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15. CRIMINAL PROCEDURE, EVIDENCE AND SENTENCING

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INTRODUCTION

15.1 In this chapter, we summarise the key case law developments in the areas of criminal procedure, evidence as well as sentencing in 2023. Consistent with the trend in the past few years, out of these three areas, the area of sentencing saw the most cases and developments.

15.2 We begin with the area of criminal procedure where we review ten cases – three from the Court of Appeal and seven from the General Division of the High Court (the "High Court"). Thereafter, we move to the area of evidence where there appears to only have been one notable High Court case. We end with sentencing, where we review 21 cases that set out key sentencing issues and frameworks, and highlight the first set of guidelines by the Sentencing Advisory Panel: the Guidelines on Reduction in Sentences for Guilty Pleas[1] ("PG Guidelines") that could be cited in court from October 2023.

CRIMINAL PROCEDURE

I. Repeat review applications an abuse of process

15.3 In two cases in 2023, the Court of Appeal emphasised that filing repeated applications for permission to make a review application under s 394H(1) of the Criminal Procedure Code 2010 ("CPC"), despite the

1 "Guidelines on Reduction in Sentences for Guilty Pleas" (15 August 2023) <https://www.sentencingpanel.gov.sg/resources/guidelines/guilty-pleas/> (accessed 19 August 2024).

prohibition in s 394K(1) of the CPC,[2] amounted to an abuse of process. The two cases are *Chander Kumar a/l Jayagaran v Public Prosecutor*[3] ("*Chander Kumar*") and *Tangaraju s/o Suppiah v Public Prosecutor*.[4]

15.4 If such applications had been filed by counsel, the counsel would in all likelihood be ordered to pay costs to the Prosecution personally. The Court of Appeal also observed in *Chander Kumar* that to curb such obvious abuse of process, where an applicant files more than one application for permission to review that does not warrant the exercise of the appellate court's inherent power to review a concluded criminal appeal, the Supreme Court Registry should consult the relevant appellate court. If so directed, the Registry should reject the filing. Even if the second or subsequent application has been accepted for filing, in error or otherwise, the Supreme Court Registry may still reject the filing if so directed by the assigned appellate judge.[5]

II. Unsigned statements admissible

15.5 Under s 258(1) of the CPC, any statement made by an accused, whether orally or in writing, is admissible in evidence at his trial. In *Abdoll Mutaleb bin Raffik v Public Prosecutor*[6] ("*Abdoll Mutaleb*"), the Court of Appeal held that even if an accused's statement was unsigned, it is admissible as a record of the accused's voluntary oral statement under s 258(1) of the CPC.[7]

15.6 The Court of Appeal considered that even in a case where the recording officer had forgotten to ask the accused to sign the statement, it would be admissible.[8] The case for admitting an unsigned statement where the maker of the statement refused to sign it after hours of recording, as was the situation in that case, was even stronger. It cannot be right that an accused who makes a formal statement in the course of investigation can glibly disavow all that he has said and refuse to sign the statement so as to render the statement inadmissible as evidence.[9]

2 Section 394K(1) of the Criminal Procedure Code 2010 states that "[a]n applicant cannot make more than one review application in respect of any decision of an appellate court".
3 [2023] SGCA 35 at [25].
4 [2023] SGCA 13 at [24].
5 *Chander Kumar a/l Jayagaran v Public Prosecutor* [2023] SGCA 35 at [26].
6 [2023] 1 SLR 1362.
7 *Abdoll Mutaleb bin Raffik v Public Prosecutor* [2023] 1 SLR 1362 at [104].
8 *Abdoll Mutaleb bin Raffik v Public Prosecutor* [2023] 1 SLR 1362 at [102].
9 *Abdoll Mutaleb bin Raffik v Public Prosecutor* [2023] 1 SLR 1362 at [103].

III. Scope of pre-amended section 258(5) CPC

15.7 Apart from *Abdoll Mutaleb* (see para 15.5 above), there was another Court of Appeal decision in 2023 that concerned s 258 of the CPC, albeit a different subsection – s 258(5) instead of s 258(1). This is the case of *Dzulkarnain bin Khamis v Public Prosecutor*[10] ("*Dzulkarnain*").

15.8 Section 258(5) of the CPC governs when a confession made by an accused can be taken into consideration as against the accused as well as a co-accused that is tried jointly with him. The section was amended in recent years through the Criminal Justice Reform Act 2018[11] and now sets out three situations in which a court hearing a joint trial may take into consideration the confession of an accused against a co-accused. Prior to the amendments, the section applied only where the accused persons in the joint trial are being tried jointly for the same offence.[12]

15.9 *Dzulkarnain* concerns the pre-amended version of s 258(5) of the CPC. The argument that one of the accused persons advanced was that the Prosecution could not rely on a co-accused's confession in cross-examining him as s 258(5) of the CPC required them to be facing the same offence before that could be done and they were not.[13]

15.10 The Court of Appeal rejected this argument and held that s 258(5) of the CPC does not apply to situations where reference is made to the statements of a co-accused when *cross-examining* an accused. If it did, it would render joint trials involving two or more accused persons charged with different offences extremely difficult, if not impossible.[14]

15.11 The purpose of cross-examination is to elicit evidence from the witness (the accused in this case). When a document is placed before a witness in cross-examination, that document is not itself being admitted as evidence. Indeed, it generally precedes the admission of the evidence – which is the witness's testimony provided in response to the questions asked. Section 258(5) of the CPC does not regulate the manner in which cross-examination is carried out but is directed towards when a co-accused's statements may be admissible as evidence against an accused.[15]

10 [2023] 1 SLR 1398.
11 Act 19 of 2018.
12 *Dzulkarnain bin Khamis v Public Prosecutor* [2023] 1 SLR 1398 at [103].
13 *Dzulkarnain bin Khamis v Public Prosecutor* [2023] 1 SLR 1398 at [99]–[100].
14 *Dzulkarnain bin Khamis v Public Prosecutor* [2023] 1 SLR 1398 at [107].
15 *Dzulkarnain bin Khamis v Public Prosecutor* [2023] 1 SLR 1398 at [104].

15.12 There is also nothing in the Evidence Act 1893[16] ("Evidence Act") that restricts the use of a co-accused's statement in cross-examination of another accused in a joint trial. Save that any question asked must relate to relevant facts, the cross-examination of an accused may include other facts that were uncovered in police investigations – including a co-accused's statements.[17]

15.13 While the Court of Appeal was specifically considering the pre-amended s 258(5) of the CPC, these observations would likely also apply to the present s 258(5), given that the amendments were to expand the circumstances in which confessions of a co-accused in a joint trial could be considered as against the other accused person and did not change the position that it does not affect the use of such statements in the cross-examination of other accused persons.

IV. When should discharge amounting to acquittal be granted

15.14 Where the Prosecution exercises its constitutional discretionary power and informs the court under s 232(1) of the CPC that it would not further prosecute an accused upon a charge, the court must order a discharge. The court, however, has a discretion under s 232(2) of the CPC to decide whether the discharge should amount to an acquittal ("DATA") or whether the discharge should not amount to an acquittal ("DNATA").[18] There are two main differences: (a) when the court orders a DATA, the accused can be certain that he will never be prosecuted on the charge in future because he has effectively been acquitted; and (b) a DATA retracts the grave public statement by the Prosecution that it has good reason to believe that the accused is involved in the offence.[19]

15.15 In *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor*,[20] the High Court provided guidance on how the court should exercise its discretion to decide whether to grant a DATA or a DNATA. The High Court held that there is an initial presumption in favour of a DNATA. The burden is on the accused to show sufficient reasons to displace this presumption,[21] though the Prosecution must inform the court of its reasons for seeking a discharge and of all other matters that are relevant

16 2020 Rev Ed.
17 *Dzulkarnain bin Khamis v Public Prosecutor* [2023] 1 SLR 1398 at [105]–[106].
18 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] 5 SLR 824 at [25]–[26].
19 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] 5 SLR 824 at [27].
20 [2023] 5 SLR 824.
21 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] 5 SLR 824 at [25] and [42(a)]–[42(b)].

to the court's exercise of its discretion.[22] The presumption for a DNATA will be even stronger in cases such as the following:[23]

> (a) *where the charge is for a serious offence* because there is a stronger public interest in prosecuting serious offences and therefore giving the authorities adequate time to do so;
>
> (b) *where there is no uncertainty about when the Prosecution will complete its investigations* because the accused will not be subject to the indefinite apprehension of potential criminal proceedings; or
>
> (c) *where the accused has wrongfully contributed to the Prosecution's difficulty in proceeding with the matter* given the public interest in preventing an accused from benefitting from his own wrongful conduct.

15.16 The presumption may be displaced, for example, where the specific facts are such that the prejudice to the accused in facing an uncertain future outweighs the public interest in ensuring that a suspect is not cleared of an offence without trial. Instances of such prejudice may be where (a) there is no real or reasonable prospect of a prosecution occurring in the future; or (b) there are grounds to suggest the charge should not have been brought at all.[24]

15.17 Considerations that are irrelevant to the court's exercise of discretion include:[25]

> (a) Past prejudice to the accused arising from poor conduct of the Prosecution or in the ordinary course of events is not relevant. The court's discretion is not to be exercised as a form of social accounting.
>
> (b) It is not typically for the court to assess whether the Prosecution's intended investigative efforts are likely to succeed. The court should not undertake a detailed assessment of the intended course of investigations. Generally, a confirmation from the Prosecution that it is actively pursuing a live lead and has reason to believe its investigations will bear fruit should be sufficient to warrant a DNATA.

15.18 While it was not necessary on the facts, the High Court made some observations, in *obiter dicta*, on whether the High Court had

22 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] 5 SLR 824 at [32].
23 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] 5 SLR 824 at [31].
24 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] 5 SLR 824 at [33].
25 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] 5 SLR 824 at [38]–[41].

the power to grant a DATA on appeal when the District Court, which decided the matter at first instance, did not have the power to grant a DATA against a murder charge (being an offence triable only in the High Court).

15.19 The High Court provisionally observed that it would be unsatisfactory if the High Court were powerless to grant a DATA on appeal (at least without resorting to narrow concepts of abuse of process or allegations of improper conduct on the Prosecution's part). If so, the Prosecution would effectively have unfettered control over whether the discharge of a charge for an offence triable only by the High Court amounts to an acquittal. To avoid this unsatisfactory outcome, this could be an appropriate area to invoke the High Court's inherent powers in a proper case.[26]

V. Amendment of petition of appeal out of time under section 378(6) CPC

15.20 In *Iseli Rudolf James Maitland v Public Prosecutor*,[27] the High Court set out a non-exhaustive framework that the court should consider for an application to amend a petition of appeal under s 378(6) of the CPC,[28] and cautioned that the factors are not to be considered in a mechanistic way:

> (a) First, the court should consider the nature of the amendment and the explanation put forward for the amendment.
>
> (b) Second, the court should consider the length of the delay between the filing of the petition of appeal and the application to amend the petition, and the explanation for the delay. A last-minute application to amend the petition of appeal (*eg*, the day before the appeal hearing) would normally be suggestive of some measure of abuse of process.[29]
>
> (c) Third, the court should consider the existence of some prospect of success in the amended petition of appeal.
>
> (d) Finally, the court should consider the potential prejudice to either party should the application be allowed or denied, in particular the potential prejudice to accused persons.

26 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] 5 SLR 824 at [61] and [63].
27 [2023] 5 SLR 1389.
28 *Iseli Rudolf James Maitland v Public Prosecutor* [2023] 5 SLR 1389 at [8]–[9].
29 *Iseli Rudolf James Maitland v Public Prosecutor* [2023] 5 SLR 1389 at [12].

15.21 In arriving at the above approach, the High Court found s 380(1) of the CPC – which pertains to permission to appeal for persons debarred from appealing for non-compliance with the CPC – and the case law on that provision helpful.[30] The court observed that an appellant's inability to argue specific grounds not included in a petition of appeal is of the same kind of prejudice, though to a different extent, as that where an appellant cannot raise any arguments altogether because procedural noncompliance debars them from appealing (which is the scenario under s 380(1) of the CPC).

VI. Release of seized property for legal fees under section 35(8)(b)(i) CPC

15.22 Under s 35(1) of the CPC, the police has the power to seize property that is related to an offence under certain situations. The court may order the release of such seized property pursuant to s 35(7) of the CPC if it is satisfied that any of the requirements in s 35(8) of the CPC is met. One such requirement, as set out in s 35(8)(*b*)(i), is that the release is necessary exclusively for legal fees – or more specifically "the payment of reasonable professional fees and the reimbursement of any expenses incurred in connection with the provision of legal services".

15.23 In *Carlos Manuel De São Vicente v Public Prosecutor*,[31] the High Court set out the principles on when seized funds may be released for the payment of legal fees pursuant to this provision.

15.24 The High Court observed that the legislative intent of s 35(8) of the CPC is to prevent undue hardship arising from police seizure of property, and is not concerned with legal entitlement to the property.[32] Therefore, the release of property is subject to a balancing exercise between the competing concerns of ensuring the efficacy of police investigations and prejudice to those potentially affected by police seizures, and whether it is necessary in the interests of justice.[33] The assessment is about whether the applicant satisfied the criteria under s 35(8) of the CPC, which has a common denominator of being "legitimate" expenses,[34] *ie*, expenses ordinarily recognised as being capable of causing hardship if the payee is unable to obtain funds to make payment for them.

30 *Iseli Rudolf James Maitland v Public Prosecutor* [2023] 5 SLR 1389 at [6]–[7].
31 [2023] 5 SLR 1397.
32 *Carlos Manuel De São Vicente v Public Prosecutor* [2023] 5 SLR 1397 at [32]–[34].
33 *Carlos Manuel De São Vicente v Public Prosecutor* [2023] 5 SLR 1397 at [35]–[36].
34 *Carlos Manuel De São Vicente v Public Prosecutor* [2023] 5 SLR 1397 at [33].

15.25 The High Court held that these five conditions must be met for a release of property under s 35(8)(*b*)(i):[35]

> (a) *First, the requirement of necessity must be met.* The release of the funds must be necessary for the payment of professional fees or the reimbursement of incurred expenses, both of which must be incurred in connection with the provision of legal services.[36] These need not be incurred in Singapore and can be for legal services rendered for proceedings out of jurisdiction.[37] The applicant must show that there are no other available funds. One consideration for this is whether the applicant has alternative sources of funding, including from separate legal entities or his family members in certain situations.[38]
>
> (b) *Second, the requirement of exclusivity must be met.* Any funds released should be used exclusively for legal fees and expenses of the applicant (and not of others, including a separate legal entity particularly where the applicant is not personally liable for the expenses, even if it is in the applicant's interests that the expenses are paid).[39]
>
> (c) *Third, the requirement of reasonableness must be met.* The professional fees or incurred expenses must be reasonable.[40] The onus is on the applicant to adduce sufficient information for the court to assess the reasonableness of the amount claimed. Further, in assessing reasonableness, the court should consider whether the amount claimed is traceable and proportionate to the reason for incurring such expenses. It is a decision subject to considerations of the nature and complexity of the proceedings.[41]
>
> (d) *Fourth, reimbursement of fees and expenses must be retrospective, for expenses already incurred*.[42]
>
> (e) *Fifth, the above requirements must be cumulatively shown.* The burden is on the applicant to adduce sufficient evidence.[43]

35 *Carlos Manuel De São Vicente v Public Prosecutor* [2023] 5 SLR 1397 at [29].
36 *Carlos Manuel De São Vicente v Public Prosecutor* [2023] 5 SLR 1397 at [30].
37 *Carlos Manuel De São Vicente v Public Prosecutor* [2023] 5 SLR 1397 at [73].
38 *Carlos Manuel De São Vicente v Public Prosecutor* [2023] 5 SLR 1397 at [38].
39 *Carlos Manuel De São Vicente v Public Prosecutor* [2023] 5 SLR 1397 at [39]–[42].
40 *Carlos Manuel De São Vicente v Public Prosecutor* [2023] 5 SLR 1397 at [43].
41 *Carlos Manuel De São Vicente v Public Prosecutor* [2023] 5 SLR 1397 at [44].
42 *Carlos Manuel De São Vicente v Public Prosecutor* [2023] 5 SLR 1397 at [45].
43 *Carlos Manuel De São Vicente v Public Prosecutor* [2023] 5 SLR 1397 at [46].

VII. Dismissal of Magistrate's Complaint

15.26 The High Court in *Koh Shu Cii Iris v Attorney-General*[44] had the opportunity to consider two issues relating to Magistrate's Complaints, in the course of dismissing the applicant's application for permission to commence judicial review against the Attorney-General's decision to intervene to discontinue her appeal against the dismissal of her Magistrate's Complaint.

15.27 The first issue was whether before a Magistrate dismisses a complaint under s 152(1) of the CPC, it was mandatory for the Magistrate to first adopt the procedures in s 151(2)(*b*) of the CPC. Section 151(2)(*b*) provides that when a Magistrate receives a complaint from a non-police officer or law enforcement officer *etc*, the Magistrate *may*, after examining the complainant on oath (as required under s 151(2)(*a*)), adopt any of the procedures in the provision. The procedures include issuing a summons to compel the attendance of any person who may be able to help the Magistrate determine whether there is sufficient ground for proceeding (s 151(2)(*b*)(i)) or directing any officer to make inquiries (s 151(2)(*b*)(ii)).

15.28 The High Court held that there was no such requirement. The procedures in s 151(2)(*b*) are not mandatory but a matter of judicial discretion.[45] Whether a further stage of enquiry is necessary must be case-specific and dependent on the substance of each complaint. There would be cases where it is apparent from the complainant's examination alone that there is insufficient reason to proceed with the complaint and that the complaint should be dismissed.[46]

15.29 The second issue was whether there is any right of appeal against the dismissal of a Magistrate's Complaint. The High Court held that there was no right of appeal, given that:

> (a) There is no provision in the CPC or any other written law conferring such a right.[47]
>
> (b) In fact, s 376(1) of the CPC specifically provides that there is to be no appeal against an acquittal or the sentence of a convicted accused even in the case where a private person successfully commences prosecution. It ought to follow that any private person whose complaint does not even pass muster

44 [2023] 5 SLR 1774.
45 *Koh Shu Cii Iris v Attorney-General* [2023] 5 SLR 1774 at [24].
46 *Koh Shu Cii Iris v Attorney-General* [2023] 5 SLR 1774 at [29]–[30].
47 *Koh Shu Cii Iris v Attorney-General* [2023] 5 SLR 1774 at [34]–[37].

under s 152(1) of the CPC would have no basis to be permitted to appeal against the dismissal of his complaint.[48]

(c) The applicant's recourse, if any, ought to lie in the court's revisionary rather than appellate jurisdiction under s 401(1) of the CPC, which expressly provides that the High Court may exercise its revisionary powers to direct a Magistrate to make further inquiry into a complaint which has been dismissed under s 152 of the CPC. However, under s 400(1) of the CPC, only the Prosecution, and not the complainant in the Magistrate's Complaint, can seek revision.[49]

VIII. Applications relating to bail

15.30 The High Court gave guidance on issues relating to bail in two cases: (a) *Sakthivel Sivasurian v Public Prosecutor*[50] ("*Sakthivel*") and (b) *Vang Shuiming v Public Prosecutor*[51] ("*Vang Shuiming*").

15.31 *Sakthivel* concerned the revocation of bail under s 103 of the CPC. In dismissing a criminal revision filed by the accused to revise the District Court's decision to revoke his bail, the High Court held that:

(a) Applications to be released on bail, following a State Courts' decision to deny bail, could be brought either as a criminal motion or as a criminal revision. Regardless of the procedural form, the application would be before the High Court in exercise of its revisionary jurisdiction, and the same standard of "serious injustice" would apply.[52]

(b) The court's power to remand a released person in custody under s 103(4) of the CPC is subject to the following two preconditions:[53]

(i) First, the released person must have been brought before the court pursuant to an arrest under s 103 of the CPC. This does not require a released person to have been brought to court pursuant to an arrest under s 103(1) specifically. All it requires is an arrest under s 103, which includes an arrest under s 103(3)(*b*) of the

48 *Koh Shu Cii Iris v Attorney-General* [2023] 5 SLR 1774 at [37(a)].
49 *Koh Shu Cii Iris v Attorney-General* [2023] 5 SLR 1774 at [37(b)].
50 [2023] 5 SLR 1588.
51 [2023] SGHC 248.
52 *Sakthivel Sivasurian v Public Prosecutor* [2023] 5 SLR 1588 at [20].
53 *Sakthivel Sivasurian v Public Prosecutor* [2023] 5 SLR 1588 at [34].

CPC (reasonable grounds to believe that the person is likely to break or has broken bail conditions).

(ii) Second, the court must think that the released person (A) is unlikely to surrender to custody, to make himself available for investigations, or to attend court; or (B) has broken or is likely to break any conditions of his bail or personal bond.

(c) The revocation of bail is a matter of judicial discretion. In exercising this discretion, the court must balance a myriad of interests and considerations, which are not limited to the question of whether the accused is a flight risk. Other considerations include (i) preventing the commission of further offences; and (ii) preventing any prejudice to a fair trial. It follows that a court in making a bail decision may also consider the risk that the accused will reoffend, intimidate witnesses, or tamper with evidence if he is released.[54]

15.32 *Vang Shuiming* concerned (a) orders to further remand an accused for eight days for the purpose of investigation pursuant to s 238(3) of the CPC; and (b) the refusal to grant the accused immediate access to counsel. The High Court, in dismissing a criminal revision against the District Court's decision on these two issues, held that:

(a) The typical evidential rules do not apply in s 238(3) CPC proceedings where the court considers whether an order to remand an accused for investigations should be granted. The proceedings are meant to be dealt with in a summary way. The threshold for a further remand application is not high as it only requires the court to consider whether it appears *likely* that further evidence may be obtained by a remand. The Prosecution is not required to adduce affidavit evidence given the need for expediency and the early stage of investigations. Requiring affidavit evidence can also lead to the injurious disclosure of confidential investigative methods and findings. Accordingly, oral submissions may, as in this case, suffice for such remand proceedings.[55]

(b) An application for further remand typically ought not to be granted in any of these situations where the prejudice caused to the accused by allowing further remand would be disproportionate to the investigative benefits of his remand: (i) where remand is sought merely for the investigator's convenience; (ii) where remand is sought for the improper

54 *Sakthivel Sivasurian v Public Prosecutor* [2023] 5 SLR 1588 at [48]–[53].
55 *Vang Shuiming v Public Prosecutor* [2023] SGHC 248 at [12]–[15].

motive of pressuring an accused to confess; (iii) where previous remand has failed to provide any further evidence; (iv) where remand is sought for a minor offence which attracts a low fine even if the accused is convicted; or (v) where remand would significantly exacerbate an accused person's illness which cannot be remedied by changing the conditions of remand.[56]

(c) In relation to the district judge's refusal to grant the accused immediate access to counsel, the High Court reiterated that while an accused has a right to counsel, this right is not one which must be granted to him immediately. It needs to be granted to him only within a reasonable time after his arrest, to strike a balance between an accused's right to legal advice and the duty of the police to protect the public by carrying out effective investigations.[57]

15.33 The accused in *Vang Shuiming* subsequently brought another criminal revision to the High Court seeking a review of the District Court's subsequent refusal to grant him bail, on the Prosecution's application, even after the Prosecution no longer sought a remand for investigations under s 283(3) of the CPC.[58]

15.34 In dismissing the criminal revision, the High Court observed that strict rules of evidence do not apply in bail review proceedings and that affidavit evidence is frequently relied on.[59] Further, where the onus is on the accused to show that bail ought to be granted (as is the case for non-bailable offences), it is incumbent on the accused to substantively rebut the Prosecution's assertions which are based on affidavit evidence, rather than simply contend that they are bare assertions or take the position that it is not for the accused to raise counter-evidence to prove his innocence.[60]

56 *Vang Shuiming v Public Prosecutor* [2023] SGHC 248 at [25].
57 *Vang Shuiming v Public Prosecutor* [2023] SGHC 248 at [18].
58 *Vang Shuiming v Public Prosecutor* [2023] SGHC 289.
59 *Vang Shuiming v Public Prosecutor* [2023] SGHC 289 at [15(a)].
60 *Vang Shuiming v Public Prosecutor* [2023] SGHC 289 at [15(c)].

EVIDENCE

IX. No minimum period of notice to admit hearsay evidence under section 32(4) Evidence Act

15.35 Under s 32(1) of the Evidence Act, statements of relevant facts made by a person are themselves relevant facts (*ie*, admissible as hearsay evidence) in prescribed situations. This is subject to the court's discretion to exclude such hearsay evidence under s 32(3) of the Evidence Act.

15.36 Section 32(4) of the Evidence Act requires the party seeking to admit such evidence to comply with "such notice and requirements and other conditions as may be prescribed by the Minister under s 428 of the [CPC]". The relevant notice requirements are set out in the Criminal Procedure Code (Notice Requirements to Admit Hearsay Evidence) Regulations 2012.[61]

15.37 In *Teo Chu Ha v Public Prosecutor*[62] ("*Teo Chu Ha*"), the High Court dealt with the contention of the appellant that the Prosecution had failed to comply with the notice requirement under s 32(4) of the Evidence Act because it had served the notice on the same day that it sought to admit the hearsay evidence (bank statements in that case).

15.38 The High Court held that serving the notice on the day that the party seeks to admit the evidence does not constitute non-compliance of the notice requirement. Neither s 32(4) of the Evidence Act nor the Regulations prescribe a minimum period of notice. The legislation merely provides that notice is to be provided before evidence is given, and that it should contain certain information and be presented in a certain form. Further, if non-compliance with the notice requirement may be cured by the court,[63] then compliance (albeit at the last minute) cannot constitute grounds for excluding the statements.[64] Any allegation that notice was served shortly before evidence was given should be assessed under the court's discretionary jurisdiction to exclude hearsay evidence under s 32(3) of the Evidence Act instead.[65]

15.39 Another notable point in *Teo Chu Ha* was that that High Court found that overseas bank statements that had been obtained through a formal inter-state request under the Mutual Assistance in Criminal

61 S 336/2012.
62 [2023] 5 SLR 1304.
63 *Gimpex Ltd v Unity Holdings Business Ltd* [2015] 2 SLR 686 at [135]–[139].
64 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [89].
65 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [89].

Matters Act[66] ("MACMA") were admissible through s 8(3) of the MACMA read with s 32(1)(*b*)(iv) of the Evidence Act, and were not admissible through ss 172 and 173 of the Evidence Act, which applied to banker's books issued in Singapore, as contended by the Defence.[67]

SENTENCING

15.40 The area of sentencing had by far the most cases and developments as compared to the earlier two areas in this chapter. This section is structured in the following way:

(a) We first review nine cases that set out general sentencing principles.

(b) Next, we review 12 cases that set out frameworks or guidance for specific offences.

(c) Lastly, in a slight departure from the practice of reviewing only cases, we end with the Sentencing Advisory Panel's PG Guidelines as this was a significant development in 2023 with considerable impact.

X. General sentencing principles

A. Some credit may be given for dutiful compliance of court's directions

15.41 The Court of Appeal held in *Public Prosecutor v BWJ*[68] ("*BWJ*") that some credit may be given to an offender who complied dutifully with the court's directions. The extent of credit that should be given depends on an assessment of the merit of compliance.[69]

15.42 In *BWJ*, the offender was in remand from the time of his arrest in August 2017 until end-June 2020 when he was released on bail pending appeal after he was acquitted by the High Court. While on bail, he was not allowed to work or to return to his home in Malaysia. In February 2022, he was permitted to travel to Johor Bahru to attend his brother's funeral and he duly returned in August 2022 for the appeal. The Court of Appeal reduced his sentence by a year in view of his dutiful compliance with his bail conditions and the court's orders despite there being a great

66 Cap 190A, 2001 Rev Ed.
67 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [26] and [81]–[87].
68 [2023] 1 SLR 477.
69 *Public Prosecutor v BWJ* [2023] 1 SLR 477 at [99]–[102].

deal of incentive to abscond and given the significant delay of two years and two months between his acquittal and the appeal.

B. Principles governing backdating of preventive detention

15.43 A three-judge *coram* of the High Court provided guidance on the principles of backdating a sentence of preventive detention in *Kamis bin Basir v Public Prosecutor*[70] ("*Kamis*").

15.44 Before *Kamis*, the key authority for this area was the 2013 Court of Appeal case of *Public Prosecutor v Rosli bin Yassin*[71] ("*Rosli*"). The Court of Appeal observed in *Rosli* that although there was no provision that conferred the court an express power to backdate a sentence of preventive detention, the court may take into account the time that an offender had spent in remand in deciding the length of the preventive detention. The court held that given that the overarching principle is to protect the public, the court should consider the time that the offender has spent in remand only in *exceptional* cases. It observed that this approach was preferable given that there was no express power to backdate a sentence of preventive detention (as opposed to a normal imprisonment term).

15.45 After the decision of *Rosli*, in 2018, Parliament amended s 318 of the CPC to expressly give the court the power to backdate a sentence of preventive detention. Since then, the status of the holding in *Rosli* became less clear and there were inconsistent positions in the lower courts on whether a sentence of preventive detention could be backdated.[72]

15.46 In *Kamis*, the High Court held that the 2018 amendments to s 318 of the CPC wrought a sea-change and were not intended to be retrospective.[73] The court now has the power to backdate a sentence of preventive detention, and this power is not limited to only exceptional cases. The decision on whether to backdate a sentence of preventive detention should be done in two stages:[74]

> (a) First, the court should decide on the appropriate length of the preventive detention, bearing in mind that the overarching principle is the need to protect the public.
>
> (b) Second, the court should take a step back and consider the effect of backdating the sentence and consider whether the

70 [2024] 3 SLR 1713.
71 [2013] 2 SLR 831.
72 *Kamis bin Basir v Public Prosecutor* [2024] 3 SLR 1713 at [3].
73 *Kamis bin Basir v Public Prosecutor* [2024] 3 SLR 1713 at [43].
74 *Kamis bin Basir v Public Prosecutor* [2024] 3 SLR 1713 at [47]–[49].

total effective period of incarceration, in the event the sentence is backdated, would still give effect to the overarching principle of the need to protect the public. It would often be the case that even with a backdated sentence the overall effective period of incarceration will be sufficient, and that not backdating may result in unfairness.

15.47 The court further observed that in a case where a court deemed that the maximum of 20 years' preventive detention should be imposed, it would be wrong in principle for the court to order this maximum sentence of preventive detention but refuse to backdate it on the sole basis that it considered that the offender ought to be kept out of society for longer than 20 years, provided that backdating would otherwise be justified. This would run counter to the statutory limit which Parliament had enacted in respect of such sentences.[75]

C. Principles governing sentencing of offender with multiple mental conditions

15.48 In *Public Prosecutor v Soo Cheow Wee*[76] ("*Soo Cheow Wee*"), the High Court gave guidance on the principles that should be considered when sentencing an offender with mental condition(s), particularly where the offender suffers *multiple* mental conditions. Specific facts, including the following, must be considered:[77]

(a) *the existence, nature and severity of each mental condition*;[78]

(b) *the interaction between the mental conditions* and, in particular, the synergistic manner in which different mental conditions may come together and operate on the offender's mind;[79]

(c) *whether a causal link can be established between the conditions and the commission of the offence*, which involves the consideration of these three aspects of mental responsibility: (i) whether the offender possessed the basic cognitive ability to perceive his acts or omissions and know their nature; (ii) whether the offender possessed the moral and legal cognition to know and appreciate whether the act or omission in question was wrong, in the sense of it being contrary to the ordinary standards of reasonable and honest persons and contrary to law; and

75 *Kamis bin Basir v Public Prosecutor* [2024] 3 SLR 1713 at [50].
76 [2024] 3 SLR 972.
77 *Public Prosecutor v Soo Cheow Wee* [2024] 3 SLR 972 at [51].
78 *Public Prosecutor v Soo Cheow Wee* [2024] 3 SLR 972 at [53]–[56].
79 *Public Prosecutor v Soo Cheow Wee* [2024] 3 SLR 972 at [57]–[60].

(iii) whether the offender was able to exercise his will to control his actions such that he acts in accordance with his moral and legal cognitive sense;[80]

(d) *the extent to which the offender had insight into his mental conditions and their effects*, which is a key consideration in determining whether his conditions should be treated as a mitigating factor;[81] and

(e) *whether the overall circumstances are such as to diminish the offender's culpability*, which may require the balancing of the interests of the public and that of the offender, and involve the consideration of these factors to determine which of the four sentencing considerations of deterrence, prevention, retribution and rehabilitation should take greater weight: (i) the offender's attitude in seeking treatment and compliance with the treatment programme; (ii) whether the offender is recalcitrant; (iii) whether the offender poses a threat to the public; and (iv) whether the crime is particularly serious.[82]

15.49 The court also emphasised that it is a matter of paramount importance to adduce expert evidence addressing the existence, nature and severity of the psychiatric condition. As a guide, it would be useful for psychiatric reports to cover these issues:[83]

(a) What is the nature and severity of the offender's mental condition?

(b) Is there a causal link between the offender's mental condition and the commission of the offence?

(c) Could the offender have prevented the onset of the particular symptoms leading to the commission of the offence? And was the offender sufficiently aware of his condition and of how he could have prevented the onset of these symptoms?

(d) Could the offender have exercised control over his actions at the time of the offence?

(e) Does the mental condition make the offender prone to reoffending?

(f) Does the mental condition make the offender dangerous to others around him?

80 *Public Prosecutor v Soo Cheow Wee* [2024] 3 SLR 972 at [61].
81 *Public Prosecutor v Soo Cheow Wee* [2024] 3 SLR 972 at [64]–[66].
82 *Public Prosecutor v Soo Cheow Wee* [2024] 3 SLR 972 at [67]–[69].
83 *Public Prosecutor v Soo Cheow Wee* [2024] 3 SLR 972 at [55]–[56].

(g) Can the mental condition be treated or controlled and if so, how and under what conditions?

D. Enhanced sentence together with sentence of fresh offence can exceed maximum sentence of fresh offence

15.50 Under s 50T of the Prisons Act 1971,[84] an offender may be sentenced to an enhanced sentence if he committed a fresh offence, in breach of his remission order, while on remission after being released from imprisonment. The maximum term of such an enhanced sentence is limited by the remaining duration of the remission order as at the date of the fresh offence. If imposed, the enhanced sentence must run consecutively to the sentence for the fresh offence.

15.51 In *Muhammad Isa bin Ahmad v Public Prosecutor*,[85] the High Court considered the issue whether the enhanced sentence, together with the sentence for the fresh offence, can exceed the maximum sentence provided for the fresh offence.

15.52 The High Court held that it can. The only statutory limit on the duration of the enhanced sentence is that it must not exceed the remaining duration of the remission order.[86] Such a finding is also consistent with case law[87] and with the parliamentary intention behind s 50T of the Prisons Act 1971 of deterring ex-inmates from reoffending during remission.[88]

E. Mandatory treatment orders cannot be imposed for LT-2 offence (or any offence carrying mandatory minimum sentence)

15.53 In *Geevanathan s/o Thirunavakarusu v Public Prosecutor*,[89] an LT-2 drug offender[90] argued that the court had the power under s 337(2)(*b*) of the CPC to grant a mandatory treatment order ("MTO") even though his LT-2 offence carried a mandatory minimum sentence.

84 2020 Rev Ed.
85 [2024] 3 SLR 1359.
86 *Muhammad Isa bin Ahmad v Public Prosecutor* [2024] 3 SLR 1359 at [22].
87 *Abdul Mutalib bin Aziman v Public Prosecutor* [2021] 4 SLR 1220.
88 *Muhammad Isa bin Ahmad v Public Prosecutor* [2024] 3 SLR 1359 at [23]–[25].
89 [2023] 5 SLR 1551.
90 "LT-2 drug offender" refers to someone who is liable to be punished under s 33A(2) of the Misuse of Drugs Act 1973.

15.54 The High Court disagreed and held that MTOs cannot be imposed for an LT-2 offence (or any offence where there is a mandatory minimum sentence) because:

> (a) Under s 337(1)(*b*)(ii) of the CPC, a court has no power to impose a community order in respect of an offence with a mandatory minimum sentence of imprisonment, such as an LT-2 offence.[91]
>
> (b) Section 337(2) contains carve-outs to s 337(1), to allow the court to impose an MTO in certain cases. However, none of these carve-outs correspond to s 337(1)(*b*)(ii) of the CPC.[92]

15.55 Parliament did not intend for the regime of community sentences to apply to serious drug offenders. The offender's position, when taken to its logical conclusion, would have led to an anomalous situation where offenders who were previously admitted to a drug rehabilitation centre would automatically be eligible for consideration for an MTO regardless of the seriousness of their present offences. This would not accord with Parliament's intention for the regime of community sentences and MTOs in particular to be available for crimes at the rehabilitative end of the spectrum.[93]

F. Relevance of difference in ages of co-offenders

15.56 The High Court held in *Kesavan Chandiran v Public Prosecutor*[94] that the difference in the ages of co-offenders engaged in the same criminal enterprise can be a valid basis for modifying the application of the parity principle between them, even if both offenders are above the age of majority.[95]

15.57 The relative youth of an offender can be relevant in determining the weight to be attributed to the sentencing objectives of deterrence and rehabilitation.[96] Further, as a general rule, the personal circumstances of co-offenders engaged in the same criminal enterprise must be accounted for when applying the principle of parity, which is not to be applied in a rigid and inflexible manner.[97] This is subject to two caveats:[98]

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91 *Geevanathan s/o Thirunavakarusu v Public Prosecutor* [2023] 5 SLR 1551 at [44].
92 *Geevanathan s/o Thirunavakarusu v Public Prosecutor* [2023] 5 SLR 1551 at [46].
93 *Geevanathan s/o Thirunavakarusu v Public Prosecutor* [2023] 5 SLR 1551 at [57]–[59].
94 [2023] 4 SLR 1187.
95 *Kesavan Chandiran v Public Prosecutor* [2023] 4 SLR 1187 at [21].
96 *Kesavan Chandiran v Public Prosecutor* [2023] 4 SLR 1187 at [21].
97 *Kesavan Chandiran v Public Prosecutor* [2023] 4 SLR 1187 at [22].
98 *Kesavan Chandiran v Public Prosecutor* [2023] 4 SLR 1187 at [24].

(a) First, the difference in the age of the offenders should be significant.

(b) Second, the threshold for finding that a difference in age is significant will be lower where the younger offender is close to the age of majority, and higher where both offenders are much older than the age of majority.

15.58 The second caveat is because the basis of age, and in particular youth, being a relevant factor in sentencing is a possible indication of the weight to be placed on rehabilitation as opposed to deterrence. Consideration of rehabilitation will be more relevant the closer the offender is to the age of majority, particularly as the court also needs to keep in view the potential for arbitrariness when dealing with offenders at the margins of the threshold age of 21.

G. Fleeing from scene of road rage offence in motor vehicle

15.59 Whether driving away from the scene of a road rage offence is aggravating depends on the facts of each case. The High Court observed in *Haleem Bathusa bin Abdul Rahim v Public Prosecutor*[99] that three factors are relevant in making this assessment:[100]

(a) *The severity of the victim's injuries and the likely availability of medical attention* – the greater the victim's injuries, the more likely it is that fleeing the scene should be viewed as aggravating, especially if the offence is committed in a secluded location with little chance that the victim would receive prompt medical attention. This is consistent with ss 84(8) and 84(9) of the Road Traffic Act 1961[101] ("RTA") which provide for enhanced penalties for drivers who do not stop after being involved in accidents where death or serious injury is caused.

(b) *The extent to which the offender's decision to flee was a deliberate attempt to evade enforcement* (*eg*, driving away despite protestations or physical restraint by bystanders), rather than merely motivated by fear or confusion (*eg*, driving off to a police station or rental car company to make a report of the accident).

(c) *The extent to which an enhanced sentence would be necessary to deter an offender from committing such an offence in future* – this would be more likely where an offender has a

99 [2023] 3 SLR 1284.
100 *Haleem Bathusa bin Abdul Rahim v Public Prosecutor* [2023] 3 SLR 1284 at [54]–[57].
101 2020 Rev Ed.

history of irresponsible road usage or non-compliance with law enforcement.

15.60 Fleeing from a scene of road rage in a motor vehicle – rather than on foot – was held to be more aggravating:[102]

(a) The use of a motor vehicle allowed offenders to flee much more quickly, which diminished the ability of the police to obtain contemporaneous evidence and statements.

(b) It is difficult, if not dangerous, for others to prevent a motor vehicle from fleeing the scene of a crime.

(c) An offender who drives away from the scene of the offence was more likely to drive recklessly and cause further accident.

(d) Significant police resources would be required to track such offenders.

H. Whether in-default terms imposed for non-payment of fines can be set off using imprisonment terms that have been served

15.61 The general understanding has been that imprisonment terms that are imposed in default of the payment of a fine (usually referred to as "in-default terms") cannot be backdated to commence from an earlier date from which it was imposed, including the date of the offender's remand.[103] However, the High Court's decision in *Xu Yuanchen v Public Prosecutor*[104] ("*Xu Yuanchen*") may have cast some doubt on this position.

15.62 The offender in *Xu Yuanchen* had initially been sentenced to three weeks' imprisonment by the trial judge after being convicted of a criminal defamation offence. He appealed against conviction and sentence. He decided to serve the sentence despite being cautioned of the potential prejudice to him if his conviction or sentence was altered. On appeal, the High Court reduced his sentence to a fine of $8,000 and imposed an in-default sentence of two weeks' imprisonment. The High Court subsequently held that the three weeks' imprisonment that the offender had served "could count as, or be set off against" the two weeks' in-default term. In doing so, the High Court invoked s 6 of the CPC

102 *Haleem Bathusa bin Abdul Rahim v Public Prosecutor* [2023] 3 SLR 1284 at [48]–[51].

103 See *Ng Nicholas v Public Prosecutor* [2024] 4 SLR 364, *Public Prosecutor v Mohammad Faizal bin Omar* [2019] SGDC 84 as well as Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2nd Ed, 2019) at paras 26.077(a)–26.077(b) and the guide on the website of the Singapore Judiciary <https://www.judiciary.gov.sg/criminal/types-sentences> (accessed 19 August 2024).

104 [2023] SGHC 217.

which allowed the court to adopt any procedure as the justice of the case may require and which is not inconsistent with the law, where no special provision had been made under the CPC.

15.63 The High Court's decision was rather narrow: it concerned imprisonment terms that have been served (and not remand periods) and a setting off of the in-default term (rather than a backdating of the sentence). However, it has a bearing on the broader question of whether in-default terms – which has the primary aim of preventing the evasion of a fine – can be satisfied, either through backdating or off-setting, by remand periods or imprisonment terms that had earlier been served.

15.64 The Prosecution filed a criminal reference to refer a related question of law[105] to the Court of Appeal. The Court of Appeal heard the criminal reference on 27 June 2024 and reserved judgment. There will likely be greater clarity in this area once the Court of Appeal's judgment is issued.

I. Number of penalty orders to be imposed if offender convicted of multiple offences under Prevention of Corruption Act 1960

15.65 Under s 13(1) of the Prevention of Corruption Act 1960[106] ("PCA"), where a court convicts a person of an offence where the person accepted gratification in contravention of the PCA, the court shall make a penalty order for a sum equivalent to the amount of the gratification. The penalty shall be recoverable as a fine. If the fine is not paid, the offender would be liable to serve an in-default term under s 318 of the CPC.

15.66 One of the decisions on sentencing in 2023 was a High Court case, *Chang Peng Hong Clarence v Public Prosecutor*,[107] that considered the issue of the number of penalty orders that should be imposed where an offender was convicted of multiple offences under the PCA.

15.67 This issue has considerable impact because s 319(1)(*d*)(i) of the CPC would limit the in-default term for each penalty order to half the maximum term of imprisonment for a single PCA offence – *ie*, 30 months'

105 The question referred was: Where an offender convicted of an offence is sentenced to imprisonment, and elects to serve such imprisonment term and not apply for a stay of execution of the sentence pending appeal, and the sentence is subsequently varied on appeal to a fine, can the imprisonment term imposed in default of the payment of the fine be satisfied by the imprisonment term that was earlier served?

106 2020 Rev Ed.

107 [2023] SGHC 225; the case concerned the older version of the Act (*ie*, the Prevention of Corruption Act (Cap 241, 1993 Rev Ed)) but there is no material difference for the purpose of this discussion.

imprisonment for ss 5 or 6. The number of penalty orders that can be imposed affects the maximum in-default term that can be imposed.

15.68 Before this decision, the prevalent practice of the courts was to impose a single penalty order regardless of the number of PCA offences. The Defence argued for this, while the Prosecution argued that a court must impose a penalty order for *each* PCA offence.

15.69 The High Court adopted neither approach and held that the court has the discretion to impose more than one penalty order if necessary – *ie*, if the total duration of in-default term that the court considered necessary exceeded the maximum allowed for one penalty order.[108] The High Court imposed three penalty orders, in relation to the 19 charges, to disgorge more than $5.8m in gratification and imposed a total in-default term of 2,129 days (*ie*, around 70 months' imprisonment).

15.70 This decision has since been overturned by the Court of Appeal on 29 July 2024 in a criminal reference filed by the offender. The Court of Appeal found that a penalty order must be imposed for *each* PCA charge – and imposed 19 penalty orders that carried a total in-default term of 120 months' imprisonment.

15.71 There will likely be greater clarity in this area after the Court of Appeal issues its grounds of decision, which will likely be covered in next year's annual review. The Court of Appeal is likely to also provide guidance on how s 13(2) of the PCA should operate in relation to the gratification for charges that are taken into consideration for sentencing.

XI. Frameworks and guidance for specific offences

15.72 There were at least ten High Court decisions that set out sentencing frameworks in 2023, three of which were decided by a three-judge *coram* (see paras 15.72(a)–15.72(c)):

(a) *Tan Siew Chye Nicholas v Public Prosecutor*[109] ("*Nicholas Tan*") – voyeurism under s 377BB(4), punishable under s 377BB(7) of the Penal Code 1871[110] ("Penal Code");

(b) *Syed Fathuddin Putra bin Syed A Rahman v Public Prosecutor*[111] ("*Syed*") – specified offences involving tobacco

108 *Chang Peng Hong Clarence v Public Prosecutor* [2023] SGHC 225 at [168]–[170].
109 [2023] 4 SLR 1223.
110 2020 Rev Ed.
111 [2024] 3 SLR 1672.

products under ss 124D–124I, punishable under s 128L(4) of the Customs Act 1960[112] ("Customs Act");

(c) *Public Prosecutor v Tan Teck Leong Melvin*[113] ("*Melvin Tan*") – fraudulent evasion of goods and services tax ("GST") where no harmful goods are involved under s 128D of the Customs Act;

(d) *Huang Xiaoyue v Public Prosecutor*[114] ("*Huang Xiaoyue*") – carrying on the business of providing unlicensed massage services under s 5(1), and punishable under s 5(4) of the Massage Establishments Act 2017[115] ("MEA");

(e) *Lee Shin Nan v Public Prosecutor*[116] ("*Lee Shin Nan*") – repeat drink-driving under s 67 of the RTA;

(f) *Public Prosecutor v Cheng Chang Tong*[117] ("*Cheng Chang Tong*") – careless or inconsiderate driving by a serious and repeat offender under s 65(1) read with ss 65(5)(*b*) and s 65(5)(*c*) of the RTA;

(g) *Vijay Kumar v Public Prosecutor*[118] ("*Vijay Kumar*") – provision of cross-border money transfer services without licence under s 5(1) and punishable under s 5(3)(*a*) of the Payment Services Act 2019[119] ("PSA");

(h) *Public Prosecutor v CSK*[120] ("*CSK*") – sexual penetration of a minor between 14 and 16 years old where the offender is in a relationship that is exploitative of the minor under ss 376A(1)(*b*)–376A(1)(*d*) punishable under s 376A(2)(*a*) of the Penal Code;

(i) *Public Prosecutor v Khor Khai Gin Davis*[121] ("*Khor Khai Gin Davis*") – attempted statutory rape committed on or after 1 January 2020; and

(j) *Niranjan s/o Muthupalani v Public Prosecutor*[122] ("*Niranjan*") – revised framework for voluntarily causing hurt under s 323 of the Penal Code.

112 2020 Rev Ed.
113 [2023] 5 SLR 1666.
114 [2023] 5 SLR 1609.
115 2020 Rev Ed.
116 [2024] 3 SLR 1730.
117 [2023] 5 SLR 1170.
118 [2023] 5 SLR 983.
119 2020 Rev Ed.
120 [2024] 4 SLR 301.
121 [2024] 4 SLR 1012.
122 [2024] 3 SLR 834.

15.73 In 2022, six of the seven decisions that set out a framework had adapted from the two-stage, five-step framework in *Logachev Vladislav v Public Prosecutor*[123] ("*Logachev*").[124] In contrast, only one out of ten of the 2023 frameworks (*ie*, *Nicholas Tan*) were modelled after *Logachev*.

15.74 Apart from these ten framework decisions, there were also two other High Court decisions that gave guidance on two specific offences:

(a) *Kandasamy Senapathi v Public Prosecutor*[125] ("*Kandasamy*") – sentencing considerations for the offence of converting, transferring or removing benefits from criminal conduct from the jurisdiction; and

(b) *Teo Chu Ha*[126] – whether the sentencing framework for s 6 of the PCA that was formulated in *Goh Ngak Eng v Public Prosecutor*[127] ("*Goh Ngak Eng*") ought to be extended to offences under s 5 of the PCA.

A. Three-judge High Court framework for voyeurism offences

15.75 In *Nicholas Tan*, a three-judge *coram* of the High Court set out a sentencing framework for the offence of voyeurism under s 377BB(4), punishable under s 377BB(7) of the Penal Code.

15.76 Section 377BB of the Penal Code, which came into force on 1 January 2020, sets out six offence-creating provisions targeting voyeurism. Prior to its enactment, the courts relied on a patchwork of laws, including insulting of modesty under s 509 of the Penal Code, which has been repealed.[128] Given the increasing prevalence of the offence and to emphasise the need for deterrence, Parliament doubled the sentencing range when enacting s 377BB, such that the maximum imprisonment term became two years (rather than one year under the repealed s 509).[129]

15.77 The High Court's framework was specifically for s 377BB(4), which criminalises an offender's operation of equipment without the victim's consent with the intention of enabling the offender or another person to observe the victim's private parts where the offender knew or had reason to believe that the victim did not consent. The High Court

123 [2018] 4 SLR 609.
124 Wong Woon Kwong SC & Norine Tan Yan Ling, "Criminal Procedure, Evidence and Sentencing" (2022) 23 SAL Ann Rev 430 at para 15.48.
125 [2023] SGHC 296.
126 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304.
127 [2023] 4 SLR 1385.
128 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [4].
129 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [48].

preliminarily observed, however, that, subject to further consideration in future, the framework may also be applied for the other five offences under s 377BB.[130]

15.78 The High Court observed that given the nature of the offence and clear Parliamentary intent, deterrence is generally the dominant sentencing consideration for adult offenders who commit such offences. It would take an *exceptional* case to warrant a shift of emphasis from deterrence to rehabilitation.[131] Such offences will typically cross the custodial threshold.[132]

15.79 The High Court modelled the framework after the two-stage, five-step framework in *Logachev* that has been gaining ground as the preferred framework for offences with a wide variety of typical presentations.[133] The following summarises the framework in *Nicholas Tan* for a s 377BB(4) offence:

> (a) In the first step, the court considers the offence-specific factors to identify the levels of harm and culpability:
>
> > (i) The High Court categorised harm into three types: (A) actual or potential invasion of privacy where there was unwanted observation of the victim's private region or the retention or dissemination of a record of the victim's image;[134] (B) violation of the victim's bodily integrity, where the offender made physical contact with the victim;[135] and (C) humiliation, alarm or distress where the victim was made aware of the offending conduct.[136] The victim's lack of knowledge does not mean that no harm was caused – there may still be harm in the form of a loss of privacy, the degree of which is to be determined by reference to objective indicia. In assessing a victim's subjective emotional trauma (*ie*, the factor in (C) above), the court should avoid double counting and only consider the emotional harm suffered in so far as it exceeds that which is objectively inferred from the extent of the invasion of privacy.[137]

130 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [62].
131 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [43]–[48] and [91].
132 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [86].
133 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [56].
134 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [67]–[72].
135 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [73].
136 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [74].
137 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [75].

(ii) Culpability involves a consideration of factors such as: (A) whether the offender actually knew, or merely had reason to believe, that the victim had not consented to be observed; (B) the degree of premeditation and planning; (C) stalking or following the victim; (D) the type and sophistication of equipment and whether it was concealed; (E) breach of relationship of trust; (F) steps taken to evade detection; (G) motivation for the offence; and (H) persistence of the offending conduct.[138]

(b) In the second and third steps, the court identifies the indicative sentencing range and then the starting point within that range, using the following matrix:[139]

		Harm		
		Low	**Moderate**	**High**
Culpability	**Low**	Fine or up to 4 months' imprisonment	4 to 8 months' imprisonment	8 to 12 months' imprisonment with caning
	Moderate	4 to 8 months' imprisonment	8 to 12 months' imprisonment with caning	12 to 18 months' imprisonment with caning
	High	8 to 12 months' imprisonment with caning	12 to 18 months' imprisonment with caning	18 to 24 months' imprisonment with caning

Caning should be imposed:[140]

(i) where the offence involves either high harm or high culpability, as well as offences on the more egregious end of the moderate harm-moderate culpability scale, which may undermine social safety to such an extent that necessitates the extremely strong deterrent effect; or

(ii) where the moderate to high harm flows from an act of violence against the victim as this engages the additional sentencing objective of retribution.

138 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [76].
139 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [83].
140 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [84].

If the offender had procured financial benefits from the offence, the court should consider imposing fines in addition to imprisonment to disgorge the gains.[141]

(c) In the fourth step, the court should adjust the starting point having regard to offender-specific aggravating and mitigating factors.[142]

(d) The fifth step is relevant only where the offender faces multiple charges. The court should consider the need to make further adjustments to the individual sentences for each charge to take into account the totality principle.[143]

15.80 Another point to highlight is that the High Court declined to comment in this case on the relevance, if any, of a psychiatric condition, such as voyeuristic disorder, that is causally linked to the commission of the offence. This was because the offender in this case did not rely on his alleged voyeuristic disorder.[144] Two other High Court cases may provide some guidance on this issue:

(a) an earlier case of *Public Prosecutor v Chong Hou En*,[145] where after hearing detailed expert evidence and submissions from both sides, the High Court held that voyeuristic disorder is generally not mitigating as it is merely a clinical description of what is essentially a perverse behavioural option and does not deprive a person of his self-control in a way that an impulse control disorder does;[146] and

(b) the High Court decision in *Soo Cheow Wee*, which sets out the principles for sentencing offenders with mental condition(s) (see para 15.48 above).

B. Three-judge High Court framework for specified offences involving tobacco products (sections 124D–124I, punishable under section 128L(4) Customs Act)

15.81 In last year's annual review,[147] it was observed that two conflicting High Court authorities on the sentencing of certain Customs Act

141 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [85].
142 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [87].
143 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [88].
144 *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 at [33].
145 [2015] 3 SLR 222.
146 *Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 at [61].
147 Wong Woon Kwong SC & Norine Tan Yan Ling, "Criminal Procedure, Evidence and Sentencing" (2022) 23 SAL Ann Rev 430 at paras 15.111–15.115.

offences involving tobacco products –*Public Prosecutor v Pang Shuo*[148] ("*Pang Shuo*") and *Ripon v Public Prosecutor*[149] – may cause confusion amongst the lower courts and that it would be ideal for this issue to be resolved soon.

15.82 The opportunity for such a resolution came soon after. A three-judge *coram* of the High Court was convened to decide on this issue in *Syed*.[150] The High Court in *Syed* held that:

> (a) The framework set out in *Pang Shuo* for specified offences involving tobacco products punishable under s 128L(4) of the Customs Act should no longer be followed.[151] Among other things, the framework, which included sentencing graphs, was overly mathematical, complex and technical.
>
> (b) The framework set out in *Yap Ah Lai v Public Prosecutor*[152] ("*Yap Ah Lai*"), which was decided before *Pang Shuo*, should continue to govern most of the specified offences involving tobacco products.[153]
>
> > (i) This would include the specified offences in *ss 128D–128I, punishable under s 128L(4) of the Customs Act*. These various provisions set out different types of offending acts in the cigarette smuggling chain. The specific act within this chain should not have any serious bearing on the analysis such that significant differentiation should be made.[154]
> >
> > (ii) However, the High Court reserved the applicability of the *Yap Ah Lai* framework to offences under s 128J (offences in relation to duty-free allowances) and s 128K (offences in relation to illegal removal of goods from customs control, *etc*). These offences appear to be rather different in nature from the core steps that make up the smuggling chain that are set out in ss 128D–128I.[155]

148 [2016] 3 SLR 903.
149 [2023] 3 SLR 896.
150 *Syed Fathuddin Putra bin Syed A Rahman v Public Prosecutor* [2024] 3 SLR 1672.
151 *Syed Fathuddin Putra bin Syed A Rahman v Public Prosecutor* [2024] 3 SLR 1672 at [38]–[45].
152 [2014] 3 SLR 180.
153 *Syed Fathuddin Putra bin Syed A Rahman v Public Prosecutor* [2024] 3 SLR 1672 at [46].
154 *Syed Fathuddin Putra bin Syed A Rahman v Public Prosecutor* [2024] 3 SLR 1672 at [49].
155 *Syed Fathuddin Putra bin Syed A Rahman v Public Prosecutor* [2024] 3 SLR 1672 at [51].

C. Three-judge High Court framework for fraudulent evasion of goods and services tax where no harmful goods involved

15.83 Apart from *Syed*, there was another decision by a three-judge *coram* of the High Court for Customs Act offences in 2023. This is the case of *Melvin Tan*,[156] where the High Court set out a framework for the offence of fraudulent evasion of *GST* where *no harmful goods* (such as tobacco products) are involved. This is an offence under s 128D punishable under s 128L(2) of the Customs Act. The minimum fine is $5,000 or ten times the amount evaded (whichever is lesser) and the maximum fine is $5,000 or 20 times the amount evaded (whichever is greater).[157]

15.84 The s 128D Customs Act offence is broader than that as it also covers fraudulent evasion of GST for harmful goods or the fraudulent evasion of customs or excise duties. But the High Court specifically provided that the framework would not cover such cases which were not before it.[158]

15.85 The framework for a first-time offender who pleads guilty at the earliest available opportunity[159] to a s 128D offence of evading GST where no harmful goods are involved is as such:

> (a) In the first step, for each *charge*,[160] the court derives the indicative fine based on the amount of GST evaded with the following guide in mind. The multiplier values at each level are to be applied cumulatively. The decreasing rate in the multiplier guards against the risk of disproportionately high fines as the amount of GST evaded increases:[161]

Amount of GST evaded	Multiplier applied to each bracket	Range of indicative fine
$1–$250	x 12	$12–$3,000
$251–$1,000	x 10	$3,010–$10,500
$1,001–$10,000	x 8	$10,508–$82,500

156 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666.

157 Customs Act 1960 (2020 Rev Ed) s 128L(2); *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [34].

158 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [33]; in a subsequent decision of *Ng Nicholas v Public Prosecutor* [2024] 4 SLR 364 released on 10 January 2024, the High Court extended the framework in *Public Prosecutor v Tan Teck Leong Melvin* to offences concerning the fraudulent evasion of *excise duty* where no harmful goods were involved.

159 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [45].

160 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [46].

161 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [39]–[47].

$10,001–$100,000	x 6	$82,506–$622,500
$100,001–$500,000	x 4	$622,504–$2,222,500
$500,001–$1m	x 3	$2,222,503–$3,722,500
>$1m	x 2	>$3,722,500

The High Court observed that the indicative sentence faced by an offender may differ depending on whether the Prosecution decides to frame the charges against him as multiple charges or as a single amalgamated charge. The indicative fine may in some instances be larger if multiple charges are framed. The Prosecution should be mindful of this. In any case, the sentencing court has the discretion in the third step of the framework to adjust the eventual fine, if necessary.[162]

(b) In the second step, the court adjusts the indicative fine (i) either by making a lump sum adjustment to the indicative fine; or (ii) by modifying the appropriate multiplier based on the aggravating and mitigating factors that are present.[163] The High Court specifically raised three points in this connection:

(A) If the offender had made a personal monetary gain, this is a separate aggravating factor.[164]

(B) While involvement of a transnational element is potentially an aggravating factor, care should be taken against ascribing undue weight to this (*eg*, the fact that the offender obtained the goods from another country should not be considered as being a separate aggravating factor).[165]

(C) The framework is based on a timely plea of guilt on the basis that it reflected a willingness to co-operate and a sign of real remorse. If there is no remorse reflected in an unduly late plea or no guilty plea, this may be taken into account against the offender.[166]

(c) At the final step, the court considers whether further adjustments are required on account of the totality principle.[167]

162 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [47].
163 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [48] and [52].
164 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [49].
165 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [50].
166 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [51].
167 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [53].

15.86 The High Court highlighted that the framework does not take into account the increased punishment provided for amalgamated charges in s 124(8)(*a*)(ii) of the CPC, which would have doubled the fine that the offender is liable under s 128L(2) of the Customs Act. The court's provisional view was that given the structure of the prescribed maximum and minimum sentences for this offence, the issue of an offender receiving a "discount" because he was convicted of an amalgamated charge would not arise and it should not be necessary to have recourse to the enhanced sentencing powers under s 124(8)(*a*)(ii) of the CPC.[168]

15.87 The High Court also set out the framework for the default imprisonment terms to be imposed if the offender defaults on the fine:

> (a) In the first step, the court decides the appropriate indicative default imprisonment terms with the following guide in mind:[169]

Fine quantum imposed per charge	Indicative default sentence
Up to $500,000	Up to 6 months
$500,000–$1m	6–12 months
$1m–$2m	12–24 months
$2m–$3m	24–36 months
$3m–$5m	36–48 months
$5m–$10m	48–72 months
$10m and above	72 months (statutory maximum)

> (b) The second step applies where there are multiple charges. The court should consider whether the aggregate default imprisonment term offends the totality principle, bearing in mind that default imprisonment terms must run consecutively.[170]

15.88 The High Court left open a question for consideration in a future case. The court observed that s 119 of the Customs Act capped the default imprisonment terms at a maximum of six years. This led to a question whether this statutory cap applies to the default term imposed for each charge or to the total default term imposed in respect of all the charges. A plain reading of the section and the Prosecution suggested that it applies to the default term imposed for each charge. As this issue did not have to be determined in this case, the court did not rule on it.[171]

168 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [58].
169 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [66]–[67].
170 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [68].
171 *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [61]–[62].

D. Framework for carrying on business of providing unlicensed massage services

15.89 In *Huang Xiaoyue*,[172] the High Court set out a sentencing framework for the offence of carrying on the business of providing unlicensed massage services. This is a strict liability offence under s 5(1), and punishable under s 5(4), of the MEA. The framework does not apply to offences under ss 5(2) or 5(3) of the MEA, which target different types of offences.[173]

15.90 The MEA was enacted in 2017 to, among other things, take tougher action against unlicensed massage establishments, many of which were being used as fronts for vice activities. Prior to this, the penalties were limited to a maximum fine of $1,000 (with an additional fine of up to $50 a day for continuing offending). Observing that this was grossly insufficient when compared to the profits of such establishments, especially where they engage in vice activities, Parliament introduced a much harsher penalty regime under the MEA and increased the maximum penalties such that a first-time offender would be liable to a fine of up to $10,000 and an imprisonment term of up to two years, while a repeat offender would be liable to a fine of up to $20,000 and an imprisonment term of up to five years.[174]

15.91 The High Court observed that s 5(1) offences overwhelmingly manifested in two particular forms:[175]

> (a) *Archetypal Non-vice Case*: where (i) a police enforcement check is conducted; (ii) it is found that massage services were provided at the establishment; (iii) the establishment does not have a valid licence under s 7 of the MEA; and (iv) the establishment may operate as an exempted establishment under s 32 of the MEA but has breached the conditions of the exemption as massages were not done in full public view.
>
> (b) *Archetypal Vice Case*: which is identical to the situation above, but additionally involves a massage therapist providing

172 *Huang Xiaoyue v Public Prosecutor* [2023] 5 SLR 1609.

173 *Huang Xiaoyue v Public Prosecutor* [2023] 5 SLR 1609 at [38]. Section 5(2) criminalises the advertising of massage services where the person does not have the licence to provide massage services. Section 5(3) provides that an owner or occupier of any premises cannot allow the premises to be used by any person whom the owner or occupier knows is carrying on the business of providing massage services without licence.

174 *Huang Xiaoyue v Public Prosecutor* [2023] 5 SLR 1609 at [3]–[6].

175 *Huang Xiaoyue v Public Prosecutor* [2023] 5 SLR 1609 at [44]–[45].

offers for sexual services in exchange for additional payment in the course of the massage.

15.92 Given the nature of the offence, a sentencing benchmark approach was preferrable over a sentencing band or matrix approach:[176]

S/N	**Archetypal s 5(1) case punishable under s 5(4)(*a*) MEA (first-time offender)**	**Benchmark**
1	*First-time* offender in an Archetypal *Non-vice* Case	Fine of $5,000
2	*First-time* offender in an Archetypal *Vice* Case	Fine of $10,000
	Archetypal s 5(1) case punishable under s 5(4)(*b*) MEA (repeat offender)	**Benchmark**
3	*Repeat* offender in an Archetypal *Non-vice* Case, where the only previous conviction was on a single, non-vice charge	Fine of $15,000
4	*Repeat* offender in an Archetypal *Vice* Case, where the only previous conviction was on a single, non-vice charge	Five weeks' imprisonment

15.93 The custodial threshold is crossed when *both* the level of harm and the level of culpability are more than low – *eg*, where vice activity is detected, and the offender is a repeat offender.[177]

15.94 These benchmarks should be calibrated, including to impose imprisonment in place of a fine if necessary, to account for the following sentencing considerations:[178]

(a) Offence-specific factors relating to harm – (i) scale and sophistication of enterprise; (ii) evidence of the amount of profits; (iii) if the establishment is near a residential area; (iv) the period of offending; (v) whether there was advertising on vice-related websites; and (vi) syndicate involvement, illegal employment of foreign workers, concealment of offending and other factors.

(b) Considerations relating to the nature of the breach of the licensing regime – (i) the extent of the offender's attempt to comply with the regime (*eg*, whether the offender applied for an exemption); and (ii) the nature of the breach of condition.

176 *Huang Xiaoyue v Public Prosecutor* [2023] 5 SLR 1609 at [42]–[56].
177 *Huang Xiaoyue v Public Prosecutor* [2023] 5 SLR 1609 at [53].
178 *Huang Xiaoyue v Public Prosecutor* [2023] 5 SLR 1609 at [57]–[60].

(c) Offence-specific factors relating to culpability – (i) degree of negligence, wilful blindness or knowledge of operations of the establishment and vice activities; and (ii) degree of involvement in the operations and management.

(d) Offender-specific factors – (i) nature of antecedents for repeat offenders; and (ii) other general factors such as presence of charges that are taken into consideration for sentencing.

E. Framework for repeat drink-driving

15.95 In 2023, road traffic offences continued to be an area that saw considerable guidance from the High Court through two cases.

15.96 The first is the case of *Lee Shin Nan*,[179] which set out the framework for *repeat* drink-driving offences under s 67 of the RTA. Prior to this, the High Court had in 2022 set out a framework for *first-time* drink-driving offences, where no harm to person or property has eventuated, in *Rafael Voltaire Alzate v Public Prosecutor*[180] ("*Rafael Voltaire*"). The RTA provides for higher penalties, including mandatory imprisonment, for repeat drink-driving.[181]

15.97 The framework in *Lee Shin Nan* for repeat drink-driving comprises these four stages – of which Stages 1 to 3 concern only the fine and disqualification period and Stage 4 relates to the imprisonment term:

(a) *Stage 1 – starting sentence range*: The court determines the sentence range for the offence based on the offender's Alcohol Level Band as if the offender were a first-time offender, using the sentencing ranges set out in the *Rafael Voltaire* framework, and then apply an uplift to the range of the fine and the disqualification period taking into account only the level of alcohol for the present conviction.[182]

179 *Lee Shin Nan v Public Prosecutor* [2024] 3 SLR 1730.

180 [2022] 3 SLR 993.

181 Pursuant to s 67(1) of the Road Traffic Act 1961, first-time drink-driving attracts a fine of between $2,000 and $10,000 and a *discretionary* imprisonment term that extends up to 12 months. Repeat drink-driving attracts a fine of between $5,000 and $20,000 and a *mandatory* imprisonment term that extends up to two years.

182 *Lee Shin Nan v Public Prosecutor* [2024] 3 SLR 1730 at [58]–[63].

Level of alcohol (µg per 100ml of breath)	Under *Rafael Voltaire* framework for first-time offenders	Initial uplift	Indicative band for repeat offenders
36–54	Fine: $2,000–$4,000 Disqualification: 24–30 months	Fine: $3,000–$4,000 Disqualification: 36 months	Fine: $5,000–$8,000 Disqualification: 60–66 months
55–69	Fine: $4,000–$6,000 Disqualification: 30–36 months	Fine: $4,000–$5,000 Disqualification: 36–42 months	Fine: $8,000–$11,000 Disqualification: 66–78 months
70–89	Fine: $6,000–$8,000 Disqualification: 36 to 48 months	Fine: $5,000–$6,000 Disqualification: 42–48 months	Fine: $11,000–$14,000 Disqualification: 78–96 months
≥ 90	Fine: $8,000–$10,000 Disqualification: 48–60 months (or longer)	Fine: $6,000–$7,500 Disqualification: 48–60 months (or longer)	Fine: $14,000–$17,500 Disqualification: 96–120 months (or longer)

(b) *Stage 2 – adjustment on account of the repeated offending behaviour*: The court should calibrate the provisional fine and disqualification period having regard to two factors: (i) the actual quantity of alcohol within the band; and (ii) the circumstances that pertain to the repetition of the offending behaviour (such as the interval between the previous conviction and present offence, the number of such offences, whether there is a trend of increasing gravity of alcohol consumption and increasing danger posed to public with each repeat offence).[183]

(c) *Stage 3 – adjustment*: The court should consider the aggravating and mitigating circumstances of the offence and the offender and make any further adjustments to the provisional assessment of the fine and disqualification period. The factors include the degree of danger posed, the distance travelled, the speed and manner of driving, the reasons for driving, whether the offender had pleaded guilty or shown remorse and whether there are other relevant antecedents.[184]

183 *Lee Shin Nan v Public Prosecutor* [2024] 3 SLR 1730 at [64]–[67].
184 *Lee Shin Nan v Public Prosecutor* [2024] 3 SLR 1730 at [68]–[69].

(d) *Step 4 – final adjustment to determine imprisonment term*: The court will finally calibrate the appropriate term of *imprisonment* having regard in particular to the need for deterrence. Where the aggravating factors considered at the previous stage (that concerns fine and the disqualification period) warrant a custodial term, they should be considered again at this stage when assessing the term of imprisonment. The court may be guided by the following indicative sentencing bands:

(i) serious (zero to two aggravating factors generally): One to six months' imprisonment;

(ii) more serious (two to three aggravating factors generally): Six to 12 months' imprisonment; and

(iii) most serious (all aggravating factors are present): 12 to 24 months' imprisonment.

The court should finally review the sentence holistically to assess whether the fine and disqualification order need to be adjusted, whether there is a basis and need to consider invoking the power to further enhance the punishment under s 67A of the RTA, and whether the overall punishment is proportional and condign.[185]

15.98 The High Court also gave guidance on:

(a) *when a court may find "special reasons" that would justify ordering a shorter period of disqualification than disqualification for life for a third-time or subsequent offender under s 67(2A) of the RTA* – such "special reasons" would generally be found only if the court was satisfied that the offender drove in circumstances that reasonably suggested: (i) it was necessary to do so to avoid other likely and serious harm or danger; and (ii) there was no reasonable alternative way to achieve this end;[186] and

(b) *when imposition of even greater enhanced penalties under s 67A of the RTA (for third time or subsequent offenders) would be warranted* – the court should consider (i) whether the antecedents reflected a cavalier disregard of the law; (ii) whether the antecedent sentences came close to the maximum sentences prescribed for the relevant offences; and (iii) whether the duration and frequency of reoffending suggested the need to go well past the maximum sentences prescribed for the relevant offences.[187]

185 *Lee Shin Nan v Public Prosecutor* [2024] 3 SLR 1730 at [70]–[73].
186 *Lee Shin Nan v Public Prosecutor* [2024] 3 SLR 1730 at [74]–[79].
187 *Lee Shin Nan v Public Prosecutor* [2024] 3 SLR 1730 at [80]–[89].

F. Framework for serious and repeat offender for careless driving

15.99 The second case in 2023 that discussed a framework for road traffic offences is *Cheng Chang Tong*,[188] which involves the offence of *careless or inconsiderate* driving (s 65(1)) committed by a *serious*[189] *and repeat offender* (s 65(5)(*b*) read with s 65(5)(*c*) of the RTA).

15.100 The High Court held that the "sentencing bands" framework in *Wu Zhi Yong v Public Prosecutor*[190] ("*Wu Zhi Yong*") provided useful guidance, even though *Wu Zhi Yong* concerned *dangerous or reckless* driving (s 64(1)) by a *serious (but first-time)* offender. The level of seriousness between both categories of offences was held to be similar.[191] Under the *Wu Zhi Yong* framework, the court considered, in the first step, the appropriate sentencing bands with reference to offence-specific factors, before calibrating the indicative sentence based on offender-specific factors in the second step.

G. Framework for providing cross-border money transfer services without licence

15.101 The PSA[192] was enacted in 2019 to mitigate risks arising from payment services, including money-laundering activities and terrorism financing. Section 5 of the PSA is concerned with the offence of the provision of unlicensed payment services. It covers seven categories of payment services: account issuance, domestic money transfer, cross-border money transfer, merchant acquisition, e-money issuance, digital payment token and money-changing services.

15.102 In *Vijay Kumar*,[193] the High Court formulated a framework for the sentencing of offences under s 5(1) punishable under s 5(3)(*a*) of the PSA in so far as it related to *money transfer services* (*ie*, money remittance services). The court left the appropriate framework for the other types of payment services (apart from money transfer services) under the PSA for future consideration.[194]

188 *Public Prosecutor v Cheng Chang Tong* [2023] 5 SLR 1170.
189 A "serious offender" under the Road Traffic Act 1961 means an offender who is convicted of an offence under s 67 (drink-driving) or s 70(4) (failure to provide specimen) in relation to the same act of driving: s 64(8).
190 [2022] 4 SLR 587.
191 *Public Prosecutor v Cheng Chang Tong* [2023] 5 SLR 1170 at [30]–[42].
192 Payment Services Act 2019 (Act 2 of 2019).
193 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983.
194 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [49].

15.103 A preliminary question that the High Court had to deal with was whether the precedents for equivalent offences under s 6(2) of the Money-Changing and Remittance Businesses Act[195] ("MCRBA"), which has since been repealed, were relevant in determining the sentence for the offences under s 5(3) of the PSA.

15.104 The High Court held that the s 6(2) MCRBA precedents had limited precedential value given that: (a) s 5(3) of the PSA covered a much broader scope of payment services while s 6 of the MCRBA covered only one category (remittance business); (b) the prescribed punishments of the provisions were different; (c) the s 6(2) MCRBA precedents lack clear reasoning to provide reliable guidance; (d) the precedents also lack consistency; and (e) the precedents failed to utilise the full range of punishment prescribed even under s 6(2) of the MCRBA. However, the precedents remain helpful in so far as they provide the relevant sentencing factors – both aggravating and mitigating – for consideration.[196]

15.105 The High Court further held that:

> (a) The "single starting point" framework is most appropriate.[197] The archetypal s 5(3) PSA case for this framework is an offender providing money transfer services without a licence.[198]
>
> (b) The starting point for an offender claiming trial is three weeks' imprisonment.[199] A custodial term ought to be the general starting point given that general deterrence is the dominant sentencing principle.[200]
>
> (c) From this starting point, the court makes appropriate upward or downward adjustments according to offence-specific and offender-specific aggravating or mitigating factors.[201]
>
> (d) Only in exceptional circumstances would a fine be justified. Exceptional circumstances include a scenario where an offender committed an "unknowing" breach where there was no basis to infer that the offender knew or ought to have known of the licensing requirements (*eg*, licence lapsed and the operator inadvertently overlooked that).[202] Even if a relatively low sum

195 Cap 187, 2008 Rev Ed.
196 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [31]–[36].
197 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [49]–[61].
198 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [64].
199 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [73].
200 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [62]–[64].
201 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [76]–[77].
202 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [78].

was involved, this would not necessarily bring the case below the custodial threshold. The critical indicator is whether an offender knew or ought to have known of the licensing requirements.[203]

H. Framework for sexual penetration of minor between 14 and 16 years old in exploitative relationship

15.106 In *CSK*,[204] the High Court held that the sentencing framework set out in *Pram Nair v Public Prosecutor*[205] ("*Pram Nair*") also applies to offences under ss 376A(1)(*b*)–376A(1)(*d*) punishable under s 376A(2)(*a*) of the Penal Code. These offences cover the sexual penetration – apart from penile-vaginal penetration by an offender's penis which falls under s 376A(1)(*a*) – of a minor between 14 and 16 years old where the offender is in a relationship that is exploitative of the minor.

15.107 The framework in *Pram Nair* had been laid down by the Court of Appeal for the offence of sexual assault by *digital* penetration under s 376(2)(*a*) of the Penal Code.

15.108 In *ABC v Public Prosecutor*[206] decided in 2022, the High Court held that the *Pram Nair* framework should apply to all offences sentenced under s 376(3) and also s 376A(3) of the Penal Code (as in force post-2019 amendments), with the exception of penile-vaginal penetration which could be prosecuted under s 376A(1)(*a*) of the Penal Code. This was because the High Court held that the *Pram Nair* framework – which was formulated in the context of non-consenting adult victims – is also applicable to consenting minors under 14 years old. Parliament equated both offences in terms of gravity and the offences had an identical sentencing provision.[207]

15.109 In *CSK*, the High Court held that similar considerations apply to offences under ss 376A(1)(*b*)–376A(1)(*d*) punishable under s 376A(2)(*a*) of the Penal Code and therefore the *Pram Nair* framework was similarly applicable to these offences.[208] The High Court left open the question of whether a different framework – such as the framework in *Ng Kean Meng Terence v Public Prosecutor*[209] ("*Terence Ng*") – should apply to offences

203 *Vijay Kumar v Public Prosecutor* [2023] 5 SLR 983 at [79].
204 *Public Prosecutor v CSK* [2024] 4 SLR 301.
205 [2017] 2 SLR 1015.
206 [2023] 4 SLR 604.
207 *Public Prosecutor v CSK* [2024] 4 SLR 301 at [61]–[62].
208 *Public Prosecutor v CSK* [2024] 4 SLR 301 at [63]–[64].
209 [2017] 2 SLR 449.

under s 376A(1)(*a*) punishable under s 376A(2) of the Penal Code involving penile-vaginal penetration by an offender's penis.[210]

15.110 The High Court in *CSK* also held that:

(a) In the context of offences under ss 376A(1)(*b*)–376A(1)(*d*) punishable under s 376A(2)(*a*) of the Penal Code, the existence of the exploitative relationship (which is why the offence is punishable under s 376A(2)(*a*)) *per se* should not be an offence-specific aggravating factor under the first step of the *Pram Nair* framework to avoid double-counting.[211]

(b) Abuse of a position of trust is a separate aggravating factor and may not exist in every case involving an exploitative relationship.[212]

(c) The same offence-specific aggravating factors listed in *Terence Ng* apply where relevant. But the High Court added an additional factor for this category of offences: the use of coercion or deception to: (i) obtain physical access to the minor for the purpose of engaging in sexual activity; or (ii) to procure factual consent from the minor to sexual activity.[213]

I. Framework for attempted statutory rape (post-2019 Penal Code amendments)

15.111 On 1 January 2020, s 511 of the Penal Code[214] was amended and replaced with the new ss 511 and 512. Before the amendments, s 511 provided, among other things, that the longest term of imprisonment that may be imposed for an attempt to commit an offence shall not exceed one-half of the longest period provided for the completed offence. After the amendments, s 512 provides that the maximum imprisonment term for an attempted offence would, with some exceptions, be the same as that prescribed for the completed offence.

15.112 *Khor Khai Gin Davis*[215] was the first High Court case to consider the impact of these amendments on attempted rape offences that were committed on or after 1 January 2020. The High Court observed that the Penal Code Review Committee Report 2018 had the following

210 *Public Prosecutor v CSK* [2024] 4 SLR 301 at [65].
211 *Public Prosecutor v CSK* [2024] 4 SLR 301 at [67].
212 *Public Prosecutor v CSK* [2024] 4 SLR 301 at [97]–[99] and [103].
213 *Public Prosecutor v CSK* [2024] 4 SLR 301 at [104].
214 Cap 224, 2008 Rev Ed.
215 [2024] 4 SLR 1012.

considerations in mind when making its recommendation to abolish the statutory one-half limit:[216]

> (a) As a general principle, an attempt ought not to be punished as severely as the completed offence.
>
> (b) In punishing an attempt, the precise discount to be given from the punishment for a completed offence should be in the discretion of the court.
>
> (c) Factors that would affect the punishment of an attempt include the culpability of the offender, the reasons the attempt did not proceed to completion, and the extent that the attempt had progressed towards completion before it was stopped or called off.

15.113 After surveying foreign and local authorities, the High Court held that attempted rape offences committed on or after 1 January 2020 should be sentenced by a two-stage approach:[217]

> (a) The court should first apply the framework for rape offences as set out by the Court of Appeal in *Terence Ng* towards determining the sentence of a notional completed rape offence. The factors to be considered must be based on the facts and evidence and not on mere conjecture.
>
> (b) Thereafter, the court should apply a discount, in recognition of the fact that the offence had not been completed. It may be relevant to consider, among other things, whether the offender voluntarily desisted at an early stage or whether he was only prevented at a late stage from carrying out an offence which would likely have otherwise been completed.

J. Revised framework for voluntarily causing hurt

15.114 In *Niranjan*,[218] the High Court revised the sentencing framework for s 323 Penal Code (voluntarily causing hurt) offences.

216 *Public Prosecutor v Khor Khai Gin Davis* [2024] 4 SLR 1012 at [16].
217 *Public Prosecutor v Khor Khai Gin Davis* [2024] 4 SLR 1012 at [45]–[46].
218 *Niranjan s/o Muthupalani v Public Prosecutor* [2024] 3 SLR 834.

15.115 The framework for s 323 Penal Code offences was first formulated by the same High Court judge in *Low Song Chye v Public Prosecutor*[219] ("*Low Song Chye*") in 2019. In *Niranjan*, the High Court revised the framework for two reasons:

> (a) The first change is to account for the increase in the maximum punishment for the offences, which had been increased by a factor of 1.5 times, from two years to three years' imprisonment, in 2019. The High Court correspondingly increased the *Low Song Chye* bands by 1.5 times to factor in the higher maximum punishment.[220]
>
> (b) The second change is to convert the framework from one where the bands were set out on a "plead guilty" basis to one that is based on offenders claiming trial. The High Court did so to reduce the risks of future potential misapplication of the framework, as there had been several cases that applied the *Low Song Chye* framework wrongly in overlooking that the framework applied to offenders who had pleaded guilty.[221] In converting the ranges from a "plead guilty" basis to a "claim trial" basis, the High Court took a broad-brush approach.[222] This may be useful guidance for how precedents or frameworks that are on a "plead guilty" basis could be converted to a "claim trial" basis in order to apply the PG Guidelines.

15.116 The revised framework for the sentencing of s 323 Penal Code offences is as follows:

> (a) At the first stage, the court considers the hurt caused by the offence and identifies the sentencing band and where the case falls within the applicable indicative range.[223]

219 [2019] 5 SLR 526.
220 *Niranjan s/o Muthupalani v Public Prosecutor* [2024] 3 SLR 834 at [60].
221 *Niranjan s/o Muthupalani v Public Prosecutor* [2024] 3 SLR 834 at [61]–[62].
222 *Niranjan s/o Muthupalani v Public Prosecutor* [2024] 3 SLR 834 at [64].
223 *Niranjan s/o Muthupalani v Public Prosecutor* [2024] 3 SLR 834 at [56] and [63].

Band	Hurt caused	Revised range for first-time offenders *claiming trial* – for offences committed *after 1 January 2020*
1	*Low harm*: no visible injury or minor hurt such as bruises, minor lacerations or abrasions	Fines or up to eight weeks' imprisonment
2	*Moderate harm*: hurt resulting in short hospitalisation or a substantial period of medical leave, simple fractures, or temporary or mild loss of a sensory function	Eight weeks to 12 months' imprisonment
3	*Serious harm*: serious injuries which are permanent in nature and/or which necessitate significant surgical procedures	12 to 36 months' imprisonment

(b) At the second stage, the court makes the necessary adjustments to the indicative starting point based on its assessment of the offender's culpability and other relevant factors. This may take the eventual sentence out of the applicable indicative sentencing range. The factors identified in *Public Prosecutor v BDB*[224] are relevant.[225]

K. Offences under section 54(1)(b) Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act

15.117 In *Kandasamy*,[226] the High Court gave guidance on the sentencing of the offence of converting, transferring or removing benefits from criminal conduct from the jurisdiction. This was an offence under s 47(1)(*b*) (punishable under s 47(6)(*a*)) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act[227] ("CDSA"). Under the present version of the CDSA,[228] the offence has been re-numbered to s 54(1)(*b*).

224 [2018] 1 SLR 127 at [62]–[70] and [71]–[75].
225 *Niranjan s/o Muthupalani v Public Prosecutor* [2024] 3 SLR 834 at [56], [66] and [67].
226 *Kandasamy Senapathi v Public Prosecutor* [2023] SGHC 296.
227 Cap 65A, 2000 Rev Ed.
228 *Ie*, the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (2020 Rev Ed). For simplicity, this Act will also be referred to as the "CDSA".

15.118 The High Court held that the sentencing ranges set out in the District Court case of *Public Prosecutor v Ho Man Yuk*[229] should not be followed given the following:[230]

> (a) There was a glaring issue with the sentencing ranges as they left gaps in between the respective bands.
>
> (b) The ranges were designed specifically to cover cases where the monies that are the subject of the offence were recovered and therefore apply only to a limited set of cases.
>
> (c) The ranges were principally based on the amounts laundered but this was not the only determining factor for such offences.

15.119 As the case concerned unique facts and parties did not submit for a sentencing framework, the High Court did not lay down a framework for such offences in the case.[231] The High Court held that in considering the sentence for these offences, the court may have regard to the offence-specific factors set out by the High Court in *Huang Ying-Chun v Public Prosecutor*,[232] which applied to the sentencing of the offence of assisting another to retain benefits from criminal conduct – under s 44(1)(*a*) of the CDSA (now s 51(1)(*a*) of the present version of the CDSA).[233]

L. Goh Ngak Eng *framework for section 6 PCA cases should not be extended wholesale to section 5 cases*

15.120 The High Court in *Teo Chu Ha*[234] considered whether the sentencing framework for offences under s 6 of the PCA – that was formulated by the three-judge *coram* of the High Court in *Goh Ngak Eng* – ought to be extended to offences under s 5 of the PCA.

15.121 The High Court in *Goh Ngak Eng* had declined to do so, observing that ss 5 and 6 of the PCA targeted distinct mischiefs and engaged different considerations in the sentencing exercise. Section 5 targets corrupt transactions more generally, while s 6 is specifically directed at a situation where the corrupt procurement of influence involves the agent subordinating his loyalty to his principal in furtherance of his own interests.

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229 [2017] SGDC 23.
230 *Kandasamy Senapathi v Public Prosecutor* [2023] SGHC 296 at [38(b)].
231 *Kandasamy Senapathi v Public Prosecutor* [2023] SGHC 296 at [38(c)].
232 [2019] 3 SLR 606.
233 *Kandasamy Senapathi v Public Prosecutor* [2023] SGHC 296 at [41].
234 [2023] 5 SLR 1304.

15.122 In *Teo Chu Ha*, the High Court reiterated that the *Goh Ngak Eng* framework that applied to s 6 PCA cases should not be extended wholesale to s 5 PCA offences.[235] However in cases where a prosecution brought under s 5 could have been brought under s 6 as well (as was the case in *Teo Chu Ha* for one of the offenders), the court should consider relevant sentencing precedents under both ss 5 and 6 of the PCA, which would involve applying the *Goh Ngak Eng* framework to the facts of the case. In calibrating the eventual sentence, the court should also consider the helpfulness of the available precedents and the limitations of the *Goh Ngak Eng* framework, such as whether there are offence-specific factors that are not captured within that framework.[236]

XII. PG Guidelines

15.123 Lastly, we highlight what is possibly the most significant development in 2023, which took the form of a set of guidelines by the Sentencing Advisory Panel[237] – the PG Guidelines. The Sentencing Advisory Panel was formed in June 2022. It comprises members from the key stakeholders in the criminal justice system – the Judiciary, the Ministry of Law, the Ministry of Home Affairs, the Singapore Police Force, the Attorney-General's Chambers, the Public Defender's Office and the Bar.[238]

15.124 A key function of the Sentencing Advisory Panel is to formulate and publish guidelines on matters relating to sentencing, to promote greater consistency, transparency and public awareness. The guidelines are not legally binding. It may be cited by the Prosecution or the Defence in their arguments before the courts. The courts may decide whether to adopt the guidelines in a given case, and if so, how the guidelines should be applied.

235 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [151].
236 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [154] and [157].
237 See Sentencing Advisory Panel, "Guidelines on Reduction in Sentences for Guilty Pleas" (15 August 2023) <https://www.sentencingpanel.gov.sg/resources/guidelines/guilty-pleas/> (accessed 19 August 2024).
238 See <https://www.sentencingpanel.gov.sg/what-we-do/> (accessed 19 August 2024).

15.125 The PG Guidelines is the first set of guidelines published by the Sentencing Advisory Panel.[239] It was published on 15 August 2023 and could be raised in submissions in court from 1 October 2023. The PG Guidelines are intended to encourage accused persons who wish to plead guilty to do so as early in the process as possible. Even before the PG Guidelines, accused persons received a reduction in sentences in appropriate cases, if they pleaded guilty.[240] The PG Guidelines aim to provide greater consistency, clarity and transparency to this pre-existing practice, by setting out the ranges in reduction in sentence that a court may consider granting based on when an accused pleads guilty. Other jurisdictions, such as the UK and Australia, have similar guidelines.[241]

15.126 The PG Guidelines apply only to sentences of imprisonment, and not to other sentences like fines, caning, probation or reformative training. For these other sentences, the court may still consider the mitigating weight to be given to the accused's plea of guilt, with reference to case law.[242]

15.127 Under the PG Guidelines, the earlier an accused pleads guilty, the larger the reduction in sentence. It sets out the following guide for the maximum reductions in sentence that the court ought to consider, according to the stage of court proceedings when the accused pleads guilty to a charge:[243]

239 Prior to this, the Sentencing Advisory Panel had published two Information Notes on 27 October 2022 (*ie*, the Information Note on General Sentencing Principles and Information Note on Sentencing for Multiple Offences) – see <https://www.sentencingpanel.gov.sg/Resources/information-notes/> (accessed 19 August 2024).

240 See, *eg*, Ng *Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449.

241 See Sentencing Advisory Panel, "Press Release: Publication of Guidelines on Reduction in Sentences for Guilty Pleas" (15 August 2023) <www.sentencingpanel.gov.sg/resources/announcements/press-release-pg-guidelines/> (accessed 19 August 2024).

242 Sentencing Advisory Panel, "Guidelines on Reduction in Sentences for Guilty Pleas" (15 August 2023) <https://www.sentencingpanel.gov.sg/resources/guidelines/guilty-pleas/> (accessed 19 August 2024) at para 7.

243 Sentencing Advisory Panel, "Guidelines on Reduction in Sentences for Guilty Pleas" (15 August 2023) <https://www.sentencingpanel.gov.sg/resources/guidelines/guilty-pleas/> (accessed 19 August 2024) at para 9.

Table 2

Stage	Description	Reduction in sentence to be considered
1	From the first mention[3] until 12 weeks after the hearing when the prosecution informs the court and the accused person that the case is ready for the plea to be taken. - If the accused person wishes to seek legal advice on whether or not to plead guilty, he should do so during Stage 1. - Nevertheless, the court may consider the reasons for any delay in obtaining legal advice on whether or not to plead guilty (e.g. whether the delay was due to matters outside the accused person's control, or whether the accused person had taken timely steps to obtain legal advice), in deciding whether the maximum reduction in sentence of 30% should still be available.	**Up to a maximum of 30%**
2	After Stage 1, until either of the following: - For cases subject to Criminal Case Disclosure ("CCD") procedures, when the court first gives directions for the filing of the Case for the Prosecution ("CFP") in relation to the charge. - For cases not subject to CCD procedures, when the court first fixes trial dates for the charge.	**Up to a maximum of 20%**
3	After Stage 2, until before the first day of the trial.	**Up to a maximum of 10%**
4	On or after the first day of the trial.	**Up to a maximum of 5%**

15.128 It also sets out a recommended approach for determining a sentence where an accused pleads guilty:[244]

> (a) *Step 1 – the court determines the sentence that it would have imposed if the accused had been convicted after trial.* This should be done for every charge. Factors that relate to the accused's plea of guilt should not be considered here. If the accused has demonstrated remorse in other ways, apart from pleading guilty (*eg*, voluntary restitution or compensation to the victim or voluntary surrender), the court may consider it as a mitigating factor in this step.
>
> (b) *Step 2 – the court determines the applicable stage of proceedings* in accordance with the table at para 15.127 above. This again is on a per charge basis as the accused may have

244 Sentencing Advisory Panel, "Guidelines on Reduction in Sentences for Guilty Pleas" (15 August 2023) <https://www.sentencingpanel.gov.sg/resources/guidelines/guilty-pleas/> (accessed 19 August 2024) at para 8.

indicated that he wishes to plead guilty, or pleaded guilty, to different charges at different stages. There may also be situations where the accused re-offends and faces additional charges.

(c) *Step 3 – the court applies an appropriate reduction to the sentence that was determined in Step 1 for each charge*. The reduction should generally not exceed the maximum reduction for the applicable stage. The strength of the evidence against the accused should not be taken into account when determining the level of reduction, subject to the public interest exception.[245]

15.129 The PG Guidelines provide that there are some situations where the maximum reductions in sentence as provided at para 15.127 above do not apply:[246]

(a) *Where a* Newton *hearing is conducted and where the accused's version of events or assertion is rejected by the court* – in such a situation, the court should consider applying a reduction in sentence that is just and proportionate without reference to the maximum reductions set out above, taking into account: (i) the conduct of the Defence; (ii) the nature of the issue raised in the *Newton* hearing; and (iii) the court's findings in the *Newton* hearing.

(b) *Where the court is of the view that it would be contrary to public interest* for the guidelines to be applied – in such a situation, the court may apply a reduction in sentence that is just and proportionate without reference to the maximum reductions set out above. Where either party to the criminal proceedings takes such a view, it should provide clear notice of its intention to make a submission to this effect to the court and the other party at the earliest possible opportunity.[247]

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245 See also *Public Prosecutor v Iskandar bin Jinan* [2024] SGHC 134 at [33].

246 Sentencing Advisory Panel, "Guidelines on Reduction in Sentences for Guilty Pleas" (15 August 2023) <https://www.sentencingpanel.gov.sg/resources/guidelines/guilty-pleas/> (accessed 19 August 2024) at para 7.

247 As far as the authors are aware, as at 19 August 2024, this "public interest" exception has been raised in two reported decisions: (a) a High Court decision – *Public Prosecutor v Iskandar bin Jinan* [2024] SGHC 134 (pending appeal filed by the offenders) at [59] – in relation to the sentencing of repeat drug traffickers who trafficked in the drugs that fall within the highest sentencing band just before the capital threshold; and (b) *Public Prosecutor v Jeremiah Ng En You (Huang Enyou)* [2023] SGDC 274 (without such a submission by parties) in relation to the offence of dangerous driving causing death by a serious offender. This case is pending appeal by a three-judge High Court (date yet to be fixed as of 19 August 2024). Additionally, the Prosecution has also invoked this exception in two cases thus far: (i) *Public Prosecutor v CNK* [2023] SGHC 358, where a 16-year-old student of River Valley High School killed a schoolmate with an axe – though the High Court did not appear

(cont'd on the next page)

15.130 Additionally, the PG Guidelines provide that:

(a) *Where the final sentence after the reduction is applied is at variance with existing judicial guidelines or precedents* for the offence in question (which may be a judicial guideline by the High Court or the Court of Appeal), the court should apply its mind as to whether to adopt the existing judicial guidelines or precedents or to give full effect to the relevant reductions.[248] The reductions set out at para 15.127 above are not intended to apply over and above the existing guidelines or precedents in cases where the offender has pleaded guilty.[249]

(b) *For Stage 1 (unlike the other stages), it suffices for the accused to* indicate *that he intends to plead guilty* but the 30% maximum reduction in sentence will only operate if the accused later follows through by pleading guilty without resiling from his initial indication of plea. The court may apply a lower reduction in sentence if it assesses that the accused had unreasonably delayed his guilty plea after his initial indication in Stage 1.[250]

(c) *Where there is an amendment to the charge that has a material bearing on the sentence* (*eg*, to a different offence or a substantial amendment to the particulars of the charge), the court may exercise its discretion to award an appropriate reduction irrespective of the recommended reductions, subject to a maximum reduction of 30%. In doing so, the court should consider factors such as the significance and extent of the amendment to the charge and the impact of the accused's plea

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to have specifically applied or addressed this exception (Court of Appeal's decision is pending); and (ii) a District Court case (non-publication order in place) involving a mother who acted in common intention with a father who caused the death of his child, Umaisyah, to burn Umaisyah's remains after she died, and concealed her death for more than five years. The father's case is found in *Public Prosecutor v DAM* [2023] SGHC 265. The District Court agreed with the Prosecution that the mother's offence of perverting the course of justice under s 204A of the Penal Code warranted the maximum seven years' imprisonment and that there should be no reduction on account of her plea of guilt for this specific offence.

248 See, *eg*, drug trafficking or importation offences where applying a maximum of 30% reduction is problematic and would be at variance with judicial precedents – *Public Prosecutor v Iskandar bin Jinan* [2024] SGHC 134 (pending appeal filed by the offenders).

249 Sentencing Advisory Panel, "Guidelines on Reduction in Sentences for Guilty Pleas" (15 August 2023) <https://www.sentencingpanel.gov.sg/resources/guidelines/guilty-pleas/> (accessed 19 August 2024) at para 10.

250 Sentencing Advisory Panel, "Guidelines on Reduction in Sentences for Guilty Pleas" (15 August 2023) <https://www.sentencingpanel.gov.sg/resources/guidelines/guilty-pleas/> (accessed 19 August 2024) at para 11.

of guilt.[251] However, this generally does not apply to (i) any change in the plea offer that does not involve an amendment to the charge, such as to proceed on a lesser number of charges; or (ii) any change in the Prosecution's sentencing position.[252]

15.131 Given the nature of the Sentencing Advisory Panel and the scope of the PG Guidelines, the PG Guidelines has had, and will continue to have, a widespread impact notwithstanding its non-binding nature. Since its publication, there have been at least three questions raised on it in Parliament.[253] We have also started seeing some decisions on it in 2024.[254] It is likely that in the next few years, there will be more decisions from the Court of Appeal and the High Court that will discuss the PG Guidelines and guide the courts and parties in the application or modification of the principles set out therein.

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251 Sentencing Advisory Panel, "Guidelines on Reduction in Sentences for Guilty Pleas" (15 August 2023) <https://www.sentencingpanel.gov.sg/resources/guidelines/guilty-pleas/> (accessed 19 August 2024) at para 12.

252 Sentencing Advisory Panel, "Guidelines on Reduction in Sentences for Guilty Pleas" (15 August 2023) <https://www.sentencingpanel.gov.sg/resources/guidelines/guilty-pleas/> (accessed 19 August 2024) at fn 8.

253 See: (a) Ministry of Law, "Written Answer by Minister for Law K Shanmugam to PQ on Measures to Prevent Criminals from Getting Away with Lighter Sentences by Exploiting Maximum Amount of Mitigation Options Available to Them" (19 September 2023) <https://www.mlaw.gov.sg/news/parliamentary-speeches/written-pq-guidelines-sentencing-advisory-panel-measures-in-place/> (accessed 23 September 2024); (b) Ministry of Law, "Written Answer by Minister for Law K Shanmugam to PQ on Requiring Attorney-General's Chambers to Indicate Plea Offer and Sentencing Position Early" (2 April 2024) <https://www.mlaw.gov.sg/written-answer-by-minister-for-law-k-shanmugam-to-pq-on-requiring-agc-indicate-plea-offer-sentencing-position-early/> (accessed 23 September 2024); and (c) Ministry for Law, "Written Answer by Minister for Law K Shanmugam to PQ on Continued Availability of Plea Bargains After Published Guidelines on Reduction in Sentences for Guilty Pleas" (3 April 2024) <https://www.mlaw.gov.sg/written-answer-by-minister-for-law-k-shanmugam-to-pq-on-continued-availability-of-plea-bargains-after-published-guidelines-reduction-in-sentences-for-guilty-pleas/> (accessed 23 September 2024).

254 *Eg*, *Public Prosecutor v Iskandar bin Jinan* [2024] SGHC 134 (appeal pending) and *Public Prosecutor v Jeremiah Ng En You (Huang Enyou)* [2023] SGDC 274 (appeal pending).