THE ART OF SENTENCING – AN APPELLATE COURT'S PERSPECTIVE

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I. Introduction

1. Ladies and gentlemen, I thank the State Courts for inviting me to speak at this conference. As an introduction, and for the benefit of those participants from overseas, I should mention that in our legal system, most of the criminal cases are tried before the State Courts consisting of the District Courts and the Magistrate's courts. The primary jurisdictional difference between these two courts lies in their powers to impose punishment, with the Magistrate's courts having a lower limit. The most serious offences, like murder, drug trafficking beyond the prescribed limits are tried in the High Court. Other serious offences like rape and robbery are normally also tried in the High Court. Appeals from the District courts and Magistrate's courts will be heard in the High Court by a single judge. In the case where the High Court exercises original criminal jurisdiction, appeals therefrom will be heard by the Court of Appeal. I will be discussing 3 areas relating to sentencing today:

   (a) first, the role of the appellate court in sentencing and setting sentencing guidelines;

   (b) second, the alternative approaches to the development of sentencing guidelines; and

(c) third, the role of the Special Panel of 3 Judges to hear selected Magistrate's Appeals.

2. Apart from my duties as a Judge of Appeal in the Supreme Court of Singapore, I have the privilege of chairing the Sentencing Council (the "Council") since it was established in March 2013. The Council consists of 6 members: Justice Choo Han Teck, Justice Tay Yong Kwang, Justice Chan Seng Onn, Justice Tan Siong Thye, Judicial Commissioner See Kee Onn[1] and Senior District Judge Ong Hian Sun[2], all of whom are appointed by the Chief Justice. The Chief Justice sits as an *ex-officio* member of the Council. I should mention that before the establishment of the Council there was the Sentencing and Bail Review Panel which was set up by the previous Chief Justice in 2006. It operated on an ad hoc basis responding to specific questions.

3. One of the main objectives behind the setting up of this Council was to assist the State Courts in the exercise of their sentencing powers to achieve greater consistency and predictability in the sentences which they impose for similar offences by providing clearer guidance on sentencing and on sentencing methodologies. This would complement the various modern sentencing tools and processes in place in the State Courts such as their JURIST (Jurist Resource and Information System); START (Sentencing Tariff and Research Tool) and SIR (Sentencing Information & Research Repository) systems, which all support judicial officers in discharging their sentencing functions. The Council, with the benefit of having many more legal minds, would be better able to consider all relevant aspects pertaining to an offence, including social policy

[1] In his capacity as Chief District Judge of the State Courts.
[2] In his capacity as Senior District Judge of the Criminal Justice Division of the State Courts.

relating to it, and lay the appropriate guidelines for the use of the State Courts. To put it simply, what is now being undertaken by the Council is really an initiative "by the Judges, for the Judges".

4. Earlier this year, as part of its work, the Council embarked on a survey of the sentencing frameworks, sentencing guidelines and sentencing methodologies adopted in other jurisdictions. In the interest of time, I will later only share some of our findings from this survey.

5. I shall now turn to the first area, which is the role of the appellate court in sentencing and setting sentencing guidelines.

II. The role of the appellate court in sentencing and the setting of sentencing guidelines

6. I will begin by quoting the often-cited passage from *R v James Henry Sargeant*:

> [The] classical principles [of sentencing] are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing."[3]

7. These four classical principles of sentencing appear simple enough as a good starting point for determining any sentence. The challenge lies in identifying which of these principles are most pertinent for the case at hand, and which will achieve a proper balance in determining the type and extent of the sentence to

[3] *R v Sargeant* (1974) 60 Cr App R 74 at [77].

be imposed. As pertinently observed by Lord Bingham CJ in *R v Howells* that there is a public dimension to sentencing:

> "Courts should always bear in mind that criminal sentences are in almost every case intended to protect the public, whether by punishing the offender or reforming him and others, or all of these things. Courts cannot and should not be unmindful of the important public dimension of criminal sentencing and the importance of maintaining public confidence in the sentencing system". [4]

8. I have had the opportunity to hear numerous appeals against the sentences passed by the District and Magistrate's courts, and I know full well that sentencing is not a mechanistic and mathematic exercise, but a very delicate qualitative and quantitative exercise. This is where the challenge lies.

9. The principles which govern an appellate court in reviewing the sentence passed by a lower court are uncontroversial: an appellate court does not have an unfettered discretion to determine the sentence afresh. The scope for intervention is limited, because sentencing is largely a matter of judicial discretion and requires a fine balancing of myriad considerations.[5] The very concept of judicial discretion involves a right to choose between more than one possible outcome, and there is room for reasonable people to hold different opinions. [6] For this reason, the appellate court's prerogative to correct

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4 *R v Howells* [1999] 1 All ER 50 at [54].
5 *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR 601 at [81].
6 *Bhandulananda Jayatilake v Public Prosecutor* [1982] 1 MLJ 83.

sentences is tempered by a significant degree of deference to the sentencing judge's discretion.[7]

10. Accordingly, our appellate court can and will interfere in a sentence imposed by the lower court only if it is satisfied that any of the following four grounds are made out:

    (a) first, the sentencing judge has made a wrong decision as to the proper factual basis for the sentence;

    (b) second, there has been an error on the part of the trial judge in appreciating the material placed before him;

    (c) third, the sentence was wrong in principle; or

    (d) fourth, the sentence imposed was manifestly excessive or inadequate.[8]

11. The fourth ground, namely that the sentence imposed was manifestly excessive or inadequate, is most commonly used to mount an appeal against the lower court's sentence. Since sentencing is not a mechanical process but a matter of judicial discretion, perfect uniformity is hardly possible.[9] Therefore, a sentence imposed by a judge below will not be interfered with merely because it is inadequate or excessive – it has to be *manifestly* inadequate or *manifestly* excessive before interference is justified.[10] In other words, an appellate court will intervene only where the sentence imposed exceeds the permissible range or sentence variation, and substantial alterations rather than minute corrections

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7 *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR 684 at [16].
8 *Tan Koon Swan v Public Prosecutor* [1986] SLR 126.
9 *Wong v The Queen* (2001) 207 CLR 584 at [6].
10 *Loo Weng Fatt v Public Prosecutor* [2001] 3 SLR 313 at [65].

are required to remedy any injustice.[11] This shows that a high threshold has to be met before intervention is warranted.[12] Having said that, I now turn to the appellate court's role in setting sentencing guidelines.

12. In accordance with the doctrine of *stare decisis*, decisions of the appellate courts are binding on the lower courts. Such precedents and any principles articulated therein act as sentencing guidelines to the lower courts for cases involving similar facts or offences, because these precedents provide an indication on the appropriate sentence to be imposed. Instead of being cursory, judgments of appellate courts are often substantial and consider sentencing for a whole category of similar offences including the particular offence committed by the accused, list down factors which are appropriately considered to be aggravating or mitigating the seriousness of the offence, and state the proper range of sentences for the relevant offence. The principal benefits of guideline judgements, according to Ashworth[13], are that firstly, it forces the appellate court to consider interrelationships of sentences between the different forms of an offence. Secondly, instead of having to deal with a series of potentially conflicting appellate decisions, sentencers in the lower courts are given a specific framework to operate within. And finally, guidance is found in one judgment rather than a number of disparate sources.

13. While references to such guideline precedents facilitate consistency and fairness by providing a focal point against which subsequent cases with differing degrees of culpability can be accurately compared and determined, the

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11 *Public Prosecutor v Siew Boon Loong* [2005] 1 SLR 611 at [22].
12 *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR 601 at [83].
13 Ashworth, "Techniques of Guidance on Sentencing" [1984] *Crim LR* 519 at 521.

sentencing benchmarks laid down in such precedents are not cast in stone.[14] They are intended to be indicative only, structuring rather than restricting discretion. This is because no matter how much thought has gone into the formulation of a particular sentencing regime, there will always be a prospect of injustice. Each case ultimately turns on its own facts and a sentencing judge must respond appropriately to all the circumstances of a particular case. As Lord Woolf commented[15] on the use and limitations of guidelines:

> *"…guidelines such as we have set out above can produce sentences which are inappropriately high or inappropriately low if sentencers adopt a mechanistic approach to the guidelines. It is essential that having taken the guidelines into account, sentencers stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances. Double accounting must be avoided and can be a result of guidelines if they are applied indiscrimately. Guideline judgments are intended to assist the judge to arrive at the correct sentence. They do not purport to identify the correct sentence. Doing so is the task of the trial judge."*

In the pursuit of equal justice, individualised justice must still be done.

14. Unlike other jurisdictions where central non-judicial bodies set sentencing guidelines, a methodology which I will touch on later, our own approach in setting guidelines has been traditional – in the sense that the development of sentencing guidelines is done incrementally with one case building upon

[14] *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR 601 at [85].
[15] In *R v Millberry* [2003] 1 Cr.App.R. 396 at 407.

another using traditional judicial reasoning, which is characteristic of how the common law has been developed. This incremental approach to the development of sentencing guidelines, rather than the more radical approach taken in some other jurisdictions, has the benefit of allowing cases to develop to form its own jurisprudence so that when cases percolate up the appellate courts, the appellate courts will be in a better position to appreciate the jurisprudence of the case and the social and legal context in which it arises before it decides whether there is anything to "fix". However, this approach may be criticised as being piece-meal and dependent on appeals being filed. Only parties to the case can appeal and the parties may not appeal against a sentencing decision for a variety of reasons ranging from the offenders being ignorant of the likelihood of a successful appeal to the additional cost which will be incurred in appealing. Where there is no appeal, the appellate court will not get an opportunity to provide guidance on a particular type of case or offence, or make any changes to guidance previously laid down which has since become less applicable or even misleading due to changes in circumstances.

15. While noting these criticisms, I ought to refer to section 23 of the Supreme Court of Judicature Act[16] read with sections 400 to 403 of the Criminal Procedure Code[17] where the High Court has the power of revision to alter the sentence of the State Courts, albeit in limited circumstances. In recent times this power was invoked by the High Court to correct a "serious injustice" even when there was no appeal filed by either the prosecution or the accused.[18] Apart from this, it does appear that legislative changes will be required if the

[16] Chapter 322, 2007 Rev Ed.
[17] Chapter 68, 2012 Rev Ed.
[18] *Yunani bin Abdul Hamid v Public Prosecutor* [2008] 3 SLR (R) 383 at [43], [44], [46]. [47], [50] and [56]. High Court's powers of revision exercised pursuant to section 266 to 270 of the Criminal Procedure Code (Chapter 68, 1985 Rev Ed)

High Court wishes to issue guideline judgments in cases where there has been no appeal. At this juncture, it may be opportune for me to state what we have learnt to have been the approach taken by some Australian States on this matter.

16. In New South Wales, Australia for instance, under the Crimes (Sentencing Procedure) Act 1999, guideline judgments can be issued by the Court of Criminal Appeal,[19] and may also be issued pursuant to an application by the Attorney-General, which is not to be taken out in relation to a particular offender.[20] The Court of Criminal Appeal may furthermore issue a guideline judgment on its own motion; however, it has to give the Senior Public Defender, Director of Public Prosecutions and Attorney General an opportunity to appear before issuing the judgment.[21] These guideline judgments are to be "taken into account" by the courts in sentencing offenders.[22] The Court of Criminal Appeal has the power to review, vary or revoke the earlier guideline judgments in subsequent guideline judgments should it wish to.[23]

17. In Victoria, Australia, the Court of Appeal retains the power to issue guideline judgments which are to be "taken into account" by courts in sentencing offenders.[24] The Court of Appeal may, upon its own intiative, consider whether to issue or review a guideline judgment previously issued in considering an appeal against sentence, or upon an application being made by a party to the appeal, even if it is not necessary for the purposes of determining the appeal in

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19 Crimes (Sentencing Procedure) Act 1999, s 36.
20 Crimes (Sentencing Procedure) Act 1999, s 37.
21 Crimes (Sentencing Procedure) Act 1999, s 37A.
22 Crimes (Sentencing Procedure) Act 1999, s 36.
23 Crimes (Sentencing Procedure) Act 1999, s 37B.
24 Sentencing Act 1991, s 6AA.

which the guideline is given or reviewed.[25] The decision to give or review a guideline judgment has to be an unanimous decision of the Court of Appeal hearing the case in question.[26] Additionaly, if the Court of Appeal decides to give or review a guideline judgment, it has to inform the Sentencing Advisory Council of its intention, and consider any views stated in writing by the Council.[27] Simiarly, the Court of Appeal must also give the Director of Public Prosecutions or a lawyer representing him, and a lawyer representing or arranged by Victoria Legal Aid an opportunity to appear and make submissions on the matter.[28] The guidelines issued in a guideline judgment are additional to any other matter that the Sentencing Act 1991 requires to be taken into account in sentencing, and cannot limit or take away from any such requirement.[29]

III. Alternative approaches to the development of sentencing guidelines

18. In some Commonwealth jurisdictions and the United States, comprehensive sentencing guidelines are being developed by independent non-judicial institutions other than the courts. Set out below are the positions of some of these countries.

A. England and Wales

19. In England and Wales, a Sentencing Council is set up as an independent, non-departmental public body of the Ministry of Justice, pursuant to the Coroners and Justice Act 2009. The Sentencing Council has two mandatory functions, first, to prepare sentencing guidelines about the discharge of a court's duties in

[25] Sentencing Act 1991, s6AB(1) and (3).
[26] Sentencing Act 1991, s6AB(4).
[27] Sentencing Act 1991, s6AD(a).
[28] Sentencing Act 1991, s6AD(b).
[29] Sentencing Act 1991, s6AG.

relation to the reduction in sentences for guilty pleas, and second, to prepare sentencing guidelines about the application of any rule of law as to the totality of sentences[30]. The Sentencing Council also has the discretion to prepare guidelines on any other matter[31]. It also has the responsibility of monitoring compliance with the guidelines issued.

20. Where guidelines have been drafted, they must initially be issued as draft guidelines[32], and the Sentencing Council has to consult the Lord Chancellor, persons appointed by the Lord Chancellor, the Justice Select Committee of the House of Commons, and any other person regarded as appropriate by the Sentencing Council[33]. In cases where draft guidelines are issued pursuant to the Sentencing Council's mandatory functions, it has to issue the guidelines as definitive guidelines after making appropriate amendments, whilst in other cases the Sentencing Council has the discretion whether to issue the guidelines as definitive guidelines after making amendments[34]. In drafting the guidelines and setting sentencing ranges, the Sentencing Council has to work within certain parameters as set out in the Coroners and Justice Act 2009.[35]

21. The English Sentencing Council has issued eight new guidelines since it was set up in March 2010, namely on assault; burglary; drugs; overarching principles of allocation, totality and charges taken into consideration; dangerous dogs, sexual offences; environmental offences; and fraud, bribery and money laundering offences.

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30 Coroners and Justice Act 2009, s120(3).
31 Coroners and Justice Act 2009, s120(4).
32 Coroners and Justice Act 2009, s120(5).
33 Coroners and Justice Act 2009, s120(6).
34 Coroners and Justice Act 2009, s120(7).
35 Coroners and Justice Act 2009, s121.

22. The Sentencing Council has 14 members, led by Lord Justice Treacy, with the Lord Chief Justice of England and Wales providing oversight over the Sentencing Council. Members of the Sentencing Council include current magistrates, Queen's Counsel, the chief executive of a local probation trust, circuit judges, the chief executive of Victim Support, a chief constable, academics, and the director of public prosecutions. The Sentencing Council has also appointed 3 advisors to advise it on matters related to their specialist areas of forensic psychology, social science and crime reduction.

B. New Zealand

23. New Zealand also has a sentencing council which is an independent body established as a body corporate whose primary function is in producing sentencing guidelines. However, the New Zealand legislature is more involved in the adoption of the guidelines. Once draft guidelines are formulated by the Sentencing Council, the minister will present them to the House of Representatives together with a statement on the likely effect of the guidelines on the prison population.[36] The guidelines will come into force unless the House of Representative choose to disapply the draft guidelines by resolution. In the event a draft guideline is disapplied, the Sentencing Council can choose to present a varied guideline to the Minister. Arguably, the greater involvement of the legislature in the exercise gives added legitimacy and weight to the sentencing guidelines issued.

[36] See generally, Sentencing Council Act 2007.

C. The USA

24. The US Federal Courts operate on a strict sentencing guideline system. The United States Sentencing Commission ("Sentencing Commission") produces the Federal Sentencing Guidelines, which all federal judges are required to refer to in all cases. District courts, while not bound to apply the guidelines, must consult those guidelines and take them into account when sentencing. The guidelines are highly detailed. Different offences are assigned different offence levels depending on the seriousness and circumstances of the offences. The sentencing judge is to find the correct category that fits the case at hand to determine the offence level to be assigned. The sentencing judge will then make adjustments to the offence level that is assigned in the light of the circumstances of the case in hand.

25. For example, if there are mitigating factors such as a guilty plea by the offender, the offence level will be decreased by a few notches. Next, the sentencing judge will check if the offender has any antecedents. Where there are antecedents, points may be attributed to the offender, depending on the seriousness of the antecedents and whether the current offence was committed while the offender was under any previous sentence ordered. Next, with the offence level and antecedent points in mind, the sentencing judge will look to a sentencing table to find the appropriate sentencing range. Lastly, the sentencing judge will refer to the guidelines to consider other sentencing options, such as whether to impose imprisonment only, or to impose a term of probation with intermittent confinement.

26. The Sentencing Commission is supported by a staff of approximately 90 persons, divided into six offices of the Staff Director, General Counsel, Education and Sentencing Practice, Research and Data, Legislative and Public Affairs, and Administration.

27. From the jurisdictions surveyed, we can see that there are several advantages to creating a non-judicial body to formulate sentencing policy. Such non-judicial bodies can issue comprehensive guidance on a variety of offences. It also provides an avenue for a wider field of expertise and experience to share their views. It can perform an advisory role which is not fettered by the appellate process and is not limited by what has been argued by the parties. It could be said that whatever suggestions/conclusions that emanate from such a body are more likely to be balanced.

28. On the other hand, having non-judicial persons involved in the setting of sentencing guidelines may have its disadvantages. First, it may be considered to be unnecessarily bureaucratic. For instance, in the New Zealand model discussed earlier, the Sentencing Council presents draft guidelines to the Minister, who then presents it to the House of Representatives, which then decides on whether the guidelines ought to be approved and brought into effect. Second, if a Sentencing Council is set up under the Executive branch, this may be seen as fettering judicial discretion. Third, as the sentencing guidelines prepared by non-judicial bodies are largely based on statistical norms rather than individual circumstances, the sentences meted out based on such guidelines may, in certain circumstances, be too rigid and incommensurate with the offence committed.

29. When one views the highly detailed US guidelines, one cannot help but feel that sentencing in the US has become largely a procedural exercise, as compared to our approach and the like in other jurisdictions surveyed, which generally operate on a principle-based approach and seeks to fit the sentence to the culpability of the offender in relation to the crime in question. While one may admire the seemingly precise and methodological approach of the US model, which would bring about more consistency in sentencing, I feel that it would be a daunting task to ensure that the guidelines issued are so comprehensive as to take into account all the conceivable offences and permutations of sentencing factors without tying down the sentencing judge in a straight jacket. For instance, the weight to be given to the same factor need not be the same for every case – this is because the circumstances under which that factor arises can never be the same; similarly its impact on the commission of the offence.

D. Legislation

30. In the course of surveying the sentencing practices of the various jurisdictions, we also noticed that in some instances the legislatures have provided some broad guidance in their respective statutes. For instance, the Criminal Justice Act 2003 of England and Wales, the Crimes (Sentencing Procedure) Act 1999 of New South Wales, and the Sentencing Act 2002 of New Zealand have statutorily set out the purposes of sentencing, and also a non-exhaustive list of aggravating and mitigating factors to be considered by the sentencing court. While one may say that many of the usual aggravating and mitigating factors have largely been articulated by the courts and there is hardly any need to codify them, arguably, codifying these factors help bring about more clarity,

transparency and legitimacy, especially to litigants who act in person. Statutorily providing a list of aggravating and mitigating factors also allows the legislature to fine-tune the law to better give effect to the expressive function of the law. For instance, the Criminal Justice Act 2003 of England and Wales provides that racial or religious aggravation and aggravation related to disability or sexual orientation will result in an increased sentence.[37]

31. On the flipside, even if the purposes of sentencing and a non-exhaustive list of aggravating and mitigating factors are codified in legislation, it still remains unclear how, for example, sentencing principles are to be applied, as the objects of those principles in themselves often conflict in their application to the particular facts of a case. They also do not provide guidance on the weight to be placed on each principle. For example, in what circumstances and in relation to which offenders should the principle of rehabilitation be accorded priority. Moreover, it could be said that codification of sentencing principles unnecessarily constraints judicial discretion. Furthermore, it must also follow that once such principles or factors are codified, the relevant laws would need to be constantly updated or reviewed to bring them in line with changing societal norms.

32. Having discussed the alternative approaches to developing sentencing guidelines, there are three questions that we need to ask ourselves:

    (a) whether we should codify our sentencing principles and purposes,

    (b) whether we should place sentencing guidelines on a statutory footing, and

[37] See ss 144(1) and 145.

(c) whether we should establish a statutory sentencing council.

33. In considering these questions, we have to remind ourselves that our small city state is, thankfully, not a city that is plagued with crime. With tough criminal laws in place, Singapore has proven itself to be a relatively safe place for its residents and visitors alike. With our established incremental approach to setting sentencing guidelines, I do not think that there is a compelling need at present for legislation, whether to codify the purposes of sentencing or to establish a framework for the creation of a sentencing council or for issuing of sentencing guidelines or sentencing judgments. However, I am not for a moment suggesting that we are closing our mind to ever putting these matters on a statutory footing. We are monitoring the situation closely and, in the meantime, we will continue to learn from the experiences of those countries which have enacted legislation in this area.

34. I recognise that our Sentencing Council which was set up to assist our judicial officers from the State Courts, is a relatively young institution, having come into existence only early last year. It hopes in time to effectively help the State Courts enhance the predictability of sentences by providing clarity on sentencing issues. This project “by the Judges, for the Judges” is well staffed by members with considerable relevant experience in dealing with criminal matters. We hope to progress in a manner and at a pace which we are comfortable with, with the use of the present means and yet imposing sentences which fit the crimes and are broadly consistent.

35. Having said that, I should also add that our Sentencing Council was impressed with the New South Wales approach to issuing guideline judgments, in

particular, the power of the Court of Criminal Appeal to issue guideline judgments on its own motion and to review, vary or revoke guideline judgments in subsequent guideline judgments. In Singapore, our practice has always been for a single High Court Judge to hear Magistrate's Appeals (appeals from both the District courts and Magistrate's courts). If the Judge hearing the appeal is of the view that sentencing guidelines or sentencing benchmarks ought to be in place for a particular offence, it will be at his discretion to issue sentencing guidelines. In 2013, our Sentencing Council decided to adopt certain aspects of the New South Wales model by creating a mechanism for appropriate cases deserving of guideline judgments to be placed before a special panel of 3 High Court Judges. The power to empanel a 3-judge High Court is provided for under section 386(1) of the Criminal Procedure Code (Chapter 68, 2012 Rev Ed) but until this year it had never been invoked. This brings me to the third and last area which I will be discussing, which is the role of the Special Panel of 3 Judges to hear selected Magistrate's Appeals.

IV. The role of the Special Panel of 3 Judges to hear selected Magistrate's Appeals

36. The Special Panel of 3 Judges to hear selected Magistrate's Appeals (a "3-judge MA panel") is designed to reinforce our current practice of issuing sentencing guidelines by a single Judge presiding over a Magistrate's Appeal. With the benefit of having three legal minds deliberating an appeal, that would better ensure that the bench would have more fully explored the various sentencing alternatives and all the implications of the proposed sentencing framework. As the issues are likely to be novel and the decision landmark, a

young energetic *amicus curiae* will be appointed to assist the court with questions of law that may arise.

37. The advantage of a 3-judge MA panel is that the guideline judgments issued would be more authoritive, and are expected to be given serious consideration to not only by the State Courts but also by the single High Court Judge who hears Magistrate's Appeals. I would reiterate that such guideline judgments could still be departed from if there are good reasons to do so. However, clear reasons should be provided in the event of any such departures.

38. The general basis for the selection of cases that ought to be surfaced to a 3-judge MA panel is still being worked through. However, there will be certain general criteria that will be considered before cases are placed before a 3-judge MA panel. For example:

    (a) complex cases where there are no relevant or useful sentencing guidelines,

    (b) cases where there is some form of systemic inconsistency in decisions made at the single judge High Court level, which includes inconsistency in the approach taken, in the outcome, or in the philosophy applied to reach the outcome,

    (c) cases where the prosecution or the defence has made submissions for a significant departure from existing sentencing precedents and where the trial court has accepted these submissions; and

(d) cases where there are multiple accused persons facing similar charges and the resolution of one case will affect the outcome of the other pending cases.

This list of criteria is not exhaustive, but provides a flavour of what deserving cases are meant to be.

39. There have been comments that guideline judgments can have a tendency to increase sentences for particular offences and can have a general deterrent effect.[38] They may have (or may be perceived to have) the effect of raising the starting point or the sentencing range.[39] They may also cause the appeal proceedings to be more protracted than ordinary appeal proceedings. Thus, we can expect that accused persons would generally be reluctant to have their matters associated with guideline application hearings. These are some of the considerations that will have to be taken into account when considering the suitability of a particular appeal for the possible issue for guideline judgments.

40. There will no doubt be further issues to be grappled with, such as whether additional evidence or information may be adduced in a guideline judgment case and to what purpose it should be put. These are still early days yet and we will continue to develop the jurisprudence as we go along.

41. For completeness, I should mention that guideline judgments may take several forms. They may, for example:

(a) provide a suggested sentencing range;

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[38] Cowdery, "*Guideline Judgments: It Seemed Like a Good Idea at the Time*" 20th International Conference, International Society for the Reform of Criminal Law, Plenary 6, 4 July 2006 , available at: <http://www.isrcl.org/Papers/2006/Cowdery.pdf>, accessed 27 Sept 2014.

[39] Ibid at 16.

(b) provide an appropriate starting point;

(c) set out the relevant aggravating or mitigating factors; or

(d) clarify the philosophy to be applied or approach to be taken.

42. Both the Secretariat of our Sentencing Council and the State Courts have developed a framework for referring appropriate and deserving cases, where notices of appeals have been filed, to the 3-judge MA panel. For cases where no appeals have been filed, the powers of revision under sections 400 to 403 of the Criminal Procedure Code (Chapter 68, 2012 Rev Ed), as previously mentioned, are still available, but these powers are generally not intended to be used as a basis to issue guideline judgments. To date, a 3-judge MA panel has issued a guideline judgment in relation to the offence of causing death by a negligent act, in particular as to the circumstances when the imposition of a custodial sentence would be necessary for that offence.[40]

V. Conclusion

43. I hope from the foregoing I have given you some idea as to how we are tackling the issues relating to sentencing in Singapore. What is undoubtedly clear is that, while our practice is different from those of the countries we have surveyed, there is the common element of the importance of issuing sentencing guidelines or guideline judgements. With our recent inception of a 3-judge MA panel and with the our Sentencing Council being constantly atuned to the need to improve our system, I am confident that in time to come, there will

[40] *Public Prosecutor v Hue An Li* [2014] SGHC 171

be a heightened level of certainty, clarity and predictability in sentencing that will benefit judges, prosecutors and defence lawyers.

Thank You.