PROSECUTORIAL DISCRETION:
A BALANCING ACT

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DECLARATION OF ORIGINALITY

I, Kenny Yang, hereby declare that this thesis is my own work and effort and that it has not been submitted anywhere for any award. Where other sources of information have been used, they have been acknowledged.

Kenny Yang

Dated: 1 November 2012
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The role of the prosecutor and the exercise of prosecutorial discretion can have an enormous impact on the outcome of criminal proceedings. The exercise of prosecutorial discretion is, however, often secretive and misunderstood. There have been concerns that a lack of accountability and transparency can result in a fertile bed for corruption. Australia has acknowledged this and taken steps to address the issue, but these measures have not come without their own costs.

The concern is that these measures may, if anything, hamper the administration of justice and result in an inefficient criminal justice system. Indeed, these concerns have been noted by Singapore who has hesitant to replicate the Australian position for fear of the inefficiency in the criminal justice system that would inevitably occur.

Accountability and transparency is thus weighed up against the efficient administration of justice. Both are necessary in a functioning criminal justice system, yet each comes at the expense of the other. This can be demonstrated by Professor Herbart Parker’s ‘Two Models of Criminal Processes’ – the Due Process and Crime Control models.

How then does one balance the two competing interests? As this paper will argue, there is no perfect system and a careful examination of a community’s cultural values and the objectives of criminal justice system will be necessary to find the appropriate equilibrium in the balancing act of prosecutorial discretion.
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