IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 254

Magistrate's Appeal No 9332 of 2018

Between

Lau Jian Bang

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing] — [Offences under Remote Gambling Act]

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Introduction

1 In this appeal, the question arose as to the appropriate sentence to be imposed on an accused person who gambled online. Facing a sentence of two weeks' imprisonment for offences under s 8 of the Remote Gambling Act (No 34 of 2014) ("RGA"), for unlawful remote gambling, the appellant seeks the substitution of a fine or other punishment. Having heard the submissions, I am of the view that it would be sufficient to impose a fine.

Facts

2 The appellant pleaded guilty to two charges under s 8(1) of the RGA. He also consented for two similar charges under s 8(1) of the RGA to be taken into consideration for the purposes of the sentencing.

3 The facts of the case are set out in *Public Prosecutor v Lau Jian Bang* [2019] SGMC 6 (the "GD").

4 On 22 October 2016 and 23 October 2016, the appellant placed bets totalling $21,000 and $18,000 respectively on football matches through a website "www.tbsbet.com", which was not an exempt operator under the RGA. He did so using an account provided to him with the username "geeng69".[1]

5 The appellant was charged, convicted and sentenced under s 8(1) of the RGA, which is set out for ease of reference:

> **Unlawful remote gambling**
>
> 8.—(1) An individual who, in Singapore, gambles —
>
> (*a*) using remote communication; and
>
> (*b*) using a remote gambling service that is not provided by —
>
> (i) an exempt operator; or
>
> (ii) a person otherwise exempt under section 40 from section 10 or 11,
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 6 months or to both.

Decision Below

6 The District Judge ("the DJ") held that general deterrence was the primary sentencing consideration with regard to illegal remote gambling: GD at [16]. In accordance with parliamentary intent, sentences for illegally gambling online should be aligned with those for illegal terrestrial gambling under the

[1] Statement of Facts paras 5, 7 and 9.

Common Gaming Houses Act (Cap 49, 1985 Rev Ed) ("CGHA") and Betting Act (Cap 21, 2011 Rev Ed) ("BA"): GD at [17].

7 Relying on commentary from *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013), the DJ held that the value of bets placed were a factor to be considered in sentencing. The objectives of general deterrence would be met by considering the imposition of a custodial sentence where the amount of bets placed by the accused is very large and greater than the maximum fine of $5,000 provided by the statute: GD at [18] and [19]. Otherwise, the imposition of a fine would simply be a business cost which gamblers would face little hardship in paying: GD at [22].

8 The DJ found that the appellant was not a novice gambler as he admitted in the Statement of Facts ("SOF") to having illegally gambled online since 2015: GD at [20]. Taken together with the value of the appellant's bets placed in the course of a week, totalling $39,000 on the proceeded charges and $50,000 including the charges taken into consideration for purposes of sentencing, a custodial sentence was warranted. Citing various State Court precedents for offences under s 8 of the RGA where custodial sentences were imposed, the DJ sentenced the appellant to two week's imprisonment for each of the two proceeded charges: GD at [21]–[27]. Both sentences were to run concurrently.

The appellant's case

9 The appellant raises numerous arguments contending that the sentence imposed by the DJ was manifestly excessive. He seeks the imposition of a

community service order ("CSO") or a high fine in respect of the two proceeded charges.[2]

10 First, as to the factual matrix on which sentencing was based, the appellant submits that the DJ erred in considering the fact that the appellant was "far from a novice gambler" to be an aggravating factor. This was based on the SOF, which stated that the appellant had been involved in illegal online soccer betting from 2015.[3]

11 Second, the DJ overemphasised the importance of general deterrence for offences under s 8 of the RGA. Mere punters, such as the appellant, are not the primary object of the RGA. By allowing operators such as Singapore Pools to offer remote gambling services, Parliament has indicated that the primary concern is not the act of remote gambling *per se*. Seen in this context, the harm caused by the appellant's offending conduct was low. The use of bet quantum as a proxy for harm was inappropriate for offences under s 8 of the RGA, as any losses would be borne by the offender and not third parties.[4]

12 Third, the DJ erred in failing to properly appreciate the sentencing precedents under s 8 of the RGA that he relied upon.[5]

13 Fourth, the DJ failed to consider sentencing precedents under the BA and CGHA.[6]

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2 Appellant's submissions at para 7.

3 Appellant's submissions at paras 13-21.

4 Appellant's submissions at para 28-56.

5 Appellant's submissions at paras 81-119.

6 Appellant's submissions at paras 123-140.

14 Finally, there was some suggestion that the appellant was unduly prejudiced by a delay in prosecution. The appellant was only charged on 21 November 2018, some two years after the offences were committed in October 2016.[7]

15 The appellant also suggests that the court adopt a "two-step sentencing band approach" for offences under s 8 of the RGA with the following sentencing bands applying for an offender who pleads guilty:[8]

Band	Harm and Culpability	Sentencing Range
1	Lesser harm and lower culpability	Fine not exceeding $5,000
2	Greater harm and lower culpability or lesser harm and higher culpability	One day to four weeks' imprisonment
3	Greater harm and higher culpability	More than 4 weeks' imprisonment

The Prosecution's case

16 The Prosecution takes the position that the DJ had properly considered all relevant factors in arriving at his decision. Deterrence is the dominant sentencing consideration for offences under s 8 of the RGA. The Prosecution stresses that RGA offences are likely to cause public disquiet. Further, such offences, being committed over the internet, are more difficult to detect and oftentimes involve a transnational element.[9]

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7 Appellant's submissions at para 122.

8 Appellant's submissions at para 69.

9 Prosecution's submissions at paras 14–20, Prosecution's further submissions at paras 35–39.

17 The Prosecution submits that the DJ was right in finding that the custodial threshold was crossed in the instant case due to the numerous aggravating factors present. The amount wagered was a proxy for the gravity of an offence under s 8 of the RGA; the large value of the appellant's bets was an aggravating factor. The appellant also ought not to be treated as a first-time offender as he had been engaging in unlawful remote gambling since 2015 and further faced a total of four charges, with the two proceeded charges relating to a series of 13 bets made in the span of two days. Finally, the offences were committed for personal gain.[10]

18 The Prosecution also tendered a table of sentencing precedents consisting of unreported decisions for offences under s 8 of the RGA, which it submits demonstrates that the sentence is in-line with the sentences imposed in similar cases.[11]

19 As regards the appellant's argument that there was undue delay in prosecution, the Prosecution submits that such allegations are unwarranted. The appellant was charged 11 months after the runner employed by the syndicate operating the remote gambling service utilised by the appellant, and whose information led to the apprehension of the appellant, was dealt with. There was no basis to allege that there was a lack of diligence in investigations.[12]

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10 Prosecution's submissions at paras 22, 32–34, Prosecution's further submissions at para 76.

11 Prosecution's submissions at Annex A.

12 Prosecution's submissions at paras 24–30.

20 The Prosecution also proposes that the court adopt a multiple starting points approach to sentencing for offences under s 8 of the RGA, with the indicative starting points based on the value of the illegal bets:[13]

Value of bets	Proposed Sentence
Up to $5000	Fines between $1000–$2500
$5000–S$9999	Fines between $2500–$5000
$10,000–$100,000	Up to 2 months' imprisonment
$100,000–$500,000	2–4 months' imprisonment
>$500,000	4–6 months' imprisonment

Further submission

21 Following the hearing on 22 July 2019, I directed parties to address me in further submissions on: (a) the characterisation of harm caused by the appellant's offending conduct; and (b) the safeguards implemented by exempt operators under the RGA, including any limitations on bet amounts.

22 The appellant submits that the harm in this case was low. There would only be harm to society if he had succumbed to gambling addiction and its concomitant ills, which were not present on the facts.[14] The appellant also stresses that concerns about the ills of gambling apply with equal force when gambling is carried out legally through exempt operators; there is thus no specific harm present in the present case.[15]

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13 Prosecution's further submissions at para 70.

14 Appellant's further submissions at para 6.

15 Appellant's further submissions at para 7.

23 In relation to the safeguards implemented by exempt operators such as Singapore Pools, the appellant tendered evidence that he would have been able to place bets of the same amount as the proceeded charges through their online platform.[16]

24 The Prosecution submits that the harm caused by illegal remote gambling is far-reaching. Illegal remote gambling is more likely to result in problem gambling, which has a profound impact on a gambler's family members and society at large.[17] Law and order concerns are also implicated as there is a material link between unlawful remote gambling activities and international criminal syndicates.[18] In this regard, persons who gamble on illegal remote gambling services should be seen as enabling the operators of such services.[19]

25 The Prosecution also disputes the appellant's characterisation of the safeguards implemented by exempt operators such as Singapore Pools. There are a broad swathe of safeguards to ensure responsible gambling and prevent criminal influences associated with illegal remote gambling from affecting law and order.[20]

The issues to be determined

26 There are three issues to be determined:

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16 Appellant's further submissions at paras 8–19.

17 Respondent's further submissions at paras 29, 35–39.

18 Respondent's further submissions at paras 33–34.

19 Respondent's further submissions at para 34.

20 Prosecutions' further submissions at para 15–20.

(a) Whether a CSO is appropriate;

(b) The appropriate sentencing framework for offences under s 8 of the RGA; and

(c) The application of the framework to the present case.

Issue 1: Whether a CSO is appropriate

27 The appellant suggests that a community-based sentence ("CBS") such as a CSO can be imposed. This was not an issue canvassed before the District Judge in the proceedings below as the appellant was then without counsel.

28 Section 337(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) sets out the general requirements for the imposition of a CBS, including CSOs:

> **Community orders**
>
> **337.—** (1) Subject to subsections (2) and (3), a court shall not exercise any of its powers under this Part to make any community order in respect of —
>
> (*a*) an offence for which the sentence is fixed by law;
>
> (*b*) an offence for which any of the following is prescribed by law:
>
> (i) a specified minimum sentence of imprisonment or caning;
>
> (ii) a mandatory minimum sentence of imprisonment, fine or caning;
>
> (*c*) an offence which is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
>
> (*d*) a person who had previously been sentenced to a term of imprisonment exceeding 3 months, other than a term of imprisonment served by him in default of payment of a fine;
>
> *(e*) a person who had previously been sentenced to corrective training or preventive detention;

> (*f*) a person who had previously been detained or subject to police supervision under section 30(1) of the Criminal Law (Temporary Provisions) Act (Cap. 67);
>
> (*g*) a person who has been admitted —
>
> (i) at least twice to an approved institution under section 34 of the Misuse of Drugs Act (Cap. 185) (called in this section an approved institution);
>
> (ii) at least twice to an approved centre under section 17 of the Intoxicating Substances Act (Cap. 146A) (called in this section an approved centre); or
>
> (iii) at least once to an approved institution, and at least once to an approved centre;
>
> (*ga*) an offence under the Misuse of Drugs Act, the Misuse of Drugs Regulations (Cap. 185, Rg 1) or the Intoxicating Substances Act, if the offender had previously been admitted to an approved institution or an approved centre;
>
> (*h*) a fine-only offence; or
>
> (*i*) an offence which is punishable with a term of imprisonment which exceeds 3 years.

29 None of the statutory prohibitions against imposing a CSO apply here; the issue then is whether a CSO ought to be imposed.

30 The CBS regime, of which the CSO is a part of, is targeted at offenders for whom rehabilitation is the dominant sentencing consideration. This was made clear in the speech of the Minister for Law Mr K Shanmugam in the second reading of the Criminal Procedure Code 2010 (Bill No 15 of 2010) (*Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at col 422 (K Shanmugam, Minister for Law):

> Our sentencing philosophy is aimed at deterrence, prevention, retribution and rehabilitation. A fair sentencing framework is one that enables the Court to deliver the correct mix of these four objectives on the specific facts of each case.

> CBS gives more flexibility to the Courts. Not every offender should be put in prison. *CBS targets offences and offenders traditionally viewed by the Courts to be on the rehabilitation end of the spectrum: regulatory offences, offences involving younger accused persons and persons with specific and minor mental conditions*. For such cases, it is appropriate to harness the resources of the community. The offender remains gainfully employed and his family benefits from the focused treatment.
>
> [emphasis added]

31 Here, there are no special circumstances suggesting that rehabilitation is the dominant sentencing consideration. As will be elaborated on later, I am of the view that the dominant sentencing consideration in this case is that of general deterrence. Accordingly, I decline to impose a CSO.

Issue 2: Sentencing framework

Sentencing precedents

32 There appears to be little consistency in the various unreported precedents cited to the court for offences under s 8 RGA for bets that involve large amounts.

33 While the Prosecution cites several unreported cases where custodial sentences were imposed for offences under s 8 of the RGA, there was at least one unreported case where a non-custodial sentence was imposed for offences under s 8 of the RGA involving similar bet amounts as the appellant.

34 In *Public Prosecutor v Tan Yong Ren, Edmund* (SC-911188-2017), the accused person faced five charges under s 8 of the RGA for bets totalling $14,605. Eleven other charges under s 8 of the RGA were taken into consideration. The total amount wagered across the proceeded charges and the charges taken into consideration was $37,258. The accused person had two previous convictions for offences under s 7 of the CGHA, for which he had been

sentenced to a $1,000 fine each. He was sentenced to a $4000 fine per proceeded charge for a total fine of $20,000.

35 As for cases involving bets of low value (*ie,* less than $1,000), it appears that courts have generally imposed a $1,000 fine.

36 Given the inconsistency in sentencing approaches adopted by the courts, it appears that this is an appropriate case to consider the issue of an appropriate sentencing framework for offences under s 8 of the RGA.

The sentencing considerations

Legislative objective of the RGA

37 The objectives of the RGA were articulated by the Second Minister of Home Affairs S Iswaran ("Mr Iswaran") during the second reading of the Remote Gambling Bill (Bill No 23 of 2014) (*Singapore Parliamentary Debates*, *Official Report* (7 October 2014) vol 92 ("*RGA Debates*") at p 2):

> The Bill has two key objectives: first, to tackle the law and order issues associated with remote gambling; second, to protect young persons and other vulnerable persons from being harmed or exploited by remote gambling.

Mr Iswaran made it clear that while the offence of illegal remote gambling, being an arrestable offence, was to be a serious one, the primary focus of the RGA would be unlawful remote gambling operators and agents (*RGA Debates* at pp 46–47):

> … The primary focus of enforcement actions under this Bill will be on the operators of illegal remote gambling services as they are most likely to be associated with or be used to support criminal activities …
>
> … I also want to assure the Member that Police will obviously take a calibrated approach and exercise judgement in enforcing

> the provision [against illegal remote gambling]. The primary focus again is on unlawful remote gambling operators and agents, less so on individual gamblers *per se*.

38 The priorities of the RGA in targeting those that are involved in organising and profiting from unlawful remote gambling services are also reflected in the relative severity of the stipulated punishments for the provision of unlawful remote gambling services under s 9 of the RGA. Such offences attract potential fines of between $20,000 and $200,000, together with an imprisonment term of up to five years. This stands in contrast with the offence of unlawful remote gambling under s 8 of the RGA, which attracts a fine of up to $5,000 or imprisonment for a term not exceeding six months.

39 A similar approach is taken with respect to terrestrial gambling. During the second reading of the Betting (Amendment) Bill (Bill No 15 of 1985) and the Common Gaming Houses (Amendment) Bill (Bill No 16 of 1985), which raised the penalties for illegal terrestrial gambling under s 5 of the BA and s 7 of the CGHA to their current levels, then Minister for Home Affairs Professor S. Jayakumar expressed that the amendments were primarily targeted at gambling operators (*Singapore Parliamentary Debates*, *Official Report* (10 January 1986) vol 46 at col 726):

> The main thrust of these amendments is against the operators of these mini-turf clubs. Enhanced punishments will be introduced for these offences…Although illegal gambling operators will now face these minimum fines as well as mandatory imprisonment, those who use their facilities, the punters, will not similarly face mandatory imprisonment upon conviction. Instead, clause 5 only amends section 5 of the Act dealing with punters who indulge in illegal betting or wagering and provides for an enhanced penalty of a fine up to $5,000 or imprisonment up to six months.

40 The upshot of this is that while general deterrence is the primary sentencing consideration for offences of unlawful remote gambling under s 8 of

the RGA, this must be seen in the context of Parliament's primary emphasis in targeting the providers of unlawful remote gambling services. It is not the case that the purposes of general deterrence are necessarily served by a custodial sentence. It may very well be the case that a substantial fine would be adequate as a deterrent: see *Yang Suan Piau Steven v Public Prosecutor* [2013] 1 SLR 809 at [34]. This necessitates a consideration of the factors going towards the harm caused by offences under s 8 of the RGA.

Harm

41 The Prosecution argues that the harm arising from offences under s 8 of the RGA is quantifiable by the amount bet. The harm from such offences identified by the Prosecution can be broadly classified into the following categories (see [24] above):

(a) the gambling itself being unauthorised or unlawful;

(b) impact on the gambler's family and society at large; and

(c) possible links that unlawful remote gambling sites may have to international criminal syndicates;

42 Such other factors would not seem to be in play when online gambling is carried on through exempt operators. As far as (b) is concerned, the two exempt operators under the RGA, Singapore Pools and the Singapore Turf Club, appear to carry messages on their platforms intended to discourage irresponsible gambling, or to put it conversely, promote responsible gambling.

43 Another possible type of harm which comes to mind is that offences under s 8 of the RG, if not sufficiently curbed, may result in the normalisation

of illegal remote gambling, thereby promoting a culture of tolerance of such behaviour. However, this is not relied upon by the Prosecution here.

44 The primary issue of contention between the parties is the relevance of the amount of the bet. This is to be expected as the amount bet is one of the few measures by which offences under s 8 of the RGA can be differentiated, given that they usually arise in similar circumstances. The Prosecution's position is that the central mischief of offences under s 8 of the RGA is the quantum of bets placed on unlawful remote gambling services.[21] The appellant's position is that the amount bet does not translate directly to harm caused as it does not result in any loss to a third party.

45 I am of the view that the quantum of bets placed on unlawful remote gambling services, while a relevant factor to be taken into account in sentencing, is not a good proxy for the harm caused by offences under s 8 of the RGA. The monetary value of loss to the victim is an important factor in assessing the harm caused in property offences: see *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*") at [43]. The same link, however, is absent in the present case, where no victim has suffered any loss. It may be argued that the gambler who places a larger wager stands to earn a greater profit, but the converse holds true, that same gambler is exposed to potentially greater losses. It does not even seem to me to be that the larger wager necessarily translates into a larger potential payoff; much would depend on the probability of the payoff event occurring. Taken together, I do not think that greater harm is caused by an offence under s 8 of the RGA by virtue of the accused person having placed a larger bet.

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21 Prosecution's further submissions at para 7.

46 Turning to some of the other harm the Prosecution alleges is caused by offences under s 8 of the RGA, much is made by the Prosecution about the social ills of gambling (see [24] above). The difficulty with this submission is that such concerns apply regardless of whether remote gambling is carried out legally or illegally. It is important to note that the mischief caught by s 8 of the RGA is not remote gambling in itself. It is unregulated remote gambling carried out on remote gambling services that are not exempt under the RGA that is the target. The actual concern with unregulated remote gambling services is that they could carry a host of other ills and lack the necessary safeguards promoting responsible gambling. In this regard, while I accept that the stringent safeguards implemented by exempt operators such as Singapore Pools are intended to curb problem gambling, it does not follow that the absence of such safeguards on unlawful remote gambling services requires heavier sentences to be imposed on gamblers. It may be that gambling on unauthorised remote gambling services may carry the risk of promoting unsupervised gambling, but this concern alone cannot lead to the imposition of sentences of imprisonment. Imprisonment would not bar problem gambling, and may instead lead to a downward spiral for the accused person.

47 Against this backdrop, the potential risks to a gambler's family are something to be taken into account in determining the harm caused by offences under s 8 of the RGA, but it appears incongruous to characterise the risks to the gambler's family and society at large as harm caused by the offence. After all, it is open to the gambler to make similar wagers legally through exempt operators such as Singapore Pools or the Singapore Turf Club.

48 The Prosecution also argues that unlawful remote gambling causes public disquiet, having "the ability to have [the] wider-felt impact of triggering

unease and offending the sensibilities of the general public."[22] This is because remote gambling "circumvents the ability of the State to impose meaningful controls [*sic*] measures that curb risks of addi[c]tion and other social ills".[23] With respect, I have some difficulty following this argument. The Prosecution fails to identify how remote gambling engenders such effects and can only muster vague assertions about the circumvention of state control. Taken to its logical conclusion, every offence committed in Singapore would cause public disquiet as tending to undermine public faith in the government to maintain law and order. I thus do not accept that public disquiet is one of the harms attributable to remote gambling.

49 As for the Prosecution's argument that remote gambling activities often involve international criminal syndicates,[24] I am similarly not persuaded that this is a harm attributable to persons who utilise unlawful remote gambling services. The involvement of a syndicate or transnational element was found to be offence-specific aggravating factors going towards harm caused by an offence in *Logachev* at [52]–[55] in the context of offences under s 172A of the Casino Control Act (Cap 33A, 2007 Rev Ed) for cheating at play in a casino. However, this was in the context of participation by the accused person in the actions of the international criminal syndicate. Where offences under s 8 of the RGA are concerned, gamblers are patrons of unlawful remote gambling services and may not even be aware of the identities of the figures behind these services. While the presence of a syndicate or transnational element would rightly be a factor going towards harm in the case of the provision of unlawful remote

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22 Prosecution's further submissions at para 28.

23 Prosecution's submissions at para 15.

24 Prosecution's further submissions at para 33.

gambling services, I do not think that such considerations should apply in the case of gamblers. The mere fact that an organised criminal enterprise could be behind an unlawful remote gambling service is not enough to visit the gambler with heavier punishment in the form of imprisonment.

50 The Prosecution's final contention is that gamblers bear some degree of culpability as enablers of operators of illegal remote gambling services. In short, it is the demand of gamblers that generates the supply of illegal remote gambling services.[25] While an intuitively attractive argument at first glance, no authority was cited for the proposition that a purchaser of an illicit good or service should be held responsible for the conduct of the seller. There is nothing in s 8 of the RGA to support such a contention and clearer language would be required, if it were indeed Parliament's intent for such a sentencing consideration to apply.

51 In the round, I am of the view that the harm caused by an offence under s 8 of the RGA is not such as to attract imprisonment as a matter of course for first-time offenders. The offending conduct here, gambling on an unlawful remote gambling service, involves doing an act (*ie*, gambling) that could have been pursued through lawful means. This is not to say that remote gambling offences should be condoned. Punishment is imposed, just not imprisonment if the offender is a first-time offender.

52 It must be emphasised that what is laid out here is only for first-time offenders. Repeat offenders may need to be treated differently, and it is in respect of such offenders that the argument that they enable or support the

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[25] Prosecution's further submissions at para 34.

activities of illegal syndicates may have some traction. Repeat offenders may indeed have to face imprisonment, but that is an argument for another day.

Comparison with other offences involving illegal gambling

53 Parliament intentionally provided that the punishments for illegal terrestrial and remote gambling would be the same. This was made clear in the speech of Mr Iswaran (*RGA Debates* at p 3):

> Clause 8 makes it an offence for an individual in Singapore to gamble remotely with an unauthorised operator. The penalty is a fine not exceeding $5,000 or imprisonment not exceeding six months or both. This is *consistent with our current laws on terrestrial gambling*. [emphasis added]

The corollary of this is that sentencing precedents for illegal terrestrial gambling under the BA and CGHA are relevant in determining the appropriate sanction for offences under s 8 of the RGA.

54 The general tenor of sentencing precedents for terrestrial gambling offences is that a fine is imposed on first-time offenders:

(a) In *Zhou Tong and others v Public Prosecutor* [2010] 4 SLR 534, the eight appellants appealed against their sentences under s 7 of the CGHA. Following a trial, six of the appellants were sentenced to a fine of $2,000 while the remaining two were sentenced to a fine of $3,000 as they had previous immigration-related antecedents. In upholding the sentences imposed, the High Court considered two other decisions, the facts of which are pertinent. The first was *Public Prosecutor v Yap Ah Yoon and others* [1993] 1 SLR(R) 506, where the sentence meted out to the eight accused persons (who had claimed trial) was a fine of $2,000. Six of the eight accused persons had gaming antecedents. The second case was *Public Prosecutor v Chua Kee Tee* (Magistrate's Appeal No

432 of 1992), where four of the five accused persons had gaming antecedents while the remaining was untraced. They were all fined $3,000 after trial.

(b) In *Ang Swee Kiat v Public Prosecutor* (Magistrate's Appeal No 98 of 1993), the accused person claimed trial to a charge of gaming in public under s 8(2) of the CGHA for gambling behind a petrol kiosk. The accused person had five previous gaming antecedents for which he had been fined between $50 and $700, the most recent conviction having been two months before the offence in question. He was sentenced to one weeks' imprisonment and a fine of $1,000. The accused person eventually withdrew his appeal.

(c) In *Leong Saw Yeng v Public Prosecutor* [2001] SGMC 31, the accused person pleaded guilty to a charge under s 7 of the CGHA. She had seven previous gaming antecedents, and had most recently been sentenced to four months' imprisonment. The court sentenced her to the maximum six months' imprisonment. The accused person eventually withdrew her appeal.

55 What can be observed from the above is that custodial sentences are not usually imposed for first-time offenders and are usually reserved for the most recalcitrant offenders for which fines appear to have no deterrent effect. This further substantiates the point made above, that a term of imprisonment should generally not be imposed in the case of first-time offenders (see [41]–[51] above). In enacting s 8 of the RGA, Parliament would have been aware of the general approach adopted by the courts with regard to illegal terrestrial gambling offences and it can be inferred from Mr Iswaran's speech (see *RGA Debates*, referred to at [37] and [53] above) as well as the same maximum

punishments for both illegal terrestrial and remote gambling offences that it was intended that a similar approach would apply to unlawful remote gambling offences. Indeed, there is little sense for a different sentencing framework to be applied to remote gambling offences.

What type of sentencing guideline should be adopted

56 The Court of Appeal in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 identified several possible approaches in developing sentencing guidelines (at [26] and [39]):

(a) The "single starting point approach";

(b) The "multiple starting points approach";

(c) The "benchmark approach";

(d) The "sentencing matrix approach"; and

(e) The "two-step sentencing bands approach".

The Court of Appeal also highlighted the considerations in adopting each type of sentencing guideline for a particular offence.

57 The appellant submits that a two-step sentencing bands approach should be adopted for offences under s 8 of the RGA (see [15] above). The two-step sentencing bands approach is best suited to offences where the range of sentencing considerations is wide and there is great variance in the manner in which an offence may present itself: *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence* Ng") at [26]–[38]. Unlawful remote gambling offences inevitably manifest themselves in a particular way with a

limited range of sentencing considerations. For this reason, I am of the view that the two-step sentencing bands approach is unsuited for unlawful remote gambling offences under s 8 of the RGA.

58 The Prosecution, on the other hand, submits for a multiple starting points approach similar to that in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha*") for first-time offenders trafficking in diamorphine under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) to be adopted. Under the *Vasentha* framework, the quantity of diamorphine is first used to determine the appropriate indicative starting point. Adjustments are then made for culpability of the offender and the presence of any aggravating or mitigating factors. The reason for adopting such an approach is that the quantity of drugs trafficked has a direct correlation to the harm caused to society and serves as a reliable indicator of the seriousness of the offence: *Vasentha* at [23]. According to the Prosecution, the starting points for offences under s 8 of the RGA can be determined based on bet quantum (see [20] above). The custodial threshold will be crossed where the value of bets exceeds $10,000. The issue with this submission is that the considerations which applied in *Vasentha* did not apply with equal force to offences under s 8 of the RGA. As I found above at [41]-[45], bet quantum is not an accurate metric for measuring the harm caused to society by such offences.

59 Given these considerations, I am of the view that the single starting point approach, which is most suitable where the offence in question almost invariably manifests itself in a particular way such that the range of sentencing considerations is circumscribed (*Terence Ng* at [28]), should be adopted for offences under s 8 of the RGA.

Calibrating the sentencing framework

60 Based on the above considerations, a fine of about $1,000 should be the starting point for offences under s 8 of the RGA for first-time offenders. The next step would involve adjusting the fine imposed to ensure that the sentence imposed would adequately serve the ends of general deterrence. In this regard, I broadly agree with the DJ that the quantum of the fine should be pegged to the quantum of the accused person's bets. The starting point of $1,000 can thus be adjusted to take into account the amount wagered by the offender. However, I do not agree with the proposition that the imposition of a fine would merely amount to a business cost to gamblers where the wager is above $5,000. A gambler is in a very different position from a businessman who deliberately flouts the law to achieve greater profits, calculating that the cost of any fine imposed would be outweighed by the attained profits. The former has little certainty of profit, and a fine could well have the desired deterrent effect by eroding profits or exacerbating any losses.

61 In cases where the bet quantum exceeds the maximum fine, it does not automatically follow, as the Prosecution argues, that a custodial sentence should be imposed instead. In *Ngian Chin Boon v Public Prosecutor* [1998] 3 SLR(R) 655, the accused person pleaded guilty to a charge under s 336 of the Penal Code (Cap 224, 1985 Rev Ed), which as it stood then provided for a maximum fine of $250 or an imprisonment term of up to three months. At first instance, the District Judge imposed a sentence of two months' imprisonment as a fine of $250 was thought to be inadequate. In allowing the appeal, Yong Pung How CJ found that there was no reason to impose a custodial sentence when a fine would suffice simply because the maximum fine was thought to be inadequate. It was sufficient for a fine to be imposed in cases involving negligence as opposed to rashness. If the maximum fine was thought to be inadequate, the proper solution

would be for Parliament to enact legislation increasing the fine to be imposed, not for a custodial sentence to be imposed instead (at [16]). Similar considerations apply here. A custodial sentence should not be imposed simply because the maximum fine is thought to be inadequate if to do so would result in a sentence disproportionate to the culpability of the accused person. The solution, it would seem, lies with Parliament to either increase the maximum fine to better deal with such situations, or to allow for fines to be coupled with other orders, including instruction and education on responsible gambling.

62 That is not to say that the quantum of a gambler's bet is the only consideration in sentencing for offences under s 8 of the RGA. Though the nature of the offence necessarily limits the range of aggravating factors that may present themselves, I agree with the Prosecution's submission that steps taken to conceal one's illegal bets may constitute an aggravating factor: see *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [25(d)]. However, it is not every act of concealment that constitutes an aggravating factor. It is clear from the authorities cited that the Prosecution must demonstrate how steps taken by the accused person obstructed detection, necessitating painstaking investigation to uncover his or her illegal activity.

63 Other general offender-specific factors may also affect the calibration of the fine to be imposed on first-time offenders. Offender-specific aggravating factors would include offences taken into consideration for sentencing purposes and lack of remorse (see *Logachev* at [64], [66]). On the other hand, a timely guilty plea or cooperation with the authorities would be offender-specific mitigating factors (see *Logachev* at [67]–[68], [70]).

64 As regards when a custodial sentence should be imposed, as noted above, I am of the view that such a sentence should generally only be imposed

in the case of repeat offenders (see [52] above). This would be consistent with the existing approach applied to offences under the BA and CGHA.

65 I do note that the framework does not fully utilise the full sentencing range prescribed under s 8 of the RGA. It is not always possible for a sentencing framework to fully canvass the spectrum of possible sentences which Parliament has provided for, especially when the framework provided canvases the appropriate sentence for first-time offenders only: see, *eg Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139. Each offence should be carefully scrutinised, with all relevant sentencing considerations taken into account in determining the appropriate sentencing framework. As highlighted above at [60]–[61], a fine would generally be sufficient in the case of first-time offenders. The possibility of coupling such penal sanctions with other measures such as instruction and education on responsible gambling is something rightly within the purview of Parliament.

Issue 3: Application of the sentencing framework to the present case

66 In my judgment, the sentences imposed by the DJ were manifestly excessive.

67 It appears from the GD that the DJ did not consider the appellant to be a first-time offender. This was based on the SOF, which disclosed that the appellant had been participating in unlawful remote gambling from 2015, and that the appellant had placed multiple bets in the span of a week (GD at [20]–[22]). I am of the view that the appellant ought to be considered a first-time offender. The sentencing court should not take into account offences which the accused person might have committed on prior occasions; to do so would effectively be enhancing the sentence based on offending conduct for which the

accused person has not been charged for and convicted of: see *Chong Yee Ka v Public Prosecutor* [2017] 4 SLR 309 at [45].[26]

68 As for the fact that the appellant had committed multiple offences, I do not think that this means that he should not be treated as a first-time offender. The case of *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR 334 ("*Jerriek*") did not lay down a hard and fast rule that an accused person should not be considered as a first-time offender if he commits multiple offences. Rather, each case must turn on its own facts. On the proceeded charges, the appellant's offending behaviour took place over the span of a week. This was a fairly short period of time and is clearly distinguishable from the accused person in *Jerriek*, whose offending behaviour took place over a six-month period. The latter also faced a total of seven charges with 38 charges being taken into consideration. In the circumstances, I am satisfied that the appellant should be treated as a first-time offender for the purposes of sentencing.

69 I also do not accept the Prosecution's submission that the appellant's concealment of his remote gambling activities constitutes an aggravating factor. The Prosecution based this on the appellant having utilised a login username and password to access the remote gambling service, which made his activities more difficult to detect. This cannot be correct. The effect of adopting the Prosecution's submissions would mean that an aggravating factor would be found in virtually every offence committed over the internet given that people generally do not reveal their identities in such a forum. Nothing in the SOF suggests that the appellant had taken any concerted steps to conceal his identity and avoid apprehension such as to constitute an aggravating factor.

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[26] Appellant's submissions at para 20.

70 The amounts wagered by the appellant were significant, totalling $21,000 and $18,000 on the proceeded charges. While I do not think that his actions merit a custodial sentence, the starting point of a $1000 fine should be calibrated upwards to reflect the seriousness of the appellant's offending conduct. I therefore allow the appeal and substitute the sentences of imprisonment with the maximum fine of $5,000, in default one weeks' imprisonment, for each proceeded charge.

Aedit Abdullah
Judge

Sunil Sudheesan, Ngiam Hian Theng Diana, and Sujesh Anandan (Quahe Woo and Palmer LLC) for the Appellant;
Viveganandam Jesudevan and Thiagesh Sukumaran (Attorney-General's Chambers) for the Respondent.