

# Why the public sector is so wary of gifts and hospitality



Former transport minister S. Iswaran, seen here arriving at the State Courts on Jan 18 with Senior Counsel Davinder Singh (left), has been charged with multiple offences, including corruption. Public servants may have been surprised by the existence of Section 165 of the Penal Code, a little-known provision, but they should be familiar with disclosure requirements in the public service, notes the writer. ST FILE PHOTO

Trust and confidence would be badly hit if public interest is seen to be undermined on account of such favours.



Eugene K. B. Tan

When is a gift not really a gift? This question has come to the fore since last week when former transport minister S. Iswaran was handed 27 criminal charges related to his dealings between 2015 and 2022 with property billionaire and Singapore GP chairman Ong Beng Seng.

Twenty-four charges come under Section 165 of the Penal Code for obtaining valuable items as a public servant, such as tickets to football matches, musicals and the Formula One races. A little-known provision, apparently never used in Singapore until last week, Section 165 makes it an offence for a public servant to accept or obtain, or attempt to do so, anything of value, without payment or with inadequate payment, from any person with whom he is involved in an official capacity. The public servant need not even have provided any official favour to the gift-giver for this to qualify as an offence.

But can gifts run afoul of the law? After all, the practice of giving and taking gifts has been going on for many years, and this case calls into question what's often seen as a norm in the corporate world. Is there something to be said about the standard expected, even demanded, of public servants? Moreover, there is apparently concern that Section 165 would have a chilling effect across the public service. It shouldn't. Public servants may have been surprised by the existence of Section 165 in our main criminal statute, but they are familiar with the disclosure and reporting requirements in the public service.

#### ESTABLISHED DISCLOSURE REQUIREMENTS

That the public sector has a

strong aversion to public servants receiving or asking for gifts and hospitality is not surprising. The damage to trust and confidence in the public sector would be highly significant if the public interest were to be undermined on account of such favours. Hence, there are longstanding rules and procedures to deal with gifts and hospitality. They include:

- Civil servants declaring to their Permanent Secretaries any gift they receive from external stakeholders on account of their official position or work;
- For gifts valued below \$50, officers can retain these if doing so does not affect the "integrity" of the civil service;
- For gifts valued above \$50, officers who wish to retain these must pay the assessed

market value of the gift to the Government.

Similarly, for meals and hospitality, Minister-in-charge of the Public Service Chan Chun Sing stated, in response to parliamentary questions in August 2023, that public officers may accept meal invitations when there are legitimate work-related reasons, or when it is "impractical or impolite to reject" the meal. Civil servants should declare and seek approval from their Permanent Secretaries before accepting a meal invitation. Where that is not possible, they should do so immediately after the meal. This is especially if the officer assesses that the value of the meal or hospitality is "incongruent" with the professional nature of the meeting and may "give rise to

perceptions of influence peddling and conflict of interest – real or perceived".

Mr Chan explained that these rules on accepting gifts and hospitality seek "to maintain incorruptibility and to prevent officers from becoming beholden to any person or organisation". Similarly, the Code of Conduct for Ministers recommends that political office holders should refuse all personal gifts and return them to the giver without delay. Where the return of the gift is impractical, the gift must be handed over to the political office holder's ministry to be dealt with in accordance with official guidelines. Should the political office holder want to retain a gift, he must pay the Government for it at the valuation price. Otherwise, these gifts must be surrendered to the Government.

It is more likely the case that a public servant will be dealt with under internal disciplinary rules rather than be charged with a crime where the infringement is one-off due to an oversight rather than through wilfulness or ill intent.

#### CONFLICTS OF INTEREST

In October 2022, in a reply to MP Murali Pillai's parliamentary question on the utility of maintaining sections 161 to 165 of the Penal Code which deal with corruption involving public servants, given the Prevention of Corruption Act, Home Affairs Minister K. Shanmugam stated that these provisions deal specifically with bribery and other forms of corrupt practices involving public servants.

He noted that these provisions are "more targeted in scope" in tackling various forms of bribery involving public servants. Retaining these provisions, along with other related laws, provides "a comprehensive set of legislative levers for corruption control" to deal with various types of misconduct.

The drafters of our 152-year-old criminal code, which has its origins in the Indian Penal Code, recognised the frailties of the human condition in bribery and other forms of corrupt practices involving public servants.

The fundamental principle at play is the solemn requirement for public servants to avoid any conflict of interest, including any reasonable suspicion of it.

Accepting or asking for gifts or hospitality when there are official dealings between two parties could automatically generate an expectation of a returned favour. It also doesn't seem right.

Such conduct creates a conflict of interest – real, apparent or imputed. Section 165 arguably imputes a conflict of interest to a public servant. This law may strike some as broad and onerous but it makes it clear that public servants in carrying out their official duties must be beyond reproach and not compromise themselves and the Government by accepting or asking for gifts even where no quid pro quo is provided.

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Consider whose interests are being served

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Singapore Standards 3700E:2016, a technical certification standard on anti-bribery management systems, describes conflict of interest as a "situation where business, financial, family, political, or personal interests could interfere with the judgment of persons in carrying out their duties for the organisation".

A public servant receiving a gift could find himself in such a situation. His actions, then, could further his own interest or the giver's, instead of the public interest. The pertinent question is whose interests are ultimately being served.

Even if one seeks to argue that there was an alignment of the interests of the giver, receiver and organisations they serve, it begs the question of why the gift was even necessary. Are the giver's interests served better because of the valuable gift?

A public servant seen to be labouring under a conflict of interest can severely undermine public confidence in the integrity of public administration. Ultimately, public perception matters immensely in governance.

Singapore has thrived due to, among other things, the commitment to incorruptibility. Founding prime minister Lee Kuan Yew put it well in 1979 on why incorruptibility must be protected at all costs: "Singapore can survive only if ministers and senior officers are incorruptible and efficient... Only when we uphold the integrity of the administration can the economy work in a way which enables Singaporeans to clearly see the nexus between hard work and high rewards."

The crucial point is the link between work and reward in our society. Once that is broken, there is little incentive to outperform our previous best through industry and innovation. Instead, it's a race to the bottom with shortcuts, unethical conduct and bribes, as one seeks to reap what one did not sow. Lawlessness is seeded, and trust deficits develop.

In the public sector (and the corporate world), a gift is really a gift when the giver and receiver are not conflicted at all or beholden to each other or perceived to be. In our professional dealings, regardless of whether we are in the public or private sector, we should look a gift horse in the mouth more closely. Or else, the gift might just ensnare us.

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