

REFERRING TO SENTENCING FRAMEWORKS FOR OTHER OFFENCES

The proliferation of sentencing frameworks is a welcome development in the sentencing jurisprudence. For the first time, appellate courts are giving guidance on how the entire sentencing range for a given offence (or a specified manifestation thereof) will be used by courts. However, since sentencing frameworks are but a species of the more classic sentencing precedent, the principles that govern when a sentencing court can refer to a sentencing precedent for one offence when calibrating the sentence for another should apply with equal force to the question of when the same court can calibrate the sentence for one offence with reference to the framework for another. To that end, this article argues that such reference is permissible so long as the offence before the court and the offence covered by a framework is analogous in policy and punishment, and that two species of such analogy comprise cases where the offences are ordinarily proportionate to one another, and where the offences are part of the same criminal enterprise.

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I. Introduction

1 The proliferation of sentencing frameworks is a fascinating development in the law of sentencing. For the first time, appellate courts are not only pronouncing on the appropriate sentence to be imposed for the offence in the instant case before the court, but also on the presumptive sentencing ranges for other manifestations of the same offence that are not before the court.¹ This is a welcome development as it provides members of the public and offenders alike with greater clarity on how courts will utilise their sentencing jurisdiction across the entire spectrum of the prescribed punishment for a given offence and not just in the instant case.

1 Ng Kean Meng *Terence v Public Prosecutor* [2017] 2 SLR 449 at [25].

2 With this proliferation of sentencing frameworks comes an interesting split in the sentencing jurisprudence from the courts at first instance: whether or not the framework for one offence (hereafter, the framework-covered offence, or “FCO”), can be applied or extended to calibrate the sentence for another offence not covered by an applicable framework (hereafter, the non-framework covered offence, or “NCO”).

3 In particular, first instance sentencing courts appear to be divided over:

(a) Firstly, whether the framework in *Tan Siew Chye Nicholas v Public Prosecutor*² (“*Nicholas Tan*”) formulated by the General Division of the High Court for offences under s 377BB(4) of the Penal Code 1871³ (“PC”) can be extended to other voyeurism offences in PC ss 377BB(1)–377BB(3), 377BB(5) and 377BB(6);⁴ and

(b) Secondly, whether the framework in the Guidelines for Scams Related Offences (“SAP Guidelines”) published by the Sentencing Advisory Panel⁵ for offences under s 55A(1)(a)(i) read with s 55A(1)(b)(ii) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992⁶ (“CDSA”) (“CDSA s 55A Offences”) can be modified to calibrate sentences for offences under either (i) PC s 417 read with s 109 (abetment of cheating) (“PC s 417 Offences”); or (ii) s 3 read with s 12 of the Computer Misuse Act 1993⁷ (“CMA”) (abetment of unauthorised access to a program in a computer) (“CMA s 3 Offences”) wherein bank accounts are relinquished by offenders to third parties and are used to funnel proceeds of scam offences.⁸

2 [2023] 4 SLR 1223.

3 2020 Rev Ed.

4 Cases in which courts have chosen to extend the framework in *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 include: *Public Prosecutor v Muhammad Faiz Bin Mohamed Yasin* [2023] SGM 28; *Public Prosecutor v Devin Ngo Rong Xiang* [2024] SGM 5; *Public Prosecutor v JCZ* [2024] SGM 57; and *Public Prosecutor v Tan Wei Sien* [2026] SGM 23. A case where the court refrained from extending the framework was *Public Prosecutor v Aung Myint* [2023] SLR(StC) 23.

5 Sentencing Advisory Panel, “Guidelines for Scams Related Offences” (21 August 2024) (“SAP Guidelines”).

6 2020 Rev Ed.

7 2020 Rev Ed.

8 Cases in which courts have held that the SAP Guidelines framework *could* be applied with appropriate adjustments to the starting point sentences recommended therein include: *Public Prosecutor v Siti Maryam Binte Mohamed Zubir* [2024] SGDC 260 at [24]–[35]; *Public Prosecutor v Yip Kong Fai Clement* [2024] SGDC 284 at [17]–[18]; *Public Prosecutor v Muhammad Raimi Rushaidy Bin Mohamed Rudy* [2024] SGM 65 at [14]–[15]; and *Public Prosecutor v Shawn Loh* [2025] SGDC 292 (cont'd on the next page)

4 The former split will be referred to as the “*Nicholas Tan Split*” while the latter split will be referred to as the “SAP Guidelines Split”.

5 On the one hand, courts that *have* opted to extend such frameworks have done so for various reasons, including that extension is permissible because both the FCO and NCO target a similar form of mischief⁹ or that there was no indication that Parliament intended for the FCO and NCO to be sentenced under different frameworks and that the seriousness of both offences could be measured by the same aggravating and mitigating factors.¹⁰

6 On the other hand, courts that have opted *not* to extend such frameworks have declined for a similar assortment of reasons. These include: (a) that the first-instance sentencing court was not the appropriate forum to determine whether a framework should be extended;¹¹ or (b) that the framework sought to be extended by parties was not expressly applicable to the NCO in the instant case.¹² That said, such courts still made limited reference to the *principles* espoused in such frameworks, such as the sentencing objectives and factors highlighted in the framework.¹³

7 It is submitted that this split in the sentencing jurisprudence should be resolved as soon as possible as it creates unnecessary complexity for counsel and accused persons alike.

8 It is well-established that the reasoning behind a sentencing decision matters as much as the decision itself. Indeed, one of the established grounds for appellate intervention is where the sentence was wrong in principle.¹⁴ Further, and in a similar vein, appellate courts have routinely held that unreported decisions are of limited precedential value

at [66]. Cases in which courts have held that the SAP Guidelines framework *could not* be applied even with the proposed adjustments to the starting points, though the sentencing considerations and factors enumerated therein were still relevant include: *Public Prosecutor v Siraj Munir Bin Mohamed Basheer* [2025] SGM 13 at [34] and [59] and *Public Prosecutor v JDT* [2025] SGDC 143 at [33]–[35] (see also, *Public Prosecutor v Siti Maryam Binte Mohamed Zubir* [2024] SGDC 260 at [24]–[27]).

9 See, eg, *Public Prosecutor v Yip Kong Fai Clement* [2024] SGDC 264.

10 See, eg, *Public Prosecutor v Muhammad Faiz Bin Mohamed Yasin* [2023] SGM 28 at [31]–[33] and *Public Prosecutor v Devin Ngo Rong Siang* [2024] SGM 5 at [38]–[39].

11 See, eg, *Public Prosecutor v Aung Myint* [2025] SLR(StC) 23 at [42]–[44].

12 See *Public Prosecutor v Muhammad Ryan Rosmani* [2024] SGDC 239 at [6]–[8].

13 See *Public Prosecutor v Aung Myint* [2025] SLR(StC) 23 at [24] and *Public Prosecutor v Muhammad Ryan Rosmani* [2024] SGDC 239 at [7]–[8].

14 *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 at [51].

since they are *unreasoned*.¹⁵ As such, where first instance sentencing decisions are divided in their reasoning with no appellate court ruling resolving the divide one way or another, it is difficult for counsel to decide on which reported precedents to rely on in his or her submissions to court.

9 Thus, this article seeks to resolve this split in the following manner:

(a) Firstly, it shall be shown that when sentencing an offender, the role of the sentencing court is to situate the offending conduct along the spectrum of prescribed punishment for the offence according to its seriousness.

(b) Secondly, that sentencing courts have done so through a number of methods, *mainly* by comparing the present case with similar previous cases (“the precedent comparison method”) or more recently, through relying on an applicable sentencing framework.

(c) Thirdly, that in the context of the precedent comparison method, appellate courts have repeatedly affirmed that reference may be had to precedents that concern offences *different* from the offence which an offender is convicted of, *provided* that both offences are “analogous” to each other in their underlying policy objectives and prescribed punishments.¹⁶

(d) Fourthly, there should be no objection to courts referring to the framework for an FCO when calibrating the sentence for an NCO provided that the two offences are analogous in policy and punishment. This is because sentencing frameworks and the precedent comparison method are but two alternative ways of situating offending conduct along the prescribed sentencing spectrum, and the notional sentence that an offender would have received had he been convicted under the FCO can be treated like a sentencing precedent for an analogous offence.

(e) Fifthly, applying the foregoing to the *Nicholas Tan* Split, it is submitted that the courts that chose to extend the *Nicholas Tan* sentencing framework to the other voyeurism offences under PC ss 377BB(1)–377BB(3), 377BB(5) and 377BB(6) were correct to do so. This is because PC s 377BB(4) and the rest of the s 377BB offences are clearly analogous in their underlying

15 *Toh Suat Leng Jennifer v Public Prosecutor* [2022] 5 SLR 1075 at [51].

16 *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 at [14]; *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor* [2014] 1 SLR 756 at [30]–[31].

policies and prescribed punishments as steps in the same criminal enterprise of voyeuristic conduct.

(f) Sixthly, applying the foregoing to the SAP Guidelines Split, it is submitted that the courts that chose *not* to extend the recommended framework for CDSA s 55A Offences to calibrate sentences for CMA s 3 Offences or PC s 417 Offences were correct in their refusal to do so. This is because the underlying policies and prescribed punishments of all three provisions are vastly different from one another. In particular, CDSA s 55A criminalises a much narrower set of conduct than either PC s 417 or CMA s 3(1), and what constitutes the gravest offence under CDSA s 55A may not be considered the gravest offence under the frameworks of either PC s 417 or CMA s 3(1).¹⁷

10 Finally, for completeness, this article shall round off with a discussion on when a sentencing court can refer to sentencing precedents for other offences when calibrating the *aggregate* sentence to be imposed for multiple offences.

II. Sentencing, sentencing precedents and sentencing frameworks

11 In calibrating the sentence for any given offence, the role of the sentencing court is to appreciate the facts of each case and situate the offending conduct of the offender along the spectrum of punishment prescribed for the offence he is being convicted of according to its seriousness.¹⁸

12 To this end, courts have developed two main ways of situating an offence along its prescribed spectrum of punishment:

- (a) by the precedent comparison method; and
- (b) through sentencing frameworks.

13 In addition to the above, courts have also resorted to other approaches for calibrating sentences. These include including hybrid approaches which combine sentencing frameworks with the precedent comparison method, as well as rehabilitative sentencing approaches for serious offences.

17 *Public Prosecutor v Siraj Munir Bin Mohamed Basheer* [2025] SGM 13 at [40]–[41].

18 *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 at [45]; *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 at [32].

A. Precedent comparison method

14 The precedent comparison method is of significant vintage. Appellate courts have long affirmed the need to calibrate sentences for any given offence in light of how similarly-situated offenders have been sentenced in the past.

15 In *DT v Public Prosecutor*,¹⁹ the High Court held that while the appropriate sentence in any given case turned on the facts and circumstances of that case, it went on to hold that “no sentence should ever be pronounced in a vacuum” and that “it is essential to be aware of what has been stated in similar cases”.²⁰ Further, the value that a sentencing precedent holds in calibrating the sentence for the instant offence depends largely on whether the circumstances of both cases are sufficiently similar. In particular, both the precedent case and the instant case should generally relate to the same offence and same prescribed punishment, and involve analogous factual matrices.²¹

B. Sentencing frameworks

16 In comparison, sentencing frameworks are a more recent development. In *Ng Kean Meng Terence v Public Prosecutor*,²² the Court of Appeal recognised that up to that point, sentencing courts had issued two kinds of “guideline judgments”: (a) those that relate to pure points of principle; and (b) those that “lay down the *presumptive sentences* that should be imposed for the commission of an offence in defined factual scenarios” [emphasis added].²³ This article refers to the latter species of guideline judgments as “sentencing frameworks”.

17 Subsequently in *Logachev Vladislav v Public Prosecutor*²⁴ (“*Logachev*”), the High Court acknowledged that sentencing frameworks were a means by which a sentencing court could situate a given instance of offending conduct along the spectrum of its prescribed punishment. There, the High Court’s stated impetus for formulating and promulgating a sentencing framework for offences under s 172A(2) of the Casino Control Act²⁵ was its finding that: (a) the cited precedents did not provide reliable reference points for determining the appropriate punishments

19 [2001] 2 SLR(R) 583.

20 *DT v Public Prosecutor* [2001] 2 SLR(R) 583 at [75].

21 Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2nd Ed, 2019) at para 13.126.

22 [2017] 2 SLR 449.

23 *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [25].

24 [2018] 4 SLR 609.

25 Cap 33A, 2007 Rev Ed.

to impose in that case; and (b) therefore it was “necessary to approach the matter from first principles” and “consider where the present case lay along the *prescribed sentencing continuum*” through a review of the “relevant sentencing considerations that apply” and the application of a proposed “sentencing framework for such offences” [emphasis added].²⁶

18 The key difference between sentencing precedents and sentencing frameworks appears to be that whereas the *ratio decidendi* of the former is generally limited to the facts of the case at hand, the *ratio decidendi* of the latter binds all cases that fall within the scope of the framework laid down in that case not just those that involve facts similar or comparable to that in the instant case.

19 A comparison between the following cases makes this clear.

20 To begin with, *Yap Ah Lai v Public Prosecutor*²⁷ (“*Yap Ah Lai*”) is an example of a guideline judgment with a sentencing framework. In that case, the appellant had pleaded guilty before the District Court, *inter alia*, to an offence under s 128F of the Customs Act²⁸ (“CUSA 2004”) for importing 161.4 kg of cigarettes into Singapore on which excise duty was unpaid (“duty-unpaid cigarettes”). On appeal, the High Court laid down a framework for calibrating sentences for all offences under CUSA 2004 s 128F that were punishable under s 128L(4), not just those involving quantities of duty-unpaid cigarettes comparable to the amount imported by the appellant.²⁹

21 In contrast, *Public Prosecutor v Juandi bin Pungot*³⁰ (“*Juandi*”) is an example of a classic sentencing precedent. In that case, the accused had pleaded guilty before the General Division of the High Court to, *inter alia*, 20 charges involving offences under s 408 (read with s 109 of the Penal Code³¹ (“PC 2008”) and s 124(4) of the Criminal Procedure Code³²) for engaging in a conspiracy to commit criminal breach of trust (“CBT”) as a servant.³³ The sums misappropriated in these charges ranged from about US\$2,114,595.86 (S\$2,858,164.81) to US\$6,517,196.40 (S\$8,833,894.05).³⁴ The General Division of the High Court declined the Prosecution’s invitation to adopt a sentencing framework for CBT offences

26 *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 at [32]–[33].

27 [2014] 3 SLR 180.

28 Cap 70, 2004 Rev Ed.

29 *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 at [46].

30 [2022] 5 SLR 470.

31 Cap 224, 2008 Rev Ed.

32 Cap 68, 2012 Rev Ed.

33 *Public Prosecutor v Juandi bin Pungot* [2022] 5 SLR 470 at [2(a)].

34 *Public Prosecutor v Juandi bin Pungot* [2022] 5 SLR 470 at [26].

under PC 2008 s 408,³⁵ and proceeded to calibrate the sentence for the offences by assessing the seriousness of the offences committed based on the aggravating and mitigating factors present,³⁶ identifying a suitable starting point for PC 2008 s 408 involving property worth about S\$2m,³⁷ and finally making the relevant adjustments to the starting point for each proceeded PC 2008 s 408 charge based on the value of the property misappropriated in each charge and the aggravating and mitigating factors present.³⁸ Notably, the court in *Juandi* did not purport to lay down the presumptive sentencing ranges for offences under PC 2008 s 408 involving property values less or greater than the amounts involved in the instant case.

22 It is appropriate at this juncture to make a further distinction between sentencing precedents on the one hand, and sentencing frameworks that have taken a “single starting point” or “benchmark” approach on the other.³⁹ While both kinds of decisions share the feature that the holdings of the court in either case are largely limited to the factual matrix before the court, only in the latter case is the court required to make the prior finding that the offence before the court overwhelmingly manifests itself in a particular way⁴⁰ whereas no similar finding needs to be made in the case of a classic sentencing precedent.

23 From the foregoing, it is clear that the precedent comparison method and sentencing frameworks are but two *alternative* ways by which a sentencing court may fulfil its task of calibrating the sentence for a given offence by situating it along the spectrum of its prescribed punishment.

C. *Hybrid and other approaches to sentencing*

24 Apart from the foregoing, courts have also taken other approaches to sentencing.

25 In *Public Prosecutor v Tan Meng Soon Bernard*⁴¹ (“*Bernard Tan*”), the High Court calibrated the individual sentences in that case not only by extending the application of a pre-existing framework, but also by

35 *Public Prosecutor v Juandi bin Pungot* [2022] 5 SLR 470 at [41]–[44].

36 *Public Prosecutor v Juandi bin Pungot* [2022] 5 SLR 470 at [45]–[57].

37 *Public Prosecutor v Juandi bin Pungot* [2022] 5 SLR 470 at [59]–[63].

38 *Public Prosecutor v Juandi bin Pungot* [2022] 5 SLR 470 at [64]–[69].

39 *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [27]–[28] and [31]–[32].

40 *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [28] and [32]; *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [49]–[54].

41 [2019] 3 SLR 1146.

referring to sentencing precedents for similar kinds of offences to identify relevant sentencing norms.

26 In that case, the accused pleaded guilty to five charges, all involving offences under s 376(1)(b) of PC 2008, which criminalised certain forms of sexual penetration not amounting to rape. Such offences were generally punishable with a mandatory term of imprisonment which could extend to 20 years, and mandatory caning of not less than 12 strokes under PC 2008 s 376(3). However, since the accused's victims in each charge were boys between the ages of 8 and 11, his offences were subject to the enhanced sentencing regime under PC 2008 s 376(4)(b) which prescribed a mandatory minimum imprisonment term of 8 years, which could be extended up to 20 years, as well as mandatory caning of not less than 12 strokes.

27 In calibrating the sentences, the High Court:

(a) firstly, extended the application of the framework in *Pram Nair v Public Prosecutor*⁴² (“*Pram Nair*”), which covered only PC 2008 s 376(2)(a) offences involving digital penetration, to include all forms of sexual penetration not amounting to rape;⁴³

(b) secondly, identified relevant sentencing norms for cases involving fellatio under PC 2008 s 376A(3) (a wholly separate provision which provided enhanced criminal sanctions for the offence of sexual penetration of minors where the victim was under 14 years of age, and which also carried a prescribed punishment range⁴⁴ identical to that under PC 2008 s 376(3)), and reconciled them with the extended *Pram Nair* framework;⁴⁵

(c) thirdly, calibrated the individual sentences for each proceeded charge by situating each offence within a suitable band of the extended framework (*ie*, Band 2, given the applicable offence-specific factors), before adjusting each sentence in light of the applicable offender-specific factors;⁴⁶ and

42 [2017] 2 SLR 1015.

43 *Public Prosecutor v Tan Meng Soon Bernard* [2019] 3 SLR 1146 at [31].

44 That is, a mandatory imprisonment term which could extend to 20 years, and mandatory caning of not less than 12 strokes (see Penal Code (Cap 224, 2008 Rev Ed) s 376A(3)).

45 *Public Prosecutor v Tan Meng Soon Bernard* [2019] 3 SLR 1146 at [33]–[36].

46 *Public Prosecutor v Tan Meng Soon Bernard* [2019] 3 SLR 1146 at [37]–[60].

(d) finally, considered cases involving a similar overall level of criminality with the instant case in order to determine what would be an appropriate aggregate sentence.⁴⁷

28 Thus, the High Court demonstrated that sentencing frameworks and sentencing precedents involving similar offences need not be mutually exclusive ways of calibrating sentences. Rather, so long as the two sources of sentencing data could be used to situate the instant offence along its own prescribed punishment spectrum and achieve a substantively just outcome, it would not be remiss for a sentencing court to have reference to both of them.

29 Sentencing approaches for serious offences where the relevant sentencing considerations include rehabilitation also bear some mention.

30 In *Public Prosecutor v Kong Peng Yee*,⁴⁸ the Court of Appeal allowed the appeal by the Prosecution against the sentence of 2 years' imprisonment imposed by the High Court on the respondent for his offence of culpable homicide not amounting to murder under PC 2008 s 304(a). However, the Court of Appeal did so not because it felt that the sentence imposed by the High Court was too lenient in the circumstances, given the gravity of the offence, but rather because it felt that a longer term of imprisonment was the most appropriate among the available options “*not to punish him* but to try and achieve the twin objectives of rehabilitation and prevention [...] in the best way possible” [emphasis added].⁴⁹ In particular, the Court of Appeal held that the prison environment would: (a) ensure that the respondent became accustomed to his new reality of taking his medications in a disciplined manner which would in turn serve him well when he is released and returns to living in an uncontrolled environment; and (b) also reasonably assuage any concerns that the public may have about a potentially dangerous man living in their midst.⁵⁰

III. Referring to sentencing precedents for other offences

31 Under the precedent comparison method, a sentencing court generally calibrates the sentence for the instant offence by referring to

47 *Public Prosecutor v Tan Meng Soon Bernard* [2019] 3 SLR 1146 at [61]–[63].

48 [2018] 2 SLR 295.

49 *Public Prosecutor v Kong Peng Kee* [2018] 2 SLR 295 at [96].

50 *Public Prosecutor v Kong Peng Kee* [2018] 2 SLR 295 at [99].

the outcomes in sentencing precedents involving the same offence. Such an offence is referred to as a “direct sentencing precedent”.⁵¹

32 However, it is also well-established that the sentencing court may refer to sentencing precedents concerning other offences, provided that the offence involved in the instant case and the offence involved in the precedent case are “analogous” in their underlying policy and prescribed punishments.⁵²

33 In *Luong Thi Trang Hoang Kathleen v Public Prosecutor*⁵³ (“*Kathleen Luong*”), the High Court held that:⁵⁴

In assessing the value of sentencing precedents based on an offence *different* from that for which the court is to pass sentence, care must be taken to ensure that the two offences (*ie*, the offence which is the subject matter of the sentencing precedents and the offence for which the court is to pass sentence), although different, are still analogous in terms of both policy and punishment. [emphasis in original]

34 This principle has been affirmed more recently by the High Court in *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor*⁵⁵ (“*Idya Nurhazlyn*”).

35 However, in practice, the finding of analogy in policy and punishment between two offences has proven to be less than straightforward. To this end, there are two important scenarios in which such analogy has been held *not* to exist: (a) where the same conduct can be prosecuted under two different offences without more; and (b) where the offending conduct was previously prosecuted under an offence that had been repealed and subsumed under another offence.

A. When offences are not analogous

(1) *Where the same conduct can be prosecuted under two offences, without more*

36 As alluded to above, it appears that the mere fact that an offender’s conduct can be prosecuted under two offences is insufficient

51 Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2nd Ed, 2019) at para 13.129.

52 *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor* [2014] 1 SLR 756 at [30].

53 [2010] 1 SLR 707.

54 *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 at [14].

55 [2014] 1 SLR 756 at [30].

for a court to find that the two offences are analogous in policy and punishment.

37 In *Kathleen Luong*, the appellant had pleaded guilty before the District Court to two charges for the offence of using false foreign travel documents under s 47(3) of the Passports Act⁵⁶ (“PASA 2008”). She had been arrested at Changi Airport after presenting two US passports for herself and for an 8-year-old boy that she was travelling with that were not issued to either of them. She was sentenced to 12 months’ imprisonment for each charge. On appeal, the High Court rejected the appellant’s argument that the District Court had failed to give consideration to sentencing precedents concerning offences under ss 419 and 471 of PC 2008 (which involved the offences of cheating by personation and using a forged document as if it were genuine). This was because:

(a) Firstly, the High Court appeared to consider offences under PC 2008 ss 419 and 471 to be “unrelated” to offences under PASA 2008 s 47(3). It held that since Parliament had chosen to consolidate and exhaustively set out the offences relating to the misuse of foreign travel documents under PASA 2008 s 47, “sentencing precedents for other unrelated precedents would be of limited guidance.”⁵⁷

(b) Secondly, the prescribed punishments for offences under PC 2008 ss 419 and 465 were too different from those pertaining to offences under PASA 2008 s 47(3). Whereas PC 2008 ss 419 and 465 offences carried maximum imprisonment terms of 5 and 4 years respectively, PASA 2008 s 47(3) offences carried a more severe maximum imprisonment term of 10 years.⁵⁸

38 Subsequently, in *Idya Nurhazlyn*, the appellant had pleaded guilty before the District Court to, *inter alia*, two charges involving the offence of making a false declaration in her application for a travel document under PASA 2008 s 39(1). The appellant and her family had their passports retained by the staff at a hotel in Malaysia after they could not pay their bill. They absconded from the hotel, abandoning their passports, and subsequently hatched up a plan to apply for documents of travel in lieu of passports at the Singapore High Commission in Kuala Lumpur by falsely declaring to the officials there that they had lost their passports. For each of these two charges, the appellant was sentenced to 2 months’ imprisonment. In coming to its decision on sentencing, the

56 Cap 220, 2008 Rev Ed.

57 *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 at [14].

58 *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 at [14].

District Court had relied on, *inter alia*, the cases of *Lai Oei Mui Jenny v Public Prosecutor*⁵⁹ (“*Jenny Lai*”), and *Abu Syed Chowdhury v Public Prosecutor*⁶⁰ (“*Chowdhury*”) – which concerned the offences of giving false information to a public servant under s 182 of the Penal Code⁶¹ (“PC 1985”) and of obtaining a pass by making a false statement under s 57(1)(k) of the Immigration Act⁶² (“IMMA 2008”) respectively.

39 On appeal, the High Court held that both *Chowdhury* and *Jenny Lai* “shed limited light on what the appropriate sentence should be” for an offence under PASA 2008 s 39(1).⁶³ Citing the holding of Chan Sek Keong CJ in *Kathleen Luong*,⁶⁴ the High Court held that “[PASA 2008 s 39(1)] is a distinct offence that carries its own considerations [from those involved in *Jenny Lai* and *Chowdhury*] and one should be slow to refer to the sentences meted out in *ostensibly similar offences* under other provisions” [emphasis added].⁶⁵ In this regard, two observations can be made:

(a) In relation to *Jenny Lai*, the High Court’s main basis for finding that the offence involved in that case was not analogous to the instant offences appeared to stem from its observations on the differences in the prescribed punishments for the offences. The High Court acknowledged that “[w]hile *Jenny Lai* did involve a case of providing a false information [*sic*] to a public servant concerning the loss of a Singapore passport when the accused had in fact sold the passport”, the offence she was convicted under was punishable with a maximum imprisonment term of 1 year, or a maximum fine of \$5000 or both. In contrast, PASA 2008 s 39(1) was punishable with a maximum fine of \$10,000, or a maximum term of imprisonment of 10 years, or both.⁶⁶

(b) In relation to the offence in *Chowdhury*, the High Court’s main objection to a finding of analogousness with the instant offence appeared to be policy-based. In *Chowdhury*, the offender had committed his offences under IMMA 2008 s 57(1)(k) by falsely declaring that he was a university graduate in order to apply for and renew his employment pass. The High Court in *Idya Nurhazlyn* observed that the offence in *Chowdhury* “implicated the interest of safeguarding Singapore’s ability to

59 [1993] 2 SLR(R) 406.

60 [2002] 1 SLR(R) 182.

61 Cap 224, 1985 Rev Ed.

62 Cap 133, 2008 Rev Ed.

63 *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor* [2014] 1 SLR 756 at [30].

64 *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 at [14].

65 *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor* [2014] 1 SLR 756 at [31].

66 *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor* [2014] 1 SLR 756 at [30].

maintain its territorial sovereignty by punishing foreigners who gain entry or remain under false pretences” and “of protecting the integrity of our workforce”.⁶⁷ In comparison, the High Court viewed the rationale for the PASA 2008 offences to be the need to safeguard the reputation and standing of the Singapore passport, and held that the appellant’s PASA 2008 offences had “created the opportunity for [the passports belonging to her and her family] to be abused” which was “not unlike selling a passport for commercial reward.”⁶⁸

40 It is submitted that both the conclusions reached by the High Court in *Kathleen Luong* and *Idya Nurhazlyn* are right in principle.

41 As alluded to above, the role of the sentencing court is to appreciate the facts of each case and situate the offending conduct of the offender along the spectrum of punishment prescribed for the offence he is being convicted of according to its seriousness, the two principle parameters of which are: (a) the harm caused by the offence; and (b) the offender’s culpability.⁶⁹

42 Thus, where the sentencing precedent for a given offence would not assist the court in its task of situating the offence that an offender is convicted of *along its own prescribed punishment spectrum*, the court would be amply entitled to refuse to rely on such a precedent.

43 In the case of *Kathleen Luong*, it was clear that precedents for offences under either PC 2008 ss 419 or 471 would be entirely unhelpful in helping the court situate the seriousness of the appellant’s conduct along the prescribed punishment for PASA 2008 s 47(1) offences. This was because the scope of conduct that was caught and punishable under PASA 2008 s 47(1) was far narrower than the scope of conduct caught under either PC 2008 ss 419 or 471. Put another way, once someone makes or uses a false foreign travel document with the required mental element and thereby obtains a gain, causes a loss or influences the exercise of a public duty, the whole of the sentencing spectrum in PASA 2008 s 47(1) is engaged, all the way up to the maximum sentence. However, such conduct would not similarly engage the entire spectrum for property offences under PC 2008 ss 419 or 471. Rather, given that the primary yardstick for property offences is the value of the property

67 *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor* [2014] 1 SLR 756 at [31].

68 *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor* [2014] 1 SLR 756 at [26].

69 *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 at [41]; *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 at [35].

involved,⁷⁰ the presentation of a fake passport would almost never engage the highest end of the sentencing spectrum for a property offence.⁷¹

44 Similarly in *Idya Nurhazlyn*, the cases of *Jenny Lai* and *Chowdhury* would also fail to assist the court in situating the appellant's conduct along the prescribed sentencing spectrum for PASA s 39(1) as the offences in those cases captured a vastly different range of conduct.

45 In particular, the offence under PC 1985 s 182 in *Jenny Lai* encompassed every instance where a person gave information he knew or believed to be false to a public servant, causing the public servant to exercise his lawful powers to do something to the injury or annoyance of any person, or to do or omit to do something that he should not have done or omit to have done. This included everything from the giving of false evidence to a police officer implicating a victim for a crime punishable by death to the comparatively less serious case where false statements are made to induce a public servant to issue a travel document. In comparison, the entire sentencing range under PASA 2008 s 39(1) is engaged so long as a person knowingly makes a false statement in connection with an application for a Singapore travel document.

(2) *Where one offence has been consolidated into another offence*

46 Also as alluded to above, another case where two offences should not be considered *sufficiently* analogous in policy and punishment is where one offence covers a range of conduct which includes *but is not limited to* the range of conduct covered by the other offence.

47 In *Vijay Kumar v Public Prosecutor*⁷² (“*Vijay Kumar*”), the General Division of the High Court held that the sentencing precedents for offences under s 6(2) of the repealed Money-Changing and Remittance Businesses Act⁷³ (“MCRBA 2008”) had “limited precedential value” for calibrating the sentence for offences punishable under s 5(3) of the Payment Services Act 2019 (“PSA”).⁷⁴ This was despite the fact that the court accepted that offences under MCRBA 2008 s 6(2) and PSA s 5(3) had an “overlap of objectives”⁷⁵ and the former offence was used to prosecute unlicensed remittance services before the latter was enacted to regulate seven categories of payment services. The court gave five reasons

70 *Public Prosecutor v Lam Leng Hung* [2017] 4 SLR 474 at [367].

71 This line of reasoning was adapted from that of District Judge Justin Yeo in *Public Prosecutor v Siraj Munir Bin Mohamed Basheer* [2025] SGMC 13 at [40].

72 [2023] 5 SLR 983.

73 Cap 187, 2008 Rev Ed.

74 Act 2 of 2019. *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [30].

75 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [30].

for its decision, but for the purposes of this article, the following two are most apposite:

- (a) The scope of conduct caught under MCRBA 2008 s 6(2) was much narrower than that caught under PSA s 5(3). Whereas the former proscribed only unlicensed “remittance business[es]”, the latter proscribed the unlicensed provision of seven categories of payment services.⁷⁶
- (b) The prescribed punishments for the two offences were different. The court observed that whereas MCRBA 2008 s 6(2) prescribed one sentencing regime for all offenders, PSA s 5(3) prescribed different sentencing regimes for individual offenders and all other offenders.⁷⁷

48 It is submitted that the General Division of the High Court’s reasons in *Vijay Kumar* can be brought within the terminology used in *Idya Nurhazlyn* and *Kathleen Luong* and rephrased as saying that there is *insufficient* analogy in the policy objectives of both offences (though there is some), and near zero analogy between their prescribed punishments such that the sentencing outcomes for MCRBA 2008 s 6(2) offences cannot usefully inform the sentences for PSA s 5(3) offences even in cases where sentencing precedents involving the former offence are factually similar to an instant case prosecuted under the latter offence.

49 There is still an open, but interesting, question as to how a sentencing court should rank offending conduct that was previously prosecuted under an offence which has either: (a) been repealed and subsumed under another offence; or (b) been repealed and prosecuted under a series of separate offences. To this end, there appear to be two logical alternatives:

- (a) firstly, the sentencing court can consider the matter afresh, and situate offending conduct prosecuted under the new offence(s) with reference only to sentencing precedents or frameworks concerning said new offence(s) without any reference whatsoever to sentencing precedents or frameworks for the repealed offences; or
- (b) secondly, the sentencing court should decide on the appropriate sentence for cases prosecuted under the new offence(s) with reference to pre-existing sentencing precedents or frameworks for the repealed offence, in particular, any prevailing sentencing norms and make adjustments thereto

76 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [31].

77 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [32].

based on whether Parliament intended for harsher or more lenient sentences with the repeal of the subsumed offence and the enactment of the consolidated offence.

50 For ease of reference, the former approach shall be referred to hereafter as the “Fresh Approach” while the latter approach shall be referred to as the “Hindsight Approach”.

51 From the case law, it is submitted that the appellate courts have generally opted for the Fresh Approach rather than the Hindsight Approach, and it is further submitted that this choice is right in principle.

52 The approach taken by appellate courts can be seen in the following two cases.

53 To begin with, *Vijay Kumar* itself. After the General Division of the High Court held that sentencing precedents for MCRBA 2008 s 6(2) offences should be treated with caution when calibrating sentences for PSA s 5(3) offences, it proceeded to lay down a “single starting point” sentencing framework for PSA s 5(3) offences involving the unlicensed provision of money transfer services by individuals.⁷⁸ In determining the appropriate custodial term that would serve as the starting point for an offender claiming trial under this framework, it considered only the sentencing ranges for 23 precedent PSA s 5(3) cases⁷⁹ with no reference made to any sentencing precedents for MCRBA 2008 s 6(2) offences.

54 Next, *Nicholas Tan*. In this case, the appellant had pleaded guilty before the District Court to two charges involving offences under PC s 377BB(4). On appeal, the General Division of the High Court decided to lay down a sentencing framework for PC 377BB(4) offences using the approach taken in *Logachev*.⁸⁰ Although it had noted in the beginning of the judgment that PC s 377BB had been enacted by Parliament to define and adequately punish the offending behaviour of voyeurism, a species of crime that had previously been dealt with through a “patchwork of laws, including insult of modesty under the now-repealed [PC 2008] s 509 and possession of obscene films under s 30 of the Films Act”⁸¹ (“FILA 1998”), it made *no reference* to sentencing precedents involving either PC 2008 s 509 or FILA 1998 s 30 offences beyond the following two general observations:

78 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [49].

79 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [73].

80 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [55].

81 Cap 107, 1998 Rev Ed. *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [4].

(a) Parliament's intention to place deterrence at the fore for voyeurism offences could be seen most clearly though the prescribed punishment for such offences under PC s 377BB(7) which is "double the maximum imprisonment term under [PC 2008 s 509]".⁸²

(b) Based on precedents of voyeurism offences prosecuted under PC 2008 s 509, there were several common manifestations of such offences which included the recording of "up-skirt" or "down-blouse" pictures of victims in public places, as well as recording victims using the toilet or bathroom, and such typical manifestations were likely to diversify with the gradual advance of technology. As such the *Logachev* framework was "particularly apt" for such offences since it: (i) "provides for a methodical evaluation of offender-specific and offence-specific factors without overemphasising any particular factor"; and (ii) it "assists the sentencing court in systematically navigating the broad range of common situations in which the offence may manifest whilst giving the sentencing court sufficient latitude to respond to the distinctive features of a particular case".⁸³

55 The apparent lack of reference made by the General Division of the High Court to sentencing outcomes, trends or norms for voyeurism offences prosecuted under either PC 2008 s 509 or FILA 1998 s 30 is particularly noteworthy. This is because the Prosecution had actually made submissions for an aggregate sentence of 8 to 12 weeks' imprisonment "*in reliance on sentencing precedents for similar upskirt offences previously prosecuted under the now repealed [PC 2008 s 509], and a reported case involving an offence under [PC s 377BB(4)]*" [emphasis added].⁸⁴

56 However, it is submitted that the preference for the Fresh Approach towards calibrating sentences for offending conduct prosecuted under a consolidated offence in both *Vijay Kumar* and *Nicholas Tan* is correct in principle, and can be explained in light of the principles enunciated in *Kathleen Luong* and *Idya Nurhazlyn* as to when a sentencing court may rely on sentencing precedents concerning an offence different from that for which the court is to pass sentence.

57 Firstly, the repealed offences in *Vijay Kumar* and *Nicholas Tan* were *insufficiently* analogous in policy to the new offence(s) in either

82 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [48].

83 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [56].

84 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [15].

case. As already alluded to above,⁸⁵ the General Division of the High Court in *Vijay Kumar* held that “it would be hasty to conclude from [the] overlap of objectives [between MCRBA 2008 s 6(2) offences and PSA s 5(3) offences] that the precedents under [MCRBA 2008 s 6(2)] ought to be fully relevant for [PSA s 5(3)]”.⁸⁶

58 While no similar observations were made expressly by the General Division of the High Court in *Nicholas Tan*, the lack of analogy in policy between the repealed PC 2008 s 509 and the newly-enacted PC s 377BB(4) is apparent from the text of the provisions themselves and the relevant Parliamentary Debates. For reference, PC 2008 s 509 stated:

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

59 In comparison, PC s 377BB set out six different offence-creating provisions in PC ss 377BB(1)–377BB(6), all of which were punishable under the same prescribed punishment in PC ss 377BB(7) and 377BB(8).

60 During the Second Reading of the Criminal Law Reform Bill, which proposed the introduction of PC 2008 s 377BB into law, Amrin Amin, the Senior Parliamentary Secretary to the Minister for Home Affairs, explained that there were two key motivations for the amendment:⁸⁷

(a) technology had facilitated the commission of sexual offences, such as voyeurism, which were dealt with at that time under the offence of Insult of Modesty in the Penal Code and also under the Films Act; and

(b) the current laws “[*did*] not adequately address the range of offences involving voyeuristic recordings and the distribution of such material on the Internet” [emphasis added].

61 These motivations behind the enactment of PC s 377BB by Parliament were also noted in substance by the General Division of the High Court in *Nicholas Tan*.⁸⁸

85 See para 47 above.

86 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [30].

87 Singapore Parl Debates; Vol 94, Sitting No 103; [6 May 2019] (Amrin Amin, Senior Parliamentary Secretary to the Minister for Home Affairs).

88 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [4].

62 As such, Parliament sought to “create specific offences in the Penal Code to provide proper framing for such offences and adequate punishments”.⁸⁹

63 From the above, it is apparent that even though both PC 2008 ss 377BB and 509 could be used to prosecute voyeurism (*ie*, the observation or recording of another person doing a private act without that person’s consent), the scope of conduct covered under either provision was simply too disparate for a sentencing court to find sufficient analogy in policy between the two provisions. In particular:

(a) PC 2008 s 509 covered a far broader range of conduct compared to PC 2008 s 377BB. The former provision did not merely target voyeurism, it criminalised other species of behaviour done with the intention to insult a woman’s modesty, such as cases where a man makes an indecent sexual proposal to a woman.⁹⁰

(b) Further, PC 2008 s 509 did not adequately address all forms of voyeurism. It did not target the species of voyeurism now covered under PC s 377BB(3) and 377BB(5): where offenders recorded their victims secretly, without any intention that their actions would be seen or heard by said victims.

64 Secondly, there was insufficient analogy in punishment. Whereas PC 2008 s 509 offences were punishable with imprisonment of up to a year, or a fine of no specified limit, or both, PC s 377BB(4) offences carry separate punishment regimes depending on the age of the victims affected. Where the victim is 14 years old or older, PC s 377BB(7) prescribes punishment consisting of imprisonment of up to 2 years, or a fine of no specified limit, or caning, or any combination of the above. Where the victim is younger than 14 years old, PC s 377BB(8) prescribes mandatory imprisonment of up to 2 years, with the possibility of a fine or caning.

65 As such, the General Division of the High Court did not err in taking the Fresh Approach over the Hindsight Approach when it set out the sentencing ranges within its framework for PC s 377BB(4) offences, or when it calibrated the sentence for the offences committed by the appellant in *Nicholas Tan*. There was simply not enough analogy in policy

89 Singapore Parl Debates; Vol 94, Sitting No 103; [6 May 2019] (Amrin Amin, Senior Parliamentary Secretary to the Minister for Home Affairs).

90 See *eg*, *Public Prosecutor v Ken Lim Chih Chiang* [2024] SGMC 90 where the accused in that case was alleged to have insulted the modesty of a female victim by asking her if she was a virgin or saying, “[W]hat if I have sex with you right now.” The accused was ultimately acquitted due to evidential difficulties.

or punishment between PC 2008 s 509 and PC s 377BB(4) for the court to derive any assistance from the sentencing outcomes for PC 2008 s 509 offences when calibrating the sentence for factually-similar offending conduct prosecuted under PC s 377BB(4).

(3) *Precedents and frameworks for non-analogous offences are still useful*

66 Notwithstanding the foregoing, it should be mentioned that just because one offence is not analogous to another offence in policy and punishment does not mean that precedents for the former are of no relevance in calibrating the sentence for the latter.

67 Rather, it appears from the case law that so long as two offences can be classified within a single genus of offences (eg, property offences, dishonesty offences, hurt offences), the sentencing considerations (eg, deterrence, retribution, *etc*) and factors used to measure an offender's harm and culpability along the prescribed spectrum for one of the offences can potentially be adopted to measure an offender's harm and culpability along the prescribed sentencing spectrum for the other offence. As shall soon be apparent, this is not the same as using the sentencing *outcomes* for one offence to inform the sentencing outcomes for factually similar offending conduct under another offence. Rather, the court is merely holding that the same sentencing considerations (eg, general deterrence) are engaged when either offence is committed, and that the same sentencing factors can be used to measure the seriousness of offending conduct whether it is prosecuted under either offences and situate it along the respective prescribed punishment spectrum for either offence.

68 This was the approach taken in *Idya Nurhazlyn*. Even though the High Court in that case had found that precedents concerning offences under either IMMA 2008 s 57(1)(k) or PC 1985 s 182 “shed limited light on what the appropriate sentence should be” for the instant offence under PASA 2008 s 39(1), due to the lack of analogy in policy or punishment among the offences,⁹¹ it nevertheless went on to hold that “[w]hat is useful in [*Chowdhury*, a case concerning an offence under IMMA s 57(1)(k)] is the analytical framework put forward by Yong Pung How CJ for assessing the culpability of an offender for false statement offences”. In particular, the court cited the four factors identified by Yong Pung How CJ to guide the court in determining what the appropriate

91 *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor* [2014] 1 SLR 756 at [30].

sentence should be under the prescribed punishment spectrum for IMMA 2008 s 57(1)(k) offences.⁹² Pertinently, the High Court held that:⁹³

In my judgment, this framework [referring to the four sentencing factors identified by Yong CJ in *Chowdhury*] can usefully be applied *for offences even under other statutes where these involve false statements being made to a public authority*, in order to enable the sentencing court to gauge how serious the particular offence is and where in the sentencing range the case should fall. [emphasis added]

69 Further, in *Vijay Kumar* itself, the General Division of the High Court held that while it would treat sentencing precedents concerning MCRBA 2008 s 6(2) offences with caution in light of the reasons it had canvassed, “that [was] not to say that the [MCRBA 2008 s 6(2)] precedents [were] devoid of relevance.” Rather, such precedents “remain[ed] helpful in so far as they provide[d] the relevant sentencing factors, both aggravating and mitigating, for consideration within the applicable sentencing framework” [emphasis added].⁹⁴

70 Indeed, the High Court has also repeatedly held that the same sentencing factors can be used to calibrate the sentences across a host of property offences.⁹⁵ In *Public Prosecutor v Lam Leng Hung*,⁹⁶ the High Court not only accepted “the general proposition that in respect of property offences, *including that of CBT*, the starting consideration ought to be the value of property involved”, but also adopted a non-exhaustive list of factors set out by the English Court of Appeal in *R v John Barrick*⁹⁷ that it felt were also relevant for calibrating sentences under CBT. Importantly, the High Court held that “[w]hile these factors were set out *in the context of the offences of theft and fraud*, [they were] also relevant in the context of CBT” [emphasis added].

92 *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor* [2014] 1 SLR 756 at [32].

93 *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor* [2014] 1 SLR 756 at [33].

94 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [36].

95 In particular, the value of the loss of property occasioned by the offender generally remains the primary yardstick for a host of offences where property was lost as a result of the offending, including cheating under s 420 of the Penal Code (Cap 224, 1985 Rev Ed) (see *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 at [40]), and corruption offences under s 6(c) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) (see *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 at [42], though the High Court noted that in that case that there could be cases where value of the property lost by the victim would not be an “accurate proxy” for the harm suffered).

96 [2017] 4 SLR 474.

97 (1985) 81 Cr App R 78.

71 Finally, in *Public Prosecutor v Law Aik Meng*,⁹⁸ the High Court famously laid out *categories* of offences wherein sentencing considerations of general deterrence would arise. These categories, such as “[o]ffences against or relating to public institutions”, or “offences against vulnerable victims” were not limited by the court to specific offence-creating provisions. Rather, the court held that offences of those *types* warranted general deterrence.⁹⁹

B. Where offences are analogous

72 This article now turns to the scenarios where offences can be considered to be analogous in policy and punishment. In this respect, there appear to be at least two such cases:

- (a) where the offences are ordinally proportionate to one another; and
- (b) where the offences are part of the same criminal enterprise.

(1) Offences are ordinally proportionate

73 One classic case in which sentencing courts have *generally* been willing to refer to precedents for one offence when calibrating the sentence for another is when the offences are ordinally proportionate to each other. As I shall endeavour to show, this is because ordinally proportionate offences are generally analogous to each other in policy and punishment.

74 The doctrines of ordinal and cardinal proportionality were first expounded by the High Court (*per* Yong CJ) in *Xia Qin Lai v Public Prosecutor*¹⁰⁰ (“*Xia Qin Lai*”). There, the court defined ordinal proportionality as the measurement of the seriousness of the offence in question against other offences, and cardinal proportionality as dealing with the question, “How serious is this particular offence of its type?”¹⁰¹ The applicability of these doctrines in the local sentencing jurisprudence has been affirmed more recently by the High Court in *Public Prosecutor v Tan Thian Earn*¹⁰² (“*Tan Thian Earn*”).

98 [2007] 2 SLR(R) 814.

99 *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [24].

100 [1999] 3 SLR(R) 257.

101 *Xia Qin Lai v Public Prosecutor* [1999] 3 SLR(R) 257 at [28].

102 [2016] 3 SLR 269 at [37]–[38] and [45].

75 Thus, in *Xia Qin Lai*, the High Court came to the conclusion that the sentences of 8 months' imprisonment for the Appellant's offences under PC 1985 s 471 were too high in comparison with other cases under that same provision (cardinal proportionality) while also noting that the offences "were analogous to an aggravated form of forgery punishable under [PC 1985] ss 466 and 467" and therefore their custodial sentences had to be "not insubstantial" (ordinal proportionality).¹⁰³

76 Similarly, in *Tan Thian Earn*, the High Court held that the District Court's starting point of 2 years' imprisonment for the respondent's offence under s 10A(1)(c) of the Misuse of Drugs Act¹⁰⁴ ("2008 MDA") (possession of a controlled substance used in the manufacture of methamphetamine) was "inappropriate" as it failed to accord with the principles of ordinal and cardinal proportionality.¹⁰⁵

77 In relation to ordinal proportionality, the High Court held that the starting point sentence did not accord with the seriousness of the *other 'supply side' offences* under the 2008 MDA, such as the offence under 2008 MDA s 10 (cultivation of cannabis, opium and coca plants).¹⁰⁶ In particular, it held that "if the minimum sentence imposed for cultivating cannabis was three years imprisonment, then the starting sentence for the present sentence [for possessing a substance used in the manufacture of methamphetamine] should not be imprisonment for a term of two years".¹⁰⁷

78 In relation to cardinal proportionality, the High Court conceived of the respondent's offence as an *abetment* of the offence of the *actual* manufacture of drugs under MDA 2008 s 6. As such, it held that if "[t]he minimum punishment for manufacturing any drug is five years' imprisonment and five strokes of the cane [...] the starting point of two years' imprisonment identified by the District Judge is somewhat low".¹⁰⁸

79 Following that, in *Bernard Tan*, the High Court came to its decision on the appropriate aggregate sentence to impose for the accused's five charges involving the offences of sexual assault by penetration under PC 2008 s 376(1)(b) by applying the doctrine of ordinal proportionality. It compared the overall criminality of the accused with the offender in *Public Prosecutor v Yap Weng Wah*¹⁰⁹ ("Yap

103 *Xia Qin Lai v Public Prosecutor* [1999] 3 SLR(R) 257 at [28]–[29].

104 Cap 185, 2008 Rev Ed.

105 *Public Prosecutor v Tan Thian Earn* [2016] 3 SLR 269 at [37].

106 *Public Prosecutor v Tan Thian Earn* [2016] 3 SLR 269 at [37]–[39].

107 *Public Prosecutor v Tan Thian Earn* [2016] 3 SLR 269 at [40].

108 *Public Prosecutor v Tan Thian Earn* [2016] 3 SLR 269 at [42].

109 [2015] 3 SLR 297.

Weng Wah”) though the latter was convicted and sentenced for charges involving the separate offences of sexual penetration of minors under PC 2008 ss 376A(2) and 376A(3). It held that “[a]fter weighing up the various issues and considering the objectives of parity, rank order and the spacing of penalties necessary in ensuring ordinal proportionality ... between *Yap Weng Wah* and the case at hand, ... the [Accused’s] sentence ought to take reference from, but be appreciably lower than Yap’s”.¹¹⁰

80 Drawing from the above, it is submitted that ordinarily proportionate offences should be considered as a species of offences that are analogous *in policy*. This is because the scope of conduct caught under two ordinarily proportionate offences is clearly similar enough that the location where a species of offending conduct falls on the prescribed punishment spectrum for one of the offences can usefully inform where it should fall on the prescribed punishment spectrum for the other offence.

(2) *Not all ordinarily proportionate offences are analogous*

81 Despite the foregoing, it should be borne in mind that even though ordinarily proportionate offences are generally analogous in policy, they may not be analogous in punishment.

82 In *Public Prosecutor v Yeo Ek Boon Jeffrey*,¹¹¹ the High Court was concerned with setting down a sentencing framework for offences under PC 2008 s 332 (voluntarily causing hurt to a public servant to deter him from his duty). The *amicus curiae* advocated for a single sentencing benchmark that should apply to such offences against all public servants, whether or not they play an enforcement role. Under this proposed framework, the court would first begin with a “baseline” sentence of 8 to 10 weeks’ imprisonment before making adjustments to it based on the aggravating and mitigating factors present in the case. One of the reasons that the *amicus curiae* gave in support of her submissions was that the “baseline” sentence was in line with ordinal proportionality, specifically, that it adequately reflected a penalty “premium” that should attach to the cases of causing hurt to a public servant as opposed to causing hurt generally.¹¹² That is, offences under PC 2008 s 323. However, the High Court held that it “[did] not think that the principle of ‘ordinal proportionality’ [...] should apply to tether the sentences for offences under s 332 to those for offences under s 323 of the Penal Code simply because both offences have their root in causing hurt”. To this end, the court placed significant weight on the disparity between the prescribed punishments for PC 2008

110 *Public Prosecutor v Tan Meng Soon Bernard* [2019] 3 SLR 1146 at [63].

111 [2018] 3 SLR 1080.

112 *Public Prosecutor v Yeo Ek Boon Jeffrey* [2018] 3 SLR 1080 at [28]–[29].

s 323 (which was punishable with imprisonment of up to 2 years, or a fine of up to \$5000 or both), and PC 2008 s 332 (which was punishable with imprisonment of up to 7 years, or with fine (of no specified limit), or with caning, or with any combination of the above). As such, the court held that “[t]he significantly different sentencing options and ranges for these two offences indicate that Parliament views [PC 2008 s 332] as a much more serious offence” and it may therefore “not be appropriate to extrapolate from the sentencing norms for [PC 2008 s 323] offences in order to calibrate a sentence framework for [PC 2008 s 332] offences”.¹¹³

83 Indeed, in the context of hurt offences, the presumptive sentences obtained under the sentencing framework for offences under PC s 323 (voluntarily causing hurt *simpliciter*) has *not* been regarded as a useful guide for calibrating offences punishable under either PC s 323A (voluntarily causing hurt which actually causes grievous hurt)¹¹⁴ or PC s 325 (voluntarily causing grievous hurt).¹¹⁵

(3) *Same criminal enterprise*

84 The second situation alluded to above is less well-established. In *Syed Fathuddin Putra bin Syed A Rahman v Public Prosecutor*¹¹⁶ (“*Syed Fathuddin*”), the General Division of the High Court held that the framework in *Yap Ah Lai* “should *continue* to govern most of the specified offences punishable under s 128L(4) of the Customs Act” [emphasis added].¹¹⁷ This was so even though the framework in *Yap Ah Lai* only appeared to be concerned with offences under CUSA 2004 s 128F.¹¹⁸

85 The court’s reasons for its holding were as follows:¹¹⁹

- (a) “[i]t may be entirely fortuitous that an offender was caught at one step [of the cigarette smuggling chain] instead of another” such that “there was no need to distinguish [between] the culpabilities of two offenders purely by looking at which step in the chain they were charged with performing”;

113 *Public Prosecutor v Yeo Ek Boon Jeffrey* [2018] 3 SLR 1080 at [56].

114 *Ang Boon Han v Public Prosecutor* [2024] 5 SLR 754 at [30]–[31].

115 *Saw Beng Chong v Public Prosecutor* [2023] 3 SLR 424 at [29].

116 [2024] 3 SLR 1672 at [46].

117 That is, offences under ss 128D to 128I of the Customs Act (2020 Rev Ed), including offences under ss 128H, 128I(1)(a)(ii) and 128I(1)(b) of the Act.

118 See *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 at [46], acknowledged in *Syed Fathuddin Putra bin Syed A Rahman v Public Prosecutor* [2024] 3 SLR 1672 at [34].

119 *Syed Fathuddin Putra bin Syed A Rahman v Public Prosecutor* [2024] 3 SLR 1672 at [49]–[50].

(b) “the culpability of offenders [involved in the cigarette smuggling chain] may be distinguished by examining other factors such as further involvement in owning, managing or controlling the smuggling enterprise”;

(c) “the specified offences also target the same twin evils of preventing loss of revenue to the Government and reducing the consumption of harmful goods”; and

(d) “[t]he specified offences under s 128F, 128G, 128H and 128I of the Customs Act ... form the core steps or activities in the smuggling chain” and “[a]lthough the core steps of smuggling do not need to be dealt with under s 128D ... and s 128E”, “any specific step in the smuggling chain is also likely to amount to a concurrent offence under s 128D” and “[s]ection 128E deals in essence with a failed attempt to import dutiable or prohibited goods”.

86 From the abovementioned holdings of the court in *Syed Fathuddin*, it is submitted that the specified offences forming part of the cigarette smuggling chain could be considered analogous in policy and punishment.

87 Firstly, the underlying legislative policies of the offences in CUSA ss 128D–128I were held to be the “same twin evils of preventing loss of revenue to the Government and reducing the consumption of harmful goods”.¹²⁰

88 Secondly, offences under CUSA ss 128D–128I involving 2 kg or more of relevant tobacco products attracted the *same* punishment regime under CUSA s 128L(4).

89 Thirdly, and perhaps most importantly, the culpabilities of paid workers involved at different parts of the smuggling chain (and who were charged with different offences under CUSA ss 128D–128I) were easily comparable as the General Division of the High Court held that it “may be entirely fortuitous that an offender was caught at one step instead of another and [there was] no need to distinguish the culpabilities [of both offenders] by looking at which step in the chain they were charged with performing” [emphasis added].¹²¹

120 *Syed Fathuddin Putra bin Syed A Rahman v Public Prosecutor* [2024] 3 SLR 1672 at [49].

121 *Syed Fathuddin Putra bin Syed A Rahman v Public Prosecutor* [2024] 3 SLR 1672 at [49].

90 As such, where an offence under CUSA s 128F fell on its prescribed sentencing spectrum could reasonably inform where an offence under CUSA s 128H should fall under its own prescribed sentencing spectrum.

91 Given the above, it is submitted that the law should recognise a second species of analogous offences, those that are part of the same criminal enterprise.

IV. No principled reason to prohibit reference to sentencing frameworks for other offences

92 In light of the foregoing, it is submitted that there is no reason in principle to restrict a sentencing court from calibrating the sentence for one offence (*ie*, the NCO) with reference to the sentence that would have been obtained had the same conduct been punished under the sentencing framework for another offence (*ie*, the FCO) *provided* that the NCO and FCO are analogous in their policies and punishments.

93 Sentencing frameworks, after all, are a species of guideline judgment wherein the court has “[laid] down the *presumptive* sentences that should be imposed for the commission of an offence in defined factual scenarios”.¹²² As such, where an FCO and NCO are analogous in policy and punishment, the notional sentence that would have been obtained had the offending conduct been prosecuted under an FCO instead of an NCO can arguably assist the court in calibrating the sentence for the NCO in the same way that a court can use a sentencing precedent for one offence to help it calibrate the sentence for another offence provided that the two offences are sufficiently analogous.

94 Indeed, as the decision in *Syed Fathuddin* seems to suggest, a sentencing court may not be remiss to hold that the sentencing framework for an FCO *governs* the sentencing of other offences that are within the same criminal enterprise as the FCO *even if* the appellate court did not expressly state in its original guideline judgment (wherein the framework for the FCO was laid down) that those other offences were within the scope of the framework.

95 In addition, one might even go so far as to say that sentencing courts are *already* permitted to calibrate sentences for an NCO with reference to the sentences obtained in factually similar cases involving an FCO where the NCO and FCO are *both* analogous in policy and punishment, *and* ordinarily proportionate to each other.

122 Ng Kean Meng *Terence v Public Prosecutor* [2017] 2 SLR 449 at [25].

96 For example, in *Sriram s/o Seevalingam v Public Prosecutor*,¹²³ the appellant had pleaded guilty before the District Court, *inter alia*, to four charges involving offences under PC 2008 s 419 (cheating by personation) and was sentenced to 9 months' imprisonment for each charge. On appeal, the General Division of the High Court adjusted the individual sentences downward to 6 months' imprisonment. In coming to its conclusion, the court held that it could calibrate the sentences "with reference to similar offences under ss 417 and 420 of the Penal Code" as "[t]his would be commensurate with the principle that "[w]hen Parliament sets a statutory maximum, it *signals the gravity* with which the public, through Parliament, views this particular offence".¹²⁴ To this end, the court not only had regard to the sentencing norms for PC 2008 s 417 offences involving losses of between \$1,000 and \$15,000, it *also* considered the "starting point set out in [*Public Prosecutor v Fernando Payagala Waduge Malitha Kumar*]¹²⁵ of 12 to 18 months' imprisonment for credit card cheating offences prosecuted under s 420 of the Penal Code"¹²⁶ (a sentencing framework using the "benchmark" approach).¹²⁷

97 One further point bears mentioning. First instance courts have sometimes refused¹²⁸ an invitation to extend the application of a sentencing framework for an FCO to calibrate the sentence for an NCO by relying on the *dictum* in *Public Prosecutor v Sindok Trading Pte Ltd*¹²⁹ ("*Sindok*") that "[sentencing] benchmarks should generally be left to the appellate court [and] should only be imposed when there are sufficient cases [and not] *a priori* generally."¹³⁰

98 It is submitted that this *dictum*, while salutary, should not be read too broadly. From context, it appears that the High Court in *Sindok* was seeking to discourage District Courts from laying down sentencing benchmarks, in particular, *a priori* and without the benefit of referring to the outcomes in a sufficient number of well-reasoned cases. The High Court does not appear to have made any comments on whether or how a *pre-existing* framework formulated by an appellate court for an FCO could be referred to or extended to calibrate the sentence for an NCO.¹³¹

123 [2023] 3 SLR 1006.

124 *Sriram s/o Seevalingam v Public Prosecutor* [2023] 3 SLR 1006 at [11].

125 [2007] 2 SLR(R) 334.

126 *Sriram s/o Seevalingam v Public Prosecutor* [2023] 3 SLR 1006 at [13(a)].

127 Ng Kean Meng Terence v *Public Prosecutor* [2017] 2 SLR 449 at [31].

128 See *Public Prosecutor v Aung Myint* [2025] SLR(StC) 23 at [44] and *Public Prosecutor v Siraj Munir Bin Mohamed Basheer* [2025] SGM 13 at [56]–[57].

129 [2022] 5 SLR 336.

130 *Public Prosecutor v Sindok Trading Pte Ltd* [2022] 5 SLR 336 at [29].

131 As an aside, the High Court's caution in *Public Prosecutor v Sindok Trading Pte Ltd* [2022] 5 SLR 336 is understandable as one District Court's decisions are not binding on other District Courts and therefore any framework formulated by a District Court
(*cont'd on the next page*)

99 Furthermore, in giving its caution, it is unlikely that the High Court in *Sindok* intended for its *dictum* to detract from either: (a) earlier High Court pronouncements in *Kathleen Luong* or *Idya Nurhazlyn* on the requirements for sufficient analogy in policy and punishments before a sentencing court is allowed to calibrate the sentence for one offence with reference to sentencing precedents for another; or (b) the time-honoured doctrine of ordinal proportionality.

V. Resolving the *Nicholas Tan* and SAP Guidelines Splits

100 This article now turns to resolving the *Nicholas Tan* and SAP Guidelines Splits.

101 In brief, it is submitted that:

(a) With respect to the *Nicholas Tan* Split, the offences in PC ss 377BB(1)–377BB(6) are clearly analogous in policy and punishment and it is correct for a sentencing court to refer to, if not extend, the sentencing framework in *Nicholas Tan* for PC s 377BB(4) offences to calibrate the sentence for the other PC s 377BB offences.

(b) With respect to the SAP Guidelines Split, the CDSA s 55A Offence on the one hand, and the CMA s 3 and PC s 417 Offences on the other hand are not sufficiently analogous in either policy or punishment, and a sentencing court should therefore refrain from referring to the framework in the SAP Guidelines for CDSA s 55A Offences when calibrating the sentence for CMA s 3 or PC s 417 Offences, even where the offending conduct prosecuted under all three offences involves the unauthorised relinquishment of bank accounts by offenders to third parties.

A. *Nicholas Tan Split*

102 The offences in PC ss 377BB(1)–377BB(6) are clearly analogous in punishment as they are all punishable under PC s 377BB(7) which carries a term of imprisonment (which may extend to 2 years), or a fine (of no specified limit), or caning (also of no specified limit), or any combination of the above punishments.

103 They are also clearly analogous in policy. As the General Division of the High Court in *Nicholas Tan* observed, PC s 377BB

Court could fail to bind other District Court decisions, potentially leading to jurisprudential chaos among the decisions at first instance.

was introduced by Parliament “with the view to define the offending behaviour of voyeurism and provide adequate punishments”.¹³² Indeed, the court appears to have taken notice of the overlap between PC ss 377BB(4) and 377BB(5) when it held that “the [PC s 377BB(4)] offence can be committed regardless of whether the offender had made a record of the victim’s image, be it by way of a photograph or video”. For context, PC s 377BB(4) criminalises the operation of equipment by any person to observe the private regions of a victim, while PC s 377BB(5) criminalises the recording by any person of the private regions of a victim. Indeed, the District Court in *Public Prosecutor v Muhammad Faiz Bin Mohamed Yasin*¹³³ went further and noted that (the whole of) PC s 377BB was specifically introduced to address technology-facilitated offences, something that the repealed PC 2008 s 509 was inadequate to deal with, and that PC ss 377BB(1)–377BB(6) “set out the entire *range* of contemptable voyeuristic offences”. The court cited the Second Reading of the Criminal Law Reform Bill wherein K Shanmugam (the Minister for Home Affairs) proposed the introduction of “specific offences involving ‘voyeurism’ which will define the offending behaviour and provide adequate punishments”.¹³⁴

104 Thus, it is clear that the conduct caught under PC ss 377BB(1)–377BB(6) was intended to set out and criminalise the entire range of possible voyeuristic conduct, from the observation of persons engaged in private acts, to the operation of equipment for such observation, to the recording of persons engaged in private acts or from the operation of equipment to the recording of another person’s private parts. Such acts arguably form part of the same criminal enterprise, and like the offences in CUSA ss 128D–128I, there should be no distinction of culpability between offenders who choose to engage in one species of voyeurism over another.

105 As such, it is submitted that it is amply permissible for courts to refer to the *Nicholas Tan* framework when calibrating the sentences for offences under PC ss 377BB(1)–377BB(6) which are punishable under PC s 377BB(7).

B. SAP Guidelines Split

106 In contrast, it is submitted that CDSA s 55A Offences are not analogous to either CMA s 3 Offences or PC s 417 Offences such that a sentencing court could refer to, adapt or extend the recommended

132 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [4].

133 [2023] SGM C 28.

134 *Muhammad Faiz Bin Mohamed Yasin* [2023] SGM C 28 at [27]–[29].

sentencing framework for CDSA s 55A Offences when calibrating the sentences for either CMA s 3 or PC s 417 Offences.

107 First, with respect to punishment:

- (a) CDSA s 55A Offences are punishable with a fine (not exceeding \$50,000), or imprisonment (not exceeding 3 years), or both;
- (b) CMA s 3 Offences are punishable with a fine (not exceeding \$5,000), or imprisonment (not exceeding 2 years), or both; and
- (c) PC s 417 Offences are punishable with a fine (of no specified limit), or imprisonment (not exceeding 3 years), or both.

108 Based on the foregoing, it is clear that there is very little analogy between the prescribed punishments for the three offences beyond, perhaps, the type of punishments prescribed. While the differences in prescribed punishments here are not quite as stark as those between the offences compared in either *Kathleen Luong* or *Idya Nurhazlyn*, it is submitted that they are disparate enough to bar any finding of analogy. In *Public Prosecutor v Siraj Munir Bin Mohamed Basheer*,¹³⁵ the District Court rightly noted several difficulties with obtaining a starting sentence for the CMA s 3 and PC s 417 Offences committed in that case through conducting a linear scaling exercise from the recommended starting point for CDSA s 55A Offences in the SAP Guidelines. Among these difficulties, the District Court cited the different prescribed punishments, holding that:

While the maximum imprisonment term under CDSA s 55A is 1.5 times longer than under CMA s 3(1), the maximum fine is 10 times higher. PC s 417 further complicates this picture, prescribing the same maximum imprisonment term as CDSA s 55A, but with no prescribed limit on the fine that may be imposed.¹³⁶

109 Next, with respect to policy, it is submitted that there is near zero analogy between the underlying policies of CDSA s 55A, PC s 417 and CMA s 3 Offences beyond the fact that the relinquishment of bank accounts to third parties unauthorised to access such accounts may be prosecuted under these provisions.

110 First, the main policy underpinning CDSA s 55A is Parliament's desire to hold money mules liable for the offence of assisting another

135 [2025] SGMC 13.

136 *Public Prosecutor v Siraj Munir Bin Mohamed Basheer* [2025] SGMC 13 at [42].

person to retain benefits of criminal conduct *in limited circumstances*. During the Second Reading of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Bill, the Second Minister for Home Affairs, Josephine Teo, stated that:¹³⁷

Based on investigations into scams, the Police have observed conduct common among money mules in facilitating a scam.

Hence, clause 7 of the Bill adds a new section 55A which introduces a new offence of assisting another person to retain benefits from criminal conduct. A money mule can be held liable for this offence *if his conduct falls within any of the following four circumstances*.

One, the value of the property he dealt with is disproportionate to his known sources of income; or two, he allowed another person, or persons, to access, operate or control his payment account and failed to take reasonable steps to find out the purpose of this arrangement; or three, he received or transferred money using his payment account and failed to take reasonable steps to find out the source or destination of the money; or four, he received money from or transferred money to another person or persons and failed to take reasonable steps to find out that person's identity and physical location.

[emphasis added]

111 Thus, these four circumstances form part of the offence created in CDSA s 55A(1) and can be found listed in CDSA s 55A(1)(b).

112 In comparison, PC s 417 and CMA s 3 Offences are far broader in their scope. In *Wong Tian Jun De Beers v Public Prosecutor*,¹³⁸ the General Division of the High Court held that “[e]ven though the offence of cheating is situated in Ch XVII of the Penal Code, which pertains to offences against property, it is nonetheless broad enough to capture the present offences”.¹³⁹ For context, the appellant in that case had deceived several women into believing that he was an agent for wealthy men looking for companionship, and that in order for any of the women to secure a “sugar daddy” arrangement with one of his clients, they had to send him their nude photographs. Later, this escalated into the appellant demanding that the women perform sexual acts with and for him in order to secure a meeting with his non-existent wealthy clients.¹⁴⁰

113 In *Public Prosecutor v Law Aik Meng*,¹⁴¹ the High Court observed that the CMA was enacted because Parliament felt that it was “difficult

137 Singapore Parl Debates; Vol 95, Sitting No 102; [8 May 2023] (Josephine Teo, Second Minister for Home Affairs).

138 [2022] 4 SLR 805.

139 *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805 at [31].

140 *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805 at [4].

141 [2007] 2 SLR(R) 814.

to proceed” against computer or computer-assisted crimes under the general laws against mischief, theft, *cheating* or criminal breach of trust, and that such general laws did not appear to provide sufficiently deterrent sentences. After noting further that subsequent amendments to the CMA were made to address the subsequent proliferation of computer-related crimes and to advocate for stronger deterrence for offences under the CMA, the High Court concluded, among other things, that even though frauds involving automatic teller machines could be prosecuted under PC 2008 s 420 (an aggravated cheating offence), “the deliberate prosecution of such offences under the CMA in lieu of the Penal Code signals to the court that it should consider whether to treat the offences even more seriously than if the prosecution had opted to invoke the provisions of the Penal Code.”¹⁴²

114 As such, it is apparent that the sentence meted out for a CDSA s 55A offence involving an offender who relinquishes access to a bank account to a third party for money will not assist the court in situating a factually-similar offence prosecuted under either PC s 417 or CMA s 3 along their respective prescribed punishment spectrums.

115 Thus, in light of the insufficient analogy in policy or punishment between CDSA s 55A Offences on the one hand, and PC s 417 and CMA s 3 Offences on the other, it is submitted that a sentencing court should refrain from referring to the starting sentences recommended in the SAP Guidelines for CDSA s 55A Offences involving offenders who relinquish access to a bank account to third parties without taking reasonable steps to verify the third parties’ purposes for accessing, operating or controlling the account (“money mule offences”).

116 That said, a sentencing court would not be remiss in referring to the sentencing considerations (namely, deterrence) and the sentencing factors (namely, whether a new bank account was opened by the offender, whether there was breach of trust and/or whether the offence was committed for personal gain, *etc*) highlighted in the SAP Guidelines for CDSA s 55A Offences, when calibrating sentences for money mule offences prosecuted under PC s 417 or CMA s 3 as these matters will assist a sentencing court to situate money mule offences along the prescribed punishment spectrum for those offences.¹⁴³

142 *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [35]–[39].

143 There are several cases wherein the District Court did not calibrate the sentences for CMA s 3 or PC s 417 offences with reference to the recommended starting sentence for CDSA s 55A Offences in the SAP Guidelines, but still had reference to the sentencing considerations and factors highlighted in the SAP Guidelines. These include: *Public Prosecutor v Muhammad Ryan Rosmani* [2024] SGDC 239 at [7]; *Public Prosecutor v Damian Eiyuu Ang* [2025] SGDC 5 at [19]–[25] and [37]; *Public* (cont'd on the next page)

VI. Calibration of aggregate sentences for multiple offences

117 The discussion hitherto has focused mainly on the calibration of sentences for individual offences. For completeness, this article shall round off with a discussion about the application of the doctrines canvassed above to the calibration of *aggregate* sentences for multiple offences.

118 The general approach to be taken in this respect is relatively well-settled. The High Court has repeatedly affirmed the following two-stage approach for sentencing an offender convicted of multiple offences:¹⁴⁴

- (a) First, the court is to consider the appropriate sentence for each individual offence.
- (b) Next, the court is to determine the overall sentence that should be imposed.

119 The analysis at the second stage involves the application of two main principles:¹⁴⁵

- (a) Firstly, the one-transaction rule. This rule involves the general proposition that imprisonment sentences for unrelated offences should run consecutively, while sentences for offences that form part of a single transaction should run concurrently. This is subject to: (i) the requirement in s 307 of the Criminal Procedure Code 2010¹⁴⁶ that where an offender is convicted of *and sentenced to imprisonment* for at least three distinct offences, the court must order that the sentences for at least two of those offences to run consecutively; and (ii) any other statutory limitation.
- (b) Secondly, the totality principle. Here, the court would take a “last look” at all the facts and circumstances to ensure that the aggregate sentence is sufficient and proportionate to the offender’s overall criminality. There are two limbs involved in the application of this principle: (i) the court should first examine whether the aggregate sentence is substantially above the

Prosecutor v Siraj Munir Bin Mohamed Basheer [2025] SGMC 13 at [59]; and *Public Prosecutor v Jovan Lim Jun Yan* [2025] SGDC 158 at [2] and [13]–[19].

144 See in particular, *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [98]. See also, *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 at [18] and *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [26]–[27] and [47].

145 *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [98(b)]–[98(c)].

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normal level of sentences for the most serious of the individual offences committed; and (ii) the court should examine whether the effect of the sentence on the offender is crushing and not in keeping with the offender's past records and future prospects. Where a sentence is found to be excessive, the sentencing court may either opt for a different combination of sentences to run consecutively or adjust the individual sentences.

120 The relevance of the principles canvassed in earlier sections of this article to the calibration of aggregate sentences appears to lie in the application of the totality principle. In particular, it appears that a sentencing court can determine how long an aggregate sentence should be by comparing the instant case with other cases involving offences which are analogous in policy and punishment.

121 As already alluded to above,¹⁴⁷ the High Court in *Bernard Tan* came to its decision on the appropriate aggregate sentence to impose for the accused's five PC 2008 s 376(1)(b) offences by comparing the overall criminality of the accused with that of the offender in *Yap Weng Wah* who was charged with offences under PC 2008 ss 376A(2) and 376A(3).

122 In *Bernard Tan*, the accused was convicted of five charges arising from five occasions wherein he performed fellatio on five victims, all of whom were boys between the ages of 8 and 11. In contrast, in *Yap Weng Wah*, the offender had pleaded guilty to 12 charges, 11 of which involved offences of sexual penetration of minors under 14 years old punishable under PC 2008 s 376A(3), while the remaining charge involved an offence of sexual penetration of a minor under 16 years old punishable under PC 2008 s 376A(2). The penetrative acts committed by the offender in *Yap Weng Wah* were more varied, including acts such as penile-anal penetration, performing and receiving fellatio, and digital anal penetration. The High Court in *Bernard Tan* held that "the accused's sentence ought to take reference from, but be appreciably lower than Yap's" in light of various issues (such as the number of victims, period of offending, manner in which victims were approached, and presence of relevant mental diagnoses) in both cases, and after "considering the objectives of parity, rank order and the spacing of penalties necessary in ensuring ordinal proportionality".¹⁴⁸

123 As such, after noting that the offender in *Yap Weng Wah* received an aggregate sentence of 30 years' imprisonment and 24 strokes of the cane, and holding that a sentence of 13 years' imprisonment with 12

147 See para 79 above.

148 *Public Prosecutor v Tan Meng Soon Bernard* [2019] 3 SLR 1146 at [63].

strokes of the cane was appropriate for each proceeded charge in the instant case, the High Court in *Bernard Tan* concluded that two of the sentences should run consecutively yielding a total sentence of 26 years' imprisonment with 24 strokes of the cane.¹⁴⁹

124 It is submitted that the High Court's decision in *Bernard Tan* to calibrate the appropriate aggregate sentence in that case by taking reference from the overall sentence imposed in *Yap Weng Wah* was not only sound, but clearly explainable within the conceptual framework of the principles in *Kathleen Luong* and *Idya Nurhazlyn*.

125 To begin with, the sexual offences committed by the accused in *Bernard Tan* and the offender in *Yap Weng Wah* were clearly analogous in policy. The High Court itself pertinently observed that PC 2008 ss 376 and 376A were both introduced by the Penal Code (Amendment) Act 2007,¹⁵⁰ that these amendments sought to achieve several (common) objectives including the “widen[ing] of the spectrum of [sexual] offences, thereby giving the Prosecution greater choice in deciding the appropriate charge to prefer”, and “[a]s a result of the above amendments, the Penal Code sets *one sentencing range for, and groups together, many forms of sexual penetration under s 376 and s 376A; including penile penetration of the mouth or anus, and penetration of the vagina or anus with any object*”. Thus, the court came to the conclusion that “the Penal Code, in terms of sentencing, *does not draw bright lines separating one form of sexual penetration, not amounting to rape, from another*” [emphasis added].¹⁵¹

126 Following that, the sexual offences in *Bernard Tan* and *Yap Weng Wah* were also somewhat analogous in punishment. For reference, the offences in *Bernard Tan* were punishable under PC 2008 s 376(4)(b), as they were committed against victims under the age of 14 years old, while the offences in *Yap Weng Wah* were punishable under PC 2008 ss 376A(2) and 376A(3). PC 2008 s 376(4)(b) prescribed a mandatory imprisonment term not less than 8 years, and not more than 20 years, with mandatory caning of not less than 12 strokes. In comparison, PC 2008 s 376A(2) prescribed either imprisonment which may extend to 10 years, or a fine, or both, while PC 2008 s 376A(3) prescribed a mandatory imprisonment which may extend to 20 years, and possible fines or caning.

127 While it is not readily apparent why the sentencing range prescribed in PC 2008 s 376A(3) appears to be far less severe than that in PC 2008 s 376(4)(b) when the offences punishable under either provision

149 *Public Prosecutor v Tan Meng Soon Bernard* [2019] 3 SLR 1146 at [61] and [65].

150 Act 51 of 2007.

151 *Public Prosecutor v Tan Meng Soon Bernard* [2019] 3 SLR 1146 at [25]–[27].

both involve the sexual penetration of persons under 14 years of age, there is still some broad similarity in the sentencing ranges. Specifically, the maximum imprisonment terms of 20 years under both sections, and the *possibility* of caning in the former offence and the *requirement* of caning in the latter offence. Admittedly, while the analogy in this respect is somewhat limited, it is submitted that in the context of calibrating aggregate sentences, this slight deficiency in analogy is not fatal because the court is not concerned with situating the case within a prescribed punishment spectrum when applying the totality principle, but rather with identifying an overall punishment that is sufficient and proportionate to the offender's overall criminality. Thus, it is sufficient that offences in the instant case and the case being compared are broadly similar in both policy and punishment, and that the overall offending conduct in both cases can be rationally compared (*ie* through the identification of specific common factors).

VII. Conclusion

128 In conclusion, the proliferation of sentencing frameworks is a welcome and intriguing development in the law of sentencing in Singapore as such judgments provide the public and offenders alike with a clear preview of how courts will utilise their sentencing jurisdiction.

129 However, sentencing frameworks should be understood as a species of sentencing precedents, and should be applied in accordance with the well-established pre-existing rules in *Kathleen Luong* and *Idya Nurhazlyn* which govern when a sentencing court may calibrate the sentence for a given offence with reference to sentencing precedents for other offences. Notably, sentencing courts should continue to ensure that the individual and aggregate sentences imposed in a given case are ordinarily proportionate to those imposed in comparable cases.
