SENTENCING CONFERENCE 2022

Special Guest Lecture

"Sentencing Frameworks: To Guide or Not to Guide?"

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I. Introduction

1. A very good morning to all. I am honoured to have been given the opportunity to deliver this lecture. I am also pleased to see that so many of you have joined us at this year's Cyber Edition of the Sentencing Conference. Events like the present provide a key platform for all of us who are interested in the administration of criminal justice to gather and share our perspectives. This is especially valuable in relation to sentencing, which by its very nature is multi-factorial and engages multi-disciplinary considerations.

2. The fundamental importance of sentencing as a feature of our criminal justice landscape is, I am sure, well understood by everyone in attendance today. At the level of each individual case, having arrived at its conclusions regarding the offender's guilt and the circumstances and impact of the offence, sentencing is the mechanism that enables the court to give effect to those conclusions by imposing the appropriate consequences on each offender. More broadly, at the societal level, sentencing

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[*] I wish to acknowledge the valuable assistance of my law clerk, Wee Yen Jean, in the research for this speech.

provides the means of upholding and enforcing the values of our community, as expressed through our criminal law, by prescribing sanctions that are thought to be appropriate to proscribe various forms of wrongful conduct.[1]

3. At the same time, there are various challenges inherent in the process of sentencing. These often require the courts to grapple with questions to which there may be no easy answers, as Justice Hoong observed in his opening address. For instance, how should an appropriate balance be struck between the four conventional sentencing principles of retribution, deterrence, rehabilitation and prevention, especially when they may well pull in different directions?[2] How can we achieve broad parity and consistency between the sentences imposed in comparable cases,[3] in the interests of ensuring fairness between offenders? And how should all this be done while simultaneously remaining sensitive to the particular factual matrix of each case, which should always remain paramount?[4]

4. All this makes the theme of this year's conference especially timely and important. Sentencing frameworks – or sentencing guidelines – provide one way of navigating these challenges, and, in more recent years, they have assumed greater prominence. But they are also not without their difficulties. This brings me to the central theme of my lecture today: *to guide, or not to guide*? That is, indeed, a significant question. In addressing this theme, I propose to explore three broad topics: first, the purpose and benefits of sentencing frameworks; second, the limits of sentencing frameworks and when they may not be entirely helpful; and third, how they might be developed and deployed most effectively.

II. To Guide …

5. I shall start with the purpose and benefits of sentencing frameworks. They can come in many forms, and there are at least five possible broad approaches, which I think you are all aware of: the "single starting point" approach, the "multiple starting points" approach, the "benchmark" approach, the "sentencing matrix" approach, and the "two-step sentencing bands" approach.[5] No matter their precise form, sentencing frameworks can be of great assistance on four levels.

6. First, to the sentencing court considering the appropriate sentence *in a specific case*, sentencing frameworks "simplify the judicial task of coming to a just sentence"[6] in each case. They do so by providing an "analytical frame of reference" that can guide the sentencing court in arriving at a fair, reasoned, and appropriate sentence that is in line with other comparable cases, while maintaining due regard for the particular facts of each case.[7] For example, "benchmark" sentences provide a sentencing norm or focal point to which the court can refer in determining where the instant case sits relative to the norm, and when departures from the norm might be justified.[8] This may be especially useful where there is a wide variety of possible circumstances in which the offence in question might be committed. In such cases, a sentencing framework that assesses the severity of the offence based on the principal factual elements of the case, which go towards the harm caused by the offence and the offender's culpability, may help to guide and structure the inquiry undertaken by the sentencing court.[9]

7. Second, sentencing frameworks help to achieve fairness *between cases* by elucidating and standardising the sentencing considerations that are relevant to

particular classes of offences, thereby promoting consistency and order in the courts' exercise of their wide sentencing discretion.[10] It has been observed that "merely analogising from precedents is unsatisfactory as the lack of structure and guidance is not conducive to building consistency across cases".[11] A sentencing framework, in contrast, can lay down guidelines for sentencing for similar or related offences, and thereby facilitate both consistency in *methodology* and, more importantly, consistency in *outcome*.[12] For example, sentencing frameworks have been laid down for the offences of driving while under the influence of drink,[13] causing death by negligent driving,[14] and outrage of modesty.[15] In addition, sentencing frameworks can potentially provide guidance on the treatment of certain classes of offenders which may be applicable across different types of criminal offences,[16] such as the significance of the offender's age,[17] mental disorders,[18] or ill health.[19]

8. While sentencing is "not a scientific exercise and does not demand mathematical precision",[20] some degree of structure and broad consistency is essential for the coherent development of our sentencing jurisprudence. Indeed, the Honourable Chief Justice of New South Wales James Spigelman once observed that the use of sentencing principles and the emergence of patterns of sentences for particular offences "play the critical role in reconciling the principle of individualised justice and the principle of consistency".[21] Where those sentencing patterns are guided by a systematic framework, which is applied with due sensitivity to the facts of individual cases, this ability to reconcile individualised justice and consistency is all the more significant.

9. Third, sentencing frameworks assist the courts in discharging their duty to consider the *full spectrum of possible sentences* in determining the appropriate sentence in each case.[22] There is often a tendency for sentences to be arbitrarily clustered around particular points within the statutory range based on existing precedents, something which has been described as an "anchoring effect".[23] This is especially problematic where those sentencing precedents are not accompanied by written grounds of decision. This may create sentencing trends that are inconsistent with Parliament's intention regarding the possible punishments that should be considered for particular offences, as well as the strong deterrent stance that Parliament has chosen to take in respect of certain types of offences.[24] By providing a structured scale or spectrum for the appropriate sentence in each case to be more finely calibrated across the statutory range, sentencing frameworks help to ensure the full utilisation of the sentencing ranges prescribed by Parliament.[25]

10. Fourth, on a broader level, sentencing frameworks can help to promote *public confidence* in our criminal justice system and in our sentencing regime. The reality is that offenders do compare their sentences against those imposed on others whom they believe or perceive to be similarly situated, and so do members of the public who keep abreast of developments in our criminal law. Consistency, which I spoke about moments ago, is of course an integral part of safeguarding public confidence in the administration of justice.[26] Apart from helping to ensure consistency, sentencing frameworks strengthen public confidence by encouraging greater *transparency and accountability* in the process of sentencing. They do so by promulgating a presumptive framework which sentencing courts are guided by, and from which departures must be carefully considered and clearly explained.[27]

11. Earlier this year, I sat on a three-Judge *coram* of the General Division of the High Court which heard a Magistrate's Appeal on the appropriate sentencing framework for offences under section 12(1) read with section 20 of the Workplace Safety and Health Act.[28] These provisions make it an offence for employers to fail to take, so far as reasonably practicable, such measures as are necessary to ensure the safety and health of their employees at work. Having considered the sentencing frameworks for these offences that had been laid down and modified in earlier cases, we decided to adopt a framework which, as we explained, would allow for a more holistic consideration of both potential harm and actual harm, and which would therefore be more appropriate for these offences.[29]

12. There may also be a public interest in ensuring that the potential penalties for certain offences are made clear to the public. In such cases, sentencing frameworks can help to provide society with greater clarity and certainty regarding the type and extent of sanctions that are likely to follow from the criminal conduct in question. In doing so, they can also have a signalling and deterrent effect on would-be offenders,[30] which in turn contributes to reinforcing the shared values of our community.

13. Let me give an example. In the context of corruption offences involving Government servants, the usual benchmark is a custodial sentence, in line with the significance of deterrence as a sentencing consideration for this genre of offences and the uncompromising stance taken against such offences. In the case of *Lim Teck Choon*, Justice of Appeal V K Rajah emphasised that this was an area of sentencing where the courts should "unremittingly adopt a firm, no-nonsense approach", and

noted that attempts to bribe a police officer would be "treated with the utmost and indeed absolute abhorrence", in order to preserve "the integrity of the police force as a pillar of Singapore society".[31] In this way, sentencing – and sentencing frameworks – can help to set the tone regarding the gravity of particular categories of offences, reinforcing the signals already sent by Parliament through our criminal legislation.

III. … Or Not to Guide?

14. It will be apparent from what I have said thus far that sentencing frameworks can be immensely useful. Notwithstanding this, however, it is important to acknowledge their limits and when they may not be helpful. I highlight three points in this regard.

15. First, it will not always be desirable or appropriate for sentencing frameworks to be laid down in particular *contexts*. There may be cases in which the circumstances relevant to sentencing are simply too diverse to be meaningfully organised within a framework. For instance, in the case of *Tan Kei Loon Allan*, the Court of Appeal held that it would not be desirable to set a benchmark sentence for the offence of culpable homicide punishable under s 304(*a*) of the Penal Code,[32] noting that the range of circumstances in which such offences can be committed is "extremely varied" and is "not easily classified", and that there is, significantly, "no such thing as a 'typical' homicide".[33] Similarly, in the more recent case of *BPK*, Justice Woo Bih Li declined to lay down a sentencing framework for the offence of attempted murder under s 307(1) of the Penal Code,[34] noting that attempted murder cases are "factually highly diverse": the offence may be committed even in situations where little if any harm is actually caused, and the offender's culpability may differ drastically depending on, for example,

the steps that he took and the reasons why he did not succeed in killing the victim.[35] Nevertheless, even in such contexts, it may still be possible to lay down guidance pitched at a higher level of generality. For example, in the case of *Dewi Sukowati*, the Court of Appeal noted that – subject to the overarching observation that the sentencing inquiry in culpable homicide cases had to always be fact-sensitive – previous sentencing decisions involving homicides by domestic helpers fell into two broad clusters. These were: cases involving offenders with severe mental disorders, where the sentences imposed had ranged between ten and thirteen years' imprisonment; and cases involving premeditation, where the sentences imposed had clustered around a term of either 20 years or life imprisonment.[36]

16. Second, there may be situations where the case before the court is *not an appropriate case* in which to lay down any sentencing framework. It may be that the issues relevant to sentencing for the offence have not been sufficiently canvassed or fully ventilated based on the parties' submissions in the case at hand,[37] making it unsafe to lay down a sentencing framework to govern future cases. Timing is another relevant consideration. In cases where there is presently little jurisprudence on the offence in question, nuances in sentencing considerations may not have fully come to light,[38] such that there may be various "unknown unknowns". Where the court is not equipped with a sufficiently broad view of the relevant considerations, this will necessarily hamper its ability to develop a sentencing framework that achieves the benefits I have outlined above.

17. Third, the *manner* in which the question is raised for the court's consideration may not lend itself well to the promulgation of a sentencing framework. For example,

in the case of *Bernard Lim*, infamously referred to as the NParks Brompton bikes case, which the Chief Justice earlier referred to, the Prosecution had filed a criminal reference to refer a purported question of law for the Court of Appeal's determination, regarding whether the default starting position for the offence of providing false information to a public servant under section 182 of the Penal Code[39] would be a custodial sentence in two specified sets of circumstances. In declining to answer the question framed by the Prosecution, which essentially sought to obtain the pronouncement of a sentencing benchmark, the Court of Appeal noted that the specific facts identified in that question were not the only facts germane to sentencing for the relevant offence, and that there was a multitude of other unarticulated factors that could have a bearing on the sentence to be imposed. A further problem with using the criminal reference procedure to obtain a sentencing benchmark was that the referred question would inevitably have to be framed based on a sufficiently broad set of facts, so as not to be regarded as a veiled backdoor appeal. This would, in turn, mean that any benchmark laid down would encompass a wide range of factual scenarios with varying degrees of severity, and recognising a particular benchmark as being immediately applicable to *all* such instances might visit unfairness upon some accused persons. I quote the following observation made by the court in *Bernard Lim*: "[t]he truth of the matter is that a question concerning sentence, which is necessarily fact-sensitive, cannot be camouflaged as a question of law".[40]

IV. An Underlying Question: How to Guide?

18. What I have covered so far goes towards addressing the question of *why* and *when* sentencing frameworks should be developed. I would now like to explore a different set of questions: *how* sentencing frameworks are developed, and *by whom*.

19. Thus far, Singapore's approach to the development of sentencing frameworks has been quite traditional, in the sense that these frameworks are developed *incrementally* in individual cases, as is the common law method. Sentencing jurisprudence then develops step by step, with each case building on those that have preceded it, and frameworks being formulated with an eye on the facts of an actual case before the court.[41] Another notable feature of Singapore's approach is that sentencing frameworks have historically been developed *by the courts*.

20. A relatively early example of a judgment setting out a sentencing framework is that in the case of *Chia Kim Heng Frederick*, which was decided almost 30 years ago. The case involved the rape of a 16-year-old girl. The then-Chief Justice Yong Pung How, delivering the judgment of the Court of Criminal Appeal, first noted the severity of the offence of rape and observed that although rape convictions were not rare occurrences, there had been "no attempt in Singapore so far to lay down guidelines as to the sentences to impose". It would therefore be "useful for [the] court to review the practice in sentencing in our courts and to state its views on this difficult area of the criminal law". Having considered the relevant case law, the court held that the starting point in sentencing for a rape committed without any aggravating or mitigating factors should be ten years' imprisonment and caning of not less than six strokes in view of the element of violence inherent in rape offences. The court also outlined some aggravating and mitigating factors that might warrant an increase or reduction of the sentence, such as the victim's youth and the use of violence amounting to hurt (which would be aggravating) and the offender's guilty plea (which would be mitigating).[42] This framework was modified some years later, after a review of the sentencing

practice thereunder revealed that it was not providing sufficient guidance for courts and had given rise to some inconsistency.[43] Nevertheless, it provides an illustrative example of how the courts applied their minds to developing sentencing frameworks even in the period before the issuance of guideline judgments became a common practice.

21. In 2006, the Sentencing and Bail Review Panel was established by the then-Chief Justice Chan Sek Keong. It developed internal judicial guidelines on sentencing and bail to promote consistency and proportionality in the sentences imposed by the courts, and responded to specific questions on an *ad hoc* basis.[44] But the most significant development to date in relation to the judicial development of sentencing frameworks was a point touched on also by the Chief Justice – the establishment of the Sentencing Council in March 2013, to provide greater guidance on sentencing and sentencing methodologies. The Council was chaired by Justice Chao Hick Tin,[45] and comprised Judges from the Supreme Court and the State Courts.[46] It surveyed the sentencing approaches that had been adopted in other jurisdictions and, together with the State Courts, developed a framework for referring appropriate Magistrate's Appeals to be heard by a special three-Judge panel of the High Court instead of by a single Judge[47] where the Chief Justice so directs.[48] This was designed to reinforce the existing practice of issuing sentencing guidelines in Magistrate's Appeals, and to ensure that the components and implications of any proposed sentencing framework would be more thoroughly considered and explored.[49] Often, a Young *Amicus Curiae* is also appointed to assist the court by making submissions on the appropriate framework and on the questions of law that may arise in this connection.[50]

22. Following the establishment of the Sentencing Council in 2013, as observed by the Chief Justice, there has been a marked increase in the number of appellate judgments setting out sentencing frameworks and benchmarks for a variety of offences. Apart from this *quantitative* change, it has also been observed that there has been a more *qualitative* change in the willingness of our appellate courts to formulate sentencing frameworks using different and more sophisticated approaches, and to grapple with difficult sentencing issues and areas of law.[51]

23. The incremental and court-led approach to the development of sentencing frameworks does, of course, have its own drawbacks. For instance, the appellate courts will generally only have an opportunity to provide guidance on the sentencing approach for particular types of offences, or comment on sentencing frameworks previously laid down, where an appeal is filed by the parties to the relevant case. The incremental development of sentencing frameworks might also be criticised for being piecemeal.[52] To my mind, however, these drawbacks do not detract from the utility of developing sentencing frameworks based on the traditional common law method, but instead shed light on how the existing approach might be fruitfully *complemented* by other means.

24. One such complement is the newly established Sentencing Advisory Panel (or "SAP" for short), of which I am currently the chair. The SAP comprises members from not only the Judiciary, but also the Ministry of Law, the Ministry of Home Affairs, the Singapore Police Force, the Attorney-General's Chambers, and the Bar. It will be proactively issuing non-binding guidelines on matters relating to sentencing, which will be made available to the public.[53] The SAP held its inaugural meeting earlier this

year,[54] and its website went live just a few days ago. I hope that its work in the years to come will provide an interesting focal point for future discussions on sentencing frameworks.

25. The establishment of the Panel, however, ought not to detract from the continuing importance of the *courts'* role in developing sentencing frameworks. The question that flows naturally from what I have spoken about so far is this: in a case where a sentencing framework *is* appropriate, how should that framework be developed and used in a way that would maximise its benefits and the advantages of the traditional approach, while avoiding the potential pitfalls and limitations? In my view, the process can be broken down into three stages: conceptualisation, formulation, and application.

26. First, at the stage of *conceptualisation*, it will be important for the court to consider and choose the right form of sentencing framework for the offence at hand. It is not a case of "one size fits all". Earlier in my lecture, I mentioned that there are at least five possible broad approaches. Different approaches will be better suited to different kinds of offences.

27. For instance, the "single starting point" approach, which requires the court to identify a notional starting point which will then be adjusted based on the applicable aggravating and mitigating factors, will be more suitable where the offence in question "almost invariably manifests itself in a particular way and the range of sentencing considerations is circumscribed", such as in the context of regulatory offences.[55] Similarly, the "benchmark" approach requires the court to identify an archetypal case,

or series of archetypal cases, and the sentence which should be imposed in respect of such cases. It is therefore "particularly suited for offences which overwhelmingly manifest in a particular way or where a particular variant or manner of offending is extremely common and is therefore singled out for special attention".[56]

28. On the other end of the spectrum, for offences where there may be great factual variance between cases, it may be more appropriate to develop a more multi-factorial sentencing approach that is capable of accommodating a more granular analysis of the harm and culpability involved in the offence. An example of this is the five-step sentencing framework developed in the case of *Logachev*, for the offence of cheating at play under section 172A of the Casino Control Act.[57] Under this approach, the court will first identify the level of harm caused by the offence and the level of the offender's culpability, having regard to the offence-specific factors identified as being relevant to the offence in question. For example, in the context of cheating at play, some of the identified factors relevant to harm are the amount cheated, the involvement of a syndicate, and the involvement of a transnational element. The court will then identify the applicable indicative sentencing range based on its assessment of harm and culpability, and the appropriate starting point within that range. Thereafter, the court will make adjustments to the starting point to take into account the relevant offender-specific aggravating and mitigating factors, before looking at the global sentence and making such adjustments as may be necessary to take into account the totality principle.[58] Notably, the sentencing framework adopted in *Logachev* was a *new* approach, which drew inspiration from the frameworks that had been established for the offence of drunk driving which had caused physical injury or property damage, and for the offence of rape.[59] This aptly illustrates the point that conceptualising the form

that a sentencing framework should take is not a closed-ended process, and new approaches can and should be explored where appropriate in order to devise the framework that is best suited to the offence at hand.

29. Second, at the stage of *formulation*, sentencing frameworks should be sufficiently comprehensive and capable of accommodating the full spectrum of diverse factual matrices in which the offence in question may be committed, so that they will be better placed to stand the test of time.[60] They should "seek to capture the cases that make up the bulk of everyday sentencing practice", while allowing room for upward and downward adjustments based on the facts and circumstances of each case.[61] They should also be conceptually coherent, which in turn will require careful thought to be given to the normative significance of different considerations in calibrating the appropriate overall sentence.[62]

30. At the same time, sentencing frameworks will need to be well reasoned and well explained in order to provide clear guidance to sentencing courts. They should also be formulated with a view to how they will actually be applied. Such frameworks are meant to *assist* the court, not to make the task of sentencing more difficult. Sentencing frameworks will cease to be helpful where they are excessively complex, technical or intricate. Where this is so, they will be prone to cause some confusion and uncertainty, and will not lend themselves well to practical application.[63] As the Court of Appeal has stressed, sentencing frameworks are "not meant to yield a mathematically perfect graph that identifies a precise point for the sentencing court to arrive at in each case". Rather, they are meant to "guide the court towards the appropriate sentence in each case using a methodology that is broadly consistent",[64]

a point emphasised by the Chief Justice in his keynote address. It should always be remembered that "sentencing is an art and not a science".[65] The goal is not to achieve scientific or mathematical precision for its own sake,[66] but instead to achieve outcomes that are fair and sound.

31. Third, at the stage of *application*, sentencing frameworks should not be applied in a "formulaic or mechanistic" way,[67] and should not be allowed to become "binding or fossilised judicial rules"[68] that supplant the court's sentencing discretion. Sentencing frameworks are not a science, and they are equally not an "administrative exercise"[69] to be carried out simply by going down a checklist of pre-identified factors. As Justice Chao observed in the 2012 case of *Ong Chee Eng*, sentencing frameworks "are the result of the practical application of statutory penal laws, but should not be mistaken for those laws themselves"; and where these frameworks "harden into rigid formulae" which suggest that only a segment of the possible sentencing range should be applied, there is a risk that the court might "inadvertently usurp the legislative function".[70] Instead, sentencing frameworks should be applied with care and sensitivity to the circumstances of each case.[71] Individualised justice requires the sentencing court to always apply its mind to the entire factual matrix before it[72] and tailor the sanctions imposed in each case to the individual offender.[73] It is also important to ensure that sentencing frameworks do not become a Procrustean bed, and to preserve the judicial prerogative to depart from existing frameworks and precedents in an exceptional case where the departure is based on cogent reasons and effected in a measured manner.[74]

32. As we move forward, there will be many more areas of development and discussion to explore with regard to sentencing frameworks. One such area is obviously the interaction between the courts and the SAP, including delineating their respective roles and considering how the strengths of each can be harnessed most effectively. Another important question to be considered, and one that is by no means new, is precisely what we mean by "consistency" in sentencing, particularly in relation to sentencing *outcomes*. Treating like cases alike is indisputably important, but it is first necessary to carefully define what falls within the category of "like cases" to begin with, and how granular the comparison between different cases ought to be. In the words of Chief Justice Spigelman, "[i]nconsistency does not exist merely because there is difference".[75] The courts should be alive to differences that engage *normative considerations* warranting a different sentence in particular cases, even if they do not fit neatly into an existing framework. What is crucial is that the sentencing court articulates its reasoning clearly and transparently, so that those reasons may be properly understood and assessed. We must never lose sight of that paramount objective.

V. Conclusion

33. Let me bring my lecture to a close with some final observations. In 1965, Ambassador-at-Large Professor Tommy Koh – then a lecturer in law in the University of Singapore, writing in the *Malaya Law Review* – remarked that the sentencing of offenders was "one area of the courts' work which is least fettered by principles and standards". Professor Koh concluded his article by making two suggestions. First, he advocated that the courts should be under a general obligation to give reasons for their choice of sentences. He noted that such an obligation would be in accordance

with the principles of natural justice; would likely lead to a rationalisation of sentencing; and would lead to more consistency in sentencing policy. Second, he highlighted the need to assist the courts in becoming better informed about the treatment of offenders from a more holistic and multi-disciplinary perspective, having regard to insights from not only fellow judges and lawyers, but also other fields involved in the treatment of offenders.[76]

34. Those views were published more than 50 years ago, and the position today is certainly very different. Professor Koh would, I hope, agree with me that the process of sentencing today is far more principled, structured, well-reasoned, and consistent than it was at the time of his writing. Viewed through the lens of the present, Professor Koh's first suggestion that the courts should be obliged to give reasons for their sentencing decisions seems eminently reasonable and modest, and one which has become a firmly entrenched feature of our sentencing jurisprudence. But there is, of course, always more work to be done.

35. At the start of my lecture, I said that the central theme I hoped to address in relation to sentencing frameworks was: to guide, or not to guide? That was the question I began with, but I suggest that there is a further question that underlies this, and which in my view may be even more important. That is – *how* to guide. Much like the process of sentencing, the answers to these questions will depend on the types of offence, offender and victim in issue. Ultimately, sentencing frameworks are a *tool* to assist the courts in arriving at a just and fair sentence in each case. As with any tool, the question is how it can be wielded most effectively; and how sharp or blunt the tool is will depend on how well it is crafted, and thereafter maintained, by those who use it.

36. I would like to end by returning to Professor Koh's second suggestion, that sentencing courts would benefit from a more holistic perspective on the treatment of offenders. As an example of a practice Singapore might wish to emulate, Professor Koh referred to the practice in England at the time for an annual meeting to be held under the auspices of the Lord Chief Justice, which was attended by judges, criminologists, prison officers, psychiatrists, psychologists, and sociologists, among others, to discuss problems of sentencing and the treatment of offenders.[77] This description, with some minor modifications, could well describe this very Sentencing Conference. Over the next two days, I certainly look forward to gaining a better understanding of the various multi-disciplinary perspectives relating to sentencing.

37. In the years to come, there will no doubt be many more questions raised, challenges posed, and opportunities presented in the field of sentencing. All of us who have a role to play in the criminal justice system will surely be paying close attention to these developments. I hope that this conference will give all attendees a meaningful opportunity to reflect on the issues that arise in this area, and on how our criminal justice system as a whole might best be developed in accordance with its foundational principles and aims.

38. I end by making an obvious observation. I recognise that some parts of my lecture will have overlapped with the Chief Justice's keynote address. My point, however, is that these principles are so fundamental and important that they bear repetition and emphasis.

39. Thank you all very much for your kind attention.

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[1] See *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 ("*Kwong Kok Hing*") at [17] and *Public Prosecutor v BOX* [2021] SGHC 147 at [52].

[2] See *Kwong Kok Hing* at [17]–[20];

[3] See *Abdul Mutalib bin Aziman v Public Prosecutor and other appeals* [2021] 4 SLR 1220 at [40].

[4] See *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 ("*Tan Kay Beng*") at [45].

[5] See *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [26]–[38].

[6] *Tan Wei v Public Prosecutor* [2016] 3 SLR 450 ("*Tan Wei*") at [1].

[7] See *Public Prosecutor v Pang Shuo* [2016] 3 SLR 903 ("*Pang Shuo*") at [28].

[8] See *Abu Syeed Chowdhury v Public Prosecutor* [2002] 1 SLR(R) 182 ("*Abu Syeed Chowdhury*") at [15].

[9] See, *eg*, *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 at [74] (laying down sentencing benchmarks for vice-related offences under ss 140, 146 and 148 of the Women's Charter (Cap 353, 2009 Rev Ed)).

[10] See, *eg*, *Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("*UI*") at [17]–[21]; *Tan Wei* at [1] and *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048 ("*GBR*") at [26]. See also The Honourable Justice Chao Hick Tin, "The Art of Sentencing – An Appellate Court's Perspective", address at the Sentencing Conference 2014 ("Justice Chao's 2014 Address") at para 13.

[11] *Lee Shing Chan v Public Prosecutor and another appeal* [2020] 4 SLR 1174 ("*Lee Shing Chan*") at [34].

[12] See *Takaaki Masui v Public Prosecutor and another appeal and other matters* [2021] 4 SLR 160 ("*Takaaki Masui (HC)"*) at [91]–[92].

[13] Under s 67(1)(*b*) of the Road Traffic Act (Cap 276, 2004 Rev Ed): see *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139.

[14] Under s 304A(b) of the Penal Code (Cap 224, 2008 Rev Ed): see *Public Prosecutor v Hue An Li* [2014] 4 SLR 661.

[15] Under ss 354(1) and 354(2) of the Penal Code (Cap 224, 2008 Rev Ed): see *GBR* and *Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580.

[16] See *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*") at [36] and [63].

[17] See *Terence Ng* at [65(b)] and [65(c)].

[18] See *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 at [30]–[35].

[19] See *Chew Soo Chun v Public Prosecutor and another appeal* [2016] 2 SLR 78 at [21]–[40].

[20] See, *eg*, *Lee Shing Chan* at [34].

[21] The Honourable J J Spigelman AC, Chief Justice of New South Wales, "Consistency and Sentencing", keynote address at the Sentencing 2008 Conference (8 February 2008) ("Spigelman CJ (2008)") at p 7, accessible at https://www.supremecourt.justice.nsw.gov.au/Pages/SCO2_publications/SCO2_judicialspeeches/sco2_speeches_pastjudges.aspx#spigelman.

[22] See *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 ("*Suventher*") at [26].

[23] See *Tan Song Cheng v Public Prosecutor and another appeal* [2021] 5 SLR 789 ("*Tan Song Cheng*") at [26]. See also *Wong Tian Jun De Beers v Public Prosecutor* [2021] SGHC 273 ("*Wong Tian Jun De Beers*") at [56].

[24] See *Suventher* at [26] and *Tan Song Cheng* at [26].

[25] See *GBR* at [26].

[26] See *UI* at [19].

[27] See, *eg*, *UI* at [17] (stating that "it would not be proper for a trial judge to depart from [sentencing] precedents without, at the very least, giving cogent reasons as to why they should not be applied in the case before him") and *Public Prosecutor v Lim Teck Choon* [2009] 2 SLR(R) 577 ("*Lim Teck Choon*") at [24] (stating that "[t]he lower courts should always bear in mind that if an appellate court desires or intends to vary the current sentencing framework, grounds of decision will be invariably given. One should be slow to interpret apparently anomalous decisions made in peculiar factual matrices as signalling a new or different sentencing approach").

[28] Workplace Safety and Health Act 2006 (2020 Rev Ed).

[29] *Public Prosecutor v Manta Equipment (S) Pte Ltd* [2022] SGHC 157 ("*Manta Equipment*") (see, in particular, [22]–[28]). See also, by way of further illustration, *Terence Ng* at [13]–[22] (explaining the court's reasons for revising the sentencing framework for the offence of rape that had been set out in *Public Prosecutor v NF* [2006] 4 SLR(R) 849 ("*NF*")).

[30] See *NF* at [39] and *Pang Shuo* at [28].

[31] *Lim Teck Choon* at [12], [19] and [26]–[27].

[32] Penal Code (Cap 224, 1985 Rev Ed).

[33] *Public Prosecutor v Tan Kei Loon Allan* [1998] 3 SLR(R) 679 at [33].

[34] Penal Code (Cap 224, 2008 Rev Ed).

[35] *Public Prosecutor v BPK* [2018] 5 SLR 755 ("*BPK*") at [55(a)].

[36] *Dewi Sukowati v Public Prosecutor* [2017] 1 SLR 450 at [15]–[23].

[37] See, *eg*, *Wong Tian Jun De Beers* at [57(a)].

[38] See, *eg*, *BPK* at [55(b)].

[39] Penal Code (Cap 224, 2008 Rev Ed).

[40] *Public Prosecutor v Lim Yong Soon Bernard* [2015] 3 SLR 717 at [18]–[23] and [30].

[41] See Justice Chao's 2014 Address at para 14.

[42] *Chia Kim Heng Frederick v Public Prosecutor* [1992] 1 SLR(R) 63 at [9]–[10] and [19]–[20].

[43] See *NF* at [18]–[38]. See also *Terence Ng* at [7] and [22].

[44] See the Valedictory Letter from Prime Minister Lee Hsien Loong to Chief Justice Chan Sek Keong (2 November 2012), accessible at https://www.pmo.gov.sg/Newsroom/valedictory-letter-prime-minister-lee-hsien-loong-chief-justice-chan-sek-keong; and Justice Chao's 2014 Address at para 2.

[45] See The Honourable the Chief Justice Sundaresh Menon, "The Legal Profession as an Honourable Profession", Mass Call Address 2022 (23 August 2022) at para 25.

[46] See Justice Chao's 2014 Address at para 2.

[47] See Justice Chao's 2014 Address at paras 4 and 42.

[48] See s 386(1) of the Criminal Procedure Code 2010 (2020 Rev Ed).

[49] See Justice Chao's 2014 Address at para 36.

[50] See, *eg*, *Manta Equipment*; *Public Prosecutor v Su Jiqing Joel* [2021] 3 SLR 1232; and *Lee Shing Chan*.

[51] Benny Tan Zhi Peng, "Assessing the Effectiveness of Sentencing Guideline Judgments in Singapore Issued Post-March 2013 and a Guide to Constructing Frameworks" (2018) 30 SAcLJ 1004 at paras 17–19 and 21.

[52] See Justice Chao's 2014 Address at para 14.

[53] See the "What We Do" page on the website of the Sentencing Advisory Panel, accessible at https://www.sentencingpanel.gov.sg/what-we-do.

[54] Ministry of Law, "Establishment of the Sentencing Advisory Panel", press release (2 June 2022), accessible at https://www.mlaw.gov.sg/news/press-releases/2022-06-02-establishment-of-sentencing-advisory-panel.

[55] See *Terence Ng* at [27]–[28].

[56] See *Terence Ng* at [31]–[32].

[57] Casino Control Act (Cap 33A, 2007 Rev Ed).

[58] See *Logachev* at [37] and [75]–[84].

[59] See *Logachev* at [75]. Those frameworks had been developed in *Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 and *Terence Ng* respectively.

[60] See *Terence Ng* at [12(a)].

[61] See *Pang Shuo* at [31].

[62] See *Terence Ng* at [12(b)] and [18].

[63] See *Public Prosecutor v Takaaki Masui and another and other matters* [2022] 1 SLR 1033 at [14]–[15], declining to endorse the "elaborate 3D sentencing framework" devised by the High Court Judge in *Takaaki Masui (HC)* for offences under ss 6(*a*) and 6(*b*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed).

[64] *Mohd Akebal s/o Ghulam Jilani v Public Prosecutor and another appeal* [2020] 1 SLR 266 at [20(b)].

[65] *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [197] (*per* Woo Bih Li J) (see also [169], *per* V K Rajah JA).

[66] See, *eg*, *Lee Shing Chan* at [34].

[67] *Edwin s/o Suse Nathen* at [23].

[68] *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR 1 ("*Dinesh Singh Bhatia*") at [24].

[69] *Dinesh Singh Bhatia* at [24].

[70] *Ong Chee Eng v Public Prosecutor* [2012] 3 SLR 776 at [24].

[71] See, *eg*, *Tan Wei* at [1].

[72] See *Tan Kay Beng* at [25].

[73] See *Abu Syeed Chowdhury* at [15].

[74] See *Dinesh Singh Bhatia* at [24].

[75] Spigelman CJ (2008) at p 35.

[76] T T B Koh, "The Sentencing Policy and Practice of Singapore Courts" (1965) 7(2) Malaya Law Review 291 ("Koh (1965)") at 291 and 297–298.

[77] Koh (1965) at 298.