Sentencing: Public Interest, Policy and Accountability

Tuesday, 1 November 2022

Introduction

1. Members of the Judiciary, the Bar and the Legal Service, ladies and gentlemen, a very good morning to you all.

2. I want to start by thanking all the speakers and panel members before me – in particular, the Honourable Chief Justice Sundaresh Menon and Judge of Appeal Steven Chong. I must admit that so comprehensive and thoughtful were their speeches yesterday, that I wondered how much I could meaningfully add.

3. Nevertheless, I will in the next 45 minutes or so try my best to contribute to this very interesting and important debate on sentencing, and in particular, sentencing frameworks.

4. I will try to do this in two broad areas.

5. First, I take reference to many of the ideas and themes which were touched on yesterday – such as the historical development of judicial discretion, the more complex and varied objectives of modern-day sentencing, the need for consistency, and the utility of sentencing frameworks, including of course, their limits.

6. I would like to build on these themes and speak, in very broad terms, about the possibility of a theoretical framework for approaching sentencing generally.

7. In the second part of this address, I will take the perspective of a prosecutor, and touch on some prosecution-centric ideas and themes. I will try to explain, by reference to a few cases I have been involved in, how prosecutors have approached the issue of "public interest" in the context of sentencing.

Part I: A Theoretical Framework for Sentencing

8. We all know that the common law develops by evolution, incrementally, not by prescription. It is one of the common law's greatest strengths, that it harnesses the great minds of jurists over very long and different periods of time. In this process, theoretical coherence in a particular area almost never comes at the start, but rather, in the midst of the evolutionary journey.

9. This should be regarded as an advantage, because time allows the most salient and strongest arguments to emerge, stress-tested against legal and social reality.

10. The Chief Justice provided for us yesterday a sketch of the historical development of sentencing practice in Singapore, including more recent developments relating to sentencing frameworks. He raised some important points about the nature of judicial sentencing, and pointed out some directions for the future.

11. Judge of Appeal Chong asked some very important questions about the purpose of sentencing frameworks, their applications, and their limitations.

12. This morning, let me explore these ideas even further. The question I would like to ask is whether this would be a suitable time to try to develop a theoretical framework for approaching sentencing for different types of offences. This is something that all the speakers have touched on yesterday in different ways.

13. I think this is appropriate at this point in time for a number of reasons. First, we are at a consolidation stage of the evolutionary cycle. We are trying to rationalise past practice, and develop a more consistent way of thinking about sentencing generally. I think at this time, we should be looking at more fundamental ideas and principles which undergird the entire enterprise.

14. Second, the practice of sentencing is not only drawing more attention from judges and lawyers, but also from the public. And, I would add, from policy makers, and legislators. Both policy makers and legislators are placing more emphasis on calibrating punishments than in the past, at least in selected areas. I think it would be useful to develop a more complete set of general ideas and principles on sentencing, to guide research, policy making and legislation.

15. Third, if we can have more refined ideas on which sentencing approach or framework should be applied to a particular offence, or set of offences, this could illuminate answers to more specific questions. For example, let us imagine that we could agree that the harm-culpability approach is generally suitable for a particular type of offence. The next question is how the specific framework ought to be designed – should it always be a three-by-three matrix? How should we designate the values in the boxes for each framework, and should these always be the same for all offences? How do we decide where fines and caning should feature in the matrix?

16. Today, I will not attempt to answer these specific questions. My goal is much more modest. I would simply like to suggest some conceptual ideas which might underpin a general theoretical framework for sentencing – with

the hope that some of you, especially those in the academic community, will find these ideas interesting enough to pursue.

A Taxonomy of Offences

17. A plausible starting point for such a framework would be some conception of the general nature of criminal offences. Are all criminal offences conceptually the same, or are there conceptually different *types* of offences? Is homicide or murder fundamentally the same as speeding? Are workplace safety offences the same as corruption?

18. At a general level, all offences aim to regulate behaviour. They describe a particular behaviour, and prescribe a punishment, or a range of punishment. But why are these acts being punished? And would this dictate how sentencing ought to be approached?

19. I often draw a conceptual distinction between "penal offences" on the one hand, and "regulatory offences" on the other. These are archetypes which guide my own thinking. The word "penal", comes from the Latin word "*poenalis*", which means to simply to punish. But the word has connotations of inflicting pain for the sake of punishment, or for vengeance or retribution. In modern usage, such as in the term "Penal Code", we can loosely understand "penal offences" as those offences which punish for what I would call "moral wrongs". Because Penal Offences are underpinned by some notion of right and wrong, they are almost universally punished in all societies, although to different extents. Classic penal offences would be homicide, sexual offences, like rape, and the whole gamut of property offences.

20. Penal offences can be contrasted with "regulatory offences". Regulatory offences can be understood as those which impose punishment not because the acts are morally wrong, but for other, mainly policy, reasons. For example, to serve a broader policy objective, such as to minimise environmental damage. Or to solve a co-ordination problem, e.g. which side of the road to drive on. Some of them are there to enforce certain standards – like the offence of driving without a licence – and hence to manage, but not eliminate, risks.

21. It seems to me reasonable to suppose that what an offence is fundamentally for ought to inform the prioritisation of the goals of sentencing, which have been classically described as deterrence, retribution, rehabilitation and prevention. One could perhaps suggest that because sentencing for penal offences emphasises retribution for the moral wrong done to the victim, there should be an emphasis on the classic retributive sentencing factors – namely, harm and culpability.

22. In modern societies, offences are often neither purely penal nor regulatory. Sometimes, policy makers legislate criminal liability to dominate an entire domain – and in doing so, offences which appear regulatory in nature, or started off life as regulatory offences, are also applied to morally bad behaviour in that domain. I will touch on one such domain later – road traffic. Another example is Workplace Safety and Health legislation.

23. Perhaps there are other types of offences which we can describe which exist for different reasons – such as offences which enforce cultural standards or norms.

The Relationship Between Offences and Punishments

24. The general point of the earlier section was this: can an understanding of the broad objective of an offence, or a set of offences, help us understand how the various sentencing objectives ought to be presumptively prioritised?

25. This in itself would be a useful exercise, but ultimately, for any theoretical framework to be useful in guiding judges and lawyers, it would need to link an offence, or set of offences, to the actual punishment or punishments available.

26. The Chief Justice most helpfully described yesterday how our sentencing options have evolved over time. Some punishment options are provided in the offence-creating sections, but some of options are cross-cutting and based purely on offender-specific criteria, like probation. The first point I would like to make is that I think we can understand better how the different punishment options, in theory and in practice, further the various goals of sentencing. The classic punishment options, fines and imprisonment, are better understood, but there are some less studied options. For example, should we use mechanisms like disgorgement of profits more generally? One area which I think has not been explored extensively is when the various punishment options can be effectively used in combination, and what the impact of this would be.

27. Legal punishments have not only grown in terms of options, but also increased in complexity. Offences and punishment provisions nowadays often overlap, and come in more complex combinations and schemas. A good example of a complex offence and punishment scheme is that of dangerous driving under s 64 of the Road Traffic Act (RTA) – the offences are overlapping and tiered according to the hurt caused, with some mandatory minimum sentences.

28. One question which arises is whether we should look at such offences, for the purpose of sentencing, individually, or whether it is better to look at related offences holistically? There are two points I would make.

29. First, it has been judicially observed that where offences are narrowly defined by harm, say in terms of causing death, it may not be appropriate to employ a framework which makes harm a primary sentencing factor. Analogous reasoning applies where offences are tiered by culpability, and also in terms of other definitional criteria.

30. Second, where there are overlapping offences or punishments, we need to ensure that the frameworks for overlapping offences do not produce conflicting results or anomalies. This can happen if we apply broad sentencing factors, such as harm and culpability, to narrowly tiered offences which overlap. Take for example, the hurt offences in the Penal Code. We would want to avoid a situation where an injury was assessed as "high harm" for the offence of simple hurt, but "low harm" for the offence of grievous hurt, but for some reason a higher sentence resulted through the application of a sentencing framework for the less serious offence. This is a complicated point which I will illustrate later when I go through some cases.

Sentencing Frameworks as Heuristics

31. Finally, I think it is important for us, as participants in the criminal justice system, to have a good understanding of how heuristics work. And by that, I mean the sentencing guidelines and frameworks themselves, as these are essentially heuristics.

32. As criminal justice practitioners, we all realise, or have come to realise over time, that the design of a framework has huge implications on case outcomes. Frameworks on their face structure thought processes and encourage consistency of approach, but they also drive outcomes.

33. Singapore has experimented over time with a number of different sentencing frameworks – these have been addressed extensively by speakers yesterday. Other jurisdictions have similarly experimented with different models. I observe that the Sentencing Council of England and Wales, for example, is much more reliant on the "harm-culpability" matrix than other forms of sentencing frameworks. And they use this for a very wide variety of offences.

34. I think there are two important aspects to the issue of how sentencing frameworks 'work', as heuristics. The first aspect is: how does the framework affect or structure the thought process of the decision maker? Does it do so in a manner which is consistent, but not rigid? We want to achieve frameworks which are sufficiently specific to provide meaningful guidance, but avoid frameworks which are too complex for the judge, the lawyers, and most importantly, the person who is to be sentenced.

35. I think it is important for the design of sentencing frameworks to take into account the way the human mind works, and also the limitations of our thought processes. In this regard, I would recount an interesting discussion I had with a judge in England. I asked him why almost all the harm-culpability matrices were three-by-three matrices, and not two-by-two? His answer was quite interesting. He said that the judges had experimented with two-by-two matrices in the early days, and there was feedback that they were difficult to use because there was no "middle". In other words, the judges when looking at what in their mind was a "typical" case, did not know which side of the line it fell on. This did not happen when there was an odd number of boxes. This is an important observation about how the human brain approaches the framework as a heuristic.

36. The second aspect of the question of how a heuristic 'works' is this: what aggregated outcomes does it produce based on the real-world distribution of offences? What spread of sentences does the framework produce at a macro-level? It is often said that frameworks should allow for the use of the entire punishment spectrum – and this is correct – but what should the *shape* of the distribution be? Does the framework produce the "right" outcome at the macro-level?

37. But, you might well ask, what is the "right" outcome? The enterprise of sentencing does not occur in a legal vacuum. To an extent, sentences imposed by law, as judicial statements about what the offender "deserves", and what society requires in terms of deterrence, reflect our ethical, social and political values. Aggregated outcomes should therefore match our political, moral and legal intuitions, and be in line with some notion of societal good. We therefore need to develop an evaluative notion of what outcomes are desirable at the aggregated level, when designing sentencing frameworks.

38. How can we achieve this? This can appear like a philosophical chicken and egg problem. Should we let the framework drive the outcome and see what happens first, or should the desired outcome drive the design of the framework?

39. I think the answer many of you will give is: a bit of both, i.e. it is an iterative cycle. And I would suggest that the common law method is well suited to creating this iterative cycle. The common law method emphasises the giving of reasons, consistency and accountability. While the common law does not evolve in a linear fashion, it has a self-correcting tendency and we tend to get where we ought to be going in the end, even if there are some twists and turns.

40. It is because frameworks need to be grounded in social reality that as far as possible, when prosecutors submit on sentencing frameworks today, we try to present the court with as much empirical data on past offending and

sentencing patterns as possible. This may not always be possible because in some cases, the offences are relatively new.

41. I would add that the aim of the framework may not, however, be to replicate past sentencing behaviour – in fact, it may expressly be to move *away* from past behaviour, which may have been inconsistent. This is an aspect of the self-correcting tendency of the common law which I referred to earlier. But past patterns, especially offending patterns, are almost always relevant information when designing sentencing frameworks.

42. Let me summarise so far. I have raised a number of issues. First, can we have a better understanding of what different types of criminal offences are fundamentally for? Second, can we understand better how punishments further the objectives of sentencing, generally, and for specific offences or sets of offences? Third, can we have a better sense of what matters (or ought to matter) to judges, the prosecution, accused persons, and society generally, so that we can develop a broad sense of desired aggregate outcomes? Fourth, can we understand better how sentencing frameworks 'work' as heuristics – so that we know which ones will best help us reach the desired outcome?

Part II: A Prosecutorial Perspective on Sentencing

43. With that, let me now recount a few cases which I have been involved in. However, as a preliminary comment, I would like to say that in most cases, when I make sentencing submissions, I generally try not to second guess what the judge ought to do. Rather, I am informing the court what I think the public interest requires – and that is why I tend to submit a range of sentence. This is partly also because I would generally not be aware of the full suite of mitigating factors.

Public Interest and Public Protection

44. I start with a series of road traffic cases. The first is not so recent a case, but a well-known one. This was a case I argued on appeal in 2013 – *Hue An Li*.[1]

45. The accused ended work at 7 p.m. the day before the accident. She spent the night with her friends at East Coast Park until 6.30 a.m., and was heading home on the PIE, when she hit the rear end of a lorry transporting foreign workers – sitting in the back of the lorry. It is known as the leading "sleepy driver" case because the accused admitted that she was feeling

[1] [2014] 4 SLR 661.

sleepy at the time. It was evident that she probably drifted off into sleep while driving.

46. Nine foreign workers were badly injured and out of the nine, one died. The accused pleaded guilty to one charge of causing death by negligent act under s 304A(*b*) of the Penal Code. The maximum penalty for this offence was a fine, or up to 2 years' imprisonment, or both.

47. The District Judge sentenced the accused to a fine of $10,000, in line with the sentencing norm for the offence. On appeal, the main argument I advanced was that the sentence should take into account the magnitude of the harm done. The High Court enhanced the sentence to 4 weeks' imprisonment – and this became the new benchmark for causing death in driving cases by negligence. It is noteworthy that the sentencing approach taken was the "benchmark" approach.

48. It seems axiomatic now that harm should factor into the sentence for driving offences, but when I recently visited the UK, I was told that at one time, sentencing for road traffic accidents was primarily based on the nature of the driving of the accused – or the "culpability", without much reference to harm done. This is not entirely illogical, because it could be argued that it is unfair to punish the person for, essentially, bad luck. However, today, the UK approach is very similar to ours – or perhaps it might be more accurate to say that ours is very similar to theirs. While indeed there can be a huge element of luck involved in terms of the outcome of an accident, the justice system should not be entirely indifferent to the harm caused, and especially so when the person puts himself in a risky situation by say, driving when tired, or even more so when the person has been drinking. From the prosecutor's perspective, one very important aspect of the public interest is the impact of an offence on the victim and the victim's loved ones, and nowhere is the shift more evident than in driving-related offences.

49. If the facts of *Hue An Li* occurred today, the Prosecution would probably proceed under s 65 of the RTA for causing death by driving without due care or reasonable consideration – known more commonly as "careless driving". Where death is caused, for first-time offenders, the maximum sentence is an imprisonment term of 3 years, or a fine of $10,000, or to both, and disqualification.

50. In a recent State Court case,[2] the following sentencing framework for such cases was suggested:

[2] *PP v Selvakumar Ranjan* [2020] SGDC 252.

Section 65(2)(*a*) RTA *(Causing Death)*	
Up to $10,000 fine or up to 3 years imprisonment or both **AND mandatory DQ: at least 8 years** *Pre-1 November 2019: No prescribed punishment for this category of inconsiderate driving*	
CULPABILITY	**SENTENCE**
Low	6 – 12 months' imprisonment (A fine of up to $10,000 or lower sentences may be imposed in exceptional cases)
Moderate	12 – 24 months' imprisonment
High	24 – 36 months' imprisonment (max.)

51. This framework takes the "sentencing band" approach, and not the "benchmark" approach in *Hue An Li.*

52. On the facts of *Hue An Li*, I would imagine that the minimum sentence we would ask for under this framework would be in the region of 6 to 12 months' imprisonment. This is a very different outcome. I am not intending here to go into the advantages of the "benchmark" approach versus the "sentencing band" approach, but clearly there are consequences to the choice of framework. I would add that the "benchmark" method resolves threshold questions (fine versus imprisonment) more clearly, whereas these are not resolved with such clarity if one uses a matrix (as often a box will state "fine or imprisonment"). But the "matrix" approach has other advantages over the "benchmark" approach, including being much more comprehensive.

53. This brings me to the second case, which is not a well-known one. It involves one of the most common scenarios for traffic accidents – the so-called "discretionary right turn". The accused, who was 20 years old at the time, made a discretionary U-turn at a junction but failed to check for oncoming traffic. As a result, he collided into a victim motorcyclist, who sustained multiple fractures – in legal terms, "grievous hurt".

54. The accused pleaded guilty at the earliest opportunity to a charge of careless driving causing grievous hurt, under s 65(3)(*a*) of the RTA. The maximum imprisonment term for this offence is 2 years. His counsel sought the imposition of probation. The accused was sentenced to 4 weeks' imprisonment at first instance. He appealed. The Prosecution had asked for 6 to 8 weeks' imprisonment at first instance. At the appeal, we did not object to a Short Detention Order (SDO) being imposed based on the facts of the case. The High Court ordered a SDO of 1 week (plus a disqualification order).

55. On 25 July, just ten days after this case was heard in the High Court, the High Court issued its judgement in a different case involving careless driving causing grievous hurt, the now seminal case of *Sue Chang*.[3] In that case, the High Court established the following framework for the offence under s 65(3)(*a*) of the RTA:

Section 65(3)(*a*) RTA *(Causing Grievous Hurt)*			
Up to $5,000 fine or up to 2 years imprisonment or both **AND mandatory DQ: at least 5 years** *Pre-1 November 2019: No prescribed punishment for this category of inconsiderate driving*			
CULPABILITY \ HARM	**Low** (hurt caused can be managed with conservative treatment)	**Moderate** (injuries of a more permanent nature)	**Serious** (injuries of a very serious or permanent nature)
Low (generally with no dangerous driving behaviour exhibited)	Fine	Fine or up to 4 months' imprisonment	4 – 8 months' imprisonment
Moderate (some manner of dangerous driving behaviour)	Fine or up to 4 months' imprisonment	4 – 8 months' imprisonment	8 – 12 months' imprisonment
High (serious manner of dangerous driving behaviour)	4 – 8 months' imprisonment	8 – 12 months' imprisonment	12 – 24 months' imprisonment (max.)

56. The framework in *Sue Chang* represents a familiar sentencing approach – the harm versus culpability matrix. In my view, this approach makes sense, because although the harm is statutorily defined as "grievous hurt", this encompasses a very wide range of bodily hurt.

57. The facts of *Sue Chang* itself are quite different from the discretionary right-turn case – particularly in terms of the level of harm. In *Sue Chang*, the accused had been driving along the CTE, behind a motorcycle driven by the victim. The accused failed to keep a proper lookout and collided into the rear of the victim's motorcycle.

58. The victim was flung off her motorcycle. She sustained a number of serious injuries, including a severe head injury, multiple intracranial haemorrhages and contusions to her right lung. She was hospitalised for

[3] [2022] SGHC 176.

more than one and a half months. At the point of her discharge, she was unfortunately still unresponsive, unable to obey commands, and unable to communicate.

59. The District Judge sentenced the accused to 6 months' imprisonment and 5 years' disqualification. The accused appealed against this sentence, and his counsel argued that a fine was appropriate instead. The High Court classified the facts as "serious harm" and "low culpability", and upheld the lower court's sentence.

60. One could argue that the facts of the discretionary right-turn case, which I referred to earlier, fall within the "low culpability" and "moderate harm" range. According to the *Sue Chang* framework, an appropriate sentence would be a fine or up to 4 month's imprisonment, depending on the aggravating and mitigating factors. It seems to me that in this scenario, and an SDO ought to be available.

61. I would return here to the point I made earlier about overlapping offences and punishment provisions. In designing the frameworks for causing grievous hurt and causing death by careless driving, it is important to ensure that they do not produce inconsistent or anomalous results. For example, the minimum punishment for "low culpability" and "serious harm" for the grievous hurt framework should not be higher than for the equivalent offence for causing death. In this case, there is no issue:

Section 65(3)(*a*) RTA *(Causing Grievous Hurt)*			
Up to $5,000 fine or up to 2 years imprisonment or both **AND mandatory DQ: at least 5 years**			
CULPABILITY \ HARM	**Low**	**Moderate**	**Serious**
Low	Fine	Fine or up to 4 months' imprisonment	4 – 8 months' imprisonment
Moderate	Fine or up to 4 months' imprisonment	4 – 8 months' imprisonment	8 – 12 months' imprisonment
High	4 – 8 months' imprisonment	8 – 12 months' imprisonment	12 – 24 months' imprisonment (max.)

Section 65(2)(*a*) RTA *(Causing Death)*	
Up to $10,000 fine or up to 3 years imprisonment or both **AND mandatory DQ: at least 8 years**	
CULPABILITY	**SENTENCE**
Low	6 – 12 months' imprisonment (A fine of up to $10,000 or lower sentences may be imposed in exceptional cases)
Moderate	12 – 24 months' imprisonment
High	24 – 36 months' imprisonment (max.)

62. The public interest in punishing driving offences is clear. Driving offences are the most common offences, and there is a huge impact on the public – in particular, for individual victims and their families. As prosecutors, we feel that sentences need to account for the impact on individuals and their loved ones. I would add that we are not acting on public sentiment, but recognising that in crafting the current RTA provisions, which are based on different levels of hurt, it was the clear intention of Parliament that punishments should depend on outcomes.

63. Having said that, we recognise that serious accidents often result from lower levels of culpability – for example, carelessness – and as I said earlier, there is an element of luck involved in the outcomes where people get hurt. Therefore, I think that the frameworks should provide some flexibility in sentencing. Indeed in *Sue Chang*, we acknowledged that fines should be an option even where harm or culpability are "moderate", and in some cases a community-based sentence would be appropriate.

64. In the discretionary right-turn case I referred to earlier, the offender was young, and the accident happened mainly due to inexperience – an SDO was a good way of achieving the sentencing balance. I would add that for careless driving offences, I take the view that probation generally would not be a very appropriate punishment for young offenders, as the probation regime generally does not fit the nature of the careless driving offence.

Public Interest and Public Confidence

65. Let me now move on to a different context – I want to talk here about two cases which illustrate public interest in a different sense. The first is a recent case, which garnered some publicity. The case is *Vu Han Jean-Luc Kha*[4] – the accused was at the time the CEO of Privé Group.

[4] HC/MA 9061/2022/01.

66. The victim was a 13-year-old boy. He and his younger brother, who was 12, were in a lift in Parklane Shopping Mall at around 8 p.m. when an intoxicated Kha and another man entered the lift.

67. Kha directed lewd comments at the victim, and for no apparent reason, punched the victim on his left temple, causing the boy to fall backwards against the lift's handrail. Kha then hurled vulgarities at the victim, who grabbed Kha's hands so he would not hit him again. When the lift door opened, Kha refused to leave and slapped the victim. We submitted a victim impact statement – the incident had mentally scarred the victim, who suffered flashbacks and difficulties sleeping.

68. The District Judge imposed a mandatory treatment order (MTO) on Kha, based on a psychiatric decision regarding Kha's suitability for the MTO regime.

69. We felt compelled to appeal. The public interest in this case was the public confidence in the criminal justice system's ability to protect vulnerable victims – which we felt would be eroded if the respondent was allowed to evade the usual punishment of an imprisonment term by relying on his psychiatric condition. We asked for an imprisonment term to be imposed for the assault.

70. The appeal was allowed – the MTO was set aside, and a 2-week imprisonment term was substituted. The High Court found that deterrence eclipsed rehabilitation as the dominant sentencing consideration in view of the multiple aggravating factors: not only was Kha voluntarily intoxicated, but he also attacked a vulnerable victim in a confined space. The Court also held that just because an MTO might have been imposed in a more serious case on the facts, it did not follow that an MTO should *also* be ordered in the instant case – the Court should be alive to how various disorders affect each offender differently.

71. From my perspective, the issue was not so much the length of imprisonment, but the matter of principle. I also want to state categorically here that while there had been media interest in this case, public interest is not the same as public sentiment. In any event, what is often seen as a barometer for public sentiment, namely, social media comments, likes or dislikes, is in my view, hardly so.

Public Interest and Public Policy

72. The next case is *Woo Haw Ming*.[5] The point of this case is to show that in some cases, the public interest in a sentence is tied to public policy.

73. The facts are as follows. Shortly after his release from prison, the accused decided to earn 'easy money' by signing tenancy agreements on behalf of a person, 'Eric', he had met in prison. After signing these agreements, the accused would leave the keys and the tenancy agreements in the property and leave the door unlocked. He had no intention of staying in the rented premises. The properties which he tenanted were later used as brothels.

74. The accused was charged with cheating offences, for deceiving landlords into believing that he was to be the rightful party leasing the units when he had no intention of doing so. Generally, with commercial offences such as cheating, the predominant sentencing consideration is the dollar-value of the victim's loss. Here, the persons cheated had apparently not suffered any loss. How then should we approach the question of sentencing?

75. We argued that the court should take into account wider public policy considerations. While there was no financial loss to the 'victim' – the landlord – there was detriment to the public. The accused's offences had enabled the proliferation of illegal vice activities. It is important, from a public policy perspective, for there to be a chain of responsibility for residential properties, which can be traced by the authorities where the properties are used for vice.

76. Eventually, the accused's sentence of 3 months' imprisonment was upheld by the High Court. The Court agreed that due weight must be accorded to the accused's facilitation of vice activities, and the fact that he had introduced distance between law enforcement and perpetrators of broader illicit schemes. In my own words, this was not a "victimless" crime which should result in a nominal punishment.

Public Interest and Public Accountability

77. To end, let me say something about public accountability.

78. Prosecutors are no less accountable to the public than judges and policy makers, for the prosecutorial decisions we make, and the sentencing positions we take. One only needs to look at the volume of appeals and feedback we get, not just from persons charged with offences, but from victims and loved ones, and even from simply interested members of the public.

[5] [2022] SGHC 204.

79. In discharging our duties, we, like judges, are balancing many different considerations, and like other decision-making bodies, are constantly trying to operate in a highly principled manner, and to speak with one voice.

80. One way of increasing our accountability is to explain how we analyse and evaluate cases – which is what I am trying to do today.

81. Another way is to widen our horizons and look beyond traditional legal arguments and sources of information. A lot has already been said about the newly established Sentencing Advisory Panel, and the benefits it will bring. Looking at how such bodies have worked in other countries, I am optimistic that our Panel will improve the rigour and effectiveness of sentencing guidelines and frameworks. First, by engaging a wider set of stakeholders, and second, by evaluating the effectiveness of guidelines, through academic research on the impact of the guidelines on judges, people being sentenced, and where appropriate, on public resources, including prisons.

82. I will only add here that the Sentencing Advisory Panel can count on the full support of the Attorney-General's Chambers.

83. Thank you for the privilege of speaking and I wish everyone a very fruitful remainder of the Conference.