's death had very much to do with the supply of flags by Merit Link Enterprise and the role TBH played as the link between YB Ean Yong and Boon Wah. This Commission

⁴⁹⁸ NOP Volume 32 pages 11796 – 11797

⁴⁹⁹ NOP Volume 32 pages 11798 – 11800

⁵⁰⁰ NOP Volume 32 pages 11792 – 11795 and pages 11802 – 11803; NOP Volume 33 page 12197 – 12198

⁵⁰¹ NOP Volume 33 page 11734

should not permit itself to be taken for a ride, and must not be misled.

4 DOCUMENTS ALLEGEDLY PRINTED FROM TBH'S LAPTOP

3.201 The Bar submits that the documents, in the form as per D94 to D97⁵⁰² respectively, allegedly printed from TBH's laptop cannot be directly attributable to TBH. We say this for the following reasons:-

- (a) First, the origin and manner in which these documents came into existence is dubious and questionable.

Najeib testified before this Commission that D94 to D97 were printed out by him on the night of 15.07.2009 at 9.00pm (having encountered problems with the laptop initially as the battery had run out and then having to obtain the password from TBH) and given to Anuar.⁵⁰³

Conversely, Najeib's ID states that these 4 documents were printed out at approximately 10.00pm of 15.07.2009 by Najeib and furnished to Anuar and subsequently printed again at approximately 11.15pm and furnished to Hairul.⁵⁰⁴ However, Anuar was no longer at the premises

⁵⁰² Exhibit I-199 D94 – D97

⁵⁰³ NOP Volume 42 pages 15811 and 15826

⁵⁰⁴ Exhibit I-204 pages 21 – 22

of the MACC Selangor by either time specified, having left at approximately 8.30pm on 15.07.2009.⁵⁰⁵

Hairul, on the other hand, claims that these 4 documents were given to him by Najeib at approximately 9.00pm on 15.07.2009 and that prior thereto, when Anuar attended at Hairul's room for a briefing at approximately 8.00pm on 15.07.2009, Anuar was already in possession of these 4 documents.⁵⁰⁶

From the aforesaid inconsistencies and contradictions, the certainty which emerges is this. It is dubious and questionable as to the manner in which D94 to D97 came into existence in its present form.

The next certainty which manifests itself can be seen from the testimony of Najeib, that is to say, at the time when D94 to D97 was allegedly printed from TBH's laptop, the same was not done in the presence of TBH. Between the hours of approximately 6.00pm to time his statement was recorded, TBH was either in the PENMAS area or the "*bilik mesyuarat utama*". There is no evidence that Najeib had brought the laptop along with a printer to these areas to have the documents printed out in TBH's presence.

⁵⁰⁵ NOP Volume 19 pages 6916 – 6918

⁵⁰⁶ NOP Volume 16 pages 5518 and 5526

Further, the printed copies of D94 to D97 were also not shown to TBH for purposes of verification with the versions said to be contained in the laptop.

Therefore, the only persons who have testified that these documents were printed from TBH's laptop are MACC officers. As is evident from the course of the inquiry and elaborated in the course of the Bar's submission herein, these officers' evidence hardly inspire or instil confidence when called as witnesses.

- (b) Secondly, these documents appear to differ in form and/or substance from the original versions said to be furnished by their sender, namely Wye Wing.

Two possibilities therefore arise: one: TBH, for whatever reason, had fiddled with the same from the original versions, in which nothing would turn on the same OR two: the MACC had tampered with the same or even planted them there, in which a sinister motive would then naturally attach.

D94

The approved and finalised version of D94 can be seen at Exhibit I-197(c), D65/d⁵⁰⁷. D65/d is a copy of the invoice/claim for one of the "*Projek Kecil*" in respect of the

⁵⁰⁷ Exhibit I-197(c) D65/d

State constituency of Kuala Kubu Bharu (one of the adopted constituencies of YB Ean Yong). The corresponding and related documents to D65/d are contained in the D65 series of documents and marked as D65/a to D65/c⁵⁰⁸ and reflected in the preceding pages thereto.

Wye Wing under intense cross-examination by counsel for MACC, had informed this inquiry that the contents of D94 were recognisable by him. He also testified that he had sent to TBH, via email, a copy similar to D65/d albeit the copy sent via email was without the company chop and signature. He further stated that the format of D94 appears different from that of D65/d and that some of the contents in D94 (the particulars of works under the header “Description”) are missing and was not able to proffer any explanation as to these differences. Wye Wing also did not know how D94 in its present form came about.⁵⁰⁹

What Wye Wing was certain is this. The original price was not RM12,190.00 as stated in D94. He was also unequivocal in rejecting the suggestion of counsel for MACC that TBH had suggested to Wye Wing that the price be raised from RM12,190.00 to RM18,750.00.⁵¹⁰

⁵⁰⁸ Exhibit I-197(c) D65/a – D65/c

⁵⁰⁹ NOP Volume 39 pages 14576 – 14590

⁵¹⁰ NOP Volume 39 pages 14591 – 14595

To the discerning eye, it is evident that D94 in its present form contain omissions in respect of the works to be supplied (and hence the corresponding price) under the header of “Description”. As rightly pointed out in the course of this inquiry, an amount of RM5,850.00 corresponding to the description of works for item 2 is missing from D94 and that taking this amount into consideration, the total of RM12,190.00 would emerge.

Two possibilities arise as to how D94 came into being. 1st, upon receipt by TBH of a copy of the original version as sent by Wye Wing, TBH could have fiddled with the same in his computer. Whatever the reason or rationale for TBH doing the same, assuming for a moment that he did so, there can be no sinister motive underlying such conduct. Neither could any wrongdoing in terms of the same being an illegal act or conduct can be said to arise in terms of the central theme of investigations which were conducted by the MACC at the material time. The reasons are too simple to state.

Wye Wing would send invoices/claims to TBH for purposes of verification and/or approval. YB Ean Yong’s evidence is also consistent in this regard.⁵¹¹ Apart from these evidence which seek to dispel the insinuation of the MACC, the simple truth is that the works in respect of the said “*Projek Kecil*” was in pith and substance completed.

⁵¹¹ NOP Volume 48 page 18137

TBH knew the project was undertaken and completed. He was responsible for the preparation of the documents such as reflected in D65/b and D65/c⁵¹² for YB Ean Yong and the latter had approved the same.

Additionally, the person responsible for approving each and every project in question, including the particulars of works and pricing thereto is in fact YB Ean Yong. In this context, TBH simply had no say.

Further, in order for payments to be made and effected by the relevant "*Pejabat Daerah*", an independent verification would have to be made by the relevant "*Pejabat Daerah*". This verification is two-fold, namely a physical site inspection by a technical officer from the relevant "*Pejabat Daerah*" and the provision of documentary evidence of work done. It is only upon the satisfactory verification by the relevant "*Pejabat Daerah*" that payments would be made as supported by the requisite payment voucher.⁵¹³ In this instance, the payment voucher can be seen at D65/a⁵¹⁴, a document which the MACC had all along, as the same was part of the investigation papers as reflected in Exhibit I-197(c). A simple exercise, had the MACC been minded to demonstrate some competence and display some diligence/industry, was to actually make an inquiry with the relevant "*Pejabat Daerah*". This does not appear

⁵¹² Exhibit I-197(c) D65/b and D65/c

⁵¹³ Exhibit I-197 (A19) page 6 paragraph 25 – 30

⁵¹⁴ Exhibit I-197(c) D65/a

to have been done. Further, in order for any suggestion of false claims to arise, the relevant “*Pejabat Daerah*” would have to be a necessary privy, in terms of knowing that the project was not done but yet proceeding to approve the claims and effecting the payments thereto. There has been no such suggestion on the part of the MACC, be it when they first commenced investigations in June 2009 right up to the point of this inquiry.

Secondly, the possibility of MACC tampering with the documents in TBH’s laptop such as to produce D94 in its present form. A possible reason for MACC to do so would be to cause disorientation or throw TBH off his tracks. Regardless, nothing material could credibly be said to turn on this as TBH knew that the project was in fact undertaken and completed, as elaborated in the preceding paragraphs.

D97

Now to the document marked as D97. This document appears to be a quotation for a “*Projek Kecil*” in Seri Kembangan. The corresponding approved and finalised copies of the relevant documents in relation to this “*Projek Kecil*” can be seen and are reflected at Exhibit I-197(b) at D36/a to D36/e⁵¹⁵. There is in fact 2 documents marked

⁵¹⁵ Exhibit I-197(b) D65/a – D65/e

as D36/b, the second of which is the actual invoice for the works done.

In relation to D97⁵¹⁶, Wye Wing had informed and explained to this inquiry as to the factual circumstances underlying D97. Of significance would be these: D97 is the quotation whilst D36/b (the second b) is the actual invoice, hence, the difference in both the dates as the quotation would precede and an invoice would only be submitted for claims after completion of the project. Further, whilst Wye Wing cannot confirm as to whether D97 in its present form was the copy of the quotation sent by him to TBH, he could confirm that the contents of D97 emanated from him. The purpose underlying Wye Wing emailing a quotation to TBH was also alluded to, namely, for purposes of asking TBH to verify with YB Ean Yong and for YB Ean Yong to confirm the same. In this regard, it was also confirmed by Wye Wing that YB Ean Yong was the person who was responsible for the determination of pricing, whether it was within budget and whether to proceed with a project. In a nutshell, YB Ean Yong was the person who was ultimately the decision maker and his instructions would be conveyed to TBH for purposes of liaising with Wye Wing.⁵¹⁷

Further in relation to D97, we also adopt our contentions as set out in the preceding sub-paragraph in relation to

⁵¹⁶ Exhibit I-197(c) D97

⁵¹⁷ NOP Volume 39 pages 14650 – 14658

D94 above pertaining to the issues that the project was in fact completed. As often said, a picture paints a thousand words. The various photographs following on from D36/e amply demonstrate the fact that the project was in fact undertaken and completed. Further independent evidence of such a fact may be gleaned from D36/b (first b) at the bottom right hand side of the page, where there is an endorsement by the relevant “*Pejabat Daerah*” that the project was satisfactorily completed. All these documents as per the D36 series were part of the MACC’s investigations papers which they had at the material time when TBH was interviewed.

D96

The next document to consider would be D96⁵¹⁸. The approved and finalised versions of the corresponding documents are set out in the D30 series of documents in Exhibit I-197(b)⁵¹⁹, the investigation papers of the MACC. The D30 series of documents are marked as D30/a – D30/g and are in relation to a “*Projek Kecil*” in the State constituency of Seri Kembangan.

Wye Wing’s testimony on these set of documents is consistent.⁵²⁰ D96 is the quotation and it emanated from him. He had sent a copy to TBH in terms which are similar

⁵¹⁸ Exhibit I-197(c) D96

⁵¹⁹ Exhibit I-197(b) D30/a – D30/g

⁵²⁰ NOP Volume 39 pages 14665 – 14667

in substance. As to D30/c, the same was prepared by Wye Wing and he had signed the same. D30/c is the invoice prepared for purposes of making a claim to YB Ean Yong. Again, it cannot be credibly disputed by MACC that the works in respect of this project was in fact completed. The document marked as D30/b (specifically, the endorsement at the bottom right hand side by the relevant "*Pejabat Daerah*") and the photographs following on from D30/g bear undoubted testimony. Hence, D96 regardless of any differences in terms of form does not seek to impute or infer any wrongdoing in terms of the central theme of investigations by the MACC at the material time, namely false claims.

D95

Finally, to D95.⁵²¹ D95 appears in form to be a document aimed at making a claim for works in relation to a project in the State constituency of Kuala Kubu Bharu. The corresponding series of documents in the possession of the MACC at the material time can be seen and are marked as D52/a to D52/d of Exhibit I-197(c).⁵²²

Once again, Wye Wing had confirmed that he was the one who had prepared a document in which the contents are similar to that of D95 although he was not sure as to whether D95 in its present form was the document so

⁵²¹ Exhibit I-197(c) D95

⁵²² Exhibit I-197(c) D52/a – D52/d

prepared. The certainty which emerges is this. Wye Wing had prepared a document in which the contents are the same and had sent the same to TBH via email. As to D52/d which is the finalised version, Wye Wing had prepared a version of it and thereafter, the company concerned, namely Syarikat Aris, had then transcribed onto its letterhead and was signed by the proprietor thereof.⁵²³

There can be neither question nor doubt as to whether the project underlying the D95 or the D52 series of documents was completed. D52/a is a copy of the payment voucher issued by the relevant "*Pejabat Daerah*". As alluded to above, and at risk of repetition, prior to the "*Pejabat Daerah*" approving and effecting payment, an independent verification exercise would have been conducted by the relevant "*Pejabat Daerah*". Again, had the MACC displayed some diligence/industry and competence on their part, a simple act of making the necessary inquiry or due diligence with the relevant "*Pejabat Daerah*" would have sufficed to show that the project was indeed completed satisfactorily.

Wye Wing had also explained the factual circumstances underlying the sending of soft copies of quotations to TBH via email. Soft copies of quotations (which will include versions such as D96 and D97) which will be unsigned

⁵²³ NOP Volume 39 pages 14670 – 14675

will be sent to TBH via email for purposes of enabling TBH to verify the same with YB Ean Yong, who is the decision maker as pricing would have to be confirmed by YB Ean Yong. Once the pricing is confirmed, Wye Wing would then prepare hard copies of the quotation and personally send two copies to YB Ean Yong's office and to TBH's office.

3.202 Additionally, the Bar submits that the documents as per D94 to D97 were not central to the nature and focus of investigations conducted by the MACC at the material time. In this regard:-

- (a) At the briefing on 14.07.2009, Hishamuddin had informed his officers that an operation would be conducted on 15.07.2009, the following day for purposes of investigating the allegations of abuse of the Selangor State allocation by the Pakatan Rakyat ADUNs.⁵²⁴
- (b) According to Hairul, the investigations conducted were in relation to offences pursuant to s. 11(c) of the Anti-corruption Act 1997 ("**ACA**") and s. 18 of MACC Act.⁵²⁵
- (c) At the briefing on 15.07.2009 chaired by Hishamuddin, Hairul was informed that the complaints, in essence, were in relation to false claims, where programmes were not carried out.

⁵²⁴ NOP Volume 16 pages 5429 – 5431

⁵²⁵ NOP Volume 16 page 5444

- (d) That D94 to D97 was not actively pursued in the manner suggested before this inquiry can be seen from the ways in which TBH was questioned and interrogated prior to his demise. At the first session when TBH first arrived at the MACC premises, the initial questioning at the PENMAS was about his background. D94 to D97 was not put to TBH.

Then, the session with Arman and Ashraf. They contend that the exercise was essentially to check documents. In relation to D94 to D97, they were asked to check as to whether these 4 documents were in the 4 files given to them. General questions were asked and there is no suggestion that D94 to D97 were probed in such a manner as was pursued before this inquiry.

Thereafter, in the recorded statement session before Nadzri, only one question each was asked of TBH in relation to D94 and D95 respectively. Even then, these were just general questions. Again, there is no suggestion that D94 to D97 were probed in such a manner as was pursued before this inquiry. Significantly, Nadzri himself was not briefed by Anuar as to D94 to D97. This being the case, it is simply inconceivable for Nadzri to be able to pursue the any vigorous line of questioning, be it in the manner pursued before this inquiry or otherwise, outside the focus and central theme of false claim as was prevailing at that time.

- (e) The focus and central theme of the investigations conducted by the MACC, that is, in relation to false claims, had remained unchanged and was a constant throughout, even post the demise of TBH. This can be gleaned from the investigation papers as per Exhibit I-197, specifically the notations of Shafik.⁵²⁶
- (f) MACC contends that the documents in the form of D94 to D97 were suspicious. In this regard, MACC also contends that the said documents were created by TBH. They premised their contention on their suspicions that the documents were created by a single person as there were common spelling errors in the word “*pakar*” as per D94, 96 and 97 and that all 4 documents were allegedly found in TBH’s laptop. Even if we were to accept these assertions at its highest, the manner in which D94 to D97 were probed, if at all, of TBH do not suggest any impropriety on the part of TBH from the perspective of false claims.

3.203 In amplification of the foregoing submissions, the Bar further submits as follows:-

- (a) In any event, D94 to D97 do not infer or suggest or implicate TBH in any wrongdoing when viewed against the factual matrix and/or circumstances as set out above, including the corresponding set of approved or final

⁵²⁶ Exhibit I-197(a) C3

version of documents pertaining to the respective projects in question and the nature of investigations carried out by the MACC at the material time.

- (b) The manner and nature of enquiries made of D94 to D97 before this Inquiry was not the manner and nature of enquiries, if at all, made by MACC as against TBH at the material time.

TBH'S STATE OF MIND IN RELATION TO D94 TO D97

3.204 The Bar submits that the various suggestions or imputations sought to be cast upon the mind of TBH in relation to the documents marked as D94 to D97 respectively by the MACC, through counsel, in the course of this inquiry is:-

- (a) Ingenious but incongruous with the underlying factual matrix and/or circumstances.
- (b) Purely speculative and predicated upon layers of suppositions which are devoid of any credible basis.
- (c) Put simply, the contentions raised by the MACC are mere after-thoughts.

3.205 The grounds and/or bases predicated this aspect of our submission are as follows:-

- (a) In the course of this inquiry, allegations were levelled or raised as against TBH's alleged state of mind in MACC's pursuit of their suicide theory. Choice phrases were used and levelled against TBH including "the young man had a lot on his mind"⁵²⁷, "honour suicide"⁵²⁸ and "death before dishonour".⁵²⁹

Significantly, at the Coroner's Inquest, the grounds raised by the MACC in their attempt to advance and bolster the suicide theory were in relation to TBH being allegedly forced into marriage as he was responsible for impregnating his girlfriend (as she then was, and now wife posthumously) and the attendant financial implications on TBH, namely an alleged inability to pay and fund the impending marriage ceremony.

MACC now changed tack in this inquiry. One would immediately appreciate the ingenuity of the allegations raised before this inquiry but cannot but discern the incongruity of the same given what had transpired at the Coroner's Inquest. As will be elaborated below, the alleged circumstances underlying the MACC's position before this inquiry in support of their suicide theory, if at all in existence, would also have been present and in existence then. Yet, this aspect was not pursued by the MACC before the Coroner's Inquest.

⁵²⁷ NOP Volume 39 page 14718

⁵²⁸ NOP Volume 48 page 18366

⁵²⁹ NOP Volume 48 page 18366

- (b) In the cross-examination of Wye Wing, the MACC, through counsel, had sought to infer or impute fear on the part of TBH through a series of factors. Ostensibly, this was done in pursuit of their suicide theory. The intention of MACC can be encapsulated in the following words of counsel for the MACC as follows:-

“Whatever is the explanation, but this is what is happening. And then, taking all these together Mr Lee, my question is not a question to blame anyone. My question is this, aren’t these enough factors to make that young man the late Teoh Beng Hock very worried when he was investigated.”⁵³⁰

These factors were then linked to the 4 documents alleged to be found in TBH’s laptop, that is D94 to D97. That this is so can be gleaned from the following line of questioning of the MACC:-

“I am putting it to you, I’m putting it to you, when Teoh Beng Hock told you in the pantry. I should not have given them my computer, his biggest fear was in relation to this 4 documents?”⁵³¹

⁵³⁰ NOP Volume 38 page 14718

⁵³¹ NOP Volume 40 page 14730

“Yes, yes. It makes no different to my question. But, my question is, do you think when you met Teoh Beng Hock when he was in that condition, he looks preoccupied with something in his head, and he said to you that, “I shouldn’t not has given my computer to them?” He was actually concerned about these 4 documents that the MACC have discovered?”⁵³²

The MACC, through counsel, then set out seven factors, with the view of sustaining their contention that TBH was fearful that fateful day in question.

3.206 This purported theory of the MACC is inherently flawed and untenable. To sustain the same, the MACC will have to contend with multiple layers of suppositions:-

1st supposition: that all these factors set out are factually correct.

2nd supposition: that TBH knew of all these factors.

3rd supposition: that all these factors when linked to D94 to D97 amount to a wrongdoing.

4th supposition: that TBH knew of such wrongdoing.

5th supposition: that TBH was guilty or implicated of such wrongdoing.

⁵³² NOP Volume 40 page 14734

6th supposition: consequently, TBH was rendered to be in such a state of fear and hopelessness as to take his own life. That is, he was completely caught and saw no way out of his dilemma. Suppositions upon suppositions six times removed or compounded.

At risk of belabouring the point, there is no evidence before this inquiry that TBH knew of all the seven factors. In relation to the 2nd supposition, MACC relies purely on conjecture and speculation. For instance, payments which were made to DAP Serdang Aman. These were made by the company involved in the “*Mesra Rakyat*” programmes. There is no evidence that TBH was privy to such payments. The MACC had obtained evidence of such payments from the search and seizure conducted at Wye Wing’s house in Seremban.⁵³³ Yet, TBH was not questioned as to Exhibits I-206A to D. This can be gleaned from the purported recorded statement of TBH. It is also clear that Exhibits I-206A to D was not put nor asked of TBH prior to his statement being recorded as these documents only made their way to MACC at approximately 1.00am. In point of fact, even Wye Wing himself was not questioned at all in respect of Exhibits I-206A to D.⁵³⁴ Further, the 4 documents, that is, D94 to D97 were in relation to “*Projek Kecil*” projects, wholly different from the “*Mesra Rakyat*” programmes. Exhibit I-206A to D were in relation to the “*Mesra Rakyat*” programmes.

⁵³³ Exhibit I-206A - 206D

⁵³⁴ NOP page 14296

The fatal flaws of MACC's theory can also be seen by perusing the 3rd supposition. The focus of MACC's then investigations was against the ADUNs of Pakatan Rakyat. TBH was not being investigated. The central theme of the investigations revolved around false claims. The essence and nature of the interview/interrogation/investigation of the MACC on TBH revolved around the questions of whether the programmes and/or projects were in fact undertaken and/or done. There was neither suggestion nor question posed to TBH that there was wrongdoing in relation to D94 to D97 in the manner contemplated before this inquiry. From a perusal of TBH's purported recorded statement by the MACC, only one question each, of a general nature, was asked of TBH in relation to D94 and D95. No question was asked of TBH in respect of D96 and D97.

That the investigations by the MACC at that time revolved around the question as to whether the programmes or projects were undertaken (false claims) are also evident as follows: 1st, MACC's own evidence through the briefings given and evidence of Hairul, secondly, the evidence of Wye Wing who said that the main thing the MACC wanted to know during his interrogation was whether the projects were done⁵³⁵, and thirdly, the evidence of Shafik who testified to say that the MACC had, in concluding their investigations post TBH, cleared YB Ean Yong of any abuse of State funds and closed the investigations.⁵³⁶

⁵³⁵ NOP page 14295

⁵³⁶ NOP Volume 43 pages 16139 - 16140

Before this inquiry, Shafik then sought to enlarge the purported wrongdoings unearthed, by reference to a charge of cheating or offence pursuant to s. 23 of the MACC Act. This evidence, at best, appears rehearsed, for the following reasons: first, Shafik himself also says there was no investigations conducted pursuant to the same⁵³⁷; secondly, his notation in the investigation papers do not suggest any of these purported offences and thirdly, the same notation do not even bear out any suggestion that these alleged offences were brought to the attention of his superior by him.⁵³⁸

It is therefore clear that the documents marked as D94 to D97 was neither central nor at the forefront of the MACC's investigations at all material times prior to this inquiry. Further, Exhibits I-206A to D have not been shown to be in the knowledge of TBH, in so far as payments to DAP Branches are concerned.

For sake of completeness, we should also highlight that in relation to the essence and nature of the interview or interrogation or investigation, there was no confession on the part of TBH in any form or manner whatsoever, be it implicating himself or others.

In any event, the Bar submits that the question of illegality in relation to the Class F contractors issue did not arise, in fact or

⁵³⁷ NOP Volume 47 pages 17866 - 17868

⁵³⁸ Exhibit I-197

in law, at the material time of MACC's investigations in respect of the "*Borang Aduan*" 52/2009. In this regard:-

- From the factual perspective, the Class F contractors issue was neither central nor at the forefront of MACC's investigations. It is clear that the same was not and did not form part of the subject matter of investigations. It was also not operative in the minds of any of the MACC officers, let alone those who were responsible in questioning or recording the statement of TBH. If the issue was not on MACC's minds, how can it credibly be said to be on TBH's mind.
- What MACC would want the Commission to believe is this. That TBH was clever enough and have the benefit of foresight to have appreciated the same. Assuming, without accepting, that this is to be true, it forms one end of the spectrum of TBH's intelligence and ability to anticipate. At the same time, MACC wants to also contend the opposite end of the spectrum. That is, whilst TBH may be said to have such intelligence and abilities, those very qualities of intelligence and ability would be conspicuously missing in terms of dealing with the anticipated issue. This is then said to have rendered TBH in such a state of fear and hopelessness to the point of no return. That is to say, there was no way out but suicide. Belief would have to be suspended if one were to accept MACC's contentions.

- TBH was not in a state of hopelessness with no possible way out of a situation at that point of time. There was yet to be any investigation on this alleged subject matter, let alone any charge. TBH knew he could rely on his support group, including family, friends and work colleagues. He knew he would have legal advisors, as evidenced by YB Manoharan's presence at SUK on 15.07.2009.
- From the legal perspective, there is no illegality. Section 6(2) of the Financial Procedure Act 1957 provides that the management and control of State funds to be vested upon the State. For projects utilising State allocations, these would come from the said State funds. In the instant case, projects were given to Class F contractors.
- However, there is no statutory obligation or requirement that such projects must be given to Class F contractors. That the same was done was merely in compliance with State guidelines⁵³⁹. Whilst the State guidelines prescribe as such, the guidelines remain as such and have no force of law. Further, the State guidelines themselves do not provide for any penal or penalty consequences.
- Finally, the evidence of YB Ean Yong further dispel MACC's contention. In this context, YB Ean Yong asserted that he is the one who decides on whom the project is to be awarded to and the price, that he has no

⁵³⁹ Exhibit I-249

knowledge as to the actual arrangements between the Bumiputra companies concerned and third parties; and that the most important thing for him was that the project/work was done and completed.⁵⁴⁰

- TBH was only attending to administrative matters and merely communicated the decisions made by YB Ean Yong. Therefore, TBH had no knowledge of any alleged wrongdoing. Further, it has not been shown that TBH had such knowledge.

⁵⁴⁰ NOP Volume 48 pages 18326 - 18330

SECTION 4

Facts Contributing to TBH's Death

MACC'S SUICIDE THEORY

- 4.1 Throughout the course of this inquiry, MACC has advanced the theory that TBH was released at approximately 3.30am on 16.07.2009, that he chose to remain in the premises of MACC at the 14th floor of Plaza Masalam, and thereafter committed suicide. This is the MACC suicide theory.
- 4.2 This has been the main thrust of MACC's case. It is not difficult to see why MACC is desperate to form and establish this theory. The consequence of an absence of a finding of suicide would be adverse for its officers as will be elaborated upon below.
- 4.3 MACC claims that TBH committed suicide because in his mind, he knew that he was implicated in alleged wrongdoings regarding the utilization of the State allocation for the ADUNs.
- 4.4 The offence which MACC was investigating at the material time was pursuant to the Borang Aduan 52/2009, namely, that the Selangor State Assemblymen had withdrawn or utilised their annual allocations by producing documents to the District Office containing false particulars, that is, that they had undertaken

programmes in their respective constituencies when there were no such programmes.⁵⁴¹

- 4.5 They have sought to bolster their theory with the late discovery of the Mystery Note that they claim to be a suicide note.
- 4.6 They have also sought to support their theory with an expert opinion from 2 psychiatrists.
- 4.7 In this part of the submission, it is intended to show that there is no basis for the theory both factually and through expert opinion. The MACC suicide theory remains a bridge too far.

Facts Relied Upon by MACC to Support the Suicide Theory

TBH's Alleged Release at approximately 3.30am

- 4.8 TBH was required to attend at Plaza Masalam for questioning. He arrived at approximately 6pm on 15.07.2009 and remained in the premises till his death. MACC claims that TBH was interviewed and his statement recorded that night carrying through to the early hours of 16.07.2009. They claimed that they finished recording his statement at approximately 3.30am, and thereafter he was released to go home. However, MACC also claims that TBH did not leave but wanted to rest at MACC's premises.⁵⁴²

⁵⁴¹ Exhibit I-61

⁵⁴² Exhibit I-204. Anuar 's ID pages 4-5 and Nadzri's ID page 9

4.9 In order to support their contention that TBH was released at approximately 3.30am, MACC relies upon the following:-

- They finished recording TBH's statement at approximately 3.30am. It is their practice that witnesses are free to go after their statement is recorded.
- Anuar instructed Nadzri to release TBH after his statement was recorded.
- Nadzri said that TBH was released and required to come back the next day to bring back documents.

4.10 It is the Bar's contention that TBH was never released at 3.30am or anytime thereafter. We have submitted at length above on the factual matrix.⁵⁴³ A summary of the Bar's contentions to debunk this aspect of the MACC suicide theory is as follows:-

- TBH's mobile phone was never released to TBH. Otherwise, there would have been record of calls made and SMSes after 3.30am. This issue has been comprehensively dealt with in the submission above under the heading 'TBH's Mobile Phone'.
- TBH's original statement cannot be traced. Therefore, the authenticity of TBH's signatures on the MACC statement

⁵⁴³ See above (look for citation)

cannot be verified. Even though WKY claims to have sighted the original statement when he prepared his first report, his analysis was not compared to an admitted sample of TBH's signature. Therefore, the recorded statement is disputed.

- MACC 004/009 Form was not issued to TBH as a matter of procedure and law if indeed TBH was released and required to return the next day with documents. Boon Wah was however issued with such a Form.⁵⁴⁴
- Anuar did not bother to read TBH's statement after the recording was completed by Nadzri. As an investigating officer, it would have been critical for him to read it before releasing TBH.⁵⁴⁵
- TBH's statement in itself is not evidence of release. Wye Wing and Harun were similarly not released even though their statements had been recorded.⁵⁴⁶
- TBH's car was parked outside and his office was only minutes away. If he had been released, and needed a rest, he could have gone home or to his office.
- Nadzri had amended his initial ID in respect of the timeline.⁵⁴⁷

⁵⁴⁴ Exhibit I-220 Tab C Page 11

⁵⁴⁵ NOP Volume 19 page 7004

⁵⁴⁶ NOP Volume 38 page 14213 and Volume 47 page 17930

- Suspicious circumstances in relation to the discovery of his original NRIC.⁵⁴⁸
- The 52/2009 operation was said to be a high profile, sensitive case and of considerable urgency. Given the stage of investigations at the material time, the release of TBH would not have been probable. More so, when TBH's recorded statement was not incriminatory.

4.11 In addition to having to establish that TBH was released, MACC would then need to show that TBH had chosen to remain at the MACC's premises on his own volition. In this regard, the MACC's contentions are:-

- Nadzri's evidence that TBH had asked to remain after release to rest.⁵⁴⁹
- Purported sightings of TBH after 3.30am on 16.07.2009.⁵⁵⁰

4.12 The Bar's position may be summarized thus:-

- Following on from our contentions pertaining to release, in the event that TBH was not released, he could not have chosen to remain.

⁵⁴⁷ Nadzri's ID in Exhibit I-198 and Exhibit I-204

⁵⁴⁸ See earlier submissions under Terms of Reference

⁵⁴⁹ Exhibit I-204 Nadzri's ID page 9

⁵⁵⁰ NOP Volume pages 3970 - 3972 and Exhibit I-199 Folio A34 page 3

- TBH did not choose to remain and that this contention is contrived. For instance, the purported are mere time markers concocted with the view of attempting to show that TBH was alive and on his own.

TBH's State of Mind

4.13 In order to further support their suicide theory, MACC contended that TBH's state of mind whilst at MACC is an important indicator. MACC claims that TBH had cause to fear himself and YB Ean Yong being implicated in alleged wrongdoings. For this, they rely on the following:-

- TBH knew that he was implicated in alleged wrongdoings regarding the allocation and utilization of State funds.
- TBH knew that he would be implicated in alleged wrongdoings in relation to the 4 documents found in his laptop and the payments made to various DAP Branches.

4.14 It is the Bar's contention that TBH's alleged state of mind as contended by MACC is purely speculative and devoid of substance. We have submitted at length above on the factual matrix.⁵⁵¹ A summary of the Bar's contentions to debunk this aspect of the MACC suicide theory is as follows:-

⁵⁵¹ See above (look for citation)

- The central theme of the 52/2009 operation was in relation to false claims, specifically claims being made from State funds from programmes or projects which were not undertaken or carried out. The investigations were confined and defined by this.
- TBH's recorded statement, if accepted, does not and did not implicate either TBH or YB Ean Yong.
- The 4 documents found in TBH's laptop was not pursued or investigated in the manner suggested or taken before this inquiry.
- There is no evidence to show that TBH knew of the payments to the various DAP Branches, which by themselves do not indicate or show any wrongdoing. This was admitted by the MACC HQ themselves when they took over the investigation post the demise of TBH.
- In addition to the state of mind from the perspective of wrongdoings, this must then also have an effect on TBH's psychological make-up, that is he must then be rendered to be in such a state of fear and hopelessness and that there was no way out.
- But, if TBH was said to be released at 3.30am, there was and is a way out. It's not a point of no return or hopelessness. Help may have been sought. TBH had sufficient support, be it from family or at work.

- There was much for TBH to live and look forward to – his impending marriage, the plans he had made towards that including the marriage ceremony and wedding dinner reception, his prospects of fatherhood, his closeness and love for his family and his capability at the work front.
- On a personal level, TBH is said to be level headed, responsible and not given to or prone to irrationality.

4.15 Other elements that pertain to the state of mind of TBH may be gleaned from parts of the submission that follow herein below.

Mystery Note

4.16 MACC seeks to rely on the Mystery Note in aid of their suicide theory. However, the Mystery Note does not advance the suicide theory. In addition to our earlier submission herein on this aspect⁵⁵², we set out in summary the following for purposes of debunking the Mystery Note:-

- The Mystery Note has not been authenticated to be written by TBH. The analysis done by WKY was not compared to any admitted sample of TBH's writing and signature. In this regard, an admitted sample is an undisputed document containing the handwriting and/or signature of a person.

⁵⁵² Look for relevant part of submissions

- The origin and manner and circumstances surrounding the discovery of the Mystery Note, including the date of discovery, are dubious to say the least.
- WKY stated that for him to make a satisfactory comparison and arrive at an opinion, he requires as many as possible identical words or Chinese characters as samples. He admitted that in this instance, he was only able to obtain 1 or 2 such identical words or Chinese characters for comparison.
- In any event, in terms of expert opinion for Chinese words or characters, Courts will be slow to accept the same as it is of questionable value.⁵⁵³
- The Mystery Note is not a suicide note in any event. Even Drs Badi'ah and Nor Hayati do not conclude or opine that the same is a suicide note.

Psychiatric Reports

4.17 Drs Badi'ah and Nor Hayati used a methodology as a basis for their report which was not designed to ascertain suicide. It was designed to ascertain the reason why someone committed suicide. In other words, it is used where we already know it is suicide and it is sought to ascertain why the person committed suicide. Dr. Badi'ah agreed that her opinion ought to be read with this in mind.

⁵⁵³ Teng Kum Seng v PP [1960] MLJ 225; Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor [2003] 2 MLJ 97

4.18 Two Psychiatric Reports were provided to the Commission for consideration. The Bar engaged the services of Prof. Mullen. His report has been marked as Exhibit I-253B. MACC engaged the services of two psychiatrists, Drs. Badi'ah and Nor Hayati. Their joint report has been marked as Exhibit I-254.

Prof. Mullen's Report

Prof. Mullen opined that prior to entering custody, TBH was in the lowest risk group for suicide. He said most of us fall into this category of lowest risk group where the chances of killing ourselves are very small. If TBH did kill himself, in his opinion, things are likely to have occurred both to undermine his psychological stability and to frighten him literally to death. Both views impute liability on the part of MACC.

Prof. Mullen in fact stated that if the evidence of MACC were to be accepted, namely, that TBH was cooperative, not showing obvious distress, and willingly chose to remain in the MACC offices, this, in his opinion would virtually exclude the chances of TBH having taken his own life.⁵⁵⁴

Further, Prof. Mullen opined that if the Mystery Note is not accepted as a suicide note, this would greatly reduce the probability that TBH killed himself.

Prof. Mullen's opinion goes on to say that:-

⁵⁵⁴ Exhibit I-235B para. 31 page 9.

“...it would be remarkable for anyone to voluntarily remain in a place where they had been interrogated for eight hours in preference to returning home. Teoh Beng Hock could not but have been aware of the anxiety of friends and family about his state. Given his enthusiasm for texting and phoning it is very difficult to understand that he would not have immediately reassured them, whatever the time.”

Drs. Badi’ah and Nor Hayati’s Report

- 4.19 Drs. Badi’ah and Nor Hayati’s report makes no conclusion as to suicide. It merely states that TBH has both, risk favouring him for suicide and protective factors that reduce his likely risk for suicide.
- 4.20 We submit that the risk factors for suicide in Drs. Badi’ah and Nor Hayati’s report on an assumption of facts or information provided by MACC which are not accurate.
- 4.21 It is contended that TBH was in a fear inducing situation as shown by the pattern of calls when MACC officers were at the SUK Building. TBH’s phone records however, show that on 14.07.2009, he had made a total of 66 calls as opposed to 65 calls on 15.07.2009. For the relevant period of time, 26 calls were made on 14.07.2009 compared to 27 calls on 15.07.2009. Further, there is no evidence as to the content or subject matter of these calls. It is humbly submitted that nothing really turns on the pattern of calls.

4.22 Second, it is contended that TBH showed a change of demeanour in custody. It was assumed in Drs. Badi'ah and Nor Hayati's report that TBH was pacing up and down, was looking down, in deep thought and regretted surrendering his laptop. However, the MACC officers' evidence has been inconsistent and unreliable on this issue. They appear to have tailored their evidence to suit the purpose. Before the internal inquiry of MACC, they painted the picture that TBH was relaxed and normal. Before the Coroner's Inquest and this Commission, a picture of anxiety was painted.

4.23 Third, Drs. Badi'ah and Nor Hayati's report was premised on two conflicting assumptions, namely:-

(a) They assumed that TBH was released but chose to stay. They opined that this was uncharacteristic since his car was readily available and he could go home. They inferred from this that TBH chose to stay because he was reluctant to furnish MACC with more documents or to face his boss and office mates.

(b) They further assumed that TBH was unable to communicate with his usual social support system because his mobile phone had been taken away. From this they opined that TBH was in an increased sense of isolation.

4.24 The two assumptions above are contradictory. TBH was either released but chose to stay, in which event he would have had

his mobile phone or he was not released and would have been deprived of his mobile phone.

4.25 Fourth, there is no evidence from MACC that TBH was aware of the shorter route to the toilet from Nadzri's room past Hadri's room and the Unit Rekod through the pantry. If Bulkini's evidence is to be believed, TBH only knew of the long route down to the Unit Pentadbiran, across the Bilik Mesyuarat Utama and up past the janitor's room to the toilet. This is because in Bulkini's evidence, when he accompanied Boon Wah to the pantry, TBH was coming from the opposite direction. Therefore the assumption that the window was conspicuous and easily accessible by MACC's own evidence is misplaced.

4.26 Fifth, there is no basis for treating the Mystery Note as a suicide note. Drs. Badi'ah and Nor Hayati's report makes no analysis of the Mystery Note and thus does not proffer any opinion on it.

4.27 Sixth, Drs. Badi'ah and Nor Hayati had stated that the lethality of method of choice, namely, falling from height was a risk factor for suicide by TBH. This is a misunderstanding of the methodology. Falling from a window is a means of committing suicide. It is not a factor in determining whether a person is at risk of committing suicide. As Prof. Mullen said:-

“people do not kill themselves because they have a method to hand, they use the methods at hand if they become suicidal.”

4.28 Seventh, Drs. Badi'ah and Nor Hayati's report stated that by the time the decision the suicide is made, the person would have adopted three attitudes which are described as the three "I"s⁵⁵⁵, namely:-

- (a) Intolerable – one would have experienced such extreme emotional pain that exceeds the threshold that one would normally face;
- (b) Inescapable – no strategies exists for solving the problem that is producing the pain, that is complete hopelessness;
- (c) Indeterminable – the person expects that the situation will not change of its own accord.

4.29 Drs. Badi'ah and Nor Hayati however go on to say of TBH state that:-

*"It is not known whether he had experienced in his mind the effects of being possibly prosecuted on the allegations, whether it would have been devastating for him and/or his organization"*⁵⁵⁶

4.30 Eighth, Drs. Badi'ah and Nor Hayati's report candidly stated:-

*"We do not have enough information to answer the questions: why did the individual do it? What were their reasons? Why at this particular time?"*⁵⁵⁷

⁵⁵⁵ Exhibit I-254 page 15 at (page 14 of the subsequent corrected version)

⁵⁵⁶ Exhibit I-254 page 15 at (page 14 of the subsequent corrected version)

⁵⁵⁷ Exhibit I-254 page 16 at (page 15 of the subsequent corrected version)

- 4.31 Ninth, Drs. Badi'ah and Nor Hayati when discussing the state of mind of TBH in her report set out two life events that occurred in July 2009 that would have affected the state of mind of TBH. The first event was the confirmation that Cher Wei was pregnant. Dr. Badi'ah agreed that this was a positive life event for TBH.
- 4.32 The second life event was the MACC investigation into alleged misuse of funds involving State Assembly members. Dr. Badi'ah was of the view in her report that this posed a potentially threatening situation as shown by TBH's efforts to alert the seven other ADUNs about the investigation in June 2009.
- 4.33 On the contrary, what this shows is that TBH already knew about the investigation and was mentally prepared. The purpose of TBH informing the seven ADUNs was to ensure that they had the documents in place. He did not ask them to destroy them or hide them. This does not connote a person who is fearful of investigations. Conversely, it shows a person who not only is responsible but also had nothing to hide or fear. When examined on this life event, Dr. Badi'ah opined that it was a neutral event, that is, it was not a negative life event with respect to TBH's state of mind.
- 4.34 It is the Bar's submission that the opinion by Prof. Mullen ought to be preferred. The Bar states that TBH was clearly not suicidal for the following reasons:-

- (a) TBH had reasons for living, that is, he was getting married and becoming a father;
- (b) TBH had no past history of pre-existing depressive illness or major psychiatric disorders;
- (c) He had no past or current history of medical illness;
- (d) He had no past history of suicide attempt or family history of suicide;
- (e) He had no past criminal offences;
- (f) He had no past history of substance abuse;
- (g) He was responsible, hardworking and a skilled writer.
- (h) He was also very close to his family members, loves children and respected elders.

All of the above are common factors accepted by Drs. Badi'ah and Nor Hayati in their report.

4.35 Further, the evidence of the people who knew him agreed that TBH was an educated, intelligent, responsible and disciplined man. It is stated in Drs. Badi'ah and Nor Hayati's report that when TBH was informed in June 2009 of MACC seizing documents from the Petaling District Office, TBH had told all of the ADUNs to ensure that their documents are in place. It is pertinent to note that he did not ask them to hide or destroy documents. This is consistent with the evidence that TBH was not only a responsible and an honest person, but was willing to cooperate and assist with MACC's investigation. These are not attributes of a person who would be irrational such as to commit suicide.

- 4.36 TBH was happy to be getting married. He had first proposed to Cher Wei in January 2009. She had asked for time to think about it. In early July 2009, Cher Wei's doctor confirmed that she was pregnant. TBH was looking forward to being a father as he loved children, as evidenced from his photographs in his camera. Cher Wei and TBH fixed their wedding for the 03.10.2009.
- 4.37 TBH, together with his parents and fiancée, had on the weekend before he died visited Cher Wei's parents to formalise their wedding plans. They had made plans for the wedding, had booked a restaurant for his wedding dinner and paid a deposit.
- 4.38 TBH had made out a wedding invitation list and blocked out YB Ean Yong's diary for the wedding dinner. On the morning of 15.07.2009, he was inviting his friends for his wedding and had also asked one of them to be his 'brother' for the wedding. He and Cher Wei had made plans to go back to Malacca on 17.07.2009 for their wedding portraits/photographs to be taken.
- 4.39 He frequently visited his parents in Malacca whenever he could find the time. He gave his mother pocket money on a monthly basis. TBH made an unusual choice for a young single man in buying a mini MPV as opposed to a smaller car because he enjoyed taking his parents and family members on outings and holidays.
- 4.40 In a nutshell, TBH had every reason to live and not a single credible reason to have committed suicide. He obviously had

the comfort and support of his friends, family and fiancée if he were in trouble. He had sanctuary and safe harbour.

4.41 All of the above coupled with MACC's own evidence that TBH was at all times a witness assisting them with the investigation, was well treated, and although perhaps tired, he was otherwise normal, virtually destroys the possibility of suicide.

4.42 MACC had advanced a theory in this inquiry that TBH committed 'honour suicide' that is, that TBH was privy to the alleged wrongdoings being investigated by MACC that night and due to his love and loyalty for his boss and organisation, he chose to kill himself instead of providing information to MACC. The evidence show that the alleged wrongdoings did not feature in any part of the questioning, statement taking and investigation by MACC that night. This was in fact not a feature at the Coroner's Inquest and has only been lately advanced in this inquiry.

4.43 As emphasized several times by the Commissioners in the course of this inquiry, this inquiry is not concerned in determining whether offences were or were not committed by the ADUNs. This is a job for the MACC. With the above caveat in mind, what this Commission is concerned with in relation to the alleged offences by the ADUNs is TBH's state of mind on the night of 15.07.2009 and the early hours of 16.07.2009 prior to his death.

- 4.44 In this respect, it is borne out in this inquiry that the issue of illegality in relation to the utilisation of bumiputera Class F contractors licenses to obtain works performed by non-bumiputeras was never part of the MACC's investigation at the material time pursuant to Borang Aduan 52/2009.
- 4.45 Further, it was never part of the interview and questioning of TBH on the night of 15.07.2009 and the early hours of 16.07.2009. This is evidenced by the written statement MACC claims to have been obtained from TBH. This is also evidenced by the testimony of Arman and Ashraf who interviewed TBH that night. This was confirmed by Shafik, the MACC investigating officer who took over the conduct of the 52/2009 investigation from Anuar and Rosfiza. Shafik concluded his investigations with the recommendation that no offences were found to have been committed and that the file was to be 'kemas untuk simpanan'.⁵⁵⁸
- 4.46 Anuar, Hairul, Arman, Ashraf and Nadzri all gave evidence. They were examined in great detail about the questioning of TBH. None of them alluded to having questioned or instructed to have questioned TBH on this issue of illegality. This alleged illegality concerning dealings with the Class F contractors was not a point raised or relied on by MACC at the Coroner's Inquest, and has only now in this inquiry been put together by MACC. Therefore, not only was the issue of illegality not

⁵⁵⁸ Exhibit I-197 Folio X

operative on the mind of TBH on that night, it was also not operative on the minds of the MACC officers.

4.47 Thus, MACC's attempt to suggest that TBH had committed 'honour suicide' to protect his boss and organization is simply unsustainable and not borne out.

4.48 In any event, there was no such wrongdoing with respect to the Class F contractors as put forward by MACC in this inquiry. Shafik had informed the Commission that there was no provision in law for the State of Selangor that required a Class F contractor to be bumiputera.⁵⁵⁹ This further reinforces the fact that this issue was wholly absent and not operative on the minds of TBH and the MACC investigating officers at the material time.

4.49 YB Ean Yong had informed the Commission that he made all the decision with respect to the appointment of contractors, the budget and approval of quotations. That TBH merely attended to administrative matters pertaining thereto and communicated YB Ean Yong's decision to the contractors. YB Ean Yong stated that he was not aware of the arrangements, if there were any, made between the various contractors. His only interest and concern was to ensure that the work was carried out properly and completed.⁵⁶⁰ The facts show that all such works were completed and certified to be so by the technical officers of the Petaling District Office.⁵⁶¹ Given this, TBH could not be said to

⁵⁵⁹ NOP Volume 47 pages 17873 - 17878

⁵⁶⁰ NOP Volume 48 pages 18077 - 18082

⁵⁶¹ Exhibit I-197(a) Folio A19 page 6 para. 25

have had knowledge of any alleged wrongdoing. This aspect has also been dealt with earlier in this submission.⁵⁶²

4.50 Cher Wei had informed this Commission that TBH was going to resign his job and move back to Malacca with Cher Wei after their wedding. TBH was either going to set up a business or look for a job as a secretary to an Assemblyman in Malacca if there was an opening. There is contemporaneous evidence in support of this in the form of the SMS sent by Cher Wei to TBH on 13.07.2009.⁵⁶³

4.51 It is clear from the above that TBH prioritised his love for his fiancée, unborn child and family over his loyalty to his boss and organisation. If a choice were to be made between living for his fiancée, unborn child and family and a 'honour suicide' out of loyalty to his boss and organisation, it is clear TBH would have chosen the former.

4.52 MACC had sought to introduce the Mystery Note as TBH's suicide note. It is clear from the above that the question of a suicide note does not even arise. In any event, given what is known of TBH and the priorities in his life, if he were to pen a suicide note, such a note would have been addressed to his nearest and dearest, in this instance, his parents and Cher Wei. Knowing also of his love for children and his impending fatherhood, it would have been likely that such a note would have left a message for his unborn child. A person who would

⁵⁶² See TBH's state of mind

⁵⁶³ Exhibit I-51 page 71

take the trouble to write a final message would ensure that it would be left in a prominent place and not leave its discovery to chance. He would not have filed it away amongst other loose papers and placed it in his knapsack. Further, being a skilled writer, he would have left no doubt that this was his last communication and not chance it being discarded.

4.53 Further, the incredulity of MACC's assertion that the Mystery Note is a suicide note is compounded by their own assertion that TBH had his mobile phone. Being a prolific SMS text writer, a more assured, effective and easier method was available to him.

4.54 As stated earlier, MACC vacillated between the theory at the Coroner's Inquest that TBH killed himself because he was unhappy with his impending forced marriage and arrival of his child, and MACC's theory of 'honour suicide' in this inquiry. This is not only devoid of substance but irresponsible and cruel.

CULPABILITY OF MACC FOR TBH'S DEATH

Driven to Suicide

4.55 In the improbable event that TBH did commit suicide, he was driven to it by MACC. As submitted earlier, TBH knew about the MACC seizure of documents from the Petaling District Office in June 2009. When MACC came to YB Ean Yong's office on

15.07.2009, although MACC required TBH to attend at their office for questioning, TBH was willing to cooperate. In fact, MACC's evidence is that he was not required by them but he volunteered.

4.56 When he entered MACC's premises at Plaza Masalam that day, he was no different from the rest of us, namely, in the lowest category of risk for suicide. If TBH killed himself, MACC must have done something between his entering custody and the time of his death. This is the period where he was within the care and control of MACC. There is no doubt that TBH was not released by MACC at approximately 3.30am or anytime proximate thereto.

4.57 If TBH had committed suicide, then MACC must have done something to him to bring this about. To quote Prof. Mullen:-

"things must have occurred in the 12 hours or so between his entering custody and falling to his death which totally undermine his pre-existing psychological stability and capacity to realistically evaluate his situation. Teoh Beng Hock, like all of us had his vulnerabilities. His concern for his family, and for his future wife and mother of his child, could have been turned into a weapon against him by a totally unscrupulous interrogator, as could his loyalty and sense of responsibility to his colleagues. There are interrogation techniques of the type alluded to in Michael Squires' briefing note to the Commission which can totally destroy a person's mental stability and induce such fear that even death seems preferable. Particularly vulnerable to

such techniques would be a law abiding citizen with no prior experience of being in the power of apparently unconstrained authority, particularly if they were cut off from all contact with sources of help and support.”⁵⁶⁴

4.58 Some evidence that MACC officers are capable of using such interrogation techniques are before this Commission. We cite the instance of Bulkini using psychological and physical abuse and intimidation by subjecting Boon Wah to standing at attention continuously for 2 hours, intermittently in darkness and threatening the wellbeing of his wife and daughter.⁵⁶⁵

4.59 We refer also to the specific direction and designation by Hishamuddin to have Ashraf on stand-by for the specific purpose of interrogating TBH. It is remembered that Ashraf played no part in the 52/2009 operation prior to this. There are 14 police reports made against Ashraf for violent physical treatment of persons he interrogated. Most of these reports are supported by medical reports showing injury. Some of these physical treatment meted out were in the extreme and we invite the Commissioners to refresh their minds with reference to Exhibit I-235.

4.60 There is also Hishamuddin. In the course of his evidence, he was arrogant, aggressive when challenged and had a short temper. The Commissioners have seen his demeanour and character and are well placed to form an opinion of the kind of

⁵⁶⁴ Exhibit I-253B page 10 para 34

⁵⁶⁵ Exhibit I-218

person he is. He has been described by some of his officers as fierce and they are in fear of him. This character trait was pointed out to him by Prof. Dr. Hatta.⁵⁶⁶

4.61 The veracity of some of the allegations in the anonymous letter⁵⁶⁷ from MACC officers have been shown to be true. In particular, Hishamuddin's instructions to his officers to distance himself from the 52/2009 operation.⁵⁶⁸ This lends weight to the rest of the said letter which describes the physical aggression of Hishamuddin in his interrogation.

4.62 Hishamuddin was previously the Deputy Director of MACC Selangor (from 2008 to March 2010)⁵⁶⁹. He was the *de facto* and *de jure* superior officer where operations and investigations are concerned. Ashraf joined the MACC sometime in 2005 and was posted to MACC Selangor where he remains todate. During this period of time where Ashraf was in MACC Selangor, Hishamuddin remained as the superior officer of operations and investigations and was in charge of the same.

4.63 During this inquiry, Hishamuddin was confronted as to the existence of these police reports against his officers, including Ashraf. Unflinchingly, Hishamuddin feigned ignorance and claimed to have no knowledge.⁵⁷⁰ This has been proven to be a lie through the evidence of DSP Kamaruddin. For instance, he

⁵⁶⁶ NOP Volume 28 page 10244

⁵⁶⁷ Exhibit I-236

⁵⁶⁸ NOP Volume 45 pages 17019 – 17020

⁵⁶⁹ NOP Volume 31 pages 11166 – 11168

⁵⁷⁰ NOP Volume 27 pages 10043 – 10049

produced a letter from Hishamuddin in relation to a police report made against Ashraf.⁵⁷¹ This letter shows that Hishamuddin has knowledge.

4.64 Hishamuddin and his officers were determined to get a result that night, and the pressure and desperation would have mounted as the hours went by. TBH's alleged recorded statement revealed nothing incriminating. Thus, as at 3.30am, Hishamuddin and his officers did not appear to have obtained what they sought. Whatever happened to TBH happened thereafter. This would have been after the last sighting of him by Boon Wah.⁵⁷² Against this backdrop, it must be borne in mind that the press was on Hishamuddin's back.

4.65 In the unlikely event that this Commission were to hold that TBH committed suicide, the Bar submits that Hishamuddin and his officers must have caused and driven TBH to suicide. Hishamuddin attempted to protect himself by instructing his officers to distance himself and his involvement in the 52/2009 operation.⁵⁷³

4.66 In any event, the MACC has a duty of care to supervise and ensure the safety and wellbeing of those who are in their custody. Custody here must be read to mean not only those who are arrested but shall include those who have been brought on to their premises for questioning or to assist in

⁵⁷¹ Exhibit I-236 and Exhibit I-235 item no. 9

⁵⁷² NOP Volume 32 page 11638

⁵⁷³ NOP Volume 45 pages 17019 – 17020; Volume 49 pages 18692

investigations. This duty is a positive duty. Therefore, even if MACC may not have actively driven TBH to suicide, they are nevertheless culpable/liable for not having properly supervised and cared for TBH's wellbeing and safety.

4.67 As authority for this proposition, we cite from a passage of the leading judgment of Lord Bingham of Cornhill in *R (on the application of Amin) v Secretary of State for the Home Department*⁵⁷⁴:-

*“A profound respect for the sanctity of human life underpins the common law as it underpins the jurisprudence under arts 1 and 2 of the convention. This means that a state must not unlawfully take life and must take appropriate legislative and administrative steps to protect it. But the duty does not end there. The state owes a particular duty to those involuntarily in its custody. As Anand J succinctly put it in Nilabati Behera v State of Orissa [1993] 2 SCR 581 at 607: ‘There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life.’ Such persons must be protected against violence or abuse at the hands of state agents. They must be protected against self-harm (see Reeves v Comr of Police of the Metropolis [1999] 3 All ER 897, [2000] 1 AC 360). Reasonable care must be taken to safeguard their lives and persons against the risk of foreseeable harm.”*⁵⁷⁵

⁵⁷⁴ [2003] 4 All ER 1264

⁵⁷⁵ *ibid.* page 1280 at para [30]

4.68 The above principle was stated in the context of a civil case. It presently does not yet find application in criminal proceedings not because the reasons behind the principle are not sound. The Supreme Court in *DK Basu* had stated that suspicious death or death in custody is the worst crime one could imagine in a civilised society under the rule of law. It had urged in its judgment for legislative change, to wit the burden of proving the suspicious death or death in custody was not by foul means was to be squarely on law enforcement agencies. The reasons are plain. Rarely do you have independent witnesses to such a crime. The victim is held in isolation and wholly within the control of the detaining authority. The witnesses are in most cases interested parties, persons under inquiry. They adhere to a strict chain of command code and are bound by a 'blue wall'. The principle and rationale cannot be faulted. Fortunately the Commissioners are free to adopt the sound rationale and apply the principle. The inquiry proceedings are not criminal proceedings. The ordinary rules of evidence in respect to the onus of standard of proof does not apply to this Commission and the Commissioners are thus free to apply this burden upon the persons who had custody of TBH that night to account and explain.

4.69 Further, the right to life provision as contained in Article 2 of the European Convention is in *pari materia* with Article 5 of the Malaysian Federal Constitution. Article 1 of the said Convention provides for the State's obligation to protect and give effect to the fundamental rights under the Convention. This same obligation is implied in the provisions of the Malaysian Federal

Constitution, in particular, Article 4 thereof which provides that the Constitution is the supreme law of the Federation.

- 4.70 The application of this obligation and duty is found in the criminal offences specified in ss. 304 and 304A of the Malaysian Penal Code. The former provides for the offence of culpable homicide not amounting to murder and the latter provides for causing death by negligence.
- 4.71 It is also pertinent to consider and take into account the facts that have been established in the course of this inquiry that the MACC officers have been coached to streamline their evidence, instructed not to volunteer information in this inquiry, concertedly lied, tampered with and suppressed evidence, and destroyed evidence (for instance, the cleaning up of all data and information in their computers prior to surrendering computers to the Commission). This establishes that there is a deliberate cover up of their roles and involvement, or that of their colleagues or superiors, in the death of TBH.
- 4.72 The evidence collectively shows that MACC and its officers are responsible for TBH's death. In this respect, we refer to the judgment of Justice Sulong Matjeraie JCA in *Mohamad Deraman v PP* [2011] 3 CLJ 601 at page 627⁵⁷⁶ wherein he relied on the oft quoted passage of Thomson CJ as follows:-

⁵⁷⁶ [2011] 3 CLJ 601

“That evidence was entirely circumstantial and what the criticism of it amounts to is this, that no single piece of that evidence is strong enough to sustain the convictions. That is very true. It must, however be borne in mind that in cases like this where the evidence is wholly circumstantial what has to be considered is not only the strength of each individual strand of evidence but also the combined strength of these strands when twisted together to make a rope. The real question is: is that rope strong enough to hang the prisoner?”⁵⁷⁷

- 4.73 In concluding this part of our submission, we are guided by Prof. Mullen’s observations in his report where he states:-

“There is to my knowledge no evidence about or even reported cases of people who have killed themselves when having witness statements taken by authorities.”⁵⁷⁸; and

“If he did kill himself, in my opinion things are likely to have occurred both to undermine his psychological stability and frighten him literally to death”⁵⁷⁹

- 4.74 The officers of MACC are criminally culpable for the death of TBH. In turn, civil liability attaches to MACC.

⁵⁷⁷ *Chan Chwen Kong v. Public Prosecutor* [1962] 1 LNS 22

⁵⁷⁸ Exhibit I-253B page 4 para 9

⁵⁷⁹ Exhibit I-253B page 10 para 36

Culpable Accident or Homicide

- 4.75 As elaborated above, there is precious little MACC have in terms of credible evidence to support their suicide theory. In the absence of suicide, the remaining possible causes of death of TBH are by natural causes, non-culpable accident, culpable accident and homicide.
- 4.76 The evidence show that TBH, prior to entering the premises of MACC, was a healthy 30 year old man with no known illnesses, he does not drink nor smoke, the toxicology reports show that there were no signs of TBH being under the influence of alcohol or drugs.⁵⁸⁰ The facts show that TBH died as a result of injuries sustained from a fall from height. This eliminates death by natural causes.
- 4.77 The window on the 14th floor of Plaza Masalam in which it is said that TBH had exited from is 3 feet 3 inches from the floor. This is at or above the center of gravity of a person of TBH's height of 174cm⁵⁸¹ (which is approximately 5 feet 8 1/2 inches). This makes it difficult for a person to accidentally tip over and fall out of the window. The floor directly abutting the said window is carpeted. It is in evidence that that particular window is an area which the MACC officers frequented to have a smoke.⁵⁸² As stated, TBH was not a smoker.⁵⁸³ There was no reason for TBH to have gone to that window nor is there

⁵⁸⁰ Exhibit I-6

⁵⁸¹ Exhibit I-42 page 2

⁵⁸² NOP Volume 42 page 15676

⁵⁸³ Exhibit I-199. (A39) page 3

evidence of TBH having been seen at or anywhere near the said window. There is no evidence that TBH had accidentally fallen out of the window. MACC themselves do not say that TBH had accidentally fallen out of the window. Death by non-culpable accident is eliminated.

4.78 This leaves the cause of death of TBH being either by way of culpable accident or homicide. By culpable accident, it is meant that there was no intention to kill TBH, however, MACC was reckless, negligent or had unintentionally caused his death.

4.79 It is not disputed that TBH was last seen alive in MACC's premises. Hairul and Anuar admitted in examination that TBH whilst in MACC premises remained their responsibility. It has been established through examination that Hishamuddin was in charge of operations. Several MACC officers came into contact with TBH either interrogating him or taking his statement. Much of the evidence as to what transpired that night had to be extracted involuntarily from MACC officers. In Section 3 herein, the evidence of MACC officers was tested for its veracity. It did not withstand the scrutiny. On the contrary, it clearly evidenced that there was a cover up on the part of MACC. The fact of the cover up and its unraveling would in itself inform this Commission of the circumstances surrounding and contributing to TBH's death.

MACC: THE COVER-UP

- 4.80 Taking into account the totality of the facts presented at this inquiry there is sufficient cause for determining that the death of TBH was a result of culpable accident or homicide. The web of inconsistencies, contradictions, deceit and lies presented by MACC on a *prima facie* reading of the same would not pass the muster of any reasonable person who has followed this inquiry closely. Through evidence, direct and circumstantial, the inquiry has uncovered an elaborate, massive, consistent and planned attempt to cover up the true circumstances surrounding TBH's death.
- 4.81 Bearing in mind that the standard to be satisfied before this Commission is one of reasonable satisfaction⁵⁸⁴, each of this evidence bound together is strong enough to form the proverbial rope as submitted earlier.
- 4.82 The twofold purpose of the cover up perpetuated by the MACC is, first, to shield and protect certain individual officers who were directly involved in and responsible for TBH's death; and second, to make the suicide theory, namely, that TBH took his own life, more believable and plausible.
- 4.83 The Bar submits that the features of the cover-up by MACC, and unraveled in the inquiry is as follows:-

⁵⁸⁴ *Briginshaw v. Briginshaw & Anor* [1938] 60 CLR 336 at 362

- (a) Hishamuddin was the highest-ranking MACC officer who was in charge and in control of the operation on 15.07.2009 and 16.07.2009. He played a major role in the operation.
- (b) The investigations were expedited as there was an urgent need to obtain 'results' on 15.07.2009 and 16.07.2009.
- (c) TBH was central to the 52/2009 operation. He was the political aide of YB Ean Yong, and an administrative intermediary between YB Ean Yong with 3rd party suppliers and contractors such as Boon Wah and Wye Wing. By MACC's reckoning, TBH would be a key witness in any prosecution or an accomplice to any wrongdoing. Answers were needed from TBH.
- (d) On the night of 15.07.2009, contrary to what MACC wants us to believe, TBH was treated as a suspect and not as a mere witness who had voluntarily followed MACC officers to assist in investigations. TBH was not released at approximately 3.30am on 16.07.2009. TBH was not free to leave as he pleased, and his mobile phone and/or NRIC were not returned to him. The purported 'discovery' of TBH's mobile phone by Anuar in the morning of 16.07.2009 has been exposed as an account meant to 'align' Anuar's testimony that he no longer held on to TBH's mobile phone post-3.30am.

MACC needed and attempted to perpetuate a version of events that showed TBH was treated as a witness, and that they released him at 3.30am. We have uncovered this attempt at concoction, and demonstrated how it is factually inaccurate.

- (e) The 'interview' by Arman and Ashraf and subsequent statement-recording by Nadzri was said by MACC to have been done properly, without coercion and absent of improper mental pressure or physical abuse by the relevant MACC officers. First, both the 'interview' and subsequent statement-recording were conducted illegally in contravention of the MACC Act. Second, the testimonies of Arman, Ashraf and Nadzri were littered with inconsistencies and illogicality as if the three of them had something to hide, that is, they did more to TBH than they have been prepared to reveal. Third, little, if any, information was obtained during the said episodes. Fourth, Arman's original handwritten notes of TBH's 'interview' and the original TBH statement recorded by Nadzri have gone missing. It is to be noted that as early as 09.10.2009, the original of the TBH statement was not seen again as is shown by the instance of WKY being provided with a photocopy for his analysis. Fifth, the movements and physical state of TBH after Boon Wah is said to have briefly seen TBH sometime after 2.30am are in grave doubt. Specific time markers were employed by MACC (such as Ashraf, Raymond and Sachi) to validate

and authenticate the purported sightings for these officers to hold out a story that they saw TBH at certain times and places, and that he was alive then.

MACC needed and attempted to perpetuate a version of events that showed TBH was not mentally or physical abused. One can only conclude based on the evidence presented by Arman, Ashraf and Nadzri that something sinister happened to the extent that the MACC officers, when testifying, were inconsistent and could not hold themselves out as sounding credible because there was just too much to hide, and too many lies, multiplied, presented.

- (f) On 15.07.2009, MACC had gone to Boon Wah's house to question him and search for documents pertaining to the Merit Link Enterprise supply of flags. They questioned him there for approximately 2 to 3 hours, and then took him to Plaza Masalam for a marathon interrogation session of about 17 hours, that is, until 1.30pm on 16.07.2009. Despite this, there was no mention of the Boon Wah investigation in the MACC investigation papers. References to this were also scratched out from TBH's statement. Till this day, the original of the TBH statement has not been produced by MACC, and is said to be missing. This is inexplicable, and yet telling at the same time.

- (i) In actual fact, MACC focused on the supply of flags by Merit Link Enterprise. Boon Wah was a key witness and/or suspect. MACC did not conduct any 'groundwork' save for seizing the relevant claim documents of Merit Link Enterprise and bringing in Boon Wah for questioning on 15.07.2009. Investigations into the Merit Link Enterprise transaction had only just begun and yet, 'results' were needed that same evening.
- (ii) TBH had requested Boon Wah to supply the flags for the National Day celebration on 29.08.2008. The flags were supplied, and the claim made by Merit Link Enterprise was paid. TBH was the link between Boon Wah/Merit Link Enterprise and YB Ean Yong.
- (iii) TBH and Boon Wah were separately questioned by MACC officers on the Merit Link Enterprise transaction. MACC officers did not obtain any incriminating information, admission or confession from TBH or Boon Wah.

Hishamuddin knew of this state of affairs.

- (iv) Hishamuddin was in the office from 8.30 to 9.00pm on 15.07.2009 to about 6.00am on 16.07.2009. By 3.30am, Anuar and Hairul were no longer involved in conducting the investigations.

Hishamuddin was solely in control.

- (v) From approximately 3.30am to 5.00am, MACC officers studiously avoided the top left section of the MACC office where the window TBH allegedly fell from is located.
- (vi) The conduct of 'cross-referencing' of information and by extension, the cross-interrogation of witnesses, is a common MACC technique to obtain information.
- (vii) 'Cross-referencing' is usually done by Hairul and Anuar. If they are not available, Hishamuddin would conduct the 'cross-referencing'.
- (viii) At approximately 3.30am on 16.07.2009, and without any useful information having been obtained, Hishamuddin had the opportunity and need to ensure all questions were answered, and incriminating evidence obtained including by way of admissions or confessions.

Hishamuddin, known as a workaholic and who desired swift 'results' from investigations he handled, personally and/in concert with other MACC officers available in the office that evening conducted the 'cross-referencing' of information regarding the Merit

Link transaction. He had to truncate the evidence-collecting process.

The interrogation of TBH continued.

- (g) By no coincidence, Ashraf only left at about 5.00am, Hishamuddin left at about 6.00am and Zulkefly left at about 7.00am on 16.07.2009. Zulkefly knew that TBH had died before he left MACC Selangor. He returned to MACC Klang, informed his colleagues about the death, left for home immediately and did not return to work on that day.
- (h) There was ample opportunity available to, among other officers, Ashraf, Hishamuddin and Zulkefly to clean up and destroy any trace of evidence.
- (i) By 7.00am, taken at its very latest, news of TBH's death had spread. Officers at MACC Klang were the first to know, and talked about it in the office.
- (j) Between 7.00 to 8.30am, Hairul and Anuar are seen by Wye Wing in discussion over a computer in Hairul's room.

The MACC cover-up was by then in motion.

- (k) At about 1.30pm, TBH's body is 'discovered' sprawled on the 5th floor corridor of Plaza Masalam. ASP Nazri receives little, if any, cooperation from MACC officers when he arrives to investigate the crime scene. According

to ASP Nazri, none of the relevant MACC officers were available for his questioning. Save for Nadzri, they remained unavailable to the police until the next day. In any event, they gave their 112 statements to the police only after a 'briefing' by Hishamuddin at about 8.30pm on 16.07.2009. None of the officers went home thereafter until the next evening when they went to IPD Shah Alam to give their said statements. They were all corralled overnight at the Plaza Masalam office.

- (l) The authenticity of the Mystery Note, its mysterious 'discovery' and the chain of evidence post-'discovery' lends credence to the Bar's emphasis that the Commission must be cautious when dealing with the said Note. Its authenticity has not been proved and the improbable account of how it was 'found' much later – for better or worse – supports the argument that the Mystery Note was created by MACC to support its suicide theory. The Bar has, it is submitted, dealt at length and debunked the Mystery Note and suicide theory.

- (m) The significance of the use of mobile phones is not lost on MACC. The absence of heavy traffic in terms of calls made and received and SMS text messages sent and received in the mobile phones of key MACC officers during the crucial period of the early morning of 16.07.2009 (which the Bar submits was when MACC first knew about TBH's death) strongly suggests that the relevant records and entries were deliberately deleted to

avoid detection. Some MACC officers have since been found to have been 'careless' in their destruction of records and entries, and have been caught out when confronted with these SMS text messages. MACC's computers were also seized much later than expected in an investigation of this nature. Why did key MACC officers feel the 'need' to remove records and entries from their mobile phones and computers if there was nothing to hide?

- (n) Various briefings and meetings were held with MACC officers chaired by the top brass of MACC to streamline the accounts of MACC officers in respect of the events on 15.07.2009 and 16.07.2009. As immediate as the night of 16.07.2009, Hishamuddin called a meeting of his officers to discuss ways they were to answer questions by the police during the 112 statement-recording. It is also in evidence that Hishamuddin instructed his officers to say that the 52/2009 operation was led by Hairul, and not himself. Why the need to distance himself?

MACC officers such as Azian and Azeem either attempted to dissuade the cover up or expressed hopelessness at the situation. They were uncomfortable with the attempted cover up. Azian warned her superior, Hairul, that it would not be beneficial to follow Hishamuddin's instructions as it would backfire. Azeem was wary about Hishamuddin's heavy hand in directing how MACC officers were to explain his (Hishamuddin) and their roles, when required to do so to the authorities.

At the same time that they were coached to render streamlined evidence, the MACC officers were also instructed not to volunteer information but adopt a non-cooperative attitude towards police investigations into TBH's death, and at the Coroner's Inquest and at this inquiry. Naturally, most of the MACC officers who testified at the inquiry constructed a 'wall', thin though it may be, of denial and ignorance. The complicity of silence and inactivity in the search for the truth extended far beyond MACC to the upper echelons of the AGC, an institution meant to uncover the truth and protect justice, for justice cannot protect itself. Coaching of MACC officers to answer questions at the Coroner's Inquest into TBH's death and at this inquiry was a norm. As an example, Azian informed this Commission that MACC officers were told by SFC Dato' Abdul Razak not to volunteer and to suppress information.

- (o) The inquiry has not only thrown up untenable testimony from MACC officers, it has also thrown up clear evidence of tampering with such an important document as the Investigation Diaries. The evidence of MACC officers on the Investigation Diary is not credible. As observed by the Commissioners, most MACC officers seem to have a better memory with the passage of time. Five Diaries were only produced upon request by the Commission. At least three Diaries were amended and 'padded-up' to suit the suicide theory of MACC. Six were not written, and two were prepared but cannot now be traced. The existence

of other Investigation Diaries was even denied by MACC prior to their existence being fished out in the course of examination. MACC officers would not have gone through so much trouble to prepare improved versions of their Diaries or deny their existence unless they were specifically instructed to do so and had to do so, that is, they had something to hide. During the course of the inquiry, many MACC officers were found wanting when referred to and questioned on their Diaries.

(p) MACC's staged-managed cover up had to have the following features, *inter alia*:

(i) No officers should be near the window TBH allegedly exited from at the alleged time of the incident which could have in all probability been between 3.30 to 6.00am. Unsurprisingly, all of MACC officers had a reason – believable or incredible – to have studiously avoided the window during the said period.

(ii) MACC officers such as Anuar and Hishamuddin had to feign ignorance about the time of TBH's death, and feign surprise when they first 'heard' about the discovery of TBH's body from their colleagues. It was Amin's evidence that a group of MACC Klang officers were already discussing the death in before TBH's body was officially 'found' in the afternoon of 16.07.2009.

Based on the evidence of Amin and Zulkefly, we are able to infer that Zulkefly, who allegedly slept at the “*surau*” and saw Anuar there, and then left at 6.59am from MACC Selangor had by then known of the death of TBH. It was Zulkefly who informed his colleagues at MACC Klang as early as 7.00am on 16.07.2009 about TBH’s death when he went back to stamp his punch card, and the word spread. Zulkefly did not work that day and he went home immediately. He has todate not given any good reason why he did not report for work on 16.07.2009.

- (iii) Anuar had to create a ‘discovery’ of the mobile phone of TBH on the morning of 16.07.2009, otherwise he would be hard-pressed to explain why he was still keeping the mobile phone of a dead person. TBH’s mobile phone was never returned to TBH as he was not released. Hence, Anuar needed an ‘alibi’ for this and so he had Hairul and Hishamuddin, two interested parties also implicated in TBH’s death, and who probably knew what happened to TBH, to confirm his account that he found TBH’s mobile phone in the office and thereafter Anuar went to look for TBH around the office.
- (iv) MACC had to provide as few leads as possible and distance further inquiries as to how TBH died.

MACC needed to break the link between the investigation into the Merit Link Enterprise supply of flags and TBH. This is to craft and devise a story that MACC did not need to keep TBH for 'cross-referencing' and cross-interrogation. Supportive of this, we have seen that Boon Wah's statement does not appear in MACC's Investigation Papers, and the questions and answers in TBH's statement relating to the Merit Link transaction have been cancelled out.

- (v) MACC had to raise more issues and doubts in respect of 'suspicious' transactions that TBH was handling to impute apparent knowledge on the part of TBH of wrongdoing at the time of his questioning on 15.07.2009. Further, MACC needed to paint a picture that TBH was concerned, worried and under pressure. He therefore had to take his own life. The Bar has shown that there was nothing which could have implicated TBH or accelerated his self-doubt to such an extent that he would commit suicide.

4.84 In the overall scheme of things, it is not unfair to say that MACC acted as early as the morning of 16.07.2009 to manufacture, tamper with, suppress, destroy and synchronise evidence in an effort to exonerate themselves and point the finger at the deceased, TBH. These are usually known as acts to subvert the course of justice, and are possible offences pursuant to ss. 191,

192, 201 to 204, 218 and 464 read with ss. 107, 108, 120A and 511 of the Penal Code.

4.85 The Bar submits that the MACC cover-up was to mask the wrongdoing of MACC officers that led to TBH's death.

4.86 In consequence of this, the evidence of injuries sustained by TBH as a result of the fall rendered by the forensic pathologists' is not directly material to the issue of determining MACC's or its officers' responsibility or culpability for his death, save for two aspects:-

(a) Their unanimous view that TBH died as a result of injuries sustained from a fall from great height;⁵⁸⁵ and

(b) Their unanimous view that a fall from such great height would mask any pre-fall injuries.⁵⁸⁶ Prof. Vanezis did not wholly discount the possibility of there being pre-fall injuries, for instance, the fracture to the manubrium sterni.⁵⁸⁷

4.87 In respect of paragraph (b) above, it thus cannot be gainsaid that there are strictly no pre-fall injuries. If MACC is culpable/liable, it does not matter what injuries TBH sustained save that such injuries had caused his death.

⁵⁸⁵ Exhibits I-42; I-82 and I-90

⁵⁸⁶ NOP Volume 25 page 9299

⁵⁸⁷ NOP Volume 25 page 9434

- 4.88 The evidence of Assoc. Prof. Salleh (Associate Professor of Mechanical and Aeronautical Engineering) which was expected to assist in determining the dynamics of a fall and the forces operating therein was of little value as it was shown to be premised on too many assumptions which were not proven. Assoc. Prof. Salleh agreed that his analysis using an elliptical inanimate object for his report was not suitable, and had himself said that he was not satisfied with his report.⁵⁸⁸

MACC: Civil Liability

- 4.89 In terms of civil liability and responsibility, it is for MACC to show that they are not responsible for TBH's death. In cases of death in custody, or suspicious death, the burden of proof is on the law enforcement agency to establish that the death was not caused by them directly or indirectly. The MACC and its officers have failed to discharge this burden.
- 4.90 Courts have been known to be alert of the tell-tale signs of deaths in custody and the ensuing concoction and web of deceit sought to be spun by law enforcement agencies. We cite an authority as illustration.
- 4.91 In *State of Madhya Pradesh v Shyamsunder Trivedi*⁵⁸⁹, the brief facts are as follows: The deceased was tortured during police interrogations. He died in police custody. In the prosecution of the police offenders, the defence set up was this. The deceased

⁵⁸⁸ NOP Volume 46 page 17576

⁵⁸⁹ (1995) AIR SCW 2793

had been released from police custody at about 10.30pm the night before. It was another police officer who found the deceased near a tree elsewhere, wriggling in pain, at approximately 7.00am the next day. Upon approaching, the deceased died. Remarkably, a police report was even made on this alleged discovery near the tree. On appeal, the acquittal of various police officers were set aside, and were convicted for various offences.

- 4.92 The preceding case was expressly referred to in the celebrated case of *DK Basu v State of West Bengal*⁵⁹⁰. Anand J (later Chief Justice of India), cited the said authority as an apt illustration of the observations made by himself in respect of custodial deaths. Some of the observations merit reproduction:-

“Death in custody is not generally shown in the records of the lock-up and every effort is made by the police to dispose (sic) of the body or to make out a case that the arrested person died after he was released from custody. Any complaint against such torture or death is generally not given any attention by the police officers because of ties of brotherhood.”

“Even where a formal prosecution is launched by the victim or his kith and kin, no direct evidence is available to substantiate the charge of torture or causing hurt resulting into death, as the police lock-up where generally torture or injury is caused is away from the public gaze and the witnesses are either

⁵⁹⁰ (1997) AIR 610 SC

policemen or co-prisoners who are highly reluctant to appear as prosecution witnesses due to fear of retaliation by the superior officers of the police. It is often seen that when a complaint is made against torture, death or injury, in police custody, it is difficult to secure evidence against the policemen responsible for resorting to third degree methods since they are in charge of police station records which they do not find difficult to manipulate.⁵⁹¹ (emphasis added)

- 4.93 Given these observations, this Commission similarly, ought not to be slow to discern the very many tell-tale signs which were brought to the fore before this inquiry.

MACC: Civil Burden of Proof

- 4.94 It is trite and well established that whenever a death in custody occurs, the burden of proof falls squarely upon the detaining authority to provide an explanation for the death. Such a proposition finds expression in various jurisdictions across the world.

- 4.95 In *Salman v Turkey*⁵⁹², the European Court of Human Rights held as follows:-

“In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of

⁵⁹¹ *ibid.* page 619

⁵⁹² [2000] ECHR 21986/93

*State agents but also all the surrounding circumstances. Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Consequently, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see, amongst other authorities, Selmouni v France judgment of 28 July 1999, to be published in Reports 1999- , para. 87). The obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies.”*⁵⁹³

- 4.96 The duty of care and the burden of proof was judicially interpreted as being enshrined in Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. In this context, Article 2(1) provides as follows:-

*“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”*⁵⁹⁴

- 4.97 In the United Kingdom, the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 has been enacted as domestic law under the Human Rights Act 1998. *Salman v Turkey* has been cited with approval and

⁵⁹³ Ibid at para 99; Also applied in *Anguelova v Bulgaria* [2002] ECHR 38361/97

⁵⁹⁴ This is *pari material* with Article 5 of the Malaysian Federal Constitution.

applied by the House of Lords in *R (on the application of Amin) v Secretary of State for the Home Department*.⁵⁹⁵ The House of Lords also quoted with approval *Jordan v UK*⁵⁹⁶ as follows:-

*“Where the facts are largely or wholly within the knowledge of the state authorities there is an onus on the state to provide a satisfactory and convincing explanation of how the death or injury occurred.”*⁵⁹⁷

4.98 In similar vein, Courts in India have also interpreted Article 21 of the Indian Constitution as imposing a duty of care, on a strict liability basis and admits of no exception, and the burden on the detaining authority to explain injuries or fatalities in custody. Cases to this effect include the following: *Nilabati Behera v State of Orissa*⁵⁹⁸, *DK Basu v State of West Bengal*⁵⁹⁹, and *Jayalakshmi v State of Tamil Nadu*⁶⁰⁰. These preceding cases also serve as authorities for the proposition that a claim for monetary or pecuniary compensation will sound against the State for established infringement of the fundamental right to life.

4.99 Article 2(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and Article 21 of the Indian Constitution both house the fundamental provision commonly referred to as the right to life.

⁵⁹⁵ [2003] 4 All ER 1264

⁵⁹⁶ (2001) 11 BHRC 1 at 30 (para 103)

⁵⁹⁷ *ibid.* page 1273

⁵⁹⁸ (1993) 2 SCR 581 at 607

⁵⁹⁹ 1999 AIR 610 SC

⁶⁰⁰ (2007) 4 MLJ 849

- 4.100 As stated above, in Malaysia, the life fundamental provision of the right to life is enshrined in Article 5 of the Malaysian Federal Constitution. In this context, Article 5(1) reads as follows:-

“5(1) No person shall be deprived of his life or personal property save in accordance with law.”

Threshold – Standard of Proof Required

- 4.101 Over and above the burden being cast upon MACC, the standard of proof required of MACC for the purposes of absolving liability for the death of TBH appears to be an onerous one.
- 4.102 In *Salman v Turkey*⁶⁰¹, when alluding to the standard of proof required in terms of providing an explanation, reference was made to the application of the standard of beyond reasonable doubt.
- 4.103 *“In assessing evidence, the general principle applied in cases has been to apply the standard of proof “beyond reasonable doubt” (see Ireland v United Kingdom judgment of 18 January 1978, Series A no. 25, para. 161). However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where events in issue lie wholly, or in large part, within the*

⁶⁰¹ [2000] ECHR 21986/93

exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention, Indeed, the burden of proof may be regarded as being resting on the authorities to provide a satisfactory and convincing explanation.”

4.104 The Bar submits that the imposition of such a threshold is sound and in accord with policy and the harsh and practical realities of cases involving injuries or deaths in custody. In this regard:-

- Transparency of action and accountability will then become a hallmark, especially when the conduct of a law enforcement agency is called into question.
- In most, if not all, cases of suspicious death or death in custody, the only witnesses are the persons whose conduct is being investigated. The law recognises that this poses in almost all such instances an insurmountable impediment to justice if the burden is not placed upon those with knowledge to explain themselves. Otherwise, the justice system would be undermined and the protection afforded by Article 5 of the Malaysian Federal Constitution would be made illusory.
- When injuries or deaths occur in custody, Courts have taken judicial notice of the inherent and harsh realities arising, including what is known generally as the ‘blue wall

of silence', and the manipulation and tampering of evidence. In turn, this often results in a miscarriage of justice and makes the justice delivery system a suspect. The cure cannot be worse than the disease.

4.105 The Bar therefore submits that the burden of proof falls upon MACC to provide an explanation for the death of TBH, failing which, civil liability attaches to MACC.

4.106 Before this inquiry, MACC has proffered nothing but the suicide theory. As has been shown above, the suicide theory is bereft of substance. Therefore, MACC has failed and/or unable to discharge its duty and burden in providing an explanation as to the death of TBH. Hence, civil liability attaches.

SECTION 5

The Malaysian Bar's Proposals

FIRST TERM OF REFERENCE AND RECOMMENDATIONS

To enquire whether or not there was any impropriety in the conduct of the examination of Teoh Beng Hock in the course of an investigation into a Shah Alam Report Number 0052/2009 by the Malaysian Anti-Corruption Commission in relation to its Standing Orders and practices and to recommend any appropriate action, where necessary.

5.1 The Bar notes that, in the course of the inquiry, the MACC had produced to the Commission its Standing Orders⁶⁰² and through the MACC Deputy Chief Commissioner of Operations, Dato' Shukri, had in writing answered and explained certain aspects of the operations of MACC.⁶⁰³ The common position of the MACC has been that TBH was called in for questioning as a witness on 15.07.2009, and he was not a suspect. In this regard, we note that MACC had produced before this inquiry the following Standing Orders which are relevant to witnesses and which were then in force on 15.07.2009 to 16.07.2009 when TBH was required to assist in investigations, namely:-

- (a) *Perintah Tetap Ketua Pengarah BPR Malaysia Bab B (Siasatan) Bil 2 Tahun 1998 – Prosedur Memerintah*

⁶⁰² Exhibit I-200

⁶⁰³ Exhibit I-212

*Kehadiran dan Merekod Pernyataan Saksi Di Bawah Subseksyen 22(1)(a) dan Subseksyen 22(8) Akta Pencegahan Rasuah 1997.*⁶⁰⁴ (“**SO No. 2/98**”)

(b) *Perintah Tetap Ketua Pengarah BPR Malaysia Bab B Siasatan Bil 7 Tahun 1998 – Prosedur Penggeledahan di bawah Seksyen 23 Akta Pencegahan Rasuah 1997.*⁶⁰⁵ (“**SO No. 7/98**”)

(c) *Perintah Tetap Ketua Pengarah BPR Malaysia Bab B (Siasatan) Bil 12 Tahun 1998 – Prosedur Penyitaan Harta Alih.*⁶⁰⁶ (“**SO No. 12/98**”)

5.2 After TBH’s death, MACC updated their Standing Orders in respect of the treatment of witnesses:-

5.3

(a) *Perintah Tetap Ketua Pesuruhjaya Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) Bab B (Siasatan) Bil. 2 Tahun 2010 Prosedur Memerintahkan Kehadiran dan Merekodkan Pernyataan Orang yang Diperiksa (Saksi) Di Bawah Subseksyen 30(1)(a) dan Subseksyen 30(8) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009.*⁶⁰⁷

This Standing Order repeals the SO No. 2/98.

⁶⁰⁴ Exhibit I-200 Bil. 1

⁶⁰⁵ Exhibit I-212 Bil. B2

⁶⁰⁶ Exhibit I-200 Bil. 5

⁶⁰⁷ Exhibit I-200 Bil. 6

- (b) *Perintah Tetap Ketua Pesuruhjaya Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) Bab B (Siasatan) Bil. 7 Tahun 2010 – Prosedur Penggeledahan di bawah Seksyen 31 Akta Suruhanjaya Pencegahan Rasuah Tahun 2009.*⁶⁰⁸

This Standing Order repeals the SO No. 7/98.

- (c) *Perintah Tetap Ketua Pesuruhjaya Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) Bab B (Siasatan) Bil. 17 Tahun 2010 Prosedur Penyitaan Harta Alih Di Bawah Seksyen 33 Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009.*⁶⁰⁹

This Standing Order repeals the SO No. 12/98.

5.4 For the purposes of this submission, the applicable Standing Orders as at the time of TBH's death are SO No. 2/98, SO No. 7/98 and SO No. 12/98.

5.5 On 15.07.2009, it is not in dispute that:-

- (a) MACC officers raided YB Ean Yong's office. Items seized were a laptop (Acer Aspire 47152) and a CPU (HP Compaq dx 2810 MT 250). The items were listed in the

⁶⁰⁸ Exhibit I-212 Bil. B1

⁶⁰⁹ Exhibit I-200 Bil. 9

“Senarai Penyitaan Harta Alih”.⁶¹⁰ They were seized under s. 33 of the MACC Act.

- (b) TBH was brought to MACC Selangor at about 6.00pm. After being ‘interviewed’ by numerous MACC officers including Arman and Ashraf, TBH’s statement⁶¹¹ under s. 30(8) of the MACC Act was purportedly recorded by Nadzri from 1.30 to 3.30am on 16.07.2009.

5.6 The Bar notes that SO No. 2/98, SO No. 7/98 and SO No. 12/98, in respect of witnesses, which were applicable to TBH on the night of 15.07.1009 to the morning of 16.07.2009, affords very little protection to witnesses in respect of their well-being, state of physical and mental health, their treatment and movements.

5.7 Suspects under investigation by MACC are granted more legal rights than witnesses. Despite the limited scope of protection afforded to witnesses, there were nevertheless several infractions of MACC’s Standing Orders.

5.8 In particular the following violations were evident:-

- (a) MACC had searched YB Ean Yong’s office and seized TBH’s laptop and CPU under his care without obtaining a written order from the Public Prosecutor or an officer of MACC of the rank of Chief Senior Assistant

⁶¹⁰ Exhibit I-62

⁶¹¹ Exhibit I-69 and Exhibit I-197(a) (A17)

Commissioner or above as required under s. 31(1) of the MACC Act. This is a breach of Orders 3.4, 4, 5 and 6 of SO No. 7/98 and Order 4.2 of SO No. 12/98.

- (b) There was no justification to support MACC's action to search YB Ean Yong's office and seize the said CPU and laptop without a written order under s. 31(1) of the MACC Act as there was no suspicion that evidence would be tampered with, removed and/or destroyed. Bearing in mind that the 52/2009 operation started as early as June 2009, there was no justification for the waiver to obtain the written order.
- (c) The Anuar led raiding team failed to take photographs and label the CPU and the laptop, and the sites from where these items were seized from as well as prepare a sketch plan of the same. This is in breach of Order 4.4.2 of SO No. 12/98.
- (d) The purported printing of 4 documents allegedly from TBH's laptop by Najeib at MACC Selangor which was then used in the interrogation of TBH was not done in TBH's presence and for his verification. TBH was not given an opportunity to confirm those were the documents in his laptop and neither was he asked to sign any seizure list regarding the 4 documents. This is a breach of Orders 4.4.1 and 4.4.4 of SO No. 12/98. The authenticity of the said 4 documents are in dispute.

- (e) With reference to TBH's alleged statement⁶¹² recorded by Nadzri on the morning of 16.07.2009 and leaving aside the question of the authenticity of the same, MACC failed to issue a written order to TBH to be examined orally to assist investigations. This is a breach of Order 4.1 of SO No. 2/98.

Further, the Bar has submitted that the recording process under s. 30(8) MACC Act was flawed and illegal. This is because the officers who had earlier 'interviewed' TBH, namely, Arman and Ashraf under s. 30(1) of the MACC Act did not subsequently record TBH's statement under s. 30(8). Another officer, Nadzri, recorded TBH's statement. This is a breach of Order 4.2.1 of SO No. 2/98.

- (f) Nadzri, when recording TBH's statement, had used his (Nadzri) own words to answer a substantial part on the questions. In this event, it is unclear which parts of the statement were the actual answers of TBH, and which were not. This is a breach of Order 4.2.5 of SO No. 2/98.
- (g) The words, "*Tandatangan Pegawai Yang Memeriksa*" do not appear on the last page of TBH's statement at the portion where Nadzri purportedly signs off as the recording officer. This is a breach of Order 4.2.9 of SO No. 2/98.

⁶¹² Exhibit I-69 and Exhibit I-197(a) (A17)

- 5.9 The crucial fact which has yet to be satisfactorily explained at the inquiry is that TBH's *original* statement recorded by Nadzri is missing. Without the same, the inquiry is unable to verify the authenticity of the statement and whether it was made as alleged by Nadzri. The violations expressed above are predicated on the assumption that the copy of TBH's statement given at the inquiry is the same document created on the morning of 16.07.2009.
- 5.10 The Bar reiterates that the Standing Orders in respect of witnesses are inadequate. Much has been left therefore to the logic, good sense and discretion of MACC officers when dealing with witnesses. It is assumed that witnesses will be treated in a friendly and non-confrontational way as their assistance and support is necessary if MACC is to effectively carry out its functions. Law enforcement agencies around the world have however surreptitiously and under the guise of seeking assistance from 'witnesses' invited persons who may actually be considered suspects to avoid the more onerous legal protection afforded to suspects. Once they are within the clasp of law enforcement agencies these 'witnesses' are then treated like suspects. This was the case with TBH, which led to his death.
- 5.11 There should therefore be a clear distinction between the treatment of witnesses and suspects. The rights of witnesses should be clear, specified and enshrined in law. The Bar prefers that legal rights of both witnesses and suspects be enacted as

part of the MACC Act because it will be transparent and accessible to the Malaysian public.

5.12 It is undesirable and insufficient to merely set out these rights by way of Standing Orders which entirely depend on the absolute discretion of MACC, and which are not transparent as they are usually classified as an 'official secret'. Adopting the Parliamentary process is more democratic. A witness or suspect has a right to know his rights when taken into custody or called upon to assist in an investigation.

5.13 The Bar herein respectfully recommends a non-exhaustive list of issues and proposals for the consideration of this Commission as a means to improving the legal protection to be afforded to witnesses assisting in a MACC investigation:-

Qualifications and Training

- (a) All MACC officers who are to be employed and/or to carry out functions as surveillance, raiding, enforcement and investigating officers should at the minimum have completed tertiary education.
- (b) MACC officers who are to be employed and/or to carry out functions as surveillance, raiding, enforcement and investigating officers should undergo a more extensive and comprehensive training programme. They ought to be examined and only enlisted for service if they meet the required standards.

- (c) Continuing education and training of MACC officers should be compulsory.

Infrastructure

- (d) The infrastructure of MACC's premises and offices should be improved and upgraded:-
 - (i) Every MACC office should be equipped with CCTV surveillance cameras available to record the movements and actions of every person who enters the office or any of its rooms.
 - (ii) There should be a specified waiting room for witnesses to be placed in while waiting for their interview or statement- recording. This is to prevent untoward incidents from happening. Witnesses should not be required to wait for more than 30 minutes save with good reason, and should at all times be escorted and accompanied by a designated MACC officer.
 - (iii) There should be a room specified for the interview and statement-recording of witnesses (**"Interview rooms"**). Interviews should no longer be conducted in the rooms of MACC officers or anywhere else for that matter save in the Interview rooms. These rooms should be located on the ground floor of

every MACC office, and should not be locked during the session.

- (iv) Interview rooms should be equipped with one-way glass mirrors enabling the witness's lawyer to observe the interview without interfering with the duties of the MACC officers.
- (v) All interviews and statement-recording of witnesses should be captured by way of video and audio recording, and video and audio equipment should be installed in the relevant rooms for this purpose. A copy of the video recording and statement recorded should be given to the witness at the end of the session.
- (vi) There should be a computerised system recording the entry and exit of all persons into MACC offices including details such as the time, the purpose and with whom he or she entered or exited the premises. This system should be complemented by a witness log book which must be signed by the relevant witnesses and MACC officers.
- (vii) There should be a specified room for MACC officers to rest and/or sleep if work requires them to lengthen their stay in their office. MACC officers should no longer be allowed to sleep in their rooms.

The Interview and Recording Process

- (e) Section 30(1) of the MACC Act should be amended to state that witnesses are only required to attend for oral examination by the MACC upon the issuance of a written order to that effect. A verbal order to attend is insufficient and can lead to abuse as there is no accountability.
- (f) Witnesses should not be left unattended. The witness should at all times be accompanied and escorted by a designated MACC officer who must regularly report the movements of the witness to the Investigation Officer to ensure that MACC is informed of the state and movements of the witness.
- (g) Interviews and the statement-recording of witnesses should only be conducted during office hours, namely, 9.00 to 5.00pm. Each session must last for no more than 1 hour at a stretch, and breaks between each session should be no less than 15 minutes each.⁶¹³
- (h) Basic amenities such as food and beverage must be given to witnesses without the necessity of the witness making the request.
- (i) Witnesses should be informed, in plain and simple terms in a language that they understand, of their right to legal

⁶¹³ Even on the accounts of most MACC officers who conducted interviews and recorded statements in the 52/2009 operation, they said that they regularly stayed overnight and were tired as they had to work for long hours.

representation and be given reasonable opportunity to seek legal assistance. Reasonable time should be given for counsel to be present at the interview and statement-recording. The right to legal representation should be absolute.

- (j) Witnesses should be informed, in plain and simple terms in a language that they understand, of their right to inform their family and/or friends about their whereabouts, in particular, that they are at the MACC assisting in investigations. This right may be curtailed in specified and exceptional circumstances clearly defined by the MACC Act.
- (k) Witnesses should be cautioned, in plain and simple terms in a language that they understand, that they need not answer any questions which may incriminate them. In this regard, s. 30(8) of the MACC Act should be amended to contain a prohibition against the use of witness statements where the witness is not informed or does not understand the precise nature of the caution.
- (l) The personal items of witnesses should not be required to be seized or handed over to the MACC before the course of their interviews and statement-recording.
- (m) Upon the completion of the witness interviews or statement-recording, an official document should be acknowledged stating the details of the session and

whether the witness is required to return again with documents or for further statements, and if so, the return date and time.

- (n) The Investigation Officer must at all times play an active role to coordinate the interview and recording process of the witness. He or she must be regularly briefed and updated on the progress.
- (o) Independent verification or background checks which may be conducted without the attendance and assistance of witnesses at MACC should be conducted expeditiously before witnesses are called in for questioning. Every investigation should be supervised and coordinated by the Investigation Officer. There should be a clear chain of command and time periods specified for the Investigation Papers to be delivered to the MACC Independent Prosecutor (as specified below).

Independent Prosecutorial Powers

- (p) For the MACC to be, and be seen as fully independent, the MACC Act should incorporate and confer prosecutorial powers to a person or body or persons within the MACC to conduct the prosecution of cases (**“MACC Independent Prosecutor”**). MACC should no longer have to refer investigations to the AGC for supervision or decisions on prosecutorial matters. In this regard, s. 5(6) of the MACC Act should be amended to remove the conferment of the Deputy Public

Prosecutor's powers on the Chief Commissioner, as the officer of the MACC Independent Prosecutor is established.

Powers to Search and Seize

- (q) Section 31(3) of the MACC Act should be amended to include the words 'in exceptional circumstances' (or words to the effect) to emphasise the rule that a written order should always be obtained save in clear instances where evidence may be in the process of being tampered with, removed and/or destroyed.

Disclosure of Documents in Criminal Trials

- (r) All Investigation Diaries, witness statements and documents referred to in the Diaries and statements should be made available and delivered to the accused person(s) in any criminal prosecution. This will ensure that Malaysian law enforcement agencies, including MACC, will live up to the highest standards of scrutiny from the time an investigation commences to the time suspects are prosecuted in court.

MACC Charter of the Rights of Victims and Witnesses

- (s) There should be drafted, published and displayed prominently, in all MACC offices, a set of guidelines explaining, in plain and simple terms, the legal rights of victims and witnesses. It may be called the 'MACC Charter of the Rights of Victims and Witnesses'. The Charter should be in various languages. An example of a similar document is the Hong Kong Police Force's 'Victim of Crime Charter'.⁶¹⁴

Above all, law enforcement officers, as a matter of an unwritten code of conduct should be respectful, courteous and considerate in the conduct of investigations.⁶¹⁵ This is something that cannot be inculcated or ingrained unless the top brass and leaders of the respective agencies lead by example.

⁶¹⁴ Hong Kong Police Force 'Victim of Crime Charter'; www.police.gov.hk (accessed 25.05.2011)

⁶¹⁵ See *Brooks v. Commissioner of Police of the Metropolis* [2005] 2 All ER 489 where Lord Steyn at page 504 opined that "(w)hilst focusing on investigating crime, and the arrest of suspects, police officers would in practice be required to ensure that in every contact with a potential witness or a potential victim time and resources were deployed to avoid the risk of causing harm or offence." Lord Rodger also said at page 516 that "as a matter of professional ethics, officers can be expected to treat witness with appropriate courtesy and consideration, and may be open to disciplinary proceedings if they do not."

SECOND TERM OF REFERENCE AND RECOMMENDATION

The Bar having perused and evaluated the facts presented throughout this inquiry and based on the submission hereinbefore appearing, proposes:-

- 5.14 That the Commission do make a finding that TBH was in the care and custody of MACC and its officers at the time of TBH's death.
- 5.15 That the Commission do make a finding that MACC and its officers have perpetrated a cover up with respect to the circumstances surrounding and contributing to the death of TBH.
- 5.16 That the Commission do make a finding that MACC and its officers have failed to discharge their obligations and duties to account for the death of TBH.
- 5.17 That the Commission do make a finding that MACC and its officers are responsible for the death of TBH.
- 5.18 That the Commission do recommend that the Government of Malaysia and MACC do consider offering an unqualified written apology to the family of the late TBH and to the citizens of Malaysia for the death of TBH.
- 5.19 That the Commission do recommend that the Government of Malaysia and MACC do consider making reasonable

recompense to the family of TBH in respect of the death of TBH.

5.20 That the Commission do recommend the following:-

- (a) That the relevant authorities do investigate Hishamuddin, Hairul, Anuar, Ashraf and Zulkefly under s. 304 of the Penal Code (Act 574) (**“PC”**) for culpable homicide not amounting to murder for the death of TBH.
- (b) That the relevant authorities do investigate Hishamuddin, Hairul, Anuar, Ashraf and Zulkefly under s. 304A of the PC for causing the death of TBH by negligence.

Hairul and Anuar admitted that in hindsight, they would not have supervised the investigation in the manner that they had as they admitted that as the KUS and IO respectively, they were responsible for any witnesses and/or suspects under their care and/or custody.

- (c) That the relevant authorities do investigate Hishamuddin, Hairul, Anuar, Arman, Ashraf, Nadzri, Bulkini, Effezul, Zulkefly, Raymond, and the other officers involved in the 52/2009 operation, under ss. 120A of the PC for criminal conspiracy in the cover up of the death of TBH.
- (d) That the relevant authorities do investigate Hishamuddin, Hairul, Anuar, Arman, Ashraf, Nadzri, Bulkini, Effezul, Zulkefly, Raymond, and the other officers involved in the

52/2009 operation, under ss. 107, 108, 511 of the PC for abetment and attempting to abet:-

- (i) in the death of TBH;
- (ii) in the cover up of the death of TBH.

(e) That the relevant authorities do investigate Hishamuddin, Hairul, Anuar, Arman, Ashraf, Nadzri, Bulkini, Effezul, Zulkefly, Raymond, and the other officers involved in the 52/2009 operation, under ss. 191 and 192 of the PC for giving false evidence and fabricating evidence with respect to the death of TBH.

(f) That the relevant authorities do investigate Hishamuddin, Hairul, Anuar, Arman, Ashraf, Nadzri, Bulkini, Effezul, Zulkefly, Raymond, and the other officers involved in the 52/2009 operation, under ss. 201 to 204, 218 and 464 of the PC for destruction of, tampering with, causing the disappearance of evidence, and framing incorrect records or writing with intent to save a person from punishment with respect to the death of TBH.

(g) That the MACC do commence an internal inquiry in respect of Hishamuddin, Hairul, Anuar, Arman, Ashraf, Nadzri, Bulkini, Effezul, Zulkefly, Raymond, and the other officers involved in the 52/2009 operation in respect of misconduct for:-

- (i) the death of TBH;
- (ii) the cover up in respect of the death of TBH.

This is the submission of the Malaysian Bar in respect of the Commission of Enquiry to enquire into the death of Teoh Beng Hock. During the proceedings of the Commission, the Malaysian Bar was represented by Counsel, namely, Christopher Leong, Nahendran Navaratnam, S. Sivaneindiren, Cheow Wee, Robert Low and Edmund Bon.

Counsel were ably assisted by a legal team comprising of Richard Wee, Joycelyn Teoh Hooi Cheng, Low Hui Mei, Derrick Chan Choon Keong, Adriana Leu Chong Lieng, Jacquelyn Hii Shin Law, Raina Radzif and Yip Xiaoheng.

The other members of the legal team are David Low Teck Kuan, Sarah Kate Lee, Angela Yap, Foo Yen Ne, Melody Leong Mei-San, Abilaash Subramaniam, Wong Kar Fai, Michael Loo, Eunice Ong, Barvina, Kishore Ramdas, Loy Ee Lin, Eliza, Yvonne Chang and Mah Kah Keong.

Dated this 25th day of May, 2011.

-signature-	-signature-	-signature-	-signature-	-signature-
Christopher Leong	S. Sivaneindiren	Cheow Wee	Robert Low	Edmund Bon

APPENDIX A

Key Events: Cover-Up

Shorn of other extrinsic evidence that may confuse, we set out below a summary of the key relevant events.⁶¹⁶

DATE TIME ⁶¹⁷	KEY RELEVANT EVENTS
15.07.2009 9.00-10.00 am	<p>Hishamuddin is in charge of the 52/2009 operation, and he delivers a briefing.⁶¹⁸ In attendance are about 20 – 30 MACC officers including Hairul,⁶¹⁹ Anuar, Arman, Bulkini, Effezul, Hadri and Zulkefly.⁶²⁰</p> <p>Hishamuddin instructs Anuar, Razif, Hafiz, Najeib and Azhar to raid the YB Ean Yong's office.</p> <p>Hishamuddin instructs Bulkini, Hadri and Zulkefly to look for the owner of Merit Link Enterprise.⁶²¹ Hadri is to lead the Merit Link team.⁶²²</p>
15.07.2009 6.00 pm	TBH arrives at MACC escorted by the TBH team. ⁶²³

⁶¹⁶ For easy reference, see the illustration of key MACC officers involved in the 52/2009 operation with regard to the interrogation of TBH and Boon Wah on 15.07.2009 and 16.07.2009 in "Appendix B".

⁶¹⁷ Times stated are approximate.

⁶¹⁸ NOP Volume 25 pages 9158 – 9169. Hishamuddin would play a major role in the operation: NOP Volume 21 pages 7803 – 7805.

⁶¹⁹ Records produced at the inquiry as at 15.04.2011 show that Hairul has been positively identified in an identification parade in respect of an assault report against MACC Selangor officers, namely, Sek 11 Rpt. No. 6917/08 (filed by Sevanesan a/l Tangganvelli on 11.09.2008): Exhibit I-235.

⁶²⁰ Prior to the briefing, Hishamuddin specifically requests for Zulkefly (MACC Klang) to assist in the 52/2009 operation: NOP Volume 44 pages 16460 – 16462. Zulkefly is a senior MACC officer with over 20 over years of experience. Hishamuddin is his junior: NOP Volume 44 pages 16620 – 16621. Records produced at the inquiry as at 15.04.2011 show that Zulkefly is a suspect in two assault reports against MACC Selangor officers, namely, Sek 11 Rpt. No. 6917/08 (filed by Sevanesan a/l Tangganvelli on 11.09.2008, but Zulkefly does not appear at two identification parades called by the police) and Sek. 11 Rpt. No. 4794/09 (filed by Rosman B Omar on 01.07.2009, no positive identification of Zulkefly by the complainant): Exhibit I-235.

⁶²¹ NOP Volume 44 pages 16461 – 16462

⁶²² NOP Volume 40 pages 14935; NOP Volume 43 page 16173

⁶²³ Exhibit I-199 (A13) pages 3 – 4; Exhibit I-45 (CCTV). TBH is an important witness and answers are needed from TBH: NOP Volume 21 pages 7737 – 7740; NOP Volume 22 pages 8041 – 8043.

<p>15.07.2009 8.30-9.00 pm⁶²⁴</p>	<p>Hishamuddin calls Hairul and Hadri to his room for another briefing, and an update of investigations.</p> <p>Hishamuddin instructs Hairul to allow officers from MACC Putrajaya to leave save for Arman and Bulkini as they are to conduct 'interviews'. Hishamuddin further instructs Hairul to 'standby' Ashraf⁶²⁵ to conduct 'interviews'.</p> <p>Hairul carries out these instructions by assigning Arman and Ashraf to 'interview' TBH, and Bulkini and Effezul⁶²⁶ to 'interview' Boon Wah.⁶²⁷</p>
<p>15.07.2009 9.45-10.00 pm</p>	<p>The Merit Link team brings Boon Wah from his house to MACC Selangor.⁶²⁸</p> <p>Bulkini, Zulkefly and Hadri see Hishamuddin and brief him on their raid.⁶²⁹ Bulkini briefs Hishamuddin.⁶³⁰</p> <p>Hishamuddin instructs Bulkini to have Boon Wah sit at the back rest area near the pantry, and Bulkini does as instructed.⁶³¹</p> <p>Hairul Ilham and Khairul Anuar Alias are in the same room during the briefing.⁶³²</p>

⁶²⁴ Hishamuddin alleges that he is in his room from this time onwards till he leaves the office at about 5.54am on 16.07.2009. During this time, numerous MACC officers meet with him in his room to brief and update him on the progress of investigations.

⁶²⁵ Ashraf was not earlier involved in the 52/2009 operation but is called in by Hishamuddin to be on 'standby'. Records produced at the inquiry as at 15.04.2011 show that Ashraf is a suspect in 14 assault reports against MACC Selangor officers, and has been positively identified in 13 identification parades by the complainants: Exhibit I-235.

⁶²⁶ In a SMS text message from Mohd Yusmizan Bin Mohd Yusof to Ashraf on 19.07.2009 regarding TBH's death, Yusmizan 'repeats' the allegation by the police that Ashraf held TBH by the belt up to the window where he exited. Yusmizan then states "...cibai epi 2 kdg2 memandai2 nk tunjuk bagus." meaning that Effezul at times would 'show off' his 'intelligence': I-194 (Lampiran N5) page 87. It is submitted that read on the face of it, the text message implies that Effezul had something to do with TBH's death. Yusmizan however explains in testimony that he merely wrote Effezul's name as he was at that time envious of Effezul, and it did not mean that Effezul caused TBH's death. The explanation of Yusmizan regarding the message is hard to believe: NOP Volume 44 pages 16773 – 16795.

⁶²⁷ Exhibit I-204 page 12

⁶²⁸ NOP Volume 44 page 16465. The time is uncertain and based solely on Bulkini's testimony as Boon Wah's testimony is that he had arrived earlier about 8.45 – 9.00pm: NOP Volume 32 page 11507.

⁶²⁹ NOP Volume 40 page 14941. Hadri says that he was called into Hishamuddin's room to report: NOP Volume 43 pages 16171 – 16172.

⁶³⁰ NOP Volume 43 page 16173

⁶³¹ Exhibit I-199 (A91) pages 5 – 6

⁶³² NOP Volume 43 pages 16172 – 16173

15.07.2009 10.00 pm	<p>Ashraf and Arman ‘interview’ TBH for more than two hours.⁶³³</p> <p>Approximately 10.00pm, ⁶³⁴ Bulkini and Effezul ‘interview’ Boon Wah about the Merit Link supply of flags.⁶³⁵</p> <p>At 10.15pm, Zulkefly returns to MACC Klang with the MACC driver to collect his car. He returns to MACC Selangor at 11.00pm, and sleeps at the “<i>surau</i>”.⁶³⁶</p>
16.07.2009 12.00-1.00 am	<p>Ashraf and Arman report their ‘interview’ session of TBH to Hairul.⁶³⁷ Arman considers TBH an ‘accomplice’.</p> <p>No questions on the Merit Link supply of flags are asked.</p>
16.07.2009 1.00 am	<p>Hairul instructs Bulkini to interrogate Boon Wah regarding Merit Link and the supply of flags. 15 minutes later, Bulkini and Effezul start the interrogation of Boon Wah which lasts for about 45 minutes.⁶³⁸</p>
16.07.2009 1.30 am	<p>Nadzri records TBH’s statement.⁶³⁹</p> <p>Anuar sleeps at sofa in front of his room.⁶⁴⁰</p>

⁶³³ NOP Volume 11 pages 3629 – 3632; Exhibit I-204 page 7

⁶³⁴ Exact time uncertain as the evidence of Bulkini, Effezul and Boon Wah are contradictory.

⁶³⁵ NOP Volume 32 pages 11507 – 11511 and pages 11540 – 11543; NOP Volume 40 page 15023 *cf.* NOP Volume 42 page 15581. Zulkefly who is part of the Merit Link team is not involved in the ‘interview’ of Boon Wah: NOP Volume 44 page 16482.

⁶³⁶ There is no apparent reason for Zulkefly to have returned to MACC Selangor and then to sleep at the “*surau*”: Exhibit I-199 (A92) page 3.

⁶³⁷ Hairul testified that officers will report to him and he will then follow on by reporting to Hishamuddin: NOP Volume 18 pages 6576 – 6577.

⁶³⁸ Exhibit I-199 (A91) pages 6 – 7. Boon Wah’s testimony is that his interrogation on the Merit Link Enterprise supply of flags started just past 10.00pm.

⁶³⁹ Exhibit I-204 page 8

⁶⁴⁰ Exhibit I-204 page 4

16.07.2009 2.00 am	<p>Bulkini and Effezul stops interrogating Boon Wah.⁶⁴¹ Bulkini is frustrated and angry at Boon Wah.⁶⁴²</p> <p>Approximately past 1.00am,⁶⁴³ Hadri⁶⁴⁴ instructs Bulkini to report the result of the interrogation directly to Hishamuddin. Bulkini reports to Hishamuddin that Boon Wah is not cooperating and frequently answers “<i>lupa, lupa, lupa</i>”. Hishamuddin replies, “<i>Tan tak nak cerita, tak apalah, you tanyalah dia, tunggu lah dia sampai dia bagi tahu.</i>”⁶⁴⁵</p>
16.07.2009 3.00 am	Hairul leaves MACC. ⁶⁴⁶
16.07.2009 3.15 am	Zulkefly wakes up from sleep at the “ <i>surau</i> ”. ⁶⁴⁷ He alleges that he goes to the “ <i>surau</i> ” on the 13 th floor to change his pants, and stays there. ⁶⁴⁸
16.07.2009 3.25 am	<p>Bulkini and Effezul report the interrogation session of Boon Wah to Hadri.⁶⁴⁹</p> <p>MACC officers ‘studiously’ avoid the top left section of the MACC office⁶⁵⁰ where the window TBH allegedly fell from is located.⁶⁵¹</p>

⁶⁴¹ Exhibit I-199 (A91) page 6

⁶⁴² NOP Volume 40 page 15051

⁶⁴³ Exact time uncertain.

⁶⁴⁴ Hadri led the Merit Link team, and said that Bulkini is senior to him and played an active role in the operation: NOP Volume 43 pages 16172 – 16173.

⁶⁴⁵ NOP Volume 21 pages 7796 – 7797; NOP Volume 40 pages 14969 – 14970 and 15051 – 15059

⁶⁴⁶ Exhibit I-204 page 14; Exhibit I-45 (CCTV)

⁶⁴⁷ NOP Volume 44 pages 16510 – 16516

⁶⁴⁸ NOP Volume 44 pages 16500 – 16506. Zulkefly’s testimony at the inquiry, taken as a whole, is to be treated with extreme caution. He lied on oath. His account that he went to the “*surau*” on the 13th floor is very much in doubt.

⁶⁴⁹ NOP Volume 40 pages 14966 – 14967, 15036 – 15042 and 15056 – 15062 and Exhibit I-244 page 9

⁶⁵⁰ Exhibit I-63

⁶⁵¹ Exhibit I-63j

16.07.2009 3.30 am	Nadzri finishes recording TBH's statement and reports to Anuar who is sleeping at the "surau". ⁶⁵²
16.07.2009 3.45 am	Bulkini leaves MACC Selangor and returns to MACC Putrajaya. ⁶⁵³
16.07.2009 (approximately 3.30-6.00 am)	----- TBH's interrogation continues? ----- ⁶⁵⁴
16.07.2009 5.00 am	Ashraf leaves MACC. ⁶⁵⁵
16.07.2009 5.00-5.45 am	Raymond ⁶⁵⁶ sees Ashraf, Hadri, Nadzri, Sachi, ⁶⁵⁷ Hishamuddin, and Anuar walking past his room. ⁶⁵⁸

⁶⁵² NOP Volume 25 pages 8948 – 8949

⁶⁵³ Exhibit I-244 page 9; NOP Volume 40 page 14984 and Exhibit I-45 (CCTV)

⁶⁵⁴ 'Cross-referencing' of information, and by extension, cross-interrogation of witnesses is a common MACC technique: NOP Volume 28 pages 10425 – 10426. If Hairul and Anuar are not available, Hishamuddin would conduct the 'cross-referencing': NOP Volume 22 pages 8021 – 8022; NOP Volume 28 pages 10418 – 10441

⁶⁵⁵ Exhibit I-45 (CCTV)

⁶⁵⁶ Records produced at the inquiry as at 15.04.2011 show that Raymond has been positively identified in an identification parade in respect of an assault report against MACC Selangor officers, namely, Sek 11 Rpt. No. 6917/08 (filed by Sevanesan a/l Tangganvelli on 11.09.2008): Exhibit I-235.

⁶⁵⁷ Records produced at the inquiry as at 15.04.2011 show that Sachi has been positively identified in two identification parades in respect of two assault reports against MACC Selangor officers, namely, Sek 11 Rpt. No. 6917/08 (filed by Sevanesan a/l Tangganvelli on 11.09.2008) and Sek 11 Rpt. No. 5195/08 (filed by Noh B Yusof on 13.07.2008): Exhibit I-235.

⁶⁵⁸ Exhibit I-201(c) – Coroner's Notes of Proceedings dated 17.09.2009 Evidence of Raymond Nion Anak John Timban page 77 at the Inquest No. 88-100-09 and NOP Volume 32 pages 11732 – 11733

16.07.2009 5.45 am	Hadri sleeps in Effezul's room as it is more comfortable. At that time, Effezul is already asleep. ⁶⁵⁹
16.07.2009 6.15 am	Hishamuddin leaves MACC.
16.07.2009 7.00 am	Zulkefly leaves MACC. ⁶⁶⁰ He goes to MACC Klang to clock out, and immediately returns home. He does not return to his office the whole day. ⁶⁶¹
16.07.2009 7.00-8.30 am ⁶⁶²	<p>Wye Wing goes to Sachi's room to ask for his handphone and if he can return home. Sachi is asleep.</p> <p>Wye Wing then goes to Hairul's room and sees Hairul and Anuar in discussion over a computer.⁶⁶³</p> <p>At 8.00am, Asrulridzuan Bin Ahmad Rustami arrives at MACC and does not see any of his colleagues in the office.⁶⁶⁴</p> <p>At 8.03am, Raylan (MACC Klang) arrives at MACC Selangor and then leaves at 8.07am.⁶⁶⁵</p>

⁶⁵⁹ NOP Volume 43 page 16183

⁶⁶⁰ Exhibit I-45 and NOP Volume 44 pages 16516 – 16517

⁶⁶¹ NOP Volume 44 pages 16553 – 16560 and pages 16511 – 16516

⁶⁶² Exact time is uncertain but it must have definitely been before 8.30am as Sachi only woke up at 8.30am.

⁶⁶³ NOP Volume 39 pages 14359 – 14370; NOP Volume 43 pages 16025 – 16027 and Exhibit I-199 (A32) page 5

⁶⁶⁴ Exhibit I-199 (A22) page 4. Asrulridzuan reported directly to Hishamuddin on the 52/2009 operation: NOP Volume 43 pages 15965 – 15967.

⁶⁶⁵ Exhibit I-45 (CCTV)

16.07.2009 9.00 am	<p>Hishamuddin calls Hadri⁶⁶⁶ and Hairul⁶⁶⁷ to attend another briefing with him.</p> <p>Anuar, Khairul Anuar and Mohd Sahril Fairoz Bin Arbain are in attendance.⁶⁶⁸</p> <p>Anuar reports about TBH's knapsack and mobile phone.⁶⁶⁹</p> <p>Hadri reports that Boon Wah is not cooperating because he is unable to answer questions and does not know where the Merit Link documents are kept.⁶⁷⁰</p> <p>Hishamuddin instructs Hairul to record Boon Wah's statement.⁶⁷¹</p>
16.07.2009 9.08 am	Roslan Bin Mohd Jari and Abdullah (both from MACC Klang) enter MACC Selangor. ⁶⁷²
16.07.2009 9.36 am	Roslan Bin Mohd Jari and Abdullah leave MACC Selangor. ⁶⁷³
16.07.2009 11.00-11.35 am	<p>Hairul instructs Hassan to take Boon Wah's statement. Hairul informs Hassan of the questions and answers to be recorded. Hassan proceeds to record Boon Wah's statement.</p> <p>Five minutes into the statement-recording, Hadri gives Hassan an invoice regarding the supply of flags.</p>

⁶⁶⁶ Exhibit 1-199 (A24) page 2 – 3 ; Exhibit I-251 page 6

⁶⁶⁷ NOP Volume 16 pages 5655 – 5657

⁶⁶⁸ NOP Volume 43 page 16186

⁶⁶⁹ NOP Volume 19 pages 7263 – 7264

⁶⁷⁰ NOP Volume 43 page 16187

⁶⁷¹ Exhibit I-251 page 6. Hishamuddin is conversant with the Merit Link transaction from his testimony at the inquiry: NOP Volume 28 pages 10454 – 10457; NOP Volume 30 pages 11031 – 11071. Many of the issues raised by Hishamuddin at the inquiry were not asked of Boon Wah and TBH on 15.07.2009 and 16.07.2009. Were these the additional issues that Hishamuddin wanted answers from TBH that night? See also NOP Volume 17 pages 6030 – 6031 and 6333 – 6339.

⁶⁷² Exhibit I-45 (CCTV)

⁶⁷³ Exhibit I-45 (CCTV)

16.07.2009 12.50-1.00 pm	Amin (MACC Klang) overhears a conversation in MACC Klang that TBH had died. ⁶⁷⁴ He says that he heard it from a MACC Klang officer who was at MACC Selangor on the morning of 16.07.2009 and returned to MACC Klang that morning. ⁶⁷⁵ Zulkefly is the only MACC Klang officer who fits the bill.
16.07.2009 1.25 pm	Hassan finishes recording Boon Wah's statement. ⁶⁷⁶

This summary of key relevant events is meant to assist the Commission to weave through the voluminous evidence to form a clearer picture of the matter and make the necessary recommendations regarding particular MACC officers who may be liable to account, in addition, to MACC as an institution. Institutions are only as good as their personnel, and the Bar believes that MACC will only improve if individuals who are unscrupulously upright, honest and trustworthy are admitted to their ranks.

⁶⁷⁴ NOP Volume 43 pages 16267 – 16268; Volume 44 pages 16549 – 16559. Among others, Amin, Nora Binti Bahrin and Raylan hear the news: NOP Volume 43 pages 16271 – 16297.

⁶⁷⁵ NOP Volume 43 pages 16267 – 16277

⁶⁷⁶ Boon Wah is held for more than 17 hours because he was not able to give the answers MACC wanted, and MACC wanted to find out about more projects: NOP Volume 21 pages 7776 – 7785 and NOP Volume 40 pages 15051 – 15052.

APPENDIX B

**MACC: Key MACC officers involved in the interrogation of
TBH and Boon Wah on 15.07.2009 - 16.07.2009**

