

SENTENCING OFFENDERS UNDER THE ROAD TRAFFIC ACT FOR DRIVING DANGEROUSLY OR CARELESSLY WHILE UNDER INFLUENCE

Resolving the Double-Counting Quandary

A set of elegant and interlinked provisions in the Road Traffic Act 1961 came into force on 1 November 2019. The provisions were intended to better deal with cases in Singapore involving motorists who drive dangerously or carelessly while under influence of drink or drugs. These provisions when applied potentially give rise to an issue of double-counting in punishment. Case law has developed such that in some cases the concern of double-counting is fully ameliorated while in other cases it is not. This article submits that there is a more attractive solution to addressing the issue. This article also generally explains how the set of interlinked provisions works, which may be useful for readers who need to apply these provisions.

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I. Arising of the double-counting quandary

1 The Road Traffic Act 1961² (“RTA”) regulates and penalises various forms of irresponsible driving. Broadly, this comes in two groups of offences under the RTA. The first targets driving that is irresponsible because of the specific manner in which the driver drove. Offences in this group include driving in excess of prescribed speed limit,³ reckless or dangerous driving⁴ and driving without due care or reasonable consideration.⁵ The second group criminalises driving that

1 The author is very grateful to the anonymous referee for the insightful comments on an earlier draft, which helped refined various arguments made in this piece. Any error remains the author’s.

2 2020 Rev Ed.

3 Road Traffic Act 1961 (2020 Rev Ed) s 63(4).

4 Road Traffic Act 1961 (2020 Rev Ed) s 64.

5 Road Traffic Act 1961 (2020 Rev Ed) s 65.

is irresponsible because the driver drove in circumstances in which he was unfit to drive. This includes offences such as driving without a valid driving license,⁶ driving while under a disqualification order⁷ and driving while under influence of drink or drugs.⁸

2 A person may concurrently commit an offence each under the two groups given that a person can drive in circumstances in which he is unfit to drive and at the same time drive in a manner that is irresponsible. Indeed, in many cases, the fact that a driver drove while he was not fit to drive was probably the very reason, or at least a contributing factor, for him driving in an irresponsible manner.

3 In 2019, the Singapore Legislature made significant changes to the RTA.⁹ What is relevant to the present article are the amendments to the punishment scheme for persons found to have driven on a road dangerously or carelessly *while at the same time* being under influence of drink or drugs. In particular, the Legislature refined the provisions such that generally for such a driver, in respect of his conviction for the offence of reckless or dangerous driving or driving without due care or reasonable consideration (as the case may be):¹⁰

- (a) he shall be punished for the fact that he drove dangerously or carelessly on a road (whether or not such driving caused hurt);
- (b) he shall *also* be punished for the fact that he so drove while under influence of drink or drugs along that same road; and
- (c) the sentence imposed on him for this conviction shall be based on the sum of the two components described in (a) and (b) above.

4 The revised provisions further, as a general rule, require the Prosecution in such cases to also charge the driver for the offence of driving while under influence of drink or drugs based on the same stretch of driving as that for his charge of reckless or dangerous driving or driving without due care or reasonable consideration.¹¹

5 Following the amendments coming into force on 1 November 2019, the approach taken by the Singapore courts in sentencing such offenders (assuming they are found guilty of both charges) has been as

6 Road Traffic Act 1961 (2020 Rev Ed) s 35(3).

7 Road Traffic Act 1961 (2020 Rev Ed) s 43(4).

8 Road Traffic Act 1961 (2020 Rev Ed) s 67.

9 See Road Traffic (Amendment) Act (Act 27 of 2019).

10 See paras 39–46 below.

11 See para 28 below.

follows.¹² The first stage is to apply the relevant sentencing principles and frameworks, in order to ascertain the appropriate punishment each for the conviction for reckless or dangerous driving or driving without due care or reasonable consideration, and also for the conviction for driving while under influence of drink or drugs. A potential issue of double-counting will then inevitably arise. This is because in relation to the sentence for the former offence, as highlighted above,¹³ the relevant punishment provisions require that the driver be punished for both the fact that he drove dangerously or carelessly as well as the fact that he so drove while under influence of drink or drugs. In relation to the sentence for the latter offence, the usual sentencing principles dictate that the driver be punished for driving under influence, and the fact that he actually drove dangerously or carelessly is always an aggravating factor to be taken into account.¹⁴ Consequently, if the individual sentences for the two offences are to be aggregated cumulatively to derive the global sentence, the offender will be punished twice both for driving dangerously or carelessly and for driving while under influence. Moreover, the offences of reckless or dangerous driving or driving without due care or reasonable consideration and the offence of driving while under influence of drink or drugs share many common aggravating factors,¹⁵ and where these factors apply the offender will similarly be punished twice as regards these factors.

6 In cases where at the first stage the court determined that the appropriate punishment for both offences is an imprisonment term, the Singapore courts have then proceeded to order the two imprisonment terms to run concurrently.¹⁶ The Criminal Procedure Code 2010¹⁷ (“CPC”) explicitly permits this to be done. In such cases then, any concern of double-counting is fully ameliorated.

7 In cases where at the first stage the court determined that the appropriate punishment for the two offences is either both a fine, or a fine and an imprisonment term, the courts have imposed the two sentences as is.¹⁸ There is no equivalent legal avenue in the CPC to order that two

12 See paras 32–38 below.

13 See para 3 above.

14 *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 at [27] and *Rafael Voltaire Alzate v Public Prosecutor* [2022] 3 SLR 993 at [33].

15 *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 at [34].

16 See, eg, *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587; *Public Prosecutor v Shin Seung Ho* [2023] SLR(StC) 78; *Public Prosecutor v Mo Weiliang* [2023] SLR(StC) 315; *Public Prosecutor v Ashwin Kumar Kumaraswamy Sanketh* [2023] SLR(StC) 104; and *Public Prosecutor v Lim Lee Choon Alex* [2023] SLR(StC) 444.

17 See s 306(2) of the Criminal Procedure Code 2010.

18 See, eg, *Public Prosecutor v Chow Chee Kin* [2022] SGDC 45 and *Public Prosecutor v Cheng Chang Tong* [2023] SGHC 119.

sentences of a fine or a sentence of a fine and an imprisonment term be implemented concurrently.

8 Moreover, for both offences in this context, the provisions in the RTA prescribe a minimum fine amount (if the appropriate punishment is thought to be a fine instead of imprisonment). So in cases where the appropriate punishment for both offences is a fine, it may be possible to rely on the totality principle and wholly ameliorate the double-counting concern in some, but not all, cases by manually reducing the fine amounts.¹⁹ In cases where the appropriate punishment for one of the offence is a fine and the other an imprisonment term, it is not clear how manual adjustments are to be made to fully (or even partially) eliminate double-counting. Other options such as reducing the imprisonment term to a nominal length of one day or converting the fine amount(s) to imprisonment term(s) and then ordering both terms to run concurrently are simply too artificial.²⁰ In any event, all of these approaches involving *ad hoc* adjustments arguably substantially, if not completely, defeat the Legislature's purpose in meticulously and thoughtfully calibrating punishment ranges for the different cases based on fines and imprisonment terms in an overall elegant scheme of things.²¹

9 This thus gives rise to a double-counting quandary. In some cases, the concern of double-counting is completely ameliorated while in other cases the offender faces the full, or at least partial, brunt of being punished twice. Which is the case is arbitrary in the sense that whether the double-counting is fully mitigated or not is not in any way justified on the basis of any usual offence or offender-specific sentencing considerations. In addition, given that it is usually in more serious cases of irresponsible driving that a court will at the first stage find that the condign punishment for the two offences is each an imprisonment term, it will generally be in the less serious cases that the offender has to suffer double punishment.²²

10 This article takes the opportunity to analyse the issue more deeply and consider whether there is a more attractive solution to the quandary. In that regard, three submissions are respectfully offered.

11 The main submission is that in respect of a driver who drove dangerously or carelessly while at that same time was under influence

19 This was alluded to by the court in *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 at [65] (see para 35 below).

20 See also *Public Prosecutor v Chow Chee Kin* [2022] SGDC 45 at [62].

21 See para 27 below.

22 *Public Prosecutor v Chow Chee Kin* [2022] SGDC 45 at [57].

is convicted of the two offences, the legislative intention is actually that the driver be sentenced only for his conviction for reckless or dangerous driving or driving without due care or reasonable consideration. The legislative intention is that no separate penalty should be imposed for the conviction of driving while under influence of drink or drugs. Relatedly, because in such cases the punishment for the latter offence has been fully integrated into and subsumed under the punishment for the former offence, the latter is not a distinct offence from the former. Accordingly, the provisions in the CPC do not require that a separate punishment be imposed for the offender's conviction for driving while under influence of drink or drugs. This approach is also the most attractive because it ensures that any double-counting concern can be fully ameliorated in every case.

12 The first supplementary submission is that in cases where the evidence reveals that the driver had driven while under influence before or after the stretch of dangerous or careless driving (which was also while the driver was under influence), that may justify the court imposing a separate punishment for the conviction for driving while under influence of drink or drugs to punish the driver specifically for the stretch of driving where the driver was under influence but the driving was not dangerous or careless.

13 It was further noted that under the post-November 2019 scheme of punishment under the RTA, in cases where an offender was convicted of the two offences, the courts have imposed a separate disqualification order for the conviction for each offence. The second supplementary submission is that this is inconsistent with legislative intention. Instead, legislative intention is for the courts to impose an order of disqualification (for an appropriate length) only in respect of the conviction for reckless or dangerous driving or driving without due care or reasonable consideration. That said, because of the way the Legislature has stipulated the presumptive length and start date of disqualification orders imposed for the two offences, offenders are not in any way prejudiced even if a court were to impose two separate disqualification orders.

14 Part II of this article will explain the post-November 2019 scheme of punishment for the two offences, which is based on a complex web of inter-linked and multi-layered sub-provisions, as well as how the Singapore courts have dealt with the issue of double-counting.²³ Readers who are already familiar with this may skip directly to

23 See paras 16–38 below.

Part III. Parts III²⁴ and IV²⁵ elaborate on the main submission and the two supplementary submissions respectively. Part V concludes with a summary of arguments.²⁶

15 For convenience, the rest of this article will adopt the following abbreviated names of the offences as used by the Second Minister for Home Affairs (the “Minister”) when moving the RTA amendments in Parliament in 2019.²⁷

Full name of offence under the RTA	Provision under the RTA	Abbreviated name
Reckless or dangerous driving	s 64	“Dangerous Driving”
Driving without due care or reasonable consideration	s 65	“Careless Driving”
Driving while under influence of drink or drugs	s 67	“Driving Under Influence”

The offences of Dangerous Driving or Careless Driving, as the case may be, will be abbreviated “Dangerous/Careless Driving”.

II. Background

A. Statutory scheme

16 Prior to 1 November 2019, ss 64, 65 and 67 of the then-RTA²⁸ defined and prescribed the punishment for the offences of Dangerous Driving, Careless Driving and Driving Under Influence respectively. There was also s 66 which specifically prescribed the punishment for the offence of dangerous driving which caused death. The relevant punishments for Dangerous Driving and Careless Driving were not in any way statutorily linked or connected to the offence of Driving Under Influence. Where a driver was found to have driven dangerously or carelessly while under influence, the Prosecution had the discretion to decide which offence(s) and how many charges for which to proceed against the driver. The then-RTA did not impinge on that discretion in any way.

24 See paras 39–61 below.

25 See paras 62–70 below.

26 See para 71 below.

27 Singapore Parl Debates; Vol 94; [8 July 2019].

28 Road Traffic Act (Cap 276, 2004 Rev Ed).

17 In 2019, the Singapore Legislature made substantial amendments to, among other provisions, ss 64, 65 and 67. Additionally, s 66 was repealed (and as will be seen below, absorbed into the revised version of s 64). These amendments came into force on 1 November 2019.

18 Under the revised s 64, sub-s (1) defines the primary elements of the offence of Dangerous Driving. Thereafter, sub-ss (2), (2A), (2B) and (2C) respectively set out the prescribed punishment ranges for fines and imprisonment terms for dangerous driving that caused death of another person, dangerous driving that caused grievous hurt to another person, dangerous driving that caused hurt to another person and dangerous driving in any other case (that is, where the dangerous driving did not cause hurt to another person). Within each of these subsections, there are four limbs:

- (a) The first limb prescribes the punishment range for an offender who is neither a “repeat offender” nor a “serious offender”.
- (b) The second limb prescribes the punishment range for an offender who is a “repeat offender” but not a “serious offender”.
- (c) The third limb prescribes a punishment range in addition to that in (a) or (b) above where the offender is a “serious offender”.
- (d) The fourth limb prescribes a punishment range in addition to that in (a) or (b) above where the offender is a “serious repeat offender”.

19 The technical definition of “repeat offender” is found in s 64(3),²⁹ while the technical definition of “serious offender” and “serious repeat offender” is found in s 64(8).³⁰ Put in broad terms, a person is a “repeat offender” if he has at least one previous conviction for an offence relating to dangerous driving, careless driving or speeding under (the current or previous version of) the RTA, or for rash or negligent driving under (the current or previous version of) the Penal Code 1861³¹ (“PC”).

20 A serious offender is an offender who is convicted of an offence under s 67 or s 70(4) in relation to the offender’s dangerous driving.³² Section 67 prescribes the offence for Driving Under Influence.

29 This is in the context of Dangerous Driving under s 64. For the definition of “repeat offender” in the context of Careless Driving, see s 65(8).

30 The definition of “serious offender” and “serious repeat offender” found in s 64(8) applies both to the context of Dangerous Driving as well as Careless Driving.

31 2020 Rev Ed.

32 Or careless driving, as the case may be.

Section 70(4) prescribes the offence of failing to provide breath or blood specimen when legally required.

21 A serious repeat offender, to put it simply, is an offender who is a serious offender and on top of that has at least one previous conviction for an offence relating to driving or being in charge of a motor vehicle while under influence of drink or drugs.

22 Notably, because of the way “serious repeat offender” is defined, a person cannot be a “serious repeat offender” if he is not a “serious offender”. Indeed, having now introduced the terms “serious offender” and “serious repeat offender”, it can be said that this article essentially concerns sentencing a serious offender or serious repeat offender who drove dangerously or carelessly.

23 Putting the pieces together, this means that the four subsections of s 64 that relate to the four types of harm (ss 64(2), 64(2A), 64(2B) and 64(2C)) each prescribe the punishment range for the following six types of offenders:

(a) *Person who is neither a serious offender nor a repeat offender*: this refers to a person who did not drive under influence in relation to the dangerous driving and also does not have any previous conviction relating to dangerous driving, careless driving or speeding under the RTA, nor rash or negligent driving under the PC.

(b) *Person who is not a serious offender but is a repeat offender*: this refers to a person who did not drive under influence in relation to the dangerous driving but has previous conviction(s) relating to dangerous driving, careless driving or speeding under the RTA, or rash or negligent driving under the PC.

(c) *Person who is a serious offender but not a repeat offender*: this refers to a person who did drive under influence in relation to the dangerous driving but does not have any previous conviction relating to dangerous driving, careless driving or speeding under the RTA, nor rash or negligent driving under the PC. The actual punishment range for such an offender is derived by manually adding the punishment range expressed in the third limb to that in the first limb of the subsection.³³

33 This is based on the High Court’s holding in *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 at [31]–[34] and [38] regarding the add-on punishment prescribed in s 64(2C)(c) of the Road Traffic Act 1961.

(d) *Person who is a serious offender and also a repeat offender*: this refers to a person who did drive under influence in relation to the dangerous driving and also has previous conviction(s) relating to dangerous driving, careless driving or speeding under the RTA, or rash or negligent driving under the PC. The actual punishment range for such an offender is derived by manually adding the punishment range expressed in the third limb to that in the second limb of the subsection.³⁴

(e) *Person who is a serious repeat offender but not a repeat offender*: this refers to a person who did drive under influence in relation to the dangerous driving and has previous conviction(s) relating to driving or being in charge of a vehicle while under influence of drink or drugs but does not have any previous conviction relating to dangerous driving, careless driving or speeding under the RTA, nor rash or negligent driving under the PC. The actual punishment range for such an offender is derived by manually adding the punishment range expressed in the fourth limb to that in the first limb of the subsection.³⁵

(f) *Person who is a serious repeat offender and also a repeat offender*: this refers to a person who did drive under influence in relation to the dangerous driving and has previous conviction(s) relating to driving or being in charge of a vehicle while under influence of drink or drugs and also has previous conviction(s) relating to dangerous driving, careless driving or speeding under the RTA, or rash or negligent driving under the PC. The actual punishment range for such an offender is derived by manually adding the punishment range expressed in the fourth limb to that in the second limb of the subsection.³⁶

In total, s 64 prescribes the relevant punishment ranges (for fines and imprisonment terms) for 24 permutations of factual matrices involving dangerous driving.

24 Furthermore, ss 64(2D) and 64(2E) set out presumptive terms of disqualification order that a court must impose, the length of which depends on the type of harm caused by the offender and whether the offender is a repeat offender, serious offender or serious repeat offender (and the number of relevant past conviction(s)).

34 See n 33 above.

35 See n 33 above.

36 See n 33 above.

25 The provisions for Careless Driving under s 65 of the RTA virtually mirror that for Dangerous Driving as described above. The main difference is that the prescribed punishment ranges for the 24 factual matrices involving Careless Driving are generally less severe than the equivalent involving Dangerous Driving. The other notable difference is that for cases of Dangerous Driving which caused grievous hurt or death, mandatory minimum terms of imprisonment are prescribed. Section 64(7) clarifies that a court may impose a term of imprisonment lower than the stated minimum if there are special reasons to so order. There is no equivalent *vis-à-vis* Careless Driving. This is simply because the provisions for that offence do not prescribe any mandatory minimum terms of imprisonment.

26 The two tables in the Annex summarise in easier to visualise format the punishment schemes for Dangerous Driving and Careless Driving respectively. This includes the manual addition of the add-on punishment ranges for serious offenders and serious repeat offenders, to derive the overall range of punishment for the 48 factual matrices.³⁷

27 Even though the entirety of the punishment scheme is based on a multiplex of interlinked provisions, when one takes a step back and studies the two tables, it can be seen that the Legislature had put in immense effort to meticulously calibrate the prescribed punishment for the various permutations of factual matrices. This methodical and elegant calibration can be gleaned from the two tables in three key ways:

- (a) By comparing the prescribed punishments across each row (eg, A1–A2–A3–A4) – it can generally be seen that all other things being equal, the punishment increases proportionately to the severity of harm caused.
- (b) By comparing the prescribed punishments down each column (eg, A2–B2–C2–D2–E2–F2) – it can generally be seen that for the same type of harm caused, the punishment is calibrated depending on whether the offender was under influence of drink or drugs while driving dangerously or carelessly, and whether the offender has any relevant past conviction(s).
- (c) By comparing the prescribed punishments of the same grid box across the table for Careless Driving and Dangerous Driving (eg, Careless Driving D4–Dangerous Driving D4) – it can generally be seen that for the same type of harm caused and the same circumstances of driving and past conviction record of the offender, the punishment for driving dangerously is more

37 See n 33 above.

severe than that for driving carelessly (given that dangerous driving generally poses a greater degree of risk compared to careless driving).³⁸

28 Another important point that should be underscored arises from the way “serious offender” is defined for the purposes of the punishment scheme for Dangerous Driving and Careless Driving. As explained earlier, “serious offender” is defined to mean an offender who is convicted of an offence under s 67 or s 70(4) in relation to the offender’s dangerous or careless driving. The upshot of this is that if the Prosecution wishes to rely on the enhanced punishment range in a case where a person drove dangerously or carelessly while under influence, other than charging the person under s 64 or s 65, the Prosecution must also charge the person under s 67 (or s 70(4)) and proceed against the person on that charge, for otherwise the person would not be convicted of an offence under s 67 (or s 70(4)).³⁹ Such a scheme of things did not exist in the pre-November 2019 version of the RTA.

29 The general legislative intent behind enhancing the penalties as described above is clear. It was to effect “stronger deterrence against irresponsible driving”, so as to make the roads in Singapore safer.⁴⁰ The Minister, in moving the amendments, noted that “irresponsible driving remains a big concern”.⁴¹ In particular, “irresponsible driving can have deadly consequences. Even if victims survive the accident, they, or their families, may suffer long-term problems”.⁴²

30 In relation to Driving Under Influence, the prescribed punishment under s 67(1) was essentially doubled by Parliament. In addition, ss 67(2) and 67(2A) stipulate presumptive terms of disqualification order that a court must impose, the length of which depends on whether the offender has any past conviction relating to driving or being in charge of a motor

38 Singapore Parl Debates; Vol 94; [8 July 2019].

39 *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 at [57] and *Public Prosecutor v Chow Chee Kin* [2022] SGDC 45 at [61].

40 Singapore Parl Debates; Vol 94; [8 July 2019].

41 Singapore Parl Debates; Vol 94; [8 July 2019].

42 Relatedly, the Minister also proposed, moving forward, to deal with offences of irresponsible driving under the Road Traffic Act. Prior to that, some cases of irresponsible driving were prosecuted under the Road Traffic Act, while others were prosecuted under the Penal Code (through offences relating to doing rash or negligent act). She also shared some general guidelines on whether a case of irresponsible driving falls under Dangerous Driving or Careless Driving, which does not require repetition here (Singapore Parl Debates; Vol 94; [8 July 2019]).

vehicle while under influence of drink or drugs, and if so, the number of such conviction(s).⁴³

31 The general legislative intent behind enhancing the penalties for Driving Under Influence is similarly clear. It was to “signal the aggravated seriousness of” driving while under influence of drink or drugs.⁴⁴

B. Case law

32 Following the amended provisions of the RTA coming into force, there have been three cases in Singapore in which the issue of double-counting was explicitly (even if briefly) considered.

33 The first is the Magistrate’s Appeal case of *Wu Zhi Yong v Public Prosecutor*⁴⁵ (“*Wu Zhi Yong*”). In that case, the accused was caught driving dangerously while under influence (46µg of alcohol in 100ml of breath). The accused’s driving did not cause hurt to any other person. The Prosecution proceeded against the accused on one charge of Dangerous Driving and one charge of Driving Under Influence. The accused pleaded guilty to both charges. The two charges were framed such that both referred to the same general length of road (“along Crawford Street towards Lavender Street near Beach Road, Singapore”) and the same approximate time (“at about 4.05am”). In respect of the Dangerous Driving charge, the accused was considered a “serious offender” as he had been convicted of Driving Under Influence in relation to his dangerous driving. The relevant punishment would hence be based on s 64(2C)(c) read with s 64(2C)(a) of the RTA. The lower court sentenced the accused on each of the two charges to 17 days’ imprisonment and ordered both terms to run concurrently (with an order of disqualification for a period of 42 months).⁴⁶ The accused appealed against his sentence on the basis that it was manifestly excessive.

34 On the issue of double-counting, the General Division of the High Court (“High Court”) considered the spirit behind s 40 of the

43 There is also s 67A (a previous similar version existed prior to November 2019). That provision provides that if a person having been convicted of two or more specified offences is again convicted of any one of the specified offences, the court has the power to impose certain additional punishment in excess of that prescribed for the conviction. That provision does not appear to have any impact on the double-counting quandary discussed in this article, and thus will be put aside for the rest of this piece.

44 Singapore Parl Debates; Vol 94; [8 July 2019].

45 [2022] 4 SLR 587.

46 *Public Prosecutor v Wu Zhi Yong* [2021] SGDC 19.

Interpretation Act 1965⁴⁷ (“IA”) and s 308(2) of the CPC (as well as the general rule against double-counting as elucidated in case law). These two provisions will be discussed in more detail in Part III.A below.⁴⁸ The High Court then held that where a serious offender provision in s 64(2C)(a) applies and the s 64 and s 67 charges are based on the same facts, as a general rule the sentences under both charges should run concurrently in so far as any term of imprisonment or disqualification order is concerned.⁴⁹

35 Applying the relevant sentencing principles and frameworks to the facts of the case, the High Court suggested that in respect of the accused’s conviction for Driving Under Influence, the appropriate punishment is a fine of \$3,000 (and disqualification term of 27 months), and in respect of the conviction for Dangerous Driving, the appropriate punishment is one month’s imprisonment (and disqualification term of between 36 to 42 months).⁵⁰ Nonetheless, the court did not have to go on to make any definitive pronouncement specifically on how double-counting is to be addressed in a case where the punishment for the two charges is a fine and an imprisonment term (and by extension where the punishment is a fine for both charges). This is because the aggregate punishment imposed by the lower court (of 17 days’ imprisonment) was in any event not manifestly excessive, and the appeal was just dismissed on that basis.⁵¹ The High Court did however offer a provisional view on the matter, which was as follows:⁵²

... these concerns [relating to double-counting] do not prevent a court from imposing a condign sentence for the offence under s 64 and, separately, a fine for the offence under s 67, where that is considered appropriate ... s 306 of the CPC explicitly sanctions the imposition of concurrent sentences when the court is dealing with multiple imprisonment terms. However, there is no such provision where the sentences consist of fines, which are therefore inevitably cumulative ... Nevertheless, the totality principle, which allows for the adjustment of individual fines so that the cumulative fine is sufficient and proportionate to the offender’s overall criminality, would enable the court to deal with any concern of unfairness arising from double or excessive punishment. This would, of course, be subject to any contrary statutory provisions having mandatory force ...

47 2020 Rev Ed.

48 See paras 39–51 below.

49 See *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 at [55]–[64].

50 *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 at [66]–[72].

51 *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 at [73].

52 *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 at [65].

36 The second case is *Public Prosecutor v Chow Chee Kin*,⁵³ a case decided several months after *Wu Zhi Yong*. The District Court there had to squarely confront the double-counting issue in a case where the appropriate punishment for the two offences was not both an imprisonment term. Arising from the same stretch of driving, the accused pleaded guilty to one charge for Dangerous Driving (which did not cause hurt) and one charge for Driving Under Influence. In respect of the former charge, the accused was a “serious offender” and thus the relevant punishment range would be the same as that in *Wu Zhi Yong*.

37 Applying the relevant sentencing principles and frameworks, the District Court concluded that for the Dangerous Driving conviction the appropriate punishment was four weeks’ imprisonment (with a disqualification term of 42 months) and for the Driving Under Influence conviction the appropriate punishment was a fine of \$8,000 (with a disqualification term of 48 months). The district judge was troubled by the double-counting quandary and described it as leading to “a seemingly odd situation”,⁵⁴ but in the end took the view that the Legislature could be said to have implicitly accepted the quandary.⁵⁵ It ultimately imposed the sentences of imprisonment and fine on the accused as is.⁵⁶ The accused’s appeal against his sentence was dismissed by the High Court without written grounds issued.

38 The third case is *Public Prosecutor v Cheng Chang Tong*⁵⁷ (“*Cheng Chang Tong*”). The accused pleaded guilty to one charge of Careless Driving (which did not cause hurt) and one charge of Driving Under Influence. He had previous convictions for speeding and hence in respect of the Careless Driving offence the accused was both a repeat offender (as defined in s 65(8)) and a serious offender. The District Court sentenced the accused to a fine of \$4,000 for the Careless Driving conviction and a fine of \$7,000 for the Driving Under Influence offence.⁵⁸ The aggregate sentence was thus \$11,000. The Prosecution appealed against the sentence only in respect of the Careless Driving conviction. The High Court allowed the appeal and increased the sentence for the Careless Driving conviction to two weeks’ imprisonment. One argument raised by the accused was based on the double-counting quandary. That was dismissed by the court because the accused had himself apparently accepted the provisional view taken by the High Court in *Wu Zhi Yong*⁵⁹

53 [2022] SGDC 45.

54 *Public Prosecutor v Chow Chee Kin* [2022] SGDC 45 at [57].

55 *Public Prosecutor v Chow Chee Kin* [2022] SGDC 45 at [61].

56 *Public Prosecutor v Chow Chee Kin* [2022] SGDC 45 at [60], [64] and [71].

57 [2023] SGHC 119.

58 *Public Prosecutor v Cheng Chang Tong* [2022] SGDC 178.

59 See para 35 above.

that a court is not prevented “from imposing a condign sentence for the offence under s 64 and, separately, a fine for the offence under s 67, where that is considered appropriate”.⁶⁰

III. Resolving the double-counting quandary

A. *Legislative intention is that no separate penalty should be imposed in respect of the conviction for Driving Under Influence*

39 To recapitulate, the first subsections of ss 64 and 65 set out the basic elements of the offences of Dangerous Driving and Careless Driving respectively. The next four subsections of ss 64 and 65 then state the prescribed punishments for cases depending on the level of hurt caused (if any) to another person by the offender’s driving. The first and second limbs of each of these four subsections lay down the punishment range for a non-repeat offender and a repeat offender respectively. Where the offender is a serious offender, the third limb stipulates that the offender faces a punishment range in addition to that stated in the first and second limbs (as the case may be). In a similar way, where the offender is a serious repeat offender, the fourth limb stipulates the additional punishment range. Pertinently, the add-on punishment ranges provided in the third and fourth limbs across all the subsections are always at least as severe as the equivalent punishment range prescribed in s 67(1) for first-time and repeat offenders of Driving Under Influence. Furthermore, the RTA defines “serious offender” and “serious repeat offender” in this context to refer a person who is convicted of Driving Under Influence (or failing to provide breath or blood specimen under s 70(4)) in relation to the offender’s dangerous or careless driving.

40 Drawing all of these strands together, the plain words of ss 64 and 65 clearly indicate that:

- (a) Where a person is found to have driven dangerously or carelessly along a road while under influence, the Prosecution should generally charge the person for Dangerous/Careless Driving as well as for Driving Under Influence and proceed against the person on both charges so that a conviction is recorded in respect of both charges,
- (b) The offender must be punished for the fact that he had driven dangerously or carelessly and on top of that for the fact that he had so driven while under influence of drink or drugs.

60 *Public Prosecutor v Cheng Chang Tong* [2023] SGHC 119 at [63].

The overall sentence for the Dangerous/Careless Driving charge cannot be less severe than the aggregate of: (i) the offender's punishment for the Dangerous/Careless Driving charge assuming he had not driven under influence; and (ii) the offender's punishment for a Driving Under Influence charge assuming he had not actually driven dangerously or carelessly.

41 The object behind this legislative design is clear – it is to ensure that in cases where a person has driven dangerously or carelessly along a road while under influence, the person should generally be fully punished for having driven under influence, and that punishment component is to be reflected in the sentence imposed in respect of his conviction for Dangerous/Careless Driving. If this was not mandated as a default, the offender may not bear the full brunt of having driven under influence. This will occur for instance if the Prosecution elects to proceed against the offender only for a charge of Dangerous/Careless Driving and applies for the court to take into consideration the charge of Driving Under Influence.⁶¹ In such cases the court would merely treat the fact of the offender driving under influence as an aggravating factor *vis-à-vis* the conviction for Dangerous/Careless Driving, and established sentencing principles suggest that the additional component of punishment arising from this aggravating factor should be less severe than the discrete punishment imposed for the Driving Under Influence charge had the Prosecution proceeded on that charge and the offender convicted of it.⁶²

42 This legislative object is confirmed by extrinsic materials. In the lead up to the passing of the 2019 amendments to the RTA, the Ministry of Home Affairs conducted a public consultation to solicit feedback regarding the amendments. In its press release, it explained that under the proposed amendments, “[i]f a Dangerous or Careless Driving offence was committed while the motorist was driving under the influence ... of alcohol or drugs, he will be liable for additional penalties, *which will run*

61 See, eg, *Public Prosecutor v Muhammad Firdaus Bin Abdul Lajis* [2007] SGDC 269. It may also occur in a case where: (a) the Prosecution does proceed against the accused for both offences; (b) the court treats the accused's driving under influence as an aggravating factor in relation to the charge for his dangerous or careless driving; (c) the court does impose a separate punishment (imprisonment term) for both charges; and (d) orders both imprisonment terms to run concurrently (see, eg, *Public Prosecutor v Tay Thiam Boon* [2006] SGDC 68).

62 *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [36].

*consecutively*⁶³ [emphasis added]. In the annex accompanying the press release, it was similarly elaborated that:⁶⁴

... [i]ndividuals who have committed Dangerous or Careless Driving and have done so whilst Under the Influence of Alcohol or Drugs, will have both penalties added together (*ie the penalty for dangerous or careless driving and the penalty for driving under influence added together*) [emphasis added].

43 When moving the amendments to the revised punishment scheme for Dangerous Driving, Careless Driving and Driving Under Influence, the Minister said that:⁶⁵

Drivers who are drunk or drug-impaired show a blatant disregard for the safety of other road users. They are one of the biggest contributors to serious accidents on our roads ... Currently, such motorists typically face the same maximum penalties as other motorists who cause accidents. *The judge may take into consideration that the offender was driving under influence during sentencing itself. But it would be clearer to have our intentions codified in law.* In fact, our intention is for offenders driving under influence to face stiffer penalties to signal the aggravated seriousness of their actions [emphasis added].

44 In addition, not only are the add-on punishment ranges for a serious offender and a serious repeat offender across all the subsections always at least as severe as the equivalent punishment range prescribed in s 67(1) for first-time and repeat offenders of Driving Under Influence, for the sub-sections relating to Dangerous Driving which caused death,⁶⁶ Dangerous Driving which caused grievous hurt⁶⁷ and Careless Driving which caused death,⁶⁸ the Legislature had deliberately crafted the add-on punishment ranges for a serious offender and a serious repeat offender to be *even more* severe than the equivalent punishment ranges prescribed in s 67.

45 Given that the Legislature had taken such pains to design the punishment scheme so that by virtue of the punishment for his Dangerous/Careless Driving charge the offender shall already be *fully*

63 “Public Consultation – Changes to Criminal Penalties for Road Traffic Offences” *Reach* (21 February 2019) at para 4(e) <<https://www.reach.gov.sg/participate/public-consultation/ministry-of-home-affairs/regulatory-administration-group/changes-to-criminal-penalties-for-road-traffic-offences>> (accessed 30 June 2023).

64 “Public Consultation – Changes to Criminal Penalties for Road Traffic Offences” *Reach* (21 February 2019) at Annex C <https://www.reach.gov.sg/docs/default-source/reach/old-reach/2019/public-consult/mha/changes-to-criminal-penalties-for-road-traffic-offences/annexes-changes-to-criminal-penalties-for-road-traffic-offences.pdf?sfvrsn=b02c7fb3_2_> (accessed 30 June 2023).

65 Singapore Parl Debates; Vol 94; [8 July 2019].

66 Road Traffic Act 1961 (2020 Rev Ed) s 64(2).

67 Road Traffic Act 1961 (2020 Rev Ed) s 64(2A).

68 Road Traffic Act 1961 (2020 Rev Ed) s 65(2).

punished for driving under influence while driving dangerously or carelessly, it seems incredulous to think that the Legislature still intended a separate punishment be imposed in respect of the offender's Driving Under Influence charge for him driving under influence while driving dangerously or carelessly. Not only will that be a stark instance of double punishment, it is not possible to discern what purpose a separate penalty in such circumstances is meant to serve.

46 In short, it is submitted that the legislative object is that the full punishment for the offender driving dangerously or carelessly and doing so while under influence (as well as any other relevant aggravating factor(s)) is to be integrated into and reflected in the sentence imposed *vis-à-vis* the Dangerous/Careless Driving charge, and the intention is for there to not be any separate penalty imposed for the Driving Under Influence charge.

47 Such a view is arguably corroborated by the Minister who moved the RTA amendments in 2019. During the debates, one Member of Parliament raised a query to the Minister which alluded to the double-counting quandary:⁶⁹

I have a query on the proposal to provide for enhanced punishment for a 'serious offender' who commits the offence of dangerous driving or careless driving. 'Serious Offender' is defined in the Amendment Bill as a person convicted for drink-driving or, alternatively convicted for refusing to give his breath sample. Under the proposed sections 64 and 65, if the same person is convicted for dangerous driving or careless driving, he is subject to an extra punishment which is in addition to the punishment for dangerous driving ...

On the face of it, there is a possibility that the serious offender may be punished twice. This is because, as mentioned before, in the current sentencing framework, the harm and culpability of a drink-driver would be taken into consideration in relation to a sentence imposed on a drink-driver under section 67. Sir, I do appreciate that scenario would only be triggered if a person faces two charges: that of drink-driving as well as that of dangerous driving. But we cannot have one analytical framework for sentencing in relation to drink-driving if a person is charged singly as opposed to another situation if he is charged for drink-driving as well as dangerous driving ...

48 The Minister's response, quoted in full, is as follows:⁷⁰

[The member] asked about Driving Under Influence offences. He asked about the additional penalties for Dangerous and Careless Driving offences, for motorists who had done so while under the influence of alcohol or drugs and *whether this would mean that a person is punished twice for the same act. There*

69 Singapore Parl Debates; Vol 94; [8 July 2019].

70 Singapore Parl Debates; Vol 94; [8 July 2019].

is no double penalty. Consider two actions. The first, a motorist was driving under influence. The second, a motorist was driving dangerously or carelessly. A motorist committing the first action, driving under influence, will be liable for penalties even if he was not driving dangerously or carelessly. If he was also committing the second action, that is driving dangerously or carelessly, *he would be liable for penalties under Dangerous or Careless Driving instead of Driving Under Influence per se.* However, the offence of driving dangerously or carelessly while under influence carries higher penalties [emphasis added].

This passage reveals that the Legislature intended that a serious offender or serious repeat offender in respect of a Dangerous/Careless Driving offence is not to suffer double punishment.

49 One may then naturally ask – if the intention in such cases is not for a separate penalty to be imposed for the Driving Under Influence charge, why then did the Legislature design the scheme such that the offender must also be convicted for a charge of Driving Under Influence? It is surmised that there are at least two good reasons for this. Firstly, it ensures that the accused only faces the add-on punishment for driving under influence where it has been proven beyond reasonable doubt that he had so driven. Secondly, there are multiple provisions in the RTA that prescribe enhanced punishments in cases where the offender has previously been actually *convicted* for Driving Under Influence.⁷¹ By stipulating that in cases where a person drives dangerously or carelessly while under influence, the Prosecution should generally also proceed against the person for a Driving Under Influence charge and secure a conviction for that charge, if the person were to reoffend subsequently, the Prosecution is facilitated in invoking the relevant enhanced punishment provisions.

50 Furthermore, the spirit behind s 40 of the IA buttresses legislative intention that a serious offender or serious repeat offender convicted of Dangerous/Careless Driving should not be punished twice, and that no separate punishment should be imposed in respect of the conviction for Driving Under Influence.⁷² That provision states that:

Where any act or omission constitutes an offence under 2 or more written laws, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under any one of those written laws but shall not be liable to be punished twice for the same offence.

71 See, eg, ss 64, 65, 67 and 67A of the Road Traffic Act 1961.

72 See *Tan Khee Koon v Public Prosecutor* [1995] 3 SLR(R) 404 at [100]–[121] (note that this case deals with s 41 of the Interpretation Act (Cap 1, 1985 Rev Ed), which is the predecessor version of s 40 of the Interpretation Act).

51 Section 308 of the CPC may similarly be taken to be consistent with such a legislative intention. That provision provides that:

(1) Where anything which is an offence is made up of parts, any of which parts is itself an offence, the person who committed the offence must not be punished with the punishment of more than one of such offences unless it is expressly provided.

(2) Where —

(a) anything is an offence falling within 2 or more separate definitions of any law in force for the time being by which offences are defined or punished; or

(b) several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence,

the person who committed the offence must not be punished with a more severe punishment than the court which tries the person could award for any one of such offences.

...

Although it is not entirely clear whether an offence of Dangerous/Careless Driving and an offence of Driving Under Influence falls under the scope of s 308(1),⁷³ the *raison d'être* behind the entirety of s 308 supports the view that a serious offender or serious repeat offender convicted of Dangerous/Careless Driving should not be punished twice (and therefore no separate punishment should be imposed in respect of the conviction for Driving Under Influence).

B. *The Criminal Procedure Code 2010 does not require a separate penalty to be imposed in respect of the conviction for Driving Under Influence*

52 The ostensible obstacle in the way of sentencing serious offenders and serious repeat offenders based on legislative intention as discussed above is s 306(1) of the CPC. However, it is submitted that

73 Cases that may be read to support the view that an offence of Dangerous/Careless Driving and an offence of Driving Under Influence fall under the scope of s 308(1) include *Tham Wing Fai Peter v Public Prosecutor* [1988] 1 SLR(R) 349 at [65] and *Xia Qin Lai v Public Prosecutor* [1999] 3 SLR(R) 257 at [21] (note that both cases deal with s 71(1) of the Penal Code (Cap 224, 1985 Rev Ed), which is the predecessor of s 308(1) of the Criminal Procedure Code 2010). Cases which appear to take the position that the two offences do not so fall under s 308(1) include *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 at [61]. See generally Shrinivas Gupta & Preeti Mishra, *Ratanlal & Dhirajlal's Law of Crimes: A Commentary on the Indian Penal Code, 1860* (Bharat Law House, 28th Ed, 2018) at pp 274–292.

when understood in its proper context, s 306(1) in fact fully contemplates a court in such cases not having to impose a separate punishment in respect of the conviction for Driving Under Influence. That provision states that:

Where a person is convicted at one trial of any 2 or more distinct offences, the court must sentence the person for those offences to the punishments that it is competent to impose.

The most crucial words here are “distinct offences”. Where a person is convicted at one trial of two or more distinct offences, this provision makes clear that the court *is required* to impose a separate punishment in respect of each of those offences. In such cases the court has absolutely no discretion to not impose a separate penalty for each offence. This legislative requirement presupposes that in the abstract a court does have the discretion to not impose a separate punishment for each offence a person is convicted for. Therefore, a necessary corollary of s 306(1) is that where a person is convicted at one trial of offences which are *not distinct*, the court has the discretion to not impose a separate punishment for each offence.

53 The question that follows is – when are two offences considered not distinct such that a court need not impose a separate punishment for each of the offences? Specifically, in the context of a serious offender or serious repeat offender, are Dangerous/Careless Driving and Driving Under Influence distinct offences? It is submitted that they are not distinct offences.

54 The Court of Appeal in *Public Prosecutor v Fernandez Joseph Ferdinent*⁷⁴ suggested that two offences are not distinct when one of the offences is “merely a more limited version of the other”. Although this point was made in relation to whether two offences are distinct or not under the then-equivalent of s 307(1) of the CPC, there is no reason to think that the court’s view is not equally applicable in the context of s 306(1), especially considering how closely related the two provisions are. In a similar vein, the High Court in *Arjun Upadhya v Public Prosecutor*,⁷⁵ in addressing the accused’s argument on double jeopardy and *autrefois convict*, held that “[i]t is only when the elements of one offence *necessarily* encompasses the elements of another that the offender can be said to be doubly punished should he be charged and convicted for committing both of those offences” [emphasis in original]. These definitions of when two offences are not distinct are at least persuasive to the present context.

74 [2007] 4 SLR(R) 1 at [23].

75 [2011] 1 SLR 119 at [17].

55 As discussed above,⁷⁶ the Legislature had explicitly designed the punishment scheme for serious offenders and serious repeat offenders convicted of Dangerous/Careless Driving such that the punishment for the offender's conviction for Driving Under Influence is always fully integrated into and subsumed under the punishment imposed for Dangerous/Careless Driving. In this context then Driving Under Influence is simply a more limited version of Dangerous/Careless Driving involving a serious offender or serious repeat offender. A serious offender or serious repeat offender faces the add-on punishment range only when the following elements are made out against him:

- (a) the basic elements of Dangerous Driving or Careless Driving under ss 64(1) and 65(1) respectively;
- (b) that he had caused death, grievous hurt, hurt to another person or no hurt was caused to any other person (as the case may be); and
- (c) the elements of Driving Under Influence under s 67(1).

In that regard, the elements of Dangerous/Careless Driving involving a serious offender or a serious repeat offender necessarily encompass the elements of Driving Under Influence.

56 It may be argued that the two offences are not distinct because ss 64 and 65 do not *literally* describe a serious offender or serious repeat offender who drives dangerously or carelessly as an "offence".⁷⁷ Sections 64 and 65 also do not literally include and state the elements of Driving Under Influence as set out in s 67. Instead, ss 64 and 65 only literally describe the basic elements of Dangerous Driving and Careless Driving as constituting "an offence", and in the subsections that set out the respective punishments, refer to "serious offender" and "serious repeat offender".

57 It is respectfully submitted that such an argument is far too formalistic and misses the woods for the trees. In the first place, the CPC defines an "offence" to mean an act or omission *punishable by* any written law. This suggests that in deciding if an act or omission is an "offence", it may be relevant to adopt a broader perspective and take into account the relevant punishment scheme. But even putting that aside, suppose the Legislature had included in s 64 a provision along the following lines:

76 See paras 39–48 above.

77 The High Court in *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 at [61] noted such an argument.

A person who:

- (a) is guilty of reckless or dangerous driving as defined in s 64(1), and
- (b) by such driving had caused death to another person, and
- (c) in relation to such driving is also guilty of driving while under influence of drink or drugs as defined in s 67(1)

shall be guilty of an offence and be punished with imprisonment for a term of not less than one year and not more than 2 years, in addition to imprisonment for a term of not less than 2 years and not more than 8 years in a case where the person is not a repeat offender, and in addition to imprisonment for a term of not less than 4 years and not more than 15 years in a case where the person is a repeat offender.

If the Legislature had done so, it would be indisputable that Driving Under Influence is not a distinct offence from the offence in the above suggested provision.

58 Crucially however, there is *in substance* really no difference between this suggested offence (in the previous paragraph) and the way the Legislature had actually opted to set out the punishment for a serious offender who committed Dangerous Driving and caused death. In all likelihood, the Legislature had chosen to not literally define the different factual matrices as suggested above because to do so would require including discrete offence definitions for the 48 different factual matrices, which would be too inelegant and cumbersome. It instead preferred to simply define the basic elements of Dangerous Driving and Careless Driving, and then include sub-provisions which set out the relevant punishments for the various factual matrices.

59 In short, although a serious offender or serious repeat offender who commits Dangerous Driving or Careless Driving has not been literally described in ss 64 and 65 as “an offence”, for the relevant add-on punishment provisions to apply, the elements of Driving Under Influence under s 67 do have to be made out against the offender. The substantive effect is that in this context the offence of Driving Under Influence is not distinct from the offence of Dangerous/Careless Driving. A court therefore retains the discretion to not impose a separate punishment in respect of the offender’s conviction for Driving Under Influence. It may be worth highlighting that in jurisdictions such as the UK,⁷⁸ Hong Kong⁷⁹

78 *Seng Foo Building Construction Pte Ltd v Public Prosecutor* [2017] 3 SLR 201 at [69].

79 *Seng Foo Building Construction Pte Ltd v Public Prosecutor* [2017] 3 SLR 201 at [70].

and India,⁸⁰ where the situation so justifies, a court similarly need not impose a separate penalty for every offence that an accused has been convicted for at the same trial.

60 What flows from the above is that in cases involving a serious offender or serious repeat offender *vis-à-vis* Dangerous/Careless Driving where the offender's charge for the offence of Dangerous/Careless Driving and his charge for the offence of Driving Under Influence are based on the same stretch of driving, the court should not impose a separate penalty in respect of the offender's conviction for Driving Under Influence. This is regardless of whether the appropriate punishment for the two charges is both an imprisonment term, both a fine, or a fine and an imprisonment term each. Whatever punishment the offender deserves for driving under influence should just be fully reflected in the punishment imposed on him for his conviction for Dangerous/Careless Driving.

61 Accordingly, the substantive outcome in *Wu Zhi Yong* – that the aggregate punishment is such that the accused is not punished twice for his driving dangerously and for his driving under influence – is doubtlessly correct. Be that as it may, it is humbly submitted that *the means* taken to reach that outcome – by imposing an imprisonment term for both offences and ordering both terms to run concurrently – is not the most ideal and not one which was intended by the Legislature. It would be more coherent and principled if the court had simply not imposed a separate punishment in respect of the accused's conviction for Driving Under Influence. Further, such an approach has the advantage (over trying to apply the totality principle on an *ad hoc* basis) of ensuring any double-counting concern is fully ameliorated in every case.

IV. Additional observations

A. *Driving under influence while not driving dangerously or carelessly*

62 The above discussion had assumed that the offender had driven under influence only along the same stretch of road as he had driven dangerously or carelessly. However, it is expected that in many cases, there is evidence that the offender had also driven under influence along other stretches of road just prior to (or after) driving dangerously or carelessly. The Prosecution may have elected not to reflect such a fact in the Driving

80 See, eg, *Behari v State* AIR 1953 All 510; *Nilmony Poddar v Queen-Empress* (1889) ILR 16 Cal 442; *Kitabdi v Emperor* AIR 1931 Cal 450; and *Muman Hasanali Mohmadali v State of Gujarat* AIR 1971 Guj 72.

Under Influence charge against the accused, but has included it in the statement of facts which the accused admits to without qualification.⁸¹

63 It is suggested that in such cases, a separate punishment may duly be imposed on the offender for his conviction for Driving Under Influence to reflect the offender's level of culpability and potential harm to other road users and property specifically *vis-à-vis* that stretch of driving under influence which did not involve dangerous or careless driving. The appropriate sentence to be imposed in such cases should be based on the prevailing sentencing principles and frameworks for Driving Under Influence.⁸² To be sure, this is provided the sentence imposed for the Dangerous Driving or Careless Driving offence does not already take into account that additional stretch of driving under influence.

64 This approach is justifiable given that the road users and property put at risk by the offender's separate stretch of driving under influence would generally not be the same road users and property put at risk by the offender's stretch of dangerous or careless driving.⁸³ Further, it is an established principle that uncharged conduct of an offender (which may constitute a separate charge) can be taken into account in sentencing if that conduct has a sufficient nexus to the charges before the court.⁸⁴

65 In that sense, even though based on the discussion in Part III above,⁸⁵ in the case of *Cheng Chang Tong* the court should not have imposed a sentence on the accused in respect of his Driving Under Influence that punished him for driving under influence while driving carelessly, as the High Court had noted from the statement of facts there, the accused had driven under influence for at least 1.6km prior to driving carelessly.⁸⁶ Thus, the fine imposed on the accused for his Driving Under Influence charge could reasonably be re-rationalised as punishment for the accused's prior stretch of driving under influence. Arguably then, the global sentence imposed on the accused was not manifestly excessive.

81 See, eg, *Public Prosecutor v Cheng Chang Tong* [2022] SGDC 178 at [1] and [6]–[15]. The High Court decision for this case may be found at *Public Prosecutor v Cheng Chang Tong* [2023] SGHC 119.

82 See generally *Rafael Voltaire Alzate v Public Prosecutor* [2022] 3 SLR 993.

83 After all, there have been accused persons convicted and sentenced even for driving while under influence for very short distances (see, eg, *Public Prosecutor v Ng Poh Tiong* [2006] SGDC 233).

84 *Teo Seng Tiong v Public Prosecutor* [2021] 2 SLR 642 at [89]–[92].

85 See paras 39–61 above.

86 *Public Prosecutor v Cheng Chang Tong* [2023] SGHC 119 at [56].

B. *Disqualification order*

66 It is observed that in all cases that has been decided under the post-November 2019 scheme of punishment involving serious offenders or serious repeat offenders who drove dangerously or carelessly the courts have imposed a disqualification order for both the offender's Dangerous/Careless Driving charge as well as Driving Under Influence charge.⁸⁷ With due respect, it is submitted that that does not comport with legislative intention, which instead is that in such cases the court should only impose a disqualification order for the offender's Dangerous/Careless Driving charge.

67 As mentioned, ss 64(2D) and 64(2E) and ss 65(6) and 65(7) set out presumptive terms of disqualification order that a court must impose in various cases involving dangerous and careless driving respectively. Section 67, which is the provision governing the offence of Driving Under Influence, also has two subsections (ss 67(2) and 67(3)) prescribing presumptive terms of disqualification order for offenders convicted for Driving Under Influence. Pertinently, both of these subsections start with the qualifying phrase "Subject to sections 64(2D) and (2E) and 65(6) and (7)". It seems that there are only two possible interpretations of this phrase:

- (a) where there is any inconsistency in application between ss 67(2) or 67(3) and ss 64(2D) or 64(2E) or between ss 67(2) or 67(3) and ss 65(6) or 65(7), the position under ss 64(2D) or 64(2E) and ss 65(6) or 65(7) is the one that should apply, or
- (b) where the court has to impose a disqualification order under ss 64(2D) or 64(2E) or ss 65(6) or 65(7), the court is not to impose a separate disqualification order under ss 67(2) or 67(3).

68 As far as this author can tell, because of the way the Legislature has crafted the two sets of provisions, there will never be any inconsistency in application between ss 67(2) or 67(3) on the one hand and ss 64(2D) or 64(2E) on the other or between ss 67(2) or 67(3) on the one hand or ss 65(6) or 65(7) on the other. Specifically, in any given case:

- (a) the presumptive length of disqualification order that must be imposed *vis-à-vis* Dangerous/Careless Driving is always at least as long as that *vis-à-vis* Driving Under Influence, and
- (b) the provisions dictate that any disqualification order whether imposed under ss 64(2D) and 64(2E), ss 65(6) and 65(7) as well as ss 67(6) and 67(7) is to start on the date of

87 See, eg, the cases cited at nn 16 and 18 above.

the offender's conviction, or where the person is sentenced to imprisonment on the date of his release from prison.

69 Consequently, the second possible interpretation of the qualifying phrase has to be the correct one. Otherwise, that phrase will be completely superfluous. Given that as argued above legislative intention was for an offender's punishment for driving under influence while driving dangerously or carelessly to be fully reflected in the sentence imposed for his conviction for Dangerous Driving or Careless Driving, this interpretation makes absolute sense. Sections 67(6) and 67(7) are thus meant to govern convictions for Driving Under Influence where the offender has *not* in relation to that stretch of driving under influence also been convicted for Dangerous Driving or Careless Driving.

70 That said, nothing substantive turns on this. Because of the way the Legislature has crafted the two sets of provisions as explained in the previous paragraph, in any case where a court imposes a disqualification order for each of the two offences, the accused will ultimately not be subject to overall disqualification for a period longer than if the court imposes a disqualification order only for the accused's Dangerous/Careless Driving charge.

V. Summary of arguments

71 To conclude, a summary of the arguments made in this article is as follows:

(a) Where an offender is convicted as a serious offender or serious repeat offender for Dangerous/Careless Driving and his charges for Dangerous/Careless Driving and Driving Under Influence are based on the same stretch of driving, the court should only impose a sentence and disqualification order in respect of the offender's conviction for Dangerous/Careless Driving. That sentence and disqualification order should fully reflect the offender's punishment for driving under influence along that stretch of driving. The offender's dangerous or careless driving, the fact of his driving under influence as well as any other aggravating factor(s) relating to those two aspects of driving should not be counted twice against him. There should not be a separate sentence and disqualification order imposed in respect of the offender's conviction for Driving Under Influence.

(b) In cases where there is evidence that the offender has driven under influence just prior to or after he had driven dangerously or carelessly while under influence, the court may impose a separate sentence, based on the usual sentencing

principles and frameworks, in respect of the offender's conviction for Driving Under Influence. This punishment reflects the offender's level of culpability and the risk of harm exposed to other person(s) and property *vis-à-vis* his stretch of driving under influence which did not involve dangerous or careless driving.

ANNEX

RECKLESS OR DANGEROUS DRIVING (s 64)		Level of harm caused			
		1. No hurt	2. Hurt	3. Grievous hurt	4. Death
Relevant past conviction(s) and/or driving under influence in relation to present offence A. - Not repeat offender - Not serious offender B. - Repeat offender - Not serious offender C. - Not repeat offender - Serious offender	- No previous conviction for speeding or dangerous driving or careless driving under the RTA nor rash or negligent driving under the PC - Did not drive under influence of drink or drugs in relation to present offence	Up to \$5,000 fine and/or up to one year imprisonment (s 64(2C)(a)) No presumptive DQ period	Up to \$10,000 fine and/or up to two years' imprisonment (s 64(2B)(a)) No presumptive DQ period	One to five years' imprisonment (s 64(2A)(a)) Presumptive eight years' DQ (s 64(2D)(d))	Two to eight years' imprisonment (s 64(2)(a)) Presumptive ten years' DQ (s 64(2D)(a))
	- Has previous conviction(s) for speeding or dangerous driving or careless driving under the RTA or rash or negligent driving under the PC - Did not drive under influence of drink or drugs in relation to present offence	Up to \$10,000 fine and/or up to two years' imprisonment (s 64(2C)(b)) No presumptive DQ period	Up to \$20,000 fine and/or up to four years' imprisonment (s 64(2B)(b)) No presumptive DQ period	Two to ten years' imprisonment (s 64(2A)(b)) Presumptive eight years' DQ (s 64(2D)(d))	Four to 15 years' imprisonment (s 64(2)(b)) Presumptive ten years' DQ (s 64(2D)(a))
	- No previous conviction for speeding or dangerous driving or careless driving under the RTA nor rash or negligent driving under the PC - Drove under influence of drink or drugs in relation to present offence	\$2,000 to \$15,000 fine and/or up to two years' imprisonment (s 64(2C)(c) read with s 64(2C)(a)) Presumptive two years' DQ (s 64(2D)(i))	\$2,000 to \$20,000 fine and/or up to three years' imprisonment (s 64(2B)(c) read with s 64(2B)(a)) Presumptive two years' DQ (s 64(2D)(g))	\$2,000 to \$10,000 fine and 1.5 to six years' imprisonment (s 64(2A)(c) read with s 64(2A)(a)) Presumptive ten years' DQ (s 64(2D)(e))	Three to ten years' imprisonment (s 64(2)(c) read with s 64(2)(a)) Presumptive 12 years' DQ (s 64(2D)(b))

<p>D. - Repeat offender - Serious offender</p>	<ul style="list-style-type: none"> - Has previous conviction(s) for speeding or dangerous driving or careless driving under the RTA or rash or negligent driving under the PC - Drove under influence of drink or drugs in relation to present offence 	<p>\$2,000 to \$20,000 fine and/or up to three years' imprisonment (s 64(2C)(c) read with s 64(2C)(b)) <i>Presumptive two years' DQ (s 64(2D)(i))</i></p>	<p>\$2,000 to \$30,000 fine and/or up to five years' imprisonment (s 64(2B)(c) read with s 64(2B)(b)) <i>Presumptive two years' DQ (s 64(2D)(g))</i></p>	<p>\$2,000 to \$10,000 fine and 2.5 to 11 years' imprisonment (s 64(2A)(c) read with s 64(2A)(b)) <i>Presumptive ten years' DQ (s 64(2D)(e))</i></p>	<p>Five to 17 years' imprisonment (s 64(2)(c) read with s 64(2)(b)) <i>Presumptive 12 years' DQ (s 64(2D)(b))</i></p>
<p>E. - Not repeat offender - Serious repeat offender</p>	<ul style="list-style-type: none"> - No previous conviction for speeding or dangerous driving or careless driving under the RTA nor rash or negligent driving under the PC - Has previous conviction(s) relating to driving under influence of drink or drugs - Drove under influence of drink or drugs in relation to present offence 	<p>\$5,000 to \$25,000 fine and up to three years' imprisonment (s 64(2C)(d) read with s 64(2C)(a)) <i>Presumptive five years' DQ (s 64(2D)(i)) or DQ for life (s 64(2E)(d))</i></p>	<p>\$5,000 to \$30,000 fine and up to four years' imprisonment (s 64(2B)(d) read with s 64(2B)(a)) <i>Presumptive five years' DQ (s 64(2D)(h)) or DQ for life (s 64(2E)(c))</i></p>	<p>\$5,000 to \$20,000 fine and two to seven years' imprisonment (s 64(2A)(d) read with s 64(2A)(a)) <i>Presumptive 13 years' DQ (s 64(2D)(f)) or DQ for life (s 64(2E)(b))</i></p>	<p>Four to 12 years' imprisonment (s 64(2)(d) read with s 64(2)(a)) <i>Presumptive 15 years' DQ (s 64(2D)(c)) or DQ for life (s 64(2E)(a))</i></p>
<p>F. - Repeat offender - Serious repeat offender</p>	<ul style="list-style-type: none"> - Has previous conviction(s) for speeding/dangerous driving/careless driving under RTA or rash/negligent driving under the PC - Has previous conviction(s) relating to driving under influence of drink or drugs - Drove under influence of drink or drugs in relation to present offence 	<p>\$5,000 to \$30,000 fine and up to four years' imprisonment (s 64(2C)(d) read with s 64(2C)(b)) <i>Presumptive five years' DQ (s 64(2D)(i)) or DQ for life (s 64(2E)(d))</i></p>	<p>\$5,000 to \$40,000 fine and up to six years' imprisonment (s 64(2B)(d) read with s 64(2B)(b)) <i>Presumptive five years' DQ (s 64(2D)(h)) or DQ for life (s 64(2E)(c))</i></p>	<p>\$5,000 to \$20,000 fine and two to seven years' imprisonment (s 64(2A)(d) read with s 64(2A)(b)) <i>Presumptive 13 years' DQ (s 64(2D)(f)) or DQ for life (s 64(2E)(b))</i></p>	<p>Six to 19 years' imprisonment (s 64(2)(d) read with s 64(2)(b)) <i>Presumptive 15 years' DQ (s 64(2D)(c)) or DQ for life (s 64(2E)(a))</i></p>

CARELESS OR INCONSIDERATE DRIVING (s 65)		Level of harm caused			
		1. No hurt	2. Hurt	3. Grievous hurt	4. Death
A.	- No previous conviction for speeding or dangerous driving or careless driving under the RTA nor rash or negligent driving under the PC	Up to \$1,500 fine and/or up to 0.5 year imprisonment (s 65(5)(a)) No presumptive DQ period	Up to \$2,500 fine and/or up to one year imprisonment (s 65(4)(a)) No presumptive DQ period	Up to \$5,000 fine and/or up to two years' imprisonment (s 65(3)(a)) Presumptive five years' DQ (s 65(6)(d))	Up to \$10,000 fine and/or up to three years' imprisonment (s 65(2)(a)) Presumptive eight years' DQ (s 65(6)(a))
	- Did not drive under influence of drink or drugs in relation to present offence				
B.	- Has previous conviction(s) for speeding or dangerous driving or careless driving under the RTA or rash or negligent driving under the PC	Up to \$3,000 fine and/or up to one year imprisonment (s 65(5)(b)) No presumptive DQ period	Up to \$5,000 fine and/or up to two years' imprisonment (s 65(4)(b)) No presumptive DQ period	Up to \$10,000 fine and/or up to four years' imprisonment (s 65(3)(b)) Presumptive five years' DQ (s 65(6)(d))	Up to \$20,000 fine and/or up to six years' imprisonment (s 65(2)(b)) Presumptive eight years' DQ (s 65(6)(a))
	- Did not drive under influence of drink or drugs in relation to present offence				
C.	- No previous conviction for speeding or dangerous driving or careless driving under the RTA nor rash or negligent driving under the PC	\$2,000 to \$11,500 fine and/or up to 1.5 years' imprisonment (s 65(5)(c) read with s 65(5)(a)) Presumptive two years' DQ (s 65(6)(i))	\$2,000 to \$12,500 fine and/or up to two years' imprisonment (s 65(4)(c) read with s 65(4)(a)) Presumptive two years' DQ (s 65(6)(g))	\$2,000 to \$15,500 fine and up to three years' imprisonment (s 65(3)(c) read with s 65(3)(a)) Presumptive seven years' DQ (s 65(6)(e))	Up to five years' imprisonment, with discretionary fine up to \$10,000 (s 65(2)(c) read with s 65(2)(a)) Presumptive ten years' DQ (s 65(6)(b))
	- Drove under influence of drink or drugs in relation to present offence				
Relevant past conviction(s) and/or driving under influence in relation to present offence					

<p>D. - Repeat offender - Serious offender</p>	<p>- Has previous conviction(s) for speeding or dangerous driving or careless driving under the RTA or rash or negligent driving under the PC - Drove under influence of drink or drugs in relation to present offence</p>	<p>\$2,000 to \$13,000 fine and/or up to two years' imprisonment (s 65(5)(c) read with s 65(5)(b)) <i>Presumptive two years' DQ (s 65(6)(i))</i></p>	<p>\$2,000 to \$15,000 fine and/or up to three years' imprisonment (s 65(4)(c) read with s 65(4)(b)) <i>Presumptive two years' DQ (s 65(6)(g))</i></p>	<p>\$2,000 to \$20,000 fine and up to five years' imprisonment (s 65(3)(c) read with s 65(3)(b)) <i>Presumptive seven years' DQ (s 65(6)(e))</i></p>	<p>Up to eight years' imprisonment, with discretionary fine up to \$20,000 (s 65(2)(c) read with s 65(2)(b)) <i>Presumptive ten years' DQ (s 65(6)(b))</i></p>
<p>E. - Not repeat offender - Serious repeat offender</p>	<p>- No previous conviction for speeding or dangerous driving or careless driving under the RTA or rash or negligent driving under the PC - Has previous conviction(s) relating to driving under influence of drink or drugs - Drove under influence of drink or drugs in relation to present offence</p>	<p>\$5,000 to \$21,500 fine and up to 2.5 years' imprisonment (s 65(5)(d) read with s 65(5)(a)) <i>Presumptive five years' DQ (s 65(6)(j)) or DQ for life (s 65(7)(d))</i></p>	<p>\$5,000 to \$22,500 fine and up to three years' imprisonment (s 65(4)(d) read with s 65(4)(a)) <i>Presumptive five years' DQ (s 65(6)(h)) or DQ for life (s 65(7)(c))</i></p>	<p>\$5,000 to \$25,000 fine and up to four years' imprisonment (s 65(3)(d) read with s 65(3)(a)) <i>Presumptive ten years' DQ (s 65(6)(f)) or DQ for life (s 65(7)(b))</i></p>	<p>Up to seven years' imprisonment, with discretionary fine up to \$10,000 (s 65(2)(d) read with s 65(2)(a)) <i>Presumptive 13 years' DQ (s 65(6)(c)) or DQ for life (s 65(7)(a))</i></p>
<p>F. - Repeat offender - Serious repeat offender</p>	<p>- Has previous conviction(s) for speeding/dangerous driving/careless driving under the RTA or rash/negligent driving under the PC - Has previous conviction(s) relating to driving under influence of drink or drugs - Drove under influence of drink or drugs in relation to present offence</p>	<p>\$5,000 to \$23,500 fine and up to three years' imprisonment (s 65(5)(d) read with s 65(5)(b)) <i>Presumptive five years' DQ (s 65(6)(j)) or DQ for life (s 65(7)(d))</i></p>	<p>\$5,000 to \$25,000 fine and up to four years' imprisonment (s 65(4)(d) read with s 65(4)(b)) <i>Presumptive five years' DQ (s 65(6)(h)) or DQ for life (s 65(7)(c))</i></p>	<p>\$5,000 to \$30,000 fine and up to six years' imprisonment (s 65(3)(d) read with s 65(3)(b)) <i>Presumptive ten years' DQ (s 65(6)(f)) or DQ for life (s 65(7)(b))</i></p>	<p>Up to ten years' imprisonment, with discretionary fine up to \$20,000 (s 65(2)(d) read with s 65(2)(b)) <i>Presumptive 13 years' DQ (s 65(6)(c)) or DQ for life (s 65(7)(a))</i></p>